

*The Clinical Legal Education Movement: Observations for New Teachers*

Keynote Address, Workshop for New Law School Clinical Teachers

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## **I. Introduction**

I take this opportunity to welcome you to clinical teaching. I know that you have spent the morning discussing clinical methods and now, as you pause at lunch, my thought is to take some time to talk with you about the clinical legal education movement that has been the source of this methodology. It is a movement that has focused on underscoring the values that should inform legal practice and developing the full range of skills needed to effectively express them. I plan to give an overview of the development of the clinical movement, discuss some of the issues it faces, and reference some of the national organizations that are relevant to your work as clinicians. I will do this by first showing an abridged version of *Seeds of Change* (“the film”), a film that is an oral history of the clinical legal education movement.<sup>2</sup> I will then fold that discussion into my own observations.

## **II. The Clinical Legal Education Movement**

In 1921, the Carnegie Foundation for the Advancement of Teaching conducted a study of legal education and found that the United States “lacked the ‘clinical facilities or shopwork provided by modern medical and engineering schools.’”<sup>3</sup> By the late 1950’s, only thirty-five of the 126 ABA-approved law schools offered clinical experiences, and these experiences were typically volunteer for both students and faculty. Only fifteen of the thirty-five schools offered some student credit and five schools gave supervising law faculty credit for their clinical courses.<sup>4</sup>

The film shows how, in the 1960’s and 1970’s, the Council on Legal Education for Professional Responsibility (CLEPR), which was funded by Ford Foundation, laid the foundation for the clinical movement.<sup>5</sup> It was CLEPR funding that provided schools with the incentive to pursue this educational opportunity. Support through CLEPR was followed by Title IX of the Federal Higher Education Act, which funding became available in the late 1970’s and continued to 1997.<sup>6</sup> When these sources of funding ended, the initial thirty-five clinics had increased to in-house, real client clinics in 147 of the then 178 ABA-approved law schools.<sup>7</sup> As Elliot Milstein

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<sup>2</sup> Videotape: Part I: *Seeds of Change: An Oral History of Legal Education* (A Living Memories Production 2001) (Produced by Professor J.P. (Sandy) Ogilvy) (Part of the Oral History Project) (on file with the Clinical Legal Education Archives, Columbus School of Law) [hereinafter *Seeds of Change*].

<sup>3</sup> Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 186 (2008).

<sup>4</sup> *Id.* at 187.

<sup>5</sup> *Seeds of Change*, *supra* note 1; *See also* Joy & Kuehn, *supra* note 2, at 187 (noting that CLEPR funded clinical programming from 1968 to 1978).

<sup>6</sup> *Seeds of Change*, *supra* note 1; Joy & Kuehn, *supra* note 2, at 188.

<sup>7</sup> Joy & Kuehn at 188.

pointed out in the film, today all ABA-approved law schools have clinical programs.<sup>8</sup> That is, clinical programs in 197 law schools.<sup>9</sup>

So, you are stepping into a movement in legal education that has, in the past forty years, gone from fledgling to pervasive. In the process, the movement has had a significant impact on approaches to classroom teaching and on what law schools promote as institutional qualities.<sup>10</sup> The question is, how well established are clinical programs in the overall legal education venture?

### III. Integration of Clinical Programs as a Goal

In the film, Sue Bryant observes that clinics are now definitely integrated into legal education.<sup>11</sup> This is true at City University of New York Law School where Professor Bryant teaches, at Dave Clark School of Law, and to some extent at a few other schools, but is not remotely the case at the vast majority of law schools.<sup>12</sup> EDUCATING LAWYERS, the Carnegie-funded analysis of legal education issued last year, recommends that law schools should “offer an integrated curriculum” that joins lawyering, professionalism, and legal analysis from the start.<sup>13</sup> This is consistent with the recommendations in BEST PRACTICES FOR LEGAL EDUCATION, also published in 2007, as a project of the Clinical Legal Education Association (CLEA).<sup>14</sup> Prior to both *Best Practices* and *Educating Lawyers*, the MacCrate Report in 1992 and other earlier reports made similar recommendations.<sup>15</sup>

#### A. Why Integration is Important

There are a number of sound reasons for connecting clinical programs to the rest of the legal education endeavor throughout law school. Clinics provide a major aspect of the law school’s community service commitment, and they model the lawyer’s responsibility to help assure access to justice.<sup>16</sup> Clinics provide a theoretical basis for lawyering methods such as reflective processes, case theory development, attention to client autonomy and informed choice, approaches to interviewing, counseling and negotiation, effective trial practice, and many other aspects of the lawyering enterprise.<sup>17</sup> Clinics also provide the theoretical basis for teaching methods that

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<sup>8</sup> Seeds of Change, *supra* note 2; Joy & Kuehn, *supra* note 3, at 188 (“Today, every ABA-approved law school offers in-house clinical courses, externships, or both.”).

<sup>9</sup> THE ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS i (2009 ed.).

<sup>10</sup> Seeds of Change, *supra* note 2 (observing the significant impact clinical teachers have had on the way law is taught today).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* See also Joy & Kuehn, *supra* note 3, at 191-192.

<sup>13</sup> WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 4 (2007).

<sup>14</sup> ROY STUCKEY & OTHERS, BEST PRACTICES FOR LEGAL EDUCATION vi (2007).

<sup>15</sup> SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]; *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508 (1992); AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979).

<sup>16</sup> See Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 998 (2004).

<sup>17</sup> See GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1979).

engage students actively and critically in the learning process and enrich learning by connecting it to its functional application.<sup>18</sup>

In the film, Michael Meltsner observes that “our impact was far less than we had hoped.”<sup>19</sup> While Professor Meltsner framed his comment in terms of clinical legal education having a greater impact on access to justice and achieving civil rights objectives, he also captures the limited impact of clinical education on law school curricula. Although there have been significant changes over the last few decades in how law is taught in the classroom—many of which, as David Barnhizer observed, reflect the impact of clinical methodology, the value of experiential learning has not been acknowledged or fully understood by the academy.<sup>20</sup>

Carnegie’s *Educating Lawyers* found that the failure to incorporate clinical faculty and courses fully into the law school sends a message to law students that such courses are not valued.<sup>21</sup> In *Educating Lawyers*, it was observed that many clinics are taught by, “A faculty that is not typically tenured and that has lower academic status. In many of the schools . . . visited, students commented that faculty view courses directly oriented toward practice as of secondary intellectual value and importance.”<sup>22</sup> It is not hard to see how this would impact student understanding of what it is important to learn.

## **B. Clinics are not Integrated**

If we consider that clinics are to be found in just about every law school, a need for integration may seem unnecessary and inconsistent with the general approach to law school curricula. There is, for example, no specific concern about connecting what is taught in torts with what is taught in constitutional law or in contracts courses. Yet, inattention to the role clinical programs should play is troublesome because the programs offer an explicit bridge between areas of law and professional practice, and this bridge is shamefully missing in the professional preparation law schools are supposed to offer.

The lack of integration can be seen in several aspects of curricular development and emphasis. Law schools, for the most part, consider clinics as another upper division course that is neither core nor necessary for successful bar passage or professional competence.<sup>23</sup> Clinical course work is rarely connected to other courses within law school, despite the fact that student practice draws on a range of law covered in substantive classes.<sup>24</sup>

Furthermore, the ABA Standards for Approval of Law Schools (“ABA Standards”) require schools to prepare students both for admission to the bar and effective and responsible participation in the legal profession.<sup>25</sup> However, more attention is paid to the former than the latter, even though bar passage requirements for law schools have only recently moved faculties to introspection about methodology. The ABA Standards also specifically require substantial instruction in a range of lawyering skills and substantial opportunities for appropriately

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<sup>18</sup> *Id.*

<sup>19</sup> *Seeds of Change*, *supra* note 2.

<sup>20</sup> *Id.*

<sup>21</sup> SULLIVAN ET AL., *supra* note 13, at 94.

<sup>22</sup> *Id.* at 87-88.

<sup>23</sup> See Margaret Martin Barry, Jon Dubin & Peter Joy, *Clinical Legal Education for This Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 38 (2000).

<sup>24</sup> *Id.*

<sup>25</sup> SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 301(a) (2007-2008) [hereinafter ABA STANDARDS, Standard \_\_\_\_].

supervised real-life practice experiences.<sup>26</sup> These accreditation standards reflect what the studies have consistently indicated. Yet, law schools manage to narrow or ignore them.

Essentially, law schools tend to pursue their missions based on the conviction that professional competence will evolve from reading casebooks and taking exams, despite evidence and the considerable critique to the contrary. When pressed, preparation for effective and responsible participation in the profession is not really seen as a law school obligation. The expectation is that students will learn after law school. By and large, they do learn. Unfortunately, they do so at some risk to clients and not from the threshold that their law degrees suggest.

#### **IV. The Status and Role of Clinical Faculty**

Despite many glowing references to law school clinical programs in glossy brochures and dean announcements, ambivalence towards clinical legal education is also reflected in the tortured language of ABA Standard 405(c) and its Interpretations.<sup>27</sup> Standard 405(c) is the standard that addresses the status of clinical faculty. It allows for something less than the security of position and role in governing the law school contemplated for tenure track faculty.<sup>28</sup>

Why is the status of clinical faculty important? First, having something less than tenure can affect program integrity. The ability to plan for clinical programs and pursue service and teaching goals is tied to the sense of security that clinical faculty have within the law school. Second, having something less than tenure diminishes the ability to influence the direction of the law school. Governance is an important aspect of the law teacher's role. It allows for participation in the development of the curriculum, including the integration of clinical programs, and often the development and continuation of clinical programs. It allows for input on student admissions in most schools. It allows for influence with regard to development of the law school mission. It allows for decisions regarding faculty hires, and this has an impact on every aspect of executing the school's mission.

The status provided to tenure-track faculty is also important for clinical faculty because it protects their academic freedom in ways that are understood within the academy.<sup>29</sup> The knowledge that decisions made regarding

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<sup>26</sup> ABA STANDARDS, Standard 302.

<sup>27</sup> ABA STANDARDS, Standard 405(c). (“Professional Environment . . . A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.”). *See also* ABA STANDARDS, Interpretation 405-6; ABA STANDARDS, Interpretation 405-7; ABA STANDARDS, Interpretation 405-8.

<sup>28</sup> Joy & Kuehn, *supra* note 3, at 224. After Northwestern University School of Law was found not to be in compliance with Standard 405(c) the school argued that while a majority of their clinical faculty were on one-year contracts they still had a form of security position that was reasonably similar to tenure because the university had an academic freedom policy that the law school followed. They argued that they were in compliance with Interpretation 405-6 because of language that stated that “long-term” contract means a five-year contract or “other arrangement sufficient to ensure academic freedom.” The Accreditation Committee agreed with this narrow reading of the rule essentially equating short contracts with long-term contracts and creating confusion with respect to the 405(c) Standard which is supposed to provide security of position reasonably similar to tenure. *Id.* at 224-27.

<sup>29</sup> *Id.* at 224 – 27.

cases, students, community activity, writing are protected goes a long way to giving clinical faculty the confidence needed to be effective, inside and outside of the institution.

Another consideration is retention. Clinical faculty are less likely to stay in schools where second-class status is offered. Apart from the other issues listed, it is a matter of basic fairness. Unless clinicians accept that the teaching they are doing in the law school is less strenuous, less important or requires less accomplishment, then it is hard to view status that is less than that enjoyed by tenure track faculty as fair. Similarly, the fact that conditions and pay are less favorable than what is offered to tenure-track faculty raises issues of fairness. One basis for distinction might be that the nine-month contracts for tenure-track faculty are unnecessary if writing is not required of clinical faculty. Furthermore, the three-month period can provide a break in service to clients unless coverage is provided. However, if writing is expected, then there is no excuse for less than a nine month contract, and whatever is required should be a point of negotiation that achieves parity with other faculty.

Law schools, for the most part, have opted for something less than tenure-track status for their clinical faculty. The recent 2008 CSALE Survey of Applied Legal Education (CSALE Survey) indicates that almost 40% of clinical faculty are on long-term contracts, meaning contracts over 5 years.<sup>30</sup> However, long-term contracts are interpreted in a variety of ways.<sup>31</sup> Only 23% of clinical faculty are tenured or on tenure-track; an additional 11.2% are on a clinical tenure track.<sup>32</sup> The remaining clinical teachers are comprised of staff attorneys, fellows, adjuncts or visitors.<sup>33</sup>

## V. Clinical Faculty Diversity

Several years ago when I was chair of the clinical section, I asked Paula Johnson, Professor at Syracuse University College of Law, to chair the clinical program at the annual Association American Law Schools (AALS) meeting with the specific purpose of raising the lack of racial and ethnic diversity in clinical teaching. Professor Johnson, unsurprisingly, did an excellent job of getting clinical faculty, who as a group tend to express deep commitment to countering racism and pursuing inclusion, to unpack some of their own prejudices with regard to hiring. The session included exercises in which participants were asked to identify hiring criteria that they viewed as important. Some of these criteria, such as the opportunity to do a considerable amount of volunteer work, were discussed as unavailable to applicants from poor and working class backgrounds, which in turn tended to exclude racial and ethnic minorities.

Shortly after that program, Jon Dubin wrote an article in which he observed that:

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<sup>30</sup> Survey, *Center for the Study of Applied Legal Education, Preview of the CSALE 2007-08 Survey of Applied Legal Educators* (Powerpoint Presentation 2008 shown at the AALS Section on Clinical Legal Education's Town Hall Meeting in Tucson, Arizona); E-mail from David Santacroce, University of Michigan Law School, to Margaret Martin Barry, Catholic University of America, Columbus School of Law (Aug. 3, 2008, 17:52:00 EST) (on file with author) [hereinafter CSALE Survey].

<sup>31</sup> *See id.* For an example of the way one law school has interpreted long-term contracts *see Joy & Kuehn, supra* note 3, at 224-26.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

The majority of law schools have no clinicians of color, virtually no policy setting clinical directors of color outside of historically black or Puerto Rican law schools, and clinicians of color generally experience less job security, lower pay and lesser job prerequisites than white clinical faculty. . . There is much talk about teaching diversity among clinicians, but actions make a different statement.<sup>34</sup>

Professor Dubin reported that in 1998-99, while virtually every law school had a “clinic” course, 69% had no clinicians of color.<sup>35</sup> He discussed that this lack of diversity would narrow the scope of clinical practice and pedagogy, and he provided specific suggestions for turning this particular aspect of the clinical movement around.<sup>36</sup> Despite the observations and specific recommendations in Professor Dubin’s article, the CSALE Survey reported that the change in the composition of who is teaching in clinics has not been significant. According to this study, of all law school clinics that responded, 11.5% of clinicians are people of color, with a little over 4% being African American and 2.7% Hispanic.<sup>37</sup>

I do not suggest that race and ethnic background are the only, or even sufficient, sources of connection with students and clients of color. However, this diversity does change the dynamic within the clinic and can lead to greater awareness of assumptions, both overt and implicit, that affect what we do.<sup>38</sup>

As you step into your roles as clinical faculty, it is my hope that you will turn this aspect of the clinical legal education movement around. By doing so, you will model the cultural sensitivity and inclusive practices your predecessors have identified so well.<sup>39</sup>

## VI. Global Clinical Movement

The clinical movement that has developed over the past several decades in the United States has had its impact throughout the world. It is now part of a global legal education movement that has allowed for renewed

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<sup>34</sup>John C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 HASTINGS L.J. 445, 447 (2000).

<sup>35</sup>*Id.* at 450.

<sup>36</sup>*Id.* at 473-76.

<sup>37</sup>CSALE Study, *supra* note 30.

<sup>38</sup>*See* Dubin, *supra* note 34, at 453 (discussing the value of diversity in clinical legal education). *See Generally* Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1989) (describing the effects of the widespread minority perception of bias within the American court system); R. Richard Banks, Jennifer L. Eberhardt & Lee Ross, *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CAL. L. REV. 1169 (2006) (exploring the ways race continues to influence individuals’ decision making and behavior creating racial bias within criminal justice system despite principles of antidiscrimination and the disavowal of racism).

<sup>39</sup>Two clinicians who have been a great resource for raising consciousness and providing tools for bridging gaps with regard to the considerable differences that influence the work of clinical educators are Susan Bryant and Jean Koh Peters. For examples of their work *see generally* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001); Jean Koh Peters, *Habit, Story, Delight: Essential Tools for the Public Service Advocate*, 7 WASH. U. J.L. & POL’Y 17 (2001); SUSAN BRYANT & JEAN KOH PETERS, *Five Habits for Cross-Cultural Lawyering*, in RACE, CULTURE, PSYCHOLOGY AND LAW 47 (Kimberly Holt Barret & William H. George eds., 2005); JEAN KOH PETERS, *Representing the Child-in-Context: Five Habits of Cross Cultural Lawyering*, in REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (3<sup>rd</sup> ed., 2007); SUSAN BRYANT & JEAN KOH PETERS, *Six Practices for Connecting with Clients Across Culture: Habit Four, Working with Interpreters and Other Approaches*, in THE AFFECTIVE ASSISTANCE OF COUNSEL (Marjorie A. Silver ed., 2007).

energy in our clinical teaching and has been the source of considerable insight into our approaches to clinical teaching.<sup>40</sup>

Frank Bloch, who has been one of the leaders of the global movement, identifies the central theme of access to justice as unifying the diverse demands on clinical legal educators across the globe.<sup>41</sup> Professor Bloch reminds us that clinical legal educators are connected in two important ways. First, inaccessible justice anywhere in the world compromises the status of justice throughout the world, particularly when it results from a structural failure of national legal regimes. Second, inaccessible justice creates instability that reverberates far beyond national and regional bounds.<sup>42</sup>

Frank Bloch, Clark Cunningham, N.R. Madhava Menon, and several others took the lead in organizing the first Global Alliance for Justice Education Conference in Trivandrum, India in 1999, thereby setting the stage for conferences and exchanges that have continued to grow and enrich those who attend.<sup>43</sup> The Ford Foundation, Open Society, the Public Interest Law Initiative (PILI), and the ABA's Europe and Eurasia Program (also known as CEELI) have had much to do with spreading our particular vision of what clinical legal education should provide.<sup>44</sup> For those U.S. clinicians who have had the chance to share teaching methodology, there has been the excitement of being exposed to students who have a level of enthusiasm and dedication that is not always present in our students, the excitement of helping to envision significant structural change, and the opportunity to learn from others who are dedicated to moving the educational experience forward.<sup>45</sup>

Teaching in and working with faculty in other countries who are committed to access to justice helps build awareness of and recommitment to these goals within our own borders, and reminds us of our connection to others who are struggling with the same issues.<sup>46</sup> We come with "beginner's eyes" to these new venues, reminded as we look of the connections to what we have failed to see at home. At a minimum then, connecting with the community of clinical and other dedicated social justice teachers beyond our borders is something to consider when you start to feel the edge wear—when the beginner's eyes you have today give way to familiarity.

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<sup>40</sup> See generally Leah Wortham, *Aiding Clinical Legal Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 CLIN. L. REV. 615 (2006) (Advocating donor support for clinical education projects abroad and outlining minimal requisites for such projects, such as direct experience with disadvantaged clients, faculty involvement, and sincerity and integrity of organizers) Barry, Dubin & Joy, *supra* note 22 (discussing issues that are important for the future of clinical legal education with a focus on the transformation of legal education and the role of clinical legal education in training competent, ethical practitioner); Frank Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. U. J.L & POL'Y (forthcoming 2008) (discussing clinical legal education's commitment to access to justice from a global perspective and arguing that the emerging global clinical movement can strengthen that commitment and increase the level and quality of law school based access to justice activity worldwide).

<sup>41</sup> See Bloch, *supra* note 40.

<sup>42</sup> See *id.* at 11.

<sup>43</sup> See Inaugural GAJE Conference, <http://www.gaje.org> (follow "Inaugural Worldwide Conference" hyperlink) (last visited Aug. 3, 2008).

<sup>44</sup> See Wortham, *supra* note 40, at 618.

<sup>45</sup> My observations are based in part on my personal experiences with teaching law students outside of the United States. These experiences have been through co-teaching a lawyering seminar in Columbus School of Law's American Law Institute in Krakow, Poland; as a Fulbright Senior Specialist co-teaching a lawyering course at NALSAR Law University in Hyderabad, India; and as a Fulbright Scholar teaching lawyering at the University of Montenegro in Podgorica.

<sup>46</sup> See Wortham, *supra* note 40, at 677-78.

## VII. Organizations and Resources

One of the aspects of your work that can be time consuming and demanding but yield personal and professional benefits is your participation in organizations related to your work as clinicians. Apart from the local and national organizations directly related to your areas of expertise, there are a number of organizations that are of specific interest with regard to legal education.

### A. Clinical Legal Education

Two organizations and one law review are specifically supportive of clinic teachers. The first is the AALS Section on Clinical Legal Education. The Section has and continues to play an important role in the development of clinical teachers. Through its workshops and conferences, it has facilitated the development and sharing of clinical teaching methods.<sup>47</sup> It has also been the major source of connections made within the incredibly supportive network of clinicians. A clinical conference is held once a year, in early May, and the section has a program and luncheon at the annual AALS meeting.<sup>48</sup> In 2004, it began offering a specific workshop for new clinicians in alternate years, the workshop you are attending.<sup>49</sup> The Section has also encouraged regional clinical legal education conferences. These smaller gatherings, such as the Midwest Clinical Legal Education Conference<sup>50</sup> and the Mid-Atlantic Clinical Theory and Practice Workshop<sup>51</sup>, have provided opportunities for focused discussion of specific topics or for scholarship presentations.

Another organization specifically for clinicians is the Clinical Legal Education Association (CLEA). CLEA was formed in 1992, to enable direct advocacy on behalf of clinical faculty and teaching, both inside and outside of the academy and to support the development of clinical teaching.<sup>52</sup> CLEA started offering workshops for new clinicians well before AALS did so, and it still conducts one in connection with the May AALS Clinical Conference in alternate years to the AALS offering.<sup>53</sup>

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<sup>47</sup> See Gateway to Clinical Legal Education, [http://cgi2.www.law.umich.edu/\\_GCLE/Index.asp](http://cgi2.www.law.umich.edu/_GCLE/Index.asp) (last visited Aug. 3, 2008).

<sup>48</sup> E-mail from Tracie Thomas, Senior Meetings Manager, Association of American Law Schools, to Jessica Greenbaum, Research Assistant to Margaret Martin Barry, Catholic University of America, Columbus School of Law (Jul. 29, 2008, 10:22:00 EST) (on file with author).

<sup>49</sup> *Id.*

<sup>50</sup> E-mail from Michael Pinard, President, Clinical Legal Education Association, to Margaret Martin Barry, Catholic University of America, Columbus School of Law (Jul. 28, 2008, 12:01:00 EST) (on file with author).

<sup>51</sup> *Id.* The Mid-Atlantic Clinical Theory and Practice Workshop occurs several times during the academic year, offering regional scholars a chance to present papers and receive feedback from other clinical colleagues. A similar gathering is sponsored by New York Law School, though it is a more formal affair where presenters are specifically invited. The Mid-west Conference is an annual event designed to develop teaching methods. Others, such as the Northwest and the Northern California conferences also focus on issues related to clinical pedagogy, though unlike the Mid-West Conference, there have only been a few. *Id.*

<sup>52</sup> See Clinical Legal Education Association, Mission Statement, <http://www.cleaweb.org/about/mission.html> (last visited Aug. 3, 2008).

<sup>53</sup> *Id.*

The Clinical Law Review is a peer reviewed outlet for clinical scholarship. It was formed in 1994, and is supported by the AALS clinical section, CLEA, and New York University School of Law.<sup>54</sup> You will find a wealth of articles on clinical pedagogy and a host of other issues that inform our work as clinical faculty. The Law Review is also dedicated to encouraging quality clinical scholarship and to that end will be hosting its second Workshop in October 2008.<sup>55</sup>

In terms of seeking support and keeping informed, there are the law clinic listserv and the list serve for law clinic administrators,<sup>56</sup> the externship listserv,<sup>57</sup> and a new clinic blog.<sup>58</sup> Participants are generous in sharing information and it is a good way to keep abreast of events, concerns and opportunities.

## **B. Legal Education**

I mentioned the Global Alliance for Justice Education (GAJE) above.<sup>59</sup> GAJE is dedicated to “achieving justice through education,” and identifies clinical legal education as a key component of its mission.<sup>60</sup> GAJE is a collaboration between non-governmental organizations and law teachers, and is intended to reach out to all involved in justice education.<sup>61</sup> GAJE is now embarking on its fifth worldwide conference, to be held in December in Manila, Philippines.<sup>62</sup>

The Society of American Law Teachers (SALT) is a community of progressive law teachers that was formed approximately thirty-five years ago by New York Law School Professor Norman Dorsen and others.<sup>63</sup> It is well known for the positions it has taken on diversity, academic freedom, immigration, torture, and other issues regarding the rule of law. SALT is also known for its bi-annual teaching conferences, the next of which will be in Hawaii in Spring 2010, and its annual public interest retreats.<sup>64</sup> Many clinic law teachers are involved in the organization, including its leadership, as are several deans.<sup>65</sup>

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<sup>54</sup> See Clinical Law Review: A Journal of Lawyering and Legal Education, <http://www.law.nyu.edu/journals/clinicallaw/> (last visited Aug. 3, 2008); see also Stephen Ellman, Isabelle R. Gunning & Randy Hertz, Foreword, *Why Not a Clinical Lawyer-Journal?*, 1 CLINICAL L. REV. 1, 4 (1994).

<sup>55</sup> The first Clinical Law Review Workshop was held in May 2006. The date of the second Workshop is October 18, 2008. The design of the workshops is to divide the drafts submitted by applicants according to subject matter. Each group is facilitated by one or two members of the Clinical Law Review Board and the attendees will meet throughout the day in their small groups to “workshop” the draft of each member of the group. See [http://www.law.nyu.edu/journals/clinicallaw/documents/CLR\\_Workshop\\_in\\_2008.pdf](http://www.law.nyu.edu/journals/clinicallaw/documents/CLR_Workshop_in_2008.pdf) (last visited Aug. 4, 2008).

<sup>56</sup> See Clinical Legal Education, <http://www.washlaw.edu/subject/lawclinic.html> (last visited Aug. 3, 2008).

<sup>57</sup> To subscribe, email [listserv@lists.cua.edu](mailto:listserv@lists.cua.edu) and put the following request in the body of the message: subscribe letern.

<sup>58</sup> See Clinicians with not Enough to Do: A Reverent and Irreverent Look at Clinical Legal Education, [http://kotplow.typepad.com/clinicians\\_with\\_not\\_enough/](http://kotplow.typepad.com/clinicians_with_not_enough/) (last visited Aug. 3, 2008).

<sup>59</sup> See Global Alliance for Justice Education, <http://www.gaje.org> (last visited Aug. 3, 2008).

<sup>60</sup> See Mission Statement of the Global Alliance for Justice Education, <http://www.gaje.org> (follow “Organization” hyperlink; then follow “Mission Statement” hyperlink) (last visited Aug. 3, 2008).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See SALT’s History, <http://www.saltlaw.org/salt039s-history> (last visited Aug. 3, 2008).

<sup>64</sup> See Public Interest & Social Justice Retreats, <http://www.saltlaw.org/public-interest-amp-social-justice-retreats> (last visited Aug. 3, 2008).

<sup>65</sup> Margaret Martin Barry is currently the co-president of SALT; Professor Holly Maguigan, a clinician at New York University Law School, was co-president from January 2004 to January 2006. During AALS’s annual meeting in San Diego this coming January, SALT will honor Steve Wizner, a clinician at Yale Law School, with its prestigious teaching award. See Officers, <http://www.saltlaw.org/officers> (last visited Aug. 3, 2008).

The American Bar Association's Section of Legal Education and Admissions to the Bar sets standards for and accredits law schools.<sup>66</sup> Accreditation, of course, is connected to the ability to sit for the bar in most states.<sup>67</sup> These functions and other activities of the Section are run by the Council of the Section<sup>68</sup> and supported by the office of the Consultant to the Council.<sup>69</sup> For the first time, the incoming chair of this regulatory section council will be a clinician, Professor Randy Hertz.<sup>70</sup>

Of current note with regard to this ABA Section are three reports that may have a significant impact on clinical teaching. After the 2007 Report of the Accreditation Policy Task Force made a number of recommendations, it was determined that some of the recommendations required additional review and study.<sup>71</sup> Three special committees were created to follow up on recommendations of the Task force; The Outcome Measures Committee, the Special Committee on Security Position, and the Special Committee on Transparency.<sup>72</sup> Each committee submitted an interim report to the Council in May 2008.<sup>73</sup>

The Interim Report of the Outcome Measures Committee recommended that the ABA Standards be re-framed to focus on outcome, as opposed to input, measures.<sup>74</sup> Thus, instead of looking at areas of instruction students should cover, schools would be assessed based on the types of lessons students should have learned.<sup>75</sup> The Report of the Special Committee on Security of Position explored whether values protected by tenure can be preserved in ways other than the approach taken in the current ABA Standards for Approval of Law School so as to allow more freedom, within certain boundaries, for schools to experiment with different models designed to achieve the same objectives.<sup>76</sup> The Report gives support for alternatives to tenure.<sup>77</sup> The Preliminary Report of the Special

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<sup>66</sup> See American Bar Association, Section of Legal Education & Admissions to the Bar, Section Mission Statement, <http://www.abanet.org/legaled/section/missionstatement.html> (last visited Aug. 3, 2008).

<sup>67</sup> See American Bar Association, Section of Legal Education & Admissions to the Bar, ABA Accreditation/Approval of Law Schools, <http://www.abanet.org/legaled/resources/faq.html> (last visited Aug. 3, 2008). Criteria to sit for the bar examination are set by each state. In every state graduation from an ABA-approved law school qualifies a person to sit for the bar. Many states do not allow a person to sit for the bar unless that person holds a J.D. degree from an ABA-approved law school. Some states, however, have their own rules about legal education, and allow graduates of non-ABA-approved schools to sit for the bar. *Id.*

<sup>68</sup> See American Bar Association, Section of Legal Education & Admission to the Bar, About the Section of Legal Education, <http://www.abanet.org/legaled/section/about.html> (last visited Aug. 3, 2008).

<sup>69</sup> See American Bar Association, Section of Legal Education & Admission to the Bar, ABA Consultant on Legal Education, <http://www.abanet.org/legaled/section/consultant/consultant.html> (last visited Aug. 3, 2008).

<sup>70</sup> See American Bar Association, Section of Legal Education & Admission to the Bar, 2007-08 Council, <http://www.abanet.org/legaled/section/council.html> (last visited Aug. 3, 2008).

<sup>71</sup> Announcement from Chief Justice Ruth McGregor, Chairperson, Legal Education and Admissions to the Bar, to Special Committee Appointees and Interested Legal Education Organizations (Oct. 8, 2007), *available at* <http://www.abanet.org/legaled/committees/subcomm.html> (follow "From the Section's Chairperson" hyperlink).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See *Interim Report of the Outcome Measures Committee*, 2008 A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B. 5, *available at* <http://www.abanet.org/legaled/committees/subcomm.html> (follow "Interim Report of the Outcome Measures Committee" hyperlink) (last visited Aug. 3, 2008).

<sup>75</sup> *Id.*

<sup>76</sup> See *Report of Special Committee on Security of Position*, 2008 A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B. 12, *available at* <http://www.abanet.org/legaled/committees/subcomm.html> (follow "Report of Special Committee on Security of Position" hyperlink) (last visited Aug. 3, 2008).

<sup>77</sup> *Id.*

Committee on Transparency recommended that more transparency is needed in the accreditation process.<sup>78</sup> These issues are expected to be the subject of continued discussion and possible modification of the Standards in the near future.<sup>79</sup>

### VIII. Closing

In the film, Steve Wizner spoke of his surprise in 2001, to learn that there were 1,768 clinicians.<sup>80</sup> Today, there are 1,674 members of the Clinical Legal Education Section of AALS alone.<sup>81</sup> It is one of the largest sections in the AALS.<sup>82</sup> Though, as William Pincus points out in the film, the clinical legal education movement has not revolutionized legal education, the numbers clearly suggest that clinical legal education is here to stay.<sup>83</sup> Each of you now join in figuring out how best to have this movement serve a vision of how lawyers can make the best contribution. Jerome Frank is quoted as saying that “clinical legal education is focused on the relationship between lawyers and clients and the role lawyers can play in society.”<sup>84</sup> Implicit in this is teaching excellence in a full range of skills honed to produce the best contribution to achieving social justice. There are several specific challenges for the clinical teacher.

First, this means that clinicians must seek currency, proficiency and exemplary service in the area of professional practice taught. It involves continuing to evaluate the demands of and our approach to service, keeping up with developments in practice, and influencing the approach to practice.

Secondly, clinicians must assess and reassess our approach to teaching. The methods developed by those you saw in the film, Barnhizer,<sup>85</sup> Bergman,<sup>86</sup> Bellow and Moulton<sup>87</sup> have been revised and critiqued.<sup>88</sup> Others have

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<sup>78</sup> See *Special Committee on Transparency Preliminary Report*, 2008 A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B. 7-11, available at <http://www.abanet.org/legaled/committees/subcomm.html> (follow “Section of Legal Education Special Committee on Transparency- PRELIMINARY REPORT” hyperlink) (last visited Aug. 3, 2008).

<sup>79</sup> The Council of the ABA Section of Legal Education and Admissions to the Bar met in August 2008 to discuss these reports and referred each of them to the Section’s Standards Review Committee for further consideration and recommendation.

<sup>80</sup> Seeds of Change, *supra* note 2.

<sup>81</sup> E-mail from Tracie Thomas, Senior Meetings Manager, Association of American Law Schools, to Margaret Martin Barry, Catholic University of America Columbus School of Law (Jun. 24, 2008, 17:21:00 EST) (on file with author).

<sup>82</sup> *Id.* The Clinical Legal Education Section has 1,674 members; the Constitutional Law Section has 1,696 members; the Criminal Justice Section has 1,434 members; the Legal Writing Section has 1,636 members; and the Women in Legal Education Section has the most, with 1842 members. *Id.* There are 170 AALS member schools, and 29 fee paid schools. *Id.*

<sup>83</sup> Seeds of Change, *supra* note 2.

<sup>84</sup> *Id.*

<sup>85</sup> See generally David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 N.Y.L. SCH. L. REV. 87 (1990).

<sup>86</sup> See generally DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT CENTERED APPROACH* (Thomson West 2d ed. 2004) (1991).

<sup>87</sup> See generally BELLOW & MOULTON, *supra* note 16.

<sup>88</sup> See e.g. David F. Chavkin, *Spinning Straw Into Gold: Exploring the Legacy of Bellow and Moulton*, 10 CLINICAL L. REV. 245 (2003); David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191 (2003); Frank S. Bloch, Susan L. Brooks, Alex J. Hurder & Susan L. Kay, *Filling in the ‘Larger Puzzle’: Clinical Scholarship in the Wake of the Lawyering Process*, 10 CLINICAL L. REV. 221 (2003); Michael Meltsner, *Celebrating the Lawyering Process*, 10 CLINICAL L. REV. 327 (2003).

provided texts on lawyering and on the clinical experience.<sup>89</sup> The Clinical Law Review is replete with articles analyzing the approaches to clinical teaching.<sup>90</sup> This attention to effective lawyering and to teaching method cannot be mistaken as the basis for complacency. The challenge to be effective teachers who inspire our students is demands your creativity.<sup>91</sup>

Third, we cannot be effective in understanding the needs, particularly of the broad underserved population, if clinicians are persistently homogenous as a group. There is simply too little racial diversity and that has implications for how clients and their issues are viewed. It also has implications for what students learn with regard to the work environment and who are reliable resources for lawyering expertise.

Fourth, it is important to connect with the rest of the law school faculty. It is all too easy to be misunderstood and to misunderstand what is influencing the direction of the school if you are isolated. You also miss the opportunity to share your work and to benefit from other faculty sharing theirs. If isolated, important work that you are doing is less likely to be recognized or appreciated by your colleagues. While it is difficult to add this to many other demands that will seem and often be more pressing, this is something worth pursuing if for no other reason than the integrity of your program and your ability to continue your work in it.

Fourth, it is important to pay attention to ways of supporting the students who are committed to public interest work, whether as a full time or pro bono activity. Help them to see how they can manage their goals, some of which may conflict with their commitment to service. Connected to this is the challenge of inspiring students who are not so inclined to understand their role in assuring that there is justice and that it is accessible.

So, I end with an observation. When it is all said and done, I can think of no work I would rather do. I have had the benefit of serving clients, having some structural impact on access to legal remedies in my community, worked with and hopefully inspired some students, and been a part of this educational movement that strives to serve justice and those who care about it. I have had the privilege of being paid and supported by an institution that has allowed me to do this. I work with supportive colleagues who I care about. I feel very fortunate, and I hope you will too.

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<sup>89</sup> See e.g. ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION (Aspen Publishers 1990); DAVID E. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS (Anderson Publishing Co. 2002).

<sup>90</sup> See J.P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography*, 2 CLINICAL L. REV. (SPECIAL ISSUE) 1 (2005).

<sup>91</sup> See generally STUCKY & OTHERS, *supra* note 14.