COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Vol. III, No. 7, March 1971

Executive Director Michael H. Cardozo, of the Association of American Law Schools, has written to CLEPR concerning Professor Lester Brickman's reference to the role of the AALS in regard to Title XI of the Higher Education Act (Financing Clinical Legal Education).

We at CLEPR are pleased to print Professor Cardozo's letter to Mr. William Pincus below:

I think I will characterize this letter as a plea for equal time, although I am not sure that the CLEPR Newsletters are the appropriate place for an exchange of this kind. My desire for equal time, however, arises from the remarks in the Newsletter of February 1971, Volume III, No. 5, on pages 5 and 6, starting with the observation in Lester Brickman's essay that "the law schools struck out three times in getting Title XI funded... Because of sheer unadulterated ineptitude."

You are personally familiar with some of the efforts to obtain funds for Title XI. Probably you and Professor Brickman are not aware of all the efforts, including not wholly unsuccessful approaches, through law school deans and former teachers, to get the White House to come out in favor of some funds for clinical education in law schools. Professor Brickman asks whether Congressmen were "approached by their respective deans in an effort to obtain the curative elixir of Title XI?" Could we have done better than Jefferson Fordham testifying before Congressman Flood of Pennsylvania, the chairman of the Appropriations Subcommittee involved? There were many similar examples. I wonder if Professor Brickman thinks that the vote on the floor of the Senate to add funds for Title XI after they had been omitted at every other stage, an almost unprecedented incident in the appropriations field, was also the result of that same "unadulterated ineptitude." These events, incidentally, are fully described on pages 8 and 9 of Section III of Part One of the 1970 Proceedings of the AALS Annual Meeting.

Professor Brickman suggests that, since half of the Senators and Representatives are lawyers, they would promptly vote for funds for help to their "alma mater" under Title XI if the need were called to their attention. Has Professor Brickman ever encountered a lawyer, whether in Congress or elsewhere, who graduated from dear old Siwash when it had no "frills" like clinical legal education and wonders why law students today need any different kind of treatment and federal funding for it? Our office has, and we have learned that lobbying for funds for legal education calls for massive efforts to convince some of the lawyers in Congress as well as the non-lawyers.

I mentioned "lobbying," a word that most people in educational organizations fear to use, because if they engage in "substantial" lobbying activities, the tax exempt status of the organization is placed in jeopardy. While there admittedly is much more that can be done on behalf of law schools in Congress, it is not clear who is in a position to do it in the face of the restrictions imposed under the tax system. While there are no restrictions on the activities of individual law teachers, students and lawyers, we know that those activities are not self-generating, but any effort to stimulate and coordinate them is counted on the balance sheet to determine the "substantiality" of legislative activities by an exempt organization that undertakes those efforts.

All this led me to feel that the widely disseminated criticism by Professor Brickman in the CLEPR Newsletter did not fairly evaluate the situation in concluding that the key members of Congress had not been approached "by their respective deans," but if they had, "it is almost certain that funding would have been obtained." Nonetheless, assuming that there may be substance to that charge, when we start again this month to seek funding for Title XI (it has not yet been "at bat for its third and final time") we will again hope for messages from the key deans in our member schools to the key Congressmen.

Michael H. Cardozo

The following essay was written at CLEPR's request by James G. Carr, Director, Criminal Justice Clinic, University of Toledo, College of Law. It is an expansion of material originally submitted to CLEPR as a grantee pursuant to periodic reporting requirements. We hope in this way to share with others some of the information and viewpoints which come our way. Changes because of minor editing to conform to space requirements are CLEPR's responsibility. The rest obviously belongs to the writer.

MORE ON "FARM-OUT" AND "IN-HOUSE" CLINICS -- THE UNIVERSITY OF TOLEDO EXPERIENCE

By James G. Carr

As law school clinics become more widespread and firmly rooted, attention turns from theoretical abstractions about their merits to the problems of structuring efficient and effective programs. In those efforts, some general patterns seem to be developing, with many clinics established along one of two prevalent models. The first of these types, the "farm-out" program, generally enrolls substantial numbers of students, places them with attorneys in various outside offices, and provides little law school supervision. A second, and usually quite distinct approach, the "in-house" clinic, tends to keep a small group of students under direct law school supervision, working on projects generated from within the program. Though clinical program structures may vary, they may be distinguished for the purposes of definition and discussion by the presence or absence of substantial law school supervision of the students' educational development.

The discussion which follows refers to our experience at Toledo with both a farm-out and in-house approach for a criminal law clinic. Faculty and student dissatisfaction with the educational results from each program led to a recent re-evaluation of our structure; we are in the process of developing a program which combines farm-out and in-house aspects. This Newsletter reviews the course of our re-evaluation, and describes the improvements sought from the revised structure.

Toledo's criminal clinical efforts began several years ago with a farm-out program. A number of students were assigned to the municipal prosecutor's office, but with very slight faculty supervision. This program gradually expanded to include the offices of the county prosecutor and public defender. In the meantime, an in-house program was also developed, in which other students assisted a faculty member who was counsel of record in post-conviction matters. Both programs were well received initially by both students and faculty.

Experience with each program indicated, however, that neither provided an adequate mix of exposure, experience and education. Lack of supervision caused the farm-out program to be without structured educational value. The post-conviction assistance program foundered on an excessive number of complicated, extensive and protracted cases. During the academic year 1969-70 both programs were the responsibility of a single professor, and the demands

on his time were unmanageable. Contact with the farmed-out students was slight, and supervision almost entirely lacking, as the director's time was totally committed to several habeas corpus cases. In these, unforeseen procedural problems arose, and student involvement became considerably reduced.

Examination of these difficulties and their causes, along with a thorough evaluation of the individual merits and disadvantages of the farm-out and in-house approaches, has resulted in some substantial readjustments in our criminal clinical program. These changes, designed to utilize the benefits of each approach and to eliminate the disadvantages, will result in a program with a single faculty supervisor directing a clinic of about 20 third year students, five working on the director's cases, the others assigned to outside attorneys.

This revised program, in one aspect, will involve the clinical director as counsel of record in a limited number of misdemeanor cases. Direct involvement will enable the director to closely oversee the development of the trial practice skills of about five of the Clinic's twenty students. His participation should provide a model of professional conduct, assure adequate and appropriate student work assignments, and emphasize consistent educational input.

Experience with Toledo's former in-house clinic which worked on post-conviction matters shows that a prerequisite to success is an avoidance of test cases, or other matters involving extensive preparation and protracted litigation. By limitation to misdemeanors, supervision will now be directed towards development of basic skills, and instruction in the mechanics of professional quality pre-trial investigation, research and preparation. This requires a restricted caseload and maintenance of an even-flowing and uncluttered docket. Emphasis on cases which tend to be disposed of more quickly reduces the impact of periodic examination and vacation periods, and avoids the carry-over problems experienced with protracted litigation. It is envisioned that misdemeanor litigation will offer the best opportunity for extensive and closely supervised student involvement.

In addition to these structural advantages, limitation to routine misdemeanors enables the clinic to avoid direct involvement in cause-oriented projects. Such projects, whether called test cases or law reform efforts, can often impede the program's acceptance by judges and practicing attorneys. This is especially true if their own activities and positions appear challenged by scholastic iconoclasts. Reform activities of interest to the students remain available in the outside offices used for farm-out placements.

The second aspect of Toledo's revised program retains some of the farm-out model's basic features. It places up to fifteen students in prosecutor and public defender offices with assigned supervising attorneys. Frequent periodic meetings between the director and the outside supervising attorneys review assignments and monitor the attorneys' response to the students and program. Weekly individual meetings between each student and the director seek to provide the supervision not previously available in the former program. These meetings, which are scheduled at hourly intervals, discuss the student's assignments and direct the work referred by the outside attorney. By arrangement with the supervising attorneys, the students are permitted to copy entire case files. By opening a duplicate file, and

discussing aspects of the litigation other than just those assigned, the student obtains an overview of the entire proceeding. As the student work product is reviewed, the discussions relate his efforts to the case as a whole.

These outside placements seem to offer the best opportunity for law reform efforts, test case participation, and involvement in extended litigation. Criticism of law school involvement is avoided, as its participation is indirect. Because the outside attorney retains primary responsibility, the time demands on the clinical director are substantially reduced, allowing him to tend to general supervision of the outside placements and close direction of his student associates on the in-house cases.

Having thus indicated the revision of Toledo's criminal clinical structure, the balance of this Newsletter discussion examines the factors developed during review of our prior programs and their problems. With foresight gained from past experience and careful attention to structure and operational modes, we are trying to maintain the worthwhile attributes of the farm-out and in-house programs and hoping to avoid the more serious disadvantages.

The economies of cost with the farm-out operation initially made it very attractive. This kind of program can enroll large numbers of students, place them in a variety of offices, and thereby give a broad exposure to legal institutions. At its most extreme, the farm-out avoids all overhead and may even utilize a part-time member of the faculty as the only law school supervisor. By rotating students among different offices, flexibility in assignments and varieties of exposure and experience are more available than with a pure in-house clinic. Public relations benefits not otherwise available also appear, as members of the practicing bar are exposed to clinical education and made to feel a part of the legal educational process. Students, on the other hand, make contacts which can prove valuable when they enter the employment market.

But in many respects the farm-out structure is the least satisfactory. The low investment of faculty time and effort debases the value of the clinical experience, and short-changes its educational purposes. Though exposed to the real world, students graduate without much better preparation than before. Poor habits may be passed on from the supervising attorneys, and attitudes of professional irresponsibility engendered. Serious students may come to avoid clinical programs as not worthwhile, and an influx of poorer students will make successful operation even more unlikely. These problems can be aggravated if the law school appears to downgrade the clinic by alloting minimal resources and attention to its operation.

Related to the problems of providing adequate supervision is the lack of control over the experience offered to the student by his assigned attorney. In the farm-out operation, the educational validity of the student's work depends almost entirely upon the vagaries of the outside attorney's personality and caseload. This is true even if the law school attempts to monitor the assignments. By training and talent a practitioner, not a teacher, the attorney frequently lacks instructional skills and may also give substantive responsibility reluctantly. Such responsibility may not come at all if the attorney believes that the student's efforts will receive only slight direction from the law school. Even minor tasks of educational merit may

not be given, because of the time lost in correcting student errors. Also, such projects as may be assigned by the practitioner often come without attention to an orderly educational development.

The traditional farm-out method rarely provides the student with an opportunity to utilize law school facilities and faculty to review his progress and examine the institutions to which he is exposed. The larger the program, the less the faculty contact and control. Diminishing the law school's involvement in the clinical operation creates the danger of a complete separation between the external and internal experiences. The formal consequence is to make allocation of credit and grading extremely difficult. Less obviously, but more importantly, opportunities for coherently structured inquiry, evaluation and learning are not available. Though exposure may be great, educational value is lost.

Unlike the farm-out clinic, the traditional in-house approach has stressed consistent and structured educational opportunities, and close supervision has been its hallmark. The faculty supervisor, as counsel of record in the clinic's cases, can assign and review work in an orderly manner with an emphasis on the student's abilities and educational needs. Variations in assignments and work load common to the farm-out situation are avoidable, and the push-pull of challenge and assistance can be individually patterned. An attendant benefit for both teacher and student is a close personal association, practically unique in the legal educational system.

With the student's work all flowing through the clinical director, every aspect of the litigation is open to view. This format lends itself readily to utilization of traditional modes of instructional inquiry, including research papers and seminars. These allow evaluation of the legal profession and institutions, either singly, or by a group. From the series of ongoing student-teacher contacts comes a great number and variety of benchmarks by which to evaluate the student's performance.

The flaw in the traditional in-house structure, of course, has been its high cost. Even with careful caseload limitation, the supervisor's opportunity to effectively supervise his students limits maximum enrollment to a far lower number than with the farm-out clinic. The cost per instructional hour soars, especially if there are additional overhead expenses, among them a secretary, office equipment and supplies, and rent for special office facilities.

Though actual cases are involved, exposure within the traditional in-house clinic to the real world can tend to be rather slight. Minimal exposure to the practices of active attorneys and the court system comes from use of clinic generated cases. An uncrowded docket allows for leisure to tend to detail, but can be deceptive as it does not represent the realities of practice. If participation by the practicing profession is slight, the program's acceptance by the bench and bar might come with reluctance. This is especially true if the law school or its clinical efforts have a reputation of being cause-oriented. Finally, the in-house program may not adjust itself well to the periodic rhythms of class conflicts, examination and vacations. If the clinic's cases become involved and protracted, carry-over problems can endanger the attempt to structure a coherent and consistent educational experience.

If, however, an in-house aspect is included within a combined program, cost factors can be fairly well controlled. It may not even be necessary to acquire outside office space and extra staff or equipment. Because the combined clinic also has a farm-out aspect, it is not the exclusive work source, and exposure to outside practitioners is broadened. Periodic alteration of assignments (in Toledo's experience, quarterly) makes available the desired blend of exposure, experience and education, not found in the farm-out or in-house methods alone. Though some students may not be able to participate in the in-house group, rotation of assignments presents a broader coverage than otherwise available.

As we re-direct our program at Toledo, experience cautions that certain prerequisite elements are necessary. Most importantly, acceptance of cases for the in-house section must be strictly regulated. Working relationship with the bench and bar must provide for discretion in the clinic director to accept or reject appointments, depending on the status of his docket. Of those cases selected, few, if any, should require substantial research. Emphasis is on investigation, preparation and the rudiments of trial practice. Protracted litigation will overload the docket as dangerously as an ongoing flood of new assignments. Both must be avoided if the clinic's in-house aspect is to assure close supervision and development of essential skills.

A second prerequisite element is careful attention to the selection of outside supervising attorneys. Because the success of the program's farm-out aspect depends upon a cooperative attitude on their part, they should initially be fully advised of the clinic's educational purposes, with subsequent meetings scheduled for periodic review. The element of close law school supervision must be emphasized, and the outside attorneys assured that they can rely on the professional quality of the student's work product.

A third prerequisite is allotment of sufficient credit to demand a corresponding student time commitment. Only if full faith and credit are given for clinical efforts can there be assurance of educational validity for the program.

An additional prerequisite, and the major disadvantage with the combined approach is that, even with a farm-out section, maximum enrollment is limited to about twenty students per faculty supervisor. Because Toledo is a two-division school on the quarter system, registration every other quarter makes clinical experience available to more students than if we were on a semester basis. Cross enrollment by clinic students in evening division courses assures open blocks of time for court appearances and meetings with supervising attorneys, and avoids class conflicts. But by contrast to the traditional farm-out approach, our enrollment is low, though considerably greater than with a pure in-house clinic.

Efforts are currently underway to reduce the impact of the enrollment ceiling. As an adjunct to the clinic approximately 30 second year students volunteer a morning a month to interview defendants for the public defender's office. Other than initial scheduling arrangements, there is no formal connection between this program and the clinic, and no credit is alloted.

An additional adjunct program is in the planning stage, and if established, would not begin until the Fall, 1971 quarter. This program would place volunteer students in the police station during peak arrest periods. These students, who would be assigned in pairs one night a month, would take initial bail information, explain Miranda rights, and contact relatives, attorneys and employers. We anticipate some initial official resistance to this program, but hope that it can be overcome. As with the public defender interviewing program, there would be no credit and no formal supervision of the students' activities, other than scheduling and some initial instruction.

The purposes of these adjunct programs are to provide public service and minimal student exposure to the criminal justice system. They are not considered clinical education programs. They do, however, allow great numbers of students to satisfy their desires for some clinical experience at slight cost to the law school. Demands for enlargement of the clinic's enrollment quota are thereby reduced.

Thus, we hope to overcome the major inadequacy apparent in the combined approach -- its relatively low enrollment. By establishing a revised program combining farm-out and in-house aspects, excessive costs can be reduced and the educational benefits of close supervision maximized. In all, advance planning, we now realize, is essential. Pressure was great for immediate development of a clinical structure; but the program's long-term stability will be better served by evaluation of the strengths and weaknesses of the traditionally distinct models.

Our grant application to CLEPR, which was accepted effective July 1970, spoke in terms of an enrollment of 45 students. Evaluation of past inadequacies, and an effort to reduce their future occurrence, necessitated the reduction in enrollment to about 20 students. We sought CLEPR's patience with our good faith efforts at experimentation, and we encourage other grantee schools to do likewise. A similar attitude was sought and obtained from faculty and administration critics of our prior efforts with clinical legal education.

Toledo's previous experience with clinical programs indicates that neither the farm-out nor the in-house program, if established alone, will be very effective. It is also apparent, however, that local conditions require individual approaches: no clinical pattern will fit more than a few schools. Our clinical efforts are favored by the school's two-division structure and a quarterly schedule which continues throughout the year. We are also assisted by the large number of our graduates now practicing in our area. Whatever the conditions, care should be given to patterning the clinic's structure to take maximum advantage of a locale's unique opportunities. Hopefully, the preceding description of our problems and present plans will suggest effective structures to others involved in clinical legal education.

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Vol. III, No. 8, April 1971

CLEPR ANNOUNCES TWENTY-EIGHT NEW GRANTS

The following grants totalling $1,026,300 have been awarded for support of twenty-eight clinical legal education programs at law schools throughout the United States and in Canada. All the programs will begin September 1971 and are for a two year period with one exception. Those interested in details of the programs should write directly to the Dean of the law school concerned.

American	$37,000
Boston College	$27,000
California-Los Angeles	$11,000
Capital	$29,000
Colorado	$32,700
Denver	$29,000
Detroit	$25,500
Drake	$27,000
Florida	$39,000
Georgetown	$18,000
Indiana	$33,000
Iowa	$45,000
Kansas	$35,000
Louisiana State	$37,000
Loyola-New Orleans	$25,000
Michigan	$77,000
Montana	$37,300
Pennsylvania	$37,000
Rutgers-Newark	$75,000
St. Louis	$15,000
Santa Clara	$50,000
Southern California	$80,000
Tennessee	$25,000
Toledo	$36,800
Vanderbilt	$30,000
West Virginia	$50,000
Willamette	$18,000
York	$45,000

CLEPR BOARD CHANGES

At the annual meeting of the Board of Directors held in March, Orison S. Marden was elected chairman. Mr. Marden has had a long association with clinical legal education. He served as chairman of the National Council of Legal Clinics and as a Board member of the Council on Education in Professional Responsibility - CLEPR's predecessor organizations. Mr. Marden is presently chairman of the New York Legal Aid Society and a past president of the ABA, the New York State Bar Association and the Association of the Bar of the City of New York.

New members elected to the Board at the March meeting are: John M. Ferren, Otis H. King, and Alvin B. Rubin. Mr. Ferren was the Director of the Legal Services Program at Harvard from 1966 to 1970 and supervised the CLEPR fellowship program there last year. He is well known for his writings in the field of clinical legal education. Last June he joined the firm of Hogan & Hartson in Washington, D. C. where he heads their Community Services Department.

Mr. King was on the faculty of Texas Southern University before becoming one of the CLEPR fellows in the Harvard program. He returned to TSU as its Dean last fall.

Mr. Rubin, Judge of the U.S. District Court in New Orleans, Louisiana, headed a special committee of the ABA's Section of Judicial Administration which drafted the ABA Model Rule Relative to Legal Assistance by Law Students.

The members of the CLEPR Board are:

William H. Avery	Chicago, Ill.
David F. Cavers	Cambridge, Mass.
John M. Ferren	Washington, D. C.
William T. Gossett	Detroit, Mich.
Florence M. Kelley	New York, N. Y.
Maximilian W. Kempner	New York, N. Y.
Otis H. King	Houston, Texas
Edward H. Levi	Chicago, Ill.
Orison S. Marden	New York, N. Y.
James M. Nabrit, III	New York, N. Y.
William Pincus	New York, N. Y.
Alvin B. Rubin	New Orleans, La.
Howard R. Sacks	West Hartford, Conn.
Walter V. Schaefer	Chicago, Ill.
Whitney North Seymour	New York, N. Y.
Joseph T. Sneed	Durham, N. C.
Samuel D. Thurman	Salt Lake City, Utah
Maynard J. Toll	Los Angeles, Cal.

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Vol. III, No. 9, April 1971

APPLICATIONS INVITED FOR 1972

CLEPR invites applications for grant funds to be used starting September 1972 in partial support of clinical legal education programs.

The total to be granted by CLEPR for such programs will be approximately half of the total granted this year as reported in an earlier Newsletter. In other words, we expect to grant a total of about $500,000. The average individual CLEPR grant has been less than $40,000. Applicants should be guided by these factors.

Preference will be given to programs which involve students in a clinical experience exclusively for an entire semester and award a semester's credit.

Our Newsletter, Vol. II, No. 7, February 1970, contains the necessary information as to content and format of applications. Additional copies of this Newsletter are available upon request.

Applications must be in CLEPR's office no later than November 1, 1971. Grants will be made and announced in the spring of 1972.

Because of an acceleration in the funding of clinical programs in previous years, the grants made in spring 1972 will exhaust available CLEPR grant funds. Therefore, CLEPR will award no grants in 1973. CLEPR expects to have funds available for grants in 1974 for use starting in the fall of that year.

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Vol. III, No. 10, May 1971

We are pleased to print the following report of a conference of directors of clinical programs in Ohio. CLEPR did not have any role in organizing or directing the conference. The initiative was that of Professor James Carr of the University of Toledo College of Law. The credit for a productive enterprise belongs to him. We believe it would be a good idea for others to hold state or regional meetings to discuss practical problems common to clinical legal education programs.

In addition to Professor Carr, the following were the participants in the Ohio conference: Professor William Bluth, Capital University; Professor George Buttafoco, Chase College of Law; Professor Melvyn Durchslag, Case Western Reserve University; Professor Robert Hunter, University of Akron; Professor Thomas Murphy, University of Cincinnati; Professor Robert Simmons, Cleveland State University; Professor R. Wayne Walker, Ohio State University; Professor Thomas Willging, University of Toledo.

A REPORT ON THE OHIO CLINICAL DIRECTORS' CONFERENCE

by Professor James G. Carr, University of Toledo, College of Law

To consider solutions for some of the practical difficulties involved in directing a clinical program, the directors of eight Ohio law school clinical programs met recently in Columbus. With twelve participants, representing a variety of programs, both established and planned, the meeting covered a wide range of topics. Few definite conclusions were reached, but there was a general feeling that a good start had been made merely by meeting informally for a day of extensive discussion.

Although no formal agenda was prepared, a letter suggesting this meeting and sent to the clinical directors early in January included a tentative list of topics. Among these were: the student practice rule, relationships with outside supervising attorneys, faculty supervision and grading, schedule conflicts, office procedure, acceptance of the program by the bench and bar, and integration of clinical exposure with the classroom. The list was designed to suggest a broad variety of topics, with the realization that one day would hardly suffice to give adequate coverage to them all. This loose structure sought only to indicate problems believed to be common to most programs.

Prior to the meeting, program descriptions were circulated to acquaint the partici-

pants with the general outline of the various clinics. From these descriptions, it was apparent that although most of the eight schools had established clinical programs, few appeared thoroughly satisfied with present structure and operations. In most instances the program descriptions spoke in prospective terms about programs being newly created or restructured and redefined. One director sent a copy of a lengthy faculty committee memorandum, complete with majority and minority reports. Thus the time appeared opportune to consider practical aspects of clinical operations. It was also apparent that our problem solving session would include a substantial amount of abstract debate about the merits of law school clinics in view of the various evolutions currently underway within the group.

The meeting began with a general discussion of some problems with our student practice rule. Some of us have experienced considerable delay in obtaining legal intern certification for third year students. As a preliminary procedure, students must have registered with the Ohio Supreme Court, a process involving lengthy questionnaires and a series of bar association interviews. After suggestions of some ways to avoid this procedural problem, consideration was given to possible substantive amendments of the rule's scope. These changes, if proposed and enacted, would allow student participation at preliminary hearings and juvenile delinquency proceedings, both of which by their generally informal structures offer abundant opportunities for student practice. Though Ohio's rule is of recent vintage,our collective experience indicates that these changes might be in order. However, there was also some countervailing concern that by seeking more we might get less; the rule now being informally construed by some judges to allow juvenile practice, might be amended to make specific prohibitions against such practice. It was decided that a draft amendment would be prepared for later discussion.

The meeting next turned to a discussion of malpractice insurance and several directors recounted their problems with obtaining coverage. Questions were raised, but appeared presently unanswerable, about the possibility of coverage for students as well as clinic directors and personnel. Because most directors had been thus far unsuccessful in their efforts to obtain insurance, cost figures were not available. Two participants agreed to inquire further and to later advise the group.

We next turned our attention to problems of adequate supervision of student work. It appeared that experiences varied, but one conclusion was universal: it is essential to limit clinic caseload and involvement to manageable proportions. Problems of excessive enrollment were also discussed, and this in turn led to efforts at reaching some common understanding of the meaning of "education" for our clinical efforts. Not surprisingly, the discussion tended to go round and about. But there was a common concern that the absence of some adequate definition of educational goals endangers continued acceptance of clinical programs, as well as seriously impeding efforts at solving practical problems. The frustrations and inadequacies of feeling that we knew what we meant but not how to say it were apparent.

From this came a general feeling, however, that the best means was close faculty

supervision of student exposure and experience. Experience at two schools with unsupervised programs indicated the absolute need for adequate supervision from within the law schools. Reliance solely on outside supervising attorneys for substantive educational input has led at best to inferior and uneven instruction, and at worst to complete inattention to learning.

Thus, even without much consensus on educational goals, the generally evolving trend among the participants appears to be towards smaller clinics with reduced student caseloads. For some schools this means a change in both student and client selection practices. The need for allotment of credit was assumed, and the discussion on that issue centered for the most part on methods of measuring the credit allocation. The most prevalent method appeared to be a calculation based on the number of hours spent by the student on clinic related work, both inside and outside the classroom.

It appeared that clinical work had been required for graduation at one time or another in three schools, but that none of the eight schools presently maintained the required status for clinical work. This was felt by the participants to be the best approach based on the general desire to improve the quality of the educational input, which in turn appears to demand a smaller and more selective enrollment than in the past. Grading practices varied, with three schools using a pass-fail system. Some concern was expressed about motivational problems with pass-fail, but there was the feeling that these problems are reduced if there is sufficient faculty contact with the student's work.

Subsequent discussion considered some of the functional problems involved in integrating the clinic into the school's and students' schedules. These included problems of class conflicts and cutting, as well as the impact of examination and vacation periods on clinic operations. The suggestion was made that interruptions caused by examinations and vacations could be reduced by careful monitoring of case intake and the docket. Again, the need for close faculty supervision was apparent. Problems with cutting indicated the need for cooperative planning between the clinic director and law school administration. The opportunity for such cooperation appears to be an additional, if indirect, benefit of granting faculty status to the clinical professor.

There followed some general discussion of case acceptance procedures, particularly as they pertain to the "in-house" operation. To avoid conflicts with the practicing bar, it was suggested that direct contacts be made with practitioners who might be affected by the program as well as with local bar associations. One school's approach to the public relations problem has led to the formation of a clinic advisory board which includes members of the local judiciary.

The day's discussions concluded with some general review of the problems of adequate integration of fieldwork experience and classroom instructions. This, of course, led back to concern for a better definition of the word "education" in the phrase, clinical legal education. These were adknowledged to be topics for another

meeting and tentative plans were made to meet again at the end of the school year.

To give better understanding to these later discussions of the problems of improving the classroom component, we will be circulating manuals and other materials presently in use among our clinics as well as elsewhere. These, hopefully, should give some better focus to our efforts to improve the classroom aspects of our various programs. It was apparent that closer integration is anxiously sought, and none of us felt completely satisifed with present approaches.

In addition to the obvious benefit of becoming acquainted, our day together pinpointed a number of common problems. Some, like the student practice rule, are of rather local concern, while others, like supervision and evaluation of student work, are of more general concern. Though few conclusive answers to the many questions were reached, the exchange of attitudes and experience may lead to some better understanding of the functional problems of running a law school clinical program. As we all develop our programs and adapt them to individual resources, needs and students, ongoing group evaluation should ensure some greater measure of success than any of us presently feel alone.

For others considering similar meetings, we would suggest that the initial organization is fairly easy: a few letters and phone calls sufficed to get us underway. In retrospect, it seems to have been a good decision to limit the participants to persons actually or prospectively involved in administration of clinical programs. Some thought had been given to inviting, among others, deans and curriculum committee chairmen. But, by limiting the group to those actually experiencing the practical problems, we seem to be better able to focus on practical solutions. At some later date when we ourselves have reached some more definite conclusions and better understanding, not only of our methods, but of our education goals, it probably will be most worthwhile periodically to include colleagues and others (i. e., judges, lawyers, CLEPR representatives) in these sessions.

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Vol. IV, No. 1, July 1971

CLEPR HOLDS PROSECUTION WORKSHOP

At a meeting held in New York City on April 30 - May 1, CLEPR hosted a group of twenty-five ranging from clinical directors to prosecutors and other guests who came together to discuss the merits of the clinical experience provided by law students acting as prosecutors. Funding of the programs is provided for by a grant to CLEPR from the National Institute of Law Enforcement and Criminal Justice. The purpose of the grant is to assay the efficacy of clinical education programs on the prosecution side in promoting the Institute's objective of improving the criminal justice system.

The guests included: David Austern, Office of the U.S. Attorney, Washington, D.C.; Kirby Baker, National Institute of Law Enforcement and Criminal Justice, Washington, D.C.; Robert Bishop, Deputy District Attorney, Redwood City, California; Robert Bogomolny, Professor, Southern Methodist University; Addison Bowman, Professor, Georgetown University; Edward Clark, Commonwealth Attorney's Office, Louisville, Kentucky; Adam von Dioszeghy, Professor, Stanford University; John Dwyer, Esq., Dedham, Massachusetts; David Epstein, Esq., Washington, D. C.; Joel Gottlieb, Assistant Attorney General, Columbia, South Carolina; William Hobbs, District Attorney's Office, Los Angeles; Earl Johnson, Professor, University of Southern California; Murl Larkin, Professor, Texas Tech University; Joseph Mulhern, Assistant Supervising Attorney, Jamaica Plain, Massachusetts; James Pierce, Professor, University of Florida; Thomas Purdom, County Attorney, Lubbock, Texas; Edwin Render, Professor, University of Louisville; Thomas Ridgway, District Attorney, Monroe, Georgia; Larry Ritchie, Professor, University of South Carolina; Leo Romero, Professor, Dickinson School of Law; Arne Schoeller, National Institute of Law Enforcement and Criminal Justice, Washington, D. C.; John Strauss, Professor, University of Georgia; George Van Hoomissen, Dean, National College of District Attorneys, Houston, Texas; and Gene Whitworth, State Attorney's Office, Gainesville, Florida.

Participating from CLEPR were Peter Swords and Betty Fisher. CLEPR's workshop consultant was Professor Lester Brickman of the University of Toledo.

In the span of one and a half days of discussion, the participants covered a several page agenda with the most attention being paid to six areas of concern: types of student activity; supervision; pre-clinical training; classroom component; practical problems; and program impact.

The major differences in types of student activity illustrated by the wide variety of programs represented and included under the generic heading of clinical prosecutor programs, derive mostly from differences in local rules (state and court), varying degrees of cooperation by prosecutors' offices and conceptual differences as to the proper form and content of the clinical program.

The first area of possible clinical activity -- following the chronological order of the criminal process -- is the police arrest and report. Several programs provide for students to be available to police to render assistance in correctly carrying out searches, obtaining warrants, etc. This contact was found to be desirable both from the perspective it provided the student and the assistance provided the police. Expectations as to possible difficulties arising from differences in attitude were not realized. Indeed, the contrary was a more typical result. That is, in the case of defense-minded students, the exposure to crimes and victims and obvious instances of guilt tended to unmake facile judgments to the effect that the police were the aggressors in the criminal process.

Once a report is filed in the prosecutor's office, whether by the police or by a complainant, an investigation is held to determine whether there is a basis for prosecution. Several programs permit student participation in this phase. Where responsibility is accorded, students interview witnesses, policemen, obtain sworn testimony prospectively oriented towards trial, and draw up a report in support of their conclusions. The final decision as to whether to prosecute is, of course, made by the DA, but several programs permit extensive student participation in this decision.

Virtually all the programs include student prosecution for misdemeanor violations although variations arise because in some jurisdictions misdemeanors can be punished by up to ten years in jail while in others one type of misdemeanor prosecution is an appellate de novo proceeding appealed from lower magisterial courts. Most misdemeanor prosecution participation is in cooperation with county prosecutors. Affiliations with city prosecutors are generally classed as less desirable because so many city prosecution offices do not engage in prior preparation. Several program directors expressed an interest in participating in city-level prosecution in an attempt to reform the system, but all conceded they do not now have sufficient resources to both continue their present level of efforts and take on major new responsibility as well.

Only a few programs permit students to prosecute felonies although those that do not commonly permit students to represent the state in felony matters at the preliminary hearing stage. Both the program directors and the prosecutors from those jurisdictions permitting full scale student participation in felony prosecution expressed substantial satisfaction with the results and encouraged others to institute similar programs. Most participants were indeed encouraged by these reports although a few felt that the present student practice rule in their jurisdiction was a limiting factor. Those who spoke against inclusion of felony prosecution in their programs were careful not to

ascribe this to any inability on the part of their students. Rather they were reflecting a dichotomy expressed at the meeting between the "fewer cases, more in-depth participation per case" position and the "greater time in court, less intricate case" position. Each side made a persuasive case. Those arguing for more courtroom time pointed out that prosecution programs were unique in that they permitted -- if the opportunity were availed of -- more time in the courtroom than any other form of clinical experience. The more intricate the case, the greater the preparation time required and hence the less time available for actual in-court work. The advocates for felony case participation pointed out that in jurisdictions where trials were de rigueur within four or five months after arrest, the students also had an opportunity for a unique experience: to see a relatively intricate case completely through from start to finish within time confines not out of the student's reach.

A few programs have students participating in appellate work but many participants felt that such participation ought not to be encouraged since opportunities to engage in appellate practice are often available elsewhere in the curriculum whereas real trial experience and the requisite prior preparation -- generally not otherwise available to students -- are the primary purposes of the clinical program.

The most widespread disagreement over modes of student participation centered about the institution of plea bargaining. The sentiments and actualities expressed ranged from total participation to total prohibition from participation. Where participation is permitted, both program directors and prosecutors expressed satisfaction with the student performance. All indicated that careful preparation by the student is required and practice seminars are held. The prior concurrence of the prosecution in the outcome to be sought is always mandatory and the presence of a prosecutor at the bargaining session is almost always required. The objections were raised by prosecutors who felt that plea bargaining required so extensive a knowledge of the personality of the accused and of his lawyer that they do not even permit their assistants of a few years standing to plea bargain. They do, however, permit students to sit in on the sessions.

While most of the law schools have defense clinics, only a few combine both aspects of the criminal process in the same program. Because of conflict of interest problems, the combinations are typically effectuated by prosecution in one type of case or at one level of prosecution and defense in a different type of case or at a different level. For example, in one program, students prosecute misdemeanors but participate in felony prosecutions only at the preliminary hearing stage. These same students act as defense counsel in felony prosecutions. Several participants expressed the hope that those programs combining prosecution and defense (U.S.C., Georgetown, and Louisville) would carefully evaluate their own experiences and publish the results.

Predictably, the most pressing issue from the point of view of the conferees was that of supervision. Although many supervisory models were presented and discussed, the one striking the most responsive chord represents a combination of law school talent

and prosecutorial office authority. In this model the program director is appointed a "special prosecutor" (either formally or by understanding) and actually handles the complete prosecution himself. A student is assigned to each case with some variances occurring in the degree of responsibility accorded the student. In some instances, the program directors are able to pick and choose the case they wish to remove from the prosecutor's desk and take back to their law school office.

Where other modes of supervision are utilized, they typically involve assignment of students to individual prosecutors with the program director keeping careful tabs on the students' activity. Variations between the two modes are also common. For example, in one program, the "decision whether to charge" stage is handled entirely by the program director (with the concurrence of the DA) and if a formal prosecution ensues, then the student is assigned to work under an assistant DA who thereafter handles the case. In another variation, students spend their first three to four months prosecuting misdemeanor cases under the supervision of the program director who has been appointed a special prosecutor. Upon "graduation", the students are sent to a suburban district where they try six-man jury cases under the supervision of the DA. During the initial training period, care is exercised in the selection of cases for student prosecution. However, once the student transfers to the suburban DA's office, he then works on whatever cases are currently being handled by that office.

Where students are supervised by prosecutors, a variation was noted between those arrangements where, on the one hand, students are assigned to work with particular prosecutors for an extended period of time and, on the other hand, are assigned to a pool of prosecutors to work with different prosecutors as their needs dictate. It was said that an advantage of the pool arrangement results from students being able to compare the abilities and techniques of several prosecutors. Further, if there is a problem with finding a sufficient number of cases for the students to participate in, the pool arrangement permits them the flexibility to go where the demand is. The major advantage of the individual assignment method lies in the fact that a program director can assure that his students will be supervised by the better prosecutors.

The degree of supervision necessary to be provided is an incident of the nature of the student activity. While desirable features can be readily identified, such as supervision of each student at every stage by the clinical program director, agreement on the tradeoffs was far from unanimous. For example, the closer the supervision provided by the director, the fewer the number of students that can participate. By farming out students to the prosecutor's office, such as they do at U. S. C., though only after careful preparation of the student, the number of students participating is maximized (the Los Angeles prosecutor's office has 400 assistants) but the actual supervision afforded each student is reduced and, of necessity, there is increased reliance on the efforts of individual assistant prosecutors. To facilitate feedback the assistant prosecutors are provided with evaluation forms which they are asked to fill out for each student. Such techniques, designed to maximize the efficiency of supervisory efforts, were of course of great interest to the group. Several advocated requiring the student to maintain careful records of his work including initial reports on field investigation, recommendations as to whether to institute

prosecution, and proposed trial strategies. The director is then able to subject student work to close scrutiny and provide feedback even when he does not provide the preliminary supervision.

Closely akin to the supervision issue is that of the amount and type of pre-clinical training to be provided. One sophisticated version presented involves the use of simulation. In this program, students respond to selected hypothetical problems in a simulated practice setting. They engage in direct and cross examination, jury selection, etc. This phase is in no way a replacement for clinical activity but rather is designed to train large numbers of students for clinical work.

A new approach to simulated work involving the training of students in direct and cross examination developed at the Stanford Law School was described. For direct examination there are prepared simple half-page "canned" police reports involving burglaries, drunken driving charges and similar matters. The students are handed these reports at the beginning of the class and given a limited amount of time, between five and ten minutes depending on the complexity of the matter, to write down all the questions they would ask on direct examination the police officer who prepared the report in order to bring into evidence all the elements of the particular crime charged. This method is designed 1) to provide a realistic context in which the students only have a short time to evaluate the report; 2) to focus their attention on the elements of crimes, the eliciting of questions relevant to proving those elements, to teach them to avoid asking leading questions and the like; and 3) to train them to avoid asking superfluous questions. Thus, both thoroughness and economy are stressed. Their answers are handed in and then discussed by the entire class in considerable detail. This method has proven to be very effective. The students have reported that it has helped them in their actual trial work, and they all found it a very exciting exercise.

For cross examination a short synopsis of the People's case is prepared which includes the testimony of three different witnesses. For instance, in a burglary case there might be included the testimony of the owner, an outside witness who saw the defendant near the place that was burglarized, and the police officer who made the arrest. These are given to three students. Another student or faculty member is prepared to play a witness who will give to the defense counsel, played by the faculty director, testimony in contradiction to that which the students have in their synopses. Two of the students are sent out of the classroom and the remaining student is given ten minutes to attempt to break the witness on cross examination. When he is through, a second student is brought in and the process is repeated. Finally, the third student is brought in to perform. This part of the class period takes about thirty minutes and the second half of the class is taken up by discussion and critique of the students' performance. This method, too, has proven to be enormously successful.

A more common pre-clinical component is the setting aside of the first two to four weeks of the program for the transmission of substantive and procedural information. Most of the participants felt that courses such as Criminal Procedure and Evidence too often

failed to prepare a student for any meaningful practice experience. Several felt that the courses could be better taught in a pre-clinical setting as part of a clinical program. The point was frequently made that even where students had adequate substantive preparation, typically they did not have the foggiest idea how to translate the elements of a crime into the presentation of a case. As a consequence it was necessary to spend considerable time in straightforward how-to-do-it instruction. Most often, the nuts and bolts of prosecution was the major component of the classroom phase of the program. In some instances, the classroom phase of the clinic was simply a continuation of pre-clinical training with greater and greater emphasis on practicality. For instance, the Stanford program described above is conducted all year. Guest lecturers in such areas as narcotics addiction, alcoholism, fingerprinting, blood analysis, and toxicology are becoming commonplace in classroom sessions. Field trips to jails and prisons with opportunities to talk candidly with prison officials are also being added on the theory that prosecutors should be aware of the consequences of successful prosecution. Different points of view were expressed over the utility of the classroom component. The opponents of the classroom component took the position that the only way you learn is by actually trying cases and since, in their view, the major function of clinical work is to teach students how to litigate, anything short of actual trial experience is of relatively little value. However, several of the programs represented felt that a part of the classroom component should be devoted to a systemic view of the criminal justice system. While all agreed that the experience yielded by the clinical program was exceedingly rich in the potential philosophical issues that can compose the most intellectually demanding of class sessions, several felt severely handicapped by the absence of materials (although a few of the participants were engaged in assembling extensive clinical teaching materials). Others felt that the overview of the system for administration of criminal justice more properly lay in the domain of a separate research seminar. It appeared that the issue was generated by the relatively small amount of time that students have to spend with these programs. Given this limiting factor, either the classroom work or a student's field experience had to be emphasized to the other's prejudice. It was agreed that these considerations militated towards the full semester approach or an approximation thereof for clinical legal education.

The practical problems raised at the workshop that are encountered in running clinical programs, cover a wide gamut. The relationship between program director and prosecutor was candidly explored. A few program directors felt that some prosecutors they had encountered were reluctant to cooperate in establishing clinical programs because they did not want their practices exposed to the outside world. The prosecutors present at the workshop did not exhibit any such reluctance. One expressed the view - - concurred in by several others - - that he "had learned a lot more from the students than they had learned from him".

The cooperation problem is one facet of a larger problem generally denoted as confidentiality. Most state prosecutors hold elective positions and have the natural caution of the politician. This is typically reflected by the expression of grave concern for the confidential nature of the workings of the prosecutor's office. All the participants agreed that once their programs had gotten underway, virtually all initial reluctances were

overcome. A more limited but also more limiting aspect of the problem is the degree to which students can bring pending cases into the classroom for discussion. For those programs where defender and prosecutor students attend the same clinical classes, such discussions are simply beyond the pale. Cases in investigatory or grand jury stages are likewise not amenable to in-class discussion.

Plea bargaining, earlier discussed as a valuable component of the clinical program, has some serious liabilities from the point of view of desire to provide students with courtroom experience. For if the case settles out of court or there is a guilty plea - - circumstances which account for upwards of 90 per cent of the cases - - the student does not gain in-court experience. He does, however, gain the experience of preparing for trial which if supervised properly, can provide substantial opportunity for educational benefit.

A rough counting among those programs represented at the workshop indicated that very few minority students are participating in prosecution programs. This holds true as well for those schools which have relatively large minority student populations. Several program directors felt that these students have exceptional empathy problems and therefore cannot bring themselves to represent the state in a criminal prosecution. Most directors, however, felt that while the ingrained prejudices are deep-seated, they nonetheless expected to gain minority student participation at least commensurate with minority student enrollment in law schools within a few years. Several expressed the hope that breaking the ice by having even one minority student participate would likely go a long way toward solving the problem.

The impact of the various prosecutor programs was judged favorable by all those attending. In several instances the programs are bringing about substantial improvement in the system for administration of criminal justice by upgrading the performance of prosecutorial staffs; several programs are providing professional caliber prosecution at judicial levels which heretofore were handled solely by police officers. Other programs have come to be regarded as significantly assisting the DA in handling his caseload as well as serving as training centers for future prosecutors. Several prosecutors felt that they were gaining a great deal from the clinical program. One program, for example, is in the process of preparing a prosecutor's trial manual. Another program has assigned two students, one with an M.B.A. from Harvard and the other a former Pentagon efficiency expert, to assist the prosecutor's office in revising the office's method of operation. Several prosecutors felt that their public images had improved as a result of their association with a law school. They felt that it gave them a progressive reputation in the community. Other prosecutors indicated that student participation resulted in their taking a broader view of the judicial process. Because of their supervisory capacity, they regarded themselves as teachers and felt a need to think more about the role of their office in the criminal justice system. Relationships with police were also improved since student manpower was often used to explain to a policeman why his complaint did not result in a prosecution. Prior to the institution of the clinical program there simply was not sufficient manpower or time to explain to an

arresting officer that his case was legally deficient. Indeed, as mentioned earlier, such contact between the typically defense-biased law student and the police has generated its own worthwhile results.

The impact of these programs upon the students participating in them was also developed at some length. Several participants noted that their students have been opened to new career alternatives. Many students who would not otherwise have considered working as prosecutors have elected to go into this field of work after graduation as a result of their experiences in prosecution programs. More generally, many students who felt they were not equipped to litigate have discovered not only that they are able to try cases but that they enjoy it and so have made career choices on that basis. A number of prosecutors complained that many defense lawyers do not know how to speak to and deal with prosecutors. They agreed that students who later became defense attorneys, because of their experience on the prosecution side, would not be subject to these infirmities.

Several interesting responses were made to the question: What particular value does a lawyer derive from having his first clinical experience as a student in a law school program rather than as a recent graduate in actual practice? First, and perhaps most emphatically, it was noted that because students do not feel the full pressure of the office's case load, they are able to prepare cases fully and so develop good work habits. Secondly, students are aware of the fact that they are students during their first clinical experience and so view the experience from a different perspective than they will as young lawyers, a perspective which produces greater educational impact. Furthermore, because students work together, they frequently engage in long discussions amongst themselves about their experiences, which prove to be educationally worthwhile. Finally, it was said that because they are students and therefore expect criticism they are critiqued on a number of points that in all likelihood would not be called to their attention by their colleagues in actual practice. As an example, the suggestion to "keep your hands out of your pockets" was given.

On balance, program participants felt that clinical prosecution programs have much to offer. They afford a great deal of courtroom experience, there are no potential due process problems as on the defense side (for adequacy of counsel), students are able to gain a more balanced view of the process, and the system for the administration of justice is improved. Finally, prosecution, because of the repetitive nature of many of the cases and its single track orientation (as opposed to the multi-branched nature of civil cases, e. g. welfare, consumer, housing, etc.), presents fewer problems from point of view of preparation of students and implementation of a clinical program.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

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Prefatory Note

On May 31, 1971 a Conference was held in Washington, D. C. under the auspices of the Curriculum Study Project of the Association of American Law Schools. According to the invitations issued to participants, the purpose of the Conference was "...to discuss and criticize a report to be submitted by the Committee to the Association". The Model Course Announcement of the project report is described in a comment prepared by Professor Edmund W. Kitch of the University of Chicago and circulated with the report, as follows: "The Model tendered by the Committee, when stripped of its operational complexities, is antithetical to clinical education ... on the whole the Model moves the law school into, and not away from, the University, and towards, not away from a definition of the law school's teaching function as a function to teach that which can be effectively taught through traditional academic methods -- the course, the tutorial, and the examination subject".

Whatever the intent of the Committee preparing the draft of the report which was considered, it is fair to state that much of the day's discussion by the approximately 150 participants involved sharp criticism of the Committee's draft for moving away from developments in clinical legal education. Very many, if not most, considered the Committee's report to be a step backward.

One of the two keynote speakers was Charles E. Silberman (the other was Ramsey Clark). In emphasizing the importance and value of clinical education, Mr. Silberman's comments were prophetic in previewing the day's discussions. Because of CLEPR's interest in clinical legal education, we are reprinting Mr. Silberman's address.

EDUCATIONAL TRENDS AND THE LAW

By Charles E. Silberman*

In trying to decide how to begin my talk this morning, I was reminded of an old story about the gentleman who approached the Episcopal Bishop of Virginia to inquire whether it was possible for a non-Episcopalian to be admitted to Heaven. The Bishop thought for a time and then answered that while he was not sure, he rather doubted that a non-Episcopalian could be admitted to Heaven. But he was sure of one thing: if the person in question were a gentleman, he would not make the attempt.

As you will discover in the next 30 minutes, I am no gentleman -- not because I wish to enter the Heaven of the law, but because of perhaps an even greater act of arrogance. My purpose

this morning, as I have redefined it, is to persuade you that the territory staked out in the Proposed Final Draft of the American Association of Law Schools Curriculum Study Project is not Heaven, but, indeed, falls considerably short of it.

This is not, I must confess, the purpose for which I was invited here. I think the principal reason that I am here is that Paul Carrington and his colleagues had the quixotic notion that since the students you meet in your law classes have lives that began before they entered Law School, and since among the experiences that have shaped and molded these students, twelve years of elementary and secondary school and four years of college may be presumed to have played a major role, it might be useful for you to know something of the changes that have been occurring in the colleges and elementary and secondary schools. My assignment, in short, was to help place the kinds of changes in legal education you are considering in the framework of what is happening to education in general.

But the changes you are considering run so counter to what I think is happening elsewhere in the educational system that I feel the need to speak to the proposed Model itself, to what I think is ill-advised or wrong in it. I hesitated a long time before doing this, because there is so much that is good and right in the Model. But I came to the conclusion that this is another instance of Emerson's dictum that "the attained good is often the enemy of the better."

Let me begin with Professor Kitch's characterization of the Model: that "on the whole" it "moves the Law School into, and not away from, the University." The problem, I submit, is that the Model moves the Law School into an obsolete conception of what the university is, or should be: obsolete in its conception of what constitutes the curriculum; obsolete in its definition of the teaching function; and obsolete in its attempt (unfortunately successful) to avoid any commitment to the social good.

Let me explain what I mean:

1. Although the words "curriculum" and "curricula" appear with great frequency, they are nowhere explicitly defined. A definition is implicit, however: the Report talks of the curriculum as though it were coextensive with the course offerings; thus, a model Law School catalog description of these courses constitutes the full description of the curriculum.

But of course the curriculum includes considerably more than just the formal courses; it is the sum total of all the experiences students have, in class and out. And we have a considerable body of scholarly literature suggesting that the so-called "hidden-curriculum" may be as important as the visible or formal curriculum, which indeed it may contradict. Christopher Jenks and David Riesman, in their major study, The Academic Revolution, demonstrate that the major function of professional school tends to be socialization into the profession -- into a model and conception of what the profession is about and for, and into a set of professional attitudes and values. This process of socialization occurs in a variety of ways: through the courses, in part, but perhaps more importantly through the cues that faculty members provide in a variety of ways, consciously and unconsciously, in their dealings with students and with one another; in the professional school's faculty status and reward system; in the kinds of lives faculty members lead; in what they regard as important and what they regard as unimportant; in what they reward and what they punish.

The process of socialization also occurs through the student's culture: through peer group relationships that may, in part, be independent of the faculty and administration but that in part may be shaped, consciously or unconsciously, by the nature of the formal curriculum, by faculty attitudes, and so on. After medical school, this process of socialization has been more closely studied in law schools than anywhere else, in the works of David Riesman, Dan C. Lortie, Seymour Warkov, Jerome Carlin, Wagner Thielens, Jr., among a number of others. Yet I was unable to find any evidence that the insights growing out of this work had been used in the recasting of the curriculum.

There is a curious irony in this fact -- in this failure to think about the hidden curriculum of the law school, or of the law itself -- for lawyers ought to be more sensitive to its importance than the members of any other profession. The essence of the law, after all, is the emphasis it places on what Willard Hurst calls the "substantive importance of procedure" -- on the recognition that means shape and even determine ends -- that the way men do things may be more important than what they do. The way men do things determines what kinds of men they are and what kind of society they have, as much as the other way around. The "substantive importance of procedure", as Professor Hurst has written, is "perhaps the most basic lesson" that the law can teach.

2. The second form of obsolescence -- the conception of the teaching process itself -- is closely bound up with the first, with the overly narrow definition of what constitutes the curriculum. Let me turn again to Professor Kitch's characterization of the educational purposes and philosophy of the Model. In moving the Law School into the University, he writes, the Model also moves the Law School "towards ... a definition of the law school's teaching function as a function to teach that which can be effectively taught through traditional academic methods -- the course, the tutorial, and the examination subject." Hence, "the Law School of the Model is more like a graduate department ... and less like a law office than a contemporary law school."

The attempt to make the law school more like a graduate department might well have been made five or ten years ago; as Jenks and Riesman demonstrate in their monumental study, the pull of the graduate school lies at the heart of what they call "the Academic Revolution." But it is, I must confess, somewhat disconcerting to find that pull still operating today for the faculty of law!

The conception of the teaching function as being limited to what can be contained in academic subjects seems to me to be obsolete or unwise in several respects:

1. On one level, it ignores what the best students are saying. They are objecting to the emphasis on graduate training and research, which too often results, in Nietzche's phrase, in "the advancement of learning at the expense of man." Jencks and Riesman write that the best contemporary students do not "demand flashy lectures by professional showmen, nor easy answers to recalcitrant questions. But they do insist that there be a visible relationship between the questions asked in the classroom and the lives they live outside it."

In the case of law schools, it seems to me that in the past five years or so there has been a profound change in the nature of the student body. The literature of the early '60's indicated that law students were less interested in social change, less interested in concern

for justice and injustice, and more concerned with personal careers and money making, than students in most other professional schools. It would appear that there has been a major change in the last five or six years. Professor Riesman suggested in his paper at the Harvard Centennial Celebration a couple of years ago at Harvard Law School that the kinds of students who in the '30's and early '40's turned to economics as the route to social change, and in the '50's and early '60's turned to sociology or some of the other social sciences, are now somewhat disenchanted with the social sciences and are turning to the law as the instrument of social change. They come to the law because of their concern for justice, because of their concern with the degree, the extent, of injustice within our society. To ignore these students' search is, it seems to me, to persuade them, unconsciously perhaps, that the law is not the instrument of social change.

Secondly, on another level, this view of the curriculum and of the teaching function seems to me to accept what some of the worst -- or perhaps more accurately, some of the more misguided -- students are saying. More precisely, it accepts the terms of the debate that so many of the young rebels, and their would-be young adherents on college faculties, have proposed. I share the concern the authors of the Model displayed about the fashionable new anti-intellectualism of the intellectuals. The current worship of uninhibited sensation and feeling -- the emphasis on experience qua experience, the insistence that all experience is valuable so long as it is unmediated by reflection or rational thought -- at its best is sentimental foolishness, at its worst is something more than that.

But this view has arisen, it seems to me, at least in part, as a reaction against its opposite number, the exaltation of the disembodied intellect, of the mind divorced from feeling or action. Both views, it seems to me, the worship of the disembodied intellect and the worship of pure experience, represent badly mistaken conceptions of the nature of mind and knowledge, which encompass feeling no less than intellect, and intellect no less than feeling.

Jerome Bruner of Harvard, the great social psychologist, has written: "The scientist and the poet do not live at antipodes." On the contrary, the artificial separation of these aspects or modes of knowing -- the false dichotomy between the 'cognitive' and the 'affective' domains, or between academic and experiential knowledge -- can only cripple the development of thought and feeling.

The Ancient Hebrews understood this well. The Biblical Hebrew word for knowledge, yadah, implies a total fusion of thought, feeling, and action. And in that archaic expression of the Old Testament, "and Adam knew (yadah) Eve, his wife", the word knowledge implies such a total fusion of thought, feeling and action that it was used to imply sexual union. Or as Yeats wrote:

> God guard me from those thoughts men think
> In the mind alone;
> He that sings a lasting song
> Thinks in the marrow-bone.

I submit that the emphasis on academic learning alone, the explicit rejection of clinical experience as an equally important form of learning, reflects this academic sin of emphasizing the intellect alone, disembodied from action.

Certainly limiting the formal curriculum to academic subject matter also runs counter to the dominent tendency in professional education elsewhere, particularly in medical education. Medical educators, for example, increasingly reject the Flexner Model's dichotomy between the "pre-clinical" and "clinical" years; the most innovative (and, increasingly, the most prestigious) medical schools now introduce students to clinical experience in their first year; and more and more they attempt to organize the curriculum so that the formal work in both pre-clinical and clinical sciences grows out of the clinical experiences themselves -- an attempt to create a situation in which theory both grows out of and informs practice.

The reasons for this change in medical education -- and I think they apply to legal education -- are essentially two-fold:

Firstly, a conviction that learning is likely to be more effective if it grows out of what interests the learner. Alfred North Whitehead wrote in The Aims of Education that the aim of education "is the acquisition of the art of the utilization of knowledge. A merely well-informed man is the most useless bore on God's earth. Pedants", he said, "sneer at an education that is useful. But if education is not useful, what is it? Is it a talent, to be hidden away in a napkin? Of course education should be useful, whatever your aim in life ... It is useful because understanding is useful."

Early clinical experience is being emphasized for a more important reason, bound up with the first kind of obsolescence in the Model's conception of the university. Clinical experience is emphasized as a means of shaping medical students' conception of their role. There is a growing concern among medical educators that postponement of clinical studies tends to dissipate, or even to destroy, medical school's most valuable instrument -- the interest, enthusiasm, and idealism with which students begin their studies. This interest and enthusiasm evaporates when students spend two years studying basic sciences with little if any indication of how these sciences may contribute to their needs and activities as a practitioner.

More important, the two-year deferment of the student's basic objective, that of helping sick people, also tends to erode their initial idealism. Thus, medical educators speak of the "pre-clinical" and "clinical" years of the Flexner Model as the "pre-cynical" and "cynical" years. Seymour Warkov's studies of law school students indicate that the same process occurs in law schools, i.e. that law students, when tested in attitudinal surveys, displayed considerably more idealism at the beginning of law school than they did at the end.

And so I would argue that clinical experience is crucial, not because it contributes to the development of skills but because it can contribute to socialization into a professional model built around the concern for justice and injustice that Ramsey Clark urged in his address. I am talking about clinical experience that emphasizes that the purpose of the law, the purpose of legal education, must be social change -- must be an increase in justice and a decrease in injustice.

What must be remembered, however, is that clinical experience per se provides no magic. What shapes students' attitudes and values is not simply their own clinical experience, but their perception of how their professors act, of how they behave in the clinical experience, how they deal with clients -- in short, what values are revealed in their behavior.

We know in medical education, for example, that students' choices of specialties within medicine is shaped very heavily by the status systems within the medical school. Surgery traditionally has been at the top of that status hierarchy; community medicine, public health, preventive medicine traditionally have been at the bottom of the hierarchy; And so the process of medical education tended to pull the abler students into surgery, or in recent years into medical research, and away from practice, away from community medicine, away from concern with public health. This is changing rapidly and radically under the impetus of medical students' insistence that wholly new systems of delivery of medical care to the poor be created. I submit that the same applies to the study of law.

Thus, the purpose of clinical experience must be understood as socialization into a professional model, which is to say into some conception of the nature and purpose of law.

And this brings me to my third source of unhappiness, the third form of obsolescence in the model: the explicit avoidance, in the words of the Model, of "any commitment to any social cause except those inextricably affected by the educational process." The Model "is reluctant to undertake the task of distinguishing between good causes which merit credit and bad causes which do not." While "such moral judgments can and should be made by the individual members of the law school community", they should not be institutionalized. Hence the Model "acknowledges a responsibility of law schools to take full account of the consequences of their program; but it stops short of assuming responsibility for a general pursuit of social good."

This, of course, is the traditional Ivory Tower view of the university, symbolized most clearly in the architecture of Oxford and Cambridge, whose buildings quite literally physically face inward toward one another, with their backs to the world -- facing away from reality, inward to the university. This view simply will no longer suffice.

It will no longer suffice, in good measure, because there is no escaping the question of values, for education is inescapably a moral enterprise. What we teach and how we teach ultimately reflect a conception of the good life, the good man, the good society. What we teach and how we teach shape the values of our students and of ourselves.

Failure to acknowledge this fact does not mean that the law school avoids commitment to some definition of the social good; I submit it means there is an unconscious commitment to the legal system as it now is, rather than as it ought to be. It means that the law schools will be turning out lawyers who continue to fit the description that Alexis de Tocqueville made 140 years ago. "Men who have made a special study of the law", says Tocqueville, "derive from that occupation certain habits of order, a distaste for formalities, and a kind of instinctive regard for the regular connection of ideas which naturally render them very hostile to the revolutionary spirit and the unreflecting passions of the multitude. Some of

the tastes and the habits of the aristocracy", Tocqueville continues, "may consequently be discovered in the characters of lawyers. I do not assert that all members of the legal profession are at all times the friends of order and the opponents of innovation," (Tocqueville seemingly has Ramsey Clark in mind), "but merely that most of them are usually so. Lawyers are attached to public order beyond every consideration. And the best security of public order is authority. It must not be forgotten also that if they prize freedom much they generally value legality still more. They are less afraid of tyranny than of arbitrary power, and provided the legislature undertakes on itself to decide matters of independence, they are not dissatisfied." That conception of the law, that kind of lawyer, will no longer do.

If I may quote the Report against itself, on page 3: "The rich complexity of the value judgments which underlie our educational institutions does not justify our natural resistance to thinking about them." Amen.

The failure to come to grips with the full implications of that statement seems to me to lead to a series of contradictions in the report. For example, the goals of legal education on page 3 lists as #3 and #4 the following: "(3) the improvement of access of all groups within the society to a voice in the exercise of power; (4) the improvement of the mobility of individuals across socio-economic class lines." I submit that one cannot list these goals as important objectives of legal education and at the same time argue that the law school must avoid any commitment to some conception of the social good, because those goals imply a profound change in the nature and structure of American society.

Unfortunately, those two goals are not really reflected in the bulk of the text itself -- in part, I think, because the model is principally directed to some of the other goals that are listed: "the improvement of the quality of general professional services in law"; "the increase of the availability of good legal services"; "the enlargement of the range of individual freedom of law students within the school"; "the establishment of a more humane atmosphere in law schools"; "preservation of university law schools as institutions congenial to intellectual inquiry."

The critical goal is the first: "The improvement of general professional services in law." That definition is basic. I would like to suggest, to echo Ramsey Clark, that the first goal must be, not the improvement of professional services in law, but the improvement of justice, or the reduction of injustice. Indeed, being a writer I have an obsession with words and I was struck by the fact that the words "justice" and "injustice" hardly occur in the Model, if indeed they are mentioned at all.

To quote a famous American, let me make one thing perfectly clear: I am <u>not</u> calling for the politicalization of the law school or of the university. On the contrary, I am, in a sense, calling for its de-politicalization. The point is that the law school -- certainly the law school of the Model -- is already politicized through its commitment to the status quo. Indeed, given the definition the Model provides of what a lawyer is, it is almost inevitable that law schools would tend to turn out lawyers of the sort Tocqueville described. The critical definition occurs in the description of the Standard Curriculum on page 5:

"The generalist lawyer is a specialist in the application of power to resolve social conflict." Much of what troubles me is bound up in that definition, which all too often means a commitment to injustice, or at the very least, an inadequately developed sense of what Edmond Cohen called "the sense of injustice."

The point is that where gross injustice exists, the pursuit of justice may involve the exacerbation of social conflict, not its resolution. It is precisely this commitment to conflict resolution rather than to justice that creates the lawyer's bias for the status quo and against social change. I would like to suggest that that definition be changed to make the generalist lawyer "a specialist in the application of power to secure justice or to reduce injustice."

I would add that this change is essential if the law is to remain a conservative institution. If we are to have a society to conserve, we must be committed to social change to secure justice.

And so the law school cannot remain an Ivory Tower; it cannot face away from the world. It must recognize and take account of the crisis -- the multiple crises of our time. Writing in a period of another crisis, John Dewey in 1934 wrote: "It is necessary to prepare the coming generation for a new and more just and humane society ... which, unless hearts and minds are prepared by education, is likely to come attended with all the evils that result from social change effected by violence."

Dewey went on to speak of the "unprecedented wave of racial and national prejudice, of readiness to resort to the ordeal of arms to settle questions, that animates the world at the present time. The schools of the world," he concluded, "must have somehow failed grievously or the rise of this evil spirit on so vast a scale would not have been possible."

If Dewey were writing about law schools today, he might have paraphrased in this fashion: "The law schools -- and the lawyers -- of this nation must have failed grievously, or this most affluent society in history could not be so grievously flawed by poverty, by racism, inhumanity, and injustice." It is past time for us to remedy that failure.

* Mr. Silberman is a noted commentator and writer on social and educational problems. He is the author of Crisis in Black and White and Crisis in the Classroom.

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FINANCING LEGAL EDUCATION

On June 8, 1971, a workshop on law school financing was held. Participants in the day-long conference were: Lawrence Blades, Dean, University of Iowa Law School; Bruce Johnstone, Project Specialist, Ford Foundation; Maximilian Kempner, Chairman, ABA's Section of Legal Education and Admissions to the Bar; Bayless Manning, Dean Stanford Law School; James Paul, Dean, Rutgers-Newark Law School; Joseph Sneed, Dean, Duke Law School; Frank Walwer, Associate Dean and Arthur Murphy, Professor, Columbia Law School; Christopher Edley, Officer in Charge of the Government and Law Section of the Division of National Affairs of the Ford Foundation and Leonard Ryan, Program Officer with the Government and Law Section.

The workshop was organized and written up by Peter Swords, a Program Officer. CLEPR was represented as well by William Pincus, President, and Betty Fisher, Program Associate.

At the start it was explained that one of CLEPR's major philanthropic objectives has been to have its law school grantees assume on their own, at the end of the terms of CLEPR's grants, the entire costs of operating the clinical programs CLEPR has helped start. While it has so far been successful in its endeavors, many of its programs have been on a modest scale. As they expand in size the law school will experience increasing cost pressures in maintaining them. Because of its interest in seeing clinical work become a permanent and consequential part of the law school curriculum, CLEPR has been led to develop a major interest in the economics of legal education per se. It was pointed out that before a law school institutes a clinical program, or any new program, it will naturally ask how much it will cost to run. Pressures caused by the additional expense of a new program precipitate further inquiry into the economics of the whole law school program. Questions are raised as to the number of electives, teaching loads and the like. Thus, as well as its particular interest in promoting clinical legal education, CLEPR has become concerned with the broader problem of seeing a wise application of all of a law school's resources.

It was asserted that the costs of running a law school are directly related to the quality and diversity of its program. Those schools offering a wide range of courses and new programs, such as clinical work, enjoying a low student-teacher ratio, and offering

scholarships to assure a wide mix of students are the ones that have difficulty keeping their budgets in balance. Schools with less ambitious programs tend to break even and a number actually make money. In any event, there was a consensus that law schools were one of the divisions in the university least supported from the university's own financial resources, and of the various graduate schools at private universities come the closest to being self-supporting.

While there was a sense of concern about law schools' financial prospects for the future, it appeared that at the present time they are not experiencing the economic stringencies that other divisions of the university have been widely reported to be undergoing. No examples of retrenchment or serious readjustment of a law school's regular program were offered. One Dean, however, characterized law schools as poverty stricken, and a number of quite ominous developments were cited.

It was reported that Allan M. Carter, Chancellor of New York University, has recently opined that student enrollment will begin to taper off in the mid-1970's. In his view we are presently moving through the last foreseeable bulge in student demographic patterns. It was suggested that if law schools develop too large an operating base in response to the current unusually high number of applications and enrollments, as the number of students entering law school in the future declines these schools may find themselves in serious trouble.

It was suggested that faculty salaries at urban law schools are a potential pressure point for increased costs. This notion was based on an apparently ever widening disparity between what practitioners are making and what law professors earn. Fifteen years ago faculty salaries were considerably closer to what practitioners in large firms earn than they are today. Coupled to this problem is the woefully inadequate clerical and secretarial services made available to law professors. It was alleged, for instance, that faculty members spend a disproportionate amount of time filing their own papers. It was pointed out, however, that as law school faculty salaries become increasingly out of line with university faculty salaries as a whole, pressures will be exerted to hold them down. Furthermore, union efforts to include law school faculties with faculties of all other university divisions as a collective bargaining unit will have a similar effect.

Each law school represented reported a tremendous increase in the growth rate of wage and salary costs for non-instructional personnel.

Finally, unlike many other divisions of the university, law schools are still growing. There appear to be expansive opportunities for program development. In addition to clinical programs it was said that other innovative programs would be begun at law schools in the next decade. These would involve inter-disciplinary efforts and the development of a sector of training pitched toward the field of public administration. These programs will entail additional faculty and so inflate the law school budget.

As the workshop progressed it became evident that the growth rate of the cost of running law schools is going to continue to rise for the foreseeable future and probably at a higher rate than can be anticipated for the growth of law school income. As a result

of the cost squeeze a larger number of people are going to begin to look at law school operations in terms of cost-benefit analyses. It was predicted that the economics of legal education will become political as, for instance, Deans struggle to cut little-attended seminars from the curriculum and students are asked to pay more and more for their legal education. To be responsive to these various pressures law schools will have to confront the hard economic issues and develop coherent plans and policies.

In response to the assertion that because of the wider use of small classes in the third year it costs substantially more to educate a third year student than a first year student, it was argued that small classes have become a fetish at some schools. There is a serious question whether any significant instructional benefit is derived from small classes that is not derived from larger classes. Furthermore, the notion that the only respectable way to learn anything is in a classroom may be nonsense.

An alternative approach to teaching a traditional four-hour Trusts and Estates course was described where the Professor lectures for only two hours on the material he thinks is particularly difficult and lets the students read the remainder on their own. They are examined on the same material and on the same basis as the students who are given the full four hours of lectures. It was agreed that the greater the number of large classes and the more material covered by a student on his own, the more resources will be available for individualized work, clinical work and the like. In this regard it was suggested that a number of so-called traditional third year courses were just as expensive as clinical programs. While clinical work entails a fundamentally new method of teaching, however, it is questionable whether the same claim can be made for many small classes.

Mr. Swords briefly reported on an analysis he had made of the costs of operating clinical programs. As a rough average, it costs about $800 to educate one student for a full year of clinical work or $400 for a semester of clinical work. There are a number of programs enrolling a large number of students showing a considerably lower cost-per-student figure and a few programs that go about as high as $1,000 per student. While the $800 a year per student is fairly typical, there are significant variations if one determines cost-per-student per credit hour. Thus, a full semester exclusively clinical program will show a low cost-per-student per credit hour because it awards, for instance, 15 hours credit for participation. Obviously this phenomenon goes beyond mere figure juggling, because students spending full time with a clinical program do not need to be provided with any other instruction. For these reasons significant cost-per-student per credit hour differences exist between programs offering two or three credit hours a semester and those offering six or more. As a general proposition, the more credit that is granted the less expensive the clinical program is.

Programs enrolling 20 students a semester usually have one member of the faculty spending full time supervising the students. Typically this man will have had between 5 and 10 years of experience and will be paid around $20,000 a year. Frequently programs of this size will employ a part-time attorney or attorneys to assist in supervision and this will cost between $4,000 and $10,000 a year. Where the program operates out of a publicly funded agency such as an OEO legal services office or a District Attorney's

office rather than the law school's own clinic, this cost may be eliminated. Several programs, however, pay a stipend to attorneys who work in these offices for supervising students. This permits the program director some choice in selecting which attorneys will work with his students as well as helping induce the attorney to see himself as a teacher. Many programs where the clinical setting is a law school-run office enjoy the participation of a number of regular faculty members in assisting with student supervision at very little added expense. A program of this size usually employs one secretary who costs about $6,000 a year. Other costs include rent, telephone, travel, office supplies, postage, and litigation expenses. While these costs vary considerably, they average out to be about $5,000 a year.

As programs reach levels of 50 students a semester they usually employ two faculty members full time and two secretaries full time. Other costs increase also but not proportionately to the number of students.

Most programs that involve the law school running its own clinic stay open during the summer and frequently employ students during the summer months to work in the office. As an average they are paid $100 a week. Only a very small number of programs pay students during the regular academic year and when they do, with one or two exceptions, no credit is awarded for their work.

Mr. Swords indicated that one problem CLEPR faces is overcoming law schools' proclivity to view clinical programs as projects which are to be funded by outside sources, special programs that require continuing subsidies to keep operating. In sharp contrast, CLEPR's purpose is to help a law school build clinical work into its regular curriculum, which entails the eventual inclusion of the cost of the program into the law school's operating budget. Actually the law schools' actions are different from their words. Many of CLEPR's grantees are already absorbing one or two clinical positions into their regular budget, although they may view with apprehension the probability of adding more clinical positions and yearn for unlimited foundation or government support for them.

Also considered was the impact on law schools of having more and more of their costs defrayed through student loans, income contingent or otherwise. It was supposed that law students would become increasingly critical and demanding of their education as they assumed larger and larger future obligations in return for it. It was also expected that law students would take a greater interest in the economics of their law schools as they paid greater amounts for their education.

There was a detailed examination of income contingent loan plans. Because of the somewhat technical nature of these discussions they are reported in full in a separate section at the end of this Newsletter. Briefly, income contingent loan plans provide for loan repayments based upon the amount of a student borrower's earnings after graduation. Thus, those students who assume relatively low paying jobs will not be burdened with as high annual loan repayments as those students who take high paying jobs, although in most cases both kinds of borrowers in the long run will repay their loans in full.

This approach has been designed to mitigate the influence of debt on a student's career choice after graduation.

It was suggested that if access to higher education for the underprivileged was the principle objective of student aid plans, it might be better to use some scholarship money to subsidize loan plans through a promise to defer or forgive repayments if incomes were low. Such an approach might provide access to higher education for more people than if the same money was used for scholarships based solely on current family income.

In addition to increased tuition based on more readily available student loans, several other ways of increasing income for law schools were discussed. Professor Caver's trimester system was briefly reviewed. His plan provides for students to complete law school in two calendar years by attending a summer semester each year. They would pay in tuition over two years what they now pay over three years. Annual tuition would accordingly jump one-third. While instructional costs would rise, with the year-long use of the plan indirect costs would decrease.

A plan was described pursuant to which a certain number of admission places would be opened up to competitive bidding. Based on LSAT scores and grade point averages, minimum standards of eligibility would be set. Anyone who qualified could bid and the highest bidders would be admitted. The rest of the admission places would be filled in the regular way.

Bayless Manning told of his efforts to found and operate CALE (Council for Advancement of Legal Education). He described its purposes and functions as mobilizing top leaders of the American Bar to join law school administrators in seeking funds for law schools. Dean Manning pointed out that traditionally Deans are the only people trying to tell potential supporters how bad things are and they are inherently suspect. Accordingly, CALE is attempting to develop a group of leading practitioners who will have the standing to make this pitch and give it credibility. Since the public and the Bar's general opinion is that law schools are well off, it is particularly important that a group such as this begins to show that law schools have real financial problems. They will help law school deans in trying to raise money from within the Bar and from other sources, such as corporations. At the present time, groups have only been organized in several large cities to operate generally on the national level, but it is hoped that lawyers will get involved at the local level and organize in a similar fashion. Alumni giving for state schools was said to be a heretofore almost completely untouched resource. In any event, it was the general opinion of the participants that private or public alumni giving has been almost non-existant. Alumni parsimony cannot be attributed to economic resistance so much as a general attitude which causes them to overlook their law schools. Once they are made aware of the problem, their giving habits should change. As alumni are induced to give more, however, they will exercise a stronger voice in suggesting how the law school should be run.

Government funding was considered as a source of support. To the extent that law schools' clinical programs are seen as helping the general public, the likelihood of

government support becomes greater. Law schools were compared to medical schools so far as the tremendous amounts of government money received by the latter. It was suggested that public monies flow into medical schools because society sees in the medical schools the place where doctors are produced and they see every doctor, no matter how much he makes for himself, in quite personal terms as doing something socially worthwhile. He is the man who is going to help them when they are sick. Society does not see lawyers in a similar light. People have no feeling of connection between them and lawyers or with the legal profession. We must begin to show the public a different kind of lawyer performing different kinds of services, a lawyer that they can make a personal connection with. If a system of legal services was developed that aided a great number of people, the public perception of the problem might change and law schools might begin to receive more governmental support.

Income Contingent Loan Plans

Premised on the assumption that an increasing proportion of the projected incremental costs of legal education will be financed in the future by student loans, the workshop devoted considerable time to an analysis of income contingent loan plans. First there were outlined three weaknesses of conventional loan programs: 1)their terms are short, limited for practical purposes to 10 years, which imposes a severe repayment burden where the amount borrowed is substantial; 2) repayment schedules call for virtually even repayments each year of loan, which places a relatively greater burden on a borrower's current income in the early years of repayment when his income is lowest; 3) no provision is made for the contingency that the borrower's income may be so low that his loan should be subsidized in some manner. Income contingent loan plans are designed to overcome these weaknesses by providing long terms for repayment, correlating a borrower's repayment obligations with his ability to repay, and providing for subsidization of some borrowers either through subsidizing the loan plan itself, or by mutualizing the risk of low income amongst all borrowers.

An income contingent loan contract would stipulate a percent of income (per $1,000 borrowed) repayment rate, a maximum repayment period, and an upper limit on liability - or until they had repaid for the maximum repayment period, whichever came first. Thus, if a borrower reaches the end of the loan's term without having repaid, his debt will be forgiven. In this case he may not have repaid the lender an amount sufficient to cover its cost in making the loan to him. On the other hand, those borrowers who reach the point of maximum liability and terminate their obligations will have paid more than enough to cover the lender's cost in making the loans to them. These surpluses will, in effect, provide a subsidization to cover the deficits created by those borrowers who were unable to meet their full obligation by the end of the loan period. Thus, the high earners of the group will subsidize the low earners. In effect, each borrower commits himself to pay a premium to insure that if he is unable to repay his loan in full he will be forgiven his obligation.

The longer the term for repayment and the greater the percent of income required to be returned each year, the fewer will be the number of borrowers who will reach maximum term without having repaid their loans at the average rate of return which the

loan fund must recover over all debts. The fewer the borrowers who do not terminate before the maximum repayment period, the less subsidization, or redistribution among borrowers. Such a plan could get by with a relatively low upper limit on liability - i.e., a low exit interest rate. Redistribution may also be controlled by picking a group whose members' income profiles are homogenous.

If, on the other hand, a group contains members whose future earnings will vary widely, and the loan plan features a short maximum repayment period and/or low repayment rates, considerable cross-subsidization may occur and a high exit interest rate, paid by all higher income participants, will be necessary.

In other words, a variety of different plans designed to achieve different objectives may be worked out by varying the loan terms and the nature of the borrowing group. It was emphasized, however, that subsidies could be provided from outside sources, such as the government. In such a case, the upper limit on liability would simply be the fund rate, regardless of the degree of subsidization to low earners, and there should be no risk of adverse selection among the potential high earners.

Two means of fixing maximum liability were described. The first attaches a set (e.g. 9 1/2%) interest rate - something in excess of the rate which the plan must recover on average from all borrowers - to the borrower's outstanding balance. Whenever his accumulated repayments have repaid his loan at this interest rate, his obligation is over. The second technique fixes the upper limit on liability as some multiple (e.g., 150%) of the principal borrowed charged only at the average rate of interest which the fund must recover. Expressing the limit directly as an exit interest rate means that all potential borrowers know what their loan would cost at a maximum. It also means that the highest income students will pay the interest premiums for fewer years - and thus contribute less - than those with lower incomes who reach the upper liability at or near maximum term. The multiple of principal is more "progressive" since higher income borrowers always repay higher interest rates, but a potential borrower does not know what his upper limit will be in terms of interest rates, since this depends on when he terminates.

To conduct any income contingent plan a potential lender has to estimate in a statistical sense what every potential borrower is going to make each year from the time of his loan until he completes his repayments. Further, he must determine the overall rate of return which the plan must recover from all loans in order to cover its borrowing costs, the costs of administering the fund, rates of default and mortality. With these inputs he can create a plan that should break even for any volume of lending.

Because of the length of the terms of these loans and because they are keyed to a percentage of income (so that the relatively low earnings of borrowers in the years immediately following graduation produce small repayment), these plans may present considerable cash flow problems. It may take a number of years before repayments are even sufficient to service the debt of the loan fund. Further, in addition to the default and liquidity risks attendant in any form of lending, these plans involve substantial

risks of income shortfall. It is difficult to predict with any accuracy the income potential of a group of borrowers over a 25 year period. Nor can a lender be sure that its plan will not be affected by adverse selection, i.e., that future low income earners will join the plan while future high income earners take conventional loans. Furthermore, as a result of the cash flow lag considerable time will elapse before a plan develops enough performance to judge it by. Because the dimensions of these risks are completely unknown in regular financial circles, it is extremely unlikely that schools will be able to obtain senior debt from the capital market without having to put up so much equity as to approximate zero leverage. For this reason it was concluded that only the very well-endowed schools, with the capacity to guarantee or lend directly all capital required by the loan plan, could finance such plans on their own, and that government support in terms of its assumption of the risk would have to be involved if such plans were to be made available to higher education on any wide-spread basis. Mention was made of one or two state legislatures that were toying with the idea.

It was pointed out that relatively little is known about these plans in terms of student interest. Studies have been run but the preliminary results are not yet clear. A question was raised regarding the appropriateness of a law school or business school student paying for the education of a graduate student in history. This might be the effect if the contingent loan plan's cohort was all graduate students. The profound policy questions for state education being financed in part by these methods were raised but not discussed. The general consensus was that the jury is still out on income contingent loans.

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CHANGING TODAY'S LAW SCHOOLS

Remarks by William Pincus of CLEPR
given at the
Southeastern Conference, Association of American Law Schools,
University of Virginia, Charlottesville, Virginia, Aug. 23, 1971

In September of 1968, just about three years ago, the Council on Legal Education for Professional Responsibility (CLEPR) opened its doors for business. By funding clinical experiments in most of the country's law schools CLEPR has changed the perennial agitation for reform of legal education from rhetoric to action. Clinical work in the law schools is changing today's law school by replacing directly a certain number of classroom hours of traditional academic instruction. It is encouraging a profound examination of existing instruction in law schools, challenging law schools to become professional schools involved in legal process, legal services and practice skills, and expanding the schools' activities beyond theorizing about legal doctrine.

Here are some basic facts about CLEPR and its program as of June 30, 1971. CLEPR inherited a balance remaining to a predecessor agency as well as receiving new grants from the Ford Foundation. It is operating under a total budget for the first five years of a projected ten-year program, of $5,993,028.28 - very close to six million dollars. In 93 grants from these funds CLEPR has made available more than $3.5 million for clinical work in law schools. Out of Justice Department funds CLEPR has made available $230,000 in eleven additional grants. Thus 104 grants, totalling about $3.75 million, have supported clinical experiments, in one way or another, in approximately 85 ABA-approved law schools, out of a total of 147, as well as providing support for a few other activities relating to clinical legal education. Of course, there are other law schools in which clinical work is being tried without CLEPR assistance. By the fall of 1968 CLEPR granted $93,500; in calendar 1969 - $1,117,850; in 1970 - $1,283,053; and in 1971 - $1,029,560.50. Because CLEPR accelerated its grant commitments during its first three years, grants next year will total below the $600,000 mark. This has been announced to the law schools in connection with the invitation to submit applications which went out last spring.

Undoubtedly the law schools have been receptive to at least modest experimentation with

clinical instruction. With only a minimum of prodding, they have been willing to look more closely at hitherto unexamined and cherished notions of teaching exclusively academic.

In addition to what CLEPR has done, the courts have opened their doors to clinical work. With the impetus provided by a Model Student Practice Rule promulgated by the American Bar Association in 1969, and with considerable initiative coming from the law schools, thirty-four jurisdictions have authorized student practice with clients and in court. Twenty of the student practice rules came into being in 1969 and thereafter, providing a welcome assist to the clinical experiments being newly undertaken by the law schools. Thus the response from the bench in support of clinical work has been encouraging.

There is so much ferment and so much forward movement in legal education that one is tempted to be content in being floated, if not carried, along. Yet what is happening in legal education is so important to law and justice that it should be explicitly understood. Otherwise it profits us little to discuss changing today's law school. For there has always been too much talk about apparent instead of real change.

Elsewhere, I have discussed the intrinsic educational values of clinical education for higher education and for the law school (See, Pincus, W., The Clinical Component in University Professional Education, Ohio State Law Journal, Spring 1971, Volume 32, Number 2, pp. 283, et seq.). The educational values are more than enough to recommend clinical education as an important part of the law school curriculum. It is appropriate now to take a more direct look at the law schools as institutions in order to expand the picture beyond the concern with educational values per se, as primary in importance as these are.

There tends to be a recurring, if not continuing, confusion about what law schools are and why they are. Oddly enough, those confused tend to be law school faculty and administrators, not so much the profession and the public, who think law schools exist to produce lawyers who can practice law, who have first-hand knowledge of what actually transpires in the administration of justice, and are used to functioning in the machinery of justice.

The 147 ABA-approved law schools include many kinds of law schools and many kinds of law teachers. Certainly the various faculties and administrations have different ideas about the role of a law school. But just as there are "national" corporations transcending state lines, there are so-called national law schools. Like their counterpart executives in business used to do, the faculties of these schools have not so much concerned themselves with the parochial problems of the locality and the state in which they are physically situated - such as the difficulties in the criminal justice system - as with the so-called larger problems of the nation and even the world. They see themselves as turning out teachers, judges, partners in influential law firms, and business and governmental leaders - in short, leaders of all kinds and not primarily practitioners of the law who deal with the ordinary man and his problems. Since many of the graduates of these schools do receive preferred consideration for the types of

careers just indicated, there is some basis for their special viewpoint for themselves. However, it is not a basis for legal education, law, and justice generally, even though the viewpoint is influential with other legal educators who envy those they consider privileged. At times the personnel of these so-called national schools have led us onward and upward; but they have also led us astray when it comes to consideration of the basic nature and responsibilities of a law school.

Yet, the winds of change are blowing as much, if not more, at the so-called national law schools. With one possible exception, they are all involved, along with other law schools, in clinical work which raises fundamental questions about the hitherto exclusively academic content of their curricula. The point here is that those who play "follow the leader" in legal education had better take a fresh look at what the "leaders" themselves are doing.

As part of deciding how and in what direction today's law schools ought to change, it would be helpful for all concerned to get a firm hold on why law schools exist. Any educational institution in producing graduates produces persons who, with a variety of talents and propensities, will go on to fill many roles in society. But a law school cannot be defined in these general terms alone - as a liberal arts college can be. A law school has special status and responsibilities. The American law school is a graduate, professional school in which those who wish to practice law must study. In only eleven jurisdictions can one become a practitioner without successful study in an accredited law school, and three of these jurisdictions have no law school. The 1970 Review of Legal Education, published by the Section of Legal Education and Admissions to the Bar, of the ABA, lists the minimum requirements in regard to study for admission to legal practice in the 51 U.S. jurisdictions (pp. 50 et seq.). Only the following eleven jurisdictions permit study wholly outside a law school: California; Delaware; Mississippi; Montana; New York; Pennsylvania; Rhode Island; Texas; Vermont; Virginia; Washington. Only Maine, North Carolina and Wyoming permit a combination of law office and law school study. It is a safe guess that not very many lawyers are being admitted to practice in the aforementioned states based on law office study.

Attendance at law school is, therefore, a requirement for practice set down in law in most states. It is a practical necessity in all states. There is no real choice for those who would practice law. The law school has a monopoly and a corresponding responsibility to prepare lawyers for practice. It is not a purely academic institution which can discharge its responsibilities by teaching any academic subject, in any way, related or not to practice. Law faculties are inclined not to think about these basic facts and their responsibilities to the practicing profession and to the public which relies on lawyers' services. It is sometimes difficult to get lawyers to stick to facts, especially when the facts apply to themselves in a way that may be unpalatable. Legal educators are as prone to ignore facts in these circumstances as other lawyers, or as their non-lawyer fellows.

It is instructive in this regard to take a brief comparative look at the situation in Great Britain and the recent recommendations made for changes in the British system of legal education. In Britain the university degree (akin to our own Bachelor's degree)

is strictly academic. University study is not a prerequisite to applying for further study to qualify as a barrister or as a solicitor. In fact, however,lately more than 80% of those becoming barristers have previously studied at a university; about 50% of those becoming solicitors have studied at a university level.

The English tradition is that anyone can become a lawyer by undertaking and successfully completing practical training. The latter phase is completely under the control of the barristers and solicitors, each of which operate their own practical school and apprenticeship system, and administer examinations to qualify barristers and solicitors. There is thus in England a clear distinction between academic study in the university and studying to become a lawyer (barrister or solicitor).

Last spring the Lord Chancellor's Committee on Legal Education, under Sir Roger Ormrod, after about two years of study, made its recommendations for change.* Although split on various details, the Ormrod Committee recommends that a few universities add a fourth year to the existing three year course. The year would be known as the vocational year. It would include clinical work with clients, as in legal aid, but limited to advice. Students would not appear in court. Also included would be such broadening courses (in the view of the Committee) as psychiatry and accountancy - courses which because of the classical tradition are not readily found in the British university.

Under the Ormrod recommendations, students who successfully complete the academic and vocational curriculum would have the following period of practical training by the barristers and solicitors substantially shortened. The purpose undoubtedly is to give the universities more of a role in qualifying persons for membership in the legal profession.

These recommendations recognize above all that if the British university is to have more of a role in qualifying members of the legal profession, it will have to provide professional training - meaning clinical experience. No doubt Sir Roger Ormrod's training as a physician as well as a lawyer has had an important influence on his thinking in this regard.

In the U.S. law schools already have the authority to qualify persons for the practice of law. That they can do this and afford other education is a plus, but the other education is not a substitute for preparation for the profession. Whatever the combination of factors that has made law schools receptive to clinical work, it is some recognition by the schools that they are professional schools, and that the professional nature of the school had been too much neglected in favor of the purely academic.

In arguing legally and conceptually about the role and responsibility of law schools, it is easy to overlook the fact that abstract and intellectual arguments have had only a minor role up to now in changing today's law schools. In recent years an open-minded and serious look at the rationale for clinical work and involvement with practice on the part of law schools came after a number of events which were not the traditional concern of legal education. What these events did was to force a recognition that traditional concerns were not enough - especially on the part of a professional school.

* See page 8

Although CLEPR came along at the same time and was aided in its program by these developments, even CLEPR had its role shaped by these broader social forces which demanded fundamental examination of the nature of professional education. CLEPR came quickly to feel the need for sharpening the definition of its program so that the clinical experiments would be recognizably different enough from the traditional curriculum to raise significant questions about the sufficiency of the academic curriculum as well as to put the clinical experiments themselves to a stiff test. CLEPR, therefore, focused its grants specifically on classical clinical education - lawyer-client work for credit under law school supervision, making a sharp break with the exclusively academic tradition. At first CLEPR was less popular than other grantors who demanded less specificity on the part of grantees. Now most would agree that the concentration and focus have yielded worthwhile results.

The outside forces which helped CLEPR's program and served also to open the law schools to change included the black man's fight for advancement; various kinds of student action; and the legal services programs which came as a result of the war against poverty. The demands on the society and the schools which came along with these forces were sometimes seen as rational and just, and almost as often as irrational and destructive.

In these events of recent years, enough raw action confronted pure thought to force consideration of some kind of accommodation between thought and action. The confrontation shook the hitherto unshakable confidence of the purely academically-oriented. They, like the emperor who was seen to be naked, were revealed in all their wisdom as not having the answers for some of the most pressing human problems.

Not that academics were supposed to solve all problems. It was that the young challenged the hitherto presumed omniscience of their teachers. What had been an advantage - living with the young - turned out to be just as great a disadvantage. Those who paid enough attention to their experience as parents would have had some familiarity with this turning of the tables. There is no real coping with the essentially anthropological phenomenon sometimes misnamed "the generation gap", but the law schools did open to some kind of action involvement, to show at least the most passionate of their children that they were doing something - not just thinking, lecturing, and writing.

Everything seems to have combined to push us all in legal education beyond merely adding a few clinical courses or even a clinical semester for some of the students today. To the question "Radical Restructuring of the Curriculum?" which is the title of this conference, the answer is "Yes". But there needs to be added - even more significantly - redefinition of what law school is and what its responsibilities are.

Changing the law school to a professional school, from its now too prevalent bias toward being an academic faculty or another graduate school in the university, does not mean giving up academic components in the curriculum. It does mean taking at least a year now devoted to academic teaching and devoting it to clinical work, thereby moving the law school toward the profession and the practice, instead of away from it. It means that the law school stays in the university under educational auspices with a professional

bias.

Becoming a professional school means that the law school, through its clinical programs, will become as much involved with the professional behavior and practice skills of the law student as with his ability to read, analyze, and write. Through such involvement, and by using certain practitioners as clinical law teachers (as in medical school), the law school will see itself as much a part of the profession as a part of the university. Like the intern supervisor in the book about the making of a surgeon, the clinical law teacher will be interested in whether the student will get up in the middle of the night and not only in whether he got "A's" in his academic courses.

The law schools in their clinical teaching are already making it possible for their graduates to practice law. They are getting away from the notion that practice is something their graduates learn after they get out. They are beginning to accept that there are standards and techniques of practice students ought to learn while the law faculty can see how the students behave with clients and their causes. This is the responsibility of the part of the profession known as the law school. Post-graduate apprenticeships cannot substitute, even for the lucky minority who get them, for the benefits to be derived from law school clinical work. There is a gap here which only a professional school can fill - not the practicing part of the profession.

Law schools have done a good job of preparing lawyers for law firms or public agencies which can afford to give the young graduate some of the training he should have received in law school, as well as providing the employer's own apprenticeship training. The law schools have not been concerned enough with legal services as distinguished from legal doctrine. They've not done enough to provide legal services for the average man and the poor, and to train lawyers who will start by serving their clients with a regard for proper behavior, a modicum of necessary skills, and some confidence in themselves as professionals.

But the law school is changing and will change even more. When the law schools begin to act as though they are parts of the practicing legal profession, then the law student, like the medical student, will begin to see himself as a future member of the profession - in fact, as a fledgling lawyer. Clinical teaching is the way of putting the law student in this frame of mind and to accustom him to taking on the responsibilities that will bear on him. It is the indispensable means of showing the fledgling lawyer how to behave with a client and how to use certain skills. Clinical teaching will result in law schools turning out lawyers, rather than law school graduates. This is what professional schools are for and this is what the public needs.

The implication of all this is that <u>all</u> law students will have a clinical year before graduating from law school. It is to be doubted whether the law schools can accommodate anyone other than the person who at least starts his law studies expecting to become a practicing lawyer. Law schools have done more than enough of casually turning out law graduates, and are now experiencing an even bigger flood of would-be law graduates, not would-be lawyers. There is enough to be done to train lawyers without having the law school provide a multiplicity of curricula and degrees. As the message gets around that

the purpose of going to law school is to become a lawyer, a substantial burden of surplus students will be removed from the law school in a few brief years. Such students will either not go to any graduate school, or they will find one more appropriate to their non-professional leanings. I am certain that the university will find some way of accommodating these, without continuing the present distortion of the law school and its role.

Of course, the law school should welcome all who qualify and are interested in taking the academic and clinical parts of the curriculum. If some do not practice after graduation, that will be their choice. But the possibility of such a choice will not be permitted to form the curriculum of the law school. The curriculum of the law school should be made on the assumption that the student will practice, not on the assumption that he may not. The latter is no basis for any professional curriculum. It is a license for having each teacher pursue his interests without much regard for institutional cohesion, direction, and efficiency. It is a fine basis for an academic community elsewhere in the university, not for a law faculty.

The year's clinical work in the law school should have a heavy exposure to criminal law, juvenile law, and to the legal problems of the ordinary man. Why? Because these areas of the administration of justice continue to receive insufficient attention and resources, and because clinical teaching in law schools provides at least one good way to give these areas additional attention and resources. Providing manpower in these areas of great need is a responsibility of the law school. Moreover, these are excellent areas in which to practice and acquire non-academic skills, under proper supervision. They are unsurpassed as areas in which to learn professional behavior with clients apart from consideration of fees.

In addition to clinical work for all students before the first law degree, it will be necessary to create in some law schools a number of post-graduate internships for one or two year periods. These should be in areas of great public importance and need. These internships should be subsidized by public funds. Again the criminal and juvenile law areas would be likely to be chosen. There might be some in the administrative law field in so-called public interest litigation. Graduates of these post-graduate programs should provide personnel for these fields of importance and also for law teaching. Examples of these kinds of programs already exist in the Georgetown University Prettyman Fellowships and in the other post-graduate internships which were modelled on this program. More attention is due to the ways and means of educating and training law teachers - much more than has hitherto been given to this important problem. These remarks cannot do more than call for study and action on the matter.

Finally, the law schools will have to take responsibility for the creation of programs to train subprofessionals to help lawyers in their job by taking over some of their tasks. These ought to be joint programs with two-year and four-year colleges. A substantial part of the training of such subprofessionals should be side by side in clinical work with the lawyer-to-be, just as nurses learn how to do it in the same hospitals where the doctors are trained.

These are the directions to be followed in charting changes in today's law schools, if the public is to be more adequately served, and service to the public is the first duty of any profession.

LEGAL EDUCATION IN THE UNITED KINGDOM

A note on the Ormrod Report by Philip A. Thomas, Lecturer in Law, University College, Cardiff, Wales

University legal education in the United Kingdom received a considerable fillip this spring with the publication of the Ormrod Report. Amongst the committee's terms of reference was the function to consider and make recommendations upon training for a legal professional qualification in the two branches of the legal profession. (The United Kingdom operates a split legal profession, divided into solicitors and barristers.)

The Report indicated that in other countries legal education is conducted almost entirely at university law schools and that entry to the profession is almost always by way of acquiring a university law degree. Partly for historical reasons this is not the case in the United Kingdom where 60 percent of solicitors and 20 per cent of barristers now being admitted are not law graduates. The committee was pleased to be able to note that the profession was emerging from the chrysalis stage of reliance upon apprenticeship and moving towards the acceptance of university training as a prerequisite for admittance to practice. This in turn raised a fundamental problem for the universities which may be defined as that of combining the education which is necessary to enable a person to follow a "learned" profession, with instruction in the skills and techniques which are essential to its actual practice.

The committee suggested that the methods of qualification should be restructured as follows: 1) the academic stage; 2) the professional stage, comprising (a) institutional training and (b) in-training; and 3) continuing education or training. Space allows me to focus solely, and then only briefly, on the institutional training. It is stated that the main function of the course is to help the student to adapt his academic knowledge to the conditions of practice by introducing him to the practical skills and techniques of the law and acquaint him with knowledge in other fields which will be of particular value in practice. This course should last about 40 weeks and be comprised of three main elements: 1) practical exercises; 2) some additional law subjects; and 3) non-law subjects of special concern to legal practitioners. The emphasis will be on the problems of practice and how they are solved and maximum contact with practitioners of all kinds will be encouraged. The possibility of experience with legal aid and advice clinics will also be explored while co-operation with other disciplines such as business studies, sociology and forensic medicine will be vigorously promoted.

One interesting point was that the majority of the committee recommended that this vocational course should be attached to the universities. Unlike the United States of American there is a traditional antithesis in this country between "academic" and "vocational", "theoretical" and "practical" which has divided the professions from the universities in the past. This suggestion, if accepted, should allow the university three year LL.B. programme to remain substantially unaltered in its pure theory of law approach. At the same time the fourth year of practical training, centered at the university, should have beneficial effects both on educators and practitioners. Perhaps its most important contribution will be to draw the two groups closer together in the common goal of providing the best form of legal education for our students.

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Prefatory Note

Because of its importance to clinical legal education CLEPR is reprinting Dean McKay's article from Trial Magazine, July/August 1971, Vol. 7 No. 4.

The Trial Lawyer and . . . LEGAL EDUCATION

by Dean Robert B. McKay, New York University School of Law

The public image of the trial lawyer, shaped by the turgid histrionics of television and motion pictures, is almost entirely wrong in its impression that the lawyer's principal weapons are bombast and guile and that his life is full of high drama.

What the public fails to comprehend is that success in the courtroom requires understanding of nearly all areas of substantive law, mastery of the rules of procedure and evidence, and careful gathering and marshaling of facts.

The aims and methods of legal education are also commonly misunderstood. Contrary to popular belief, law teachers are not generally engaged in speculative research into matters of no moment, and law students are not generally committed to strident protest and noisy confrontation. The seldom-perceived reality is that most law teachers have escaped from the ivory tower (if ever there imprisoned) and are devoting their considerable skills to the enlargement of social justice and to the improvement of those aspects of daily life within reach of the law.

And the law students, while surely less quiescent than in other times, have turned their new energies to serious reexamination of the goals and methods of legal education and the legal profession itself. Surely, these manifestations of concern for the world outside and the role of law in reshaping it deserve understanding and encouragement.

Misapprehension of goals and methods of trial lawyers and of law schools is not limited to the nonlegal portions of our social order. A failure of understanding exists within the legal system itself, even between trial lawyers and legal educators. At the very least we should try to understand each other, whatever may be the failings of perception outside the profession.

It is the purpose of these comments to begin the process of interpretation.

It is sometimes said that trial practice is a specialized branch of the legal profession. But that view seems to me wrong because too narrow. Even though advocacy before judge, jury, or administrative tribunal does call for special skills, that is only the tip of the iceberg of legal talent essential to the success of the "compleat" trial lawyer.

The advocate who earns the accolade of "trial lawyer" must be able to work with sure knowledge in fields of law as disparate as corporations, commercial law, securities regulation, antitrust, estates, domestic relations, tort claims, and criminal matters. He must be at home in law and equity, with juries and judges, and before administrative panels. He must be able to choose the proper court, federal, state or specialized, and to work his way knowledgeably through the disparate rules and regulations peculiar to each.

Most important of all, he must prepare his case so thoroughly that he can provide the trier of the facts with every relevant bit of evidence while excluding the extraneous and giving the whole a shape more coherent than the untidy arrangement of facts in their natural state.

Truly, the trial advocate is a generalist who requires for success every skill known to the law.

Law schools do not - and cannot - teach all these skills in the time available. The law is rich in its complexity, and requirements of trial practice are so insistent in their demands that no law school can equip even its best students with all the skills essential to a successful career of trial advocacy.

The wonder is not so much that law schools cannot train an advocate in three years as that they do so much so well. Most law students are able at graduation - or even before - to research frontier problems of the law in subject-matter areas in which they have had little substantive training. They are also ordinarily able to make appellate arguments on points of law, even before sophisticated tribunals.

It is no denigration of students or of their schools to state that they are seldom competent to undertake the more difficult task of providing adequate representation to a client in a trial setting.

Questions naturally arise: Can the law schools do more? Should they attempt more? In suggesting that we can add and should do more, however, I do not by any means argue that legal education can be turned around to provide certifiable specialty training for trial advocacy upon graduation.

Debate over the amount and nature of "practical" training that should be offered in law school is not new. But the focus of the discussion has shifted dramatically. Until well into the twentieth century most American lawyers gained their original knowledge of the law through some kind of apprentice training, most of it not much good. Even when there was a veneer of academic training in a law school, it was ordinarily thin and often poor in quality.

In natural reaction to the manifest deficiencies in legal training, the university law schools became increasingly academic and sometimes even scornful of the more pragmatic aspects of preparing for the practice of law. The notion that law study should be primarily limited to the classroom and the library so dominated American legal education that a post-World War II challenge to these principles was easily defeated by the legal education group.

Thus, the case method of instruction and the Socratic method of teaching became ever more refined and seemingly beyond challenge -- at least until the late 1960's.

When students, often joined by younger faculty members, began to inquire into the established ways of doing things, new conceptions of legal education quickly emerged. There were not many who favored a return to the old apprenticeship schemes, which had not worked very well. Nevertheless, there was in those plans a kernel of educational wisdom out of which new plans for the future could be developed.

The core idea that was new, although with many variations, was the insertion of clinical training directly into the educational program of the law school, including a significant amount of advocacy training.

The new clinical training was distinguished from apprenticeship training, and even from law student "assignments" to legal aid offices and prosecutors' offices, by the fact of faculty supervision of the clinical work and the award of academic credit for successful completion. However useful the earlier apprenticeship training had been in many individual cases, inadequate supervision by busy prosecutors, defense lawyers, and other practitioners had made these attempts to provide practical experience unsatisfactory for educational purposes.

Moreover, the assignments too often included nonlegal makework or repetitive functions of little educational value. Clinical training, at least at its best, promises to overcome these difficulties in large part - although at a price. Let me first explain the promise and then outline the problems, all of which I hope and believe are solvable, some with diligence and others with money.

Clinical training as part of a law school program requires two ingredients for success.

First. The problems presented for student solution must be real problems, whether involving preparation of pleadings, writing of briefs, or representation of clients before administrative boards or in courts. In the case of direct client representation by law students it has often been necessary to seek rule changes to permit representation by a nonlawyer, usually in minor matters and often with a member of the bar present and technically assigned to represent the client.

Many jurisdictions now permit student practice to this extent, as detailed in a pamphlet of State Rules Permitting the Student Practice of Law, published by the Council on Legal Education for Professional Responsibility in the spring of 1971. CLEPR has been the body most active in seeking extension of clinical training through grants to individual law schools and general promotional activities.

Second. The clinical training program must be part of the academic program of the law school, with, at the minimum, active and regular supervision of the field work by one or more members of the faculty. Not only must the work outside the law school be supervised by someone from inside the institution, but ordinarily, in addition, there should be periodic seminar-type discussions at which the involved students compare and evaluate their experiences.

Only by rigid insistence on these academic controls can there be any assurance that learning is taking place. Only then is it possible to justify the award of academic credit in recognition of the substantial investment of student time required to make clinical experience meaningful.

The problems in developing a clinical program are apparent. The short of it is that if the program is to be successful, it requires a genuine faculty commitment to the essential supervision, and new sources of financial support.

It is all too easy for faculty members to lose their enthusiasm for clinical training when they find that the supervision is less ego-gratifying than classroom teaching, requires commitment outside the physical repose of the law building, and is not likely to lead to publishable research. Moreover, while student contact is increased, it is with a small number of students; the faculty-student ratio should ideally not be more than eight or ten students to one teacher.

This, of course, suggests the other principal problem. Clinical education is costly education, as our medical colleagues have long known. In a period when university budgets are more often reduced than increased, it is hard to find new money for educational experimentation, particularly where opinion on the merits is still divided.

CLEPR, with an initial grant of $6 million from the Ford Foundation, has funded experimental programs in a number of law schools, while making it clear that continuation must be from other funds. Efforts to secure federal funds have so far been unsuccessful. Although Title XI of the Higher Education Act of 1965 included an authorization for clinical training funds, no funds have yet been appropriated.

The question remains: Do clinical programs offer the best reconciliation between the training needs of the trial lawyer and the training capacity of the law schools? I believe so and therefore urge the trial bar to support well-supervised clinical training programs, including the funds necessary to insure success.

The favorable view just expressed is not shared by all, either inside or outside the academic community. The only point entirely clear about legal education at the present time is that theory and practice are in a general state of flux.

The subject-matter content of first-year courses has been considerably altered even though course names remain generally recognizable. After the first year, courses and seminars are largely elective at most law schools, which means that student programs are much more individual and that there is no "standard" graduate.

But the most dramatic change is in the clinical programs which have appeared at nearly all law schools in a variety of shapes and sizes. No more recently than 1968 there were almost none. Now the range is from a full semester of off-campus work with a public interest law firm in Washington to the more nearly traditional (but highly effective) programs in the criminal courts, sometimes with an established legal services program, sometimes through preparation of cases assigned to faculty members.

In between the range of subject matter is particularly remarkable - including at one school (my own) consumer protection, juvenile delinquency, labor relations, prison counseling, police work at the precinct level, and women's rights, as well as more traditional forms of clinical work with defense counsel or prosecutors in criminal matters.

The resistance to clinical training that remains in the law schools depends principally on the view that law schools are well equipped to provide academic training in a classroom setting, but are much less likely to be successful in providing effective "practical" training outside the law school. The problem is real and must be overcome if clinical training is to become a permanent feature of legal education, as I believe it should.

Disquiet with present legal education is very strong, however, and there is a restless eagerness to seek more realistic preparation. It is likely that neither faculty nor students will any longer sit still for return to the conventional classroom methods as the exclusive means of communication between law teachers and law students.

We should have learned something useful about relevance (a much-abused but useful word) in the recent past. It would be too bad to return to a partially discredited past without first making an earnest attempt to succeed in the new programs that many teachers and students have found so exciting.

Justice in the American courtroom deserves the best training available from the law schools. If that best is clinical, even if expensive and difficult, we should not hesitate if it is also right.

STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW

by Alan A. D'Ambrosio, Institute of Judicial Administration

In late 1970 the Institute of Judicial Administration conducted research for the Council on Legal Education for Professional Responsibility which resulted in the publication of a brochure entitled "State Rules Permitting the Student Practice of Law: Comparisons and Comments." The text contains a summary of the various provisions for student practice in the states as of the end of 1970 with some comment on individual details. Several appendices were included which contain a summary of the rules in chart form, an annotated bibliography and reprints of the texts of the rules and statutes.

Concomitant with an increased interest in clinical education in the law schools has been an increased acceptance and authorization of student practice by state legislatures and courts. This increased activity has made necessary a supplemental report in this Newsletter, summarizing the new and revised rules which have gone into effect since the publication of the 1970 brochure. Nine jurisdictions have recently made provisions for or revised their existing authorization of student practice, i.e., Connecticut, Louisiana, Massachusetts, Mississippi, New Jersey, North Carolina, North Dakota, Texas and Washington. The summaries that follow are meant to highlight the major provisions of these rules and do not purport to be a substitute for a careful reading of the texts to determine individual variations and exceptions.

Connecticut. The judges of the Superior Court adopted a rule concerning "law student interns" effective September 1971 (Practice Book, §42 A). An eligible law student may, under the supervision of an attorney admitted to practice in Connecticut, represent any person, appear before any court or administrative tribunal and prepare the necessary documents and pleadings in any matter. Appearance in court is subject to the approval of the court, the supervising attorney and the client. In order to be eligible to appear pursuant to the rule, the intern must be enrolled in an American Bar Association-approved school, have completed three semesters of legal study and be certified by the dean of his law school. He may appear on behalf of an indigent client or work in conjunction with a private attorney, a legal aid office or public prosecutor. The rule calls for the establishment of a legal internship committee to examine the operation of the program and receive complaints and suggestions.

Louisiana. The Louisiana Supreme Court promulgated a rule in March 1971 authorizing student practice (Sup. Ct. Rule XIV-A). An eligible student may represent the state or an indigent person before any state court or administrative tribunal in a civil action in which there is no attorney's fee and in all criminal matters, if he receives the written consent of his client and the supervising attorney. He may also prepare pleadings, briefs, and other documents. The authorization is, however, limited to participation in a clinical program conducted and supervised by the student's law school. The Supreme Court has also established certain individual criteria for eligibility, which include enrollment in an American Bar Association-approved law school in Louisiana, completion of four semesters of legal studies, certification by the dean of the law school and the taking of a prescribed oath to uphold certain professional precepts. The supervising attorney

must be admitted to practice before the Supreme Court of Louisiana and be approved by the dean of the law school under whose program the student participates.

Massachusetts. The Massachusetts Supreme Court revised its rule in late 1970 to provide increased opportunity for student practice (Sup. Ct. Rule 3:11). Previously the court had permitted students to appear on behalf of the Commonwealth or an indigent defendant in a criminal proceeding held in any district court. Under the revised rule the justices of the Superior Court are given the discretion to permit student appearances on behalf of the state or an indigent defendant in a criminal proceeding in their court in which a motion for a new trial, an appeal for a review of a sentence or a petition to authorize a defendant's pretrial release on his personal recognizance is at issue.

Mississippi. Mississippi passed legislation allowing law students to engage in the limited practice of law in March 1971 (Chap. 466 of the Laws of 1971). The student is authorized to practice as though admitted to the bar while participating in a clinical program established at his law school, except that all documents of record must be signed by an attorney licensed to practice in Mississippi and all activity in court must be in the presence of and under the supervision of a licensed attorney. The student may work with either an elected public official or an attorney engaged in private practice in the state for at least ten years. Legal interns may not argue cases before the Supreme Court. The act sets forth certain individual criteria for eligibility. The student must be enrolled in a Mississippi law school, have completed two-thirds of the requirements for graduation and take an oath to adhere to certain standards of conduct. The judge administering the oath must also issue a court order indicating that the requirements of the statute have been satisfied and authorizing the student to engage in the practice prescribed.

New Jersey. The New Jersey Supreme Court amended its rule effective September 1971 greatly expanding the opportunities for student practice (Sup. Ct. Rule 1:21-3 (c)). Prior to the amendment, a student was limited to appearing in certain specified courts on behalf of an indigent person referred to him by a legal aid office. The present rule deletes the requirements that the client be indigent and that referral be made by legal aid. It permits the student to appear before any state court or agency under a program submitted by either his law school or a legal aid office and approved by the Supreme Court.

North Carolina. A provision of the rules and regulations of the North Carolina State Bar (S84-8) permits law school students participating in legal aid clinics to represent indigents. The provision does not provide further guidance as to requirements for eligibility, activities authorized or supervision required.

North Dakota. The North Dakota Supreme Court promulgated a student practice rule, which became effective in September, 1971. The student is authorized to appear subject to the approval of the client, supervising attorney and opposing counsel, before any state court or administrative tribunal in any civil or criminal matter, prepare pleadings, briefs and other court documents, and assist in the preparation of applications for post-conviction relief in cases in which the right to counsel is not guaranteed by the constitution. The student may work under a state prosecutor or supervising attorney admitted

to practice in the state and approved by the dean of the law school. In order to be eligible to appear under the rule, the student must be enrolled in the University of North Dakota Law School, have completed four semesters of legal study and be certified by the dean of the law school and an attorney designated by the Supreme Court.

Texas. The Texas legislature enacted a statute effective August 1971 authorizing law students to assist licensed attorneys in the trial of cases (Tex. Rev. Civ. Stat. §3, art. 320-a-1). Actual practice under the enabling legislation will be governed by rules and regulations to be promulgated shortly by a committee composed of State Bar and Junior Bar Association members, subject to the approval of the Supreme Court. The legislature did, however, set the minimum standards for student practice. An eligible law student may file instruments and motions and appear before any state court or administrative tribunal, provided that he is accompanied by an attorney licensed to practice in the state. In order to be eligible to participate, the student must be enrolled in a law school approved by the Supreme Court of Texas, have completed two-thirds of the credit hours required for graduation and be approved by the presiding judge of the court in which he wishes to appear.

Washington. The Supreme Court of Washington promulgated a student practice rule which went into effect in its present form in May 1971. (Rule 9 of the Rules for Admission to Practice Law). An eligible law student or recent graduate may represent any person or the state before the trial and superior courts of the state in both civil and criminal matters, advise his client and negotiate on his behalf and prepare pleadings, briefs and other court documents. The student must work under the supervision of a member of the Washington State Bar Association who has practiced law for at least three years and who will maintain direct supervision over the practice of the legal intern. In order to be eligible, a student must be enrolled in an approved law school, have completed two-thirds of a three year course of study or five-eighths of a four year course of study and have the written endorsement of his law school dean. The student must file an application which contains the name of the supervising attorney and his signature, indicating his willingness to assume responsibility for the student. The bar association must then indicate its approval or disapproval of the application and forward it to the Supreme Court which issues or refuses to issue the limited license to the student. The present rule will expire in December 1973 unless extended by order of the Supreme Court.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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Vol. IV, No.6, November 1971

CLEPR HOLDS WORKSHOPS ON LIFE AND TIMES OF THE CLINICAL LAW PROFESSOR

On October 8 and 15, 1971 workshops on the life and times of clinical law teachers were held at CLEPR's offices in New York City. Participants in the two day-long conferences were: Cushman Anthony from the University of Maine; David Binder from UCLA; Richard Carter from Catholic University; Kenney Hegland from the University of Arizona; David Hood from Wayne State University; Arthur LaFrance from Arizona State University; Annamay Sheppard and Michael Lang from Rutgers University-Newark; William MacPherson from the University of New Mexico; William McAninch from the University of South Carolina; Michael Meltsner from Columbia University; Thomas Murphy from the University of Cincinnati; David Rosenberg from Boston University; John Urso from the University of Detroit; Dominick Vetri from the University of Oregon and Stephen Wizner from Yale University.

The workshops were organized and written up by Peter Swords, a Program Officer at CLEPR. CLEPR was represented as well by William Pincus, President and Betty Fisher, Program Associate.

The workshops undertook to explore the position today of the clinical law teacher from the standpoint of his relations with his fellow faculty members and his relations with his students. Both the satisfaction and frustrations of the jobs were exposed.

To summarize at the start, it was the participants' general opinion that, viewed from the standpoint of the whole law school program, clinical work in most schools has not yet achieved full recognition in all quarters. It was reported that the majority of traditional faculty members remain largely unconcerned about their school's clinical programs. In contrast, however, student interest continues at an extremely high level and Deans, in distinction to their faculty's indifference, vigorously puff their clinical innovations to their alumni and prospective student applicants.

Each attending clinician enjoys his job immensely. Most of them came from practice backgrounds and maintain an active interest in the excitement of the litigation experience. For many the actual trying of cases is the ultimate reality to being in the law whether as a teacher or a practitioner. Clinical teaching allows them to continue in this field. At the same time it was agreed that one of the major attr actions to clinical work is the ability to keep one's feet in two camps - the academic world of reasoned reflection and the real world of practice.

As much as they enjoy practice, many participants reported that perhaps the greatest satisfaction of their work lies in the close personal and teaching relationships that they have developed with their students. To watch a student find out that the practice of law is interesting and discover that he is capable of being a lawyer and then to observe him grow in confidence in handling matters was said to be tremendously moving. Equally gratifying is to see a classroom C student finally find a way to display and develop his abilities.

From these and similar experiences many clinicians have developed an interest in pure pedagogical questions: how does a person really grow? how much experience does a student need to be able to absorb more knowledge? what can you do to motivate the passive student?. Participants who taught both traditional courses and clinical courses noted that these processes are rarely observed in traditional classes. It was suggested that traditional legal education with its emphasis on substantive expertise may have lost contact with the really profound problem of how people learn. It was further suggested that a fundamental rationale for clinical work to be in law schools is to raise again the basic pedagogical questions concerning how people develop and become more mature human beings and professionals at the same time.

Several participants observed that the opening up of career alternatives to students who might otherwise be unaware of the possibilities of practicing in these areas is gratifying. Considerable satisfaction is also derived from bringing the outside world into the law school. Faculty and students are made more aware of what is going on in the actual development and administration of the law in their local jurisdiction. Several participants told of providing to traditional professors for use as hypotheticals in their classes actual cases derived from their clinical program's practice. Furthermore, a number of traditionalists have been persuaded to add clinical components to their regular courses.

All, however, is not roses with clinical legal education. Wide consensus existed among the participants that the major frustration plagueing the clinical professor is having too much to do. While clinicians enjoy being in both the academic and practicing camps this gives rise to a considerable burden - simultaneously being responsible for running a law office and serving clients and teaching law students. A number of clinicians are responsible for large caseloads and find that the necessity for them to function as office managers goes at cross purposes with their teaching efforts. In addition to these responsibilities many clinicians reported that they must spend considerable time developing good relations with the local bar and judiciary. Further, constant attention must be given to preparing reports for and applications to various funding agencies. All of this is naturally compounded in situations where the clinical professor has teaching responsibilities in the traditional curriculum. In these cases several participants stated that they spend proportionately more time preparing for their traditional courses than they do on their clinical work to the latter's detriment. With all this, many find difficulty in keeping up with developments in their areas of interest. In this connection some resentment was expressed for traditional professors who get paid more for working on a nine-month basis than clinicians who are hired to work for an academic year. While traditional professors are able to take summer jobs to supplement their incomes, most clinicians have to operate their programs all year long.

Experience with local judiciaries varies. Some judges are enthusiastic about law students appearing before them and take, for instance, an active interest in critiquing a student's performance after a proceeding has terminated. Other judges are less receptive to law students seeing them as part of a cadre of legal service lawyers for whom they have little use.

During the two days considerable discussion was held concerning the clinician's relationship with the rest of his faculty. Many agreed that faculty indifference to clinical work is the essential key to the relationship. Traditional faculty members aren't hostile to clinical work; they simply do not care about it. So long as it keeps students happy and it does not encroach upon their activities they have little concern about its existence. It was suggested, however, that as clinical work demands more credit and a bigger piece of the law school budget hostility will obviously develop. Furthermore, as more high quality lawyers are put on the faculty the level of activity at the law school is going to rise. Many traditional faculty members have selected a role for themselves which keeps them away from the conflicts and confrontations which are the life blood of the clinician. As law school faculties become increasingly dominated by active clinicians traditionalists will inevitably become threatened. Under present circumstances, however, several participants complained that it is extremely difficult to persuade faculty members with expertise relevant to their program's practice to provide input to their projects.

In this context it was asserted that in view of the difficulties of conducting a good clinical program it was important for a clinician to feel confident in his position. This depends to some degree upon his security at the law school and his prestige among his colleagues. Discussion about the need for clinicians to teach traditional courses was pertinent to these considerations. Several participants resented having to do so to the extent that it was necessary in order to prove themselves, for purposes of tenure appointment and the like, in terms of traditional teaching values. It was pointed out that if clinical work is to develop into a meaningful teaching methodology it is going to have to be measured on its own merits. Effective method follows from the true nature of the enterprise and not from prejudices and preconceptions derived from other and quite different undertakings. Nevertheless, it was agreed that current political realities of clinical education made it necessary for many clinicians to accept traditional teaching assignments. Furthermore, most of the participants who teach traditional courses do so in areas directly related to their clinical work, for example, criminal procedure and evidence, and all have enjoyed the experience. As already noted, however, such assignments add a considerable burden to clinicians who have more than a full time job in adequately directing and supervising their clinical programs.

Related to these considerations, an interesting issue arose concerning the need to develop materials and methods for teaching the lawyering process. One participant cited the lack of such aids as a primary frustration. It was suggested that clinical law teaching should develop general concepts that govern various lawyer's skills such as interviewing, counselling and the like. Students and lawyers should have an express understanding of the controlling psychological and sociological principles and be able to synthesize them into their practice. In contrast, it was suggested that the lawyering process was an art and not a science and that much of its worth could be lost by dissecting and academicising particular skills. Note was made that nobody has been able to use trial practice type books with any

great success. These skills cannot be learned by teaching canons. They involve very sensitive, human situations and have to be taught like the old craftsman taught his apprentice, and this, it was asserted "does not involve learning a bunch of rules." To learn these skills students might better observe an attorney in the conduct of his practice with the attorney constantly analyzing and explaining what he did and why he did it at each step as the case develops. Students learn these skills best from the particular to the general and not the converse. Several participants found that students are unable to bring a conceptual approach to these problems until after they have had some clinical experience.

Much time was spent discussing students. Conferees explored the problem of what can be done for the student who is poorly motivated-- lazy or passive. One way to avoid this problem is to develop a reputation among a school's students that the program demands extremely hard work. Such reputation may be supported during the interviews with student applicants. Self-selection processes will then tend to weed out students looking for an easy pass. One participant told of confronting during group meetings of his program those students who think their clinical work is a waste of time. In the context of this position they are urged to discuss in an open and candid manner their feelings about their profession and their position in their profession. In this connection it was noted that one significant purpose of clinical education lies in a student developing emotional strength to handle a caseload. A related problem involves third-year students in their last semester. With the light at the end of the tunnel clearly visible, many such students are less active than second-year students who hunger for relief from traditional classes. In any event, most participants running programs where relatively little credit was awarded felt restrained from asking students to do a great deal and in their opinion this considerably weakened their program.

Several participants noted that a number of their students were not interested in becoming involved with the legal process or professional responsibility issues of their clinical experience. Rather they seem to be exclusively interested in learning the techniques of practice. One program was described however in which as well as skills training it was considered critical to educate students to perceive accurately the institution and doctrines that operate upon the client population which the program serves-- the urban poor. This is accomplished in a variety of ways. Students are involved in the litigation process in courts where the poor characteristically appear: domestic relations court, municipal courts, landlord-tenant courts, and the like. Further when a student is given a case he is urged to seek after its wider implications. An example was given of a case involving the serious beating of a Puerto Rican boy by a policeman following a false arrest. The arrest was followed by a juvenile proceeding that was believed to be a cover-up for the aggressive activity. The policeman failed to show up at the hearing that resulted in an adjourned disposition. On the one hand this case could be considered merely as a tort action. But as the program operates, the students were asked to look into what the Inspection Division of the Police Department did with the case when it came in and to find out as well whether the FBI investigated the matter. Further, the students attempted to find out what the prosecutor's office did when the report was filed with it. Thus the case was examined at the institutional level. Students were asked to inquire into how law enforcement agencies function at tension points in community relations. This inquiry takes place in individual meetings between the students assigned to the case, the lawyer with whom they work, and the program's two full time clinical professors. (In the program in question, students work with local Legal Services

and Public Defender attorneys on several of their matters.) In some instances such cases are brought to the attention of all the students in the program at a weekly seminar.

Many participants were surprised to find that students desire more hand-holding at the start of their clinical experience than they expected. It was agreed that extremely close and extensive supervision at the beginning of their clinical work goes a long way to getting students started with productive attitudes.

Several participants complained about the tedium of being confronted with repetitious questions by students during their case supervision. Several points were made in response to this problem. To the extent that the questions involved matters that the students should know about, they ought not be answered. One of the bad habits that clinical education can check at the start of a lawyer's practice is his reliance upon the advice of other attorneys rather than finding the solutions to problems himself. Furthermore, many of these questions should be anticipated and covered in orientation sessions. Finally it was suggested that experienced third-year students can be used to help students with recurring questions of a simple nature.

The question of grading was discussed at some length. Several participants wondered whether students should be graded at all on their clinical work. Others felt that there were minimum standards that students should be held to before he is given a passing grade. One participant described the following grading scheme: If the student meets minimum standards of accountability and appears to be trying hard but demonstrates little talent he is given a "C" for his clinical work. If he shows some level of excellence and demonstrable competence in terms of his written product and how he handles the matters, he is given a "B". If he demonstrates the ability to merit a "B" and takes on more than he is obliged to, he receives an "A" for his clinical work. On the question of pass-fail several participants noted that students performing at a high level and interested in achieving a high grade point average are penalized by this system.

The question of the place of clinical education and the clinical professors in the law school world was a principal theme in both workshops. It was agreed that clinical teaching was widely different from traditional teaching and that clinicians should assure that it maintains its special identity. It was suggested that doubt about acceptance can be quickly dispelled by looking to the students whose enthusiasm for clinical work across the country grows apace. Merely by virtue of his position, the clinical professor becomes the most popular man on the faculty. Unlike student interest in international law, poverty law and environmental law, which in the past has waned after a few years, clinical work appears to have struck a universal chord as more and more student bodies demand clinical opportunities. Furthermore, as clinical work becomes more visible, the Bar's interest in the student programs also seems to be growing. With increasing support for clinical legal education from law schools' two major constituants-- students and the Bar-- the future looks bright.

Preface

The lead article in the November 5 issue of Res Gestae, a law student publication at the University of Michigan, contained comments by the directing faculty and by students involved in a new clinical program funded by CLEPR. These comments complement the preceding report of CLEPR's Workshops. We thank the editors of Res Gestae for their permission to reprint this article.

CLINICAL LAW

Described by professors as "satisfying" and "very enjoyable" and by students as "inspiring." "beneficial," "unbeatable" and "the greatest educational experience since kindergarten," the Clinical Law Program, now two-thirds through its first semester, has earned a unique place among law school courses.

According to students and teachers involved in the program, the course is more rewarding, more fun and much more work than most law school courses.

The program is located on the third floor of the Municipal Court Building on the corner of Main and Huron. (Jack Garris is officed on the second.) The Clinical Program shares offices with Legal Aid. The offices are at best functional. Students work in one large room that houses a dozen desks and several typewriters. That room has the air of a newspaper copy room at deadline time. Students are busy drafting complaints, making phone calls and talking over cases. In addition to these office tasks the course gets students into court where they present entire cases from opening statement to closing argument, including jury selection and cross examination.

Professors Jerald Israel and Joe Kalo, a 1968 graduate of this law school, are teaching the course. Israel believes that students "almost without exception" have been enthused about the program. A sampling of students confirms Israel's belief.

Robert Pickett, a second year student, believes the program's success has been largely the result of the enthusiasm generated among its members.

Students agreed that a major source of their enthusiasm was the practical nature of the course. Mark Rosenthal pointed to the interesting and continually changing practical experience the program gives, which he finds "100 times more inspiring than law school." Paul Barrett said the program allows a student to do the work of a lawyer "in every respect." Pickett finds the program is interesting because it gives a realistic view of what it is like to practice law under pressure.

Chuck Silverman emphasized that the pressure is real because students have serious

responsibilities to their clients -- compared to "no responsibility in law school."

Good working relationships with fellow students and professors is another key to the program's success. Students eagerly help each other with cases. Pass/fail grading removes grade competition. More importantly, a common desire to help clients and learn in the process produces cooperation.

Students praised the approach Israel and Kalo have taken towards the course. According to Silverman, the Socratic method is not used, and students get helpful answers to questions. One student said the professors "turned out to be much more friendly and accessible" than expected. Another, who was afraid of Israel and "hated" him before taking Clinical Law, now thinks he's "great" and "fantastic." Students in the program are on a first name basis with "Joe" and "Jer."

Students and professors agreed that the course has taken a lot of time. They also agree that it has been well worth it. Mimi Bernstein, who finds the time demands of the program sporadic, put in 60 hours one week, including several nights and all day Sunday.

Israel said the course has taken "far, far more" of his time than an equivalent number of credit hours in normal courses. As a result he has had little time for research and that on weekends.

Students have been forced to cut more classes than usual in order to make court appearances.

The course has proved an effective teaching tool. Kalo said that it gives important exposure to real trials which often don't follow the standard pattern of procedure which is typical of mock trials. Students get valuable experience dealing with judges, prosecutors, other attorneys and clients. Kalo said they learn to evaluate clients in terms of the information they can supply and their effectiveness as witnesses as a product of their personality and credibility.

Israel sees the course as teaching skills in client counseling, negotiating, drafting and appearing in court. Ability to negotiate with all government personnel is a goal. Much negotiating is done with social work people and police and in one instance with a post office official.

Silverman believes the course is most effective for teaching the technique of "marshalling facts." Rosenthal, Barrett and Israel saw the appreciation and understanding of procedure taught by the course important.

The course has made Mimi Bernstein want to do trial work in practice. Before the course she thought she would never want to be a litigator.

Israel fears some budding trial lawyers might be discouraged by one learning experience of the course which he doesn't consider valuable. That is the frustrating art of waiting, mainly for court appearances. Apparently this lesson is repeated mercilessly. Crowded dockets are responsible. Israel recounted one instance recently when he and a student

arrived at the appointed time for a court appearance only to see the judge spirited away to an arraignment at a hospital.

Future possibilities for Clinical Law do not seem to include an entirely clinical curriculum. Though one student said he would go clinical all the way if he could other students and the professors felt that structured law courses were a necessary complement to a clinical program. Students generally felt 16 weeks of the program was sufficient.

Israel said that an all-clinical program would be prohibitively expensive because of the inefficiency of teachers having to work individually with students on legal problems which were similar but sufficiently different to require individual attention, such as jury selection. Such problems are economically dismissed by all-encompassing hypotheticals in classroom courses. He also questioned whether there would be enough teachers willing to teach such a curriculum. Ane he explained that the substantive law learned in the Clinical Program, though thoroughly learned, is too narrowly focused and doesn't give a desirable broad perspective of the law.

Kalo believes the program has ironed out a lot of administrative details and will go more smoothly next semester. Israel thinks the course should be full time and worth 12 to 15 credits. He hopes in the future it will be possible for some students to work with the Prosecutor's office and he would like felony cases to be handled by students.

Warren Adler, another student in the course, hopes that the course will be expanded to give everyone an opportunity to take it.

Israel does not think the course should be required since its usefulness depends largely on an individual student's plans. Interestingly, he believes the course may be more important for a student who plans to go into a plush corporate practice than for a student headed for legal aid. The reason is that the corporate lawyer probably would not otherwise get exposed to the type of clients and cases handled by the Clinic.

There are no present plans to expand the course. Surprisingly, however, its present limited enrollment of 30 just about satisfies student demand. The course had approximately 40 nibbles last semester. Now will the fish who wanted someone else to test the water jump in?

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CLEPR ANNOUNCES GRANT TO COLUMBIA UNIVERSITY TO SUPPORT A STUDY OF THE ECONOMICS OF LEGAL EDUCATION

A grant of $27,000 has been awarded to Columbia University to be used by the School of Law to conduct a study of the Economics of Legal Education. Frank K. Walwer, Assistant Dean of the Columbia Law School, will conduct the project and will be assisted in these efforts by Peter Swords of CLEPR. Gordon Gee has been appointed as Research Coordinator for the project.

The study originated in part with conversations held during CLEPR's Workshop on the Economics of Legal Education on June 8, 1971, reported in Vol. IV, No. 3, September 1971 of the CLEPR Newsletter.

Because of CLEPR's efforts to move law schools to a position of building the cost of clinical programs into their regular budget, CLEPR has developed a strong interest in the economics of legal education. Law schools and CLEPR share the same interest in finding out as much as possible about how much it costs per student credit hour for traditional legal education and for clinical legal education.

To get some reliable information on this and closely related matters, approximately nine law schools will be selected and studied. The selection will include schools representative of broad categories such as state or privately-supported institutions. Each school's history will be reviewed and income and expenditures will be carefully traced to determine their rates of growth. Figures elicited from schools belonging to one type of law school will be combined into a single set of numbers to illustrate the circumstances of a "representative" law school. The identity of the law schools surveyed will be kept anonymous.

Because of the small size of the sample, the study's results will not give a precise picture of the economic facts of all American law schools. Nevertheless, it is anticipated that its findings will point to the general circumstances of most law schools and provide a useful mode of analysis that each school might take advantage of in studying its particular situation.

The study will be divided into five sections: One section will furnish a brief historical

summary of American law schools, based on existing literature, bringing out, where possible, financial aspects of their development. A second section will trace the growth of expenditures and income of the nine law schools. Expenditures will be grouped into seven functional categories: instructional costs, instructional support, administration costs, library, student activities, financial aid and special projects. On-site interviews at the various law schools should help to shed light on the underlying reasons for the increase in costs. From this information rates of growth for future expenditures will be extrapolated. A similar analysis will be made on the income side, tracing the growth of tuition and fees, endowment income, alumni and other private giving, and sponsored research. Projections of rates or growth of future income will be developed. A third section will develop the present costs of providing traditional legal education to a first-year student, a second-year student and a third-year student. This will be done by computing the cost of educating a number of actual students and extrapolating from these results the average cost of first, second and third-year law students. A fourth section will provide an analysis of the costs of clinical legal education programs. A brief analysis of the cost of other new methods of legal education will also be included in this section. A fifth and final section will make economic comparisons between various alternatives of financing future legal education, and make some predictions as to projected expenditures and available income to meet these costs.

It is planned to complete the study and a report by the end of 1972.

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DO CLINICAL COURSES COST MORE THAN TRADITIONAL COURSES IN THE LAW SCHOOL CURRICULUM?

Preface

This Newsletter contains excerpts from the December 1971 Report of the Curriculum Committee on Clinical Programs of the New York University Law School. The fact that most law schools have a clinical program or programs attests to the educational value of clinical programs. However, there is occasional concern in some quarters about the cost of such programs. The NYU Report is remarkable in that it is the first case we know of where a law school has analyzed the cost of clinical programs in comparison to other second and third year courses in the law school curriculum. (See Section IV, below.) The last CLEPR Newsletter announced a CLEPR-financed study which will analyze these costs in a number of law schools. The results of that study will be available at the end of this year.

* * * * * *

The faculty in the spring of 1969, acting on recommendations of this Committee, made a far reaching though reviewable commitment to clinical programs as an integral part of the third-year J.D. curriculum. In this Report the Committee has undertaken to evaluate, in the light of this School's subsequent experience with clinical programs, the premises on which its earlier recommendations were based. The Committee's purpose is to make general and specific recommendations relating to the long-term role of clinical programs in the J. D. curriculum.

I. The 1969 Committee Report and Subsequent Faculty Action

The Committee defined "clinical program" as a programmed educational activity involving field work which is supervised and credited by the faculty. The Committee postulated that clinical programs would be beneficial to the Law School in that they would provide after the first two years of basic instruction more meaningful opportunities for instruction in the lawyer's role as fact-finder, counsellor, advocate, negotiator, and draftsman; would be an important motivational factor for students in the third year; would enhance the Law School and University's service to the community; would assist students to make career choices based on experience; and would assist the Law School to recruit exceptional students. The Committee stressed the need for "balanced" clinical programs, i.e. offerings covering a broad spectrum of professional practice and providing exposure to the range of institutional interests within practice areas. The Committee cautioned against the School's direct involvement, via clinical programs, in controversial causes, and recommended

that students' activities in clinical practice situations normally be under the auspices of reputable and experienced law offices or other agencies. The Committee also saw a need for granting credit for some or all clinical programs on an ungraded ("pass-fail") basis. It was of the opinion that it would be unwise and inequitable to compensate students for any credited field-work component of a clinical program and it suggested that the better approach would be to provide scholarship or loan assistance to students who could not otherwise undertake clinical work.

The Committee was strongly of the opinion that the "over-riding problem" in establishing clinical programs was that of "effective faculty supervision." The Committee estimated that effective faculty supervision in most clinical programs would require a student-faculty ratio not greater than 10 to 1 and, in certain intensive programs, 5 to 1. Such supervision was essential, the Committee reasoned, to relate clinical experience to educational program, to assure that students would not become trapped in routine work, and to evaluate performance. In discussing the question of who would provide such supervision the Committee stated:

> . . . we considered and rejected the idea of relying on part-time personnel or "clinical associates" without full faculty status. Clinical programs must be regarded in every way as comparable to traditional Law School offerings. We mean by this that not only must the professors charged with overall responsibility for clinical programs have regular faculty rank; but that junior personnel to the extent that they actually engage in teaching in such programs must also have professorial, instructional or teaching fellow rank.

The Committee did not attempt to prepare a financial blueprint for clinical programs, but it anticipated that students' selection of clinical alternatives would result in some reduction in the number of third-year seminars. In addition, although the Committee did not believe that it was feasible, proper or desirable to mandate clinical work by existing faculty, it contemplated that future faculty appointments would to some extent take into account competence and desire to work in clinical programs.

On the basis of the Committee's 1969 Report the Faculty adopted the following policies:

> 1. That each third-year student be permitted to take up to six or seven credit hours in each semester in clinical offerings, or in comparable outside-the-classroom work such as Law Review;
>
> 2. That sufficient clinical programs be established for the foregoing purpose as soon as practicable, with substantial expansion of clinical programs to occur not later than the spring 1970 semester;
>
> 3. That all clinical programs conform to the guidelines set forth in the Committee's Report;
>
> 4. That personnel be appointed, with full faculty status to the extent recommended in the Committee's Report, who possess the special skill and experience necessary to create, teach and supervise clinical work

with at least one such faculty appointment being made as soon as possible in the spring 1969 semester;

* * * * *

III. Educational Value of Clinical Programs

The evidence presented to the Committee convinces us that the clinical experiment should not only be permitted to continue, but that clinical programs should be both expanded and more fully integrated into the curriculum of the Law School. We have reached this conclusion because we believe that clinical programs serve an important educational function, entirely consistent with, and complementary to the academic mission of this school. While we recognize that these programs may have other values - e.g., satisfying student desire for "real life" experiences, and making the School more attractive to high quality applicants - we feel that these alone do not justify the substantial commitment to clinical work we are recommending. We base our judgment on the belief that clinical programs have the potential for solving significant problems created by traditional legal education, namely, the waning of student interest in academic pursuits by the third year of law school, and the failure of law school education to prepare the student adequately for the variety of roles he or she will play in practice. Our reasons for these beliefs are as follows:

1. The impact of clinical programs on student motivation.

Perhaps the most important task of an educational institution is to create an atmosphere in which the student wants to learn. All of us in the Law School community, whether as teachers or students, are acutely aware of the fact that the traditional approach to legal education has not been very successful in sustaining this atmosphere throughout the course of the student's career. Despite the efforts which have been made in recent years to "modernize" legal education through the adoption of a full elective program in the second and third years, and through the development of specialized courses and seminars in areas of high student interest, our students, at least by the third year, are for the most part fairly unresponsive, and seem content to perform the minimum of work required to satisfy their obligations. The motivation of many, if not most students to respond to an uninterrupted diet of casebook and classrooms seems to be exhausted in two years.

Our clinical experience indicates, however, that the lack of interest in traditional courses should not be taken as a lack of interest in learning. Clinical programs, offering students the opportunity to deal with "live" clients and legal issues, seems to have been very successful in regenerating their interest in the learning process. The difference between the clinic and the classroom in this regard appears to be in the fact that the clinical setting gives the student a direct and meaningful responsibility for his or her work product. No doubt there are other factors involved. But whatever the reason, the problem of motivation, so discernible in the classroom, seems not to be a significant one in the clinical setting.

It is important to stress that the students in most of our clinical programs have been devoting their time and energy to legal issues as complex and difficult as those which they address in class. Whatever the subject matter of their field work, the students have been repeatedly exposed to the same principles and practices which they have previously studied. They have,moreover, been exposed to them in a context often more challenging than before:

the pending case is never quite so clear as the decided one; nor is it possible to excerpt from such a case the issues relevant to some particular area of law. Students dealing with live legal problems, therefore, must often confront uncertainty more directly than they do in class, and must often bring to bear their knowledge in several fields of law to respond adequately to the problem presented by a client.

2. The use of clinical programs in exposing students to the problem of fact-determination. An effective lawyer, as law professors constantly remind their classes, must be able to find, organize and analyze facts, and to develop and express arguments or proposals to achieve a client's objectives based on those facts. This is true whether those objectives are to stay out of jail, to expand minority employment in construction trades, or to reform the financing of local government. Despite their emphasis on the importance of facts, however, traditional law school offerings seem to be far more useful vehicles for imparting a knowledge of, and appreciation for legal principles than for creating a strong sensitivity for the difficulties involved in applying those principles in practice. The reason appears to lie at least in large part in the reliance of traditional courses on the appellate process, in which the focus of attention is not on the fact-finding process, but on the wisdom of judges in applying legal principles to facts already found. In such a setting, the student need not face the arduous task of culling legally useful data, or indeed, the agony of having to proceed despite the "fact" that the facts are imperfectly revealed. In the clinical setting, the student has no such luxury.

3. The use of clinical programs to train students in the management of substantial projects. Basic law school courses do not purport to teach students how to perform the important task, so common to the practice of law, of working through a complex legal matter from its inception. Whether the problem is the creation of a corporation, the study of the operation of a public agency, or the preparation and advocacy of a piece of legislation, students in two- or three-hour seminars are not organized to see such problems through. A clinical program which sets as its goal a substantial and definite product can be a useful way to develop the capacity of students to take a comprehensive view of legal issues, and to train students to phase and economize their efforts so as to achieve an effective product in the time available.

4. The use of clinical programs to increase the effectiveness of students in their early years of practice. It is often said that the practical training of the young attorney is a function for the law firm or public agency to perform, rather than the law school. Whether or not this proposition is theoretically correct, it is not generally true in practice. Few graduates will have the opportunity to learn how to pull together a wide range of legal principles and methods or to develop and manage legal projects in their early years of practice. In large firms or agencies, they will rarely see more than a small piece of any major project, or piece of litigation. If they practice alone or in small, or over-burdened offices, there may be no one to criticize their work.

Moreover, except in rare instances law firms, government agencies or other operating institutions must concentrate on maximizing output, and either cannot afford the time-consuming task of review and editing the work of young lawyers, or have little interest in doing so. Even if the will were present, very few practicing lawyers or government officials have the patience or skill to help the young attorney to learn.

If, however, learning is a primary objective, as it is in the clinical setting, litigation and other projects can be managed so as to give the student assignments in all phases of the activity. His work can be reviewed carefully, and he can be made responsible for additional research or redrafting necessary to produce a quality product. At the same time, given careful supervision the end product can represent a high level of professional achievement.

The student can, moreover, be made to examine his work in a broader perspective. Actual practice is rarely objective, and while the young attorney can learn how to draft a pleading or an agreement, he is not likely to be called upon to consider all sides of every question, or to appreciate the potential and limitations of the courts and of other institutions or indeed of lawyers themselves. The necessary atmosphere of inquiry is possible only when a primary focus is on the student's learning, as well as the client's needs. This focus can best be assured in a clinical setting, in which all of those involved in supervision of the student's work are committed to his or her intellectual and practical development, as well as to the interests of a client or project.

The clinical program can assist the young attorney in another way as well. Students who have experienced clinical programs here and elsewhere report substantial growth in their self-confidence and in their confidence that lawyers can be effective in achieving socially useful objectives within our system of institutions. Exposure to the law in operation frequently forces students to readjust their view of what the law, and the role of the lawyer is, and this in turn seems to make them somewhat better equipped to formulate their career goals.

IV. Cost of Clinical Programs

Cost is a frequently voiced objection to clinical education. We believe that this objection is not well taken. In the first place, clinical programs vary greatly in terms of cost, as do traditional law school courses. Secondly, it is clear that considerations other than cost go into the decision whether to offer a particular course or program; the Law School is, after all, concerned primarily with the educational value of its offerings, and only secondarily with whether offerings "pay" for themselves. Thus there are many courses presently offered which, when compared to the "average" course, are uneconomical. Clearly, a price must be paid for the "luxury" of having small, specialized courses. We believe that clinical programs must be viewed in this overall context.

Several observations are in order as to our cost experience to date with clinical programs.

1. Some clinical programs which have been offered are indistinguishable, in terms of cost, from traditional offerings. Thus, a clinical program which involves a group of students performing field work under the supervision of a faculty member is no more expensive than any other course taught by him and taken by the same number of students. The same is true in the case of students assigned to outside agencies who return to school for a program-related seminar conducted by a professor. Likewise, a clinical program supervised by an adjunct professor need cost no more than a regular course taught by an adjunct professor.

2. Some clinical programs have involved no instructional costs to the Law School. This is the case where the faculty member receives no teaching credit for his supervisory work. It is also the case where funding is provided by outside agencies, which would not otherwise contribute funds for programs of the Law School.

3. In some cases, a substantial price tag attaches to clinical efforts. This is particularly true in programs which involve students in practice, and which require full-time intensive supervision. This type of clinical program, the so-called "in-house clinic", appears to be the most expensive. At the same time, it is an extremely valuable model from the standpoint of assuring adequate supervision. The question is whether we can afford this type of program. In addressing that question we have assumed that a reasonable method of comparing the costs of educational offerings is to calculate these costs on a per-student, per-credit hour basis. This is accomplished by estimating the proportion of the faculty or other staff member's salary allocable to a course or program and dividing that figure first by the number of enrolled students and then by the number of credit hours which the course or program carries. To illustrate, assume that a professor earns $25,000, and teaches four three-credit courses per year. The cost allocable to each course would be $6,250. Assume further that there are 25 students in each course. The cost of each course per student would be $250. Since each course carries three credit hours, the cost per student per credit hour would be $83.33.

To determine the cost of Law School courses, we have analyzed data, prepared by the University, which itemize course costs for the academic year 1969-70. Part of our analysis involves a comparison of costs by grade level. Thus, we have determined the total cost of courses taken by first year undergraduate students, second and third year undergraduate students, graduate students and a combination of graduate and undergraduate students. In isolating these categories, we have arbitrarily chosen to designate courses as undergraduate if they had fewer than 20 per cent graduate students, and graduate courses if they had fewer than 20 per cent undergraduates, with the balance being "mixed."

A. Total Costs

The total teaching cost for 192 courses (290 sections) was about $1,240,000. The total number of student registrations was 15,533, of which 6,658 were graduate and 8,875 were undergraduates.

B. Cost Range

In order to give the most accurate picture, we have analyzed the cost range in three ways: the mean cost; the median cost; and the dollar range of costs in various categories. All figures refer to the cost of courses per student credit hour.

1. Range of Costs, All Courses

The data reveals a very wide range of costs among our courses. The least expensive course cost $3.79 per student credit hour, and the most expensive $781.00. The median cost for all courses was between $40 and $50.

Fifty-one of the 197 courses (26 per cent) cost $90.00 or more, with a total of $227,000 spent to educate 730, or 5 per cent of the students.

2. Range of Costs, by Grade Level

As might be expected, the least expensive level of courses were first year courses. The mean cost of these courses was $39.44: the median, $41.00, and the dollar range from $29.56 to $50.13.

Second and third year undergraduate courses, and mixed courses, were close in cost. The mean cost of the former was much higher ($106.29 as compared with $78.60); but the median cost, perhaps a fairer figure, was $50.78 for the former, and $60.40 for the latter.

Graduate courses were less expensive than the two categories just mentioned, and, depending upon how one reckons it, were no more expensive than first year courses: the mean cost was $87.17, and the median $38.46.

3. High Cost Courses

A total of 51 courses (26% of all courses) offered in 1969-70 cost more than $90.00 per credit hour. The mean cost of these courses was $218.40. The median cost was $166.68. The range of dollar costs was from $90.91 to $781.00.

4. Clinical Courses

As stated at the outset, the primary purpose of our study was to determine how clinical programs fit within the cost scheme. Again, we can no more generalize about these courses than we can generalize about the cost of traditional courses, as this study shows. The following analysis, then, is of one type of clinical course - the in-house clinic, specifically the Criminal Law Clinic.

Professor's salary (one-half annual teaching load)	$11,000
Supervising Attorneys (2)	35,000
Overhead (Estimated amount above that of regular faculty)	10,000
	$56,000

The number of students involved is 32, making the cost per student, $1,750. Since each receives 14 hours of credit, the cost per student credit hour is $125.00.

It would seem proper to compare this cost with second and third year undergraduate courses. A closer comparison could have been made if it were possible to isolate costs for teaching third year students only, but this data is not available. It should be noted, however, that aside from a few large (and therefore inexpensive) courses in which third year students predominate in numbers, (e.g., New York Practice), most third year students are probably involved in smaller, (and therefore more expensive) courses and seminars. In any event, the $125.00 cost per credit hour for the Criminal Law Clinic compares well with the mean cost of second and third year courses ($106.29), although it is far greater than the median cost ($50.78).

Perhaps the most useful comparison is between the Criminal Law Clinic cost, and the cost of other high cost courses. As noted, the mean cost of those courses is $218.40, and the median is $166.68. Forty-six of these courses were more expensive than the projected cost of the Criminal Law Clinic. It might also be noted that the cost of the Clinic was the same as the mean cost of comparative law courses, and lower than the median cost of those courses.

It would appear, therefore, that clinical courses are, at least when compared with other courses, not unreasonably expensive. Even where full-time supervising attorneys are

required, the expense is well within our current cost range. It should be stressed, however, that the best way for the Law School to assure economy in this area (apart from active grant solicitation) would seem to be to increase, over time, the capability of its faculty to work clinically, and, where possible, to encourage the pooling of supporting services for clinical programs.

V. Recommended Guidelines

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H. Financing of Clinical Programs

Earlier in this Report figures were presented which demonstrate that instructional costs for even the most expensive type of clinical program, the in-house clinic, are well below the cost of nearly fifty conventional third-year offerings. If, as we believe, clinical instruction is a viable and important part of the School's educational program, then we can see no reason why it should not be supported by Law School funds. In fact to the extent that clinical programs, unlike conventional courses, can generate part of their own funding, they represent an economic asset for the School. At the same time, because of this variable element of foundation and other support as well as the variations in instructional costs for different clinical programs, it is difficult to place a dollar figure on the cost to the Law School of underwriting clinical programs.

In 1969 the faculty, on recommendation of this committee, adopted the policy that each third-year student should have the option to take up to one-half of his or her program in clinical offerings, i.e., up to seven credits in each semester. We believe this to be a desirable goal, but it is one that we have not begun to approach. Presently, about nine per cent of student credit hours in the third year are taken in clinical programs (approximately 870 out of a total of 9500 credit hours). We believe that it is realistic to expect a slight increase in this figure in 1972-73.

We recommend that the Law School budget be used to underwrite clinical programs in academic year 1972-73 to a minimum extent of ten per cent of all third year student credit hours. We also urge that continued efforts be made to obtain foundation and other support for existing and expanded clinical programs. The dollar underwriting cost to the Law School budget for 1972-73 will depend, of course, on the extent to which clinical offerings can be increased and the extent to which outside assistance can be obtained.

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Preface

CLEPR staff considers Hofstra's law office an important example for clinical law teaching: analagous to a teaching hospital in medical school. It is dedicated to teaching in an environment of high standards of professionalism, quality service to clients, and concern for justice. We hope its story will be helpful to other schools operating, or contemplating the operation of, an in-house clinic.

THE STORY OF HOFSTRA LAW SCHOOL'S IN-HOUSE CLINIC

by Professor David K. Kadane*

Genesis

Hofstra Law School since its inception has conceived of its clinical program as an integral component of the training of law students; and from the beginning it has been thought that a sound way to accomplish this, following the model of a modern medical school, would be to organize a law office resembling as much as possible a standard commercial law office although with intake criteria designed to mitigate hostility of lawyers who specialize in the legal problems of those just above the level of indigency. With a broad spectrum of legal matters in the office, and with the atmosphere of a real, functioning law firm, students would have a more rounded experience and the office might be seen by the clients as somewhat different from a charity.

The Planning Stage

But a law office meeting these criteria cannot be whistled up; planning is necessary, and patient building. In the planning stage some of the most fruitful discussions were had with John DeWitt Gregory. He had been the first Director of the OEO-supported Nassau Law Services Committee, and at the time was Director and General Counsel of New York City's Community Action for Legal Services, the largest of the OEO-funded legal service programs in the country.

Half a year before the NLO opened its doors I also started consultations with people in the Nassau County community who have been especially active in trying to cope with

*See note below on Professors Kadane and Gregory.

the problems of poverty and race, not only to introduce the office but also to get some sense of community priorities with respect to law services. In addition, the availability of services from the local Legal Aid Society (LAS) and the Nassau Law Services Committee was examined and it became clear that the most pressing needs were (a) dealing with the civil matters of clients whose income, although somewhat above the maxima allowed by LAS and OEO, nevertheless was insufficient to enable them to afford to pay a lawyer; and (b) developing an alternative to LAS on the criminal side, for despite the views of both informed lawyers and judges whom I consulted that those services were of a high professional order, nevertheless some percentage of indigent clients is disaffected and suspicious of the LAS criminal attorneys who are seen as integral parts of the Establishment (or at least more so than are members of the private bar, who are more likely to have the time to listen and to explain). Given the very modest resources which would be available to the office, there was never a prospect that either need could be met; but identification of the needs was important from the viewpoint of the orientation of the office.

Starting Up

On September 1, 1970, several weeks before School opened its doors to students, the Neighborhood Law Office's shingle had been hung out. I was employed as a full-time professor at the School, but given a lightened teaching load so that I could devote about half of my time to organizing and running the Neighborhood Law Office (NLO). The office was located on the second floor of a two-story building in Hempstead, the commercial and transportation hub of Nassau County and two miles from the Law School.

The office was soon seen by some parts of the community as a friend. Volunteers helped to clean it up. One scraped and waxed the floors. Several others did electrical rewiring. But because of the very limited resources of the office this concept could not be carried too far, lest expectancies develop which could not be met. The initial staff consisted of a secretary with no previous experience in a law office, an attorney who had not practiced law for some years, and (on a part-time basis) myself. The secretary turned out to be first-rate in both capacity and personality, and soon became an excellent legal secretary. The lawyer was employed on a full-time basis; and while the salary of $10 per week in cash may not have seemed high to her (it was computed simply at two dollars a day, a dollar for the morning and a dollar for the afternoon) there were other compensations of a less material sort. She quickly refreshed her considerable skills, and the cases started to accumulate. (Later, after this lawyer left the office because she moved her residence to New York City, her place was taken by another lawyer, on the same terms.)

Enough money was found to make it possible to employ another lawyer (this one on bread-winning terms) for some months. He was followed by another on a half-time basis, which was all the time she felt she could be away from her new baby. She had worked for me in her pre-maternal days before the Neighborhood Law Office was opened, mostly on commercial and regulatory law matters, and at the NLO I set her to work on the legal aspects of a substantial minority group business program which the Nassau County Economic Opportunity Commission was mounting. After a few months I arranged for her to be paid

directly by the EOC, with the NLO furnishing the office space, most of the secretarial services, overheads, and the opportunity for consultation which professionals require. This arrangement, which is still in effect, added at low cost a substantial dimension to the office and has helped us avoid the excessive concentration on matrimonials and landlord-tenant matters which inundate so many poverty law offices.

We were fortunate enough to interest a major New York law firm, Milbank, Tweed, Hadley & McCloy, in the affairs of the office on a pro bono basis. They sent us an able young lawyer on a trial basis, for a month, and he has been followed by four others, expanding our capacity and at the same time giving the young lawyers a welcome taste of practical face-to-face lawyering.

Summer

Meanwhile, Hofstra Law students were anxious to be helpful; but as they were only in their first year there was little they could do beyond serving papers and making some simple title searches. However, by the summer of 1971 they had completed their first year and we found room (and modest stipends) for five of them. Several others helped as volunteers, as well as two students from other law schools. They spent a busy summer, as there were many things going on in the office in addition to the normal caseload. For example, there was a project to examine the bail system, and another to write a practical manual for uncontested matrimonials, and another to consider the legal and factual problems resulting from exclusionary zoning laws. In addition, a not-for-profit corporation furnishing technical assistance to people seeking to establish day-care centers (which the office had incorporated and for which it had obtained tax-exempt status) made its home in the office, providing to students the experience of an additional type of exposure. The bail project was later combined with an enquiry by a citizens' group into the possibility of establishing a bail fund, and the project turned over to a recent graduate of another law school who, awaiting his admission to the bar, did his work at the NLO.

The summer activities were only lightly structured, and I believe that while the experience was positive for the students, the supervision was so thin that its educational value was quite limited.

An interesting and successful experiment was the adoption of a practice of having lunch around the library table -- lawyers, secretaries, students, clients, friends. I made it a habit to bring varied guests: practicing lawyers, judges, economists, social workers. The office was being appreciated as a place where interesting things happened.

Second-year Course

By late summer we were gearing up for our first formal course: a two credit second-year course, approved by the Law School faculty, to be given in each semester in the 1971-2 year.

We had always considered that while a clinical experience is undoubtedly useful to an embryo professional, credit should be given for the experience only when there is a substantial

educational (as distinguished from training) component. One key to this is a degree of supervision going beyond ensuring that the clients do not get hurt. It is necessary to challenge the student to justify his adherence to a form, to question why he has not pursued a better path even if one believes he has chosen a tolerable one, to check on the adequacy of his research -- in short, to subject him to the office equivalent of a classroom exchange.

This implies a good deal of supervision. We are aware of earlier clinical programs which seem to have been based on the notion that only good can come from exposing students to the bustle and pressures of an over-burdened poverty law office. We have seen too many bad habits inculcated by such an approach (and, incidentally, too many good lawyers turned away from the professional task of rendering law services to the needy) for us to be willing to tolerate an under-supervised program for credit.

On the basis of what we could gather from the thin experience of others, and from what the management experts tell us as to the general capacity of a person to supervise others, we estimated that a sound goal would be one supervisory hour for each ten hours of student time, at the cutting edge. But we also estimated that supervisors would have to spend about half of their time in planning and other activities apart from student contact, so that we had best figure on one supervisory hour for each five student hours. Two professors, each devoting half time to the office, would be inadequate to meet this criterion. Moreover, it seemed necessary, if the office was to run smoothly, to have one lawyer who would be sufficiently familiar with all the matters in the office so that it could function even when the faculty member most familiar with a particular matter was discharging his classroom teaching responsibilities.

Thus, Harvey Spizz, a lawyer with some experience in poverty law, was employed full-time. The choice was most fortunate, as he proved to have the capacity to relate well to the law students, as well as to handle a large volume of business. Additional office space on the same floor was taken. We arranged with the Adelphi University School of Social Work in nearby Garden City for the part-time placement of two social work students in the office, under the supervision of a teacher at that school. The addition of a social work component to the office not only gave us an additional resource for the benefit of our clients, but also broadened the conceptions of our law students as to the ways in which it is possible to help people in trouble.

Effective September 1, 1971, John Gregory came on to the Law School faculty on a full-time basis, although, like me, he was given a reduced teaching load so that each of us could spend about half time at the office.

A total of twenty students, about 30% of the class, are taking the second-year course. Each student is expected to spend at least seven hours on office work, although many students spend considerably more time. Every Wednesday there is a two-hour seminar, attended by all the students, by Messrs. Gregory and Spizz and myself, and usually by the supervisor of the social work students.

Each student in the office is assigned to work on several matters. These matters have been quite varied, thanks to the visibility of the office. Of course there are the usual

matrimonial, landlord-tenant, family court and consumer fraud matters. But in addition the students have worked on the formation of not-for-profit corporations, an important federal case testing the constitutionality of suburban exclusionary zoning, paternity cases, a class suit to enjoin an adverse change in welfare benefits, the drafting of a bill for the New York Legislature (at the request of a Supreme Court Justice) dealing with legal authorization for involuntary medical procedures, cases involving the fraudulent procurement of deeds where mortgages were intended by the grantors, and a variety of criminal matters.

Some of the cases are referred by the Legal Aid Society or the Nassau Law Services Committee; some are referred to the office by court personnel, including judges; some are sent by other lawyers, or are referred by old clients or friends. Of course, we can accept only a fraction of the matters which are referred to us. The criteria we employ in deciding whether to accept a case cover not only the financial position of the client, but also the importance of the case to the client or the community, and the suitability of the case as a vehicle for instruction of students.

At the beginning, and with the consent of the clients, students sit in on interviews with clients and witnesses conducted by lawyers, and take notes. Each interview is discussed with the student participant. Later, as Mr. Spizz and the directors are satisfied that the student can conduct an interview alone, he is allowed to do so after first discussing the objectives of the interview. While our practice did not always conform to our principle, because, after all, we were dealing with human beings, nevertheless before the end of the first semester virtually all the students had reached the stage of being able to conduct an interview alone.

Students prepare first drafts of all legal papers, which drafts are then reviewed with them. Students do the legal research as to the matters to which they are assigned, and the adequacy of the research is checked on the spot.

We regard the seminar as the reflective component of the course: the point where inferences are drawn, lessons articulated, problems flushed, attitudes examined, experiences compared and shared. At the early sessions there was emphasis on factual information about the office, the limitations on second-year law students under New York law, the locations of the courts, the few simple office rules as to files, confidentiality, etc. Even standards of dress were discussed by the students -- and resolved by them.

While occasionally the lawyers introduced a matter at the seminar, or made an announcement, the students were encouraged to decide what topics would be discussed. Some topics, such as interviewing techniques, excited general interest. But we still have to learn how to cope with the problem of handling topics which interest some students deeply, but others hardly at all. An extreme example occurred when we let almost a whole session get bogged down in a fruitless argument by a few students over whether the keeping of time sheets was a horror; some thought that the argument was more of a horror than the keeping of the time sheets.

We kept records of what happened at the seminars, and concluded that the best sessions were those in which the students discussed cases they were handling, and the group

explored alternative strategies in the cases. In those real contexts we were best able to sharpen questions as to professional ethics, the functions of the lawyer in relation to the client and to the courts, the effects of poverty on the client's variance from middle-class behavior, the delicate balance between under- and over-identification with the client. The students were exposed to the hard reality of the effect of the law on real people in their actual lives, as distinguished from the abstractions appearing in the usual appellate decision studied in the classroom. And the students had an opportunity to see at first hand how lawyers restlessly analyze facts in an imaginative search for avenues of relief for a client in trouble.

We know that all these things were presented, and came to the surface. What we do not know is how many of them pierced the consciousness of individual students, and how deeply, and with what qualifications or distortions. Nor do we know of a test we can give to measure these things. Furthermore, if there were such a test we do not know whether it would be we or the students who would be tested. My impression is that the seminars were reasonably successful for about half of the students: the more vocal and assertive ones, but that they were largely a failure for about a fourth of the students: those who were less aggressive or less willing to discuss their personal emotional reactions and less interested in those of others. We must learn how to improve the seminars. We have received comments from a number of the students which seem to reflect an appreciation of what a clinical course is all about, but on the other hand we had made no secret of our objectives.

The Law School faculty determined, on our recommendation, to use the usual letter-grades for the course. Apart from the general criticisms of grades applicable to classroom courses, there are special grading problems in a clinical course. In the usual classroom course, especially when the grade is based exclusively on a written examination with the identity of the student unknown to the grader, the grade is a function of the competence and achievement of the student (at least to the extent that a written examination can disclose them and the grader can divine them). Every effort is made to exclude from consideration both the personality of the student and the extent to which his competence and achievement were high before the course began, i.e., improvement.

But what are we supposed to measure, when we give grades in a clinical course? (a) If the student is meek and shy, so that he may be thought by some to be less likely to shine as a general practitioner or poverty lawyer or whatever, do we give him a lower grade because of our negative stereotype as to this personality trait? (b) If the student came to the course with elbows sticking out all over and insensitive to the psychological needs of client and witness, but wound up the course with such greatly improved insight and manner that he is now average, do we give him a C^+ for being average or an A for squeezing out of the course just the sorts of things he especially needed? (c) Does the student who does an easy and efficient job on the matters assigned to him because of his previous familiarity with the relevant areas of law (perhaps because of a previous course he has taken) get a better grade, ceteris paribus, than the student who blunders about and needs more help on the same sorts of matters because they are strange to him?

Despite these unanswered problems we are giving letter grades this year, at least because we said we would (although the tacit major premise in our reasoning may be questioned).

At the suggestion of one of the students, we invited each student to write a short statement (perhaps a page or two) explaining what he thought he got out of the course, and, if he wished to say, what grade he thought he should get. Then we interviewed each student, discussed his situation, and interpreted for him the grade we decided on. Perhaps the most fruitful part of the process was the opportunity given to each student to have a candid and friendly assessment of his assets and his problems, in a situation in which he was expected to be equally candid, not only in terms of himself but also with respect to what he got out of the course and how it might be changed for the better. (We never opened such a discussion before we told the student what grade we had given him.)

Third-year Course

We are now readying a course for third year students. The faculty have approved in principle an eleven credit course, designed to occupy for each student a combined total of about 32 hours per week in the office and in a classroom situation, although we have not yet determined the breakdown between them. We are only now learning the uses and problems of the classroom component of a clinical course.

Each student would also be obliged to enroll in a regular three-credit course, which need not be in any field related to the work of the office. The second year two-credit course (or its equivalent) would be a pre-requisite, and admission would require the approval of the teachers. The students would not be allowed to take the course more than once (just as the two-credit second year course may be taken only once). There will be no written examination, and I may propose that there be no letter grades, for my difficulties with grading the second year students would be magnified with a course having such a heavy weighting in a student's cumulative grade.

The reasons the faculty decided to offer a third-year course of eleven credits rather than fourteen, and to require each student in the course to take a three credit course whether or not related to the work of the office, are (1) that we want students in the course to be aware that they are students, and not lawyers, a difference in attitude which we think is important; and (2) we want the students to have the discipline of having to attend class with a more or less structured format and agenda, prepare materials for classroom consideration, and take an examination; and we do not believe that any of those functions can well be required in connection with a clinical course.

The reason we have decided to offer as much as eleven credits, requiring the equivalent of four days a week full-time throughout a semester, is that we believe this amount of time and no less is necessary to inculcate the important values of a clinical educational experience. We estimate the number of students disposed to follow the full semester path to be one-sixth of each class.

We have pending before the Appellate Division of the New York Supreme Court (which has jurisdiction over student practice) an application to permit third year students to handle small claims, child protection cases, certain matrimonials, certain relatively simple criminal cases, and other matters. We must then apply to the New York Court of Appeals for permission to give credit for the 11-point third-year course.

Thus the basic premise behind the Hofstra clinical experience is to fit the students into a strong ongoing rounded law office in the ultimate charge of full-time faculty members. We have set up a law office rather than an out-reach program, with the dual functions of providing clinical education for the students and rendering legal service in the community. The office is seen as an entity, and not simply a physical place in which a student legal aid service is furnished. An environment has been created in which much work is being done for individual clients as well as for community groups and institutions.

We are aware of the boredom often experienced by third year students, but in designing this course we were not influenced by it. We are aware that third year students are anxious to be released from academia and to be allowed to practice law as soon as possible, but we were not influenced by that consideration either. We believe that (1) the strictly academic aspects of a law school education can be interpreted for many students in terms of the real world, only in the context of closely supervised clinical experience accompanied by a high degree of self-consciousness; (2) law students should be taught lawyering, as well as law; (3) when one focuses on service to the public, professionalism is an important subject to be taught in a law school; and (4) a heightening of the sense of justice and injustice, and an awareness of the actual impact of our legal system on real people, can best be achieved in a clinical setting.

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Note on Hofstra Clinic Personnel

by Dean Malachy T. Mahon

David K. Kadane was finishing his 22nd year as General Counsel to one of the nation's largest utilities when we were first introduced to each other by a perceptive mutual friend in 1968. He had graduated from Harvard Law School in 1936 and had spent some time with the SEC, including a period as Assistant Director, and in other federal posts in Washington, D. C. He had also spent two years with the Peace Corps in Tanzania. He was ripe for a new challenge. I had just been given two years to get things ready for the opening of the new Hofstra University School of Law by September 1970, and had a bagful of challenges to pass out.

Professor Kadane was officially signed up for the charter faculty of Hostra Law School by May 1969. I asked him to organize and open a functioning law office which would be an integral part of the School's program, supervised by full-time faculty members. Its purpose was to help educate our law students; and the vehicles it would use in reaching that goal were to render a public service.

We were fortunate in being able to recruit John DeWitt Gregory to the faculty for the start of our second year in 1971. His experience as General Counsel and Executive Director (and organizer as well) of the largest Government financed chain of neighborhood law offices in the country -- Community Action for Legal Services in New York City -- has immeasurably strengthened our program and added new dimensions to our thinking.

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CLEPR HOSTS PARAPROFESSIONAL CONFERENCES

Recently CLEPR sponsored two conferences at its New York offices in an attempt to delineate the present status of the legal paraprofessional movement and the relevance of current developments to the law school world. In order to gain insight into likely future trends, it was decided to canvas paraprofessional developments in those other professions which had developed the most highly sophisticated utilization patterns, namely medicine and dentistry. Accordingly, a first conference was held on December 3-4, 1971, to which were invited representatives of these other professions who were most instrumental in the development and training of paraprofessionals. This was followed by a second conference, held on February 10-11, 1972 to which were invited representatives of the law teaching profession who were asked to consider the then accumulated data.

Attending the first conference were: Dr. Alfred Yankauer of the Harvard Medical School; Dr. Alfred Sadler of the Yale School of Medicine; Dr. William Lloyd, director of the Martin Luther King Health Center; and Dr. Roscoe Matkin, Director of Dental Auxiliary Programs at the University of North Carolina School of Dentistry. Dr. Henry K. Silver of the University of Colorado Medical Center was scheduled to attend but had to cancel at the last moment due to illness. However Dr. Silver did send along a substantial amount of correspondence which was read to the conference participants.

Attending the second conference were: Deans Robert Yegge of the University of Denver, Joseph Julin of the University of Florida and Murray Schwartz of UCLA, Professors Paul Carrington of the University of Michigan and Kline Strong of the University of Utah. Attending both conferences were Professor Eli Jarmel of Rutgers, Mr. Austin Anderson, former Associate Dean for Continuing and Professional Education of the University of Minnesota and chairman-elect of the ABA Committee on Legal Assistants. Representing CLEPR were its president, William Pincus, and staff members Peter Swords, Victor Rubino and Betty Fisher.

The conferences were planned and organized by Professor Lester Brickman of the University of Toledo who is the author of this report. A memorandum to the Assistant Secretary for Health of HEW, authored by Dr. Sadler, has been extensively used in the writing of this report.

The hypothesis that the medical and dental professions had something to offer to the legal profession in the paraprofessional area turned out to be uncommonly prescient. As Dr. Sadler (whose brother is a lawyer on the staff of the Yale Medical School) put it, the issues raised by the development and use of medical paraprofessionals are "remarkably similar" to those surrounding the use of legal paraprofessionals. These issues may be summarized as follows:

(1) Identification of the job task of the paraprofessional. Implicit in this issue is the raison d'etre of paraprofessionalism: the restructuring of the profession's delivery system to better serve the consumer; also implicit is the issue of career development of the paraprofessional.

(2) Selection of nomenclature and categorization of job types.

(3) Recruitment of the paraprofessional.

(4) Training of the paraprofessional and selection of the training situs.

(5) Credentialization and licensure.

(6) Dependency/independency vis-a-vis the professional.

Because of these remarkable similarities and because of the general lack of awareness on the part of the legal profession of the nature of the developments in the fields of medical and dental paraprofessionalism, it has been decided to describe in some detail several of the more interesting and instructive medical and dental paraprofessional programs. Suffice to say by way of introduction that typically the issues of relevance to the legal profession virtually leap from the page.

Medical Paraprofessionals

The basis for the development of the medical paraprofessional programs is the recognition that there is a great shortage of manpower available to deliver adequate health care. As indicated by the report of the National Advisory Commission on Health Manpower, issued in November 1967, most physicians are utilized inefficiently and many of the functions they perform can be accomplished by intermediate health workers. Thus through expanded delegation (which requires new training formulae) and greater efficiency in delegation (which requires new delivery systems), the medical profession is seeking to care for more people with existing available health manpower as well to expand the sources and types of manpower.

Medical paraprofessional programs may be classified into three major types: (1) the nurse expansion or extension program; (2) the program that takes individuals with some medical background and by augmenting their training, prepares them to work alongside of the physician; and (3) the program which begins with the totally untrained person and through training, prepares him to be a physician's assistant.

One of the first major efforts to train the new breed of medical paraprofessional - i.e., the medical assistant specifically conceived of as adjunct to the reform of the medical

service delivery system, was inaugurated at Duke University in 1965 under the direction of Dr. Eugene A. Stead. He developed a two year Physician's Assistant program aimed primarily at training returning military corpsmen. The recruitment criteria applied specifically deemphasize the baccalaureate degree status of the applicant; indeed no college background is required. Rather there is a studied attempt to select persons who are "compassionate," and who have had experience in working with ill people and who thus know they can tolerate the frustrations of dealing with the ill. These men are taught to perform a broad range of physician and nursing tasks under the direct supervision and control of practicing physicians. There is special emphasis on the repetitive tasks of patient care. These may be neglected by medical staffs more and more attuned to research at the expense of ordinary and direct forms of patient care. (Interestingly, nurses were unable to perform many of these tasks due to lack of training and a highly authoritarian educational process which inculcates in them a constant awareness of forbidden areas of patient care.) The curriculum consists of nine months of basic scientific training, followed by fifteen months of clinical rotations and has served as the primary model for at least six other physician's associate programs. Recently added for those who wish college credit is a two year baccalaureate degree-producing, integrated educational program. By September 1970, 29 trainees had graduated and been placed in the offices of private practitioners in rural areas, in clinics of larger cities and at Duke University Hospital; and by 1971, the entering class had grown to 60. Indeed application activity has grown so much that it is becoming more and more difficult to turn down the very highly qualified four year baccalaureate degreed applicant whose number now abounds, thus jeopardizing the original foci of the program which was to turn out assistants whose total time commitment was two years and to select applicants on the basis of life experience rather than formal educational status.

Another effort at training military corpsmen for use in civilian medicine was begun last year at the University of Washington in Seattle, under the direction of Dr. Richard Smith. The MEDEX program is aimed at a narrow manpower pool - the returning Special Forces Medical Corpsman who has had at least a year of independent duty experience. The major thrust of the program is to get corpsmen quickly acclimated to the civilian side and then, through a very laborious and extensive process, matching him up with a physician under whose specific guidance he will thereafter deliver primary patient care, usually in rural areas. This project, because of the more highly qualified status of personnel, begins with just three months of intensive training in the university hospital, including review of medical histories, physical examinations and simple therapeutic procedures. It is followed by a year's preceptorship with a physician, during which time the Medex learns to carry out functions that are most helpful to that physician. To qualify as a preceptor, each physician is carefully screened and agrees to hire his Medex for at least one year after the training period. The National Center for Health Services Research and Development of HEW has recently let three new contracts for the establishment of MEDEX programs and is considering further expansion.

The Yale Physician's Associate Program was begun in January 1971 under the auspices of the Trauma Program of the Department of Surgery. It seeks to meet the substantial deficiency in the delivery of primary and acute care to the critically ill, e.g., the accident victim. (The leading cause of death for those aged 1-37 is the accident.) Since one of the greatest defects in our health delivery system is the lack of adequate staffing

of emergency facilities, the Yale program, which is part of a much larger effort, has as its objective the training of men and women to handle in a sophisticated manner the wide variety of emergency problems which appear in major medical centers or community hospitals.

The training portion of the Yale program has been modeled after Duke's. It too is two years in length and divided into two parts. The didactic portion of nine months' duration is given at the Yale University School of Medicine and is integrated when appropriate with the medical school curriculum. The clinical rotation portion takes fifteen months and is analogous to clinical clerkships for medical students.

Candidates for the program are required to have had substantial medical experience in military or civilian life. Evidence of ability to do college level work in the medical sciences is also required. Therefore two or more years of college is preferred and a strong background in science is desired. Again, however, there is an extreme emphasis on "compassion" in the selection process.

In 1964 and 1965, Dr. Henry K. Silver developed the nurse-practitioner program at the University of Colorado Medical Center. The program is founded upon the theses that a pressing need exists at almost all levels for health care for an increasing population of children, and that this need can only be met by drastically altering and improving the pattern of furnishing health service and by better use of health professionals. In this program, graduate nurses return to the medical center for a four-month course of study which prepares them to assume an expanded role in providing total health care to children, especially well children - the majority of patients seen in a pediatrician's office. As part of their instruction they learn improved interviewing techniques appropriate for their expanded roles and responsibilities so that their assessments can be more perceptive and pertinent; they also become proficient in performing a complete physical examination. They review the dynamics of physical, psychosocial, and cultural forces affecting health, discuss salient features of personality development with a child psychiatrist and develop proficiency in counseling parents in childrearing practices.

After the four-month training period, the pediatric nurse-practitioners function in the offices of pediatricians in private practice and in field stations in low-income urban and rural areas where they are readily accessible to the people. In some of the field stations a physician is present during the hours that patients are seen,while in others physicians only visit the station once or twice a week at which time they see patients with special problems. Nonetheless it is considered that nurse-practitioners always function under the supervision and direction of a physician - even though he may not be physically present at all times. Dr. Silver feels that patients of private physicians employing nurse-practitioners are enabled to obtain greater understanding of their childrens' needs because of the opportunities for increased contact between mother and nurse-practitioner. Moreover, application of the combined talents "results not only in improved patient care by having two people make an assessment, but also allows more efficient and effective use of the skills and time of both the physician and the nurse."

Patient acceptance of the nurse-practitioner has generally been good with younger patients more readily accepting her services than older children whose previous

experience has been exclusively with the physician. Mothers, moreover, are delighted because the nurses make house calls not only in emergency situations when the doctor is not immediately available, but also to assess the progress of children under care, to assist mothers in carrying out instructions for the care and treatment of their children, and to evaluate the environment of the allergic child.

Nurses also handle many of the telephone calls previously directed to the physician and they are able to answer a significant proportion of the parents' questions without having to refer them to the physician.

As Dr. Silver has observed: "The nurse-practitioners become associates to physicians and take on more of a collaborative relationship with them and other health personnel, rather than being technicians or administrators or merely their assistants." Moreover, patient contact is increased and use of professional skills maximized.

Dr. Silver is now developing an even more major restructuring of the process of delivery of health care to children to meet the growing deficit in health manpower. Called the Child Health Associate Program, enrolled students will complete two (or more) years of work on an undergraduate college or university campus, followed by a two-year course of instruction at the University of Colorado Medical Center in Denver and a one-year internship. As undergraduates, the students will take a course of study similar to, but shorter than, that taken by premedical students; the curriculum for the first of the two years at the Medical Center will consist principally of study in the basic sciences, while the second year will primarily be a clinical experience on the pediatric wards, in the nurseries, in the outpatient department, as well as in various community facilities (outpatient departments of other hospitals, neighborhood health centers, special community residential centers, child health conferences, offices of private pediatricians, etc.). Since much of the subject matter covered by practicing pediatricians during their undergraduate (premedical) and medical school experience relates to factual and conceptual information that is mainly applicable to specialities other than pediatrics or to the relatively small proportion of pediatrics having to do with rare diseases and with severe and disabling illness, the training period for the Child Health Associate Program can be shortened over the medical school training program because it will be limited mainly to those aspects of the educational experience having to do with health care that is most directly concerned with children. The Child Health Associate curriculum will place particular emphasis on the large proportion of practice having to do with well children and relatively mild disease states. The course of study is designed to give young men and women the competence to give optimum care for this proportion of the total health needs of children. It is also designed to provide them with knowledge necessary to know when to make necessary referrals to physicians for consultation or further management. Since hospitalization of pediatric patients is generally limited to those with serious illness or complex problems, hospital care (except for some aspects of routine newborn nursery care) would automatically be considered outside the realm of "normal pediatrics" and would require medical consultation. Within the limits established, the Child Health Associate will be qualified to diagnose, counsel, and prescribe in both health and sickness. He will spend a sufficiently long period of training at the medical center, so that he will also be able to evaluate adequately social and cultural factors as they affect health, and will have the capacity to interpret and assess

the latest developments and research pertaining to health care of children.

The clinical year will be followed by an internship of twelve months which will consist of a combination of services with emphasis on the experience in outpatient clinics, the offices of private physicians, and the community facilities; relatively little time will be spent on the wards. On completion of the undergraduate curriculum and the first two years of the program of training at the medical center, the trainees will receive the title of "Child Health Associate" and will be awarded a bachelor of arts degree. After completion of the overall program and successful passage of an examination given by the Colorado State Board of Medical Examiners, the Child Health Associate will be certified by the Board and be qualified to provide a large part of child health care, including complete supervision of the well child and the diagnosis and treatment of most children who are ill or injured. In 1969, a law regulating the practice of the Child Health Associate was passed by the Colorado State Legislature. (The statute is discussed by Dr. Silver at 284 New England Journal of Medicine 304, Feb. 11, 1971). Dr. Silver foresees a starting salary of between $10,000 and $12,000 with subsequent increases to $15,000.

The establishment of nurse-practitioner programs has met with opposition from the nursing profession from which such statements as the following have emanated: "We want to be nurses, not associates of a physician." Having laboriously built up a status for herself over a long period of years, the leaders of the nursing profession have resisted characterizing themselves as physician assistants or mini-doctors. This status-role conflict has been engendered in part by the desire of nurses to establish their own standards, i.e., to be "true" professionals, and to retain control over their destiny. On the other hand, the physicians associates coming out of Duke are being hired at twelve to fourteen thousand per year and quickly moving up to fifteen or even seventeen thousand. The same is true for MEDEX graduates. Nurses earn considerably less. So by being dependent and by coming under the unbrella of a physician, these new personnel are being handsomely rewarded. It remains to be seen whether such financial incentives will overcome the nursing profession's current insistence on independence. By resisting innovation, the nursing profession is making reform of the medical care delivery system more difficult.

The significance of these events to the legal profession lies in the aftermath of the development of the legal paraprofessional. If it is agreed that the emergence of legal paraprofessionals in large numbers is inevitable, then the professionalization process which is so prominent in our society will lead towards demands for "professional status" and even independence from the lawyer. Such a process would be hastened if legal paraprofessionals developed substantially under their own thrust rather than as a result of the efforts of the legal profession. Indeed the more control the developing legal paraprofessionals gain over their own development, the greater the likelihood that they will resemble nurses in so far as the above discussed attitude is concerned.

Because a significant issue in the legal paraprofessional area revolves about the public-private dichotomy, alias the lay assistant versus the lay advocate (see the discussion

at 71 Colum. L. Rev. 1188), it was considered important to have a public (as opposed to proprietary) program represented at the Workshop. The Martin Luther King Health Center is an OEO-funded integrated comprehensive medical care program dispensing family oriented health care to the ambulatory. It aggressively serves an area of New York City populated by some 45,000 black and Puerto Rican residents by actively seeking out patients, even going door to door in some instances. The integration of medical services is accomplished via a team approach in an attempt to overcome the fragmentation of medical care that is so characteristic of today's delivery system. The team is designed to provide about 90 per cent of the physician care that a typical family may require and consists of an internist, a pediatrician or obstetrician, a public health nurse-practitioner, a family health worker, and a community health advocate. The two medical professionals on the team dispense traditional services. The nurse is of the genre of Dr. Silver's program but her training is of a much less formal nature. Her principal duties are well baby and pre- and post-partum care. The family health worker is recruited from the community and is trained over the course of six months to provide a fairly broad range of home nursing and social case work services. The primary locus of her activity is in the patient's home; she takes initial histories, follows up on treatment procedures, and renders social assistance to the family especially in the areas of housing, welfare and schooling. The community health advocate worker is a legal paraprofessional and undergoes a four-month training program conducted by staff lawyers. The function of this lay advocate is to provide backup assistance to the health care team in the social areas listed by seeking to assure that the treatment of medical problems is not hindered by legal impediments or inadequacies. [A more detailed description of the community health advocate is set forth at 71 Colum. L. Rev. 1197-98.]

A lively debate is ongoing in the medical profession on the issue of licensing of the newly emerging medical paraprofessional. One school of thought is that the less regulation the better so as to allow maximum diversification in the development of paraprofessional programs and practices. Indeed the four states that adopted statutory provisions in the 1960s authorized delegation of medical functions to "any person" so long as the services were performed under supervision of a licensed physician. [See Arizona Rev. Stat. Sec. 32-1421(b) (Supp. 1971); Colorado Rev. Stat. Sec. 91-1-6(3)(m)(1963); Kansas Stat. Sec. 65-2872(g) (1964); and Oklahoma Stat. tit. 59, Sec. 492 (1971).] Yet to some this does not go far enough to authorize experimentation. The Colorado legislation, for example, which for the first time in the U.S. permits a non-physician to prescribe drugs, has been criticized on the grounds that it tightly locks child health associates into "a highly detailed piece of legislation that regulates their activities comprehensively and minutely" and "is an excellent model of what should not be done with any licensed group of professionals." [See Curran, "New Paramedical Personnel--To License Or Not To License?" 282 New England J. of Med. 1085 (1970).] Dr. Silver, on the contrary, suggests that "maximum regulation is necessary for the initial graduates of new training programs since these health workers are the very ones whose activities and degree of supervision require specific definition." The Duke University Department of Community Health Services, in a report to HEW, dated June 30, 1970, recommended that licensure be strictly controlled by the state boards of medical examiners. Professor Nathan Hershey of the University of Pittsburgh Graduate School of Public Health recommends investing health

services, institutions and agencies with the responsibility for regulating the provision of services within bounds established by the state institutional licensing bodies--i.e., institutional licensure. [See Hershey, "An Alternative to Mandatory Licensure of Health Professionals," 50 Hospital Progress 71 (1969).] Since the individual physician's office, especially that of a group practice, is coming to be recognized as a small health care institution, Professor Hershey's proposal is a highly expansible and non-restrictive one.

As a result of the proliferation of medical paraprofessional programs, the states of Arkansas, California, Connecticut, Florida, Iowa, New Hampshire, New York, North Carolina, Oregon, Tennessee, Utah, Washington and West Virginia have also enacted legislation permitting the delegation of medical services to non-physicians. [The statutes are discussed at Sadler and Sadler, "Recent Developments in the Law Relating to the Physician's Assistant," 24 Vand. L. Rev. 1193 (1971).] These delegation statutes do not attempt to define the key term, "supervision and control"; nor do they define delegable tasks or the circumstances under which work may be delegated. Two states have so far enacted statutes permitting certain designated non-physicians to actually practice medicine. The Colorado Statute [Colo. Rev. Stat. Ann. Sec. 91-10-3(5) (Suppl. 1969)] was enacted in 1969 to permit the Child Health Associate to function. In 1971, Washington enacted by far the least restrictive law [Wash. Acts. ch. 30 (enacted April 8, 1971)], permitting a "physician's assistant to practice medicine to a limited extent under the supervision and control of a physician" but not requiring the physician to actually be present.

Allied to the licensure issue is the issue of recognition of major types of medical paraprofessionals by the profession of medicine. While there is no perceived great rush to superimpose specific patterns, there is a general perception that such patterns ought to be developed over time and then be given specific recognition. In furtherance of this aim, the Board on Medicine of the National Academy of Sciences and the Association of American Medical Colleges have begun to outline major classes of medical paraprofessionals. A report of the Board on Medicine lists three generic types, the first of which is new to American medicine whereas the other two are not. The first type is an assistant capable of approaching the patient, collecting historical and physical data, and presenting it in such a way that the physician can visualize the medical problem and determine the next diagnostic or therapeutic step. He is to aid the physician by performing diagnostic and therapeutic procedures and by coordinating the role of more technical individuals. He is to function under the general supervision and responsibility of the physician, though he might, under special circumstances and under defined rules, operate away from the immediate surveillance of that physician. He is to be distinguished by his ability to integrate and interpret findings on the basis of general medical knowledge and by his exercise of independent judgment within defined rules and circumstances. The second type of assistant, while not equipped with broad spectrum medical knowledge and skills, possesses a high level of skill in one clinical specialty or, more commonly, in certain procedures within a specialty. An example, suggested by the Board, is an assistant who is highly skilled in the physician's functions associated with a renal dialysis unit. The third type of assistant performs tasks covering a broad spectrum of

medical areas but does not possess the level of medical knowledge required to integrate and interpret findings. He is similar to the first type of assistant in range of tasks but he cannot exercise the degree of independent synthesis and judgment expected of the first type. This third type assistant is to be to medicine what the practical nurse is to nursing.

All of these assistants are visualized as working in a dependent relationship with physicians and performing functions limited to the areas of their supervisors' special competence. Performance and equivalency should be provided for to permit demonstration of mastery of such of the material normally taught to medical students in their clinical years. It is anticipated that the first type of assistant should be able to complete medical school in less than the usual four academic years. The Board of Medicine concludes its recommendations by urging that the AMA and the Association of American Medical Colleges (AAMC) evaluate medical paraprofessional programs and develop a system for accreditation.

To clarify terminology describing allied health professionals, Dr. Silver has recommended adoption of the new term, "syniatrist," to designate an individual who practices in association, union, or together with a physician. He has further suggested that there should be three categories of syniatrists: syniatrist associate, syniatrist assistant, and syniatrist aide. The associate would be someone who would assume a direct and responsible professional role as a colleague and associate of a physician. Associates would be capable of making value judgments and independent decisions based on their assessments of a clinical situation; within clearly defined limits, they would be expected to assume responsibility and accountability for their decisions and performances. They would serve under the supervision of physicians but would still have considerable latitude in practice. The syniatrist assistant would work under the direct cognizance and authority of physicians and would not be expected to assume responsibility for their own decisions and actions; rather they would carry out delegated tasks that they had been trained and certified to perform. The syniatrist aide would be an individual who had had little or no formal training who, under supervision, could carry out defined routine tasks and provide care of a non-skilled nature. [The nomenclature is discussed at 217 Journal of the American Medical Association 1368 (Sept. 6, 1971).]

The Association of American Medical Colleges, by action of its Council of Academic Societies, formed a Task Force on Physician's Assistant Programs in November, 1969. The Task Force was asked to: consider the role of newly developed assistants, evaluate the need for standards for programs producing them, and make recommendations to the Council. The preliminary report of the Task Force contains much of the same material as the statement by the Board on Medicine (some members belong to both groups).

The Task Force believes that the AAMC should promote the concept of an effective health care team by providing exposure to optimal use of assistants at the medical school level. As a part of its interest in providing high quality health care to all persons, the AAMC has become increasingly involved with the proper training, function, and utilization of assistant health personnel. The Task Force recommends that the

AAMC should demonstrate leadership in defining the role and function of new health categories, and setting educational standards for programs producing them. The AAMC should develop an accrediting agency as a means of effective accreditation and periodic review of "Aid To Physician" (ATP) programs. A joint liaison committee with the AMA, similar to the Joint Liaison Committee for Medical Education, is suggested. The relevance of these recommendations to the law school world is apparent.

Maintaining that issues of accreditation should be related to the existing structure of the accreditation process, the Council on Medical Education of the AMA, the Association of Schools of Allied Health Professions, and the National Commission on Accrediting are recommending a study to jointly analyze the 14 allied health profession proposals thus far submitted to the National Commission on Accrediting.

In addition to a general categorization of the medical paraprofessional, another significant issue is the task analysis. Several methods of task analysis are being used in the health field. The "time-motion" study undertakes a clinical review of every action and movement of a given worker. Another approach uses questionnaires submitted to each health worker concerning the amount of time spent performing a given task and the amount of repetition of tasks. The consensus approach brings together experts in education and experts in a particular field who review the important functions and tasks to determine the boundaries and limits of that field. One or more of these methods is utilized by most of the existing medical paraprofessional programs.

The Division of Physician Manpower of the Bureau of Employment and Manpower Training has contracted with the University of Florida to a) describe and measure tasks which can be performed by lesser trained persons in the general practice setting, and b) develop a model to ascertain the optimum combination of auxiliary and professional personnel. Numerous other efforts are also underway.

Those involved in the task analyses of the work of the medical professional and paraprofessional are trending towards the development of national standards and practice essentials--this to allow the development of training curricula and national proficiency testing. While there has been much discussion in the legal world of the wisdom of following a similar course, thus far the voices counseling caution and indicating that many such decisions are premature have predominated.

Dental Paraprofessionals

Many of the identical concerns for the availability of medical services have been operative in the dental profession with many parallel results. Increasing income, higher levels of education, and programs--both private and governmental--which reduce the financial barriers to care are factors which are accelerating the demand for dental services. Prepayment plans are becoming increasingly popular especially as a form of fringe benefit for labor unions. When coupled with the fact that fewer than 50 per cent of the populace presently do not see a dentist even once a year, the conclusion is compelling that there is a great need to increase manpower resources to meet the future demand for dental care. And while new dental schools, increased enrollment of dental

students in present schools, and a larger training capacity for dental auxiliaries are a partial answer, it has become apparent, according to the Interagency Committee on Auxiliary Personnel of the American Dental Association (composed of representatives of dental schools, dental assistants, dental hygienists, dentists, and state dental examining boards), "that more effective use of dental auxiliaries will probably provide the best single source for meeting the manpower challenge." Accordingly the American Dental Association established a policy in 1961 which encouraged experimentation in the assignment of additional functions to dental hygienists and assistants to determine which duties might be assigned; the time, cost, and methods required for training; and how the private practitioner could be helpful to accommodate to new methods of practice. Experimental programs since conducted have demonstrated that persons with predetermined qualifications can be trained through a formal educational program in a comparatively short period to provide services traditionally performed by the dentist with no lessening of quality.

Dental auxiliary personnel include the laboratory technician, the chairside dental assistant, and the dental hygienist. The assistant works alongside the dentist in what is called four-handed dentistry. The hygienist has a great deal more responsibility and is involved in oral prophylaxis and patient education. The experiments being conducted (and which are reported on herein) are for the purpose of expanding the duties of the assistant and hygienist.

One of the first experiments was conducted at the U.S. Navy Training Center in Great Lakes, Illinois. In seven weeks, 12 naval dental technicians were taught to insert amalgam and silicate restorations in cavities prepared by dentists. On the basis of that study it was concluded that a dentist operating at three chairs and delegating certain operative procedures to trained technicians could treat twice the number of patients and could significantly increase the number of restorations placed when compared to his one-chair productivity.

A 1963 program at the University of Alabama further extended delegable tasks. The results of this study, reported in the September 1967 issue of the J. of the Am. Dental Ass'n., concluded that carefully selected high school graduates could be trained to perform as well as advanced undergraduate dental students in a number of areas. And the study done by the Division of Dental Health of the U.S. Public Health Service extended still further the scope of delegable tasks and indicated that with one dentist and four assistants, productivity could be increased by as much as 140 per cent. (The increased productivity also means increased income. The dentist working with four assistants nets more than twice as much as the dentist without assistants.) During the process of this development, several states revised their dental practice acts to allow for these expansions of the functions of hygienists and assistants. Moreover, several states are considering the development and licensure of a new category of auxiliary.

What is perhaps most significant from the point of view of the legal profession is that it has been schools of dentistry that have assumed the leadership in the reformulation of the dental care delivery system.

At the University of North Carolina School of Dentistry, 13 years of experience in dental auxiliary utilization (DAU) and in training dental students to work with auxiliary personnel during their tenure in dental school is now being used as the foundation for increasing the availability of dental care by expanding the role of auxiliary personnel; the vehicle is denoted as the TEAM (Teaching Expanded Auxiliary Management) program and involves the training of auxiliaries to perform services heretofore the exclusive responsibility of the dentist. It should be noted that the School of Dentistry conducts training programs for dental hygienists and dental assistants in addition to the undergraduate dental curriculum. Dr. Matkin indicated that "having such dental auxiliary training programs as an integral part of the dental school makes it possible for us to train the dental health team together, which has tremendous carry-over into private practice following graduation."

As part of the DAU/TEAM program, every dental student is trained in aspects of personnel management and supervision, evaluation procedures relating to competence and abilities of auxiliary personnel; evaluation of the services being provided by expanded duty auxiliaries in terms of quality and quantity; and the development of practice routines that make maximum use of such trained, expanded duty auxiliaries. The latter concepts include personnel selection, training, and utilization; office design and function; patient flow patterns and scheduling; and the delegation of appropriate expanded duties to qualified personnel. Training heavily stresses the clinical method.

The training program for dental assistants has produced one very surprising result. Dental assisting students have accomplished 30 per cent more tooth restorations in the clinical component in one semester than upperclass dental students accomplish in a full year. Moreover, quality levels are at least as high as those required of dental students. One outcome of this result has been the initiation of a comparative study of the teaching methodologies for dental assisting students and dental students in an attempt to isolate those factors that enable dental assisting students, with a total higher education of two years, to perform tasks that require dental students four years of post-baccalaureate training. Implications for the teaching of law abound in this study.

Legal Paraprofessionals

There has been a recent surge of literature examining the question of the legal paraprofessional. [A bibliography is set forth at 24 Vand. L. Rev. 1213 (1971)]. A recent article by the author of this report, contained in 71 Colum. L. Rev. 1153 (1971), examines many of the issues and presents a detailed compendium of legal paraprofessional programs. The conference and this report have afforded an opportunity to focus on certain issues that the participants felt most relevant to their concerns and as well to update a limited number of the more significant paraprofessional program ventures.

As can be seen from even the limited discussion offered in this report, many of the issues now being faced by the dental and medical professions regarding the development, training and utilization of paraprofessional personnel are equally applicable to the legal profession. A resolution of such issues as task analysis, career development, recruitment, training and training situs, credentialization, licensure, and the relationship of the legal assistant to the lawyer is not yet possible. Instead, it was the general

feeling of the participants that much experimentation and developmental programs ought to be engaged in and that there is little that should be foreclosed at this time. Much of the debate over issues was generated by the reporting of programs that the participants were involved in or had personal knowledge of.

The Los Angeles area easily occupies center stage in the legal paraprofessional movement with programs of various sorts underway at UCLA, USC, the University of West Los Angeles and Los Angeles City College. Indeed, and perhaps not surprisingly, the entrance of a number of different educational institutions into the legal paraprofessional field seems parallel to the variety of schools offering a professional legal education including the fully accredited private and state university, the evening school, and the non-accredited institution.

Los Angeles City College is a community college which is offering a two year full-time program for legal assistants. The program includes courses in wills, family law, law office management and a variety of other courses which compositely look rather like a mini-law school program. Tuition is free to area residents.

The University of West Los Angeles has a small non-accredited law school. It has set up a Division of Paralegal Studies and offers both a two year program for legal assistants and a three year certificate program for legal administrators. The tuition charge is $25 per unit plus certain other fees.

USC does not as yet have a full paraprofessional program although each additional course offered is considered to be a step in that direction. The current part-time program, developed jointly by the law school and the University College Extension Division, is aimed primarily at employed legal secretaries from small and medium-sized law firms who wish to obtain advanced training and education in particular areas. The pilot course offering, The Role of the Legal Assistant I, was completed in Spring 1971 and is extensively described in an 86 page pamphlet titled: "A Report On The Role Of The Legal Assistant Pilot Course Held At University of Southern California Spring 1971". There are two current course offerings, Wills, Probate and Trust Administration and The Role of the Legal Assistant II. The latter seeks to provide an overview of the concepts, problems and approaches in the area of law office administration; in addition, an experimental and exploratory part of the course is being devoted to teaching the fundamentals of legal research. This spring a course will be offered in civil litigation in the California State Courts which will cover pleading, discovery, marshalling of evidence, and the role of the legal assistant in preparing for settlement and trial.

Substantive courses for addition to the USC program are developed through the formation of advisory committees comprised of practicing lawyers, legal secretaries, and law teachers who engage in the needed analysis and in the collection and development of teaching materials. As each course is designed, it is submitted for approval to the University Curriculum Committee.

USC is looking toward the development of an entire undergraduate curriculum for legal assistants which would include the awarding of a B.A. degree. It is also actively seeking

funding for a training program for non-lawyer employees of OEO Legal Services offices.

The program at UCLA, which is being developed in direct response to a request by the Los Angeles County Bar Association, is an experimental one under the auspices of the University Extension division but with the approval of the law school. So far the program consists of one ten-week, full-time course (200 hours of instruction) in California probate law. The 40 enrolled students are all at least high school graduates and most are presently employed legal secretaries; there are others, however, including a liberal sprinkling of unemployed aerospace engineers seeking a new career. The materials have been prepared by two practitioners loaned by area law firms to the law school. Instruction is also provided by practitioners with different ones lecturing on different parts of the course. UCLA is presently considering offering a second specialty course.

The most extensive legal paraprofessional training program that was reported on as being centered at a university is being developed at the University of Minnesota General College in cooperation with the Minnesota State Bar Association. A division of the College having responsibility for the development of new programs and offering primarily occupational liberal arts programs (e.g., dental hygiene, "New Careers" programs) is now offering a legal technology program which has been formulated by Austin Anderson and is based on a revision of the curriculum adopted by the ABA Special Committee on Legal Assistants. [The curriculum is set out in detail at New Careers in Law II: Conference Report, June, 1971, a publication of the ABA Special Committee on Legal Assistants, at p. 52.] The General College program results from the "Pilot Program of Instruction for the Legal Paraprofessional," a 32-hour course of study offered in Minneapolis in mid-1971 for the purpose of determining whether: a) there was a sufficient interest in the legal community in such a course of study for non-lawyers; b) there was a sufficient interest in the general community in such a course of study; c) law office employees and persons not presently employed in law offices could successfully be combined in a single instructional unit. A further purpose was the development of teaching materials. At the conclusion of the experimental study program, questionnaires were sent to the registrants as part of a formal evaluation procedure. These events resulted in the initiation of the current program under which training is provided for three levels of proficiency: a one-year program meriting a certificate as a Legal Secretary; a two-year program meriting an A.A. degree as a Legal Assistant; and a four-year program resulting in a B.A. degree as a Legal Administrator. For entrance into the program, a high school degree or its equivalency is required. The student body is presently restricted to 20 because of the still decidedly experimental nature of much of the undertaking; however, when fully operative, enrollment will be considerably expanded. Also at present, two legal specialty courses are being offered, Business Organizations and Real Estate Practice, but when fully underway, a total of ten legal specialty courses is planned. Such courses are being added at the rate of two per quarter. Thus, in the Spring 1972 Quarter, Estate Planning and Introduction to Civil Litigation will be the additional offerings. The specialty courses are taught by practitioners specializing in the respective areas while the remainder of the student's curriculum is taught by full-time members of the College faculty. In addition to formal classroom training, there is a summer internship component which involves students working in a specific department of a law firm, title insurance company, county assessor's office, etc. Interning students will typically be required to work through a problem which will be assigned to them as part of their classroom program as well as performing

tasks ongoing in that office. The educational program is advised by a sub-committee of the Continuing Legal Education Committee of the Minnesota State Bar Association.

The other contender for the "heavyweight crown " reported on is the "Utah Systems Approach." [This undertaking is more fully described at 71 Colum. L. Rev. 1218-19 and New Careers in Law: II, pp. 61-67.] This approach, in contrast to the Minnesota program, is a non-degreed program and is predicated on the conclusion that the best employment of a lay assistant is for the performance of those tasks which can be so routinized that standardized procedures and forms, pulled together in manual form, may be used. This conclusion is in turn predicated on analyses of the ways lawyers practice law which have led Kline Strong, originator of the Utah program, to conclude that a great deal of what lawyers actually do may in fact be so systematized. [A systems management analysis of legal practice is set forth at 71 Colum. L. Rev. 1211 et seq.]. Thus the Utah approach may be categorized as one whose central focus is on task analysis and task redefinition.

There are two distinctive branches in the Utah Systems Approach. The administrative side involves such tasks as time keeping, accounting, personnel management, investigations, filing, library management, etc. The substantive branch includes the several dozen identifiable substantive law areas such as probate, real estate, bankruptcy, etc.

The basic feature of the Utah approach is the development of highly sophisticated, integrated, and synthesized practice systems devised by senior law students enrolled in formal courses at the University of Utah with the assistance of specialists and experts drawn from neighboring law firms. Utilizing such assistance, student teams develop standardized systems for the handling of administrative and substantive matters. Both lawyers and lay assistants are to be trained in these systems. The lay assistant is to be trained in the administration of each system in detail while the lawyer, because he already knows the substantive content, will have a more cursory training in the system but will also be trained in the effective management of lay assistants operating legal systems. It is contemplated that much of this type of training of the lawyer would take place in the law school during the basic legal educational process.

The law school's involvement would be limited to devising and maintaining the currency of the systems. The actual training of the lay assistants is to be done primarily by practitioners and professional educators in a wide range of institutions (though not at law schools). Once the lay assistant has successfully completed an initial course in "This Is What The Law Is," it is contemplated that further instruction in substantive specialties can be accomplished through such self-teaching devices as programmed instruction. A certification procedure is also provided for.

The Utah and Minnesota approaches pose in sharp contrast the issue of generalist versus specialist training. Under the Minnesota program, generalists who have taken specialty courses are being trained to function in as yet undetermined ways in small and medium sized law firms. The Utah approach is to train specialists who will perform in a replicable manner without regard to which lawyers they are employed by. Indeed they would not necessarily have to be employed or directed by a lawyer in order to perform the tasks for which they were trained, although it is intended that they nonetheless always

work under the supervision and control of a lawyer. The dichotomy in approach may in part be attributed to differing conceptions as to the needs of the private practitioner. Moreover, the Minnesota program will ultimately comprise a new entry vehicle for legal personnel whereas the Utah program will focus mainly on those lay persons already employed by law firms. Finally, as a direct adjunct of this latter point, the Utah system will be producing legal specialists in large numbers almost momentarily while the Minnesota approach, because of the inclusion of college level training and the measured development of specialty courses, will produce but a limited number of graduates for at least the next several years.

An experimental feature of the Minnesota program being planned for implementation in the fall was of particular interest to the conferees. Six students, in their second year of the Minnesota program, will be assigned to work under an as yet undetermined number of University of Minnesota law students who themselves will be participating in a clinical program at the law school. The law students will all be in their third year and eligible to practice under the Minnesota student practice rule. The genesis of the experiment is the "chairside dental assistant" model for the training of dental paraprofessionals, discussed earlier in this report. While much of the detail has yet to be worked out, it has so far been determined that the clinical setting will be criminal law. The law students involved will attend (as they normally would) misdemeanor court sessions on two days a week, at which time they will be assigned indigent clients in cooperation with the Public Defender's Office. These law students will handle all the non-trial work basically on their own, including the arraignments and initial interviews. In return for this assistance, the Public Defender's Office supplies the supervision when the students conduct a trial. At a minimum, therefore, the legal paraprofessional students teamed up with the law students will closely observe the criminal process in action; it is likely that they will also interview witnesses and handle part of the investigation. CLEPR has supplied the clinical program with a grant to hire a supervisor to oversee the activity of the law student/legal paraprofessional student teams and to provide instruction in joint operation.

This supplementation of the legal assistants' classroom work is being designed to afford them exposure to how the system operates and is an attempt to overcome an almost natural inclination towards a very mechanical approach to the training of legal assistants. From the perspective of the law school, the objective will be to train lawyers (law students) in the management of personnel--a task in which lawyers have traditionally scored very low.

From a broader perspective, it was suggested that the experiment might afford the lawyer, the legal profession, and the law student a view of law as a process which could be analyzed in terms of the steps that are involved in the execution of legal tasks and the method of allocating resources for such performance. The step analysis would of course be an essential feature in the training of the paraprofessionals. Put in different terms, the experimental venture might serve to introduce law schools to a management analysis of the performance of legal tasks.

While the implications for legal education are mostly visionary at this point in time, it is conceivable that introducing some phases of paraprofessional instruction into the law

school, especially via the medium of clinical education, has the potential for significant change of the traditional methods and goals of legal education. If the issue is examined from the perspective of the teaching of the system for the passage of property from one generation to another, it is at least conceivable that the kind of analysis of the system that would be required in order to teach the parts of that system to legal paraprofessionals would result in a rethinking of the system itself. Which is to say that an implicit part of the process of analysis of tasks and their simplification and standardization is the raising of the question of whether the results sought could better be achieved by new or different systems--in effect, querying what the role of the lawyer in the wills and probate process ought to be, unencumbered by the vested interest the lawyer has in maintenance of the present system. Another potential benefit might be a replication of the experience at the University of North Carolina School of Dentistry. There, as pointed out, the dental school found it could achieve levels of technical competence in a two-year training program for dental assistants that had earlier been thought only possible in a four-year graduate level program for dental students, with obvious implications for training methodology. Without the juxtaposition of dental assisting student against dental student in the same clinical program, it is unlikely that the results would have been perceived as they were.

The clinical component was one of several interfaces between the legal paraprofessional and the law school which was raised at the conference. A strong theme running throughout--the role of the law school--was frequently discussed but proved to be as elusive as the advent of the legal paraprofessional will prove ineluctable. Several participants urged onto the law schools, à la the dental schools, the mantle of leadership. But opposition was voiced to the close association of the legal paraprofessional to the law school. All agreed that such association would prove persuasive in obtaining approval from bar associations; and that approbation by the law schools could play a key role in the hiring process. But legal paraprofessionalism, it was argued, should serve as a wedge to open wider the access routes to legal practice and, equally importantly, to facilitate development of radically different structures for the delivery of legal services. To these proponents, leadership by the law schools was seen as possibly stamping onto future forms of paraprofessionals the indelible features of present practices of lawyers. That is, law school-centered training programs might end up perpetuating what might be regarded as undesirable features of the present delivery system and might preempt other institutions from offering training programs. Instead, it was urged by some that paraprofessionals be allowed to set up their own competitive delivery systems in challenge to the lawyering modes of the legal profession. To these participants, the legal paraprofessional could function as did Jacksonian democracy in the 1830s and 40s, and sweep aside bar association-imposed impediments to the practice of law.

Another law school theme raised was that of the current enrollment phenomenon and its possible impact on the development of legal paraprofessionals. It was pointed out that admissions to the bar will triple this year as compared to 1960. In response it was indicated that while little hard data is available, it would appear that as many as one-third and possibly even one-half of law school graduates are not directly involved in the practice of law within three years of graduation. To the responders, therefore, the greatly increased enrollment of law students yet poses no peril to the growth of legal paraprofessionalism.

Perhaps the one unifying theme of the conference was that no mustard plaster pattern has yet emerged to be slapped on to shape the future. The message to the law schools is that experimentation be encouraged so as to facilitate a diversified developmental pattern.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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CLEPR ANNOUNCES FIFTEEN NEW GRANTS

CLEPR grants totalling $582,000 have been awarded to 12 law schools for support of clinical legal education programs and to 3 law schools for the training of clinical teachers.

In its April 1971 Newsletter CLEPR announced that, in considering applications for academic year 1972-73, preference would be given to programs in which students were involved exclusively in a clinical experience for an entire semester and received a semester's credit. Seven of the grants described below are in this category. All of these semester-long clinical programs will take place in clinics which are operated and controlled by the law schools.

One grant will support the first experiment by a law school - Minnesota - in training legal paraprofessionals with law students in a law school clinic.

A list of the fifteen grants and a brief description of each follows.

Support of Clinical Programs in Law Schools

A full semester clinical program at BOSTON COLLEGE SCHOOL OF LAW will become part of the Law School's regular curriculum in the fall of 1972 with the help of a $35,000 grant from CLEPR that will partially support the program for two years. Each semester between fifteen and twenty students will staff what in effect will be a public interest law firm located in downtown Boston. It will operate in tandem with Boston's Urban Areas Project of the Lawyers' Committee for Civil Rights under Law housed in contiguous office space.

A CLEPR grant of $45,000 will assist the law school of CLEVELAND STATE UNIVERSITY over a two-year period to inaugurate a one and one-half quarter clinical experience awarding 18 credits. Forty-eight students per year will work on selected cases from the Cleveland Municipal Court. Evening students, usually unable to participate in clinical programs because of their job commitments, will have an opportunity to enroll in the program through the financial support of the Alumni Association.

Under a grant to it from the Law Enforcement Assistance Administration, Department

of Justice, for promoting clinical programs in criminal prosecution, CLEPR has awarded a contract to the LAW CENTER of GEORGETOWN UNIVERSITY in the amount of $15,000 to enable Georgetown to hire an additional attorney to help supervise undergraduate law students participating in a clinical program established under a prior contract pursuant to which they prosecute and defend cases in the lower courts in Washington, D. C.

HOFSTRA UNIVERSITY SCHOOL OF LAW has been awarded a two-year CLEPR grant of $28,000 for partial support of a clinical semester program for third year students. The law school will operate a law office off campus under the supervision of two law school professors and with the assistance of a clinical intern. The cases will be screened and selected for their educational value and will involve clients with incomes above the OEO poverty level.

LEWIS & CLARK COLLEGE, NORTHWESTERN SCHOOL OF LAW has received a two-year CLEPR grant of $32,000 for partial support of a clinical program in which the law school will operate a law office off campus under the supervision of three law school professors, two of whom will act as co-directors. The thirty third year students in the program each semester will spend half of their time working in the office and the other half of their time taking practice, simulation and related substantive courses, some of which will involve clinic cases.

The UNIVERSITY OF MINNESOTA LAW SCHOOL has been awarded a two-year CLEPR grant of $30,000 for partial support of a clinical education program in the training of law students to work with and utilize paraprofessional students. In conjunction with the General College, the clinic will give field experience to legal paraprofessional students who will team up with clinic law students and receive academic credit for their clinic work. A clinic supervisor will establish and coordinate this program.

The UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW has received a $10,000 one-year CLEPR grant to help it initiate next fall its first clinical program awarding academic credit. A new member will be added to the faculty to spend his full time directing the program in which fifteen third year students will participate each semester for six hours of credit in an in-house clinic involving considerable representation on both the civil and criminal side under a new student practice rule.

A full semester of clinical work will become part of the regular curriculum at the law school of the UNIVERSITY OF SAN FRANCISCO with the support of a two-year $40,000 CLEPR grant. Fifty students per year will receive 10 credits for practice experience at two sites - a law school operated and supervised clinic located near the Public Defender's office and a Barristers' Club operated and supported clinic within San Quentin prison. Three related seminars given by the Director, Assistant Director and a regular faculty member are an important part of this program which involves the student in sequential aspects of the system of criminal justice.

SETON HALL UNIVERSITY SCHOOL OF LAW has been awarded a two-year CLEPR grant of $37,000 for partial support of a program dealing with the legal problems of the working

poor. The law school will operate a law office off campus under the supervision of a clinical director and with the assistance of a clinical intern. The program will award two half semesters of credit to thirty third year law students each year.

A grant of $38,000 to WASHBURN UNIVERSITY will assist the law school over a two year period to add personnel to its existing clinic. Sixty students per year and twelve in the summer will receive 13 credits for a full semester's work on selected cases referred from courts, Legal Aid, OEO offices and the Menninger Clinic. Practicing attorneys, regular faculty members and a psychiatrist will provide classroom components and additional specialized supervision to student fieldwork.

A two-year CLEPR award of $35,000 to WAYNE STATE UNIVERSITY LAW SCHOOL will enable the law school to add next fall a full semester component to its already substantial clinical program. The new program will add a professor to the school's faculty to work full time with fifteen students a semester in running an in-house poverty law clinic. Cases will be referred to the clinic from local OEO neighborhood law offices.

The YALE LAW SCHOOL has received a one-year CLEPR grant of $25,000 to aid in expanding the clinical legal education program at Yale in two ways. First, the position of Training Director will be established. The Training Director's function will be to establish a pattern for student supervision in a clinical program in a particular agency, and then move to another agency and establish a pattern for this agency. Second, the grant would give some support for extension of the regular faculty into the clinical area.

Training of Clinical Teachers

HARVARD UNIVERSITY SCHOOL OF LAW has received a $195,000 grant from CLEPR to be used for three years beginning in June to train graduate Fellows as clinical law professors. The CLEPR Fellows will receive their clinical training by helping Professor Gary Bellow supervise an undergraduate clinical program pursuant to which each semester seventy-five third year students participate for 8 hours of credit. A similar fellowship program has been conducted at Harvard for the past three years and has been extremely successful in producing clinical professors. With the number of clinical programs increasing each year, the continuation of the Harvard program should help meet the growing demand for clinical professors. The program under the new grant will differ from the first fellowship program by extending the fellowships from one to two years. Upon completing the program the Fellows receive an LL.M.

Grants of $7,000 and $10,000 to GOLDEN GATE COLLEGE OF LAW and the UNIVERSITY OF TEXAS LAW SCHOOL FOUNDATION respectively will provide half support in each case to law teachers with academic teaching experience who wish to acquire practice experience for use in clinical teaching. The remaining support will be provided by the law schools. Professor Robert Schubert of Golden Gate will spend his practice year at the Boston College Legal Assistance Bureau, and Professor Robert Dawson of Texas will be with the Public Defender Service for the District of Columbia.

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REPORT OF CLEPR WORKSHOP ON THE ROLE OF CLINICAL LEGAL EDUCATION AT THE METROPOLITAN AND REGIONAL LAW SCHOOL

This workshop was held in CLEPR's offices in New York on March 16-17, 1972. Participating were Professor Michael Ambrosio of Seton Hall University Law School, Professor Joseph H. Koffler of New York Law School, Professor Gary H. Palm of the University of Chicago Law School, Dean C. Delos Putz, Jr., of the University of San Francisco Law School, and Professor Donald F. Rowland of Washburn University School of Law.

The workshop was organized and written up by Professor William H. Bluth of Capital University Law School. CLEPR was represented by William Pincus, President, and Peter Swords, Victor Rubino and Betty Fisher, Program Officers. Also in attendance were Mrs. Felice Levin and Professor Lance Liebman, consultants to the Ford Foundation.

During the past several years, CLEPR has made grants to more than 90 different law schools. While the majority of private foundations tend to make most of their grants to a small handful of major national schools, it is clear from the numbers that CLEPR has extended the reach of its activities to include the more prevalent type of school. These schools, which are the typical American law school, do not enjoy large endowments, low student-faculty ratios, extensive curriculum offerings and a wealthy alumni body. The great majority of these schools teach what has come to be known as national law, as distinguished from local law, and they do have students from distant parts of the country.

However, they recruit most of their students on a local or metropolitan basis and return the majority of their graduates to practice law in the same locations from where they were recruited. In its efforts to affect all of legal education in America, the bulk of CLEPR's grants have been made to these schools. This workshop assayed the role of clinical legal education in such metropolitan and regional law schools.

The participants began by discussing the particular educational advantages of clinical programs to students of regional law schools. One of the basic functions of clinical programs at these schools is to provide skills training of a high standard in the areas of interviewing, counselling, trial advocacy and the like. Traditional legal education has not provided this training, it being left to the individual's post-law school experience in actual practice. This system of professional training has worked to a degree for the minority of law school

graduates who are given the opportunity to apprentice with Wall Street-type firms or major federal agencies such as the Justice Department. In any event, for the average law school graduate there is no such post-graduate training. In contrast, it was noted by the participants that the great majority of graduates from their law schools become practicing attorneys either on their own or as members of small firms. Skills training as considered here cannot be provided economically by the small law office and the graduate who begins as a solo practitioner must necessarily acquire these skills on his own. By training these future practitioners in interviewing, counselling, drafting, negotiating and litigating the regional schools provide the kind of training formerly given only to the elite in the profession during their first years of practice. As teaching institutions the law schools may be providing skills training of a standard superior to any provided in law firms: private or public.

It was opined that a second major educational objective of clinical programs for these schools lies in training future lawyers for local leadership roles. It was observed that a large number of the graduating students of the schools represented become local judges, prosecutors, government and political leaders. It was suggested that these schools should offer courses designed to prepare students for roles in local government. At the present time, if there is such preparation the emphasis is on national institutions and federal agencies. Perhaps the regional school has been derelict in not emphasizing enough the training of effective local leaders, for they graduate so many of them. The clinical model seems well suited for this purpose. By expanding the seminar component of most clinical programs to include an examination and analysis of the institutions involved in students' clinical work, a greater awareness and insight into the workings of local government can be fostered. Also, expansion of clinical programs into the local administrative process would broaden the clinical experience and increase this awareness and insight.

Providing law students with a close relationship with faculty members was said to be a third major educational objective of clinical programs at regional schools. At the present time, the clinical course may be the only course in which the student may experience a very close working relationship with an individual faculty member. These schools do not offer a large number of seminar courses. Most courses are required and the elective portion of the curriculum is limited. There are more large classes and overall student-teacher ratios are higher than at the major national schools. The participants unanimously agreed that seminar and other opportunities for close association with the faculty were desirable from an educational viewpoint. In the major national schools the clinical course is one of many seminar-size courses and serves as the example of a seminar. In this case, it was suggested that the classroom component of the clinical course and the teaching materials used were more important at these schools since the clinical seminar could well be the student's only seminar experience.

Another topic covered was the utility of the clinical method for evening division students. Clinical programs have been designed almost exclusively for day division students and little attention has been given to the implementation of clinical programs for evening students. Professor Bluth described the clinical course he offers in the evening. One section of the Corrections Clinic is open to senior evening students. At the present time six out of a graduating class of 17 are enrolled. Four hold law-related jobs; two as law clerks in law offices, one with an insurance company and one with the Juvenile Court. The program involves the representation of prisoners of the Ohio Penitentiary. The students interview their clients in the evening. A weekly seminar is held and conferences with the instructor

are also scheduled in the evening. Some investigation and all litigation must take place during the day, but the students have found little difficulty in taking the time off from work. Evening students, perhaps due to their work experience, are able to assume responsibility at an earlier stage and initially turn in a more professional work product. All of the students in the program plan to practice law upon graduation.

Other conferees from schools with evening divisions found that their evening students did not have the time flexibility during the day to participate in a clinical program. It was suggested that a student's motivation in attending evening law school might account for his interest or disinterest in clinical programs. Some students are enrolled in evening programs to improve their skills in their current jobs which they intend to keep after law school. Examples would be employees of banks, insurance companies, and corporate executives. These students never intend to enter the general practice of law and are, on the whole, less interested in clinical opportunities. On the other hand, there are some students who are compelled by financial reasons to attend law school in the evening. For these students, who cannot find law-related jobs while in law school, the skills training provided by clinical programs seems as important as for the day students. In terms of a clinical program's impact on local institutions, it was suggested that an evening program may have a greater impact than a day program. Evening students generally have deeper roots in the local community and are involved in local civic and political affairs. Upon graduation they remain in the community and often move into local government positions due to their contacts in the community. Furthermore, they seem to move into the power structure a lot sooner than the day students.

Several other advantages peculiar to programs at regional schools were noted. It was suggested that these schools may enjoy unique advantages in establishing innovative clinical programs due to their good reputation in the local community. Some participants observed that this indeed was the case. They have found that local officials are most cooperative in helping to establish clinical programs, even though controversial cases might be brought and increased work would be created for local agencies. This co-operation is attributed to a desire to help the law school, and by a realization that the law school is trying to train better lawyers rather than to stir up trouble. These conferees felt that the quiet, practice-oriented reputation of their schools is a definite boon to the creation of their clinical programs. Other participants felt that the school's reputation is of little importance. They believed that the reputation of the man setting up the program is the controlling factor in gaining co-operation. All agreed that local alumni are enthusiastic about clinical programs and are helpful in establishing them.

It was suggested that the clinical professor at the regional law school may enjoy a higher status than his counterpart at an elite school. The participants agreed that the clinician is more likely to be treated as a full faculty member at their schools than he would be at a major national school. He is more likely to chair important faculty committees, be granted tenure, and not be treated as a stepchild. However, he may face less pressure to publish. The conferees were pleased with their relationships with their faculties and several found other faculty members more than willing to offer their assistance and expertise in the clinical program. It was asserted that increased faculty support and co-operation was the result of a strong practice orientation among the faculty of the school. This was borne out when the conferees were polled on the experience levels of their colleagues. The majority of faculty members had substantial practice experience before they entered teaching. Most were recruited from private practice and many maintain close

contacts with the practicing bar. They support the clinical program and tend to participate in it more than the exclusively classroom-oriented teacher. There seems to be less resistance on the part of a practice-oriented faculty towards the introduction and expansion of clinical programs and there is less need to legitimize the clinical course in an academic sense. Several participants noted, however, that recent hiring has been directed more toward the academician than toward the practitioner, which may change faculty attitudes concerning the clinical professor and clinical programs.

Problems peculiar to clinical programs in their schools were next considered by the participants. First, the problems of the working student were discussed. Clinical programs at schools with a large number of working students are sometimes forced to compete with private employers for a student's time. The time required for litigation in a clinical program cannot be tailored to accomodate a student's class and work schedules and some students feel they cannot do both. This seems to be more a problem with students than with employers, since clinical programs using students who work part-time have found employers most co-operative in allowing students time off for court appearances and other required clinical work.

Several reasons were suggested for the large number of working students at these schools. The primary reason is financial. The regional law schools are unable to match the major national schools in their ability to provide financial assistance to their students. With a dearth of scholarship money available, more students are forced to work in order to pay tuition and expenses. A second reason relates to the hiring process. Many students find part-time work leads to full-time employment upon graduation. While Wall Street-type firms use summer programs as an evaluative device in the hiring process, smaller firms use part-time clerkships for the same purpose. Another reason suggested was peer group pressure.

In this connection, Dean Putz noted that many of the students at his school are employed in law-related jobs. A substantial number clerk in law offices. Others are employed by the courts, prosecutor and defender offices, and many public agencies. Jobs are often passed from student to student. These jobs frequently serve as an important step in the hiring process, since they give the prospective employer a long, hard look at the student's legal ability. In addition, they provide a natural clinical experience for the student. He sees and learns first-hand the workings of local institutions. Other participants also noted that a large number of their students held part-time law-related jobs. Estimates ranged as high as 70% of the student body.

It was agreed that the difficulty of financing clinical programs was the biggest problem facing regional schools in conducting this new kind of legal education. The metropolitan and regional private law school is basically financed by tuition income. In some cases tuition may provide as much as 90% of law school income. Yet there is a limit to the amount of tuition that can be charged, especially in states which have state-supported law schools, since tuition at a state-supported school is likely to be half that required to support a self-sufficient private school. Secondly, there was a general consensus that the metropolitan and regional law schools are far closer to being self-sufficient than the major national schools. Therefore, deans and administrators look very carefully at any program that is likely to be more expensive. It was pointed out that a study done by N. Y. U. demonstrated that clinical programs are no more expensive than other seminar courses. While this analysis may hold for a school with many seminar offerings, it is not a useful comparative tool for schools that offer few, if any, seminars, as is the case with most regional schools. For these schools clinical programs are more expensive than other courses and finances are often a major constraint in the way of the expansion of clinical programs.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

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Introduction

Peter Swords of CLEPR wrote the text for this Newsletter after a special review by way of field visits and study of written material. This was in addition to his knowledge of the area under consideration which he derived from his work on many CLEPR-financed clinical programs.

CLEPR welcomes the opportunity, through this publication, to call attention again to the challenges of clinical work in providing legal services to those who are incarcerated. There are few "pressure cookers" in human experience where as much is demanded of anyone - heart, soul, intellect - as is involved in rendering a useful service to prisoners. Since legal services are essential for everyone behind bars, there is real work here in which the future lawyer can obtain an unparalleled educational experience. Because legal services for prisoners are yet to be provided in most instances, the law schools and their students can pioneer the creation of law offices in correctional institutions, while adding much to legal education. In the future, funds for such law offices, contracted to law schools, may be included in the regular budgets for operating correctional facilities.

LAW STUDENTS IN PRISON LEGAL SERVICES
A Report on a Special Aspect of CLEPR's Program

As the American public has become increasingly concerned about its country's jails and prisons so has the American Bar. Courts are moving away from their traditional "hands-off" approach to matters involving prison administration and are beginning to consider what actually goes on inside correctional institutions. Bar associations are adding committees on corrections and penology to their list of regular standing committees. And all across the country law schools are establishing legal service programs for inmates in which law students represent actual inmates with actual legal problems. The Council on Legal Education for Professional Responsibility, a specialized philanthropy sponsored by the Ford Foundation, has played a major role in promoting these programs. This

Newsletter tells of the Council's efforts in this area and describes several of the programs it has funded that involve students working in prisons.

Before describing the Council's particular efforts in the corrections area there follows an introduction to its overall activities and purposes. The Council, known throughout the law school world as CLEPR, was organized in 1968 with a grant from the Ford Foundation to aid experiments in clinical legal education by providing accredited law schools with financial assistance to help them initiate clinical programs. Clinical legal education, as the term "clinical" suggests, involves law students representing actual clients in real cases. While a few schools had clinical programs before CLEPR's founding, for the most part these were not regular components of the law school curriculum and were offered on a non-credit basis. CLEPR's goal has been to make clinical work a regular part of the law school curriculum. To do this, it has emphasized two major factors: first, that adequate credit be awarded to students who participate in these programs and secondly, that these programs be supervised by regular faculty members. Today over 125 of America's 147 accredited law schools have clinical programs of this nature. About 85 of these schools have received CLEPR grants to help them start up new or expand existing clinical programs.

CLEPR's efforts in clinical legal education have been helped by the strong interest of law students for clinical work and by the enactment in the last few years by a large number of states of student practice rules authorizing students to practice law under prescribed conditions.* These rules in turn have encouraged law schools to engage in clinical work. Today 38 states have rules allowing student practice. A substantial boost to the enactment of student practice rules was given in 1969 by the promulgation of the American Bar Association's Model Rule for student practice.

CLEPR has had two major objectives in promoting clinical work: the improvement of the education of law students and increasing the delivery of legal services to the poor. While a potential conflict between the service and educational goals of clinical education might be expected to develop, in actual practice this has not been the case. Learning to handle a caseload is one of the educational objectives of clinical work. Furthermore, programs have had little difficulty in limiting their caseload when its size begins to interfere with the program's educational purposes. As having law students become aware through first hand experiences of the problems of delivering legal services is one way of creating conditions for improving the situation in the future, the educational and service objectives are essentially of a piece.

CLEPR believes that three major educational goals are served by clinical legal education. First, training is received in practical skills not usually taught in the traditional curriculum, such as interviewing, counseling, negotiating, fact gathering and advocacy skills. Second, law students, under close and regular supervision, develop habits of discipline and learn to turn out a lawyer-like work product of quality. And third, awareness is developed of the public service responsibility of the bar and of individual lawyers. Other

*A CLEPR pamphlet entitled "State Rules Permitting the Student Practice of Law; Comparisons and Comments" prepared by New York University Institute of Judicial Administration, provides a historical description of the development of these rules, reprints the various rules as of January 1, 1971 and briefly analyzes and compares the various rules. Copies of this pamphlet are available at CLEPR's office on request.

educational objectives include: providing students with career alternatives; bringing reality into the law school by taking the law school out into the world, and making traditional courses more intelligible and lively for students who have had a clinical experience.

Early in its existence CLEPR became interested in clinical programs in corrections. This field seemed ideal for furthering its objectives. On the service side, countless inmates were in need of legal services and nobody was doing anything about it. Educationally, exposing law students to the raw reality of prison life might do more for their understanding of the criminal justice system than weeks of lectures and library reading. One of CLEPR's first grants was to the National Council on Crime and Delinquency for a conference held at the University of New Mexico in the fall of 1969 on Law Students in Corrections. This conference brought together over 200 participants consisting of top corrections personnel, lawyers, judges, law school teachers and law students to explore the role of the law student in the corrections system. To further promote interest in this field, in February of 1970, in its Newsletter inviting applications for clinical legal education programs starting in the Fall of 1971, CLEPR announced that it would give preferential consideration to applications involving clinical work in legal services programs in jail or prison. It said: "This is an area which offers outstanding opportunities for the classical clinical experience; renders an important personal and social service; and holds promise of contributing to the rehabilitation of prisoners and the reform of the correctional system." In the Spring of 1970 CLEPR had reprinted 6,000 copies of Bruce Jacob's and K.M. Sharmar's article entitled Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process, that appears in the Spring 1970 issue of the Kansas Law Review, Vol. 18, No. 3. This comprehensive article, as its title suggests, analyzes in great detail the legal needs of inmates and explains alternative methods for meeting those needs. It was sent to each Dean and faculty member of accredited law schools.

CLEPR has made grants to the law schools of the following 15 universities and colleges to provide support for clinical programs in corrections: University of Arizona, Capital University, University of Connecticut, University of Detroit, University of Florida, Georgetown University, University of Indiana (Indianapolis), University of Kansas, Louisiana State University, University of Minnesota, University of Oregon, University of Puerto Rico, University of South Carolina, Wayne State University, and Yale University. Four of these programs are described below. In addition to these programs, 42 other law schools also have clinical programs in corrections. A list of all these schools appears at the end of this Newsletter. It is plain then that the movement for law student inmate legal services programs has reached substantial proportions.

As suggested, clinical programs in the corrections area have well served the goals of clinical legal education. Most inmates incarcerated in American prisons are desperately in need of legal services, and inmates, almost by definition, are indigent. Their very existence has been radically altered by a conviction, and many of them sustain themselves with the half hope that they may find some way of being released before their time expires. Quite understandably, State and Federal Courts are flooded with petitions for post-conviction relief. With the inmate population growing and becoming increasingly aware of the possibilities of post-conviction relief, the flood level is rising and causing an acute problem for many of our courts. At the present time the great majority of these petitions are filed by the inmates themselves. However, many inmates are ignorant of what must be alleged in a petition as a bare minimum in order to state a claim for relief.

This means that in a few instances, at least, prisoners with valid legal claims will not be heard. Furthermore, in many instances unassisted "writ writers" submit petitions that are hand written and barely legible. Frequently, these will be many-paged documents filled with largely irrelevant material. All of this imposes a tremendous burden upon the courts that must review these petitions. It is clear for one reason then why law school prisoner legal assistance programs are being received so enthusiastically. From the courts' standpoint such programs operate as a sieve screening out baseless claims. This means that the number of petitions filed should be reduced. These programs are too new to substantiate this claim, but the general consensus is that they are beginning to have this effect. Furthermore, the petitions that do get to the court are intelligible, contain only relevant information, are rationally organized and mercifully brief. They are the kind of papers that a court can work with.

In addition to the problems at the judicial level an internal administrative problem frequently arises in prisons when inmates are not provided legal services. Such lack promotes jailhouse lawyers which in turn gives rise to friction among inmates when a client is unable to pay his jailhouse lawyer his fee for the performance of legal services. There is indication that the availability of free legal services from law school programs reduces the number of contacts between inmate clients and their jailhouse lawyers.

Finally, law school clinics directly assist the rehabilitation process. More and more people involved with corrections are coming to view legal services as necessary for the creation of conditions that make possible meaningful rehabilitation. So long as prisoners believe that they are unfairly incarcerated and without rights, it is unlikely that they will become involved with their own rehabilitation. If a prisoner can still feel that he has some connection with the outside world, by sharing some of the same rights as those enjoyed by the free, there is a chance he can be rehabilitated. But if he doesn't feel any such connection then there is no chance at all.

Educationally, inmate legal assistance projects make first-rate clinical legal education programs. Considerable interviewing and counseling experience is afforded to law students. The psychological pressure of some of the interviews is equal to the most difficult a lawyer has to deal with. Post-conviction cases provide a vehicle for the exercise of a number of lawyering skills. Typically, long trial transcripts have to be searched for error. In many cases it requires considerable effort merely to obtain a transcript. Such a setting furnishes a realistic context in which to develop that most important of lawyer attributes--self discipline in habits of thoroughness. Furthermore, the whole area of crimincal law is covered and difficult jurisdictional and procedural problems must be contended with. Post-conviction work is not limited to collateral attacks on the constitutionality of an inmate's conviction. A good number of cases involve questions of sentence computation. These cases are worked out at the administrative level. This gives students an opportunity to meet and negotiate with prison authorities. Detainers involve negotiating with foreign state district attorneys. Furthermore, many prison programs are not restricted to post-conviction matters but handle civil cases as well for their inmate clients. Many inmates have matrimonial and custody problems. Welfare difficulties relating to inmate's family are frequent. Occasionally a convict will have property or commercial matters that require attention. A wide variety of different kinds of cases are then available for students who participate in these programs, thus assuring their educational content.

Most programs involve students making frequent trips to the penitentiaries in order to visit their clients. Each interview lasts on the average for one hour and this means that a good deal of general discussion goes on between the inmate and the student-lawyer. As a result of this full exposure to life in prison, students derive first-hand insight into problems of penology and are in a position to make informed analyses and judgments regarding legal process and professional responsibility issues arising in the field of corrections.

Descriptions follow of several presently operating CLEPR-supported clinical legal education programs providing legal services to incarcerated prisoners. During the course of each description many of the points made in this introduction will be amplified and examples will be given to illustrate their meaning.

The first modern day clinical program in corrections began at the Law School of the University of Kansas located in Lawrence, Kansas. Over ten years ago Paul E. Wilson, a professor of criminal law, began exploring ways to develop clinical programs at his school. At that time he was advised that clinical programs involving traditional legal aid matters were not feasible in a town as small as Lawrence. It occurred to him, with two major prisons nearby, the U.S. Penitentiary at Leavenworth and the Kansas State Penitentiary at Lansing, that a clinical program involving legal services to inmates might be a workable proposition. It was obvious that inmates had a tremendous number of legal problems and that in the majority of cases they were indigent. In the early 1960s he began talking with the authorities at the Kansas State Penitentiary concerning the possibility of initiating such a program but met with little interest at that time. Not to be deterred, a few years later in 1965 he discussed his ideas with James Vorenberg, who was then with the Justice Department, and out of these sessions there developed the University of Kansas Legal Assistance Project. Vorenberg met with Eugene Barkin, Chief Counsel to the Federal Bureau of Corrections, and Barkin made arrangements with Leavenworth for the program to operate. With a grant from the Metzenbaum Human Relations Fund of Cleveland the program commenced in the Fall of 1965. During the following year officials from the State approached the Law School and requested that the project expand into the State Penitentiary at Lansing. Today the program services both Leavenworth and the Lansing facility. In 1969 Professor Keith Meyer assumed directorship of the program.

Each year about 20 second- and third-year students participate in the program for two semesters, receiving three hours of credit per semester on a pass/fail basis. At the beginning of each year a five-week orientation course in post-conviction remedies and practical approaches to working with a prison administration is conducted. Sixteen class sessions are held. Subject areas covered include such matters as federal court jurisdiction, habeas corpus, section 2255 motions (a habeas corpus-type of relief for prisoners detained in federal institutions, right to counsel in post-conviction collateral attack cases, detainers, state sentencing procedures and the computation of good time and parole eligibility. Students are asked to read some 150 pages of cases and statutes which are discussed and lectured upon during the classes. At the conclusion of the sixteen sessions, a two-hour examination is given for which a student receives a letter grade and one hour of credit in addition to the six hours awarded for participation in the remainder of the program.

At the end of this orientation session Professor Meyer assigns cases to ten teams of two students. Inmates request assistance by completing a form supplied by the Law

School to the prison which they obtain from their case worker or other prison official. Inmates in the penitentiaries learn about the program by word of mouth and from prison authorities when they request help with their legal problems. Upon receipt of an application for assistance the project sends a letter to the inmate informing him that a student will be assigned to his case. Before the students have their first meeting with their client they confer at length with Professor Meyer about the case. During their first interview they are accompanied by a third-year student who participated in the program the year before and who worked with the project during the immediately preceding summer. This student is familiar with the prison and has had considerable interviewing experience. After the meeting the interview is reduced to writing and submitted to Professor Meyer, who then discusses the case once more with the students and a case strategy is worked out. Once the student has his first case under control additional matters are assigned to him. Eventually students will carry a caseload of about five matters. During the course of the year each student will make between ten and twelve trips to the penitentiaries. The students are expected to devote 45 hours each semester to their field work although most students end up spending a great deal more time with their cases. Each student on the average handles about fifteen cases a year, but this number does not involve those cases where, after an interview, it is determined that there is no merit to the prisoner's claim.

Once a week for at least an hour the clinic meets as a group, and discussion is held on the various problems students are experiencing with their cases. In this manner every member of the clinic becomes familiar with what everyone else is doing. Review is also made of substantive and procedural law pertinent to their practice. In addition, from time to time guests are invited to come and address the clinic. For example, a member of the State Board of Parole and Probation, or a case worker from the Federal Penitentiary might come to talk about their jobs and the views of the Corrections System. Each year the wardens of the State and Federal prisons also visit the Clinic's seminar.

As with most correction clinics, well over half of the Kansas Clinic's caseload consists of suits attacking an inmate's conviction and detainer matters. The former cases involve Section 2255 motions for the Federal inmates at Leavenworth and State or Federal habeas corpus applications for the State prisoners at Leavenworth.

A clear and persuasive explanation of the benefits of clinical programs in the corrections area was given recently by Professor Paul Wilson. He began by pointing out that since its inception his Clinic has provided legal services to over 1,000 prisoners. While able to achieve the desired relief in relatively few of the total number of cases handled, the Clinic has won some significant suits and has demonstrated interest in and concern with the problems of a substantial number of inmates. Time and again this latter point was echoed by people involved with these programs. Students universally believed that one of their major functions lay in providing a human contact for their inmate clients living in a universe otherwise devoid of personal concern. Wilson referred to this part of the students' work as providing a kind of spiritual service. Many men live for years in prison without anybody from the outside world taking any interest in them. There is a great benefit in merely letting prisoners unburden themselves. Correction authorities also cited this contribution to raising the morale of inmates as one of the primary benefits of these programs. It is interesting to compare this aspect of the clinical program with the President's Task Force Report on Corrections' primary recommendation for reforming our penal institutions, which proposes to change them from the traditional

authoritarian regimes that now exist to collaborative institutions. The collaborative institution will be structured around a partnership of inmates and staff engaged in the process of rehabilitation. Instead of isolating the inmates from the community at large, the new approach will seek to assimilate the inmates with normal non-criminal ways of life, partly through identification with the staff and partly through increased communication with the outside community. Law student programs can be viewed as a first step toward the collaborative approach to penology.

Wilson also believed that these programs furnished help to prison administrations in making available a service that they are largely unprepared at the present time to provide. Increasing numbers of correctional authorities are coming to accept the position that they are responsible for maintaining a full program of services to their prisoners, and these services include legal services. By allowing law schools to institute these programs legitimacy is added to their claims that they are building good programs for their inmates. As indicated below, in interviews with corrections authorities this point was often favorably referred to as a benefit resulting from the institution of such programs. Wilson pointed out that the courts were aided by these programs as well as the inmates and their keepers. They tend to keep baseless claims from getting before the courts and those petitions which are filed by these programs are prepared in such a way that the courts can understand and work with them, thus promoting final disposition of the matter.

Finally, Professor Wilson noted that these programs have great educational benefits for the students. They receive experiences that are not available to them anywhere else in the law school curriculum. Wilson asserted that we cannot understand what prisons are like from merely reading about them. One must go there and look at them, find out how they smell, and become acquainted on a regular basis with inmates and correction officers. Only on the basis of these experiences can one begin to make informed judgments about the correction system. Learning what prisons are now like provokes speculation about what they ought to be like. Wilson also made the point that students working in the program gain excellent interviewing experience. They sit down face to face with people they have read about as criminals and become aware of them as human beings. Furthermore, by reviewing prisoners' cases students become aware of the results of shoddy lawyering and they develop professional responsibility insights.

In an interview Warden Harris of Leavenworth made many of the same points as Professor Wilson. He noted that nuisance complaints have been reduced since the advent of the program and emphasized that the provision of legal services to inmates who could not afford counsel was an obligation owed to them that he was very pleased to have fulfilled in his institution.

Before reviewing the next program, in order to provide a clearer sense of what a student actually does when he represents an inmate-client, there follows a description of a habeas corpus case and an explanation of detainer cases. Attacks on the legality of the inmate's conviction and detainers make up the largest part of these programs' caseloads. The habeas corpus case is fictitious but closely parallels a case that has been recently handled by one of the programs described in this pamphlet. The client was convicted by a jury of armed robbery in July of 1967 and given a maximum sentence of 35 years. Several years before he approached the clinic he had unsuccessfully appealed his conviction. During his

time in prison he had heard through the grapevine that a conviction may be overturned on the ground that a prosecutor's comments to the jury during his closing argument are inflammatory and prejudicial. He remembered the harsh words of his prosecutor's closing remarks and decided to approach the law school corrections clinic working in his prison to see whether someone there might be able to help him. To do this he obtained a request slip from one of the correction officers working his ward and filled it out, asking for an interview with the clinic. By the end of the day the request slip had been delivered to the clinic and early the next morning one of the three students who work regularly for the clinic receiving compensation from work-study funds sent the inmate-client a questionnaire to be filled out. (These work-study students are all in their third year and had participated in the clinic during their second year. They receive no academic credit for their work and, in effect, act as office managers for the clinic.) Several days later the questionnaire was returned to the clinic. It was numbered and placed on a waiting list to be taken up after earlier cases had been disposed of. All the questionnaires are first reviewed by the clinic's Director, a law school professor devoting all of his time to the program. After he has looked over the questionnaire he assigns the cases to various students, depending on the nature and size of their caseload. If it appears on the face of the questionnaire that the matter cannot be handled by the clinic, it is given to one of the work-study students who then writes to the applicant and informs him that the clinic will be unable to help him. In this particular case, while the questionnaire contained information as to the charge upon which the inmate was convicted, the date and place of his conviction, and the length of his sentence, the only information revealing the inmate's claim for relief was the cryptic phrase, "I am innocent and did not receive a fair trial."

Shortly after the questionnaire was received the case was assigned to a second-year student participant. He called an official at the prison with whom the clinic regularly dealt and set up an appointment for an interview the following morning. The next day he met his client at 9:30 A.M. When he arrived his client was waiting in the lawyers' interview room located next to the visitors' room on the first floor of the prison. In his first interviews he had been accompanied by one of the third-year work-study students who assisted him with his interviews and critiqued his efforts when the meeting was over. Now he was on his own. The interview lasted about 45 minutes. His client rambled, talking at first about the closing remarks of his prosecutor. He had brought with him a copy of the brief that had been filed several years previously by his appointed counsel when he had appealed his conviction. The student examined the brief. It was centered around evidence introduced on trial but also mentioned the fact that his client was handcuffed throughout the week of his trial. At this point the student temporarily excused himself and conferred for a few minutes with the clinic's Director who had accompanied several student interviewers to the prison that morning and was stationed in a small office room nearby to the lawyers' room. The Director suggested that the student find out as much as he could about the handcuffs. He believed that a court might find that his client's due process rights may have been violated by having him appear before his jury hand-cuffed. Upon his return his client explained that four years before his trial he had escaped from a county jail, and because the local authorities were afraid that he would escape again he was hand-cuffed all during the time of his trial. His client further explained that five months before his trial he had undergone fusion surgery on his right ankle and could hardly walk, let alone run.

After the interview and a conference with the program's Director, it was decided to concentrate on the issue of the handcuffs and to write to his client's former attorney to see whether he could shed any light on the matter and if he had a copy of the trial transcript. When no reply was made to the second letter, the student telephoned the attorney only to learn that he did not have a copy of the transcript and remembered little about the case. The student then wrote to the clerk of the court in which his client's trial took place and asked for a copy of the transcript. He received a prompt reply that the document would not be allowed out of the courthouse without a court order. A motion for the District Court of Appeals was prepared by the student and submitted by his client, in propria persona, seeking loan of the transcript for a 30-day period. The motion was granted and the transcript was received shortly thereafter. In order to substantiate his client's claims regarding his operation, the student decided that it was necessary to obtain records from the hospital where his client had undergone surgery. It took two drafts before the program Director approved the language of the release. When the records were received they did indeed reveal that the client's ankle had been operated upon and that he was unable to run. After a meeting with the Director, it was decided to petition for a writ of habeas corpus in the local U. S. District Court. In order to do this the student had to work through some fairly complicated jurisdictional questions and prepare a statement of facts to support the claim for relief. The drafting process was tedious and it took four drafts before the Director approved the petition for filing. As a final step, the student prepared a Motion to Proceed in Forma Pauperis and for Appointment of Counsel, with an attached Affidavit of Indigence and Certificate of Service. When all the papers were ready and approved, a final conference was held with his client to explain what had been done and what he might expect to happen. The client was given a memorandum of law that the student had prepared on the handcuff issue and was advised that the Attorney General might file a motion to dismiss. He was told to notify the clinic in the event that happened. The District Court granted the motion and appointed counsel to represent the inmate at his hearing. As a final step, the student sent a copy of his file to the appointed counsel.

This case well illustrates the benefits that such programs provide to the criminal justice system. In all likelihood, the inmate in question would have eventually filed papers on his own without legal assistance. They might have been lengthy and barely intelligible, and almost certainly would not have raised the proper legal issues. Even more certainly, motion would have been denied giving rise to the likelihood that after a while he might once again attempt to file papers for release with as little success. In contrast, brief and well organized papers were filed that raised the only issue that had any merit worthy of the court's consideration. The client was kept closely apprised as the matter progressed and should have been impressed by the care and detailed efforts that were expended in developing his case. If the court ultimately rules against him as a result of these efforts, it is more likely that he will be satisfied that nothing more can be done for him.

From the above description it should be clear that collateral attacks on an inmate's conviction present a wide range of criminal process issues. For this reason such cases make excellent vehicles for legal education. Further, the type of work that is done in these cases develops the self-discipline and habits of care and thoroughness that characterize a lawyer at his best.

While only a few post conviction cases result in an inmate's conviction being overturned,

correction clinics are often successful with the other major source of cases--the detainer.

When a jurisdiction institutes criminal charges against a person incarcerated in another jurisdiction, it usually files a detainer with the warden of the prison holding the inmate, requesting, in effect, that he be held for extradition to the demanding jurisdiction at the termination of his prison sentence. The lodgment of a detainer against an inmate can have serious consequences for his present imprisonment. It may decrease his chance of obtaining a favorable custody classification. Typically, he will be classified as a maximum custody risk on the ground that a prisoner with a detainer has a greater incentive to escape than one without one. As a result of such classification he may lose certain privileges. For instance, he may not be eligible for trustee status or for assignment to a medium or minimum security prison which may be located near to his wife or family. Further, he may not be eligible for study-release or work-release programs. Another deleterious effect of detainers may be to hinder an inmate's chance of parole. Perhaps the most devastating consequence of the detainer is that it causes anxiety and this hinders the rehabilitation process. It behooves a prisoner therefore to try to have the detainer lodged against him withdrawn. Frequently correction clinics are effective in obtaining this relief. A request to the prosecutor of the demanding jurisdiction who instituted the charge against the inmate may be sufficient to persuade him to withdraw the detainer. To effectively make such a request, a student-attorney must be ready to speak to a number of factors that will concern the prosecutor who lodged the detainer. These include: the seriousness of the outstanding charge, the nature and length of the current conviction and sentence, and the inmate's behavior in prison. In the latter connection, the request will be more forceful if the student-attorney can find a responsible prison official to join in his request. If the request is turned down, a demand for a speedy trial may be made. However, the decision to make such a demand must be weighed with great care. Does the inmate-client in fact really want a rapid disposition of his case? Many inmates desire the withdrawal of their detainers, but are not truly anxious to defend a fresh case. Crucial to such a decision is the determination of whether, if convicted, the inmate will receive a sentence to run concurrently with his present one.

While post-conviction proceedings for collateral relief and detainers make up the major portion of these correction clinics' caseloads, there are a number of other matters that are regularly handled by these clinics. Perhaps the next most common case involves a prison administration's computation of an inmate's sentence. Frequently inmates feel that their sentences have not been correctly determined or that they have not received the proper amount of "good time" credit against the length of their sentence for good behavior. A "Good Conduct Time" credit is awarded by most penal laws by providing that a prisoner may be granted a reduction of his sentence not to exceed one-third of his minimum term for time served without infractions. Occasionally correction clinics take action against prison officials for treatment or lack of treatment given to inmates in the institutions. Prisoner rights cases, however, have not yet become the major item of these clinics' caseloads. A number of civil problems are handled by the clinic, divorce actions being the largest category. Many prisons have rules that prohibit a married inmate from seeing women other than his spouse or members of his direct family. As many inmates have separated from their legal wives years before their incarceration, these rules can work a substantial hardship. Child custody, dependency and neglect, and paternity cases are fairly frequent problems and from time to time a personal property case will come up.

The second program to be described is the Post Conviction Legal Assistance Clinic at the

University of Arizona in Tuscon. In the Fall of 1968 Professor David Wexler decided he would add a clinical component to the criminal procedure seminar he was scheduled to teach the following Spring. Wexler had heard of the program at Kansas and was interested in the possibilities of law students providing legal services to inmates. During the Fall he conducted extensive negotiations with the Arizona Director of Corrections and the warden of the Arizona State Prison located in Florence, about sixty miles from Tuscon. Wexler agreed to restrict the students' practice to post-conviction cases and not to take prisoners' rights suits against the State. To support his proposal he obtained approval from the State Bar Committee on Criminal Legal Services to Indigents as well as from Arizona Supreme Court Judges. The Attorney General's office also supported the proposal. In the past, with most prisoners going unrepresented on their post-conviction claims, the lawyers representing the State from the Attorney General's office were expected by the court, in effect, to present the prisoners' side of the case as well as the State's in opposition to the prisoners' claim. This raised serious advocacy problems and the Attorney General looked forward to the students furnishing relief on this score by representing the prisoners. During the Fall Professor Wexler hired Andrew Silverman, then a third-year student, to be his research assistant in helping to prepare materials for the program in the Spring.

The Post Conviction Legal Assistance Clinic commenced operation in February of 1969 at the start of the school's Spring semester. Fifteen students participated for two hours of credit. Andy Silverman was one of the participating students and, because of his light class-room schedule, he spent a great deal of time working in the clinic. Following graduation he worked for a year with the Maricopa County Attorney's Office in Phoenix, Silverman then returned to the law school to help Professor Wexler conduct the clinic. Starting in the Fall of 1971 Silverman took over the running of the clinic, and Professor Wexler now acts as a consultant to him.

Each semester about 15 second- and third-year students participate in the clinic for two hours of credit. Since most of the clinic's matters do not involve litigation, recently there has been an effort to enroll second-year students in the course because third-year students prefer some of the Law School's other clinics which, under Arizona student practice rule allowing third-year students to appear in court, involve actual litigation.

Notices of the program's services are posted in various strategic places throughout the prison, indicating that if an inmate desires assistance he should request it by letter to the clinic. Upon receipt of the letter, the clinic opens a file on the applicant and mails the applicant a questionnaire which he is asked to complete and return to the clinic. Upon its receipt, it is reviewed briefly by Mr. Silverman who then assigns it to a student. In this manner Mr. Silverman assures that each student handles a variety of different types of cases during his participation in the clinic. The student's first task with regard to his case is to immediately write a letter of introduction to his client. He then sets up an interview with his client and travels to the prison to conduct the interview. Similar to the other programs that are described, the prison officials are extremely cooperative in arranging these interviews. The interviews take place in special rooms, and while there is no time limit upon the interviews, they typically last for about an hour. After the interview the student makes a memorandum of it which is reviewed by Mr. Silverman. Each student meets with Mr. Silverman for a regularly scheduled hour each week to review his cases. Furthermore, Mr. Silverman reviews any written matter before it

leaves the clinic and is available for assistance to the students at their initiative all during the week. At any one time a student will have a caseload of about four or five cases, and during the course of the semester will visit the prison about five times, spending about one-half day each trip. Similar to the caseload of the Kansas Corrections Clinic, about two-thirds of Arizona's caseload is made up of post-conviction suits for collateral relief and detainers. Sentence computation problems also frequently arise.

In a letter to the author, William P. Dixon, Assistant Attorney General of the State of Arizona, writing for the Attorney General, had this to say about the Clinic:

> "Our office regards very highly the Post-Conviction Legal Assistance Clinic at the University of Arizona Law School, as the same has been conducted by Andy Silverman and his predecessors. In answering the various Petitions for Habeas Corpus and other relief, which inundate our courts by the hundreds and which is our responsibility, three problems of an especially vexatious nature confront us in almost every case. The first is that the vast majority of these petitions are absolutely spurious, but determining and demonstrating this to the court often requires a great deal of frustrating labor on our part. When the convict is represented by Andy and his Post-Conviction Clinic we can, without exception, rest assured that we are not dealing with a spurious claim. Defensible perhaps, but not spurious.
>
> "The second problem, again of almost universal dimensions, is the unlettered, undisciplined and nigh unintelligible manner in which most petitioners present their claim. To get more specific, practically every prisoner can recite by rote, as if he were dealing off prayers on a strong of beads, phrases out of the first ten amendments to the United States Constitution. These phrases they sprinkle in among their factual claims, and the courts cannot ignore them. However, though it may sound strange, this method of presentation of a claim, lacking preciseness, is much more difficult to respond to or otherwise handle. When the Post-Conviction Clinic presents a claim, it is presented in its properly precise legal form. This saves us immense time.
>
> "The third problem which crops up in a large number of petitions filed by prisoners is the tendency to misrepresent flatly the state of the record. Of course it goes without saying that Mr. Silverman and his Clinic are completely candid and open with the court and opposing counsel. This also is of immense help to our office.
>
> "If this sounds like I am enthusiastic over Andy's Clinic because he saves us time and trouble, I apologize for the implication, and hasten to assert that nothing could be further from the truth. The real contribution he makes is this: Just as we in this office are dedicated to the effective prosecution of criminals, we are equally dedicated to the proposition that no one be convicted unjustly or in violation of the Constitution or laws of the State or of the United States. When Andy Silverman and his Clinic are on the other side I have the inner satisfaction of knowing that my opponent is ably represented, diligently taken care of, and that everything that can possibly be said in his behalf is being said in a most effective manner. This is a direct help to this office."

To further illustrate the nature of the cases taken by these correction clinics, there follows a description of several cases that the Arizona program has recently handled.

The first case involves an inmate who was convicted of unlawfully possessing marijuana and sentenced to a three- to five-year term in the State Prison. After an unsuccessful appeal of his conviction he contacted the clinic. The drugs had been found in his car following an arrest for a traffic violation. It developed that the inmate's brother-in-law had called a Narcotic Squad Officer and told him that the inmate was smoking marijuana in a nearby gas station. Two Narcotic Squad patrol cars proceeded immediately to the gas station to observe the inmate's actions but did not observe him smoking. While the officers had the station staked out, they were informed by the Motor Vehicle Division that the inmate's license had been suspended. When the inmate got into his car and drove away, the officers stopped and arrested him for driving with a suspended license. Following the arrest they effected the search which produced the marijuana. The trial court and Arizona Supreme Court held that the search was valid, stating that it was incident to a proper arrest. The clinic filed a habeas corpus petition in the U.S. District Court alleging an unlawful search and seizure based upon a sham arrest. The District Court ruled that the search was invalid, thus granting a writ of habeas corpus releasing the petitioner. The State did not appeal the decision or re-try the petitioner.

This case is one of the few in which the clinic has been successful in overturning a conviction on constitutional grounds. It is, however, fairly representative of the range and kinds of claim that are made in post-conviction cases. The next two cases described also typify the kind of case in which corrections clinics have achieved considerable success.

In the second case, involving a writ of habeas corpus claim, the petitioner was originally convicted on nine counts of writing bad checks totalling $165. The petitioner was sentenced to nine one- to two-year terms apparently running consecutively. On appeal the only attack on the sentence by his court-appointed attorney was made on the ground that the sentence was excessive. This claim was rejected by the Arizona Court of Appeals which held that the sentences were not excessive since each sentence was within the statutory limitation. After being notified of his unsuccessful appeal, the petitioner contacted the clinic. Upon investigating the case, his student-lawyer discovered that the petitioner's judgment of sentence read that his nine sentences were to run consecutively, but were all to date from the date of sentencing. The clinic then filed a State habeas corpus petition and, based on an Arizona case, argued that the ambiguity in the petitioner's sentence should be resolved in his favor and, therefore, his sentences should read to run concurrently. The court agreed with the claim and granted a writ of habeas corpus. Since the petitioner had spent a sufficient time in prison to have completed serving nine concurrent one- to two-year sentences, he was immediately released.

The third and final case described came up in response to an inmate's request for assistance in preparing a habeas corpus petition alleging the involuntariness of his guilty plea. The inmate was interviewed by a clinic student assigned to investigate the facts surrounding his plea. During the course of the interview, the inmate offhandedly remarked that he had only decided to draft the petition and fight his case when the institution, a few weeks earlier, changed his scheduled release date from April, 1969 to May, 1970. Surprised and interested by the latter statement, the student lawyer pursued the release date problem.

He learned that the inmate, a narcotics violator, was convicted in 1961 and, when sent to prison, was given a release date of April, 1969. A few months prior to his scheduled release date, however, the inmate was informed by the institutional authorities that his original release date had been inadvertently computed without regard to a 1961 legislative enactment, which provided heavy mandatory penalties for most narcotics violations, and that his proper release date, computed by taking that statute into account, was in May, 1970. Checking further, however, the student lawyer learned that the 1961 statute could not properly be applied to the inmate since its effective date was in October, 1961, whereas the inmate had been sentenced in September, 1961. When notified of the error, the authorities promptly reinstated the inmate's original release date, thereby sparing him 13 months of improper confinement.

One of the oldest corrections clinics in the country is run by the Law School of the University of South Carolina located in Columbia, the state's capital. Each semester some 15 third-year students participate in the Corrections Clinic for which they are awarded three hours of academic credit. For the first three weeks of the program they meet for a minimum of two hours every evening for intensive orientation sessions. The orientation program is a mixture of lectures on practical skills and discussions of South Carolina's corrections and parole systems. Office procedures are discussed and a tour is given of the Central Corrections Institution, South Carolina's maximum security prison located in Columbia. At the end of this period the students are ready to accept cases.

Prison authorities submit to the Corrections Clinic a list of inmates who desire legal counseling. Forms to sign up for legal assistance are available in designated places at each institution and references are also taken from employees of the various facilities. This list is supplemented by requests that the Corrections Clinic receives from other sources, such as family of the inmates or local legal service programs. The list is kept in chronological order so that inmates are served, except in emergency, in accordance with when they requested help. Each student picks up about five matters at the start of his clinical work and keeps a caseload of about this size during the course of the semester.

During a semester a student may handle as many as 25 matters. The great majority of cases comes from inmates confined in the Central Correctional Institution. Inmates imprisoned in correctional facilities outside of the Columbia area desiring legal assistance are transferred temporarily to CCI so that they may receive student assistance.

After a student picks up his case he calls the prison authorities and makes an appointment to interview his client. The prison authorities have been very cooperative in scheduling these interviews. Students average two trips a week to CCI where they conduct about two inmate interviews each trip taking about one-half hour each interview. Interviews normally take place in the attorney's interview room or in the visitor's room. Students are expected to devote at least ten hours a week to their field work although many go way over this minimum.

South Carolina's Corrections Clinic is unique among these law school programs in providing its law students an opportunity to represent prisoners at their parole eligibility hearings.

Every other week the South Carolina Parole and Pardon Board meets to consider

applications for parole. Students in the Corrections Clinic represent inmates at these hearings. A week before each hearing two or three applications are selected and each one assigned to an individual student. By statute it is necessary for an inmate to have secured a suitable job and a place to stay before he is eligible for parole. Each student representative makes immediate arrangements to interview his client and see whether he has made any arrangements for employment and residence. If he has not, the student then attempts to find employment for the inmate and locates a place for him to stay. Jobs are generally obtained through leads supplied by the inmate, through the Alston-Wilkes Society, through companies with a policy of handling ex-prisoners or through personal contacts of the student. On the eve of a recent parole hearing one law student, a young lady, had exhausted all of these avenues. She then proceeded to ride around town and knock on the doors of construction trailers, asking for jobs. After assuring the foremen that the jobs were not for her, she succeeded in obtaining suitable employment for her inmate-client. The student will usually interview his client at least twice more before the hearing and prepare him for making a statement to the parole board. At the hearing the student begins the proceedings by making a five- to ten-minute presentation on the prisoner's behalf during which time he details the reasons why it would be appropriate for the inmate to be released. After his presentation the inmate is usually asked to speak, and this is followed by questions from the panel directed to both the inmate and his law student representative. During his semester in the Corrections Clinic a student will usually make four appearances before the Parole Board.

In an interview with William D. Leek, Director of South Carolina's Department of Corrections, he indicated complete satisfaction with the Clinic. He believes the Clinic's efforts have been significant in reducing the number of frivolous writs filed by inmates under the charge of his department. Like so many others involved in this work, Leek also believes that making someone available from outside the immediate institution to talk to inmates about their problems is of considerable benefit to the morale of his prisoners. Leek cited as another advantage to his department the Clinic's ability to bring to his attention administrative problems that might likely result in protracted litigation. He thinks it is far better to have these matters worked out through negotiations rather than before a court. In many cases the practices challenged are ones he is unaware of, and upon learning of them is eager to make changes necessary to eliminate the undesirable aspects of the challenged activity. As the Clinic is in a position to bring such suits, a nice balance exists between it and the department for negotiating when problems of an administrative nature are raised.

An example of the resolution of one such administrative problem is shown by the department's recent publication of regulations involving censorship of mail. A prisoner at Central Corrections Institution had his mail censored and brought suit in the Federal District Court. The trial judge held a hearing and postponed ruling in order to give the parties time to reach an agreement. The Corrections Clinic represented the inmates and the Director and his wardens represented the Department of Corrections. In an all day session mailing regulations were mutually agreed upon and the suit was dropped. These regulations are detailed, intelligible and manifestly fair, and have been operating to the complete satisfaction of both inmates and department personnel. Leek believes that the experience was tremendously educational for both the students and his corrections staff.

More recently administrative procedure rules have been worked out to cover situations

involving matters internal to the prisons, where inmates feel they have been aggrieved by some action taken by correction authorities. The administrative procedures rules came about as the product of two frustrations. The Department of Corrections was frustrated because in some instances suits were being brought seeking relief which the Department would have been glad to give had they known the problem existed. Many correction officials are eager to work out their own rules before becoming involved in judicial proceedings which may impose requirements that are burdensome and possibly dysfunctional. From the Clinic's standpoint, prior to such rules there was no practical way for a prisoner to exhaust his administrative remedies before bringing suit.

Leek's point regarding what Professor Wilson has called "spiritual services" was iterated during student interviews. One student exclaimed that working with the Clinic was the first time he felt useful since coming to the law school. Much of what the students do for their clients involves assistance on matters of only a quasi-legal nature. For instance, an inmate may want to transfer to another institution to be closer to his family, or an inmate may want to have returned to him papers or possessions removed from his cell during the time he was kept in solitary confinement. Frequently, prisoners feel they are in need of medication. Students attempt to resolve these problems by contacting prison authorities.

However helpful the provision of the social services may be to inmates, it appears that they are not recognized as such by the inmates assisted by these programs. Their concern is to be let free and in most cases this seems to inhibit them from appreciating many of the non-legal services provided to them. Their interest in their student-lawyer is with what he can do for them as a lawyer. A broad consensus exists among inmates that their papers are given more weight by the courts if a law student's name is on them. Many people believe that when a clinic takes their case it is the first time since their arrest that their case has been carefully studied. In this connection several inmates expressed to the author the sense of relief they feel when they realize that there is somebody from the outside world who is trying to help them. It seems that the relationship with a representative from the outside world, presumably their agent attempting to help them, promotes a sense of their own autonomy in a prison world that almost necessarily operates to serialize and dehumanize them. One is again reminded of the Task Force's plea for collaborative institutions.

One of the most recently instituted corrections clinics is operated by the Law School of Capital University located in Columbus, Ohio. The genesis of the Capital University Corrections Clinic can be traced to the time when William Bluth was clerking for Judge Orrin Judd of the Federal District Court in the Eastern District of New York. The court was flooded with petitions from inmates seeking post-conviction relief. As a clerk Bluth was assigned the task of reviewing many of these petitions. A good number of them were hand-written and largely illegible. It was impossible in many cases to determine whether the prisoners had a valid claim for relief or not. Thus Bluth became acutely aware of the legal services needed by inmates. He carried his interest with him when he discussed his position on the law faculty at Capital University. He indicated to the Dean that he was interested in initiating a clinical program in the post-conviction area. The Dean supported him and upon his arrival at the school in the Fall of 1970, he began negotiations with John McClure, a recent graduate of the Law School at Ohio State, who was an administrative assistant to Harold J. Cardwell, Warden at the Ohio Penitentiary,

Ohio's maximum security prison in Columbus. Cardwell approved of the plan to institute a law school legal services program in his penitentiary. The Spring before the program commenced Bluth on a volunteer basis with volunteer students conducted a pilot legal services project with the prison in order to find out what the nature of the program's caseload would likely be, what kind of cases students were able to handle, and to work out in advance any administrative problems with the penitentiary authorities. During this time Bluth was given a regular teaching load by the Law School. When the program began in the Fall of 1971 he was relieved from any teaching assignments in the traditional curriculum so that he could devote his full time to conducting the new clinical program. Bluth reports that directing the program requires all of his time, and that he does not believe he could do so adequately if he had other teaching assignments.

Under the Deputy Warden of Treatment the Ohio Penitentiary operates a law office called the Legal Services Department. The office is open five days a week from 7:00 until 5:00, and is staffed by 11 inmates who have regular working assignments in the Legal Services Department. It is located in a small building in the center of the prison's yard. Two fairly large rooms have been made available for the Legal Services Department. One is a library and the other has been separated into two parts: one an enclosed area for interviewing inmates and the other an area for typing and maintaining records. Working for the Legal Services Department are a chief clerk, a librarian, two inmate legal advisers (jailhouse lawyers), a reception center legal clerk, a maximum security legal clerk, a runner, and four clerk-typists. The Legal Services Department has built up a substantial law library over the past several years, most of the titles having been contributed by attorneys in the Columbus area. The inmate legal advisers were selected by the prison authorities on the basis of their reputation for competence. Originally there was only one such adviser, but Professor Bluth persuaded the administration of the need for an additional one.

When an inmate desires legal services from the Corrections Clinic he sends an intra-institutional communication (colloquially known as a "kite") to the Legal Services Department stating his wish for assistance. He is then sent back a questionnaire regarding his case for him to complete. Upon its return it is numbered consecutively and the Corrections Clinic handles the cases in the order that they come in. If an inmate wishes his case to be handled by a jailhouse lawyer he will write directly to one of the two legal advisers. Most emergency matters are handled by the legal advisers who are present at the Legal Services Department every day. However, for matters that do not require immediate attention in the great majority of cases inmates request assistance from the Corrections Clinic. The relationship between the inmates attached to the Legal Services Department and Professor Bluth and his students of the Corrections Clinic is an interesting one. In effect there are two closely paralleled organizations, formally and practically independent of one another, working side by side in the same spaces. Professor Bluth has made it his express policy to avoid having the inmate advisers develop too much of a dependency upon the expertise of the Corrections Clinic. Nevertheless, while keeping this policy in mind, Bluth will from time to time help the inmate legal advisers with some of their more complex legal problems. Furthermore, an arrangement has been worked out pursuant to which when the Corrections Clinic makes a determination that an inmate has no basis for relief, his case may be transferred to one of the jailhouse lawyers.

Students are present at the penitentiary three times a week--on Monday, Wednesday and Friday. Each student handles a caseload of about five matters at any one time. Professor Bluth controls a student's caseload in such a manner so as to assure that each student has a variety of different kinds of cases. During the course of the semester an individual student will average about one trip a week to the penitentiary. Before a student conducts an interview with an inmate, he reviews the inmate's questionnaire and prepares an interview sheet with Professor Bluth. During interview hours about three student interviews occur simultaneously. This permits Professor Bluth to critique each one of the student's interviews shortly following the interview. At these sessions, Bluth and the student work out a strategy for the case. At this point formal arrangements for supervision on the case ceases. However, Professor Bluth maintains an open-door policy and students are expected to seek additional help from Professor Bluth whenever they desire it. Furthermore, at weekly meetings of the entire program Bluth reviews each student's progress. These weekly meetings last for two hours and, aside from reviewing the Clinic's caseload, several students prepare specific problems relating to post-conviction remedies for class discussion.

In an interview with the author Warden Cardwell spoke very well of the Corrections Clinic. He noted that much inmate frustration is fostered by their belief that they should not be detained because legal grounds exist to support a claim for their release. One inmate may tell another that he should not have to serve anymore time. Not infrequently the informant will be a jailhouse lawyer looking for business. At any rate, the Legal Services Department operates to dispel a great deal of this kind of misinformation and Cardwell believes this function has been rendered more effectively since Professor Bluth and his students initiated their program. Cardwell believes that if a man is going to do time he should be convinced he is serving it legally and this realization should be developed as near to the start of a prisoner's term as possible. These sentiments were echoed by the Legal Services Department's two inmate legal advisers. It is their impression that a great number of prisoners believe that they failed to receive a fair trial. They will have no peace of mind until they are fully satisfied that everything possible has been done for them.

These advisers provided an interesting insight into the attitudes of inmate-clients regarding their relationship with the Law School clinic. Many inmates are extremely suspicious of lawyers,perceiving them as representatives of the establishment that has imprisoned them, and students are perceived as lawyers. Further, many of the prisoners who come for interviews with the students have not dealt with someone from the establishment on other than a hostile basis for so long a time, if ever, that they have great difficulty relating to the students. They are not used to being treated with dignity. Like the students, many of the inmates are also nervous at their interviews. They complain that when they return to their cells they remember all the things that they had meant to tell their student-lawyer. It became clear from talking to these two inmate legal advisers that these interviews were momentous events for many of the inmate-clients, and because of this present a real challenge for the students. Students must learn how to make their clients relax in order to obtain as much relevant information from them as possible. At the same time they are dealing with men who have developed highly unrealistic and intense hopes as to their chances for securing release. They implore their students to believe their stories and to see how unjust it is that they remain imprisoned. Understandably, the most difficult interviews are those when students have to tell their clients that there is nothing that can be done to help them. It is not uncommon for students to have their clients weep.

It is curious to compare these inmates' attitudes toward their interviews with their student-lawyers with the students' attitudes toward their interviews with their inmate-clients. Both parties tend to view each other as alien and find these interviews emotionally draining affairs. Many students are terrified at first by their clients. After several interviews fear is replaced by a dreadful realization of the realities of institutional life. Out of this first-hand experience of prison life law students learn of the terror that permeates the prison world. Guards live with the constant threat of assult from inmates who almost unanimously regard them as total aliens, objects of unrelenting hate. In most prisons intense racial antagonism persists between an almost all white staff and a largely black population. Recently the threat of riot has become a constant concern. In one program, for a brief period, out of fear for their physical safety, students stopped traveling to a prison where there was a serious threat of a riot. Furthermore, between inmates a near jungle world obtains in which the stronger prey on the weaker. Most inmates are continuously wary of each other, many viewing their fellow-prisoners as vicious and dangerous. Coercion of fellow inmates, fraud, gambling, theft, and pervasive homosexuality are commonplace occurrences in the daily round of institutional existence. Sooner or later an inmate must prove himself able to repel the aggressive advances of other inmates before he is safe from their assaults. Self-isolation among inmates is epitomized by their slogan "Do your own time."

With this exposure students sense in their gut the challenge that our prisons are little more than warehouses of human degradation. As the bar becomes more concerned about the correctional end of the criminal justice system it is important that its lawyers, judges and teachers inform their reform efforts with this kind of full awareness of the underlying realities of prison life. As future lawyers, law students graduating from these programs will be able to exert responsible and informed leadership in this area of law reform.

List of Schools Conducting Prisoner Assistance Programs

University of Akron
Albany School of Law
University of Arizona
Boston College
University of California (Hastings)
University of California (Los Angeles)
Capital University
University of Chicago*
University of Colorado
Columbia University
University of Connecticut
University of Denver
University of Detroit
Duke University
University of Florida
Florida State University
Georgetown University
University of Georgia
Golden Gate College*

Harvard University*
University of Idaho
Indiana University (Bloomington)
Indiana University (Indianapolis)
University of Iowa
University of Kansas
Lewis and Clark College
Louisiana State University
Loyola University (Los Angeles)
University of Maine
University of Maryland
University of Michigan
University of Minnesota
University of Montana
State University of New York (Buffalo)
University of North Carolina
University of North Dakota
Northwestern University
University of Notre Dame
Ohio Northern University
University of Oklahoma
University of Oregon
University of Pennsylvania
University of Puerto Rico
Rutgers University (Camden)
University of San Francisco
University of Santa Clara
University of South Carolina
Temple University*
University of Tennessee
University of Texas
University of Utah
University of Valparaiso
Washburn University
University of Washington
Wayne State University
Yale University

* Credit is not awarded for participation.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Vol. V, No. 1, June 1972

CLEPR ANNOUNCES SEPTEMBER WORKSHOP ON ARGERSINGER V. HAMLIN: THE CHALLENGE TO THE LAW SCHOOLS

On June 12 the Supreme Court of the United States extended the right to counsel to apply to misdemeanor cases involving jail sentences. (Argersinger v. Hamlin. No. 70-5015)

Clinical law school programs are specifically mentioned in a concurring opinion by Mr. Justice Brennan, joined in by Mr. Justice Douglas (writer of the majority opinion) and by Mr. Justice Stewart. Mr. Justice Brennan's opinion follows:

> I join the opinion of the Court and add only an observation upon its discussion of legal resources, ante, at 12, n. 7. Law students as well as practicing attorneys may provide an important source of legal representation for the indigent. The Council on Legal Education for Professional Responsibility (CLEPR) informs us that more than 125 of the country's 147 accredited law schools have established clinical programs in which faculty-supervised students aid clients in a variety of civil and criminal matters. * CLEPR Newsletter, May 1972, at 2. These programs supplement practice rules enacted in 38 States authorizing students to practice law under prescribed conditions. Ibid. Like the American Bar Association's Model Student Practice Rule (1969), most of these regulations permit students to make supervised court appearances as defense counsel in criminal cases. CLEPR, State Rules Permitting the Student Practice of Law: Comparisons and Comments 13 (1971). Given the huge increase in law school enrollments over the past few years, see Ruud, That Burgeoning Law School Enrollment, 58 A.B.A.J. 146 (1972), I think it plain that law students can be looked

to to make a significant contribution, quantitatively and qualitatively, to the representation of the poor in many areas, including cases reached by today's decision.

* A total of 57 law schools have also established clinical programs in corrections, where law students, under faculty supervision, aid prisoners in the preparation of petitions for post-conviction relief. CLEPR Newsletter, May 1972, at 3. See United States v. Simpson, 141 U.S. App. D.C. 8, 15-16, 436 F. 2d 162, 169-170 (1970).

To take up this challenge to the law schools, CLEPR is holding a Workshop on September 21 - 22, 1972 at the House of the Association of the Bar of the City of New York.

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Vol. V, No. 2, July 1972

CLEPR CONFERENCE ON CLINICAL TEACHING

CLEPR indicated last fall that in awarding grants in spring 1972 preference would be given to programs in which students were involved in a clinical experience for an entire semester and received a semester's credit - twelve to fifteen hours. Seven of the twelve grants announced in a recent Newsletter (Vol. IV, No. 11, April 1972) were in this category. All seven of these schools, in addition to awarding a semester's credit, have chosen the in-house model - a law school operated and controlled clinic - as the site of the students' clinical work.

In recognition of the specialized problems of this evolving and now highly preferred form of clinical legal education, CLEPR decided to present a training program for neophyte clinical professors which would illustrate the operation of a clinic and demonstrate the replicability of various models at any law school seeking to initiate a clinic. Also to be covered were other facets of the clinical methodology. The conference, organized by CLEPR Program Officer, Mrs. Betty Fisher, was held on May 24-26, 1972 at the House of the Association of the Bar of the City of New York. Five accomplished clinicians, Professors Gary Bellow of Harvard, Richard Carter of Catholic University, Joseph Harbaugh of Connecticut, Earl Johnson, Jr. of Southern California, and Robert E. Oliphant of the University of Minnesota, handled the teaching chores. Resource personnel present to assist the principal speakers were Professors Morton Cohen of Wayne State, John DeWitt Gregory and David K. Kadane of Hofstra, Michael Meltsner of Columbia and Harry Subin of New York University.

Representing CLEPR, in addition to Mrs. Fisher, were its President, William Pincus, and Program Officers Peter Swords and Victor Rubino. Professor Lester Brickman of the University of Toledo was the reporter for the conference and is responsible for this Newsletter.

The selection of subject areas for discussion was based upon a perception of the needs of new clinical teachers. Thus the conference dwelt on Management of the Clinic, Preparing the Student for Clinic Work, Teaching the Clinical Seminar, the Use of Videotape in Clinical Instruction, and Teaching Interviewing.

Of these subjects, the one that lent itself most readily to teaching to clinical teachers

was Management of the Clinic. Professor Robert Oliphant discussed the subject in the context of four clinical programs that he runs at the University of Minnesota: a prisoner assistance clinic, a civil legal aid clinic, a criminal (misdemeanor) clinic, and an appellate program. These programs run the gamut of law school clinical programs and were therefore an apt choice as the basis for a presentation of the essential principles of management. Indeed a central feature of the presentation was that common management principles apply regardless of the specifics of the clinical program. The first step in organizing any clinical program which is to include a law school operated clinic is to design the program to maximize supervision. Oliphant's programs all involve large numbers of students in clinic settings and would not be operable as adequately supervised clinical programs absent the strong emphasis on management and maximization of supervision. Each of his programs shares these common goals:

1. The efficient involvement of large numbers of law students, i.e., 20 to 40 students per quarter, in each program, though with only a single faculty supervisor. To achieve this objective, student supervisory assistance is always utilized. Moreover, a systematic approach to handling the affairs of the clinics is always established. The use of student supervisors and management systems will be commented on later.

2. The provision of a quality legal education to each student in each program. Subgoals include teaching the law students to turn out a careful lawyer-like work product - thus an emphasis on the development of habits of thoroughness and self-discipline and the consequent need for management devices to insure the timeliness and adequacy of the student work product; promotion of an awareness in each student of his professional obligation to increase the availability of legal services to heretofore relatively unserved segments of society; and presentation of insights into the systemic functioning of the legal system.

3. The delivery of quality legal services to persons requiring legal assistance. As an adjunct of the second goal, it is made clear to students that the standards of the practicing bar are simply not adequate quality models; in place thereof, the clinic itself is presented as a quality standard for emulation when the goal is the provision of legal services.

4. The limited utilization of outside legal talent to supplement faculty supervision and to provide highly qualified field supervision at reasonable cost but without any loss of quality control by the clinic.

5. The involvement of a significant proportion of the law school faculty in some aspect of clinical education. In effectuating this goal, Professor Oliphant has successfully solicited the assistance of faculty members in the supervision of law students preparing cases for litigation in areas of those faculty members' expertise.

6. The acceptance of clinical legal education as a legitimate if not essential content of any law school curriculum.

All of Oliphant's programs are designed to implement the above goals. Accordingly, from a management standpoint, they reflect certain similar operational characteristics.

Thus each program is of the "in-house" variety though it may be more proper to refer to them as of a modified "in-house" variety because not all include a walk-in type clinic. Rather, cases are obtained through daily contact with various agencies such as Legal Aid. This format permits control to be exercised over case intake, both numerically and by type, and helps to insure that each student is exposed to a variety of experiences and fact situations. To further facilitate this, cases of a particular type are solicited from participating agencies. And when a type of case which is already represented in abundant numbers comes to the clinic, the client is referred to other agencies, typically Legal Aid, for assistance.

The "in-house" and modified "in-house" facilities also permit the closing down of clinic intake during the month of August. Such facilities also provide a central contact point and telephone number that is available to all clients. Control over the student work product is maintained through use of a file which is opened for each student that contains a copy of that student's entire work product. In this fashion, close faculty supervision over the student's work is maintained thus permitting an evaluation of that work product on a regular and organized basis. Finally, the in-house format facilitates the maintenance of a central filing system for all open cases, thus yielding an up-to-the-minute accounting of open cases and instant access to the files should a client call or drop in when the assigned student is unavailable.

The disadvantages of the in-house program, when organized in the above modified fashion, are mainly in the area of cost since it is necessary to maintain a physical facility, and to provide secretarial assistance, telephone service and office equipment and supplies. The educational advantages, however, more than outweigh the increased cost.

The principal means by which Professor Oliphant maximizes supervision is through the use of senior law students who are called "student directors" and who function at the level of a teaching assistant. Up until several years ago, the program was of a completely volunteer nature run exclusively by law students. In changing over to a more tightly structured, faculty supervised, for-credit program, the student directorship concept has been retained. The student director is always a graduate of the clinic himself and receives two academic credits per quarter up to a maximum of six credits for his supervisory and administrative work. Student directors answer routine questions for clients, prepare all student schedules, run clinic offices at designated times, and finally and most importantly they review a large amount of routine student work.

There are a number of other management features that may be briefly listed prior to an analysis of individual programs which will be set forth to indicate how these features are integrated and operationally complement each other. Scheduling of the clinics is arranged to permit the clinical professor's time to be organized around large uninterrupted blocks. For example, two specific days a week are devoted to in-court supervision of students representing misdemeanants. Students are assigned on a one-to-one basis to a client, and it is understood at the outset that the assigned student is responsible for that client even if the matter goes beyond the end of the quarter. Only if the student leaves the state is the case reassigned. If the student cannot handle the case over the summer, it goes to a student director. To handle the burden, additional

student directors are taken on for the summer.

Finally, it is of interest to point out that students receive three quarter hours of credit for the clinic and that there is a seminar associated with each program which is run either by the clinical professor or another member of the faculty.

To illustrate with more specificity how a clinical program is managed, two of Professor Oliphant's programs will be discussed.

The prisoner assistance project has been recently set up to handle the civil legal problems (including detainers and Section 2254-55 matters) at the Sandstone Federal Penitentiary, located 80 miles north of the campus, and at the State Women's Reformatory at Shakopee, 35 miles from the campus. (The program has recently received a grant of $100,000 from L.E.A.A. to handle the civil problems of all inmates in the state.)

The project is managed by three senior law student directors and faculty supervision is supplied by Professors Oliphant and Freeman. All cases begin with a request for assistance from an inmate. Upon receipt, a student director assigns a student to interview the prisoner and to fill out a three page form which seeks a complete history of convictions and incarcerations as well as a complete set of information about the present imprisonment. The student also fills out a two page "Financial Inquiry" form to ascertain indigency and then files within three days an "Initial Status Report" in triplicate which includes the following categories of information: statement of the problem, what steps the student has so far taken, proposed solution, steps to be taken to accomplish the solution, and what help (if any) is needed on the case. Included with the forms that are given to the student is a "policy statement" explaining the purposes of the program and how it operates. A separate set of instructions accompanies the forms to be filled out.

Within two weeks, a memo of the case in duplicate must be submitted to the student director who either returns it to the student for further work or transmits it to the clinical professor for final review. This process, too, is reduced to a form titled "Student Director & Faculty Advisor's Comments: Prison Project". The form indicates that all legal advice must be approved in writing before it is given, and space is provided for comments from the student director and the clinical professor.

Mail from prisoners is placed in the proper file upon receipt. A list is posted on the law school legal aid bulletin board giving the assigned student notice of the letter. When the student reads the notice, he crosses out his name and when he comes to the Clinic to obtain the letter, he crosses out his name again on a carbon copy of the list posted at the file cabinet. All outgoing mail must be approved by a student director prior to being sent; copies are always placed in the file. All files also have placed in them a "Contents of File" form which may never leave the Clinic. On this sheet, the student lists all matters relating to the case including: a record of all interviews with the client, a record of all correspondence - noting to or from whom, when sent or received and the subject of the correspondence, and a record of all conversations relating to the case.

Regardless of the status of the case, every twenty days all cases are reviewed by the clinical professor who fills out a form indicating whether the case has been reviewed before, whether it is still open and if so, whether some matter requires the immediate attention of a student director, whether the case can be closed and whether a student status report is needed. If it is, a box is checked off which operates as a directive to the secretary to immediately contact the student and obtain a current status report. This review system was instituted to forestall a student's sloughing off a case or otherwise not being as responsive as he should within an appropriate time frame. As a further check on the activity of the students, a form titled "List of Sandstone Cases" has entered on it a listing of each case coincident with the receipt of the request for assistance from an inmate. The form includes the client's name, the date the case was opened, the student director's name, the assigned student's name and spaces for dates to be entered indicating when the memo to the student director was filed, when the memo to the clinical professor was filed, and when the case was closed. This form guards against the infrequent but quite serious instance when a student checks out a file and does absolutely nothing further on the case.

Finally, there is a form for "Final Disposition" of the case including a summary of the case, why it was closed, the date the client was notified and the clinical professor's "O. K.".

It should be noted that the prisoner assistance project does not permit attainment of the operational goal of limiting the number and type of cases since the program does not presently refuse assistance to any inmate who desires it. However, Professor Oliphant is of the view that once the political problems of gaining entrance into the prison and the confidence of the warden and the inmates have been overcome, it will be possible to use reasonable limitation on cases.

The Civil Legal Aid Program has had a longer history of operation than the prison project and an 82-page (as compared with 16-page) Management Form book has been prepared. A central intake and administrative office is maintained about eight blocks from the law school and four satellite offices, located throughout the city, are manned on a part-time basis. Clients must make prior appointments. They are then scheduled to see a law student who has arranged to be on duty for intake purposes at designated times comporting with his class schedule. To maintain caseload control, the offices are closed down during final exams. If a would-be client calls while the office is closed down, he is referred to Legal Aid. Excluded cases include all plaintiff's actions involving a claim for more than $350, parking tickets and moving traffic violations (with some exceptions), patent and copyright matters, contested divorces, and claims against the university.

Seventy second year students per quarter enroll in the program, each handling six to nine cases though those who end up with a difficult case will have a considerably reduced caseload. Under the Minnesota student practice rule, only seniors may appear in court. When a case appears appropriate for litigation, all of the preparation is done by the assigned student. However, any in-court work is undertaken by one of the student directors who is always a third year student. There is therefore considerable competition among the second year students for election to student directorships. Moreover, only

those who have completed the civil program may enroll in the third year criminal misdemeanor program. (This "progression of clinical experiences" idea has received extensive discussion in earlier CLEPR Newsletters.)

The student directors number seven and their duties are described in an eight page section of the Manual; they include: preparation and posting of all rosters for the program; overall responsibility for the timeliness and limited responsibility for the adequacy of the work product of the students; staffing of the field offices (a student director is always present when an office is open) and responsibility for their operation including seeing to it that students who were rostered appear to handle their assigned intake, double checking the financial eligibility of every intake client, discussing each case which is accepted with the student who handled the interview before the student leaves the office that day, and insuring that proper office procedures are followed so that cases are properly opened; reading every memo on every case before it is forwarded to the clinical professor - if the memo is at that point deemed unacceptable, it is returned to the student for further work before it is transmitted to the clinical professor; seeing to it that all conference appointments with the clinical professor are kept; proofreading and approving all letters before they are mailed; and selecting successor student directors through a voting procedure. Student directors have their own desks, work areas and telephones and receive six hours of credit over the course of a year.

Office procedures for the civil program are similar to those used in the prisoner assistance program. All procedures are reduced to writing and whenever possible, forms are utilized. Thus, a six page combined interview and financial eligibility form is filled out by the student at the initial interview. At the conclusion of the interview, the student gives the secretary a tear-off sheet; she, in turn, opens a file for the case and staples the sheet to the front of the file. The secretary makes a daily list of all new cases containing the same information as that required in the prisoner assistance program. Again, no matter how simple the case appears, the student prepares a memo including a discussion of the facts, issues, relevant law and conclusions and advice. The memo is turned in to a student director who reviews it and if approved, it is submitted to the clinical professor who reviews each memo and approves the advice to be given or the course of action to be followed. From that point, the secretary picks up all approved memos from the clinical professor's desk, enters the client's name in the 20-day (tickler) review book and places the file in the "open" category. The file is given to the student prior to a scheduled case conference with the student director, the clinical professor, or both, depending upon the complexity of the case. A "review note" form is filled out at the time of the 20-day review; the review may also result in the clinical professor's checking off a "request for a status report" form which contains specific categories for requested information. When the case is closed, a "case termination" form is filled out and the file goes into a separate file maintained for each student. This enables the clinical professor to evaluate the students' work at the end of each quarter. Also, when a case is closed, a 3 x 5 card on which the secretary noted the student's name and the client's name when the file was opened is moved from an "open" file box to a "closed" file box.

In addition to the above referred to forms, the Management Forms Manual also contains several other forms to be used in specifically designated circumstances, e.g., a letter

referral form when the client is not eligible for services, and memoranda on substantive and procedural legal areas such as landlord and tenant law, basic court procedures for commencing or defending a civil lawsuit in Hennepin County, and time limitations on bringing claims against a municipality. Also included is a copy of the "Director's Candidate Evaluation Form" which is filled out by the student director for each student and which is an evaluation of student attitudes and writing and interview ability. Students also fill out a form evaluating the clinic.

The extensiveness of the clinical work that a properly managed semester-long program permits almost always requires that there be an orientation or preparatory program of perhaps a week's duration. Obviously, preparation for various phases of in-court work will continue throughout the semester but a concentrated, six hours per day, five to seven day instructional program before the students go out to deal with the world of clients and courts is a recognized necessity. Some of this time period has to be devoted to covering the substantive law which the clinic is to deal with for the experience has been universal that even students who have taken courses whose titles would appear to subsume the course content essential for clinic work have, in fact, not even a barely adequate substantive background. Thus students who have had a course in Contracts flounder when a client walks in with some form of agreement that he signed. Which is to say that students generally lack the facility to deal with a client who walks into an office and spills forth a mass of information in other than appellate case law form. Clinic students who have had a course in Evidence are unable to qualify matters for admission into evidence; and students who have had a course in Criminal Procedure haven't the faintest idea how to make a motion to quash certain evidence. Moreover, few students even have any substantive preparation in those civil law areas which the clinic deals with. In addition to substantive law, there is also included in these introductory programs, skills training in such areas as interviewing, counselling, and trial practice. The procedural operation of the local courts is typically included with the trial practice segment and simulation methodologies are often utilized in their presentation.

Professor Earl Johnson of the University of Southern California presented this part of the program drawing upon his own civil law clinic preparation materials. The semester-long program at U. S. C. is of the modified in-house variety and now consists of three courses - each awarded 7 1/2 hours of credit; students in the program take two of the three for a total of 15 credits per semester. One course is a basic civil practice course which is called "The Lawyering Process" and which involves assigning students to work in a neighborhood Legal Services office under the direction of a supervising attorney. The said attorney is one of two designated by a local O. E. O program to work full time as a supervising attorney with the clinic. The law school supplements the O. E. O. salaries thus permitting salary levels more nearly consistent with that of other law school clinical professors. Moreover, the law school participates in the selection of the attorney.

The basic criminal course involves assigning students to either work in the office of the District Attorney or the Public Defender. The average student working in the D. A. 's office will handle a couple of jury trials, eight preliminary hearings in felony cases and ten court trials.

The third course is called Advocacy and Social Change and emphasizes test case litigation and legislative advocacy.

Scheduling is arranged so that on Monday and Wednesday, half of the class will be in criminal courts; and on Tuesday and Thursday, the other half will be in civil law offices. Friday is class day for all three courses.

The course component for each clinical program emphasizes those basic skills requisite to that program. Thus, the civil side course emphasizes nonlitigative skills such as interviewing, negotiation, and drafting while the criminal side emphasizes litigational skills such as direct and cross examination, objections and closing arguments.

The U.S.C. orientation program consists of nine class days of six hours each which is the equivalent in terms of class hours of a 4-hour course. Great emphasis is placed on use of simulation techniques, especially those designed to give the student familiarity with the court procedures which he shortly will be dealing with. Thus, on the criminal side, a part of the introduction is devoted to "Simulation Exercises in Criminal Trial Advocacy" which is a compacted form of a Trial Practice course. This component consists of about thirty hypothetical situations progressing in order of difficulty from easy to complex. For the simulation exercise in Direct Examination, Cross-Examination and Objections, each student is assigned a role as prosecutor, defense counsel or witness. The teacher acts as judge and commentator. Each student portraying a prosecutor or defense counsel is furnished a copy of the complaint and a "statement of facts". In addition, he receives a sealed envelope containing supplementary information pertinent to cross-examination of opposing witnesses. The student witnesses read the "statement of facts" and in some cases, a sealed envelope containing instructions relevant to their testimony. The student prosecutor examines witnesses whose testimony is summarized in the "statement of facts". Objections can be made and argued by the student defense counsel or any other member of the class. Technical objections are encouraged in order to develop a facility for recognizing potential objections and for phrasing and rephrasing questions under pressure. The teacher-judge rules on the objections after hearing argument from both counsel. The student defense counsel may cross-examine these witnesses, relying upon the supplementary information contained in his sealed envelope. The student defense counsel then examines any defense witnesses whose testimony is summarized in the supplementary information. The same rules regarding objection obtain. The student prosecutor may cross-examine these witnesses, again making use of any supplemental information he has been furnished. At the conclusion of examination of all witnesses, the defense counsel may move and argue for dismissal of the case on any appropriate grounds.

For the simulation exercise in Jury Selection, students are assigned roles as prosecutor, defense counsel and members of the jury panel. The teacher again acts as judge and commentator. There are fourteen hypothetical jurors on the panel. Unknown to the students, seven of these jurors are definitely pro-prosecution in background and attitude while the other seven are definitely pro-defense. The student attorneys conduct voir dire examinations of the members of the panel and select a jury of four from the panel of fourteen. Each student is allowed four pre-emptory challenges and as many challenges for cause as he can persuade the teacher-judge to grant. The teacher calls the

pro-prosecution and the pro-defense jurors alternately thus permitting each student attorney an equal opportunity to select a jury with a majority favorable to his position. The student attorney who, at the conclusion of the jury selection, has obtained a majority on the four-man jury is declared the winner.

For the simulation exercise in Closing Argument, each student prepares an eight minute argument based on five hypothetical fact situations. Students assigned to the prosecution side of the argument may reserve up to two minutes of their alloted time for rebuttal.

A simulation on the civil law side was explained in detail by Professors Bellow, Harbaugh and Carter. The subject area was Consumer Law and a set of training materials titled the Hunter Case File was used as the teaching device. The same materials are in use at the Legal Services Training Program to train newly-hired O.E.O. lawyers. As part of the exercise, the trainees interview a witness, formulate an answer to a complaint, devise discovery strategies, take a deposition, engage in negotiation with opposing counsel, and examine and cross-examine a witness in a trial. The case is begun by looking at an "intake information sheet" and a "summary of the interview". The student is called upon to indicate his perceptions of the case and a tape is then played of a discussion of the case by experienced lawyers. The materials are thereafter delivered sequentially; that is, the student is called upon to act (e.g., take depositions, engage in discovery proceedings, negotiate, etc.) based upon the scope of information that would normally be available to him at that point in a real case. The model is the same throughout. The student does the work and then either views a tape or has distributed to him a copy of what the lawyer in the case actually did. The class then analyzes the two work products and the question is always posed: would you have done what the lawyer did? On the substantive side, the design of the material is to illustrate the defenses of fraud, mistake and unconscionability and the offensive defenses of negligent misrepresentation, defamation and breach of privacy.

One aspect of the Hunter Case File involves the settlement of a finance company note (received from an aluminum siding company) for $1,200 which Hunter, the client,is being sued on. Student negotiators representing the finance company are instructed to settle for any amount up to $300, that is, because of affirmative suits that could be brought against the company in response to its collection procedures, it is willing to pay $300. Despite this, most student negotiating teams representing Hunter, settle for a payment to the company of $400-$500. This startling example was the jumping off point for an extensive discussion of a clinical course called "Conflict Resolution and The Lawyering Process", taught by Professor Bellow at the Harvard Law School. The course covers "The Elements of Fact Development" including client and witness interviews and ethical considerations, "Counseling and Conflict Resolution" and "Negotiation". Professor Bellow uses a 364-page set of materials that he has developed for the course.

Part of the Negotiation segment of the course is given over to a discussion of game theory and negotiation game models. Thus are introduced the concepts of zero sum game, saddle point, concession patterns, leverage, commitment, reciprocity, threat, reaction to threat, and information flow, among others. After each negotiating model theory is developed, there is always resort to the videotape machine to view one of a

series of tapes that Professor Bellow has recorded illustrating each such model with an actual bargaining situation.

This emphasis on the use of videotape was pronounced throughout the training conference. Indeed, much of the time was devoted to a discussion of the teaching of interviewing techniques. One of the methods used to instruct the conferees was the videotaping of an interview session at the conference - one of those in attendance playing the role of the lawyer and the other, with the assistance of a fact sheet, the client. The "lawyer" then recited his understanding of the facts of the case. The videotape of the interview was then played and commented on by Professor Harbaugh just as he would have done in the classroom component of his clinical program. Thus the tape was stopped frequently for illustration of points of difference between the information conveyed by the client and the recital thereof by the attorney and for analysis of interview techniques.

Since it has been a common experience in clinical programs that traditional legal education has not prepared students for a lawyer-client experience, the use of videotapes is conceived as a teaching technique that provides economies of both cost and time in pre-clinical programs. Professors Bellow and Harbaugh also use tapes in the concomitant seminar of their clinical programs to provide skills training that the students' casework has revealed a need for. For example, the tapes on jury selection and voir dire were developed for the Connecticut Criminal Justice program to assist the students in the cases they were then handling in the clinic.

Although all the speakers found tapes economical and effective tools, none of them considered the use of tapes as a substitute for actual experience with a client. Tapes aid in training in the skills that are necessary in working with a client and his problem. Moot court and mock trials may similarly be utilized as training but not substitution for actual participation in trial work.

William Pincus pointed out that the focus of the conference was on teaching techniques because most of the participants had behind them extensive experience in practice but were embarking on new careers as teachers. He urged the participants to a perspective view: that skills are transformed into wisdom as the student works with a client on the client's problem; that the benefits of clinical education for the student come from what, most importantly, takes place in the clinic itself.

CLEPR ANNOUNCES SEVEN NEW GRANTS

A grant of $15,000 to the AMERICAN BAR ASSOCIATION FUND FOR PUBLIC EDUCATION to be used by the National Institute for Trial Advocacy will enable a group of eleven clinical law teachers to attend the Institute's first summer session. Trial advocacy is an integral part of clinical work in the law schools. It is a significant coincidence that leaders of the organized bar are emphasizing better preparation in trial advocacy at a time when clinical work is including trial advocacy as an important part of the clinical curriculum. CLEPR's support for training clinical law teachers, both the academic types and those already in clinical work, is another instance of the same coincidence of interest and attention.

A CLEPR grant of $35,000 to CATHOLIC UNIVERSITY OF AMERICA will support on a declining basis a full semester clinical program in the law school awarding 13 credits to the twenty participating students. An earlier CLEPR grant helped provide faculty supervision to students working in a ghetto-area clinic located in downtown Washington, D. C. Catholic now fully supports and plans to expand this clinic. The new CLEPR grant will make possible the hiring of an Assistant Director and office personnel.

An award of $35,000 to COLUMBIA UNIVERSITY will support a continuing study on the economics of legal education and the inauguration of studies on other subjects of direct interest to CLEPR's programs in clinical legal education. This work will be under the direction of Mr. Peter Swords, newly appointed Assistant Dean at Columbia's school of law.

A second grant to COLUMBIA UNIVERSITY in the amount of $9,000 will be used by the law school to provide supervision to law students working with community development organizations.

A grant of $3,000 to the UNIVERSITY OF COSTA RICA will assist the law school in setting up a Community Education Project. This Project will offer an additional experience to law students who already staff legal aid clinics under the direct supervision of law school professors.

A CLEPR award of $10,000 to the Georgia Department of Human Resources will make it possible for law students at EMORY UNIVERSITY to provide supportive services to Georgia Indigents Legal Services by assisting inmates at Atlanta Penitentiary whose families receive public assistance.

The LAW DEVELOPMENT CENTRE in Kampala, Uganda, which provides the post-graduate law student training required for admission to the bar, will use a $12,000 CLEPR grant to provide supervision to law students working in two newly established legal aid offices. This project not only inaugurates clinical work in Uganda, but also the first program of legal assistance.

NEW YORK COURT OF APPEALS AMENDS RULE FOR ADMISSIONS OF ATTORNEYS

Because of its importance to clinical legal education CLEPR wishes to call attention to recent amendments to the New York Court of Appeals rules dealing with the admission of attorneys.

These rules, which are a substantial step forward for clinical legal education, were the result of proposals made by the Joint Conference on Legal Education.

Credits for Clinical Work. The Court of Appeals promulgated a rule (effective September 1, 1972) allowing substitution of clinical programs for up to 12 of the required 80 hours of classroom periods (22 NYCRR 520.4(c)(4)). Previously there was no mention of credits for clinical work.

Admission Pro Hac Vice. The Court of Appeals also promulgated a rule (effective September 1, 1972) allowing any court of record to admit an attorney licensed in another State, pro hac vice:

> "... to advise and represent clients, or participate in the trial or argument of any case, during the continuance of his enrollment as a graduate student or graduate assistant, or during his employment as a law school teacher in a criminal law or poverty law and litigation program in an approved law school in New York State, if in that case he is engaged without fee to advise or represent the client through his participation in an organized defender association or an organized legal services program approved by the county bar association for the county where the principal office of said defender association or legal services program is located, and the Appellate Division may require the filing of periodic reports by these organized defender associations and legal services programs giving such details as may be deemed warranted such as the identity of the attorneys and matters handled by graduate students, graduate assistants and law school teachers pursuant to their admission pro hac vice under this rule..."
>
> (22 NYCRR 520.8(d)(2)

The latter amendment is only of direct significance to teachers at New York law schools, but hopefully will spur other jurisdictions to similar action. The former amendment clearly affects any law student who plans to be admitted to the New York bar.

The foregoing summaries are meant to highlight the major provisions of these rules and do not purport to be a substitute for a careful reading of the text.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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Preface

For the past two annual CLEPR board meetings, selected panelists and guests have been invited to participate in discussions of subjects vital to legal education. This year, fifteen panelists and seven guests joined the board members and the CLEPR staff in a three-day meeting, from March 23 to March 25, at Boca Raton, Florida.

The subjects discussed by the panelists were: "The Future Law School Curriculum," "The Training of Clinical Professors," "Paraprofessionals and Clinical Training," and "Developments Abroad in Clinical Training."

This CLEPR Newsletter summarizes the presentation of the panelists and the ensuing discussions.

THE FUTURE LAW SCHOOL CURRICULUM

Panel Presentations

Presiding: Edward Levi, President, University of Chicago

Panelists: Gary Bellow, Professor, Harvard Law School; Thomas Ehrlich, Dean, Stanford Law School; Joseph Harbaugh, Professor, University of Connecticut Law School; Eli Jarmel, Professor, Rutgers-Newark Law School; Robert McKay, Dean, New York University Law School; Michael Sovern, Dean, Columbia University Law School; Robert Stevens, Professor, Yale Law School.

CHAIRMAN EDWARD LEVI opened the panel presentation by observing that the future law school curriculum was tied to the future of higher education and the future organization of the Bar itself. He noted that the subject was an important one and that the members of the panel were, as he phrased it, "properly diverse."

DEAN EHRLICH told the conferees that he and others had just finished a study of legal education for Clark Kerr's Carnegie Commission on Higher Education and

that he wanted to share with them some of their conclusions.

"Our one dominant conclusion," he said, "both predictively and postcriptively, is diversity within law schools and among them in both curricula structure and in curricula content." He believed that steps would be taken on an experimental basis first and that within a decade or so the following would take place:

Two-year law school and specialization. The two-year law school will become a reality, although some students would still be graduated in three, four, or even more years and each group would have a "different educational arrangement and a different curriculum focus." He predicted that those students who stayed longer might begin specialization and might gain a joint degree. More significantly, lawyers in both private and public practice would be coming back to law school in very large numbers for specialized training.

He said there were substantial pressures pushing in the direction of specialized practice. Firstly, the marked trend toward specialization in the profession and that this trend would increase in the coming years. Secondly, the number of lawyers in the United States would be doubled within ten to fifteen years, with specialized training as an inevitable byproduct. And thirdly and "paradoxically," the move for a two-year law degree as an option would exert pressure for a return to law school after a period of time when more training is "really needed and much more likely."

Curricula trends. The trend will be away from a curriculum composed exclusively of classroom courses and toward a curriculum that is particularized in many different experimental forms. An outstanding example, he noted, was clinical education, which, he felt, should be encouraged in the broadest sense and that even in a two-year curriculum it would have a very important place. He doubted that there "is any single setup that would be the best arrangement for all students and for all schools and for all time for exposing them to the work of lawyers." Dean Ehrlich advocated that "clinical education, like other dimensions of the curriculum, be broadly defined and be allowed to develop in its many different ways." He concluded his remarks by stressing the need for a wide variety of possible arrangements by which students would be exposed to the actual operations of the legal system simultaneously with their academic work. "Diversity is very helpful for law students and for the legal services they will be called on to provide. I urge you to support it."

PROFESSOR HARBAUGH began his remarks by stating that he was critical of present-day law school education and that this feeling was shared by many law students. "I do not feel law students are receiving the kind of education they hoped for and anticipated." "Frankly," he said, "the students are bored." At the same time, he added, they are deeply concerned about their legal education. The law school faculty, he continued, is in many instances "reluctant to modify the traditional approach to legal education." This attitude contributes to the students' boredom.

Clinical education. He stressed the importance of clinical education as an important modification. However, he said, "If clinical education is to be accepted as a teaching method, it is going to have to be able to adapt itself to the traditional courses in law school. It is going to have to be an approach used in taxes, in corporations, in estates, and trusts." Clinical education should be available to the student early in his legal education and not be postponed until late in the second or third year.

He noted that three of the vital elements of clinical education were observation, role-playing, and participation. These elements, he stressed, can easily begin in the first year. "If they do not, we are going to lose more and more law students. At least if we do not lose them in body, we will lose them in mind."

Professor Harbaugh then outlined the concept of clinical education in a three-year law school curriculum. During the first year, in the basic courses, students could be involved in observation and role-playing. In the second year, students could begin client representation under student-practice rules. And in the third year, there would be a clinical semester or semesters in which students take on more complex cases with diminishing amounts of faculty supervision.

Clinical education at the University of Connecticut. He said that the clinical semester program at this university was a viable educational device, "one of the most encouraging signs we have seen." Clinical work is particularly important at schools like Connecticut, whose graduates work mostly in small firms where post-graduate training is lacking. For these students, clinical work should be "dramatically increased." In contrast, graduates of schools such as Harvard, Yale, Stanford usually find employment in large firms where a post-graduate apprenticeship resembling a clinical experience will be provided - client representation under the supervision of a senior partner. There is some tendency in such quarters, therefore, to see less need for practical training, although the other educational benefits of clinical work may be recognized.

Professor Harbaugh ended his presentation by expressing hope that there would be changes in the educational structure of law schools over the next ten years - "that it was absolutely necessary" - but that he did not believe that "most of our professors are prepared to accept the modifications Dean Ehrlich and I have suggested."

PROFESSOR BELLOW's presentation examined three facets of legal education: what changes were likely to occur in the next decade; what changes were not likely to occur; and the implications for clinical techniques and clinical teaching.

Changes likely to occur. There will be increased opportunities for students to engage in two- , three- , and four-year operations. The law schools will respond more than at the present time to individual career plans of the students and there will be more specialization. There will be increasing use of clinical methods in the third and fourth years and relatively little use of them in the first two years.

The legal needs of the middle class will be of increasing concern, with the law schools training more lawyers to meet these needs. Non-lawyers will be trained to do the law

jobs that the profession is unable or unwilling to do. This will involve changes in the unauthorized practice rules, fee schedules, and the existing dispute resolutions mechanisms. There will also be increased provision of legal services to groups.

The curriculum will probably offer increased opportunities for students to engage in social science research as part of the "credit package" toward their law degree.

Professor Bellow expected that interdisciplinary work would also increase and hoped that this would provide several angles of vision to a given subject matter area. But he felt that bringing psychologists into the classroom or "tacking on" social scientists to law professors was not a viable way to bring broader perspectives to the study of law. Interdisciplinary studies and interdisciplinary insights really take place in one man's head - a self-constructed synthesis.

Changes not likely to occur. "What worries me is what will not take place," Professor Bellow noted. "What is not in the wind is a change in the law school's attitude toward change." Professor Bellow felt that because most law schools define curricular change as the addition of courses to the existing curriculum rather than the discarding of some courses and the substitution of new ones, little real change will take place. The financial effect of this ever-adding but never-discarding is that resources become strained, without any innovation occurring. Thus, lack of resources make new programs, such as clinical, difficult to institute.

He did not envision much change in the nature and dynamics of pedagogy. He felt there was little concern in the law school "for how students learn, for how and what we teach, and for what kinds of alternative methods of pedagogy might be available to cope with the problems of learning and teaching." Even if there are structural changes in the curriculum and even if social science materials are added, "the teacher has not been willing to face up to the question of what we are doing and whether there is a way to do it better."

Implications for clinical techniques and teaching. "One of the most exciting aspects about clinical education," Professor Bellow said, "is the degree to which you can raise questions about teaching methodology ... It seems to me that the criticisms of clinical education involve its greatest potential because it is one of the few places in the law school where we are actually focusing on a teaching method and asking ourselves how does this work, what is it trying to accomplish."

There will not be much change, he ventured, in the current unwillingness of the law faculty to examine the basic, essential undertaking of the first year. He observed that contrary to most law school writings, the first year, in actuality, "enormously undermines the student's ability to integrate an understanding of the problems of his own role, the client's problems, the institutional setting -- all of which contribute to a common solution." "For those of us in clinical education," he concluded, "we should begin to move beyond our concern with acceptance toward a critique, and beyond our desire to get some people teaching in clinical education to an entire theory of instruction that is valuable not only for clinical reasons -- doing clinical work -- but valuable for law students."

PROFESSOR JARMEL opened his remarks by noting that Rutgers has the most developed clinical program in the country, with students having the option of taking as much as one-third of their classes in clinics. He further noted that Rutgers has a variety of clinics that add up to over eighty catalog hours available to students. "Nevertheless," he said, "we do not see any great movement of students toward clinical education."

He pointed out that even though it "is fair to say that the law students are unhappy with existing curriculum...it is equally fair to say that law firms are unhappy with how we turn out a finished product." For the past two generations, he said, "we have left the job of finishing lawyers largely to the practicing firm," which, in turn, "has transferred the cost of that away from the law school and to their clients."

Law Services. He agreed with Professor Bellow that in the coming decades there would be an increasing pressure to provide law services to middle - and lower-income people. He, too, felt that in the years ahead there would be a greater diversity in the practice of law. He stressed that the increased burdens placed on the profession gave the law schools the burden of developing "teaching techniques that will teach our students to teach themselves in our changing world, and for that purpose I think clinical education, perhaps, is the best teaching tool we have available to us."

Non-practicing law school graduates. Less than half of the graduating law students practice law. Instead, they go into other fields -- business management, public administration, insurance, real estate, and so forth. He predicted that this trend would accelerate in the coming decades. He further noted that there were a sizable number of students who have advanced degrees when they enter law school "and have no desire at all to practice law." They wish to use their training in law to increase "their arsenal of tools" that can be used in other professions.

Clinical education assumptions. Professor Jarmel then challenged a number of assumptions that he claimed had been made by CLEPR and others interested in clinical education. Firstly, "there is an assumption in clinical education that one must deal with live problems. I think it helps to have live problems, but I do not think it is necessary. I think you can deal with a sizable hunk of canned problems and duplicate what you want and thus control the kind of learning experience you get into." He observed that the structure of clinical education today with its emphasis on a live situation demands of the law students "an incredible transition" from the traditional classroom situation. Some students feel they are not ready for this transition because "nobody has taken them through a controlled situation and evaluated them." In structuring clinical programs, the controlled situation provides a middle ground that should be explored.

Secondly, the assumption that litigation is the only skill that can be learned "within a clinical form... 'Clinic' is equated to 'litigation.' I think a lot of lawyering can be learned in live, or incubated, or mock situations and has nothing to do with litigation."

DEAN McKAY stressed that when clinical education was introduced into the curriculum it was the most important thing that had happened to legal education in this century.

"It fundamentally changes the viewpoint of the students and the faculty as well as the nature of legal education."

Discontent among law students. He observed that there was a serious discontent in today's law schools, primarily among the students in the first-year class. He attributed this, in part, to the fact that some students having been exposed to law school for the first time realized they had a sense of morality. However, this exposure "did not give them a feeling of morality about the law but a feeling of immorality about the law." The frustration of the student's high moral expectation leads to his discontent. Even a small minority of disillusioned students -- ten, twenty, thirty percent of them -- "is enough to put the whole class and the whole faculty somewhat off balance and raises a different kind of conflict issue than we had in the past."

Increase in law students. Dean McKay then noted that the increase in the number of law graduates would raise new problems. One of the problems is the creation of opportunities for graduates by opening up new kinds of legal professions, particularly those that would meet the demands of society for legal services.

He concluded his remarks with a few observations on accreditation. He noted that the American Bar Association and the Association of American Law Schools were now showing some flexibility in working out their accreditation standards. He also noted that in the State of New York, for example, there is a third interested body -- the New York Court of Appeals, which regulates not only the New York law schools "but every school in the country that ever sends a graduate of that school to New York for admission to the Bar. As I heard the various programs described this morning, it is clear to me that every one of these programs is in violation of the rules of the Court of Appeals of New York."

DEAN SOVERN began his remarks by observing that the future law school curriculum was intrinsically tied to the future of the world in which we live. In this "phenomenally explosive period," he foresaw a number of changes. There would be an expansion of group legal services. Legal aid, governmentally financed, would likely induce some significant changes in the way law is practiced although it would not necessarily be followed by significant changes in the manner in which law is taught. There would be a growth in paraprofessional training, but it would not necessarily be part of the law school operation.

Better preparation of law students. There has been a substantial upgrading of legal education since World War II. A significant fact is that law school students are now in the top half of the student population. "Students are just better prepared and more intelligent than they have been historically. This improved quality might generate the kind of self-confidence that could produce greater diversity."

Dean Sovern observed that big classes and case-book instruction would still be a "major component in the future law school curricula." He believed, however, that

there would be more clinical instruction because of the considerable influence of CLEPR. There would also be an upswing in interdisciplinary work, especially in the fields of economics, psychology, and quantitative methods. The stress on small group work because of the influence of clinical instruction has made many faculties think about small group work in other areas.

Technological teaching tools. In spite of forty years or so of accelerated technology, there has been no large-scale escalation in the use of videotape, audiotape, computers, or other such technological tools. He did not foresee a significant use of such tools in the future.

Number of years of higher education. The shortening of the law school period to two years will probably be tied to a shortening of the undergraduate period, with the possibility that the student in some kind of undergraduate-law school mix would spend a total of six years in higher education instead of the now-prevalent seven years.

Dean Sovern ended his remarks by saying that the "objectives of legal education will be essentially what they have been, but they will be more realistically assessed. We will continue with more intensity to try to help students acquire the skills that will enable them to interpret and make the rules of tomorrow and not simply of today."

PROFESSOR STEVENS began his presentation by giving a brief resume of the background of legal education. He noted that before the turn of the century there was a great deal of legal education in America that was not a result of law school education. "In the last seventy years, we have done a remarkable about-face. We now have to go to law schools for all practical purposes." He noted that in the early years of the law schools, they were discriminating; they kept out of the profession the so-called undesirable with the reasoning that they "were keeping up standards." He observed that in the twenties there were still two-year law schools and that a college requirement for entry into law schools began in earnest in the thirties. It was in the thirties and forties "that the law schools and the profession managed to get many of the requirements incorporated into state legislation." This resulted in a rather rigorous structure in which today "we are very much caught." Although law school students are of a higher caliber and better prepared than in previous years, "nevertheless the curriculum has changed very little and, in intellectual terms, it has been going down."

Faculty-student ratio. Professor Stevens said that law schools are being run "on the cheap." He was critical of the accreditiation requirement that there be a minimum faculty-student ratio of one faculty member to every seventy-five students. "This is something I assume is unheard of in the worst high school or kindergarten." He noted, however, that by merely having more faculty members, there would not necessarily be an improvement in the quality of education. This is so partly because "we are willing to tell our colleagues what to do and none of us are prepared to change our own style of teaching." Basically, however, he felt that quality was tied to the fact that there is "not any money in legal education. University presidents like law

schools because they are cheap, and while they are cheap, nothing is really going to happen."

Students' view of law schools. Professor Stevens said that he had done a study in six different law schools of what students think about law schools. "On the whole, it is not much." The study also indicated that students in their third year are not really working in law school, with the majority of them having outside jobs that are full time. These full-time-job students spend only ten hours a week on law school studies. He said that this was not a new situation; the Harvard curriculum reports of 1936, 1947, and 1961 observed that little happened in the second and third years. "You just have the huge classes with professors talking to one or two people, and the people on the Harvard Law Review like it, but nothing happens."

He wryly noted that faculty often talked "like prison guards" and that the natives are getting restless or are lazy and would like to go out of their cells." Rhetorically, he asked, "What should we as faculty do to encourage students to do something useful?"

He raised the question of whether attention should not be given to moving legal studies down to the undergraduate level; for instance, having an undergraduate major in law under a six-year experiment or some such. In general, he felt that whether one was an egalitarian or an anti-egalitarian the fact remained that the law profession was not necessarily homogeneous and that what "we really ought to accept are different sorts of law schools doing different kinds of things."

Clinical education and poverty law. Professor Stevens observed that in many people's minds clinical education, "quite wrongly, I am sure," has been closely linked with the idea of poverty law. "Obviously, clinical education, if it is going to make a real impact in the law schools, has to go further than that."

He felt that CLEPR was too conservative in wanting only one year of clinical legal education. "I would like to see three-year clinical law schools. I would also like to see law schools where clinical work is an option, and, perhaps, even a very small option." The entire question of clinical education is "going to require great radical restructuring in the profession itself."

He concluded his presentation by making several observations about accreditation and Bar examinations. He observed that we ought to have an effective Bar examination and stop "the nonsense of accrediting law schools." We should be completely flexible about how people acquire their legal knowledge; "whether through an apprenticeship or one-year or two-year or three-year law school or whether they do it through a clinical law school. It seems to me if we really think we have made important educational and psychological breakthroughs in examining, the breakthrough is to have a very tough and hard law examination and not require people to go to law school and not require clinical work but allow people to do as much as they want."

Discussion Period Comments

Cost of clinical education. Clinical legal training is not necessarily any more expensive

than other forms of legal training.

Twenty-year cycles. From a historical view, legal education problems seem to run in twenty-year cycles.

Need for job descriptions. Law schools must have a clear view of society's legal needs in the future. A new set of job descriptions are necessary so that law schools can properly prepare their law students to qualify for new career opportunities.

Law school and university finances. Tuition revenue produced by law schools is increasing but the demands of the universities for operating income hampers the law schools' financial ability to enrich both faculty and programs.

Territorial imperatives. Because of the faculty's traditional concern with "territorial imperatives," there will be no radical change in any existing law school.

Presentation of law to students. The law school teacher rarely makes any effort to question the underlying assumptions of his teaching methods. How is law presented to students? First, it is presented in terms of hypothetical-factual models. The student reads a case and then is asked to respond to a hypothetical model. Second, the material is presented as a world divided amongst subjects such as torts, contracts, civil procedure, property. The student experiences a problem of integration. He slips into a categorizing approach that is antithetical to an integrated learning experience. A possible aid to overcome the problem would be to have faculty sitting in on each other's classes and also to have an overlap of courses so that the students not only benefit but the faculty has to rethink what it is doing and how it is doing it. Third, the underlying assumption for the current division of materials is that there is an internal body of principles and concepts that one can categorize. Thus, it is difficult for the student to develop concepts that both unify and simplify - an important step in the educational process.

In general, American education does not make students excited by the learning process. Too often, students simply play the game of "citing the professor." The goal should be to make legal education exciting and challenging.

Clinical education and traditional law courses. One of the reasons clinical education has not become too involved in the traditional law courses is that this would require law teachers to rethink their own approach to legal education - "and this is a very difficult and threatening process." Another reason is that there is no general acceptance by law faculties of the intellectual value of the clinical method. The results are that clinics end up as appendages to the law curriculum and the clinical method is not adopted as a teaching device.

Doctrine and legal education. Doctrine is an instrument to separate the irrelevant from the relevant and to synthesize. Although it is true that doctrine changes, doctrine does - and should - play a legitimate role in legal education.

The two-year law school. Comments by various conferees included the following:

"At a recent meeting in New Orleans, sixty law school deans present voted sixty to nothing against the two-year curriculum." . . . . "I am just overwhelmed with the kinds of things I think can be done and that need to be done in three years, and I do not think we are turning out very good graduates right now at the end of three years. The thought of being able to do this in two years overwhelms me." . . . . "I have an idea that if we adopted the two-year notion, there would be no room at all in that two years for the kinds of very interesting things that are developing. I think that to preserve innovation, we have to, perhaps, hang on to that third year." . . . . "I find the concern about a two-year law school somewhat depressing because it seems to me to be saying these are interesting and important things but we cannot persuade our students of that. I think we can persuade some students." . . . . "I have great trouble discussing the two-year curriculum in the same way I have trouble discussing whether constitutional law ought to be three units or four. It depends on what is in the box, and it depends on what is going to be taught in those two years and who is going to teach it and what will be its goals and how will it link to subsequent experiences." . . . . "For the past couple of years I have been with a law firm, and I have been quite surprised that the principal complaint of the younger lawyers there and former students I know around the country in similar firms is they are getting lousy training in the law firm. This, of course, has some special meaning to us if we go back to a two-year law school because, implicitly, it puts a greater burden on the law firms or other institutions for the practice of law."

Charge: Clinical education is strong in only one area - poverty law. Not true if you define clinical education "more broadly than lawyer-client relationship." If you define it to mean "observation, simulated exercises, and participation in a broader sense" then there really is quite a good deal of clinical education going on in a number of other fields: labor law, corporate law, property law, criminal law - and in a good many different ways.

Continuing education. The goal of continuing education for lawyers is a fine one, but in order for it to be truly successful it should be done in a full-time educational environment - at a university.

Theory and reality. One of the great vices of legal education is that none of the theoretical framework is tested against operational reality. That would suggest that clinical representation might pull the real world back into the law school.

Professional responsibility. In 1959, when the Council on Legal Clinics was first created, the main, impelling reason for its creation was that so little was being done in the law schools and by law firms and lawyers in practice in trying to get across to the law students and the new law clerks a sense of professional responsibility. Since then, a good deal has been accomplished in this field. Several years ago, one of the first questions an interviewer would be asked by a law student was "How much time does your firm devote to outside activities, in the field of property law, civil rights? How much time am I going to be allowed to do this?" In the last year or two, this has almost completely disappeared in the interviewing process. "The students are not asking this kind of question any more. How come?" (Answer by another participant) "I do not believe the students are disinterested in public

interest work of various kinds, but there does seem to be a threat, as they see it, because of a poorer job market. The troops are hungry." (Another answer by another participant) "One reason is the feeling among many young lawyers that in the marketplace of two or three years ago they could lobby for a job on the basis of pro bono work but could not get promoted on that basis. I think that if it is not apparent to them that this is a rewarding kind of good thing to do, they will very quickly get out of pro bono work. Moreover, I think our focus on poverty law kinds of clinics in law schools very often exposes students to the most frustrating kinds of practice. Their concepts of what it is they can do for their clients are very limited within student practice rules, within grinding kinds of everyday landlord-tenant, low-level, consumer-type problems that keep reoccurring and are not very challenging. I think there is a body of students who, by the time they finish their clinical experience, are disillusioned with their ability to help by furnishing pro bono representation."

Night law schools. The night law schools will continue to play a role but the number of applicants may drop. There is constant pressure by law school deans to shift night school students to the day school programs. Night law schools should be maintained, encouraged, and improved since they serve a useful purpose and provide diversity and flexibility.

Why Johnny goes to law school. There is no one overriding reason but a host of reasons. Some just don't know what else to do, so it might as well be the study of law. Some hope to escape the draft. Many of them feel it is a good way to earn a living. Some would like to emulate Ralph Nader. Some hope to use law to change the world, but, said one participant, "I remind them that law school is, after all, only what it says. It is just a school."

Student anxieties and animosities. In the "old days," a number of first-year law school students didn't think they were very smart. They expected to be near the bottom of the class, and they were anxious about that. Today, a number of first-year law students throughout their educational careers have been achievers, and "the central feature of the first-year method is to have them make mistakes in public. It is anxiety-producing, provocative, and a great deal of animosity grows out of it."

Law services and the middle class. Although law services for those who cannot afford to pay for them sould be continued and increased, the bedrock clientele is still the middle class. "I hope the curriculum will not be changed so that service to the middle class will become more difficult."

The contented and discontented student. Comments by various conferees: "The bulk of the students are content. The dissatisfied are a minority, but a vocal one." . . . "Some students are going to law schools now because other alternatives are closed to them. Law was not their first choice. So they are more likely to express dissatisfaction." . . . . "Do professors think the second- and third-year students are bored because student esteem for professors is low and thus the professors' own egogratification is less?" . . . . "Complaints with the curriculum are recurrent. Innovations become absorbed. One thing that has changed is that we now have articulate,

persistent student critics." . . . ." I was in the class of '60. When we became dissatisfied with law school, we thought there was something wrong with us. The class of '72 assumes that, if they are dissatisfied, there is something wrong with the system."

Changes via young faculty members. Comments by various conferees: "Changes in the law school have resulted not only from reform movements by students but also by young faculty members." . . . . "I do not think an institution like a law school can change itself. I think the suggestions of a few young faculty members ought to be absorbed." . . . . "The interesting thing about law teachers is that to an extraordinary degree they want to teach and want to be loved by the people they are oppressing. You get all kinds of soul-searching and then reforms do tend to appear in the faculty-student relationship."

Student pressure. Comments by various conferees: "Student criticism, of course, is irresponsible, but that is one reason why it is effective." . . . . "Maybe we know a little bit better what is good for the students than they know themselves because we have a sense of historical perspective that is based on being away from the law school as students for some period of time." . . . . "I think that if there is a lesson to be learned, it is unquestionably that we are responding to student pressures. But I hope we will not trade our judgment when they exert pressure on us. I think students lack an institutional memory." . . . . "Student pressure is a very good stimulus to an institution. It helps cut back the prevailing smugness on the part of all of us."

The end of the discussion period. Last words: "The subject 'The Future Law School Curriculum' is a difficult one. I do not know whether the challenge has been met."

Panelists' Closing Comments

Professor Harbaugh was pessimistic that there would be great changes in the law school curriculum. He reiterated that without outside pressures on the faculty, there would be no movement forward. A hopeful sign was consumer pressure for the delivery of services and this might stimulate some growth. The law schools themselves could stimulate growth in one particular area - clinical education. He thought CLEPR has been too narrow in its approach. But without the assistance of CLEPR, you will not get movement on the part of the faculty."

Dean Ehrlich was optimistic that there would be incremental and not convulsive little steps forward in legal education. "I think the incremental steps will lead to diversity not for its own sake but for the sake of the legal services that we have to provide for different groups of people with different interests and different needs. I see different schools taking on much different forms." The very numbers of different kinds of needs for legal services will force some substantial revisions. He hoped for changes in the structure of the Bar and in the structure of legal education and that "these two groups which have been relatively isolated in the past would work more closely together in the future."

Professor Bellow observed that CLEPR has to spend more time developing a coherent pedagogy when talking about clinical education. It has to begin to pick and choose, to make judgments that will eventually provide examples and pressures while at the same time promoting the process of self-criticism. CLEPR's greatest value is the degree to which it questions the assumptions about law teaching and law teaching goals that have too long been left unquestioned. "Insofar as CLEPR continues to do that, it is performing a very real function in the legal education world."

Professor Stevens said that he, too, felt "quite pessimistic" and that the changes that were occurring were not fundamental but "tinkering." Student pressure, however, may force a number of things and that "we really ought to be pushed much more dramatically." He noted that, institutionally, law schools are incapable of changing very much by themselves. He granted that there would be marginal changes, and, probably,in the right direction. He hoped that the ABA regulations would be made more flexible and that the AALS would "die a death as an accrediting agency." He hoped, too, for more flexibility by the Court of Appeals of New York and by other courts or "otherwise the chances for real change, real adaptation in legal education, are very small."

President Levi expressed the view that "law schools are among the strongest units in higher education in the United States. He said that the problem for law schools is much the same as the problem for other areas of graduate professional training; namely, that "it is very difficult and terribly important to keep one's eye on training in problem finding as well as in problem solving." He noted that one of the most important things that has happened to legal education is the change in undergraduate education, "not only because of the greater numbers enrolling or the greater number of schools but because of a weakening of the intellectual discipline of undergraduate education." He stressed that "professional responsibility" is part of CLEPR's title and wondered whether this concept, which "means a much better understanding of the values of the legal system and the values that are involved in making a society work," was being sufficiently emphasized. He noted that there was diversity in the law schools despite the opinions of some persons to the contrary and that "diversity is a good thing and ought to be encouraged."

Dean Sovern said it was important to emphasize that "law professors in the past changed slowly, not out of laziness but out of a deep sense of conviction and worthiness of what they were doing" and because "they found many of the suggested changes unsound." Today, there is greater diversity and a greater willingness to experiment with changes. As a result, within narrow limits, "change has been occurring and seems likely to continue. I suspect that part of that phenomenon for pressure for change is just that-- boredom, and novelty has its own merits." He mused whether the pace of change is all that important and that "in our present state of ignorance" it may not be better to proceed slowly.

Professor Jarmel said that legal education is in reasonably good shape, including the first-year program. He noted that clinical education offers the best available hope of making the second and third year a much more relevant experience to

students, but there are two very real practical limitations. The first is the question of tenure, "which I suggest most law teachers do care about." He noted that "activist clinical law professors in the year before they are up for tenure ask to teach traditional courses and be put on half teaching loads in order to write the piece that the tenure committee will read so they can get their vote." The second is one of cost. "I think the game and issue is how to spread a relatively small amount of resources into a second and third year where students are not listening to us."

Dean McKay disagreed with those who claimed there have been no significant changes in legal education in the past five or ten years. He cited the increase in minority students, new teaching methods, and the proliferation of clinical programs. He felt that the question of accreditation should be worked out "in a sensible way," perhaps having AALS merging with the ABA and having a single accrediting body that would have "flexible standards and not be interfered with by the individual standards of the various states." He noted that with so many legal needs unfilled, "I find it incredible to assume that the talents of the legal profession cannot find ways to meet those needs." On clinical education, he observed that without CLEPR the clinical movement would "not be where it is today, and I think everybody agrees that this change is for the better... I hope CLEPR is supported until all schools are believers."

TRAINING OF CLINICAL PROFESSORS

Panel Presentations

Presiding: Peter Swords, CLEPR Staff

Panelists: Richard Abel, Professor, Yale Law School; Gary Bellow, Professor, Harvard Law School; John Scarlett, Dean, Drake University Law School; and Norman Lefstein, Deputy Director, Public Defender Agency, Washington, D.C.

MR. SWORDS opened the discussion by noting that "there is probably no better way of gaining access into some of the very important pedagogical issues of clinical legal education than by examining how people are trained to become clinical law professors" and that the members of the panel had a wide variety of experience in this area.

PROFESSOR BELLOW began his remarks by stating that there was a diversity of approaches to training clinical teachers and that since this was the case he believed the best thing to do was to describe what he and his colleagues do in clinical teacher training at Harvard and the setting in which it operates. Basically, the program consists of six teaching fellows who, over a two-year period, pursue a graduate degree in law. They hope to expand so that it will include visiting teachers as well.

Functions of teaching fellows. First, they directly supervise students in the clinical program. There are 75 students per semester in courses that deal with civil and criminal legal aid work. The students receive eight units of credit each semester and participate both in courses and the actual handling of cases.

Secondly, the fellows attend two courses that Professor Bellow teaches, which attempt to draw on students' practice experience. "What I do in the classes is to take a careful look at the processes in which the students are engaged -- interviewing, counseling, and negotiating. I try to develop a framework in which the students can begin to teach themselves, and the fellows participate in that."

Thirdly, the fellows themselves teach a two-hour seminar. This supplements Professor Bellow's three-hour course. The format follows a case presentation model that is very similar to the medical school model. "You present actual cases from the field or hypothetical cases that represent problems with which the students are having difficulty."

Fourthly, the teaching fellows pursue their own course of graduate work: namely, taking courses and doing a thesis either on some facet of legal education or on some facet of practice. "We have encouraged the fellows to engage in systematic study of what lawyers actually do and in what ways."

A typical week described. On Monday, Professor Bellow meets for two hours with the fellows and discusses administrative and general problems in education -- transfer, retention, role conflict, etc. Prior weeks' classes are discussed with particular emphasis on techniques and materials, pedagogical writings are reviewed, and future classes are planned with respect to student needs and responses. Plans for next year include the taping of fellows' classes and then reviewing the tapes during these two-hour sessions.

During the week, other meetings are held in which Professor Bellow outlines the classes he will teach during the week, in terms of both their pedagogy and their planned content. During the week, too, the fellows emphasize the same content with the students in the actual supervisory setting, calling on Professor Bellow periodically to illustrate the kinds of things he is looking for. "It is invaluable for me because it means that in the classes I teach I can draw on actual practice illustrations in order to integrate the ideas I am presenting with what they are doing in the field. Similarly, I go out in the field and work directly with the students who attend the seminars so there is a continual process of checking, arguing, changing."

Basic assumptions. Professor Bellow emphasized that the process does not operate as smoothly or efficiently as he described it, but believed "it might be useful to take a look at its basic assumptions."

First, is the assumption that teaching is an activity that can be analyzed, described, and defined in terms of specific choices about material, attitude, and techniques -- and that these choices can be taught and reflected on. "I ask of the teaching fellows that they be far more self-conscious about their teaching experience and reflective about

what they are doing than we ask of law professors. Again and again, whether in the field or in the classroom, we keep asking the fellows the same questions: Why did you ask that question?; what were you trying to accomplish with it?; what assumptions are you making about learning that are implicit in that kind of question?; what overview of the course are you trying to present by handling the particular pedagogical problem that way? As you would imagine this process is both very challenging and very anxiety-producing. I think clinical teachers not only teach with ideas and contents, they teach with their own actions and their own attitudes and in an environment in which they feel far more exposed and far more vulnerable and far more isolated than the classroom teacher does, and they very deeply feel the demands made of them."

Secondly, is the assumption that the best way for clinical teachers to learn is to teach. They do so in an atmosphere in which they have the opportunity to be self-critical, to be reflective, to make mistakes, and to see each other as models. "The entire assumption about clinical learning suggests the particular combination of personal involvement, theoretical framework, and trial and error."

Thirdly, is the assumption that it is both necessary and possible to articulate educational goals. Few persons in the law-teaching field can say what constitutes a good teaching job. Yet, it is necessary to articulate those criteria that can become the basis for a better idea of what the teaching process is about. He noted that there are countless questions to be asked on form, content, anxiety, the teacher as a model, the limits of persuasion, the proper balance on motivation, and "thinking as a lawyer," among others. "We have not begun to answer these questions, although I think we are trying."

Funds, directions, and commitment. Professor Bellow said that he did not support the idea that without proper funds the clinical movement would expire. "I think that directions will change with or without proper funds. I think the process of self-criticism has begun, and I think it will continue. He observed that Harvard has made a commitment to continue clinical education for a long time. He concluded his presentation by observing that running clinical programs and the concomitant reflection on teaching method are most challenging, "and I think they are the most rewarding endeavors I have ever been engaged in."

MR. LEFSTEIN commented initially that while he was not a law professor and he did not conduct a clinical program he could contribute to the discussion by describing two programs that have aided in educating clinical professors -- the Prettyman fellowship program from which he graduated some years ago, and his own agency, the Public Defender's Agency in Washington, D. C.

The Prettyman Program. The two principal parts of the program are its academic phase and its trial and litigation phase. The academic part consists principally of graduate law school courses, which are unrelated to trial work. The heart and strength of the program is the litigation aspect. Prior to going into court, there is an intensive training program in the criminal area as well as some limited emphasis on mock trials and mock motion sessions. Once in court, the participants gain an unusual amount of

The personal experience. Professor Abel's presentation was a highly personal one in which he described his work on one case and what he learned from that particular case. He disposed of his training in a few sentences. " I began on September 8 and handled my first case that afternoon. I received no training except what one picks up during the process. There were two attorneys who were to break me in, but they left for other offices as I entered. This has both advantages and disadvantages."

The case basically involved a white American woman married to a Puerto Rican, their four children, the breaking up of their marriage, and their custody fight for the children before and after she gave birth to a fifth child by another man. Professor Abel described his deep personal involvement in the case as the woman's lawyer and his experience with the husband's lawyer who employed dilatory tactics, and the judge who can be typified by the remark ascribed to him by Professor Abel: "This woman is an adulteress, and I will not give her custody of any of the children."

"What I learned." After giving the facts of the case in some detail, Professor Abel said he would try to state briefly some of the things he had learned which he would not have learned had he only studied the case in a classroom setting. "I have learned about judges," he said. "I knew something about judges before, but it was not quite so real to me as it is now .... I discovered something about lawyers. I am not sure what I learned, but I have learned a great deal about negotiating and the kinds of relations one gets into.... I have learned something about the problems of the relationship between negotiation and adjudication.... I have learned a lot about clients and the kinds of emotional relationships that one gets involved in with them.... I have learned something about procedures, not simply how one follows them but the way in which the use of procedural techniques can totally alter the substantive outcome of the case.... I have learned something about substantive law as well -- that the rules that are asserted to be the black letter of the law have no relation whatever to what goes on in the courtroom. The evidence is manufactured to meet the necessities of the black letter of the law in the most shameless fashion with the total participation and collusion of everyone involved.... I also learned something about involvement with principle and with individuals." Professor Abel felt that he could only have had such a learning experience outside of the classroom setting and that this experience made explicit many of the values in clinical legal education.

DEAN SCARLETT began his presentation by observing that many professors in law schools are incompetent to teach clinical courses at the present stage of their own development.

Lack of experience. Many professors have never had any field or practice experience. Those who have had such experience, had it a long time ago or in very limited amounts. "They have had no experience with the clinical method at all, and in many instances are not much interested in having any or in learning much about it." In addition, he noted that they also have little real understanding of the learning process, pedagogical techniques, or the relationship of these techniques to the clinical method and the clinical training process. He observed that many of them feel threatened by the vitality

experience in a very short period of time. They begin, initially, with misdemeanors in juvenile cases and advance to the trial of felony cases. In addition, they also handle several appeals.

During the early years of the program, its purposes were to stimulate interest among lawyers in criminal practice and to elevate criminal law practice in the District of Columbia. In recent years, the program has changed considerably. It has developed a civil component and expanded from a one-year to a two-year program. In the fall of 1972, with the help of LEAA funds, it will have a prosecutor component. The participants will spend the first year doing criminal defense work and the second year working as prosecutors.

The Public Defender's office in Washington, D.C. The office has the responsibility of providing representation in criminal and juvenile cases in the District of Columbia. The Agency, which is funded by Congress, also represents inmates of mental hospitals. Overall, the Agency has 114 positions of which 44 are attorney positions. The balance is made up of investigators and social workers who aid the lawyers, clerical and administrative staff, and personnel that is involved in coordinating the appointment of private attorneys to cases not handled by the Public Defender's service.

Similarity of Public Defender service and clinical programs. In some respects, insofar as the attorney program is concerned, the Public Defender service is very much like a clinical program. Before the Public Defender lawyers go into court, they undergo rather intensive training programs that last between seven and eight weeks, "where they do nothing but really go to school in-house." They engage in case reading and in mock motions and trials and conduct sample final arguments, voir dire, and motions to suppress. Various case models are used during the course of the program, which is taught by the office's own staff members. After the lawyer completes the program, he is assigned to a supervisor, who is responsible for meeting with the lawyer on at least a bi-weekly basis and for observing him in court. At weekly staff meetings, cases are dissected.

During the past three years, two law professors -- one of whom was partially sponsored by CLEPR -- have been in residence for a year each. "We are extremely anxious to have them because they provide stimulation for our own staff." Within the bounds of the Public Defender statutes, "we are inclined to let the law professor do virtually whatever he likes. This could mean, for example, offering supervision to our lawyers or engaging in the broad kind of practice in which our office is involved."

PROFESSOR ABEL began his remarks by saying that he was going to present to the conferees a highly unstructured teacher training program since it basically involved removing himself as a teacher of Legal Anthropology and African Law at Yale and working full time for a year with the New Haven Legal Assistance Association, a predominantly OEO-funded legal aid office with five branch law offices and about 25 staff attorneys. "In many ways, what I think my training experience illustrates is not the training of the clinical law teacher but the nature of clinical education itself in a rather crude form."

and thrust of the clinical programs and the interest they have generated. They feel doubly threatened because they feel highly inadequate to deal with new techniques. Faculty thus threatened become antagonistic to clinical programs. They contribute to the segregation of the clinical programs from other parts of the law school curriculum and to the deprecation of their intellectual value."

Programs for non-clinical professors. After making the aforementioned observations, Dean Scarlett suggested that "in addition to programs for the training of clinical professors, we badly need programs for the training and indoctrination of non-clinical professors in clinical methodology. Obviously, just providing them with the information at this point is not going to get the job done. We are probably going to have to work out some method of force-feeding." Although he said he had no firm idea how it could be done, he did have several suggestions. One possible way might be to assign non-clinical professors to team-teach clinical programs with clinical professors. This would expose them to many of the expert methods that are being used in clinical education, give them a better understanding of what can and what cannot be done in a clinical program and tend to break down the barriers between the non-clinical and the clinical faculty. The best place to try out this suggestion would be in schools with summer programs.

Another possible way might be to have non-clinical professors put themselves into a clinical situation in much the same way that Professor Abel put himself into a clinical setting for one year. A good place to work might also be in a law office situation and, if possible, the activity should be connected with a law school clinical program and supervised by law school faculty.

Retraining or additional training for law professors. "Law teachers are very much like doctors who will not take their own medicine." Although law professors prescribe continuing legal education programs and a return to law school for specialist training programs for lawyers, there are few programs for the retraining or additional training of law professors. "More programs are needed which offer training in teaching techniques -- techniques which would bring professors up to date in new developments in the transferral of information and in the learning process." Dean Scarlett believed this would enrich the entire curriculum, bring into every course in the law school some measure of clinical methodology, and give the law school "a breath of fresh air from the real world experience." It might also tend to eliminate "many of the inadequate feelings of the non-clinical faculty in dealing with clinical methodology and open the doors for much greater and more widespread experimentation with the clinical method throughout the entire law school curriculum."

Growing gap between Bar and law teachers. Dean Scarlett said that in his experience he has observed a growing gap between the concepts of practitioners and law professors as to "what legal education is and should be and the things that law schools are trying or hoping to do." He suggested that the Bar should be given and should accept more responsibility for the development of clinical legal education.

He further observed that there are clinical programs today that do not fall either into the area of expertise of clinical or non-clinical professors, and that these programs will probably continue to use non-law school, non-faculty supervisors in portions of their program. He gave as an example the legislative clinical program at Drake University Law School in which the persons supervising the training of students were legislators.

Title XI. Dean Scarlett concluded his remarks by giving a brief rundown of what has been happening to Title XI, the section of the Higher Education Act that provides support for clinical legal education. Although Title XI has been part of the Act for three years, the program has never been funded. He reviewed the various actions in the House and Senate for the program in which funds amounting to seven and a half million dollars have been authorized but not funded. He suggested that the chances for funding this year were no better than fifty-fifty. If the funds were released, Dean Scarlett observed, it would allow CLEPR a great deal more latitude in the kinds of things that it could do with its funds since many of the types of programs that CLEPR has been funding could be taken over by the Title XI program.

Discussion Period Comments

Clinical professors at Columbia.

Although more than fifteen members of the faculty are engaged in one context or another with clinical instruction, only a handful of them have been funded by CLEPR or other outside sources. Many have participated in clinical instruction as an adjunct to their conventional teaching loads.

Following a review and a warm endorsement of its CLEPR-funded program, the faculty resolved that, in general, no one shall teach clinical programs full time. Even professors who come on originally as clinicians are expected to teach conventional courses that are usually related to their clinical work.

The faculty has taken a very firm position that there should be no discount on intellectual capacity in the appointment of clinical professors. Differences have to do with taste and time so that the same scholarly performance is not expected of clinical professors as compared with those who carry normal loads, but in all other respects it is expected that clinical appointees have the intellectual capabilities and rigorous minds that are looked for in faculty members who will teach traditional courses.

For many years Columbia has offered a graduate seminar in Legal Education taught by a senior faculty member and assisted by a junior man. Over time, as these juniors have joined the regular faculty, a group of professors has grown up who are accustomed to thinking about methods of teaching as a part of their regular teaching responsibilities. Such faculty members, sensitive to new methodologies, do not feel threatened by the introduction of clinical courses.

Clinical Professors at Harvard. Clinical teachers at Harvard come with very good academic records and very good credentials in legal aid practice. Nevertheless, it is constructive to see the problems that exist among persons who want to become clinical teachers. First, "they have developed some very bad practice habits. Three or four years in legal aid practice, as it is currently operating, produces a way of going at law practice that is not systematic, careful, or thoughtful, and one of the sources of anxiety is the necessity that they relearn a great many of the habits and patterns that they have slipped into." Second, "they come to teaching really remarkably unreflective and unselfconscious of what they do. Teaching demands a capacity to step back from what you are doing and look at it and a desire for systematizing an experience." Third, "our notions of what go into a clinical program are, despite our rhetoric, really very primitive. I mean that most clinical programs, although I like to think otherwise, are really continuing legal education programs."

"The question is not whether there is much to be learned by being in practice and gaining many new insights, but the question for us as teachers is whether we can build a framework around that experience that systematizes it and allows us to understand it in such a way that new information can be ordered and education can develop. This is an incredibly difficult process.... If you combine the various difficulties of the practical experience of the people who come to us with our own inabilities to really understand what teaching is about - and that we have only just begun - then I think we should not be as harsh on people who are not willing to move quite as fast as we want them to."

Faculty recruiting. In the recruiting of new faculty, the emphasis should be placed on finding a person who does not necessarily have experience in clinical teaching but has in his background an attitude and interest and willingness to experiment, which is likely to make him bring clinical work into his particular field of study.

Clinical and non-clinical teachers. Question: Can the clinical law teachers teach such things as case-reading skills and writing skills better than non-clinical teachers? Answer: "The perspective is that we [the clinical teachers] are teaching people a mode of thought, a way of disciplined analysis and method of synthesis that takes large amounts of material and brings it together in a problem-solution context as well as a number of execution skills such as writing, drafting, and the like. I think we are, in fact, doing that better for we start with a richer factual context and, therefore, the problem is more difficult and in the end more rewarding.... I think we force a self-consciousness and self-reflectiveness about the learning process which the present system does not do. I think, too, that we operate in a much better faculty-student relationship than the current method."

Law in the classroom and the real world of practice. Comments by various conferees: "Part of the resistance to the clinical method is because of the painful realization of what is perceived to be the substance of law in terms of a classroom and what it actually means in terms of the real world of practice." ... "We all pay lip service to the findings of the legal realists. We all recognize there is an enormous gap between

law in action and law in the books. Law in action is what is going on in the courtroom or law office or agency or between clients who never even reached the preliminary stages of the legal system. The reason that I took a year off to do field work is that I have no desire to teach law in the books and never have. I cannot find adequate descriptions of law in action. The only way to find them is to make them, and the way you make them, I hope, is by a combination of practice and the academic component. You have to create a structure that will enable you to represent, in a scholarly fashion, the findings of particular incidents, particular cases." . . . "There are a rather substantial number of the younger law professors who are beginning to look for outlets in the kind of teaching that brings them into the domain of the law in action."

PARAPROFESSIONALS AND CLINICAL TRAINING

Panel Presentations

Presiding: Victor J. Rubino, CLEPR Staff

Panelists: Dr. Alfred H. Sadler, Jr., Yale Medical School; Dr. Roscoe L. Matkin, University of North Carolina Dental School; Professor Eli Jarmel, Rutgers-Newark Law School; and Professor Robert E. Oliphant, University of Minnesota Law School.

MR. RUBINO opened the discussion by stating that CLEPR has an interest in paraprofessionals for a number of reasons. First, paralegals are a force to be reckoned with in the future delivery of legal services, especially to the poor and middle class and to those who cannot afford a lawyer at full billing. Second, with regard to training in the clinical area, law students must learn the advantages and disadvantages of having paralegals working with them in an office. And finally, the determination should be made as to who should train paralegals and what training methods can best be utilized.

Historical survey of dental auxiliaries: DR. MATKIN began his presentation about paraprofessionals in the dental profession with an historical resume. He noted that the earliest training of dental paraprofessionals began as early as the 1890's, with the training of a few persons to make dentures and do laboratory work for dentists. By 1913 a dental hygienist program was established in Boston, and by 1922 the dental-assistant profession was initiated. Since then, there has been an ever-increasing use of dental paraprofessionals to meet the increased demand for dental services on the part of an expanding population that insists on greater dental care. Today, there are nearly 250 dental-assistant training programs, 175 dental hygiene programs, and about 30 dental laboratory technician training programs.

A program to train dental students to work effectively with dental auxilliary personnel was started at the University of North Carolina in the mid-1950's. Largely through funding

by the U.S. Public Health Service, this dental auxiliary utilization training program has been incorporated in one form or another into all dental schools in the United States. In 1967, a survey of dental practice indicated that those dentists that utilized auxilliary personnel on a routine basis had a significant increase in productivity with a proportionately increased income.

TEAM and DAU programs: Dr. Matkin then discussed in some detail the TEAM (Teaching Expanded Auxiliary Management) program at the University of North Carolina Dental School. Based on research by a number of university and government groups, it was shown that it was possible for auxiliary personnel to be trained to provide services at the same or better level than those provided by persons at the average senior dental school. The services include those that formerly were considered to be the sole responsibility of the dentist. In the past year, students trained as dental assistants under the TEAM program accomplished about thirty percent more in the laboratory-clinical situation than the regular dental students did before they were introduced to patients. The TEAM program has now been incorporated with the DAU (Dental Auxiliary Utilization) program to prepare every dental student to deal more effectively with the delivery of dental care by more efficient and effective utilization of auxilliary personnel, especially those who are trained and capable of performing a broad range of duties that heretofore have been within the exclusive realm of the dentist. The curriculum involved in the TEAM training program has been added to and integrated with the present dental curriculum, with the combined DAU/TEAM program designed "to build one upon the other."

Clinical phases of the TEAM program. Each dental student, upon being assigned to the TEAM clinic, is assigned an auxiliary team consisting of an expanded-duty dental assistant, two chairside dental assistants, and together with five of his classmates, shares a dental hygienist. A dental laboratory technician is also available to him throughout his clinical experience. The dental student is told what specific duties his team is capable of performing, what can and cannot be delegated, and to whom. It is the student's responsibility to schedule patients who require services that can "appropriately be delegated to his team so that maximization of his talents and those of each member of his team can be achieved." The student and the auxiliaries are evaluated by members of various academic departments. Weekly seminars are held. They are attended by both students and auxiliaries and are led by the TEAM clinical faculty.

Two basic concepts. The program is based on two basic concepts; namely, that the dental student who works with an auxiliary team will learn together with that team, and that when the student gets into practice he will earn his living together with the team. "We are fast coming to the realization," Dr Matkin concluded, "that in providing dental services to the people it is not who does the work but how well it is done."

PROFESSOR SADLER stated that he would review the role of paraprofessionals in medicine and hoped that the review might have relevance to the training of paraprofessionals in the legal profession.

Number of medical paraprofessionals. Since 1900, there has been a tremendous growth of paraprofessionals in medicine. Today, there are approximately eleven paraprofessional personnel for every physician in the United States. These include, among others, inhalation therapists, laboratory technicians and technologists, radiology technicians and technologists, and nurses. In the field of radiology alone, there are 13,000 programs as compared to 100 medical schools. Nursing programs at a variety of levels number almost 1,000. The hospital patient in the course of a day may have as many as fifteen or twenty paraprofessionals -- "people in white coats of one kind or another" -- taking blood, performing one or another kind of manipulation, or being directly involved in diagnostic processes. "All this adds up to the fact," Professor Sadler said, "that paraprofessionals are very much in medicine, have been for some time, and there is a continued demonstration of need for more of them all the time."

Licensing. At the present time, most states have from twelve to twenty-five separately licensed health professions, each of which has a specific, defined scope of practice. Professor Sadler observed that in some respects this was unfortunate "because people now look at licensing as a regulatory mechanism, and it is increasingly being recognized that licensing is not doing the job that it was originally intended to accomplish."

The physicians' assistant program. Four major factors have led to the establishment of programs to train physicians' assistants: the shortage of physicians; the need for more even distribution of medical care, especially in the rural and disadvantaged areas; rising medical costs and thus the need for less costly personnel; and the need to relieve busy physicians of some of the burden of routine care of patients.

Three major models in the training of physicians' assistants. One model is the program that was established at Duke University in 1965. The impetus for the program was to train personnel to carry out many of the physician's routine tasks so that he could have the time to pursue continuing education programs at the University's medical center. The physicians' assistant program extends for 24 months and is modeled in some respects after a medical school curriculum. There is a didactic course of nine months that includes, in the main, basic and clinical science material. This is followed by fifteen months of clinical rotations during which time trainees spend time in hospitals and doctors' offices learning to work with and under the supervision and control of physicians. When the assistants are graduated they are hired by physicians and work directly for them in a variety of settings. To date, there have been 75 graduates of this program.

Another model is the MEDEX program that was set up at the University of Seattle in Washington in 1969. The impetus for this program was to take the well-trained returning military Medical Corpsmen, of whom there are about 6,000 per year, and try to use that military experience in a civilian setting. This program is a fifteen-month process. The first three months are devoted to patient history-taking and physical diagnosis. The MEDEX student is then sent out into the community, where for twelve months he works in a one-to-one relationship with a general practitioner.

Professor Sadler noted one of the practical issues in this program, namely that "some practitioners are good teachers and some are not. Some are interested in having assistants and others just give lip service to the concept and so they [those in charge] have gone to great lengths to screen for what they think will be good teachers." The selection process includes several rounds of interviews with the practitioners at the medical center. The Medic and the physician select each other, so that there is no placement with a doctor who is not really excited about teaching and who does not empathize with the student with whom he is working. At the present time, there are about 100 graduates of this program and six other MEDEX models which have been set up in various parts of the United States.

The third training model consists of various programs which expand the function of the registered nurse, 99 percent of whom are female. These baccalaureate nurses already have a three or four year training base, and onto that is added additional training in a particular area of medicine. For example, at the University of Colorado, during the past five years a number of pediatric nurse-practitioners have been trained in four months how to do complete well-baby care, to make checkups of newborns, infants, and adolescents, and to perform up to half of the medical tasks necessary in caring for simple pediatric illnesses that doctors normally take care of in their offices. At Yale, the physicians' associate program (the term "associate" is used instead of "assistant" to connote more of a colleague relationship), under physician supervision, is concerned with not only well-baby care and chronic illnesses such as arthritis but with acute illnesses as well. Here, an attempt is being made to show that even in the acute-care areas such as trauma and cardiac arrest, the physicians' associates can do much of what physicians have traditionally done.

Some issues that may be pertinent to training paralegals. The experience in training medical paraprofessionals, Professor Sadler said, has been very healthy for medicine generally and for medical education in particular because the physician, typically, has not gone back to examine the methodology or the curriculum used by medical schools for training the physician of today. These paraprofessional programs have forced him in his training of physician assistants to examine, delineate, and measure health service as well as educational methodology.

He also believed that, as in dentistry, there will be an increasing use in medical schools of (common) teaching involving both the medical student and the medical paraprofessional. He noted that the practice in the past twenty years or so of nursing being treated as an independent body of knowledge distinct from medicine has been a mistake and should be re-examined with the viewpoint of increasing the utilization of nurses vis-a-vis doctors and increasing the responsibility and interest of the nurses themselves. He observed that "a major tragedy" has been the fact that out of 1,300,000 nurses who have received training, only 650,000 are practicing their profession. Joint education of the physicians' assistants and medical students would help to overcome this problem of separatism and would allow "the two of them to get accustomed to working together and learning together."

Doctor-paraprofessional relationships. An important question is the relationship of doctor and medical paraprofessional. Generally, the reason that the physicians' assistant has done so well so fast is that he works for a physician. Legally, this is expressed by not licensing them to practice separately but by allowing them to practice by adding an amendment to the medical practice act that specifically allows physicians to delegate responsibilities to an assistant so long as he works under the doctor's supervision and control. "This has given the innovative physician enormous flexibility and has allowed the assistants very quickly to do much more than any other health professional has ever done in direct patient care."

Professor Sadler concluded his remarks by observing that "in the perspective of clinical teaching, medicine has not had the problem of dealing with clinical practice that law seems to have because most medical faculty are, in fact, physicians, who deal with patients day in and day out. We have had a tremendous problem, though, in trying to determine what physicians can delegate appropriately to an assistant, and we are in the early stages of learning what can be effectively delegated and what cannot."

PROFESSOR JARMEL opened his remarks by observing that if "clinical legal education is a kind of infant idea in legal education, paralegal training is a prenatal idea, and sometimes I wonder whether insemination has occurred as yet." He noted that there are less than ten American law schools that have dealt with the problem in any formal manner.

Professor Jarmel joined Dr. Sadler in noting the difference between the medical and legal academic communities: medical faculty also practice while law professors seldom have clients. The legal academic community is dramatically different from those of medicine and dentistry. There has been "an explosion of demands on our legal system." Decisions such as Gault and Gideon for example, "dump all sorts of volume into the system." Furthermore, "every time a poverty lawyer establishes a principle, he generates an incredible number of cases." Equally incredible is the large number of graduates from the law schools and the resulting situation of having to provide jobs for so many new lawyers. The Bar is concerned with an oversupply of lawyers, and some law students are resistant to the creation of a large body of paralegal personnel, who are looked upon as job competitors, but the new demands on the legal system will not necessarily be met by this increase in the number of lawyers because the system has generally been unresponsive to low-dollar claims. "It is virtually impossible to litigate civil suits under a thousand dollars unless somebody is willing to fund them." The use of paralegals,by reducing the cost of services, might encourage the profession to assume more responsibility for the local needs of the low and middle income sectors.

"Confusion" about paralegals. Professor Jarmel noted that "Dr. Sadler talks about eleven kinds of paramedicals and Dr. Matkin talks about three kinds of paradentals and we do not talk about anything. Sometimes we mean people licensed to take ap-

peals in front of the IRS or to argue rate-setting cases in front of the ICC. And sometimes we mean people who are not even in the junior high school brackets who might take a low-income person by the hand and walk him into a social security disability office and just show him where to go in order to acquire some rights he is entitled to." He also observed that there actually are paraprofessionals in large quantities all over our legal culture, but they have not been called "paraprofessionals," as such. They have been called "estate planners" and "trust officers" and "title examiners" and "claims adjusters." There are, he noted, perhaps two or three score of such professions that function in and around the practice of law. Whether or not the law schools take a really active role in training paralegals, the fact is that many persons are already receiving some kind of paralegal education within law firms and to a lesser extent within continuing legal education programs within junior colleges. The reason for this is that a need for paralegals of one kind or another does exist and this need is being filled in one way or another so that there can be delivery of legal services that are meaningful to the society at large.

Role of the law school. Professor Jarmel observed that law schools should participate in the training of paralegals but that their role, perhaps, could best be performed by planning what other educational institutions should do in this field. This would include the four-year colleges, the two-year colleges, and the continuing legal education institutes. The law schools could be helpful in planning the kinds of job descriptions that are needed and the kinds of training programs that should be established in these other institutions. Law schools, probably, could also engage in experimental offerings within their own schools and could conduct experiments in integrating and training law students to work together with paralegal trainees in school supervised law offices. Since paralegals "will be doing much of the dispute-resolution work in the future," law schools might help by training their law students how to manage them. He concluded his remarks by observing that legal clinics should undertake experiments in these areas with regard to "how to teach these matters and what sort of paralegal models should be developed."

PROFESSOR OLIPHANT began his presentation by bluntly stating that "the need for paraprofessionals in the legal profession has been well illustrated. I do not think that anyone who practices law can conclude anything but that there is a serious need for more legal services and there is a corresponding need to reduce the cost of these legal services so that the lower-income citizens of our society can obtain legal services at a modest cost. Only by the employment of paraprofessionals can we somehow reach this objective."

Problems in setting up paraprofessionals within the legal profession. There are a number of problems regarding the establishment of paraprofessionals within the legal profession. One such problem is the lawyer's psyche. "We are treading on hallowed ground whenever we discuss the idea of a paraprofessional. The idea of the attorney-client relationship has always been held quite sacred, and it has come to be a part of the lawyer's religion that no one can really interfere with his relationship with the client." He noted that there are a number of statutes on the books

that protect lawyers from those who would engage in the unauthorized practice of law. Lawyers have carefully cultivated the idea that they are a profession and that they cannot be invaded by non-professionals. Another problem is to convince practicing lawyers that paraprofessionals can efficiently handle certain legal problems and that the use of paraprofessionals in these areas will result in economies of operation. "If we can sell most of the legal profession on the idea that they can make money using paraprofessionals, I do not think this last obstacle will stand very long." The third problem is the training of paraprofessionals. "I doubt that we can expect bar associations or practicing attorneys to take the responsibility to properly prepare and train paraprofessionals to work in their offices because it would not, in their eyes, be economical."

Goals. The goals are to educate the lawyers, in the first place, to the usefulness of the paraprofessionals and, in the second place, to prepare a group of people to go out into the field and work in the legal offices. The lawyer should be educated, actually "propagandized," to satisfy these goals by raising the issue of paraprofessionals at various lectures and discussions that he attends at the local, state, and national bar associations and in continuing legal education programs. He should learn about paraprofessionals and actually work with them while he is still a law student so that he will have this experience before he becomes a practicing attorney.

Paralegal program at the University of Minnesota. At the General College, a program has been established to train three kinds of legal paraprofessionals --legal secretaries, legal assistants, and legal administrators. A legal secretary goes to the General College for a year, where she takes about forty-five credits of course work. Upon satisfactory completion of her course work, she is certified as a legal secretary and is ready for employment. The legal assistant goes for two years and takes approximately ninety credits of work divided into one-third technical types of training and two-thirds devoted to supportive types of courses. At the end of the two-year period, he receives an Associate in Arts degree and is certified as a legal assistant. He has the option to continue for two more years and receive a Bachelor of Arts degree and be certified as a legal administrator. The program began in January, 1972, and though it is too soon to make an evaluation, the program seems to be going rather well.

Field work. Plans are under way to have the student paraprofessionals engage in field work by placing a number of them in the student legal aid clinic operation. Here, they will actually work with students in the criminal law program and in the domestic relations program. In addition, a clinical professor from the law school will teach the criminal law and domestic relations courses that the paraprofessionals will take. "We find nothing sacrosanct about limiting law professors to teaching people who are law students. In fact, we think that if he is a good teacher, he can teach anyone at any level."

Evaluation. At the end of a couple of quarters, the program will be evaluated to determine just what paraprofessionals have learned and how well they have performed in the field. In addition, "we are going to test out the theory of whether

or not it is more useful to have an individual paraprofessional train in an in-house, closely supervised program or have him train in farmed-out fashion where you send the paraprofessional down to a private law office and hope that through the process of osmosis he will be trained sufficiently"

Discussion Period Comments

Training of paralegals by proprietary schools. There are a number of proprietary schools that have programs to train legal paraprofessionals. The schools are of varying quality with some of them turning out high-quality graduates. In addition, specifically in California, there are unaccredited law schools that offer legal paraprofessional courses.

The ABA and the AALS and the training of paralegals. The activities of both organizations regarding legal paraprofessional training, as one conferee stated, "is in its infancy." It was pointed out, however, that an ABA committee on paralegals has been in existence for three years, and in April, 1971, issued a preliminary draft on legal assistants. The AALS has made some studies of legal paraprofessional work and is about to appoint an operating standing committee. In addition, an AALS committee has been operating for about a year, and, together with the ABA committee, recently held a conference in Denver. The proceedings of the Denver conference were published by the ABA.

Law students and paraprofessionals. Law students do, indeed, seem to be concerned about the large number of graduates entering the legal profession and their relationship to the developing paraprofessional movement. How will the present law student view paralegals, say, ten or fifteen years from now when he is "at the height of his professional career?" Not a real concern, one conferee said. "Our concern is not basically that of securing positions for lawyers. I do not think that this is fair to society. If we can train a group of people who can function at the same level that lawyers are functioning now at a reduced price, I think we ought to do that. We ought not let the economic factors influence us so much." Another conferee said that this may be so but since the setting up of law schools can be -- and has been -- "on the cheap," in comparison to setting up medical schools, there is a very large and increasing number of lawyers. A large number of legal paraprofessionsals will threaten the employment of qualified lawyers. "It is going to be something of a tragedy if we cannot effectively use the law school graduates at a decent level when they come out."

Sexism and racism in the training of legal paraprofessionals. First warning: Don't allow sexism to develop in the training of paralegals! This has happened in the training of nurses in the medical profession, where nurses have twice the training but earn half as much as the physician assistant. Second warning: Don't provide legal services to the poor and the black by the use of less than lawyers! Question: "Are you going to shuttle poor people and black people into our profession as paralegals rather than call them 'professionals'? I think we have to be very concerned about that."

Experiences abroad with paraprofessionals. A couple of analogies between the United States and foreign countries were attempted -- one in a developing country (Tanzania) and one in a developed country (England). In 1962, in Tanzania -- then known as Tanganyika -- there was no medical school and few practicing physicians. It was decided to have a program of training medical assistants rather than training full-fledged doctors. These people were supposed to go up-country after their training and give medical service to the people. It didn't work that way. Those persons in the program who were any good wanted to be doctors and insisted on "the real thing." Consequently, "within no time the school of medical assistants became the medical school and now most of the people who began in 1962 to be trained as medical assistants in Dar es Salaam, are, in fact, in Minnesota at the Mayo Clinic doing something or other." In England, there are roughly 25,000 lawyers and 70,000 legal paraprofessionals if one includes the so-called managing clerks. "These people do most of the work in most of the law offices, and they do it with considerable competence. They are entirely trained in the office. Many of them know as much law in certain areas and, perhaps more than the so-called principals for whom they work. I think that by looking at this situation one can see some of the dangers. Unless you have an escape valve so that these people can become full lawyers, it can be a very undemocratic system. Another thing is that it also builds in the status quo. Efforts at law reform are frustrated because of a supply of underpaid paraprofessionals."

Paraprofessionals who would be lawyers. There have been a number of examples demonstrating the fact that paraprofessionals are not content to remain "paras"; they want to be "pros." At Denver, for instance, a few years ago a group of paraprofessionals were trained at the law school and were established in a resident information center. "They promptly set themselves up in law offices, issued law cards, and began acting as if they were lawyers. It is a very, very tough kind of problem."

Will paralegals lower cost of legal services? With an increase of legal paraprofessionals, legal costs will not necessarily become lower. Fees are set by the practitioner. "When we are in a market of no price competition as we are in law and medicine and dentistry, the use of the paraprofessional will not be to go and say, 'We form corporations for $10 less than the other fellow.' Paraprofessionals will be used to enhance the professional income." Comment on this comment by another conferee: "I think you touched on a very sensitive issue of professional ethics.... I do not think we ought to get into the training of paralegals merely as another way of funding some dollars for the private bar."

Legal tasks of paraprofessionals. It is anticipated that legal paraprofessionals, for example, now being trained at the University of Minnesota, among other tasks, will prepare complaints for a prosecutor's office, prepare search warrants, interview people who are seeking complaints in a prosecutor's office, prepare preliminary motions for suppression of evidence, do various kinds of investigation and research, probate estates, prepare interrogatories and initially prepare diagrams of accidents in personal injury cases.

Professional responsibility and paraprofessionals. Professional responsibility must be a paramount concern. The function of CLEPR, for example, is "not to supply paraprofessionals for the Wall Street firms and the big firms of this country. I think it is with the overcrowded, understaffed legal service projects throughout the country, the poverty programs, where a good deal of the clinical work is taking place, that paraprofessionals can perform the best services for society."

Panelists' Closing Comments

Dr. Matkin observed that dental paraprofessionals have lowered the cost of dental service by relieving the dentist of routine tasks that can be handled less expensively by a dental assistant. The training of dental paraprofessionals is being done to a large extent in community colleges, junior colleges, and technical institutes.

Professor Sadler commented that perhaps the law profession should rethink whether it wants to double the output of lawyers. "Should people who are doing a lot of what lawyers have traditionally done be educated as lawyers? Certainly, in medicine, we are asking ourselves that question. We are wondering whether much of what is done by a specialty in the practice of medicine with an input of a marvelous liberal arts education, four years of medical school, an internship, and four years of specialty training is really efficient and economical from a social policy point of view and is a wise thing to do and continue to do in this country."

Professor Jarmel noted that the ultimate responsibility of the entire profession and the law schools, in particular, is how one delivers decent legal services to a whole culture. This requires, among other things, defining the job descriptions for lawyers, what it is they do and what are the special things that make lawyers function. "Can certain legal tasks be done by other people and what kinds of other people can do it and what sort of training do they need? Do we really have far too many overly educated people in law schools being too elegantly trained for the kinds of things our culture will be expecting of them? I think these are the gut of the matter. I do not know how we crack it, but that is where we have to spend our energies in the next decade."

Professor Oliphant stated in closing: "I think the questions that have been raised are important, and they have not been answered. I guess from our point of view we are going forward in an organized fashion and with the smallest experimental model and, hopefully, we will be able to contribute some sort of answer to some of the questions that were asked this morning."

DEVELOPMENTS ABROAD IN CLINICAL TRAINING

Panel Presentations

Presiding: William Pincus, President, CLEPR

Panelists: John Cratsley, Teaching Fellow, Harvard Law School; Barry Metzger, Staff, International Legal Center; Robert Stevens, Professor, Yale Law School.

MR. PINCUS observed that clinical legal education is taking place in a number of foreign countries and that in the brief session that was to follow the panelists would describe their experiences with clinical training abroad.

MR. METZGER began his remarks by noting a rapid growth in clinical training in a number of foreign countries. He then said that he had been a representative of the International Legal Center in Ceylon, where a clinical education program had been inaugurated in 1969 at the Law College in Colombo. Thirty-five students participated in 1970 and seventy students in 1971. The students did not work in actual courtroom cases because of the nature of law practice in Ceylon but centered their activity on giving legal aid to underprivileged persons under the supervision of solicitors to whom they were assigned. Occasional seminars were held where, under the guidance of the law faculty, they discussed the cases upon which they had worked.

At the Catholic University, in Chile, under a grant from the Ford Foundation, the International Legal Center administered a clinical education program in which students provided legal services to the inhabitants of slum areas of Santiago. In many respects, the cases that were handled resembled those of a typical legal aid poverty program in the United States. In the beginning of the program, the students participated in test-case litigation. However, this did not prove to be satisfactory and their activities then were centered on preventive law. This consisted of various programs, including the issuance of newsletters and the production of television programs. Mr. Metzger observed that the rationale for clinical education appeared to be even more valid here, and in other areas abroad, than in the United States. One of the reasons for this is that most law graduates go into individual practice rather than into large, structured law offices, where a young lawyer would receive some case supervision by an older practitioner. As a result, the students feel that clinical legal education is vital to their future because of their faculty supervised field experience. The value of the program was not only that it increased the students' sense of professional responsibility but that it also drew a number of members of the law faculty into the field of clinical education.

Mr. Metzger concluded his remarks by hoping that there would be greater cooperation between the International Legal Center and CLEPR in overseas programs, especially in the areas of increasing the quality of clinical work and the integration of clinical education into the regular curriculum of the law schools.

MR. CRATSLEY observed that, with funds provided by a CLEPR grant, he had attended a conference of law schools in Singapore. His aim was to present to the conference delegates a picture of clinical legal experience in the United States and particularly at

Harvard. "I discovered, however, that I probably learned more from the delegates about Asian law students than the delegates learned from me about American law students." The Asian law students were definitely interested in some form of clinical education though their interest varied from data gathering (Australia) to developing indigenous law systems for indigenous people (Papua). If there was one overriding concern, it was that the apprentice system in law needed a complete overhauling.

The Asian law students seemed to be most anxious for financial success, and this limited their interest in clinical education, expecially their perspective on a long-range clinical commitment. Many of the students, especially those from the higher social strata, found it difficult to bridge the gap between their social status and the low status of the poverty-stricken clients in the clinic.

The faculty appeared to have a great deal of hesitancy to engage in practical law experience and preferred to concentrate their efforts on classroom teaching. A large number of them also resisted clinical education because they believed that the system of clerkship adequately handled the field experience situation.

Mr. Cratsley observed that there were several types of endeavors that could further advance clinical legal education in the Asian area; namely, supervised student work in law offices during the summer recess; research work in low-income areas; an emphasis on indigenous legal assistance; and the replacement of apprenticeship with skills courses.

He ended his remarks by noting that, in general, clinical legal education in the Asian countries was still in a very elementary stage.

PROFESSOR STEVENS, who has been engaged in a survey of legal institutions in developing societies, opened his presentation by saying that before World War I there was a great deal of skepticism abroad about American legal education. This attitude changed after World War II when it became evident that there was a good deal of value in the American system of case-method training. He observed that there was value in the apprenticeship system if it is well done and that this, too, can be a valid method of legal education.

The role of the lawyer is different abroad than it is in the United States. In general, law plays a much narrower role in European society as well as in the less-developed countries of the world than it does in this country. Thus, it is necessary to develop legal education programs that are in step with this different situation. In many countries of Africa, for instance, there is a reluctance in having judges and courts decide social issues.

Other factors exist which suggest that great caution be used in exporting U.S. methods of legal training: a major role of law schools abroad is to produce public administrators as well as lawyers; there is reluctance in less-developed countries to commit limited resources to law schools when scientific training is so immediately important to the economy.

Professor Stevens mentioned two countries that have or have had clinical education programs. Zambia, for example, has a clinical education program in which some students are assigned to the prosecutor's office and others are assigned to legal aid. There is not much supervision, he noted, although it is greatly needed. In Korea, it is necessary to keep in mind that, according to the Confucian concept, law is a repressive phenomenon.

Here, there had been a legal aid program at the University's law school, but it has since been abolished.

In conclusion, Professor Stevens observed that it was not only the philosophical concepts but the political set up of countries abroad - Tanzania, for instance, is a socialist society - that have to be considered in the establishment of clinical education programs.

Discussion Period Comments

International Legal Aid Society. This organization is doing work abroad in clinical education and will have a growing role to play in this field in the future.

Relationship of Bar and law schools. In the United States, there is a direct relationship between the status of an independent Bar and education. This is not necessarily so in some countries abroad where the Bar as an independent body has no real stature. It may be necessary to push for an elevation of status for the Bar in order to facilitate clinical legal education abroad.

Interest in clinical education. From the number of inquiries from abroad on clinical education that have been received by CLEPR, there appears to be a good deal of interest in this aspect of legal education in many countries.

India and Pakistan. There is practically no legal aid in the civil side in either India or Pakistan. In all of India, for example, there are only three or four small volunteer groups offering legal aid.

Canada, Mexico, Puerto Rico. Some clinical education work is being done in Canada, particularly by York University. The conferees had no knowledge of clinical work in Mexico. In Puerto Rico, the law school of the University has had a flourishing legal aid program for a long time. Under a 1970 CLEPR grant, two faculty members supervised an expanded clinical program that includes student representation of both juvenile and adult prison inmates.

Resistance to legal aid programs. There is strong resistance on the part of some foreign students to the establishment of legal aid programs. This is true, for instance, in Ethiopia, where the students have been antagonistic to such programs. Here, and in other developing countries, activist students view legal aid as a "band-aid operation that retards the revolution." Another factor is that in many foreign countries there is an overriding emphasis on grades and, thus, students are not willing to spend time in clinics but would rather devote their time to getting high grades in examinations in their academic course work.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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(Part I)

ARGERSINGER v. HAMLIN: THE CHALLENGE TO THE LAW SCHOOLS (1)

> "We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."
> Douglas, J., at page 37, 407 U.S. 25 (1972)

> "... I think it plain that law students can be expected to make a significant contribution, quantitatively and qualitatively, to the representation of the poor in many areas, including cases reached by today's decision."
> Brennan, J., concurring at page 41, 407 U.S. 25 (1972)

The Welcoming Remarks of CLEPR's President

In his welcoming remarks at the Argersinger conference, co-sponsored by the Council on Legal Education for Professional Responsibility, Inc. and the Law Enforcement Assistance Administration, held at the New York City Bar Association on September 21-22, 1972, President William Pincus of CLEPR analyzed the challenge to the law schools in three aspects: "moral, professional and educational." In reviewing the moral challenge, he felt that because it has taken the Supreme Court of the United States almost 40 years to decide that no person may be imprisoned for any offense unless counsel was present at trial, absent a knowing and intelligent waiver, something must be wrong in our system of government to which attention has not been given for such a long period of time. Because the criminal justice process is still the stepchild of our society, those assembled at the conference should be conscious of the fact that there is a moral challenge here. Concerning

(1) Our Newsletter was prepared by William W. Greenhalgh, Assistant Dean, Georgetown University Law Center. It summarizes the proceedings of the meeting described.

the challenge as professionals, using the quotation, 'If you are not part of the answer, you must be part of the problem," there is a special obligation of lawyers and educators to become involved. Although clinical legal education has helped to overcome the lack of attention to criminal justice, there is a great deal more to be done. Professional schools as distinguished from schools of general education should teach students to be professional, because lawyers up to now certainly have not been part of the answer.

With regard to the educational segment, Mr. Pincus believed that Argersinger should prompt the conferees to take a look at the opportunity to add to the professional curriculum in the law school another aspect--the education of the total professional. He hoped that "through clinical legal education horizons of professional education in the law schools will widen, broaden, and deepen and that we will learn how to teach and assess the performance of people." Those involved should tackle the troublesome political and financial situations underlying the duality of clinical and academic education. Budget and resources are necessary to support both. CLEPR, he stated, recently awarded a grant to Columbia University Law School to be headed by Peter Swords, formerly of CLEPR and presently the new Assistant Dean, to study the economics of legal education. "This will help the law schools not only to face up to these fundamental problems but also to come up with answers and let developments in both clinical and academic legal education move forward to productive ends."

Professor Allison's Keynote Address

The first speaker at the conference was Professor Junius Allison, Director of Clinical Legal Education at Vanderbilt University in Nashville, Tennessee, whose topic was "The Implication of Argersinger for the Law Schools--An Overview." He posed five questions concerning the new and vigorous push the law schools had received by virtue of the United States Supreme Court's decision: demand for manpower, effective assistance of counsel, prosecutorial requirements, implemental litigation, misdemeanor volume. First, the law students' services are needed and legal clinics are recognized as a rich resource for providing representation to augment the assistance given by public defenders and the private bar. Secondly, claims of ineffective assistance of counsel may be raised when the law student is not actually supervised in court by a member of the bar. Waiver of counsel in favor of the law student may help, but student practice rules may have to be amended to assure presence in court at all times of the supervisory lawyer. Thirdly, inasmuch as no person may be imprisoned for any offense unless counsel is present, absent a knowing and intelligent waiver, Argersinger by necessity requires a greater prosecutorial input in order to balance the adversary process. Fourth, additional litigation at the Argersinger level probably will be necessary for the full implementation of the constitutional right to counsel as intended by the decision--such as, invocation of Federal jurisdiction, mandamus, habeas corpus, and contempt procedures. Lastly, the volume of misdemeanors must not prevent the law schools from selecting a variety of legal issues in order to diversify the activities of clinically related teaching and training. The heavy responsibility of providing all or a substantial part of legal aid to the poor should not fall upon law students. Such attempts would jeopardize the whole clinical program and would give the community an excuse to evade its duty to establish the needed service. In closing, Professor Allison

suggested that Argersinger may affect other areas of the criminal justice process such as, police practices, court structures, legal profession, prosecutor and defense services, corrections, and ultimately decriminalization.

In commenting upon Professor Allison's remarks, Mr. Pincus felt that although student practice rules start out with an expression of interest in providing legal services and concomitant participation by law students, the legal profession, the law schools, and government have not paid sufficient attention to providing legal services for everybody under a comprehensive national system. He believed that again the law schools by participation in clinical work can highlight not only the lack of such a legal service system, but also that kind of legal service system the country ought to have for everybody. Questions posed from the audience indicated concern over the following: The supervisory attorney in the courtroom providing more service than training; law students' other academic obligations as opposed to their professional responsibility in court; ineffective assistance of counsel concerns even under attorney supervision; volume of misdemeanor cases, especially in juvenile courts, and resistance by state supreme courts to promulgation of viable student practice rules as well as overcoming opposition by bar associations.

Dean Spring on Law School Training Responsibilities

The next speaker was Dean Raymond L. Spring of Washburn University School of Law in Topeka, Kansas, who talked on "The Responsibility of Law Schools for Training Student Counsel." He perceived that the topic was subject to three interpretations: (1) do the law schools have a responsibility to provide counsel to meet the demand for counsel under Argersinger; (2) what is the responsibility of law schools for providing training for persons who are acting as student counsel; (3) what is the responsibility of the law schools in performing their own obligation of training students to become counsel as their ultimate obligation as lawyers. In answer to his first interpretation, Dean Spring felt that the law schools have a responsibility through their clinics to meet some of the demands that Argersinger has thrust upon them. The law school must try to produce someone who is knowledgeable in the law and skilled in the application thereof. But this must be realistically consistent with the demography of providing legal service in their community, and the states should not be dissuaded from entering the area of furnishing such defense services.

With regard to his second proposition, Dean Spring outlined his law school's clinical concept for so providing training to those who act as student counsel. He felt that the clinical program must be integrated into the regular academic curriculum. Faculty members, other than the clincians, from time to time, assist at his law school in supervision as well as serve on the clinic committee of the law school. Washburn has a clinical semester incorporating a series of seminars such as interviewing techniques, evidentiary presentation at trial, the jury trial, plea bargaining, ethics, and office management. Clinical students are permitted to take one outside course; yet all seminars are given at such times not to detract from the times the courts are in session. Two thirds of the cases handled by the clinic are criminal, th other third civil. They cooperate with the Legal Aid Society of Topeka on potential conflict of interest cases, which does represent a fair number of appointments. The clinic on the criminal side is multi-disciplinary-

prosecution as well as defense. The prosecution students are assigned to the local County Attorney's Office. Washburn also has a joint prosecution program with the University of Kansas Law School, which they both operate statewide during the summer. Student Directors under the Clinical Director assist him in docket control, assignment of cases and conference scheduling for the 24 member student clinic. Dean Spring reflected that possibly graduate assistance could be explored in this supervisory area. Second year students perform clerical duties so that there is continuity for the third year when they are eligible to go to court. As to his third question, Dean Spring felt that he had basically answered it with his recitation of Washburn's clinical semester.

Questions put by the conferees to Dean Spring ran the gamut as follows: Urban-rural mal-location of law schools with clinical programs and possible exchange of law students into a clinical semester (i.e. University of Michigan at Ann Arbor and Wayne State University at Detroit); evaluation of in-house as opposed to out-house clinical programs and the concomitant problems of academic component, supervision, and proximity to the law school; and the continuity of service aspect after a fifth or sixth semester clinical program.

Clinic Financing: University, Private and Public

After a fascinating talk during luncheon at the Century Club by Professor Bruce Rogow, who represented Jon Argersinger (pronounced with a soft g), both in the Supreme Court of Florida and the United States Supreme Court, Dean Robert McKay of New York University Law School, opened the afternoon session, which dealt with "The Financing of Criminal Justice Clinics." "The name of the game in the American courtroom is justice and if the best training for the practice of the profession in that sense is in fact clinical training, then we have no excuse but to provide it," he said. He felt that this was especially true at this particular time inasmuch as law schools have never been more prosperous. In tracing generally the cost of clinical legal education at his law school, Dean McKay then related the operation of his criminal law clinic and its 40 student membership. He has one member of the faculty of professorial rank who devotes half his time to clinic and four full-time clinical instructors, two of whom are not on his payroll. They are paid by the Legal Aid Society of New York. This arrangement is mutually beneficial to both institutions. Also, another area of budgetary cooperation eventuates because of NYU's clinical involvement in municipal activities. They are using city space, furniture, telephone lines, and sometimes secretarial services, which thereby reduce the law school's expenses to a considerable extent. He then briefly turned to three problems that have arisen with the operation of his criminal law clinic: (1) sensitivity to the status of clinical personnel; (2) limitation of number of hours for work for students outside their full-time academic program; and (3) the recently-amended rule of the New York Court of Appeals prohibiting more than 12 clinical semester hours towards the 80 hour semester hour requirement, which affects all students wishing to take the New York State Bar.

Following Dean McKay, Peter Swords, Assistant Dean at Columbia University Law School and former Program Officer at CLEPR, briefly outlined the present posture of private financing for clinical programs in the nation's law schools. Seed money, such as CLEPR has provided, is fundamental and therefore upon expiration of such grant funds other sources

must be found. Secondly, private foundations respond to universities, perhaps their primary constituents. Lawyers in droves sit as trustees on foundation boards. Law school deans should inform their alumni this is the kind of thing they want. This should be enormously effective. Finally, the foundation would have to be taught that the great bulk of the criminal justice crisis involves the misdemeanor courts. Changes in these courts are required and this involves institutional building for which up front money is desperately needed to fund new experiments.

The next speaker was Richard W. Velde, Associate Director Law Enforcement Assistance Administration of the United States Department of Justice, who gave an over-view of federal financing in the wake of Argersinger. As to the availability of LEAA funds to assist law schools in setting up clinical educational programs or helping them to provide assigned counsel for defendants in misdemeanor cases, Mr. Velde outlined two possible areas of funding. At the national level, LEAA had already awarded a $290,000 grant to CLEPR to support pilot projects in 11 law schools for prosecutorial clinical training. He felt that such pilot projects could be funded out of LEAA discretionary funds but stated that on a national level LEAA did not have funds to support an operational program in every state or every interested law school. He indicated that state planning agencies under LEAA because of their block grants would be a possible source for funding operational programs in the law schools.

On Friday morning, Mr. Richard C. Wertz, Executive Director, Maryland Governor's Commission on Law Enforcement and the Administration of Justice (State Planning Agency under LEAA) picked up where Mr. Velde left off and gave the conference insight into both the planning process of a state planning agency as well as the action programming as mandated by the Safe Streets Act. He warned that law schools must become involved early in the state planning agency process: they must address themselves to the up-dating of the annual comprehensive plan as required by the Safe Streets Act; they must participate in defining the ideal system for their state's criminal justice process; they must further help to identify specific five year improvement objectives. Only after these planning phases have been undergone the actual business of accepting action program applications take place. By proper early planning of the identification of the need for third year law students as interns in both the prosecutors' offices and the newly-created public defender offices, Argersinger did not have the effect in Maryland that it did in other states. The Governor's Commission had monies budgeted and was able to respond to the decision. More specifically, the Governor's Commission has already funded two clinical programs in the Maryland suburbs--one to Georgetown University Law Center and the other to American University Law School. Also in the process of negotiation for similar clinical programs are the University of Maryland and the University of Baltimore Law School, which will service the Greater Baltimore Metropolitan area. He felt that the clinical programs should be multi-disciplinary (prosecution-defense) in approach, should share resources, training, personnel and should coordinate all their activities. Both Georgetown and American have to develop an evaluation component as a condition to their grant, which will be especially critical to the determination of their effectiveness in the prosecutor and public defender offices in both Montgomery and Prince Georges County, Maryland.

Questions relative to financing reflected the following areas of concern: perennial non-

funding of Title XI of the Higher Education Act ($75,000 per law school for clinical legal education); hard-cash match (10% of total project cost) requirement (effective fiscal 1973) from sub-grantees (law schools) of either state or local units of government; use of a Council of Governments (regional planning agency) as a financial administrator and accountant where more than one law school is a sub-grantee of a local unit of government; pros and cons of the use of graduate fellows ($9,000 per year for LL.M. in Trial Advocacy at Georgetown Law Center) as supervisory attorneys; possible use of Law Enforcement Education Program (LEEP) as a source of financial aid to law students working in courts and court-related areas; contemplation of a student credit interchange between LEAA state planning agencies where a law school in one state has a criminal justice clinic and another does not; and law school representation on both the state planning agency as well as the regional planning board level.

Representative Criminal Justice Clinics

Following the session on financing, the next panel discussion concerned itself with Student Counsel in Criminal Justice Clinics. Representative of a medium sized jurisdiction of approximately 100,000 population, Professor James R. Pierce, Director of Clinical Education, University of Florida Law School at Gainesville, presented members of his multi-disciplinary program as the first panel. Richard (Buzzy) Green, Jr., former Public Defender for the Florida Eighth Circuit and recently elected Circuit Judge to the same circuit, led off the discussion. He first traced the tortuous history of the part-time public defender system (1963) and the use of law students on their own time for no credit through the award of a grant from the National Defender Project of the National Legal Aid and Defender Association in 1965 for three projects--student intern, release on recognizance, and experimental misdemeanor counsel. He then related the ultimate development of a legal aid clinic culminating in Jim Pierce's appointment to the faculty as supervisor. Judge Green next outlined defender training in the clinic. The students (12-15 per quarter) are assigned to an assistant public defender as well as supervised by a faculty member. They remain in the public defender's office for two quarters and sometimes volunteer for a third. Some 400 lawyers presently practicing in Florida were at one time in this clinical program. Thus, the program has had a considerable influence on the administration of criminal justice.

Professor Stephan Mickle then related his experiences with interns doing defender work in the Municipal Court. The intern conducts the initial investigation, interviews the witnesses, and presents an initial report, spelling out the theory of the case, defenses that should be raised, and outlines all the legal issues involved therein. The supervisor, Professor Mickle, is present in court, but the intern for the most part tries the whole case. The action is faster; jury trials can be had; and the students get more cases to try than their felony colleagues.

The next speaker introduced by Professor Pierce, who outlined the history of a CLEPR grant for a prosecutor intership program to complement the defense side, was Professor Gerald T. Bennett, supervisor for the prosecutor project at the Law School. Approximately the same number of students are involved for 2 quarters and sometimes they volunteer for

a third at no additional course credit. They are assigned to both the State's Attorney's Office in the Circuit Court and the County Solicitor in the Court of Record. Inasmuch as the students can try cases without courtroom supervision, they more often try cases by themselves. The academic component consists of an advocacy seminar taught along with a trial evidence course for 2 hours a quarter. Professor Bennett supervises this phase not only as a faculty member but also as an Assistant State's Attorney. The students work up the cases by completing an investigation report, drawing up a legal evaluation of the case and presenting an initial report. At this point the Assistant State's Attorney takes over prosecutorial responsibility. Professor Bennett is available on a consulting basis. Coupled with the individual supervision, weekly staff conferences are held to iron out any problems. Potential conflicts of interest between the defense and prosecution interns are held at a minimum since the operation of the multi-disciplinary program remains completely separate under different faculty supervisors.

To explain the prosecution phase in greater detail, Professor Bennett called upon Mr. Stan Morris, Assistant State's Attorney for the Eighth Judicial Circuit, a former student in the clinic himself. He emphasized the ethical considerations of the confidentiality of the State's files, the use of the initial report, and the gradual transformation of assisting in the trial of a case to ultimately trying a case in the second quarter of the clinic.

Before Professor Pierce finished with his panel, he described an award of $67,000 by the State Planning Agency of Florida under LEAA to construct a clinical program at the law school to induce the talent trained in the clinical programs to remain in the criminal justice system. Part of the grant goes toward a program of scholarship and to students participating in the clinic. The crux of the award, however, is the development of multi-disciplinary post-graduate internships. Interns are paid about $150 a week to serve for six months and are assigned either to the State's Attorney's, County Solicitor's and/or Public Defender's Office. They, therefore, not only continue their training, but also act as an intermediate level of supervision between the professorial personnel in the law school and the professional staff in the various offices.

The next speaker was William W. Greenhalgh, Assistant Dean at Georgetown University Law Center in Washington, D.C., who related the operation of the Law Center's Criminal Justice Clinic. Suggesting the unique nature of the clinic, because it operates on a metropolitan inter-state basis under two different student practice rules (D.C. -- misdemeanors; Maryland--felony), he traced the historical merger of Professor Bowman's Criminal Practice Seminar and his Prisoner's Counseling Project (both funded by CLEPR) into the clinic. As is presently constituted the clinic operates thusly: approximately 50 third-year students are assigned either to a prosecutor's office or are individually supervised by an experienced defense supervisor paid out of LEAA funds. The D.C. Division consists of about 34 students; half are assigned to the various divisions of the U. S. Attorney's Office, which prosecutes not only all federal crimes but also all felony violations and substantially all misdemeanor offenses under the D.C. Criminal Code; the other half are appointed to represent misdemeanor indigents in the Superior Court of the District of Columbia (population 800,000). The Maryland Division consists of 16 students, four of whom are assigned to the State's Attorney's Office in both Prince Georges (population 700,000) and Montgomery County (population 550,000) and eight of whom work

with the Public Defender's Office in the same two counties. All students in the D. C. division participate in the corrections component consisting of investigation and research of post-conviction problems at the Lorton Reformatory Complex of the D. C. Department of Corrections. Under a consent decree ordered by U.S. District Judge William B. Bryant they also represent inmates in disciplinary hearings at both the D.C. Jail and the Women's Detention Center. The D.C. students also, under a recently promulgated student practice rule, represent violators charged with parole revocations before the D.C. Board of Parole.

The academic component consists of two sections of a formal seminar (2 hours a week) covering applicable substantive, evidentiary, and procedural law, and an informal seminar (2 hours) critiquing the students involved either in court or in mock trial sessions. The faculty/student ratio is as follows: an Associate Dean (on occasion), two full-time, experienced, litigator-faculty members (50% of their time), an adjunct litigator-professor (4 hours a week); two experienced, defense-supervisors (one for D.C. and one for Maryland), and a graduate second year Legal Intern (Prettyman Fellow). The Criminal Justice Coordinating Board (State Planning Agency under LEAA for the District of Columbia) funded the D.C. division in the amount of $75,000; the Governor's Commission on Law Enforcement and the Administration of Justice awarded the Maryland division a grant of $33,000.

At the conclusion of Dean Greenhalgh's remarks, the Honorable Alfred Burka, Associate Judge of the Superior Court of the District of Columbia, was called upon to relate the attitude of judges toward student practice based upon his experience as Chairman, Student Practice Rule Subcommittee, Rules Committee of the Board of Judges of the D.C. Superior Court. Their first reaction, according to Judge Burka, is "What's in it for the Court?" To answer this, you ask the judge what the problems are in his court and then show him how law students will help resolve them. Secondly, you call to the court's attention that where law students have been admitted to practice, efficiency in that jurisdiction has been increased, simply because the court no longer has to become advocate for the defendant because of his lawyer's inability to so perform. Thirdly, the court's calendar, because of this efficiency, is much more under control - law students commonly do a better job than appointed attorneys in pretrial proceedings and this promotes greater control. Fourthly, the court's budget does not have to be used for fees for appointed counsel and this produces a financial saving as well as increased service to the court. Lastly, tell the court that you are building up a corps of local attorneys who will be not only interested but knowledgeable in criminal law. Judge Green also made this point in his earlier remarks.

Judge Burka indicated that judges have considerable fears relative to student practice. First of all, they all wanted to know who was going to supervise the law student. This person must be experienced and non-disruptive. Secondly, since some law schools do not require Evidence, the fear that this is no longer necessary may be overcome by making it mandatory for those in a clinical legal program. Thirdly, the fear of loss of income to local criminal lawyers can be overcome by appointing the best of the practicing bar to be compensated under the Criminal Justice Act to supplement the law school's supervising attorney. Lastly, the fear that every appointment to a law student will result in a jury trial demand can be overcome by demonstrating to the judges that law students not

only do not file useless motions, are not intimidated by their clients, and do not antagonize the court, but also, when in the best interests of their clients, can engage in plea bargaining. As he closed his remarks, Judge Burka opined that a campaign to convert the judges must be pitched on the practical aspects as well as assistance to the court.

The final panelist was Professor Robert E. Oliphant, Clinical Professor of Law at the University of Minnesota Law School and Director of its Clinic. Appearing with him was the Honorable Susanne C. Sedgwick, Associate Judge of the Municipal Court, Hennepin County, Minnesota. In December 1967 the Minnesota Supreme Court implemented Gideon by requiring the appointment of counsel in all misdemeanor cases. In early 1968 attempts were made to implement the decision affecting Hennepin County with 1,500,000 population. First they tried part-time public defenders; then they tried a student misdemeanor program on a placement basis with the part-time defenders in supervisory capacity. In July 1968, in an effort to overcome deficiencies that were coming to light, a bright, knowledgeable, full-time public defender was hired. At the same time the student program was substantially revamped; the interview component was increased; Professor Oliphant took over the supervision of the students at the arraignment stage for closer work with them; trial briefs were demanded; a handbook for both students and the practicing bar was prepared for use in the defense and prosecution of misdemeanor cases; senior students were brought in to handle administrative duties. At present there are four full-time attorneys in the Public Defender program supervising approximately 45 students a quarter. Three capable attorneys are recruited for one year and help the law school administer the internal operation of the program. Case files are selected weekly from the Public Defender Office, which is part of the Clinic. Thus there is selectivity. The benefits to the Office are an up-to-date library, student investigators, preparation of pre-trial motions, office space and equipment, and some secretarial assistance. The benefits to the law school are obvious.

In commenting on the Minnesota Clinic Judge Sedgwick gave a view from the other side of the bench. Her first observation was that students render superior representation. In addressing herself to the issue as to why the need for students when a public defender is available, her answer was simple - quantity as well as quality of student representation. Her case in point was the ability of four law students to sort by initial interview financial eligibility for public defender representation at the arraignment stage. Two areas of concern she expressed were that law schools academically do not devote enough time to the sentencing process and its ethical importance to the court. Alternatives to incarceration are becoming more readily available and law professors should train their students to take advantage of them. Secondly, she agreed with Judge Burka that certain prerequisites, such as courses on evidence and advocacy skills, should have been successfully completed before going into court. All in all, she thought that students provided competent representation and were going into practice with an ever increasing awareness of what the problems were in a particular court.

Need for Student Counsel

The first speaker after luncheon for the Friday session was Norman Lefstein, Public Defender for the District of Columbia. His topic was the Need for Student Counsel.

For one daily engaged in the operation of a Public Defender Office, the issues to him were not whether there is a need for student counsel or whether clinical programs are desirable but : (1) What kind of training will the law students receive; (2) what contribution will the clinical program make towards solving problems raised by Argersinger; (3) what ideals and/or views toward defense representation and the criminal justice system will the students take with them from the clinical programs. Ideally, Mr. Lefstein would like to see the law students come to his agency knowing how to prepare and try a criminal case. This is consistent with sound educational goals and principles and requires nothing more than teaching the law student the skills of an effective lawyer--how to assemble facts, ask witnesses questions, and conduct negotiations. In his own office he has a 6-week training program consisting of case reading and analysis of substantive, evidentiary and procedural criminal law, mock hearings on video-tape and visits to correctional and other criminal justice institutions. But his office cannot teach in 6 weeks or 6 months for that matter what a newly appointed public defender needs to know. A vigorous clinical experience, however, can make this lawyer more effective.

With regard to contributing to the problem solving by those in clinical programs, Mr. Lefstein believed that such programs could make a qualitative contribution such as resisting coerced waivers by judges of the right to counsel. Also clinics can be at the forefront in challenging the implications of a system whereby judges and prosecutors engage in a predicative evaluation of whether a defendant needs counsel because of the possibility of a term of imprisonment. Aside from these legal challenges to the system, clinical programs can demonstrate proper training for public defenders as well as the private bar.

Concerning ideals and views when leaving a clinical program, Mr. Lefstein stated he would like to see law students come to him dissatisfied with the status quo--i.e., too many indigents and too few public defenders. Because they have learned while in a clinical program the proper way to practice law, they should not be content to assume inordinate case loads. Even if they do not go into public defender work, they can be spokesman for what is necessary to upgrade existing legal services. He noted that even though Argersinger has exacerbated a pre-existing condition of too few lawyers to defend indigent misdemeanants, it also affects the prosecution in a like manner--lack of financial resources to meet the decision's demand. Since the Supreme Court of the United States is unlikely to lay down rigid standards as to what constitutes ineffective assistance of counsel, the legal profession is going to have to work on its own to improve the quality of representation, and clinical programs can play a vital role in this endeavor.

Questions from the conferees reflected the following areas of concern: Development of an economic mechanism to permit clinical graduates to perform national legal services; difficulty of providing representation in rural areas and possible utilization of the clinical semester concept (with adequate funding) for law students to service those areas; expansion of the holding of the Argersinger decision specifically emphasizing the "no person" due process concept to provide impetus for national legal services.

Some Cautionary Notes

The final speaker at the conference was Professor Addison M. Bowman, Co-Director of the

Georgetown Law Center Graduate Legal Intern Program as well as its Criminal Justice Clinic, who spoke on the Role of Student Counsel in Criminal Cases. Being the last speaker, he had had many good ideas about Argersinger and law student clinics, but found that all had been prempted by previous speakers and conferees. He then contributed what he described as "a couple of cautionary notes." While attempts are still being made to overcome resistance by judges to promulgating viable student practice rules, by faculty to obtain proper academic credit for the clinics, and by administrators to fund adequately the academic as well as the supervisory component, suddenly Argersinger is the law of the land. Professor Bowman, therefore, suggested that providing the solution to Argersinger, through the law schools, is not necessarily consistent with sound educational goals. In capturing the excitement of clinical students, caseload volume may detract from legal education. The incompatability of the desire of clinical students to increase caseloads and concomitant pressure from the bench to do the same results in a confrontation with quality clinical work. Low caseloads must be maintained. Supervision, both pretrial and at trial, must be on an individual basis. There must be "a sort of continual involvement between supervisor and student" with respect to a particular case, not a block of cases. This is vital to any clinic. "If we want our students to go out and contribute to law reform, to upgrade legal services, and ultimately upgrade the profession, then we have an obligation to try to show them how law ought to be practiced, not how it really is practiced."

Professor Bowman then outlined the operation of the Georgetown Law Center Criminal Justice Clinic. Unlike the University of Florida Law School program, the prosecution and defense meet together in both the academic seminar as well as in the critique sessions. Since professional responsibility is taught at every stage, he believed that there was nothing inconsistent with this merger so long as the students were taught to understand professional standards. The same philosophy applied in the correctional component of the program where both prosecution and defense do prison counseling work at the Lorton Reformatory Complex, appear before the D.C. Parole Board at revocation proceedings, and represent inmates at the D.C. Jail and the Women's Detention Center in disciplinary hearings. This service component seemed to him to be the clinic's greatest function, although it's not the kind of service that perhaps the court thinks about. "This service may very well be in identifying the problems that are endemic in the system, in bringing them to the attention of the community, and in filing remedial litigation." This is the kind of service that good lawyers do.

At the end of Professor Bowman's remarks comments from the participants took on a more critical point of view as to what had really been accomplished during the two-day Argersinger conference. Questions from the participants fell into these categories: Can law school clinics really meet the challenge of Argersinger; where should the legal profession be going in this area; what concrete ideas, specific guidelines or general direction should be evolved to implement Argersinger; isn't the solution different in different places; how does one obtain an expanded student practice rule in order to implement Argersinger; are not the law schools only part of the answer; should not government, the bar, and society play a more responsible role in this endeavor; is not now the time through the medium of this conference for the law schools through clinical education to bring the practice of law in the grand manner into those precincts where it has never been seen before. What do you think?

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Preface

To consider the implications of the Argersinger v. Hamlin opinion for the law schools, CLEPR sponsored a meeting of law school deans, clinical professors, public officials and representatives of interested organizations on September 21 and 22 in New York City. Funds to support the conference were provided by LEAA.

The first paper presented was an overview of the issues raised by the opinion. It was prepared by Professor Junius L. Allison, Director of Clinical Education, Vanderbilt University School of Law, and is here reprinted in its entirety.

ARGERSINGER AND THE LEGAL CLINIC PROGRAM

Professor Junius L. Allison

In spite of the tremendous progress made in clinical legal education in the past few years, many of the law professors and administrators engaged in programs that employ this effective technique of teaching legal concepts, substantive principles and the skills of law practice have hoped for a real breakthrough which would bring about the adoption of this method on a wider basis and encourage its integration more completely into the regular curriculum. The concurring opinion of Mr. Justice Brennan in Argersinger v. Hamlin (92 S. Ct. 2006) may be the impetus needed to advance the clinical concept. Without question, the impact on law schools will be great.

Before I venture some comments on how the law schools may be affected by this extension of the right to counsel, I want to raise a few questions concerning the nature of the new and vigorous push we have received from the U.S. Supreme Court.

First, this is a demand for manpower. Our services are needed and we are recognized as a rich resource for providing representation to augment the assistance given by the defender offices and the private bar. I should quickly add that this service aspect is wholesome and sound, but from the standpoint of a teacher, I would have preferred that this push came from a recognition of the teaching value of the clinical approach to legal education. However, I read into Justice Brennan's comments on approval of the clinical concept. This seems to be implicit in his concurring opinion and we should accept it as such. To paraphrase a commercial, we needed that, for in too many law schools the

clinical program is little more than an adjunct to the halls of ivy where the "real education" takes place. But with the proper handling of the challenge we now face, we should be able to move substantially toward the goal of having the clinical method considered on a par with case book discussions and lectures in torts and taxation. (1)

The second issue I want to propose is a constitutional one relating to "effective" counsel. Under the ABA Model Rule, students may represent clients in criminal cases but the provision for supervision is different for cases where the defendant has a constitutional right of counsel. (2) Where such a right exists, the supervising attorney must be "personally present throughout the proceeding." The purpose of the provision is to forestall any subsequent claim that competent counsel was not provided since the defendant was represented by a law student. Now that counsel (unless there is a waiver) is constitutionally required in misdemeanor cases where there is a possibility of a prison sentence, the picture changes somewhat. Even if we assume that a lawyer licensed to practice in the jurisdiction is the attorney of record, suppose that he is not in the courtroom at all times, which perhaps is typical in the handling of a large number of misdemeanor cases. The possibility of the matter of student representation being raised on appeal may be remote, but the question of unauthorized practice of law was the issue in Hackin v. Arizona (389 U.S. 143). (3). In that case a graduate of an unapproved law school represented an indigent person in an habeas corpus case. After Hackin had been found guilty of violation of the statute prohibiting unauthorized practice, he attempted to appeal, but his petition to the U.S. Supreme Court was denied on the ground that no substantial federal question was involved. Even though this did not involve a student who was certified for limited practice by the state Supreme Court, it may present some difficulties. The Council of the Virginia Bar Association which rejected a proposed student rule, seemed to be influenced by the decision. (4) At any rate, the Student Rule may have to be amended or the supervisor will have to spend much more time in court. (5)

The third point is related to manpower also. Not only will there be a greater need for defense counsel, but under the Court's ruling more prosecutors in more courts will be required. This was recognized by Chief Justice Burger in his concurring opinion, when he stated:

> Trial judges sitting in petty and misdemeanor cases - and prosecutors - should recognize exactly what will be required under today's decision. Because no individual can be imprisoned unless he is represented by counsel, the trial judge and the prosecutor will have to engage in a predictive evaluation of each case to determine whether there is a significant likelihood that, if the defendant is convicted, the trial judge will sentence him to a jail term. . .

Presently, it is rare for a member of the prosecutor's staff to take an active role in the usual misdemeanor case. The judge handles the whole proceedings and prefers this arrangement. Otherwise a case might be prolonged to 10 or 15 minutes. Recently I observed an example of assembly-line justice in a city court where students were prosecuting." When I commented on the brevity of the hearings where the defendant had not pled guilty, the judge said, "Look at my docket. We'd be here until late afternoon if the

students tried to make a big thing out of these cases. . . But letting them ask a few questions is good practice for the boys." Now, unless the court routinely appoints defense counsel, the prosecutor will have to review each case where the possible punishment is a fine or imprisonment and give the judge some idea of the gravity of the offense charged.

By creating a situation where more manpower will be required on the state's side, we have a greater need for law student participation across the table from their fellow interns who appear for the defense. The ABA Rule and about 20 states provide that students may represent the state. It seems reasonable to assume that if this further educational experience is to be available to law students the ABA Rule and those of the states will have to comply with the constitutional right to effective counsel.

We should also note the possible implications of another case decided last December by the Supreme Court. In Mayer v. City of Chicago (92 S. Ct. 410) the Court held that the state must afford an indigent a trial record of sufficient completeness to permit proper consideration of his claim. This requirement of a free transcript may be followed by a provision that there must be counsel on appeal in misdemeanor cases, as Douglas v. California (372 US 335) followed Griffin v. Illinois (351 US 12). This will mean more legal services will be needed, thereby placing upon the public defenders and the bar an even heavier responsibility. As in Argersinger, this demand will indirectly affect legal clinical programs in law schools. This statement of additional needs which are presently on the horizon does not anticipate what the situation would be if the U. S. Supreme Court found a constitutional requirement of counsel in civil cases.

The fourth general observation is that additional litigation on the local level probably will be necessary for the full implementation of constitutional right to counsel in misdemeanor cases. Based upon our experience in other areas, we can expect that for months, and perhaps years in some instances, a few local courts will ignore this new decision of the Supreme Court and proceed with the dockets as they have in the past.

This has been the case of imprisoning indigent defendants who cannot make bail which is prohibited by Tate v. Short (401 U. S. 395 - 1971). The same situation exists where an indigent is required to pay court costs in divorce actions in violation of Boddie v. Connecticut (401 U. S. 371 - 1971). In the city of Nashville the Legal Services had to file suits in federal court asking that the local judges be forced to comply with the Supreme Court decisions. Even today there is not full compliance. One judge stated openly that he was not going to let the federal judge run his court. A similar difficulty followed Gault (378 U. S. 1) in some jurisdictions. Reports from other states indicate that this problem of local compliance is widespread. (6) Therefore, we can expect that more suits will have to be filed, more contempt orders entered before Argersinger becomes effective nationwide.

One final point in these general comments: Will the volume of misdemeanor cases prevent the law school from selecting a variety of legal issues in order to diversify the activities related to clinical training and to have assignments of manageable proportions? We face this obstacle on the civil side when a clinic has the full or principal responsibility of providing all the legal assistance for the poor. There are still some

areas of considerable size where the legal clinic is the only organized legal resource available. This often means that the student handles far more divorce cases than he does other matters, thus raising a question as to the educational value of such routine practice. We should keep in mind, also, the danger of devoting such a disproportionate amount of students' time to misdemeanors that they will not have time to become acquainted with the many steps in processing felony cases, such as the lineups, preliminary hearings, indictments and trial by jury.

If this state of affairs develops in the misdemeanor field there may be pressure for us to redefine or reemphasize the purposes of clinical instruction. Is the primary objective to teach or is it to provide service - or are the two objectives of equal importance? Are they compatible or are they sometimes in conflict? The ABA Model Student Practice Rule seems to embrace both but providing legal services is first mentioned, followed then by a statement that the aim of the Rule is also to encourage law schools to provide clinical instruction. The Report of the President's Commission on Law Enforcement and Administration of Justice (p. 152) reverses the order saying that the legal clinic "provides an opportunity for law schools . . . to give their students invaluable training . . . while at the same time improving the quality of representation and relieving manpower shortage." The states are somewhat divided on the question of purposes. Ten or more have followed the ABA version. Michigan emphasizes the "social" goal. Nebraska mentions only the educational value. Oklahoma says specifically that the "intern program is not for the purpose of nor should it be used as a vehicle to secure new or additional clients. . ." In the study prepared for CLEPR by the Institute of Judicial Administration there is this statement:

> The provision of legal services for the poor, one of the most pressing problems facing our legal system at present, is a primary goal of nearly all the student-practice rules studied.

It does not say "the" primary goal, however.

There is a strong feeling among directors of clinical programs and deans of law schools that the teaching purpose is and must be first, with the service aspect being a desirable but a secondary objective. Medical clinics operated in cooperation with schools of medicine are not expected to provide all the medical services the indigent need. Neither should the heavy responsibility of providing all or a substantial part of the legal aid to the poor fall on law students. To attempt such would jeopardize the whole clinical program and it would give the community an excuse to continue to evade its duty to establish the needed services.

But we will not have to face a dilemma in this misdemeanor necessity if we find some way to be selective, to limit the representation by students, and to provide sufficient supervision.

Justice Brennan did not say that the law students could or should supply all the assistance. He suggested them as a resource "as well as the practicing attorneys."

In an attempt to assess the impact Argersinger will have on the courts, the legal profession, or the law schools, we must have some estimate of the number of misdemeanor

cases where the defendant will be unable to employ counsel. Since there are no complete statistics on the volume, we have to make projections from the few known facts. In the American Bar Foundation Study in 1965 (7), Lee Silverstein estimates that in 1962 there were approximately 5,000,000 cases including traffic offenses. Of these, 25-50% of the defendants were probably indigent (the percentage much less than for felonies). Using the smaller percentage, he says that it is reasonably accurate to use the figure of 1,250,000. Not all of these will require counsel, however. A great number will plead guilty without the advice of a lawyer. Some will waive counsel even though they plead not guilty. My guess is that of the 1,250,000, only 20% or 250,000 will request a lawyer. Next, we have to estimate the number of these defendants who will face the possibility of a jail sentence. With the typical penalty for a misdemeanor being a fine or confinement or both, it appears safe to say that in at least 50% of these, the defendant may be sentenced to jail. This gives an estimated number of 125,000 cases in the nation where counsel must be provided. (Silverstein estimated that 70,000 were actually imprisoned in 1962). A large number of these will be represented by the public defender and many will have compensated counsel appointed by the court. This may not leave an unmanageable number if the other resources are fully used, but will be a sufficient volume of clients for legal clinic programs. If these figures are fairly reliable, we can place the ratio at about 125 cases per 200,000 people.

In determining the accuracy of these estimates, many will question more than one factor, such as the 25% indigency figure, and the 20% guess as to those who will require legal counsel. Too, we have to make allowance for the increase of crime from 1962, the date of the information gathered by ABF for the study. We cannot be sure of course, of the increase in crime generally, especially for one segment-- misdemeanors. The report of the President's Commission (8) explains why this data is not available, but for our purposes I believe a 30% increase can be used as a workable estimate. This will give us annually about 162 indigent misdemeanor clients in a city of 200,000 who face the possibility of a prison sentence and who request counsel.

Turning to another aspect of this problem, let's consider our resources. We frequently talk about the need to establish more clinical facilities over the country, but there is a greater network than we realize. This is an encouraging development even though Justice Powell, in a footnote to his concurring opinion points out that the "problems of meeting state requirements and of assuring the requisite control and supervision are far from insubstantial." In CLEPR's 1970-71 survey, 198 programs of various types are listed where 3,866 students participate. Of course one law school may have two or three different projects and the same students, if they are in more than one program, are counted more than once. Seventy of these projects are specifically in the criminal law field. In addition, some of the 750 students in the General Placement category are no doubt doing some work in the criminal courts.

So, we already have a broad foundation, but we face the question of how much manpower and emphasis in instruction we want to divert to this new demand. As I have suggested before, this is a serious problem. Indeed, soon after the Argersinger decision came down, Robert Knauss, Dean of the Vanderbilt Law School and a strong supporter of clinical legal education programs, stated that he hoped Justice Brennan was not looking at the law student clinics as a cheap source of labor. I do not take this to mean that the

clinics have no role or responsibility. It is a caution that we should keep in mind in expanding our clinical programs to take advantage of the favorable climate which Justice Brennan is helping to promote.

As a convenient administrative vehicle for extending the clinical programs to provide more educational opportunities and to help meet this need for more service, I suggest that an additional course in Criminal Advocacy be developed in which some students may represent the defendants and some work with the prosecution. It can be so structured that the maximum educational value be assured and at the same time assist in the manpower shortage. If the law school cannot finance the project initially, it may be possible to get funds from LEAA, which has been done in several jurisdictions. Further, if Title II of the Higher Education Act receives a reasonable appropriation, HEW money will be available. Of course, we do not overlook the possibility of coming back to CLEPR for some assistance.

As a closing observation, I suggest that Argersinger may affect other areas-- police practices, the court structure, the legal profession's attitude towards its responsibility for the administration of justice, and, of course, our law schools. For instance, if the provision of counsel in misdemeanor cases is too costly under an assignment system, a statewide defender plan with a broader scope of service may be necessary. In fact, the National Legal Aid and Defender Association is calling for such a system, whereby the offices will be under the direction of full time public defenders, with all services coordinated by a National Defender Commission. (9) Changes in the administration of the courts will certainly be required to handle the heavier dockets. More volunteer services from the private bar may be required. But most far-reaching of all is the Court's suggestion that other reforms are needed in laws relating to crimes. (See footnote #9) Law teachers, legislators and others concerned with law reforms must consider decriminalizing or at least removing the possibility of jail sentences for certain offenses such as vagrancy, public drunkeness, prostitution, and perhaps the use of narcotics and gambling. All of these, as was pointed out in The Challenge of Crime in a Free Society, present policemen, prosecutors, judges and correction officials with problems they are ill-equipped to solve. If Argersinger did no more than to force us to reexamine our laws affecting victimless crimes, it will have served a great purpose. But the impact of Argersinger will be more widespread, of course. This Conference, called by the ever-alert president of CLEPR, is some evidence of that fact.

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(1) I cannot resist the temptation to quote Jerome Frank ("A Plea for Lawyer-Schools", 56 Yale L. J. 1303): "American education went badly wrong some seventy years ago when it was seduced by a brilliant neurotic. I refer to the well-known founder of the so-called case system, Christopher Columbus Langdell."

(2) Note comment in "Model Student Practice Rule: Clinical Education for Law Students," Ark. L. Rev. 24:367 (1970) where this question is raised.

(3) Justice Douglas in his dissenting opinion commented (p. 146): "Some states, aware of the acute shortages of lawyers to help the indigent have utilized the abilities of qualified law students to advise and even to represent them in court. . . "

(4) "Student Practice-Limited Appearances in Court by Third Year Law Students," University of Richmond L. Rev. 6:152, Fall 1971. Note the author's comment, however: "Carefully constructed programs for student representation of indigents seem to me to pose no threat to policies embodied in the sixth amendment. Quite to the contrary, they give real meaning to the amendment's aim."

(5) See "The Law Student Appearance Rule," Willamette L. J. 7:20; (1971) for a discussion of the authority to regulate practice of law - courts or legislature.

(6) Hood v. Smedley, Alaska S. Ct. No. 1406, June 12, 1972; Bloom v. Metzger, Ohio S. Ct. No. 71-781, June 21, 1972; In re Audrey Haddock No. 14710 U.S. Dist. Ct. of Conn., May 23, 1972; In the matter of William Rodriguez, N.Y. Ct. of Appeals, May 4, 1972; Matter of Bartsch, N.Y. S. Ct. Sp. Term Kings Co., May 4, 1972 (all cases reported in Poverty Law Reporter: CCH)

(7) Defense of the Poor in Criminal Cases in American State Courts, American Bar Foundation, Chicago, p. 10.

(8) The Challenge of Crime in a Free Society, pp. 3-7, 18-31.

(9) NLADA Briefcase. Vol XXX No. 6 July 1972-p. 205