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## TEACHING NOTE

# Developing Student Self-reflection Skills through Interviewing and Negotiation Exercises in Legal Education

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### INTRODUCTION

The philosophy of education at Flinders Law School emphasises the acquisition of foundation legal skills, including interpersonal communication such as interviewing and negotiation, in a program which is designed to foster independent learning. As part of this commitment, Flinders has initiated and maintained a project to incorporate self-reflection as an explicit goal of teaching. Developing a capacity for informed reflection on their own work will directly enhance students' learning and enable them to monitor and improve their performance after graduating and entering the work-force.

In this paper, we generally use the term "self-reflection" rather than the more widely used term "self-assessment", though both are often used interchangeably. Self-assessment may (though not necessarily) imply a student actually indicating a specific mark for their work, which may or may not be incorporated into the grade given by the teacher. The concept of self-reflection emphasises the student undertaking an informed, supported and explicit critical analysis of their own experience in interviewing and negotiation, examining their planning and performance in light of professional and personal goals and values, and formulating concrete strategies for improvement. Such self-reflection will include an evaluative or self-assessment aspect, in a broad sense, and both terms were used

in the teaching program.

At Flinders, structured self-reflection, as an explicit part of the teaching process, has been incorporated into interviewing and negotiation programs as part of the undergraduate law degree. These programs have been especially designed to take advantage of the particular opportunity for self-reflection created by clinical or skills training, as discussed further below.<sup>1</sup>

## SELF-REFLECTION IN HIGHER EDUCATION

Increasingly over the past decade or more, educators have recognised the importance of providing students with the ability to monitor their own progress, both during the time they are taking part in formal training and afterwards when it is hoped they will become “life-long learners”.<sup>2</sup> Boud argues that self-reflection can be incorporated into a wide variety of academic courses and programmes, and many disciplines now seek to develop the skill of self-reflection in students. This has produced a considerable literature in areas such as nursing,<sup>3</sup> teacher education<sup>4</sup> and social work.<sup>5</sup> Monographs and articles also provide examples from medicine,<sup>6</sup> dentistry<sup>7</sup> and mathematics.<sup>8</sup> While this work includes detailed descriptions of particular forms of self-reflection which are not necessarily suited to the teaching of legal skills, it nevertheless provides a useful starting-point for thinking about ways of encouraging law students to monitor their own learning.<sup>9</sup>

In the United Kingdom, The Society for Research in Higher Education has published several monographs on the subject of reflective practice in university, discussing the “nuts and bolts” of facilitating reflective dialogues with students,<sup>10</sup> but there is surprisingly little dealing specifically with legal training.<sup>11</sup>

In legal education in Australia, there is a growing literature on the teaching of skills<sup>12</sup> as part of wider research on methods to improve student learning.<sup>13</sup> Also, law schools are increasingly focusing attention on students graduating with generic skills and attributes.<sup>14</sup> In the US as well as in Australia, there has been significant emphasis on a particular model of experiential learning, especially of legal skills, which incorporates an element of reflection.

Work by Kolb<sup>15</sup> and others emphasises the role which experience plays in learning. According to this theory, learning

takes place when students progress through a cycle of tasks, consisting of direct experience, reflective observation, abstract thinking and active experimentation.<sup>16</sup> This cycle is also described in the US MacCrate report on legal education as “theory instruction, performance, critique”<sup>17</sup> and in other legal education literature on skills teaching.<sup>18</sup> In simple terms, this means that students are required to undertake real or simulated exercises which involve the application of specific skills, and following this, to reflect orally and/or in writing on what happened. This method of teaching and learning has been linked to the influential concept of “reflective practice”.<sup>19</sup>

However, while experiential learning has become a more frequent feature of legal education,<sup>20</sup> there has been little written on specific steps that should be taken in order to enable students to learn from their professional and personal experiences, and to develop self-reflection as an essential learning and professional skill.<sup>21</sup>

Most of the literature focuses on the goals, not the methodology of clinical teaching. Generally, it categorizes clinical legal education as a ‘skills’ supplement to the broader curriculum, as a method of teaching professional ethics, or as an experience-based approach to examining the role of law in society. Less well-documented are approaches to evaluation in clinical legal teaching.<sup>22</sup>

Attempts have been made to provide more detail on the reflective or evaluative phase of the experiential learning cycle, notably by Ziegler.<sup>23</sup> It is still common, however, for authors to focus on the teacher’s skills needed, rather than on the processes which students require to develop as reflective learners and practitioners.<sup>24</sup> Kift points out that “...in analysing the literature on experiential methods in law school teaching, little regard is generally had to the mechanics...”<sup>25</sup>

This paper is an attempt to fill this gap, by giving greater emphasis to what the students do, and what they identify as the elements of the teaching methodology which they find most helpful in developing their capacity for self-reflection.

## SELF-REFLECTION AND SKILLS IN THE FLINDERS LAW DEGREE

The curricular structure we have developed at Flinders Law School introduces students to skills in the first year, then integrates

skills teaching with substantive law topics, with more elaborate and demanding skills programs in later year topics:

- In the first year topic Lawyering: Procedures and Ethics, exercises in listening, interviewing, drafting, negotiation and oral advocacy are conducted informally as part of regular tutorial groups.
- In the second year, students undertake a more elaborate exercise in oral advocacy or mooted as part of the Contracts topic.
- In the second or third year, students undertake a more elaborate exercise in legal interviewing.
- A drafting exercise is part of Corporate Law in the third year.
- In the final or penultimate year, students do a further exercise in legal negotiation in Resolving Civil Disputes.<sup>26</sup>

In this paper, we will focus on the interviewing and negotiation exercises in 1999 in the first year topic, Lawyering: Procedures and Ethics, and the negotiation exercise in the final year topic, Resolving Civil Disputes, also in 1999. By 1999, these programs were no longer new; many of the elements of the program had been in operation in the first year since 1997 and in the final year since 1996, and a number of different staff members have been involved. In 1998, Kathy Mack was awarded a teaching development grant<sup>27</sup> to develop students' self-reflective capacity in the context of interviewing and negotiation programs and to develop ways that self-evaluation, when linked to planning, reporting or discussion, could become part of formal assessment. The grant enabled us to expand some elements, to refine the programs in light of a wider literature on reflective learning and practice, and to undertake student surveys to determine what aspects students found most helpful in developing their self-reflective capacity.

In these interviewing and negotiation exercises, we explicitly implemented the basic experiential learning cycle of *preparation, action, and reflection*,<sup>28</sup> with an especially strong emphasis on the preparation and reflection phases. This model of experiential learning requires students to engage in active self-reflection: to think critically about the ways in which they learn, the ways in which they might improve their skill levels, and the values which they intend to carry into professional practice. This reflection on their own actions and attitudes is made explicit in classroom discussions and in written reflective reports.

## *Preparation*

The preparation phase includes several components aimed at introducing the specific skill of interviewing or negotiation and the “metacognitive” skill of reflection.<sup>29</sup>

- First, students are assigned readings which include material about experiential skills learning generally as well as specific information about the particular skills of interviewing or negotiation, including planning and evaluation.<sup>30</sup>
- Next, there is a lecture which includes a video of a simulated interview or negotiation. While showing the video, instructor comments model the evaluational questions students should consider in planning, performing and reflecting on their own activity. In 1999, in the first year interviewing program, students were shown interviews conducted by other students; in the first year negotiation program, short excerpts from a professional legal training video were shown; in the later year negotiation exercise, a different professional negotiation training video was shown in its entirety.
- Students then prepare a written plan for the activity, in the form of a brief outline. This plan is based on guidance from the readings about planning for the specific activity<sup>31</sup> as well as on materials giving information about the client to be interviewed or the dispute to be negotiated. For example, the preliminary interview information in the first year topic is quite brief: students may be told that they are to interview a potential client about an accident in a shop. Their plan should include the goals for the interview and concrete actions to achieve these goals, possibly including a specific questions on key points. For the negotiation exercises, more detailed facts are provided, including client instructions and other documents or information. Negotiation plans may contain notes on the goals of each party, and the strengths and weaknesses of each sides’ case, possible settlement options, etc.

### *Action: The Interview or Negotiation Role Play*

All the interview and negotiation exercises are conducted as simulations at the law school, with the students acting in role as legal practitioners. The interview exercises involve other students playing the role of clients to be interviewed. Negotiations are

conducted one on one, with a student acting as the legal representative for each party. The first year Lawyering students conduct their interviews and negotiations in the classroom as part of their tutorial classes. (Tutorial classes contain 12-14 students.) The negotiation exercise for the final year students in Resolving Civil Disputes are conducted in specially designed premises in the law school, which enable observation and video recording of the negotiation.

Performance in the exercise itself is not marked as part of the assessment scheme. There are several reasons for this decision. The central aim of the project is to encourage students to form their own evaluative tools, and to find their own “voices”, rather than to depend on teachers as authoritative judges of their performance and progress. Another is practical constraints on staff and student time, and on availability of space for the conduct of exercises. As the number of students participating in each exercise is very large, there would have to be several different observers, which would create difficulties in terms of (apparent) subjectivity in marking. One way to address these concerns might be to award only a “pass” or “fail” grade to students, but this is somewhat meaningless, as virtually all students would pass and it is generally believed that students may put in less effort and/or do not perform as well when graded on a pass/ fail basis.<sup>32</sup>

### *Reflection*

The reflective aspect of the exercise involves several components:

- After the interview or negotiation, each student provides short written responses to two sets of questions.<sup>33</sup>
  - One set of questions, called the “Self-Assessment Guide”, stimulates the student’s own self-reflection. Students are asked specific questions about their own performance and the student must explicitly link the student’s perception of his or her own performance to the planning before the exercise. The student must also identify concrete strategies for future improvement.
  - The other questions, called “Feedback from Partner”, elicit written feedback to the other student interviewer or negotiator. Giving feedback requires each student to recall,

analyse and reflect on the process from the perspective of the other participant. Receiving the feedback enhances self-reflection by giving a basis for confirmation, comparison or moderation of the student's perceptions of their own performance.<sup>34</sup>

- In the negotiation exercise in Resolving Civil Disputes, students are videoed during their exercises and have a short meeting with an instructor/observer who provides some feedback. Students complete their self-reflective guide before hearing feedback from another student or an instructor.
- Students then write a report on the exercise which requires explicit self-reflection on their planning and their performance in the exercise. The reflective reports should evaluate their plans, the process and outcome of the interview or negotiation and consider any feedback from others as well as ideas from the assigned readings. Later year students review the video of their exercise as part of preparing the reflective report. As this is a new and relatively unusual assignment, especially for the first year students, the readings include guidance on evaluation and reflection<sup>35</sup> and there is a lecture in which expectations for the report are discussed. The written plan and the reflective report are handed in and marked as part of the formal assessment scheme in the topic.<sup>36</sup>

We expected that these structured self-reflective elements, especially when linked to written planning and reporting requirements as part of formal assessment, would make the goal of teaching students how to learn from their own experience more explicit, and create a direct link between the activity and the self-reflective learning objectives.

## STUDENT PERCEPTIONS

As part of developing and improving the program, we conducted surveys to learn more about the students' response to the focus on self-reflection. Two questionnaires were administered in Lawyering, one after the interviewing reflective report was submitted, and another after the negotiation report was submitted. In Resolving Disputes, one questionnaire was administered after the negotiation report.

Purposes of the questionnaires included:



- to elicit students' views of the usefulness of some elements of our implementation of the experiential learning cycle in promoting both skills learning and self-reflection; and
- to investigate whether students saw self-reflection as an ability which could be applied to other learning in law school and beyond.

The questionnaires mainly included closed ended questions on the usefulness of the different teaching and learning strategies, both for learning the specific skill and for self-reflection. Answer choices were "Very helpful, helpful, I'm not sure, not helpful, very unhelpful". Open ended questions included asking for any other comments on preparation for the exercise and on the exercise itself; asking about recommended changes, and asking "What advice about [the exercise] would you give to a student beginning [the topic]?" Students were also asked if they had "used the self reflective skills [in this topic] in other law school subjects, in other areas of learning, and in subsequent work or other activities outside Law School". If they answered yes to any of these questions, they were asked to give examples.

To enhance the independence of the survey and to emphasise the voluntariness and anonymity of the survey, Dr Gerry Mullins of the Advisory Centre for University Education (ACUE), Adelaide University was responsible for the survey. Students were given a letter from Dr Mullins explaining that they were under no obligation to respond to any questionnaire; that participation [or non-participation] would have no impact on assessment or grades at all; that information the ACUE gained was strictly confidential and would not identify any individual student and that only general information and statistical summaries were provided to the Law School. This information was reiterated in lectures and tutorials. The questionnaires were administered during a regularly scheduled lecture time, when no teaching staff were present and the completed questionnaires were delivered directly to the ACUE for analysis.

### *The Sample*

In Lawyering, the first year class in which interviewing and negotiation were held, total enrolment was about 165 students. The 92 students who responded to the Lawyering interview exercise

questionnaire and the 90 who responded to the Lawyering negotiation exercise questionnaire represent about 60% of the total students in Lawyering.<sup>37</sup>

In Resolving Civil Disputes, the final year class with a negotiation exercise, total enrolment was about 175, and all students were required to participate in the negotiation exercise and to write a report. The 96 students who responded to the 1999 survey represent about 55% of the total enrolment in this topic.

Female students constitute about 63-68% of the respondents, which is slightly greater than the overall enrolment of women (about 60%). However, tests for a gender difference in the data reported in this paper showed no significant effect. Nearly half of the Lawyering students had been out of school for no more than one year, and more than half of the students in Resolving Civil Disputes had only been out of school for five years, suggesting that mature age students may be slightly overrepresented in the respondents. Over 94% of respondents are “full-time” in the sense that they are undertaking at least a full academic load.

### *Helpfulness of Preliminary Activities for Conducting the Interview or Negotiation*

Students were asked “how helpful” they found the video and writing a plan for their conduct of the actual interviewing or negotiation activity. Their responses (Table 1) indicated that they found preparing the written plan helpful, and somewhat more helpful for their performance of the task, in comparison to viewing a video. This positive response to the plan suggests that students’ own experience confirms the link, discussed in the literature, between active planning, such as writing a plan, and skills learning. More first year students found the interview video (which showed student interviews) useful compared to the negotiation video (excerpts from professional video). In 2000, when we used excerpts from student negotiation videos in Lawyering, the percentage of students who found the video helpful or very helpful increased to 70%, suggesting that first year students, at least, found that observation of another student’s work was more useful in developing their own skills.

Table 1: Helpfulness for Conducting the Interview (Percentage of students responding “Helpful” or “Very Helpful”)

	Lawyering/ Interview [N = 92]	Lawyering/ Negotiation [N = 90]	Resolving Civil Disputes/ Negotiation [N = 96]
Video	68	50	56
Writing a plan	86	73	73

*Helpfulness of Preliminary Activities for Self-assessment or Self-reflection*

Students were also asked specifically about the extent to which the video, writing a plan, and the readings helped them in the process of self-reflection. Their overall responses suggested that these elements were less helpful in self-reflection (Table 2) than in developing the specific skill itself (Table 1). However, writing a plan was still seen as helpful for self-reflection by a very high proportion of students, especially first year students.

Even more helpful for first year students were several of the readings. For them, the interview readings which were most frequently rated as helpful or very helpful were those about planning (A), about skills learning generally (B) and conducting the interview (C), and the most helpful negotiation readings were those about conducting the negotiation (E), skills generally (B) and planning (D). For the later year students, readings were regarded as less helpful than writing a plan or watching a video. The readings which were most frequently rated as helpful or very helpful by later year students were about planning (E), approaches to negotiation (F), and evaluating the process and outcome (G). (The letters in parentheses above in the table refer to readings listed in Appendix 1.) It is not surprising that first year students found the readings about skills learning especially valuable, as this was their first exposure in law school to structured interactive skills development, whereas the final year students would have completed other skills programs during their degree.

The final year students found the video particularly useful. This may reflect the specific material shown since, as noted above, different videos were used with the different groups. Final year

students were shown a professional training video, which may have reinforced their perception of themselves as entering professional practice.

Table 2: Helpfulness for Self-reflection: Preliminary Activities (Percentage of Students Responding “Helpful” or “Very Helpful”)

	Lawyering/ Interview [N = 92]	Lawyering/ Negotiation [N = 90]	Resolving Civil Disputes/ Negotiation [N = 96]
Video	40	28	68
Writing a plan	76	71	63
Reading most frequently ranked “Helpful” or “Very Helpful”	88 (A)	79 (D)	62 (E)
2nd most frequently ranked reading	78 (B)	74 (B)	54 (F)
3rd most frequently ranked reading	75 (C)	62 (E)	48 (G)

Note: The letters in parenthesis refer to the readings listed in Appendix 1.

### *Helpfulness of Activities After the Exercise*

The students were asked about the helpfulness of various activities following the specific interview or negotiation task: the two sets of questions answered immediately after the exercise [the “Self-Assessment Guide” and the “Feedback from Partner”]; feedback from an observer or a follow up lecture [where applicable] and the experience of writing a reflective report (Table 3).

The importance first year students put on feedback from their partner suggests that this could be emphasised more for the later year students. However, later year students may have been less attentive to giving and receiving this feedback, as they knew an instructor/observer would comment. These feedback questions are designed to be answered, in writing, immediately after the exercise is completed, within the overall time available for the tutorial class or negotiation session. This imposed time constraints for all students in preparing the self-assessment and peer feedback forms.

Also, the students feel considerable urgency to begin discussing the simulation out of role immediately. These factors mean that written feedback and self-reflection forms were not always prepared as fully or thoughtfully as we might have hoped.

The preference among first year students for feedback, even from peers, over self-reflective instruments, suggests that these students are still fairly dependent learners. The later year students appeared to find writing a self-reflective report more helpful than feedback from other sources, which would be consistent with the more independent learning style one would hope for in final year students, many of whom are already undertaking legal work.

Table 3: Helpfulness for Self-reflection: Subsequent Activities (Percentage of Students Responding “Helpful” or “Very Helpful”)

	Lawyering/ Interview [N = 92]	Lawyering/ Negotiation [N = 90]	Resolving Civil Disputes/ Negotiation [N = 96]
Self-Assessment Guide	67	69	62
Feedback from partner	90	81	57
Feedback from observer	Not applicable	Not applicable	58
Follow-up lecture	Not applicable	Not applicable	54
Writing a report	74	75	76

### *Self-assessment of Performance*

Students were asked “How would you rate your performance” in the interview or negotiation itself, with response choices of “Excellent, Good, Satisfactory, Poor, Very Poor”. Almost all students assessed their performance in the task as at least satisfactory (Table 4). The first year students in Lawyering tended to give themselves a better rating than the later year students in Resolving Civil Disputes. This may reflect the first year students’ less well developed expectations of what is required in a Law course, or the more demanding nature of the task assigned in the later year class.

The students’ evaluation of their performance was generally

consistent with the overall view of instructors and observers. Had we been assessing performance on a satisfactory/ unsatisfactory basis, very few students would have been rated as unsatisfactory. What is impossible to know, of course, in light of the anonymity of the survey, is whether any particular student's self-assessment would be matched by the instructor's evaluation. However, the student's reflective reports were marked by the instructor who had observed the exercise. A student whose own reflections were significantly out of line with the views of the observer would have been given some feedback to that effect, but this was rare.

Table 4: Self-assessment of Performance

% of students responding:	Lawyering/ Interview [N = 92]	Lawyering/ Negotiation [N = 90]	Resolving Civil Disputes/ Negotiation [N = 96]
"Excellent" or "Very good"	68.4	57.4	52.1
"Satisfactory"	28.3	39.1	41.7
"Poor" or "Very poor"	3.3	3.5	6.2

### *Confidence Measures*

In the questionnaire, which was administered after the exercise and after the reflective reports were completed, students were asked to rate their confidence before and after the specific exercise, with five response choices: "Excellent, Good, Satisfactory, Poor, Very Poor". (Their rating of confidence before is a recollection three to four weeks after the event.)

A striking feature of their responses is the rise in students' confidence following their interview and negotiation exercises (Table 5). The rise is greater in the first year students, presumably reflecting their lower starting level and the fact that they have less experience with interviewing and negotiation tasks, especially in role as a legal practitioner. Most gratifying of all is the rise in confidence of those students, especially in the first year, who indicated very low levels of confidence before the task.

Table 5: Student Confidence

Lawyering/ Interview	Lawyering/ Negotiation	Resolving Civil Disputes/
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	[N = 92]		[N = 90]		Negotiation [N = 96]	
	Before	After	Before	After	Before	After
% of students responding "Good" or "Excellent"	32	75	37	70	45	68
% of students responding "Poor" or "Very poor"	23	2	22	3	18	10

### *Extension of Self-reflection to Other Activities*

Finally, the students were asked to indicate whether they had used their self-reflection skills in contexts outside the subject. As we might expect, those who were least likely to report wider use of self-reflection skills were first year students, immediately after their first exercise, for whom the requirements of explicit reflection on experiential learning are likely to be quite novel. The proportion is greater after the negotiation exercise in the first year, and slightly greater for the final year students (Table 6).

Students who used their skills in an extended context tended to use those skills in various contexts. For example, of the students responding positively to this question in the Lawyering/Negotiation questionnaire, 13 students responded positively regarding all three areas, and 20 used self-reflection skills in at least two areas.

Several students gave examples of using self-reflection to improve written assignments in other academic work. Workplace applications included a student learning from his/her own dealings with customers as a way to improve performance or reflecting on coping with training for a new job as a way to identify "what I know and what I needed to ask about". An example of a personal development insight is a student indicating self-reflection as a means of identifying a need to be more assertive in social situations as well as in tutorials.

Overall, it appears that just over 25% of first year students and nearly 30% of final year students use their self-reflection skills in at least one other context, with some increase in the ability to do so after greater experience with the emphasis on self-reflection in

these programs. While this is not a high percentage, the level of self-awareness and the insights required are quite demanding. A student who was able to generalise the self-reflection skill, as elicited in these exercises, to other contexts, would be displaying a very high degree of cognitive and ethical development, as reflected in a the widely used scheme articulated by Perry.<sup>38</sup>

Table 6: Generalising Self-reflection

% of students who used self-reflection skills in:	Lawyering/ Interview [N = 92]	Lawyering/ Negotiation [N = 90]	Resolving Civil Disputes/ Negotiation [N = 96]
Other Law School subjects	17	26	28
Other areas of learning	23	28	31
Work & activities outside Law School	Not asked	25	28

## CONCLUSION

The survey of students has identified some strengths in our current teaching strategies, underscored links between our approaches and the wider literature on reflective practice, and indicated some important areas where we can improve our approach to assisting students to develop the self-reflective skills necessary to become a life-long learner, especially one who exercises professional judgment in an unsupervised setting.

Strategies which students regard as especially effective in eliciting self-reflection include writing a report and, especially, requiring students to prepare and submit a plan for each exercise. First year students found peer feedback and preliminary readings especially valuable, while later year students found the video more valuable. The significance of a written plan and a written reflective report is shown by the large number of students at all levels who found these elements helpful.

Answers to open ended questions in the survey confirm the importance of these factors. When asked to give advice to future students doing these exercises, students strongly emphasised preparing, and the importance of the written plan, as well as doing the readings (the specific advice most frequently given). In the class discussions, students often recognised that the process of developing the plan, and the discipline imposed by writing it, was



valuable, even if the document itself was not used very much in the actual interview or negotiation. This is consistent with the statistical findings above, which confirm that students clearly recognise the value of writing a plan, and preparation more generally, both to performing a task and to reflecting on it afterwards.

One area requiring further improvement is the selection and use of appropriate videos to be shown to first year students before the exercises. Though most students found the videos useful for conducting the exercise, only 40% regarded the interviewing video as helpful or very helpful for self-reflection, and only 28% regarded the negotiation video as helpful or very helpful.

When asked what, if any, changes they would recommend for future exercises, a small number of students suggested that the exercises themselves should be assessed, while other students wished for more guidance in lectures, and some mentioned the need for clearer criteria on what was expected in the report. We have responded to these comments by explaining why performance is not directly assessed and developing written criteria for the reflective report.

Of course, some things are still unclear. As with any methodology, the survey has its limitations. Because we were unable to survey students who had undertaken the more elaborate interviewing exercise in the later year subject, for example, it was not possible to obtain data that might tell us whether students had gained a sense of their skills accumulating (or whether they failed to make the link between the various skills exercises offered throughout the degree).

Thus, although students, especially those in their first year, still desire direct instruction, guidance and evaluation from others, there was also good acceptance of self-reflection, even among the first year students. A significant proportion of students reported extending self-reflection to other activities. This suggests that once students grasp the concept and method of self-reflection, they are able to generalise it.

## APPENDIX 1: ASSIGNED READINGS

(THE LETTERS IN PARENTHESES LINK TO TABLE 2)

### INTRODUCTION: LEARNING SKILLS

(B) Susan Campbell, Ross Hyams and Adrian Evans, *Practical Legal Skills* (1998) Chapter 1.

Vanessa Merton, 'The Work of a CUNY Law Student: Simulation and the Experiential Learning Process in Lesnick, Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum' (1990) 37 *UCLA Law Review* 1157.

Sally Kift, 'Lawyering Skills: Finding Their Place in Legal Education' (1997) 8 *Legal Education Review* 43, 62-63.

David Boud, *Enhancing Learning Through Self-Assessment* (London: Kogan Page, 1995) 13-15.

Skills Performance Standards, from Don Peters, 'Mapping, Modelling and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing and Counselling' (1996) 48 *Florida Law Review* 875.

### INTERVIEWING

(A) Susan Campbell, Ross Hyams and Adrian Evans, *Practical Legal Skills* (1998) Chapters 2 and 3.

#### *Planning*

(C) Jenny Chapman, *Interviewing and Counselling* (Cavendish, London, 1993) 25-30\*

Kay Lauchland & Marlene Le Brun, *Legal Interviewing: Theory, Tactics and Techniques* (Butterworths, Sydney, 1996) 70.

#### *The Interview: Structure, Skills, Ethics*

(C) Jenny Chapman, *Interviewing and Counselling* (Cavendish, London, 1993) 46-7, 49-57.

Kay Lauchland & Marlene Le Brun, *Legal Interviewing: Theory, Tactics and Techniques* (Butterworths, Sydney, 1996) 48, 50-58, 81-86, 101, 129-132.

#### *Reflecting on the Interview*

Kay Lauchland & Marlene Le Brun, *Legal Interviewing: Theory, Tactics and Techniques* (Butterworths, Sydney, 1996) 12-14, 178-180.

### NEGOTIATION

(D) Susan Campbell, Ross Hyams and Adrian Evans, *Practical Legal Skills* (OUP, Sydney, 1998) Chapter 5

(E) *Planning*

H Astor & C Chinkin, *Dispute Resolution in Australia* (Butterworths, Sydney, 1992) 87 (“Preparation for Negotiation”).

H Raiffa, *The Art and Science of Negotiation* (1982) 126-30, in L Riskin & J Westbrook, *Dispute Resolution and Lawyers* (West Publishing Co: St Paul, Minnesota, 1987) 158-9.

Inns of Court School of Law, *Advocacy, Negotiation and Conference Skills* (Blackstone Press, London, 1994) 147-52, 186-8.

(F) *Approaches to Negotiation:*

*Competitive, Cooperative, Positional, Problem-Solving*

Mediation and Approaches to Negotiation, from L Boulle, *Mediation: Principles, Process Practice* (Butterworths, Sydney, 1996) 46-53.

C Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem-Solving* (1984) 31 *UCLA Law Review* 754 at 755-61, 795-801 in Riskin & Westbrook, *Dispute Resolution and Lawyers* (1987) 121-9, 173.

L Riskin & J Westbrook, *Dispute Resolution and Lawyers: 1993 Supplement to Hardcover Edition* (West Publishing Co, St Paul, Minnesota, 1993) 13-15.

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## APPENDIX 2: LAWYERING INTERVIEW PEER FEEDBACK QUESTIONS

- Did the interviewer open the interview effectively? How was this done?

- Did you feel comfortable/uncomfortable talking about yourself or your situation during the interview? Why? Did the interviewer do anything which made you more or less comfortable?
- Did the interviewer obtain most of the relevant information from you?
- Was there anything you wished to express, but did not? What was that?
- Did the interviewer do anything to inhibit you from expressing yourself as you wished?
- Was the interview different in any way than you expected?
- What was the most effective thing the interviewer did?
- What was the least effective thing the interviewer did?
- Did the interviewer appear to have any particular difficulty with any aspect of the interview? What difficulty, with what aspect of the interview?
- Did the interviewer close the interview effectively? How was this done?
- What words would you use to describe the tone or atmosphere of the interview?

### APPENDIX 3: LAWYERING INTERVIEW SELF-ASSESSMENT QUESTIONS

- What were your main objectives for the interview?
- To what extent were your objectives achieved?
- Describe your interviewing style (eg relaxed? formal?). Why did you choose this approach?
- What questioning techniques did you use? Which were most helpful and when?
- Did anything happen during the interview that you did not expect? What?
- Was the interview easier or harder than you expected? In what way(s)?
- Identify three things you did well in the interview:
- I think that I performed well in the interview because....
- Identify three areas in which you need to improve
- I can improve in these areas if I ...

These peer and self-assessment questions are based, in part, on material from M LeBrun and R Johnstone, *The Quiet Revolution* p

190-193; from AG Amsterdam, D Lunde & KM Mack, *Lawyering Process* course materials (unpublished, 1976); Neumann, A *Preliminary Inquiry into the Art of Critique* (1989) 40 *Hastings LJ* 725; and D Tribe *Negotiation* (Cavendish, 1993).

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<sup>1</sup> S Kift, *Lawyering Skills: Finding their Place in Legal Education* (1997) 8 *Legal Education Review* 43, 67-71. See text at footnotes 17-20. While there has been considerable discussion about the proper role of “skills” in law schools, this article is not about skills learning per se, but about developing a student’s self-reflective capacity in the context of a particular skills program, and so does not review the general debate about skills teaching in law schools. For a recent discussion of the role of professional skills training as part of university education, see S Christensen and S Kift, *Graduate Attributes and Legal Skills: Integration or Disintegration?* (2000) 11 *Legal Education Review* 207 at 211-214.

<sup>2</sup> D Boud, *Enhancing Learning Through Self Assessment* (London: Kogan Page, 1995); D Boud, *Problem-based learning in education for the professions* (Sydney: HERDSA, 1985); D Boud, R Keogh & D Walker eds, *Reflection: Turning Experience into Learning* (London: Kogan Page, 1985); D Boud, *Implementing student self-assessment* (Kensington, NSW: HERDSA, 1986).

<sup>3</sup> AM Palmer, S Burns & C Bulman eds, *Reflective practice in nursing: the growth of the professional practitioner* (Oxford: Blackwell Scientific Publications, 1994); BL Paterson, *Developing and maintaining reflection in clinical journals*, (1995) 15 *Nurse Education Today* 211; J Owens, D Francis, K Usher & J Tollefson eds, *Images of Change: A Collection of Reflective Writings* (Townsville: School of Nursing, James Cook University of North Queensland, 1997); M Mallik, *The role of nurse educators in the development of reflective practitioners: a selective case study of the Australian and UK experience* (1998) 18 *Nurse Education Today* 52.

<sup>4</sup> EG Pultorak, *Facilitating Reflective Thought in Novice Teachers* (1993) 44(4) *Journal of Teacher Education* 288; R Tremmel, *Zen and the Art of Reflective Practice in Teacher Education* (1993) 63(4) *Harvard Educational Review* 434.

<sup>5</sup> K Hinett, C Maughan, B Lee & K Stanton, *Managing Change in Assessment and Learning in Legal Education: A Tale of Two Cities* (1999) 33 *Law Teacher* 135, nn 33

<sup>6</sup> S Clark, 2000 On: *Equipping Medical Students to Communicate with Patients of Tomorrow*, in R Ballantyne, J Bain & J Packer, *Reflecting on University Teaching: Academics’ Stories* (Canberra: Committee for University Teaching and Staff Development, DEETYA, 1997) 347.

<sup>7</sup> J Wetherell, G Mullins & R Hirsch, *Self-assessment in a problem-based learning curriculum in dentistry* (1999) 3 *European Journal of Dentistry* 97.

<sup>8</sup> J Cowan, *On Becoming an Innovative University Teacher: Reflection in Action* (Buckingham: Society for Research into Higher Education & Open University Press, 1998) 54-6.

<sup>9</sup> For a sceptical response to the question whether developing the ability to reflect on one’s work is as crucial to students, as it may be to teachers, see L Morton, J Weinstein & M Weinstein, *Not Quite Grown Up: The difficulty of applying an adult education model to legal externs* (1999) 5 *Clinical Law Review* 469, especially 521-2.

<sup>10</sup> For example, J Cowan, *On Becoming an Innovative University Teacher:*

- Reflection in Action*, (Buckingham: Society for Research into Higher Education & Open University Press, 1998); A Brockbank & I McGill, *Facilitating Reflective Learning in Higher Education*, (Buckingham: Society for Research into Higher Education & Open University Press, 1998); selected works in S Brown & A Glasner eds, *Assessment Matters in Higher Education: Choosing and Using Diverse Approaches*, (Buckingham: Society for Research into Higher Education & Open University Press, 1999).
- 11 It seems reasonable to expect that more literature dealing with legal training will emerge in the wake of a three-year project, funded by the Higher Education Funding Council for England and conducted from 1996 to 1999, known as the SAPHE project. SAPHE stands for Self Assessment in Professional and Higher Education. A summary and evaluation of the project, which concerned three Law Schools in the United Kingdom, appeared in K Hinett, C Maughan, B Lee & K Stanton, *Managing Change in Assessment and Learning in Legal Education: A Tale of Two Cities* (1999) 33 *Law Teacher* 135.
  - 12 For example, S Christensen and S Kift, *Graduate Attributes and Legal Skills: Integration or Disintegration?* (2000) 11 *Legal Educ Rev* 206; JS Gilchrist, *Reform of Skills Teaching in the University of Canberra School of Law* (1998) 5 *Canberra Law Review* 233; R Hyams, S Campbell & A Evans, *Practical Legal Skills* (Melbourne: Oxford University Press, 1998).
  - 13 M LeBrun & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: Law Book Co, 1994); R Johnstone, J Patterson & K Rubenstein, *Improving Criteria & Feedback in Student Assessment in Law* (Sydney, Cavendish Publishing, 1998).
  - 14 JS Gilchrist, *Reform of Skills Teaching in the University of Canberra School of Law* (1998) 5 *Canberra Law Review* 233, 234.
  - 15 DA Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Eaglewood Cliffs, NJ: Prentice-Hall, 1984).
  - 16 G Gibbs, C Rust, A Jenkins & D Jaques, *Developing Students' Transferable Skills* (Oxford: Oxford Centre for Staff Development, 1994) 13 simplify this as "form-plan-do-reflect." Note that most advocates of this kind of experiential learning agree that there is no hard and fast rule about the point at which learners should enter the cycle; rather, they point out that learners may enter the cycle at any point, but should then progress in the sequence described by Kolb's model. See Kift, *supra* note 1, 63.
  - 17 American Bar Association, *Legal Education and Professional Development—An Educational Continuum: Report of the Taskforce on Law Schools and the Profession: Narrowing the Gap* (MacCrate Report) (Chicago: American Bar Association, 1992) 254 as quoted in D Peters, *Mapping, Modelling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling* (1996) 48 *Florida Law Review* 875, nn 22.
  - 18 For example, AG Amsterdam, *Clinical Legal Education - A 21st Century Perspective* (1984) 34 *Journal of Legal Education* 612, at 616-7; Winsor, *Toe in the Bathwater: Testing the Temperature with Problem- based Learning* (1989) 7 *Journal of Professional Legal Education* 1; Peters *id.*
  - 19 This is particularly true since the publication of Schön's work: DA Schön, *The Reflective Practitioner: How Professionals Think in Action* (New York: Basic Books, 1983); DA Schön, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987) and an article which he wrote specifically with legal educators in mind: DA Schön, *Educating the Reflective Practitioner* (1995) 2 *Clinical Law Review* 231.
  - 20 For example, see M Meltzer, *Writing, Reflecting and Professionalism* (1999) 5 *Clinical Law Review* 455.
  - 21 AL Tyree & DJ Boud, *Self and Peer Assessment in Professional Education: A Preliminary Study in Law* (1980) 15 *Journal of the Society of Public Teachers of Law* 65 and S. Rawson and AL Tyree, *Self and Peer Assessment in Legal Education* (1989) 1 *Legal Educ Rev* 135 discuss the use of self-assessment of

- student essays.
- <sup>22</sup> AL Zeigler, Developing a System of Evaluation in Clinical Legal Teaching (1992) 42 *Journal of Legal Education* 575, at 575-6.
- <sup>23</sup> *Id.*, at 586, nn 68.
- <sup>24</sup> For example, Tarr uses the process followed by experienced teachers in critiquing their students' performances as the model for teaching evaluation skills. As she points out, "teachers are continuously called upon to act as role models who have mastered the art of evaluation." NW Tarr, The Skill of Evaluation as an Explicit Goal of Clinical Training (1990) 21 *Pacific Law Journal* 967, at 989. Tarr stresses the need to apply these skills regularly throughout teaching programmes.
- <sup>25</sup> Kift, *supra* note 1, at 71.
- <sup>26</sup> The first year topic was previously called Introduction to Law. In 1999, as part of a larger curricular change, the topic was renamed Lawyering: Procedures and Ethics. Before 1999, the advanced interviewing exercise was part of Criminal Law; now, it is part of Administrative Law. Corporate Law in the third year was previously named Company Law, and Resolving Civil Disputes was previously entitled Litigation.
- <sup>27</sup> The grant was awarded by the Committee for University Teaching and Staff Development (CUTSD). The CUTSD scheme was, until 1999, a funding initiative of the Australian Federal government to support innovative teaching and learning practices.
- <sup>28</sup> Kolb, *supra* note 16; LeBrun & Johnstone, *supra* note 14, at 77-8; Kift, *supra* note 1, at 67 "...input or preparation...actual engagement...processing of what has been learned...".
- <sup>29</sup> Kift, *supra* note 1, at 68.
- <sup>30</sup> See Appendix 1 for examples of reading materials assigned, which are provided in a course reader.
- <sup>31</sup> See Appendix 1 for examples of reading materials assigned, which are provided in a course reader.
- <sup>32</sup> M-L Fisher and AI Siegal, Evaluating Negotiation Behavior and Results: Can We Identify What We Say We Know? (1987) 36 *Catholic U Law Review* 395, at 396, 405 cited in C Craver and D Barnes, Gender, Risk Taking and Negotiation Performance (1999) 5 *Michigan Journal of Gender and Law* 299, at 308.
- <sup>33</sup> Examples of these questions for the Lawyering interview exercise are listed in Appendix 2 and 3. The questions for negotiation in Lawyering and in Resolving Civil Disputes are similar.
- <sup>34</sup> Boud, *supra* note 3 at 15.
- <sup>35</sup> See Appendix 1 for examples of reading materials assigned, which are provided in a course reader.
- <sup>36</sup> This approach is similar to a method used in the Housing Law clinic at Saint Louis University Law School which requires students to present two written documents, a 'pre-task report' and a self-evaluation. See Zeigler, *supra* note 23, at 586-8, nn 68, based on the work of M Meltsner, JV Rowan & DJ Givelber, The Bike Tour Leader's Dilemma: Talking About Supervision (1989) 13 *Vermont Law Review* 399; KR Kreiling, Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision (1981) 40 *Maryland Law Review* 284; and RK Neumann, A Preliminary Inquiry into the Art of Critique (1989) 40 *Hastings Law Journal* 725, 748 nn 70.
- <sup>37</sup> Not all students in Lawyering wrote reflective reports on both the interviewing and negotiation exercises. All students had access to the readings and to the lectures in which the videos were presented, all were expected to hand in a plan and to participate in the exercise itself, and virtually all students did so. However, students could substitute another writing assignment for one of the reflective reports. The interview exercise was held quite early in the semester;

about 120 students submitted written reports. The negotiation exercise was held a few weeks later, and about 90 students did a written report. However, because of the voluntary and confidential nature of the survey, it is impossible to know whether these are the same or different subsets of students, as there were two different surveys, each distributed shortly after the exercise was completed. It is also impossible to know whether all the students responding to each questionnaire wrote a reflective report, though we believe that students were more likely to respond to a questionnaire about an exercise in which they had participated more fully.

- <sup>38</sup> WG Perry Cognitive and Ethical Growth: The Making of Meaning in LeBrun and Johnstone, *supra* note 14 at 84-85.