



SECTION ON

NEWSLETTER

CLINICAL LEGAL EDUCATION

November, 1984

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

MESSAGE FROM THE CHAIR

By

Roy Stuckey, South Carolina

Please come to the AALS Annual Meeting in January. Details about the Section's programs are at the end of this Newsletter. (If you are coming to the meeting, you would be well-advised to bring that part of the Newsletter with you. There may be problems finding the right meeting at the right time without it.)

The Section's plenary session on Friday morning will be unlike any we've produced in the past and it should be entertaining, and even educational. However, a more significant meeting for many may be the open meeting of the Section's Executive Committee which is scheduled to begin at 8:00 PM on Thursday, January 3, in the Cabinet Room of the Washinton Hilton. A portion of that meeting will be spent considering the status of clinicians and whether or not the Section should undertake any projects to promote improvments. It will also be a time to find out how schools appear to be responding to the new ABA accreditation standard.

The informal setting (we hope to have beer and wine available throughout the meeting) will provide an opportunity to engage in more complete discussions about any Section business which warrants discussion than time will permit during the business meeting (we are holding the business meeting during the afternoon for the first time to avoid interfering with anyone's plans for the evening).

This meeting of the AALS could be one of the most important for clinical teachers to attend in many years. We are at a stage in the development of clinical education where the state of the art is changing almost daily in both substance and methodology. The AALS meeting provides a forum to learn about these changes and to explore new ways of thinking about and doing clinical teaching.

Many schools are reexamining their clinical programs and we need to keep up with modifications in program design and staffing patterns. The AALS Committee on Clinical Legal education is considering a wide

range of projects and it is expected to meet in Washington. Although its members have not yet been named for 1984-85, the ABA Skills Training Committee is also expected to convene. The plans for the April, 1985, AALS Workshop for Clinical Teachers will be developed then, and the Executive Committee of the AALS will meet twice during the session.

The best reason to come to Washington is simply to spend time in the company of each other. There is no better opportunity during the year to meet new friends and renew old acquaintances. Nor is there a better method to become a participant in Section activities and business. My successor in office, Sue Bryant, is planning to appoint as many of the Section's committees as possible in time for them to have meetings in Washington, and almost everyone who is interested in working will be given an assignment.

If you are interested in serving on a committee, get in touch with Sue between now and January, if possible. If you forget, catch her there and ask to be appointed. The bashful are often overlooked, and it is not considered bad form to seek committee assignments.

It is hard to think of appropriate comments to make as I near the end of my term in office. I was honored to have had the opportunity to serve as the Section's chair. Everyone was more supportive and kinder to me during the year than I usually deserved, and I will try to repay the many favors whenever opportunities arise. I am both wiser and older as a result of the experience, but not in equal proportions.

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DUES ARE DUE
RENEWAL CARDS ENCLOSED

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COMMITTEE NOTES

MEMBERS ADDED TO ANNUAL MEETING PROGRAM COMMITTEE

At the request of Graham Strong, Chair of the Section's Annual Meeting Program Committee, Roy Stuckey has appointed Bob Dinerstein, American, and Larry Weeks, Arizona State, to the Committee.

CONTINUING CLINICAL EDUCATION

Holly Hartstone, Queens, has had to resign as chair of the Continuing Clinical Education Committee because of excess demands on her time. Steve Emmens, Alabama, has agreed to assume the duties of chair. Other members of the Committee are Tom Geraghty, Northwestern; Roger Haydock, William Mitchell; Gary Lowenthal, Arizona State; Mike Meltsner, Northeastern; Carrie Menkel-Meadow, UCLA; Al Porro, Baltimore; Michael Zeldin, Antioch.

NOMINATIONS

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

Chair-Elect: Gary Palm, Hofstra
Executive Committee: Frank Bloch, Vanderbilt
Michael Norwood, New Mexico

The election will be held at the Section Business Meeting following the Section Program on January 4, 1985. The members of the Nominations Committee are Elliott Milstein, American; Jim Countiss, Hawaii; Bea Frank, NYU; Jane Johnson, Tulane; Roslyn Lieb, Northwestern; Arnie Siegel; Loyola-Los Angeles; Steve Wizner, Yale.

POLITICAL INTERFERENCE

"The Political Interference Committee has been inactive thus far this year," reports Chairperson Jim Stark. "We are anxious to hear from clinicians around the country who have been subjected to any form of outside pressure concerning their cases and their programs." The Committee is prepared at the very least to work as an information clearinghouse for clinical teachers experiencing difficulties and, depending on the problem, might undertake an advocacy role as well. You can contact Jim at the University of Connecticut Law School, 65 Elizabeth Street, Hartford, CT 06105 (202) 241-4673.

TEACHING MATERIALS

The Teaching Materials Committee is soliciting copies of clinical teaching materials to be part of a display of materials to be exhibited at the AALS Annual Meeting. You are strongly encouraged to send copies of your materials to Lois Knight, Assistant Dean, Boston University School of Law, Room 482, 765 Commonwealth, Boston, MA 02215. A good display will reflect favorably on clinical education in general as well as on the teachers involved.

TAP

Clinicians who wish to discuss their careers may now consult with Tenure and Advisory Project members on a confidential basis. TAP members are John Capowski, Maryland; Michele Hermann, New Mexico; Jim Klein, Toledo; Carol Liebman, Boston College; Jack Sammons, Mercer; Kandis Scott, Santa Clara; Jed Scully, McGeorge; Phil Schrag, West Virginia.

BITS AND PIECES

AALS WORKSHOPS FOR CLINICIANS PLANNED FOR APRIL IN WASHINGTON

On April 12 and 13, 1985, there will be a AALS Workshop on Litigation Theory and Practice presented in Washington. The program is expected to be of interest to clinical teachers, including those who teach through simulation as well as those who are involved in client clinics.

On April 11, 1985 there will be a one day program which will focus on matters of particular interest to clinicians. This program was approved by the AALS Executive Committee at its mid-November meeting, therefore plans for it are still sketchy. Two clinicians (Roy Stuckey and Jennifer Rochow) have been added to the Planning Committee for the Workshop on Litigation Theory and Practice (Dean Rivkin, Ken Broun, Leo Romero and Tom Rowe), and the committee will reconvene during the AALS Annual Meeting to plan the details of the program.

This unusual situation grew out of a series of events. For reasons that aren't entirely clear, the AALS Committee on Professional Development did not contain a recommendation that a workshop on Clinical Legal Education be offered in Spring, 1985. Apparently, the issue was never raised until the Committee's recommendations had been submitted and approved.

It had been generally understood by clinicians and other people that the Professional Development Committee would make recommendations annually that would result in either a workshop or a teaching conference on Clinical Legal Education each year.

When the oversight was discovered in August, the schedule for 1985 had been set. Several alternatives were considered and the Committee on Clinical Legal Education discussed the problem at its meeting on September 28, 1984. It developed a recommendation to the Executive Committee that the workshop on Litigation Theory and Practice be expanded by a day so as to add a day directed especially at the concerns of clinical law teachers. Subsequently, the Committee on Professional Development met and joined in this request. The Committee on Professional Development also renewed its commitment to recommend that a conference for clinicians be held in 1986. It will ask the Committee on Clinical Education to reexamine the need for continuing annual programs for clinicians and to report its recommendations to the Professional Development Committee.

AALS NOMINATIONS AND APPOINTMENTS

The nominations for offices of the AALS have been announced. They are: Susan Prager, UCLA, President-elect; and Ken Penegar,

Tennessee, and Wade McCree, Michigan, for three year terms on the Executive Committee.

President-elect, Roger Cramton, has announced some committee appointments of particular interest to clinical teachers. Dean Rivkin's term as a member of the Professional Development Committee ends at the upcoming annual meeting. Phil Schrag, Georgetown (visiting at West Virginia), has been appointed to the Committee for a three year term.

Four new people have been added to the AALS Committee on Clinical Education. Jennifer Rochow, Boston College; Gary Laser, Chicago-Kent; and Tony Amsterdam, NYU, will serve three year terms. Peter Hoffman, Nebraska, will serve the one year remaining on Sue Bryant's term (Professor Bryant became ineligible to serve on the Committee when she moved from Hofstra to CUNY-Queens, a non AALS School). Members of the Committee whose terms expire in January include: Clint Bamberger, Michele Hermann, and Kandis Scott.

An unconfirmed report is that David Binder will chair the Committee. Professor Binder has two years remaining on his term. Other members of the Committee are Jim Klein, Toledo, and Roy Stuckey, South Carolina, who have one year remaining; and Arthur LaFrance, Lewis and Clark, and Walter Steele, SMU, who have two years remaining on the Committee.

TITLE IX REFUNDED

President Reagan signed on November 9 the appropriations bill funding the Law School Clinical Experience Program for the 1985 fiscal year. The bill increases funding for the Program to \$1.5 million from the current \$1 million level. The legislation remains the same as past years and it is expected that the implementing regulations, application packets, etc., will also remain the same. The closing date will be announced in late December--early January in the Federal Register. At this time the closing date is expected to be in March. Charles Miller has taken over from Alan Schiff as coordinator in the Department of Education.

POVERTY LAW PROGRAM SCHEDULED FOR AALS ANNUAL MEETING From Information Supplied By Marie Failinger, Hamline

Clinical teachers with an overlapping interest in poverty law should attend the program scheduled for Friday, January 4 at the AALS Annual Meeting. Many clinical teachers will be on the program.

11:00 a.m. LAW SCHOOLS AND LEGAL SERVICES: CHALLENGES AHEAD

A panel discussion about legal and policy issues facing Legal Services programs in the future, the responsibility of law schools for providing legal

representation to the poor, and law school relationships with Legal Services programs.

Clint Bamberger, Maryland
Marie Failinger, Hamline
Alan Houseman, Center on Law and Social
Policy
Clint Lyons, NLADA
Carrie Menkel-Meadow, UCLA
Ralph Smith, Pennsylvania

1:00 p.m. POVERTY LAW NETWORK: METHODS OF TEACHING
POVERTY LAW

John Capowski, Maryland, Meeting Planner and
Moderator
Howard Lesnick, CUNY-Queens
Cass Sunstein, Chicago
Nadine Taub, Rutgers-Newark

EVENING (Probably 5:00-7:00 p.m.) RECEPTION

For Legal Services supporters, former program attorneys and board members. Sponsored by NLADA and the Coalition for Legal Services.

EMORY COMMENCES LL.M. IN LITIGATION

The Emory University School of Law in Atlanta is taking applications for its first class of graduate students in Litigation. The program will begin in August, 1985.

The LL.M. development is a natural extension for Emory which has an extremely rich J.D. program in litigation already in place. The school was a 1984 recipient of the Emil Gumpert Award for excellence in teaching trial advocacy. The award is made by the American College of Trial Lawyers.

Professor Abraham P. Ordovery, Director of Emory's Litigation Program, described the LL.M. course of study as a three part approach to learning the art of litigation. Each student must take at least three clinical offerings in which he or she will prepare and try actual civil and criminal cases. These clinics include association with law firms, prosecutors, public defenders, and trial judges.

The second portion of the program offers students a variety of simulation courses. Each course covers the gamut of litigation techniques from intake interviews through pleadings, motion practice, discovery and trial. One course is centered around a securities litigation, another deals with an anti-trust case, a third with a nuclear accident and a fourth with an environmental matter. Other

simulations include injunction cases, real estate battles, voting rights cases and so on.

The third set of courses are a mix of seminars and class offerings in diverse areas relevant to litigation. Some of the courses are full semester courses while others are "mini courses" in which discrete subject matter is covered in a weekend of discussion and analysis. These courses include an advanced evidence seminar, a course in social science methodology, an investigation of the psychology of small group dynamics, damages, arbitration and alternative dispute resolution, federal jurisdiction, a group of litigation medicine offerings, ethics for the trial lawyer and a host of other courses.

The LL.M. program will be open to both full and part-time students.

For additional information concerning the LL.M. Program in Litigation at Emory, please contact:

Professor Abraham P. Ordover
Director of the LL.M. Program
Emory University School of Law
Atlanta, Georgia 30322

For information concerning admission and application materials contact:

Office of Admissions
Emory University School of Law
Atlanta, Georgia 30322

THE VALUE OF CLE "SKILLS" COURSES

Reprinted From

15 ALI-ABA CLE Review, No. 33, p. 4 (Nov. 16, 1984)

Does any profession turn out graduates who are less prepared than law graduates to practice their chosen profession? Fledgling physicians have already diagnosed the ills of many patients; young dentists have gained valuable experience in clinical settings; newly licensed architects have drawn blueprints and constructed architectural models. But the average law graduate cannot yet draft a decent pleading, let alone competently try a civil or criminal case.

For too long now, most law schools have been satisfied, like the fictional Professor Kingsfield, with teaching mush-headed students to "think like lawyers." That is certainly a good start in the process of educating a lawyer, but a novice who thinks like a lawyer cannot interview a client effectively or negotiate a fair settlement is not yet fit to practice as a lawyer, regardless of what his state's bar examiners may have certified. And experience gained in those areas may be obtained only at the expense of his clients.

Fortunately, lawyers today have a number of attractive options to remedy these deficiencies. Many bar associations now provide so-called "bridge-the-gap" programs that help recent bar admittees comprehend the vagaries of law practice. An increasing number of CLE courses now attempt to develop or refine lawyering skills--such as negotiating, interviewing, and using scientific principles to decide whether to accept a case--as opposed to increasing a lawyer's substantive knowledge about a particular area of the law.

Unfortunately, many lawyer have grown accustomed to thinking of CLE as something to be resorted to only when Congress or their state legislature passes a new act. Yet, it seems to me that these "skills" courses ought to be a must for all lawyers, from the inexperienced recent graduate to the savvy barrister, so that each can provide the competent, affordable services that increasingly cost conscious clients demand. and with an increasingly large number of lawyers competing for the same, relatively stable number of clients, the lawyer who polishes those skills that cut across all the areas of his practice is bound to be in an advantageous position.

Michael G. Walsh
Associate Director of Publications

SHORT STUFF

Bob Burns and Tom Geraghty, both of Northwestern, and Carrie Menkel-Meadow, UCLA, were part of a panel discussion on Negotiation Strategies for the 1980s as part of the Corporate Dispute Resolution Institute held at Northwestern University School of Law, November 15 and 16.

Carrie Menkel-Meadow, UCLA, and Tony Ansterdam, NYU, will be panelists in a program entitled "Where's the Beef? Looking at the Law School Classroom." The program is part of the Society of American Law Teachers National Conference to be held December 14 and 15 at Queens College.

Michael Zeldin has resigned his position at Antioch School of Law and has joined the Department of Justice Criminal Division as of November 12, 1984.

JOBS

CATHOLIC

Catholic University School of Law in Washington, D.C. invites nominations and applications for the position of Director of its Law and Public Policy Program. The Program provides internships and course offerings exploring legislative and administrative processes and lawyering competencies most important in the development of public policy. The Director works with the Center for National Policy Review, a civil rights center at the law school. Tenure-track position; 11-month appointment. Faculty rank and salary commensurate with experience. Position available late May 1985. Law degree and practice experience required. Experience with public policy matters

desirable; also classroom teaching, clinical supervision, and administrative experience. Direct inquiries, or submit letter of application and resume, to: Professor William Kaplin, School of Law, Catholic University of America, Washington, D.C. 20064, 202/635-5140. Application deadline January 15, 1985. AA/EO employer.

NORTHEASTERN

Responsibilities:

Teaching, research, writing and perform school-related projects. Curricular requirements include among others,...clinical, using simulation.

Qualifications:

Law degree and admission to Bar required. Candidates should have a strong record of academic or professional achievement and demonstrated success or high potential to be a superb teacher and legal scholar. Expertise and experience in practice and teaching in the particular field of curricular need preferred; willingness and ability to be flexible about teaching assignments and other institutional needs.

Salary range: Negotiable

Please send resume by
December 9, 1984 to:

Stephen N. Subrin
54 Cargill Hall
Northeastern University
360 Huntington Avenue
Boston, MA 02115

We are eager to hire minority and female faculty.

NORTHERN ILLINOIS

The Northern Illinois University College of Law is seeking applicants with civil clinical teaching interests for a full-time, tenure-track faculty position beginning August, 1985. The position involves: 1) teaching a simulation-based course in law office and pre-trial litigation skills, 2) administration, supervision, and teaching in a civil litigation externship program, and 3) teaching other traditional law courses, preferably in the commercial law field. Women and minorities are strongly urged to apply. Submit resumes or address inquiries to:

Dean Leonard P. Strickman
Northern Illinois University
College of Law
DeKalb, Illinois 60115

WEST VIRGINIA

West Virginia University College of Law is seeking an experienced director to operate its clinical program. The clinic is comprised of one or two clinical teachers with help from other faculty members and adjuncts. The clinic operates out of newly constructed clinic offices located in the law school. The position to be filled is a teaching position with salary dependent upon experience and qualifications. Contact Gerald G. Ashdown, Associate Dean for Academic Affairs and Professor of Law, College of Law, West Virginia University, P.O. Box 6130, Morgantown, WV 26506-6130.

The following positions were listed in the October 5, 1984 AALS Placement Bulletin:

UNIVERSITY OF CALIFORNIA SCHOOL OF LAW, LOS ANGELES seeks applicants for teaching positions to begin August 1985 or January 1986.

We seek both experienced and beginning teachers for permanent and visiting, clinical and non-clinical positions. In addition, we have a limited number of openings for temporary part-time or full-time law teachers. Our principal, though not exclusive, interest is in individuals who would like to teach taxation or property. Qualifications for all positions include excellence in academic legal training and scholarly distinction or promise. Applicants primarily interested in clinical teaching and research should also have clinical or litigation experience, at least two years' bar membership in any jurisdiction, and California Bar membership or willingness to take the California Bar exam no later than July 1985.

The School of Law has a special interest in enriching its intellectual environment through further diversification of the range of ideas and attitudes represented within the faculty. We therefore particularly welcome applications from minority group members, women and others whose varying backgrounds may contribute to this end. Contact: Chair, Faculty Appointments Committee, University of California School of Law, 405 Hilgard Avenue, Los Angeles, CA 90024.

THE UNIVERSITY OF IOWA COLLEGE OF LAW seeks applicants for permanent or visiting classroom and clinical teaching positions. We are interested in all persons of high academic promise, irrespective of prior teaching experience, and wish to assure the diversity of our faculty by including among our candidates persons of all races, sexes, religions, national origins, ages, and other groups that traditionally have been underrepresented in the legal profession. Consideration of any applicant for a faculty position may depend upon the current curricular needs of the College, though considerable flexibility ordinarily exists with respect to courses and other assignments. Persons interested in a career in law teaching should send resumes, references and descriptions of areas of interest. Contact: Faculty

Recruitment Committee, University of Iowa College of Law, Iowa City, IA 52242.

RUTGERS UNIVERSITY SCHOOL OF LAW, URBAM LEGAL CLINIC seeks one or two staff attorneys to supervise and teach third-year law students in their work on clinic cases. In addition the staff attorney participates in the teaching of a weekly seminar dealing with lawyering and trial skills. Litigation experience necessary. New Jersey Bar preferred. Eventual admission required. Caseload involves housing, consumer, family and other poverty law areas. Women, minorities and the handicapped are strongly encouraged to apply. Contact: Rutgers Urban Legal Clinic, 15 Washington Street, Newark, NJ 07102.

The following position was listed in the November 9, 1984 AALS Placement Bulletin:

RUTGERS UNIVERSITY SCHOOL OF LAW, NEWARK invites applications for permanent and visiting faculty positions for the academic year 1985-86. We have a special interest this year in teachers with a background in either commercial law or trusts and estates, but will welcome applicants with expertise in all other areas, including first year courses, clinics and interdisciplinary studies. Our search process includes a strong effort to identify women and minority candidates. Contact: Professor John M. Payne, Rutgers University School of Law, 15 Washington Street, Newark, NJ 07102.

The following positions were listed in the November 16, 1984 AALS Placement Bulletin:

STATE UNIVERSITY OF NEW YORK LAW SCHOOL AT BUFFALO invites candidates for permanent or visiting positions. Some preference exists for persons interested in teaching commercial law, corporations and corporate finance, federal taxation, civil procedure, government regulatory areas (e.g. communications and transportation), and patents and copyrights. The School encourages faculty whose research interests involve linkages with other disciplines and whose efforts will go into the restructuring of basic courses and the conduct of empirically-based research in law. Faculty are also encouraged to take part in actual or simulated clinical programs, as well as teaching in the traditional classroom format. We welcome expressions of interest from anyone with excellent academic credentials (J.D. and/or M.A./Ph.D. in social science) and some professional experience in law or teaching, or research experience in law or law-related areas. Rank and salary will depend upon experience and qualifications. Interested candidates should apply. Contact: Law School Appointments Committee, SUNY At Buffalo Law School, 319 O'Brian Hall, Buffalo, NY 14260.

THE UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW invites applications for anticipated positions for the nine-month academic year beginning August 16, 1985. Consideration of any applicant will depend on current staff and curricular needs. These needs may include assistant, associate or full professors in clinical or classroom

positions. Candidates should have an excellent academic record in law studies together with law related graduate study or recent successful teaching experience or practical experience plus demonstrable potential for teaching. Interested persons should send resumes. Contact: Chair, Faculty Selection Committee, University of North Dakota School of Law, Grand Forks, ND 58202.

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL invites applications for law faculty positions. A few positions will be filled. The Law School is particularly interested in those specializing in anti-trust, commercial law, corporations/securities law, criminal law, international law, poverty law and property and land use. Applicants must exhibit academic performance at the very highest levels of excellence. High quality publication history and prior law school teaching experience desirable. The Law School is seeking highly qualified applicants to teach and supervise casework in its Clinical Programs (including a "live client" small business planning/-counseling and a family juvenile law clinic). Please contact in writing, with resume and references. Contact: Professor Stephen J. Schulhofer, Chairman, Appointments Committee, University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia, PA 19104.

ESSAYS

The current "hot" topic in legal education and scholarship is alternative dispute resolution as witnessed by the burgeoning number of articles and conferences on the subject. ADR, as it is come to be called, is also having its effect on clinical legal education. The essay in this issue is on how this increasingly importanta topic is being integrated into the clinical curriculum.

TEACHING DIVORCE MEDIATION: ALTERNATIVE DISPUTE RESOLUTION AND THE CLINICAL SETTING*

Serena Stier, Iowa

The Divorce Mediation Seminar and Clinic

In the fall semester of 1982 the College of Law and School of Social Work at the University of Iowa jointly created a Divorce Mediation Seminar. The one semester seminar teaches teams of law and mental health graduate students the knowledge and skills necessary to mediate family dissolutions. The first seven weeks of the class focus on the substantive areas relevant to divorce in order to create a shared knowledge base for the law and mental health students. This includes such topics as family policy, family systems theory, family law and ethics. The second half of the course concentrates on skills development including participation in a simulated divorce mediation case. Each team is videotaped mediating one session of the

*These remarks have been taken from an article by Serena Stier and Nina Hamilton, Teaching Divorce Mediation: Creating a Better Fit Between Family Systems and the Legal System, 48 ALB. L. REV. 693 (1984).

simulation. Team members review their taped mediation after the class simulation. Team members review their taped mediation after the class observes and discusses their session. The actors who play the roles of the parties in the simulated mediation session share with the mediators and the class their reflections on the mediation experience. In the spring semester of 1984 a clinic was added to the curriculum to permit interdisciplinary teams, which have completed the seminar, to provide divorce mediation services to families seeking dissolutions. The teams are supervised individually by the teachers of the course and also participate in a weekly group supervision conference.

The ultimate goal of the divorce mediation seminar is to prepare its participants to mediate marital dissolutions effectively. The seminar has a number of other important objectives, however, which both contribute to this goal and have value in their own right. These objectives include teaching interdisciplinary consultation, familiarizing students with a family systems approach to family interventions, and developing a shared knowledge base among students and a sensitivity to the ethical issues raised by mediation.

With the team approach to divorce mediation, mediation exercises are jointly conducted by two mediators, one a law student and the other a mental health graduate student. The advantage of this approach is that it draws on the professional strengths of two disciplines particularly pertinent to the divorce process -- law and mental health.

Mediation, however, is not a simple combination of legal and mental health skills, with each mediator acting only when his or her professional expertise is pertinent. To act as a divorce mediator is to perform a role distinct from that of either lawyer or therapist. A mediator is not a therapist, although he or she must understand and respond to the feelings and behavior elicited by emotionally charged issues. A mediator is not a legal representative or adviser, although he or she should be knowledgeable about the legal questions that a dissolution agreement must resolve. Use of the team format can facilitate the learning of the mediator role since knowledge and skills derived from both law and mental health are involved in mediation.

At present mediation in general and divorce mediation in particular are still too new to legal practice to have developed any definitive principles for how they should be conducted. Many different and varied experimental mediation programs are needed to determine which work best under particular circumstances.

Description of Mediation

Articles in the legal and general literature increasingly criticize the legal profession for making the divorce process unnecessarily costly, both emotionally and financially. The adversarial process has been criticized for aggravating the negative consequences of divorce for both parents and children. Lawyers and non-lawyers have responded to this criticism by exploring alternative

means for resolving divorce disputes. One such alternative, mediation, permits a husband and wife to negotiate their dissolution agreement directly with one another. Mediation allows the parties to take charge of their own divorce and to settle to their mutual satisfaction property, support and custody issues.

Mediating disputes is a generic problem solving skill appropriate for resolving any issue. It has been used to resolve disputes in areas as diverse as labor-management relations, the environment and the neighborhood. Mediation can serve to resolve disputes among any number of parties, although it most frequently involves two disputants. Raiffa has characterized disputes appropriate for mediation as "situations in which two parties recognize that differences of interest and values exist among them and in which they want (or in which one or more are compelled) to seek a compromise agreement through negotiation." (THE ART & SCIENCE OF NEGOTIATION 7 (1982))

The purpose of mediation is to assist the disputing parties to reach an agreement which resolves their dispute in such a way that each is satisfied and prepared to comply with its terms. The process of resolving disputes through mediation does not involve representation by lawyers who conduct the negotiations, as does traditional dispute resolution. Mediation does not involve the delivery of rational and persuasive arguments to a neutral decision-maker selected by the state, as does the adversary system. Nor does it involve a decision-maker selected by the parties, as does arbitration. In mediation there is no third party decision-maker who acts as a fact-finder and is constrained by principles such as stare decisis. Agreements reached through mediation are designed by the parties themselves, who bargain directly with one another. The mediator, who is selected by the parties, serves as a neutral facilitator of the negotiation process. The process is a private one with no future legal implications for those who are not parties to the agreement.

The outcome of a successful mediation is an agreement that accommodates the mutual interests of the parties rather than a declaration of their rights and obligations. In contrast to adversarial dispute resolution, the outcome is not seen as a zero-sum game. Successful resolution of the dispute does not leave one party the winner and the other party the loser because the two protagonists do not have completely opposite interests. (Raiffa at 1) The mediation process is designed to help parties move away from taking antagonistic positions and arguing in terms of rights. This shift in perspective is accomplished by assisting the parties to identify their interests and to find ways to mutually accommodate them. (R. FISHER & W. URY, GETTING TO YES (1981)) The agreement, therefore, should represent a win-win outcome.

The content of the mediated agreement need not be determined by the law of the particular jurisdiction where the mediation occurs. Mediated agreements offer the potential for greater creativity in developing solutions that are mutually agreeable. Professor Fuller recognized this potential when he described mediation as "commonly

directed not toward achieving conformity to norms but toward the creation of the relevant norms themselves." (Mediation -- Its Forms and Functions, 44 S. CAL. L. REV. 305, 308 (1971)) Nonetheless, the content of a mediated agreement may still be constrained by what the parties believe they might obtain in court. Bargaining in mediation is still within what has been called "the shadow of the law." (Mnookin & Kornhauser, Bargaining in the Shadow of the Law: The Case of Divorce 88 YALE L. J. 950 (1979))

Descriptions of mediation generally portray the mediator as neutral. In our approach to divorce mediation we prefer to characterize the mediator as non-partisan. While the content of the eventual agreement is determined by the parties themselves, the process of reaching an agreement is controlled by the mediator. Thus, although the mediator does not favor either party, he or she is concerned about how the outcome is achieved. If the agreement is to have a reasonable chance of being implemented, the process by which it is reached must be fair. The mediator is responsible for ensuring that neither party takes advantage of a superior bargaining position. When the parties perceive the mediation process to be fair and equitable, they are more likely to feel committed to the agreement and thus to comply with its terms. Moreover, should future disagreements occur the parties are more likely to seek further mediation rather than to litigate.

Our program pays special attention to the children involved in a divorce. When a divorcing couple has children, divorce mediation can assist them to recognize that, although they will no longer be married to one another, they will both continue to be parents to their children. Thus, the "family" will continue, although the marriage dissolves. Instead of the parties arguing about custody, a matter of rights or taking a position, the mediator engages them in a discussion on how best to implement their mutual interests in parenting.

Following one or two initial sessions with the spouses, we conduct one or more sessions that include the children. According to one of the few studies of the effects of divorce on children and parents, most divorcing parents feel unable to explain to their children that they are divorcing and to reassure them that they will not lose access to the parent who moves out, and who is usually the father. (J. WALLERSTEIN & J. KELLY, SURVIVING THE BREAKUP 40 (1980)) Parents' understandable reluctance to explain their divorce to their children results in increased distress and a prolongation of the negative effects of the divorce process for the children. Therefore, the mediators in our program meet with the parents to help them work out what they wish to communicate to their children. The mediators offer to be present when the parents talk to the children about the divorce. If the parents decide not to take advantage of this opportunity, they are encouraged to talk with their children privately as soon after the divorce decision as possible.

After the children have been told about the divorce decision, the mediators meet with the entire family in a session designed to elicit information about the children's special concerns. The mediators make it clear to the parents and to their children that eliciting the

children's views does not imply that they should have the power to control any of the terms of the agreement. However, since the effects of divorce on some children are clearly, if only temporarily, devastating, it is especially important to assist parents to effectively respond to their children's needs in this period of crisis even though they themselves are greatly distressed.

Alternative Dispute Resolution and the Clinical Setting

There are some programs attempting to integrate substantive and skills training with clinical services in a one semester program. This may be possible, in our opinion, in mediating issues other than dissolution, but we find the family area particularly complex and difficult to master. Through a grant from the National Institute for Dispute Resolution, we have been able to prepare our course materials for distribution. They will be available under the title of DIVORCE MEDIATION TEACHING MATERIALS by Serena Stier and Nina Hamilton from the Dispute Resolution Clearinghouse at the University of Wisconsin Law School.

PUBLICATIONS

Interviewing

Radzik & Emek, Selling Your Services, 10 Legal Econ. No. 3, p. 64 (May-June 1984)

Schisgall, Counsel for the Divorce Lawyer, 10 Legal Econ. No. 4, p. 32 (July-Aug. 1984)

Ethics

Ackerman, Law Schools and Professional Responsibility: A Task for All Seasons, 88 Dick. L. Rev. 202 (1984)

By Clinicians

Capowski, The Appropriateness and Design of Categorical Decision-Making Systems, 48 Alb. L. Rev. 951 (1984) (John Capowski teaches clinic at Maryland)

Dinerstein, The Absence of Justice, 63 Neb. L. Rev. 680 (1984) (Robert Dinerstein teaches clinic at American)

General Interest

Brown, American Lawyers' Troubles, and What May Be Done About Them, 15 ALI-ABA CLE Review No. 31, p. 3 et seq. (Nov. 2 1984)

Bryden, What Do Law Students Learn? A Pilot Study, 34 J. Leg. Ed. 479 (1984)

Calhoun, Thinking Like a Lawyer, 34 J. Leg. Ed. 507 (1984)

Davidow, Teaching Constitutional Law and Related Courses Through Problem-Solving and Role-Playing, 34 J. Leg. Ed. 527 (1984)

The Massachusetts Supreme Judicial Court's Statement on Legal Education, 15 ALI-ABA CLE Review No. 27, p. 1 et seq. (October 5, 1984)

Skills Training Highlights International Meeting, 15 ALI-ABA CLE Review No. 33, p. 4 (Nov. 16, 1984)

Video and Audio Tape

Gillers, Elain, Gross, Hazard & Meserve, Applying the Model Rules of Professional Conduct (Video tapes available from PLI, 810 Seventh Ave., New York, NY 10019)

AALS ANNUAL MEETING UPDATE

Plans are proceeding apace for the program of the Clinical Section during the 1985 AALS Annual Meeting to be held in Washington, D.C., from January 3rd through January 6th. Please be warned that the summary which follows will be the only complete schedule and description of Section events which you will receive before the Annual Meeting. Note especially that the schedule has been shifted by one day since the preliminary schedule was reported in the last Newsletter. Note also that the locations of Section events, and, indeed, the existence of some Section events, are not reported in the AALS Annual Meeting program announcement, so this Newsletter report may function as your only notice of those matters.

Schedule of Section Events:

January 3

8:00 - 8:30 p.m. RECEPTION (with cash bar until 9:00 p.m.)
8:30 - 9:30 p.m. OPEN MEETING of the Executive Committee

Location: Cabinet Room (Washington Hilton)

January 4

8:00 - 8:45 a.m. TEACHING MATERIALS DISPLAY AND COFFEE
8:45 - 9:00 a.m. OPENING REMARKS
9:00 - 10:15 a.m. CLINICAL SECTION PLENARY SESSION
"Right-Brain Lawyering: Teaching Creativity
in the Clinic"

Location: Lincoln West (Washington Hilton)

10:30 - 12:00 SIMULTANEOUS WORKSHOP SESSIONS
(1) "Other Voices, Other Rooms: Lessons
from Non-Legal Experiential Education"
(2) "Managing Stress to Maximize Learning
in Clinical Courses"
(3) "Tilling New Fields: A sampler of
Groundbreaking Clinics"

Location of Workshops: International West, International Center,
Cabinet Room (Washington Hilton)

12:00 - 2:00 p.m. SECTION LUNCHEON [Please Pay In Advance,
see supra]
Annual Award Presentation
Entertainment Program

Location of Luncheon: Jefferson East (Washington Hilton)

2:30 - 4:30 p.m. COSPONSORED PROGRAM (w/ABA Appellate Judges' Conference and Section on Legal Writing, Reasoning and Research)
"Teaching Appellate Practice Skills"

4:30 - 5:00 p.m. SECTION BUSINESS MEETING

Location of Afternoon Events: Lincoln West (Washington Hilton)

January 5

8:30 - 10:30 a.m. Meeting of the Executive Committee
10:30 - 12:00 Meetings of other Clinical Section Committees

Locations: Rooms 3014-17 (Washington Marriott)

Description of Principal Events:

Teaching Materials Display

Lois Knight (Boston University) is organizing a passive display of clinical teaching materials which will be open for view throughout the morning in our main meeting room. We hope to have coffee service beginning at 8:00, and hope that the teaching materials display will function as a focus for congregation before Roy Stuckey (South Carolina) begins the program at 8:45 with brief opening remarks.

Plenary Session: "Right-Brain Lawyering: Teaching Creativity in the Clinic"

Moderator: Graham Strong (Virginia)

Panelists: Gordon A. MacLeod
Member of the Board of Trustees, Creative Educational Foundation, Buffalo, N.Y.
Instructor, Creative Problem-Solving Institute, Buffalo, N.Y.
Partner, Hodson, Russ, Andrews, Woods & Goodyear, Buffalo, N.Y.

Dr. C. Robert Showalter
Clinical Associate Professor of Behavioral Medicine and Psychiatry and Associate Medical Director, Institute of Law, Psychiatry and Public Policy, University of Virginia

This session is designed as an interdisciplinary presentation that describes what is known about the process of creative problem-solving, that illustrates methods that may be helpful in teaching or encouraging creativity, and that begins to adapt that knowledge and those methods to our teaching of the lawyering process. It is intended to address the need of clinical law teachers to tap the imaginative as well as the analytical abilities of their students, and to begin to work towards an understanding of how that might be accomplished.

Dr. Showalter will discuss the physiological correlates of the creative process, with particular attention to the results of research into the separate functions of the right and left hemisphere of the brain. Mr. McLeod, who taught the first and perhaps the only law school course on creative problem-solving, will discuss techniques of creative problem-solving and their application to the lawyering process. A workshop breakout session may be scheduled as a follow-up to the plenary session.

Workshop 1: "Other Voices, Other Rooms: Lessons from Non-Legal Experiential Education"

Moderator: Janet Motley (California Western)

Panelists: Robert Lee Sigmon
Associate Director, Wake Area Health Education Center (Wake AHEC) at Wake County Medical Center, Raleigh, NC.

Mr. Sigmon has had extensive experience in the areas of theological and health services training. He has consulted with national organizations, colleges, high schools, governmental agencies and private sector organizations on the design and practice of service-learning experiential learning programs.

Sharon Rubin
Assistant Dean for Undergraduate Studies,
University of Maryland at College Park.
Dr. Rubin served, from 1978-1984, as the Director of Experiential Learning Programs at the University of Maryland. She has been responsible for supervision, training and administration, as well as grant development for experiential education projects. She has made numerous presentations and published widely in this field.

Richard A. Ungerer
Executive Vice-President, National Institute for Work and Learning, Washington, D.C.

Mr. Ungerer has a long history in experiential education. His own training in social work and theology, as well as extensive work with other educational organizations has gained him the reputation as a valued consultant in this area.

This workshop will join the experiences of experts from non-legal fields of education. Each panelist will present information and issues intended to stimulate group discussion about what we might learn from outside of the law school context. The emphasis of this workshop will be audience participation.

Workshop 2: "Managing Stress to Maximize Learning in Clinical Courses"

Panelists: Don Peters (Florida)
Marty Peters (Florida)

This workshop examines psychological and social intervention techniques that can help students manage the destructive stress that client representation can generate. It begins with a short description of a stress intervention model; a presentation which our experience suggests can be valuably shared with students near the start of their clinical experience. Participants will then divide into small groups to generate lists identifying the most common stressors that their students and they confront in their programs. These lists will be shared and discussed.

A brief video-tape will also be shown to facilitate discussion. This tape contains three vignettes demonstrating how psychological and physical interventions can be used to manage stress in common clinical contexts and excerpts from an actual class on collaborative working. The learning contexts depicted in this tape are: (1) dealing with an extremely nervous student before a hearing; (2) preparing for a significant performance; and (3) a case planning encounter. The stress management techniques demonstrated by the tape include: (1) relaxation method; (2) mental image rehearsal; (3) control/no control analysis; (4) preparation; (5) setting realistic expectations; (6) letting go; (7) attitudinal factors; (8) communication approaches; and (9) social support.

Workshop 3: "Tilling New Fields: A Sampler of Groundbreaking Clinics"

Moderator: Larry Weeks (Arizona State)

Panelists: Jeff Hartje (Gonzaga)
Doug Frenkel (Pennsylvania)
Bob Stumberg (Georgetown)

The intent of this workshop is to engage both the panel and the audience in an examination of what is new on the horizon of clinical education as well as what could limit us reaching that horizon. There will be a panel composed of people involved in non-traditional clinics: a mediation/arbitration clinic, a small business clinic, a clinic focusing on legislation, and possibly one more. Although one aspect of the workshop will be information exchange, a large part of the time will involve an audience/panel exercise to illuminate the limits and possibilities of using clinical education in new substantive areas. Are there such areas of law which are not appropriate pedagogically, politically, practically? If so, what is it about the clinical method which limits it? Conversely, what characteristics of clinical education make it adaptable to new substantive areas? Another way of saying this relates to possible biases which we as clinicians may have that limit our perceptions of what subjects and areas we can or cannot teach with a clinic. Examining those biases may be useful and necessary in critically evaluating these new clinical directions.

The Annual Meeting Planning Committee looks forward to your attendance in January, and invites you to direct your questions, comments and suggestions regarding any aspect of the program to Graham Strong (Virginia).

Section Luncheon

The Section Luncheon will be held on January 4 at noon following the morning Clinical Section Program. The Section's Annual Award given to an individual who or organization which has made an outstanding contribution to clinical legal education will be presented at the Luncheon. There will also be light entertainment provided in the form of a musical satire of sorts. The cost of the Luncheon is \$15.00. To purchase a ticket, please send a check to Sue Bryant by December 17:

Susan Bryant
CUNY Law School at Queens College
200-01 42nd Avenue
Bayside, New York 11361

Bob Dinerstein (American) is organizing a short program of lively, and perhaps musical, entertainment during the Section's luncheon. He urgently solicits those of you with aspirations as lyricists or, especially, as performers, to come forward and offer your services. No talent is required. He warns that only participants can be assured that they will not be targets of the entertainment program's sardonic barbs.

UNUSUAL BUSINESS FOR THE BUSINESS MEETING

Should Sue Be Allowed To Serve?

Sue Bryant, Chair-Elect of the Section, became technically ineligible to serve as an officer when she moved from Hofstra to CUNY-Queens. CUNY-Queens is a new law school which has not yet become eligible for AALS membership. AALS Executive Committee Regulation 12.3 limits eligibility to hold office in any AALS Section to regular members, who must be faculty or professional staff at AALS member law schools or Canadian Associates. The Section's own bylaws similarly restrict eligibility to hold office.

Millard Ruud, AALS Executive Director, explained the principles underlying Regulation 12.3 as follows:

An officer of a section may speak for the section, an Association entity, to the members of the section, other sections, committees and other Association entities. That individual should be a member of the Association "family." While someone not a member of the Association "family" may be as sensitive to Association interest, there is sufficient risk that she may not be to make it reasonable to confine the leadership positions to members of the faculty of member schools. There are a limited number of section, committee and other leadership positions within the Association; these should be available only to the members of the faculty of those schools that by their payment of dues support the Association. Non-member schools through the payment of a service fee purchase certain services and publications in bulk and so support the work of the Association. But this does not support the work of the Association generally.

The situation is not one which will go away if the Section ignores it. Professor Bryant has already lost her seat on the AALS Committee on Clinical Education, and the AALS was prepared to prevent her from serving as chair of the Section.

However, the Section, through its Executive Committee, asked the AALS Executive Committee to recognize the special circumstances of Professor Bryant's case and to allow her to serve as chair. The AALS Committee on Clinical Education supported this request. At its mid-November meeting, the AALS Executive Committee decided that it would raise no objection, if the Section wants Professor Bryant to serve as its chair.

The Section will be given an opportunity to decide the question during its annual business meeting which will begin at 4:30 p.m. on January 4, 1985.

Should Bylaws Be Amended?

A number of proposed bylaw amendments are expected to be presented by the Bylaws Committee for consideration during the meeting. They should be relatively noncontroversial in purpose; but one should always expect some difficulty in reaching agreement on the specific wording of by-laws. In order to reduce the risk that this possibility will make the business meeting unusually long and/or tedious, copies of the proposed changes will be available at the open meeting of the Section's Executive Committee which will begin at 8:00 p.m. on Thursday evening, January 3, 1985 in the Cabinet Room in the Washington Hilton. The Executive Committee will be asked to approve and recommend their adoption. It would be extremely helpful if anyone who might have an opinion to express about by-law amendments would make the effort to attend that meeting and participate in the Executive Committee's discussion. The proposals will include the following, and hopefully no others:

1. Add a provision for the waiver or suspension of the by-laws by a two-thirds vote during the annual business meeting (the absence of such a provision will require us to engage in very awkward parliamentary procedures when the Section addresses the Sue Bryant question).

2. Add a provision for the selection of an interim chairperson if both the chair and the chair-elect are unable to serve for any reason.

3. Require the chairperson to present a detailed financial accounting during the annual business meeting at the end of his or her term. This has never been done, and some people feel that the membership deserves more information about the Section's finances, especially since dues are charged. Roy Stuckey plans to make such a report in January, whether or not the by-laws are changed.

4. Provide a mechanism and establish guidelines for spending Section funds generated by dues and sources other than general funds of the AALS.

The AALS Budgets \$800.00 of its funds to support each Section. Our Section also charges \$15.00 annual dues.

AALS Executive Committee Regulations provide:

12.6 Finances.

- d. General funds of the Association appropriated to a section may be used, among other purposes, to
 - 1. compensate law students and others for performing research and similar tasks for a section project; and
 - 2. reimburse a person who participates as a speaker or panelist in a section program and who is not a faculty member of any law school for the person's travel and other expenses in accordance with the Association's travel reimbursement policies.
 - 3. purchase for a reasonable amount a plaque or other memorial of an approved award or citation.
- e. General funds of the Association appropriated to a section may not be used to
 - 1. reimburse a faculty member of any law school, whether on leave or not, for travel;
 - 2. pay honoraria; or
 - 3. pay for food, drink or entertainment for section members.
- f. Section funds generated by dues and sources other than general funds of the Association are subject to the restrictions in Subsection (e), unless the section sets other guidelines that are approved by the Executive Committee.

Among the "other purposes" for which general funds can and have been used by the Section are expenditures associated with the Newsletter (this always exceeds the AALS allocation and various expenses of the Chairperson such as telephone, xerox and mail costs.

The Section has never established any guidelines for the expenditure of funds generated by dues. The proposal being prepared by the By-laws Committee will require prior approval by the Section's Executive Committee before expenditures could be made for purposes other than those enumerated in Regulation 12.6(d). It will also describe specific categories for which the funds can be spent. Categories being considered include:

providing coffee breaks or other refreshments during meetings or functions of the section; insuring the luncheon at the AALS meeting (For no good reason other than no one else will do it, the chair-elect must personally guarantee the hotel that a certain number of people will show up for the lunch. No one has come up short yet, but the potential loss is enormous, and it is unfair to ask any individual to take it. An existing problem is that understandably conservative estimates have resulted in too few tickets being available every year.); allowing the Section to invite guests to the luncheon (now, the Section cannot even pay for the person receiving the Section's Award); and providing sponsorship and support for programs (One of the original purposes for charging dues was to use the money to encourage regional workshops and conferences. This has never happened (for too many reasons to describe here); however, AALS Regulation 12.1, paragraphs g and h, allow the President of the Association to authorize a section to hold a program at a place other than the annual meeting of the Association or to sponsor a lecture or regional seminar.)

If you have thoughts about these proposals or ideas about other aspects of the by-laws which need attention, please call or write Vance Cowden, chair of the bylaws committee. He teaches at South Carolina, (803) 777-2278.

MERRY CHRISTMAS