

## Application for E. Smythe Gambrell Professionalism Award for 2008-2009

**Name of Organization:** Phoenix School of Law

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**Project/Program Title:** General Practice Skills Course (“Using Lawyers to Teach the Skills and Values Essential to the Professional Practice of Law”)

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**Course Starting Date:** Fall Semester 2007

**Summary of Project Description:** (A full description of the project is attached.)

Phoenix School of Law opened for students in 2005. It has three mission pillars: 1) To be student centered; 2) to assure practice readiness; and, 3) to serve the underserved.

The General Practice Skills course (GPS), described in this application, was specifically designed to be a capstone course in fulfilling the mission pillar of “practice readiness.”

The distinguishing feature of the course design is that the course, under the supervision of the program director, is taught by teams of practicing lawyers, selected from the legal community. The lawyers teach identified skills and values that are essential to their daily practices, and which are transferable to other areas of the law. (These are the same skills and values deemed essential by the MacCrate Report, the Carnegie Institute Study, The Best Practices For Legal Education (authored by Stuckey and others), and a survey taken by Phoenix School of Law of Arizona attorneys prior to the course design.)

Students must complete skill exercises and resolve client problems in small group law firms, and individually, in seven different modules which represent different practice areas of the law.

The focus of the GPS course is primarily on professionalism and the learning of the skills essential to solving real client problems. The course does not purport to make every student “practice ready” since the practice of law is a lifetime learning experience. Its purpose is to give the students the confidence in being able to accept representation of their clients in a professional and skillful manner and to know, that with practice and attention to the values of professionalism, they will succeed in the practice of law.

**Success of Project:** The GPS course is now in its fourth semester offering. It has received rave reviews from the students. (Student evaluations are discussed more fully in the course

description attached.) It has also received high praise from the ABA site team which visited the Phoenix Law School campus as part of the accreditation process in February, 2009. Follow-up evaluations will be made when students have been in practice for a long enough period to assess the value of the course to their own professional practice.

**Impact measurement/evaluation:** Assessment and evaluation are fully described in the attached project description.

**Do you feel the goals were met and why?** A full discussion of “meeting goals and continuous improvement” is set forth in the attached project description.

**What evidence can you present to demonstrate the effectiveness of the project?**

Valparaiso University Law Review will publish an article, in its Spring, 2009 edition, describing the GPS course. The article, authored by Professors, Gerry Hess and Stephen Gerst, is entitled, *Professional Skills and Values in Legal Education: The GPS Model*.

The Institute for Law and Teaching will hold its summer conference in June 2009 in Spokane, Washington. Its theme will be, “Implementing Best Practices and Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum.” Professors Stephen Gerst and Dave Cole, from the Phoenix School of Law, have been invited to do a workshop entitled, *Creating a General Practice Skills Course: Using Lawyers to Teach the Skills and Values Essential to the Professional Practice of Law*. The workshop will discuss course design, student assessment, integration with doctrinal courses, hiring and training of lawyer faculty, and course administration. (For more information on the ILTL Conference please contact Gerry Hess, ILTL Co-Director, [ghess@lawschool.gonzaga.edu](mailto:ghess@lawschool.gonzaga.edu).)

**Program Description:** (The following description is from a draft of a portion of a law review article entitled, *Professional Skills and Values in Legal Education: The GPS Model*, authored by Stephen Gerst and Gerry Hess, which will be published in the Spring 2009 Edition of the Valparaiso Law Review. Permission has been granted by Valparaiso Law Review for use in this application. )

The General Practice Skills course is a one semester, six-credit course required of all third-year students. The acronym for the course name (GPS) is intentional: just as a Global Positioning System helps people find their way in the world, the General Practice

Skills course helps orient students to the profession. The course consists of seven modules in which skills and values essential to attorneys are practiced. The course meets twice each week for a period of three hours at each meeting. Satisfactory completion of the course, graded on a pass/fail basis, is a requirement for graduation. The course is taught by faculty members who are practicing attorneys and judges and who are active members of the State Bar of Arizona. They team-teach under the supervision of the Director of the General Practice Skills course program, who is a full-time member of the Phoenix School of Law faculty.

#### 1. General Practice Skills Course Design

In 2006, Dean Dennis J. Shields appointed a committee to design a skills and values course. The committee consisted of faculty, professional staff, and a student representative.<sup>1</sup> The committee performed background research on skills and values education by examining courses and programs that already existed in other law schools.<sup>2</sup> In addition, the committee reviewed the MacCrate Report and numerous articles about teaching practice skills written after the MacCrate Report in 1992.<sup>3</sup> The

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<sup>1</sup> Two of the faculty members had many years of experience as practicing lawyers and as trial court judges. The other faculty member had been in legal education for two decades and had designed curricula at two other law schools. The staff member was the director of career services at Phoenix School of Law and had experience as a practicing lawyer and as a recruiter for a law firm. The student had an MBA degree and was a leader of the Phoenix School of Law student body.

<sup>2</sup> The committee reviewed courses and programs at the University of Wisconsin Law School, Chicago-Kent College of Law, Glasgow Graduate School of Law in Scotland, Case Western Reserve University School of Law, University of Montana School of Law, and Loyola (New Orleans) School of Law. Ralph Cagle, Director of University of Wisconsin Law School's Lawyering Skills Course, and Gretchen Viney, the Associate Director, provided valuable information and examples of materials currently being used in that program, which has been in existence since 1948. Professor Sophie Sparrow, Franklin Pierce Law Center, provided guidance in the initial design stages of the General Practice Skills course.

committee also consulted with Arizona lawyers in various areas of practice and members of the Phoenix School of Law faculty who had recently practiced law.<sup>4</sup> The culmination of the committee's efforts was the General Practice Skills course.

The General Practice Skills course has five learning objectives,<sup>5</sup> expressed as learning outcomes. By the end of the course students will have: (1) practiced many of

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<sup>3</sup> Examples of the reviewed articles include: Richard A. Matasar, *Skills and Values Education: Debate About the Continuum Continues*, 46 N.Y.L. SCH. L. REV. 395 (2003); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek To Narrow*, 8 CLINICAL L. REV. 109 (2001); Arturo Lopez Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB. L. REV. 132 (1998); Jay M. Feinman, *Simulations: An Introduction*, 45 J. LEGAL EDUC. 469 (1995); Robert R. Merhige, Jr., *Legal Education: Observations and Perceptions from the Bench*, 30 WAKE FOREST L. REV. 369 (1995); John Sonsteng et al., *Learning by Doing: Preparing Law Students for the Practice of Law—the Legal Practicum*, 21 WM. MITCHELL L. REV. 111 (1995).

<sup>4</sup> Several faculty members at the Phoenix School of Law have extensive practice experience or have served as judges on the Superior Court of Arizona.

<sup>5</sup> The learning objectives for the General Practice Skills course are adapted from the University of Wisconsin Law School's Lawyering Skills Course.

The **learning objectives** of the Lawyering Skills Course are:

1. To immerse students in practicing many of the skills and techniques they will use in their first years of law practice;
2. To demonstrate, and provide insight into, the way a lawyer handles criminal, civil and divorce cases; engages in estate planning, probate, real estate, and creditor/debtor matters; counsels business clients; serves as a guardian ad litem; and manages time and professional practices;
3. To provide an opportunity for students to experience how lawyers solve client problems, interview and counsel clients, draft documents, plan and process case files, negotiate, mediate, and advocate, all in the context of factual situations students are likely to face as lawyers;
4. To foster understanding of and commitment to high standards of professional responsibility to clients, the justice system, and the community, through the examination of ethical and professional dilemmas that arise in daily law practice; and
5. To offer a realistic basis for making decisions about law as a career.

The Lawyering Skills Course does not fill all the needs of students moving from law school to law practice. For example, the course does not address certain skills that other courses in the curriculum emphasize: appellate advocacy, legal research, brief-writing, and trial advocacy. Also, the Lawyering Skills Course does not provide a foundation, in breadth or depth, of any area of substantive law. However, students will learn some substantive law during the semester and will acquire the tools necessary to lay a strong foundation in those areas as they move into practice.

University of Wisconsin Law School Course Objectives,  
[http://law.wisc.edu/academics/lawskills/student\\_handbook/](http://law.wisc.edu/academics/lawskills/student_handbook/)

Course\_obj.htm (last visited Nov. 15, 2008)..

the skills they will use in the practice of law; (2) experienced how lawyers solve legal problems, interviewed and counseled clients, investigated facts, negotiated settlements, handled appearances before a court, drafted legal documents, prepared cases for dispute resolution, and advocated on behalf of clients; (3) become knowledgeable and sensitive to the professional values deemed important by the bench and bar; (4) demonstrated a commitment to high ethical standards and professionalism in dealing with clients, opposing counsel, courts, and the community; and (5) acquired a realistic basis to make decisions about different areas of the law as a career.

To achieve these objectives, the General Practice Skills course is organized into seven modules: (1) law office organization and management; (2) family law; (3) small business entities law; (4) debtor/creditor law; (5) wills and estates law; (6) criminal law; and (7) personal injury law. The practice areas are common to the general practice of law and provide a diverse range of opportunities for the teaching of practice skills and values.<sup>6</sup>

Informed by the results of the Arizona Bench and Bar Survey,<sup>7</sup> the committee identified the thirteen professional skills on which the course would concentrate: written communication, drafting legal documents, listening, oral communication, working cooperatively as part of a team, factual investigation, interviewing, recognizing and solving ethical dilemmas, pretrial discovery, advocacy, counseling, negotiation, and

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<sup>6</sup> The committee concluded that a new lawyer, regardless of the type of employment he or she initially obtains, should achieve a level of competence in the skills necessary to handle several basic kinds of cases that lawyers in general practice commonly handle.

<sup>7</sup> *See supra* Part II.A.

mediation. Other professional skills that the survey respondents deemed important did not become part of the General Practice Skills course because they were emphasized in other required courses (e.g., legal analysis, reasoning, research, and appellate advocacy).

The thirteen professional skills were allocated to the seven modules. Most of the skills appear in at least two modules. The skill of recognizing and solving ethical dilemmas was assigned to all seven modules:

- Law Office Organization and Management - Working cooperatively as a team, Listening, Written communication, Counseling, Recognizing and resolving ethical dilemmas;
- Family Law Practice - Listening, Counseling, Mediation, Pretrial discovery and advocacy, Recognizing and resolving ethical dilemmas;
- Small Business Entities Practice - Drafting legal documents, Interviewing and questioning, Negotiation, Recognizing and resolving ethical dilemmas;
- Wills and Estates Practice - Drafting legal documents, Listening, Interviewing and questioning, Counseling, Recognizing and resolving ethical dilemmas;
- Creditor/Debtors Practice - Written communication, Negotiation, Factual investigation, Recognizing and resolving ethical dilemmas;
- Criminal Law Practice - Advocacy, Negotiation, Pretrial discovery, Interviewing and questioning, Recognizing and resolving ethical dilemmas; and
- Personal Injury Practice - Working cooperatively as a team, Factual investigation, Interviewing and questioning, Negotiation, Advocacy, Recognizing and resolving ethical dilemmas

The modules emphasize not only skills, but professional values as well. Each faculty team must choose at least two professional values from the list identified by respondents to the Arizona Bench and Bar Survey as important or essential.<sup>8</sup> Through

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<sup>8</sup> The selection of values was made by each faculty team out of the list of values in Table 6 above. Each faculty team identified two values they were committed to emphasizing during their module. The faculty team was not restricted from choosing the same values as chosen by other faculty teams. The faculty teams had the freedom to emphasize the professional values that they believed were critical to their area of practice. Many of the six professional values chosen by the faculty teams were included in two or more modules.

this process, the following professional values were emphasized in the fall semester 2007: (1) acting honestly and with integrity; (2) showing reliability and willingness to accept responsibility; (3) striving to provide competent, high quality legal work for each client; (4) treating clients, lawyers, judges, and staff with respect; (5) demonstrating creativity and innovation; and 6) showing tolerance, patience, and empathy.

The program director of the General Practice Skills course is a member of the full-time faculty of Phoenix School of Law.<sup>9</sup> The responsibilities of the director include the following: (1) recruiting faculty; (2) developing curricula and materials; (3) orienting and training faculty; (4) assuring the preparation of appropriate teaching plans; (5) assuring that course materials are useful, organized, and accurate; (6) evaluating faculty; (7) handling student issues related to the program; and (8) promoting public relations and connections to the community.<sup>10</sup>

The program director recommends faculty members for the course.<sup>11</sup> Two members of the State Bar of Arizona team-teach each module. Faculty members for the

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<sup>9</sup> Stephen Gerst, Associate Professor of Law, and co-author of this Article, was appointed Director of the General Practices Skills Program by Dean Shields in November 2006. Before joining the Phoenix School of Law faculty, Professor Gerst practiced law in Arizona for eighteen years and served as a Maricopa County Superior Court Judge for twenty-one years.

<sup>10</sup> During the first year of the General Practice Skills course, 2007–2008, the director position was to comprise all of that faculty member’s responsibilities. Thereafter the director’s responsibility was allocated as one-half time to the General Practice Skills course and one-half time to teaching in the general curriculum.

The General Practice Skills course design also provides for a full-time program assistant who is to have administrative responsibilities as assigned by the director. It was decided that the position would not require a law degree; however, it would be preferable for this person to be a lawyer. The hiring of a program assistant position has not occurred as of this writing. The program director has managed the course with the assistance of other faculty and Phoenix School of Law staff.

<sup>11</sup> General Practice Skills faculty members must be approved and appointed by the Dean. Faculty members are paid a modest honorarium and receive CLE credit.

General Practice Skills course either specialize or have extensive experience in the practice area of their module. A two-lawyer faculty team provides optimum opportunities for individualized attention and detailed feedback on assignments. In addition to teaching the module, the faculty team is responsible for assisting in the preparation of the teaching plans, attending orientation and training, grading student assignments, providing formative feedback to the students, and assessing the course for improvement.

Teaching plans and materials are developed by members of the practicing bar in consultation with Phoenix School of Law faculty members. Each teaching plan sets out the professional skills and values the module will address. The plan explains in detail the preparation required of the students before each class, such as reviewing a case file, reading applicable cases and statutes, drafting motion papers, and formulating an oral argument. The plan sets out the teaching and learning activities that will take place in each class, including motion arguments, drafting plea agreements, strategic planning, and resolving ethical dilemmas with other members of a student-formed law firm. Appendix B contains a teaching plan for the Criminal Law Practice module.

Materials for each module generally consist of articles, statutes, court rules, ethics opinions, legal forms, sample pleadings, and hypothetical scenarios. The materials are designed to help students learn the professional skills and values allocated to each module and to provide information regarding other resources that will assist the student in bridging the gap from the academic environment to the practice of law. For

example, the materials for the Criminal Law practice module include a case file with charging documents, police reports, discovery documents, booking information, release conditions, motion practice pleadings, court rulings on motions, letters, change of plea documentation, a pre-sentence report, sentencing recommendations, and a sentencing order.

The General Practice Skills course meets twice a week for two three-hour periods.<sup>12</sup> Phoenix School of Law is a dual division law school, so sections are offered in both the day and evening division each year.<sup>13</sup> Each section is limited to thirty students to accommodate the practical exercises and feedback necessary to the success of the course.<sup>14</sup>

The final design feature of the General Practice Skills course is grading. Student performance in each module is graded on the basis of “Not Proficient,” “Proficient,” or “Highly Proficient.” If a student receives two or more “Not Proficient” grades, the

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<sup>12</sup> The original design of the course provided that classes would be scheduled for either two hours three times a week, or three hours two times a week. A survey of students and prospective faculty revealed that they favored classes of three hours, two times a week. In addition, the original design provided that an additional block of time would be scheduled for students to work collaboratively on assignments. However, this design feature was not implemented. Instead, students were organized into law firms to collaborate during class sessions and via email outside of class. This appears to better accommodate the practice exercises and feedback necessary for the success of the course.

<sup>13</sup> At Phoenix School of Law the General Practice Skills course is presently scheduled on Tuesdays and Thursdays for a three-hour period each class. The course is offered from 1:00 PM to 4:00 PM for the fall semester and from 6:00 PM to 9:00 PM for the spring semester.

<sup>14</sup> In addition to appropriate scheduling and class size, the General Practice Skills course needs physical space, including a classroom to accommodate thirty students, space for small group breakouts, and a courtroom (or a room that could be used as a courtroom) for practice. No additional space is needed for a program director who is already a member of the faculty. The General Practice Skills faculty members generally arrive at the school within one-half hour of the beginning of each class period, and leave campus shortly after the class ends. There has been no identified need for additional or separate space for the General Practice Skills faculty.

student will not pass the course. Students must attend a minimum of 85% of the classes<sup>15</sup> and must complete all written assignments. Written and oral assignments are graded by the faculty teams, who also provide formative feedback to the students on each assignment.<sup>16</sup>

## 2. General Practice Skills Course Delivery

Although the specific teaching and learning methods for each module are set out in detail in the teaching plans discussed above, four aspects of the General Practice Skills course delivery are hallmarks: student law firms, professional skills instruction, integration of values and professionalism, and an open question period.

### *a. Student law firms*

Before the first class, the students form themselves into law firms of four or five students. The law firms are maintained throughout the entire course. They are used for collaborative small group assignments and to simulate real life problem solving and advocacy on behalf of clients. The previous law school experience of many students has been individual rather than collaborative. Associating into law firms allows the students to learn through small group discussion, planning, sharing ideas, and division of labor. Additionally, the students learn, just as in actual law firm practice, that there are

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<sup>15</sup> Attendance is taken for each class. On the written attendance sheet the student writes his or her initials next to his or her name, as well as checking “yes” or “no” as to whether all homework assignments were completed. The Phoenix School of Law’s attendance policy allows a student to be absent for any reason for no more than 15% of a course.

<sup>16</sup> The General Practice Skills course design provides that faculty will recognize top students in some appropriate fashion. This has not yet been implemented.

differences between them in strengths and weaknesses, work ethic, and accountability. One of the most valuable lessons students learn is that their individual reputations can be affected by the work product of their law firm.

*b. Skills instruction*

Each module begins with introductions of faculty and students<sup>17</sup> and then quickly moves into professional skills instruction. The practice exercises and learning outcomes of each module are summarized below.

Law Office Organization and Management:

This module is taught by a current staff member of the Law Office Management Assistance Program of the State Bar, and Lynda Shely, a nationally recognized attorney who specializes in ethics and professionalism. In this module the student law firms produce a law firm business plan, which includes their decisions regarding the firm's area of practice, location, office equipment needs, marketing, insurance coverage, staff, systems for checking conflicts, case management, billing, and the allocation of income and expenses. The firms draft documents essential to the attorney-client relationship, including a retention letter which includes a fee agreement, a client intake form, a client

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<sup>17</sup> The materials provided to the students before the beginning of each module contain resumés of the General Practice Skills faculty members who will teach the module. At the beginning of the first class of each module, the program director introduces the General Practice Skills faculty members to the students. Each faculty member is provided with photographs and the names of each student. The students are asked to individually stand and introduce themselves and identify their law firm. Each student is asked to relate his or her background, experience in the legal field, whether they have taken any courses or have specialized knowledge in the practice area, and what they hope to learn in the module. In each course module it is likely that several students, particularly those enrolled in the part-time evening program, are currently working in the legal field or have had prior employment experience in the subject matter of the module.

conflicts checking procedure, a declination letter, a mail processing procedure, a closing letter on a client's case, a trust account three-way reconciliation, a billing statement, and time sheets. Additionally, the students discuss case file retention policies, withdrawal from representation, and the strict rules that apply to the handling of client funds and trust accounts. During this module, the students also receive a demonstration of an electronic case management system.

#### Family Law Practice:

\_\_\_\_\_The students practice interviewing clients in a marriage dissolution proceeding.<sup>18</sup> Using the information developed during their client interviews, the students draft, and file with the court (faculty), the documents commonly needed in connection with a marriage dissolution proceeding in Arizona.<sup>19</sup> The students participate in a court hearing for temporary orders pending the dissolution and a court-held management conference. Following the management conference, the student law firms represent their clients in a court-ordered mediation of issues that remain unsettled.<sup>20</sup> At the end of the module, the students prepare final decrees of dissolution, parenting plans, and child support calculations.

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<sup>18</sup> The first time the course was offered, the students played the role of the clients. The second time the course was offered, the "clients" were volunteers from the community who were given information as to their roles and circumstances. The community volunteer clients provided a better learning experience for the students, who had to adjust to the personalities of clients of whom they knew nothing. The "clients" participated in both the interviewing sessions and in the mediations, which took place on separate days. There were three "wife" clients and three "husband" clients, each represented by separate student law firms.

<sup>19</sup> These documents include a Petition for Dissolution, Petition for Temporary Orders, Client Affidavit of Financial Information, Proposed Parenting Plan, Proposed Child Support Worksheet, Petition for Order of Protection, and a Resolution Management Conference Statement.

<sup>20</sup> In the mediation exercise, students who have completed the Phoenix School of Law mediation course act as mediators and the other students act as lawyers for the husband and wife.

### Small Business Entities Practice:

\_\_\_\_\_The students begin by interviewing a client who wants to start a small business venture.<sup>21</sup> Each student law firm forms an LLC for the client, which requires students to prepare articles of organization and an operating agreement, to file the documents with the corporation commission,<sup>22</sup> to obtain a tax number for the new business entity, and to draft minutes for the minute book to reflect changes to the operating agreement. In the second week of the module, the businesses set up by three of the law firms decide to acquire the assets of the businesses set up by the other three law firms. The law firms enter into negotiations on behalf of their respective clients to settle issues relating to non-competition, indemnity, and warranty clauses in an asset purchase agreement. Following negotiations, the students prepare an asset purchase agreement.

### Wills and Estates Practice:<sup>23</sup>

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<sup>21</sup> The scenario in this exercise involves a client who wants to start a business to develop and sell a solar energy device. He has an investor lined up and another person with technical expertise who wants to be part of the venture. The students have to decide between the forming of a corporation, partnership, or an LLC, based upon their homework reading assignments and class discussions. (The scenario is designed to lead the students into choosing an LLC as the business form, though the class discusses the other forms of businesses).

<sup>22</sup> The “filings” are sent electronically to a legal assistant in the General Practice Skills faculty member’s law firm who either accepts it for filing or rejects it for deficiencies, based on whatever deficiencies would cause a rejection by the corporation commission.

<sup>23</sup> This module is scheduled for one week, with two three-hour classes. The first semester the course was offered it was scheduled for fourteen weeks with two weeks for each module. The wills and estates module was scheduled for the week of mid-term exams in other courses, which did not work well for the students. A decision was made to shorten the course to thirteen weeks, which brought it into line with other course offerings. Consequently, the wills and estates module was reduced to one week with two three-hour class periods. All other modules are scheduled for two weeks with four three-hour classes.

The students learn the basics of drafting a will, a durable power of attorney, and the probate of an estate. Each student drafts two wills—one is based on a scenario in the materials and the other is the student’s own will. The students also interview a client who needs estate planning services. Following the will drafting assignments, the client for whom the students drafted a will passes away. The students are then retained to represent the personal representative of the estate in probate proceedings. Each student completes the appropriate probate documents. Through class discussion, each document in an informal probate proceeding is reviewed for its proper purpose and use.<sup>24</sup>

#### Creditor/Debtor Practice:

The students focus on creditors’ remedies for the first week and bankruptcy practice the second week. The students observe a demonstration of a client interview in a debt collection matter, learn how to make a telephone call regarding the collection of a debt in compliance with the Fair Debt Collection Practices Act (“FDCPA”),<sup>25</sup> draft a letter to collect a debt in compliance with the FDCPA, draft pleadings in a typical debt collection matter, and conduct a judgment debtor examination. The first week of this module ends with the students preparing to garnish money discovered during the judgment debtor’s exam when they are given notice of the debtor having filed bankruptcy and the issuance of a stay order on all proceedings. In the second week of

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<sup>24</sup> These documents consist of forms in common usage and that have been approved by the Arizona courts. They include letters of appointment of a personal representative, inventory and appraisal, notice to creditors, affidavit of publication, acceptance or rejection of creditor’s claims, distribution of assets, and a closing statement.

<sup>25</sup> Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692–1692p (2006).

the module, the students practice interviewing a client seeking debt relief, prepare schedules for a client in a Chapter 7 bankruptcy proceeding, prepare a motion for relief from the automatic stay, prepare a motion for a finding that a debt is non-dischargeable, and participate in a court hearing to argue their motions.

#### Criminal Law Practice:

The students are furnished with a criminal case file involving a methamphetamine laboratory and the arrest of their client. Student law firms representing the defendant research and draft a motion to suppress evidence, a motion to limit the use of prior convictions, and a motion to determine the voluntariness of the defendant's statements. The prosecution law firms file responsive pleadings and memoranda as to each motion. Court hearings are held for arguments and rulings on the motions. Students then engage in settlement negotiations to reach a plea agreement. Following a change of plea proceeding, the students advocate for their respective clients at a sentencing hearing.

#### Personal Injury Practice:

\_\_\_\_\_This module is based upon an actual personal injury case involving an intersection automobile accident. Students are provided with a video tape of the accident,<sup>26</sup> police reports, witness statements, medical authorizations, sample medical records, portions of pleadings and deposition transcripts, and mediation memoranda.<sup>27</sup>

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The video footage was taken by a camera installed at an intersection by public authorities.

Student law firms conduct a witness interview, take or defend a deposition,<sup>28</sup> prepare settlement conference memoranda, participate in a settlement conference, and make an opening statement before a jury.

*c. Values Instruction*

As noted above, every General Practice Skills module includes the skill of resolving ethical issues and two or more professional values selected by the faculty team for each module.<sup>29</sup> Throughout each module, the faculty teams raise ethical dilemmas that commonly arise in the practice area taught. Professionalism, as distinguished from ethical issues,<sup>30</sup> is also stressed throughout each module. The faculty team selects the means to emphasize values and professionalism for their module. Sometimes they are incorporated into examples and scenarios used in the module. At other times, the faculty team makes values a point of discussion with the class. The most powerful teaching of values and professionalism, however, is in the

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<sup>27</sup> Students now receive these documents on a CD rather than in hard copy. The first time these documents were used they were provided to the students via email, which was not as satisfactory as providing each student with a CD. Consideration will be given to making more use of CDs as a method of delivering documents in the future.

<sup>28</sup> Arrangements are made with a court reporting school for student court reporters to record the depositions. Both students in the General Practice Skills course and students in the court reporting school practice the skills involved in making and protecting the record of proceedings.

<sup>29</sup> *See supra* Part II.B.1.

<sup>30</sup> On September 5, 2007, the Arizona Supreme Court signed an order amending several Supreme Court Rules that affect the way law is practiced in Arizona. The amended rules became effective January 1, 2008. The Court adopted Rule 31(a)2.E., which defines “‘unprofessional conduct’ as ‘substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer’s Creed of Professionalism of the State Bar of Arizona.’” Jim Lee & Patricia Sallen, *New Professionalism and Lawyer Discipline Rules Adopted*, 44 ARIZ. ATT’Y 30, 30 (Dec. 2007). At the same time, the Court modified Supreme Court Rule 41(g), which “replaced the requirement that lawyers ‘abstain from all offensive personality’ with a requirement that lawyers ‘avoid engaging in unprofessional conduct.’” *Id.* Thus, beginning January 1, 2008, “‘unprofessional conduct’” became a ground for the imposition of lawyer discipline. *Id.*

modeling behaviors of the faculty teams, which the students have the opportunity of observing throughout the duration of each module.

Examples of professional and ethical issues raised include the following:

- In the Law Office Management module, the students are confronted with “The Five C’s of Law Office Ethics”—conflicts checking, calendaring, communication/confidentiality, competence, and cash. In the practice exercises, strong emphasis is placed on avoiding conflicts of interest, keeping clients informed, proper handling of monies, and appropriate training of staff.
- In the Family Law module, professionalism is emphasized in dealing with client expectations and settlement conferences, and in handling cases with a pro se litigant. Students are confronted with issues on how to counsel clients in dealing with their spouse, children of the relationship, and other family members.
- In the Small Business Entities module, students are confronted with the issue of “who do you represent?” The tensions, stresses, and professional responsibilities of the lawyer representing a client in the acquisition or sale of a business are emphasized.
- In the Wills and Estates module, students are faced with difficult issues of professionalism in dealing with clients who have suffered the loss of a loved one and must rely on their attorney for advice and counsel. Students encounter the dilemma of dealing with clients who are elderly and possibly being taken advantage of by their families or others.
- In the Creditor/Debtor module, students practice procedures required by the Fair Debt Collection Practices Act and other requirements of professionalism in dealing with debtors. The bankruptcy portion of the module emphasizes issues of candor to the court with respect to assets and transfers.
- In the Criminal Law module, duties of candor to the court often conflict with duties relating to confidentiality of communications with a client. Students are placed in situations where these issues arise before a judicial officer and learn to resolve them in a professional and ethical manner.
- In the Personal Injury module, ethical and professionalism issues arise in the context of the relationship among lawyers during discovery and in settlement negotiations. Exercises are designed to foster student discussion and resolution of these issues, as well as emphasize the duty of candor to the court and other counsel, and courtesy and respect to all litigants.

*d. Open Question Period*

The last hour of the final day of each module is reserved for an open question period. Each student law firm prepares three or four questions they would like to ask of the General Practice Skills faculty team. The questions may relate to either the practice area of the module or to the faculty member as an individual, as long as the questions are of general interest to the class. Each student law firm is given the opportunity to ask their round one question, and then the questioning rotates to subsequent rounds of questioning.<sup>31</sup> The questions provide an opportunity for the students to ask about things such as career satisfaction, billable hours, fees charged, law firm expectations, issues that tend to cause high levels of stress for attorneys in the practice area, development of clientele, attaining partnership, career opportunities, where to find resources, and balancing the practice of law with other areas of life. One of the benefits of the course design is that by the end of each module, the students and lawyer faculty have established a relationship that has the possibility of continuing into the future.<sup>32</sup>

### 3. General Practice Skills Course Evaluations

The General Practice Skills course is evaluated by both faculty and students. These evaluations are shared with the General Practice Skills Program advisory committee and the Dean. The program director observes the classes of an entire module of any faculty team teaching a module for the first time. In addition, the advisory committee reviews the teaching plans and materials for each module.

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<sup>31</sup> One of the General Practice Skills faculty members invites a less experienced member of her law firm to join the open question period, so the students will have the opportunity to ask questions of someone closer to where they are in the transition from law school to practice.

<sup>32</sup> All of the General Practice Skills faculty members have been kind enough to provide the students with their office phone numbers and an invitation for the students to contact them at any time they need assistance in practice.

Students evaluate each module separately as well as the course as a whole. On the day following the end of each module, students are e-mailed a link to an evaluation survey instrument to be completed anonymously. The evaluation instrument uses a 1–5 scale. It requests the students to rank and comment on each of the faculty members who taught the module, the materials provided, and whether the module met its objectives of incorporating the skills and values allocated to the module. Additionally, the students are asked to comment on how they believe the module helped them become practice-ready, what three things they liked best about the module, and in what ways they believe the module could be improved.

At the end of the entire course, the students are again surveyed and asked to evaluate to what extent the course as a whole accomplished its objective of teaching skills and values that are used by attorneys in different areas of practice. This final survey also asks the students to comment on the ways they have benefited from the course, what aspect of the course they would not change, and what changes they would suggest for improving the course.<sup>33</sup>

The student evaluations of the General Practice Skills course have been very positive. In fall 2007 and spring 2008, a total of fifty-five students participated in the course and forty-two students completed the course evaluation, for a response rate of

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<sup>33</sup> The student evaluation results for each module and the course as a whole are shared with the General Practice Skills advisory committee, the Associate Dean for Academic Affairs, and the faculty team that taught the module for their analysis and suggestions for course improvement. The committee has determined that the evaluations will not be shared with the student representative on the committee.

77%. The vast majority of students believed that the course achieved its overall objective of teaching skills and values. Table 7 summarizes those results.

**Table 7**

On a scale of 1–5 (with 5 being the highest), how would you rate the General Practice Skills course in accomplishing its objective of teaching general practice skills and values that are used by attorneys in different areas of practice?				
1	2	3	4	5
0%	0%	5%	21%	74%

In their narrative comments, students offered suggestions for improving the course, including scheduling writing assignments so that students could complete them during the weekend, using non-law students as actors in simulations, and expanding the course to encompass more modules. Most narrative comments, however, were glowing. Many students noted the professional skills and values they had learned such as oral advocacy, drafting, cooperating with team members, and the ethical considerations infused into every module. Many students commented on other significant learning that took place in the course—confidence in their ability to successfully begin their legal careers, insight into practice areas that may be the best fit for them, and the opportunity to work closely with outstanding members of the bar. One student succinctly summarized the comments of many others, “This was a wonderful capstone for my law school experience.”

### III. RECOMMENDATIONS FOR THE DESIGN AND DELIVERY OF A SKILLS AND VALUES COURSE

The General Practice Skills course was created to meet the mission of the Phoenix School of Law and the educational needs of its students. However, Phoenix School of Law's experience in designing and delivering the General Practice Skills course holds valuable lessons for law schools that strive to make professional skills and values an integral part of legal education.

A. *Connect Courses, Curricula, and Mission*

Effective educational programs harmonize several levels of planning and design.<sup>34</sup> Program design begins with the law school's mission, which should identify the functions the school intends to serve and its overall goals.<sup>35</sup> Derived from the mission should be a set of educational outcomes that describe the knowledge, skills, and values that graduates should attain during law school.<sup>36</sup> Law schools should design curricula and create individual courses that guide students toward mastery of these outcomes.<sup>37</sup>

The development of the General Practice Skills course reflected each of these planning levels. The mission of Phoenix School of Law includes a commitment to preparing students to practice law.<sup>38</sup> Based on the MacCrate Report, published surveys

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<sup>34</sup> See BEST PRACTICES PROJECT, *supra* note 8, at 93 (section drafted by Michael Hunter Schwartz).

<sup>35</sup> GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 87 (2000).

<sup>36</sup> See BEST PRACTICES PROJECT, *supra* note 8, at 42–43, 49, 93.

<sup>37</sup> *Id.* at 93.

<sup>38</sup> See *supra* note 65 and accompanying text.

of lawyers in Chicago, Minnesota, and Montana, and its own survey of Arizona lawyers, Phoenix School of Law’s faculty identified the key knowledge, skills, and values that contribute to practice readiness.<sup>39</sup> Phoenix School of Law designed its required curriculum to enable students to achieve those outcomes.<sup>40</sup> Finally, Phoenix School of Law created the General Practice Skills course to address a subset of the essential professional skills and values.<sup>41</sup> Other law schools following the same design process may come to very different results based on their missions, goals, and outcomes.<sup>42</sup>

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<sup>39</sup> See *supra* notes 66–70 and accompanying text.

<sup>40</sup> See *supra* note 71 and accompanying text.

<sup>41</sup> See *supra* notes 78–79 and accompanying text.

<sup>42</sup> A number of law schools have made recent changes in their curricula to respond to criticisms of traditional legal education. See Jill Schacner Chanen, *Re-engineering the J.D.: Schools Across the Country are Teaching Less About the Law and More About Lawyering*, A.B.A. J., July 2007, at 42. Harvard Law School decided to depart from its 100-plus-year old curriculum and will reduce the number of hours spent on traditional common law courses and mix in three new classes: legislation and regulation, international and comparative legal studies, and problem-solving skills. *Id.* at 42–45, 64. Vanderbilt University Law School is rejecting a teaching method dominated by appellate opinions; instead it is adding classes based on statutes and regulations and is promoting the use of primary materials, such as contracts and litigation documents, in first-year courses. *Id.* Northwestern University School of Law has formed a working group that is studying whether classes from outside the law school—like accounting and finance—should become mandatory. *Id.* The University of Detroit Mercy School of Law is recruiting retirement-age partners from local law firms to join the faculty to help create the optimum balance for students. *Id.* Detroit Mercy instituted a mandatory law firm program for its third year students, the focus of which is on simulated transactions, in a variety of practice areas, created by former practitioners using real documents. *Id.* At Stanford Law School, law students can take elective courses at the university in the business school or in sciences and engineering to develop skills that are transferable to the practice of law. *Id.* At the University of Pennsylvania Law School, after the first year students can take a quarter of their classes outside the law school. *Id.* Drexel University has a soon-to-be unveiled co-operative law program, which will allow students to devote two entire quarters to externships with courts, non-profit organizations, law firms, and businesses. *Id.* Syracuse University School of Law offers a General Counsel Transition course designed to teach decision-making, investigation, case management, personal relations, and business management. William Mitchell College of Law offers the Legal Practicum, a simulation-based course in which students interview clients, investigate facts, conduct deposition, draft pleadings, make oral arguments, and participate in mediation, arbitration, negotiations, settlement conferences, and jury trials. Northeastern University School of Law integrates classroom study with supervised work experiences in its Cooperative Legal Education program. Sonsteng, et al., *supra* note 65, at 418–21.

Building upon the Carnegie Report and the Best Practices Project, a series of conferences have addressed the call for change in legal education. In November, 2007, the University of South Carolina School of Law held a conference entitled, *Legal Education at the Crossroads: Ideas to Action, Part I*. Fifty-seven of the leading legal educators in the United States came together to discuss reforming legal education. The program was planned and facilitated by Professor Roy Stuckey, University of South Carolina School of Law and Professor Judith Wegner,

*B. Involve the Practicing Bar, Law School Administration, Faculty, and Students in the Design Process*

Despite the fact that the MacCrate Report, Carnegie Report, Best Practices Project, and published surveys of lawyers have directly addressed effective preparation for practice, it is still very helpful to gather input from lawyers engaged in the types of practice that the school's graduates are likely to enter. This input can be gathered through written surveys, focus groups, or both.<sup>43</sup> The legal community is not often asked by a law school, "What can we do to prepare our graduates for you?" and "What are the things you wished you had learned in law school that would have better prepared you to be a practicing attorney?" By asking the practicing bar to assist in identifying the knowledge, skills, and values that it deems most important to the practice of law, the law school establishes and maintains credibility within the legal community. It also helps the law school recruit practicing attorneys to serve as

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University of North Carolina School of Law. Professor Stuckey is the primary author of the Best Practices Project and Professor Wegner is one of the co-authors of the Carnegie Report. See Univ. of S. C. Sch. of Law, <http://law.sc.edu/crossroads/> (last visited May 23, 2008).

In February, 2008, Georgia State University College of Law held an International Conference on the Future of Legal Education. The focus of the conference was the Carnegie Report. The conference asked two related sets of questions: First, if one was charged with starting a new law school, how would one implement the Carnegie recommendations? What would the budget look like? How would the faculty be recruited and structured? What would one want the student body to look like? What would be the curriculum? Second, how would an existing law school transform itself into the kind of law school envisioned by the Carnegie Report? What would a five year transition plan look like? The conference chair was Clark D. Cunningham, W. Lee Burge Professor of Law & Ethics, Georgia State University College of Law. See Ga. State Univ. Coll. of Law, <http://law.gsu.edu/FutureOfLegalEducationConference/> (last visited May 23, 2008).

In September 2008, the University of Washington School of Law hosted Legal Education at the Crossroads— Ideas to Accomplishments: Sharing New Ideas for an Integrated Curriculum. The conference will feature recent curricular developments and curricular proposals in progress in a workshop setting with colleagues around the country. The chair is Debbie Maranville, Professor of Law and Director of Clinical Law Program at the University of Washington School of Law. Press Release, Shari Ireton, Univ. of Wash. Sch. of Law, *UW School of Law to Host "Legal Education at the Crossroads"* (Aug. 14, 2008), <http://www.law.washington.edu/News/Articles/Default.aspx?YR=2008&ID=Crossroads>.

<sup>43</sup> Phoenix School of Law anticipated that many of its graduates would enter the profession as prosecutors, public defenders, and general practitioners in small firms. Consequently, Phoenix School of Law surveyed lawyers engaged in private practice and conducted focus groups with prosecutors and public defenders.

instructors in skills and values courses, and it shows students that the practicing bar plays an important role in their preparation for the profession.

The committee designing the skills and professionalism courses can have a broad perspective if it includes faculty, staff, and student representation. These representatives should reach out to their constituencies to gather input. For example, the committee should consult with faculty members who have expertise in areas that will be addressed by the course. Likewise, the student representative may be asked to poll other students on a variety of issues that relate to course design. Students very much appreciate knowing that they are recognized as stakeholders in the design of a course that is going to help them build the bridge from law school to the practice of law. It is also important for the committee to keep the dean and the rest of the faculty fully informed by issuing progress reports and soliciting feedback via e-mail or at faculty meetings. Successful skills and professionalism courses need support of the faculty, administration, and students. Finally, it is helpful to have an ongoing advisory committee, after the course is designed and approved, to provide monitoring and input. Continuing assessment is the key to continuous improvement, and continuing communication is the key to continuous support of faculty, students, and administration.

### *C. Decide How Student Performance Will Be Assessed*

A course in practice skills and values can be graded according to the law school's prevailing grading system or by an alternative method tailored to the nature of the course. On one hand, employing the school's standard grading system enhances the

status of the skills and professionalism course as a “real” course. Faculty and students may take the course more seriously if it fits within the school’s normal grading scheme. On the other hand, the course may not lend itself to traditional assessment of student performance through graded examinations or papers. For example, much of the Phoenix School of Law’s General Practice Skills course involves collaborative work by the students simulating a small law firm. Furthermore, the General Practice Skills faculty consists of practicing attorneys, who have little experience or education in grading student performance. However, practitioner faculty members are able to provide meaningful feedback to students on their skill simulations and drafting exercises. Consequently, Phoenix School of Law chose to grade its course on a pass/fail system based on students’ completion of all writing assignments, attendance, and proficiency in demonstrating the skills and values in each module. The faculty teams provide detailed feedback on oral and written student performances and on the professional values reflected in students’ decision making.<sup>44</sup>

#### *D. Train and Support Adjunct Faculty Members*

Practicing attorney faculty members are generally enthusiastic and well prepared. They are not, however, trained educators. Much of their past experience in learning has come from the lecture or Socratic Method. Continuing legal education courses offered by the bar and programs at conferences often consist mostly of “talking

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<sup>44</sup> Faculty feedback to students is generally of two types: 1) immediate oral feedback after a skill has been practiced by a student or group of students and, 2) oral and written feedback on drafting assignments. Faculty feedback often consists of faculty demonstrating an “alternative” or “better” way of performing a skill exercise as well.

heads.” In addition, practicing attorneys have a wealth of knowledge and stories about their practice that they are eager to share with students. Without proper orientation and training, many practicing attorneys would spend the class time talking. The students would do little other than listen and take notes.

Training of the practicing attorneys should start by explaining that the teaching plans emphasize that students “learning while doing.” The attorneys must understand that they have three primary roles: (1) to provide the materials and information necessary to prepare the students for their skill exercises; (2) to give the students time to practice the skills and professional values; and (3) to provide positive and constructive feedback to students on their performance.<sup>45</sup>

During the course, a member of the full-time faculty should provide guidance and feedback to adjunct faculty members. In most cases, the course is as much a learning experience for the practitioner faculty member as it is for the students. The practitioner may be completely comfortable in an office setting or a courtroom, yet experience nervousness and anxiety in teaching law school students for the first time. Therefore, the full-time faculty should provide the practitioner pictures of the students and start the course with student introductions to help the faculty member quickly connect with the students. The practitioner faculty members should also be given constructive feedback at the end of each class period. The most difficult aspect of teaching the General Practice Skills course for the practitioner faculty member may be

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<sup>45</sup> For an excellent guide for faculty for providing effective feedback to students on performance of skills, see Ralph Cagle, *Critiques of Students Lawyering Skills*, in GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 310–13 (1999).

to adhere to the teaching plan and refrain from talking too much. Some of the Phoenix School of Law students noted that the instructor lectured too much and that there was not enough time to adequately complete the skills exercises. Practitioner faculty should be encouraged to “keep things moving and the students doing.”

#### *E. Additional Suggestions from Lessons Learned*

The four sections above provide general guidelines for developing and delivering courses devoted to professional skills and values. This section offers more specific suggestions based on the lessons learned from the first two offerings of the General Practice Skills course.

The optimal size for the course is a maximum of thirty students per section, with two practicing attorneys as an instruction team for each module. This size allows students to engage in collaborative and individual simulation exercises and receive group and individual feedback from the instructors. A class of thirty students can make six law firms with five students in each law firm. For simulation exercises, this allows for three plaintiff and three defendant groups.

A module length of two weeks works well for both the students and the attorney faculty. Students experience skills and values in the context of seven practice areas throughout the semester. The two week module allows attorneys to schedule themselves away from their practices for what amounts to no more than the time it would take to try a case.

Prior to the beginning of each module, the students should be provided with the teaching plan, homework assignments, and materials needed for the module. Where appropriate, students should be referred to internet sites maintained by the courts, legislature, or other applicable entities. Materials should be indexed and numbered sequentially for easy reference

by the students and practitioner faculty. If the students are provided with samples of pleadings, discovery documents, police reports, and other documents relating to actual clients, the identities of the people involved should be changed or removed.

To the extent possible, simulations involving the skills of interviewing, counseling, mediating, or conducting court proceedings with clients, witnesses, or other parties, should make use of people who are willing to assist in making the simulation exercises as realistic as possible. Theatre students and non-law school friends of students or faculty can make excellent role players. When relative strangers to the law school play roles, the skill exercises are more realistic than when roles are played by law school students, faculty, and staff. Care must be taken to assure that the role players are properly prepared for the exercises with scripts and full explanations of what is expected of them. The role players can be an excellent source of feedback to the students following the skill exercises in which they participate.

Each module should end with a thirty to sixty minute period for students to ask the practitioner faculty questions about their careers as lawyers and about their practice areas. This helps students make more informed career choices and is a personal, meaningful way of ending each module.

Every module should be evaluated by the students upon its completion. The evaluation process should be anonymous, kept short, and easy to complete. Typically, students are quite candid in expressing their views about what they feel works and does not work. They are not hesitant to criticize instruction or materials that are not up to high standards and are also quite complimentary of instructional excellence. Evaluations that ask students to assess whether the module accomplished its objectives of teaching the skills and values allocated to the module,

provide essential feedback to the faculty members and program director. In addition, survey questions that ask students to comment on the ways the module helped them become practice-ready and the changes they suggest for the module help the faculty members and program director continuously improve the course.

#### IV. CONCLUSION

First, there are the criticisms. Next, come the calls for reform. Then, others defend the existing order. Sometimes incremental changes are made. This is how many institutions, including legal educational systems, evolve.

Over the last three decades, critics have argued that legal education does not do enough to prepare graduates for professional practice. They have urged law schools to devote significant effort and resources to teach students a broad range of professional skills and values.<sup>46</sup> Defenders of traditional legal education point out its success in teaching doctrine, theory, and analytical skills; they argue that other professional skills and values are best learned in practice after graduation from law school.<sup>47</sup> In response to the calls for change, some law schools have attempted to address the gaps between legal education and the professional practice.<sup>48</sup>

Will recent innovations in law school curricula make a significant difference in the readiness of graduates to practice law? Law schools will not know the answer to

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<sup>46</sup> See *supra* notes 5–50 and accompanying text.

<sup>47</sup> See Matasar, *supra* note 74, at 396 n.2.

<sup>48</sup> See, e.g., *supra* note 113; Matasar, *supra* note 74, at 401–14 (reviewing the origins and effects of the MacCrate Report).

that question unless they assess the effects of their reform efforts. Surveys or interviews of former students, after their first year or two of practicing law, is one way of assessing the success of curricular innovations. The survey could ask graduates to evaluate the role that skills and values courses played in their transition to practice. Former students could rank the degree to which the skills and values taught in law school have helped in their present area of practice. Another way of assessing the effectiveness of skills and values courses is to survey or interview employers of the graduates. Both the Garth and Martin survey of Chicago and Missouri lawyers, and the Sonsteng and Camarotto survey of Minnesota lawyers, provide excellent examples of sophisticated efforts to determine how recent graduates learned the professional skills essential to success as a lawyer.<sup>49</sup>

Assessment of the effectiveness of curricular changes will be the next challenge for law schools who have responded to the calls for more attention to professional skills and values in legal education. It will be fruitful ground for new scholarship and a basis for continuous improvement. Serious assessment is the way to demonstrate that the increased attention to the underfed side of legal education is critical to preparing students for practice in the twenty-first century.

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Garth & Martin, *supra* note 9, at 478–99; Sonsteng & Camarotto, *supra*, note 9, at 336–41, 248–69.

## Appendix A

### Arizona Bench and Bar Survey

Phoenix International School of Law is committed to producing graduates who are ready to practice law. To construct a curriculum and select appropriate teaching and learning methods, Phoenix Law must identify the essential professional skills, knowledge, and values that lawyers need for success in the Twenty-First century. Your responses to this survey will provide information that Phoenix Law will use to design and refine its program of instruction to produce practice-ready graduates.

#### Demographics

Current Position (choose one)

\_\_\_\_ Judge

\_\_\_\_ Solo practice

\_\_\_\_ Firm of 2–5 lawyers

\_\_\_\_ Firm of 6–25 lawyers

\_\_\_\_ Firm of more than 25 lawyers

\_\_\_\_ Government

\_\_\_\_ In-house counsel

\_\_\_\_ Other (specify) \_\_\_\_\_

\_\_\_\_ Number of Years Since Graduation From Law School

Practice Areas (choose each that accounts for at least 10% of your current workload)
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<input type="checkbox"/> Administrative law <input type="checkbox"/> Admiralty <input type="checkbox"/> Antitrust <input type="checkbox"/> Aviation <input type="checkbox"/> Banking law <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Business planning <input type="checkbox"/> Civil litigation <input type="checkbox"/> Civil rights <input type="checkbox"/> Commercial law <input type="checkbox"/> Consumer law <input type="checkbox"/> Contracts <input type="checkbox"/> Constitutional law <input type="checkbox"/> Corps. & Partnerships <input type="checkbox"/> Criminal defense	<input type="checkbox"/> Criminal prosecution <input type="checkbox"/> Education law <input type="checkbox"/> Elder law <input type="checkbox"/> Employment law <input type="checkbox"/> Entertainment law <input type="checkbox"/> Environmental law <input type="checkbox"/> Estates, trusts, and wills <input type="checkbox"/> Family law <input type="checkbox"/> Health law <input type="checkbox"/> Immigration law <input type="checkbox"/> Insurance law <input type="checkbox"/> Intellectual property <input type="checkbox"/> International law <input type="checkbox"/> Juvenile law <input type="checkbox"/> Labor law	<input type="checkbox"/> Land use law <input type="checkbox"/> Local government law <input type="checkbox"/> Mass communications <input type="checkbox"/> Native American law <input type="checkbox"/> Natural resources law <input type="checkbox"/> Personal injury law <input type="checkbox"/> Poverty law <input type="checkbox"/> Property <input type="checkbox"/> Regulated industries <input type="checkbox"/> Securities law <input type="checkbox"/> Social Security <input type="checkbox"/> Sports law <input type="checkbox"/> Taxation <input type="checkbox"/> Water law <input type="checkbox"/> Workers compensation
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Other practice areas (please specify)

## Professional Skills

For each category of professional skills below, assess its importance to the success of an associate at the end of the first year of practice at a small, general practice firm. Use the following scale:

- 1 Essential
- 2 Very important
- 3 Moderately important
- 4 Minimally important
- 5 Unimportant

- \_\_\_\_\_ Appellate advocacy
- \_\_\_\_\_ Arbitration
- \_\_\_\_\_ Counseling
- \_\_\_\_\_ Drafting legal documents
- \_\_\_\_\_ Factual investigation
- \_\_\_\_\_ Interviewing and questioning
- \_\_\_\_\_ Legal analysis and reasoning
- \_\_\_\_\_ Legal research (library and computer)
- \_\_\_\_\_ Listening
- \_\_\_\_\_ Mediation
- \_\_\_\_\_ Negotiation
- \_\_\_\_\_ Networking within the profession
- \_\_\_\_\_ Obtaining and keeping clients
- \_\_\_\_\_ Oral communication
- \_\_\_\_\_ Organization and management of legal work
- \_\_\_\_\_ Pretrial discovery and advocacy
- \_\_\_\_\_ Problem solving

- \_\_\_\_\_ Recognizing and resolving ethical dilemmas
- \_\_\_\_\_ Strategic planning
- \_\_\_\_\_ Trial advocacy
- \_\_\_\_\_ Working cooperatively with others as part of a team
- \_\_\_\_\_ Written communication
- \_\_\_\_\_ Other important professional skills (specify)

## Legal Knowledge

For each category of legal knowledge below, assess its importance to the success of an associate at the end of the first year of practice in a small, general practice firm. Use the following scale:

- 1 Essential
- 2 Very important
- 3 Moderately important
- 4 Minimally important
- 5 Unimportant

\_\_\_\_\_Administrative law

\_\_\_\_\_Bankruptcy, liens, and poverty law

\_\_\_\_\_Business associations (agency, partnership, corporations)

\_\_\_\_\_Civil procedure

\_\_\_\_\_Civil rights

\_\_\_\_\_Commercial law (UCC)

\_\_\_\_\_Contracts

\_\_\_\_\_Constitutional law (federal and Arizona)

\_\_\_\_\_Consumer law

\_\_\_\_\_Criminal law

\_\_\_\_\_Criminal procedure

\_\_\_\_\_Employment and labor law

\_\_\_\_\_Environmental, natural resources, and water law

\_\_\_\_\_Estates, trusts, and wills

\_\_\_\_\_Evidence

\_\_\_\_\_Family, juvenile, and elder law

\_\_\_\_\_International and immigration law

\_\_\_\_\_ Insurance, workers compensation, and social security law

\_\_\_\_\_ Intellectual property and Internet law

\_\_\_\_\_ Local government, land use, and Native American law

\_\_\_\_\_ Professional responsibility (Arizona and Model Rules of Profession Conduct)

\_\_\_\_\_ Property (real, personal, landlord-tenant)

\_\_\_\_\_ Remedies (damages, injunctions, enforcement of judgments)

\_\_\_\_\_ Securities, banking, and investment law

\_\_\_\_\_ Taxation

\_\_\_\_\_ Torts

\_\_\_\_\_ Other important legal knowledge (specify)

## Professional Values

For each category of professional values below, assess its importance to the success of an associate at the end of the first year of practice at a small, general practice firm. Use the following scale:

- 1 Essential
- 2 Very important
- 3 Moderately important
- 4 Minimally important
- 5 Unimportant

- \_\_\_\_\_ Act honestly and with integrity
- \_\_\_\_\_ Commitment to a balanced life
- \_\_\_\_\_ Commitment to continued professional growth and development
- \_\_\_\_\_ Commitment to critical self-reflection
- \_\_\_\_\_ Commitment to personal growth and development
- \_\_\_\_\_ Commitment to pro bono work
- \_\_\_\_\_ Demonstrate creativity and innovation
- \_\_\_\_\_ Demonstrate maturity, autonomy, and judgment
- \_\_\_\_\_ Demonstrate self-motivation and passion
- \_\_\_\_\_ Demonstrate tolerance, patience, and empathy
- \_\_\_\_\_ Engage in healthy stress management
- \_\_\_\_\_ Involvement in community activities and service
- \_\_\_\_\_ Participate in activities designed to improve the profession
- \_\_\_\_\_ Show diligence and ethic of hard work
- \_\_\_\_\_ Show reliability and willingness to accept responsibility
- \_\_\_\_\_ Show self-confidence and earn others' confidence
- \_\_\_\_\_ Strive to promote justice, fairness, and morality

\_\_\_\_\_ Strive to provide competent, high quality legal work for each client

\_\_\_\_\_ Strive to rid the profession of bias

\_\_\_\_\_ Treat clients, lawyers, judges, staff with respect

\_\_\_\_\_ Other important professional values (specify)

Phoenix Law appreciates your willingness to share your experience and expertise by responding to this survey.

## **Appendix B**

### **Teaching Plan – Criminal Law Practice Module**

#### **Skills:**

- 1) Recognizing and resolving ethical issues
- 2) Negotiation
- 3) Pretrial Discovery
- 4) Advocacy

#### **Values:**

- 1) Act honestly and with integrity
- 2) Treat clients, lawyers, judges, and staff with respect

#### **Summary of Module:**

Students will be provided with an actual criminal case file arising out of the finding of a methamphetamine laboratory.

Students will review the case file and read the charging statutes. They will make use of the Criminal Code Sentencing Guide to calculate the potential range of sentences facing the defendant. The case file raises issues regarding the search of the defendant's car, the voluntariness of the defendant's statements, and the admissibility of his prior convictions. The students will receive a plea offer with a short expiration date and have to resolve the dilemma of recommending the taking of a favorable plea offer or litigating the legal issues that could result in a dismissal or a better offer. The students will draft and file a motion and response requesting the suppression of evidence seized in a search of defendant's car, including his statements, and respond to the State's request for a Rule 609 hearing. The students will argue their motions in the courtroom before a judge. Following the rulings, the students will be involved in plea negotiations. The students will draft the terms of the plea agreement. The students will observe attorneys while they review the plea agreement with the defendant who will raise new information that poses an ethical dilemma for the students. The students will read

relevant ethics opinions and resolve the ethical issues. The students will participate or observe a demonstration of a hearing on taking a plea to the plea agreement. The students will participate in a sentencing hearing.

### **Homework Prior to Day One:**

Instructions:

You have been hired by the law firm of Lockhart and Tate. You have been assigned to the case of State of Arizona v. Brett Williams. The case file has been provided to you. You will be meeting with Mr. Lockhart and Mr. Tate at 1:00 PM on Tuesday, October 23, 2007 to discuss the case. To be prepared for this meeting you must do the following:

- 1) Review the case file documents carefully.
- 2) Look up the statutes that define the charges against your client. (You do not have to read the sentencing statutes.)
- 3) Use the 2007 Criminal Code Sentencing Guide to determine the ranges of sentencing that your client is facing. (Note: Your client would actually face the sentencing code as it existed at the time of the alleged crime, but we will use the 2007 guide for this case.)
- 4) Read the following cases and rules:
  - a) State v. Gant (pertaining to search of vehicle)
  - b) State v. Pettit (relating to admissibility of statements)
  - c) Rule 609, Rules of Evidence and State v. Green (addressing Rule 609 considerations)

### **Day One:**

- 1) Introduction of faculty and students. (1:00 PM to 1:20 PM)
- 2) Faculty to discuss case file documents using overhead projector. (1:20 PM to 2:10 PM)

3) Faculty to discuss the use of the Criminal Code Sentencing Guide. (2:10 PM to 2:30 PM)

Break (2:30 PM to 2:40 PM)

4) Strategic Planning related to this case: How should this case be defended? Was the search of the car valid? Are the statements of the defendant admissible? If the defendant takes the stand, will the jury be told of his prior convictions? Students are to discuss these issues in their law firm groups. (2:40 PM to 3:00 PM)

5) Arrival of letter from the prosecutor with a plea offer. (While in their groups, distribute to the students the letter that has just arrived.) Students are to evaluate the offer and discuss it in their groups. (3:00 PM to 3:15 PM)

The plea offer is to plead to Conspiracy to Manufacture a Dangerous Drug, a Class 2 felony. Counts 2 and 3 and allegations of threshold and multiple offenses will be dismissed, including allegations of prior convictions. The range of sentence is a presumptive 5 years, with a maximum sentence of 10 years (Supermax of 12.5 years) and a minimum sentence of 4 years (Supermin of 3 years). Probation is available. The prosecutor is willing to leave sentencing discretion up to the court. The prosecutor has instituted a time limit of 48 hours from receipt of the plea offer for the defendant to accept it; otherwise, it is withdrawn.

6) Faculty discussion about the dilemma that this plea offer creates because there are possible motions that, if granted, could result in a dismissal or weakening of the State's case and could affect how the Defense Counsel would handle case strategy and presentation to the client. (3:15 PM to 4:00 PM) (First, ask each law firm to report on the results of their discussion.)

7) Students are informed that the defendant wants to take his chances and fight the case. (Explanation of Thursday's homework assignment.) All motions and responses are to be e-mailed to Judge Gerst by Thursday morning at 9:00 AM. Also, make the law firm assignments for arguments that will occur the next day. All students are to read all cases. Each law firm will draft one motion or response.

**Homework for Day 2:**

Students are to read Rule 16.2, Rules of Criminal Procedure (Procedure on Pretrial motions to Suppress Evidence and Burden).

Students are divided into law firms representing the defendant and the State. There will be three law firms representing each side. One defendant law firm will prepare a Motion to Suppress the evidence seized in the search of the car and all fruits there from based on the case of State v. Gant. The first State's law firm will simultaneously file a response. A second defendant law firm will file a Motion for a voluntariness hearing and to suppress the statements made by the defendant. (We will not actually hold a voluntariness hearing, but will instead assume that one was held and that the evidence supported what is described in the police report.) The second State's law firm will file its response. The third defendant law firm will file a response to the State's request for a Rule 609 hearing. The third State law firm will file a response.

## **Day 2:**

Court hearings:

Judge Gerst presiding in the Courtroom. This will be the time set for hearings on the motions. Each law firm will argue their motion and response. Faculty will be at counsel table to offer assistance or answer questions of student presenters. (We will try and have every student participate even though they may make the same arguments.) Following the arguments, Judge Gerst will rule as follows:

- 1) The motion to suppress all evidence based on the illegal search will be denied.
  
- 2) The motion to suppress statements by the defendant will be granted.
  
- 3) The motion to admit prior conviction will be granted as to one and denied as to the other. The court will allow counsel choice as to "sanitization."

If there is time, there will be class discussion arising out of the hearing on the motions.

### **Homework before Day 3:**

Students to read Ethics Opinion 00-02 in materials which reviews the ethical quandaries cause in plea agreements when a lawyer's duty of confidentiality may be in conflict with a lawyer's duty of candor to the court.

Read Rules 17.1 through Rule 17.6 relating to the taking of pleas.

Review Plea Agreement form. (Distribute to students.)

### **Day 3:**

1) Students will negotiate a plea agreement.

Defense wants the same "no agreements" deal as to sentencing and also wants the original plea offer. The State now wants a stipulation that if the defendant receives probation, he serve a one year jail term as a condition of probation. We will privately suggest to the prosecutors to offer the same deal with a six month jail term if defendant gets probation and other terms such as drug treatment, payment of clean-up costs, etc. (The prosecutors are—and should be—concerned that Judge Gerst's ruling on the search issue would be reversed on appeal. This is the defendant's main negotiating point.)

2) Students will draft plea agreement. (We need to provide the forms.)

3) Demonstration by faculty of the interview with the defendant to discuss the new plea offer that was negotiated. (The defendant still wants to go to trial. He asks his attorney about his chances of getting the judgment reversed on the search issue. His lawyers discuss the risks and what he is facing. Defendant decides to take the deal, but in the discussion reveals for the first time that he has an undisclosed prior conviction for a drug offense in Kansas from 15 years ago.)

4) Student law firms meet to decide how to resolve the ethical issue and report back in class.

5) Demonstration of the taking of a plea before Judge Gerst.

6) Discussion and questions arising out of the taking of the plea proceeding.

#### **Homework for Day 4:**

Read Rules of Criminal Procedure 26.1 through 26.16 relating to sentencing.

Review Probation Report and Recommendations of the prosecutor. (Distribute to students.)

Review of Probation form used by Superior Court. (Distribute to students.)

#### **Day 4:**

1) Court hearings by law firms representing the defendant and the State at sentencing. (Court imposes a sentence of probation with 6 months jail, drug treatment, clean-up costs, probation service fee, etc.; court fills out form and defendant signs it.)

2) Discussion about preparing the case for sentencing, including client preparation.

3) Question and Answer session on any subject relating to the practice of criminal law with faculty. (Suggest we use the same procedure as previously used in other module, i.e. each law firm decide on 4 questions that would be of interest to the class. Then each law firm asks their top question and then we go to round 2, 3, and 4, as time permits.)

