



UNIVERSITY OF
SOUTH CAROLINA

School of Law

Southern Clinical Conference and Bellow Scholars Workshop
October 19-20, 2018

Overcoming Division: The Role of Clinical Legal Education

Program Schedule*

Thursday, October 18, 2018

2:30 p.m. - 5:30 p.m.

Registration
School of Law Lobby

3:00 p.m. - 5:30 p.m.

New Clinicians Workshops
Room 131

6:00 p.m. - 7:30 p.m.

Informal Gathering
COLA's on Assembly Street¹

Friday, October 19, 2018

7:30 a.m. - 8:45 a.m.

Registration and Breakfast
Outside Law School Cafe

8:45 a.m. - 9:00 a.m.

Welcome
Dean Robert Wilcox
Emily Suski
Karen Williams Courtroom

* *This conference is made possible in part through the support of the AALS Section on Clinical Legal Education; CLEA, the Clinical Legal Education Association (cleaweb.org); and the University of South Carolina School of Law.*

¹ *COLA's is a five block walk from the Law School. Meter parking is generally readily available near the restaurant if you prefer to drive.*

9:00 a.m. - 10:30 a.m.

Plenary I
Karen Williams Courtroom

Divides, Commonalities, and Justice Work

Scott Cummings, UCLA School of Law
Samuel Brooke, Southern Poverty Law Center
Karla McKanders, Vanderbilt Law School

The opening plenary session will explore the many ways that clinical and social justice lawyering is evolving to address the powerful cultural, political, and other societal schisms presently plaguing our country. Among other topics, the interactive session will:

- Consider the role of clinics in promoting cross-disciplinary alliances in social justice work. Detailing examples of work to build community-labor and labor-environmental alliances in Southern California, the presentation will reflect on the pedagogical approaches clinical educators can use to teach students about the heightened importance and challenges of alliance-building in the current political context, the special role of lawyers in brokering common ground, and the skills necessary to bridge differences across progressive movements.
- Discuss pedagogies clinical educators may employ to facilitate students' critical thinking and reflection on divisive issues and how they can develop their voices as lawyers in times of deep societal rift. The experiences of the Vanderbilt Immigration Practice Clinic will provide the framework for reflecting on pedagogical tools that engage students in assessing how their socialization impacts the development of recursive loops in which their assumptions impact the decisions they make as lawyers.
- Offer perspectives on the ways in which community-based, social justice lawyering outside of the law school clinical setting has been affected by and adjusted to heightened political tensions at the national, regional, and local levels. How have more intensely charged societal schisms changed the work of the Southern Poverty Law Center and advocates like it? What strategies and approaches are the SPLC and entities like it employing to forge collaboration and overcome division?

10:30 a.m. - 10:45 a.m.

Break

10:45 a.m. - 12:00 p.m.

Concurrent Sessions I
See Room Assignments Below

Excuse Me: Teaching Interrupting Bias as a Lawyering Skill

Latonia Haney Keith, Concordia University School of Law
Anne D. Gordon, Duke Law School
Kathryn Ramsey, University of Memphis, Cecil B. Humphreys School of Law

Room 130

Experiential education teachers are experts at teaching students how to address the difficult parts of lawyering, from emotional client interviews to stressful trial preparation. Many are also incorporating

classes on how to recognize implicit bias, in order to encourage our students to recognize bias both within the legal profession and within themselves. Missing from most experiential education syllabi, however, is an explicit discussion of how to deal with bias when confronted in the workplace, including sexual harassment from colleagues, courts, and clients – one of the powerful divisions in American life faced by our profession. While this panel’s presenters recognize the need to stop biased behavior at the source (i.e. by reforming the perpetrators), we also feel strongly that students need the skills to address it when it happens. Either as a target of bias or as a bystander, students must have the tools to interrupt bias, create safe spaces, and advocate for themselves and others, all while acting professionally and preserving workplace relationships. These skills are especially essential for women, racial minorities, and other underrepresented groups, who may have already confronted bias either in their clinics or externship placements.

Walls Will Fall: Harnessing the Collective Capacity of Clinics, Pro Bono, Alumni, Courts & Our Rural Communities

*Wendy Bach, University of Tennessee College of Law
Eric Amarante, University of Tennessee College of Law
Joy Radice, University of Tennessee College of Law*

Room 131

Natural divisions exist in law schools even within robust clinical programs. In fact, they seem necessary to the success of the overall program. Individual clinics operate independently from each other; rarely do students work together across clinics. Pro bono projects and alternative spring break projects, which offer quasi-clinic experiences, engage students in important access to justice work outside clinic. Clinic alums attend pro bono projects organized by bar associations and legal aid. If each of these programs and groups joined together, even just one time during a semester, the capacity of a clinical program to assist underserved communities increases dramatically. This workshop aims to engage participants in a backward design approach to develop a model for a mobile legal clinic once a semester that breaks down these divisions. In University of Tennessee’s Legal Clinic, we have been experimenting with a model that we call the UT Rural Mobile Legal Clinic. It has identified rural areas that have virtually no affordable legal services. Some of these communities have few, if any, local attorneys. To respond to this access to justice gap, the UT Rural Mobile Legal Clinic has harnessed the resources of four individual clinics, pro bono students, clinic alums, and local judges to bring a Cost Waiver and Expungement Court to residents of rural areas in East Tennessee. We hold Saturday morning court at civic organizations or local churches to help people remove the burdens of old court costs which have resulted in obstacles to securing work and housing and the loss of a driver’s licenses. At the mobile clinic, the students immerse themselves in key lawyering skills: They conduct intake, interview and counsel clients, prepare motions and orders, draft expungement petitions, prep their clients to testify and make oral arguments before the judges and opposing counsel. They do this several times over the course of 4 hours evaluating their own performances, truly honing in on these key lawyering skills. And after the clinic, we reflect with the students to talk about a range of system-wide issues that the clinic uncovers from unequal results because of judicial discretion to the underlying local cost and fees system that creates the need for these clinics. This rural mobile clinic model is not confined to doing cost waiver and expungement work. In fact, we are exploring how to use the practice areas of other clinics like our Wills Clinic and Community Economic Development Clinic to provide a range of legal services on these Saturday mornings. The UT Mobile Legal Clinic Model breaks down the divides between individual clinical courses, between clinic and pro bono, and between clinic and alumni pro bono work while responding to a serious access to justice need – brining necessary legal services to sorely underserved rural communities. At the same time, the mobile legal clinic model zeros in on essential lawyering skills and creates a unique community experience for the clinic, bringing together students and faculty from different clinics, alumni in the community, and pro bono students which includes first-year students. This workshop will use a

backward design approach to engage participants in thinking about how to develop their own version of a mobile legal clinic that breaks down clinic divides. All three presenters are uniquely suited to lead this workshop because they have developed and led Mobile Legal Clinics. See <https://law.utk.edu/2018/03/28/legal-clinic-offer-expungement-event-madisonville/>. Each professor runs a different clinic or pro bono program connected to the mobile clinic. Wendy Bach directs the Advocacy Clinic. Eric Amarante directs the Community Economic Development Clinic. And Joy Radice directs the Expungement Clinic, is the faculty advisor of the Expungement Pro Bono Project, and chairs the faculty Pro Bono and Public Interest Committee at the law school.

Teaching Narrative in Clinic

Margaret E. Johnson, University of Baltimore School of Law

Room 133

This session addresses bridging the between space of theory and practice, the generational divide between professors and students, as well as fostering self-assessment. Specifically, this presentation focuses on teaching narrative theory and story in an engaging and approachable way to teach and enhance students' lawyering. Margaret Johnson (and Carolyn Grose) have recently published a clinical text on this subject, *Lawyers, Clients & Narrative: A Framework for Law Students and Practitioners*. This session will cover the basics of narrative theory as well as millennial friendly exercises and self-assessment tools for applying narrative theory to lawyering.

An Empirical Study of the Role of Clinical Legal Education in the Bar Prep - Practice Ready Debate

Robert Kuehn, Washington University School of Law
David Moss, Wayne State University Law School

Room 288

What role should clinical courses play in a law student's course of study? The ABA requires that law schools ensure their graduates are adequately prepared for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession. Beyond the required first-year curriculum and minimal upper-level ABA requirements in professional responsibility and experiential coursework, most law schools give students enormous freedom to choose the types of courses that will prepare them for bar passage and effective practice as a lawyer. Yet schools and their faculties often have very conflicting views on what a student's upper-level coursework should include. Reflecting the divide between theory and practice, students are often told to load up on doctrinal courses, believing that graduates can obtain lawyering skills in their first post-J.D. job. Others argue that too many graduates are ill prepared for practice and need to learn through clinical courses how to apply the law in service of clients. The long-standing theory-practice debate has been further complicated of late by declines in bar passage and increased pressure on schools to focus on the bar exam and its testing of legal knowledge. Given the freedom students have to structure their legal education, what types of learning experiences are students choosing after the first year of law school? And what impact are those choices having on their bar passage? To date, there has been surprising little empirical evidence of any relationship between law school coursework, in particular experiential and bar subject courses, and bar exam outcomes. This session will provide this evidence by presenting, for the first time, the final results of a large-scale longitudinal study of the relationship between law school course selection and bar passage for 2006-2015 J.D. graduates of two law schools. The panelists will explain the limited prior studies on coursework and bar exam passage, present their new study's findings regarding experiential and bar subject coursework, and discuss its implications for addressing the debate over the role of clinical courses in the curriculum

and how those courses may impact both the acquisition of professional skills and bar passage. The session will assist audience members, and their schools, in making informed decisions about how to best prepare their students for the dual goals of bar passage and practice readiness.

Beginning with Aspirations

*Elizabeth M. Donovan, Ave Maria School of Law
Lauren R. Aronson, Louisiana State University Law*

Room 289

Law school immigration courses and clinics stand at the intersection of the divisive topic of “immigration” in American life. In this session, we will explore beginning immigration courses and clinics with a document such as the Universal Declaration of Human Rights or the Convention Relating to the Status of Refugees, or an exercise which asks students to explore their personal core values and how law can reflect those personal core values, and then holding up law, policy, and practice against the values embodied in existing documents or student-generated documents. The practical and logistical constraints of the legal framework for United States immigration law, policy, and practice, and global responses to migration, are then addressed through a lens of goals and possibility rather than through a lens of obstacles and impossibility. These core values are returned to throughout the semester as students consider their future roles as lawyers or legislators or policy makers or diplomats or simply engaged citizens.

While this session uses immigration courses and clinics as a discussion point, the ideas are transferable to other courses and clinics, and the goals of appreciating a divide, crafting strategies to overcome the divide, and committing to a role in seeking just approaches.

12:00 -1:30 p.m.

Lunch Program
Law School Event Space
(adjacent to the Lobby)

Keynote Speaker

Jaime Harrison,

*Associate Chairman and Senior Counselor of the Democratic National Committee
Co-author of Climbing the Hill: How to Build a Career in Politics and Make a Difference*

1:30 p.m. -2:45 p.m.

Bellow Workshop
Room 131

A Crash Course in Empirical Methodologies for Clinical Law Professors

Anna Carpenter, University of Tulsa College of Law
Elizabeth Chambliss, University of South Carolina School of Law
David Finger, Loyola New Orleans College of Law
Alyx Mark, North Central College

The goal of this session is to give clinicians new to empirical research an overview of qualitative and quantitative methodologies. The session will discuss how projects can use multiple methodologies and how to collaborate with social scientists. Using examples from current Bellow Scholar projects, the session will illustrate how clinicians are particularly well-suited to this work.

Concurrent Sessions II
See Room Assignments Below

MeToo - Coming Soon to a Clinic Near You

Russell Gabriel, University of Georgia School of Law

Room 133

The MeToo movement has brought up a lot of important themes – some unifying, some divisive, often both. Some MeToo themes, and closely related themes, are already a part of clinic seminar and reflection discussions. These include: gender equality, the cumulative and traumatic impact of a thousand cuts, cultural patterns of power distribution, in-group dominance, the intersection of race and gender advocacy, the amplification of unheard voices, the use of narrative, third wave and the evolution of feminism, the impact of social media, and the difference between cultural judgment and legal judgment in the context of sexual assault and sexual harassment (to name a few). We would like to explore some of the most salient themes of the MeToo movement and how using this moment in a clinic setting might further a robust appreciation of MeToo's intersection with the legal profession and possible impact on conceptions of legal advocacy, client relations, workplace behavior, and professional identity. We also want to explore the potential challenges of using MeToo in a clinic setting – is there a down side? Do some aspects of MeToo work better in certain types of clinics than others? MeToo is both inclusive and exclusive; both restorative and punitive. Some might suggest that for MeToo, overcoming division is simply beyond its mission. We appreciate that possibility, but believe that, ultimately, the messages and themes of MeToo create a platform for addressing justice and equality in the legal system and that MeToo can be a force for overcoming division even if it is not always viewed that way. For this reason, designing clinical curricula to engage with the MeToo Movement makes sense. We hope to use the following video [Caution – graphic description of prison sexual assault] (https://www.nytimes.com/video/opinion/10000005899858/the-rape-jokes-we-still-laugh-at.html?emc=edit_th_180710&nl=todaysheadlines&nid=444449860710) as a starting point for this conversation. The video focuses on the societal acceptance, or at least absence of condemnation, of male on male prison rape and sexual slavery. The video strikes us as a good starting point for discussion (see below) because while closely related to MeToo it is not part of the movement, per se, yet raises similar issues and offers the opportunity to place the MeToo frame around a slightly different picture. The fact that this picture is not as quickly included in MeToo offers the opportunity to consider both insider and outsider perspectives on MeToo with our students. One of us (Joanna Woolman) directs a family defense clinic, using an interdisciplinary model with social workers and law students to provide representation to parents (primarily mothers) whose children have been removed due to abuse or neglect.

The other (Russell Gabriel) directs a criminal defense externship which places students in a local public defender office doing criminal defense work across the range of criminal charges, including domestic violence and sexual assault cases. Both practices are community based practices where issues of sexual assault, harassment, inequality, power dynamics, culturally inherited patterns of decision-making and advocacy, and traditions of silencing dissent afford broad intersections with MeToo, as is true of many clinics. There is some contrast between the lawyering focus of the clinic and the externship the presenters direct. Joanna's holistic approach to representation in the area of family defense where children are or may be removed from a home positions her clinic to take a supportive role toward victims (children, and occasionally adults as well) while at the same time having a representational relationship with possible perpetrators. Russell's work in public criminal defense aligns his students with possible perpetrators in the criminal law system which tends to presume that the interests of defendants and victims are not aligned. MeToo does not intersect these legal practices in the same way, or at the same place, nor will it with other practices that may be represented by the participants. We hope and expect that these differences will add richness and bring out multiple perspectives to the discussion.

SLAPPs - Back with a Vengeance

Penelope Canan, University of Central Florida

Lisa Jordan, Tulane Law School

Rachel Deming, Barry University Dwayne O. Andreas School of Law

Room 130

There has been a resurgence of Strategic Lawsuits Against Public Participation (SLAPPs) in the past couple of years, particularly against environmental activists. George Pring and Penelope Canan identified the phenomenon of SLAPPs in the mid 1980's. They found that some businesses and governments were using the minimal pleading requirements in civil cases to assert claims such as tortious business interference against groups and individuals who contacted governmental officials to oppose projects that needed governmental approvals. They found that this had a chilling effect by discouraging a broader range of individuals and non-profits from petitioning governmental officials about issues of public concern. In response, many state legislatures enacted so-called anti-SLAPP statutes. These statutes often provided for expedited consideration of claims that a lawsuit had been filed primarily to prevent or to chill public participation. Some statutes also provided for penalties against SLAPP filers. However, legislative gaps have been exploited by business interests seeking to quell opposition to their business interests. This session would focus on 3 recent cases, 2 brought against Greenpeace in federal courts and 1 brought in Florida against an individual, Maggy Hurchalla. The cases against Greenpeace allege federal causes of action, exploiting a gap in federal law because Congress has failed to pass federal anti-SLAPP legislation. In the case of Maggy Hurchalla, a jury recently awarded \$4.4 million to the plaintiff-developers for tortious interference based Ms. Hurchalla's communications with governmental officials expressing her opposition to plaintiffs' actions and urging those officials to take actions based on plaintiffs' violations of the conditions for which governmental approvals were given. These kinds of lawsuits create a division between concerned citizens and their governmental officials, chilling active and informed participation in government. We will discuss these cases, the original research by Pring and Canan and the characteristics of effective anti-SLAPP legislation, and then engage everyone in a discussion about possible actions to take going forward.

Strengthening Relationships between Legal Clinics and Legal Aid Agencies

*Margaret Middleton, Georgia State University College of Law
James E. Mitchell, Georgia State University College of Law*

Room 288

Law School law clinics and legal aid organizations commonly partner to serve a shared client base and practice area. In many ways they are natural allies, sharing social justice missions, law student interns and staff. However, the goals, interests and priorities of clinics and legal aid agencies are also often in tension. For example, clinics often rely on legal aid agencies to find, screen and triage clients and their legal issues, to refer cases that match the pedagogical goals of the clinic, and to accept the calls of people who have been turned away from a clinic's help, but law schools rarely compensate legal aid agencies for these services. In some communities, legal aid agencies and law school clinics may compete for financial support from their local legal community. The presenters of this workshop ask how understanding the needs of legal aid and law school clinics can help to overcome division and strengthen these important institutional relationships. The presenters come from both sides of the clinic-legal aid partnership. Margaret Middleton co-founded Connecticut Veterans Legal Center (CVLC), a small legal aid agency which serves the civil legal needs of low-income veterans in Connecticut. CVLC has maintained an informal working relationship with the Yale Law School Veterans Legal Services Clinic for eight years. James Mitchell teaches in the Health Law Partnership Legal Services Clinic (HeLP Clinic) at Georgia State University - College of Law, a formal partnership founded between the law school, Atlanta Legal Aid Society and Children's Healthcare of Atlanta. Margaret recently joined the faculty of the HeLP clinic.

Getting Over Ourselves: Identifying Barriers to Learning

*Lauren Onkeles-Klein, UDC David A Clarke School of Law
Robert Dinerstein, American University, Washington College of Law*

Room 289

We all entered law school with a wide range of skills and experiences - many that were the building blocks for good lawyering, and a few that unintentionally formed a wall. As professors, we try to strengthen those skills that support students' transition into strong, dedicated, and thoughtful, attorneys. More difficult is the task of addressing those internal processes that can calcify into educational, professional, and social barriers. Legal professionals require a reliable internal compass to determine appropriate responses to external expectations, internal reactions, and work-related situations. Integrating an intentional approach to building cognitive skills through obstruction-identification and structured self-evaluation is one way to strengthen students' internal processes. While self-evaluation can strengthen and build cognitive skills, identifying how and where to create opportunities for self-evaluation into a classroom dynamic is difficult. Building instruction around how to receive feedback while accurately assessing oneself provides students with powerful tools to support professional development and build capacity for alliance development within diverse constituencies.

2:45 -3:00

Break

Empirical Research, Clinical Advocacy, and Publishing: How It All Fits Together

Michael Kagan, UNLV William S. Boyd School of Law
Fatma Marouf, Texas A&M University School of Law
Wendy Bach, University of Tennessee College of Law
Colleen Shanahan, Columbia Law School

This session will feature former Bellow Scholars discussing writing articles, books, and shorter based on empirical research, tips for publishing, and how to manage the balance (and ideally create efficiencies) between clinic advocacy and empirical research.

Concurrent Sessions III
See Room Assignments Below

Administering Implicit Bias in the Clinical and Externship Setting-Am I the Problem?

Colleen T. Scarola, University of Denver Sturm College of Law
Christine E. Cerniglia, Stetson University College of Law
Kinda L. Abdus-Saboor, Georgia State University College of Law
Carmia N. Caesar, Howard University School of Law

Room 130

Research shows that regardless of the social groups we belong to, we perceive and treat people differently based on their social groups (race/ethnicity, gender, sexual orientation, ability, religion, politics, etc.). Dialogue around implicit bias matters because everyone possesses these unconscious associations, and it affects our decisions, behaviors, and interactions with others. As faculty members and lawyers, we examine implicit bias on multiple levels. However, do we ever consider whether we are the problem? The presentation will focus on implicit bias in the clinical and externship settings. In particular, how we can ensure that our own implicit bias is not influencing guidance conversations with students or our supervision of students in clinics and fieldwork placements. We will examine different methods for providing guidance to students in the externship setting including the “matching function”. We will also scrutinize how we provide supervision to students in these various settings and whether we have a propensity to be more responsive to certain students (i.e. white male students vs. diverse female students). This presentation may raise more questions than provide answers. Nonetheless, it is an important conversation to have and challenges us to examine whether our supervision and guidance of students sharpens or overcomes the divides in our society.

Borrowing from Participatory Design to Enhance Collaborative Lawyering

*Daria Fischer Page, University of Iowa College of Law
Amber Baylor, Texas A & M University School of Law
Nicholas Benson, University of Iowa Office of the Provost
Travis Kraus, University of Iowa Office of the Provost
Dr. Celen Pasalar, North Carolina State University College of Design*

Room 286

This panel explores the potential role for participatory design in legal work for social change. Participatory design is a concept typically associated with the design, architecture and urban planning fields: it describes collaborative community planning, which nurtures collective creativity and focuses on the co-creation of solutions by professionals, communities, and other stakeholders. Building on theories of beneficiary accountability and emergent strategy, the panel will explore principles of participatory design that enhance collaboration skills fundamental to effective lawyering and law reform efforts.

The panelists are professors and university administrators – lawyers, landscape architects, and urban planners -- whose work focuses on problem solving with communities in a variety of substantive areas by harnessing the skills of students and the resources of their institutions. We will investigate different approaches to implementing participatory design through discussion and exploration of the panelists experiences in their fields. Participants will leave with an understanding of participatory design, as well as ideas and concrete tools to incorporate these techniques into clinical teaching and legal practice.

Advocating for Social Change in the South

*Claire Raj, University of South Carolina School of Law
Lisa Martin, University of South Carolina School of Law
Ann Eisenberg, University of South Carolina School of Law*

Room 133

Successful lawyering in the South, particularly systemic advocacy, requires acknowledging the importance of civility, tradition and relationships. It also requires navigating a severe lack of resources, both public and private, available to address social needs. In this session, we will reflect on how advocacy is influenced by culture and region and the challenge of deciding when and how to fight for change.

Experiential Dividing Lines: Interpreting Standards 303 and 304

*Kendall Kerew, Georgia State University College of Law
Susan Kay, Vanderbilt Law School
Joy Radice, University of Tennessee College of Law*

Room 288

This year marks the first graduating class to fulfill the new experiential course requirements outlined in ABA Standards 303 and 304. Nationally, differences have emerged in how law schools are interpreting the requirements of 303 and 304 and in how they are identifying classes that meet these standards. Some schools have set specific criteria and procedures to review each experiential course. Other schools have

simply asked faculty members whether the course satisfies the requirement. Questions have surfaced about whether all field placements need to satisfy 304. As schools begin to make strategic decisions, schools are divided into camps reflecting different guiding philosophies for how to determine the courses that qualify for the 6 experiential credits. For example, some schools may be driven by efficiency and scarce resources, others by academic freedoms, and some by longstanding commitment to clinics, simulations, and externships. Some of these divergent philosophies might undermine the intent of 303 and 304 to offer students experiential opportunities that teach critical lawyering competencies. This interactive workshop will delve into the changes of 303 and 304 and their application, including an update about the recent revisions to Standards 303 and 304 which were approved by the ABA House of Delegates this August. We will also point to the Self-Study Questionnaire as means of anticipating what the Council on Legal Education will be looking at as it assesses compliance for accreditation purposes.

*When Students Choose Clients: Designing Frameworks for
Successful Student-Led Case Selection*

*Courtney Cross, University of Alabama School of Law
Allyson Gold, University of Alabama School of Law*

Room 289

Both presenters direct in-house litigation clinics in which students conduct intake interviews of potential clinic clients and present those intakes during a weekly case selection seminar. Clinic students are involved in determining whether or not the clinic accepts a given client or case. Both directors endeavor to avoid undermining or overruling the students' decisions – but reserve the rarely-invoked right to do so. This panel will explore different methodologies for framing and facilitating student-led case selection. Topics for discussion will include shaping initial conversations around bias, stereotyping, and microaggressions; incorporating student learning goals into case selection; anticipating conflicts that may arise; asking the students to create ground rules for presenting and accepting clients; and intentionally revisiting these policies throughout the semester. Questions that will be explored with the audience will include: What are the benefits of involving students in case selection? What are the challenges? When (if ever) should faculty intervene in these decisions? How can case selection be used to further the mission and goals of a clinic? This presentation resonates with the “Overcoming Divisions” theme of the conference because it examines a seemingly neutral aspect of clinic that can be fraught with different opinions about what makes someone deserving of free legal services.

4:15 -4:30

Break

WIP Session I***Room 133******What MeToo Offers the Fourth Amendment***

Russell Gabriel, University of Georgia School of Law
Discussant: Josh Gupta-Kagan

The general topic area of this paper is the Fourth Amendment and Race. The article addresses why the Court (SCOTUS) should take into account serial repetition of police invasions of privacy and their impact on communities of color in the Court's assessment of the reasonableness of warrantless searches. Currently the Court views police conduct in isolation – it weighs the impact of a single stop and frisk on a single individual against the broad public interest in enforcing the criminal law. The individual almost always loses – the scales seem rigged. MeToo has shed light on the impact of serial harassment and discrimination repeated across generations. The MeToo stories serve, by analogy, to illustrate why serial mistreatment of minorities by police, across time and place, should be taken into account when assessing the impact of singular invasions of privacy and determining reasonableness for purposes of the Fourth Amendment.

A Rule 11 for Prosecutors

Yuri R. Linetsky
Discussant: Joy Radice

The paper will propose enactment of a rule of criminal procedure that would be similar to the current Rule 11 that applies to civil litigation. Such a rule would allow judges to hold prosecutors (and their offices) monetarily accountable for bringing or maintaining frivolous prosecutions.

WIP Session II***Room 131******The Adultification of Immigrant Children***

Laila L. Hlass, Tulane University School of Law
Discussant: Michael Kagan

A “crimmigration crisis,” has been brewing over the last twenty years, marked by the growth of the immigration industrial complex. With it has come the rise of for-profit detention centers, widespread surveillance, increased collusion between local law enforcement and immigration officials, expanded basis for deportation of long-term residents, and pervasive rhetoric attacking the dignity of noncitizen people. As the deportation machinery has mimicked aspects of the carceral state in its severity revolution, immigration enforcement against immigrant children has become progressively punitive, as well.

Public officials regularly exploit tropes of immigrant children as criminals, gang members, and animals, in tandem with the emerging phenomenon referred to as the school-to-deportation pipeline, where immigrant

children are increasingly subject to overzealous enforcement from the immigration regime and over-policing within school, juvenile and criminal justice systems. The school-to-deportation pipeline converges with, diverges from, and is influenced by the school-to-prison pipeline where zero tolerance policies and other institutional characteristics and practices of schools make it more likely children will not remain in schools to graduate, but instead become implicated within the juvenile and criminal justice systems and ultimately incarcerated.

The immigration system has long treated children generally the same as adults, with some modest exceptions made for unaccompanied minors—those children who are under the age of 18 and not accompanied by a parent or legal guardian. Yet in recent years, as immigration laws, policies and practices have become more severe and punitive, even entities like the Office of Refugee and Resettlement (ORR) whose purposes are to educate and care for unaccompanied immigrant children—have been weaponized to harm them, undercutting the modest protections for unaccompanied minors.

A children’s rights and juvenile justice lens is useful to examine how various actors within the immigration regime have collectively perceived and then subsequently treated children as adults, as well as the more recent co-option of the Office of Refugee and Resettlement by the enforcement agency. According to recent juvenile justice jurisprudence the state cannot proceed as if children were not children, yet the immigration regime proceeds exactly so. Ultimately a juvenile and children’s rights lens can be used to surface deep tensions within the immigration regime about how immigrant children should be viewed and treated and to suggest a new way forward

Poverty, Adverse Childhood, & Disability

*Claire Raj, University of South Carolina School of Law
Discussant: Tanay Asim Cooper*

My presentation will explore the intersection of poverty, adverse childhood experiences, and disability. I plan to discuss recent class action litigation that seeks to expand disability rights statutes to cover entire neighborhoods of children based on their zip code.

WIP Session III

Room 288

Teaching Social Media Ethics in Externships

*Colleen Scarola, University of Denver Sturm College of Law
Discussant: Alex Scherr*

I am currently in the research stages but my focus will be on (1) history of social media, (2) importance of teaching law students social media skills, with particular focus on ethics, and (3) designing a social media seminar. I have designed and teach a Social Media Externship seminar and also incorporate social media into my other seminars I teach.

Reefer Reparations: Can Controversy be Converted into Justice?

Jasmin Mize, University of the District of Columbia David A. Clarke School of Law
Discussant: Tiffany Murphy

This article will make the case that communities targeted by the War on Drugs should be allowed specialized access to the cannabis industry as a means of addressing decades of law enforcement priorities that intentionally besieged persons of color and other economically disenfranchised persons. By looking at: (1) the racialized history of marijuana criminalization and its impact on the American criminal justice system; (2) how the impact of the War on Drugs can be equated to a ‘New Jim Crow’ or system of social oppression; and (3) an extended examination of whether “reefer reparations” are a palatable and equitable concept that can truly serve as a vehicle for community justice. The article seeks to address the current paradox in the legal cannabis market – that large numbers of those who were arrested before legalization were persons of color, and the majority of legal cannabis businesses in the post-legalization era are owned and operated by white men and/or corporate interests.

WIP Session IV

Room 130

Menstrual Justice

Margaret E. Johnson, University of Baltimore School of Law
Discussant: Marcia Zug

This Article builds on current menstrual activism and legal reform to create a feminist legal theory framework for menstrual justice. This Article begins by examining how law and society treat menstruation (and hence menstruators), examining five specific categories of treatment: (a) as a barrier to economic, education, and social opportunities; (b) as a tool for micro-aggression, shaming, oppression, and control of menstruators; (c) as a situs for essentializing persons; (d) as a basis for discrimination; and (e) not as a societal benefit and burden. These menstrual injustices are caused by many of the same structural issues addressed by feminist legal theory. Fortunately, menstrual activism has been on the rise attempting to address these issues. Three major feminist legal theories underpin current menstrual activism: substantive equality, anti-subordination, and anti-essentialism. This Article seeks to develop a broad feminist legal theory framework to combat those injustices and achieve menstrual justice.

Periods and Workplace Policy

Marcy Karin, University of the District of Columbia David A. Clarke School of Law
Discussant: Marcia Zug

Menstrual hygiene management is an obstacle to full workplace equality. On average, a woman or girl menstruates once a month, usually beginning around the age of ten to fifteen until she reaches menopause. Menstruation is a natural bodily function, yet it remains stigmatized and unsupported by law/policy. Every day, women are forced to deal with inadequate access to menstrual products, often while already handling difficult circumstances. By nature of the process, menstruation and its corresponding characteristics makes its way into workplaces. A lack of access to adequate menstrual

products prevents full workforce connectedness. It may lead to poor attendance and decreased productivity. Periods cause some workers to stain their clothes and face public ridicule, especially when their period arrives unexpectedly or if regular breaks are not available to women. Menstruation management has been used as a way to intimidate or harass workers. The stigma around menstruation and a lack of awareness of the issue also makes some women susceptible to discrimination and harassment. Girls are taught to keep their menstrual needs a secret, to prevent boys from being uncomfortable. Also, when a period arrives unexpectedly, women may not be able to secure products during work without repercussion. Further, the issue of menstrual management is further complicated for transgender and gender nonconforming workers. As a result, some women have been forced to choose between their health and their economic security. In theory, existing workplace laws address this reality in some way. Unfortunately, existing labor standards and antidiscrimination protections have generally failed in ways I hope to explore in this paper. Since 2015, menstrual equity has been having a policy moment. States and localities across the country have proposed or passed legislation providing women and girls additional access to affordable menstrual products in schools, shelters, and correctional facilities and removing the “tampon tax.” Federal legislation has been introduced as well. These proposals and new laws largely ignore the workplace. This article will review the failure of existing workplace laws to adequately address menstrual equity, explain why this failure prevents employment law from living up to its theoretical protections, and offer a proposal to rectify this mismatch.

WIP Session V

Room 289

Unregulated Charity

*Eric Franklin Amarante, University of Tennessee College of Law
Discussant: Tameka Lester*

The vast majority of charities in the United States operate in a regulatory blind spot, as they are neither meaningfully evaluated when they apply for charitable status nor substantively monitored after they receive charitable status. Driven by severe budget constraints, the IRS decided to essentially ignore any charity that claims it will realize less than \$50,000 in annual gross receipts. From a practical perspective, the IRS’s decision makes sense. To the extent smaller charities are less likely to cause harm, it is reasonable (perhaps even preferable) to subject them to less scrutiny. This type of prioritization, known as risk-based regulation, has become increasingly popular as regulatory budgets have continued to shrink. But however intuitive, reasonable, or widespread, the fact remains that the IRS has effectively absolved itself of the duty to oversee the majority of charities.

This Article explores, on both a micro- and macro-level, the negative consequences of the IRS’s decision to leave smaller charities unregulated. On the micro-level, the lack of regulation impacts virtually every person who interacts with the charitable sector, including donors, beneficiaries of charities, and private actors in the market. On the macro-level, as an increasing number of charities operate without proper regulation, the public will lose faith in the charitable sector and hasten the erosion of the “halo effect” enjoyed by all charitable organizations, large and small.

This Article is the first to identify and discuss the harms associated with the IRS’s failure to apply either front-end or back-end scrutiny to smaller charities. To address this regulatory failure, this Article argues

that the IRS should require a more robust retrospective regulatory tool for all charities, regardless of size. This solution represents a cost-effective means for the IRS to meet its regulatory burden in a manner that will help restore public faith in the charitable sector.

The Poverty of Criminalization

*Barbara Fedders, University of North Carolina School of Law
Discussant: Wendy Bach*

Commentators have ably documented the myriad ways in which poverty underlies entanglement in the criminal legal system – and intensifies its consequences. While scholarly focus on the criminalization of poverty is overdue and important, this Article takes a different, and inverse, tack.

Building on the work of feminist scholars who have critiqued the harsh and punitive treatment of people seeking government aid, this project identifies and analyzes what I call the poverty of criminalization. It is, first, diagnostic. It identifies key ways in which the criminal apparatus assumes – or usurps -- tasks that should fall to traditional social-welfare actors and systems. For example, police departments now operate programs that determine which would-be defendants are eligible for drug detoxification. Local prosecutors work with school systems to assess which students deserve diversion from juvenile or criminal court for in-school misconduct. District attorneys lobby for the enactment of statutes to penalize women who give birth to babies addicted for drugs, resting their arguments on the notion that conviction and subsequent probation are the best – and perhaps the only – means for these women to attain services.

The Article then analyzes the distinct individual and institutional harms that result from the allocation to criminal-system actors of social welfare aims. As criminal-system actors make decisions outside their expertise, it seems likely that the programs and services selected for and imposed on individuals now within the criminal ambit may be inappropriate. In addition, these individuals will experience stigma because their status or actions have become criminalized. The usurpation of social-welfare decisions by the criminal apparatus also contributes to the ongoing shredding of the social safety net.

5:30 – 7:30 p.m.

**Reception
Law School Courtyard**

Saturday, October 20

8:00 a.m. -9:00 a.m.

Breakfast
Outside Law School Cafe

8:15 a.m. -10:15 a.m.

Bellow Workshop
Room 131

Future Bellow Scholar Idea Workshop

Anna Carpenter, University of Tulsa College of Law
Colleen Shanahan, Columbia Law School
Elizabeth Chambliss, University of South Carolina School of Law
Alyx Mark, North Central College
Alyson Gold, University of Alabama School of Law

The goal of this session is to review the timeline, selection criteria, and scholar obligations, and then to provide direct assistance and feedback on Project Proposals for individuals seeking to be Bellow Scholars starting in January 2019. Bellow Scholar alumni will work in small groups with those with ideas to help refine their ideas, develop research strategies, discuss social scientist collaboration, explain IRB and data gathering processes, and answer questions.

9:00 a.m. -10:15 a.m.

Concurrent Sessions III
See Room Assignments Below

***Communication, Stereotypes, and Alliances: Overcoming the Divisions
that Affect the Client's Story***

Janet Heppard, University of Houston Law Center
Tasha Willis, University of Houston Law Center
Ann Webb, J.D., L.C.S.W., Doctoral Candidate, University of Houston Graduate College of Social Work

Room 136

It has always been important for our students to understand the clients with whom they work in order to provide competent, diligent, and zealous advocacy; to learn to avoid presumptions and miscommunications and to ask the questions needed to truly understand one's client and their story and their legal and non-legal needs. Differences in cultural backgrounds can affect the ability of lawyers to represent clients of diverse backgrounds effectively, and can lead to misunderstandings in communication and in presentation of the client's story. There are times law students must also collaborate with non-attorneys as they work to understand their client's story. With that in mind, forming alliances with other professions, beginning in the graduate school environment, is a critical piece of clinical education. Although effective alliances can form between many different professions, for purposes of this presentation, we will address collaborative practice between social work and the law, two professions with a strong focus on social justice. Specifically, part of this presentation will address the ways in which social work students and law students can share the experiential learning process, learning from and with each other, as they develop culturally competent interview skills, particularly with respect to traumatized or vulnerable clients. The presenters will propose ways to overcome these

cultural divisions as we teach students to be better lawyers and seek ways to truly understand a client's story.

Using a combination of simulation, case studies, and direct instruction, participants will experience the challenges of functioning in a different culture, will explore different scenarios in which enhanced cultural sensitivity will improve client experiences and outcomes, and will learn different ways to integrate cultural learning and collaboration into the law school experience. In addition, one speaker will "present" via videoconference to show how students can learn through an online platform using live classroom facilitators.

Teaching Intersectional Lawyering in the Clinic Seminar: Pedagogical Tools to Strengthen Student Engagement with Marginalized Communities

Etienne Toussaint, University of the District of Columbia David A. Clarke School of Law

Nakia C. Davis, North Carolina Central University School of Law

Tianna Gibbs, University of the District of Columbia David A. Clarke School of Law

Tameka E. Lester, Georgia State University College of Law

Room 133

The clinical seminar grounds students' clinical experiences, affording them a safe space to learn the substantive law and legal skills employed in clinic client work, while also helping them develop their professional identities. Among the most significant challenges faced by clinical faculty in the clinic seminar is teaching students how to be "intersectional" lawyers – legal advocates who not only demonstrate content mastery and effective service delivery, but also understand the demand for interprofessional competencies, and are equipped to handle the diversity of intersectional legal issues that arise in a rapidly changing society. Drawing from their rich practice experience, clinic faculty and clinic supervising attorneys have the unique privilege of helping the next generation of lawyers learn how to represent "real" people with "real" problems, as well as teaching students how to draw lessons from the past to tackle the evolving social problems of today and tomorrow. The purpose of this concurrent session is to explore innovative strategies that clinic faculty can use in the clinic seminar to "fill in the gaps" and educate students on the range of intersectional issues they will face in their future practice that may extend beyond "traditional" legal skills employed in the clinic. Each faculty member on the panel will share how they have employed unique pedagogical tools in their clinic to ensure that their students enter the tumultuous world of live client representation and practice equipped with the skills necessary to address a diversity of intersectional social problems facing their future clients. Specifically, this panel presentation will explore in detail the pedagogical strategies of: (1) "flipping" the classroom; (2) incorporating "model" client files into instruction about practice; (3) inviting guest speakers to participate in designed learning experiences; (4) cross training exercises; (5) decision trees, peer evaluations, and reflective lawyering exercises; and (6) clinic-wide action research projects. Our goal is to provide clinicians with valuable tools that can help transform the learning experience for students and enhance their engagement with social justice issues.

Creating Policy in a Limited Space

Marcy Karin, University of the District of Columbia David A. Clarke School of Law
Lauren Onkeles-Klein, University of the District of Columbia David A. Clarke School of Law
Elly Kugler, Georgetown University Law Center
Kathryn Ramsey, University of Memphis, Cecil B. Humphreys School of Law

Room 130

Legislative lawyering in law school clinics has operated "between" spaces since its inception. This is because experiential opportunities to learn legislative lawyering skills, much like the underlying policy work, often sit at the intersection of some combination of law, politics, policy, media, and other by design. As a result, faculty face who teach in clinics that do this work in any capacity may face questions like: whether these projects really offer opportunities to learn how to be a "lawyer;" is this work client service, a think tank opportunity, or should it be considered an extension of faculty research; and is it appropriate to engage in this work outside of D.C. (or a state capital). These questions surface some of the challenges of operating in limited spaces. Others include geography, politics, employment restrictions at public universities, lobbying restrictions, and project design challenges like integrating students into ongoing coalition advocacy and channeling their energy against injustice into lawyering work. In addition, much policy work itself is currently operating in limited spaces with limited opportunities given external realities. For example, D.C. faces special Congressional control issues and Southern states (and others) are increasingly preempting localities from passing progressive legislation such as living wage laws. This panel will explore engaging in policy work in limited space and the questions, challenges, and opportunities that go along with it. It will also offer tips about teaching students (and ourselves) how to adapt to these circumstances and find creative ways to overcome some of the limitations

10:15-10:30

Break

10:30 a.m. -12:00 p.m.

Plenary II
Karen Williams Courtroom

Overcoming Divisions: Takeaways from the Conference

Tiffany Murphy, University of Arkansas School of Law
Tanya Asim Cooper, Pepperdine School of Law
Wendy Bach, University of Tennessee College of Law

The closing plenary will host and model a process and structure for creating Open Conversations in your communities that allow for organic discourse on pressing issues of our day that divide us. We will consider how to be global citizens, lawyers, and clinicians in an increasingly divisive world.

12:15 p.m. – 2:00 p.m.

New Clinicians Workshop
Room 131