



SECTION ON

NEWSLETTER

CLINICAL LEGAL EDUCATION

November, 1983

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

MESSAGE FROM THE CHAIR

BY

Kandis Scott, Santa Clara

The American Bar Association and the AALS have not yet approved rules requiring schools to give clinical teachers appropriate faculty status. Nonetheless, I predict that there will be improvements in our professional positions. At some schools these improvements will be linked to the demand that clinical teachers write serious articles.

In addition to time pressures, lack of research assistance and quiet work space, one barrier to clinicians' writing is the difficulty in finding a suitable topic. Selecting a topic is an intimidating process. If the topic is too big, you will never finish the research or writing; if too small, your work will not be justified. If no one is interested in the topic, the effort is meaningless. Finally, it takes a bit of nerve to believe that you can contribute something important to legal scholarship.

Let me suggest a few obvious ways to begin the search for a writing topic so as to spark your more sophisticated ideas. Ask yourself what material is hard to teach. For example, how do you teach students to write persuasively as advocates when they prefer the neutral prose of the office memo? How can students learn to be creative in designing a theory of the case? If the topic is difficult for you to teach, it is probably difficult for others so your thinking might solve a problem in legal education.

What do you talk about with other clinical teachers? Those are the important topics within our field. For example, an analysis of the strengths and weaknesses of farm-out clinics could be instrumental in designing future clinical programs.

What do you talk about with traditional teachers? The matters which interest your colleagues are likely to interest others. You may write about clinical teaching or the structure of a clinical program. Or you may convert your lunch table advice on writing an effective demand letter into an article about pre-trial strategies in consumer disputes.

What makes you angry in your work? Waiting in court while criminal cases are continued or adjourned might lead to an article about court administration.

Many clinicians teach in specialty clinics and are experts in their substantive areas. This suggests writing rather traditional pieces about the substantive law. A brief filed in a clinic case could be expanded into such an article.

A final and equally obvious suggestion is to discuss your idea for writing with a respected member of the traditional faculty. Such a person can advise you on the acceptance your piece would receive in the faculty, can suggest modifications or alternative topics, and can help during your writing.

I am personally opposed to requiring that clinical teachers publish in order to obtain equal faculty status. Most clinicians are doing exciting teaching and course development which can not be done by traditional teachers. There is enough room in the modern law school for teachers who write and writers who teach. Despite my beliefs, I recognize that many of my colleagues will be expected to write if they want job security. Let us help one another to make such a requirement manageable and to make the writing meaningful.

COMMITTEE NOTES

COMMITTEES TO BE APPOINTED

The committees of the Section have traditionally been staffed by clinical teachers representing a broad spectrum of the discipline. Next year's committees will be appointed during the AALS Annual Meeting in January.

Roy Stuckey, the incoming chairperson of the section, has asked a group of outstanding clinical teachers to chair the Section's committees in 1984. A list of the committees and the chairs for 1984 follows.

If you would like to serve on a committee, or any particular one, please contact Roy Stuckey, University of South Carolina Law School, Columbia, South Carolina 29208. (803) 777-2278.

Annual Meeting Program Committee - Chair: Rod Jones, Southwestern.

The Committee is to determine the nature, format and content of the Section's program at next year's AALS Annual Meeting. Section members are encouraged to forward any thoughts they may have concerning the program to the chair.

Awards Committee - Chair: Undecided.

The Committee accepts nominations of persons to receive the Section's annual award for exceptional service in Clinical Legal Education.

Clinical Legal Education Coordinating Committee - Chair: Bill Greenhalgh, Georgetown.

The Committee will monitor and report the activities of other organizations which are relevant to the purposes of the Section and coordinate all such activities.

Committee On Computers - Chair: Frank Bress, New York University.

This is a new committee. The specific charge of this committee has not been determined. Recommendations are encouraged. It is expected that members of this committee will be knowledgeable in potential applications of computers in clinical programs.

Committee On Faculty Status - The Executive Committee will decide in San Francisco whether or not to continue this committee, and, if so, what should be its charge. Last year it was:

The Committee will collect, compile and disseminate information about the faculty status of clinical teachers throughout the country, and the standards employed by law schools to determine faculty status. The committee will survey clinical teachers to ascertain the impact of proposed accreditation standard 405(e) upon individuals and clinical programs.

Committee On Integration Of Clinical Methodology In The Traditional Curriculum - Chair: Joe Harbaugh, Georgetown.

This is a new committee. Its title speaks for itself. Clinicians who're interested or involved in this subject will comprise this committee.

Membership Committee - Chair: Susan Kovac, Tennessee.

The Committee will maintain records and solicit membership in the Section. It will recommend additional ways in which the Section can improve or broaden its services to clinical teachers.

National And Regional Workshops Committee - Chair: Susan Bryant, Hofstra.

The Committee is responsible for providing assistance, information and suggestions to persons organizing regional and national workshops. The committee will consist of people who have been involved or hope to be involved in organizing regional workshops for clinicians.

Nominating Committee - Chair: Elliott Milstein, American.

The Committee nominates persons to serve as Chair and on the Executive Committee for election at the Section's annual meeting. The committee will solicit and accept suggestions of persons to serve in these positions from the membership of the Section.

Committee On Political Interference - Chair: Jim Stark, Connecticut.

The Committee will monitor and determine the nature and extent of political interference and attacks on clinical programs by outside forces. The committee will make recommendations on how the Section and individual clinical programs can most effectively respond to the interference.

Teaching Materials Committee - Chair: Don Gifford, Toledo.

The Committee will continue the survey of clinical teaching materials and start a second survey of related materials, such as video tapes, materia's on clinical methodology and "works in progress" of clinical teachers. The committee also plans to develop a proposal for a working conference in 1984 designed to assist clinical teachers in preparing and implementing clinical courses.

Tenure And Promotion Advisory Project Committee - Chair: Kandis Scott, Santa Clara

The Committee will provide advice and counsel to clinical teachers regarding applications for tenure and promotion. The committee solicits requests for advice on application procedures. The clinical teachers applying for tenure or promotion should contact the committee chair.

Roy has also convinced Peter Hoffman of Nebraska to continue to serve as editor of the Section's Newsletter. (It only took a minor arm twist.) This vital resource of clinical teachers needs the continued support of all members of the Section.

NOMINATIONS REPORTED

The Nominations Committee chaired by Judy Potter, Maine, has announced its nominations for Chair-Elect and the Executive Committee of the Section on Clinical Legal Education:

Chair-Elect: Susan Bryant, Hofstra

Executive Committee: David Gottlieb, Kansas

Carrie Menkel-Meadow, UCLA
(Withdrawn)

The election will be held at the Section Business Meeting following the Section Program on January 5, 1984. The members of the Nominations Committee are: Judy Potter, Chair, Maine; Jim Doyle, Georgetown; Mary Lynne Fisher, Loyola-L.A., Peter Hoffman, Nebraska; Don Peters, Florida.

Note from Kandis Scott, Chair:

You will notice that Carrie Menkel-Meadow, a nominee for the Executive Committee, has withdrawn. Let me explain. I named Carrie to the Nominating Committee last January, but she was never notified of this and did not serve on the Nominating Committee. After she was selected as a nominee, I saw this mistake and realized she might be thought to be on the Nominating Committee. To avoid the appearance of a conflict of interest, even though there was no actual conflict, Carrie withdrew as a Nominating Committee nominee. She has been nominated by petition according to our by-laws.

Others interested in running for a position on the Executive Committee should send me a petition signed by three members of the Section by December 21, 1983. (By-laws Art. IV, Sec. 2)

ANTICIPATION BUILDS AS ANNUAL MEETING PROGRAM TAKES FINAL SHAPE
 BY
 Paul Bergman, UCLA

Yes, anticipation is building in Boise, Idaho, for a bountiful potato harvest. At the same time, the Annual Meeting Committee has put the finishing touches on the Program which will take place at the AALS 1984 Annual Meeting, on Thursday, January 5. The Morning Session, beginning at 9:00 a.m., will consist of the discussion and demonstration of four different clinical teaching methods. Each demonstration will include audience participation in role play exercises. Following a gala clinical luncheon, the Afternoon Session will begin at 2:30, and will be broken down into two parts. The first part will consist of breaking the clinicians into six different groups, each group to discuss the usefulness of the demonstrated teaching methods to teach a variety of subjects of concern to clinical teachers. The Committee hopes that participants will leave the Program with specific teaching ideas that they can use in their classrooms. The second part will consist of three different presentations; participants may select the one in which they are most interested. Additionally, clinicians who have a burning desire to discuss a topic other than those the Committee has chosen will have an opportunity to make themselves known to each other and meet during the second part of the Afternoon Session.

Here is the full program:

Morning Session

"Teaching Direct and Cross Examination Through Lecture In Disguise" - John Barkai and Jim Countiss, Hawaii

"Non-Legal Role Plays" - Paul Bergman, UCLA

"Integrating Substantive and Clinical Teaching" - John Farago, Queen's College

"Simulated Practice" - Roger Haydock and John Sonsteng, William Mitchell

Afternoon Session - Part I

Discussion Leaders: Bob Seibel, Maine; Bob Bloom, Boston College; Roslyn Lieb, Northwestern; Phil Schrag, Georgetown; Al Porro, Baltimore; Jim Klein, Toledo.

Afternoon Session - Part II

"Tenure Update" - Elliott Milstein, American; Dean Rivkin, Tennessee

→ "Making Farm-Out Programs Effective" - Janet Motley, Cal Western

"Teaching Ethical Issues in a Clinical Course" - J. Michael Norwood and William T. MacPherson, New Mexico; Frank Munger, Antioch

WELCOME TO THE SECTION -- YOUR DUES ARE GOOD THROUGH DECEMBER, 1984
 BY
 Susan Kovac, Tennessee

The Membership Committee reports that the time has arrived to renew your Section membership. Membership is now on a calendar year basis, January 1 through December 31. Annual dues are \$15 for teachers at AALS member schools and Canadian Associates. Associate members dues are \$10.00. Associate members who are not at ABA approved schools must pay an additional \$10.00 to join one section of the AALS. Associate members may not vote or hold office in the Section. A dues card for your convenience has been enclosed. Mail it today!

Here is the definitive list through November 10 of those folks, and those folks only, who are paid up members of the Section through December, 1984. Almost all of these are new members, so those old friends who do not see their names on the list need to send in their dues to remain with us for next year.

Alexis Anderson	John E.B. Myers
Michael Axline	Richard North
Mead Bailey	Edward O'Brien
William Bluth	J.P. Ogilvy
Bruce G. Cameron	David Oppenheimer
Robert Dinerstein	Paul Papak
Joames Doyle	John L. Pottenger, Jr.
Pat Fetzer	Maude Prevere
Phyllis Goldfarb	Roark Reed
Michael D. Green	Peter Salgo
Henry L. Hecht	Roy D. Simon
Walter Heiser	Larry Spain
Max Kravits	Jam Stark
Mark Lauritsen	Richard A. Stern-Boswell
Lynn Lopucki	Bradley Stetler
Carroll Lucht	Michael Zeldin
Mary McCarthy	

COMMITTEE ON TEACHING MATERIALS

The Committee on Teaching Materials has completed preparing a supplemental questionnaire which you should have received by the date of this Newsletter. The new questionnaire is designed to solicit information on articles and materials concerning clinical methodology and related areas of interest to clinical teachers. Among other things, the questionnaire asks for clinical teachers to recommend what they consider to be the best articles and materials in these areas. In addition, volunteers are being sought to write critiques of the articles and materials identified. If you have not yet received the questionnaire, please contact Don Gifford, Toledo.

The Committee is now working on a second project of putting together a proposal for a working conference on the use of clinical teaching methods and materials in traditional law school courses. The project is still in the planning stage and more information will be forthcoming.

COMMITTEE ON COMPUTERS NAMES MEMBERS

Clinton Bamberger, Maryland, chair of the newly created Committee on Computer Applications in Clinical Teaching, has announced the membership of the Committee:

Frank Bress, NYU
 Karen Czapanskiy, Maryland
 Richard Granat, Institute for Paralegal Training
 J.P. Ogilvy, Texas Southern
 Robert Seibel, Maine
 Jim Sproul, Chicago-Kent
 Ronald Staudt, Chicago-Kent
 Roy Stuckey, South Carolina

The Committee is still in formation and would be pleased to hear from others who are interested in serving.

REGIONAL CLINICAL CONFERENCES

BY
 Jennifer Rochow

Are you interested in attending a regional clinical conference? Has it crossed your mind to try to organize one -- but then it seemed like too much trouble? You found yourself wondering where to start? The Section has been collecting information and agendas from the meetings that have been held over the past few years, in order to assist our members in this organization process. Information, copies of previous materials, and suggestions are available from Jennifer Rochow, Chair, Committee on Regional Training, Boston College Law School, 885 Centre Street, Newton, MA 02159.

BITS AND PIECES

STANDARDS REVIEW COMMITTEE MAKES RECOMMENDATION ON 405 (e)

The Council of the Section of Legal Education and Admissions to the Bar at its July 30-31, 1983 meeting upon recommendatin of the Standards Review Committee, deferred consideration of the proposed new Standard 405(e) and the suggested interpretation thereof relating to the status of clinical law teachers. The Standards Review Committee reported that it was continuing its study of this matter and would present a report, with recommendation, to the Council at its December 3-4, 1983 meeting. The Standards Review Committee met on November 19-20, 1983 and had as its first item on the Agenda the matter of proposed Standard 405(e). By

unanimous vote the the members present, the Committee agreed to present the following proposed Standard to the Council. The Committee further recommends that if the Council declares its intent to consider for adoption and recommendation to the House of Delegates of the American Bar Association the following version of Standard 405(e) that it also simultaneously adopts the suggested interpretation of Standard 405(e):

Stanard 405(e)

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

A. Interpretation

A form of security of position reasonably similar to tenure includes a separate tenure track or a renewable long term contract. Under a separate tenure track, a full-time faculty member, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure as a faculty member in a professional skills program. After tenure is granted, the faculty member may be terminated only for good cause, including termination or material modification of the professional skills program.

A program of renewable long term contracts should provide that, after a probationary period reasonably similar to that for other full-time faculty, the services of a faculty member in a professional skills program may be either terminated or continued by the granting of a long term contract that shall thereafter be renewed. During the renewal period the contract may be terminated for good cause, including termination or material modification of the professional skills program.

B. Interpretation

In determining if full-time faculty members in a professional skills program meet standards and obligations reasonably similar to those provided for other full-time faculty, competence in the areas of teaching and scholarly research and writing should be judged in terms of the responsibilities of the faculty member in the professional skills program. Each school should develop criteria for retention, promotion and security of employment professional skills program.

C. Interpretation

Standard 405(e) does not preclude fixed, short-term appointments in a professional skills program such as full-time visiting faculty members and full-time supervising attorneys.

If the Council declares its intention to consider for adoption proposed Standard 405(e), public hearings would be conducted at the January, 1984 Annual Meeting of the Association of American Law Schools, and at the Midyear Meeting of the American Bar Association, final action on the proposal would be taken at the May, 1984 meeting of the Council and a recommendation made to the House of Delegates of the American Bar Association for its August, 1984 Annual Meeting.

LSC ANNOUNCES NEW CLINICAL PROGRAM

The Legal Services Corporation will fund a pilot law school clinic project designed to enable law school clinics to supplement services offered by existing legal services programs. "The thousands of conscientious and capable law school students throughout the country could be a well-spring of talent and dedication to tap on behalf of legal aid to the poor," said Donald P. Bogard, LSC President.

Plans for the project are being developed by the Corporation's newly established Office of Program Development under the supervision of Peter T. Broccoletti, Director. Project Coordinator is Charles T. Moses III. It is expected that within one month the Director will solicit proposals from all accredited law schools for the purpose of awarding eight to twelve one-time grants to geographically dispersed law school clinics in amounts ranging from \$50,000 to \$100,000 to cover an 18 month period.

For further information concerning this pilot project, please contact: Charles T. Moses III, Law School Project Coordinator, Office of Program Development, Legal Services Corporation, 733 15th Street, N.W., Washington, D.C. 20005 (202) 272-4340.

ABA FORMS TAX CLINIC STUDY COMMITTEE From Information Supplied By Jennifer Brooks, William Mitchell

The ABA Sections of Taxation, Litigation and Legal Education have formed a new committee to study tax litigation clinics. The 16 member Joint Committee on Legal Education Tax Clinics, composed of lawyers, law teachers and judges, is chaired by Jennifer Brooks of William Mitchell. Other law teachers on the committee are Jerome Borison, Denver; Bruce Hart, SMU; Henry Lischer, Jr., SMU; Leo Raskind, Minnesota; and Scott Taylor, New Mexico.

The Committee has undertaken a number of tasks including 1) developing statistics from existing tax litigation clinics regarding the number of taxpayers served, the nature of the representation, etc., 2) studying the possibilities of developing externship programs with the IRS

and the Department of Justice; 3) developing criteria for case selection; 4) developing a prototype tax litigation clinic structure with operating manuals, forms, etc., 5) analyzing the funding of tax litigation clinics; and 6) the overall educational benefits of tax litigation clinics. There are currently tax litigation clinics at Bridgeport, Capital, Denver, Minnesota, Nebraska, New Mexico, SMU, and William Mitchell.

SALT VOTES AGAINST LIMITATIONS ON PAID EXTERNSHIPS

The Board of Governors of the Society of American Law Teachers voted unanimously at its September meeting to oppose the present interpretation of Standard 306 barring academic credit for paid externships. Standard 306 is part of the ABA Standards for the Approval of Law Schools. As reported in the last issue of the Newsletter, there were similar efforts to amend Standard 306 during the 1983 meeting of the ABA House of Delegates. The Standards Review Committee of the ABA Section of Legal Education and Admissions to the Bar will conduct public hearings on the proposed amendment at the AALS Annual Meeting in San Francisco, January 4-7, 1984. SALT's view of the problem is given in the following position statement:

"The Society of American Law Teachers opposes the present interpretation of Standard 306(a) which bars academic credit for paid externships.

The rationale of the interpretation must be based on the assumption that externships which are compensated will fail to meet the formal requirements of Standard 306(a). Perhaps it also reflects a concern that a paid student would receive a double benefit for the same work. Our concern stems from the impact of the interpretation on students of modest means.

It may be true that payment for student services relates generally to poorly supervised practicum or to student duties without intellectual challenge for which academic credit should be denied. Payment as a disqualification is, however, both over and under inclusive. For example, it seems likely that inept student service by a marginal student could be performed, if at all, only by foregoing compensation. Students working at low resource farm-out programs that can neither afford to compensate them or to supervise their work will satisfy the interpretation but will not obtain good experience. Large firms, with both the resources to supervise students effectively and the ability to present challenging assignments may be quite willing to pay good students for their work. Their willingness to pay a student may actually guarantee that the student will be given appropriate assignments. Many examples of a negative relationship between the quality of practical experience and the willingness of employers to pay can be imagined.

Disallowing credit for compensated externships discriminates against students who are forced to work for pay in order to finance their legal education. For them, externships must, under the present interpretation, be sacrificed to work for which they, unlike their wealthier classmates, will receive no credit. Should they want practical experience and require

pay, they will be forced to take additional class work to compensate for the lack of credit although other classmates will be relieved of some classroom pressure by their externship work.

Law schools are involved in an outreach for minority and economically disadvantaged students required by conscience and Standard 212. Many of the students attracted through affirmative action efforts are under financial pressure despite available loans and scholarships. We believe they and other students who cannot afford to work in law offices without pay should not be foreclosed from externship experience.

With or without pay, inadequate externship experience should not lead to credit. Schools have an obligation to supervise clinical work which cannot be satisfied by merely monitoring compensation or its absence. The ABA has an obligation to inspect the school's performance, in this regard. Again compensation is an inadequate test.

There may be circumstances in some sections of the country that make the present rule reasonable. A no-pay requirement should not be forbidden to schools in setting their own rules but we believe it should not be imposed on schools which disagree."

THE PUBLIC INTEREST LAW INTERNSHIP ANNOUNCES
ITS SUMMER 1984 PROGRAM

BY

Sallie Ann Hancock, Executive Director, PILI

The Public Interest Law Internship is a project of the Chicago Bar Association developed in cooperation with the Donor's Forum of Chicago, local law schools and public interest agencies. The purpose of PILI, as stated in its charter, is to "provide law students and young lawyers with experience and training in the legal institutions serving the public interest." The program is designed to provide an educational experience for the interns and valuable work for the participating public interest law agencies. Coordination and academic supervision are provided by Professor Ronald W. Staudt, Chicago-Kent. A broad of agencies participate in the program; it should appeal to law students of all political persuasions. Interns will be paid \$2,500 for the summer; they must work at least ten weeks.

As of this date, fund raising for 1984 has just begun, and firm commitments are not yet available. Applications are now being accepted for positions contingent on funding expected in the winter and spring. The following agencies are expected to participate: Better Government Association; Business and Professional People for the Public Interest; Chicago Lawyers' Committee for Civil Rights Under Law; Leadership Council for Metropolitan Open Communities Legal Assistance Foundation of Chicago; Mid-America Legal Foundation; and Roger Baldwin Foundation of the ACLU. Attorneys at each agency agree to expend special effort in selecting cases and projects for summer law students to illustrate the range of lawyering experiences addressed by public interest lawyers. Students learn public interest law by participating in the work and observing the work of these select attorneys.

Each fall PILI announces its program by contacting law professors at more than 70 American law schools. As a result of this effort, 180 students from 47 law schools applied to be 1982 PILI interns. Resumes of these students were circulated to each of the participating public interest agencies. Twenty-one PILI interns from 14 different law schools were hired by the agencies with PILI funds to fill fieldwork positions for the summer of 1982. Each year has been progressively successful in PILI's attempts to recruit and place law students in public interest law positions.

In addition to on-the-job supervision by public interest attorneys, PILI sponsors group seminars for the interns. Professor Ronald W. Staudt of IIT/Chicago-Kent College of Law organizes these meetings to bring together all PILI interns for discussion of issues in public interest advocacy. In these meetings the students, supervising attorneys and guest speakers discuss the definition of the public interest, analyze methods for advocating public interest positions in the courts, government agencies, legislative bodies and in the media, discuss ethical restraints on those who fight corruption, and identify possibilities for future contribution to public interest advocacy by students as full time or part time public interest attorneys after graduation from law school.

HOW TO APPLY: Students should send eight copies of their resume and transcript, and anything else they consider part of your application, to:

Sallie Hancock
Executive Director, PILI
c/o IIT/Chicago-Kent College of Law
77 South Wacker Drive
Chicago, Illinois 60606

She will distribute the resumes to the participating agencies. The agencies will select their own interns. Applicants may indicate special interests in particular agencies or subject matter. Such interests should be stated prominently on the resume. In addition, resumes may be made available to other public interest employers in the Chicago area.

TITLE IX CONTINUED

The Law School Clinical Experience Program will be around for at least one more year. As in past years, the Administration did not request any funds for the Program for the 1984 fiscal year. The Senate followed suit, but the House included a budget line of \$1,000,000 in its appropriation bill. The Conference Committee followed the House version and \$1,000,000 was included in the bill finally adopted. President Reagan signed the bill on October 31. This year's appropriation is an increase of \$350,000 over the \$650,000 appropriated for fiscal year 1983.

Alan Schiff of the Office of Post Secondary Education of the Department of Education reports that the Department expects to award 40 grants for next year with an average award of \$25,000. Application forms probably will be mailed to law schools approximately January 19, 1984.

The application deadline will be March 5, 1984 and the awards will be made by the end of May. Recipient schools will be required to provide 50% matching funds. No indirect costs will be allowed.

As in the past, grant applications will be reviewed by a committee of readers. Potential readers are identified by the AALS, the Clinical Section and by persons writing in. If you are interested in being a reader, send your vitae to Alan Schiff, Department of Education, Office of Post Secondary Education, ROB #3, Rm. 3067, Washington, D.C. 20202.

WASHINGTON SUPREME COURT UPHOLDS STUDENT PRACTICE RULE
From Information Supplied By
Mead Bailey, South Dakota

The Supreme Court of Washington recently ruled that representation by law students does not deny criminal defendants their constitutional right to counsel as long as the students strictly comply with the Washington student practice rule. The defendant in City of Seattle v. Ratliff, 667 P.2d 630 (Wash. 1983), was challenging several convictions for driving on a suspended license. When his appointed counsel failed to appear for trial, the judge appointed a law student intern from the Seattle-King County Public Defender Association who was representing Mr. Ratliff in another matter. The case immediately proceeded to trial without allowing the law student to consult with his supervisor but the court did permit the defense to delay presenting its case until after a weekend recess.

After recognizing the need for on-the-job training of law students, the Supreme Court found student representation to be constitutionally permissible:

When Rule 9 [the student practice rule] is complied with, the criminal defendant will obtain legal assistance sufficient to meet both federal and state constitutions. As the court in Perez [People v. Perez, 594 P.2d 1 (Calif. 1979)] so aptly points out, representation by a Rule 9 intern under the active supervision of a licensed attorney will most likely result in a higher caliber representation than that provided by a novice attorney sitting alone. There is no constitutional infirmity in such representation.

In this case, however, there was not strict compliance with the student practice rule and the convictions were reversed. While the rule does not require in-person supervision of all appearances in courts of limited jurisdiction, the court held supervision, at a minimum, requires 1) some pretrial consultation between the legal intern and a supervising attorney, and 2) consent of a supervising attorney to the legal intern's appearance.

CALIFORNIA AMENDS STUDENT PRACTICE RULE
From Information Supplied By
Glendalee Scully, McGeorge

The California Supreme Court, acting on recommendations by The State Bar of California, has adopted revisions to the Rules Governing the Practical Training of Law Students and Rules of Professional Conduct, effective October 21, 1983.

Revisions to the law student training rules include:

*Shortening from one-and-a-half years to one year the law school enrollment period required before a student may be certified to participate in practical training programs under the supervision of an attorney.

*Requiring a certified student either to have successfully completed or be currently enrolled in courses which provide training in evidence and civil procedure.

*Reducing from ten to five the number of students any one attorney may supervise at one time unless a waiver is granted by the committee that administers the student practice rules.

*Permitting certified students to appear on behalf of a government agency to prosecute infractions under the general supervision of an attorney, but without the supervising attorney's immediate presence.

PACIFIC REGIONAL CONFERENCE ON CLINICAL
AND LAWYERING EDUCATION SKILLS

By
Jeanie Rucci, USF

Forty-one clinicians from the West Coast, plus one from Antioch, met over the weekend of November 4-6 at Berkeley, California. The focus of this year's conference was training and evaluating students in contexts other than client service clinics. Presentations included a slide show from Walt Heiser of the University of San Diego on their summer clinic in London; a panel discussion by Kenney Hegland, Bea Moulton and Jeanie Rucci on introducing skills training in the first year; and reports from Golden Gate, Southwestern, San Diego, Hawaii and Puget Sound on innovative programs. John Barkai of the University of Hawaii and Andrew Silverman of the University of Arizona discussed methods of skills evaluation, Janet Motley of Cal Western demonstrated the video tape she has developed to train field supervisors in extern programs, Mark Burstein of Southwestern led the group through a series of games he uses in teaching trial advocacy, and Kandis Scott, Chair of the AALS Clinical Section, let everyone know how clinicians have fared in this year's political lineup.

The serious task of the meeting, however, was to carefully scout appropriate eating and entertainment spots for the upcoming AALS meeting in San Francisco. Never known to shirk responsibility, the clinicians

chartered a 40 foot yacht and spent three hours sailing the islands and waterfronts of San Francisco Bay -- undaunted by a broken generator, no lights and no hot food.

The conference was organized by Jeanie Rucci of the University of San Francisco and Marc Stickgold of Golden Gate University. Copies of the 200 page conference workbook can be obtained for \$7.50. Write: Marc Stickgold, Golden Gate University, Mission Street, San Francisco, California.

REVIEWS OF COMMERCIALY PRODUCED LAW-REVIEWED FILMS AND VIDEOTAPES

More and more commercially produced law-related videotapes are becoming available. The flyers and ads make them all sound terrific; the prices make it seem risky to actually find out. If you have bought - or rented - or seen - any of these tapes, why not share your reactions with your fellow clinicians? Your review doesn't have to be elaborate to be helpful; those few pithy sentences which have naturally formed in your mind by the end of viewing the film would probably be enough to help the rest of us decide whether there's any chance the film might suit our purposes or not. Notes regarding student reaction would also be helpful - as well as any suggestions for collateral reading, placement within the course, etc. A tape can also be a handy kickoff for a part of a conference - having reviews available would make it easier for people organizing conferences to find suitable possibilities.

If you've seen or used a tape or film, please take a few minutes to jot down your reactions and send them to:

Jennifer Rochow
Boston College Law School
885 Centre Street
Newton Centre, MA 02159

or you can call and deliver your review verbally: (617) 552-4388.

FACULTY CHANGES

Mercer University has announced that Jack Sammons, former Director of Clinical Education, has assumed the post of Associate Dean. Professor Karl Rice is the new Director.

Steven Pepe, Michigan, has been designated for a newly created Magistrate position with the U.S. District Court in Ann Arbor.

JOBS

BROOKLYN LAW SCHOOL

Brooklyn Law School is in the process of developing a Federal Litigation Clinical Program. The Law School is seeking an experienced litigator with an interest in an academic career to join our faculty as director of the program.

The primary resource for cases will be referrals from the Pro Se clerk in the Eastern District. Since the United States District Court for the Eastern District of New York and the Second Circuit Court of Appeals have broad student practice rules, the clinic students will be able to appear before those courts to argue motions or appeals, or to conduct hearings and other proceedings. In addition, they will acquire some of the skills necessary for effective civil litigation as well as learn certain areas of substantive law.

The program will assist the Court's efforts to secure representation for all litigants. Since many pro se cases involve constitutional claims, the cases the program handles undoubtedly will provide fertile grounds for productive advocacy and creative teaching.

The tenure track position would offer an opportunity to teach substantive courses in related areas in addition to supervising student work and teaching a clinical seminar. The director should have substantial federal litigation or law teaching experience, and will be expected to assume some administrative responsibilities including planning, record keeping, office management and fund raising.

If anyone on your staff would be interested in applying for this position, please contact Professor Joel Gora, Chair of the Faculty Appointments Committee, Brooklyn Law School, 250 Joralemon Street, Brooklyn, New York 11201 (Tel: 212-625-2200).

UNIVERSITY OF CINCINNATI

The University of Cincinnati College of Law is seeking a clinical methods teacher.

The position is a tenure track faculty position to be filled at the Assistant or Associate Professor level. The clinical program at the University of Cincinnati College of Law is an integral component of the skills curriculum, and it operates within the Center for Studies in Professional Skills. The Center has as its mission the teaching of skills, the development of new teaching methodologies and the study of the effectiveness of professional performance and development.

Candidates for the clinical teaching position should have an excellent academic record, preferably law review and published scholarship, and experience in practice. Prior experience as a clinical

teacher is not required. In addition to supervising the clinical programs, the clinical methods professor may be required to teach skills simulation courses such as trial practice or negotiations.

The University of Cincinnati is an affirmative action employer.

Contact: Professor Glen Weissenberger
 Director of the Center for Studies
 in Professional Skills
 College of Law
 University of Cincinnati
 Cincinnati, OH 45221

GEORGIA STATE UNIVERSITY

For its third year of operation, 1984-85, Georgia State University College of Law seeks a full-time, twelve-months-a-year, tenure-track, faculty person as Director of its Lawyer-Skills Development Program. The Director will be responsible for developing, structuring, and coordinating all aspects of this program, including the first-year legal writing and appellate advocacy courses, classroom instructions in litigation skills, and externships. Responsibilities will also include the supervising and coordinating of adjuncts involved and some teaching in the program.

Applicant must have baccalaureate degree from nationally-accredited college, first professional degree in law from nationally-accredited American law school, and affirmative interest in teaching at institution committed to both day and evening educational opportunities. Previous experience in law school teaching (preferably clinical teaching) and in the practice of law are required.

No immediate tenure possible. Rank and salary competitive and negotiable depending on qualifications and experience. Equal opportunity and affirmative action procedures applicable. Interviewing will begin as soon as possible, but no hiring will be done until closing of applications on December 15, 1983. GSU College of Law is seeking provisional and full national accreditation at earliest possible time. Contact Dean Ben F. Johnson, College of Law, Georgia State University, Atlanta, GA 30303.

UNIVERSITY OF IOWA

The University of Iowa College of Law seeks applicants for permanent or visiting classroom and clinical teaching positions. We are interested in all persons of high academic promise, irrespective of prior teaching experience, and wish to assure the diversity of our faculty by including among our candidates persons of all races, sexes, religions, national origins, ages, and other groups that traditionally have been underrepresented in the legal profession. Consideration of any applicant for a faculty position may depend upon the current curricular needs of the College, though considerable flexibility ordinarily exists with respect to courses and other assignments. Persons interested in a career in teaching

should send resumes, references and descriptions of areas of interest to: Faculty Recruitment Committee, College of Law, University of Iowa, Iowa City, Iowa 52242. The University of Iowa College of Law is an equal opportunity and affirmative action employer.

WILLIAM MITCHELL COLLEGE OF LAW

The William Mitchell College of Law seeks a tenure-track faculty member to teach in the Civil Clinic area with the following responsibilities:

1. Teaching:
 - (a) Teach a clinic course that involves direct fieldwork supervision of a few students.
 - (b) Supervise clinical adjuncts in other fieldwork clinics.
 - (c) Teach at least one non-clinic course each year.

This teaching work load will be designed to be roughly equivalent to that of other faculty.

Current faculty will continue to teach other clinics and supervise their adjuncts. This person can be a resource person for them. The extent and nature of supervision necessary will depend upon the degree to which other faculty will be engaged in direct and indirect fieldwork supervision.

2. Evidence of Professional Development: As with other Faculty, this is satisfied by scholarly achievements such as preparation of original teaching materials, scholarly research and publication, participation in continuing legal education, teaching and writing, and contributions to professional and learned organizations.

3. Committee Work: Same as other faculty.

We prefer an applicant with some practice experience and some teaching experience who will be an efficient manager of peers. The salary will be commensurate with experience. The position will be tenure track. Admission to the Minnesota Bar can be accomplished by motion.

William Mitchell presently has an extensive and intensive clinical program which is an integral part of the curriculum. This position will afford a clinician an excellent opportunity to teach in an innovative Law Clinic. Interested applicants may contact Professor Roger Haydock, Clinical Director, at (612) 227-9171 for further information about the

UNIVERSITY OF MARYLAND SCHOOL OF LAW seeks applications for tenured or tenure-track clinical positions. Significant experience in practice, the ability to teach well, and a commitment to legal scholarship are required.

The clinical faculty practice and teach as a law firm in the school's building with a general civil and criminal practice. The clinical faculty supervise students in practice and teach a lawyering process course as a component of the principal clinical course. The faculty also teach clinical courses by simulation and are encouraged to teach more traditional courses in the curriculum. The clinical law office is in a newly remodeled space with offices for faculty, staff and students, a conference room, a classroom and moot courtroom. Four offices and the moot courtroom are equipped with remotely controlled video cameras to record student performances. Apply by December 1, 1983. Contact: Professor Clinton Bamberger, University of Maryland School of Law, 510 W. Baltimore Street, Baltimore, MD 21201.

NEW YORK LAW SCHOOL seeks to fill several faculty openings through permanent and visiting appointments of both experienced and entry-level teachers. The school has needs in several areas, including anti-trust, clinical education, commercial law, corporations, debtor-creditor law, labor law, real property, and taxation. Candidates should have a superior academic background and scholarly achievement of promise. Female and minority candidates are encouraged to apply. Send letter and resume. Contact: Professor George W. Dent, Jr., New York Law School, 57 Worth Street, New York, NY 10013.

WASHINGTON UNIVERSITY SCHOOL OF LAW invites applications for permanent or visiting teaching positions, including clinical. Qualifications include excellence in academic training and scholarly distinction or promise. Applicants primarily interested in clinical teaching and research must also have litigation experience. Contact: Chair, Personnel Committee, Washington University School of Law, St. Louis, MO 63130.

WEST VIRGINIA UNIVERSITY COLLEGE OF LAW invites applications for faculty positions beginning fall 1984. Openings may exist for experienced or entry-level tenure-track faculty, or for a clinical director, which may also be tenure track. Applicants should have distinguished academic records, experience in the legal profession and promise of high scholarly achievement. Applications for accomplished scholars are also sought for a possible endowed chair in law. This chair position would not be restricted in subject matter. Also, it could be awarded on a visiting or permanent basis. For all positions, applications from women and members of minority groups are particularly encouraged. Contact: Associate Dean Thomas Barton, West Virginia University College of Law, Morgantown, WV 26505.

GEORGETOWN UNIVERSITY LAW CENTER invites applications for the five E. Barrett Prettyman and Stuart Stiller Fellowships in Trial Advocacy. The fellows are trained for two years as criminal defense litigators and clinical teachers. At the same time, they pursue a program of scholarly writing and course work leading to the LL.M. degree. Tuition is free and a substantial stipend is provided. Applicants must be eligible to take the July 1984 Bar examination. Application deadline is January 1, 1984. Contact: James Doyle, Legal Internship Program, 605 G Street, N.W., Washington, D.C. 20001.

THE UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW invites applications for possible one year or continuing positions for the nine-month academic year beginning August 1984. Consideration of any applicant will depend on current curricular needs. These needs may include instructors, assistant, associate or full professors, in clinical or classroom positions. Candidates should have an excellent academic record in law studies together with law related graduate study or recent successful teaching experience plus demonstrable potential for teaching. Interested persons should send resumes. Closing date for applications is January 1, 1984 or until a suitable pool of candidates is formed. Contact: Chair, Faculty Selection Committee, University of North Dakota School of Law, Grand Forks, ND 58202.

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL has a few positions to be filled. The Law School is particularly interested in those specializing in law and economics, corporate/securities law, commercial law, criminal law, health and welfare law and business regulation. Applicants must exhibit academic performances at the very highest levels of excellence. High quality publication history and prior law school teaching experience desirable. The Law School is also seeking highly qualified applicants to teach and supervise casework in its clinical programs (including a "live clinic" small business planning/counseling and a family/juvenile law clinic). Please contact in writing with resume and references. Contact: Professor Stephen B. Burbank, Chairman, Appointments' Committee, University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia, PA 19104.

SAINT LOUIS UNIVERSITY SCHOOL OF LAW seeks applications for permanent and visiting faculty positions in areas including corporate/securities, procedure and clinical. Superior academic record and commitment to teaching and scholarship are desired. Women and minority applicants are encouraged to apply. Send resume. Contact: Professor Sanford Sarasohn, Saint Louis University School of Law, 3700 Lindell Boulevard, St. Louis, MO 63108.

SETON HALL UNIVERSITY SCHOOL OF LAW invites applications from those qualified to teach in the area of taxation, as well as for possible faculty positions in the corporate law area, clinical programs (New Jersey Bar membership preferred) and co-ordination of its legal writing program. Applications for possible openings outside of the above areas are also encouraged. Minority, female and handicapped candidates are especially encouraged to apply. Contact: Robert A. Diab, Faculty Appointments Chair, Seton Hall University School of Law, 1111 Raymond Boulevard, Newark, NJ 07102.

THE UNIVERSITY OF TENNESSEE COLLEGE OF LAW seeks applicants for full-time faculty positions beginning in the fall 1984. A superior academic background is required; a significant practice or clerkship experience is also desirable. Areas of primary need include tax, property, decedents' estates, business associations and clinical education. Salary and academic rank are commensurate with individual qualifications and experience. Interested candidates should apply. Contact: Professor John L. Sobieski, Jr., The University of Tennessee College of Law, 1505 West Cumberland Avenue, Knoxville, TN 37996-1800.

TEACHING METHODOLOGIES

Current plans are to have each issue of the Newsletter contain several short pieces centered around a topic of interest to clinical teachers. Last issue, the topic was computers and the clinic; this issue it is teaching methodologies.

You will notice that teaching methodologies is also the theme for the morning portion of this year's Clinical Section Program at the AALS Annual Meeting. Several of the presenters at the Annual Meeting have also contributed pieces to the Newsletter. Our hope is that this preview of their presentations will encourage greater audience participation at the Annual Meeting and will provide vicarious participation for those of us who cannot be in San Francisco. In addition, two of the pieces are about courses or programs that, although not traditionally clinical, should be of interest to clinical teachers.

If you are interested in seeing a particular topic covered in a future issue of the Newsletter or want to contribute a piece yourself, please drop the editor a note.

LECTURE-IN-DISGUISE

By

John Barkai and Jim Countiss, Hawaii

In a courtroom at the University of Hawaii Law School, the following witness examination took place:

Direct Examination

- Q. How do you teach students to perform the various lawyering skills at the University of Hawaii? A. We use clinical textbooks, Xeroxed materials, court visits, student simulations, class discussion, and the lecture-in-disguise.
- Q. Please tell the jury, what is the LECTURE-IN-DISGUISE (LID)? A. The LID is the name used by Professors Barkai and Countiss for a teaching method which uses a demonstration of a lawyering skill by the instructors to deliver a lecture to the students.
- Q. What do you mean by "lecture"? A. Traditionally, a lecture is a monologue. For our purposes, the lecture refers to the subject matter being taught. The content of the lecture could be forms of questions, active listening, impeachment, witness examination, court procedure, etc.
- Q. Then what is the "demonstration"? A. The demonstration is a lawyering skill which is being taught.
- Q. What types of demonstrations do you do in the LID? A. The easiest demonstration is the witness examination, but counseling, interviewing, negotiating, and other skills can also be used.
- Q. What's the disguise you talked about? A. It's called a "disguise" because the content of the lecture is somewhat hidden by the process of the lawyering skill.
- Q. Which are you teaching, the content or the process? A. Both.

- Q. Why teach both at once? A. Partially because it's entertaining. More importantly, the LID improves student learning. Students are getting both a lecture and a demonstration at the same time.
- Q. Could you teach direct examination by the LID? A. Oh sure. As a witness in a LID, I could explain that on direct the attorney must use non-leading questions to accredit the witness and to assist the witness in telling the story.
- Q. What else could you do? A. I would point out that you, the witness examiner, have been asking non-leading questions, specifically open ended and narrow questions, which are appropriate for direct. I would also suggest that students note your position in the courtroom, as well as your tone, pace, and attitude - the whole nonverbal gestalt of direct examination.
- Q. So isn't it true that with the LID you can practice what you teach? Objection - "He's leading the witnesses."
- Q. I withdraw the question. Is there anything else you would like to say about the LID? A. Just that you could make the techniques used even more explicit by pointing to words on the blackboard such as "open-ended question", "accrediting the witness", etc.

Cross Examination

- Q. This is cross examination isn't it? A. Yes.
- Q. And if I do this properly, my questions should be leading, shouldn't they? A. Yes.
- Q. The dialogue between the instructors is more exciting than the typical lecture, isn't that true? A. Yes.
- Q. You have a concern, don't you, that there might be too much going on here for the average student to pick up? A. Yes, somewhat.
- Q. You realize that the LID can challenge the brightest students to the maximum, don't you? A. Yes.
- Q. And wouldn't you agree that most students may internalize this examination process at an unconscious level, even if they are not fully conscious of all that is happening? A. Yes.
- Q. This demonstration will shape the preparation of their next witness examination, won't it? A. Yes sir.
- Q. This is similar to the old apprentice system of training lawyers isn't it? A. I learned to practice law in legal services.
- Q. My question was, the LID is like an apprentice system, right? A. Yes.
- Q. You can show the students both good and bad examples with a LID right? A. Yes.
- Q. And by seeing a demonstration the students learn more about the process than by simply reading a transcript? A. Right.
- Q. And LID provides the opportunity to "annotate" the live process as it is happening, doesn't it? A. That's true.
- Q. Isn't it true that a LID on witness examination is great for the first class of the semester? A. Yes.
- Q. The content could be an explanation of the clinic course? A. Yes.
- Q. You could teach the students about direct and cross exam through the LID. A. That's right.
- Q. And you could tell them that they will have to ask a direct and a cross-examination question about the course after the instructors finish their examination, right? A. True.

- Q. And isn't it true that the LID becomes an active learning method for the students because the students will ask a question and then be critiqued on the form of the question they asked. Objection -"Compound Question" - Sustained.
- Q. And in addition, you could introduce the syllabus as an exhibit and distribute it to the class, isn't that right? A. Great idea, yes.
- Q. So you can use the LID in many situations? A. True.
- Q. You can mix the process and content of the LID, can't you? A. I don't understand.
- Q. Well, for example, you could counsel another professor about how to conduct a negotiation, isn't that right? A. True.
- Q. Isn't one of your favorite LID's a fake disagreement where one professor complains he does not want to teach active listening, while at the same time the other professor counsels him using active listening? A. Yes, I like that one.
- Q. And you have used LID teaching evidence and criminal procedure? A. Yes.
- Q. Just one final point professor. Don't you usually oppose the lecture method for teaching because the students are not active learners during the lecture? A. Yes, that's true.
- Q. Well Professor, isn't it true that you just joined in a lecture-in-disguise? A. Yes, yes, I can't stand it any more (sobbing).

NON-LEGAL ROLE PLAY EXERCISES

By

Paul Bergman, UCLA

Simulation is a familiar teaching technique, particularly to clinical teachers. Simulation allows us to bring a controlled version of the real world into a classroom, and then to ask students to behave as they might in the real world.

In my experience, however, many simulations incorporate at the same time too little and too much of the real world. The real world of lawyering calls upon lawyers to exercise some skills which are peculiarly legal, and others which are little different from those used in everyday life. Part of our concerns as clinicians, therefore, ought to be demonstrating to students that the social skills and abilities they have developed before coming to law school are of value to them as lawyers. From this perspective, many simulations have too much of the legal world, and too little of the world of social skills.

For example, though a simulated direct examination may shut off a number of real world legal concerns, the examination remains a complex matter with a multitude of aspects. Within the confines of a single direct examination, a student is likely to be concerned about the relationship of the evidence to the facts to be proved; the persuasiveness of the story; the legal merits of the questions and the evidence; responding to objections; handling documents and real evidence; demonstrating a professional demeanor; showing interest in the witness; and so forth. To lump all of these skills, legal and social, into one or even a series of simulations and then to expect learning to result is frequently too much to ask. Certainly whole events should be simulated

during a course. However, whole event simulations may be more effective if they are the simulation of "smaller" exercises. Though these smaller exercises may, of course, take place in legal settings, I want to stress here the value of using ordinary social situations. In obviously legal settings, students are quick to focus on the "legal" aspects of the simulation to the exclusion of concerns about the role social skills, and their abilities with respect to those skills. Non-legal settings encourage students to use the skills they brought with them to law school. In discussions following exercises, students are generally quite capable of making the necessary connections between the social and a similar legal setting.

Non-legal role plays evolve from analysis of legal activities such as direct or cross-examination, interviewing and negotiation. Through analysis, most activities can be parsed according to definable segments that typically make up that activity, or according to the different skills that are used while engaged in the activity. For example, there are typical phases of most interviews or examinations at trial, and there are certain skills that are used and types of questions that are asked during each phase. Similarly, apart from considerations of various negotiation methods, there are certain skills that lawyers are called upon to use repeatedly during negotiations.

Once definable segments and skills have been identified, we may devise simulations oriented around each. While the simulation settings may be legal, the benefits of non-legal settings should always be considered. For example, if you want to teach about the discomfort a student may feel when first entering a courtroom, you may describe it through a simulated courtroom setting. But why not give each student the identity of a person normally found in a courtroom (e.g., bailiff, clerk, lawyer, drunk asleep in the back row), tell the students they are at a cocktail party at which they do not know the other guests, and ask them to mingle? Since most students have probably muddled through uncomfortable cocktail parties, they can fall back on the same social skills they have already employed. Because the setting is not an obviously legal one, following the exercise the discussion can focus on their feelings, attitudes and conversational gambits. Guided by the instructor, the students are usually capable of figuring out to what extent cocktail party behavior needs to be modified for the courtroom.

In a variety of legal settings, say in opening statements, lawyers have to communicate information to judges or others who are unfamiliar with a topic, or who are from a rather different background. Instead of focusing on a legal setting, an instructor may ask a student to tell another student how to put on his or her coat. The latter student, however, is just in from Mars, and unfortunately will not understand many of the terms used by the former. The student instructor, therefore, has to define and explain many terms which are familiar to her or him, but which are meaningless to a listener.

At the Annual Meeting, I hope to describe and illustrate a few other non-legal role plays I have used. The role plays are illustrative only. In fact, the specific role plays are less important than the analytical process from which they evolved. If an instructor breaks down complex lawyering tasks into separable skills and activities, the instructor will

be able to create non-legal role plays suited to her or his needs. Such exercises are excellent building blocks leading to more typical lawyering settings, and they are also a lot of fun.

LEGAL PRACTICUM COURSE

By

Roger Haydock & John Sonsteng, William Mitchell

The William Mitchell College of Law will be offering a new ten credit, one semester course that represents an innovative and creative evolutionary approach in clinical legal education. The course attempts to combine the best of both simulated and fieldwork experiences into an integrated clinic.

Objectives. The learning goals of this course include:

1. The development of new areas of clinical experience.

We have selected those facets of simulated and actual client representation and merged them into an intensive, integrated semester-long course.

2. The provision of professional, individual supervision.

This course requires the involvement of a substantial number of faculty members who act as tutors to the students and provide them with continuous supervision and numerous in-depth critiques.

3. The implementation of new teaching techniques.

Students in this course will learn through the clinical method and will also assume responsibility as teachers by interacting with the members of their "law firm" and their colleagues in the course.

4. To better prepare students for the practice of law.

The course presents upper class students with a challenging, exciting, demanding, realistic, and educational experience, and simulates the practice of law more effectively than traditional simulated or clinical courses.

5. To instill professional responsibility.

Each client and case will provide the student with ethical issues which need to be addressed, analyzed, and resolved.

6. To provide legal experience in the preparation and trial of cases, including administrative cases, and the settlement of controversies outside the courtroom.

The course requires each student to conduct a trial, administrative hearing, a legislative meeting, an arbitration procedure, a negotiation conference, and a mediation session.

7. To provide skills training usable in the practice of law, including witness interviewing, factual and related investigation, legal analysis, client counseling, document drafting, and discovery.

8. To integrate substantive law, procedural law, and skills learning in one course.

This semester-long course will require the students to devote their full educational time and attention to problems and issues involving legal principles learned from their previous courses in the core curriculum.

9. To combine simulated learning experiences and fieldwork experiences in the same course.

Part of the course will involve students in simulated cases and problems and part of the course will require students to represent actual clients.

10. To simulate real life as much as possible.

The simulated part of the course will have students form their law firm, complete with letterhead and office space, file papers in real clerks' offices, appear in proceedings in real forums, and interrelate with individuals employed in the legal system as if the case involved real issues and real clients.

11. To involve instructors in roles in addition to supervision.

The faculty will include instructors who will act as clients, opposing parties, opposing attorneys, and other individuals as part of a case or problem.

12. To reflect the realities of practice.

The cases and problems and the fieldwork have been designed to provide students with realistic situations, some of which they can resolve easily, others which become more complex, and still others which challenge all their abilities. The students will be retained by the clients in a sequence designed to provide them with a continuous flow of some related and some independent problems.

This clinic will initially be offered to 16 students in the spring semester. Students will be engaged in both simulated learning experiences and exercises and in fieldwork representation of actual clients.

Simulated Experiences. The students will be divided into four-person law firms and will practice law under the supervision of faculty and tutors. Simulated cases and problems and clients will be presented to each law firm during the semester, requiring the student attorneys to handle a significant variety of intergrated substantive and procedural law. The problems will involve the following substantive areas: corporate law, personal income tax, business income tax, wills, real estate, commercial law, criminal law and procedure, constitutional law, civil rights, torts, family law, employment law, and poverty law. Each of the student firms will be involved in proceedings including a court trial, an administrative hearing, a contract arbitration, motion hearing, legislative conferences, depositions, and a Supreme Court appeal. The cases will involve proceedings in both state and federal judicial and administrative forums and the state legislature. All the student attorneys will interview clients, investigate facts, draft documents, prepare pleadings, compose memos, prepare briefs, negotiate settlements, and conduct related skills. Each week during the 15-week semester the student law firms will receive information about new cases and problems or continuing developments. This proposed syllabus lists the activities for the simulated portion of the course. The client, problems, and cases are

identified by letters of the alphabet. Some of the problems will last several weeks, some longer. The clinic fieldwork experiences will be coordinated with this schedule.

Fieldwork Experiences. Each student will be assigned to interview and represent three indigent clients with civil problems. This fieldwork will be coordinated with the simulated law firm experiences and constitute pro bono activities. The cases will be screened from clients through Legal Assistance of Ramsey County, a local legal services office that contracts with the College to provide a source of clients. Two cases will be selected that should be resolved by counseling and negotiating. A third case will be selected that will involve an administrative hearing, most probably an unemployment compensation hearing.

Classes. Each week the law firm will meet at regularly scheduled times with their tutors. The faculty tutors will supervise the students and evaluate and critique their performances. Faculty tutors will act as facilitators in each session. They will probe, question and stimulate the self-learning and analytical process. Each week individual students will meet with their clinical supervisor to review the fieldwork cases.

Course Prerequisites. All of the cases and problems will be based upon the subject matter that Mitchell students cover in the basic required courses. These required courses include contracts, torts, criminal law, civil procedure, property, constitutional law, corporations, income tax, commercial transactions, legal research and writing, evidence, trial advocacy, and professional responsibility. Additional information about poverty law will be provided students during the fieldwork course.

For further information, Professors Roger Haydock or John Sonsteng may be contacted at (612) 227-7591. They will explain more about the new course at the AALS meeting in San Francisco.

LAWYERING SKILLS PROGRAM IN INTERVIEWING,
COUNSELING AND NEGOTIATION

By
Carrie Menkel-Meadow, UCLA

Professors David Binder and Carrie Menkel-Meadow of the UCLA clinical program have completed the development of a comprehensive Lawyering Skills program for the American Bar Association. (See Winter issue, Barrister magazine, 1983). The program, which was begun in 1979 as part of ABA President Leonard Janofsky's mandate to teach law office as well as courtroom skills, may be of interest to law school clinicians. At the urging of the ABA the program was designed to make use of clinical experiential and participatory learning models. Called by some a "NITA program for law office skills" the program utilizes several different formats including didactic lectures, video tape demonstrations, class exercises and individual video-taped performances and critique sessions.

Unlike NITA, however, the program draws on particular models of interviewing, counseling and negotiation and thus, depends less on ideosyncratic feedback and more on clearly developed conceptual and pedagogical models of these lawyering skills. A comprehensive Teacher's

Manual describes those models and informs instructors in the program how to use the models in lectures, video commentary and individual critique sessions. The pedagogical theory of using these models is that students will have a clear understanding of what is being taught irrespective of the particular points of view of individual instructors. Thus, the student understands the objective of the learning experience and can concretely measure whether conceptual understanding has been accompanied by behavioral mastery. More sophisticated students, who have mastered the skills in the models, can then critique whether the models are effective in all contexts. The program utilizes a "Phased" teaching format so that skills are broken down into their component parts and students do not progress from one level to the next without demonstrating mastery in each segment. Thus, interviewing is divided into Commencing the Interview, Preparatory Explanation and Fact Development and negotiating is divided into Conceptions of Negotiation, Planning the Negotiation (Substantive Solutions), Planning the Negotiation (Counseling the Client), Negotiation Process and Conducting the Negotiation.

The program is unique not only because of its methodological approach but because of its substance. All three skills components of the course utilize a "client centered" orientation to the performance of lawyer's skills. The interviewing and counseling segments are based on Binder and Price's Legal Interviewing and Counseling. The negotiation segment of the course utilizes a Problem Solving approach developed by Menkel-Meadow (see Toward Another View of Legal Negotiation (forthcoming, 1983) and similar to Fisher & Ury's Getting to Yes). Emphasis in the program is on learning the client's real needs and desired solutions and facilitating client participation in legal processes. In addition, the program adds a new dimension to skills training by employing problems in both litigation (dispute resolution) and transaction planning and thus permits comparison of the use of skills in their contextual complexity.

The program materials include four volumes (three volumes of problem sets and one teacher's manual with substantive material on lawyering skills, including lectures, transcripts of video-tapes, planning sheets and checklists for interviews and negotiation and guides for critique sessions) and two video-tapes (one on dispute resolution and the other on business planning). (The whole package is available from the ABA for \$397). The program materials include a guide for using the material in a law school clinical course of varying credit hours or as a separate intensive course (particularly useful for those experimenting with clinical skills teaching in first year or legal method courses).

Although the program was originally developed to teach lawyering skills to lawyers already in practice (many of whom have never had clinical courses) it has served extremely well in law school clinical courses in Interviewing, Negotiation and Counseling as well as in some non-clinical courses. (One of the problems has been used in a contracts class to illustrate basic contracts principles as well as to give students an experiential base for understanding the interaction of doctrine and skills.)

The program was developed by combining interviews and observations of lawyers in practice as well as on refining the models in clinical courses and in pilot programs developed by the ABA. Thus, the program combines clinical theory developed in the "ivory tower" of the law school with empirical verification and pedagogical pretesting and modifications.

After years of teaching clinical courses and perfecting trial advocacy courses we are beginning, through programs like the Lawyering Skills Program, to develop theories and models of what lawyers do outside of the courtroom so that we can better understand and teach these skills. In addition, it is important to begin to understand that skills may be different in different contexts and that our conceptions of which skills are important depend on what the lawyer's conception of her role is. (I.e. to serve the client or "win the case"). The Lawyering Skills Program should demonstrate that there are principles unique to the teaching of lawyering and that these principles can be taught and further refined as we analyze what lawyers do and why they do what they do.

Those who are interested in learning about or ordering parts of the program can call Azike Ntephe at the American Bar Association at 800-621-8986.

GENERAL PRACTICE COURSE

By

Richard L. Rykoff, Santa Clara

I have offered a course entitled "General Practice" for seven years at the University of Santa Clara Law School. The course was inspired by the book entitled "Structuring A General Practice Course" by Professor Studart G. Gullickson of the University of Wisconsin.

The aim of the Santa Clara course is to provide an overview of the general practice of the law and lawyer's role. The approach taken is to present the several areas which the general practitioner will predictably deal with most frequently: criminal defense, real estate matters, personal injury claims, domestic relations (primarily divorce) matters, wills and the probate of estates, debtor/creditor matters (including enforcement of judgments), and commercial matters (usually limited to corporate and partnership formation and operation). Approximately two weeks are devoted to each subject area with usually six subject areas covered a semester.

In addition to the substantive areas, attention is also paid to affective considerations in the practice of law and law office management and operation.

In the limited space offered, I will set out the pattern of the course as illustrated by one of the segments given. However, an overview of the goals should first be summarized:

1. The overall aim is to introduce the student to the garden variety kinds of fact situations predictably encountered by a practitioner in each of the indicated areas. The fact situation is then treated as would a knowledgeable and competent attorney in dealing with the client,

investigating facts informally and through formal discovery, consulting with experts, drafting documents, dealing with adversaries, litigating the matter, and negotiating a settlement. Most of these exposures are via simulation; some are accomplished through contact with those actually engaged in the particular areas being examined.

2. The affective framework in which the lawyer functions in each of the areas is given attention. Consideration is given in each segment to the nature of the attorney-client relationship, the frame of reference of the client in that field, and the goals to be accomplished.

3. In each of the subject areas explored, the "lawyering skills" predominantly employed are replicated and/or observed. Simulations are structured for the attorney-client interview, for the negotiation, for drafting of documents, for depositions, and for some courtroom aspects of the litigation process.

4. Throughout the semester, students are encouraged to consider and explore their own personal concepts of how they view their roles as attorneys in general and in particular with reference to each of the areas being explored and experienced.

5. Each segment is team-taught with one or more specialists in that area of practice, and in each segment there is participation by those experts or officials who would normally be encountered by the lawyer in representing a client.

6. To the extent there are court proceedings or offices involved, the class observes their functioning or has a simulated problem to perform in that particular office.

7. Issues of professional responsibility are raised throughout the course.

8. A major objective in each segment is making clear the entire process from the initial presentation of the matter to the attorney, through the various considerations and steps taken to whatever resolution seems appropriate under the circumstances. An effort is made to relate the end results of the lawyer's involvement to the way in which the matter is perceived and attended to from the beginning throughout the period of consideration of each segment.

The first segment of the course is devoted to the affective considerations in the practice of law. The first class sessions are devoted to a discussion of the role of the lawyer as reflected by the reasons that each student has come to law school, what they plan to do with their legal education, what factors they consider to define a good lawyer, and what they perceive the lawyer's function to be.

A psychologist or psychiatrist then joins the class to discuss the emotional aspects of the law practice, including the relative position of attorney and client in the representation, the extent to which the attorney's own needs and constructs should and do enter into the relationship, and the phenomena of transference and countertransference.

Each of the substantive segments typically commences with a specialist in that field of practice giving an overview kind of lecture. This initial presentation uses a common fact situation presented to an attorney in that aspect of the practice, and the lecture deals with the various approaches the attorney considers and utilizes (e.g. informal attempts to resolve the problem, litigation techniques, etc.) To the extent that documents are commonly used in representing clients in this particular area of the practice, exemplars are used to illustrate and concretize discussion.

Space considerations prevent a summary of all of the segments of the course, but a typical segment, personal injury, is outlined below.

The initial session is presented by a plaintiff's personal injury attorney. This class is devoted to an overview of the representation of an injured client from the time the client first approaches the attorney through settlement (trial techniques are left; to the course in trial practice).

Forms and exemplars of documents utilized by that attorney's office are distributed and discussed: . retainer agreements, correspondence to clients, settlement briefs, etc.

At the conclusion of that session, documents from an actual personal injury file of a local office are distributed. These documents are normally the police report and a summary of testimony of a treating physician and a witness to the accident. Students are advised that in the following week they will be taking the deposition of the plaintiff in the automobile accident, and they will be acting the role of defendant's attorney. They are to visit the scene of the accident and prepared to take a 30-minute deposition concerning liability and damages. The deposition is taken before a student court reporter with a law student playing the role of the witness and myself as opposing counsel. An actual transcript is prepared which is later reviewed with the student.

The next class session presents a professional investigator and an accident reconstruction expert. Each expert discusses what he does, what attorneys should and should not expect of each, how an attorney should work with such an expert, and the cost of such services. Written discovery tools are also discussed, and the students are assigned to the writing of some interrogatories and requests for admissions.

The next class session is devoted to a consideration of negotiation and settlement procedures. A claims agent for one of the major insurance companies discusses the most effective ways to settle personal injury claims. Simulated negotiation exercises are scheduled for out-of-class practice with videotaping of a selected number arranged for later viewing and discussion.

Class sessions for the balance of the segment include discussion of the process of informal and formal discovery, and a lecture by an insurance defense attorney on his or her perspective of the case being handled.

The other segments of the course are presented using essentially the same approach: utilizing experts, observations, drafting of documents, performance of the roles in simulation, etc. in a manner appropriate to the particular subject matter of each segment.

ARTICLES ABOUT CLINICAL EDUCATION

Clinical Education

Bodensteiner, An Explanation of Clinical Education, 12 Stetson L. Rev. 719 (1983) (Ivan Bodensteiner has long been active in clinical education at Valparaiso).

Stevens, American Legal Scholarship: Structural Constraints and Intellectual Conceptualism, 33 J. of Leg. Ed. 442 (1983).

Interviewing and Counseling

Howarth & Hetrick, How to Interview the Client, 9 Litigation 25 Su. '83.

Negotiation

Bryant, Dealing With an Unreasonable Plaintiff, 46 Tex. B. J. 100 (1983).

Advocacy

Katz & Felshman, Lawyer's Language -- Some Suggestions for Incorporating Techniques of Advocacy Into the Appellate Brief, 9 J. of Contemp. L. 127 (1983).

General Interest

Coute, A Glimpse Forward: Toward Quality and Coherence in Law School Curricula, 16 J. Mar. L. Rev. 523 (1983).

Elkins, A Humanistic Perspective in Legal Education, 67 Nebr. L. Rev. 494 (1983).

Symposium, American Legal Scholarship: Directions and Dilemmas, 33 J. of Leg. Ed. 403 (1983).

The following articles are recommended to those who must satisfy their scholarly interests through other means than clinical teaching:

Currie, The Most Insignificant Justice: A Preliminary Inquiry, 50 U. Chi. L. Rev. 466 (1983).

Easterbrook, The Most Insignificant Justice: Further Evidence, 50 U. Chi. L. Rev. 481 (1983).

By Clinicians

Long, When the Client is a Child: Dilemmas in the Lawyer's Role, 21
J. of Fam. Law

Rivkin, The TVA Air Pollution Conflict, the Dynamics of Public Law
Advocacy, 49 Tenn. L. Rev.843 (1982).
(Dean Ravkin teaches clinic at Tennessee).

Books

J. Tanford, The Trial Process (1983)(Contains chapters on interviewing and
negotiating).