UNIT ONE. POST-REALIST LEGAL PEDAGOGY AND SCHOLARSHIP

This unit will trace the development of experiential and multidisciplinary methods that have characterized post-realist legal pedagogy and scholarship. After an initial discussion of realism and its effects on the academy, we will conduct a set of exercises designed to explore pre- and post-realist approaches to legal reasoning.

Week 1 (Sept. 7)

RONALD DWORKIN, LAW’S EMPIRE 228 - 38 (1986)  
Alexander H. Pekeles, The Case for a Jurisprudence of Welfare  

Assignment: The readings for this week introduce approaches to common law reasoning that can be described in at least four ways:

- reasoning from universal principles  
- reasoning within an interpretive discipline, bounded by the language of statutes and precedent  
- reasoning within an interpretive tradition, writing a continuing story as established rules interact with new instances  
- reasoning from social science to rules that will enhance social welfare

Working individually, reflect on your reactions to these kinds of legal reasoning and on why you react as you do. Prepare to introduce yourself to the group by telling us which of these modes of legal reasoning are attractive to you, which worry you, and what aspects of your background or personality might explain your reactions.

Week 2 (Sept. 12)

Readings: ANTHONY G. AMSTERDAM, PEGGY COOPER DAVIS & ADERSON BELGARDE FRANCOIS, LAWYERING BY THE BOOK, Appendices A - C (Fitzgerald v. Hemmingway,
**Assignment:** This assignment builds on Lawyering’s admonition that the advocate’s speech must always be adapted to the intended audience.

Assume that you practice law in a world in which Fitzgerald and Whitman’s Brotherhood have been decided, but Elliot has not been decided. Working in groups of 3 or 4, draft an argument of no more than two double spaced pages (less is fine), taking either the plaintiff’s or the defendant’s side in Elliot.

Group 1 should that its case is before a panel of judges who think of themselves as reasoning from universal principles.

Group 2 should assume that its case is before a panel of judges who think of themselves as reasoning within an interpretive discipline, bounded by the language of statutes and precedent.

Group 3 should assume that its case is before a panel of judges who think of themselves as reasoning within an interpretive tradition, writing a continuing story as established rules interact with new instances.

Group 4 should assume that its case is before a panel of judges who think of themselves as reasoning from social science to rules that will enhance social welfare.

Each group should be prepared to present its arguments in class and to explain how the arguments were adapted to audience.

*The next four units will examine the psychological and social dynamics of face to face lawyering interactions.*

**UNIT TWO. NARRATIVE AS A TOOL FOR ACHIEVING INTERACTIVE COMPETENCE**

**Week 3 (Sept. 19)**

**Guest Presenter:** Rita Charon, M.D., Ph.D.


**Readings:**


Assignment: TBA

Week 4 (Sept. 26)

Assignment: This assignment builds on the work of Charon, Amsterdam and Bruner. Working in teams of three or four, and using narrative theory as an analytic tool, prepare to present in class an analysis of a videotaped client interview (to be made available online).

UNIT THREE. INTRAPERSONAL INTELLIGENCE AS A PREREQUISITE FOR INTERACTIVE COMPETENCE

Week 5 (Oct. 7)

Guest Presenter: Professor Carol Gilligan

http://www.law.nyu.edu/faculty/profiles/bios/gilliganc_bio.html

Readings: Peggy Cooper Davis, We Can Do Better, 14 YALE JOURNAL OF LAW AND FEMINISM 263 (2002)

Assignment: Working individually, conduct a videotaped client interview. Materials necessary to prepare for and critique the interview will be distributed on or before September 26.

Week 6 (Oct. 10)

Assignment: Working in pairs and following critique guidelines that reflect Gilligan’s theoretical approach to relational work, critique the videotaped interviews that you and your partner conducted in preparation for the October 7 session. Prepare to present your critiques in class, using videotaped excerpts to illustrate significant insights.

In units four (and six) we will examine the development of a lawyer's sense of role and responsibility. The particular focus of unit four is the lawyer’s sense of self in relationship with others.

UNIT 4. INTRAPERSONAL INTELLIGENCE AND PROFESSIONAL ROLE: “THE AESTHETICS OF YOU” IN PROFESSIONAL RELATIONSHIPS

Week 7 (Oct. 17)

Guest Presenter: Professor Anna Deavere Smith

http://www.law.nyu.edu/faculty/profiles/bios/smithad_bio.html
**Readings:** TBA

**Assignment:** TBA

**Week 8 (Oct. 24)**

**Assignment:** Working in pairs and following critique guidelines that reflect Deavere Smith’s theories, critique the videotaped interviews that you and your partner conducted in preparation for the October 7 session. Prepare to present your critiques in class, using videotaped excerpts to illustrate significant insights.

In the next unit, we will examine the effects that narrative, rhetoric, and other techniques for structuring cognition and deflecting bias have on receptivity to legal argumentation.

**UNIT 5. INTERPERSONAL INTELLIGENCE IN ADVOCACY: ADAPTING SPEECH TO AUDIENCE, PART II**

**Week 9 (Oct. 31)**

**Guest Presenter:** Professor Neal Feigenson

http://www.quinnipiac.edu/x10871.xml


**Week 10 (Nov. 7)**

**Assignment:** Working in teams of three or four and drawing on the Feigenson presentation, draft an argument of no more than two double spaced pages (less is fine) suitable as an opening statement in the ICWA oral argument. Be prepared to present your arguments in class and to discuss the uses you made of theories of cognition.

In unit six, we return to the matter of the lawyer’s role, this time focusing on the relationship between knowledge of self and ethical or moral choice.

**UNIT 6. INTER- AND INTRAPERSONAL INTELLIGENCE AND ETHICAL OR MORAL JUDGMENT**

**Week 11 (Nov. 14)**

**Guest Presenters:** Professor Susan Fiske

http://webscript.princeton.edu/~psych/psychology/research/fiske/index.php
Professor Tigran Eldred

Commentor: Professor Richard Schechner


Week 12 (Nov. 21)

Assignment: Working in groups of three or four, prepare to counsel in class the client whom you interviewed in preparation for the October 7 session.

In this final unit, we return to the post-realist theories of legal reasoning to consider the roles of ritual and cultural resonance.

UNIT 7. INTERPERSONAL INTELLIGENCE AND CULTURAL KNOWLEDGE IN ADVOCACY: THE ROLE OF MAGIC

Week 13 (Nov. 28)

Guest Presenter: Professor Jessie Allen
Commentator: Professor Richard Schechner

Readings: Legal Magic: How Ritual Formality and Doctrinal Formalism Help Adjudication Shape Our World.

Week 14 (Dec. 5)

Assignment: Working in teams of three or four and drawing on the Allen presentation, draft an argument of no more than two double spaced pages (less is fine) suitable as an opening statement in the ICWA oral argument. Be prepared to present your arguments in class and to discuss the uses you made of “magic.”

FINAL PROJECT: Working individually, but in consultation with the Lawyering Professor with whom you are working as a Teaching Assistant (or, if you are not working as a teaching assistant, with Professor Amsterdam or Davis), prepare a detailed plan for a class or class segment to be implemented during the Spring Semester. The class or segment should draw explicitly on theories introduced and used during the Colloquium. A project description and a memorandum describing how the project uses theories developed in the colloquium are due on or before the last day
of exams.