

# TEACHING LAWYER EFFECTIVENESS ACROSS THE CURRICULUM

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## Introduction and Premises

There are growing forces for change in legal education that support increased emphasis on what we call “Practice and Profession Readiness”. These include published reports like the Carnegie Report and Best Practices for Legal Education (but also including the ABA’s MacCrate Report from nearly 20 years ago) as well as conferences such as the series of “Legal Education at the Crossroads” and the upcoming AALS “Conference on the Future of the Law School Curriculum.” There are also many articles, news reports and commentary about the changing nature of the employment market for lawyers and the perceived related reduction of opportunities for structured learning on the job with guidance and supervision. In addition some schools have already reported significant curricular revisions, often with an increased emphasis on experiential learning.

In order to explore ways that individual faculty members and law schools can effectively move to increase law student readiness for the profession prior to graduation we need to consider several components:

1. Identification of the qualities required to effectively practice law;
2. Definition of the level of competence or mastery desired as the outcome of the learning;
3. Identification of methods for teaching and learning those qualities; and
4. Development of tools for assessing the learning of the qualities and the success of the programs put in place to prepare students for practice and professionalism.

Each of these components could be the subject of considerable analysis and debate. For purposes of our presentation, we need to set out some premises that we will rely on, knowing that there could be discussion about them, but hoping that these are at least agreeable enough to pave the way for constructive problem solving.

For Component 2, the level of competence, we rely on the definition proposed by the ABA Standards Review Committee in its recent proposed revisions to the Article 3 portion of the accreditation standards. This is embodied in the following interpretation of proposed standard 302 which, for the first time, would require each law school to identify and define learning outcomes it seeks for its graduates, and those outcomes “...shall include competency as an entry-level practitioner...” (proposed standard 302(b)):

### ***Interpretation 302-4***

*The level of competency required is the level of competency that an entry level practitioner must have for effective, ethical and responsible participation in the legal*

*profession. The level of competency of an entry-level practitioner may take into account the particular practice settings for which the law school prepares its students.*

We are cognizant of the challenges of Component 4, developing assessment tools that are effective and efficient for evaluating and grading performances and accomplishment for the various factors that make up profession readiness. We also recognize that bar passage rates, currently the most common concrete tool for evaluating the overall success of a curriculum, generally do not adequately reflect the success of preparation for practice. . But for purposes of this session, we defer those issues to be addressed once we have identified the tools for improving effective delivery of education for Practice and Professionalism that we wish to use in the courses and curriculum.

Component 1, identification of the qualities required for effective practice of law, may be the most challenging part because it is at once complex and nuanced. There are a number of sources to look to for these criteria, including the ABA Accreditation Standards, the MacCrate Report, and the Carnegie Foundation Report on Educating Lawyers. A recent and particularly powerful set of criteria were developed by Marjorie Schultz and Sheldon Zedeck at UC Berkeley. Through a process of empirical study, Professors Schultz and Zedeck developed a set of 26 lawyer effectiveness factors that capture a consensus of what practicing lawyers believe are the necessary attitudes and skills necessary for effectiveness in law practice. (The report, FINAL REPORT Identification, Development, and Validation of Predictors for Successful Lawyering, 2008, is available on the Berkeley Law website). These factors were organized by Schultz & Zedeck into 8 “umbrella” categories or groups. The categories and Effectiveness Factors are listed in Attachment A. In some ways, the Schultz & Zedeck factors are directly related to the skills and values identified by the ABA’s MacCrate report many years ago. Since many legal educators are familiar with the MacCrate lists, we have provided a cross reference between the Schultz & Zedeck factors and the MacCrate qualities in Attachment B. For purposes of discussion, we will use the Schultz & Zedeck Effectiveness Factors as our list of qualities and skills students should have become proficient at upon graduation. The next step in course or curricular design would be to consider how each of those Effectiveness Factors can or should be addressed in particular courses or in the curriculum as a whole.

This brings us to our premises for Component 3, methods for teaching and learning. Law school curricula include a wide variety of settings and experiences for student learning. It is reasonable to assume that one Effectiveness Factor might best be learned in one type of setting whereas another quality or skill is best suited to another. For example, intellectual skills such as legal analysis and reasoning might be learned quite well in a large class lecture or Socratic dialog setting, while researching the law probably is better learned in a small group or one-on-one type learning environment. In thinking about how a law school course or curriculum should be designed, it would be helpful to consider which Lawyer Effectiveness Factors are addressed well in the format anticipated for the class (or across the curriculum) and

focus the class (or curriculum) in ways that will address the desired factors most effectively.

One way to engage in this evaluation is by way of a chart which positions the various Effectiveness Factors against the range of law school teaching venues.. Attachment C is a chart that positions the Schultz & Zedeck factors along the vertical axis and across the horizontal axis we have identified eight teaching/learning venues – 1) large class (consisting of 40 or more students); 2) Small class (consisting of less than 40 students); 3) Seminar (consisting of 16 or fewer students); 4) Skills class (where simulation is a primary vehicle for learning); 5) In-house real client clinic (where the student takes on the primary responsibility for handling the client matter); 6) Hybrid clinics and field placements or externships (where the student takes on the primary responsibility for handling the client matter); 7) Field placements or externships (where students do not take on the primary responsibility for handling the client matter, and function in a subordinate or law clerk role); and 8) Lawyering competitions taken for academic credit, e.g. moot court or law journals.

The teaching/learning venues chosen for this chart are somewhat arbitrary (e.g. is there a meaningful difference at the cut-off point of 40 for purposes of thinking about what can be accomplished in a large versus a small class? Should it be 50? 30? Is there a difference in the efficacy of teaching to a particular effectiveness factor in a seminar if the class has 16 students, 20 students or 10 students?) However, we think this approach captures the most commonly accepted and utilized teaching venues in most law schools, subject to debate about where the cut-off points should be. We do note that we have omitted some learning categories available in law school, but which generally do not provide credit, e.g. *pro bono* work. The awarding of academic credit is a key element in our analysis.

It should also be noted, however, that inherent in each teaching venue are assumptions about what is done in that setting. For example, in the large class *venue*, we assume the predominant teaching *method* is lecture, some discussion and Socratic dialog. We assume there is little or no one-on-one instruction, little small group work, no real client interaction, little or no simulation or acting in lawyering role, and little or no writing or research beyond the final examination. Likewise, in the in- house real client clinic *venue*, we assume the teaching *methods* include predominantly real client interaction on real cases, some simulation activity, significant case-specific legal research and writing, regular one-on-one faculty student interaction and instruction, and some group work and interaction.

We recognize that these “stereotypes” of the enumerated teaching settings are not accurate in all or even many cases (because, for example, some teachers in large classes may make significant use of simulation, or may have their students engage in small group work to a great extent – and some in in-house real client clinics utilize simulation activity more than they do actual real clients). And we congratulate the many innovative teachers who are making significant innovations in the use of the traditional teaching settings. Accordingly, we also provide, in Attachment D, two lists of teaching *methods* as an alternative or complementary way of thinking about how the Effectiveness Factors can best be taught. We encourage people to begin with the

venues and then think about the methods that they might use in the venues in which they teach in order to enhance learning opportunities for the Effectiveness Factors.

Another element of the chart in Attachment C is the ranking scale. We have chosen a five point ranking scale that allows evaluators to rank a particular learning setting against each lawyer effectiveness factor according to how well the factor can be learned in that setting: a ranking of 5 indicates the teaching setting is an “excellent” place for students to learn the qualities or skills embedded in that Effectiveness Factor; a ranking of 4 indicates the setting is a “good” place to learn the factor; 3 indicates “fair”; 2 indicates “poor”; and 1 indicates the factor is not addressed in that teaching/learning setting. This chart with the rankings could be used by a faculty member or committee to gather information and opinions relevant for the particular school. It is also possible to supplement or substitute the teaching methods for the venues if one prefers.

Regardless of whether we examine learning venues or methods, and whether the chart is used in its present form or in a new form which blends venues and methods, or combines the descriptions of methods from multiple sources, using an approach like this can help to identify particular strengths of various elements of the curriculum, and can help in the design of particular courses or whole curricula to make the best and most effective use of limited educational resources.

### **Presentation at the Institute for Law Teaching and Learning Conference**

At the conference we will ask participants to work on developing some concrete ideas for adding or enhancing efforts to address the Effectiveness Factors in the courses that they teach. For purposes of the conference we have selected the following Effectiveness Factors from the Schultz & Zedeck list and we will ask participants to choose one of the factors that they would like to incorporate more into a course that they presently teach:

1. Problem solving
2. Practical Judgment
3. Fact Finding
4. Influencing and Advocating
5. Strategic Planning
6. Ability to see the world through the eyes of others
7. Evaluating Performances (self and others—note—this combines “Evaluation, development and mentoring” with “Self Development”
8. Building Relationships (combines “Providing advice and counsel and building relationships with clients” and “Developing relationships within the legal profession”

We will divide participants into small groups so that they can brainstorm and develop ideas for incorporating the chosen factors into the courses. We expect that participants in each small group will include teachers who teach in a variety of venues, and use a broad range of methods that we acknowledge as elements of a typical law school curriculum.

In addition to hearing the reports of the small groups, we will invite the participants to then broaden the inquiry into a discussion of which learning/teaching methods seem to offer the most promise for incorporating the selected Effectiveness Factors. We will also explore the ways in which the discussions can serve as a foundation for analysis of possibilities for the other Effectiveness Factors. We will look for synergies between learning the Effectiveness Factors and mastering the doctrine and analytical issues involved in the courses. Finally, we will turn the group's attention to at least a preliminary inquiry into the methods and issues attendant on assessment of student work and the success of the approaches to implementing enhancement of the Effectiveness Factors.

# ATTACHMENT A

## SCHULTZ & ZEDECK EFFECTIVENESS FACTORS

### List of 26 Effectiveness Factors with 8 Umbrella categories

#### **1 : Intellectual & Cognitive**

- Analysis and Reasoning
- Creativity/Innovation
- Problem Solving
- Practical Judgment

#### **2: Research & Information Gathering**

- Researching the Law
- Fact Finding
- Questioning and Interviewing

#### **3: Communications**

- Influencing and Advocating
- Writing
- Speaking
- Listening

#### **4: Planning and Organizing**

- Strategic Planning
- Organizing and Managing One's Own Work
- Organizing and Managing Others (Staff/Colleagues)

#### **5: Conflict Resolution**

- Negotiation Skills
  - Able to See the World Through the Eyes of Others
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#### **6: Client & Business Relations - Entrepreneurship**

- Networking and Business Development
- Providing Advice & Counsel & Building Relationships with Clients

#### **7: Working with Others**

- Developing Relationships within the Legal Profession
- Evaluation, Development, and Mentoring

#### **8: Character**

- Passion and Engagement
- Diligence
- Integrity/Honesty
- Stress Management
- Community Involvement and Service
- Self-Development

## ATTACHMENT B

<b><u>Shultz &amp; Zedeck (plus..)</u></b>	<b><u>MacCrate Report Cross-References</u></b>
(Nos. 1-8 from Shultz & Zedeck, FINAL REPORT Identification, Development, and Validation of Predictors for Successful Lawyering (2008) at 26. Other factors (in italics) added by Margolis and Seibel)	
<b><u>1. Intellectual and Cognitive</u></b> CONSIDER: Analysis and Reasoning, Creativity/Innovation, Problem Solving, Practical Judgment	<u>Skill 1 – Problem-Solving</u>  <u>Skill 2 – Legal Analysis and Reasoning</u>  <u>Skill 6 - Counseling</u>
<b><u>2. Research and Information Gathering</u></b> CONSIDER: Researching the law, Fact Finding, Questioning and Interviewing;	Skill 3 – Legal Research  Skill 4 – Factual Investigation Skill 5 - Communication
<b><u>3. Communications</u></b> CONSIDER: Influencing and Advocating, Writing, Speaking, Listening;	Skill 5 - Communication
<b><u>4. Planning and Organizing</u></b> CONSIDER: Strategic Planning & <i>Decisionmaking</i> , Organizing and Managing One's Own Work/ <i>Practice Management</i> , Organizing and Managing Others/ <i>Leadership</i>	Skill 9 – Organization and Management of Legal Work  Skill 1 – Problem Solving
<b><u>5. Conflict Resolution</u></b> CONSIDER: Negotiation Skills, Ability to See the World Through the Eyes of Others;	Skill 7 - Negotiation  Skill 8 – Ligation Skill 4 - Factual Investigation
<b><u>6. Client and Business Relations - Entrepreneurship</u></b> CONSIDER: Networking and Business Development, Providing Advice and Counsel & Building Relationships with Clients, <i>Experience Working with People from Other Nations and With Other Legal Systems, Can Evaluate and Apply Basic Financial Concepts and Understand the Impact they Have on Transactions or Disputes</i>	Skill 6 - Counseling
<b><u>7. Working with Others</u></b>	Skill 9 – Organization and Management of Legal Work

CONSIDER: Developing Relationships within the Legal Profession, Evaluation, Development & Mentoring, Ability to Work Cross-Culturally and Cross-Jurisdictionally

MacCrate Fundamental Values

**8. Character**

CONSIDER: Passion and Engagement, Diligence, Integrity & Honesty, Ability to Manage Stress, Community Involvement & Service

Skill 10 – Recognizing and Resolving Ethical Dilemmas

MacCrate Fundamental Values

**9. Knowledge of legal theory & doctrine**

CONSIDER: Knowledge and ability to apply the basic legal rules and theories applicable to the most common types of legal problems in the area, Awareness of and Respect for Non-US Systems of Law

Skill 2 – Legal Analysis and Reasoning

Skill 3 – Legal Research

**10. Ethics and Professionalism**

CONSIDER: Provision of Competent Representation, Striving to Promote Justice, Fairness, Morality, Striving to Improve the Profession, Professional Self-Development (including life long learning and reflective practice)

Skill 10 – Recognizing and Resolving Ethical Dilemmas  
MacCrate Fundamental Values

## ATTACHMENT C

Please rate using the following scale: 5=excellent method of teaching the competency, 4= good method, 3=fair method, 2=poor method, 1=doesn't address the competency	Large Class (40 or more students)	Small Class (less than 40 students)	Seminar (16 and fewer students)	Skills Class (where simulation is primary vehicle)	In House Real Client Clinic (with client responsibility)	Hybrids & Field Placements (with client responsibility)	Field Placements (without client responsibility)	Other lawyering skills activities, e.g., moot court, law journal (for credit)
<b>LAWYER EFFECTIVENESS FACTORS</b>								
<b>1. Intellectual and Cognitive</b> --Analysis and Reasoning; Creativity and Innovation; Problem Solving; Practical Judgment								
<b>2. Research and Information Gathering</b> --Researching the Law; Fact Finding; Questioning and Interviewing								
<b>3. Communications</b> --Influencing and Advocating; Writing; Speaking; Listening								
<b>4. Planning and Organizing</b> --Strategic Planning; Organizing and Managing ones own work; Organizing and Managing Others (staff/colleagues)								
<b>5. Conflict Resolution</b> --Negotiation Skills; Able to see the world through the eyes of others								
<b>6. Client and Business Relations - Entrepreneurship</b> --Networking and Business Development; Providing Advice & Counsel & Building Relationships w/clients								
<b>7. Working with Others</b> --Developing Relationships w/in the Legal Profession; Evaluation, Development and Mentoring								
<b>8. Character</b> --Passion & Engagement; Diligence; Integrity/Honesty; Stress Management; Community Involvement and Service; Self Development								
<b>9. Knowledge of legal theory &amp; doctrine</b> -- <i>added by Margolis &amp; Seibel</i>								
<b>10. Ethics and Professionalism</b> -- <i>added by Margolis and Seibel</i>								
<b>TOTALS</b>	0	0	0	0	0	0	0	0

## ATTACHMENT D

# Teaching Methods for Lawyering Effectiveness Factors

### HESS & FRIEDLAND, TECHNIQUES FOR TEACHING LAW (1999)

1. Questioning and Discussion techniques in the classroom
2. Visual Tools (other than computers) in or out of the classroom
3. Real life learning opportunities—e.g. clinics, field placements
4. Collaborative learning
5. Computer assisted instruction in or out of the classroom
6. Simulations and Role Playing
7. Writing exercises

### SCHACHTER, THE LAW PROFESSOR'S HANDBOOK (2004)

1. Socratic and case method
2. Hypotheticals and case studies
3. Simulations
4. Problem solving method
5. Collaborative learning tasks
6. Excursions
7. Games and gimmicks
8. Cultivating practitioners and theoreticians
9. Experiential training
10. Professionalism and professional responsibility
11. Pro bono activities