

# SYLLABUS

## INTERVIEWING AND COUNSELING

SPRING 2002

DON PETERS

Welcome to Interviewing and Counseling. Our course materials are:

- (1) **Lawyers as Counselors: A Client-Centered Approach**, by David A. Binder, Paul Berman, and Susan C. Price [West Publishing Co. 1991] [hereafter Text];
- (2) **Will You Join The Dance: Supplemental Readings and Exercises for Interviewing and Counseling**, by Don Peters [Spring 2001][hereafter Dance]; and
- (3) **The Counselor-at-Law: A Collaborative Approach to Client Interviewing and Counseling**, by Robert F. Cochran, Jr., John M.A. DiPippa, and Martha M. Peters [Lexis Publishing 1999] [hereafter CDP], a supplemental source so valuable that reading assignments for classes and multiple copies are on library reserve.

Please purchase the first two books [and the third if you wish] as soon as possible. The reading assignments are often long but contain no appellate cases. They are concentrated before major and focused role plays begin and you should review them as necessary during these intensive performance phases of the course. In addition, participation in this course requires use of a small audio tape recorder for taping and reviewing the five major role plays you will do this term [two interviews and three counseling conferences]. You must provide your own audio recorder and tapes.

The course goals include:

1. Providing information about action theories allowing you to prepare, conduct, and evaluate interviewing and counseling tasks effectively;
2. Providing information about ethical and other values dimensions of effective interviewing and counseling;

3. Providing sufficient opportunities to apply this information in the reflective practice of fundamental tasks to allow you to develop your skills and improve your competencies in interviewing and counseling.

This is a learning by doing course. Grades are based on the cumulative evaluation of your observed performances, written assignments and two short, multiple choice quizzes administered to encourage your attention to reading assignments. An additional 15 points are awarded for participation in discussion classes. A more thorough discussion of the grading approach follows later in this Syllabus.

This course requires participating in ten major role plays, five times as a lawyer and five times as a client. These exercises are scheduled during regular class hours at staggered starting times so that ten minutes of each are observed by instructional facilitators who evaluate your performances. These ten minute segments are videotaped and we will discuss the exercise and analyze excerpts from these videotapes during the second half of these classes. In addition, this course requires participating in 18 short, focused role plays, many of which will be observed and evaluated by instructional facilitators, and numerous other class exercises that are neither observed nor graded.

This course also requires seven short, graded written assignments. Six react to performances as either lawyer or client in the major role plays and the last evaluates the course and your experiences in it. Specific suggestions for these papers and a schedule of their required dates follow later in this Syllabus. The short deadlines we use encourage you to reflect and reach while the experiences are fresh. Except when indicated otherwise, these papers should not exceed three typed pages, double-spaced, on 8 ½ by 11 inch paper.

The ABA Standards for the Approval of Law School require “regular and punctual class attendance.” I interpret this standard as requiring presence at least 90% of our classes, monitor attendance, and reduce grades for following below this standard. Missing classes where major role plays are scheduled presents significant learning problems for the students with whom you are paired so please attend all of these sessions. Students stranded by someone who does not attend one of these sessions receive 90% of the points available for that exercise. Missing a focused role play class similarly disadvantages other students so please attend of these sessions. In addition, many classes involve distributing confidential information for future role plays. If you miss one of these distributions, you are responsible for picking these documents up promptly from me or my secretary.

The following class schedule is quite detailed. Any questions you have about any of these assignments should be directed to me by phone [352-392-0412 office, 352-372-6415 home] or email [[petersdon@law.ufl.edu](mailto:petersdon@law.ufl.edu)]. If you cannot reach me, my secretary, Helen Stoneking [same as my office phone number above] will respond in my absence. You may submit required papers by email [above address] or fax [352-

## CLASS SCHEDULE

**Tuesday, January 15: COURSE INTRODUCTION:** Read pages 1-30 TEXT, 1-12 DANCE, and 1-30 CDP. We will introduce the course, explain its learning approach, and discuss the core values of collaboration and client-centeredness that underlie most of the action theories we will examine.

**Thursday, January 17: MOTIVATING COMMUNICATION AND ADMINISTRATION OF THE MYERS-BRIGGS TYPE INDICATOR [MBTI] AND THE THOMAS-KILLMAN MANAGEMENT OF DIFFERENCES EXERCISE [MODE]:** Read pages 32-45 of TEXT, and 98-104 of CDP. We will discuss action theories and behavioral skills involved in motivating communication, central to interviewing and counseling but important in many other lawyering contexts, and critically evaluate videotaped excerpts showing aspects of these skills. We will also practice these skills in short role plays that will be distributed in class. In addition, the MBTI and MODE, two valuable tools for learning about natural behavioral habits that often influence interviewing and counseling action choices, will be administered.

**Tuesday, January 22: LISTENING:** Read pages 46-68 of TEXT and 31-48 of CDP. We will discuss action theories and behavioral skills involved in effective listening, the core of effective interviewing and counseling and critically important in many other lawyering contexts. We will also critically evaluate videotaped excerpts showing aspects of these skills and then practice them in short focused role plays that will be distributed on **Thursday, January 17**.

**Thursday, January 24: QUESTIONING AND INTERVIEWING ETHICS:** Read pages 69-81 of TEXT and 48-55 of CDP. We will discuss action theories, behavioral skills, and ethical dimensions involved in questioning. We will also critically evaluate video clips illustration aspects of these behaviors and dimensions and then practice these skills in short role plays that will be distributed in class.

**Tuesday, January 29: ORGANIZING INTERVIEWS VIA INITIAL NARRATIVES AND POST-NARRATIVE TIME LINES:** Read pages 84-144 of TEXT and 57-94 of CDP. We will discuss beginning interviews, soliciting and enhancing initial narratives to start initial and follow up interviews, and the theories and behaviors underlying conducting time lines after narratives end. We will critically evaluate videotaped excerpts showing aspects of these topics. We will also practice these skills in short role plays that will be described and distributed in class.

**Thursday, January 31: FIRST SET OF FOCUSED ROLE PLAYS DEALING WITH TIME LINES:** We will do our first set of focused role plays which involves dividing the class in half with each section working with an instructional facilitator.

Each half of the class further divides into triads. Each set of focused role plays involves three short assignments based on three scenarios that unfold throughout the term. You will play a consistent role in each scenario as either the lawyer, the client, or the observer-critiquer. Each scenario is framed by a written narrative that replicates what each client said during the first phase of their interview. Please review these narratives before this and every other focused role play class. The narratives for these clients, Terry Wilson, Kim Olsen, and Pat Webb, are on pages 76-81 of DANCE.

These classes contemplate 7-9 minute role plays, followed by a 7-10 minute discussion in each triad about the action choices made during the role play. These discussions should be led by the observer-critiquer and the student playing the client role should also provide feedback. A short discussion of the exercise follows each role play in the entire 12 person group. Instructional facilitators will rotate observing three of the four triads in each class and participating in their feedback discussion. They will evaluate the performances of everyone observed concentrating on the lawyer's preparation and skillful performance, the client's preparation and participation in the feedback discussion, and the observer-critiquer's skillful presentation of accurate and helpful feedback. Additional instructions on these classes is found on page 75 of DANCE. No taping or written paper requirements attach to these classes. The additional information needed for this first set of focused role plays will be distributed in class on **Tuesday, January 29.**

**Tuesday, February 5: POST-NARRATIVE TOPICAL-BASED INFORMATION GATHERING:** Read pages 145-223 of TEXT and 95-104 of CDP. We will discuss aspects of these important action theories and the behavioral skills needed to implement them. We also will critically evaluate video clips showing lawyers engaging in these activities and practice these skills in short role plays that will be described and distributed in class.

**Thursday, February 7: SECOND SET OF FOCUSED ROLE PLAYS DEALING WITH POST-NARRATIVE, TOPICAL DEVELOPMENT:** We will do another set of three focused role plays dealing with post-narrative, topical development in the interviews begun and time-lined earlier. You will change the composition of the triad and instructional facilitator with whom you will work but play the same role in each scenario that you performed earlier. The additional information needed for this second set of focused role plays will be distributed in class on **Tuesday, February 5.**

**Tuesday, February 12: FIRST MAJOR ROLE PLAY: INTERVIEWING MARTY PINES:** We will conduct our first major role play, interviewing Marty Pines, page 82 of DANCE, by dividing the class in half with each working with their own instructional facilitator and a separate room where taping occurs during the first hour and the discussion and video review happens during the second hour. You will be paired with one student playing the role of Marty Pines while the other plays the lawyer conducting the interview. Interview starting times will be staggered that every pair conducts either

the first, second, or third ten minute of their interview in the assigned video review before their facilitator. The remaining portion of your interviews may occur wherever you like as long as the space is conducive to a confidential session and the required audio taping. Lawyers should also audiotape the ten minute segment that is videotaped to facilitate preparing their action choices chart. Pairings, taping schedules, base room assignments, and confidential information for Marty will be distributed in class on **Thursday, February 7.**

Everyone returns to their assigned room at the start of the second hour. This session will include a general discussion of the experience and focused evaluation of portions of all six of the interviewing segments videotaped in the previous hour. Lawyers must audiotape their entire interview [including the ten minute segment that is videotaped], listen to the tape, chart their action choices on a copy of the interviewing chart that follows in this Syllabus, and submit this completed chart with their reaction paper. Clients do not need to audiotape or chart but must submit a reaction paper. The reaction papers for this exercise are do no later than noon on **Friday, February 15.**

**Thursday, February 14: MBTI AND MODE REVIEW:** Read pages 13-74 of DANCE and 223-45 of CDP. We will discuss these instruments, distribute your individual type profile, share aggregate class data, and speculate how this information may help you improve your interviewing and counseling skills.

**Tuesday, February 19: SECOND MAJOR ROLE PLAY: INTERVIEWING GLENN OAKS:** We will do our second major role play, interviewing Glenn Oakes, page 83 of DANCE, by rotating the student with you are paired, the instructional facilitator with whom you work, and your role [you will be lawyer if you played Marty Pines and will play Glenn Oakes if you were Marty's lawyer]. In all other respects this class will proceed following the instructions for the first major role play session. Pairings, taping times, base room assignments, and confidential information for Glenn will be distributed in class on **Thursday, February 14.** The reaction papers [with completed action choices charts from the lawyers only] are due no later than noon on **Friday, February 22.**

**Thursday, February 21: DIFFICULT AND ATYPICAL CLIENTS, ENDING INTERVIEWS, AND INTERVIEWING WITNESSES:** Read pages 224-56 of TEXT and 105-08 CDP. We will discuss these topics along with the action theories and behavioral skills needed to accomplish them effectively. We will also evaluate video excerpts to enhance our discussions and do short role plays that will be described and distributed in class.

**Tuesday, February 26: THIRD SET OF FOCUSED ROLE PLAYS DEALING WITH INTERVIEWING WITNESSES:** We will do a third set of focused role plays dealing with interviewing an important witness in the scenarios we are developing.

Students who have been playing the client role will play the witness and other roles stay the same. We will rotate the triad composition and instructional facilitator. Room assignments and the additional information needed for this set of focused role plays will be distributed in class on **Thursday, February 21**.

**Thursday, February 28: THIRD MAJOR ROLE PLAY: INTERVIEWING ROUNDS INTERVIEWING LESLIE GEAR, ALEX GRANDY, AND SANDY BEACH:**

This class applies our focused role play approach to a thirty minute initial interview. Assigned to a triad working with students with new colleagues, you will rotate through roles as either interviewing lawyer, client, or observer critiquer in the above exercises, briefly described on pages 84-86 of DANCE. Our two hours will be divided into three forty minute segments with thirty minutes allotted to interviewing followed by ten minutes of feedback and discussion led by the observer-critiquer. Leslie Gear will be interviewed at 3:00 p.m.; Alex Grandy at 3:40 p.m.; and Sandy Beach at 4:20 p.m. Pairings, room assignments, and confidential client information will be distributed in class on **Tuesday, February 26**. No comprehensive instructor observation and evaluation, or videotaping, occurs. You must audiotape your interview as lawyer, chart it, and hand in your completed action choices chart with your reaction paper no later than 5 p.m. on **Monday, March 11**. [note that this class is just before spring break and writing your reaction paper earlier rather than later is strongly advised] No reaction papers are required from clients [or observers] for this assignment.

**Tuesday, March 12: REVIEWING INTERVIEWING ROUNDS AND FIRST QUIZ:** We will discuss your interviewing experiences in the Gear, Gandy, and Beach exercises. In addition, the first quiz, covering all the reading assignments thus far, will be administered.

**Thursday, March 14: REINTRODUCING COUNSELING, IDEAS ABOUT CLIENT DECISION-MAKING, AND GENERATING ALTERNATIVES:** Read pages 258-80, 287-93, 309-31 of TEXT and 109-42 of CDP. We will discuss important action theories and behavioral skills involved in approaching client decision-making and generating alternatives effectively. We will also evaluate video excerpts to enhance this discussion and engage in short role plays that will be described and distributed in class.

**Tuesday, March 19: IDENTIFYING, PREDICTING, AND EVALUATING CONSEQUENCES AND LAWYER INTERVENTIONS:** Read pages 281-86, 293-308, 332-406 of TEXT and 142-64 of CDP. We will analyze these critically important dimensions of counseling that build on effective motivating, listening, and questioning skills that we have practiced earlier. We will also evaluate several short demonstrations of these important tasks and engage in short role plays that will be described and distributed in class.

**Thursday, March 21: FOURTH SET OF FOCUSED ROLE PLAYS FEATURING MAKING AN IMPORTANT DECISION IN EACH SCENARIO:** We will return to our ongoing focused role play scenarios and do one helping each client make an important decision in their situation. We will rotate the composition of the triads and your instructional facilitator. Room and triad assignments along with the additional information needed for this set of focused role plays will be distributed in class on **Tuesday, March 19.**

**Tuesday, March 26: FOURTH MAJOR ROLE PLAY: COUNSELING MARTY PINES:** We will return to the Marty Pines situation, reunite your earlier lawyer-client pairs, and do this counseling conference using staggered starting times, videotaped segments, facilitator evaluation, and a post-performance hour class to discuss the experience and review tape excerpts. Room assignments, video times, and confidential client information will be distributed in class on **Thursday, March 21.** Lawyers must audiotape their conferences [including the portion videotaped] and submit completed action choices charts [making a copy of the document found later in this Syllabus] with their papers. Clients must also submit reaction papers. These papers are due no later than noon on **Friday, March 29.**

**Thursday, March 28: FIFTH SET OF FOCUSED ROLE PLAYS FEATURING HELPING CLIENTS MAKE DECISIONS ABOUT DISPUTE RESOLUTION:** We will do another set of focused role plays with each raising a common aspect of counseling clients during mandatory mediation, a feature of contemporary Florida law practice. We will rotate the composition of your triad and the facilitator with whom you will work. Room, triad, and facilitator assignments, along with information needed to make this set of focused role plays work, will be distributed in class on **Tuesday, March 26.**

**Tuesday, April 2: FIFTH MAJOR ROLE PLAY: COUNSELING GLENN OAKES:** We will reprise our Glenn Oakes pairings and conduct counseling conferences using staggered starting times, scheduled video taping slots, facilitator observation, and a second hour to discuss experiences and review tape excerpts. Room assignments, video times, and confidential client information will be distributed in class on **Thursday, March 28.** Lawyers must audiotape their conferences and submit completed action choices with their papers. Clients must also submit reaction papers. These papers are do later than noon on **Friday, April 5.**

**Thursday, April 4: SIXTH MAJOR ROLE PLAY: COUNSELING ROUNDS COUNSELING LESLIE GEAR, ALEX GRANDY, AND SANDY BEACH:** We will return to our interviewing rounds triads and counseling our respective clients. Each counseling conference may last us to 35 minutes and be followed by a no more than five minute feedback session led by the designated observer. Leslie Gear will be counseled at 3:00 p.m.; Alex Grandy at 3:40 p.m.; and Sandy Beach at 4:20 p.m. Room assignments and confidential client information will be distributed in class on

**Tuesday, April 2.** As before, no facilitator evaluation, videotaping, and instructor feedback will occur. Lawyers must audio tape their counseling conference and submit a completed action choices chart with their reaction paper. No papers are required from clients or observers. All papers are due no later than 5 p.m. on **Monday, April 8.**

**Tuesday, April 9: SEVENTH MAJOR ROLE PLAY: COUNSELING SEAN GOGH:** New student pairs will be created for the two major role plays this week, with students alternative as either Sean Gogh or Lynn Summers or the lawyer counseling either one. These classes will be conducted in the same fashion as the Marty Pines and Glenn Oakes interviewing and counseling sessions except that no papers or action choices charts are required. This class will feature counseling Sean Gogh and general information about this role play appears on pages 87-96 of DANCE. Pairings, starting times, taping slots, and room assignments for the second hour of discussion and video review, along with confidential information, will be distributed in class on **Tuesday, April 2.**

**Thursday, April 11: EIGHTH MAJOR ROLE PLAY: COUNSELING LYNN SUMMERS:** This class will involve counseling Lynn Summers, and general information about this role play appears on pages 97-105 of DANCE. Pairings, starting times, taping slots, and room assignments for the second hour of discussion and video review, along with confidential information, will be distributed in class on **Tuesday, April 9.** No audiotaping, charting, or paper-writing are required for this class.

**Tuesday, April 16: SIXTH SET OF FOCUSED ROLE PLAYS FEATURING LAWYER INTERVENTIONS IN COUNSELING CONTEXTS:** We will do our final set of three focused role plays, practicing effective lawyer interventions. Triad, facilitator, and room assignments, along with the confidential information needed to make this role play work, will be distributed in class on **Thursday, April 11.**

**Thursday, April 18: DISCUSSING DIFFERENCES AND COUNSELING QUIZ:** Read pages 203-21 of CDP. We will discuss the influences gender, ethnic, type, age, and other important differences have on interviewing and counseling generally and in our course experiences. We will use video demonstrations to enhance these speculations. In addition, our second quiz, covering the reading assignments dealing with counseling, will be administered.

A reaction essay evaluating your experiences and this course, and containing suggestions for improving this class, is due no later than 5 p.m. on **Monday, April 22.** This paper may not exceed 5 pages in length and should treat the following topics in any way that you wish:

1. A self-evaluation comparing your level of skills to the performance standards on pages 8-12 of DANCE;

2. The action theories you found most valuable in this course, indicating why;
3. The action theories you found least valuable in this course, also indicating why; and
4. Specific suggestions you have for improving future versions of this course.

**Tuesday, April 23: LOOKING FORWARD AND BACKWARD:** We will discuss how action theories raised in this course may apply to your future practice, points raised in your final papers, and anything else that seems relevant.

### **WRITTEN ASSIGNMENTS SCHEDULE**

1. Marty Pines interviewing reaction paper as either lawyer [worth 18 points] or client [worth 15 points], due no later than **NOON on Friday, February 15.**
2. Glenn Oakes counseling reaction paper as either lawyer [worth 18 points] or client [worth 15 points], due no later than **NOON on Friday, February 22.**
3. Interviewing rounds reaction paper as lawyer for either Leslie Gear, Alex Grandy or Sandy Beach [worth 18 points], due no later than **5 p.m. on Monday, March 11.**
4. Marty Pines counseling reaction paper as either lawyer [worth 18 points] or client [worth 15 points], due no later than **NOON on Friday, March 29.**
5. Glenn Oakes counseling reaction paper as either lawyer [worth 18 points] or client [worth 15 points] due no later than **NOON on Friday, April 5.**
6. Counseling rounds reaction paper as lawyer for either Leslie Gear, Alex Grandy, or Sandy Beach [worth 18 points], due no later than **5 p.m. on Monday, April 8.**
7. Final reaction essay [worth 21 points], due no later than **5 p.m. on Monday, April 22.**

### **SUGGESTIONS FOR WRITING REACTION PAPERS**

1. The following suggestions are illustrative rather than mandatory. Although I apply no set formula for evaluating papers, these suggestions stem from my hunch that focusing your papers in these directions will provide valuable practice identifying specific behaviors and then evaluating their effectiveness. In addition, they will give me greater understanding of your experiences, many of

which regrettably but necessarily occur outside of instructor observation. Finally, these suggestions may resolve uncertainties about what should be in these papers to get good grades for them, anxieties that many students have expressed in the past.

2. Consider focusing your reactions papers this way:
  - a. The action choices that were most effective, analyzing as specifically as possible why you made these choices and why you conclude that they were successful;
  - b. The action choices that were least effective, analyzing as specifically as you can why you made these choices and why you conclude that they were not successful;
  - c. What surprised you the most, why it surprised you, how you reacted to this surprise, and how you evaluate your reactions;
  - d. What parts of this experience conflicted most with your values or caused you the most ethical anxiety, how you resolved these tensions, and how you evaluate your choices;
  - e. What aspects of this experience confirmed or disconfirmed action theories, and what new action theories or contextual modifications you have generated as a result.
3. Reaction papers should be reactions to and reflections about the experiences rather than simple, narrative accounts of what happened. They should describe what happened that was significant, why it was important and what you think about it now. They should identify and analyze specific behaviors rather than describing broad themes. For example, writing "I did not listen well and listening is crucial to effective interviewing because....." fails to identify specific listening errors and starts to develop broad listening themes that, while important, are not the mission of these papers. Selecting two or three examples of harmful listening errors, describing them in detail, and then speculating why effective listening was difficult for you and how you aim to change and improve, provides a much more effective segment of a reaction paper.
4. Balance your papers between evaluating positive action choices and identifying errors that need improving.
5. The three page limit is designed to force you to assess which positive and negative choices were critical and articulate why. It obviously does not permit analyzing every point that emerges as you listen to your audiotape and chart your action choices on the charts that follow in this Syllabus. Choosing 3 to 7

key points, contexting them effectively, and then developing them fully using specific examples gets good grades. Rambling, conclusory or chronological descriptions of what happened that fail to identify and analyze specific behaviors do not.

6. The space limits and short time frames are designed to encourage you to write while the experience remains fresh in your minds. It also gives me a fighting chance of reviewing your papers promptly.
7. When writing reaction papers as lawyers:
  - a. Listen to your audiotape before writing, looking for the insights about your action choices that this brings;
  - b. Chart your action choices on the charts that follow in the Syllabus, making extra copies of these pages and using the appropriate documents for your interviews and your counseling conferences;
  - c. Retain a copy of each chart for your files to see how your behaviors change over this course.
  - d. When charting action choices, remember that:
    - i. Charting does not need to be as accurate as bookkeeping sometimes is [but it should not be as creative as some types of accounting are]; and accuracy helps you ascertain your behaviors and improve them;
    - ii. The same action choice may be charted in several categories; i.e. a sentence may contain both a content paraphrase and an open question, or a feeling acknowledgment may be a motivating statement, and so forth;
    - iii. If you are having a hard time discerning what category to put a remark in, it probably was not a very effective thing to say.
8. When you write reaction papers as clients, remember the general suggestions earlier about identifying specific action choices and:
  - a. Focus the first two pages on evaluating your lawyer's performance, writing from the role of that client rather than a course colleague, devoting:
    - i. The first page to specific articulations of what was done effectively, and why you, in role as that client, believed it was successful;

- ii. The second page to specific articulations of what was not done effectively and what actions you, in role as that client, think would have been more effective and why your recommendations would have been more successful;
  - iii. The third page to what you learned about effective interviewing or counseling from the experience of playing that client role including what action theories you had confirmed and disconfirmed, and what new action theories or contextual modifications you generated.
- b. Make an extra copy of the first two pages of your paper and hand it to your lawyer at the beginning of the next class so that he or she can receive the benefit of your thoughtful, written feedback.
  - c. Make sure you hand in all three pages to your instructor at or before the assigned deadline.

## **INSTRUCTIONS FOR PLAYING CLIENT ROLES**

This course asks you to take seriously your assignments to play client roles in its interviewing and counseling exercises. Playing these roles realistically contributes crucially to everyone's learning. The following general suggestions may help:

1. Playing roles well requires preparation and commitment. Walking into a scheduled session without having read and thought about your confidential client information diminishes the value of the experience for everyone.
  - a. Obtain your confidential client information as quickly as you can if you miss the class where it is distributed;
  - b. Read your confidential information carefully and thoughtfully a few times before the session, implanting the general scenario in your mind and thinking about how you want to play this role;
  - c. Develop comfort with the role play's facts, remembering that simulations inevitably create factual gaps by recreating only parts of situations, and that our role plays do not require memorizing facts. Try to learn the general information. When asked about information that you cannot recall, either ad lib consistently with what you know or simply state that you don't remember. Both are more appropriate than reading from your confidential document during interviews or counseling conferences;

- d. Do not read from or even look at your confidential information during the role play. Doing so destroys the realism we are trying to generate and reminds everyone that we are playing roles;
  - e. Whenever possible, limit ad libs to fill gaps, resolve minor inconsistencies, and respond to the changing dynamics as appropriate. Do not create major, significant, or “killer facts” that change entire landscapes of situations.
2. Adopt an individual and personally realistic role and stay in it throughout the entire session.
- a. Summon your impressive acting skills, thinking carefully about your role and how it fits with your personality. Then visualize and conceptualize yourself as this person and play it as you personally would act in similar situations while remaining consistent with any instructions that are provided;
  - b. Divorce your lawyering skills from your role playing unless you are cast as a lawyer. Try to be the person described in the instructions rather than your normal, brilliant, analytical, articulate, witty, persuasive self. Don't try to take over using what you know about competent interviewing and counseling unless your instructions as you to take control;
  - c. If consistent with your instructions, conceptualized role, and actual personality, give your lawyer a robust but reasonable level of difficulty to deal with. Do not behave in impossibly difficult ways;
  - d. Avoid overacting or grossly exaggerating your real personality as you seek to follow your instructions. This usually comes off as phony, often feels manipulative, and undercuts our goal of making the role plays as realistic as possible.
3. Avoid these common errors which often reflect law students unable to curb their “lawyering ways”:
- a. Narrating huge chunks of information in structured, organized, detailed ways that few law people [except for police officers on direct in routine cases] talk;
  - b. Using “legalese” inappropriately.
4. Replicating the emotional dimensions of life pose significant challenges for many law students, complicating practicing and developing empathy-based skills such

as acknowledging feelings. Many scripts ask you to express certain feelings at appropriate moments. When this occurs:

- a. Give it your best shot, trying to put some feeling behind the words in your tone, pace, and accompanying non-verbal conduct. For example, don't say "I'm furious" using a flat voice tone, no affect, a matter of fact inflection, and bored nonverbal behavior. The mixed messages that this sends seriously undercuts our learning goals;
  - b. If you do communicate a strong feeling with some degree of genuineness, don't recover immediately. Stay with it. Avoid the counterproductive mixed signals sent by tears one moment and total calmness seconds later.
5. Stay in role at all times and resist entreaties by your lawyers to pull you out of role. If asked "what has the instructor hidden in there that I am supposed to dig out with good questions," respond by saying, "I have no idea what you are talking about."
- a. Comply with instructions about not disclosing certain information unless asked specifically about it by trying to replicate normal human communication patterns rather than game playing;
  - b. Do everything you can to de-emphasize the manipulative potential of using scripts to simulate realistic motivation, inhibition, and emotional issues.
6. Participate fully in feedback sessions and
- a. Give feedback, in role as this client or how you felt as this client;
  - b. Avoid giving feedback from the more distanced perspective of a colleague also studying legal interviewing and counseling.

### **SOME GRADING THOUGHTS**

Grades are important to you and to those unfortunately narrow-minded law firms that look only at GPAs when making hiring decisions. Grading is difficult to do well, particularly in professional skills, clinical courses. Because it causes me anxiety, and is likely to cause you anxiety as well, let me be as explicit as possible about how grades are computed in this course.

This course has no final exam. All of the major role plays will be observed and evaluated by an instructor on a 15 point scale assessing only the actions that are

displayed during these periods. The theories outlined in our texts and classes provides the basis for these evaluations. Your performances as clients in these roleplays will be evaluated on a 5 point scale. In addition, many of your performances in the focused role plays will be observed and evaluated by instructors on a 9 point scale for lawyer performances, a 7 point scale for critiques, and a 5 point scale for client presentations. I evaluate the four reaction papers you write as lawyers and the two client reaction papers on the point scales mentioned earlier, 18 for the lawyer papers and 15 for the client papers, using the criteria set forth in the suggestions earlier. The final paper earns up to 21 points. I total the points you earn for each exercise and paper at the end of the term and use that computation to ascertain a final grade. Up to 15 points for class participation will also be awarded at the end of the term. Two multiple choice quizzes during the course add to this mix.

No method of grading ever totally resolves the subjective aspects that can irritate and anger those who do not earn the marks they feel they should have received. The approach adopted here may be challenged on that basis. It also may be attacked because it simultaneously asks you to learn and be evaluated. Ordinarily, non-clinical courses follow a two step process: first, learning [hopefully], and then evaluation. I choose not to use a traditional final examination because I don't believe they accurately measure what one needs to learn in a skills course. Fewer assessments might generate less stress. On the other hand, they would be worth more proportionately and could thus produce more anxiety.

I chose this scheme to spread the dreaded risk of failure [which we all experience] to encourage everyone to try and try again. I firmly believe that skills acquisition requires repetitive, reflective practice. This scheme also tracks actual law practice where everything you do subjects you to subtle evaluations by clients, colleagues, and judges that constitute reputation; a factor which affects your level of professional satisfaction and success.

Instructors will write feedback notes on the evaluation forms completed while observing your performances. I will provide you with these forms and get your papers back promptly, with as much hastily scrawled feedback as I can provide.

Having said all this about grading, I believe that the most valuable feedback you will get in this course will be that which you generate from: (1) reflecting on your performances, and (2) measuring them against the theoretical discussions in readings and generated in class and the critiques you receive from each other and me. How far or little you progress in skill development by these measures will mean much more to your career than the letter appended later to the total of your points earned in this course [even if that letter gets you hired by Smash, Bash, and Crash, P.A.].