

LibRA

To: Professor Erika Wilson

From: LibRA – Faculty Research Service

Date: March 6, 2019

Subject: Ethics of Using Clinic Student Stories in Legal Scholarship

1. **Description of Request:**

Professor Wilson requested a bibliography of scholarship exploring the ethics of clinical law professors using stories about students or students’ case work in their legal scholarship and writing.

1. **Summary of Research Strategies and Results:**

For this research, LibRA built upon its prior work on the topic of the ethics of using client stories in legal scholarship, as well as relying on novel search queries and additional databases.We performed searches in HeinOnline, Westlaw, and Google Scholar. We also used natural-language Google queries to identify any discussion on legal or academic blogs.In some cases, we used adaptations of search strings that had proven successful in the prior LibRA project completed for Professor Wilson, such as “ethic! /s client /s (story OR stories) AND scholarship”. We also gleaned search terms from articles found for our previous annotated bibliography, such as “exploit” and “narrative” and their variants.

Articles from our previous bibliography were re-examined for any citations focusing on student stories. In particular, we examined all known sources citing the 1998 Nina W. Tarr article included in the previous bibliography, “Clients’ and Students Stories: Avoiding Exploitation and Complying with the Law to Produce Scholarship with Integrity,” which we knew to be on-point.

Our research supports the conclusion that the topic of interest here remains largely unexamined in legal scholarship. The 1998 Tarr article is very likely the only piece of scholarship specifically examining the ethics of using clinical students’ stories or cases in legal scholarship in any depth. In fact, the 2014 Robert C. Holmes article summarized below notes that Tarr’s article appears to be the only source addressing the “possibility for exploitation of law school clinic students” in general. The following selection of articles for the most part addresses issues that are more generalized than the topic of interest or are tangentially related to it, but which may still prove useful for shaping an understanding of the topic.

1. **Research & Conclusions:**

Robert C. Holmes, *Use of Clinic Students’ Extant Talents: Negative Exploitation or a Peek at the Future of Legal Education?*, 66 Rutgers L. Rev. 685 (2014).

* **Brief Summary**: This article lacks a focus on using student stories in legal scholarship. Its specific focus is on the use of students’ “extant talents”—proficiency in other disciplines or skills which they did not glean from law school—in clinic work. However, the framework the author uses to evaluate this specific issue may prove useful. The discussion is centered around the theory of exploitation in general, with ample treatment of a wide variety of possible avenues for exploitation in the law school clinic context and a discussion of potential alternative standards for evaluating the fairness of relationships and transactions where harm is not the standard, *id.* at 710-720. In citing Nina W. Tarr’s 1998 article, the author notes that it was “the only reference to the possibility for exploitation of law school clinic students . . . found.” *Id.* at 688, n. 5.

David Hricik, *Life in Dark Waters: A Survey of Ethical and Malpractice Issues Confronting Adjunct Law Professors*, 42 S. Tex. L. Rev. 379 (2001).

* **Brief Summary**: This article surveys a number of ethical considerations unique to adjunct professors. It discusses the ethical issues of students sharing “war stories” or “yarns” from their own legal employment almost solely in terms of the duty of confidentiality. *See id.* at 392-393. The author discusses faculty plagiarism and attribution of student work (but not student stories or cases) at 403-04. Some issues specific to clinical professors are discussed, but none relating to sharing of student stories, cases, or work.

Jacqueline St. Joan & Stacy Salomonsen-Sautel, *The Clinic as Laboratory: Lessons from the First Year of Conducting Social Research in an Interdisciplinary Domestic Violence Clinic*, 47. Loy. L. Rev. 317 (2001).

* **Brief Summary**: This article briefly addresses the ethical concerns of explicitly using clinic students as research subjects, given such students’ tendencies towards competitiveness and the possibilities of coercion. *Id.* at 354-55. The bulk of the article describes the authors’ use of qualitative and quantitative methods to evaluate the impact of an interdisciplinary approach to clinical practice.

Jo A. Tyler & Faith Mullen, *Telling Tales in School: Storytelling for Self-Reflection and Pedagogical Improvement in Clinical Legal Education*, 18 Clinical L. Rev. 283 (2011).

* **Brief Summary**: This article describes a research process that asked clinic students to actively engage in storytelling of client interactions for the purposes of their own reflective learning and to inform the pedagogical approach of clinic faculty. Faculty and clients also participated in the storytelling, and faculty were able to compare their own stories with those of students. However, the stories themselves were not published in legal scholarship. The authors cited Tarr’s article in describing how they took steps to protect students from coercion and assured them they would make limited use of the stories and would protect students’ identities from being revealed. *See id.* at 301-02.

Bill L. Williamson, *(Ab)Using Students: The Ethics of Faculty Use of a Student’s Work Product*, 26 Ariz. St. L.J. 1029 (1994).

* **Brief Summary**: This article lacks any focus on clinical faculty or students, but serves as a thoughtful overview of the opportunities for exploitation of law students’ research and writing work by law professors and the ethical issues involved. It proposes ethical standards and discusses how they might be implemented.