

Incorporating a Challenging Assumptions Component into “Staple” Clinical Exercises

**AALS Workshop on Clinical Legal Education
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TITLE: Incorporating a Challenging Assumptions Component into “Staple” Clinical Exercises.

As clinical professors from different schools, we all teach in the area of immigration law and have worked with clients seeking asylum in the United States. This presentation combines various exercises and teaching techniques that we have used in order to teach students how to work with cultural bias and assumptions. We will each discuss a particular simulation exercise that we have used in the classroom and found successful in helping the students to challenge cultural and legal assumptions. During the presentation, participants will take part in exercises as students would. We have found that these exercises lead the students to examine and critically analyze how assumptions will affect their clinical experience and their future work as attorneys. We will end with a critical examination about challenging student assumptions; challenging assumptions about how students learn; and frameworks that guide pedagogical decisions regarding teaching social justice clinics.

II. WHAT’S IN YOUR BRIEFCASE?¹: CHALLENGING OUR PERSONAL ASSUMPTIONS

A. Overview

The goal of this exercise is to challenge and bring awareness to the assumptions we carry into our daily activities and the classroom. This exercise seeks to have students examine the assumptions they carry with them (in their proverbial “briefcase”) every day. The briefcase contains all their values, beliefs, assumptions, biases, prejudices, hopes, and fears. This briefcase most often goes unexamined—yet it is present with us everywhere we go. When these things are invisible to us, it is easy to fall victim to them and unintentionally victimize others. When we examine the contents of our briefcase, we can then make conscious decisions; we are in control of our attitudes and actions.

¹Exercise Adapted from “The Presenter’s Fieldbook: A Practical Guide, 1st Edition, Chapter on The Guide’s Key to Special Situations and Resources,” Robert J. Garmston (1997).

The exercise involves: (1) having participants form small groups; (2) distributing an “empty briefcase” handout to each participant; (3) giving participants ten minutes to fill in some of their core values, beliefs, assumptions, biases, prejudices, hopes and fears about immigrants (emphasizing that participants will not have to share what they write); (4) having participants discuss within their small groups their discoveries about themselves; two or three implications of what they discovered for their work; given these implications, to what, if anything, will they now pay more attention?; and (5) debriefing the group: what are some insights gained from this activity? what are some of the things to which we must pay attention as we serve our clients?

B. Lesson Plan

Explanation of why we have a class on cultural difference: Why do we devote an entire class to cultural differences? The reason is that cultural differences may affect every aspect of your case, from the initial interview all the way through to the hearing in front of the immigration judge or asylum officer. An effective advocate, regardless of the type of law s/he practices, will recognize cultural differences and learn to work with them.

Even when you begin to practice it is important to realize you will be serving a diverse clientele; accordingly it is important to be attuned to various cultural differences of the individuals for whom you are working and the businesses for which you will be working. Often you will be required to develop an understanding of the business culture or terminology that the business uses to effectively represent your client. Accordingly, it is important to understand what cultural baggage we may be carrying ourselves, before we delve into another cultural environment that may be totally foreign to ourselves.

This concept will apply in different contexts even outside of your clinical experience. For example, as an associate with my law firm, when I was litigating an employment discrimination case for a management company for an apartment complex, I had to learn industry terminology and the

culture within the rental business to effectively represent and communicate with my clients and witnesses for the case.

What's in Your Briefcase? The exercise we are going to do will help you to examine and learn about your own cultural biases you may be carrying with you. Today we are going to examine the things that you are carrying with you. We are going to use the metaphor of what you are carrying in your brief case for this exercise.

I imagine everyone carrying around an invisible briefcase. In that briefcase is all of their stuff. By stuff I mean all their values, beliefs, assumptions, biases, prejudices, hopes, and fears. This suitcase/briefcase most often goes unexamined—yet they are present with us everywhere we go. When these things are invisible to us, we become victims to them and we may unintentionally victimize others. When we examine the contents of our suitcases, we can then make conscious decisions. We can take control of our attitudes and actions. Today, you will have an opportunity to examine your briefcase. This is especially important given the work you are doing/ will do with our clients.

Here's how that examination will occur: Everyone will get a “suitcase” for examination; next you will have some reflection time to look inside; then you'll have a chance to dialogue about some insights.

1. Give everyone a suitcase handout.
2. State and write: In all of our suitcases are our values, beliefs, assumptions, biases, prejudices, hopes and fears. *See Appendix A.*
3. Review sentence stems with the students. You will have some personal reflection time to complete these stems. ***NO ONE WILL READ YOUR ANSWERS.*** You will not have to share what you write. This is for you. Write whatever comes to mind- not what you think is appropriate or what others may want to hear. What you feel is what you feel. **(10 minutes).**

4. PAIRS: Another handout: Everyone needs a chance to share in these small groups or pairs. What are some discoveries about yourself? What are two or three implications (of what you discovered) for your work? So what? Given these implications, to what will you pay attention? Now what? *See Appendix A. (10 minutes)*

5. **Debrief the whole group:** What are some insights you gained from this activity? What are some of the things we must pay attention to as we serve our clients? **(10 Minutes)**

II. CLASSROOM HYPOTHETICAL EXERCISES: CHALLENGING OUR PROFESSIONAL ASSUMPTIONS

A. OVERVIEW

After completing the briefcase exercise, participants are presented with three hypothetical exercises involving fictitious clients; the participants are then asked how they would handle each situation in light of new discoveries of what they are carrying in their briefcases. Each scenario deals with a different type of assumption: one deals with cultural barriers, one deals with linguistic difficulties, and the last deals with the effects of trauma. The first scenario, which involves a female client from a sex-segregated culture, challenges the assumption that principles of confidentiality and the attorney-client relationship transcend cultural boundaries. The second scenario, involving a well-educated client whose strong accent makes communication difficult but who is satisfied with her level of English proficiency, challenges the assumption that interpreters are always a solution to communication problems. The final scenario, in which a trauma victim relates his testimony in one particular manner during trial preparation, but in an entirely different manner during trial, challenges the assumption that thorough preparation of your client will ensure that s/he testifies according to your expectations.

B. Lesson Plan

The following scenarios are presented to students in a political asylum clinic, who are then asked how they would handle the situation. Each scenario deals with a different type of assumption: one deals with cultural barriers, one deals with linguistic difficulties, and the last deals with the effects of trauma.

Assumption #1: The principles of confidentiality and the attorney-client relationship transcend cultural boundaries.

Two male attorneys are working together on a pro bono asylum case. Their client is an educated, English-speaking young woman from Afghanistan. Prior to the initial client meeting, the attorneys briefly discussed confidentiality and the attorney-client relationship with her. Her uncle accompanies her to the initial client interview and politely declines to leave when the attorneys request privacy. Their client insists that he remain because it would make her feel more comfortable and satisfy her and her family's concept of propriety.

What assumptions have the attorneys made? What should the attorneys do at this point? What can they do in the future with this client and with others to prepare for this type of situation?

Assumption #2: If your client speaks English, you will have no problem understanding her.

Dr. Nana is a French-speaking professor from Cameroon seeking asylum in the United States. Up until now, she has only communicated with the law school clinic by e-mail, always in perfect English. When she arrives to meet with you for the first time, you can barely understand her due to her strong accent.

What assumptions have been made? How would you handle this situation? What can you do in the future to prepare for this type of situation?

Assumption #3: After preparing extensively with your client, he will testify on the stand according to your expectations.

Your client is a torture victim. You have interviewed him several times about his experiences. Each time, he breaks down uncontrollably when he describes what happens to him, but after a few moments he is able to speak clearly and with detail. Eventually, his court date arrives. In court, he relates the event calmly and without emotion, but testifies that he is not able to remember the date or any other details.

What assumptions have been made? How would you handle this situation? What can you do in the future to prepare for this type of situation?

III. “BLOCKS PARTY” DIRECT EXAMINATION EXERCISE: ANTICIPATING OTHERS’ ASSUMPTIONS

A. Overview

The Building Blocks exercise is adapted from an article by Paul Bergman, Avrom Sherr & Roger Burrige, *Learning from Experience: Nonlegally Specific Role Plays*, 37 J. Legal Ed. 535 (1987). This exercise involves distributing sets of building blocks to two students (one assigned to be the builder/client, the other assigned to be the copier/adjudicator) facing away from each other. A third student is assigned to be the lawyer. The lawyer questions the client about the structure while the adjudicator attempts to replicate the client’s structure on the basis of the client’s answers to the lawyer’s questions.

The purpose of the exercise is to illustrate how events get distorted even through innocent telling, particularly when a system of questioning is introduced. The blocks not only represent the facts of the case, but the different values, experiences, perceptions and assumptions of the fact finder, witness and lawyer. The exercise illustrates how different a fact finder’s perception of events is from the actual story the client is trying to convey, particularly when the parties come to the adjudication process with two entirely different sets of blocks; it is disturbing to realize how different those stories might be. Real life is even more likely to produce error. In the exercise, our fact finder at least knows there is a finite set of blocks. In real life, a fact finder might develop an infinite number of concepts based on the oral story. In addition, the exercise, as usually structured, uses two sets of identical blocks. Adding a challenging assumptions component to this exercise by using non-identical sets of blocks allows students to confront and challenge their own assumptions as well as giving them a language with which they can more easily discuss cross-cultural issues.

B. Lesson Plan

This exercise requires adding on a modification to a “staple” clinical exercise. The premise underlying the Building Blocks exercise found in the Bergman, Sherr & Burrige article² is that simulations placed outside an overtly legal context, are valuable for law students. The article argues that these simulations allow law students to understand the extent to which their everyday social behavior sometimes constitutes desirable professional behavior.

The article details a number of exercises and identifies the legal context that the exercise is addressing. For example, the Block Party is highlighted as an exercise to flesh out issues surrounding Direct Examination.

The Building Blocks exercise as it appears in the article is reproduced below.

Exercise Four: Block Party (Direct Examination 1)

Background: Few of us realize or appreciate the extent to which events are different from a verbal description of them, especially when the report is made in the somewhat artificial question-answer format of trial. In the settling of disputes by means of oral storytelling much information is inevitably lost or altered by the very telling.

Nonlegal Counterpart: Research indicates that we are visual learners; most of what we know is a product of our having seen it. By contrast, we are quite inefficient when it comes to oral transmission of data. Transforming actual events into verbal description is something we do repeatedly in everyday life, but usually without any sense of how we have altered those events in the listeners mind.

Exercise: Children’s building blocks may graphically depict how data are lost and altered as one moves from a visual into a verbal world. One needs two sets of identical blocks that have pieces of varying shapes and colors. (The “Blockhead” game is ideal.) In phase 1, two students sit across a table from each other. One builds a structure using all or many of the blocks; the other watches as the structure takes shape and then copies it. The exercise approximates a real-life situation in which one learns directly from visual reality. In phase 2, two other students are seated so that each cannot see what the other is doing. Again, one builds and the other copies. This time, however, the builder must describe what he or she is doing, and the other must try to copy the structure based on the verbal

² *Learning from Experience: Nonlegally Specific Role Plays*, 37 J. Legal Ed. 535 (1987).

description alone and without asking questions. Here we see what might happen if witnesses in court were simply put on the stand and asked to tell their story without interruption. Finally, in phase 3, three students participate, with the copier again barred from seeing what the builder is doing. The third student (the “lawyer”), who cannot see either of them, questions the builder about the structure while the copier attempts to replicate the builder’s structure on the basis of the builder’s answers to the third student’s questions. We thus move closer to a trial, in which the fact finder creates reality based on witnesses’ answers to lawyers’ questions.

Discussion. The purpose of the exercise is to illustrate how events get distorted even through innocent telling, particularly when a system of questioning is introduced. Asked to evaluate what happened, students realize that more time was consumed in each succeeding phase of the exercise. Errors in “copying” in phase 2 usually are errors of detail, while the overall shapes of the two sets of blocks are quite similar. By contrast, errors in phase 3 are usually of overall shape, though many details may be accurate. The exercise tends to demonstrate that questions that would produce phase 2-type responses (open questions) are useful to establish the overall pattern of a story, and that phase 3-type questions (detailed or closed questions) are necessary to elicit details. The discussion also may include consideration of the time each phase consumed and of the potential effect of varying time periods on a fact finder’s attention span. If one regards the copying student in phase 3 as a fact finder trying to reconstruct the witnesses’ stories, it is disturbing to realize how different those stories might be. Real life is even more likely to produce error. In the exercise, our “juror” at least knows there is a finite set of blocks. In real life, a juror might develop an infinite number of concepts based on the oral story.

The exercise illustrates a dilemma of direct examination. Supply too little detail and inaccuracies multiply. Supply too much detail and attention wanders, and one winds up with a distorted version of reality anyway.³

Challenging Assumptions Component. Using this exercise as designed makes an assumption that all individuals come to the table, or to the witness stand, with the same “blocks.” In fact, the exercise requires that you have “two sets of identical blocks.” In the context of an asylum clinic it is often clear that our clients do not come to the table with the same blocks, (i.e. the Western standard of what a house looks like may not equal the type of house our clients come from.) In response to the idea that individuals do not have the same set of blocks I modified the exercise. I switch the set

³ Paul Bergman, Avrom Sherr, and Roger Burrige, *Learning from Experience: Nonlegally Specific Role Plays*, 37 J. Legal Educ. 535, 548-49.

of blocks so that they are no longer identical. I do not tell the students what I am doing, I ask for volunteers to do another round, students usually think they have “figured out” the exercise at this point. I send them out of the room and switch the blocks (for the set of blocks that I use, I switch out the blocks of the copier so that similar structures could still be built, for example if I take away a large rectangle block, I replace it with two triangles that can form the same shape as the rectangle). I invite the students back in and they go about the exercise with a builder, copier, and lawyer.

Students often become frustrated, especially the copier because he/she cannot always follow the instructions. If students make assumptions and solely rely on the shape and colors of the blocks they are doomed, however if they are working from an overall description and shape they have some success.

The discussion after this simulation usually centers on assumptions students make regarding this exercise and more broadly about their clients having the same “blocks” that they have. One benefit of this exercise is that it gives students a language to talk about cross-cultural issues and assumptions in a manner that is not accusatory or loaded. Instead of avoiding a culturally sensitive topic students are more apt to bring the issues up in discussion and reflection by noting that, “this is a case where the client and I (or another student) do not have the same blocks.” It is fascinating to observe how the students’ language on these issues changes after this exercise. In addition, we have discussions about how our job is to make the decision-maker “see” the structure the client sees even if the decision-maker does not start with the same blocks, in other words how can we use two triangles to make a rectangle in the decision-maker’s head?

Blue or Green? Another approach for this exercise involves challenging student assumptions about language and color. The English language makes a distinction between blue and green, but some languages do not. For this approach simply inform the student who is playing the role of the “client” (builder) to pick either blue or green and use that word to describe both blue and green blocks.

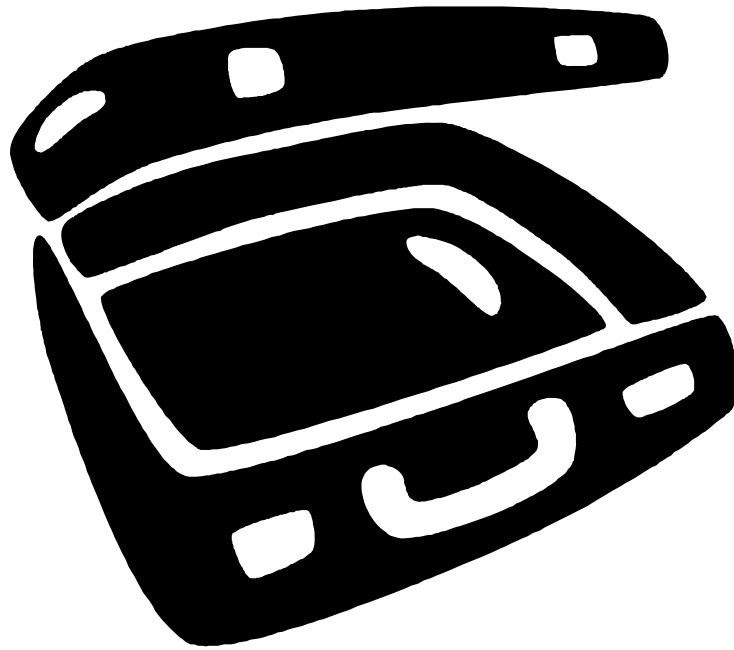
IV. DEBRIEF/CRITIQUE

The end of the presentation will involve discussion and critique of the pros and cons of the exercises. This section will focus on questions involving what implications do the classroom exercises have on our decisions about what clients we will represent, the nature of our advocacy, the framework for teaching social justice, and how we teach students about lawyering.

Should you have any questions regarding the materials set forth within please do not hesitate to contact any one of the presenters.

APPENDIX A
Briefcase and Reflection Handout

What's in Your Briefcase?



REFLECTION QUESTIONS

I believe life is...

I like people who are...

The best way to handle conflict is...

Lawyers are...

I value...

I dislike people who are...

Iraqis are...

All people's behavior is driven by...

A bias I know I hold is...

People who are seeking asylum are is...

When people are unlike me I...

A prejudice I hold about immigrants is...

I believe spousal abuse is caused by...

A fear I have about representing my client is...

People are usually lying when...

Questions for Discussion:

What are some discoveries about yourself?

What are two or three implications (of what you discovered) for your work this semester?

as an attorney in the future?

Given these implications, to what will you pay attention?

APPENDIX B
Assumptions Student Exercises Handout

Student Exercises

Assumption #1: The principles of confidentiality and the attorney-client relationship transcend cultural boundaries.

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