

Family Law Education Reform Project

Initial Draft of Findings and Recommendations

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Introduction: The Family Law Education Reform (FLER) Project

The last two decades have seen substantial – even dramatic – changes in the practice of family law, most particularly the infusion of nonlegal professionals into the court system. As this sea change has occurred, however, law school curricula and teaching have remained relatively static. The result, predictably, is that young lawyers entering family law practice often find themselves unprepared for what they encounter. A substantial and growing gap between family law teaching and family law practice undermines the best efforts of new family lawyers, and leaves them ill prepared to assist families and children in separation, divorce, and dependency matters. Today's family lawyers need a thorough understanding of the appropriate – and inappropriate – uses of dispute resolution services, the emotional impact of family conflict, case management processes in the family courts and the rise of, and critique of, unified family courts. Yet the materials from which most family law professors teach contain nary a word on any of these topics.

“Traditional” family law teaching materials emphasize litigated cases, nearly to the exclusion of everything else. What message does this emphasis convey to students? One strong possibility is that students conclude that litigation is the norm in family law, with the “good” lawyer being the one who wins cases for her client. The published materials rarely, if ever, describe the tightrope family lawyers walk in an area where the outcomes for all parties and their children are inherently linked.² Indeed, a student may study assiduously in most family law

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² See, e.g., Russell Engler, *The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps We Should Seek to Narrow*, 8 Clinical L. Rev. 109, 154 (expressing the view that “students are not necessarily any better prepared to handle family law cases simply because they have taken a traditional family law course.”)

courses and never once see the literature documenting the harm children suffer from intractable parental conflict. Discussion of the pervasiveness of domestic violence is also missing from many traditional family law materials, as is treatment of the rapidly expanding phenomenon of unrepresented litigants in family court.

In reality, today's family courts incorporate a wide variety of dispute resolution procedures and are populated by professionals from multiple disciplines. Many jurisdictions have unified family courts that group a range of issues – from divorce and custody to juvenile crime to child support – under one roof, with a single judge. Specialized courts for domestic violence, drug abuse, and permanency planning also dispense both mental health and legal services, involving the courts in interventions in the family that are designed to meet therapeutic goals. As a result, family court judges do not serve only as adjudicators. They may also oversee a multi-disciplinary group of service providers all engaged with the children and families whose cases are before the court. This complex mix of professions, skills and roles is still evolving. In addition to lawyers and judges, mediators, custody evaluators, guardians ad litem, parent educators and parenting co-ordinators are all powerful actors in today's family courts. Indeed, today's family lawyer works in a world where understanding the work of dispute resolution and mental health professionals may be as essential as knowledge of governing statutes and constitutional doctrine.

The goal of the FLER Project is to provide family law teachers with the ideas, tools and materials they need to bring family law teaching in line with family law practice, and to help students become effective and reflective family law practitioners, leaders and policy makers. The course modules and model curricula that will emerge from this project will be designed to provide the next generation of family lawyers with an understanding of the range, complexity, and interdisciplinary nature of family law practice. They will stress sensitivity to the legal, emotional, and process needs of family members. More grandly, it is our hope that future generations of family lawyers will not only provide more informed and effective advocacy to the families they serve, but will also serve as catalysts for positive change in their broader communities.

The FLER Project also aims to connect to the larger undertaking of “building the educational continuum” forcefully articulated in the MacCrate Report on legal education.³ That report presented an analysis of fundamental lawyering skills and professional values which all lawyers should seek to acquire. The ten lawyering skills included the following: problem solving; legal analysis and reasoning; legal research; factual investigation; communications; counseling; negotiation; litigation and alternative dispute resolution procedures; organization and management of legal work; and recognizing and resolving ethical dilemmas.⁴ The four basic professional values were listed as provision of competent representation; striving to promote

³ American Bar Association Section on Legal Education and Admissions to the Bar, Legal Education and Professional Development - An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992)[hereinafter, “MacCrate Report”].

⁴ See MacCrate Report, 138-40.

justice, fairness, and morality; striving to improve the profession; and professional self-development.⁵ These professional skills and values particularly resonate within the mission of teaching law students in order to enhance the performance of family lawyers. Attorneys who focus on the resolution of family problems must be prepared to handle an especially wide array of ethical and emotional dilemmas, are called upon in their daily practice to exercise a broad range of skills, and must know how effectively to interact with professionals from other disciplines.

The FLER Project also shares many of the aims of the “Best Practices” Project of the Clinical Legal Education Association (CLEA). CLEA’s endeavor is a long term effort to examine and describe the best practices for law schools to prepare students to practice law.⁶ Recognizing that “[m]ost new lawyers are not as prepared as they could be to discharge the responsibilities of law practice,”⁷ the CLEA project

seeks to provide a framework within which law schools and licensing authorities can establish minimum qualifications for law graduates that promote public protection, competence, and accountability in the delivery of legal services. Our primary concern is the potential harm from incompetently rendered legal services. A law school’s educational program should guarantee that each graduate will have the knowledge, skills, and values necessary to meet a new lawyer’s legal and moral obligations to clients.⁸

Studies of legal education in the past generation have generally concluded that “most graduates of law schools lack the minimum competencies to provide effective and responsible legal services,”⁹ and that the profession is failing to meet its obligation to provide access to justice, one of the core values identified in the MacCrate Report.¹⁰

I. Teaching Family Law: What Are the Goals?

Every accredited law school in the United States offers its students one or more courses

⁵ *Id.* at 140.

⁶ The current (Dec. 7, 2004) draft of the “Best Practices of Law Schools for Preparing Students to Practice Law” is available at <http://professionalism.law.sc.edu> [visited December 19, 2004].

⁷ *Id.* at §1(A).

⁸ *Id.*

⁹ *Id.* (citing sources).

¹⁰ See Deborah Rhode, *Access to Justice: Connecting Practices to Principles*, 17 *Georgetown J. of Leg. Ethics* 369, 371 (2004); John B. Attanasio, *Out-of-the-Box Dialogs: Foreword*, 52 *J. Leg. Ed.* 473, 475 (2002); Mary C. Daly, *The Structure of Legal Education and the Legal Profession, Multidisciplinary Practice, Competition, and Globalization*, 52 *J. Leg. Ed.* 480, 484 (2002).

of study in areas variously denominated “Family Law,” “Juvenile Law,” “Children and the Law,” etc.¹¹ Why are these courses offered? What goals do curriculum planners and the teachers of these courses have in mind as they offer them? The FLER Project has tentatively identified five goals that family law courses, broadly defined, try to achieve:

1) **LEGAL ARCHITECTURE**: Introducing students to a body of law consisting of seminal cases and sample statutes and regulations. Taken together, these cases, statutes and regulations form a basic architecture within which the practice of family law takes place.

2) **LARGER CONTEXT**: Placing family law in a larger context. Family law has a rich history to which many disciplines have contributed, and it is strongly affected by a range of forces—economic, religious, psychological and demographic, among others.

3) **INTERDISCIPLINARY NATURE**: Giving law students an accurate picture of the many ways in which family law is practiced, and introducing the multiple actors, from many disciplines, who play important roles both within and as adjuncts to the family courts.

4) **NECESSARY SKILLS**: Providing students with the skills needed to be excellent family law practitioners.

5) **CULTURAL WINDOW**: Opening a window on a troubled area of American law and culture and inviting intelligent, energetic and idealistic young people to get involved.

The FLER Project aims to draw interested parties into a discussion which will, we hope, proceed on at least four levels: (1) Are these the right goals for family law courses and curricula? (2) If they are not, or if they are too limited, what should be added or changed? (3) If these are sound goals, are law schools achieving them? (4) If not, who and what needs to change?

To date, two significant meetings have been held at which law professors and other professionals involved with family law and the family courts have exchanged information and ideas. The following is an initial attempt to collect what we have learned and shared so far. This draft is organized to reflect the five goals stated above. Interested persons may also request a rough draft which tries to collect (but not necessarily organize!) all the good ideas shared at the two meetings (AFCC Annual Meeting, San Antonio, Texas, May 2004; Hofstra/AFCC Meeting, Hempstead, New York, November 2004) that have been held to date.

¹¹ FLER Project co-reporter J. Herbie DiFonzo and his students examined the offerings of accredited law schools in two states: New York and California. The schools surveyed offered from 2 to 13 “family law” courses and from 0 to 3 clinics per school. [Data presented at Nov. 2004 FLER conference sponsored by the Association of Family and Conciliation Courts and Hofstra University School of Law.]

II. The San Antonio and Hofstra Discussions: How Are We Doing?

Goal No. 1: **LEGAL ARCHITECTURE** – Are law professors doing a good job of introducing students to the seminal cases, the statutes and the regulations which constitute the body of family law? And, how do students respond?

Answer: Mixed. In a survey conducted with his Hofstra students, co-reporter J. Herbie DiFonzo reviewed a number of the most popular family law casebooks. Prof. DiFonzo found that 79% of the pages of eight illustrative family law texts were devoted to case material and statutes, with the vast majority of that being devoted to cases. None of the participants in either of our two initial meetings suggested that books currently on the market fail to provide enough case material. However, many of the law professors said that the books provide too little help in presenting non-case legal material. Two primary examples cited were materials on the Employee Retirement Income Security Act (ERISA) and the Consolidated Omnibus Budget Reconciliation Act (COBRA), complex statutes with profound effects on the division of property at divorce, and on access to medical insurance after divorce. Students who do not understand ERISA and COBRA may fail to ensure that their clients claim the pension and health insurance benefits to which they are entitled after divorce. The Hofstra group also noted that students often lack command of basic finance concepts and terminology, making it difficult to teach matters like pension division.

The Hofstra group also pondered students' familiarity (or lack thereof) with the legislative process and the importance of legislation in family law. One participant asked if any of the others had invited a state legislator to speak in her or his class. No one in attendance had done so. The general consensus was that having legislators come to the classroom could be quite beneficial. Some participants suggested that since state legislators often have small (or no) staffs, law student assistance might be attractive to them, while providing an opportunity to increase students' exposure to the legislative process (discussed further below). One participant, noting the difficulty in getting students interested in discussions of policy, suggested that having legislators visit the classroom would help to ground matters of policy in a real setting.

The discussion of core legal principles and their presentation in the casebooks sparked a more general discussion of student responses to family law courses. Family law is tested on the bar of 40 states.¹² Some students enroll in family law courses because they are sincerely interested in learning about this area of law. Many others, however, enroll solely to prepare for

¹² Data presented at Nov. 2004 FLER conference sponsored by the Association of Family and Conciliation Courts and Hofstra University School of Law.

the bar examination. This mixed motivation can significantly affect students' responses to the material presented. Several participants at Hofstra noted that students clamor for a focus on doctrine and resist efforts to discuss policy or law reform. Having family law questions on the bar exam also leads students to press for state specific material to be covered in the family law course. One participant in the Hofstra discussions said that 2/3 of the students in her basic family law course "don't want to be there," creating a poor atmosphere for the exploration of issues.

Participants in our discussions whose state bars do not test family law (or do so in theory, but in fact rarely include family law questions on the bar exam) had a different experience. Their courses tended to enroll very interested and motivated students, but in much smaller numbers. One San Antonio discussant stated that 15% - 20% of each law school class would pass through the basic family law course, with 10-15% in more specialized courses. This discussant, however, felt this was a better alternative than forcing uninterested students to take the family law course. Others argued for making family law a required course, perhaps a first year course. They stressed that there are so many required courses in the law school curriculum that electives are squeezed, and too few people take family law. There was fairly sharp disagreement on this issue, which came up again at Hofstra. One professor, who had worked on a project that put ADR in the first year, described the endeavor as "not working". Others suggested that there would be tremendous resistance to paring down current first year courses to make room for family law. Another alternative, discussed below, is to try to insert bits of family law into current first year courses. A third suggestion was the "flashy brochure" – i.e., luring students into family law by presenting it in an appealing manner in a piece of promotional material circulated to incoming students.

The conversation at Hofstra also noted the relatively low status students attribute to family law. Students perceive the field as shrinking, with limited job prospects. It was unclear whether the discussion participants agreed that the field is shrinking. At least one practitioner was quite clear in arguing that there is a good living to be made in family law for skilled practitioners. However, the professors seemed to agree that student perception of poor career prospects is widespread. The question was raised whether the family law bar could be mobilized to provide opportunities for students that might enhance the attractiveness of family law careers. The participants seemed to agree with the comment of one professor at the Hofstra discussion that law school career services offices generally do a poor job of assisting and placing students who are hoping for careers in family law.

At the closing roundtable at Hofstra, the participants agreed that the FLER Project needs to hear from students in some systematic way. However, no specific strategies for gathering student input were proposed.

Goal no. 2: **LARGER CONTEXT** – Do Family Law Courses as Currently Constructed Help Students to Understand the Historical, Cultural, Religious, Economic, Demographic and Other Forces that Have Shaped and Continue to Shape Family Law?

Answer: No. In the survey referred to above, Prof. DiFonzo and his students made a page-by-page analysis of an “average” family law text. They determined that its 1,166 pages contained only 18 pages of social science “context” material. This troubled many of the participants at the Hofstra discussion greatly.

The law professors who gathered at Hofstra noted that mental health professionals are frequently called upon to investigate family law cases, to make reports, to testify as experts, or all three.¹³ These professionals, who often have great credibility in the courts, frequently rely on (or simply assume the validity of) certain psychological theories such as family systems theory or parental alienation. Law students generally know nothing at all about these theories, their sources, judicial responses to them, or challenges that have been asserted to their validity or use. Lack of familiarity with dominant contemporary psychological theories was identified as a major contextual gap in law students’ educations.

Other participants at Hofstra noted that most commercial family law materials treat the American family as if each family unit were the same, much like Tolstoy’s famous dictum about happy families.¹⁴ Little attention is paid to cultural differences among families, to the special stresses affecting single parent families, or to domestic violence and its effects on family law. Most family law courses spend very little time on the legal issues facing unmarried partners or on same sex adoption. The Hofstra participants also generally agreed that too little time is spent reviewing family financial issues. Finally, family law as presented in the casebooks was described as not only America-centric, but as generally excluding all international comparisons. Not only are comparativist legal insights elided, but also skipped are perspectives which would reveal, for instance, the extraordinary levels of child poverty in the United States. And nothing in any family law sequence identified by the participants at San Antonio or Hofstra focused on law reform, policy initiatives, or lobbying.

Another area of agreement and concern that spanned the San Antonio and Hofstra meetings was the effect of low income or poverty on family law practice. The group at Hofstra in particular strongly echoed the profound insights of Prof. Jacobus Ten Broek’s classic work from the mid-1960’s, “California’s Dual System of Family Law,”¹⁵ *i.e.*, that one family law

¹³ The interdisciplinary nature of contemporary family law is discussed below.

¹⁴ “Happy families are all alike; every unhappy family is unhappy in its own way,” Leo Tolstoy, *ANNA KARENINA*, Ch. 1, first line.

¹⁵ Jacobus Ten Broek, *California’s Dual System of Family Law: Its Origin, Development and Present Status (Part I)*, 16 Stan. L. Rev. 257 (1964); *California’s Dual System of Family Law: Its Origins, Development and Present Status (Part II)*, 17 Stan. L. Rev. 614 (1965).

governs the well off, while a quite distinct family law regulates the poor. Participants concurred with the assessment that family law casebooks blur this distinction, leading students to conclude that all families' cases proceed in the system that is actually only available to the well off.¹⁶ In the four decades since Ten Broek published his seminal two-part article, poorer families have tended more often to have no legal representation at all. The Hofstra group pointed out that casebooks often fail to mention, must less suggest strategies for coping with, the *pro se* explosion in family courts.

A final major substantive hole in many family law curricula is ethics. Some participants noted that other courses—including the specific course on legal ethics—stress the ethical requirement of zealous advocacy. But no course, with the possible exception of some extraordinary ADR offerings, helps law students grapple with the task of meeting their ethical obligations to their clients in a *nonadversary* milieu. How does one advocate zealously without encouraging antagonism? Stated in the reverse, how can a lawyer be sure that he or she is giving a client excellent representation in a legal system that presses constantly for compromise and concession? Many participants at Hofstra agreed that more time spent on and a much sharper focus on legal ethics in the family law context is essential.

Ideas and Approaches: In discussing this cluster of issues – which we have roughly defined as “context issues”—a few ideas came up several times. One was the creative use of video, particularly clips from mainstream, popular culture movies. A number of teachers noted that after students watch a clip from, say, *Kramer v. Kramer*, it is far easier to draw them into a discussion of the difficult emotional terrain of family law practice, the possible conflict between a family's short-term gains and long-term benefits, rules vs. standards, and the fundamentally practical nature of family law.

A second strong theme was that family law professors would benefit from conversations with professors of the social sciences. Some questioned, however, whether problems of “territoriality” might undermine the value of such efforts.

Both the San Antonio and Hofstra participants seemed to concur that the materials in current legal casebooks present families as white, middle class, and married, and see their

¹⁶ One example is discussion of *Troxel v. Granville*, 120 S.Ct. 2054 (2000). This important Supreme Court case provides an excellent framework to discuss variations in emerging family units. But the legal issues as framed in the half-dozen Supreme Court opinions in *Troxel* may mislead students into believing that a significant portion of the family court docket revolves around cases in which several worthy sets of adults compete for a child's attention. The reality that family judges spend far more of their time on the bench in an often desperate search for a single competent, loving adult to care for an often neglected or abused child may be harder to establish for students unless the discussion is empirically grounded.

problems as being resolved (if they are) in courts, with paid counsel for each party. These supposedly modal families are nonviolent, usually rational, and have no connection to the world beyond the United States. Family law, too, seems unaffected by political pressure, religion, economics, immigration or demography. As a group, the participants expressed deep dissatisfaction with this state of affairs.

Goal No. 3: **INTERDISCIPLINARY NATURE** – Introducing the “Real World” of Contemporary Family Law: Do Family Law Courses Give Students an Accurate Picture of Contemporary Family Law Practice?

Answer: Clinics and externships may (and should). Classroom courses do not.

Not only do the available casebooks fail to present an accurate view of the practice of contemporary family law, many fail to deal with practice in any significant way. Powerful actors like mediators, custody evaluators, guardians ad litem, parent educators, and parenting co-ordinators go entirely unmentioned in most family law teaching materials. The participants in both the San Antonio and Hofstra conversations described contemporary family law practice as “interdisciplinary,” although the ramifications of that term were not fully explored.

The law professors at both sessions agreed that mediation has become a crucial (and is a growing) part of divorce practice, and of other aspects of family law practice as well. But, as one Hofstra break-out group agreed, “mediation means many things,” leaving law teachers unsure what they should teach. The discussants also noted that mediation has one role with “regular” families, a different role with high-conflict families, and a hotly contested role in the presence of domestic violence. However, as several groups of discussants noted, the media portrays family law as a battlefield in which all soldiers litigate. Students absorb this false view, and fail to realize that most of those who work in family law increasingly use (and have always used) problem solving and collaborative techniques. In addition, the general public (*i.e.*, the legal consumer) is also strongly influenced by this media portrayal. Clients want many things from their lawyers, predominately low prices, speedy processing of their cases, and “to win.” The “lawyer as shark” model was said to dominate among consumers.

Law teachers, however, must stress an alternate reality. They must also convince students that lawyers who help clients to settle cases are respected in the profession and may, in fact, have higher incomes than those who litigate most issues. The “quality of life” point was raised many times in both San Antonio and New York. Lawyers who collaborate more and save litigation for the fraction of cases in which it is the right approach experience a better quality of life than those who do battle in every case.

Several of the Hofstra conversations suggested that law professors should bring more

practicing lawyers into the classroom. Some groups suggested that a wider array of professionals could be invited in, including mental health professionals, judges, parent educators, and accountants. A number of groups also suggested that these professionals might have a role as adjunct teachers, though hiring them might open the Pandora's box of requests for additional funding. The conversations at Hofstra and in San Antonio also noted that most teaching materials and most family law courses do not discuss unified family courts or the fact that in such courts litigation is extremely rare.

Identified as a barrier to increasing students' exposure to interdisciplinary family law was the perception shared by many at the Hofstra meeting that interdisciplinary work may not be valued by the academy.¹⁷ If this perception is accurate, it may not be safe for untenured faculty to devote time to interdisciplinary work. This was not the only point at which the law teachers – particularly those at the Hofstra meeting – noted that tenure review drives a good deal of what law professors can do. It stands as a significant hurdle to attempts to substantially re-orient family law teaching. Tenure places the highest value of works of high theory; thus, there may be a need to fashion a high theory of interdisciplinary family law.

A suggestion from the final roundtable at Hofstra was that a survey of recent law school graduates who were practicing family law would be extremely useful. The major question to be asked would be “what didn't you learn”? It might also be possible to survey judges, asking for their impressions of the weaknesses of new family law practitioners. It would also be extremely desirable to survey the consumers of legal services to learn what they felt they needed from their lawyers and whether they got it.

A strong consensus posited that family law teachers should connect theory with practice. This pedagogical marriage could be accomplished in part by bringing people into the classroom who can demonstrate to students the interdisciplinary nature of contemporary family law. Students also need to be placed in the field, if not through clinics, then through externships, or “service learning,” a growing area in other fields. Law students may also serve as GALs or work supervising visitation. They would receive credit for these activities, which they would be asked to reflect on in a structured setting. It was noted that “guided reflection” is very hot in higher education today. Again and again participants in the Hofstra discussion bemoaned the rules limiting externship placements to nonprofit organizations. They also noted limits on credits for externships and a lack of administrative support in some schools.

Court observation was also identified as essential to grounding students in the reality of family law. Courts were portrayed both as key actors and as very uncomfortable spaces. In fact, courts are often so emotionally difficult that they encourage young lawyers to “put on the mask,”

¹⁷ This point was made by several discussants at Hofstra, but was challenged by others who suggested that in some legal fields interdisciplinary work is valued—such as collaborations between economists and law professors teaching business organizations.

a practice that forms a barrier between lawyers and clients—in short, a behavior that is simultaneously adaptive and maladaptive. Some participants noted that their local courts strongly discouraged bringing law students to observe sessions.¹⁸ In addition, some states lack specialized family courts, so what students would be observing would be a general civil session.

Ideas and Approaches: There was, as was noted above, general agreement that students need to learn much more about what actually happens in contemporary family courts. The list of actors and concepts to whom/which students should be introduced includes the following:

1. Mediation
2. Marriage and family counseling, and how families locate counseling resources
3. The structure and goals of unified family courts
4. The emotional impact of family litigation on the litigants
5. The emotional difficulties a family law practitioner will face, techniques for dealing with them, and frank discussions of the impact of gender (of both attorney and client) on the emotional load

Many ideas for imparting this new knowledge are suggested in the discussion above, including the following:

1. Stressing externships.
2. Emphasizing the value of clinical work, including the creation of interdisciplinary clinics where law students would work side by side with graduate students in psychology and/or social work.
3. Introduce more people, perspectives, and types of expertise into the classroom in the persons of invited visitors, particularly practicing attorneys.
4. Provide out of classroom experiential opportunities for students that are in addition to live client clinics.
5. Explore the possibility of joint field studies with social workers or psychologists.
6. Create cross-disciplinary alliances with relevant departments on our campuses, *e.g.*, psychology, social work, nursing, family and consumer science.
7. Find more time to talk—to each other and with our students.
8. Place much greater emphasis on the role of attorney as counselor and guide.
9. Model and encourage a problem-solving non-competitive orientation (though many commented that this is difficult in the competitive milieu that is law school).
10. Create programs of practical training for any family law professor who did not practice in the field.
11. Or change the credentials for becoming a family law professor, to limit the slots to those

¹⁸ Not all do, however. Prof. DiFonzo has recently successfully required all 85 of his family law students to attend three hours of family court and write a short reflection paper. By discussing the attendance requirement with local courts ahead of time, Prof. DiFonzo was able to get full cooperation and a welcome for the students.

with significant practice experience.

Goal no. 4: **NECESSARY SKILLS** – When Students Have Completed the Family Law Curriculum, Do They Have Skills Needed to Practice Family Law?

Answer: Virtually always, no.

A great deal of time at both the Hofstra and San Antonio meetings was spent discussing ADR and its crucial role in the practice of family law. Several professors at the Hofstra meeting argued that ADR should be a required part of Family Law, so that no student could get credit for Family Law without also taking ADR.

Students who plan careers in family law also need to be taught techniques for effective client counseling. Training good legal counselors begins with teaching listening skills. Students need to learn skillfully to address the emotional content of family law. Indeed, it was suggested that an “introduction to lawyering” course was needed that focused explicitly on lawyers’ roles, and had a significant component devoted to the role of emotion in human behavior.

Since the practice of family law often includes representing children, techniques for working with and talking to children should be taught. Though negotiation has entered the curriculum in many law schools, the participants at both the Hofstra and San Antonio meetings underscored the enormous significance of negotiation in family law practice. Law students would also benefit from exposure to specific problem-solving techniques, and to any approaches or content that would expand their cultural competence.

Many of the break-out sessions at Hofstra noted that simulations can be an excellent tool for teaching skills. It was suggested that actors drawn from the university theater department might play the parts of family members in a running simulation. Some participants noted that medical schools use simulated patients to train their students, as a prologue to practice with actual patients. Law schools might use these simulations as a transitional step to student practice within clinics.

Another suggestion was adding an optional “lab” component – for extra credits – to the basic family law course. Students enrolled in the lab could make guided observations, for example, of mental health professionals or of parent educators working with families. Students might also work with state legislators, perhaps in researching or drafting legislation. Since bar associations in many states also work on legislative proposals, these lab students might work with the local bar. Perhaps the most elaborate model for skill building suggested that first year students should observe sessions in family courts. Then, in their second year, students would handle a complex simulated case. The third year would involve placement in a live client clinic.

Sequencing current courses might also create new opportunities for skill building.

Most discussants agreed that the skills needed by family law practitioners are, in fact, very useful in many professional settings outside of family law. However, if family law is to be used as a major skill-building opportunity, it will need more resources, and it will have to deal with a general lack of student interest in skills-oriented courses. It was suggested that even without additional resources and increased student enthusiasm, family law teachers could and should do more modeling of skills and behaviors, which should be possible, even in a content driven curriculum.

There was also considerable agreement with the idea that family law professors should build stronger alliances with their law school's clinical faculty. This idea was suggested in a broader context by the MacCrate Report on legal education, but most participants felt that little progress had been made in this area. In many law schools, clinicians are not tenured, and too much time spent working with clinical faculty may not help a family law professor's tenure case.

A good deal of discussion focused on the possibility of awarding students certificates of specialization in family law, either along with their J.D. or as part of an LL.M. program. These concentrations would be both experiential and interdisciplinary. Skill building should also continue after law school, and lawyers should be encouraged (pressed?) to join and participate in multi-disciplinary organizations.

The FLER Project was also encouraged to create a set of modules that could be inserted by family law teachers into current courses. These modules would lend themselves to skill development, to focusing on the interdisciplinary nature of contemporary family law, and to student reflection and self-assessment. Perhaps, it was suggested, the FLER Project could act as a clearinghouse for simulations and supplementary material, made available electronically, so that professors could choose the pieces they liked. (Questions were raised here about copyright issues and shareware that will have to be addressed if the FLER Project adopts recommendations of this sort.) There was a particularly positive response to the idea of packaged simulations. If law students could engage in an on-going simulation, they could try a range of approaches to "their" family's problems.

These materials would probably be much more useful if the FLER Project also wrote an accompanying "how to" manual. All "non-law" materials would have to be clearly relevant to family law, but the participants in our discussions felt strongly that more non-legal material was badly needed in family law. The FLER Project might also look for family law cases that would work well in other courses, and package and offer them to the teachers of those courses. A number of those who spoke at Hofstra stressed that to be effective, our project will need to offer a variety of products that can be used in many different ways. It was suggested that the institutional culture of law schools will be a barrier to this work.

Discussants also exhorted the FLER Project to create sample problems with strong family law content that can be used by first year teachers. One way to go about this would be to identify cases already in leading first year casebooks that have family law content and provide supplementary materials allowing the first year teacher to stress and expand the family law content. Family law teachers might act as conduits for this material, presenting it to their colleagues and offering to co-teach a class with them. This could be done not only with substantive family law issues, but by having family law teachers introduce ADR or other skills. Some professors with published casebooks have websites with links to other material. Should the FLER Project explore the possibility of being linked to leading casebooks? It was strongly urged that the FLER Project have its own website.

Though there was certainly not unanimity among the participants in these discussions, the following skills were mentioned several times as being important:

1. ADR
2. Client counseling
3. Listening skills
4. Dealing with emotion – yours and your client's
5. Talking with/listening to children
6. Negotiation
7. Cultural competence

Goal no. 5: **CULTURAL WINDOW** – Does the Family Law Curriculum Get Students Interested in and Concerned about the Situation of Families and Children in the United States?

Answer – we seem to be preaching to the choir.

All participants, both in San Antonio and at Hofstra, agreed that the family law curriculum needs to be expanded, both in terms of course numbers and student participation. Would more students take family law courses if they were thereby offered opportunities for direct contact with sitting judges and local bar associations – perhaps opportunities not offered by other parts of the curriculum?

One of the Hofstra break-out groups was given the task of considering the ways in which courts supply both an opportunity for and a barrier to improving the teaching of family law. The group quickly came to realize that there is enormous variation in family courts from state to state. In some states, the family courts are well funded and can provide a range of ancillary services such as private mediation and psychological evaluations. In other states, courts are underfunded to the point of institutional starvation: Investigations are not ordered because

investigators cannot be paid. There are long waits for mediation. Children do not receive appointed counsel, even in high conflict cases.

Another crucial difference is that some states have no specialized family court, and in some, though there is a family court, there are no judges permanently assigned to the court. Instead, all of the trial court judges in the system will pass through the family court on a rotating basis. The result is a complete lack of judicial leadership in the family law area. The discussants considered whether a connection with a law school could help family court judges enhance their stature. It was noted that law schools often work with courts to provide judicial education, or on particular topics of concern. An example was offered from Missouri, where law professors worked with judges to create templates for developmentally-appropriate parenting plans. Several participants lauded the “common understandings” that come from such interactions. Could students be included in such endeavors? Some opined that a lack of openness, endemic to their courts, would serve to keep students out. This group’s conversation also turned to the appellate courts, with one professor stating that 1/3 of the appellate cases in her jurisdiction were family law cases – which most appellate judges are woefully unprepared to handle. Might this fact create clinical opportunities?

The group agreed that the “draw” for judges had to be the hope of better-prepared lawyers appearing in front of them. Family court judges were described as “desperate” for change, which could probably be basis for mobilizing them. From the student side, the professors would have to prepare the students for the sometimes frightening and often negative atmosphere of courts. Student externships in the courts with court personnel as supervisors appealed to a great many of the discussants.

Another hook to draw students to family law might be the opportunity to work closely with practitioners through local bar associations. Might students attend continuing legal education courses and use them for networking? The discussants agreed that, as with the courts, there would be a great deal of variation by state on this matter. In some states, the law schools are too far from the places where the bar associations are headquartered, and in some states there are no private bar associations, only the state’s unified bar.

This group ended by wondering whether all of the “groups mucking around the edges” could be assembled as a constituency for family law reform. Perhaps some sort of Family Law Advisory Committee could be assembled that would visit law schools to talk about non-doctrine matters like burnout and life balance. The goal here, the group concluded, would be to find win/win combinations. Who is out there who has needs a law school can serve? If these folks can be identified, they could form a no-cost resource for law schools and attract more students to family law.

In addition to a sense that too few students are interested in family law, many in the

group stressed the absence of men in the classroom. If too few *students* choose family law as a field, the problem is only compounded if one focuses on male students.

Some of the suggestions listed above for making family materials available to first year teachers and having family law faculty co-teach certain sessions of first year courses should also have the effect of (1) capturing the interest of some students who might not have considered studying family law; (2) making family law more mainstream; (3) educating non-family law faculty about some family law issues; and (4) adding a layer of coordination to the curriculum. Beyond the first year, perhaps interest in family law could be fanned by involving the family law teachers in the general civil clinic and/or in the ADR or mediation courses. “Cross-pollination” was seen as a good idea.

Many of the comments made at the Hofstra sessions stressed that policy and the future of families are a critical component of family law, to be taught along with doctrine, ethics, social science, an introduction to the court system and an introduction to the interdisciplinary nature of contemporary family courts.

III. Miscellaneous Responses and Rambling Notions

Conversations involving multiple academics are inherently untidy, and law professors, with their love of the spoken word, may be the worst. The conversations both in San Antonio and at Hofstra might not have pleased a CEO, but they were rich with ideas. Collected here are some that seemed too valuable to lose, but didn’t seem to fit any of the five issues around which this memorandum has been structured.

A. Courses

Discussions of courses and course structure included these ideas:

1. More small, advanced seminars probing specific family law issues in depth are needed.
2. Law professors should work to have a Family Law Center at their schools and to group family law courses around it.
3. Collapse the teaching of black letter law into three weeks. Use the rest of the semester to teach “what lawyers really do.” Successful local practitioners would be a key part of this latter portion of the course.
4. Offer an ample array of courses: Family Law; Child, Family and State; Juvenile Justice; Domestic Violence Clinic; Family Clinic (or general civil clinic that takes family cases); Seminar on Constitutional Issues in the Family; Health/Reproductive Law; Child Advocacy Clinic; Grandparents’ Clinic; Mediation Theory and Practice; Counseling; Negotiation; and Bioethics.
5. Collaborations with nursing schools can be valuable.

6. Since family law is unlikely to get a great deal of additional course slots, priorities in what to add need to be set with care.
7. Use moot court to get students to grapple with social science materials.
8. Should we be thinking in terms of courses, or in terms of elements that need to appear somewhere; and then assuring that, in fact, they are somewhere?
9. Can some things be taught “pervasively,” or did the ethics by the pervasive method suggest that this may not work well?
10. A family law curriculum can be thought of in three stages: The core, the infiltration and the world. “Core” is Family Law, Child, Family and State, Constitutional Law Seminar, Domestic Violence Clinic, and Juvenile Justice. “Infiltration” would include Mediation, Trusts and Estates, Health Law, the general civil clinic, and any skills courses. (The idea was that the teachers of those courses could probably be persuaded to insert some relevant family law material.) “World” includes academic service learning.

B. Beyond the JD

1. Law schools should create and offer masters’ degree programs for non-lawyers working in the courts.
2. With law schools taking the lead, universities should offer new degree programs with a multi-disciplinary focus.

C. Care and Feeding of Faculty

1. Offer sabbaticals that could be used to develop new teaching materials and techniques rather than producing more theoretical scholarship.
2. Look for funding to endow chairs for family law professors.
3. Use our research to prove the importance of family law, the problems American families are facing, and why this is important.
4. Form a group like the health law teachers have that meets regularly. Family law teachers need to use each other as resources.
5. Academics should be pushing for family law reform.
6. We should share syllabi and reading lists. Barbara Glesner Fines offered to host these on her website until the FLER Project website was up and running.
7. We need more faculty/student research collaboration.
8. What about an institute for law school teaching?

D. Changing Institutional Hearts and Minds

1. Improving family law requires changing the hearts and minds of law school deans.
2. This task will probably require enlisting the help of allies perceived to be important, such as the American Bar Association (ABA), the Association of American Law Schools (AALS), the Association for Family and Conciliation Courts (AFCC), and the National Council of Juvenile and Family Court Judges (NCJFCJ).

E. Resources

1. Many comments were made about the need for resources. It may be impossible to make family law courses more relevant to practice if no new resources are available.
2. We need to build coalitions that might be able to pump some money into family law curricula. Likely sources include the following:
 - (a) Foundations. Mentioned were Annie E. Casey, W. T. Grant, Kellogg, Wendy's and Soros. Family law professors should create a National Committee on Foundations.
 - (b) Continuing legal education and certificate programs can bring in substantial revenue.

F. Random Notions

1. There is a rampant lack of civility in legal settings. Can we do anything about this? Can we at least talk—civily, of course—about it?
2. Should law lead the family dispute process or should those with training in the emotional realm take the lead and let law follow?
3. Consumers are pushing strongly for unbundled legal services. They are unwilling to pay full service lawyers. How should we deal with this issue?
4. The ABA Dispute Resolution Section and the family law community should work more closely together.
5. We need help learning to do effective team teaching across disciplines.
6. Legal publishers are rigid and may be a formidable barrier to needed change.
7. Can we come to some conclusion on what we want *all* students to know about family law vs. what we want family law practitioners to know?
8. We need to discuss assessment and whether it can be used to foment change.
9. Transformation requires more than changing the curriculum. It requires changing values.

IV. Next Steps

The FLER Project has three additional outreach projects on its schedule for the near future. The first will take place in San Francisco in January 2005, in conjunction with the AALS annual meeting, with the Family and Juvenile Law Section and the Alternative Dispute Resolution Section. The second will be in March 2005 at the Wingspread Conference Center in Racine, Wisconsin, and will bring in judges, mediators, custody evaluators and many others. The third presentation/workshop will occur in Seattle in May 2005 as part of the AFCC annual conference. It is the sincere hope of your Co-Reporters, and all involved, that the many excellent ideas we were offered by participants in San Antonio and at Hofstra can be challenged, enhanced, and further refined.