



# THE LAW ALUMNI JOURNAL

THE LAW SCHOOL

UNIVERSITY OF PENNSYLVANIA

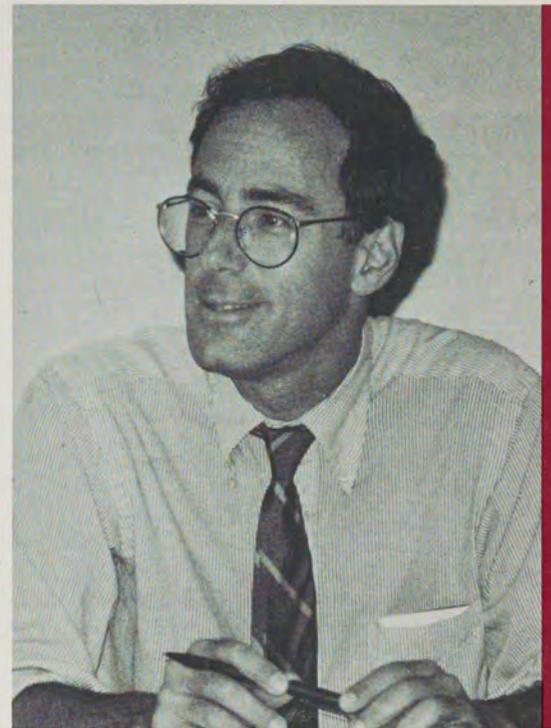
Fall 1987

Volume XXIII

Number 1

## THE LAW SCHOOL CLINICAL PROGRAM: THEN & NOW

As Viewed by  
Practice Professor Douglas N. Frenkel, '72  
Director of Clinical Programs  
p. 11



### In This Issue

- FROM THE DEAN 1
- REUNION WEEKEND 10
- THE 1987 HONORARY FELLOW 14
- WHAT KIND OF FEDERAL JUDGES DO WE WANT? 15
- PENNSYLVANIA TAXATION 17



### COMMENCEMENT 1987

p. 10

**EDITOR'S NOTE:** *Practice Professor Douglas N. Frenkel, the Director of Clinical Programs, was graduated from the University of Pennsylvania, cum laude, in 1968, and from the University of Pennsylvania Law School, cum laude, in 1972. Following graduation from Law School, he served for one year as law clerk to Judge Theodore O. Spaulding of the Pennsylvania Superior Court and, then, practiced law at Community Legal Services in Philadelphia as staff attorney, supervising attorney and managing attorney.*

*Professor Frenkel joined the Law School Faculty in 1978. In 1980, he became Director of Clinical Programs, which have grown and thrived under his direction. He also teaches courses in Interviewing, Counseling and Negotiation, Professional Responsibility, Alternatives to Litigation and Family Law.*

*In the following interview, Professor Frenkel provides enlightening insights into the growing Clinical Programs in which he and the Law School take tremendous pride.*

# THE LAW SCHOOL CLINICAL PROGRAM: THEN & NOW

As Viewed by  
Practice Professor Douglas N. Frenkel, '72  
Director of Clinical Programs



**LSH:** *Please trace the history of clinical education and its evolution here at the University of Pennsylvania Law School.*

**Professor Frenkel:** Clinical education had its origins in an earlier portion of this century in a rather primitive mode. The argument for greater use of a clinical teaching methodology began to take form in the literature in the 1930's. [Our *Law Review* published Jerome Frank's piece entitled "Why Not a Clinical Law School?" in 1933.] Until the late 1960's, clinical education across the country was confined to "farming out" students to work under the supervision of local practitioners and to those courses that taught trial or appellate advocacy through the use of simulated exercises.

At this Law School, as at many others, the movement toward a clinical curriculum began in the late '60s. At that time, a criminal defense clinical program existed under the leadership of Tony Amsterdam, '60. In the early 1970's, the Law School had a specialized law office in the health law area as part of the Health Law Project started by [the late Professor] Ed Sparer. The School, however, really did not develop an in-house clinical teaching capacity until 1977 when it opened a teaching law office called the Penn Legal Assistance Office under the direction of Mark Spiegel. That marked the first time that the Law School invested in a laboratory that would allow us to carry out student fieldwork primarily as a vehicle for the study of lawyering as discreet subject matter. It also brought onto the Faculty a group of teachers interested in combining theory and practice and in developing a methodology that uses experience as the basis for intensive, structured learning. In the ten years since then, our Clinical Education Program has diversified and grown into a major part of the overall curriculum.

**LSH:** *Did you participate in any of the clinical offerings as a student at the Law School?*

**Professor Frenkel:** My clinical experience, if you want to call it that, was typical of what was offered in the early 70's. During my second year, I worked at the Health Law Project. In my third year of law school, I worked for several hours a week at a North Philadelphia office of Community Legal Services for a small number of credits in a Program called "Community Law and Criminal Litigation."

**LSH:** *And this was the limit of available clinical courses at that time?*

**Professor Frenkel:** Essentially. There were a few opportunities to work in a variety of public interest settings away from the Law School, but there was no law school supervisor, no course or literature devoted to an examination of the role or skills I was



Seated at left are Clinical Supervisors lecturers: Patrick Johnston, Fran Wetzel, center, and Lorilyn McKinley, right.

Seated above Practice Professor Frenkel counsels student.

employing, no coherent plan for learning other than the hit-or-miss "real world" experience. It did not compare at all to clinical education today.

**LSH:** Was this lack of interest indigenous to Penn Law School or were these programs undervalued across legal education lines?

**Professor Frenkel:** The situation here was typical of attitudes nationally concerning clinical education. Until the 1970's, there was a great deal of uncertainty about the overall mission of law schools (to some extent, that feeling still exists today). There was concern about giving a portion of the curriculum over to anything that had the appearance of real world practice at a time when law schools were striving to be part of the legitimate intellectual fiber of a large university. There were also some practical concerns, not the least of which had to do with the perceived expense of clinical education. There is no question that a sound "live client" clinical education program requires intensive faculty supervision which, in turn, means lower student-faculty ratios than in an ordinary classroom. To a great extent, there was little or no understanding of the pedagogical underpinnings of a serious clinical curriculum. It has only been in recent years that clinicians, through teaching and writing, have articulated the clinical contributions to the study of law. Finally, to the extent that early forms of clinical education were exclusively linked to poverty law and litigation, this served to isolate or limit student and institutional interest.

**LSH:** Please describe the Penn Law School Clinical Program today and the experience of students enrolled in it.

**Professor Frenkel:** The clinical curriculum now consists of a cluster of courses that involve both real case experience as learning vehicles and, also, simulations without real clients.

On the "live-client" side, there are several courses. We offer our original course entitled Lawyering Process, which focuses on dispute-based lawyering. Here students study the role and pre-trial skills of the litigator, while representing clients in a

variety of civil matters. Students take part in simulated lawyering transactions as part of an intensive skill course before the real case work begins.

Since 1981, we have offered our Small Business Clinic in which students represent clients referred by the Wharton School's Small Business Development Center, while studying the work and skills of the lawyer for an entrepreneur or business entity. Counseling, planning and drafting are stressed. No litigation is done in this course.

Since 1983, we have offered a course in child advocacy in which students are engaged in the practice and study of lawyering for non-traditional clients. There is an interdisciplinary emphasis on the lawyer's use of experts and data from other professions (for example, social work and mental health) and a comparative look at how different professions approach conflict, especially in the family area.

Last year, we introduced a new dispute resolution course involving real cases in which students are placed in the role of mediator - a neutral role that is the subject of an increasing amount of scholarly discussion and professional examination. Students are trained in mediation skills, study role/ethical questions and, then, attempt to mediate civil disputes (up to \$5,000) in the Philadelphia Municipal Court. In addition to mediation, the supervised fieldwork teaches "problem-solving" negotiation, case evaluation and argument/persuasion more effectively than our other courses. To place mediation in context, the course also requires students to observe/participate in related processes around the City including judicial settlement conferences, court-annexed and private arbitration and other so-called "alternatives" to the courtroom.

The simulation side of the program offers students a course in the study of the lawyering skills of interviewing, counseling and negotiation which is a very popular course in the curriculum. Of course, older courses have been offered here for years in Trial of An Issue of Fact and Appellate Advocacy, taught by adjunct Faculty.

The typical student experience in all of our in-house, clinical courses involves a consistent combination of theory and prac-

tice. All student casework places students on the frontline as lawyers. This work, however, is done under the intensive scrutiny and supervision of a Clinical Faculty member. For example, a student in our litigation clinic would not write a letter or draft a pleading without that document being reviewed in advance by the student's supervisor. Similarly, all client interviews are videotaped (with client consent) and critiqued, all subsequent transactions and court appearances planned with, observed by and debriefed by the student's supervisor. Every student decision is subjected to intensive analysis and scrutiny with the teacher. To maximize individual learning, each student works one-to-one with a single supervisor for the entire semester. This model applies to all "real case" courses.

All of our clinical courses have classroom study as an essential component. Students have a minimum of two and, in some courses, four hours of classroom work in which - through a combination of reading, lecture, video observation, discussion and role play - they are immersed in examining a variety of models for lawyer-skill development and in studying notions of lawyer role and competence. Seminars frequently focus on questions arising from students' real case experiences, including ethical questions, in a way that we cannot replicate elsewhere in the curriculum. We are able to study professional responsibility by dealing with students' actual resolutions (or avoidance) of dilemmas - not as how they would like to think they would behave and respond to hypothetical problems. Seminars focusing on real cases allow us to begin to develop judgment by collaborative dissection of lawyer decision-making. Finally, as these sessions involve a great deal of student control over the classroom agenda and the real need to assist a colleague in planning for a transaction or solving a problem, students are involved in the discussions intensively.

In all of these courses, students are expected to spend roughly three hours per week for every credit unit that is involved in the course. For some of our larger credit courses, students spend almost half of their academic credits or half of one week in this very intensive experience.

I ought to add that we do have a limited program of externship study that comes under the clinical curriculum. A limited number of students are placed in practice-based settings around the City and, in some cases, outside of Philadelphia in practice environments that we cannot replicate at the Law School. Examples include the local District Attorney's office, an environmental law practice in Washington, D.C., etc. In that area, we have tightened-up the process of supervision so that we are not simply sending students out without Faculty scrutiny. We screen potential placement supervisors and their proposed program for each student as though we were hiring outside tutors for our students; once placed, we monitor the students' experiences on a regular basis.

In addition, a criminal defense clinical course is offered by a member of the Public Defender's Office, who devotes a substantial amount of time to teaching and supervision.

**LSH:** *How does the University of Pennsylvania's Clinical Program compare to that of the New York University Law School, which is the reputed model in that area?*

**Professor Frenkel:** I assume that the NYU model you refer to is their required simulation course given in the first-year. In many ways, it is not unlike clinical (role-play, video) portions of our First-Year Course in Professional Responsibility and our upper-level Interviewing, Counseling and Negotiation course. What makes the NYU course unique is that lawyering is frontally introduced as required subject matter, taught by a substantial number of faculty through small groups and individual critique. Given our current Faculty size, this model really would not be feasible at this Law School.

**LSH:** *You previously mentioned that students taking clinical courses try "real" cases and handle "real" clients. What criteria are used in choosing cases for the Program?*

**Professor Frenkel:** The cases we accept are largely chosen on the basis of their compatibility with the teaching goals of the course. In the Lawyering Process course, for example, we look for a combination of intensive opportunities for lawyer-client interaction and lawyer-lawyer negotiating possibilities as well as potential courtroom experience. In addition, it is helpful if the case presents an opportunity for students to have to marshal facts in developing the case on behalf of the client. This is a skill area that is not addressed elsewhere in the curriculum which many of our students find extremely difficult. To the maximum extent possible, we seek cases that will have a relatively short life; major protracted cases do not give individual students much in the way of experience. Finally, we apply financial eligibility tests tailored to each course.

**LSH:** *The Clinic is sporting a number of new supervisors this year. Can you tell us about this new corps of Faculty members?*

**Professor Frenkel:** We have three new Clinical Faculty members on the litigation side of our Office. Fran Wetzel has joined us from a private practice setting in Washington, D.C., where she did a considerable amount of white collar criminal defense as well as civil litigation. Patrick Johnston was a litigator at Dechert, Price & Rhoads in Philadelphia and, then, was a member of the general counsel staff of a large Philadelphia corporation prior to joining us. Lori McKinley, the other new member of the Clinical Faculty, practiced with Community Legal Services in Philadelphia and has the interesting sidelight of having worked in the mental health area prior to attending law school. Adding people with experience in private practice provides us with an interesting dimension and perspective for the teaching of lawyering. Until now, clinicians who have taught here and elsewhere, like much of the literature, have come almost exclusively from public interest settings. My sense is that while this has provided a strong foundation, it may have limited our ability to examine more closely certain important dimensions of lawyering and decision-making, including such things as the impact of different modes of delivering legal services, economic factors affecting clients' decisions, lawyers' decisions, etc.

“  
The extent to which the Law School has embraced clinical education institutionally...is probably attributable...[to] our attempt to move [it] out of the narrow confines...of litigation set in a public interest setting...  
”

**LSH:** *The Clinical Education Program at Penn Law School has traveled a painful, tenuous road to success. To what do you attribute the Program's "acceptance" into the realm of respectability?*

**Professor Frenkel:** Of course, those of us who have been involved in clinical teaching have always been convinced of its important place in the curriculum. Your question really deals with the extent to which the Law School has embraced clinical education institutionally. And that is probably attributable to a number of factors.

The first, I think, has been our attempt to move clinical education out of the narrow confines of litigation and of litigation set in a public interest setting. By covering the broader landscape of lawyering, we certainly have reached a wider range of students. In the process, clinical education has been viewed as a complement to our broad, substantive curriculum.

Another factor has to do with the extent to which student receptivity has grown. I would like to think that the increase in the number of students who elect to take our clinical courses (including simulation courses) - and this number is now up to in the neighborhood of 60 percent of each graduating class - has had something to do with the Law School's greater receptivity and recognition of what we have been attempting to do. Clinical courses are the Law School's major response to widely-felt student dissatisfaction with the second and third years of law school. Our students want to learn in different modes, to have more demanded of them than writing exams or papers, to develop skills in a "safe" environment and to work with real clients in a public service setting, possibly for the first time.

I think, also, the interest of Faculty members in attempting to teach doctrine or theory in ways other than the standard case method has grown. Although these developments have taken place on a very local individual case basis, the cumulative effect has been the recognition that clinical methodology is a valuable teaching tool.

**LSH:** *Over the years, our students and Alumni/ae repeatedly have praised the Clinical Program as "one of the best law school experiences that has ever happened" to them. How can Alumni/ae who have enjoyed this positive experience demonstrate their appreciation today?*

**Professor Frenkel:** There are a number of levels on which we have been able to involve Law School Alumni/ae in our Program. Each year, the simulation courses that we offer bring practicing attorneys to the campus to do such things as engage in mock negotiations with students. Students find those exercises tremendously valuable and "real" learning experiences. Our Alumni/ae make

*continued on page 21*

**John M. Fowler**, has been named President and Chief Executive Officer of Gulf Insurance Company, a subsidiary of Commercial Credit Company.

**H. Ronald Klasko**, a managing partner at the Philadelphia firm of Abrahams & Loewenstein and chairman of its Immigration Department, has co-authored a book entitled *Employer's Immigration Compliance Guide* on the new employer verification and sanctions law.

**John Makdisi**, Professor of Law at Cleveland-Marshall College of Law, has dedicated his newly published work-book on *Estates and Future Interest* (1987) to Law School Professor Emeritus, George L. Haskins.

**The Honorable Frederica Massiah-Jackson**, of the Philadelphia Court of Common Pleas, was the guest speaker at naturalization ceremonies sponsored by the Philadelphia Bar Association in March, 1987.

**Manuel "Manny" Sanchez** has announced the formation of a partnership with John D. Daniels under the firm name of Sanchez & Daniels, Suite 810, 333 West Wacker Drive, Chicago, IL, 60606.

**'75 Anthony C. Ching** has been appointed the West Coast Litigation Counsel for Shell Oil Company in the newly established Los Angeles Office. He has also been appointed to the Editorial Board of the Executive Committee of the Litigation Section of the California State Bar and is a Judge *pro tempore* of the Los Angeles Municipal Court.

**'76 James A. Backstrom**, former Attorney in charge of the Dallas Field office of the Antitrust Division, U.S. Department of Justice, has joined the Philadelphia and Princeton firm of Fox, Rothschild, O'Brien & Frankel as a member of its Litigation Department.

**Jeffrey I. Pasek**, a partner in the Labor Department of the Philadelphia firm of Cohen, Shapiro, Polisher, Shiekman & Cohen, has been appointed by the Pennsylvania Bar Association to the Board of the Pennsylvania Legal Services Center. Mr. Pasek is also Chairman of the Pennsylvania Chamber of Business and Industry's Industrial Relations Committee.

**Michael T. Scott**, formerly a partner at Pepper, Hamilton & Scheetz, has become a partner in the Philadelphia office of Reed Smith Shaw & McClay.

**'77 Gilbert F. Casellas** has been elected to a three-year term in the Pennsylvania Bar Association House of Delegates. He also chairs the Young Lawyers Section of the Philadelphia Bar Association.

**John Jamieson**, an associate in the Philadelphia firm of Panitch, Schwartz, Jacobs & Nadel, was a panelist addressing the annual meeting of the Philadelphia Patent Law Association. Mr. Jamieson spoke on "Review of Cases on the Subject of Obviousness".

**'78 Ruth S. Landau**, of the Phoenix, Arizona firm of Streich, Lang, Weeks & Cardon, was co-Chair and a faculty member of the Arizona State Bar's October, 1986 seminar entitled: "Beyond the Prima Facie Case: Employment Law Today." Ms. Landau currently specializes in labor and employment law, representing management.

**'78 Zygmunt A. Pines**, of Philadelphia, has published "Pennsylvania Appellate Practice Procedural Requirements and Vagaries of Jurisdiction," in the *Dickinson Law Review*. Mr. Pines is Assistant Chief and Senior Staff Attorney of the Central Legal Staff of the Pennsylvania Superior Court.

**'79 Lorraine C. Staples** has returned to the Morristown, NJ, firm of Vogel, Chair, Schwartz & Collins after a two year sabbatical to live in Baton Rouge, LA, where her husband was engaged in a temporary research assignment for Exxon Corporation. In the interim, she gave birth to her first child.

**'80 Steven N. Cousins** has become a partner in the St. Louis, MO, firm of Armstrong, Teasdale, Kramer, Vaughan & Schlaflly and is chairman of the firm's newly formed Financial Restructuring, Reorganizing and Bankruptcy Department. Mr. Cousins is the youngest attorney to head a department within the firm.

**Kristin Ramage Hayes** was sworn in as an Assistant U.S. Attorney, assigned to the Criminal Division in Philadelphia. She has been the director of litigation and special projects at the Redevelopment Authority of Philadelphia since September, 1986.

**'81 Nancy J. Hopkins**, of the Norristown, PA, firm of Gerber & Gerber, was elected to serve a three-year term as a Director on the Pennsylvania Bar Institute Board.

**Dennis A. Williams**, of Mt. Laurel, NJ, has been named Assistant Counsel to United Jersey Banks.

**Walter H. Schumacher** was promoted to Associate Counsel at Campbell Soup Company's Headquarters in Camden, NJ, where he has been Assistant Counsel since 1984. Previously he was an associate in the Philadelphia office of Morgan, Lewis & Bockius.

**'82 Paul N. Allen** has joined the Philadelphia firm Obermayer, Rebmann, Maxwell & Hippel.

**Douglas N. Candeub** has become associated with the firm of Hoyle, Morris & Kerr in Philadelphia.

**'83 Abbi Lisa Cohen**, of Philadelphia, has become associated with the firm of Montgomery, McCracken, Walker & Rhoads in the Environmental Section of the Litigation Department.

**Leslie C. King, III**, has relocated his offices to 1048 Paseo de Peralta, Post Office Box 9851, Santa Fe, New Mexico, 87504. His practice is limited to Bankruptcy, Business Reorganization, Loan Restructuring and related Debtor-Creditor Law.

**Kazuhiko Shimada, LL.M.**, of Tokyo, Japan, has joined NTT International Corporation providing engineering and consulting services of telecommunications and data processing systems.

**Mark Suprenant**, of St. David's, PA, is associated with the Philadelphia firm of Montgomery, McCracken, Walker & Rhoads in the Business Department.

**'84 Phillip G. Steck**, of New York City, is an Assistant District Attorney in Manhattan with the Special Narcotics Prosecutions Bureau. He was formerly associated with the firm of Whiteman, Osterman & Hanna in Albany, NY.

**'85 Rachel Buchman Lipshutz** and Mark Lipshutz were married on November 1, 1986 in Tamarac, FL.

**Cheryl R. Saban**, of New York City, has joined the firm of Paul, Hastings, Janofsky & Walker as an associate in the firm's Employment Department.

**'86 Professor Edward B. Shils**, the Founder and Director Emeritus of the Sol C. Snider Entrepreneurial Center of the Wharton School of the University of Pennsylvania, announced the \$500,000 Shils/Zeidman Fellowships in Entrepreneurship providing grants for needy U.S. minority students, students from Israel and students from countries in the developing world.

## THE LAW SCHOOL CLINICAL PROGRAM Continued from page 13

major contributions to those courses (and have a good time in the process).

We also have had Alumni/ae occasionally coming on to the Clinical Faculty on a "sabbatical" basis, a development which has been mutually beneficial in the few instances in which that has occurred.

Finally, in the last few years, a separate Friends of Clinical Education Alumni Giving Fund has been created to provide financial support for the expansion of this part of the curriculum. It has been very gratifying to see the extent to which Alumni/ae and others interested in clinical education have supported this Fund.

**LSH:** *How do you envision the future of clinical education and Clinical Programs at the University of Pennsylvania Law School?*

**Professor Frenkel:** I think that clinical methodology will continue to play an increasing role in the overall curricula of most law schools. In terms of specific expansion, the next major step is the increased integration of clinical methodology (that is, role-based experiential teaching) into the traditional classroom. I think that this will be true here at Penn and at other law schools. I also see an expansion of "live client" clinical vehicles as law schools grapple with the need to justify the three-year course of study, and to vary the learning modes offered in the upper-level curriculum.

Finally, there seems to be growth in overall student participation in work-based experiences off-campus, both for credit and for pay. We may see more and more effort made to use this data and experience in the classroom.

**LSH:** *Dean Robert H. Mundheim stated in his "From the Dean" column featured in this issue of The Journal, "Under Doug Frenkel's guidance, I think we have developed a Clinical Program that is second to none in the nation." This glowing compliment must be a wonderful boost to your professional ego.*

**Professor Frenkel:** It's always nice to hear things said in a positive light. I'd like to think that some of the design changes that we have made in the last few years have anticipated developments in our profession and have been responsive to students' learning goals. My hope is that we can continue to develop clinical teaching in ways that will be embraced by the Faculty as a whole and will increasingly occupy a central place in the curriculum.

