SECTION ON

CLINICAL LEGAL EDUCATION

NEWSLETTER

June, 1984

Reply to:

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MESSAGE FROM THE CHAIR

By
Roy Stuckey, South Carolina

If you ever find yourself wondering if you made the right career decision. . . if you ever start thinking that either side of the fence we straddle looks invitingly green. . . if you ever begin to worry about the future of clinical legal education. . . then, get thee to a gathering of clinical teachers.

The AALS National Clinical Teachers Conference in May was not the best conference there ever was or will be, but it was the largest and most diverse gathering of clinical teachers ever. That made it successful.

I am not sure why meetings of clinicians are so special and so productive. Most probably, the answer is historical. As a group, we have thrived in the face of consistent adversity of one sort or another. Perhaps, this experience has given us a clearer understanding of our larger, common goals which helps us put aside individual differences when a shared objective is sought.

There have been many examples of this during our relatively brief history. The Duke conference was one more. There were old and young clinicians in attendance; easterners and westerners; humanists and nonhumanists (I don't think there were people present who could be labeled as the opposite of humanists, although there was some discussion about super-naturalists.); and there was a healthy sampling of pure simulators and placement clinic enthusiasts. Almost everyone who was there feels that clinical education was moved slightly forward during the week and that many seeds were sown for more significant advancements in the future.

The conference ended in the same spirit in which it was conceived. The participants worked themselves to the point of exhaustion, giving to each other everything possible to improve the collective benefit of the meeting. Each presenter had put in dozens of hours preparing for what was, for most, only an hour of "air time." And everyone took risks of one sort or another to improve the quality of the experience and to help the group move forward.

Perhaps, no people took more risks or gave more of themselves to the conference than my colleagues on the planning committee. Joe Harbaugh suggested that the conference be run under the umbrella of a week-long simulation. Elliott Milstein was the first to support the notion, which kept it from withering on the vine as a crazy idea, and he and Joe worked together to refine the concept so it could work. Kandis Scott and Jennifer Rochow were the inspiration for most of the topics discussed during the conference, and they volunteered to help present two of the riskiest - decision-making and values. This may seem like mild stuff in June, but it took a great deal of courage in October making a commitment to talk about research on every day of the Conference.

Lingering uncertainties about the location of the Conference and the budget for it reached a point during the Spring when serious consideration was given to calling it off. We were at that point when Sue Bryant pushed the button which allowed us to keep going (and to sleep better at night). She said something like, "Don't worry. Even if the program falls apart or no one registers for the conference, it will be a worthwhile experience for the faculty and whoever else shows up to spend a week talking to each other about clinical education."

And I guess that's the essence of what I am trying to communicate. Many special things happened at Duke, but the most special event of all was simply the gathering of the clan. The dynamics at Duke were not unique. Whenever clinical teachers have gotten together, there has been an atmosphere charged by shared interests and concerns, mutual trust and support, and sincere caring for each other and for the future of legal education.

That is what is special about being a clinical teacher. If you haven't attended meetings of clinical teachers before, you have missed the best part of being one. If you have, then be advised that it only gets better as you renew old friendships and meet more clinicians.

Some of us will gather again in August during the ABA Annual Meeting, others will attend regional conferences during the Fall, and the Section will assemble formally at the AALS Annual meeting in January. Don't miss out.

BITS AND PIECES

UPDATE ON 405(e)

From Information Supplied by
Dean Rivkin, Tennessee and Roy Stuckey, South Carolina

Will this be the longest running serial ever? Will we never see the end of Newsletter titles such as the above? When it finally looked like the "proposed" would be dropped from 405(e), the opposition rallied its forces. Now more hard work is ahead and the future remains uncertain.

The Council of the ABA Section of Legal Education and Admissions to the Bar met on May 19 to vote on forwarding proposed Standard 405(e) to the ABA House of Delegates for adoption as an accreditation standard. Standard 405(e), as discussed in prior Newsletters, would provide tenure equivalent status for clinical teachers. The vote in the Council was unanimously in favor of the standard after several modifications were made to the accompanying Interpretations. But the meeting was not completely smooth. Joseph Julin, President of the AALS, appeared on behalf of the AALS Executive Committee to urge delaying consideration or rejection of the standard. While the Council rebuffed this plea, the Executive Committee is currently proposing to oppose the adoption of 405(e) by the ABA House of Delegates which will meet in Chicago on August 7 and 8.

The ABA House of Delegates has delegated to the Council the power to interpret accreditation standards. As part of the process of considering 405(e), the Council has also promulgated proposed Interpretations of the standard. The proposed Interpretations are likely to be adopted by the Council if the House of Delegates acts favorably on the standard.

At the Council meeting, Gordon Schaber, Dean of McGeorge and Chair of the Section's Standard Review Committee, made three recommendations concerning the proposed Interpretations on behalf of his committee. First, he recommended a modification of Interpretation A that would replace the word "renewed" with "renewable." (The original proposed 405(e) and accompanying Interpretations are contained in the November Newsletter). This was passed by the Council. Dean Rivkin, Tennessee, a member of the Council, considers this a drafting change that was consistent with the intent of the standard as it has evolved.

Second, Schaber recommended that Interpretation C be modified to exclude "full-time supervising attorneys" from the purview of the standard. The justification for this change was that "soft money" programs might be precluded if the predominant criterion was not met. He therefore felt that greater flexibility would be permitted by his proposal. He acknowledged the potential for abuse by schools that would try to circumvent the entire standard by focusing on this language. A lengthy debate followed this recommendation. Rivkin, Justice Norman Krivosha of the Nebraska Supreme Court, Judge Henry Ramsey of Berkeley, California, and Dean Norman Redlich spoke against the proposal. Dean Richard Huber, Dean Frank Walwer, and a few others spoke in favor of it. The upshot of the debate, which focused on the question of "flexibility", was language proposed by Judge Ramsey that would exclude from the standard an "experimental program of limited duration". This appeared to be a compromise that went to the heart of the objectors' concerns. Rivkin spoke against the exception but to no avail. He was the only dissenting vote on this aspect of 405(e).

Third, Schaber recommended a two year grace period for full compliance. Compliance would begin with the 1986-1987 academic year. There was very strong support for this aspect of the standard, and it passed unanimously. It reads:

> Full compliance with this standard shall be required with the commencement of the 1986-1987 academic year. In the intervening two years each approved law school shall develop a plan in conformity with this standard. This time interval will permit approved law schools, in developing their plans, to draw upon the resources of this section and the Association of American Law Schools.

Before a final vote, Prof. Joseph Julin, President of AALS, gave a lengthy and passionate speech in opposition to adoption of the standard. He stated that it would quell diversity and imagination, would sour relations between the ABA and the AALS, and would impede the ability of law schools to manage the coming decline in demand for legal education. He rested his argument on the AALS-ABA Guidelines and stated that a study was necessary to determine whether this standard was in fact necessary. He insisted that "it comes down to a matter of proof." He concluded by saying that the opponents of the standard will make a substantial case to the ABA House of Delegates. He noted that this was too bad since the Council and AALS were <u>really</u> not adversaries on this question.

Julin's remarks generated a great deal of discussion by the members of the Council. This discussion centered on the political feasibility of the standard and its real "need." Redlich, Ramsey, Krivosha, and Rivkin made strong statements in favor of the standard. Redlich called this issue the most important issue that he has faced in the accreditation of law schools. Ramsey noted that it was grossly unfair to discriminate against law teachers on the basis of what they teach. Krivosha noted that clinicians should have "rights" too. Rivkin emphasized the good faith process the standard has endured. Finally, Bob McKay noted that, by rejecting the standard now, the Council would be breaking faith with clinicians. He stated that equity, fairness, and educational necessity underpin this issue. He strongly urged the adoption of the standard now. (In the end, it was adopted by unanimous vote.)

Millard Ruud, Executive Director of the AALS, reported at the Clinical Teachers Conference on the Council meeting and the Executive Committee's position. He stated the Executive Committee voted unanimously to oppose 405(e) but for varying rationales. He said the Executive Committee agrees with the Council on the role of clinical education, but differs on matters of timing. Ruud stated that the Council may have viewed the Executive Committee as engaging in a stall since no study, as was now being proposed by the Executive Committee, had been made in the two years 405(e) has been pending. Finally, he said the current position of the Executive Committee is to "oppose and

oppose publicly" the passage of 405(e) in the House of Delegates. The Executive Committee will meet on June 25 to consider its position again.

Meanwhile, the AALS is proceeding with the proposed study. A questionnaire has been sent to all member law school deans seeking information on the current status of clinical teachers and what the anticipated effects of 405(e) would be if adopted.

Several clinicians have made Ruud aware of their view that the Executive Committee's actions run the risk of seriously alienating many clinical teachers from the AALS. In addition, Norman Redlich, Dean of N.Y.U. and a member of the Council, has stated he will organize a counter group of deans to support 405(e) and that he would speak in favor of it on the floor of the House of Delegates. Redlich, Schaber, and Richard Huber, Dean of Boston College, have sent a letter to all law school deans requesting their support of 405(e). Their arguments are:

* Proposed 405(e) is the result of two years of effort and numerous public hearings. During this time, no dean has appeared in opposition to the basic concept underlying the proposed standard. Some deans have raised questions about the language of portions of the standard, and these have been carefully considered by the Standards Review Committee of the Council and the Council itself;

* The Council is composed of individuals with extensive backgrounds in legal education who unanimously support the standard;

* Few have ever questioned the relationship of tenure status to the quality of legal education when applied to traditional academic faculty. The arguments in favor of tenure for traditional faculty are no less true for teachers in a professional skills training program;

* The argument is made by opponents that 405(e) is an example of over-regulation. No one, however, makes this argument when applying tenure to traditional faculty. The charge of over-regulation is heard only when it is sought to be established that an individual's tenure status should not depend on the subject he or she teaches;

* Standard 405(e) is a flexible standard allowing experimentation in programs and systems of tenure;

* Clinical education cannot attain its rightful place in academic life if the hiring of full-time clinical teachers is dependent on their being relegated to a second-class citizenship. Standard 405(e) will attract to professional

skills training a higher quality of teachers, and it will tend to increase the level of their performance by providing greater incentives;

* Standard 405(e) is a matter of elemental fairness and decency. There should be no second-class citizens among the full-time members of an academic faculty.

What can you do? Express your views to the dean of your school and to your state members of the ABA House of Delegates. The House will meet on August 7 and 8 in Chicago. You should make your views known well prior to this date.

UPDATE ON 405(e) UPDATE

As of July 3, 1984, there appears to be a real chance that the Council of the Section of Legal Education and Admissions to the Bar may accept the AALS Executive Committee's substitution of "should" for "shall" and 405(e) may be presented to the House of Delegates with that change. A report that the Council has already agreed to this change was incorrect and it is not at all clear what it will do. If the Council decides to make this change, the AALS will not oppose its adoption.

If the change is made, clinical teachers have a mechanism through which we can propose an amendment on the floor of the House of Delegates to replace "should" with "shall." As of this moment, that is what is expected to happen, if the Council agrees to the change.

However, clinical teachers are trying to learn more about the reasons for the Council's reconsideration of the issue, and it is too early to make an irrevocable decision.

The final decision about what to do will probably be made in Chicago during the ABA meeting. Clinical teachers who can go to Chicago should be there to help make these decisions and to demonstrate our unity. The House will probably consider 405(e) on either Tuesday, August 7 or Wednesday, August 8. There will be organizational meetings of clinical teachers on Tuesday and Wednesday mornings: at 8:30 a.m. in the second floor lobby (near the registration desk) of the Hyatt Regency.

Try to let Roy Stuckey know if you are going to be in Chicago (8^3) 777-2278. He will be staying at the Drake during the meeting. Roy can also provide up-to-date information about the status of things between now and the ABA meeting.

LSC ANNOUNCES GRANTS

From Information Provided By
Dean Rivkin, Tennessee and The Legal Services Corporation

The Legal Services Corporation has announced the recipients of its grants for the expansion and development of clinical programs to assist LSC eligible clients in receiving legal representation. The grants are part of a demonstration project to fund law school civil clinics for an 18 month period beginning in the fall of 1984. "The primary function of the project," according to Peter Brocceletti, Director of LSC's Office of Program Development, "is to test whatever student legal clinics can be an efficient and effective means of argumenting the work of existing legal aid programs." Other goals of the project are to enhance the education of law students through participation in the delivery of legal services to poor clients; to create a future group of lawyers interested in providing legal services to the poor, either as career or as an integral part of private practice; and to increase cooperation between LSC and all segments of the legal community. A last minute reduction in funding reduced the number of grants to nine. The recipients are:

Vermont	$70,000
Virginia	95,000
Loyola - New Orleans	90,000
Indiana U. - Indianapolis	90,000
Southern Methodist Univ.	70,000
St. Mary's	90,000
North Dakota	60,000
Wm. Mitchell	70,000
McGeorge	65,000

As reported in the last issue of the Newsletter, the LSC project has generated considerable controversy among clinicians. One viewpoint was presented in a letter sent to all law school deans by several clinical teachers. The signers of the letter were described by Millard H. Ruud, Executive Director of the AALS, in a memorandum to the deans on the same subject, as "fourteen of the leading clinicians." The AALS Executive Committee never took a position on the project nor the letter's arguments. Highlights of the letter included:

> It is possible that a law school clinical project might serve as a useful means to enrich legal services to the poor in an era when funding for legal services for the poor adequately met that need. Even then, some would argue that sound clinical education inherently conflicts with the service mission that the Corporation supposedly seeks to advance through this project. Unfortunately, this is a time of hardship for legal services.
> * * *

In this context, a proposal by LSC to fund, however modestly, . . . a new initiative must be viewed with skepticism. * * *

Augmenting legal services to the poor by using law students is an idea whose time has come and gone. Although law school programs might contribute to an already adequate delivery system, the idea that law school programs can play a primary role in providing legal services for the poor has been discredited over the years. The primary mission of law school clinical programs is to educate students; to add a strictly service mission to the all-encompassing educational one would be self-defeating for both.

* * *

What, then, is LSC's motivation for instituting this project? Among careful observers of the Corporation, there is near consensus that the . . . Program is yet another strand in the Corporation's plan to dismantle or seriously weaken the field programs. * * *

* * * On balance, we believe it is important for clinical programs with long-standing commitments to legal services for the poor to participate in this project. This will give the Corporation a pool of programs whose experience must be tapped to give the Corporation a realistic demonstration of the project.

The letter was signed by Clint Bamberger, Maryland; Sue Bryant, Hofstra; Doug Frenkel, Penn; Joe Harbaugh, Temple; Robert Keiter, Wyoming; John Kramer, Georgetown; John Levy, William & Mary; Carrie Menkel-Meadow; UCLA; Bea Moulton, San Francisco; Gary Palm, Chicago; Dean Rivkin, Tennessee; Kandis Scott, Santa Clara; Mark Spiegel, Boston College; and Roy Stuckey, South Carolina.

Lastly, Dean Rivkin of Tennessee, a member of the Council of the ABA Section of Legal Education and Admissions to the Bar, reports that Charles Moses of LSC appeared before the Council on May 19 to present LSC's view on the project. Moses told the Council that LSC had received 57 high-quality grant proposals. The panel reviewing the proposals was composed of Bill Pincus, former head of CLEPR; Dick Taylor, a project director from North Carolina; Moses, and a member of the grants and evaluations division of LSC.

Moses stated that LSC developed this project to get "research data" on the delivery of legal services through law school clinical programs. He stressed the "local involvement" of the field programs in the project. He said that 30 percent of the project directors reponded to LSC's initial letters about the program, and that of these, 50 percent were enthusiastic about the proposal. He also said that LSC would weigh the enthusiasm of the local program during project selection.

In response to the criticism about the "ripple" effect that the project will be testing, Moses stated that LSC was simply following up on a mandate in the Legal Services Corporation Act and a 1978 GAO study that recommended to LSC that it get more involved in clinical education. He also stated that a few of the proposals submitted deal expressly with the question of pro bono research. Finally, he addressed the question of service versus education. He said that Donald Bogart, President of LSC, feels that there is no reason why there can't be good legal education and quality service under this program. Moses said that LSC wants to investigate this proposition. He also said that they wanted to test it using a variety of models in geographically dispersed areas. He closed by stating that last year the Corporation closed more cases than ever in history and that now is the time for research on mixed delivery systems. He termed this "leveraging resources."

CLINICAL TEACHERS CONFERENCE

The National Clinical Teachers Conference, held May 19-25 at Duke in Durham, North Carolina, was a great success (see Message from the Chair). While the dorms left much to be desired, the campus was beautiful and the presentations exciting and provocative. The attendance was the largest ever for these conferences.

The Conference led off with a keynote address by Elliott Milstein, American, and a description of the format for the remainder of the week. Participants were to assume they were consultants retained by the University of Nevada - Las Vegas to design a clinical curriculum for its newly created law school. The tone for the discussions to follow was set by watching a video-tape of a faculty meeting at the law school. The debates in the faculty meeting covered the full spectrum of positions including those who opposed any sort of clinical training, those arguing for a simulation program, and those wanting a full-blown, live client clinic.

On the first full day, Elliott Milstein, American, and Kandis Scott, Santa Clara, talked about what we know about decision making as a subject matter while Don Peters, Florida, presented a video-tape of a method of teaching decision in a clinical context. Following each presentation, the participants broke out into small groups to discuss the what, how and why of teaching decision making. The day concluded with a presentation by Frank Block, Vanderbilt, and Carrie Menkel-Meadow, UCLA, on using the clinic as a basis for research on lawyering processes.

Each day's main topic was followed by a discussion of research topics and methodologies. The program on Monday, Tuesday and Wednesday followed the format of the first full day. On Monday, Frank Munger, Antioch, and Jennifer Rochow, Boston University, lectured on teaching about values and presented a simulation illustrating the importance of values in the teaching and practice of

law. The day also included a talk by Dr. Martha Peters, an educational psychologist at Florida, on stress management. Tuesday's presentation was on client counseling by David Koplow, Georgetown, John Morris, Utah, Sandy Ogilvy, Texas Southern, and Jane Aiken, Georgetown. While client counseling was the focus of the discussions, the topic was designed to be representative of skills training in general. Wednesday was a half-day program by Bill Greenhalgh, Georgetown, Peter Hoffman, Nebraska, and Martha Peters on client supervision.

The program on Thursday shifted to designing a proposed curriculum for the new law school. Led by David Binder, UCLA and Sue Bryant, Hofstra, the conference worked on bringing together the discussions of the entire week into concrete suggestions about what are the particular advantages of clinical education and how these could become part of a law school's curriculum. On Friday, the recommendations of the discussion groups were formalized and presented.

All was not serious intellectual inquiry. Besides suffering through Elliott Milstein's terrible limricks, there was also an evening devoted to a contest on the best clinic war story presided over by the master story teller himself, Roy Stuckey, South Carolina. Other events were Kandis Scott leading a discussion on promotion and tenure, the South Carolina crew playing endless hours of Trivial Pursuit, and extensive field research on whether North Carolina barbeque is really different than the South Carolina version. Lynn Lo Pucki, Wisconsin, demonstrated his computer based Debtor-Creditor game. Attendees at the Conference were:

Jane H. Aiken Georgetown	Alexis Anderson Boston College	Thomas P. Anderson Campbell University
Peter Aron George Washington	Marie Ashe Nebraska	Joseph Baum Albany
Barbara Bezdek Georgetown	David A. Binder UCLA	Frank Bloch Vanderbilt
Katherine Broderick Antioch	Sue Bryant Hofstra	Robert Burdick Boston University
Sally Burns Georgetown	Robert Catz Miami	Douglas L. Colbert Hofstra
Gregory Conti Boston College	Nancy Cook American	Corinne Cooper Missouri - Kansas City
Catherine Cronin-Harris Fordham	Selwyn L. Dallyn Arizona State	Luis DeGraff Queens

Robert Dinerstein
American

Craig Edwards
Lewis and Clark

Stephen Ellmann
Columbia

Steve Emens
Alabama

Marc Finkelstein
Brooklyn

Pat Flynn
South Carolina

Douglas N. Frenkel
Pennsylvania

Sandra S. Froman
Santa Clara

J. Noah Funderburg
Alabama

Susan Gillig
UCLA

Phyllis Goldfarb
Georgetown

Pam E. Goldman
Cornell

Robert Goodwin
Cumberland

Bill Greenhalgh
Georgetown

Jeffrey H. Hartje
Gonzaga

Steven Hartwell
San Diego

Kirk S. Hazen
Syracuse

Joseph Henseley
Houston

Peter Hoffman
Nebraska

William Hornbostel
Drake

Dan Hutchinson
UCLA

John Irvine
Indiana

Bruce Kogan
Delaware

David Koplow
Georgetown

Minna Kotkin
Brooklyn

Susan D. Kovac
Tennessee

John C. Landis
Delaware

Homer LaRue
Queens

John Levy
William & Mary

Carol B. Liebman
Boston College

Lynn Lo Pucki
Wisconsin

Chip Lowe
Nebraska

Randy Lowry
Willamette

Anne Maddox
Alabama

Nancy Maurer
Albany

Jim McGovern
South Carolina

Carrie Menkel-Meadow
UCLA

Elliott Milstein
American

Albert Moore
UCLA

John Morris
Utah

Joe C. Morrison
Alabama

Robert Mosteller
Duke

Frank Munger
Antioch

Marjorie Murphy
Cincinnati

J.P. (Sandy) Ogilvy
Texas Southern

Gary Palm
Chicago

Patrick O. Patterson
UCLA

Don and Marty Peters
Florida

W. Marshall Prettyman
Seton Hall

Louis Raveson
Rutgers-Newark

Barbara Ravitz
UCLA

Suzanne Reilly Pennsylvania	Dean Hill Rivkin Tennessee	Terence W. Roberts McGeorge
Jennifer Rochow Boston College	Henry Rose Loyola - Chicago	Richard Rosen North Carolina
Nicki Russler Tennessee	Peter Salgo New England	Kandis Scott Santa Clara
Ellen Scully Catholic	Glendalee Scully McGeorge	Jed Scully McGeorge
Ann Shalleck American	Graham B. Strong Virginia	Roy Stuckey South Carolina
Phil Tegeler Connecticut	Norman A. Townsend Georgia State	Paul Tremblay Boston College
Lawrence B. Weeks Arizona State		

INFORMATION SOUGHT ON CLINICAL CONFERENCE

In order to improve future clinical teachers conferences, Roy Stuckey, South Carolina, is seeking information from those clinical teachers who did not attend. If you are one who did not make the journey to Durham, please drop Roy a short note telling him why - no money, no interest, or whatever.

TAX CLINICS

Robert Beaudry, Southwestern, and Stuart Filler, Bridgeport, have developed a model for creating tax clinics based upon their experiences in running two programs. The report covers the selection of clinical supervisors, funding, budget, caseload sources, student qualifications, a suggested seminar syllabus, and grading. The report can be obtained from either author.

The ABA Tax Section and Litigation Section Joint Committee on Tax Litigation Clinics chaired by Jennifer Brooks, William Mitchell, is continuing its study of the various problems of tax clinics (see November, 1983 Newsletter). Among other matters, it is studying the feasibility of developing externship programs with the Chief Counsel's Office of the IRS and the Department of Justice, tax clinics appearing before the Tax Court, ethical problems of tax clinics, and fees and funding of the clinics. The Committee has already completed a great amount of work and is a potential clearinghouse for information on tax clinics.

ARBITRATION INTERNSHIP PROGRAM FOR MINORITY STUDENTS

The Arbitration Section of the National Bar Association and the American Arbitration Association are co-sponsoring an arbitration program for minority students. The program was started in the summer of 1983 as a three year pilot project.

In 1984, the program is expected to have two or three students who will participate as clinical interns. Students participating in the clinical program have advanced approval from their schools. The school advises the AAA of the school's reporting requirements such as hours, etc., and of its requirements to certify that the student's assignment was satisfactorily completed.

The internship program consists of formal training in alternative dispute resolution, presence in a minimum of two arbitrations, written and research assignments usually in the field of arbitration law, or other assignments of a hands-on nature, for example, in mediation.

For futher information, contact Rosemary S. Page, Associate General Counsel, American Arbitration Association, 140 West 51 Street, New York, NY 10020.

HENNING COMMENTS ON CLINICAL EDUCATION

Some interesting remarks about clinical education were made by Joel Henning, in an article entitled Professors Ain't What They Used to Be appearing in the March, 1984, Syllabus, the publication of the ABA Section of Legal Education and Admissions to the Bar:

> The Michaelman Report comes out in favor of more clinical education. But that parade has gone by, at least concerning the legitimacy of clinical training. Every law school has some kind of clinical program. But some schools are discovering that the financial costs of satisfying student demands for clinical education cannot be supported as enrollments level off and student interest in doing good is replaced by their obsession with doing well. To their wry amusement, administrators of these schools have also discovered that the very lawyers who cried out for more practical teaching discount clinical courses on job candidates' law school records.
>
> Other schools, including New York University, have gone way beyond the threshold questions concerning clinical education and are now asking how best to integrate practical problem solving into a large portion of the law school curriculum. Some schools have built entire curricula around clinical experience, including Antioch Law School in Washington, D.C. and the new Queens College Law School of the City University of New York, which admitted its first class of students last fall.

Mr. Henning is president of LawLetters, Inc., publishers of Law Hiring & Training Report.

AALS LAW TEACHERS DIRECTORY

All full time clinical teachers are supposed to be listed in the AALS Law Teachers Directory, even if they are not included in a school's tenure-track staff. It is unclear how many clinicians are out there who are not being included in the Directory, but if you are one or if you know of others who are being omitted, it is not because the AALS is unwilling to include you. The cover memorandum which accompanies the materials sent to each school for updating entires in the Directory has for years specifically noted the appropriateness of including non tenure-eligible clinicians in the Directory.

It is important to be listed in the Directory, for it is the only comprehensive listing of law teachers in the country. A number of mailing lists of interest to clinical teachers are compiled from the Directory, and there is no justifiable reason for excluding any full-time clinician. Some schools may simply be unaware that it should be done. Others may be more obstinate. If obstinacy seems to be the cause, the AALS Section of Clinical Legal Education would like to know about it. Write or call Roy Stuckey at the University of South Carolina, (803) 777-2278.

STANDARDS FOR EXTERNSHIP PROPOSED

In response to a request by the Consortium on Professional Competence, the Council of the Section of Legal Education and Admissions to the Bar, at its May, 1984 meeting, decided to undertake implementation of the following recommendation of the Task Force on Professional Competence:

> Well-supervised externships and clerkships may supplement law school instruction. We recognize the limited value of poorly planned and supervised externships and clerkships. If they are to be effective educational tools, they require an appropriate purpose, plan, breadth and structure. Guidelines and a model plan for externships and clerkships should be developed. It may well be that appropriate models have already been developed by certain law firms or law schools, but have not been widely disseminated. A model plan, distributed to externship supervisors and to prospective employers of clerks, would serve a useful purpose.
>
> We recommend that the Section of Economics of Law Practice, the Section of Legal Education and Admissions to the Bar, the Young Lawyers Division, and the Law Student Division work together to that end.

The Council referred these recommendations to the Skills Training Committee for review and consideration as to their implementation by the Section. If you have ideas or suggestions about the standards, please forward them to David Binder, UCLA. The Council will meet again in August. Any suggestions should be made prior to then.

POVERTY LAW NETWORK FORMS

By
Marie Failinger, Hamline

Despite sweeping changes in public benefit programs and shifts in the director of court decision delineating the rights of program beneficiaries, there has been little response in the legal education community. To begin exploring these changes in substantive poverty law issues, a group of law teachers and students have formed an informal network to share information and encourage discussion of these issues. The network, which began at the January AALS conference in San Francisco, is intended to foster scholarship about and community response to, substantive poverty law issues, and to strengthen poverty law curricula and programs in law schools.

Among its immediate objectives, the network is working to assist particularly traditional scholarship by providing a network of readers for poverty law articles, and information about poverty law materials newly in print. A subcommittee will also be working on getting current poverty law texts updated or replaced with new publications. A program on teaching poverty law is planned for the 1985 AALS annual meeting, and the network may be sponsoring both local and national opportunities to discuss poverty law issues in the future.

The speakers at the 1984 meeting posed several needed areas for scholarship in the 1980's. Art La France, Dean at Lewis and Clark, suggested that many of the concepts which were discussed in early poverty law courses need to be rethought in light of changes in social services delivery: these include concepts of federalism; the understanding of the family as reflected in public benefit programs; the role and needs of women; the cash-out/vendoring controversy; and the use of public benefits to encourage or punish socially desired behaviors (e.g., workfare requirements). In the health area, Eve Triffo from Southwestern stressed the need for research into due process issues affecting hitherto "peripheral" programs such as Title V, the extent of the federal agency's statutory discretion in public benefit programs (e.g., waivers of state program requirements); enforcement of standards in existing programs such as Hill-Burton; and civil rights problems in these programs. Myron Moskovitz from Golden Gate focussed on scholarship needs for the central shelter problem of low-income people: an inadequate supply of housing. Sunny Peltier from the University of Cincinnati discussed current work on a "right to food" doctrine, and mentioned several research issues on domestic food programs and development of legal incentives for production and distribution of food to low-income people.

Many of the 60 members of the network are clinical law teachers, or worked with low-income people as Legal Services or public interest lawyers; an increasing number are teaching or reviving poverty law courses in their curricula. Any law teacher or student who is interested in becoming a network member, or receiving the quarterly newsletter, may contact Marie Failinger, Hamline University School of Law.

MINNESOTA ADOPTS CLINICAL FACULTY STANDARDS

By
Stephen F. Befort, Minnesota

The controversial topic of clinical faculty status has been addressed at the University of Minnesota Law School. After six months of committee study and faculty debate, the law school faculty adopted a new personnel code entitled "Personnel Policies and Procedures for Clinic Faculty at The University of Minnesota Law School."

The clinic model at Minnesota is for tenure track faculty to direct the clinical program and supervise non-tenure track instructors who are primarily responsible for teaching clinic classroom sessions and supervising student case work. At present, Minnesota has two tenure track clinic directors and five non-tenure track clinic instructors.

Prior to the adoption of the new personnel code, the clinic instructors were employed on an annual contract basis with no assurance of job security. Contract terms and personnel policies were generally established by the Dean on an ad hoc basis. In addition, although clinic instructors were voting members of the faculty committees, they had no voting status at faculty meetings.

The Personnel Policies and Procedures document adopts a non-tenure track, job security approach for other than adjunct clinicians. The key elements of the document are:

1) The hiring of clinic faculty on probationary appointments which may be converted to continuous appointments after successful completion of the probationary period which may not exceed six years.

2) Clinic faculty on continuous appointments may be dismissed only for cause, financial exigency declared by The University of Minnesota central administration, or program reduction or termination.

3) Clinic faculty on either probationary or continuous appointments may vote at faculty meetings on issues "directly affecting clinic instructors or ... clinical programs."

4) The establishment of procedures and criteria for hiring clinic instructors and awarding continuous appointments.

Although the document details more specific considerations, the general criteria provided for continuous appointment approval are as follows:

-Quality of teaching classroom components of clinical programs;

-Quality of supervision of students in the handling of actual cases;

-Participation in the management and operation of clinical programs and in making of policy which affects these programs; and,

-Contributions to the development of law and legal education.

> Note: While the role of clinic faculty does not entail traditional scholarship of the kind and extent expected of tenured/tenure track faculty, clinic faculty presumably will be interested in the development of their fields of law, their legal specialties, and legal education; and published contributions to that development beyond the specific performance of their clinic duties will be credited, but such contributions are not required for a continuous appointment.

The new Personnel Code for clinic faculty is clearly a compromise. Although it does enhance and regularize the status of the clinic faculty, it falls quite short of providing a status equivalent to that of other faculty members. In addition, it now appears that current clinic faculty members will not automatically receive probationary appointments as first proposed. Instead, they will only be eligible to apply for these positions along with other interested applicants with their experience in clinical education given "appropriate credit."

Copies of the new Personnel Code may be obtained by contacting Steve Befort, Civil Clinic Director, University of Minnesota Law School, 190 Law Building, 229 19th Avenue South, Minneapolis, MN 55455.

SCHRAG ACCEPTS VISITOR CHAIR

By
David A. Koplow, Georgetown

Yet another sign that clinical legal education is being accepted in the nation's law schools is the recent appointment of a clinician -- a member of the Section -- to an endowed chair. Philip G. Schrag, Director of the Center for Applied Legal Studies (CALS) at Georgetown University Law Center, will spend next year as the William J. Maier Visiting Professor of Law at West Virginia University. At WVU, he and Lisa G. Lerman (currently also at CALS, and next year a Visiting

Assistant Professor at West Virginia) will direct and expand the clinical program, using materials and techniques that they have helped to develop at Georgetown. WVU has decided to make a major commitment to its clinical program, doubling the number of faculty members attached to it and using its only chair to support the clinic.

SHORT STUFF

John Capowski, Maryland, was inadvertently omitted from the Executive Committee roster published in the last issue of the Newsletter.

Don Gifford, Toledo, is joining the clinical faculty at Florida in the Fall.

Ron Staudt, long associated with the clinical programs at IIT Chicago-Kent, has been appointed Director of its Center for Law and Computers.

Michael Meltsner has resigned as Dean of the Northeastern School of Law effective August 1, 1984.

Glen Weissenberger has been appointed Director of the University of Cincinnati's Center for Studies in Professional Skills.

Norm Stein has moved from Arkansas to Hofstra. Sue Bryant has moved from Hofstra to Queens.

JOBS

HARVARD

Harvard Law School seeks a Directing Attorney for a new student practice clinic being established in cooperation with Cambridge and Somerville Legal Services, Inc., which will provide legal assistance to low-income clients in a variety of civil matters. The Directing Attorney will have general administrative responsibility for the clinic and serve as a fieldwork instructor, supervising approximately twelve half-time clinical students during the academic year. Candidates should have at least five years experience in poverty law practice, have previously been involved in the supervision of attorneys or law students, and be either a member of the Massachusetts bar or qualified for admission on motion. Experience in immigration law is particularly desired, although not necessary. Starting date for the position is September 1, 1984. Annual salary is $25,000., with an attractive benefits package. Please send a detailed resume with references no later than July 16, 1984 to: Marc Lauritsen, Director of Clinical Programs, Langdell 368, Harvard Law School, Cambridge, MA 02138

Harvard Law School is an equal opportunity employer.

IOWA

The University of Iowa College of Law invites applications for a full-time teaching position in its clinical program. Appointment to the position will be made either as a year-to-year visitor or on a continuing basis in a career-status track, depending upon the qualifications and experience of the person employed. Litigation experience is strongly preferred. Please apply in writing, enclosing a resume with references, to Professor William Buss, College of Law, University of Iowa, Iowa City, Iowa 52242. The University of Iowa is an equal opportunity/affirmative action employer.

TOLEDO

The University of Toledo is seeking applicants for a full-time, tenure track position as director of a prosecutor intern clinical program beginning in September 1984. Position also will include teaching criminal procedure and/or other nonclinical courses. Significant experience in criminal representation is required. Please send resume to Prof. Ronald Raitt, University of Toledo College of Law, Toledo, Ohio 43606.

VIRGINIA

The University of Virginia seeks applications immediately for a two-year position as Director of the Family Law clinical program at the Law School. Salary in the $20's. Duties include some administration, student supervision and instruction in advocacy concerning family law cases. Send resume and references by July 10, 1984 to Professor Kent Sinclair, Director of Lawyer Training, University of Virginia School of Law, Charlottesville, VA 22901. (804) 924-4663. An affirmative action, equal opportunity employer.

The following announcement appeared in the April 13, 1984 AALS Placement Bulletin:

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.

ESSAYS

The essay topic for this issue of the Newsletter is empirical research. Frank Bloch, Vanderbilt, and Carrie Menkel-Meadow, UCLA, presented several suggestions at the National Clinical Teachers

Conference on how to conduct empirical research. The essays tie into this topic by discussing the efforts of several clinical teachers who are actively involved in carrying out empirical research.

PATTERNS OF ARGUMENT IN LEGAL DISPUTE-NEGOTIATION
A SUMMARY

By
Robert J. Condlin, Maryland

In recent years I have been intrigued by a belief, common to clinical students and practicing lawyers, that legal argument is of little or no consequence in disputing negotiation. Students regularly report that argument never convinces anyone. "There are cases on both sides," they say, "which are equally strong" and arguing about them wastes time because it produces only impasse." Often, as they become "experienced," they try to skip argument altogether and proceed directly to the making of offers. Practicing lawyers are not much different. They leave substantive law implicit and try to work out disputes by appeals to shared categories of what cases are worth. In the end, both groups return regularly to arguing law, if only to settle novel questions, or ones in which there is a disagreement about applicable categories, but neither acknowledges that it is of much use.

This is a surprising view. Legal disputes typically consist of disagreements about the nature and extent of legal rights and obligations, and resolving these differences, or at least discussing what a court would do with them, seems to be logically prior to reaching a settlement. As the embodiment of the disputants' substantive rights, argument is also the element of negotiation most directly related to the justice of a settlement. In a legal system that is itself just, the justice of a negotiated outcome would seem to exist, at a minimum, in proportion to the extent to which the parties' competing legal claims are raised, debated and resolved.

This is not to say that legal concerns must take precedence over all others. Parties may waive legal rights for non-legal considerations, but the selection of a negotiated outcome over an adjudicated one does not by itself constitute such a waiver. Waivers must be based on a complete understanding of the rights involved and made in the absence of coercion. In this respect, dispute negotiation is a hybrid of bargaining on the one hand, and adjudication on the other and thus, in a fundamental way, is unlike the bargaining dominated subjects of the rich social science literature on negotiation. Perhaps this is why that literature has comparatively little to say about the nature and effect of argument in influencing negotiation outcome.

I became interested in negotiation argument for two reasons. First, I believed that substantive law should be an important factor in influencing negotiation outcome and was curious why this belief was

not widely shared. Second, I did not understand negotiation generally, and thought that if I first picked it apart piecemeal, more or less from the ground up, that I would be in a better position to articulate an overall view. My plan was to examine a number of negotiation's major components in separate articles, and only after that was done, put them together into a general theory. Put another way, I wanted to approach the topic of negotiation inductively, not so much in one article, as over a series of them.

In the article summarized here, I analyze patterns in student and lawyer argument appearing in the transcripts of simulated negotiations. For about four years, I have had students and lawyers negotiate a moderately complex lawsuit involving the constitutionally questionable transfer of an inmate of the Virginia prison system. Participants were given background files containing approximately twenty pages of single-spaced information, including personal profiles of the individual parties, a history of their relationship, internal bureaucratic detail about the Virginia prison system, accounts of other inmates in similar or equivalent positions, and pleadings, memos, reports, recorded testimony, and other documents relating to the transfer that would have been generated in the ordinary course of the case. They also were given copies of eight Supreme Court cases on closely related facts, all decided within eight years of the transfer. The issues presented by the problem appear still to be undecided by the Court. The problem was set in Virginia because it was the original participants' home jurisdiction, and they could draw on information about personalities and places of the state's prison system, as well as attitudes and sentiments of the state's population in general. Every effort was made to eliminate the need to make up information in order to keep the smooth flow of argument going. Over the four year period, approximately 200 negotiations were done.

Each of the negotiations was videotaped and reviewed with its participants. In the course of these reviews, representative excerpts of the participants' due process arguments were isolated and transcribed. Every effort was made to select self-contained segments (many of which were eight to ten pages long), in order that the full complexity of the arguments could unfold. The due process topic was selected because it was the central issue in the problem. It was impossible to resolve the dispute without talking about due process, and no one tried to.

In approaching the tapes, I expected to discover that argument was marginalized because it was made badly, that it did not convince because it should not. This expectation was developed during reviews of tapes of another simulated negotiation. In these test tapes, arguments were made poorly and discounted by the participants because of that fact, notwithstanding that the participants were well prepared and quite skilled. I wanted to see if this pattern was limited to the tapes in question, or whether it represented a more basic characteristic of the way that law trained people argue law. If

argument was done badly as a general rule, this would not solve the question with which I began, but it would refine it, and that would be a helpful first step. My expectations were born out, at a level of detail that I could not have imagined.

Put succinctly, the arguments in my data tapes were a mess. The biggest failing was a lack of detail. Arguments were identified, or labelled, but not developed. Pieces of arguments were expressed out of context, and in circumstances where it would be unreasonable to expect the listener to fill in the missing pieces. Little of the problem's background factual material about the inmate's behavior, prison system practices, or treatment of prisoners in similar situations was used, the richness of the case law was largely ignored, and the intricacies of the confusing, redundant, and sometimes contradictory Virginia prison tranfer regulations (including some made up especially for the problem) were not examined carefully.

The arguments also were unidimensional. They dealt principally with the elaboration of rules, to the exclusion of analogy, policy, principle, and consequences. Rarely did the parts of the arguments build cumulatively. More often, they were isolated episodes, unconnected to one another, and arranged in sequences that were random as much as developmental. In fact, chaotic is the best way to describe the structure of most of the discussion. The arguments also showed little balance. Stylistically, they were cordial, but at the level of substance there was little to indicate that the bargainers viewed the legal questions as close, or their adversaries' arguments as having merit. They talked as if it was unreasonable, bordering on stupid, for the adversary to disagree.

In addition, the participants seemed not to plan their remarks past the opening exchanges, and acted as if they expected the adversary not to respond. They used cases as controlling precedents rather than conceptual aids to solving analytical dilemmas, pretended to be knowledgeable when it would have been better to admit genuine (and often transparent) ignorance, spoke before they knew what they were going to say, elevated stylized conflict about differences that were trivial above genuine conflicts about differences that were real, and stated complicated positions in soliloquies rather than in pieces as part of an extended exchange back and forth with the adversary. Most of the negotiators seemed to have a predetermined set of substantive points to make, an idea about where to bargain, and a general strategy of "playing it by ear" after that.

What made these patterns doubly interesting is that the participants had been shown tapes of other simulated negotiations in which similar patterns appeared, and they had vowed not to let that happen to them. The arguments even violated the participants' own standards of good argument articulated before the negotiations began. The participants knew what they wanted to avoid, and knew what they wanted to produce, and could do neither.

If these patterns are widespread, and I make a number of arguments in the article to suggest that they are, they have implications for several aspects of the practice and study of negotiation. To begin with, they suggest that even the best law trained people may not be technically skilled at arguing law. At first glance, this is a surprising, even shocking suggestion. Yet, the law student participants in the simulations were successful, elite law students. On any admission index, they would rank in the top ten percent, and all were in the top quarter of their class. When asked to write out their due process arguments in the form of a brief on the merits, or a pre-negotiation planning memo (as many were), they made strong arguments with most of the good qualities missing in their oral presentations. Yet, when face-to-face with another negotiator, they became vulgar shadows of their paper selves.

Many of the reasons for this have to do with the structure of face-to-face negotiation, and the nature of simulation gaming, and I discuss these factors at length in the article. But another factor that seemed to operate, and one with which law teachers should be concerned, is the perception of negotiation argument as a variant of moot court. Participants acted as if they had an obligation to compete rhetorically, to be louder, quicker, more certain, and more clever than their adversaries. The discussions became games of one-upmanship, ridicule, and harangue. They seemed to understand argument as oratory rather than analysis, and success at argument as producing silence rather than learning. These phenomena do not support the now fashionable view that there ought to be more cooperation in dispute negotiation, as much as they suggest a need for a better understanding of competitive argument. I also discuss this topic at length.

A second set of implications has to do with negotiation theory. Here, my analysis suggests that the norm centered view of negotiation -- that negotiation consists of the "invocation and reasoned elaboration of distinctively legal elements, principles, rules, precedents," and that these elements, "heavily determine" negotiation outcome -- needs to be qualified and elaborated. Legal argument, even that consisting only of "focusing norms near the limits of their precision," played a systematically small part in the disposition of my negotiations. Yet, if argument does not always fix outcome in a causally direct sense, more needs to be said about what it means for negotiation to be "rule-determined." For example, do rules enter negotiation as a part of threats, and have their principle effect in the shadows of these ostensibly power-based tactics? If so, how do we know that it is the rule that has force rather than, say, the adversary's lack of stamina or his intolerance of conflict? Or do rules operate tacitly, as authoritative background norms in the heads of negotiators, developed through socialization in the law, and take effect without being triggered by an adversary? Or are rules invoked in code, where a phrase, idea, or piece of evidence automatically and unambiguously conveys the full complexity of a point to an adversary,

but not to one reading a transcript of the exchange in another context? However rules take effect, the assertion that negotiation is rule-determined requires a more finely nuanced analysis, in which indirect as well as direct relationships between argument and outcome are examined.

The third set of implications concerns the legitimacy of private ordering. Argument can be of three types: 1) true and recognized as such; 2) unrebuttable within the time frame of the negotiation, though not believed; or 3) invincibly sincere and strongly felt, though patently wrong. Each type produces concessions and settlement, but only the first has a consistently direct connection with justice. Truth is not all of justice, but it is a part of it in a way that skill and sincerity are not. In my simulations, sincere and skillful arguments were more prevalent than true ones. In fact, participants did not seem to view truth-seeking as a necessary component of persuasion, or bilateral investigation of hard issues as compatible with adversarial advocary. More often, they relied on intransigence, power, personal force, rhetorical flourish, and reputation to establish the strength of their claims. When they succeeded in these ventures, they produced results that in a significant sense, were lawless, that is, inconsistent with prevailing law, though not always knowingly so. If this pattern is widespread, and unknown to the principals for who lawyers negotiate, valid legal claims may regularly be abandoned unintentionally, mistakenly, or on the basis of incorrect assumptions about their worth. When this happens, legitimate interests are sacrificed needlessly, and serious questions are raised about the fairness of private ordering.

The article is in final manuscript form and will be circulated to law journals sometime in the summer or fall. Judging from past experience, both my own with this manuscript, and that of colleagues with articles on similar topics, it may take a while to find a journal as a group of student editors have not yet warmed to clinical subjects, and the search for one who has can be long.

EMPIRICAL DATA RESEARCH at WILLIAM MITCHELL LAW CLINIC

by

Roger S. Haydock, William Mitchell

For the past several years we have been involved in various empirical surveys related to the practice of law. Our experience has been very informative, quite interesting, somewhat frustrating, and easier than we anticipated. Our lack of knowledge about social-scientific methods beyond what we had learned in Sociology 101 had been a barrier to our becoming involved in empirical research. Our reluctance was overcome by experts from the University of Minnesota and from our student body who taught us what we needed to know which was, to our surprise, not an extensive amount of information. The

fears we had in creating valid questionnaires and conducting reliable surveys turned out to be largely unfounded. The survey process can be relatively straightforward with the proper advice and help of experienced researchers, although it does take time and effort away from clinical activities. Sociologists from the University of Minnesota Social Research Group and William Mitchell law students provided us with the resources and assistance to effectively conduct empirical research surveys. The University sociologists received an honorarium and the students were provided with independent research credit.

There are a variety of research methods that may be used to collect and collate empirical data. We primarily used a combination of a number of social scientific approaches, variously known as measurement, descriptive, clarification, and exploratory methodologies. We learned that we did not personally have to understand the social scientific basis for these methods. Our expert consultants provided us with that understanding. We just needed to learn how to create survey methods to collect data. Interpreting the information we collected has not been difficult. Our clinical legal education and practice experience has been sufficient to provide us with the background to legitimately and authoritatively explain and interpret most of the empirical data.

We have completed and are currently involved in several surveys. We have gathered information about negotiation practice and court trials and are gathering information about motion practice and client representation. The specific data collection methods used vary depending upon the survey and its purposes.

The negotiation survey consisted of several parts. The first part consisted of the observation of a total of 240 simulated negotiations. One hundred and twenty of these exercises involved the settlement of personal injury lawsuits; 80 of these simulations involved the negotiation of commercial lease terms; and 40 simulations involved the negotiation of a commercial bank loan. These simulations involved both law students negotiating with each other and some lawyers negotiating with each other in face-to-face, videotaped sessions running between 20 minutes to 50 minutes. The research findings were made while observing the videotape negotiations and after discussing the negotiations with the participants.

The second negotiation survey involved a review of 100 actual cases that involved negotiations. These cases were handled through the William Mitchell Law Clinic and involved legal problems that indigent clients had with landlords, merchants, employers, spouses, government agencies, and tortfeasors. Observations were made during and after the clients were represented; conferences were had with the various participants; files were reviewed.

A third survey consisted of obtaining evaluations by experienced trial lawyers concerning a tort action. Approximately 30 trial lawyers from various parts of the country reviewed the same case file, and evaluated the case and estimated the probable jury verdict.

A fourth survey involved obtaining information, by written questionnaires and personal interviews, from trial lawyers practicing in the Minneapolis/St. Paul area. This part of the survey is still in process. Lawyers are being asked a variety of questions concerning their preparation of a case for negotiations, their approach to settlement discussions, typical tactics and techniques they employ, and related inquiries. The findings obtained from all these surveys will appear in a book entitled Negotiation Practice, to be published by John Wiley Publishers in late 1984.

The court trial survey consists of two separate surveys, one involving judges and another involving trial lawyers. Two questionnaires were prepared to be completed by judges. The first questionnaire, consisting of a couple of pages, asked objective questions about court trials. The second questionnaire was designed to be used by an interviewer who asks the judge the prepared questions and checks the appropriate response or writes down the judge's narrative responses. The results of this survey will be published in a future edition of the William Mitchell Law Review.

The second court trial survey focuses on the trial lawyer's experience in court trials. A revised questionnaire similar to the questionnaires used for the judges are now being submitted to experienced criminal and civil trial lawyers in the Twin Cities area. Our goal is to obtain information from about 75 trial lawyers, a number equal to the judges who responded.

A motion practice survey is in the process of being prepared. We have drafted questionnaires for judges and need to pre-test the questionnaires before beginning the survey. We hope to conduct a similar survey on motion practices with trial lawyers next year.

A survey collecting information about the representation afforded clients by law students through the William Mitchell Law Clinic is also being presently conducted. A questionnaire was prepared seeking information from clients who have been represented through the Law Clinic about their experience. Trained law students telephone former clients and, after obtaining their permission, spend about 20 to 30 mintues asking questions about their representation. This information will be used only for internal purposes at William Mitchell and will not be publicized. We have some reservations about contacting indigent persons and "using" them as experimental clients. In the future, we hope to create a survey that will seek information from both indigent clients represented through the Law Clinic and private clients represented through law offices.

Our primary purpose in gathering empirical data is to provide more of an objective basis for our teaching lawyering approaches, strategies, and tactics and to generally improve the practice of law. We find ourselves as clinicians advising students to use one method over another without much basis in fact for that advice except our experiences and the anecdotes of our colleagues. Empirical data will help us determine what advice to give and provide us with a more legitimate and authoritative basis for claiming the advice to be sound.

The mechanics of collecting empirical information are not complicated. The first step is determining what information you want to obtain and the purposes for the survey. A second step is drafting a valid and reliable questionnaire, which process usually consists of several drafts. We found that we were able to provide the substantive content for the questionnaires, and experts from the University were able to compose and refine questions designed to seek relevant information. A third step is pre-testing the questionnaire by conducting practice interviews using the questionnaire. The number of pre-tests depends upon the type of questionnaire. The fourth step consists of composing a final draft of the questionnaire after the pre-test. The fifth step consists of selecting persons to be interviewed. Some interviewees, like judges, will all be contacted. Other interviewees, like lawyers, need to be randomly selected. We select lawyers at random from bar association lists and lists of lawyers from specialized organizations.

We send out a letter a reasonable time before the interview to prospective interviewees which explains the purpose of the survey, the mechanics of the survey, the persons who will contact them, what will happen to the results, and the confidential nature of the information. We do not disclose the identity of a response by any participant but only make public a list of the participants. We use code numbers to file the information; we maintain a master list of all participants but keep that list confidential. The sixth step involves contacting the participant and arranging an interview time. We usually send a confirming letter, noting the interview time and include a copy of the objective questionnaire to be completed ahead of time. The seventh step is conducting the interview. Sociologists from the University trained law students to conduct interviews, a process that only takes a few hours. The eighth step is reviewing all the data collected, collating it, analyzing it, and deciding what to do with it. The ninth, and final step, is writing up the results of the survey.

We have received excellent cooperation from the judges (95% were interviewed), and very good cooperation from the attorneys and clients contacted. Some individuals refused to cooperate, and that is to be expected. One problem that has occurred during the interviewing of judges is that the judges will volunteer much more information and

extend the interview far past the scheduled time. One major problem with trial lawyers is finding time in their schedule to interview them.

We strongly believe that law school clinics provide an excellent laboratory to obtain information, to test new theories about practice, to create practice models, and to change the practice of law for the better. Anyone who has an interest in receiving copies of the questionnaires that we have developed may write to me at: William Mitchell College of Law, 875 Summit Avenue, St. Paul, MN 55105.

PUBLICATIONS

Clinical Education

Developments, Tax Clinics, 34 J. Leg. Ed. 112 (1984).

Goldblatt & Siegal, Training the Appellate Advocate, Trial, June 1984, at 56 (Steven Goldblatt is director of the Appellate Litigation Clinical Program at Georgetown. Susal Siegal is a graduate teaching fellow assigned to the Program).

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

Herr, Supervised Judicial Clerkships: A Valuable Clinical Experience, 9 Wm. Mitchell L. Rev. 151 (1984) (David Herr is an adjunct clinical professor at William Mitchell).

McConnell, Statutory Law in Legal Education: A Response to Professor Williams, 35 Mercer L. Rev. 855 (1984) (Maxine McConnell teaches clinic at SMU).

Mudd, Law School Academic Planning: One Approach, Matthew Bender Law School Report, Apr. 1984.

Appellate Advocacy

Harte, Protecting the Verdict on Appeal, Trial, June 1984, at 40.

Kaplan, Writing That Persuades, Trial, June 1984, at 44.

Purver & Willemsen, Appellate Advocacy, Trial, June 1984, at 36.

Ethics

Babcock, Defending the Guilty, 32 Clev. St. L. Rev. 175 (1984)

Edwards, Professional Responsibilities of the Federal Prosecutor, 17 U. Rich. L. Rev. 511 (1984).

Johnston, An Ethical Analysis of Common Estate Planning Practices - Is Good Business Bad Ethics?, 45 Ohio St. L. J. 57 (1984).

Schwartz, The Zeal of the Civil Advocate, 1983 A.B.F. Res. J. 543.

Fact Investigation

Twining, Taking Facts Seriously, 34 J. Leg. Ed. 22 (1984).

Litigation

Hartje, Cross Examination: A Primer for Advocates, 7 Am. J. Trial Advoc. ___ (1984) (Jeff Hartje teaches clinic at Gonzaga).

Supter, Taking the Perfect Deposition, Case & Com., Mar-Apr. 1984, at 30.

Negotiation

Danninger, Johnson & Lesti, Negotiating a Structured Settlement, 70 A.B.A.J. 67 (1984).

Hartje, Lawyers' Skills in Negotiation: Justice In Unseen Hands, 1 J. of Dispute Res. ___ (1984) (Jeff Hartje teaches clinic at Gonzaga).

Klein, The Put-Up-Or-Shut-Up Strategy in Business Negotiations, 17 U.C. Davis L. Rev. 341 (1984).

Maynard, The Structure Of Discourse in Misdemeanor Plea Bargaining, 18 Law & Soc. Rev. 75 (1984).

Menkel-Meadow, Review Essay: Legal Negotiation: A Study Of Strategies In Search of a Theory, 1983 A.B.F. Res. J. 905 (Carrie Menkel - Meadow teaches clinic at UCLA).

White & Fisher, Essay Review: The Pros and Cons of "Getting to Yes", 34 J. Leg. Ed. 115 (1984).

General Interest

Hazen & Hazen, Simulation of Legal Analysis and Instruction on the Computer, 59 Ind. L. J. 195 (1984).

Schlegel, Searching for Archimedes - Legal Education, Legal Scholarship, and Liberal Ideology, 84 J. Leg.-Ed. 103 (1984).

Summers, Fuller on Legal Education, 34 J. Leg. Ed. 8 (1984).

Symposium, Critical Legal Studies, 58 Stan. L. Rev. 1 (1984).

Symposium, Traditional Legal Education, 35 Mercer L. Rev. 751 (1984).

By Clinicians

Bodensteiner, Bank & Meskowitz, Unequal Justice Under Law: An Analysis of Indigents In the Criminal Justice Sytem -- The Indiana Experience, 6 W.N. Eng. L. Rev. 263 (1984) (Ivan Bodensteiner has long been associated with the clinical programs at Valparaiso).

Gifford & Friedman, A Constitutional Analysis Of Ohio's New Drunk Driving Law, 15 U. Tol. L. Rev. 133 (1984) (Don Gifford teaches clinic at Florida).

Goodpaster, Judicial Review of Death Sentances, 74 J. Crim. L. & Criminology 786 (1984) (Gary Goodpaster teaches clinic at Cal-Davis).

Schrag, By the People: The Political Dynamics of a Constitutional Convention, 72 Geo. L. J. 819 (1984). (Phil Schrag teaches clinic at Georgetown. The article will be reprinted in Behind the Scenes: The Politics of a Constitutional Convention to be published in June).

Treatises

D. Binder & P. Bergman, Fact Investigation (1984) (Dave Binder and Paul Bergman teach clinic at UCLA).

Conference On Legal Education In the 1980s, ABA Sec. of Legal Ed. & Admissions to the Bar (C. L. Hedges, ec. 1982).

F. Block, Federal Disability Law and Practice (1984) (Frank Bloch teaches clinic at Vanderbilt).

J. Hartje & M. Wilson, Lawyer's Work (1984) (Jeff Hartje & Mark Wilson teach clinic at Gonzaga).

D. Kennedy, Legal Education and the Reproduction of Hierachy: A Polemic Against the System (1983).