

CLINICAL LEGAL EDUCATION

September, 1982

Reply to:

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CHAIRPERSON'S MESSAGE

By

Elliott S. Milstein

I apologize to any of you who have tried unsuccessfully to reach me during the past month. The entire clinical program here was moved from an off-campus office building to a building on-campus, a move which makes a lot of sense in the long-term. Unfortunately, we were forced to move before the remodeling of our new building was complete and, among other problems, we have had no telephones for two weeks. I feel extremely cut-off from the outside world and full of free-floating anxiety because of it.

Supervising a remodeling job is surely not something which I have trained for but parts of it have been quite enjoyable. It is so much more concrete than anything which we do as lawyers (no pun intended) in that it breaks down into discrete problems, each of them capable of solution and at the end there is a semi-permanent object to behold. The experience has, however, illustrated graphically once again the many ways in which the clinician's job is very different from that of the rest of the faculty.

I am happy to report that my own problems have not interfered with the work of the Section since many of our Committees are effectively fulfilling their mandates. Frank Bloch has done a terrific job as Chair of the Annual Meeting Program Committee. His Committee began its task in the Spring and worked through the summer to put together an excellent program for the Cincinnati meeting. That program is listed in this Newsletter. The Ad Hoc Committee on Political Interference also worked through the summer under the leadership of Liz Schneider. That Committee was asked to draft a statement of the problem and to propose a possible change in the Accreditation Standards to deal with it. Liz and Jim Stark have exchanged well-researched legal memos and expect to merge the drafts during the next month and issue a report which will be published in the next issue of this Newsletter. The Awards Committee, under the leadership of Gary Laser, completed its task on schedule and has proposed a recipient of the Clinical Section Award. Once the Section Executive Committee approves, the Award will be announced. The Nominations Committee, chaired by Jack Sammons, is still in the process of receiving suggestions for Section Officers for 1983. Bea Frank, as Chair of the Teaching Materials Committee, has collected a massive stack of materials from many of you and expects to report in the immediate future as to what she has and how it can be made available. The National and Regional Training Committee, chaired by Jim Klein, has been actively cajoling people to organize regional training programs. Jim will also represent the Committee on the planning committee for the 1983 AALS Clinical Teachers (weekend) Conference. Norman Stein has managed to keep in touch with the section membership and committees and to continue the difficult job of putting out

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This Newsletter is a forum for the exchange of points of view. Opinions expressed here are not necessarily those of the Section and do not necessarily represent the position of the Association of American Law Schools. AALS Executive Committee Reg. 12.4(c).

ANNUAL MEETING PROGRAM ANNOUNCED

The AALS Annual Meeting will be held in Cincinnati, Thursday - Sunday, January 6-9, 1983. The Section on Clinical Education will again present a full day program, on Thursday, January 6th. The program and speakers are as follows:

Annual Meeting Program
Cincinnati, Ohio
January 6, 1983

First Morning Session

Topic: "Big Cases v. Little Cases" - A Meaningful Distinction in Clinical Caseloads?

Moderator: Frank S. Bloch, Vanderbilt University

Speakers: Stephen J. Herzberg, University of Wisconsin

Michael L. Sheldon, University of Connecticut

Stephen Wizner, Yale University

Second Morning Session

Topic: Current Issues in Clinical Legal Education

Moderator: Susan J. Bryant, Hofstra University

Speakers: Elliott Milstein, American University
(ABA Standards on the status of clinicians)

Elizabeth M. Schneider, Rutgers-Newark
(Political interference in law school clinics)

Luncheon

Speaker: Clinton E. Bamberger, Jr., University of Maryland

First Afternoon Session

Topic: New Goals and Approaches for the Teaching of Lawyering Skills

Moderator: W. Lewis Burke, Jr., University of South Carolina

Speakers: Paul B. Bergman, UCLA
Carrie J. Menkel-Meadow, UCLA
Gary H. Palm, University of Chicago

Second Afternoon Session

Topic: Beyond the Teaching of Skills - Neglected Aspects of
the Lawyering Process in Clinical Teaching

Moderator: Peter J. Hoffman, University of Nebraska

Speakers: Edwin H. Greenebaum, Indiana University at Bloomington
Kenney F. Hegland, University of Arizona
R. Nils Olsen, Jr., State University of New York at
Buffalo

Business Meeting

SIXTH NATIONAL TRAINING CONFERENCE HELD
IN MINNEAPOLIS

The 1982 AALS Clinical Teachers Conference was held in Minneapolis, Minnesota from June 19 to 26 at the University of Minnesota Law School. In planning this year's conference, efforts were made to expand it beyond some of its previous horizons. The hope was to make the conference useful and even invigorating for experienced clinical teachers, while still continuing to provide the kind of basic training which has been so useful to beginning clinical teachers. Thus, participants brought tapes of their teaching or supervision, which were examined and discussed in small groups much as in previous years, but this activity accounted for only one of the six days in the schedule.

The seventy-five participants were divided into four small groups. Each group included clinical teachers with a range of experience and a team of two facilitators. Four days in the schedule began with presentations to the small groups by specially invited, experienced clinical teachers, in areas including: interviewing and counseling (classroom components); negotiation (classroom components); supervision; and case planning. These presentations (more lengthy and complete than was possible in previous years, and for which the presenters deserve special thanks) were followed by time in the schedule sufficient for substantial interchange within each group concerning the presentation and subject, encouraging depth and breadth of discussion and the pursuit of interesting tangents. The facilitators with-

in the groups did their best to assure that time, however spent, was at least not wasted - and were responsible for adding another dimension to the discussion during or at the end of the day. This most controversial aspect of the conference (Phase III) was included with the idea of using the group's discussion and evaluation of the presentation as an example of how a group works on a task. The hope was that the group would examine its own functioning and, in doing so, learn how to make other groups (classes, supervising groups, etc.) function better. Phase III was an ambitious attempt at something pretty new; it created some problems, inspired suggestions for modification or elimination, gave everyone involved with it a fair amount of mental exercise, and added an extra aspect of animation and challenge to the conference.

Presentations in plenary sessions by Michael Meltsner, Gary Bellow, and Jeanne Charn addressed explicitly questions of what clinical legal education has been, can be, and should be, generating a fair amount of discussion of what the larger, long-term goals of clinical teaching ought to be. A workshop presentation by Roger Fisher on Negotiation was interesting not only for what it may have offered regarding the teaching of negotiation, but also for the questions it raised regarding the nature of negotiation itself, and the possible roles for lawyers within that process. Informal evening discussions on subjects including Clinical Course Design, Status of Clinical Teachers, and Clinical Methodology in the Non-Clinical Curriculum completed the schedule, allowing focused interest groups to gather themselves and exchange ideas, strategies, commiseration, and encouragement.

The seemingly effortless organization of the conference, the vast amount of provocative discussion and the weariness of the participants at the end of the week resulted from the efforts of the AALS planning committee, Dean Rivkin, Chair, (Tennessee); Susan Bryant (Hofstra); Phillip Schrag (Georgetown); Kandis Scott (Santa Clara); and Peter Winograd (New Mexico). A good deal of the credit for the success of the conference undoubtedly belongs to John Bauman, Executive Director of the AALS who was on hand, along with Verline McFadden and Jan Kulick.

Evaluations of the conference, including suggestions for the weekend conference in 1983, or the longer conference in 1984, are still being gratefully received by the AALS.

Indeed, the conference was so stimulating that at the last morning session the participants burst into song, with "High Hopes".

What makes you think critiquing critiques
Will improve your teaching techniques
Law students know critique reaks
And it's all double speak,

But we have high hopes
Largely dry hopes

cont.

We had pie, Title IX, in the sky hopes
So any time your funding's low
Jobs about to go
Then it's time to say whoa!
Oops, there goes an androgogical
Oops, there goes a pedagogical
Oops, there goes a parapolitical crew.

Active listening is where it is really
Second only to touchy and feely
Rapport will help you relate, great
We will facilitate

But we have high hopes
Largely dry hopes
We had pie, Title IX, in the sky hopes
So any time your funding's low
Jobs about to go
Then it's time to say whoa!
Oops, there goes an androgogical
Oops, there goes a pedagogical
Oops, there goes a parapolitical crew.

When you're moving into Phase III
And you're wondering what it will be
Do you feel or think or see
How this relates to me.

But we have high hopes
Largely dry hopes
We had pie, Title IX, in the sky hopes
So any time your funding's low
Jobs about to go
Then it's time to say whoa!
Oops, there goes an androgogical
Oops, there goes a pedagogical
Oops, there goes a parapolitical crew.

SEVENTH ANNUAL TRAINING CONFERENCE BEING PLANNED FOR 1983

The Planning Committee for the AALS National Clinical Teachers Training Conference has been appointed. Susan J. Bryant, Hofstra, is Chair of the Committee which also includes Jim Klein, Toledo, Michael Meltsner, Northeastern, Elliott Milstein, American, and Dean Rivkin, Tennessee. As reported in the last Newsletter this will be a weekend conference, with week long conferences taking place in alternate years. The Committee seeks input from members of the Section as to where the conference should be held, when it should be held, the subject matters that should be covered and to whom (with regard to experience and expertise) the conference should be addressed. All comments should be directed to Sue Bryant.

NATIONAL AND REGIONAL TRAINING COMMITTEE REPORT ON SURVEY
OF INTEREST IN TOPICS AND FORMATS FOR WORKSHOPS

Bob Seibel, University of Maine, has compiled the responses to the questionnaire which the Committee distributed at the Section's program at the AALS annual meeting in Philadelphia. Sixty people completed and returned the questionnaire which is reprinted to refresh memories.

In Category I the two subjects chosen most often were "Negotiation" and "Developing a Theory of the Case" (49 and 48 yes responses respectively). This means that about 80% of the respondents would want to have those topics covered at a national or regional conference they attend. It seems as though this is a fairly clear signal that these subjects should be covered in our training efforts. There were several topics bunched together as the next most desirable group: Fact Investigation, Counseling, Interviewing, Professional Responsibility, Discovery, Motion Practice, and Writing Skills.

In addition to the tabulation of the numbers, there were many instances of special preferences indicated or written comments added. These tended to focus on the topics of "developing a theory of the case" and "writing skills". It seems that this data should be viewed in light of comments made by several respondents to the effect that emphasis should be on how to teach these subjects more than on the substance of the subject. This echoes the sentiments expressed by several people who commented on the Midwest Regional Workshop in 1980; they thought the best parts of the program then were those that dealt with "how to teach".

Naturally, there is a close interrelation between methods and goals in any subject area but it seems as though there is a significant demand for workshops which emphasize the process of teaching rather than substance. Then participants can choose the substance themselves for their own teaching goals and adapt and extrapolate appropriate processes.

In Category II there was no strong positive response.

Category III had five topics that were preferred based on the total number of positive responses: "Dynamics of the One to One Critiquing Process"; "Defining Goals for Clinic"; "Relation of Clinic Goals to Law School Goals"; and "Research for Clinicians". All received thirty-seven positive responses and "Relation of Simulations to Clinic" received thirty-five responses. The preferences here were not so strong or well focused as the preferences in Category I. In addition, the written comments tended to focus attention on "one to one" supervision. In addition, several people mentioned "structuring and controlling a farm out program" as a topic they were very interested in (and 31 gave yes responses to this topic). This may be a reflection of a sense of doom about funding prospects and an expectation that reduced financial commitments may necessitate increases in farm out programs.

There was strong sentiment that most conferences should try to attract both experienced and new clinical teachers, and should provide some programs specifically directed at each group. This confirms the observation that one of the best parts of the clinical workshops has been the intermingling of people who have different backgrounds and teach in widely varied programs. The informal cross fertilization of ideas is an important part of a workshop and should be preserved.

Finally there was a decided coolness to the idea of emphasizing substantive law at clinical conferences. Apparently the membership feels that other available CLE programs adequately fill the need to keep on top of developments in the law. This underscores the emphasis among members of the section that efforts should be focused on how to teach rather than on substantive knowledge.

QUESTIONNAIRE

I. If you were to attend a National or Regional Training Conference, which of the following topics would you like to have covered (circle "Y" for yes) and which you like to have omitted from the program (circle "N" for no). Assume that the emphasis of the presentation would be on how to teach the subject in a clinic setting:

Interviewing	Y	N
Counseling	Y	N
Fact Investigation	Y	N
Developing Theory of the Case	Y	N
Negotiation	Y	N
Discovery (Formal)	Y	N
Professional Responsibility	Y	N
Appellate Advocacy	Y	N
Drafting of Pleadings	Y	N
Motion Practice/Oral Advocacy Skills	Y	N
Writing Skills (from letters to Pleadings to Memos)	Y	N
Trial Skills (generally)	Y	N
Direct Exams	Y	N
Cross Exams	Y	N
Opening Statements	Y	N
Closing Arguments	Y	N
Other Topics You'd Like Presented:		

II. Another way of analyzing what we teach starts with our raw materials - our cases. Would you be interested in programs that looked at what can/do we teach using:

Criminal Cases	Y	N
Domestic/Family Law Cases	Y	N
Landlord Tenant Cases	Y	N
Public Benefit Cases	Y	N
Class Action Cases	Y	N
Others You'd Like to Hear About:		

III. Some general clinic related topics that could be presented at regional or national conferences:

Dynamics of the One to One Critiquing Process	Y	N
Defining Goals for Clinic	Y	N
Relation of Clinic Goals to Law School Goals	Y	N
Status of Clinic Faculty	Y	N
Research For Clinicians	Y	N
Dealing With Burnout Among Clinical Teachers	Y	N
Relation of Simulations to Clinic In The Law School Curriculum	Y	N
Grading In Clinic	Y	N
Controlling Student Caseload	Y	N
Office Management Problems	Y	N
Specialization In Clinic Programs	Y	N
Role of Clinic Teachers In Other Courses	Y	N
Structuring and Controlling a "Farm Out" Program	Y	N
Other Topics:		

III. A. Looking back over the "menu" covered in questions I, II, and III, please circle the one or two topics that you would most like covered in a national or regional conference.

IV. Finally, there are some choices about structure and form of conferences that we would like your thoughts on. Please feel free to write in additional comments.

Should some conferences be directed primarily for new clinical teachers	Y	N
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Should some conferences be exclusively for people with at least two years clinical teaching experience	Y	N
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Should <u>most</u> conferences try to attract both <u>experienced</u> and new clinicians but provide some programs specifically for each	Y	N
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Should some conferences be strictly devoted to one or two narrow topics (e.g., negotiation or trial skills.) Perhaps these could produce additional teaching materials for general circulation.	Y	N
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Should conferences include sessions that deal with substantive law (e.g., developments in criminal law) as sort of CLE programs within a conference for clinical teachers.	Y	N
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V. Other comments or suggestions (We would particularly wel-

come comments on how you think the section's committee on workshops could be most helpful, and your ideas about the format of conferences and workshops in terms of participation, simulation, discussion, lecture, etc.):

CONFERENCE OF CHIEF JUSTICES ISSUES REPORT BY
TASK FORCE ON LAWYER COMPETENCE

On May 26, 1982 the Conference of Chief Justices Task Force on Lawyer Competence issued findings and recommendations which are supportive of clinical legal education. The Task Force, comprised of ten Chief Justices, examined "various proposals made for enhancing [lawyer competence]".

The Task Force found that the ". . . current processes of legal education, admission to the bar, post-graduate skills training and continuing legal education, and attorney discipline are not yet adequate, individually or collectively, to guarantee the competence of the bar." They also found that lawyer competence would not be assured by improving any one of the existing institutions or by any single innovation.

The section of the report dealing with the deficiencies of legal education was critical of the limited role that clinics have in most law schools. "Despite the increasing emphasis upon clinical activities and skills training, courses that emphasize the elements of professional competence are still only an adjunct to the central process of legal education in most law schools. These programs are much more expensive to administer than traditional lecture or discussion courses and they continue to be offered as electives; no law school has enough capacity in its clinical programs at present to make a practicum part of the required curriculum. An indication of the limited prestige of clinical programs may be the fact that very few clinical law teachers are included in the tenure track. . . .

As Gordon Gee and Donald Jackson have suggested, clinical programs must also diversify the opportunities that they offer to students for practical experience and enable them to participate in 'all branches of the law and all segments of society' if they are to succeed in shedding their poverty law image and becoming 'a significant feature of legal education.'

The report ultimately concluded that the Conference of Chief Justices should create a coordinating council on lawyer competence which, among other things, would develop a model state lawyer competence program for consideration and adoption by the Conference. The Task Force would have 24 members representing the various institutions relevant to its work, including the Association of American Law Schools.

The staff of the Task Force drafted an outline of the components of a Lawyer Competence Assurance Program with examples of additional actions needed. Among the proposals identified were

development of curricula, faculty, and funding for enhanced skills training and expanded clinical education opportunities in law schools.

Copies of the report are available from the National Center for State Courts in Williamsburg, Virginia.

COMMITTEE ON POLITICAL INTERFERENCE TO ISSUE REPORT

The Committee on Political Interference has been at work on a report documenting the problem of political interference, detailing ethical and legal proscriptions against such interference and setting forth the need for a governing standard by an accrediting organization (ABA - AALS). The Committee has several working drafts before it and intends to issue a final report by the time of the AALS Annual Meeting.

AALS STANDING COMMITTEE ON CLINICAL LEGAL EDUCATION TO MEET

The AALS Standing Committee on Clinical Legal Education will meet in Cambridge, Massachusetts on October 9th. All clinical teachers are encouraged to contact the members of the Clinical Section's Executive Committee who are on the Standing Committee and comment on issues of concern in clinical legal education. Contact Kandis Scott, Santa Clara, Judy Potter, Maine, or Gary Palm, Chicago.

CLINICAL SECTION DUES REMINDER

Please remember to send in membership dues to the AALS as soon as possible. This will be the last formal request for dues for membership in the Section. Dues are \$15.00 for the year and an additional \$10.00 for faculty at non-ABA schools and ABA schools that are not service fee paid. Please enclose the following form with your dues.

NAME: _____

Address: _____

Faculty Member at: _____

Mail to: AALS
Suite 370
One Dupont Circle, N.W.
Washington, D.C. 20036

UPDATE ON ABA PROPOSED ACCREDITATION STANDARD 405(e)

At its meeting on July 9-11, 1982, the ABA Accreditation Committee had before it a proposed new Standard 405(e) and related interpretation as originally presented to the Council of the Section on Legal Education and Admissions to the Bar in May, 1982 (See June, 1982 Newsletter), together with an amendment suggested by the Clinical Committee, as follows:

405(e) Full-time clinical faculty members shall be entitled to an employment relationship substantially equivalent to that required for other members of the faculty under Standard 405.

Interpretation of Standard 405(e): Full-time clinical faculty members are entitled to an employment relationship substantially equivalent to that enjoyed by other members of the full-time faculty. This Standard may be satisfied by:

- (1) The inclusion of full-time clinical faculty on the same tenure track as the other members of the faculty;
- (2) A separate tenure track; or
- (3) An approach that provides features substantially equivalent to tenure.

Full-time clinical faculty members are persons who have primary responsibility for classroom teaching. The law school bears the burden of establishing that its approach is substantially equivalent. This Standard is not meant to preclude employment of full-time clinical teachers on fixed, short-term employment relationships, for example, in situations where a law school receives a short-term grant to fund a clinic in a specific subject matter.

Following discussion, the Accreditation Committee adopted a motion to amend the language of the proposed interpretation, as follows:

Interpretation of Standard 405(e): Full-time clinical faculty members are entitled to an employment relationship substantially equivalent to that enjoyed by other members of the full-time faculty. This Standard may be satisfied by:

- (1) The inclusion of full-time clinical faculty on the same tenure track as other members of the full-time faculty;
- (2) A separate tenure track; or

- (3) Employment contracts, such as successive, renewable, long-term contracts that provide features substantially equivalent to tenure.

The approach chosen shall also include terms and conditions of employment substantially equivalent to those offered to non-clinical, full-time members of the faculty.

The Accreditation Committee submitted the amendment to the Council of the Section on Legal Education and Admissions to the Bar for consideration at its August 7-8, 1982 meeting.

The Council has referred the proposed new Standard 405(e) and related interpretation, as adopted by the Accreditation Committee, to the ABA Standards Review Committee which is chaired by Dean Gordon D. Schaber, McGeorge School of Law. Dean Schaber has indicated that his committee will hold public hearings on the proposal at the AALS annual meeting in Cincinnati. Elliott Milstein will coordinate individual testimony at the hearing and submission of written comments to the Standards Review Committee.

The AALS Executive Committee debated issues raised by the proposed Standard and interpretation after receiving a report concerning the Standard and interpretation from a two person subcommittee composed of President-Elect David H. Vernon, University of Iowa and Joe Harbaugh, visiting at Georgetown. After debate, the Executive Committee decided to defer the matter for further consideration at its November meeting and to refer it to the AALS Standing Committee on Clinical Legal Education. The Standing Committee will meet on October 9th in Cambridge, Massachusetts. Comments about the proposal should be directed to committee members Gary Palm, Judy Potter or Kandis Scott who are also members of this Section's Executive Committee.

CLINICAL TEACHERS ON ABA COMMITTEES

Dean Rivkin, Tennessee, was elected to the Council of the ABA Section of Legal Education and Admissions to the Bar.

Joe Harbaugh, Visiting at Georgetown, has been appointed to the Accreditation Committee. Also, Joe will be the delegate to the ABA for the AALS, starting at the ABA mid-year meeting.

Other committee appointments will be announced in the next Newsletter.

TRANSITIONS

Roy Stuckey, South Carolina, will be on leave for the Spring Semester, 1983, and will be a Visiting Associate Professor at Santa Clara.

JOBS AVAILABLE

Hofstra University School of Law invites applications for the tenure-track position of Director of Clinical Programs. Applicants should have excellent academic credentials, as well as litigation and clinical teaching experience or the equivalent. Women and minority candidates are encouraged to apply. Please send resumes to: Professor M. Patricia Adamski, Hofstra University School of Law, Hempstead, New York 11550.

The University of North Carolina School of Law seeks to fill a tenure-track position as director of its in-house clinical programs. These programs include a Criminal Law Clinic (2 supervising attorneys and 24 students per semester), an Appellate Defendant Clinic (1 supervising attorney and 8 students per semester) and a Civil Legal Assistance Clinic (1 supervising attorney and 8 students per semester). Responsibilities include managing and developing these programs and teaching related classroom components. Background in criminal law and clinical education preferred but not required. Salary and rank commensurate with experience. Applications from women and minorities are particularly encouraged. The School of Law is an Equal Opportunity/Affirmative Action Employer. Contact: Professor Thomas Lee Hazen, School of Law, The University of North Carolina at Chapel Hill, Van Hecke-Wettach Hall, Chapel Hill, N.C. 27514.

Southern Illinois University School of Law seeks to fill a tenure-track position as director of its in-house clinical program. Applications should be sent to Professor Darrell W. Dunham, Southern Illinois University School of Law, Carbondale, Illinois, 62901.

(CHAIRPERSON'S MESSAGE-cont'd)

this Newsletter. Roy Stuckey manages to continue to serve as the conscience of the Section, keeping many of us informed as to political issues which deserve attention and providing valuable insights about ways to organize to address them. To each of these people and the Committee members who have worked with them, Thank You.

Dean Rivkin was elected to the Council on Legal Education and Admissions to the Bar of the ABA. He is, I believe, the first clinician on the Council. As you all know, Dean has worked extremely hard on behalf of clinical education on the national level over the past several years and there is no one who I would rather see in that position. Congratulations.