Council on Legal Education for Professional Responsibility

NEWSLETTERS

1976-1980

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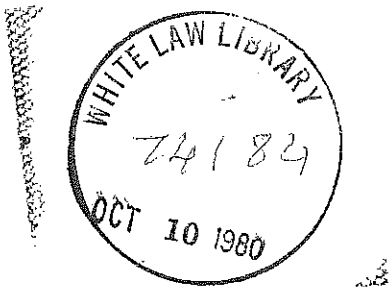
Vol. VIII—Vol. XII



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preface

This is the fourth reprinting in one volume of CLEPR Newsletters. The first single-volume compilation covered our Newsletters from January 1969-December 1972, Volume 1, No. 1 through Volume V, No. 4. The second covered our Newsletters from January 1973-May 1974, Volume V, No. 5 through Volume VI, No. 13. The third covered our Newsletters from July 1974-May 1975, Volume VII.

This periodic compilation of CLEPR Newsletters in volume form is intended to make them more manageable for reference purposes.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

280 Park Avenue • New York, N.Y. 10017 • Phone (212) 697-6800

Volume VIII, May 1976

Whitney North Seymour has been elected Chairman of CLEPR's Board of Directors, and Maximilian W. Kempner has been elected Chairman of CLEPR's Executive Committee. Both these positions were formerly filled by Orison S. Marden, a founder of CLEPR, who died on August 25, 1975. We also regret to report that Judge William H. Hastie, a member of CLEPR's Board, died on April 14, 1976.

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CLEPR ANNOUNCES NEW GRANTS

New grants to fifteen law schools have been made by CLEPR under Guidelines announced to law schools in May 1975.

Nine grants were awarded to provide partial support for new clinical supervisors in order to increase clinical placements for students either in existing programs or in new programs. In response to the indication in the Guidelines that funding preference would be given to programs taking place within a clinic established for teaching purposes and under the control of the law school, a number of schools set up in-house facilities with their own funds and were granted CLEPR support to increase the number of students working therein. All the schools will be able to offer a clinical experience to a higher percentage of each graduating class and simultaneously take care of some of the unfulfilled demand for clinical opportunities.

The nine grants are as follows:

Case Western Reserve University, $30,000, to add 2 supervising attorneys and a secretary to a newly-established in-house clinic, permitting expansion of third year programs and establishment of a second year program.

Chicago-Kent College of Law (Illinois Institute of Technology), $30,000, to hire 2 supervisors and 2 secretaries for a new in-house clinic which will represent a pre-paid group of middle-income workers.

Columbia University, $32,000, to add a supervising attorney and secretary to the School's first in-house clinic.

Duke University, $10,000, to add a graduate intern to a three-year sequential clinical program which, by 1977, will accommodate most of the graduating class.

University of Maryland, $11,000, to supplement the salaries of two legal aid attorneys to compensate them for time spent in student supervision.

University of Michigan, $40,000, to hire a supervising attorney to direct fieldwork components added to four seminar courses, Criminal, Juvenile, Welfare and Family Law; and to hire a private attorney, on a part-time basis, to supervise students working in a fieldwork component added to the Tax Seminar.

University of San Diego, $20,000, to add a clinical instructor and 2 adjunct clinical professors so that the clinical curriculum can be expanded by the addition of courses on Real Property, Probate and Estate Planning, and Environmental Law.

Southwestern University, $25,000, to hire two faculty members to supervise students representing lower-middle-income clients of a new law school-operated clinic where fees are charged or awarded.

Texas Southern University, $24,000, to hire two new instructors so that a clinical experience is available to 1/3 of each entering class in a two-year sequential program.

The following two grants were awarded pursuant to the Guideline which promised preference for projects which would improve and strengthen supervision.

Temple University, $50,000, to hire two experienced private attorneys on sabbatical from their own practice, thereby adding a new kind of supervision to an enlarged teaching clinic, and ini-

tiating ties between legal educators and practitioners who share responsibility for the training of future lawyers.

Washburn University, $30,000, to support an additional clinical professor so that the student/faculty ratio can be substantially improved in first and second-year courses that form part of a three-year clinical sequence.

To create a wider awareness of the need for substantial funds for clinical training of lawyers, CLEPR Guidelines encouraged law schools to seek significant outside funding for clinical education by offering grants of $100,000 to be matched 2 to 1 for operating expenses or 3 to 1 for capital improvements by alumni gifts, legislative appropriations, or general university funds. The grant described below, which is for general support of clinic operating expenses, must be matched by $200,000 raised from alumni solicitation before the CLEPR funds are released.

Harvard University, $100,000, to 1) further develop the use of part-time practitioners as regular supervisors in the clinical programs; 2) double the number of sections of the new combined Trial Advocacy-Clinical course; 3) continue development of teaching materials for use in clinical courses.

The following grants provide support for capital improvements in law school-operated clinics. They were made pursuant to the offer of CLEPR funds when substantial outside funds have been raised by the law school for capital improvements.

University of New Mexico, $100,000, to provide teaching equipment for use in a new clinic which will occupy an entire floor of a wing, added to the present law school, and funded by legislative appropriation. One-third of the CLEPR funds will be used to purchase video equipment and two-thirds to purchase computer equipment in order to create a modern, model teaching law office. At New Mexico, participation in clinical work is required of all students and the equipment will be used to provide training in a three-year clinical sequnce.

University of San Diego, $30,000, to reconstruct and equip the third floor of the Law School as a new Legal Services Center making possible the consolidation and enlargement of the clinic programs. A new courtroom will be included in the reconstruction and located next to the Center for convenient use by Clinic students. The required $90,000 in matching funds will be raised by a bond issue sold by the University pursuant to a state program under the California Education Facilities Authority.

University of Southern California, $100,000 to build a new physical

facility which will house an existing law school clinic providing legal representation to a pre-paid group entirely composed of students of the University. As at New Mexico, the intent is to create a modern teaching law office. Thus, substantial expenditures are planned for teaching "tools" - computer terminals, and video and television equipment. The School proposes to raise the required matching funds of $300,000 from alumni, private foundations and the University.

Washburn University, $20,000, to provide office and teaching equipment for a clinic facility occupying an entire new wing added to the present building with funds raised by the School in a recent solicitation to alumni, augmented by a pledge of University funds. The Washburn Legal Clinic is in effect, a large law office, staffed by five full-time clinical faculty assisted by more than half of the second and third-year students. The grant provides for the purchase of typewriters, dictation equipment, and telephonic systems for office use, as well as video and audio equipment for training students in a three-year program of clinical work.

The grant described below was awarded under a Guideline offering support for innovative experiments in clinical education.

University of Oregon, $7,000, to add a skills training component to the required first-year Torts course by having students do interviewing and investigative work on personal injury cases.

REPORT ON TRAINING FOR COMPETENCY AND ADMISSION TO THE BAR

In connection with its annual Board of Directors Meeting, CLEPR invited a group of legal educators, jurists, bar admission authorities and private practitioners for a two-day Workshop to discuss the topic: Education and Training for Competency before Admission to Practice.

After definitions of competency were offered and analyzed the participants took an historical look at requirements for admission to practice over the years. They then moved to consideration of some recent developments in requirements for admission to practice as well as accreditation of law schools. These included the recommendations of the Clare Committee, the conditions imposed by Indiana Rule 13, and the work in accreditation by the Association of American Law Schools, the American Bar Association, and the Department of Health, Education and Welfare. The contributions of law school clinical education in competency training were analyzed as were recent developments in the use of computerized teaching materials and trial practice courses linked to law school clinical teaching. The Workshop concluded with a discussion of "Where do the law schools go from here?"

in which five law school deans and a past-president of the ABA participated.

To encourage further discussion of the issues raised at the Workshop, the entire fall issue of Learning and the Law will be devoted to publication of the papers prepared by the Workshop invitees as the basis of discussion, accompanied by an analytical essay written by Professor Lester Brickman of the University of Toledo College of Law who acted as reporter for the Workshop.

The Workshop highlighted the gaps that exist between legal education and the bar admission process and brought out the need for continuing dialogue between those involved in education and those involved in qualifying lawyers for the profession. To this end, CLEPR will hold a small planning conference, which will include representatives from bench, bar and schools, to continue the dialogue started in connection with the CLEPR Board meeting.

Continuing interest in the issue of competency is evidenced by the recent creation by Judge Richard M. Givan, Chief Justice of Indiana, and one of the participants in the CLEPR Workshop, of a committee entitled: Indiana Judicial Council on Legal Education and Competence at the Bar.

CLEPR TO SUPPORT NEW PUBLICATION ON STUDENT PRACTICE AND BAR ADMISSION RULES

A CLEPR grant of $17,350 has been awarded to the Institute of Judicial Administration, Inc. to prepare and print a compendium and analysis of state and federal rules and statutes governing bar admission and student practice. The compendium, published in looseleaf form to make possible continuous updating, will be available for sale.

No single-volume, complete collection of bar admission requirements exists. Two previous CLEPR booklets contained state and federal student practice rules - the latest as of 1973. Together with the recently published CLEPR studies of law school curricula, the new publication will make available a basic library of information on the education and qualification of lawyers.

INQUIRY CONCERNING WORKING CONDITIONS OF CLINICIANS

As the number of clinicians increases and clinical programs become established parts of the curriculum, differences emerge between clinical teachers and academic teachers in regard to number of hours worked per week and weeks worked per year; also as to student contact hours, salaries, and such perquisites as sabbaticals. In an effort to gain concrete information concerning these apparent disparities, CLEPR in 1974 awarded a grant to the AALS for use by the Section on Clinical Legal Education to conduct a study of clinicians' working conditions covering the points mentioned above as well as others. To date, data about 120 clinicians have been submitted by over 80 schools, and a follow-up has recently been sent out by Professor

Jerrold Becker of the University of Tennessee College of Law to elicit further information.

To complement this study, CLEPR now has contacted ten schools, selected because of the size of the clinical faculty and the extent of the clinical curriculum, requesting a) a description of any disparities between academicians and clinicians that exist at the school, and b) specific suggestions for reducing or eliminating such disparities.

AVAILABILITY OF TEACHING MATERIALS

The following materials, produced with CLEPR support to the schools mentioned, are now ready for distribution. Interested parties should contact the sources mentioned below.

School: University of Michigan
Subject: A Method for Teaching Legal Ethics and Professional Behaviour
Authors: Dr. Andrew S. Watson and Professor Steven D. Pepe
Format: 5 videotapes with accompanying text for students and manual for teachers

Titles and Description:

1. Demonstration of a Clinical Conference. A class which dealt with lawyer ethics, peer group criticism, interviwing problems, and other professional role conflicts. A one-hour edit of a two-hour class.

2. Lawyer Role Conflicts and their Resolution: Learning Through Group Process. This tape aims to demonstrate some technique for helping students to become aware of their professional conflicts and to learn how to cope with them. Discussion of methodology.

3. Psychological Taxonomy of Lawyer Conflicts. A series of twelve examples of "taxonomic conflicts" are demonstrated from student-lawyer interviews with clients, and from class discussions about such problems. The purpose is to demonstrate what the conflicts actually look like in real practice situations.

4. A Clinical Case Conference. A second example of how a clinical conference is taught, in this case without the use of an interview-tape stimulus. Deals with a series of important professional conflicts.

5. A Clinical Conference on Counsel's Life v. The Client's Needs. This is the complete record, on two reels, of the class used in Tape #2. No commentary on the process is included on the tape.

Price: $35 per 1/2" reel-to-reel or $40 per 3/4" cassette tape, plus $3 per reel handling and shipping charges. Not available for loan.
Contact: CLEPR, c/o the Video Group, Inc., 77 West Canfield, Detroit, Mich. 48201

School: University of Oregon
Subject: Legal Ethics
Author: Professor Fredric R. Merrill
Format: 3 videotapes of student-client interviews; others in process
Titles and Description:

1. The Solonsky Adoption. (23 minutes) Student in legal aid office interviews woman with two children and her second husband regarding an adoption of the children by the second husband.

2. The Wellman Case. (15 minutes) Student working in legal aid office is consulted by a man who is defendant in uniform reciprocal non-support proceeding brought by District Attorney to collect support for wife and children in California.

3. The Prosecution's Choice. (9 minutes) Student in clinical program in District Attorney's office is assigned to prosecute a traffic offense. When policeman is interviewed, student discovers that conduct of defendant, who apparently does not have counsel, does not meet elements of crime.

Price: May be duplicated at cost
Contact: Professor Merrill, University of Oregon School of Law, Eugene, Ore. 97403

School: Harvard University
Subject: Trial Evidence
Author: Professor Charles R. Nesson
Format: 16 mm. film
Titles and Description:

1. State v. Riley. (B&W, app. 12 minutes) Trial judge, sympathizing with rape victim, takes over direct examination and effectively cuts off cross examination.

2. Commonwealth v. Lopinson. (Color, app. 17 minutes) In a murder trial, the prosecutor introduces gory photographs of victims while defense claims these are inflammatory and prejudicial.

Price: Available free on a loan basis.
Contact: Professor Charles R. Nesson, Harvard Law School, Cambridge, Mass. 02138

School: University of Minnesota
Subjects: Civil Procedure, Legal Ethics
Author: Professor Roger C. Park
Format: Programmed computer exercises for use on EDUCOM network of Automatic Data Processing Corp.
Titles and Description:

1. Evidence, The Complaint, Drill on Code of Professional Responsibility, The Defense Function, Case Analysis. Others in process. A synopsis of each exercise may be obtained from the author.

Price: Available, royalty free, to all interested law schools.

Contact: Technical information - Dr. Russell Burris, Director, Consulting Group on Instructional Design, University of Minnesota, Minneapolis, Minn. 55455. Other - Professor Park, University of Minnesota Law School, Minneapolis, Minn. 55455

School: University of Illinois
Subjects: Interviewing and Counseling, Legal Research, Conduct of a Trial, Contracts, Property, Evidence. More than 50 hours of instruction in various other subjects also available.
Author and Project Director: Professor Peter B. Maggs. Other law professors are participating.
Format: Programmed computer exercises for use on PLATO network of Control Data Corporation.
Description: A synopsis of each exercise may be obtained from the author.
Price: Available, royalty free, to all interested law schools.
Contact: Professor Maggs, University of Illinois College of Law, Champaign, Illinois 61820

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Other contributions are being made to a growing library of computer-based exercises for use in both traditional and clinical programs. Under a grant from the Law School Admission Council, Professor Charles Kelso of Indianapolis Law School, has developed, on the PLATO system, a series of Introduction to Law lessons which may be useful to teach pre-clinical skills to first-year law students. At Harvard, Professor Robert Keeton has prepared computer-based exercises in Torts and Trial Practice. For further information, please contact Professors Kelso and Keeton at their schools.

Professor Keeton should also be contacted for information concerning EDUCOM, the network system. Professor Maggs can supply information concerning the PLATO network. A recent article in Science magazine describes the educational uses of the PLATO computer system. (Volume 192, No. 4237)

CLEPR suggests that readers interested in using computer-based exercises should make initial inquiries at their own University to ascertain computer accessibility.

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Volume IX, No. 1, January 1977

PARITY BETWEEN CLINICAL AND ACADEMIC SALARIES SUPPORTED BY NEW CLEPR GRANTS TO TWO LAW SCHOOLS

A new emphasis in CLEPR's program is reflected in grants made in December, 1976 to Northwestern University and the University of Tennessee. The entire amounts awarded will be used to increase the salaries of clinical supervisors in the law schools of these two universities in an initial effort by CLEPR to up-grade the status and pay of personnel working in clinical programs.

Disparities between the working conditions of academicians and clinicians will not be erased solely by the up-grading of clinical salaries. Inherent in the double role of teacher/practitioner are longer hours, longer work weeks, more student-contact hours and responsibility for clients - all adding up to more demanding work than is required of those who are classroom teachers. But CLEPR believes that raising clinical salaries to parity with those of classroom teachers will eliminate one of the most serious handicaps in the recruitment and retention of qualified clinical supervisors in the increasing number of clinical programs.

Northwestern University will receive $29,300 over a two-year period which, together with matching funds from the School of Law, will be used to increase the salaries of five tenure-track clinical faculty so that parity between clinical and academic compensation is established. Annual individual salary increases ranging from $5,000 to $7,000 will bring total annual compensation for clinicians into line with compensation available to non-clinical faculty who teach on a nine-month basis and also engage in additional teaching or research in the summer. Northwestern has committed itself to maintain the higher clinical faculty salaries supported by this grant in future budgets, except for adjustments that reflect differing levels of experience.

In awarding this grant CLEPR recognizes Northwestern's pioneer role in es-

tablishing new promotion and tenure criteria which take into account the special demands of clinical teaching. All teachers at Northwestern must meet the promotion and tenure standard which requires the making of significant contributions to the development of the law or legal education or to the improvement of legal institutions and procedures. For non-clinical teachers these contributions normally are expected to result in publication of original research. Clinical teachers are not required to publish. However, the standards make publication an option for clinical teachers by providing that "if a clinical teacher desires to have original research and publication considered as one of the criteria for promotion or tenure, the clinical teacher, where feasible, may be given some relief from clinical teaching responsibilities to engage in appropriate research and writing." As an alternative to publication, clinical teachers may satisfy this standard for promotion and tenure by making "significant contributions to development of the law or to legal education." Since clinical legal education is still in the developmental stage, significant contributions to the developmental process, such as proposing and evaluating new methods and techniques, "will be considered as an acceptable method for satisfaction of this standard for promotion and tenure." Also, the standard for teaching effectiveness may now be met not only by a showing of excellent performance in the teaching of large classes but also by a showing of "excellence in the teaching of small groups and in supervising students...in clinical...studies." Northwestern recognizes here the importance of the teaching that takes place as a clinician supervises student-client casework. Thus, in addition to financial parity established by the grant, Northwestern has given further support to clinical faculty by establishing promotion and tenure standards which recognize the different roles of clinicians and academicians.

The University of Tennessee will match a CLEPR award of $19,000 in a two-year plan to increase the salaries of the twelve attorney/instructors in the College of Law's extensive clinical program so that their pay more closely approximates that of academicians of equivalent years of experience. In addition to taking into account the usual differences in working conditions in the law school which weigh more heavily on clinicians, this grant is aimed at breaking the bond between the salaries of clinical teachers and the pay of legal services attorneys. Clinical teachers' salaries have too often been pegged at a level slightly above that for legal services attorneys and lower than the salaries for classroom teachers. This grant highlights the fact that clinicians are teachers although also lawyers.

At Tennessee, the Clinic staff of four tenure-track faculty and the twelve attorney/instructors mentioned above direct a program which provides civil-indigent services for Cumberland County under a grant from the Legal Services Corporation, criminal defense services with funds from LEAA, and services to the elderly under Title XX of the Social Security Law. Included in the School's annual budget are the salaries of the four tenure-track clinical faculty and the maintenance costs of a spacious physical facility for clinical operations. Such

major financial commitment by the Law School assures that the goals of providing quality service to clients and quality teaching to students are met. Added to this there will now be the law school's new commitment under the present grant which moves the pay scale of the staff attorney/instructors away from the salary level in legal services and toward the law school faculty scale.

OTHER RECENT CLEPR GRANTS

Seven Springs Farm Center, Inc., (an affiliate of Yale University), $6,000, to provide partial support for a two-part conference held in June and July, 1976 on "The Ethical Problems of the Lawyer in Contemporary Society." The discussion,by representatives of bench, bar, government agencies and legal education, and the working papers prepared by the invitees as the basis of the discussion will form the nucleus of an enlarged treatment of the symposia subject in a book to be written by Professor Geoffrey C. Hazard of Yale Law School. Publication is planned for Spring 1977 by Yale University Press. A portion of the CLEPR grant funds will be used to purchase and distribute copies of the book to clinical teachers and others in legal education.

American Bar Association Fund for Public Education, $10,000, to be used by the National Institute of Trial Advocacy (NITA) to cover tuition and expenses for nine clinical law teachers to attend the Institute's national training session (June-July, 1976) and one clinical law teacher to attend the Institute's north-east regional session.

CLEPR's previous support of the NITA training program has made it possible for 70 clinicians to improve their skills as advocates and as teachers through attendance at NITA sessions.

American Bar Association Fund for Public Education, $15,000, to be used by the Consultant on Legal Education to the ABA to support a project that will analyze and report on the information collected by the 1975 annual ABA Law School Questionnaire. The 1975 Questionnaire was substantially expanded in order to collect more information concerning programs of study and instructional costs. This expansion follows earlier CLEPR support for a publication by Dean Frank Walwer and Assistant Dean Peter de L. Swords of Columbia University School of Law entitled The Costs and Resources of Legal Education. Under the general supervision of the Consultant on Legal Education to the ABA, Professor James White, Deans Walwer and Swords are responsible for the work supported by this grant.

Also new and important is the fact that starting with the 1976 edition ABA Questionnaires will solicit information concerning clinical programs.

Long-term funding of this work and its products will come from the ABA and other sources. The CLEPR grant initiates a plan for the publication of annual reports which will make available for the first time, on a continuing basis, comprehensive and detailed information on American law schools.

American Bar Association Fund for Public Education, $8,400, to be used to defray the costs of publishing and distributing 3,000 copies of the Summer 1976 issue of Learning and the Law. The issue was devoted almost entirely to CLEPR's workshop on Education and Training for Competency before Admission to Practice, held in March 1976. The magazine contains the working papers prepared for the Workshop, a summary of proceedings, an analytical essay, and a reprint of an article by William Pincus urging renewed attention by judges, bar examiners, and practitioners to their responsibilities in the education and licensing of lawyers.

University of Michigan, $15,500, to support the production of two student-client and lawyer-client interview videotapes by Dr. Andrew Watson and Professor Steven Pepe for use by Michigan and other schools in seminar teaching of ethics and professionalism. This grant continues CLEPR's support for teaching materials which come out of the Michigan clinic, but which are particularly suitable for use in other clinical programs. Readers are directed to CLEPR Newsletter, Volume VIII, May 1976 for a description of the earlier videotapes produced by Dr. Watson and Professor Pepe and other teaching materials produced elsewhere.

Association of American Law Schools, $4,300,to hold a colloquium to discuss the disparities in working conditions and status between clinical law faculty and academic faculty and attempt to suggest approaches to the problems involved. The bases of the discussions will be law school criteria for evaluating clinical teachers and classroom teachers, and the status and perquisites that result from such evaluation. The AALS proposal cites the relative ease with which law schools employ the criterion of a classroom teacher's scholarly production as the basis of decision making, and the considerable difficulty of evaluating the clinical teacher's competence absent enunciated criteria directly related to his job. The proposal suggests that new standards and methodology must be employed to evaluate teachers whose time schedules do not permit them to research and publish.

Under the chairmanship of Millard Ruud, Executive Director of AALS, a group of deans and clinicians will attend a one and one-half day conference to discuss the agenda described above. The proceedings will be taped and transcribed with the results published by the AALS in monograph form for distribution to law schools.

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Volume IX, No. 2, February 1977

THE EDUCATION AND LICENSING OF LAWYERS

Report on Key Biscayne Conference
by Professor Lester Brickman, Cardozo School of Law

A concern for competency has led the Council on Legal Education for Professional Responsibility (CLEPR) to hold two meetings to discuss means of improving competency in the bar. The first meeting was titled "Education and Training for Competency before Admission to Practice" and took place in conjunction with the CLEPR Board meeting in March 1976. The Summer 1976 issue of Learning and the Law is devoted to the proceedings and papers of this conference. The second meeting took place in Key Biscayne, Florida in November 1976 and was titled "The Education and Licensing of Lawyers". Professor Howard Sacks of the University of Connecticut School of Law and member of CLEPR's Board of Directors served as Chairman. Papers prepared in connection with the meeting and a list of conference participants are set forth on the last page of this Newsletter.

While CLEPR's concern for competency is shared by many in the bar as reflected in efforts to bring about specialization, certification and mandatory continuing legal education, the focus in the bar and bench is primarily on the lawyer who has already been admitted to practice. CLEPR's goal is to shift attention to pre-admission phases, that is, on the education and licensing process for becoming a lawyer. Therefore, the agenda for the Key Biscayne meeting listed the following questions and topics:

I. Are there any serious deficiencies in the present system for educating and licensing lawyers?

   A. Length of time devoted to education (college and law school). Is this time span necessary? Could it be shortened?

   B. Law school curricula and methodologies of teaching. Should law school requirements be limited to academic, library and classroom work? Should clinical experience be optional or required?

C. The bar examination. What is its function? What does it test for?

II. Proposals to change the present requirements for the lawyer's license.

A. Education

1. Justin Stanley: 7 years, divided: 4-college, 2-law school, 1-practical training outside law school under auspices of bar.

2. Bayless Manning: 7 years, divided: 4-college, 2-law school, 1-bar-administered "lawyer school".

3. Michael Sovern: 8 years, divided: 4-college, 2-law school, 1-practice in private firm, 1-law school.

4. William Pincus: 6 years for J.D., divided: 3-college, 3-law school, (third year clinical); 5 years for LL.B. divided: 3-college, 2-law school.

5. James Fellers: 6 years, divided: 3-college, 3-law school, (third year devoted to clinical, history of law and study of justice system).

6. Antioch: 7 years, divided: 4-college, 3-law school (clinical training begins in first year and continues through third year).

B. Bar Examinations and Admission to the Bar

1. Use of the diploma privilege by more states

2. New requirements for admission

a. Clare Committee recommendations (Federal)

b. Indiana Rule 13 (State)

3. Additions to or changes in form and content of bar exam

a. Multi-state Bar Exam

b. Competency testing

c. ABF-ETS project

4. National bar exam as alternative to separate state exams

5. Federal bar exam for admission to federal courts

a. Implications of Clare Committee recommendations and

subsequent work of Devitt Committee

b. Automatic admission based on membership in state bar

There probably has never been a conference which hewed narrowly to a prepared agenda. Frequently assumptions upon which agenda items are based may be questioned. Areas which conference organizers anticipated would invite little discussion instead generate strong advocacy, while ideas and concepts which did not gain a foothold in the agenda come to the fore in the discussion. In these respects this conference had much in common with other conferences on related subjects. But it was also quite different in some noteworthy respects.

The chemistry of this conference was determined by the personalities and interests represented by the 43 participants. The selection of such a resource base reflected a recognition of the need to fix responsibility within the various relevant interest groups for the development and ascertainment of lawyer competency. Law schools, bar leaders, bar examiners, and state and federal judiciaries agree that among them lies the responsibility for training for, developing, maintaining and enforcing standards of competence. Allocation of that responsibility, however, is hotly disputed. As noted in the introduction to the special issue of Learning and the Law, "responsibility assumed by all is responsibility assessed against no one".

The bringing together of representatives of each of these constituencies to discuss the education and licensing of lawyers - which is perhaps the first convocation of such a group for such purposes in recent history - is what gave this conference its unique flavor. For it quickly became apparent that no prior meetings or conferences had broached quite the same subject in quite the same way. The very fact that these particular participants were meeting together was thought to be highly instructive. Moreover, by seeing themselves as an interrelated part of a process of education and licensing, the stage for a more ambitious undertaking was set.

Perception of this interrelationship was a major conference objective. In furtherance thereof, a paper was prepared by Dr. Robert A. Chase detailing the medical education and credentialing system - a system which is much more fully developed than is the analogous legal education and licensing system. A Coordinating Council on Medical Education, composed of representatives of the American Medical Association, the association of medical colleges, hospitals, and medical specialty groups and boards, is the major policy body which oversees Liaison Committees which have direct operational authority for accreditation of educational programs. Drawing on this medical analogy, a paper prepared by Jane Kelso examined the institutions and groups which most impinge upon the education and licensing of lawyers including the Association of American Law Schools, the American Bar Association, the National Conference of Bar Examiners, state boards of bar examiners, state supreme courts, the National Conference of Chief Justices, the federal judiciary and the Law School Admission Council. This analysis was presented in the context of a proposal drawn by analogy from the medical profession for the creation of a Coordinating Council on Lawyers' Credentials whose purview would be the accreditation of schools and training programs, the licensing of individuals to practice, and the certification of specialists.

The presentation of this plan evoked a curious response. There was very little discussion of the specifics of the proposal in the subsequent sessions. A coordinating council may well have been regarded as a desirable development. But it was as if discussion of such a plan symbolized a willingness to share control over one's domain, whether that be legal education, the bar exam or the licensing process. No such willingness was evinced. The absence of specific discussion, however, was an ambivalent commentary for the idea of a coordinating council formed the backdrop for most of the discussion in the respective panels.

The need for a coordinating council may be predicated on several different approaches. For example, it may be regarded as an appropriate arena for the discussion of common or overlapping problems or as having superior capability for making more impactful statements on legal education, particularly with regard to funding. As presented, however, the need for a coordinating council was based upon a realization of significant deficiencies in the educational and licensing process. Under our present system, people are being certified to practice law who are insufficiently qualified and inadequately trained in certain basic lawyering skills. These deficiencies received considerable attention from the panels.

Competency, or lack thereof, was a major focus of discussion. Definitional problems were quickly perceived. What is it we mean by a "competent" lawyer or a "competent" performance by a lawyer? A requisite taxonomy of competency has not yet been developed by the bar. For some, this was ample justification for failing to go forward with any proposals generated by a concern for incompetence. For others, a beginning point was to set out a critical inventory of tasks performed by lawyers, to break these tasks down into successively smaller sub-tasks until the components of each task were of a size and dimension that standards could be formulated for their performance. The Educational Testing Service project, which is being sponsored by the Law School Admission Council, the National Conference of Bar Examiners, the American Bar Foundation and the Association of American Law Schools, is attempting to compile such an inventory and develop measures of proficiency.

The predicate of incompetence was directly disputed by some. Incompetence is not a problem of significant dimension, they argued. Who are these incompetent lawyers? Where are they, they questioned. Several expressed the view that the present system for educating and licensing lawyers was the finest of all possible systems and that there was no need to tamper with it.

It quickly became apparent that so long as lawyers' performance in practice does not leap out and strike the leaders of the bar and of our educational, licensure and judicial systems in the face, there is a strong predisposition for assuming adequacy or at least for leaving well enough alone. Perhaps a future conference should include representatives of groups who are medium income consumers of legal services as a first step in stripping away the layers which insulate the issue of the quality of legal services being delivered to most citizens in this country from public scrutiny. Even if many in the judiciary do not perceive a competence problem, their domain is perhaps less than 1% of the legal services being delivered

to clients. It is inside lawyers' offices that 99% or more of legal services are dispensed. While many doubt that looking hard for instances of incompetence would yield results worth the effort, it cannot be doubted that there is very little motivation to conduct such a search. There were very few who saw any need for a system of public accountability for the performance of lawyers.

The feeling of comfort that enveloped the discussion of the quality of lawyers' performances extended, as well, to the area of legal education. The six proposals highlighted in the agenda for modification of present educational requirements received short shrift. Few thought there was need for change. "The law schools," they said,"were doing a fine job." Indeed, the accolades were unsparing: the bar examiners were doing a fine job; the licensing procedure was in good order, etc.

The task of stimulating a willingness to transcend the current educational and licensing system fell to an "outsider". Dr. Robert A. Chase, President of the National Board of Medical Examiners, saw the discussion as a defensive reaction to the concern expressed about the competence of lawyers. Describing his vision as one of deja vu, Dr. Chase observed that almost the identical kind of discussion had preceeded the establishment of the Coordinating Council for Medical Education. Speaker after speaker at medical meetings would get up and proclaim what a fine job the medical schools and licensing authorities were doing; the virtues of medical students were extolled. While lawyers, of course, knew that doctors had a competency problem, meetings on medical education always included lots of reassurances about "how great we doctors are" - a commentary which Dr. Chase felt equally applicable to the group he was addressing. To paraphrase Dr. Chase, both sets of discussion were indicative of a paranoid denial of the presence of any problems but were, nonetheless, a stage that had to be gone through. He recommended that the effort to bring a coordinating council into being for legal education and licensure be intensified.

Few concessions were made on the lawyer competency point, but discussion of the adequacy of legal education and its interface with the bar exam and licensing procedure was reinvigorated. One of the problems thought most acute was the lack of coordination between the bar exam and legal education. Each seems to reinforce some of the worst aspects of the other. Not only is there no external encouragement for law schools to develop different training methods, such as the clinical format, but the present bar exam makes the widespread adoption of the clinical method more difficult.

It is widely acknowledged that the bar exam as presently formulated tests only for cognitive skills. Many felt, however, that there is an additional essential dimension to being a competent lawyer, namely lawyering skills. These skills include interviewing and counselling, solving the problems of an actual client, ethical sensitivity and trial advocacy. Since these skills are not a requisite for becoming a member of the bar , it was argued that it should be apparent that many clients are being inadequately represented. Changes in both the credentialing system and legal education are therefore necessary in order for law graduates, who are no longer required to serve any kind of internship, to be adequately prepared to represent clients.

One possible change in the law school curriculum is movement toward competency based education. Adoption of such a curricular design was discussed in conjunction with the proposal for a coordinating council. Upon determining the kinds of skills necessary for performing competently as a lawyer, law schools would develop the requisite skills training and problem solving programs. These training programs would be certified or accredited by some central coordinative body. To graduate, students would have to be certified as being minimally proficient in these skills.

The role of clinical education in the production of competent lawyers was discussed. It was generally agreed that increasing the number of and enrollment in clinical programs would yield a commensurate improvement in the lawyering skills of law school graduates. But there were questions raised about the adequacy of resources for the task. Others responded that if law schools really felt that clinical education was important, they would convince their university administrations to provide adequate resources and/or reallocate currently provided resources. There were some who ventured that until clinical education was required, the competence of graduates could not be assured. Others suggested that the appropriate strategy was to move in such a direction that clinical education would be regarded by educators and students as a necessary course - as part of the "standard" curriculum. To do so would undoubtedly require a change in the bar exam. Bar examiners should, therefore, develop devices to test for clinical skills. Pending their development, bar examiners could require law schools to certify that their graduates were minimally proficient in lawyering skills; a certification by the law school of successful completion of a clinical course could be accepted as satisfying the requirement.

The commitment of law schools to clinical education was questioned. It was noted that the issue of the integration of clinical education into law school curricula had not been resolved. Moreover, clinical teachers did not have the status of other members of law faculties. Was it, therefore, realistic to expect that law schools could be tempted to make skills training an integral part of legal education? Moreover, who should participate in deciding such issues as the form and content of legal education?

To the argument of one law school dean that the best course of action was to leave the law schools free to pursue their own views of legal education and with the flexibility to experiment as they saw fit, another law school dean responded that law schools should not be left alone. They needed to be pushed and prompted, pressured and prodded. Law school faculties are simply too comfortable with the status quo.

Law schools have yet to realize that indifference to the concern for competency may result in a quickening erosion of their control over the form and content of legal education. Rule 13, which was promulgated by the Indiana Supreme Court and which mandates two-thirds of the coursework for those who wish to take the Indiana bar exam, was pointed out as springing from a sincere desire on the part of those with the responsibility for certifying the competency of lawyers to the public, to meet their responsibility. Rule 13 has been vehemently criticized by the legal academy but few have yet recognized that until law schools respond to the legitimate concerns of state supreme courts in whom reposes the formal authority for certifying competency,

Rule 13 will remain a harbinger of the future.

After two and a half days, the conference chairman, Howard Sacks, summed up the proceedings by saying that the group's decision was that the agenda for non-action was greater than the agenda for action - that there was much not to do. It is indeed true that the status quo was the "hands down" winner. But if the majority felt satisfied about the present system, there were a number of minorities with shifting memberships who found much fault with aspects of our present credentialing system. Since there was no agreement on the faults or the solutions, the status quo was the natural beneficiary. But it would be misleading to indicate that proposals for change had been rejected so much as they had been deferred. Several participants candidly acknowledged that they had not heretofore given much thought to the issues of education and licensing of lawyers. Having been thus sensitized, however, they wanted additional time to reflect on the problems and the proposals proffered. Several of the supreme court justices found the conference an "eye opening" experience and wanted the opportunity to expose their colleagues on the bench to similar colloquies.

As a tentative agenda for future action three proposals gathered the most widespread support:

That there be a national bar exam, administered perhaps in more than one stage (as is done in medical school) such as at the conclusion of the second year of law school and then a second part upon graduation;

That the form and content of the bar exam be changed from its present exclusive preoccupation with cognitive skills to give appropriate recognition to the importance of skills training in the production of competent lawyers;

That there be additional meetings such as the one sponsored by CLEPR bringing together bar leaders, state supreme court justices, members of the federal judiciary, bar examiners, law school educators and representatives of the public, i.e., legal service consumers, but that the next series of these meetings be on a regional basis and perhaps serve as the precurser of a national coordinating council.

It was a call for the next step.

Papers Prepared in Connection with the Conference*

1. Layer Education and Certification: Flawed Premises and Uncertain Results, by Norman Redlich
2. The Education and Licensing of Lawyers: Current Proposals to Improve the Competency of Lawyers, by Lester Brickman
3. Credentialing in Medicine, by Dr. Robert A. Chase
4. The Multistate Bar Examination, by Joe. E. Covington
5. Education in Professional Responsibility, by David Epstein
6. American Legal Education and the Bar: Hand in Hand or Fist in Glove, by E. Gordon Gee and Donald W. Jackson
7. United States Bar - The Power to Create, Admit and Discipline, by John Germany
8. Testing Generally in the Law and in Clinical Programs, by Charles Kelso
9. Solving our Credentialing Problems by Drawing on the Medical Analogy, by Jane Kelso
10. Minority Students, Lawyering Competency and Bar Examinations: A Preliminary Inquiry, by Edgar and Jean Cahn
11. Measuring the Acquisition of Clinical Skills, by John Winterbottom

Participants at the Conference

Judges: Robert L. Clifford, New Jersey; Edward J. Devitt, Minnesota; Harold Fatzer, Kansas; Joe R. Greenhill, Texas; Robert H. Hall, Georgia, LaFel E. Oman, New Mexico; Albert Tate, Louisiana.

Bar Examiners: Clyde O. Bowles, Chicago; Donald H. Corson, Kansas City; Arthur Karger, New York City.

Law School Deans: Francis X. Beytagh, Toledo; Edgar Cahn, Antioch; Roger C. Cramton, Cornell; Frederick M. Hart, New Mexico; David J. McCarthy, Georgetown; A. Kenneth Pye, Duke; Norman Redlich, NYU; Theodore J. St. Antoine, Michigan; Harry H. Wellington, Yale.

Law School Faculty: Lester Brickman, Cardozo; E. Gordon Gee, Brigham Young; Charles Kelso, Indiana (Indianapolis); Robert E. Oliphant, Minnesota; Howard R. Sacks, Connecticut; G. Joseph Tauro, BU; James P. White, Indiana, (Indianapolis) Millard H. Ruud, Texas, Executive Director, AALS; Joe E. Covington, Missouri (Columbia), Director of Testing, National Conference of Bar Examiners.

Private Practitioners: Joseph Barbash, New York City; E. Stephen Derby, Baltimore; Alex Elson, Chicago; Burnham Enerson, San Francisco; David Epstein, Washington, D.C.; Robert W. Meserve, Boston; Sharp Whitmore, Los Angeles.

Special Invitees: Dr. Ivan Bennett, Jr., Provost and Dean, New York University Medical Center; Dr. Robert Chase, President, National Board of Medical Examiners, Philadelphia; Professor Donald W. Jackson, Texas Christian; Jane Kelso, Indianapolis; John Winterbottom, Educational Testing Service, Princeton.

CLEPR Staff: William Pincus, President; Elizabeth R. Fisher, Program Officer; Victor J. Rubino, Program Officer.

* Copies of papers may be secured from CLEPR at a cost of $1 per copy

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Volume IX, No. 3, April 1977

Preface

What follows is a description of what we believe to be a unique teaching law office combining the efforts of a law school and a law firm in Baltimore. The reader will note how the operation of the teaching law office serves three purposes at the same time. Without intending to give one preference over the other, they are: legal service; clinical legal education; and pro bono work by members of a law firm. A description of the law school's other clinical programs will be found in an excellent essay by Dean Michael J. Kelly entitled Report of the Dean, University of Maryland School of Law, 1976. For a relevant report of recent date on public interest practice in general by members of the bar, we refer our readers to the report of the American Bar Association Special Committee on Public Interest Practice. The Chairman of the Special Committee is John M. Ferren, Esq. of the Washington, D.C. bar who is also a member of CLEPR's Board of Directors. Copies of this report are available from the American Bar Association, 1155 East 60th Street, Chicago, Attention: J. Roger Detweiler, Esq.

THE PRIVATE BAR AND THE LAW SCHOOL
A Partnership in Developing a Public Service and Clinical Education Program

By E. Stephen Derby, Esq. and Professor Michael Millemann

The University of Maryland School of Law and the law firm of Piper & Marbury, one of the largest firms in Baltimore City, have joined together to establish a joint venture in legal education and public service - a civil legal aid office located within one block of the law school. This office, which opened in August, 1976, offers legal services to indigent clients. Legal services are provided by a complement of staff which includes three full-time law school faculty members, cooperating law firm attorneys, and twelve third year law students each semester

who, pursuant to a local in-court practice rule, act as co-counsel with full-time staff and cooperating firm attorneys.

The primary goals of the clinic are: 1) to provide quality legal services to indigent clients; 2) to create an effective forum for channeling pro bono efforts by firm attorneys; and 3) to provide a quality clinical education experience to third year law students. A review of the first seven months operation of the clinic indicate that these goals are being achieved.

Delivery of Legal Services to Indigent Clients - Involving the Private Bar

The delivery of legal services to indigent clients through the clinic continues an experiment begun by Piper & Marbury in 1969. In that year the firm opened a "branch office" located in east Baltimore. It was staffed by two full-time attorneys who represented indigent clients. This office represented a unique method for channeling the pro bono efforts of a major law firm. See Smith and Kratz, Legal Services For the Poor - Meeting the Ethical Commitment, 7 Harv. Civ. Rights - Civ. Lib. Law Rev. 509 (1972).

The "branch office" model was to place attorneys in the office on a rotation basis; that is, attorneys placed in the office would stay there for a year or two and then rotate to other sections within the firm. This office was maintained by the firm from 1969 through 1975. The lack of continuity resulting from the rotation system was one reason for the decision to close the office and seek a more stable and effective means of meeting the firm's responsibility of delivering legal services to indigent clients.

The Legal Services Clinic has provided a stable vehicle for this pro bono effort. This stability is provided in several ways. First, the staff of the Legal Services Clinic is employed for an indefinite period of time. They provide a nucleus of poverty law specialists who are available as a resource to firm attorneys. Second, the full-time staff have developed training and substantive materials for students, both written and videotaped, which are also available to assist firm attorneys in the three types of specialized cases handled by the clinic: 1) social security cases; 2) landlord/tenant cases; and 3) institutional cases. As new associates enter the firm there is an on-going orientation program which involves them at an early stage with one of the clinical specialities. Third, the twelve third year law students who participate in the clinic are assigned to the firm attorneys as well as to the full-time staff. These students provide a significant resource to the firm attorneys in providing representation to indigent clients. The reaction of firm attorneys to the quality of the assistance they have received from students in the clinc program has been distinctly positive.

The efforts of Piper & Marbury attorneys in handling clinic cases are supervised and coordinated by a committee consisting of two partners and one senior associate of the firm. The firm attempts to involve as many of its attorneys as feasible while not referring a disproportionate number of clinic cases to any one attorney.

Although participation by firm attorneys in clinic cases is voluntary, once assigned, clinic cases are handled as an equal part of the firm's regular caseload.

The brief period of clinic operation does not provide a basis for drawing hard conclusions concerning the clinic's potential for encouraging private attorneys to provide pro bono services to indigent clients. However, so far the results are quite encouraging. Since the clinic began operation, 23 attorneys at Piper & Marbury have assumed the responsibility for at least one clinic case, and it is expected that additional attorneys will handle cases as the clinic program develops. When measured against the total number of associates in the firm, 37, it is clear that the pro bono activation effort is showing a real potential for success.[1]

The Student Educational Component

The student educational experience has, for several reasons, proved to be a rich one. Student involvement in the clinic is substantial, since students receive about 60% of the semester's credits for their involvement in the clinic. Intensive supervision of student work is guaranteed by the presence in the clinic of three full-time faculty members and a twelve student per semester limit on enrollment. In addition, the cooperative supervision provided by associates of Piper & Marbury gives students an exposure to diverse legal styles and talents. Perhaps most importantly, the "individualized", rather than the "law reform", nature of the caseload has continually exposed students to the client contact which is essential to the development of "people-oriented" counselors.[2] The choice of the clinic caseload also maximizes the opportunity students have to participate in all phases of a case, from initial interview through trial, thus encouraging the development of varied skills of lawyering. For example, in the social security speciality, students develop a case from initial interview through hearing and deal with difficult problems of interpreting medical evidence and cross-examing expert witnesses (medical and vocational experts). The students in the social security speciality brief and argue appeals of social security cases in federal court.

[1] Statistics regarding the total caseload of the clinic are not yet available. First semester data has, however, been compiled. During this time the clinc opened a total of 95 cases. Forty of these were in the social security speciality, 28 in the institutional speciality, and 27 in the landlord/tenant speciality. Sixty-two of these cases were concluded during the first semester of the clinic's operation. Because of the substantial resources available to the clinic, the clinic was successful in the vast majority of these cases.

[2] The Chief Justice of the United States used this phrase in discussing the necessity for increasing the quality of the practicing bar throughout the country.

The institutional speciality has allowed students to participate, as co-counsel, in jury trials, and to brief and argue cases before federal courts including the United States Court of Appeals for the Fourth Circuit.

The landlord/tenant speciality has involved students in the day-to-day problems of tenants and given students substantial opportunity to maximize in-court representation of clients.

This does not suggest, of course, that all problems normally associated with clinical programs have been solved. The substantial opportunity for pre-trial preparation has meant that a high percentage of cases has been settled prior to trial for the benefit of the client. This resolution of cases has decreased the actual in-court student experience. Also, the tension caused by the effort to maximize use of student work while still providing the highest quality legal counsel to clients has existed in several cases. But these so-called "problems" forcefully communicate to students the most important educational lesson of the clinic, that the client interest is paramount and can be best achieved by quality pre-trial work.

In conclusion, the first semester's operation of the clinic indicates that major law firms and law schools can be effective partners in the delivery of legal services to indigent clients and, at the same time, provide a quality clinical education experience to third year students. The law firm's contribution of resources (both financial resources and attorney involvement) has made the creation of the clinic possible. The law school's contribution of full-time faculty members to the clinic has guaranteed a quality educational program for students and a stable mechanism for channeling pro bono efforts of private attorneys. Young firm associates are able to obtain experience in cases and before various forums that are not part of the usual large firm experience. And, most importantly, indigent clients are able to receive quality legal services which might not otherwise be available to them.

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Volume IX, No. 4, May 1977

TRENDS IN CLINICAL LEGAL EDUCATION: 1970-1976*

by E. Gordon Gee,
Assistant Dean, Brigham Young University Law School

This survey of clinical legal education is the eighth undertaken by the CLEPR staff and the seventh published survey. Perhaps the greatest strength of the surveys has been cumulative information that they have provided concerning the direction of clinical legal education in this country. Because this survey does represent the seventh from which meaningful comparative data can be drawn, a sufficient time lapse has now taken place to make it possible to identify significant trends.

General Description

Analysis of the seven published CLEPR surveys reveals the following general descriptive figures concerning the growth of clinical legal education.

	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76	1976-77
No. of Schools Reporting	100	110	117	115	127	134	139
No. of Programs	204 (169 Credit Granting)	270 (231 Credit Granting)	324	315	346	419	494
Fields of Law	14	21	30	34	41	49	57

*The text has been excerpted and edited by CLEPR staff from the introductory essay contained in the Annual Survey and Directory of Clinical Legal Education (1976-1977) which CLEPR distributed earlier this month.

Percentage of Change: 1970-76

No. of Schools	+39%
No. of Programs	+192% (in credit granting programs)
Fields of Law	+307%

During a Bicentennial celebration at New York University School of Law, its former dean, Robert McKay, gave a most thoughtful presentation on legal education in which he noted:

> "Even the curriculum has showed some give. The most notable single addition to the law school scene is a genuine commitment to clinical training, not yet up to what is available in medical schools, but at least open to enterprising students who want a real-life introduction to the profession."*

Based on the information contained in the preceding chart, few can now doubt the veracity of Dean McKay's statements, nor can it be said that clinical legal education is not an integral part of the American legal education system. With nearly 90 percent of the ABA-approved law schools now reporting some form of clinical program, and with a 192 percent increase in credit-granting programs over the past seven years, it appears that the most pressing problem faced by clinical legal education is how it can best be assimilated into the law school curriculum. It should be noted that with a 307 percent increase in the available fields of law being taught through clinical formats the assimilation process has already started to take place. This phenomenal growth in the types of courses and fields of law being taught attests to the fact that clinical legal education is no longer pedagogically parochial.

Clinical Models

Even though there has been tremendous growth in the number of fields of law being taught through the clinical format, data suggest that this growth is taking place within the confines of the major program models rather than through any new developments. For example, school-operated and supervised law offices provided the clinical settings for 33% of the programs in 1970-71, and provided the clinical settings for 35% of the programs in 1976-77. The other models involved use of outside law offices and altogether constituted about 65% of the clinical settings.

* McKay, "Legal Education" in American Law: The Third Century 261, 273 (1976).

It is significant that in seven years of the survey the percentage of total programs in the "school-operated and supervised law office" category has remained constant although with the growth in number of programs, the number of in-house clinics has substantially increased. The constancy in terms of percentages as between in-house and outside programs can be partially explained by the fact that so many good clinical opportunities do exist outside of the law school setting, but undeniably there is also an element of financial expediency on the part of law school administrations. To make in-house clinical programs larger requires more money, perhaps at the expense of other law school projects. Translated into administrative "jargon" it appears that if these data are to be believed it is only financially tolerable to have approximately one-third of the clinical programs in-house.

Credits and Grading

One of the most disturbing trends that can be identified from this year's survey, compared with years past, is the large number of schools that continue to put credit limitations on the number of clinical credits that a student may accumulate toward graduation. Along with other limitations which exist in the law school such as required courses, and the "informal curriculum" (bar examination pressures), any additional limitations on clinical hours makes it difficult for students interested in clinical work to take even the maximum number of credits allowed. In addition, law schools continue to have difficulty in blending the traditional educational program with clinical work, which often results in scheduling conflicts and pressures on students to meet competing priorities. One of the solutions to this dilemma has been to move toward a clinical semester in which students are totally immersed in clinical work for one semester. Yet, if students do participate in clinical semesters they often are prevented from taking further clinical work in other semesters because of these credit limitations. The following table illustrates the continued strong trend existing among law schools that limit the amount of clinical credit that a student may take:

	1970-71	1971-72	1972-73	1973-74	1974-75	1975-76
No. of Schools with max. credit limitations	67 (84%)	84 (84%)	91 (77%)	99 (86%)	104 (86%)	120 (86%)
No. of Schools without credit limitations	12 (16%)	16 (16%)	26 (23%)	16 (14%)	17 (14%)	19 (14%)

An equally difficult problem facing clinicians is the grading format to be used for evaluating clinical activities. The survey data indicate that after a period of liberalizing grading policies in general, law schools have now returned to the numerical or letter grading systems used in traditional courses. On the other hand, credit/no credit procedures are still widely used to evaluate clinical course work. As has already been noted, this is partially a function of the difficulty that a clinical instructor has in drawing fine distinctions among various student performances

in clinical activities. But, it must also be recognized that the credit/no credit grading procedures are also a reflection of law school faculty concerns about the quality of clinical legal education programs. Perhaps the solution to this dilemma lies in the work that is now being done to develop testing procedures that adequately evaluate skills that are taught in clinical programs.

Sources of Funding

The final piece of comparative data that can be drawn from the CLEPR surveys focuses on the sources of funding available to clinical legal education over the past eight years. These data can be summarized as follows:

Sources of Cash Funding

Number of Programs Toward Which Funds Contributed and Percent of Total Programs

	Law Schools	Foundations	Bar Comm.	Other
1970-71	136 (67%)	89 (43%)	5 (2%)	48 (23%)
1971-72	119 (44%)	86 (31%)	11 (4%)	88 (32%)
1972-73	120 (49%)	69 (28%)	11 (3%)	71 (29%)
1973-74	195 (71%)	23 (7%)	4 (1.5%)	81 (26%)
1974-75	282 (87%)	22 (7%)	14 (4.3%)	84 (25%)
1975-76	305 (73%)	38 (9%)	12 (2.8%)	101 (25%)
1976-77	411 (83%)	22 (4%)	12 (2.4%)	108 (22%)

Clinical legal education programs are supported primarily from the general funds of the law schools and universities. But, as has been the pattern with the variety of educationally innovative programs within and without legal education, the initial impetus for such innovation came from funding outside of the institution. In this case, as these data indicate, foundations were the major supporters of clinical legal education in its formative years. Bar committees and other funding sources, such as state and federal governments, have been relatively constant in their support of clinical legal education over the past eight years. This type of funding is important, but without a substantial infusion of funds from the law schools themselves, bar funding would be able to support only the most modest of programs. It is important that the bar does show a commitment to the funding of clinical legal education because, without their continued support, clinical legal education will not progress. Indeed, it can be argued that clinical legal education may well be the vehicle for which law schools have been searching in order to get the profession more involved in supporting legal education financially.

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Volume X, No. 1, September 1977

NEW CLEPR GRANTS GIVE PRIORITY TO PARITY FOR CLINICIANS AND TO A STUDY FOR CLINIC GUIDELINES

During the period May - July 1977 CLEPR granted the amounts shown to the grantees listed below for the purposes indicated.

Parity between Salaries of Clinicians and Academicians. Five grants represent a continuing effort by CLEPR to upgrade the status and pay of personnel working in clinical programs. (See CLEPR Newsletter, Vol. IX, No. 1, January 1977.)

Hofstra University, $38,000, for partial support of a two-year program to raise the salaries and benefits of the Law School's six full-time clinical supervisors to a par with that enjoyed by the rest of the School's teachers.

University of New Mexico, $18,600, to establish salary parity between the five clinical faculty and other Law School faculty.

New York University, $84,000, for partial support of a two-year program to place the salaries of the twelve clinical faculty in parity with academic faculty salaries.

Rutgers University, Newark, $17,000, to increase the salary levels of four clinical faculty positions, establishing parity between clinical and academic salaries.

Yale University, $16,000, for partial support of the cost of increasing the salary levels of four clinical positions.

Guidelines for Clinical Programs, $150,000, to the Association of American Law Schools (AALS) for a two-year study and report on guidelines for clinical programs. In the last few years review of a law school's clinical program has been incorporated into the ABA and AALS inspection and accreditation process although without the help of generally recognized guidelines. This development and the sustained growth of clinical education in the law schools have persuaded a number of legal educators to undertake this effort to develop guidelines by which

the various clinical programs and courses may be evaluated by the law schools themselves and by those who review and evaluate clinical programs on behalf of the ABA and the AALS.

Robert B. McKay, former Dean of New York University School of Law and presently Director, Program on Justice, Society and the Individual of the Aspen Institute for Humanistic Studies, is Chairman of a seven-member Guidelines Project Committee which will oversee the project. In addition to Mr. McKay, the Committee will have as members three persons designated by the American Bar Association and three persons designated by the Association of American Law Schools. Professor Steven D. Leleiko, New York University School of Law, will serve as Project Director.

Orison S. Marden Memorial Lectures

New York University, $50,000, to endow an Orison S. Marden Lecture on Legal Education to be delivered at the School of Law at least biennially. The lecturer would be in residence at the School of Law for a suitable period of time for discussions and seminars with teachers, students and others interested in legal education. The text of the lecture and other suitable materials will be published.

Association of the Bar of the City of New York Fund, Inc., $50,000, to endow alternating annual Orison S. Marden Memorial Lectures, given one year on professional responsibility and ethics in the legal profession and the other year on legal services. The text of the lecture will appear in The Record of the of the Association of the Bar and also be published separately.

Other Grant Awards

Antioch College, $24,000, to be used by the School of Law for partial support of two Clinical Fellows who will supervise students in a pre-paid group legal services program to be added as a discrete division of the School's teaching law office.

Association of American Law Schools, $16,250, for partial support of a three-day teacher training conference for recently-hired clinicians to be held in October 1977.

University of the Pacific, McGeorge School of Law, $50,000, to be matched by $150,000 raised by the grantee, for construction of a new building which will serve, in part, as a center for clinical skills training and as an experimental law office under the direction of a private practitioner-teacher.

University of Pennsylvania, $30,000, for partial support of a new clinical teaching office adjacent to the School of Law.

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Volume X, No. 2, October 1977

CHARGING FEES IN A LAW SCHOOL CLINIC

CLEPR asked the Directors of two clinical programs in which fees are collected from clinic clients to describe their experience. Here are the responses from the Directors of the clinics at Chicago-Kent College of Law of Illinois Institute of Technology and at the School of Law of Southwestern University.

Prepaid Legal Services Programs and In-House Clinical Education

by Professor Gary S. Laser,
Chicago-Kent College of Law

Recent national studies point out that middle-income people, an enormous group of 140,000,000, are not adequately served by the legal system. They underutilize lawyers because legal services are too costly, appropriate lawyers are hard to find, and lawyers are too often perceived as being unable to help.

Rapid growth in middle-income practice is expected to produce up to one-half of the new lawyering jobs in the next decade. To provide adequate legal services for this group, the way in which law is practiced is undergoing profound changes. Prepaid legal services plans, low cost legal delivery systems, paralegals, lawyer advertising, preventive law programs, pro se instruction and lawyer referral plans monitored for cost and quality control are being or will be introduced. These approaches will increasingly be incorporated in law practice generally.

Law schools should make special efforts to educate their students to practice in this setting, through clinical education programs incorporating middle-income delivery components. This emerging field would benefit greatly from ideas and prototypal models of practice generated from law school involvement.

The in-house Legal Services Center of the Illinois Institute of Technology Chicago-Kent College of Law delivers legal services to a middle-income group under a prepaid legal service plan. All of the 400 Chicago employees of a clothing manu-

facturing company are covered. The employer pays $50 per employee per year. In exchange the Legal Services Center provides up to twenty-five hours of legal advice and assistance annually for an employee and his or her family. In addition, the plan pays the first $100 of other costs per covered family per year, but in any one month total payments by the plan for costs covered cannot exceed $300. *

Subject to certain limitations and exclusions set forth in the plan, the benefits include all personal legal matters including controversies arising out of the purchase of consumer goods or consumer finance transactions; the lease of a residence or the purchase or sale of a residence; estate planning; divorces, adoptions and other family legal matters; proceedings arising from traffic violations and misdemeanor criminal charges; proceedings in juvenile court; and, in general, claims, litigation, and other legal matters arising out of the personal affairs of an eligible employee or dependent. The nature and extent of legal services furnished is determined by the independent professional judgment of the clinical attorney.

The most important exclusions include all business legal matters; felony proceedings against an employee or dependent; unemployment compensation claims; contingent fee cases including workman's compensation matters; controversies between an eligible employee and the company, or an agent or another employee of the company; and preparation of federal and state income tax returns.

The Legal Services Center is committed to the educational virtues of an in-house clinic. Superior role models are selected as clinical teachers. When assignments are made, consideration is given to the educational value of the work. Students receive a closely supervised experience. Classroom instruction supplements fieldwork. The prepaid legal services plan adds other educational dimensions. Initially, several students worked on the benefits package, drafted legal documents and researched professional responsibility, Employee Retirement Income Security Act requirements, and federal income tax issues. These students received a rigorous "corporate" clinical experience usually not available in an in-house law school setting.

The nature of the cases generated by the prepaid plan also broadens the student's

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*If, during the plan year's first month, the aggregate requests for reimbursement from all covered families are $300 or less, and if no one family requests more than $100, the plan will pay all incurred case costs. The difference between the $300 available for reimbursement and the amount actually paid out by the plan is carried over to the second plan month. If, during the plan year's first month, reimbursement requests from all covered families are more than $300 and no one family requests more than $100, the plan will pay a "pro rata" share of all such requests up to the available $300. During the second and subsequent plan months, the amount available for reimbursement is $300 plus the preceding month's or months' carryover, if any. Irrespective of the amount carried over, the plan will not pay more than $100 of case costs per covered family per year. If less than $3,600 is expended for case costs during the entire plan year, the unexpended funds revert to the Legal Services Center.

educational experience. The following is a case intake analysis of the first year operations.

Type of Case	Number
Automobile - Property Damage Defense	9
Automobile - Traffic Court	3
Consumer	9
Divorce	11
Domestic Relations - Other	6
Insurance	3
Land Trust	1
Misdemeanor	6
Contested Estate Matters	3
Real Estate	4
Social Security	2
Tax - Federal (Research)	1
Wills & Estate Planning	6
Miscellaneous	7
Total	71

Even though most plan beneficiaries are lower middle-income people, a number of matters were property related, enabling students to do estate planning; to handle real estate transactions, contested estate matters; and, in one case, to research complex personal federal tax questions.

Aware of the need to lower costs and increase quality in prepaid and middle-income delivery, clinical attorneys with the help of students are designing a number of legal delivery systems. They make extensive use of standardized forms, word processing capabilities, modern management techniques and paralegals. We have already pretested our estate planning for small estates systems and plan to pretest our pro se and default divorce systems during the fall. These systems, along with landlord/tenant, purchase and sale of single-family homes, consumer transactions and small claims representation will be operating within six months. Each system will include a manual designed to teach students how to use the system and the basic substantive and procedural law in the area. Through our intake sources, we expect to generate enough cases to give every student intern a chance to use each system.

In an era when there are so many competing interests for shrinking higher education money, prepaid legal services and middle-income delivery offer in-house clinical programs an independent funding source. Over 3,000 prepaid legal services plans have emerged throughout the country over the past several years. Their growth has accelerated as legal difficulties have been overcome. Since the legal terrain is complex, law schools planning such programs should pay special attention to the following considerations:

1. The Code of Professional Responsibility, especially DR2-103, which sets forth the rules for lawyers participating in open and closed panel plans.

2. Section 302 of the Taft Hartley Act, which permits employers to contribute funds to defray the costs of legal services for employees, their families and dependents for counsel or plans of their choice.

3. The Employee Retirement Income Security Act, which applies to employee benefit plans arising out of the employer-employee relationship.

4. The Tax Reform Act of 1976 which excludes from the employee's taxable income employer contributions to qualified prepaid legal services plans and allows tax-exempt status for qualified non-profit prepaid legal services plans under Section 501C(20) of the Internal Revenue Code.

5. Lawyer advertising. See Bates v. State Bar of Arizona, 97 Sup. Ct. 2691 (1977)

6. Malpractice insurance. In-house clinics seeking coverage usually secure policies issued for legal aid operations. Since prepaid generates revenue, such clinics will probably be covered through practicing bar policies.

7. Student practice rules. A state by state analysis will be required to determine whether the relevant state rule permits student practice in a law school approved prepaid clinical program.

8. Unauthorized practice of law. Prepaid contracts between universities and prepaid plans should have provisions guaranteeing the independent professional judgment of the clinical attorneys.

9. State laws and regulations. Plans established as corporations function under state law. Some states already require registration or approval of plans through the insurance commissioner, state bar or judiciary.

The Southwestern Clinical Law Center
by Professor Roblin J. Williamson,
Southwestern University School of Law

With the assistance of a one-year grant from CLEPR, matched with funds from the law school, Southwestern University School of Law has started a new clinical law office, serving lower-income persons in the greater Los Angeles area. Unlike prior clinical ventures of Southwestern, the new law office, the Southwestern Clinical Law Center (SCLC) charges fees for its representation. These fees are lower than prevailing charges in the area, and qualified clients may make payments on their fees over a long period of time, with no interest charges. After setting up the office and developing procedures, SCLC opened for intake in September, 1976. Income since SCLC began has reached a total of approximately $19,000.00.

SCLC seeks to provide high quality legal services to people of low income, and to give students clinical training in many aspects of the lawyering process. Clients qualify for SCLC's services if their incomes do not exceed double the Legal Services offices' schedules. In Los Angeles County, then, we will take clients with monthly after-tax incomes as follows: single person, $570, or less; family of two, $770; family of three, $870; and so on. Some contingent fee cases are accepted, although a modest fee of some kind is required, with credit towards the contingency. In family law matters, which is the office's main practice, fees are sometimes awarded to SCLC from the other spouse. Civil and criminal cases are handled.

Clients are referred to SCLC from many sources. The Los Angeles County Bar's Lawyers Reference Service has a Modest Means Panel to which we belong. Many of the Legal Services offices in the county have begun to make referrals. As attorneys and judges learn about the offices, they too have advised clients to come to us. The office does not seek to make any sort of profit from its operations. However, it is hoped that a substantial contribution to the cost of operating an in-house clinical program can be made. It is anticipated that once the office has reached top efficiency our monthly income will be $3,500.00. That income will cover secretarial costs, and expenses for copying, supplies, telephones, postage and other similar costs. It will not help defray the cost of the faculty-lawyers who supervise the program.

SCLC now consists of one secretary-bookkeeper, a receptionist, a part-time typist-clerk, two student directors, and two supervising attorneys from Southwestern's faculty. There are twenty students assigned to SCLC for each of three semesters, including those who enroll in a twelve-week summer session. At this writing there are about 280 active cases.

Problems in fee setting have not been completely resolved. At first we took some contingent fee cases with no payments from clients. That policy has been rejected and we now require some payment, to be applied to a contingency. For example, a client may have a $2,000.00 claim. We will charge $75.00, with an initial payment of $25.00, and $10.00 monthly payments. We will also charge 10% of any recovery if made by settlement, or 15% if we go to court. In the event of recovery, the contingent fee payable to the office is reduced by the payments previously made by the client. As for all other cases, we plan to experiment with a stated fee schedule and monitor the results. Prior to this system, each supervising attorney had used individual discretion in fee setting. The range of fees for the fall and spring semesters was from $40 or $50 as a minimum to $150.00, with the exception of criminal matters and a few other cases. The fee schedule now in use is based on client income and family size. An individual's net monthly income will be reduced by $50.00 for each dependent. That will produce the Adjusted Net Monthly Income (ANMI), and fees are then charged based on the following schedule:

ANMI	Fee
$ 0 - $250	$ 30

ANMI	Fee
$251 - 300	$ 45
301 - 350	60
351 - 400	75
401 - 450	90
451 - 500	105
501 - 550	120
551 - 600	135
601 - 650	150
651 - 700	165
701 - 750	180

As can be seen, this schedule makes no allowances for case type or complexity. While some latitude in fee setting is still provided, our experience to date is that fees generally represent what people can afford, and not the type of case. The lower income person only has a certain amount of money that can go to an attorney, be it for a custody battle or the defense of an unlawful detainer.

Southwestern has operated another in-house clinical program, the Community Legal Assistance Center (CLAC) for five years. SCLC is located in a building immediately adjacent to the law school, and CLAC is one-half mile to the east. The two offices will be consolidated at the SCLC building. After the merger there will be three secretaries, a receptionist, six student directors, five faculty-lawyers and 40-50 students. CLAC has never charged fees, representing only clients who qualified for Legal Services. In order that our merged offices can still help the poverty community, the minimum fee has been lowered to $30.00, as shown in the schedule. Also a fee can be waived or the time for payment to begin can be extended in special cases.

Students who are assigned in the program attend a week of lectures, demonstrations and discussion prior to the commencement of the normal academic semester. In that week office procedures are reviewed, and an overview of the family law and civil litigation process is undertaken. There are court tours and introductions to interviewing techniques. Once the semester is underway, students are involved in weekly classes covering other phases of lawyering, including criminal process, negotiations, ethics, debtor-creditor practice.

We attempt to involve students in the practical concerns of law office management. Questions of fee scheduling, collecting, file maintenance, work flow and other problems are reviewed in meetings of all the students.

SCLC is still in the midst of a "shake-down cruise", although operating at the same time. We are learning and making adjustments as we proceed. Some clients who make payments over time are not making those payments, and a review of their situation will be made. The tension between serving a community with a high caseload and serving the student's own educational needs is being felt

and analyzed. But by and large the CLEPR grant has permitted us to start an experiment which is working. With support from the local attorneys, the organized bar and the judiciary, we are providing students with meaningful educational experiences; we are reaching a group of clients previously shut out of the legal system; and, finally, we are making an income which has permitted this expansion of our clinical programs, and will be the base for further expansion in the future.

Any law schools interested in more information about SCLC should call Professor Roblin J. Williamson, Director of Clinical Studies, Southwestern University School of Law, 675 South Westmoreland Avenue, Los Angeles, California, 90005. Telephone: (213) 380-4800, Extension 266.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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Volume X, No. 3, February 1978

CLINICAL LEGAL EDUCATION NEWS ITEMS*

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Legal Services Corporation Board Discusses Funding of Clinical Programs

For some time now, law schools have been seeking funding from the Legal Services Corporation to pay for the client service components of clinical programs. A few law schools have been successful in obtaining funding. Most have not.

In December, 1976 the Corporation held a one day seminar on "How Law Schools Can Help Legal Services for the Poor". Now the Legal Services Corporation has placed on its agenda for March 2-3, 1978, after what we understand were some persistent inquiries from a number of schools, a discussion of how the Corporation can help law school clinical programs. These law school programs have been providing legal services to the poor for some years, sometimes in their own clinic facilities and sometimes in outside legal aid offices, but without any help from either OEO or its successor, the Legal Services Corporation.

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Proposed Title XI Criteria Issued

Pursuant to Title XI of the Higher Education Act of 1965, the Office of Education of the Department of Health, Education and Welfare, on January 11, 1978 approved proposed criteria for funding applications for Law School Clinical Experience Program grants. The proposed criteria were subject to comment until February 17, 1978 and are published in the Federal Register, Volume 43, No. 12, January 18, 1978.

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*We solicit news items reporting developments in clinical legal education at a particular law school which will be of general interest. Also send to us other items affecting clinical legal education in your state or nationally. Send your items to Lester Brickman, News Items Editor, at CLEPR's office. See page 4 for a listing of some of the kinds of items we believe to be of general interest.

Congress has appropriated $1 million for Fiscal Year 1978 to fund Title XI in order to provide actual clinical practice experience to law students. The proposed criteria are based on an expectation of support for 20 to 25 programs averaging between $40,000 and $50,000 and with a maximum statutory amount of $75,000.

No application deadline has yet been established. When the application forms are approved by the Office of Management and Budget, they will be distributed with a 60 day deadline for receipt of applications. This means, according to Wayne McCormack, Associate Director of the AALS, that applications will be due around April 1st, with funding decisions to be made before May.

The office of Education contact is Dr. Donald N. Bigelow, Chief, Graduate Training Branch, Division of Training and Facilities, U.S. Office of Education, Regional Office Building Three, Room 3709, 7th and D Streets, S.W., Washington, D.C. 20202.

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Members Named to AALS-ABA Committee on Clinical Guidelines

The Executive Committee of the Association of American Law Schools and the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association have established a Committee on Guidelines for Clinical Legal Education. AALS representatives are Henry McGee, Jr. (UCLA), David McCarthy (Georgetown) and Norman Penney (Cornell). ABA representatives are William Boyd, President of the University of Iowa, Gordon Schaber, Dean of McGeorge, and Thomas B. Stoel, Jr., Natural Resources Defense Council Staff Attorney. Robert McKay, former Dean of the New York University Law School and present Director, Program on Justice, Society and the Individual of the Aspen Institute for Humanistic Studies, is the Chairman. Steven H. Leleiko, Assistant Dean and Clinical Associate Professor at the New York University Law School is the Committee Project Director.

The Committee is being supported in its effort by a $150,000 grant from CLEPR. A report is expected in about two years.

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Student Practice and Bar Admission Rules Compiled and Annotated

A comprehensive collection of state and federal bar admissions and law student practice rules has been compiled by the Institute of Judicial Administration for CLEPR. Bar Admission Rules and Student Practice Rules contains statutory material, analytic essays on the relevant rules, charts, and a selected case annotation of five categories of issues raised by bar admission rules and bar examinations. Contributions to the collection have been made by the book's editor, Fannie J. Klein, Senior Consultant to the Institute of Judicial Administration; Steven H. Leleiko, Assistant Dean and Clinical Associate Professor at New York University School of Law; and Jane H. Mavity, an independent consultant. Copies of the 1400 page book are available from Ballinger Publishing Company, 17 Dunster Street, Cambridge, Massachusetts 02138, at a cost of $100.

ABA Section of Legal Education Develops Guide for Assessment of Clinical Programs on Inspection Visits

The Clinical Legal Education Committee of the ABA Section of Legal Education and Admissions to the Bar has delegated Peter Swords, an Associate Dean at the Columbia Law School, to prepare a memorandum on clinical legal education to be distributed to teams making inspection visits to law schools seeking provisional approval and re-inspection visits to approved law schools. The memorandum will suggest how a school's clinical legal education program might be assessed and will alert inspection teams to the various aspects of clinical programs that ought to be reviewed in the course of an inspection. In preparing the memorandum, Dean Swords will be assisted by the Clinical Legal Education Committee Chairman, Victor Rubino, a staff member of CLEPR.

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Tests for Clinical Skills

CLEPR has been awarded a grant in the amount of $79,000 from the Fund for the Improvement of Postsecondary Education (FIPSE) of HEW. In announcing the grant FIPSE described it as follows:

> "A collaboration of law schools is developing new measures of practical lawyering skills. The resulting assessment techniques and instruments will provide an alternative to traditional and conventional Bar Examinations for the determination of entry into the legal profession."

The project is now underway with several efforts having been allocated funds to devise a series of experimental tests for clinical skills by September 1, 1978.

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Trial Practice and Other Courses Being Moved into Clinical Curriculum

Several schools have reported to us that their clinical programs have had their teaching responsibilities enlarged by the addition of certain courses already in the law school curriculum which in some cases deal more directly with lawyering skills than with legal doctrine. Courses thus "transferred" have included Trial Practice, Professional Responsibility, Civil Procedure, Legal Writing and Evidence. We are interested in gathering as complete a record as possible and request that anyone with knowledge of these or similar developments at his own or other institutions write to us.

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Pepperdine Publishes Clinical Law Reporter

The Pepperdine University School of Law has changed the name of its Clinical Law Journal and Newsletter to the Clinical Law Reporter. Sections in the Reporter are titled: Topics in Clinical Legal Education, Profiles in Clinical Programs, and Reactions to Clinical Law. The Reporter is published three or four times a year and the current subscription rate is $4.00 per year. Subscription requests and articles and news items should be sent to: Clinical Law Office, Pepperdine University School of Law, 1520 S. Anaheim Blvd., Anaheim, California 92805.

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REMEMBER TO SEND US NEWS ITEMS

We are interested in printing in future newsletters reports on developments in law school clinical programs or in your state which have not come to our attention, including: new programs; the expansion of extant programs; major program innovations; new funding sources; supervisory techniques; sources of clinical teachers; major improvements in physical facilities; utilization of clinical students in new or expanded legal services delivery systems (e.g., group and prepaid legal services, legal clinics) or in legal specialties which heretofore have not had much attention from clinicians (e.g., tax, commercial law, administrative law, estate planning, arbitration); faculty evaluations of clinical programs; changes in student practice rules; etc.

COUNCIL ON LEGAL EDUCATION
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Volume X, No. 4, March 1978

GROWING PAINS IN LAW SCHOOL TAX CLINICS:
A Report on the Experience at Hofstra, Southern Methodist and Michigan*

It appears that the field of taxation is about to develop into an important part of clinical education, breaking the near monopoly that so-called poverty law has had in law school clinics. Over 90% of American Law schools now offer clinical courses, mostly because of the efforts over the last nine years of the Council on Legal Education for Professional Responsibility. Still, most programs involve either the representation of indigent clients or agencies of government, especially those engaged in prosecution. There are four reasons for this limitation on client selection. The major expansion of clinical education in American law schools coincided with the advent of federally funded Legal Services so that, first, there was a wave of unprecedented interest among law students in the legal problems of the poor and second, the law schools could save money by placing students in the newly available government funded law offices for the poor. The result was the farming-out of law students to such law offices - a practice which still exists on a large scale. A third reason is that most student practice rules including the model ABA rule adopted in 1969 restricted student practice to representation of the indigent. Finally, some bar associations opposed clinical programs which sought to represent the non-indigent, just as they did the federal funding of civil legal aid offices for the poor.

Although representation of both the indigent and the affluent afford adequate opportunities for training in interviewing and counseling, fact investigation, litigation, and

*Information presented herein on the Hofstra program is taken from a detailed report prepared by Professor Stuart J. Filler, Director of Hofstra's Tax Clinic and Sondra R. Harris, Instructor of Law and Supervising Attorney. Information on the other two programs has been provided by Samuel R. Miller, Director of the Federal Tax Clinic at SMU and by Professor Steven D. Pepe, Director of the Clinical Law Program at the University of Michigan.

professional responsibility, many experienced clinicians now believe that representation of middle income and business clients would add significant educational benefits to clinics by enlarging the scope of clinical experience available to students; by attracting to clinics students with business and commercial law interests; and by allying some clinical programs with such traditional courses as Federal Tax, Estates and Trusts, Estate Planning, etc. To some, such developments hold out the hope of more fully integrating clinical courses into the law school curriculum. Several law schools, therefore, have been undertaking a major effort to add representation of middle income clients and commercial interests to their clinical curriculum. There are a number of such programs operating. They include clinical components of group and prepaid legal services programs consisting of college students and construction and factory workers, estate and business planning programs, and federal and state tax programs.

The latter offer unusually good opportunities to law schools seeking to provide students with exposure to clients whose problems add additional dimensions to clinical programs, and aiming to make clinic experiences more representative of the totality of law practice today.

Tax clinics are currently in operation at three law schools: Hofstra, Michigan and Southern Methodist Universities. The tax clinics are not income tax preparation centers, and with the exception of "failure to file" cases that involve possible criminal or civil penalties, participating students do not prepare tax returns. Student work centers on representation of taxpayers at Internal Revenue Service audit, district and appellate conferences at which proposed deficiencies are contested. The Hofstra program also involves representation before state and federal courts. Representation of clients before the Internal Revenue Service ordinarily is restricted to attorneys, CPA's, enrolled agents, i.e., those that have passed an examination, and qualified former employees of the Service. Students at the three law schools, by a special student practice rule order issued each semester by the Director of Practice of the U.S. Department of the Treasury, are approved for practice before the Service and are exempted from the examination requirements.

Apart from whatever controlling effect lies in their respective state general student practice rules neither the Michigan nor SMU programs operate under authorization of any other state or federal student practice rule directed to representation of clients in their clinical tax programs.

Hofstra's general student practice rule as promulgated by the Appellate Division of the New York Supreme Court, Second Judicial Department, permits representation of clients whose incomes fall below the Bureau of Labor Statistics' "Lower Level of Income", which is currently $10,500. However, an amendment was obtained for the tax program permitting use of the Bureau's "Intermediate Level of Income", which is currently $18,866 and has been increasing at the approximate rate of 7.5% annually. The Hofstra program has a wider purview including issues of state and city income taxation, sales tax, real and personal property tax and such non-tax issues as bankruptcy and secured transactions, and its students, therefore, appear before both state and federal courts in addition to the IRS. Accordingly, Hofstra students

practice under authority of the Appellate Division of the Supreme Court of New York, the U. S. District Court for the Eastern District of New York and the United States Court of Appeals for the Second Circuit.

The Service is restricting its approval to the three currently operating programs which it regards as being experimental in nature. Information on the programs is being compiled by the Service and a review will be undertaken this summer. A decision will then be made as to whether to expand the scope of permission to enable additional law schools to institute similar programs. Preliminary observations by the Service are very favorable, and it appears likely that a decision to end the trial period and to regularize clinical tax practice by regulation or special rule will be made.

All three programs provide representation to persons who may be considered middle income which, of course, today includes a large part of the American working class. The Michigan program has no income limit on its clients and represents taxpayers whose proposed federal tax deficiency does not exceed $2,000. The SMU program has neither an income nor an amount in controversy limit. The nature and extent of services furnished is determined by the Clinic's Director. The Service refers to it all cases in which the proposed deficiency is $2,500 or less if the taxpayer is not and has not been represented by an attorney, a CPA, or an enrolled agent and the case does not involve fraud. Larger cases are also taken in the discretion of the Clinic Director depending upon the educational value of the cases.

The Hofstra Tax Clinic program permits its students to elect from four to eight credits or one semester of four credits in each of two semesters. For each credit, students are required to spend a total of three and one quarter hours per week in the clinic plus attendance at a two hour weekly seminar, so that there is a fieldwork commitment of between thirteen and twenty six hours a week. These hourly requirements are minimum guidelines with a student's caseload and client demands being the principal determinant of the amount of time spent by students at the clinic. The SMU program which is in its fourth semester of operation awards four hours of credit and expects its students to devote twenty hours per week to fieldwork. The Michigan program awards two hours of credit and expects six to eight hours per week of fieldwork.

A typical student caseload at Hofstra is five cases per four-credit student and eight cases per eight-credit student. Each Hofstra student's portfolio contains a variety of individual income tax matters, an exempt organization issue, a bankruptcy matter which might also have significant tax issues, and possibly a state or local tax issue. Each student has an opportunity to participate in at least one new client intake interview and attends one or more audits, district or appellate conferences, or chief counsel's office conferences; some students appear in federal bankruptcy court for a first meeting of creditors or other bankruptcy related proceedings.

All three programs require, as a prerequisite, successful completion of the basic federal tax course. Michigan, in addition, requires a course in accounting. A weekly seminar meeting is also a standard feature at all three schools. Discussion of pro-

fessional responsibility issues is a major focus of the weekly seminar. There is instruction in the procedural aspects of practice before the Service, tax research techniques, and substantive matters. Treasury and Internal Revenue Service personnel attend these seminars to discuss candidly settlement policies at different levels of the administrative process as well as the government's view of an attorney's role in representing clients in federal tax cases. The Commissioner of Internal Revenue has appeared at the SMU seminar.

Students in all three programs are graded on a pass/fail basis. At Hofstra, students pay $10 per semester for malpractice insurance and the University and private contributions cover the cost of faculty and staff. Michigan is a self-insurer with regard to malpractice coverage. All three programs are "in house" in that client intake is done at the law school and the clinical programs have direct responsibility for their clients.

Most of the growing pains associated with tax clinics derive from the need to publicize the tax clinic's services and to broaden the scope of representation. All of the programs have found it necessary to make special efforts to obtain clients. They have resorted to newspaper articles and publicity programs. SMU has been most successful because the Dallas District of the Service refers taxpayers to the Clinic. The other two clinics do not receive referrals from the Service.

The Dallas District requires its IRS examiners to give each taxpayer information about the free legal assistance available at the earliest point during the audit when the taxpayer indicates disagreement with the proposed adjustment. The taxpayer receives from the examiner a printed statement describing the Clinic and giving him the Clinic telephone number to call. If the taxpayer is eligible for assistance, the audit procedure is then temporarily recessed to give the taxpayer opportunity to call the Clinic and for the Clinic to prepare the case. Recently the Dallas District of the Service has gone further in its referral efforts. With every audit letter to a taxpayer whose return does not indicate tax preparer assistance, the District includes a letter indicating the availablility of assistance from the SMU program.

The Michigan program, because of its location in a small community, has had the most difficulty in obtaining clients. In response to this problem, the Service has permitted the program to extend its geographical reach to include Ypsilanti in addition to Ann Arbor. It also has allowed the program to put up a sign in the audit offices advertising the program's existence and availability. Requests to have IRS agents distribute literature indicating the program's availability have been denied by the Service.

Hofstra has publicized its tax clinic program in metropolitan and local newspapers, magazines, television and radio news, corporate personnel departments, union newsletters and in local library service directories. Representatives of the school have spoken about the clinic before bar associations and accounting associations. Moreover, Hofstra writes to all taxpayers who have filed pro se petitions in the Tax Court informing them of the program. These letters are written just before the semester begins, and have resulted in giving each student the opportunity of

having one Chief Counsel's Office conference within three months after the letters are mailed.

Hofstra, unlike SMU and Michigan, however, has not been permitted to post signs in local IRS audit offices. When the Service was presented with the request for posting of signs, it responded that it would approve, provided that the Director of Practice, the local District Director, and the state bar association did not object. Since the Service bears responsibility for the administration of audit offices, it seems appropriate to require the first two approvals. However, a question may be raised about requiring state bar association approval instead of comment only. It is obvious that a bar association will view with some suspicion or hostility any free or competitive legal service scheme, even though its primary purpose is the better training of future lawyers. Allowing bar associations to veto clinical tax programs seems quite inconsistent with the stated policy of the Internal Revenue Service, with respect to providing more assistance to taxpayers. The Service, particularly in Congressional testimony, has frequently stated its position to be to assist taxpayers who have tax disputes. Even though it is not their primary objective, law school clinical programs further that policy.

Unfortunately, in this instance the IRS delegated veto power to a state bar association over the matter of posting of notices in its local offices of the availability of free legal service to taxpayers. Hofstra's request to post a sign in IRS audit offices was forwarded to the New York State Bar Association for approval which in turn forwarded it to three of its own committees and to the Nassau and Suffolk Bar Associations. The three committees and the Suffolk County Bar Association approved. The Nassau County Bar disapproved and further indicated that if it could, it would have disapproved the entire tax clinic program.(See Note 1) The State Bar Association and the Service have allowed the Nassau County report to operate as a veto.

The Hofstra tax clinic has had another impediment to contend with. It has been unable to obtain permission for its students to appear before the Tax Court. In order to augment its caseload and because in about 20% of its cases Hofstra finds it necessary to file a petition in the Tax Court or in Federal District Court, the Hofstra program sought Tax Court approval for student practice before that Article I Court, on a basis comparable to that of its practice before the Federal District Court for the Eastern District of New York. At that point the Tax Court sought the views of the Council of the Tax Section of the American Bar Association on the Hofstra proposal.

The Council of the Tax Section referred the Hofstra petition to three of its committees: the Small Taxpayer Assistance Committee, the Committee on Court Procedure, and the Ad Hoc Committee of the Committee on Standards of Tax Practice. These committees reported on May 20, 1977, essentially adopting the adverse report of the Committee on Small Taxpayer Assistance of May 18, 1977. (See Note 2) Thereupon, a meeting was held between the Committee on Small Taxpayer Assistance and the judges of the Tax Court to discuss the Hofstra proposal. A member of the Hofstra faculty who was a member of the Committee was advised "not to participate in the meeting with the Tax Court" because of a "conflict of interest." After the meeting, the Tax Court, by letter of November 21, 1977 disapproved the Hofstra petition.

Hofstra has filed a notice of appeal with the United States Court of Appeals for the Second Circuit. The Tax Court has returned the notice stating that there was no decision upon which an appeal could be taken. Hofstra intends to pursue the matter via a mandamus action.

The Tax Court's position is being contested in other ways. The Advisory Committee to the Commissioner of Internal Revenue took up the issue at its meeting of March 14, 1978. There was general agreement that the Tax Court should permit student practice at least on an experimental basis as the IRS has done and thus generate data upon which to base a determination. In addition, Congressman Sam M. Gibbons, Chairman of the Subcommittee on Oversight of the House Ways and Means Committee, in a March 8, 1978 letter to Jerome Kurtz, Commissioner of the IRS, strongly took issue with the role of the Tax Section of the ABA in securing the negative decision on Hofstra's petition. Finally, there are indications that the leadership of the American Bar Association is reviewing the action of the Tax Section.

There matters now stand. Obviously there is movement for change. If a favorable decision on student practice is made by the IRS it will increase the likelihood that the Tax Court will reconsider its opposition to student practice. While it is undergoing the growing pains of any important new development, student tax practice looms large as one of the growth areas for clinical legal education programs.

NOTES

1. Four reasons were given by the Nassau County Bar Association for disapproval of the posting of signs in local IRS offices indicating the existence of student legal assistance: 1) Persons who earn up to $18,500 are "certainly not in the poverty area and could well afford hiring professional representation." (This view can be disputed. It is not income alone but the amount at stake too which determines the financial feasibility of hiring a lawyer.) 2) IRS offers a tax service free to the public "should they not choose to hire counsel or an accountant." (The Nassau Bar did not point out that this service of IRS involves filling out of tax returns - not audit help.) 3) Bar members doubt "the ability of students to advise clients concerning these [extremely intricate tax] matters." (The level of competence in supervised student practice tends to be as high or higher than that of the general level of law practice in the United States today - a finding confirmed by lawyers, judges, prosecutors and others with close contact with clinical programs.) 4) The bar noted that "it appears that this activity may well involve the practice of law." (It does. Student law practice under court rule is underway in 47 of 50 states, the District of Columbia and Puerto Rico, 24 federal district courts, 4 United States Courts of Appeal, and several administrative agencies. Perhaps the greatest problem with the Nassau County Bar Association's position comes from its apparent lack of concern with the training of future lawyers for competence, and its disregard of the fact that it is a law school which is sponsoring the tax clinic.)

2. The May 18, 1977 report of the Committee on Small Taxpayer Assistance sought

NOTES (cont.)

to point out the benefits and detriments resulting from permitting student practice. While stating that "there is much to say ... for taking legal education out of the classroom and into the real world," the report indicated considerable doubt over the prospect of student practice "because student representation at the administrative level is still largely in the experimental stage ..." (No attempt to ascertain law school experience with clinical programs dealing with administrative agencies, courts or other adjudicative bodies, however, is referred to in the report. In fact, such experience is extensive at the administrative level and has generally been well received.)

One problem focused on by the report is that unlike "professional legal aid clinics staffed by paid attorneys ... faced with enormous caseloads requiring that only the most meritorious cases be accepted ... [clinical tax programs might well] raise and pursue unnecessary issues on audit or in litigation in an effort to provide more meaningful instruction and experience to the students".... Therefore, tax clinics might endeavor, perhaps at the expense of individuals who really need assistance, to ... [seek out] more interesting and challenging ... [matters]." (The same argument, soon proven to be groundless, was made by some lawyers and judges who originally opposed student practice in legal aid matters - now so widely accepted.)

The report noted that there is "the possibility that tax clinics would settle fewer cases and bring more to trial ... [since] settlements, although perhaps the best course of action for the taxpayer in view of the merits of his case, are simply less appealing from an instructional point of view." "[If the national] rate of settlement were substantially reduced as a result of a nationwide establishment of law school tax clinics ... a serious question [would] exist [as to] whether the Tax Court could handle ... [this] additional caseload without adding more judges and more staff personnel, again at the public's expense." (Of course, the settlement issue is a serious one for all concerned with the speedy as well as the fair administration of the laws. But there is no indication that law school clinics are unaware of the need for both speed and fairness. The Hofstra program's record to date (as of February 1978) is that all docketed cases have been settled and there has yet to be an appearance in Tax Court for an argument on the merits. At SMU, the experience is a higher settlement rate than for the private bar in the area.)

Another problem discussed in the report is the effect of "constant turnover of law school students ... on the effective representation of [the] taxpayer.... [While] the attorneys advising the students presumably would insure that any case accepted was followed through to a conclusion ... that does not assist in fulfilling one of the important purposes of the clinic - the education of students." (Here, obviously, the report is dealing with matters which are more the province of the law schools, i.e., the details of clinic management which insure both adequate client representation and education of law students. These are matters which have been and are being successfully addressed by law schools in all clinical programs.)

The report went on to recommend consideration of limitations on any student tax practice. It suggested that only "low-income taxpayers" be represented by stu-

NOTES (cont.)

dents. It stated that if middle income taxpayers were represented by students it would be less competent representation than that provided by "tax return preparers, accountants, etc." (It is pertinent to note that the average tax deficiency of Hofstra's clients has remained at approximately $325 per taxable year for the four years the program has been in existence, and has ranged from $100 to $700. Under such circumstances it is difficult to conclude that the clinical program deprives lawyers or accountants with special proficiency in tax matters of lucrative practice.)

REMEMBER TO SEND US NEWS ITEMS

We are interested in printing in future newsletters reports on developments in law school clinical programs or in your state which have not come to our attention, including: new programs; the expansion of existing programs; major program innovations; new funding sources; supervisory techniques; sources of clinical teachers; major improvements in physical facilities; utilization of clinical students in new or expanded legal services delivery systems (e.g., group and prepaid legal services, legal clinics) or in legal specialties which heretofore have not had much attention from clinicians (e.g., tax, commercial law, administrative law, estate planning, arbitration); faculty evaluations of clinical programs; changes in student practice rules; etc.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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Volume X, No. 5, April 1978

Career Perspectives for Clinical Teachers
(A First Report)
by Professor Laura Sager, NYU School of Law

This reports on the first of three recent conferences held in New York City by CLEPR on career perspectives for clinical law teachers. Participants included former and present clinical teachers; non-tenure track as well as tenure track and tenured clinicians; full-time clinical teachers, and faculty members with both clinical and academic teaching responsibilities; supervising attorneys and non-supervising clinical teachers and administrators.

In the course of the three conferences the participants considered the various ways in which the status, compensation and working conditions of clinical teachers differ from those of academic teachers, particularly with respect to tenure; the historical and institutional reasons for such differences; the effect of such differences on the careers of clinicians and the quality of clinical programs; and the ways in which the law schools have tried or could try to resolve problems concerning the status and compensation of clinical teachers.

Background of Participants

The first of the three conferences was held on January 27, 1978. It was attended by clinical teachers from eight law schools* and by A. Kenneth Pye, Chancellor of Duke University and formerly Dean of Duke Law School. The conference began with a discussion of the background of the participants and the factors motivating their decision to go into clinical teaching. Most of the participants were graduated from law school within the past four years, then worked for a legal services program, and have now spent between two and four years as non-tenure track clinical teachers. Only one participant was a tenure track (and tenured) clinical professor. All the

*These teachers and schools are as follows: Gary E. Bair (American); Robert G. Burdick (B.U.); Holly Hartstone (Columbia); David A. Kozlowski (Vanderbilt); Carrie Menkel-Meadow (Penn.); Wallace Mlyniec (Georgetown); Roark M. Reed(SMU); and Robert Smith (Boston College).

clinical participants both supervise student work and teach a clinical seminar, and several teach one or two academic courses as well. Several persons who explained their reasons for going into clinical teaching, mentioned the significant role that clinics had played in their own experience as law students. Others emphasized the importance of promoting the teaching of humanistic values in the law school curriculum. For many, especially those who had left legal services jobs, clinical teaching offered the opportunity to provide high quality legal services to the poor without the overwhelming case load and pressure of legal services work.

Since most of the participants were relatively recent law school graduates, they tended to have no clearly defined long-term career goals and few, if any, considered clinical teaching as a full-time, long-term career goal. Several persons expressed the view that, like legal services attorneys, clinical teachers could expect to "burn out" after a few years, partly because of the intensive and repetitive nature of the work and partly because the law schools offer no definite career structure for clinicians. To the extent that they had focused on the long term, the participants were about equally divided between academic teaching and full-time practice (either in legal services or private practice) as a long-term goal. However, several persons expressed a desire to continue with clinical teaching on a part-time basis.

Status, Compensation, and Benefits

The discussion revealed significant differences between the status, compensation, and benefits of clinical teachers and their academic colleagues. Probably the most fundamental difference concerns eligibility for tenure. While academic teachers are normally hired on a tenure track, most clinical teachers are not eligible for tenure, but are given a one-or two-year contract which may or may not be renewable.

There appear to be three basic models which the law schools follow in the employment of clinical teachers. Some law schools, probably the majority, have adopted a two-tiered model, in which one or more tenure track slots are allocated to faculty members who are hired on the basis of the same criteria as all other academic faculty, but whose responsibilities specifically include clinical as well as non-clinical courses. Such faculty members usually are assisted by non-tenure track clinicians who supervise student work. Other law schools do not set aside particular tenure track slots for faculty members with clinical interests. Instead, they rely on the regular faculty to provide clinical course offerings in their areas of specialization, again with non-tenure track clinicians to supervise student work. Still another model involves the hiring of one or more tenure track faculty exclusively for clinical work, either with or without the assistance of non-tenure track supervising clinicians.

Like the majority of non-tenure track clinical teachers throughout the country, most of the participants at the conference were hired on the basis of a one-or two-year contract. Apparently the process of hiring clinicians does not place a premium on an explicit understanding of contractual terms (except as regards salary and non-eligibility for tenure), since many of the conference participants were uncertain as to the duration of their contracts and had only a general sense that they were employed on a one-year contract, which the law school might or might not renew.

As a practical matter, most of the participants expected that their contracts would be for as long as their clinical program continued in being, and most felt that their programs would continue for the indefinite future. However, they recognized various factors which might affect the continued viability of their programs. A new dean, or the faculty as a whole, might decide to reduce clinical offerings in general or to eliminate a particular clinical course. Programs dependent on grant money might expire together with the grant, and programs suffering from a falling-off in student interest might be abolished. In any of these events, the clinical teacher would almost certainly be terminated since, unlike the academic faculty who are expected to be able to teach virtually any academic course, clinicians, (especially non-tenure track clinicians) are generally considered capable of teaching only clinical courses.

In addition to being ineligible for tenure, most clinicians are paid less and work longer than their academic colleagues. Unlike the regular faculty who work nine months each year, the clinical faculty generally is hired on the basis of an eleven-month contract. This is certainly true of non-tenure track clinicians and in some instances is also true of the tenure track clinical faculty. However, the eleven-month obligation is apparently not inflexible. Most of the participants stated that they are permitted to hire law students to assist with their cases during the summer, and several stated that they feel free to take time off during the summer on an informal basis to the extent that their case load allows.

Non-tenure track clinicians also differ from the regular faculty in that they are not entitled to sabbaticals nor, in most cases, to take an unpaid leave of absence. Apparently, clinicians generally serve on faculty committees, although perhaps not on the most important committees, such as curriculum and appointments. However, in many law schools they are not allowed to attend faculty meetings. In some cases they may attend the meetings but may not vote. It may be symptomatic of the basically ambiguous status of many clinicians that several of the participants stated that they did not know whether they could attend or vote at faculty meetings, but simply assumed that they could not.

Most of the participants did not know whether they received the same fringe benefits, such as life insurance, health insurance and pensions, as the regular faculty. However, the general impression was that at most law schools such fringe benefits are probably the same for all faculty members.

Identification of Problems and Possible Solutions

Although the conference participants did not articulate specific grievances, it is clear that clinical teachers generally are unhappy with their second-class status in the law schools and with the disparity in the amount of compensation they receive. While CLEPR has recently made a number of grants in order to equalize the salaries of clinical teachers, no one at the conference was aware of any independent efforts by the law schools to achieve such equalization.

The participants knew of only a few instances in which the law schools had recently undertaken formal consideration of the question of the status, and particularly the

tenuring of clinical faculty. One school, which has been following the two-tiered model of employing both tenure track and non-tenure track clinical faculty, has recently concluded a study which recommended that all clinical teachers be hired on the tenure track and be allowed to teach academic as well as clinical courses. Another school which has undertaken such a study has concluded that the two-tiered system should be maintained, but that the non-tenure track clinical teachers should be provided with a clearer understanding of the terms and conditions of their employment. This study suggested that the non-tenure track clinicians should be considered in the same category as librarians, registrars and other administrative personnel, with similar kinds of contractual rights. A study produced by still another law school, has recommended that the granting of a few long-term (five-year) contracts for clinical teachers, in addition to several one-or two-year contracts.

The participants recognized that questions concerning the status, compensation and working conditions of clinicians are inextricably tied to the law school's basic perception of and commitment to clinical education. Clinical programs differ from traditional legal courses in certain fundamental ways. Clinical education is a relatively recent phenomenon, and many law schools still regard it as an experimental rather than a necessarily permanent part of the law school curriculum. They are also concerned that student interest in clinics may diminish over time. Moreover, clinical education tends to be expensive. At some schools the programs are dependent on outside grant money, which cannot be expected to continue indefinitely. For these reasons, the law schools are reluctant to grant tenure to clinicians unless they are also qualified to teach regular academic courses. Those law schools which do have tenure track opportunities for clinicians, therefore, tend to apply the same standards for the hiring and tenuring of clinical and non-clinical faculty alike. However, it is far from clear that the criteria by which academic faculty is hired and tenured are the most appropriate criteria for comparable decisions about clinical teachers. Chancellor Pye suggested that for the purpose of making tenure decisions, the law schools should properly require evidence of scholarship equal to that expected of the non-clinical faculty. He noted, however, that such scholarship might differ in subject matter from the scholarship of the academic faculty.

Undoubtedly, the law schools believe that the difference between the status, compensation and working conditions of clinicians and the regular faculty is justified because clinicians are not required to meet the same rigorous academic criteria that are applied to the hiring of the academic faculty, and because clinicians are generally regarded more in the nature of practicing attorneys than as teachers. For these reasons, many law schools tend to equate the role and status of clinicians with those of other non-academic law school employees, such as librarians, registrars and other administrators. However, the fact remains that clinicians differ from administrative personnel in one critical respect: their role and function are to teach.

CLEPR is aware that many clinical teachers are dissatisfied with their second-class status in the law school world. A report on the subsequent conferences will focus more concretely on the nature of such dissatisfaction, the extent to which it affects the career development of clinical teachers, and its implications for the future of clinical education.

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Volume X, No. 6, May 1978

Is Law School a Full Time Enterprise?: Part Time Students and Part Time Teachers

by Lester Brickman

The annual meeting of the Board of Directors of CLEPR took place on April 6-9, 1978 and included a panel presentation on the involvement of students and teachers in "outside" activities. The panel was chaired by Roger C. Cramton, Dean of Cornell University School of Law, and included Ronald M. Pipkin, Assistant Professor of Legal Studies at the University of Massachusetts, Norman Redlich, Dean of the New York University Law School, and Robert B. Stevens, Provost of Tulane University.

The issues addressed were: how students and faculty spend their time; whether patterns of time usage have changed over time; and the implications of such time usage patterns and trends for the future of legal education in general and clinical education in particular.

To proceed with a discussion of student time expenditure, especially for second and third year students, it is first necessary to confront a hypothesis which would obviate the need for further study. Namely, why are we not justified in defining as desirable whatever allocation of time is made by students. On what bases can we express discontent with certain patterns of allocation? Three reasons were advanced by Dean Cramton:

1. A sense of wasted opportunity for personal growth by those students who basically withdraw from law school studies. This "sense" may also be stated in question form: is the resort to employment outside of the law school motivated by a failure of law schools to maintain student interest in intellectual endeavor or by other reasons?

2. A decline in the level of preparation for class may be diluting the quality of law school instruction, particularly in those classes where the socratic technique or some other non-lecture pedagogical method is employed and there is a heavy dependence on student participation in dialogue and discussion. There is a trend

towards increased outside work and a concommitant decline in class attendance and in the level of class preparation of those who do attend. All this may be part of a broader on-going lowering of the quality of education and of the demands of educators. An erosion of standards seems to be underway, and the expectations of law teachers of the level of performance of upper class students seem to be diminishing.

3. A lessening of commitment by both students and faculty to the shared enterprise of the university community.

Law student time usages are currently being studied by the American Bar Foundation's Research Program in Legal Education which has established a Law Student Activities Patterns Project. The project, an empirical study under the direction of Professor Ronald Pipkin, is researching the behavorial correlates of law student socialization, time budgeting by law students and the general processes of professionalization. Professor Pipkin presented a summary of the study and shared with the audience his first tentative assays of the rich lodes of data that he was mining.

A sample of 300 students randomly selected from each of six law schools, and 150 randomly selected students from a seventh school were asked to complete a 46-page attitudes and activities questionnaire and a week-long time-log journal with entries to be made for every 15 minute time period, 24 hours a day. A response rate of 70% yielded approximately 1400 time-logs. In selecting the law schools involved, Professor Pipkin sought a diversity of school and student and therefore an appropriate mix of large versus small schools. Three of the seven schools were characterized as "elite"; of the remaining four, two were public and two were private, one of the latter being under Catholic auspices. The LSAT mean for the elite schools was 718 and for the non-elite, 670.

The selection of time usage as a methodology for measurement of student activity presents several conceptual difficulties. One is the distinction between objective and subjective time. Objective time is a standardized measure of time, e.g., minutes, hours, etc. Subjective time reflects a person's perception of how he spends his time. All of us recognize that some time moves faster than other time. Data collection may well yield a bias in that someone filling out a diary by indicating how he spent his time is apt, because of subjective time, to overemphasize (in terms of time allocation) the drudgery and the activities liked least.

A second methodological problem involves a basic assumption of time and motion study research: that there is a relationship between time use and the level and quality of energy expended. A concept of time is used as a surrogate for energy because of our inability to devise a more direct method of measuring what we really seek which is the expenditure of mental energy. But some activities consume more mental energy than others. A time usage approach necessarily must ignore such distinctions.

A third problem is the absence of useful methodological information in the literature

which apparently results from a rejection by many sociologists of time and motion studies as a research tool. The grounds for such rejection are political, namely, that the studies are seen to have a purpose to benefit one side in the management-labor arena. This absence of useful information makes it even more difficult to confront and resolve propositions basic to time and motion methodology. For example, can time use be measured and described without knowing the context in which the time is used, i.e., how much does one have to know about what and why people are doing in order to measure their activity? Another problem is how does one characterize time use when people are doing two or more things at the same time, e.g., studying Contracts and watching TV. Professor Pipkin resolved this latter issue by using a priority ranking and so the categorized activity would be the primary one: studying Contracts.

The time diaries were maintained during the eighth week of the first semester and the second week after each school's Spring break in the second semester. Fortunately, for the project, no major event of national or international importance occurred which if it had might have contaminated the results by yielding abnormal data, i.e., data not reflective of "normal" time.

The very preliminary and tentative findings of the project range from the obvious to the suspected to the surprising. The Fall and Spring time diaries did not vary significantly although students do study a little less and engage in more leisure activities in the Spring (which is somewhat surprising in that the Spring diaries were kept during the tenth and twelfth weeks of the semester and exam studying might have been expected to have been reflected to a greater degree in the data).

There are two constants in law student activity: sleeping and personal activities. Sleeping (including napping) accounts for 56-58 hours per week (approximately 8 hours per day); personal activities (eating, hygiene, household and religious activities, child care) accounts for 30 hours per week with a slight upward trend over the three years of law school. All other activities measured turned out to vary over extreme ranges. The two variables with the most elaborate distributions were leisure time and study time:

	Range in hrs.	Aver. hrs. 1st. year	Aver. hrs. 3rd year
Leisure Time	0-70	30	36
Study Time	0-70	34	24.5

Variances by school type were observed. Students at non-elite schools had a larger drop-off in study time over the three years than elite school students while the latter had a greater increase in leisure time. The difference between elite and non-elite leisure time in the third year is accounted for largely by increased outside work by non-elite students.

Class attendance declined from 14 hours per week in the first year to 10 hours per week in the third year. One in five elite school students was enrolled in a clinical program and devoted 10 hours per week to clinic whereas one in four non-elite stu-

dents was enrolled but spent only 7 hours per week on clinical work. Again the range was extremely broad with some students claiming up to 40 hours per week. (It is interesting to speculate on the hours disparity. If we knew how many credit hours were being awarded for clinical work, we could conclude that the disparity was reduced or accentuated by factoring in hours spent per hour of academic credit. Moreover, by breaking down class attendance patterns, we might be in a position to conclude that more elite students cut class to participate in clinic whereas non-elite students also cut class but in order to work).

A dramatic increase in part-time jobs takes place between the first and third years of law school. One in four elite students spends 11 hours a week at work. Again, the range of distribution is very broad with one student showing up as working 54 hours a week. Professor Pipkin feels that additional refinement of the data, particularly the extraction of students who work in the library and those who are research assistants will allow a segregation of off-campus work and will likely lead to a significant increase in the average number of hours worked (off campus).

The total time spent on all school-related activities shows up as follows:

	1st year	3rd year
Elite	54	44
Non-elite	50	40

These figures should be coupled with the fact that leisure time activities increase at elite schools from first to third year while working time increases over the three year span at non-elite schools.

The study indicates that there is a universal trade off between study and leisure time with the most common trade off being that students increase leisure time at the expense of study time at an approximate 1:1 ratio. The second most common non-elite trade off involves work. Study time for non-elite students decreases at an almost 1:1 ratio as work time increases whereas the study time decrease at elite schools is accounted for by an increase in leisure time. Students enrolled in clinical programs tend to allocate time for this endeavor first at the expense of leisure time and second at the expense of job time. However, because of the decrease in study time over three years and the concommitant increase in leisure time, clinical students perform their clinical work at the expense of study time (for traditional courses) at a ratio of nearly 1:1. (It is interesting to speculate as to what students enrolled in clinical programs would do with their time if clinic were not available. Would they use the time for studying or outside employment ?)

Professor Pipkin is working on refining the data so that more variables can be isolated and less gross trends and usages identified. The kinetics of time use are also being studied with a view toward identifying those activities which are energizing and those which are debilitating.

Dean Cramton, in commenting on the preliminary reporting of the data and on the

need for such research, indicated that he had a sense that the best graduates of the best law schools were less interested today in going into teaching than in the past. In part, this may be attributable to what he earlier described as an erosion of standards and a decline in the commitment of students (and faculty) to the shared enterprise of the university community. If students are less interested in learning, then they may well regard teaching as a less intellectually satisfying endeavor, especially since it is other students with these same attitudes that they will be teaching. In addition, changing student perceptions of legal educators may also be contributing to a decline in student interest in becoming law teachers. The bases for such changing perceptions were examined by Norman Redlich, Dean of the NYU Law School.

Dean Redlich presented what he described as impressionistic rather than empirical data on how law teachers spend their time. He began with a job description as might be written if one were to advertise in the "help wanted" section for the typical law professor:

> WANTED, law teacher; educational qualifications: J.D. Degree; teaching: two courses per semester or one course and one seminar per semester; expected to: devote reasonable time to instructional responsibilities, engage in scholarly pursuits, and fulfill responsibilities to the profession. Steady pay ranging from mid-twenty thousands to high forty thousands depending on age and qualifications. Working year: 9 months; free rest of the time to engage in any pursuits you wish.

Dean Redlich then sketched a model of how a typical law teacher might fulfill such a job description.

	Hours per week
Teaching, classroom	6
Direct preparation for classroom hours (3 hours per hour of class)	18
"Keeping up" time (advance sheets, law review articles, etc.)	6
Talking to students	4
Committee work	6
Sleep	50
Personal (eating, shopping, paying bills, etc., 4 hours per day for 7 days)	28
Leisure and family (2 hours per day for 6 days and 7 hours on Sunday)	19
Transit (1 hour per day for 5 days)	5
Total hours	142

Since the total number of hours in a week is 168, that leaves 26 hours unallocated. However, this figure applies only to those 28 weeks of the year when there is actual teaching and does not take into account increased time demands at exam grading time or decreased time demands the rest of the year. Even during those 28 weeks, if a

law teacher foregoes all outside work, he can devote a not inconsiderable amount of time to scholarship and service to the profession.

Sketching out such a model indicates that it is possible to do the tasks listed in the job description. But there is another conclusion which can be drawn: if one wants to ignore scholarship, cut corners in class preparation, spend less time with students, etc., a great deal of time can be freed to engage in outside work. And that is precisely what many law professors do in the estimation of Dean Redlich, in derogation in varying measure of their professional responsibilities. (Outside activities frequently include private practice in the form of consulting for a law firm or other private organization, pro bono practice, consulting for government agencies and CLE work).

Law teachers are drawn to these types of outside activity for a number of reasons, including: money; a need to be listened to, especially by those who wield power in society; status, which is perhaps more easily and quickly acquired through these outside activities than through the painstaking processes of scholarly research; satisfaction of self-demands resulting from a schizophrenic attitude held by many law professors who have consciously sought for themselves roles as cloistered academics but who harbor unfulfilled yearnings for a role in the "real world" outside; and finally, the need or desire for a change of scenery.

These outside activities do make a positive contribution to legal education. Thus, the image of the activist law professor engaged in pro bono work is one which law schools seek to foster since it indicates in a fashion that the schools are in some way actively involved with real world problems and because it tends to keep legal education refreshed by its involvement with current societal concerns. Moreover, law students frequently become involved with these activities through the activist professors, and most regard this as a benefit. The accomplishments of the activist professors frequently result in improvements in our system for the administration of justice. Finally, such participation sometimes leads to improvements in teaching and has the potential of leading to scholarship.

There is, however, a price to be paid. One such price is that students and schools are paying a considerable amount of money to law professors who engage in outside activities with a consequent net loss of time available to students who end up on balance with less well planned courses and less access to professors. Another price is a net loss of scholarship. However, the most important price may well be that the model of the teacher devoting considerable amounts of time to outside activities becomes accepted as the role model for the most admired professor.

Dean Redlich expressed concern over the development of such a role model and the implicit message regarding professional responsibility. To whom, he queried, is the law teacher responsible? Is it not first to one's students, then to one's colleagues and finally to one's institution? Isn't there an image being created that the most important people at a law school are those who are most neglecting their professional responsibilities. Moreover, the nature of the practice being engaged in by the professor with outside pursuits tends to be one that is an ego gratifying experience for

the professor more than it is related directly to serving the interests of a particular client. The client tends to be the environmentalist association, the civil rights group, the government agency or the large corporation or interests fighting the government agency; almost never is the client one who is or whose problem is mundane, common or ordinary. The message conveyed to students, therefore, is that that type of law work is more important than serving the individual needs of typical clients.

Another price paid is that the clinical teacher inevitably is in a position where his options are far more limited than those of the teacher of traditional courses. Because the clinical teacher must spend full days at the office handling a large caseload, he does not have the time to engage in activities which would lead to his acquiring the status that traditional teachers acquire through outside activities. As a consequence, students come to perceive clinical teachers as being less important than other faculty members. This perception is reinforced when the student notices that the work of the clinical teacher who represents the mundane, common, ordinary client is less important in the eyes of the law school than the type of outside work engaged in by the traditional teacher. Students receive a powerful message from this state of affairs and professors conclude that they cannot teach in clinical programs because in order to do so they would have to forego doing the things by which they acquire status.

How teachers spend their time, therefore, poses an important issue of professional responsibility. Yet, no standards have ever really been formulated. Dean Redlich then proceeded to set forth a series of preferred standards. With regard to teaching responsibilities, a professor should be prepared for class, should meet his classes regularly, and should distribute a syllabus in advance of the course; he should be available to meet students, and his performance in class should be periodically monitored. He should also have recognized responsibilities to the school including attending meetings and being available for committee work. If these responsibilities are met, Dean Redlich would be in favor of permitting a fairly significant trade off of scholarly pursuit for some types of outside work. The character and dimensions of such trade offs should be left to individual schools to formulate but only if supervision and scrutiny are applied. To foster the latter, the AALS and the ABA, as part of accreditation and membership standards, should require schools to develop and implement standards of professional responsibility for teachers.

Professor Pipkin's and Dean Redlich's presentations were commented on by Robert Stevens, Provost of Tulane University. Professor Stevens believes that we are laboring under an historical illusion of how things were in the past. He sees little difference in student time usage patterns over time, noting that at the University of Pennsylvania in the 1920's law students attended class in the morning and worked in law offices in the afternoon as part of apprenticeship programs. Students at Yale also were essentially "part time" during this period, although in the 1930's there was a shift in time usage patterns which coincided with the installation of Robert Hutchins as President of the University and his attempts to create a more intellectual atmosphere. This shift away from part time employment also coincided with the Depression; students worked less on outside activities because there were fewer jobs available.

Professor Stevens, who characterized his remarks as impressionistic, believes that those persons interested in scholarship engage in scholarship; those with a basic disinterest in scholarship find outside activities more attractive.

The characterization by both Dean Redlich and Professor Stevens of their remarks as impressionistic raises serious questions as to how much we really know about how law professors are spending their time. Their remarks and estimates stand in sharp juxtaposition to the emerging data reported on by Professor Pipkin for law students. The need for a study of the dimensions and implications of the phenomenon of the part time teacher are obvious. Moreover, the American Bar Association Standards for the Approval of Law Schools, at section 402(b), defines a full time faculty member in language which is characterized by its ambiguousness, elasticity and lack of specificity. No doubt any standard governing the performance of a full time law teacher must permit substantial deviation, but our knowledge today of that range of deviation is virtually nonexistent. Dean Redlich's impressions, taken together with Professor Pipkin's findings, ought to be sufficient to impel us to study the problem and reformulate the accreditation standards in light of such study.

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Volume X, No. 7, May 1978

HIGHLIGHTS OF CONFERENCE ON TITLE XI
(Federal Funding for Clinical Legal Education)

A conference on Title XI of the Higher Education Act of 1965 ("Law School Clinical Experience Programs"), sponsored by the AALS and partially supported by a grant from CLEPR, took place at the Vanderbilt Law School on March 3-4, 1978. In attendance were over 100 persons representing 89 law schools, the ABA, the AALS, CLEPR, the U.S. Office of Education, and other organizations. The immediate impetus for the conference came from Professor Junius L. Allison of Vanderbilt.

The conference focused on the history of Title XI and the funding criteria established by the U.S. Office of Education for the expenditure of the first appropriation ($1,000,000) for Title XI which now expires at the end of fiscal year 1979.

A call to action was sounded by Associate Dean John R. Kramer of the Georgetown Law School who has been a counsel to three U.S. House of Representatives committees. Dean Kramer explained the Congressional funding process and, in particular, how effective lobbying is done--which he contrasted with the efforts that law school representatives have earlier mustered. He indicated that although law schools were seeking funds for clinical programs for educational purposes, the primary emphasis in any presentation to Congress would have to be on the client service aspects of the programs if success in funding were to be achieved. He then called on all of those assembled to join with him and Wayne McCormack of the AALS who are serving as coordinators of the effort to obtain reauthorization of Title XI, and more immediately to obtain an appropriation of $5,000,000 for Fiscal 1979 under the existing authorization.

While the main focus of the conference was on funding Title XI, there were a number of related themes sounded by the speakers. Shepherd Tate, President-Elect of the American Bar Association described the ABA's support for clinical education while adding his own eloquent endorsement and excellent summary of the benefits of clinical legal education.

Dean Robert K. Knauss of the Vanderbilt Law School and Professor Spencer

Kimball of the University of Chicago both described experiences at their law schools where diminished funding had forced the faculty to closely examine the role of clinical in the law school curriculum. As a consequence of faculty scrutiny, both schools increased their degree of support for clinical. John Kramer, Associate Dean at Georgetown found a suggestion of sound strategy in these descriptions. Apparently, most law teachers, regardless of initial attitude concerning clinical teaching, who are brought close to clinical experience come away convinced of its academic value. Therefore, Dean Kramer urged that some of the most traditional academics be assigned to committees that are evaluating the clinical programs. Millard Ruud, Executive Director of the AALS, indicated that law schools providing legal services via their clinical programs should have the service aspects funded by the Legal Services Corporation. Others strongly concurred.

These and other themes have been excerpted from the transcript of the proceedings and are presented below in the form of quotations from the transcript.

From the remarks of S. SHEPHERD TATE, President-Elect, American Bar Association: "... Legal education... is a special concern of the American Bar Association....

"In 1971, the Board of Governors approved, and the House of Delegates subsequently ratified, a resolution authorizing the Law Student Division to launch a campaign in support of federal funding for clinical legal education through Title XI, and in 1972, the ABA House of Delegates reiterated its position and urged 'that the President of the United States request funding for clinical legal education and that the Congress of the United States appropriate funds therefore.'

"Several ABA entities are currently addressing the issue of clinical legal education. This is one of the topics being considered by the ABA Special Committee for a Study of Legal Education, which is expected to report to the House of Delegates at the 1978 Annual Meeting. In addition, the Section of Legal Education and Admissions to the Bar supports a Committee on Clinical Legal Education.

"Recently, the ABA and AALS established a new Clinical Legal Education Guidelines Committee. As many of you know, this Committee was funded by the Council on Legal Education for Professional Responsibility to conduct up to a three-year study. I am confident that this Committee, which is chaired by Robert B. McKay, former dean of New York University Law School, will provide sound advice and strong leadership in the development of guidelines.

"Why is the organized bar so concerned about clinical legal education? Briefly, I will suggest at least three reasons....

"First, clinical legal education promotes lawyer competence by providing practical experience to law students....

"The ABA tries to increase competence in many ways, including the accreditation of law schools, continuing legal education and disiplinary procedures.

"The ABA efforts to promote lawyer competence are assisted by clinical legal education programs, which acquaint future lawyers with some of the practical skills and information necessary for the successful practice of law. In addition, clinical legal education aids law students in making wise career choices through exposure to private practitioners, legal service organizations, governmental agencies, and judges. More knowledgeable career choices by students will obviously result in more competent services to clients.

"Second, clinical legal education promotes professional responsibility.

"Lawyer ethics and discipline are issues of utmost concern to the American Bar Association and to me personally. ABA President Wm. B. Spann, Jr. has exercised crucial leadership in this area by appointing a top-flight committee to study the ABA model Code of Professional Responsibility....

"One of the aims of this reevaluation of the Code is to clarify ambiguities so that lawyers can be more certain that their conduct is consistent with highest ethical standards. But whatever words are developed to describe ethical conduct, they will be meaningless until put into practice. Clinical legal education contributes significantly to the ethics of the profession by exposing law students to practical ethical issues which lawyers encounter daily.

"Third, clinical legal education promotes pro bono activities.

"All lawyers have a responsibility to contribute time and expertise to organizations and individuals who cannot afford to pay legal fees. Unfortunately, not all of us -- by a long shot--follow that imperative....

"Clinical programs involving services to indigent clients acquaint law students with the need for and benefits of pro bono work. Through such programs, law students and their supervising attorneys provide needed services to the indigent while demonstrating the legal profession's commitment to the public interest.

"Lawyer competence, professional responsibility and pro bono activities are all crucial issues facing the legal profession. I commend those of you who have given many years, even entire careers, to promoting these vital interests through clinical legal education. Let me assure you that the ABA is concerned and does care about clinical legal education."

From the remarks of EUGENE F. SCOLES, President, Association of American Law Schools: "...Clinical education is recognized as a vital part of understanding our legal institutions and the function that lawyers perform in our society. Thus it becomes an important method for understanding professional responsibility and the significance of other courses in the curriculum. Further, it is perceived as important at the level of the best kind of educational experience rather than simply as a simple 'how to do it' exposure. For instance, the present day perception is no longer, I think, concerned with proving the value of clinical education, but rather how these efforts can be integrated into the curriculum with a full sharing of the academic function of educating lawyers for the half century of service that

they begin when they leave law school."

From the remarks of ROBERT L. KNAUSS, Dean, Vanderbilt University Law School: "For most of us, the last few years have been a time of agonizing re-appraisal of the clinical activity. Our own situation at Vanderbilt, I think, is fairly typical. We had in the early seventies built a very strong and diverse program which was primarily financed through soft money. Within the last two years we have been forced to transfer almost all of the clinical law funding to our hard budget. We have been pushed in a way that was not true in the past to look at clinical education and make some priority judgments concerning it. In many respects this has not been all bad--in fact, again reflecting on our own situation, there have been some very strong positive aspects. By forcing the full faculty to look at clinical education in respect to other priorities in the Law School, we now have a consensus which was not true in the past (and I will say it is a modest consensus) that clinical education does have a proper place and role in the Law School's academic curriculum. Faculty members on one side of the building have been forced to become acquainted with and understand what in fact has been going on over in the other side of the building housing the clinical activities. Some minimum range of understanding and comprehension has been brought to the full faculty on such questions as: What are the skills that clinical education aims to address? Does clinical legal education mean only actual client-related programs, or does it include simulations, role playing and straight work? Where do the more traditional offerings of moot court, trial practice, litigation, and the newer subject matters involving negotiation and counselling fit into clinical legal education?"

From the remarks of SPENCER KIMBALL, Executive Director, American Bar Foundation; Professor of Law, University of Chicago: "I would like to make a couple of observations from a vantage point that is, perhaps, different from that of most of the people here. Those who know me personally know that I belong to an extreme, the academically, research-orientated wing of the profession.

"I also teach at a law school, the University of Chicago, which most people would perceive to have that same perspective.

"I did have the opportunity last year, however, of serving on a committee chaired by Ken Dam which had the responsibility of reconsidering the posture of the University of Chicago Law School with respect to its clinical program.

"I had always been a skeptic about the value of clinical education, largely because of its image... as a how-to-do it kind of activity. Perhaps a large part of the problem clinics have with the deans and with academically-oriented faculty members may lie in that traditional image of the clinical program.

"I was persuaded, however, in the course of the several months that we engaged in our study at Chicago, that when it is done right clinical education can be very tough-minded and intellectually rigorous training in the stuff of the law, and particularly in that portion of the stuff of the law that is very difficult to teach in the ordinary classroom.

"It is on that basis that I personally, the committee on which I served, and the law school made a commitment to the continuation of support from our own limited resources for our clinical program. That posture is something that I think would surprise most of the people whose perception of Chicago - a correct one, I might add - is as a research-oriented, academically-oriented, university-directed kind of law school."

From the remarks of MILLARD H. RUUD, Executive Director, Association of American Law Schools: "Those clinical programs that provide legal services that have both an educational and legal service component perhaps should be eligible for funding by some entity responsible for the provision of legal services. The funding of the two different components --the educational component and the legal services component--could reasonably be...from different sources and should have different rationales for the funding....

"The Legal Services Corporation at some point, not in the immediate fiscal year or possibly next one, could pay for the legal services provided by the law school program....

"Perhaps the law schools might be willing to strike a bargain with the Legal Services Corporation that the law schools... would fund the education component and the Legal Services Corporation the legal services component."

From the remarks of ROBERT D. EVANS, Associate Director of Government Relations, American Bar Association: "We, in Washington, will do everything we can in terms of talking to people on the Hill and in terms of figuring out what buttons need to be pushed, but it does come down, basically and ultimately, to the members of the Appropriations Committees and, particularly, hearing from people back home.

"The importance of this was stressed by Congressman Eilberg from Philadelphia. He spoke before a bar group a couple of years ago and told us, with respect to lobbying, 'When I hear something from the American Bar Association, it's interesting. When I hear from three lawyers in my district, it's important.'

"I think it's that distinction that we need to bear in mind as we proceed with the lobbying effort."

From the remarks of JOHN R. KRAMER, Associate Dean and Professor of Law, Georgetown University: "For about eight to ten years, we have sat on our collective asses in law school clinical education in not dealing with the Congress of the United States. It really was only a spur of the moment thing, in December 1976, that ultimately brings us here today. Title XI is the primary if not the exclusive focus of this conference, and we have all acted rather inappropriately.

"It is time to get our act together and do something meaningful about dealing with the Congress....

"One of our problems with Congress is the way we dealt with them last year, the

way we made our pitch. The issue that we posed to Congress was that we needed this money to improve legal education. That was our primary focus, our primary thrust. The head of the AALS wanted to make that the key point of his testimony and, to the extent that law deans rather than clinicians did the lobbying, that was the focus....

"The problem with that is that Congress is not the law school community. It is not a collection of law school deans. It is not a collection of Spencer Kimballs saying 'Show me'. It is a collection of people who give out money for things that they deem to be national priorities and on a list of 1 to 100, 99th comes better trained lawyers for Congress, and it will never move--never.

"Any sales that we try to make on the basis of 'This is good for legal education. This is what legal education means,' is designed to sell absolutely nothing to that audience....

"The heart of [our]...pitch[must be]...that we can tap an immense pool of free volunteer help, the minds and hearts--perhaps more hearts than minds--of second and third and, in many cases, first year law students working without compensation, other than credit--and, in some cases, not even that--to provide services primarily for indigents.

"Now that may not be how we want to define clinical legal education in our own home community. That isn't what we struggle to try to analyze in faculty meetings. But we are dealing with Congress, and that has to be the primary thrust....

"From now on, we are a permanent self-interest group, a permanent lobby. I urge all of you... to contact your Congressmen and Senators... not through your deans--although I'm a dean--because the deans think about clinical legal education as part of the spectrum of legal education, and clinicians sometimes think about the clients.

"It's the client pitch and the service pitch that's going to work with Congress, and not some broader nonsense about better trained lawyers. Valid that well may be, but it is valid in a different forum at a different time....

"In the academy you have to sell clinical legal education as the best form of legal education. To do that, you have to plan a lobbying campaign for a different audience the same way you would plan a lobbying campaign for the Congress.... The way we have accomplished it is, in part, by letting the academicians loose, by putting the Spencer Kimballs on the committees that review, evaluate, and control the clinics.

"What you find, unless it is a totally hostile law school environment, is that everybody who is exposed to the clinical experience comes away, however previously hostile, convinced of the academic value of that experience.

"Therefore, any planning committee and any ongoing evaluative committee of clinics

ought to consist, at a minimum, of 60% of the 'Where's the article you wrote this week for the Law Review?' - types, and not clinicians. That is the only way to inspire confidence and trust. It is the only way to build in appropriate lobbyists on your own behalf who are respected as non-clinicians by other members of the faculty....

"Let us talk about the value of clinical education for training lawyers in the academy. Let us talk about serving the disenfranchised when we are before Congress. And then let us do both as a part of our program of clinical legal education."

From the remarks of JUNIUS L. ALLISON, Professor of Law, Vanderbilt University: "The compelling reasons for an adequate funding of Title XI are obvious. If we in the law schools do not take the lead in communicating the needs to Congress, who will? Almost every key member of the Senate and House lives in a community where there is a law school dean and a faculty. Why not urge this network of knowlegeable friends to help in a real educational program?"

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In addition to Millard Ruud's suggestion about funding for the legal service component of clinic programs, both he and Bob Evans of the ABA Washington Office referred specifically to a discussion of the matter at the March, 1978 meeting of the Board of the Legal Services Corporation. Bob Evans gave an extensive summary of the discussion from which the following was excerpted.

"What is the Corporation doing at present in the clinical area?...

"Apart from the direct efforts of the Corporation [in funding clinics at Antioch and Tennessee] there are a number of arrangements that have been made by local legal aid offices with law schools and with law school clinical education programs. They range all across the boards from situations where the Corporation is paying sums to the law school for faculty to situations where the law school merely has students that go over and work in an existing legal aid office.

"It's fairly clear that the Corporation has no real handle on the extent of these arrangements - what exactly they entail, how they are handled. I think the one thing that they definitely ought to be encouraged to do is to try to get some better idea of what's going on in that area.

"Now, the real issue that we are here to discuss this morning is what happens next, and will the Corporation get into the clinical legal education field more heavily?...

"There are two factors that seem fairly clear. One, that there will be no significant change in the Corporation's position in this regard for fiscal year 1979. That is largely because, first, they have already made a budget submission to Congress in which there is no indication that there will be any movement in this area. Second, the belief of the Corporation is that they need to move on the priorities of expanding into the new geographic areas and getting up to the minimum access...

"It is clear that the Corporation staff, at least, feels very much more comfortable at this point with the idea that the local programs would make arrangements with the law schools, rather than the national Corporation making direct grants.

"It is also clear, I think, that several Board members are willing to go well beyond that, but the Corporation staff discussed it in terms of, if we have an existing program in that area, does it make good sense for us to set up another program which would be in competition with or in duplication of the existing program. Perhaps in a case where there is no program at present, it would make sense to give every consideration to a clinical program which might apply for a grant to be a service provider in that area...

"There are some obvious benefits that the Legal Services Corporation can derive from going the clinical legal education route. Obviously, the first one is the provision of services, and to the degree that the costs are shared by the law schools and the legal services program the costs for the service may end up being very competitive or, perhaps, even cheaper than they could provide through their own staffed offices, although no one really knows.

"But another factor is in the training in the handling of poverty law matters of students who may ultimately become legal services attorneys. Obviously, any training that is done by the law schools in that regard gives the Corporation, when they hire somebody, a person who is better prepared, more ready to go, and it saves them from having to do the training themselves...

"On the plus side, in addition to the training aspect and the service aspect, it is obviously desirable from the Corporation's standpoint to have members of the profession - even though they do not go into legal aid work - who are sensitized to the problems in this area, and who may take pro bono cases while in private practice, or people who will simply be supportive of the legal services concept, both locally and in terms of funding nationally...

"Two of the new Board members expressed the feeling that joint efforts between law schools and the program would provide a healthy degree of cross-fertilization and new input, rather than a closed situation...

"They also expressed the view that the legal services movement for its own political purposes needs to strengthen its constituencies and that if it reaches out to their institutions and provides funds to clinical programs at law schools and other institutions, it will be developing constituencies which will be supportive of the overall efforts. It makes sound political sense for them to do that... "

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Volume XI, No. 1 September 1978

THIRTEEN SCHOOLS AND AALS RECEIVE NEW CLEPR GRANTS

A grant of $100,000 has been made to the Chicago-Kent College of Law of the Illinois Institute of Technology to support the development of four computer-based legal service delivery systems. An earlier CLEPR grant assisted the College in establishing an in-house clinic with a potential capability of handling large numbers of clients through the medium of group and prepaid legal services plans. The Law School thereafter contracted with a garment manufacturer to provide legal services to its employees and their dependents for an annual fee of $50 per employee paid by the employer to the law school. The College also receives $100,000 per year from the City of Chicago to represent the elderly and is negotiating to add a sliding scale fee schedule for those elderly clients with incomes above the eligibility level.

The large volume of clients being represented has led the director of the program, Professor Gary Laser, to consider means of lowering the costs of delivery by utilizing computer technology to systematize delivery and increase the efficiency of the delivery process. The grant will support experiments in the use of computers to assist in the delivery of legal services in some high volume areas such as consumer service contracts, retail installment sales contracts, uncontested divorces, wills and estate planning for small estates, and purchase and sale of real estate for single family occupancy. A second aspect of the project is the development of a computerized time accounting system for all clinic personnel, i.e., attorneys, paralegals, students and secretaries, which will provide the basis for an assessment of hourly costs for each service and level of personnel.

Computerization will strengthen the educational character of the clinic in at least two important ways. First, students will learn how to practice law in a law office setting of the future. Second, data obtained from computerizing the administrative/timekeeping functions will provide the Center with information

about how cases are handled, and thereby better enable the clinical professors to evaluate the student's educational experience.

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To create a wider awareness of the need for substantial funds for building and equipping law school clinics, CLEPR has encouraged law schools to seek significant outside funding for clinical education by offering grants of up to $100,000 for operating expenses or for capital improvements to be matched by alumni gifts, legislative appropriations, or general university funds. Four new grants have been made under this aspect of CLEPR's program.

A grant of up to $100,000 for general support of the Mandel Legal Aid Clinic has been made upon the conditions that the University of Chicago match this amount on a three-to-one basis and that a minimum amount of $150,000 be raised by the School to qualify for any pro rata portion of this grant.

The Mandel Legal Aid Clinic was created in 1958 by the University of Chicago and the Legal Aid Bureau of United Charities of Chicago to provide legal aid services and to be an extracurricular program for the school's students. In 1970, Professor Gary H. Palm was hired as Director and a basic change was then implemented which involved giving law students responsibility for the representation of the clinic's clients. Thus, legal aid lawyers were replaced by practitioner/teacher-supervisors. The recent reduction of United Charities' financial support due to the latter's operating deficit caused a reduction of clinic staff attorney positions. In response to this financial crisis, Dean Norval Morris appointed a committee of senior faculty to review the clinic. Its favorable recommendation on the clinic's future in the law school was adopted by the faculty and included increased financial support for the clinic, and an expansion of academic credit beyond the current two hours for the pre-clinical trial practice simulation course and two hours for the fieldwork course to an eight credit clinical course. A recent CLEPR grant has enabled the School to increase clinical salaries significantly. Restoration of the clinical staff to its prior level will require a considerable increase in the funding level for the clinic which the University has undertaken to reach by raising the funds requred to match the CLEPR grant in a special fund-raising effort advertised for the benefit of the clinic.

A grant of $40,000 has been made to American University contingent upon the raising of $120,000 of matching funds, for expansion and renovation of clinical facilities, including the installation of new audio-visual equipment. Existing space of 1050 square feet now used for other purposes will be allocated to the clinic, doubling the space available for clinical use and providing additional clinical offices. Both interview offices and a new courtroom will have newly built-in videotaping capability, and a television studio will make possible greater utilization of all the video installations.

A grant of $33,500 has been made to Vanderbilt University contingent upon the

raising of $100,500 in matching funds. The total of $134,000 would be used for expansion and renovation of clinical facilities, including installation of audio-visual equipment. When completed, there will be an area of 120 feet by 30 feet devoted to the clinic, with a street level entrance for clients. Office space is being provided for a director, two supervisors, three interviewing offices, and two offices for related programs. A waiting room for clients will be at the center of the area. Additional facilities useful to the clinic will be placed adjacent to it in a new wing of the law school building now planned for early construction. There will be a covered walk between the clinic and the new wing, providing easy access between the clinic and the new wing's moot courtroom, audio-visual area, library and conference room.

A grant of $10,000 has been made to the University of California, Los Angeles, contingent upon the raising of $20,000 in matching funds, for the purchase and installation of video equipment. The School has recently received an appropriation of $82,000 from the state to renovate a building next to the law school which will provide an additional 1800 square feet to be devoted to the clinic. A video control and editing room is planned for the facility and the CLEPR grant will assist in the purchase of needed equipment.

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Four grants have been made to schools to upgrade clinical salaries so as to narrow the gap between the salaries of clinical staff and the salaries of academic faculty. These grants reflect CLEPR's continuing concern over the second class status of many clinical teachers - an indication that many law schools have not yet come to grips with the essential role of clinical education in law school education. The four grants are as follows:

Boston University, $24,250, for partial support of a program to increase the salary level for clinical instructors by approximately $6,000 so as to place them within the range of associate professors on the academic faculty.

University of Georgia, $27,550, for partial support of a program to provide higher salaries for eleven clinical supervisors and to reclassify and upgrade certain positions in the clinical programs.

University of South Carolina, $26,000, for partial support of an increase of salaries for five clinical staff positions to bring clinical salaries to within the range of assistant professors.

Southern Methodist University, $17,500, for partial support of an increase of salaries for clinical staff to compensate them for their longer work week and their longer school year (eleven months versus nine months for academic faculty).

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A grant of $50,000 has been made to Loyola University of Los Angeles for partial support of a distinguished clinical professorship to be filled by an experienced attorney on sabbatical leave from law practice. The purpose is to introduce clinic staff and students to a more experienced attorney and one whose practice background differs from the usual clinician's poverty law background. This person is to function as the senior partner or director of litigation for the law school's teaching law office and will also teach one course each semester, either in a practice specialty or one dealing with practice skills. Other schools besides Loyola of Los Angeles which have established distinguished clinical professorships for the same purpose are Temple University and the McGeorge School of Law.

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The introduction of a pre-clinical component into the first year of legal education is being undertaken at a number of schools, two of which have been awarded grants to assist in replacing the current first year legal writing program with a program staffed by clinic personnel, as follows:

Hofstra University, $76,000 for partial support of a new four credit, two semester, legal research writing and oral advocacy course for all first year students, to be staffed by clinic personnel. All students will observe an interview of a client, will prepare pre-and/or post-interview memoranda, draft complaints and other papers, and fulfill additional research assignments. An earlier CLEPR grant assisted Hofstra in upgrading its clinicians' salaries.

Northwestern University, $70,700 for partial support of a new three credit, year long program for first year students, in legal research and writing. The program will be under the overall direction of the clinical director and will be staffed by a Director of Legal Writing, three legal writing clinical fellows and twelve students. Legal writing problems will be drawn from current clinic cases. A separate legal process component will introduce first year students to aspects of litigation planning and professional responsibility. An earlier CLEPR grant has aided Northwestern in upgrading its clinicians' salaries.

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The importance of clinical supervision is reflected in the grant of $54,450 to the Association of American Law Schools for partial support of the cost of three annual one week Clinical Teacher Training Conferences for approximately sixty clinicians each year. Historically, most law schools have hired young and inexperienced attorneys to serve as clinical supervisors, thereby creating a need for in-service training. An earlier CLEPR grant enabled the AALS to hold its first Clinical Teacher Training Conference in Cleveland on October 19-22, 1977, with a faculty of six experienced clinicians and a videotape consultant, under the

direction of Professor David Barnhizer of Cleveland State University. While 120 applications to attend were received, funding limitations resulted in restricting attendance to 55. The current grant will support one week conferences in 1978, 1979 and 1980.

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A grant of $31,500 has been made to the University of Minnesota for use by its Consulting Group on Instructional Design (CGID) for partial support of a program to develop measures to test for clinical skills. CLEPR has been the recipient of a grant from the Fund for the Improvement of Post Secondary Education (FIPSE) of the Department of Health, Education and Welfare, to devise tests for clinical skills. Out of these funds, CLEPR, in turn has funded the Educational Testing Service to make an inquiry into what skills are uniquely learned in a clinical program and to devise tests for such skills. CLEPR has also given some of the FIPSE funds to CGID to convert computerized testing programs for clinical skills. The CLEPR grant currently being announced supplements the FIPSE funds already made available to CGID.

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EDUCATORS AND ABA REVIEW CHIEF JUSTICE'S PROPOSALS

In August, Professor Samuel D. Thurman, University of Utah College of Law, Chairman of the American Bar Association Section of Legal Education and Admissions to the Bar, announced the appointment of a Task Force to study "Lawyer Competency - The Role of the Law Schools." As part of its assignment the Task Force will study criticisms of legal education made by Chief Justice Warren E. Burger. The Chairman of the Task Force is Roger C. Cramton, Dean of the Cornell Law School. Other members are: Willard L. Boyd, Jr.; Robert F. Hanley; Judge A. Leon Higginbotham, Jr.; Judge Shirley M. Hufstedler; Dean Joseph R. Julin; Maximilian W. Kempner; Dean Robert B. McKay; R. W. Nahstoll; Judge Alvin B. Rubin; Sharp Whitmore.

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In June a group met to discuss Chief Justice Burger's remarks at the American Law Institute meeting in May. There follows the minutes of this meeting (prepared by Dean Norman Redlich of the New York University School of Law and edited by CLEPR for reasons of space).

Chief Justice Warren Burger was the host at a luncheon for the conferees, but he did not participate in the actual meetings. Attending the meeting were: Dean Carl A. Auerbach, University of Minnesota Law School; Associate Dean John R. Kramer, Georgetown Law School; Professor Eric Sirulnik (Representing Dean Robert Kramer), National Law Center; Dean Roger Cramton, Cornell Law School; Dean Ernest Gellhorn, University of Washington Law School; Dean Joseph Julin, Spessard L. Holland Law Center, University of Florida; Dean Angus S. McSwain, Jr., Baylor University School of Law; Dean Norman Redlich, New York University School of Law; Professor Michael Reiss (Representing Dean Dorothy Nelson), University of Southern California Law Center; Mr. Millard Ruud, Executive Director, Association of American Law Schools; Dean Albert Sacks, Harvard Law School; Mr. William Pincus, President, Council on Legal Education for Professional Responsibility; Mr. James M. H. Gregg, Acting Administrator, L. E. A. A.; Mr. Perry A. Rivkind, Assistant Administrator, Office of Operations Support, L. E. A. A.; Mr. James Swain, Director of Adjudication Division, Office of Criminal Justice, L. E. A. A.; Mr. Tony Partridge, Federal Judicial Center.

Dean Redlich acted as Chairperson of the meeting and he introduced Mr. Gregg, Acting Director of L. E. A. A., who welcomed the participants and pointed out that the genesis of the meeting was, in addition to the Chief Justice's talk on May 16th, a breakfast meeting of the Fellows of the Institute of Judicial Administration, immediately preceding the Chief Justice's talk, in which Mr. Gregg and Dean Redlich had briefly discussed L. E. A. A.'s interest in advocacy training in law schools.

Dean Redlich emphasized that the purpose of the meeting was to exchange information concerning the present status of advocacy training in legal education, to explore the desirability of expanding such training, and to consider various alternatives including, but not necessarily limited to, the proposal of the Chief Justice.

It was apparent from the discussion that there exists a wide variety of advocacy programs in American law schools, although none of the schools represented at the meeting had a program of the type recommended by the Chief Justice. Several schools had trial practice courses of 3-5 credit hours; others offered more intensive courses such as the N. Y. U. program of ten credit hours in one semester, or the N. I. T. A.-type programs at Harvard and Cornell; all the schools offered advocacy training and experience in connection with clinical programs. All of the programs were elective with the exception of the one at Baylor which has a required ten-credit program for all third-year students and which was described by Dean McSwain as the dominant feature of the third year at that school. Except for the advocacy training growing out of the clinical programs, schools appear to rely on lecture and simulation as the teaching methods.

In the discussion of existing programs and the problems they have presented, the participants seemed to agree (not necessarily unanimously) on the following:

1. Advocacy training is a desirable feature of legal education not only for the purpose of training trial lawyers, but also because of the added perspective that such training provides in the student's learning of legal rules and reasoning.

2. Advocacy training is extremely costly. The N.Y.U. advocacy program, for example, which enrolls twenty students for ten credit hours, will cost $2,500 per student in direct teaching and support costs. Dean Redlich estimated that a year-long LL.M. program in advocacy would cost approximately $10,000 per student. Although there was agreement on the high cost of such training, some felt that the cost would be less if incorporated into clinical programs, since such programs, although costly, had already been partially absorbed in legal education. The Baylor experience indicated that the cost was not necessarily prohibitive, although the small size of Baylor (370 students) and its apparent ability to teach advocacy with a larger student/faculty ratio than has been the experience at other schools suggested that the Baylor model would not be easily followed. Mr. Pincus pointed out that costs could be made more manageable by the shifting of funds from other forms of teaching to advocacy teaching, and that cost per student hour would be reduced if schools would allocate larger numbers of course credits to advocacy courses. He also reminded the group that the high cost of traditional seminar courses is often ignored.

3. Most of the participants felt that advocacy training should remain, as it is in most schools, an optional program. For reasons of cost and sound educational policy there was little support for compulsory programs.

4. With the exception of Mr. Pincus, the participants felt that advocacy skills could be taught both through simulation and through clinical, i.e., live client programs. Mr. Pincus urged strongly that simulation should be considered as a supplement, rather than an alternative, to the clinical method because a real situation with actual clients was an essential ingredient of the teaching of advocacy skills.

5. Advocacy training involved far more than the techniques of trial practice, or interviewing witnesses or pre-trial practice. A proper program in advocacy involved intensive education in the entire litigation process, and should also be viewed as an advanced course in applied evidence and procedure. In fact, the participants felt that such programs should be properly called "The Litigative Process," rather than Advocacy or Trial Practice, in order accurately to describe their scope.

6. There is a great need for teaching materials, a point emphasized by Dean Sacks and others. Most existing courses tended to rely on the imaginative efforts of individual instructors, which does not provide a firm base for the widespread adoption of intensive advocacy programs in legal education. If new funding is available, it could profitably be used to develop new teaching materials which could then be used in many law schools.

7. While adjunct faculty could play a useful role, and internships could be valuable, advocacy training should be under the direction of full-time members of law school faculties.

8. While a limited number of schools might be able to run effective graduate programs in advocacy, most schools do not have graduate programs and are not in a position to develop them. Therefore, the major (but by no means

exclusive) development in this area should be at the undergraduate level.

9. It would be most helpful to be able to televise trials, over closed-circuit television and to build a national library of video-tapes of such trials for educational purposes. Dean Auerbach emphasized the importance of allowing federal courts to participate in this way.

10. Law schools have experienced difficulty in attracting full-time faculty to teach in advocacy programs. The tendency of traditional classroom teachers to question the intellectual worth of advocacy training adds to the problem of attracting top-flight teachers and fully integrating them into the mainstream of academic life.

With regard to the Chief Justice's proposal for an experiment, by a limited number of schools, in an intensive year-long program in advocacy, the group reached the following conclusions:

1. Schools should be encouraged to come forward with proposals for expanded programs in the litigation process (as described in paragraph 5, supra) including, but not limited to, year-long programs, semester-long programs, or year-long LL.M. programs at those schools where graduate programs would be practical.

2. Great care should be placed on quality control. For that reason, among others, the group reemphasized the importance of supervision by full-time faculty, while recognizing the difficulty of providing permanent tenured status for advocacy teachers.

3. The group felt that such programs could be undertaken without the extensive changes in the basic structure of the three-year law school suggested by some aspects of the Chief Justice's proposal. Participants questioned the desirability or feasibility of selecting a small group of students at the start of their law school careers and placing them in a separate educational track, as the Chief Justice proposed, although an experiment along those lines was not precluded. It was generally felt that the objectives of the Chief Justice's proposal could be achieved within the existing framework of undergraduate legal education, or within the context of an LL.M. Program.

4. Special funding of experimental advocacy programs, either from L.E.A.A. or other sources, should be for innovative programs, and should try to achieve a diversity of experimentation, which could include undergraduate programs, graduate programs, and possibly programs undertaken by law schools in the area of continuing legal education of lawyers. Efforts should be made to develop comparative experience with simulation, clinical training and internships in private law offices.

5. Some participants expressed reservations about selecting a small number of schools. This could create the impression that only those schools were conducting innovative advocacy programs when, in fact, such programs were being developed in many schools.

6. The group noted that a program patterned along the lines suggested by the Chief Justice would not meet A.B.A. or A.A.L.S. accreditation standards, but it was also noted that the relevant bodies of both organizations had expressed willingness to consider request for variances.

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Volume XI, No. 2, October 1978

More on Career Perspectives for Clinical Teachers

by Professor Laura Sager, NYU School of Law

This is a report on the second and third conferences held in New York City in March and April 1978 under CLEPR's sponsorship to discuss career patterns and problems of clinical teachers. (A first report is contained in CLEPR's April 1978 Newsletter, Volume X, No. 5) The participants included former and present clinicians, all with substantial experience in clinical teaching, as well as several persons involved in law school administration. (See page 4 for a list of participants.)

The discussion ranged over a variety of matters affecting clinical teachers, but the participants agreed that the fundamental problem, to which all others can be traced, is the fact that at most law schools, clinical programs and clinical teachers are regarded as both different from and less valuable than academic courses and academic teachers. Consequently, the law schools are at best ambivalent about, and at worst hostile to, clinical programs, and tend to judge clinical teachers not on the basis of how successful they are in clinical work, but rather on the extent to which they share the scholarly background and interests of the academic faculty.

The participants agreed that clinical programs differ from academic courses both in content and methodology. While most academic teaching follows the case method, clinical teaching emphasizes learning by doing. And while academic courses are concerned with mastery of particular areas of substantive law and doctrinal analysis, clinical courses emphasize other matters of concern to lawyers. These include the ability to gather and organize complex facts; to apply the relevant legal principles to the facts of a particular case; to write and argue persuasively; to try cases effectively in court; to become sensitive to problems of legal ethics and professional responsibility; and to engage in critical reflection upon the operation of legal institutions. However, the fact that clinical courses are different from academic courses, does not mean that they are less important. On the contrary, the participants agreed that clinical education provides students with intellectual and professional training equal in value to that provided by academic courses.

The participants further agreed that because of the very real differences between clinical and academic teaching, different people may be attracted to and successful in these

different kinds of work. The interests, abilities and experience of clinical and academic teachers are not necessarily the same. While some persons may be effective as both clinical and academic teachers, it is undoubtedly the case that others will prefer to confine themselves to one or the other forms of teaching. Just as the law schools do not expect most academic teachers to be prepared to undertake clinical teaching, they should not expect that clinical teachers will necessarily be ready and willing to teach academic courses. The law schools should therefore consider adopting two separate but equal employment tracks for clinical and academic personnel. Equally high standards of excellence would govern decisions concerning the hiring, promotion and granting of tenure to teachers on both tracks. However, the criteria for evaluating teachers on the two tracks would not be identical but would reflect the objective differences in the nature of their work.

Hiring standards. The participants agreed that current hiring policies often are not geared to finding and hiring the most highly qualified clinicians. If the law schools come to accept clinical education as different from but equal in value to academic courses, the hiring criteria for clinicians will have to be reconsidered.

At some law schools, clinicians are hired on a tenure track and are afforded equal status in the law school, but the hiring decision is based on the same criteria as are applied to academic professors - an outstanding academic record, law review experience and scholarly writing. The participants agreed that while a candidate's academic record and scholarship may be relevant to the hiring decision, they should not be the controlling factors. Far greater weight should be given to the candidate's litigation experience, including courtroom work, and to the personal qualities necessary for a successful close working relationship with students.

Other law schools hire clinicians in non-tenure track positions and offer them lower salaries and lesser benefits than the regular faculty. Such persons may have neither outstanding academic backgrounds nor extensive litigation experience. Instead, they are often recent law school graduates who have relatively little experience, but who are willing to accept the low salaries and second class status which the law schools offer. The participants recognized that the lower pay scale for clinicians is caused in part by budgetary constraints, but they agreed that the law schools will be far more likely to offer clinicians equal salaries and benefits, and consequently to recruit more experienced persons, once they accept clinical programs as equally valuable components of the law school curriculum. Even with the present disparity in compensation and status, however, it may be possible for the law schools to find highly qualified and experienced practitioners who are willing to trade the financial rewards of practice for the advantages of academic life. The participants agreed that if the clinicians hired were as outstanding in litigation as the academic teachers were outstanding in academic and scholarly work, the law schools would, in time, become more willing to offer clinicians an equal place among the faculty.

Promotion and tenure. Undoubtedly, the question of tenure for clinicians is a difficult and controversial one. The tenure system itself is now under attack from many quarters and may ultimately be abandoned by the universities and law schools. The participants agreed that if clinicians are to be truly equal members of the law

school community, however, they should be considered for and granted tenure on the basis of demonstrated excellence as long as the law schools continue to grant tenure to academic teachers.

The participants also agreed that the criteria for promotion and tenure, like hiring criteria, should reflect the differences between clinical and academic work. Most importantly, it was agreed that the emphasis on scholarly research and writing should be relaxed in the case of clinicians. Such research and writing is considered an appropriate requirement for academic teachers because it is evidence of expertise in substantive law and of the ability to engage in sophisticated analysis of legal doctrine. However, since the traditional law review article is only marginally relevant evidence of excellence in the kind of work that clinicians do, such research and writing should not be a significant factor in decisions concerning their promotion and tenure. Instead, the law schools should permit clinicians to demonstrate their abilities and achievements on the basis of briefs, case files and other non-traditional writing, such as articles concerned with matters relating to clinical education. In addition, substantial weight should be given to the quality of the clinician's teaching and community service.

The emphasis on scholarly research and writing is particularly inappropriate for clinicians because unlike their academic counterparts, who usually have substantial amounts of free time during the academic year, in the summers, and on sabbaticals, clinicians usually work full time eleven months of the year supervising students and attending to cases and usually they are not entitled to sabbaticals. Therefore, if the law schools continue to insist that clinicians engage in research and writing as a condition for promotion and tenure, the clinicians should periodically be given either a lightened work load or a leave of absence in order to meet these obligations.

Personal and professional growth. The participants agreed that clinicians, like academic teachers, need a certain amount of time to pursue their own intellectual and professional interests in order to remain fresh and creative teachers. While many academic faculty members are able to engage in research, writing and outside consulting work during the academic year as well as in the summers and on sabbaticals, clinicians usually have little if any time for outside projects because of the heavy time commitments involved in their work and because they are often ineligible for leaves and sabbaticals. The participants felt strongly that clinicians should be given the opportunity from time to time to engage in full time law practice outside the clinical setting in order to sharpen their own lawyering skills and to develop new insights and perspectives to bring to their teaching. Reduced teaching loads, leaves of absence, and sabbaticals should therefore be made available to clinicians for this purpose as well as for the purpose of pursuing more scholarly interests. The participants also felt that it is important for clinicians, like the academic faculty, to be free to vary the form and content of their courses and, if qualified, to offer academic courses from time to time, just as qualified academic teachers should be permitted forays into the clinical field.

Conclusion. Undoubtedly a major stumbling block to the acceptance of clinical programs and clinical teachers is the lack of communication between the clinical and academic faculty, as a result of which the academic faculty often has little understanding of the

goals and achievements of clinical programs and of the abilities and expertise of clinical teachers. Clearly, a necessary first step for promoting mutual understanding and respect is for the academic and clinical teachers to learn more about each other and to openly discuss both the career problems of clinical teachers and the status of clinical education in the law schools. Only as a result of such open discussion will it be possible for the clinicians to be accepted as different in some respects but nevertheless equal members of the law school community.

* * * * * * * * * * *

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Volume XI, No. 3, June 1979

DEVELOPMENTS IN CLINICAL LEGAL EDUCATION IN ENGLAND

by Peter S. Smith
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When I was initially considering the possibility of spending six months in England[1] studying develpments in clinical legal education, a faculty member at an English Law School cautioned me that there were "no projects in being in England which you would regard as falling within the meaning of that term". So depressed was he with the current state of English legal education that he concluded that "a much shorter visit (than six months) would suffice" since nothing I would learn "would be of more than passing interest".

Not being discouraged by this description,[2] I have discovered that much more is happening than my English source realized. Indeed, I have been continuously surprised during the course of my investigations to discover how little persons in different segments of English legal education seem to know about the latest doings of their colleagues. Arriving in a country that is, by American standards, so compact geographically encourages the mistaken assumption that everyone will know what everyone else is doing. Indeed, the barriers which have developed between the various groups that have responsibility for different segments of legal education and training substantially inhibit the free flow of ideas and information.

Since my arrival in late December, 1978, I have taken up residence at the Law School of the University of Warwick which is located in Coventry. As I will explain shortly, Warwick has progressed further than any other law school in the development of a clinical law program as an integral part of its curriculum.[3] In order to capture fully the essence of the program, I have participated in all of the group meetings in the classroom setting and observed the students and staff in all facets of their work, from interviewing clients to individual case supervision.

In addition to immersing myself in the Warwick programs, I am visiting other law schools which either have developed or are on the verge of developing clinical teaching approaches. I am also meeting with persons involved with the operation of the

two law schools which - under the direction of the respective professional bodies -[4] provide an additional year of training for students following graduation from the traditional educational institutions. These so called "vocational" or "professional" law schools - entities unknown in our own system - vastly complicate the task of understanding and analyzing the successes and failures of English legal education. Their actual method of operation, and the manner in which they relate to the traditional law schools, has been a particularly fascinating area of inquiry. Finally, I am spending a number of days in firms of solicitors and with practicing barristers, discussing the formal English system of "on the job" training with both the qualified lawyers and their trainee "articled clerks" and "pupils".[5]

Background on English Legal Education

Before focusing on clinical aspects, it will be helpful to summarize the sequence of English legal training and some of the differences between the U.S. and English systems which must be kept in mind when reviewing any aspect of English legal education. Unlike the American scheme, which concentrates all "formal" legal training inside the universities,[6] the formal educational system in England is divided into three distinct segments, each organized and carried out by a different part of law-education community. The first segment consists of a three year program at a university or other institution of higher education[7] which, upon successful completion, entitles the student to a law degree.[8] While the make-up of the three year curriculum varies somewhat from institution to institution, in all instances the curriculum includes courses (almost always required) in what is known as the six "core" subjects: constitutional law, contract, torts, land law, criminal law, and trusts.[9] The remainder of the curriculum consists of a list of optional legal courses which has been substantially expanding in the last ten years but remains much shorter than the typical American law school catalogue of subjects.[10]

The second sequence in the training is the vocational course of one year[11] which must now be taken following the completion of the three year university program by all persons who wish to continue on the road to professional qualification as a solicitor or barrister.[12] Each branch of the profession has its own professional school which provides this one year of training.[13] For intending solicitors, the one year program is taught at four branches of the College of Law, an institution whose main function is to teach this course. The Law Society approves the curriculum and administers the examinations that are given at the conclusion of the program.[14] Meanwhile, persons intending to be barristers must enroll at the Law School of the Inns of Court which is operated by the Council of Legal Education, an arm of the Senate of the Inns of Court and the Bar.

The final stage of formal training takes place in the setting of the lawyer's office. Persons satisfactorily completing the College of Law programs are required to spend two years as articled clerks in a firm of one or more solicitors. However the arrangement may work out in practice, the clerk is technically articled to a particular solicitor who must have a minimum of five years experience as a practicing attorney. Only after the completion of the two years of articles may the individual obtain a practicing certificate entitling him to be a solicitor.[15]

Meanwhile, a person successfully completing the Inns of Court Law School program enters the third stage of his formal education program by attaching himself, as a "pupil", to a practicing barrister of not less than five years experience. He remains in that role for one year but, in the second six months, is permitted to go past the observation stage and begin to handle cases himself. Following the successful completion of this one year of pupillage, he is free to become a practicing barrister in his own right.[16]

Before turning to a discussion of the role of clinical instruction in these three different stages of training, it is wise to point out, however cursorily, some obvious differences between education, training, and law practice in the United States and England. I do so without suggesting whether those differences are more apparent then real, or whether they call for different conclusions concerning the relevance of, or method of applying, clinical teaching concepts as they are known in the United States.

The first difference, and the one that English academics continually stress to me, is that the university stage of law training in England occurs at the undergraduate level when the typical American student would be immersed in a four year liberal arts program that might include a course in constitutional or international law. As a result of this difference, the English law student is not only chronologically three or four years younger than his American counterpart, but is less certain about his career plans and more likely to end up in a professional field other than law.[17] A second major difference is the role which the profession plays in the formal education program: the professional societies at the second stage and the practitioners at the third stage. That role extends to regulating who enters the profession.[18] Thirdly, the division of the English legal profession into two separate branches has a major effect on how persons are trained for the profession, at least after the first stage at the University.[19] Fourthly, there is a major difference in size between the legal professions in each country and the sheer quantity of laws and regulations. The practicing profession in England is approximately fifty thousand, less than ten percent of the United States' total. The unitary system of government and the traditional role of London as the center of the judiciary and much of the practicing profession[20] stands in marked contrast to the United States. Obviously this difference is relevant to such issues as specialization versus the general practice of law and the related question of how to train lawyers.

With this background in mind, I will review the traditional and developing role of clinical methods in the various stages of the lawyer's formal education. I proceed in reverse order, starting with the third stage and ending up with the first.

The Third Stage of Training - Pupillage and Articles

Similar to the early experience in the United States, instruction received by the articled clerk from his solicitor and by the pupil from his pupil-master traditionally constituted the bulk or all of the formal training received before entry into practice.[21] While articles and pupillage are very much in place, they are under constant attack from different elements of the legal community.[22] As a supposed

effort in clinical training, articles and pupillage founder in two fundamental respects. First, the apprentice, for too much of his training period, may remain isolated from personal involvement with clients and responsibility for law practice.[23] Second, whatever the nature of his involvement in his principal's practice, there is generally an absence of any systematic approach to either teaching or learning the skills or role of a lawyer.

Pupillage

For the first six months of his training, a pupil is restricted to being an observer only.[24] During the second six months, his actual contact with practice will depend very much on the nature of his placement. In those chambers[25] which handle mainly a criminal practice, pupils will, at the start of their six month period, normally receive assignments to handle preliminary matters or minor cases in the lower criminal court. For those pupils in chambers handling more esoteric civil matters, the role of observer will almost certainly continue during the second six month period as well.

Only a minority of barristers take pupils, but there is no mechanism for ensuring or even encouraging that a barrister has the time, interest, or ability to develop a systematic program of training. While there are instances in which the barrister approaches his role as pupilmaster in a planned fashion, what training the pupil receives is essentially a matter of luck. Since the pupil spends all of his time with the barrister to which he is attached,[26] he has much to lose if he chooses wrongly.

Articles

For the articled clerk in the solicitor's office, the situation is little different. One person in articles recently stated the following to the Royal Commission on Legal Services which is undertaking a major examination of the legal profession, including the system of education and training: "As to whether or not one eventually acquires a good set of Articles is to a large extent pot luck. By good Articles I mean whether or not the Principal has time to spend providing adequate training, whether or not the clerk is asked to do a varied range of work and whether or not he or she is allowed freedom and responsibility".[27] The general view, which is consistent with my personal observations, is that the "pot luck" is more often bad than good. The reasons are those just given. Like the pupil, the articled clerk too often observes and, when he is given an assignment, it frequently is to photocopy or engage in messenger work. In the largest firms in London, the clerk normally is rotated every six months into a different section of the firm in order to give him a breadth of experience.[28] This, of course, has the advantage of increasing the chance that during at least some of his period of articles he will be assigned to a solicitor who will give him both instruction and discrete pieces of responsibility. But the pressures of work, which are at least as severe for the solicitor as for the barrister, normally combine with the lack of an organized program to result in an absence of systematic teaching and learning even in the largest firms.

The formal system of training called "articles" does not appear to have much effect

on the real mode of learning: the "milieu" approach. In discussions with partners in the solicitors' firms I have visited, I asked whether it was possible for them to systematically teach - and for the clerks to systematically learn - basic lawyering skills such as interviewing, negotiation, drafting, and advocacy. All the partners, including those responsible for the training programs, generally said it is not. Indeed they were surprised that the question was even asked because they were so comfortable with the notion that learning to practice law is a slow process of absorption that cannot be speeded up or slowed down by any process other than "existing". This attitude is not peculiar to the English practitioner. The point, however, is that articles and pupillage are held out as something different from and presumably superior to, the model in which the new lawyer simply joins a law firm and plays whatever role a new lawyer does. It is not apparent that the existence of the apprentice program, with its various trappings, adds anything by way of systematic training or development of lawyering abilities to what would exist if it were abolished. When I asked various partners in solicitors' firms what changes would occur if articles were abolished and persons joined their firm as assistant solicitors, they were hard pressed to think of any changes unrelated to compensation.[29]

The Second Stage of Training - The Vocational Course

The Inns of Court School of Law

Although historically the profession provided formal instruction in the law at the Inns of Court, the system disintegrated and was not revived until little more than a century ago. On the barristers' side, the focus has been the Council of Legal Education which dates back to 1852. For many years, however, the teaching program consisted merely of optional lectures by part-time teachers. A Dean was appointed in 1968 and faculty were subsequently recruited. The program has been in a constant state of evolution, with substantial changes implemented in the 1978-1979 academic year. The Law School, which is located next to one of the Inns of Court, currently has an enrollment of approximately eight hundred students.[30] The program starts in mid-September and concludes in early July. During this period, there are thirty weeks of actual instruction.

Historically, instruction at the Inns of Court consisted exclusively of lectures on the substantive law. In recent years, however, the Law School's program has slowly evolved in other directions as well. The 1978/79 academic year started with a three week course introducing students to the substantive law materials to be covered, acquainting them with practice in the various courts, and commencing formal instruction in two substantive courses[31] and legal drafting. The heart of the instruction takes place over three terms which are divided into two ten week and one four week segments.[32] Most instruction is organized into six courses, known as "papers". Four of them are required: evidence, civil and criminal procedure, general paper I (problems in tort and criminal law), and general paper II (problems in trusts and contract). The two optional papers may be selected from a list of nine subjects.[33] The civil and criminal procedure and evidence papers and the two

options are taught by a combination of straight lecture, in which students sit in classes of 300 and are discouraged from asking questions, and tutorials which vary from between 9-15 students each. Over the course of the year there are 48 hours of lecture and ten hours of tutorial in each of the four subjects.[34] The mode of instruction in the two general papers is slightly different. Students meet in sections of 150 in each of the papers once every other week. In advance of the class, they are given a written problem to study. The first few minutes of the class consists of lecture, and the remainder, hopefully, will be devoted to discussion. The tutorials operate in the manner already described, with ten hours of instruction each term in each paper. Thus the two general papers are much more heavily oriented in the direction of small group discussions and student participation in the large sections.

The remainder of the formal instruction, representing the new developments at the Law School, falls within the broad definitions of "clinical".[35] It consists of four different phases: drafting classes, practical exercises, court observation, and project. The drafting classes are taught by practicing barristers. The student attends six classes, each of three hours duration and covering a different substantive area. The classes are in groups of 200 students. The method of instruction varies, with some barristers engaging almost exclusively in lecture and others encouraging substantial discussion. In some of the sessions, the students are asked to prepare some work in advance of the class session.[36]

The practical exercises are divided into two major parts. The first involves six forensic exercises, centering on such matters as examination and cross-examination of witnesses, making a plea in mitigation, etc. The first portion of the exercise involves a one hour session in which a practicing barrister meets with a group of 300 students and presents a demonstration. Students participate as observers only, except to the extent that the barrister may call on several of them at the beginning of the demonstration to play a role of attorney, witness, or judge. The following day, the large group is divided into groups of five students who perform the exercise before a practicing barrister for an hour in the late afternoon, either in his chambers or in the Royal Courts of Justice.[37] Obviously, the involvement of such a large number of practitioners supervising and critiquing these exercises can lead to potential difficulties in administration and quality control.[38]

The other major part of the practical exercises is the chambers exercises, which focus on the barrister's paperwork duties (e.g., drafting claims and defenses) and advising his client in his office (chambers). These exercises are conducted in the manner just described except there are no large demonstration sessions that precede each of the one hour meetings with five students.[39]

The court observations entail one visit to each of five courts and to an industrial tribunal (administrative hearing).[40] Each visit lasts for the entire day and normally involves a meeting with the presiding judge either at the beginning or the end of the day, or both, to discuss matters involved in the cases and the manner in which they were presented. Sometimes the students are asked to leave the court when the judge is delivering his opinion, after which they will be asked what the decision should have been and why. Numerous judges participate in this program and the size of the

student groups is never larger than ten and frequently is less than five. The administrative difficulty in arranging these visits has been compounded by the not infrequent failure of students to appear at the appropriate judge's chambers, or the failure to dress appropriately when they do appear. This has led to a certain amount of grumbling from judges and court administrators as to whether the program is worth the trouble.

Commencing with the 1978-79 academic year, the School of Law will take its biggest plunge thus far into a simulation approach when it conducts a three week project at the conclusion of the academic year. The project is presently in the preparation stage, but it is expected that there will be three different cases - civil, criminal, and chancery - with the student given the option of choosing his case. The intention is to divide the students into small groups of opposing parties and to take the case through all its stages from initial factual development to appearance in court. Performance will be assessed and a student who fails to perform adequately will be viewed as not satisfactorily completing the Law School program.

Currently, no aspect of the formal Inns of Court Law School curriculum involves the student directly in actual law practice. In 1971, a major report on legal education in England and Wales urged that the possibility be explored of running legal aid clinics in conjunction with the second stage of legal training.[41] The report detailed the advantages of the students obtaining "some experience of the real thing" as part of their formal training.[42] However, the governing body of the School of Law has rejected the idea on the ground that the number of students involved would prevent proper supervision of their work. A handful of students - probably no more than 25 - participate on a voluntary basis in the Free Representation Unit which was set up in 1972 to provide free representation to persons who appear before administrative tribunals.[43] While the Law School arranges at the start of the academic year for the students to be informed of the Unit's work it has no role in the Unit's operation. Most of the students who participate appear to do so out of a desire to assist persons in need of representation, not as a means of developing advocacy skills.

The College of Law

The second stage of training for solicitors, unfortunately, can be described much more briefly. Much has been written about the College of Law and its mode of instruction. A statement recently submitted to the Royal Commission on Legal Services by a student who took the course captures the flavour: "The rules of the establishment seem to be to attend all lectures, take down all dictated notes, do not read any text books, learn the notes like a parrot - regardless of whether they are understood or not and when asked the appropriate question regurgitate the appropriate part of the notes". Up to and including the present academic year at the College of Law, it is accurate to say that the program is - pure and simple - an extreme form of substantive law cramming to enable the student to pass the examination. It is literally true that the bulk of each lecture session consists of the teacher reading his notes very slowly so that the student may copy down each and every word.

After much criticism over the years, the College of Law has announced that a

wholly new program will be instituted commencing with the 1979-80 academic year. Instead of the series of lectures under the traditional substantive law headings, the new curriculum will be divided into four portions: litigation, the solicitor and his practice, the solicitor and his private client, and the solicitor and his business client. The litigation portion of the curriculum is totally new and recognizes the fact that, more and more, solicitors are spending their time as advocates in lower civil and criminal courts and administrative tribunals. In addition, the part entitled the solicitor and his practice will include substantial material in the area of professional conduct that had not previously been taught.

Except for the addition of this new material, it is questionable whether changes in the program will be more than cosmetic. Significantly, there is no intention of inserting into the instruction any skills training, simulation work, or actual law practice under supervision. Thus the program is destined to remain essentially a course in substantive law. Hopefully the "dictated notes" form of teaching will come to an end. The new curriculum calls for a number of small group sessions (15-20 students) to be slotted in with the more standard fare of large lectures. This change will give those teachers who are so inclined the opportunity to utilize different teaching methods.[44] However, even changes in methods of teaching traditional substantive law will depend on the ability of the College of Law to break away from its traditional view of its mission: to enable the student to pass the Law Society's examinations. The senior member of one of the College's branches described this role to me as "beating the examiners". In the future, he optimistically predicted, the exams will be viewed by the faculty simply as a necessary evil occurring at the conclusion of the course. He acknowledged, however, that it would not be easy for all faculty members at each branch suddenly to shed their concerns over the pass rate of the examinations. Should there be a drop in the success rate of the examinations, he conceded that such a development might cause faculty members to lapse into the old "time tested" methods of instruction.

The First Stage - Academic Training

It is at the first stage of training - in the university and polytechnic - that clinical education forms are slowly beginning to emerge. I will focus mainly on the Universities of Kent and Warwick where the developments have been the greatest, with some mention of other institutions.[45]

The University of Kent Clinical Program

The first developments in clinical law teaching occurred at the University of Kent, one of the new provincial universities that sprang up during the more prosperous decade of the 1960's. The law program took a non-traditional form from its inception in 1966. Although the existence of law as part of undergraduate education has tended to make the English law schools less a distinct entity within the university than is the case in the United States, Kent went even further and integrated its law program with the Department of Social Studies. Thus, in the first year, students who are intending to pursue law may take only two law courses, with the remainder in other fields such as economics, history, and political science. Not until the

second year may the student concentrate exclusively on law subjects. The Law School's approach is to view law as a social science. As a consequence, teaching at Kent broke away from the very traditional system of teaching "black letter" law in a very narrow context.

Although the less traditional nature of the law program at Kent no doubt made more likely the development of clinical law approaches, the major impetus came from one faculty member, Adrian Taylor, who arrived at the Law School in its second year. Becoming increasingly dissatisfied with the overwhelming emphasis on learning substantive law in a vacuum, he began discussing with his colleagues a program of unifying theory and practice under the title "Praxis". Between 1971 and 1973, plans slowly developed, culminating in a "Report of the Sub-committee on Clinicalization" of the law faculty in May 1973. Chaired by Mr. Taylor, the sub-committee recommended the establishment of a law clinic and the revision of existing law courses in order to "clinicalize" major portions of the curriculum.

These proposals translated into several concrete developments commencing in the fall of 1973. First, all students in the first year were required to make a series of visits to the various courts, attending in designated groups with their instructor. The visits were followed up with seminar discussions of what the group observed and individual reports which were assessed as part of the required written assignments in the course. Students in their second year were required to participate in a moot court program and undertake a clinical project. The latter assignment, which would result in a dissertation of about 8,000 words, could be undertaken in two ways. The student would either obtain a summer placement in a legal or other agency or make empirical investigations and observations without actually undertaking a formal summer placement. Following the placement or observation, he would undertake whatever library research was needed and would then write up his project for submission to a particular faculty member. Under the plan for the clinical projects, each project would bear some relationship to a particular course and would be submitted to the instructor who taught that course. In this way, the projects were to "feed into" the various courses, thereby furthering the "clinicalization" process. The written report counted for 50 percent of the assessment in the course to which the project related.

The other major feature of the clinical program was the law clinic which opened its doors in late 1973. In his position as Director of the clinic, Mr. Taylor co-ordinated not only the operations of the clinic but the choice of the clinical projects, the summer placement of the students, and court visitations. The actual case work of the clinic was under the direction of a solicitor who arrived in the fall of 1974. Unlike the other phases of the clinical work, participation in the clinic was not made mandatory. However, about 50 students each year participated in the clinic's work.[46] They would normally spend about one half day per week in the clinic doing case work. In addition, they were expected to attend weekly clinical seminars which focused on lawyering skills, ethical considerations, and case work strategy.[47] The work in the clinic consisted of observation and, subsequently, conducting of interviews, legal research, drafting of letters and documents, and advising clients in the presence of a staff member. Occasionally students assisted

staff or themselves handled matters before administrative tribunals.

Although the clinic work was not compulsory and those who did participate received no academic credit for it, the tie-in with the academic program was very substantial. In addition to the role that the Director of the clinic played in co-ordinating the required clinical projects, several other faculty members served as "duty officers" at the clinic on a regularly scheduled basis each week. Thus the clinic was very much an "in-house" operation. The University provided the space for the clinic and paid the salaries of the solicitor and secretarial staff. Indeed, this close relationship with the Law School, when combined with certain other factors, eventually resulted in the clinic's demise.

By 1976, the clinic had become engaged in a number of highly controversial cases which pitted it against different segments of the "establishment" in the local community of Canterbury. In one such case, the clinic led an inquiry into the management of a psychiatric hospital, one of whose board members was the wife of the University's Vice-Chancellor.[48] The tension that developed as members of the local Government made known their displeasure to the University administration was heightened when the clinic represented students who were engaged in a sit-in at the University. Matters were made worse because of resentment harboured by local solicitors who believed that some of their potential clients were obtaining free legal services at the clinic. Added to these difficulties were the personalities of the Director of the clinic and its solicitor, neither of whom was about to compromise on the cases they were taking or their view of the local or University establishments.

In December 1975 the law faculty established a committee to review the work of the full clinical program and report back to the faculty with proposals. Shortly thereafter, a committee of the social studies faculty (of which the law faculty was a part) was established to examine the operation of the clinic, including its contribution to the education of law students, and its relationship to the social sciences faculty, the law faculty, and the local community. In addition, the committee was asked to comment on a proposal to develop an Institute of Clinical Legal Education, which would have constituted a more permanent and expanded form of the existing clinic.

The deliberations of these two committees during 1976 eventually led to a major blow-up between various factions at the University and in the local legal community. The committee of the social studies faculty issued a report highly critical of the work of the clinic and questioning whether it was serving a useful educational purpose. Referring to the controversies caused by various clinic cases, the committee concluded that the clinic must be re-constituted as a body wholly separate from the University. The report also refused to support the expansion of the clinic in the form of an Institute of Clinical Legal Education.

Meanwhile, the committee of the law faculty recommended that the clinic be continued but that certain changes be made in the organizational structure of the clinical program in order to promote its full integration in the law curriculum. It proposed a discrete course in clinical law which would involve the students in case

work, participation in clinical seminars, and the writing of a research project or placement report relating to matters raised during work at the clinic.[49]

The substance of each report was approved in late 1976, with the social studies faculty voting to close the existing clinic in August 1977. Enormous controversy quickly developed, with charges and countercharges that spilled into the national press. A proposal for establishing an independent law center in Canterbury ultimately foundered in the spring of 1977 when the National Law Society refused to approve it.[50]

During the past two years, the clinical program has been in somewhat of a lull. The court visitation and moot court parts of the program have continued. The clinical project continues as well but in a somewhat changed form. Whereas previously the student was encouraged to go on a placement and let the project grow out of it, now only a minority of students are placed; the emphasis in the project is on the research. Meanwhile, the clinical course which was to have commenced at the start of the 1977-78 academic year has not yet been offered. The decision has been made to delay its implementation until it can be offered in conjunction with a newly created clinic. Efforts to re-establish the clinic have continued. Recently the local Law Society approved a proposal for an independent law center in Canterbury and the matter is now under consideration by the National Law Society. Meanwhile efforts are being made to obtain adequate funding for the program. The clinic would have a solicitor as permanent professional staff. His principal function will be to render legal services to the community. The exact nature of the tie-in with the educational program of the Law School has not been worked out, but the administration of the Law School hopes that, in the pattern of the previous clinic, several faculty members will work on a part-time basis in the clinic and will provide the essential supervision for students who wish to become involved. It remains to be seen whether the newly organized clinic can be sufficiently independent of the University to satisfy the desires of those who fear a repetition of the previous experience and, at the same time, provide a learning environment for students in addition to servicing clients.

The University of Warwick Legal Practice Program

The experience of the University of Warwick in developing clinical legal education both parallels and contrasts with the Kent experience. Like Kent, the University of Warwick was founded in the mid-1960's; its law program began in 1967. Seeking to break sharply with the tradition of English legal education programs, the law faculty adopted as its theme a "law in context" approach in which the law would be studied in its social context, not as an isolated body of rules. This concept led to the alteration of traditional subject boundaries in order to facilitate the teaching of substantive law in a form which more closely approximates its actual functioning in society. Consistent with this approach was the introduction of substantial interdisciplinary material throughout the curriculum.

The development of the clinical program at Warwick was a natural outgrowth of the desire on the part of many of its faculty members to experiment with new methods and to relate teaching to reality.[51] In the late 1960's, governmental funds were

made available for the creation of community development projects to seek new solutions to problems of urban deprivation. In 1970, such a project began in Coventry. Its staff soon recognized the need for legal assistance in certain areas where persons were either physically or psychologically distant from practicing solicitors. A neighborhood information and opinion center had commenced operations in mid-1970, and one year later four faculty members from Warwick Law School volunteered to staff the center once each week on a rotational basis for the purpose of giving legal advice. These individuals were motivated not only by a desire to assist clients in substantive law areas (e.g., welfare) which were outside of the area of expertise of local solicitors, but by the wish to further educate themselves at a time that they were developing new substantive courses and teaching methods. This involvement was seen not only by its participants but by other faculty members as consistent with what Warwick was all about: teaching law in context.

During the two years that the faculty members staffed the legal advice sessions,[52] students at the Law School did not participate with them. However, with such faculty interest in actual client representation, the climate was obviously ripe for developing student involvement. Indeed, when the advertisement for a full-time lawyer was prepared, it mentioned the possibility that law students might be made available to assist in the work of the center. After the permanent attorney was hired, one or two students a week would sit in on advice sessions that he conducted.

In the ensuing years, informal involvement of students in client representation began to develop. In April 1973, a community center was opened in the nearby town of Leamington Spa. That fall several members of the law faculty, including one who handled the legal work incident to establishing the center, inaugurated an information and advice program to give free legal assistance as part of the center's program. After several months, students began volunteering their assistance to the faculty members who, on a rotational basis, conducted two advice sessions each week. Meanwhile, during the 1972-73 academic year, the students themselves had organized a neighborhood law center at the University which operated three advice sessions a week for students and staff of the University on a variety of legal problems. Although this program was run exclusively by the students, there was frequent informal contact and consultation with faculty members on individual cases.

Against this background, three faculty members prepared a report in the 1974-75 academic year entitled "A Clinical Program in Warwick Law School". The document proposed the creation of two half courses[53] as options in the second and third year. The second year course, "Clinical Course I", would contain a series of seminars in the first term involving instruction in interviewing, information gathering, letter writing, professional ethics, and discussion of substantive law areas that would likely be encountered. The student would then undertake supervised work at a local legal advice center in the second and third terms. The third year course, called "Clinical Course II", would include the formally taught element if it had not already been taken, and work at a legal advice center in the first part of the third year or, in the alternative, a placement during the summer vacation between the second and third years.

Significantly, the proposal recommended that in place of a formal examination, the student be judged by one or more of the following methods:1) a written project based

on an area of law or practice which the student encountered in his case work; 2) a written report by the student discussing his case work; or 3) the supervisor's assessment of the student's case work performance. Thus, for the first time (including the Kent program), a student's participation in client representation would be part of his formally assessed law school work, not merely an extra-curricular activity.

After initial faculty discussions of the proposal, the report's authors, joined by two other faculty members, issued a subsequent report further elaborating on the academic justifications for the program and its methods of operation. Recognizing that the program should be phased in slowly, it suggested that no more than 12-16 students be involved in case work in the first year and that supervision be provided by several faculty members, each contributing a modest portion of his time. The memorandum estimated that as many as eight faculty members might be willing to participate, with one person co-ordinating advice work and another responsible for placements. Those two would be joined by at least two or three others in the supervision of advice sessions.[54]

After further discussions, the faculty approved a clinical program to commence in the 1975-76 academic year. In its final form, it involved three half courses. The proposed "Clinical Course I" was approved for second year students and was entitled "Legal Practice I". The proposed "Clinical Course II" became two separate courses, designated "Legal Practice II" and "Legal Practice III".[55] The former constituted a placement by a student in a legal agency in the summer vacation between his second and third year, followed by a written report to be submitted to a faculty member on aspects of law and practice he encountered. The latter course, to be taken in the third year by students who had taken Legal Practice I the previous year, would involve the supervised representation of clients together with a written report on aspects of their work.

The clinical program commenced operation in the fall of 1975. Although the structure of Legal Practice II and III have remained the same, the Legal Practice I course has evolved into a much more comprehensive program. At the end of the second year, the faculty expanded it to a full course[56] and authorized either second or third year students to enroll. This change permitted an expansion in the classroom component in the 1977-78 academic year. In addition to instruction in lawyering skills and substantive law areas,[57] expanded use was made of case discussion groups which had been introduced in the second year. The students were given material pertaining to professional responsibility, legal services delivery systems, the varying roles played by the lawyer, and problems involved in enforcing the legal rights of the poor. This material formed the basis for a series of seminars entitled "Lawyers in the Community". Currently, various classroom components involve an average of approximately four hours of meetings per week, normally in two hour segments.

The casework in Legal Practice I has also evolved. Initially, students obtained cases at the advice centers in Leamington and Coventry as well as from the exist-

ing student-run law center at the University. Gradually the Leamington advice center became the predominant source of cases. A number of cases, however, continue to be referred from the student center on the campus and from other sources. Occasionally students have assisted with cases at the monthly repossession hearings at the Coventry housing court.[58] This year, a new source of cases has been developed in conjunction with the Coventry branch of a national pressure group that specializes in assistance to one-parent families.

The method of case supervision, as well as the supervisors, has slowly changed. Initially, several faculty members shared supervision, frequently handling matters in their respective areas of substantive expertise. During this period, one of the faculty members developed a system designed to give strict supervision while, at the same time, affording students increasing opportunities for individual responsibility in the handling of cases. Substantial differences developed in the means by which the faculty member sought to exercise supervision. Several faculty members seemed reluctant to permit students to assume responsibility, insisting on sitting in and even controlling interviews with clients or redrafting letters without the students' knowledge.

As the first two years wore on, several faculty members dropped out of case supervision and moved on to other activities in the Law School or to teaching careers elsewhere. More and more, one particular faculty member assumed the lion's share of responsibility for directing the program and providing case supervision. Beginning in the 1977-78 academic year, when Legal Practice I became a full course, he was appointed to the newly created post of Director of Legal Practice. Believing that student responsibility for cases should be maximized, he sought to encourage a form of supervision which would not prevent the student from carrying out lawyering functions himself. For example, except for inconspicuous monitoring at the start of the year, he does not observe client interviews relying instead on post-interview discussions with the students as the means of catching errors.

Although an occasional case is now supervised by another member of the faculty, most case supervision has been handled by the Director of Legal Practice and part-time assistants since the program became a full course. In the last academic year, two attorneys who worked regularly in legal advice centers assisted on a part-time basis with supervision. In the current year, the Director has received assistance from a law graduate who has worked for several years in the office of a solicitor. It is hoped that a new faculty member will be recruited in the near future and can share some of the casework responsibilities with the current Director of Legal Practice. In the meantime, other members of the faculty occasionally assist on a case and teach some of the theoretical portions of the course.

With the escalation of Legal Practice I into a full course, the system of student evaluation has changed. In the first two years, student assessment was based almost exclusively on the written project, although grades would be increased when the student's casework was viewed as particularly outstanding or when the written project plainly suffered because of a substantial amount of good casework.

With the introduction of the full course, however, the assessment was changed to include three parts. The first is a two hour written examination covering the materials and discussions in the "Lawyers in the Community" seminars. The student is instructed to illustrate his answers with experiences from his casework. This portion of the assessment makes up 30 percent of the total. The written project, which might stem from or be triggered by some experience in casework, represents 40 percent of the assessment. Finally, the supervisors' assessment of the casework constitutes the final 30 percent.[59]

The Legal Practice II and III courses have assumed less importance in the curriculum. About ten students each year normally sign up for Legal Practice II. The program tends to have the difficulties normally associated with "out of house" placements. Faculty knowledge of the nature of individual placements varies substantially, and evidence of bad placements tends to come after the fact. However, the required written project which grows out of the placement permits direct faculty involvement in the only portion of the program that counts toward the formal assessment.

The Legal Practice III program has essentially been a catalogue description. The first and only student to enroll is currently taking the course. Reasons for general lack of student interest in this course and the absence of overwhelming enthusiasm for the other legal practice programs[60] cannot be precisely ascertained. However, there appear to be forces at work not dissimilar to those existing in American law schools. To some extent, students are bound in either by those courses which they are required to take or which they feel they must take in order to better prepare for the vocational stage and the professional examinations that follow. There also appears to be a certain fear of both the quantity of work involved in Legal Practice I and of the lack of certainty that exists in a program that takes the student outside of the security of the lecture room.[61] In addition, the Director of Legal Practice has a reputation for being demanding of the students, a fact which undoubtedly has frightened off some.

Limitations of space compel me to forego any detailed description of "Scenes from an English Clinic".[62] I want to mention briefly, however, the philosophy underlying the program. Although the students are deeply engaged in representing clients and performing various legal skills, the Director of Legal Practice does not consider that the purpose of the program is to "turn out lawyers" or even principally to begin the development of certain "professional" legal skills. Rather, he sees the program as creating the opportunity for exposing students to real life problems with which they must deal in a legal context, with the consequent effect that such exposure will have on their intellectual and moral development. He does not consider that the program need be or should be justified as the means of producing lawyers. Yet he is the first to agree that, for those who eventually become lawyers, the program equally serves functions of professional training. He is not unwilling to make that argument to the appropriate audience. In large measure, this different way of expressing the objective of the program is made necessary by the fact that English law schools are at the undergraduate level thereby creating the need to justify a program as "liberal", and not simply "professional". The fact that formal legal education in the United States is both at the graduate level and ends at the time

the law degree is awarded permits the American law teacher to frame his objectives in terms that directly relate to professional training for law practice.[63]

Polytechnic of the South Bank Skills Program

Although the Kent and, more particularly, the Warwick experiences represent high water marks of clinical law development in English legal education, there are signs that the movement is beginning to spread. One institution, Polytechnic of the South Bank in London, has introduced skills training and simulation work in the first two years of its law program. In the first year all students take a course in legal method, which includes taking statements, drafting letters and opinions, and preparing pleadings. Although the course is not formally assessed (the students are not informed of this fact until the course is completed), the level of interest has been substantial. In the second year, the students spend a full term in one of their four courses participating in a simulated accident case, starting with initial client interviews and proceeding through negotiations (which inevitably break down) and trial. The students, however, are not assessed for their performance in the simulation, and their evaluation is based exclusively on a traditional examination given at the end of the course. Student participation in actual client representation is currently limited to an informal program in which several faculty members and a number of students handle cases at a local legal advice center. However, there is strong support on the faculty to build in such client representation as a regular part of the academic program. In this connection, the Law School is planning to submit a proposal to the Council for National Academics Awards requesting that it be permitted to make supervised student work on actual cases part of the assessed academic program. Since the Council approves the degrees at all the polytechnics, a favorable decision on this request could serve as an impetus to the other polytechnics to move in the same direction.

Brunel University and Trent Polytechnic Sandwich Programs

Two other institutions, Brunel University and Trent Polytechnic, have developed programs known in England as "sandwich" courses. Essentially the same as the program which has been developed in the United States only at Northeastern University, the students alternate between traditional academic studies in law school and outside placements. Unlike the other English law schools, these programs are of four years duration.[64]

At Brunel, the student spends the first two terms in each of his initial three years taking the traditional academic programs at the University.[65] During the summer term[66] and the summer vacation (approximately four months) in each of his first three years, he works in an outside placement which might include a traditional private law office, a government law department, or an office more on the fringes of law, such as a probation department. Placements are arranged through the Law School and a faculty member visits the student on the job at least once and frequently twice. The student is paid by his employer and is normally placed with a different employer during each of his three placements. At the conclusion of the placement, the student is required to write a report about his work and the employer gives a confidential evaluation of the student's performance.

Normally the student's report is not counted as part of his assessed work, but if it is particularly good it will carry weight if he is on the border line between different classifications.[67]

The sandwich program at Trent Polytechnic is similar, although the "sandwich" is thicker.[68] Started about fifteen years ago, the program has now evolved into an initial nine months of regular course work, followed by a six month placement in a law office. After the completion of the first placement, the student returns for a full year of regular course work and then goes to his second placement for nine months. He then returns to the Law School for a final nine month period of course work. Having experimented with the more frequent placements for shorter periods, the faculty decided that cutting down the placements to two and making the latter one a more substantial period permitted the student to obtain a much better experience. Unlike the Brunel program, the placements are always made in a law office (either private or governmental) rather than probation departments and similar settings which do not involve the actual conduct of legal work. In order to minimize expenses for the student, he is normally placed in his home town. The faculty hopes to place the student in two different locations, but frequently an office requests that the student be continued there during his second placement and the school agrees (assuming that the placement is adequate) in order to keep good relations with that office. As at Brunel, a faculty member visits the students periodically, twice during the six month placement and three times during the nine month placement. At the conclusion of his placement, the student is not required to write up his experience, but he must, as a separate matter, write a dissertation which may stem from his placement experience.

Developments at other Institutions

A survey is currently under way to determine the extent to which other English law schools are now experimenting with clinical law methods. It is unlikely, however, that any of the programs have progressed as far as those previously described. Data already collected [69] reveal, however, that a number of law schools are moving closer to formal involvement in clinical work. This development has normally taken the form of particular faculty members and some students working in community or campus based legal advice centers. Although the work is voluntary and not part of official faculty responsibility or student assessment work, several of the programs are similar to the pattern at Warwick Law School in the early 1970's, and might well evolve in the manner that that law program did. Correspondence from faculty members in one of these institutions closed with the statement that "we would be very interested . . . to participate in any national efforts to set up law clinics on the U.S. Model". Reading between the lines of other correspondence, one gets the feeling that at least some members of a number of law faculties would be willing to press for clinical programs if they had any sense that they would receive support and some chance of success for their efforts.

Conference on Clinical Legal Education

Concluding this description, I want to mention a conference which is being planned for late June on the subject of clinical legal education. The faculty member who is

largely responsible for developing the simulation program at Polytechnic of the South Bank suggested the idea and plans are now under way for a one day meeting co-sponsored by that institution and the University of Warwick Law School.[70] Although the agenda is not set as I conclude this report, an effort will be made to examine theoretical justifications for clinical education in the first stage of legal training and to assess developments that are now under way. All universities and polytechnics will be invited to send representatives, and persons involved in the other stages of legal training will also be asked to attend. As the first such conference to be held in England, hopefully it will not only provide an educational function, but also supply the necessary psychological support for those faculty members who can return to their law schools with the feeling that other persons nearby believe they do and will support them in efforts to achieve change.

FOOTNOTES

1. The description is based on my investigations during the first three months of a six month stay in England. Because of the space limitations of this publication and the incompleteness of the research, the discussion will be abbreviated and essentially descriptive in nature. A more detailed account, with analysis and comparison to the United States' experience, will appear elsewhere at a later date. This description sets the scene as of March, 1979.

   Except where otherwise indicated, all discussions pertain exclusively to England and Wales. Scotland, frequently referred to in these parts as "another country", has its own separate civil law system and a substantially different legal education program than exists in England or Wales. Northern Ireland, while not differing so drastically in its legal system, has also pursued an independent course in the education and training of lawyers, and, consequently, must be examined separately.

2. In part, my lack of discouragement stemmed from my not uncritical view of legal education in the United States. There is a tendency to indulge in the "grass is always greener" approach largely as a result of one's own frustrations. See, e.g., Burger, The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to our System of Justice?, 42 Ford, L. Rev. 227 (1973). The glowing - indeed unrecognizable - descriptions of American legal education that I have heard since my arrival in England indicate that this phenomenon is universal. See also Gee and Jackson, Bridging the Gap: Legal Education and Lawyer Competency, 1977 Brigham Young L.R. 695, 786 - 87 (1977).

3. There are presently in England and Wales 53 institutions of higher learning that award law degrees recognized by the professional societies as satisfying their requirements for the first stage of legal training.

4. The solicitors' branch is represented by The Law Society. The barristers' branch - known as "The Bar" - is represented by the Senate of the Inns of Court and The Bar (a recent - and not complete - merger of the organization of the practicing bar and those [mostly judges and retired barristers] who control The Inns of Court).

5. The former term describes those persons who must serve in a solicitor's firm for a minimum period of two years before they are authorized to practice as a solicitor. The latter term describes persons who must serve in a barrister's chambers for one year prior to being viewed as fully qualified to operate independently as a barrister.

6. Naturally, I am referring to the formal training that occurs prior to the point that the individual becomes fully certified to practice law. Thus I deliberately exclude such formal training, under the guise of continuing legal education programs, that may take place inside or outside of the university during a lawyer's career. I also emphasize the use of the work "formal", to distinguish training and learning that take place in circumstances and settings in which such processes are not the central activity of the individual or the institution with which he is associated.

7. These other institutions, generally entitled "polytechnics", have in many cases evolved from existing technical colleges. Their law degree program must be approved by the Council for National Academic Awards, a national accrediting agency. One of the current features of English legal education is the wall that exists between university law schools on the one hand and the polytechnics on the other, with the former looking down their noses at the latter who, for their part, suffer from inferiority complexes. This attitude was rightly described as "deplorable intellectual snobbery" by a leading academic lawyer over ten years ago, see Gower, The Inter-Relation of Academic and Professional Training, 9 J. Soc'y Pub. Tchrs. L. 434, 445 (1967), but it continues virtually unabated.

8. In all of the 21 polytechnics and in a few of the universities, the degree is known as a "B.A. (Law)". Most of the university law schools, however, classify the degree as "L. L. B.".

9. Whether such "core" subjects would be viewed by all English law faculties as essential parts of the curriculum, they remain so by virtue of the fact that their successful completion exempts the student from examinations in them by the professional bodies after graduation from law school.

10. See Wilson and Marsh, A Second Survey of Legal Education in the United Kingdom, 13J. Soc'y. Pub. Tchrs. L. 239, 281 - 85 (1975). The much longer list of American law school options, however, may not be all that significant in practice, given the the tendency of American law students to confine themselves to "bread and butter" options. See Jackson and Gee, Bread and Butter?: Electives in American Legal Education (1975).

11. The one year program roughly coincides with the academic year but is considerably more intensive in the number of hours of formal instruction per week.

12. Because entry into the legal profession in England is not always preceded by the university law degree program, or even by any university training at all, there are exceptions to the general statement just made. Thus, respecting the solicitors' side of the profession, certain persons might be excused altogether from taking this one year course and other persons might be permitted to take it following the third stage of training that takes place in the law firm.

13. It is at this stage that the individual must opt for one side of the profession or the other. Proposals for joint training during this second phase are continuously made and as rapidly rejected, especially by the Bar.

14. Commencing in 1979, the Law Society has also provided that the course shall be taught at seven polytechnics located in different geographical areas of England. Although the faculties of these polytechnics are wholly independent of the College of Law - indeed their main task is to instruct in the individual polytechnic law degree program - the curriculum for the one year course is prescribed by The Law Society and is identical to the one at the College of Law.

15. I deliberately do not state that the practicing certificate permits the individual to engage in the practice of law since, unlike the normal arrangement in the United States, lay persons in England are not prohibited from practicing law except in certain specified areas. The implications of this difference will not be discussed here.

16. Again, due to space limitations and the purpose of this report, I completely gloss over major issues pertaining to the difficulties of obtaining articles of pupillage, and the further difficulties of obtaining regular employment upon the completion of the third phase of training.

17. The most recent comprehensive survey suggests that approximately 70 percent of English law graduates intended to enter the legal profession at the time of graduation. See Wilson and Marsh, note 10, supra, at 289. A recent survey in the United States revealed that nearly 94 percent of the selected group of law students surveyed indicated that they would either definitely or probably become practicing lawyers. See Gee and Jackson, note 2, supra, at 945.

18. While the judicial and legislative branches of government - not the professional societies - set the standards for entry into the profession in the United States, the Bar in England is wholly free of statutory regulation, and the judiciary plays no formal role in admission to either branch. As a practical matter, however, the judges exercise substantial influence over entry of barristers because of the major role that they play in the governmental structure of the Bar.

19. The extent to which training for intending solicitors and barristers should be different is a hotly debated subject which has influenced discussion about legal training in the United States. See Burger, note 2, supra; Remarks of the Chief Justice of the United States to the American Law Institute (May 16, 1978)

20. Indeed, one of the current crises in the English legal profession is that the decentralization of courts, with the consequent growth of civil and criminal litigation in the provinces, has created grave problems for the barristers, almost all of whom have been concentrated in a tiny area in the center of London.

21. In the solicitors' branch, apprenticeship has been required by statute since the early part of the eighteenth century. Pupillage, however, has been obligatory only for the last 20 years, although apprenticeship to a barrister was the most common mode of entry.

22. A special subcommittee of The Law Society's Education and Training Committee is currently investigating means for improving articles, and has issued a report recommending changes.

23. Without reviewing the controversy here, whether "clinical" should mean actual contact with and responsibility for a client is obviously at the heart of the ongoing American debate on the subject. Interestingly, in his recent proposal for a special law school with an entire third year devoted to clinical training in advocacy, Chief Justice Burger proposed student participation in the pre-trial stage but observation only during the trial stage. See Burger, note 19, supra, at 7.

24. Although the pupil may during the initial six month period work on his pupilmaster's paper work (drafting pleadings, preparing written advice on the law, etc.) he has no direct dealing with either the solicitor who retained his pupilmaster or with the lay client involved. Actually, the instances in which he comes closest during this period to assuming responsibility for law practice are those in which a pupilmaster, contrary to permitted practice, adopts the pupil's paper work as his own without meaningful review.

25. Although barristers are not permitted to practice in partnership, they associate in a group, called "chambers", which typically numbers about fifteen barristers and is administered by a clerk. Since all barristers' work is referred by solicitors who, in turn, are required to deal initially with the barrister's clerk and not the barrister himself, the chambers operates not unlike a typical law firm in distributing work, with the clerk playing the role of the senior partner in doling out the assignments to the members of chambers when, as is commonly the case, the solicitor does not request any particular barrister in the chambers.

26. It is now common for a pupil to serve one barrister for his first six months and find another pupilmaster for the remaining six months. However, during that six month period, he is attached to a single individual, not to a chambers. Whether the pupil might seek to accompany another barrister in his chambers to a hearing on a particular occasion would depend very much on the pupil's initiative.

27.Memorandum to the Royal Commission on Legal Services. The Commission's Report, which may recommend major changes in legal education and training, will be issued in the summer or fall of 1979.

28.The Law Society encourages such rotation and is now considering a recommendation that would require that during articles the clerk be given experience in at least two substantive areas of practice among a specified list of six. In the smaller firms with less structured practices, a six month rotation is less feasible. The need to survive economically may result in the disappearance of even the formal trappings of a training program for clerks.

29.Indeed,from the point of view of the articled clerk or pupil, changing his status from "apprentice" to "lawyer" might have the beneficial effect of removing the worst elements of the "slave system" which currently results in pupils receiving no salary whatever during their pupillage and articled clerks normally receiving a poor wage. Until only recently custom called for the clerk or the pupil to pay a fee for his apprenticeship, in recognition of the "instruction" he received. On the barristers' side of the profession, fees up to £100 may still be charged but normally no fee is taken.

30.All persons intending to practice at the Bar in England and Wales are required to complete the course successfully. That group comprises approximately six hundred students. The remainder of the student body is made up of persons from other parts of the United Kingdom and Commonwealth Nations.

31.Those two courses, forensic medicine and company accounts, each involve ten hours of instruction. Although the students are not examined in these courses, they are required to select one or the other; in practice, almost every one selects company accounts.

32.The last half of the four week term is devoted exclusively to review.

33.Revenue law, family law, landlord and tenant, sale of goods and hire-purchase, local government and planning, practical conveyancing, conflict of laws and European Community law, labor law and social security law, and law of international trade.

34.For purposes of the tutorial, the civil and criminal procedure paper is viewed as two separate papers, with ten hours of tutorial in each.

35.As will be seen shortly, none of the formal work of the Inns of Court Law School would meet one of the critical parts of the CLEPR definition of clinical legal education: actual involvement by the students in the representation of clients. See Pincus, Clinical Training in the Law School: A Challenge and a Primer for the Bar and Bar Admission Authorities, 50 St. John's L. Rev. 479 (1976).

36.A small amount of additional drafting is done by students who take the optional papers in family law and sale of goods. Furthermore, the required procedure course involves an additional one hour session on drafting criminal appeals.

37. The administrative task of organizing the small groups is formidable since sixty barristers are needed simultaneously on each occasion that the small groups meet. Students not intending to practice in England and Wales are not required to participate in these exercises. There remain, however, 600 students, each of whom will meet six times with the barrister in a group of five. Thus, there are a total of 720 one hour sessions during the year. Since 60 sessions take place at any one time, a minimum of 60 barristers is necessary for the forensic exercises, presuming (which is not the case) that every barrister will be willing and able to conduct all 12 sessions, (six sessions for the students in each of the two large groups of 300 that are subsequently divided into 60 groups of five).

38. My personal observations and interviews are still incomplete, but they reveal a series of difficulties both with the large demonstrations and the small group sessions.

39. In addition to the forensic and chambers exercises already mentioned, the students are also required to attend four other demonstrations of court procedure. These sessions are observational only and are not followed by any practice sessions.

40. Visits are spread among civil and criminal courts and those of limited and general jurisdiction. Visits to the appellate courts are not required.

41. Report of the Committee on Legal Education, (March 1971). It should be noted that the majority of the Committee recommended that this second stage be integrated into the existing structure of higher education at the universities and colleges. That recommendation, which was viewed as the most controversial in the report and the only one which split the Committee, was never implemented.

42. Id. at 63.

43. The Free Representation Unit is composed of students at the Law School, pupils, and young barristers. Currently, there are about 50 active members who represent clients in the greater London area before administrative tribunals in employment and governmental benefit cases.

44. At one of the four branches of the College of Law, the faculty has obtained the assistance of the education department of a local university to help its members develop methods of instruction for the large group meetings which will permit them to break away from the traditional dictation system.

45. I have been amused to hear academics in England describe clinical education in the United States as a very pervasive and permanent part of the educational scene, while noting that it does not exist at all in their country. Particularly for those who wish to see changes in teaching methods in English law teaching, it is no doubt tempting to assume that the numerous individual experiments in clinical law teaching in the United States have become permanently and pervasively entrenched.

Footnote 45 cont'd...
Dean Norman Redlich was more accurate when, in commenting upon the cheers that greeted Judge Carl McGowan's speech to the A.A.L.S. convention attacking clinical law development, he stated:"TheJudge's attack is against a trend which I don't think exists". The New York Times, January 8, 1979.

46.The total enrollment in the law program at Kent is approximately two hundred. This figure does not include students who take law along with another subject as part of a joint degree program.

47.Student attendance at the seminars fell substantially during the course of the year. The frequency of the seminars also decreased in the later years of the clinic's existance.

48.In England, the Vice-Chancellor is the operating head of the university; the position of Chancellor is honorary.

49.It was clear that, by 1976, the plan for "clinicalizing" all courses had made virtually no headway. Indeed, the tendency of the clinic staff to manage most aspects of the clinical program in isolation from other faculty members tended to promote the separateness of clinical work. The new course represented a less ambitious scheme but one more likely to achieve the goal of integrating a clinical program into the curriculum.

50.The need for the Law Society's approval stemmed from the fact that a solicitor is normally prohibited from advertising the availability of his services or sharing his professional fees with a person other than another solicitor. The clinic's financial stability and its ability to attract clients depended on the waiver of these rules. Because of the local opposition of solicitors fearful of losing business, the Law Society was reluctant to grant waivers. A great controversy arose between the Law Society and groups favoring the establishment of law centers over the criteria for obtaining waiver. In late 1977, an agreement was reached which greatly eased the ability of law centers to obtain the needed waivers.

51.The desire to experiment with new methods of law teaching is discussed by the law school's first Dean (called "Chairman" in England) in a speech delivered shortly after his appointment at Warwick. See Wilson, The Concept of a Law Degree: Getting on with the Job, 10 J.Soc'y.Pub.Tchrs.L.114(1968)

52.After an initial period, one of the four faculty members dropped out. At the end of the first year, discussions commenced which led, in April 1973, to the appointment of a full-time attorney at the center.

53.Normally a student in an English law school will take the equivalent of between four and five full courses each year. A full course runs for an entire academic year and a half course runs for half of the year.

54.The memorandum concluded that in the long term the program co-ordinator should be a practitioner engaged part-time in local practice as well as being a member of the faculty. This idea has since been abandoned as unwise, and the faculty is committed to the notion that a full-time faculty member should co-ordinate the program.

55.The title "legal practice" was adopted because a senior member of the faculty (the school's first Dean), questioned the use of the word "clinical". Kent University's program had highlighted the word "clinical" and he wanted the Warwick program to have its own separate identity.

56.In large part, this expansion was simply a recognition that the time students were spending in the program greatly exceeded the normal effort for a half course.

57.This year skills training classes were held in case recording, interviewing, letter writing, fact finding, and law finding. Substantive law sessions were given in family, consumer, welfare, and labor law. Court and administrative tribunal procedures in housing repossession, domestic, and supplementary benefits cases were examined in additional sessions. One Sunday in February, the class engaged in a mock negotiation which started at 2 p.m. and concluded at 8:30 p.m. The students were divided into teams and negotiated a settlement in a consumer case which was drawn from the files of a previous year. Staff members role-played the clients, and each side could contact its client or opposing counsel in person, by telephone, or by letter (a secretary stood by to type correspondence and court pleadings). Each twenty minutes represented the passage of one day, and the students were told that they were expected to negotiate a settlement if at all possible. After much difficulty, including two face-to-face meetings of the attorneys, a settlement was reached. The exercise was discussed in a detailed two hour class session the following week.

58.These cases involve actions against tenants living in public housing, normally for non-payment of rent.

59.The significance of the 30 percent assessment for casework is not only that it represents a recognition that actual client representation is a formal part of the law program, but that a continuing assessment of any form is used. The formal written examination is deeply entrenched in the English university as a means of evaluation, and any variance from that approach runs the risk of meeting general hostility from university authorities who lay down specific rules on matters of assessment. Thus, to a substantial extent, the 30 percent assessment by formal examination is an acknowledgement of political realities and a device to overcome possible opposition to the continuing assessment portions of the program.

60.Although Legal Practice I has normally received its full complement of fifteen students, there has never been a problem of oversubscription. Current enrollment in the Law School is about 90 in each class.

61. It is generally acknowledged that the students put vastly more time into the legal practice course than any other course in the curriculum. A fair estimate would be 15-25 hours per week, including class time.

62. See Meltsner and Schrag, Scenes from a Clinic, 127 Pa. L. Rev. 1 (1978)

63. This is not to say that the American law teacher necessarily does speak in these terms, as the current debate over clinical law training demonstrates. That immersion in law practice can be seen as advancing the "liberal" aims of undergraduate education should give some pause to those who have difficulty harmonizing "theoretical" learning and "practical" training, or conclude that the latter has no place at a university law school.

64. There is currently substantial discussion among legal academics in England over extending at least some of the law programs to four years, on the ground that there is simply not enough time to permit proper coverage in the existing three year program. The only standard four year law curriculum currently existing in the United Kingdom (other than the two sandwich courses) is at Queen's University of Belfast, Northern Ireland.

65. Brunel requires that students in their first two years must select at least half of their regular courses in fields other than law.

66. English educational institutions divide the program into fall, spring and summer terms, the last of which commences after a several week Easter vacation.

67. The standard grading system in England includes four basic categories: first, upper second, lower second, and third.

68. Trent actually operates two law programs, a traditional three year course with about seventy five students per class and the sandwich course with about forty five students per class.

69. By sheer chance, I recently discovered that a faculty member at Manchester University was gathering information on the informal inolvement of law students and faculty members in community or campus based legal advice centers. Further surveys are now being undertaken to make the data more complete.

70. Co-sponsorship by a polytechnic and a university law school is, itself, a remarkable breakthrough in English legal education.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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Volume XII, No. 1, October 1979

Clinical Education in Australia - The Monash Experience

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In 1975 the Monash Law School introduced the first clinical programme in an Australian law school when it commenced teaching a new subject entitled Professional Practice. That subject involves both academic and practical elements and is taught on a one semester basis to students taking the final year of a five-year LL.B.

To place the programme in context it is necessary to indicate the role which Australian law schools play in the pattern of Australian professional legal education. It is also necessary to realize that control of admission to practise is, as in the United States, vested in state bodies rather than in any national body.

Until very recently law degrees were awarded only by the universities but in the last few years law degree teaching has been established at the Queensland Institute of Technology and the New South Wales Institute of Technology. These are institutions comparable with the English polytechnics. Members of the staff of these Institutes are eligible for membership of the Australasian Universities' Law Schools Association; and in this paper I have used the term "university law school" as including the two Institute law schools.

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1. The Role of the Australian University Law School

Australian law schools serve a function different from that served by their English or American counterparts. Although the Australian legal system, apart from its Federal structure, derives from English institutions of government and English common law, legal education in Australia is quite different from that in England. Whereas in England university law courses developed independently from and unrelated to the development, or the requirements, of training for legal practice, in Australia university legal education has from its inception related directly to the needs of training for practice.

University law teaching in Australia first began at the University of Melbourne in 1857, although the first university law degree course did not begin until 1859 at the University of Sydney. From the beginning the universities have provided the theoretical training necessary for admission to practise and in this respect they resemble the American law schools; but there is one major distinction, degrees in law have been accepted by the profession as sufficient evidence of the legal knowledge necessary for practice. In Australia there are no separate bar examinations as such which a graduate must pass before admission to practise. Except where a student has failed to take certain specified professional subjects as part of his degree or, as is the case in New South Wales, Queensland, South Australia and Western Australia, subjects not available as part of the degree are required for admission to practise -I refer here specifically to such subjects as bookkeeping, accounts, ethics or law practice and office organization - a graduate will not be required to take any post-graduate examinations. I have set out in Appendix I a table which I prepared last year for the Australian Legal Education Council and which shows the requirements for admission in each of the six Australian states. From this it can be seen that the university degree, provided it contains certain prerequisite subjects is treated as the only certification of the academic competence of the would-be practitioner.

A University degree is not an essential prerequisite to practice. In most states it is possible to qualify for admission by completing specified (university) subjects and serving a four or five year period of apprenticeship. Few students, however, opt for this alternative so that substantially all applicants for admission (except in New South Wales) hold a university degree and that degree is a normal prerequisite to admission. In New South Wales there is still provision for a person to be admitted to practise on completing certain subjects prescribed by the Barristers' Admission Board or the Solicitors' Admission Board. The New South Wales practice in this respect is anomalous in the Australian context.

Effectively, the law schools provide the academic basis for admission to practise. It is not likely that any substantial change in the role of the LL.B. degree will occur in Australia, so long as the universities can maintain the integrity and quality of that degree and develop its content to satisfy ever higher demands on professional competence.

An applicant for admission, in addition to completing his LL.B. degree, must also spend a period of apprenticeship as an articled clerk, and/or (depending upon the state) complete a six or eight-month practical training course. The practical training course does not cover basic legal concepts and is not geared to testing a student's knowledge of the substantive law but it is concerned rather to teach him how to apply the law he has already learned. Any examinations or testing which occurs during the course of the practical training course is thus quite different from a bar examination of the type known in the United States.

Although in New South Wales and Queensland, and <u>de facto</u> in Victoria, the roles of the barrister and of the solicitor are separated in the English manner, the prerequisites to admission as a barrister or as a solicitor are substantially identical in all states except New South Wales. In the last mentioned State a person may be admitted to practise as a barrister without serving articles of clerkship and without

completing a practical training course. In Queensland the prerequisite subjects for admission as a barrister are different from the prerequisite subjects for admission as a solicitor. There is, however, no real difference in the training required.

Thus, whereas in England the law degree may be only peripherally relevant to admission to practise and in the United States that degree, although a prerequisite to admission to practise, will be followed by a professional admission examination, in Australia, the law degree may provide the only test of a lawyer's knowledge and understanding of the law. The degree is not, however, a necessary prerequisite to admission nor does it of itself confer a right to practice.

Australian law students, like their English counterparts, start their university law training immediately upon leaving school. They are, therefore, when they enter the law school three or four years younger than American students but the degrees are of four or five years' duration, not three.

As can be seen from Appendix 1, the length of the degree is a function of the university rather than a function of the admission requirements of the state. At Monash University, the University of New South Wales, Macquarie University and the University of Western Australia the LL.B. takes five years; but the LL.B. degree at the other law schools can be completed in four years of full-time study. Most states adopt a parochial attitide and recognize only local degrees as satisfying admission requirements. The law schools, however, give liberal credit in their LL.B. degrees for subjects studied interstate. No distinction is drawn for admission purposes between the graduates of the different universities within the state, provided their degrees include the prerequisite professional subjects.

It is at first sight, perhaps, suprising that, since the Australian law degrees are so directly related to the attainment of a practising qualification, no clinical programme was established at any Australian law school until 1975. The answer lies in three factors.

The first of these is academic conservatism. Although the division between the academic and practising sides of the profession has never been as great in Australia as it is in England, some tension has developed between the universities' obligation to certify that their graduates have the requisite knowledge for practice and the desire of the law schools to be free to include in their degrees a wide range of "academic" subjects.

Despite the fact that the universities in Australia have been vested with responsibility for the academic training of practitioners and have been subject to very limited supervision by the profession, there has still been a tendency for the law schools, with Professor Twining[1], to consider that plumbing is none of their business. There has been a tendency to equate clinical training with the inculcation of mere mechanical routine skills.

The second factor is the existence of the year of postgraduate apprenticeship. A student, it was felt, could learn the "nuts and bolts" of practice during his year as an articled clerk. This provided a logical, if not entirely justifiable, basis for the law schools to remain aloof from development of mere "technical skills". With the development of practical training courses, which lacked any actual client contact, as an alternative to, or to replace, articles of clerkship, this argument has become less tenable.

The third factor is cost. A clinical programme is expensive of manpower. Unless outside funds are found for such a programme few academics are prepared to sacrifice the interests of "legitimate" university activity for what they regard as a fringe operation. In Australia ouside sources of funds are few.

1. "Pericles and the Plumber" (1967) 83 L.Q.R. 391.

2. The Staffing of Australian Law Schools

The content and staffing of Australian law schools have changed drastically in the last three decades. Originally most law school teachers in Australia were practitioners who taught part-time and most degrees were rigid in content, but there has, over the last twenty years, been a swing to full-time teachers and towards a wider academic content, towards cross-disciplinary teaching and away from the emphasis on black-letter law. I believe that this swing has reached its extreme in the last two or three years and that the pendulum is now centering again. While Australian academics recognize the need for a graduate to develop a broad perspective, there is also increasing recognition that the smorgasbord approach to legal education has little merit either from an academic or a practical viewpoint.

Because nearly all the law school staff before World War II were part-time, most teachers were experienced practitioners. This has changed drastically. Not all teachers today are qualified to practise, even fewer have significant practical experience. A survey[2] taken in 1976 showed that across all Australian law schools approximately 65 per cent of academics possessed professional qualifications and 35 per cent had been engaged in full-time practice. However, from observation, I would consider that only about 5 per cent had been in full-time practice for more than 4 years.

At Monash we are in a somewhat better situation. Of the sixty-one full-time members of staff forty have been admitted to practise in Australia, and a further ten, although not admitted to practise in Australia have been admitted to practise in their country of origin. Of the forty, thirteen have had four or more years in full-time practice and a further seven have engaged regularly in part-time practice since their appointment. Although we are better endowed with practical experience than, I think, any other law school in Australia, we have a situation where

2. Nygh "University Law School Recruitment and Staff Policy" LEGAL EDUCATION IN AUSTRALIA: Proceedings of National Conference, Sydney, August 15-20, 1976, p.265.

only eighty-one per cent of our staff have professional qualifications and only twenty-one per cent have significant full-time practical experience. In 1975 when the clinical programme started that twenty-one per cent was only fifteen per cent.

Nonetheless this weight of experience did make it easier to introduce a practical course at Monash than might have been the case in most other Australian law schools. At Monash there was a sufficient body of opinion in favour of exposing students to people and facts before they actually graduated. It is less difficult to persuade those who have practised of the need for graduates to possess skills other than those required to interpret subtle points of law or to argue an appellate case. Even so the move to establish the course met with considerable opposition based largely on the "plumbing is dirty" syndrome and the question of cost.

3. The Origins of the Monash Clinical Course

In 1971 some Monash law students and graduates began operating a voluntary legal referral service. This was not part of the curriculum and was not faculty-approved; it was directed to the provision of a free legal service which persons who might not otherwise be able to afford legal assistance could attend to seek advice and, if their problems required legal action, referral on to a legal practitioner.

In 1973 these students and graduates reached an arrangement with the Council of the City of Springvale, a suburb of Melbourne near to the University and with a large immigrant community, to establish a free legal service operating at night from a house in Springvale which also accommodated the Springvale Community Aid and Advice Bureau. It soon became obvious that if the service were to continue to rely solely on volunteer labour and if the students participating did not receive any credit for work done at the legal service, it would have difficulty in continuing once the first flush of enthusiasm had worn off. Those involved in running the legal service and members of the Monash Staff who were concerned to see legal aid made more readily available to

the underprivileged recommended the implementation of a clinical subject. At this stage, I believe, many of the proponents were more concerned at implementing legal aid and in developing a social conscience amongst students than in the more direct educational benefits of introducing such a subject.

There was concern, of course, that the clinical programme would be expensive. In the initial stages this was overcome by the device of using half the services of a full-time member of staff and three part-time tutors. There was also a strong feeling amongst some of the staff that it was not the University's function to be involved in the practical aspects of law, that this could best be learned by the student after he graduated and went out into the work force.

No significant funds were available to enable the clinical programme to be developed and most of those who were advocating the clinical programme had relatively little practical experience. The consequence was that, after much discussion with Professor Arthur Berney of Boston College Law School who was then visiting Monash, I became the main draftsman of the proposal for the clinical subject.

The initial recommendation to Faculty Board stated quite categorically: "The object of the course is to familiarize the student with the way in which the law operates in practice, to enable him to see the reasons for this form of operation and to assist him to assess critically the way in which the law today serves the needs of the community. A student who has completed the course should have a considerable understanding of the practicalities of the day-to-day operation of the law; but it is not intended to be a course of practical training. It is intended as an academic analysis of the practical operation of the law".

In fact, and as I had hoped, the subject did develop into a course of practical training in which students learned about people, facts and files. I believe, however, that if in 1974 I had not stressed the academic aspects of the course it is unlikely that it would have been approved by Faculty Board.

The subject was given both an academic and practical content. Students in addition to spending one night per week interviewing clients at the Springvale Legal Service were also obliged to attend a weekly three-hour seminar, at which they were "required to investigate and analyse in the context of practical experience which they have obtained -

(a) the functions of the lawyer;

(b) the relationship between lawyer and client and between lawyer and lawyer;

(c) the relationship between social problems and the proffered legal solution;

(d) the role of the lawyer as an adviser, as a planner, as an initiator and conductor of litigation, and as a person who carries (or should carry) a major responsibility for the adjustment of social and financial problems arising in our society;

(e) the operation of our present legal system generally, its deficiencies and its advantages."

4. Development of the Monash Programme

As a proponent of the clinical programme with (relatively) significant experience in practice I found myself obliged to put my time, if not my money, where my mouth was. To overcome the cost objections I agreed (as half of my semester's teaching commitment) to be the only full-time member of staff involved in a pilot for fifteen students in the second half of 1975, provided I could have the aid of three practitioners as part-time "tutors".

The Faculty appointed three of the most active of the volunteer solicitors at the Springvale Legal Service as tutors. In this part-time position they were each required to attend Springvale one night per week and supervise the activities of five students. I and other members of the full-time staff also attended on a roster basis to assist in the supervision.

When a student interviews a client and obtains a statement of the client's problems the work is only beginning. Part-time tutors could not adequately supervise the follow-up work to be done by the students, nor could the volunteer typist who attended at Springvale at night carry out all the typing work. I took over the supervision of all follow up work and my secretary took over the balance of the typing.

The first semester was chaotic and difficult. Although there were only fifteen students involved the supervision of the follow up work on up to fifty files per week and the running of the weekly seminars was a fairly solid half load. Fortunately I obtained a considerable amount of assistance from the profession and from the Law Institute of Victoria, members of which were prepared to be heavily involved in the conduct of the seminars.

At the end of the first semester of the programme, i.e. in November 1975, we discovered that we had a legal service which was now viable but which had no student manpower to service it over the summer. The volunteers and the part-time tutors, other Faculty members and I spent the summer filling the gap until March when students again became available.

In the first half of 1976 the numbers were increased slightly and I obtained part-time assistance in carrying out the follow-up work from Mr. Harry Reicher. He later joined the staff as a full-time member of the Faculty in July of that year.

Realizing the need to run the service over the summer we decided to have three student intakes and, in effect, to operate the clinical programme on a trimester basis. Unfortunately, as Mr. Reicher and I were still the only full-time members of staff involved this made considerable inroads into our opportunity to carry out research or even to take a short vacation over the summer.

In 1976 I was approached by representatives of a Committee set up in the Doveton area asking that I expand the clinical programme to provide a free legal service at Doveton, a working class area some seven miles from the University. They offered accommodation for a night time service at the Doveton and Hallam Community Health Centre. It was not practicable to accede to their request immediately; but in 1977 I became Dean and additional members of staff became involved in the clinical programme. In July 1977 a free legal service forming part of the clinical programme, and staffed by me and my wife, who is a full-time practitioner, with the assistance of three students, commenced operating on one night per week at Doveton. That Service now operates one afternoon and one evening per week.

Also in 1977 when I was finding it difficult to meet the typing needs of the expanded programme I was approached by the Student Union which, until then, had employed a practitioner on a part-time basis to provide a legal advice service for students, to ask if the clinical programme could take over this function. In 1978 in return for secretarial assistance provided by the Student Union, the staff and students in the clinical programme took over this advisory role. Space needs and staff availability made it impracticable to provide more than advice at this stage.

During 1978 the University acquired a former Marist College adjacent to the University. The Vice-Chancellor acceded to my request that part of the building with a layout ideal for a suite of legal offices should be made available to the clinical programme. At the beginning of 1979 we commenced a full legal service operating from these premises and expanded the student advisory service to a full legal service.

5. The Present Programme

The programme is now recognized by the University as a valuable part of legal education and in the Australian context, as a development unique to Monash. This has gradually led to the injection of additional University funds into the Faculty budget to help meet the costs of the programme. The original seminar programme has been varied (see Appendix II and Appendix III) a weekly, tutorial dealing with practice matters has been added to the students' load, and the legal service participation has been increased from twelve to fifteen weeks.

(i) Springvale

The Springvale Legal Service from which the programme originally developed now operates on five mornings and four evenings per week. During the day a practising solicitor, Simon Smith, who is employed by the University as an "Administrative Assistant" runs the office and is responsible for providing continuity. He also supervises each morning session with the assistance of two students.

Each evening the service is staffed by one of four practitioners who are employed on a part-time basis by the Faculty. Each of these practitioners attends on one night per week and has under his supervision four or five students. The number of students allocated to a particular "session" depends upon the client demand. We have analysed this demand statistically and we seek to up-date the analysis at the end of each trimester in order to re-allocate students appropriately.

In addition to Simon Smith, there is also a secretary in attendance at the Springvale Service during the day. Students who attend to interview clients on one half day or one evening each week come back to the service to make telephone calls, to have documents typed, to discuss their cases, and to prepare briefs for counsel. There is thus a steady stream of students through the office at all times of the day.

The range of matters which come to Springvale include: motor accident claims; criminal charges, ranging from traffic offences to drug offences to malicious wounding; consumer complaints in relation to faulty goods and unsatisfactory or dishonest services; matrimonial disputes; small debt claims; landlord and tenant problems; and disputes as to entitlement to social welfare payments.

In most of these matters - except matrimonial matters and motor accident claims - the client is usually the defendant. In all of these cases the initial step of contacting the solicitor on the other side, of putting in a notice of intention to defend a default summons, of contacting the informant, or whatever, is taken by the student. He writes his own letters but he is not allowed to sign them. All documents leaving the legal service must be signed by a person who is currently entitled to practise in the State of Victoria. This is a rule which I have rigidly insisted upon. I have also stressed that any student who gives advice without consulting a practitioner or who sends out a document over his own signature will be failed.

As already indicated, the Springvale Legal Service is housed in a surburban house in a working class suburb in which there is also a large migrant hostel. During the day this house is shared with the Springvale Community Aid and Advice Bureau, a body set up with local government and state funds for the purpose of providing a general welfare advice service to members of the Springvale community. At night the legal service has the use of the whole house, although there is often a Spanish interpreter or a social worker available to assist with the problems of clients which spill over into the social work area.

The emphasis at Springvale is on informality and assistance to the client. Because of the ethos of the establishment, the way in which it originally began, and the personality of those who work there, the educational element is perhaps subservient to the legal aid element.

(ii) Doveton

At Doveton the legal service operates on a Monday afternoon and Thursday evening in premises provided by the Doveton and Hallam Community Health Centre. During the day these premises are used primarily for community medical services including physiotherapy and psychological counselling. Members of the local community and members of the staff of the Doveton and Hallam Community Health Centre provide volunteer administration, reception and some typing services for the legal service at Doveton. The practitioners at Doveton are full-time members of the Monash staff who are assisted by volunteer solicitors from the Dandenong area. Dandenong is a large industrial - formerly rural - centre about 20 miles out of Melbourne and about 6 miles from Monash of which Doveton is a working-class off-shoot.

Originally Doveton operated only on a Thursday night but it gradually became apparent that there was a demand in the family law area from women who found it difficult to seek advice in the evening. Consequently, in the second half of 1978 we started a Monday afternoon service with two students supervised by a member of staff, Ms. Domenica Whelan, who was a former associate to the Chief Judge of the Family Court of Australia. This caters largely for a female clientele most of whose problems are matrimonial.

The range of matters handled on Thursday nights at Doveton is very similar to the range of matters handled at Springvale. There is one significant difference: whereas at Springvale the great majority of the clients are of non-English speaking origin, at Doveton only about 25 per cent of the clients would fall into this category.

The layout of the premises and the fact that the service was being started from scratch, that there were no "traditions" to break down and that the initial client demand was small enabled the Doveton Service to develop in a more disciplined fashion than has the Springvale Service. There was in the initial stages more time to emphasize the need for clear and precise file notes, to take students to task for faulty

office procedure; and there were not the problems created by having a number of people operating on different nights without sufficient co-ordination as clearly did happen in the early stages of the Springvale operation.

From the early days and before the University became officially involved with it, the Springvale Service had operated on a "community centre" basis and had not required clients to make appointments. At Doveton we instituted an appointments system from the beginning. If a matter were urgent or if the night were not a busy one we would see a client who did not have an appointment but he/she would have to wait, until those with appointments had first been served. At Doveton I sought to insist (although the volunteers sometimes made appointments nevertheless) that in the early weeks of the course no more than fifteen clients were given appointments for any one night. We had five students involved and I believed that a maximum of three clients per student was as much as we could cope with until the students had developed their skill at interviewing. Irrespective of the stage of the course I tried to keep the number of clients in an evening down to twenty. The Springvale operation has always been premised on the assumption that all-comers should be served.

Whatever the reason, the Doveton operation has developed as having a greater emphasis on office procedure and on training. There has been more time, perhaps, to sit with a student while he telephoned the informant in a criminal case and to criticise his handling of the matter afterwards.

(iii) Monash

The Monash Legal Service which began functioning as a proper legal service for the first time this year operates on four mornings and one evening per week. It serves mainly the University community (both students and staff) at the moment but is expanding to meet the needs of

the local community. It is staffed by practitioners who are full-time members of the Monash staff and who at any session have two students under their supervision. A secretary provided by the Faculty of Law (with some subsidy from the Student Union) provides the secretarial service and volunteer first year students provide a roster of receptionists. Most of the clients are students or staff of the University or of Rusden College a nearby Teacher's College. The range of work is wide and covers the same areas as the work at the other two services, with the heaviest concentration being in the motor accident field, followed by matrimonial work, traffic offences, consumer complaints and social welfare disputes.

Perhaps because of the layout of the office, perhaps because Mrs. Carol Bartlett, who took initial responsibility for the development of the office, is a tight common lawyer and had formerly practised with a big city firm, perhaps because there are no social workers or members of other disciplines involved in the Monash operation, perhaps because the number of clients is less pressing than at Springvale or even at Doveton, the emphasis on office procedure is probably greatest at Monash.

It is interesting that the official philosophy (so far as the University is concerned and so far as I am concerned) behind the University operation of these three legal services is identical but the nature of the operation tends to differ.

5. The Student's Role in the Clinic

The student conducts the initial interview with the client and then consults with the practitioner tutor who, after discussing the facts and the law with the student, decides whether it is necessary for him to interview the client; if not, he gives the student directions as to the advice to be given the client and the next action to be taken.

In the early stages of the course, it is inevitably necessary for the tutor to conduct a second interview. He goes back into the interview room with the student and asks additional questions to clarify points not seen by the student. Sometimes, to the amazement of the student, he obtains answers which completely alter the whole complexion of the client's claim or defence. He and the student then discuss the matter with the client; and the tutor advises the client and explains that the student will now write a letter of demand to the driver of the other car, or as the case may be.

When the client leaves, and unless business is slack on that morning or night, the student, having made a note of the next action to be taken, immediately proceeds to interview another client. He is expected to complete his follow-up work either later that night or on a subsequent day. He is, however, expected to complete his file notes at the time of the interview.

The students are, of course, required to keep diaries and file notes and to make sure that, in litigation, necessary action takes place when it is required to take place. They are responsible for letter writing, drafting of particulars of demand in motor accident cases, for the filing and serving of summonses, for conducting negotiations with the other side and for the preparation of briefs for court appearances.

There is no provision in Victoria for students to appear in any court, although I would be happy for many of the students who have reached the sixth or seventh week of their course to appear in simple debt or traffic cases. Sometimes, where the client has no real defence to an action for debt but is really asking for time to pay, a student will attend court with him to assist him in making his plea and putting his arguments. As a matter of practice we would not normally issue proceedings in any jurisdiction but the lowest - that of the magistrates' court where at present the maximum claim that can be brought is $A1,000 - shortly

to be increased to $A3,000. We do, however, and have, defended actions in the County Court but not in the Supreme Court of the State.

The tutor's task during the first three or four weeks is quite horrendous. By the last three or four weeks of the course, the students who are all in the fifth year of their degree are capable of conducting an efficient interview, have developed lawyers' instincts about the credibility of their clients and have lost much of their habit - derived from the formal curriculum - of putting problems into a specific pigeon hole too easily. They have also learned that the legal answer may not be the practical answer.

I recall one student in his third week at Springvale, when I was working down there interviewing a woman whose husband consistently beat her up whenever he was in alcohol; and, being a man of regular habits, this was usually the case each Friday night. The student saw the issue as a simple one. The wife was entitled to leave the husband. If she did leave him it would not be desertion but it would be constructive desertion by the husband who would be obliged to pay maintenance to the wife. He had not adverted to the fact that the wife had no assets, no relatives whom she could call upon for free board and lodging, and was a woman in her early forties with three school age children, nor to the possibility that the husband, who was an unskilled worker living in a rented house, might well prefer to take a job interstate under another name rather than pay maintenance to his wife if she left him.

This case illustrates one of the prime functions of a clinical programme as I see it, to bridge the gap between the law in the books and the law in practice, to inculcate into the student who, whatever his background, has absorbed his law in the ivory tower, an understanding of how that law does or does not work in practice.

6. The Future of the Programme

The clinical programme at Monash has been in operation now for four and a half years. During that time Professional Practice has been taught twelve times to a total of 400 students. In 1979 141 students have been involved in the course and a similar number will be involved next year. The programme has been modified and adapted as experience revealed deficiencies or gaps in the methods of supervision, in office procedure, or in the academic input. I believe that we have successfully established a clinical course which is accepted by the profession, by the University authorities and by the academics.

For many years the profession felt unwilling to trust academics to teach practical skills. Practitioners assumed that academics were not equipped to train people for the realities of practice; and this has constituted as great a bar to rational development of legal education in Australia as has the academic's rejection of plumbing as something beneath his dignity. We seem to have overcome, to some extent, these irrational prejudices. The legal profession has accepted the value of our clinical course and the Monash academics have accepted that there is an obligation to train as well as to educate our plumber before we let him loose in the sewers and water supplies of our legal system; that the mere ability to draw plans for a perfect water reticulation system is of little value to the community if the plumber cannot also fix the leaking taps and patch the corroding pipes of the existing defective system. Our final year students see the merit of dirtying their hands, in knowing how the plumbing actually works as opposed to merely looking at the blue prints. The demand for places in the programme continues to exceed supply.

The majority of those students who have completed Professional Practice urge that the course be made compulsory for the degree. This is not likely in the foreseeable future unless we can increase our resources of manpower to cope with the extra 70 or 75 students per year which this would involve.

The future of the programme depends upon funding and upon the recognition by the University and the profession of the value of clinical training and recognition by the relevant government authorities that funds injected into University clinical programmes provide a very cheap form of community legal aid.

Since I wrote the first draft of the preceding paragraph, the University has agreed to inject an additional $34,500 into the law school budget in 1980 to enable the appointment of a Director of Clinical Training. It would seem that this will be a continuing commitment by the University to the clinical programme and it may help to make the subject available to all final year students. We also have an application for funds before the Australian Legal Aid Commission acceptance of which would enable us to open up two more legal aid centres in nearby suburbs thus meeting both a community demand and providing additional places for students in the programme.

Mr. Guy Powles, an experienced New Zealand practitioner, who is now immediately responsible for the supervision of the course, co-ordination of the three legal services and implementation of any new developments, is analyzing the operation of the programme with a view to overcoming one of the major problems - the clash between the demands of follow-up work for a client and the demands of ordinary academic studies. We are now trying to devise a way in which a student involved in the clinical programme can be freed from other subjects during the fifteen weeks of the course.

At the present time Professional Practice constitutes one quarter of the work load of a final year student. It thus carries twice the weight attributable to other one semester subjects. It may be that we will expand the academic content of the programme, expand the weight given to the subject and make it a full-time one semester course.

The future of the clinical course is tied up very much with the general future of legal education in Victoria, and Australia generally. It is clear that the articles system is on the way out, and without clinical education more and more graduates will be admitted to practise without having seen the inside of a lawyer's office and without knowing what a client is.

It is the duty of the law schools to turn out people who are competent to practise the law and that does require that the student have - if one does not like the phrase "the subtle mind of the equity practitioner" - a capacity for sophisticated thinking. The student should also be tested in his basic capacity to handle facts, files and people. These are the three essential daily ingredients of a lawyer's diet. At the present time there is no necessary testing of these skills.

In an ideal world I believe that a clinical component should form a compulsory part of the law degree for those who wish to be admitted to practise. In Professional Practice we teach certain skills which are also taught to graduates in the post-graduate practical training course - the writing of letters of demand, the drafting of particulars, the keeping of a file note. These skills are necessary for the student to carry out the practical aspects of the clinical programme. We also teach certain aspects of procedure because it cannot be assumed that the student has already taken that subject, or, where he has taken it, that he has retained the relevant knowledge. For these reasons the clinical component should be preceded, not followed by, the practical training course. Both in my view should precede graduation. The law degree should then be the sole requirement for admission to practise.

This would enable us to test the student's capacity to be a lawyer, not just his capacity to answer examination questions, before we let him loose on the public. In addition to a capacity for sophisticated reasoning our graduates need

to have a basic knowledge of the law in their heads, to know about people and facts and to have commonsense and nous. At the present time we test only the capacity for reasoning. Until we test all the other attributes I do not believe that we can say that we are turning out lawyers.

In the absence of the ideal, which would require considerable amendment to the rules governing admission to practise in the State of Victoria, I would like to see the present clinical programme at Monash expanded to a full-time one-semester course so that students engaged in Professional Practice do not suffer from the present conflict between the demands of assignments, class tests and attendance at lectures, on the one hand,and the pressures of completing follow-up work in relation to practical matters on the other.

TABLE A shows the specifications for admission in each Australian state and the length of, and the compulsory subjects required to be taken as part of the LL.B. degree at each Australian Law School.

TABLE B shows the compulsory academic content of the LL.B. degree in each state and the additional requirements which must be met before admission. Many of the subjects listed under "Professional" may be taken as part of the LL.B. degree.

The Tables may be slightly out of date in some cases but the general picture they reveal is still accurate.

APPENDIX II

Extract from Report to Executive Committee to Faculty on the 1975 clinical course.

"The actual seminar programme planned was as set out below:

A. Institutional Aspects

Seminar 1. Legal Education

Seminar 2. The Legal Profession. Its nature; its general functions; its general duties.

Seminar 3. The Courts. Litigation; the nature of the adversary process.

Seminar 4. (a) The Client
(b) The Police Force

B. Communication (People and Facts)

Seminar 5. Communication with the Client. Interviewing; taking instructions; ascertaining facts; advising.

Seminar 6. Communication with the Opposition. Negotiating; adjourning; settling.

Seminar 7. Communication with the Court. Adducing evidence; legal argument; advocacy.

C. The Lawyer's Role in Society

Seminar 8. The Relationship of the Lawyer to the Criminal Justice System.

Seminar 9. The Relationship of the Lawyer to the Bureaucratic System (From Social Welfare to Titles Office).

Seminar 10. The Relationship of the Lawyer to the Legislative Process.

Seminar 11. The Present Role of the Lawyer. What skills does he exercise? How are they developed?

Seminar 12. The Future Role of the Lawyer. What services can he provide? What skills should he possess?

In conducting this programme, considerable assistance was obtained from Mr. Horman of the Victoria Police Force, Mr. Lewis of the Law Institute of Victoria, Mr. Ross of the Leo Cussen Institute and Dr. Hore of H.E.A.R.U. All of these people, expert in different areas, took part in seminars and from their practical and theorectical experience outside the environment of the Law School added an air of reality to the practical aspects of the seminars.

In practice, it was found that seminars 5, 6 and 7 expanded to tkae up more than the three hours allotted to them and consequently seminar 10 and seminar 11 did not take place at all and seminar 9 was given less than its allotted three hours."

Seminar Programme for Second Semester 1979

MONASH UNIVERSITY

Faculty of Law

PROFESSIONAL PRACTICE C 1979

Revised Seminar Programme

Seminars - [Wednesdays 2.15 - 5.15 p.m. Venue: Seminar Room 5]

No. 1 July 11 - Interviewing
(Mr. Neil Pgaet, HEARU, Monash University)

No. 2 July 18 - The Client
(Mr. Gordon Lewis, Executive Director, The Law Institute)

No. 3 July 25 - Legal Aid
(Mr. Alan Nicholl, formerly of the The Law Institute; Mr. Jim Galatas, ALAO; Mr. Leigh Jackson, Legal Aid Committee)

No. 4 August 1 - Communicating with the Opposition
(Mrs. Marilyn Puglesi, Solicitor)

No. 5 August 8 - Time Limits, Law Claims and Professional Negligence
(Mr. Graham Fuller, The Law Institute)

No. 6 September 5- Consumer Protection
(Mr. Colin O'Hare, Senior Lecturer, Monash University

No. 7 September 12 - Tactics and Procedure in Police Prosecutions
(Inspector W. Horman, Victorian Police Department, Mr. David Galbally, Barrister and Solicitor, Mr. Neil Rees, Solicitor, Aboriginal Legal Service)

No. 8 September 19 - Conveyancing Practice
(Mr. R.J. Ball, Senior Lecturer, Monash University, President, The Law Institute)

No. 9 September 26 - Office Procedure and Management
(Mr. John Stewart, and Mr. Stan Jones, Law Institute of Victoria)

[This seminar will be held at the offices of the Law Institute and students are asked to make advance arrangements to allow for attendance in both morning and afternoon - 10 a.m. Law Institute]

No. 10 October 3 - The Young Advocate
(Mr. Jeremy Rapke, Barrister)

No. 11 October 10- Law Outside Private Practice
(Mr. A. Lyons, Registrar of Titles, Mrs. S. Viney, Stamps Office; Mr. J. Spicer, BHP; Mr. B. Maddern, Industrial Advocate)

No. 12 October 17- Analysis of Course.

July 1979

TABLE A

STATE	LOCAL SPECIFICATIONS	ACADEMIC CONTENT				
NEW SOUTH WALES	1. Law degree 2. Professional subjects 3. 6 months practice course for solicitors. ALTERNATIVELY 1. 18 subjects prescribed by Barristers Admission and Solicitors Admission Board. 2. 6 months practice course. INTERSTATE ACADEMIC QUALIFICATIONS Liberal Credits are granted towards a local degree University of Sydney: A student must have completed 2 years full time with the University in order to obtain a Sydney LL.B. Furthermore a student must do over 50% of his subjects at Sydney.	MACQUARIE LL.B. (5 yrs) Structure of Law The Citizen and the State Standards of Legal Responsibility The Meaning of Contract Australian Government I Australian Government II Personal Injury Notion of Property Commercial Law (including sale of goods and company law) Land Law Remedial Law Litigation (covering Civil Procedure and Evidence) Professional Legal Ethics (1) Trust Accounts (1)	N.S.W. LL.B.(5 yrs) Criminal Law Legal System - Torts Contracts Administrative Law Constitutional Law Property & Equity Litigation (includes Criminal Procedure) Law, Lawyers & Society (includes legal ethics element) Those seeking admission as barristers need separately to undertake only Trust Accounts. Professional Legal Ethics (1) Trust Accounts (1)	N.S.W.I.T. LL.B. (6 yrs part-time) Introduction to Constitutional & Legal History Introduction to the Legal System. 12 Skills Seminars Elements of Contract Criminal Law Law of Tort Land Law (including Elementary Conveyancing) Commercial Transactions Law of Associations Trusts & Securities Family Law (including Succession) Revenue Law Public Law Law of Remedies Conflict of Laws Law of Evidence & Procedure Professional Legal Ethics (1) Trust Accounts (1)	SYDNEY LL.B. (4 yrs) Contracts Criminal Law Legal Institutions Torts Commercial Law I Federal Constitutional Law Principles of Equity Public Law Real Property Commercial Law II Conflict of Laws Jurisprudence Trusts and Succession Professional Legal Ethics (1) Trust Accounts (1)	A.N.U. LL.B. (4 yrs.) Legal Method Constitutional Law and Civil Rights Criminal Law and Procedure Contracts Torts Commercial Law Property I Property II Administrative Law Trusts Succession and Legal Interpretation Commonwealth Constitutional Law Evidence Practice and Procedure Professional Legal Ethics (1) Trust Accounts (1)

(1) Subjects prescribed for admission which are normally taken as part of the 6 months practice course.

TABLE A (cont'd)

STATE	LOCAL SPECIFICATIONS	ACADEMIC CONTENT	
QUEENS-LAND	1. Law degree 2. Professional subjects and 3. (a) 2 years Articles or (b) 1 year Practice Course or (c) 5 years Articles while completing degree part-time. ALTERNATIVELY 1. Prescribed subjects 2. 5 years Articles INTERSTATE ACADEMIC QUALIFICATIONS Liberal credit normally given in general core subjects, less so in subjects with strong local content. Interstate degrees are recognized by the profession on a subject for subject basis. Queensland degree requires at least 6 subjects from the Queensland curriculum.	UNIVERSITY OF QUEENSLAND LL.B. (4 yrs.) 40 Credit points of Arts Subjects (1)(2) Introduction to Law (1)(2) Contract (1)(2) Criminal Law (1)(2) Torts (1)(2) Constitutional Law (1)(2) Administrative Law (2) Commercial Law (1)(2) Equity (1)(2) Company Law (1)(2) Land Law (1)(2) Moots (1)(2) Evidence (1)(2) (Succession) (1)(2) (Securities) (1)(2) (Taxation) (1)(2) (Conflicts) (2) (Jurisprudence) (2) (Family Law) (1) (Vendor and Purchaser) (1) Professional Barristers Practice (3) Ethics Solicitors Legal Drafting Practice (3) Book-keeping	QUEENSLAND INSTITUTE OF TECHNOLOGY LL.B. (4 yrs. full-time or 6 yrs. part-time) Introduction to Law (1) (2) Law of Contract (1)(2) Torts (1)(2) Land Law (1)(2) Criminal Law and Procedure (1)(2) Constitutional Law (1)(2) Equity (1)(2) Family Law (1)(2) Commercial Law (1)(2) Conveyancing and Drafting (1) or Jurisprudence (2) and Administrative Law (2) Local Government Law or Law of Bankruptcy or Industrial Law (2) Introductory Accounting Succession (1)(2) Company Law and Partnership (1)(2) Evidence (1)(2) Taxation (1)(2) Practice (1)(2) Solicitors' Trust Accounts (1) or Public International Law (2) Conflict of Laws (2) Securities (1) (2) Professional Conduct (1)(2)

() subjects not compulsory for degree
(1) subjects taken as part of degree prescribed for admission as a Solicitor
(2) subjects taken as part of degree prescribed for admission as a Barrister
(3) subjects prescribed for admission as a solicitor which may be taken as part of degree.

TABLE A (cont'd)

STATE	LOCAL SPECIFICATIONS	ACADEMIC CONTENT
SOUTH AUSTRALIA	1. LL.B. 2. Professional subjects 3. Either 1 year's Articles or 8 months practice course. INTERSTATE ACADEMIC QUALIFICATIONS Interstate degrees are credited by the Board of Examiners after advice from the Faculty of Law on academic merit and subject to passing such additional subjects as Board prescribes.	UNIVERSITY OF ADELAIDE Elements of Law (1) Constitutional Law (1) Criminal Law (1) The Law of Torts (1) The Law of Contract (1) The Law of Property (1) Constitutional Law II (1) Trusts and Succession (1) Commercial Transactions (1) The Law of Evidence (1) (The Law of Procedure) (1) (One of Jurisprudence; Roman Law, Comparative Law, Legal History) (1) Professional Legal Ethics; Accounts.
TASMANIA	1. LL.B. (Australia) 2. Subjects prescribed by Board of Legal Education being:- Torts; Contract; Mercantile Law; Trusts; Evidence; Criminal Law; Land Law; Company Law; Family Law; Australian Constitutional Law; Administrative Law I. Plus any one of:- Income Tax; Estate Planning; Creditors Rights; Banking Law. Plus any one of:- Jurisprudence; Comparative Law; Legal History; Criminology. 3. (a) 6 months practice course plus 18 months apprenticeship or (b) (by leave of Board) 2 years Articles. ALTERNATIVELY The subjects prescribed by the Board of Legal Education; and five years as Articled Clerk. INTERSTATE ACADEMIC QUALIFICATIONS The University gives credit for subjects of comparable weight and content. All Australian LL.B. degrees are recognised.	UNIVERSITY OF TASMANIA LL.B. (4 yrs. - including one year in any other Faculty) Compulsory Subjects Contract Torts Criminal Law Land Law Constitutional Law

() subjects not compulsory for degree
(1) subjects taken as part of degree prescribed for admission to practise.

TABLE A (cont'd)

STATE	LOCAL SPECIFICATIONS	ACADEMIC CONTENT				
VICTORIA	1. LL.B. 2. Professional subjects 3.(a) 1 year's Articles or(b) 6 months' practice course. ALTERNATIVELY 1. Specified subjects (as per COLE syllabus) 2. 4 years' Articles. INTERSTATE ACADEMIC QUALIFICATIONS Liberal credit towards a local degree. Such a degree is, however, essential if applicant is not already admitted to practise in British Commonwealth.	MONASH LL.B. (5 yrs.) The Legal Process Contract Torts Administrative Law Constitutional Law Criminal Law & Procedure Property I Professional Evidence (3) Taxation (3) Accounts Professional Conduct Procedure (3)	MELBOURNE LL.B.(4 yrs.) Legal Process Criminal Law Constitutional & Legal History Constitutional & Administrative Law Torts Contracts Property I Trusts Professional Evidence (3) Taxation (3) Accounts Professional Conduct Procedure (3)	C.O.L.E. (5 yrs.) Introduction to Legal Method Criminal Law Principles of Contract Tort Constitutional Law Mercantile Law Principles of Property Equity Land Contracts Securities & Creditors Rights Evidence (1) Taxation (1) Procedure (1) Law Relating to Executors & Trustees Legal Persons Family Law Accounts (1) Professional Conduct (1)	A.N.U. LL.B.(4 yrs.) Legal Method Constitutional Law & Civil Rights Criminal Law & Procedure Contracts Torts Commercial Law Property I Property II Administrative Law Trusts Succession and Legal Interpretation Commonwealth Constitutional Law Evidence Practice and Procedure Professional Evidence (3) Taxation (3) Accounts Professional Conduct Procedure(3)	TASMANIA LL.B. (4 yrs. including one year in another Faculty) (2) Contract Torts Criminal Law Land Law Australian Constitutional Law Professional Evidence (3) Taxation (3) Accounts Professional Conduct Procedure

(1) subjects prescribed by Admitting Body taken as part of academic course.
(2) Tasmanian graduates are only eligible if they have passed the Victorian HSC examinations.
(3) subjects prescribed for admission which may be taken as part of degree.

TABLE A (cont'd)

STATE	LOCAL SPECIFICATIONS	ACADEMIC CONTENT
WESTERN AUSTRALIA	1. B.Juris (3 yrs.) 2. LL.B. (1 yr.) 3. Articles (1 yr.) 4. Professional subjects INTERSTATE ACADEMIC QUALIFICATIONS University credit is on a year for year basis. Law graduates from interstate normally require to complete the one year LL.B. and to serve one year as an articled clerk. Overseas graduates credited with 2 years of 4 years academic study.	UNIVERSITY OF WESTERN AUSTRALIA LL.B. (5 yrs. including one year in another faculty) The Legal Process Criminal Law Contract Torts Real Property Constitutional Law Evidence Trusts Procedure Conveyancing Professional Accounts Law Practice & Office Organization
A.C.T.	1. LL.B. (from any Australian University) 2. (a) 6 months' practice course; or (b) 12 months' Articles INTERSTATE ACADEMIC QUALIFICATIONS Accepted.	

TABLE B.

PREREQUISITES TO ADMISSION

VICTORIA (4 or 5 yr. degree)	NEW SOUTH WALES (4 or 5 yr. degree)	QUEENSLAND (2) (4 yr. degree)	SOUTH AUSTRALIA (4 yr. degree)	WESTERN AUSTRALIA (5 yr. degree including 1 yr. in another faculty)	TASMANIA (4 yr. degree including 1 yr. in another faculty)	A.C.T. (4 or 5 yr. degree)
Academic						
Legal Process(1) Contract Torts Administrative Law Constitutional Law Property Criminal Law	The Legal System Contract Torts Administrative Law Constitutional Law Property & Equity Criminal Law Litigation Law, Lawyers and Society	Introduction to Law Contract Torts Administrative Law Constitutional Law Property Criminal Law Equity Commercial Law Company Law Evidence Succession Securities Taxation (Family Law) (Vendor & Purchaser) or [Conflicts] [Jurisprudence]	Elements of Law Contract Torts Constitutional Law Property Criminal Law Trusts and Succession Commercial Transactions Evidence Procedure One of Jurisprudence, Roman Law, Comparative Law, Legal History.	The Legal Process Contract Torts Constitutional Law Property Criminal Law Trusts Evidence Procedure Conveyancing	Contract Torts Administrative Law Constitutional Law Property Criminal Law Trusts Evidence Family Law Company Law Mercantile Law One of Comparative Law, Legal History, Criminology.	A Law degree from an Australian University.
Professional Evidence Procedure Professional Conduct Accounts Taxation 1 yr Articles or 6 months' practice course	Professional Barristers Legal Ethics Trust Accounts Solicitors Legal Ethics Trust Accounts 6 months' practice course	Professional Barristers Practice Ethics Solicitors Practice, Ethics Bookkeeping Legal Drafting 2 or 5 yrs. Articles or 1 year practice course	Professional 1 yr. Articles or 8 months' practice course	Professional Accounts Law Practice and Office organization. 1 yr. Articles	Professional 6 months' practice course and 18 months' apprenticeship	Professional 1 yr. Articles or 6 months' practice course

(1) not essential in the case of graduate of University of Tasmania
(2) based on University of Queensland rather than on Queensland Institute of Technology course.
() subjects required for admission as a Solicitor
[] subjects required for admission as a Barrister

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

Volume XII, No. 2, June 1980

I

CLEPR National Conference
on
Perspectives on American Legal Education

The Conference was held at Key Biscayne, Florida from October 24-27, 1979. Some 130 persons attended in addition to CLEPR Board members and staff. Among those attending were a number of persons from Canada, Australia and the United Kingdom concerned with legal education.

What follows are commentaries on the Conference by two of those attending from abroad: Michael Zander of the United Kingdom, and Terence Purcell from Australia; a list of panelists and their discussion topics; and a list of Conference participants. The appendix to this Newsletter carries the text of a memorandum prepared for participants to suggest issues to be discussed and to stimulate discussion.

The Clinical Legal Education Conference at Key Biscayne
by Michael Zander
Professor of Law, London School of Economics

I was asked to comment on the Key Biscayne conference from a foreigner's perspective and concluded that the best I could do would be to offer some reflections on a few of the themes that were addressed at the meeting. Certain of the issues discussed at the conference seemed of mainly local interest but others reflected concerns on which an outsider might at least express a view. It is of course always risky to enter into other people's debates - partly because of the fear that one will have misunderstood the issues, partly because nothing brings warring factions together so much as the meddling of an outsider. But I am emboldened to offer my own thoughts by the warmth and friendliness that I, and

I think all the other foreign visitors to this meeting, encountered at every turn.

1. The Development of Clinical Programmes

The spread of clinical programmes in the past few years in the United States has been a remarkable development brought about principally through the generosity of the Ford Foundation and the energy and vision of Bill Pincus. Already the clinical movement is spreading to other countries - notably to Canada, Australia and the United Kingdom. There is little doubt that this will rank as one of the most significant stages in the history of legal education. It has added a new dimension to the teaching of law at the university which broadens and deepens the experience of students. It makes them better equipped for the work they will later undertake - both in the narrow sense that they will be better educated and in the more general sense that they will have had an experience of personal development not available through the traditional methods of legal education. And yet, although clinical programmes now exist in so many places they still appear to arouse opposition.

2. The Opposition to Clinical Programmes

I came expecting the conference to be a celebration of the integration of clinical training into the law school curriculum in the United States. I had assumed that with CLEPR bowing out after some ten years of pioneering work it would be folding its tents secure in the knowledge that this major innovation in legal education had conquered most resistance. Obviously there were still real problems - of financing, of meshing with the ordinary law school curriculum, of grading students, etc. - but I imagined that the fundamental battle as to the suitability of clinical legal education for the law school had been fought and won. To my considerable suprise however there appeared to be some question about this. I may have misread the signs but it seemed that not a few of the speakers from the universities were expressing unease about the invasion of their sanctum by this unruly infant. The fear seemed to be at a basic level - that clinical programmes were in some way incompatible with the true values of university education. I heard repeated eloquent affirmations of the function of the university as the provider of liberal education. The clear implication was that clinical programmes were too much involved with the real world ('vocational training') or lacked sufficient intellectual content ('treating the common cold') to be worthy of admission within the gates.

This reaction would have been more understandable in England than in America. In England it is only within the past few decades that legal education has been established at all in the university, and until very recently the law faculties were struggling to establish their credentials as providers of liberal education. It was for this reason that they avoided like the plague subjects which had about them the smack of contact with ordinary life. Company law, tax law, labour law, family law, creditors' or debtors' rights and the like were all too 'vocational' to be taught in the university until very recent times. The proper material for the university law student until the last fifteen years or so was Roman law, jurisprudence, legal history, international law and a few common law subjects such as contract and tort. English

law teachers laboured under the impression that liberality of education lies primarily in the content rather than in the method and style of teaching. But as Samuel Alexander said 'Liberality is a spirit of pursuit not a choice of subject'. In fact the content of liberal education has changed greatly through the centuries. Law is by no means the only discipline that has had difficulties in establishing itself. It seems ironic today, but even the introduction of the classics was at one time fiercely resisted by European universities and more than a hundred years after the publication of Newton's Principia the ancient English universities were refusing to admit the sciences into the curriculum.

American law schools have not been as detached from real life as those in England. They have long appreciated that a practical subject such as, say, company law can be taught in a narrow way emphasising technical skills or in a broad way as a means of studying the role of law in the business world. The Platonic-Aristotelian prejudice which dominated English thinking was that a gentleman does not concern himself with the affairs of the real world and above all not with the concerns of the market place. But as Albert Whitehead said 'Pedants sneer at an education which is useful. But if education is not useful, what is it? Is it a talent to be hidden away in a napkin?'. If the range of subjects taught in American law schools is fit for university law students, clinical programmes are no less suitable. It is undeniable that clinical programmes can be taught in a narrow, technical or vocational way which is the antithesis of education - but the same is true of any subject on offer at the university. The educational context of clinical programmes is no less and may in a sense even be greater than that of the mainly bookwork courses. Exposure of students to the discipline of real problems in the environment of the university permits a productive fusion of the academic with the practical. This synthesis appears to offer at least as good a vehicle for legal education as the traditional subjects.

3. How Far Should University Clinical Programmes Train Lawyers for Practice?

One of the major problems of American legal education is the absence of any proper institutional training for lawyers after they leave the law school. Apart from Bar examinations which require mainly a mastery of a mass of 'black letter law', there are neither training courses to prepare students for practice nor even a requirement of supervised learning in the office. As a result it is increasingly being urged that the university law schools should shoulder the burden of preparing their students for practice. Chief Justice Burger for instance complains of the quality of advocacy of trial lawyers and the response from many quarters is that the law schools should be persuaded or perhaps even be required to give instruction in advocacy. The law schools protest that this is an attack on academic independence.

In England the problem does not arise in this form because the law student must undergo two further stages after leaving the university. He has to complete a one year course of training run by the Inns of Court Council of Legal Education (for barristers) or by the Law Society's College of Law (for solicitors). Until a few years ago these courses were rightly criticised as being largely theoretical but a

serious effort has now been made to turn them into a genuine form of preparation for practice. The Bar course concentrates on drafting, the writing of opinions, the handling of small cases in both the civil and the criminal courts, and mastery of evidence and procedure. A film unit is used to demonstrate advocacy techniques, in particular through exercises by the students themselves. The solicitors' course takes students through the stages of a series of basic transactions - a conveyance, a probate case, a divorce, formation of a company etc. The students are divided into syndicates to represent the different parties; they draft and exchange the documents and study model files. In both courses the objective is to prepare the student for the kind of detailed work he will actually meet in practice. (A similar but even bolder and more developed system of institutional training for practice appears to have been established in Australia. Mr. Russell Stewart, Director of the College of Law in Sydney, New South Wales, spoke of this at the conference and subsequently sent me a fascinating 122 page paper on the present and likely future of the New South Wales scheme - 'Curriculum Development for the Practical Legal Training Course', draft of 20th November 1979, from College of Law, 2 Chandos Street, St. Leonards, N.S.W., Australia 2065).

After completing the compulsory institutional course the would-be entrant to the English profession must still undergo a period in pupillage (for barristers), or under articles (for solicitors). (Pupillage is one year, during the first six months of which the barrister may not do any case on his own; articles is normally two and a half years.) Pupillage and articles are criticized for not fulfilling their role but at least they provide a period during which the recruit to the profession is working under some measure of supervision. Indeed, even after qualifying, solicitors are subject to further restraint in that they may not set up in practice on their own nor become partners in a practice until they have worked for another three years in an office. In other words, the university is regarded as only the first stage of the process of formation of a practising lawyer. This makes it relatively easy for the university to resist any suggestion that it should shoulder the burden of preparing lawyers directly for practice.

In the United States the position is very different and tension between the law schools and the ABA accreditation process or between law schools and the courts which in most states admit lawyers to practice seems inevitable. In the past it seems that tension has largely been avoided by the ABA conducting itself with notable restraint and by the courts virtually abdicating their powers. The signs are that at least in some states the courts will now move more actively into the arena. At the conference Judge Littlejohn of South Carolina made no secret of his view that 'the training of lawyers is a matter too important to be left to the faculty alone'. In his state lawyers wanting entry to the profession must have taken certain prescribed courses, must have participated in a set minimum of trials and must have undergone a form of internship, as well as later pursuing Continuing Legal Education. In principle there can be no objection to the admitting authority having a say in the content of the qualification process. The difficulty is that judges are not likely to be over-sensitive to the problems of universities nor especially knowledgeable about the strengths and weaknesses of the law school. They may be justified in considering that practitioners should, for instance, have

conducted a certain minimum number of trials before being admitted to practice, but it by no means follows that it is sensible to expect this particular requirement to be satisfied at the law school. If every student has to show that he has handled, say, ten cases as a trial advocate, the numbers of cases being conducted by students would rise astronomically. This would have major resource implications for the law schools. The numbers of clinical teachers would have to be increased exponentially. But much more significant even than this is the effect it would be likely to have on the basic conception of clinical training. If the numbers were vastly increased it would probably be impossible to teach clinical students in the Grand Manner. Clinical work might be in danger of losing its most vital features borne of the close relationship between practical work and the academy. There would not be sufficient time or manpower to maintain detailed supervision of the students' work nor would it be easy for their experiences later to be subjected to analysis in the classroom. The programme could easily degenerate into the mere delivery of bulk legal services which would satisfy only the most superficial educational aims. It might still be better than not at any stage exposing students to the experience of actual clients before qualification. But it would as much be a misuse of the university as if the law schools were required to show that their students had handled ten conveyancing or probate transactions. At some point in his training a student should have to perform practical tasks; it does not follow that they should all be performed during the law school years.

Given the existing American system I see no easy way of resolving this dilemma. If there is no way of establishing institutional professional training schemes after law school it is inevitable that law schools will be asked to provide more training for practice. This trend will grow as the move toward making all aspects of the legal system more accountable to the public interest gathers strength. At the same time it is inevitable and right that the law schools should resist the pressure - at least insofar as it represents a demand to provide vocational training. The line between education and training may be a fine one but it is vital that it continue to be drawn. To the extent that university law schools are turned into trade schools they will be weakened and diminished by such a development. The issue is not I believe whether they should continue to claim to be masters in their own house but what the house should be used for. The law schools will therefore be right I believe to view with scepticism the demands made by Judge Littlejohn and his allies. On the other hand, there is every reason why law schools should show themselves to be intellectually open to new thinking. It may be for instance that dialogue between different constituencies could be promoted by new advisory committees including law school members and representatives of different interest groups in the community - judges, practitioners, other educators, and possible some 'ordinary citizens'.

A parallel development which may have been sparked by the Miami conference is a grouping of clinical teachers in some kind of loose national association. So far most of the promotion of the clinical concept seems to have been left to CLEPR and it was high time that this task was taken over by the clinicians themselves. If it did nothing else the conference will have been valuable in stimulating clinical teachers to establish their own association.

4. Should Clinical Programmes be Made Compulsory for Students ?

I am against mandatory requirements of a very detailed kind being imposed on law schools in regard to clinical education. Nevertheless I see considerable virtue in some compulsory element in the curriculum being assigned to clinical experience as soon as resources permit. There is already an impressive variety of clinical programmes in many law schools and it may soon be possible for the ABA accreditation procedure to be used to require some form of clinical involvement during a student's career. The exact nature of the experience is much less important than the fact that he has had some opportunity to involve himself in real legal problems with live clients under the supervision of a teacher. Exposure to real problems should be as much a part of a lawyer's education as familiarity with the intellectual skills of lawyering which have traditionally formed the main part of legal education. Some forms of clinical training can of course be based on simulations and these should be used where possible - not least as a means of husbanding resources. But clinical education which includes work with live clients is likely to be a fuller and even more valuable experience. I would doubt if it would be right to devote the whole of the final year of law school to clinical work but it would seem legitimate to ask students to use a portion of the second or third year in this way. This would be educationally valuable in any country. It may be even more desirable in the United States where formal education after law school seems somewhat thin. The timing of such a new rule of accreditation would need careful consideration. It may well be that it could not be considered for some years but it seems like a logical development in the continuing story of legal education.

5. The Future

In countries like England the challenge for the next few years will be whether the example of the United States in developing a new concept in legal education in the universities can be emulated. The signs so far are mixed. As Peter Smith's paper for this conference shows some university law schools in England have begun to experiment with clinical programmes and the conference in London in June 1979 convened by members of Warwick University and the Polytechnic of the South Bank, attracted interest from a number of universities and polytechnics. But so far at least only a few have shown a real desire to become involved. The great majority appear to limit themselves to the academic tradition in the narrow sense and to be uninterested in exploring this new dimension in legal education. The professional bodies are improving their practical skills training but they do not use live clients nor do the large numbers concerned allow closely supervised practical work by the students. Practical skills training on an institutional basis is extremely valuable but it is not clinical education. The future prospects in England therefore are only moderately encouraging.

In the United States on the other hand the main question may be whether clinical programmes will become a Trojan horse used by the bar and the judges to require practical skills training in the law schools or whether on the other hand they retain their quality as a means of providing genuine education. The more that clinical

education is seen by the profession not to be fulfilling the practical skills function the greater may be the call for some alternative system for training lawyers. The chief problem that appeared to be posed by the introduction of clinical programmes was whether they were compatible with the values of the university. In my view this issue has been decisively answered in the many outstanding clinical programmes that have been run at different universities. The method can be used to provide liberal education in the great university tradition. The question is rather whether clinical teachers should aim at the great tradition or whether they should try instead to satisfy the profession's call for a services and training function. I have no doubt of the right answer. A university law school should insist on maintaining the true standards of a university. But this undeniably leaves unanswered the question posed by Chief Justice Burger - what can be done to improve the technical competence of lawyers?

"Comments From Abroad - The Impressions of an Australian Participant"
by Terence Purcell
Director, Law Foundation of New South Wales

One of the first things which struck me about the programme for the CLEPR Conference in Florida was the familiarity of the issues confronting those concerned with legal education in the U.S. The programme, which Bill Pincus sent to me some months before the Conference, also listed a range of speakers of eminence and authority. The programme so impressed my Board that they felt it worthwhile to send me halfway around the world for a three-day conference. Obviously from the high level of participation by other non-Americans this view was widely shared by other foreign institutions. Of course all of us who came from Australia took advantage of our visit to North America to attend other conferences and visit appropriate institutions. Curiously enough, however, the English and the Canadians did not seem to indulge themselves to the same degree. Obviously antipodean travellers are more willing explorers as Russell Stewart, Director of the College of Law, wryly noted in his report on his travels that Londoners thought that to return to Australia via their city seemed an unusual way to go home!!

Well, one duly arrived at the Sonesta Beach Hotel to find that it lived up to expectations even down to the coconut palms on the beach. As Russell also noted, "it was obviously chosen to attract a good attendance (which it did) but a little away from the Miami night life to ensure attention to the subject in hand".

One of the disadvantages of coming from such a long way was that one was confronted at the reception desk with a volume of specially prepared papers, which apparently expanded on all the issues one was likely to be confronted with during the ensuing three days. Needless to say, I was still attempting to assimilate the various arguments put forward in the papers at the end of the Conference. The papers are,

however, a rich source of insight, particularly to non-Americans, into the U.S. legal education and legal profession sub-cultures.

Clearly the most provocative document at the Conference was Bill Pincus' rather dramatic looking memorandum emblazoned across the front with "START HERE" in large black letters. The "Start Here" document was the type of cleverly disguised detonator every conference needs to help them get started. In his statement Bill spelt out some home truths as he saw them to the assembled participants and it seemed particularly appropriate that these issues were exposed in the cold (air conditioned, that is) light of the first morning.

There was a bluntness shown in Bill's comments upon the various topics which surprised the visitors but as the Conference progressed, it was apparent that someone had to roll up to the assembled mixed bag of judges, lawyers, law teachers and "clinicians" the hard questions. There was no avoiding them then.

The first session was, to my way of thinking, probably the best of the three days. The audience was provided with some hard data about lawyers and their work in both the American and the Australian contexts. Professor Heinz gave a particularly interesting account of his study of Chicago lawyers which largely supported Bill Pincus' comments on the stratification of the profession. Professor Zemans made one of the most telling comments of the meeting during her address (which was born out during the rest of the Conference) when she said that "most commentators on legal education base their views upon anecdote and personal history with there being very little systematic information nor for that matter understanding of the socialization process that takes place at law school." Roman Tomasic then provided some interesting comparative yet parallel insights into the Australian legal profession which, in many ways, matched the Chicago findings. It was interesting to sit in on later sessions and group discussions and see how little importance was placed upon this basic information and the implications flowing from it. It once again brought home to me the lack of interest most lawyers have in social science research which almost borders on contempt when the research happens to focus upon the legal profession.

Professor Slagle of Ohio State University School of Law then provided some interesting data on the people who actually went to law school.

As for the group discussion, I found myself amongst a group made up largely of deans and judges, a group apparently not given to having their views tested or challenged. It was during this session that I was amazed at the seniority of the deans and the law teachers present - they were all old by contemporary Australian standards. In fact I would estimate that a similar group of Australian law school deans and teachers would average 15 years younger than those present. The group was certainly not interested in comparative information nor the "hare-brained" views of social scientists or foreigners. I hear that other groups functioned a little better.

The next session was almost a parody of the type and quality of defense which I am sure IBM or Exxon would put up if any of their basic beliefs or functions were

Program for CLEPR National Conference

Topic I — The Law School and the Sociology of Law Practice (The Chicago Bar as a Case in Point)

Moderator: Alex Elson, Esq., Chicago
Panelists: Prof. Carl Auerbach, Visiting Fellow, Hoover Institution on War, Revolution and Peace
Prof. John Heinz, Northwestern University School of Law
Prof. Orin Slagle, Ohio State University School of Law
Roman Tomasic, Law Foundation of New South Wales
Prof. Frances K. Zemans, University of Chicago (Visiting Scholar, American Bar Foundation)
Reporter: Prof. Lester Brickman, Yeshiva University, Benjamin N. Cardozo School of Law

Topic II — The Law School in the University: At Home with the Academy, or Away from the Practicing Profession?

Moderator: Dean Norman Redlich, New York University School of Law
Panelists: Willard Boyd, President, University of Iowa
Rev. Timothy Healy, President, Georgetown University
Dean Charles Meyers, Stanford Law School
A. Kenneth Pye, Chancellor, Duke University
Prof. Michael Zander, London School of Economics
Reporter: Prof. E. Gordon Gee, Brigham Young University Law School

Topic III — The Law Schools, The ABA, and the Courts: Who Should Specify What about Legal Education before Admission to Practice?

Moderator: Dean William D. Warren, University of California (Los Angeles) Law School
Panelists: Hon. James Duke Cameron, Chief Judge, Arizona Supreme Court
Dean Roger Cramton, Cornell Law School
Hon. Bruce Littlejohn, Judge, South Carolina Supreme Court
Hon. Rosalie Wahl, Judge, Supreme Court of Minnesota
Prof. James White, Consultant, ABA Council of the Section of Legal Education
Reporter: Prof. David R. Barnhizer, Cleveland State University School of Law

Topic IV — Four Years of College and Three Years of Law School: Should Student Practice Replace the Seventh Year Itch?

Moderator: Prof. Spencer Kimball, University of Chicago Law School
Panelists: Dean David McCarthy, Georgetown University Law Center
Dean Gerard Nash, Monash University, Victoria, Australia
Dean Harry Wellington, Yale Law School
Hon. Malcolm Wilkey, Judge, U.S. Court of Appeals, Washington, D.C.
Reporter: Prof. Steven Leleiko, New York University Law School

challenged. The Reverend Timothy Healy delivered himself of a brilliant defense in fine oratorical style of the virtues of the academic environment in a way that had special meaning to a humble Catholic boy of Irish descent!

His fellow speakers on the topic in their own erudite way supported the need for law schools to be a part of academe. Kenneth Pye amused the participants by comparing law students with divinity students when he said that complaints about law school graduates from the profession were identical to the complaints he received from ministers about their new curates who, they felt, were too much oriented toward theology and not sufficiently practical!

The vexed question of the role and responsibilities of the Courts in legal education came next and we witnessed an interesting attack upon the law schools from the Bench which, to my mind, was a little unkind particularly as the judges only see a small group of practitioners.

The final session still has me mesmerized. There was a lot of discussion about the redundant last year of law school. Before this session began I felt that I was reasonably knowledgeable about the U.S. legal education process - I had even read Erlich and Packer*! Yet there I was being told that after two years of law school, students were bored and yearning to get out into the real world. As someone who came from a country where most people did about four years of law, I came away convinced that all the propaganda fed to us over the years is true - the Yanks are truly the brightest and the best!

In conclusion, I have been assured by a number of people at the Conference that it was a useful event which got judges, deans, law teachers, lawyers and clinicians talking around tables and even occasionally, socialising together. One thing that was noticeable as a foreigner was that a lot of the problems confronting U.S. legal education today are being dealt with in other countries sometimes quite successfully. It was noteworthy, certainly in my group, that there was distinct lack of interest in comparative experience regardless of the fact that there are often very few legal, social and historical differences between the U.S. and countries such as Australia, Canada, and even Great Britain.

The only other matter that I should comment upon was the "hidden agenda", namely whether clinical education would continue on in its present form and with its present goals. Obviously it largely depends upon Uncle Sam picking up the tab! Being an outsider and foundation administrator, I will watch the next step with great interest!

*Packer, H.L., and Ehrlich, T., New Directions in Legal Education, McGraw-Hill, McGraw-Hill, New York, 1972.

CLEPR National Conference Participants

Bernard Adell, Dean, Faculty of Law, Queens University, Ontario, Canada

Carl Auerbach, Visiting Fellow, Hoover Institute on War, Revolution and Peace

David Barnhizer, Cleveland State University School of Law

Jerome A. Barron, Dean, National Law Center, George Washington Univ., Washington, D. C.

George T. Barrow, Chairman, National Conference of Bar Examiners, Chicago

C. Bartlett, Faculty of Law, Monash University, Victoria, Australia

Stanley M. Beck, Dean, Osgoode Hall Law School, York Univ., Ontario, Canada

Claude Belleau, Dean, Faculty of Law, Laval University, Quebec, Canada

Donald Bigelow, Department of Health, Education & Welfare (HEW) Washington, D. C.

Edward J. Bloustein, President, Rutgers University, New Brunswick, New Jersey

Frank S. Bloch, Vanderbilt University School of Law, Nashville, Tennessee

William H. Bluth, Capital University Law School, Columbus, Ohio

Robert L. Bogomolny, Dean, Cleveland-Marshall College of Law, Cleveland, Ohio

Clyde O. Bowles, Immediate Past Chairman, National Conference of Bar Examiners, Chicago

Willard L. Boyd, President, University of Iowa

Lester Brickman, Cardozo Law School, New York, N. Y.

Russell W. Burris, University of Minnesota Law School

Hon. James Duke Cameron, Chief Judge, Arizona Supreme Court

David Cavers, Harvard Law School

W. H. Charles, Dean, Faculty of Law, Dalhousie University, Halifax, Nova Scotia

Donald H. Clark, Dean, College of Law, University of Saskatchewan, Canada

Roy A. Cohen, Esq., ABA Law Student Division, Wilmington, Delaware

C. R. Conniff, Polytechnic of the South Bank, London, England

Joseph E. Covington, Director of Testing, National Conference of Bar Examiners, Columbia, Missouri

Roger Cramton, Dean, Cornell Law School, Ithaca, New York

John E. Cribbet, President, Association of American Law Schools; Dean, College of Law, University of Illinois

David C. Cummins, Chairman-Elect, National Conference of Bar Examiners, Columbus, Ohio

Dennis Curtis, Yale Law School

Richard E. Day, Dean, University of South Carolina School of Law

Robert Desiderio, Dean, University of New Mexico School of Law

Hon. Edward J. Devitt, Chief Judge, U. S. District Court, St. Paul, Minnesota

Bert H. Early, Executive Director, American Bar Association, Chicago

Alex Elson, Esq., Chicago, Illinois

John Elson, Northwestern University School of Law, Chicago, Illinois

John Farago, Assistant Dean, Valparaiso University School of Law, Valparaiso, Indiana

Frederick R. Franklin, American Bar Association, Chicago

F. Murray Fraser, Dean, Faculty of Law, University of Victoria, British Columbia, Canada

E. Gordon Gee, Dean, West Virginia University College of Law

Howard A. Glickstein, Howard University School of Law, Washington, D. C.

Hon. Richard M. Givan, Chief Justice, Indiana Supreme Court

Hon. Joe R. Greenhill, Chief Justice, Supreme Court of Texas

Joseph D. Harbaugh, Temple University School of Law, Philadelphia, Pa.

Donald E. Harding, Hastings College of Law, San Francisco, California

Timothy S. Healy, S. J., President, Georgetown University, Washington, D. C.

John Heinz, Northwestern University School of Law, Chicago

Orrin L. Helstad, Dean, University of Wisconsin Law School

John E. Holt-Harris, Jr., New York State Board of Law Examiners

Ron W. Ianni, Dean, Faculty of Law, University of Windsor, Ontario, Canada

Caliph Johnson, Texas Southern University, Thurgood Marshall School of Law, Houston, Texas

Frank D. Jones, Dean, Faculty of Law, University of Alberta, Canada

Rodney R. Jones, Southwestern University School of Law, Los Angeles

Arthur Karger, Chairman, New York State Board of Law Examiners ;; Past-Chairman, National Conference of Bar Examiners

Hon. Robert E. Keeton, U.S. District Judge, Massachusetts

Michael J. Kelly, Dean, University of Maryland School of Law

Patrick D. Kelly, ABA Special Committee on Study of Legal Education

Charles D. Kelso, McGeorge School of Law, Sacramento, California

Spencer L. Kimball, University of Chicago Law School

John R. Kramer, Georgetown University Law Center, Washington, D.C.

Raymond A. Landry, Dean of Civil Law, University of Ottawa, Canada

Gary S. Laser, Chicago-Kent College of Law Legal Services Center, Illinois Institute of Technology

Rex E. Lee, Dean, Brigham Young University Law School, Provo, Utah

Steven H. Leleiko, New York University School of Law

Denis Lemieux, Faculty of Law, Laval University, Quebec, Canada

Hon. Bruce Littlejohn, Judge, Supreme Court of South Carolina

Jack R. London, Dean, Faculty of Law, University of Manitoba, Canada

Frank Lyles, Esq., Spartanburg, South Carolina; Member State Bar Comm. on Legal Educ.

David J. McCarthy, Jr., Dean, Georgetown University Law Center, Washington, D.C.

John P.S. McLaren, Dean, Faculty of Law, University of Calgary, Canada

William T. MacPherson, University of New Mexico School of Law

Allan A. Matheson, Dean, Arizona State University College of Law

Charles J. Meyers, Dean, Stanford Law School, Stanford, California

Elliott S. Milstein, Director of Clinical Program, Washington College of Law, American University, Washington, D.C.

Lizabeth A. Moody, AALS Executive Committee, Cleveland State University, Cleveland-Marshall College of Law

Francis D. Morrisey, Vice Chairman, National Conference of Bar Examiners, Chicago

Charles A. Morrison, Dean, The Inns of Court School of Law, London

Richard W. Nahstoll, Chairman, Accreditation Committee, ABA Section of Legal Education, Portland, Oregon

Gerard Nash, Dean, Faculty of Law, Monash University, Victoria, Australia

John P. Nelson, Loyola University School of Law, New Orleans, Louisiana

Lawrence Newman, Chairman of the Council, ABA Section of Legal Education and Admissions to the Bar, New York, N.Y.

Robert Oliphant, William Mitchell College of Law, St. Paul, Minnesota

Mary W. Oliver, AALS Executive Committee, University of North Carolina School of Law

Revius O. Ortique, Jr., Member of Board, Legal Services Corporation, Washington, D.C.

G.A. Owen, Faculty of Law, Monash University, Victoria, Australia

Gary H. Palm, University of Chicago School of Law

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II

Clinical Professorship Endowed at Stanford Law School

Following is part of the text of an announcement of February, 1980 concerning the establishment of a Professorship in Clinical Legal Education at Stanford Law School.

"Professor Anthony G. Amsterdam has been named to the newly established Kenneth and Harle Montgomery Professorship in Clinical Legal Education at Stanford Law School, Dean Charles J. Meyers has announced.

Endowed by Mr. and Mrs. Kenneth F. Montgomery of Northbrook, Illinois, the chair will enable the Law School to recognize and support Professor Amsterdam's work in clinical instruction, which focuses on the cultivation of skills in law students that are necessary and useful in practicing law, including trial and appellate advocacy, negotiation, counseling, and drafting. Amsterdam has pioneered the development of clinical instruction at the Law School since 1969.

In making the gift to establish the chair, Mr. Montgomery said: 'I take pleasure in endowing this chair because Stanford, a superb Law School, has recognized the value of clinical legal education. On my graduation from law school, among my many deficiencies was an abysmal lack of knowledge of trial procedure. Assigned to the trial department, at my request, I managed to lose cases which I might have won had I been grounded in trial procedure. After a painful indoctrination, unfortunately at clients' expense, I managed to fare better.

'What too few people realize is that clinical legal education, when done well, does much more than train lawyers in important legal skills; it provides an effective means for introducing and examining difficult issues about the legal profession, the adversarial system, and what it means to be a lawyer...' "

Appendix

Below is the text of a memorandum circulated to participants at CLEPR's National Conference on Perspectives on American Legal Education, which suggested issues for discussion under each of the four major topics assigned to the Conference panelists and later taken up by all Conference participants in smaller discussion groups:*

On Topic I, the Law School and the Sociology of Law Practice (The Chicago Bar as a Case in Point), recent studies of the Chicago Bar by the American Bar Foundation, and earlier studies such as those of Jerome Carlin, point to the stratification of the bar socially, economically, and by areas of practice. There is also strong evidence that the law schools tend to be stratified in the same way, i.e., different schools provide graduates to different kinds of employers and different kinds of law practice. Moreover, it seems to be true that within each law school the graduates go into different places in the bar, depending on their standing in their graduating class. It's also a fact that law schools and lawyers view different kinds of practice differently. Practices which involve helping individuals do not pay as well and do not rate as high as those which involve business matters.

These are not novel observations. However, when law school and legal education are discussed they tend to be considered as though they are monolithic, and as though they function for the purposes of prestige employment only. This comes about because the discussions at most professional gatherings are dominated by a relatively few nationally influential schools and their faculties. Also, schools play down their difference, making believe instead that they are like the Harvards and Yales. The reason? The local and regional law school faculties look forward to moving up from employment in the minor leagues to employment in the major leagues.

There is, thus, no dissent when spokesmen from the national schools assert that the preparation of the "leaders" of society is the business of the law school; and when they claim that abstract legal education is best because it prepares the lawyer whose client is society as a whole. Demoted to a lower status, explicitly or implicitly, is the lawyer who concerns himself with the grubby needs of the ordinary person. In addition to what else may be said about such a world outlook, it ignores the fact that the vast majority of law school graduates will be involved in legal services to individuals and in law-related jobs below the leadership level, which is reserved for relatively few.

In concentrating on those at the top, the influential law schools assume, quite appropriately, that the largest and most affluent law firms will take their top graduates as a matter of course, as will other important employers. For the rest of the student body, all the law schools have expanded in large measure because they have been more than willing to accommodate those who wish to have a post-graduate degree of general usefulness in the employment market. For itself, law school embraces the ambiguous nature of its professional degree, since this reinforces the law school's desire to be at home in the university and away from the practicing profession.

*Reprinted from CLEPR's Fifth Biennial Report (The President's Report)

Selling credentials with wide acceptability is good business for all parts of higher education in a society which boasts that everyone can make it, given a fair chance to start with a good education. At the same time, because general credentials, in lieu of (?) or in addition to (?) preparation for law practice, have become so important in what is now a mass market, policies on admission to law school have become more than ever a matter of social and political controversy. For getting into law school is seen as opening the door to many well-paying white-collar jobs by those who, in the working classes and in minority groups, have their eye on upward social mobility.

In concentrating on leaders, the nationally influential law schools also replenish their own teaching ranks, supply teachers for others, and receive financial and other support later on from those graduates who fulfill their promise and go on to fill the top positions outside. Of course, if a lower-ranking graduate makes it - as happens in life - the law school, whatever its character, is all too happy to accept tokens of gratitude from that graduate too.

Law schools did not invent differences among humans, nor did law schools create all the social and economic conditions which are the bases of the pecking order, but the law schools fit themselves easily into the "system" and contribute heavily to its reinforcement. Like doting parents, the faculties boast of their successful offspring, take credit for contributing to their achievements, and plan their teaching and other activities to fit what appear to be the requirements of those at the top of the profession economically and socially. There is no reason for the law schools to disregard the success patterns of the society. On the other hand, one could ask for a broader view of their role by the law schools, since they do qualify all the members of the legal profession, and not just the top 20%. This may be a quixotic suggestion in view of the fact that all of higher education in a democracy like ours has as one of its primary objectives giving everyone a chance to become one of the elite. Perhaps it is too much to suggest that law schools and higher education also look beyond the identification and placement of the top group to the needs and careers of the rest, who are more apt to live and work more intimately with the bulk of the population.

With respect to Topic II, the Law School in the University: At Home with the Academy, or Away from the Practicing Profession?, recent research indicates quite clearly that just before and just after World War I law teachers undertook a campaign to create an autonomous law teaching profession, and because they are teachers, the law teachers selected the university as their home of choice.

Law teachers have been successful in creating a separate profession within the legal profession. Whether or not their scholarly pretensions have succeeded in making them acceptable to the academy remains a matter of some controversy and doubt. Understandably, law teachers want very much to be accepted within the university at least on the same basis as other professors. At the same time they point to their professional licenses and to higher earning by practitioners to justify special treatment in the form of higher salaries than other professors.

The law teaching profession remains in a state of constant tension. The teachers

have been busy building themselves a home in the university, but the public supports law teachers because it views them as providing members of the practicing profession. Many members of other faculties in the university, not directly connected with outside practicing professions, do not entirely accept law faculties as members of the scholarly community. For some in the academic community a taint attaches to being part of a profession the majority of which makes its living outside the university. This is not what happens with historians or philosophers. In their eagerness to be full members of the academic community, law teachers have avoided identification with the practicing profession and emphasize instead their role in general education and preparation of graduates for a variety of roles in addition to practicing law.

The practicing profession has given up any role in education of the lawyer before admission to the bar, leaving the field entirely to the law school, and making it easier for the law teachers to divorce themselves from the practicing profession. However, this has not resolved the dilemma of the law school. Rare is the lawyer, teacher or practitioner, who really understands why the law school is in the university, and what its role and responsibilities are with respect to the practicing profession.

It is possible that the place of the law schools in the university would be more firmly established if they identified themselves more with the delivery of legal services, with the practice of law, and with practitioners. Maybe more respect from other parts of the university would be forthcoming for law faculties if they gave more emphasis to the problems of the practicing profession than to the kinship of legal doctrine and academic disciplines or to joint degree programs which are designed mostly to show how neatly law teachers and their interests fit in with the rest of the university. It could well be, for instance, that courses in law and economics belong in the economics department where law students can take the course. And it also may be a fact that law schools have gone too far to demonstrate their purity, in the form of freedom from practice and practitioners, by building faculties composed entirely of persons who have eschewed practice from the start; or of those who have dipped in just enough to say that they have practiced and seen the academic light; or of those who are refugees from practice because they can't or won't take the grueling demands of practice any longer. Such faculty members can hardly be expected to have an inclination to get close to the profession. Maybe law faculties ought to have a good representation from the ranks of those who believe practice is what they want to continue to do, though it may be in the form of teaching practice to students, especially in a clinical setting. And maybe law schools ought to be serious enough and straightforward enough about their intentions in bringing in those who don't want to run away from practice to give such practitioner-teachers job security and salaries equal to, if not higher than, the academic faculty. Maybe such changes would help the law school in the university because it would be doing what it alone can do well, and what no other faculty can do.

Perhaps the university, if it sees itself as having identifiable and universally accepted characteristics, can help dispel some of the confusion which exists in regard to what the law school is. Does the university insist that professional schools consist entirely

of the same kinds of faculties as those in non-professional schools? Does the university accord lower status to professional schools than to purely academic faculties? To what extent are the law school faculties living with myths of their own creation and why?

Topic III, The Law Schools, The ABA, and the Courts: Who Should Specify What about Legal Education before Admission to Practice?, is concerned with fundamental relationships between the public authorities who control admission to practice and the law schools. The latter now, in effect, have a monopoly on pre-admission education. In building a place within the universities, law teachers also constructed a refuge against intrusion by lawyers and judges on matters of legal education. As law teaching became a profession unto itself it adopted the same outlook other teachers have. Teachers believe that they know best how to teach as well as what to teach. Then what is left for the judges who write admission rules, and for accrediting agencies such as the American Bar Association?

For about 25 years following the end of World War II there appeared to be no serious challenge to the view that law teachers know best. Although the American Bar Association extended the effectiveness of its accreditation activities, and the supreme courts of the states continued to lay down requirements for admission to practice, the law schools believed they had achieved a free hand with respect to their curriculum and teaching methods. Occasionally tensions arose, but for this long period there was no hue and cry about a challenge to the freedom of the law schools to do what they would with their curriculum.

Yet, because certain subjects are listed as appearing on state bar examinations, approximately one-third of most law school curricula is made up of required courses, and most other courses are offered for the same reason. There has been no serious objection on the part of law teachers to these restrictions on the curriculum. They have not been viewed as threatening to what law faculties want to teach or to their methods of teaching. Nor has there been a reaction against the fact that quite often requirements for admission to the bar, and the American Bar Association standards for approval of law schools, prescribe the number of class hours and the number of weeks to be spent in residence. Why have the schools gone along for so many years with these prescriptions form the outside and only recently reacted so negatively to other prescriptions?

The advent of clinical legal education and the creation of CLEPR to support it about ten years ago, seem to mark the beginning of a period of tension arising from outside pressure for changes in the law school. Resistance came from traditionalists in law teaching, who would retain the purely classroom character of the law schools. The outside pressure came from CLEPR advocating movement in the direction of having the law school provide education in a practice setting as well as in a classroom setting.

So long as the debate remained one between the law schools and CLEPR, which is a private institution, the pressure from the outside seemed to be tolerated with a minimum of ill will by the law schools. However, in the last few years, as judges

and courts have spoken and acted with respect to what is called "competency training," the debate over control of legal education has become acrimonious.

Have the law schools unfurled the banner of academic freedom only to preserve the status quo? Must we accept the argument that only law teachers know what needs to be taught and how to go about teaching it? Do judges and lawyers know anything about what and how to teach in law schools? Isn't it appropriate for state supreme courts to become active in regard to the matter of educational requirements before admission to the practice of law? Is the fact that the judges have let their authority lie dormant for so long a conclusive argument against their reassertion of authority in recent years? If the judges do act, how far should prescription of educational requirements by the court go? Is there a difference between prescribing the subject matter of courses and the prescription of broad areas of educational experience? For example, some courts now require a specified number of hours in class (as does the American Bar Association) and also limit the number of hours in educational programs outside of class, such as in clinical programs (as does the American Bar Association). What if the courts were to require "X" number of hours of classroom instruction and "Y" number of hours of clinical instruction as a minimum, leaving it to the law schools to fill in the details?

Finally, in all this discussion, what about the role of the American Bar Association in respect to the accreditation function? As the courts become active in specifying more details about legal education before admission to practice, what will be the role of the ABA? Will there be less for the American Bar Association to cover in its standards for approval of law schools? Does or should the American Bar Association reflect the viewpoint of the law schools, the viewpoint of courts such as those in Indiana and South Carolina, or neither? Can the American Bar Association play a useful role in mediating this emerging controversy? Should there be a permanent and continuing coordinating committee of law school educators, the American Bar Association, and state supreme courts?

Topic IV, Four Years of College and Three Years of Law School: Should Student Practice Replace the Seventh Year Itch?, is concerned with the entire span of higher education which is now required for one to qualify for admission to the bar. Though most state rules on admission would accept three years of college and three years of law school, in practice we have a seven-year requirement, since very few law students are admitted to law school without four years of college.

Seven years of higher education after twelve years of primary and secondary education represent a very long period of time in a person's lifetime. One may question the utility of 19 years of exposure to a teacher in front of the classroom and to books in the library and at home with nothing more. Does such teaching and learning do as much good toward the end of the 19 years as it does at the beginning? One may suggest that at a certain point in this 19-year process there are not only diminishing returns but also negative effects from so much confinement to the classroom method of teaching, omitting experiential teaching and learning. One may also argue that the enhancement of intellectual growth is offset somewhere along the line by ignoring the potential and the need for development of other qualities in the student.

The literature of legal education contains an abundance of observations by highly regarded law teachers and law deans to the effect that the third year of law school is characterized by students' malaise, if not active emotional and other kinds of rebellion against so much classroom schooling. The February 1979 issue of the Cornell Law Forum contains an article by Professor Kevin Clermont which goes so far as to suggest that students are impressed by the purposelessness of both the second and third years of law school, and that everything after the challenge of the first year is precipitously downhill in law school.

Advocates of clinical legal education add specifically that the development of human capabilities and responses that are not dependent on intellectual capacity alone requires education in a practice setting. It is not skills training alone which is the clinic's purpose, important as skills are. More important is the fact that the clinic is there to give the student responsibility like that in the outside world, and to see how the student takes such responsibility.

Recent studies of the history of legal education in the twentieth century indicate that the extension of college and law school years for law students was dictated by the politics of fifty years ago. In the 1920's, the American Bar Association, anxious to make it more difficult for new immigrants to enter the profession, teamed up with law teachers, organized in the Association of American Law Schools, to require more years of academic education. The law teachers for their part desired this development in order to look more acceptable to the universities where they were building their home. The results were beneficial for the law teachers, and not at all effective with respect to the exclusionary goals of the organized bar. Nevertheless we have inherited the present seven-year span of higher education before admission to the bar.

Can we put aside the results of a history which is now irrelevant, and reorganize the use of the present seven years in higher education devoted to preparation for admission to the bar? In doing so, should we include a certain amount of clinical experience for law students - both to enlarge the development of the person who is about to become a lawyer and to refresh the enthusiasm of students and teachers through the provision of a different kind of education in addition to the traditional classroom experience?