



THE PRESIDENT'S MESSAGE

Transformation and Training in the Law: Serving Clinical Legal Education's Two Masters

By Rachel Moran, University of California, Berkeley

My AALS Presidential Address, reported in the previous newsletter, noted that my theme for next year's convention will be "Transformative Law." In this and my two remaining newsletter columns, I will explore three domains of transformative law: experiential learning, scholarship, and classroom teaching. This column will address the first area and will focus on what is most likely considered the greatest transformative advance in legal education over the past several decades: the rise of clinical legal education programs.

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Elizabeth Hayes Patterson, Georgetown to Serve as Deputy Director of AALS

Patterson to begin her second term as AALS Deputy Director in August, will serve one-year term

Professor Elizabeth Hayes Patterson from Georgetown University Law Center will re-join the AALS staff as Deputy Director in August. "I decided that it would be helpful to me if I could benefit from the insights of another person who had recently served as Deputy Director," said Susan Westerbger Prager, in her first address as the AALS Executive Director and Chief Executive Officer to the House of Representatives at the 2009 Annual Meeting in January. Current Deputy Director David A. Brennen, of the University of Georgia law faculty will become dean at the University of Kentucky College of Law this summer.

Professor Patterson received her J.D. from Catholic University. After graduation, she served as a clerk for the Honorable Ruggero J. Aldisert of the U.S. Court of Appeals for the Third Circuit. Before joining the Georgetown faculty in 1980, Professor Patterson served as Chair of the D.C. Public Service (Utilities) Commission. She now teaches Conflicts, Contracts, Race and American Law, and Commercial Law: Sales Transactions at Georgetown University Law Center. From 1993-97, she served as Associate Dean for the JD and Graduate Programs at the Law Center.

Professor Patterson is familiar with the AALS, having served as Deputy Director from 2005-2007. She was also on numerous committees, such as the Committee on Recruitment and Retention of Minority Law Teachers 1991-1993; the Nominating Committee for 1998 Officers and Members of the Executive Committee; the Planning Committee for the Joint AALS, ABA Commission on Women in the Profession and ABA Section of Legal Education and Admissions to the Bar Workshop on "Taking Stock: Women of all Colors in Law School;" and she co-chaired the 2000-2001 AALS Taskforce on Racial Diversity.

Prager noted that she is grateful to Professor Patterson for being willing to return to the AALS at this time and to the Georgetown Law Center for granting a further leave to Professor Patterson to help the AALS in this way.

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President's Message

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Although these programs can cover a range of training techniques, including simulations, here I primarily discuss the live-client clinics.

Introduction

This is a fitting time to consider the future of clinical legal education. This year marks the twenty-fifth anniversary of Anthony Amsterdam's germinal article, which speculated about how developments in the field might be viewed from the vantage point of the twenty-first century.¹ The past decade has seen comprehensive retrospectives on the development of clinical education and an extensive guide from the Clinical Legal Education Association as to how the field should develop.² As part of a study of the professions, the Carnegie Foundation issued a thoughtful and broad exploration of how to educate lawyers, which has implications for all of legal education including clinical legal education. The report already has engendered considerable discussion in the law school world.³

These sources leave little doubt about the promising possibilities of clinical legal education. My concern here, however, is to ask whether clinical legal education could become a victim of its own success. I will address several challenges facing the field, ones that implicate first principles: What is clinical legal

education supposed to accomplish, and what aspects of it are truly fundamental? As I will show, these challenges have their root in the historical origins of today's clinics and their dual mission to advance innovative pedagogy and to promote social justice.

The Root of the Challenges: Clinical Legal Education Serves Two Masters

The clinical movement began to make substantial in-roads into legal education in the 1970s, thanks in substantial part to the Ford Foundation. The movement was forged at a time of legal activism, when the courts were seen as a forum ripe for pursuing social change. The clinical movement, which served clients in need, bore a strong resemblance to the legal aid clinics that had taken root in low-income, disadvantaged communities around the nation. These clinics not only undertook the sort of cases traditionally associated with poverty law, for example, landlord-tenant disputes, but also test-case litigation that attacked the structural causes of inequality.⁴

From the outset, this was controversial work. Some of that controversy was external to the movement: The political nature of the litigation challenged the status quo by

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legal education
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fundamental?*

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¹ Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612 (1984).

² For a comprehensive look back from the turn of the century, see Margaret Martin Barry, et al., *Clinical Education for This Millennium: The Third Wave*, For a comprehensive look back from the turn of the century, see Margaret Martin Barry, et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 5-32 (2000) (hereinafter "Third Wave"). The guide is Clinical Legal Education Association, ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* (2007) (hereinafter "BEST PRACTICES").

³ WILLIAM M. SULLIVAN, ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) (often known as the "CARNEGIE REPORT").

⁴ Third Wave, supra note 2, at 12-19.

President's Message

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demanding that law operate to solve problems rather than to entrench them.⁵ Some of the controversy was internal, as critics attacked lawyers for treating clients as instruments of change rather than as people who set their own agenda in the litigation process.⁶

The primary challenge for the clinical legal education movement was to expand programs from a few law schools to nearly all of them. Universal acceptance was achieved by making pedagogical claims, in particular that the programs would improve students' preparation for legal practice. These claims emphasized the need for a broader training in lawyering skills and the benefits of experiential learning in engaging students' interest and acquainting them with the attorney's role and obligations.⁷

Today, this battle for universal clinical offerings has largely been won. The American Bar Association now requires that law schools offer substantial clinical opportunities as a condition for accreditation; clinics are widely available and sometimes mandatory. Even so, problems of unmet student demand do persist in some schools. Challenges related to the full integration of clinical education into the broader law school curriculum remain. Clinical professors worry that their efforts remain marginalized curricular afterthoughts and that their status is that of academic "second-class citizens." Clinical educators hope that integration will secure these

programs' future and put them on a par with traditional, in-class instruction.⁸

A separate problem has received less notice, however: in promising both pedagogical improvement and the pursuit of social justice, the clinical legal education movement serves two masters. As the movement grows in size and centrality, this problem intensifies. Clinical programs, when more fully assimilated into the law school curriculum, will likely be defined more by their pedagogical contributions than their social justice traditions. Service to low-income clients could become incidental rather than central to the clinics' mission. Clients would be chosen simply because they are the only ones who will accept counsel from second- or third-year law students rather than an experienced, fully credentialed attorney, much as free low-cost dental clinics help dentistry students learn while serving the poor. Helping the needy would remain a fortunate benefit of clinical programs, but a side benefit rather than the metric upon which their success is judged.

With that background, I note three emerging challenges for clinical legal educators.

First, recent reports on the state of legal education have focused on clinics largely as vehicles for skills training and experiential learning, rather than as sites for social justice lawyering. This trend threatens to subordinate the role of serving

the needy as a hallmark of clinical legal education. A new emphasis on outcome-based assessments will only exacerbate this tendency, as clinics are forced to justify their existence by demonstrating direct and immediate gains in student learning.

Second, shifting to a pedagogical focus could result in clinics being less responsive to both diversity and transformation in the legal profession itself. Indeed, assimilation to the standard curriculum could lead clinics to take on the same static qualities that led to the movement's original attacks on narrowly focused and intractable Socratic in-class instruction.

Third and finally, pressures to globalize legal education, including clinics, could further complicate the balance between a student-focused account of clinics that centers on learning and a client-focused account that emphasizes social justice.

Challenge # 1: Focusing on Skills Training May Undermine the Social Justice Origins of Clinics

Recent reports on legal education have focused on clinics almost exclusively with regard to how they better promote skills training and experiential learning. This emphasis on pedagogical benefits, while offered as a value-neutral approach to evaluation, effectively subordinates and marginalizes the social justice mission of clinics.

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⁵ For a description of some of the political controversies surrounding clinics, see Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 *FORDHAM L. REV.* 1971 (2003).

⁶ See, e.g., GERALD P. LÓPEZ, *REBELLIOUS LAWYERING* (1992).

⁷ See, e.g., ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM* (1992) (also known as the MacCrata Report), available at <http://www.abanet.org/legaled/publications/onlinepubs/macrate.html>.

⁸ Peter A. Joy and Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 *TENN. L. REV.* 183, 188-90 (2008).

Type of Registration	Received by May 20	Received After May 20
Conference on Business Associations		
Faculty of Member and Fee-Paid Schools	\$535	\$595
Faculty of Non Fee-Paid Law Schools	\$585	\$645
Workshops on Transactional Law and Work Law		
Faculty of Member and Fee-Paid Schools	\$495	\$545
Faculty of Non Fee-Paid Law Schools	\$545	\$595
Entire Mid Year Meeting (includes conference and both workshops)		
Faculty of Member and Fee-Paid Schools	\$780	\$865
Faculty of Non Fee-Paid Law Schools	\$830	\$915

AALS Mid Year Meeting Conference on Business Associations

June 7-10, 2009

Long Beach, California

Since the last Conference on Business Associations in 1998, business, law, and legal education have all undergone profound change, rendering the field of business associations teaching and scholarship an even more robust and exciting one. Significant changes in business and law have included high-profile corporate failures and scandals in the U.S. and

abroad; rapidly growing numbers of new, unincorporated enterprises; expanding globalization of business and capital market activities; increasing influence of private equity and the privatization of companies seeking shelter from new legislation such as the *Sarbanes Oxley Act of 2002*; and heightened focus on corporate governance, shareholder voice, environmental

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AALS Mid Year Meeting Workshop on Work Law

June 10-12, 2009

Long Beach, California

The law of the workplace, including labor, employment, antidiscrimination, and employee benefits law, is an important and pervasive part of people's lives, and the social and economic culture of the United States and the world. It has also changed substantially in the last 20 years. The physical and organizational contexts in which people work and the nature of work have

changed, as have workers' backgrounds, expectations, commitments, and competing obligations. The relationship between work and other fundamental social and legal regimes, such as the regulation and provision of health insurance and care and the debates around government-provided social safety nets, becomes ever more apparent as the gap widens between the haves and the have-nots in America and around the world.

These remarkable changes in the context and content of work life require significant development and reevaluation of Work Law. Labor and employment litigation now account for

about 12 to 14 percent of the federal courts' docket. Work Law scholarship is increasingly empirical, interdisciplinary, and international. The teaching of Work Law has expanded, even while several of the traditional law school courses that comprise the field have undergone dramatic changes in the last several decades. Labor Law, traditionally focused on collective bargaining in an industrial economy, has been transformed by the globalization of the economy and the diversity of the workforce to include issues of race, gender and immigration status. The at-will paradigm that dominated Employment Law has been modified in important respects by case law and a proliferation of statutes that apply to individual employees.

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Planning Committee for the AALS Workshop on Work Law

Anthony Baldwin, Mercer University
 Catherine L. Fisk, University of California, Irvine
 (at Duke University when Planning Committee met)
 Ruben J. Garcia, California Western School of Law,
Chair
 Harry G. Hutchison, George Mason University
 Kevin R. Johnson, University of California, Davis
 Michael L. Selmi, The George Washington
 University
 Jay Tidmarsh, Notre Dame Law School

AALS Mid Year Meeting Workshop on Work Law

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And the content of Employment Discrimination courses has grown with the enactment of new federal and state laws, including those prohibiting discrimination based on disability and sexual orientation, and the adoption of new frameworks for analyzing forms of discrimination, and institutional dynamics that affect the law. Laws regulating leave, benefits, wages and hours, and a host of other issues have grown and changed. Finally, international issues now find their way into Work Law courses, and are now forming the basis for casebooks and stand-alone courses.

Participants in the 2009 Workshop on Work Law will have a chance to consider these and many other topics. The panels will appeal to law teachers in a diverse group of fields. Panels will address the institutional dynamics of the discrimination law, how Work Law teachers are incorporating the findings of the Carnegie Report into their teaching, and recent Supreme Court decisions.

The Workshop on Work Law will overlap with the Conference on Business Associations: Taking Stock of the Field and the concurrent Workshop on Transactional Law. We think scholars and teachers in diverse and related areas will make connections between their primary fields and Work Law. It is our hope that by attending you come away from the workshop with new ideas for your scholarship and teaching.

Topics:

- Corporate Law Approaches to Employee/Labor Interests
- Changing Nature of Contemporary Employment Discrimination
- How Does Law Change Organizational Culture? The Problem of Compliance with Workplace Law
- Small Group Discussions on Empirical Research on the Workplace
- Teaching Work Law through Simulation and Other Skills-Oriented Methods
- National Origin and Immigration
- Supreme Court Update and Legislation
- Labor Law in the 21st Century
- Concurrent Sessions:
 - Low Wage Work
 - Health Benefits and ERISA Preemption
 - Arbitration
 - Reforming the Content of Work Law Courses

Speakers:

- Sameer Ashar (CUNY)
- Samuel R. Bagenstos (Washington)
- Richard A. Bales (Northern Kentucky)
- Robert Belton (Vanderbilt)
- Mark W. Bennett (Judge, U.S. District Court, Northern District of Iowa, Sioux City, IA)
- Marsha L. Berzon (Federal Appeals Judge, U.S. Court of Appeals, for the Ninth Circuit, San Francisco, California)
- William T. Bielby (University of Illinois, Department of Sociology, Chicago, IL)
- Susan Bisom-Rapp (Thomas Jefferson)
- Matthew T. Bodie (Saint Louis)
- Christopher David Ruiz Cameron (Southwestern)
- Laura J. Cooper (Minnesota)
- Roberto L. Corrada (Denver)
- Scott L. Cummings (UCLA)
- Lauren B. Edelman (California, Berkeley)
- Timothy Glynn (Seton Hall)
- Michael Z. Green (Texas Wesleyan)
- David L. Gregory (St. John's)
- Seth D. Harris (New York Law School)
- Jeffrey M. Hirsch (Tennessee)
- Ann C. Hodges (Richmond)
- Paul L. Hoffman (Schonbrun, De Simone, Seplow, Harris and Hoffman LLP Venice, California)
- Sharona Hoffman (Case Western)
- Maria O. Hylton (Boston University)
- Thomas C. Kohler (Boston College)
- Orly Lobel (San Diego)
- Ann Mc Ginley (Nevada, Las Vegas)
- Colleen E. Medill (Nebraska)
- Maria L. Ontiveros (San Francisco)
- Camille G. Rich (Southern California)
- Leticia Saucedo (Nevada)
- Vicki Schultz (Yale)
- Judith Scott (General Counsel, Service Employees International Union, Washington, DC)
- Paul M. Secunda (Marquette)
- Joseph E. Slater (Toledo)
- Peggie Smith (Iowa)
- Katherine Stone (UCLA)
- Susan P. Sturm (Columbia)
- Dorian Warren (Assistant Professor, Department of Political Science, School of International and Public Affairs, Columbia University)
- Steven L. Willborn (Nebraska)
- Cynthia Williams (Illinois)
- Michael J. Zimmer (Northwestern)

Mid Year Meeting: AALS Workshop on Transactional Law

June 10-12, 2009 Long Beach, CA

“Transactional law” refers to the various substantive legal rules that influence or constrain planning, negotiating, and document drafting in connection with business transactions, as well as the “law of the deal” (i.e., the negotiated contracts) produced by the parties to those transactions. Traditionally, the law school curriculum has emphasized litigation over transactional law. However, many modern lawyers serve corporate clients, and a significant percentage of lawyers engage in some form of transactional practice. Hence, law schools must place greater emphasis on training law students to be transactional lawyers, and should support law faculty engaged in scholarship focused on transactional law. To this end, in 1994, the AALS held a workshop on the transactional approach to law, which sparked experimentation and innovation in teaching and scholarship related to transactional law. Since that time, there have been significant developments in transactional law. This Workshop not only will take stock of those developments, but also will enable participants to gain some in-depth perspective regarding the relative benefits and drawbacks of those developments.

Law schools have attempted to respond to the demand for increased transactional training in a variety of ways, from integrating transactional law into traditional law school courses to developing stand alone “Deals” or “Business Planning” courses. A number of law schools have developed innovative programs in transactional law. This Workshop will enable participants to discuss specific methods of teaching transactional skills with an eye towards ferreting out best practices. Should professors interested in teaching transactional law focus on substantive law, “transactional skills,” (i.e., planning, negotiating, and drafting), economic or other theories of business transactions, or all of the above? Should transactional skills be taught in separate courses or integrated into substantive courses? If taught in separate courses, should such courses be part of the first-year curriculum, integrated throughout the three years, or focused on the upper-level curriculum? How do you modify or supplement the traditional case method to teach students useful transactional skills?

The Workshop also will explore the challenges and benefits that arise for those who write or would like to write transactional scholarship. And as an initial matter, the Workshop will address how best to define “transactional scholarship” in a way that accurately captures the potential breadth and depth of transactional law, and how transactional scholarship differs from traditional legal scholarship. The Workshop

also will explore best practices for scholarship in this area, including methodologies for researching the legal, financial and practical effects of various corporate transactions. The Workshop will feature concurrent works-in-progress sessions, enabling participants to exchange ideas and insights regarding new scholarship related to transactional law.

One important goal of the Workshop is to bring together faculty from different doctrinal areas of law, including faculty who teach in the clinical setting. Transactional law touches many substantive areas of law, and it is closely identified with bankruptcy, business associations, contracts, commercial law, intellectual property, labor and employment law, securities regulation, and taxation. The Workshop will provide a unique opportunity for faculty members to make connections between their primary fields and transactional law, and thus should appeal to a broad spectrum of scholars and teachers.

For a list of topics and speakers for the Mid Year Meeting Workshop on Transactional Law see page 7.

Planning Committee for the AALS Workshop on Transactional Law

Lisa M. Fairfax, University of Maryland,
Chair
Victor Fleischer, University of Illinois
Peter Pitegoff, University of Maine
D. Gordon Smith, Brigham Young
University
Alfred Chueh-Chin Yen, Boston College

Topics and Speakers at the AALS Workshop on Transactional Law

Topics:

- Integrating Transactional Law in the Traditional Courses
- Works-in-Progress: Transactional Scholarship in Business Associations
 - Is Breaking Up that Hard to Do? Reverse Termination Fees and Board Fiduciary Duties in Private Equity Related Transactions
 - How Complete Are Our Capital Markets? Assessing the Role of Financial Derivatives in Going-Private Transactions
 - Should Partnership Tax Define “Merger” and “Division”? (And If so, How?)
 - The Search for an Unbiased Fiduciary in Corporate Reorganizations
- What is the Big Idea?
- Concurrent Sessions:
 - Empirical Study of Contracts
 - Ethics and Social Responsibility of Business Transactions
 - International
 - Legal Profession
 - Non-Profits
- Methods of Scholarship
- Innovations in Transactional Scholarship
 - Information Flow and Fraud Interdiction: An Empirical Study of Law Firm Due Diligence
 - How Transactional Structures Create Value
 - More Than Merely Incidental: An Argument for Third Party Beneficiary Rights in Inner-City Redevelopment Contracts
 - Report on Empirical Investigation of Outsourcing Agreements
- Case Methods
- Teaching Innovations
 - Finance Transactions Concentration
 - Mittal Steel in Liberia
 - Teaching Transactional Business Law Skills Through an Intellectual Property Lens
- Small Groups on Teaching
 - Real Estate Transactions
 - Entrepreneurship
 - Intellectual Property
 - Corporate and Finance
 - International and Comparative

Speakers:

- Afra Afsharipour (California, Davis)
- Iman Anabtawi (UCLA)
- Robert P. Bartlett III (Georgia)
- Margaret M. Blair (Vanderbilt)
- Evelyn Brody (Chicago-Kent)
- Elizabeth F. Brown (Georgia State University College of Business)
- Dan L. Burk (California, Irvine)
- Patience A. Crowder (Tulsa)
- Scott L. Cummings (UCLA)
- Kenneth G. Dau-Schmidt (Indiana, Maurer)
- Thomas F. Disare (SUNY)
- Heather M. Field (California, Hastings)
- George S. Geis (Virginia)
- Eric F. Gerding (New Mexico)
- Franklin Gevurtz (McGeorge)
- Gaurang Mitu Gulati (Duke)
- Shubha Ghosh (Wisconsin)
- Philip Halpern (SUNY)
- Celeste M. Hammond (John Marshall)
- Michelle Morgan Harner (Nebraska)
- Joan Heminway (Tennessee)
- Michael S. Knoll (Pennsylvania)
- Russell Korobkin (UCLA)
- Therese H. Maynard (Loyola, Los Angeles)
- Lisa H. Nicholson (Louisville)
- Christiana Ochoa (Indiana, Maurer)
- Erin O’Hara (Vanderbilt)
- Karl S. Okamoto (Drexel)
- Daniel M.G. Raff (Wharton School, University of Pennsylvania)
- Usha R. L. Rodrigues (Georgia)
- D. Gordon Smith (Brigham Young)
- James C. Smith (Georgia)
- Tina L. Stark (Emory)
- Frederick Tung (Emory)
- Amy Deen Westbrook (SUNY)
- David A. Westbrook (SUNY)
- David Zaring (Wharton School, University of Pennsylvania)

Conference on Business Associations

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and other forms of sustainability, and international human rights. Likewise, law and legal education have witnessed equally significant changes during this same time that impact teaching and scholarship in the business associations area. Some of those changes include new reforms in legal education being spurred by the recent Carnegie study; advances in pedagogy gained from legal education's more vigorous engagement with teaching and learning theory and with skills education; renewed attention to ethics and professionalism; continued expansion of the diversity of scholarly approaches to the field, including empirical, psychological, historic, economic, and critical perspectives; and the growing privatization of dispute resolution, especially for business and commercial matters. Reexamination of scholarship and teaching in the business associations area is particularly imperative now in light of the recent financial crisis and the likely change of regulatory philosophy in Washington.

Characteristic of the growing richness of the business associations field, the AALS received two particularly strong program proposals for this conference. Rather than

choose just one, the program committee was charged with blending the two in order to better canvas the field and include a wider array of viewpoints and topics. As a result, the 2009 AALS Conference on Business Associations will appeal to the full range of teachers and scholars working in the field, for the first time creating an opportunity for diverse theories and analyses of business associations to be in dialogue with one another. The conference will thus be useful to new and experienced teachers and scholars, as well as to those who might characterize their approach to the field as either "traditional" or as "critical" or somewhere in between. Sessions will focus on teaching and on scholarship, will feature leaders in the field and emerging voices, and will include academic as well as practice perspectives.

The substantive sessions will begin on Monday, June 8, with an opening plenary focused on the role of the basic business associations course. Senior, mid-level, and junior professors will discuss not only what is currently being included in the course but what should be in the future. Small group breakout sessions will follow the plenary to allow fuller discussion among colleagues about the content of and pedagogical approaches to the basic course. A second plenary will launch the afternoon sessions, this one devoted to pedagogical techniques and created from proposals selected through a competitive review process. Staying within the teaching methods theme, the second afternoon session will feature a choice among several concur-

rent sessions, including sessions on teaching and learning technology, and transactional emphasis.

The second day of the conference, June 9, will more intentionally engage the rich diversity of thought about business associations. The opening plenary will be directed at the topic of the objectives of public companies and the important question of "who decides" what those objectives are and should be. To permit fuller discussion of this interesting issue, the plenary will be followed by small group breakout sessions about whether and how to address ideological issues in business associations courses. The afternoon of the second day will turn to scholarship, with an opening plenary on current approaches to business associations scholarship. The plenary will engage a variety of approaches, including comparative, empirical, critical, doctrinal, and economic. Concurrent sessions on each of those areas will follow in order to provide attendees the opportunity for more in depth exploration of scholarly perspectives. Concurrent session leaders will be selected from proposals submitted through a competitive review process.

The final day of the conference, June 10, will open with a plenary that directs attention to perspectives from practice. A range of practice perspectives will be featured, including government, venture capital, shareholder litigation (both plaintiff and defense), general counsel, corporate social responsibility, private equity, and small to large firm practices. Small group breakout sessions following the plenary

Planning Committee for the Conference on Business Associations

Stephen M. Bainbridge, University of California, Los Angeles

Dorothy Andrea Brown, Emory University

Thomas W. Joo, University of California at Davis

Donna M. Nagy, Indiana University, Maurer, **Chair**

Steven Ramirez, Loyola University, Chicago

Larry E. Ribstein, University of Illinois

Kelly Y. Testy, Seattle University

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will provide more extended opportunities for discussion with practitioners, with the plenary speakers serving as the conveners of the small groups. The afternoon presents attendees a choice of sessions, both of which are co-sponsored by other AALS Workshops. One track is a Workshop on Transactional Law, which focuses upon the challenge of integrating transactional law into traditional courses, including Business Associations, Bankruptcy, Commercial Law, Labor/Employment, Tax, and Intellectual Property. A second choice of track is a Workshop on Work Law, focusing on corporate law approaches for protecting employee/labor interests.

This conference has been planned for teachers and scholars in the field of business associations (including corporate and non-corporate business forms) and related subjects (including securities regulation, corporate finance, mergers/acquisitions). The conference may also be useful to teachers and scholars working in other substantive areas in which the role and function of the business association (particularly the corporation) in society is of significant academic and/or practical interest.

The conference will be held at the Westin Long Beach Hotel in Long Beach, California June 7–10, 2009. The conference will begin on Sunday, June 7, with an opening reception from 6:00 to 8:00 p.m., followed by three days (June 8–10) of plenary and concurrent sessions. Starting at 2:00 p.m. on the third day, the conference will feature sessions planned in collaboration with two AALS Workshops, one on Transactional Law and the other on Work Law. In addition to the conference sessions, receptions will be held on Sunday, Monday and Tuesday evenings and luncheons will be held on Monday, Tuesday and Wednesday.

Topics:

Role of Basic Course: What it is and Where it is Going?; Business Associations Pedagogy: Innovative Approaches to Teaching Basic and Advanced Courses; What are the Objectives of the Public Companies and Who Decides?; Trends in Business Associations Scholarship; Perspectives from Practice; Concurrent Sessions: (Case Studies in Business Associations Courses; Corporate Finance; Teaching Transactional Courses in Conjunction with Lawyers; Transaction Approaches to Business Associations Pedagogy; Teaching Business Associations Through Other Lenses; How Do Academics and Judges Value Corporate Scholarship?; Interdisciplinary Scholarship; Transaction-Focused Scholarship); Integrating Transactional Law in the Traditional Courses; Joint with Conference on

Business Associations Works-in-Progress (Is Breaking Up that Hard to Do? Reverse Termination Fees and Board Fiduciary Duties in Private Equity Related Transactions; How Complete are our Capital Markets? Assessing the Role of Financial Derivatives in Going-Private Transactions; Should Partnership Tax Define “Merger” and “Division”? (And If so, How?); The Search for an Unbiased Fiduciary in Corporate Reorganizations); Corporate Law Approaches to Employee/Labor Interests.

Speakers:

Afra Afsharipour (California, Davis); Iman Anabtawi (UCLA); James D. Barrall (Global Chair, Benefits and Compensation Group, Latham & Watkins, LLP); Robert P. Bartlett III (Georgia); Matthew T. Bodie (Saint Louis); William J. Carney (Emory); Donald C. Clarke (George Washington); Alicia Davis Evans (Michigan); Lisa M. Fairfax (Maryland); Heather M. Field (California, Hastings); Jose M. Gabilondo (Florida International); George S. Geis (Virginia); Erik F. Gerding (New Mexico); Franklin Gevurtz (McGeorge); Timothy Glynn (Seton Hall); H. Kent Greenfield (Boston College); Michael D. Guttentag (Loyola); Michelle M. Harner (Nebraska); Peter H. Huang (Temple); Joan Macleod Heminway (Tennessee); Paul L. Hoffman (Schonbrun, DeSimone, Seplow, Harris and Hoffman, LLP, Venice, California); Christine Hurt (Illinois); Robert C. Illig (Oregon); Andrea L. Johnson (California Western); Lyman P.Q. Johnson (Washington and Lee); Donald C. Langevoort (Georgetown); John Linarelli (LaVerne); Jeffrey M. Lipshaw (Suffolk); Jacqueline Deborah Lipton (Case Western); Kate Litvak (Texas); Therese H. Maynard (Loyola); Lawrence E. Mitchell (George Washington); Elizabeth Nowicki (Tulane); Peter B. Oh (Pittsburgh); Karl S. Okamoto (Drexel); The Honorable Troy A. Paredes (Commissioner, U.S. Securities and Exchange Commission, Washington, D.C.); Frank Partnoy (San Diego); Usha R. Rodrigues (Georgia); Hillary A. Sale (Iowa); D. Gordon Smith (Brigham Young); Tina L. Stark (Emory); Faith Stevelman (New York Law School); David R. Stickney, Partner (Bernstein Litowitz Berger & Grossman LLP, San Francisco, California); Lynn A. Stout (UCLA); The Honorable Leo E. Strine (Vice Chancellor, Court of Chancery, Delaware); Eric L. Talley (California, Berkeley); Robert B. Thompson (Vanderbilt); Frederick Tung (Emory); Cheryl Lyn Wade (St. John's), Charles K. Whitehead (Boston); Cynthia Williams (Illinois); Michael A. Woronoff (Head of the Corporate Securities Practice, Proskauer Rose, Los Angeles, California).

President's Message

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Best Practices for Legal Education, in a section explicitly echoed by the Carnegie Report, spends four-and-a-half pages noting the superiority of in-house clinical courses in achieving certain educational goals. Half a page of this section asserts that arranging student interactions with segments of society with inadequate access to legal services promotes compassion and concern about injustice, a transformation that is neither automatic nor inevitable.⁹ The report allows in a footnote that some “small percentage of the student body” may appreciate clinics for reasons “unrelated to their educational effectiveness or efficiency, [including] ... a way to demonstrate their role in providing services to their communities ... [and] to provide a place for nurturing their students who are committed to social justice issues.”¹⁰ This turns the traditional rationale for clinics on its head: “social justice” is not a core commitment but an option made available to those few students with such interests.

Clinics have faced challenges both in opinion columns by conservative critics¹¹ and in court by aggrieved defendants. In response, clinics often are defended in purely pedagogical terms. A recent amicus brief filed by the Clinical Legal Education Association in litigation by a disgruntled developer against the Environmental Law Clinic at Rutgers School of Law–Newark focused almost entirely on the

pedagogical and skills-development aspects, along with a short statement about advantages in acquainting students with “ethical dilemmas.”¹²

That is all well and good – but if we avoid defending clinics for the benefit their activism provides society, people will soon figure out that clinics can provide all of the purported pedagogical advantages with none of the grief if educators simply steer clear of controversial matters. Legal academia, and academia more broadly, face similar political pressures – when it comes to clinical education, however, buckling under to pressure to be risk-averse has a serious practical effect in the marble halls beyond the ivory towers: important lawsuits do not get filed, and the most vulnerable and needy go without representation.

Justifying clinics based primarily on pedagogical advantages is self-perpetuating because it invites objective outcome-based assessments. We see this in the increasing pressure to include such measures in the law school accreditation process. Clinical legal education is, frankly, not yet well prepared for such evaluation. Like many academic programs, much of its self-evaluation relies on first-person testimonials from a given school’s program participants, who are obviously interested parties. Such accounts seem unlikely to satisfy rigorous advocates of outcome-based measures of success. What few studies have been published suggest

that the benefits of clinics are mixed at best. This is hardly surprising and far from damning, given that this is the typical trend in social science and educational research more generally.¹³

If and when outcome-based measures do come, though, it will likely prove easier to measure the pedagogical benefits of clinical legal education than its social justice impact. One can more readily imagine counting students served and assessing acquisition of Amsterdam’s nine non-Socratic cognitive skills than quantifying the extent to which social justice has been served and measuring how effectively ethical orientations have been inculcated. The latter sorts of measures may be possible, but development of such assessments is not the path of least resistance. They will not appear without attentive effort – effort that we have not yet as a field decided to devote.

Challenge #2: The Creation of Clinical Traditions May Slow the Accommodation of Diversity and Change in the Profession

In 1992, Judge Harry Edwards famously criticized the legal academy for its distance from the world of working lawyers.¹⁴ He called for greater skills training and better professional socialization. The questions he raised then reverberate for clinical legal educators today: what skills and what socialization do students need?

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⁹ BEST PRACTICES, *supra* note 2, at 190.

¹⁰ *Id.* at 189 n. 606.

¹¹ Heather MacDonald, *Clinical, Cynical: You'll never believe what left-wing law pros consider "mainstream."* WALL ST. J., Jan. 11, 2006, available at <http://www.opinionjournal.com/extra/?id=110007794>.

¹² Brief of Amicus Curiae Clinical Legal Education Association, Sussex County Assocs., LLP v. Rutgers, The State University, Docket No. SSX-L-540-06 (May 1, 2008), available at http://www.cleaweb.org/resources/briefs/Rutgers_amicus_brief_and_supporting_docs.pdf.

¹³ See Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359, 362-63 (2008).

¹⁴ See generally Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 57 (1992).

Call for Scholarly Papers at the 2010 Annual Meeting in New Orleans, Louisiana

To encourage and recognize excellent legal scholarship and to broaden participation by new law teachers in the Annual Meeting program, the Association is sponsoring its twenty-fifth annual Call for Scholarly Papers.

Those who will have been full-time law teachers at an AALS member or fee-paid school for five years or fewer on July 1, 2009 are invited to submit a paper on a topic related to or concerning law. A committee of established scholars will review the submitted papers with the authors' identities concealed.

The Committee to Review Scholarly Papers for the 2010 Annual Meeting, chaired by AALS Immediate Past President John Garvey, Boston College Law School, consists of: Steven A. Bank, University of California, Los Angeles School of Law; Robert G. Bone, Boston University School of Law; Laura E. Gomez, University of New Mexico School of Law; Richard L. Hasen, Loyola Law School; Daniel R. Ortiz, University of Virginia School of Law; Michael J. Perry, Emory University School of Law; Margaret V. Sachs, University of Georgia School of Law; Gerald Torres, The University of Texas School of Law; and Deborah Widiss, Indiana University Maurer School of Law, last year's Scholarly Paper competition co-winner.

Papers that make a substantial contribution to legal literature may be selected for distribution and oral presentation at a special program to be held at the AALS Annual Meeting in New Orleans, January 2010. The author of the presented paper will also be recognized at the Annual Meeting Luncheon. The selection committee must determine that a paper is of sufficient quality to deserve this special recognition, and the AALS is not obligated to select any paper.

Deadline: To be considered in the competition eight hard copies of the manuscript must be postmarked no later than August 15, 2009 and sent to: Call for Scholarly Papers, Association of American Law Schools, 1201 Connecticut Avenue, N.W., Suite 800, Washington, DC 20036-2717. Also, an electronic version must be emailed to scholarlypapers@aals.org no later than August 14, 2009.

Anonymity: The manuscript should be accompanied by a cover letter with the author's name, contact information and statement of compliance described below. The manuscript itself, including title page and footnotes, must not contain any references that identify the author or the author's school. The submitting author is responsible for taking any steps necessary to redact self-identifying text or footnotes.

Form and Length: The manuscript must be typed, double-spaced, on 8 1/2" by 11" paper in 12-point (or larger) type with ample (at least 1") margins on all sides and must have sequential page numbers on each page of the submitted article. Footnotes should be 10-point or larger, single-spaced, and preferably on the same page as the referenced text. Each submission must be prepared using either Microsoft Word or otherwise submitted in rich text format. Submissions are limited to articles, essays and book chapters. There is a maximum word limit of 35,000 (inclusive of footnotes) for the submitted manuscripts. Manuscripts will not be returned.

Eligibility: Faculty members of AALS member and fee-paid schools are eligible to submit papers. The Call is open to those who have been full-time law teachers for five years or fewer as of July 1, 2009. (For these purposes, one is considered a full-time faculty member while officially "on leave" from the law school.) Co-authored papers are eligible for consideration, but each of the co-authors must meet the eligibility criteria established above. No one who has won the AALS Scholarly Papers Competition is eligible to compete again. Honorable Mention recipients are eligible to enter again. Professors are also restricted to submitting only one paper in the Scholarly Paper Competition.

Planning Committee for AALS Workshop for New Law School Teachers,

Workshop for Pretenured Minority Law School Teachers *and*

Workshop for Beginning Legal Writing Teachers

Randy E. Barnett, Georgetown University, **Chair**
 Leonard M. Baynes, St. John's University
 Rachel E. Croskery-Roberts, The University of Michigan
 Okianer Christian Dark, Howard University
 Michael Green, Wake Forest University
 David S. Olson, Boston College
 Lisa Hope Nicholson, University of Louisville

AALS Workshop for New Law School Teachers

June 18-20, 2009

Washington, DC

At the 27th annual Workshop for New Law School Teachers, new law teachers will share their excitement, experiences and concerns with each other and with a roster of senior and junior faculty chosen for their track record of success and their diversity of scholarly and teaching approaches. These professors will pass along invaluable advice about teaching and testing techniques and tips for developing, placing and promoting one's scholarship. Speakers will also address how to manage the demands of institutional service, as well as the expectations of students and colleagues, along with special challenges that arise when confronting controversial topics. This year's Workshop has been restructured to provide expanded opportunities for small group interaction with speakers and other participants.

The Workshop will benefit newly appointed faculty members, including teachers with up to two years of teaching experience, and those with appointments as visiting assistant professors.

For more information visit:
www.aals.org/nlt09/.

Topics:

- Scholarship
- Preparing for Your First Semester of Teaching
- Biggest Triumphs and Mistakes: Junior Faculty Perspectives
- Learning Theory
- Challenging Conversations
- Blogging
- Exam Preparation, Reading, Grading, Review and Course Evaluation
- Navigating Law School Politics

Speakers:

Douglas A. Berman (Ohio State); Christopher J. Borgen (St. John's); Dorothy Andrea Brown (Emory); The Honorable Guido Calabresi (U.S. Circuit Judge, U.S. Court of Appeals, New Haven, Connecticut); Eric R. Claeys (George Mason); Shahram Dana (John Marshal); Angela J. Davis (American); Graeme B. Dinwoodie (Chicago-Kent); Cara H. Drinan (Catholic); William N. Eskridge, Jr. (Yale); Cheryl Hanna (Vermont); Paula Lustbader (Seattle); Janai S. Nelson (St. John's); Lawrence B. Solum (Illinois); Andrew E. Taslitz (Howard); Francisco X. Valdes (Miami); Laurie B. Zimet (California, Hastings).

Request for Proposals for Professional Development Programs

In preparation for the submission of proposals on professional development programs to the Executive Committee, the Committee on Professional Development will convene at the AALS headquarters this fall. Among other things on the Agenda, the Committee will recommend the Association's professional development calendar for the 2010-2011 academic year.

If your section believes that it would be an opportune time for the AALS to offer a professional development program in areas of interest to your section during 2010-2011, the Professional Development Committee invites you to submit a proposal for such a program. To ensure a comprehensive review of these proposals and facilitate the request for any additional information, the deadline for submission is **May 29, 2009**. Proposals received by then will receive preference in the selection process.

The Association's professional development programming consists primarily of one-day workshops at the Annual Meeting and two-day workshops and three-day to five-day conferences at the Mid Year meeting. Programs need not fit any particular format, but many past conferences and workshops have fallen into one of the following categories:

(1) subject matter programs aimed at faculty who teach particular subjects or types of courses such as the 2008 Mid Year Meeting Conference on Evidence and the 2009 Mid Year Meeting Conference on Business Associations;

(2) programs for groups with similar interests other than subject matter such as the 2004 Mid Year Meeting: Workshop On Racial Justice In A New Millennium: From *Brown to Grutter*: Methods to Achieve Non Discrimination and Comparable Racial Equality and 2003 Workshop on Taking Stock: Women of All Colors in Law School;

(3) programs that cut across subject matter lines or integrate traditional subject matter such as the 2005 Annual Meeting Workshop on Evaluating Students and Evaluating Outputs: Vision, Revision, Envision: Critical Perspectives in Assessment and the 2009 Mid Year Meeting Workshop on Transactional Law;

(4) programs that focus upon a type of skill or discipline as in the 2006 Mid Year Meeting Conference on New Ideas for Law School Teachers and the 2009 Annual Meeting Workshop: Progress? The Academy, Profession, Race and Gender: Empirical Findings, Research Issues, Potential Projects and Funding Opportunities;

(5) programs dealing with matters of law school administration or legal education generally such as the 2008 Mid Year Meeting Workshop for Law Librarians and the 2010 Annual Meeting Workshop on Pro Bono Public Service; and

(6) programs exploring the ramifications of significant developments in or affecting the law such as the 2008 Annual Meeting Workshop on Fair and Independent Courts.

Proposals should be as specific as possible, including a description of the areas or topics that might be covered, in as much detail as possible, and an explanation of why it would be important and timely to undertake such a program in 2010-2011. The Professional Development Committee particularly encourages proposals for programs that are sufficiently broad that they will interest more than the membership of a single AALS section. The AALS strongly encourages proposals that contemplate different or innovative types of programming or develop interdisciplinary themes. A sample of a well-developed proposal is available for review on the AALS Web site at: <http://www.aals.org/profdev/>

The Association welcomes suggestions for members of the planning committee and potential speakers, along with a brief explanation as to their particular qualifications. It is helpful to the planning committee to have as much information as possible about potential speakers in advance of its meeting. Since planning committees value diversity of all sorts, we encourage recommendations of women, minorities, those with differing viewpoints, and new teachers as speakers. Specific information regarding the potential speaker's scholarship, writings, speaking ability, and teaching methodology is particularly valuable.

Workshop for Pretenured Minority Law School Teachers

June 17-18, 2009

Washington, DC

From their first day of teaching until tenure, minority law teachers face special challenges in the legal academy. At this workshop, diverse panels of experienced and successful law professors will focus on these issues as they arise in the context of scholarship, teaching, and the tenure process. The workshop dovetails with the AALS Workshop for New Law School Teachers by providing sustained emphasis on the distinctive situations of untenured minority law school teachers.

The Workshop will be of interest to newly appointed minority law teachers as well as junior professors who are navigating the tenure process and looking for guidance and support.

For more information, visit www.aals.org/pretenured/

Topics:

- Promotion and Tenure: Getting to Yes
- Teaching: Strategies to Success
- History of People of Color in the Academy
- Service: Strategies to Success
- Scholarship: Strategies to Success
- You Can Do This

Speakers Include:

Larry Cata Backer (Penn State); G. Marcus Cole (Stanford); Adrienne D. Davis (Washington); A. Mechele Dickerson (Texas); Joseph D. Harbaugh (Nova Southeastern); Tanya Kateri Hernandez (George Washington); Rachel Moran (AALS President and California, Berkeley); Blake D. Morant (Wake Forest); Mark Niles (American); Xuan-Thao Nguyen (Southern Methodist); Enid Trucios-Haynes (Louisville); Serena Maria Williams (American).

Workshop for Beginning Legal Writing Teachers

June 20-21, 2009

Washington, DC

The Workshop is designed to offer new law faculty an introduction to the teaching of legal writing, research, and analysis. The workshop will address the basic tasks of the teacher of legal writing: classroom teaching, designing problems, conducting effective individual conferences, incorporating the teaching of legal research, and critiquing students' written work. Additionally, the workshop will address new teachers' scholarly development as well as institutional status issues.

The Workshop will be of interest to new legal writing teachers and to all new teachers whose responsibilities include some teaching of legal writing.

Topics:

- The History and Mission of Legal Writing Programs
- Designing Assignments
- Critiquing
- Scholarship: Finding Your Voice in the Legal Academy
- Teaching Legal Research
- Managing Your Student Conferences
- Putting It All Together: Constructing Your Course

Speakers Include:

Mary Beth Beazley (Ohio State); Patricia A. Broussard (Florida A & M); Diana R. Donahoe (Georgetown); Anne M. Enquist (Seattle); Amy E. Sloan (Baltimore); Craig T. Smith (Vanderbilt); Nancy J. Soonpaa (Texas Tech).

For more information, visit www.aals.org/beginning/

Proposals for Professional Development Programs

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While proposals are solicited from sections and those proposals are extremely valuable as a starting point for the planning committee, the Association's professional development programs are not section programs. Rather, they are Association-sponsored programs recommended by the Professional Development Committee and approved by the Executive Committee. Planning the actual program, including the choice of specific topics and speakers, is the responsibility of the planning committee, which is appointed by the AALS President. The planning committees normally include one or more individuals who are in leadership positions in the relevant section or sections, but also will include others who are knowledgeable about the program topic or have general experience with AALS professional development programs. Because the planning committee is asked to bring its own perspectives to the planning of the program, it is not customary to appoint the author of a proposal to the planning committee. Instead the proposal is given to the planning committee in advance of its meeting, and members of the planning committee may consult with the proposer and a host of other faculty before the planning committee meeting.

As indicated above, proposals should be submitted to AALS Deputy Director, David A. Brennen, by **May 29, 2009**. Please send an electronic copy of your proposal by e-mail to profdev@aals.org. Deputy Director Brennen also would be pleased to discuss proposal ideas with you and to answer any questions you have about the Association's professional development programs. Please send your questions by e-mail to dbrennen@aals.org.

Scholarly Papers

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Papers are expected to reflect original research or major developments in previously reported research. Papers are not eligible for consideration if they will have been published before February 2010. However, inclusion of a version of the paper on the Social Science Research Network (SSRN) or similar pre-publication resources does not count as "publication" for purposes of this competition. Submitted papers, whether or not selected for recognition, may be subsequently published as arranged by the authors. Papers may have been revised on the basis of review by colleagues.

Statement of Compliance: The cover letter accompanying each submission must include a statement verifying: 1) the author holds a faculty appointment at a member or fee-paid school; 2) the author has been engaged in full-time teaching for five years or fewer as of July 1, 2009; 3) all information identifying the author or author's school

has been removed from the manuscript; 4) the paper has not been previously published and is not committed for publication prior to February 2010; 5) the content of the hard copy version of the paper is, in all respects, identical to the electronic version of the paper; and 6) the author must also agree to notify the AALS if and as soon as s/he learns that the submitted paper will be published before February 2010.

Presentation at the Annual Meeting: The author of any selected paper will present an oral summary of the paper at a special program to be held at the 2010 Annual Meeting. Copies of the paper will be made available for distribution to those attending the presentation.

Inquiries: Questions should be directed to scholarlypapers@aals.org

President's Message

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The answer is, if anything, less straightforward now than in 1992. The legal profession currently faces increasing specialization and segmentation; some even doubt that the traditional law firm will continue to exist in its currently recognizable form. Lawyers in large firms may have relatively little face-to-face contact with clients. Public interest lawyers struggle with limited resources. Lawyers of all stripes will face substantial pressures to economize by arriving at adequate rather than ideal legal answers. The work of attorneys at the margins of the profession may more resemble that of paralegals – if the outsourcing of such work doesn't eliminate its availability for job applicants altogether.¹⁵

The increasing diversity of legal careers and the skills they require demands that we reconsider what "skills training" means and consider what skills need be taught. Recall that the criticism of the Socratic Method from scholars such as Amsterdam was that it inculcated too narrow a set of skills and failed on its own terms to impart the flexible reasoning skills that it claimed to prize. In a diverse field, clinical educators may fall into a similar trap – assuming that cognitive skills such as "hypothesis formulation and testing" and "ends-means thinking"¹⁶ are honed so well in any given clinical environment that they will transfer to any future setting.

The Socratic method professes to teach students not positive law itself – because positive law inevitably changes – but how to derive positive law in future moments by employing skills like case analysis and, later, statutory analysis. Cognitive scientists and educational theorists refer to this concept as "learning how to learn." Will clinical training – itself much more diverse than the Socratic Method – teach students to "learn how to learn" in both novel and changing environments?

Will clinical training – itself much more diverse than the Socratic Method – teach students to "learn how to learn" in both novel and changing environments?

There is basis for doubt. Clinics tend to privilege a face-to-face version of lawyering with an individual client in which the lawyer has substantial resources to investigate and pursue the case. This model may embody a normative ideal or a romanticized image of law practice – one that will become less common as the conditions of the profession shifts. It is readily imaginable that

clinical practices may not move in synch with such changes, just as practitioners of the Socratic Method failed to do. In fact, to the extent that clinics seek small-scale problems that can benefit students, the programs may largely ignore the restructuring that is going on in the profession. If clinics largely serve low-income clients with small day-to-day problems, a simple model of "A sues B" will predominate, supplanting one that attacks complex issues and uses law as a tool for structural change.

This challenge also interacts with the shift to pedagogical justifications. Curricula purporting to prepare students for professional work will likely appeal to many students who want a competitive edge in the job market. But this comes at some opportunity cost: this approach may displace the social justice orientation for clinics, especially as the job market worsens.

The answer to the question "what skills?" turns out to be politically fraught. Professional skills training and learning professionalism are useful skills, but ones largely aimed at the individual. Anita Bernstein has proposed teaching students about the "pitfalls" of the profession: what constitutes breach of fiduciary duty or malpractice, how to interact with judges and clients, and so on.¹⁷

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¹⁵ See Quintin Johnstone, *An Overview of The Legal Profession in the United States, How That Profession Recently Has Been Changing, and Its Future Prospects*, 26 QUINNIPIAC L. REV. 737 (2008).

¹⁶ Amsterdam, *supra* note 1, at 613-14.

¹⁷ Anita Bernstein, *Pitfalls Ahead: A Manifesto for the Training of Lawyers*, 94 CORNELL L. REV. 479 (2009).

President's Message

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This is an excellent idea – but not all pitfalls are individual. Lawyers also confront pitfalls for the profession and for society at large.

For example, moving away from a social justice orientation may benefit the individual job-seeking lawyer, but at the expense of the larger society. My previous column focused on the need to resuscitate the model of the “citizen-lawyer” who sometimes puts private practice aside to work, possibly at substantial personal expense, primarily with governmental and other social problem-solving agencies. The citizen-lawyer evades the pitfall of lost independence, which Robert Gordon defined as deriving from capture by parochial client interests in one’s practice.¹⁸

Imagine a clinical program that recognized society’s need for lawyers with social justice perspectives as well as the importance of preparing students for their role as citizen-lawyers. Such a program would not only better honor the philosophy of imparting “skills” and “professionalism” that both law and lawyers need, but it would continue to serve the dual purposes of clinical education. The training might leave lawyers a little less prepared than Judge Edwards might have preferred for their first job out of school, but also better prepared for the full course of their career – and in a healthier profession.

Challenge#3: The Globalization of Clinical Legal Education May Complicate the Relationship between Pedagogy and Social Justice

Clinical legal education is attracting increasing global interest. Once again, foundation grants, coupled with international aid – notably from the Ford Foundation in China – are playing a critical role in the spread of these programs. Peggy Maisel recently reviewed various clinical initiatives with instructively varying results.¹⁹ Clinical efforts in Kenya are lauded for successfully avoiding what locals see as cultural imperialism; efforts in Iraq are noted for failing in that respect. Russian law students eschew any clinical focus on social justice, seeking to attain practical skills to help them in career placement. China accepts a social justice mission of providing low-paid or unpaid assistance for individual needy clients, but rejects anything like impact litigation or work for broader collective social reforms. The track record of these programs is mixed and their future uncertain.

Clinical legal education within China has recently been the focus of fascinating reviews from both an insider’s²⁰ and an outsider’s²¹ perspective. Again, rather than reviewing such efforts, I want to raise a point in reference to China about transcending American assump-

tions about foreign legal systems that generally receives short shrift in these discussions. Philip Genty recently has raised what should be a fundamental concern in exporting American approaches: that much of the world uses a civil law rather than a common law system.²² He argues that clinical legal education is less well adapted to a civilian system, which depends more than ours on doctrinal analysis rather than case law. Genty notes that a civilian system lacks some features that common law lawyers, at least in the U.S., take for granted. For example, one reason that we do not see class actions brought in China is that the civilian legal system does not provide for them; “cause lawyering” generally is not part of the civilian legal culture. This is not a matter of China being a “developing nation;” it is a matter of its being part of a venerable tradition of civil law. Social justice lawyering will have to adapt to a new system there – as it will in Eastern Europe, Mexico, and elsewhere.

Clinics may bolster the social justice orientation of foreign legal education programs, but this is far from assured. As foreign support declines, clinics may disappear or adopt new forms that do not threaten the political status quo. This challenge implicates the tensions

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¹⁸ Robert W. Gordon, *Corporate Law Practice as a Public Calling*, 49 MD. L. REV. 255 (1990).

¹⁹ Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 CLINICAL L. REV. 465 (2008).

²⁰ Zhen Zhen, *The Present Situation and Prosperous Future of China Clinical Legal Education* (October 7, 2005), available at http://www.law.ucla.edu/docs/zhen_zhen_prosperous_future_of_chinese_clinical_educatio_.pdf.

²¹ Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117 (2005).

²² Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and Its Implications for Clinical Education*, 15 CLINICAL L. REV. 131 (2008).

President's Message

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between skills training and social justice. If the social justice rationale for global clinical legal education faces resistance – from governments or legal cultures or students who seek better career placement – then pressure grows to define foreign clinics in terms of pedagogical benefits and focus on easily portable skills for the transnational lawyer. The social justice origins of the clinical education movement, which are if anything more critical in developing countries, might face even greater risks of subordination to student-centered learning concerns abroad than in the United States.

Conclusion

The struggle to preserve the social justice origins of legal clinics will be the defining challenge of the twenty-first century for clinical legal education. Faced with pressures to assimilate to the general curriculum, standardize programs, measure learning outcomes, cater to students' short-term career interests, and palliate government resistance both domestic and foreign, clinicians increasingly will be forced to justify their existence in student-centered terms that can obscure the mission of serving needy clients and communities. The clinical movement

must determine how central social justice lawyering is to its identity here and abroad; ideally it will act to maintain this core commitment. Otherwise, this facet of clinical education will become at most incidental and at worst irrelevant to defining programs' success, and an important legacy will be lost.

Nominations for AALS Executive Committee and President-Elect

The Nominating Committee for 2010 Officers and Members of the Executive Committee members, chaired by Martha L. Minow, Harvard Law School, invites suggestions for candidates for President-Elect of the Association and for two positions on the Executive Committee. The committee will meet in September to recommend candidates for these positions to the House of Representatives at the January 2010 Annual Meeting in New Orleans.

Suggestions of persons to be considered and relevant comments should be sent to Executive Director Susan Westerberg Prager at 1201 Connecticut Avenue, N.W., Suite 800, Washington, DC 20036-2717 no later than August 1, 2009. President Rachel Moran has appointed an able, informed, and representative Nominating Committee. This committee would very much appreciate your help and the help of members of your faculty in generating names for its consideration.

The members of the Nominating Committee for 2010 Officers and Members of the Executive Committee are:

- William Hines, University of Iowa College of Law
- Herma H. Kay, University of California, Berkeley School of Law
- Antoinette Sedillo Lopez, University of New Mexico School of Law
- Martha L. Minow, Harvard Law School, Chair
- Blake D. Morant, Wake Forest University School of Law
- Ruth L. Okediji, University of Minnesota Law School, Immediate Past Chair
- Edward L. Rubin, Vanderbilt University Law School

2010 Annual Meeting Theme: "Transformative Law"

In 2010, we will be meeting in New Orleans for the first time since Hurricane Katrina forced the relocation of our 2006 Annual Meeting. During my Presidential year, I am adopting the theme of "Transformative Law," mindful of the symbolic significance of our return there as well as of the successes and failures of the legal profession in addressing this perilous past decade. Our meeting this year takes place at a time of crisis in our economy, our ecology, and our international standing as the leader of the free world. Many lawyers (including our President, Vice-President, and many Cabinet officials and congressional leaders) must tackle these challenges. Media coverage of their efforts, however, portrays these public servants as people who happen to be lawyers, not as lawyers whose leadership grows out of their mastery of law and whose accomplishments represent the pinnacle of their professional pursuits. To a significant degree, the news accounts reflect the fact that these leaders have not pursued a traditional law firm practice but instead have devoted themselves to government and public service. The image of the citizen-lawyer, whose training can be used to advance the common good, has so thoroughly disappeared from the popular imagination that those who pursue this path are no longer centrally defined as lawyers.

*Contrast today's portrayals to those of fifty years ago, when the word "lawyer" might conjure up images of crusaders in the civil rights movement. Or, compare these images to those of an even earlier era, when attorneys entered public life as architects of the New Deal. When citizen-lawyers embarked on these campaigns for change, the result was transformative law. By this, I mean that law became a powerful tool to challenge and reconfigure social institutions. Transformative law can take place at the national, state, or local level. Challenges can come through landmark Supreme Court decisions like *Brown v. Board of Education*, which forced the nation to reconsider the meaning of racial equality. Or, change can be the product of ground-breaking statutes and administrative action, as the battle for the New Deal that President Franklin Delano Roosevelt waged with a reluctant Supreme Court reminds us. Whatever the forum, citizen-lawyers have produced transformative law because they understood their professional role as integral to achieving the American dream.*

Today, when lawyers receive attention as lawyers, they are more likely to be defending the notorious than building the nation. Is there no greater role for lawyers as professionals in our contemporary public life? Is the citizen-lawyer now largely relegated to some lost golden age of reform? I believe that law still has a vital role to play at moments of national crisis like this one, but we must once again recognize that lawyers can be powerful agents of change and not merely advocates for agendas set by someone else. We, as members of a learned society, can play a critical role in resurrecting the citizen-lawyer and the possibilities for transformative law. In fact, the current crisis of confidence in our country provides an unparalleled opportunity for lawyers to answer the call of service and restore a sense of integrity and trust.

*-Rachel Moran,
AALS President and University of California, Berkeley School of Law*

President-Elect H. Reese Hansen Seeks Recommendations for Committee Appointments

H. Reese Hansen, Brigham Young University, President-Elect of the Association, will begin work this summer on committee appointments for 2010. He will appoint members of the following standing committees for three-year terms: Academic Freedom and Tenure, Bar Admission and Lawyer Performance, Clinical Legal Education, Curriculum, Government Relations, Libraries and Technology, Membership Review, Professional Development, Recruitment and Retention of Minority Law Teachers, Research, Sections and Annual Meeting, and the Journal of Legal Education Editorial Board.

At your earliest convenience and no later than June 22, please send your recommendations of AALS member school faculty who should be considered for committees to Susan Westerberg Prager, Executive Director. Recommendations should be sent to sprager@aals.org with "Committee Nominations" as the subject header.

The AALS seeks committees that reflect the participation of newer as well as seasoned members of the faculty. It would be most helpful if recommenders provide insight into the suggested person's strengths in the context of committee service as well as any aspect of their background and interests that would contribute to the work of a particular committee or committees.

Upcoming Meetings and Events

June 7 - 12, 2009

Mid Year Meeting

Long Beach, California

June 17-18, 2009

Workshop for Pretenured Minority Law School Teachers

Washington, D.C.

June 7-10, 2009

Conference on Business Associations:

Taking Stock of the Field and Corporate Social Accountability

June 18-20, 2009

Workshop for New Law School Teachers

Washington, D.C.

June 10-12, 2009

Workshop on Transactional Law

June 20-21, 2009

Workshop for Beginning Legal Writing Teachers

Washington, D.C.

June 10-12, 2009

Workshop on Work Law

Future Annual Meeting Dates and Locations

- January 6-10, 2010, New Orleans
- January 4-8, 2011, San Francisco
- January 4-8, 2012, Washington, D.C.
- January 4-8, 2013, New Orleans

Future Faculty Recruitment Conference Dates

Washington, D.C.

- November 5-7, 2009
- October 28-30, 2010
- October 13-15, 2011
- October 11-13, 2012
- October 17-19, 2013
- October 16-18, 2014