

NEWSLETTER

91-2

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REPORT FROM THE CHAIR by Jeff Hartje (Denver)

The Department of Education is recommending eliminating all of the law school programs that have traditionally aided law students, including the clinical experience program under Title IX of the Higher Education Act. Apparently the Department wants a single fellowship program to which graduate students apply to finance their education. Also threatened are the CLEO program and the Patricia Harris Scholarship program. Therefore, the grant funding that many clinical programs have found so beneficial since 1979 is in serious jeopardy. A question that has been asked by the A.A.L.S. administration as it circulated this information is "Is this program important?"

This particular crisis raises again the continuing debate over the outside funding of clinical programs. Since the early '70s, law school clinical education programs, first through the Ford Foundation's CLPR Grant Program, received funds to initiate and continue clinical legal education programs. In the late 1970s the Department of Health, Education and Welfare's clinical legal education project DOE-CLEP was funded by Congress and the department began making grants to law school clinical programs. In the Fall of 1984, the Legal Services Corporation (LSC) awarded over a million dollars in clinical research grants to law schools and another 1.6 million in funds for an elder law project designed to assist law school clinics in serving the needs of the elderly population. The CLPR and Elder Law programs were discontinued but the other grant programs have continued, albeit with fluctuating funding totals. These sources have been joined by I.O.L.T.A. and state-funded sources as now familiar resources for clinical programs.

Outside funding of law school clinical programs has been criticized from its beginning. Off-stated concerns about outside funding include both general and specific components depending on the funding source. Some of the most obvious general concerns are: (1) short-term soft money is an unstable source of support

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for an educational enterprise; (2) outside funding allows a law school to avoid a commitment to its clinical program; (3) the goals and preferences of the funding source may clash with clinical educational goals, e.g., education vs. number of clients served; (4) the requirements of the grant may dictate and skew the content of the clinical course, e.g., focus on legal problems of the
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This NEWSLETTER is a forum for the exchange of points of view. Opinions expressed here are not necessarily those of the Section on Clinical Legal Education and do not necessarily represent the position of the Association of American Law Schools.

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elderly vs. broader lawyering process concerns; (5) grant supported faculty positions allow the law school to avoid making permanent (tenure) commitments to clinical faculty.

As some of you may recall, three years ago Professor Paula Gallowitz (New York University) and your humble servant designed a survey questionnaire to explore, in a specific way, these general concerns. Of the responses from 106 law schools, 71 schools reported current outside funding for their clinical programs and 20 reported past outside funding. Responding schools reported 269 clinical full-time faculty. 64 of 269 were funded by grant resources from outside the law school.

In reviewing the blizzard of numbers generated by our study the responses indicated overall a very positive impact from outside funding. The funding allowed expansion of clinical offerings, the ability to serve more students, and enhanced the general commitment of the law school to clinical legal education. A random sample of LSC questionnaires to students seems to suggest that their experience in an LSC sponsored clinical program had some significant impact on the professional identity of the students, e.g. students were more willing, than before the experience, to serve disadvantaged and indigent clientele.

On the negative side, obviously, there was much criticism of the short terms of the normal grant. There was some suggestion, although not as much as one might think, that the outside funding allowed a law school to avoid a permanent commitment to its clinical programs. In fact, a significant amount (some 45%) of programs reported that once the funding was eliminated, the faculty hired were taken on by another source -- most often law school hard money. There were few complaints that the outside grant source skewed clinical educational goals and content of courses.

It seems clear that for many law school clinical programs, particularly in smaller, less well endowed law schools, outside funding is significant in allowing clinics to get started, expand programs, undertake innovative projects, and secure faculty who have a good chance at a permanent position. Although this section cannot take a position on the elimination of the program (the AALS Administration has to speak for us), we as individuals may be able to have some

impact. Those of you that are interested in contributing a voice to the effort to maintain DOE-CLEP funding and the other programs (CLEO and Patricia Harris are directed toward assisting minority law students) as well, should contact me (303) 871-6982, Mary Wolfe (317) 274-3808, or Dan Power (515) 271-3851, co-chairs of the Section's Legal Services and Outside Funding of Clinics Committee.

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The annals of "isms": Elitism

As many of you know, the section at its May workshop in Washington D.C. made its first serious attempts to deal with a number of issues involving racism, sexism, homophobia in our teaching in the clinic and the classroom. A significant portion of the conference was devoted to groping for more coherent methods of both raising the consciousness of our students to these issues and dealing ourselves with the stereotypic thinking that burdens us all. The conference was a first and tentative step in exploring these serious issues.

Yet nagging in my mind is the constant recognition of stereotypic thinking that can be as destructive and venomous as that which is occupying our present discourse, which is accepted if not embraced continually in our conversations and our judgments.

Elitist generalizations help us build hierarchies, save evaluation time, take empirical short cuts and in many ways, like other stereotypic leaps, allow us to forget or dismiss the individuality of our colleagues and students, the value of their ideas and work, and often the quality of their characters. We make assumptions every day about our students, our fellow lawyers, judges, academics from such information as what law school they attended, where their law review articles were published, what law firm they worked for and we equate, depending on a number of elitist variables (and I am not making this up, as anyone whom has served on a law school appointment/personnel committee will tell you) "star" or "dogmeat."

Clinical teachers know better than most how

these equations operate. The elite teach standup classes, the unelite are involved in unsanitized practicalities.

There is microcosmic elitism, as above, and macrocosmic elitism. The reward system in legal education is based on macrocosmic elitism. A position at law school Y is clearly, without examination, better than a position at law school X. The law review article in "Y" Law Journal is presumptively a better article than one published in "X and A" Law Review, without any comparative evaluation. The underlying premise must be the student editors at "Y" are more intelligent and discerning than those at "X and A." But there is no underlying premise. Many faculty members can tell you with great confidence the elitist horse power ranking of law schools and their journals, although they cannot tell you the reasons behind their certainty.

John Elson said it first in writing, that the overwhelming majority of law review articles published in this country have little social utility, are in fact read by only a few and have virtually no lasting impact on the world of legal educators, lawyers and judges. Yet it is the writings that have the least concrete impact in the world that are the most treasured. They are "theoretical" or "think" pieces. Scholarship, teaching and action relating to real client struggles, real lawyer issues and the real state of American justice are somehow contaminated. The elitist vision emphasizes abstractions, multi-syllabic evils and theories that state the obvious in such difficult language that the writer would have been better to have written in Farsi. Elitism maintains the "upstairs/downstairs" repression of clinical faculty members who after 20 years of membership in the academic community still are comparatively underpaid, overworked, overstressed and, probably thankfully, unelite.

The organization that we value as clinical teachers, the AALS, is permeated with the elitist vision. Elitism and its traveling companion, cronyism, influences in many instances our own endeavors as a section. We rarely check our elitism. I have never heard common elitist assumptions nor the stereotypic thinking that supports them challenged. Elitist assumptions require no demonstrative support.

We seem to be beginning an era in which true progress toward diversity of gender, race, age and sexual orientation may be occurring among faculty in

law schools and perhaps in the legal profession. This progress will certainly be checked by appeals to elitism under the guise of "merit," permitting the elite to claim an allegiance to diversity and their inability to affect it. See the Chused report.

For many clinical teachers the negative realities of elitism are clear but still the siren song is powerful. A young clinical teacher whose writings have been well received was counseled recently by a well respected faculty member to abandon clinical education and to join the mainstream academic world if he hoped to be an important figure.

It is not anti-intellectual to refuse such counseling.

COMMITTEE REPORTS

COMMITTEE ON OUTSIDE FUNDING by Mary Wolfe (Indiana), Chair

LEGAL SERVICES CORPORATION

The Legal Services Corporation awarded twenty grants to law school clinic programs. The awards totalled \$1,183,531. These are one year grants. The committee has recommended that LSC revise its program and make grant awards for more than one year and that the expansion requirement be amended.

The Reauthorization Committee of the LSC Board held hearings on reauthorization in San Francisco and Chicago. The last reauthorization for the corporation occurred in 1977 and expired in 1980. The LSC Board was meeting to review the report of this committee, but it is not likely a reauthorization will be forthcoming this year.

DEPARTMENT OF EDUCATION

DOE awarded 73 grants for 1991-92. Forty-six of these were renewal grants (43 are in the second year of a three year grant, and 3 are in the second year of a two year grant). The average renewal award was \$82,454. DOE received 45 applications for new grants and 27 were approved for funding. Of the 27 new awards, 16 are three year grants, 7 are two year grants and 4 are one year grants. The average new award was \$75,344.

The monies required to continue the funding of the above grants for 1992-93 is \$6,600,000. The administration requested zero funding for the program; however, the full house appropriations committee approved funding at \$8,000,000. The Senate appropriations committee was working on coming out at a similar amount. This would provide for funding for new as well as continuation grants in 1992-93.

DOE also is holding reauthorization hearings. Betsy Levin, Executive Vice President and Executive Director of AALS, gave testimony before the House Postsecondary Education Subcommittee on behalf of the legal education programs in Title IX of the Higher Education Act. Statements also were submitted by Elliott Milstein, Dean of American University, Washington College of Law, and Dean Judith C. Areen from Georgetown Law Center. Their comments discussed the importance of the Law School Clinic grants. Ms. Levin's comments recommended raising the grant level and providing continued support without expansion or development of new programs each year. We will keep you updated as we learn more about the DOE reauthorization issues.

DOE will hold a technical services conference on how to apply for a grant under the clinical experience program of Title IX on October 18, 1991, at the GSA Building in Washington, D.C. Notices should be sent out soon. For more information, contact Barbara Harvey at DOE: 202/708-7836.

EXTERN COMMITTEE
by Leah Wortham (Catholic), Chair

Following the D.C. Clinical Workshop in May, the Extern Committee organized a Saturday evening and Sunday half-day conference on externships at the Georgetown Conference Center. More than forty people participated. The Planning Committee was: Liz Ryan Cole (Vermont), Mary Jo Eyster (Brooklyn), Linda Morton (California Western), Carol Liebman (Boston College), and Frank Avellone (Ohio Northern).

Topics covered were: Externships Goals and Methods; What to do in a Classroom Component; Training Students to Be Responsible for Their Own Learning. If anyone who could not attend is interested in a copy of materials distributed, please send a check for \$20, payable to Catholic University, to Leah Wortham. The materials include items on

extern courses from a number of law schools, a bibliography of pertinent articles, an outline of the talk on Goals and Methods, and an unpublished paper with greater detail on that subject. Tapes (amateur) also were made. If interested in the tapes, please call or write Leah Wortham.

AMONG OURSELVES

Participants in a recent conference on The Legal Profession in the 1990s, presented by Hofstra School of Law, included **Andrew Schepard** (Hofstra) and **Liz Schneider** (Brooklyn).

Carrie Menkel-Meadow (UCLA) recently received the highest honor awarded by the Center for Public Resources, in recognition of legal scholarship on alternative dispute resolution.

As reported in the previous edition of the Newsletter, **Roy Stuckey** (South Carolina) and **Peter Hoffman** (Nebraska) will split a job in Hong Kong this year. They will be working with Neil Gold in implementing the new Law Practice Course at City Polytechnic in Hong Kong. See the October 1990, issue of the Newsletter.

Roy joined Neil on July 1, 1991, and will return home in December. Peter will be in Hong Kong from January through June 1992. They both want to keep in touch, so you might want to save the following information:

Address:

Visiting Senior Fellow _____
Department of Law
City Polytechnic of Hong Kong
83 Tat Chee Avenue
Kowloon, Hong Kong

FAX:

011 852 788 7128

Telephone:

011 852 788 7223

On December 1, 1990, **Marie Ashe** (West Virginia) was named the Roscoe P. Posten Professor of Law.

Stephen Dycus (Vermont) was a Visiting Scholar at the Natural Resources Defense Council in Washington, DC for spring 1991. During 1991-92 he will be Distinguished Visiting Professor at West Point.

Randolph N. Stone has been appointed director of the University of Chicago Law School's Mandel Legal Aid Clinic, effective July 1, 1991. Professor Stone was most recently the head of the Office of the Public Defender of Cook County, Illinois, one of the largest public defender offices in the nation with over 500 lawyers. He has previously served as a clinical teacher at Chicago and has lectured and taught at several other law schools. Professor Stone will head a new criminal defense project at the Clinic.

Gary Palm, who has served as Clinic director for the past twenty-one years, will remain at the Law School as a Clinical Professor and a member of the Clinic's governing committee. He will continue his clinical practice in the areas of welfare and child support, as well as teaching a seminar in civil rights litigation and a course in litigation methods.

Steve Hartwell (San Diego) and **Terry Player** (San Diego) both received tenure recently. Terry will be on sabbatical during the 1991-92 academic year. She plans to tour France by bicycle after directing San Diego's International Comparative Law Program in London this past summer. Other plans call for her to tour the Northwestern United States and Canada, and spend some time in Australia, Fiji and Tahiti.

Richard Wharton (San Diego) has accepted an offer from Barpassers to join its distinguished national faculty in teaching its Multi-State Bar Review Course. He will be teaching Property and Constitutional Law.

Steve Hartwell (San Diego) taught in the "Judicial Fact-Finding and Decision-Making" course of study for the California Center for Judicial Education and Research in August at Dana Point, California.

Paul Papak (Iowa) has been named the director of a new program at Iowa to counsel athletes being pursued by sports agents.

Howard Eisenberg (Southern Illinois) has been appointed the new dean of Arkansas-Little Rock.

CHANGES OF VENUE

David Benjamin Oppenheimer (John F. Kennedy University) is visiting at Golden Gate University this fall.

Deborah Barthel Caplan (George Washington) will be visiting West Virginia in the spring.

Catherine Klein (Catholic) is visiting at American this year.

OF INTEREST TO CLINICIANS

CLEVELAND-MARSHALL TO HOST CONFERENCE ON THE JUSTICE MISSION OF AMERICAN LAW SCHOOLS

On October 30 - November 1, 1991, Cleveland State University, Cleveland-Marshall College of Law will host a conference on The Justice Mission of American Law Schools. The announced purpose of the conference is to assert that law schools and law faculty are obligated to understand the nature of social justice and to seek to advance conditions of justice. "This does not mean that all will agree on the particular meaning of what is just or of what should be done. It does demand that there be concern with seeking to answer the critical questions of justice and fairness, right and wrong to the extent of one's ability, and to facilitate positive change." For more information on the conference, call David Barnhizer at Cleveland State: 216/687-2315.

MOST CLINICIANS EVER SERVE ON SITE INSPECTION TEAMS by Roy T. Stuckey

During the 1990-91 academic year, all but a handful of ABA/AALS accreditation site inspection teams had at least one clinical teacher as a member. Dean James P. White, ABA Consultant on Legal Education and his administrative assistant, Salley Lee, deserve credit for their persistent pursuit of volunteers.

The clinicians and former clinicians who participated in inspections this year include: Jane Johnson, Tulane; Mark Heyrman, Chicago; Joe Harbaugh, Richmond; Randy Schmidt, Chicago; Jon Hyman, Rutgers-Newark; Paul Reingold, Michigan; Richard Boswell, Hastings; Doug Colbert, Hofstra; Bob Smith, Boston College; Roy Stuckey, South Carolina; Gary Laser, Chicago-Kent; Peter Hoffman, Nebraska; Marie Failingner, Hamline; John Elson, Northwestern; Don Peters,

Florida; Carrie Menkel-Meadow, UCLA; Steve Emens, Alabama; Kathy Sullivan, Brooklyn; Herb Eastman, St. Louis; Leah Wortham, Catholic; and David Gottlieb, Kansas.

These people deserve our thanks. An inspection (including preparing, conducting the site visit, and writing parts of the report) takes one and a half to two weeks out of your schedule. I expect Dean White to try to match or better his record of 1990-91, but he will need your help. If he or Salley Lee calls you, please try to make the time. No one can really afford it, but this is an important public service.

LEGALAID/NET FOR LAW SCHOOL CLINICS

LegalAid/Net is a computer network for legal services programs that was launched a year and a half ago and is now being used by more than 300 legal services offices in 30 states, including 15 national back-up centers and several state support centers. The network is a quick, reliable and inexpensive way to send mail, conduct conferences and exchange documents. It contains information "folders" on major areas of law such as health, public benefits, employment and housing.

Michigan and Harvard Law Schools have been using LegalAid/Net in their clinics and they are urging other law school clinical programs to investigate the service.

The network provides up-to-date information and resources for public interest practitioners and offers an efficient means of educating students about current issues in poverty law. It permits clinicians at different institutions to communicate with each other on a wide variety of problems and topics. It permits students to communicate with each other across offices and programs. It links students and supervisors to a number of databases, particularly the case abstracts supplied by the National Clearinghouse for Legal Services. Students would also be able to join in discussions of current problems and, if interested, could publicize their availability to do research.

In the future, the network offers the possibility of a broad dialogue nationwide on issues and problems in clinical education and its relation to the legal service delivery system.

LegalAid/Net is part of HandsNet, a highly successful network that connects more than 1000 advocates, policymakers, researchers, and services providers working on a broad range of poverty-related issues.

For more information, contact Jeffrey S. Lehman at Michigan or Gary Bellow or Donald T. Trautman at Harvard.

SALT TEACHING CONFERENCE

The 1991 SALT Teaching Conference: Public Interest or Private Gain: The Struggle for the Soul of the Profession, will be held October 4-5, 1991, at Stanford Law School. The conference will focus on what law teachers can do at their institutions to facilitate public interest work by students and faculties. It will feature an in-depth case study of a particular law school, summaries of empirical material on changing patterns of law placement, and panel sessions on bringing about curriculum and institutional change. For more information contact Howard A. Glickstein, SALT president, at Touro: 516/421-2244.

HASTINGS TO HOST CONFERENCE ON THE EMERGING CONVERGENCE OF PROGRESSIVE LEGAL THEORY AND PRACTICE

Hastings College of the Law is hosting a conference on January 31 and February 1, 1992, dedicated to the emerging convergence of progressive legal theory and practice. The Hastings Law Journal will dedicate a theme issue to the topic. The conference and issue will explore the intersections of theory and practice as they are affected by and reflect issues of class, race, gender, ethnicity, and sexual orientation. Scholars active in clinical, critical race, feminist, law and society, and critical legal studies are especially encouraged to present papers, serve as discussants, and participate in workshops at the conference. A range of concerns are expected to figure in the discussions and papers, including hierarchy and the empowerment of marginalized people; improving the delivery of legal services; coping with the bureaucracy of the welfare state; the function of voice and storytelling in interviewing and counseling clients; the relative merit of differing modes of dispute resolution; and

the efficacy of the present regime of professional ethics. For more information about the conference contact Simeon Herskovits, editor-in-chief of The Hastings Law Journal, 200 McAllister Street, San Francisco, California 94102-4978; telephone: (415)565-4727.

PUBLICATIONS BY CLINICIANS

- Alfieri, Anthony (Miami). *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 Yale L.J. 2107 (1991).
- Alfieri, Anthony. *Speaking Out of Turn: The Story of Josephine V.*, 4 Georgetown J. Leg. Ethics 619 (1991).
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- Burnham, William (Wayne State) and Michael C. Fayz. *The State as a "Non-Person" Under Section 1983: Some Comments on Will and Suggestions For the Future*, 70 Ore. L. Rev. 1 (1991).
- Bentele, Ursula (Brooklyn) and Eve Cary. *Appellate Advocacy: Principles and Practice - Cases and Materials* (Anderson Publishing Co. 1991).
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- Critchlow, George (Gonzaga). *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 Gonzaga L. Rev. 415 (1990/91).
- Ellmann, Stephen J. (Columbia). *Legal Text and Lawyers' Culture in South Africa*, 17 N.Y.U. Rev. L. & Soc. Change 387 (1989/1990).
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- Hoffman, Peter (Nebraska). *Valuation of Cases for Settlement: Theory and Practice*, 1991 J. Dispute Resolution 1.
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- Neumann, Richard (Hofstra). *On Strategy*, 59 Fordham Law Review 299 (1990).
- Neumann, Richard. *From an Insurrection*, 3 Yale J. of Law and the Humanities (1991).
- Pertnoy, Leonard D. (St. Thomas) with Podgor, Ellen. *Bias and Difference; An Analysis for Those Who Just Don't Get It*, 54 Albany L. Rev. 413 (1990).
- Pertnoy, Leonard D. *And God Created Woman – But to be a Criminal Defense Attorney?* 42 Mercer L. Rev. 713 (1991).
- Schrag, Philip G. (Georgetown). *Carrying a Big Carrot: Linking Multilateral Disarmament and Development Assistance*, 91 Col. L. Rev. 993 (1991).
- Wizner, Stephen (Yale). *Homelessness: Advocacy and Social Policy*, 45 U. Miami L. Rev. 387 (1990-91).

**COMMITTEE ON IN-HOUSE CLINICS SEEKS TO
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OF EXISTING CLINICS AT PARTICIPATING
SCHOOLS**

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Community Legal Clinics, 720 20th St., N.W.,
Washington, DC 20052. Telephone: 202/994-7463.