

LAWYERING SKILLS
Spring Semester 2011

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Performance Group Instructors:

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REQUIRED MATERIALS

1. Binder, David, Bergman, Paul, Price, Susan and Tremblay, Paul R., Lawyers As Counselors 2nd Edition(Thomson West, 2004)
2. Craver, Charles B., Alverson, Freda H., Effective Legal Negotiation and Settlement (Michie, 2005)
3. Fisher, Roger, and Ury, William, Getting to Yes, 2nd Edition(Penguin 1991)

I. PURPOSE

Lawyering is a complex activity requiring many types of knowledge and skills. Lawyers must know substantive and procedural law. They must possess analytical and judgment skills, frequently referred to as "thinking like a lawyer." They must apply this knowledge in the legal context, requiring working knowledge of the legal process. They need technical representational skills and an appreciation of the lawyer's role and professional responsibility.

Lawyers must express their thoughts effectively. Oral and written communication skills are paramount to successful lawyering. Lawyers need legal research and analysis skills. To deal effectively with clients and colleagues, lawyers must use interpersonal communication skills. Lawyers interview, develop and investigate facts, establish client relationships, counsel clients, engage in case planning activities, negotiate, mediate, and use persuasion. To be competent and professional, lawyers must reflect upon how they conduct their practice, and what character traits the good lawyer should possess. In short, lawyers must not only "think like a lawyer," they must also be proficient in the skills related to "acting, writing and speaking like a lawyer." This is true whether a lawyer is engaged in traditional law practice, non-traditional practice, or has chosen a background in the law to practice a different profession.

The purpose of this course is to train students in basic communication skills that they will use throughout their careers. The course will focus on interviewing and counseling, negotiation, fundamentals of mediation, and the skills needed to successfully conduct those activities. These are basic skills that can be transferred to use in different contexts. They are foundation skills for lawyers, but have practical applications regardless of career path chosen. Students will also be asked to contemplate how professional they believe their personal presentation is. The course is divided into two main areas of study, (1) interviewing and counseling, and (2) negotiation.

II. SUBJECT MATTER

Interviewing and Counseling

Interviewing refers to lawyer interaction with a client for the purpose of identifying the client's problem, and for the purpose of gathering information on which a solution to that problem can be based. Counseling refers to a process in which lawyers help clients achieve effective solutions to their problems. Specifically, it refers to a process in which potential solutions with their probable

positive or negative consequences are identified and then weighed in order to decide which alternative is most appropriate. Effective counseling demands understanding of how each client's unique goals and circumstances intertwine with legal issues. Lawyering skills will be discussed in the context of both litigation and transactional matters.

The objectives of this portion of the course are (1) to describe the components of successful interviewing and counseling, and to provide a framework for developing those skills yourself, (2) to observe these skills in use, and (3) to practice the skills in a controlled environment where careful critique can be provided. Fact gathering will be studied in context during this and other portions of the course.

Negotiation

Negotiation is one of the most frequently used lawyering skills. Much of lawyering involves negotiation, whether the lawyer characterizes it as such or not. Whenever a lawyer is dealing with another party trying to resolve a matter, s/he is engaging in a form of negotiation.

The objectives of this portion of the course are (1) to give a reliable description of the negotiating styles and methods of practicing lawyers by use of empirically derived information and videotaped examples of experienced lawyers in actual negotiations; (2) to critically examine the two basic negotiating strategies; (3) to give students experience in the preparation, evaluation and negotiation of selected legal problems; and (4) to give students feedback on their grasp of the substantive information in the course and on their performance as a negotiator.

Mediation

Mediation is a process for problem-solving by which participants, with the assistance of a neutral third person, systematically isolate disputed issues in order to consider alternatives, develop options and reach a consensual settlement that will accommodate their needs.

The objectives of this portion of the course are (1) to acquaint students with the mediating styles and methods of practicing lawyers and (2) to suggest what skills make for good mediation.

III. INSTRUCTIONAL METHOD

Simulation

The primary method of instruction for the course will be simula-

tion of lawyer's skills. Simulation requires students to perform skills in the lawyering role. Students will be assigned problems to prepare and present, usually in front of an instructor and other class members, and sometimes will be videotaped during these performances. Students will self-evaluate their performance, and the instructor and peers will provide critique.

Students will observe and critique videotapes of lawyers and other students engaged in performing various skills. Students will participate in directed discussion of assigned readings.

Self-evaluation and Peer Evaluation

Self-evaluation is an important part of this course. Students will learn to assess their skills in many contexts. They will become aware of both their strengths and weaknesses, so that they may become more skilled. A companion skill is peer evaluation. How others see us is an invaluable form of feedback. Lawyers frequently work by critiquing one another's ideas and performances. Learning to provide constructive feedback is a foundation lawyering skill. General oral evaluations will be given of classmate performances, and students will also fill out self-evaluation and peer evaluation forms. Students will review tapes of their performance and critique that performance.

Instructor Evaluation

Instructor evaluation is also an important instructional method. Instructors will evaluate weekly classroom performances. Instructors will privately review videotapes with students after their self-evaluation. This will provide the student an opportunity to receive detailed critique from one of the instructors.

IV. CLASS MEETINGS

This class meets as a whole in one one-hour session each week and as performance groups of eight students for one two-hour session each week. During the one-hour session, subjects of study will be introduced and discussed. Students will frequently observe videos of performance of the skill being studied. In the performance sessions, students will present assigned problems. Students will have to schedule time outside class to complete performance assignments.

V. Technology Policy

Laptop computers or other electronic devices may be used during discussion group for note-taking only. No internet use is permitted during class.

In addition to the usual courtesies due to your classmates, refrain from text-messaging and email, using cell phones, pagers, or any other communication device. Refrain also from displaying wallpaper, screen savers, or other material on your computer screen that can reasonably be expected to distract your classmates.

Violation of this policy could result in a reduction of your grade and/or dismissal from the class.

VI. GRADING

Each person's grade in the course will be based upon the following factors:

1. Attendance. Because so much of the learning takes place in classroom presentations, demonstrations, and discussions, you must plan to attend all the classes. Any student who misses more than two (2) class sessions will be required to give demonstrative evidence of having mastered the material assigned for that class session, or s/he must withdraw from the course. Missed classes and lack of preparation will affect final grade.
2. Successful completion of all assignments. This includes completing all problems on time, including all assigned aspects of each problem.
3. Professionalism is important, and you should develop good habits from your earliest lawyering experiences. In practice you would not miss an appointment with a client, another lawyer or a senior partner. If you miss an appointment for a video recording, video review, or negotiation, without good reasons and/or without notifying the people involved, your grade will be lowered. ALWAYS notify Vickie Jauert of any changes in taping or review schedule. Also, never sign up for more than one video recording or review time. Professionalism includes appropriate ethical conduct.
4. Your grade will be determined using the following factors:

Participation in discussion group	10%
Written assignments	20%

Performance group (including final interview, counseling and negotiation exercises)	50%
Exam	20%

WRITTEN ASSIGNMENTS IN LAWYERING SKILLS
Spring 2011

<u>Assignment #</u>	<u>Description</u>	<u>Class Session #</u>
1	List of Ten Skills Lawyers Need	1
2	Skills Improvement to Date	8
3	Interview Self-Evaluation	10
4	Lists from <u>Tello v. Henson</u> ; Outline from <u>Pearson v. Hobart</u> ; Sheets from <u>Richards</u>	12
5	Counseling Self-Evaluation	15
6	Negotiation Self-Evaluation	16
7	NEGOTIATION ONE: PETERSON V. DENTON Negotiation Goals	19
8	Settlement Agreement	19
9	Evaluation of Self & Opponent	19
10	NEGOTIATION TWO: MULDAR V. SCULLY Negotiation Goals	22
11	Settlement Agreement	22
12	Evaluation of Self & Opponent	22
13	List of Ten Skills & Self-Evaluation	23
14	NEGOTIATION THREE: FTC V. TIMESAVE Negotiation Goals	23
15	Settlement Agreement (including points)	23
16	Evaluation of Self & Opponent	23
17	Narrative Paper	23

LAWYERING SKILLS
Spring Semester 2011

Class Schedule

Discussion Group: Monday 5:00-5:50 p.m.
Performance Group: Tuesday 5:00-6:50 p.m. (1 group)
Wednesday 6:00-7:50 p.m. (1 group)

<u>Week</u>	<u>Discussion Group</u>	<u>Class Session</u>	<u>Performance Group</u>	<u>Class Session</u>
1	1/24/2011	(1)	1/25&26/11	(2)
2	1/31/2011	(3)	2/1&2/11	(4)
3	2/7/2011	(5)	2/8&9/11	(6)
4	2/14/2011	(7)	2/15&16/11	(8)
5	2/21/2011	(9)	2/22&23/11 (No Class-Interviews)	(10)
6	2/28/2011	(11)	3/1&2/11	(12)
3/7-3/11/2011 (SPRING BREAK)				
7	3/14/2011	(NO)	3/15&16/11 (Interview reviews)	(NO)
8	3/21/2011	(13)	3/22&23/11	(14)
9	3/28/2011	(15)	3/29&30/11 (No Class-Counseling Exercise)	(No)
10	4/4/2011	(16)	4/5&6/11	(17)
11	4/11/2011	(18)	4/12&13/11	(19)
12	4/18/2011	(20)	4/19&20/11	(No)
13	4/25/2011	(21)	4/26&27/11	(22)
14	5/2/2011	(23)		

Exam-Self-Scheduled Closed Book

LAWYERING SKILLS

Date: January 24, 2011 Discussion Group

Class Session: 1

Subject: Introduction to Course and Instructional Methods
Learning to Critique
Discussion of the Counseling Process
Motivation in the Interviewing and Counseling Process

Reading Assignment:

Binder, Bergman, Price and Tremblay, pages 1-77.

Performance Assignment:

None to prepare.

Written Assignment:

We will use a standard format for identifying your written work.

Include your name and the date in the upper right hand corner, and mark it "Assignment No. 1." **Put the name of your Performance Group Instructor also.** Use 8 ½ x 11" paper only. Please use a similar format on all future assignments. Example:

South, Carla

1/24/11

Class Session 1

Assignment No. 1

Thompson-Spring 2011

Prepare a list of ten skills you think are important for being an effective lawyer. If you hope to practice in a specific substantive area, state the area and tailor your list accordingly. If you don't intend to practice law, describe the type of career you want, and develop your list to reflect your career choice.

Evaluate your current level of proficiency at the ten skills you have listed. You may choose the descriptors for this rating. You may be narrative or conclusory. If there are specific skills you hope to improve in this course, please describe them.

Please hand in assignment to Small Group Instructor by class time on day of your small group meeting.

LAWYERING SKILLS

Date: January 25 & 26, 2011 Performance Group

Class Session: 2

Subject: Introduction to Critique Process
Motivation in the Interviewing and Counseling Process

Reading Assignment:

Binder, Bergman, Price & Tremblay, pages 1-77

Performance Assignment:

Be prepared to practice using interview skills. No prior preparation required. Exercises will be conducted in class. Based upon your reading, think about how you might critique the questions other students ask.

Written Assignment:

None.

LAWYERING SKILLS

Date: January 31, 2011 Discussion Group

Class Session: 3

Subject: Active Listening
Questioning

Reading Assignment:

Binder, Bergman, Price & Tremblay pp. 41-111.

Performance Assignment:

None.

Written Assignment:

None.

LAWYERING SKILLS

Date: February 1 & 2, 2011 Performance Group

Class Session: 4

Subject: Active Listening
Questioning

Reading Assignment:

None.

Performance Assignment:

PEOPLE v. RAMSEY

LAWYER INSTRUCTIONS

The purpose of this exercise is to provide you with experience in recognizing and responding to feelings which are vaguely expressed during the course of an interview.

You are a lawyer in the process of interviewing Arlene/Ron Ramsey who is charged with petty theft. Your client has told you that the arrest was made as he/she was leaving Hughes Market. The client indicates that a store detective grabbed her/his shopping bag and withdrew a package of ice cream bars from which he/she had not paid. The client does not know how the package got into her/his bag, but thinks perhaps it was placed there by her/his six-year old daughter.

You should now continue the interview to determine what occurred when the client was actually taken into custody. Your interview should not be concerned with any other factual aspects of the case. The interview for this purpose should not exceed five minutes.

HANSON v. HANSON

LAWYER INSTRUCTIONS

The purpose of this exercise is to provide you with practice in recognizing and responding to feelings which are vaguely expressed during the course of an interview. You are a lawyer in the process of interviewing Julie/Roger Hanson. Proceedings have just been commenced against the client for failure to pay child support, and an Order to Show Cause re Contempt is set for next week. Your client has told you that since the divorce he/she has remarried and now has a child of a second marriage as well. The client's second spouse has deserted her/him. The client is employed as a high school teacher. While the client is required to pay \$500 per month child support under the terms of the decree, the client has paid only \$350 to \$400 a month for the past six months. The client believes he/she is doing the best that can be done. Your client tells you that her/his first spouse has said on several occasions that he/she understands the client's financial problems.

You should now continue the interview to obtain full information concerning the client's financial situation during the last six months. Your interview should not be concerned with any other factual aspects of the case. The interview for this purpose should not exceed five minutes.

Roles: Two students from each Performance Group should pick up Client Instructions from Professor Thompson during class Monday.

Written Assignment:

None.

LAWYERING SKILLS

Date: February 7, 2011 Discussion Group

Class Session: 5

Subject: Information Gathering, Beginning Client Conferences
Preliminary Problem Identification Stage
Preparatory Explanation

Reading Assignment:

Binder, Bergman, Price & Tremblay pp. 79-111.

Performance Assignment:

None.

Written Assignment:

None.

LAWYERING SKILLS

Date: February 8 & 9, 2011 Performance Group

Class Session: 6

Subject: Beginning Client Conferences
Preliminary Problem Identification Stage
Preparatory Explanation

Reading Assignment:

Binder, Bergman, Price & Tremblay review pp. 79-111.

Performance Assignment:

1. **LAWYER INSTRUCTIONS:** The purpose of this exercise is to provide you with practice in beginning client conferences and conducting the Preliminary Problem Identification Stage of the interview. As the interview commences, you know nothing more than the client's name. Conduct the interview up to the point where you would begin to obtain a time-line of the transaction from which the client's problem emanates.
2. If you are assigned to portray a client, carefully prepare your client role.

Written Assignment:

None.

LAWYERING SKILLS

Date: February 14, 2011 Discussion Group

Class Session: 7

Subject: Obtaining a Timeline
Gathering Information from Atypical and Difficult Clients

Reading Assignment:

Binder, Bergman, Price & Tremblay pp. 112-148; pp. 247-268 (Ch. 12)

Performance Assignment:

None.

Written Assignment:

None.

LAWYERING SKILLS

Date: February 15 & 16, 2011 Performance Group

Class Session: 8

Subject: Eliciting a Timeline

Reading Assignment

Review Binder, Bergman, Price & Tremblay pp. 112-148

Performance Assignment:

1. Kearns v. Mayberry Auto Works

LAWYER INSTRUCTIONS: The purpose of this exercise is to provide you with practice in providing a Preparatory Explanation and Obtaining a Timeline. Your client is David/Doris Kearns. Kearns lives in a twenty-five unit apartment building on Barrington Ave. between San Vicente and Wilshire. Kearns is employed as a teller at Security Pacific Bank in Saint Paul. You are unsure about Kearns' knowledge of the law or lawyers. Kearns was recommended by another bank teller for whom you had drawn a will.

In the Preliminary Problem Identification State, the client indicated that about a month ago he/she made a \$3000 down payment on a 1938 De Soto being sold by Mayberry Auto Works on Payne Blvd. Mayberry now refuses to deliver the car claiming it has been sold to the owner's former spouse. The client's desire is to make Mayberry comply with the agreement since this kind of car cannot be purchased elsewhere.

You should assume that the Preliminary Problem Identification Stage of the interview has been completed.

Begin the exercise by providing the client with whatever Preparatory Explanation you think is appropriate and then proceed through Obtaining a Timeline.

2. Briggs v. People

LAWYER INSTRUCTIONS:

The purpose of this exercise is to provide you with practice in providing a Preparatory Explanation and Obtaining a Timeline. Your client is Phyllis/Phillip Briggs. Briggs lives on Oakwood Terrace in Stillwater and teaches history at Hamilton High School in Stillwater. You sense he/she has never seen a lawyer before. Briggs came to you on the recommendation of a friend of yours who lives in Briggs' apartment building.

In the Preliminary Problem Identification Stage the client indicated that last Saturday night when he/she was on the way home from a party he/she was arrested and charged with driving under the influence and possession of marijuana.

The arrest occurred at Vincent and 26th. The client must now appear in the Washington County District Court the day after tomorrow. The client, who is a high school teacher, is very concerned because he/she has no idea what his/her options are and what effect a conviction might have.

You should assume that the Preliminary Problem Identification Stage of the interview has been completed.

Begin the exercise by providing the client with whatever Preparatory Explanation you think is appropriate and then proceed to Obtain a Timeline.

Written Assignment:

1. Computer literacy is an important lawyering skill. All assignments from now on must be typed, but evaluation forms distributed for the problems may be handwritten. Include your name, the date, class session number, name of your small group instructor and "Assignment No." in upper right hand corner, per example on page 8 herein. If this presents a hardship, please see Professor Thompson.

Turn in a one-page description of how you feel your skills have improved to date and discuss your developing concept of yourself as a lawyer. Identify specific skills you have used. This is Assignment No. 2. If you have an evaluation of how small group is going to date, please include that also. The small group evaluation should be in addition to the one

page skills analysis, not substitution. Due by class time, to your Small Group Instructor, the day of your Performance Group.

LAWYERING SKILLS

Date: February 21, 2011 Discussion Group

Class Session: 9

Subject: Theory Development; Developing Potential Evidence
Theory Development Questioning Techniques
Concluding Client Conferences

Reading Assignment:

Binder, Bergman, Price & Tremblay pp. 149-207; 234-246

Performance Assignment:

None.

Written Assignment:

None.

LAWYERING SKILLS

Date: February 22 & 23, 2011 Performance Group

Class Session: 10 (No Class Meeting)

Subject: Complete Client Interview

Reading Assignment:

Review Binder, Bergman, Price & Tremblay as necessary.

Performance Assignment:

You will be assigned a client. You must arrange a time to interview that person on video outside of class time.

You are about to interview a potential client, Sarah/William Butler. (You may use your client's real name if you prefer.) You MAY NOT meet with the client in advance except to arrange the interview. Do not discuss the case with them, or attempt to get to know them. You are striving to experience the actual lawyering situation, where lawyers frequently meet clients for the first time at the intake conference.

You will be allotted only 30 minutes to conduct the interview because you have another appointment scheduled a half-hour after the Butler appointment. Probably within the 30 minutes, you will not have enough time to gather sufficient information on which to advise a client about whether he/she should proceed with litigation. Therefore, you should be prepared to adjourn the interview without assessing the client's legal position. However, be sure to conduct all phases of the interview including the theory development stage. Small group instructors will post review times on the Lawyering Skills Office bulletin board. They will meet with you individually to review your video.

Written Assignment:

Perform an extensive self-critique of your video. This includes completing a form provided in the Lawyering Skills Office, and please add additional information you desire. Include discussion of how your skills are developing. Some reviews may take place during Performance Group meeting time; some may not. You are responsible for arranging this with the Instructor. Bring your laptop with the video downloaded and your COMPLETED self-evaluation to your review. To facilitate ease of video recording performance groups will not

meet February 22 & 23. You will complete client interview. Reviews with small group instructor will be held the week of March 14-16, after spring break.

LAWYERING SKILLS

Date: February 28, 2011 Discussion Group

Class Session: 11

Subject: Nature of the Counseling Process
Four Steps: Clarifying Objectives
Identifying Alternatives
Identifying Consequences
Making a Decision

Reading Assignment:

Binder, Bergman, Price & Tremblay pp. 269-322.

Performance Assignment:

None.

Written Assignment:

None.

LAWYERING SKILLS

Date: March 1 & 2, 2011 Performance Group

Class Session: 12

Subject: Client Counseling
Clarifying Objectives
Identifying Alternatives
Predicting the Legal Consequences
Identifying Nonlegal Consequences
Whose Decision: Client or Lawyer?

Reading Assignment:

Binder, Bergman, Price & Tremblay pp. 269-322

Performance Assignment:

Prepare the following three problems.

1. Richards v. Kaufman

Predicting the Legal Consequences

Elliot/Ellen Richards is the owner of a six-unit apartment building located at 1401 North Van Ness Avenue. Richards has instituted an unlawful detainer action against Virginia/Virgil Kaufman, the tenant in Apartment A. Kaufman is in possession of the premises under a two-year written lease and only six months of the term have expired.

The suit seeks the recovery of: (1) rent of \$500 per month for two months of April and May, (2) reasonable attorney's fees in accordance with the provisions of the lease, and (3) forfeiture of the lease and possession of the premises.

Kaufman has filed an answer admitting that the rent is unpaid but claiming that no rent is due. Kaufman contends that the two-bedroom apartment was not maintained in a habitable condition and that therefore no rent is owing. In particular Kaufman contends that during the period in question Richards failed to maintain the bathroom in adequate condition in that the toilet was constantly becoming stopped-up and could not be flushed. In addition, Kaufman contends that Richards failed to maintain the common garbage area in a clean and sanitary condition. As a

consequence, Kaufman contends s/he was frequently forced to take the garbage to a disposal area in a neighboring apartment building.

In answers to interrogatories Richards admits receiving timely and adequate notice of the alleged defects; but contends, however, that there is no merit to Kaufman's complaints about either the toilet or the garbage area.

Through formal discovery and interviews with various witnesses, Kaufman's lawyer has learned the following: Richards contends that any difficulties with the toilet were solely the result of the actions of Kaufman's two children. In particular, Richards contends that the children were causing the toilet to become stopped up by putting articles such as newspapers and paper towels into the toilet. Twice during the month of April and twice during the month of May a plumber from ABC Plumbing was at the Kaufman apartment to work on the toilet. In each instance the condition of the toilet was such that it would not flush. In one instance, April 10th, the malfunction was caused by someone attempting to flush newspapers down the toilet. In the other three instances, however, the difficulty was attributable to mechanical defects of various types. In addition to the instances with the plumber, Richards contends that twice during April when s/he responded to Kaufman's complaints about the toilet, s/he found the toilet stopped up by newspapers. Kaufman insists Richards repaired the toilet only once during April. S/he does not deny, however, the presence of newspapers.

With respect to the garbage area, Kaufman contends that the area was so filthy and smelly that it was physically sickening to use the area. Kaufman has several photographs showing the area to be in a very slovenly condition, and several other tenants in the building are willing to verify Kaufman's story. There is no contention by Kaufman that the smell from the garbage area permeated the apartment.

Kaufman's attorney has now contacted her/him and indicated that Richards is willing to dismiss the suit and allow Kaufman to remain in possession for the duration of the lease if Kaufman will pay back rent of \$750. The attorney fees which Richards and Kaufman have paid their respective attorneys is \$200.

(1) What are the probable legal consequences if Kaufman refuses to settle and proceeds to trial?

(2) Prepare the kinds of charts (delineating advantages and disadvantages) discussed in the text beginning from page 307 through 321, and be prepared to use them with the client.

2. Tello v. Henson

Identifying Nonlegal Consequences

Alex Tello has instituted suit against Robert Henson. The suit seeks recovery of \$3,500 allegedly loaned by Tello to Henson and also the recovery of reasonable attorney fees. The latter are claimed under the provisions of a promissory note allegedly evidencing the loan. Henson has filed an answer admitting that he received \$3,500 from Tello. Henson alleges, however, that under the terms of the agreement between the parties the money is not yet due and payable.

At the time Tello gave the money to Henson, Tello's spouse was opposed to the loan. She felt that Henson would not repay the money, and she therefore urged her husband not to make the loan. Henson was a personal friend of Tello, and Tello therefore decided to go ahead with the transaction despite the objections of his spouse.

Since the filing of the suit, several mutual friends of Tello and Henson have urged Tello to at least temporarily drop the suit because Henson is in desperate need of money.

Tello's current income is adequate to meet his immediate needs and those of his family. However, although Tello has adequate income to meet his daily needs, he has a current need of at least \$1,500. He needs \$500 in order to pay for the repair of a hydraulic lift at his service station. He also needs \$1000 to take his family on the vacation which he has promised them. The vacation is to occur next month.

Mr. Tello's lawyer has just called Mr. Tello into the office to inform Mr. Tello of the following offer of settlement made by Henson. Henson will immediately pay Tello \$1000 if Tello will sign a complete release. Tello's lawyer has indicated that Tello has a good but not an excellent chance of obtaining a judgment for the full \$3,500 if the case proceeds to trial, but the lawyer has also indicated there is about a fifteen (15) to twenty (20) percent chance that the court will hold that Tello's suit is premature and that the money is not due for another two years. If the court reaches this conclusion, Tello will be liable to Henson for reasonable attorney fees. The lawyer has further indicated that the trial will probably take place in about four months. To date Tello has paid his lawyer \$500; if the case proceeds to trial the lawyer's additional fee will be \$300.

What are the potential nonlegal consequences which may befall Mr. Tello if (a) he accepts the settlement offer, (b) he rejects the settlement offer?

3. Pearson v. Hobart

Whose Decision, Client or Lawyer?

Robert Pearson and Diana Sanes are dry wall contractors. With Pearson holding a sixty-percent interest in the business, Pearson and Sanes are doing business under the fictitious firm name of Pearson Inc.

About three years ago Pearson Inc. was the dry wall subcontractor on a small, six home subdivision in Apple Valley. After the houses had been completed and sold, three of the new owners filed suit against the developer and the general contractor. The suit alleged that in various respects the homes were defectively built; the plaintiffs sought damages in the sum of \$150,000. When the developer and the general contractor filed their respective answers, each filed a cross-complaint against several of the subcontractors who worked on the project. Named as a cross defendant in each of these cross-complaints was Pearson Inc. and the partners, Pearson and Sanes. The cross complaints each sought damages from Pearson Inc. in the amount of \$50,000.

On being served, Pearson and Sanes retained a lawyer, Jill Smith. Smith filed answers to each cross-complaint denying liability. The case has now proceeded through the discovery and pretrial stage and trial is set for next week. After protracted negotiations with counsel for the plaintiffs and the cross-complainants, Smith has received an offer of settlement. The offer is the last one Smith believes she will receive before the trial starts. Under the terms of the offer Pearson Inc. would pay to the plaintiffs the sum of \$6,000 in exchange for a complete release by the plaintiffs and the cross-complainants.

In evaluating the legal consequences of proceeding to trial, Smith has come to the conclusion that there is a rather good chance that the total liability of Pearson Inc. will not exceed \$2,500, and that there is a small chance the liability will not exceed \$1,500. On the up-side of the matter, Smith believes there is perhaps a twenty-percent chance that a judgement could go as high as \$8,500 and only the most minimal risk that it could go beyond that figure.

To date, Smith has received \$2,500 in attorneys fees; her projected additional fees, should the case proceed to trial, are \$1,000 to \$2,400. Court costs to date are \$350 and projected additional costs are \$50.00.

Smith has arranged for Pearson to come into her office in order to discuss the settlement offer. Pearson has full authority to act on behalf of the partnership.

In talking over the situation and analyzing the positive and negative consequences of the alternatives of trial and settlement, Pearson and Smith have come up with the following list. After reviewing this list, would you, if you were Pearson's lawyer, advise Pearson to settle? Why or why not?

Written Assignment:

Turn in your sheets from Richards v. Kaufman, lists from Tello v. Henson, and your outline of advice and reasoning from Pearson v. Hobart. Mark them in the upper right hand corner per page 8, as "Assignment No. 4."

*Make copies for yourself for future reference. Due by class time the day of your Performance Group; hand in to your Small Group Instructor.

SETTLEMENT ALTERNATIVE

LITIGATION ALTERNATIVE

Positive

Positive

Economic

- 1) avoid further attorney fees of \$1200-\$2400
- 2) avoid loss of time necessary to attend trial
- 3) avoid 20% risk of judgment for \$9000 and minimal risk of judgment for more than \$9000
- 4) avoid court costs of \$400

Economic

- 1) retain good chance to pay only \$2500 and some chance to pay only \$1500

Social

- 1) improved relations with employees because will have money left to pay year end bonuses

Social

- 1) improve relationship with partner who favors litigation

Psychological:

- 1) avoid further worry about ultimate financial effect of result at trial
- 2) avoid strain of trial

Psychological:

- 1) avoid feeling of dissatisfaction of paying more than owe

Negative

Negative

Economic:

- 1) pay \$6000
- 2) give up good chance to pay only \$2500 and small chance to pay only \$1500

Economic:

- 1) further attorney fees of \$1500-\$2500
- 2) take 20% risk of paying \$9000 and minimal risk of more than \$9000
- 3) lose time from work to attend trial
- 4) court costs of \$400

Social:

- 1) increase strain with partner who favors going to trial

Social:

- 1) take risk of poor relations with employees because no money for year end bonuses

Psychological:

- 1) feeling of dissatisfaction

Psychological:

- 1) continued worry about

tion because paying more
than probably owe
2) strain of actual trial

ultimate financial
effect

LAWYERING SKILLS

Date: March 14 & 15, 2011

Class Session: Set up a time to review client interview with your small group instructor. Bring your laptop and self-evaluation with you to the meeting.

LAWYERING SKILLS

Date: March 21, 2011 Discussion Group

Class Session: 13

Subject: Conducting the Counseling Process
Refining and Tailoring the Four Steps of the Counseling Process

Reading Assignment:

- 1) Binder, Bergman, Price & Tremblay pp. 323-399

Performance Assignment:

None.

Written Assignment:

None.

LAWYERING SKILLS

Date: March 22 & 23, 2011 Performance Group

Class Session: 14

Subject: Conducting the Counseling Process

Reading Assignment:

Review as necessary.

Performance Assignment:

Richards v. Kaufman

1. SAME BASIC FACTS AS LAST WEEK. However, Richards has not decided to proceed; i.e. no decision has been made whether to proceed with the unlawful detainer. Counsel Richards, and help him/her reach a decision as to how to proceed.
2. Counsel Kaufman as to same facts we discussed last week (you should have kept a copy of your sheets).
3. Some of you will be asked to portray Richards and Kaufman. There are no additional facts - your chance to portray the landlord and tenant of your imagination!

Written Assignment:

None.

LAWYERING SKILLS

Date: March 28, 2011 Discussion Group

Class Session: 15

Subject: Refining Counseling Skills

Reading Assignment:

Binder, Bergman, Price & Tremblay pp. 400-444 optional
Counseling models for both litigation and proposed deals

Performance Assignment:

Your final counseling exercise, based upon the following facts, will occur this week. Schedule recording and review per class discussion. We will not meet as Performance Groups March 29 and 30.

Written Assignment:

Complete the Counseling Self-Evaluation form, Assignment Number 5. Bring your completed self-evaluation and your laptop to your counseling review.

LAWYERING SKILLS

Date: March 29 & 30, 2011

No Performance Group

Devote time to completing final counseling exercise and counseling review with small group instructor.

LAWYERING SKILLS

Date: April 4, 2011 Discussion Group

Class Session: 16

Subject: Negotiating Patterns
Dynamics of Cooperative and Competitive Negotiating

Reading Assignment:

Craver, Effective Legal Negotiation and Settlement, pp. 1-105.
(Skim Chapter 3.)

Performance Assignment:

Review the following facts. Think about how to critique a negotiation based upon the reading you have done. We will review a negotiation tape in class next week.

You will receive the facts for your first out-of-class negotiation exercise, Peterson v. Denton. You must schedule with your partner and complete the negotiation before April 12 and 13 Performance Group.

VI. NEGOTIATION PROBLEMS

In addition to negotiation problems we do in class, additional problems will be assigned for negotiation out of class during the semester. Unless otherwise noted, each problem involves the following steps:

- a. Receive the problem; prepare on facts and law; analyze dollar value and other "values" of your case, identify factual ambiguities. Discuss ambiguities with Professor or Instructor as needed.
- b. Prepare a set of five goals you desire to accomplish during the course of the negotiation. These should be personal, behavioral goals such as "Avoid losing my temper" or "Show a real concern for the desires and needs of the opposing party." After the negotiation, assess how you accomplished each goal, and/or how you could improve in the future. Submit to small group instructor.
- c. Conduct the negotiation, meeting as many times and

for as long as necessary in order to achieve a settlement or reach a real impasse.

- d. Draft settlement agreement. Hand in to Performance Group Instructor.
- e. The first thirty minutes of the final negotiation must be recorded. Write a two-page summary description of what you did, what effect it had on your opponent, what your opponent did, what effect it had on you, and what you learned from the experience. These must be submitted to Professor Thompson by the date specified in class. Failure to complete assignment by that date will result in a grade of F for this exercise.
- f. In addition to the above procedures, the following rules must be observed:
 1. You may not discuss the problem with any other person who is in the class or who has already taken the class, regardless of whether that person is on your side of the problem or on the opposing side. This rule applies until after class discussion of that particular problem.
 2. You may not show your opponent your confidential information as received from the instructor. There is no restriction on how much of the information you convey (you may convey all of it or none of it, or any amount in between), but this must not be done by showing the confidential information sheet to your opponent. This rule applies until after class discussion of that particular problem.
 3. You must negotiate each problem in the context of the facts of the problem or dispute and not in terms of what it may do to your grade in the class.
- g. Each team of negotiators is required to reach a firm agreement in every problem. If no agreement is reached, two penalties are attached. First, as a substitute for trial, each person will be required to submit a six-page paper explaining the dynamics of the negotiation and describing what factors prevented agreement from being reached. Second, the final settlement offer of each person will be evaluated for its reasonableness, and persons holding out for unreasonable

settlement amounts will be penalized.

We will use several methods for giving you feedback on your negotiation style and effectiveness.

- h. Peer and Self-Evaluation Form. You and your opponent will both be asked to complete an evaluation form in which you DESCRIBE your perceptions of your opponent and of yourself in the negotiation. You will also be asked to give your opinion of how effective each was in the negotiation. After you have completed these forms, you will exchange them to see what the perceptions of the other person were. This proves to be an enlightening and useful form of evaluation. THESE EVALUATIONS WILL NOT AFFECT YOUR GRADE IN ANY WAY. They will be submitted in Performance Group.

Written Assignment:

Complete the Negotiation Self-Evaluation, recording how you currently perceive your negotiating characteristics. This is Assignment No. 6. Due by class time the day of your Performance Group April 5/6. Hand in to your Small Group Instructor.

COTTONBURGER FACTS: PART 1

1. Cottonburger is high protein meat substitute (like Textured Vegetable Protein)
2. Developed by Dr. Schwartz, a Swiss scientist
3. Goal: set up non-profit production in protein deficient developing countries (starting in India and Nigeria)
4. Only sales in Europe: to elementary schools at \$.03/lb.
 - a. No prospects of other sales
 - b. 100,000 lbs. on hand which must be sold or destroyed
5. Profits in the U.S. market are crucial to Schwartz
 - a. He's not able to produce or market in U.S.
 - b. Wants good U.S. producer/distributor
 - c. Willing to grant an exclusive distributorship
 - d. Wants \$.12 per pound from U.S. distributor
6. Willing to come to the U.S. to help set up production
 - a. Willing to spend "three months or so" in U.S.
 - b. Wants to work ½ time on his own product (ice cream)
 - c. Wants "access to a good lab" (for work on ice cream)
 - d. Wants "three lab assistants" available to help him
7. Knows Jones has very conservative political views. This is not a problem for him.

COTTONBURGER FACTS: PART 2

1. Jones is a Chicago-based distributor of meat products
 - a. Wants to test-market cottonburger in the U.S.
 - b. Needs 50,000 pounds for the market test
 - c. Offering \$.05 per pound (plus shipping)
2. Wants Dr. Schwartz to help set up production of cottonburger
 - a. Wants him to stay 8 to 10 months
 - b. Offering \$1,500 per month (in 1986 dollars) plus travel expenses
3. Must have exclusive rights to distribute cottonburger in U.S.

COTTONBURGER: ISSUES TO BE RESOLVED

<u>ISSUE</u>	<u>SCHWARTZ'S VIEW</u>	<u>JONES' VIEW</u>
1. Price per pound	\$.12/lb.	\$.05/lb.
2. Time in U.S.	About 3 mo's	8-10 mo's
3. Fee for Schwartz	No Instructions	\$1,500/mo & travel
4. Exclusive Arrangement	Agrees to it	Must have

LAWYERING SKILLS

Date: April 5 & 6, 2011 Performance Group

Class Session: 17

Subject: Introduction to Negotiation

Reading Assignment:

Fisher & Ury, Getting to Yes, pp. 1-14.

Performance Assignment:

We will conduct negotiation exercises that do not require advance preparation.

LAWYERING SKILLS

Date: April 11, 2011 Discussion Group

Class Session: 18

Subject: Stages of the Negotiation Process

Reading Assignment:

Craver, pp. 108-246.

Fisher & Ury, pp. 17-57.

Review Peterson v. Denver facts.

Performance Assignment:

None.

Written Assignment:

None.

Peterson v. Denver

Plaintiff, Ms. Peterson is a 40-year-old woman who was injured as she exited a trolley car and was hit by the defendant, Mr. Denver. Ms. Peterson was rushed to the hospital by ambulance where she had emergency surgery to attempt to save the use of her legs. However, the surgeons were unable to save her legs and she is a paraplegic. She is paralyzed from the waist down but continues to have the use of her upper body including full use of her arms. Ms. Peterson had a two month hospital stay after which she received extensive physical therapy and continues to receive physical therapy on a weekly basis. Her special damages which include her medical expenses and lost earnings total \$250,000 to date. At this time Ms. Peterson is confined to a wheelchair. Medical experts have advised her that she will never regain the use of her legs.

Ms. Peterson is a patent attorney and works full-time as an in-house attorney for a computer software firm. Although she was temporarily unable to work, she is now working full-time and has been able to perform at the same level as prior to her accident. She earns approximately \$110,000 per year in salary with a bonus package that allows her to earn up to \$125,000.

Ms. Peterson is currently separated from her husband. He moved out of their home subsequent to the accident. They were experiencing marital difficulties prior to the accident but had not discussed separation or divorce.

The defendant, Mr. Denver is 45 years old, married, the father of three children ages sixteen, fifteen, and twelve. He is a partner in a successful architectural firm.

Mr. Denver was driving home from a business dinner with prospective new clients when he approached the hill on Ninth Street and swerved to miss a double-parked automobile and collided with the plaintiff who was exiting a trolley car. He is terribly remorseful about the accident and wants to compensate Ms. Peterson for her injuries.

Both parties would like to settle this matter.

Ms. Peterson

Ms. Peterson is a 40-year-old patent attorney. She is a paraplegic as a result of being hit by defendant Denver's automobile as she was stepping off of a trolley car on Ninth Street at the top of the hill. On the night of the accident Ms. Peterson had been dining with a male co-worker. She was meeting with him to discuss what the future would bring. Ms. Peterson has been married for fifteen years and has been experiencing marital difficulties for the past two years. She became emotionally involved with her co-worker and was in the process of determining whether she would leave her fifteen-year marriage and embark on a relationship with him. They had recently become intimately involved and had both reached the point where decisions regarding their future had to be made. At dinner the night of the accident, Ms. Peterson discussed her options but she had not determined whether she would leave her marriage.

Ms. Peterson had consumed eight gin and tonics at the restaurant on the evening of the accident. She felt intoxicated when she got on the trolley car after dinner. As she exited the trolley car she slipped and fell into the road where she was hit by the defendant. Her legs were run over and she had subsequent surgeries but remains a quadriplegic. The medical experts have indicated that she will remain in this condition for the remainder of her life.

Ms. Peterson has made the best of a bad situation and has a positive attitude about her recovery and her future life. She has made accommodations to her home so that it is wheelchair accessible, however, she feels that she will need to build a new home that is handicap accessible in every way. She is in the process of working on plans. She will also need to purchase a modified vehicle.

Ms. Peterson would like to avoid going to trial. She is very familiar with the time and energy required for a trial and feels that if she were to go to trial, her negligence would substantially reduce any award. She would like to achieve a settlement somewhere between one million and 1.5 million.

A witness has indicated that the defendant was speeding at the time of the accident and did not take adequate precaution approaching the hill. Because of his rate of speed he was unable to stop when he swerved to miss the double-parked car and that is why he collided with the plaintiff as she exited the trolley car. This witness, however, has not returned the plaintiff's attorneys calls for the last two weeks and on the last attempt to contact her, her phone was disconnected with no forwarding number.

Mr. Denver

Mr. Denver is a 45-year-old happily married father of three. He is a partner in an architectural firm and earns approximately \$60,000 per year. His wife is a homemaker and he is the sole support of the family. They live a comfortable lifestyle but have little extra left over each month.

On the night of the accident, Mr. Denver was on his way home from a business meeting with clients. He was preoccupied with the dinner discussion as he approached the hill on Ninth Street. When he reached the top of the hill a car was double-parked and he swerved to miss it. He feels that he may have been going too fast under the circumstances. As he swerved to miss the double-parked car, a woman stepping off the trolley slipped and fell right in the path of his car. He tried to stop but couldn't do so fast enough and ran over her legs rendering her a paraplegic. He feels terrible about the accident and wants to compensate her. The limits on his automobile liability insurance policy are \$1.5 million. If necessary, he would be willing to pay up to \$10,000 personally to settle this matter.

Mr. Denver doesn't know exactly how fast he was going. He doesn't think he was exceeding the posted speed limit. If he hadn't swerved to miss the double parked car, he wouldn't have hit Ms. Peterson. He wishes he had hit the parked car.

Mr. Denver had consumed 2-3 beers at the restaurant in the course of his meeting. He was not administered a blood alcohol test. He did not receive a ticket from the police officer that came to the scene of the accident and filed the accident report. He has a perfect driving record.

LAWYERING SKILLS

Date: April 12 & 13, 2011 Performance Group

Class Session: 19

Subject: Negotiating Patterns
Dynamics of Cooperative and Competitive Negotiating

Reading Assignment:

Craver, review as necessary.

Fisher & Ury, pp. 56-94.

Performance Assignment:

Before class, complete Peterson v. Denton Chemical Co. negotiation assignment. (Handout)

Written Assignment:

Hand in Assignments 7-9 by class time to your Performance Group Instructor. Short statements giving your pre-negotiation goals (per Syllabus pages 31-33) and assessing how you did with them are Assignment No. 7. The written Settlement Agreement for Peterson v. Denton Chemical Co. is Assignment No. 8. The Self and Opponent Evaluation form is Assignment No. 9.

LAWYERING SKILLS

Date: April 18, 2011 Discussion Group

Class Session: 20

Subject: Review of Negotiation

Reading Assignment:

Craver, pp. 247-404 and Fisher & Ury, 97-143.
Review Doe v. Palsgraf

Performance Assignment:

None.

Written Assignment:

None.

Jane Doe v. Professor Palsgraf

This action involves a lawsuit instituted by Plaintiff Jane Doe seeking damages in excess of \$250,000 against Professor Palsgraf for sexual harassment.

The Plaintiff is Jane Doe, a twenty-three-year-old first year law student at University Law School. She is from a politically prominent California family. She has put herself through college on scholarships and by working during the year. She is currently supporting herself through law school and is paying tuition of \$17,500 per year.

Ms. Doe is an excellent student and has received A's in nearly all of her law classes. Professor Palsgraf was her Torts professor for the entire first year of law school. Ms. Doe and Professor Palsgraf became friendly in the first few weeks of classes and their friendship grew through the first semester. In the second semester of Ms. Doe's first year, Professor Palsgraf began to pay an inordinate amount of attention to her. They began to meet for coffee approximately once per week from January through April.

Professor Palsgraf pursued Ms. Doe and indicated his interest in a personal relationship with her. Ms. Doe determined that she did not want to become involved with her law professor and relayed this information to Professor Palsgraf. Professor Palsgraf continued to pursue Ms. Doe and to make demands that she engage in a personal and physical relationship with him. On seven separate occasions he contacted Ms. Doe both on-campus and off-campus to discuss what he deemed their relationship problem.

Professor Palsgraf is a tenured professor at the law school where he has been teaching for the past twelve years. He is known both nationally and internationally for his work in the area of product liability. He has a stellar reputation and is honored to be teaching at a highly prestigious law school.

Professor Palsgraf feels that he may have engaged in inappropriate conduct on two occasions, but minimizes the extent to which he may have done so. He feels that Ms. Doe is overly sensitive but he is willing to take steps to rectify the situation. He admits that he may have graded her more harshly than necessary and does regret doing so. He is willing to change her grade in an attempt to resolve this matter.

The investigation to this point has revealed that Professor Palsgraf earned \$85,000 per year as a law professor. His house is valued at between \$300,000 and \$350,000 and is in an exclusive neighborhood approximately two miles from the law school.

Both parties have indicated an interest in settling this matter and both

parties seek a confidential agreement.

Jane Doe

Ms. Doe is a twenty-three year old law student who comes from a politically and socially prominent family. Jane decided to attend law school to pursue a political career where she would have an impact on womens' and childrens' issues. She received straight A's in her first year law school courses.

Jane is incensed about the treatment she received from her Torts professor Joe Palsgraf. She admits that she was initially interested in Professor Palsgraf and did have coffee with him throughout her second semester. This eventually turned into his coming to her apartment on several occasions. However, towards the end of second semester she realized he was interested in a romantic involvement. She determined that she was not interested in a sexual or romantic involvement with him. She clearly articulated this information to Professor Palsgraf on several occasions.

Professor Palsgraf continued to pursue her and on eight separate occasions followed her and either pleaded or threatened her regarding becoming sexually involved with him. She became frightened of Professor Palsgraf.

She did not feel safe anywhere since he accosted her both at school and outside her apartment. She is very intimidated by Professor Palsgraf.

She found that she could not conduct her studying at the law school and instead had to go to a local library which was very inconvenient for her.

When she received her Torts grade of a D, it was the final straw. She contacted an attorney to assist her in bringing an action against Professor Palsgraf.

Jane is uncertain about the extent of monetary damages that are generally awarded in cases like hers. She is less interested in receiving a large monetary award than she is in asserting herself and "teaching Professor Palsgraf that he cannot treat students in the manner in which she was treated." Jane would like the following factors to be included in any settlement with Professor Palsgraf.

- a grade of A in the Torts class
- an agreement that Professor Palsgraf will have no contact with her for the remainder of her years at the law school
- mandatory counseling for Professor Palsgraf
- an assurance that Professor Palsgraf will not engage in misconduct towards any other women law students and termination if he engages in such conduct
- ideally she would like him to leave the law school permanently or at least for the next two years.
- monetary damages in an unspecified amount

Jane is interested in a confidential agreement. She feels that any publicity surrounding this would negatively impact her family and her future opportunities in the field of law. She feels that even if she is right in pursuing this action, the legal community does not look kindly on sexual harassment plaintiffs and she doesn't want to risk the possible negative impact on her future career. Jane is also worried about the impact of information indicating that in her initial contact with Professor Palsgraf she had not precluded the possibility of a romantic relationship.

Initially, she was quite attracted to him and it was only after she got to know him better that she realized she was not interested. She told two of her law student friends that she was interested in Professor Palsgraf in the beginning of the school year. She worries that it will look as though she led Professor Palsgraf on. Also, she is worried because there were no witnesses to the incidents and her only corroborating evidence is that she told her best friend about what the Professor did. She is also worried about other professors at the law school finding out she brought an action against Professor Palsgraf and how that might impact their feelings about her as a student.

Jane is somewhat interested in receiving counseling regarding the sexual harassment incident but feels that she has resolved most of the issues within herself already. She will feel vindicated if a settlement is reached in which Professor Palsgraf has to recognize what he has done and suffer discomfort over it. For that reason she is interested in monetary damages but is not sure about what amount would impact Professor Palsgraf. Ultimately, however, she is more interested in the non-monetary sanctions that will be placed on him and on his record at the law school.

If he continues to harass her, she wants his employment terminated.

Professor Palsgraf

Professor Palsgraf is a highly esteemed Torts professor at the University Law School. He has held that position for twelve years and in that time has published extensively in law journals throughout the country and abroad. He is on the cutting edge of product liability law and is currently developing his expertise in the area of environmental law. His career is extremely important to him. He enjoys the prestige that goes with teaching at one of the top law schools in the nation.

Professor Palsgraf understands that his conduct in pursuing a sexual relationship with Jane Doe was inappropriate. He minimizes the severity of his action but does admit that his conduct was unprofessional and inappropriate. His position is that he misunderstood Jane and felt that in fact she did want a personal and physical relationship with him even though she said she didn't. He agrees that Ms. Doe should have received an A or A- as her final Torts grade. He is willing to do the following things to resolve this matter.

- agree to a no contact order with Jane Doe for her remaining two years at the law school
- attend counseling
- pay monetary damages

Professor Palsgraf does not want to leave the university under any circumstances at this time. He is in the midst of important research and is not due for a sabbatical for three years. He understands that if absolutely necessary he may be required to take an early sabbatical by the law school. He would like to avoid this outcome but if it is the only way to resolve this matter he is willing to do so.

Professor Palsgraf is extremely interested in attaining a confidential settlement agreement. He wants to protect his reputation in the legal community. He is also worried that information will emerge with regard to another woman law student that he had a relationship with. She brought a complaint against him to the Dean of the law school but later withdrew the allegation. He still is not convinced that he has a problem but he is willing to attend counseling for the sake of resolving this matter.

Professor Palsgraf realizes that monetary damages will probably be part of any settlement agreement. He would like to pay as little as possible preferably under \$5,000. If however monetary damages become a major part of the settlement he is willing to go as high as necessary to resolve this matter but under no circumstances will he pay more than \$64,000, which is the amount he has in a savings bond which is available at this

time. In addition to his \$85,000 salary, Professor Palsgraf earns \$100,000 per year as a consultant and speaker in the area of product liability. Professor Palsgraf feels that he was probably too aggressive on two separate occasions but feels that Ms. Doe is bringing this action just to get money from him. He does not feel he has harmed her in any way.

LAWYERING SKILLS

Date: April 19 & 20, 2011 Performance Group

Class Session: (No Class)

Subject: Negotiation of Dissolution Cases

No Performance Group meeting this week. Devote the time to performing
Negotiation Two: Muldar v. Scully.

LAWYERING SKILLS

Date: April 25, 2011 Discussion Group

Class Session: 21

Subject: Negotiation of Commercial Transaction

Reading Assignment:

Craver, pp. 589-623.

Fisher & Ury, pp. 147-187 (optional).

Performance Assignment:

Perform Negotiation Three, per instructions handed out.
Assignments 14-17 must be submitted to the Lawyering Skills
office by May 9, 2011.

Written Assignment:

None

LAWYERING SKILLS

Date: April 26 & 27, 2011 Performance Group

Class Session: 22

Subject: Stages of the Negotiation Process
Economics of Litigation and Settlement

Reading Assignment:

Review as needed.

Performance Assignment:

Prepare to perform in class Berych Employment Contract.

Written Assignment:

You are to hand in Assignments 10-12 to your Performance Group Instructor. Your pre-negotiation goals and assessment (per Syllabus pages 32-34, class session 16) are Assignment No. 10.

The written Settlement Agreement for Negotiation Two is Assignment No. 11. The Evaluation is Assignment No. 12.

LAWYERING SKILLS

Date: May 2, 2011 Discussion Group

Class Session: 23

Subject: Mediation

Reading Assignment:

Performance Assignment:

Perform Negotiation Three, per instructions handed out. Assignments 14-17 must be submitted to the Lawyering Skills Office by May 9, 2011.

Written Assignment:

Draft a list describing ten skills you think are important for being an effective lawyer. Indicate what you think each skill entails, and why you think it is important. Then write at least three pages discussing how you perceive your performance as a lawyer during this course. For example, were you professional? Were you comfortable in the lawyer's role? How did you deal with ethical problems you faced? Did you always summon the effort required to zealously represent your client? Did you gather information regarding areas in which you now think you do/do not want to practice? Were you respectful of others? **Mark it Assignment No. 13. Turn in to the Lawyering Skills Office by May 6. Make sure your small group instructor's name is on the assignment.**

Hand in assignments 14-17 by 1:00 p.m. on May 9, 2011. Your Pre-negotiation Goals and Assessment are Assignment 14. The Settlement Agreement **INCLUDING POINTS ACHIEVED** is No. 15. The Evaluation is No. 16. The narrative paper described at E. on syllabus page 33, is No. 17.

Have a nice summer!