

Newsletter - Aug, 1984  
Sept/Oct

- 10:30-12:00 SIMULTANEOUS WORKSHOP SESSIONS
  - (1) "Other Voices, Other Rooms: Lessons from Non-Legal Experiential Education" (Organizer: Janet Motley, California Western)
  - (2) "Managing Stress to Maximize Learning in Clinical Courses" (Organizer: Don & Marty Peters, Florida)
  - (3) "Tilling New Fields: A Sampler of Groundbreaking Clinics" (Organizer: David Koplow, Georgetown)

12:00-2:00 p.m. SECTION LUNCHEON  
Annual Award Presentation  
Entertainment Program

2:30-4:30 p.m. COSPONSORED PROGRAM (w/ABA Appellate Judges' Conference)  
"Teaching Appellate Advocacy"  
(Clinical Section Organizer: Robert Martineau, Cincinnati)

4:30-5:00 p.m. SECTION BUSINESS MEETING

JANUARY 4

8:30-10:30 a.m. Meeting of the Executive Committee

10:30-12:00 Meeting of other Clinical Section Committees

What we have in mind for the Plenary Session is an interdisciplinary panel presentation that describes what is known about the process of creative problem-solving, that illustrates methods that may be helpful in teaching or encouraging creativity, and that begins to adapt that knowledge and those methods to our teaching of the lawyering process. One of the simultaneous workshops scheduled to follow the Plenary Session will focus on the insights to be drawn from experienced-based education as it has developed outside the field of law. A second workshop will address the special impact of stress upon learning and performance in the client clinic, and the stress-management strategies available to the clinical teacher. The last of the workshop sessions will look at the movement of clinical education into new substantive fields of law, and feature a sampling of "new wave" clinics in such fields as victim's rights, legislation, small business, and alternative dispute resolution.

A short program of light entertainment is planned as a change of pace during the Section Luncheon, and will likely include a musical satire of some sort. And, of course, Henry the Horse dances the waltz.

The afternoon session on January 3rd, not a part of the Program Committee's planning responsibilities, is a program jointly sponsored by the Clinical Section and the ABA Appellate Judges' Conference on the subject of teaching appellate advocacy.

The design of the Annual Meeting program is still a work in progress: an extra workshop may yet be added to the schedule, and the list of presenters for each of the scheduled sessions is yet to be

finalized. The Program Committee would warmly welcome all suggestions from the Section's membership.

#### MEMBERSHIP

Changed jobs? If this Newsletter reached you late because it had to be forwarded from your last place of employment, let us know. And if there is anybody new on your clinical faculty who did not receive a copy, let us know. Address changes should be sent to Susan Kovac, Tennessee, Chair of Membership Committee, or Wendy Ernst at the AALS.

#### NOMINATIONS

If you are interested in running for a section office or serving on a Section Committee, contact Susan Bryant, Queens College, Chair Elect.

#### TAP

The Tenure and Promotion Advisory Project continues to offer its assistance to those concerned with faculty status issues.

The Project has collected information about law schools' efforts to design programs providing clinicians "substantially equivalent" long term contracts. These materials are available from Kandis Scott, University of Santa Clara Law School.

Teachers who have been recently appointed to tenure tracks may wish to consult with a more experienced clinician about the tenure process generally, evaluations of teaching and scholarship, school visits by other clinicians, and other matters of concern.

TAP continues to compile the names of tenured clinicians and those on longer term contracts. If you fit those categories, please send your name to Kandis Scott.

#### BITS AND PIECES

##### 405 (E) IN CHICAGO

During its Annual Meeting in Chicago, the ABA House of Delegates approved a new standard for the accreditation of law schools. Accreditation Standard 405(e) was adopted by the House with "should" substituted for "shall." The full text of the recommendation of the Council of the Section of Legal Education and Admissions to the Bar as it was approved by the House is reproduced following this report.

The June Newsletter reported that the Council of the ABA Section on Legal Education and Admissions to the Bar had voted unanimously in May to recommend approval in August by the ABA House of Delegates of a

new accreditation Standard which was intended to improve the status and job security of clinical law teachers. This was expected to be opposed by the AALS and supported by clinicians.

Before the ABA meeting, however, the leadership of the Section and the leadership of the AALS reached a compromise which resulted in AALS support for 405(e) in exchange for the substitution of the word "should" for the word "shall" in the standard. The agreement was originally reached between Bob McKay, chairman of the Council of the ABA Section and Dick Julin, president of the AALS, with Gordon Shaber, chairman of the Section's Standard's Review Committee participating. No clinician was involved or consulted prior to the compromise being made. Members of the Council of the ABA Section were then asked to approve the compromise, and a majority did (apparently, only three voted against it: Dean Rivkin, Norm Krivosha, and Henry Ramsey).

The clinical teachers who learned of this were outraged by the change and were particularly angered that the agreement had been made without prior consultation with clinicians and without providing anyone an opportunity to comment on this apparently significant amendment to language which had been "shall" on the floor of the House of Delegates, a seemingly insurmountable objective. However, the alternative plan was to attempt to prevent the adoption of 405(e) in order to buy time, if it was the judgment of the clinicians at the ABA meeting that clinical legal education would be better off with no standard than with 405(e) with "shall."

After arriving in Chicago, clinicians met privately and publicly with leaders of the ABA and AALS. The conclusions reached after these meetings were: (405(e) with "shall" would do more to improve clinical legal education than 405(e) with "should;" the compromise by the ABA Council was based on political considerations not related to clinical legal education more than by any belief that "should" was preferable to "shall;" and clinical legal education would be better served by the adoption of 405(e) with "should" than by no standard at all. This was reinforced by discussion during the Council's meeting (attended by approximately ten clinicians) which emphasized its intention to see that 405(e) brought about the same charges whether "should" or "shall" was used. Norm Redlich and Dick Huber made it clear that their votes for "should" would change if the desired impact was not produced quickly. This was the general sentiment of many other members of the Council, including Sam Roberts the incoming chairman.

When the issue came before the House of Delegates, an attempt was made to have the Standard amended on the floor of the House to its original form with "shall." The motion came from the delegate of the Criminal Justice Section. However, the effort was engineered by Bill Greenhalgh. After some debate, the motion to amend failed by a vote of 106 to 184. The vote on the Standard followed almost immediately with insignificant opposition.

The effort to amend represented the first time that clinical teachers have attempted to influence the House of Delegates other than through established channels and organizations. The clinicians lost due to a combination of factors: They were opposed by the Association

of American Law Schools, the ABA Section of Legal Education and Admissions to the Bar, and, perhaps most significantly, by the ABA Board of Governors. (Some members of the Board of Governors did not even remember endorsing "should," as it had been rubber-stamped by them as a routine matter.) It was felt that the short time in which the clinical teachers had to organize this effort resulted in too many delegates remaining uneducated about the significance of the issue. There were too few clinicians in Chicago to overcome this ignorance before the vote was taken.

However, most observers felt it was very significant that, despite these handicaps, the clinicians had convinced 106 delegates to vote for "shall." This was viewed as evidence of what clinical teachers have maintained all along: the lawyers and judges who make up the majority of the American Bar Association membership view clinical legal education in a very positive light. They understand that clinicians are achieving many of the things which they believe should be done to improve legal education and, ultimately, the competency of all practicing attorneys. They also do not like unequal treatment among legal educators, particularly if the legal educators who are teaching about law practice are the ones being treated as second class citizens.

The strength shown in Chicago is attributable to one person: Bill Greenhalgh. Roy Stuckey, Dean Rivkin and Gary Palm were also in Chicago supporting "shall," as were a number of clinical teachers from Chicago law schools. A large number of clinical teachers around the country had written delegates about 405(e). This helped tremendously. However, Bill deserves credit for 98% of what was accomplished. By the time the House of Delegates met, he had the support of a number of groups in the ABA, most of whom spoke or attempted to speak on behalf of "shall" during the debate. Among those who spoke were: Gale Thetford, one of the delegates for the Law Student Division; Marna Tucker, President, D.C. Unified Bar; Tony Palermo, a state delegate from New York; and Bill Greenhalgh. Waiting in the wings to talk when debate was cut off were Kathleen Dussalt, the other delegate of the Law Student Division and Bob Hanley, past chairman of the Litigation Section. Also supporting the move were David Brink, past president of the ABA, the Judicial Administration Division, and Joe Potenza of the Young Lawyers Division. (The Young Lawyers Division had voted to instruct its delegates to vote for "shall" following a debate during its assembly between Bill Greenhalgh and a designated young lawyer. Bill carried the day when a young lawyer in the audience rose to explain that she had gone to a law school in the midwest where the clinical director had been forced to go into traditional teaching. There had been no career track for him in clinical teaching. She mourned the loss of a good clinician.)

The "shall" amendment was defeated in the House in part because of the oratory used by the people who spoke against it. However, the gist of their comments was not at all antagonistic to the ultimate goals of clinical teachers. They all said or implied that the House of Delegates would be given an opportunity to reconsider their vote if "should" did not quickly accomplish significant change in the status of clinical teachers. Sharp Whitmore, the delegate for the Section on

Legal Education and Admissions to the Bar, made a very positive statement about clinical education, including the observation that employment status at a law school should not be dependent on the subject one teaches. He mentioned that if "should" doesn't do the job, then future re-evaluation would be available to the House of Delegates. Bob McKay, outgoing chair of the Section, said the only question is one of timing. He predicted that the good sense of providing job security and better treatment for clinical teachers will persuade schools to do it, even if "should" is used in the Standard. He felt it was too early to make it mandatory. Dick Julin, President of the Association of American Law Schools, reflected much of what Bob McKay had said. He explained that the Association wants to help accomplish the results being sought through 405(e), but it wants to avoid risking any diminution of programs as a result of moving too quickly.

When the vote had been taken and the dust settled, everyone agreed that clinical teachers are capable of winning future fights in the House of Delegates, with or without the support of the Section on Legal Education and Admissions to the Bar or the Association of American Law Schools. This should help ensure that the Section and the Association are not likely to make decisions of importance to clinicians again without first providing them an adequate opportunity for input. It was also evident that clinical legal education is clearly accepted as a legitimate part of legal education.

Several other things related to 405(e) happened in Chicago. The Council of the Section on Legal Education and Admissions to the Bar decided to survey law schools as soon as possible to determine precisely what is the status of clinical teachers. It will resurvey law schools early in the Spring and compare the information to determine whether or not significant change is occurring. If not, the Council would be able to change its position on "should" or "shall" as early as its meeting in May, 1985. (Perhaps, although he was not heard to say it, Bill Greenhalgh would have been justified in saying "just wait til next year.") It is clear that the Council remains very supportive of clinical education and does not intend to lose interest in the near future.

It has been reported to the AALS Executive Committee by Millard Ruud that some clinicians view the Executive Committee as "the enemy." This is probably accurate. However, discussions in Chicago with the executive officers of the Association led a number of clinicians to believe that this opinion may be unjustified. There are reasons to hope that the Association will now work diligently to encourage schools to provide appropriate status and recognition for clinical teachers. At least, new lines of communication have been opened which should provide more accurate information concerning the perspectives and motives of the AALS Executive Committee.

Although there was no activity generated by them on the floor of the House of Delegates, some people may be interested to learn that on July 26, 1984 (about a week before the vote on 405(e)) deans Paul Carrington, Duke; Gerhard Casper, Chicago; Carl Hawkins, BYU; and Terrance Sandalow, Michigan; wrote every member of the House of



Delegates a letter in which they expressed their opposition to 405(e). The letter's main thrust was the issue of over-regulation of law schools. This is consistent with previous positions which these deans have taken with regard to other accreditation standards. The delegates apparently disregarded the letter.

The next chapter? It is unclear precisely what will happen next. Jim White, Consultant on Legal Education to the Section on Legal Education and Admissions to the Bar, has already written all deans about the action by the House of Delegates, and he will in the near future send another letter explaining how it will be applied in the accreditation process.

Everyone who is interested in the welfare of clinical legal education should now work together to create an atmosphere in which deans and faculties can respond to 405(e) in a rational, thoughtful manner, not an emotional one. Stay tuned.

#### TEXT OF STANDARD 405(e)

The law school should afford to full-time faculty members whose primary responsibilities are in its professional skills program a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided other full-time faculty members by Standards 401, 402(b), 403 and 405. The law school should require these faculty members to meet standards and obligations reasonably similar to those required of full-time faculty members by Standards 401, 402(b), 403 and 405.

#### GREENHALGH THANKS 405(e) SUPPORTERS

Bill Greenhalgh, Georgetown, leader of the fight at the ABA Annual Meeting for the mandatory version of 405(e), has asked that his letter to the supporters be reprinted in the Newsletter. As Bill points out, "many, many clinicians who were not present did write important letters to members of the House of Delegates as promised." These supporters should also be recognized and thanked.

Dear Friend:

The smoke has just cleared from the Accreditation Standard 405(e) battlefield. Several hundred clinical educators engaged in the fulltime teaching of professional skills now face the future protected by a hortatory standard of employment security, amorphous in application, hollow in effectuation and illusory in enforcement. Some of my colleagues feel that we are better off than we were before. I disagree. We have just been formally relegated to second class professionalism.

Notwithstanding the dire consequences of this continuing discrimination in American legal education, I very much wish to thank you, both upon behalf of all my peers and myself, for not only the moral but voting support on the floor of the House of Delegates on Tuesday, August 7, 1984. With the forces of the elitist AALS arrayed against us, the iniquitous capitulation of the Legal Ed Council, and

the unwitting role played by the Board of Governors in changing the magic word "shall" to "should," its a political miracle we mustered 106 votes in support of the "shall" amendment. You should be very proud of the role you played.

In closing I am reminded of the words of Theodore Roosevelt when he said:

. . . The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes short again and again; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who, at best, knows in the end the triumph of high achievement, and who, at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those timid souls who know neither victory or defeat.

We very much appreciate your last full measure of devotion to our cause, because it was fair and just.

Many thanks,  
William W. Greenhalgh

#### LSC FUNDS EARMARKED FOR CLINICS

The appropriations bill funding the Legal Services Corporation for fiscal year 1985, P.L. 98411, signed into law on August 30, earmarks \$2 million for grants to law schools to develop clinical programs and materials which will "increase quality legal services to the elderly." The grants, not to exceed \$200,000 each are to begin no later than July 1, 1985 and to be completed by July 1, 1987. This provision was added to the bill at the insistence of Congressman Neal Smith (D-Iowa) who is a strong advocate for clinical education as well as service to the elderly. The pertinent language of the bill reads:

\$2,000,000 shall be available to increase quality legal services to the elderly by: (1) developing classroom and bar association source materials on law affecting the elderly for use by law schools, the private bar, legal services grantees, and in continuing education seminars; (2) developing plans to encourage the private bar to do more to provide better pro-bono services for elderly and higher quality paid services; (3) developing a clinical program to supplement local Legal Services Corporation grantees; and (4) disseminating the results to other law schools, legal aid societies and other interested parties; such pilot programs shall be distributed, if applicants are available, to varying size and geographically located schools; at least 50 per centum of the funds required shall come from non-federal sources and federally funded assets and projects will not be included in in-kind services; no grant shall exceed \$200,000; the application and award procedure shall not require a detailed plan or extensive paperwork so long

as the recipient signs a guarantee that more than 50 per centum of the funds required shall come from non-federal sources and that federally funded assets and projects will not be included in in-kind services; the awards shall be made by July 1, 1985 and the projects shall each be completed by July 1, 1987; grantees shall not copyright the material developed and shall not charge other than private groups or individuals for such material and such charge shall not be more than approximately their net cost of production.

LSC ANNOUNCES ADDITIONAL GRANTS  
From Information Supplied By  
The Legal Services Corporation

The Legal Services Corporation has announced five additional grants for the expansion and development of clinical programs to assist LSC eligible clients in receiving legal representation. The original nine grants, reported in the June Newsletter, are part of a demonstration project to fund law school civil clinics for an 18 month period beginning in the fall of 1984. The additional grants were made to increase the geographic dispersal of the demonstration programs. The new recipients are:

North Carolina	\$ 70,000
Notre Dame	85,000
Gonzoga	75,000
San Diego	54,000
SUNY Buffalo	77,000

The Legal Services Corporation also announced that William Pincus, former head of CLEPR, will develop the evaluation plan to be used by LSC in determining the success of the demonstration project.

PRETTYMAN PROGRAM CONTINUED  
By  
James Doyle, Georgetown

Georgetown University Law Center has announced the continuation of the E. Barrett Prettyman and Stuart Stiller Fellowship Programs in its Graduate School of Law. Fellowships with a stipend of \$13,750 per year, in addition to full tuition and fees, will be awarded to five outstanding recent law graduates who will be selected to participate in the two-year program leading to an LL.M. degree. Four fellowships were established in honor of the distinguished former Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, and one fellowship honors the distinguished advocate and lecturer, Stuart Stiller.

Scope of the Program:

Applicants who have been awarded Prettyman Fellowships or the Stiller Fellowship register at the Law Center in mid-August. The



first six weeks of the program is devoted to a comprehensive and intensive study of the criminal law, procedure, and rules of evidence of the District of Columbia. Thereafter, the fellows engage in representing indigent clients on trial in the federal and local courts of the District of Columbia. Most clients are received by court-appointment; however, many telephone or walk into the office seeking legal assistance. The large majority of trial work is in the Superior Court of the District of Columbia. In addition, a few appointments are accepted in the United States Court of Appeals; and the Program has filed an amicus curiae brief in the Supreme Court each of the last three years. Fellows begin their fieldwork by representing indigent clients in misdemeanor and juvenile cases and soon move on to felony appointments. All trial work is under close supervision of the director of the program and his assistants, all of whom have substantial experience in the trial of criminal cases. The fellows are supported by a professional investigator and by ongoing relationships with groups such as the Medical School's Department of Forensic Psychiatry. At the beginning of the second year, the fellows will substantially reduce the number of cases they accept and will assume major responsibility for the supervision of third-year Georgetown law students in our clinical programs. The fellows will become supervising attorneys for the Criminal Justice Clinic and the Juvenile Justice Clinic. In these clinics, third-year law students will represent, under the authority of the student practice rule, indigent defendants in petty offenses, misdemeanors and juvenile proceedings. The fellows will also bear some of the responsibility for classroom instruction in the clinics. Thus, the Prettyman Fellowship Program, while retaining its emphasis on trial advocacy, will relate to Georgetown's clinical programs which entail trial work. At the same time, the fellows will share, as clinical instructors in training, in the operation of what we believe are model student clinics.

The fellows also pursue a program of graduate study developed on the basis of the program's past experience. The principle instructional device is the series of orientation seminars, totalling over one hundred hours of instruction, conducted by the Director and consulting experts. Each fellow is additionally required to take eight hours of course work in the Graduate School of Law during his two years in residency. There are a number of related and acceptable courses and seminars at Georgetown from which the fellows can elect, including Juvenile Court Practice and Procedure, Competency and Criminal Responsibility, Forensic Sciences, and Expert Testimony. In addition, course work in the Department of Psychiatry of the School of Medicine at Georgetown University, and at the graduate level in criminology at American University can be approved for credit.

The program ends in July of the second year. The degree of Master of Laws is awarded to fellows who have successfully completed the course of study and submitted a paper of publishable quality. Fellows are required to spend all of their time in fulfillment of the requirements of the program.

Application:

Any person who has graduated or who will graduate in June from an approved law school in the United States, and who has been awarded an undergraduate degree from an approved college or university is eligible to apply for a fellowship. Of course, it is essential that the fellows be members of the District of Columbia Bar. In the case of applicants who are not members of the Bar of the District of Columbia, tentative selections will be made. In all cases where an applicant has been tentatively selected, another applicant will be designated as an alternate. An applicant's participation in the program is contingent upon his passing the bar examination.

Applications should be submitted by December 1, 1984. Fellows will be selected in January, 1985. Inquiries, requests for applications, and application forms should be directed to:

William W. Greenhalgh, Director  
LEGAL INTERNSHIP PROGRAM  
Georgetown University Law Center  
Clinical Program Center  
605 G Street, N.W., #300  
Washington, DC 20001

PINCUS RECEIVES FIRST KUTAK AWARD

William J. Pincus, former president of the Council on Legal Education for Professional Responsibility, was the recipient of the first Robert J. Kutak Award for outstanding contributions to legal education. The Award, presented by the ABA Section of Legal Education and Admissions to the Bar, was given at the Section's business meeting on August 6 at the ABA Annual Meeting in Chicago. The Award, which is not given annually but only when merited, is in the form of a medal. Recipients are selected by the Section's Council. Robert McKay, NYU, Chair of the Section presented the Award to Mr. Pincus in honor of his many contributions to legal education through the efforts of CLEPR in encouraging the development of clinical legal education.

BRIDGE-THE-GAP STUDY NEARING COMPLETION

Reprinted from ALI-ABA CLE Review, Sept. 14, 1984, at 3.

At the suggestion of the conferees at the ALI-ABA sponsored 1981 Houston Conference on Enhancing the Competence of Lawyers, the ALI-ABA Committee undertook an extensive nationwide study to obtain more information about short-term, post-law school bridge-the-gap courses and to assess their effectiveness in preparing new lawyers for practice.

The study was begun in mid-1982 under the direction of its Reporter, the Honorable Howard H. Kestin, Judge of the Superior Court of New Jersey. He has been assisted by the three members of the Bridge-the-Gap Subcommittee -- A.G. Cleveland, Jr., of Atlanta, T.L.

Caudle III of Dallas, and Millard H. Ruud of Austin, Texas -- and the Director of the ALI-ABA Office for Research and Development, Mark Mendenhall.

Gathering information about the sponsors of the bridge-the-gap courses, was the first of six phases in the study. Some 39 sponsors of statewide bridge-the-gap courses, as well as 12 local sponsors of similar courses, were identified.

Six major survey instruments were developed to solicit information from course sponsors, course attendees, young lawyers, law firm training partners, course observers, and course materials reviewers. After the attendee questionnaires were field tested in the spring of 1983, full-scale distribution of the questionnaires began in the summer of 1983 and continued through the spring of 1984.

Of the 31 course sponsors of CLE providers who participated in the study, 25 sponsored statewide programs and six sponsored local programs. Sponsors cooperated by completing an extensive sponsor's questionnaire and by distributing blank questionnaires to the more than 4,000 lawyers who attended their courses. Some 1,600 responses have been received and are being tabulated and analyzed.

In addition to these questionnaires, several ancillary questionnaires were developed to solicit information from young lawyers generally about their initial training experiences, and from law firm training partners about their familiarity with bridge-the-gap programs. The views of some 800 attorneys were obtained in this portion of the study, the results of which are being tabulated and analyzed.

Another part of the study involves reviewing the course brochures and written course materials that accompany each program. Brochures from each course and written course materials from 22 sponsors have been collected and will be examined for the final project report.

The Bridge-the-Gap Study is now entering its final phase. The massive amounts of data that have been collected are being tabulated, some by computer, and will be carefully reviewed so that a preliminary draft report of the Subcommittee's findings can be presented to the full ALI-ABA Committee at its next meeting in November 1984.

#### WITNESS PREPARATION MATERIALS WANTED

Bethany Dumas, a 3rd year law student with a Ph.D. in linguistics, is interested in any materials you may have run across regarding witness preparation, particularly as regards the courtroom restrictions on language used by witnesses (if you use the right words, you can get it in but if you use the wrong words, the objection is sustained). Please contact Bethany at the University of Tennessee Law Review, 1505 W. Cumberland, Knoxville, TN 37996-1800.

## TENURE TIP

Some do not write for personal intellectual satisfaction or to improve the profession. Those goals are just incidental benefits for the teachers writing to get tenure. If one must write for tenure, one must consider that goal from the beginning of a project.

When choosing a topic, clinicians should consult influential faculty members about its appropriateness. Often an unsympathetic colleague has the most realistic view of how a topic will be accepted. If only "friendly" or clinical faculty believe that a topic is worthwhile, it will be hard to persuade the entire faculty or the tenure committee that the paper is worthy.

Clinicians should continue this consultation while researching and writing. The best advisor may be the unsympathetic faculty member who is knowledgeable, or at least intelligent and interested, in the relevant area of law. That person can keep the writer on the right track substantively. Moreover, an established teacher's interest in a new teacher's project suggests to others that the project has merit. Ongoing criticism from a person who knows the faculty's standards can assure that the work will meet those standards. Finally, it should help in the tenure evaluation to have respected teachers who understand one's scholarship thoroughly.

## AALS WORKSHOP ON SOCIAL SCIENCE

The theme of the Essay section of the Newsletter for this and the last issue has been empirical research. One of the themes of the National Clinical Teachers Conference held at Duke in May was also this subject. If you have caught the the religion or are interested, but still in doubt, the AALS Workshop on the Role of Social Science in Legal Scholarship and Legal Education will be of help. The Workshop will be held at the Key Bridge Marriott Hotel in Arlington, Virginia on November 1-3. The schedule is:

Thursday, November 1

5:00-7:00 p.m.  
Registration

7:00-8:30 p.m.  
Reception

Friday, November 2

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

Millard H. Rudd, Executive Director  
Association of American Law Schools

Joyce S. Sterling, Chair  
AALS Planning Committee for Workshop on  
Social Science and University of Denver

9:00-10:30 a.m.

Contributions of Empirical Data to Legal Research:  
Defining the Problem, Identifying, Collecting  
and Analyzing Data and Integrating Law and  
Social Science

Convenor:

Richard O. Lempert, University of Michigan

Presenters:

Julius G. Getman, Yale University  
Lee E. Teitelbaum, University of New Mexico

10:30-10:45 a.m.

COFFEE BREAK

10:45-12:15 p.m.

Small Group Discussions

Discussion Leaders:

David C. Baldus, University of Iowa  
Sheldon J. Plager, University of Indiana, Bloomington  
Maurice Rosenberg, Columbia University  
Victor G. Rosenblum, Northwestern University  
Richard D. Schwartz, Syracuse University  
Joyce Sterling, University of Denver

12:30-2:00 p.m.

AALS SPONSORED LUNCHEON

2:00-3:30 p.m.

Contributions of Social Science to Understanding  
the Legal System: Selected Examples

Professionalism in Legal Profession

John P. Heinz, Northwestern University

Civil Litigation

George L. Priest, Yale University

Sentencing

Ilene H. Nagel, Indiana University, Bloomington

3:30-3:45 p.m.

COFFEE BREAK

3:45-5:15 p.m.

Small Group Discussion

Saturday, November 3

9:00-10:30 a.m.

The Use of Social Science in Policy and Decision-making  
David C. Baldus, University of Iowa  
Maurice Rosenberg, Columbia University  
Victor G. Rosenblum, Northwestern University

10:30-10:45 a.m.

COFFEE BREAK

10:45 a.m.-12:15 p.m.

Small Group Discussion

Discussion Leaders:

Julius G. Getman, Yale University  
John P. Heinz, Northwestern University  
Richard O. Lempert, University of Michigan  
Ilene H. Nagel, University of Indiana, Bloomington  
David M. Trubek, University of Wisconsin

12:15-2:00 p.m.

Lunch (on your own)

2:00-3:00 p.m.

The Place of Law and Social Science in the Structure of  
Legal Education

Moderator and Presenter:

Sheldon J. Plager, Indiana University, Bloomington

Presenter:

David M. Trubek, University of Wisconsin

3:00-3:15 p.m.

COFFEE BREAK

3:15-4:00 p.m.

Plenary Discussion

The registration fee is \$300 for faculty of AALS member schools, \$350 for faculty of fee paid schools and \$370 for faculty of non-fee paid schools. A faculty discount of \$75 is offered to the second and additional faculty members from the same school who register for this workshop. For further information, contact the AALS, One DuPont Circle, N.W., Suite 370, Washington, D.C. 20036.

#### SHORT STUFF

Alan Kirtley has returned to the fold by rejoining the faculty at Puget Sound as a clinical teacher.

Carrie Menkel-Meadow was a participant in a conference on mediation: "Beyond the Adversary Model: The Teaching and Practice of



Mediation," held June 28-July 1, sponsored by the Center for Law and Human Values.

Paul Brest, Kenneth and Harle Montgomery Professor of Clinical Legal Education at Stanford, delivered the thirty-first Cleveland-Marshall Fund Lecture on November 6th. The title of his talk was "The Constitution of Democracy."

Columbia School of Law has announced a gift of \$1 million for the clinical program from Jerome L. Green.

Gary Lowenthal is visiting at Stanford for this academic year.

Rod Jones, former chair of the Section, has resigned from the faculty at Southwestern. Rod will be missed as an excellent clinical teacher and a valued contributor to the Section.

Ron Staudt, Chicago-Kent, moderated a panel on the impact of the computer on legal education at the meeting of the Section of Legal Education and Admissions to the Bar during the ABA Annual Meeting in Chicago, August 2-7.

Several clinical teachers conducted workshops at an ABA program, "Juvenile Delinquency Trial Techniques," held September 15-16 in New York. Wallace Mlyniec, Georgetown, ran one entitled "Interviewing the Client and Plea Bargaining;" Andy Shookhoff, Georgetown, led "The Role of the Attorney in Delinquency Cases;" Steve Wizner, Yale, did "The Dispositional Hearing;" and Robert Shepherd, Richmond, conducted "Suppression Hearings."

John Barki, Hawaii, will be conducting a seminar in Palau, Micronesia, in January.

## JOBS

### ANTIOCH

ANTIOCH SCHOOL OF LAW has an immediate opening for an Associate Dean for Clinical Affairs. The Associate Dean will have overall administrative responsibility for Antioch's clinical program. Additionally, the position requires budget oversight, grant writing and management, Legal Corporation grant administration and oversight of graduate legal fellows program. The person should have at least seven years of litigation and/or live clinical legal education teaching experience, have previously been involved in the supervision of attorneys, have familiarity with Legal Services Corporation regulations and have general administrative and budget making experience. Salary based upon experience. Please send detailed resume and references to: Mr. Francis Stevens, Antioch School of Law, 2633 16th Street, N.W., Washington, DC 20009. Antioch is an equal opportunity employer.

## HAWAII

The UNIVERSITY OF HAWAII invites application for a 9 month, full-time, tenure track position, which is 1/2 to 3/4 clinical teaching. Traditional tenure requirements (publications, teaching, community service) will apply to this position. The clinical responsibilities will include both classroom teaching and fieldwork supervision. The present clinic is a criminal clinic, but the new clinician could run a civil or a criminal clinic. Hawaii Bar membership is required. A full-time faculty member is eligible for admission to the bar without taking the bar examination. Send detailed resume or inquiries to Professor John Barkai, Chair, Faculty Appointments Committee, University of Hawaii Law School, 2515 Dole Street, Honolulu, Hawaii 96822, phone 808-948-6546.

## KANSAS

UNIVERSITY OF KANSAS SCHOOL OF LAW is seeking well qualified lawyers for positions beginning with academic year 1985-86. These positions are contingent upon the availability of funding and include permanent, visiting, 12-month, 9-month, semester, and summer session appointments. Positions can include tenure-track appointments in clinical education. Applicants must hold J.D. or LL.B. with outstanding academic record from an accredited law school. Significant legal experience is preferred. For information, contact Professor Sidney A. Shapiro, Faculty Recruitment Committee, School of Law, University of Kansas, Lawrence, KS 66045. We are an Equal Opportunity/Affirmative Action employer.

## NORTHWESTERN

NORTHWESTERN UNIVERSITY SCHOOL OF LAW is seeking to fill a tenure track clinical line beginning with the 1985-86 academic year. Interested persons should submit a resume to Professor Ronald Allen, Northwestern University School of Law, 750 North Lake Shore Drive, Chicago, IL 60611.

## TENNESSEE

UNIVERSITY OF TENNESSEE is seeking to hire a person for tenure track position with primary responsibilities in its Legal Clinic. We are looking for a person interested in clinical theory and practice and in creative teaching and law practice. Teaching and work in the Legal Clinic require a commitment to a collaborative work environment. We are particularly interested in applications from minorities and women. Contact Dean Rivkin, U.T. Legal Clinic, 1505 W. Cumberland, Knoxville, TN 37996-1805 (phone 615-974-2331).

## TOLEDO

UNIVERSITY OF TOLEDO COLLEGE OF LAW is seeking applicants for the position of Director of the Criminal Law Practice Program. This faculty position is a tenure track position and also involves teaching non-clinical courses. The clinical program has a classroom and fieldwork component. Two adjunct professors assist the director in

the field work. For further information, write Prof. Ronald Raitt, Univ. of Toledo College of Law, 2801 West Bancroft Street, Toledo, Ohio 43606. An equal opportunity employer.

### ESSAYS

The essays for this issue of the Newsletter are a continuation of last issue's topic of empirical research. With the adoption of Accreditation Standard 405(e), the pressure on clinicians for publication will undoubtedly increase. These essays, it is hoped, will provide guidance and inspiration as we undertake our own scholarly endeavors.

#### REFLECTIONS ON CLINICAL SCHOLARSHIP

By

Gary Lowenthal, Arizona State  
(visiting at Stanford)

Clinicians' research interests are easily identified. We need to examine what lawyers and students actually do when practicing law, why they do it, whether there are preferable alternatives, and how we can formulate and present those alternatives. Whenever we analyze a student's performance, prepare for a classroom discussion, or meet at conferences to share ideas, we struggle with many stimulating questions and few satisfying answers, as we try to conceptualize about lawyering behavior. Is argument used differently in negotiation than in presenting a case before a tribunal? What factors impede a student's ability to help a client choose between alternatives? In what contexts is a "funnel approach" inappropriate for fact gathering? What is the relationship between lawyers' values and their decision-making? Is it possible to define professional competence in various tasks and functions performed by lawyers? Can we formulate meaningful categories of behavior that differentiate between good and bad lawyering? The questions we need to address in our research are the very ones we ask in the classroom.

This coincidence between instructional issues and research topics is no accident. Let's face it. We know little about the subjects we teach. For example, the more time one spends thinking about negotiation, the less certain he or she feels about its content. We also understand little about our pedagogy beyond an intuitive level. We advocate a non-directive approach to criticizing students' performance, yet most of us find ourselves telling our interns what they're doing wrong. It is frustrating to be an instructor when you do not fully comprehend about how it should be taught but something in your subconscious tells you to do it a different way.

Ironically, this very frustration makes clinicians' scholarly mission an especially exciting one. Frank Bloch and Carrie Menkle-Meadow expressed this sense of excitement at the 1984 Clinical Teachers Conference, emphasizing the promise of empirical research to explore questions of lawyers' behavior, values and competence, as well as the richness of our case files as a data base. Peter Hoffman has reemphasized this mission by calling for descriptions of ongoing

empirical research in the Newsletter. Most clinicians hunger for studies about decision-making, negotiations and the dynamics of the lawyer-client relationship.

Not surprisingly, this preference for empirically based scholarship reflects the methodology of our teaching. We formulate hypotheses about lawyering when we challenge our students to think about professional behavior. Then we test those hypotheses by observing our students, and either affirm them, modify them, or search for new hypotheses. Clinical teaching reflects the methodology of the social scientist rather than the traditional legal scholar. Therefore, it is natural that our research interests also reflect this bias.

Recognizing clinicians' preference for empirical research, it is not difficult to identify reasons for our admittedly scant literature. First, much empirical work takes years to design, implement and report. I am, for example, studying how decisions are made by criminal lawyers and their clients. I hope to test and compare David Binder's counseling model with a traditional "client control" approach. My project involves interviews with approximately 170 former defendants and their lawyers. It took more than a year to find co-researchers with appropriate abilities, design an effective methodology, draft a proposal, and obtain funding. Data collection, involving over 300 in depth interviews, will take another year. Coding, entering the data on my University's research computer, and statistical analysis also will take substantial time and resources. Then I can begin writing. Clinical legal education is a young discipline. Developing a literature will take both time and patience.

Second, consider the dynamics of the tenure process. As clinicians march forward to the glories of the scholarship wars under the banner of "empirical research," we encounter battlefields littered with the bodies of our colleagues from the recent past. Tenure decisions at prestigious law schools have reflected faculty assessments of the quality of a candidate's scholarship. In the near future, most schools will make qualitative assessments of scholarship when making personnel decisions. Bear in mind that the faculty members making those assessments generally are and will continue to be traditionalists, while clinicians under scrutiny typically are at early stages of their academic careers, with burdensome teaching responsibilities. The record to date of empirically oriented clinical scholars in the tenure process has been mixed, at best.

I am reminded of the Impressionist painters trying to display their works in Paris galleries little more than a century ago. Art critics of that age viewed the paintings of Manet, Monet and their contemporaries either as "non-art" or as low quality work unworthy of display in the world's finest showplaces. Similarly, I had a friend on a prestigious law school faculty fifteen years ago who specialized in Chinese Law hardly a mainstream legal field in 1969. Although he published a competent book on Chinese legal institutions, his faculty denied him tenure because they viewed the book as "too much about China and not enough about law." Two years later Nixon went to Peking, commerce between the two nations increased dramatically, law

schools became interested in China, and some people criticized the shortsightedness of my friend's former colleagues. Nevertheless, the key word in the last sentence is "former."

I use these illustrations not because I equate Manet with Menkel-Meadow or because I foresee a dramatic change in traditionalist views lurking around the corner. Instead, my point is that the tenure process provides a disincentive for clinicians inclined to engage in empirical research. This problem is exacerbated because, as I noted earlier, much high quality empirical work takes years to develop and produce.

A third factor retarding the growth of clinical literature is the demand of clinicians' teaching and administrative work loads. I have taught criminal law and criminal procedure courses during some academic years without any clinic responsibilities. Even in a rapidly changing field like criminal procedure, I have been able to put aside blocks of time each week during those years to concentrate on my scholarship. In other years, when I have supervised students and have managed the operations of a clinic, I have found little time to think about data collection and writing. Traditional teaching is highly structured; the class meets at certain times each week and the instructor engages in preparation for a number of hours before each class. It is easy to plan one's time in such a structured setting. On the other hand, a clinician is more at the mercy of court calendars, student schedules, witness' availability, and clients' work schedules. A clinic, by its very nature, does not provide the ivory tower necessary for sustained scholarly endeavor.

Fourth, much empirical research requires a more substantial commitment of resources than does most traditional legal scholarship. Social scientists and statisticians usually do not donate their time to lawyers conducting empirical studies. In addition, in most projects a staff is needed to collect data, collate it, code it and enter it into a computer. At some universities, computer access is expensive. Even simple empirical projects usually require more resources than traditional legal scholarship. At many schools, clinicians are fighting for sufficient funds merely to keep their clinics operating adequately. Research support in these circumstances may be extremely difficult to obtain.

Knowing what we can do and identifying the factors retarding our efforts, we can draw some conclusions about the growth of clinical scholarship. First, despite the crying need for empirical studies on the lawyering process, this need should not be met by tenure track clinicians who have not yet obtained tenure. I strongly recommend that persons in this category devote their attention to manageable articles consisting of doctrinal analysis. The primary audience for initial articles by law school faculty is going to be a tenure committee, not clinical colleagues at other schools. Truly significant contributions to the growing literature of clinical legal education are most likely to be the product of years of observation, reflection and communication with other clinicians, in any case. We want you to be still around when you are most able to make those contributions. In addition, there is much to be learned from the

process of preparing and publishing a well written article, regardless of its subject matter. True clinical scholarship can come later, when the pressure and time constraints of a tenure decision will not compromise the product.

Second, there are a large number of experienced and thoughtful clinicians who have participated in conferences and programs throughout the years, but have not contributed their insights to the scholarly literature. If we are going to become a true academic discipline, these people must produce. Yes, your administrative and teaching responsibilities are overwhelming, and you have long lamented the fact that you do not have the time for research. But who has thought more about the issues than you? Who is going to write the seminal piece on lawyers' decision-making, if not you? Would you prefer that it simply is not written? Some of your clinical colleagues, with equally demanding pressures, have made valuable scholarly contributions by finding the time.

"Finding the time," by and large, means negotiating with one's own law school and university for sufficient resources. Instead of requesting an additional staff attorney, a couple of word processors or new video tape equipment, sometimes clinicians should consider asking for release time, research assistants, or funds for social science consultants. Although it is possible to obtain funding from the National Science Foundation, the American Bar Foundation and other external sources, most clinical scholars with worthwhile projects will not be so fortunate. Initial projects will not be, and probably should not be, on a large scale or expensive. But choose a topic related to the lawyering process; your clinical colleagues can learn more from your study of decision-making than from your thoughts about the latest Supreme Court decision in your substantive field. Even if the short term cost of scholarship is a reduced clinical offering to your students, the long range benefit may well be worth it.

#### SHARING OF EMPIRICAL RESEARCH

By

Frank Munger, Antioch

One of the new themes of the AALS Clinical Law Teachers Workshop this year was scholarly writing by clinicians. It was apparent that many clinicians do not need to be convinced of the value of developing insights gained in clinical teaching and of packaging them in the formal style to which law reviews have become accustomed. What many clinicians badly need is a summer off and support for their work. One of the forms of support which clinicians can provide to each other is information sharing. What follows is offered only as a beginning, and will help mainly persons who want to do empirical research.

Getting Started: My best advice under all circumstances is to talk to others about the work you want to do. A friend will often do to start with, but eventually talk with others who have done research similar to what you have in mind or who are likely to know something about the field you are interested in. My experience has been that



people are much more willing to share information and to give advice than I possibly could have imagined. Therefore, the place to start, at whatever rudimentary stage of development the project may be lingering, is with phone calls and letters asking for advice, for papers, and for other contacts. By the time you have completed this stage, your topic may have changed, or may have become more focused. You will know about "the state of the art."

There are a few people who have been nearly invariably helpful and who are broadly knowledgeable about empirical research on legal education and lawyering: Carrie Menkle-Meadow or Rick Abel at UCLA; Gary Bellow, Legal Services Institute, Boston, MA; Bea Moulton, Stanford. While these persons are broadly knowledgeable and well-connected, one should never hesitate to call or write the author of work related to your topic. The task is to find out who these people are. They are likely to come from diverse backgrounds - law, sociology, political science, psychology - but probably publish their work in a small number of journals (see below). Unpublished work in progress is harder to find. Here is where networking within and outside the Clinical Section will help. For research in progress on court systems (very broadly interpreted) see the Court Improvement Bulletin published by the American Judicature Society. For advice both about who is doing what in empirical legal research and about matters related to funding, Felice Levine, Director of the Law and Social Science Program of the National Science Foundation has been a valuable consultant and has been willing to provide guidance to newcomers in the field who are at an early stage of their research.

Also for newcomers, the AALS is offering a workshop on empirical research for law teachers in Washington, D.C., November 1-3, 1984. The workshop will emphasize starting from scratch, formulating ideas and questions, rather than complex methodology. It sounds like an excellent beginning for clinicians interested in empirical research. In this regard it is worth recalling three works recommended by Carrie Menkle-Meadow in her workshop presentation: Schun, The Reflective Practitioner (as a source of ideas and concepts); Selltitz, Wrightman and Cook, Research Methods and Social Relations; Schatzman and Straus, Field Research (good on evolving theory in the field - C.M-M.)

Getting Funded: Much empirical research can be done with simple methodology and without expensive equipment or staff, particularly if the material comes from your own observation, your clinic, or from case files and decisions. In addition to the faculty development grants available internally at some universities, there are a few well-known sources of public and private funding for empirical research on law-related topics. These sources are likely to be interested in research growing out of a clinical experience or projects which are policy oriented if the idea is presented to them in a form which falls within their particular mandate. I have listed a contact in each agency where I was able to obtain the name of someone on the inside likely to be helpful in approaching the agency:

Law and Social Science Program  
National Science Foundation  
1800 G St., N.W. Room 312  
Washington, D.C. 20550

Area: Very broad  
Contact: Felice Levine  
(202) 357-9567

National Institute of Justice  
633 Indiana Ave., N.W. Room 842  
Washington, D.C. 20531

Area: Criminal Justice  
Contact: Cheryl Martorana  
(202) 724-2962

Center for Studies of Violent and  
Anti-Social Behavior  
National Institutes of Mental  
Health  
5600 Fishers Lane, Room 6C-15  
Rockville, Md. 20857

Area: As billed.  
Phone: (202) 443-3729

Office of Juvenile Justice and  
Delinquency Prevention  
633 Indiana Ave., N.W., 11th Floor  
Washington, D.C. 20531

Area: As billed.  
Contact: Dr. Emily Martin,  
Director of Evaluation  
Research. (202) 724-5421

Walter E. Meyer Research Program  
American Bar Foundation  
1155 E. 60th St.  
Chicago, Illinois 60637

Area: Support for empirical  
research on administra-  
tion of justice and "incr-  
easing urbanization of  
American life." Specifically  
for law teachers.

Fund for the improvement of Post-  
Secondary Education  
Department of Education  
400 Maryland Ave., S.E.  
Washington, D.C. 20202-6331

Phone: (202) 245-8091

NOTE: FIPSE is broad in its interests and has a number of related programs. Our developmental disabilities clinic received a demonstration grant which will fund improvements in the instructional program as well as service and evaluation research. Another example, the Mina Shaughnessy Scholars Program "provides educators with time and funds to further develop and analyze ideas emerging from their practice" including support for research directed to this end.

There are many specialized programs in the Washington Bureaucracy which fund demonstration programs, policy evaluation research, and training evaluation research from time to time. To find out about them consult a specialist in that field or someone like Felice Levine who monitors as many such programs as possible. For example:

Behavioral Science Research Program  
National Institute on Aging  
National Institutes of Mental Health  
Building 31C, Room 4C32  
Bethesda, MD 20205

Contact: Richard Suzman  
(202) 496-3136

From time to time the Legal Services Corporation funds demonstration projects and evaluation research by clinical programs. The Law School Admissions Council of the American Bar Association has recently funded programs to assist minority law students. These are sources for specialized program development and research.

In the private sector, there are many foundations which fund law-related research, such as Russell Sage, Ford or Carnegie. But in addition to these (and other) large foundations, many, many small foundations with specialized interests and regional focus also fund law-related research. There is a foundation handbook which should be consulted if you are thinking of this source. The interests of foundations change rapidly and a current report or someone up to date on their funding should also be consulted.

Getting Published: There are only three journals that I know of which have expressed special, continuing interest in publishing work derived from clinical experience. They are the Journal of Legal Education; The American Bar Foundation Research Journal; and The Antioch Law Journal. But many traditional law reviews now publish work derived from clinics or work about lawyering and also publish empirical research. In addition, there are specialized journals devoted exclusively to empirical legal research, such as the Law and Society Review or the Law and Policy Review (among a number of others). A well-researched article with interesting conclusions will be easy to place. Work on clinical teaching methodology, reporting experiences in clinical teaching of interest primarily to clinicians, will be harder to place. Notes on work in progress, developments and interesting news aimed exclusively at clinicians may not be accepted anywhere outside of this newsletter until clinicians have their own publication.

The important thing at the outset is not to be put off by the real or imagined requirements of law review writing. Get your work on paper in some form; ask friends and colleagues for criticism when you get this far; and eventually let an editor worry about the final revisions.

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