

Workshop 5C

Formative Assessment: Successes and Difficulties in Giving Feedback

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INTEROFFICE MEMORANDUM

TO: 2010 ILTL SUMMER CONFERENCE WORKSHOP PARTICIPANTS

FROM: BERYL BLAUSTONE (Co-authored with Judge Maria Arias – New York and Margaret Barry – Catholic University of America School of Law)

RE: FORMATIVE ASSESSMENT: SUCCESSES AND DIFFICULTIES IN GIVING FEEDBACK

INTRODUCTION:

YOU WILL BE ASSIGNED TO ROLEPLAY THE ROLE OF SENIOR SUPERVISING LAW PROFESSOR. IN THIS CAPACITY YOU WILL BE ASKED TO PREPARE FOR A FEEDBACK DISCUSSION WITH THE JUNIOR CLINICAL LAW PROFESSOR ON HER SUPERVISION MEETING WITH THE LAW STUDENT ASSIGNED TO THIS CASE. AT THE WORKSHOP YOU WILL VIEW A VIDEO OF THE SUPERVISION MEETING AFTER THE LAW STUDENT MET WITH THE CLIENT.

NEW YORK LAW:

DOMESTIC VIOLENCE IS A FACTOR THAT COURTS CAN TAKE INTO ACCOUNT IN CUSTODY/VISITATION DETERMINATIONS. IT IS NOT DISPOSITIVE. THE PRACTICE IS THAT VISITATION WILL OCCUR BETWEEN THE NON-CUSTODIAL PARENT AND CHILD/REN UNLESS THE CUSTODIAL PARENT CAN DEMONSTRATE THAT IT WILL BE HARMFUL FOR THE CHILD TO HAVE CONTACT WITH NON-CUSTODIAL PARENT.

Fact Pattern - Background:

Ms. Jones; our client; has a temporary restraining order. She filed a petition for the restraining order with the Queens County Family Court. On the same day of the filing in an ex-parte proceeding she received the temporary order. She has one child, Laura Jones. Laura is 7 years old and is a first grader. The father, Mr. Jones, has moved out of household. Ms. Jones lives with the child. Mr. Jones has been out of the household for about a month. He filed a petition in Queens County Family Court seeking visitation with Laura. He has had phone contact with Laura since he moved out. Laura has also visited with him. While she

has not spent the night at her father's home, she has had day visits and has seen him for dinner a few times.

She is scheduled to return to court on the issue of visitation and the student lawyer met with Ms. Jones to prepare her for the court appearance. This preparation included discussing her goals, her desired outcomes for court, and counseling her on the applicable law and likely outcomes at court. Ms. Jones absolutely does not want the father to have visitation. No evidence exists in this case that identifies any specific harm that has occurred between the father and Laura. There is a child protective service report that says that Mr. Jones' home has space for a child and that Laura wants overnight visits with her father at his place.

Counseling session between the Student Lawyer and Ms. Jones focused on visitation issue:

In the counseling session, Ms. Jones is adamant that she does not want the father to have visitation because of the previous abuse to herself. Also she states that Mr. Jones did not want her to have the baby and had wanted her to have an abortion. She states that some of the abuse occurred while she was pregnant with Laura. Mr. Jones wants alternate weekend visitation as is customary—he has been told by his attorney that he can get alternate weekend visits as well as a mid-week visit and alternate holiday visits. There has been an exchange of phone calls followed by letters between Mr. Jones' Attorney, Laura's Law Guardian and the Student Lawyer in which the Law Guardian represented that she supports Mr. Jones' application for alternate weekend visitation.

Challenges of the counseling session for the Student Lawyer:

The Student Lawyer, using a client centered approach, wants to get Ms. Jones what she wants. From an emotional/psychological perspective, the Student Lawyer appreciates the client's position about not wanting Mr. Jones to have any access to Laura and wanting to limit the father's visitation rights. The Student Lawyer has limited experience in court and is not accustomed to predicting for the client how likely or unlikely it is that she will obtain her desired goal. It was extremely difficult for this Student Lawyer to tell Ms. Jones that her goal is highly unlikely because Ms. Jones had a strong negative reaction to this news. At this point, Ms. Jones erupted into an emotional outburst with the Student Lawyer. The Student Lawyer struggled with explaining that the client's goal is inconsistent with the legal standard.

All the information in this memo sets forth the scenario of what has occurred prior to the feedback session that you are about to see on the video between the Student Lawyer and the Supervisor.

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Teachers open the door, but you must enter by yourself.¹

CAUSES FOR FEEDBACK FAILURES

- *Negative Feedback
- *Negative Tone and Style of Delivery
- *Student Passivity
- *Hidden Methods

CORE LEARNING THEORY: THE BASIS FOR THE SIX-STEP FEEDBACK MODEL

- *The feedback process should be structured as a source of learning.
- *Self-generated observations deepen and expand learning.
- *Careful, rigorous, guided and structured reflection on performance increases

¹ ZEN GARDEN BOOK OF MEDITATIONS (1999).

the learning of both skill and substance.

- *Without a structured feedback process, self-assessment is an after-thought rather than an assimilated aspect of the conduct of professional work.
- *Repetition anchors knowledge and fosters movement from simplistic to complex understanding of knowledge.
- *Safety in self-assessment motivates improvement.

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Six Step Feedback Model¹

Step One: The Student Identifies Strengths of the Performance

The student should identify those aspects of the work that she feels were done well or with which she feels satisfied. The student's statement should include an identification of what the performance accomplished.

Step Two: The Supervisor Responds Solely To Those Items Raised by the Feedback Recipient

In this step, the supervisor confines their remarks to the points that were raised by the student. **Only positive feedback should be given at this point.**

Step Three: The Supervisor Identifies Other Strengths of the Performance

The supervisor now adds additional points that were done well. This wide-open stage explores all facets of the performance that were accomplished satisfactorily or that show a potential for success, with specific illustrations of why these aspects were executed successfully.

Step Four: The Student Identifies Difficulties and/or Changes to be Made

In this step, the student takes the initiative in identifying areas in need of improvement. The student should come forward with specific comments.

Step Five: The Supervisor Responds to the Identified Difficulties

The supervisor confines their remarks at this point exclusively to those issues raised by the student. The comments should indicate how the issue could be handled differently next time.

Step Six: The Supervisor Indicates Additional Difficulties

This final stage involves another wide-open exploration of all facets of the performance. This time, the discussion focuses on aspects that were not satisfactorily accomplished, again with specific illustrations and concrete analyses.

¹ Based on Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 Clin. L. Rev. 601 (2006).