

USE OF ROLE PLAY AND INTERVIEW MODES IN LAW CLINIC CASE ROUNDS TO TEACH ESSENTIAL LEGAL SKILLS AND TO MAXIMIZE MEANINGFUL PARTICIPATION*

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Case rounds are a common feature of the seminar component of clinical programs. This article describes using in the case rounds setting multiple design elements, including role plays and formalized interviews, to enhance student learning and engagement. In the rounds described here, a student presenter is asked to adopt the role of her opponent in her clinic case and to explain succinctly the opponent's case, followed by an informational session in which the student presenter is allowed only to give short answers in response to questions from her clinic peers; and after the question-and-answer session, students and their professors debrief the role play. The role play aspect – where the clinic student adopts the role of an opponent in her clinic case – compels clinic students to better anticipate the other side's legal strategy and arguments and to delve into facts that they might overlook without having assumed the other side's role. Adopting the other side's position also allows students to explore legal and policy issues deeply. In addition to providing these benefits, the question-and-answer format of the rounds allows students to develop presentation and interrogatory fundamentals. Having the opportunity to practice questioning the "opponent" also provides students with the prospect of learning how best to obtain information through experimenting with different modes of inquiry. For example, students can learn that

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hyperbole common to stereotyped exchanges between opponents may not be appropriate for gathering facts and exploring nuances in facts and areas of uncertainty. At the same time that students are learning these skills, preserving the essential elements of rounds (involving real cases, with real practice issues, and exchanges between students) means that students have the opportunity to learn to think like lawyers as they do in traditional rounds that do not use role plays or formalized question-and-answer structures. Students, for example, gain insights about professional reasoning, judgment, and values and engage in self reflection in preparing for and participating in the role play. Combining the elements of traditional case rounds – that are so critical in teaching clinic students how to think like lawyers – with opportunities to practice the essential lawyering skills of storytelling, counter-analysis, and interrogatory basics has many benefits worth exploring.

Case rounds in law clinics are meetings in which all of the students in the clinic discuss their real work with their classmates, professors, and supervising attorneys.¹ Law clinic rounds take various forms. Some rounds are “law firm meetings” where the members of the law firm, *i.e.*, clinical professors and students, exchange information about the projects on which they are working. Others explore specific themes that recur in law or clinic practice – such as case planning, outcome prediction, legal and factual analysis, analyses of relationships and interactions with clients and other actors involved in the cases, and issues relating to social justice lawyering. In addition, there are rounds that are called “case presentations,” which are made by students about their cases and provide a forum for the presenting students to practice their presentation skills and to seek their colleagues’ advice.

A student in our clinic could be found in case rounds introducing her case like this: “I represent Prudential Gas and Electric Company. Our company produces reliable energy at affordable prices. Recently,

¹ Susan Bryant and Elliott S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education?* 14 CLINICAL L. REV. 195 (2007). Their article explores the learning goals and theory of rounds; identifies the kinds of learning that is possible during rounds; and discusses the choices professors can make to increase learning opportunities. Many of the sources that I consulted in writing this article came from their article.

These longtime clinical professors identify two other typical clinical pedagogical spaces aside from case rounds: supervision and seminar. *Id.* at 198; *see also* Elliot S. Milstein, *Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 377 (2001). In addition to rounds, supervision, and seminar, field visits can be another pedagogical space. A field visit may, for example, be a toxic tour. A toxic tour is a term used in environmental justice communities to describe a tour of toxic sites in a low-income neighborhood where the residents are predominantly people of color. *See, e.g.*, Ivy Jeane, *Bayview/Hunters Point Toxic Tour* (May 2009), http://www.foundsf.org/index.php?title=Bayview/Hunter%27s_Point_Toxic_Tour. A field visit may also be to a client’s house or office.

an environmental group has asked the state Public Utilities Commission to bar procuring energy from new power plants burning fossil fuel. Our company believes that such a ban might be wise in the future, but it is not a good idea for now. The ban will make the energy supply less reliable and affordable for our customers.”²

Our clinic represents plaintiffs in environmental cases. Why then might the clinic student be representing a large utility company in her case? The student is participating in an exercise where she is playing the role of an opponent in the case that she is handling in the clinic. Her classmates, who play the role of our client in these “opponents case rounds,” are poised to ask questions about the details of the case. This article describes the “opponents case rounds” and explains why our clinic has chosen to employ role playing as opponents as well as the question-and-answer format for some of our case rounds.

Part I covers the types of rounds that law clinics use and the reasons that case rounds are useful in clinical teaching: rounds typically capitalize on teachable moments that naturally occur during the informational exchange that students and their professors have about their cases; and students see in rounds how professional reasoning and ethical decision making work and thus learn to think like lawyers.³

After this general discussion on rounds, I describe in Part II the opponents case rounds that we use in our clinic. The opponents rounds incorporates multiple designs, including role plays and structured interviews, to enhance student learning and engagement. In these rounds, a student presenter is asked to adopt the role of her

² This narration is fictional. Real utility companies, which generate energy, however, sometimes use these arguments about reliability to advocate energy generation from fossil-fuel sources. These utilities argue that fossil-fuel sources are still necessary because wind and sun are intermittent (that is, their ability to generate varies) and therefore cannot supply energy at all times. They also argue that planned and unplanned reductions in energy generation capacity also require fossil-fuel sources of energy as backup despite deep concerns of mainstream climatologists about the increasing levels of greenhouse gases in the atmosphere and the amounts of such gases that power plants produce. See, for example, arguments outlined in Track I Opening Brief of Calpine Corporation, In re Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans, Rulemaking 10-05-006 (Cal. Pub. Util. Comm’n Sept. 16, 2011), <http://docs.cpuc.ca.gov/EFILE/BRIEF/143826.htm>; and other sources that mention these potential concerns about reliability, Alfred J. Cavallo, *Energy Storage Technologies for Utility Scale Intermittent Renewable Energy Systems*, 123 J. SOL. ENERGY ENG’G 387 (2001). Despite these concerns, scientists have argued that energy from wind, water, and the sun can meet all global energy needs, with the right policies and planning in place, such as connecting diverse sources of renewable energy to a common transmission grid and addressing temporary intermittency of some renewable sources through gap-filling with other renewables. See, e.g., Mark A. Deluchhi and Mark Z. Jacobson, *Providing All Global Energy with Wind, Water, and Solar Power, Part II: Reliability, System and Transmission Costs, and Policies*, 39 ENERGY POL’Y 1170 (2011).

³ Bryant and Milstein, *supra* note 1, at 215.

opponent in her clinic case and to explain the opponent's position in only several sentences, followed by a longer question-and-answer session in which the presenter's clinic peers are required to ask questions; after the question-and-answer session, students and their professors debrief the role play.

Part III then evaluates the benefits that students derive from this type of rounds. I conclude that the opponents rounds are particularly useful for teaching persuasive storytelling in legal advocacy, factual and legal analysis, and counter-analysis. The students participating in opponents case rounds also learn skills that they would learn in traditional case rounds, such as case presentation and oral advocacy skills. At the same time that students learn these skills that are important for entry-level competence, students also have an opportunity to learn values and judgments that students typically have been observed to derive from traditional case rounds. Students gain insights developed in traditional rounds because students practice and observe professional reasoning, judgment, and values – both from the opponents' viewpoint and in debriefing sessions – and engage in self reflection in preparing for and participating in the role play. These rounds also intensely engage every student and help develop the students' confidence in asking “good questions” because of the question-and-answer format.

The use of role play and formalized interviewing in rounds, however, presents its own challenges and limitations, and the professors facilitating these rounds must carefully plan them to maximize learning. I treat these issues in Part IV.

I. LAW CLINIC CASE ROUNDS: FORM, FUNCTION, AND LEARNING OPPORTUNITIES

The Greek agora was “a central, open space where public life was enacted,” and its existence distinguished a city from a settlement.⁴ In much the same way, case rounds in clinic life are a central forum where members of a law clinic interact and make the clinic an entity in itself distinguishable from most law school classes. The interactions between the members of the clinic “model the kind of thinking done by lawyers in practice as well as modeling the ways lawyers work together to improve work product.”⁵

Of course, as the very term “rounds” suggests, clinical law professors have borrowed this pedagogy from their medical counterparts: “For centuries, a cornerstone of [medical] clinical education has been

⁴ WILLIAM J. MITCHELL, *SPACE, PLACE, AND THE INFOBAHN: CITY OF BITS*, 176 n.2 (MIT Press 1997).

⁵ Bryant and Milstein, *supra* note 1, at 251 n.1.

for . . . students and junior physicians to make rounds on hospitalized patients with more experienced and professionally senior individuals.”⁶ At their very basic, law clinic rounds, like their medical counterparts, are discussions between students and professors about real cases and their progressions.⁷ In law clinic rounds, some – even perhaps most – professors would say that the students are at the center, describing rounds as “a [teacher-] facilitated peer conversation among clinic students that is focused on their fieldwork.”⁸

This Part of the article explores the many forms and functions of case rounds because their design and functions are tied: designing them properly requires thinking explicitly about their functions.⁹ For new clinical professors, this description should also serve as a beginning point for designing and evaluating the efficacy of the rounds in their clinics.

A. Form: From Unstructured to Structured

Law clinic rounds are meetings of all of the students in the clinic and their supervising attorneys, including the clinic professors. In these rounds, which occur periodically, the participants exchange information about the projects on which they are working,¹⁰ discuss issues they are working through, identify next steps, and ask their classmates for assistance in thinking through the issues in the case.¹¹

⁶ DONN WEINHOLTZ AND JANINE EDWARDS, *TEACHING DURING ROUNDS: A HANDBOOK FOR ATTENDING PHYSICIANS AND RESIDENTS* vii (Laura Mumford, ed., The Johns Hopkins Univ. Press 1992). See also Y. Xiao, P. Milgram & D.J. Doyle, *Medical Case Rounds: A Medium for Training and Studying Real-Life Decision Making*, 39 Proc. of Hum. Factors and Ergonomics Soc’y Ann. Meeting 1330 (1995) (during medical rounds, “participants receive training through interactive discussions around particular problems, cases, or patients”).

⁷ Interestingly, medical rounds have mostly moved away from the bedside, instead taking place in the hallways and conference rooms. See Jed D. Gonzalo, Philip A. Masters, Richard J. Simons, and Cynthia H. Chuang, *Attending Rounds and Bedside Case Presentations: Medical Student and Medicine Resident Experiences and Attitudes*, 21 *TEACHING AND LEARNING IN MEDICINE*, 105 (2009). In that way, medical and legal clinic rounds have become similar.

⁸ Bryant and Milstein, *supra* note 1, at 195.

⁹ “A teacher’s approach to and goals for rounds shape preparation expectations for rounds.” *Id.* at 237.

¹⁰ See, e.g., e-mail from Professor Jamie Baker Roskie to author (Mar. 7, 2011) (on file with author). The Land Use Clinic at the University of Georgia School of Law actually calls these rounds “staff meetings.” *Id.* The clinic holds these staff meetings outside of class time because there is not enough time during the seminar for both the meetings and content-based teaching. *Id.* Interestingly, the clinic may even meet with clients during these meetings.

¹¹ See, e.g., Bryant and Milstein, *supra* note 1, at 200-03. Professors Bryant and Milstein provide insightful analyses of the learning goals of rounds, how case rounds can proceed, and the kinds of learning that is possible from rounds, and I cannot but recommend their article in whole for an introduction to law clinic rounds.

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Time-sensitive decisions are, however, typically made in the clinic, outside of rounds, even if discussed and reviewed with the class later in rounds.¹²

With law clinic rounds, the instructions that students receive beforehand vary quite a bit, from requiring very little preparation (in fact none other than involvement in a clinic case) to extensive.¹³ For example, our clinic's case rounds a decade ago much more resembled a law firm meeting, where students were not required to prepare in advance but were told that they were expected to talk about the case they were handling, recent developments, and next steps in a conversational, unstructured manner.¹⁴ Other clinics, on the other hand, provide specific, written instructions on the types of issues to cover. This approach is similar to the one that our clinic now requires for the students' very first case rounds – that students be prepared to provide a brief overview of their cases, including information about their clients, the clients' goals, the case status, and expected next steps.¹⁵

Many rounds, especially regularly occurring rounds, are purposefully unstructured – or relatively so – to give students room to talk and to learn as events occur. Giving this kind of freedom to students is essential to their learning because aspects of law practice that these novice student practitioners themselves might reveal as important may not necessarily be those that the professors may identify as a topic of discussion: what is obvious to us professors may not be obvious to the novice practitioner, and this gap may provide an important

¹² Our clinic's experience certainly is the same – that we do not decide time-sensitive matters in rounds. Reviewing the syllabi of other clinics also gives the same impression since most case rounds obviously do not take place every day, and case decisions need to be made sometimes more frequently than that. *See, e.g.*, seminar syllabus for Spring 2011, Interdisciplinary Environmental Clinic, Washington University in St. Louis (on file with author).

¹³ Bryant and Milstein, *supra* note 1, at 237-39.

¹⁴ At times, especially when the clinic was handling many cases at once, the time allotted for these discussions (one class session) was too short to cover the cases more than superficially. When there was adequate time, students shared discoveries they made about what it means to be an advocate.

¹⁵ *See* Syllabus, Fall 2011, Environmental Law and Justice Clinic (on file with author). The Interdisciplinary Environmental Clinic at Washington University in St. Louis, for example, includes the following specific instruction for the first case rounds:

[E]ach team should make a brief (< 10 minutes) presentation explaining your case. Why is this case significant? What are the key things others might want to know about it? Information you may wish to include:

1. Client(s) and their objectives
2. Other key parties/players and their roles/objectives
3. Overview of matter
4. Key issues - legal and factual
5. Looking ahead —where things are going

See seminar syllabus for Spring 2011, Interdisciplinary Environmental Clinic, *supra* note 12.

opportunity for instruction.¹⁶ (For example, in our clinic's rounds, students are often surprised that government agencies do not comply with mandatory statutory duties and find such failures unacceptable. We professors who have sued government agencies multiple times to enforce these statutory duties can easily forget that citizens would find such failures incomprehensible. This gap affords an opportunity for students and professors to talk about "slippage" in the law and what it says about our society.)¹⁷

There are also generational, class, or racial differences between the professors and students that sometimes surface in these discussions that, again, professors may not anticipate if these rounds were too structured or planned. For example, discussion of race and race discrimination may bring out attitudes in students, some of whom believe that we live in a post-racial era, that may be surprising to the professors whose professional identities were formed during the civil rights movement.

In sum, rounds that are relatively unstructured capitalize on teachable moments that naturally occur during the informational exchange. In contrast, highly structured rounds may discourage these discussions that lead to valuable insights because the participants may think that these issues stray too far from the agenda. Structuring rounds may thus detract from this "just-in-time" learning opportunity.¹⁸

In addition, overly structured rounds may lead to forcing "the group to the next prepared case just as the group gets going on an important topic."¹⁹

Aside from rounds that rely on developments in the case to provide fodder for the "aha" moments that teachers find rewarding, some rounds may also explore specific topics or a given case in depth.²⁰ The topics tend to be themes that recur in law or clinic practice such as case planning, outcome prediction, legal and factual analysis, analyses of relationships and interactions with clients and other actors involved in the cases, and social justice: "rounds conversations teach students important professional habits, including reflecting on experience,"²¹

¹⁶ Professors Bryant and Milstein call the kind of learning that occurs in some of these rounds as "just-in-time" learning because it "aris[es] from an immediate, timely issue in a student's on-going lawyering," contrasted with "just-in-case" learning, which occurs to prepare for the contingency that the student might need to learn something just in case the student needs the knowledge. Bryant and Milstein, *supra* note 1, at 207-08.

¹⁷ Such opportunities present introducing concepts that are discussed in articles such as Daniel A. Farber, *Taking Slippage Seriously*, 23 HARV. ENV. L. REV. 297 (1999).

¹⁸ Bryant and Milstein, *supra* note 1, at 195.

¹⁹ *Id.* at 238.

²⁰ *Id.* at 231-37.

²¹ *Id.* at 195.

and extracting theory from practice. In addition, there are rounds that are called “case presentations,” which are made by students about their cases and provide a forum for the presenting student to practice their presentation skills and to seek their colleagues’ advice. These presentations tend to be more elaborate, with the instructions being concomitantly more detailed.

Rounds may also differ in the frequency with which they occur. Some clinics hold rounds almost every week, whereas others hold them just a handful of times per semester.²² The choice of how many rounds clinics hold in a given semester appears to depend on factors such as the educational value the professors and students place on rounds on the one hand and the necessity for substantive law training on the other.²³

Professors Bryant and Milstein advocate weekly rounds if their objective is to achieve the learning goals they describe in their article, such as professional reasoning and ethical decision making:

We contrast these regular weekly meetings with the kinds of presentations that occur when rounds occur infrequently such as those held four times a semester where students present their work on cases. The infrequency of those rounds means they are more likely to be presentations and inherently less interactive than the conversations we describe and promote in this article.²⁴

B. Various Functions of Case Rounds

In addition to serving as a forum for discussions between student peers and their more experienced professors, rounds in many clinics also appear to serve the functions of – and take the form of – meetings that any organization typically convenes. Indeed, all of the functions that producer Sir Antony Jay identifies in his insightful article about meetings are those that clinical teachers would recognize as functions

²² Our clinic generally holds rounds weekly as do some other clinics from which I have gathered information. Another clinic at our school holds rounds only a handful of times because it devotes most of the classes to substantive law and skills training. Outside of our school, the practice also seems to be as varied as there are clinics. One clinic requires a set each of “initial case rounds” and “in depth rounds.” See responses on file with author.

²³ One clinic that responded to my informal request for information noted that the professors chose to do rounds weekly “to give everyone an opportunity to present at least once.” E-mail from Professor Hope Babcock to author (Mar. 4, 2011) (on file with author). Another clinic responded that it holds weekly “staff meetings” outside of class because of the necessity of covering other material in class; and three rounds during the semester in class. Roskie-Baker, *supra* note 10.

²⁴ Bryant and Milstein, *supra* note 1 at 231 n.103 (citing to a source on psychotherapy supervision that describes “research showing that weekly meetings created an atmosphere that allowed case workers to express feelings and communicate on a deeper level whereas bi-weekly meetings stayed more formal”).

that case rounds serve.²⁵ Both the meeting and learning functions of rounds are discussed more in detail below.

1. *Providing a forum to share communication efficiently and to discuss the shared information*

The essence of rounds is the communication that takes place among the student-lawyers and their supervising attorneys (including, of course, clinical law professors)²⁶ who comprise the law firm.²⁷ This communication is essential in most clinics because they operate as law firms, and their members must communicate about what the law firm is doing. If held with any regularity, rounds thus serve the same basic purposes that law firm meetings serve. Such meetings make communication within the law firm efficient by providing a forum where information is exchanged among the members of the firm.

Rounds, however, are not simply about efficiency. A discussion board or e-mail may arguably be more efficient for communicating a majority of the information that law clinic students and professors must have to be a team on a case. The reason that rounds happen face-to-face is, however, to focus on the *interaction*, not simply on transmission of information. Because students and their supervising

²⁵ See Antony Jay, *How to run a meeting*, HARV. BUS. REV. 43, 44-48 (Mar.-Apr. 1976). Jay wrote the article as a result of research he did for a training film he produced, "Meetings, Bloody Meetings," featuring John Cleese of Monty Python fame and Edie Falco, before she became famous starring in *The Sopranos*. In this short, entertaining article, Jay explains what purposes a meeting serves, how to conduct a meeting, and how to follow up after a meeting. It is an excellent article not only for students who are about to conduct their first meeting, but also for the rest of us who spend large amounts of time in meetings or conference calls.

²⁶ In clinic parlance, supervising attorneys include professors or staff attorneys who provide student supervision on a case or project.

²⁷ Professors Bryant and Milstein define rounds as "facilitated classroom conversations" in which students "discuss with each other their cases or projects." Bryant and Milstein, *supra* note 1, at 196. They emphasize the peer aspect of these conversations. *Id.* In learning theory terms, these student-centered conversations are distinguishable from "what Paulo Freire calls the 'banking' concept of education," Barbara J. Fleischer, *Mezirow's Theory of Transformative Learning and Lonergan's Method in Theology: Resource for Adult Theological Education*, J. OF ADULT THEOLOGICAL ED. 147, 152 (2006). It is called banking because educators "deposit . . . information into the student." *Id.* With student-centered education, students and teachers together experience learning:

Educators . . . take on a role of facilitator, fostering healthy group processes and enabling students to pursue their self-directed learning. . . . The educator enters into the process of exploration with the students, becoming a co-learner by listening to their stories and experiences and drawing out new reflections through honest questioning that leads to examining their current interpretations of experiences and potentially new meanings. The educator is a participant and partner in the work of discovering, recovering, and uncovering layers of meanings and assumptions embedded in experiences and "plays the role [of] a *provocateur*, one who challenges, stimulates, and provokes critical thinking."

Id.

attorneys gather as a group in one place only during the clinic seminar and case rounds, it is especially important to use the shared time to interact.²⁸ Colloquially, this shared time is when the group can answer the question, “What’s up?” and analyze and learn from the responses.

As noted earlier, given the number of cases in the clinic, the discussions during regular rounds may not involve in-depth discussions about any one case. Information sharing in these rounds typically occurs in the form of a presentation where students describe the basic facts and status of their cases, what has happened in the case since the group last met, the particular decision at issue, and the next steps the student expects to take in the case.²⁹ (Because these rounds involve case presentations, clinical professors might use the two terms, case presentations and rounds, interchangeably.) Often, particular issues or problems that students are facing in a case are discussed as a group. If there are significant developments in the case such as a court appearance, the student in charge may give a lengthier report.

In-depth case discussions do occur, however, in specially-set rounds. Many clinics report that students are required to do an in-depth case presentation in front of their clinic classmates. For these longer case presentations, professors may require the student presenter to share material ahead of time with the class. One clinic instructs that each case team prepare a PowerPoint presentation, fifteen to twenty minutes in length.³⁰

²⁸ Most clinics with which I am familiar hold “team meetings” or “case meetings” outside of class time to discuss a particular case. In meetings held outside of the rounds context, clinic students and their supervising attorney discuss their projects and may meet with clients. Baker Roskie, *supra* note 10.

²⁹ See seminar syllabus for Spring 2011, Interdisciplinary Environmental Clinic, *supra* note 12.

³⁰ See *id.* Environmental case rounds at the Institute for Public Representation at Georgetown Law require the presenting student to prepare before the rounds take place a short memorandum of no more than two pages, “explaining the relevant background and context for her issue, attaching relevant supporting materials.” Babcock, *supra* note 23.

The presentation proceeds as follows:

The student then presents her issue to her colleagues and leads the discussion. We use Edward de Bono’s Six Thinking Hats method for controlling discussion in our environmental rounds, but we use only 5 hats and have labeled them facts, negative, positive, creative, and emotion The discussion leader puts a hat on the table to signal what she wants from the group[.] . . .

[I]f a participant makes a different type of point the leader can either use the hat to keep the original discussion on track or the speaker puts a new hat on the table to signal they are about to say something different. [This method results in] much more structured discussions and helps the discussion leader control what happens.

Id.

Bono’s Six Hats method is a way of examining different aspects of a problem by examining each aspect separately. Janet Weinstein & Linda Morton, *Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education*, 9 CLINICAL L. REV. 835, 856 (2003). “Each aspect is represented by a color: red for emotions, white for facts, yellow for

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2. *Providing a forum for face-to-face interactions with the entire group*

Lawyers at all experience levels talk about their cases to colleagues, family, friends, and sometimes even strangers. These people serve the function of a focus group “audience” in the Aristotelian rhetorical triangle.³¹ “[E]ffective rhetoric depends not only on solid logic but also on canny knowledge of human character and emotion,” *i.e.*, on the relationship between the three points of the Aristotelian rhetorical triangle, which are speaker, arguments, and audience.”³² Aristotle assumed the audience to play an active role in the construction of a story:

Since he addressed his *Rhetoric* to the Greek city-state’s equivalent of the televangelist – the public orator – Aristotle did not make a third point that probably would have been obvious to him. In the *Politics*, he insisted on the intrinsically social nature of human beings. Taking Aristotle one step farther, we should notice that most rhetorical work takes place in the course not of one-sided oration but of two-sided conversation. What is more, the other conversationalists commonly intervene in the arguments to anticipate, confirm, or challenge where it is going. The skilled rhetorician, in her turn, checks continuously to see how the other participants are taking the story she is telling.³³

In the same way, thousands of years after Aristotle taught rhetoric, lawyers have conversations with colleagues, family, and strangers and adjust the rhetorical force of their cases based on these interactions with people who are not immersed in the case facts or wedded to the perspective of any one side.

positive, green for future, black for critique, and blue for process. His theory is that the symbolic act of donning different colored hats allows the problem solvers to explore each aspect of the problem separately, without bias or interference.” *Id.* Proponents of the Six Hats method find it helpful for avoiding default thinking: “For example, lawyers and law faculty have the tendency to immediately critique ideas with our black hats; if we first explore the emotional aspects of an issue (red hats), it is easier to separate our anger or other feelings from other components of the issue. Or, it might be best to first explore the positive aspects of the problem (yellow hats), if we are dealing with a problem that seems to be very negative. It is often good to start with the facts (white hats).” *Id.* at 857. As for the Land Use Clinic at the University of Georgia School of Law, case rounds are held about three times in a semester. “We start out with each of the students giving a formal presentation about a project they’re working on, and they also discuss what they’re learning about lawyering, working with a supervisor, and leadership. It gets a bit more informal for the [remaining] two.” Baker Roskie, *supra* note 10. The students usually prepare a PowerPoint for the first presentation. *Id.*

³¹ CHARLES TILLY, *WHY?* 73 (Princeton Univ. Press 2006).

³² *Id.* Aristotle defined rhetoric as “the faculty of discerning the possible means of persuasion in each particular case.” ARISTOTLE, *ART OF RHETORIC* xxxvi (John Henry Freese trans., Harv. Univ. Press 2000).

³³ TILLY, *supra* note 31, at 74.

For a majority of clinic students, their clinic case is their very first legal case and therefore the first time that they are responsible for managing the rhetoric of a case. Rounds thus provide the first forum where clinic students may play the public orator and gauge their classmates' responses to their cases and arguments. For example, the classmates may react to the student's analysis of the case facts by offering alternative explanations that the student might not have thought of or express doubt about the emotional appeal of the case.

Rounds similarly offer students an opportunity to gauge their audience's nonverbal reactions. As social animals, we express what we intuitively think and feel not just through words, but also through our facial expressions and gestures. Indeed, some would argue that our facial expressions betray, not simply convey, what we feel.³⁴ After all, why would Apple have added a front camera to the latest version of the iPad to enable others to view the iPad user, and why would people communicating for business reasons choose Skype or video conferencing over the telephone?

Rounds provide a face-to-face opportunity for novice professionals to observe the many reactions of their classmates to the factual, legal, social, emotional, and political dimensions of their cases. That is, to the extent that advocacy depends on how the audience reacts to the advocate's presentation, the classmates' empathy, agreement, puzzlement, or even anger may signal the strength or weaknesses of the case, and such reactions may give the advocate an opportunity to adjust the presentation. What students learn in these face-to-face interchanges is that the legal force of an argument does not alone make a case.

In addition to providing a forum to gauge the rhetorical force of cases, rounds provide a face-to-face forum for professors to gauge other reactions that are important to the dual missions of clinics – teaching and provision of legal services. In the face-to-face interactions that occur during rounds, clinic professors may get a glimpse into how students really feel about the clinic's cases and the actors involved – how comfortable students feel about their legal positions, the

³⁴ MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* 197-213 (2005) (a popular account about the human face as a mirror of human emotion and the Facial Action Coding System, which was created by Paul Ekman and Wallace Friesen to study and analyze facial expressions). According to Gladwell, Professor Ekman says that, "in a certain sense, [information on our face] is what is going on inside our mind." *Id.* at 206. *See also* WHAT THE FACE REVEALS (Paul Ekman & Erika L. Rosenberg eds., Oxford Univ. Press 2005). There are times, though, when it is important to understand that not all that you perceive may convey what you think because of circumstances. That was one of the points of Gladwell's book. *See also* STEFAN H. KRIEGER & RICHARD K. NEUMANN, *ESSENTIAL LAWYERING SKILLS* 92 (2011) ("a client's body language tells you something about the client's feelings[, but sometimes] it does not" as when a client slouches from fatigue, not from lack of interest).

progress they are making, team dynamics, their clients, and even supervision.³⁵ As we all know from experience, some interactions are more conducive to eliciting spontaneous utterances – that is, causing the speaker to “blurt out” something that she is thinking. It may be that the somewhat unpredictable nature of rounds takes down some of the guards that students normally have; and students may reveal some of their reactions that they normally would not. (By unpredictable, I mean that the presenting student cannot prepare for all of the interactions because she cannot predict with certainty the interactions that occur during rounds – for example, the kinds of questions she may get from her peers and her professor.) Moreover, students may come to a certain realization during rounds because of the reflection that some rounds compel in the student-presenter, the student-audience, and the professor-audience.

3. *Defining the collective identity of a group*

Regular meetings also serve to affirm the group’s identity and the participating individual’s sense of belonging to the group,³⁶ and clinic rounds serve to affirm the students as practicing law together with other students.³⁷ By getting a larger picture of the clinic docket, the students may be able to see a correspondingly broader picture of what the clinic is trying to accomplish for its various clients. For example, the cases in our clinic may involve different administrative agencies and different forums, but students see that there is a theme to the cases we handle: fossil fuel based energy generation hurts low-income communities and communities of color.

An important part of the collective identity is for the group to celebrate and grieve together. The clinic as a firm may experience thrills of victory and agonies of defeat, cementing the bond the class has formed with their clients, classmates, and professors.³⁸ Students’ reports on successes or losses may take the form of “war stories,” a student may relate who did what, why she thinks the outcome was or was not successful, how things could have gone differently, what the client did, what the decision maker did, and why the decision maker made the particular decision the way she did. Students may talk about what was difficult, unexpected, or exciting; and empathize with each

³⁵ See Bryant and Milstein, *supra* note 1, at n. 95 (collaboration problems can surface as an issue during rounds).

³⁶ Jay, *supra* note 25, at 46; see also Bryant and Milstein, *supra* note 1, at 231 (“Regularly scheduled rounds develop interactive patterns that are different from the normal classroom pattern and build a sense of community in the shared enterprise that allows students to depend on the group”).

³⁷ See generally Bryant and Milstein, *supra* note 1.

³⁸ *Id.* at 217.

other. Sharing these stories and outcomes as a group unifies the students as a law firm.

4. *Providing a forum for meaningful participation in the organization's decision making to increase cohesion in effectuating the decision*

Regular meetings also provide a place for the group to act as a group, including producing “better ideas, plans, and decisions” as a result of collaboration.³⁹ Clinic rounds similarly provide a place for student lawyers to practice legal reasoning and decision making with the input of fellow students and their teachers who can provide expertise.⁴⁰ For example, rounds often touch on case planning – such as analysis of the client’s goals, identification of the decision makers who affect the clients, the different alternatives that clients have to achieving their goals, and the consequences that follow from certain decisions. Rounds thus not only enrich students’ experience at the clinic, but also provide them with an opportunity to participate in decision making on cases for which they are not directly responsible. “The original idea that one person might have come up with singly is tested, amplified, refined, and shaped by argument and discussion.”⁴¹ As another example, it is not unusual for attorneys to provide useful observations and valuable input on cases they are not supervising. Even when the clinic staff have regular meetings, it might be natural for the professors to think of ideas or questions during case rounds, where they are then shared with the group.

The process of collaboration itself – and not simply the product that results from the effort – also provides lessons for clinic students for whom collaboration is a relatively new aspect of law school education.⁴² In the Spring 2011 semester at the clinic, for example, several students chose to do a presentation on collaboration, discussing the elements of successful collaboration (such as flexibility and communication) and the reasons for collaborating (such as improvements in the work product).⁴³ With collaboration increasingly being recognized as

³⁹ Jay, *supra* note 25, at 45.

⁴⁰ Bryant and Milstein, *supra* note 1, at 200-03.

⁴¹ Jay, *supra* note 25, at 45.

⁴² Of course, collaboration among law students is not entirely novel. Some professors require discussions among students in class, and many students participate in study groups. Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk About Law*, 54 J. LEGAL EDUC. 570, 575 (2004).

⁴³ Interestingly, the reasons for collaboration and the conditions that make collaboration possible are reflected in human evolutionary history. See Michael Tomasello, *Human Culture in Evolutionary Perspective*, in *ADVANCES IN CULTURE AND PSYCHOLOGY* 39, 40 (M. Gelfand ed., Oxford Univ. Press 2011) (“changes in human temperament – toward greater tolerance and social comfort seeking, among other things – were prerequisite for

an important lawyering skill,⁴⁴ providing opportunities to practice this skill is an important part of rounds.

5. *Providing a forum to develop group knowledge and reflection*

Beyond communicating the basic facts of a clinic case, rounds broaden the students' experience, and provide a teaching opportunity for skills training and teaching substance and procedure. Rounds expose students to cases beyond the ones they are handling that often involve different legal and factual issues, clients, and procedural postures.⁴⁵

In clinics that handle litigation or engage in long-term policy work, rounds provide students with the opportunity to see the full potential progression of their cases through other cases, even though in a given semester, the students may not be able to see how their own cases play out. They may be able to infer from the progressions of other cases what could happen in their cases in the future. In clinics that handle cases that begin and end within a semester, students may

humans beginning down their ultracooperative pathway," and, "in this new social context, these tolerant and prosocial individuals would be more likely to be doing the kinds of things together in which cognitive skills for forming joint goals, joint attention, cooperative communication, and social learning and teaching would be especially beneficial — such things as hunting animals together, gathering embedded plants together, and so forth").

⁴⁴ Among the articulations that include collaboration as an important aspect of entry-level competence for lawyers is that of the Law Society of England and Wales. See Law Society of England and Wales, *A New Framework for Work Based Learning: A Consultation Paper 14* (Aug. 2006), earlier version cited in BEST PRACTICES FOR LEGAL EDUCATION 54 (Roy Stuckey et al. eds., 2007). For articles treating collaboration as an essential lawyering skill, see Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation:" *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957 (1999).

As to humans as species (not just as lawyers), scientists go one step further in characterizing the importance of collaboration. "Biologists have little hesitation in linking humans' success to their sociality." Nicholas Wade, *Supremacy of Social Network*, N.Y. Times, Mar. 15, 2011, at D4:

"Humans are not special because of their big brains," says Kim Hill, a social anthropologist at Arizona State University. "That's not the reason we can build rocket ships — no individual can. We have rockets because 10,000 individuals cooperate in producing the information."

The two principal traits that underlie the human evolutionary success, in Dr. Hill's view, are the unusual ability of nonrelatives to cooperate . . . and social learning, the ability to copy and learn from what others are doing.

. . .
A system of cooperative bands "provides the kind of social infrastructure that can really get things going," [Michael Tomasello, a development psychologist at the Max Planck Institute for Evolutionary Anthropology in Germany] said.

. . .
One of [the skills that very young children possess] is . . . shared intentionality, the ability to form a plan with others for accomplishing a joint endeavor.

Id.; see also MICHAEL TOMASELLO, *WHY WE COOPERATE* (MIT Press 2009).

⁴⁵ Bryant and Milstein, *supra* note 1, at 201.

see patterns in the different cases that say something about our legal system and society.⁴⁶

Case rounds also provide an opportunity to teach substantive law in context. In our clinic, where the docket includes cases that are in both administrative and judicial forums, case rounds provide an opportunity to teach administrative law and civil procedure. Because many students are not intensely exposed to statutory and regulatory schemes by the time they arrive at the clinic, case rounds can expand the students' knowledge and, in the context of real cases, provide opportunity to test and apply the lessons students learn in other courses.⁴⁷

Learning about rulemaking in an administrative law class provides the necessary background knowledge, but drafting comments on a proposed rule or challenging a final rule in court brings administrative law to life not only to the students working on the project but to other students in the clinic hearing about it. For example, students may learn firsthand how challenging it is for a grassroots group to prepare comments on a highly technical environmental rule and how to obtain resources to overcome such challenges.⁴⁸ Reading rules about the requirements of preparing a summons and complaint, too, is one thing; hearing about the realities of serving the summons and complaint on a corporate defendant whose officer pretended not to be in the office (as occurred in one of our cases) brings these rules to life.

In addition to providing an opportunity to broaden and deepen substantive and procedural knowledge, rounds provide an opportunity to learn professional reasoning, judgment, and values, including the importance of self-reflection, which Professors Bryant and Milstein discuss in depth.⁴⁹ Students, for example, learn to look for trigger points for potential problems and learn ways of avoiding problems and preparing for several different potential scenarios that may play out in their cases.⁵⁰

⁴⁶ *Id.* at 251.

⁴⁷ See Doug Rohrer & Harold Pashler, *Increasing Retention Without Increasing Study Time*, 16 *CURRENT DIRECTIONS IN PSYCHOL. SCI.* 183 (2007). This article addresses the phenomenon that many students forget much of what they learn. The authors argue that the remedy is not to study more. Instead, retention is much higher if students are exposed to the same content over a series of shorter sessions. This method of spacing and repeating is well suited to clinical work where students are re-exposed to concepts they learned in substantive courses.

⁴⁸ As a former student noted, "the highly technical information involved in the Clinic's environmental cases is at first intimidating." Notes from a student (Nov. 7, 2011) (on file with author).

⁴⁹ Bryant and Milstein, *supra* note 1, at 199, 206-07. Rounds provide opportunities to learn multiple professional skills and values such as "parallel universe thinking," where students consider an issue from varied perspectives.

⁵⁰ Y. Xiao, P. Milgram & D.J. Doyle, *Medical Rounds: A Medium for Training and*

II. DESIGNING CASE ROUNDS TO ACHIEVE MULTIPLE LEARNING GOALS

While rounds have become an essential part of clinic instruction for all of the educational opportunities they offer, there are inherent challenges.⁵¹ Some of the challenges include engaging the quiet student, as well as students who are not assigned to the case that is being discussed. Another challenge is ensuring that professors provide enough structure so that these rounds, which tend to treat clinical problems as they arise, maximize their educational potential. Clinical professors are particularly interested in ensuring a high incidence of teachable moments, given the long list of skills that must be taught in a semester to develop “entry-level lawyer” competence in students. Finally, clinical professors face the challenge of allocating class time between skills and substantive law training, on the one hand, and rounds, on the other: there are so many substantive subject areas and skills that students must learn that case rounds, despite the educational value that the professors may recognize in them, may be neglected.

Case rounds that simultaneously combine several functions – such as sharing information about the clinic docket and skills training – and use designs such as role plays can overcome some of these challenges. These multipurpose rounds can provide a safe forum for students to learn and practice essential lawyering skills while delivering as much educational value as traditional rounds.

Before I discuss the challenges of rounds in further detail, which I do in Part III below, I describe in this part a type of case rounds we hold in our clinic. We use a role play in which a student presenter assumes the role of an opponent in her case, with her classmates assuming the role that the student or her client normally plays in the real case. The presenter’s classmates (sometimes referred to in this article as the “audience”) find out the facts of the presenter’s case mostly through the presenter’s answers to questions.

These rounds simultaneously provide information about case status, teach skills, and provide the learning opportunities that are unique to rounds. These structured rounds that are designed to serve

Studying Real-Life Decision Making, 39th Proc. of Hum. Factors and Ergonomics Soc’y Ann. Meeting, 1330 (1995). Although this observation comes from the medical field, law clinic rounds similarly provide an opportunity to transfer these professional skills of risk avoidance and management.

⁵¹ “Rounds are difficult,” note Professors Bryant and Milstein. Bryant and Milstein, *supra* note 1, at 200. They identify various difficulties, including problems that occur because some students become frustrated, believing that there are *the* right answers from the right experts (teachers); and the group dynamics in student-centered discussions could be challenging to manage. *Id.* at 248-49.

multiple functions can also enliven the classroom and bring enormous satisfaction to the clinic professors and the students. I will first discuss the design and then provide the instructions that I give to the students. In Part III, I discuss how these rounds have worked.

A. *Designing Structured Rounds with Learning Goals and Student Needs in Mind*

A necessary starting point for determining the kinds of rounds to hold is to determine the professor's ultimate goals for the rounds. It may also be necessary to do an assessment of the students' skills to determine the students' needs. The students' needs are important to consider in implementing the lessons because adult students may not engage fully if they do not believe the lessons to be in accord with their own assessment of their needs.⁵² The professor's goals and the students' needs may at times coincide, but at times may not.

For our clinic's role play rounds, I had in mind a list of goals based on an assessment of my students' needs and a set of strategies to achieve my teaching goals.

1. *Students must understand the nature of persuasion and storytelling.*

Goal: Competent entry-level lawyers must understand the nature of persuasion and storytelling.⁵³ Beginning clinic students may not have begun to think about the nature of persuasion and storytelling. As already discussed, for a majority of clinic students, rounds provide one of the first opportunities in law school to experiment with storytelling and to adjust the rhetorical angle depending on the audience's reactions.

Potential Strategies for Achieving the Goal: Provide reading and explicit instructions asking students to think about storytelling modes.⁵⁴ Make time to discuss and reflect on story lines that worked and why in a debriefing session after students have a chance to tell their stories.⁵⁵

⁵² See *infra* note 84.

⁵³ See MICHAEL TIGAR, PERSUASION: THE LITIGATOR'S ART (American Bar Ass'n 1999).

⁵⁴ Instructors can consider assigning material from KRIEGER & NEUMANN, *supra* note 34, at 139-225 (persuasive fact analysis); CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS (Alex J. Hurder et al. eds. 1997) 225-231 (storytelling); and DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS 48-50 (2002) (case theory).

⁵⁵ "Debriefing is the process of reviewing the student's performance (the process in which the student engaged) and the work product produced (the task or end result) and providing feedback to the student. It is the process of helping the learner to reflect on her simulation performance, draw some principles from it, and help her prepare for the next

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Instructors can also ask students to identify an occasion when someone else was successful or unsuccessful in persuading them and describe why. Students are typically able to draw on their experiences to identify the critical elements of persuasion, such as the speaker's credibility, good character, expertise, confidence in the way opinions are expressed, and the organization of the presentation.⁵⁶

2. *Students must understand the other party's arguments and motivations and prepare an effective response.*

Goal: Competent entry-level lawyers must understand the other parties' motivations, goals, perspectives on facts, and legal analysis. In other words, effective lawyering involves understanding the other side's story, and responding to it effectively.⁵⁷ Without this preparation, lawyers can fail to effectively anticipate and deflect opposing arguments, engage in preparatory factual and legal research, and apprehend the true terrain of the client's battle. This goal is particularly important to achieve in clinics that attract true believers of the clinic's mission. Students who are true believers, while often making empathetic and passionate advocates, tend to see only one side of the argument and see the world as black and white. In some ways, the true believers' shortcomings are related to the problem of unrestrained use of the persuasion mode and cognitive rigidity discussed in the next part of the article.

Beginning clinic students with little advocacy experience may not see this need for counter-analysis. There are surprisingly very few beginning clinic students, if indeed any at all, who have seen advocacy and persuasion in the clinic as an exercise that involves looking at both sides of arguments. While students must engage in counter-analysis in their first-year legal writing course, they need more practice.⁵⁸

time." Paul S. Ferber, *Adult Learning Theory and Simulations – Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417, 456 (2002).

⁵⁶ In our class, we often refer to a "good person speaking well," referring to Aristotle's teaching on rhetoric, and students are exposed to examples of such persuasion. In one class, students identified why their colleague's presentation was good – that the presenter was a "good person" because, in response to questions from her classmates who were playing the role of a community member impacted by potential lead pollution, she expressed regret for not having enough information by saying, "Unfortunately, we don't have enough data," which made the "community members" feel as though she was trying her best to provide the information that they sought.

⁵⁷ See KRIEGER & NEUMANN, *supra* note 34, at 229 ("the process of responding to your adversary's case usually requires an assessment of your adversary's story").

⁵⁸ The frequency with which students identify their improvement in counter-analysis after the opponents case rounds (*see infra* note 92 and accompanying text) confirms my belief that showing students how to do counter-analysis in legal writing is insufficient for that skill to carry over to real cases. *See also supra*, note 47 concerning the importance of spaced repetition in learning.

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Potential Strategies for Achieving the Goal: Have the students assume the role of the opponent or some other party involved in the case.⁵⁹ Students should reflect on the experience to see how they saw the case differently after the presentation.⁶⁰

3. *The presentation should be logically organized and contain critical and relevant information.*

Goal: Lawyers are called on to make presentations of all kinds, most of the time to people who know less about the case than they do. These presentations include discussing work product with senior lawyers, clients, and other decision makers such as judges. Law students do not have many opportunities to make presentations, unless they are involved in moot court teams, student governance, and other extra-curricular activities, or have prior job experience that required organization and presentation skills. Poor organization or delivery ruins even the best story, as we all know.

Organization is one area where students' skill levels can be widely varying. Moreover, a student's organizational skill is not necessarily generalized: that is, a student who can write well-organized memoranda does not necessarily give organized oral presentations.

In addition to organization, competent lawyers must pay attention to the key elements and the potential trajectory of their case. The presentation should thus ideally convey accurate information about the client, the client's goals, the procedural posture of the case, legal and factual issues (both helpful and adverse to the case), and next steps. In other words, students need to learn how to talk about the law⁶¹ and learn presentation skills geared toward an audience who is

⁵⁹ Another set of goals can be found at Advocacy Teaching Blogspot, as developed by Professor Wes Porter for coaching mock trial participants:

Like all other aspects of our skills training, we must communicate our expectations to our students and provide modeling and critical feedback about their performance . . .

First, review: we expect students to spend their own time with a new case file reading, re-reading, structuring, dissecting, analyzing and 'brainstorming' case theories and potential themes before their instructors and teammates are involved.

Second, report: we expect our students to communicate independently their hard work with the file and their own persuasive ideas (the good, bad and ugly) about their case presentation.

Third, review again: we expect student to return to the file with different perspectives and ideas after these initial meetings.

Initial Case Analysis for Trial Teams, Advocacy Teaching Blog (Sept. 22, 2010), <http://advocacyteaching.blogspot.com/2010/09/initial-case-analysis-for-trial-teams.html> (last visited Aug. 26, 2011) (emphasis deleted).

⁶⁰ See Ferber, *supra* note 55, at 439-41, for a discussion of role design and assignment of roles in simulations.

⁶¹ See Sarah E. Ricks, *supra* note 42, at 570 ("Talking confidently about law is an important skill in legal practice, [and] yet law teachers rarely devote much attention to devel-

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not as familiar with the case.⁶²

As Professors Krieger and Neumann explain, there are at least three models of organizing facts: by legal elements, chronology, or through a story mode.⁶³ Students should begin to experiment with different modes of storytelling to learn which works best for their stories.

Another important aspect of giving a presentation that novices neglect is the importance of practicing a presentation to ensure that the information that must be delivered can be delivered within the allotted time. Many of our clinic students, in their first presentations, underestimate the amount of time it takes to present the information they want to include.

Potential Strategies for Achieving the Goal: Provide explicit instructions that set forth the professor's expectation about organization and content. The professor may require students to read about the three models of organizing facts. Mostly, however, providing students with an opportunity to give presentations and to reflect and assess how they could be improved should lead to developments in both the content and delivery of the presentations.

4. *The audience should be fully engaged.*

Goal: The instructor should create a forum in which the audience is comfortable participating.⁶⁴ Ideally, the audience should participate by paying attention to the content of the presentation, actively thinking about the case, and contributing to identification of legal, factual, and ethical issues that the presenter must consider to represent the client effectively.

Potential Strategies for Achieving the Goal: Rounds should be formally structured as a session in which relatively short answers follow the listeners' questions. Short answers from the presenter are critical because overly long answers often fail to engage the other participants.⁶⁵

oping students' oral skills when fluency doesn't come to them naturally.").

⁶² Clinical professors appear to value case rounds for this very reason – that they provide an opportunity to students to talk about their cases to others who do not know the details of the case. See Babcock, *supra* note 23; Baker Roskie, *supra* note 10. I certainly do.

⁶³ KRIEGER & NEUMANN, *supra* note 34, at 140-86.

⁶⁴ STEPHEN D. BROOKFIELD, UNDERSTANDING AND FACILITATING ADULT LEARNING 12-13 (Jossey-Bass Pubs. 1986) (“[a] fundamental feature of effective facilitation [in the classroom of adult learners] is to make participants feel that they are valued as separate, unique individuals deserving of respect”). See also generally Ricks, *supra* note 40 (suggesting numerous ways to engage students such as contextualizing off-topic student responses, allowing students to collaborate on answers, using small-group discussions that precede class discussions, and giving students advance notice of when they are required to speak in class).

⁶⁵ At the beginning, the question-and-answer structure was geared almost solely to mo-

5. *The audience should learn the art of asking good questions, and the presenter should pay attention to what the questions reveal about the presentation.*

Goal: “One of the marks of an effective person – in law and in almost any part of life – is the ability to ask the right question in the most productive way.”⁶⁶ Good questions bring to the surface unexamined assumptions; introduce the potential for different interpretations of facts and inherent ambiguities in certain facts; and highlight aspects of a problem that may have been neglected. How many times have we paused to say, “That is a good question,” when a colleague’s query challenged the way we had been thinking about our cases from our particular, and sometimes limited, perspectives, or when we had not considered a critical issue? Without good questions, it is difficult to examine the assumptions, perspectives, beliefs, and the research and analysis underlying the presenter’s case analysis.

Students listening to presentations should ideally ask these good questions, assess the answers from the presenter to determine whether they obtained the information they sought through their questions, and follow up with further questions if the answer did not provide the information. Without seeking these details, students who are not involved in a case cannot participate meaningfully in discussions about the case. Without adequate comprehension of their classmates’ cases, students can lose critical learning opportunities that rounds offer – such as learning to generalize from particular cases and learning civil procedure from observing multiple cases in different stages.

Despite the critical function of questions to student learning, I have observed that audience participation in traditional rounds is generally limited to a few questions.⁶⁷ In many cases, not everyone participates. Some students are afraid to ask questions. Yet when these reluctant interrogators ask questions, they are nearly always good.⁶⁸

tivate student participation and engagement, but as we professors conducted these sessions, we learned that the short answers compel student enquirers (also referred to in this article as the audience) to formulate better questions to elicit facts as the students were not receiving the information they thought they needed from the short answers. See discussion in the next paragraph of the text.

⁶⁶ KRIEGER & NEUMANN, *supra* note 57, at 51 (emphasis deleted).

⁶⁷ Feedback from one of our clinic students included the following observations:

“Hard to think of questions to ask.”

“Students should ask more questions.”

Anonymous feedback from the students of Fall 2011 (Aug. 23, 2011) (on file with author).

⁶⁸ My theory on why these reluctant speakers ask good questions is rooted in what makes them reluctant to participate to begin with. They are generally thoughtful students who do not value their own participation over others’, and they wait to see if other students will ask the questions they have in mind. They may also be students who are not as confident in asking the basic questions because they think that the questions are too basic.

Students thus need to be encouraged to ask questions and have more opportunities to practice the art of asking questions in a supervised setting.

In addition to learning to ask questions, learning to *listen* to questions is also a fundamental entry-level skill for lawyers. Questions reveal the audience's knowledge level, gaps in knowledge, assumptions, and prejudices. The presenter thus benefits by gaining insight into the narrative power of his story, gaps in her own knowledge and assumptions about the case, and how his belief in his case may have obscured important ambiguities that are amenable to alternate interpretations that do not necessarily favor her case. In oral argument, for example, learning to listen to the judge's question and assessing the judge's thinking are critical skills for an advocate. The students in the audience, too, must learn to hear both the questions and the answers to be able to ask good follow up questions and not duplicate questions. As basic as these skills are, experienced lawyers who remember their first deposition know how difficult it is to listen to both the questions and answers.

Potential Strategies for Achieving the Goal: Provide modeling. Provide timely feedback on the students' questions so that they can learn why certain questions are good at certain times.

B. Instructions to the Class for the Case Presentation

With these goals in mind, I designed a role play, where the presenter must adopt the role of one of the parties in the case other than that of the client.⁶⁹ Explicit, advance instructions to the students, both the presenters and the audience, spell out the instructor's expectations for the rounds, including her expectations about preparation and her learning goals.⁷⁰ The following instructions are annotated for the purpose of this article both with footnotes and texts in brackets. The in-

Once encouraged – by statements from the instructor, for example, that there are no dumb questions – they begin to value basic questions.

⁶⁹ The very first time our clinic tried this role play, we professors provided oral instructions and modeled the presentation. Even with modeling, a few students had questions about how they should structure their presentations, and thus this instruction was born. At the Institute for Public Representation at Georgetown Law, graduate fellows do the first presentations to provide a model. Written comments from Professor Hope Babcock (Aug. 27, 2011) (on file with author).

⁷⁰ Explicit instructions can encourage students to “monitor, evaluate, and regulate their own learning strategies.” Craig Deed, *Strategic Questions: A Means of Building Metacognitive Language*, 20 INT'L J. OF TEACHING AND LEARNING IN HIGHER ED. 481-82 (2009). These activities are attributes of metacognition. *Id.* Metacognition has two aspects – knowledge of cognition, *i.e.*, “strategies that can be used for different tasks, knowledge of which strategies are effective under certain conditions, and knowledge about oneself”; and regulation of cognition, *i.e.*, predicting, planning, monitoring, and evaluating one's learning. *Id.*

structions were also modified as I wrote this article and will continue to be revised to suit my classroom needs.

Instructions

You will do many presentations during the course of the semester.⁷¹ In this next presentation, you will assume the role of one of your opponents. For those of you with more than one case assignment, your professor will tell you which case to cover in this presentation. Your professor will also assign the presenter's role, which could be the opponent's president, lawyer, or community liaison.⁷² The presenter's classmates will play the role of the community members living near the source of pollution that the case is targeting.⁷³ The community can be represented by lawyers.

Goals for the Presenter:

To think about the case from the other side's point of view; to learn how to make presentations; to experience answering questions from the adverse party to learn how to do it to protect and enhance your client's interests.

Goals for the Rest of the Class:

To experiment with styles of questioning and to learn how to ask questions, especially follow-up questions, that get at the information you want. [Note to the reader: I do not identify in the instruction all of the goals I have for the class because I do not want the students to focus too much on the many purposes of the exercise. I do not want them to analyze the exercise too critically because many of the benefits, I believe, come from the reflections that occur during and after the exercise. I also do not state that one of the goals is classroom engagement. I expect increased engagement to result from the presentations.]

The Presenter's Preparation for the In-Class Presentation: You must decide ahead of time what your story is. A story is based on morality, like Aesop's Fables. Typically, a company's story is that it makes a useful product, and that it has a responsibility to shareholders and

⁷¹ The presentations our students have done by this point cover important aspects of their cases, much like those that are done at the Interdisciplinary Environmental Clinic. See *supra* note 12.

⁷² The professors assign the role that is most conducive to storytelling or to factual and legal presentations that classmates can probe with questions. Sometimes, the role may be that of the agency, rather than the parties, that is the decision maker.

⁷³ Normally, each student, rather than the entire team of students handling a given case, is required to do a presentation. The main disadvantage of team presentations that we have discovered is that shy students tend to retreat to the background. Where there are multiple teammates, the professors either assign an issue or a different role to each of the students.

consumers to make the product in the most cost effective way possible. If a community group is alleging that the company has violated an environmental requirement, we have seen that a typical company will argue that it did its best to determine the law, followed the regulation's requirements as the company could best determine, and no one until now has told the company that it was out of compliance; such a company will even argue that it consulted with regulators, and it did what the regulators allowed. (Consult the materials on persuasive facts and case theory. Your case theory or story should fit the client's goals and the evidence, both good and bad for your side.)

[Notes to the reader: In addition to requiring students to read material dealing with storytelling and persuasive facts,⁷⁴ I also require students to watch a videotaped interview by Amy Goodman of Democracy Now of Tim DeChristopher, a student who successfully bid on 22,000 acres of public land to save it from drilling,⁷⁵ "Posing as a bidder, Utah student disrupts government auction of 150,000 acres of wilderness for oil and gas drilling."⁷⁶ Amy Goodman is an excellent interviewer, and Tim DeChristopher is a good advocate who knows how to tell a persuasive and sympathetic story.⁷⁷]

You should decide what kind of information is good for your story and how much to disclose. Within the rules of this class exercise (which is different from the real world), assume that your presentation is under penalty of perjury. You cannot lie outright. But you may omit information from your presentation, so long as the omission does not make you a perjurer. An example is as follows:

Q: What are the air pollutants that come out of the foundry process?

A: Primarily particulate matter.

(The answer is incomplete, but it is not untrue.)

You should also think about the presentation tools you will use. What will be the most effective tool to communicate your story? Should you use a handout or PowerPoint presentation, or write on the board? Your professors encourage you to use visual aids such as a picture of the product the company produces, a map of the facility and its sur-

⁷⁴ See KRIEGER & NEUMANN, *supra* note 57.

⁷⁵ United States v. DeChristopher, No. 2:09-CR-183, 2009 WL 3837208 (D. Utah Nov. 16, 2009). DeChristopher was prosecuted for violations of the Federal Onshore Oil and Gas Leasing Reform Act and for providing false statement.

⁷⁶ DEMOCRACY NOW!, http://www.democracynow.org/2008/12/22/posing_as_a_bidder_utah_student (last visited Aug. 26, 2011).

⁷⁷ In July of 2011, Tim DeChristopher was sentenced to two years in prison and fined \$10,000 for feloniously making a false statement and violating federal oil and gas leasing laws. See *Utah: Man Gets Jail for Fake Bids at Energy Auction*, N.Y. TIMES, July 27, 2011, at A15.

rounding areas, and “exhibits” demonstrating the company’s good works.

During the Presentation:

The presentation should proceed as follows:

1. *Your professors will give a brief introduction of the case that the presentation is about. The professors may provide information about the actors, the jurisdiction in which the story is unfolding, the procedural posture of the case, who the audience is comprised of, and perhaps even the clinic client’s goals. Your professor sets this stage so that you can remain in role.*
2. *The presenting student will give a very short introduction, based on the “story” or case theory. In this introduction, you should also tell your audience what the clinic’s client is complaining about. Your introduction may sound like this: “We are a family-owned steel foundry business that has been in this community of West Berkeley for generations. Manufacturing jobs are disappearing from the United States, contributing to high unemployment rates. We provide jobs to over a hundred people in the community with health benefits. We make important products ranging from parts for print presses to bridge components. Our steel parts are made from the highest quality materials so that bridges do not collapse as they do in other countries. Recently, West Berkeley United filed a complaint in federal court alleging that we are violating the Clean Air Act.”*
3. *Students asking questions should think about what they want to find out about the facility (since they live nearby). Make sure to ask questions that follow up on the answers. Assess whether you have gotten the information you want or at least have exhausted the line of inquiry before moving to a different subject area. Students who are in the audience should initially start with general questions about the company, where it is, what it does, how it impacts the community, what the manufacturing process is, and what it can do to make things better for the community etc.⁷⁸*
4. *The presenting student should generally answer the questions in two to three sentences.*
5. *Expect your professors to interrupt the presentations to refine and refocus the questions from the audience. When your professors interrupt, it is not because you are doing anything wrong. It is to make sure that we make use of teachable*

⁷⁸ Before doing the opponents case rounds, our clinic professors do not provide any explicit instruction to students on interrogation, interview, or deposition techniques.

moments.

6. *Have fun.*⁷⁹

III. ASSESSMENT OF THE MULTIPURPOSE, ROLE PLAY ROUNDS

While rounds have become an essential part of clinic instruction, professors or instructors in both legal and medical fields find conducting successful rounds challenging. The multipurpose rounds described in the previous part of this article simultaneously provide the learning opportunities that are unique to rounds and teach other skills that rounds do not typically teach. Structured rounds that are designed to serve multiple functions can also enliven the classroom and bring enormous satisfaction to both clinic professors and students. Below I discuss how the structured rounds described in the previous section meet some of these challenges.⁸⁰

A. *Students' Regard for the Audience in Case Rounds*

One of the most common challenges for most beginning clinic students with case presentations is assessing how much the audience knows about their cases and molding their presentations to provide the appropriate amount of information to suit the purpose of the presentation. In fact, even more basic than that, most students do not have sufficient experience with presentations to regard matters of audience and purpose as important considerations for shaping their presentations. It is my experience that, no matter how many times the instructor may remind the presenters that the audience does not know the details of the case as intimately as do the presenters, the presentation assumes facts “not yet in evidence.”⁸¹

⁷⁹ Professors who try this kind of role play in case rounds are encouraged to contact me. I would like to hear about what worked and what did not.

⁸⁰ My assessment of whether and how students have achieved the learning goals I have set for them for the opponents case rounds did not follow any quantitative empirical research protocols. Rather, the assessment is based on discussions with and anonymous feedback from students as well as on my professional judgment of their learning. Quantitative methods could result in eliminating bias in the students' responses that are made to please their professor and thus permit a more accurate assessment. Professional judgment, however, should still be considered a valuable tool for judging whether students are more engaged or have made improvements in questioning skills. After all, senior lawyers typically use their professional judgment, not quantitative methods, to gauge junior lawyers' performance.

⁸¹ In this aspect student oral presentations are not different from some of the more rudimentary legal memoranda that students sometimes write. In legal writing, a writing expert has defined instances in which the writer inadequately frames an issue as those that require “the reader to know everything about the case before it can be truly comprehended, and [are] therefore easy to frame but hard to understand.” Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 SCRIBES J. LEGAL WRITING 1,

Another complicating factor, which I earlier discussed, is that when presenters do not provide background information for their cases, most of their classmates rarely seek the information they need to understand the presentation, evaluate their classmates' claims about and assessments of the case, and ask questions about the case that might lead the presenter to make a different evaluation. Most disturbingly, it is not uncommon for the students in the audience to refrain from seeking information about the most basic aspects of the case being presented: the identity of client, the client's goals, the forum in which the case is pending, and the procedural posture of the case. The students in the audience quite often assume that they must be missing something rather than assuming that the information has not been provided to them. Students also tend not to ask the basic questions because they assume that, had they paid closer attention to the course materials – such as written case summaries that are provided at the beginning of the semester in some clinics – they would know more. These students are therefore reluctant to show their assumed lack of knowledge.⁸²

The case presentation method I described overcomes – and in some ways, avoids – some of these challenges. First, the instructor's introduction of the case at the outset, which includes a summary of the most basic facts, models what should be considered as the most basic information for introducing a case.

Second, students are forced to ask questions. When students do not ask questions, the presentation quite literally comes to a standstill. This disruption appears to make students uncomfortable and compels them to ask questions simply to have the presentations continue. Forcing students to ask questions to seek information also prevents students from “feeling dumb” because students are required to ask basic questions and thus asking such questions does not imply that they do not know information that they already should.⁸³

Still, even with the opportunity that the question and answer format provides for discovering information, many students have commented that reading a written case summary ahead of the presentation would have been helpful.⁸⁴

3 (1994-95).

⁸² When basic facts are revealed much later in the presentation than I think they should have been, I often ask my students why they did not ask the questions to get at those facts. In these conversations, my students have revealed these reasons as the causes of their silence.

⁸³ This subject is explored in more detail in section D below.

⁸⁴ For example, students commented that a meeting preceding the presentation and more baseline information might have been helpful. *See* anonymous student feedback, *supra* note 67. The choice of how much information to provide, however, is a difficult one

B. Students' Engagement and Motivation to Participate

With traditional case presentations, where the presenter mostly controls the content and flow of the class, students are somewhat motivated to participate. In our clinic, for example, students often identify as their personal learning goals for the class that they want to become familiar with different environmental statutes and see how such statutes are enforced as well as how policies are made. Students are therefore theoretically motivated to hear about their classmates' cases and learn more about them.

Despite the meaningfulness of case rounds to students, however, student participation can be spotty in these traditional rounds. Factors that influence the quality of student participation in traditional rounds include how interesting the case discussion is to students (and therefore how meaningful the discussion is to their learning), how well the presentation is made,⁸⁵ how quickly students pick up information from the presentations – which in turn may depend on how clear the presentations are – how quickly the students absorb and process the information in the presentation, and, frankly, how they are feeling at that moment.⁸⁶ The impact of the quality of the presentation on stu-

for professors facilitating the question and answer format.

It might also be helpful for discussions in subsequent case reviews to name the case with something catchy so that the students that are not working on the case can better recall the case facts. For example, a case in which a group of residents living near a pulp mill is suing the Environmental Protection Agency for its failure to conduct a timely review of rules designed to minimize air pollution from such mills might be labeled, "Delayed Pulp Mill Rules." University of York professors who teach Problem Based Learning talked about the convenience of naming the problem at the Sixth Global Alliance for Justice Education Worldwide Conference in Valencia, Spain (July 2011).

⁸⁵ As one student noted, "Overall, I thought that the [opponents rounds] worked well. How well they worked depended mostly on the preparation of the individual presenters." Anonymous feedback from a student of Fall 2011 (Aug. 23, 2011) (on file with author). Another student remarked, "I enjoyed this week's case rounds because they focused on particular issues and the discussion was pointed." Anonymous feedback from a student of Fall 2010 (Oct. 11, 2010) (on file with author).

⁸⁶ In learning theory terms, lack of participation can be explained this way:

The voluntary nature of participation by adult learners also means that such participation can easily be withdrawn if learners feel that the activity does not meet their needs, does not make any particular sense, or is conducted at a level that is incomprehensible to them.

BROOKFIELD, *supra* note 64, at 11-12.

Some anonymous comments from our students illustrate some of the reasons students may have for not participating, including not being confident about what is going on:

"Case [presentations] are going well – I'm glad that I'm finally starting to recognize/remember the key issues because this makes it easier to follow and ask educated questions."

"It would have been useful to have had a meeting with our team & professor [before the presentation about the presentation itself]."

"[T]he discussion seemed slightly premature [without] case summaries done ahead of time."

dent participation is not trivial. We have a short attention span for less than captivating material, and it can be challenging to keep the material relevant to the students not handling the case, especially in clinics that handle highly technical matters such as environmental law.⁸⁷ Moreover, students listening to presentations do not have the same motivation as the presenter to know the details of the case, and the listeners can fail to think critically or ask critical questions about the material being presented.⁸⁸

With structure that provides listeners with an active role equal to that of the presenter, the quality of the discussion has improved dramatically in our case rounds. In contrast to traditional presentations where the onus is on the presenter to keep the class going, the structure of questions and short answers shifts the burden of continuing the rounds to the listeners. When the presenter stops talking, the students listening to the presentation are motivated to consider what they know about the case, what they do not know, and what they need to know. Their thought process in these moments is almost palpable.⁸⁹

The quality of the student participation in these sessions also increases when professors model through demonstrations what they ex-

Comments from students (Oct. 11, 2010) and (Aug. 23, 2011) (on file with author).

⁸⁷ If you heard terms such as “distributed generation,” “nont attainment new source review,” and “synthetic minor permitting,” you might have a similar reaction. *See also supra* note 48.

⁸⁸ Of course, I do not mean to imply that all traditional rounds suffer from this problem. “The memos that students prepare [at the Georgetown clinic] pose specific questions the student wants the audience to answer. This also helps structure the discussion.” Babcock, *supra* note 69. But as she notes, “often the student presenter asks more questions than the student listeners.” *Id.*

⁸⁹ Transformative learning theorists call these moments “disorienting dilemmas.” They are a “catalyst for examining an unquestioned assumption.” Fleischer, *supra* note 27, at 151. “The disorientation then evokes self-examination accompanied by emotions,” including surprise, anger, or fear, or other “emotional correlates of the initiating dilemma.” *Id.* Or, as Professor Brookfield explains,

[T]he most significant learning we undergo as adults results from some external event or stimulus that causes us to engage in an anxiety-producing and uncomfortable reassessment of aspects of our personal, occupational, and recreational lives. This external stimulus may be a calamitous event, such as being fired, experiencing the death of a parent, sibling, or spouse, going to war, or coping with the divorce. The learning in which we are forced to engage as a result of these events may be unsought and may have many painful aspects. Nonetheless, we may regard such learning as highly significant, precisely because it caused us to question our ways of thinking and behaving in our personal relationships, occupational lives, or social activities. . . . As anybody who has renegotiated an intimate relationship, who has confronted a parent, or who has attempted to change the pattern of relationships and activities in the workplace knows, to question the validity of the assumptions under which he or she has been living and to try to change the habitual activities and responses of oneself and others are not always joyous, releasing, and exhilarating experiences.

BROOKFIELD, *supra* note 64, at 22.

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pect from the presenter and the students in the audience. In our clinic, before the role play presentations begin, my colleague plays the role of the student-presenter, with a past clinic case, and the students ask her questions, with me guiding the discussions. We have found this modeling exercise to be beneficial because there is something about the role play that is very new to students – and it is not clear whether the novelty is in playing an opponent or answering questions from the audience – and thus practicing the role play before students begin theirs takes away some of the apprehension that students have about trying on their own. Demonstrations have also provided an opportunity to work out bugs in the instructions.

C. *Learning the Elements of Storytelling, Persuasion, and Counter-Analysis*

Novice lawyers and students have a difficult time “allow[ing] for acceptance of inherent contradictions and ambiguities, alternative truths, and different world views.”⁹⁰ Learning theorists call the ability to recognize uncertainties as “dialectical thinking.”⁹¹ The inability to think dialectically can lead learners to react to contradictions by “denial” and “entrenchment.”⁹² Students in our clinic characteristically have trouble, especially at the very beginning of their clinic apprenticeship, accepting that their opponents could possibly have any defenses: their cases appear extremely straightforward to these entering clinicians. These novice practitioners might say: how could the U.S. Environmental Protection Agency have any defenses to our client’s claim that the agency has failed to make a rule by the deadline specified in the statute? An example of entrenchment might be a student who cannot spot or is unwilling to entertain other theories and thus fails to analyze those theories and prepare responses to them.⁹³

⁹⁰ Sharan B. Meriam, *The Role of Cognitive Development in Mezirow’s Transformational Learning Theory*, 55 ADULT EDUC. Q. 60, 64 (2004).

⁹¹ *Id.*

⁹² *Id.* (quoting MICHAEL BASSECHES, DIALECTICAL THINKING AND ADULT DEVELOPMENT 221 (1984)).

⁹³ Professor Babcock described to me an opposite situation: “Some of my students wonder how we could have possibly taken on such a losing case or are initially totally persuaded by the other side’s response to one of our arguments – great teaching moments!” Such situations could also be helped by a role play. In assuming the other side’s role, the student may come to see counter-arguments for her client’s side. I suppose, however, that it is also possible for the student to become even more entrenched in her belief that her client’s case is unmeritorious or problematic. Again, though, as Professor Babcock points out, these occasions present opportunities to dissect real cases and to see that they are messy, and that perhaps there are very few straightforward cases in real life. Even in a relatively straightforward case where an agency has failed to perform a mandatory duty by a statutory deadline, remedies issues are not straightforward. Questions such as the agency’s resources and ability to carry out the duty will be relevant even if the agency has

It is not surprising that students have a difficult time with dialectical thinking. This type of thinking develops with experience, and some law students may not yet have had the legal and life experiences to discover that reality is multifaceted and not straightforward.⁹⁴ Thus, forcing students to adopt the opponents' viewpoint can allow students to engage in dialectical thinking.

Students indeed report thinking of arguments that they had not anticipated from the other side after doing the opponents' presentation: only by assuming the role of the other side and thinking of the other side's narrative strength and appeal could these students discover potential arguments that the other side might make. Interestingly, one student even reported that, in preparing for the opponents rounds, he had a different strategy for legal research and reviewed cases he had not in preparing his affirmative case.⁹⁵

The students also report seeing holes in their advocacy position that they need to prepare for. Adopting the opposing side's role has been an effective tool in educating students on the importance of examining the strengths of the other side's arguments, the weaknesses in theirs, and to prepare their case given these complexities.⁹⁶

Finally, student presenters learn fairly quickly that, without forethought about the purpose of their narrative, they can unwittingly compromise their own persuasive power. That is, as Professor Karl N. Llewellyn said, "the first thing that comes up is the issue and the first art is the framing of the issue so that if your framing is accepted the case comes out your way. . . . [And] you have to build a technique of phrasing your issue which will not only capture the Court but which will stick your capture into the Court's head so that it can't forget it."⁹⁷ Being able to frame the issue takes considerable practice, and the opponent presentation provides another forum for developing these advocacy skills.

blown the deadline long ago, and no court will order the agency to perform the duty tomorrow.

⁹⁴ Meriam, *supra* note 90, at 64-65 (citing S.D. Brookfield, *Adult Cognition as a Dimension of Lifelong Learning*, in *LEARNING AS TRANSFORMATION* (Jack Mezirow et al. eds., Jossey-Bass 2000), and R. KEGAN, *IN OVER OUR HEADS: THE MENTAL DEMANDS OF MODERN LIFE* (Harv. Univ. Press 1994)).

⁹⁵ See Ferber *supra* note 59 as to the effect role plays have.

⁹⁶ One student, for example, reported that the opponents rounds "was particularly helpful in determining the holes in [our] arguments and facts. In preparing for the opponent presentation, I forced myself to see the arguments of our opponent In doing so, I was better able to dissect [our] approach and see counterarguments that needed to be addressed either in testimony or briefing." Student comments (Oct. 3, 2011) (on file with author).

⁹⁷ Garner, *supra* note 81, at 11 (quoting Karl N. Llewellyn, *A Lecture on Appellate Advocacy*, 29 U. CHI. L. REV. 627, 630 (1962)).

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D. Unexpected Benefits: Learning to Ask Questions

One of the deficiencies that immediately became evident when we first instituted this structured role play rounds was that students had very little experience asking questions, and that their lack of experience impeded the flow of the presentation. Students literally got stuck. You could say that I had my own disorienting dilemma, not having anticipated this problem.⁹⁸ Once we worked through this issue, as described below, there were additional benefits to the highly structured question and answer format, which are discussed below.

1. The importance of instructor guidance in teaching the art of asking questions.

One of the critical lessons for me was that students need much more guidance in questioning techniques than I had anticipated. The first time the students tried the question-and-answer session, we professors did not guide the questions. The result was that the presentation came out fairly jumbled. The presentations had little chronological or logical coherence because the questions, which were student driven, were not organized, and students failed to ask follow up questions. We professors attempted to interject our own questions, but that approach did not work either because we had no control over the order of questions. After several failed tries, we decided that instructor guidance was critical to ensure that the questions followed some order - *e.g.*, chronological or grouped by subject matter. Instructors must also “slow down” the students to ensure that they stay on a given topic for a sufficient time to obtain all of the relevant facts, and to guide them to do presentations in a clear, organized manner.

I learned the importance of guidance also when I saw a video of Professor Deborah Epstein teaching client interviewing skills to students in the Domestic Violence Clinic at Georgetown University’s Law School. Professor Epstein designed a simulation in which she plays the client whom her students in her Domestic Violence Clinic interview. The video shows two successive interviews. In the first interview, two of the students in the class team up to interview the professor-client. The team elicits some basic facts about a woman whose husband wakes her up in the morning and beats her. The client states that her husband woke her up and “messed with her.” After the first interview, the details of the abuse are sketchy. In the second interview, Professor Epstein again plays the client, but she also steps out of her role to guide her students in asking follow up questions to elicit

⁹⁸ See *supra* note 89 for an explanation of the term, “disorienting dilemma.”

specific facts in chronological order.⁹⁹ In response to specific follow up questions about what the client meant when she used certain words such as “messed with her,” and taking the client through what happened that morning step by step, the client reveals that, when she said that her husband “messed with her” when he woke her up, she meant that he threw water on her as she lay in bed, pulled her by the hair to the floor from the bed, and kicked her with a heavy boot.

When Professor Epstein reveals those facts, the students are shocked, as I was in watching the video, and they realize that they missed those facts in the first interview. They are then forced to reflect on the difference between the two interviews – why the second interview that was conducted in detail in chronological order resulted in critical information they missed the first time.¹⁰⁰ Although the purpose of the demonstration was to illustrate how a class can be designed backwards with goals in mind,¹⁰¹ I also took away from it that it is important for instructors to guide and model the questions that students should ask when they are novice interviewer-interrogators.

Guidance can come after several questions fail to get at a critical aspect of the case or the details that are important. The instructor can also help guide the presentation by asking logical follow up questions if not asked by the student. The sequence of questions should be designed to allow students to build upon previous questions and responses, provide reasons, make connections between ideas and causes and effect, and probe alternative universes and perspectives.¹⁰² For

⁹⁹ In the Women’s Employment Rights Clinic at Golden Gate University School of Law, in an interviewing exercise based on Professor Epstein’s approach, one of the professors plays the client, with the other guiding the students’ interview questions. Conversation with Professor Marci Seville, Director, Golden Gate University School of Law Women’s Employment Rights Clinic, in San Francisco, CA (Fall Semester 2009). The division of role allows the professor-client to remain in role, which is important to ensure that the simulation is as close as possible to a real interview.

¹⁰⁰ This simulation also enacts what learning theorists call transformational learning:

In transformational learning, one’s values, beliefs, and assumptions compose the lens through which personal experience is mediated and made sense of. When this meaning system is found to be inadequate in accommodating life experience, through transformational learning it can be replaced with a new perspective, one that is “more inclusive, discriminating, open, emotionally capable of change, and reflective”; in other words, more developed.

Meriam, *supra* note 90, at 61 (quoting and citing Jack Mezirow, *supra* note 94).

¹⁰¹ “Backward design” refers to a “circular” teaching method, which “begins by articulating what a teacher (or a program) wants students to learn and then planning experiences and instructions to aid students in their learning. The circle continues by gathering evidence to determine if these learning objectives have been met and then using those results to improve teaching and learning.” Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You – What You Need to Know About Learning Outcomes and Assessment*, 16 J. LEGAL WRITING INST. 605 (2010).

¹⁰² Robyn M. Gillies, *Promoting Thinking, Problem-Solving and Reasoning During Small Group Discussions*, 17 TCHRS. & TEACHING: THEORY AND PRAC. 73, 74-75, 85

instance, the instructor can point out where the discussion is heading, the information so far generated, and the gaps in the information and assumptions.¹⁰³ If the instructor wishes to get at the purpose of the student's question to make connections between ideas, the instructor might ask, "Why is that question important?" "What happens if" questions get at alternate perspectives and may point out issues and information students may have missed. The instructor may also have to demonstrate effective questioning technique if the class does not appear to get there on its own.¹⁰⁴ In essential ways, guidance gets at encouraging critical thinking in students.¹⁰⁵

2. *The problem: failing to distinguish between the need for persuasive and inquiring modes*

It is not enough for novice lawyers to understand the nature of persuasion. Critically, they "must know how – and when – to function in inquiring mode as well as in persuasion mode."¹⁰⁶ The persuasion mode, which is "the thinking and talking that manipulates a situation," tends to encourage hyperbole, posturing, and skipping over "unknowable and gray areas" and may discourage active listening.¹⁰⁷ "Unrestrained persuasion-mode behavior" tends to over-simplify and predisposes lawyers to "make statements that, on reflection, they know to be false."¹⁰⁸ The "inquiring mode," on the other hand, tends

(2010). Although this article concerns encouraging dialoguing skills to encourage higher-level thinking in children, many of the ideas apply to adult education. The author discusses how well-guided small group discussions help children learn questioning, response, discussion, and problem solving strategies.

¹⁰³ Guidance may look like this: "The interviewee just said that the truck was covered with high quality tarp to prevent the animal carcasses in the truck bed from smelling too much. If you want to test the assumptions in that statement, what do you need to know, and how would you ask the questions to get at the answers?"

¹⁰⁴ Studies show that even children adopt and use techniques that are demonstrated to them in small group discussions. See Gillies, *supra* note 102, at 87.

¹⁰⁵ Socratic questions can guide critical thinking.

Socratic questioning involves:

- seeking reasons and evidence,
- looking for implications and consequences,
- finding and reflecting on assumptions
- seeking examples and analogies,
- looking for objections
- identifying and taking different view points or perspectives,
- distinguishing what is known from what is believed, and
- detecting inconsistencies, overgeneralizations, and vagueness.

Barry K. Beyer, CRITICAL THINKING 19 (1995).

¹⁰⁶ KRIEGER & NEUMANN, *supra* note 34, at 13.

¹⁰⁷ *Id.* at 13, 14 (citing Robert J. Condlin, *The Moral Failure of Clinical Legal Education in THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS* 318, 326 (D. Luban ed. 1983)).

¹⁰⁸ Condlin, *supra* note 107, at 326 (cited and quoted in KRIEGER & NEUMANN, *supra*

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to lead students to explore gray areas and areas of uncertainty in order to learn, “regardless of the consequences” to the case.¹⁰⁹ As an example, in a persuasion mode, a lawyer may ask, “Didn’t your company’s lab tests show that this tire disintegrates at 90 miles per hour?” In an inquiring mode, a lawyer may ask, “Could you tell me everything you know about how this tire was tested in the lab?”¹¹⁰

The question and answer structure of the role play rounds provides an ideal opportunity to drive home lessons about when it is appropriate to use persuasion or inquiry modes. The written role play instruction asks students to inquire about the company, what it does, how its activities impact the community, and how the company can improve the environment. To find out what the company does and how its activities impact the community, students will mostly need to use the inquiry mode. To find out how the company can improve the environment, students may need to use both the inquiry and persuasion modes. For example, to find out what the foundry in the example in the role play instructions can do to eliminate odor from its operations, students will need to know what the company already does, what other similar companies may do, and available technologies to address odor. Once those options are identified, students may need to use the persuasion mode to steer the company to make commitments to eliminate or abate the odor.

Because the role play introduces opportunities to practice the two modes of inquiry, the structured rounds provide a forum to identify explicitly when students are working in persuasion or inquiry modes, and assess and discuss how effective the modes are for accomplishing the students’ objectives.

3. *Areas in which instructor guidance is particularly appropriate.*

In students and novice lawyers, unreflective persuasion-mode behavior tends to lead to argumentative as well as cross-examination type questions.¹¹¹ Students tend to ask narrow and leading questions rather than open-ended questions. This tendency may be due to a gap in the training we provide to our clinic students because we do not provide instructional material on – and do not specifically train students in – interviewing techniques. While some clinics provide intensive training on client interviewing, our environmental clinic typically

note 34, at 14).

¹⁰⁹ KRIEGER & NEUMANN, *supra* note 34, at 14.

¹¹⁰ *Id.*

¹¹¹ This statement is based on my observation as well as my colleagues’ at my law school. Students at the beginning of the exercise often ask argumentative questions such as those that begin with, “Isn’t it true that . . .?” This tendency is also seen in novice lawyers who appear to find it easier to ask cross-examination type questions.

works with organizational clients, and therefore we have not prioritized interviewing skills in our curriculum. Discussions with colleagues at my law school, including Professors Marci Seville and Hina Shah, however, provide some anecdotal evidence that even students who are provided with materials on interviewing techniques also tend to ask narrow and leading questions until they have done both simulated and live client interviews.

The role play provides a rich opportunity for exploring the efficacy of different types of questioning methods – such as open-ended and narrow questions, questions that clarify answers, and the funnel method of obtaining information.¹¹² (Everyone has played Twenty Questions, which is similar to the funnel method of obtaining information, in which broad questions are used first and then narrow or targeted questions get at more precise information.)¹¹³ Instructor guidance is particularly important to explore the different and most effective way of obtaining information. From time to time, instructors may find it necessary to interrupt the presentation, as we do in our clinic, to point out the kinds of answers open-ended questions beget compared to cross-examination type questions.

Instructors may even have to impose a rule to encourage open-ended questions at first. For example, we introduced a new rule last year to train students to ask open-ended questions by restricting students to ask initially what, where, when, who, how, and why questions. Follow up questions can be more narrowly tailored. This instruction has been effective for getting students to ask questions that elicit basic information from the presenter.

Another area in which students need guidance is in presentations that contain highly technical information. Presentation of such information tends to intimidate and thus stymie students. In these instances, it is important for the instructor to guide the students again by reiterating the importance of asking basic questions, exploring the assumptions that the presentation has made, seeking alternatives to the answers the presenter has given, and asking for details when the presenter has made broad statements.

One effective method for dealing with problematic areas of inquiry is to break up the class into teams, after some preliminary facts come out of the presentation, to analyze the categories of topics students might need to explore. Students can then brainstorm questions

¹¹² See DAVID A. BINDER AND SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* 92-99 (West Publishing Co. 1977). The authors provide a detailed discussion of the funnel method questioning and its practical application.

¹¹³ See *Twenty Questions*, *ENCYCLOPEDIA BRITANNICA*, <http://www.britannica.com/EBchecked/topic/611036/twenty-questions> (last visited Mar. 17, 2012).

that should be asked, and instructors can facilitate the team discussions to enhance student learning about questioning techniques and case analysis.

E. Dealing with Students of Varying Abilities

What has been said of medical rounds is true of law clinic rounds: “Dealing with students . . . of varying abilities, varying levels of mastery, and varying degrees of motivation is a powerful challenge for all teachers.”¹¹⁴ I would add to that list varying levels of confidence. The structured rounds that we have been experimenting with provide an opportunity for students at all skill and confidence levels to participate in and contribute to discovering the facts of the case and to improve their skills.

Each student gains an understanding of the importance of having a clear idea of a compelling advocacy story. Each student learns, at her own pace, through trying different types of questions the power of open-ended questions. Students also learn from each other by listening to the form of questions that their peers pose and from the professors’ modeled questions.

To enable students with different abilities to maximize learning, the professors should encourage students to wonder out loud, emphasize that there are no “stupid questions,” convene collaborative brainstorming sessions when questions stall, and assist students in brainstorming. Encouraging students to wonder out loud has many benefits. Often, students who believe that they are not performing well in these exercises are actually those who are thoughtful but not as confident (or perhaps care more about how they are perceived by their peers and are therefore afraid to pose questions that they consider “dumb”). When they hear their peers whom they consider smart ask the same questions that they were afraid to ask, these less confident students gain a measure of confidence.

F. The Capacity of Opponents Rounds to Deliver the Learning Opportunities that Traditional Rounds Deliver

The opponents rounds are just as effective at satisfying some of the functions of traditional rounds. Aside from providing an opportunity to hone presentation skills,¹¹⁵ the opponents rounds provide a forum to share the facts of each student’s case and for in-depth analysis

¹¹⁴ WEINHOLTZ AND EDWARDS, *supra* note 6, at vii.

¹¹⁵ One student, for example, wrote that “opponent presentations have been good opportunities for me to improve on my public speaking skills.” Student comments, *supra* note 96. This observation is consistent with comments my students have made to me in conversations I have had with them.

of some of the key issues in the case. The opponents rounds also of course provide a forum for face-to-face interactions and to develop group knowledge.

Similarly, the role play rounds provide an opportunity to develop a collective identity. Even though the students are handling different types of cases, they have an opportunity to see, as the audience playing the roles of our clients or their lawyers, the types of arguments that the role-playing opponent makes, and they often develop a sense that injustice is being done to our clients.

In addition, the post-role play discussions where students debrief what happened in the role play provide meaningful opportunities for students to learn the lessons that traditional rounds provide, such as learning to behave like lawyers through collaboration.¹¹⁶

IV. SHORTCOMINGS OF THE STRUCTURED ROUNDS

While many benefits have compelled our clinic to use the opponents rounds, professors considering using this or other structured rounds should consider some of the shortcomings of the method. Some of the shortcomings include the unsuitability of the method to presentations involving predominantly legal issues; the time-consuming nature of the presentations; and the challenges that the question-and-answer format pose to the professors facilitating the role play.

A. *Presentations Involving Predominantly Legal Issues*

Cases or decision points that present primarily questions of law may need a different approach to be valuable to students. Most such matters need to be introduced with enough legal background and a good statement of the issues. For example, one of our clinic cases necessitated analysis of which court had jurisdiction to hear the case. The issue was purely legal because the relevant facts were not disputed or likely to be disputed. It was difficult to analyze the jurisdictional issue without having the audience first read a detailed memorandum analyzing the pertinent statutory provision and the governing cases. Arguably, the students in the audience might even have

¹¹⁶ In ideal rounds conversations, students learn to move from “the particular to the general,” while also discovering that not all generalizations are useful because “the answer” depends on the problem’s context. Bryant and Milstein, *supra* note 1, at 216-23. Rounds are also ideal for exposing students to think about cross-cultural lawyering skills and values that are laden in decisions we make as lawyers. *Id.* at 223-28. A funny thing happens on the way to the clinic forum that that do not necessarily happen in other settings such as in individual supervision sessions, team meetings, or seminar. Students get to see in rounds how professional reasoning and ethical decision making work – and thus learn to think like a lawyer. *Id.* at 215. This learning happens in opponents rounds mostly in the debriefing session.

had to read substantial portions of the relevant cases before being able to ask meaningful questions. The instructions thus might need to be modified for matters presenting primarily legal issues.

Aside from the type of advance information that the students in the audience may need, the technique that students have for discovering facts – such as beginning with what, where, when, who, how, and why questions – may not be sufficient. They may need to be reminded that some of the same questions that they use in traditional classrooms should be used to deal with legal questions. Some of these questions are:

What are the alternative arguments? (For example, in the case where jurisdiction is at issue, what are the potential alternative jurisdictions, and what are the arguments supporting each? What are the weaknesses of each argument?)

What are the statutory and regulatory provisions governing the case?

What is the governing case law?

These are questions that experienced lawyers naturally ask, and they are those that may come up in traditional rounds. Cases or decision points that primarily involve legal issues thus may be more suitable for traditional rounds.

Despite these challenges, retaining many of the features of the opponents rounds – including retaining the opponents' viewpoint and the question-and-answer format (with modifications that are appropriate to talking about law questions) – for legal issue-oriented cases provide an opportunity to teach students new skills. One such skill is being able to frame legal questions adequately.¹¹⁷ That is, novice lawyers have a difficult time framing issues both in writing and in talking about the law so that a third party who is not as involved in their cases can understand the legal problem they are trying to solve.¹¹⁸ Presentations involving primarily legal issues provide clinical professors with an opportunity to teach how to frame issues for discussion with peers or judges through “disclos[ing] the decisional premises.”¹¹⁹

Here are two examples that Professor Garner gives:

1. Can Jones maintain an action for fraud?
2. To maintain a cause of action for fraud under California law, a plaintiff must show that the defendant made a false

¹¹⁷ Professor Garner refers to being able to frame issues so that anyone with moderate knowledge of the law can understand an issue as “deeply” framing an issue. *See supra* note 81, at 3.

¹¹⁸ *Id.* at 2.

Id. at 4.

¹¹⁹ *Id.*

representation. Is Continental entitled to summary judgment on Jones' fraud claim?

The shorter version sends the reader elsewhere to learn what, precisely, the issue is; the longer version asks the reader to do considerably less work. Whereas the surface issues says next to nothing about what the court is really being asked to decide, the deep issue explains precisely what that something is.¹²⁰

Providing a forum in front of other students who are not as familiar with the case gives the presenting students an opportunity to practice these skills.

B. Time-Consuming Nature of the Question-and-Answer Format

Another shortcoming aside from the unsuitability of the method for all cases is that the role plays – in particular, the question and answer aspect – take a significant amount of time to execute well. When we have allotted twenty minutes for a presentation, it has consistently taken longer.¹²¹ Each presentation could easily be extended to an hour.¹²²

With cases where several students are assigned to a single case, however, it is possible to assign each student to cover a different aspect of the case so that the class could discuss the case in depth without devoting too much time to a single presentation. We experimented with this approach in the last two semesters, and it worked fairly well, without the presentation going overlong. The presentations still took about thirty to forty minutes.

Because of the time-consuming nature of these rounds, it is difficult to accommodate both these rounds and traditional rounds in a semester, especially if there are many students in the clinic. (And I believe it is essential not to replace the traditional rounds where student-centered discussions happen because those discussions deliver the valuable “just-in-time” learning opportunities that Professors Bryant and Milstein identify.) Where there is more than one instructor, it may be beneficial to split up the class into smaller groups so that these

¹²⁰ *Id.*

¹²¹ Indeed, the inability to devote even more time frustrates some students, as the following feedback reflects:

“Give equal time to all groups.”

“Maybe I would suggest more time to deal with questions.”

Anonymous student feedback, *supra* note 67.

But there are other opinions:

“I wouldn't necessarily change anything at this time.”

Id.

¹²² One presentation went longer. The presentation primarily involved legal issues.

sessions could be run simultaneously.

C. *Special Facilitation Issues*

Finally, the role play rounds discussed in this article do not resolve the inherent difficulties that clinical professors have with traditional case rounds, such as class dynamics and dilemmas over when the instructor should intervene. Students who find the question-and-answer format exciting or are naturally dominant in such situations tend to want to ask more questions than others. Professors facilitating the role play thus must still deal with these dynamics issues. It may be appropriate, for example, for the professor to set a limit on the number and nature of questions that a single student can ask. Another idea worth considering, which came from one of our students, is to allow a team of a small number of students to ask questions during a given presentation.¹²³

Another facilitation issue that professors must consider is the tendency for the students to adopt their roles very seriously. While this tendency generally leads to positive learning outcomes (such as when students are thorough in their counter-analysis), one area where it could be problematic is when the students in the audience adopt a particularly antagonistic attitude toward the presenter. At times, as has happened in our classroom, students who consider the presenter to be evasive in her answers may pursue what they wrongly believe to be effective follow-up questioning, by adopting an aggressive tone. In such cases, it might be entirely proper for the professor facilitating the role play to step in to model effective questioning without displaying aggression.¹²⁴

Lastly, when multiple students are covering different aspects of a single case, it is important for the professor to ensure that the presentations are ordered properly so they flow, and the students in the audience are first exposed to the presentations that logically go first.

¹²³ This choice, however, may reduce student engagement. Watching the session, I would imagine, differently engages the students. It might make sense to allow a team of students to be in the lead, with others in the wings to take over if the team does not deliver.

¹²⁴ It is difficult to decide when to intervene and when not to, as the following student comments from the same day illustrate (although the comments are slightly ambiguous as to what they are referring to):

“Interruption from professors is distracting.”

“Encouraging asking questions is very good.”

“More interruption during presentation would be better.”

Anonymous student feedback, *supra* note 67.

CONCLUSION

In law clinics around the country, case rounds are a common feature of the seminar courses accompanying the clinic curriculum. Using in our clinic's rounds multiple design elements, including role plays and formalized interviews, has enhanced student learning and engagement. The role play aspect, where our students assume the role of their opponents, has improved their ability not only to anticipate the other side's legal arguments, but also to research and discover facts and story lines that they might have otherwise overlooked. The formalized interview format has allowed students to develop presentation and interrogatory fundamentals. At the same time that students are learning these skills, they have had the opportunity to learn to think like a lawyer and to gain insights about professional reasoning, judgment, and values. Combining the elements of traditional case rounds such as reflection with opportunities to practice essential lawyering skills of storytelling, counter-analysis, and interrogatory basics has had many benefits.

