



SECTION ON

NEWSLETTER

CLINICAL LEGAL EDUCATION

March, 1985

Reply to: Peter T. Hoffman
University of Nebraska
College of Law
Lincoln, NE 68583-0902
(402) 472-2161

MESSAGE FROM THE CHAIR

By
Sue Bryant, CUNY

Now that we have 405(e) and are beyond the "shall" vs. "should" controversy, the real test is for us to make 405(e) meaningful. In part this will involve individual decisions made by individual schools; however, 405(e) is an accreditation standard which has some meaning beyond that given to it by each individual school. In trying to give meaning to this standard each of us will work at giving the standard meaning in our own school struggles; at the same time we need to be in touch with one another to give the standard meaning beyond our own individual school. Before the standard was passed, we talked about what effect the standard might have on the clinicians teaching in the clinics at the time the standard took effect. As we begin to negotiate its meaning with law schools, there are fundamental questions about hiring and firing that relate to values about who should be a law teacher which are worth explicitly exploring with ourselves and our faculties.

Perhaps because I am teaching a course this semester called Equality and Inequality, the Role of Law and Lawyers, I start this inquiry by asking what does equality as required by 405(e) mean? Is it possible for us to be equal to our non-clinical colleagues and different from them in requirements for entrance to law school faculties? I hope the answer to this is yes; I fear that the answer may be that the closer we get to equality in benefits and governance rights, the more that equal means the same. For starts, the clinical faculty might look more male, more white, and more from prestigious law firms rather than public interest backgrounds. In the past, different entrance requirements have permitted the hiring of lawyers who have not come exclusively from the prestigious jobs in the profession; instead, clinicians have primarily come from other backgrounds like government agencies, legal services and public defender programs. Different entrance requirements also recognize that additional and different skills are required for clinical teaching. For example, clinical teachers must have enhanced interpersonal skills which are necessary for effective one-to-one teaching. Many of us can point to excellent clinicians teaching in high quality clinical programs who do not have the same credentials (work experience, law school credentials and publications) as other faculty

at their schools. If an equality in treatment standard requires us to reject today people who look on paper exactly like those people who were hired five years ago, I think we will lose some of the diversity which has benefited clinical education and law schools. An equal but different standard is not standardless. Instead, we should encourage standards which focus on those experiences and skills which are relevant to the kind of teaching clinical teachers do.

Is it possible for us to be equal to our non-clinical colleagues and different from them in requirements for retention on the law school faculties? Again I hope the answer to this is yes. The stumbling point in this question of standards for retention is scholarship and the difficulty with arguing for a different standard is how to make this argument without it being read as anti-intellectual or anti-scholarship. The point is not that clinicians shouldn't write, generate ideas which improve clinical education at our own and other schools, or reflect on issues of lawyering and the profession. Instead, we want to ask what is useful to the profession, our programs and to legal education. The starting point should be why is scholarship required and how do those purposes relate to the goals of clinical education. We also want to ask how the scholarship requirements for retention and tenure will affect our programs and the choices we make in the cases we select and the amount of live-client work we do. There certainly exists the danger that we will fall into the "super-mom" phenomenon where we say that we can do it all as well as someone who is trying to do one job rather than two.

In many schools, the standards have already been set and we can learn from one another about the various ways that schools have handled the issues of scholarship. The question of what scholarship should be required/permitted to be done by clinicians and what effect these requirements will have on the clinical program is one which the Standing Committee on Clinical Education of the AALS is looking at this year.

The Section will continue to be interested in both the institutional questions surrounding 405(e) and helping individual clinicians develop strategy for their own promotion and tenure. I have set up a special sub-committee of the tenure and promotion committee to look at and collect data on the various ways that schools have resolved the issue of standards for scholarship, how clinicians did or did not meet standards and what effect these choices had on the programs involved. My hope is that we can come up with models which explicitly look at the underlying values and purposes behind those models as well as some models that people might use for development at their own schools. The tenure and promotion committee will continue to aid individual clinicians who want advice or other help in the promotion process. Finally, we want to keep on top of what is happening in general with 405(e). We plan to do this in two ways: first, to follow closely the ABA inspection visits this year to see what is being done about 405(e) and what the ABA is saying to those schools; second, to ask those of you who are having success or difficulty and want to pass that information along to send that information to one of the members on the Executive Committee listed below who has agreed to play a special role in keeping on top of 405(e). Anyone who wants information about what

is going on at other schools can call or write to these same people: Gary Palm, Chicago; Bea Frank, NYU; David Gotlieb, Kansas, or me.

I hope to see many of you in Baltimore in April at the Clinical teachers/litigation workshop. We have scheduled a Section meeting for that workshop.

Sue Bryant
CUNY Law School
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New York, New York
11361
718-357-8147(direct line) or
718-357-7584(school line)

COMMITTEE NOTES

Sue Bryant, Chair, has announced committee appointments for 1985. The committees are now in the process of organizing and deciding what activities to pursue in the coming year. All of the committees are interested in suggestions on how they can better serve the Section and its members; do not hesitate to call or write the committee chair of the appropriate committee if you have an idea you think worth pursuing.

EXECUTIVE COMMITTEE

Sue Bryant, CUNY; Frank Bloch, Vanderbilt; Bea Frank, NYU; David Gottlieb, Kansas; Peter Hoffman, Nebraska; Carrie Menkel-Meadow, UCLA; Mike Norwood, New Mexico; Gary Palm, Chicago; Jennifer Rochow, Boston College; Kandis Scott, Santa Clara; and Roy Stuckey, South Carolina.

ATTORNEYS FEES

Mike Axline, Oregon, Chair; Jane Aiken, Georgetown; Len Cavise, DePaul; Minna Katkin, Brooklyn; Garry Laser, Chicago-Kent; Robin Masson, Cornell; Doug Parker, Georgetown; Suzanne Reilly, Pennsylvania; Nicki Russler, Tennessee; Jim Stark, Connecticut; and Louise Trubek, Wisconsin.

At the suggestion of Mike Axline, a new Clinic Section committee has been formed this year to examine attorneys' fees as a means of financing clinical programs. At its first meeting, at the AALS convention in Washington, the Committee agreed to survey current clinic practices, research relevant case law and report on the practical consequences and policy issues that are raised when clinics seek fees under fee-shifting statutes. Committee members also discussed, agreed to investigate, but did not decide whether or not to report on, direct fee-for-services clinics. (We are interested in learning how prevalent such clinics are and the extent to which clinicians are interested in learning more about them. See questionnaire form, infra.)

If our first meeting was any indication, even the narrower subject of fee-shifting raises rich and complicated questions. Here

are some of the issues that were raised, hinted at, discussed, but by no means answered:

- (1) Our sense is that clinics around the country are increasingly taking cases that potentially generate court-awarded fees. Is this true? If true, is it a welcome development? What impact has this development had on the financing of law school clinics by other means? What impact on clinic subject matter and case selection? To what extent do programs around the country have the flexibility to take fee generating cases if program directors wanted to?
- (2) What is the basis and amount of attorneys fees when sought by clinical programs? May supervisors charge market rates? May students charge for their time, and at what rate? Have courts required clinics to distinguish "educational" time from actual case preparation time? If so, how does one draw that distinction?
- (3) Where do fees go when received? To the University? To the law school? To an existing or specially created clinic budget? Who controls the use of attorneys' fees? Does existing case law suggest any guidelines or limitations concerning these questions? Does the propriety of a clinic receiving or using fees in a particular way depend on whether the clinic is a separate incorporated entity?
- (4) Several clinics around the country apparently permit clinic teachers to keep a percentage of any fee generated in cases they supervise. How widespread is this practice? Is it a desirable method of enhancing the salaries of attorneys and reducing salary inequities in law schools? What is the impact of and on 405(e)? What impact on case selection and the allocation of case responsibility to students? How do you apportion fees when a clinician leaves a school before a case is completed?
- (5) Do settlement discussions in fee-shifting cases pose any special problems for clinics? For example, who has authority to waive fees or accept reduced fees on behalf of the Clinic, to enhance settlement prospects? Does the potential imposition of costs and fees against clinics under Rules 68 or 11 FRCP create potential difficulties?
- (6) What are the tax consequences, if any, when clinics receive fees? Are fees received under fee-shifting statutes a form of contingency fee? If so, does the receipt of fees have any impact on the availability of, or rates for, malpractice insurance covering clinical programs?

These are some of the questions raised in the Committee's first meeting. Other questions may well occur to newsletter readers; the Committee encourages them.

In any event, the Committee would appreciate your taking 5-10 minutes to fill out the questionnaire attached at the end of the Newsletter to get it started on its work. It is as brief as possible

and is designed primarily to identify the clinical teachers around the country who have experience with any of these issues and have information to share.

AWARDS

Jennifer Rochow, Boston College

BY-LAWS

Vance Cowden, South Carolina.

COMPUTERS

Phil Hamilton, New England, Chair; Clint Bamberger, Maryland; John Bonine, Oregon; Frank Bress, NYU; Lewis Burke, North Carolina; Karen Czapanskiy, Maryland; Mark Lassiter, Harvard; Mike Norwood, New Mexico; Bob Seibal, Maine; and Ron Staudt, Chicago-Kent.

The Section's Computer Committee is about to survey clinical programs on their use of computers. The survey will be conducted by telephone and will inquire into each clinic's hardware, software and applications, i.e. which clinic functions are computerized and how. The Committee hopes to conclude the survey by mid-May and to compile the results over the summer. If all goes well, the tabulated results will be available to participants by the fall.

We hope that the survey will serve several purposes. First, it will let people know who has what hardware and software and what they're doing with it. This information should be useful to those clinics which are contemplating purchases of computer equipment and those who would like to expand their use of the hardware and software which they already have. Second, the survey results should be helpful in promoting the expanded use of computers in clinics. Third, the information produced by the survey will make it easier to set up systems for cooperative exchange among clinics, such as teleconferencing and the swapping of materials through electronic mail. Fourth, the results will serve as a benchmark for measuring the development of computer technology in clinics. Incidentally, the survey will also help the Committee identify issues which the Section and the Committee should address in the future.

Each clinic should receive a call from a member of the Committee before May 10. If you haven't heard from us by then, or if you have any questions, please call Phil Hamilton at the New England School of Law (617) 451-0010.

CONTINUING CLINICAL EDUCATION

Steve Emens, Alabama, Chair; Tom Geraghty, Northwestern; Roger Haydock, William Mitchell; Gary Lowenthal, Arizona State; Mike Meltsner, Northeastern; Carrie Menkel-Meadow, UCLA; and Al Porro, Baltimore.

INTEGRATION OF CLINICAL METHODOLOGY INTO THE TRADITIONAL CURRICULUM

Bob Dinerstein, American, Chair; Stacy Caplow, Brooklyn; Larry Grossberg, New York; Joe Harbaugh, American; Henry Hecht, UC-Berkeley; David Koplou, Georgetown; Jim Morris, Utah; Richard Neuman, Hofstra; Rex Perschbacher, UC-Davis; Maude Pervere, UC-Hastings; Don Peters, Florida; Elizabeth Schneider, Brooklyn; Glendalee Scully, McGeorge; Arnie Siegel, Loyola-LA; and Karen Tokarz, Washington-St. Louis.

LEGAL SERVICES

Betsy Fuller, Cornell, Chair; Peter Aaron, George Washington; Marie Ashe, Nebraska; John Capowski, Maryland; Paula Galowitz, NYU; Jeff Hartje, Gonzaga; Dean Rivkin, Tennessee; Ken Rothstein, Hofstra; Pamela Walker, Akron; and Mark Weber, Chicago.

At the open meeting of the Executive Committee at the AALS Annual Meeting, there was an extended discussion about the issues raised by the Legal Services Corporation funding of clinical programs. As you may remember from articles in prior editions of the Newsletter, in the fall of 1984 LSC began funding approximately fourteen clinical programs to assist LSC eligible clients in receiving legal representation. There was considerable controversy at the time as to whether clinical programs should apply for the funding (June, 1984 Newsletter). Questions have also been raised about the selection process and criteria used in awarding the grants.

Issues explored at the Executive Committee meeting included the selection process within LSC, whether there should be clinicians in the review process, whether clinical programs should be applying for the funding and cooperating with this program at all, and generally, what the Section should be doing about continued funding and preservation of the Legal Services Corporation. As a result of that discussion, Sue Bryant, Chair, appointed a special committee to address these questions. Some of the committee members met during the AALS conference.

There are two purposes of the committee: to air differing points of view on the issues raised by LSC funding of clinics, and what, if anything the Section and AALS can do or should do with regard to the preservation of LSC. We decided that one of our first needs was to gather information. One committee member is writing to all the schools which received LSC funding to determine their views on why they applied, the nature of the program that is being funded, the effect on the education program, the review of the program by LSC, the response from the local legal services projects, and whether they intend to re-apply. Mark Weber has already obtained copies of some of the grant applications from LSC and is in the process of trying to obtain more information about the criteria for the decisions, through a F.O.I.A. request. We shall also try to get budget break-downs of LSC funding the last few years, in an attempt to determine what LSC would do with the money if it were not funding clinical programs.

In further Newsletter articles, we plan to disseminate the information that we have gathered and, in addition, to publish articles analyzing advantages and disadvantages of clinical programs applying for LSC funding. (There will be additional funding by LSC of clinical programs.) Specifically, we are interested in your opinions on the following issues: What is the potential effect on the future of LSC of clinical programs cooperating with this program? What is the potential long-range effect on clinical education and on law schools of becoming dependent on federal money? What is the response to the oft-relied upon rationale for applying: if we don't, some other program will? We feel we need to explore these issues before we can answer the concrete questions which face us: Should schools apply? Should clinicians take part in the review and evaluation processes? Should the Section urge the AALS to take a position on this and other issues concerning the future of LSC? We encourage anybody with information about or opinions on these issues to contact Betsy Fuller at Cornell (Myron Taylor Hall, Cornell Law School, Ithaca, NY 14853). We also hope to disseminate information and keep people informed about issues generally affecting LSC.

MEMBERSHIP

(No chair designated) Stephen Befort, Minnesota; Robert Goodwin, Cumberland; Susan Kovac, Tennessee; Theresa Player, San Diego; and Wendy Watts, Georgetown.

NOMINATING

(No chair designated) Mark Heyrman, Chicago; Carrie Menkel-Meadow, UCLA; Janet Motley, Cal Western; Kandis Scott, Santa Clara; Mike Sheldon, Connecticut; Norm Stein, Hofstra; Graham Strong, Virginia; and Steve Wizner, Yale.

POLITICAL INTERFERENCE

(No chair designated) Robert Catz, Miami; Neil Franklin, Idaho; Wallace Mlyniec, Georgetown; and James Stark, Connecticut.

PROGRAM

(No chair designated) Claudia Angelos, NYU; Doug Frankel, Pennsylvania; Peter Hoffman, Nebraska; John Irvine, Indiana-Bloomington; Rosalynn Lieb, Northwestern; Richard Perna, Dayton; and Jennifer Schramm, Puget Sound.

TEACHING MATERIALS

(No chair designated) Frank Bloch, Vanderbilt; Lois Knight, Boston University; Carlos Ramos-Gonzales, Inter American; Suzanne Reilly, Pennsylvania; Jennifer Rucci, San Francisco; Ray Simon, Washington-St. Louis; Barry Strom, Cornell.

The Teaching Materials Committee has now completed two surveys, one of clinical teaching materials and the other of clinical scholarship. Those of us who teach in clinical programs are engaged

in the never ending task of attempting to compile appropriate teaching materials for our clinical courses. This task is significantly more difficult for us than it is for our traditional academic colleagues, who have available to them a wide array of published texts. It is even more difficult because we need to choose teaching materials which are relevant to the particular locale where our students practice.

Recognizing the urgency of these problems, more than three years ago the Clinical Section authorized Bea Frank of NYU to attempt to collect and survey the teaching materials which clinicians were then using. Responses were received from clinicians at 103 schools, and eventually filled some 17 cardboard boxes. Over the last three years, those boxes of teaching materials have found their way from New York to Philadelphia and then to various locations including St. Louis, Boston, Ithaca, Toledo and Gainesville. A summary of the responses is now available.

This list is being made available so that clinicians, particularly those new to clinical education, will be able to contact those individuals who have compiled teaching materials. The Committee on Teaching Materials stresses that it does not have the capabilities or authorizations to distribute the materials in its possession, so you should contact directly the "contact person" listed in the summary.

Only two years ago at the 1983 AALS Annual Meeting in Cincinnati, Professor David Vernon, in addressing the AALS House of Delegates, divided all law school faculty members into two mutually exclusive groups: "scholars" and "clinicians." Many of us in clinical education believed that this was a grossly inaccurate characterization of clinical teaching. Clinicians were increasingly publishing "traditional scholarship," as evidenced by the periodic bibliographies in the Clinic Section Newsletter. In addition, many of us sensed that we were on the verge of witnessing the emergence of a unique and distinctive entity: "clinical scholarship" with its focus on the lawyering process itself, lawyering skills and clinical methodology.

In an attempt to get a handle on whether our perceptions were valid, in December 1983, the Committee on Teaching Materials surveyed members of the AALS Clinical Section concerning clinical research projects and clinical scholarship. Forty-three clinicians from 37 different law schools responded to that survey and listed their current research and scholarship projects. The survey reveals a substantial body of clinical scholarship and research in progress.

It is the Committee's hope that by sharing the survey results with the Clinical Section that a number of things will be accomplished. First, clinicians with parallel research interests will be able to contact one another and enhance their scholarly efforts. Second, those of us teaching clinical and skills-training courses will be able to contact those individuals whose research projects or scholarship are relevant to our own clinical teaching. Third, the publicizing of existing clinical research and scholarship projects is a not-so-subtle attempt to encourage other members of the Clinical Section to engage in similar efforts, and to provide those who are so

motivated with a list of faculty members who may be able to provide either technical assistance or moral support.

Both surveys may be obtained from Lois Knight, Boston University School of Law, 765 Commonwealth Avenue, Boston, MA 02215.

TENURE AND PROMOTION ADVISORY PROJECT

(No chair designated) Bob Bloom, Boston College; Stacy Caplow, Brooklyn; John Capowski, Maryland; David Gottlieb, Kansas; Michele Herman, New Mexico; Jim Klein, Toledo; Jack Sammons, Mercer; Kandis Scott, Santa Clara; and Jed Scully, McGeorge.

Sub Committee: John Doyle, Georgetown; Carol Liebman, Boston College; Chet Mersky, NYU; Wally Mlynic, Georgetown; and Larry Weeks, Arizona State

Hot Line: Sue Bryant, CUNY; Bea Frank, NYU; David Gottlieb, Kansas; and Gary Palm, Chicago.

BITS AND PIECES

AALS WORKSHOPS

The AALS will be holding two workshops of interest to clinicians. The first, the Workshop on Applications of Technology to the Teaching of Litigation, will be held on April 10-11. The second, the Workshop on Teaching Civil Litigation Theory and Practice, on April 11-13, will immediately follow the first. Both will be held at the Omni International Hotel in Baltimore.

The first day of the Technology Workshop is specifically directed at clinical teachers and is designed to serve as this year's clinical workshop. A meeting of the Clinical Legal Education Section will be held on April 11.

The registration fee for the first workshop is \$125 for faculty of member schools, \$50 for faculty of fee paid schools, and \$175 for faculty of non-fee paid schools. Registration for the second workshop is \$225, \$275 and \$300, respectively. When a second or third faculty member from the same schools sign up for one workshop each, a discount of \$25 is offered to the second and third registrants and a \$50 discount is offered to the fourth and subsequent registrants.

The total registration fees are lower when signing up for both workshops. The fees are \$325.00 for faculty at member schools, \$375.00 for faculty at fee paid schools and \$400.00 for faculty of non-fee paid schools. A faculty discount of \$75.00 is offered to the second and additional faculty members and \$125.00 is discounted to the fourth and subsequent faculty members who sign up for both workshops.

Registration forms can be obtained from the AALS. Hotel reservations can be made at the Omni by calling (301) 752-1100. Rates are \$79.00 single or double. Be sure to identify yourself as an AALS participant.

AALS Workshop on the Application of Technology
to the Teaching of Litigation
April 10-11, 1985
Baltimore, Maryland

Wednesday, April 10, 1985

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

6:00 - 8:00 p.m. RECEPTION

Thursday, April 11, 1985

8:00 - 8:10 a.m. Welcome, Millard H. Ruud, Executive Director,
Association of American Law Schools

8:10 - 8:35 a.m. Applications of technology to Litigation Practice.
Litigation teachers need to be up to date on what is going on in
the world of practice in order to prepare their students for that
world as it is and will be. This presentation will address the
following questions: How are lawyers presently using technology
in litigation practice? How can someone get started who is
unfamiliar with the technology involved? What will it cost? In
addition to what is presently being done, what kinds of other
applications seem possible in the foreseeable future?

John Kline, Esquire, Willian, Brinks, Olds, Hofer,
Gilson and Lione, Chicago, Illinois

8:35 - 9:00 a.m. Possible Applications of Technology to Litigation
Teaching. Litigation teachers need to expose their students to
the present and foreseeable applications of technology to
practice, but that same technology may also have additional
immediate applications in litigation teaching. This presentation
will sketch out some of the things technology may be able to do
for the teacher, the students, and the program as well as what it
can do for their practice. Possible applications could serve
administrative, supervisory or a range of educational functions.

Wesley Blakeslee, Esquire, Westminster, Maryland

9:00 - 9:15 a.m. COFFEE BREAK

9:15 - 10:00 a.m. Two Examples of the Application of Technology to
the Teaching Law Office. Litigation and clinical teachers need
to be aware of possibilities, but they also need to know what has
actually been developed and is being used. This presentation
will describe two concrete applications of technology: the de-
velopment and functioning of two pieces of software - a Clinical
Law Office Management Program and a Trial Notebook Program.

J. Michael Norwood, University of New Mexico

10:00 a.m. - 12:00 p.m. Small Group Discussions

12:15 - 1:45 p.m. LUNCH on your own

2:00 - 2:45 p.m. Using Interactive Videodisc to Teach Trial Practice. How much actual teaching can be delegated to computers? Can computer assisted legal education ever equal the human variety? Surpass it? In which kinds of areas? This presentation will demonstrate an interactive videodisc trial practice exercise, in which students watch a movie of a case in court. At various points the students make certain choices regarding motions or objections or tactics, and they then have the opportunity to watch how their choices play out in the case. The construction of the exercise permits the students to discover the reasons behind the results they see and to follow up on gaps in their knowledge by calling up appropriate textual material ("going to the library") while still sitting at the machine, even in the middle of "trial."

Frank A. Bress, New York University

2:45 - 3:15 p.m. Computer Assisted Teaching of Legal Writing. Litigation and clinical teachers often spend a substantial portion of their teaching time trying to teach students how to write certain things - how to prepare motions or pleadings, or how to draft agreements of various kinds, or wills, for example. How much of this teaching can be delegated to computer assistants? Will the product be serviceable? And will the student understand the reasons for the choice made - or even realize that choices were made? Will computer assisted legal education produce machine operators - or efficient lawyers? The presentation will demonstrate a will writing program, which includes a series of explanations and annotations which guide and educate the student regarding the various possible options.

Robert F. Seibel, University of Maine

3:15 - 3:45 p.m. Applications of Technology in a Legal Services Setting. Many law school clinical programs are affiliated with or function independently as legal services offices. Other programs and clinicians, while not officially involved in legal services work, maintain an interest in and concern for what can be done to improve the delivery of legal services to poor people in this country. This presentation will describe a research project just getting underway which is aimed at exploring the possible applications of technology to legal services training and practice; specific research products in the process of developments will also be described, and to the extent possible, demonstrated.

Marc Lauritsen, Harvard University

3:45 - 4:00 p.m. COFFEE BREAK

4:00 - 5:00 p.m. Small Group Discussions

5:00 - 6:00 p.m. Section Meeting, Clinical Legal Education Section

6:00 - 8:00 p.m. RECEPTION

AALS Workshop on Teaching of Civil Litigation Theory and Practice
April 11-13, 1985
Baltimore, Maryland

Thursday, April 11, 1985

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

6:00 - 8:00 p.m. RECEPTION

Friday, April 12, 1985

8:45 - 9:00 a.m. Welcome, Millard H. Ruud, Executive Director
Association of American Law Schools
Kenneth S. Broun, Chair, AALS Planning
Committee on Teaching Litigation Theory
and Practice, University of North
Carolina

9:00 - 10:30 a.m. Simulated Litigation Courses: Beyond Nita Method.
There is growing consensus that simulated litigation courses can
enrich the teaching of lawyering skills and our understanding of
the litigation process. Interest in the structure and method of
such courses cuts across subject matter categories. The
panelists, who take varying approaches to simulation, will
describe the theories and details that underpin the successful
use of sophisticated litigation simulations.

Alan B. Morrison, Director of Public Citizen Litigation
Group, Washington, DC

David Rosenberg, Harvard University

Philip G. Schrag, Georgetown University

Moderator: Dean Hill Rivkin, University of Tennessee

10:30 - 10:45 a.m. COFFEE BREAK

10:45 a.m. - 12:15 p.m. Small Group Discussions

12:15 - 2:00 p.m. AALS SPONSORED LUNCHEON
Honorable Patricia Wald, U.S. Court of Appeals,
Washington, DC

2:00 - 3:30 p.m. Empirical Research in and About Litigation. In
recent years, empirical research has come to play an increasingly
important role both in deciding the outcome and in determining
how well courts are serving our society. Recent trends suggest
that most trial lawyers will encounter the occasion to use
empirical research on behalf of clients and decisions about the
administration of justice will be founded on research results.
These developments require that attorneys understand scientific
method, and adopt that method to the needs, traditions, and
methods of law.

David M. Trubek, University of Wisconsin

William Laurens Walker, University of Virginia

Moderator: William Eldridge, Federal Judicial Center,
Washington, DC

- 3:30 - 3:45 p.m. COFFEE BREAK
3:45 - 5:15 p.m. Small Group Discussions
5:30 - 6:30 p.m. RECEPTION

Saturday, April 13, 1985

8:45 - 10:15 a.m. Reform of Federal Civil Procedure. The panelists will discuss major current issues in federal civil procedure focusing on Rules of Civil Procedure and on the rules amendment process. To put it another way, the panel discussion will be about three questions: What have the rules reformers done for us lately? What are they up to? And should we be doing anything about them?

Honorable Robert Kastenmeier (D-Wiconsin), Chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and Administration of Justice
Honorable Robert Keeton, United States District Court, Boston, Massachusetts
Maurice Rosenberg, Columbia University
Moderator: Thomas D. Rowe, Jr., Duke University

- 10:15 - 10:30 a.m. COFFEE BREAK
10:30 a.m. - 12:00 noon Small Group Discussions
12:00 noon - 1:15 p.m. LUNCH on your own

1:15 - 2:45 p.m. The Goals and Structure of the Litigation Curriculum. No two schools have the same litigation-oriented courses. Traditional courses, trial practice courses and clinics come in various forms, sizes and sequences. Some critics of legal education have expressed concern that we spend too much time teaching about litigation in contrast to other aspects of the law. This panel will address the issues of how and when, as well as the question of how much.

Joseph D. Harbaugh, American University
David J. McCarthy, Jr., Georgetown Unviersity
Robert J. Martineau, University of Cincinnati
Moderator: Kenneth S. Broun, University of North Carolina

- 2:45 - 3:00 p.m. COFFEE BREAK
3:00 - 4:00 p.m. Small Group Discussions

405(E) DEVELOPMENTS IN THE ABA

By
Dean Rivkin, Tennessee

At the meeting on February 17, 1985, of the ABA Council of the Section of Legal Education and Admission to the Bar, Jim White reported that this spring some 26 or 27 ABA law school accreditation inspection teams will be specifically instructed to inquire about the

status of clinical teachers under 405(e). This information will be collected as quickly as possible and, at the latest, will be presented to the ABA Council at its July, 1985, meeting in Washington, D.C. At the same time, the Skills Training Committee of the Section will meet next month to formulate recommendations for the implementation of the standard. Presumably, these recommendations, if necessary, could be considered by the Council at its May or July meetings. White also reported that he and Millard Ruud will circulate to a law school deans information regarding existing status arrangements for clinical law teachers. He stated that, in time, a document embodying this information will be published. Finally, he stated that it was his impression that there has been a great deal of "movement" this academic year on the issue of 405(e) and that the "should" in the standard is being interpreted as a "shall" by most schools.

At a previous meeting of the Council on December 9, 1984, White reported that the AALS has requested that the ABA join in a joint committee to oversee the implementation of 405(e). There was also a good deal of discussion about the purpose of such a committee; namely, whether the committee would actually develop "models" for tenuring clinicians or simply synthesize and circulate the rapidly evolving schemes. Norman Redlich, NYU, stated that he did not want to create the impression for law schools that a committee was working on a "model"; he felt that such a perception would impede the deliberations that are going on at many law schools.

Millard Ruud stated that he felt a committee could identify and describe different approaches to the issues of job security, voting rights, research opportunities, and a host of other sub-issues that lurk in the implementation of 405(e). In this sense, a committee could be formed within the next month or so and would rapidly digest and disseminate information to law schools during the coming months.

By the end of the meeting it was agreed that a small committee should be formed to prepare a report on the implementation of 405(e). (The committee has now been formed with Millard Ruud and Jim White as the committee members.)

Clinicians should know that if they need information about 405(e) or are facing problems, they should not hesitate to tap into one of us who has followed this issue closely over the years (e.g. Greenhalgh, Georgetown; Stuckey, South Carolina; Harbaugh, American; Palm, Chicago; Rivkin, Tennessee; etc.). There are a number of "pressure points" in the system that will make our input in particular cases reasonably effective.

COMMITTEE SEEKS INFO ON CLINICAL SCHOLARSHIP

During 1985, the AALS Standing Committee on Clinical Education will explore the subject of increased scholarship and writing in clinical education. The committee would appreciate receiving suggestions about what types of writing and scholarship clinicians would find useful and what the AALS might do to assist clinicians who desire to engage in scholarly endeavors. Comments can be addressed to

David A. Binder, Chair, University of California, School of Law, Los Angeles, CA 90024.

CLINICIANS APPOINTED TO AALS COMMITTEES

A number of clinical teachers were appointed to AALS standing and special committees for 1985:

Committee on Accreditation
Elliott Milstein, American

Committee on Clinical Education
Anthony Amsterdam, NYU
David Binder, UCLA, Chair
Peter Hoffman, Nebraska
James Klein, Toledo
Gary Laser, Chicago-Kent
Jennifer Rochow, Boston College
Walter Steele, SMU
Roy Stuckey, South Carolina

Committee on Continuing Legal Education
Beatrice Moulton, San Francisco

Advisory Committee for the Journal of Legal Education
Carrie Menkel-Meadow, UCLA

Committee on Professional Development
Philip Schrag, Georgetown

Special Committee on Nominations for 1986 Officers
Carrie Menkel-Meadow, UCLA

Joint AALS-ABA Section of Legal Education and Admissions to the Bar Lawyer Training After Law School Committee
Beatrice Moulton, San Francisco

Planning Committee for Workshop on Teaching Litigation Theory and Practice
Dean Rivkin, Tennessee
Jennifer Rochow, Boston College
Roy Stuckey, South Carolina

SKILLS TRAINING COMMITTEE

The A.B.A. Section of Legal Education and Admissions to the Bar has announced the 1984-85 members of its Skills Training Committee, several of whom are clinicians: Marilyn Yarbrough, Kansas, Chair; Roy Stuckey, South Carolina, Vice-Chair; Dean Nina Appel, Loyola-Chicago; Herbert Fishbone, private practice; Carrie Menkel-Meadow, UCLA; Gary Palm, Chicago; and Dean John Roberts, Wayne State.

The committee will be meeting in Indianapolis on March 30 and 31.

TITLE IX DEADLINE NEARS

The deadline for applying for a grant under the Law School Clinical Experience Program is March 25. All schools should have received an application packet by now. \$1.5 million has been appropriated for this year which will result in 40 to 50 grants averaging \$30,000 each. The grant applications will be read April 9-12 with the announcement of recipients to occur on June 28. For

further information, contact Charles Miller (202) 245-3253 or Mrs. Harvey (202) 245-2511.

ANNUAL MEETING

By

Graham Strong, Virginia
Janet Motley, Cal. Western
Larry Weeks, Arizona State
Don Peters, Florida

Thomas Shaffer wrote nine years ago that "if there is one thing legal education has not yet begun to do, it is to unburden the creativity of law students." The Section's Annual Meeting Program, held on January 4 in Washington, attempted a step toward that goal in its plenary session, "Right-Brain Lawyering: Teaching Creativity in the Clinic." The session was moderated by Graham Strong, Virginia, and featured an interdisciplinary panel: Gordon MacLoud, a trustee of the Creative Education Foundation, who taught the first law school course in creative problem solving; Dr. Robert Showalter, the associate medical director of the Institute of Law, Psychiatry & Public Policy at Virginia; and Steve Hartwell, a clinician from the University of San Diego School of Law.

Gordon MacLoud discussed the role of creative imagination in the problem solving process and a set of specific techniques that can function to encourage creative problem solving. He discussed brain storming as a method of idea generation, with particular attention to the importance of deferred judgment, high volume, and the transformative rearrangement and combination of ideas. He also addressed the factors that may inhibit creativity in the lawyering process and the special functions of problem redefinition, "incubation" and metaphor in the cultivation of creativity.

Robert Showalter discussed the nature of the creative process from a psychological and physiological perspective. His major thesis was that the special mode in which the right cerebral hemisphere of the brain receives and processes information makes right-brain participation critical to the creative process. His review of research in brain function not only demonstrated the fundamental distinction between left- and right-brain processing styles, but also suggested that the potential for creative production may be enhanced through the conscious stimulation of right-brain activity.

Steve Hartwell discussed ways in which he has begun to apply some of the concepts underlying creative problem solving in his own clinic. He recommended the use of testing instruments (such as the "Keirseley Sorter" and the "Kolb Learning Style Inventory") and reflective journals to enhance student self awareness regarding their own cognitive styles. He also discussed the relationship between particular "languages of thought" and the potential for creative problem solving and how that relationship can be demonstrated in the clinic through the use of mental puzzles.

The plenary session handout, which includes a lightly annotated bibliography of readings regarding the creative process, creative

problem solving, and hemispheric brain function, is available by request from Graham Strong.

After the session on right-brain lawyering, the group broke into three workshops:

Other Voices, Other Rooms: Lessons From
Non-Legal Experimental Education

Participants in this workshop were Sharon Rubin, Assistant Dean of Undergraduate Studies, University of Maryland, College Park, and Richard Ungerer, Executive Vice President for National Institute for Work and Learning, Washington, D.C. The moderator was Janet Motley, Associate Professor of Clinical Law and Director, Clinical Internship Program, California Western School of Law, San Diego.

The purpose of this workshop was to discuss what can be learned from the use of experiential education in other disciplines. Sharon Rubin provided some interesting information from the NEH sponsored study on internships in the humanities, indicating that the most important factors determining the success of an internship experience are supervision and the nature and variety of assigned tasks. This report stimulated group discussion about learning contracts, the training of out-of-house supervisors and, the usefulness of separating faculty and supervisory roles. Sharon Rubin also discussed and distributed handouts on adult development taken from Chickering. This led to further group discussion about recognizing the development stages of students and the need to be perceptive and responsive to their unique needs.

Richard Ungerer distributed handouts regarding experiential training in other fields and important factors in assessing experiential learning. The group discussed challenges of evaluating students and examined the potential for integrating the use of learning style theory into our teaching and supervision of students.

One of the most interesting discussions was about the various roles involved in experiential education--administrator, teaching and supervisor--and how these roles might present conflicting interests and how they are handled by separate individuals in other fields of training. It was also good to be reminded of how important it is to keep in mind the developmental stages of students and to be aware of the tendency to prepackage and mold student experiences. It is hoped the workshop represents the beginning of a dialogue among professional educators using experiential education.

Tilling New Fields

The purpose of this workshop was to identify some new areas of clinical education currently being explored and to examine some of the assumptions and limitations that characterize the clinical method, generally. The workshop began with three presentors. The first speaker was Bob Stumberg from the Harrison Institute for Public Law at Georgetown who described his legislation clinic. The legislation clinic contracts with Montgomery County and serves as the Office of

Legislative Council for that county. As such, it handles all legislation for the county and is responsible for a major rewrite of the county code. The experience that the students get is one which encompasses a large amount of planning and drafting as well as the particular complexities of client contact with council members and their staffs.

The second speaker was Doug Frankel from the University of Pennsylvania who is the director of a small business clinic. The students in this clinic work with MBA students and private attorneys in providing the legal services to clients who are involved in starting up or maintaining commercial enterprises. The clinic is very popular at Penn inasmuch as it is perceived as training which will be directly relevant to the lawyering in the commercial area that so many law graduates will do. Business planning and contractual drafting and client relations are also a major portion of the students' experience. Doug's presentation was the longest and the majority of the questions from those attending the workshop were directed to Doug and the program at Penn. Business planning is a relatively new concept for a clinic (although very old work for lawyers) and is currently offered at only a few law schools in the country. Another aspect of this clinic is the involvement of outside attorneys who are made adjunct professors and who work with the students, so this is a quasi in-house clinic.

Finally, Jeff Hartje from Gonzaga, spoke briefly to the educational experience of students involved as mediators and arbitrators at the Gonzaga Law Arbitration and Mediation Center. The Center provides arbitration and mediation services over a wide range of subject areas, utilizing the expertise of university personnel. Students are assigned to a particular arbitrator or mediator during a session and additionally, they are provided with training and are allowed to mediate small disputes on their own. This experience enables the students to understand the basic nature of the disputing process. In addition, the students are taught to identify and articulate to the participants the interests (both hidden and overt) of each party. By participating in this interest identification process, the students are made more aware of alternative ways to ameliorate disputes among parties and their practice will be enhanced by that experience.

After the presentations, the workshop broke up into two groups to discuss both the presentors' programs as well as some of the limits of clinical education. Two factors which became part of both group's discussion was the fact that all three of the new clinics involved non-adversarial roles for the students although many of the skills taught were the same as in the more traditional, adversarial clinics. Additionally, the business law clinic and its attendant popularity spoke to the change in law students' interests (although perhaps not ultimate work) in the last decade of legal education. Finally, those characteristics of the mediation/arbitration clinic which interested students are parallel to the alternative dispute resolution movement generally in the legal field. Basically, the workshop underlined the concept that clinical legal education contains the responsiveness and flexibility necessary to adapt to new substantive areas. There was

also a feeling at the workshop that the limits of clinical legal education and the assumptions of clinicians in general needed constantly to be tested in order to grow.

Managing Stress to Maximize Learning in Clinical Courses

The workshop began with a short presentation by Marty Peters, Florida, defining stress and the stress response, and describing the stress intervention model that she has developed. A handout was also distributed, Marty's article entitled "Burnout: The Modern Malady of Helping," 2 Florida Lawyer 13 (Spring 1984), which explained this model. [Copies are available upon request from either Don or Marty Peters.] Don Peters, then described how he uses Marty's stress management expertise in the Civil Clinic at the University of Florida. The workshop then used small group discussion to develop a list of the most common stress responses that are seen in clinical teaching. This list included procrastination and avoidance; retreat to the familiar, i.e., from fact investigation to the library; and anger directed toward clients, opponents, and supervising attorneys. Stress responses were identified ranging from short term effects like tears and shortness of breath to more long term behavior like feelings of being overwhelmed and helplessness.

Marty then led a discussion of various interventions that clinicians can make to help students manage these stress responses. This included demonstrations of a breathing exercise that can be used to deal with short term responses; a positive mental imagery exercise, and relaxation exercise. Don will be happy to make a copy of a video tape demonstrating these techniques if you send him a 3/4 inch, U-matic VHS tape for dubbing. The 18-minute tape contains three scenes demonstrating stress management techniques in the Clinic at Florida and excerpts from a cooperative working clinic class taught by Marty.

The afternoon program was a joint undertaking with the AALS Section on Legal Writing, Reasoning and Research, and the ABA Appellate Judges' Conference. The topic was teaching appellate practice skills. Carl McGowan, Judge of the D.C. Circuit Court of Appeals, served as moderator of the program with Steven Goldblatt, Georgetown; Robert Martineau, Cincinnati; Mark Sandler, Baltimore; and Frank Tuerkheimer, Wisconsin as speakers.

BUSINESS MEETING ADOPTS NEW BYLAWS

The Section of Clinical Legal Education held its annual business meeting on January 4, 1985, as part of the AALS Annual Meeting in Washington, D.C. The meeting was conducted by Roy Stuckey, South Carolina, outgoing chair, who after making a few remarks about the state of legal education, moved into the business portion of the meeting:

*Amended bylaws were adopted. [A copy of the new bylaws is attached at the end of the Newsletter.] The new bylaws are the result of herculean effort by Vance Cowden, South Carolina, and the Bylaws Committee.

*Gary Palm, Chicago, was elected as Chair Elect and Frank Bloch, Vanderbilt, and Mike Norwood, New Mexico, were elected to the Executive Committee. [The terms of John Capowski, Maryland, and Barbara Schwart, Iowa, expired at this meeting.]

*Section 2(b) of the amended Bylaws was suspended in order to permit Sue Bryant, CUNY-Queens, to serve as chair of the Section during 1985.

*Roy Stuckey promised to present in the Newsletter a detailed accounting of the Section's finances once this information could be coerced from the AALS. [Roy reports that to date the information has not been forthcoming from the AALS.]

The meeting concluded with Roy Stuckey turning over the chair to Sue Bryant. She made a few remarks concerning her plans for the coming year and encouraged members of the Section to volunteer for work on Section committees and projects.

RIVKIN RECEIVES SECTION AWARD

Dean Rivkin, Tennessee, was the recipient of the 1984 Clinical Legal Education Annual Award. The award is given each year to individuals or organizations who have supported and encouraged the inclusion, expansion and improvement of intellectually sound, experientially-based learning programs in the nation's law schools. Dean was selected by the Committee on Awards based on his long and active involvement in and support of clinical education. Among other things, Dean co-chaired the Section in 1981 and has served on numerous Section committees; he chaired the planning committee for the 1981 and 1982 AALS Clinical Teachers Training Conferences and has been involved in the planning of others; and he has been instrumental in the passage of 405(e) through his membership on the Council of the ABA Section of Legal Education and Admissions to the Bar and the AALS Professional Development Committee. Anyone who knows Dean and his efforts realize this short list only begins to suggest the tremendous work Dean has carried out on behalf of clinical education. The Award was presented at the Section luncheon on January 4 at the 1985 AALS Annual Meeting in Washington, D.C.

SECTION LUNCHEON GOES SING-A-LONG

The Section Luncheon this year saw a change of format in the form of a musical revue. Bob Dinerstein, American, debuted as a lyricist to the overwhelming approval of those present. While space does not permit reproduction of the complete libretto, one example is presented here for the benefit of those unfortunate members who missed the live performance

ON TENURE

(to the tune of "On Broadway")

They say that law schools won't put us on tenure (on tenure),
They say the work we do is simply no good (on tenure);
But they're all wrong, I know they are,

'Cause I can play this VCR,
And that will soon make me a star on tenure (on tenure).

They say that we don't write enough for tenure (for tenure);
And what we write, they say, is simply no good (for tenure);
But who are they to criticize,
When what they write so strains the eyes,
With loads of footnotes written so they'll get tenure (get
tenure).

They say that we're too practical for tenure (for tenure),
They say that our technique is simply no good (for tenure);
But our critiques stress theory, too,
And more than their case studies do,
Guess they'll have to change their view on tenure (on tenure).

They say the Double ALS fought tenure (fought tenure),
It said that 405e was no good (fought tenure);
But we fixed them, with "should" for "shall",
So Double ALS's our pal,
And we won't quit till they put us on tenure (on tenure, fade
out).

Bob reports there are no current plans for a road tour.

SEX BIAS IN CRIMINAL LAW

The Ohio State University has awarded an affirmative action grant for the 1984-85 academic year to Professor Nancy S. Erickson, Professor of Law at O.S.Y.U. College of Law, to complete a project entitled "Sex Bias in the Criminal Law Course: Bringing the Law School Curriculum into the 1980's."

Professor Erickson, with the assistance of Professor Nadine Taub of Rutgers Law School (Newark) as primary consultant, law students, and experts in sex discrimination law and criminal law, will examine whether, and if so to the extent which, gender-related issues have become an integral part of the traditional first-year criminal law course as it is taught throughout the country. The term "gender-related issues" refers both to issues involving sex-based classification such as traditional rape laws, and issues likely to be of particular concern to one sex, such as domestic violence. The proposed study is designed to serve as a model for a comprehensive study involving the entire law school curriculum.

The project will proceed in three steps: a review of casebooks now being used in the first-year criminal law course to determine whether traditional sex-bias in criminal law is being adequately dealt with, a survey of all law professors currently teaching the course, and a compilation of supplementary materials that may be of assistance to professors of criminal law who wish to compensate for inadequacies in traditional teaching materials.

Clinical law teachers are in a particularly good position to contribute to this project in two ways. First, they may have access

to briefs, transcripts, and similar documents that would be appropriate for the compilation of supplementary materials. Second, clinical law teachers view the criminal law as it actually works and thus may see when a supposedly neutral rule has an adverse impact on women.

Clinical law teachers in the criminal law field are also urged to take the time to fill out the questionnaires when they receive them.

Examples of topics of special relevance to the project are:

Rape & other assault	Conspiracy
Prostitution	Failure to act
Assault	Provocation
Sexual harassment	Diminished capacity
Battered spouses	Capital punishment
Abortion	Sentencing
Defenses:	Penal institutions
Duress	Expert witnesses
Insanity	
Self-defense	
Defense of others	
P.M.S.?	

Persons interested in assisting with the project are urged to contact and to send relevant materials to:

Prof. Nancy S. Erickson
Ohio State University
College of Law
1659 North High Street
Columbus, OH 43210
(614) 422-1575

Prof. Nadine Taub
Rutgers University
School of Law
15 Washington Street
Newark, NJ 07102
(201) 648-5637

BANKRUPTCY GRANT GOES TO SOUTH CAROLINA

The Southeastern Bankruptcy Law Institute, Inc., has given a grant to the Bankruptcy Practice Clinic at the University of South Carolina School of Law.

The Institute is a nonprofit corporation organized for the primary purpose of presenting an annual seminar on bankruptcy laws and rules. The Institute uses any excess funds from the seminar to support a variety of projects, including legal education, which will improve the quality of bankruptcy practice.

Two members of the Institute's board of directors, James C. Frenzel, a partner in the law firm of Womble, Carlyle, Sandridge and Rice in Winston-Salem, North Carolina, and the Honorable Dudley H. Bowen, Jr., U.S. District Court Judge for the Southern District of Georgia, made the presentation to Dean Harry Lightsey during a ceremony at the Law School on January 18, 1985. Among those in attendance was The Honorable J. Bratton Davis, Bankruptcy Judge for South Carolina.

The Bankruptcy Clinic enables third-year law students to represent clients in bankruptcy proceedings from the initial client interview through the end of the case. Classroom meetings cover a variety of topics related to bankruptcy practice.

The grant will be used to hire an adjunct professor to teach the clinic with Associate Clinical Professor Lewis Burke on a part-time basis. It will also be used to purchase the necessary equipment and software to support the simulation of a case involving financial problems of a small business. This "Debtor Creditor Game" will represent the Law School's first experiment with computer-assisted legal instruction.

LSC ELDERLAW GRANTS

The Legal Services Corporation will shortly be sending out solicitations for grant awards to develop clinical programs which will "increase quality legal services to the elderly." \$1.6 million has been specifically earmarked for clinical programs. It is presently anticipated that this will result in 16 grants of \$100,000 each to run up to two years in length. A 50% match will be required. The tentative deadline for applications is April 19. Other funds are slated to be used for the development of teaching materials.

SHORT STUFF

The February issue of the Law School News reported the death of John S. Bradway, formerly at South Carolina, Duke Hastings and, most recently, California Western. Professor Bradway was one of the early pioneers in clinical education and was the namesake of the now discontinued Bradway Fellows at Duke.

Joe Harbaugh, American; Carrie Menkel-Meadow, UCLA; and Elliot Milstein, American; will be on the faculty of a PLI Negotiation Workshop for Lawyers to be held in New York City on March 14-15 and in Los Angeles on April 11-12. Joe Harbaugh is also co-chair of the program.

The AALS is offering for sale cassette tapes of the AALS National Clinical Teachers Conference held on May 19-25, 1984, in Durham, North Carolina. Descriptions and prices may be obtained by writing the AALS.

Roy and Dale Stuckey are the proud parents of a new baby boy, Scott Addison, born March 11th. Scott entered the world at 10 lbs. 3 oz. Both Dale and Roy are doing fine.

A conference entitled Lawyer Competency, Professional Responsibility and Legal Education will be held at Indiana University School of Law-Indianapolis on March 29-30 in celebration of ten years of service by James P. White as Consultant on Legal Education to the A.B.A. The conference will be chaired by Robert B. McKay, NYU.

Paul Bergman, UCLA, will talk about simulated clinical methods of teaching evidence at the AALS Conference on Teaching Evidence to be held on May 19 through the 24th in Albuquerque.

JOBS

ANTIOCH

Antioch School of Law is seeking full-time Attorney/Professors to begin teaching in August 1985. Antioch is dedicated to providing combined classroom and clinical legal education to a diverse student body, and to serving less-privileged individuals and communities in Washington, D.C. and across the nation. Several permanent positions and one-year visiting appointments are available for both clinical and classroom teaching. Consideration of any applicant will depend on current staff and curricular needs. Teachers may be needed for evidence, criminal law and procedure, federal courts, trial and appellate advocacy, and commercial law.

Applicants should have at least three years of practice experience. Applicants with law school teaching or similar law-related supervisory experience are preferred.

Salaries at Antioch, established through collective bargaining with the Faculty Union, presently range from \$28,000 to \$45,000, depending upon the number of years since graduation from law school.

Applicants should send resumes to Faculty Recruitment Committee, c/o Academic Dean, Antioch School of Law, 2633 16th Street, N.W., Washington, D.C. 20009.

Minorities and women are strongly encouraged to apply.

CORNELL

Cornell Law School seeks a highly qualified person to serve as lecturer/staff attorney with the Cornell Legal Aid Clinic beginning in August, 1985. The initial appointment will be for a period of one year, with possible extension beyond that period. Duties include supervision of students handling civil cases and teaching lawyering skills. Five years actual practice, clinical teaching experience and prior legal services experience preferred. Send resumes with names of three references to: Barry Strom, Director, Cornell Legal Aid, Myron Taylor Hall, Ithaca, New York 14853-4109. Applications accepted until filled. AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER.

PUGET SOUND

University of Puget Sound School of Law invites applications for a visiting faculty position in the Law Practice Clinic beginning fall of 1985. One or two year position. Position includes supervision of third year students and participation in teaching of seminar on advocacy skills. Minimum of three years bar membership and experience in criminal or family law required. Women, minorities and the handi-

capped encouraged to apply. Contact: Jenifer Schramm, University of Puget Sound Clinical Law Program, 949 Market Street, Suite 366, Tacoma, WA 98402, as soon as possible. (206) 756-3480.

The following position was listed in the April 12, 1985, AALS Placement Bulletin:

CALIFORNIA WESTERN SCHOOL OF LAW seeks assistant or associate professor of clinical law. Duties include working with interns, course design and teaching in applied skills areas such as interviewing and counseling, negotiation and mediation. High-ranking law school graduate with a minimum of two years of legal experience desired. Available immediately. Contact: Professor Janet Motley, Director, Clinical Internship Program, California Western School of Law, 350 Cedar Street, San Diego, CA 92101. Phone: (619) 239-0291.

The following position was listed in the February 27, 1985, Chronicle of Higher Education:

Assistant Director, Clinical Programs. Qualifications: Good academic record, more than two years' experience as practicing lawyer, interest and talent for teaching skills courses such as interviewing, counseling, negotiation, discovery and trial practice, ability to work closely with local bar and bench. Applicant must be able to supervise and teach third year students in an on- and off-campus clinical program that includes civil and criminal practice. Applicant must either be licensed in North Carolina or able to be so licensed soon after employment. The position is non-tenure. Duties are limited to normal school year. Salary dependent upon qualifications and experience. Position available May 1, 1985. Applications must be received by March 29. Send to Professor James Taylor, Jr., Associate Dean, External Affairs, Wake Forest University School of Law, Box 7206, Reynolda Station, Winston-Salem, North Carolina 27109. An Equal Opportunity Employer.

ESSAYS

TEACHING ALTERNATIVE APPROACHES TO DISPUTE RESOLUTION - A CLINICAL METHOD

By

Jeffrey H. Hartje, Gonzaga

Recent years have brought another round of wailing and gnashing of teeth by the legal education teaching establishment over the deficiencies of traditional legal education. The present focus again is on the short sightedness of a curriculum wedded completely to a view of the court as the instrument of dispute resolutions and the exclusive study of appellate decisions as the key teaching method. The "alternative" solution is to expose students to the real nature of disputes and of the processes, in addition to litigation, for resolving them - negotiation, mediation, arbitration, fact finding, and new or hybrid forms of these processes, e.g. mini-trials.

This development has fostered, in the last three years, a new section of the AALS on Alternative Dispute Resolution, ("ADR" it is called - there has to be a better name) "backup" centers and new funding sources - the National Institute for Dispute Resolution; the Center for Public Resources, and ADR workshops galore.

For those weary of the "litigation as warfare" mentality, the gentler ways of disputing have been siezed upon with religous fervor. But all of this ain't new. The basic dissatisfaction is a familiar one and the ADR movement may be simply a more "intellectually sanitized" response to the criticisms of legal education made by clinical teachers for fifteen years.

ADR has been embraced by many who understand clinical teaching methodology only as intellectually questionable skills training. Yet virtually every ADR course that I know of employs some clinical methodology - role plays, simulations, games, etc. In methodology and substance almost all ADR courses are clinical half-way houses - transitions from the artificiality of the case doctrine method to the reality of live client clinical education.

As clinical law teachers most of us have been very familiar with this subject matter and some have been trail breakers in the teaching of negotiations and other alternatives to litigation. Most of the present simulation methods of teaching ADR skills were pioneered by clinical teachers.

In the excellent June issue of the Journal of Education, 34 Journal of Legal Education 229 et seq., there was much discussion in the several articles of the use of role plays and other simulations in ADR courses. I also use simulations extensively in my classroom courses in ADR, negotiation and mediation. However, like most clinical teachers I have always preferred the urgency and relational values of law students working with real clients, shouldering real responsibility and solving real problems. And like many other clinicians I have designed (or fallen into) live client clinics to achieve those preferences. It seemed that a clinic focusing specifically on real negotiation, mediation and arbitration could incorporate the educational values of live client clinics and provide a community resource as well. The impulse to design such a clinic was accelerated by the movement to institutionalize arbitration and mediation, a part of "multi-door" court services in many jurisdictions. Law students need to know more about these processes and the skills involved.

Why a live client clinic? A mediation and arbitration clinic with a specific focus on solutions, for the problems of real persons may counteract the notion, generally conveyed by our legal education format, that the lawyer is the center of the dispute resolution process with the client or disputant cut off from the decision-making and relegated to the status of a "yes man." The perniciousness of this idea is difficult to overstate. One of its most obvious side effects is an over emphasis on the lawyer's individual behavior as opposed to lawyer/client collaberative behavior.

Negotiation simulations deal in a detached way with client directions and client needs but even in the best designed programs, (See Binder, Menkel-Meadow, Ravitz et al. at UCLA where volunteer actors play client roles to the extreme of telephoning the student/lawyer at home) the attorney-client connection may be unfocused and the client used as the vehicle to deliver instructions only.

Mediation simulation has similar restraints. The client-parties, no matter how firmly they are told otherwise, tend to view the situation as one where they should strive to help the student mediators, who are on the spot, to "resolve" the problem. The study of arbitration creates its own set of problems. The only simulation approach that I know of is one by Stephen Goldman in Labor Law Arbitration at Northwestern. Classroom approaches convey the process and the players but not the real dynamics of arbitration.

Our program is designed as a three-part approach:

Part One is a three-week academic component directing the student toward the literature of negotiation, mediation and arbitration. The students study an 800 page set of materials. I have compiled, in addition to Fisher & Ury, Getting to Yes. Classroom meetings are employed to discuss readings and to do small group role plays to illustrate various issues involved in negotiations and, later, mediation.

In Part Two the students are assigned to work with a mediator or arbitrator-faculty member at Gonzaga on the panel at the Center. The students act as resource persons and collaborators with the mediator or arbitrator. Each student optimally works on at least two disputes. The student's role will be explained to the parties and their representatives and issues of confidentiality are examined.

The mediations involve disputes between parties attempting to negotiate a modification of an existing divorce decree, conflicts subject to our Domestic Violence Act, landlord-tenant disputes, and neighborhood conflicts. Arbitration takes place in more limited circumstances, primarily first party insurance claims and disputes involving limited dollar amounts. The students are required, among other things, to assess the nature of the dispute, identify the underlying party interests in the matter, essay the consequences of mediation, understand negotiating styles and tactical ploys and attempt to identify potential windows of solution. In arbitration the student participates as a resource person and aide to the arbitrator.

Part Three involves the student in the mediation of minor disputes involving landlord tenant rent deposits, repair and habitability issues.

The three phases allow the student, we believe, to acquire a broader, less parochial view of the disputing process -- a view from the top, as it were. This perspective perhaps permits a more problem-solving orientation and develops a more analytical view of potential solutions in disputes.

At this writing the program is just off the drawing board and it is too early to comment on success or even the ascertainment of preliminary goals.

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CLINICAL EDUCATION

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Haydock, Clinical Legal Education: The History and Development of a Law Clinic, 9 Wm. Mitchell L. Rev. 101, (1984) (Roger Haydock teaches clinic at William Mitchell).

Sacks, Clinical Legal Education at the University of Connecticut School of Law, 16 Conn. L. Rev. 765 (1984) (Howard Sacks teaches clinic at Connecticut).

Schneider, Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom, 11 J. C. & V.L. 179 (1984) (Elizabeth Schneider, now at Brooklyn, previously taught clinic at Rutgers-Newark)

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Tushnet, An Essay on Rights, 62 Texas L. Rev. 1363 (1984)

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BY CLINICIANS

Bodensteiner & Levinson, Current Developments in Civil Liberties, 60 Chi [-] Kent L. Rev. 455, (1984) (Ivan Bodensteiner has long been associated with the clinical programs at Valparaiso)

Tegeler, Developer Payments and Downtown Housing Trust Funds, 18 Clearinghouse Rev. 678, (1984) (Phil Tegeler teaches clinic at Connecticut)

BOOKS

Frascogna & Hetherington, Negotiation Strategy for Lawyers (1984)

Haydock, Negotiation Practice, (1984) (Roger Haydock teaches clinic at William Mitchell)

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ASSOCIATION OF AMERICAN LAW SCHOOLS

Bylaws of the Section on
CLINICAL LEGAL EDUCATION

Article I. Name and Purpose

Section 1. Name.

This section shall be known as the section on Clinical Legal Education (hereinafter referred to as the section).

Section 2. Purpose.

The purpose of this section is to promote the communication of ideas, interests and activities among members of the section and to make recommendations on matters concerning clinical legal education.

Article II. Membership

Section 1. Membership.

(a) Membership in the section is open to a faculty member of a law school that is a member of the Association of American Law Schools (hereinafter referred to as AALS) and to Canadian Associates.

(b) Associate membership is open to any other person who is concerned with the teaching, administration and advancement of clinical legal education.

Section 2. Privileges of Members.

(a) Regular members shall be eligible to vote in person at a section meeting and to hold office in the section.

(b) Associate members may participate in the programs, meetings and activities of the section, but may not vote or hold office in the section.

Article III. Officers and Committees

Section 1. Officers.

The officers of this section are the chairperson and the chairperson-elect. The chairperson and the chairperson-elect shall be elected to single, one-year terms by the membership of the section at each annual meeting of the AALS. The section may elect two members to serve as co-chairpersons and co-chairpersons-elect.

Section 2. Executive Committee.

(a) The executive committee is comprised of the section chairperson, chairperson-elect, six elected members, and one appointed member.

(b) The six elected, non-officer members of the executive committee shall be elected to three year terms by the membership of the section at each AALS annual meeting. Such members' terms shall be staggered to provide for the election of two non-officer members each year. Elected, non-officer members shall be ineligible to serve successive three-year terms. In the event of a vacancy, the chairperson shall appoint someone to serve until the next annual meeting at which time a member shall be elected to serve any remaining portion of the term.

(c) The appointed, non-officer member of the executive committee shall be appointed to a one year term by the chairperson and shall serve as editor of the section publication. The member shall be appointed at or immediately following the annual meeting and shall be eligible to serve successive terms.

(d) The immediate past chairperson of the section shall serve a one year term as an ex officio member of the executive committee.

(e) The executive committee shall determine the size of the standing committees and may create any special committees it deems appropriate. In the interval between annual meetings, the executive committee shall discuss issues relating to section governance and clinical legal education, shall make recommendations on policies affecting clinical legal education to the AALS Standing Committee, and shall solicit and receive reports from standing and special committees of the section. (Pursuant to AALS Executive Committee Regulation 12.6, the executive committee shall also be responsible for reviewing and approving the proposed expenditure of section income.)

Section 3. Standing Committees.

(a) Nominating Committee. (1) shall solicit from section membership the names of potential nominees for section officers and executive committee members; (2) shall consider the suitability of the potential candidates for office and select nominees; and (3) shall report the names of the nominees to the section chairperson and to the AALS Executive Director.

(b) Annual Meeting Program Committee. (1) shall determine the nature, format and content of the section program for the next annual meeting; (2) shall arrange for speakers, participants and materials for the annual meeting; and (3) shall notify section members regarding the annual meeting.

(c) National and Regional Training Program Committee. (1) shall develop, support and coordinate a comprehensive training program for clinical educators; (2) shall represent the section in the implementation of national training conferences; and (3) shall promote the establishment of regional training programs, encourage the formation of regional program committees, and provide support for regional training programs.

(d) Awards Committee. (1) shall propose to the section executive committee criteria and procedures for awards for distinguished achievement or service consistent with AALS Executive Committee Regulations; and (2) solicit nominees for awards and nominate recipients of awards in compliance with such regulations.

Article IV. Nominations and Elections

Section 1. Nomination by Committee.

In nominating members to serve on the executive committee, the nominating committee should strive to have the executive committee reflect the different geographical regions, different clinical program types and different genders and ethnic and racial backgrounds within the section membership. Not less than 90 days before the annual meeting, the nominating committee shall notify the section chairperson and the AALS Executive Director of the names of persons nominated to fill the officer and executive committee positions. The section membership shall receive notification of the identity of the nominees submitted by the nominating committee not less than 30 days before the annual meeting.

Section 2. Nominations by Petition.

A regular member of the section may be nominated for an elected position on the executive committee by petition signed by three other regular members and submitted to the section chairperson and the AALS Executive Director not less than 15 days before the annual meeting.

Section 3. Elections.

All officers and other elected members of the executive committee shall be elected at the annual meeting. Elections may be by voice or secret ballot, as determined by the chairperson.

Article V. Duties of Officers

Section 1. Chairperson.

The chairperson shall preside at all meetings of the section and the executive committee. The chairperson shall present at the annual meeting the report of the section for the prior year (including a detailed accounting of section funds and of all expenditures). The chairperson shall appoint members of the standing and special committees. The membership of such committees should reflect the different geographic regions, different clinical program types and different genders and ethnic and racial backgrounds within the section membership. The executive committee also shall designate members of the executive committee to serve as liaison between the section and the AALS Standing Committee on Clinical Legal Education, American Bar Association Committee on Legal Education and other organizations whose activities bear on clinical legal education.

Section 2. Chairperson-Elect.

The chairperson-elect of the section shall assist the chairperson, as the chairperson may request, and shall perform the duties of the chairperson during absence or disability of the chairperson. If the office of the chairperson becomes vacant, the chairperson-elect shall succeed to the office of chairperson.

[Section 3. Vacancies in the Office of Chair.

Should both the chairperson and the chairperson-elect be unable to serve in the office of chairperson a temporary chairperson shall be elected from the elected members of the executive committee to complete the term. This election shall be by majority vote of the executive committee. The appointed, non-officer member of the executive committee shall, as soon as practicable after learning of the vacancy, call and conduct a meeting of the executive committee in person, by conference call or by mail for the purpose of this election.]

Article VI. Dues

Section 1. Dues.

Each regular member of the section shall pay annual dues in the amount of \$15.00. Each associate member of the section shall pay annual dues in the amount of \$10.00

[Section 2. Authorized Expenditures of Section Dues and Other Section Income.

In addition to the purposes described in AALS Executive Regulation 12.6(d), beginning with the 1985 AALS Annual meeting section dues and other section income may be spent for a reception for section members at an AALS annual meeting, workshop or teaching conference, any deficiency in a meal guarantee, for a section survey, section directory, enhanced newsletter, and regional teachers training conferences. Before the activity is undertaken, the section's Executive Committee must authorize payment of an expenditure, the section chair must determine that the particular expenditure was authorized by the executive committee and is consistent with the section's bylaws and AALS policies. The executive committee with the prior approval of the AALS Executive Committee may also authorize the expenditure of section income for other specific purposes.]

Article VII. Policy Statements

Section 1. Policy Statements.

Because sections are part of the AALS, statements of policy or positions adopted by a section may be made public only after they are approved by the AALS Executive Committee.

Article VIII. Amendments

Section 1. Amendments.

These bylaws may be amended at the annual meeting of the section by a majority of the regular members of the section present and voting. The amendment takes effect when it is approved by the Executive Committee of the AALS.

[Article IX. Suspension of Bylaws

Section 1. Suspension of Bylaws.

Any of these bylaws may be suspended by a two thirds (2/3) majority vote of the regular members of the section present and voting at a business meeting of the section. A motion to suspend must set forth the specific section to be suspended and the purpose of the suspension.]

Bracketed bylaws were added by amendment at the 1985 Annual Meeting.

ATTORNEY'S FEES QUESTIONNAIRE

Please return this questionnaire, within 15 days, to Mike Axline, Pacific Northwest Resources Clinic, Law Center, University of Oregon, Eugene, Oregon 97403.

NAME:

SCHOOL:

TITLE OF CLINIC:

1. Does your Clinic seek fees under fee-generating statutes?

Yes _____ Kinds of Cases

No _____

2. If not, do you have interest in doing so?

Yes _____ Comments

No _____

3. Taking into account university policies and politics, and the subject matters your clinic has traditionally handled, do you have flexibility to do so?

Yes _____ Comments

No _____

Unsure _____

4. Does your Clinic charge clients fees?

Yes _____ Kinds of Cases

No _____

5. If not, do you have interest in doing so?

Yes _____ Comments

No _____

Unsure _____

6. Does your Clinic have flexibility to do so?

Yes _____ Comments

No _____

7. Please identify by name of school, title of program and clinical

supervisor, all clinical programs you know about that handle fee-shifting cases.

8. Please identify all programs that you know about that charge clients fees for service.

9. Do you have, or do you know about, any unreported decisions concerning clinics that seek fees under fee-shifting statutes? If so, please attach copies of decisions or provide information describing how the Committee could obtain them.

10. Do you have comments on, or information about, any of the issues raised in the accompanying article? (Please send any relevant materials and comments in the space below.)