SECTION ON

CLINICAL LEGAL EDUCATION

March, 1987

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MESSAGE FROM THE CHAIR

By
Peter T. Hoffman, Nebraska

It is with some apprehension that I write my first Message from the Chair--having Gary Palm as your predecessor makes a hard act to follow. I am quickly learning that being chair of the Section means being heir to many small but time-consuming administrative problems that will have no discernable impact on the shape of clinical education in this country. This is not to say that the Section's activities do not have importance--they do--but it is the work of the Section committees which has lasting impact. The committees involve the collective efforts of the Section members and are what produce tangible, lasting results.

For instance, in the past year the Committee on Clinics and Attorney Fees under Mike Axline, Oregon, produced an outstanding report on what should happen with attorney fee awards to clinical programs. This report is available directly from Mike or me. The Future of the In-house Clinic Committee, under John Elson, Northwestern, and Bob Dinerstein, American, has been working hard all year on addressing many of the problems facing the in-house clinic--burn out, declining enrollments, etc.--and what if anything can be done about them. Paula Galowitz, NYU, and the Legal

Services Committee have been closely monitoring the Legal Services Corporation funding of clinical programs as part of the ongoing debate about what the relationship should be between LSC and clinical legal education. These are just a few examples. All of the committees have major responsibilities and many of their projects are not short term, but will extend over several years. All of them are important.

This year also presents a number of important issues the Section's committees will have to deal with. Let me start with three new committees that were created by the Executive Committee when it met in Los Angeles. First, there is the International Education Committee to be chaired by Jeff Hartje of Gonzaga. As was highlighted by the Arrowhead Conference jointly sponsored by UCLA and the University of Warwick in October, clinical education is not exclusively an American phenomenon. Other countries are developing clinical programs, encountering their own problems in implementing this new pedagogy, and crafting unique and different solutions to the problems. The development in other countries provide special opportunities for the trading of insights and approaches between our schools and those of other countries.

The exchange of ideas is already occurring with Arrowhead as just one example. Don Peters, Florida, is spending a year at Monash University in Australia; Frank Bloch, Vanderbilt, is on a Fulbright in India (see his report in the Essay section of this issue); Jeff Hartje, Gonzaga, has lectured in Japan; John Barkai, Hawaii, has taught in Papua, New Guinea. There are opportunities

for clinical teachers to become involved in foreign clinical programs and, I would hope, opportunities for foreign teachers to become similarly involved in our programs. The International Clinical Education Committee will be exploring these opportunities as well as what new ideas and approaches we can gain from foreign programs.

A second newly created committee is the Insurance Committee to be headed by Nicki Russler of Tennessee. At the Executive Committee meeting, the problem of state immunity statutes was discussed. These statutes, which confer immunity on state agencies, are being used by at least one university to avoid purchasing malpractice insurance for its law school clinic. But the issue remains whether these statutes confer immunity in federal court or on clinical staff and students. Another issue that came up was malpractice insurance coverage for Rule 11 awards. The Insurance Committee has been asked to look into these matters.

The third newly created committee is the Committee on Externships to be jointly chaired by Liz Ryan Cole of Vermont, and Janet Motley of California Western. If clinical education has been a second class citizen in the law school world, externships have been second class citizens among clinicians. The Section has only recently begun paying attention to the unique problems of this type of clinical education and it was only last year that Vermont Law School hosted the first conference devoted specifically to this subject. Yet externships have and will continue to play a central role in clinical education. It is time this role be recognized and the new committee will assist in doing so.

The work of the already existing committees will continue during the year. To mention only a few, the Continuing Legal Education Committee under Carolyn Kubitschek of Hofstra will be examining opportunities for clinical teachers in CLE work; Doug Frankel, Pennsylvania, will be having the Committee on Integration of Clinical Methodology into the Traditional Curriculum look at how clinical teaching methods can be used in the classroom; and the Tenure and Promotion Committee will be asked to examine the success of Accrediation Standard 405(e) in upgrading the status of clinicians.

Some changes for the year are Sandy Ogilvy, Texas Southern, has taken over as Newsletter editor and Roy Simon, Washington University-St. Louis, has, under the title of archivist, agreed to try to figure out the history of the Section before we all forget it. My thanks to both of them for taking on difficult jobs.

It should be an exciting year with many important issues being examined. If you are interested in becoming involved, and you should be, I strongly urge you to contact me and I will appoint you to the committee of your choice. (The one exception is the Future of the In-House Clinic Committee which, because of the point at which it is in its work, has a closed membership.)

A last comment: The Clinical Teachers Workshop scheduled for San Antonio on March 12-14 is shaping up to be an excellent program. In addition, many of the Section committees will be meeting there. Do come--it will be educational and fun!

COMMITTEE ASSIGNMENTS

ANNUAL Program

Chair: [To be appointed]

Members: Nancy Cook, American; Rob Dieter, Colorado; Bea Frank, NYU; Byron McCoy, Univ. of Houston; Wally Mylniec, Georgetown; Sandy Ogilvy, TSU; Jed Scully, McGeorge; and Ann Shalleck, American.

CLINICS AND ATTORNEY FEES

Chair: Mike Axline, Oregon

Members: Susan Kay, Vanderbilt; Minna Kotkin, Brooklyn; Doug Parker, Georgetown; Jim Strake, Connecticut; and Barry Strom, Cornell.

COMPUTERS

Chair: Bob Seibel, Cornell

Members: Frank Bress, Pace; Karen Czapanskiy, Maryland; Marc Lauristen, Harvard; Mark Mitshkun, Boston U.; Mark Norwood, New Mexico; Terry Player, Santa Clara; and Barry Strom, Cornell.

CLE

Chair: Carolyn Kubitschek, Hofstra

Members: Steve Lubet, Northwestern; Byron McCoy, U. of Houston; Joe Morrison, _____; Sandy Ogilvy, TSU; and Wendy Watts, Georgia.

EXTERNSHIPS

Chairs: Janet Motley, Cal. Western; Liz Ryan Cole, Vermont

Members: John Elson, Northwestern; Steve Lubet, Northwestern; Henry Rose, Loyola-Chicago; Roy Simon, Washington U., and Roy Stuckey, South Carolina.

FUTURE OF THE INHOUSE CLINIC

Chair: [To be announced later]

Members: David Barnhizer, Cleveland State; Richard Boswell, Notre Dame; Bob Dieter, Colorado; David Gottlieb, Kansas; Renee Laurene Haybach, Nova; Susan Kay, Vanderbilt; Carolyn Kubichek, Maryland; Marje McDermott, W. Virginia; Gary Palm, Chicago; Kandis Scott, Santa Clara; Mark Spiegel Boston; Graham Strong, Virginia; Roy Stuckey, South Carolin Kathy Sullivan, Harvard.

INSURANCE

Chair: Nicki Russler, Tennessee

Member: Frank Bress, Pace.

INTEGRATION OF CLINICAL METHODOLOGY INTO THE TRADITIONAL CURRICULUM

Chair: Doug Frenkel, Pennsylvania

Members: Evangeline Abriel, Loyola-New Orleans; Stacy Caplow, Brooklyn; Jim Cohen, NYU; Nancy Cook; American; Bob Dinerstein, American; Barbara Schatz, Columbia; Ann Shalleck, American.

INTERNATIONAL CLINICAL EDUCATION

Chair: Jeff Hartje, Gonzaga

Members: John Barkai, Hawaii; Frank Bloch, Vanderbilt; Lissa Griffin, Pace; Don Peters, Florida; and Wendy Watts, Georgia.

LEGAL SERVICES

Chair: Paula Galowitz, NYU

Members: Deborah Barthel, GWU; Susan Bennett, American; John Capowski, Maryland; Michael Gallagher, Loyola-New Orleans; Jeff Hartje, Gonzaga; Randy Hertz, NYU; Catherine Mahern, TSU; Angela McAffrey, _____; Terry Player, San Diego; Gary Schultze, Brooklyn; Andy Shookhoff, Vanderbilt; Naira Soifer, Maine; Kathy Sullivan, Brooklyn, and Mary Wolf, Indiana-Indianapolis.

MEMBERSHIP

Chair: Susan Kovac, Tennessee

NOMINATING

Chair: [To be appointed later]

POLITICAL INTERFERENCE

Chair: John Barkai, Hawaii

TENURE AND PROMOTION

Chair: Gary Laser, ITT, Chicago-Kent

Members: Susan Apel, Vermont; Deborah Barthel, GWU; Stacy Caplow, Brooklyn; Lois Knight, Boston U; Carol Liebman, Boston Col.; Andy Shookhoff, Vanderbilt; and Maira Soifer, Maine.

PERSONAL NOTES

Steven Lubet (Northwestern) and Jeffrey M. Shaman (De Paul) have been awarded $12,800 from the Chicago Bar Foundation to research and critique laws concerning judicial conduct and ethics. Their study will cover such topics as conflicts of interest, judicial demeanor and diligence, misuse of office, political activity, and speech and association activities.

Leornard L. Cavise (De Paul) was awarded the Outstanding Teacher Award for 1985-86. Len is also featured on page 48 of the December 1986 ABA Journal. The article discusses lawyers handling sex discrimination cases.

Jame Aiken (Arizona State) spoke to the Arizona Public Health Association on "Conflicts and Constraints: Ethical Dilemmas Confronting Public Health Professionals."

Faculty from the City of University of New York (CUNY) formed a panel at the annual meeting of the ABA Section of Legal Education and Admissions to the Bar. They described their attempts to fuse two types of pedagogy, clinical and traditional, by intergrating clinical methods into the classroom and by extensive use of simulation.

Wendy Watts (Mercer) is moving to Georgia.

Henry Rose (Loyola-Chicago) delivered the second Martin Luther King, Jr. Day lecture on Jannuary 21 at Loyola-Chicago. His topic was "The Legal Problems of the Poor in Chicago."

ANNUAL MEETING ROUNDUP

The section returned to the day long program format at the AALS Annual Meeting in Los Angeles.

Dave Barnhizer (Cleveland-Marshall) opened the session with a presentation he titled: "A Clinical Carol" or the Spirit of Clinical Future. His remarks are reproduced at the end of this report.

Following Dave's remarks, representatives from Northwestern, NYU and Georgetown described the response of each school to §405(e). Northwestern operates under a modified regular tenure track system [Northwestern's Statement of Standards are available from ed.]; NYU uses a separate clinical tenure track; and GULC utilizes long-term contracts for clinicians.

Concurrently run morning workshops were: 1) Workshop for Beginning Clinicians, conducted by Randy Hertz (NYU) and David Medine (Indiana-Bloomington), Teaching Ability -- a) what goes in: syllabus, materials, case load, supervision, evaluation, and grading; b) what comes out: pre-performance, classroom teaching, 1:1 supervision and post-performance (critique); and 2) Workshop for Intermediate Clinicians - Scholarship: Traditional, non-traditional, and whatever. This workshop was lead by Richard Boswell (Notre Dame), Lois Knight (Boston Universtiy), and Roy Simon (Washington University, St. Louis). Roy Simon's remarks are included at the end of this report.

Our luncheon speaker was Robert MacCrate, President-Elect of the American Bar Association. Mr. MacCrate's remarks are reproduced at the end of this report.

The afternoon sessions led off with two concurrent workshops. Bob Stumberg (Georgetown) discussed: Teaching Substantive Law - Can A Clinician Teach Local Government Law? Jim Cohen (Fordham) and Liz Cole (Vermont) discussed: Externships - Do they Have A Place in Law School? Jim Cohen's remarks will be included in the next issue of the Newsletter.

Susan Ross (Georgetown) then led a discussion of Sexual Harassment in the Workplace -- Supervisor vis-a-vis student, or vice versa. The day ended with remarks by Wendy Watts (Mercer), who talked about the responsibility of the clinic to the law school.

"A Clinical Carol" or
The Spirit of Clinical Future
Remarks by Dave Barnhizer, Cleveland State University
at the Annual Meeting in Los Angeles, California
January 3, 1987

Adjunct Senior Quasi-Professor John Clinical was ending the final meeting of the semester with the three students enrolled in Ivy Law School's remaining clinical course, "How to File and Win Requests to Compel Answers to Interrgatories." The three students, and the four assistant clinical quasi-professors who team taught the course with Professor Clinical were all present for the great event.

After moments of intense, individualized teacher/student interaction on how to enhance chances of success through strategic punctuation techniques, the graduating students all turned to John Clinical and asked, "Sir, are there any words of wisdom we can take with us as we go out into the world of law practice?" Clinical gazed deeply into the eyes of each student

and, after a brief pause pronounced, "Skills, young men. Skills!" Two of the students and all four assistant clinical quasi-professors nodded enthusiastically as they took notes. The third student averted her eyes, however, unable to look Clinical in the eye.

Being blessed with superb awareness of non-verbal techniques of communication, Clinical immediately demanded to know why the student, Mary Crutchit, was not overwhelmed by his advice. Crutchit hesitated, but after Clinical threatened a failing grade if she did not come clean, Crutchit redfacedly mumbled that she had thought that The Law and being a lawyer involved something more, perhaps even possessing ideals and trying to do some good. Clinical could barely restrain himself and snorted, "This is a course of law, young woman, not of justice!" As an afterthought he added "Bah Humbug!"

Later that night Clinical arrived at his door. As he prepared to insert his key in the lock, he was startled when the knob appeared to take on the appearance of Bill Pincus. Pincus, founder of the modern clinical movement, grimaced at Clinical for a few seconds and then moaned "Beware, Clinical, Beware!" before fading to a brass doorknob once again.

Somewhat shaken but deciding that the apparition was obviously related to the three triple martinis and deluxe anchovy and knockwurst pizza he had consumed for dinner, Clinical entered his home, prepared for bed and retired, drifting off to sleep the moment his head touched the pillow.

At the stroke of midnight he was startled awake by a loud noise and an eerie blue glow at the foot of his bed. In the midst of the glow was a figure that looked amazingly like Gary Bellow, someone he had known long ago and who had once taught clinical courses at Harvard.

Certain that he was in the midst of an amazingly lucid dream, Clinical put his head back on his pillow but immediately felt himself seized by a powerful force. Irritated, he looked at the glowing figure and said, "All right, what do you want and who are you? You know you are in technical violation of trespass laws?" The kindly figure responded quietly, "I am the Spirit of Clinical Past, come to show you what used to be."

Holding Clinical's hand firmly the Spirit transported the two of them to a scene that was obviously a law school of the early 1970s. Startled but intrigued Clinical exclaimed, "I recognize this, I began my career here teaching 'Clinical Law and Justice. Oh, was that ever a good course! We had to turn students away. They were so excited. Come to think of it, even I was excited."

In rapid succession the Spirit of Clinical Past transported John Clinical to places where bright eager clinical teachers were surrounded by intense and animated law students working with clients who had been deprived of fair treatment, due process, or dignity. He overheard discussions containing almost foreign sounding phrases such as "this is not right," "that is not fair," and "we can't let them get away with treating people like that." Finally John asked, "Why did you bring me here?"

Clinical Past answered, "To show you what you once were, what you have lost, and what you could have become." To which Clinical responded, "That's interesting, but times are different. Anyway, we teach students how to be 'Good Lawyers.'" Clinical Past gazed sadly at John and stated "I am only your first visitor, expect two more." At that, John Clinical found himself back in his bed.

Clinical's next visitor was the Spirit of Clinical Present. Clinical witnessed scenes of law school clinics closing down, tiny enrollments in clinical courses, declining budgets, denials of tenure, clinical scholars no farther advanced than fifteen years before, clinical teachers sitting around at AALS meetings knowing something was wrong but not what to do about it.

Suddenly, John Clinical found himself in a cold, bleak graveyard. As he peered through the gloom to his left, he saw a silent figure shrouded in black, and knew it was his third visitor, the Spirit of Clinical Future. There was no sound as the Spirit of Clinical Future approached. The black shrouded arm pointed behind Clinical, forcing him to turn almost against his own will. Clinical found himself looking at headstones that he suddenly knew were monuments to dead clinical programs and to the spirits of vanished clinical teachers. Clinical saw "Virginia-1979," "Pennsylvania-1978," "Berkeley-We were only Kidding!," "Yale-The only good clinician is a dead clinician," "Cleveland State-1986." The Spirit pointed toward the ground and as John looked down he saw at his feet a marker masked in

shadow. Suddenly he knew fear. He tried not to look but found himself drawn irresistably. As he stooped, he saw engraved on the stone the words, "John Clinical -- 1968-1988."

POINTS OF COMPARISON

For those who have been wondering what Charles Dickens has to do with the modern clinical movement as of January 3, 1987, we have arrived at the points of comparison. The title of my speech is "A CLINICAL CAROL" OR THE SPIRIT OF CLINICAL FUTURE.

For the moment, at least, we need to think of ourselves as a collection of Ebenezer Scrooges. Most clinical faculty are much more likely to associate law school deans and nonclinical law faculty with Scrooge-like tendencies. After all, law deans deny clinical faculty adequate money. Law deans are happy with clinical faculty as long as they do not rock the boat or make the dean's jobs more difficult. Nonclinical law faculty often consider their clinical associates as intellectual invalids, unfit for full membership in the "shining intellectual community" of American legal scholars. I do not deny that these attitudes exist nor that they are often blind and unfair.

The central truth, however, is revealed in the immortal words of Pogo, "We have met the enemy and he is us!" We clinical faculty are Ebenezer Scrooge. With much good cause we can blame law deans and nonclinical faculty, but that path of blaming others is a trap not an answer. If blaming others is not the answer, what is?

THE SPIRIT OF CLINICAL FUTURE

What has the Spririt of Clinical Future revealed to us? Think about Scrooge. In his youth he was a lively, caring, loving, and hopeful young man. Scrooge cared about values and had a sense of the worth of other humans. Similarly, in its youth, the Clinical Movement of Bill Pincus, Gary Bellow, Tony Amsterdam, Bill Greenhalgh, Earl Johnson and others was vibrant, hopeful, and committed to a central core of values. Those values involved deep intellectual commitments to social justice, to righting abuses of power, to due process and equal protection, and to exploring ways lawyers could serve as critical instruments of social action through law. The current position for the clinical movement is far different than its creative early years. It has lost its reforming spirit and energy, becoming concentrated on narrow technical goals.

EXTREME TECHNICISM/THE BIRTH OF SCROOGE

As Martin Buber, Jacques Ellul and many, many others have understood, technique and the technical orientation carry within themselves a seductive obsession that rapidly blinds us to other concerns. Skills, techniques of advocacy, drafting, negotiation, interviewing and counseling etc. are mechanisms that are important to the extent they facilitate the effectiveness of deeper intellectual commitments. Yet the "tail" of skills and techniques quickly began to "wag", and then even to consume the central core of values and resisting abuses of power that had driven clinical faculty during the earlier years.

When I was a reasonably young and impressionable clinician I asked Bill Greenhalgh about the central goals of his Prettyman Program and Criminal Justice Clinic at Georgetown. He answered, "to teach young ministers of justice." Such visions are what have driven many clinical teachers. But the vision has by now largely been given over to obsession with technique. Obsession with technique is the trap in which the Clinical Movement of 1987 is caught. Skills and the orientation to technique are necessary but insufficient conditions of the clinical process.

The Ebenezer Scrooge of A CHRISTMAS CAROL turned into a narrow, unbending, technical, selfish creature because he had made the making of money, the "turning of a profit" into the only value of his life. Clinical faculty have becomne Scrooges because the deeper idea of professional responsibility as a moral, political and humanistic frame of reference was buried beneath an obsession with technical prowess. Technical competence has become the justification for clinical expenditures. Many people who became clinical faculty were hired primarily as glorified staff attorneys who saw their tasks as that of teaching legal skills rather than conveying the richer social, political, and intellectual contexts within which technical competency was essential but not primary. The Scrooges of the modern Clinical Movement also emerged because technical skills became increasingly favored by various committees of the American Bar Association concerned with making law schools "fit" more closely with their conceptions as judges and practicing lawyers of what a good lawyer needs or does.

If we concede of course, only for the purpose of this discussion, that delightful, young, happy, committed, caring clinical Ebenezers have become Scrooges, what messages does the Spirit of Clinic Future reveal to us?

The messages include the following:

1. The Clinical Movement is gripped by a spiritual malaise.
2. As an intellectual movement it currently possesses no internal justification.
3. As a political movement it has scant and still declining support within law schools.
4. There are other, less expensive ways to teach skills and to do so as well or better.
5. In its present posture the Clinical Movement is an aging, drifting relic that in may places is dying of neglect.
6. Its apparent allies (trial advocacy, alternative dispute resolution etc.) are not ultimately true allies.
7. The Clinical Movement can take credit for bringing much reform into American law schools. It has succeeded so well that it is now being destroyed by its own success.
8. The modern Clinical Movement must go back to its roots, clarifying those original grounding principles, formulating new ones, and then applying those principles to the conditions of 1987 and the future.

SCROOGE REDEEMED AND THE NEO-CLINICAL MOVEMENT

Spirit of Christmas Future allowed Scrooge to be redeemed. The Spirit of Clinical Future is to allow us to be redeemed. The "Redeemed Scrooges" of the Neo-Clinical Movement will consider the following values and commitments as part of their strategy.

1. Lawyers in the United States are essential catalysts of currents of "progressive justice" through law.
2. It is not necessary that all law students be educated clinically. Programs should be designed to concentrate on and attract students who possess commitments to social justice.
3. A critical social function of American lawyers is to rectify or at least struggle against abuses of power. The clinical experience and much research and scholarship done by clinical scholars should identify, explain and concentrate on institutions, processes and conditions that involve this orientation.
4. Lawyers must learn how better to contribute to solving pressing social problems.
5. Clinical faculty must see research and scholarship on these fundamental concerns as central to what they do. Power, problem solving and justice provide orientations for clinical scholars through which they can make significant contributions to knowledge.

6. Lack of strong commitment to scholarship will end up destroying any integrity the modern Clinical Movement might possess.

7. Live client programs still remain the best way to attract and educate students who will live their professional lives with positive commitments to doing justice. But the choice of clinical clients will often change as clinical faculty design programs and perform scholarship consistent with the important values of Neo-Clinicism. The clinical experience that accepts the technical orientation as an important but secondary byproduct of its primary mission will not be legitimate simply because it is "live." It will be legitimate because it advances key elements of the Neo-Clinical grounding principles.

CONCLUSION

Scrooge was made to realize that the clinical future is contingent. We do not know for sure what it will be even if we act aggressively, strategically and with the best of intentions. We could still end up in a cold, bleak grave with nonclinical faculty pausing only to spit, while law deans hasten to seize meager clinical resources before the bodies of clinical programs are even cold.

The first, and most vital step, is for clinical faculty to regain their spirit and to believe in themselves. The Clinical Movement has had an enormous impact on American law schools in less than two decades. It has been a major force in facilitating diverse approaches and subject matters, and in humanizing legal education.

For movements to survive they must adapt, possess flexibility, generate leadership from within, be aware of the changing nature of the environment within which they operate, and possess a powerful strategic vision that provides continuing focus and anchorage. The Clinical Movement has failed to adapt other than along the path of least resistance, i.e. technical skills, and has therefore lost contact with its strategic vision. As an intellectual mission skills and technique will never rise above means rather than ends. When we mistakenly attempt to transform means into true ends of a university law school we trivialize the contribution that the Clinical Movement can offer. When this occurs the justification for more expensive clinical courses becomes tenuous.

The Clinical Movement has much about which to feel great pride. One man, Bill Pincus, has had more impact on the content, goals and processes of American legal education than anyone since Christopher Langdell. The successes, however, have often ended up outside clinical programs, but derived from experimentation done within clinical programs by clinical teachers. This willingness to innovate, experiment and risk must be recaptured.

HOW TO BE A SCHOLARLY CLINICIAN

by

Roy D. Simon, Jr.
Associate Professor of Law
Washington University in St. Louis

(The following remarks were prepared for delivery at the 1987 AALS Annual Meeting, Clinical Legal Education Section Program, Workshop on Scholarship by Clinicians, January 3, 1987.)

In this outline of my thoughts on scholarship, I will focus on two things: (1) writing traditional law review articles; and (2) finding time to write. But first, I will describe my own teaching situation and my assumption about the audience.

My own teaching situation: I began in 1983. I am on the regular tenure track and have a nine-month contract. I have a regular office at the law school. I teach half time in live-client clinics and half time in the classroom. My classroom courses are pretrial litigation and legal ethics.

My live-client clinics are supervised externships. I have a dozen students per semester, split between the United States Attorney's Office and the Special Public Defender's Office. I visit each site several days a week. I participate actively in handling cases but am not counsel of record.

My assumptions about the audience: I am assuming that most of you have taught for less than five years and that you teach a mix of live-client clinics and simulation skills courses. I also assume that most of you have not published much yet but want to publish, whether you have to or not. The main questions in your mind are: (1) what to write, and (2) how to find time to write.

Writing Law Review Articles

Law review articles come in many varieties. I am going to focus on "traditional" articles, but first I will describe my own experience with two non-traditional types of articles.

Clinical Topics: The first law review article I wrote was on a clinical topic: should the ABA allow clinical students to receive both money and academic credit at the same time? The question was then being debated within the ABA. I read a lot of clinical literature, reviewed the ABA's files on the subject, talked to a lot of people, and did a lot of thinking. The research went quickly because I didn't have to worry about any cases or treatises. The article was published less than five months after I started.

The main advantage of writing on a clinical topic is that you can do it quickly. The research base is fairly small, and clinicians are more expert about clinical topics than a regular faculty member would be. Also, the resulting product is useful to fellow clinicians and may improve clinical education.

The disadvantage of writing on a clinical topic is that the tenure and promotion committee is not likely to give you much credit for it. The research base is too small and the issues are unfamiliar to traditional scholars.

Litigation Topics: The next article I wrote grew out of a brief. I was working on the petitioners' Supreme Court brief in Marek v. Chesny, a case inolving Rule 68 of the Federal Rules of Civil Procedure (the "offer of judgment" rule). The lead attorney on the brief rejected a lot of my ideas, so I decided to

turn the rejected ideas into an article. I tried my best to be scholarly and objective, but it was hard to shed my advocacy mentality. My research was thorough, but some of the editors who rejected that article said it looked too much like a brief.

The main advantage of writing an article growing out of your own litigation is that you have a significant start on the research. You know the arguments on both sides, and you may have a judicial opinion or two directly on point. Also, the topic is well defined, so you don't spend time floundering around.

The main disadvantage of basing an article on a brief is that you may appear too result-oriented. Your conclusion may seem predetermined, and you may have a hard time treating opposing arguments fairly. Unless you can overcome these obstacles and be genuinely objective, the tenure committee may view you more as an advocate than a scholar.

Traditional Articles: The next article I wrote was much more traditional. I looked at proposed amendments to Rule 68 of the Federal Rules of Civil Procedure and at a couple of recent Supreme Court cases on Rule 68. I analyzed the history, the case law, and the goals of Rule 68, then came up with my own proposal for amending the rule.

The major advantage of writing a traditional law review article are substantial and obvious. Traditional law review articles are like U.S. dollars; they are accepted as currency everywhere. If you have the time and energy to write a traditional article, you will gain respect within your institution and

make yourself far more marketable at other institutions. You may even develop a reputation as an expert on your chosen subject. If a school wants you to prove that you are scholarly, a traditional law review article is the best proof you can offer.

The main disadvantages of writing a traditional law review article are that it is enormously time consuming, and it is hard to predict how long it will take to write. Also, finding the right topic for a traditional law review article is not easy. How do you find the right topic for your first article?

- Start small. A narrow topic will take less time to research and write; a narrow topic allows you to go into greater depth; a short article (20 to 30 pages) is easier to get published than a long article; you can more readily become an expert in a narrow area than a broad area; and you can always expand your topic as you research and write.
- Write on something in your own field. If you choose a topic from a field in which you teach, you will have a basic start on research, you will be better able to think creatively in the area, you will be less likely to make serious mistakes, your day-to-day teaching will lead to new sources and insights, and you will be able to use your growing knowledge of the subject in your teaching.
- Avoid very hot areas. If an area is very hot, others are writing about it as well. You run a real risk of getting precluded or overshadowed. (For the same reasons,

avoid writing on pending Supreme Court cases. You aren't likely to get an article published before the Court issues an opinion.) It is better to choose a relatively stable area that presents knotty and enduring problems. Problems involving discovery, evidence, ethics, and procedure are often in this category, and are naturals for clinicians.

Once you have selected a topic, start writing as soon as possible. Don't wait until you finish your research. If you sit down to write early in the process, you will identify the specific issues on which you need research, and you will not lose sight of common sense. You will also develop your own framework for thinking about the problem, which will make the cases and the literature much more meaningful to you.

Don't worry about "polish" in your first draft. The purpose of a first draft is to help you develop your thoughts and get them down on paper. Write as quickly as you can, and don't worry about organization or footnotes. If you decide that an idea is out of place, write it down anyway and make a note to move it later. If you think of a better way to say something you've already said, write again. If a footnote occurs to you, put it in brackets in the text. If you think of a question you need to research, put it in brackets and draw a star in the margin so you don't forget to do the research. In short, write a first draft that works for you. You will have plenty of time to edit.

How to Find Time to Write

Unless your school provides periodic research leaves or gives you the summer off, you may have difficulty finding time to write. Here are a few suggestions for remedying that problem:

1. Scheduling your writing time. Writing is like saving money: if you wait until you get around to it, you'll never do it. You have to schedule writing time into your day. If possible, you should schedule a specific block of time for writing every day or every week, and let other people know you do not want to be disturbed during that time.

- I suggest scheduling an hour or two every day. By working every day, you avoid losing your train of thought, you keep up a sense of progress, and you constantly reinforce the habit of sitting down to write.

- If you are the kind of person who needs larger blocks of time to write, set aside a whole day (or half a day) each week, and stick to it. A missed week may mean that you write nothing for two weeks, and two missed weeks may discourage you so much that you drop the project.

2. Hang out the "Do Not Disturb" Sign. Literally or figuratively, you have to hang out the do not disturb sign when you sit down to write. If possible, have a secretary take phone messages and screen visitors. Otherwise, your writing time may trickle away into a stream of calls and meetings.

You may be asking, "What about our students? We have to be there when they need us." I understand that feeling. But I can give several arguments in favor of a strict do not disturb policy during writing time:

- Many problems can wait, or can be communicated as well or better in writing. In fact, writing questions down forces students to articulate issues concisely and specifically -- a skill we supposedly want to teach in clinics.

- If students cannot disturb you during designated hours, they may become more self-reliant. They will get into the habit of trying to solve their problems on their own before they seek help. Even when students cannot solve problems on their own, they will be forced to think the problems through before asking for your advice. This kind of self-reliance is also a skill we are trying to teach in clinical courses.

- If students know that you are not always accessible, they will have greater respect for your time when you are available. We all try to spend our time with students efficiently, but some time can be cut out of nearly every meeting without losing anything.

- Many questions can be answered by a colleague, especially if the questions are not case-specific -- so students may well be able to get answers to most of their questions even during your "non-office hours."

- Our doors should always be open for urgent problems -- but my guess is that truly urgent problems are rare. How often does a problem arise that cannot wait one or two hours for your attention?

- In any event, no matter how accessible we want to be, we won't be accessible to our students for very long if our contracts are not renewed.

3. <u>If possible, write early every morning</u>. If you do not feel that you can schedule writing into your regular working day, or if you want to create extra time to write, I suggest writing early every morning, before the regular work day starts. This requires some personal sacrifice (including getting up before 6:00 a.m.), but it has several advantages:

- You will not be disturbed by students, phone calls, court calls, or social plans before 8:00 a.m. And if you are having a particularly productive morning, you can keep writing until someone needs you.

- You are fresh and alert in the early morning (assuming you get enough sleep). If you don't believe me, try it for a few weeks. You'll get used to it. (At least you will avoid rush hour.)

- If you try to write after your regular work day ends instead of before it starts, you will have to fight exhaustion and turn down social engagements. You may also find it difficult to tear yourself away from your regular work, especially if you are a litigator.

We all have plenty of writing ability and ideas. All we really need to do is sit down and write.

Remarks of
Robert MacCrate, President-Elect
American Bar Association
AALS Section on Clinical Legal Education
Los Angeles, California
January 3, 1987

I welcomed Bill Greenhalgh's invitation to speak with you today. I am intrigued by the paradoxes of American legal education. The struggle of clinical legal education for academic recognition provides a vivid example of how conservative and tradition-oriented legal education became once it acquired a self-image and an identity in the academic world.

Preoccupation with the immediate seems often to obscure the longer view. As someone a step removed, but sharing with you a deep interest in the future of legal education for what it can mean to the legal profession and the public, I would like to suggest where clinical legal eduation seems to fit into the longer view in historical perspective. There is a curious paradox to finding it struggling for full acceptance in the legal education fraternity.

I suggest that the essence of what is today referred to as clinical legal education was originally at the very well-spring of legal education in America. It is ironic to see CLE's struggle for acceptance within the education establishment over the past 20 years when one realizes the historical origins from whence it springs and its inherent centrality to the whole concept of educating lawyers.

Before the Civil War, the idea of legal education in a school was as a supplement to the system of law office apprenticeship. As Alfred Z. Reed documents in his 1921 report on the legal profession made under the auspices of the Carnegie Foundation, the development of law schools awaited the abolition of the apprentice system. In my own State of New York that abolition was accomplished by a State constitutional convention in 1846. It reflected the Jacksonian rejection of special privileges for any group.

However, those involved within this profession universally acknowledged the need for practical training in the art of lawyering. Law office experience continued to be mandated by the courts for admission to the bar. The recently established law schools, seeking to attract returning veterans of the Civil War, successfully prevailed on State legislatures and the courts to grant the "diploma privilege" to their graduates, excusing them from the burden of taking a bar examination. But the requirement of law office experience before admission to the bar persisted.

With the organization of the bar nationally during the 1870s - the ABA was organized in 1878 - and the Bar's movement to raise professional standards, a significant question for the developing

law schools became: what credit for law school study would be allowed against the required years of law office experience for admission to the bar?

In the succeeding decades of the 19th Century, as leading law schools gradually won their place in the university, they moved increasingly away from the practical to the theoretical, leaving training for the actual practice of law to others. At the same time, the emerging law school establishment sought the total substitution of law school study for any requirement of law office experience.

It took a social scientist in the person of Alfred Z. Reed in his 1921 report to call the attention of the legal education and bar association establishment to the three continuing requisites for a complete preparation for practicing law: namely, general education, theoretical knowledge of law, and practical training. The Association of American Law Schools and the American Bar Association welcomed much in Professor Reed's report and shortly thereafter established the accredittion process for law schools, but his call for greater diversity in legal education and for more practical training lay neglected for many years.

In 1933 Jerome Frank in the University of Pennsylvania Law Review penned an eloquent attack on traditional legal education limited to the printed word and asked: "Why Not a Clinical Law School?" He opined that "Something important and of immense worth was given up when the legal apprentice system was abandoned as the basis of teaching in the leading American law schools." He concluded that "the law schools should once more get in intimate

contact with what clients need and with what courts and lawyers actually do." But it took 30 years, the call for civil rights and a crying need for legal services to awaken those in legal education to the voids in the process of educating lawyers.

The Council on Legal Education for Professional Responsibility was established less than 20 years ago, but in the intervening years practical training, with a view to the increasingly diverse demands upon the profession, has been returned to a central place in any discussion of legal education. Both among legal educators and within the practicing bar attention has repeatedly been directed to the need for improving legal education to address the needs inherent in adequately preparing the next generation of lawyers. If the profession is to meet the myraid demands upon it and respond as a profession of service should, the law student must enter the profession with sense of professional competence. The practicing profession is going to have to have sustained help from the teaching lawyer, with improved and more diverse teaching methods from the time of entering law school through the continuing years in practice which follow.

I am heartened by the renewed interest shown in the last two decades in improving the process. While the effects of the 1971 Report of the Curriculum Study Project are only slowly appearing, a few steps are being taken, in the words of that report, to "offer education that corresponds to the varied needs of the public for legal services and to the varied goals of a wider array of students."

From Carrington, Stevens, Cramton, Rosenblum and Zeamans, Pipkin, Heinz and Laumann, Packer and Erhlich, McKay and Amsterdam and the 1980 Report of the ABA's Special Committee for a Study of Legal Education, we gain fresh insights and a picture of an establishment in ferment that is searching for better ways to relate legal education to the needs of a vastly expanded and changed profession.

The one most visible change in legal education in the recent past has been the development and spread of clinical programs supervised wholly or in part by law school personnel, with systematic clinical instruction being integrated with the basic curriculum and the clinical law teacher emerging as an academic participant to be reckoned with. The nature of the struggle for acceptance was captured in the title of the 1976 "Report from a CLEPR Colony" of Meltsner and Schrag (published in the Columbia Law Review), but today such reports have borne fruit as clinical legal education programs grow in number, in quality and in their teaching utility.

The 1980 Guidelines for Clinical Legal Education prepared by a joint committee on the Association of American Law Schools and the American Bar Association and the formal creation of this Section in 1981 mark a watershed in the return of practical training to a recognized and undeniable place in legal education. Thus it is in 1986 that President Prager in her June President's Message can hail the introduction of "the client" into the law school as the organizing principle of clinical education and identify the current years as a particularly important period in

the evolution of clinical legal education. Various educational issues remain to be resolved upon which you are focusing at this meeting, but I am singularly pleased to be here at such a time to assure you of the interest and support for your efforts of the organized bar and of my desire to work with you in restoring practical clinical education to its essential place in preparing lawyers for practice, by bringing back not only "the client" but also "the practicing lawyer" into law school.

Permit me to close with a personal anecdote: a tale of two generations in the law. The father, with no college education, during the first decade of this century, attended a night law school which was not bound to the traditional track. At the same time he worked as an observant stenographer in an Ivy League law firm in lower Manhattan. There he worked for the privileged few at the bar who were getting presumably fine practical training on the job. Finally through night law school and having passed the bar, the father opted to open by himself a store front law office in Brooklyn near the ferry house of the boat running to Manhattan. His first fee went to pay the sign painter to inscribe on the store front window: "John MacCrate, Attorney at Law." However, the owner of the store, who had his business in the rear, had the sign painter back to include his profession. The sign henceforth would read "John MacCrate, Attorney at Law, Horses for Hire." From such an office and with the education a night law school provided, the father, over the next several years, successfully defended seven homicide cases along with an array of other law work typical of a community lawyer.

Forty years later, the son had neither the aptitude nor indeed the preparation to follow in his father's footsteps. Instead, following World War II and the typical education of an Ivy League law school at that time, and 25 years after Prof. Reed's admonitions, he emerged from law school without more than a moot appellate court argument sponsored by his law school and totally dependent for practical training on what he could get from others. Fortune smiled upon him in his first job where he carried bags for two master teachers, who later were respected Federal Judges. But such an opportunity for excellent post-law school practical training was a special prize and no part of any law school's plan for its students in the late 1940s.

During the forty years between these two generations a great deal had changed in the practice of law but not in legal education, unless one one focuses upon the confining of legal education principally to the universities and the increased restrictions upon diversity in the educational opportunities available to those seeking to enter the law. However, thanks to those who have pressed the case for what we now know as clinical legal education, there have been visible changes in the past ten years. One has the feeling that, with law schools and the organized bar working together, legal education will be offered in the years ahead that increasingly corresponds to the varied needs of the public for legal services and to the varied goals of a wider array of students; and that clinical legal education in diverse programs will take its rightful place as a necessary and integral part of such an educational offering.

ESSAY

A CLINICAL PASSAGE TO INDIA

by

Frank S. Bloch
Professor of Law and
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Visitors to India from the West--particularly the United States and England--often have trouble establishing a position for themselves as they observe and seek to understand what is going on around them in this great and complex country. On the one hand, everything seems so different from home; yet so much is the same. Putting aside personal reactions and experiences for another day, I can say that as a lawyer and a law teacher I too found my position shifting constantly during the first few months of my visit to India as a Fulbright Senior Lecturer and Visiting Professor at the University of Delhi: Am I just at another law school that happens to be half a world away, or am I in another world?

Let me set the scene by describing some representative samples of what I observed and experienced during those first few months:

* All of the lawyers practicing in the Delhi High Court (the equivalent of a state supreme court) went on strike for 21 days to protest political interference in delaying the promotion of a judge of the court to the position of chief judge; the lawyers practicing in the Supreme Court of India struck for one day in sympathy. The judge was promoted.

* In the middle of a lecture the current went off for the third time that day. There were two small windows that let in a little light, but the overhead fans were still and it was 105 outside. I was expected to and did continue without interruption; the lecture was over and tea was served before the current came back on.

* Walking through the halls of Lawyers' Chambers at any courthouse in India one can hardly manage to avoid tripping over stacks of memographed pages that are being assembled on the floor into briefs and petitions. The phones hardly work, there are no word processors, and copying machines are available--when the current is on--only from copy-machine wallahs at little private stalls in the market.

* A national convention called to propose a uniform code for family law in India got bogged down on the question whether the Muslim community would have to be exempted in order to guarantee its religious freedom to engage in polygamy, avoid any serious obligation to pay alimony and to prohibit adoption.

* First semester examinations were scheduled to begin on December 1, after the president of the student union agreed to the schedule proposed by the dean. In late November, a break-away faction of students objected to the schedule and complained to the university administration. The administration told the law faculty to set a new starting date; the faculty met and refused to reschedule examinations at a time that would conflict with winter holidays; examinations began on January 5.

At the same time, India has retained substantial amounts of English law, modified only slightly since independence, and has a constitution modeled in significant respects after the Constitution of the United States; law libraries and legal

research methods are organized essentially the same as in the United States; and most of Indian legal education and much of Indian law practice (including all law practice in the High Courts and the Supreme Court) is conducted in English. To top it off, students participating in moot court competitions must follow uniform rules of citation published in a little blue book.

This contrast of striking differences and basic similarities exists with respect to clinical legal education in India as well. The central educational themes are the same. Thus, in a recent proposal for a new clinical course approved by the law faculty at The University of Delhi, it was stated that "[p]rofessional legal education must include study of the profession itself and training in the large variety of skills, approaches and methods of the lawyer." The clinical method of instruction was chosen in order to give students "a deeper understanding of the subject through their personal involvement." The major issues facing clinical legal education in India are also the same. However, because of the vast differences in the social, professional, educational and political environments in the two countries, there are significant differences in the approaches and directions taken with respect to these issues. A brief discussion of the four major topics of concern in clinical legal education in India today will illustrate.

Establishing a Place in the Curriculum

There were a few clinical projects established in Indian law schools in the mid-1960s, as a result of individual effort by a few committed faculty members. A very few law schools offered minimal support in the early years; none allowed the awarding of credit. For the past ten years, many efforts have been made to educate law faculties and the legal profession about the value of clinical legal education, including a number of national conferences which drew participants from all the major law schools. Unfortunately, with some notable exceptions clinical legal education is still an extracurricular activity at most Indian law schools today.

The structure of education in India, including legal education, is such that even when a faculty wants to add clinical courses to the curriculum it does not have the power to do so. Authority is always centralized in India, and there are usually many layers to pass through before reaching the top. The top usually has some connection with the government, if it is not the government itself; and government action is almost always influenced heavily by partisan politics. Thus, any course proposed by any faculty at a university must be approved by at least two central committees before being allowed into the curriculum. In

addition, the course of study in law schools is subject to conditions and requirements set down by the Bar Council of India, a government-sanctioned body that regulates admission to the bar. Efforts to place clinical courses in the curriculum therefore must follow a twin strategy: convince the central academic authorities of the academic value of clinical legal education, and seek support from the Bar Council of India.

On the academic front, although the process is time-consuming and there are inevitable political obstacles to navigate, those law schools that have made the effort generally have succeeded in getting clinical courses in the curriculum. Most are listed as optional second- or third-year courses; in a few schools a basic clinical course is required. The problem is that the vast majority of law schools are not interested in reform. In this respect, clinical legal education suffers from a quality problem that pervades legal education in India today. The differences in quality of law schools is tremendous. On the one hand, there are law departments at most major universities, many with good facilities and excellent faculties. Most of India's 350 law schools, however, are independent or semi-independent law colleges, many of which have no facilities to speak of and are staffed almost entirely by part-time lecturers. University law departments are classic academic institutions--some operate only on the "post-graduate" level

(LL.M. and Ph.D.)--but that does not mean, of course, that the quality necessarily is good; law colleges are more practice-oriented, and those with serious principals (deans) and faculties do an excellent job. The best law departments, such as the University of Delhi and Benaras Hindu University, and the best law colleges, such as the ILS (Indian Law Society) Law College in Pune, have led the way for clinical legal education. The problem in establishing a true clinical movement in India is bringing along the other, lesser schools, which are also in need of major, basic reform.

This is where the Bar Council of India strategy comes in. A number of legal education reformers, including the leading clinicians in the country, persuaded the Bar Council to impose a five-year curriculum for law study as a condition for admission to the bar. The idea was to incorporate the last two years of college and the three years of law study into one program. The first two years would be made up mostly of social science courses (economics, political science, sociology) taught with the intention of developing a background for law study; the last three years would essentially track the present three-year law course. A number of other reforms were mandated as well, including greater proficiency in English for students, greater numbers of full-time faculty, raised minimum standards for libraries, and a mandatory clinical component

in each of the last four semesters (two years) of study. Unfortunately, before the ink was dry, opponents of the five-year plan--a loose coalition of large numbers of law colleges and part-time faculty who feared extinction and a smaller number of law departments and academic faculty who feared loss of autonomy--took the offensive, and the highly politicized Bar Council responded first by postponing and then by downgrading the plan from a mandatory to an optional model. (Sound familiar, 405(e) proponents?)

The result of all this is that the clinical movement in India is essentially back to where it was ten years ago, but with considerable political experience for future use. Those programs that are in operation, including those operating as part of a five-year curriculum, are gaining strength and clinicians still hope to make something out of the Bar Council of India's presently passive support.

Clinical Faculty Appointments

The only real academic law faculty in India are the faculty in the law departments and a handful of the full-time teachers at the very best law colleges. Law department faculty can be set apart first because of their university affiliations: appointments and promotions in law departments are subject to central academic review, just as with any other faculty of the university. Just as important, however, is a rule prohibiting full-time law

teachers from practicing law. Full-time law faculty--which means most law department faculty and only a few law college faculty other than the principals--are thus removed from the profession in fact and in spirit, in marked contrast to the large number of part-time law college (and a few law department) faculty who can and do practice law at the same time.

This two-track system of full-time and part-time faculty, following roughly but not exactly the division between law departments and law colleges, has been the focus of tension and debate in legal education in India for the past twenty years. All that has developed, however, is a stand-off: the five-year curriculum and related reforms lean heavily in favor of full-time faculties, but the part-time teachers, who are also members of the bar and therefore a force in the Bar Council of India, have succeeded in putting virtually all reform on hold. Even those law colleges that have gone ahead with a five-year curriculum generally have not increased their percentage of full-time faculty.

The issue of full-time vs. part-time faculty has swirled around the clinical legal education movement as well, but has not affected it directly. In fact, with a two-track system in place where most part-time teachers are happy with their dual role as teacher and lawyer and full-time teachers are happily or unhappily precluded from

practice, there are only two options for clinical programs: give full-time faculty classroom work and some non-litigation projects, and use part-time faculty for case supervision; or, give the whole program to part-timers. Although there are some very visible senior full-time faculty involved in clinical programs, the bulk of clinical teaching in India is being done today by part-time teachers who seem to have no sense of second-class citizenship, at least no more so than other part-time teachers/lawyers. This situation does, of course, raise questions of the academic quality of the programs--the usual concerns about the commitment of part-time teachers--and the better programs have full-time faculty involved as well. Many full-time faculty members--clinicians and non-clinicians alike--are urging a change in the practice rules to allow full-time faculty teaching in clinical programs to appear in their clinical cases, but at this time there is no sign of any change. If and when the rules do change, then there may be a greater push for full-time clinical teachers; by that time perhaps enough law schools in the United States will have dealt with the status issue to provide Indian law schools some guidance.

Service vs. Education

From the very beginning, service goals have threatened to dominate clinical legal education in India. I use the word "threatened" advisedly, because a substantial number of supporters of clinical education from all parts of the profession and the academy feel that providing legal services to the poor is the most important, if not only, justification for clinical programs at Indian law schools. There is a very creative and dynamic legal aid movement in India with a vast array of projects at various levels of development supported by a considerable network of committees and commissions. Legal aid projects include such diverse activities as surveying in villages for legal problems, alternative dispute resolution "legal aid camps" and national-impact public interest litigation, in addition to direct client representation. Moreover, the concept of legal aid for the poor as a professional obligation has near unanimous acceptance; as one judge explained to me recently, in a country with seventy percent of the population below the poverty line you cannot have a legitimate judicial system without mandatory legal aid. However, as happens quite often in India, implementation has lagged far behind theory and sentiment. It has been quite natural, therefore, for clinicians and legal aid proponents to come together with the solution of the law school legal aid clinic.

This general acceptance of the service function as extremely important, if not dominant, does not mean that educational concerns do not exist. A few clinicians argue, as have some in the United States, that the work itself is the education. Most, however, are working to fit various legal aid projects into a coherent clinical curriculum that will provide students with an understanding of the role of the lawyer in society and training in lawyering skills. I am presently working with Indian colleagues on a handbook for clinical teachers intended to provide guidance in planning and implementing courses to achieve these curricular goals, which will be published in cooperation with one of the major legal aid commissions.

It may appear that there is some of the Edwin Meese philosophy at work here ("if we have to provide legal aid, let's have the law students do it"), but the negative elements of student-based legal aid programs are outweighed by the positives, certainly more so in India than is the case in the United States. First, there is no standing legal aid network to be undermined. Second, there is a real and legitimate need for experimentation in the delivery of legal services to the poor that can be undertaken by the law schools. Finally, many of the legal aid activities contemplated are only semi-professional in nature, such as socio-legal surveying in villages and holding legal literacy camps on basic legal rights, and therefore well within the

capabilities of second- and third-year law students. The challenge for Indian clinicians is to chose the right types of projects for their students and to make the most of the teaching opportunities presented by those projects.

Content of Skills Training

Of all the current issues, the content of skills training is probably thought to be the least important by clinicians in India. There is a general sense that clinical programs should teach lawyering skills or the lawyering process, but little serious work is being done to build up the substantive content of these subjects. One reason is that Indian clinicians are working on a clean slate: neither lawyers nor law teachers have viewed even trial practice as an appropriate subject for study. Moot court is seen by most as a valuable exercise, but a course, or even part of a course, on appellate advocacy simply is not considered.

Skills training, as opposed to the general experience of acting as a lawyer, is also of less interest to Indian law students than to their counterparts in the United States. First of all, only a small percentage of Indian law students--at some schools as low as ten or fifteen percent--have any intention of ever practicing law. For many, law school is a relatively easy place to earn an additional degree that will add status and financial reward

in government service or business. For those who do intend to practice, they know that their opportunities in the profession--where most lawyers practice individually out of court chambers--depend more on their personal and family contacts than on any skills they may have acquired in law school.

The result is a fairly routine and predictable program for teaching skills, with considerable emphasis placed on legal research and writing because training in these skills in the traditional curriculum is thought to be inadequate. One area generating some new interest is negotiation and settlement. Although usually approached in the context of informal dispute resolution through legal aid camps, an effort is being made to generalize from these experiences and to study and teach negotiation and settlement from a more general perspective.

Where does all this lead, and what is the future of clinical legal education in India? A colleague explained modern India to me a few weeks ago while he was driving me home from campus: "On paper, India can't be beat," he said, with his mouth brimming with juice from his betel leaf chew. There was a pause while he leaned out the window and deposited the juice on the street. "The problem," he continued, "is that more often than not you can't recognize what is on paper by the time it is put into practice--if it is put into practice at all." Much of the work being done

by clinicians in India today is directed at creating a very promising national blueprint for clinical legal education. The question is whether the plan will be recognizable if and when it is put into practice. From my perspective, that is fine; I have a ready excuse to revisit in a few years to see how things are going.

OF INTEREST TO CLINICIANS

Roy Stuckey (South Carolina) has reported on the activities of the Skills Training Committee of the ABA Section of Legal Education and Admissions to the Bar. Among other things, the Committee has 1) distributed another survey on Standard 405(e) compliance to all law schools; 2) distributed "Guidelines for Part-Time Legal Employment During Law School" to all accredited law schools, collected responses, and discussed revisions; 3) shared its proposed revisions to the ABA Annual Questionnaire with the AALS Committee on Clinical Education.

The Committee's plans for the spring include 1) reviewing data collected from the most recent 405(e) survey and preparing an updated reprint; 2) review of a proposal from the General Practice Section to ask law schools to develop a "track" within the curriculum for general practice; 3) reconsideration of the informal policy recommendation that the Council adopt a policy requiring a skills teacher to be included on every inspection team; and 4) review of the Annual Questionnaire takeouts that permit the comparison of salaries of clinicians to other faculty members at each school.

An ABA Standing Committee on Lawyer Competence was created at the ABA Annual Meeting in New York last August. Its mission is to devise and implement methods for 1) researching, developing, and exchanging information concerning lawyer competence; 2) coordinating ABA and other lawyer or court efforts regarding lawyer competence, including recommendations to the Board of Governors or House of Delegates, or both, and; 3) developing means of achieving lawyer competence.

The new Standing Committee is sponsoring a series of regional conferences on lawyer competence, the first to be held in Atlanta, March 5-7, 1987.

The Report of the Committee on Clinics and Attorney Fees of the Clinical Section of the AALS is available from Peter Hoffman (Nebraska), section chair. The Report (45 pp. including appendices) discusses clinical recovery of attorney fees - eligibility for fee awards, legal and ethical constraints on how fees may be spent by clinics, the tax consequences for clinicians of attorney fee awards, and a number of policy issues raised by attorney fee recoveries, including the potential for conflicts between the educational mission of clinics and the pecuniary benefit to be gained from fee generating cases, the potential for conflicts between local bar associations and clinics, and the impact that recovery of fees may have on the perception of clinics within the academic community.

The Indiana General Assembly is considering a Concurrent Resolution that urges the Indiana Supreme Court to study the feasibility of requiring practical legal training as a prerequisite to admission to the bar. The Resolution passed the House of Representatives unanmiously, and is now pending in the Senate Judiciary Committee. The preamble to the Concurrent Resolution provides that 1) academic legal education provided by today's law schools is deficient in practical legal training; and 2) it is desirable that those who hold themselves out to be practicing lawyers be able to prepare legal documents, make legal pleadings, prepare for trial, conduct voir dire examinations, and adequately handle all those other nonacademic things (sic.-ed.) that a practicing attorney must deal with; and 3) it is probable that provisions for the adequate practical training of lawyers is dependent upon joint action by the Supreme Court, the bar, and the general assembly.

In two recent antitrust cases, federal district courts in Houston and Chicago have drafted orders that provide for payment of residual settlement funds to law schools to be used to teach advocacy. In the Folding Cartons case, the U. S. District Court for the Northern District of Illinois proposes to divide $1.7 million among the law schools in Chicago. The U. S. District Court for the Southern District of Texas, Houston Division, proposes to distribute about $1 million from the residual settlement funds in In Re Corrugated Container Antitrust Litigation, M.D.L. 310, to the law schools at the University of Houston and the University of Texas. The funds would be used for programs at the schools to train advocates. Faculty from Thurgood Marshall School of Law in Houston and Texas Tech Law School in Lubbock have asked that their schools be included in the proposed distribution. [A copy of the Proposed Order on Residual Funds in the Texas case is available from the editor.]

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**** JOBS **** JOBS **** JOBS **** JOBS **** JOBS ****

PACE UNIVERSITY SCHOOL OF LAW - two openings:

1) Appellate Litigation Clinic and 2) Child Support Enforcement Clinic. Faculty responsibility includes supervising all case work and planning and teaching a weekly seminar.

Both positions are tenure track appointments to begin in the 1987-88 academic year. Salary is commensurate with New York area salaries for legal services lawyers and teachers with equivalent experience. To apply, submit a letter of application along with a resume or curriculum vitae to Prof. Frank A. Bress, Associate Dean of Clinical Education, Pace University - School of Law, 33 Crane Ave., White Plains, NY 10603 (914-681-4333)

Applications were requested by March 1, 1987. [But, what do you have to lose? Ed.]

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NORTHWESTERN UNIVERSITY SCHOOL OF LAW - Clinical Fellowship.

A two-year fellowship designed to train aspiring clinical teachers. Fellows will supervise students' case work in the Law School's inhouse clinic and will also assist in the teaching of lawyering process and trial advocacy courses. Write or call: Thomas Geraghty, Associate Dean of Clinical Education, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611; (312) 908-8576.

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EAST PALO ALTO COMMUNITY LAW PROJECT - Executive Director.

EPACLP seeks a lawyer with substantial experience and demonstrated ability in poverty law practice, personnel management and fundraising. EPACLP provides community education, landlord/tenant, government benefits, family, juvenile and immigration law services to an ethnically diverse community in San Mateo County, California. The Project also provides clinical training for Stanford Law School students. Starting date 6/15/87; salary negotiable. Send resumes by April 1 to Executive Director Search Committee, EPACLP, 1395 Bay Road, East Palo Alto, CA 94303.

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UNIVERSITY OF CHICAGO - Clinical teacher.

A clinical teacher is sought for the Mandel Legal Aid Clinic, which represents parents of handicapped children in administrative hearings and in litigation in state and federal courts. Clinical teachers are responsible for designing and implementing each element of the program, which integrates classroom teaching, simulations, preparation of actual cases in small groups of second- and third-year students, and supervised representation of clients into a comprehensive educational program. Contracts are on a year-to-year basis, although clinical teachers often stay at the Law School for at least five years. Contact Mark J. Heyrman, 1111 East 60th Street, Chicago, Illinois 60637.

NOTED IN THE FEBRUARY 6 AALS PLACEMENT BULLETIN:

UNIVERSITY OF BALTIMORE --

Full-time position created by unexpected resignation. The person leaving taught evidence, trial advocacy, and local government law. Announced deadline 2/21/87. Contact: Prof. Anrnold Rochuarg, University of Baltimore School of Law, 1420 North Charles Street, Baltimore, MD 21201.

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UCLA --

Seeks applicants for teaching positions to begin August 1987 or January 1988, including experienced and beginning teachers for permanent and visiting, clinical and non-clinical positions. Contact: Chair, Faculty Appointments Committee, University of California School of Law, 405 Hilgard Avenue, Los Angeles, CA 90024.

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CORNELL --

Seeks a highly qualified person to serve as senior lecturer or lecturer with the Cornell Legal Aid Clinic beginning in the summer of 1987. Applications accepted until April 1, 1987. Contact: Prof. Larry Palmer, Chair, Faculty Appointments Committee, Cornell Law School, Myron Taylor Hall, Ithaca, NY 14853-4901.

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UNIVERSITY OF NORTH DAKOTA --

Invites applications for possible one-year or continuing positions for the nine-month academic year beginning August 16, 1987. Needs may include clinical positions. Contact: Chair, Faculty Selection Committee, University of North Dakota School of Law, Grand Forks, ND 58202.

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UNIVERSITY OF PENNSYLVANIA --

Seeking highly qualified applicants to teach and supervise case work in their Clinical Programs, which include a litigation based course, a "live client" small business planning/counseling course, and a family/juvenile law clinic. Contact: Prof. Harry L. Gutman, Chair, Appointments Committee, University of Pennsylvania Law School, 3400 Chestnut St., Philadelphia, PA 19104.

SAINT LOUIS UNIVERSITY --

Invites applications for several tenure-track positions. All specialties, including clinical areas, will be considered. Contact: Prof. Jesse A. Goldner, Chairman, Faculty Appointments Committee, Saint Louis University School of Law, 3700 Lindell Boulevard, St. Louis, MO 63108.

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UNIVERSITY OF SAN FRANCISCO --

Invites applications for permanent and visiting positions. An applicant for a clinical position should be a member of the California bar or prepared to take the July 1987 exam, and should have some experience in criminal law. Contact: Prof. Suzanne Mounts, University of San Francisco School of Law, 2130 Fulton Street, San Francisco, CA 94117-1080.

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ARIZONA STATE UNIVERSITY --

Seeks to hire a visiting or adjunct professor for approximately twelve weeks, commencing May 1987, to teach clinical seminar and supervise law student interns in the law school clinic. Contact: Prof. Gary Lowenthal, Arizona State University College of Law, Tempe, AZ 85287. Telephone: (602) 965-5379.
