

Interviewing, Counseling, and Negotiating

University at Buffalo Law School

Professor Kim Diana Connolly

Summer 2011

Mondays and Wednesdays, 9 am – noon, Cooke 127A

SYLLABUS

(as handed out first day of class, please see website to confirm dates, etc.)¹

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1. Purpose and Goals

Interviewing, Counseling and Negotiating (“ICN”), is designed to help you understand and develop certain “practical lawyering” skills, including interviewing clients and witnesses, counseling clients, and negotiating on behalf of clients. Lawyers need these skills (and others) to represent clients competently in every legal setting from litigation to transactional planning. In ICN you will learn these skills (as well as the theory behind them) in the context of the rules of professional responsibility and concepts of

¹ As explained in the last section of the syllabus, it is likely there will be further additions and modifications to the schedule and materials covered as set forth in this original version of the syllabus. Changes will be announced in class, posted to the website, sent via email and/or otherwise communicated appropriately. The website and class announcements are the controlling information source in the event of any conflict.

professionalism. While the primary course goal is to help you gain a foundation for your continued professional growth in the areas of interviewing, counseling, and negotiating, we will also emphasize two other important skills throughout the course: self-reflection and appropriate adaptation.

2. Materials

- **Textbook:** STEFAN KRIEGER AND RICHARD NEUMANN, ESSENTIAL LAWYERING SKILLS (Aspen, 4th ed., 2011)

A. **WEB SITE for Simulations and Other Materials:**

A LEXIS-hosted "Blackboard" site. To access the course web site for the first time and enroll,

- go to <http://www.lexisnexis.com/lawschool/>, click "User Logon" , then click on "Sign On" and enter your LexisNexis ID
- choose the "Webcourses" tab
- Select the "Courses" tab at the top of the page
- click on the "Browse Course Catalog" link at the top right
- click on the "SUNY-Buffalo Law School" link
- locate "Interviewing, Counseling and Negotiating" and click on "enroll"

After you're enrolled, you will only have to go to <http://www.lexisnexis.com/lawschool/>, login, and click on the course link to access the course web site. Remember, always click the "Logout" link at the top of the screen to exit the course.

If you run into **technical problems**, please call the LEXIS-NEXIS 24-hour hotline at 1-800-45-LEXIS (800/455-3947). Please ensure that LEXIS has your correct email address (and recall that the law school strongly prefers that you use the official USC email for all communications related to law school coursework).

B. **Additional Materials:** to be distributed in class as needed.

3. Professor Contact Information

Office: 519

Office Phone: 645-2092

E-mail: kimconno@buffalo.edu

Office Hours: My "official" Summer 2011 office hours will be posted on the course website. If I am unavailable during these hours, I will make every effort to post an announcement in advance. In addition, I maintain an **open door policy** – if I am in my office, please feel free to ask whether I am available to talk at that time. If it is not convenient, I will set another time. You also may set an appointment by emailing or calling me.

4. Course Requirements

Class Attendance: You are expected to attend class, and roll will be circulated on a weekly basis for your signature. Your signature on the roll indicates that you attended the entire class period. You must comply with the LAW STUDENT HANDBOOK rule and other applicable rules on attendance.

Computers: Students using computers during this class must comply with law school rules. I reserve the right to reduce grades for inappropriate computer use or discontinue allowing computers for certain class times if it seems in the best interest of the course.

Cell Phones/PDAs: If cell phones are brought into the classroom they should be silenced or turned to vibrate throughout the duration of the class. PDAs should not be accessed during class (except at break or for a specific reason cleared in advance with the professor).

Preparation: You are expected to be prepared for each class and for each simulation.

Simulations: Students must complete each assigned simulation competently and timely, and a portion of your grade will result from various simulation performances and self-evaluations over the course of the semester. Failure to complete simulations on time will result in a deduction from the final grade. Students are expected to be available and cooperative in scheduling and conducting the simulations with each other.

Conduct: You are expected to know and abide by the applicable rules of professional responsibility when conducting any simulations. You are also expected to conduct yourself in a professional manner throughout all aspects of the course.

Honor Code: You are expected to fully abide by the Rules of Academic Responsibility.

Collaborative Approach: You will be asked for feedback (sometimes anonymous) throughout the semester. Your willingness to co-create this course is what will make it a meaningful experience for all concerned.

5. Teaching Methods

We will use a combination of interrelated classroom work; simulations; and research, writing, and reading assignments to explore the basic skills of interviewing, counseling, and negotiating. The readings, class work, research/writing, and discussion postings on the web should prepare you to conduct the related simulations. The simulations will teach you the nuances and practicalities of applying these skills and will add depth and texture to what is taught in class.

Note that the course is not designed to have professor observation and evaluation of all student simulations. The professor will evaluate only the in-class simulations and one out-of-class simulation. A primary learning opportunity will come through evaluating yourself and your various partners for the out-of-class simulations using guidance and forms provided on the course web site. This approach will help you develop your ability to reflect, self-evaluate, and peer-evaluate. These additional skills should serve you well in your legal career.

This course is designed to be formative and collaborative. In other words, unless you take responsibility for your own learning, you will not get much out of this course. More than in most other law school courses, you will be co-creating this experience both in the class and during the simulations. To this end, surveys and other feedback methods will be used during the course of the semester to help shape the direction of the class. These surveys do not serve the same purpose as the formal law-school-administered instructor evaluation at the end of the semester (which is primarily used for tenure/promotion and future course planning). I reserve the right to adapt requirements set forth in this memorandum (with sufficient advance warning to you) in light of survey results and class developments.

A. Reading

You will be assigned readings from the listed text as well as materials that will be available on the course web site at webcourses.lexisnexis.com, including assignments from your peers. Please check the course website for additional materials each week before class. You will be held responsible for reading and comprehending all non-optional reading materials.

B. Web Site/Email/LEXIS

In an effort to provide students another "practical lawyering" experience for the internet age, the

course is designed with a strong electronic component. Therefore, interaction and material delivery will rely heavily on the course web site. If you do not have home computer access, you can access the site through the computer labs in the law school library. Please provide the course website with your preferred email address, particularly if you rely on a non-law-school address. You can change your email in the Blackboard site by going to "Law Student ID Registration" on the LexisNexis Login page. See 2.B. for detailed instructions about accessing the ICN course web site.

C. Discussion Forum

You are expected to post questions and reflections before each class. You also must post one short research paper for comment and comment on at least five research papers of colleagues (further information will be provided about this assignment). You will post these comments to the web discussion forum on the Blackboard site. You can also post other reflections or discussions there after class or at other times. Note that the discussion forum is meant to be just that – a forum for group discussion. The professor will participate regularly, but will not "answer" each posting.

D. Classroom Work/Participation

General: The class is scheduled to meet twice per week for 180 minutes plus a break. Some of this scheduled time will be dedicated to out-of-class simulations (see below). The classroom work will consist of demonstrations, class discussions, exercises and simulations, videos, lectures (including guest lectures), and general debriefing of the outside simulations. PowerPoint presentations, clickers, and other visual media will often be used to complement the classroom lecture component.

Preparation: You are expected to come to class fully prepared by reading all the required materials in advance. We can't make as much progress as we should if you are not familiar with the materials. The competing demands on students in law school may mean that on one or two occasions you cannot do all the reading, but if that should happen please **do not** skip class.

Class participation points: A portion of your grade will be based on "class participation." Participation is defined broadly, and can include one or more of the following: class discussion, participation in the electronic discussion forum, and meetings with the professor during office hours. Note that participation is defined by the quality, not the quantity, of your participation. You will receive at least one opportunity during the course of the semester to perform an in-class simulation before the entire class. As discussed in the previous section you are required to post to the discussion forum at least once a month (four times over the course of the semester).

E. Questions and Reflections

Because there will be no exam in this course, I have added this component to ensure meaningful class participation and thus enable appropriate coverage of the material in each unit. To this end, each student **MUST** submit, on a weekly basis, a "Reflections and Questions" document about that week's reading. The details of this requirement are as follows:

- ***Two short questions/reflections per class:*** Once you have completed the assigned reading, please draft a **SHORT** document (I anticipate it will be around half a page to one page if printed out that contains **at least two questions or reflections** on the reading you have done for the class. Do not submit more than five questions/reflections nor more than the equivalent of a two page document in any one class.
- ***Submission mechanics:*** You must submit your questions and reflections to the course website via the **discussion board at least 30 minutes before class starts**. Please do not attach a document, but put the text in the actual posting.
- ***Missed submissions:*** Knowing that certain times of the semester are a bit

busier than others and that competing demands sometimes creep up, you will be allowed to be late on (or even miss) three submissions. Thus, you will be required to submit a minimum of ten Reflections and Questions documents over the course of the summer. You of course may submit Reflections and Questions for each class.

- ***Role in grading:*** Failure to submit the required ten Reflections and Questions documents will result in a reduction in your participation grade – two points will be deducted from your grade for each late or missed document.

F. Simulations Outside Class

Overview: There will be seven (7) simulations outside of class. You will conduct one simulation alone and critique yourself. In the remaining simulations, you will critique yourself and your partner for that simulation at the end of each simulation and submit evaluation forms. You will be required to videotape two simulations and view the videotape in its entirety before submitting your evaluation.

Goals: The goals of the simulations are three-fold: (1) to enable you to learn through doing; (2) to help you learn the tools of self-criticism so that you can use them to continue developing these crucial skills throughout law school and after graduation; and (3) to help you learn to perform effective and meaningful peer evaluations.

Timing/Credit: Sufficient time should be dedicated to the simulation exercises – for this three (3) credit course, the classroom component of the course will be shortened to allow sufficient time to complete the work. It is expected that each simulation and evaluation session will typically take approximately one to one and a half hours for both partners together.

You will lose two points per day toward your final grade if you turn in simulation evaluation forms late. In order to maximize the efficacy of the simulation experience, if at all possible you should not conduct the simulations until after the class that addresses those skills. The simulations will not require outside research. They are designed to be self-contained so that you can focus on the interviewing, counseling, and negotiating skills themselves.

Groups: Early in the course, students will be divided into GREEN and BLUE groups. Most of the simulations that the GREEN group will undertake will involve a factual scenario based on a criminal situation, and most of the simulations that the BLUE group will undertake will involve a factual scenario based on a civil dispute. The GREEN group students will use the set of simulation materials found on the course web site in the GREEN group Simulation Materials Folder, and the BLUE group students will use the BLUE group Simulation Materials Folder. Approximately one week before simulation forms are due, materials containing instructions and evaluation forms for the upcoming simulation will be posted to the web.

Partners: For all but the first simulation, you will be paired with a person from the other group (so if you are a member of the GREEN group you will get a partner from the BLUE group). In order to maximize the experience of working with different personalities and styles, you will get a different partner for each simulation.

Roles: During most simulations (but not the negotiation and retainer agreement exercises), you will participate in two roles: (1) lawyer and (2) client or witness. Because most of the simulations will be based on two scenarios, one criminal and one civil, if you are in the GREEN group you will serve as the lawyer in the criminal case and witnesses, clients, etc., in the civil case. Likewise, the BLUE group students will be lawyers in the civil case and witnesses, clients, etc., in the criminal case. The simulation materials for the GREEN group will contain lawyer instructions for the criminal case and client or witness instructions and the evaluation form. The simulation materials for the BLUE group will contain lawyer

instructions for the civil case and client or witness instructions and the evaluation form.

Accessing Forms: Instructions and evaluation forms will be available on the course web site. Note that it is an honor code violation to access the other groups' forms before the due date for each exercise. Once you have completed the entire exercise, you may review the forms that your partner used in completing the simulation. Note that the Blackboard software tracks student access to various locations in the course web site.

Evaluation Forms: After you and your partner have completed each simulation exercise, both of you will fill out evaluation forms and discuss the performances of both yourself and your partner. For two simulations you will also be responsible for preparing and submitting an associated short written document, upon which you will be evaluated.

Recorded Simulation: During the course of the semester, you will be required to record, watch and reflect on at least one of your simulations. Web cameras and facilities will be available and the procedures will be set forth in a separate memorandum. Following the simulation, you and your partner should watch the recording together, then complete the additional evaluation form.

Professor Observation: You will be required to perform one out of class simulation with the professor observing for feedback and grading purposes. A portion of your grade will be drawn from this observation.

Written Simulations: You will prepare written simulation products twice during the semester. These written simulations will comprise 20 percent of your grade (10 points each). The two written simulations are the retainer agreement and counseling memorandum. You will be provided detailed information on each of these at the appropriate time during the course.

6. Research Papers

You will be asked to draft two research papers of 1500 words with minimum of 10 original sources, including one non-internet source located in the law school library, on an aspect of a major subject of the course (interviewing, counseling or negotiating). You will post these papers on the discussion board and receive (and respond briefly to) feedback from your colleagues. In addition, you will comment on a total of five (5) papers posted by your colleagues. Further information regarding this assignment will be provided in a separate memorandum and on the course website.

7. Grading

Your grade in this course will be based on the following:

Observed and In-Class Simulations:	20 percent
Written Simulations:	20 percent
Questions and reflections	20 percent
Class Participation (including web):	10 percent
Research papers plus comments on colleagues research papers	30 percent

In addition, two (2) points will be deducted from your final grade for failure to submit a total of ten (10) questions and reflections documents. Also, you will lose two (2) points per day toward your final grade if you turn in simulation evaluation forms late.

8. TENTATIVE Schedule (actual dates posted on course website)

Class 1: Course Introduction

*Collaborative Lawyering
Attorneys and Clients*

Assignment: KREIGER: Chapters 2, 3 & 4

Class 2:

*Collaborative Lawyering
Professionalism
Rules of Professional Conduct
Retainer Agreements*

Assignment: See website and class handout from previous class.

SIMULATION: Retainer Agreement (Draft Portions of a Retainer Agreement).

Class 3:

Conducting Initial Interview I

Assignment: See website and class handout from previous class.

Class 4:

Conducting an Initial Interview II

Assignment: See website and class handout from previous class.

SIMULATION: Initial Client Interview (GREEN Group: Lawyer For Criminal Client; BLUE Group: Lawyer For Potential Tort Plaintiff). Evaluation forms are due by 5 pm.

Research Paper on Interviewing (if you choose that topic) due by 5 pm.²

Class 5:

*Debrief Interview Simulation
Witness Interview
Counseling I*

Assignment: See website and class handout from previous class.

SIMULATION: Witness Interview I (GREEN Group: Interview Witness For Criminal Client; BLUE Group: Interview Witness For Potential Tort Plaintiff). Evaluation forms are due by 5 p.m.

Class 6:

*Debrief Witness Interview I Simulation
Theory of the Case and Fact Investigation*

Assignment: See website and class handout from previous class.

SIMULATION: Witness Interview II (GREEN Group: Interview Witness For Criminal Client; BLUE Group: Interview Witness For Potential Tort Plaintiff). Evaluation forms are due by 5 p.m.

Class 7:

*Debrief Witness Interview II Simulation
Counseling II*

Assignment: See website and class handout from previous class.

SIMULATION: Counseling (GREEN Group: Help Criminal Client Decide Whether To Plead Guilty; BLUE Group: Help Tort Client Decide What To Do). Evaluation forms are due by 5 p.m.

Research Paper on Counseling (if you choose that topic) due by 5 pm.

² Peer comments due five days after all research paper submission deadlines.

Class 8: *Debrief Counseling Simulation*
Counseling III

Assignment: See website and class handout from previous class.

First Brief Reflective Paper on Learning Contract due before class.

Class 9: *Negotiating I.*

Assignment: See website and class handout from previous class.

SIMULATION: Negotiation I. Results and evaluation forms are due by 5 p.m.

Class 10: *Debrief Negotiation I Simulation*
Alternative Dispute Resolution (ADR) – Overview

Assignment: See website and class handout from previous class.

Class 11: *Negotiating II*

Assignment: See website and class handout from previous class.

SIMULATION: Negotiation II, Negotiating Terms of a Property Transaction. Results, evaluation forms and second written submission (counseling memorandum to client) are due by 5 p.m.

Research Paper on Negotiation (if you choose that topic) due by 5 pm.

Class 12: *Debrief Negotiation II Simulation*
Negotiating III

Assignment: See website and class handout from previous class.

Second Brief Reflective Paper on Learning Contract due before class.

Class 13: *Bringing Professionalism Together*

Assignment: See website and class handout from previous class.

Class 14: *Pulling it All Together*
Day-to-Day Collaborative Lawyering and Fostering a Balanced Practice

Assignment: See website and class handout from previous class.

9. **Further Information/Updates**

Because this course is being adapted throughout the semester, this syllabus may be amended throughout the class. Additions or modifications to assignments, as well as changes to any of the dates above, or other important information will be posted on the web site and, assuming time permits, announced in class.