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The Art of Legislative Lawyering and the Six Circles Theory of Advocacy

Chai R. Feldblum
Georgetown University Law Center, feldblum@law.georgetown.edu

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Chai Rachel Feldblum*

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I. OVERVIEW

A "legislative lawyer" is a person who exists in Washington, D.C., and in almost every city and state in this country where legislation and administrative regulations are developed. But most people do not know who that person is or what that person does. In fact, most advocacy organizations that should be hiring legislative lawyers have no idea who a legislative lawyer is.

* Professor of Law; Director, Federal Legislation Clinic, Georgetown University Law Center; B.A., Barnard College; J.D., Harvard Law School. My thanks go to all the individuals with whom I have worked in the Legislative arena and from whom I have learned and continue to learn.

I coined the term "legislative lawyer" when I created a Federal Legislation Clinic at the Georgetown University Law Center in Washington, D.C. over a decade ago. I needed to explain to my faculty colleagues what type of *law* I intended to teach my students in the Clinic and why such learning deserved six (now ten) law school credits.

As I explained at the time, "legislative lawyers" are individuals who practice law in a political, advocacy context. *Good* legislative lawyers are: (1) good at comprehending, analyzing, and manipulating legal text and, at the same time, good at understanding the political dynamics of legislative and administrative systems; (2) able to gain the trust and respect of both legal players and political players in an advocacy effort because of their joint competency in law and politics; and (3) able, because of such trust and respect, to be effective and creative translators and negotiators between the often disparate worlds of law, policy, and politics.

My primary goal in this article is to describe the skills and talents of a good legislative lawyer. I do so partly to provide a name and structure for a type of activity that is currently performed in many advocacy efforts, but is not usually recognized and understood as such by players in the political and advocacy worlds. But I do so primarily to persuade the reader that any federal, state, or local advocacy effort would benefit immeasurably by the involvement of a legislative lawyer.

The legislative lawyer is a key component of my Six Circles Theory of Effective Advocacy. I developed this theory mostly (although not exclusively) out of my experience working on the Americans with Disabilities Act from 1988 to 1990. An additional goal of this article, therefore, is to set forth the Six Circles Theory of Effective Advocacy and to highlight its potential contribution towards structuring an effective legislative or regulatory effort.

Three of the skill sets identified in the Six Circles theory have long been recognized as essential in legislative efforts on a federal or state level: a "lobbyist" who convinces policy makers to take a certain position; an "outreach coordinator" (or "grassroots organizer") who mobilizes popular support for the position; and a "communications person" who shapes the media's understanding of the position. The primary contribution of the Six Circles Theory is to disaggregate the role of the person who "convinces policy makers to take a certain position" into four separate and distinct skill sets and individuals: the strategist, the legislative lawyer, the policy researcher, and the lobbyist.

Finally, the Federal Legislation Clinic has been in operation now for over a decade. Over two hundred students have taken the one-semester Clinic, and a number of them have gone on to positions that use their skills directly in the legislative and administrative arenas. All the students, I hope, have left the Clinic with a better understanding of how law is created and with a stronger set of skills in reading legal text—two qualities that should be helpful in any type of law they are currently practicing.

Thus, a final goal of this article is to provide an overview of how I teach "legislative lawyering" in a law school clinical setting. I hope this section of the article, together with its appendices, will be useful to anyone who wishes to establish a similar clinic focusing on legislation and administrative regulations.

This article was first presented at a talk at the University of the Pacific, McGeorge School of Law in November 2002. In preparing for the talk, I visited McGeorge School of Law's web site and was delighted to find the following lead line on the school's academics page: "McGeorge graduates succeed because they know how policy and politics influence law. And they use this knowledge with skill and confidence."[1]

As I said in my speech after quoting that line: "Ah, music to my ears! I am looking forward to publishing this lecture in your law review, so that we can use the venue of that publication to explain to people why they need to hire legislative lawyers. And then there will be tons of additional jobs for the graduates of your Institute for Legislative Practice and my Federal Legislation Clinic. And best of all, we might get some more sophisticated laws in the process."[2]

Here is my effort at delivering on that promise.

II. THE SIX CIRCLES THEORY OF EFFECTIVE ADVOCACY

A. The Americans with Disabilities Act (ADA) Experience

To anyone looking in from the outside, the advocacy effort to pass the ADA had a simple structure. There was a coalition entitled the Consortium of Citizens with Disabilities (CCD). CCD was established in the late 1970s and was made up of a number of Task Forces.[3] CCD had no paid staff; the President, Paul Marchand, was the Executive Director of the ARC (then known as the National Association of Retarded Citizens), and served as the elected President of the coalition on a volunteer basis.[4]

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1. University of the Pacific, McGeorge School of Law, Academics, *at* http://www.mcgeorge.edu/academics/index.htm (last visited Nov. 11, 2003) (copy on file with the *McGeorge Law Review*).

2. Videotape: The Art of Legislative Lawyering (Chai Rachel Feldblum 2003) (on file with the *McGeorge School of Law, Gordon D. Schaber Law Library*).

3. A coalition named the Consortium for Citizens with Developmental Disabilities (CCDD) was formed in 1975. The group gradually began addressing disability issues beyond those of developmental disability, and, in 1989, the coalition officially changed its name to the Consortium of Citizens with Disabilities (CCD). NATIONAL COUNCIL ON DISABILITY, EQUALITY OF OPPORTUNITY: THE MAKING OF THE AMERICANS WITH DISABILITIES ACT 25, 64 (1997) (providing a useful, albeit not completely accurate, history of the making of the ADA).

4. *Id.* at 71-74. The ARC no longer stands for National Association of Retarded Citizens. Several years ago, it changed its name simply to The Arc. *See* www.thearc.org/history/names.htm (last visited Nov. 1, 2003) (copy on file with the *McGeorge Law Review*).

The Rights Task Force of CCD took the lead in lobbying to pass the ADA.[5] There were three co-chairs of the Rights Task Force: Patricia (Pat) Wright, Director of Government Affairs for the Disability Rights Education and Defense Fund (DREDF), Liz Savage, a government affairs representative with the Epilepsy Foundation of America, and Curt Decker, Executive Director of the National Association of Protection and Advocacy Systems.[6] During 1989 and 1990, when activity on the ADA was constant, approximately thirty to forty lobbyists attended the weekly meetings of the CCD Rights Task Force. The group included representatives from almost all of the major disability groups, such as the Paralyzed Veterans of America, the Epilepsy Foundation, the Mental Health Law Center, the AIDS Action Council, and the United Cerebral Palsy Association. I attended those meetings as the Washington lawyer/lobbyist of the AIDS Project of the American Civil Liberties Union (ACLU).[7]

To the outside, everyone in this group presumably looked the same: each person was a "lobbyist." But if an advocacy effort has solely an undifferentiated group of lobbyists, with no further division of labor among the participants, that advocacy effort is unlikely to be particularly successful. By contrast, in the successful effort to pass the ADA, there was a clear division of labor among the "lobbyists."

Pat Wright, one of the co-chairs of the Rights Task Force, was the *strategist* for the group. She conceptualized the entire legislative game plan to pass the ADA and carried it out step-by-step. The self-described "general" of the ADA effort, Wright had a vision of how to enact the ADA. She planned every action, oversaw every skirmish, made plans and counter-plans. Over a period of two years, Wright carried out her vision of passing the ADA by devising creative and persistent strategies to overcome every hurdle thrown before the bill. While some members of the coalition chafed under Wright's sometimes dictatorial or unorthodox methods, few questioned her efficacy or her strategic brilliance.

Wright engaged in the strategy to pass the ADA in close consultation with Ralph Neas, the Executive Director of Leadership Conference on Civil Rights (LCCR).[8] Although CCD was the official coalition engaged in the passage of the ADA, no civil rights bill had ever passed Congress without the active support and

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5. A second important coalition was the National Organizations Responding to AIDS (NORA), which Jean McGuire and Tom Sheridan from AIDS Action Council, and I, at the ACLU, helped revitalize in 1988. This coalition worked in concert with CCD and generally followed the strategic leadership of Pat Wright.

6. NATIONAL COUNCIL ON DISABILITY, *supra* note 3, at 79.

7. I began work with the ACLU AIDS Project in April 1988. I had previously worked, for several months, at the AIDS Action Council in Washington, D.C. As my work on the ADA progressed, HIV/AIDS issues took up approximately five percent of my time, while general disability issues consumed the rest. The Director of the AIDS Project, Nan Hunter, graciously "lent" me to the general disability community for approximately two years. Hunter and I jointly decided this would be an appropriate use of my time, based on our strategic conclusion that people with HIV and AIDS would most likely receive protection through the passage of a broader anti-discrimination law that covered all people with disabilities, including those with HIV/AIDS, rather than through a law that protected only people with HIV/AIDS.

8. NATIONAL COUNCIL ON DISABILITY, *supra* note 3, at 29.

advocacy of LCCR—the premier coalition of civil rights, labor and religious groups.[9] Wright had "paid her dues" to LCCR by working as a coalition member within LCCR for almost a decade and, by the 1980s, had secured a seat on the group's influential Executive Committee. Largely as a result of Pat Wright's efforts, the LCCR Executive Committee placed passage of the ADA as one of its top legislative priorities in 1989.[10]

Wright organized three main subgroups within the CCD Rights Task Force.[11] The first was a lobbying group, headed by Liz Savage of the Epilepsy Foundation. The second was a grassroots group, headed in a loose fashion by Marilyn Golden of DREDF and Justin Dart, a disability rights advocate. The third was a "lawyers group," which I headed in a loose and unofficial manner.

Most of the people who showed up for the weekly CCD Rights Task Force meetings were lobbyists. Liz Savage was the coordinator, leader and cajoler for this group of lobbyists during a massive lobbying effort that extended over two years. The lobbyists visited congressional staff people, educated them regarding various issues, and provided them with talking points concerning votes that might be expected to arise. The job of the lobbyist was to persuade, to gather intelligence on how a member of Congress might be expected to vote, and to convey that intelligence back to the strategist for future planning.

The breadth of organizations supporting the ADA was a critical element in the successful passage of the law. At the height of the lobbying effort, over fifty organizations were active in supporting passage of the bill. Moreover, the joining of forces of the traditional disability community, the AIDS community, and the general civil rights community was a key element in the bill's success. But the deep breadth of organizational support for the ADA was only as good as the massive logistical structure that Liz Savage organized and coordinated among those organizations' lobbyists. And that massive lobbying structure was, in turn, only as effective as the strategic leadership and direction that Pat Wright provided to the coalition.

While the effort to pass the ADA was largely an "inside-the-Beltway" enterprise, the relationship between Washington, D.C. lobbyists and grassroots disability rights activists was carefully nurtured. Two major grassroots organizations, the National Centers of Independent Living (NCIL) and the Americans Disabled for Accessible Public Transportation (ADAPT), were not part of CCD and were often skeptical of the legislative compromises required during the advocacy process. Marilyn Golden from DREDF and Justin Dart, a

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9. For a description of the Leadership Conference on Civil Rights (LCCR), see *About LCCR: Our Coalition, at* http://www.civilrights.org/about/lccr/index.html (last visited Nov. 1, 2003) (copy on file with the *McGeorge Law Review*).

10. Morton Halperin, then Director of the Washington office of the American Civil Liberties Union, was also a member of LCCR's Executive Committee and also actively supported placing the ADA among LCCR's top priorities. Halperin is one of the most gifted federal strategists I have ever had the good fortune to work with and I continue to prize the lessons I learned from him at the ACLU.

11. These groups were patterned on Task Forces often established under an LCCR Steering Committee.

freelance but highly respected disability rights advocate, were critical liaisons to these organizations, as well as to the general grassroots disability community. Among many other activities, Golden and Dart helped organize hundreds of letters and "disability discrimination diaries" that were sent to members of Congress to explain the need for the ADA.[12]

Successful passage of the ADA also depended on shaping a message about the bill that made opposing the legislation appear almost mean-spirited and un-American.[13] During passage of the ADA, Pat Wright usually took the lead in conceiving and implementing the media message. Ralph Neas was also instrumental in developing a media plan and engaging with the press as the spokesperson of LCCR.

Finally, shaping the *content* of the legislation was the area that fell into my bailiwick. Pat Wright, the strategist, called me simply "the lawyer" for the ADA. I now call the role I played that of the "legislative lawyer."

As the legislative lawyer for the ADA, I read every case decided under existing federal handicap anti-discrimination law (primarily sections 501, 503 and 504 of the Rehabilitation Act of 1973[14]). I learned the legal landscape of disability anti-discrimination law, understood the issues that had been problematic in litigation under the existing federal law, and developed a keen awareness of the complexities of some of the legal issues. I also developed a relationship with the lawyers who had been litigating and/or writing about federal handicap anti-discrimination laws for years. Most prominent among these were Arlene Mayerson, the chief lawyer at DREDF, Pat Wright's group, and Bob Burgdorf, who had drafted an earlier version of the ADA.[15] In addition, the two individuals I consulted most regularly for substantive legal and political advice were my two immediate supervisors: Nan Hunter, Director of the ACLU AIDS Project and Morton Halperin, Director of the national Washington office of the ACLU.

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12. NATIONAL COUNCIL ON DISABILITY, *supra* note 3, at 75, 107. Justice Breyer's dissent in *Board of the Trustees of University of Alabama v. Garrett* relies heavily on these "disability diaries"; its entire Appendix C consists of citations to "Submissions made by individuals to the Task Force on Rights and Empowerment of Americans with Disabilities." Bd. of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 356, 376, 391, app. C (2001).

13. Indeed, even the title of the act—the *Americans* with Disabilities Act—was chosen to be in line with this media message, even though the law protects resident aliens with disabilities as well.

14. 29 U.S.C.A. §§ 791, 793-94 (West 1999 & Supp. 2003).

15. There were other lawyers who played a greater role than Arlene Mayerson or Bob Burgdorf in specific areas of the bill. For example, for purposes of the negotiations on Amtrak, commuter rail, and private and public bus companies, I communicated with and relied primarily on Tim Cook from the National Disability Action Center and Jim Weisman from the Eastern Paralyzed Veterans Association. The relay-system section of the law, title IV, was handled entirely by Sy Dubrow and Karen Peltz-Strauss from the National Center for Law and the Deaf with little involvement by me. In addition, lawyers who served as staff people to several members of Congress, such as Robert Silverstein for Senator Tom Harkin, Carolyn Osolinik for Senator Edward Kennedy, Melissa Schulman for Representative Steny Hoyer, Randy Johnson and Pat Morrissey for Representative Steve Bartlett, and Alan Roth for Representative John Dingell, all played significant roles in the crafting of the law as the bill went through the respective jurisdictions of the members of Congress for whom they worked.

I also lived and breathed the political atmosphere of Washington—meeting with staff people, meeting with coalition members, and participating in strategy sessions. As the provisions of the ADA were drafted, and subsequently as various provisions become the subject of negotiations, I served as the conduit between the litigation lawyers and the political people. And as deals were cut on those provisions, and we decided what to give up or change in the provisions, I was the one who explained to the group of lobbyists what we were giving up and why.

Throughout the process of negotiating and drafting the ADA, I learned to speak two languages well: the language of law and the language of politics. Most importantly, I learned to translate between those languages, and to use my combined knowledge of law and politics to devise creative solutions, sell workable compromises, and write effective legislative language.

B. The Six Circles Theory of Effective Advocacy

The Six Circles Theory is patterned primarily (although not exclusively) on the successful advocacy effort used to enact the ADA. As the graphic on the following page displays, the six circles consist of a strategist, a lobby manager, a legislative lawyer, a policy researcher, an outreach strategist, and a communications director.[16]

Obviously, there are often more than six people involved in any serious advocacy effort. Indeed, a serious effort would probably require one strategist, one lobby manager working with five lobbyists, two legislative lawyers, one policy researcher, one outreach strategist working with three outreach coordinators, and one communications director. The premise of the theory, however, is that there are *six distinct skill sets* that are necessary for any effective advocacy effort.

In coalitions with scarce resources, one person usually has the skill sets of more than one circle. For example, the skill sets of strategist, lobbyist, and communications person are often rolled into one person. The theory postulates, however, that merging several skill sets within one person is never the *preferred* option for a successful advocacy effort. Thus, if resources are limited and an advocacy effort can afford only five people, an adherent to the theory would hire and deploy a lobbyist and a legislative lawyer, rather than hire and deploy two lobbyists.

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16. My experience with the ADA, from 1988-1990, provided me with the insight for naming five of these circles. Indeed, for ten years in my Federal Legislation Clinic, I taught the "Five Circles Theory of Effective Advocacy." From 2002-2003, I had the good fortune to meet, and to begin to work with, Karen Kornbluh from the New America Foundation, and Kathleen Christensen from the Alfred P. Sloan Foundation. The activities I engaged in with these two individuals, and with several others, (most notably Alexa Freeman, Anne Harrison Clark and Katie Corrigan) in developing a framework for creating more fair and flexible workplace policies, provided me with an understanding of the need for the sixth circle, that of the Policy Researcher.

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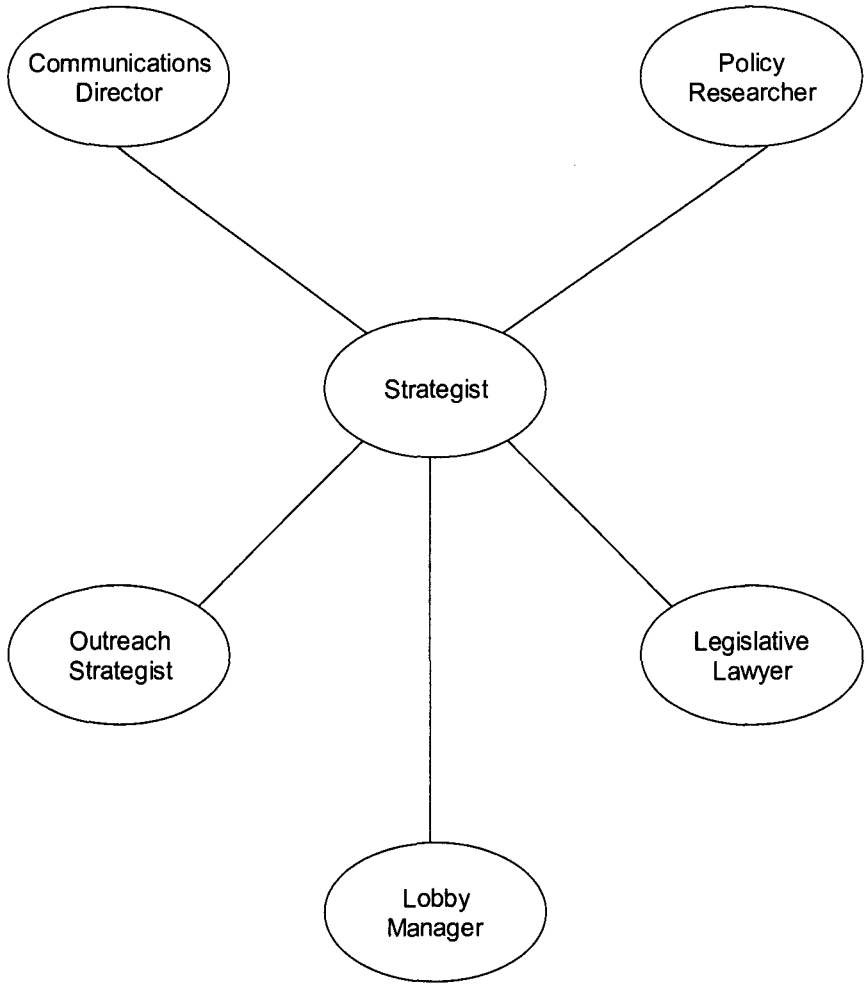

Finally, having the six circles filled, and having one individual leading each of those circles is not sufficient, in and of itself, to guarantee a successful advocacy outcome. Whatever position an advocacy coalition advances must be one that, in our democratic structure, will be capable of mustering majority (or sometimes super-majority) support. The primary contribution of the Six Circles Theory, therefore, is to describe six distinct skill sets a successful coalition must be able to deploy—*when* the political dynamics are such that success is *possible* on a particular issue.

The Six Circles Theory was developed in the context of a situation in which the political climate was sufficiently ready for a legislative effort. People with disabilities had received some civil rights protection in the Rehabilitation Act of 1973 vis-à-vis entities that received federal funds or contracts; they had held on to that protection in the Civil Rights Restoration Act of 1987, and they had received their first protection in the private sector in the Fair Housing Amendments Act of 1988.[17] By 1988, when work began on the ADA, the political climate was ready for introduction of such a bill.

By contrast, when the appropriate political climate does not yet exist for an issue, and one desires federal legislative action, one must first mount a campaign that will change the landscape in such a manner that future passage of legislation becomes possible. As with a legislative advocacy effort (see below), in such a campaign, academics, opinion leaders, members of the media, national constituency groups (including their members, Washington representatives, and lawyers), members of the legislature and administration staff, community leaders, and "real" people and businesses all need to be coordinated in a seemingly seamless and organic manner. The six distinct skill sets of the Six Circles Theory are still essential in such a campaign—but the strategist could be called a "policy strategist" rather than a "legislative strategist," and the goal will be to create the environment in which a future legislative advocacy effort can succeed.

1. The Strategist

The strategist is the "vision person" and the "general." This circle is the most important skill set for an effective advocacy effort and it is the hardest one to find. Strategists are rare and precious commodities. There are countless leaders of innumerable coalitions in Washington, D.C., and most of these individuals are very good lobbyists. But very few of them are "*strategists.*"

A strategist is a person who has the *creative vision* of how to proceed in the legislative game, and who has the talent, persistence, connections, interpersonal skills, and creativity to implement that vision step-by-step. A strategist is a person who identifies and deploys levers of influence others do not even realize exist. The strategist coordinates and deploys the five other circles—the lobbyist, the legislative lawyer, the policy researcher, the outreach strategist, and the communications director—much as a conductor brings together an orchestra for a performance that brings out the best in each player. A strategist is a juggler, defusing and managing short-term crises, while implementing the long-term vision of the pre-legislative, legislative or administrative game. And the strategist

17. Rehabilitation Act of 1973, 29 U.S.C.A. §§ 701-796*l* (West 1999 & Supp. 2003); Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (codified as amended in sections of 20, 29, and 42 U.S.C.). Fair Housing Amendments Act of 1988, 42 U.S.C.A. §§ 3601-3619, 3631 (West 2003) and 28 U.S.C.A. §§ 2341-2342 (West 1994 & Supp. 2003). *See generally* NATIONAL COUNCIL ON DISABILITY, *supra* note 3.

is a person with much patience and endurance—because a significant advocacy effort is usually a long and arduous process.[18]

The strategist must also have certain bases of knowledge. A strategist must have a sophisticated understanding of what will influence members of the relevant legislative body and the relevant administrative body. This includes understanding the electoral dynamics of a member's legislative district (or an executive's electoral base), as well as the range of additional and unexpected factors that might affect how any particular elected official will make decisions on a policy question. The strategist must have a sophisticated understanding of the political dynamics *within* the relevant legislative body, as well as the political dynamics *between* the relevant legislative bodies and the executive body. Finally, a strategist must be skilled in both the legislative and budget processes of the relevant bodies. The more creative and brilliant the strategist, the more levers of influence the strategist will be able to identify and deploy.[19]

A strategist who leads a coalition effort must also have significant inter-personal skills. At bottom, the power of a strategist comes from members of a coalition putting their faith in the strategist's leadership and political judgment. To do so, coalition members must feel there is value to be gained in handing significant authority over to the strategist and in agreeing to follow that strategist's lead.

Strategists achieve this outcome through a combination of charisma, cajoling, flattery, and talent. At the outset, the strategist must convince the interested parties that she or he brings a set of *unique skills* that will be helpful in achieving the advocacy result sought by all of the interested parties. Indeed, one of the purposes of the Six Circles Theory is to disaggregate the skill set of the strategist from that of the lobbyist—so that organizations that have lobbyists working for them, *but not strategists*, can comprehend the "value-added" that will be provided by associating with a strategist.

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18. For example, the Civil Rights Restoration Act of 1987 and the Fair Housing Amendments Act of 1988, the first two legislative efforts in which I was involved, took four and eight years, respectively, to enact. The time frame for passing legislative changes on the state and local level is usually shorter than on the federal level. The skill set for the strategist remains the same, however, although the patience and endurance needed for each particular legislative effort may be somewhat reduced.

19. One strategist has described her role in the following manner:

> I was the one who had the very big picture; knew the politics; understood the interests of all the players; sensed the levers; understood who could play what role; really had a handle on the national public relations aspect and sold stories to the media; knew the legislative and budget processes; could translate among the academics, lawyers, politicians, grassroots groups, and businesses; held everyone's hand; etc. In none of these cases was I the direct lobbyist, the academic expert or the legislative lawyer. Nor did I try to get in between these individuals and members of Congress . . . I let others have ownership, claim credit, be the experts.

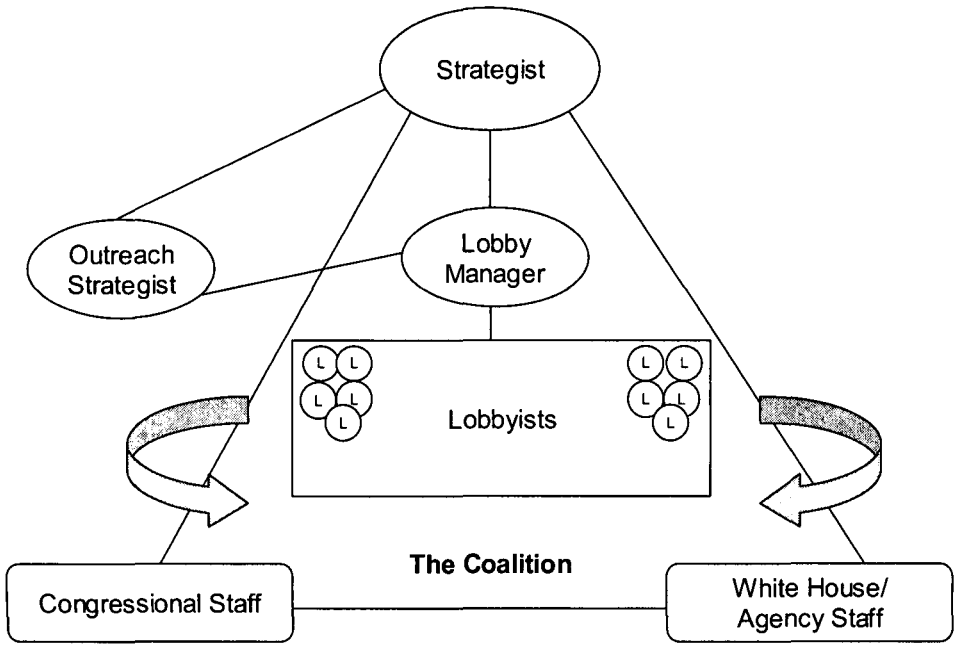
E-mail from Karen Kornbluh, Director of Work & Family Program, New America Foundation, to Chai Feldblum, Director of Federal Legislation Clinic and Professor, Georgetown University Law Center (May 15, 2003) (on file with author) (describing her role in a classroom internet access provision in a telecommunications bill). *See also* REED E. HUNDT, YOU SAY YOU WANT A REVOLUTION: A STORY OF INFORMATION AGE POLITICS, 110-11, 137-40, 167-69, 204-07 (2000) (describing Kornbluh's role in the FCC effort).

In order to convince coalition members that their organizational interests will be well-served by the "value-added" of the strategist, the strategist must also create a process in which coalition members feel their positions, needs, and strategic viewpoints are being taken into account. Coalition members will then feel an ownership in the strategy being pursued. In addition, a strategist must ensure that appropriate coalition members receive credit and thanks for the accomplishments achieved through the strategy.

Of course, nothing succeeds like success itself. Coalition members are most likely to remain loyal to a strategist who is a proven winner in the legislative game. First-time strategists in new coalitions need to continually "earn" the respect and trust of the members they are leading. Established strategists have the luxury of relying, to a significant degree, on past successes—although they too have to ensure that coalition members do not get restive under their leadership.

Finally, to be an effective "conductor of the orchestra" or "general of the army" (depending on the strategist's personality type), the strategist must have a keen understanding of and respect for the distinct skills brought by those individuals inhabiting the five other circles. Indeed, the best strategist is often someone who possesses many of the skills that characterize each of those five circles, but who has *chosen* not to inhabit those circles in order to have the time and energy to perform the role of the strategist.

2. *The Lobby Manager/Lobbyists*



The lobbyists are "information carriers" and "persuaders." In an effective advocacy effort, information flows two ways. A good lobbyist conveys his or her advocacy message to the intended audience (usually a staff person) clearly, simply, and effectively. A good lobbyist also hears, elicits, and understands the particular concerns and objections raised by the staff person (or, more rarely, a legislator) and is able to convey that information back to the strategist.[20]

A lobbyist thus must have good oral and written skills. But, of equal importance, a lobbyist must have a calm temperament and a positive attitude. A good lobbyist is a repeat player—slowly building relationships with key staff people over time. Building good relationships requires staying calm and composed, no matter how annoying a staff person might be. It also means taking "no" for an answer, and then coming back at the person or the issue with a different approach. Most critically, it means having incredible endurance and patience—because building a relationship takes time and staff turnover is often high.

The lobbyist's stock in trade is his or her credibility. An effective lobbyist is one whom a staff person feels is honest and can be trusted. The staff person need not always be persuaded by the lobbyist. Nor does the staff person need or expect the lobbyist to emphasize all the substantive or political holes in his or her argument. (That is what the lobbyists for the opposition are expected to do.) But lobbyists *are* expected never to deliberately mislead staff people or falsify information. Indeed, doing so would inflict significant damage on a lobbyist's reputation and, hence, future effectiveness.[21]

The main prize on which a lobbyist always has her or his eye trained is a *number*: i.e., the necessary number of votes required to pass a bill, stop a bill, or modify a bill (the three primary games in any legislative arena). Hence, a lobbyist must be able to persuade the staff person (and thereby, the legislator) in order to get the legislator's vote; must be able to understand what is getting in the way of the legislator's sought-for affirmative (or negative) vote; and, of key importance, must be able to *gauge* accurately how the vote will be cast based on the information conveyed by the staff person or legislator.

Once an advocacy effort is in full legislative swing, the more lobbyists acting as two-way information carriers the better. But in order to ensure that all the information is conveyed, collected, and captured effectively, it is necessary to have someone who takes on the administrative responsibilities of the "lobby manager." The lobby manager maintains the massive grid of all legislative offices that require information; sets up visits for the lobbyists with these offices; keeps track of which lobbyists have visited which offices; collects the

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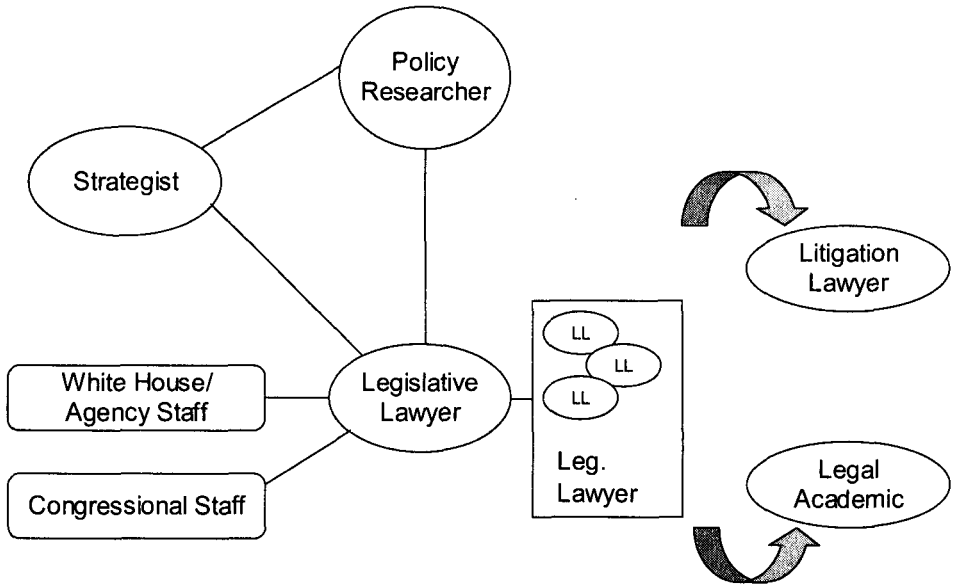
20. When operating on the federal level, a lobbyist will usually be in contact with a staff person. When operating on the state level, and certainly on the local level, the lobbyist is more likely to be in touch with the legislator directly.

21. *See* WOODSTOCK THEOLOGICAL CENTER, THE ETHICS OF LOBBYING: ORGANIZED INTERESTS, POLITICAL POWER, AND THE COMMON GOOD 3-4 (2002) (quoting lobbyists on the need for truth-telling).

information reported by the lobbyists subsequent to each visit; and determines, with the strategist, what offices need additional information or visits (for example, a document or a visit by the legislative lawyer or the policy researcher).

3. The Legislative Lawyer



The legislative lawyer is the "legal content person" and the "conduit" between the political players and the substantive legal players on any particular issue. The legislative lawyer must spend a significant amount of time learning the legal landscape of an issue, with a level of depth and sophistication parallel to those who litigate in the area or who produce academic writings in the area. The legislative lawyer must also be engaged directly with the political process, so that he or she will have a sophisticated understanding of the political pitfalls that may characterize any particular advocacy issue.[22]

22. I discovered, several years after coining the term "legislative lawyer," that the National Conference of State Legislatures (NCSL) publishes a newsletter entitled "The Legislative Lawyer." But NCSL's definition of the term is different from mine. I have spoken, on a few occasions, to the legislative lawyers affiliated with NCSL. They tend to be non-partisan lawyers employed by a member legislature or legislative agency to provide legal services, including legislative drafting. They would be comparable to the non-partisan legislative counsels in the House of Representative and the Senate. By contrast, my definition of a legislative lawyer presumes that the lawyer is actively advocating for a particular cause or client. To access current issues of "The Legislative Lawyer," see National Conference of State Legislatures, Legal Services Publications, *at* http://204.131.235.67/programs/legman/legalsrv/pubs.htm (last visited Nov. 2, 2003) (copy on file with the *McGeorge Law Review*).

The legislative lawyer's substantive legal and policy knowledge, coupled with her understanding of political dynamics, forms the basis on which the legislative lawyer (in conjunction with the policy researcher) produces policy options and legislative proposals. The legislative lawyer's combined understanding of law and politics also shapes his or her ongoing negotiations with the various players, as the strategist coordinates the efforts that will lead to the legislation being ultimately successfully enacted into law (or a regulation ultimately successfully promulgated).

As with a lobbyist, a legislative lawyer's stock in trade is credibility. But his or her credibility must be established in two distinct arenas: that of substantive law and policy, and that of politics.

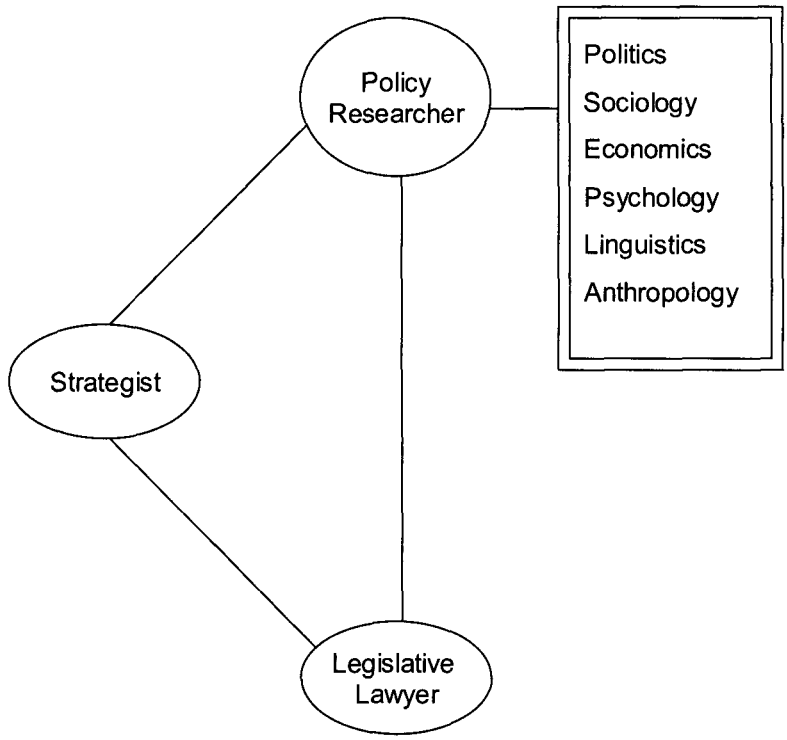
The legislative lawyer must be sufficiently skilled in legal analysis so as to understand the detailed and complex concerns of those who litigate or otherwise practice in the substantive legal arena under consideration for change. These substantive legal experts must feel the legislative lawyer is "good at law"—so that the legislative lawyer will be fully trusted to understand even complex legal analyses regarding existing law and proposed law.

At the same time, the legislative lawyer must establish her *bona fides* with the political establishment. The key players must feel that the legislative lawyer "gets the political scene"—so that the legislative lawyer will be fully trusted to understand even arcane and bizarre political concerns. For this to occur, the legislative lawyer must get to know the key political players in the particular endeavor, understand the particular political concerns at play, and be present at the range of meetings that are the mainstay of advocacy efforts.

The legislative lawyer also needs to be able to speak two languages well: law and English. The legislative lawyer should be able to engage in a complex legal discussion with the substantive legal experts. At the same time, the legislative lawyer must be able to translate those discussions into simple and useful English—that is, a format easily accessible to those whose most precious commodity is time and who are more interested in "bottom lines" than in discursive treatises.

Over time, a good legislative lawyer will be able to identify and comprehend the basic political realities in any advocacy effort. But a symbiotic relationship between the strategist and the legislative lawyer is critical for enhancing the work of both individuals. The strategist will be able to identify for the legislative lawyer political realities that even a talented and seasoned legislative lawyer would not perceive on his own. Conversely, a legislative lawyer can identify for the strategist substantive pitfalls in particular policy proposals or legislative (or regulatory) language that even a talented and seasoned strategist would not discern on her own. This symbiotic relationship ensures that the sum will truly be more than its parts.

4. The Policy Researcher



The policy researcher is the "policy content person" and the "conduit" between the political players and the substantive policy and academic players on any particular issue. The role of the policy researcher is a relatively new one in my conceptualization of the theory of advocacy and is the only one I have not yet had the opportunity to observe in action. But particularly in situations where an advocacy effort is not yet ready for a legislative solution, I believe a policy researcher can be critically helpful in sorting through and analyzing possible policy objectives and ramifications.

Academics in the fields of economics, psychology, sociology, political science, linguistics, anthropology, technology, communications—the list can go on—often engage in research that has a direct (or indirect) impact on policy. But it is often difficult for such academics to provide their research insights to policymakers in a manner that works effectively for both groups.

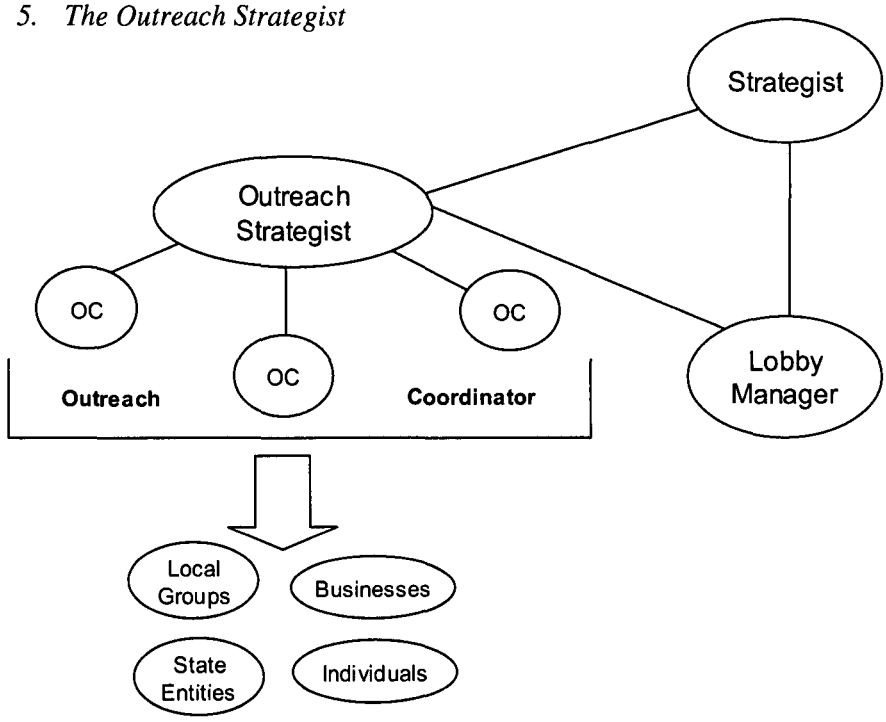
Academics are often called upon to testify in favor of, or against, a particular piece of legislation. But by the time a legislature is ready to hold a hearing on a bill, the legislative process has moved along quite significantly already. Thus, at that point, legislative staffers are not particularly interested in having the research insights of the academics complicate the picture. Instead, they want the research

knowledge of the academics to simply, clearly, and in an uncomplicated fashion support the position their bosses have already taken by introducing or supporting the proposed legislation. As one can imagine, these types of expectations can be frustrating and constraining for policy experts—particularly academic ones.

Thus, for academic research to have a positive impact on the development of policy, insights from such research need to enter *early* in the legislative process—indeed, in the *pre*-legislative process when policy positions are first being formulated. But for that to occur, there needs to be an individual who can be a *conduit* between such academics and the political players. Like the legislative lawyer, who needs to be equally versed in law and in politics, the policy researcher needs to be equally versed in the methodologies of academia and in the nuances of politics.

Again, like the legislative lawyer, the policy researcher must work to gain the trust and respect of both academics and political players in order to serve as the necessary conduit and translator. The academic professionals must believe the policy researcher understands the methodology and limitations of any particular research project and draws only those inferences that may legitimately be drawn from the research. At the same time, the political players must feel they are receiving from the policy researcher information from the research that is useful—that is, that takes into account political realities and is presented in easily accessible language.

5. The Outreach Strategist



Engaging "real people" in an advocacy effort is a skill that requires strategy, imagination, perseverance, and communication skills. In an optimal advocacy effort, an outreach strategist works with several outreach coordinators. Each coordinator is an "information carrier" and an "organizer." Like a lobbyist, an outreach coordinator conveys information in two directions. But while one direction is the same—that of the strategist and the coalition—the other direction is quite different. The outreach strategist and coordinators bring information to individuals and organizations who are interested in a particular advocacy effort, organize them to persuade legislators and the executive branch of the coalition's position, and increase the numbers of such grassroots advocates. At the same time, the outreach strategist and coordinators hear, elicit and understand the beliefs, positions, and goals of these constituents, and communicate those concerns to the strategist and the coalition.[23]

The reality of advocacy efforts is that one does not need a massive grassroots movement to create a successful campaign. One does, however, need to create the *perception* that there are a significant number of individuals who care deeply about a particular advocacy effort—enough that electoral wisdom for the legislator or executive will dictate that attention should be paid to that constituency. To create that perception, an advocacy effort requires a minimal number of active and engaged constituents who will communicate effectively with decision-makers.

An outreach strategist is a good listener, translator, and educator who creates a symbiotic relationship between the grassroots constituency and the advocacy coalition. Members of the coalition (and the strategist leading the coalition) are better served if they receive candid and thoughtful suggestions from individuals who are directly impacted by the legislative and administrative policies under consideration. And such information is often better received by coalition members if it is channeled through an individual who understands the political realities in which the coalition and the strategist are operating.

Conversely, members of the public seeking a policy objective are better served if they receive candid and honest assessments about what is politically feasible. Again, that information is likely to be better received (and believed) if it is channeled through an individual the grassroots advocates have come to trust. Thus, just as the legislative lawyer is the conduit between the substantive legal experts and political players, and the policy researcher is the conduit between academic experts and political players, the outreach strategist is the conduit between the grassroots constituency and the political players.

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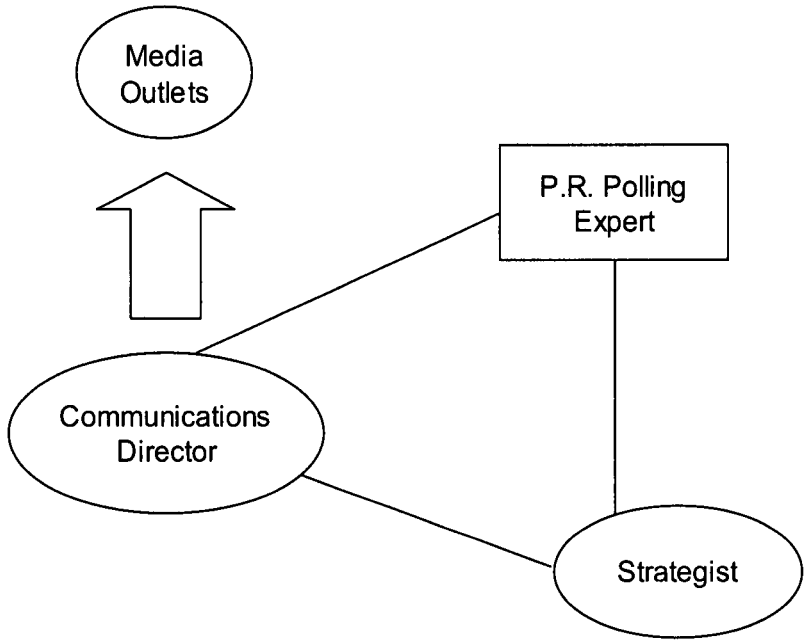
23. In an advocacy effort that advances a particular business, organizational or professional interest, the constituents will be the individual businesses, organizations and professionals seeking to enact (or to stop or to modify) a legislative proposal. While organizing such entities requires somewhat different skills than organizing individual members of the public, coordination of such organizations, businesses or professionals also falls within the outreach circle.

6. The Communications Director



The communications director is the "message shaper." It is a commonplace understanding that a group that succeeds in "framing the debate" on a particular policy question significantly increases its chances of success. In other words, how one frames the policy *question* to be answered by the political process will, in all likelihood, help determine the policy *answer* that will be given by players in that process.[24]

A key responsibility of the strategist, therefore, is to figure out how to get the general public, and by extension the legislative and executive decision-makers, to view the policy question in the frame most advantageous to the coalition's advocacy goal. The communications director is a key player in this endeavor. She or he contributes an understanding of how certain words and terms will resonate with the public, as well as the ability to shape a message with clarity, precision, and punch. If resources are available, a polling firm can be particularly helpful during the process of shaping (and reshaping, if necessary) the message of the advocacy effort. And once a message has been formulated and finalized, the

24. The significance of "framing" has been studied by psychologists and has been documented particularly in the context of polling. *See, e.g.*, Kelton Rhoads, *Framing* (1997), *available at* http://www.workingpsychology.com/lossaver.html (last visited Nov. 2, 2003) (copy on file with the *McGeorge Law Review*); *see also* George Lakoff, *Framing the Dems*, THE AM. PROSPECT, Sept. 1, 2003 (describing the use of framing as a political strategy).

communications director is the one with the contacts, skill, and creativity to ensure the message is disseminated to the appropriate outlets.

The Six Circles Theory is designed to make transparent the intricate set of connections and skills that currently constitute a successful legislative advocacy effort. The importance of the strategist in this effort cannot be underestimated. It is the strategist who orchestrates and coordinates all the circles. Without a strategist, output from the other circles will always exist, but it is more likely to be scattershot and ultimately ineffective. At the same time, individuals within each of the other five circles must be provided their due place, due respect, and due amount of time to perform their requisite tasks. The Six Circles Theory postulates that if a strategist is in place and the other five circles contain the appropriate players, a potentially winning team exists. The outcome of the policy fight will then be determined by the strength of the opposition team and the alignment of the political stars at that point in time.

III. THE LEGISLATIVE LAWYER

While all six circles are necessary for a successful advocacy effort, the circle I inhabit (and the one I teach) is that of the Legislative Lawyer. It is also one of the circles least recognized in advocacy organizations today.[25] Most organizations do not hire "legislative lawyers."[26] Rather, they hire "lobbyists"—and some of those lobbyists turn out, by temperament and by skill, to be legislative lawyers. Organizations also sometimes hire lawyers as "policy analysts." While these positions are often not located in the lobbying department, some of these analysts also turn out, by temperament and skill, to be legislative lawyers. The premise of the Six Circles Theory, however, is that explicitly naming and supporting the role of the legislative lawyer enhances an advocacy effort.

A. The Naming of the Legislative Lawyer

Lawyers heavily populate the halls of federal, state and local legislatures and executive agencies today. Many lobbyists are lawyers, as are many legislators, staff people, and executive officials. But most of these lawyers do not spend a significant percentage of their time doing extensive legal research or writing long legal memos. Indeed, most of these individuals entered the legislative or executive arenas precisely because they were *not* so interested in legal text or precedent and *more* interested in policy, politics, and strategy.

25. Most organizations also do not hire policy researchers. The Alfred P. Sloan D.C. Workplace Policy Initiative, whose staffing is based explicitly on the Six Circles Theory of Advocacy, will hire a policy researcher. I leave it to that individual to write his or her own article about the skills and tasks of the policy researcher.

26. Indeed, I inform the twenty-four students who come through the Federal Legislation Clinic each year that I am training them for a position that does not yet exist in any formal sense.

But legislatures and executive branches pass and implement laws that consist of detailed legal text. Thus, lawyers are seen as a "necessary evil." Lawyers who practice in an area of law under consideration are often brought in as "experts" who will provide advice on the text of a proposed law or regulation. But because these lawyers are individuals who have chosen to actually practice law, rather than engage in the political world, their engagement with the political world is often less than ideal. At best, these expert lawyers view the influence politics inevitably exerts on text as unfortunate and bizarre; at worst, they experience it as unconscionable or unacceptable. In many cases, the outcome for the legislative or regulatory language at issue is less than ideal.

For example, a lawyer who litigates in a specific area may believe a provision in a bill should be drafted in a certain way. This belief may stem from her detailed, substantive knowledge derived from litigating and studying many legal cases—all of which convinces her that certain words must be used in the provision if the provision is to achieve its desired goal when implemented by an agency and/or interpreted by a court.

But a staff person for the key legislator sponsoring the bill may resist using those words because he believes they will cost the bill several critical votes. The reasons for that outcome may not be particularly cogent or logical; political concerns are often neither. Or, assuming the bill has already been drafted with these words, lobbyists may start bringing information back to the strategist that the provision is causing unexpected difficulty with a certain group of legislators. Again, the reasons for such difficulties may not be particularly logical. But if these difficulties are causing "static" around a bill, the strategist will want to get rid of that static.

In such cases, the strategist, the lobbyists, and the staff people usually want to change the words to eliminate the political problem. But these individuals, even if they happen to be trained as lawyers, are unlikely to have read all the legal cases on which the expert lawyer has based her recommendation. And the litigation lawyer, even if she has attended one or two political meetings, is unlikely to be happy about accommodating certain political realities—particularly when the reasons voiced seem illogical or incoherent.

The result is usually an impasse. The staff people do not understand why the lawyer "can't just use different words," and the litigation lawyer is exasperated that the staff people and lobbyists do not understand "why certain words are really important" once the law is actually used in a judicial context. Sometimes, an accommodation on language is worked out to the satisfaction of the litigation lawyer. But more often, the litigation lawyer simply "loses" because the bottom line is that the language used must be able to move the bill forward.

A legislative lawyer, who is responsible for learning the law and the politics of an issue, can forestall such impasses by facilitating informed conversations between the legal and political players. Because the legislative lawyer, unlike the lobbyists, is not responsible for making phone calls and visiting scores of legislative offices, she has the opportunity to read the same legal cases on which

the litigation lawyer has based her recommendations. In fact, the legislative lawyer affirmatively likes reading legal cases! The subsequent deeper involvement in the legal issues allows the legislative lawyer to engage in a sophisticated conversation with the litigation lawyer as to why the latter believes certain words are necessary for a particular legal purpose. Such conversations provide the legislative lawyer with a solid basis for understanding the concerns of the litigation lawyer.

At the same time, because the legislative lawyer affirmatively likes the political arena and has thus chosen to work within it (as compared to litigation lawyers who have often been "parachuted in" to work on one piece of legislation), the legislative lawyer has a healthy respect, rather than disdain, for the role politics inherently plays in the shaping of policy. Thus, she is more likely to be able to explain to her litigation colleagues why even some irrational political responses need to be accommodated in order to have a bill ultimately become a law.

The translation service will, in fact, go two ways. Because a legislative lawyer can translate complicated legal issues into accessible English, she may be better able to explain to staff people and lobbyists why certain words are, indeed, worth fighting for. At the very least, she can explain to the political players why a solution other than simply dropping the offending language must be explored.

Exploring alternative solutions is an essential responsibility of the legislative lawyer. After the legislative lawyer understands the legal concerns of the litigation lawyer, she can explore with that lawyer, and other litigation lawyers, whether other words—while not perfect—might achieve much of the same result sought by the litigators, but without carrying the same political difficulties. Because a legislative lawyer embraces (rather than fights) the reality that politics necessarily affects text, and because a legislative lawyer affirmatively *likes* thinking about and researching law, she can focus her energy and creativity on crafting solutions that will use the best legal language within the constraints of the political system.

Creativity requires data. The legislative lawyer has equal access to two sets of databases—legal data and political data. The better the legislative lawyer's access and comprehension, the more likely it is that he can be creative in crafting the substantive content of legislation and regulations.

B. The Skills of the Legislative Lawyer

The skills of a legislative lawyer are best understood by thinking about the chronological stages in which a legislative lawyer approaches his or her work. These stages are: assess the problem/issue; research the problem/issue; propose solutions and approaches; draft materials; and engage in oral presentations and negotiations.

1. Assess the Problem/Issue

A legislative lawyer must first fully understand his client's desired policy goal. In a situation in which the legislative lawyer is hired to work directly for an organizational client (for example, in the same "government relations" office in which the lobbyists are hired—the optimal structural approach envisioned in the Six Circles Theory), this requires fully understanding what the organization's policy goals are.[27]

The legislative lawyer must then be able to identify, and accurately assess, both the political landscape and the legal landscape that will govern his client's desired policy outcome. For a lobbyist, understanding both a policy goal, and grasping the politics surrounding the goal, is easily achievable. The entire role of the lobbyist is built around explaining a policy goal to a decision-maker and persuading the decision-maker of the merits of that outcome. One of the reasons lawyers become lobbyists is that they are interested in the policy analysis and human interaction required by that line of work. By contrast, a legislative lawyer who is interested in and steeped in the legal details of an issue may need to make an extra effort to fully understand both the policy goal and the politics surrounding the issue. Nevertheless, an understanding and assessment of both policy and politics is *key* to the foundation of good legislative lawyering work. It is that understanding, and that intuitive application of politics to law, that sets the legislative lawyer apart from lawyers who operate purely in the *legal* arena.

In a good legislative lawyer/policy researcher/strategist relationship, a dialogical assessment of the issue will arise through the interaction of the three roles. At the outset, a strategist will articulate a policy goal—as he or she conceptualizes it at that point in time. Based on that articulation, the legislative lawyer will identify the relevant legal areas that may need to be modified to

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27. The relationship between a legislative lawyer and a "client" is an interesting area that deserves treatment and analysis in a separate article. Most lobbyists, even if they are also lawyers, do not view themselves as "practicing law." Rather, they view themselves as working for an *outcome*—i.e., achieving the policy results sought by the organizations for whom they work. Hence, few lobbyists (and presumably, few legislative lawyers operating in the political context) think of their employing organizations as their "clients"—at least in terms of the ethical rules that ordinarily govern a lawyer's relationship between his clients, other potential clients, and other lawyers. *See generally* MODEL RULES OF PROF'L CONDUCT PREAMBLE AND SCOPE, R. 1.0-1.18 (2003). And although the organizations are often accountable to others (usually individuals or entities that comprise their membership base or boards of directors), these constituents are rarely experienced as "clients" by the lobbyists. Thus, the Model Rules of Professional Conduct seem mostly irrelevant to these lawyer/lobbyists. *See generally* Neta Ziv, *Cause Lawyers, Clients, and the State: Congress as a Forum for Cause Lawyering During the Enactment of the Americans with Disabilities Act*, *in* CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA 211-43 (Austin Sarat & Stuart Scheingold eds., 2001) (providing a sharp but accurate critique of how legislative lawyers operate outside any discernable code of professional legal ethics).

Clearly identifying and elucidating the role of the legislative lawyer can be a first step in ultimately crafting rules of professional conduct that are relevant to the settings in which such lawyers operate. An effort has begun to craft such rules for lobbyists, using lobbyists themselves to think through such rules. A similar analysis and effort would be helpful for developing a code of professional ethics for legislative lawyers, once that professional field becomes more established.

achieve that goal (or that might be inadvertently affected by achievement of the goal). The identification of those legal arenas may then further shape the strategist's assessment of the political landscape. For example, if additional laws will come into play, additional political interests will need to be taken into account by the strategist.

At the beginning stage of the process, it is important simply that the strategist, the legislative lawyer, and the policy researcher identify all the relevant landscapes—that of politics, law and policy—and that they share a common understanding regarding the status of those landscapes.[28] As the strategist, legislative lawyer, and policy researcher continue with their tasks (see below for tasks of the legislative lawyer), the assessments of these landscapes may begin to shift. Indeed, the purpose in proposing solutions and engaging in negotiations (see skills number three and six below) is to shift the political landscape and/or change the understanding of the legal or policy landscape enough so as to bring about consensus and victory. As such shifts occur, the legislative lawyer, policy researcher, and strategist must exchange information to ensure they continue to share a common assessment of the most current state of the legal, policy, and political landscapes.

2. Research the Problem/Issue

The second stage of work for the legislative lawyer is to research the issue. The foremost skill a legislative lawyer brings to this task is a sophisticated, refined, and sharpened ability to *read text*. By "text," I mean the actual words in a statute or regulation, or in a pending bill or regulation. By "read," I mean the ability to correctly ascertain what those words mean (or could mean).

It is difficult to overestimate the importance of the skill of "reading text." In the policy world, few people engage in a close, meticulous reading of all the relevant text. This is often because they lack time, and sometimes, because they lack interest or capacity. In any event, it is the legislative lawyer's almost obsessive focus on text that sets him or her apart from other players in the *political* arena.

"Obsessive" is not an inaccurate word to use in describing the necessary skill of reading text. Most relevant text is buried in surroundings of less relevant text. Laws are often amended over the years, resulting in odd placements of sections and provisions and in convoluted sentences. New bills often amend existing laws, so that the language of the bill cannot be understood without careful reference to and study of the existing law.

28. The assessment of the strategist will be shaped as well, on a continuing basis, by assessments from the other three circles—the lobby manager, the outreach strategist, and the communications director.

During the research stage, the legislative lawyer must meticulously *find* and *understand every piece of text relevant to the policy goal* being sought. No phrase is too small to be glossed over; no cross-reference too minor to escape unexamined. Opening clauses such as "subject to subsection (a)" or "except as provided in subsection (b)" are red flags for a legislative lawyer; they never escape further exploration.

Of course, such meticulous attention to text has always been the hallmark of a good lawyer—regardless of the field or arena in which the lawyer practices.[29] What the legislative lawyer does, however, is bring this meticulous attention to, enjoyment of, and ability to read text *into* the political world, where most individuals usually have the time to read only executive summaries and bullet points. While the legislative lawyer must be able to translate his or her sophisticated understanding of text into usable documents and proposals (see skill number four below), it is when the legislative lawyer allocates time to read text and research law that the principal contributions of the legislative lawyer can begin to emerge.

To make a contribution, a legislative lawyer must read the relevant text with a keen understanding of the political dynamics surrounding the pending legislation or regulation. All lawyers engage in research with an eye to both law and politics. But the politics are different depending on the surroundings. Litigation lawyers deal with the politics of the judicial system, their clients, and their opposition. Organizational and transactional lawyers deal with the politics of the organization, community, or whatever entity they are dealing with. Legislative lawyers, by contrast, deal with the politics of the legislative branch, the executive branch, and the range of advocacy stakeholders interested in an issue.

It is usually not possible to absorb a sophisticated understanding of the politics of a situation simply by hearing a description of the relevant political dynamics. This is a situation in which "location, location, location" is the all-important component. It is only by sitting through (sometimes interminable) meetings with coalition partners, legislative staff people, and agency officials that a legislative lawyer can begin to absorb completely the political concerns and needs of the various stakeholders. Having done so, the legislative lawyer can then take into account those concerns when engaging in an interpretation of existing text or of new proposed legislative or regulatory text.[30]

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29. Indeed, mistakes in law are often the result of a sloppy reading of text. *See, e.g.*, Chai Feldblum, *Definition of Disability Under Federal Anti-Discrimination Law: What Happened? Why? And What Can We Do About It?*, 21 BERKELEY J. EMP. & LAB. L. 91, 110-11 (2000) (analyzing the opinion of a federal district court judge in *E.E. Black, Ltd. v. Marshall*, 497 F. Supp. 1088 (D. Haw. 1980)).

30. For example, while doing research, a legislative lawyer may consider whether a piece of text should be interpreted as already including the result sought by the client or, conversely, whether the text needs to be clarified through a statutory amendment. Which recommendation the legislative lawyer will offer will depend not only on the legal aspects of the text, but on the political configuration of the relevant decision-making bodies. And the configuration may be quite detailed. It will include not only whether the parties in control of the legislative and executive branches are sympathetic to one reading of the text or another, but even more

Finally, as in any research endeavor, a legislative lawyer must know when to stop engaging in research and move on to the next stages of the task. Achieving a balance between sufficient comprehensiveness (so as not to miss an essential piece of the puzzle) and completing work in a timely fashion is a challenge faced by lawyers in every arena. The legislative arena, however, is often characterized by the "hurry up and wait" motif. A hearing will be called with four days notice and testimony must be drafted over a period of two days. Then the hearing will be cancelled. A mark-up of a piece of legislation[31] will be scheduled with three days notice, and proposed amendments and supporting materials must be developed for circulation to sympathetic legislators. Then the mark-up will be cancelled. Two weeks later, a bill will be considered on the Senate floor on which several of the amendments could potentially be offered. Refining the amendments so that they can be offered to the bill must be done with two hours notice. Then the bill will be pulled from the floor because of a controversy on an unrelated provision.

Operating in this system is a matter of temperament and skill. A legislative lawyer must be able to research and write under pressure, continue to perform well even when an issue has been raised for the sixth time, and maintain at least a façade of calm during all proceedings.

3. Propose Solutions and Approaches to the Problem/Issue

After researching an issue or problem, a legislative lawyer must be able to propose approaches and solutions to the issue. The building blocks for this skill set are the same ones noted above: an ability to read text and an ability to gauge political realities. But this stage of work also requires creativity, assertiveness, and perception. (Flashes of brilliance are, of course, always welcomed by clients at this stage.)

A broad range of activities and documents come under the heading of "propose solutions and approaches." At bottom, however, they all revolve around proposing different legislative and administrative options for achieving a client's policy goals. These may include recommending support, opposition, or modification of a bill; recommending that a client focus on one particular program rather than another; or recommending that a client argue the law it needs has already been passed and the relevant agency need only issue appropriate implementing regulations.

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specifically, whether the individuals in control of the relevant committees of jurisdiction are sympathetic and what particular legislative vehicles are moving through the legislature at that point in time.

31. A mark-up of legislation occurs when a legislative committee considers a proposed bill. The committee "marks" the bill "up" by considering, accepting, or rejecting amendments to various sections of the bill, and then votes on whether to pass the bill in its final, marked-up version.

In any of these activities, the legislative lawyer and the policy researcher will discern the range of possible solutions by engaging *equally* with players in the traditional legal, academic, and think-tank worlds, and with players in the political world. The goal of both the legislative lawyer and the policy researcher is to fully comprehend the positions of each player; to gain the trust of each of the players based on such comprehension, and to help the players figure out a solution that meets everyone's needs to the greatest extent possible.

The work involved in proposing solutions and approaches is often quite straightforward and does not require extensive negotiation or manipulation. For example, assume an organization's federal policy goal is to have the children in foster care receive better health assessments and care. During the research stage, the legislative lawyer will learn all the relevant text, cases, and practices of the federal foster care grant program to the states and the relevant text, cases, and practices of the Medicaid program, the federal-state health care program most easily accessible to foster care children. At the same time, the policy researcher will find and assimilate the range of research that has been done in the area of foster children's health needs.

During this phase of the research, the goal of the legislative lawyer and the policy researcher will be to analyze how the various government programs interrelate and to understand what barriers they pose in having foster care kids receive health assessments and care. At the same time, the legislative lawyer and policy researcher will learn about the political dynamics surrounding the various programs at the state level, the political dynamics surrounding the coalition relevant to making changes in those programs at the federal level, and the relevant politics of the federal legislature on the issue of foster children's health care.

Using this wide range of legal, policy, and political information, the legislative lawyer and policy researcher will recommend to their client a series of options for enhancing health care for foster care children. These options will build on the best available legal structure, will take into account academic policy insights, and will have a reasonable chance for passage. The more relevant legal, policy, and political information the legislative lawyer and policy researcher have, the more creative and comprehensive they can be in suggesting options and approaches.

At other times, the work involved in proposing solutions or approaches will require extensive negotiation and, perhaps, some subtle manipulation of text. For example, imagine several litigation lawyers have recommended the use of a certain phrase in a bill, but staff people for the key sponsors of the bill have resisted use of that phrase because of fear of adverse political ramifications. (This is the scenario I described above in which an impasse is often reached.) The legislative lawyer must first assess the issue—she must identify her client's policy goal and interests, the political dynamics affecting the bill, and the relevant legal provisions. During the research stage, the legislative lawyer must learn the relevant text in all its minute detail, must find and study all the relevant

case law, must identify and talk with litigators in the area as well as any other sources who may be useful (e.g., in academia or in policy think tanks), and–through briefings and discussions with the strategist—must identify and understand any additional layers of relevant political reality.

After all this work is done, the legislative lawyer will be sufficiently situated to serve as a conduit between the litigation lawyers in one world and the political players in the other. She may come up with a piece of text she believes will meet most of the needs of the litigators, without causing significant political harm. Quite possibly, neither group will be completely happy with the proposed text. The litigation lawyers may feel the language is not clear enough, while the political people might feel the language still says too much. But, through written documents and oral communications, the legislative lawyer should be able to convey to each group how their respective concerns have been taken into account and should be able to make a persuasive case as to why the proposed solution is the best resolution of the issue, if not the perfect resolution.[32]

4. Draft Materials

The first two stages of legislative lawyering work—assessing and researching a problem or an issue—are essential for the legislative lawyer to devise creative and helpful solutions and approaches. The remaining two stages are essential for the legislative lawyer to "deliver" on that solution or approach. No matter how brilliant a legislative lawyer may be in her comprehension and creativity during the first three stages of work, if she cannot explain to others what she has learned and cannot help persuade the relevant players to come together in a consensus, she has not "delivered" as a legislative lawyer.

An essential mechanism through which one explains one's ideas and approaches is written materials. Learning to write for an advocacy effort is perhaps one of the hardest skills for lawyers (and law students) to learn. Lawyers have a tendency to set forth a great deal of information, cover all possible alternatives, and use terms hardly ever heard in ordinary conversation. While this is appropriate, and indeed, imperative in some settings, it can be deadly in an advocacy setting. Thus, the challenge for a legislative lawyer is to *know* a great deal of information, but to *convey*—in clear and simple written form—only that information which the audience targeted for the document or communication needs to know.

Of course, this is no different than any lawyer who must be sure his written documents are appropriate for the targeted audience. The difference is simply the *type* of audiences the legislative lawyer will be addressing. An advocacy effort

32. Of course, one of the most important qualities for a legislative lawyer to have is the capacity to hear criticism effectively. Thus, if the legislative lawyer hears a reaction to the proposed solution that indicates a serious flaw with her approach, she needs to incorporate that information quickly and use it to craft yet an alternative approach.

requires a number of different documents for audiences that will range in knowledge, sophistication, time, and patience. For example, a legislative lawyer may need to write an options memo for a client, a piece of testimony for a hearing, a set of talking points for staff people, a background memo for coalition members, an alert for grassroots activists, an offer of proposed legislative language and committee report language, and comments on proposed regulations.

All these documents should draw on the extensive body of knowledge the legislative lawyer has developed in stages one through three of his work. Yet each of these documents must be written differently in order to be effective with the target audience. This difference will be manifested in tone, length, complexity, and approach. A document that is intended to be an objective summary of a bill will not have editorial comments interspersed throughout the document; a document intended to persuade a legislator will not have a lengthy exposition of the merits of the opposition's arguments. In each case, the writer identifies the *purpose* of the document and shapes his writing to achieve that purpose.

A legislative lawyer must be competent to write *all* the documents necessary for an advocacy effort—from the most simple to the most complex. Once a legislative lawyer is part of an advocacy effort, the solution to various political/legal problems may depend on subtle and creative uses of text. In such cases, it is important that all documents used in the advocacy effort correctly reflect both the legal and political goals in play. This includes everything from detailed background papers to simple one-pagers of bullet points.

The value a legislative lawyer adds to the drafting of even simple advocacy documents can perhaps best be understood by considering another possible scenario. Imagine a litigation lawyer has "parachuted in" to help with an advocacy effort related to the area of law in which he practices. The litigation lawyer writes a background memo for staff people that is correct, comprehensive, and persuasive as a legal matter. It is also completely useless in the legislative process because it is too lengthy and complicated. The lobbyist for the advocacy effort (who is herself a lawyer, but who did not like law much and, therefore, went into lobbying) summarizes the long, legal document into a usable page of bullet points. The lobbyist, however, misses a subtle legal point and produces a document that is not quite legally accurate. The mistake causes an uproar in one of the sponsor's offices, or causes a mistake in the drafting of language, or gets carried over to the legislative history and creates a problem down the line in an agency or judicial interpretation. (Choose your favorite nightmare.)

A legislative lawyer skilled equally in law and politics—and who may be trying to do some subtle work with text in her creative solutions—can help avoid these problems. Depending on the resources available, a legislative lawyer might review some of the advocacy documents, rather than draft all of them initially. But no document should be viewed as too simple or too basic for a legislative lawyer. A legislative lawyer must have the capacity and the temperament to write both sophisticated legal documents and simple grassroots alerts—and to consider both as part of her job.

Finally, my motto for any form of writing is: "the reader shall do no work." A reader should never have to fill in missing pieces of logic, information, or structure on her own. She should be carried easily and seamlessly from one sentence to the next, from one paragraph to the next—landing in a smooth, nice finish. The organization of the piece should lead the reader where the writer of the document wants the reader to go—but in a seemingly organic and effortless manner. And finally, the reader should experience the tone of the document as "just right."

5. Oral Presentation and Negotiation

Written communications are essential to conveying one's ideas, but nothing substitutes for in-person oral exchanges. Consensus is usually reached through a series of oral exchanges and negotiations. Thus, the ability to communicate and negotiate effectively is the final skill set of the legislative lawyer.

The oral communications of a legislative lawyer can be divided into two categories: explanatory and persuasive. Examples of explanatory communications are explanations to a client or a coalition of how a proposed bill changes existing law or why existing law must be rectified by legislation. Examples of persuasive communications are persuading a coalition that a proposed deal is a good one (despite the fact that it appears to give up a provision the coalition previously thought was essential), or persuading a staff person that a proposed legal provision does meet all the political concerns of her boss, or convincing an agency official that an existing legal provision would already achieve a particular policy goal if the agency simply issued appropriate implementing regulations.

When a legislative lawyer is engaged in an explanatory communication, he must be able to convey the relevant information clearly and concisely. Time is the most precious commodity in the legislative arena; attention spans of listeners are often short. As in writing, a legislative lawyer must know a great deal of information, but must be able to convey only what the listener absolutely needs to know about the issue at that point. In addition, if the legislative lawyer is to be an effective "conduit" between the legal/academic world and the political world, he must be able to explain complicated legal concepts in simple English to those in the political world and be able to explain tangled political realities in simple English to those in the legal/academic world.

When a legislative lawyer is engaged in a persuasive communication, she must be able to convey the relevant information clearly, concisely, and persuasively. Being persuasive requires knowing what matters to the listener and shaping one's arguments in a way that is thoughtful and responsive to those concerns. Thus, the key to speaking persuasively is to *listen* effectively.

A persuasive conversation is a dialectical activity. The speaker sets forth her argument, then hears (or sometimes intuits based on body language) the reaction of the listener, and then reshapes her argument to meet the listener's concerns. A good persuasive conversation is like a good soccer play by a team, where the ball

is passed back and forth among the players in a seamless manner, ultimately bringing the ball down the field towards the goal. A bad persuasive conversation is like a racquetball game of one, where the player keeps hitting the ball against the same wall again and again. Of course, the challenge in a persuasive conversation is that people on the other side of the conversation do not yet perceive themselves as being on your team (soccer or otherwise)! Thus, the challenge is to maintain a tone and demeanor that treats others in the conversation as potentially on your team—and then moving the conversation ball down to a goal that ultimately becomes your joint goal.[33]

Negotiations represent a more complicated game of oral soccer.[34] The strategist must first identify and engage the right players for the advocacy team to advance the client's goal. She must also identify the players for the other team and set up the game. The legislative lawyer and the policy researcher, working in concert with the strategist, then begin to move the ball among the players, helping to choreograph an effective game play. This requires building consensus within the advocacy team first and then moving forward to engage the opposing team.

If negotiations proceed well, members of the other team will slowly move on to the advocacy team set up by the strategist. Obviously, doing so might change where the ultimate goal for the ball will be *located.* It is the joint responsibility of the legislative lawyer and the policy researcher, however, to ensure that the final location of the goal remains consistent with the client's overall policy objective. (Of course, depending on the legislative lawyer's skill with text, it might just *look* as if the location of the goal has been changed.) In any event, the legislative lawyer and policy researcher are responsible for the *content* of the soccer game play, while the strategist is responsible for the vision, lobbying, outreach, and communications components of the game—those elements which will ensure the game's ultimate success.

C. *The Utility of a Legislative Lawyer*

As a description of the five skill sets of a legislative lawyer indicates, a good legislative lawyer brings both convenience and creativity to the legislative process. On the convenience front, the legislative lawyer quickly becomes the "go-to" person whenever a legislator, legislator's staff, or coalition person has a

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33. I owe the soccer game metaphor of persuasion to Andy Schneider, whose children presumably play soccer. I owe my understanding of this metaphor to Ariel, Isaac and Noah, my three soccer-aficionado nephews.

34. There is, of course, a rich literature on the art, strategy, and workings of negotiation. Carrie Menkel-Meadow, one of my colleagues at Georgetown University Law Center, has written, taught, and spoken widely in this field. Her articles include: *The Lawyer as Consensus Builder: Ethics for a New Practice*, 70 TENN. L. REV. 63 (2002); *When Winning Isn't Everything: The Lawyer as Problem Solver*, 28 HOFSTRA L. REV. 905 (2000); *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 WM. & MARY L. REV. 5 (1996); *Whose Dispute Is It Anyway?: A Philosophical and Democratic Defense of Settlement (in Some Cases)*, 83 GEO. L.J. 2663 (1995).

question about the legal content of an issue in an advocacy effort. Similarly, academic researchers and litigation lawyers benefit from having a clearly designated individual to whom they can convey their wisdom and who they can be assured will understand and appreciate their contributions.

There is also significant convenience in having the individual who knows the detailed text and substantive content of the advocacy effort be *available* and *present* for the range of meetings that make up the advocacy effort. Litigation lawyers who become involved in an advocacy effort, in addition to their usual legal activities, are essentially trying to do two jobs. Unless such lawyers take a leave from their other legal work, they will not always be available for meetings. The timing of the legislative process is erratic; an essential consultation and/or decision-making meeting can arise at a moment's notice. The convenience in having a legislative lawyer who is competent to make decisions about the wording of legislation or legislative history, and who is *available* for meetings, cannot be overestimated.

Finally, there is the convenience in having someone who knows both law and politics be involved in both the written and oral components of advocacy. Nothing the legislative lawyer writes should ever need to be rewritten to make it accessible to the target audience. Options presented by a legislative lawyer should never need to be reformulated to accommodate political realities. The explanation a legislative lawyer provides to a staff person should never need to be rephrased by a lobbyist in order to be useful for the staff person.

At times, a legislative lawyer will actually be able to come up with a creative solution to a legal problem (and sometimes a political problem) that neither the strategist/lobbyists nor the expert lawyers/academics would have arrived at by themselves. It is difficult to be creative without accumulating data and knowledge. By extension, if one can accumulate legal, policy, and political data with equal sophistication and comprehension, one can be more creative in devising new legal and policy solutions that will accommodate political realities.[35]

IV. TEACHING LEGISLATIVE LAWYERING: THE FEDERAL LEGISLATION CLINIC

For years, students arrived at the Georgetown University Law Center eager to study law and policy in the heart of the nation's capital. But while the Law Center offered an impressive array of classes dealing with policy issues, and an impressive array of clinical opportunities in general, there was no opportunity for students to have a first-hand experience in crafting federal law and regulations.

35. It is difficult to provide examples of such occurrences. I did consider, and reject, a number of possible examples for this article. In some cases, the examples were inappropriate because of client confidentiality issues. In most cases, however, they were inappropriate because the issue is still "live" in some sense (i.e., it is subject to further agency or judicial interpretation). In such cases, I have no desire to spell out the "creative solution" I proposed—especially if that solution is still working.

Professor William Eskridge and Professor Peter Edelman felt that Georgetown University Law Center should offer a clinical opportunity in legislation to its students.[36] The origins of the Clinic mirror the unique strengths and interests of those individuals. Professor Eskridge is one of the leading academics to revitalize the field of legislation as a scholarly endeavor.[37] Professor Eskridge suggested that students in a legislation clinic could undertake research projects referred to them by the Legislative Reference Service of the Library of Congress. This would give students exposure to the workings of the legislative process and enhance their ability to engage in statutory interpretation.

Professor Peter Edelman, drawing on his extensive career in government and public interest advocacy, modified the proposal by suggesting that students work on behalf of clients seeking legislative action from Congress.[38] That structure would expose students to the intricacies of conflicting policy positions and politics that ultimately shape the text passed by Congress. A faculty committee (including Professors Eskridge, Edelman and several others) studied the issue and ultimately recommended to the faculty the establishment of a Federal Legislation Clinic in which students would represent organizational clients in the legislative process. The faculty approved the plan for a Federal Legislation Clinic in 1991.

After considering various possibilities of outside funding, the law school committed to funding the Clinic from internal revenues. In 1993, I was hired as an Associate Professor of Law and as the Clinic's founding director. With Scott Foster,[39] I spent the first semester developing a proposal for approval of credit for

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36. In 1989, when the thinking for a Federal Legislation Clinic evolved, William Eskridge was a law professor and Peter Edelman was a law professor and an Associate Dean at Georgetown University Law Center.

37. *See* WILLIAM N. ESKRIDGE, JR. ET AL., CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 3d ed. (2001); WILLIAM N. ESKRIDGE, Jr. & SANFORD LEVINSON, CONSTITUTIONAL STUPIDITIES, CONSTITUTIONAL TRAGEDIES (1998); WILLIAM N. ESKRIDGE, JR. ET AL., LEGISLATION AND STATUTORY INTERPRETATION (2000); William N. Eskridge, Jr. & John Ferejohn, *The Article 1, Section 7 Game*, 80 GEO. L.J. 523 (1992); William N. Eskridge, Jr., *Dynamic Interpretation of Economic Regulatory Legislation (Counterveiling Duty Law)*, 21 LAW & POL'Y INT'L BUS. 663 (1990); William N. Eskridge, Jr., *Interpreting Legislative Inaction*, 87 MICH. L. REV. 67 (1988); William N. Eskridge, JR. & Phillip P. Frickey, *Legislation Scholarship and Pedagogy in the Post-Legal Process Era*, 48 U. PITT. L. REV. 691 (1987); William N. Eskridge, Jr., *Legislative History Values*, 66 CHI. KENT L. REV. 365 (1990); William N. Eskridge, Jr., *Norms, Empiricism, and Canons in Statutory Interpretation*, 66 U. CHI. L. REV. 671 (1999); William N. Eskridge, Jr., *Should the Supreme Court Read the Federalist But Not Statutory Legslative History?*, 66 GEO. WASH. L. REV. 1301 (1998); William N. Eskridge, Jr., *Spinning Legislative Supremacy*, 78 GEO. L.J. 319 (1989); William N. Eskridge, Jr. & John Ferejohn, *Super-Statutes*, 50 DUKE L.J. 1215 (2001).

38. Professor Edelman had served, by that point, as Director of the New York State Division for Youth; Associate Director of the Robert F. Kennedy Memorial; Legislative Assistant to Senator Robert F. Kennedy; and Special Assistant to Assistant Attorney General John W. Douglas with the United States Department of Justice. He subsequently served as Assistant Secretary for Planning and Evaluation and Counselor to the Secretary with the Department of Health and Human Services. Professor Edelman has also written books, chapters and articles on government programs in the area of social welfare and poverty. *See* Georgetown Law, Faculty, Peter B. Edelman, *at* http:www.law.georgetown.edu/curriculum/tab_faculty.cfm?status=faculty&Detail=246 (last visited Oct. 19, 2003) (copy on file with the *McGeorge Law Review*).

39. Scott Foster was the Federal Legislation Clinic's first Teaching Fellow and the Clinic's Deputy

the Clinic. While the faculty presumably expected that students would work on a combination of research and practical legal advocacy documents, there was no model to explain how the students' work would capture this combination of law and politics. The credit proposal to the faculty thus became my vehicle for conceptualizing how the students' work would result in *legal* training and the production of legal documents, and at the same time, how that work would be integrally connected and relevant to the *political* process.

I originally asked for, and received, six law school credits for students taking the one-semester Federal Legislation Clinic. Six years later, in 1999, Professor Robert Stumberg authored a report from Georgetown University Law Center's Clinic Committee on *Policy on Allocating Credit to Clinical Programs.* This report, presented a sophisticated approach for allocating clinical credit through the identification of the type and amount of "structured interaction" time enjoyed by students in any given clinic. In 2002, I wrote a memo to the faculty justifying the allocation of ten credits for the Federal Legislation Clinic based on the Stumberg model. That memo, Appendix A, provides a complete overview of the current operations of the Federal Legislation Clinic.

Over the years, my Teaching Fellows and I have refined the curriculum and structure of the Federal Legislation Clinic, with the enthusiastic help of Clinic students who have always been more than willing to share with us how Clinic operations can be improved. The current sum of that wisdom can be found in Appendices. These include the syllabus for a three-day legislative seminar, the table of contents for the Clinic Handbook and the Clinic Calendar (Appendix B); a chart and description of the substantive skills of the legislative lawyer (Appendix C); and an assortment of memos describing activities the students engage in during the Clinic semester (Appendix D).

The documents in the Appendix are designed as a guide and "food for thought" for anyone considering the establishment of a legislation clinic. Obviously, different law schools and different clinics will accommodate different structures. Indeed, several law schools have developed legislative or administrative clinics, with no two programs being exactly alike. Following is a list of all such clinics I was able to find through a web search, with some prose culled from their self-description on the web.[40]

Director for several years. He is currently the Registrar at Georgetown University Law Center.

40. Please contact me directly, Feldblum@law.georgetown.edu, with corrections or updates to this list and description.

✓ *Boston University School of Law Intellectual Property Legislation Clinic, Health & Environmental Legislation Clinic, and General Legislation Clinic*[41]

Students in all three clinics draft, design, and analyze legislation while working with various state and local politicians, public interest groups, and administrative agencies to craft solutions to pressing client problems. By providing students the opportunity to work on legislation in the context of intellectual property, medical, and environmental law, Boston University's programs stress the importance of effective legislative lawyering to the development of innovative solutions to novel legal problems.

✓ *University of the Pacific, McGeorge School of Law Legislative Process, Strategy and Ethics Clinic*[42]

This clinic begins in the fall semester with classroom instruction on bill screening, monitoring, analysis, and drafting; legislative intent research and advocacy; and rules of professional conduct. The spring semester involves practical experience in the office of either a legislator or lobbyist, or the legislative office of a government agency. McGeorge's clinic seeks to strike a balance between learning within and outside the classroom.

✓ *Moritz College of Law Legislation Clinic*[43]

Moritz's Clinic places upper-class law students at positions in various departments of the Ohio Statehouse. Students attend classroom seminars twice a week in addition to the duties they perform for individual General Assembly members, leadership caucuses, or other departments of the Ohio Statehouse. This intern-oriented model gives students an "insider's" look at legislative lawyering.

41. *See* Boston University School of Law, Clinical Programs, The Legislation Clinics and the Legislative Internship Program, *at* http://www.bu.edu/law/jd/clinics/legislation.html (last visited Nov. 11, 2003) (copy on file with the *McGeorge Law Review*).

42. *See* University of the Pacific, McGeorge School of Law, Academics, Legislative Process, Strategy & Ethics, *at* http://www.mcgeorge.edu/academics/curriculum_catalog/full_course_descriptions/legislative_process_strategy_and_ethics.htm (last visited Nov. 11, 2003) (copy on file with the *McGeorge Law Review*).

43. *See* The Ohio State University, Moritz Law, Legislation Clinic, General Information, *at* http://moritzlaw.osu.edu/legisclinic/geninfo.html (last visited Nov. 11, 2003) (copy on file with the *McGeorge Law Review*).

✓ *Seattle University School of Law Administrative Clinic*[44]

The Seattle University program teaches legislative lawyering through a litigation lens. Its students work cooperatively in pairs to represent clients in administrative hearings before administrative law judges in Washington state. Clinic students meet once per week in class and must keep a minimum of four office hours per week.

✓ *Tulane School of Law Legislative & Administrative Advocacy Clinic*[45]

Tulane's clinic focuses on developing legislative and administrative implementation strategies through the use of economic analysis and feasibility assessment. Students craft bills, amendments, fiscal impact statements, and administrative agency rules.

✓ *University of the District of Columbia School of Law Legislation Law Clinic*[46]

This clinic trains its students through classroom instruction on statutory construction, the legislative process, and legislative research and drafting. Students supplement the classroom instruction with practical experience in local and national legislative offices and are assigned to work on at least one legislative project with the U.S. Congress or the Council of the District of Columbia.

✓ *Washington University School of Law Congressional & Administrative Law Clinic*[47]

Washington University's clinic is open to third-year students during their spring semester, and requires students to work in Washington, D.C., under the instruction of attorneys at several government offices. Students also attend a course on government ethics, frequently guest-taught by key legislative and legal players.

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44. *See* Seattle University School of Law, Programs, Clinical Law Courses, *at* http://www.law.seattleu.edu/clinic/courses?mode=standard#adminlaw (last visited Nov. 11, 2003) (copy on file with the *McGeorge Law Review*).

45. *See* Tulane School of Law, Descriptions and Special Information About Courses, *at* http://www.law.tulane.edu/intranetpub/academics/coursesched/coursedescript03s.htm (last visited Nov. 11, 2003) (copy on file with the *McGeorge Law Review*).

46. *See* UDC David A. Clarke School of Law, Legislation Law Clinics, *at* http://www.law.udc.edu/clinics/legislation/index.html (last visited Nov. 11, 2003) (copy on file with the *McGeorge Law Review*).

47. *See* Washington University School of Law, Congressional & Administrative Law Clinic, *at* http://www.law.wustl.edu/Clinics/cong.html (last visited Nov. 11, 2003) (copy on file with the *McGeorge Law Review*).

V. CONCLUSION

It would be nice to assert that having legislative lawyers involved in every advocacy effort will necessarily result in statutes that are better written, more tightly organized, and less ambiguous. But there is no guarantee that such results will occur.

Certainly, some poor drafting can be avoided by having a legislative lawyer in the mix. But sometimes statutes are poorly organized because political realities and/or legislative procedural rules dictate that a particular provision be amended in an ambiguous fashion, rather than a new provision drafted that would make more sense if only law (and not law mixed with politics and procedure) were at issue. Sometimes a legislative lawyer will craft statutory language that is deliberately vague because that is the only way to achieve a consensus that will allow the bill to pass. Those who adhere to a strict textualist approach to statutory interpretation may find such legislative approaches deplorable or annoying, but it is difficult to envision a radical restructuring of the legislative process that would obviate the need for such compromises—despite the headaches that such approaches often cause the courts.[48]

The establishment and solidification of the legislative lawyering role might, nonetheless, help bring about some useful institutional communication and reform. At the present time, members of the judiciary and the legislature seem like an estranged couple who share a house by necessity, but who live on opposite sides of the house and are clueless about the happenings and culture of the other side. Thus, we have statutory interpretation rules that presume legislatures do not include redundant materials in a law or that members of the legislature are aware of other bills enacted at the same time as the bill now under consideration by the court as a law—two presumptions that would be news to most legislative staffers. The reality is that redundant phrases are often included to meet some political concern or another and members of the legislature often have no clue about the language of other bills moving through their legislative body.[49]

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48. *See, e.g.*, Joseph A. Grundfest & A.C. Pritchard, *Statutes with Multiple Personality Disorders: The Value of Ambiguity in Statutory Design and Interpretation*, 54 STAN. L. REV. 627, 637-42 (2002); Victoria F. Nourse & Jane S. Schacter, *The Politics of Legislative Drafting: A Congressional Case Study*, 77 N.Y.U. L. REV. 575, 592-94 (2002) (explaining the contribution of consensus drafting to legislative ambiguity). During oral arguments for *Sutton v. United Airlines*, Justice Anthony M. Kennedy joked with attorney Roy Englert that "this whole act is metaphysical," referring to the ADA. *See* United States Supreme Court Official Transcript at 23, Sutton v. United Airlines, Inc., 527 U.S. 471 (1999) (No. 97-1943). I subsequently wrote a 100-page article on the definition of disability simply to provide the background and reasoning for why we had drafted an act that seemed so metaphysical. *See* Feldblum, *supra* note 29.

49. I have written innumerable redundant phrases in laws, solely to appease advocacy groups with legislative clout. Moreover, I argued strenuously during passage of the ADA that we not use the term "subterfuge" in section 501(c) of that act, because of the unfortunate judicial meaning given that word in a separate law, the Age Discrimination in Employment Act. It was one of the few fights I lost in the drafting of the ADA. For subsequent history, see, e.g., Johnson v. K Mart Corp., 273 F.3d 1035, 1059-60 (11th Cir. 2001)

Legislatures engage in equally bizarre presumptions, exposing their lack of understanding of judicial constraints in interpreting text. For example, a legislature may spell out one rule in the text of a bill and then contradict that rule in its legislative history.[50] The most famous case of that, of course, is *Holy Trinity Church v. United States*.[51] But courts are increasingly reluctant to "fix" these shortcuts taken by the legislature.

A legislative lawyer is certainly not a panacea to all these evils. But creating a cadre of such lawyers, who develop a professional sense of their role as legislative lawyers, may help in implementing ideas advanced by various individuals over the past few decades. The most organized effort to enhance communication between the judiciary and the legislative branch was the Governance Institute, founded by Judge Frank M. Coffin, a judge on the First Circuit Court of Appeals and Robert Katzmann, then an academic and now a judge on the Second Circuit Court of Appeals.[52] The Governance Institute sought to enhance communication through symposia, writings, and meetings.[53] All these efforts are useful and should be continued, as should writings from judges, lawyers, and legislators who have ventured forth with suggestions for enhanced communication.[54] But a sustained effort along these lines, that might make a

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(concluding that the "subterfuge exception to the safe harbor provision [of the ADA] requires that a plaintiff show that the employer specifically intended to discriminate based on disability, whether the discrimination was aimed at fringe-benefit or non-fringe-benefit aspects of the employment relationship"); E.E.O.C. v. Aramark Corp., 208 F.3d 266, 268, 272 (D.C. Cir. 2000) (determining that the ADA "safe harbor" for bona fide employee benefit plans not subject to State laws regulating insurance protects any such plan adopted before enactment of ADA; safe harbor could not have been "used as" subterfuge to evade purposes of ADA if plan was adopted before ADA's enactment); Leonard F. v. Israel Disc. Bank of N.Y., 199 F.3d 99, 100-08 (2d Cir. 1999) (finding that a benefit plan formulated prior to passage of ADA cannot be "subterfuge to evade the purposes of the Act," since subterfuge clause requires intent to evade); Ford v. Schering-Plough Corp., 145 F.3d 601, 611-12 (3d Cir. 1998) (stating that the safe harbor provision of ADA covering insurance industry does not require insurance company to justify its policy coverage or show actuarial data demonstrating that their plan is not a subterfuge after plaintiff makes prima facie allegation of discrimination in disability benefits); Krauel v. Iowa Methodist Med. Ctr., 95 F.3d 674, 678-79 (8th Cir. 1996) (finding that a health insurance benefit plan cannot be subterfuge to defeat insurance safe harbor provision of ADA unless the employer intended through the plan to discriminate in a nonfringe-benefit-related aspect of employment relation).

50. *See, e.g.*, Chai R. Feldblum, *Medical Examinations and Inquiries Under the Americans With Disabilities Act: A View from the Inside*, 64 TEMP. L. REV. 521, 542-45 (1991).

51. 143 U.S. 457, 464-65 (1892) (Senate committee chose not to clarify that labor meant "manual" labor, assuming it would be construed in that limited fashion by the courts).

52. Frank M. Coffin, *The Federalist Number 86: On Relations Between the Judiciary and Congress*, *in* JUDGES AND LEGISLATORS: TOWARD INSTITUTIONAL COMITY 21-31 (Robert A. Katzmann ed., 1988); Robert A. Katzmann, *Bridging the Statutory Gulf Between Courts and Congress: A Challenge of Positive Political Theory*, 80 GEO. L.J. 653 (1992); Robert A. Katzmann, *An Experiment in Statutory Communication Between Courts and Congress: A Progress Report*, 85 GEO. L.J. 2189 (1997).

53. *See An Experiment in Statutory Communication Between Courts and Congress*, *supra* note 53, at 2193-94. Members of the Governance Institute met with members of the House of Representatives who were best poised to facilitate clearer communication between the legislative and judicial branches. Ultimately, a mechanism was created through which the D.C. Circuit forwarded opinions involving murky issues or those believed to be of legislative interest to key players in the House.

54. *See, e.g.*, Henry J. Friendly, *The Gap in Lawmaking—Judges Who Can't and Legislators Who Won't*, 63 COLUM. L. REV. 787 (1963) (outlining his vision of a supervisory agency that would monitor and

significant impact over time, can only benefit from having a professional group of individuals whose job description includes a responsibility for communicating between the worlds of politics and judicial interpretation.

At the very least, creating a professional class of "legislative lawyers," whose role in the development of legislation is understood and whose skills are highly valued, can only help elevate the field of legislation in a manner that will ultimately benefit all sectors of society. And if real justice in our society is to be achieved for individuals across the economic and social spectrum, I believe we must invest in the political world. Training, hiring, and being legislative lawyers may represent some useful first steps towards that goal.

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amend proposed legislation to reduce the likelihood of incomplete and erratic legislation); Ruth Bader Ginsburg & Peter W. Huber, *The Intercircuit Committee*, 100 HARV. L. REV. 1417, 1431-34 (1987) (advocating a standing committee comprised of congressional members to supplement legislative gaps, study court opinions, and anticipate/resolve dilemmas on issues of legislative concern); Benjamin N. Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113 (1921) (describing Justice Cardozo's vision of a Ministry of Justice to run interference between the first and third branches of government, engaging in statutory revision and law reform). *See also* Nourse & Schacter, *supra* note 48, at 621-24 (suggesting that increased involvement of the Legislative Counsel's Office would educate staffers and members on the interpretive techniques employed by the judiciary and assist them in drafting statutes that incorporate forethought of such concerns).

APPENDIX A
MEMORANDUM

TO: Dean Judith Areen
CC: Clinics Committee
FROM: Chai Feldblum
DATE: February 19, 2002
RE: Request to Increase Academic Credit

I am writing to request an increase in academic credit for the Federal Legislation Clinic ("FLC"), pursuant to the revised standards for clinic credit described in the October 7, 1999 report to the faculty by the Clinics Committee entitled Academic Credit for Clinical Programs ("Clinics Credit Report"), and as adopted by the faculty on October 13, 1999. As outlined below, I believe the number of academic credits allocated to student participation in the Federal Legislation Clinic should be increased from eight to ten credits, effective at the start of the 2002-2003 academic year.

Two years ago, I engaged in a comprehensive review of student work in the Clinic, and estimated that students would engage in 318 hours of structured interaction time during their semester. That translated into an average of 29.3 hours/week. When divided by 3.5 (the number established by the new academic credit policy for clinics), that resulted in 8.4 credits. Hence, in February 2000, I requested that the FLC's credit be raised from six to eight credits.

That request was favorably approved by the Clinics Committee, and subsequently, by the faculty. In the Clinics Committee's response to my request, however, members of the Committee observed that the work of the Clinic (as I had described it) seemed to potentially warrant ten, rather than eight, credits and that the Clinic curriculum could also possibly benefit from additional classroom components (also justifying a ten, rather than an eight, credit allocation.)

At the end of the memo in which I had requested the additional credit, I made the following observation:

> Under the new FLC policy . . . our students [will be] required to submit a time sheet each week. Our teaching fellows [will] review these student time sheets to ascertain whether students are meeting the FLC time commitments. Put another way, we will use this tool to ensure that students meet the structured interaction time goals set forth above to support our request for eight credits.

Since FLC's credit increase from six to eight credits, I have had the opportunity to review my students' time sheets, and to review more carefully the hours I believe are essential to producing quality work in the Clinic. In addition, I have added several segments to the classroom component of the course. Based on these changes and observations, I believe the credit for the FLC should be

increased from eight to ten credits. Moreover, I would like to have six classroom hours (rather than four) set aside by the Registrar for the Clinic.

The following explication of the structured interaction time demanded by the Clinic draws on my February 4, 2000 memo, with revisions that reflect the increased time Clinic students spend (and are expected to spend) on Clinic work.[1] (These figures are all based on a 13 week semester.)

DEVELOPING AND REFINING THE FLC'S CURRICULUM

The art of legislative lawyering lies in combining a thorough knowledge of law, with a sophisticated understanding of politics, in order to devise creative and effective legislative and administrative solutions. The art of *teaching* legislative lawyering lies in providing students access to the real-life challenges of legislative lawyering, yet artificially *slowing* the process down sufficiently so that appropriate learning can take place.

Over the past nine years of directing the Federal Legislation Clinic, I have developed and refined various methods for teaching legislative lawyering to GULC students. The challenges in doing so have been manifold: finding the right clients with the appropriate legislative lawyering needs; teaching the students the relevant legislative process and specific legislative lawyering skills in a timely fashion; ensuring the Clinic's work will actually be used in the political process (where having one's materials used means having *power*); and finally, having the appropriate supervisory mechanisms in place to provide the students with ongoing and appropriate training, feedback and mentoring. The overarching challenge throughout this process has been to shape the Clinic's curriculum so that these educational and client-related priorities can all be achieved in one short clinic semester.

My goals in establishing and directing the Federal Legislation Clinic have always been (at least) two-fold: to provide a quality education for GULC students and to provide a quality product for the clients of the Clinic.[2] I first set out these goals, and my suggested structure for meeting such goals, in a memorandum to the Clinics Committee and Academic Standards Committee in November 1993, requesting academic credit for the Clinic.

In January 1994, I submitted a proposal to the Department of Education for a three-year grant for the Federal Legislation Clinic under the Law School Clinical Experience Program (LSCEP). That grant proposal expanded on the November 1993 memo and laid out in detail the educational goals of the clinic, and the curriculum and supervisory structures that would be used to carry out such goals.

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1. I was conservative in my estimate of time required for the Clinic in my initial request for an increase in Clinic credit. I am still being conservative in my current estimate of time required. The need for additional curriculum components, or for additional time on projects, may require a reassessment of credit in the future.

2. My Clinic materials also note a third goal—maintaining a "happy and harmonious clinic family." I feel fortunate to have been able to meet this goal, as well as the other two.

In 1995, I described the curriculum of the Clinic for purposes of a two-year review I was scheduled to undergo as a clinical education teacher. Professor Robert Stumberg of the Harrison Institute reviewed my curriculum at the time for the Clinics Committee. In the review, Professor Stumberg provided the following comments with respect to the number of credits FLC students are allotted for participation in the clinic:

> As regards the time/credit issue, please indulge my opinion, which did not prevail when FLC was created. Limiting FLC students to one semester *and* to only six credits has an academic cost. With student turnover at mid-year, the FLC must limit how much responsibility it delegates to students. Even with two classes per week, a one-semester clinic cannot cover all the lawyering skills in its seminar without painful triage. **A 10- credit (one semester) clinic, for example, would relieve some of the academic stress**, and a two-semester clinic would enable students to take on more responsibility. I fear that the FLC was squeezed into a prefabricated mold of time/credit allocation, which does not respect its unique character and educational value. But enough about that; the fact is that the FLC works well in spite of imposed limits because both students and staff work overtime to "transcend" the limits, as Chai puts it. (emphasis added).

The new clinics credit approach adopted by the faculty in 1999 was a great stride forward, and increasing the FLC's credit to eight credits has allowed our students to devote more time to their Clinic work. Nevertheless, Professor Stumberg's observation as early as 1995 was prescient: the correct credit allocation for the FLC should be ten credits.

CURRENT FLC CURRICULUM AND STRUCTURED INTERACTION TIME

The substantive abilities of an effective legislative lawyer are detailed in a chart and in accompanying documents provided to students in our FLC clinic recruiting materials, on our FLC website, and again at the beginning of each semester. The substantive abilities chart provides the criteria for measuring student performance during our mid-term and final evaluations of them.

The Federal Legislation Clinic teaches legislative lawyering skills through a series of activities. These activities, together with the average amount of "structured interaction time" expected of students for each activity, are as follows:

1. Intensive Legislative Training (Affectionately Called "Boot Camp") in August Immediately Prior to the Start of the Academic Year

During three days of intensive afternoon classroom instruction, students are taught the basics of Congressional process and procedure. Learning takes place

through the use of case studies, lectures, guest speakers, and panel discussions. Attached to this memo is the syllabus for the training seminar and the Table of Contents of the 2001-2002 Clinic Handbook and Seminar Materials.

Structured Interaction Time:

18 hours of boot camp (12 pm-6 pm for three days)
36 hours of preparation for boot camp

Total Structured Interaction Time = 54 hours/semester

2. *The Development of Legislative Lawyering Documents on Behalf of a Client, with Critique and Guidance from a Teaching Fellow and the Director; Attending Meetings Related to Client Work and Document Preparation*

The bulk of learning engaged in by the students occurs in the process of their *doing* legislative lawyering work on behalf of their clients during the Clinic semester. The work product produced by the students spans the spectrum of documents used by advocates and lawmakers in the federal legislative and administrative process. For example, a student may produce an in-depth research memo setting forth the background law relevant to a particular legislative provision; the student may then reduce that memo to two pages of simple bullet points for a Congressional staff member; the student may then write an options memo on the particular issue, setting forth different legislative texts with an explanation of what each text will mean as a substantive legal matter; and finally the student may write proposed legislative history for the legislative text chosen by the client and the Congressional staff.

In the course of writing any one of these documents, the student will meet with his or her client to ascertain the client needs and with his or her Teaching Fellow for guidance and critique at each stage of the process of developing the document(s) needed by the client. The student, however, is expected to *assume the role* of being a legislative lawyer for the client. The Teaching Fellow and Director help provide direction and collaboration, but the student is expected to feel responsible to the client and to take initiative consistent with that role. Moreover, the student is expected (and encouraged) to hold on to this sense of responsibility, even as his or her document undergoes two or three edits with the Teaching Fellow, and a final edit by the Director.

Structured Interaction Time:

Client meetings (every other week)	1 hour each for 7 mtgs. or 7 hours/semester
Preparation for client meetings	1 hour for each mtg or 7 hours/semester
Meetings with Teaching Fellow	2 hours/week or 26 hours/semester
Meetings with Director	.5/hours every other week or 4 hours/semester
Coalition/staff meetings	10 hours per semester
Preparation for coalition/staff mtgs.	10 hours per semester
Research and Writing on Client Project	15 hours/week or 195 hours/semester
Binder Preparation	10 hours/final week (if binder has been dutifully maintained during the semester!)

3. Ongoing Classes During the FLC Semester

In addition to the three-day bootcamp, Clinic students have classes during the course of the Clinic semester. These classes cover: legislative research, reading text, statutory interpretation, the Congressional budget process, clients and ethics, legislative drafting, policy discussions, and project assessments.

Legislative Research Session	2 hours
Text classes	8 hours
Preparation for text classes	12 hours[3]
Statutory interpretation classes	4 hours
Preparation for stat int classes	8 hours
Budget classes	4 hours
Preparation for budget classes	6 hours[4]
Clients and ethics class	2 hours
Preparation for ethics class	1 hour
Legislative drafting class	2 hours
Preparation for leg drafting class	2 hours
Five Circles panel	2 hours
Recent graduates panel	2 hours
Policy discussions	6 hours
Project assessments	4 hours
Preparation for project assessments	4 hours

Total Structured Interaction Time = 69 hours

4. Student-Led Meetings and Mock Presentations to Congressional Staffers

In one area, I have developed mock simulations for the Clinic students: oral advocacy. Students' research and writing are usually translated into materials that are *actually* used in the legislative process. By contrast, students are rarely given the opportunity to speak at (much less run) a meeting, or to present a key argument to a Congressional staffer during a meeting. The power in Washington to speak is too precious and closely guarded to be given very often to a student who appears on the scene for a mere four months. (By contrast, the Clinic's Teaching Fellows have often provided key presentations at coalition meetings or staff meetings—with students in attendance.)

Thus, in order to provide students with an opportunity to engage in the oral advocacy unique to legislative lawyering, I have each student engage in two simulations. First, the student arranges a persuasive or brainstorming meeting on the legislative lawyering issue that is the subject of his or her client project. (This is called the "student-led meeting.") The student assigns roles to three Clinic

3. There are four two-hour text classes. I anticipate that students need to prepare three hours for each class.
4. There are two two-hour budget classes. I anticipate students need to prepare three hours for each class.

colleagues as participants in the meeting. The remaining eight students watch the meeting (which is videotaped), and then all twelve students participate in a policy discussion facilitated by the student who has convened the meeting.

The student is given ultimate responsibility for how the meeting will be structured. Depending on where the student's work on the project has progressed, the student may choose to engage in a *persuasive* meeting (e.g., convince DOJ lawyers to interpret a piece of text in a particular way) or a *brainstorming* meeting (e.g., meet with coalition partners to discuss how to convince DOJ lawyers to adopt a particular interpretation of text.) The only requirements are that the meeting force participants to grapple with a piece of *legal* text, within the context of *political* realities. The student puts together an extensive packet of materials for the three participants in the meeting, and a somewhat abbreviated packet for the remaining eight students who will participate in the policy discussion. For general guidance, the student meets with the Teaching Fellow and the Director prior to the meeting. The student describes the type of meeting that will be held and explains what materials will be included in the packet.

The second simulation occurs at the end of the semester. Each student engages in a persuasive meeting with a group of individuals posing as Congressional staffers or Administration officials. (These are called "mock staffer meetings.") These individuals who attend tend to be former Teaching Fellows of the Clinic, coalition partners, Congressional staffers, and agency officials. Again, these meetings center on the actual project on which the student has been working during the semester.

Each student first does a practice presentation with Clinic staff. That practice session is videotaped and the student and Director meet to watch the tape and discuss the presentation. The following week, the student engages in the real "mock-staffer presentation." The individuals who participate in the presentation offer a critique to the student immediately after the presentation. The final presentation is also videotaped, and students are offered the option of reviewing that tape with the Director.

Structured Interaction Time

Student-led meetings	
Model student-led meeting (by Director)	1 hour
Meet with Director to prep for mtg	1 hour
Preparation for student-led meeting (self)	20 hours
Preparation for meeting as mtg participant	10 hours/meeting for 3 meetings (30 hours)
Preparation for mtg as participant in policy discussion	2 hours/meeting for 8 meetings (16 hours)
Participation in student-led meetings	12 hours
Mock-staffer meetings	
Preparation for practice presentation	4 hours

Review of practice presentation with Director and Teaching Fellow	1.5 hours
Preparation for final presentation	4 hours
Writing one-pager for presentation	6 hours
Final mock presentation	.5 hours

Total Structured Interaction Time = 96 hours/semester

5. Mid-semester and Final Evaluations

A key component of the learning that takes place in the Clinic is the *self-reflection* that each student engages in regarding his or her work, and the *individualized feedback* the student receives from the Director and Teaching Fellow following such self-reflection. The students engage in this self-assessment based on the list of legislative lawyering skills they receive in the beginning of the semester. A one-hour self-reflection and feedback session occurs at mid-semester; a second one-hour session occurs at the end of the semester. (These are called the "mid-semester evaluation" and the "final evaluation.")

At the conclusion of the semester, each student prepares final binders of all their documents and research. These binders include a detailed table of contents to provide Clinic staff and subsequent Clinic students with an understanding of the relevance of the student work-product and the context in which the various documents have been written.

Structured Interaction Time

Mid-semester evaluation	1 hour
Preparation for mid-semester evaluation	1 hour
Final Evaluation	1 hour
Preparation for mid-semester evaluation	1 hour

Total Structured Interaction Time = 4 hours/semester (but 0 hours for credit purposes)

CALCULATING THE APPROPRIATE NUMBER OF CREDITS FOR THE FLC

As detailed above and summarized below, the total structured interaction time related to FLC work is 490.5 hours:

1. Intensive Legislative Training ("Bootcamp") 54 hours
2. Document Preparation/Meetings 269 hours
3. Ongoing Seminars during Clinic semester 69 hours
4. Student-led meetings/mock presentations 96 hours

According to the Clinics Credit Report formula, determining the appropriate number of credits for student participation in the FLC would be calculated as follows:

1. To calculate the average number of weekly student hours:
   Structured Interaction Time of 488 hours/semester
   Divided by 13 weeks/semester
   Equals an average of 37.5 hours/week

2. To calculate the appropriate crediting:
   Average of 37.5 hours/week
   Divided by 3.5
   Equals 10.72 credits

Therefore, the appropriate number of credits for student participation, according to the Clinics Credit Report, should be ten (assuming we round down!).

CONCLUSION

The curriculum, supervision structure, and evaluation methods in the Federal Legislation Clinic have evolved through a rigorous process of trying out an approach, asking for student evaluations of the approach, revising the approach, and asking for evaluation again. We have developed an extensive questionnaire that we have distributed to students after each semester since Fall 1996. We hold day-long weekend retreats to assess the questionnaire results and make changes to enhance the clinic's structure and curriculum. I believe these retreats have been essential for enhancing the clinical experience for our students and determining which of our educational tools are most effective.

My goal in directing the Federal Legislation Clinic has been to teach students how to combine a rigorous knowledge of the law with a sophisticated understanding of political realities, so they themselves can be capable of devising creative legislative solutions to difficult legal and political situations. And I have wanted to convey to them the intellectual joy, the creative stimulation, and the sense of gratification I experience in engaging in this form of lawyering. Allowing students to receive ten credits for their participation in the Federal Legislation Clinic would free students of undue outside pressure during their FLC participation and help them to invest fully in a productive and satisfying clinical experience.

APPENDIX B
BOOT CAMP !

FIRST DAY: TUESDAY, AUGUST 26
(Report to Room 340 to get room assignment)

12:00 p.m. - 12:30 p.m.	*Bring your lunch; talk & bond*
12:30 p.m. – 1:00 p.m.	***Introductions:*** Students and Clinic Staff
1:00 p.m. – 1:15 p.m.	***Introduction to Boot Camp***
1:15 p.m. – 2:30 p.m.	***Introduction to Legislative Lawyering & the Five Circles Theory*** Clinic Handbook Materials, Tab 1
2:30 p.m. – 2:45 p.m.	BREAK
2:45 p.m. – 3:30 p.m.	***Legislative Lawyering (cont'd)***
3:30 p.m. – 4:15 p.m.	***Introduction to the Clients***
4:15 p.m. – 4:30 p.m.	BREAK
4:30 p.m. – 6:00 p.m.	***Congress and the Agencies*** Clinic Handbook Materials, Tab 2

SECOND DAY: WEDNESDAY, AUGUST 27
ROOM XXX

12:00 p.m. - 12:30 p.m.	*Bring your lunch; schmooze*
12:30 p.m. - 2:00 p.m.	***Legislative Process & Procedure*** *Congress & Lawmaking* *The Congressional Environment* *Preliminary Legislative Action* Scheduling Legislation in the House & Senate Oleszek, Chapters 1 – 4, 6
2:00 p.m. - 2:15 p.m.	BREAK
2:15 p.m. - 4:15 p.m.	***Legislative Process & Procedure (cont'd)*** *House and Senate Floor Procedure* *Resolving House-Senate Differences* *A Dynamic Process* *A Note on Congressional Oversight* Oleszek, Chapters 5, 7-10
4:15 p.m. - 4:30 p.m.	BREAK
4:30 p.m. - 6:00 p.m.	***A Power Point Q & A Review***

THIRD DAY: THURSDAY, AUGUST 28
ROOM XXX

12:00 p.m. - 12:30 p.m.	*Bring your lunch; schmooze*
12:30 p.m. - 4:30 p.m.	*Conceiving a bill, creating a coalition, arranging for introduction, choreographing a hearing, getting through markup, bringing the bill to the House and Senate floor, getting through conference, obtaining the President's signature.*
	ALL DONE BY *YOU* IN *SMALL GROUPS* *(Half of you will be in room XXX for these; the other half will be in room XXX.)*
	See Tab 3 for the subject of the bill.
	You will receive additional materials, and particular assignments for your small groups, as we proceed through the day.
	To PREPARE: Read your OLESZEK! The small group exercises on your final day will put into practice what you've read in Oleszek and what you've gone over with Professors Feldblum, Corrigan and Westmoreland the previous two days.
4:30 p.m. – 6:00 p.m.	***Panel Discussion.***
	And finally . . . . PIZZA !!!!!!!!!!!!!

CLINIC HANDBOOK AND CLASS MATERIALS
FALL 2003

APPENDIX C
THE LEGISLATIVE LAWYER: SUBSTANTIVE ABILITIES

Substantive Goal	**Necessary Skills**
Assess the Issue	☐ Understand client's concerns ☐ Comprehend legal text ☐ Assess political realities ☐ Ask questions for clarification, if needed
Research and Analyze the Issue	☐ Find background and supporting data and legal materials ☐ Comprehend and analyze materials ☐ Complete research in a timely fashion with appropriate comprehensiveness
Propose Approaches to the Issue	☐ Analyze and assess legal materials in light of political realities ☐ Be creative and assertive ☐ Suggest additional research projects or work products that client might need.
Draft Materials	☐ Write in a clear, simple and persuasive manner ☐ Write in different styles for different audiences ☐Incorporate editorial comments in an "active" manner
Present Materials Orally	☐ Be well-versed in all relevant and related materials ☐ Articulate issues in clear and concise manner ☐ Articulate issues in persuasive and thoughtful manner

APPENDIX C
THE LEGISLATIVE LAWYER: SUBSTANTIVE ABILITIES

The Federal Legislation Clinic seeks to teach law students how to be effective legislative lawyers. Described below are the range of skills that constitutes effective legislative lawyering. These are the skills we expect you to use and improve upon during the course of the semester. These are also the skills on which you will be graded.

Assess the problem: The first step in approaching a legislative lawyering problem is to *assess* what the problem is. This will require the following components:

First, you must clearly understand what your *client* thinks the problem is. You may find, as you delve into the issue, that you will develop a different sense of what the problem *should* be. That will be relevant information for you to bring back and discuss with your client. But you must start off with a clear understanding of what your client thinks the problem or issue is.

Second, you must be able to read and comprehend the *legal text* relevant to the problem. This text might be existing law, existing regulations, a proposed bill or amendment, case law, or (most likely) some combination of the above. In order to assess the problem, you will need to be able to read carefully and understand the relevant legal texts.

Third, you must be able to observe and understand the *political dynamics* relevant to the problem. These dynamics might concern the relationship between a Republican Congress and a Democratic Administration, the interests of a particular Member of Congress, turf battles between various advocacy interest groups, budgetary impacts of your issue, procedural limitations on your issue, or the overall legislative agenda of Congress. To assess the legislative lawyering problem, you must grasp and understand the political dynamics related to your issue.

Finally, you must be able to *ask questions for clarification.* Your client, Teaching Fellow, or Director will never know what you don't know unless you ask. Never leave a meeting without a clear sense of what has just transpired, assuming (or hoping) you'll figure it out on your own afterwards. Ask in the moment—that will be your best learning experience.

Research the problem: Once you have assessed the problem, you need to collect information that will aid you in moving your agenda forward with regard to your issue. (Each problem will demand a different agenda—figuring out what that agenda is comprises part of assessing the problem.) Researching the problem effectively will include the following components:

> *First*, you must be able to *find* the *background information* that is relevant to your issue. Often, this information will be laws, bills, legislative history, regulations, and case law. Sometimes this information will exist on agency or advocacy group web pages or will be accessible only by calling someone.
>
> *Second*, you must be able to *comprehend* and *analyze* the materials you have found. The skills you need to use here are your basic legal skills of comprehension and analysis. This is an *essential* skill of the legislative lawyer. You must be *comfortable* with text; you must be able to read text *correctly*; and you need to be able to deal with massive *amounts* of text without getting overwhelmed.
>
> *Third*, you need to be able to *complete* your research in a *timely fashion*, with *appropriate comprehensiveness*. This can be tricky. Legislative lawyering is not like writing a paper. If you spend too much time researching an issue you may find your document is no longer needed by the time you have it ready. So, you need to know when to stop researching and start writing. On the other hand, you need to do enough research so that you do not miss any important pieces of your issue. Our goal is to give you practice over the course of the semester in learning how to strike this difficult balance between research and writing.

Propose solutions: Sometimes your Teaching Fellow and Director will have a proposed solution to a problem when you are first given the issue. *Once the issue is given to you, however, it is your issue and your problem.* As you do your research, which presumably will be guided by the initial proposed solution suggested by the Teaching Fellow and the Director, stay *skeptical* and *engaged.* Skeptical means: keep testing the appropriateness of the solution against the information *you* are now collecting. Engaged means: keep remembering this is your issue to comprehend and your problem to solve. The components for effectively proposing solutions are:

> *First*, you must be able to *analyze* the *legal information* you are gathering in light of the *existing political realities*. This will require both an ability to comprehend relevant legal text and to assess pertinent political realities—the two main skills necessary for assessing the problem.

Second, you must encourage your *creative instincts* in coming up with ways of approaching your problem, and then you must be *assertive* in putting forth those ideas. Don't wait to be asked—come forward with questions, challenges, assertions, and ideas.

Draft materials: One of the most important things a legislative lawyer does is draft materials. While it is sometimes important for a legislative lawyer to draft legislative language, the reality is that there are a variety of other documents that a legislative lawyer must be proficient in producing. These include memos urging certain approaches in legislation or regulations, talking points and letters summarizing these approaches, and legislative history to support these approaches. *Being able to draft effective written materials is a key skill of the legislative lawyer.* The components necessary for effective drafting are:

First, you must be able to write in a *clear*, *simple*, and *persuasive manner*. Your writing should tell a story that brings the reader along to where *you* want the reader to be.

Second, you must be able to write in *different styles* for *different audiences*. What will be clear to agency regulators will not be clear to grassroots advocates. What may be persuasive to Congress may not be persuasive to an agency. A key component in drafting materials is tailoring your document to your audience.

Third, you need to be able to effectively *incorporate* editorial comments into subsequent drafts. One of the main experiences the Clinic provides you is the chance to work extensively on a document, with ongoing edits and feedback. Your job is to be *open* and *engaged* in the editing process. Be open to changes: your Teaching Fellow or Director is suggesting changes for a reason—be curious about why those changes are being suggested. (But keep *owning* your project—do not input changes if you don't understand why those changes have been suggested!) Stay engaged: don't give up owning your project as your document is being edited.

Present materials orally: A final key skill for an effective legislative lawyer is the ability to convey a problem, or a solution to a problem, to another person or group of people. Most of the work of Washington takes place in meetings. If you want to impact a legislative or regulatory issue, you must be able to make your case orally. The components necessary for effective oral advocacy are:

First, you must be *well-versed* in all relevant and related materials. The particular skill a legislative lawyer brings to the legislative or regulatory table is substantive knowledge of the issue at hand. When you start speaking, you need to *have* that substantive knowledge.

Second, you need to be able to articulate the issue (either the problem, or the solution to the problem) in a *clear* and *concise* manner. Everyone in Washington is busy—if you talk too long, they'll tune out.

Third, if you are presenting a solution to a problem, you need to be able to articulate that solution in a *persuasive* and *thoughtful* manner. People change their mind when they're persuaded to do so; thus, your oral presentation should be persuasive. But people don't like to feel their issues and concerns are not being heard; be sure you're not only persuasive, but thoughtful—demonstrate you are responsive to audience concerns.

It's great fun being a legislative lawyer.
I hope you get a kick out of learning this stuff.

APPENDIX D
SPECTRUM OF WRITING

The purpose of this memo is to give you an overview of the different types of writing produced by the Clinic. You may be asked to write a wide variety of documents over the course of the semester. You can always refer to past Clinic binders or the Sample Documents binder (see below) to find examples of these documents.

Overall, the Clinic's work can be divided into four main categories:

- ***Legal Research and Analysis Documents***—These are primarily research memos to familiarize our clients with new issues. These documents may evaluate the current framework of the issue and help our client determine what legislative or other efforts are necessary. Often, these types of documents provide the basis for *Client Documents* or *Legislative/Administrative Documents* (see below). These documents may describe current law (statutes, regulations, and/or case law), evaluate different legislative or administrative proposals, and recommend a course of action for our clients.
- ***Client Documents***—These documents are produced primarily for internal use by our clients. They may be informational materials for a coalition meeting or documents to disseminate to field offices or staff members. These documents may include comparisons of legislative proposals, side by sides, or articles for a client's newsletter.
- ***Legislative Lobbying Documents***—These documents are produced for use in legislative lobbying efforts in Congress or the White House. These documents may include side by sides, talking points, advocacy letters, or legislative summaries.
- ***Administrative Lobbying Documents***—These documents are produced for use in lobbying efforts to agencies. These documents include draft guidance, oversight letters, or comments on regulations.

The types of documents you may draft include:

- **Grassroots Materials** (Talking Points, etc.)
- **Staff/Coalition Materials** (Talking Points, Q&As, Briefing Papers)
- **Short Background Research Memos** (3-10 pages)
- **Statutory Language** (Bills, Amendments) **with Narrative**
- **Report Language** (for House, Senate Conference)
- **Options Paper** (re: statutory suggestions, policy options)
- **Testimony, Congressional Record Statements, Colloquies**
- **Comprehensive Research Memo** (10+ pages)

We have assembled binders containing examples of documents which illustrate the wide variety of the work produced by the Clinic. Most of these documents were prepared by Clinic students over the past two years. These examples are not exhaustive as new projects are requested every semester. These

documents, however, will provide you with a useful guide as you draft your own documents. The binders are located in the Clinic Office main area in binders labeled "Sample Documents."

* * *

PROJECT ASSESSMENT CLASS MEMORANDUM

Where is my project now and where is it going in the future?

During the semester we will have one class where each student will briefly discuss where his or her project is in the legislative or administrative process. (Check the Clinic calendar for the date of this class.) The purpose of this class is for you to share with your colleagues where your project is and where it is going (or where you think it is going!).

For example, you may be on the ground floor of a larger project, doing background research to help your client better understand an issue so it can develop into a policy proposal. Or, you may be in the latter stages of a project actually advocating on Capitol Hill with members of a coalition to pass legislation. Where your project is in the legislative process may depend on many factors, including whether legislation has been introduced, who has agreed to sponsor or co-sponsor a bill, whether a hearing has been held and whether your coalition unanimously agrees on a particular issue. Where your project stands in the administrative arena may depend on political considerations for the administration.

In preparation for the project assessment class, you should prepare a memo explaining where your project currently is in the process and where you expect it to go in the future. You should describe your project in one or two sentences at the beginning of your memo. Your memo should include a discussion of the politics of your issue (within a coalition, on the Hill or in the agency), why your project is where it is in the process, and whether your client can do anything to move the project along. **Your memo should be no more than two pages.**

You should bring to the project assessment class copies of your memo to be distributed to each of your student colleagues, the two Teaching Fellows and the Director.

* * *

STUDENT-LED MEETINGS

Each student leads one mock meeting each semester, using his or her Clinic colleagues as participants in the meeting. The **goals** of having these meetings are as follows:

- ✔ to give *all* Clinic students a *substantive sense* of the issues their colleagues are working on;

- ✔ on any *particular issue*, to give a *subset* of the Clinic students (those who sign up as participants for that meeting) a deeper understanding of the text, law, policy and politics surrounding that issue;
- ✔ to give the Clinic student *leading* the meeting a chance to practice his or her skills of speaking, listening, and controlling a meeting; and
- ✔ to give the Clinic students *participating* in the meeting a chance to practice their skills of speaking and listening.

The Clinic Calendar, located at h:Clinic Materials\Calendar-s02.wpd, tells you when the student-led meetings occur. About a month into the semester, we will distribute a schedule of which students will present on the designated student-led meeting days. Once you know the date of your meeting, check the Clinic Calendar for *when your materials are due to be distributed* to your colleagues and be sure to put that date on your calendar as well.

Each student gets to decide what ***type* of meeting** he or she wants to convene. For example, if you've been working on getting an amendment added to a bill, you might want to create a meeting where you persuade semi-hostile Hill staffers that your amendment is a good idea. If you've been working on presenting to your client different options for achieving a particular policy goal, you might want to convene a meeting of groups sympathetic to that policy goal to elicit from them reactions to the options you've developed thus far. If you're just in the beginning of a complicated legal project, you might call a meeting of other friendly legislative lawyers to help you think through the legal and political issues you need to be thinking about.

The meeting you convene is *not long*—it's just **twenty minutes**. So you have not failed to have a "good meeting" if you don't achieve consensus on policy options in that time period, or if you haven't transformed semi-hostile staffers into flag-waving supporters of your amendment by the end of the meeting. *Keep your eyes on the prize of the goals of this exercise.* The point is for all your colleagues to get a general sense of your issue, for all the participants in your meeting to have a deeper sense of the text, law, policy, and politics surrounding your issue, for you to have a sense of what it means to run a meeting, and for your participants (and you) to practice your oral skills.

Once you decide what type of meeting you want to convene, you need to decide what ***materials*** you will give to your participants in your meeting so they can participate intelligently. Remember—they can't possibly read everything about your issue that you've already read. Nor do they need to do so in order for you to have a "good meeting." An essential job of the student convening the meeting is to come up with the **packet of materials,** and an **explanatory cover memo**, which will enable his or her colleagues to assume the roles they are given in the meeting. Be sure to give them any relevant text and any essential case law (if relevant). Think about what materials would be useful for them to understand both the policy and the politics of your issue. In addition, you may want to meet

beforehand with your participants to give them more background on the policy and politics of an issue, or to answer any questions they might have.

The Clinic students who are *not* participants in the meeting will receive **the same (or an abbreviated) packet of materials** that the participants receive. All Clinic students are expected to read this packet of materials prior to the student-led meeting. All Clinic students will *observe* the twenty-minute meeting, and will then *participate* in a *debrief/policy discussion* that will follow that meeting. The student who convenes the meeting will facilitate that debrief/policy discussion. If the student wishes, that can be a relatively directive conversation, and the explanatory cover memo may include a description of what that student would like to lead a discussion on. Or the student can decide to facilitate a more free-wheeling conversation about the issue or about his or her colleagues' reaction to the meeting.

So, here are the steps you need to take to be ready for the student-led meetings (both yours and your colleagues):

1. Pull up your version of the Clinic Calendar and customize it with when your student-led meeting occurs, when your meeting is with the Director, and when you have to distribute your materials. Customize it further with when you are signed up to participate in a student-led meeting. (You should have three of these during the semester.) Make sure you build in time to prepare for those meetings.

2. A few days before you are scheduled to meet with the Director, you should meet with your Teaching Fellow to talk about what *type* of meeting you want to convene and what *materials* you want to provide. This should be a brain-storming session between you and your Teaching Fellow—but you should *come* to that meeting with some *ideas* of the meeting you want to have and of the materials you want to distribute. You should *leave* your meeting with your Teaching Fellow with a pretty *solid* sense of what type of meeting you want to convene, the roles you will assign your participants, the materials you will include in your packet, and what you will say in your cover memo.

3. For your meeting with the Director, you should *come with a draft of your cover memo, role assignments for your participants, and all the materials for your packet.* This meeting is designed to give you a chance to talk about how you see your meeting playing out and to get advice and feedback from both the Director and your Teaching Fellow.

4. After the meeting with the Director, you can follow up with your Teaching Fellow regarding any additional questions. In addition, your Teaching Fellow will (time permitting!) be available to provide edits on your cover memo.

5. You are responsible for making copies of your packet and putting it into your colleagues' folders in the Clinic by 5 pm on the date listed on the Clinic Calendar for your meeting. If you are not going to make this deadline, you are responsible for contacting your colleagues and letting them know when they can expect the packet. (Hopefully, this won't happen too often!)

6. Clinic students who are *participating in that meeting* are responsible for reading their packets in enough time that they can ask clarifying questions beforehand of the student convening the meeting. All other Clinic students are responsible for reading the packet well enough that they can participate intelligently in the debrief/policy discussion.

7. If you are the student convening the meeting, be sure to be in touch with the participants of your meeting beforehand to answer any questions they may have or to give them some additional background on your issue.

8. For the student convening the meeting: think about what you want to cover in your debrief/policy discussion. There may be a particular burning issue you want to discuss and, if so, you should have highlighted that in your cover memo. Alternatively, you may have decided just to throw open the conversation to whatever your colleagues want to discuss. Just remember B you need to facilitate the discussion.

9. Meetings always go over better with food. *So, on the day of your meeting, bring some snacks for your colleagues.*

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MOCK STAFFER PRESENTATIONS

The ability to advocate a client's policy position persuasively and effectively is an essential skill of a legislative lawyer. To help you develop this skill, you will be required to make a 15-20 minute presentation to a panel of "mock" Hill or agency staff members on an issue that you have been working on during the semester for your client. The panel participating in your presentation will likely not be the real Hill or agency staff members that you and the client have been dealing with on your particular issue. Instead, we ask other professional staff members who are knowledgeable on your issue to "role play" these staff members in order to give you a realistic experience of advocating your client's position.

During the presentation, you will spend 15-20 minutes advocating your client's position on your issue. Although you need to have a plan for how you will present your client's position to the staffers, you also must be prepared to answer questions and engage the staff members in a mutual dialogue on your issue. You should also prepare a one-page document of talking points (the key

points you want to make during your presentation) to give to the staff members at the beginning, in the middle, or at the end of your presentation. (The timing of when to give documents to staff during a presentation is a strategic decision you should discuss with your teaching fellow.)

To give you an idea of what an effective presentation to staffers looks like, the Clinic Director will do a model presentation during a Clinic class approximately three weeks before the scheduled mock staffer presentations. The following week, you will have the opportunity to practice your mock staffer presentation with the two teaching fellows. This practice presentation will be videotaped, and you will meet with the Clinic Director and your teaching fellow to review and evaluate this videotaped practice presentation. Your final mock staffer presentation will also be videotaped, and you will have the option of reviewing your final videotaped presentation with the Clinic Director.

See the Clinic calendar for the dates for the model mock staffer, the practice mock staffers, the practice videotape reviews and the final mock staffer presentations.

Attached are some tips for a successful mock staffer presentation.

Tips for Mock Staffer Presentations

Starting the presentation—Introduce yourself, tell the staffers who you are representing (your client, not the Federal Legislation Clinic) and, in general, why you have asked to meet with them. Within the first three minutes of your presentation, the staffers should know what your issue is, why the client is interested in the issue, and, in general, what you are asking them to do (what is your proposal). [For example, do you want them to recommend to the Senator that he sponsor a bill on your issue; do you want them to recommend to the Representative that she amend her bill to add language favorable to your client's position; do you want them to recommend to the Secretary that the agency adopt guidance that would help your client's constituents access an important federal program; etc.]

Paper—Prepare a one-page document that outlines and explains your issue and your proposal(s). Hand this out at the beginning, during or after your presentation ("when" to hand out paper will depend on the structure of your presentation, your audience, the complexity of your document, etc.).

Tough Questions—Be prepared, and try to anticipate the questions you'll be asked. If you don't know the answer to a particular question, do NOT bluff it! It's better to say, "I don't know, I'll have to get back to you," than to lose credibility (for yourself and for the client) with a wrong answer.

Know Your Audience—Who are you talking to, what are their roles regarding your issue, what can you realistically expect of them? Is this a meeting to discuss a specific proposal, or a concern of your organization, or to gather

information from staffers? Do you need them to agree to something immediately or do they have time to evaluate? Do you need the group to come to a consensus?

Control the Meeting but Don't Preach—Make sure you get in all of the points that you need to in order to make your point. Be careful, however, that your meeting with the staffers doesn't degenerate into a session where you preach the gospel of your issue to them. Instead, your presentation should flow like a dialogue with staffers—listen to their questions; incorporate their ideas if you can and politely disagree if you cannot (and tell them why your client's position makes more sense).

Watch the Clock—Make sure you don't run out of time before you get through your issues/proposals; gauge your audience and know when it's time to wrap-up.

Be Flexible—Be willing to change your mind. If the staffers present another option/argument that changes your proposal, go with it. Adapt to the situation and, as needed, ask for time to evaluate and get back to them. But don't give up too easily if the staffers' position conflicts with your client's!

Acknowledge Your Mistakes—If you provide incorrect information, go back and clarify; you'll save credibility by correcting yourself rather than letting the mistake go.

Clarify and Explain Clearly—Try to keep your answers to staff questions short and concise. If staffers seem to ask the same question more than once, it probably means they did not understand your explanation/answer so try a different way to explain it. If you don't understand their questions, ask for clarification.

Keep your Cool—You are lobbying, but not bullying, so be careful not to antagonize the staffers. Your personality may conflict with one of the staffers, but you need to maintain a good relationship because, as a legislative lawyer, you often have to approach the same staffers time after time.

Wrap-up—Close out your meeting by restating your issue, your proposal, and what you want from the staffers. Mention any next steps that you will take or expect from them.

MID-SEMESTER CHECK-INS AND EVALUATION

In the middle of the semester you will have the opportunity to check-in with, and be evaluated by, the Clinic Director (see Clinic calendar for schedule). You will meet for a half-hour with the Clinic Director. During this time you will be asked to evaluate your Clinic work for the first half of the semester, and you will also get feedback from the Director about your progress to date. This meeting is also your opportunity to voice any concerns you have about your Clinic experience.

Attached is a memo describing the substantive qualities of a legislative lawyer and a chart summarizing both the substantive and professional qualities we hope you are developing (and manifesting) in your Clinic participation. To prepare for your mid-semester evaluation, go through these materials and rate yourself: Where do you think you are strong and where do you think you are weak? What work have you done thus far in which you have displayed those skills or improved those skills? Your session with the Director will start with *you* performing an honest self-assessment of your performance in the Clinic for the first half of the semester. (Remember to bring a copy of the chart of substantive and professional qualities with you to the evaluation, with relevant notes to yourself written in!) After you have evaluated your performance in each area, the Director will respond. (The Director will have read through all your written materials, including every draft, in preparation for this meeting. The Director also will have notes from any oral presentations you have made when the Director was present (either in class or in work for your client.))

To prepare for the "check-in" part of this session, think about what your goals are for the remainder of the semester, and what type of work you would like to have the chance to do in the Clinic. This is also your opportunity to provide the Director with any general comments or critiques of your Clinic experience—in enough time to let us respond to those appropriately. As you will be meeting with the Director without your Teaching Fellow, be prepared to also let the Director know about your interactions with your Teaching Fellow.

CLINIC WRAP-UP CLASS

At the end of the semester, we will have a Clinic "wrap-up" class (see Clinic calendar for schedule). During the wrap-up class, each of you will have a chance to reflect on your Federal Legislation Clinic experience and discuss the art and practice of legislative lawyering. In preparation for this class, you must write a two to three page memo explaining what you've worked on and learned over the course of the semester. Please bring copies of your memo to distribute to each of your Clinic colleagues (students, Teaching Fellows and the Director).

This wrap-up memo is *not* intended to provide an overview of the issues you worked on (the guidelines for that memo are set forth in a separate advisory in this binder). The Wrap-Up Memo has been described in past semesters as the "What I did on my summer vacation" memo. Your memo should address the following questions:

- Where has your project gone (in a general sense), and where will the next group likely take it?
- What specific lessons have you learned about legislative lawyering?
- What most surprised you during this semester?

The week before the wrap-up class, we will make examples of past Clinic "wrap-up" memos available to you (look for a small black binder on the coffee table in the Clinic).

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FINAL TASKS MEMORANDUM

Preparing Your Issues Overview Memo,
Binders and Binder Table of Contents,
Organizing Your Documents on the Clinic's H:\Drive and
Submitting Your Student Questionnaire

As the Clinic semester comes to a close, you will need to:

➢Prepare an issues overview memo,

➢Organize your binders, with binder labels and a table of contents;

➢Organize your documents on the Clinic's H:\ Drive; and

➢Submit your student questionnaire.

The issues overview memo, the binders and the organization of your documents on the H:\ Drive are designed to help the Clinic staff and subsequent Clinic students understand what happened on your issues, how people can access the work you did, and what they might expect in the coming months. Check the Clinic Calendar for the due date for completing these tasks. (The student questionnaire will be distributed at the Clinic wrap-up class and must be turned into Loretta Moss on the date of your final evaluation.)

I. ISSUES OVERVIEW MEMO

The Issues Overview Memo is the primary way for you to let subsequent Clinic students and staff know what you worked on this semester, how your issues developed or progressed, the status of those issues, what documents you produced, how these documents were used by your Client and how they fit into the legislative strategy of your Client, and what future developments are expected on your issues. Please look at other student binders prepared for your client for sample memos.

II. PREPARING YOUR BINDERS, BINDER LABELS AND THE TABLES OF CONTENTS

There is no one best way to prepare a binder. The number of binders you need to prepare, the size of each binder, and the material included in the binder will depend on the work you have been doing. You should try to follow the guidelines listed below to the extent possible as you organize your materials and think about how best to guide future students through your work:

- For each major issue you worked on, create a primary binder with tabs identifying your final work product, the latest versions of the relevant legislation and other legislative materials, and the other important documents that someone new to the project might need to access quickly and regularly. (You should *not* include earlier drafts of your documents—only the final versions.)
- Create separate binder(s) containing background research and/or other voluminous materials on your issue (i.e., cases, law review articles, testimony, etc.), so that your primary binder(s) is not unmanageable.
- Think about how to describe the documents behind each tab and their relevance to your issue, including any important compromises/milestones which the documents represent and/or any important conflicts or discussions around the documents. The most effective way to guide future students through your documents, and the documents produced by others, is to group them together by topic and/or type of document and to alert readers to the milestones or developments represented by the documents.
- Please make sure to include the following as part of each binder:
  - Put the Table of Contents as the top document in each of your binders, followed by a copy of your Issues Overview Memo. (NOTE: Make sure that at the end of each binder's table of contents, you list the titles and numbers of other binders you have prepared on the issue.) See prior Clinic student binders for the table of contents format.
  - Use tabs to separate the various sections of your binder.
  - Make sure your binder is labeled with your name, Clinic semester, name of the client, and the issue(s) addressed. Also,

indicate how many binders you are creating and the number of that specific binder. (In other words, if you have created three binders, label them Binder 1 of 3, Binder 2 of 3, etc.) See prior Clinic student binders for the binder label format.

—Your binder should look neat and professional (no loose pages or "overstuffed" binders). It should be something you would not hesitate to share with the client.

III. ORGANIZING YOUR DOCUMENTS ON THE H:\ DRIVE

It is important that Clinic staff and subsequent Clinic students can easily access final drafts of the documents you worked on this semester, and distinguish them from earlier drafts. In order to accomplish this task, **please make sure that the "main" folder under your name includes only your final drafts.** Create a "drafts" subfolder(s) under your main folder and put earlier drafts of your documents or other documents/research there.

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FINAL EVALUATIONS MEMORANDUM

For your final evaluations, you will meet with the Clinic Director and your Teaching Fellow for an hour. As you did with the mid-semester check-ins, you should prepare for your final evaluation by reviewing the substantive and professional qualities charts and evaluating your performance in each category. As you do so, think about the work you did during the semester – both for your client and in the classroom – and consider your areas of strength, areas where you have improved over the semester, and areas where you still need improvement.

Your final evaluation session will start with *you* going through each category on the two charts and doing a thorough self-evaluation (you may want to bring copies of those charts, and your notes, to the evaluation). After you finish your self-evaluation, your Teaching Fellow will respond, and the Clinic Director will add her comments. (Your Teaching Fellow and the Director will have read through all of your written materials (*every* draft), reviewed their notes on how you performed in client meetings and in the classroom, and reviewed your final mock staffer video.)