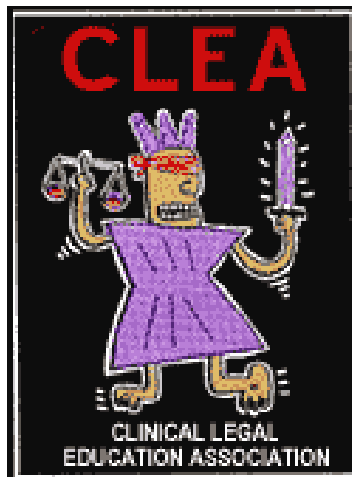

CLINICAL LEGAL EDUCATION ASSOCIATION



HANDBOOK FOR NEW CLINICAL TEACHERS **MAY 2015**

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WELCOME TO THE CLEA NEW CLINICIANS CONFERENCE

Dear New Clinicians,

On behalf of the Clinical Legal Education Association (“CLEA”) and the Section on Clinical Legal Education of the Association of American Law Schools (“AALS”), we congratulate and welcome you to an exciting, rewarding career as a clinical legal educator. Although the Section on Clinical Legal Education and CLEA are separate entities, we share many of the same goals and interests. We hope that you utilize the resources of and participate in both CLEA and the Section throughout your career.

CLEA is an all-volunteer advocacy group and serves as an independent voice for clinicians on critical issues, including those concerning the accreditation of law schools and the participation of clinicians in the academy. CLEA also serves as a sponsoring organization for new initiatives: for example, it fostered the New Clinicians Conference as well as the Best Practices Project, which has produced the long-awaited *Building On Best Practices: Transforming Legal Education in a Changing World*. CLEA also sponsors community-building activities and annual awards to clinic students across the country, as well as awards for Outstanding Advocate for Clinical Education and Outstanding Clinic Project. CLEA works largely through its Committees, which form to address pressing issues facing clinical legal education, and welcoming new participants.

The Section on Clinical Legal Education is one of several sections of the AALS, an educational association of more than 170 law schools representing more than 10,000 law faculty. The Section serves a critical “insider” function within the AALS to ensure clinical perspectives and experiences inform all aspects of the of the Association’s work. To that end, the Section supports the collection and dissemination of important data about clinical legal education and advocates for strong AALS responses to issues of concern to clinicians. The Section also provides support for professional development as teachers and scholars via the annual Conference on Clinical Legal Education, webinars and online supervision rounds, the Bellows Scholar Program, annual Works-in-Progress sessions, its sponsorship of regional conferences and programs at annual conferences, a mentoring program, and the Clinicians’ Desk Reference. The Section also bestows two awards annually: the M. Shanara Gilbert Award, given to an “emerging” clinician,” and the William Pincus Award, which recognizes career-long commitment and service to clinical legal education. Like CLEA, much of the Section’s work is carried out via its committees (17 in total).

CLEA and the Section are separate entities but provide some services jointly. For example, we jointly publish the Clinical Law Review and sponsor the annual Clinical Writers Workshop at New York University each fall. CLEA and the AALS alternate each year in hosting training meetings for new clinical teachers. In odd years, CLEA hosts the New Clinicians Conference in conjunction with the AALS Conference on Clinical Legal Education. In even years, the AALS provides a New Clinical Teachers Workshop in conjunction with annual New Teachers Conference.

We hope that you will join both CLEA and the AALS Section on Clinical Legal Education. Both offer important ways to connect with the clinical community and to access resources to advance your career as a clinical legal educator. And both will benefit from the new ideas and vision that you, our newest members, bring to the clinical community.

Janet Thompson Jackson
Washburn University School of Law
CLEA Co-President, 2015

Mary Lynch
Albany Law School
CLEA Co-President, 2015

and

Jayesh Rathod
American University Washington College of Law
2015 Chair, AALS Section on Clinical Legal Education

CLEA MISSION STATEMENT

CLEA exists to advocate for clinical legal education as fundamental to the education of lawyers. CLEA and its members seek to:

- Foster excellent teaching and scholarship by clinical educators;
- Integrate clinical teaching and extend its methods into the legal education program of every law school;
- Reform legal education so as to prepare law students for excellent and reflective law practice;
- Advance regulation of legal education that insures the continued vitality of clinical education in law schools; and
- Pursue and promote justice and diversity as core values of the legal profession.

CLEA'S GOALS AND ACCOMPLISHMENTS

The Clinical Legal Education Association was founded after several years of discussion among clinical teachers. Membership is open to all people interested in using clinical methodology to prepare law students and lawyers for more effective law practice. Clinical methodology includes supervised representation of clients, supervised performance of other legal work, the use of simulated exercises in a variety of settings. Clinical teaching is designed to teach skills and values necessary to the ethical and competent practice of law.

CLEA was incorporated as a nonprofit corporation in 1992. What follows is a list of some of the principal goals and accomplishments of the organization:

1. **To bring together in one organization all of those involved in clinical education.** CLEA welcomes as members not only full-time clinical teachers at law schools belonging to the Association of American Law Schools, but also field supervisors, adjunct teachers, faculty at schools outside the U.S., and other people who are involved in clinical education or are interested in its continued development.
2. **To serve as a voice for clinical teachers and to represent their interests inside and outside the academy.** CLEA has been a vigorous advocate for the interests of clinical teachers on a number of issues, including: the ABA's comprehensive review of its accreditation standards for law schools; challenging political interference by outside organizations, individuals, and public bodies to the independence of law school clinics; proposed cuts in Legal Services Corporation funding; and establishment of a uniform law to make admission to practice easier for clinical teachers.
3. **To promote and disseminate clinical scholarship and research.** CLEA was instrumental in founding the first Journal of Clinical Legal Education, the CLINICAL LAW REVIEW, a peer-review journal which publishes useful and readable articles about improving the teaching of law and the quality of legal practice. Membership in CLEA includes a subscription to the CLINICAL LAW REVIEW.
4. **To foster professional development of clinical teachers.** CLEA organized the first national conferences on externships, Alternative Dispute Resolution clinical programs, and a workshop for newer clinical teachers. In addition, CLEA has provided training on advanced supervision issues for experienced clinical teachers and field supervisors in two geographic regions. Members receive discounts on the cost of CLEA conferences and training.
5. **To gather and distribute to clinical teachers information about issues and developments that affect clinical teachers.** CLEA publishes a newsletter, maintains active telephone and Internet communications, and has sponsored annual salary and demographic surveys of clinic teachers.
6. **To foster the development of clinical methodologies, the integration of clinical methodology into legal education, and the integration of clinical teachers into Law Schools.** CLEA organized a workshop on the MacCrate report during the 1993 AALS Annual Meeting. CLEA also fostered the Best Practices Project, which is about to publish its second Best Practices text, *Building On Best Practices: Transforming Legal Education in a Changing World*.

CLEA presently has more than 1,000 members. If you are interested in its mission and goals or would like to contribute by suggesting a new objective to a vital and growing organization, please join.

ROADMAP: CONNECTIONS BETWEEN CLEA AND THE AALS SECTION ON CLINICAL LEGAL EDUCATION

The Association of American Law Schools (“AALS”) Section on Clinical Legal Education and the Clinical Legal Education Association (“CLEA”) are the two main professional organizations for clinical teachers. This roadmap aims to describe the two organizations and their activities.

The Section on Clinical Legal Education is the official voice of clinicians within the AALS. The Clinical Section presents programs such as the Annual Clinical Conference or Workshop,¹⁷ supports regional conferences, and publishes a newsletter. Because the Section is part of the AALS, it cannot take an independent public position or an active role on public issues without the permission of the AALS Executive Committee. The Section may ask the AALS to take a position but it cannot take a position on its own. Annual membership dues for the Clinical Section are \$15 (payable to AALS).

The Clinical Legal Education Association (“CLEA”), founded in 1992, advocates on behalf of clinicians and clinical education in a variety of public forums. CLEA co-publishes the Clinical Law Review, sponsors and supports workshops and conferences, publishes a newsletter, and maintains a website with a database of available positions in clinical legal education. CLEA also sponsors the *Per Diem* project each year, to financially support social justice work in the community hosting the AALS Clinical Conference or Workshop.¹⁸ CLEA’s membership dues for individuals are \$40 per year; group rates are also available. Membership includes a subscription to the Clinical Law Review.

Together, CLEA and the AALS collaborate closely and their memberships greatly overlap. Both organizations sponsor workshops and conferences, and often the two organizations offer them in a collaborative fashion. For example, the New Clinicians Conference, held every other year, is sponsored by CLEA, but is scheduled immediately before the AALS Clinical Conference or Workshop.

¹⁷ Historically, the AALS Clinical Section has alternated between hosting five-day “Clinical Conferences” and three-day “Clinical Workshops.”

¹⁸ Clinicians are encouraged to make a tax-deductible donation equal to the amount of one day’s *per diem* – to a worthy recipient selected by local clinicians.

Both CLEA and the Clinical Section maintain committees to address various issues affecting clinical teachers, such as the ABA accreditation standards, the status of clinicians, and political interference. CLEA also maintains a comprehensive history of advocacy materials on its website, including *amicus* briefs.

Both organizations sponsor and support the CLINICAL LAW REVIEW, a semi-annual, peer-edited journal devoted to issues of lawyering theory and clinical legal education. The Clinical Law Review is also co-sponsored by NYU Law School. The Review welcomes unsolicited articles, as well as essays, comments, and other short pieces on lawyering, clinical teaching, legal practice, or related subjects.

Both CLEA and the Clinical Section support the Center for the Study of Applied Legal Education (CSALE), a non-profit corporation dedicated to the empirical study of applied legal education and the promotion of related scholarship. CSALE's website, with survey data on developments in applied legal education (including program design, capacity, and administrative support), can be found at www.csale.org.

With many similarities, you may be wondering: Why do we need two organizations and what are the differences between them? One major difference is the ability of each organization to take an independent public position or an active role on public issues. The Clinical Section, as part of the AALS, is limited by the fact that it is part of a larger organization, and it must therefore seek approval for any public actions and statements. As a freestanding entity, CLEA may take action on an issue, including stating its positions publicly, as long as the action or public statement has been approved by its member-elected Board of Directors.

Another difference between the two organizations is the ability of clinicians to become members. Membership in the AALS Clinical Section is limited to faculty at schools that are members of fee-paid associates of the AALS. CLEA membership is not restricted in this way. Those who teach in foreign countries and at non-AALS member schools are eligible to join, as well as adjunct professors and supervisors in field placement programs who are not full-time employees of a law school.

RESOURCES FOR NEW CLINICIANS

THE AMERICAN BAR ASSOCIATION'S ROLE AS THE ACCREDITING BODY FOR LAW SCHOOLS

ABA Accreditation and its Standards for Approval of Law Schools

The Council of the American Bar Association's Section of Legal Education and Admissions to the Bar is the recognized accrediting agency for J.D. programs in the United States. In its role as accrediting authority, the Council has adopted Standards and Rules of Procedure for Approval of Law Schools that establish the minimum requirements for all ABA-approved schools.

When seeking initial approval by the Council, a law school must demonstrate its compliance with the Standards. After a law school has been fully approved, the ABA arranges site visits every seven years, to monitor the school's continued compliance.

The Standards Review Committee (SRC) is charged with reviewing proposed modifications to the Standards and making recommendations to the Council. After a multi-year comprehensive review by the Standards Review Committee, in August 2014, the ABA's House of Delegates approved a package of comprehensive revisions to the Standards and Rules of Procedure for Approval of Law Schools. The 2014-2015 Standards may be accessed at:

http://www.americanbar.org/groups/legal_education/resources/standards.html

Set forth below are portions of just a few of the newly-revised Standards that are particularly relevant to clinical and experiential programs.

Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

... (3) one or more experiential course(s) totaling at least six credit hours.

An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:

(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;

- (ii) develop the concepts underlying the professional skills being taught;
- (iii) provide multiple opportunities for performance; and
- (iv) provide opportunities for self-evaluation....

Standard 304. SIMULATION COURSES AND LAW CLINICS

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:

- (i) direct supervision of the student's performance by the faculty member;
- (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (iii) a classroom instructional component.

(b) A law clinic provides substantial lawyering experience that (1) involves one or more actual clients, and (2) includes the following:

- (i) advising or representing a client;¹⁹
- (ii) direct supervision of the student's performance by a faculty member;
- (iii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (iv) a classroom instructional component.

Standard 305. FIELD PLACEMENTS AND OTHER STUDY OUTSIDE THE CLASSROOM

... (e) A field placement program shall include:

- (1) a clear statement of its goals and methods, and a demonstrated relationship between those goals and methods and the program in operation;
- (2) adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;
- (3) a clearly articulated method of evaluating each student's academic performance involving both a faculty member and the site supervisor;
- (4) a method for selecting, training, evaluating, and communicating with site supervisors;
- (5) for field placements that award three or more credit hours, regular contact between the faculty supervisor or law school administrator and the

¹⁹ The SRC is now recommending a revision to Standard 304, to clarify that students serving as third-party neutrals will also fall within the definition of "law clinic." See May 2015 SRC Agenda and Meeting Materials:

http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards_review/2015_05_src_meeting_materials.authcheckdam.pdf

site supervisor to assure the quality of the student educational experience, including the appropriateness of the supervision and the student work;
(6) a requirement that each student has successfully completed instruction equivalent to 28 credit hours toward the J.D. degree before participation in the field placement program;²⁰ and
(7) opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student may earn three or more credit hours in a field placement program, the opportunity for student reflection must be provided contemporaneously...

Interpretation 305-1

Regular contact may be achieved through in-person visits or other methods of communication that will assure the quality of the student educational experience.

Interpretation 305-2

A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation. This Interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement.²¹

²⁰ The “28 credit rule” first appeared in the 2014 revisions; however, the Standards Review Committee is recommending, in May 2015, that the requirement be modified. The proposed language would provide that students must complete “one academic year toward the J.D. degree with sufficient prerequisites to assure the quality of the student educational experience before participation in the field placement program...” See May 2015 SRC Agenda and Meeting Materials.

²¹ The SRC previously recommended elimination of the prohibition on paid externships (Interpretation 305-2); however, the Council did not adopt that recommendation. The SRC now recommends adoption of a rule that would allow schools to grant credit for work that is compensated, coupled with a requirement that those schools choosing to do so must demonstrate “sufficient control of the student experience” and “maintain records to document the steps taken to ensure compliance with the Standard.” See May 2015 SRC Agenda and Meeting Materials.

TAXONOMY OF CLINICAL PROGRAM DESIGN

Note: The information below, originally generated many years ago and periodically revised, seeks to provide a basic overview of some common models for courses that fit within the umbrella of clinical legal education. This glossary is intended to serve merely as a starting point for understanding and thinking about clinical and experiential teaching and should not be viewed as promoting any particular type of design over others.

Types of Clinics

There exists an enormous diversity in clinical programs and courses. This section provides some points of distinction among the various types of programs, organized by: relationship of student, client & supervisor; lawyering activity; relationship of program to law school; and funding sources.

BY RELATIONSHIP OF STUDENT, CLIENT & SUPERVISOR

LAW CLINIC: Under the supervision of law school faculty, students form lawyer-client relationships and engage in law practice, often pursuant to a student practice order.

EXTERNSHIP OR FIELD PLACEMENT: Students perform fieldwork in offices outside the law school and under the supervision of practicing attorneys, with oversight by faculty; placements typically include government agencies, legal services offices, and judicial chambers.

HYBRID OR EXTERNAL CLINIC: These programs combine elements of both in-house clinics and externships; faculty often share supervisory responsibilities with attorneys in outside organizations.

BY LAWYERING ACTIVITY

LITIGATION: Students advocate in formal proceedings before authoritative decision-makers, typically courts or administrative agencies, at the trial and appellate levels.

DISPUTE RESOLUTION/NEUTRAL PRACTICE: Students perform in the role of third party neutral (e.g., mediator, arbitrator) or as advocates in informal negotiation.

TRANSACTIONAL: Students represent and counsel clients in planning, negotiating and drafting documents related to transactions; clients may be individuals or entities.

COMMUNITY LAWYERING/ORGANIZING: Students advocate on behalf of community groups, typically with respect to economic development and/or social justice issues.

LEGISLATIVE ADVOCACY: Students accept legislative drafting and advocacy projects on behalf of clients seeking redress through legislative action; similar to both transactional and community organizing clinics.

UNBUNDLED LAW CLINICS: Students engage in specific lawyering activities (“limited representation”) on behalf of otherwise unrepresented clients; activities often include client counseling on particular issues or advocacy for a limited time period, e.g., one court appearance, or in connection with one particular activity, e.g., negotiation or mediation.

BY RELATIONSHIP TO LAW SCHOOL: IN-HOUSE OR EXTERNAL

IN-HOUSE CLINICS function exclusively as clinical practices within a law school; faculty members supervise clinic students.

EXTERNAL OR “FIELD” CLINICS function as law practices outside the law school, with supervision provided by attorneys in the field and/or clinical faculty members.

BY FUNDING SOURCES: HARD MONEY, SOFT MONEY, AND SUPPORT FROM GOVERNMENT

CLINICS FUNDED WITH HARD MONEY operate with funding from the law school’s internal budget, based on sources of support for the entire institution, including alumni giving and state support. This model is typically viewed as institutionally secure, but allows for administrative discretion.

CLINICS FUNDED WITH SOFT MONEY operate with funds from temporary sources, including grants, foundations and time-limited governmental programs. This model is seen as less stable than a program funded with hard money, but also provides a measure of independence from decanal control.

CLINICS FUNDED WITH DIRECT GOVERNMENT SUPPORT operate with funds from state or local government to provide a designated legal service.

Clinic Design

Even among clinics of a similar type, differences in design may create wide differences in teaching and service provision. This section offers a non-exclusive list of some frequently-encountered design choices.

CLIENTS SERVED, SERVICES PROVIDED, AND STUDENT ROLES

Determinations about the type of legal services to be provided and client eligibility usually have significant impact on a clinic's curriculum and other strategic decisions. Another significant initial design issue relates to the nature of the role(s) to be assumed by students, e.g., to what degree will students be responsible for cases and how much independent judgment will they be permitted to exercise?

SUPERVISION MODELS

Supervisory relationships vary from a traditional lawyer-law clerk model, in which the supervisor consistently provides direction and assigns tasks to students, to a non-directive relationship. In non-directive models, the clinical teacher expects students to take the lead in their casework, and the supervisor will intervene only if the applicable student practice order or professional rules require.

REFLECTIVE PRACTICE

JOURNALS AND REFLECTIVE WRITING ASSIGNMENTS: Many law clinics and externships require students to maintain reflective journals or to submit directed reflective writing assignments in which they discuss their experiences, observations and lessons learned.

INDIVIDUAL MEETINGS WITH SUPERVISORS: Law clinics and externships often incorporate individual meetings with students and supervisors and/or faculty, scheduled at designated points, e.g., beginning of semester, mid-semester, and end-of-semester. Meetings that occur early in the semester may focus on establishing goals and expectations, mid-semester meetings often include student self-assessment and feedback and suggestions for improvement from supervisors, while end-of-semester meetings usually incorporate further self-reflection by students and supervisor feedback, as well as discussions about lessons learned and planning for further development. Students also may be expected to provide feedback and critical assessment to supervisors.

CLASSROOM COMPONENT

Pursuant to revised ABA Accreditation Standard 304(b), a “law clinic” must include “a classroom instructional component.” The seminar curriculum will often cover a number of different areas including doctrine relevant to the clinic’s practice areas, skills training, casework management, ethical issues, or any combination of these and other topics. The classroom may also serve as a forum for collaborative reflection in both law clinic and externship courses.

SKILLS TRAINING

Law schools differ in how they prepare students for the basic tasks and activities to be performed in law clinics and externships. Some schools offer pre-requisite courses, e.g., interviewing, counseling & negotiation, document drafting, trial practice, while others incorporate the skills training into the clinic or externship seminar. Almost all clinical programs provide multiple opportunities for students to engage in simulations of the lawyering activities they are expected to perform, in advance of the live client experience.

CASE HANDLING AND WORKLOADS

Clinics and externships provide numerous opportunities for students to learn about the management of caseloads and the details of practice. Students are usually expected to rely on a variety of systems, including networks, computerized databases, and collaborative calendars, and to face the challenges presented by deadlines and multiple obligations to clients.

COLLABORATIVE PRACTICE

Law clinics vary in the extent to which they encourage team and group practice. Many include collaborative casework in which students are assigned to teams of two or more, thus providing exposure to interdependence and collaboration. This is in contrast to the emphasis on individual competition in non-clinical law school settings.

RESEARCH, ANALYSIS, AND WRITING PROJECTS

Many law clinics specifically require completion of one or more written projects by students in conjunction with their casework. Research, analysis and written work may be expected on a case-specific basis but may also include practice-related issues not specifically related to individual cases.

ACADEMIC AND CURRICULAR CONCERNS

Common “academic” design issues include: determining pre-requisites and/or co-requisites; the number of credit hours to be allotted to the seminar and fieldwork components; the relationship between the number of hours of fieldwork performed and number of credits; the procedures by which students enroll; and assignment of grades.

Other curricular concerns relate more specifically to faculty who teach clinical courses. These include: status, promotional standards and faculty governance rights of clinical teachers; requirements and/or ability to teach non-clinical courses; and the calculation of “teaching hours” credited for supervision of casework.

SAMPLE READINGS

This bibliography identifies a number of articles that address issues relevant to clinical legal education. Another resource that may be helpful is the Online Annotated Bibliography of Clinical Legal Education prepared by J.P. Ogilvy & Karen Czapanskiy, available at <http://faculty.cua.edu/ogilvy/Biblio05clr.htm>.

Please keep in mind these are just some sample resources and not intended to be exhaustive. There are many fine articles published each year that offer important insights into experiential teaching and learning. Please let us know if you think there are other articles or resources that should be contained in the next version of this bibliography.

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WEB-BASED RESOURCES

Websites and Blogs

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<http://www.aals.org/>

American Association of Law Schools (AALS)/Clinical Legal Education Section:

https://memberaccess.aals.org/eWeb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=2546c8e7-1cda-46eb-b9f3-174fc509169b

American Bar Association Section of Legal Education and Admission to the Bar:

<http://www.abanet.org/legaled/home.html>

Best Practices For Legal Education

<http://bestpracticeslegaled.albanylawblogs.org/>

Center for the Study of Applied Legal Education (CSALE)

<http://www.csale.org/index.html>

Clinical Education: An Annotated Bibliography, Revised Edition: (Revised 2005), J. P. Ogilvy with Karen Czapanskiy:

<http://faculty.cua.edu/ogilvy/Biblio05clr.htm>

Clinical Law Prof Blog:

http://lawprofessors.typepad.com/clinic_prof/

Clinical Law Review:

<http://www.law.nyu.edu/journals/clinicallawreview>

Clinical Legal Education Association (CLEA):

<http://www.cleaweb.org>

Global Alliance for Justice Education (GAJE):

<http://www.gaje.org/>

International Network on Therapeutic Jurisprudence:

<http://www.therapeuticjurisprudence.org/>

Institute for Law School Teaching:

<http://www.law.gonzaga.edu/About-Gonzaga-Law/Institute-for-Law-School-Teaching/default.asp>

The Law and Society Association:

<http://www.lawandsociety.org/>

LexternWeb:

<http://www.law.cua.edu/lexternWeb/index.htm>

National Legal Aid & Defender Association:

<http://www.nlada.org/>

National Professionalism Web Site:

<http://professionalism.law.sc.edu/>

Society of American Law Teachers (SALT):

<http://www.saltlaw.org/>

Listservs

LAWCLINIC – go to <http://lists.washlaw.edu/mailman/listinfo/lawclinic/>

LEXTERN – to subscribe, email listserv@lists.cua.edu with the following request in the body of the message: subscribe lexttern

GAJE – email majordomo@list.vanderbilt.edu with the following command in the body of your email message: subscribe gaje

Humanizing Legal Education – to subscribe, send an empty email to: legaled-subscribe@mail.law.fsu.edu

LAWPROF – to subscribe, email listproc@chicagokent.kentlaw.edu with the following request in the body of the message: subscribe LAWPROF

LEGALETHICS – to subscribe, email listserv@lawlib.wuacc.edu with the following request in the body of the message: subscribe legeathics-l [your first name] [your last name] lawprofessor

PROF-ISM – a professionalism listserv, to subscribe email listserv@vm.sc.edu with the following request in the body of the message: SUB PROF-ISM [your first name] [your last name]

SAMPLE EXERCISES

Building Blocks Exercise

From Paul Bergman, Avrom Sherr & Roger Burrige, *Learning from Experience: Nonlegally-Specific Role Plays*, 37 J. Legal Ed. 535 (1987)

The premise of this article is that simulation exercises placed outside an overtly legal context, in settings already familiar, are valuable for law students. Everyday social behavior sometimes constitutes desirable professional behavior as well. The article describes several usual exercises. One in particular has become a “staple” of many clinical programs: the Blocks Exercise.

The Blocks Exercise illustrates the strengths and weaknesses of oral communication, particular in a question-answer format. It has immediate relation to interviewing and direct examination, in particular. As the authors see it, “[r]esearch indicated that we are visual learners; most of what we know is a product of our having seen it. By contrast, we are quite inefficient when it comes to oral transmission of data. Transforming actual events into verbal description is something we do repeatedly in everyday life, but usually without any sense of how we have altered those events in the listener’s mind.” Obviously, oral communication is a lawyer’s principal tool as well. Distortion is an ever-present worry. This exercise never fails to make vivid points, in about ½ hour, depending on the length of the discussion.

Here is one suggested version of the exercise:

Stage 1: Player 1 builds; player 2 copies visually.

Discussion: Note the sight; speed; accuracy. (For contrast.)

Stage 2: Player 3 builds; player 4 is behind a screen. Player 3 describes her structure; player 4 is mute, listens and tries to replicate the structure.

Discussion: Note the additional time, the frustration and the lessened accuracy. Identify how it “went wrong” – usually, player 3 is accurate in the description, but the ambiguities of language become apparent.

Stage 3: Without warning, ask player 2 to return and build again – from memory – player 1’s structure.

Discussion: the added challenge of memory loss, especially without a warning that one will be called upon later to recall an “event”.

Stage 4: Player 5 builds; player 6 is behind a screen. Player 6 may interview player 5 to find out how to build the structure.

Discussion: Usually the time is longer but the accuracy increases. Lots of time spent setting up expectations and vocabulary.

Stage 5: Player 7 builds; player 8 is behind a screen and is mute. Player 9 sits with player 7, and conducts a direct exam of him in order to enable player 8 to replicate the structure.

Discussion: player 8 is like a juror, trying to glean understanding from a conversation in which she cannot participate – like stage 2 again.

Introduction to Representing Clients (Ice Breaker)

I first participated in this exercise in 1992 at a clinic conference. Jean Koh Peters and Paul Tremblay demonstrated it in a small group. I do not know where they got it, or if they invented it, but I have been using it in my clinic and in my simulation interviewing and counseling course ever since. It has evolved over time from the original exercise.

- Carrie Kaas (2005)

Divide the class into pairs.

Ask each pair to interview each other for approximately three minutes each.

I let them decide who goes first

I give very little guidance, and refuse to answer too many questions.

I do not tell them whether or not to take notes.

I do not tell them what is going to happen next.

My students usually assume that this is the first role play interviewing exercise and focus heavily on interview technique, hoping to impress me with their interrogation skills. I do not contradict them.

Call everyone back together after six minutes.

I now ask everyone to sit in a big circle—or the closest approximation that I can manage within the constraints of the room layout.

I want everyone to be able to make eye contact with everyone else.

Tell everyone that they will be introducing the person they interviewed to the rest of the class, and telling the class about the person. Depending on the class size and time available, I usually limit the presentation to one minute or less.

Note for future comment how people react—especially if any pairs whisper or pass notes to each other.

Begin the presentations. Take notes and notice the following:

Does anyone correct the presenter?

Does any presenter ask for clarification from the person he or she is introducing?

Who uses notes?

How often do the pairs' presentations mirror each other in topic? (Two favorite colors; two pets discussions; etc.)

How often is the presentation nothing more than a resume?

What is the body language of the person being presented?

Who does the rest of the class look at—the presenter or the person being presented?

After the full rounds of presentations, introduce yourself.

Begin the discussion with a deliberate feint: Ask the people who interviewed first generic interviewing type questions—such as Did you use a closed or open question?

Slowly lead the conversation through questions and answers—moving from a focus on interviewer's conduct to the experience of being a re-presenter by another, with little or no control over, or preparation for, the experience.

Who controls the flow of information with what types of questions?

Because the person did not know what was to be done with the information, did he or she share more or less personal information?

Did any presenter self-censor what he or she said to the group about a classmate?

Did any person instruct the classmate not to reveal something (notes or whispers)?

Who did they look at and why—presenter or person being introduced?

How did it feel to be introduced to your classmates and professor with no chance to decide what was said?

Draw their attention to the fact that you got to tell the class whatever you wanted to about yourself, but that you took that privilege away from the class.

Ask how the presentations would have differed if you had told the class what was to happen? How many would have told their presenter what they wanted said about themselves?

Conclude with getting the observations about how much this exercise is like the experience of being a client: being asked lots of questions, with no idea what will happen with the information, and rendered mute as you listen to someone else making your “first impression” for you.

Note: I have begun using a variation of this exercise at the end of the semester as well. I tell the class that each person will present the class with an insight of something learned from the class (or some other task) and then I tell when they are going to “present” through an agent/lawyer. I pair them up and after a few minutes of talking, we go around the room. I remind them of the initial exercise and get them to tell me what was different. Most students tell me that they asked the partner, “What would you like me to tell the class on your behalf?” and admit that this approach never occurred to them in the first class.

Empathy for Clients and “Clients Who Lie”

Exercise by Bridgette Carr

Articles to look at with exercise:

- 1) Hegland, Kenney, "Lies, Mistakes, and Miscalculations," Chapter 4 (pp. 46-58), Trial and Clinical Skills in a Nutshell (4th ed.) (no doubt, there's a newer version) and
- 2) Preston, Julia, "Guatemala Laureate Defends 'My Truth,' The New York Times, Jan 21, 1999.

With crayons or markers, ask students to draw a picture illustrating the following scenario:

“There was a shooting. The next door neighbor heard the shot and looked out the window just in time to see the culprit run past.”

Tell the students to not spend more than 10 minutes on this, to not worry about whether their drawing is “good,” and please do not discuss the assignment with classmates.

After the drawing is complete, start off looking at the students’ drawings, which illustrates the “filler effect” (how we will in gaps in stories based on our own culture and experiences), and discussing how the students’ backgrounds influenced their pictures. It's fun (and fun is good) and enlightening.

We then discuss what they learned from Hegland's article, which includes a brief explanation of false memories and other psychological phenomena that influence our recall.

Then, we get to lies, and the article on Rigoberta Menchu makes for a rich discussion of what is and isn't a lie, the morality of lying, and casting judgment on stretchers of the truth.

I have not used (but come to think of it, probably should use) a brief excerpt from the

1996 (or so) video, "Well Founded Fear," in which an enlightened asylum officer says that lies are not a moral issue, as asylum seekers may have all kinds of valid reasons for lying, and that it's not her job to judge the person, but to try to figure out what really happened.

Later on, we have a class session called "cross cultural lawyering and parallel universe thinking" in which we have more readings about cultural reasons for miscommunications and we take a couple examples from the students' cases (a moment in an interview or some action by the client that troubled or confused them) and brainstorm possible reasons for the client's statements or actions (re. learning to lawyer based on facts and not assumptions, and not jumping to conclusions).

CLEA - 2015 New Clinicians Conference

Program Schedule

8:00-8:30:	Breakfast
8:30-9:00:	Welcome and Introductions
9:00-9:30:	Presentation: Clinic Seminar Joy Radice, Associate Professor of Law, University of Tennessee at Knoxville College of Law
9:30-9:45:	Break
9:45-10:45:	Guided Small Groups (#1)
10:45-11:00:	Break
11:00-12:00:	Special Topics – Break Out Sessions (1) Scholarship (2) Faculty Governance (3) Effective Feedback
12:00-12:50:	Luncheon and Welcome – CLEA Co-Presidents Janet Thompson Jackson, Professor of Law, Washburn School of Law, and Mary Lynch, Professor of Law, Albany Law School
12:50-1:00:	Break
1:00-1:30:	Presentation: Supervision Jayesh Rathod, Associate Professor of Law, Washington College of Law, American University, and Tirien Steinbach, Executive Director and Clinical Instructor, East Bay Community Law Center
1:30-2:30:	Guided Small Groups (#2)
2:30-2:45:	Break (Mid-Afternoon Refreshments)
2:45-3:15:	Presentation: Clinical Rounds Elliott Milstein, Professor of Law, Washington College of Law, American University
3:15-4:00:	Guided Small Groups (#3)
4:00-4:45:	Presentation: State of the Clinical Academy Robert Kuehn, Professor of Law and Associate Dean for Clinical Education, Washington University School of Law, and David Santacroce, Clinical Professor of Law and Associate Dean for Experiential Education, University of Michigan Law School