

Association of American Law Schools

AALS.ORG/CLINICAL2016

# **39<sup>TH</sup> AALS CONFERENCE ON CLINICAL LEGAL EDUCATION**

**Clinics and Communities:  
Exploring Community Engagement  
Through Clinical Education**

**April 30 – May 3, 2016 | Baltimore, MD**

Image Credit: Phil! Gold

## **Program Booklet**

# Exhibitors

*Be sure to visit these exhibitors in Harborside Foyer*

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# 39th Annual Conference on Clinical Legal Education

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## CLINICS AND COMMUNITIES: EXPLORING COMMUNITY ENGAGEMENT THROUGH CLINICAL EDUCATION

April 30 – May 3, 2016  
Baltimore Marriott Waterfront, Baltimore, Maryland

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### IMPORTANT

The Evaluation Form is not included in this booklet.  
It will be emailed to you soon after the conclusion of the Conference.  
Your comments will assist us in planning future conferences.



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# Introduction

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Welcome to Baltimore! Since last summer, the Planning Committee for the 2016 AALS Conference on Clinical Legal Education has been preparing for your arrival. We're delighted that the time has come for us to gather together and consider the relationship between law school clinics—a term we use to include both in-house clinics and externship programs—and the communities we serve.

Baltimore is more than a setting. It is also a symbol for our conference: a diverse and vibrant city that, like other urban areas, has experienced considerable suffering—especially in poor communities of color—related to rising inequalities. As in too many neighborhoods in too many cities across America, access to employment, safe housing, and decent public education has diminished, while poverty, criminalization, and disenfranchisement have grown. Law has played a role in these structural problems, and may also have a role to play in efforts to ameliorate these problems and to support community action. Law school clinics may help by engaging students in examining the role of law and lawyers in aggravating or alleviating suffering, and in collaborating on legal efforts to build communities' strengths and address harms experienced by those who seek their assistance. One of many examples currently happening in the city, law clinics in Baltimore provide assistance to urban farming collectives that claim vacant land to grow and distribute fresh produce to people throughout the city.

From their inception, clinics have been both a legal education movement and a cause lawyering movement. Our 2016 conference folds in questions about the evolution of the relationship between clinics and communities, and the causes that communities and individuals need assistance in addressing. The urgency of the problems that communities face lends urgency to our examination of these questions about the contributions clinics can make now and in the future, through both legal work and formative influence on students. We hope you share our sense of the importance of these questions.

The conference contains many moving parts, such as plenary sessions, concurrent sessions, multi-session workshops, keynote speakers, posters, small working groups, community field trips, works-in-progress, receptions, a workshop for new clinicians, and contemplative space. This year the conference will also feature a half-day symposium of the *Clinical Law Review* celebrating the 25th anniversary of Gerald López's influential book "Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice." Entitled "Reflecting on Rebellious Lawyering at 25," the symposium follows a keynote address by López and an opening conference plenary on the impact of his book on clinical legal educators over the past two-and-a-half decades.

Subsequent plenaries consider clinics' community partnerships and the relationship of clinics to important community movements such as Black Lives Matter, which garnered additional attention in Baltimore following the death of Freddie Gray in police custody one year ago. A diverse menu of concurrent sessions and workshops add to the exploration of the topics raised by the conference. Working groups—which we restored to their own time slots based on feedback from the last conference—will provide a small group setting for processing what we are learning. We hope the conference will be thematically connected, joined by consideration of the roles clinics play in serving community needs and the methods by which they do so.

We have endeavored to create opportunities to make Baltimore a salient part of the conference. We have provided a map of a self-guided walking tour from the hotel that identifies important sites in Baltimore's struggles for social justice. If you choose, we have made arrangements for you to sign up for a Monday afternoon visit with a number of Baltimore community organizations, agencies, and courts. We will provide you with transportation to receptions at two Baltimore law schools with

rich clinical traditions—the University of Baltimore School of Law and the University of Maryland Francis King Carey School of Law. Facilitating access to the community around the conference is necessary and appropriate for a conference entitled “Clinics and Communities.”

In other words, our four days together at the conference will be packed with activity. We hope the conference programming honors the complexity of our work. And we hope you carry away from it new ideas and insights, suggestions, and perspectives that deepen your understanding, your teaching, and your practice.

May our time together in Baltimore be personally and professionally enriching for us all.

Best wishes,

**The Planning Committee for the 2016 AALS Conference on Clinical Legal Education:**

Phyllis Goldfarb, The George Washington University Law School, **Chair**  
Carolyn B. Grose, Mitchell | Hamline School of Law  
Margaret E. Johnson, University of Baltimore School of Law  
Tamara Kuennen, University of Denver Sturm College of Law  
Julie D. Lawton, DePaul University College of Law  
JoNel Newman, University of Miami School of Law  
Daniel M. Schaffzin, The University of Memphis, Cecil C. Humphreys School of Law

**PLANNING COMMITTEE FOR 2016 AALS  
CONFERENCE ON CLINICAL LEGAL EDUCATION**

Phyllis Goldfarb, The George Washington University Law School, **Chair**  
Carolyn B. Grose, Mitchell | Hamline School of Law  
Margaret E. Johnson, University of Baltimore School of Law  
Tamara Kuennen, University of Denver Sturm College of Law  
Julie D. Lawton, DePaul University College of Law  
JoNel Newman, University of Miami School of Law  
Daniel M. Schaffzin, The University of Memphis, Cecil C. Humphreys School of Law

**AALS EXECUTIVE COMMITTEE**

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Vicki C. Jackson, Harvard Law School  
Vincent D. Rougeau, Boston College Law School  
Avi Soifer, University of Hawai'i, William S. Richardson School of Law





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# Schedule At-A-Glance

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## **FRIDAY, APRIL 29**

5 – 8 pm AALS Registration

## **SATURDAY, APRIL 30**

8:45 am – 12:30 pm Workshop for New Law School Clinical Teachers  
1:45 – 4 pm Conference on Clinical Legal Education Opening Keynote  
and Plenary Session: Rebellious Lawyering and Clinical  
Legal Education  
4:15 – 5:45 pm Working Group Discussions  
6 pm Reception with Posters

## **SUNDAY, MAY 1**

7:30 – 9 am Section on Clinical Legal Education Committees and Meditation  
9 am – 12:15 pm Clinical Law Review Symposium  
9 – 10:30 am Concurrent Sessions  
10:45 am – 12:15 pm Concurrent Sessions and Workshops  
12:15 – 2 pm AALS Luncheon: Shanara Gilbert Award and Featured Speaker  
2:15 – 3:45 pm Plenary Session: #BlackLivesMatter and Clinical Legal Education  
4 – 5:15 pm Working Group Discussions  
6 – 7:30 pm Reception at University of Baltimore School of Law

## **MONDAY, MAY 2**

7:30 – 8:30 am Clinicians of Color and Diversity of Leadership Committees  
and Meditation  
8:45 – 10:30 am Plenary Session: Innovative and Sustainable Clinical Engagement  
with Community Needs  
10:45 am – 12:15 pm Concurrent Sessions and Workshops  
12:15 – 1:45 pm AALS Luncheon  
2 – 5 pm Community Engagement Projects  
2 – 3:30 pm Concurrent Sessions and Workshops  
3:45 – 5 pm Working Group Discussions  
6 – 7:30 pm Reception at University of Maryland Francis King Carey  
School of Law

## **TUESDAY, MAY 3**

7:30 – 9 am Section on Clinical Legal Education Committees and Meditation  
8:30 – 10 am Concurrent Sessions and Workshops  
10:15 – 11:45 am Section Works in Progress and Bellow Scholars Program Reports  
11:45 am – 12:30 pm Working Group Discussions  
12:30 – 1:45 pm Luncheon  
2 – 3 pm Plenary Session: Reflections and Lessons



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# Conference Schedule

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**Friday, April 29, 2016**

5 pm – 8 pm

**AALS Registration**

Harborside Registration, 4th Floor

9:15 am – 10 am

**Plenary I: The Clinical Seminar**

Harborside C, 4th Floor

Deborah Epstein, Georgetown University Law Center

This session will provide an overview for thinking about how to design the seminar component of a clinical course, emphasizing the importance of being as deliberate in the classroom as we are during supervision to promote student directed learning.

**Saturday, April 30, 2016**

## **AALS Workshop for New Law School Clinical Teachers**

7:30 am – 8 pm

**AALS Registration**

Harborside Registration, 4th Floor

8:45 am – 8:55 am

**Welcome and Introduction**

Harborside C, 4th Floor

**Welcome**

Judith Areen, AALS Executive Director

**Introduction**

Phyllis Goldfarb, Chair, Planning Committee for AALS  
Conference on Clinical Legal Education, The  
George Washington University Law School

8:55 am – 9:15 am

**Clinical Legal Education Historical  
Overview**

Harborside C, 4th Floor

Margaret Barry, Vermont Law School

To provide context for the presentations and discussions to follow, the opening session will offer new colleagues an understanding of where clinical education came from, the forces that have influenced its development, and its current role in the training of future lawyers.

10 am - 10:15 am

**Refreshment Break**

Harborside Foyer, 4th Floor

10:15 am – 11 am

**Plenary II: Clinical Supervision**

Harborside C, 4th Floor

Conrad Johnson, Columbia University School of Law  
Elliott S. Milstein, American University, Washington  
College of Law

Ann C. Shalleck, American University, College of Law

This session, from two experienced clinicians, will build understanding of the framework and practices involved in supervision as presented in their chapter in the Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy. Using clinical seminar techniques, the presenters will emphasize the elements of supervision that involve the relationship between a particular client matter or client and larger issues of social justice, addressing the contexts that are inherent in each. Through the presentation and exercises, attendees will gain familiarity with supervision techniques that will enable them to use these techniques in conducting supervisions and analyzing their own supervision experiences.

11 am – 11:45 am

## **CONCURRENT SESSIONS**

### **Externships**

Galena, 4th Floor

Kendall L. Kerew, Georgia State University College of Law

Inga N. Laurent, Gonzaga University School of Law

The session will highlight and provide a forum for discussion centered on the teaching and continued emergence of externship courses. Presenters and attendees will together explore best practices and current issues relating to field supervision, classroom seminars, guided reflection, evolving ABA standards, and other topics related to externship course design and pedagogy.

### **Scholarship**

Heron, 4th Floor

Amna Akbar, The Ohio State University, Michael E. Moritz College of Law

Leigh Goodmark, University of Maryland Francis King Carey School of Law

The presenters will discuss a range of topics regarding the process of writing and submitting scholarship for publication. This session will be helpful for those attendees trying to navigate the responsibilities of writing with other clinical and law school obligations.

### **Faculty Governance**

Iron, 4th Floor

Bradford Colbert, Mitchell | Hamline School of Law  
Laura L. Rovner, University of Denver Sturm College of Law

David Anthony Santacrose, The University of Michigan Law School

One of the many challenges facing a new clinician is navigating the somewhat Byzantine maze of law school administration. This session will provide new clinicians with a framework for better understanding and negotiating the decision-making structures at law schools. We will have an interactive discussion regarding academic governance and the unique role that clinicians can play. Topics to be considered include the nature of academic governance, the opaque structure of hierarchy and how to navigate it, participation in law school and university committees, and the role status and tenure (or the lack thereof) play.

### **Case Rounds**

James, 4th Floor

Wendy A. Bach, University of Tennessee College of Law  
Susan J. Bryant, City University of New York School of Law

This session is designed to review a number of teaching techniques and potential teaching goals that can be met using student-presented case rounds. The presenters will suggest different frameworks for designing and conducting case rounds to accomplish different educational goals.

11:45 am – 12:30 pm

### **Concurrent Sessions (repeated)**

# 39th Annual Conference on Clinical Legal Education

1:45 pm - 2 pm

## Welcome and Introduction

Harborside C, 4th Floor

### Welcome

Judith Areen, AALS Executive Director

### Introduction

Phyllis Goldfarb, Chair, Planning Committee for AALS  
Conference on Clinical Legal Education, The  
George Washington University Law School

2 pm - 4 pm

## Opening Keynote

Harborside C, 4th Floor

Gerald López, University of California, Los Angeles  
School of Law

## Plenary Session: Rebellious Lawyering and Clinical Legal Education

Harborside C, 4th Floor

Patience A. Crowder, University of Denver Sturm  
College of Law

Ramzi Kassem, City University of New York School of  
Law

Margaret L. Satterthwaite, New York University School  
of Law

**Moderator:** Ascanio Piomelli, University of California,  
Hastings College of the Law

Following Gerald López's keynote address, the panel will begin – if the technology gods are willing – by using a real-time polling app to get a sense of the audience's familiarity with and reaction to Rebellious Lawyering and will distill some of its key themes. We will then explore the possible benefits and challenges of applying rebellious lawyering in (1) a transactional clinic in which many students aspire to practice in corporate law firms; (2) a global justice clinic that aims to lawyer rebelliously from afar; and (3) a clinic that represents prisoners at Guantanamo and Muslim and South Asian communities in New York bearing the brunt of national security and counter-terrorism policies and practices.

4 pm - 4:15 pm

## Refreshment Break

Harborside Foyer, 4th Floor

4:15 pm - 5:45 pm

## Working Group Discussions

(see handout for your Working Group assignment and its location)

6 pm - 7:30 pm

## AALS Reception with Posters

Grand Ballroom Salon V, 3rd Floor

(see page 47 for Poster Descriptions)

**Ohio's Statewide CQE Project: Crossing Law School Boundaries to Address a Pressing Community Need**  
Joann M. Sahl, University of Akron School of Law

**Establishing a Substantive Law Center for Student and Community Engagement: Suffolk's Housing Discrimination Testing Program**

Nadiyah Humber, Suffolk University Law School  
James Matthews, Suffolk University Law School

**Magnifying the Community's Access to Transactional Legal Services through a Pro Bono Attorney Program**  
Susan Felstiner, Lewis and Clark Law School

**Working Together to Help Immigrant Entrepreneurs: Increasing Client Impact and Student Learning through Cross-Institution Collaborations**

Amanda Kool, Harvard Law School  
Eliza Platts-Mills, The University of Texas School of  
Law

### What Offices Can Teach

Deborah Burand, New York University School of Law  
Anne M. Choike, The University of Michigan Law  
School

**Community Lawyering in an Environmental Clinic\*  
(\*without Litigation)**

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

**The Community Impact of Miami Law’s Health Rights Clinic: A 10-Year Report 2005-2015**

Tulay Koru-Sengul, PhD, MHS, Department of Public Health Sciences, University of Miami Miller School of Medicine  
Melissa Swain, University of Miami School of Law

**Location, Location, Location: Lessons in Engagement Learned from Thirty-Five Years of Being Located in Our Client Community**

Julie McCormack, Harvard Law School  
Maureen E. McDonagh, Harvard Law School

**Value-Added: Utilizing the MSW Perspective**

Dana Malkus, Saint Louis University School of Law

**The Advance Directive Clinic: A Versatile, Community-Based Clinic Add-On Project**

Ryan Sullivan, University of Nebraska College of Law

**Teaching Concurrent Clinical and Non-Clinical Poverty Law Classes to Enhance Social Justice Teaching**

Spencer Rand, Temple University, James E. Beasley School of Law

**Clinical Engagement in Communities and the Year of Mercy**

Daniel Gandert, Northwestern University Pritzker School of Law

**The Clinician’s Helping Hand Project: Mentoring Program**

Kathryn Ramsey, The George Washington University Law School

7:30 – 8:30 pm

**AALS Clinical Section Town Hall**

Harborside E, 4th Floor

**Sunday, May 1, 2016**

7:30 am – 9 am

**AALS Section on Clinical Legal Education Committees**

(see page 67 for committee meetings and room locations)

**Meditation Session**

Raven, Lobby Level

Join Valena Beety in a series of guided contemplative practices, including seated, lying down, and walking time, followed by shared conversation about the experience.

9 am – 12:15 pm

**CLINICAL LAW REVIEW SYMPOSIUM: REBELLIOUS LAWYERING AT 25**

Harborside E, 4th Floor

Since its publication almost 25 years ago, Gerald López’s “Rebellious Lawyering” (and a group of related works of legal scholarship written during a fertile period of critical thinking and writing on poverty law) has had an abiding impact on lawyering practice and theory. It has inspired generations of lawyers and shaped public interest legal practice. To celebrate the 25th anniversary of “Rebellious Lawyering,” the “Clinical Law Review” has invited scholarly articles on the themes of López’s seminal work and is hosting a symposium during the conference to invite reflection on the evolution in the text’s meaning and the insights it offers to public interest lawyers and clinical educators today. During the symposium, authors will present their ideas and moderated discussions will follow.

In 2016-17, the invited articles and reflections on the symposium will be published in two volumes of the “Clinical Law Review.” The “Clinical Law Review” is a semi-annual peer-edited journal devoted to issues of lawyering theory and clinical legal education. The Review is jointly sponsored by the Association of American Law Schools (AALS), the Clinical Legal Education Association (CLEA), and New York University School of Law.

**Welcome**

Phyllis Goldfarb, The George Washington University Law School

**Reflections on “Rebellious Lawyering” at Twenty-Five**  
 Gerald López, University of California, Los Angeles  
 School of Law

## On Lawyering

**Moderator:** Carolyn B. Grose, Mitchell | Hamline  
 School of Law

**Rebellious Lawyering: A Critique of Pedagogy and Practice**

Anthony Alfieri, University of Miami School of Law

**It’s About Power, Not Policy: Rebellious Lawyering for Large-Scale Social Change**

Alexi Freeman, University of Denver Sturm College of Law

**The Culture of Non-Profit Impact Litigation**

Martha Gómez, Staff Attorney, Mexican American Legal Defense and Educational Fund (MALDEF), Washington, DC

**Rebellious Lawyering as Movement Lawyering: Advocating with Love, Humility, and Courage**

Betty Hung, Policy Director, Asian Americans Advancing Justice, Los Angeles, CA

**Rascuache Lawyer: A Chicano Vision of Rebellious Law Practice**

Alfredo M. Mirande, Department of Sociology, University of California, Riverside

**Appreciating Rebellious Lawyering**

Ascanio Piomelli, University of California, Hastings College of the Law

## On Legal Education

**Moderator:** Wendy A. Bach, University of Tennessee School of Law

**Teaching Rebelliously: Client-Centered Legal Education**

Eduardo Capulong, Alexander Blewett III School of Law at the University of Montana

**Etta & Dan: Seeking the Prelude to a Transformative Journey**

Daria Fisher Page, Georgetown University Law Center

**The Case for Reparations**

Brian G. Gilmore, Michigan State University College of Law

**Channeling Rebellious Lawyering in Constitutional Rights and International Human Rights Clinics**

Jeena Shah, Rutgers School of Law – Newark

**Narrative Understanding in Working with Clients: Revisiting the Work We Know So Little About and Lay Lawyering**

Ann C. Shalleck, American University, Washington College of Law

## Issue Area – Community Defense

**Moderator:** Kimberly A. Thomas, The University of Michigan School of Law

**Family Farm Advocacy and Rebellious Lawyering**

Stephen Carpenter, Deputy Director and Senior Staff Attorney, Farmers’ Legal Action Group (FLAG), St. Paul, MN

**Rebellious Lawyering for Families: Challenging our Notions of Public Defense, Community Engagement and Interdisciplinary, Client Centered Practice**

Kara Finck, University of Pennsylvania Law School

**Pegasus Legal Services for Children – Taking Stock of a Rebellious Non-Profit Practice in New Mexico**

Tara Ford, Co-Founder and Attorney, Pegasus Legal Services for Children, Albuquerque, NM

**From the Ground Up: Criminal Defense Lawyering and Criminal Law Education for Communities Most Affected by Mass Incarceration**

Editha Rosario-Moore, Assistant Appellate Defender, Office of the State Appellate Defender, Ottawa, IL  
 Alexios Rosario-Moore, Columbia College Chicago

## Issue Area – Community Economic Development

**Moderator:** Jeffrey Selbin, University of California, Berkeley School of Law

**Teaching and Practicing Community Development Poverty Law: Avoiding “Regnant,” Building “Asset-Based”**

Alicia Alvarez, The University of Michigan Law School  
 Susan D. Bennett, American University Washington College of Law

Louise A. Howells, University of the District of Columbia, David A. Clarke School of Law  
 Carmen V. Huertas-Noble, City University of New York School of Law

Hannah Lieberman, Executive Director, Neighborhood Legal Services Program (NLSP), Washington, DC

**What’s Art Got To Do With it?: Non-Essential Assets, the Pervasiveness of Income Inequality, and Rebellious Lawyering**

Patience A. Crowder, University of Denver Sturm College of Law

**Movement Lawyering is Rebellious Lawyering**

Brian Glick, Fordham University School of Law

**Entrepreneurial Representation as Rebellious Lawyering**

Paul R. Tremblay, Boston College Law School

**Issue Area – Immigrant Rights**

**Moderator:** Jennifer L. Koh, Western State University College of Law

**Rebellious Lawyering in the “National Security”**

**Context**

Ramzi Kassem, City University of New York School of Law

Diala Shamas, Stanford Law School

**Being the Change in the South: The Politics of Allyship and Lawyering with Immigrant Communities**

Karla Mari McKanders, University of Tennessee College of Law

**Re-conceptualizing Tools for the Rebellious Lawyer: The Paradox of Empathy in the Context of Immigration Practice**

Brenda Montes, Associate Attorney, Franco Law Group, Los Angeles, CA

9 am – 10:30 am

**CONCURRENT SESSIONS**

**Clinics, Coalitions, & Communities: Partners in Advocacy**

Galena, 4th Floor

Jillian Bernstein, Former Student Clinician, Vermont Law School ENRLC and Environmental Consultant, Enhesa, Washington, DC

Deborah M. Chizewer, Northwestern University Pritzker School of Law

Nancy C. Loeb, Northwestern University Pritzker School of Law

Laura B. Murphy, Vermont Law School

The caseload of environmental law clinics often extends beyond traditional notions of litigation. We will use three case studies to explore advocacy strategies that our clinics use in working with coalitions and communities: (1) working with a coalition of statewide organizations advocating for labeling of genetically engineered foods in Vermont; (2) working with and in communities to correct an

environmental injustice resulting from the storage of petroleum coke in Chicago; and (3) representing the Village of DePue, a largely immigrant town in Illinois, in pushing the responsible parties to conduct a hazardous waste cleanup. Through advocacy, law students learn how to build and work with coalitions, participate effectively in legal and regulatory processes, engage in political processes at multiple levels of government, and work with various forms of media to bring attention to environmental injustices. Our students also develop the ability to adapt as case/campaign goals are achieved or evolve. We will also engage the audience in a dialogue about advocacy beyond litigation, unique challenges that arise in working with coalitions, the types of activities best suited for students, and more.

**Teaching Reflective Practice**

Harborside D, 4th Floor

Timothy M. Casey, California Western School of Law

Reflection is a core component of learning through experience, and remains a central tenet of clinical pedagogy. But teaching reflection is neither obvious nor easy. As teachers, we typically confront two problems when introducing a reflective component into our courses. The first problem concerns resistance from students, who see reflection as too “touchy-feely,” and too far removed from the substantive knowledge, which they believe to be central to legal education. The second problem concerns teachers, who usually have high expectations for their students and who may feel disappointed in what they perceive to be a fairly low level of performance with respect to reflection. This interactive session will explore a model for reflection that can be applied not only to our students learning but also to our own teaching.

**Community Engagement: Decolonization, Clinics, and Community as Client**

Heron, 4th Floor

Sarah Buhler, University of Saskatchewan College of Law, Community Legal Assistance Services for Saskatoon Inner City (CLASSIC)

Cheryl Fairbanks, University of New Mexico School of Law

Christine Zuni Cruz, University of New Mexico School of Law

Nicole B. Friederichs, Suffolk University Law School

Seánna Howard, University of Arizona James E. Rogers College of Law



This session will introduce and demonstrate a dialogue circle and protocols for its use. In circle, the presenters will share experiences, lessons, and techniques gained by representing and engaging with indigenous communities. The circle will focus on three topics: decolonization, clinics, and community as client.

Decolonization theory will be used to explore the historical backdrop and present day relationships against which legal problems and solutions must be considered in indigenous and settler communities. Decolonizing the spaces associated with the law, including courtrooms, classrooms, law offices, and public discourse will be explored. Decolonization strategies useful in working with Indigenous Peoples can also be useful in working with other communities to understand a community, to heal, to ensure better representation, to transform the courtroom, to assist the understanding of the bench and bar of individual clients, and to work with the larger community to address racism and insensitivity in the community. In decolonizing legal spaces, the transformation of space makes understanding, peace, and justice more accessible.

The presenters, in circle, will share examples of teaching topics and tools, as well as examine the challenges of community representation. Additionally, the session will explore tensions, which sometimes arise, between responding to community needs and achieving clinical education goals or when charged with representing a specific community, how clinics respond when a community's needs warrant a course of action which does not squarely fit into today's objective of creating "practice-ready" graduates. Conference participants will be included in the debriefing at the conclusion of the circle and invited to ask questions.

### **#HowisTHATfair: Goading Hesitant Millennials into Meaningful Engagement in the Criminal Justice Community**

Essex C, 4th Floor

Daniel T. Coyne, Illinois Institute of Technology  
Chicago-Kent College of Law  
Rachel Moran, University of Denver Sturm College of Law

A primary tool for provoking students toward community engagement, especially young millennials who may have little connection to the community in which they are attending law school, is narrative:

stories and examples that open students' eyes to injustices endured by both the community as a whole and the specific clients they will be representing. Professors Coyne and Moran will introduce the topic of goading millennials into community engagement from their two unique perspectives: Dan, a Chicago native who has been practicing law in the Chicago community for 30 years, and Rachel, a former student of Dan's in the Chicago-Kent clinic. Dan will talk generally about his pedagogy of using narrative to provoke community engagement, and Rachel will talk specifically about the particular narrative practices used during her time in the clinic and how they inspired her to become more engaged with her clients specifically and the community generally. In addition to sharing our own stories, we will ask session participants to break into small groups and spend time identifying and discussing justice-based narratives that they find inspirational and that may resonate with the particular student bodies they teach today. Participants will have an opportunity to explore and share each other's narratives in an effort to convert those stories into specific teaching strategies.

### **Carpetbaggers or Collaborative Colleagues?**

Harborside C, 4th Floor

Ty Alper, University of California, Berkeley School of Law  
Bradford Colbert, Mitchell | Hamline School of Law  
Russell C. Gabriel, University of Georgia School of Law  
John D. King, Washington and Lee University School of Law  
Christopher Roberts, The University of Texas School of Law  
Jenny M. Roberts, American University Washington College of Law  
Robin Walker Sterling, University of Denver Sturm College of Law  
Kate Weisburd, University of California, Berkeley School of Law

At their best, clinics not only help individuals obtain justice but also raise the standard of legal practice in the communities they serve. Clinical legal educators and students alike are drawn to the field not only out of a desire to help individuals but also to strengthen communities and build productive alliances. Clinics can have an uneasy relationship, however, with the local legal communities in which they practice. This tension can be particularly acute in the context of criminal clinics, in which faculty and students must forge relationships with local practitioners, judges,

and advocacy organizations. This tension offers a pedagogical opportunity – a chance to explore with our students the consequences of conflicting goals and competing alliances within legal communities. In this session, we will use our varied experience in criminal clinics in different parts of the country to explore these issues in a way that will be relevant to clinicians working in any substantive area.

It can be disorienting for both faculty and students when clinics experience resistance from the legal communities with which they interact. A new criminal defense clinic might expect skeptical inquiries from local prosecutors, for example, but an unenthusiastic reception from the local defense bar can be far more challenging. It may also provide a teaching opportunity about systemic injustice, professional role, and community advocacy.

How do we prepare our students to work for social justice in legal communities that may be hostile to their goals as well as their means of achieving those goals? How do we decide when to accommodate local practice and legal culture and when to challenge it? How can law students with minimal experience play a role in improving the culture of advocacy in a particular jurisdiction?

**Preparing Lawyers for Community Engagement: Using Externships to Teach Students How to Collaborate, Communicate, and Be Catalysts for Change**  
Iron, 4th Floor

Kendall L. Kerew, Georgia State University College of Law  
Inga N. Laurent, Gonzaga University School of Law  
Kelly S. Terry, University of Arkansas at Little Rock  
William H. Bowen School of Law

Students participating in externships are necessarily involved in one or more communities external to the law school. It is important for externship pedagogy to recognize this community engagement and to teach students how to identify those communities and work effectively with them. This session will explore how externships engage students in communities and how externship clinicians can use the externship seminar to make students more aware of different communities and become effective community partners. This session will include a discussion of how to define these communities and examine theoretical critiques of how lawyers engage with communities and how students can measure their own experiences

against these critiques. We will also focus on how to integrate community perspectives into the externship classroom. Presenters will discuss ways to do this, including using class rounds and presentations. The final part of the session will focus on how to use the externship class to teach relational skills that are essential for effective community engagement. After attending the session, participants will be able to understand and apply principles of community engagement in externship teaching; help students identify and understand the communities with whom they engage; and use specific classroom exercises to teach communication, collaboration, and cultural awareness that are necessary for effective community engagement.

**Community Is All of Us: “Meeting People Where They Are” Through Holistic and Interprofessional Collaboration**

James, 4th Floor

Anne Bautista, California Western School of Law  
Courtney Cross, University of Denver Sturm College of Law  
Danielle Pelfrey Duryea, SUNY Buffalo Law School  
Margo Lindauer, Northeastern University School of Law  
Beth Lyon, Cornell Law School  
Linda H. Morton, California Western School of Law

This concurrent session on the special value of interprofessional collaborations for students, faculty, institutions, and communities is designed for clinicians already working in interprofessional collaborations as well as for those contemplating new ones. We will not only share best practices and offer a wealth of sample teaching, training, and organizational materials, but also help participants formulate plans for moving forward with their own interprofessional teaching and clinical practice efforts. The “presenters,” who are clinicians working in health-, domestic violence-, and farmworker-focused clinics with a wide variety of structures and service models, will facilitate small group discussions that leverage all the knowledge in the room to address participants’ live needs and questions. Each of us teaches in a clinic in which students and faculty work closely with social workers, medical professionals, community organizers, public health professionals, media, and/or members of other professions and disciplines; some of us also hold joint appointments in other schools within our universities and/or teach classes cross-listed at other graduate schools. This

work has brought us—and our interprofessional colleagues—out of our disciplinary “silos” and into disciplinary dialogue as well as into collaborative, coordinated client service that truly meets people where they are. Thus, we have found, interprofessional collaboration enhances our connectedness in several senses of the word—not only to our client communities, but also to our wider geographic, professional, law school, university, and academic communities, all in the service of more meaningful engagement for students, better service to individual clients, and long-term, sustainable change.

### **Conflict and Community: A Pedagogical Approach**

Essex A, 4th Floor

Melissa Frydman, University of Illinois College of Law  
Betsy Ginsberg, Benjamin N. Cardozo School of Law,  
Yeshiva University  
Elizabeth Nevins-Saunders, Maurice A. Deane School  
of Law at Hofstra University

In-house law clinicians have long struggled with conflict that quickly arises when our lawyering strategies aim (1) to be client-centered; (2) to engage communities, defined broadly, affected by our cases; and (3) to foster systemic change in the systems impacting our clients. The goal of this concurrent session is to engage participants in questions related to this conflict, including: How does the conflict between client-centeredness, community, and change surface in various live-client experiences? What would a pedagogical approach to teaching conflict, community, and change look like if intentionally incorporated into our course curriculum? And how can we develop strategies for engaging this conflict with communities?

The presenters will draw upon their diverse experiences in legal education to develop a concurrent session that is relevant to participants teaching different types of experiential, live-client courses. We represent a broad spectrum. Our different courses reveal similarities and differences with how conflict with clients and community arises in different settings (from big cities like NYC to smaller cities like Champaign) and through different types of advocacy forums (from administrative immigration hearings to criminal courtrooms).

The primary goal of this concurrent on Conflict and Community is to allow participants to thoughtfully address conflicts arising from client-centeredness and

community engagement. The learning objectives of the session include: (1) identification of a range of ways that client-centered lawyering comes in conflict with community and/or systemic-change; (2) naming the communities we intend to engage within this tension; (3) considering how we might intentionally surface this conflict for our students through supervision, seminar classes and readings, and case rounds; and (4) developing concrete strategies for engaging the conflict in our lawyering.

### **Improving Community Engagement through Cultivating Greater Awareness of Our Multiple Identities and Roles**

Essex B, 4th Floor

Susan L. Brooks, Drexel University Thomas R. Kline  
School of Law  
Evangeline Sarda, Boston College Law School

As clinicians we ask students to explore the biases and assumptions they have about their client communities as well as the biases and assumptions their client communities may have about them, and the impact these processes have on their work as lawyers. We spend less time considering group level dynamics, the identities and roles that arise from such dynamics, and the way these dynamics can draw us and our students unwittingly to participate in larger systemic dynamics. In this session, participants engage in an exercise revealing psychosocial processes arising among groups in real time. The goal is to cultivate greater awareness of the multiple group identities and roles we carry on behalf of ourselves and on behalf of others, whether we consciously choose these identities and roles or not, and the influence these processes have on how we show up and take up professional roles within communities. The exercise is playful, and yet it can also reveal deep group processes. It is designed to allow exploration of what is usually hidden: the processes by which groups begin mutually to project onto one another and the impact of these processes on all the groups and individuals in the room.

Participants will be able to: (a) learn experientially how projective processes between groups can give rise to systemic dynamics; (b) link their experience to work with groups in the classroom, as well as within communities and courts; and (c) explore classroom management aimed at creating a safe and strong container for in-class exercises that lead to greater personal awareness yet may be unsettling for students.

10:30 am – 10:45 am

### Refreshment Break

Harborside Foyer, 4th Floor

10:45 am – 12:15 pm

## CONCURRENT SESSIONS

### Out of the Ivory Tower and into the Community! Academic Writing for Social Justice

Galena, 4th Floor

Christopher Lasch, University of Denver Sturm College of Law

Robin Walker Sterling, University of Denver Sturm College of Law

Katie Tinto, Benjamin N. Cardozo School of Law, Yeshiva University

Erica Zunkel, The University of Chicago, The Law School

This session centers on our belief that clinicians can produce high-quality “academic” scholarship without forfeiting our commitment to social justice activism and our commitment to serve the needs of the communities from which we draw our clients. In this session, we will consider the many roles clinicians are often expected to, or want to, assume, as practitioners, scholars, and social justice advocates. We will offer conceptual frameworks for balancing these roles within a piece of writing.

We hope to galvanize participants to translate scholarship into activism and activism into scholarship. With that goal in mind, we intend for each participant to leave this session with a concrete idea for a piece of scholarship informed by social activism or a clinical litigation/advocacy project informed by scholarship. In the context of discussing participants’ own ideas, we will examine the relationship between scholarly writing and our desire to produce scholarship that supports and advances community goals. Our hope is that participants will come away from the session with concrete tools for facilitating the synergies between their lawyering, community activism, and scholarship.

### Taking the Law School into the Community: Embedding Clinics in Neighborhoods, Courts, and the Community Partnerships

Heron, 4th Floor

Bernadette Gargano, University at Buffalo School of Law, The State University of New York

Rachel López, Drexel University Thomas R. Kline School of Law

Brittany Stringfellow-Otey, Pepperdine University School of Law

Monica Piga Wallace, University at Buffalo School of Law, The State University of New York

Community-based approaches to lawyering often facilitate a deeper understanding of the daily and ongoing struggles facing the members of particular neighborhoods and cities. Such approaches provide the context necessary for students to more fully appreciate the challenges that chronic poverty and disenfranchisement raise for their clients. At the same time, questions arise about boundaries in the attorney/client relationship and other ethical dilemmas. Additionally, clinicians may more acutely feel the tension between student expectations and community demand. Using the presenters’ neighborhood, court, and community partnerships as a backdrop, this session will address the benefits of embedding clinics within the community, outside of the four walls of the traditional law school, as well as the challenges presented.

Our session will address the following questions: How might location allow clinics to be more nimble and responsive to client and community needs? How might our grounding in communities better inform our role as lawyers and advocates? Does proximity to the community alter how clinics prioritize cases and projects or develop their goals and objectives? Are there additional skills and competencies that students need in this context? Does a clinic’s sustained presence in a neighborhood allow our students to have a fuller understanding of their clients’ lives, thereby increasing their empathy toward them? What challenges arise in partnering with outside organizations to provide legal services? To what extent might the university’s strategic goals be in tension with the interests of the community?

**Exploring Professionalism: The Role of Bar Rules, Norms, Customs, Personal Identity, and Appearance**

Harborside C, 4th Floor

Elizabeth B. Cooper, Fordham University School of Law  
 Keith Fogg, Villanova University School of Law  
 Beth Lyon, Cornell Law School  
 Wallace J. Mlyniec, Georgetown University Law Center

The goal of this panel is to reconsider many of the rules and norms that govern law students’ access to and acceptance in the profession. This program will provide brief introductions to, then involve the participants in exploring, three topics.

First, we will chart the litigation-centric nature of student practice rules, which fail to address many of the forms of lawyering that clinics are doing. Session participants will discuss the best features of their own state rules, debate whether expanding rules to encompass a wider range of lawyering tasks would support clinical education, and identify areas of lawyering that could be included in such an expansion.

The second discussion will problematize the semesters-of-study limitations contained in most state student practice rules, limitations that typically restrict student practice to the last year of law school. In contrast to these limitations, administrative agencies typically provide more expansive opportunities for first- and second-year students to practice, better supporting the legal academy’s burgeoning interest in experiential education in the first year of law school. Session participants will discuss the opportunities for first-year student engagement in clinics that have an administrative or federal practice.

Finally, we will examine issues that arise when supervising students who do not conform to majority identity norms that still shape our professional environment, whether because they mis-read cues, lack resources, or make choices related to identity (e.g., race, gender, sexual orientation, gender identity, class structure). We will push the conversation past the notion that conformance advances clients’ goals, and address questions of how clinical faculty should – or should not – engage with students on these issues in teaching and in supervision, related both to clinic work and student career development.

10:45 am – 11:30 am

**Building the Foundation for Community Engagement: Lessons Learned from the DC Community Listening Project**

Iron, 4th Floor

Faith Mullen, The Catholic University of America, Columbus School of Law  
 Enrique Pumar, Department of Sociology, The Catholic University of America

As law school clinicians we sometimes we make educated guesses about the needs of people in the communities we serve. These are good instincts that can effectuate profound changes as we work for fairness, opportunity, and equality, but the risk is that we will impose a kind of top-down menu of assistance, without a real understanding of the communities. It is worth considering whether we could we be more effective if we asked our communities what their needs are and how they believe those needs might best be addressed.

The District of Columbia Consortium of Legal Service Providers recently sought to explore that possibility by sponsoring a project that asked nearly 600 low-income people in DC about the challenges they face and the barriers that prevent them from overcoming poverty by asking them, directly, about their most pressing problems. The project sought information from community members through focus groups and through a lengthy survey. Consortium member organizations convened 20 focus groups, in which 130 community members. Legal services providers and law students facilitated the groups.

The survey built on the focus group results. The project trained community members and law students to administer the survey. This turned out to be a great opportunity for law students to connect with low-income people, to hear their problems, and to gain a better understanding of the role of law in solving problems. Ultimately, surveyors collected information from 590 people.

This session will report findings from the project, highlight some of the challenges in carving out a meaningful role for law students, and help participants think through how they could use this project as a springboard for their own efforts to enter a conversation with their client communities.

11:30 am – 12:15 pm

### **Using Your Case Management System for More than Malpractice Prevention**

Iron, 4th Floor

Marjorie A. McDiarmid, West Virginia University  
College of Law

Virtually every clinic these days is using a commercial law office system to keep track of their clients, court appearances and other practice management issues. Because of the nature of these systems, they provide a lot of data which can be used for teaching purposes: time tracking as a measure of effort and efficiency, case planning, and ethics to name but a few.

This session will draw on the experience of attendees to formulate “best practices” guidance on how to use these systems for their maximum pedagogical value. Come with stories about how you use these data and what questions you would like to mine from them.

### **Citizen Lawyers: Teaching Students to Lobby for Community Change**

James, 4th Floor

Stephanie Boys, Indiana University School of Social  
Work Susan McGraugh, Saint Louis University  
School of Law

Lobbying activities by special interest groups have become the source of public debate as well-financed lobbyists exert influence over the legislative agenda. Our students, as members of the community, are in an advantageous position to help balance the effects of money in the political process by providing their skills and their voices to the debate. This presentation will discuss ways that our students and our legal clinics can work with communities to enhance their capacity to achieve social change through legislative efforts. We will also discuss how we use the drafting and passage of community-friendly legislation to enhance our pedagogical goals. Does involvement in the political process threaten the neutrality of a law school?

Presenters will discuss their efforts to partner with community agencies and public interest groups to lobby for the passage of community-oriented legislation. Using examples from past lobbying forays, the presenters will discuss the process of teaching students to flex their political muscle by engaging their lawmakers in advocacy efforts. The second half of the presentation will be a brainstorming session to assist participants in creating lobbying efforts at their home institutions.

### **A Law School’s Truancy Court Program: Re-Routing the School-to-Prison Pipeline**

Harborside D, 4th Floor

Barbara A. Babb, University of Baltimore School of Law  
Moshe Berry, Social Worker, Henderson-Hopkins  
Elementary/Middle School, Baltimore, MD  
The Honorable Yvette Bryant, Judge-in-Charge, Family  
Division, Baltimore City Circuit Court, Baltimore,  
MD  
Gloria H. Danziger, University of Baltimore School of  
Law

The University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC) has operated its Truancy Court Program (TCP) for eleven years. The TCP is a school-based program for Baltimore City Public Schools located in neighborhoods where poverty, poor health, and illiteracy are rampant. These schools are also characterized by a punitive approach to negative behaviors like truancy. The TCP capitalizes on the stature and credibility of Maryland judges and magistrates, who volunteer to serve as TCP Judges. The TCP team also includes a law student enrolled in the CFCC Student Fellows Program (a 3-credit experiential course), a TCP Mentor, a TCP Attorney, a TCP Social Worker, a TCP Coordinator, school administrators, and teachers. The team meets weekly with participating middle and high school students for 14 weeks and works to identify and address the complex reasons why students are missing school. A direct result of this re-engagement is the interruption of the school-to-prison pipeline, as TCP students begin to take an active interest in their education, future, and community. Panelists will explain the program’s genesis and will highlight the impact of participation in the TCP on law students. Presenters also will discuss how the law school has partnered with Baltimore City Public Schools and the community to develop and implement a unique program in the most under-served and unserved areas of Baltimore. Participants will learn about the challenges of operating a law school community-based program and how to overcome them. The session will conclude with an interactive exercise that demonstrates an actual TCP session.

## Movement Lawyering in a Clinical Setting

Essex A, 4th Floor

Andres Del Castillo, Community Organizer, City Life/  
Vida Urbana, Northside, Jamaica Plain, NY  
Stanford Fraser, 3L Student, Harvard Law School and  
Student Attorney, Harvard Legal Aid Bureau, Co-  
leader, Foreclosure Task Force and Project No One  
Leaves, Cambridge, MA  
Eloise Lawrence, Harvard Law School  
Patricio S. Rossi, Harvard Law School

This session will explore how clinics can effectively partner with community organizers advocating for political, economic, and/or social change in the communities in which clients live and work.

First, we will discuss the “sword and shield” model developed in Boston during the foreclosure crisis. This model involved clinicians and law students at Harvard Law School teaming up with community organizers at City Life Vida Urbana, a tenants’ rights organization, to combat displacement by foreclosing banks. The “sword” was the community organizing which involved weekly meetings, actions such as eviction blockades, protests, and other public demonstrations. The “shield” involved canvassing by students to explain people’s legal rights, legal consultations at the weekly community meetings, and legal representation of any member of the community group facing eviction. This project prevented or significantly delayed the displacement of hundreds of families, achieved meaningful law reform, and gave voice to the thousands of residents adversely affected by the foreclosure crisis. Currently, the model remains in place while the movement has shifted from post-foreclosure evictions to fighting mass displacement caused by gentrification. We will discuss how that shift has impacted the work done by both the “sword” and the “shield.”

Second, we will pursue with the group how this model could work in your clinics addressing your community’s needs. Specifically, we will work together: (1) to identify the community organizations/organizers that you could potentially partner and what types of issues they are working on; (2) to identify what legal services your clinic can provide that simultaneously educate students on how to become effective advocates, help individual members of the community organization with their immediate

legal needs, and further the advocacy goals of the community organization; and (3) to understand how community organizers can help you serve individual clients, advance broader policy objectives, and teach students how to practice outside the scope of traditional individual client representation.

## Clinic-Community Partnerships: Practical Tips, Pitfalls, and Pedagogy

Essex B, 4th Floor

Fareed Hayat, Howard University School of Law  
Margaret M. Jackson, University of North Dakota  
School of Law  
Sarah Russell, Quinnipiac University School of Law  
Geetha Sant, Washington University in St. Louis School  
of Law  
Valerie Schneider, Howard University School of Law

Sometimes, individual client representation can feel like a game of whack-a-mole: we assist one client in solving a legal problem, only to move on to assist other clients with similar or identical issues. Meaningful partnerships with community organizations can allow law clinics to affect broader changes while also serving many pedagogical and practical purposes—they can be a reliable source of interesting clients, they are a great way for students to network with community decision makers, and they can help facilitate an organized approach to developing your clinic.

This panel will explore diverse goals and models of clinic-community collaboration, with a focus on reflecting on these experiences (many of which feel like fits and starts) and devising plans and principles for maximizing learning and community impact. The panelists work in a wide variety of settings—criminal, civil, transactional, urban, rural, historically Black, majority White etc.—and will discuss the practicalities of partnering with community groups in each of these environments. From pedagogy to the particulars, participants will leave this information-sharing session with a sense of how to identify potential community partners, involve students in the planning process, set the partnership in motion, and reflect on the collaboration.

## **When Life Gives You Lemons: Externship Clinicians Doing More with Less in Times of Dynamic Community Change**

Essex C, 4th Floor

Derrick Howard, Valparaiso University School of Law  
Becky Rosenfeld, Benjamin N. Cardozo School of Law,  
Yeshiva University

Susan B. Schechter, University of California, Berkeley  
School of Law

Field placement clinicians serve many different roles. Some clinicians work exclusively within externship programs; many handle additional responsibilities in skills instruction, writing and research, professional responsibility, pro bono, career services, and other areas. Given the ongoing explosion of growth in experiential learning offerings, many in our community feel overwhelmed with all we want and need to do for our schools, our students, and ourselves. This session will offer the opportunity for conversation about what we are aiming for and accomplishing on our campuses; how we are building allies and garnering support; how we can build programs that are integrated into our clinical, experiential, and school communities; and how we can maintain professional identities that sustain us and our various communities. In this interactive session, we will explore how we fit into our institutions, the roles we play, and how we keep ourselves going. In a structured exercise, we will first “kvetch” about then positively reframe challenging aspects of our jobs. Working in small groups, we will ponder specific examples of conflicts within an institution that call our values and ability to do great work into question. One example is the rise of private-sector externships and how we grapple with those for programs that see their primary mission as promoting social justice work. Another is how we deal with field placement reorganization when a law school brings in a new experiential learning director. We will explore connections to conference themes of community engagement and social justice in our community through inquiry into the varied communities externship clinicians interact with in the educational ecosystem: students, institutions, disempowered communities, and colleagues. Our goal is for each attendee to walk away with 2-3 concrete tips and tools to do their jobs and live their lives more productively and meaningfully.

10:45 am – 12:15 pm

## **WORKSHOPS**

Advanced sign-up for Workshops is required; attendance is limited.

### **(Re-)Designing a Clinic Using Backward Design**

Susan D. Bennett, American University, Washington  
College of Law

Danielle Cover, University of Wyoming College of Law  
Carwina Weng, Indiana University Maurer School of  
Law

Confused by the ABA standards requiring program outcomes? Wondering how your course assessments and learning outcomes will map onto the law school's? This workshop can help. Whether your focus is community lawyering, lawyering skills, ethics, or substantive knowledge, this workshop will help you to design a course that aligns with your learning goals and outcomes and to situate your course in your school's program outcomes. During the workshop, participants will use backward design, an approach to instructional design and planning pioneered by Grant Wiggins and Jay McTighe, to begin drafting a course of each participant's choosing. By the end of the workshop, participants can expect to have identified the major goals of their clinics, the final grading assessment and rubric of their clinics, and the learning outcomes for their students. Readings will be assigned before the conference. Then, throughout the workshop, participants will receive feedback from colleagues and facilitators on the work they do during the workshop. Participants must commit to attend the entire four-part workshop.

### **Making Educational Videos**

Michele R. Pistone, Villanova University School of Law  
Angela K. Upchurch, Southern Illinois University  
School of Law

This workshop will focus on the creation and use of online educational videos. Materials will be provided to participants, and participants will be asked to take part in conference calls/webinars prior to the conference to go over the learning science behind educational videos, the different types of videos, and an overview of the process of creating them. Participants will be asked to bring scripts and images to the workshop. The workshop will focus on scripts and visuals, different methods of creating videos (webcams, screen-casting, multimedia, etc.), and various educational uses of videos, including



for student feedback. By the end of the workshop, participants will have the information they need to make informed choices about using online educational videos.

### Scholarship Support

Michele Estrin Gilman, University of Baltimore School of Law

Jeffrey J. Pokorak, Suffolk University Law School

The Scholarship Support Workshop is designed to support new and emerging scholars in identifying scholarly topics, developing writing strategies, gaining feedback on writing, and obtaining publication. This workshop is a safe space to ask questions, share ideas, and obtain support. There are four sessions: in session one, we consider the advantages clinicians have as scholars, and we brainstorm about ways to overcome writing barriers; in session two, we discuss the nuts and bolts of the presentation and publication processes; in sessions three and four, each attendee shares a scholarly idea and receives feedback in a roundtable format designed to help them refine their thesis and the scope of their project. Attendees do not share written work or drafts. Prior workshop attendees have reported that the workshop motivated them to start and complete their scholarly projects.

12:15 pm – 2 pm

### AALS Luncheon

Grand Ballroom Salon V, 3rd Floor

**AALS Section on Clinical Legal Education Shanara Gilbert Award Presentation**

**Slideshow of New Clinicians**

2:15 pm – 3:45 pm

### Plenary Session: #BlackLivesMatter and Clinical Legal Education

Harborside C, 4th Floor

Kimberlé W. Crenshaw, University of California, Los Angeles School of Law

Dorcas Gilmore, American University, Washington College of Law

Ralikh Hayes, Coordinator, Baltimore Bloc and Board Member, Baltimore Algebra Project, Baltimore, MD

Brendan D. Roediger, Saint Louis University School of Law

Robin Walker Sterling, University of Denver Sturm College of Law

**Moderator:** Renee M. Hutchins, University of Maryland Francis King Carey School of Law

This plenary panel, consisting of clinicians and community advocates, will discuss the latest developments in this signal movement for racial justice and various ways that clinical programs can engage with it. Using an interactive format, panelists will demonstrate and share lessons learned, collective wisdom, and best practices for working with community organizations in challenging multiple issues of structural inequality such as those involving race in criminal justice, housing, employment, education, and equitable development. Panelists will also address critical pedagogical questions surrounding engaging students inside and outside the classroom as allies of community-led movements.

3:45 pm – 4 pm

### Refreshment Break

Harborside Foyer, 4th Floor

4 pm – 5:15 pm

### Working Group Discussions

(see handout for your Working Group assignment and its location)

6 pm – 7:30 pm

### Reception Sponsored by and Held at University of Baltimore School of Law

The University of Baltimore School of Law will host a reception in UB's striking new John and Frances Angelos Law Center, with transportation provided. The reception will encompass the entire building, with music, art, and spoken word performances by community-based artists and organizations. Attendees will also have an opportunity to tour UB's state-of-the-art Clinical Law Offices. After the reception, there are numerous opportunities for dinner and other activities in areas within walking distance of the UB campus, including Mt. Vernon – a historic district in which UB is located – and Station North – a revitalized cultural and entertainment hub in Baltimore with a range of coffee houses, restaurants, theaters, and art galleries.

Bus transportation provided from the SE Bus Entrance of the hotel to the reception at the law school, located at 1401 N. Charles Street, between 5:30 and 6 pm, with returning service between 7:40 and 7:50 pm from the law school's Gordon Plaza. Guests are encouraged to fill each bus to capacity (sitting and standing) for the most efficient transfer schedule.

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**Monday, May 2, 2016**

7:30 am - 8:45 am

**Clinicians of Color and Diversity of Leadership Committees**

Waterview A, Lobby Level

**Meditation Session**

Raven, Lobby Level

Liz Keyes will lead a half-hour guided meditation ideal for beginners and for those beginning again, followed by discussion of the experience. The rest of the time will be left for silent meditation, for those who wish.

9 - 10:30 am

**Plenary Session: Innovative and Sustainable Clinical Engagement with Community Needs**

Harborside C, 4th Floor

Jeffrey R. Baker, Pepperdine University School of Law  
Davida Finger, Loyola University New Orleans College of Law

Beth Lyon, Cornell Law School

Lydia Nussbaum, University of Nevada, Las Vegas,  
William S. Boyd School of Law

Cynthia Wilson, Northwestern University School of Law

**Moderator and Presenter:** Janet Thompson Jackson,  
Washburn University School of Law

This plenary will showcase innovative ways that experiential learning courses can engage in the community and teach students about communities and community partnerships. The panelists, representing faculty teaching across the spectrum of in-house clinics and externships, will: (1) address opportunities and challenges associated with designing courses that are pedagogically sound, sustainable, and responsive to the immediate and/or longer-term needs of specific communities; and (2) demonstrate pedagogical techniques, such as simulations and exercises, that can help students better understand and build relationships with the communities they serve.

10:30 am - 10:45 am

**Refreshment Break**

Harborside Foyer, 4th Floor

10:45 am - 12:15 pm

**CONCURRENT SESSIONS**

**Restorative Approaches in Clinics and Communities**

Galena, 4th Floor

Samantha Buckingham, Loyola Law School, Los Angeles

Annalise J. Buth, Northwestern University School of Law

Deborah Thompson Eisenberg, University of Maryland Francis King Carey School of Law

Eve Hanan, University of Baltimore School of Law

Lydia Nussbaum, University of Nevada, Las Vegas,  
William S. Boyd School of Law

Jonathan Scharrer, University of Wisconsin Law School

This panel will explore the possibilities and challenges of incorporating restorative justice work in a clinical legal setting. Through our clinical work in schools, prisons, and courts, law students work with individuals from marginalized communities, individuals whose private lives have become regulated by state institutions, and individuals whose behavior has been over-criminalized. In all of these contexts, law students learn important lessons about how damage to relationships or individual autonomy may contribute to conflict, drive legal disputes, and escalate violence. All of our clinics involve bringing together all individuals impacted by an incident (both victims and offenders and any support people) through a conferencing or mediation model.

Presenters will briefly set out a framework for restorative clinical work, describing our work in prisons, schools, courts, and communities. We will demonstrate some of the teaching methods we use to help law students understand restorative theory and practice. We will explain the pedagogy of circles, conferencing, and victim-offender mediation, and how they can be used in our teaching and work with communities. Then, consistent with restorative theory, the session will actively engage in the audience in a restorative format so we may collectively explore the opportunities, challenges, and limitations presented by restorative work for clinical legal educators, lawyers, and communities.

## **Clinics and Courts: Opportunities for Collaboration, Innovation, and Change**

Heron, 4th Floor

Paul Bennett, The University of Arizona James E.  
Rogers College of Law  
John C. Cratsley, Harvard Law School  
Kathleen Devlin Joyce, Boston College Law School  
Kristine A. Huskey, The University of Arizona James E.  
Rogers College of Law

This concurrent session will explore the role that clinical and placement programs can play in the broader question of court innovation and change – independent of individual case representation. The presenters will first describe the very different ways in which each of their programs collaborates with courts and engages students in court innovation. The presenters will address how their programs involve students in important questions of how court processes can impact minority and low income or vulnerable populations. We will then open the session to brainstorm how clinical and placement programs can create richer collaborations with courts and judges. We will explore how law school programs can impact courts and how courts can affect clinical and placement design and pedagogy. We will also explore how our relationships with courts can shape the way we represent our clients and help our students understand the role of lawyers in impacting court policies and procedures.

Our learning goals are that participants:

1. Better understand some of the diverse ways in which law school programs interact with courts and judges. What are some of the benefits of close relationships? What are some of the danger areas?
2. Better understand how to use our relationships with courts and judges to provide a quality learning experience for our students and to improve outcomes for our clients.
3. Better understand how law school programs can help improve courts including specific proposals for court reform.

## **Rebellious Lawyering from the Trenches to the Law School: Lessons from Clinicians and Lawyers Trained by Gerald López**

Iron, 4th Floor

Jesus M. Barraza, California Western School of Law  
Marissa Dagdagan, National Labor Relations Board,  
Region 31, Los Angeles, CA  
Julia I. Vazquez, Southwestern Law School  
Jason Wu, Staff Attorney, The Legal Aid Society, New  
York, NY

This panel will build upon the work of Gerald López’s seminal book, “Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice.” The panel consists of former students of López whose collective goal is a rejection of the regnant lawyering model in order to practice and teach rebelliously. These clinicians and practicing attorney will discuss how this goal can present challenges—ideological, structural, and practical—and how they endeavor to overcome such challenges. They will present how their experiences as non-traditional law students in the Rebellious Lawyering Course served as a framework for their future legal careers in engagement with underserved communities and problem solving. Panelists will discuss how the framework of rebellious lawyering informs their work in the “legal trenches” with underserved communities to building the next generation of rebellious lawyers. Attendees will engage with the panel in questions of how pedagogy informs our work with students and the communities we serve. The panelists will also lead small working groups to discuss the reflections on attendees’ rebellious roots and goals as well strategies to implement the tenets of rebellious lawyering in our practice and teaching. Attendees will also be invited to participate in a rebellious clinician’s on-going working group to continue collaboration and sharing of materials, exercises, and problem solving strategies.

## Integration of New Teaching Materials on Social Justice and Community into the Clinical Curriculum

Harborside E, 4th Floor

Jane H. Aiken, Georgetown University Law Center  
Alan K. Chen, University of Denver Sturm College of Law  
Scott L. Cummings, University of California, Los Angeles School of Law  
Ann C. Shalleck, American University, Washington College of Law  
**Moderator:** Sameer Ashar, University of California, Irvine School of Law

This session is designed to generate ideas for incorporating a variety of new teaching materials concerning social justice, community, and professional identity into the clinical curriculum. Both public interest lawyering and clinical legal education have evolved a great deal over the past generation, and this session will explore three new books—Alan K. Chen and Scott L. Cummings, “Public Interest Lawyering: A Contemporary Perspective;” Deborah Epstein, Jane H. Aiken, and Wallace J. Mlyniec, “The Clinic Seminar;” and Susan Bryant, Elliott S. Milstein, and Ann C. Shalleck, “Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy”—each of which examines in its own way the relationship between clinics and communities with special attention to thinking about the role of clinics in promoting social justice, empowering communities with whom they work and collaborate, and advancing one of the incipient goals of the clinical legal education movement, providing legal representation to underrepresented populations. Presentations about these materials followed by a structured group activity will allow participants to explore and develop ideas about integrating components of these varied teaching materials into the clinical curriculum. We also hope that the session will meaningfully advance the conversation about how the relationship between clinics and communities has changed since the publication of Professor López’s landmark work “Rebellious Lawyering,” and what public interest law looks like as we move deeper into the twenty-first century.

## Focusing on Empathy: Helping Students Translate General Empathy for the Client Community to Particularized Empathy for the Clients, and Back Again

James, 4th Floor

Rachel Camp, Georgetown University Law Center  
Deborah Epstein, Georgetown University Law Center  
Laurie S. Kohn, The George Washington University Law School

Most of us would agree that experiencing and communicating empathic understanding to our clients is an essential lawyering skill. In contrast to skills like interviewing and direct examination, however, empathy is rarely a subject on a clinical classroom syllabus. More typically, clinicians assume that empathy is inherently ingrained or lacking, and doesn’t lend itself to adult learning, either in the seminar classroom or in the supervision context.

But many clinic students struggle with empathy, especially in clinics representing vulnerable and underserved populations. When focused on the client population in general, students tend to find it easy to feel a sense of connection. In the abstract, students can assume that clients will fit within sympathetic stock stories; they can focus on presumed client vulnerabilities, and identify their own role as a “savior,” all of which may well mesh easily with their hopes for an idealistic lawyering experience.

At the individual level, of course, many clients will disappoint these abstract expectations. Students may find an individual client difficult to work with, may not agree with a client’s choices, or may even outright dislike a particular client. When that happens, the empathy students felt in the abstract becomes far more difficult to maintain in the specific situation.

In this session, we will explore the following questions: What is empathy and how can it be lost or maintained? How can we help students hold on to empathy both at a general level and at a client-specific level? How does empathy translate between individual representation and representation of the broader community? What pedagogical goals might support including empathy explicitly in the clinic curriculum? Through discussion groups and exercises, we will work together to develop concrete strategies both in the classroom and through supervision to help students locate and maintain empathy.

**Exploring Community Engagement Opportunities through an Interdisciplinary Partnership Lens**

Essex A, 4th Floor

Tomar Brown, University of Pittsburgh School of Law  
Janet H. Goode, University of Memphis, Cecil C.

Humphreys School of Law

Medha D. Makhoulf, The Pennsylvania State University  
– Dickinson Law

Jennifer N. Rosen Valverde, Rutgers School of Law –  
Newark

To date, much of the community engagement work of law school clinics has responded to situations of crisis. Less frequent are examples of clinics engaging communities proactively, thereby using a preventive approach. The medical-legal partnership (MLP) is a model of inter-professional collaboration that has taken hold in varying forms in more than fifty law school clinics and more than 250 medical and health institutions. MLP practitioners use the term “preventive law” to describe legal advocacy focused on the root causes of health problems, and efforts to identify and address a client’s social determinants of health before they become legal problems. In so doing, the MLP has made great strides in shifting the thought processes of participating attorneys from a reactive/ treatment-oriented focus to a proactive/preventive one. MLPs’ consideration of community issues from multiple disciplinary perspectives opens the door to fascinating questions about the way problems and solutions are defined and addressed. This enables MLPs to better engage, collaborate with, and serve their communities to advance human rights and social justice proactively.

Through a mix of presentations, discussion, and participatory problem-solving exercises, this session will explore community engagement opportunities that MLP clinics offer, and translate the lessons learned for use in any inter-professional clinic. Panelists will share examples of community engagement and collaboration in teaching, learning, service delivery, research, and scholarship at all stages of clinic development, from inception to formation and implementation. Panelists will offer answers to several questions related to partnerships with communities, including: Can we collaborate across programs to serve communities? What forms of community engagement and collaboration have we used at different stages of program development and implementation? What are the [challenges and] tradeoffs in the areas of problem definition,

curriculum development, inter-professional education, community service delivery, and research and scholarship?

**Back to the Future: Engaging Communities through Individual Representation and Impact Litigation**

Essex B, 4th Floor

Elizabeth Keyes, University of Baltimore School of Law  
Jennifer L. Koh, Western State University College of  
Law

Shoshana Krieger, Texas RioGrande Legal Aid, Austin,  
TX

Stefan H. Krieger, Maurice A. Deane School of Law at  
Hofstra University

Sarah Rogerson, Albany Law School

Much of the existing scholarship on community engagement by lawyers—including Gerald López’s classic book, “Rebellious Lawyering”—is quite disdainful of traditional clinical models. A focus on representation of individual clients, the argument goes, stifles disadvantaged communities from telling their actual stories by constricting their narratives to the limited framework of legal theories. And traditional class actions and impact litigation, these scholars assert, disempower disadvantaged groups by giving the role of storyteller to the attorneys, rather than members of the community. For these reasons, this scholarship contends, radically new and different models must be developed to give voice to the disadvantaged and truly engage with disempowered communities.

Our experience with litigating on behalf of disadvantaged individuals and community groups, however, calls into question this critique. In this session, we plan to demonstrate that traditional clinical models of representing clients in individual cases and impact litigation can be quite effective in engaging communities so long as that engagement is an explicit clinical goal.

The first part of the session will discuss clinics which place high pedagogical value on teaching students how to ethically, compassionately and zealously represent individual clients, at the same time engage with surrounding communities at multiple levels. In fact, in some cases, the likelihood of success in the individual client representation may be greatly enhanced by the students’ parallel efforts in community engagement.

The second part of the session will describe how traditional impact litigation of a federal housing discrimination case in the Hofstra Clinic on behalf of nine Latino plaintiffs helped develop a community of the subordinated plaintiffs rather than undermine it. When the clients first came to the Clinic, their community was inchoate. What the Clinic found was that the requirements of the traditional litigation process actually helped the subordinated clients develop a community. The case provided a catalyst for the development of a community and a collective voice.

### **Talking About Race in Case and Workplace Settings**

Harborside C, 4th Floor

Susan J. Bryant, City University of New York School of Law

Jean K. Peters, Yale Law School

This concurrent session will review the principles, techniques and analytical frameworks that lawyers can use more effectively to raise issues of race. Using an interactive style, with case examples, role play and discussion, we will demonstrate new techniques for use in case and workplace and the classroom. We will elicit other successful strategies for talking about race from participants, especially in community advocacy settings. We will explore how advocates/students can respond to micro-aggressions and how we can teach students to respond. The session will also explore how implicit bias functions in practice to shape our work with clients, communities, and decision makers and how we help students develop these insights.

### **Client-Centeredness Applied to Community Group Representation**

Harborside D, 4th Floor

Alicia Alvarez, The University of Michigan Law School  
Michael Diamond, Georgetown University Law Center  
Paul R. Tremblay, Boston College Law School

This concurrent session will address head-on the ethical and logistical challenges involved in working with community groups while adhering to the commitment of client-centeredness. Each of us has written on the topic (although not always in agreement with one another), and each of us has experience, in clinics or elsewhere, in community group representation. We find these questions important and quite hard, and we hope to use this concurrent session to tease out some tentative answers.

Our goals for the session: The participants and panelists will engage in a discussion of, and therefore learn much about, the ethical and practice-based considerations emerging from a progressive lawyer's representation of a community group, especially an ill-structured group whose members do not speak with one voice (that is to say, every community group).

Our plan for the session: Using a story where lawyers and students grapple with these issues, the session will highlight the deep tensions that can arise in this kind of work.

This concurrent session will attempt to grapple with the following questions directly and in a spirited fashion: Can client centeredness include a community focus? Does it require it? How can we best respond to the issues affecting our clients and the communities we aim to serve?

10:45 am – 12:15 pm

#### **Workshops**

Advanced sign-up for Workshops is required; attendance is limited.

**(Re-)Designing a Clinic Using Backward Design (Continued)**

**Making Educational Videos (Continued)**

**Scholarship Support (Continued)**

12:15 pm – 1:45 pm

#### **AALS Luncheon**

Grand Ballroom Salon V, 3rd Floor

#### **Social Justice Speaker**

John Nethercut, Executive Director, Public Justice Center, Baltimore, MD

#### **CLEA Awards:**

Per Diem Project Award Presentation

Excellence in Public Interest Case/Project

Outstanding Advocate for Clinical Teachers

2 pm – 5 pm

#### **Service Projects/Community Engagement**

(see page 75 for descriptions)

2 pm – 3:30 pm

## CONCURRENT SESSIONS

### Engaging with Racial and Faith-Based Communities in an Era of “University Engagement”

Heron, 4th Floor

Anthony V. Alfieri, University of Miami School of Law  
 Catherine Kaiman, University of Miami School of Law  
 Paulette J. Williams, University of Tennessee College of Law

This presentation will address clinical faculty and student engagement with racial and faith-based communities through clinical inner-city black church clergy and congregations in low-income communities of color, a subject largely absent from Gerald López’s path breaking book, “Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice.” The session will explore both program design and pedagogy. Materials will be drawn from current clinical programs and related nonprofit advocacy-and-organizing projects engaged in community-based, black church collaborations in the fields of civil rights, community development, environmental justice, and poverty law.

A goal of this session is to highlight the strategies being used at the university level to engage with the community, assess their effectiveness, and determine if any of those strategies can be applied to the law clinic context. The session will include brief presentations about work at the University of Tennessee in developing community partnerships, and the work of the University of Miami Center for Ethics and Public Service.

In this concurrent session the presenters will explore what is meant by engagement with the community from a number of perspectives: Are we talking about the same community when we talk about engagement by the university and by our clinics? How do members of the community or their needs shape our curricular offerings? What kind of scholarly work is being done that engages the community? How do research and scholarship reflect the level of outreach to the community? What outcomes are we seeking from our community engagement work? We will use small group discussions and discussions with the larger group about goals and effects of community engagement and of scholarship in this area.

### Lessons from Baltimore and Washington, D.C.: Working with Community-Based Organizations to Build Capacity and Fight for Economic Justice

Harborside C, 4th Floor

Priya Baskaran, Georgetown University Law Center  
 Renee Camille Hatcher, University of Baltimore School of Law  
 Louise A. Howells, University of the District of Columbia, David A. Clarke School of Law  
 Susan R. Jones, The George Washington University Law School  
 Jaime Lee, University of Baltimore School of Law  
 Alicia Plerhoples, Georgetown University Law Center  
 Eva Seidelman, University of the District of Columbia, David A. Clarke School of Law  
 Brenda V. Smith, American University Washington College of Law  
 Etienne C. Toussaint, The George Washington University Law School

#BlackLivesMatter is not only a criminal law issue, but also an issue of economic justice and political empowerment within urban centers that face increasing income inequality and gentrification. This concurrent session will engage participants in the economic justice work of community economic development and transactional law clinics in Baltimore and Washington, D.C. Our clinic work with community-based organizations aims to capture and anchor capital that is essential to redressing community members’ economic inequality, via new economic institutions, community-owned institutions, and social enterprises; and build capacity within community-based organizations to further their efforts to increase political and economic power within poor and low-income communities.

Participants will hear from clinical law professors from Baltimore and Washington, D.C. law schools. Our work includes legal representation of community land trusts, limited equity cooperatives, worker cooperatives, nonprofits, social enterprises, church-based credit unions, and entrepreneurs who are returning citizens.

Participants in this concurrent session will:

- Learn about the collaborations between clinics and community-based groups in Baltimore and Washington, D.C. to combat social and economic injustice;

- Learn methods to build capacity within community-based groups;
- Understand the learning objectives that students acquire from working with community-based groups, which include both lawyering skills and tools to combat income inequality and other economic injustices; and
- Understand the challenges of engaging in community-based work, and come away with concrete tools for positioning clinics to engage in movement work that is timely but often unpredictable and not neatly packaged for student involvement.

### **#DOYOURJOB: Exploring Community Engagement and the “Public Citizen” Role of Lawyers through In-House Clinics and Externships**

Essex C, 4th Floor

Martina E. Cartwright, Texas Southern University  
Thurgood Marshall School of Law  
Erika Curran, Florida Coastal School of Law  
Elizabeth McCormick, University of Tulsa College of Law  
Linda F. Smith, University of Utah, S. J. Quinney  
College of Law  
Lisa C. Smith, Brooklyn Law School  
Melissa Swain, University of Miami College of Law  
Leah Wortham, The Catholic University of America,  
Columbus School of Law

Last summer, the hashtag #DOYOURJOB erupted on Twitter in response to the refusal by a court clerk to issue marriage licenses to same sex couples. In the context of clinical legal education, #DOYOURJOB is an equally powerful mantra. It calls for us to explore the complex roles that lawyers have with clients and communities. #DOYOURJOB also encompasses the important role of lawyers in making sure that others—especially those public servants who come in contact with our clients—do their jobs properly. We will argue that any clinic (in-house or externship) could have as learning goals that students explore the values and value-choices encountered in their clinical work, engage in critique, including institutional critique, and begin to assume the lawyer’s role “as a public citizen having special responsibility for the quality of justice.”

Four presenters who direct in-house Immigration Clinics will present ideas and materials for engaging clinical students in an examination of their professional roles in the community. Two presenters whose students do clinical work in District Attorneys’ offices will discuss how their students engage with

the community and how their teaching addresses “institutional culture” in the DA’s office. A clinician at an HBCU (historical black colleges and universities) will discuss their mission to incorporate and impart social justice tenets in practical legal education, ensure access to justice for underrepresented communities, and provide legal education opportunities to minority applicants. The final two presenters will discuss the range of ways in which externship experiences can offer a window into institutional critique and exploration of values and how materials in the newly-published “Learning from Practice” text can support clinical courses focusing on institutional critique and social justice.

This will be an interactive session and will include an opportunity for sharing ideas, questions, and feedback.

### **Community and Pedagogical Benefits of Developing Public Education Resources and Engaging in Technology Enhanced Representation**

Iron, 4th Floor

Carrie Hagan, Indiana University Robert H. McKinney  
School of Law  
Jack Lerner, University of California, Irvine School of  
Law  
Art Neill, California Western School of Law  
Victoria Phillips, American University, Washington  
College of Law  
Alex Rabanal, Illinois Institute of Technology Chicago-  
Kent College of Law

In serving both our communities and students, as clinicians we often need to be creative about our methods of community engagement and litigation focus/case acceptance practices. Traditionally clinics revolve around a live-client model of individual client centered representation. But what happens when we as clinics need to make an impact for more than one individual at a time? Are there non-case related ways that we can create useful legal pathways for our current and future clients, and our community?

Part I of this session will discuss the pedagogical benefits and successful approaches when working with students on creating public education resources. Focusing on non-traditional resources including apps and video, we’ll discuss how this work advances pedagogical goals of doctrinal learning and client counseling. Specifically, panelists will explain how student work developing public education resources



supports not only doctrinal learning by reinforcing concepts learned in the classroom, but also fundamental client counseling skills, such as being able to explain legal concepts to non-lawyers. Through open moderation and audience participation, panelists will discuss a variety of public education projects they have undertaken in their clinics, including the Fair Use Best Practices for Documentary Filmmakers and Online Video Creators, as well as the Fair Use App, and a variety of educational video series and written resources.

Part II of the session will introduce attendees to A2J, a software system with an authoring tool that creates graphical guided interviews, which walk self-represented litigants through a legal process. Presenters will discuss the pedagogical model as implemented within clinics; present specific clinic project guided interviews; direct attendees to various teaching materials created by clinics using this software; and expose attendees to new pedagogical perspectives and tools generated by the professors who have taught in the project. Syllabi and sample interviews will be made available.

### **Constructing a Blueprint for Choosing Clients in Community and Economic Development Clinics**

James, 4th Floor

Bernice Grant, University of Pennsylvania Law School  
Carrie L. Hempel, University of California, Irvine  
School of Law

Anika Singh Lemar, Yale Law School  
Robert A. Solomon, University of California, Irvine  
School of Law

Community and Economic Development Clinics often represent groups of people seeking to make a positive change through the development of new or better housing, economic opportunities, sources of healthy food, or other initiatives aimed at creating a better life for the community's members.

Determining which communities a clinic should represent, and what problems to resolve, present opportunities and challenges. How does a clinic choose the communities it represents, without engaging in “cause” lawyering? Even if one starts from the position that people who live in a given community should make the decisions about how to improve their community, conflicting visions as to what improvement looks like often occur in communities within communities. How does a

clinic best choose which “community” to represent? Moreover, after a clinic has agreed to represent a community, CED professors often ask students to think critically about the question “who is the client?”—especially when representing an informally organized group. Other questions may include “what does the client want” and “what are the best means for getting what the client wants?” These questions become increasingly difficult when the individuals in a group do not speak with a unified voice.

This concurrent session will provide a space for constructing a blueprint to use in considering how to choose communities for representation, work responsibly within a “lawyers-as-problem-solvers” vision of representation, and discuss recurring questions about the identity of the CED client and how to achieve the client’s goals. The session will begin with a short discussion by panelists from three different clinics with different approaches. The session also will include breakout sessions to discuss, in smaller groups, how other clinics approach these issues, and to develop model blueprints to use in examining and re-examining whether a clinic is meeting its vision of service to the communities it desires to serve.

### **Evaluating New Forms of Experiential Education: Which Opportunities for Students to Work in the Community Should We Adopt?**

Harborside E, 4th Floor

Claudia Angelos, New York University School of Law  
Wendy A. Bach, University of Tennessee College of Law  
Phyllis Goldfarb, The George Washington University  
Law School

Donna H. Lee, City University of New York School of  
Law

Laura Rovner, University of Denver Sturm College of Law  
Alexander Scherr, University of Georgia School of Law

This concurrent session will continue the presenters’ collective efforts to develop methods and materials for clinicians and externship teachers involved in evaluating new experiential offerings that offer students opportunities to work in the community. This method is designed to confront the challenges we face as schools explore new experiential offerings and strive to fulfill the ABA’s new requirement that all students receive six credits of experiential education. It is also particularly targeted at helping clinical or externship faculty analyze and discuss offerings being proposed by faculty who do not traditionally teach

in clinics or externships or by members of the bar who seek to offer learning opportunities to students. We intend for the proposed methodology to help clinicians articulate the benefits and risks of new forms of experiential learning, navigate the challenges of deciding whether to endorse or oppose proposals, justify decisions to scale back proposals that do not effectively meet experiential learning goals, or strengthen new experiential offerings by injecting clinical pedagogy. During the session we will draw on participants' institutional experiences with new forms of experiential learning and provide opportunities to consider and use the methodology in discussion of proposals at their own institutions. We will also seek feedback on whether the method used is helpful to the clinical community and how it might be strengthened.

### **Fringe or Not: The Role of Street Law, Know Your Rights, and Other Community Engagement Pedagogies in Social Justice Education**

Harborside D, 4th Floor

Beryl S. Blaustone, City University of New York School of Law

Paula Galowitz, New York University School of Law

Catherine F. Klein, The Catholic University of America, Columbus School of Law

Richard L. Roe, Georgetown University Law Center

There are many street law clinics in U.S. law schools and increasingly in many clinical programs around the world. The primary focus of this session is on integrating aspects of street law and other community engagement pedagogies into our existing clinics. One aspect of some of the pedagogies is creating programs on demand from and in cooperation with the communities themselves. We will explore the evolving concepts of self-determination and autonomy in “non-traditional” lawyering partnerships including supportive, educational, and facilitation roles. Students learn how to work and communicate in a participatory environment, as well as explore broader roles of lawyering in which the community is empowered and identifies its needs. This session is a celebration and acknowledgment of some of the creative and innovative activities we engage in with our students and the communities we serve. The title of this session is a play on the concept of “Fringe Festival” and is intended to reflect the playful approach we will use throughout this session.

The session will feature a demonstration of street law methodology and a panel including community participants in a street law program in a rehabilitation center in Washington, D.C. Participants will discuss the methodology and benefits of this type of program both in small and large groups. Each colleague in the session will have the opportunity to share their experiences and insights. Participants will leave the room with a deeper understanding of the value of street law, know your rights and other community engagement pedagogies in the social justice education mission of clinical education. Together we will reflect on the lessons we have learned from these pedagogies. We will also suggest approaches to incorporate them into existing clinics and increase engagement with the community.

### **Supervising Movement Lawyering**

Essex B, 4th Floor

Annie Lai, University of California, Irvine School of Law  
Sunita Patel, American University Washington College of Law

Jeena Shah, Rutgers School of Law

Movement lawyering is the practice of lawyering to build power in communities engaged in collective efforts for social change. Lawyers may engage in a variety of activities: they may defend the right to protest, help establish new organizations, represent organizations or collectives in litigation, provide direct legal services to a membership base, or work in coalition on a policy or legislative campaign. However, organizers and activists have also recounted examples of where lawyers, despite their best intentions, worked at cross purposes with or ultimately did more harm than good to people's movements. As law school clinics begin to engage more directly with such movements, it is imperative that we reconfigure our teaching and supervision methods to better equip law students for the work they will be called upon to do. In this interactive workshop, participants will explore how clinical teachers can produce more thoughtful, strategic, and resourceful allies to social movements; help law students work more effectively with community organizers and other stakeholders; and prompt law students to think critically about the power and limits of their professional role. Through a participatory mock supervision session, we will illustrate how to operationalize the teaching goals for movement lawyering, surface common challenges, and brainstorm potential responses. Participants will also share concrete tools for teaching movement lawyering principles in other clinical settings, including seminar and case rounds.

## Clinical Pedagogy and a Beginning Quest for Resilience and Dignity

Essex A, 4th Floor

2 pm – 2:30 pm

W. Warren Hill Binford, Willamette University College of Law

Shelaswau Bushnell Crier, Willamette University College of Law

Carrie Hagan, Indiana University Robert H. McKinney School of Law

2:30 pm – 3 pm

Margaret I. Bacigal, The University of Richmond School of Law

Ashley R. Dobbs, The University of Richmond School of Law

Julie McConnell, The University of Richmond School of Law

Mary Kelly Tate, The University of Richmond School of Law

Adrienne E. Volenik, The University of Richmond School of Law

3 pm – 3:30 pm

Questions and Discussion

This presentation will focus on the recent experience of six clinicians who have introduced resiliency concepts and exercises in their pedagogy. The clinicians come from a diverse background of disciplines. This will afford breadth and depth for attendees of similarly diverse backgrounds. In response to the community theme animating this conference, each clinician will present what impact these efforts have had in terms of three communities: the community connecting the clinic students to each other, the community connecting the student-lawyers with their clients and the community connecting the clinical professor with their clinic students. The presentations will delve into specific techniques used, scholarship and books relied upon, and activities incorporated by each clinician. The presentation will also focus on recent scholarship supporting the importance of resiliency as a factor in career satisfaction and growth. There will be a particular emphasis on reflection as a pillar that can be harnessed to access pedagogical gains around resiliency. Specifically, the clinicians will share how incorporating resiliency learning into their curricula advanced law students' emerging professional identities and how it clarified students' beliefs and values about what a legal career signifies for their futures. Examples of clinical topics taught through the lens of resiliency include: how demands, expectations,

and constraints on lawyers and law students affect their relationships with clients; how self-awareness can impact collaboration with peers and clients; why preserving and replenishing emotional, physical, and intellectual energy is essential to the creation of a sustainable career; and why discovering methods of identifying and clarifying strengths and weaknesses is necessary for personal and professional growth.

2 pm – 3:30 pm

### Workshops

Advanced sign-up for Workshops is required; attendance is limited.

#### **(Re-)Designing a Clinic Using Backward Design (Continued)**

#### **Scholarship Support (Continued)**

#### **Another Path to Justice: Training Students in Private Practice Skills**

Ann Juergens, Mitchell | Hamline School of Law  
Ilene B. Seidman, Suffolk University Law School

This workshop seeks to grapple with the fact that access to justice work must include small and solo practices. No more than 10% of law graduates will find work in the non-profit or government sectors, and the majority of lawyers in private practice are in small or solo firms. With this in mind, workshop participants will plan methods for readying students for the realities of the law services market as well as ways to improve the quality of access to justice in their communities, via the private sector. The group will explore how clinicians can include the skills and values that will enable students to support themselves in small justice-oriented law practices in their teaching and in their law schools.

The first session will examine our ideas of social justice work. Participants will generate an inventory of skills needed to succeed in fee-for-service practice settings that are not required in no-fee practice. In discussion, we will identify which of these skills are taught in clinics currently. Small groups will choose one skill that we would teach differently in preparing students for a fee-for-service context and plan how to do so.

In the second session, participants will identify barriers to incorporating these skills into their clinics and into the larger curriculum. We will design and vet a plan for overcoming these barriers and for including at least one of the identified skills of private practice in

participants' existing clinics and course of study. The workshop also will troubleshoot the task of keeping a public interest focus while learning so-called "private" practice skills, and consider the stretch involved in teaching these skills for those of us—including one of the workshop planners—who have never engaged in private law practice.

3:30 pm – 3:45 pm

### **Refreshment Break**

Harborside Foyer, 4th Floor

3:45 pm – 5 pm

### **Working Group Discussions**

(see handout for your Working Group assignment and its location)

6 pm – 7:30 pm

### **Reception at the University of Maryland Francis King Carey School of Law**

The University of Maryland Francis King Carey School of Law thanks West Academic for sponsoring this reception. We invite you to visit Maryland Carey Law's historic Westminster Hall, sample some of Baltimore's finest fare, celebrate clinical legal education, and engage!

Bus transportation provided from the SE Bus Entrance of the hotel to the reception at the law school, located at 500 W. Baltimore Street, every ten minutes starting at 5:30 pm with last bus returning to the hotel at 7:35 pm.

## **Tuesday, May 3, 2016**

7:30 am – 8:30 am

### **AALS Section on Clinical Legal Education Committees**

(see page 69 for committee meetings and room locations)

### **Meditation Session**

Raven, Lobby Level

Jean Peters will lead two half-hour meditations: the first from a CD by Rod Stryker, the Four Desires, chosen based on the consensus of the group; the second, a recording she prepared based on the "future self" visualization recommended by experts on vicarious traumatization.

8:30 am – 10 am

## **CONCURRENT SESSIONS**

### **Examining Community and Mission in Gender Violence Clinics**

Galena, 4th Floor

Ann M. Cammett, City University of New York School of Law  
Leigh Goodmark, University of Maryland Francis King Carey School of Law  
Lisa V. Martin, The Catholic University of America, Columbus School of Law  
Natalie Nanasi, Southern Methodist University, Dedman School of Law  
Jane K. Stoeber, University of California, Irvine School of Law

It is often challenging for lawyers practicing in the area of gender violence to identify the appropriate community to target and mission to pursue. Survivors of intimate partner and sexual violence often hesitate to self-identify and may not view themselves as connected to others via shared experiences of abuse. Community-based organizations (CBOs) working to combat gender violence may limit the populations they serve by, for example, declining to provide assistance to "imperfect" victims with "co-occurring issues" (e.g., those who struggle with addiction or have criminal records). With overwhelming demand for help securing remedies more traditionally associated with gender violence, such as orders of protection, custody, or divorce, CBOs may not offer

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a more holistic range of services. As a result, certain individuals who experience gender violence may be excluded or overlooked by CBOs or may continue to struggle with interrelated issues that CBOs are not equipped to address.

The goal of this session is to develop attendees' understanding of a domestic/family/gender violence clinic's potential role in expanding the conception of community in gender violence work. Drawing on the presenters' experiences working in legal areas as varied as civil rights, immigration, child abduction, criminal law, housing, employment, and public benefits, this session will explore the benefits of expanding the missions of domestic violence clinics. We will discuss how predicating assistance on client experience as opposed to legal matter advances client-centered lawyering and serves to recognize the intersectionality between domestic violence and other harms such as hyper-incarceration, human trafficking, and child welfare, as well as broader concepts of human rights and poverty. We will think critically about the community with which we partner and aim to better understand our role in bringing attention to the voices of survivors who are not typically heard and broadening the conception of what constitutes "gender violence work."

### **Transactional Clinic Impact on the Community Ecosystem**

Heron, 4th Floor

Esther S. Barron, Northwestern University Pritzker School of Law

Brian Krumm, University of Tennessee College of Law

Patricia H. Lee, St. Louis University School of Law

Stephen F. Reed, Northwestern University Pritzker School of Law

Michael Schlesinger, The John Marshall Law School

While clinics that focus on litigation have been around since the early 1950s, transactional clinics didn't begin to surface until the late 1970s and early 1980s. In the mid-1990s, a small number of business clinics existed and today there are more than 140 transactional clinics. While it is readily apparent how community development transactional clinics engage and partner with communities, it is not as clear to the casual observer what role entrepreneurial, business, and intellectual property clinics play in effectively supporting communities. This panel will discuss how they view and define "communities" and "community engagement" from the perspective of their particular clinical focus and geographic area. Although from a

pedagogical standpoint the principal purpose of these clinics is to train students for leadership positions in law, intellectual property, and business, these clinics also provide a valuable service to the community by helping both for-profit and nonprofit organizations and individuals who could not otherwise afford legal assistance. Clients are often selected according to several criteria: businesses that can provide students with important and versatile transactional law experience, companies likely to create new jobs for the community, and individuals and organizations providing a unique product or service.

The panel will provide an overview on how each defines their "community" and how they view the impact they have on promoting the local, regional, or national ecosystem through their clinical work. The participants may share their syllabi, intake forms, and other materials that demonstrate how their clinics evaluate potential clients and how they perceive working with such clients benefit a larger community. The panel will entertain questions from and enter into discussions with the audience in order to explain programmatic goals and objectives, as well as exploring opportunities for improvement.

The panelists represent an experienced and geographically diverse group of clinicians who will engage the audience with their insights into transactional skills development and the value they view their programs add to their "communities."

### **One Big Happy Family: How Clinicians and Doctrinal Faculty Can Create Projects that Address Community Needs**

Iron, 4th Floor

Jennifer Ching, Executive Director, Queens Legal Services, Jamaica, NY

Brant T. Lee, University of Akron School of Law

Andrea McArdle, City University of New York School of Law

Joseph A. Rosenberg, City University of New York School of Law

Joann M. Sahl, University of Akron School of Law

This session will address course innovations that engage second- and third-year law students to build essential lawyering skills in a social-justice lawyering context. It will focus on hybrid clinical and doctrinal offerings at CUNY Law School and the University of Akron School of Law (UA). The hybrid clinic at CUNY attempts to bridge the gap between externships and in-house clinical programs by collaborating

with Queens Legal Services in a community-based housing practice. The doctrinal class at CUNY is a New York City-focused seminar, Land Use and Community Lawyering, that studies various contexts in which community-based stakeholders can participate meaningfully in decision making about affordable housing, environmental safety, and the effects of climate change. UA offers a Social Justice Lawyering doctrinal class and clinic that is co-taught by a clinician and a doctrinal professor. The UA model allows students to engage in law reform projects with national, state, and local actors, while studying the role of lawyers in community-based social justice reform work. The presenters will use the CUNY and UA models to discuss creative ways to incorporate social justice lawyering into the law school curriculum.

### **Providing Legal Aid to Vulnerable Communities through Law Clinics: The View from Qatar and the Arab World**

James, 4th Floor

Julia Constanze Braunmiller, Legal Consultant for the Women, Business and the Law Project, World Bank Group, Washington, DC  
Yassin El Shazly, Qatar University College of Law  
Peggy Maisel, Boston University School of Law  
Mohamed Y. Mattar, Qatar University College of Law

This session explores the role of law clinics in providing legal aid to vulnerable communities, through partnerships with these communities and by working with government agencies who are in charge of addressing their needs. It covers the clinical work of Qatar University and other law clinics in the Arab region that target the elderly, the disabled, foreign laborers, domestic workers, trafficking victims, and street children. It inquires into challenges in providing legal aid to the vulnerable communities and calls for the expansion of the concept to include not only legal representation but also legal information, legal education, and legal advocacy.

### **Clinics Working Within the Campus Community to Address Campus Sexual Assault, Intimate Partner Violence, and Stalking in a Time of Heightened Scrutiny**

Harborside E, 4th Floor

Kelly Behre, University of California, Davis, School of Law  
Tanya Asim Cooper, Pepperdine University School of Law  
Jill C. Engle, The Pennsylvania State University – Penn State Law  
Kasia Mlynski, University of Oregon School of Law  
Wendy Seiden, Chapman University Dale E. Fowler School of Law

As the country debates the role of universities in addressing gender-based violence and student rights on campus, some law school clinics find themselves uniquely positioned as a part of the university community engaging in the dual role of representing individual victims and participating in university policy development. This panel will examine law school clinics providing direct representation to victims of sexual assault, intimate partner violence, and stalking in the larger community, including students. We will discuss the political and ethical complications that may arise when representing a student against another student and when holistic civil representation includes campus disciplinary hearings and Title IX rights. We will address enhanced confidentiality considerations, university reporting guidelines, and potential conflicts of interest.

The panel will also discuss the complications that arise through participation in campus violence coordinating committees, compliance meetings, and the development of student conduct policies and procedures, as well as the potential conflicts clinical faculty consider before deciding whether or not to serve on student disciplinary hearing boards or in university investigatory roles. We will explore nuances that emerge when advocating broadly for a class of victims and assisting the university in improving the community response to victim complaints while decreasing its liability.

## Reimagining Advocacy: Adapting Clinical Models to Meet Community Needs

Harborside C, 4th Floor

Farrin Anello, Seton Hall University School of Law  
 Kate Evans, University of Minnesota Law School  
 Denise L. Gilman, The University of Texas School of Law  
 Jennifer Lee, Temple University, James E. Beasley  
 School of Law

Ranjana Natarajan, The University of Texas School of  
 Law

Sarah H. Paoletti, University of Pennsylvania Law  
 School

Elissa C. Steglich, The University of Texas School of Law  
 Philip Torrey, Harvard Law School  
 Michael S. Vastine, St. Thomas University School of  
 Law

The goal of this session is to challenge ourselves to pursue clinical projects that may not easily fit within our clinic's pre-existing legal work, yet respond to pressing community needs. Emerging social justice issues often require a creative, timely, and nuanced response that may fall outside the scope of the historic clinical paradigm of individual client representation. As clinicians, we are uniquely positioned to address new systemic issues in response to the communities we serve.

By way of example, this session will explore the response of various immigration, civil rights, and human rights clinics to the significant increase in the number of asylum-seekers from Central America since the summer of 2014. These clinics not only sought to address the overwhelming need for individual immigration counsel but also pushed back against the enforcement-focused response of the federal government. The government's response includes expedited proceedings without due process for families and unaccompanied children, vastly increased detention of families, and reporting and electronic monitoring for released families pending resolution of removal proceedings.

Through discussion and small group work, the session will address some of the common questions and concerns clinicians have about taking on projects that do not neatly fit within our current clinical models. How does one create a successful new project? How can a project utilize multiple strategies such as community organizing, civil rights impact litigation, international human rights, and domestic policy advocacy to bring about change? How does one get outside of the comfort zone to take on such a

project, yet maintain the control needed to teach and supervise students? What pedagogical value do such projects have for our students?

While our examples may draw from our experience in the immigration context, we invite racial justice, human rights, civil rights, criminal justice, and other clinicians to enrich the discussion.

## Empirical Scholarship and Community Engagement

Harborside D, 4th Floor

Emily Benfer, Loyola University Chicago School of Law  
 Anna E. Carpenter, The University of Tulsa College of  
 Law

Russell Engler, New England Law | Boston

Allyson Gold, Loyola University Chicago School of Law

Michael Kagan, University of Nevada, Las Vegas,

William S. Boyd School of Law

Colleen F. Shanahan, Temple University, James E.

Beasley School of Law

Jessica Steinberg, The George Washington University  
 Law School

There are a growing number of clinicians who recognize the power of empirical research as part of advocacy and activism on behalf of a community. This session will provide inspiration, lessons learned, and frameworks for combining advocacy and empirical research in clinicians' engagement with communities. The presenters are clinicians who are conducting empirical research in communities where they are also advocates and activists on issues such as access to justice, legal services, health justice, domestic violence, housing, and immigration.

The first part of the session will use the presenters' experiences to explore the intersection of empirical research and activism on behalf of communities and will address questions including:

- Should (and can) empirical research be designed as a means to advance advocacy and activism ends for a particular community?
- What happens when empirical research goals (or results) conflict with a community's advocacy goals or personal activism goals?
- Can one design empirical research that is independent of but nonetheless consistent with community advocacy or activism goals?
- How are clinicians particularly well suited to be empirical scholars?

The second part of the session will gather information about attendees' motivations and then divide into small groups led by each presenter designed to brainstorm, plan, reflect on, and troubleshoot potential empirical research projects that grow from attendees' own community engagement.

### **Towards Holistic Representation: Creating Successful Law and Social Work Collaborations**

Essex A, 4th Floor

Cheryl A. Azza, Boston University School of Social Work  
Cheryl G. Bader, Fordham University School of Law  
Laila L. Hlass, Boston University School of Law  
Wendy J. Kaplan, Boston University School of Law  
Elizabeth Nevins-Saunders, Maurice A. Deane School of Law at Hofstra University  
Sarah Sherman-Stokes, Boston University School of Law

Would an interdisciplinary social work-legal collaboration enhance the education you provide your students, the representation you provide your clients, and your clinic's community engagement? This panel will explore the many benefits of interdisciplinary clinical education with a focus on social work-legal partnerships and ways to overcome-- and indeed use as pedagogical tools—the perceived obstacles to an interdisciplinary approach. Through discussion, role play, and presentation, we will examine a number of social work-legal partnership models and tackle a variety of issues that arise when law students collaborate with social work students or students from other disciplines. Such issues include: client confidentiality and other ethical considerations; constructing and deconstructing role boundaries; supervising students from outside disciplines; teaching interdisciplinary collaboration skills; goal setting; learning interviewing, counseling, and problem solving skills from the teachings of other disciplines; and providing clients access to services and community resources. This session aims to demonstrate the nexus between interdisciplinary education and holistic representation and to address pedagogical and logistical questions when creating and implementing a model that is right for your clinic.

### **Connecting Clinics, Clients, and Communities in Rural America**

Essex B, 4th Floor

Lauren E. Bartlett, Ohio Northern University, Pettit College of Law  
Allison Korn, University of Baltimore School of Law  
Jessica Long, University of Idaho College of Law

Clinics that serve rural populations contend with a number of unique challenges. At the same time, clinicians in remote areas have the opportunity to foster students' appreciation for the meaning of their work in the local landscape and the complexities of practice in the rural context. The goals of this session are to facilitate a dialogue among rural clinicians and explore exercises that illustrate about the distinctive aspects of rural clinical legal education and the ways in which it is shaped by communities.

8:30 am – 10 am

#### **Workshops**

Advanced sign-up for Workshops is required; attendance is limited.

**(Re-)Designing a Clinic Using Backward Design  
(Continued)**

**Scholarship Support (Continued)**

**Another Path to Justice: Training Students in Private Practice Skills (Continued)**

10 am – 10:15 am

#### **Refreshment Break**

Harborside Foyer, 4th Floor

10:15 am – 11:45 am

#### **AALS Section on Clinical Legal Education Works in Progress**

(see page 51 for descriptions and locations)

#### **Bellow Scholars Program Report on Projects**

James, 4th Floor

(see page 67 for descriptions)

11:45 am – 12:30 pm

#### **Working Group Discussions**

(see handout for your Working Group assignment and its location)



12:30 pm – 1:45 pm

**AALS Luncheon**

Grand Ballroom Salon V, 3rd Floor

**Honoring Gary Palm – Opportunities to speak in memory of Gary and his work**

2 pm – 3 pm

**Plenary Session: Reflections and Lessons**

Harborside C, 4th Floor

**Facilitators:**

Carolyn B. Grose, Mitchell | Hamline School of Law  
Margaret E. Johnson, University of Baltimore School of Law

In our final plenary, we will invite audience members to reflect on questions raised by the conference. In the interest of making this reflection helpful and relevant, we invite conference-goers to email or tweet us questions they might like to consider during that last plenary. You can do this one of two ways: #AALSreflections for people who use Twitter; or aalsreflection@gmail.com for people who prefer email.



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# Biographies of Planning Committee Members, Plenary and Luncheon Speakers

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AREEN, JUDITH Executive Director, Association of American Law Schools (since 2014). Paul Regis Dean Professor, Georgetown University Law Center (on leave). JD, 1969, Yale; AB, 1966, Cornell University. Mem. of Bd. of Editors, Yale L.J. *Admitted:* DC, 1972; MA, 1971. Dean Emer., since 2010; Prof., Georgetown Law Center, since 1976; Interim Dean, Georgetown Univ. Law Center, 2010; Exec. V.P. & Dean, Georgetown, 1989-2004; Fellow, Woodrow Wilson Int'l Cntr. for Scholars DC, 1988-1989; Prof., Community & Fam. Med. Georgetown Med. Cntr., 1982-1989; Assoc. Dean, Georgetown, 1984-1987; Gen. Counsel & Domestic Reorg. Coord'r, 1979-1980; Dir., Fed. Leg. Rep. Proj. Pres.'s Reorg. Proj. Off. Mgt. & Budget DC, 1977-1979; Vis. Assoc. Prof., Michigan, 1975-1976; Assoc. Prof., Georgetown, 1972-1976; Fel. & Dir., Educ. Voucher Study Cntr. for the Study of Public Policy Cambridge MA, 1970-1972; Prog. Planner for Higher Educ., Budget Bur. Off. of the Mayor NYC, 1969-1970. *Subjects:* Family Law; Jurisprudence; Educ. Law. *Books:* Higher Educ. and the Law (with Lake), 2d ed., 2014; Cases and Materials on Family Law (with Spindelman and Tsoukala), 6th ed., 2012; Cases and Materials on Law, Sci. and Med. (with King, Goldberg, Gostin & Jacobson), 3d ed., 2005; Educ. Vouchers: A Report on Financing Educ. By Grants To Parents (with Jencks et al.), 1970. *Member:* ALI; ABF (Fellow). *Consultantships:* Gov'r, DC Bar, 1979-1982; Bd. Member, Pro Bono Institute, since 2004; Exec. Com., AALS, 1998-00, 2005-07, Pres., 2006.

BAKER, JEFFREY R. Assoc. Prof. of Law, Dir. of Clin. Programs, Pepperdine. JD, 2000, Vanderbilt; BA, 1997, Harding Univ. *Admitted:* CA, 2014; AL, 2007; MS, 2000. Assoc. Professor, Pepperdine, since 2013; Assoc. Prof., Faulkner, 2006-2013; Assoc., Watkins & Eager PLLC Jackson MS, 2001-2006; Adj. Professor, Belhaven College, 2004; Assoc., Phelps Dunbar P.A. Tupelo MS, 2000-2001. *Subjects:* Externships; Elder Law Clinic Clin. Tchg. (S); Pre Trial Practice; Law & Literature; Family Violence Clinic (S); Introduction to Ethical Lawyering; Negotiation Theory & Prac.; Community Just. Clinic. *Member:* CLEA; AALS. *Consultantships:* Co-Chair, Montgomery Cty. Task Force on Domestic Violence, 2009-2013; Member, Alabama St. Bar Task Force on Pro Bono Celebration, 2009-2013; Member, Inst. of Faith and the Academy, 2009-2013.

BARRY, MARGARET Prof. and Assoc. Dean for Clin. and Experiential Programs, Vermont. JD, 1980, Minnesota. Prof. and Assoc. Dean for Clin. and Experiential Programs, Vermont Law School, since 2011; Assoc. Prof., since 1998;

Ass't Prof., 1992-1998; Clin. Instr., Cath. Univ., 1987-1992; Ch. Legis. Counsel, U.S. House of Reps. DC, 1981-1987. *Subjects:* Families and the Law Clinic (S). *Awards:* ABA Stands. Rev. Com. Serv. Award, 2011; Soc. of Am. Law Schools Leadership Award, 2011; William Pincus Award, 2009; Clin. Legal Educ. Ass'n Outstanding Advocate Award, 2006; Clin. Legal Educ. Ass'n Award for Serv. to Clin. Legal Education, 1999; D.C. Coalition Against Domestic Violence, 1994; D.C. Coalition Against Domestic Violence, 1989. *Member:* CLEA (V.P., 1998, Pres., 1999, Bd. Mem., 2000-02); SALT (Mem. of Bd., since 2004, Co-President, 2008 and 2009); AALS (Chair, Sect. on CLE, 1998). *Consultantships:* Vice Chair, ABA Stands. Rev. Committee, ABA Sect. of Legal Educ. and Adms. to the Bar, since 2008; Mem., DC Bar Task Force on Family Law Representation, since 1991, Co-Chair, 2001-2007; Co-Chair, Teen Domestic Violence Subcom., DC Coord'g Coun., 1997-1999; Chair, Steering Com., Family Sect., DC Bar, 1989-1991.

CRENSHAW, KIMBERLÉ W. Dist. Prof. of Law, UCLA; Prof., Columbia. MA, 1985, Wisconsin; JD, 1984, Harvard; BA, 1981, Cornell. Prof., since 1992; Acting Prof., 1989-1992; Ass't Prof., U.C.L.A., 1986-1989; Clerk, Just. Shirley S. Abrahamson WI Sup. Ct., 1985-1986. *Subjects:* Crim. Law (Substantive); Civil Rts. (S).

CROWDER, PATIENCE A. Ass't Prof., Denver. JD, 1999, Rutgers - Newark; BA, 1995, Georgetown. Arts. Ed., Rutgers L. Rev. *Admitted:* CO, 2011; OK, 2007; MD, 2005; CA, 2000. Ass't Clin. Prof., Univ. of Tulsa Coll. of Law, 2007-2010; Clin. Fellow, Univ. of Balt. Sch. of Law, 2004-2007; Bus. Dev. Mgr., St. Hope Corp. Sacramento, 2002-2003; Assoc., Shearman & Sterling San Fran., 1999-2001. *Subjects:* Community Economic Dev. Clinic.

EPSTEIN, DEBORAH Prof. & Assoc. Dean, Clin. Educ. and Public Interest & Community Serv. Programs; Director, Domestic Violence Clinic, Georgetown. JD, 1988, New York Univ; BA, 1984, Brown Univ. N.Y.U. L. Rev. *Admitted:* DC, 1991; WA, 1990; NY, 1989. Assoc., Bernabei & Katz DC, 1991-1993; Women's Law & Public Policy Fellow, Georgetown, 1990-1991; Assoc., Heller Ehrman White & McAuliffe Seattle, 1989-1990; Clerk, Hon. Marvin Katz E.D. PA, 1988-1989. *Subjects:* Family Law (S); Clin. Tchg. (S); Emplmt. Discrim. Law (S). *Books:* The Clinic Seminar, 2014; Listening to Battered Women: A Survivor-Centered Approach to Advocacy, Mental Health, and Justice, 2008; Dist. of Columbia Domestic Violence Benchbook, 1997; Litigating Domestic

Violence Cases: A Prac. Manual (with Fulcher & Lehrman), 1995. *Awards*: Clin. Legal Educ. Association, Outstanding Advocate for Clin. Teachers, 2011; Georgetown Women's Forum Alumnae Award, 2011; Georgetown Law Cntr. Fac. of the Yr. Award, 2006. *Consultantships*: Chair, D.C. Domestic Violence Fatality Rev. Bd., since 2005; Comm'r, DC Mayor's Comm. on Violence Against Women, since 1996; Dir., DC Superior Ct. Domestic Violence Intake Cntr., since 1996.

FINGER, DAVIDA Ass't Clin. Faculty, Loyola, New Orleans; Interim Assoc. Dir., of the Law Clinic; Interim Dir. of the Gillis Long Poverty Law Center; Founding Dir., The Incubator Program. MA, 2007, University of Pennsylvania; JD, 2002, Seattle University. Teaching Fellow, Neighborhood Partnership Network, New Orleans, 2009; Wasserstein Fellow, Harvard Law School, 2008-2009.

GILMORE, DORCAS R. Vis. Prac.-in-Res., Community & Economic Development Law Clinic, American University. Co-Founder, Baltimore Action Legal Team. JD, 2007, Maryland; ABH, 2000, Rollins. Ass't Gen. Counsel, NAACP, 2010-2013; Skadden Fellow & Staff Att'y, Community Law Center, 2007-2010.

GOLDFARB, PHYLLIS Jacob Burns Fdn. Prof. of Law and Assoc. Dean for Clin. Affairs, Geo. Wash. MA, 1985, Georgetown; JD, 1982, Yale; MA, 1979, Harvard Univ.; BA, 1978, Brandeis Univ. *Admitted*: MA, 1988; DC, 1982. Jacob Burns Fdn. Prof. of Law & Assoc. Dean for Clin. Affrs., Geo. Wash., since 2007; Prof., since 1997; Assoc. Prof., 1991-1997; Ass't Prof., Boston Coll., 1986-1991; Ass't Prof., No. Illinois, 1984-1986; Supervising Att'y, Georgetown, 1982-1984. *Subjects*: Law and Narrative; Evidence; Legal Profession; Crim. Procedure; Jurisp. (S); Women & the Law (S); Crim. Justice. *Awards*: CLEA Outstanding Advocate for Clin. Teachers Award, 2012. *Member*: Editor-in-Chief, Clin. Law Review.

GROSE, CAROLYN B. Prof., Mitchell Hamline. JD, 1994, Brooklyn; BA, 1988, Middlebury Coll. Arts. Ed., Bklyn. L. Rev. *Admitted*: MN, 2006; DC, 2005; MA, 1998; NY, 1995. Assoc. Prof., Wm. Mitchell, since 2006; Prac.-in-Res., American, 2004-2006; Ass't Clin. Prof., Connecticut, 1999-2004; Staff Att'y/Skadden Fellow, Western MA Legal Servs. Springfield, 1996-1999; Clin. Tchr., Western New England, 1997-1999; Clerk, Sr. Judge Whitman Knapp S.D. NY NYC, 1994-1996. *Subjects*: Clin. Tchg. (S); Advocacy; Trusts and Estates; Evidence.

HAYES, RALIKH Pres., Bd. of Dir., Baltimore Algebra Project; Youth Commissioner, 9th District, Baltimore City Youth Commission; Devel. Assoc., Public Justice Center. Exec. Dir., Baltimore Algebra Project, 2011-2013.

HUTCHINS, RENEE M. Prof. of Law; Co-Director, Clin. Law Program, Maryland. JD, 1993, Yale; BA, 1990, Spelman. *Admitted*: MD, 2005; NY, 1995. Prof. of Law, Univ. of Maryland Sch. of Law, since 2004; Acting Ass't Prof., New York Univ., 2002-2004. *Subjects*: Appellate & Post-Conviction Advocacy Clinic; Fourth Cir. Decisions (S); Crim. Procedure. *Books*: Learning Crim. Procedure, 2014.

JOHNSON, CONRAD Clin. Prof., Columbia. JD, 1978, Brooklyn; JD, 1978, Brooklyn; BA, 1975, Columbia College, Columbia University. *Admitted*: NY, 1980. Co-Dir., Lawyering in the Digital Age Clinic, since 2001; Clin. Prof., Columbia Law School, since 1992; Co-director, Columbia Law School, Fair Housing Clinic, 1989-2000; Dir., Columbia Law School, Clin. Progs., 1993-1996; Acting Dir. of Clin. Programs, Columbia Law School, 1992-1993; Assoc. Clin. Prof., 1990-1992; Vis. Assoc. Clin Prof., Columbia Law School, , 1989-1990; Ass't Prof., CUNY Law School, 1988-1989; Vis. Ass't Prof., CUNY Law School, 1987-1988; Att'y-in-Charge, Harlem Neighborhood Off., 1983-1987; Staff Att'y, The Legal Aid Soc. Civil Div. NYC, 1978-1983. *Subjects*: Clin. Tchg. (S); Legal Profession; Civil Rts. (S); Tech. & Practice. *Awards*: Prof. Willis L.M. Reese Award for Excellence in Teaching, 2013; The Legal Aid Soc. Pro Bono Serv. Award, 2006; The Legal Aid Soc. Pro Bono Serv. Award, 2003. *Member*: CLEA (Bd. of Dirs., 1999-01); AALS (Com. on Curric. & Res., 2000-02); AALS/ABA/LSAC (Jt. Com. on Racial & Ethnic Diversity, since 2002); Bd. of Governors, 2005-08, Soc. of Americal Law Teachers; Co-Chair, AALS Clin. Section, Tech. Committee. *Consultantships*: Governor's Appointee, Jud. Screening Committee, First Dept., 2007-2011; City Bar Just. Center, Bd. of Trustees, NYC Ass'n of Bar, 2005-2011; Bd. of Directors, CALI, Computer Assisted Legal Instruction, since 2011; Bd. of Directors, National Black Law Journal, Columbia Jour. of Race and Law, since 2002.

JOHNSON, MARGARET E. Assoc. Professor, Co-Director, Cntr. on Applied Feminism, Director, Bronfein Family Law Clinic, Baltimore. BA, 1987, Dartmouth. Arts. Ed., Wis. L. Rev. *Admitted*: MD, 2006; DC, 1997; MA, 1995. Ass't Prof., Baltimore, since 2006; Prac.-in-Res. & Dir., Domestic Violence Clinic American, 2002-2006; Sr. Assoc./Assoc., Kalijarvi Chuzi & Newman P.C. DC, 1997-2002; Assoc., Terris Pravlik & Wagner DC, 1996-1997; Women's Law & Public Policy Fel. & Staff Att'y, Wash. Lawyer's Com. for Civil Rts. & Urban Affrs. DC, 1995-1996; Jud'l Clerk, Hon. Hector M. Laffitte U.S.D.C. Dist. of PR San Juan, 1993-1995. *Subjects*: Sex-Based Discrimination; Emplmt. Discrimination; Property; Family Law Clinic (S). *Books*: AALS Bellow Scholar Award, 2005. *Member*: Order of the Coif. *Consultantships*: Ed'l Com., Women in the Law in MD, since 2007.

KASSEM, RAMZI Assoc. Prof. of Law & Dir., Immigrant and Non-Citizen Rights Clinic, CUNY; Supervisor, Creating Law Enforcement Accountability & Responsibility (CLEAR) Project, CUNY. JD, Columbia.

KUENNEN, TAMARA Assoc. Prof., Denver. LLM, 2004, Georgetown; JD, 1996, Northeastern; BA, 1991, Occidental. Assoc. Prof., Denver, since 2004; Teaching Fellow & Women's Law and Public Policy Fellow, Domestic Violence Clinic, Georgetown, 2002-2004; Staff Att'y, Legal Aid Servs. Of Oregon, 1996-2001; Legal Intern, Oregon Coalition Against Domestic and Sexual Violence, 1995; Law Clerk, Northwest Women's Law Center, 1995; Law Clerk, Center for Reproductive Law and Policy, 1994. *Subjects:* Civil Litig. Clinic.

LAWTON, JULIE D. Assoc. Clin. Prof. of Law, DePaul. LLM, 2005, Georgetown; JD, 1997, Howard; BS, 1993, Florida A&M University. *Admitted:* IL, 2012; DC, 1998; MD, 1997. Assoc. Professor, DePaul, since 2014; Ass't Professor, DePaul, 2011-2014; Mng. Member, Lawton Development, 2007-2011; Instructor, Georgetown, 2005-2011; Vis. Ass't Professor/Fellow, Georgetown, 2003-2005; Associate, Financial Services, Morrison & Foerster LLP, 1997-2001; Financial Analyst, Bank of America, 1993-1994. *Subjects:* Bus. Fundamentals for Lawyer (S); Housing and Community Dev. Legal Clinic. *Awards:* Coleman Fdn. Fellowship, 2015. *Member:* Officer, AALS Sect. on Clin. Legal Education. *Consultantships:* Plng. Committee, AALS Conf. on Clin. Legal Education, 2015-2016; Host and Plng. Com. Member, Transactional Clinicians Conference, 2014.

LÓPEZ, GERALD Prof. of Law, U.C.L.A. JD, 1974, Harvard; BA, 1970, Southern Cal. *Admitted:* CA, 1974. Clin. Prof., New York Univ., since 2000; Vis. Prof, UCLA, 2006-2007; Prof., U.C.L.A., 1994-2000; Prof., 1985-1994; Vis. Prof., Stanford, 1984-1985; Prof., 1983-1985; Vis. Prof., Harvard, 1983-1984; Acting Prof., 1979-1983; Vis. Prof., U.C.L.A., 1978-1979; Priv. Prac., San Diego, 1975-1979; Ass't Prof., Cal. Western, 1976-1978; Clerk, Hon. Edward J. Schwartz Ch. Judge U.S.D.C. S.D. CA San Diego, 1974-1975. *Subjects:* Community Outreach Educ. & Obligation; Clin. Teaching; Hist. of Legal Education; Contracts; Civil Rts. Litig. Clinic; Community Economic Development. *Books:* Guide to a Fair and Just Workplace, 2006; Streetwise About Money, 2006; The Cntr. for Community Problem Solving Reentry Guide, 2005; Rebellious Lawyering, 1992.

LYON, BETH Clin. Prof. of Law, Cornell. Mng. Editor, Georgetown Int'l Law Journal. *Admitted:* PA, 2001; DC, 1997; NY, 1995. Professor, Villanova Univ. Sch. of Law, since 2010; Assoc. Professor, Villanova Univ. Sch. of Law, 2008-2010; Ass't Prof., Villanova, 2001-2008; Practitioner in Residence, Washington Coll. of Law, Am. University, 1998-2001; Staff

Att'y, Human Rts. First, 1995-1998. *Subjects:* Farmworker Legal Aid Clinic; Farmworker Legal Aid Clinic (S). *Books:* Outstanding Bk. Award, Gustavus Myers Cntr. for the Study of Bigotry and Human Rts. in North America (chapter contributor), 2008. *Awards:* AALS Sect. on Clin. Legal Educ. Shanara Gilbert Emerging Clinician Award, 2003. *Member:* AALS (Chair, Int'l Human Rts. Sect., 2003); SALT (Bd. Mem., since 2006, Co-Chair, Human Rts. Committee); Latina/o Critical Theory Inc. (Bd. Co-Chair, 2006-2008, Steering Com. Praxis Coordinator, 2009-present). *Consultantships:* Member, Am. Bar Ass'n Adv'y Grp. on Lang. Access Stands. Project, since 2010; Bd. Mem. (currently Salary Survey Com. Co-Chair), Soc. of Am. Law Teachers, since 2007; Bd. Mem. (currently Bd. Vice-President), Friends of Farmworkers, since 2006; Bd. Mem. (currently Bd. President), Global Workers Just. Alliance, since 2005; Bd. Mem., Latina/o Critical Legal Theory, Inc., since 2003; Chair, DC Bar Immig. & Human Rts. Com., 1997-2000.

MILSTEIN, ELLIOTT S. Prof., American University. MA, 1971, Yale; JD, 1969, Connecticut. *Admitted:* DC, 1973; CT, 1969. Prof., since 1977; Vis. Prof., New York L.S., 2007; Dean, 1994-1995; Interim Pres., 1993-1994; Dean, 1990-1993; Interim Dean, American, 1988-1990; Dir., Clin. Progs., 1972-1988; Co-Dir., Nat'l Veterans Law Cntr., 1978-1984; Acting Assoc. Dean, Fac. Affrs., 1977-1978; Assoc. Prof., 1974-1976; Ass't Prof., American, 1972-1974; Sr. Staff Att'y, New Haven Legal Assist. Ass'n Inc., 1971-1972; Lect. & Co-Dir., Legal Clinic Connecticut, 1969-1970. *Subjects:* Legal Profession; Crim. Law; Clin. Tchg. (S); Off. Prac. (S); Alternate Dispute Resolu. (S); Int'l Human Rts. (S). *Books:* Transforming the Educ. of Lawyers: The Theory and Prac. of Clin. Pedagogy (co-authored with Bryant and Shalleck), 2014. *Awards:* The Lever Award from DC Law Students in Court, 2006; William Pincus Award for Outstanding Contributions to Clin. Ed., 1992. *Member:* AALS (Chair, Sec. on Clin. Educ., 1982, Chair, Com. on Clin. Educ., 1993-94, Exec. Com., 1996-01, Pres., 2000); AALS (Parliamentarian, 2003-2010, 2014. *Consultantships:* Fac., AALS Clin. Tchrs' Conf., 1978-81, 1983-84, 1986, 1988, Chair 1998-99, Co-Chair 2011, since 1992; Performance Test Consult., St. Bar of CA, 2004-2011; Multi St. Perf. Test Com., Nat'l Conf. of Bar Exam'rs, 1996-2004.

NETHERCUT, JOHN Executive Director, Public Justice Center, 2002-present. JD, 1982, Harvard. BA, 1978, Earlham College. Deputy Chief & Ass't Att'y General, Consumer Protection Division, Office of the Att'y General of MD, 1988-2002; Att'y, Legal Servs. of Central NY, 1987-1988; Att'y, Southern Tier Legal Servs., 1986-1987; Att'y, Legal Aid Soc. of Greater Cincinnati, 1982-1986; Paralegal, Migrant Farm Worker Unit, Legal Servs. Org. of Indiana, 1978-1979; Community Boycott Organizer, United Farm Workers, 1975.

NEWMAN, JONEL Clin. Professor, Dir. Health Rts. Clinic, Miami. JD, 1986, Yale. Sr. Ed., Yale L.J. *Admitted:* FL, 1997; CT, 1987. Ass't Prof., Miami, since 2005; Att'y, FL Legal Servs. Miami FL, 2002-2005; Att'y, FL Just. Inst. Miami, 1996-2002; Att'y, CT Civil Liberties Union Hartford, 1991-1995; Att'y, Garrison Silbert & Arterton New Haven CT, 1987-1991; Clerk, Hon. R. Lavier Anderson U.S.C.A. 11th Cir. GA, 1986-1987. *Subjects:* Prof'l Responsibility; Civil Procedure; Clin. Tchg. (S). *Awards:* AALS Clin. Sect. Shanara Gilbert Award, 2015. *Member:* Fellow, Am. Bar Foundation; AALS Sections on Clin. Legal Educ. and Poverty Law. *Consultantships:* Member, ABA Civil Right to Counsel Working Group, 2009-2012; Comm'r, ABA Immig. Comm., 2005-2009.

NUSSBAUM, LYDIA Assoc. Professor, Nevada, Las Vegas. JD, 2009, Maryland; BA (Hons), 2003, Cornell University. Exec. Articles Editor, Maryland Jour. of Int'l Law. *Admitted:* NV, 2014; MD, 2010. *Subjects:* Med. Clinic; Perspectives on Dispute Resolution; Family Law.

PIOMELLI, ASCANIO Prof., UC, Hastings. JD, 1985, Stanford. *Admitted:* CA, 1985. Prof. of Law, since 2007; Assoc. Clin. Prof., 2004-2007; Ass't Clin. Prof., 2001-2004; Clin. Att'y, UC Hastings, 1992-2001; Exec. Dir., 1990-1991; Staff Att'y, East Palo Alto Community Law Proj. East Palo Alto CA, 1988-1990; Staff Att'y, Fresno Merced Legal Servs. Fresno CA, 1985-1987. *Subjects:* Community Economic Dev. Clinic (S); Community Grp. Advocacy Clinic (S). *Consultantships:* Bd. of Eds., Clin. Law Rev., 2006-2011.

ROEDIGER, BRENDAN D. Assoc. Prof. of Law, St. Louis. JD, 2005, Wash., St. Louis; BA, 2002, Univ. of Minnesota. *Admitted:* MO, 2008; IL, 2005. Ass't Professor, St. Louis, since 2009; Lecturer, Wash., St. Louis, 2008-2009; Staff Attorney; Reg. Coord'r for Low Wage Worker Issues, Land of Lincoln Legal Assist. Foundation, Inc., 2005-2008. *Subjects:* Clin. Teaching. *Awards:* CLEA: Excellence in Public Interest Case of Project, 2015; St. Louis Univ. SGA Diversity and Social Just. Award, 2015; Equal Housing Opportunity Coun. Open Door Award, 2015. *Member:* CLEA.

SATTERTHWAITE, MARGARET L. Prof. Clin. Law., New York Univ. JD, 1999, New York Univ. Bk. Rev. Ed., N.Y.U. Rev. L. & Soc. Change. *Admitted:* NY, 2000. Assoc. Prof. of Clin. Law, NYU Sch. of Law, 2008-2011; Ass't Prof. of Clin. Law, 2006-2008; Res. Dir., Cntr. for Human Rts & Global Just. New York Univ., 2003-2005; Consult'g Expert, UN Dev. Fund for Women NYC, 2002-2003; Clerk, Int'l Ct. of Just. The Hague Netherlands, 2001-2002; Fellow, Human Rts. First NYC, 2000-2001; Clerk, Hon. Betty B. Fletcher U.S.C.A. 9th Cir. Seattle, 1999-2000. *Subjects:* Human Rts. (S); Clin. Tchg. (S). *Books:* Human Rts. Advocacy Stories, 2009. *Awards:* Podell Dist. Tchg. Award, 2011. *Member:* ASIL (Co-Chair, Human Rts. Interest Group, 2007-2009); Order of the Coif.

*Consultantships:* Task Force on National Security, NYC Bar, since 2008; Consult., UN Dev. Fund for Women, since 2003; Bd. of Dirs., Amnesty Int'l, USA, 2005-2008; Int'l Law Com., NYC Bar, 2005-2008.

SCHAFFZIN, DANIEL M. Ass't Prof. of Law & Dir. of Clin. Programs and Externships, Memphis. *Admitted:* ND, 2008; NJ, 2001; PA, 2000. Vis. Ass't Prof. of Clin. Law, Univ. of Memphis Cecil C. Humphreys Sch. of Law, since 2009; Vis. Ass't Professor, Univ. of North Dakota Sch. of Law, 2007-2009; Counsel, GlaxoSmithKline, 2005-2007; Associate, Pepper Hamilton LLP, 2000-2005. *Subjects:* Housing and Emplmt. Litig. Clinic; Trial Advocacy; Civil Litig. Clinic; Contracts I and II; Civil Litig. Clinic. *Member:* CLEA.

SHALLECK, ANN C. Prof. of Law and Carrington Shields Scholar, Am. University. JD, 1978, Harvard; BA, 1971, Bryn Mawr Coll. *Admitted:* DC, 1984; PA, 1978. Professor, Am. University, 1991-2015; Assoc. Professor, Am. University, 1987-1991; Lecturer, Am. University, 1984-1987; Supv'g Att'y, Community Legal Servs. Phila., 1981-1982; Staff Att'y, Community Legal Servs. Phila., 1978-1981; Consultant, Nat ABA Leg Res Cnt Child Adv & Protec, 1983-1994. *Subjects:* Women & the Law Clinic; Feminist Jurisp. (S); Family law; Women & the Law Clinic; Intell'l Prop. Clinic. *Books:* Transforming the Educ. of Lawyers: The Theory and Prac. of Clin. Education, 2014; Lawyers and Clients: Critical Issues in Interviewing and Counseling (with Ellmann, Dinerstein, Gunning & Kruse), 2009; Ct. Rules to Achieve Permanency for Foster Children: Sample Rules/Commentary (with Hardin), 1985. *Awards:* William Pincus Award from AALS Clin. Sect. for Outstanding Contributions to Clin. Teaching, 2015; William Pincus Award from AALS Clin. Sect. for Outstanding Contributions to Clin. Teaching, 2015; Am. University, Washington Coll. of Law Scholarship Award, 2011; CLEA Award for Outstanding Advocate for Clin. Teachers, Clin. Legal Educ. Association, 2009; Emalee C. Godsey Scholar, Am. University, Washington Coll. of Law, 1996. *Member:* Exec. Com., 2010-2013; Spec. Adv'y Com. on ABA Law Sch. Accred. Stands. (2010-13); Com. on Curric. & Res., 1991-94, Com. on Prof'l Dev., 2005-07, Chair, 2006-07, AALS; member, ALI; AALS Conferences/Workshops on Clin. Education, Plng. Comm. 2008, 2007, 2006, 1999 (Chair); Co-Chair (2000-01), Mem. 1994-95, ABA Clin. and Skills Trng. Committee, 2000-01. *Consultantships:* Mem., Multistate Performance Test Com., Nat'l Conf. of Bar Exam'rs, 1996-2004; Bd. of Gov'rs, SALT, 1993-1997; Adv'y Com. on Implementation of the Final Rpt. of the Task Forces, DC Racial & Ethnic & Gender Bias in the Cts., 1992-1993.

STERLING, ROBIN WALKER Ass't Professor, Law Sch. Clin. Program, Denver. *Admitted:* CO, 2010; DC, 2000. Ass't Professor, Univ. of Denver Sturm Coll. of Law, since 2010; Spec. Counsel, National Juv. Defender Center, 2006-2010;

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Supervising Attorney, Children's Law Center, 2005-2006; Staff Attorney, Public Defender Serv. for the Dist. of Columbia, 2002-2005; Fellow, Georgetown Univ. Law Center, 2000-2002; Law Clerk, Hon. Emmet Sullivan, U.S. Dist. Ct. for the Dist. of Columbia, 1999-2000. *Subjects*: Crim. Defense Clinic (S).

THOMPSON JACKSON, JANET Prof. and Co-Dir of Law Clinic, Washburn. JD, 1988, Howard; BA, 1984, Wittenberg Uni. *Admitted*: KS, 2005; MD, 2003; PA, 1988. Assoc. Prof., Washburn University, since 2004; Clin. Fellow, Univ. of Baltimore, 2002-2004; Adj. Prof., Univ. of the Dist. of Columbia, 1999-2002; Exec. Dir., Families Forward Inc., 1994-2002; Att'y, Cole Raywid & Braverman, 1991-1994; Att'y, Buchanan Ingersoll P.C., 1988-1991. *Subjects*: Race & the Law (S); Small Bus. & Transactional Clinic; Entrepreneurial Law (S); Property.

WILSON, CYNTHIA Clin. Assoc. Prof., Northwestern. JD, 1986, Northwestern. Arts. Ed., J. of Crim. L. & Criminology. *Admitted*: IL, 1986. Clin. Assoc. Prof., since 2005; Sr. Lect., Northwestern, 2000-2005; Proj. Dir., Chgo. Lawyers' Com. for Civil Rts. Chgo., 1990-2000; Assoc., Sachnoff & Weaver Chgo., 1986-1990; Jud'l Clerk, Just. Seymore Simon Sup. Ct. of IL Chgo., 1987-1988. *Subjects*: Ethics; Clin. Teaching. *Member*: Order of the Coif.





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# Poster Descriptions

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*Posters are presented at the Reception,  
Saturday, April 30, 2016, 6:00 p.m.*

## **Ohio's Statewide CQE Project: Crossing Law School Boundaries to Address a Pressing Community Need**

Joann M. Sahl, University of Akron School of Law

One in six Ohioans has a criminal conviction, and those convictions prevent them from finding and keeping employment. In 2011, Ohio created a new statutory remedy, the Certificate of Qualification for Employment (CQE), to provide relief to people suffering these consequences. The University of Akron Law School (UA) became the first in Ohio to offer a CQE clinic, assisting 700 Ohioans with their CQE petitions. In 2015, UA conceived and spearheaded a new effort, the "Statewide CQE Project," to train other schools in Ohio to do the same. The Project involved four other Ohio law schools and significantly increased CQE services throughout Ohio.

## **Establishing a Substantive Law Center for Student and Community Engagement: Suffolk's Housing Discrimination Testing Program**

Nadiyah Humber, Suffolk University Law School  
James Matthews, Suffolk University Law School

Having a center for academic study organized around a substantive law area can result in a variety of types of community partnerships that improve student learning, create job opportunities, attract grant funding, and create positive outcomes for the community. Such centers create opportunities for traditional litigation based clinical work, but also for community education, access to the law for marginalized groups, interdisciplinary policy work, academic studies, empirical research, and scholarship. This poster presents Suffolk's Housing Discrimination Testing Program ("HDTP") as one example of such a clinical legal center.

## **Magnifying the Community's Access to Transactional Legal Services through a Pro Bono Attorney Program**

Susan Felstiner, Lewis and Clark Law School

Since opening in 2016, Lewis and Clark Law School's Small Business Legal Clinic (SBLC) has included a Pro Bono Project. Through the Pro Bono Project, the SBLC matches volunteer attorneys with clients according to the attorney's area of expertise. The poster will highlight how the Pro Bono Project has helped the SBLC:

- a) increase Portland's low-income small business community's access to transactional legal services;
- b) strengthen relationships between the local legal community, the Oregon State Bar, local government, the small business community, and the law school; and
- c) leverage those relationships to diversify SBLC funding opportunities.

## **Working Together to Help Immigrant Entrepreneurs: Increasing Client Impact and Student Learning through Cross-Institution Collaborations**

Amanda Kool, Harvard Law School  
Eliza Platts-Mills, The University of Texas School of Law

This poster highlights a publication of the Community Enterprise Project of the Transactional Law Clinics at Harvard Law School (HLS): A Legal Overview of Business Ownership for Immigrant Entrepreneurs in Massachusetts. The poster explains the relationship HLS shared with immigrant services partners in Boston, practicing immigration and business law attorneys,

and participants in the Entrepreneurship and Community Development Clinic at the University of Texas School of Law. It also describes the two clinics' collaborative efforts towards a 50-state version of the guide to assist undocumented, immigrant entrepreneurs, including best practices for spreading politically sensitive information and rights related to vulnerable client populations.

### **What Offices Can Teach**

Deborah Burand, New York University School of Law  
Anne M. Choike, The University of Michigan Law School

“Good rooms enable good teaching.” T. Vaughan (1991)

Discussions about how physical environments impact student learning often center on the layout and placement of classrooms. In the law clinic context, these discussions also focus on the design of clinic office spaces. Much less attention has been paid to how clinical faculty members can (and do) use their own offices to create physical spaces that advance clinical learning goals and pedagogy. This poster presentation shows how clinical faculty members are turning their faculty offices into collaborative and motivational learning spaces by paying attention to the design and decoration of their offices.

### **Community Lawyering in an Environmental Clinic\* (\*without Litigation)**

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

My challenge was to start a new Environmental and Earth Law Clinic as a solo lawyer in a new state with a small budget and no clients. Environmental litigation is expensive and often does not solve the underlying environmental concerns; disputes are more often resolved through ADR mechanisms such as negotiation, mediation, and facilitation. Environmental court cases also take a long time and involve many documents, making it hard to give students meaningful legal work in a semester-long clinic. Therefore, I established partnerships with local community-based organizations to advise them on environmental concerns on a project basis.

### **The Community Impact of Miami Law's Health Rights Clinic: A 10-Year Report 2005-2015**

Tulay Koru-Sengul, PhD, MHS, Department of Public Health Sciences, University of Miami Miller School of Medicine  
Melissa Swain, University of Miami School of Law

The Health Rights Clinic is a Medical-Legal Partnership operated in collaboration between the University of Miami's School of Law and Miller School of Medicine. This poster chronicles the 10-year history of the Clinic by detailing the demographics of the clients it has represented, the types of cases as well as the legal case outcomes including the total cash, food stamp, and health insurance benefits, and immigration status secured for the most vulnerable clients in South Florida. In ten years, the Clinic has trained over 200 future lawyers, has served over 2,000 clients and has secured over three million dollars.

### **Location, Location, Location: 35+ Years of Engagement Lessons Learned from 35 Years of Being Located in Our Client Community**

Julie McCormack, Harvard Law School  
Maureen E. McDonagh, Harvard Law School

Founded in 1979, the Legal Services Center of Harvard Law School (LSC) was intentionally sited off campus in Boston's diverse Jamaica Plain neighborhood by Gary Bellow and Jeanne Charn as a then completely novel “Teaching Law Office” where prospective lawyers could deepen knowledge and skills through mentored representation of actual clients. Examining “community” through the lens of our direct service clinics and conveying the dynamic, fluid history of the clinics that have evolved (and sometimes died) at LSC, we share our experience of engagement as a powerful catalyst and describe how (for better or worse?) being community embedded defines the LSC service and learning experience.

**Value-Added: Utilizing the MSW Perspective**

Dana Malkus, Saint Louis University School of Law

The Entrepreneurship and Community Development (ECD) Clinic at St. Louis University School of Law provides transactional legal services to entrepreneurs, nonprofits, and community groups. Through a pilot initiative, the ECD Clinic added a MSW Communities and Organizations practicum student to the team. This student brought an interdisciplinary perspective to the ECD Clinic. Moreover, she added real value for ECD Clinic clients by consulting on things such as planning, financial sustainability, and board development while law students provided legal assistance to those same clients. This poster highlights the pilot initiative, observations about the initiative, and example projects.

**The Advance Directive Clinic: A Versatile, Community-Based Clinic Add-On Project**

Ryan Sullivan, University of Nebraska College of Law

My poster describes our Advance Directive Clinic (ADC) project at the University of Nebraska College of Law, and provides guidance on how the project can be duplicated and effectively incorporated into any existing clinical program. During the last three years, we have successfully conducted eleven ADCs as “add-ons” to our existing Civil Clinical Program. The project generates amazing learning opportunities for students to develop skills in the areas of client counseling, problem solving, legal research, document drafting, and community outreach. The poster will include information on the general concept and the basic steps involved, as well as suggested parameters and sample forms.

**Teaching Concurrent Clinical and Non-Clinical Poverty Law Classes to Enhance Social Justice Teaching**

Spencer Rand, Temple University, James E. Beasley School of Law

Typical Poverty Law clinics focus on one area of law and one type of intervention. Students gain limited insights into other poverty law areas and practice models. Similarly, non-clinical Poverty Law classes give a broader understanding of law but lack client connection, potentially leaving students with unrealistic understandings of problems and seeing the poor as an amorphous “them.” To enhance both classes, a non-clinical and clinical class were paired that were taught by the same professor. Meeting together sometimes and separately others, learning goals were better met. Some classes included clinical students describing cases and clients to non-clinical ones; similarly, non-clinical students described their policy strategies to clinical students. The poster includes a description of learning goals for both classes and pairing classes helped them be better reached.

**Clinical Engagement in Communities and the Year of Mercy**

Daniel Gandert, Northwestern University Pritzker School of Law

Pope Francis declared the current year to be a Year of Mercy. Unfortunately, the US is currently not a merciful society especially with regard to the criminal justice system. However, there are many areas for which clinic educators and students bring about mercy. This poster will highlight these areas. Additionally, this poster will describe the way that clinical legal education teaches students the values that have the potential to bring about a merciful mindset which is helpful to the overall good of society.

**The Clinician’s Helping Hand Project: Mentoring Program**

Kathryn Ramsey, The George Washington University Law School



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# Works in Progress Schedule & Program Descriptions

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*Tuesday, May 3, 2016, 10:15 – 11:45 a.m.*

## **REENTRY**

Essex A, 4th Floor

### **Problematizing State Expungement Statutes**

Joy Radice, University of Tennessee College of Law

**Discussant:** Jenny Roberts, American University, Washington College of Law

A growing number of scholars have turned their attention to expungement statutes as a promising vehicle to overcome obstacles to successful reentry. Part of the reason is that over the past decade, states have either passed their first expungement statute or increased the breadth of their old one, even adding felonies to the list of expungable offenses. Their potential, after all, is great: Expungement removes convictions and dismissals from a public criminal record. If an employer, landlord, or state licensing-agency pulls an expunged record, nothing should appear, giving that individual the same chance as people who have never been convicted of a crime.

But academics also point to potential problems with expungement given that expunged records may remain available through hundreds of private criminal history databases that abound. This article builds on this literature, cautioning us against putting too much stake in expungement statutes. It raises questions about the theoretical, legal, and practical problems with the current regime of expungement statutes, and proposes ways to make expungement and complementing anti-discrimination law a more robust way to increase the employment potential of people with criminal records.

### **Crime-Free Rental Housing Ordinances: Troubling Questions About Evictions for ‘Criminal Activity’ in Private-Market Rental Housing**

Kathryn Ramsey, The George Washington University Law School

**Discussant:** Valena E. Beety, West Virginia University College of Law

Crime-free rental housing ordinances (CFRHOs) have proliferated in municipalities across the U.S. since the early 1990s, and there are currently more than two thousand local governments that have enacted some form of a CFRHO. While the specifics differ among jurisdictions, two almost-universal characteristics of CFRHOs are: 1) requirements and incentives for landlords to perform criminal background checks on prospective tenants and reject those with criminal records; and 2) requirements and incentives for landlords to evict tenants who engage in any kind of criminal activity, on or off the property.

My article investigates the legislative history of CFRHOs in the Chicago area, as well as the characteristics of those municipalities, including racial and socio-economic demographics, any history of housing segregation, availability of public or subsidized housing, and crime statistics before and after passage of the CFRHOs. In particular, I am interested in patterns of enforcement of the provisions of the CFRHOs. I also explore whether there is any relationship between the increasing numbers of CFRHOs and changes in federal housing policies regarding people with criminal histories. My research on a local level will enhance current knowledge and understanding about this trend and the impact of CFRHOs more broadly.

## **HOUSING DISCRIMINATION**

Essex B, 4th Floor

### **Transcending Prejudice: An Empirical Study of the Prevalence of Housing Discrimination Based on Gender Identity in Greater Boston**

William Berman, Suffolk University Law School

Regina Holloway, Suffolk University Law School

Jamie Langowski, Suffolk University Law School

**Discussant:** Valerie Schneider, Howard University School of Law

Transgender and gender non-conforming people are among the most vulnerable to prejudice in our society. The National Center for Transgender Equality estimates that one in five transgender people have experienced discrimination when seeking a home and more than one in ten have been evicted. The Fair Housing Act does not include gender identity as a protected class. Opponents of inclusive legislation have questioned if there is even a need for the protection, citing a lack of evidence. Until recently, very little research existed about the need for legal protections for people based on gender identity.

This article will publish the results of the empirical study by Suffolk University Law School's Housing Discrimination Testing Program (HDTP), and will examine the current status of the federal and local laws related to this issue. HDTP is conducting housing discrimination tests in the Metro Boston area to gather statistically significant data regarding the prevalence of discrimination against transgender and gender non-conforming housing seekers in Greater Boston. Data on the prevalence of housing discrimination based on gender identity is critical for policy makers around the country as they work to add gender identity as a protected class in order to better protect this community.

### **Defining the Damage**

Kate Elengold, American University, Washington College of Law

**Discussant:** Anika Singh Lemar, Yale Law School

As the federal Fair Housing Act approaches its fiftieth anniversary, this article will explore the continued crisis of sexual harassment of vulnerable women in rental housing across the United States. It will build on my previous work, "Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing," which exposes the structural forces that have permitted and ignored racialized sexual harassment in housing and explores how the prevailing narrative of sexual harassment in housing has further silenced those experiencing racialized sexual harassment.

Using the Fair Housing Act as the legal framework, this article challenges the notion that there is no conceivable path within civil rights laws to account for complex plaintiffs and intersectional claims. Specifically, it reconceptualizes the use of a damages demand in a civil rights claim as a tool to start to dismantle the silos around protected class analysis, which have thus far operated to limit intersectional claims and defeat complex plaintiffs. To do so, this article draws on two strands of feminist legal scholarship: that forcing women into binary groups and subordinating them based on the groupings is sex discrimination that is harmful to all women, and that damages and financial parity are critical elements of equity. Conceptualizing racialized sexual harassment in those terms will permit lawyers to tell the client's complex story, within the framework of a sex discrimination claim, without ignoring the effect of race on her experience and her injury.

## **CRIMINAL JUSTICE POLICY**

Essex C, 4th Floor

### **Justifying Imprisonment in an Era of Mass Incarceration**

Lindsey Webb, University of Denver Sturm College of Law

**Discussant:** John P. Gross, Jr., The University of Alabama School of Law

This article will contribute to the literature addressing the purposes and philosophy behind sentencing in general, and the role that prison conditions do or ought to play in judicial sentencing determinations more specifically. It will inquire into the implications of an imagined sentencing structure that would require prosecutors to present evidence that a prison sentence imposed on a particular defendant would result in a positive social or individual outcome. Such a justification would

require prosecutors, judges, and defense lawyers to view the traditional purposes of punishment – retribution, deterrence, incapacitation, and rehabilitation – through an empirical, evidence-based lens that would encompass both the conditions of a prison sentence and the demonstrated social and individual outcomes of incarceration. In so doing, courts and attorneys would be required to grapple with the circumstances of the crime and of the individual defendant, the actual conditions of confinement in the prison or jail system in which the defendant would be confined, and the ways in which sentences to incarceration do or do not contribute to positive individual or social change.

### **Fighting Fire with *Kimbrough*: The Federal Judiciary’s Role in Drug Law Reform**

Erica Zunkel, The University of Chicago, The Law School

**Discussant:** Eve Hanan, University of Baltimore School of Law

The federal judiciary needs to assume its co-equal role alongside the legislative and executive branches and fight back against flawed federal drug laws. *Kimrough v. United States*, 552 U.S. 85, 109 (2007), makes clear that federal district court judges can vary from the Guidelines on the basis of policy disagreements, even in a “mine-run case.” While *Kimrough* focused on the infamous crack cocaine guideline—widely recognized to produce harsh, disparate outcomes for black defendants in the federal system—the Supreme Court made clear that the drug guideline as a whole is suspect because it does not exemplify the Sentencing Commission’s “exercise of its characteristic institutional role.”

It has been nearly ten years since *Kimrough*. Since then, Congress passed the Fair Sentencing Act to correct the racially discriminatory 100:1 crack/powder cocaine disparity that had been passed as part of the 1986 Anti-Drug Abuse Act. This seemed to portend more much-needed federal drug law reform. Yet, it appears that typical election-year, tough-on-crime politics will prevent more sweeping legislative reform of our drug laws from becoming a reality. *Kimrough* gives judges the perfect weapon to fight back and express their policy disagreements with what Congress has wrought until Congress fixes it.

### **DISABILITY RIGHTS**

Kent A, 4th Floor

#### **Group Homes as Sex Police – Depriving the Sexual Liberty Rights of Adults with Intellectual Disabilities**

Natalie Chin, Brooklyn Law School

**Discussant:** Robert D. Dinerstein, American University, Washington College of Law

What’s sex got to do with it? Legal scholarship has left unexplored what remains a taboo issue: adults with intellectual disabilities, sex, and the right to engage in intimate relationships in a supervised residential setting. Since the United States Supreme Court decision in *Olmstead v. L.C.*, states have steadily gotten out of the institutionalization business. Today, privately run group homes are a common residential placement for individuals with intellectual disabilities leaving state-run institutions. It has become the unacknowledged practice through unilateral decision making by the group home whether a resident has the capacity to consent to sexual activity. Many of these decisions are made based on stereotypes and implicate issues of substantive due process. With states paying little attention to their day-to-day operations, group homes have normalized their role in stripping residents of their sexual choices and freedoms.

This article argues that *Olmstead* and its progeny provide the groundwork to challenge the action of group homes in sexually isolating residents as a violation of the Americans with Disabilities Act’s integration mandate. This Article will further examine how courts have confronted issues of consent and capacity, and assert that the systematic denial of a resident’s right to engage in sexual relationships implicates the sexual liberty interest in *Lawrence v. Texas*. Lastly, this article will offer recommendations for protecting the sexual liberty rights of group home residents, while respecting the doctrines of *Olmstead* and *Lawrence*.

## **Narrowing the Substantive and Procedural Gaps Between Medical Capacity Assessments and Legal Competency Determinations**

Jennifer D. Davis-Oliva, The Pennsylvania State University – Dickinson Law

**Discussant:** Leslie Salzman, Benjamin N. Cardozo School of Law, Yeshiva University

Constitutional and common law dictate that individuals possess autonomy and self-determination, which encompass the right to accept and to refuse medical treatment. Management of medical treatment can be complicated in situations when the ability of the patient/client to make reasonable decisions is called into question. The American legal system endorses the principle that all persons, including those involuntarily committed, are presumed competent to make reasoned decisions. This article will address the differences between competence (as a legal concept) and capacity (e.g., to give informed consent for medical treatment or to refuse said treatment) and the legal and medical implications that attend to those differences. Among other things, it will establish that competence, like capacity, can (and frequently does) vary over time and is specific and/or can vary with specific tasks. In other words, a patient/client may be competent to consent for a simple but not a complex procedure and, as a result, courts should be reticent to issue blanket adjudications of general incompetency. This article will also argue that because a diagnosis of mental illness implies neither a lack of capacity to consent nor to refuse treatment, courts should enforce a psychiatric patient's medical treatment decision absent an adjudication of specific incompetency directly pertinent to said decision.

## **DISABILITY RIGHTS (ELDER RIGHTS & RACE DISCRIMINATION)**

Kent B, 4th Floor

### **“With All Deliberate Speed: The Elusive Promise of Disabled Children of Color”**

Esther Canty-Barnes, Rutgers Law School

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

This article examines the historical and racial relationship between *Brown v. Board of Education* and the Individuals with Disabilities Education Act, specifically, the paradoxical impact that they have had upon African American children with disabilities in their struggle to achieve educational equality. Although the Individuals with Disabilities Education Act has been amended several times to ensure that the procedural and substantive rights of parents and their disabled children were protected, it has had a deleterious impact, counter to its intent. While the Act has been instrumental in providing access to education for children with disabilities, it provided a legal mechanism for continuation of the systematic policies of segregating children of color, contrary to the *Brown* decision.

Despite Congress' intent when it enacted the Individuals with Disabilities Education Act, some children in the special education system have not fared well in many respects. Students of color, especially African Americans, have been disproportionately represented in Special Education, more particularly in the classifications of mentally retarded and emotionally disturbed. Disproportionality is also evident in placement decisions, with higher rates of students of color with special needs attending more segregated educational settings, and in the doling out of punishment, with higher rates of suspension and expulsion for these same children. The Special Education system, as it has been implemented, continues to be a major impediment to the success, independence, and upward mobility of the very children it was intended to help. As a result, children of color with disabilities are more likely to drop out of school, end up in the juvenile justice system, and remain unemployed and unable to become self-sufficient members of society.



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## **FAMILY LAW & EDUCATION LAW**

Kent C, 4th Floor

### **The Wrong Kind of Help**

Jane K. Stoeber, University of California, Irvine School of Law

**Discussant:** Sarah Katz, Temple University, James E. Beasley School of Law

The state has a listening problem when it comes to victimized individuals. Whereas the state often intervenes in the family in undesired ways that create harm, it frequently fails to respond to pleas for help from those who are traumatized.

In response to the state's historic non-intervention in the "private sphere" of the family, many areas of family law now experience over-criminalization, often contrary to the harmed individual's wishes. Examples of aggressive, undesired state interventions include the state pursuing domestic violence charges or child support enforcement even when family members voice safety, economic, or relational harms; judges issuing bench warrants against abuse victims for failing to testify for the state; and the state charging well-intentioned parents with "medical child abuse" or "failure to protect." The state paradoxically retains the practice of non-intervention in other areas concerning the family, such as parental abduction and protection order enforcement.

"The Wrong Kind of Help" seeks to explain these discrepancies in state intervention in the family and offers normative solutions to avoid the current hyper-criminalization tendency and to take into account the victimized person's wishes.

### **The Privacy of the Public Schools**

Emily Suski, Georgia State University College of Law

**Discussant:** Margaret Barry, Vermont Law School

The family and public schools have overlapping roles with respect to the care and education of children. The Supreme Court has used these roles to justify deference to the decision making of both parents and schools. Feminist scholars have long examined and critiqued this deference to families as private as dangerous to not only women but also to children. What has gone unexamined, however, are the ways that the deference to schools, evidenced in Supreme Court and lower court jurisprudence and in federal and state statutes, make schools private. This paper explores both how deference to the public schools makes them private and leaves children vulnerable to harms at school. It argues that while the family and the public schools have similar, sometimes overlapping roles with respect to children, the public schools are in some ways more private than families. While children can suffer harms in families that will give rise to fundamental structural changes to the individual family institution, they can suffer similar or worse harms in school that will be far less likely to result in structural changes to the institution of the school.

## **FAMILY LAW**

Lauren A, 4th Floor

### **Domestic Violence Tort Plaintiffs: A Qualitative and Quantitative Study**

Camille Carey, University of New Mexico School of Law

**Discussant:** Leigh Goodmark, University of Maryland Francis King Carey School of Law

Is it worth it for domestic violence victims to sue abusers for intentional torts committed against them? Dr. Tami P. Sullivan, a psychologist from the Yale School of Medicine, and I are conducting a study to try to answer this question. The study examines whether domestic violence tort plaintiffs experience financial, therapeutic, or deterrence benefits from pursuing a claim against an abuser. Using qualitative and quantitative instruments, we are collecting data from domestic violence tort plaintiffs from across the country. These plaintiffs have discussed whether the litigation process made them feel empowered, vindicated, and heard or re-traumatized and dismissed. Participants in the study have explained whether the behavior of their abusers changed as a result of litigating the legal claim. Participants have also shared their experiences with

attorneys, judges, and their abusers before, during, and after tort litigation. Initial analysis of the data reveals that domestic violence tort suits generally provide positive outcomes to plaintiffs. Once data collection is complete, we will have a better understanding of whether, why, and how law school clinics and lawyers should pursue domestic violence tort claims on behalf of clients.

### **A Call for Victims' Attorneys: The Growing Need for Legal Assistance for Campus Sexual Assault Survivors**

Kelly Behre, University of California, Davis, School of Law

**Discussant:** Lisa C. Smith, Brooklyn Law School

In spite of the increased media focus on campus sexual assault, student victims continue to experience challenges navigating different legal systems and enforcing their rights within each system. Access to advocacy and mental health resources is not enough; student victims need access to civil attorneys as well. This project infuses the broader discussion about the civil legal needs of sexual assault survivors into the discourse about campus sexual assault, and it advocates for increased access to qualified civil legal assistance for student victims of sexual assault. Part I introduces the complicated and overlapping systems student victims of sexual assault often encounter and details legal needs of victims in the academic, criminal, and civil legal systems. Part II discusses student victim's specific need for access to private counsel for campus adjudicatory hearings, particularly in cases in which the accused is represented by private counsel. Part III considers the value victims' attorneys may bring to community coordinating response teams by providing a legal analysis of victim's rights under the law and assisting with the development of school policies and procedures.

### **EDUCATION & TRAINING OF POLICE & COURTS**

Laurel B, 4th Floor

#### **How Family Courts Account for Intra-family Sexual Abuse of Children in Cases Involving Domestic Violence**

Micaela C. Deming, Ohio Northern University, Pettit College of Law

**Discussant:** Jill C. Engle, The Pennsylvania State University – Penn State Law

Intra-family child sexual abuse cases in cases involving domestic violence are often brought to light in the context of family court in divorce and child custody proceedings. Very few perpetrators of intra-family child sexual abuse are investigated, prosecuted, or convicted of their crimes. Child protective services is also often unresponsive in these cases because there is no protective need once the non-offending parent asserts a desire to protect the child. It is therefore left to the family courts to evaluate the evidence and issue orders regarding every aspect of the child's life. The family courts largely do not have the necessary education to understand the complex interrelationship with domestic violence and child sexual abuse, they therefore rely heavily on other equally underinformed professionals. The result is an overwhelming number of the nation's children living in the custody of, or having regular and frequent unsupervised contact with, the parent who is sexually abusing them. Family courts and the professionals they rely on must be subject to mandatory training to fully understand these families and issue orders that protect children from further abuse.

#### ***Marbury* and the Police: Do Police Officers Know Enough About the Law?**

Yuri R. Linetsky, The University of Alabama School of Law

**Discussant:** Josephine Ross, Howard University School of Law

The primary responsibility of police officers is to enforce the laws enacted by state and local governments. But to enforce the law officers need to know not only how to interpret statutory law, but how to apply statutory, common, and constitutional law to their interactions with the public. Though police officers need not be lawyers, their knowledge must be broader than a basic understanding of traffic and criminal offenses. Just as every law student learns early in their law school tenure about *Marbury v. Madison* and the concepts of judicial review, modern police officers need to understand the theoretical underpinnings of our criminal justice system and the Constitutional principles they must protect and apply to real-world situations. The primary training ground for new police officers is the police academy—where little time is devoted legal

training. Through an original empirical analysis of state training requirements, this paper shows that the number of hours devoted to legal topics in state police academies is surprisingly low: about 12% of total academy hours. This paper will suggest that enhancing legal training will lead to better, smarter decisions by police officers when interacting with citizens and improve overall police/citizen relations.

## **FAMILY LAW (TECHNOLOGY & JUVENILE JUSTICE IMPLICATIONS)**

Laurel C, 4th Floor

### **What If She Were Me: A Feminist Retelling of the Story of Revenge Porn**

Claire Donohue, American University, Washington College of Law

**Discussant:** Lisa Martin, The Catholic University of America, Columbus School of Law

A victim of revenge porn ostensibly has several avenues of redress, but what remains elusive is liability of the site host; which, in turn, removes an incentive for hosts to engage with the problem of revenge porn. Meanwhile, the damage done by revenge porn has lasting consequences for a victim's sense of privacy, safety, reputation, and control. Victims of revenge porn again and again voice the desire to take control of the situation and mitigate further damage by having content removed. This article posits that the public conversation about revenge porn has inspired the limited options and responses to it, namely options that focus on punishing the poster rather than inspiring take-downs. The popular frame features law enforcement and lawmakers saying "what would you do if this were your daughter?" The response to such a frame is one of indignation and anger, a reaction that inspires a call for retribution. This article argues that the "daughter" frame is available and tempting because it essentializes women and reacts to sexual content in a tired and familiar way. This article instead asks "what would you do and how would you feel if this were you?" and employs feminist theory to suggest frames and focuses that allow one to advocate for victims within Copyright and Intellectual Property systems.

### **The State as Parent and Prosecutor: The Problem of Charging Foster Children with Placement Crimes**

Meredith Schnug, University of Kansas School of Law

**Discussant:** Lisa Martin, The Catholic University of America, Columbus School of Law

Children who are placed in the state's custody through child welfare proceedings are commonly charged with minor crimes for behaviors that would not be considered criminal if exhibited by children living in their own homes. This paper focuses on "placement crimes" as a point of entry for children into the juvenile justice system and advocates for reform to reduce this trend. Research indicates that intervention by the juvenile justice system can negatively affect children in many ways. Additionally, children of color are disproportionately represented in the child welfare system and are more likely than their white counterparts to be arrested, thus contributing to disproportionate minority representation in the juvenile justice system.

Part I of this paper examines the serious and long-lasting implications of juvenile justice system involvement for children charged with placement crimes. Part II explores the factors that contribute to children being charged with placement crimes, including foster parents' and social workers' seemingly benevolent goal of accessing more services for the children in their care. Part III sets forth proposals to prevent foster children from being charged with placement crimes and argues that in these situations, the state's response should be that of a parent, and not a prosecutor.

## **TAX**

Laurel D, 4th Floor

### **Empowering Domestic Violence Survivors by Recognizing Federal Income Tax “Divorce”**

Nicole Appleberry, The University of Michigan Law School

**Discussant:** W. Edward “Ted” Afield, Georgia State University College of Law

This article proposes that people who leave their spouses due to domestic violence should be allowed to file their federal income taxes using the Single or Head of Household filing statuses, no matter when in a tax year they escaped, and regardless of whether or not they are still married. In effect, I am suggesting a do-it-yourself “divorce,” effective for tax purposes only, for domestic violence survivors only, to allow these individuals access to deductions and credits that could be critical for their transitions from domestic violence victims to domestic violence survivors. The article traces the origins of the current rule, argues that the fraud it is designed to forestall is both unlikely to occur and of de minimus import in the context of the dangerous economic hardship faced by those who flee batterers, and finds support in a similar provision of the Affordable Care Act.

### **Addressing Private Benefit in Public Charity Art Organizations**

Anne Choike, The University of Michigan Law School

**Discussant:** John B. Snyder, University of Baltimore School of Law

The question of how to increase diversity in the public’s access to, and participation in, the arts is increasingly relevant, as more public money is dedicated to promoting the arts at the same time that racism and sexism persist in the art industry and society more broadly. Federal tax law impacts this question because many arts organizations are tax exempt public charities, and public charities are required to serve “a public interest” in order to obtain and maintain their tax exempt status. With respect to art organizations specifically, the IRS currently determines whether a public interest is being benefited by looking primarily to the audience being served.

The audience is, however, only half of the equation in any exhibition or performance of the arts; therefore, this article argues that the IRS should consider not only the audience who is viewing the work promoted by public charity art organizations, but also the artists who create those works, when determining whether a public interest is served. Specifically, the IRS should ensure that artists and the work they create serve the public interest by ensuring both are representative of, and accountable to, the community served by any art organization seeking public charity status.

## **STATE REGULATION OF RISK**

Heron, 4th Floor

### **Will *Citizens United* Be the Death of Public Health? How to Preserve Sound Policy with Unadulterated, Evidence-Based Decisions at the Local Level**

Jada Fehn, Mitchell | Hamline School of Law

**Discussant:** Kim Diana Connolly, University at Buffalo School of Law, The State University of New York

Under the *maxim Salus populi suprema lex esto*, the well-being of the community is the highest law. Public health progress gets credit for twenty-five years of increased life expectancy in this country over the last century. Continued advancements in public health policy that are sound and evidence-based depend on local, impartial rule-making bodies. Yet, instead of strengthening public health, recent court decisions have compromised the powers by which health agencies ameliorate population risks. The encroachment on public health powers is driven, in part, by the political influence of corporate interests in the post-*Citizens United* era. Like the tobacco industry before it, the soda industry has spent unprecedented amounts on lobbying and political measures to fight back against public health regulation of products. Stifling the innovation, expertise, and agility of public health rule-making bodies because one industry rallies against a threatening local policy, sets a dangerous precedent in the modern political environment.

## **Second Amendment v. the Environment: Florida's Laws Pre-empting Environmental Regulation of Gun Ranges**

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

**Discussant:** Richard H. Frankel, Drexel University Thomas R. Kline School of Law

This article will discuss Florida legislation exempting a specific class of properties, gun ranges, from most of the state's environmental laws and all local regulation, and creating a rule that relies on the gun industry to define standards for performance.

Florida's legislation creates a risk assessment presumption that applies only to gun ranges and gives the ranges immunity from all state and local governmental legal actions if the range has made a good faith effort to comply with a best practices manual issued in 2004. This limitation is further complicated by the state's attorney general's interpretation pre-empting all local regulation of gun ranges, even if they are based on the safety and welfare of the local community, and allows any person to put a gun range on his or her property. The legislation also imposes civil and, in some cases, criminal fines on any governmental official who does anything to restrict gun ranges.

I want to examine ways to challenge the legislature's restrictions on state and local action to address acknowledged sources of contamination and also the ramifications of including the industry in setting standards.

## **GROUP 12: IMMIGRATION**

Waterview A, Lobby Level

### **After Incompetence: What's an Immigration Judge to do?**

Sarah Sherman-Stokes, Boston University School of Law

**Discussant:** Ragini N. Shah, Suffolk University Law School

Four years ago, the Board of Immigration Appeals set forth, for the first time, the procedures an immigration judge should undertake when they believe the respondent before them to be incompetent. Since that time, the law and scholarship surrounding competency in immigration removal proceedings has been rapidly developing. My first article, "Sufficiently Safeguarded: Competency Evaluations of Mentally Ill Respondents in Removal Proceedings," argued that the current system of competency determinations in removal proceedings – where such initial determinations are the exclusive province of an immigration judge – provide an inadequate protection that violates fundamental fairness.

Building on that article, "After Incompetence" will explore what happens to a noncitizen after an immigration judge's finding of incompetence. I will argue that there should be a presumption of termination of proceedings. I will then examine the civil and criminal procedures employed in the case of a criminal defendant who is civilly committed and discuss whether such procedures should be applied in the immigration removal context.

### **Cruel and Unusual Penalty? The Use of Solitary Confinement in Civil Immigration Detention**

Emily Torstveit Ngara, University of Baltimore School of Law

**Discussant:** Christine Bustany, Suffolk University Law School

The legal fiction that deportation is not a punishment has meant that immigration proceedings and detention are considered civil in nature. Yet every day Immigration and Customs Enforcement (ICE) holds up to 30,000 noncitizens in jails and prisons across the United States. Though they are in "civil detention" ICE frequently houses immigration detainees with the general prison population where they are subject to similar conditions of confinement, including solitary confinement for disciplinary purposes. Disciplinary use of corrections techniques such as solitary confinement are punishments and cannot be exempted from procedural due process requirements as civil detention has been. There are insufficient procedural safeguards in place to protect individuals being taken into custody by ICE and then subjected to punitive disciplinary measures. Once in detention, the daily operations of jails and prisons do not provide sufficient procedural due process for individuals against whom disciplinary action is taken. This article argues that use of such extreme and harmful forms of punishment in a civil detention setting is an unconstitutional violation of procedural due process, the Eighth Amendment prohibition on cruel and unusual punishment, and the United States' international obligations.

## Scrutinizing Immigration Federalism

Jenny-Brooke Condon, Seton Hall University School of Law

**Discussant:** Denise L. Gilman, The University of Texas School of Law

It is time to rethink how courts scrutinize laws distinguishing between citizens and non-citizens. Courts have long subjected federal immigration laws to rational basis review, while closely scrutinizing state laws distinguishing on the basis of lawful immigration status. This dichotomized approach is an anomaly within equal protection jurisprudence more broadly, which otherwise requires congruence between federal and state equal protection obligations and thus equivalent scrutiny. Recently, however, the foundation for the equal protection dichotomy has been contested. State and local governments increasingly regulate migrants in ways previously considered the exclusive province of the federal government and scholars have urged a broader view of immigration federalism, rejecting the notion that sub-federal governments are powerless to regulate, and, in particular, assimilate, migrants into state and local communities. Absent from the literature, however, is an account of what this means for the long-existing equal protection dichotomy and whether deference to an exclusive federal immigration power remains a coherent basis for modulating equal protection scrutiny. This Article argues that whether alienage is a constitutional basis for distinction does not turn upon the government discriminating and proposes a functional approach to judicial review that considers the interplay between state interests, migrants' rights, and constitutional structure.

## IMMIGRANT RIGHTS

Waterview B, Lobby Level

### Derecho a silencio: Protecting the Undocumented Crime Victim as Witness

Suzan M. Pritchett, University of Wyoming College of Law

**Discussant:** Maureen A. Sweeney, University of Maryland Francis King Carey School of Law

Congress created the U non-immigrant visa to bring immigrant victims of crime out of the shadows and encourage their participation in the investigation and prosecution of criminal activity. To this end, in exchange for certification from law enforcement officials, U visa applicants regularly participate as witnesses in criminal trials against the perpetrators of the crimes committed against them. However, serving as a witness in a criminal trial subjects the U visa applicant to cross-examination about their immigration status, employment history, criminal history, and credibility. These attacks in a public trial setting can be traumatic, intimidating, and have far-reaching consequences in other areas of an applicant's life. This article analyzes the Federal Rules of Evidence to determine what evidentiary protections can be utilized to protect a U visa applicant as a witness. In concluding that existing rules of evidence are inadequate, the article proposes that rape shield laws might serve as a model for the development of a new status-shield law. Status-shield laws have the potential to protect U visa applicants at trial and further Congressional intent of encouraging the assistance and participation of undocumented non-citizens in the investigation and prosecution of crime.

### Resuscitating Immigrants' Right to Work

Geoffrey Heeren, Valparaiso University School of Law

**Discussant:** Jason Parkin, Pace University School of Law

For much of United States history, immigrants had a right to work. Nineteenth and early-twentieth century courts viewed work as a natural right protected by the Due Process Clause. There were no regulatory limits whatsoever on immigrant labor until the mid-twentieth century, and even then, the limits were weakly enforced. Yet since 1986, immigrants have been able to work legally only if they have permission. A fundamental philosophical shift has occurred: while at one time immigration was viewed as a means for regulating the labor market, today controls over immigrant labor are used as a method of immigration enforcement. This shift from a libertarian paradigm of work to one of law enforcement is exemplified by the plaintiffs' arguments in *United States v. Texas* that the Administration's grant of work permission to some unauthorized migrants is illegal. This article will contend that if the history of immigrants' right to work stands for anything, it is that they can be permitted to work without any new congressional authorization. Moreover, it is worth resuscitating an intuitive point from the early cases concerning immigrants' right to work that is oddly absent from today's debate: everyone needs to eat.

## **IMMIGRATION**

Waterview C, Lobby Level

### **Immigration Law's Treatment of Married Children**

Medha D. Makhoul, The Pennsylvania State University – Dickinson Law

**Discussant:** Elizabeth A. Keyes, University of Baltimore School of Law

Our immigration laws provide special protections, benefits, and forms of relief for children. However, children who are married are never explicitly addressed by the law. They are variously treated as either married adults or unmarried children. This article analyzes the treatment of married minors in the family-based and humanitarian immigration systems. It reveals that married minors are often treated indistinguishably from married adults; and when they are treated as children, it is often to their detriment.

The article attempts to explain why this is so by exploring the assumptions about dependency, marriage, and gender roles that underlie the immigration laws' conception of childhood. It argues that reform is necessary to address the situation of married minors, and identifies several potential reforms that seek to balance the competing interests of protecting children, achieving optimal numbers of immigrants, and preventing fraud. Our immigration laws have a long history of relying on stereotypes about women and foreign cultures that are considered offensive to modern sensibilities. Although the laws have been largely purged of such stereotypes, they continue to enforce the oppression of certain particularly vulnerable groups. Girls and young women of color are disproportionately affected by child marriage. In an era of unprecedented child migration to the United States, the article offers potential solutions to remedy an inconsistency within immigration law that affects a particularly vulnerable class of children.

### **Cosmopolitan Democracy and the Detention of Immigrant Families**

Rebecca Sharpless, University of Miami School of Law

**Discussant:** Sarah Rogerson, Albany Law School

This article discusses the cosmopolitan political theory of Seyla Benhabib as a framework for understanding the United States' policy of detaining en masse poor immigrant families from Central America. Faced with a "surge" of women and their children crossing the border without authorization, the United States dramatically increased its capacity to detain immigrant families. Immigration officials vowed to hold the family members, the vast majority of whom were seeking asylum, until their cases were complete. Yet six months after opening a mammoth family detention center, the Secretary of Homeland Security announced that the U.S. government was making "substantial changes" to its family detention policy and would discontinue long-term detention of women traveling with their children who had made a threshold showing for asylum. This article argues that the United States' shifting decisions about how to treat the surge families are examples of what Benhabib has termed democratic "iterations"—democratic practices that reflect different ways of resolving the constitutive tension of liberal democracies between principles of universal application, like human dignity and freedom of movement, and concerns relating to self-determination, like border control. While concluding that the policy shifts reflected a rebalancing of the principles of universality and territoriality, this article also argues that Benhabib's political theory fails to fully account for how changes regarding family detention have occurred. This article concludes with an examination of the limitations, and radical possibilities, of the rule of law for edging the United States toward Benhabib's normative vision of a cosmopolitan democracy with porous boundaries.

## **COMMUNITY DEVELOPMENT**

Waterview D, Lobby Level

### **Hyperloop and Communities**

Edward De Barbieri, Brooklyn Law School

**Discussant:** Michael L. Haber, Maurice A. Deane School of Law at Hofstra University

Innovations in evacuation tube transportation technology (the "hyperloop") will lead to tremendous opportunities in economic growth and development. Yet, poor, disenfranchised, communities of color and other groups with limited political and economic power will likely bear the brunt of disruption and displacement. Elon Musk and others have hailed the

hyperloop evacuation tube technology as the next step in affordable, safe, high-speed travel to the benefit of all. However, the land acquisition approval process for developing the hyperloop risks harming – either through displacement, nuisance, or other harm – low-income communities most of all.

This article studies the likely impact of hyperloop travel on low-income communities in areas connected by hyperloop transportation. It reviews the legal academic literature on the impact of technology and innovation on urban development and makes recommendations for the equitable sharing of the benefits of the hyperloop technology. The article seeks to avoid the abuse such a system's development can have on low-income communities who tend to suffer most when development such as this is planned. It recommends several community-driven proposals for making local land use approvals, including the use of community benefits agreements, in implementing the hyperloop transportation technology to avoid harming politically or economically disenfranchised groups.

### **The Personal Identities of Housing Cooperatives**

Julie D. Lawton, DePaul University College of Law

**Discussant:** Michael L. Haber, Maurice A. Deane School of Law at Hofstra University

The idea of a corporation's personal identity based on race, religion, and gender has received new attention in the past year after the Supreme Court's decision imbuing a privately held for-profit corporation with a religious identity. However, ten years ago Professor Richard Brooks contemplated the idea of a corporation's racial identity in the ground-breaking article, "Incorporating Race." Recent federal court opinions and the Supreme Court's ruling in *Hobby Lobby* evaluate the question about whether a corporation should have a personal identity and, if so, how that personal identity is established. This article evaluates a special type of privately-held corporation, the housing cooperative, to argue that a housing cooperative can have a personal identity, and analyze the implications of such an identity on the housing cooperative's ability to admit and restrict members on the basis of the otherwise protected classes of race, gender, and religion. This article is in the very early stages of development so the author hopes to use this as an opportunity to identify potential issues and think through potential arguments.

### **CLINICAL PEDAGOGY/CLINIC DESIGN**

Atlantic, 3rd Floor

#### **Transferring Clinical Legal Pedagogy to the University Technology Transfer Office**

Cynthia Laury Dahl, University of Pennsylvania Law School

**Discussant:** Katherine R. Kruse, Mitchell | Hamline School of Law

In order to offer students a unique opportunity to deliver legal counsel involving cutting edge scientific discoveries, the Intellectual Property (IP) Clinic at Penn Law School incorporates client work from our university technology transfer office (TTO). The technology transfer office commercializes and productizes early stage discoveries from university laboratories. But such a clinic model can present logistical, technological, pedagogical, and most interestingly, ethical challenges.

This paper describes how we built and currently operate a legal clinic with a sizeable TTO client component. It offers a new IP clinic model, with advantages and challenges, to other IP clinicians for their consideration. However, perhaps more importantly, it delves into the fascinating and thoroughly unanticipated ethical challenges we faced in starting to operate the clinic, which also have a broader application to other clinic models. Although the size and sophistication of the TTO client forced certain ethical issues to the forefront, the paper presents advice for clinics generally serving business clients, including lessons about: navigating complicated conflicts of interest; maintaining client confidentiality and attorney-client privilege (especially while providing mixed legal/business advice); and balancing the USPTO's duty of disclosure rules against an obligation to deliver thorough and complete legal advice.

The author hopes that the discussion will challenge her analysis and assumptions as well as allow the audience to engage on ethical issues where the law is still unsettled.



## A Student Lobbying Practice Rule

Marcy L. Karin, Arizona State University Sandra Day O'Connor College of Law

**Discussant:** Cynthia Batt, Stetson University College of Law

This article recommends the creation of a “student lobbying practice rule” to exempt law school clinics from lobbying restrictions. It begins by articulating the reasons why training students on ethical and reflective lawyer lobbying and policy advocacy are a vital part of legal education. Next, it explains why teaching this type of advocacy is at risk in part due to the obstacles created by a chilling effect of existing lobbying restrictions. It does this by identifying how existing restrictions may have a chilling effect on law schools—including state schools—that do not want to violate them or report information pursuant to these restrictions. It also covers a chilling effect that may result in political interference by deans, donors, etc. Then, the article explores how a student lobbying practice rule would overcome those challenges—both by removing any doubt about the application of lobbying restrictions to clinics (obstacle 1) and by protecting academic freedom against political interference (obstacle 2). In so doing, it hopes to contribute to what will become an increasingly robust conversation about the propriety of applying lobbying restrictions to law school clinics.

## Of Courtrooms & Classrooms: The Learning Fact-Finder

Danielle Cover, University of Wyoming College of Law

**Discussant:** Ian S. Weinstein, Fordham University School of Law

Trial planning and preparation focus on the creation of a story the fact-finder can follow throughout the course of the trial. Storytelling and narrative are essential to capturing the attention of the fact-finders and ultimately convincing them that one side should prevail over the other. At their core, trial preparation and planning through storytelling are about persuasion—it is the essence of the trial process to persuade, to change a juror’s understanding or judgment about a client’s position or behavior by appealing to both reason and emotion. The story an attorney tells over the course of a trial draws the juror in, helps them to understand the client, and convinces them to decide in the client’s favor. Teaching is, in many ways, also an act of persuasion. In any given classroom, effective educators embrace the intangible characteristics of their students and build lessons in ways that recognize those characteristics as important aspects of the learning environment. A persuasive learning environment engages students in a compelling learning atmosphere that inspires changes in their knowledge, beliefs, and interests. That is, they may come to understand the material in a way they had not previously. This paper argues that if trial practitioners treat jurors as learners, not simply listeners, they may be able to develop a stronger persuasive technique. By treating knowledge acquisition and understanding as two different components of an overall trial strategy, litigators may ultimately increase the persuasive value of their messages.

## LAWYERING MODELS

Dover A, 3rd Floor

### What’s Art Got To Do With It?: Non-Essential Assets, the Pervasiveness of Income Inequality, and Rebellious Lawyering

Patience A. Crowder, University of Denver Sturm College of Law

**Discussant:** W. Warren Binford, Willamette University College of Law

Gerald López’s “Rebellious Lawyering” challenges public interest lawyers to investigate not only their modes of practice but their motives for practice as well. Applicable to both transactional and litigation practice, the text’s principles call for lawyers to be both intentional and nontraditional in practice and the representation of underserved communities, particularly where issues of class and race predominate. Starting with the City of Detroit’s unprecedented bankruptcy filing, this article examines the debate about whether a portion of the art collection held by the Detroit Institute of Art (DIA) could be characterized as “non-essential assets” that should have been sold to satisfy certain creditors. Using lessons from Detroit, this article builds on the foundation of “Rebellious Lawyering” to explore questions about the consequences of race and class discrimination in nonobvious settings—such as the potential forced sale of the DIA’s collection. This article then asks whether the post-recession economy imposes collateral consequences on inner-city community cultural assets in the form of

austerity in economic development funding. This article examines the collateral consequences of the post-recession economy and the concomitant expansion of metropolitan poverty on cultural assets in communities of color and low-income communities in metropolitan communities.

### **Going Above and Beyond the Rules of Professional Responsibility: Using Human Rights Principles to Inspire the Legal Profession**

Lauren E. Bartlett, Ohio Northern University, Pettit College of Law  
**Discussant:** Sherley Rodriguez, Suffolk University Law School

The rules of professional conduct and attorneys' oaths regulate how a lawyer should act when practicing law, but focus on what lawyers need to do, or need not to do, to keep their law license. There is little in the current regulations on how to be a great lawyer; a lawyer that is skillful, well-respected, and, at the same time, achieves justice or systemic change for the downtrodden. As applied to legal ethics and professionalism, human rights principles provide aspirational goals for lawyers in practice. Moreover, the development of human rights codes of conduct at the law firm, organization, or law clinic level, can provide practical guidelines for legal professionals and a path towards greatness.

## **LAWYERING**

Dover B, 3rd Floor

### **Lawyering Through Stories**

Carolyn B. Grose, Mitchell | Hamline School of Law  
Margaret E. Johnson, University of Baltimore School of Law  
**Discussant:** Michael W. Martin, Fordham University School of Law

This is a new textbook for clinical law and externship professors who wish to integrate narrative and storytelling into their teaching of the full range of lawyering. Built around concrete lawyering skills and values, this book is a comprehensive and stand-alone clinical text that provides a thorough examination of how to lawyer through stories. This text is for clinical law professors who aim to teach their students how to develop more fully as effective legal professionals by learning how to hear, tell, construct, and deconstruct stories. The book provides accessible content and exercises to develop students' identification of narrative components, the choices in constructing stories, implementing those choices with clients in conducting interviews, legal counseling, negotiation, fact investigation and planning, case theory development, trial advocacy, and/or transactional lawyering tasks. In addition, the book addresses the use of narrative theory to engage in critical reflection and professional development, to explore questions of justice and cultural assumptions, and to engage in creative and effective problem-solving. Each chapter is built around a lawyering skill or value, providing examples of storytelling from the popular culture, such as Season I of the SERIAL podcast and TED talks, concrete examples of narrative applied to lawyering, and specific exercises to teach lawyering through stories. We will be presenting a portion of the book during the WIP session.

### **Representing the Religious Client: A Clinical Perspective**

James A. Sonne, Stanford Law School  
**Discussant:** Sally B. Frank, Drake University Law School

Clinicians commonly include religion within the litany of cross-cultural dynamics to which client-centered lawyers should be attuned. For although judges, theologians, and philosophers may dispute its precise meaning and contours, religion continues to play a central role in the lives of millions in this country. Unfortunately, it is a factor many contemporary lawyers undervalue or neglect, and on which the professional literature is sparse. This is especially worrisome where the increasingly diverse nature of society will only compound the consequences of any such ignorance in the coming decades. Religion is of course just one possible aspect of the intersecting lives and perspectives of clients, lawyers, and the system that brings them together; it is also often intertwined with other factors—e.g., race, ethnicity. But given its abiding importance to so many, and the unique window it can provide into human identity and motivation, including religion as a core aspect of cross-cultural lawyering is not just sensible. It is vital. This article explores the necessity, challenge, and broader benefits of cross-cultural religious literacy for lawyers, and why the law school clinic holds particular promise in developing those engaged to the task.

## LEGAL IMPLICATIONS OF BUSINESS MODELS

Dover C, 3rd Floor

### When Social Enterprises Fail

Jonathan Brown, Yale Law School

**Discussant:** Barbara L. Bezdek, University of Maryland Francis King Carey School of Law

In recent years, a majority of states have enacted legislation creating “social enterprise” business forms designed to enable the pursuit of a “double bottom line” of profit and social impact, and a growing number of companies have adopted such forms. However, neither social enterprise statutes nor the extensive academic scholarship on the subject have addressed difficult questions as to how a bankruptcy proceeding of a social enterprise should be affected by its unique legal characteristics. While issues of financial distress may seem a remote consideration to an entrepreneur or investor contemplating a social enterprise legal form, they are critical nonetheless. Focusing on benefit corporations, the most widely adopted social enterprise form, this article observes that the existing law and perceived objectives of bankruptcy conflict with the statutorily defined duties of benefit corporation directors, and are likely to produce outcomes that are at odds with the core goals of benefit corporation legislation. This article then argues that just as the benefit corporation model eschews a norm of pure shareholder wealth maximization and takes into account the interests of a company’s other stakeholders, the bankruptcy law of benefit corporations should eschew a norm of pure creditor wealth maximization and take into account those same stakeholder interests. Drawing on the rich academic literature of bankruptcy theory, this article justifies such an approach as effectively constituting a unique bankruptcy regime that is contracted into by benefit corporations and their creditors, and finds precedent in the distinctive treatment of nonprofits and railroads under bankruptcy law.



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# Section on Clinical Legal Education Bellow Scholars Program Report on Projects

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*Tuesday, May 3, 2016*

*10:15 am – 11:45 am*

*James, 4th Floor*

Increasingly, clinic faculty in diverse settings engage in empirical research related to their clinical work. This research can have several functions in furthering the mission of a clinic: enhancing the delivery of legal services or promoting economic and social justice; demonstrating the need for proposed legal or policy reforms; testing assumptions about the way courts works; and examining the way we approach our students, our profession, and the development of clinical teachers. The Bellow Scholars program recognizes and supports the work of clinicians who have embarked on such projects. The current Bellow Scholars will present updates on their work:

**Moderator:** Leah A. Hill, Fordham University School of Law

## **Vision and Action: Access to Justice, Professional Formation, and Employment Prospects in the Inaugural Classes of New York’s Pro Bono Scholars Program**

Kim Diana Connolly and Danielle Pelfrey Duryea, University at Buffalo School of Law, The State University of New York

Interdisciplinary longitudinal study of the Pro Bono Scholars Program’s impact on expanding access to justice and helping law students to become “practice-ready,” and impact on community partners and law schools.

## **Tenant-Based Affordable Housing as a Tool of Opportunity in Post-Katrina New Orleans**

Stacy E. Seicshnaydre, Tulane University School of Law

Empirical study of the use of tenant-based housing subsidies by low-income renters in the pre- and post-disaster New Orleans and effect on access to education, employment, and transit, with recommendations for mechanisms to reduce income inequality and segregation.

## **Achieving Health Equity for Low-Income Clients: The Effect of Medical-Legal Partnership in the Law School Setting**

Emily Benfer and Allyson E. Gold, Loyola University Chicago School of Law

An empirical study of the effect of inter-professional collaboration and the medical-legal partnership model, in a law school clinic setting in particular, on access to justice and health equity for low-income clients.

**Building Community Capacity for HIV-Positive Individuals in Southcoast, Massachusetts**

Margaret Drew, University of Massachusetts School of Law – Dartmouth

The research is designed to assess the unmet legal and other needs of those in the community living with HIV. The long-range goal is to determine if meeting these needs improves health outcomes. This project assesses the social determinants of health.

**Disadvantaged Communities Access to Safe Drinking Water in Salinas Valley, California & Beyond**

Alina Ball, University of California, Hastings College of the Law

A project to identify and implement community-driven solutions through organizing, education, legal advocacy, and technical assistance to secure safe drinking water. Through legal research compiling empirical data on low-income, rural communities with contaminated water sources, the researchers are analyzing how corporate and transactional representation may facilitate safe drinking water.

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# Schedule of AALS Section on Clinical Legal Education Committee Meetings

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## **SATURDAY, APRIL 30**

12:30 - 1:45 pm

**Clinical Section Committee Chairs**  
Harborside D, 4th Floor

## **SUNDAY, MAY 1**

7:30 - 9:00 am

**Externships**  
Waterview A, Lobby Level  
**Co-Chairs:** Kendall Kerew, Daniel Schaffzin

**International**  
Waterview B, Lobby Level  
**Co-Chairs:** Sarah Paoletti, Peggy Maisel

**Policy**  
Waterview C, Lobby Level  
**Chair:** Ragini Shah

## **MONDAY, MAY 2**

7:30 - 8:45 am

**Clinicians of Color**  
Waterview A, Lobby Level  
**Chair:** Evelyn Cruz

*Meeting with:*

**Diversity in Leadership**  
**Co-Chairs:** Julie Lawton, Patience Crowder

## **TUESDAY, MAY 3**

7:30 - 8:30 am

**Bellow**  
Waterview D, Lobby Level  
**Co-Chairs:** Michael Gregory, Leah Hill

**Communications**  
Waterview A, Lobby Level  
**Chair:** Leif Rubinstein

**Externships**  
Waterview B, Lobby Level  
**Co-Chairs:** Kendall Kerew, Daniel Schaffzin

**Interdisciplinary**  
Waterview C, Lobby Level  
**Co-Chairs:** Colleen Boraca, Lucy Johnston-Walsh

**Membership**  
Laurel D, Fourth Floor  
**Co-Chairs:** Jodi Balsam, Jaime Lee

**Technology**  
Dover A, Third Floor  
**Chair:** Michele Pistone

**Transactional**  
Laurel C, Fourth Floor  
**Co-Chairs:** Susan Jones, Victoria Phillips



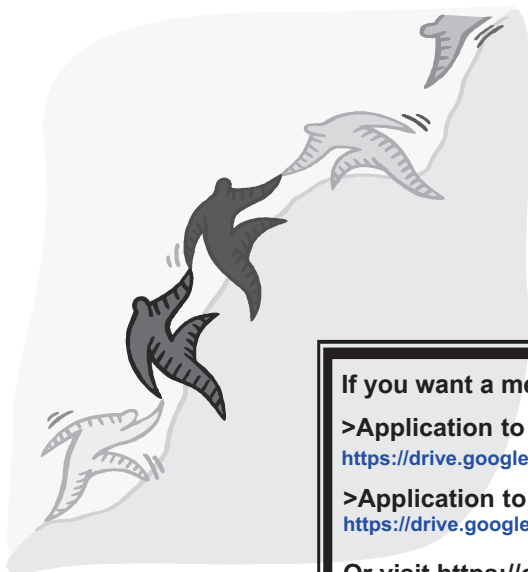


# *The Clinician's Helping Hand Project*

## *AALS Section on Clinical Legal Education Membership, Outreach & Training Committee*

The Clinician's Helping Hand Project is a mentoring program for clinicians who want guidance and expertise from an understanding colleague. This program is designed to:

- ◆ Assist new clinicians with the transition to clinical teaching;
- ◆ Support clinicians at any level of professional development who are at a transition point with regard to teaching, course design, scholarship, service, status, etc.;
- ◆ Provide mentors with an opportunity to share their experiences and expertise, and to connect with other clinicians;
- ◆ Build community among clinicians in general and support for the AALS Section for Clinical Legal Education through the formation of mentoring relations.



The Membership, Outreach & Training Committee is charged with enhancing membership by reaching out to clinicians who desire information about professional resources, training and available support. The Committee is especially interested in reaching those clinicians who may not know a lot about the clinical community and the support we can provide each other. We seek to aid in the creation of a stronger and more inclusive clinical community.

**If you want a mentor or want to be a mentor, fill out the forms at these links:**

**>Application to be a Mentor**

<https://drive.google.com/open?id=13uK3eEegRAX73g0KtszCRmYIYtaJE8h-0b66ocavzmw>

**>Application to Request a Mentor**

[https://drive.google.com/open?id=1a\\_Tmusr-k1oCXV9BiK-2WvaLj\\_Mf2fQGYUx65RrHt50](https://drive.google.com/open?id=1a_Tmusr-k1oCXV9BiK-2WvaLj_Mf2fQGYUx65RrHt50)

**Or visit <https://connect.aals.org/cle>**

### *The Membership, Outreach & Training Committee:*

*Jodi Balsam (Brooklyn) Co-chair [jodi.balsam@brooklaw.edu](mailto:jodi.balsam@brooklaw.edu)*

*Jaime Lee (Baltimore) Co-chair [jlee@ubalt.edu](mailto:jlee@ubalt.edu)*

*Lauren Aronson (Louisiana State) [lauren.aronson@law.lsu.edu](mailto:lauren.aronson@law.lsu.edu)*

*Sabrina Balgammalla (North Dakota) [sabrina.balgammalla@law.nnd.edu](mailto:sabrina.balgammalla@law.nnd.edu)*

*Yael Cannon (New Mexico) [cannon@law.unm.edu](mailto:cannon@law.unm.edu)*

*Christina Pollard (Idaho) [christinap@nidabo.edu](mailto:christinap@nidabo.edu)*



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# Organization Events

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## **SATURDAY, APRIL 30, 2016**

6:30 pm

**Clinical Legal Education Association  
(CLEA) Membership Meeting and Board  
Meeting**

Harborside E, 4th Floor

## **TUESDAY, MAY 3, 2016**

7:30 - 8:30 am

**Clinical Law Review Board Meeting**  
Laurel B, 4th Floor



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# Community Engagement Project Sites

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May 2, 2016, 2:00 p.m. – 5:00 p.m.

Unless otherwise noted, please plan to arrive at a site by 2:30 p.m.

## **FORCE: UPSETTING RAPE CULTURE**

Creative activist collaboration designed to upset the culture of rape

Liaison: Leigh Goodmark, University of Maryland  
Gender Violence Clinic

Representatives from FORCE will introduce the organization and talk about the principles that guide its work. Participants will then have the opportunity to work on materials for the Monument Quilt. [themonumentquilt.org](http://themonumentquilt.org) (25 people maximum)

### **FORCE: Upsetting Rape Culture Open Studio Party**

120 W. North Avenue  
Baltimore, MD 21202  
(2.5 miles from the conference hotel; walkable)

## **THE RE-ENTRY CENTER, NORTHWEST ONE-STOP CAREER CENTER**

The “ReC” is part of the Mayor’s Office of Employment Development

Liaison: Michael Pinard, University of Maryland  
Reentry/Criminal Records: Legal Theory and Practice

Located in Mandawin Mall, the ReC provides a wide range of services to individuals with criminal records, including employment counseling, federal bonding, child support services, financial literacy and computer training. This site visit will allow participants to tour the ReC and learn about its various programs and services. (20 people maximum)

### **Northwest Career Center**

2401 Liberty Heights Ave #302  
Baltimore, MD 21215  
(4.9 miles from conference hotel; taxi recommended)

## **THE BALTIMORE HOUSING ROUNDTABLE, NORTH EAST HOUSING INITIATIVE AND CHARM CITY LAND TRUST**

Coalition of advocates and academics, religious and homeless people, renters, and homeowners

Liaison: Barbara Bezdek, University of Maryland  
Community Equity and Development Seminar:  
Legal Theory and Practice

Come talk with Baltimore’s pioneers of the community land and trust movement at Charm City Land Trust (CCLT). The Baltimore Housing Roundtable has developed a policy and action plan, designed to boost resident participation in development plans in Baltimore, create jobs, and re-invigorate communities without displacing the people who live in them. The North East Housing Initiative (NEHI), a client of the University of Maryland CED Clinic, is a community-based organization launching its Community Land Trust (CLT) program for acquisition and rehabilitation, deeply affordable homeownership, and stewardship, and CCLT is piloting CLT housing as part of its urban ministries program. (12 people maximum)

### **The Baltimore Housing Roundtable**

Meeting Space: St. John’s Church  
2640 St. Paul Street, Baltimore  
(3.4 miles; bus/free Circulator)

## **DISTRICT COURT OF BALTIMORE CITY**

Liaisons: Deborah Thompson Eisenberg and Toby Treem Guerin, Center for Dispute Resolution/Mediation Clinic; Deborah Weimer, Landlord-Tenant Clinic; and Dawna Cobb, JustAdvice Project

Three clinics at the University of Maryland Francis King Carey School of Law provide direct services at The District Court for Baltimore City, civil division (Maryland's lowest level court). This site visit will provide an opportunity to meet with the professors and students from the three clinics: Mediation Clinic, Just Advice Clinic, and Landlord-Tenant Clinic, as well as staff and judges from the District Court. Each clinic has a different relationship with the court and the clients. Together we will explore the various services provided and the advantages and disadvantages of providing courthouse-based services. The visit will include a tour of the courthouse. (20 people maximum)

### **District Court for Baltimore City (01-04)**

Civil Division  
501 East Fayette Street  
Baltimore, MD 21202  
(0.7 miles; walkable)

## **DISTRICT COURT OF BALTIMORE CITY\***

Pretrial justice and bail

Liaison: Douglas Colbert, University of Maryland  
Access to Justice Clinic: Effective Assistance of  
Counsel at Bail

Baltimore's pretrial bail and release system has received considerable national attention following last April's uprising and arrest of 500 protestors and its use of money bail often in excessive amounts. Come observe the video bail hearings of people arrested within the past 48-72 hours, speak to a District Court Judge and a public defender, and join Professor Colbert afterward for a discussion at his home. (30 people maximum)

### **District Court for Baltimore City (01-01)**

Borgerding District Court Building  
5800 Wabash Avenue  
Baltimore, MD 21215  
(9.8 miles; taxi)

\*Please arrive at this event by 2 p.m.

## **WORLD RELIEF BALTIMORE IMMIGRATION LEGAL CLINIC**

Immigration legal services

Liaison: Maureen Sweeney, University of Maryland  
Immigration Clinic

Meet with World Relief advocates that co-sponsor pro bono consultations with the University of Maryland clinic twice per month and with a lawyer (or two) from the local public defender's office to talk about the Immigration Clinic's collaboration in advising noncitizen clients about likely immigration consequences of plea deals. (20 people maximum)

### **World Relief Baltimore Immigration Legal Clinic**

7 E Baltimore St  
Baltimore, MD 21202  
(0.9 miles; walkable)

## **PUBLIC JUSTICE CENTER**

Public Justice Center is a non-profit legal services provider that advocates in the courts, legislatures, and government agencies, educates the public, and builds coalitions to pursue systemic change to build a just society.

Liaison: Michelle Ewert, University of Baltimore Civil  
Advocacy Clinic

Representatives from PJC will discuss the benefits and challenges of collaborating with organizers and other non-legal allies in social justice movements. (15 people maximum)

### **District Court for Baltimore City**

Civil Division  
501 E. Fayette St.  
Baltimore, MD 21202-4013  
(0.7 miles from the conference hotel; walkable. Also  
accessible by public bus.)

**A TEACH-IN WITH BALT (BALTIMORE ACTION LEGAL TEAM)**

Liaison: Eve Hanan, University of Baltimore Juvenile Justice Project

BALT offers community lawyering to Baltimore communities as they exercise their civil liberties protesting against injustices rooted in structural racism and economic inequality. Specifically, BALT organizes legal support during protest actions, provides legal support to community organizations, advances community legal education, and furthers policy reform efforts. The Teach-In, which will occur at the conference hotel, will include a discussion of BALT, its work in the community during the Uprising and since, and an engaging discussion about how law school staff have been involved in supporting the communities' organizing efforts and the possibilities for further engagement. (50 people maximum)

**BALT Teach-in**

Baltimore Marriott Waterfront  
Laurel A, 4th Floor  
2 pm – 3:30 pm





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# Out and About: A Self-Guided Social Justice and Cultural Walking Tour

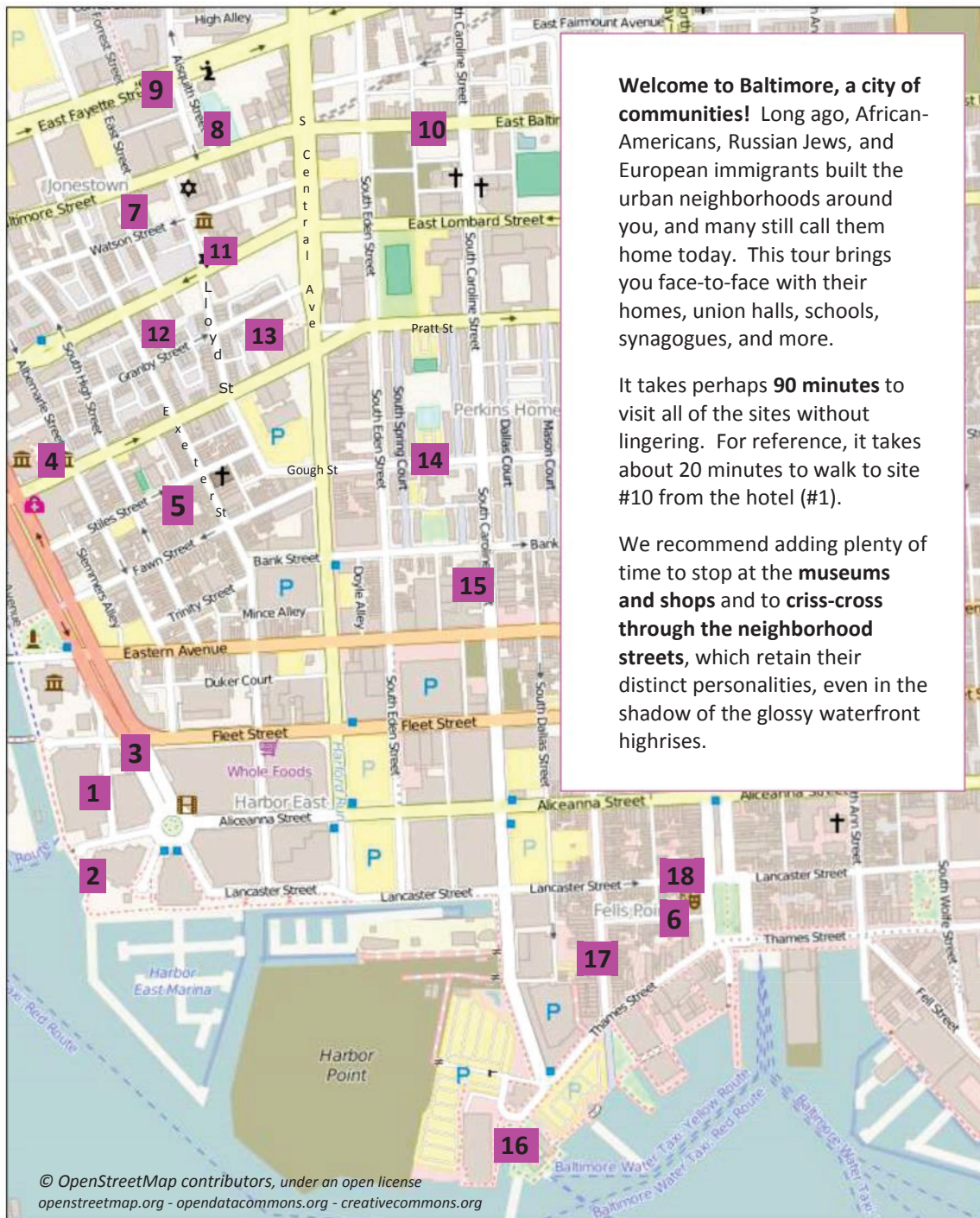
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*Prepared by Jaime Alison Lee, University of Baltimore School of Law, Community Development Clinic*

1. Conference hotel. Outside the hotel in the traffic circle, a dramatic bronze monument reflects the remembrance by nearby Polish communities of those killed by Soviet forces in 1940.
2. Here once stood Victor's Café, the first business to open as part of the area's redevelopment in the 1990s. Victor's employed 80 people, but as the area grew more upscale, it was demolished to give the Four Seasons Hotel a harbor view.
3. 601 President St.: President Street Station (now the Civil War Museum, 10-4 pm except T/W) was a train terminus for travelers from the north and may have had connections with the Underground Railroad. In reportedly "one of first skirmishes of the Civil War," Massachusetts troops leaving the station en route to the South were attacked by Southern sympathizers.
4. 830 E. Pratt St.: The Museum of Maryland African-American History & Culture (T-Sat 10-5, Su 12-5) is named for Baltimorean Reginald F. Lewis. Born in 1942, Lewis graduated from Harvard Law School, established the first African-American law firm on Wall Street, served as head of Beatrice Foods, and nurtured African-American entrepreneurship. Next door is the 1793 Star Spangled Banner Flag House (T-Sa 10-4 pm), where Mary Pickersgill sewed the flag that flew over Ft. McHenry and inspired our national anthem.
5. Immigrants populated Little Italy in the late 1800s. Former U.S. Speaker of the House Nancy Pelosi (daughter of the city's mayor) grew up here, as did Frank Zappa and television's "Homicide" character Al Giardello, whose father was Italian and whose mother lived at Perkins Homes (see #14).
6. 1631 Shakespeare St. (southeast corner of the map): In the early 1900s Baltimore had 10,000 clothing workers, over half of whom were women and teen girls, and more than 300 sweatshops. This building once housed a sweatshop.
7. 1023 E. Baltimore St.: Workers in various industries once flocked to union halls to organize, socialize, learn about their trades, and debate politics. Garment workers (the men made pants and overalls, while women stitched buttonholes) met at the Labor Lyceum, now a warehouse. Many halls, however, excluded women, the foreign-born, and blacks.
8. 1120 E Baltimore St.: A Quaker school for the poor opened here in 1833 in a Greek temple-style building. The McKim Free School is now a community center. Nearby, Henrietta Szold founded another school, the Russian Night School, to teach English to immigrants. The United Garment Workers hall once stood across the street, at 1119 E. Baltimore.
9. Aisquith/Lexington Streets: In 1913, 100 female garment workers marched here to join forces with suffragists and demand women's rights at President Woodrow Wilson's inauguration.
10. 1441 E. Baltimore St.: The Amalgamated Clothing Workers' labor hall still stands here.
11. 15 Lloyd St.: Built in 1845, the Lloyd Street Synagogue is the third oldest standing synagogue in country and still has its original mikveh (ritual bath). Next door is the Jewish Museum of Maryland (Su-Th 10-5 pm).
12. 1019 E. Lombard St.: Attman's Deli (est. 1915) claims to be the oldest Jewish deli in the U.S. under original family ownership. It is part of Baltimore's famous "Corned Beef Row."
13. Around E. Pratt St. and Lloyd St.: When Flag House Courts was demolished 2001, Baltimore became the first U.S. city to raze all of its high-rise public housing. Flag House was rebuilt under HOPE VI, a federal program implemented all across the country, but heavily criticized for decreasing the number of public housing units and forcing low-income residents, many of them African-American, to leave their communities while inviting wealthier people to move in and gentrify the neighborhoods.

14. 1411 Gough St.: Public housing residents of Perkins Homes protested in 2013 when \$88 million in tax breaks were awarded to the developer of luxury waterfront high-rises. The developer won the credits in part by claiming that it was investing in an economically distressed area, since Perkins Homes was close by. Protesters argued that the developer should use some of those resources to actually support Perkins Homes residents.
15. 1413 Bank St.: While larger unions had grand halls (see #7 and #10), smaller unions met in members' homes. The steam boiler-makers' union met at this home in the 1890s.
16. Frederick Douglass lived here as a child before escaping slavery in 1838. Visit the nearby museum (Sa-Su 12-4, M-F 10-4) to learn about him and about a black-run ship-caulking company that opened here at the docks in 1866 and operated for 18 years. The community raised \$10,000 to start the business when black ship-caulkers came under both economic and physical assault from white caulkers.
17. At the turn of the 19th century, Fells Point teemed with shipbuilders, dock activity, and merchants, and occasionally with violent protests against those in power. Both free blacks and slaves lived and worked here, and later, so did immigrants from Germany, Czechoslovakia, Ukraine, and elsewhere. Polish residents here were known to "follow the crops," migrating to pick crops in spring, returning here in late summer for canning jobs, then heading to the Gulf Coast to the seafood packing plants. By the early 1960s, port activity was closing down as work moved to the larger outer harbor, but artists and preservationists joined the neighborhood. Plans were announced in 1966 to extend the I-83 highway through Fells Points and demolish hundreds of homes. After a decade of passionate resistance from the community, the city gave up on these plans.
18. Between Thames/Lancaster/Broadway: In 1907, this neighborhood was documented as a "slum block." Today, many would call it highly gentrified.

*Sources include The Baltimore Book: New Views of Local History (Temple University Press, 1991), media reports, Wikipedia, and other websites. Thanks to Baltimore residents Profs. Susan Bennett and Barbara Bezdek for contributing ideas and inspiration.*





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# Exhibitors

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*Located in Harborside Foyer*

## **Carolina Academic Press**

700 Kent Street  
Durham, NC 27701  
Phone: (919) 489-7486  
Fax: (919) 419-0761  
Website: [caplaw.com](http://caplaw.com)

### **Representatives**

Linda Lacy  
Carol McGeehan

Carolina Academic Press publishes a wide range of casebooks, course books, treatises, and monographs for the legal education community. As of January 1, 2016, these offerings have expanded, with CAP's acquisition of the LexisNexis law school list. You may be familiar with our widely adopted legal writing offerings, such as *Plain English for Lawyers* and the online learning tool *Core Grammar for Lawyers*. Our popular series include the groundbreaking *Context and Practice Series* and the *Understanding, Q&A, Skills and Values and Mastering* series. For more information and to check out our titles, please visit [caplaw.com](http://caplaw.com).

## **Clio**

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Andrew Gay

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## **CORE Higher Education Group**

1300 Division Road, Suite 303  
West Warwick, RI 02893  
Phone: (401) 398-7733  
Website: [www.corehighered.com](http://www.corehighered.com)

### **Representative**

Alexis Carbone  
Mark MacGrotty

CORE Higher Education Group is a Rhode Island technology company providing SaaS applications to colleges and universities. The CORE Technology Suite is comprised of three SaaS applications supporting institutions of higher education in the areas of externship management, student competency management, and ePortfolios. The CORE Technology Suite is built on a foundation of three integrated applications:

- 1) CORE ELMS - An Experiential Learning Management System (ELMS) supporting the needs and processes of externship departments, corporate partners, and students in the field.
- 2) CORE CompMS - A Competency Management System (CompMS) for detailed student competency documentation and tracking, curriculum mapping, and course evaluation.
- 3) CORE ePortfolio - Electronic Credential Presentation Portfolios designed to manage and present an individual's educational, professional, and experiential achievements.

With CORE Technology Suite, higher education institutions can impact student retention, readiness, and placement while addressing critical accreditation requirements through core analytics.

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### **Representatives**

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**Working Materials for Use During  
#BlackLivesMatter Plenary**

Sunday, May 1, 2016  
2:15 pm - 3:45 pm

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**TERRY V. OHIO, 391 U.S. 1 (1968)**

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

This case presents serious questions concerning the role of the Fourth Amendment in the confrontation on the street between the citizen and the policeman investigating suspicious circumstances.

Petitioner Terry was convicted of carrying a concealed weapon and sentenced to the statutorily prescribed term of one to three years in the penitentiary. Following the denial of a pretrial motion to suppress, the prosecution introduced in evidence two revolvers and a number of bullets seized from Terry and a codefendant, Richard Chilton, by Cleveland Police Detective Martin McFadden. At the hearing on the motion to suppress this evidence, Officer McFadden testified that while he was patrolling in plain clothes in downtown Cleveland at approximately 2:30 in the afternoon of October 31, 1963, his attention was attracted by two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue. He had never seen the two men before, and he was unable to say precisely what first drew his eye to them. However, he testified that he had been a policeman for 39 years and a detective for 35 and that he had been assigned to patrol this vicinity of downtown Cleveland for shoplifters and pickpockets for 30 years. He explained that he had developed routine habits of observation over the years and that he would "stand and watch people or walk and watch people at many intervals of the day." He added: "Now, in this case when I looked over they didn't look right to me at the time."

His interest aroused, Officer McFadden took up a post of observation in the entrance to a store 300 to 400 feet away from the two men. "I get more purpose to watch them when I seen their movements," he testified. He saw one of the men leave the other one and walk southwest on Huron Road, past some stores. The man paused for a moment and looked in a store window, then walked on a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. He rejoined his companion at the corner, and the two conferred briefly. Then the second man went through the same series of motions, strolling down Huron Road, looking in the same window, walking on a short distance, turning back, peering in the store window again, and returning to confer with the first man at the corner. The two men repeated this ritual alternately between five and six times apiece - in all, roughly a dozen trips. At one point, while the two were standing together on the corner, a third man approached them and engaged them briefly in conversation. This man then left the two others and walked west on Euclid Avenue. Chilton and Terry resumed their measured pacing, peering, and conferring. After this had gone on for 10 to 12 minutes, the two men walked off together, heading west on Euclid Avenue, following the path taken earlier by the third man.

By this time Officer McFadden had become thoroughly suspicious. He testified that after observing their elaborately casual and oft-repeated reconnaissance of the store window on Huron Road, he suspected the two men of "casing a job, a stick-up," and that he considered it his duty as a police officer to investigate further. He added that he feared "they may have a gun." Thus, Officer McFadden followed Chilton and Terry and saw them stop in front of Zucker's store to talk to the same man who had conferred with them earlier on the street corner. Deciding that the situation was ripe for direct action, Officer McFadden approached the three men, identified himself as a police officer and asked for their names. At this point his knowledge was confined to what he had observed. He was not acquainted with any of the three men by name or by sight, and he had received no information concerning them from any other source. When the men "mumbled something" in response to his inquiries, Officer McFadden grabbed petitioner Terry, spun him around so that they were facing the other two, with Terry between McFadden and the others, and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat Officer McFadden felt a pistol. He reached inside the overcoat pocket, but was unable to remove the gun. At this point, keeping Terry between himself and the others, the officer ordered all three men to enter Zucker's store. As they went in, he removed Terry's overcoat completely, removed a .38-caliber revolver from the pocket and ordered all three men to face the wall with their hands raised. Officer McFadden proceeded to pat down the outer clothing of Chilton and the third man, Katz. He discovered another revolver in the outer pocket of Chilton's overcoat, but no weapons were found on Katz. The officer testified that he only patted the men down to see whether they had weapons, and that he did not put his hands beneath the outer garments of either Terry or Chilton until he felt their guns. So far as appears from the record, he never placed his hands beneath Katz' outer garments. Officer McFadden seized Chilton's gun, asked the proprietor of the store to call a police wagon, and took all three men to the station, where Chilton and Terry were formally charged with carrying concealed weapons.

On the motion to suppress the guns the prosecution took the position that they had been seized following a search incident to a lawful arrest. The trial court rejected this theory, stating that it "would be stretching the facts beyond reasonable comprehension" to find that Officer McFadden had had probable cause to arrest the men before he patted them down for weapons. However, the court denied the defendants' motion on the ground that Officer McFadden, on the basis of his experience, "had reasonable cause to believe . . . that the defendants were conducting themselves suspiciously, and some interrogation should be made of their action." Purely for his own protection, the court held, the officer had the right to pat down the outer clothing of these men, who he had reasonable cause to believe might be armed. The court distinguished between an investigatory "stop" and an arrest, and between a "frisk" of the outer clothing for weapons and a full-blown search for evidence of crime. The frisk, it held, was essential to the proper performance of the officer's investigatory duties, for without it "the answer to the police officer may be a bullet, and a loaded pistol discovered during the frisk is admissible."

After the court denied their motion to suppress, Chilton and Terry waived jury trial and pleaded not guilty. The court adjudged them guilty, and the Court of Appeals for the Eighth Judicial District, Cuyahoga County, affirmed. *State v. Terry*, 5 Ohio App. 2d 122, 214 N. E. 2d 114 (1966). The Supreme Court of Ohio dismissed their appeal on the ground that no "substantial constitutional question" was involved. We granted certiorari, 387 U.S. 929 (1967), to determine whether the admission of the revolvers in evidence violated petitioner's rights under the Fourth Amendment, made applicable to the States by the Fourteenth. *Mapp v. Ohio*, 367 U.S. 643 (1961). We affirm the conviction.

I.

The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." This inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized,

"No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

We have recently held that "the Fourth Amendment protects people, not places," *Katz v. United States*, 389 U.S. 347, 351 (1967), and wherever an individual may harbor a reasonable "expectation of privacy," *id.*, at 361 (MR. JUSTICE HARLAN, concurring), he is entitled to be free from unreasonable governmental intrusion. Of course, the specific content and incidents of this right must be shaped by the context in which it is asserted. For "what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures." *Elkins v. United States*, 364 U.S. 206, 222 (1960). Unquestionably petitioner was entitled to the protection of the Fourth Amendment as he walked down the street in Cleveland. *Beck v. Ohio*, 379 U.S. 89 (1964); *Rios v. United States*, 364 U.S. 253 (1960); *Henry v. United States*, 361 U.S. 98 (1959); *United States v. Di Re*, 332 U.S. 581 (1948); *Carroll v. United States*, 267 U.S. 132 (1925). The question is whether in all the circumstances of this on-the-street encounter, his right to personal security was violated by an unreasonable search and seizure.

We would be less than candid if we did not acknowledge that this question thrusts to the fore difficult and troublesome issues regarding a sensitive area of police activity - issues which have never before been squarely presented to this Court. Reflective of the tensions involved are the practical and constitutional arguments pressed with great vigor on both sides of the public debate over the power of the police to "stop and frisk" - as it is sometimes euphemistically termed - suspicious persons.

On the one hand, it is frequently argued that in dealing with the rapidly unfolding and often dangerous situations on city streets the police are in need of an escalating set of flexible responses, graduated in relation to the amount of information they possess. For this purpose it is urged that distinctions should be made between a "stop" and an "arrest" (or a "seizure" of a person), and between a "frisk" and a "search." 3 Thus, it is argued, the police should be allowed to "stop" a person and detain him briefly for questioning upon suspicion that he may be connected with criminal activity. Upon suspicion that the person may be armed, the police should have the power to "frisk" him for weapons. If the "stop" and the "frisk" give rise to probable cause to believe that the suspect has committed a crime, then the police should be empowered to make a formal "arrest," and a full incident "search" of the person. This scheme is justified in part upon the notion that a "stop" and a "frisk" amount to a mere "minor inconvenience and petty indignity," 4 which can properly be imposed upon the citizen in the interest of effective law enforcement on the basis of a police officer's suspicion.

On the other side the argument is made that the authority of the police must be strictly circumscribed by the law of arrest and search as it has developed to date in the traditional jurisprudence of the Fourth Amendment. 6 It is contended with some force that there is not - and cannot be - a variety of police activity which does not depend solely upon the voluntary cooperation of the citizen and yet which stops short of an arrest based upon probable cause to make such an arrest. The heart of the Fourth Amendment, the argument runs, is a severe requirement of specific justification for any intrusion upon protected personal security, coupled with a highly developed system of judicial controls to enforce upon the agents of the State the commands of the Constitution. Acquiescence by the courts in the compulsion inherent in the field interrogation practices at issue here, it is urged, would constitute an abdication of judicial control over, and indeed an encouragement of, substantial interference with liberty and personal security by police officers whose judgment is necessarily colored by their primary involvement in "the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14 (1948). This, it is argued, can only serve to exacerbate police-community tensions in the crowded centers of our Nation's cities.

In this context we approach the issues in this case mindful of the limitations of the judicial function in controlling the myriad daily situations in which policemen and citizens confront each other on the street. The State has characterized the issue here as "the right of a police officer . . . to make an on-the-street stop, interrogate and pat down for weapons (known in street vernacular as 'stop and frisk')." But this is only partly accurate. For the issue is not the abstract propriety of the police conduct, but the admissibility against petitioner of the evidence uncovered by the search and seizure. Ever since its inception, the rule excluding evidence seized in violation of the Fourth Amendment has been recognized as a principal mode of discouraging lawless police conduct. See *Weeks v. United States*, 232 U.S. 383, 391 -393 (1914). Thus its major thrust is a deterrent one, see *Linkletter v. Walker*, 381 U.S. 618, 629 -635 (1965), and experience has taught that it is the only effective deterrent to police misconduct in the criminal context, and that without it the constitutional guarantee against unreasonable searches and seizures would be a mere "form of words." *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). The rule also serves another vital function - "the imperative of judicial integrity." *Elkins [392 U.S. 1, 13] v. United States*, 364 U.S. 206, 222 (1960). Courts which sit under our Constitution cannot and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions. Thus in our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents. A ruling admitting evidence in a criminal trial, we recognize, has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur.

The exclusionary rule has its limitations, however, as a tool of judicial control. It cannot properly be invoked to exclude the products of legitimate police investigative techniques on the ground that much conduct which is closely similar involves unwarranted intrusions upon constitutional protections. Moreover, in some contexts the rule is ineffective as a deterrent. Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life. Moreover, hostile confrontations are not all of a piece. Some of them begin in a friendly enough manner, only to take a different turn upon the injection of some unexpected element into the conversation. Encounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime. 9 Doubtless some [392 U.S. 1, 14] police "field interrogation" conduct violates the Fourth Amendment. But a stern refusal by this Court to condone such activity does not necessarily render it responsive to the exclusionary rule. Regardless of how effective the rule may be where obtaining convictions is an important objective of the police, 10 it is powerless to deter invasions of constitutionally guaranteed rights where the police either have no interest in prosecuting or are willing to forgo successful prosecution in the interest of serving some other goal.

Proper adjudication of cases in which the exclusionary rule is invoked demands a constant awareness of these limitations. The wholesale harassment by certain elements of the police community, of which minority groups, particularly Negroes, frequently complain, will not be stopped by the exclusion of any evidence from any criminal trial. Yet a rigid and unthinking application of the exclusionary rule, in futile protest against practices which it can never be used effectively to control, may exact a high toll in human injury and frustration of efforts to prevent crime. No judicial opinion can comprehend the protean variety of the street encounter, and we can only judge the facts of the case before us. Nothing we say today is to be taken as indicating approval of police conduct outside the legitimate investigative sphere. Under our decision, courts still retain their traditional responsibility to guard against police conduct which is overbearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary and its fruits must be excluded from evidence in criminal trials. And, of course, our approval

of legitimate and restrained investigative conduct undertaken on the basis of ample factual justification should in no way discourage the employment of other remedies than the exclusionary rule to curtail abuses for which that sanction may prove inappropriate.

Having thus roughly sketched the perimeters of the constitutional debate over the limits on police investigative conduct in general and the background against which this case presents itself, we turn our attention to the quite narrow question posed by the facts before us: whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest. Given the narrowness of this question, we have no occasion to canvass in detail the constitutional limitations upon the scope of a policeman's power when he confronts a citizen without probable cause to arrest him.

## II.

Our first task is to establish at what point in this encounter the Fourth Amendment becomes relevant. That is, we must decide whether and when Officer McFadden "seized" Terry and whether and when he conducted a "search." There is some suggestion in the use of such terms as "stop" and "frisk" that such police conduct is outside the purview of the Fourth Amendment because neither action rises to the level of a "search" or "seizure" within the meaning of the Constitution. <sup>12</sup> We emphatically reject this notion. It is quite plain that the Fourth Amendment governs "seizures" of the person which do not eventuate in a trip to the station house and prosecution for crime - "arrests" in traditional terminology. It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person. And it is nothing less than sheer torture of the English language to suggest that a careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is not a "search." Moreover, it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity." It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.

The danger in the logic which proceeds upon distinctions between a "stop" and an "arrest," or "seizure" of the person, and between a "frisk" and a "search" is two-fold. It seeks to isolate from constitutional scrutiny the initial stages of the contact between the policeman and the citizen. And by suggesting a rigid all-or-nothing model of justification and regulation under the Amendment, it obscures the utility of limitations upon the scope, as well as the initiation, of police action as a means of constitutional regulation. This Court has held in the past that a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. *Kremen v. United States*, 353 U.S. 346 (1957); *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 356 -358 (1931); see *United States v. Di Re*, 332 U.S. 581, 586 -587 (1948). The scope of the search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible. *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (MR. JUSTICE FORTAS, concurring); see, e. g., *Preston v. United States*, 376 U.S. 364, 367 -368 (1964); *Agnello v. United States*, 269 U.S. 20, 30 -31 (1925).

The distinctions of classical "stop-and-frisk" theory thus serve to divert attention from the central inquiry under the Fourth Amendment - the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security. "Search" and "seizure" are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a "technical arrest" or a "full-blown search."

In this case there can be no question, then, that Officer McFadden "seized" petitioner and subjected him to a "search" when he took hold of him and patted down the outer surfaces of his clothing. We must decide whether at that point it was reasonable for Officer McFadden to have interfered with petitioner's personal security as he did. And in determining whether the seizure and search were "unreasonable" our inquiry is a dual one - whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

## III.

If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether "probable cause" existed to justify the search and seizure which took place. However, that is not the case. We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures

through the warrant procedure, see, e. g., *Katz v. United States*, 389 U.S. 347 (1967); *Beck v. Ohio*, 379 U.S. 89, 96 (1964); *Chapman v. United States*, 365 U.S. 610 (1961), or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances, see, e. g., *Warden v. Hayden*, 387 U.S. 294 (1967) (hot pursuit); cf. *Preston v. United States*, 376 U.S. 364, 367 -368 (1964). But we deal here with an entire rubric of police conduct - necessarily swift action predicated upon the on-the-spot observations of the officer on the beat - which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.

Nonetheless, the notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context. In order to assess the reasonableness of Officer McFadden's conduct as a general proposition, it is necessary "first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen," for there is "no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails." *Camara v. Municipal Court*, 387 U.S. 523, 534 -535, 536-537 (1967). And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate? Cf. *Carroll v. United States*, 267 U.S. 132 (1925); *Beck v. Ohio*, 379 U.S. 89, 96 -97 (1964). Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. See, e. g., *Beck v. Ohio*, supra; *Rios v. United States*, 364 U.S. 253 (1960); *Henry v. United States*, 361 U.S. 98 (1959). And simple "'good faith on the part of the arresting officer is not enough.' . . . If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." *Beck v. Ohio*, supra, at 97.

Applying these principles to this case, we consider first the nature and extent of the governmental interests involved. One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest. It was this legitimate investigative function Officer McFadden was discharging when he decided to approach petitioner and his companions. He had observed Terry, Chilton, and Katz go through a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation. There is nothing unusual in two men standing together on a street corner, perhaps waiting for someone. Nor is there anything suspicious about people in such circumstances strolling up and down the street, singly or in pairs. Store windows, moreover, are made to be looked in. But the story is quite different where, as here, two men hover about a street corner for an extended period of time, at the end of which it becomes apparent that they are not waiting for anyone or anything; where these men pace alternately along an identical route, pausing to stare in the same store window roughly 24 times; where each completion of this route is followed immediately by a conference between the two men on the corner; where they are joined in one of these conferences by a third man who leaves swiftly; and where the two men finally follow the third and rejoin him a couple of blocks away. It would have been poor police work indeed for an officer of 30 years' experience in the detection of thievery from stores in this same neighborhood to have failed to investigate this behavior further.

The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for McFadden's invasion of Terry's personal security by searching him for weapons in the course of that investigation. We are now concerned with more than the governmental interest in investigating crime; in addition, there is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.

In view of these facts, we cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest. When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

We must still consider, however, the nature and quality of the intrusion on individual rights which must be accepted if police officers are to be conceded the right to search for weapons in situations where probable cause to arrest for crime is lacking. Even a limited search of the outer clothing for weapons constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience. Petitioner contends that such an intrusion is permissible only incident to a lawful arrest, either for a crime involving the possession of weapons or for a crime the commission of which led the officer to investigate in the first place. However, this argument must be closely examined.

Petitioner does not argue that a police officer should refrain from making any investigation of suspicious circumstances until such time as he has probable cause to make an arrest; nor does he deny that police officers in properly discharging their investigative function may find themselves confronting persons who might well be armed and dangerous. Moreover, he does not say that an officer is always unjustified in searching a suspect to discover weapons. Rather, he says it is unreasonable for the policeman to take that step until such time as the situation evolves to a point where there is probable cause to make an arrest. When that point has been reached, petitioner would concede the officer's right to conduct a search of the suspect for weapons, fruits or instrumentalities of the crime, or "mere" evidence, incident to the arrest.

There are two weaknesses in this line of reasoning, however. First, it fails to take account of traditional limitations upon the scope of searches, and thus recognizes no distinction in purpose, character, and extent between a search incident to an arrest and a limited search for weapons. The former, although justified in part by the acknowledged necessity to protect the arresting officer from assault with a concealed weapon, *Preston v. United States*, 376 U.S. 364, 367 (1964), is also justified on other grounds, *ibid.*, and can therefore involve a relatively extensive exploration of the person. A search for weapons in the absence of probable cause to arrest, however, must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (MR. JUSTICE FORTAS, concurring). Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a "full" search, even though it remains a serious intrusion.

A second, and related, objection to petitioner's argument is that it assumes that the law of arrest has already worked out the balance between the particular interests involved here - the neutralization of danger to the policeman in the investigative circumstance and the sanctity of the individual. But this is not so. An arrest is a wholly different kind of intrusion upon individual freedom from a limited search for weapons, and the interests each is designed to serve are likewise quite different. An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows. The protective search for weapons, on the other hand, constitutes a brief, though far from inconsiderable, intrusion upon the sanctity of the person. It does not follow that because an officer may lawfully arrest a person only when he is apprised of facts sufficient to warrant a belief that the person has committed or is committing a crime, the officer is equally unjustified, absent that kind of evidence, in making any intrusions short of an arrest. Moreover, a perfectly reasonable apprehension of danger may arise long before the officer is possessed of adequate information to justify taking a person into custody for the purpose of prosecuting him for a crime. Petitioner's reliance on cases which have worked out standards of reasonableness with regard to "seizures" constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of conduct under the Fourth Amendment. See *Camara v. Municipal Court*, *supra*.

Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Cf. *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Brinegar v. United States*, 338 U.S. 160, 174 -176 (1949); *Stacey v. Emery*, 97 U.S. 642, 645 (1878).

And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience. Cf. *Brinegar v. United States* supra.

## IV.

We must now examine the conduct of Officer McFadden in this case to determine whether his search and seizure of petitioner were reasonable, both at their inception and as conducted. He had observed Terry, together with Chilton and another man, acting in a manner he took to be preface to a "stick-up." We think on the facts and circumstances Officer McFadden detailed before the trial judge a reasonably prudent man would have been warranted in believing petitioner was armed and thus presented a threat to the officer's safety while he was investigating his suspicious behavior. The actions of Terry and Chilton were consistent with McFadden's hypothesis that these men were contemplating a daylight robbery - which, it is reasonable to assume, would be likely to involve the use of weapons - and nothing in their conduct from the time he first noticed them until the time he confronted them and identified himself as a police officer gave him sufficient reason to negate that hypothesis. Although the trio had departed the original scene, there was nothing to indicate abandonment of an intent to commit a robbery at some point. Thus, when Officer McFadden approached the three men gathered before the display window at Zucker's store he had observed enough to make it quite reasonable to fear that they were armed; and nothing in their response to his hailing them, identifying himself as a police officer, and asking their names served to dispel that reasonable belief. We cannot say his decision at that point to seize Terry and pat his clothing for weapons was the product of a volatile or inventive imagination, or was undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so.

The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation. Compare *Katz v. United States*, 389 U.S. 347, 354 -356 (1967). The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that "limitations upon the fruit to be gathered tend to limit the quest itself." *United States v. Poller*, 43 F.2d 911, 914 (C. A. 2d Cir. 1930); see, e. g., *Linkletter v. Walker*, 381 U.S. 618, 629 -635 (1965); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Elkins v. United States*, 364 U.S. 206, 216 -221 (1960). Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation. *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (MR. JUSTICE FORTAS, concurring).

We need not develop at length in this case, however, the limitations which the Fourth Amendment places upon a protective seizure and search for weapons. These limitations will have to be developed in the concrete factual circumstances of individual cases. See *Sibron v. New York*, post, p. 40, decided today. Suffice it to note that such a search, unlike a search without a warrant incident to a lawful arrest, is not justified by any need to prevent the disappearance or destruction of evidence of crime. See *Preston v. United States*, 376 U.S. 364, 367 (1964). The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer.

The scope of the search in this case presents no serious problem in light of these standards. Officer McFadden patted down the outer clothing of petitioner and his two companions. He did not place his hands in their pockets or under the outer surface of their garments until he had felt weapons, and then he merely reached for and removed the guns. He never did invade Katz' person beyond the outer surfaces of his clothes, since he discovered nothing in his pat-down which might have been a weapon. Officer McFadden confined his search strictly to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.

## V.

We conclude that the revolver seized from Terry was properly admitted in evidence against him. At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize

the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.

Affirmed.



3 JOHN W. TERRY  
 RICHARD CHILTON  
 CARL KATZ

SUSP. PERSON

POLICE DEPARTMENT  
 CLEVELAND, OHIO  
 DEPARTMENTAL INFORMATION

DIST. D. 5 ONE

EXAMINED BY Steven Radach RANK Serif

Oct 31 1963  
 Oct 31 1963

FROM Martin Mc Fadden Det # 1125 TO Michael Haney Sgt  
 SUBJECT Report on arrest of John Woodall Terry, Richard D. Chilton and  
 Files: Carl Katz and Gun Seizure  
 COPIES TO

Sir;

At about 2:25 this P.M. and this date I was walking East on Huron Rd. I noticed two colored men standing at the corner of Huron Rd and Euclid Ave. I noticed one of these men would leave the other and walk West on Huron Rd. He would kind of slow his walk and look into the United Air which is located at 1276 Euclid Ave but has a rear entrance on Huron Rd. He would then continue to walk West on Huron Rd and stop and then as he came east again he would pause and again look into the United Air Lines. When he came back to Huron Rd and Euclid he would talk to the other colored man and the other man would take the same walk and do the same as the other man pausing in front of the United Air Lines. During the time I was watching them they made about three trips each. While they were together at the corner I saw a white man who came ~~from the~~ east on Huron Rd stop and talk to these two colored men and after he left them, he walked west on Euclid Ave. I could not see him after he left these men and can not say where ~~ex~~ he went or what he did. About five minutes after this white man left the corner these men also left the corner of Huron Rd and ~~xxx~~ Euclid Ave and went West on Euclid Ave. In front of 1120 Euclid Ave Zuckers Store for men these two colored men met the white man again and they stopped and talked. At this point I approached these three men and informed them I was a police officer and told them to keep their hands out of their pockets. First one I searched was John Woodall Terry age 31 colored of 1275 East 105th St and in the inside ~~xxx~~ pocket of his topcoat (left side) found a 38 cal. automatic, name on same P. Beretta - cal. 9 Corte- M. 1934 Brevet- Cardone V.T. 1941 xlx serial No. 897012. One bullet was in the chamber 6 bullets in the clip.

On searching Richard D Chilton age 32 of 1610 Lotus Dr found a 38 cal revolver loaded with 5 bullets Name Hopkins and Alan Mfg Co Ft. Jan 5 -88 X- L Double action Found this gun in the right hand front pocket of the topcoat Chilton was wearing. Serial No 5209

Searching Carl Katz white age 49 of 3755 Mayfield Rd found no weapons. Request that these two guns be turned over to the Ballistics to be checked out.

Also request that the three above mentioned men be checked out by the Robbery Squad.

Gun Seizure reports made on the above two mentioned guns

Respectfully  
Martin Mc Fadden Det  
 # 1125



2010, the court has collected more revenue for Failure to Appear charges than for any other charge. This includes \$442,901 in fines for Failure to Appear violations in 2013, which comprised 24% of the total revenue the court collected that year. While the City Council repealed the Failure to Appear ordinance in September 2014, many people continue to owe fines and fees stemming from that charge. And the court continues to issue arrest warrants in every case where that charge previously would have been applied. License suspension practices are similarly unchanged. Once issued, arrest warrants can, and frequently do, lead to arrest and time in jail, despite the fact that the underlying offense did not result in a penalty of imprisonment.<sup>21</sup>

Thus, while the municipal court does not generally deem the code violations that come before it as jail-worthy, it routinely views the failure to appear in court to remit payment to the City as jail-worthy, and commonly issues warrants to arrest individuals who have failed to make timely payment. Similarly, while the municipal court does not have any authority to impose a *fine* of over \$1,000 for any offense, it is not uncommon for individuals to pay more than this amount to the City of Ferguson—in forfeited bond payments, additional Failure to Appear charges, and added court fees—for what may have begun as a simple code violation. In this way, the penalties that the court imposes are driven not by public safety needs, but by financial interests. And despite the harm imposed by these needless penalties, until recently, the City and court did little to respond to the increasing frequency of Failure to Appear charges, and in many respects made court practices more opaque and difficult to navigate.

### **1. Court Practices Impose Substantial and Unnecessary Barriers to the Challenge or Resolution of Municipal Code Violations**

It is a hallmark of due process that individuals are entitled to adequate notice of the allegations made against them and to a meaningful opportunity to be heard. *See Cole v. Arkansas*, 333 U.S. 196, 201 (1948); *see also Ward v. Vill. of Monroeville*, 409 U.S. 57, 58-62 (1972) (applying due process requirements to case adjudicated by municipal traffic court). As documented below, however, Ferguson municipal court rules and procedures often fail to provide these basic protections, imposing unnecessary barriers to resolving a citation or summons and thus increasing the likelihood of incurring the severe penalties that result if a code violation is not quickly resolved.

We have concerns not only about the obstacles to resolving a charge even when an individual chooses not to contest it, but also about the trial processes that apply in the rare occasion that a person does attempt to challenge a charge. While it is “axiomatic that a fair trial in a fair tribunal is a basic requirement of due process,” *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009), the adjudicative tribunal provided by the Ferguson municipal court appears deficient in many respects.<sup>22</sup> Attempts to raise legal claims are met with retaliatory conduct. In an August 2012 email exchange, for instance, the Court Clerk asked what the

<sup>21</sup> As with many of the problematic court practices that we identify in this report, other municipalities in St. Louis County also have imposed a separate Failure to Appear charge, fine, and fee for missed court appearances and payments. Many continue to do so.

<sup>22</sup> As discussed in Part II of this report, City officials have acknowledged several of these procedural deficiencies. In 2012, a City Councilmember, citing specific examples, urged against reappointing Judge Brockmeyer because he “often times does not listen to the testimony, does not review the reports or the criminal history of defendants, and doesn’t let all the pertinent witnesses testify before rendering a verdict.”

Prosecuting Attorney does when an attorney appears in a red light camera case, and the Prosecuting Attorney responded: “I usually dismiss them if the attorney merely requests a recommendation. If the attorney goes off on all of the constitutional stuff, then I tell the attorney to come . . . and argue in front [of] the judge—after that, his client can pay the ticket.” We have found evidence of similar adverse action taken against litigants attempting to fulsomely argue a case at trial. The man discussed above who was cited after allowing his child to urinate in a bush attempted to challenge his charges. The man retained counsel who, during trial, was repeatedly interrupted by the court during his cross-examination of the officer. When the attorney objected to the interruptions, the judge told him that, if he continued on this path, “I will hold you in contempt and I will incarcerate you,” which, as discussed below, the court has done in the past to others appearing before it. The attorney told us that, believing no line of questioning would alter the outcome, he tempered his defense so as not to be jailed. Notably, at that trial, even though the testifying officer had previously been found untruthful during an official FPD investigation, the prosecuting attorney presented his testimony without informing defendant of that fact, and the court credited that testimony.<sup>23</sup> The evidence thus suggests substantial deficiencies in the manner in which the court conducts trials.

Even where defendants opt not to challenge their charges, a number of court processes make resolving a case exceedingly difficult. City officials and FPD officers we spoke with nearly uniformly asserted that individuals’ experiences when they become embroiled in Ferguson’s municipal code enforcement are due not to any failings in Ferguson’s law enforcement practices, but rather to those individuals’ lack of “personal responsibility.” But these statements ignore the barriers to resolving a case that court practices impose, including: 1) a lack of transparency regarding rights and responsibilities; 2) requiring in-person appearance to resolve most municipal charges; 3) policies that exacerbate the harms of Missouri’s law requiring license suspension where a person fails to appear on a moving violation charge; 4) basic access deficiencies that frustrate a person’s ability to resolve even those charges that do not require in-court appearance; and 5) legally inadequate fine assessment methods that do not appropriately consider a person’s ability to pay and do not provide alternatives to fines for those living in or near poverty. Together, these barriers impose considerable hardship. We have heard repeated reports, and found evidence in court records, of people appearing in court many times—

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<sup>23</sup> This finding of untruthfulness by a police officer constitutes impeachment evidence that must be disclosed in any trial in which the officer testifies for the City. Under the Fourteenth Amendment, the failure to disclose evidence that is “favorable to an accused” violates due process “where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This duty applies to impeachment evidence, *United States v. Bagley*, 473 U.S. 667, 676 (1985), and it applies even if the defendant does not request the evidence, *United States v. Agurs*, 427 U.S. 97, 107 (1976). The duty encompasses, furthermore, information that should be known to the prosecutor, including information known solely by the police department. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). This constitutional duty to disclose appears to extend to municipal court cases, which can result in jail terms of up to three months under Section 29-2 of Ferguson’s municipal code. See *City of Kansas City v. Oxley*, 579 S.W.2d 113, 114 (Mo. 1979) (en banc) (holding that the due process standard of proof beyond a reasonable doubt applied in a municipal court speeding case because “the violation has criminal overtones”); see also *City of Cape Girardeau v. Jones*, 725 S.W.2d 904, 907-09 (Mo. Ct. App. 1987) (explaining that reasonable doubt standard applied to municipal trespass prosecution because municipal ordinance violations are “quasi-criminal,” and reversing two convictions based on privilege against self-incrimination). We are aware of at least two cases, from January 2015, in which the City called this officer as a witness without disclosing the finding of untruthfulness to the defense.

in some instances on more than ten occasions—to try to resolve a case but being unable to do so, and subsequently having additional fines, fees, and arrest warrants issued against them.

a. Court Practices and Procedural Deficiencies Create a Lack of Transparency Regarding Rights and Responsibilities

It is often difficult for an individual who receives a municipal citation or summons in Ferguson to know how much is owed, where and how to pay the ticket, what the options for payment are, what rights the individual has, and what the consequences are for various actions or oversights. The initial information provided to people who are cited for violating Ferguson’s municipal code is often incomplete or inconsistent. Communication with municipal court defendants is haphazard and known by the court to be unreliable. And the court’s procedures and operations are ambiguous, are not written down, and are not transparent or even available to the public on the court’s website or elsewhere.

The rules and procedures of the court are difficult for the public to discern. Aside from a small number of exceptions, the Municipal Judge issues rules of practice and procedure verbally and on an ad hoc basis. Until recently, on the rare occasion that the Judge issued a written order that altered court practices, those orders were not distributed broadly to court and other FPD officials whose actions they affect and were not readily accessible to the public. Further, Ferguson, unlike other courts in the region, does not include *any* information about its operations on its website other than inaccurate instructions about how to make payment.<sup>24</sup> Court staff acknowledged during our investigation that the public would benefit from increased information about how to resolve cases and about court practices and procedures. Yet neither the court nor other City officials have undertaken efforts to make court operations more transparent in order to ensure that litigants understand their rights or court procedures, or to enable the public to assess whether the court is operating in a fair manner.

Current court practices fail to provide adequate information even to those who are charged with a municipal violation. The lack of clarity about a person’s rights and responsibilities often begins from the moment a person is issued a citation. For some offenses, FPD uses state of Missouri uniform citations, and typically indicates on the ticket the assigned court date for the offense. Many times, however, FPD officers omit critical information from the citation, which makes it impossible for a person to determine the specific nature of the offense charged, the amount of the fine owed, or whether a court appearance is required or some alternative method of payment is available. In some cases, citations fail to indicate the offense charged altogether; in November 2013, for instance, court staff wrote FPD patrol to “see what [a] ticket was for” because it “does not have a charge on it.” In other cases, a ticket will indicate a charge but omit other crucial information. For example, speeding tickets often fail to indicate the alleged speed observed, even though both the fine owed and whether a court appearance is mandatory depends upon the specific speed alleged. Evidence shows that in some of these cases,

<sup>24</sup> See *City Courts*, City of Ferguson, <http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts> (last visited Feb. 26, 2015). By contrast, the neighboring municipality of Normandy operates a court website with an entire page containing information regarding fine due dates, methods of payment, and different payment options, including the availability of payment plans for those who cannot afford to pay a fine in full. See *How Do I Pay a Ticket / Fine?*, City of Normandy, <http://www.cityofnormandy.gov/index.aspx?NID=570> (last visited Feb. 26, 2015).

a person has appeared in court but been unable to resolve the citation because of the missing information. In June 2014, for instance, a court clerk wrote to an FPD officer: “The above ticket . . . does not have a speed in it. The guy came in and we had to send him away. Can you email me the speed when you get time.” Separate and apart from the difficulties these omissions create for people, the fact that the court staff routinely add the speed to tickets weeks after they are issued raises concerns about the accuracy and reliability of officers’ assertions in official records.

We have also found evidence that in issuing citations, FPD officers frequently provide people with incorrect information about the date and time of their assigned court session. In November 2012, court staff emailed the two patrol lieutenants asking: “Would you please be so kind to tell your squads to check their ct. dates and times. We are getting quite a few wrong dates and times [on tickets].” In December 2012, a court clerk emailed an FPD officer to inform him that while he had been putting 6:00 p.m. on his citations that month, the scheduled court session was actually a morning session. More recently, in March 2014, an officer wrote a court clerk because the officer had issued a citation that listed the court date as ten days later than the actual court date assigned. Some of these emails indicate that court staff planned to send a letter to the person who was cited. As noted below, however, such letters often are returned to the court as undeliverable. It is thus unsurprising that, on one occasion, a City employee who works in the building where court was held wrote the Court Clerk to tell her that “[a] few people stopped by tonight looking for court and I referred them to you.” The email notes that one person insisted on providing her information so the employee could “vouch for her appearance for Night Court.” The email does not identify any other individual who showed up for court that night, nor does it state that any steps were taken to ensure that those assigned the incorrect court date did not have Failure to Appear charges and fines imposed, arrest warrants issued against them, or their licenses suspended.

Even if the citation a person receives has been properly filled out, it is often unclear whether a court appearance is required or if some other method of resolving a case is available. Ferguson has a schedule that establishes fixed fines for a limited number of violations that do not require court appearance. Nonetheless, this list—called the “TVB” or “Traffic Violations Bureau” list—is incomplete and does not provide sufficient clarity regarding whether a court appearance is mandatory. Court staff members have themselves informed us that there are certain offenses for which they will sometimes require a court appearance and other times not, depending on their own assessment of whether an appearance should be required in a given case. That information, however, is not reliably communicated to the person who has been given the citation.

Although the City of Ferguson frequently bears responsibility for giving people misinformation about when they must appear in court, Ferguson does little to ensure that persons who have missed a court date are properly notified of the consequences that result from an additional missed appearance, such as arrest or losing their driver’s licenses, or that those consequences have already been levied. If a person misses a required appearance, it is the purported practice of court staff to send a letter that sets a new court date and informs the defendant that missing the next appearance will result in an arrest warrant being issued. But court staff do not even claim to send these letters before issuing warrants if an individual is on a payment plan and misses a payment, or if a person already has an outstanding warrant on a

different offense; in those cases, the court issues a warrant after a single missed payment or appearance. Further, even for the cases in which the court says it does send such letters prior to issuing a warrant, court records suggest that those letters are often not actually sent. Even where a letter is sent, some are returned to court, and court staff told us that in those cases, they make no additional effort to notify the individual of the new court date or the consequences of non-appearance. Court staff and staff from other municipal courts have informed us that defendants in poverty are more likely not to receive such a letter from court because they frequently change residence.

If an individual misses a second court date, an arrest warrant is issued, without any confirmation that the individual received notice of that second court date. In the past, when the court issued a warrant it would also send notice to the individual that a warrant was issued against them and telling them to appear at the police department to resolve the matter. This notice did not provide the basis of the arrest warrant or describe how it might be resolved. In any case, Ferguson stopped providing even this incomplete notice in 2012. In explaining the decision to stop sending this warrant notice, the Court Clerk wrote in a June 2011 email to Chief Jackson that “this will save the cost of warrant cards and postage” and “it is not necessary to send out these cards.” Some court employees, however, told us that the notice letter had been useful—at least for those who received it—and that they believe it should still be sent. That the court discontinued what little notice it was providing to people in advance of issuing a warrant is particularly troubling given that, during our investigation, we spoke with several individuals who were arrested without ever knowing that a warrant was outstanding.<sup>25</sup>

Once a warrant is issued, a person can clear the warrant by appearing at the court window in the police department and paying a pre-determined bond. However, that process is itself not communicated to the public and, in any case, is only useful if an individual knows there is a warrant for her or his arrest. Court clerks told us that in some cases they deem sympathetic in their own discretion, they will cancel the warrant without a bond. Further, it appears that if a person is aware of an outstanding warrant but believes that the warrant was issued in error, that person can petition the Municipal Judge to cancel the warrant only after the bond is paid in full. If a person cannot afford to pay the bond, there is no opportunity to seek recourse from the court.

If a person is arrested on an outstanding warrant—or as the result of an encounter with FPD—it is often difficult to secure release with a bond payment, not only because of the inordinately high bond amounts discussed below, but also because of procedural obstacles. In practice, bond procedures depart from those articulated in official policy, and are arbitrary and confusing. FPD staff have told us that correctional officers have at times tried to find a warrant in the court’s files to determine the bond amount owed, but have been unable to do so. This is unsurprising given the existence of what has been described to us as “drawers and drawers of warrants.” In some cases, people have attempted to pay a bond to secure the release of a family

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<sup>25</sup> Prior to September 2014, a second missed court appearance (or a single missed payment) would result not only in a warrant being issued, but also the imposition of an additional Failure to Appear *charge*. This charge was imposed automatically. It does not appear that there was any attempt by the court to inform individuals that a failure to appear could be excused upon a showing of good cause, or to provide individuals with an opportunity to make such a showing. Additionally, just as the court does not currently send any notice informing a defendant that an arrest warrant has been issued, the court did not send any notice that this additional Failure to Appear charge had been brought.

member in FPD custody, but were not even seen by FPD staff. On one occasion, an FPD staff member reported to an FPD captain that a person “came to the station last night and waited to post bond for [a detainee], from 1:00 until 3:30. No one ever came up to get her money and no one informed her that she was going to have to wait that long.”

b. Needlessly Requiring In-Court Appearances for Most Code Violations Imposes Unnecessary Obstacles to Resolving Cases

Ferguson requires far more defendants to appear in court than is required under state law. Under Missouri Supreme Court rules, there is a short list of violations that require the violator’s appearance in court: any violation resulting in personal injury or property damage; driving while intoxicated; driving without a proper license; and attempting to elude a police officer. *See Mo. Sup. Ct. R. 37.49*. The municipal judge of each court has the discretion to expand this list of “must appears,” and Ferguson’s municipal court has expanded it exponentially: of 376 actively charged municipal offenses, court staff informed us that approximately 229 typically require an appearance in court before the fine can be paid, including Dog Creating Nuisance, Equipment Violations, No Passing Zone, Housing – Overgrown Vegetation, and Failure to Remove Leaf Debris. Ferguson requires these court appearances regardless of whether the individual is contesting the charges.

Requiring an individual to appear at a specific place and time to pay a citation makes it far more likely that the individual will fail to appear or pay the citation on time, quickly resulting, in Ferguson, in an arrest warrant and a suspended license. Even setting aside the fact that people often receive inaccurate information about when they must appear in court, the in-person appearance requirement imposes particular difficulties on low-wage workers, single parents, and those with limited access to reliable transportation. Requiring an individual to appear in court also imposes particular burdens on those with jobs that have set hours that may conflict with an assigned court session. Court sessions are sometimes set during the workday and sometimes in the early evening. Additionally, while court dates can be set for several months after the citation was issued, in some cases they can also be issued as early as a week after a citation is received. For example, court staff have instructed FPD officers that derelict auto violations must be set for the “very next court date even if it is just a week . . . or so away.” This can add an additional obstacle for those with firmly established employment schedules.

There are also historical reasons, of which the City is well-aware, that many Ferguson residents may not appear in court. Some individuals fear that if they cannot immediately pay the fines they owe, they will be arrested and sent to jail. Ferguson court staff members told us that they believe the high number of missed court appearances in their court is attributable, in part, to this popular belief. These fears are well founded. While Judge Brockmeyer has told us that he has never sentenced someone to jail time for being unable to pay a fine, we have found evidence that the Judge has held people appearing in court for contempt on account of their unwillingness to answer questions and sentenced those individuals to jail time. In December 2013, the FPD officer assigned to provide security at a court session directly emailed the City Manager to provide notice that “Judge Brockmeyer ordered [a defendant] arrested tonight after [he] refused to answer any questions and told the Judge that he had no jurisdiction. This happened on two separate occasions and with the second occasion when [the defendant] continued with his refusal



to answer the Judge, he was order[ed] to be arrested and held for 10 days.”<sup>26</sup> We also spoke with a woman who told us that, after asking questions in court, FPD officers arrested her for Contempt of Court at the instructions of the Court Clerk. Moreover, we have also received a report of an FPD officer arresting an individual at court for an outstanding warrant. In that instance, which occurred in April 2014, the individual—who was in court to make a fine payment—was approached by an FPD officer, asked to step outside of the court session, and was immediately arrested. In addition, as Ferguson’s Municipal Judge confirmed, it is not uncommon for him to add charges and assess additional fines when a defendant challenges the citation that brought the defendant into court. Appearing in court in Ferguson also requires waits that can stretch into hours, sometimes outdoors in inclement weather. Many individuals report being treated dismissively, or worse, by court staff and the Municipal Judge.

Further, as Ferguson officials have told us, many people have experience with the numerous other municipal courts in St. Louis County that informs individuals’ expectations about the Ferguson municipal court. Our investigation shows that other municipalities in the area have engaged in a number of practices that have the effect of discouraging people from attending court sessions. For instance, court clerks from other municipalities have told us that they have seen judges order people arrested if they appear in court with an outstanding warrant but are unable to pay the fine owed or post the bond amount listed on the warrant. Indeed, one municipal judge from a neighboring municipality told us that this practice has resulted in what he believes to be a widespread belief that those who attend court but cannot pay will be immediately arrested—a view that municipal judge says is “entirely the municipal courts’ fault” for perpetuating because they have not taken steps to correct it. Recent reports have documented other problematic practices. For example, a June 2014 letter from Presiding Circuit Court Judge Maura McShane to municipal court judges in the region discussed troubling and possibly unlawful practices of municipal courts in St. Louis County that served to prevent the public from attending court sessions. These practices included not allowing children in court. Indeed, as late as October 2014, the municipal court website in the neighboring municipality of Bel Ridge—where Judge Brockmeyer serves as prosecutor—stated that children are not allowed in court. While it appears that Ferguson’s court has always allowed children, we talked with people who assumed it did not because of their experiences in other courts. One man told us he was aggressively questioned by FPD officers after he left his child outside court with a friend because of this assumption. Thus, even though Ferguson might not engage in some of these practices, and while it may even be the case that other municipalities have themselves implemented reforms, the long history of these practices continues to shape community members’ views of what might happen to them if they attend court.

Court officials have told us that Ferguson’s expansive list of “must appear” offenses is not driven by any public safety need. That is underscored by the fact that, in some cases, attorneys are allowed to resolve such offenses over the phone without making any appearance in

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<sup>26</sup> The email reports that the defendant, a black male, was booked into jail. This email does not provide the full context of the circumstances that led to the 10-day jail sentence and further information is required to assess the appropriateness of that order. Nonetheless, the email suggests that the court jailed a defendant for refusing to answer questions, which raises significant Fifth Amendment concerns. There is also no indication as to whether the defendant was represented or, if not, was allowed or afforded representation to defend against the contempt charge and 10-day sentence.

court. Nonetheless, despite the acknowledged obstacles to appearing in person in court and the lack of any articulated need to appear in court in all but a few instances, Ferguson has taken few, if any, steps to reduce the number of cases that require a court appearance.

c. Driver’s License Suspensions Mandated by State Law and Unnecessarily Prolonged by Ferguson Make It Difficult to Resolve a Case and Impose Substantial Hardship

For many who have already had a warrant issued against them for failing to either appear or make a required payment, appearing in court is made especially difficult by the fact that their warrants likely resulted in the suspension of their driver’s licenses. Pursuant to Missouri state law, anyone who fails to pay a traffic citation for a moving violation on time, or who fails to appear in court regarding a moving traffic violation, has his or her driver’s license suspended. Mo. Rev. Stat. § 302.341.1. Thus, by virtue of having their licenses suspended, those who have already missed a required court appearance are more likely to fail to meet subsequent court obligations if they require physically appearing in court—fostering a cycle of missed appearances that is difficult to end. That is particularly so given what some City officials from Ferguson and surrounding communities have called substandard public transportation options. We spoke with one woman who had her license suspended because she received a Failure to Appear charge in Ferguson and so had to rely on a friend to drive her to court. When her friend canceled, she had no other means of getting to court on time, missed court, and had another Failure to Appear charge and arrest warrant issued against her—adding to the charges that required resolution before her license could be reinstated.<sup>27</sup>

To be clear, responsibility for the hardship imposed by automatically suspending a person’s license for failing to appear in a traffic case rests largely with this state law. Notably, however, Ferguson’s own discretionary practices amplify and prolong that law’s impact. A temporary suspension can be lifted with a compliance letter from the municipal court, but the Ferguson municipal court does not issue compliance letters unless a person has satisfied the *entire fine* pending on the charge that caused the suspension. This rule is not mandated by state law, which instead provides a municipality with the authority to decide when to issue a compliance letter. See Mo. Rev. Stat. § 302.341.1 (“Such suspension shall remain in effect until the court with the subject pending charge requests setting aside the noncompliance suspension pending final disposition.”). Indeed, Ferguson court staff told us that they will issue compliance letters before full payment has been made for cases that they determine, in their unguided discretion, to be sympathetic.

This rule and the Ferguson practices that magnify its impact underscore how missed court appearances can have broad ramifications for individuals’ ability to maintain a job and care for their families. We spoke with one woman who received three citations during a single incident in 2013 in which she pulled to the side of the road to allow a police car to pass, was confronted by the officer for doing so, and was cited for obstructing traffic, failing to signal, and not wearing a seatbelt. The woman appeared in court to challenge those citations, was told a new trial date would be mailed to her, and instead received notice from the Missouri Department of Revenue

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<sup>27</sup> While Missouri provides a process to secure a temporary waiver of a license suspension, we have heard from many that this process can be difficult and, in any case, is only available in certain circumstances.

several months later that her license was suspended. Upon informing the Court Clerk that she never received notice of her court date, the Clerk told her the trial date had passed two weeks earlier and that there was now a warrant for her arrest pending.<sup>28</sup> Given that the woman's license was suspended only two weeks after her trial date, it appears the court did not send a warning letter before entering a warrant and suspending the license, contrary to purported policy. Court records likewise do not indicate a letter being sent. The woman asked to see the Municipal Judge to explain the situation, but court staff informed her that she could only see the Judge if she was issued a new court date and that she would only be issued a new court date if she paid her \$200 bond. With no opportunity to further petition the court, she wrote to Mayor Knowles about her situation, stating:

Although I feel I have been harassed, wronged and unjustly done by Ferguson . . . [w]hat I am upset and concerned about is my driver's license being suspended. I was told that I may not be able to [be] reinstate[d] until the tickets are taken care of. I am a hard working mother of two children and I cannot by any means take care of my family or work with my license being suspended and being unable to drive. I have to have [a] valid license to keep my job because I transport clients that I work with not to mention I drive my children back and forth to school, practices and rehearsals on a daily basis. I am writing this letter because no one has been able to help me and I am really hoping that I can get some help getting this issue resolved expediently.

It appears that, at the Mayor's request, the court entered "Not Guilty" dispositions on her cases, several months after they first resulted in the license suspension.

d. Court Operations Impose Obstacles to Resolving Even Those Offenses that Do Not Require In-Person Court Appearance

The limited number of code violations that do not require an in-person court appearance can likewise be difficult to resolve, even if a person can afford to do so. The court has accepted mailed payments for some time and has recently begun to accept online payments, but the court's website suggests that in-person payment is required and provides no information that payment online or by mail is an option. As a result, many people try to remit payment to the court window within the police department. But community members have informed us that the court window often closes earlier than the posted hours indicate. Indeed, during our investigation, we observed the court window close at 4:30 p.m. on days where an evening court session was not being held, despite the fact that both the Ferguson City website and the Missouri Courts website state that the window closes at 5:00 p.m.<sup>29</sup> On one such occasion, we observed two different sets

<sup>28</sup> By initiating the license suspension procedure after a single missed appearance and without first providing notice or an opportunity to remedy the missed appearance, the court appears to have violated Missouri law. *See* Mo. Rev. Stat. § 302.341.1 (providing that after a missed appearance associated with a moving violation, a court "shall within ten days . . . inform the defendant by ordinary mail at the last address shown on the court records that the court will order the director of revenue to suspend the defendant's driving privileges if the charges are not disposed of and fully paid within thirty days from the date of mailing").

<sup>29</sup> *See City Courts*, City of Ferguson, <http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts> (last visited Feb. 26, 2015); *Ferguson Municipal Court*, Your Missouri Courts, <http://www.courts.mo.gov/page.jsp?id=8862> (last visited Feb. 26, 2015).

of people arrive after 4:30 p.m. but before 5:00 p.m. One man told us his ticket payment was due that day. Another woman arrived in the rain with her small child, unsuccessfully attempted to call someone to the window, and left. Even when the court window is technically open, we have seen people standing at the window waiting for a response to their knocks for long periods of time, sometimes in inclement weather—even as court staff sat inside the police department tending to their normal duties.

As noted above, documents we reviewed showed that even where individuals are successful in talking with court staff about a citation, FPD-issued citations are sometimes so deficient that court staff are unable to determine what the fine, or even charge, is supposed to be. Evidence also shows that court staff have at times been unable to even find a person's case file, often because the FPD officer who issued the ticket failed to properly file a copy. In these cases, a person is left unable to resolve her or his citation.

e. High Fines, Coupled with Legally Inadequate Ability-to-Pay Determinations and Insufficient Alternatives to Immediate Payment, Impose a Significant Burden on People Living In or Near Poverty

It is common for a single traffic stop or other encounter with FPD to give rise to fines in amounts that a person living in poverty is unable to immediately pay. This fact is attributable in part to FPD's practice of issuing multiple citations—frequently three or more—on a single stop. This fact is also attributable to the fine assessment practices of the Ferguson municipal court, including not only the high fine amounts imposed, but also the inadequate process available for those who cannot afford to pay a fine. Even setting aside cases where additional fines and fees were imposed for Failure to Appear violations, our investigation found instances in which the court charged \$302 for a single Manner of Walking violation; \$427 for a single Peace Disturbance violation; \$531 for High Grass and Weeds; \$777 for Resisting Arrest; and \$792 for Failure to Obey, and \$527 for Failure to Comply, which officers appear to use interchangeably.

For many, the hardship of the fine amounts imposed is exacerbated by the fact that they owe similar fines in other, neighboring municipalities. We spoke with one woman who, in addition to owing several hundred dollars in fines to Ferguson, also owed fines to the municipal courts in Jennings and Edmundson. In total, she owed over \$2,500 in fines and fees, even after already making over \$1,000 in payments and clearing cases in several other municipalities. This woman's case is not unique. We have heard reports from many individuals and even City officials that, in light of the large number of municipalities in the area immediately surrounding Ferguson, most of which have their own police departments and municipal courts, it is common for people to face significant fines from many municipalities.

City officials have extolled that the Ferguson preset fine schedule establishes fines that are “at or near the top of the list” compared with other municipalities across a large number of offenses. A more recent comparison of the preset fines of roughly 70 municipal courts in the region confirms that Ferguson's fine amounts are above regional averages for many offenses, particularly discretionary offenses such as non-speeding-related traffic offenses. That comparison also shows that Ferguson imposes the highest fine of any of those roughly 70 municipalities for the offense of Failing to Provide Proof of Insurance; Ferguson charges \$375, whereas the average fine imposed is \$186 and the median fine imposed is \$175. In 2013 alone,

the Ferguson court collected over \$286,000 in fines for that offense—more than any other offense except Failure to Appear.

The fines that the court imposes for offenses without preset fines are more difficult to evaluate precisely because they are imposed on a case-by-case basis. Typically, however, in imposing fines for non-TVB offenses during court sessions, the Municipal Judge adopts the fine recommendations of the Prosecuting Attorney—who also serves as the Ferguson City Attorney. As discussed above, court staff have communicated with the Municipal Judge regarding the need to ensure that the prosecutor’s recommended fines are sufficiently high because “[w]e need to keep up our revenue.” We were also told of at least one incident in which an attorney received a fine recommendation from the prosecutor for his client, but when the client went to court to pay the fine, a clerk refused payment, informing her that there was an additional \$100 owed beyond the fine recommended by the prosecutor.

The court imposes these fines without providing any process by which a person can seek a fine reduction on account of financial incapacity. The court does not provide any opportunity for a person unable to pay a preset TVB fine to seek a modification of the fine amount. Nor does the court consider a person’s financial ability to pay in determining how much of a fine to impose in cases without preset fines. The Ferguson court’s failure to assess a defendant’s ability to pay stands in direct tension with Missouri law, which instructs that in determining the amount and the method of payment of a fine, a court “shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual.” Mo. Rev. Stat. § 560.026.

In lieu of proportioning a fine to a particular individual’s ability to pay or allowing a process by which a person could petition the court for a reduction, the court offers payment plans to those who cannot afford to immediately pay in full. But such payment plans do not serve as a substitute for an ability-to-pay determination, which, properly employed, can enable a person in some cases to pay in full and resolve the case. Moreover, the court’s rules regarding payment plans are themselves severe. Unlike some other municipalities that require a \$50 monthly payment, Ferguson’s standard payment plan requires payments of \$100 per month, which remains a difficult amount for many to pay, especially those who are also making payments to other municipalities. Further, the court treats a single missed, partial, or untimely payment as a missed appearance. In such a case, the court immediately issues an arrest warrant without any notice or opportunity to explain why a payment was missed—for example, because the person was sick, or the court closed its doors early that day. The court reportedly has softened this rule during the course of our investigation by allowing a person who has missed a payment to go to court to seek leave for not paying the full amount owed. However, even this softened rule provides minimal relief, as making this request requires a person to appear in court the first Wednesday of the month at 11:00 a.m. If a person misses that session, the court immediately issues an arrest warrant.

Before the court provided this Wednesday morning court session for those on payment plans, court staff frequently rejected requests from payment plan participants to reduce or continue monthly payments—leaving individuals unable to make the required payment with no recourse besides incurring a Failure to Appear charge, receiving additional fines, and having an arrest warrant issued. In July 2014, an assistant court clerk wrote in an email that she rejected a defendant’s request for a reduced monthly payment on account of inability to pay and told the

defendant, “everyone says [they] can’t pay.” This is consistent with earlier noted statements by the acting Ferguson prosecutor that he stopped granting “needless requests for continuances from the payment docket.” Another defendant who owed \$1,002 in fines and fees stemming from a Driving with a Revoked License charge wrote to a City official that he would be unable to make his required monthly payment but hoped to avoid having a warrant issued. He explained that he was unemployed, that the court had put him on a payment plan only a week before his first payment was due, and that he did not have enough time to gather enough money. He implored the City to provide “some kind of community service to work off the fines/fees,” stating that “I want to pay you guys what I owe” and “I have been trying to scrape up what I can,” but that “with warrants it’s hard to get a job.” The City official forwarded the request to a court clerk, who noted that the underlying charge dated back to 2007, that five Failure to Appear charges had been levied, and that no payments had yet been made. The clerk responded: “In this certain case [the defendant] will go to warrant.” Records show that, only a week earlier, this same clerk asked a court clerk from another municipality to clear a ticket for former Ferguson Police Chief Moonier as a “courtesy.” And, only a month later, that same clerk also helped the Ferguson Collector of Revenue clear two citations issued by neighboring municipalities.

Ferguson does not typically offer community service as an alternative to fines. City officials have emphasized to us that Ferguson is one of only a few municipalities in the region to provide *any* form of a community service program, and that the program that is available is well run. But the program, which began in February 2014, is only available on a limited basis, mostly to certain defendants who are 19 years old or younger.<sup>30</sup> We have heard directly from individuals who could not afford to pay their fines—and thus accumulated additional charges and fines and had warrants issued against them—that they requested a community service alternative to monetary payment but were told no such alternative existed. One man who still owes \$1,100 stemming from a speeding and seatbelt violation from 2000 told us that he has been arrested repeatedly in connection with the fines he cannot afford to pay, and that “no one is willing to work with him to find an alternative solution.” City officials have recognized the need to provide a meaningful community service option. In August 2013, one City Councilmember wrote to the City Manager and the Mayor that, “[f]or a few years now we have talked about offering community service to those who can’t afford to pay their fines, but we haven’t actually made it happen.” The Councilmember noted the benefits of such a program, including that it would “keep those people that simply don’t have the money to pay their fines from constantly being arrested and going to jail, only to be released and do it all over again.”

## **2. The Court Imposes Unduly Harsh Penalties for Missed Payments or Appearances**

The procedural deficiencies identified above work together to make it exceedingly difficult to resolve a case and exceedingly easy to run afoul of the court’s stringent and confusing rules, particularly for those living in or near poverty. That the court is at least in part responsible for causing cases to protract and result in technical violations has not prevented it from imposing

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<sup>30</sup> Recently, the court has allowed some individuals over age 19 to resolve fines through community service, but that remains a rarity. See *City of Ferguson Continues Court Reform Initiative by Offering Community Service Program*, City of Ferguson (Dec. 15, 2014), <http://www.fergusoncity.com/CivicAlerts.aspx?AID=370&ARC=699> (stating community service program was launched in partnership with Ferguson Youth Initiative in February 2014 “to assist teenagers and certain other defendants”).

significant penalties when those violations occur. Although Ferguson’s court—unlike many other municipal courts in the region—has ceased imposing the Failure to Appear charge, the court continues to routinely issue arrest warrants for missed appearances and missed payments. The evidence we have found shows that these arrest warrants are used almost exclusively for the purpose of compelling payment through the threat of incarceration. The evidence also shows that the harms of the court’s warrant practices are exacerbated by the court’s bond procedures, which impose unnecessary obstacles to clearing a warrant or securing release after being arrested on a warrant and often function to further prolong a case and a person’s involvement in the municipal justice system. These practices—together with the consequences to individuals and communities that result—raise significant due process and equal protection concerns.

a. The Ferguson Municipal Court Uses Arrest Warrants Primarily as a Means of Securing Payment

Ferguson uses its police department in large part as a collection agency for its municipal court. Ferguson’s municipal court issues arrest warrants at a rate that police officials have called, in internal emails, “staggering.” According to the court’s own figures, as of December 2014, over 16,000 people had outstanding arrest warrants that had been issued by the court. In fiscal year 2013 alone, the court issued warrants to approximately 9,007 people. Many of those individuals had warrants issued on multiple charges, as the 9,007 warrants applied to 32,975 different offenses.

In the wake of several news accounts indicating that the Ferguson municipal court issued over 32,000 warrants in fiscal year 2013, court staff determined that it had mistakenly reported to the state of Missouri the number of charged offenses that had warrants (32,975), not the number of people who had warrants outstanding (9,007). Our investigation indicates that is the case. In any event, it is probative of FPD’s enforcement practices that those roughly 9,000 warrants were issued for over 32,000 offenses. Moreover, for those against whom a warrant is issued, the number of offenses included within the warrant has tremendous practical importance. As discussed below, the bond amount a person must pay to clear a warrant before an arrest occurs, or to secure release once a warrant has been executed, is often dependent on the number of offenses to which the warrant applies. And, that the court issued warrants for the arrest of roughly 9,000 people is itself not insignificant; even under that calculation, Ferguson has one of the highest warrant totals in the region.

The large number of warrants issued by the court, by any count, is due exclusively to the fact that the court uses arrest warrants and the threat of arrest as its primary tool for collecting outstanding fines for municipal code violations. With extremely limited exceptions, every warrant issued by the Ferguson municipal court was issued because: 1) a person missed consecutive court appearances, or 2) a person missed a single required fine payment as part of a payment plan. Under current court policy, the court issues a warrant in every case where either of those circumstances arises—regardless of the severity of the code violation that the case involves. Indeed, the court rarely issues a warrant for any other purpose. FPD does not request arrest or any other kind of warrants from the Ferguson municipal court; in fact, FPD officers told us that they have been instructed not to file warrant applications with the municipal court because the court does not have the capacity to consider them.

While issuing municipal warrants against people who have not appeared or paid their municipal code violation fines is sometimes framed as addressing the failure to abide by court rules, in practice, it is clear that warrants are primarily issued to coerce payment.<sup>31</sup> One municipal judge from a neighboring municipality told us that the use of the Failure to Appear charge “provides cushion for judges against the attack that the court is operating as a debtor’s prison.” And the Municipal Judge in Ferguson has acknowledged repeatedly that the warrants the court issues are not put in place for public safety purposes. Indeed, once a warrant issues, there is no urgency within FPD to actually execute it. Court staff reported that they typically take weeks, if not months, to enter warrants into the system that enables patrol officers to determine if a person they encounter has an outstanding warrant. As of December 2014, for example, some warrants issued in September 2014 were not yet detectable to officers in the field. Court staff also informed us that no one from FPD has ever commented on that lag or prioritized closing it. Nor does there seem to be any public safety obstacle to eliminating failure to appear warrants altogether. The court has, in fact, adopted a temporary “warrant recall program” that allows individuals who show up to court to immediately have their warrants recalled and a new court date assigned. And, under longstanding practice, once an attorney makes an appearance in a case, the court automatically discharges any pending warrants.

That the primary role of warrants is not to protect public safety but rather to facilitate fine collection is further evidenced by the fact that the warrants issued by the court are overwhelmingly issued in non-criminal traffic cases that would not themselves result in a penalty of imprisonment. From 2010 to December 2014, the offenses (besides Failure to Appear ordinance violations) that most often led to a municipal warrant were: Driving While License Is Suspended, Expired License Plates, Failure to Register a Vehicle, No Proof of Insurance, and Speed Limit violations. These offenses comprised the majority of offenses that led to a warrant not because they are more severe than other offenses, but rather because every missed appearance or payment on any charge results in a warrant, and these were some of the most common charges brought by FPD during that period.

Even though these underlying code violations would not on their own result in a penalty of imprisonment, arrest and detention are not uncommon once a warrant enters on a case. We have found that FPD officers frequently check individuals for warrants, even when the person is not reasonably suspected of engaging in any criminal activity, and, if a municipal warrant exists, will often make an arrest. City officials have told us that the decision to arrest a person for an outstanding warrant is “highly discretionary” and that officers will frequently not arrest unless the person is “ignorant.” Records show, however, that officers do arrest individuals for outstanding municipal warrants with considerable frequency. Jail records are poorly managed, and data on jail bookings is only available as of April 2014. But during the roughly six-month period from April to September 2014, 256 people were booked into the Ferguson City Jail after being arrested at least in part for an outstanding warrant—96% of whom were African American. Of these individuals, 28 were held for longer than two days, and 27 of these 28 people were black.

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<sup>31</sup> As stated in the Missouri Municipal Court Handbook produced by the Circuit Court: “Defendants who fail or refuse to pay their fines and costs can be extremely difficult to deal with, but if there is a credible threat of incarceration if they do not pay, the job of collection becomes much easier.” Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.6 (2010).



Similarly, data collected during vehicle stops shows that, during a larger period of time between October 2012 and October 2014, FPD arrested roughly 460 individuals following a vehicle stop *solely* because they had outstanding warrants. This figure is likely a significant underrepresentation of the total number of people arrested for outstanding warrants during that period, as it does not include those people arrested on outstanding warrants not during traffic stops; nor does it include those people arrested during traffic stops for multiple reasons, but who might not have been stopped, much less arrested, without the officer performing a warrant check on the car and finding an outstanding warrant. Even among this limited pool, the data shows the disparate impact these arrests have on African Americans. Of the 460 individuals arrested during traffic stops solely for outstanding warrants, 443 individuals—or 96%—were African American.

That data also does not include those people arrested by *other* municipal police departments on the basis of an outstanding warrant issued by Ferguson. As has been widely reported in recent months, many municipal police departments in the region identify people with warrants pending in other towns and then arrest and hold those individuals on behalf of those towns. FPD’s records show that it routinely arrests individuals on warrants issued by other jurisdictions. And, although we did not review the records of other departments, we have heard reports of many individuals who were arrested for a Ferguson-issued warrant by police officers outside of Ferguson. On some occasions, Ferguson will decline to pick up a person arrested in a different municipality for a Ferguson warrant and, after however long it takes for that decision to be made, the person will be released, sometimes after being required to pay bond. On other occasions, Ferguson will send an officer to retrieve the person for incarceration in the Ferguson City Jail; FPD supervisors have in fact instructed officers to do so “regardless of the charge or the bond amount, or the number of prisoners we have in custody.” We found evidence of FPD officers traveling more than 200 miles to retrieve a person detained by another agency on a Ferguson municipal warrant.

Because of the large number of municipalities in the region, many of which have warrant practices similar to Ferguson, it is not unusual for a person to be arrested by one department, have outstanding warrants pending in other police departments, and be handed off from one department to another until all warrants are cleared. We have heard of individuals who have run out of money during this process—referred to by many as the “muni shuffle”—and as a result were detained for a week or longer.

The large number of municipal court warrants being issued, many of which lead to arrest, raises significant due process and equal protection concerns. In particular, Ferguson’s practice of automatically treating a missed payment as a failure to appear—thus triggering an arrest warrant and possible incarceration—is directly at odds with well-established law that prohibits “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983); *see also Tate v. Short*, 401 U.S. 395, 398 (1971). In *Bearden*, the Supreme Court found unconstitutional a state’s decision to revoke probation and sentence a defendant to prison because the defendant was unable to pay a required fine. *Bearden*, 461 U.S. at 672-73. The Court held that before imposing imprisonment, a court must first inquire as to whether the missed payment was attributable to an inability to pay and, if so, “consider alternate measures of punishment other than imprisonment.” *Id.* at 672; *see also Martin v. Solem*, 801 F.2d 324, 332 (8th Cir. 1986)

(noting that the state court had failed to adequately determine, as required by *Bearden*, whether the defendant had “made sufficient bona fide efforts legally to acquire the resources to pay,” but nonetheless denying habeas relief because the defendant’s failure to pay was due not to indigency but his “willful refusal to pay”).

The Ferguson court, however, has in the past routinely issued arrest warrants when a person is unable to make a required fine payment without any ability-to-pay determination. While the court does not *sentence* a defendant to jail in such a case, the result is often equivalent to what *Bearden* proscribes: the incarceration of a defendant solely because of an inability to pay a fine. In response to concerns about issuing warrants in such cases, Ferguson officials have told us that without issuing warrants and threatening incarceration, they have no ability to secure payment. But the Supreme Court rejected that argument, finding that states are “not powerless to enforce judgments against those financially unable to pay a fine,” and noting that—especially in cases like those at issue here in which the court has already made a determination that penological interests do *not* demand incarceration—a court can “establish a reduced fine or alternate public service in lieu of a fine that adequately serves the state’s goals of punishment and deterrence, given the defendant’s diminished financial resources.”<sup>32</sup> *Id.* As discussed above, however, Ferguson has not established any such alternative.<sup>33</sup>

Finally, in light of the significant portion of municipal charges that lead to an arrest warrant, as well as the substantial number of arrest warrants that lead to arrest and detention, we have considerable concerns regarding whether individuals facing charges in Ferguson municipal court are entitled to, and being unlawfully denied, the right to counsel.

b. Ferguson’s Bond Practices Impose Undue Hardship on Those Seeking to Secure Release from the Ferguson City Jail

Our investigation found substantial deficiencies in the way Ferguson police and court officials set, accept, refund, and forfeit bond payments. Recently, in response to concerns raised during our investigation, the City implemented several changes to its bond practices, most of which apply to those detained after a warrantless arrest.<sup>34</sup> These changes represent positive

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<sup>32</sup> Ferguson officials have also told us that the arrest warrant is issued not because of the missed payment per se, but rather because the person missing the payment failed to abide by the court’s rules. But the Supreme Court has rejected that contention, too. In *Bearden*, the Court noted that the sentencing court’s stated concern “was that the petitioner had disobeyed a prior court order to pay the fine,” but found that the sentence nonetheless “is no more than imprisoning a person solely because he lacks funds” to pay. *Bearden*, 461 U.S. at 674.

<sup>33</sup> Additionally, Ferguson’s municipal code provides: “When a sentence for violation of any provision of this Code or other ordinance of the city . . . includes a fine and such fine is not paid, or if the costs of prosecution adjudged against an offender are not paid, the person under sentence shall be imprisoned one day for every ten dollars (\$10.00) of any such unpaid fine or costs . . . not to exceed a total of four (4) months.” Ferguson Mun. Code § 1-16. Our investigation did not uncover any evidence that the court has sentenced anyone to imprisonment pursuant to this statute in the past several years. Nonetheless, it is concerning that this statute, which unconstitutionally sanctions imprisonment for failing to pay a fine, remains in effect. *Cf. Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

<sup>34</sup> In December 2014, the court set forth a bond schedule for warrantless arrests, which provides that, for all but 14 code violations, a person arrested pursuant to a municipal code violation and brought to Ferguson City Jail shall be issued a citation or summons and released on his or her own recognizance without any bond payment required. For those 14 code violations requiring a bond, the court has set “fixed” bond amounts, although these are subject to the court’s discretion to raise or lower those amounts at the request of the City or the detained individual. The court’s

developments, but many deficiencies remain.<sup>35</sup> Given the high number of arrest warrants issued by the municipal court—and given that in many cases a person can only clear a pending warrant or secure release from detention by posting bond—the deficiencies identified below impose significant harm to individuals in Ferguson.

Current bond practices are unclear and inconsistent. Information provided by the City reveals a haphazard bond system that results in people being erroneously arrested, and some people paying bond but not getting credit for having done so. Documents describe officers finding hundred dollar bills in their pockets that were given to them for bond payment and not remembering which jail detainee provided them; bond paperwork being found on the floor; and individuals being arrested after their bonds had been accepted because the corresponding warrants were never cancelled. At one point in 2012, Ferguson's Court Clerk called such issues a “daily problem.” The City’s practices for receiving and tracking bond payments have not changed appreciably since then.

The practices for setting bond are similarly erratic. The Municipal Judge advised us that he sets all bonds upon issuing an arrest warrant. We found, however, that bond amounts are mostly set by court staff, and are rarely even reviewed by the Judge. While court staff told us that the current bond schedule requires a bond of \$200 for up to four traffic offenses, \$100 for every traffic offense thereafter, \$100 for every Failure to Appear charge, and \$300 for every criminal offense, FPD’s own policy includes a bond schedule that departs from these figures. In practice, bond amounts vary widely. *See* FPD General Order 421.02. Our review of a random sample of warrants indicates that bond is set in a manner that often departs from both the schedule referenced by court staff and the schedule found in FPD policy. In a number of these cases, the bond amount far exceeded the amount of the underlying fine.

The court’s bond practices, including the fact that the court often imposes bonds that exceed the amount owed to the court, do not appear to be grounded in any public safety need. In a July 2014 email to Chief Jackson and other police officials, the Court Clerk reported that “[s]tarting today we are going to reduce anyone’s bond that calls and is in warrant[] to half the amount,” explaining that “[t]his may bring in some extra monies this way.” The email identifies no public safety obstacle or other reason not to implement the bond reduction. Notably, the email also states that “[w]e will only do this between the hours of 8:30 to 4” and that no half-bond will be accepted after those hours unless the Court Clerk approves it.<sup>36</sup> Thus, as a result of this policy, an individual able to appear at the court window during business hours would pay half as much to clear a warrant as an individual who is actually arrested on a warrant after hours. That Ferguson’s bond practices do not appear grounded in public safety is underscored by the

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recent order further provides that, even if an individual does not pay the bond required, he or she shall in any case be released after 12 hours, rather than the previous 72-hour limit.

<sup>35</sup> For example, the recent orders fail to specify that, in considering whether to adjust the bond imposed, the court shall make an assessment of an individual’s ability to pay, and assign bond proportionately. *Cf. Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) (noting that the incarceration of those who cannot afford to meet the requirements of a fixed bond schedule “without meaningful consideration of other possible alternatives” infringes on due process and equal protection requirements).

<sup>36</sup> The court’s website states that the court window is open from 8:30 a.m. to 5:00 p.m., not 4:00 p.m. *See City Courts*, City of Ferguson, <http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts> (last visited Feb. 26, 2015).

fact that the court will typically cancel outstanding warrants without requiring the posting of *any* bond for people who have an attorney enter an appearance on their behalf. Records show that this practice is also applied haphazardly, and there do not appear to be any rules that govern the apparent discretion court staff have to waive or require bond following an attorney's appearance.

It is not uncommon for an individual charged with only a minor violation to be arrested on a warrant, be unable to afford bond, and have no recourse but to await release. Longstanding court rules provide for a person arrested pursuant to an arrest warrant to be held up to 72 hours before being released without bond, and the court's recent orders do not appear to change this. Records show that individuals are routinely held for 72 hours. FPD's records management system only began capturing meaningful jail data in April 2014; but from April to September 2014 alone, 77 people were detained in the jail for longer than two days, and many of those detentions neared, reached, or exceeded the 72-hour mark. Of those 77 people, 73, or 95%, were black. Many people, including the woman described earlier who was charged with two parking code violations, have reported being held up until the 72-hour limit—despite having no ability to pay.

Indeed, many others report being held for far longer, and documentary evidence is consistent with these reports. In April 2010, for example, the Chief of Police wrote an email to the Captain of the Patrol Division stating that the “intent is that when the watch commander / street supervisor gets the census from the jail he asks who will come up on 72 hrs.,” and, if there is any such person, “he can have them given the next available court date and released, or authorize they remain in jail, since he will be the designate.” The email continues: “If someone has already been there more than 72 hours, it may be assumed their continued hold was previously authorized.” Further, as noted above, while comprehensive jail records do not exist for detentions prior to April 2014, records do show several recent instances in which FPD detained a person for longer than the purported 72-hour limit.

Despite the fact that those arrested by FPD for outstanding municipal warrants can be held for several days if unable to post bond, the Ferguson municipal court does not give credit for time served. As a result, there have been many cases in which a person has been arrested on a warrant, detained for 72 hours or more, and released owing the same amount as before the arrest was made. Court records do not even track the total amount of time a person has spent in jail as part of a case. When asked why this is not tracked, a member of court staff told us: “It's only three days anyway.”

These prolonged detentions for those who cannot afford bond are alarming, and raise considerable due process and equal protection concerns. The prolonged detentions are especially concerning given that there is no public safety need for those who receive municipal warrants to be jailed at all. The Ferguson Municipal Judge has acknowledged that for most code violations, it is “probably a good idea to do away with jail time.”

Further, there are many circumstances in which court practices preclude a person from making payment against the underlying fine owed—and thus resolving the case, or at least moving the case toward resolution—and instead force the person to pay a bond. If, for example, an individual is jailed on a “must appear” charge and has not yet appeared in court to have the

fine assessed, the individual will not be allowed to make payment on the underlying charge. Rather, the person must post bond, receive a new court date, appear in court, and start the process anew. Even when the underlying fine has been assessed, a person in jail may still be forced to make a bond payment instead of a fine payment to secure release if court staff are unavailable to determine the amount the person owes. And when a person attempts to resolve a warrant before they end up arrested, a bond payment will typically be required unless the person can afford to pay the underlying fine in full, as, by purported policy, the court does not accept partial payment of fines outside of a court-sanctioned payment plan.

Bond forfeiture procedures also raise significant due process concerns. Under current practice, the first missed appearance or missed payment following a bond payment results in a warning letter being sent; after the second missed appearance or payment, the court initiates a forfeiture action (and issues another arrest warrant). As with “warrant warning letters” described above, our investigation has been unable to verify that the court *consistently* sends bond forfeiture warning letters. And, as with warrant warning letters, bond forfeiture warning letters are sometimes returned to the court, but court staff members do not appear to make any further attempt to contact the intended recipient.

Upon a bond being forfeited, the court directs the bond money into the City’s account and does not apply the amount to the individual’s underlying fine. For example, if a person owes a \$200 fine payment, is arrested on a warrant, and posts a bond of \$200, the forfeiture of the bond will result in the fine remaining \$200 and an arrest warrant being issued. If, instead, Ferguson were to allow this \$200 to go toward the underlying fine, this would resolve the matter entirely, obviating the need for any warrant or subsequent court appearance. Not applying a forfeited bond to the underlying fine is especially troubling considering that this policy does not appear to be clearly communicated to those paying bonds. Particularly in cases where the bond is set at an amount near the underlying fine owed—which we have found to be common—it is entirely plausible that a person paying bond would mistakenly believe that payment resolves the case.

When asked why the forfeited bond is not applied to the underlying fine, court staff asserted that applicable law prohibits them from doing so without the bond payer’s consent.<sup>37</sup> That explanation is grounded in an incorrect view of the law. In *Perry v. Aversman*, 168 S.W.3d 541 (Mo. Ct. App. 2005), the Missouri Court of Appeals explicitly upheld a rule requiring that forfeited bonds be applied to pending fines of the person who paid bond and found that such practices are acceptable so long as the court provides sufficient notice. *Id.* at 543-46. In light of the fact that applicable law permits forfeited bonds to be applied to pending fines, Ferguson’s longstanding practice of directing forfeited bond money to the City’s general fund is troubling. In fiscal year 2013 alone, the City collected forfeited bond amounts of \$177,168, which could instead have been applied to the fines of those making the payments.

Ferguson’s rules and procedures for *refunding* bond payments upon satisfaction of the underlying fine raise similar concerns. Ferguson requires that when a person pays the underlying

<sup>37</sup> Critically, however, when a person attends court after paying a bond and is assessed a fine, court staff members *do* automatically apply the bond already paid to the fine owed, and in fact require application of the bond to the fine regardless of the defendant’s wishes. Thus, the court has simultaneously asserted that it *can* apply a bond to a fine without a defendant’s consent when the bond would otherwise be returned to the defendant, but that it *cannot* apply a bond to a fine without a defendant’s consent when the bond would otherwise be forfeited into the City’s own accounts.

fine to avoid bond forfeiture, he or she must pay in person and provide photo identification. Yet, where the underlying fine is less than the bond amount—a common occurrence—the City does not immediately refund the difference to the individual. Rather, pursuant to a directive issued by the current City Finance Director approximately four years ago, bond refunds *cannot* be made in person, and instead must be sent via mail. According to Ferguson’s Court Clerk, it is not entirely uncommon for these refund checks to be returned as undeliverable and become “unclaimed property.”

**C. Ferguson Law Enforcement Practices Disproportionately Harm Ferguson’s African-American Residents and Are Driven in Part by Racial Bias**

Ferguson’s police and municipal court practices disproportionately harm African Americans. Further, our investigation found substantial evidence that this harm stems in part from intentional discrimination in violation of the Constitution.

African Americans experience disparate impact in nearly every aspect of Ferguson’s law enforcement system. Despite making up 67% of the population, African Americans accounted for 85% of FPD’s traffic stops, 90% of FPD’s citations, and 93% of FPD’s arrests from 2012 to 2014. Other statistical disparities, set forth in detail below, show that in Ferguson:

- African Americans are 2.07 times more likely to be searched during a vehicular stop but are 26% less likely to have contraband found on them during a search. They are 2.00 times more likely to receive a citation and 2.37 times more likely to be arrested following a vehicular stop.
- African Americans have force used against them at disproportionately high rates, accounting for 88% of all cases from 2010 to August 2014 in which an FPD officer reported using force. In all 14 uses of force involving a canine bite for which we have information about the race of the person bitten, the person was African American.
- African Americans are more likely to receive multiple citations during a single incident, receiving four or more citations on 73 occasions between October 2012 and July 2014, whereas non-African Americans received four or more citations only twice during that period.
- African Americans account for 95% of Manner of Walking charges; 94% of all Fail to Comply charges; 92% of all Resisting Arrest charges; 92% of all Peace Disturbance charges; and 89% of all Failure to Obey charges.<sup>38</sup>
- African Americans are 68% less likely than others to have their cases dismissed by the Municipal Judge, and in 2013 African Americans accounted for 92% of cases in which an arrest warrant was issued.

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<sup>38</sup> As noted above, FPD charges violations of Municipal Code Section 29-16 as both Failure to Obey and Failure to Comply. Court data carries forward this inconsistency.

- African Americans account for 96% of known arrests made exclusively because of an outstanding municipal warrant.

These disparities are not the necessary or unavoidable results of legitimate public safety efforts. In fact, the practices that lead to these disparities in many ways undermine law enforcement effectiveness. *See, e.g.,* Jack Glaser, *Suspect Race: Causes and Consequence of Racial Profiling* 96-126 (2015) (because profiling can increase crime while harming communities, it has a “high risk” of contravening the core police objectives of controlling crime and promoting public safety). The disparate impact of these practices thus violates federal law, including Title VI and the Safe Streets Act.

The racially disparate impact of Ferguson’s practices is driven, at least in part, by intentional discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. Racial bias and stereotyping is evident from the facts, taken together. This evidence includes: the consistency and magnitude of the racial disparities throughout Ferguson’s police and court enforcement actions; the selection and execution of police and court practices that disproportionately harm African Americans and do little to promote public safety; the persistent exercise of discretion to the detriment of African Americans; the apparent consideration of race in assessing threat; and the historical opposition to having African Americans live in Ferguson, which lingers among some today. We have also found explicit racial bias in the communications of police and court supervisors and that some officials apply racial stereotypes, rather than facts, to explain the harm African Americans experience due to Ferguson’s approach to law enforcement. “Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Based on this evidence as a whole, we have found that Ferguson’s law enforcement activities stem in part from a discriminatory purpose and thus deny African Americans equal protection of the laws in violation of the Constitution.

### **1. Ferguson’s Law Enforcement Actions Impose a Disparate Impact on African Americans that Violates Federal Law**

African Americans are disproportionately represented at nearly every stage of Ferguson law enforcement, from initial police contact to final disposition of a case in municipal court. While FPD’s data collection and retention practices are deficient in many respects, the data that is collected by FPD is sufficient to allow for meaningful and reliable analysis of racial disparities. This data—collected directly by police and court officials—reveals racial disparities that are substantial and consistent across a wide range of police and court enforcement actions.

African Americans experience the harms of the disparities identified below as part of a comprehensive municipal justice system that, at each juncture, enforces the law more harshly against black people than others. The disparate impact of Ferguson’s enforcement actions is compounding: at each point in the enforcement process there is a higher likelihood that an African American will be subjected to harsher treatment; accordingly, as the adverse consequences imposed by Ferguson grow more and more severe, those consequences are imposed more and more disproportionately against African Americans. Thus, while 85% of

FPD's vehicle stops are of African Americans, 90% of FPD's citations are issued to African Americans, and 92% of all warrants are issued in cases against African Americans. Strikingly, available data shows that of those subjected to one of the most severe actions this system routinely imposes—actual arrest for an outstanding municipal warrant—96% are African American.

a. Disparate Impact of FPD Practices

i. *Disparate Impact of FPD Enforcement Actions Arising from Vehicular Stops*

Pursuant to Missouri state law on racial profiling, Mo. Rev. Stat. § 590.650, FPD officers are required to collect race and other data during every traffic stop. While some law enforcement agencies collect more comprehensive data to identify and stem racial profiling, this information is sufficient to show that FPD practices exert a racially disparate impact along several dimensions.

FPD reported 11,610 vehicle stops between October 2012 and October 2014. African Americans accounted for 85%, or 9,875, of those stops, despite making up only 67% of the population. White individuals made up 15%, or 1,735, of stops during that period, despite representing 29% of the population. These differences indicate that FPD traffic stop practices may disparately impact black drivers.<sup>39</sup> Even setting aside the question of whether there are racial disparities in FPD's traffic stop practices, however, the data collected during those stops reliably shows statistically significant racial disparities in the *outcomes* people receive *after* being stopped. Unlike with vehicle stops, assessing the disparate impact of post-stop outcomes—such as the rate at which stops result in citations, searches, or arrests—is not dependent on population data or on assumptions about differential offending rates by race; instead, the enforcement actions imposed against stopped black drivers are compared directly to the enforcement actions imposed against stopped white drivers.

In Ferguson, traffic stops of black drivers are more likely to lead to searches, citations, and arrests than are stops of white drivers. Black people are significantly more likely to be searched during a traffic stop than white people. From October 2012 to October 2014, 11% of stopped black drivers were searched, whereas only 5% of stopped white drivers were searched.

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<sup>39</sup> While there are limitations to using basic population data as a benchmark when evaluating whether there are racial disparities in vehicle stops, it is sufficiently reliable here. In fact, in Ferguson, black drivers might account for *less* of the driving pool than would be expected from overall population rates because a lower proportion of blacks than whites is at or above the minimum driving age. See *2009-2013 5-Year American Community Survey*, U.S. Census Bureau (2015) (showing higher proportion of black population in under-15 and under-19 age categories than white population). Ferguson officials have told us that they believe that black drivers account for *more* of the driving pool than their 67% share of the population because the driving pool also includes drivers traveling from neighboring municipalities—many of which have higher black populations than Ferguson. Our investigation casts doubt upon that claim. An analysis of zip-code data from the 53,850 summonses FPD issued from January 1, 2009 to October 14, 2014, shows that the African-American makeup for all zip codes receiving a summons—weighted by population size and the number of summonses received by people from that zip code—is 63%. Thus, there is substantial reason to believe that the share of drivers in Ferguson who are black is in fact *lower* than population data suggests.



Despite being searched at higher rates, African Americans are 26% *less* likely to have contraband found on them than whites: 24% of searches of African Americans resulted in a contraband finding, whereas 30% of searches of whites resulted in a contraband finding. This disparity exists even after controlling for the type of search conducted, whether a search incident to arrest, a consent search, or a search predicated on reasonable suspicion. The lower rate at which officers find contraband when searching African Americans indicates either that officers' suspicion of criminal wrongdoing is less likely to be accurate when interacting with African Americans or that officers are more likely to search African Americans without any suspicion of criminal wrongdoing. Either explanation suggests bias, whether explicit or implicit.<sup>40</sup> This lower hit rate for African Americans also underscores that this disparate enforcement practice is ineffective.

Other, more subtle indicators likewise show meaningful disparities in FPD's search practices: of the 31 *Terry* stop searches FPD conducted during this period between October 2012 to October 2014, 30 were of black individuals; of the 103 times FPD asked both the driver and passenger to exit a vehicle during a search, the searched individuals were black in 95 cases; and, while only one search of a white person lasted more than half an hour (1% of all searches of white drivers), 59 searches of African Americans lasted that long (5% of all searches of black drivers).

Of all stopped black drivers, 91%, or 8,987, received citations, while 87%, or 1,501, of all stopped white drivers received a citation.<sup>41</sup> 891 stopped black drivers—10% of all stopped black drivers—were arrested as a result of the stop, whereas only 63 stopped white drivers—4% of all stopped white drivers—were arrested. This disparity is explainable in large part by the high number of black individuals arrested for outstanding municipal warrants issued for missed court payments and appearances. As we discuss below, African Americans are more likely to have warrants issued against them than whites and are more likely to be arrested for an outstanding warrant than their white counterparts. Notably, on 14 occasions FPD listed the only reason for an arrest following a traffic stop as “resisting arrest.” In all 14 of those cases, the person arrested was black.

These disparities in the outcomes that result from traffic stops remain even after regression analysis is used to control for non-race-based variables, including driver age; gender; the assignment of the officer making the stop; disparities in officer behavior; and the stated reason the stop was initiated. Upon accounting for differences in those variables, African Americans remained 2.07 times more likely to be searched; 2.00 times more likely to receive a citation; and 2.37 times more likely to be arrested than other stopped individuals. Each of these

<sup>40</sup> Assessing contraband or “hit rates” is a generally accepted practice in the field of criminology to “operationaliz[e] the concept of ‘intent to discriminate.’” The test shows “bias against a protected group if the success rate of searches on that group is lower than on another group.” Nicola Persico & Petra Todd, *The Hit Rates Test for Racial Bias in Motor-Vehicle Searches*, 25 *Justice Quarterly* 37, 52 (2008). Indeed, as noted below, in assessing whether racially disparate impact is motivated by discriminatory intent for Equal Protection Clause purposes, disparity can itself provide probative evidence of discriminatory intent.

<sup>41</sup> As noted above, African Americans received 90% of all citations issued by FPD from October 2012 to July 2014. This data shows that 86% of people receiving citations following an FPD traffic stop between October 2012 and October 2014 were African American.

disparities is statistically significant and would occur by chance less than one time in 1,000.<sup>42</sup> The odds of these disparities occurring by chance together are significantly lower still.

*ii. Disparate Impact of FPD's Multiple Citation Practices*

The substantial racial disparities that exist within the data collected from traffic stops are consistent with the disparities found throughout FPD's practices. As discussed above, our investigation found that FPD officers frequently make discretionary choices to issue multiple citations during a single incident. Setting aside the fact that, in some cases, citations are redundant and impose duplicative penalties for the same offense, the issuance of multiples citations also disproportionately impacts African Americans. In 2013, for instance, more than 50% of all African Americans cited received multiple citations during a single encounter with FPD, whereas only 26% of non-African Americans did. Specifically, 26% of African Americans receiving a citation received two citations at once, whereas only 17% of white individuals received two citations at once. Those disparities are even greater for incidents that resulted in more than two citations: 15% of African Americans cited received three citations at the same time, whereas 6% of cited whites received three citations; and while 10% of cited African Americans received four or more citations at once, only 3% of cited whites received that many during a single incident. Each of these disparities is statistically significant, and would occur by chance less than one time in 1,000. Indeed, related data from an overlapping time period shows that, between October 2012 to July 2014, 38 black individuals received four citations during a single incident, compared with only two white individuals; and while 35 black individuals received five or more citations at once, not a single white person did.<sup>43</sup>

*iii. Disparate Impact of Other FPD Charging Practices*

From October 2012 to July 2014, African Americans accounted for 85%, or 30,525, of the 35,871 *total* charges brought by FPD—including traffic citations, summonses, and arrests. Non-African Americans accounted for 15%, or 5,346, of all charges brought during that period.<sup>44</sup> These rates vary somewhat across different offenses. For example, African Americans represent a relatively low proportion of those charged with Driving While Intoxicated and Speeding on State Roads or Highways. With respect to speeding offenses for all roads, African Americans account for 72% of citations based on radar or laser, but 80% of citations based on other or unspecified methods. Thus, as evaluated by radar, African Americans violate the law at lower rates than as evaluated by FPD officers. Indeed, controlling for other factors, the disparity in speeding tickets between African Americans and non-African Americans is 48% larger when

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<sup>42</sup> It is generally accepted practice in the field of statistics to consider any result that would occur by chance less than five times out of 100 to be statistically significant.

<sup>43</sup> Similar to the post-stop outcome disparities—which show disparities in FPD practices after an initial stop has been made—these figures show disparities in FPD practices after a decision to issue a citation has been made. Thus, these disparities are not based in any part on population data.

<sup>44</sup> Although the state-mandated racial profiling data collected during traffic stops captures ethnicity in addition to race, most other FPD reports capture race only. As a result, these figures for non-African Americans include not only whites, but also non-black Latinos. That FPD's data collection methods do not consistently capture ethnicity does not affect this report's analysis of the disparate impact imposed on African Americans, but it has prevented an analysis of whether FPD practices also disparately impact Latinos. In 2010, Latinos comprised 1% of Ferguson's population. See *2010 Census*, U.S. Census Bureau (2010), available at [http://factfinder.census.gov/bkmk/table/1.0/en/DEC/10\\_SF1/QTP3/1600000US2923986](http://factfinder.census.gov/bkmk/table/1.0/en/DEC/10_SF1/QTP3/1600000US2923986) (last visited Feb. 26, 2015).

# Plenary Session: Innovative and Sustainable Clinical Engagement with Community Needs

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Monday, May 2, 2016  
9:00 – 10:30 a.m.

**Speakers:**

Jeffrey R. Baker, Pepperdine University School of Law  
Davida Finger, Loyola University New Orleans College of Law  
Beth Lyon, Cornell Law School  
Lydia Nussbaum, University of Nevada, Las Vegas, William S. Boyd School of Law  
Cindy Wilson, Northwestern Pritzker School of Law

**Moderator:** Janet Thompson Jackson, Washburn University School of Law

The session will begin with an introduction of the panelists and how their respective experiential courses include community engagement.

The first segment and break-out groups will discuss opportunities, challenges, and strategies for clinic design, pedagogy, and internal assessment with respect to community engagement. In considering clinic design, participants will reflect on local contexts, school priorities, practice areas, and client selection to hone best practices for clinics engaged in specific communities. Various pedagogical strategies can help students learn about client and other communities as well as how to successfully partner with them. Teaching strategies that will be discussed include student assignments, suggested reading, discussion topics, and interactive classroom activities. The segment will also share assessment techniques that support community engagement.

The second segment and break-out groups will discuss the opportunities, challenges, and strategies for engaging clients and community partners and involving them in assessment. Presenters will briefly describe dilemmas they have faced and will use a case-rounds approach to analyze the problem and possible solutions.



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# Other Information

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## **WIFI ACCESS IN MEETING ROOMS - COMPLIMENTARY**

Turn on Wi-Fi in the device

Look for the network SSID: **Marriott CONF**

A splash page will pop up for Guest-Tek services

Enter the Passcode: **AALS2016**

(Please Note: This is not case sensitive and there are no spaces)

Enter First and Last Name

Hit the button "I Accept"

Proceed to internet as normal

## **GUEST ROOM INTERNET - COMPLIMENTARY**

Please follow the instructions prompted, accept charges, and connect.

You must "accept charges" in order to connect, but you do not have to pay. The hotel will remove the charges prior to check out so that no one sees any charge for internet. Please check your room bill before departing to make sure internet charges have been removed.

## **TWITTER**

Be sure to Tweet about your experiences and education during your long weekend with us. Use the hashtag #AALSclinical.

## **FUTURE AALS CLINICAL CONFERENCES:**

Friday, May 5 – Tuesday, May 9, 2017  
Denver, CO

Sunday, April 29 – Wednesday, May 2, 2018  
Austin, TX

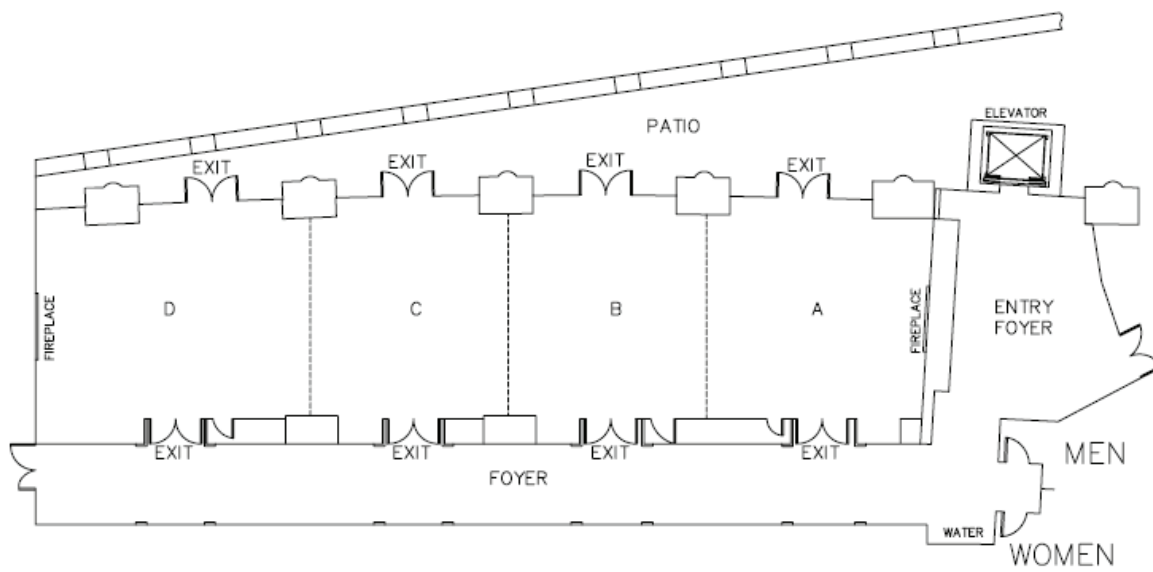


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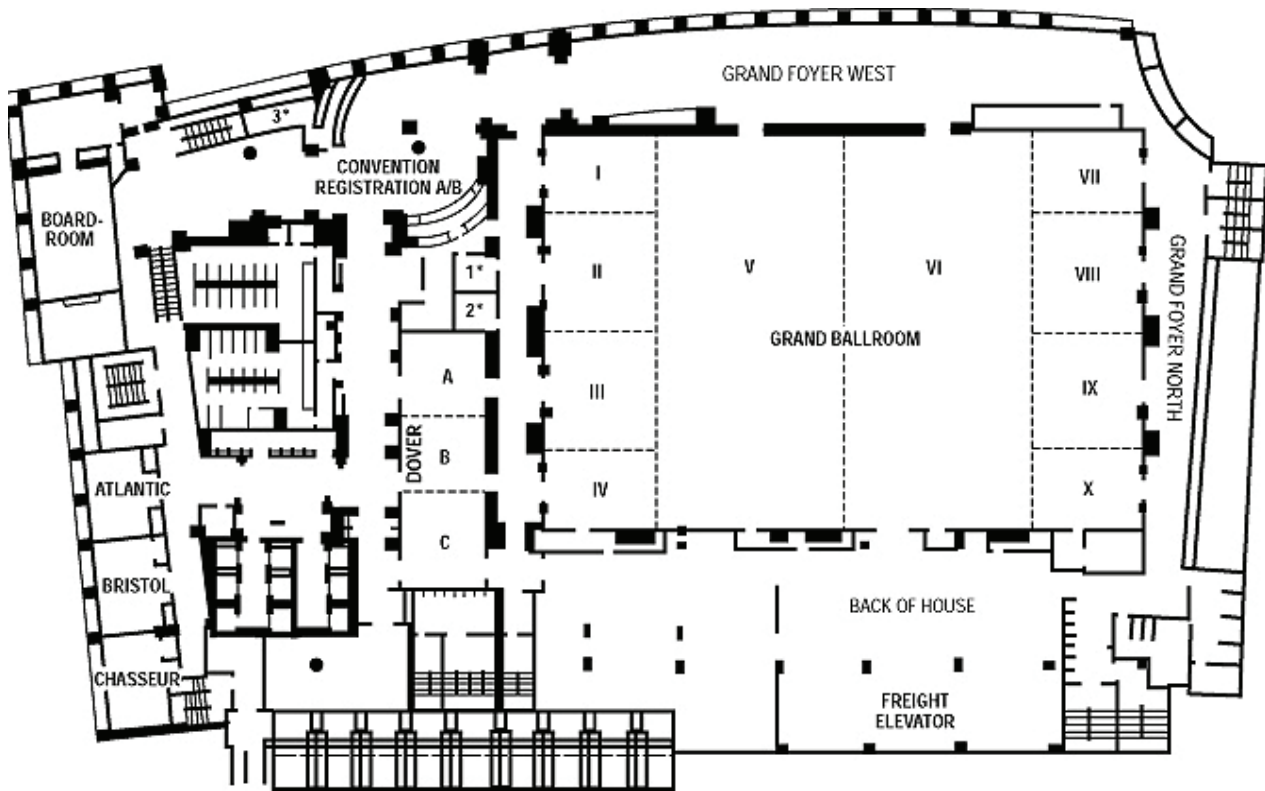
# Hotel Floor Plans

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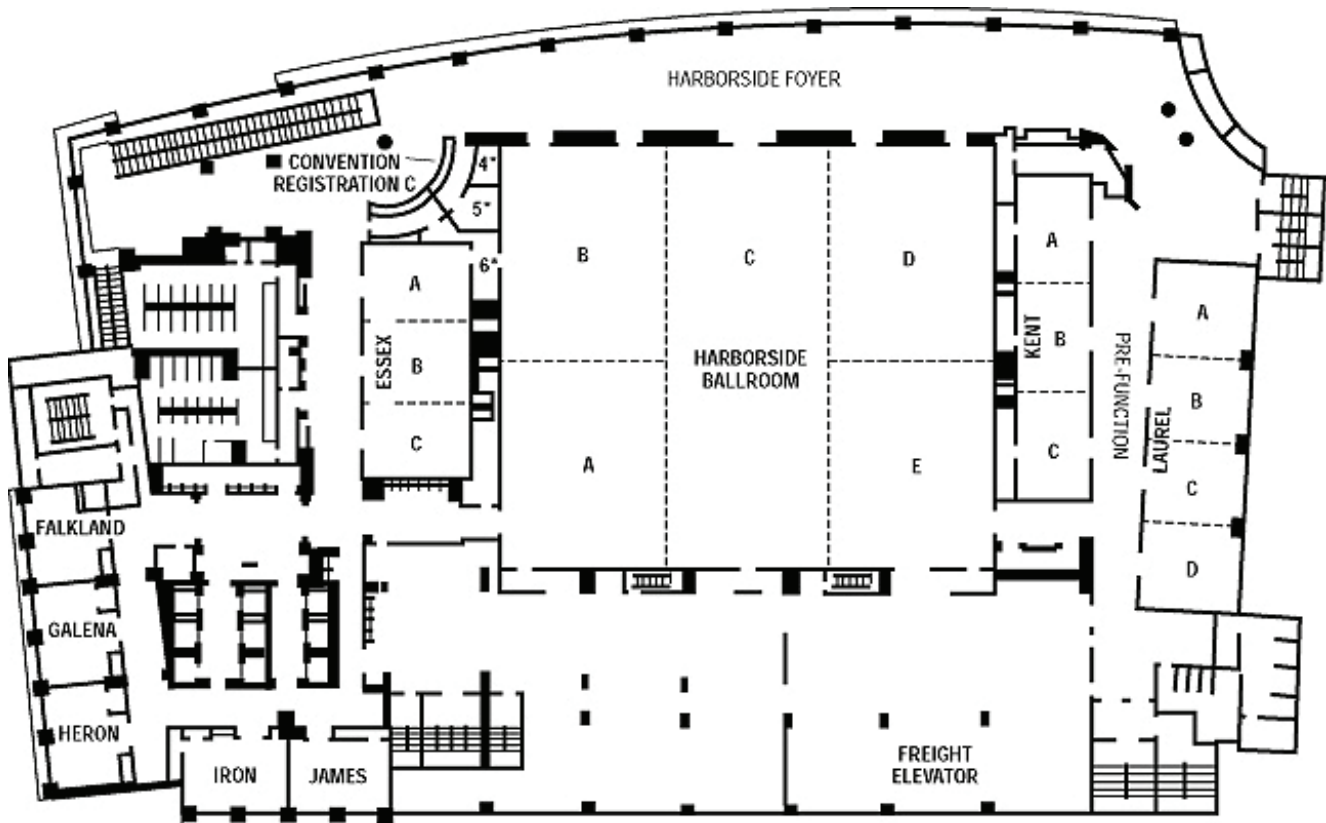
## WATERVIEW BALLROOM - LOBBY LEVEL



### GRAND BALLROOM - 3RD FLOOR

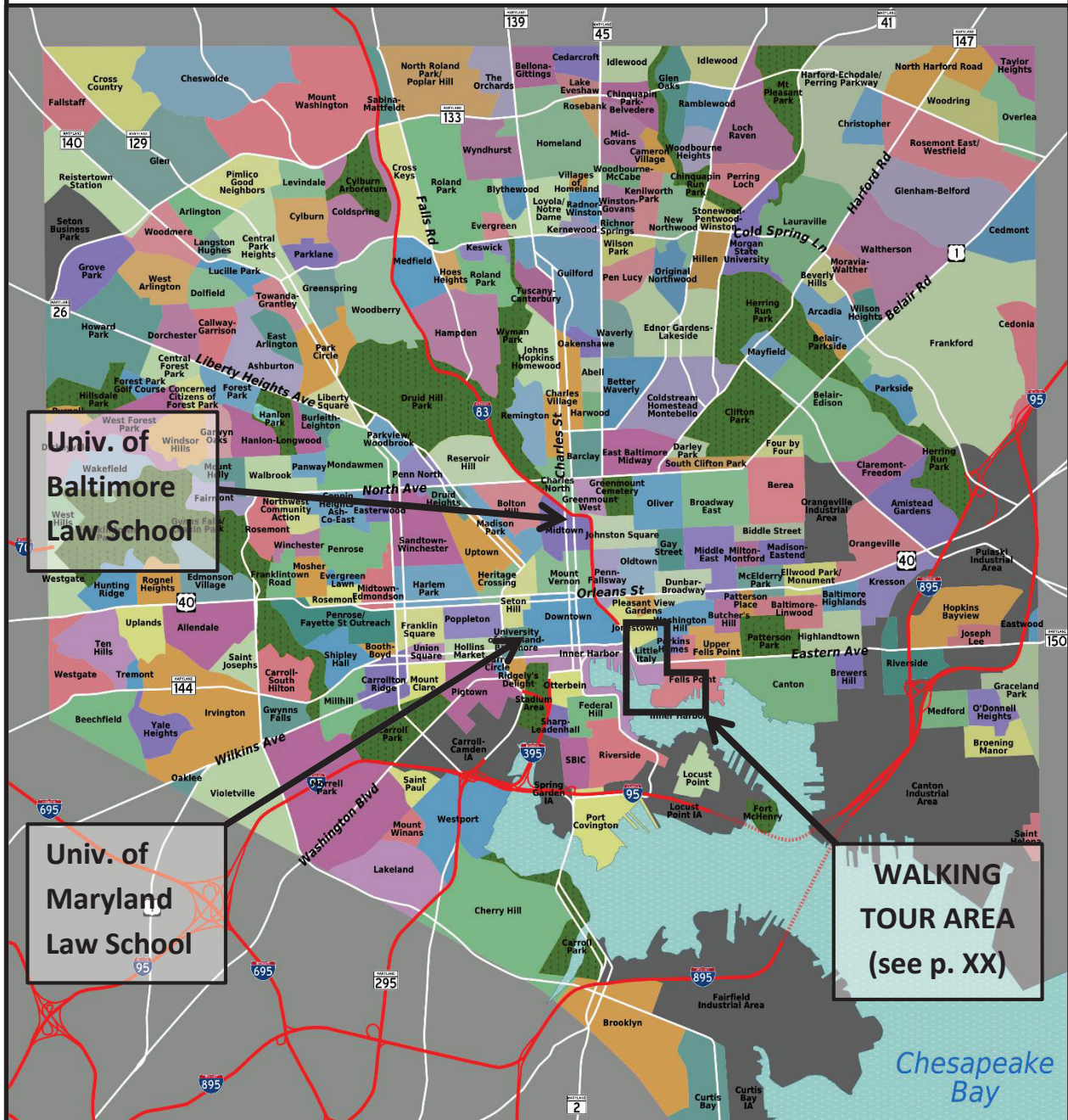


### HARBORSIDE BALLROOM - 4TH FLOOR





# Baltimore's Communities



Credit: Peter Fitzgerald, OpenStreetMap-self created, traced from OpenStreetMap, CC BY-SA 3.0, <https://commons.wikimedia.org/w/index.php?curid=8921687>, modified by Jaime Lee, Univ. of Baltimore

# AALS CALENDAR

## **Workshop for New Law School Teachers**

Thurs., June 9 – Sat., June 11, 2016, Washington, DC  
Thurs., June 22 – Sat., June 24, 2017, Washington, DC  
Thursday, June 7 – Sat., June 9, 2018, Washington, DC

## **Faculty Recruitment Conferences**

Thurs., Oct. 13 – Sat., Oct. 15, 2016, Washington, DC  
Thurs., Nov. 2 – Sat., Nov. 4, 2017, Washington, DC  
Thurs., Oct. 11 – Sat., Oct. 13, 2018, Washington, DC

## **Conferences on Clinical Legal Education**

Fri., May 5 – Tues., May 9, 2017, Denver, CO  
Sun., April 29 – Wed., May 2, 2018, Austin, TX

## **Annual Meetings**

Tues., Jan. 3 – Sat., Jan. 7, 2017, San Francisco, CA  
Wed., Jan. 3 – Sun., Jan. 7, 2018, San Diego, CA  
Wed., Jan. 2 – Sun., Jan. 6, 2019, New Orleans, LA



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