

CLINICAL PROGRAMS

Interim

From The Director...

August 2001

Arizona State University College of Law FORUM is published for alumni, students, faculty and friends.

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Attention Alumni:
The FORUM is looking for news about you! Please submit items such as births, marriages, job moves, awards, etc. to the editor at jodi.weisberg@asu.edu

We want to include your news in upcoming issues.

Having drawn the short straw, I was "honored" with the assignment of serving as Interim Director of Clinical Programs this year while our regular Director, Professor Cathy O'Grady, was on a research sabbatical. Contrary to the projections of our clinical staff, I survived the year without having to commit myself to a mental institution. Thanks to the exceptional competence and professionalism of the lawyers teaching in our clinics, the programs are thriving.

I learned this year that one of the most challenging aspects of Professor O'Grady's job involves the selection of cases for our Civil Practice Clinic. Through our mix of cases, we strive to maximize the educational value of clinical instruction while contributing to the tremendous need for pro bono legal services. Because the demand for our free services far exceeds our capacity, the Director must serve as somewhat of a "gatekeeper" – deciding which cases get referred to students for intake interviews.

A number of factors weigh in this gatekeeping decision: Will the students have the opportunity to see the case through in one semester? If not, is the case likely to provide students with rich lawyering experiences? Are the issues sufficiently complex to challenge the students' analytical skills, yet simple enough to allow the students to be primarily responsible for the representation? Finally, what is likely to happen to the client if the Clinic does not provide assistance?

Often, the answers to these questions are in conflict. In resolving this conflict, I tried to keep mind that the Clinic's primary goal is to help students become better lawyers by learning to understand and respond appropriately to client needs.

One of the more challenging intake decisions this year involved a developmental disabilities case referred to the Clinic by the Arizona Center for Disability Law. The potential client was Pedro, a 22 year old whose mental retardation and deafness prevented him from developing the skills needed to live independently. Pedro's parents had applied for developmental disability benefits, but their application was denied. It appeared that the criteria that the agency used in determining eligibility were not designed to properly assess an applicant whose functioning was affected by other impairments, such as hearing loss. Pedro's parents were seeking counsel to represent them before the administrative tribunal.

The "client-need" factors were certainly compelling in Pedro's case, but I was uncertain of its educational value for our students. There was not much of a factual record to

develop. The issue in dispute was relatively discreet and would likely involve little more than dueling experts. At the same time, mastering the applicable law and understanding the medical issues would require a substantial amount of work, depleting the resources we had available to help other worthy clients. On the other hand, the case would provide students the opportunity to prepare and present expert testimony in an adversarial hearing, which, in the end, was the deciding factor for me.

The student attorneys assigned to Pedro's benefits appeal worked feverishly to prepare for the hearing. They assembled and analyzed the voluminous educational and medical records produced in the case, then retained a doctor with expertise in assessing developmentally disabled individuals with hearing impairments – and willing to help us pro bono.

After fully preparing for the hearing, the students decided to first seek a resolution outside the adversarial process. Their case was strong, and they wanted to demonstrate its strength to the other side. Accordingly, they facilitated a pre-hearing meeting between the experts expected to testify for each side. The information exchanged during the meeting convinced the agency to reverse its decision and award Pedro the benefits. Having prepared so thoroughly for the hearing, the students couldn't help but feel some disappointment in missing out on the chance to present their case to a judge. But their disappointment was far overshadowed by the gratification they experienced in helping this family get the result they needed.

While the students representing Pedro may not have had the opportunity to conduct a cross-examination or deliver a closing argument in this particular case, they learned a much more valuable lesson about the power of creative thinking in the law and the capacity of lawyers to help their clients solve problems. From a teacher's perspective, this is what makes clinical work fulfilling.

But I sure am glad that Professor O'Grady is back from her sabbatical.



Robert Dauber, *Interim Director of Clinical Programs*

Bob Dauber

CLINICAL FACULTY

JENNIFER BARNES

*Visiting Clinical Professor,
Civil Practice Clinic*

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*Clinical Professor,
Civil Practice Clinic*

M. ROBERT DAUBER

*Clinical Professor,
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MICHAEL GORDON

*Faculty Associate,
Civil Practice Clinic*

DAN LOWRANCE

*Faculty Associate,
Public Defender
Clinic*

ANN E. WOODLEY

*Clinical Professor
and Lodestar
Mediation Clinic
Director*

HUGO ZETTLER

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Criminal Practice
Clinic*

CLINICAL ADMINISTRATIVE STAFF

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Assistant*

TERESA BRADSHAW

Office Manager

Order in the Classroom – Training Future Lawyers in High-Tech Courtrooms

By Catherine O'Grady, Director of Clinical Programs

Professor: Welcome to class everyone. Will the students selected for today's simulation on direct examination please take their proper seats at the counsel tables? You have one minute to get organized, then let's get started.

Thus begins the typical law school clinic or trial advocacy class. We don't lecture very much. Instead, our students participate in simulated exercises that cover a wide range of professional lawyering activities including client interviewing, fact investigation planning, client counseling, mediation, negotiation, deposition strategies, and pre-trial and trial techniques. A typical simulation might last 30 minutes. After the simulation ends, the clinic professor will use the rest of the class time to guide the class in a discussion of the simulation just presented.



The professor has a number of decisions to make on how best to teach from the simulation exercise that just ended. Although some key pedagogic goals can be prepared ahead of class, many of the teacher's goals must be decided as the simulation unfolds – and one can never be sure what will happen during a simulation exercise. This is challenging, exciting, on-the-spot teaching that can be enhanced by state-of-the-art technology.

I am excited to report that thanks to generous support from John D. "Chip" Harris, we are designing a new high-tech courtroom/classroom at the College of Law. Construction is now underway. We will proceed in stages to build first the foundation of the classroom/courtroom and then add the technology. When it is completed, the new

"LODESTAR...a guiding ideal; a model for imitation"

By Ann E. Woodley, Director, Lodestar Mediation Clinic and Clinical Professor of Law

As we reach the end of the first year of operation of the Lodestar Mediation Clinic, I would like to share some of the Clinic's accomplishments, as well as some of the plans for the future. The Clinic was created in July of 2000, and supported by a five-year grant from the Lodestar Foundation. Although the ASU College of Law has had a mediation clinic since 1996, the Lodestar Mediation Clinic was created to develop an expanded Alternative Dispute Resolution (ADR) program involving both the training of law students and the creation of community outreach projects.

The Clinic is designed to foster an interdisciplinary and collaborative approach to education, training, and service in the mediation and ADR fields. As part of this interdisciplinary focus, the Clinic formed an affiliation with its first Research Fellow, Roselle Wissler, Ph.D., a prominent social scientist. Dr. Wissler, Professor Bob Dauber, and I are working on an empirical research project about the current ADR practices and attitudes

in the Arizona state courts.

Also as part of the Clinic's new interdisciplinary focus, three Ph.D. students are now invited to take the Mediation Clinic Course each semester, in addition to the 12 law students. And each semester one lawyer and one non-lawyer adjunct will assist in teaching the course.

The Mediation Clinic Course continues to improve. This Spring the students participated in an online mediation role-play (mediating through their computers) with students from two other ADR-related classes.

The Clinic's community service contributions have also been expanded. There is an increased number of law and other graduate students mediating actual cases in a greater number of courts, and some mediations are now offered during evening hours.

Another significant accomplishment is that the first ASU College of Law team to participate in the ABA Section of Dispute Resolution's "Representation in Mediation" competition won the regionals this Spring.

courtroom will have the following features:

- It will shake up the traditional notion that spectators in the gallery have no choice but to look at the backs of the attorneys' heads. By making use of four cameras and the newest split-screen technology, students will be able to view a simulation on a large video projection screen as it is occurring ("live action") from four different perspectives: the judge's perspective, the jury's perspective, the witness's perspective, and a wide angle view.
- A document camera will allow for digital display of paper documents, and a Boeckeler Pointmaker pen will allow for the annotation of images. Evidence presented to the jury on the document camera will fill the screen, temporarily replacing the live action shots.
- Students and teachers will be able to plug in laptop computers that can then display to the entire system in the courtroom. Thus, students will be able to learn how to integrate Power Point and other programs in their trial presentations.
- The courtroom will include a high quality sound system and custom lighting that will be designed to enhance video recording, review, and playback.

- Professors will be able to control what students see on the screen, and they will be able quickly to retrieve segments of the recorded simulation, from video disk recorders, for playback during the review of the simulation.

Our design team members, including Dick & Fritsche Design Group and Jerry Davis of Jeremiah Associates, have creatively addressed ASU's desire to enhance the courtroom's teaching capabilities. For ASU, this courtroom is an exciting experiment – very few law schools or educational settings have used split screen technology to develop this type of educational environment.

The College of Law's new courtroom will be an ideal place to provide training for both students and lawyers on the latest electronic courtroom technologies. We look forward to graduating new lawyers who have received training in these environments, and we hope we will soon be assisting seasoned lawyers by providing the training they will need to practice law in these courtrooms.

Substantial portions of this article first appeared in Arizona Attorney magazine, April 2001.

The team then participated in the nationals in Washington, D.C., in conjunction with the Annual Conference of the ABA Section of Dispute Resolution.

A number of efforts have been made to inform the community about the existence of the Clinic and to seek input about its future activities. To this end, I have written several articles, and have spoken to groups including law school classes at ASU, Maricopa County Association of Family Mediators, the small business group of the Tempe Chamber of Commerce, and the Mesa Chamber of Commerce.

Substantive seminars on mediation and other ADR-related topics have also been part of the Clinic's work this past year. These seminars included presentations to undergraduate, graduate, and law school classes at ASU, and CLEs sponsored by various bar associations and business groups.

I have also been developing connections with persons interested in mediation and ADR at the local, state and national levels by attending regional and national ADR conferences, holding numerous meetings with local and state ADR practitioners, and participating in committee and other meetings of the ADR organizations.



In addition, I have been developing ideas for community outreach projects in the areas of business, the University, and elementary and secondary education. In the planning stage is a series of ADR seminars focused on business needs, and I am working on a law review article about business dispute prevention and planning. The Clinic is working with the Residential Life Office at ASU to train Hall Counselors and Resident Assistants in mediation skills and to provide mediation services for dormitory disputes.

Finally, a program is being developed that will send law students to elementary and secondary school classes to discuss various conflict resolution-related topics. That program is called "LOCRS" – pronounced "Lockers" – Law Students Offering Conflict Resources to Schools.

The Clinic's first Program Coordinator, Susan Minchuk, was hired to help administer the Mediation Clinic Course and the Clinic's outreach projects on a part-time basis. An administrative office for the Clinic has been created, a "Model Mediation Room" is being developed, additions have been made to the Clinic web site, and a Lodestar Mediation Clinic brochure has been designed.

Plans for the future include additional development of the Clinic's community outreach programs, and the creation of an advisory board and a speaker's bureau.

MEDIATION COMPETITION

by Ann E. Woodley

This Spring the ASU College of Law student team of Chuck Oldham (2L) and Diane Targovnik (2L) won the regionals of the 2001 American Bar Association (ABA) Section of Dispute Resolution “Representation in Mediation” Competition. I coached the team, which was also assisted in their practice sessions by a number of faculty, students, and local lawyers and mediators.

In the “Representation in Mediation” Competition, law students play the roles of attorney and client in mock mediation sessions. The focus of the competition is on the effectiveness of an attorney’s representation of a client during a mediation session. Such representation requires a new and difficult combination of traditional advocacy skills and collaborative, creative, and problem-solving skills. It also requires that the attorney be able to work well with his or her client, the mediator, and the opposing party and counsel. The law students are judged upon their preparation, case analysis, presentation, strategy, communication skills, and other skills essential to effective representation in mediation.

The regional competition in which ASU participated was held at The University of Utah College of Law in Salt Lake City, Utah on March 2 and 3, 2001. The ASU team prevailed over two teams from the University of Utah, two teams from Brigham Young University (J. Reuben Clark Law School), and one team from The University of Idaho College of Law. The ASU team then went on to participate in the nationals, which was held in Washington, D.C. from April 25- 27, in conjunction with the Annual Conference of the ABA Section of Dispute Resolution.

While 68 teams from 40 law schools participated in the first round of the competition, only the 12 regional winners (including the ASU team) went on to compete at the national level. Marquette School of Law was announced as the winner of the nationals at a luncheon on April 27th in front of more than 1,000 attendees at the conference, at which time the 12 regional winners also were publicly recognized. And, as a result of ASU’s regional win, the ASU College of Law will be hosting the regional mediation competition here next Spring.

The Clinic Thanks
the Following
Adjuncts:

JON SANDS
Trial Advocacy

JUDGE BARRY
SCHNEIDER
*Lawyering Theory
& Practice*

LEE STEIN
*Lawyering Theory
& Practice*

JERRY STRICK
*Lawyering Theory
& Practice*

JOAN TOBIN
Mediation Clinic

JUDGE PENNY
WILLRICH
*Lawyering Theory
& Practice*

HUGO ZETTLER
*Criminal Practice
Clinic*

Moot Court Winners

MICHAEL BERCH ADVOCACY COMPETITION

Katosha Belvin
Paul Hickman
Lorenzo Jones
Craig O’Loughlin

Best Oralist:
Craig O’Loughlin

Best Brief:
Kiersten Bergeson

WILLIAM C. CANBY, JR. APPELLATE ADVOCACY COMPETITION

Dave Edwards
Isaac Gabriel
Diane Targovnik

Best Oralist:
Dave Edwards

Best Brief:
Donna Howard

ENVIRONMENTAL MOOT COURT TEAM

Kris Carman
J.R. Ellingson
Michaela Helsin

FIRST AMENDMENT MOOT COURT TEAM

Jennifer Dalton
Michael Edgell
Timothy Sabo

NATIONAL MOOT COURT TEAM

David Wood
Alicia Maher
Abby Ewing

John White
Mike Mason
Matthew Schultz

DONALD F. FOEB TRIAL ADVOCACY COMPETITION

Alex Dominguez
Frank Freeman
Leila Ghoulam
Alicia Maher

CLIENT COUNSELING COMPETITION

1st Place:
Chuck Oldham
Nicole Severson

Runners Up:
Amy Courson
Erin O’Brien

JENCKES CLOSING ARGUMENT COMPETITION

Katosha Belvin
Alex Dominguez

Alternates:
Cassandra Jones
David Williams

RICHARD OPLINGER CLOSING ARGUMENT COMPETITION

1st Place:
Frank Freeman

2nd Place:
Meghan Tomasik

3rd Place:
Mike Mason

4th Place:
Chuck Oldham

LTP Class

Although the Lawyering Theory and Practice class was designed to give students a picture of what it's like to be a lawyer, students aren't the only ones reaping the benefits of the class. The judges and lawyers who serve as adjunct professors are reaping benefits too.

"It's encouraging that students are interested in dealing with everyday problems and that they are sensitive to the needs of everyday people," said Larry Cohen, a solo practitioner who taught the class last year. "I hope the students take away an appreciation for the reality of the law rather than the theory."

Meant as a first step in the clinical education curriculum, the students are divided into "law firms" which handle two civil cases. Actors play the roles of clients and witnesses, while students play the part of attorneys. They conduct initial interviews, investigate the cases, write pleadings, learn negotiation and alternative dispute resolution and the skills of trial advocacy. The cases end with a jury trial, with students from the "law firms" taking opposing sides.

According to ASU law professor Gary Lowenthal, who started the class in 1996, students get more out of the clinics and are more grounded after taking this course.

"Most graduates go into practice so it's important that the law school get them as prepared as possible," said Lowenthal.

Practitioners and judges serve as adjunct professors, bringing their real life experiences, viewpoints and philosophies to the students.

"On a personal level, I got a renewed excitement of litigation and the students are so much fun," said Celia Rumann, an assistant federal public defender, who taught the class for the first time last fall. "The enthusiasm of the students is contagious and they really seemed to enjoy learning practical skills and putting those skills to work in a practical setting."

Not only did Judge Penny Willrich, of the Maricopa County Superior Court, enjoy the teaching experience on both a personal and professional level, she had high praise for the program.

"ASU does a really good job in putting this class together," she said. "I think that it is beneficial that they use practitioners and judges because we can impart valuable information to the students."

Judge John Foreman, of the Maricopa County Superior Court, agrees.

"As judges we see a lot of attorneys who are not well prepared or do not understand the process. I wish they had courses like this when I was in school," he said. "It's important that the law

school continue its commitment to teach this kind of course. I'd also like to see the settlement part expanded and I'd like to see them establish a clinical settlement class."

John "Chip" Harris, of Harris and Palumbo, has taught the class for three years and loves it.

"There is a tremendous living life to the law and I can touch that life through these young eager minds," he said. "We tend to think about the money and the hours and it's easy to lose sight that if we choose, we can be involved in something so meaningful and helpful to others."

First time teacher and alumnus Ashley Adams, of the U.S. Attorney's Office, thoroughly enjoyed the experience.

"The main goal is for students to learn professionalism and strategic ways to advocate for your client and that winning isn't everything," she said. "I enjoyed seeing the student's progression and I learned from the students too. They have such an optimistic view of the law that it renewed my own enthusiasm."

For student Mark Vilaboy, who was a tax auditor for the IRS for 13 years prior to entering law school, taking the class was a way to "get a taste of trial practice."

"I have an appreciation for what you have to do in litigation," he said. "The class taught me that a lot of questions aren't clear and that affects how you handle the case," he said. "There are also different styles of lawyering and I'm struck by just how much a trial attorney must keep in mind. I've gained a healthy respect for litigators. I would recommend this class to any student who is at all interested in litigation."

Jennifer Barnes

Jennifer Barnes will be joining the faculty as a Visiting Clinical Professor during the 2001-02 academic year. Ms. Barnes is a 1987 graduate of the ASU College of Law. She worked as a trial attorney at the firm of Treon, Strick, Lucia & Aguirre for 10 years before starting her own personal injury practice in 1997. During the fall and spring semesters, Barnes will be working full time in the Civil Practice Clinic with Professors Chuck Dallyn, Bob Dauber, Cathy O'Grady and Bob Bartels.

Barnes is excited about coming back to her alma mater to teach and wants to give students a leg up in the legal world. She believes the clinical curriculum imparts the practical knowledge students will need so they can start on the "second rung of the ladder instead of the first" once they are out in the working world.

"You really have to care about helping the client," she said. "Being a lawyer is not about making money. You must be passionate about what you are doing and whom you are helping. Practice law ethically and with a positive attitude and it will bring good will to the community,"



The Clinic Thanks the Following Adjuncts:

ASHLEY ADAMS
Lawyering Theory & Practice

DAVID EISENBERG
Trial Advocacy

JUDGE JOHN FOREMAN
Lawyering Theory & Practice

PATRICK GANN
Criminal Practice Clinic

JOHN DAVID "CHIP" HARRIS
Lawyering Theory & Practice

ANNE HARWOOD
Lawyering Theory & Practice

MARTY LATZ
Theory & Practice of Negotiations

DAN LOWRANCE
Public Defender Clinic

JUDGE ROBERT MYERS
Pretrial Practice

BRUCE MYERSON
Mediation Advocacy

JOHN REA
Mediation Clinic

CELIA RUMANN
Lawyering Theory & Practice, Trial Advocacy, Civil Practice Clinic

Calendar

August 13-17, 2001

Orientation

August 20, 2001

Fall Semester Begins

September 14, 2001

CLE Professionalism Class

1-5:30 p.m. Great Hall

\$70 for ASU Alumni; \$85 for all others

To register call 480.965.3096

September 28, 2001

Myles Lynk Investiture

Great Hall

Call 480.965.6405 for further information

October 8-12, 2001

Fall Break

November 2, 2001

CLE Professionalism Class

1-5:30 p.m. Great Hall

\$70 for ASU Alumni; \$85 for all others

To register call 480.965.3096

November 19, 2001

Pedrick Lecture, Great Hall

Speaker: Ronald Dworkin

Call 480.965.6405 for further information

November 29, 2001

Classes End

December 4-12, 2001

Final Exams

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