

# Roleplays as Rehearsals for “Doing the Right Thing”—Adding Practice in Professional Values to Moldovan and United States Legal Education

Ann Juergens  
Angela McCaffrey\*

## INTRODUCTION

Teach law in Moldova in February? Two clinical teachers accustomed to Minnesota winters were not daunted by the prospect. After planning for many weeks, we embarked on a teaching exchange funded by the United States Agency for International Development (“USAID”) and coordinated by a non-governmental organization based in Minnesota.<sup>1</sup> The project’s goals were to share United States

---

\* This Article was developed following a session at the North American Regional Global Alliance for Justice Education (“GAJE”) conference, Fordham University School of Law, New York, May 3–4, 2006, by Ann Juergens and Angela McCaffrey. Ann Juergens is Professor and Co-Director of Clinics, William Mitchell College of Law; Angela McCaffrey is Clinical Professor and Director of Clinics, Hamline University School of Law, both in St. Paul, Minnesota. We are grateful to Susan Hartman of CONNECT U.S./Russia; to the students of law and Deputy Dean Vladimir Grosu at Moldova State University, Chisinau; to the students and Dean Sergei Zaharia at Komrat State University, Komrat; to the students and Dean Andrei Dumas at Real Humanities University, Cahul; and to the deans of our respective law schools during our sojourn, Allen Easley and Jon Garon, for making the Moldova exchange possible. The feedback provided at the New Directions in Clinical Education Scholarship Roundtable held at Washington University in St. Louis School of Law on November 9, 2007, was invaluable. We thank Emily Hughes and Michael Perlin in particular for their written comments. Karen Tokarz and Peter Joy helped a great deal by gathering us with other authors in this Volume and leading that scholarly exchange.

1. Susan Hartman, the director of a non-profit, and Ann Juergens and Angela McCaffrey, two clinical law teachers, traveled to Moldova and worked with professors and law students at three law schools throughout Moldova for ten days in February 2005. This visit was the second part of an exchange with legal educators from Moldova. During the first phase, in September 2003, deans and faculty members from four law schools in Moldova came to Minnesota to learn about American legal education methods, including clinical legal education. Posting of Jamie M. Hopkins, [Jamie@Connectusrussia.org](mailto:Jamie@Connectusrussia.org), to [mnrpcuEmailList@ yahoo.com](mailto:mnrpcuEmailList@yahoo.com) (July 31, 2006) (on file with authors). They visited Hamline University School of Law, William Mitchell

methods of legal education with this former Soviet state that is one of the poorest countries in Europe.<sup>2</sup> We were to teach methods that foster critical thinking and along the way cultivate understanding between Moldovan and United States law teachers and law students.

We did not predict that we would learn more about legal education from the Moldovan students than we would teach them. With forty-six years of experience in law teaching between us, we understood the goals of the project and how to accomplish them. We would engage the Moldovan students in critical reflection and skill-building exercises. Moldovan law teachers would learn to employ active teaching methods that could be adapted to teach a variety of legal principles and skills.

Yet our class plans—a handful of simple roleplays and oral presentations to be performed by students in front of their classmates—became vehicles for the students to explore their concerns about the bribery endemic in the Moldovan legal system. We had not planned a pedagogy focused on values in the legal profession, but rather on critical analysis and lawyer-client relationship skills. Despite our plans, in three different Moldovan law schools in as many cities, the students turned our short classroom roleplays into improvised rehearsals in finding words to resist bribery. We learned that they hoped to practice law in a more honest way than they were observing around them. The students seized our class visits as opportunities to explore their profession's values and to map pathways for their own future justice-oriented professional behavior. Their energy shifted our attention from a demonstration of interactive teaching to the specific power of open-ended, lightly scripted roleplays to reveal students' preoccupations with professional identity and values. Analysis of doctrine and critical thinking became secondary. Fairness and morality and social and economic contexts came to the foreground.

Moldova is in the throes of transition from a state-run collectivist economy to a privatized market economy following the demise of the

---

College of Law, and the University of Minnesota Law School. Our trip was the follow on.

<sup>2</sup> *The World Factbook: Moldova*, <https://www.cia.gov/library/publications/the-world-factbook/print/md.html> (last visited Jan. 24, 2008).

U.S.S.R.<sup>3</sup> Moldovan law students wanted to examine how they could become honest lawyers within the framework of a rapidly transforming profession. This short, intense visit to another land made us reflect upon whether U.S. students might benefit from increased values and practice examination in their legal educations.

This Article explores lessons learned from Moldovan law students for U.S. legal education. Following this Introduction, Part I establishes context for the exchange with Moldovan law schools including some Moldovan political history. It describes the interactive exercises prepared for the exchange and how the students transformed them into a dialogue about professional values.

Part II lays out research and commentary that critique legal education in the United States. In particular, the Article notes the call for increased attention to values and to the development of responsible professional identities in law graduates. If U.S. law schools' signature pedagogy is the case dialogue method,<sup>4</sup> and if that method is well designed to teach legal analysis and doctrine, need anything be added in the first year to begin to integrate the values of the profession?

Part III proposes that the answer to that question is yes, and that simple interactive exercises are a straightforward way to add values and skills exploration in first-year courses. The addition of brief roleplays does not require fund-raising or additional teachers or infrastructure. It requires only a few sheets of paper and a willingness to set aside some coverage of doctrine in exchange for discussion of values and for practice in implementing them. This section also analyzes the benefits that would be gained by the addition of short simulations into first-year courses.

Part IV sketches specific steps for implementing roleplays in the first-year curriculum and provides a sample for experimentation. The Article concludes by encouraging the use of roleplays from the first

---

3. Moldova declared independence from the Soviet Union in 1991. CHARLES KING, *THE MOLDOVANS: ROMANIA, RUSSIA, AND THE POLITICS OF CULTURE* (2000). For a good discussion of the political and cultural history of Moldova, see KING, *id.*

4. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 2* (2007) [hereinafter *CARNEGIE REPORT*]. See discussion *infra* Part III.C.

year of law school so as to include rehearsals in implementing core professional values to the traditional teaching of legal analysis.

#### I. TEACHING MISSION IN MOLDOVA TRANSFORMED: MOLDOVAN LAW STUDENTS USE ROLEPLAYS TO VOICE CONCERNS ABOUT BRIBERY

On our first day at Moldova State University in Chisinau, after a morning meeting with law professors, we finally were ushered into a classroom holding twenty-five fourth-year law students. This section was taught entirely in English, so we had the luxury of working without interpreters.<sup>5</sup> We began with a simple “interview and introduce each other” exercise, then moved on to short roleplays in which a student playing a lawyer was tempted by another to breach her client’s confidentiality. We were surprised to find that students in role frequently would offer bribes to the students playing the attorney to obtain confidential information.

The reason for this became clear in the early afternoon when we took a break. Searching for a water fountain, Ann followed students into the basement. Two male students from the class shepherded her into the student snack bar, a windowless cellar where women in big aprons dished out pastry, soup, and bottled water. As they waited in the long line, the men began asking her about the principle that we had proposed during class, that taking bribes from a non-client in exchange for client confidences is wrong.

---

5. Language is an interesting factor in Moldovan education. Moldovans speak and read two primary languages: Moldovan (virtually the same as Romanian) and Russian. They are also speakers of Gagauz (a language related to Turkish), Ukrainian, and Bulgarian. *The World Factbook: Moldova*, *supra* note 2. The existence of two primary languages in a small land reflects its history of conquest and subordination by other powers. KING, *supra* note 3. When Moldova declared its independence from the former Soviet Union in 1991, Moldovan became the official language of the nation. *Id.* In the United States, there is universal education in English, with the exception of Puerto Rico. “Puerto Ricans are citizens of the United States from birth and . . . come from an island commonwealth of the United States where Spanish is the official language.” Manuel del Valle, *Language Rights and Due Process: Hispanics in the United States*, 17 REV. JR. U.P.R. 91, 92 (1982). In Moldova, students may attend school in a variety of languages. For example, at Moldova State University, law classes are taught in Moldovan, Russian, English, or French. Students elect classes by subject and by language. The need to find both good interpreters and a common language among the students was a constant issue for our teaching.

They were hungry for such conversation, they said, because they were learning that bribes were a part of many lawyers' lives in Moldova. Ann told them that in her experience as a lawyer in private practice in the United States, a reputation for honesty was good for business over the long run. When clients trusted her, they sent other people to her for help. Most lawyers in private practice attract their clients by word of mouth, and if these students needed a lawyer and had a choice, would they go to a lawyer who could be bribed or to one who could not? The students became animated and said they had not heard this in law school, but they and their fellow students thought this way. They wanted to be honest; they wanted to practice law in a new way. They were surprised that Ann was interested in this, and immediately asked that the U.S. law teachers help their class find the "new way" to practice law in Moldova.

During interactive exercises in class, the students expressed their deep concerns about practicing law in Moldova. Moldova is a small country located between Romania and the Ukraine.<sup>6</sup> Subordinated by Russia, Romania, and the Ottoman Empire for centuries, Moldova was part of the Soviet Union until it collapsed, along with the farm and factory collectives.<sup>7</sup> It is poor with few natural resources; most of its energy is imported from Russia.<sup>8</sup> The transition to private property from the state-run collective system is seen as "bad but necessary."<sup>9</sup> Individuals, rather than the state, are now supposed to be the owners of the land and businesses. But, as Sergei Zaharia, the Dean of the Law Department at Komrat State University, explained, few citizens have a good idea of what "ownership" means.<sup>10</sup> When Moldova was a state within the Soviet Union, Moldovans were not able to own a home, nor were they subject to eviction or homelessness.<sup>11</sup> After years of guaranteed work and housing, individuals were finding that "ownership" of property also meant that they must fend for

---

6. *The World Factbook: Moldova*, *supra* note 2.

7. KING, *supra* note 3, at 150.

8. *The World Factbook: Moldova*, *supra* note 2.

9. Interview with Vladimir Grosu, Deputy Dean of Law Faculty, Mold. State Univ., in Chisinau (Feb. 7, 2005).

10. Interview with Sergei Zaharia, Dean of Law Dep't, Komrat State Univ., in Komrat (Feb. 8, 2005).

11. *Id.*

themselves.<sup>12</sup> The Communist Party still holds the majority in the democratically elected parliament.<sup>13</sup>

Legal work was transforming itself in this country that had dismantled the Soviet collective system barely fourteen years before.<sup>14</sup> The number of lawyers was mushrooming as they were needed to help with the deals, disputes, and injustices that accompany economic privatization.<sup>15</sup> People with little property—the majority—were struggling with the concept of private property as others were embracing the new market-based system.<sup>16</sup> Amid this political, economic, and legal change, the law students wondered if the practice of law could evolve from a bribery-based system to something more honest.

Legal education in Moldova takes place at the undergraduate level.<sup>17</sup> The most widespread teaching method in Moldovan law departments is still lecture, with little opportunity for discussion, followed by examinations.<sup>18</sup> As more lawyers are required to help a decentralized ownership system function, law deans saw that their students ought to learn more than the letter of the law.<sup>19</sup> Students needed training in critical thinking to complement the traditional European classroom lecture methods. They wanted practice in the arts of persuasion and negotiation.<sup>20</sup> Students needed to understand how to apply law in diverse factual settings, for example, to appreciate that “ownership” might have shades of meaning depending upon context, that all is not black and white as it was supposed to be under the former legal system.<sup>21</sup>

---

12. *Id.*

13. *The World Factbook: Moldova*, *supra* note 2.

14. KING, *supra* note 3, at 150.

15. Interview with Vladimir Grosu, *supra* note 9.

16. Interview with Sergei Zaharia, *supra* note 10.

17. As the need for legal services has grown, law student numbers have grown too. Interview with Vladimir Grosu, *supra* note 9. Moldova State University graduated ninety-two law students in 1997. *Id.* That number grew by hundreds each year until reaching one thousand graduates for each of the five years leading up to our visit in February 2005. *Id.*

18. Interview with Vladimir Grosu, *supra* note 9.

19. Interview with Sergei Zaharia, *supra* note 10.

20. *Id.*

21. *Id.* Moldova's current legal system is based upon a constitution adopted in 1994. KING *supra* note 3, at 159. The constitution provides that Moldova is a democratic state in which the dignity and rights of the people are a supreme value. CONSTITUTION OF THE REPUBLIC OF

Moldova suffers from a serious corruption problem.<sup>22</sup> This problem has been documented both by international and local think tanks.<sup>23</sup> Transparency International, a global civil society founded in 1993 to fight internationally against corruption,<sup>24</sup> “defines corruption as the abuse of public office for private gain [such as] . . . bribery of public officials, kickbacks in public procurement, [or] embezzlement of public funds.”<sup>25</sup> In 2004, Transparency International released a “Global Corruption Barometer”<sup>26</sup> in which Moldova ranked 114 of 146 countries in perceived levels of corruption, with countries perceived as worse receiving the highest numbers on the corruption scale.<sup>27</sup> Most recently, a Transparency survey ranked Moldova 111 of 179 countries on the perceived corruption scale.<sup>28</sup> Transparency International also has found that levels of perceived corruption remained high in states transitioning from communism.<sup>29</sup>

Within Moldova itself, two independent Moldovan think tanks cited corruption as among the worst problems of Moldova, alongside worsening poverty, high taxes, and the poor quality of medical care.<sup>30</sup> Another independent survey of Moldovans found that nearly half of

---

MOLDOVA art. 1, § 3. The legal system includes elements of both Soviet and continental systems. Mariana Harjevschi & Svetlana Andritchii, *An Overview of the Legal System of the Republic of Moldova*, 31 INT’L J. LEGAL INFO. 47, 49 (2002), available at <http://www.llrx.com/features/moldova.htm#Judicial>. Judges are appointed by the President. CONSTITUTION OF THE REPUBLIC OF MOLDOVA art. 116, § 2. For an overview of the Moldovan legal system, see Harjevschi & Andritchii, *supra*.

22. Transparency International, About Us, [http://transparency.org/about\\_us](http://transparency.org/about_us) (last visited Oct. 10, 2008).

23. *Moldovan Parliament Strategy and Action Plan to Combat Corruption*, BASA-PRESS, Dec. 16, 2004, <http://www.azi.md/news?ID=32222>.

24. Transparency International, About Us, *supra* note 22.

25. Transparency International, Corruption Perceptions Index 2007, [http://transparency.org/policy\\_research/surveys\\_indices/cpi/2007/faq](http://transparency.org/policy_research/surveys_indices/cpi/2007/faq) (last visited Aug. 27, 2008).

26. Svetlana Ivanova, Olga Proskurnina & Anna Nikolayeva, *Barometer of Corruption: Transparency International: One in Five Russian Citizens Give Bribes* (Dec. 2004) (copy on file with authors). See also Transparency International, Global Corruption Barometer 2004, [http://transparency.org/policy\\_research/surveys\\_indices/gcb/2004\\_\\_1/](http://transparency.org/policy_research/surveys_indices/gcb/2004__1/) (last visited Oct. 10, 2008).

27. Transparency International, Corruption Perceptions Index 2004, [http://transparency.org/policy\\_research/surveys\\_indices/cpi/2004](http://transparency.org/policy_research/surveys_indices/cpi/2004) (last visited Aug. 27, 2008).

28. Transparency International, *supra* note 25.

29. Pavol Stracansky, *Corruption-Europe: Communism Leaves a Long Hangover*, INTER PRESS SERVICE, Nov. 1, 2004, <http://ipsnews.net/interna.asp?idnews=26088>.

30. *Moldovan Parliament Approves Strategy and Action Plan to Combat Corruption*, BASA-PRESS, Dec. 16, 2004, <http://www.azi.md/news?ID=32222>.

respondents reported that police officers asked openly for money or other bribes.<sup>31</sup> After police officers, customs officers, public health workers, and high-ranking governing officials were perceived to be the most corrupt public officials.<sup>32</sup>

Closer to the law schools, a survey by two Moldovan student associations revealed that “90 percent of [student] respondents say that they know about . . . corruption at [colleges and universities]; [and] 80.5 percent confirmed that their teachers take bribes.”<sup>33</sup> Bribery is so prevalent in Moldova that in December 2004 its parliament approved “a national anti-corruption strategy and an action plan.”<sup>34</sup> Government restrictions alone have not been effective in cutting down corruption. The new effort is to convince citizens and civil groups to join with the government in the fight against corruption.<sup>35</sup> Moldova continues to study means to grapple with corruption and to implement the anti-corruption action plan.<sup>36</sup>

Moldovan law students were concerned about the prevalence of bribery in the legal system of which they would soon be a part. Similarly, U.S. law students do not operate in a perfect world. There is plenty of cheating in U.S. colleges and law schools,<sup>37</sup> and the U.S. legal profession faces substantial ethical issues. A four-year survey of 62,000 U.S. undergraduates on ninety-six campuses recently found that two-thirds of the students admitted to cheating.<sup>38</sup> A comparable

---

31. *Police and Customs Officers Still Most Corrupt in Moldova*, SALUT. MD, Mar. 22, 2006, <http://www.aznocorruption.org/cgi-bin/e-cms/vis/vis.pl?s=001&p=0033&n=001605&g>.

32. *Id.*

33. *Students in Moldova Pay Bribes Not to Study*, SAULT. MD, Feb. 20, 2006, <http://www.aznocorruption.org/cgi-bin/e-cms/vis/vis.pl?s=001&p=0033&n=001549&g>.

34. *Moldovan Parliament Approves Strategy and Action Plan to Combat Corruption*, *supra* note 30.

35. *See id.*

36. For example, in 2006, a delegation of Moldovan judges and prosecutors visited Minnesota in order to learn new methods for ending bribery in government. Posting of Jamie M. Hopkins, *supra* note 1. *See also* Vanessa Valentino, *Managing Corruption in Higher Education in Moldova* (Apr. 2007) (master thesis, John F. Kennedy Sch. of Gov't, Harvard Univ.), [http://www.culiuc.com/papers/vvalentino\\_corruption.pdf](http://www.culiuc.com/papers/vvalentino_corruption.pdf). (analyzing the conditions that allow corruption to flourish in Moldovan higher education and recommending an action plan for bringing it under control following a study prepared for the Moldovan Ministry of Education and Youth).

37. Jonathan D. Glater, *Colleges Chase as Cheats Shift to Higher Tech*, N.Y. TIMES, May 18, 2006, at A1.

38. Glater, *supra* note 37 (citing Donald L. McCabe et al., *Academic Dishonesty in*



study of graduate students conducted from 2002–2004 found that 56 percent of graduate business students and 47 percent of non-business graduate students admitted to engaging in some form of cheating or questionable behavior during the past year.<sup>39</sup> Other researchers state that “forty-five percent of law students admit to having cheated.”<sup>40</sup>

Cheating takes place after law school in the United States as well. A study by Myron Orfield tells us that 86 percent of judges, public defenders, and prosecutors (including 77 percent of judges) surveyed “believed that police officers fabricate evidence in case reports at least ‘some of the time.’”<sup>41</sup> A startling 92 percent (including 91 percent of judges) “believe that police officers lie in court to avoid suppression of evidence at least ‘some of the time.’”<sup>42</sup>

As the legal workplace increasingly evolves according to a business rather than a professions model, young associates are pressured to procure and retain clients and to log enormous—and sometimes inflated—billable hours.<sup>43</sup> U.S. law students will practice in a business climate that has faced corruption scandals so serious that federal legislation has been passed to protect the public. For example, the Enron scandal led to protection for whistleblowers.<sup>44</sup> The Foreign Corrupt Practices Act was passed to address “a long

---

*Graduate Business Programs: Prevalence, Causes, and Proposed Action*, 5 ACAD. MGMT. LEARNING & EDUC. 294, 295 (2006)).

39. See McCabe et al., *supra* note 38, at 299.

40. Caroline P. Jacobson, *Academic Misconduct and Bar Admissions: A Proposal for a Revised Standard*, 20 GEO. J. LEGAL ETHICS 739, 740 (2007). See also Linda McGuire, *Lawyer or Lying? When Law School Applicants Hide Their Criminal Histories and Other Misconduct*, 45 S. TEX. L. REV. 709 (2004).

41. Michael L. Perlin, “Half-Wracked Prejudice Leaped Forth”: *Sanism, Pretextuality, and Why and How Mental Disability Law Developed as It Did*, 10 J. CONTEMP. LEGAL ISSUES 3, 6–7 (1999) (citing Myron W. Orfield, Jr., *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U. COLO. L. REV. 75, 100 n.13, 107 n.146 (1992)).

42. Perlin, *supra* note 41, at 7.

43. Arthur Gross Schaefer & Leland Swenson, *Contrasting the Vision and the Reality: Core Ethical Values, Ethics Audit and Ethics Decision Models for Attorneys*, 32 PEPP. L. REV. 459, 464 (2005).

44. Richard E. Moberly, *Unfulfilled Expectations: An Empirical Analysis of Why Sarbanes-Oxley Whistleblowers Rarely Win*, 49 WM. & MARY L. REV. 65, 67 (2007) (stating that in part because “scandals at corporations such as Enron and WorldCom came to public light through the efforts of whistleblowing employees,” federal protection of whistleblowers was included as part of the Sarbanes-Oxley Act of 2002).

history of bribery of foreign public officials by U.S. companies.”<sup>45</sup> And the Insider Trading and Securities Fraud Enforcement Act of 1988 was passed “to prevent misuse of material, non-public information” by brokers.<sup>46</sup> In part, it is the legal profession that has enabled these kinds of dishonest business practices. The president of the American Bar Association recently decried corruption in the U.S. legal system, pointing to corporate lawyers’ failure to speak out against wrongdoing by clients.<sup>47</sup>

The reality is that both U.S. and Moldovan law students will enter a work world where corruption poses significant ethical challenges. Both U.S. and Moldovan law students could benefit from opportunities to grapple with finding the words to say no and to engage in ethical conduct.

As we prepared to teach in Moldova, we were not aware of the students’ desire to confront the bribery issue. As it turned out, the preparation we did, focusing primarily on brief interactive exercises, worked well. The exercises allowed the students’ concerns to bubble to the surface.

The plan was for us to teach students at four different law schools in perhaps three different languages with little follow-up.<sup>48</sup> Rather than using the case dialogue or Socratic method to teach critical thinking skills, we decided to involve students more actively during the short time we had together by using short, interactive exercises

---

45. Rebecca Walker, *The Evolution of the Law of Corporate Compliance in the United States: A Brief Overview*, in PRACTICING LAW INSTITUTE, ADVANCED CORPORATE COMPLIANCE WORKSHOP 2007 13, 18 (Michael E. Horowitz & Rebecca Walker eds., 2007), available for order at [http://www.pli.edu/product/book\\_detail.asp?ptid=503&stid=28&id=EN00000000032371](http://www.pli.edu/product/book_detail.asp?ptid=503&stid=28&id=EN00000000032371).

46. *See id.* at 19.

47. Michael Ding, *Bar Association Leader Critiques Legal Profession*, STANFORD DAILY NEWS, Nov. 9, 2007, available at <http://daily.Stanford.edu/article/2007/11/9/barAssociationLeaderCritiquesLegalProfession.html>.

48. At our session at the North American Regional GAJE conference, lawyers with international teaching experience brainstormed what to do before teaching abroad. This conference was held at Fordham University School of Law, May 3–4, 2006. GAJE is a worldwide coalition of people, who, by definition and by name, care about promoting justice. The GAJE website, <http://www.gaje.org>, has information about this past conference as well as future ones. A compilation of the group’s thoughts on how to prepare for a teaching trip abroad is set forth in Appendix I, *infra*. Note that we did not accomplish many of these steps before we taught in Moldova.

and roleplays. This would contrast sharply with the way law classes are taught in Moldova.

We chose an interviewing exercise to break the ice and enable participants to learn about one another and about the skill of interviewing. To follow that, we designed roleplays that involved keeping client confidences and avoiding conflicts of interest. To serve these scripts, we developed a mock computer sales contract dispute between two characters.<sup>49</sup> Finally, the students would have the chance to practice mediating the contract dispute and to practice oral argument in mock litigation of the contract dispute.<sup>50</sup> Writing these sparsely scripted exercises for teaching turned out to be the best preparation we did. They opened the students to one another, to us, and to deep thinking about ways of being a lawyer.

During the first exercise, every student in the classroom—whether there were twenty-five or eighty of them—was told to turn to a person nearby and interview her or him. The students were to incorporate three specific questions into their queries, including, “What special trait do you possess as a person that will help you to be a good lawyer?” After interviewing one another, volunteers introduced their colleagues to the entire class.<sup>51</sup>

This opening task, during which everyone heard introductions of a handful of students, was key; we did it in every group we taught. While we had planned to focus the class discussion on the interviewee standing in the shoes of the client and listening to her or his story being told by the lawyer, the students pulled in a different direction. They did not want to identify subtle inaccuracies in the introduction, for example; they wanted to tell one another their ideas

---

49. See *infra* Apps. A, B (listing the problems we wrote). Problem 4 in Appendix A was developed by Professor Aliona Cara, Moldova State University.

50. To aid the Moldovans in understanding the various contexts for the roleplays, author McCaffrey developed a one-page chart comparing litigation and mediation in the United States. See app. C, *infra*.

51. Some variation of this exercise was introduced to us some time in the past twenty years either at a Midwest Clinical Teachers' Conference or at the national clinical conference. We cannot remember or track its provenance but know that other clinical teachers contributed to this basic teaching plan. A similar exercise is used by C. John Cicero to demonstrate the difficulty of recalling an interview accurately and “to show how memory is subject to and influenced by personal bias and individual interest.” C. John Cicero, *The Classroom as Shop Floor: Images of Work and the Study of Labor Law*, 20 VT. L. REV. 117, 141 (1995).

of what qualities make a good lawyer. When asked to name personal traits that would help them as lawyers, they did not point to their facility at public speaking or at writing. Rather, they shyly seized the platform to express their desire for justice. This drive for justice seemed to be a core value, and it became the central theme for our work together.

The ethics roleplays that followed the introduction exercise gave us further insight into the students' experiences and allowed class discussions to focus on issues they themselves raised in the course of the roleplay. Each hypothetical had a role for an attorney, a client, and a third party whose character was to challenge the attorney using secret facts. The roleplays required acting improvisation as the students received only two or three lines of instruction yet had perhaps ten minutes in which to perform before the group.

Our most striking observation was that students playing a neighbor, relative, or the opposing party *always* offered a bribe as a tactic for gaining confidential information from the student lawyer representing the client. In all our years of law teaching, neither of us had ever had a student suggest a bribe. Had we led class with a lecture or the case dialogue method, it would have taken much more time before students would have had the opportunity to raise the question of how to handle offers of bribes.

While student actors always offered bribes for confidential information, students acting as attorneys *always* refused bribes. They continued to refuse no matter how much the actors persisted. They said things such as, "My reputation is too important to accept a bribe," or "It is not legal for me to accept a bribe." The students told each other of their desire to practice in a "new way" without bribes and practiced finding the words to resist the bribes in pressured situations.

The open-ended nature of the exercises allowed the students to express their values and taught us about their cultural baselines and the context of the law and society in which they lived. All of us were surprised by what we learned. The students were accustomed to lecture-styled teaching and seemed pleased with this chance to interact in class. They were delighted to discover new dimensions of

one another during the introductions.<sup>52</sup> The group was more interesting and justice-oriented than the students had realized.

The students were exhilarated by the idea that their own judgment mattered when learning to handle a sticky ethical situation. As teachers, we too were exhilarated by the intensity of the students' reactions.

The use of short, interactive roleplays allowed the class to alter course with the Moldovan current. Students filled in factual and legal context while playing their roles. We also asked them to discuss how one is persuasive in Moldovan culture. What are Moldovan legal standards for ethical practice by lawyers? Is there a written code of professional conduct in Moldova? In light of the students' engagement, we decided to cut coverage of institutional facts, such as the U.S. judicial system and litigation that the Moldovan teachers had asked us to discuss, and instead to spend time on encouraging the students' exploration of how to implement ethical behavior in law practice.

Bribery emerged as a fundamental context to practicing law that worried the Moldovan students greatly. When asked why bribery was such a problem, the first reason the students and teachers gave was that no one earns enough salary. For some people, bribes are necessary to survive. They believed this was true in the legal field, in education, in the judiciary, and essentially across the board in Moldova. The second reason given was that business has always been conducted that way. Just as we were surprised by the ubiquity of bribery in Moldova, the students were surprised that in the United States one could operate without frequent payments under the table.

When the students expressed the desire to practice in a new way without bribery, they could not imagine such a system very well. Frank class discussions and roleplaying gave them a chance to imagine law practice where concern for reputation and hopes for

---

52. One woman who had not spoken a word during class came to us following class to tell us that, though she had not volunteered to speak, she had benefited immensely from the exercises. She said that she and her fellow students had known almost none of these things about each other before—particularly their interesting lives and their aspirations for justice—and she would look at her classmates in a new way from now on. Journal Entry of Ann Juergens (Feb. 7, 2005) (on file with authors).

integrity in the system would meet, and often trump, the pressure to give and take bribes.

## II. UNITED STATES LEGAL EDUCATION CRITIQUED: U.S. LAW STUDENTS NEED MORE OPPORTUNITIES TO INTEGRATE LEARNING OF DOCTRINE, SKILLS, AND VALUES

Not long after we returned from Moldova, new research was published that reiterated past suggestions that law schools should increase their focus on values and skills.<sup>53</sup> Fifteen years after the MacCrate Report pointed to law schools' failure to teach values and professional skills alongside the skill of legal analysis,<sup>54</sup> the Carnegie Foundation released a report that decried law schools' lack of teaching of ethical and social sensitivity. *Educating Lawyers: Preparation for the Profession of Law* observes that law schools' dominant case-dialogue teaching method abstracts legal problem-solving from the problem's human context.<sup>55</sup> This has the unintended result that ethical and community factors are not well integrated into law students' thinking about how to solve legal problems for clients. The development of professional values and justice orientation is usually neglected when case-dialogue teaching rules the classroom. The ability to evaluate legal problems in context, to understand, assess, and communicate consequences for real people in complex settings, is essential to successful, competent, and ethical law practice.<sup>56</sup>

*Educating Lawyers* is one in a series of reports on professional education by the Carnegie Foundation, which also studied the

---

53. CARNEGIE REPORT, *supra* note 4, at 12. The Carnegie Foundation for the Advancement of Teaching recently studied legal education and concluded that law schools face an "increasingly urgent need to bridge the gap between analytical and practical knowledge, as well as the demand for more robust professional integrity." *Id.* See also WILLIAM M. SULLIVAN ET AL., SUMMARY, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007), available at [http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers\\_summary.pdf](http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers_summary.pdf).

54. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138–41 (1992) [hereinafter MACCRATE REPORT].

55. CARNEGIE REPORT, *supra* note 4, at 187.

56. See *id.* at 188.

professional education of nurses, doctors, engineers, and clergy.<sup>57</sup> The authors compared law school teaching methods, particularly in the first year of law school, with those used to educate other professionals.<sup>58</sup> Using the lens of learning theory, the *Carnegie Report* found the case-dialogue method “well suited to train students in the analytical thinking required for success in law school and legal practice.”<sup>59</sup> At the same time, the report asserted that legal education could be much better.<sup>60</sup> Surveys of law graduates revealed that the case method is not seen as particularly helpful in the transition from law school to practice. In addition, there is a diminishing return with the case method after the first year.<sup>61</sup>

The *Carnegie Report* concluded that the case dialogue method is a pedagogy that is overused, resulting in imbalance and disengagement from learning.<sup>62</sup> Yet it does not recommend abandoning Socrates’ method. Rather, it suggests that law schools add to it by intentionally integrating the teaching of practical skills and the ethos of responsible, professional service with the teaching of legal analysis and doctrine.<sup>63</sup>

What lawyers do is to exercise “judgment in action,” so they must begin to practice that during their education.<sup>64</sup> Adding the development of practical skills and understanding of professional values to training in legal reasoning during the first year will help

---

57. *Id.* at 15.

58. *Id.* at 17.

59. *Id.* at 75.

60. *Id.* at 76.

61. *Id.* at 76 (citing RONIT DINOVTZER ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS (2004)).

62. CARNEGIE REPORT, *supra* note 4, at 77 (citing ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES]).

63. See CARNEGIE REPORT, *supra* note 4, at 13. The CARNEGIE REPORT asserts the need to integrate the following three aspects of legal education:

1. The teaching of legal doctrine and analysis, which provides the basis for professional growth
2. Introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients
3. A theoretical and practical emphasis on inculcation of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession

*Id.* at 194.

64. See *id.* at 9.

students learn “to understand and intervene in particular contexts.”<sup>65</sup> Paying attention to ethical maturity in the first-year curriculum, the authors reason, would make the development of legal reasoning and practical skills more relevant to students. Such a curriculum shift would acknowledge that students are preparing to become “legal professionals who are both competent and responsible to clients and the public.”<sup>66</sup>

On a related subject, the 2006 Law School Survey of Student Engagement (“LSSSE”),<sup>67</sup> a national survey of law students, found that law students are not well engaged in their education despite its high cost in money and effort.<sup>68</sup> The survey revealed a significant decline in interest and effort in the classroom as students progress through law school.<sup>69</sup> Yet engagement is essential both to learning overall and to the professional and ethical development of graduates.<sup>70</sup> The LSSSE credits clinical and experiential teaching methods in law school with cultivating higher order thinking and writing skills, as well as with fostering growth of a greater sense of professional responsibility and of the need for lawyers to contribute to the welfare of the community.<sup>71</sup>

Finally, the 2007 *Best Practices for Legal Education: A Vision and a Road Map*,<sup>72</sup> developed by clinical faculty from across the country, led by Roy Stuckey and including Peter Joy, emphasizes the importance of role assumption and practical experience for law students learning how to resolve human problems consonant with the MacCrate-identified professional values of justice, fairness, and morality.<sup>73</sup>

These publications are a new wave of thinking about subjects that have been much in the province of clinical education.<sup>74</sup> They already

---

65. *See id.* at 14.

66. *See id.*

67. LAW SCH. SURVEY OF STUDENT ENGAGEMENT, ENGAGING LEGAL EDUCATION: MOVING BEYOND THE STATUS QUO (2006) [hereinafter LSSSE SURVEY].

68. *Id.* at 8–9.

69. *See id.* at 3.

70. *See id.* at 6.

71. *See id.* at 16.

72. *See* BEST PRACTICES, *supra* note 62.

73. *Id.*

74. *See* Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This*



have been the subject of presentations at national conferences,<sup>75</sup> have helped to nurture curricular reform,<sup>76</sup> and have legitimized anew conversations among faculties about how law schools are to graduate thoughtful professionals on their way to practice law.

During the past four decades, the clinical legal education movement has led to some real changes in U.S. legal education.<sup>77</sup> Much has been written and much has changed concerning “skills” education.<sup>78</sup> But despite the MacCrate Report’s call for legal educators to recognize the profession’s values, and despite the clinical movement’s focus on justice,<sup>79</sup> U.S. law schools have done little to enhance the teaching of justice, fairness, and morality in their classrooms. There is so much else to cover in classes; the academy is

---

*Millennium: The Third Wave*, 7 CLINICAL L. REV. 1 (2000) (discussing the waves of development of clinical teaching methodology and prescribing further integration of clinic methodology into the rest of the curriculum for the future of legal education).

75. See, e.g., Judith W. Wegner et al., Plenary Session at the Association of American Law Schools (“AALS”) Annual Meeting: The Carnegie Report on Educating Lawyers from the Perspective of the Law School Dean (Jan. 4, 2008); William M. Sullivan et al., Plenary Session at the AALS Annual Meeting: Rethinking Legal Education For The 21st Century (Jan. 4, 2008); Roy T. Stuckey et al., Presentation at the AALS Workshop on Clinical Legal Education: Challenging Assumptions About Business as Usual in Legal Education (May 4, 2007); Lee S. Shulman & Michelle Geller, Plenary Session at the AALS Clinical Workshop: What’s the “Learning” in Service Learning: Teaching Students to Learn from Experience (May 1, 2005).

76. See Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES, Oct. 31, 2007, at B9, available at <http://www.law.stanford.edu/news/details/1238/Training%20Law%20Students%20For%20Real-Life%20Careers/> (discussing how the CARNEGIE REPORT, *supra* note 4, has spurred reflection at many law schools; Stanford Law School hosted a meeting in December 2007 with representatives of other law schools aimed at improving how law schools operate, and suggestions from the meeting ranged from changes in curricula to providing more practical, real-world training for law students). See also Katherine Mangan, *All Rise. Welcome to Law School*, CHRON. HIGHER EDUC., Jan. 11, 2008, at A10 (discussing measures that some law schools have taken, e.g., Drake University, Elon University, and University of New Mexico, in response to the sentiment expressed in the CARNEGIE REPORT, *supra* note 4, and BEST PRACTICES, *supra* note 62, that law schools should offer more practical training, as well as attention to social and ethical issues).

77. See, e.g., Barry et al., *supra* note 74, at 12 (discussing how clinical legal education solidified and expanded its foothold in the academy during the second wave of clinical legal education, from the 1960s through the late 1990s). See also Gary Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 125 (2001) (“In the 1990’s, many law schools developed a legal skills curriculum and experimented with a variety of new pedagogical approaches to the teaching of practice skills. Skills education today has assumed a life of its own.”).

78. See J.P. Ogilvy & Karen Czapsanskiy, *Clinical Legal Education: An Annotated Bibliography* (3d ed.), 12 CLINICAL L. REV. (SPECIAL ISSUE) 1 (2005).

79. See *id.* (listing 57 articles under the “Social Justice” category).

more concerned about teaching analytical and skill competency than it is about teaching values competency. Furthermore, bar examinations are not good instruments for testing integrity, values, and healthy professional identity.

The Standards for Approval of Law Schools require that every school offer instruction in “professional skills generally regarded as necessary for effective and responsible participation in the legal profession”<sup>80</sup> and in the “values, rules and responsibilities of the legal profession and its members,”<sup>81</sup> but do not require offerings in the development of ethical judgment.<sup>82</sup> The Standards also state that students should have “substantial opportunities” for clinical, externship, pro bono, and small group work.<sup>83</sup> Perhaps these latter

---

80. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, 2007–2008 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 21 (2007), *available at* <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/2007-08%20Standards%20book.pdf>.

81. *Id.*

82. American Bar Association Standards for Approval of Law Schools:

Standard 302. CURRICULUM

(a) A law school shall require that each student receive substantial instruction in:

(1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;

(2) legal analysis and reasoning, legal research, problem solving, and oral communication;

(3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;

(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

(5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.

(b) A law school shall offer substantial opportunities for:

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

*Id.* at 21–22.

83. *Id.*

opportunities are where professional judgment is expected to be developed, but, with the exception of pro bono and some small group work, they are rarely offered in the first year of law school. With renewed impetus provided by *Educating Lawyers*,<sup>84</sup> the LSSSE,<sup>85</sup> and *Best Practices*,<sup>86</sup> legal educators must find ways to create more opportunities for the development of responsible identity and judgment before the clinics and externships of the second and third years of law school.

The law students in Moldova gave us an idea for answering that challenge. The Moldovans, in a place where critical thinking and practical skills training were in their infancy, where legal education was beginning a rapid expansion as lawyers' role in society grew, forced issues of professional values and identity sharply into the foreground of our classroom lessons. After we had time to reflect on that experience, we wanted to recreate those same teaching moments at our home schools.

### III. SHORT, INTERACTIVE EXERCISES IN FIRST-YEAR CLASSES ARE A MEANS TO INTEGRATE THE LEARNING OF DOCTRINE, SKILLS, AND VALUES

The Moldovan law students with whom we worked were used to lectures in class with little opportunity for interaction. Yet they were extremely competent at acting the role of a lawyer in a simulated setting. Given a brief fact situation, they were able to interview a client effectively and to express their thoughts on ethical issues. They also jumped at the chance to engage in mock mediation and oral argument of a contract dispute.

Why were Moldovan law students, accustomed to a lecture teaching model, so well able to step into role in interactive exercises and to reflect upon the most serious ethical issue facing lawyers in their country?

---

84. CARNEGIE REPORT, *supra* note 4.

85. LSSSE SURVEY, *supra* note 67.

86. BEST PRACTICES, *supra* note 62.

*A. Student Activity Is an Aid to Learning*

The success of active learning methods is not new information. Decades ago, Albert Cullum recommended that teachers “push back the desks” and allow students to become actively involved in their education.<sup>87</sup> He compared the opening day of grade school to an opening night on Broadway with the students “secretly hoping that this is the school year when the teacher is not a bore, the year they will be able to laugh together, the year they will be truly accepted.”<sup>88</sup> Joy, laughter, and respect for each student were essential components of an excellent classroom. Cullum stressed that,

A sensitive teacher is always aware of the drama inherent in his class. Every class contains a cast ready to play their roles in every subject matter area, and the teacher, sensing the rhythm of his group, soon finds his role too. It is not necessary for the teacher always to play the lead; frequently he can do twice as well in a supporting role. As the school year proceeds, a good teacher will realize that sitting before him, around him, or next to him is a stellar cast!<sup>89</sup>

Cullum declared that the thing in which students are truly interested is “doing and doing now.”<sup>90</sup> He suggested that teachers promote learning by allowing children to help and encourage one another,<sup>91</sup> by fostering “emotional involvement with subject matter,”<sup>92</sup> by giving them choices and asking for volunteers,<sup>93</sup> and by laughter.<sup>94</sup> An active classroom caused students to engage in part due to the sheer excitement and fun of learning.<sup>95</sup>

---

87. ALBERT CULLUM, PUSH BACK THE DESKS 15 (1967).

88. *See id.* at 13.

89. *See id.* at 13, 14.

90. *See id.* at 15 (emphasis omitted).

91. *See id.* at 16.

92. *See id.* at 17.

93. *See id.* at 16.

94. *See id.* at 18.

95. *See id.*

*B. Adult Learning Theory Supports the Use of Relevant Interactive Exercises that Are Collaborative and Include Feedback*

The principles of excellence in education espoused for children by Cullum in 1967 closely track the principles of teaching that have been elicited in the literature on adult legal education. Thirty years after Cullum, Gerald Hess named six principles that are important to adult law learners.<sup>96</sup>

The first of Hess's principles is voluntariness: Because adults are learning of their own volition, education must meet their needs.<sup>97</sup> The second is respect: Adult learners need to feel respected and, conversely, need to be respectful.<sup>98</sup> Collaboration is the third principle: Adults thrive when they collaborate with teachers and other students, occasionally stepping into the leadership role.<sup>99</sup> The fourth is context: Adult students do not want to learn in a vacuum but want to see learning in light of their past experience and present actual or simulated realities.<sup>100</sup> Activity is the fifth principle: Students need to do more in the classroom than listen.<sup>101</sup> Active learning encompasses a wide array of techniques, ranging from field work to classroom discussion and simulation.<sup>102</sup> Hess asserts that active learning is particularly important for law school in that it develops higher level thinking skills.<sup>103</sup> Evaluation is the sixth and final characteristic of effective adult education: The progress of adult learners is promoted by clear and frequent feedback.<sup>104</sup>

These principles parallel those that Cullum articulated for children, except that for adults, real world context and feedback are important additions. Adults are more pragmatic than children and seek in education relevance to their future work.<sup>105</sup> The importance of

---

96. Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. REV. 941 (1997).

97. *See id.* at 942.

98. *See id.*

99. *See id.* at 943.

100. *See id.*

101. *See id.*

102. *See id.*

103. *See id.*

104. *See id.* at 944.

105. Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the*

active learning for adults means that adult students are ready to and “should take responsibility for their own education.”<sup>106</sup>

The roleplays in Moldova seemed to work well for many of these reasons. The law students were more than ready to push back their desks, get out of their seats, and rise to speak up as learners who were soon to become lawyers. They drew on their own experiences and understanding of the culture as they stepped into the role of attorney, client, or person trying to gain confidential information. Those experiences included the expectation of bribes, so they were motivated to engage in critical reflection on the bribery that loomed in their future workplaces. They knew better than we did that they needed practice as they aimed to build responsible professional identities.

As these student “lawyers” practiced the practical skill of finding the words to refuse bribes in an interview, they practiced integrating personal ideals of honesty with a professional value of loyalty to the client and to a fair justice system. They took our four-sentence script on interviewing and the ethics of confidentiality and added to it scenes on justice, fairness, and morality. And, perhaps aided by being in unknown territory, we allowed them to take over our teaching plan for these purposes.

Our teaching experience in Moldova was reinforced and clarified by *Educating Lawyers*,<sup>107</sup> *LSSSE*,<sup>108</sup> and *Best Practices*.<sup>109</sup> Together,

---

*Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 47 (1995) (citing MALCOLM KNOWLES, *THE ADULT LEARNER: A NEGLECTED SPECIES* 57 (1990)).

First, adults see themselves as self-directing human beings, as opposed to child learners whose self-concept is one of depending on an instructor’s will. Second, adults’ greater reservoir of personal experience can be used as a basis for learning. Third, adults’ readiness to learn is quite high if the subject of learning is related to the developmental tasks, i.e., the performance expected of them in their social role. Finally, adult learners are much more inclined than child learners to acquire knowledge that is able to be immediately applied rather than acquiring knowledge that has some future benefit. In other words, adults approach learning with a ‘problem-centered’ frame of mind.

*Id.*

106. Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401, 417 (1999).

107. See CARNEGIE REPORT, *supra* note 4.

108. LSSSE SURVEY, *supra* note 67.

109. See CARNEGIE REPORT, *supra* note 4; LSSSE SURVEY, *supra* note 67; BEST

our experience and the literature led us to theorize that short roleplays in the first-year law school classroom could be a powerful and accessible vehicle for the introduction of themes of lawyers' values during the year when most law teaching focuses on analytic skill development.

Placing students in roles of attorneys, judges, clients, and so on, working with doctrinal issues from a particular perspective, can enhance learning through increased engagement, introduction of context, and reliance on students' own experience. Integrating roleplays with doctrinal teaching in the first year would allow students to learn, not only to reason as lawyers do, but also to make judgments under pressure as a lawyer must and then to act on those judgments.

### *C. The Importance of Reflective Practice to Future Competence*

Researchers who study top professional performers have found that the biggest difference between the most successful and others is not native talent but instead the amount of deliberate practice they have had.<sup>110</sup> As a medical resident in surgery, Atul Gawande had repeated difficulty getting central lines into the large vein in patients' chests.<sup>111</sup> He was very anxious about the process until one day when he finally succeeded.<sup>112</sup> He reflected on the value of practice in helping him develop this skill:

I still have no idea what I did differently that day. But from then on, my lines went in. Practice is funny that way. For days and days, you make out only the fragments of what to do. And then one day you've got the thing whole. Conscious learning becomes unconscious knowledge, and you cannot say precisely how.<sup>113</sup>

---

PRACTICES, *supra* note 62.

110. ATUL GAWANDE, *COMPLICATIONS: A SURGEON'S NOTES ON AN IMPERFECT SCIENCE* 20 (2002).

111. *Id.*

112. *Id.* at 21.

113. *See id.* at 21.

Law students are preparing for a career in which they will use words rather than scalpels as their tools. Law students who start early to act in role and speak as attorneys will have more cumulative opportunity for deliberative practice and, it follows, the chance to build greater competence.

Lack of adequate opportunity to practice essential skills is probably the primary reason that, as some critics say, law schools do not produce proficient practitioners.<sup>114</sup> The MacCrate Report found that the ten essential lawyering skills are (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and alternative dispute resolution procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas.<sup>115</sup> The three essential values of the profession are (1) provision of competent representation; (2) striving to promote justice, fairness, and morality; and (3) striving to improve the profession.<sup>116</sup> Any of the skills could begin to be developed through roleplays formulated for first-year courses. Any such roleplay should focus also on the values of the profession.

Clients value most highly their lawyers' use of good judgment and ability to solve problems.<sup>117</sup> Because problem-solving expertise is developed through solving problems, many suggest that legal education emphasize problem solving for all students.<sup>118</sup> An approach to doing this is with lengthy and nuanced hypotheticals, including the context (the "background noise") of realistic but irrelevant detail. Some law schools and individual professors are indeed integrating extended simulations into their first-year programs.<sup>119</sup>

---

114. See BEST PRACTICES, *supra* note 62, at 181.

115. See MACCRATE REPORT, *supra* note 54, at 138–40.

116. See *id.* at 140–41.

117. Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 315 (1995).

118. See *id.* at 386–87. The difference between experts and novices, in part, is the sheer quantity of experience they have had. Experts tend to "recognize" in the problem a pattern of a certain kind and to 'retrieve' a solution from a stored repertoire of solutions to similar problems." *Id.* at 335. See generally Andrea Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445 (2002) (describing problem-solving theories and the use of clinical education at the University of Dayton Law School).

119. See Barry et al., *supra* note 74, at 42–44. At New York University School of Law,



Yet without mounting a major curriculum reform project, simple, short problems can be introduced to allow students to insert their own potentially irrelevant but telling detail into the classroom. This is an uncomplicated way to introduce active learning about justice, fairness, and morality into every first-year course.<sup>120</sup>

Practicing the use of doctrine in contexts in which it might arise increases the likelihood that the underlying concept will be remembered when needed.<sup>121</sup> For example, a student is more likely to remember an ethical principle if she is called upon to use it in a hypothetical situation involving a client or other person.<sup>122</sup>

Adding roleplays to the first-year curriculum also highlights the interpersonal, relational aspects of lawyering. A large part of what lawyers do is represent and counsel people; often they are under stress or in crisis. Roleplays give law students the opportunity to imagine relations between the parties as they practice acting the part of client, lawyer, third party, judge, and so on.<sup>123</sup>

---

first-year students engage in interactive and interpretive work in the Lawyering Program. The Lawyering Program, <http://www.law.nyu.edu/lawyeringprogram/index.htm> (last visited Mar. 27, 2008). See Deborah A. Schmedemann, *Finding a Happy Medium: Teaching Contract Creation in the First Year*, 4 J. ASS'N LEGAL WRITING DIRECTORS (forthcoming 2008) (analyzing the teaching of contract creation and describing the extended contract negotiation and drafting exercise at William Mitchell College of Law in the second semester of the first-year skills course, Writing & Representation: Advice & Persuasion).

120. Of course, some students may insert their own realistic details that make the roleplay complicated indeed. Teachers must be sensitive when asking students to roleplay potentially traumatic situations involving assault or other abuses.

121. Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 57 (2001) ("The rules concerning contract law, for instance, will make more sense . . . if students are familiar with the circumstances in which the contract would be entered, have themselves engaged in the process of forming a contract or can see examples of written contracts, and are familiar with how those contract rules will be used by an attorney, either in negotiating or drafting a contract, or in arguing over the meaning of the contract after a dispute has arisen."); Paul S. Ferber, *Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417, 434 (2002).

122. Maria Tzannes, *Legal Ethics Teaching and Practice: Are There Missing Elements?* 1 T.M. COOLEY J. PRAC. & CLINICAL L. 59, 78–79 (1997).

123. Peggy Cooper Davis & Aderson Belgarde Francois, *Thinking Like a Lawyer*, 81 N.D. L. REV. 795, 802 (2005) ("[L]awyering, like many professions and more so than most, is relational rather than all in the head. It involves language, performance, and the management of emotion and desire as much as it involves logic and numbers.").

*D. Interactive Exercises in the First Year Can Assist in the Development of Professional Identity and Ethical Values*

Law students begin to develop their professional identity from the first day of law school, but they usually will not enroll in a course entitled “Professional Responsibility” until their second or third year. Howard Lesnick counsels law teachers to raise the most fundamental questions of identity for students in their professional responsibility classrooms: “Who am I? In my work as a lawyer, what will I be doing in the world? What do I want to be doing in the world?”<sup>124</sup> Playing roles in hypothetical situations is a powerful way for first-year law students to begin to answer those questions, to start to form their professional identities.

One of the ten skills listed in the MacCrate taxonomy of skills of the legal profession is recognizing and resolving ethical dilemmas.<sup>125</sup> Ethics generally warrants an entire upper-level law school course; instruction in “the history, goals, structure, values, rules and responsibilities of the legal profession and its members” is required by the American Bar Association Standards.<sup>126</sup> Because ethical issues are close to the surface in every law school subject, law students should have opportunities to work with ethics and values issues as they arise in every subject. This can be accomplished in the context of roleplays during the first year.<sup>127</sup>

---

124. HOWARD LESNICK, BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW 1 (1992).

125. MACCRATE REPORT, *supra* note 54, at 194.

126. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 80, at 21.

127. Other authors have suggested that ethics be taught in a pervasive method. *See, e.g.*, Peter A. Joy & Kevin C. McMunigal, *Teaching Ethics in Evidence*, 21 QUINNIPIAC L. REV. 961, 961 (2003) (“There are several good reasons to incorporate ethics into all law school courses, including evidence. A significant source of unethical behavior by lawyers is a failure to recognize ethical issues. Having professors who teach in fields outside professional responsibility recognize and deal with ethics issues increases student awareness of, and sensitivity to, ethical issues in the legal work they do. The pervasive teaching of ethics provides students with the ‘skills needed to identify and analyze issues in settings where ethics is not the primary focus of attention.’”) (quoting Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L.J. 719, 737 (1998)). *See also* DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (2d ed. 1998); Peter A. Joy, *Teaching Ethics in the Criminal Law Course*, 48 ST. LOUIS U. L.J. 1239, 1240 (2004); Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLINICAL L. REV. 401, 410 (1994).

The fields of moral philosophy and developmental moral psychology offer guidance in how law schools might better foster students' capacity for ethical reasoning and judgment.<sup>128</sup> Kohlberg's famous study on moral development found that "broad social participation, which calls for reciprocal role playing, is a main facilitator of moral development."<sup>129</sup> Kohlberg used experiential methods to teach moral reasoning. He created moral dilemmas for people to discuss with others. When they experienced internal conflict over their values, they would "move to a higher stage of synthesis to resolve the conflict."<sup>130</sup>

Lecture and even case dialogue are not effective in accomplishing this move to a higher stage of moral development. Rather, simulations and real events involving reciprocal roleplaying might develop judgment "through stimulating the capacity of students to take different points of view."<sup>131</sup>

The field of social psychology, in uncovering factors that cause human behavior, offers the insight that social norms affect professional behavior as much as what law students learn formally in school.<sup>132</sup> In exploring what may be missing in professional responsibility instruction, Maria Tzannes analyzed how roleplays affect the development of ethical behavior in law students and ultimately in lawyers.<sup>133</sup> Tzannes cited a study of the South Wales (Australia) Police force, which found that unethical practices were linked to corrupt cultural and social norms where individual police officers were subject to strong expectations that they follow those norms.<sup>134</sup> Because engaging in ethical behavior is a personal choice

---

128. David A. J. Richards, *Moral Theory, The Developmental Psychology of Ethical Autonomy and Professionalism*, 31 J. LEGAL EDUC. 359, 359 (1981).

129. *See id.* at 369 (construing Lawrence Kohlberg, *The Development of Moral Character and Moral Ideology*, in REVIEW OF CHILD DEVELOPMENT RESEARCH 383, 395, 406 (Martin L. Hoffman & Lois Wladis Hoffman eds., 1964)).

130. *See* Richards, *supra* note 128, at 370 (construing Lawrence Kohlberg, *Cognitive-Developmental Theory and the Practice of Collective Moral Education*, in GROUP CARE: AN ISRAELI APPROACH 342, 368-69 (Martin Wolins & Meir Gottesman eds., 1971)).

131. Richards, *supra* note 128, at 372.

132. Tzannes, *supra* note 122, at 68-69.

133. *Id.* at 78-79.

134. *Id.* at 73. *See also* Orfield, *supra* note 42. Orfield conducted interviews of police, judges, prosecutors, and defense attorneys. *Id.* at 81. The interviews found "a pattern of pervasive police perjury intended to avoid the requirement of the Fourth Amendment." *Id.* at

and also a choice lawyers need to make occasionally in the face of negative social expectations, ethics ideally is taught in a manner that integrates the subject with the skills associated with its practice.<sup>135</sup>

The skills needed to act ethically include those of recognizing an ethical dilemma, deciding upon a wise way to proceed, and, finally, implementing that decision.<sup>136</sup> Tzannes suggests that roleplays are an effective way for law students to develop these skills.<sup>137</sup> She describes how the students in an ethics class in Australia must go through those three steps, ending with the presentation of their decision in words spoken to a roleplayed client.<sup>138</sup> Other students try to get them to change their minds. The teacher plays the role of difficult client or other attorney.<sup>139</sup> Students need to find the words to hold their positions. They must find the words to resist outside entreaty.<sup>140</sup> It is important for lawyers to develop the skills of finding the words to state an ethical position, as well as sticking to that position under pressure.<sup>141</sup> Developing that skill might lead to greater ethical behavior by lawyers.<sup>142</sup>

Learning to find the words to resist bribery was exactly what the Moldovan law students were doing in the brief exercise we prepared

---

82–83. The interviews also found that judges “knowingly accept police perjury as truthful.” *Id.* at 83. The exclusionary rule was found to be a deterrent to police perjury. *Id.*

135. *See* Tzannes, *supra* note 122, at 75–77.

136. *See id.* at 76–79.

137. *See id.* at 78–79.

138. *See id.* at 79.

139. *See id.* (“The teacher plays ‘the client or business associate from hell.’”).

140. *See id.*

141. *See id.*

142. *See id.* at 77–79. Tzannes served as a member of the Ethics Committee of the Law Society of New South Wales, Australia. *Id.* at 60 n.5. Based upon her experience with lawyer disciplinary cases, Tzannes suggests that the lack of opportunity to develop the skill of finding the words to resist unethical conduct in law school is the reason for some unethical behavior among lawyers:

I would speculate that many of the cases coming before disciplinary tribunals arise, not only because the lawyer did not or could not resist the entreaties of the client or others, but because they did not [know] or had not learned how to [find the words] to be assertive. It is not something that comes naturally especially when there is a strong desire to please the client, the business associate or employer, or merely to fit in. Although this may be hard to believe when we are dealing with intelligent people, disciplinary tribunals regularly comment upon those desires and so they cannot be ignored as factors that affect behavior.

*Id.* at 79.

for them. After a student has learned to speak those words of resistance, “they can be repeated whenever the occasion arises.”<sup>143</sup>

One purpose of teaching ethics in law school is “to cultivate a capacity for and willingness to engage in reflective judgment.”<sup>144</sup> Critical reflection, however, is a habit that develops through experience over time.<sup>145</sup> Most current law school courses of study do not provide enough opportunities for developing a modicum of judgment before graduation. Adding roleplays into the first-year curriculum would give law students more practice time to develop the important skills of moral reasoning, exercising judgment, and listening.<sup>146</sup>

#### *E. Increased Student Engagement Leads to Increased Learning*

In addition to gaining skill in dealing with ethical issues, the use of roleplays in first-year courses may increase student understanding of the doctrine they are learning. Roleplays serve a purpose similar to clinics in that they set up situations that occur in real life and allow students to act out and solve problems. The addition of real-life hypotheticals should capture the students’ attention and enhance learning.<sup>147</sup>

Erin Gruwell was a young teacher whose first assignment was to teach English in an extremely challenging high school classroom that the school administration had written off. She achieved success by

---

143. *See id.*

144. Ian Johnstone & Mary Patricia Treuthart, *Doing the Right Thing: An Overview of Teaching Professional Responsibility*, 41 J. LEGAL EDUC. 75, 79 (1991).

145. *See id.*

146. LESNICK, *supra* note 124, at 227.

147. In *Involvement and Clinical Training: An Evaluation*, 41 U. COLO. L. REV. 463, 464 (1969), Edward Kimball said it in a slightly different way:

Many of the things we have tried to communicate by traditional teaching methods may not be taught any better by clinical training or involvement programs, but they may be better learned. One thing these programs can offer that other programs often lack is a sense of relevancy. Because they are dealing with real problems, students are often invigorated in their approach to related coursework.

*Id. Cf.* Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. LEGAL EDUC. 402, 412 (1998) (recommending roleplays as a medium for teaching both why students need certain knowledge and how they will use it). *See also* Maranville, *supra* note 121, at 57–58.

convincing the “students to write journals about the problems they faced, including abuse, racial hostility and anorexia.”<sup>148</sup> These students who were undervalued went on to publish a book, graduate from high school, and, in some cases, go to college.<sup>149</sup> In an interview about the teaching methods she used to achieve such success, Gruwell outlined the questions a teacher should ask to achieve excellence in a classroom. These questions are just as relevant for a law school teacher as for any teacher hoping to motivate students:

First, how do you engage students in the classroom? By engaging them, you are making the education system really relevant.

Second, how do you enlighten them with curriculum? Make education come to life? Be relevant to what they know?

And thirdly, once they are engaged, how do you empower them to continue making education and those lessons a part of who they are?<sup>150</sup>

Simulations and roleplays can help with law student engagement, especially when they are set in a relevant context.<sup>151</sup> Simulations require engagement; students who act in them cannot be passive observers while in role.<sup>152</sup> “[T]hese techniques promote interest in the subject matter, motivation to learn, better knowledge retention, and better understanding of how to apply the knowledge. [They are] also grounded in the old adage that people learn not by what they see or hear, but by what they do.”<sup>153</sup>

Simulations require students to go beyond memorizing material to apply what they have learned. Applying their knowledge gives students “feedback about what they understand and, more

---

148. Cati Vanden Breul, *Gruwell's Mission Has Become Her Life*, MINN. STAR TRIB., Mar. 26, 2007, at E1. Her teaching methods were portrayed in a movie entitled FREEDOM WRITERS (Paramount Pictures 2007).

149. Breul, *supra* note 148.

150. *See id.*

151. GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 194 (1999).

152. *Id.*

153. *See id.*

importantly, what they don't understand."<sup>154</sup> Other values from the use of simulations include helping to "deal with student anxiety over the unknown and ambiguous world of law practice"<sup>155</sup> and helping students develop skills in "time-management, assertiveness, ethics, fortitude in making mistakes, accepting and giving constructive feedback, and dealing with the emotional aspects of a situation with legal implications."<sup>156</sup>

The addition of or increased use of roleplays could enhance student engagement and, in the process, give students a good start in developing their professional identities. In sum, the value of roleplaying is so high that the technique should spread beyond simulation-based skills and clinic courses into the classic doctrinal courses of the first year.<sup>157</sup>

#### IV. WAYS TO ADD ROLEPLAY TO FIRST YEAR-LAW CLASSES

For our work with Moldovan law faculty, we developed a brief outline of the basic steps in the development of a roleplay for their use.<sup>158</sup> Our method has three primary components: (1) setting an educational goal for the exercise; (2) developing a format; and (3) engaging in reflection and feedback.

Roleplays may range from a single exercise that takes up a small part of one class to a course with an ongoing simulation throughout.<sup>159</sup> This Article focuses on the former in hopes that the ease of incorporating single-exercise roleplays will encourage their use.

---

154. *Id.*

155. *Id.*

156. *Id.* at 195.

157. Authors of BEST PRACTICES, *supra* note 62, "encourage the use of simulations in large enrollment classes." See BEST PRACTICES *supra* note 62, at 225. Cf. CARNEGIE REPORT, *supra* note 4, at 194-98 (urging the integration of doctrine, skills, and values teaching beginning in the first months of law school).

158. See *infra* App. D.

159. For example, see Cicero, *supra* note 51, for a description of simulations used throughout a labor law class. Paul Ferber describes the development of simple, complex, and extended simulations. See Ferber, *supra* note 121. See also Jay M. Feinman, *Simulations: An Introduction*, 45 J. LEGAL EDUC. 469 (1995) (giving an overview of issues to consider when planning simulations); Hess & Friedland, *supra* note 151.

In choosing educational goals for an individual roleplay, a teacher should reach beyond the doctrinal subject matter of her course and think of a skill and value to practice alongside the course doctrine. Consulting the list of fundamental skills and values of the profession from the MacCrate Report is useful for that purpose.<sup>160</sup>

Our Moldovan exercises focused on the skills of interviewing and recognizing and resolving ethical dilemmas rather than on specific legal doctrine (other than ethics); that was because of the larger goals of our visit.<sup>161</sup> Roleplays are well-suited to building understanding of a concept of substantive law, such as civil procedure or contracts.<sup>162</sup> Yet any roleplay involving at least one lawyer will have some practice context, so it is difficult to imagine a roleplay that will not reinforce some skill, even when understanding doctrine is its primary goal.

Roleplays in first-year classes might best be designed with two or three educational goals, so enhanced understanding of a particular legal concept, the development of a practice skill, and attention to the underlying values issues common in the area of practice might all be involved. When, for example, a contracts teacher wishes to develop comprehension of the doctrine of consideration, a roleplay might involve a negotiation in which students bargain over contract terms

---

160. See MACCRATE REPORT, *supra* note 54, at 127–98. We summarized that content for the Moldovans in: A List of Legal Skills and Values Taught at American Law Schools, *infra* App. E. Before our trip to Moldova, we learned that library materials and paper copying capability would be limited, so we also compiled a list of websites to assist the teachers in Moldova. See *infra* App. F. All documents, except the list of websites, were translated into Russian. We made multiple copies of these one-page tools and brought them with us in English as well as in Russian.

161. See Introduction, *supra*, for a brief description of the goals of our trip. The skills we taught are among those listed in the MACCRATE REPORT, *supra* note 54, at 127–98. See also *infra* apps. A, B.

162. Robert G. Vaughn, *Use of Simulations in a First Year Civil Procedure Class*, 45 J. LEGAL EDUC. 480, 482 (1995). Vaughn uses simulations to “cover difficult topics [of civil procedure law] effectively.” *Id.* While Vaughn’s primary goal is teaching course content through simulation, he acknowledges that students also value the lawyering skills to which they are introduced through the exercises. *Id.* at 480. Similarly, Lynn Dallas developed simulations for business law classes “to enhance the students’ understanding of substantive materials.” Lynn L. Dallas, *Limited-Time Simulations in Business Law Classes*, 45 J. LEGAL EDUC. 487, 487–97 (1995). See also Carol Chomsky & Maury Landsman, *Introducing Negotiation and Drafting into the Contracts Classroom*, 44 ST. LOUIS U. L.J. 1545 (2000); Karl S. Okamoto, *Learning and Learning—to—Learn by Doing: Simulating Corporate Practice in Law School*, 45 J. LEGAL EDUC. 498 (1995); Schmedemann, *supra* note 119.



and one side does not offer valid consideration. Values would come into play if the negotiation scenario included some awkward or inconvenient fact that challenged students with respect to their duty of truthfulness in statements to others.<sup>163</sup>

After educational goals are established, a teacher designs the format for the roleplay.<sup>164</sup> Write a brief story involving a real-life situation in which the chosen issues naturally arise. In our experience, the most successful roleplays involve people or settings that we ourselves know well. Something within the students' experience will inspire (or provoke) the most engagement.

Roles should be created for two or more characters and secret facts written for at least one of the characters so that the classroom drama may be more surprising, challenging, and real. For our purposes, we give each student a brief paragraph of facts, with a few sentences of secret fact instructions in addition for some.<sup>165</sup>

Student actors should be given some time to prepare and clear instructions as to goals and expectations.<sup>166</sup> Are there particular statutes, rules, cases, or ethical standards to which the students should refer in preparation? In our experience, it is easiest to introduce a roleplay following a discussion of the law that is involved in the scenario.

In Moldova, the students' entire preparation time was spent right in class. We asked for volunteers for the roleplay, and then one of us led the volunteer playing the attorney through a discussion of goals in front of the class while the other took the student playing another party into the hall to discuss instructions for their role.

Co-teaching is ideal for many educational purposes but is often a rare luxury. When teaching alone, it may be most feasible to assign

---

163. Negotiation is one of the skills listed in the MACCRATE REPORT, *supra* note 54, at 185–90. Rule 4.1 of the Model Rules of Professional Conduct (some version of which is present in virtually every state's lawyer professional responsibility rules) requires that lawyers be truthful in material statements of fact to others. Rule 3.4 requires fairness in dealing with opponents. See MODEL RULES OF PROF'L CONDUCT, available at <http://www.abanet.org/cpr/mrpc/toc.html>. Negotiation is a rich context in which to explore lawyers' duties to be truthful. See, e.g., Chomsky & Landsman, *supra* note 162; Gerald B. Wetlaufer, *The Ethics of Lying in Negotiation*, 75 IOWA L. REV. 1219 (1990).

164. See *infra* Apps. A, B, D.

165. See *infra* Apps. A, B.

166. See BEST PRACTICES, *supra* note 62, at 185.

roleplay parts ahead of the class in which they will be performed. We would, however, resist giving too many instructions or assigning much grade credit for these exercises. The exercises should be the equivalent of speaking aloud in class. The ideal atmosphere is one where students feel free to improvise and push a little bit, where laughter breaks out, and where no one is reading from a script. The instructions may be for stage directions or about attitude and a main rhetorical thrust. The point is to let the students fill in the words somewhat spontaneously as they go along. A student may prepare an outline of points to make; on the other hand, a memo (such as of client counseling items) that is read aloud is not in keeping with the spirit of roleplay. When lawyers interact with clients, opponents, and third parties, they must be prepared on the substance but rarely will read from a script of remarks.

If students in a first-year course express nervousness about performing in front of the class, a teacher may reassure them by promising that the performance will not be graded, by reminding them that each student will have a turn in front of the class (if that will be feasible over the course of the semester), by allowing the performance to take place in the middle of the classroom instead of in front of the room, by asking the other students for express assurances of support, and so forth. Too much time to prepare can increase anxiety, so the teacher should experiment to find the optimum measure of preparation time for the goals of the exercise.

As an alternative to the fishbowl method, roleplays may be performed in small groups with every student participating, followed by discussion with the class as a whole. In this mode, each student is assigned to play one of the roles, and another one or two observe, take notes, and provide feedback in each small group. The observer(s) also may be charged with reporting the experience back to the class.

When using one set of roleplayers at a time in a class, ask the participants to stand or sit or move in front of or in the middle of the class. Be sure they can be heard by everyone, even if this means that portable microphones must be used. The teacher should be off to the side unless he is playing a role such as the judge in a courtroom scenario. Professors as primary roleplayers can dampen the ambience of the exchange; students might be reluctant to go head to head with a

teacher. Yet where the professor is the one asking a student to do something that is illegal or unethical, the roleplay might provide a very good simulation of how it feels to say no, perhaps, to your boss in a law firm.

Let the students know how much time they have to act out their roles. Keep it short, five to ten minutes at most. It is often useful to ask a student in the class to take as complete notes as possible of what was said (a roleplayed court reporter or keeper of minutes) as those might be useful later.

Then let them act. Resist the impulse to chime in or intervene. The teacher has as much to learn as the students, not about the doctrine or skill, but about how her students are imagining their roles as lawyers, about how they conceive of the relationships they will face, and about what really worries them about becoming lawyers. Perceiving these things during the roleplay requires close attention and must be done in addition to attending to the other stated goals of the exercise.

After the roleplay has been acted out in class and the professor or students call it to an end, it is time for the students to reflect and receive feedback. Critique of performance is a classic clinical legal education technique that is essential for learning to take hold.<sup>167</sup> Again, for our work with Moldovan law faculty, we created a short outline of steps for self reflection and for evaluation of others.<sup>168</sup>

Teaching students the art of self reflection as they engage in roleplays will lead to more effective and respectful debriefing sessions in class. One may teach this by example by leading the students through the series of questions that provoke self reflection, or by reading and spending class time on the concept.<sup>169</sup> For example, each student acting as the attorney in a roleplay could set a goal for the exercise and relay that goal to the class before the exercise.

---

167. Critique of performance has been an integral part of most models of clinical education. For synopses of many articles discussing the importance of and methods of critique of students, see Ogilvy & Czapanskiy, *supra* note 79, at 10–19, 36–39, 57–60. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 80, at 21, which requires law schools to offer substantial opportunities for real-life practice experiences “designed to encourage reflection by students on their experiences . . . and the development of one’s ability to assess his or her performance and level of competence.”

168. *See infra* app. G.

169. Nina Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967 (1990).

Deciding upon that lawyering goal would be considered part of the preparation for the roleplay.

After the roleplay, the lawyer actors should be the first to reflect upon whether they met their own goal.<sup>170</sup> What worked? What did not? What was within their control? What was outside of their control? Was the substance of what they said in counseling the client (or bargaining with the opponent or other activity) affected by economic or social aspects of their law practice setting? If yes, in what way? What would they do differently next time or if they had more time? What will they do the same? Is there anything about the operation of the legal doctrine that was involved in the roleplay that they understand better than before? What aspect of the law is now murkier than before the exercise? How did their use of a legal precept change their understanding of it, if at all?

After the primary actor has spoken, other class members may then voice their opinions on all of these questions. The professor might find that each planned teaching point is brought out by student commentary before he has to add his own insights.

Again, the primary purpose is to elicit students' reflection on their experience and on their observation of another's experience, not to tell the students the professor's views. The students playing clients or other non-lawyer characters may add insight gained from that experience. Were they confused, irked, or heartened by the student lawyer's behavior? Why? The professor also may lead the students to consider broader issues such as public policy issues at stake, socioeconomic concerns, their view of the lawyer's role in this context, areas for potential law reform, and so forth.

A sample roleplay, for use in a contracts class, is included in this Article as Appendix H. The scenario involves a landlord client who wants her or his lawyer to include a clearly unenforceable penalty clause in a lease, to accomplish the landlord goals of making extra money and keeping tenants in their leases for longer periods. It is based on leases that one of the authors has seen often in her practice, and is intended to allow examination of a client request that must not

---

170. When a student is particularly nervous about being in front of the class, a professor may decide to start the evaluation with some positive comments on the student's performance. In general, however, it is good practice to solicit the student's own thoughts first.

be uncommon, i.e., to include an illegal or unenforceable term in a contract.

The roleplay can be used for various goals, some of which are laid out for the students at the top of the handout.<sup>171</sup> Most obviously, its goal is to practice the skill of client counseling; the student lawyer should discover that it is more difficult to do the right thing when speaking directly to a disappointed or pushy client than it is when writing an answer on paper. What rhetorical tropes did the lawyer use to counsel the client if the lawyer thought it unwise or unethical to include the penalty clause? What were the values in the arguments with which the client came up in response? Was there time in the ten minutes allotted to resolve what would be written in this contract? What would the lawyer have done with more time? Would that likely be effective? With what competing goals or values is the lawyer dealing here?

The roleplay lawyer also will have occasion to think about the nature of contracts in the real world, for the client wants this clause to encourage or discourage behavior over time and not simply to freeze the parties' agreement into a writing that is used once and then filed and forgotten. What other means of accomplishing the landlord-client's goals might a creative and ethical lawyer devise?

A key goal of this roleplay is to explore the values and ethics of the practice of drafting contracts with clearly unenforceable clauses. It could begin a substantive discussion of whether lawyers may include such clauses for a client, whether the client demands them or not, with reference to the Rules of Professional Conduct in that jurisdiction.<sup>172</sup>

Yet it is not essential to know or invoke those rules to have a rich discussion of this issue. In fact, jurisdictions vary as to whether the inclusion of such clauses violates the Rules of Professional Conduct.<sup>173</sup> A teacher might state that the students should assume that

---

171. See *infra* App. H.

172. Model Rules of Professional Conduct 1.2(d), 2.1, 4.1(a) and 8.4 may be violated by such clauses. MODEL RULES OF PROF'L CONDUCT, *supra* note 163.

173. See Christina Kunz, *The Ethics of Invalid and 'Iffy' Contract Clauses*, in Symposium, *Contracting Out of the Uniform Commercial Code*, 40 LOY. L.A. L. REV. 487 (2006) (analyzing the various contexts in which invalid contract terms present themselves and exploring lawyers' duties in light of the ethical rules and Uniform Commercial Code).

lawyers in this jurisdiction would not be disciplined for including an invalid clause in a contract and ask that they think about the conduct in light of their own values. What kind of lawyers do they want to become?

A related question of ethics in client counseling that may be explored through this roleplay is the appropriate role of the client in directing a lawyer's work. What tools do lawyers have for declining or resisting client demands? What is the legitimate range of client requests? What difference did the economic pressure from the client or law firm make in the student lawyer's course of conduct? If including an invalid clause could make the lawyer subject to professional discipline, how would a student resolve the ethical and financial tensions? How does one speak with insistent clients and keep their business despite refusing to do their bidding?

In sum, this sample roleplay can be used to explore a range of issues. The key for the teacher is to anticipate the issues as much as possible in advance and to formulate her own thoughts on how best to handle them. We would not advise attempting an in-depth discussion of every issue after one run-through of the roleplay, but rather would focus on two or three areas for discussion, depending upon the time allotted and student responses. Whether you explore client counseling in the discussion or not, the students will have experienced a few minutes of counseling. A teacher could well choose to focus on the values issues rather than on the skill of counseling.

When everything works well, the students make it obvious what they most want to think about and the teacher is prepared to let them explore that or to guide them to a more worthwhile area that will also be of interest. The little theater piece may be referenced as illustration in future contracts classes, and, most importantly, as a reference point for students when they confront similar challenges in practice.

## CONCLUSION

The time is overdue for law schools to add a more thorough and systematic consideration of professional values and ethical context to their programs of study. While the integration of practice skills is also overdue in legal education, this Article focuses on the inclusion of issues of justice, fairness, morality, identity, and relations between people. The Moldovan students reminded us powerfully that healthy senses of all of these, too, are needed for competent representation of clients.

While there are multiple teaching methods for including professional values in legal study, this Article proposes one small but robust step for first-year teachers to take. Try out a few short roleplays. Take twenty to thirty minutes every two weeks and see what you find. If invited to do so, first-year students might easily incorporate issues of fairness and justice into their roleplayed problem solving. They are closer to the values that led them to apply to law school and have easier access to their thinking before law school than they might have in later law school years.<sup>174</sup>

Use of roleplays in first-year law classes can begin the integration of students' skills in legal analysis with their own values and experiences—the first step in shaping a responsible professional identity.<sup>175</sup> Roleplays create moments where students may pull the many pieces of lawyering together: legal concepts, legal skills, and ethical considerations.<sup>176</sup> In the first year, roleplays are a simple step

---

174. See Joy, *Teaching Ethics in the Criminal Law Course*, *supra* note 127, at 1241 (citing Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School*, 37 UCLA L. REV. 1157, 1159 (1990)). Additional reasons why ethics should be introduced from day one of law school are also explored in Peter Joy's article. *Id.* ("The need for the pervasive teaching of ethics is perhaps more important in first-year law school courses than in those in the final two years of law school 'because the first year courses signal what it means to think and act like a lawyer.'") (quoting Russell G. Pearce, *Teaching Ethics Seriously*, *supra* note 127, at 737).

175. See Suellyn Scarnecchia, *The Role of Clinical Programs in Legal Education*, 77 MICH. B.J. 674 (1998) (describing how clinical programs also help students build professional identity and "the relief and excitement students feel when they are permitted to put all of the pieces of being a lawyer together").

176. See, e.g., MICHAEL J. KELLY, THE TEACHING OF LEGAL ETHICS II: LEGAL ETHICS AND LEGAL EDUCATION 43 (1980) ("[L]awyering is an important *subject* for legal education from which students can develop insights into and preparation for—even practice of—the moral choices of law practice.").

toward making legal education more integrated or holistic and toward making students feel they are on the path to becoming responsible lawyers.<sup>177</sup>

Roleplays also give students practice in finding the words to do the right thing. Learning to say *no* to a powerful client, judge, or adversary is one of the more important skills for a responsible lawyer. A lawyer must be able to say no, even when everyone else at an institution is saying yes, even when others are telling the lawyer that her or his career will be ruined, that the firm will go out of business,<sup>178</sup> or that troops will die as a result of their refusal to ratify certain conduct. As noted by former deputy Attorney General James B. Comey in a recent commencement speech, “It takes more than a sharp legal mind to say ‘no’—it takes moral character.”<sup>179</sup> Law school teachers should aspire to have every one of their students leave law school with both qualities well developed.

---

177. See CARNEGIE REPORT, *supra* note 4 (citing Robert J. Shiller, *How Wall Street Learns to Look the Other Way*, N.Y. TIMES, Feb. 8, 2005, at A25).

178. The movie *Michael Clayton* was nominated for several Academy Awards for its story of the intense pressure brought to bear on two lawyers who want to stop hiding the truth about the products of their client, an international corporation that is the defendant in a multi-billion dollar toxic tort suit. MICHAEL CLAYTON (Warner Bros. 2007); <http://michaelclayton.warnerbros.com> (last visited Oct. 20, 2008).

179. James B. Comey, former U.S. Deputy Att’y General, Commencement Address at William Mitchell College of Law (May 20, 2007), *available at* <http://www.wmitchell.edu/news/articles/default.asp?articleID=11196>.



## APPENDIX A\*

**PROBLEM 1**

You go to the waiting room to meet your client, Valentina, and another person is with her. The other person follows the two of you to your office. What should you do? The other person is Valentina's neighbor who gave her a ride.

**Secret Facts for Problem 1**

Neighbor—If the attorney asks you to leave, make him/her understand that you are the client's best friend, and it would be more efficient for you to just sit in. Tell him/her you already know a lot about the case and could be helpful. Pressure the attorney to let you stay.

**PROBLEM 2**

You are representing Valentina in a contract dispute. Her nephew (whom you have not yet met) calls and asks for an update on the status of the case and the likelihood of reaching a settlement. What should you say?

**Secret Facts for Problem 2**

Nephew—Tell the attorney that Valentina asked you to call. You are close family members. She wants you to tell the nephew what is happening. It's okay to talk to you because you know all about the contract for the computer.

**PROBLEM 3**

You are representing Valentina in the contract dispute. Andre comes to your law office. He asks you to represent him as well, or instead of Valentina. He will pay you well. What will you do?

**PROBLEM 4**

(Problem 4 was written by Aliona Cara, Law Professor, Moldova State University.)

You are in your law office speaking with a client, who happens to be a journalist. In the middle of the interview, you receive a phone call from another client, Anna. She is a member of parliament and your client in a divorce. She is calling to tell you she will miss an

---

\* Appendices A–G were prepared by Angela McCaffrey, Hamline University School of Law, amccaffrey@hamline.edu; and Ann Juergens, William Mitchell College of Law, ann.juergens@wmitchell.edu, for use in teaching in Muldova in February 2005.

appointment with you because she is in the hospital after being beaten by her husband when he was served the divorce papers. She is hysterical and asks you for advice on what she can do to protect herself. Suddenly, you realize that your journalist client, who can overhear your advice, is taking notes. What issues have arisen? What will you do?

## APPENDIX B

**VALENTINA**—Computer Store Owner  
(Summary of facts)

Valentina has a small business selling computers in Chisinau. She is successful. She sold Andrei 10 computers for 120,000 lei on December 1, 2004. He paid 60,000 lei down and agreed by written contract to pay the balance of 60,000 lei on January 15, 2005. The written contract allows her to sue or repossess if there is a payment failure.

He does not pay on January 15, 2005. It is now February 7, 2005. She has called and spoken with him several times.

**ANDREI**—Internet Cafe Owner  
(Summary of facts)

Andrei graduated from State University of Moldova. He went to Italy to work for a software company for 10 years. He wants to move back to Chisinau and set up an internet cafe with a bar to sell Italian cappuccino and Moldovan wine. He bought 10 computers from Valentina for 120,000 lei on December 1, 2004. He paid 60,000 lei down and signed a contract to pay 60,000 lei on January 15, 2005.

When he had the computers installed, he realized they were slower than he thought and didn't have the capacity he expected. He thinks they weren't worth what he paid for them. Also, his investors fell through, so he could not pay the balance on January 15, 2005.

APPENDIX C<sup>†</sup>LITIGATION BRIEFLY COMPARED TO MEDIATION IN THE  
UNITED STATES

<p><b>LITIGATION</b>—Adversary system</p> <p><u>Decision-maker</u>—Judge or jury of 6 or 12</p> <p><u>Formal rules</u>—Civil or criminal procedure, rules of evidence, rules of decorum, rules of local practice</p> <p><u>Process</u>—Each side is represented by its own attorney. Attorneys ask judge to admit testimony and things into evidence, for use by decision-maker in reaching decision.</p> <p><u>Theory of the case</u>—Lawyers develop theory of case based upon law and facts and present story to decision-maker in attempt to persuade them using the following format.</p> <p><u>Opening statement</u>—Lawyer tells decision-maker theory of case and what the evidence will show.</p> <p><u>Direct examination</u>—Lawyer presents testimony through questions to witnesses and often offers documents and physical evidence through witnesses.</p> <p><u>Objections</u>—Other lawyer interrupts and asks judge not to allow the testimony or thing into evidence.</p> <p><u>Cross examination</u>—Lawyer questions witness for other side to reduce impact of their direct testimony.</p>	<p><b>MEDIATION</b></p> <p><u>Decision-maker</u>—Parties decide the case themselves.</p> <p><u>Formal rules</u>—Rules of practice, District courts, Minnesota Rule of General Practice 114—Alternative Dispute Resolution</p> <p><u>Process</u>—Parties may or may not be represented by lawyers. The parties are assisted by a mediator who does not represent either party. He or she is neutral.</p> <p><u>Opening phase</u>—Mediator facilitates introduction. Explains confidentiality. Seeks agreement to mediate—contract is signed.</p> <p><u>Opening statements phase</u>—Mediator asks each side to state nature of dispute, issues to be decided, settlement talks thus far.</p> <p><u>Identifying interests phase</u>—Mediator facilitates general discussion of each party's interests. Mediator asks parties to focus on interests not legal issues. Mediator makes a list of all interests of both parties.</p> <p><u>Option generation phase</u>—Mediator helps parties list possible solutions and merits and problems with each.</p> <p><u>Moving to settlement phase</u>—Mediator helps parties come to agreement on solutions if parties are ready to do so.</p>
---	--

<sup>†</sup> Appendices C–I do not conform to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).

<p><u>Closing argument</u>—Each lawyer argues her/his theory of the case and why the law and the facts that the judge allows into evidence suggest her/his side should win.</p> <p><u>Trial brief</u>—Written argument by each lawyer as to why under facts and law they should win.</p>	<p><u>Settlement</u>—If parties reach agreement mediator helps summarize all terms and has parties agree on who will draft final settlement and the timeline for completion.</p>
--	--

## APPENDIX D

**A METHOD FOR DEVELOPING & IMPLEMENTING ROLEPLAYS  
IN LAW SCHOOLS**

1. Decide upon the lawyering skill you wish to teach in the roleplay.
2. Consider what makes someone excellent at this skill.
3. Write a brief fact situation that calls for the use of the lawyering skill.
  - a. Create tension in the facts so that there is not an easy solution.
  - b. Write roles for two or more characters. For example, one student may be called upon to be an attorney, and another may be his or her client. Or two student lawyers may argue a motion to a judge. Other possible characters could be witnesses, neighbors, opposing parties and so on.
  - c. Create secret facts that are given to the characters to make the roleplay more surprising, difficult, and real for the student acting as the attorney.
4. Ask students to review the law that applies to the situation before starting the roleplay.
5. At the start of the roleplay, ask the student attorney to focus the evaluation. What are her or his goals for the roleplay? On what skill does he or she most want to receive evaluation?
6. After the exercise, discussion can focus on:
  - a. Students in role of attorney reflect on their performance in the exercise. How well did they meet their own goals? What worked? What did not? What would they do differently the next time?
  - b. Other students give student attorneys evaluation on the same questions above.
  - c. Faculty might ask student attorneys and the class what, if any, laws apply in this situation. What is legal? What is not? What is the public policy intent of any laws? Can arguments be made for law reform? Are there other important considerations?

## APPENDIX E

**A LIST OF LEGAL SKILLS AND VALUES TAUGHT IN AMERICAN  
LAW SCHOOLS\*****Fundamental Lawyering Skills**

1. Problem Solving
2. Legal Analysis and Reasoning
3. Legal Research
4. Factual Investigation
5. Effective Communication
6. Counseling
7. Negotiation
8. Litigation
9. Alternative Dispute Resolution (such as Mediation)
10. Organization and Management of Legal Work
11. Recognizing and Resolving Ethical Dilemmas

**Fundamental Values of the Profession**

1. Provision of Competent Representation
2. Striving to Promote Justice, Fairness, and Morality
3. Striving to Improve the Profession
4. Professional Self-Development

\* Excerpted from SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AN THE PROFESSION: NARROWING THE GAP (1992).

## APPENDIX F

**WEB SITES ON BEST PRACTICES &/OR EDUCATION OF  
LAWYERS**

**Best Practices of Law Schools for Preparing Students to Practice Law**—<http://bestpracticeslegaled.albanylawblogs.org/>

**Bibliography of Clinical Legal Education**, by J.P. Ogilvy & Karen Czapanskiy—<http://faculty.cua.edu/ogilvy/Index1.htm>

**Center on Professionalism** (Resources for improving the character, competence and conduct of legal professionals)—<http://professionalism.law.sc.edu/>

**Clinical Legal Education Association**—<http://www.cleaweb.org/>

**Equal Justice Works** organizes, trains and supports public service-minded law students and is the national leader in creating summer and postgraduate public interest jobs—<http://www.equaljusticeworks.org/>

**Gateway to Clinical Legal Education**, sponsored by University of Michigan Law School Clinical Program—[https://cgi2.www.law.umich.edu/\\_GCLE/index.asp](https://cgi2.www.law.umich.edu/_GCLE/index.asp)

**Law Help Minnesota** (Helping low income Minnesotans solve civil legal problems)—<http://www.projusticemn.org/civillaw/index.cfm>

**Minnesota Legal Services Coalition**—[www.mnlegalservices.org/](http://www.mnlegalservices.org/)

**National Association of Consumer Advocates**—<http://www.naca.net/>

**Sargent Shriver National Center on Poverty Law**—<http://www.povertylaw.org/>

**Public Interest Law Initiative of Columbia University Budapest Law Center**, advancing human rights principles by stimulating the development of a public interest law infrastructure in Central and Eastern Europe, Russia and Asia (has features)—<http://www.pili.org/en/>

**Street Law**, provides practical, participatory education about law, democracy and human rights—<http://www.streetlaw.org/>



## APPENDIX G

**A METHOD FOR SELF-EVALUATION USED IN AMERICAN LAW SCHOOLS\***

Law students and lawyers can improve their craft by learning the skill of self evaluation. In the United States, law students often are taught to use self evaluation after they perform in roleplays or do client representation tasks through their clinical programs. Developing the habit of self reflection leads to lifelong learning and growth well beyond law school. Lawyers who are reflective continue to improve their skills with every experience. The following is a method for learning and practicing the skill of self evaluation:

1. **Identify the goal** of the exercise or lawyering task.

For example, if the exercise is a client interview, what is its purpose? Is this an initial interview to see if the client has a legal problem? Is it a follow-up interview to gather more detailed information for trial?

2. **Focus** the evaluation.

After deciding upon the goal of the exercise, the lawyer/student thinks about what portion of the skill he or she most want to develop. In an initial client interview, for example, the focus might be on developing the client's trust. Focus the self evaluation on a specific skill rather than attempting to evaluate everything.

3. Identify **responsibility** for outcomes.

After the lawyering task, identify responsibility for what happened. Try to distinguish between the things for which one was responsible and what was outside of one's control. For example, if the evaluation is focused on probing for difficult facts and the lawyer/student was not successful, analyze why. Perhaps an interpreter was not fully fluent in both languages and communication was incomplete. Perhaps the client was drunk and unable to communicate effectively. Perhaps the client was hesitant to talk due to the unpleasant and private nature of the facts. Is there something the lawyer or student could have done differently, or were some aspects not her or his responsibility?

4. Identify what might be done **differently in the future**.

After analyzing actions for which they were responsible, lawyers/students can consider one or two things they might do differently the next time. For example, if the client was hesitant to talk due to the private nature of facts, one might think about why and what he or she might do differently next time. Perhaps the client doesn't know why the lawyer needs to know these facts. Perhaps the client doesn't know that a lawyer and interpreter are required to keep what clients say confidential. An explanation about confidentiality might help.

\* This method is adapted from Nina Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967 (1990).

## APPENDIX H

## CONTRACTS ROLEPLAY

TO: FIRST YEAR CONTRACTS CLASS STUDENTS

FROM: PROFESSORS JUERGENS & McCAFFREY

RE: ASSIGNMENT FOR THURSDAY'S CLASS

CLASS GOALS:

Our study of remedies for breach of contract and of unconscionability will continue this Thursday with an assignment to prepare to play the role of a lawyer counseling her/his client in a contract creation matter. The exercise will help us explore the challenges of contract drafting and the skill of client counseling. We also expect you to think about the implications for the values of the profession and for your own values in the lawyerly activities of contract drafting and client counseling.

**FACT SCENARIO for STUDENT PLAYING LAWYER ROLE:**

Your client is a landowner of residential properties with whom you have worked for several years. In fact, a substantial portion of your small firm's billable work comes from this client. She has asked you to revise the standard lease contract that she has used with tenants for the past decade. After instructing you to update the document to reflect current norms, she also requested that you include a clause in the revised standard lease that reads as follows:

**Tenant agrees that if s/he opts to give notice and vacate before 12 months' residence in the unit, tenant will pay a \$2,500 penalty to landlord.**

You have told the client that you cannot include a penalty clause in a contract; the law in this jurisdiction is clear that penalty clauses in contracts will not be enforced by the courts. This is particularly true when the penalty is an amount far greater than any actual damages the recipient has suffered from the conduct triggering the penalty.

The client has asked to meet with you to discuss this. [She has negotiated a flat annual fee from your firm to cover consultation on legal questions throughout the year. You are akin to an outsourced in-house counsel for her business.]

**SECRET FACTS FOR THE STUDENT PLAYING THE LANDLORD/CLIENT (given in addition to all the facts above):**

You want this clause because you know other landlords who say that it brings in ready cash, and it delays tenants from moving out. Pressure the lawyer to include the clause. You'll take the consequences if it can't be enforced. Everyone is doing this. What's the big deal? Just change the word "penalty" to "fee."

You fear that this lawyer has cold feet when it comes to playing in the real world of business. If the lawyer is not willing to do this, you may have to take your business elsewhere.

## APPENDIX I

GROUP THOUGHTS ON HOW TO PREPARE FOR A TEACHING TRIP  
ABROAD*Network:*

- Go to a GAJE conference.
- Send an email query to the GAJE listserv. The GAJE website, [www.gaje.org](http://www.gaje.org), gives these instructions for joining the GAJE listserv: “You may join the Global Alliance for Justice Education by e-mail. Please include your name, postal address, email address you want listed, and a brief statement of your involvement in justice education. If you have a fax number, telephone number, or organizational affiliation, please include this information also. Membership is free and not limited to professional legal educators; students, practicing lawyers, social activists, and any others interested in promoting justice education are welcome. You will be automatically subscribed to the GAJE electronic bulletin board (“listserve”). Membership applications and any questions about the GAJE listserv should be sent to: [owner-gaje@list.vanderbilt.edu](mailto:owner-gaje@list.vanderbilt.edu).”
- Call others who have been/are going to the same country.
- Visit <http://www.law.sc.edu/clinic/internationalsurvey.shtml> for Professor Roy Stuckey’s list of people who have taught overseas and their locations.
- Host people from your destination when they come to your country.

*Research Culture, Politics, History, Geography, Economy and Law of the Host Country:*

- Read about the host country’s culture. Read its great literature as well as about its politics, history, economy, geography, and current news. Ask your library to begin clipping and forwarding articles from overseas news sources about the country.
- Go to the Council of Europe Web site, <http://www.coe.int/>, for more information about any European country.

- Find reputable international websites for political and economic information about the destination region, such as the Index on Africa, <http://www.afrika.no/index/index.html>.
- Find culturally competent experts who can be your informants about the country's culture, politics, law, etc.
- Learn about the legal profession in the host country. Find the local bar association, if it exists, and learn how it fits into the legal establishment and society. Make contact with a local bar association.
- Find out who goes to law school and how do they fund their education?
- Obtain a very good, detailed map.

*Understand Your Specific Project:*

- What are the goals of the people at the law school or clinic where you will be teaching or working?
- What is the agenda for your visit?
- What is the role of the visitor/observer?
- Under what constraints do the hosts operate (e.g., financial, political, legal)?
- What material resources will or will not be available to support you? Will there be paper, blackboards, electricity, library legal materials, water, heat, etc?
- How will your clinic (if that is what you will be building) fit into the existing curriculum?
- How are decisions made at the law school?
- Who funds clinical education?
- Find local NGOs operating in the area of your teaching and expertise. Make contact and learn from them.
- Seek to employ professionals, interpreters, and translators rather than volunteers. How can you vet them ahead of time?
- Investigate the sustainability of your venture. How will your program/course/etc. be supported in the long run?

How is the world going to be a better place because of this exchange?  
What do WE bring back? Why do THEY want us to come?