



SECTION ON

CLINICAL LEGAL EDUCATION

JUNE 1987

Reply to: SANDY OGILVY
Thurgood Marshall School of Law
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004
(713) 527-7275

MESSAGE FROM THE CHAIR

by

Peter T. Hoffman, Nebraska

The semester at Nebraska has just ended, finally leaving me some time to think about what I have been doing for the past year. For several years I have been hearing about declining interest in clinical education among law students, but, blessedly, I did not have any personal evidence of this. Up until now we have had more student demand than we could handle. But this year, without warning, we had a fifty percent decline in the junior class sign up for the fall of next year. It looks like the courses will still be full, but the number of students turned away is much smaller than in the past.

After shaking our heads and asking what hit us, we set out to investigate the reasons for this sudden and precipitous falloff in student demand. This is one of the issues the Future of the In House Clinic Committee is looking into and I am sure their analysis will be much more detailed than mine. But I do have some preliminary thoughts I think are worth sharing with you.

By reviewing anonymous student questionnaires and talking with students we trusted to be candid, we came up with a pretty good idea of the reasons for the decline. What we found was not one individual cause but several. First, demand for clinic has always varied from semester to semester at this school. Initially we had no idea why, but several years ago one of the students opened our eyes to reality--interest in clinic is strongly dependent on what other courses are being offered that semester. If there are a number of classes scheduled which will also appear on the bar exam, then clinic demand plummets. On the other hand, sign up soars during those semesters when the course offerings are thinner.

Second, our clinics have always been billed as preparing students for the practice of law. Since most of our students ended up staying in the state in small firms or as solo practitioners, this meant getting them ready for that type of practice. And we had been very successful at achieving what we claimed--alumni would report back that the clinic had been the best course they had taken in law school and that they had a real leg up when they entered practice.

Through the years, however, what we had been preparing students to do, practice within the state, has changed. More and more of our students are leaving Nebraska and these students do not perceive the clinic as being relevant to their future plans. We found we were attracting mainly students who planned on practicing here and were losing those who intended to move away.

Third, when our clinics first started out, we went to great lengths to insure that students were aware of the clinical opportunities and what they involved. Some of our publicity techniques seem almost hokey in retrospect. For instance, we used to publish a once-a-semester newsletter which reported on some of the more interesting clinical cases. As our demand grew, we discontinued these efforts and relied almost solely on word of mouth. Now we hear that the information among the students about the clinic is favorable, but there is little of it passing from the current class to those yet to take the clinic. Many students claim to know very little about the clinics and believe them comparable to clerkships.

Finally, the main reason we discovered for students not taking the clinic is they think it requires too much work. They are right to a certain extent--clinic does take more time for the credits involved than most senior classes. And, much to our surprise, we found through a study of student time records that we had, in fact, increased the student work load through the years.

The work load issue is also a reflection of the increasing number of students who have to clerk to remain in school. What would be a moderate time demand to a student who has to contend only with classes becomes overwhelming to those who also must work.

Sounding the lament of every one who has been teaching for more than ten years, I also believe that many students today are less willing to work hard while in law school. Part of it may be the frequently reported movement in student attitudes away from idealism and towards acquisitiveness, but I suspect the main reason is a change in the demographics of today's law students. Our entering classes, like at many other schools, have much lower LSATs and GPAs than ten years ago. I would opine that these lower measurements are more than a reflection of innate ability; they are also a reflection of students' lesser willingness to work hard on their studies.

After completing our review of student demand for the clinics, we have taken a number of steps to adjust to the new reality and we are considering many more. An example of what we are doing is a renewed effort to make students aware of the available clinic courses. We even have gone so far as to revive the old clinical newsletter.

We also have learned one critical lesson that is worth passing on: AVOID COMPLACENCY! We were satisfied with the clinical curriculum we had worked so hard to create. After many years of putting together a quality program, we started devoting our energies to other matters and ignored the changes occurring around us. We ran into trouble because we had created our programs under one set of conditions and never reexamined those conditions as times changed. We learned that clinics are a lot like babies; they are a lot easier and more fun to create than to raise.

Some problems such as students working less than in prior years, if this is true, cannot be corrected, but many other problems reflect legitimate areas for improvement. The success of clinical education ultimately rests on students desiring a clinical experience. If student demand is not there, law schools will quickly seize upon this as an excuse to terminate clinics. Student demand, in turn, depends on clinics providing an experience students perceive as valuable. It is our responsibility to insure the value is there.

A final thought. We are convinced the decline in student demand can be turned around. Historically, student interest in clinical education has been high. There is nothing to indicate that this interest cannot be revived. Our early efforts appear to be having the desired effect. From this I draw hope that other schools reporting similar problems also can turn their programs around.

The causes for falling student demand, to a large extent, are unique to individual schools, but common patterns can be discerned. As I mentioned previously, the Future of the In House Clinic Committee is studying this problem and would appreciate any ideas you might have. Contact either John Elson, Northwestern, or Bob Dinerstein, American, and give them your thoughts.

HAVE A GOOD SUMMER

COMMITTEE REPORTS

CLE COMMITTEE -- Carolyn Kubitschek, Hofstra, chair.

The Continuing Legal Education (CLE) Committee has been working on three projects this year: 1) discovering what opportunities exist for clinicians to do continuing legal education work; 2) acting as a resource to assist clinicians in developing CLE programs; and 3) surveying the substantive law specialties of clinicians.

With regard to the first project, we found that 20 states have mandatory continuing legal education programs (known generally as MCLE), and the number is growing rapidly. These states, and the requirements where known, are:

Alabama:	12 hours a year, ethics not required;
Colorado:	45 hours in 3 years, including 2 hours of ethics;
Georgia:	12 hours a year, 2 in ethics;
Iowa:	15 hours a year, ethics is being discussed;
Kansas:	36 hours in 3 years;
Idaho:	30 hours in 3 years;
Kentucky:	15 hours a year;
Montana:	15 hours a year;
Mississippi:	
Nevada:	10 hours a year;
North Dakota:	
Oklahoma:	12 hours a year;
South Carolina:	
Texas:	15 hours a year, 1 hour of ethics;
Vermont:	
Virginia:	
Washington:	15 hours a year;
Wisconsin:	30 hours every two years;
Wyoming:	
Missouri:	15 hours a year.

The CLE Committee is collecting information describing the requirements in more detail. Clinicians who have developed CLE programs and would like to take advantage of these requirements can contact Carolyn Kubitschek at (516) 560-5934 for details.

A number of clinicians have developed and/or taught exciting CLE programs, in both substantive and skills areas where our specialities lie. For example, Joe Harbaugh, American, chaired a two-day program on negotiation for the Practicing Law Institute, and Elliott Milstein, American, was on the faculty. The programs included lectures on negotiating tactics, interaction between lawyer and client, deciding when to negotiate, initiating negotiations, bargaining tactics, wrapping up negotiations, and role plays and discussions of a simulated negotiation.

Sandy Ogilvy, Thurgood Marshall, organized a highly successful day-long program on the new immigration law for attorneys and social workers who will handle legalization cases. The program, attended by 160 people, featured lectures in the morning and workshops in the afternoon. For more information and advice, call him at (713) 527-7275.

Byron McCoy, Houston, directs that school's extensive CLE program. He recently directed a two and a half day program, also on the new immigration law, aimed at attorneys in criminal and labor law, as well as those with immigration practices. One of the most successful CLE programs at Houston is their NITA-type

trial advocacy program, which is offered to a group composed of both third-year students and fledgling attorneys. Byron has found that this combination works extremely well: each group competes with the other to reach high levels of accomplishment. The program has received rave reviews from judges in the area, who have noticed that the entire level of trial practice has gone up. There are positions and honoraria available for clinicians who are interested in teaching in this or one of the other CLE programs at Houston. For more information, call Byron at (713) 749-3947.

Carolyn Kubitschek recently participated in a CLE program on basic Social Security Disability Law and Practice, and will shortly be doing a seminar on Appeals to the Second Circuit in Social Security Cases.

These are a very small sample of the CLE work that clinicians have done. If you are interested in doing CLE work, and would like information on the programs that are available for clinicians to teach, or advice and/or technical assistance on developing your own program, feel free to call anyone on the CLE committee. If you are doing CLE work now, please let us know so that others can take advantage of opportunities you may know about, or can contact you for advice.

The survey, referred to in the first paragraph, is a study of all the substantive law specialities of clinicians throughout the country. More than 150 clinicians have responded already, and those responses are presently being fed into a computer. The Committee submitted a preliminary report, listing those clinicians who handle various types of federal civil rights cases, at the weekend conference in San Antonio in March. As soon as the data processing is complete, the final report will be written and sent to all who have participated in the survey. If you have not mailed in your questionnaire, you will not receive the final report. If you have lost your questionnaire, but would still like to participate, please call Carolyn Kubitschek and a new one will be sent to you immediately. It takes about five minutes to fill out, and responses are still welcome.

COMMITTEE ON EXTERNSHIPS -- Janet Motley, California Western,
and Liz Ryan Cole, Vermont,
Co-chairs.

At the AALS Annual Meeting in January, the Executive Committee of the Clinical Section agreed to create a committee on Externships. A first meeting of the committee was held while participants were still gathered in Los Angeles. Those present agreed that substantial need existed for a meeting/training on how best to run an effective externship program. We agreed to make a quick needs assessment to determine:

1. Whether there was sufficient interest (18 or more people) in running effective externships to put a meeting together;

2. If sufficient interest existed, whether to schedule one meeting - either in Vermont or in San Francisco (to coincide with the ABA annual meeting), or two meetings, one for each coast, or even regional meetings. [See announcement below - ed.]

We also discussed the possibility of co-sponsoring a Symposium on Methods of Teaching that would provide a focus for those working in individualized instructional settings, such as the externships.

Since the meeting, very preliminary discussions have been held with members of the Teaching Methods Section regarding the proposed symposium, and a needs assessment on Training for Externships is being circulated to all people who responded to Liz Ryan Cole's externship survey (along with some who have yet to respond).

Janet and Liz would be happy to hear from anyone interested in externships.

The Externship Committee will hold a one-half day long session, Running Effective Externships, October 17th in Albuquerque, New Mexico. The meeting will be held immediately after the close of the National Conference on Lawyer Competence, Professional Skills and Legal Education, scheduled for October 15 - 17. (If, by the time you read this, you have not already received notice from your Dean about the National Conference, please obtain a copy of this announcement and schedule from your Dean's office.) This October meeting will replace the session tentatively scheduled for San Francisco in August. As you will see from the announcement, the focus of that meeting includes many areas of interest to faculty involved with externships and, given limited time and money, we wanted to allow as many people as possible associated with teaching externship programs to attend the National Conference.

The agenda for Running Effective Externships will be determined after we know the final shape of the agenda for the National Conference. We will put an agenda in the fall Newsletter and send an announcement to all people who have responded to the Vermont Law School Survey on externships.

If, however, after reading this announcement you know now that you may be interested in attending, please call or write Liz Ryan Cole (Vermont) or Janet Motley (California Western), co-chairs of the Externship Committee.

ADDITIONAL APPOINTMENTS TO COMMITTEES ANNOUNCED BY PETER HOFFMAN,
NEBRASKA, SECTION CHAIRPERSON

Ann Shallek, American, Chair of Annual Program Committee;
Gary Laser, ITT-Kent, Chair of Tenure & Promotion Committee;
Pat Regan, Loyola-New Orleans, International Committee;
Barbara Schatz, Columbia, Integration of Clinical
Methodology into the Traditional Curriculum Committee;
Committee;
Keith Harrison, Northern Illinois, Externship Committee;
Susan Apel, Vermont, Tenure & Promotion Committee;
Minna Kotkin, Brooklyn, Integration of Clinical Methodology
into the Traditional Curriculum Committee.

OF INTEREST TO CLINICIANS

The ABA Journal, May 1, 1987, carried a short news feature that discussed the impact of part-time work by law students on law school performance. The article, which quoted both Bill Greenhalgh, Georgetown, and Roy Stuckey, South Carolina, also reprinted the voluntary guidelines for part-time employment of law students developed by the Skills Training Committee of the ABA's Section of Legal Education and Admissions to the Bar.

Roy Stuckey, South Carolina, forwarded to the Newsletter this item concerning the ABA's interpretation of Accreditation Standard 306:

Interpretation 2
of Standard 306
Regarding Field Placement Programs

(a) A law school which has a program that permits or requires student participation in studies or activities away from the law school (except foreign programs) shall develop and publish a statement which defined the educational objectives of the program. Among educational objectives of such programs may be instruction in professional skills, legal writing, professional responsibilities, specific areas of the law, and legal process. The educational objectives shall be communicated to the students and field instructors.

(b) Such programs shall be approved by the same procedures established by the law school for the approval of other parts of its academic program and shall be reviewed periodically in accordance with those procedures and in light of the educational objectives of the program.

(c) The field instructor or a faculty member must engage the student on a regular basis throughout the term in a critical evaluation of the student's field experience.

(d) A member of the faculty must periodically review any program conducted by a field instructor to ensure that the program meets its educational objectives. In conducting such review, the faculty member should consider the time devoted by the student to the field placement, the tasks assigned to the student, selected work products of the student, and the field instructor's engagement of the student on a regular basis in a detailed evaluation of the student's field experience.

(e) In evaluating whether such a program, in light of the educational objectives of the program, complies with the requirements of Standard 306, the Accreditation Committee shall consider the following factors:

- / Prerequisites for student participation
- / Extent of student participation
- / Method of evaluation of student performance
- / Qualification and training of field instructors
- / Method of evaluation of field instructors'
- / Classroom component
- / Student writings
- / Adequacy of instructional resources
- / Involvement of full-time faculty
- / Amount of academic credit awarded

Gary Palm, Chicago, wants to alert clinical teachers at schools scheduled to receive ABA accreditation visits during the academic year 1987-1988 to contact Dean James P. White, Consultant on Legal Education to the American Bar Association, to make certain that a clinical teacher is included on the accreditation team. Jim White's address is Indiana University School of Law - Indianapolis, 735 West New York Street, Indianapolis, Indiana 46202. Gary adds that anyone wanting advice about planning for the accreditation visit or having suggestions about the accreditation process should contact him or Roy Stuckey, South Carolina, both of whom are on the Skills Training Committee of the ABA Section on Legal Education and Admissions to the Bar.

Lynn Barenberg, a social worker at the Boston College Legal Assistance Bureau, would like to correspond and compare notes with social workers who work in or with legal clinics. Interested persons should call Lynn at (617) 893-4793 or write to her c/o Boston College Legal Assistance Bureau, 24 Crescent Street, Waltham, MA 02154.

NATIONAL CONFERENCE BEING PLANNED FOR OCTOBER

Roy Stuckey writes:

I need your help in planning a conference for the ABA Section of Legal Education and Admissions to the Bar. A major goal of the conference is to allow legal educators to share information about professional skills courses and programs. Participants will also examine some of the fundamental issues related to the law school's role in promoting lawyer competence.

You can help me figure out which courses/programs should be described during the conference and who should be invited to participate in the program. Any other ideas or reactions you have would be appreciated, too.

By the time you receive this Newsletter, a memo announcing the conference will have been sent to all law school deans. A more detailed announcement might have been distributed as well.

Please review the preliminary schedule set out below and let me hear from you. I hope you will not be bashful about sending materials to me or volunteering your services.

I can be reached at the University of South Carolina School of Law, Columbia, S. C., 29208. (803)777-2278

**NATIONAL CONFERENCE
ON
LAWYER COMPETENCE, PROFESSIONAL SKILLS AND LEGAL EDUCATION**

- Site:** University of New Mexico Law School
Albuquerque, New Mexico
- Dates:** Thursday evening, October 15 through
Sunday noon, October 18, 1987.
- Accommodations:** Hotel arrangements are being made.
Rates will be in the range of \$50-\$60.
- Registration fee:** Not expected to exceed \$250.
Will include most meals.

Preliminary Schedule

NATIONAL CONFERENCE ON
LAWYER COMPETENCE, PROFESSIONAL SKILLS AND LEGAL EDUCATION

(This is an unofficial schedule for planning purposes.
A detailed schedule will be mailed in late Summer.)

THURSDAY EVENING: Informal reception/buffet at hotel.

FRIDAY MORNING:

Opening of the Conference. The Honorable Rosalie Wahl, Supreme Court of Minnesota and Chair, ABA Section of Legal Education and Admissions to the Bar.

What are professional skills?

...and why should law schools teach them?

-speakers will present a variety of views, including recent suggestions for redefining professional skills. The extent of a law school's obligation to provide professional skills instruction will be explored in relation to the responsibility of lawyers to provide competent professional services shortly after graduation from law school. Small group discussions will follow.

LUNCH: Informal at Law School.

FRIDAY AFTERNOON:

An Overview of Professional Skills Courses.

-speakers will describe some of the recent innovations and types of courses which are being used to enhance professional skills instruction programs.

-some of the categories which may be included in this segment are: courses in the first year curriculum which are being used to introduce students to professional skills and other concepts about law practice; clinical courses involving supervised student representation of clients (in-house and externships); simulated lawyering skills courses, particularly those involving pretrial skills such as negotiation; courses using computer assistance for substantive or skills instruction, including data and time management skills; and courses in which clinical methodology is being used to improve learning in traditional subjects.

FRIDAY AFTERNOON, CONTINUED:

Examples of Professional Skills Courses.

-some law schools with innovative professional skills courses will provide demonstrations of their courses and answer questions about them, including how much they cost, how and why the schools decided to develop them, and what problems remain to be worked out. Simultaneous demonstrations will occur throughout the building. Participants will be able to attend those which most interest them.

-the small groups will reconvene to compare notes on their observations and to share ideas about innovative courses.

LATE FRIDAY AFTERNOON: Reception/tour of the Law School.

FRIDAY EVENING: No Conference events or meals are scheduled.

SATURDAY MORNING:

An Overview of Professional Skills Programs.

- while the Friday afternoon program will look at individual pieces of a professional skills instruction program, this segment of the Conference will describe how some of the pieces are being put together.

-some of the categories which may be included are: intensive semesters during which all or most of a student's courses are related to professional skills; three year programs providing coordinated learning opportunities which enable students to reach increasingly higher levels of skill; and tracks in which the professional skills instruction is designed to prepare students to practice in particular fields of law (e.g., tax law or labor law) or to engage in particular kinds of practice (e.g., litigation or general practice).

Examples of Professional Skills Programs.

-law schools will demonstrate and answer questions about their professional skills programs. These workshops will occur simultaneously.

-the small groups will reconvene to compare notes on their observations and to share ideas about innovative programs.

LUNCH: Informal at Law School.

SATURDAY AFTERNOON:

Obstacles to Professional Skills Instruction... and Solutions.

-panelists will try to identify the major reasons why some law schools are not developing comprehensive professional skills instruction programs and will discuss ways in which some schools have overcome these obstacles.

-obstacles which have been suggested include: creating, managing and reallocating resources (money, facilities and personnel); inadequate information about what should be done and how to do it; resistance from traditional faculty; inadequate guidance/pressure in the law school accreditation process; bar exam testing of subjects unrelated to professional skills; and curriculum decisions based on what other schools are doing rather than on an independent evaluation of the mission and student needs of each law school.

-each small group will be asked to make recommendations for the future development of professional skills instruction and to make concrete proposals for overcoming any obstacles which may hinder such development.

SATURDAY MIDAFTERNOON: Take buses to ranch for western cookout. Return around dark before the temperature drops.

SUNDAY MORNING:

**Keynote Address by Robert MacCrate, President of
the American Bar Association.**

Recommendations of the Small Groups.

-the recommendations developed on Saturday afternoon will be reported and discussed.

Reactions of Special Guests.

-representatives of groups which have studied legal education and lawyer competence will be invited to attend the Conference. In this segment, they will share their views about the proceedings and whether law schools seem to be moving in the directions which were recommended by their groups.

Concluding Remarks By Professor Robert B. McKay, NYU.

AMONG OURSELVES

Clinton Bamberger, Jr., Maryland, has been named to the board of directors of the Micronesian Legal Services Program, which provides legal assistance in civil matters to indigent persons living in the Marshall, Caroline, and Marianas Islands. He is the only board member who is not a resident of the islands in Micronesia.

Joseph D. Harbaugh, American, chaired the PLI Negotiation Workshop for Lawyers held in New York, March 19-20, 1987, and Los Angeles, April 23-34, 1987. Elliott S. Milstein, American, was on the workshop faculty.

David A. Koplou, Georgetown, and Charles Koch, William & Mary, have been hired as consultants to the Administrative Conference of the United States (which has a contract with the U. S. Department of Health & Human Services) to study the Social Security Administration's Appeals Council, and to make recommendations regarding that body. David invites all clinicians to contact him with any stories, papers, or other information they should consider in their study. Their report is due by the end of the summer.

The second AALS Midwest Clinical Teachers Conference was held at DePaul University College of Law April 10-12. The planning committee consisting of Gary Palm, Chicago, Mark Kadish, Chicago-Kent, John Elson, Northwestern, and Vivien Gross, Chicago-Kent, devised sessions that included: 1) Value of Externship Programs; 2) Pedagogical Issues of Live Client Clinics; 3) Underlying Values of Live Client Clinics; 4) Issues of Survival of the Clinical Teacher; 5) Teaching Innovations - Computers and Interactive Video Discs; and 6) Group Case Conferences. The Conference faculty included William Hornbostel, Drake, Peter Hoffman, Nebraska, David Medine, Indiana-Bloomington, David Gottlieb, Kansas, Nina Tarr, No. Illinois, Henry Rose, Loyola, Chicago, Mark Heyrman, Chicago, and Marjorie Murphy, Cincinnati.

Sandy Ogilvy, Texas Southern, was named Outstanding Teacher in Law by Texas Southern University for the 1986-1987 academic year.

Bill Greenhalgh, Georgetown, is running for the chairmanship of the Criminal Justice Section of the ABA. He is presenting a challenge to the incumbent, Judge Sylvia Bacon. Bill asks clinicians who are members of both the ABA and the Criminal Justice Section to vote for him at the ABA meeting in San Francisco. The election will be held in the Westin St. Francis Hotel on Sunday, August 9 at 10:30 a.m. If you are a member of the ABA but not of the Criminal Law Section, you may still vote if you join the section before July 1. Membership in the section is \$25.00, payable to the ABA, 750 N. Lakeshore Dr., Chicago, IL 60611, telephone: (312) 988-5522.

Jenifer Schramm, Puget Sound, is leaving the University of Puget Sound's Clinical Program to take some time off. Jenifer reports that she is not certain whether she will return to clinical teaching in the future. Marsha Pechman will become the new Director of the clinical program at Puget Sound; Betsy Hollingsworth will be the other long-term contract clinician; and Raven Lidman will be the third clinician. She will have a short-term contract.

Marilyn Yarbrough, Kansas, is the new Dean at Tennessee, and Joe Harbaugh, American, is the new Dean at Richmond.

Bob Doyel, Mercer, has gone into private practice.

Phil Schrag, Georgetown, and Lisa Lerman are the parents of a son, Samuel Schrag Lerman, born March 8. Lisa will teach at Catholic next year.

NOTES FROM THE WORKSHOP ON CLINICAL LEGAL EDUCATION
HELD IN SAN ANTONIO, TEXAS
MARCH 12-14, 1987

Over a hundred clinicians gathered in San Antonio in March for the bi-annual workshop on clinical teaching. The workshop was entitled "Teaching Across Skills." As described by Graham Strong, Virginia, Chair of the AALS Planning Committee for the Workshop on Clinical Legal Education, the workshop was an attempt to take the traditional perspective on the subject matter of clinical instruction and rotate that perspective by ninety degrees. Rather than focusing on traditionally-defined categories of lawyering skills or activities, the workshop was designed to focus on the common elements that slice across those categories at right angles.

Graham and his committee gathered together the strongest faculty in years for the workshop. The presenters included Tony Amsterdam, NYU, Bea Moulton, Hastings, Dean Rivkin, Tennessee, David Binder, UCLA, Kenney Hegland, Arizona, Bob Seibel, Cornell, Ann Shalleck, American, Gary Bellow, Harvard, Carol Liebman, Boston College, Nancy Cook, American, and Gary Palm, Chicago.

The opening session introduced the notion that common themes cut across the traditional skill categories of clinical education. The four themes considered during the workshop: idea-generation, planning, judgment, and values, were considered in the context of four traditional skill categories: investigation, counseling, negotiation, and litigation.

After the introductory session, participants divided into small groups to explore the concept of "re-slicing" the subject matter of clinical education, and to begin to identify and consider the themes that have cut across their own teaching of traditional skills.

The next plenary session examined how the first of the cross-cutting themes -- idea-generation -- could be taught independently, or taught thematically in the context of traditional skill categories. The small group discussions that followed drew upon the model of the plenary session to generate ideas about how the second of the cross-cutting themes -- planning -- could be taught independently, or taught thematically in the context of traditional skill categories.

On Saturday, the first plenary session considered the second sample slice: Teaching Judgment Across Traditional Skills. This session was again followed by small group discussions devoted to considering and expanding upon the materials presented in the plenary session.

The final plenary session considered how a re-slicing of the traditional subject matter of clinical education could play out in the context of four primary teaching methods: classroom lecture/discussion, simulation, individual casework supervision, and the group case conferece. This session was again followed by small group discussions.

It is impossible to encapsulate in the Newsletter even a small portion of the substance of the workshop. Those of you who were unable to attend can only hope that the presenters and the participants will consent to recreate some of what was discussed through essays in the Newsletter or other means of communication.

As is always the case when clinicians gather, not all of the time was spent in deep philosophical discussions of pedagogy; there was a lot of good fellowship as well. Paul Bergman, UCLA, and his band of minstrels, provided a wonderful musical interlude at the luncheon on Saturday. Space limitations preclude reproduction of the entire script, but I have included a couple of the more memorable songs to give you an idea of what you missed.

To provide some context for the lyrics that follow, I will reproduce the introductory narrative to the musical, entitled: "2010: A Clinical Odyssey."

Narrator: Early in the 21st Century, a faculty meeting is underway in the Harvard Law School, and we are fortunate to be able to sit in on part of it. Harvard began the national move to the all-clinical curriculum in the 1990's, and since then casebooks have been systematically gathered and burned. A few old-timers, known as case methodists, try to keep the casebooks orally alive: David Binder, drugged into becoming a case methodist around 1990, spends his days in seclusion, reciting over and over the 5th edition of Kaplan and Waltz, "Cases and Materials on Evidence." When they are found, case methodists are punished by being forced to read the collected works of Roberto Unger. Today, the Harvard faculty has just voted to add 2 upper

level courses to the 6-year clinical curriculum, "Open Questions III" and a joint course with the Department of Home Economics, "Practical Ways to Expand and Cross-Cut a Pie." The faculty is about to consider a suggestion from the governing law school body, the ALS (Association of Lawyering Schools) that case methodists be allowed to teach in law schools, perhaps pursuant to long-term contracts. Assistant Associate Adjunct Professor Paul Carrington, who was hired to digest depositions, was asked to submit a proposed long-term contract, but instead returned with an essay analyzing how the parties in the "good ship Peerless" case were implicitly reflecting a free market ideology. We listen as Dean Gary Palm begins the discussion.

[In response to Palm's request to be told why they should hire a case methodist, Carrington sings]:

THOSE WERE THE DAYS (Archie Bunker Version):

When doctrine was the only news,
Our words made the law reviews.
Words that would our students confuse.
Those were the days.

We liked our reign of terror when,
Classes were Socratic and students were men.
Brother we could use a Dean like
Christopher Langdell again.

What's this garbage clinical,
The thought of practice makes us ill.
Theory is the need that we could fill,
Those were the days.

We can show we really rate,
When obscure points we illuminate
Showing how some footnote errs
Convinces us that we're great.

It's time to go back to our roots,
And show those clinicals our boots.
Students' court hearings will all be moots,
That'll be our days.

[At one point in the discussion, the clinicians recall how they were treated by the case methodists when the clinicians were in the minority. The publish or perish rule was remembered]:

IF I LOVED YOU

(Traditional faculty verse)
If you'd written,
Tenure would have been so easy to say.
In our circle you'd be.

If one article,
Had pushed a few clients out of the way
No worries about 405(e).

Longing to write something that no one reads-
Filled with footnotes would mean scholarly deeds.

Now we've lost you.
Down you will go to the law firm hell.
And we never will have
You here sittin,
If only you'd written.

(Clinician verse)
We'd have written
But words do not come in an easy way.
When your caseload is high.

We'd have written,
But what would our students and clients say,
If we told them, good-bye?

Longing to help our needy clientele,
We saw our tenure chances shot to hell.

We may leave you,
But interviewing, counseling and going to trial
Are something your students must do.
Teach them skills on,
They won't love you.

At the Friday luncheon, Gary Bellow was presented the 1987 Award of the AALS Section on Clinical Education. The presentation was made by Tony Amsterdam, the 1986 winner of the award. I have had several requests to reprint Tony's remarks, as well as Gary's remarks upon accepting the Award. (Gary's remarks will appear in the next issue of the Newsletter -ed.)

Tony Amsterdam
Presentation of the 1987 Award
of the AALS Section on Clinical Legal Education to
Gary Bellow
San Antonio, Texas
March 12, 1987

The usual trick in announcing awards of this sort is to come up with at least a couple of plausible reasons why the honoree deserves to be honored, and to embroider each reason long enough so that the bell rings for the next activity before anybody can cross-examine you. In Gary Bellow's case, the trick is exactly the opposite: to select and edit down into tolerably short form all of the obvious and overwhelming reasons why we all know that Gary deserves our Section Award.

Let me start with a bare-bones summary of Gary's career in its large historical context, before getting down to our reasons for honoring him. After graduating from a college and a law school which shall remain nameless except to their near neighbors in New Haven and Cambridge, Gary took his graduate law degree from Northwestern in 1961, spent six months in the army, and finally went to work a long last in 1962 at the Legal Aid Agency for the District of Columbia, where he represented criminal defendants for three years and came to be the Deputy Director of the Agency. Here Gary's historic mission was to raise, and to incite other lawyers to raise, issues which so infuriated an obscure Circuit Judge named Warren Burger as to cause this Judge to write opinions that gained him considerable notoriety and a subsequent Chief Justiceship of the United States, with consequences which I shudder to relate. Meanwhile, Gary, with his usual foresight, having set this chain of events firmly in motion, proceeded to get out of criminal law while the getting was still good, and to move over to the civil side, taking a position as Administrative Director, and then Deputy Executive Director, of the United Planning Organization (UPO), also in Washington, D.C. Pausing there only long enough to invent the implied warranty of habitability and other nefarious doctrines that turned the time-honored process of summary eviction into a forum for litigating housing-code violations and similar exercises of the commonlaw slumlord's prerogatives, Gary moved along to California Rural Legal Assistance in 1966, where, as is well known, his historic role, along with several other bad eggs, was to inspire in the then Governor of California an undying animosity to law reform, legal services, and everything connected therewith -- an animosity which caused the said Governor later to seek out the scene of Gary's earliest successes, Washington, D.C., and there to declare total war on Legal Services with consequences which again I shudder to relate. Meanwhile, Gary, with his usual foresight, having set this chain of events firmly in motion, proceeded to go into clinical law teaching, where a person of ideas and abounding energy could really make mischief.

He began in 1968 at the University of Southern California inventing its intensive clinical program, the "Clinical Semester," and then moved to Harvard Law School in 1971, where among his other notable achievements, including survival, he and his accomplices created the Legal Services Center (LSC), in Jamaica Plain, an urban poverty law office that carries about a third of the total caseload of Greater Boston Legal Services and also functions as a teaching clinic for students from Harvard and other law schools in the area.

So much for mere historiography. Apart from the shaping of choleric Chief Justices and worse Presidents, what has Gary done to warrant our honoring him today? Here is where all kidding ceases and the need for extreme selectivity sets in. We honor Gary Bellow for many reasons, but, I think, primarily for six:

First, we honor Gary for: a life of commitment to the protection of the deprived and disadvantaged.

Perhaps the most notable single thing about Gary -- and certainly the thing that Gary himself would want said about him first -- is that, while Gary founded contemporary clinical legal education, pioneered its major trails, created most of its important ideas, taught and inspired armies of law students and clinical teachers in his spare time, he has been a practicing legal services attorney all of his life. He started by representing indigent criminal defendants twenty-five years ago, and today he is still handling housing cases, public benefits cases, immigration cases, and the rest of the grist of the legal services mill for hundreds of individual clients at LSC. He has survived the temptations to become a mere theoretician, a mere pedagogue, a mere law reformer -- although he has outdone all of these people at their own trade -- he has survived the allure of the pure flame of abstract intellection; in short, he has demonstrated what one of my great aunts, who put three children through law school and married two others to doctors would have viewed as a positively ridiculous lack of ambition and resistance to upward mobility along accepted professional lines. As a result, the lives of not hundreds, but thousands of poor people have been a little less painful, the yoke of their oppression a little lighter, their sense of self-worth and the possibility of realizing their potential as human beings enriched because Gary and his colleagues and students have treated them with dignity and care and through the force of law required others to treat them at the least with decency.

Second, we honor Gary for: perceptions about the process of representing the poor, and for strategies for doing it well, which are based upon a profound belief that the lawyer's job is to empower his or her client, so as to make the client stronger, more independent, more self-confident, more able to steer by his or her own star, to attain his or her own destiny, to find his or her own fullness of spirit.

A lot of us believe in all this and swear in the abstract by the propositions that a client is entitled to be represented without thereby being demeaned, to be helped without being treated as helpless, to be advised without being viewed as a fool. But Gary has been uniquely responsible for discovering and developing the means to put these beliefs into practice. His legal theories and his litigation victories have shaped the tools by which abstract rights became enforceable by remedies that put real power within the grasp of real people: breach-of-warranty defenses to eviction, rent strikes, and so forth. In Washington, D.C., in Boston, and in the agricultural towns of South-Central California, Gary has mobilized communities in ways that turned lawsuits into causes and causes into crusades. In the early days of the welfare rights movement, he taught both clients and lawyers by his ideas and his example of what clients had a right to demand and what lawyers had a duty to deliver: legal service,

not noblesse oblige. At USC, at Harvard, and in formal and informal meetings and training sessions of clinicians, he has relentlessly insisted that a major responsibility of a self-conscious legal profession is to face up honestly to the questions of what roles lawyers are playing, want to play, and should play vis-a-vis their clients and client groups, if representation for the poor is to mean something more significant than the substitution of one form of domineering paternalism for another.

Third, we honor Gary for: demonstrating in his person what a clinical teacher can be and what a clinical teacher has to do to keep the faith with his or her profession.

Working closely and intensively with students in a way that respects their individuality has always been the heart of Gary's teaching, as it is the heart of clinical legal education. To be willing and to be able to spend countless hours with one or a very few students, sharing their efforts to find their own way through the process of identifying problems and of fashioning solutions, requires a mixture of self-confidence and humility that is a very special gift. It is a gift uncommonly rare in law teaching generally, and if we clinicians have come to prize it and to be allowed to cultivate it in an academic world where it is grudgingly accepted at best, that is in large measure because Gary Bellow and precious few like him have made us see that teaching means caring whether a student emerges from the process as a self-sufficient learner or a knowledge-sponge, as an active problem solver or a mere solution critic. At the same time, Gary has been the outstanding example to which we could point in convincing our academic colleagues that, whether or not they all shared this vision of law teaching, it is at least sufficiently compatible with their own visions of intellectual excellence so that our practice of it can be tolerated, if not embraced, in the legal academy. Meanwhile, Gary has gone on, year after year, working with individual students, drawing them out, engaging their minds, quickening their souls, encouraging them to dare to think, to question the unquestionable, to believe in the unbelievable, including the unbelievable credo that they are as capable of thinking for themselves as the professor is. Gary's students of twenty years ago; and those of us who know how hard it is for a good clinician, like a good restaurant, not to go precipitously downhill at the first signs of success, can only stand in awe of Gary still going strong after more than two decades of unfailingly inspirational teaching.

Fourth, we honor Gary for: doing more than any other single person to create the conception we hold today of clinical teaching as a self-critical discipline with a flexible but nonetheless solid array of pedagogic techniques and an evolving but not chaotic framework of principles for looking with analytic rigor and intellectual honesty at lawyering skills.

Through Gary's writings, his papers, his Lawyering Process book with Bea Moulton, and again through what he has communicated to so many of us in so many formal and informal teaching sessions, Gary has strongly molded the content of our contemporary thinking about lawyer's roles and skills, and about methods for teaching them inside and outside of law school. His ideas have opened new vistas to us all; and if they are not the final word on their respective subjects, Gary Bellow is the last person in the world who would want them to be. It is enough that no one in our profession now or in the foreseeable future can think deeply about lawyering without coming to grips with Gary's insights and concepts, or without coming away stimulated by their vigor.

Fifth, we honor Gary for: never forgetting or ceasing to remind us that, although clinical teaching must include an emphasis on lawyering skills and on the preparation of students to be competent practitioners of law, mere technical proficiency is not enough to justify a lawyer's keep or save a lawyer's soul.

It is altogether fitting that, in Dave Barnhizer's recent parable delivered to the Clinical Workshop at the AALS Meeting in Los Angeles, the stern but gentle ghost who rises to haunt a decadent and aridly technicalistic professor of clinical legal education in a barren future that has seen the death of values bears a striking relationship of face and figure to Gary Bellow. If clinical legal education does not come to tread that fatal road, it will be because Gary's spirit bars it to us. First among us all, Gary has seen and declared that social consciousness is inseparable from the clinical teaching mission: that because being a lawyer implies responsibility for the justness with which the protections of law are distributed within society, being a teacher of lawyers implies responsibility for confronting students with the question what masters they will serve in their practice of the law. And again by his example, Gary has modeled a role for those of our students and ourselves whose answer to the question is that we do not choose to serve a system of law devoted to the perpetuation of caste and caste-based privilege.

Finally, we honor Gary for: his unique ability to inspire others -- innumerable students, colleagues, co-workers, fellow clinicians -- to follow his calling and aspire to his vision.

When all is said and done, the measure of any teacher is the number of minds that she has stirred to consciousness, and the intensity of that consciousness. Directly and indirectly, by his teaching and its radiations, Gary Bellow has fueled the intellect and fired the creativity and conscience of two generations of students, many of whom have become clinical teachers and legal services attorneys supervising students, and have passed on the torch. To those of us who are his contemporaries -- and even to the very few of us who admit to being his elders -- he has given the concepts, the encouragement, and the challenge to follow in his path.

For all of this, Gary, it is my great pleasure, to bestow on you the Section's Award for Outstanding Contributions to Clinical Legal Education.

EXTERNSHIPS - A SHORT CRITIQUE

Remarks by

James A. Cohen

Fordham University

Delivered at the AALS Annual Meeting

Los Angeles, California

January 3, 1987

A central theme of my talk is that we as law faculty have a responsibility to students. As faculty we explicitly and implicitly represent that we are teachers which means we possess knowledge of the subject matter, for example tax or litigation and an ability to teach it. This, of course, is not to say that we are the only lawyers who have knowledge or teaching ability, but we are the ones being paid to teach.

The purpose of this discussion is to determine the educational value, if any, of externship programs. By way of definition, I believe the thread which is common to all externships is that students work outside of the law school in a legal environment for credit, and they are not supervised by either full time or adjunct members of the law school faculty. In almost all externships there are two nominal supervisors: the placement attorney and a faculty member who acts, at a minimum, as a liaison and trouble shooter.

Let's first briefly examine the goals of legal education in general and clinical education in particular. Certainly many law teachers believe our goal, in the broadest possible terms, is to teach students to "think like lawyers." Unfortunately, this phrase does not impart a great deal of information and as we will see it may not be completely accurate.

But if we really want to teach law students to think like lawyers it makes sense to examine briefly how lawyers think, what they think about, and what they do. In broad terms lawyers are problem solvers; they solve or attempt to solve problems which confront institutions, people and the law. They do so by using a wide range of reasoning processes and analytic and behavioral skills. Activities such as legal research and writing, information acquisition, interviewing, counseling, negotiation, argument, and witness examination are all - or should be - manifestations of complex thinking processes which include the following:

1. Problem identification analysis;
2. Fact and law integration;
3. Ends - means thinking;
4. Risk calculation;

5. Case analysis and interpretation;
6. Doctrinal analysis and interpretation.*

Since we teach all of the above in simulation courses and in "in house" clinics, it should be useful to examine how these thinking processes are imparted in those contexts. In general these methods of thinking are taught in relation to a particular activity and involve extensive critique of both the planning and execution phases. In negotiation for example, the critique will evaluate whether the student understands the basic concepts and principles of negotiation and also evaluate the student's planning process. What were one's objectives and goals and how were they arrived at? Were all of the factual and legal options canvassed? Was the value of one's own case and the other side's properly assessed, etc. With respect to the execution of the exercise, the instructor will focus on the choice and effect of various types of questions and statements the sequence of questions and statements; the choice of words and whether the effect on the other side was predictable and if so was the prediction accurate. These are among the questions and issues which will be explored by the faculty member.

Let's take another example - the preparation of a memorandum or brief. In an "in house" clinic, students take part in the selection and characterization of facts, but only after a thorough and systematic discussion of information acquisition techniques with the faculty member. The discussion involves canvassing the known facts and the cost of discovering currently unknown facts and determining whether certain facts are knowable at all. The same discussion occurs with respect to the law, i.e. what law is known and unknown and what are the costs involved in learning the law that is not yet known as well as determining at what level of certainty the law can be "known."

This discussion necessarily includes decisions, preliminary and final, about the merits of particular legal issues as well as decisions, preliminary and final, about the wisdom of including or excluding them in a final product. When a draft is submitted to the faculty member, it is examined in light of the discussion just described. The draft is redesigned, rewritten (additional legal or factual research may be necessary), but gradually the document is completed. (Of course all of this is done within the frequently short time constraints of litigation).

The same sort of process occurs with respect to interviewing, counseling, negotiation, witness examination and argument which are engaged in or observed by students. There is a planning phase in which discussions such as those described above will occur and a critique stage in which both the planning phase and the execution phase will be reviewed exhaustively. For example, planning will be examined to determine whether it adequately anticipated all of the predictable events and whether those events thought unpredictable could have been predicted with better planning; whether or not planning identified and

prioritized the full range of goals and risks, etc. The same review or critique occurs with respect to the execution phase. If done properly, it's an enormously time consuming process.

There are several types of externships. Students are placed in chambers of judges, state and federal - trial and appellate levels. Students are placed in government agencies; for example, U.S. Attorneys Offices, District Attorneys Offices and Attorney General Offices; and deal with both civil and criminal matters. Finally, students are placed in defender and legal services organizations in both state and federal courts. Some schools permit students to do their fieldwork in a private law office. The number of credits permitted varies from one or four per semester to a full semester's worth. Programs involving a smaller number of credits typically require students to work between 12 and 20 hours per week in the field as well as attend a class.

Students engage in a variety of activities in the various placements, however, they mostly do research and writing. These projects tend to have a "law only" orientation as opposed to "fact" orientation because the time expended by the student is such that he or she is involved in only part of the process. The supervising attorney is also normally in possession of all the facts necessary and needs no assistance in developing them. Students who work for judges cannot participate in the development of facts, but they can, theoretically, observe or assist in the process the judge goes through in "finding" facts.

Finally, most projects are assigned much like a partner making an assignment to an associate in a law firm. There is little discussion of methods, of goals, risks, strategies or pitfalls, etc. Those subjects for the most part remain in the attorney's mind and become integrated into the final written product. Moreover, there is little critique or feedback.

In addition to research and writing assignments, students may also observe interviews, counseling, negotiations, argument and witness examinations. It is all too common, however, that these observations occur in a vacuum. For several reasons the student is not able to see the activity as a product of what has or has not occurred before or as preparation for what is to occur later. Indeed, it may even be difficult for the student to understand the immediate purpose of the activity.

There are a few externships in which students actually appear in a court setting and argue or otherwise represent a client under the supervision of the placement attorney. These kinds of externships raise problems which are discussed below, but also raise additional problems because the areas in which faculty do not supervise are extended. The time problem is critical here. It takes an enormous amount of time to properly prepare a student to argue or appear in court. It also requires a high level of teaching skill both to avoid providing answers too quickly (a very real temptation because the client is "live") and the temptation to be too easy or too harsh in the critique.

What is the benefit or value of an externship program? There are a number of practical benefits, for example, a student who clerks for a judge normally benefits from the value on his or her resume. The same is true for other externships which involve "prestigious" placements. Students may also be exposed to a variety of different kinds of people not usually met in the law school environment. Such exposure can have a beneficial broadening effect. The student is also exposed to law of a different type and at a different level than typically found in law school, and it is useful for students to see that there is more to law school than that contained in casebooks.

On the other hand, much of what the students see and do, is not particularly challenging at any level. There is certainly some value in having the students realize that their professional life will not likely be spent in preparing and arguing cases before the United States Supreme Court, but should credit be granted for this realization? The student can also develop some insight into the inner workings of the placement. For example, a student in a judge's chambers will undoubtedly develop some idea about how - mechanically and intellectually - judges go about making decisions. To the extent that "feedback" is available, the student will benefit, although that benefit is necessarily limited by a variety of constraints. The question is, are any of these benefits, valuable as they are on one level, sufficient to justify granting academic credit? It must be kept in mind that the traditional justification for granting credit is faculty involvement.

The question becomes: Can the placement attorney, as a general matter, adequately impart the reasoning processes and the analytic and behavioral techniques described earlier? I think the answer is no. Contact and involvement with a member of the faculty is essential in order to accomplish what I believe to be the goals of clinical education.

Most externship programs contain inherent obstacles which prevent them from offering students an adequate clinical learning experience. The first is the limited amount of time the student spends in the field. Because it is limited, it is difficult for them to see the whole picture. Thus, it is difficult to relate one event to another or to understand why events are occurring in the way that they are and not occurring in other ways. The second problem is more fundamental. The absence of faculty supervision in the student's learning experience means that the student is much less likely to be exposed to the rigorous intellectual and reflective processes that go on in the mind of the attorney-actor prior to and during the execution of the skill. None of this is to say that the student isn't learning. It is only to say that the value of the student's learning experience is substantially different - and less - than that which would occur if a member of the faculty were supervising it.

Another problem is time. Judges, government attorneys and defense lawyers are almost all overworked. They simply do not have the time to supervise students in a way that meets the highest standards of excellence to which those of us in clinical education ought to aspire. There are other problems. Teaching ability is another serious problem. A particular supervising attorney may be superb in practice, but simply unable to teach. We are all familiar with such individuals. Lack of training is another problem. In a sense these are related because most practicing attorneys have not been exposed to the methods of clinical education, nor have they been exposed to, if you will, the "substantive" content of clinical education. By that, I refer to the reasoning process and analytic and behavior techniques discussed earlier.

The placement attorney is also handicapped by the fact that thinking about, and teaching lawyering are relatively new developments in legal education. Thus, there are few practitioners who have been exposed to this rigorous and systematic thinking process in law school. Many lawyers and many traditional law teachers, although I hope few clinical law teachers, believe that a good interview or negotiation or cross-examination is intuitive and reflective. Even lawyers who engage in those activities frequently have a sense that they are on "automatic." They have no cause to reflect on nor have they had any training which enables them to dissect the intellectual process that they go thorough in planning for the activity and in executing it. As a result, they are not always conscious of its intellectual qualities. Obviously, this lack of awareness or understanding makes it very difficult to be an effective teacher.

All of these problems create a certain narrowness of perspective which is not eliminated by programs such as NITA in which many placement supervisors have taught. Those programs typically focus only on trial skills ignoring subjects like information acquisition, interviewing, counseling, negotiation, etc. and the relationship they have with trial skills. They also typically lack sufficient emphasis on the critical intellectual and judgmental components of the "skill."

Finally, it is important to note that certain role and ethical issues are difficult for the supervising attorney to develop in part for the reasons identified above, but also because that supervising attorney is an advocate and thus may lack a certain balance which hopefully a member of the faculty would provide.

What level and what form of faculty involvement is necessary in order to justify granting credit? The level and type of faculty involvement must be consistent with our responsibility to teach and the fact that we are paid to do so. The critical difference between clinical teaching and traditional teaching is important in this context.

For most typical second- and third-year courses, the student can learn from a casebook or other assigned readings and class note from a fellow student. The learning experience might be better if the student went to class, but the material can be learned without class attendance. The dominant learning method has already been imparted in the first year. The student, in a very passive way, merely has to apply it to a new body of information. Clinical teaching is quite different. The object of the learning experience becomes, in a very real sense, the student. It is the student's conduct, thinking processes, and observations which become the subject of the learning experience and thus the teacher's attention.

An externship program must be designed to permit faculty critique of students' conduct and thinking. In order to do so effectively the faculty member must be fully familiar with the student's activities at the placement and this requires a sound working relationship with the placement attorney. Ideally, the placement attorney ought to provide feedback to the student and the faculty member. Such a relationship requires that confidentiality issues be addressed both in the context of judicial decision-making and the attorney client privilege. It also requires that the faculty member spend a great deal of time becoming familiar with the student's activities and reviewing those activities with the student.

Externship programs can be a useful part of a law school's clinical program but only if we as faculty are willing to invest time in supervision.

I hope this paper raises a number of questions which will encourage discussion. One may for example, disagree with the objectives of clinical education I have identified or claim that comparison with simulation courses and "in house" clinics is unfair or misleading. My principle concern is that we as law school faculty, particularly clinicians, should be very careful about permitting credit for learning experiences we do not control. These are of course, clinical credits and we should insist on high standards of excellence for reasons of substance and politics. Traditional law school courses often permit students to pass or even get excellent grades with little or no faculty involvement in the student's learning experience. That however, is not a standard we should ascribe to, nor can it justify granting clinical credit for low or no value course work.

*This description is drawn largely from Amsterdam, Clinical Legal Education - A 21st Century Perspective, 34 J. LEGAL ED. 612 (1984) and a speech given by Professor Amsterdam entitled: The Lawyering Revolution and Legal Education, delivered at the ABA Convention in the summer of 1985.

COMMENT

Janet Motley (California Western)

As co-chair of the Clinical Section Subcommittee on Externships, I thought it appropriate for me to comment on Jim Cohen's remarks. As I understand it, Professor Cohen intended his remarks to provoke discussion about externships. Certainly, the subject is topical in light of the expansion of such programs and the ABA/AALS shift of attention toward them. Unfortunately, Professor Cohen's remarks cannot provoke meaningful discussion for several reasons.

First, Professor Cohen rather arrogantly presumes that all or even most in-house clinics conform to his idealistic notion of what they should be, then compares externships unfavorably with the ideal. The extensive planning, discussion and review of each student activity that he describes might be the ultimate experience for our students. In reality, we all know that clients' needs and the frenzy of law practice often interfere with these educational niceties. Any of us who has been to a clinical conference has heard countless stories of such occurrences. This does not mean the in-house clinic is a wrong or bad experience, only that it is not the educational utopia Cohen describes. We cannot judge the externship by comparing it to this fantasy.

Second, Cohen's remarks grossly over-generalize - often inaccurately. Where did he get his information about what externs do? In the program with which I am familiar, externs do not merely research and write. Their work does not focus exclusively on law while omitting exposure to facts. To the contrary, many externs handle client files under the supervision of their supervising attorney. They are not permitted to work as unpaid law clerks. In most respects, their supervisors treat externs as associates in the office and include them in staff meetings, tactics sessions and goals discussions. While Professor Cohen correctly notes that feedback is important and to be sought, our students are capable of learning from their own experiences, even in situations where they might not receive detailed and frank feedback. (The clinical faculty can help in this process.) Moreover, while it is true that some interns do not receive the kind of feedback they might receive in an in-house situation, some receive more.

Third, Cohen's comments about the intensive work needed to prepare a student to conduct a trial presuppose the absence of such skills training elsewhere in the curriculum. In fact, a course in trial practice is probably the proper forum for such intensive training. Surely the clinical program has many other goals than merely to focus on technique and tactics. The clinical externship program may serve as a laboratory where students can experiment with the information they have acquired in courses such as trial practice, interviewing and counseling, research and writing, etc.

As a laboratory, an externship situation offers particular learning opportunities which might not be available in an in-house clinic. For example, observing lawyering tasks is a valuable source of education. Students have a chance to distinguish effective from ineffective behavior and to draw conclusions about the practice of law from what they observe. Additionally, students in an externship setting see a variety of lawyering styles rather than being limited to one role model. In a sense, the students must use their own discretion to decide which behaviors they will emulate and which they will eschew.

Cohen's criticism of judicial externships rather amazed me. His assumption that students in this setting do nothing more than passively observe the decision-making process is blatantly incorrect. In reality, students in this setting refine their research, writing, and analysis - skills basic to almost any kind of law practice. Students review the work of many attorneys (seeing varied degrees of quality), they discuss policy, analysis and technique with the judges or justices, they draft appellate opinions, they look first-hand at the appellate process, learn a great deal about trial practice in the process of reviewing transcripts, and do some of the most responsible lawyering possible. The students get an opportunity rarely afforded to many attorneys - a valuable and educationally challenging experience.

Finally, my biggest problem with Cohen's remarks is that he totally ignore the role of the clinical faculty member in the externship program. This role unifies the externship experience, differentiating it from what might be a nonreflective clerking position. The faculty member reflects with the student, unhampered by client demands or personal ego involvement with cases. Although I acknowledge that some out-of-house placement programs have not yet developed this aspect of their programs, the potential exists for a truly reflective learning experience. Cohen suggests that law schools providing externships are abdicating their responsibility for the students' education. Such a suggestion is incorrect and unfair. Those of us who have labored to develop responsible programs of this nature know this. Professor Cohen should examine such a program.

Meaningful discussion about externships does not focus on the question of whether they should exist. The fact is that these programs are a part of our professional training curriculum and that they are growing in number. The present discussion should concern what we can do to structure these programs well and supervise them thoughtfully.

PUBLICATIONS OF INTEREST TO CLINICIANS

Annotation, Priority and Effect of Law Students Acting as Counsel in Court Suits, 3 A.L.R. 4th 358.

Chase, Jonathon. "Vermont Law School's New General Practice Program: An Introduction," 11 VT. L. REV. 373.

Crampton. "Professional Education in Medicine and Law: Structural Differences, Common Failing, Possible Opportunities, 34 CLEV. ST. L. REV. 349.

Neustadter, Gary. "When Lawyer & Client Meet: Observations of Interviewing & Counseling Behavior in the Consumer Bankruptcy Law Office," 35 BUFFALO L. REV. 177.

Palmer, Victor W. "Administrative Hearings for the General Practitioner," ABA JOURNAL 86 (March 1, 1987).

Symposium on Clinical Legal Education, 36 CATH. U. L. REV. 337.

Symposium on Poverty and the Law, 22 HARV. C.R.-C.L. L. REV. 3.

PUBLICATIONS BY CLINICIANS

Brest, Paul (Stanford) & Vandenberg. "Politics, Feminism and the Constitution: The Anti-Pornography Movement in Minneapolis," 39 STAN. L. REV. 607.

Brest, Paul. "Constitutional Citizenship," 34 CLEV. ST. L. REV. 175.

Catz, Robert S. (Cleveland-Marshall) & Lipson. Materials on the Process of Federal Civil Litigation (Matthew Bender 4/88).

Catz, Robert S. "Removal of Federal Judge by Imprisonment," 18 RUTGERS L. REV. 119.

Colbert, Douglas L. (Hofstra). "The Motion in Limine in Politically Sensitive Cases: Silencing the Defendant at Trial," 39 STAN. L. REV. 1 (July 1987).

Colbert, Douglas L. "The Motion in Limine: Trial Without Jury - a government weapon against the sanctuary movement, 16 HOFSTRA L. REV. 1.

Doyel, Robert (Mercer). "Burden-Shifting Criminal Jury Instructions in Georgia," 38 MERCER L. REV. 1.

Failingen, Marie (Hamline). "An Offer She Can't Refuse: When Fundamental Rights and Conditions on Government Benefits Collide," 31 VILL. L. REV. 833.

Greenebaum, Edwin (Indiana). "Problem Behavior: Pathology, Lawyers, and Referrals," 62 IND. L. J. 365 (Sp. 1987).

Lubet, Steve (Northwestern). "Impropriety: Love, Friendship, Free Speech, and Other Intemperate Conduct," 1986 ARIZ. ST. L. REV. 379.

Mahern, Catherine M. (Texas Southern). "Maintaining Autonomy through Planning," 50 TEXAS BAR J. 482 (May 1987).

Mahern, Catherine M. "Benefits for Senior Texans," 50 TEXAS BAR J. 502 (May 1987).

Meltsner, Michael (Northeastern). "Healing the Breach: Harmonizing Legal Practice and Education," 11 VT. L. REV. 377.

Murphy, Marjorie (Cincinnati). "Encounters of a Brief Kind: On Arbitrariness and Police Demands for Identification," 1986 ARIZ. ST. L. J. 207.

Ogilvy, J. P. (Texas Southern). "Interviewing and Counseling Older Clients," 50 TEXAS BAR J. 488 (May 1987).

Perschbacher, Rex R. (U.C.-Davis), et al. Cases and Materials on Civil Procedure (casebook) (Matthew Bender).

Schrag, Philip G. (Georgetown). "Terry White: A Two-Front Negotiation Exercise," 88 W. VIR. L. REV. 729 (summer 1986).

Snyder, Lloyd (Cleveland-Marshall). "Ethics and the Settlement of Civil Rights Cases: Can Attorneys Keep Their Virtue and Their Fees?" 16 N.M.L. REV. 283.

Tokarz, Karen (Washington U.). "Women Judges and Merit Selection Under the Missouri Plan," 64 WASH. U.L.Q. 903.

AMERICAN UNIVERSITY, WASHINGTON COLLEGE OF LAW seeks a faculty member or visiting faculty member for the Public Interest Law Clinic. The position is on the tenure track. Responsibilities include supervision of students representing veterans, teaching the seminar portion of the program, and participation in the administrative and legal affairs of the clinic. Contact: Professor David Aaronson, Chair, Appointments Committee, The American University, Washington College of Law, 4400 Massachusetts Avenue, N.W., Washington, D.C. 20016. (Source: AALS Placement Bulletin, April 10, 1987.)

BROOKLYN LAW SCHOOL seeks a full-time faculty member to direct a new child support clinical program. The position requires supervision of 8-10 students per semester and during the summer session, as well as the responsibility for teaching a two hour weekly seminar.

The program will be located in a fully equipped and staffed law office at the school and will handle cases in Brooklyn Family Court located a few blocks away. The position will begin during the summer in order to start intake in the fall of 1987. Salary and rank will be commensurate with experience. Individuals with background in family law practice are encouraged to apply. Contact Professor Stacy Caplow, Brooklyn Law School, 250 Joralemon Street, Brooklyn, New York 11201.

CONNECTICUT seeks a clinician to supervise student attorneys in state and federal criminal cases on the trial and appellate level and to co-teach the clinical seminars that focus on practical and theoretical case planning, problem analysis, courtroom advocacy, and other lawyering skills. The applicant should have excellent academic credentials, a minimum of 1 year litigation experience and membership in the Connecticut Bar by autumn is required. Screening begins June 15, 1987. Reply to: Professor Michael R. Sheldon, University of Connecticut, School of Law, 65 Elizabeth Street, Hartford, CT 06105-2290.

DRAKE seeks a supervising attorney for a one year appointment in its general civil clinic. The applicant should have five years of legal experience. Resumes should be sent before June 30, 1987, to Daniel Palmer, Drake University Law School Legal Clinic, 2805 Brattleboro, Des Moines, Iowa 50311.

FORDHAM UNIVERSITY seeks a full-time faculty member to teach a new child support clinical program. The faculty member will supervise student representation of clients and co-teach a litigation skills seminar. Individuals with a background in litigation and experience in the family law area are encouraged to apply. Contact Professor James A. Cohen, Fordham University School of Law, Lincoln Center, 140 West 62nd Street, Room 138, New York, New York 10023.

JOBS... JOBS... JOBS... JOBS... JOBS... JOBS... JOBS... JOBS... JOBS...

GEORGETOWN UNIVERSITY LAW CENTER is accepting applications for a two year fellowship for LL.M. candidates interested in training as appellate advocates in the federal and District of Columbia courts. The fellows are selected and trained by the director of Georgetown's Appellate Litigation Clinical Program. In addition to arguing and briefing cases in the federal circuit courts and the District Columbia Court of Appeals, the fellow supervises the clinic's law students, who also litigate appeals, and is an active participant in conducting the Appellate Litigation Clinic seminars.

The fellow will receive a stipend and free tuition. To apply, send a letter and resume to the Appellate Litigation Clinic, 25 E Street, N.W., Washington, DC 20001. (District of Columbia Bar membership as of July 1, 1987, is required.)

GEORGETOWN UNIVERSITY LAW CENTER is seeking to fill a full time clinical professor position on a long term contract track beginning no later than January 1, 1988. The person hired will work in the area of broadcast and common carrier communications law and will be responsible for supervising the work of law students and graduate fellows on litigation and administrative and legislative advocacy.

Send resume with list of referees by July 15, 1987, to Professor Wallace Mlyniec, Coordinator of Clinical Education, 600 New Jersey Avenue, N.W., Washington, D.C. 20001.

HOFSTRA is seeking applicants for a full-time non-tenure track position in its civil clinic. Teaching experience is desirable. Applicants should send a resume to Professor Kenneth Rothstein, Community Legal Assistance Corporation, 73 Main Street, Hempstead, New York 11550. The phone number is (516) 560-5934.

MERCER LAW SCHOOL seeks a full-time position to teach litigation skills, pre-trial litigation, and interviewing, counseling and negotiation. An initial two-year contract will be offered the successful applicant. Contact Prof. Jack Sammons, Mercer University Law School, Macon, GA 31207.

UNIVERSITY OF NORTH DAKOTA invites applications for possible one year or continuous positions for the nine-month academic year beginning August 16, 1987. Needs may include clinical positions. Contact: Faculty Selection Committee, University of North Dakota School of Law, Grand Forks, ND 58202. (Source: AALS Placement Bulletin, April 10, 1987.)

OFFICE OF KINGS COUNTY, NEW YORK, DISTRICT ATTORNEY seeks an individual with substantial experience as a criminal litigator and/or experience in clinical teaching of attorneys or law students to become Director of Legal Training. The person will be responsible for developing and administering entry and advanced legal training programs.

JOBS... JOBS... JOBS... JOBS... JOBS... JOBS... JOBS... JOBS... JOBS...

Candidates must be admitted (or eligible for admission) to practice in New York State. Former prosecutorial or criminal defense experience a plus. Competitive salary and excellent benefits.

Send detailed resume and salary history to: Albert Teichman, Esq., Executive Assistant District Attorney, Office of the Kings County District Attorney, Municipal Building, Brooklyn, New York 11201.

EDITOR'S PAGE

This is the second issue of the Newsletter for which I have been responsible. I had hoped to experiment with some format changes with this issue, however, computerization at Thurgood Marshall School of Law is proceeding more slowly than anticipated and with my secretary on vacation, I was compelled to compose the Newsletter on my PCJr at home. Hence the less than sterling print quality in this issue.

This issue continues the same departments that Peter Hoffman pioneered as editor of the Newsletter. We have the Message from the Chair, Committee Reports, news items of general interest to clinicians, news items concerning individual clinicians, publications of general interest to clinicians, and publications by clinicians. This issue also contains a short report of the recent Workshop on Clinical Education held in San Antonio in March.

I would like to encourage each reader of the Newsletter to assist me with future issues by sending me items of interest for publication. I will be asking each school to identify a reporter/contact person to be responsible for keeping me informed of activities by clinicians at that school that may be of interest to other clinicians, so that I can expand my news sources beyond Peter Hoffman, Roy Stuckey and the small band of other regular contributors.

In addition to news and gossip, the Newsletter will endeavor to be an instrument for creative discourse among clinicians. Your essays and other writings are especially sought. This issue carries the remarks of Jim Cohen, Fordham, on the topic of externships. Jim's remarks are followed by a comment penned by Janet Motley, California Western. It is my desire to use the Newsletter to foster a continuing dialogue on the topic of externships. I therefore, invite reactions to the two pieces in this issue, as well as additional writings on the subject of externships.

Another area in which I specifically wish to invite comments is funding of clinical programs. Although a few programs may be fully and adequately funded by the university budget, I suspect that most of our programs are constantly on the look-out for additional funding, more secure funding, special project funding, and the like. Several issues back, Steve Wizner, Yale, reported on a campaign he developed to ask the alumni of his clinical program to make dedicated gifts to the clinic. There are probably many more such ideas in practice and on the drawing board that we should share with each other. If your program charges fees, contracts with governments to provide services, writes grant proposals, etc. as part of its funding process, why not let others know of the pitfalls and successes by sharing your experiences through the Newsletter?

Although I don't presently intend to start a Letters to the Editor section, I do welcome your comments on the Newsletter.

