CUA Law Library
3 5127 00015 1316

Council on Legal Education for Professional Responsibility

NEWSLETTERS

January 1973-May 1974

•

Vol. V, No. 5—Vol. VI, No 13

LAW
KF
263
.C6
Cop.4

BOARD OF DIRECTORS

Orison S. Marden, New York, New York
Chairman of the Board and of the Executive Committee

John M. Ferren, Washington, D.C.
Hon. William H. Hastie, Philadelphia, Pa.
Hon. Florence M. Kelley, New York, New York
Maximilian W. Kempner, New York, New York
Otis H. King, Houston, Texas
A. Leo Levin, Washington, D.C.
Robert B. McKay, New York, New York
James M. Nabrit, III, New York, New York
Dorothy W. Nelson, Los Angeles, California
William Pincus, New York, New York
John D. Robb, Albuquerque, New Mexico
Hon. Alvin B. Rubin, New Orleans, Louisiana
Howard R. Sacks, West Hartford, Connecticut
Bernard G. Segal, Philadelphia, Pennsylvania
Whitney North Seymour, New York, New York
Maynard J. Toll, Los Angeles, California
Lyman M. Tondel, New York, New York

OFFICERS

William Pincus, President
Betty Fisher, Secretary
Victor Rubino, Treasurer

Preface

This is the second reprinting in one volume of CLEPR Newsletters. Our previous single volume compilation covered our Newsletters from January 1969 - December 1972, Volume I, No. 1 through Volume V, No. 4.

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

TABLE OF CONTENTS

Volume	Page*
Vol. V, No. 5, January 1973 The Role Of The Law School In Improving The Delivery Of Legal Services, By William Pincus	1
Vol. V, No. 6, February 1973 Part I - Report On Workshop On Professional Responsibility Part II- Special Note On Stanford Law School Catalog	5
Vol. V, No. 7, March 1973 Law Students In The Lower Courts, Hennepin County, Minnesota By Professor Robert E. Oliphant	13
Vol. V, No. 8, March 1973 Report On Planning Session For CLEPR National Conference By Professor Dominick Vetri	21
Vol. V, No. 9, April 1973 Second Annual Project Report (from Dickinson School of Law to CLEPR) By Professor Leo M. Romero	32
Vol. V, No. 10, May 1973 Changes In CLEPR Board Membership	42
Vol. V, No. 11, June 1973 CLEPR Invites Applications (Guidelines)	44
Vol. VI, No. 1, July 1973 Bibliography Of Writings About Clinical Legal Education By Professor George S. Grossman	46
Vol. VI, No. 2, August 1973 An Approach To Cost Analysis Of Clinical Programs By Peter deL. Swords, Assistant Dean, Columbia Law School	62
Vol. VI, No. 3, September 1973 Clinical Teaching Materials	71
Vol. VI, No. 4, October 1973 Learning Theory And The Law School Classroom By Dr. Stanford C. Ericksen	89

*Refers to numbers at bottom of page.

Volume	Page
Vol. VI, No. 5, November 1973	
Part I - A Preliminary Profile Of Clinical Law Teachers	96
Part II- A Further Note On Description Of Clinics In Law School Catalogs	
Vol. VI, No. 6, November 1973	104
Letter From The Law Clinic	
By Professor Alfred F. Conard	
Vol. VI, No. 7, December 1973	116
Clinical Work In The First And Second Year Of Law School	
By Professor Lester Brickman	
Vol. VI, No. 8, February 1974	
"News and Notes" - published by Northwestern Legal Assistance Clinic	132
A List Of CLEPR Board Members	141
Vol. VI, No. 9, February 1974	
The Education Of The Advocate	143
By Judge Irving R. Kaufman	
Vol. VI, No. 10, March 1974	
Part I - On The Visibility Of The Legal Clinic	153
By Dean Raymond L. Spring and Professor Donald F. Rowland	
Part II- On Teaching Ethics In The Law School	158
By William Pincus	
Vol. VI, No. 11, April 1974	160
Instructional Effectiveness In Legal Education: Some Observations And Recommendations	
By Dr. Russell Burris	
Vol. VI, No. 12, May 1974	
Grading Clinic Students	
By Professor James C. Carr	167
Comments On Professor Carr's Essay	171-184
Vol. VI, No. 13, May 1974	185
Clinical Legal Education And Legal Aid - The Canadian Experience	
By Professor Frederick H Zemans and Professor Lester Brickman	

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume V, No. 5, January 1973

THE ROLE OF THE LAW SCHOOL IN IMPROVING THE DELIVERY OF LEGAL SERVICES

By William Pincus, President of CLEPR

Introduction

In connection with the dedication of its new Law School on December 8th and 9th, 1972, the University of Toledo held a Dedication Colloquium on December 8th, 1972. The subject of the Colloquium was Legal Services in the 70's: The Shape of the Future. The Moderator of the Colloquium was Professor Lester Brickman of the University of Toledo College of Law. The speakers and their assigned topics were:

Stuart G. Gullickson, Associate Professor of Law, University of Wisconsin
"The Systems Approach to Law Practice"

F. William McCalpin, Chairman, ABA Special Committee on Prepaid Legal Services
"New Delivery Systems: Paraprofessionals, Group Legal Services, Prepaid Legal Insurance, Specialization, and Consumer Organizations"

Robert W. Meserve, President, The American Bar Association
"The Role of the Organized Bar"

Monrad G. Paulsen, Dean, University of Virginia Law School
"New Directions for Existing Organizations: Whither Lawyer Referral, NLADA and OEO Legal Services?"

William Pincus, President, Council on Legal Education for Professional Responsibility, Inc.
"The Role of the Law School in Improving the Delivery of Legal Services"

It is our understanding that the University of Toledo College of Law plans to publish the proceedings in the near future, including the remarks of all the participants.

The remarks made by William Pincus on the occasion of the dedication follow on the next page. (One editorial change has been made in the original.)

The Role of the Law School in Improving the Delivery of Legal Services
By William Pincus, President of CLEPR

For perspective we should keep in mind the following: The right to counsel in criminal cases was not announced until Gideon v. Wainwright in 1963. It has still not been aggressively implemented by state legislation and appropriation. Shortly thereafter the Office of Economic Opportunity included legal services to the poor - in civil cases - as part of its crusade against poverty. This has resulted in many more legal aid offices, buttressing the solitary efforts of legal aiders who had been for many years trying to provide such counsel. Yet to this day the right to counsel in civil cases has not been established as a principle in American law. Legal aid, progressive in its time, viewed its work as charitable. OEO legal services have been viewed as a weapon or tool - part of a promise to eliminate poverty - more concerned with change in social conditions and institutions than with such matters as the right to counsel. Nowhere has there been an overall concern to establish the right to counsel for everyone, poor, working class, middle class, or what-have-you, with contribution to cost of counsel by the individual, if at all, based on some assessment of ability to pay. Not even the recent and much-to-be-welcomed union sponsorship of group legal services for their members has such a lofty objective in mind, although the group legal services movement has the most promise of any development to date for changing the structure for delivery of legal services.

Obviously, much remains to be done - in fact, most of the job is untouched. Thus, the first priority is still to mandate that legal services be delivered to everyone, and at the same time begin to address ourselves to the system and economics of such delivery. Having the topic of legal services as the theme of this dedication is a hopeful sign for the future. May we hope that it will not be too much longer before we see concrete actions by the law schools to help America make a great leap forward in the delivery of legal services?

The law schools can help first by including courses on legal services. This is the simplest of the law school's needed contributions, provided that professors can be found who will be interested in doing so. At the risk of sounding overly commercial it should nevertheless be stated that research, writing and teaching in this field could and should be encouraged through financial assistance. As in other fields money can help to interest teachers, especially those who are already looking for such opportunities. Additions to the curriculum should be made on the history of legal services in America and the development of legal services systems elsewhere, such as Ontario, Canada; Britain; and Scandinavia. Countries such as Chile, Costa Rica, and Zambia also have some relevant experience in legal aid involving law schools. There are others. If the subject matter is not enough to attract scholars, and it ought to be, funds for comparative research elsewhere ought to attract at least some scholars who like to add the fun of travel to the intrinsic interest of the subject matter.

In short, the law student should learn about systems of delivery, the economics and structure of the legal profession, and alternatives for change here, just as he is exposed to legal doctrine and to some analysis of institutions like courts and prisons. Self-

analysis by lawyers in the law school should become a regular part of legal education and legal research and writing.

The second thing law schools can do is to show by example, including experimentation, in a clinical setting, how law should be practiced, and how legal services can best be delivered. They also need to create an atmosphere for service through actual clinical work by law students. Most law schools now have a clinical course or two or three, and some even have as much as a clinical semester. However, there must be a substantial step forward in the clinical field if law schools are to make a significant contribution to improving the delivery of legal services while they are educating the students.

The background for this step forward must be the realization, always kept fresh in our consciousness, that a law school clinic is not the vehicle for providing needed legal services, except incidentally as the service setting in which alone clinical education must take place. But, in addition to other educational values, the law school clinic is the place to expose future lawyers to the ideal practice of the law, and also is the law office which should set an example to the practicing bar. In other words, the law school clinic should be the model law office. It is the place to experiment with better ways of delivering legal services which are suggested by the research recommended earlier: such matters as reallocations of tasks between lawyers and others, including so-called paraprofessionals and lay advocates, or improving the use of assigned counsel by developing ways of certifying lawyers for inclusion on criminal defense panels. Successful experiments of this kind should then commend themselves to the public, the bench and the bar.

In working on such experiments the law school clinic should not exclude projects which may be "touchy" because they touch the politics of the bar. For example, experiments on financing legal services through various group schemes should be on the experimental agenda.

To conduct such experiments a certain number of law school teaching clinics will have to be considerably expanded and strengthened. More lawyers will have to be available for teaching and supervision, including a new breed of practitioner-teacher who will be in the clinic for part of the week, while they continue their practice outside. Professionals from other disciplines in the universities will have to be brought in at the appropriate time for work on systems, economics and other aspects of legal services which may be coming under scrutiny through tests of alternatives.

As the clinic is expanded there will be more opportunities for more of the law students to participate. Probably all law students should have some clinical experience - some more than others, depending on propensities and career plans. For the most important contribution by the law school to the improvement of legal services will be in its use of teaching method in the form of the clinic which involves the teacher and the student in actual service - actually helping someone. Over and above teaching skills, demonstrating quality, developing in future lawyers certain aspects of professional maturity, and conducting experiments, the law school clinic can demonstrate that being a lawyer means helping someone and serving him as a professional.

It is important to recognize that inclinations to help and serve individuals are not encouraged, and may well be discouraged, by a long academic education which confines us to

study, analysis, critique, and in general to the lofty view from the position of policy-maker and leader. We are what we choose to do, and we also become what we do. If we don't act in the lawyer-client relationship anywhere in professional education, we are all the less likely to be happy about doing so later on. Certainly we shall find it more difficult. The law school until very recently has been exclusively another academic layer, on top of undergraduate study. That we profit from the academic study of law cannot be gainsaid. But we pay too high a price if academic study is all we get. The model of the academic teacher is the only model we are exposed to in law school, and the process itself does not involve us in acting as lawyers. Only to make us think as lawyers is the goal of legal education as it has traditionally been conducted. These messages of non-involvement with practice - with helping and serving a client - come across quite clearly to law students. These messages do not carry any encouragement to service, let alone better service. Such an atmosphere in the law school attracts many who have no intention of engaging in the delivery of legal services. It also retards the development of the law student who wishes to become involved in lawyer-client work. It insures that all students remain only students while in law school, not putting them in situations where, as in the clinic, they will begin to think of themselves as lawyers. Absent the clinical setting the lawyer-to-be is insulated from developing himself by working with the model provided by the teacher-practitioner, who alone can help him to bridge the gap between being a student and becoming a lawyer.

The law school has, therefore, three ways in which it may in the future become a most important factor in improving the delivery of legal services:

1. By conducting legal research on legal services and by including courses on legal services in its curriculum;

2. By consciously using a law office clinic as a laboratory for experiments in improvements in the delivery of legal services;

3. By having law students perform service as part of clinical education while working under the tutelage of teacher-practitioners who will provide a service model in addition to the academic model, in the process having law students start becoming lawyers accustomed to living as lawyers as well as thinking abstractly of themselves in a lawyer-client relationship.

If the law schools perform these tasks as well as they have their academic role up to now, it is certain that the delivery of legal services will be vastly improved over the next few decades - both in quantity and in quality.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume V, No. 6, February 1973

CONTENTS

Part I - Report on Workshop, pages 1-6

Part II - Special Note on Stanford Law School Catalog, pages 6-8

Part I

Introduction

On November 9, 1972 CLEPR invited several clinical professors to a workshop in CLEPR offices to discuss the subject of professional responsibility. For purposes of delimiting the discussion, professional responsibility was to be considered in its private aspect - that of the lawyer's responsibility to and for his client. The public aspects of professional responsibility, such as law reform, better legal services, etc. had received attention generally while the private aspect had not. Participants were asked to bring to the workshop examples of problems of professional responsibility which had arisen during their students' work with clients. By consideration of these examples the question of at what point and in what way professional responsibility is taught in law school clinics might be answered.

Professor Marvin S. Kayne of the University of California, Berkeley and Hastings, acted as moderator and prepared the following report of the discussion. The other participants were: Professor David Barnhizer of Cleveland State University; Professor Martin Levine of the University of Southern California; Professor Donald Stern of Boston College; Professor Richard Tilton of Seton Hall University; Professor Roger Wolf of Catholic University; and Professor Fred Zemans of York University, Toronto, Canada. Representing CLEPR were William Pincus, President, and Betty Fisher and Victor Rubino, Program Officers.

TEACHING PROFESSIONAL RESPONSIBILITY IN LAW SCHOOL CLINICS
By Professor Marvin S. Kayne

William Pincus welcomed the participants. He stated that professional responsibility had always been the central concern in CLEPR's program since learning under the burden of responsibility is the essence of the clinical experience. Mr. Pincus felt that even during a period of rapid growth professional responsibility has been consistently taught in the clinics although not often explicitly analyzed. The time has come to make explicit the concern with professional responsibility. Simple examples, required matters, such as showing up for client appointments or maintaining files necessarily occur and must be discussed.

The discussion started with an attempt at definition. The difficult question of what directions "public professional responsibility" should take appeared to be resolved, for the purpose of the meeting, by delegating the question to lawyers as a group. The question for the meeting became: with what ethical sense should the individual law student be imbued to serve his clients, i.e., "private professional responsibility?" The latter term was tentatively divided into three areas: 1) fair dealing with anyone (e.g., client, opposition) within any given case; 2) maximum competency in representing the specific client; 3) conflict between maximum competency and fair dealing.

While the Canons of Ethics are ordinarily thought of more in the context of conflict, and competency is usually not even discussed as an ethical question, it was pointed out that the Codes of Professional Responsibility are replete with all three duties. The group consensus was that the teaching of ethics did occur in all three categories and that competency was clearly an important matter to professional responsibility.

Even before any definition emerged it was opined that for students engaged in legal services work it was necessary that prime ethical consideration be given to the concept of class representation. The example first given was that a client with a landlord problem may offer an ideal situation for tenant political organization. (This re-raised the spectre of public professional responsibility until it was again set aside with the notion that the individual lawyer/student must make private decisions which have public implications. Those participants opposed to class representation pointed out that the concept allows the student to "cop out" to the larger cause. When isolated it was realized that the first question was: does the student represent the individual client or poor tenants as a class? The problem seemed at first a question of conflict between competent advocacy and fair dealing. In fact all three areas of responsibility soon appeared in an overlapping form. In order to deal fairly with his client the student must be able to recognize that in seeking to serve the larger anti-establishment cause he or she may be following personal needs or even ego-tripping. In order to deal fairly with the client this fact must be disclosed. If the client is willing to take the risk of a diminished result, in his case, for the good of a greater number, he may. But if the student is manipulating the client to that conclusion that fact must also be revealed.

Other ideas developed to show that the conflict was perhaps only apparent, and that the most effective advocacy for an individual client may also best serve the political purpose, or that both goals could at least be achieved simultaneously. In determining optimum strategy every alternative, not just every cause of action, must be explored. The tenant alone may have little legal recourse to repairs or defense against eviction, but if he is part of a rent strike or joins with the other tenants as class plaintiffs the landlord may be forced to remedy the individual ills. If the landlord offered an individual "deal" it was agreed among the participants that the client had to be fully advised even if his personal acceptance jeopardized the cause of the other tenants. And if the student planned to manipulate a nonacceptance, the fact of the manipulation had to be revealed. Even in the face of acceptance by the client it was recognized that if the case was properly selected and pleaded either the client might have little at stake or the cause of action could continue without the client's participation.

As a result of this discussion a number of matters inherent in the tripartite definition of private professional responsibility as it appears in clinical programs were clarified: Despite the student's personal preferences or values, a minimum requirement is servicing the client well, i.e., competency: Manipulation to personal ends is a serious danger that must be assiduously watched and fully disclosed: Competent advocacy involves analyzing every possible strategic approach to its potential conclusion and handling the case to maximize results to the individual client, and if others are also involved, to them, provided that no undisclosed conflict occurs.

Another situation discussed led to some of the same conclusions set out above and helped in further elaborating the matter. An example resulting from a trial problem raised several ethical considerations. The client had been poorly prepared for trial and under cross-examination lied. The lie became apparent and it was then discovered that the client believed that the law student had actually coached the lie. The adverse implications for the client, the case, the student, the instructor and the clinical program consumed a full extra two days of court time, with a bare extrication at the end. At the simplest level, the result was an ethical breach of competence to the client. Proper witness preparation, including telling the truth while preparing for the most unfavorable evidence is simply good tactics. The student had not, in fact, intended the client to lie. In terms of fair dealing to the opposition, the court and all the parties mentioned above, the circumstance was an abysmal lesson. It cost everyone time, emotional anguish and a serious risk of an unjust result. What the student did may have resulted from laziness or a lack of insight into the dynamics of the case discussion with the client. If so, the comments above pertain. But if the student unconsciously led the witness to the lie out of undifferentiated personal motives, e.g., to win in any event, then the case is one of conflict as well.

Obviously the matter was thoroughly discussed, the student chastized and the whole affair stood as a sharp ethical lesson to all the students. While the reason for the mistake never became fully clear, the possible reasons and the consequences were raised as sharp

warning signs for any future occurrence.

Another case, arising in a state with tough divorce laws, involved a student who stopped probing a client when he believed any further disclosures would reveal a non-meritorious cause of action. When he brought the matter to the instructor the probing was continued. The student disagreed with the stringency of the divorce laws and did not want to jeopardize his client's chance to get divorced. When the instructor went further, a number of adverse facts did come to light. Further exhaustive inquiry overcame the difficulties and re-established the cause of action. Since the adverse facts were likely to come out if the case were tried, to have stopped would have been incompetent advocacy. Since the initial incompetency was the result of a personal motive the student was being unfair to his client, the defendant, and the court.

Before moving into the realm of the more ordinary clinical cases, a somewhat surprising question was raised: How do you teach private professional responsibility? Most people at the meeting assumed it just happened automatically in the clinical setting. But focus on individual teaching methods revealed that the teaching of responsibility was in fact occurring in the following tangible ways.

1. A student faced with the necessity of solving a problem is motivated to a better solution by his personal involvement. For example, students' names are usually put on their pleadings.

2. Real people with real problems provide the human motivation to arrive at the best solution. A dramatic combination of 1 and 2 is the student trying a lawsuit.

3. A classroom focus on ethical problems encountered in either actual or simulated experience initially teaches and then heightens awareness when the real experience again occurs. Some of the techniques in use are:

   a. analysis and discussion of a simulated case file raising ethical questions
   b. bringing in outside practitioners to discuss their ethical problems
   c. allowing the student to see himself in action through video feedback with instructor and/or peers providing critique
   d. assigning reading in the behavorial sciences to sensitize students to why they miss or improperly handle ethical problems
   e. discussions specifically related to questions of motivation, manipulation, ego matters, etc., as further sensitivity devices
   f. analysis of actual cases from the field for their ethical content

4. A willingness and ability to single out and severely chastize the lazy student.

5. The emphasis on strategy, i.e., how to best win a case, in the clinic is probably its primary distinction from the ordinary academic course. Strategic matters often force

simultaneous consideration of several substantive and procedural areas interrelated with human variables. The result is not only a greater flexibility, but a much tighter analysis. While this obviously makes for the more competent advocate, the choice of strategies invariably includes ethical choices.

6. Because of the close working conditions in the clinical setting, the teacher becomes a model for conduct as well as intellectual achievement.

7. When students are placed in outside agencies, the selection of offices where good ethical procedures are practiced can result in emulation in the right direction.

8. File checkpoints for supervisor review create assurance of diligence and sufficient consideration of important matters in specific cases.

9. The instructor often develops extra-office relationships with students, allowing inculcation of ethical attitudes on a personal basis.

10. Clinical instructors are often called on for evaluation to prospective employers which creates a very tangible reason for ethical performance.

11. The real pressures, time and otherwise, of actual practice and the necessary daily discussions on a point-by-point basis force a concentrated focus on the student.

12. Peer evaluations on an ongoing basis expose students to the most critical eye they may meet in law school. This is particularly true in programs where students work in pairs.

The discussion moved to a consideration of the professional responsibility problems experienced by the student at the earliest levels of client contact. When a student first introduces himself, he is faced with the task of honestly revealing he is a student and still obtaining rapport and confidence. To do otherwise is unfair to the client and is likely to impinge on the competent gathering of facts. To do even this simple matter requires that the student know himself well enough to distinguish his role, overcome his natural anxieties and comprehend the client's anxieties. Any or all of the teaching methods mentioned above may be needed to assure that the process occurs quickly and properly.

Similar problems arise in just getting preliminary statistics, determining financial eligibility and gathering facts. Statistics may hit on sensitive areas. Financial questions raise a potential for exclusion or unfair inclusion. Fact gathering may call on insights or areas of substantive law the student may not have. The student may have to interrupt the interview to consult with a lawyer. All of this raises the level of tension on both sides of the desk. The client may be hostile. The client may feel he has no choice. In order to deal fairly and competently with the client, the student must quickly gain confidence, learn to separate himself from the case, and learn the dynamics of this type of interpersonal relationship, even if he must take longer to learn the substantive law. Only by actually going

through these matters in a real learning experience can the student professionally handle the case.

By the end of the day it was obvious that discussing clinical programs from the point of view of professional responsibility sharpened one's vision for clinical goals. The discussion also showed that students with the responsibility of a real client and his problem must learn to consider more explicitly the issues of professional responsibility with which they are involved at many junctures. Clinical supervisors not only fill role models as lawyers but also can make explicit and help students analyze these issues. Many clinical teachers are already doing this and have developed teaching methods which may be useful to clinical teachers at other schools.

Part II

SPECIAL NOTE ON THE STANFORD LAW SCHOOL CATALOG (1972-1973)

One of the written sources which provides us with much valuable information concerning legal education is the law school catalog of courses. In addition to listing courses, some catalogs suggest that much analysis and thought has gone into recent developments in legal education. One of these is the current Stanford Law Catalog.

In a future issue we shall make mention of other law school catalogs. Here we wish to call attention to the Stanford catalog as an outstanding example of a listing of courses which clearly distinguishes between clinical and other extra-classroom experiences. Although CLEPR concentrates on clinical legal education we appreciate the usefulness of experiments with other extra-classroom work, particularly when the law school involved is fully aware of the distinctions between these experiences and the different benefits that accrue from each.

We commend the entire Stanford bulletin to our readers. To show how the various extra-classroom experiences are distinguished one from the other, we quote first the description of externships in the general text, and then the listings for a number of other non-traditional and extra-classroom courses, including clinical courses. We have not attempted to make a complete listing, only to illustrate.

> OPERATIONAL TRAINING - EXTERNS (page 12)
> A limited number of students who are candidates for the J.D. are offered the opportunity to spend up to six months away from the School in a carefully supervised and previously arranged operational experience. Arrangements for the positions and selection of the students are made by a supervising faculty member and an extern supervisor outside the School. Opportunities for Stanford law externs currently include, for example, work in local departments of correctional probation, law clerkships to trial court and appellate judges, work-study assignments at the Center for Law and Social Policy in Washington, D.C., assistantships in two comparative law institutes in Europe and assignments to the Washington office of several

U.S. senators. The aim of the extern program is to give law students an academic experience in a direct working environment and an opportunity to observe the functioning of a legal institutional process. Students in the operational training program spend either their fourth or their fifth term in the program, together with part of the summer between their fourth and fifth terms. Before the end of their period of operational training, externs write a substantial critical paper on some aspect of the legal institution in which they work. They receive a full term's credit for their extern experience.

269. CRIMINAL PROCEDURE, ADVANCED: CLINICAL SEMINAR IN DEFENSE. Prof. Amsterdam. 3 units. (page 31)

Each student will spend a minimum of eight hours per week assisting in the defense of criminal cases handled by the Public Defender's Office of Santa Clara County. He will be exposed progressively to the various stages of criminal defense work, including: (1) interviewing defendants and witnesses, and conducting field investigation; (2) representing defendants at arraignment and other pretrial proceedings at the municipal court level; (3) preparing and conducting misdemeanor court and jury trials; (4) preparing and arguing pretrial motions in superior court; and (5) preparing and arguing appeals. Classroom training in litigation skills and practices will be given, and seminar sessions will undertake exhaustive consideration of selected problems of criminal defense. Students will be responsible for the preparation of written background materials for the seminar. In addition to the three units of credit allocated for the course, students may elect directed research relating to the subjects of the course for up to three additional units of credit, with approval of the instructors. Prerequisites: Criminal Procedure and Evidence (may be taken concurrently when offered Autumn Term).

271. CRIMINAL PROCEDURE, ADVANCED, CLINICAL SEMINAR IN PROSECUTION. Prof. Kaplan. 3 units. (and 3 units Spring term) (pages 31-32)

This is a limited enrollment course running through the Autumn and Spring terms.

A condition of admission is qualification to engage in activities as permitted by the Rules for Practical Training of Law Students of the State Bar of California. Each student will spend a minimum of four hours a week under the direction of the San Mateo County District Attorney's Office and will be responsible for: a) presentation of two preliminary examinations, b) trial of a misdemeanor, c) preparation and argument of one motion or appeal before the Appellate Division of the Superior Court. Class work will focus on problems met in the field work. In addition to the three units of credit per term allocated for the course, students may elect directed research relating to the subjects for up to 3 additional units per term, with approval of the instructors. Prerequisites: Criminal Procedure and Evidence (may be taken concurrently when offered Autumn Term).

299. JUVENILE LAW. Prof. Wald. 3 units. (and 3 units Spring term) (page 33)
This course will be a combination "traditional" and clinical seminar. There will be weekly seminars in which the philosophy of the juvenile court, the law pertaining to minors and other substantive issues will be discussed. In addition, each of the students will be representing juveniles in juvenile court proceedings. This will involve at least one afternoon and the following morning every two weeks, plus extensive time preparing cases for trial. Mimeographed materials. The course will run year long and be limited to 15 students. In addition to the 3 units of credit per term allocated for the course, students may elect direct research relating to the subjects of the course for up to 3 additional units per term, with approval of the instructor.

289. INNOVATION IN POLICE DEPARTMENTS. Prof Danzig. 3 units. (page 40)
This is a research seminar designed to enhance the student's understanding of the methods and difficulties of effecting institutional change. It focuses on the problems of innovation in police departments generally, and particularly on the experience of change agents (including courts, politicians, pressure groups, people policed and police themselves) in improving the efficiency or propriety of police work in New York and the Bay Area. The seminar will progress through (1) an examination of largely unpublished papers documenting efforts at change from the standpoint of both the innovators and the police; (2) discussions with participants in these efforts: (3) participation by students in relevant police work (riding on patrol, going out with detectives, etc.); (4) individual interaction with police in which the student will attempt to evaluate someone else's effort at innovation or, by pre-arrangement, to participate in an on-going effort at effecting change. When applying to the seminar, students should indicate their nature of interest in the subject and any prior experience in working with police departments.

325. LEGISLATIVE "WORKSHOP." Prof. Girard. 2 hours. (page 41)
Preparation of legislation and ancillary materials, and participation in the legislative process. Class members individually or in groups will draft or revise legislation (including research and information collection), participate in negotiations and meetings, and make presentations to legislators, legislative committees and other interested parties. Projects will be chosen by students with instructor assistance and approval. Critical appraisal of legislative functions, organization, selection and operation, as well as problems and techniques of statutory drafting and interpretation will be emphasized. Various informed participants in the legislative process will meet with the class.

// COUNCIL ON LEGAL EDUCATION
FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume V, No. 7, March 1973

Preface

Clinical programs at the University of Minnesota Law School involve most of the third year class and include many supervised student court appearances. Professor Robert Oliphant, Clinical Director since 1969, has been active in the preparation of manuals and other teaching materials, the setting up of office systems, and the development of working relationships with public officials. CLEPR hopes Professor Oliphant's description of an in-house clinic working closely with a public defender's office will be both useful and interesting to other schools.

LAW STUDENTS IN THE LOWER COURTS, HENNEPIN COUNTY, MINNESOTA

by Professor Robert E. Oliphant

There is one proposition on which all observers of the lower courts throughout this country agree. That is that the lower courts are in a sorry state of affairs. Their plight has been ignored by the organized Bar associations, avoided by middle class Americans, and tolerated by the judges, prosecutors, and defense lawyers who work in them.

The appalling conditions have been the subject of numerous investigations, criticisms, and dismay by governmental commissions and citizen task forces. For the most part, the findings and recommendations of the investigators and critics have gone unheeded.

The lower courts are the courts before which thousands of citizens are first brought either for trial of misdemeanors or petty offenses or for preliminary hearings when they are charged with felonies. While the work of the lower courts may be "petty" with respect to the type of offenses and the penalties imposed, it is far from petty with respect to the impact on the citizens who may have their first and only contact with the criminal justice system at the lower court level.

The types of offenses lodged against citizens in these courts is as broad as the imagination. Citizens are charged with speeding, vagrancy, indecent conduct, minor assaults, drunk driving and a multitude of other crimes. Most of the citizens appearing before the lower courts are poor with respect to the population in general and a vast number are non-white. They are aware of neither their basic constitutional rights nor the possible consequences of pending court action against them when they have their day in these courts. Only a small proportion of lawyers practice in these courts, mainly for reasons of economics. In

Hennepin County, Minnesota, for example, the most populated county in Minnesota and one of the largest in the United States, a good estimate would be that less than five percent of the practicing attorneys in the county have any regular contact with the criminal matters that come before the Municipal Court. Far too often attorneys with large, prestigious law firms with the ability to effect major change are completely unaware of the conditions in the lower courts.

The advent of defender systems in some lower courts has undoubtedly produced some outstanding and dedicated lawyers. However, because of the incredible caseload and inadequate staff furnished to them, they quickly become tired and discouraged. In many courtrooms they can be seen reluctantly but willingly participating in the dehumanization of citizens. The courts operate with the most meager facilities and with the least trained personnel. Some have court administrators; most do not. Some have modern computerized twentieth century handling of files; most live in the nineteenth century.

A burgeoning population and increasing urbanization have aggravated rather than ameliorated these problems. Many dedicated persons working in the courts become frustrated at the huge caseload and exasperated at the inability to adequately deal with problems. Practices by judges, prosecutors and defense attorneys which would be condemned in the higher courts may still be found in some of these courts.

It is doubtful that any program of crime prevention can become effective until there is a massive overhaul of the lower criminal courts. Many of the citizens who find themselves in these courts interpret the experience as an expression of indifference to their situation and to the ideals of fairness, equality and rehabilitation professed in theory but almost always denied in practice.

The decision of the United States Supreme Court in Argersinger v. Hamlin is an open invitation for an effective two-pronged attack on the injustice that exists in these courts. The opportunity exists for law schools throughout the nation to utilize the ability, enthusiasm and vigor of their students in the defense of misdemeanants while at the same time educating prospective members of the bar in the nuts and bolts of ethical lawyering. The fashion in which this invitation albeit challenge is met will be critical to the improvement of our criminal justice system. If the law students, law schools, and law teachers throughout the country fail to seize the obvious opportunity for education, service, and reform, which the Supreme Court has provided for them, there is little hope that the confidence of the citizens in the concept of justice will ever be restored. There is even dimmer hope that the massive overhaul of the lower courts can ever be made. It seems ironic that in the twentieth century, man can set foot on the moon but he cannot find due process in his civilized courtrooms. In Minnesota we have had over three years to experiment with both law students in a clinical misdemeanor program and to develop a public defender program in the lower criminal courts of Hennepin County. The results of those experiments will be shared throughout this paper.

In 1967 the Minnesota Supreme Court surprised almost everyone by establishing a Court rule which requires that counsel in any misdemeanor cases must be appointed where the defendant might be incarcerated. The decision caught most governmental units unprepared. There was little or no available money to staff the courts with lawyers. Some

judges and court personnel looked upon the rule with reluctance. To some observers it appeared that many, if not most, of the entrenched court personnel desired to delay implementation as long as possible.

In Hennepin County initiative to implement the Supreme Court rule was jointly seized by the State Public Defender, C. Paul Jones, and the University of Minnesota Law School. With funds left over from a Ford Foundation grant, the Defender, who officed within the Law School, hired two talented and highly experienced criminal defense lawyers on a part-time basis to staff the county misdemeanor courts. At the same time, students from the Law School were assigned to work with these defenders in a rather loosely supervised fashion through the school's fledgling Legal Aid Clinic. From January 1968 until the summer of that year the work of the part-time defenders and the law students was carefully scrutinized and evaluated by both the Defender's office and the Law School. By the summer of 1968, it became apparent that changes had to be made.

Utilization of part-time defenders was a mistake. On several occasions indigent clients had sought the part-time defenders at their offices only to find they were at trial on civil matters or otherwise occupied on non-defender business. It became obvious that the caseload was far too great for part-time defenders. It was difficult for trial judges to accept guilty pleas at the arraignment and impose a sentence only during the morning court hours. The defenders tried to work only during the mornings. Several cases by necessity were being carried over from the court's morning arraignment session to the afternoon. Thus, the part-time defender was forced to remain a full day in court. The dangers which are created by a system providing a built-in incentive to plead as many defendants guilty as possible in order to lighten the defender's trial caseload or to encourage a narrow application of indigency standards, again to keep the caseload low, were apparent. Lack of a centralized office where clients could receive assistance, the ever-increasing caseload, and the inherent dangers in the part-time defender concept caused the State Public Defender to decide in the summer of 1968 to replace the two part-time defenders with one full-time lawyer. The law school increased its role in the development of the Public Defender program by agreeing to furnish office space and secretarial assistance within the school to the newly hired defender.

A decision was made by the Defender to hire the best available attorney and pay him a salary comparable to that paid by the best law firms in the community. If reform was ever to be achieved, it obviously had to come from a strong, talented defender corps. In September 1968, an experienced trial lawyer was hired at a substantial salary. The opportunity to do meaningful trial work, the excellent salary, and the attraction of being a part of the law school clinical program were the primary reasons an extraordinary lawyer was attracted to the program.

Not only were changes made by the Public Defender, but the law school also altered the student clinical work. After evaluating the 1968 student performance the conclusion was clear. The 1968 law student performance had been very poor. The naive notion that senior law students could be given live cases and adequately handle them with minimal supervision was shattered. Unsupervised students conducting interviews usually either failed to obtain important material facts or completely overlooked them. Many students did not know how to prepare for trial. Most had never handled a live case from beginning to end; none understood trial tactics.

Much closer supervision over each student's courtroom work was begun by the law school. A standard interview form was devised to (1) help students record the facts they gathered during an interview, (2) act as an outline to guide the interview, and (3) provide a record of the case. Written materials designed to assist each student in the preparation of his case were also developed. A manual for the "Defense of Misdemeanor Crimes" was prepared and published by the Continuing Legal Education Center of the University of Minnesota. The manual was designed for students in the Misdemeanor Program, but found widespread acceptance from members of the practicing Bar throughout the state.

Since 1968, supervision over law student work has been continually increased. Currently, students receive three credits per quarter for their efforts. They handle all Public Defender arraignments two days a week in Minneapolis Traffic and Criminal Misdemeanor Court but under the direct supervision of two law school professors. A weekly seminar academically prepares them for their field work. Thorough trial briefs are required of each student who is assigned a trial. Each trial brief is examined, criticized and graded by a member of the law school faculty before a student is permitted to consult with the Public Defender, who acts as his in-court supervisor. All of the student trials are selected by a clinical director, thus insuring that students handle the most challenging cases in the Public Defender files.

The Public Defender Staff has expanded since 1968. Continually it has attracted the finest young legal talent in the state. It now boasts of four full-time lawyers who are hired on one year non-renewable contracts. The decision to limit their employment to one year was made at the end of 1969 because all of the lawyers working in the program agreed that the demands placed on them over a twelve month period burned them out, caused them to become cynical, callous, and reduced their effectiveness. Subsequent experience has verified the wisdom of this decision. At the end of each year, a Public Defender has gained an excellent background in trial practice and an understanding of the lower court system that could be gained in no other fashion.

An exchange program has been developed with the largest downtown Minneapolis law firm whereby a member of its litigation department spends one year on leave to the Public Defender's office and helps administer the misdemeanor program. The benefits to an exchange arrangement are clear.

The purpose of a defender program is to benefit the indigent defendant. A defender or law school clinical program which gains the reputation for providing second-rate representation because it uses poorly prepared lawyers and poorly supervised law students for criminal defense work would degrade the entire court system and reflect adversely on both the legal profession and the law schools. Such a program would comply with neither the letter nor intent of Argersinger.

Throughout the three year development of the Public Defender program, it has been sheltered within the Law School clinic and has been an integral part of it. The result has been to keep subtle political pressures which hamper reform and change from being felt directly.

There has, however, been a strong undercurrent of opposition from a few members of the local bench. These judges are irritated by the vigor of the defense, the brilliance of

individual attorneys in the program, the care with which trials are handled, and the fact that appeals are taken from "their" courts. They have been made to look bad! The Chief Judge has indicated that the philosophy of the current public defender corps is incompatable with that of the bench. Public defenders, to his mind, are apparently supposed to exercise less vigor and apply lower standards for representation than members of the private bar. This viewpoint is antithetical to the Canons of Ethics of the American Bar Association and the basic premise which underlies the American system of justice.

Equal justice under law is the most basic tenet of our system of justice. This means that every man is entitled to be treated in the same manner and afforded the same protections under duly enacted laws as any other man. A wealthy man has all the advantages of the system. He can hire the best lawyer, pay the costs of pursuing every accessible legal avenue, and generally avail himself of all the justice that money can buy. A poor man, however, seldom has these advantages. His encounter with the judicial system is likely to be painfully costly, an unpleasant experience, and access to obtaining justice is usually impaired because of his poverty. For some reason, far too many judges in the lower court system of this country fail to recognize these basic facts and ignore the basic tenet upon which the court system is founded.

We have chosen the adversary system of justice as the means by which truth will be pursued in our courts. The procedure we have adopted encourages vigorous clashes of opposing viewpoints, limited by rules of evidence and procedure, from which the truth presumably will emerge. It is an evolved form of "trial by combat" in which the opponents spar with arguments and evidence, not swords and spears. The skill of the advocate, as well as the cause he champions, determines the winner. While most law school freshmen understand this principle, most lower court judges never recognize its existance.

If the principle of equal justice under the law and the use of the adversary system as the means of discovering the truth is to be maintained, then every person regardless of his financial ability must take with him into combat a person in the form of an advocate who makes it his business to fight these battles pursuant to the rules. There is no other way in which the system can function adequately and fairly.

From a trial judge's point of view, the appointment of student-defenders will almost certainly increase the number of trials. A system that depends for survival on 95 percent of all defendants pleading guilty is threatened by any possible change in that statistic. There is no evidence however that providing counsel will substantially change this figure.

An objection raised by some judges and prosecutors to the vigorous Hennepin County defender program is that technicalities are used to "get the guilty defendant off." No defense attorney worth his salt would overlook the technicality of an invalid arrest where a search and seizure issue was present,or the technicality of a Miranda warning prior to a confession. Yet, when these issues are raised and a hearing demanded thereon by a public defender or law student, the attitude of some court personnel changes. One recent example involves our own local court. A statute creating the Hennepin County Court gives a defendant the absolute right to demand a formal written complaint when an offense is tab-charged, that is, charged in a shorthand method. This right was rarely exercised. For many years, the Minneapolis City Attorney has had an open file policy which gives defense lawyers

an opportunity to see arrest reports prior to a plea or trial. However, when student-defenders carefully read arrest reports and determined that a technical defense existed, that more facts were needed, or that complaints wouldn't be issued because the victim didn't want to pursue the matter, they started asking for written complaints. Although the written complaint is an absolute right by statute, the fact that the defendants represented by the public defender were exercising the right angered some prosecutors who then refused to allow any public defenders or students to see arrest reports. Private defense attorneys can still see the arrest reports and also demand written complaints. The reason for the disparity is apparent.

The Minnesota State Public Defender said in a speech a few years ago that the greatest problem in the criminal justice system is the quality of the prosecution. The same statement can be made today. Although there are excellent prosecutors, many good ones leave the lower court system within a year or two despite comparatively high salaries. One reason is that the civil service system retains and locks in some inadequate and lazy individuals who eventually acquire seniority within that system. Another is the frustration many prosecutors cannot live with. Public defenders often win cases they should lose because of a prosecutor, but the answer is to improve the quality of the latter, not reduce the effectiveness of the former. Ideally, students should not only continue with public defender work, but they should also apprentice as prosecutors.

Law student involvement, enthusiasm and thoroughness create greater long term interest in the courts and an awareness of their problems. The answer to congestion and backlog in the courts, particularly the lower courts, is the eventual phasing out of large numbers of offenses which should not be classified or treated as crimes. Three of sixteen Hennepin County judges were recently in trial for several weeks hearing obscenity cases involving the sale of pornographic materials to a small number of adults. At the same time the court calendar remained one year behind in the disposition of Drunk Driving cases, many of which resulted in accidents or serious injury to members of the public. Solutions will only be found to these problems when large numbers of lawyers experience them first-hand.

Many of our ever increasing numbers of law graduates seek positions in the State Legislature and will have the incentive, ability and understanding with which to make needed changes. The students in the clinical programs are being prepared for this task.

Expanded defender services not only increase the number of cases taken to trial, but also increase the number of cases which are more equitably disposed of without trial when the facts warrant a different or lesser charge. The words "plea negotiation" have taken on such a negative connotation that one would hesitate to list this as a positive contribution by a good defender system. Plea negotiation has been a positive and valuable tool in arriving at justice in the prosecution and defense of criminal matters. A prosecutor seldom knows both sides of the story presented to him at the time a complaint is drawn or charge is lodged against a defendant. When a defense attorney has the opportunity to investigate his case and discuss it with a prosecutor, a reduction in the charge is many times legitimately warranted. Students have conducted excellent investigations with the result that many charges have been reduced or dismissed without the necessity for trial. As with other good tools, plea negotiation can be misused and its proper use depends on

the knowledge and integrity of both attorneys, together with complete understanding and agreement by the defendant.

There are many instances where representation of defendants in petty offenses means representation in sentencing. If the point of the criminal justice system is rehabilitation, then a lawyer has an ethical duty to do whatever possible to effect a sentence that will work towards that end. Few law schools offer training of this type. In Minnesota, because of the clinical programs, the Law School has started to train its students in alternatives in sentencing. The students are sufficiently interested in their clients to want to be present prior to sentencing when the probation report is presented. Because of their thoroughness, they have frequently been able to augment such report or to make meaningful suggestions to the court.

A number of factors encourage the development of a strong law student misdemeanor program. One of the most important is a good student practice rule allowing law students to handle live cases. However, a rule should be carefully promulgated to avoid vesting broad discretion in the trial judge regarding the student function. For example, in Detroit, Michigan, some trial judges have interpreted the Michigan Student Practice Rule as giving them total discretion to remove a student at any stage of the proceedings. The rule is used to remove students from representing indigents whenever a jury trial demand is made. Wherever a defender system is controlled by the Judiciary, it has less chance of objectively serving the indigent.

Another important consideration is the selection of a Clinical Professor to head the program. Ideally, he should have criminal trial experience, academic credentials acceptable to the law school faculty, be able and willing to write and have the talent to teach at both the practical and theoretical levels. Administrative ability is also necessary.

An in-house program is highly desirable because it allows close supervision over student work, control over the intake of cases and the maintenance of educational goals. In-house can mean two things. There can be either an agency affiliated with a law school with the two working jointly in the representation of indigent defendants, or there can be a law school-oriented defender program with no outside agency affiliation. Where there is no outside agency affiliation, the costs of administering the program are normally very high, therefore it is to the benefit of both the law school and the outside agency to develop a joint affiliation.

There is a recognizable conflict between the law schools which have an educational goal and outside agencies which have service as their goal. The only reasonable method by which such a conflict can be compromised is the development of a mutually acceptable law school-centered defender program.

The University of Minnesota has a joint agency-law school in-house program. The benefits to the University from such an affiliation are: (1) Control over student work; (2) Quality supervision of student work; (3) Control over the types of cases and the number of cases each student is handling; (4) Continual maintenance of the educational goals in the program. In addition, the agency staff usually provides supervision for all student in-court work.

The benefits to the agency from such an affiliation are: The use of an up-to-date law library; (2) The use of large number of students to investigate and prepare for numerous trials in addition to preparation of briefs and motions; (3) The prestige of being a part of the law school; (4) Ready access to an experienced trial lawyer in the clinical professor; and (5) The agency is removed from subtle political pressures which are present when it is located in or near the courthouse.

If a law school is going to develop an in-house program, it will have to be prepared to assume responsibility for providing a full-time office for students and their clients, together with an adequate secretarial staff.

Financial considerations occasionally force law schools to develop farm-out programs, that is, the students are totally turned over to outside agencies. The benefits to the law school from this type of program are that it costs a school very little to run and there are few administrative worries. During the past two years there have been evaluations of several farm-out clinical programs throughout the United States. From the results of the evaluations, it is evident that despite the good intentions of both the law schools and the outside agencies to whom the students have been farmed, most programs function with erratic supervision, substantial student confusion and dismay over their role, and an obvious lack of educational goals. Such agencies have neither the time nor the teaching talent to develop a strong clinical program. Most outside agencies use and abuse students rather than educate them.

Quality supervision of a student program is extremely important to its success. Experience has led us to conclude that students cannot perform adequately without a carefully structured, carefully supervised program. Students do not have an "ear" for evidentiary objections and can hardly be expected to develop one in their brief exposure to the clinical program. Students have had little more than a brief theoretical grounding in trial tactics when they come to the clinical program. They are often unprepared for the unexpected. Prosecutors will often seize on the weaknesses of an inexperienced defender or unsupervised law student. A student can never be left to handle a trial or put in a plea of any kind without first confering at length with his experienced supervisor. Students should also be evaluated at every stage of their work in the program. This means that evaluations are made on their pre-trial preparation (including interviewing), the trial work and post-trial work. No aspect of a student's efforts should be overlooked.

Although the student programs entail a great deal of work and supervision on the part of the law schools in order to remain effective, it is obvious that many benefits derive from the use of the students. In Hennepin County, not only have student-defenders improved the quality of representation for indigents, but they are graduating to become better trial lawyers with a lasting awareness of the problems in the lower courts. They are more aware of the quality of the Judiciary and have actively campaigned to replace judges they feel are not adequately serving the people. They have demonstrated to poor and minority defendants that the system can provide not only adequate but excellent representation for them as well as for the wealthy.

The law school curriculum has been altered to meet the needs of students involved in clinical work. If the law and the courts are to continue to respond to the changing society, then students should be consistently exposed to that society in which they will eventually work. This arrangement has worked to the advantage of all.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Vol. V, No. 8, March 1973

Introduction

CLEPR has invited legal educators, members of the bar, judges and others who are concerned with improvements in legal education to attend a National Conference in June of this year. The theme of the Conference will be: Legal Education in a Service Setting - CLEPR and Clinical Education 1968-1973. The Conference will provide an opportunity to review developments in clinical legal education during the first five years of CLEPR's operation, as well as to discuss and explore future directions.

The Conference will focus on seven discussion topics. Articles will be prepared on each of the seven topics and distributed in advance to participants. Each topic will be introduced by the author of the article and then the author will act as a moderator for a discussion first by commentators and then by the participants. A planning session for the Conference was held on November 10, 1972 at the offices of the Bar Association of the City of New York. Almost all of the panelists were in attendance.

William Pincus, President of CLEPR, welcomed the participants and indicated that there were two objectives for the planning session: the first was for the authors, commentators, and reporters to get to know one another, and the second was to isolate the concerns, controversial and non-controversial alike, that will and should come up at the National Conference. At the planning session, each group of panel members roughed out their discussion topic and everyone present participated in a brainstorming session to provide input and suggestions.

REPORT ON PLANNING SESSION FOR CLEPR NATIONAL CONFERENCE [1]

TOPIC: EDUCATION V. SERVICE OR EDUCATION AND SERVICE
Panelists: Dean Dorothy Nelson, Professor David Binder, Professor Lester Brickman

William Pincus introduced the topic by stating that some people think there is a built-in conflict in clinical legal education between the education and service functions. Is the provision of client service and the education of law students antithetical? Mr. Pincus

(1) This report was prepared by Professor Dominick Vetri of the University of Oregon Law School

asserted that the functions are complementary although they may be in tension at times. He felt that there was positive merit in having tension between the two functions; without tension the context would be sterile.

Comments of Dean Nelson

Top Priority for Educational Function. Dean Nelson agreed that service and education are complementary in clinical work. Service is a necessary component of clinical work, but the education function must be given top priority. Clinical programs must have a substantial intellectual content in order to warrant their existence. The students should participate in an intensive seminar as an integral part of their field work experience. This assures that the students gain an appropriate perspective on their experience.

Caseload Restrictions: Volume and Variety. Law schools should not develop their own legal service operations (e.g., law school legal aid clinic) under law school control. They should rely on service agencies within the community and assign students to handle cases developed within those outside agencies. Reliance on outside agencies allows the clinical program more freedom to pursue its educational goals, for example, in selecting the cases the students will handle and in eliminating the cases the program does not want. The selection process assures that each student is exposed to a variety of different legal problems. An in-house clinic could mean that at times the program would be required to handle cases for service reasons at the expense of educational objectives. This violates the first priority rule. Moreover, law schools with in-house clinics may find themselves directly involved in political controversies because of certain cases arising out of the programs. This is unfortunate because in such situations community support can be jeopardized.

What Do We Mean by Service? Ordinarily we think of service in terms of clients but the concept should be considered in a broader sense. Clinical programs can and do provide service to judges and lawyers as well as clients.

Comments of Professor Brickman

Mismanagement of Service and Education Functions: The education and service functions in clinical programs are complementary. Essentially, the program personnel must establish priorities for the functions and there is a potential for the mismanagement of the priorities. We must remember that clinical legal programs developed contemporaneously with the rise in student activism, the demands for relevant education, and also with the rise in publicly funded legal services. Now that student activism and publicly funded legal services are both receding, the question is whether clinical programs will also recede. Clinical legal education can recede if inappropriate types of programs are given major emphasis.

Law reform emphasis programs should not be the primary vehicles for clinical legal education. If a program accentuates law reform it is of necessity inserted in controversy; supervisory time is decreased as a result, and the students get caught up in the controversy. Another shortcoming is that such programs tend to attract the activist students rather than a cross-section of the student body.

Comments of Professor Binder

Program Objectives Are Determinative. There are a multitude of possible objectives in any clinical program and it is difficult to achieve them all. It is necessary, therefore,

to explore and decide upon your primary objectives. Once that is done, the service v. education dilemma becomes more manageable. Professor Binder said that in his program his primary goals are: (1) skills training; (2) law reform and (3) an understanding of society's institutions. If skills training is your principal objective then you must restrict the volume of cases your students are handling. With the law reform and institution understanding objectives, caseload may or may not be a problem.

Group Comments

Judicial Attitudes on Service and Education: Some judges believe that law students and their supervisors are more intent on raising issues than providing good legal service to their clients. That concept of clinical programs by some judges must be confronted and dealt with at the Conference. (Note that such judges may consider the issues inappropriate because they take more court time. The clinical supervisor on the other hand may consider litigation of those issues as critical from the educational perspective as well as important to the client. Where is the line to be drawn? Do we ever litigate issues solely for educational reasons without reasonable advantage for the client?)

Law Schools Must Teach Students to Cope with Controversy: If a law school decides not to get involved in controversial cases, either on a case by case basis or in the manner it structures its clinical programs, it communicates that value system to its students. This teaches the students to avoid controversy. We should teach students "to look after the public interest" by involving ourselves and the students in controversial cases.

Should Clinical Programs Provide a Higher Standard of Representation than the Bar Generally? What are our clinical program students learning? Is the practice of law being advanced or merely continued? For example, in many criminal courts the judges are insistent that the docket be moved along. Should the clinical programs facilitate the movement of the docket - provide service to the courts and the community - or should they represent their clients in the full manner that the Code of Professional Responsibility requires - provide service to their clients? Clinical programs can be put in jeopardy by making the wrong choice. Should clinical programs make a qualitative contribution to the practice of law by developing a higher standard of representation - a model of law practice - or should they merely make a quantitative contribution by handling lots of cases? (Note that this poses a conflict between concepts of service.)

Legal Services Delivery System Analysis: Is it advisable for a clinical professor to explore with students the particular institutional framework for providing legal services within which the students are working, e.g., a legal aid office, a prosecutor's office, an environmental protection agency? Might not such exploration create tension between the institution representatives and clinical program personnel? How do you explore such matters and achieve the educational objective without jeopardizing the program?

TOPIC: TEACHING THE TEACHERS

Panelists: Professors Addison Bowman, Martin Levine, Robert Dawson, David Barnhizer, and Kenneth Pye

Comments of Professor Levine

Lack of Clinical Teacher Education Programs. The standard of teaching generally adhered to in the law teaching profession is inadequate. Almost all law teachers engage

in role modeling, i.e., they copy the teaching techniques of their law school teachers. The AALS Law Teachers Clinic is an important first step in attempting to train law school teachers to be competent teachers.

Clinical professors learn by "trial and error and error and error." Some internal feedback on the teaching is possible from the students but generally there are no fellow colleagues working closely enough with you in the program to discuss operations. There typically is lots of external evaluation from traditional law teachers in the way of constant scrutiny, advice, suggestions and attacks.

Learning From Informal Discussions of Clinicians at Conferences. The current most effective learning opportunity for clinicians comes about through the meetings of clinical teachers that take place from time to time. Informal discussions among clinicians is extremely helpful; we exchange our feelings, problems, and hints of solutions. This, for example, may be the single most important benefit of the National Conference.

Comments of Professor Dawson

Learning by Practicing Law. Professor Dawson is on leave from his school this year and is working with the District of Columbia Public Defenders office. He had previously taught law for eight years but had no law practice experience. Professor Dawson indicated that he would draw upon his experience in the Public Defenders office to create a program to teach criminal law in a clinical setting. He believes, however, that there is a need for formal programs to train clinical law teachers. Learning by doing is not sufficient; you learn about the practice of law not how to teach the practice of law.

Comments of Professor Pye

The Clinicians. What kinds of people do we want as clinical teachers? Should clinical teachers have had practice experience before or after coming into law teaching? Clearly, they should have had the experience before doing clinical teaching. The clinicians must be the intellectual equals of the rest of the faculty.

The Relation of Clinical Programs to the Curriculum Generally. Each clinician should explore the following kinds of concerns:

1. Where does clinical work fit into the curriculum?
2. How are the programs to be financed?
3. Since clinical education will take place well beyond law school, what portion of the full time span should occur in law school?
4. Are the skills that are developed by the students transferrable from the immediate legal representation context to others?
5. What auxiliary sources of help are available to the clinicians?
6. What methods of evaluation should be used for assessing the clinical program?
7. How are general concepts of clinical education to be modified and adapted to the particular institution?

Comments of Professor Bowman

A Clinical Teacher Program. The Prettyman Program at Georgetown was intended to

provide clinical training at the graduate level. It also developed a number of clinical teachers in the same process. The Program will be modified specifically to train clinicians; graduate students will become the supervisors for third year law students.

Field work supervisors should be hired with an eye to their development as clinicians. The clinicians should attend to the training of the supervisors by involving them in the seminars.

Comments of Professor Barnhizer

The Harvard Clinical Teacher Training Program. Professor Barnhizer was trained as a clinician in Professor Gary Bellow's program at Harvard. Professor Barnhizer explained Bellow's program. Essentially it is divided into two parts: (1) operating a clinical program by supervising law students in their field work and teaching a clinical program classroom component and (2) seminar sessions on educational methods with Gary Bellow. The educational methods seminar focuses on the reasons, purposes, techniques and methods of clinical training. The program is designed to provide input on psychological principles and learning theories which can help the clinician develop the best methodology. The clinician trainees at Harvard develop a teaching plan for each classroom session with their students; they follow the plan, and then they discuss and evaluate the results with Bellow. The Harvard program provides an "approach" to clinical teaching and a basis for evaluating the teaching.

Group Comments.

1. Clinicians should take far more advantage of continuing legal education materials.
2. There is a vast difference between supervising field work and the teaching of law practice skills.
3. We must be concerned with the values and objectives of the teachers who are training clinicians. What are our selection criteria in hiring clinicians? Are they appropriate?
4. The teaching methodology analysis that many clinicians are undertaking is contagious and will be picked up by the traditionalists.
5. Should the clinical teachers continue to practice law?
6. How do you teach students to interview, cross examine a witness, develop a case strategy? What methodology is used to train students in these skills?

TOPIC: INCLUDING CLINICAL EDUCATION IN THE LAW SCHOOL BUDGET
Panelists: Assistant Dean Peter Swords and Professor Gordon Gee

Peter Swords, formerly on the CLEPR staff and now Assistant Dean at Columbia, and Professor Gordon Gee have been engaged in a study of the financing of law schools. The principal focus of the study has been on the methods of financing legal education in the future. They have taken an intensive look at the income and costs of a handful of schools over a 15 year period. They have determined what the increases in cost have been and tried to ascertain the causes of the increases. (The largest element of increasing costs has been faculty salaries.)

Dean Swords will prepare an article for the National Conference on the financing of clinical legal education. It will analyze the costs and the prospects for finding the necessary money in the future.

Professor Gee indicated that law schools should develop a uniform system of reporting income and expenses so that schools can compare costs.

TOPIC: LIVING THE CODE OF PROFESSIONAL RESPONSIBILITY: CASE AND THEORY

Panelists: Professors Andrew Watson, Marvin Kayne, David Chambers, Charles Miller, Howard Sacks, and Dominick Vetri

Comments of Professor Watson

Interpreting Experience and Teaching Human Relations Skills. Professor Watson introduced the topic by discussing professional responsibility in its broadest sense. Clinical education provides lawyering experience and that is useful, but it is only half of the process. The experience must be interpreted if clinical education is to achieve its full potential.

Clinical experience subjects the students to lawyer role stresses and the students must learn how to manage those stresses. Students should "sweat blood under surveillance and have their blood-letting interpreted."

Lawyers need to know how to process human data. How one feels about human data affects the information gathered. Law schools have not taught skills in dealing with people so most lawyers have only intuitively learned skills. Data is now available from the social sciences that will help legal educators to train law students in the skills they need to deal with people, e.g., interviewing and negotiating. Today's clinical programs, in general, do not do an adequate job of training students in interviewing and negotiating skills.

If we fail to build these matters into our program, clinical education may not survive.

Comments of Panelists

Professor Kayne indicated that a lawyer's performance in human relations should be discussed. Clinicians should be concerned, for example, with how lawyers interact with secretaries and how lawyers deal with the hostility of clients.

Ethical Sensitivity Skills Training. Professor Sacks thought that the panel should address itself to how to teach students to come with ethical problems that arise in the cases they handle. He suggested that one way of developing class sessions on ethical problems would be to take ten problems and analyze how they were resolved. The analysis would provide insights into the process of developing a sensitivity in dealing with ethical problems.

Professor Sacks supplemented his remarks with the following list of considerations:

1. What types of professional responsibility problems are best dealt with in a clinical setting? Those dealing with responsibilities to client and tribunal? Lawyers' role in law revision and community service? Other?

2. Are there any professional responsibility problems which are especially common to, or especially well-suited for, treatment in a clinic?
3. To what extent is professional responsibility training in the clinic integrated with similar training in Legal Profession courses or the pervasive approach to professional responsibility training?
4. What techniques have been used for professional responsibility training in the clinic? Didactic? Discussions with students? Student research? Other?
5. What teaching materials are used -- e.g., The Code of Professional Responsibility?
6. Are problems encountered by individual students in the clinic brought to the attention of all the students in the clinic? If so, how?
7. How successful has the clinical professional responsibility training been?
8. What is the basis for your judgment as to degree of success?
9. What lessons have you learned about professional responsibility training in the clinical context which might be helpful to others?
10. What unsolved problems still bother you?
11. If clinical training in professional responsibility is better than academic training, or at least adds something to academic training, what accounts for its success?
12. It might be desirable for the author of a paper to use a few paragraphs or pages to describe in considerable detail exactly what he or others have been doing in clinical training in professional responsibility and why the particular plan for such training was chosen.

Professor Miller pointed out that there were innumerable opportunities to discuss professional responsibility issues in clinical work.

Professor Chambers noted that few clinicians received much training in resolving ethics problems. One critical question that the panel should discuss is whether the clinician should take over a case if the student is not doing as good a job as the clinician could do.

Professor Vetri raised several issues for consideration: (1) Should clinical teachers receive psychology training? (2) Ethical sensitivity skills training raises two basic teaching problems: (a) How do you methodologically teach ethical sensitivity skills? and (b) When should ethical issues arising in current cases be discussed in the classroom sessions? Evaluating the decisions made in a current case concerning an ethical problem can create tension among the field supervisor, the intern and the clinical teacher. Abstract discussions of ethical issues are relatively easy to engage in, but ethics decisions in on-going cases go to the heart of one's value system and people do not like to have their value systems challenged. Analyzing the decision-making process in such matters without the criticism creating animosity is a difficult problem.

William Pincus suggested that the panel focus on specific cases raising ethical problems of all types. He thought that clinicians should determine whether students gain any greater sensitivity to ethical issues by being trained in clinical programs.

TOPIC: DIRECTING AND MANAGING LEGAL EDUCATION IN A SERVICE SETTING

Panelists: Professors Robert Oliphant, Annamay Sheppard, Gary Palm and Harry Subin

Comments of Professor Oliphant

Professor Oliphant said that his article for the National Conference would explore in detail five models of clinical education. He will analyze the pros and cons of each model. The five models are: (1) the total in-house clinical program where there is no agency affiliation and the law school assumes all responsibility; (2) the total farm-out clinical program where the law school assigns its students to independent agencies and supervision is provided by the agencies; (3) a modified farm-out or agency program where the law school assigns its clinicians to an agency to supervise students; (4) a modified in-house program where an agency operates out of the law school and the law school assumes primary control over the agency; and (5) the situation where a traditionalist professor and his practitioner friend work on cases.

Professor Oliphant listed several additional issues that need consideration. Who are the clinical teachers? Where do we find them? Should we use graduate students or law students as teachers? How do we integrate traditionalists into our clinical work? How many cases should each student handle? Should the cases be selected? How do you evaluate student work?

Comments of Panelists

Professor Palm indicated that the needs and resources for each setting require thought and analysis. We should discuss the training of supervisors and how we can evaluate their work.

Professor Sheppard suggested that each program must determine its goals and how they mesh. In her program, Professor Sheppard has established the following principles:

1. Every case is a teaching tool.
2. Every client is entitled to first-rate service.
3. The clinical program owes a responsibility to the community.

Sometimes these principles end up in conflict and your job is to attempt to make "harmony out of conflicting goals."

Professor Subin stated we should first ask what we want to accomplish through our clinical program. Pedagogical goals must be defined and are more important than service models.

TOPIC: DELIVERY OF LEGAL SERVICES AND OTHER IMPROVEMENTS IN THE MACHINERY OF JUSTICE

Panelists: Judge Harold Leventhal,Professors Junius Allison, Morton Cohen, Donald Stern, Roger Wolf, and Robert Bartels

Comments of Judge Leventhal

Trial Judge Cooperation with Clinical Program. Judge Leventhal discussed a variety of matters. First, how do you obtain the cooperation of trial judges? Trial judges do not like to have their jobs made more complicated. This leads to a first principle of judicial

administration for appellate judges - you must not make changes which make it uncomfortable for trial judges. Similarly, clinical programs must avoid complicating judicial duties if they are to win the approval of trial judges. Well run clinical programs will persuade judges of the values of clinical education. Using a professor who is a seasoned practitioner is helpful in gaining judicial approval.

Judge Leventhal thought that clinical programs that make "federal cases" out of minor matters threaten the system and jeopardize the continuation of the program. "You have to build restraint into the system." This is analogous to the situation where you don't make all of the objections to the admissibility of evidence available to you because of the possible adverse jury reaction. "Even a paying client's lawyer has to take the judge's attitude into consideration." You must decide what the critical issues are in your case and what are your "fencing" points.

The Value of Experiential Learning. Litigation skills cannot be learned solely through simulated learning programs. The tension that arises when you are on your feet in a courtroom is not easily duplicated in simulated sessions.

Comments of the Panelists

Professor Allison thought that clinical programs must concern themselves with how the machinery of justice is working.

Professor Cohen said that clinical programs generally get into the areas of law abandoned by the legal profession - e.g., legal aid, prisoner representation and low level misdemeanor representation. We have "unpopular representatives representing unpopular clients in unpopular cases."

At times, clinical programs can educate the members of the bar. Professor Cohen cited the following example from his program. The program requested jury trials in minor misdeamor cases because the judges were prejudiced against criminal defendants. In order to avoid the jury trials, the judges adjourned the cases and if the defendants stayed out of trouble, they dismissed the cases. The attorneys in the community soon learned of the practice and started demanding jury trials for paying clients.

Professor Stern raised several central questions that need consideration. What do we do with cases that go on for more than a semester? What about clients that do not want to be represented by a student? What are the skills that a lawyer needs? What are the criteria for good interviewing, negotiating, litigating and appellate arguing?

Professor Stern noted that there is a likelihood that clinical educators and group legal services personnel will get together and work on problems such as establishing qualitative standards of law practice.

Professor Bartels thought we should be concerned with whether our programs have favorably improved the machinery of justice. For example, clinical programs in prosecution can have a favorable impact on the ethics of prosecutors.

Professor Wolf suggested that we try to evaluate the effect that our programs have upon the law and the bar.

PARTICIPANTS

Professor Junius L. Allison, Vanderbilt University
Professor David R. Barnhizer, Cleveland State University
Professor Robert D. Bartels, University of Iowa
Professor David A. Binder, University of California, Los Angeles
Professor Addison M. Bowman, Georgetown University
Professor Lester Brickman, University of Toledo
Professor David L. Chambers, University of Michigan
Professor Morton P. Cohen, Wayne State University
Professor Robert Dawson, Washington, D. C.
Professor Gordon Gee, Columbia University
Professor Marvin S. Kayne, University of California, Hastings
Judge Harold Leventhal, Washington, D. C.
Professor Martin Levine, University of Southern California
Professor Charles H. Miller, University of Tennessee
Dean Dorothy W. Nelson, University of Southern California
Professor Robert E. Oliphant, University of Minnesota
Professor Gary H. Palm, University of Chicago
Professor Kenneth Pye, Duke University
Professor Howard R. Sacks, University of Connecticut
Professor Annamay T. Sheppard, Rutgers. The State University, Newark
Professor Donald K. Stern, Boston College
Professor Harry L. Subin, New York University
Assistant Dean Peter deL. Swords, Columbia University
Professor Dominick Vetri, University of Oregon
Professor Andrew S. Watson, University of Michigan
Professor Roger C. Wolf, Catholic University of America

CLEPR STAFF
William Pincus, President
Elizabeth Fisher, Program Officer
Victor J. Rubino, Program Officer

(3) Arrange for a supervisory lawyer in the clinical office at the outset. I would also recommend that the supervisory lawyer be given faculty status even if no more than lecturer in law.

31. It is difficult to judge what is most innovative in your own program. However, I do regard several aspects of the clinical program as being unique and successful. The outstanding feature of the clinical program was its relationship with CCLSA. This relationship, whereby clinical students constituted the staff of the only legal service program in the county, provided a rather special clinical setting. In this setting, the students experienced the responsibility for a client's case and the responsibility of an organization for the poor of the community. That this kind of experience could be imparted to the students, and at the same time, quality legal services be provided, is due largely to the method of supervision. Under such supervision, the students were made to feel responsible for their clients and came to rely upon themselves for resolving difficult issues. Such an accomplishment is the special contribution of the clinical method of education at the Dickinson School of Law.

32. As a result of their experience in the clinical program, the law students came to appreciate the nature of the legal process and their very special role as a member of the legal profession. They realized that the lawyer carries a very heavy responsibility for his clients, and they felt a sense of pride in being able to discharge this responsibility in a professional manner. They now have the confidence that they can discharge this responsibility upon graduation from law school.

The program's impact on the law school's student body is more difficult to ascertain. However, the number of students electing the Legal Clinic course for next year has increased, and the Student Bar Association has supported the decision to add a Criminal Clinic. Furthermore, the "Dickinson Law Review" published two articles whose genesis came from two law reform cases handled by CCLSA.

Again, it is hard to judge the impact of the project on the curriculum. Courses in Advocacy, Welfare Law, and Law Poverty were added with the clinical program in 1970. A course in Civil Rights and Liberties was added in 1971-72. Perhaps the best measure of its impact on the curriculum is the increase of credit hours awarded to the clinical program and the resolution approving the addition of a Criminal Clinic in 1972-73.

COUNCIL ON LEGAL EDUCATION
FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume V, No. 9, April 1973

Introduction

Every CLEPR grantee is required to furnish Interim and Annual Reports according to a uniform report outline provided by CLEPR. There is much in these reports which analyzes the fundamentals of legal education with emphasis on clinical methods. What the reports say about teaching and learning is of general applicability and interest. By way of illustration we are reprinting one such report which recently came to us.

SECOND ANNUAL PROJECT REPORT
Prepared by Professor Leo M. Romero

1. Dickinson School of Law

2. The total cost of the project as proposed and implemented was $40,000 for the two year period, September 1, 1970 to August 31, 1972. Of this total the Dickinson School of Law was to provide $20,000 ($6,000 in the first year and $14,000 in the second year); CLEPR was to provide $20,000 ($14,000 in the first year and $6,000 in the second year).

3. a. Purposes

The purposes of the clinical education program are: (1) to enable the students involved to acquire knowledge and skills incidental to rendering the highest quality legal service and (2) to provide quality legal service for indigent clients.

b. 1971-72 Program Structure

(1) Fieldwork assignments for the Legal Clinic courses were limited to the Cumberland County Legal Service Association, Inc.
(2) The scope of the Legal Clinic was limited to legal aid.
(3) Maximum enrollment in each of the Legal Clinic courses was established at twenty-five.
(4) Credit - 6 hours for two semesters of participation.

c. Content of Program

The primary vehicle for supervision was the staff conference. The class of twenty was divided into four groups of five students. The clinical professor and directing attorney met with each group each week for a conference. Every new case was discussed and strategy developed. In addition, developments in other pending cases were brought to the attention of the conference for discussion and analysis.

Further supervision was provided for court appearances. In the staff conference preceding a court appearance, the student who would appear in court presented any pleadings, written questions for direct and cross-examination, etc. In addition, both the clinical professor and supervising attorney observed the student in court, and, afterward, critiqued his performance.

The classroom component consisted of two-hour weekly seminars. The focus of the classroom component was on the practical skills involved in legal aid work. Other seminar meetings were in essence staff meetings where office procedure was discussed or particularly troublesome and recurring legal problems were discussed. Later seminars were devoted to the study of systems for the delivery of legal services, both to indigents and to the public in general.

4. The relationship between CCLSA and the Legal Clinic course provided a meaningful experience for every student. The CCLSA staffing pattern is unique in that it depends on the students enrolled in the clinical program for its staff. The full-time attorney directs the office and assists in the supervision of the clinical students. But it was the students (working under the supervision of the clinical professor and the directing attorney) who bore the primary responsibility for CCLSA clients.

5. CLEPR Grant No. 70-21 to the Dickinson School of Law runs from September 1, 1970, to August 31, 1972. This Second Annual Project Report covers the third and fourth semesters of the four semesters covered by the CLEPR Grant.

6. The director of the clinical program during the period of the CLEPR Grant was Leo M. Romero, Assistant Professor of Law in charge of student clinical affairs. Mr. Romero can be reached at the University of New Mexico School of Law. Mr. Romero will be succeeded as clinical professor by F. Charles Petrillo who will assume his duties on September 1, 1972.

   Mr. Romero is a graduate of Oberlin College and the Washington University School of Law in St. Louis. He spent two years as an E. Barrett Prettyman Fellow at the Georgetown University Law Center's Graduate Internship in Criminal Law and Litigation, from which he earned an LL. M.

7. The project director, Mr. Romero, had full faculty status and was eligible for tenure. Mr. Romero's faculty status was assistant professor of law.

8. The following list represents a breakdown of the various responsibilities of the project director and attempts to estimate the percentage of his time allocated to each responsibility:

Administration of the Project		60%
Seminars	10%	
Staff Conferences and Supervision of Students	35%	
Certifications (for Student Practice Rule)	5%	
Administrative Responsibilities	10%	

Representation of Clients (in connection with the program)	5%
Other work for the office (CCLSA)	5%
Internship Program	5%
Other work for the law school	25%

9. The director of the Cumberland County Legal Service Association, Inc., Peter M. Wendt, Esquire, was the only other person involved in the supervision of students. He spent approximately 60% of his time supervising the students, 25% administering the office, and 15% representing clients.

10. The project director received full teaching credit for the Legal Clinic courses and one additional course each semester. The director of the Cumberland County Legal Service Association, Inc., does not have faculty status.

11. Twenty students, including thirteen seniors and seven middlers, were in the second year of the program and received a total of six academic credits, three for each semester.

12. Enrollment in the clinical program is not required for graduation.

13. There are no absolute prerequisites for participation in the clinical program. However, certain criteria have been established for selecting students when enrollment exceeds the maximum allowable in the program. The criteria are:

    (a) Seniors have priority over middlers.
    (b) Successful completion of Evidence I and II.
    (c) Prior participation in the Dickinson School of Law Legal Aid Society or prior experience in a public service program.
    (d) Grade average in the top three-quarters (3/4) of the class in either the junior or middler years.

    The above criteria were the subject of controversy in May of 1972 when course elections for the fall semester of 1973 were made. More than fifty students elected the Legal Clinic course for 1972-73. A number of students believed that the Legal Clinic course should be treated like any other course in the law school where selections are made by lot. A proposal to abolish the preference for students who had participated in the Legal Aid Society or had prior experience in a public service program was presented to the Faculty Legal Aid Committee on which two students sit. The Committee, after careful consideration, decided to affirm the above criteria in view of the special relationship between the clinical program and CCLSA. CCLSA depends on law students in the clinical program for its staff, and there is no other legal service agency in the county. Therefore, the clinical program has more than just an educational responsibility; it has a responsibility to the community for quality legal service as well. With this responsibility in mind the Committee decided that there should be some control over the selection of students in the program. The criteria appeared to be reasonably related to the selection of those students who would not fail in their responsibility to CCLSA.

In order to give all students an equal opportunity to satisfy the criteria, the Committee proposed that the above criteria be widely publicized throughout the law school. In addition, the Committee proposed that additional clinical courses be offered in order to provide a clinical education to a larger percentage of the student body.

The last criteria deserves special comment. My experience has indicated that grade average is a very unreliable indicator of performance in a clinical program. One of the serious shortcomings of the typical emphasis on grade average and class rank in law schools is that it denies any sense of accomplishment to the majority of students. Most students have nothing on which to pride themselves. Clinical work offers an opportunity for a student to feel the weight of responsibility for another person's problem, and in the process of resolving the client's problem, to sense his own value in doing his best for his client.

A meaningful clinical experience has another important educational benefit. The case method of instruction is for most students a boring experience. To read cases just because they were assigned is tedious and is generally irrelevant. It is only when cases are read against the background of a problem, for instance a client's problem, that real comprehension of the issues can be achieved. If a law student has never been exposed to real clients and real problems, he has great difficulty in understanding the context in which any assigned case must be viewed. One benefit of clinical experience is that a student becomes familiar with the process through which a case goes by the time an appellate opinion is written, they are better able to recognize the issues dealt with in the opinion and to critically analyze the decision of the court. This was true of my own experience as a law student and then an attorney, and I have observed the same phenomenon in my clinic students.

14. There was no preparatory course offered to or required of students enrolled in the clinical program. Although there was no formal orientation program, guidelines for the legal clinic program were prepared and distributed prior to commencement of the fall semester. These guidelines introduced the students to the Cumberland County Legal Service Association, Inc., the nature of work performed by the office, the office procedures, and the nature of the student's relationship to the office and to the legal clinic program. In addition, the first several evenings of the semester were devoted to office procedure, listing the relevant sourcebooks, outlining the relevant statutory provisions, and drawing attention to significant cases in the area of poverty law.

    Although it would be preferable to have the students prepared in all of the skills before participating in the clinical program, not only is it impossible, but it is antithetical to the clinical model of teaching and learning. Therefore, an orientation program should be brief and should only concentrate on the essentials.

15. The only classroom elements in the clinical program are those specifically part of the Legal Clinic course. These include a two-hour weekly seminar and four two-hour staff conferences each week.

16. Teaching materials were not extensively used in the seminar meetings in line with the purposes of the seminars: (1) teaching practical skills, (2) discussing office

problems, (3) discussing recurring legal problems encountered in the office and strategies for their resolution, and (4) study of the delivery of legal services to indigents and to the public in general.

With regard to the first purpose, simulated exercises were conducted in the seminar meetings. The materials were either selected from my personal files or from the cases handled in the office. For instance, simulated interviews were conducted with a student playing the part of one of his clients and being interviewed by another student unfamiliar with the case. A professional counselor and clinical psychologist appeared before the class and observed and critiqued the simulated interviews. Other skills taught in this manner were negotiation and settlement, direct examination, and cross examination. The primary sourcebook for the latter two skills was Keeton, Trial Tactics and Methods. One interesting experiment was the tape recording and typing of the simulated interviews and examination of witnesses. The written record of the student's performance proved very successful as a teaching and learning technique.

In addition, the Code of Professional Responsibility was assigned, and a short quiz on certain ethical problems likely to be encountered in legal aid work was administered near the outset of the program.

17. The fieldwork activities of the students included the full range of attorney activities in a legal service office. Seniors (eleven were certified under the Pennsylvania Student Practice Rule) represented their clients in court under the supervision of the clinical professor and supervising attorney.

Fieldwork is the most important part of a clinical program. Otherwise, the clinic becomes just another course at the law school. In order for the fieldwork component to accomplish its objective, it is essential that the student deal with real clients. And, to be most effective, the fieldwork component must give the student the responsibility for his own clients and his own cases. The student should feel that he-- not the supervising lawyer or the clinical professor-- is the one finally responsible for his client.

This feeling of responsibility for one's client is at the heart of the legal profession. It motivates the lawyer and it motivates the student who feels its weight. It induces long hours of work, painstaking research, and thorough investigation. It engenders endless questions of the supervising professor and attorney. It gives the student an appreciation of his role in our system of law and in our society, and it gives him an understanding of the legal process.

Fieldwork activities had a second aspect. The organization of CCLSA and the operation of the office were of great interest to the students. As part of their clinical experience, many of the decisions concerning the operation of the office were left to the class as a whole. In essence, the class became a law firm with the clinical professor, supervising attorney, and the law students sharing in many decisions.

The two supervisors were careful not to diminish the students' sense of responsibility for their clients. Decisions were left to the student after the alternative

courses were discussed. If a student's course of action appeared to the supervisors to be inconsistent with the client's best interests, his decision was questioned and the hazards explained. In all such cases, the student adopted a course of action in line with the client's interests. If a student's decision was a matter of judgment on which two reasonable attorneys might disagree, the supervisors made every effort not to interfere with the student's decision. However, the student was asked to explain the considerations he took into account in making his decision. Many decisions are matters of judgment, but it is important that the student know why he makes a certain decision.

Although it is possible that a student's representation of a client in court may be injurious to the client's interest, in no case did we experience the necessity of stepping into a case and relieving the student of his responsibility. With proper preparation and advance supervision, students are able to handle even the most unusual problems that may arise in court. Even more important, it can be educationally damaging to the student to take over for him. It is embarrassing to him in front of his client and in front of the court. Such a course of action also carries important consequences beyond the individual student. The other students in the clinical program would then feel that their responsibility was illusory and that the real responsibility rested with the supervisors. With these considerations in mind, every effort was made to convey to the court that the student was in charge but that he might occasionally consult with one of the supervisors.

Another hazard that confronts the supervisor is the good case with interesting issues. The temptation to take this case from the student must be resisted if the clinical program is to preserve the practice of student responsibility. If the supervisor wants to handle his own cases, he should obtain them in the same manner as do the students.

18. Each student was assigned six hours per week in the CCLSA office. The six-hour requirement insured that the office was properly staffed each hour it was open. It is not an indication of the hours required to perform successfully in the program. The caseload determined the amount of time devoted to fieldwork; it was easily in excess of twice the amount of office time.

The office assignments were made the first week of the fall semester and continued through the examination period, although on a reduced basis. The students were responsible for their cases throughout the semester break, but they were not required to staff the office. The office was staffed on a volunteer basis over this period. Office assignments in the spring semester again carried through the examination period. A hiatus in staff was avoided by the employment of the summer staff effective on the last day of examinations. The 1972 summer staff consisted of the supervisory lawyer and three law students, all of whom were qualified under the student practice rule.

19. The credit for the Legal Clinic Program was not apportioned between the classroom component and the fieldwork component. Three hours of academic credit was awarded for successful participation in the entire program each semester.

20. Since students form the entire working staff of CCLSA, the student practice rule in Pennsylvania (Supreme Court Rule 12-3/4) is an essential part of the clinical program. Eleven seniors were certified to make court appearances under Rule 12-3/4 last year. They made a total of seventy-four appearances in court, includint the Court of Common Pleas and the District Justices.

    If there was any likelihood of a court appearance in those cases assigned to second year students ineligible under the student practice rule, a certified senior was also assigned to the case. The second year student was held ultimately responsible for the case, but the certified senior was held accountable for the court appearance. Since the clinical program functioned as a law firm, no problems were encountered where a senior had to make a court appearance in a case belonging to a second year student.

21. Students enrolled in the clinical program were not permitted any course adjustments, but the increase in credit hours from the previous year did free the students from conflict with the law school schedule to the extent that they were taking fewer courses and hours.

22. Supervision was provided by the clinical professor and by the supervising attorney. The primary vehicle for supervising the students' fieldwork was the weekly staff conference. The twenty students were divided into four groups of five, and each group met in a staff conference with the clinical professor and supervising attorney each week. At the staff conferences each student presented the facts, issues, relief sought, and strategy for resolving the problem for each new case. In addition, the clinical professor frequently requested a report on the status of other open cases, and the students often raised questions about cases on which they were working. Furthermore, the supervising attorney was present in the office on a full-time basis and available for supervision on a day-to-day basis.

    The nature of the supervision provided was consistent with the purpose of making each student feel responsible for his cases. The staff conference was designed to permit each student to wrestle with each case before seeking advice from the clinical professor or supervising attorney. The students were required to analyze each new case, do the necessary research and fact investigation, and develop a plan for resolving the case before the staff conference. At the same time, the students were discouraged from running to the supervising attorney or clinical professor to answer questions that (1) could either be answered by the students, or (2) could await the next staff conference. Only urgent matters would be considered by the supervisors, and all others were either saved for the staff conference or referred back to the student.

    The purpose of this supervisory scheme was to place the burden on the students for thinking through a case. The students were forced to rely upon themselves rather than upon the supervisors for resolving a case. The staff conference served as a point of reference for the student where he could check on the validity of his analysis and his proposed strategy. Used in such a way, the staff conference reinforced

the feeling that the student was responsible for his case.

For the supervisors, the staff conference served two purposes: First, it served as the primary educational device, and second, it served as a means of insuring quality work by the students. The staff conference afforded the supervisors the opportunity to observe the way a student approached a case and analyzed it-- these two skills being the most important skills of a lawyer. After a student presented the facts, issues, and strategy for a case, the clinical professor, supervising lawyer, or the other four students would question the student with regard to any part of his case presentation. For instance, the student would be questioned as to the facts-- was there a written contract or what was the age of the client at the time he signed the agreement? At the beginning of their clinical experience, the student invariably failed to ask critical questions or failed to mention central facts in their case presentations. As they gained more experience, the incidence of incomplete factual presentations was reduced markedly. With regard to the issues and strategy for resolution, the student would be asked if he considered any other theories and why he chose the strategy he did. In addition, he would be questioned about the problems he must face in resolving the case.

The staff conference was not the only place where supervision was provided. All court documents were read and approved by the supervising lawyer, and all court appearances were carefully supervised. At the staff conference preceding a court appearance, the student was required to state his objections and to present an outline of his course of action. For example, he would indicate what witnesses would be called, if any, and the questions he would ask these witnesses. In addition, the supervisors would often observe the student prepare his witnesses and would always observe the student in court. Afterwards, the supervisors critiqued the student's performance.

Whether the supervision was provided in the office, in the courtroom, or in the staff conference, the method was always the same. The student was forced to make the decisions himself and to consider as many alternatives as possible. The supervisors made every effort to remain resource persons and to avoid making the crucial decisions in a case. This effort was for the most part successful. Only by resisting the temptation to make the tactical decisions in a case, can clinical education be successful.

23. Classroom subjects were designed to complement the fieldwork in the legal aid office. The fieldwork was dominant. The classroom component was supportive in the sense that it gave students an opportunity to practice and refine skills that they were using in their fieldwork. It also provided an opportunity to reflect on what they were doing. Hopefully, the seminar sessions enriched the fieldwork experience and gave the students insight into a lawyer's relation to both his client and the public in general.

24. The faculty solidly supported the clinical program. Although no formal evaluation of the clinical program has been made by the faculty, the Curriculum Committee has endorsed the policy of expanding clinical offerings.

25. Faculty interest in the clinical program appears to be growing. The faculty adopted major changes in the program after its first year upon the recommendation of the clinical professor and added a new course, Legal Clinic Seminar, at the end of the second year. In addition, the faculty approved a Criminal Clinic for the 1972-73 year if the details can be arranged.

26. According to Dean Burton R. Laub, the Dickinson School of Law definitely intends to continue the clinical program as a part of the curriculum after the CLEPR funds have been expended. Legal Clinic courses are part of the curriculum for 1972-73, and the faculty has authorized the addition of Criminal Clinic.

27. The clinical program was overwhelmingly successful in its second year. In spite of having a staff composed entirely of law students, CCLSA developed and matured into a legal service program capable of providing quality legal services. Furthermore, the clinical program succeeded in providing a truly valuable educational experience for each of the twenty students enrolled, and permitted each student to mature as a young lawyer.

28. The most outstanding success of the clinical program has to be the growth and maturity of CCLSA with a staff of law students. The clinical program is more than an educational process; it is a law office providing the only legal aid services available in Cumberland County, a county with a population of 158,000. It is a law office that has won the acceptance of the community and financial support from the community in the amount of $7,500. It is a law office that has provided quality legal services and has proved that it is capable of representing the poor in the county. Finally, it is an office in which law students have gained a valuable part of their education. Their experience has encompassed the routine cases, the glamorous law reform cases, the operation of a law office, and the operation of the legal system.

The most serious shortcoming of the clinical program has been its limited availability to the students at the Dickinson School of Law. However, this shortcoming was the basis of the program's success with regard to those students who were enrolled in the program.

29. The most serious problem encountered in making the clinical program successful was funding the CCLSA office. This problem was finally resolved in May of 1971, and CCLSA hired its first full-time attorney in September 1971. With the addition of this supervising attorney, the program had two supervisors to assist the students. The other problem was structural and organizational, and this problem was resolved with the changes in the clinical program after its first year of operation. The basic change was the abandonment of the farm-out aspects of the program and the concentration of the students in the CCLSA office.

The clinical program encountered two other special problems because of the unique relationship between the clinic and CCLSA. The first problem was one of continuity over summers, vacations and examinations. This has been resolved by hiring law students over the summer and by continuing clinical assignments during

examination periods. The office was staffed over other vacations on a voluntary basis with no problems.

The second and more serious problem related to yearly change in staff. At the beginning of each year, CCLSA would be staffed with new law students with no expertise and little, if any, experience. To prevent such a hiatus in experience, the faculty added a new course entitled Legal Clinic Seminar. It is open to a maximum of five seniors who successfully completed Legal Clinic I and II in their second year. It is a two-semester course with one and one-half credits awarded each semester. The five senior law students will each prepare and conduct two seminar classes for the Legal Clinic course on subject matters frequently encountered in the CCLSA office. Such seminar presentations will include the substantive law, procedure, and local practice. Each student will prepare a paper on the subject of his seminar presentation, and the paper will become part of a comprehensive office manual.

The new Legal Clinic Seminar will serve a valuable function in providing a continuous base of experience to both CCLSA and the clinical program. The clinic will now begin each September with a nucleus of experienced students. These experienced seniors can assist the supervisors in acquainting the new students with the office procedure, and they can sit in on the first interviews by the new students. In addition, these students will be qualified to make court appearances under the student practice rule in the first month or two when the new students are fulfilling the requirements for certification. They can also serve as the student attorney for the second year students enrolled in the clinical program. Moreover, they can undertake special projects such as law reform cases.

Five of the twenty-five positions available in the clinical program are reserved for these experienced seniors. Of the remaining twenty positions, fifteen are reserved for seniors. Five are reserved for second year students who then will be eligible for the Legal Clinic Seminar in their senior year.

30. If I were beginning a clinical program at the Dickinson School of Law anew, I would do at the outset what I have done in response to the various problems encountered. Specifically, I would do the following:

(1) Establish an in-house program since in my experience, a farm-out program has serious limitations.

(2) Structure the course so that it carries approximately four to five hours of credit each semester. Again, I would make it a two-semester program since one semester is too short a period in which to make the students feel responsible for their cases. Many cases just cannot be completed within one semester. I would not advise more credit for the clinical program at the Dickinson School of Law as long as there is only one program. If more credit was awarded, fewer students could be accommodated in the program.

COUNCIL ON LEGAL EDUCATION
FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Vol. V, No. 10, May 1973

CHANGES IN CLEPR BOARD MEMBERSHIP

The list of CLEPR Board members below shows the changes recently made under CLEPR's by-laws which limit membership on its Board to two consecutive terms. Six of the eighteen Board members completed their second consecutive term of office at the last CLEPR Board Meeting on March 2, 1973 (single asterisk below). To succeed them six new Board members were elected to three-year terms (double asterisk below).

Chairman of the Board:
Orison S. Marden, Esq.
New York, New York

William H. Avery, Esq.
Chicago, Illinois

David F. Cavers, Esq.
Cambridge, Massachusetts

John M. Ferren, Esq.
Washington, D.C.

William T. Gossett, Esq.*
Detroit, Michigan

The Honorable William H. Hastie**
Philadelphia, Pennsylvania

The Honorable Florence M. Kelley
New York, New York

Maximilian W. Kempner, Esq.
New York, New York

Otis H. King
Dean, Texas Southern University School of Law
Houston, Texas

Edward H. Levi
President, University of Chicago
Chicago, Illinois

A. Leo Levin **
Professor, University of Pennsylvania Law School
Philadelphia, Pennsylvania

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

James M. Nabrit, III, Esq. *
New York, New York

Dorothy W. Nelson **
Dean, University of Southern California Law Center
Los Angeles, California

William Pincus
President, Council on Legal Education for Professional Responsibility, Inc.
New York, New York

John D. Robb, Esq. **
Albuquerque, New Mexico

The Honorable Alvin B. Rubin
New Orleans, Louisiana

Howard R. Sacks
Professor, University of Connecticut School of Law
West Hartford, Connecticut

The Honorable Walter V. Schaefer *
Chicago, Illinois

Bernard G. Segal, Esq. **
Philadelphia, Pennsylvania

Whitney North Seymour, Esq.
New York, New York

The Honorable Joseph T. Sneed *
Washington, D.C.

Samuel D. Thurman *
Dean, University of Utah College of Law
Salt Lake City, Utah

Maynard J. Toll, Esq. *
Los Angeles, California

COUNCIL ON LEGAL EDUCATION
FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume V, No. 11, June 1973

CLEPR INVITES APPLICATIONS

CLEPR solicits preliminary drafts of applications from ABA-approved law schools for aid in connection with new experiments in clinical legal education. These applications should be for funding starting September 1974, and must be received by CLEPR no later than October 15, 1973. Final applications will be requested at a later date by letter sent to individual schools.

Guidelines

The kinds of clinical experiments which will receive preference in consideration by CLEPR are illustrated by the following examples:

1. Additional experiments within an established clinic to broaden the clientele, kinds of cases, and categories of teaching and supervisory personnel by including one or more of the following:

   a. Clientele: members of a pre-paid or group legal services program or others not selected on the basis of indigency.

   b. Cases: public interest law for clinical teaching in administrative law; cases brought into the clinic by other members of the faculty; cases brought into the clinic by affiliated practitioner-teachers.

   c. Teaching and supervision: post-graduate clinical interns selected from the law school's own graduates or from other schools (to assist in supervision of pre-J. D. clinical students and to improve their own skills for practice and teaching); non-clinical faculty members who bring cases to the clinic; and affiliated practitioner-teachers who do likewise.

2. Experiments in restructuring roles and systems involved in delivery of legal services or in settling disputes, e.g., clinical training of paraprofessionals or legal assistants in the law school clinic.

3. Experiments in integrating into the first and second years of the law school's curric-

ulum aspects of clinical work and pre-clinical preparation, e.g., investigation, research, and writing on cases in the clinic for first year law students; simulated and real experiences in interviewing, counseling and negotiation involving cases in the clinic for second year law students. Preference will be given to proposals which demonstrate explicit attention to a sequence of learning and experience leading to responsibility for a client as a student lawyer.

Applications should include plans for use of clinic cases in teaching professional responsibility involving the lawyer, his client, and others.

CLEPR will not grant funds to any law school for support of programs already in operation. Preference will be given to law schools which have demonstrated their capacity in the clinical field.

Programs presented to CLEPR must be within budget limits as follows: CLEPR does not expect to exceed its average of grants in the past which is $35,000 for two years; applications must be based on projected actual cash outlay of new money by the law school as well as by CLEPR; no overhead will be allowed. Unrealistically high budgets will necessarily hamper consideration of proposals. Support from CLEPR will be on a declining basis, generally for a period not to exceed two years. In the first year the applicant law school will be expected to provide at least one-third of the total budget requested for the experiment. In the second year the law school's share of the budget should be approximately three-fourths.

Teaching positions should be in terms of full-time involvement so far as possible. Fractional time allocations will not be given as favorable consideration, unless the fractional time is, per se, part of a special experiment as with the use of practitioner-teachers mentioned above.

CLEPR will take into account the amount of credit given for participation in the clinical experiment submitted for funding.

Preference will be given to programs in which the law school exercises enough control over the service setting to be responsible for the educational experience. This situation is generally found in law school-operated clinics or teaching law offices, or where the law school effectively controls all or part of an outside office's operation for educational purposes. "Farm-outs" with little or no law school supervision will not receive consideration.

Form of Application

Preliminary drafts of application should conform, so far as possible, to the format set forth in CLEPR Newsletter, Vol. II, No. 7, February 1970. (See pages 82 et seq. of the compilation of CLEPR Newsletters.) Necessary modifications should be made in order to furnish information directly pertinent to the project being submitted. Applications should be no more than 10 double-spaced pages in length. A budget must be included. No application will be considered unless it is submitted by the Dean of the law school. Twenty-five copies of each application must be sent to CLEPR.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 1, July 1973

CONTENTS

Bibliography, Clinical Legal Education, pages 1-16
CLEPR Publications Currently Available, page 16

Introduction

In 1971 CLEPR awarded a grant to the University of California, Los Angeles for a study of the library needs of clinical programs in law schools.

The project was under the overall supervision and review of Professor David A. Binder, director of the UCLA clinical program, and Frederick E. Smith, UCLA Law Librarian. Professor George S. Grossman, Law Librarian at the University of Utah, conducted the research and prepared a written report which contained recommendations on the law library needs of clinical programs. He also prepared a bibliography of writings about clinical legal education as part of his study. We are printing the bibliography below in advance of the publication of the report because of the many requests we have received for a bibliography on clinical legal education.

BIBLIOGRAPHY OF WRITINGS ABOUT CLINICAL LEGAL EDUCATION

Early Clinical Efforts
The Debate of the 1950's
The Interim
The Current Clinical Movement
Individual Programs

Early Clinical Efforts

Bradway [John S. Bradway published extensively on clinical teaching and prepared materials for the Duke Law School clinic in the 1930's and 1940's. For a bibliography, see, Djonovich, Legal Education: A Selective Bibliography 72-74 (1970).]

Crampton, A Plan for Law Student Participation in Real Cases, 30 J. Am. Jud. Soc. 173 (1947).

Darby, A Criticism of Our Law Schools, 12 Ill. L. Rev. 342 (1917).

David, The Clinical Lawyer-School: The Clinic, 83 U. Pa. L. Rev. 1 (1934).

Elliot, Legal Aid Clinic Versus Legal Aid Society, 8 Am. Sch. L. Rev. 410 (1936).

Frank, Both Ends Against the Middle, 100 U.Pa. L. Rev. 907 (1951).

Frank, Courts on Trial (1949).

Frank, A Plea for Lawyer Schools, 56 Yale L. J. 1303 (1947).

Frank, What Constitutes a Good Legal Education ? 19 A.B.A.J. 723 (1933).

Frank, Why Not a Clinical Lawyer-School? 81 U. Pa. L. Rev. 907 (1933).

Fuchs, Educational Value of a Legal Clinic - Some Doubts and Queries, 9 Am. L. Sch. Rev. 857 (1937).

Gardner, Why Not a Clinical Lawyer-School --- Some Reflections, 82 U. Pa. L. Rev. 785 (1934).

Harris, Educational Value of a Legal Aid Clinic, 3 Ohio St. L. J. 300 (1937); 8 Am. L. Sch. Rev. 860 (1937).

Henderson, Wherein Do the Law Schools Fail to Prepare a Law Student for Practice, 9 Am. L. Sch. Rev. 1178 (1941).

Hepburn, Law Schools and Legal Clinics, 6 Am. L. Sch. Rev. 245 (1928).

Johnson, A Lay View of Legal Education, 43 Colum. L. Rev. 462 (1943).

Johnstone, Legal Aid Clinic Reports (Survey of the Legal Profession, 1951).

Joiner, Motion Pictures and Practice Litigation: Michigan Law School Introduces New Techniques, 35 A.B.A.J. 185 (1949).

Kocourek, A Gap in Law School Training and a Way to Bridge it, 5 Am. L. Sch. Rev. 334 (1924).

Llewellyn, The Current Crisis in Legal Education, 1 J. Legal Ed. 211 (1948).

Llewellyn, On What is Wrong With So-Called Legal Education, 35 Colum. L. Rev. 651 (1935).

Llewellyn, Place of Skills in Legal Education, 45 Colum. L. Rev. 345 (1945).

McCaskill, Methods of Teaching Practice, 2 Cornell L. Q. 299 (1917).

McClain, Some Practical Problems to be Considered in Undertaking Clinical Work in Law Schools Located in Small Communities, 7 Am. L. Sch. Rev. 147 (1934).

Maguire, Legal Aid Clinics: A Definitional Comment, 7 Am. L. Sch. Rev. 1151 (1934)

Martin, Practical Legal Education, 3 Am. L. Sch. Rev. 237 (1913).

Patterson, The Legal Aid Clinic: Benefits to Lawyers, to Law Students and to Indigents, 21 Tex. L. Rev. 423 (1943).

Piel, Student Viewpoint Toward Clinical Work, 8 Am. L. Sch. Rev. 228 (1935).

Pound, The University and the Legal Profession, 70 Ohio St. L. J. 3 (1940).

Rowe, Legal Clinics and Better Trained Lawyers: A Necessity, 11 Ill. L. Rev. 591 (1917).

Shaw, Practical Training for the Law Student: The Apprenticeship System or Legal Clinics, 15 Can. B. Rev. 361 (1937).

Smith, Legal Clinics: The Students' Point of View, 24 Case & Com. 214 (1917).

Vold, Legal Preparation Tested by Success in Practice, 33 Harv. L. Rev. 168 (1919).

Wheaton, Law Teaching and Pragmatism, 25 Geo. L.J. 338 (1937).

The Debate of the 1950's

Brown, Louis, The Law Office--A Preventive Law Laboratory, 104 U. Pa. L. Rev. 940 (1956).

Calhoun, Law Schools and Practical Training, 55 W. V. L. Rev. 83 (1953).

Cantrall, Law Schools and the Layman: Is Legal Education Doing Its Job?, 38 A.B.A.J. 907 (1952).

Cantrall, Legal Education: The Extent to Which "Know How" in Practice Should Be Taught in Law Schools, 6 J. Leg. Ed. 316 (1954).

Cantrall, Practical Skills Can and Must Be Taught in Law Schools, 6 J. Legal Ed. 395 (1949).

Cavers, "Skills" and Understanding, 1 J. Legal Ed. 395 (1949).

Clad, The Gap in Legal Education: A Proposed Bridge, 41 A.B.A.J.45 (1955).

Clark, Practical Legal Training: An Illusion, 3 J. Legal Ed. 423 (1951).

Connor, Legal Education for What? A Lawyer's View of the Law Schools, 37 A.B.A.J. 119 (1951).

Cutler, Inadequate Law School Training: A Plan to Give Students Actual Practice, 37 A.B.A.J. 203 (1951).

DeCapriles, A Report on the Inter-Profession Conference--- Apprenticeship, 1 J. Legal Ed. 176 (1948).

Elliott, Remarks on Legal Education, 6 J. Legal Ed. 158 (1953).

Galvin, Applied Legal Training: An Experiment in Legal Education, 41 A.B.A.J. 1133 (1955).

Green, Realism in Practice Court, 1 J. Legal Ed. 421 (1949).

Griswold, English and American Legal Education, 10 J. Legal Ed. 429 (1958).

Griswold, Law Schools and Human Relations, 37 Chi. B. Record 199 (1956).

Griswold, Legal Education: The Extent to Which "Know-How" in Practice Should be Taught in Law Schools, 6 J. Legal Ed. 324 (1954).

Harum, Internships Re-Examined: A "Do" Program in Law Schools, 46 A.B.A.J. 713 (1960).

Johnstone, Law School Legal Aid Clinics, 3 J. Legal Ed. 535 (1951).

Joiner, Legal Education: Extent to Which "Know How" in Practice Should Be Taught in Law Schools, 6 J. Legal Ed. 295 (1954).

Kessler, Clerkship as a Means of Skills-Training, 11 J. Legal Ed. 482 (1959).

Lefever, Is a "Legal Intership" Necessary?, 26 Pa. B.A.Q. 139 (1955).

Levi, The Graduate Legal Clinic: Restoring Lawyers' Research Responsibilities, 38 A.B.A.J. 189 (1952).

McClain, Is Legal Education Doing Its Job? A Reply, 39 A.B.A.J. 120 (1953).

McClain, Legal Education: Extent to Which "Know-How" in Practice Should be Taught in Law School, 6 J. Legal Ed. 302 (1954).

Mathers, The Practice Court: Practical Training in Law Schools, 42 A.B.A.J. 333 (1956).

Miller, Clinical Training of Law Students, 2 J. Legal Ed. 298 (1950).

Murchinson, A Young Lawyer Looks at His Law School Training, 6 S.C.L.Q. 194 (1953).

Nutting, Training Lawyers for the Future, 6 J. Legal Ed. 1 (1953).

Orschel, Is Legal Education Doing Its Job? Brief of Amicus Curiae, 40 A.B.A.J. 121 (1954).

Orschel, The Teaching Approach of a Practical Lawyer, 5 J. Legal Ed. 515 (1953).

Panel, Legal Internships, 6 J. Legal Ed. 504 (1954).

Reese, Legal Aid and the Law Student, 8 J. Legal Ed. 321 (1956).

Roberts, Performance Courses in the Study of Law: A Proposal for Reform of Legal Education, 36 A.B.A.J. 17 (1950).

Silver, Law Students and the Law: Experience-Employment in Legal Education, 35 A.B.A.J. 991 (1949).

Stason, Legal Education: Postgraduate Internship, 39 A.B.A.J. 463 (1953).

Stephenson, More on Bridging the Gap, 7 J. Legal Ed. 259 (1954).

Stevens, Legal Education for Practice; What the Law Schools Can Do and Are Doing, 40 A.B.A.J. 211 (1954).

Storey, Law School Legal Aid Clinics, 3 J. Legal Ed. 533 (1951).

Symposium, Legal Clinics for Law Students, 7 J. Legal Ed. 204 (1954).

Vanderbilt, The Future of Legal Education, 43 A.B.A.J. 207 (1957).

Weinstein, The Teaching of Fact Skills in Courses Presently in the Curriculum, 7 J. Legal Ed. 463 (1955).

The Interim

Allison, A Survey Report on Legal Clinics, 6 Student Lawyer J. no. 3, at 18 (1961).

Amanoles, et al., Current Issues in Legal Education, 9 Clev.-Mar. L. Rev. 582 (1960).

Austin, Is the Casebook Method Obsolete?, 6 Wm. & Mary L. Rev. 157 (1965).

Cooper, Preparation for the Bar, 15 J. Legal Éd. 300 (1963).

Doyle, Teach the Law Student to Be a Lawyer, 38 Dicta 289 (1961).

Forer, Training the Lawyer, 47 A.B.A.J. 354 (1961).

Griffith, Megarry, Morton & Tunks, Academic Preparation for the Practice of Law, 14 J. Legal Ed. 11 (1961).

Harno, Legal Education - The Law School View, 34 Penn. B.A.Q. 70 (1962).

Inbau, Current Controversies About Legal Education, 8 Clev.-Mar. L. Rev. 199, 209 (1959).

Kessler, Clerkship,a Means of Skills Training, 11 J. Legal Ed. 482 (1959).

The Law Schools Look Ahead, 1959 Conference on Legal Education, Ann Arbor, Michigan (1959).

LeDain, Practical Training of Law Students in the Province of Quebec, 3 Can. B. J. 242 (1960).

Lefever, Skills Course vs. Law Practice Clerkship, 37 Penn. B.A.Q. 305 (1966).

Leflar, et. al., Legal Internship Committee Report, 15 Ark. L. Rev. 237 (1961).

Meiners, Clerkship, a Legal Anachronism, 64 Dick. L. Rev. 31 (1959).

National Council on Legal Clinics, Education for Professional Responsibility in the Law School, Report (1962).

New Jersey, Supreme Court, Committee on Training for the Practice of Law. Report (1957).

Note, Modern Trends in Legal Education, 64 Colum. L. Rev. 710 (1964).

Nutting, The Emerging Lawyer and Legal Education, 16 Amer. U. L. Rev. 1 (1966).

Peden, Obtaining Courtroom "Know How": The Judicial Assistanceship Program at the University of Louisville, 12 J. Legal Ed. 431 (1960).

Practical Training in Legal Education, 2 Can. B. J. 121 (1959).

Raffel, Continuing Legal Education: The Need and the Reason, 13 J. Legal Ed. 1303 (1960).

Rutter, Jurisprudence of Lawyers' Operations, 13 J. Legal Ed. 301 (1961).

Sacks, Education for Professional Responsibility: The National Council on Legal Clinics, 46 A.B.A.J. 1110 (1960).

Sacks, Human Relations Training for Law Students and Lawyers, 11 J. Legal Ed 316 (1959).

Stein, Practical Training for Trial of Civil Cases, 7 McG. L. J. 207 (1961).

Stone, Legal Education and Professional Responsibility (1959).

Symposium, Academic Preparation for the Practice of Law, 14 J. Legal Ed. 11 (1961).

Symposium, Philosophy and Legal Vocationalism, 19 J. Legal Ed. 169 (1966).

Tate, Is Pennsylvania's Legal Clerkship Obsolete?, 36 Penn. B.A.Q. 394 (1965).

Thomas, Law Clerkship---Evaluated Survey of Practical Legal Training: Present and Prospective, 36 Okla. B.A.J. 959 (1965).

Thomas, Practical Training in Advocacy: A Proposal, 2 Tulsa L. J. 45 (1965).

Thurman, Presidential Address: Education for Professional Responsibility, 1962 A.A.L.S. Proceedings, p. 63.

Wright, Law School Training in Criminal Law: A Judge's Viewpoint, 3 Am.Crim. L.Q. 166 (1965).

The Current Clinical Movement

American Bar Association. Law Student Division. Committee on Education for Advocacy. The Law School Curriculum and Advocacy Training (1967).

Anderson & Kornblum, Clinical Legal Education: A Growing Reform, 57 A.B.A.J. 591 (1971).

Ares, Legal Education and the Problems of the Poor, 17 J. Legal Ed. 307 (1965).

Association of American Law Schools, Committee on Curriculum, Report, 1968 A.A.L.S. Proceedings, Pt. 1, Sec. 2, at 7. ["Myers Report."]

Association of American Law Schools, Curriculum Study Project Committee, Training for the Public Profession of the Law: 1971, 1971 A.A.L.S. Proceedings, Pt. 1 Sec. 2 ["Carrington Report."]

Bergin, The Law Teacher: A Man Divided Against Himself, 54 Va. L. Rev. 637 (1968).

Boden, Is Legal Education Deserting the Bar?, 37 Ins. Counsel J. 97 (1970).

Brickman, Clinical Education: Polemics and Pragmatics, 3 C.L.E.P.R. Newsletter, no. 5 at 1 (Feb. 1971).

Broden, Role of Law Schools in O.E.O.'s Legal Services Program. 41 Notre Dame Lawyer 898 (1966).

Brown, J. R., The Trumpet Sounds: Gideon---A First Call to the Law School, 41 Tex. L. Rev. 312 (1965).

Burger, A Sick Profession, 27 Fed. B. J. 228 (1968).

Carlin, Will Clinical Education Make It?, 3 C.L.E.P.R. Newsletter, no. 1 (Sept. 1970).

Clark, Student Advocate in the Courts, 1 Seton Hall L. Rev. 1 (1970).

Cleary, Law Students in Criminal Law Practice, 16 DePaul L. Rev. 1 (1966).

Clinical Education, 16 Student Lawyer J. no. 1, at 17 (1971).

Comment, Student Practice---Limited Appearances in Court by Third Year Law Students, 6 U. Richmond L. Rev. 152 (1971).

Conference of California Law Students, Memorandum in Support of the... "Student Internship Program" Proposal. (1967).

Cosgrove, The Teaching of Law Students or Graduates the Techniques of Practical Application to Real Problems of Learned Law (Canberra, Winston Churchhill Memorial Trust, 1970.)

Council on Legal Education for Professional Responsibility, Biennial Report (1970).

Council on Legal Education for Professional Responsibility. Newsletter. 1969-

Cowgill, Hoerger & Ridberg, Report of Student Participants, in Kitch, Clinical Education and the Law School of the Future, University of Chicago Conference Series, no. 20, 1969. [Hereinafter cited as Chicago Conference.]

Creger & Glaser, Clinical Teaching in Medicine: Its Relevance to Legal Education, Chicago Conference, at 77.

Dente, Need for More Professors Who Have Practiced Law, 18 Clev. -Mar. L. Rev. 252 (1969)

Dunn, Legal Education and the Attitudes of Practicing Attorneys, 22 J. Legal Ed. 220 (1969).

Ferren, Goals, Models and Prospects for Clinical Legal Education, Chicago Conference, at 94.

Ferren, The Teaching Mission of the Legal Aid Clinic, 1969 Law & Social Order [Ariz. St. L. J.] 37.

Flaherty, Clinical Experience and the College Work-Study Program, 19 Clev. -Mar. L. Rev. 194 (1970).

Frakt, Supervising Students in Legal Clinics Outside the Law School, 3 C.L.E.P.R. Newsletter, no. 1 (Oct.1970).

Gorman, Clinical Legal Education: A Prospectus, 44 S. Cal. L. Rev. 537 (1971).

Gorman, Proposals for Reform of Legal Education, 119 U. Pa. L. Rev. 845 (1971).

Gozansky, Interviewing and Counseling Workshops: Using Videotape to Teach Clinical Skills, 3 C.L.E.P.R. Newsletter, no. 6 (March 1971).

Great Britain. Committee on Legal Education. Report. 1971. ["Ormrod Report."]

Grismer & Shaffer, Experience-Based Teaching Methods in Legal Counseling, 19 Clev. -Mar. L. Rev. 448 (1970).

Griswold, Hopes---Past and Future, 31 Harv. L. S. Bull. 36 (1970).

Handler, The Role of Legal Research and Legal Education in Social Welfare, 20 Stan. L. Rev. 669 (1968).

Haskell, Legal Education Can Be Cheaper, Qucker and Better, 22 Case W. Res. L. Rev. 515 (1971).

Hurst, Changing Responsibilities of the Law School, 1968 Wisc. L. Rev. 336.

Johnson, Professional Responsibility Aspects of Legal Services Programs, 41 Colo. L. Rev. 319 (1969).

Johnstone, Student Discontent and Educational Reform in the Law School, 23 J. Legal Ed. 255 (1970).

Kimball, Involvement and Clinical Training: An Evaluation, 41 U. Colo. L. Rev. 463 (1969).

King, Report on Law Students in Corrections Conference, 15 Student Lawyer J. 4 (May 1970).

Kitch, Clinical Education and the Law School of the Future, Chicago Conference, at 5.

Leleiko, Legal Education---Some Crucial Frontiers, 23 J. Legal Ed. 502 (1971).

Leleiko, Urban Law School and the Urban Crisis, 16 N.Y.L.F. 717 (1970).

McGee, Universities, Law Schools, Communities: Learning or Service or Learning and Service?, 22 J. Legal Ed. 37 (1969).

McKay, The Trial Lawyer and Legal Education, 4 C.L.E.P.R. Newsletter, no. 5 (Nov. 1971).

Murphy, The Role of Nonpractical or Cultural Courses, 15 J. Legal Ed. 139 (1969).

Nader, Crumbling of the Old Order: Law Schools and Law Firms, 54 Minn. L. Rev. 493 (1970).

Note, Legal Education---A Step in the Practical Direction, 21 S. Cal. L. Rev. 236 (1969).

Note, Model Student Practice Rule: Clinical Education for Law Students, 24 Ark. L. Rev. 367 (1970).

Note, Neighborhood Law Offices: The New Wave in Legal Services for the Poor, 80 Harv. L. Rev. 805 (1967).

O'Toole, Realistic Legal Education, 54 A.B.A.J. 774 (1968).

Panel, Directions in Legal Education and the Role of the Practitioner, 39 Bar Exam., nos. 1-2, at 8 (1970).

Panel, Financing Student Clinical Programs, Chicago Conference at 34.

Paulsen, Involvement and Clinical Training: An Evaluation, 41 U. Colo. L. Rev. 461 (1969).

Pincus, The Clinical Component in University Professional Education, 32 Ohio St. L. J. 283 (1971).

Pincus, Clinical Practice Innovations in Law Schools, 28 Legal Aid Brief Case 47 (1969).

Pincus, The Lawyer's Professional Responsibility, 22 J. Legal Ed. 1 (1969).

Pincus, Programs to Supplement Law Offices for the Poor, 41 Notre Dame Lawyer 887 (1966).

Pincus, Reforming Legal Education, 43 A.B.A.J. 436 (1967).

Problems in Legal Education, 17 Clev.-Mar. L. Rev. 189, 193 (1968); 19 Clev.-Mar. L. Rev. 427 (1970); 20 Clev.-Mar. L. Rev. 441 (1971).

Sacks, Student Fieldwork as a Technique in Educating Law Students in Professional Responsibility, 20 J. Legal Ed. 291 (1968).

Sacks, Remarks on Involvement and Clinical Training, 41 U. Colo. L. Rev. 452 (1969).

Schneider, Constitutional Limitations on Law Students Representation of Criminals, 13 Student Lawyer J., no. 8, at 10 (Apr. 1968).

Silberman, Educational Trends and the Law, 4 CLEPR. Newsletter, no. 2 (Aug. 1971).

Silverman, The Practitioner as Law Teacher, 23 J. Legal Ed. 424 (1971).

Smith, Is Education for Professional Responsibility Possible?, 40 U. Colo. L. Rev. 509 (1968).

Sneed, Dissatisfaction with Legal Education: Will Responses Be Any Better?, 13 Student Lawyer J. 9 (Oct. 1967).

Sneed, Message from the President---Action Programs and Academic Freedom, 21 J. Legal Ed. 217 (1968).

Stone, Legal Education on the Couch, 85 Harv. L. Rev. 392 (1971).

Stolz, Clinical Experience in American Legal Education: Why Has It Failed?, Chicago Conference, at 54.

Swords, The Public Service Responsibilities of the Bar: The Goal for Clinical Legal Education, 25 U. Miami L. Rev. 267 (1971).

Symposium, From Student to Lawyer---Transition Without Trauma, 34 Bar Exam., nos. 1-2, at 4 (1965).

Vetri, Educating the Lawyer: Clinical Experience as an Integral Part of Legal Education, 50 Oreg. L. Rev. 57 (1970).

Vukovich, The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change, 23 Case W. Reserve L. Rev. 140 (1970).

Watson, The Quest for Professional Competence: Psychological Aspects of Legal Education, 37 U. Cin. L. Rev. 93 (1968).

Young, Book Review [of Chicago Conference], 1970 Utah L. Rev. 688.

Individual Programs*

Ash & Guest, The Harvard Student District Attorney Project, 13 Student Lawyer J. 4 (March 1968).

Barrett, The Law School and Training in Trial Advocacy, [Simulated Litigation at the Notre Dame Law School] in Kitch, Clinical Education and the Law School of the Future (University of Chicago Conference Series, no. 20, 1969). [hereinafter cited as Chicago Conference.]

Bellow & Johnson, Reflections on the University of Southern California's Clinical Semester, 44 S. Cal. L. Rev. 664 (1971).

Blasier, Programs for Clinical Experience in Criminal Cases at Howard, Chicago Conference, at 195.

Boden, Bridging the Gap: Skills Training for Advocacy Office Proficiency at Marquette University Law School 42 Wis. B. Bull. 27 (Oct. 1969).

Botein, The Manhattan Bail Project: Its Impact on Criminology and the Criminal Law Processes, 43 Tex. L. Rev. 319 (1965).

Brown, Planning by Lawyers---A Law School Course in Client Counseling, 15 Practical L. no. 3, at 70 (1969).

Carr, More on "Farm-Out" and "In-House" Clinics---The University of Toledo Experience. 3 C.L.E.P.R. Newsletter, no. 7 at 3 (March 1971).

Casad, The Kansas Trial Judge Clerkship Program, 18 J. Legal Ed. 75 (1965).

*In addition to the published material listed, internal documents of individual law schools may be available (e.g., clinical program reports, project proposals, teaching materials, and faculty or student reports on the clinical program.) This study was aided by such materials from U.C.L.A., U.S.C., Loyola of Los Angeles, Utah, N.Y.U., Columbia, Harvard, Minnesota, Washington and Berkeley.

Clinical Education Expands, 45 Fla. B. J. 631 (1971).

Cohen, The Law Office as a Law School: Two Experiments in New York City, Chicago Conference, at 204.

Cohen, The University of Texas' Criminal Justice Project: An Example of Involvement and Clinical Training, 41 U. Colo. L. Rev. 438 (1969).

Comment, Legal Internship in Missouri, 31 Mo. L. Rev. 367 (1970).

Comment, A Legal Intership Program for the University of Mississippi Law School?, 41 Miss. L. J. 112 (1969).

Comment, Limited Student Practice in Arizona, 1971 L. R. Social Order [Ariz. St. L. Rev.] 148.

Council on Legal Education for Professional Responsibility, Clinical Legal Education in the Law School Curriculum [U.C.L.A. and N.Y. U.] (1971).

Council on Legal Education for Professional Responsibility. Survey of Clinical Legal Education, 1970-71, 1971-72.

Culp, Deaton & Cooper, Legal Internship Program, Oklahoma Bar Association, 14 Student Lawyer 14 (Sec. 1968).

Everett, The Duke Law School Legal Internship Project, 18 J. Legal Ed. 185 (1965).

Fairbairn, Legal Aid Clinics for Ontario Law Schools, 3 Osgoode Hall L. J. 316 (1965).

Ferren, What Is Legal Education Coming To?, 19 Harv. L. S. Bull. 10 (Nov. 1970).

Fleisher, The Practice of Law by Law Students: An Analysis [The Harvard C.L.A.O. Program.] Chicago Conference, at 125.

Handler, Field Research Strategies in Urban Legal Studies [University of Wisconsin], 8 Osgoode Hall L. J. 401 (1970).

Harrington, Preventive Law for Low Income Groups: The Texas Southern Experience, 21 J. Legal Ed. 339 (1969).

Jarmel, The New Jersey Skills Training Course, 17 J. Legal Ed. 432 (1965).

Kadane, The Story of Hofstra Law School's In-House Clinic, 4 C.L.E.P.R. Newsletter, no. 9 (Feb. 1972).

Kimball, Correctional Internship---A Wisconsin Experiment in Education for Professional Responsibility, 18 J. Legal Ed. 86 (1965).

King, Training in Juvenile Delinquency Law: The St. Louis University Law School Forum-Clinic, 12 St. Louis U. L. Rev. 597 (1968).

Klein, Law School Legal Aid Programs: A Survey (National Legal Aid and Defender Association, 1969).

LaFrance, Clinical Education: "To Turn Ideals Into Effective Vision", [Arizona State] 44 S. Cal. L. Rev. 624 (1971).

Lanckton, The Community Legal Assistance Office: Harvard Law School Neighborhood Law Office, Chicago Conference, at 188.

Law Schools or Lawyer Schools in Alabama? A Proposed Internship Program, 1 Cumberland-Samford L. Rev. 316 (1970).

Leleiko, The Clinic at N.Y.U., 24 J. Legal Ed. 429 (1972).

McAuliffe, The Urban Law Program at the University of Detroit, 20 J. Legal Ed. 83 (1967).

McCarthy, "Interns at Law": Chicago's Novel Contribution to Legal Education, 49 Chicago B. Rec. 46 (1967).

Meltsner, Clinical Education at Columbia: The Columbia Legal Assistance Resource, 24 J. Legal Ed. 237 (1972).

Merson, Denver Law Students in Court: The First Sixty-five Years, Chicago Conference, at 138.

Miller & Duggitt, The Urban Law Program of the University of Detroit, 54 Calif. L. Rev. 1009 (1966).

Monaghan, Gideon's Army: Student Soldiers [Boston University Roxbury Defender Project], 45 B.U.L. Rev. 445 (1965).

Oaks, Law Student Use by C.J.A. Counsel, 14 Student Lawyer J. 3 (Dec. 1968).

O'Hara & Greif, Trial Advocacy: Classroom to Courtroom, 44 Conn. B.J. 387 (1970).

Oliphant, Clinical Education at the University of Minnesota, Chicago Conference, at 148.

Peck & Fletcher, A Course on the Subject of Negotiation, 21 J. Legal Ed. 196 (1968).

Pye, Legal Internships: Georgetown's Experiment in Legal Education [Prettyman Fellowships], 49 A.B.A.J. 554 (1963).

Redlich, Perceptions of a Clinical Program [University of Wisconsin], 44 S. Cal. L. Rev. 574 (1971).

Royane, Summer Legal Intern Program for Law Students in District Attorneys' Offices, 22 J. Legal Ed. 105 (1969).

Seidman, Welfare Department Project at Harvard Law School, 49 J. Urban L. 363 (1971).

Shapo, An Internship Seminar for Law Students: A Test of Theory, A Critique of Practice [University of Texas], 46 Texas L. Rev. 479 (1968).

Silverberg, Law School Legal Aid Clinics: A Sample Plan; Their Legal Status [University of Pennsylvania], 117 U. Pa. L. Rev. 970 (1969).

Slowinski, Seaton Hall Practice of Law Project, 13 Student Lawyer J., no. 8, at 15 (Apr. 1968).

Spangenberg, Legal Services for the Poor: The Boston University Roxbury Defender Project, 1965 U. Ill. L. Forum 63 (1965).

Steinfield & Hamada, Report of the Boston College Law School---Commission on Law and Social Action Intern Program, 1968, 22 J. Legal Ed. 240 (1969).

Thompson, Canadian Experience in Practice Training, 16 J. Legal Ed. 42 (1963).

U.S. Dept. of Justice. Office of Law Enforcement Assistance. Harvard Student District Attorney Project---A Clinical Experience in Prosecution of Minor Criminal Cases by Senior Law Students (1968).

University of South Carolina Law School Corrections Clinic, 23 S.C.L. Rev. 294 (1971).

Walden, A Twentieth Century Curriculum for the Small Law School: The North Dakota Plan, 20 J. Legal Ed. 97 (1967).

White, The Anatomy of a Clinical Law Course [University of Michigan], Chicago Conference, at 158.

White, The Lawyer as Negotiator: An Adventure in Understanding and Teaching the Art of Negotiation, 19 J. Legal Ed. 33 (1967).

Wilson, Clinical Programs at the Boston University School of Law, Chicago Conference, at 176.

Wolf, D.C. Law Students in the Courtroom, 35-36 D.C. B. J. 41 (Nov-Feb 1969).

Woodruff & Falco, The Defender Workshop: A Clinical Experiment in Criminal Law [University of San Francisco], 52 A.B.A.J. 233 (1966).

****

CLEPR Publications Currently Available

The following publications are available free of charge:

- Survey of Clinical Legal Education 1972-1973
- CLEPR Newsletters 1969-1972
- Second Biennial Report, 1971-1972
- State Rules Permitting the Student Practice of Law: Comparisons and Comments
- Selected Readings in Clinical Legal Education

The following publications will be sent on receipt of the amount indicated:

- Clinical Education for the Law Student: Legal Education in a Service Setting ($8.00 postpaid for 1-9 copies; $7.00 postpaid for 10 or more copies)
- Report of Proceedings, CLEPR National Conference, Buck Hill Falls, Pa. ($1.50 per copy postpaid)

COUNCIL ON LEGAL EDUCATION
FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 2, August 1973

AN APPROACH TO COST ANALYSIS OF CLINICAL PROGRAMS

by Peter deL. Swords, Assistant Dean
Columbia University School of Law

Introduction

This Newsletter examines some aspects of the costs of clinical legal education. It is based upon detailed financial and statistical data collected specifically for this Newsletter from 10 separate law schools' clinical programs. In addition information is used that has been obtained in the course of a study on the costs and resources of legal education which is being conducted at Columbia under the co-direction of the author. This study will be published this fall.

The Newsletter is divided into three sections. The first section explores generally some problems in approaching questions involving the fiscal side of legal education and clinical legal education. The second section examines specifically the instructional costs of clinical education, and the third section examines specifically the non-instructional costs of clinical education.

Section I

In fiscal terms, a clinical program constitutes a somewhat peculiar entity in the law school budget. To begin with it is one of the few instructional programs that may be budgeted separately. In contrast, for example, a seminar in problems of sentencing would be included in a total law school (line-item) budget in such a manner that makes it nearly impossible to break out the discrete costs of this element of the law school's criminal law program. A clinical program would, of course, also be included in the total law school budget, and it would be as difficult to determine the costs of the clinical program from that document as it would be to determine the costs of the seminar in sentencing. The difference between a clinical program and other instructional programs is that typically an independent budget will exist covering its operation whereas no such budgets are prepared for other programs. This phenomenon is largely explained by the fact that during the development phase of clinical education many clinical programs were supported by outside funding, such as CLEPR or the Law Enforcement Assistance Administration

(LEAA), and such support was based on and controlled by separate budgets covering the program. It may be anticipated that the separate clinical program budget will disappear as law schools move out of the development phase of clinical education and more and more programs wean themselves from the succor of outside funding to become supported by the general income of the university. This will be unfortunate. Separate budgets have afforded those interested in clinical education with a fertile source of hard information. Furthermore, it may be that they have promoted an interest in the law school world in comparing costs of various legal education programs. (See CLEPR Newsletter Vol. IV, No. 8, January 1972.) This small move toward program budgeting in legal education would seem to be a good thing, and we should hope that rather than the eventual disappearance of separate budgets for clinical programs the future might bring the proliferation of separate budgets for the various educational programs that are conducted at law schools today but are hardly recognized as such. This procedure would be of enormous aid for making decisions regarding priorities among the several law school instructional programs.

Before leaving the specific subject of law school budgets, it should be noted that while a separate budget may exist for a clinical program and be available to the program directors, the routine accounting for these programs is frequently done by the controller's office of the university's central administration. As a result the program director may have little idea of the extent of program expenditures and problems often emerge when budgetary reports are prepared for funding agencies. Typically, university accounts are set up in a manner that bear little resemblance to the budgets prepared by the funding agencies. As financial reports are extremely useful to a funding agency for program evaluation, program directors would be well advised to keep their own set of books. This procedure, however, may not be without difficulty as typically many program expenditures are made by central administration offices (purchasing or the controller, for example). The business of financial reporting remains a problem area for both the grantors and grantees of sponsored programs.

A second feature that sets a clinical program apart from many other law school educational programs lies in the fact that it incurs a great many expenses that are properly regarded as not being strictly instructional. For example, court costs, duplicating costs in connection with litigation, costs incurred in telephoning clients and the like are essentially costs incurred by any law office and may be more properly attributable to the public-service side of the program rather than its instructional component. As will be explained more fully below, no strict line exists between instructional costs and non-instructional costs, but generally speaking such a division is entirely apt and represents a distinguishing feature of clinical programs.

Frequently, many of the actual costs of operating a clinical program do not show up on its separate budget. For example, if the program is run out of spaces located in the law school building, rental, heat and lighting expenses are usually not considered as part of the expenses of the program. Sometimes certain office expenses are also absorbed by the general law school budget, and in most cases the value of the services supplied to the clinical program by the law school library are not determined and assigned as costs of the program.

As the above may suggest, attempts to measure the costs of educational programs are hazardous and unsure exercises. Cost figures, whether cost per program, cost per student or cost per student hour, are inevitably low. In almost every case the capital costs of running the educational enterprise are omitted. In addition, fringe benefits are frequently left out of calculations because of the difficulty of assigning a cash value to many of the elements of the fringe benefit package. Furthermore, some part, however small, of what is usually referred to as indirect costs should be, but seldom is, attributed to each program. Indirect costs include such items as the President's salary, the costs of the bursar's office, the costs of maintaining the university's chapel and an enormous number of other items. The problem of indirect costs is perhaps the murkiest aspect in the whole field of the economics of legal education. Some fortunate law schools are not charged with indirect costs; indeed, a few extremely fortunate law schools receive a subvention out of central university funds to help defray their direct costs. These are the rare exceptions, however, and most law schools are required to give over some of their general income to help meet the indirect costs of their university. The problem is that each university determines indirect costs in its own manner. In many cases the determination seems to be made as the result of history rather than as a rationally developed allocation scheme. These variations make comparisons between different law schools and their component programs a tricky business at best. In any event, indirect costs are extremely difficult to ascertain and this fact, combined with the others mentioned, makes it virtually impossible to determine the true costs of legal educational programs. (It should be recognized that the problems of indirect costs are not unique to private law schools. State law schools also struggle with indirect costs. On the one hand private law schools attempt to keep for themselves as much of their tuition, endowment and gift income as possible. On the other hand, public law schools attempt to keep for themselves as much of their legislative subvention, typically based upon the number of enrolled students, tuition, endowment and gift income, as possible.)

Section 2

Having suggested some of the general problems involved in attempting to make fiscal analyses of legal education programs, we shall now turn to a more specific consideration of the costs of clinical programs. As indicated above, a distinction may be drawn between instructional costs and non-instructional costs. Instructional costs include the salaries of faculty members directing the program and supervising students and the salaries of attorneys whose primary responsibility is to supervise the program's students. In most cases, these latter individuals will be considered to be part of the law school's teaching staff although they may or may not enjoy full faculty status. Non-instructional costs include the salaries of attorneys whose primary responsibility is to help manage the clinic's caseload, the salaries and wages of secretaries, paraprofessionals and other personnel who work directly on the clinic's caseload and all the non-personnel expenses that are incurred in running a law office. The exact nature of these expenses will be clarified below. As suggested, considerable overlap may occur between instructional and non-instructional costs. Supervising faculty members will necessarily be involved in helping prosecute the clinic's caseload and conversely attorneys whose major responsibility is to manage the

clinic's caseload will from time to time supervise students. Nevertheless for analytical purposes the differences between these two activities are clear enough and the distinction is useful for analyzing clinical programs from a fiscal standpoint.

Initially, an examination will be made of instructional costs. This topic may be analyzed in terms of the number of students one faculty member or supervising attorney may supervise during the course of a semester and in terms of the salary levels of these supervising personnel. One of the oldest arguments in the field of clinical education involves the question of the proper student/faculty ratio for clinical programs. (See CLEPR Newsletter Vol. II, No. 2, November 1969, pages 3-4.) Salient to this issue is a consideration of the type of cases being handled by the clinic, the experience of the faculty member or supervising attorney and the nature of their teaching load, i.e., whether they devote their full time to the clinical program or whether they have other teaching assignments in the school's standard curriculum. Some have argued that for an individual instructor to provide thoroughly adequate supervision no more than seven students should be assigned to him. This ideal would appear to be a limiting case and the author knows of no clinical program which enjoys such a favorable student/faculty ratio. In practice, the ratios are much higher and they range widely among the many clinical programs. Of the 10 programs examined specifically for this Newsletter, the lowest student/faculty ratio enjoyed during the year for which information was collected was 10/1, the highest 25/1 and the mean was 20/1 . (In determining a program's student/faculty ratio, if an instructor spends less than full time on the program he is assigned a figure proportionately less than one for computing the ratio.) It appears then that a student/faculty ratio of 20/1 is about average for clinical programs. In view of the fact that this ratio is premised on each clinical instructor devoting his full time to the program, it is believed that fully adequate supervision is provided at these ratios.

Salary levels paid to clinical professors depend for the most part upon their age and experience. In so far as compensation is concerned no distinctions have been found between faculty members who teach clinically and faculty members who teach in the traditional curriculum. The Columbia study has shown that for the year 1970-71 the median law faculty salary (ex-fringe) nationwide was $20,000. As clinical professors tend to be on the young side of a faculty's age spectrum, their salary levels can be expected to be lower than the average. Attorneys engaged to work in the clinic as student supervisors without full faculty status are usually paid at levels somewhat below those enjoyed by instructors with full faculty status.

It has been suggested that a typical clinical program assigns one instructor to every twenty students. This arrangement constitutes a small class for most law schools which offer a large number of their courses in classes upwards of 100 students. It might naturally be inferred that the instructional costs of clinical programs are higher than usual law school classes. This certainly would have been the case twenty or so years ago, but today small classes of 20 or less students proliferate throughout the curricula of many law schools, particularly in their upperclass programs and for most schools it would be inaccurate to characterize clinical programs as unusually expensive.

The Columbia study has found that enormous growth in both student enrollment and faculty

size occurred between 1955 and 1970. One result of the expansion in faculty size has been the considerable enlargement of law schools' curricula. As curricula have grown, schools have been able to offer a larger and larger number of courses in small classes. The Columbia study has found that the average student/faculty ratio of law schools today is about 25/1. (This mean figure should be regarded warily because it obscures the fact that there are a large number of schools with higher student/faculty ratios and a large number of schools with lower student/faculty ratios.) In the paper prepared by the author for the National Conference held by CLEPR last spring at Buck Hill Falls, it is demonstrated how law schools today with student/faculty ratios of 25/1 are able to devote around 60% of their second-and-third-year teaching hours to small class instruction; small class instruction being defined as classes averaging 20 students. [See Swords, Including Clinical Education in the Law School Budget, in CLINICAL EDUCATION FOR THE LAW STUDENT, 314-324 (CLEPR 1973).] It is clear therefore that with this high proportion of upperclass teaching hours being devoted to small class instruction one can no longer maintain that such classes are unusually expensive. Furthermore it also follows that the instructional costs of clinical programs are not unusually expensive.

In this connection, however, it should be noted that if a clinical professor carries less of a teaching load than faculty members teaching in the regular curriculum, clinical programs should be recognized as costing somewhat more than other programs involving small class instruction taught by faculty members who teach at a full load. This matter is largely dependent upon how much credit is awarded for clinical work. The recent SURVEY OF CLINICAL LEGAL EDUCATION 1972-1973 (CLEPR 1973) suggests that a large number of clinical programs today offer 3 hours of credit a semester, thus paralleling so far as credit is concerned most upperclass courses. In these cases, the clinical professor who devotes his full time to the clinical program will teach less credit hours than the average law professor. The Columbia study has found that the average teaching load for American law school professors today is between 10 and 12 hours an academic year. However, there is no particular reason for a clinical program to be limited to three hours per semester. Higher allocations of credit would seem to be justified on two grounds. First, students who work in such programs frequently spend considerably more time than they do on a traditional course. Secondly, because of the close and regular supervision which students receive in their clinical work, the number and quality of teacher-student contact hours occurring each week in such programs is frequently considerably higher than in the ordinary course. Indeed, perhaps in recognition of these considerations, a growing number of clinical programs are offering as much as 6 hours of credit a semester. In some cases, even higher allocations of credit are made - as much as a semester's worth. In these instances, clinical professors carry at least a full teaching load.

In conclusion, it appears clear that insofar as instructional costs are concerned, clinical programs are no more expensive than a large number of other courses and instructional programs offered in small classes which have come to constitute a significant proportion of most law schools' upperclass programs.

Section 3

So far detailed consideration has been given to the instructional costs of clinical programs. The remaining part of this Newsletter will deal with the non-instructional costs of such programs. The extent of a clinical program's non-instructional costs depends in large part upon the nature of the program. Clinical programs involving small and controlled caseloads will incur relatively small non-instructional costs. On the other hand, clinical programs which involve the operation of full service clinics with few, if any, limits on their caseload will incur substantial non-instructional costs.

Non-instructional costs are divisible into two major components: personnel costs and non-personnel costs. To begin with an examination will be made of personnel costs. As a general matter, secretarial assistance constitutes by far the largest item in the personnel cost category of non-instructional costs. Of course those programs that engage attorneys whose primary responsibility is caseload management (and who therefore fall within the non-instructional cost category) will have higher personnel costs for these services than secretarial assistance but programs of this dimension are relatively rare while practically every clinical program uses its own secretary. This arrangement is to be contrasted with most other law school instructional programs which typically obtain their secretarial services from a shared pool of secretaries. From the information collected, as a very rough approximation, it is estimated that one secretary can service a program enrolling 40 students a semester. Frequently students will do a great deal of their own typing, and the program's secretary will manage the office, take care of pressing correspondence and perform all the secretarial chores required on major pieces of litigation. The rate at which secretaries are paid varies considerably depending on the geographical location of the clinic. One of the programs examined, located in a rural setting in the West, pays as little as $3,000 a year to its secretaries. On the other hand programs located in major metropolitan centers pay secretaries up to $8,000 a year. It is interesting to note that secretaries attached to clinical programs, because of the complexities of their work, are frequently among the highest paid secretaries at the law school.

As indicated, some programs, particularly those running major clinics offering services to a large community of clients, engage attorneys to work primarily on the clinic's caseload. Wide variations exist between the amounts paid to these individuals. Understandably, experience is the key factor in determining their level of compensation. Frequently such lawyers are very young and accordingly are paid substantially less than faculty members. Some large-sized clinics also engage paraprofessionals. It is impossible to generalize about the level of compensation that these individuals receive. Typically, they are highly efficient workers paid at very low wages.

We now turn to non-personnel costs, the second major component of non-instructional costs. In order to better grapple with these costs they may be broken down into the following six categories: office supplies, duplicating, telephone, postage, travel and litigation. These are the items that appear most frequently on the budgets of clinical programs. Before examining how these items vary among different types and sizes of programs, brief consideration should be given to what has been left out of this list. The most notable

omission is, of course, rent and utilities. These items have not been included for two reasons. In a large number of instances space for the clinical program is provided in the law school building and no determination is made to impute the rental value, etc., of such space. Also, while there are a number of programs that rent space outside of the law school building, the wide differences among similar programs between the nature of the spaces leased, the areas in which the space is leased and, following in part at least from these differences, the levels of rental obligations make virtually impossible any meaningful comparisons of these items.

A second significant item omitted is library expenses. Maintaining a library is, of course, one of the major expenses of running a law office. Most of the budgets examined, however, showed no item for library expenses. It would appear that in most cases personnel working in the clinics use the law school library. Interestingly, the two programs for which information on library costs is available represent extremes on a spectrum of clinical models based upon size of caseload. The first program has a strictly controlled and limited caseload and enrolls about 40 students a semester. It budgets about $600 a year for library expenses. Much of this amount is taken up in subscriptions to fairly expensive loose-leaf serial services. The second program is a full service clinic and enrolls about 100 students a semester. Its annual library budget for the year examined was $3,300. One may presume that most of these costs were for continuations.

In addition to the omissions mentioned above, few budgets ever contain a line for insurance--either malpractice or liability. Of course where the clinic is on the law school's premises, it will probably be covered by the university's liability insurance. Finally, a major fiscal advantage of being attached to a university lies in the fact that in most cases no expenses are incurred in performing an annual audit.

Clinics of substantial size usually contain a line on their budget for office furniture and equipment. Such clinics use a large number of typewriters, desks, file cabinets and the like. During the course of any one year a number of these items have to be replaced or repaired. Smaller clinics, which tend more to live off the mother law school for such items, do incur these costs.

Turning now to the six items that are usually included in the non-personnel cost section of clinical program budgets, we shall consider two programs of different sizes. The first program will be assumed to enroll 40 students a semester supervised by 2 faculty members. The budget for the non-personnel costs of such a program might look like this.

Item	Amount
Office supplies	$ 500
Duplicating	750
Telephone	500
Postage	350
Litigation	1,000
Travel	500
Sub-total	$ 3,600

These estimates have been made on the basis of examining the budgets of a number of

programs of about the size supposed. Wide variations of course exist between the several programs and these figures represent only rough averages. They are, however, fairly representative and afford a good basis for discussion. Those figures will, of course, vary depending upon the scope of the clinic's caseload. The above figures assume a fairly restricted caseload. If a 40 student clinic with a large caseload is assumed the figures might look more like this.

Office supplies	$ 1,000
Duplicating	1,000
Telephone	750
Postage	750
Litigation	1,500
Travel	1,000
Sub-total	$ 6,000

Duplicating costs are a major item in all these budgets. Even those programs that have restricted caseloads incur substantial duplicating costs. Such programs typically involve complex litigation which requires a great deal of paper work and inevitable duplicating costs. The advent of sophisticated duplicating systems has in turn produced a greater demand for office supplies and office supplies have been particularly subject to the pressures of inflation. Telephone expenses are a somewhat peculiar item on clinical program budgets. It appears that a fair number of clinical programs have their telephone costs picked up on the regular law school budget. Here is another example of a special indirect cost item that frequently does not work its way into recognized costs of clinical programs. No significant differences in telephone costs are notable between rural and city programs. Little can be said about postage except that it is a substantial item and in contrast to the telephone bill, clinics uniformly have to meet their own postage expenses.

The two items that vary the most in the non-personnel portion of clinical program budgets are litigation and travel expenses. A number of programs that seemingly engage in trial work do not list litigation costs as a program expense. This may be due to a failure in reporting or because no such costs are incurred because such litigation as is conducted takes place at a very low level (and so does not involve witness fees, deposition costs and the like) and court costs are uniformly waived. In cases where litigation costs are reported their nature varies from program to program. Filing fees and compensation for court reporters constitute a substantial expense for most programs. Some programs incur fairly considerable expenses for witness fees, others do not. Programs involving complex litigation typically incur major deposition expenses, expert witness fees and consultant expenses. Programs involving criminal defense work tend to incur polygraph expenses.

Travel expenses depend largely on the georgraphical location of the clinic. Naturally rural clinics incur far greater travel expenses than programs situated in the city. On the other hand, regardless of location, programs offering legal services to inmates usually incur heavy travel expenses.

The second program to be examined will be assumed to be a full service clinic enrolling

about 100 students a semester. While it is impossible to estimate with any precision the budget of such a program, based upon an examination of the budget of three full service clinics of this size, the figures might look like this.

Office supplies	$ 3,000
Duplicating	2,500
Telephone	5,000
Postage	1,000
Litigation	1,500
Travel	1,000
Sub-total	$ 14,000

It is plain from the above that non-instructional costs make up a considerable part of a clinical program's total budget, although such costs reach substantial proportions only with large full service clinics. In an era of increasing financial constraints any additional costs on the higher education enterprise, however small, produce pressures and inevitably raise funding difficulties. As suggested, these costs are properly attributable to the service side of clinical programs and their financing should come from the clients who benefit from the clinic's services. Where a clinic's clients are indigent, as is so often the case, these costs should be defrayed from sources that usually finance legal service programs. A number of programs do receive support from local united charities groups, LEAA or the Office of Economic Opportunity. It should be an item of high priority for people interested in clinical education to help assure that the proposed federal Legal Services Corporation makes financial provision for law schools' clinical programs. For the past several years, a small number of clinical programs have successfully experimented with servicing middle-class clients from whom they have received fees. Recently, Professor Lester Brickman has very ably made the case for clinical programs to extend their services beyond the impoverished client and along the way has suggested that by doing so a new source for financing clinical programs would be opened up. [See, Brickman, <u>CLEPR and Clinical Education: A Review and Analysis</u>, in CLINICAL EDUCATION FOR THE LAW STUDENT, 80-82 (CLEPR 1973).]

The clinical legal education movement began with real force in the late 1960s at a time that marked the beginning of the end of higher education's salad days. It has developed then during a time of fiscal constraint rather than one of largesse. While CLEPR funding helped many programs get their start, most of the early grants have expired and almost all of the programs these grants supported have continued in operation. One cannot be sanguine about the financial future of higher education. Accordingly it will continue to remain difficult to solve the financing problems of clinical education. Nevertheless, it is clear that these programs have taken solid root both educationally and fiscally and for the near-term future, which is as far as I can see, it is my firm belief that the movement will go forward and grow stronger.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 3, September 1973

CLINICAL TEACHING MATERIALS

We list below by author teaching materials which have been prepared by clinical teachers out of their experience in law school clinics.

Inquiries as to the availability of these materials should be made directly to the authors.

We invite information about other teaching materials which have been prepared for use in clinical programs. We expect to publish this information periodically. Such information should be supplied in the format used below.

* * * * * * * * * *

Author: ROBERT BARTELS

Title: Materials on Client Representation

Address: College of Law, University of Iowa, Iowa City, Iowa

Date Material Completed: August 15, 1973

Course for Which Prepared: Legal Clinic - Civil

Summary: Analytical and background materials on Interviewing and Counseling, Fact Investigation, and Negotiation. Used in conjunction with problem sets and simulation exercises in Clinic Seminar.

Form: (Written, Taped, etc.) Mimeo
Pages and Size: 183, 8 1/2 x 11 inches
Price: $3.66
Copies Available: On request

* * * * * * * * * *

Author: ROBERT BARTELS

Title: Outline of Poverty Law Topics

Address: College of Law, University of Iowa, Iowa City, Iowa

Date Material Completed: August 15, 1973

Course for Which Prepared: Legal Clinic - Civil

Summary: Outline of Issues and Source Material regarding Divorce, Landlord-Tenant, Welfare, Federal Litigation, Consumer Protection, and Constitutional Law. Geared to Iowa practice, and designed to be "starting point" manual for legal aid interns.

Form: (Written, Taped, etc.) Mimeo
Pages and Size: 66, 8 1/2 x 11 inches
Price: $1.32
Copies Available: On request

* * * * * * * * * *

Authors: ROBERT BARTELS and BARRY LINDAHL

Title: Prisoner Representation Manual

Address: College of Law, University of Iowa, Iowa City, Iowa

Date Material Completed: August 15, 1973

Course for Which Prepared: Legal Clinic - Prisoner

Summary: The Manual is designed to be of current practical significance to Clinic interns. Interns will be asked to contribute short articles to the Manual, based upon their own personal experiences in special situations of Clinic work. The Fall 1973 edition of the Manual contains materials and articles relating to interviewing, discovery, and brief writing. There is also a statutory section which contains the federal habeas corpus and civil rights statutes, as well as some state prisoner remedies. Another section of the Manual deals with particular problems of the trial, such as opening statements, introduction of documents, and cross-examination.

Form: (Written, Taped, etc.) Mimeo
Pages and Size: 230 pages, 8 1/2 x 11 inches
Price: $4.60
Copies Available: On request

* * * * * * * * * *

Author: JERROLD L. BECKER

Title: Counseling Materials for the Low-Income Businessman

Address: 1505 W. Cumberland Avenue, Knoxville, Tennessee 37916

Date Material Completed: August 1, 1973

Course for Which Prepared: Economic Development Clinic

Summary: Materials designed to acquaint the low-income businessman with the variety of procedures and problems attending the formation or expansion of a business. Such topic areas as taxes, insurance, permits, zoning and franchising are discussed in a way which briefly acquaints the client with the major issues. The booklet is used by law students in their counseling activities with the clinic's low-income business clients.

Form: (Written, Taped, etc.) Printed
Pages and Size: -- 8 1/2 x 11
Price: $2.50
Copies Available: May be purchased from the above address.

* * * * * * * * * *

Author: GARY BELLOW

Title: Conflict Resolution and the Lawyering Process: Materials for the Clinical Teaching of Law

Address: Clinical Program, Harvard Law School, Cambridge, Massachusetts 02138

Date Material Completed: 1971

Course for Which Prepared: The Lawyering Process

Summary: These edited materials draw on readings from psychotherapy, psychology, historiography, decision theory, game theory, and ethics, all focused to give a theoretical backdrop to the development of such lawyering skills as interviewing, counseling, negotiation, and investigation. Case examples containing illustrative fact situations and necessary laws and regulations are also included.

Form: (Written, Taped, etc.) Offset
Pages and Size: 354 pages, 8 1/2 x 11 inches
Price: $7.50
Copies Available: No complimentary copies; may be purchased from the above address.

* * * * * * * * * *

Authors: GARY BELLOW and ROBERT H. BOHN, JR.

Title: Commonwealth v. Isaac Jones: Materials for the Clinical Teaching of Law

Address: Clinical Program, Harvard Law School, Cambridge, Massachusetts 02138

Date Material Completed: 1972

Course for Which Prepared: Criminal Trial Advocacy

Summary: This case file is one of a series illustrating problems typically encountered in the field, designed to familiarize students both with a lawyer's decision making process and with Massachusetts laws and procedures. It is not a model file. This case file involves charges of breaking and entering and larceny, with the defense focused on eyewitness identification, probable cause hearing, gaining access to police reports, fact investigation, and motions to suppress evidence.

Form: (Written, Taped, etc.) Offset
Pages and Size: 60 pages, 8 1/2 x 11 inches
Price: $1.50
Copies Available: No complimentary copies; may be purchased from the above address.

* * * * * * * * * *

Authors: GARY BELLOW and ROBERT H. BOHN, JR.

Title: Commonwealth v. Graziano/Peters: Materials for the Clinical Teaching of Law

Address: Clinical Program, Harvard Law School, Cambridge, Massachusetts 02138

Date Material Completed: 1972

Course for Which Prepared: Criminal Trial Advocacy

Summary: This case file is one of a series illustrating problems typically encountered in the field, designed to familiarize students both with a lawyer's decision making process and with Massachusetts laws and procedures. It is not a model file. In this case file, the charges included stealing, assault and battery, and possession of burglarious instruments. Defenses involved a petition for reduction of bail, a petition for release on personal recognizance, motions to suppress illegally obtained evidence and motions to use electronic sound recording equipment and to obtain a record of court proceedings.

Data re Form, Pages and Size, Price, Copies Available are same as on title above.

* * * * * * * * * *

Authors: GARY BELLOW and ROBERT H. BOHN, JR.

Title: Commonwealth v. Joseph Smith: Materials for the Clinical Teaching of Law

Address: Clinical Program, Harvard Law School, Cambridge, Massachusetts 02138

Date Material Completed: 1972

Course for Which Prepared: Criminal Trial Advocacy

Summary: This case file is one of a series illustrating problems typically encountered in the field, designed to familiarize students both with a lawyer's decision making process and with Massachusetts laws and procedures. It is not a model file. The defendant in this case file was charged with assault and possible battery with a dangerous weapon. Involving drunkenness and possible child abuse, the problem focused on determining whether the incident in question was accidental or intentional, leading to such legal issues as husband-wife privilege, testimony of a minor at trial, and alternative disposition through the use of social service agencies.

Form: (Written, Taped, etc.) Offset
Pages and Size: 35 pages, 8 1/2 x 11 inches
Price: $1.00
Copies Available: No complimentary copies; may be purchased from the above address.

* * * * * * * * * *

Authors: GARY BELLOW and BEATRICE MOULTON

Title: Reputable Finance v. Collins: Materials for the Clinical Teaching of Law

Address: Clinical Program, Harvard Law School, Cambridge, Massachusetts 02138

Date Material Completed: 1972

Course for Which Prepared: The Lawyering Process

Summary: This case file is one of a series illustrating problems typically encountered in the field, designed to familiarize students both with a lawyer's decision making process and with Massachusetts laws and procedures. It is not a model file. A consumer case, this file deals with violations of truth-in-lending and state consumer protection laws. The student works through a variety of procedural regulations for solving the problems, including discovery, affirmative relief for injunction and damages, and class action suits. Emphasis here is on pre-trial and trial procedures and strategies.

Form: (Written, Taped, etc.) Offset
Pages and Size: 86 pages, 8 1/2 x 11 inches Price: 2.00
Copies Available: No complimentary copies; may be purchased from the above address.

* * * * * * * * * *

Authors: GARY BELLOW and BEATRICE MOULTON

Title: Carlson v. Murphy: Materials for the Clinical Teaching of Law

Address: Clinical Program, Harvard Law School, Cambridge, Massachusetts 02138

Date Material Completed: 1972

Course for Which Prepared: The Lawyering Process

Summary: This file is one of a series illustrating problems typically encountered in the field, designed to familiarize students both with a lawyer's decision making process and with Massachusetts laws and procedures. It is not a model file. A landlord-tenant case, this file takes the student through eviction proceedings, rent control board hearings, housing inspection problems, and summary process, with emphasis on appeal procedures.

Form: (Written, Taped, etc.) Offset
Pages and Size: 106 pages, 8 1/2 x 11 inches
Price: $2.50
Copies Available: No complimentary copies; may be purchased from the above address.

* * * * * * * * * *

Author: JAMES CARR

Titles: Criminal Law Practice Program - Vol. I and Vol. II
Municipal Intern Manual: Practice and Theory

Address: University of Toledo, College of Law, Toledo, Ohio 43606

Date Material Completed: Summer, 1972

Course for Which Prepared: Criminal Law Practice

Summary: Vol. I: interviewing, pre-trial release, motions to suppress, discovery, alibi, evidentiary matters and professional responsibility. Vol. II: plea bargaining, sentencing, probation, parole, prison conditions and professional responsibility.

Form: (Written, Taped, etc.) Xeroxed and Printed
Pages and Size: Vol. I, 250 pages; Vol. II, 250 pages; Municipal Intern, 300 pages
Price: About $4.50 to $6.00 per volume
Copies Available: On request

* * * * * * * * * *

Authors: RICHARD H. CHUSED, MICHAEL D. LANG, ANNAMAY T. SHEPPARD, et al

Title: Urban Legal Clinic, Rutgers Law School Manual of Instruction

Address: Rutgers. The State University of New Jersey, 175 University Avenue, Newark, N. J. 07102

Date Material Completed: Fall, 1972

Course for Which Prepared: Urban Legal Clinic

Summary: Materials on Consumer, Welfare, Housing, Landlord/Tenant and Matrimonial Law - Local to New Jersey. Procedure, substance, bibliography.

Form: (Written, Taped, Etc.) Typed
Pages and Size: 80 pages, 8 1/2 x 11 inches
Price: --
Copies Available: Single copies on request.

* * * * * * * * * *

Author: CLEVELAND STATE UNIVERSITY - CLEVELAND BAR ASSOCIATION

Title: Criminal Trial Advocacy: State v. Smith and Jones

Address: Cleveland State University, Cleveland-Marshall College of Law, Cleveland, Ohio 44115

Date Material Completed: March 30, 1973

Course for Which Prepared: Criminal Clinical Practice

Summary: The tapes contain a complete trial of a criminal case, involving armed robbery and murder. Pre-trial motions are presented in addition to the trial itself.

Form: (Written, Taped, etc.) Videotape
Videotape: 14 hours, plus fact patterns and exhibits geared to the tapes.
Price: --
Copies Available: The tapes and materials are still being edited. At this time, the tapes are not available for distribution but will be.

* * * * * * * * * *

Author: CLEVELAND STATE UNIVERSITY - CLEVELAND BAR ASSOCIATION

Title: Trial Advocacy (Civil): Ling v. Smyth

Address: Cleveland State University, Cleveland-Marshall College of Law, Cleveland, Ohio 44115

Date Material Completed: May 12, 1973

Course for Which Prepared: Clinical Legal Education

Summary: The tapes contain a complete trial of a personal injury (automobile accident) case, from voir dire through instructions to the jury. The format involves the use of varying attorneys for different segments of the case, thereby providing the benefit of diverse styles within the context of one continuing trial. Included are the deliberations of the jury, videotaped without their knowledge.

Form: (Written, Taped, etc.) Videotapes
Videotapes: 14 hours. Written materials keyed to the videotapes.
Price: --
Copies Available: The materials are still being edited and annotated. They should be in final form and available for distribution by January, 1974.

* * * * * * * * * *

Authors: GEORGE COOPER and HARRIET RABB

Title: Equal Employment Law & Litigation

Address: Columbia Law School, 435 West 116th Street, New York, N. Y. 10027

Date Material Completed: August, 1972 (Revision due February, 1974)

Course for Which Prepared: Clinical Seminar in Fair Employment Law at Columbia Law School

Summary: This is a comprehensive textbook which deals exclusively with Title VII of the Civil Rights Act of 1964 (employment discrimination). It includes a background discussion of developments in Title VII law, procedural problems in instituting a claim, methods by which to prove claims of discrimination, and guidelines for developing effective remedies.

Form: (Written, Taped, etc.) Written in a looseleaf binder
Pages and Size: 700 pages, 6 x 9 inches
Price: $10.00
Copies Available: None at above address. Please inquire with:
Ms. Lucy deCarlo, Office of State & Community Affairs
1800 G Street, N.W., Washington, D.C. 20506

* * * * * * * * * *

Author: LUCY S. HENRITZE

Title: The Windgate Saga: A Study in Domestic Relations Interviewing, Counseling, and Negotiation Skills
Address: Emory University Law School, Atlanta, Georgia 30322
Date Material Completed: March, 1973
Course for Which Prepared: Domestic Relations Seminar

Summary: A tripartite custody conflict presented through hypothetical materials. Materials include summary of initial interviews with three parties, scripts for actors for use in second interview conducted by students. Materials designed to display variances in view of common factual situation as described by different parties. After discovery is completed, students are responsible for negotiating a settlement and drafting the formal separation contract. Model discovery pleadings and settlement included. There is a complementary videotape of a negotiation session in which three former students arrive at the optimum settlement.

Form: (Written, Taped, etc.) Written and Videotape
Pages and Size: 40 written pages 8 1/2 x 11 inches; 1 1/2 hour Viedotape.
Price: Written material free while current supply lasts. Videotape $50.00 per print.
Copies Available: As many as demand will support.

* * * * * * * * * *

Author: LUCY S. HENRITZE

Title: The Case of Raymond Tucker: Defensive Decision-Making and Ethical Considerations in Juvenile Advocacy
Address: Emory University Law School, Atlanta, Georgia 30322
Date Material Completed: June, 1972
Course for Which Prepared: Juvenile Law Practice and Procedure

Summary: A hypothetical case illustrating some very difficult problems of decision-making, e.g., the use of a guilty plea where a client is "undercharged", problems of jurisdiction, and counseling problems presented by an untruthful client. The case is presented by full excerpts from the file up to the point of some two weeks before preliminary hearing. There is a complementary videotape of the trial as it actually occurred upon the attorney's choosing to enter a plea of not guilty.

Form: (Written, Taped, etc.) Written and Videotape
Pages and Size: 20 pages written, 8 1/2 x 14 inches; 1 hour Videotape.
Price: Limited supply of written material available upon request. Videotape $35.00/print.
Copies Available: As many as demand will support.

* * * * * * * * * *

Author: P. RAYMOND LAMONICA

Title: Perspectives into the Lawyering Process: Selected Readings for the LSU Clinical Legal Education Program

Address: Louisiana State University Law Center, Baton Rouge, Louisiana 70803

Date Material Completed: January, 1973

Course for Which Prepared: Clinical Law Course

Summary: Selected Readings and Notes:

1. The Lawyer's Role
2. Communicating with the Client
3. Communication with the Court and Counsel
4. Fact Development and Trial Preparation
5. Negotiation and Settlement
6. Trial
7. An Overview of Criminal Practice

Form: (Written, Taped, etc.) Written
Pages and Size: 386 pages, 8 1/2 x 11 inches
Price: Not for sale, for experimentation and evaluation purposes only.
Copies Available: None

* * * * * * * * * *

Author: WILLIAM T. MACPHERSON and J. MICHAEL NORWOOD

Title: Clinical Law Handbook--Teaching Materials

Address: UNM School of Law, 1117 Stanford N.E., Albuquerque, New Mexico 87131

Date Material Completed: May, 1973

Course for Which Prepared: All Clinical Law Programs -- Law Office, Prison Legal Services, Women's Legal Service, Prosecution, Law Intern, Judge Adjutant General.

Summary: A combination of materials covering interview, investigatory and negotiating techniques, procedures through the Court System, divorce and will check-lists, child support schedules, Program By-laws and rules. There is a special appendices section including Albuquerque Municipal Code, and Rules for Municipal, Small Claims, Magistrate, District and Bankruptcy Courts.

Form: (Written, Taped, etc.) Typed and Xeroxed
Pages and Size: 471 pages, 8 1/2 x 11 inches
Price: $7.00
Copies Available: No complimentary copies. Very limited supply.

* * * * * * * * * *

Authors: MICHAEL MELTSNER and PHILIP G. SCHRAG

Title: Public Interest Advocacy: Materials for Clinical Legal Education

Address: Columbia University Law School, 435 West 116th Street, New York, N.Y. 10027

Date Material Completed: Available December, 1973

Course for Which Prepared: Seminar in Public Interest Advocacy

Summary: This is a book of materials and problems for general use in clinical courses and seminars, either as a course casebook or to supplement an instructor's own mimeographed material. Part I examines the various modes of public interest advocacy. Part II (the bulk of the book) is a handbook on the skills of the public interest lawyer. Part III presents two public interest cases in minute detail.

Form: (Written, Taped, etc.) Printed paperback
Pages and Size: Approximately 500 pages
Price: to be determined
Copies Available: Will be marketed by Little, Brown & Company starting December 1973.

* * * * * * * * * *

Author: MANDEL LEGAL AID CLINIC STAFF AND STUDENTS

Title: Mandel Legal Aid Clinic Manual

Address: 6020 S. University Avenue, Chicago, Illinois 60637

Date Material Completed: Continually updated; 1973 edition to be completed October 1.

Course for Which Prepared: General Clinical Practice

Summary: A summary of Illinois Law and Practice with guides for practice by student-attorneys. Topics include welfare, consumer, employment, juvenile, family, and housing law; civil practice, criminal law and procedure and referrals for indigents in Cook County, Illinois. Most of manual only relevant to Cook County, although it may be a model for similar efforts by other clinical programs.

Form: (Written, Taped, etc.) Typewritten
Pages and Size: 8 1/2 x 11 inches, approximately 600 pages
Price: $10.00 per copy
Copies Available: Single or in quantities of 50 or more.

* * * * * * * * * *

Author: KEITH MEYER

Title: What To Do About Detainers

Address: Green Hall, University of Kansas, Lawrence, Kansas 66044

Date Material Completed: --

Course for Which Prepared: Defender Project

Summary: It is essentially a how-to-do it article and deals with the problems of counseling an inmate who has a detainer problem (interstate and intrastate).

Form: (Written, Taped, etc.) Typewritten
Pages and Size: 8 1/2 x 11 inches
Price: --
Copies Available: --

* * * * * * * * * *

Author: BEATRICE MOULTON

Title: In re Wheeler: Materials for the Clinical Teaching of Law

Address: Clinical Program, Harvard Law School, Cambridge, Massachusetts 02138

Date Material Completed: 1972

Course for Which Prepared: The Lawyering Process

Summary: This case file is one of a series illustrating problems typically encountered in the field, designed to familiarize students both with a lawyer's decision making process and with Massachusetts laws and procedures. It is not a model file. Geared toward teaching welfare regulations, In re Wheeler involves fair hearings, writ of mandamus, and petition for review for retroactive welfare payments. Emphasis here is on extraordinary writs and proceedings.

Form: (Written, Taped, etc.) Offset
Pages and Size: 77 pages, 8 1/2 x 11 inches
Price: $1.75
Copies Available: No complimentary copies; may be purchased from the above address.

* * * * * * * * * *

Authors: OLIPHANT, PETERSON, TINKHAM and WAHL

Title: Misdemeanors and Moving Traffic Violations Manual

Address: Mason Publishing Company, St. Paul, Minnesota

Date Material Completed: Summer, 1973

Course for Which Prepared: Clinical Misdemeanor Course

Summary: This book is a detailed analysis of the law in the misdemeanor courts in the state of Minnesota.

Form: (Written, Taped, etc.) Printed, three-ring, looseleaf binder
Pages and Size: 250 pages
Price: $35.00 to the practicing bar; special discount for students and teachers-$20.00.
Copies Available: Printed copies available after August 1, 1973.

* * * * * * * * * *

Author: ROBERT E. OLIPHANT

Title: Clinical Procedure Manual

Address: University of Minnesota Law School, Legal Aid Clinic, Minneapolis, Minn. 55455

Date Material Completed: 1972-73

Course for Which Prepared: Clinical Misdemeanor Course

Summary: This is a field manual which describes the Hennepin County Municipal Court system and is used to prepare students for their field work in the Misdemeanor course. Contains forms, and descriptions of how to do things and where to go.

Form: (Written, Taped, etc.) Mimeographed
Pages and Size: About 150 pages, 8 1/2 x 11 inches
Price: Free to students
Copies Available: New, revised version available in September, 1973.

* * * * * * * * * *

Authors: GARY H. PALM and CLINICAL FELLOWS, UNIVERSITY OF CHICAGO

Title: Materials for Trial Practice B, University of Chicago Law School

Address: University of Chicago Law School, 1111 East 60th Street, Chicago, Illinois 60637

Date Material Completed: Updated each year; available June 1 each year

Course for Which Prepared: Trial Practice B Seminar

Summary: Problem materials for introduction to the skills of a Trial Lawyer. Emphasis is placed on role playing of simulated courtroom experiences. Methods include exercise in small groups of six students each. Selected readings from leading sources on trial practice.

Form: (Written, Taped, etc.) Typewritten
Pages and Size: Approximately 800 pages, 8 1/2 x 11 inches and 8 1/2 x 14 inches
Price: $12.50
Copies Available: Orders must be received by March 15, for delivery about June 15.

* * * * * * * * * *

Author: MURRAY RICHTEL

Title: Civil Practice: Materials and Problems

Address: University of Colorado School of Law, 13 Fleming Law Building,
Boulder, Colorado 80302

Date Material Completed: July, 1973

Course for Which Prepared: Civil Practice

Summary: Problems relating to interviewing, pleading, letter writing, discovery, and negotiation with supplementary reading material.

Form: (Written, Taped, etc.) Tyepwritten
Pages and Size: 250 pages, 8 1/2 x 11 inches
Price: See next item below
Copies Available: Copies of some problems available at Xerox cost.

* * * * * * * * * *

Authors: JOHN J. SAMPSON and JOHN M. SCANLAN

Title: Texas Family Law: Cases and Materials

Address: University of Texas School of Law, 2500 Red River, Austin, Texas 78705

Date Materials Completed: Still in process of completion

Course for Which Prepared: Advanced Legal Services

Summary:

Form: (Written, Taped, etc.) Photo offset
Pages and Size: 8 1/2 x 11 inches. 250 pages at present; will increase to about 400-500 pages.
Price: Dependent upon number of pages completed at time of order.
Copies Available: Use limited to Texas as a practical matter. May be purchased at the above address.

* * * * * * * * * *

Author: MARC STICKGOLD

Title: The Lawyer as Civil Practitioner

Adress: Wayne State University Law School, Detroit, Michigan 48202

Date Material Completed: September, 1973

Course for Which Prepared: The Lawyer as Civil Practitioner (originally Michigan and Federal Civil Practice)

Summary: The course is designed to deal with three primary areas, each volume of material covering one of the areas. Vol. I is entitled "Social Uses of the Legal Process" and contains materials concerning lawyers' roles: institutional problems of the legal system; political, economic and social problems as they relate to the lawyer as a civil practitioner. Vol. II covers pre-litigative skills, including interviewing, counseling and negotiation. Vol. III covers pleadings, with emphasis on a comparison between Michigan and Federal practice. A set of separate problems for classroom simulation are also used.

Form: (Written, Taped, etc.) Typed and Xeroxed
Pages and Size: Two Volumes 8 1/2 x 11 inches; one Volume 8 1/2 x 13 - total 650 pages.
Price: $25.00 for 3 volumes; $10.00 for single volume.
Copies Available: May be purchased from author at above address, but copies are limited.

* * * * * * * * * *

Author: DOMINICK R. VETRI

Title: Lawyering Skills

Address: University of Oregon Law School, Eugene, Oregon

Date Material Completed: June, 1973

Course for Which Prepared: Legal Aid Clinical Program

Summary: These materials are for use in the academic seminar component of clinical programs which place students in legal aid offices. The materials provide a focus for orientation to clinical learning, theoretical and practical discussions of lawyering skills, simulation experience, developing knowledge about the operating characteristics of legal aid programs and developing a perspective view on legal aid as an institution in our society. A transcript of an interview and of a negotiation has been included for class discussion purposes.

Form: (Written, Taped, etc.) Written
Pages and Size: 170 pages, 8 1/2 x 11 inches
Price: Complimentary
Copies Available: A few complimentary copies

* * * * * * * * * *

Author: Published by the WASHBURN LEGAL CLINIC

Title: Washburn Legal Intern Practice Handbook

Address: Washburn University School of Law, Topeka, Kansas 66621

Date Material Completed: 1973

Course for Which Prepared: Clinical Semester Program, Washburn Legal Clinic

Summary: Outline of entire Clinical Semester Program, including course description of seminars included in the program, the office procedure followed, description and introductory notes on the courts in which the students practice, and Kansas Supreme Court Rule 213, as amended, the student practice rule under which the students are allowed to practice.

Form: (Written, Taped, etc.) Written (mimeographed)
Pages and Size: 189 pages, 8 1/2 x 11 inches
Price: $2.00
Copies Available: On request

* * * * * * * * *

Author: LOUISE A. WHEELER

Title: Divorce Interview Packet

Address: Green Hall, University of Kansas, Lawrence, Kansas 66044

Date Material Completed: May 15, 1973

Course for Which Prepared: Legal Aid Clinic

Summary: This interview packet is meant to be accompanied by certain information that appears in the Legal Intern Instruction Manual. It is an interviewing form to answer all questions that arise in the interviewing of a client who is seeking a divorce. Forms have also been devised to be used in conjunction with the packet and are found in the Legal Intern Instruction Manual.

Form: (Written, Taped, etc.) Typed and Xeroxed
Pages and Size: 12 pages, 8 1/2 x 14 inches
Price: $1.20
Copies Available: Inquiries should be directed to the author.

* * * * * * * * * *

Author: LOUISE A. WHEELER

Title: Legal Intern Instruction Manual

Address: Green Hall, University of Kansas, Lawrence, Kansas 66044

Date Material Completed: July 1, 1973

Course for Which Prepared: Legal Aid Clinic

Summary: This Manual is the basic guide for all interns working in this clinical program. It provides an overview of the office operation, suggestions concerning interview and negotiation techniques, rules for record keeping and intern responsibility for cases as well as specific information on selected substantive issues. Also included are a variety of forms and notes on problems of general civil procedure.

Form: (Written, Taped, etc.) Typed and Xeroxed
Pages and Size: Approximately 80 pages, 8 1/2 x 11 inches
Price: $8.00
Copies Available: Inquiries should be directed to the author.

* * * * * * * * * *

Author: LOUISE A. WHEELER

Title: Legal Intern Misdemeanor Manual

Address: Green Hall, University of Kansas, Lawrence, Kansas 66044

Date Material Completed: August, 1972

Course for Which Prepared: Legal Aid Clinic

Summary: The Manual deals with all aspects of misdemeanor representation and includes forms. Subjects include interview and negotiation techniques, pre-trial preparation, examination of witnesses, post-trial issues, and useful sources.

Form: (Written, Taped, etc.) Typed and Xeroxed
Pages and Size: 64 pages, 8 1/2 x 11 inches
Price: $6.40
Copies Available: Inquiries should be directed to the author.

* * * * * * * * * *

COUNCIL ON LEGAL EDUCATION
FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 4, October 1973

LEARNING THEORY AND THE LAW SCHOOL CLASSROOM
by Stanford C. Ericksen

Preface

On May 22-23, 1973, a workshop was held at the Center for Research on Learning and Teaching of the University of Michigan to discuss the extent to which present or alternative methods of legal education take into account what we know about how people learn and also how to encourage more interest in learning theory among legal educators. Dr. Stanford Ericksen, Senior Research Scientist of the Center, organized the workshop and the following law school professors participated: Alfred Conard, Edward Stein and James White, Michigan; Robert Keeton, Harvard; Peter Maggs, Illinois; Robert Oliphant, Minnesota. Dr. Russell Burris, Director of the Center for Research in Human Learning at the University of Minnesota, and CLEPR staff also participated in the workshop.

CLEPR's support of clinical legal education is based on the belief that it extends the possibilities for learning in a major way by accelerating the development of the professional-to-be both as a person and as a lawyer. In CLEPR's view of the learning process, the translation of theory into practice, which involves the assumption of responsibility for a client, is essential to the completion of professional education. From the beginning of its program CLEPR's espousal of clinical experiments has come from a concern for the learning process and the teaching methods which are a part of such a process. Thus, CLEPR sponsored this workshop and is pleased to publish below Dr. Ericksen's essay which deals with some aspects of learning in legal education.

Learning Theory And The Law School Classroom

by Stanford C. Ericksen
Center for Research on Learning and Teaching
The University of Michigan (1)

Law schools are in clover: bright students are clamoring for admission, faculty members are well paid, the administration is pleased with the relatively low cost per credit hour of instruction. This is an enviable state and all the more reason to continue to reassess the ends and means of legal education. The clinical instruction emphasized by CLEPR is an excellent example of this updating process, and one which is supported by the theory and findings from the science of learning. This body of knowledge is important for education in general and I have been asked to relate concepts from research in this area to the law school setting.

Improving the Conditions for Learning

Legal education is distinctive, but it is not unique since all teachers must face the tasks of:

1. Defining objectives, goals and aims for a particular course of study that will carry over to the off-campus setting.

2. Making available the resources for learning, and managing the affairs of the classroom, that is, to actually teach the course.

3. Devising and conducting ways of evaluating the achievement of each student.

The emphasis given to these three components varies with different philosophies of education. The currently popular humanistic approach, for example, favors the "open" classroom and is relatively relaxed about 1 and 3 and stresses the importance of the student's affective state--his/her feelings and personal values. These interests, attitudes, values, ambitions and personal characteristics are, indeed, critical conditions for learning, but I argue that the subject-matter teacher is still responsible for setting forth what should be learned (negotiations are permissable), and for assessing achievement.

From the point of view of learning theory, teaching is effective when it motivates students toward well marked instructional goals and evaluates fairly their level of attainment. Education's achievement is, of course, a function of many factors, and one of the aims of research on learning is to identify and describe the primary conditions that influence the acquisition of knowledge, its retention and use.

(1) See appendix for note on the Center.

(S)-(stimulus)-- (O)-(organism)--- (R)-(response)---- is a classic formulation in behavioral psychology and can be used here to set forth certain features of the teaching-learning interaction. In the conventional role of presenting information to the class, the teacher is controlling stimuli (S-variables). His subject matter objectives may be clear, his intentions may be excellent, and he may labor over his lectures with loving care. Nevertheless, a preoccupation with "input" may cause neglect of other important factors for learning. The passive state of quietly listening to a lecture, or the anxious state of anticipating the professor's socratic inquiry, are less effective conditions for learning than those instructional arrangements such as clinical courses which involve the student and allow him to actively organize his own pattern of responding (O and R variable).

The particular emphasis on the learner and what he does is illustrated in the use of technological aids for teaching. Televised lecturing for example, simply changes the way the stimulus is given and does not by itself change the student's role in the learning process. The development of the video-cassette, however, significantly improves the educational value of TV, since it allows the individual student to control the time, the place, and the context of his own information processing.

The book, of course, is the example par excellence of a technological aid for instruction. As the student reads the book, he is in control; he gives meaning to the pages, and he reads and rereads until he achieves what to him is an adequate level of understanding and meaning. In effect, in studying the book (or videotape, or the computer printout, or his own notes), the student actively participates in probing the structure and utility of a complex principle, and in this case, of the law.

Without exception, the instructional projects and arrangements described at the Ann Arbor conference emphasized factors that increase student participation in the learning process. It was apparent that these teachers had sensed that the main direction for the improvement of law school teaching involves starting from the base of how students learn rather than "innovating" with respect to how teachers teach.

Transfer of Learning

Beyond this, the ultimate criteria for assessing the quality of legal education lies in how well students transfer what they learn from the classroom to the outside community. This is the thrust of "Training for the Public Profession of the Law: 1971" (Paul Carrington, 1971). In essentially the same vein, CLEPR is fostering the development of procedures to help the law student apply what he has learned to meet the urgent demands of contemporary society on the legal profession. These transfers of learning goals are generally accepted; the main debate is about how best to achieve this large purpose.

The neatest theory of transfer is the notion of "mental discipline". Train the student's mind, strengthen his mental muscles, and he will carry over his ability to remember, to think logically, to solve problems, to create new solutions, and to assess arguments

wherever and whenever he is put to the test. Unfortunately, there is little evidence to support the validity of this theory. Today, most teachers sense that the transfer value of what they teach is not merely a function of the mental process, but must be intrinsic to the content students learn and the procedural skills they acquire. In addition, of course, the teacher sets an example (a model) as to the attitudes and values of the profession.

Defining transfer of learning objectives for a law school course must be an intriguing task. What constitutes the body of factual and conceptual knowledge, the general and specific problem solving procedures, and the sets of attitudes and values that lead to high-level professional performance later in time and in quite different situations? Teachers sometimes beg this question and one irate law student indicated her resentment at playing, "I've got a secret; see if you can guess what it is." Unless it is used as a buffer to protect and enhance the status and security of the professor, "teaching students how to think like (as) a lawyer thinks" is a thoroughly realistic challenge for teachers of law: Can the teacher be explicit in detailing for his students how a lawyer defines problems in a given area, clarifies issues, searches the literature, identifies relevant and irrelevant examples, procedures and precedents, reaches a decision, negotiates a position, plans ahead, implements moral judgments, and so on?

Law school teachers treasure diversity, and rightly so. The range of professional activities is so varied and complex that it is more important to keep the curriculum loose and pliable than it is to establish a rigidly uniform "core" or to reach agreement on the topical details of particular courses.

No single curricular or instructional plan can satisfy the many-faceted dimensions of legal education. Teachers know full well that neither they nor their students can anticipate all the specific problems and information resources that will later be needed by the practicing attorney. Inevitably, therefore, instructional objectives are defined in terms of the structure, dimensions, and boundaries of concepts, principles, rules, moral standards, and generalizations that apply to the general practice of law. The reshaping and applying of these principles is left to on-the-job training of the apprentice lawyer.

I view CLEPR as being essentially an effort to encourage law school teachers to map various routes across the no-man's-land between theory and practice. This new development of clinical education is significant in terms of the transfer of learning paradigm--the opportunity for students to test out what they have learned in specific situations. Medicine, social work, education, clinical psychology and nursing have wrestled with similar problems for a long time, and have learned that specific training is usually helpful for improving the interchange between the abstractions of the classroom and the concrete reality of performing a service for individual persons.

Primary Factors for Learning

Many personal resources are important for a student's success in school and one of these

(S)(stimulus)-- (O)(organism)--- (R)-(response)---- is a classic formulation in behavioral psychology and can be used here to set forth certain features of the teaching-learning interaction. In the conventional role of presenting information to the class, the teacher is controlling stimuli (S-variables). His subject matter objectives may be clear, his intentions may be excellent, and he may labor over his lectures with loving care. Nevertheless, a preoccupation with "input" may cause neglect of other important factors for learning. The passive state of quietly listening to a lecture, or the anxious state of anticipating the professor's socratic inquiry, are less effective conditions for learning than those instructional arrangements such as clinical courses which involve the student and allow him to actively organize his own pattern of responding (O and R variable).

The particular emphasis on the learner and what he does is illustrated in the use of technological aids for teaching. Televised lecturing for example, simply changes the way the stimulus is given and does not by itself change the student's role in the learning process. The development of the video-cassette, however, significantly improves the educational value of TV, since it allows the individual student to control the time, the place, and the context of his own information processing.

The book, of course, is the example par excellence of a technological aid for instruction. As the student reads the book, he is in control; he gives meaning to the pages, and he reads and rereads until he achieves what to him is an adequate level of understanding and meaning. In effect, in studying the book (or videotape, or the computer printout, or his own notes), the student actively participates in probing the structure and utility of a complex principle, and in this case, of the law.

Without exception, the instructional projects and arrangements described at the Ann Arbor conference emphasized factors that increase student participation in the learning process. It was apparent that these teachers had sensed that the main direction for the improvement of law school teaching involves starting from the base of how students learn rather than "innovating" with respect to how teachers teach.

Transfer of Learning

Beyond this, the ultimate criteria for assessing the quality of legal education lies in how well students transfer what they learn from the classroom to the outside community. This is the thrust of "Training for the Public Profession of the Law: 1971" (Paul Carrington, 1971). In essentially the same vein, CLEPR is fostering the development of procedures to help the law student apply what he has learned to meet the urgent demands of contemporary society on the legal profession. These transfers of learning goals are generally accepted; the main debate is about how best to achieve this large purpose.

The neatest theory of transfer is the notion of "mental discipline". Train the student's mind, strengthen his mental muscles, and he will carry over his ability to remember, to think logically, to solve problems, to create new solutions, and to assess arguments

wherever and whenever he is put to the test. Unfortunately, there is little evidence to support the validity of this theory. Today, most teachers sense that the transfer value of what they teach is not merely a function of the mental process, but must be intrinsic to the content students learn and the procedural skills they acquire. In addition, of course, the teacher sets an example (a model) as to the attitudes and values of the profession.

Defining transfer of learning objectives for a law school course must be an intriguing task. What constitutes the body of factual and conceptual knowledge, the general and specific problem solving procedures, and the sets of attitudes and values that lead to high-level professional performance later in time and in quite different situations? Teachers sometimes beg this question and one irate law student indicated her resentment at playing, "I've got a secret; see if you can guess what it is." Unless it is used as a buffer to protect and enhance the status and security of the professor, "teaching students how to think like (as) a lawyer thinks" is a thoroughly realistic challenge for teachers of law: Can the teacher be explicit in detailing for his students how a lawyer defines problems in a given area, clarifies issues, searches the literature, identifies relevant and irrelevant examples, procedures and precedents, reaches a decision, negotiates a position, plans ahead, implements moral judgments, and so on?

Law school teachers treasure diversity, and rightly so. The range of professional activities is so varied and complex that it is more important to keep the curriculum loose and pliable than it is to establish a rigidly uniform "core" or to reach agreement on the topical details of particular courses.

No single curricular or instructional plan can satisfy the many-faceted dimensions of legal education. Teachers know full well that neither they nor their students can anticipate all the specific problems and information resources that will later be needed by the practicing attorney. Inevitably, therefore, instructional objectives are defined in terms of the structure, dimensions, and boundaries of concepts, principles, rules, moral standards, and generalizations that apply to the general practice of law. The reshaping and applying of these principles is left to on-the-job training of the apprentice lawyer.

I view CLEPR as being essentially an effort to encourage law school teachers to map various routes across the no-man's-land between theory and practice. This new development of clinical education is significant in terms of the transfer of learning paradigm--the opportunity for students to test out what they have learned in specific situations. Medicine, social work, education, clinical psychology and nursing have wrestled with similar problems for a long time, and have learned that specific training is usually helpful for improving the interchange between the abstractions of the classroom and the concrete reality of performing a service for individual persons.

<u>Primary Factors for Learning</u>

Many personal resources are important for a student's success in school and one of these

is the intellectual skill required to acquire, manage, and utilize abstract ideas. By contrast, the ability to memorize factual information does not set bright students apart and law school courses should deal with abstractions. Basic and applied research on the cognitive processes, e.g., problem solving, decision making, learning from textual material, and the role of meaningfulness in learning and memory are, therefore, relevant to law school teaching.

The research on concept learning, for example, supports the emphasis law school teachers give to the case study method. In concept learning the student may study a verbal statement of the principle and then proceed to test his understanding by noting confirming and non-confirming instances (case studies). Rather than being an end in itself, each case analysis should be a particular example or form of evidence in support of a more general concept, principle or procedure. The assessment of learning should be in terms of how well students can identify and manage the principles in the general case, rather than in knowing the internal details of specific cases. The evaluation of "bluebook" examinations is essentially an appraisal by the teacher of how well each student has grasped the meaning of a set of concepts.

If a student doesn't understand a principle now, the probability is low that instant insight will occur later in practice. High transfer learning and good original learning are not independent events; the former depend on the latter and both are effects of the same kinds of variables. For example, when we ask, "How well does the student understand what he is learning?", this involves original learning, retention, and transfer. What is meaningful is a subjective matter and depends on each student's perception, memory, and habits of study. In a similar vein, the interests, motives, needs and aspirations that influence the direction and degree of effort are also distinctively personal for each student. It follows, therefore, that in effect, the individual student is the <u>de facto</u> unit of instruction. In his own idiosyncratic style, he organizes and directs his mental processes toward the achievement of personal aims and purposes. The zigzag curve of learning is unique with each student and formal education must eventually accept this fact and adapt to this immutable and invarient condition of the learner.

A number of "individualized" instructional technologies attempt to utilize certain primary conditions for learning: flexible adjustments to individual differences among students, mastery of well-defined sub-goals, and positive feedback (reinforcement) en route to achieving these goals. Some of the more familiar labels for these arrangements are: the Keller Plan, modular instruction, self-paced supervised study, performance contracting, and mastery learning. In addition, simulation and gaming, independent study, small-group interaction and other "open" classroom climates invite greater involvement of students. Given a well-organized sequence of study materials, students can learn very well by themselves and in the interchange with their peers. The important point is, however, that in whatever form, instructional programs which encourage and allow students to <u>participate more actively in the process of learning</u> bring together the major factors that improve the quality of learning.

From the point of view of applied learning theory, the efforts of Clinical and other law school teachers to step up the degree of student involvement is the most significant single step for improving the impact of instruction. Changes are not going to come about overnight. For one thing, the reward structure of law schools, as of graduate schools generally, causes teachers to feel that their time is better spent in legal research, scholarship and consulting, than in pedagogical development. This is the bottleneck.

Evaluation

Evaluative feedback is a necessary condition for learning. A student needs to know if he is moving along on the right track and whether or not his decisions, conclusions, interpretations and reactions in general are correct. Knowledge of results (feedback, reinforcement) should not be delayed; so far as learning is concerned, the most important evaluation occurs during the course of studying, decision making and problem solving. This is why it is so important for clinical courses to have proper supervision.

I realize that the term "evaluation" generally refers to the process of testing and grading final levels of performance. Information about the course grade comes too late and is too gross to influence the progress of learning other than, perhaps, through its effect on the motivation to do better next term. The measurement technology used for categorizing students against local and national norms is more relevant to the management of the educational system, than it is to shaping the curve of learning for individual students.

Undoubtedly, there is considerable room for improving the educational justice of the testing and grading procedures used in law schools. An old education aphorism states that "the power to test is the power to control the curriculum." This is a good reminder that, to be fair and valid, and regardless of the procedural details, testing should be intrinsically consistent with the course objectives and how they were taught. To this, I would add the further requirement that a test should not be a uniform mold of convergent learning and thinking, but encourage the divergent expression by the individual students.

The lay citizen views the legal profession as being both the authority for and the responsible guardian of the rights of individuals. The application of learning theory promotes this same value when brought to bear in the law school classroom.

Appendix

The Center for Research on Learning and Teaching (CRLT) was established by the University of Michigan faculty more than ten years ago as a resource for better teaching. Dr. Stanford C. Ericksen, Professor of Psychology, was appointed the Center's first Director in line with his interest in applied and basic research on human learning and thinking.

The following five activities are the major means by which the Center supports efforts to improve the conditions for learning:

Consultation -- Staff members at the Center work with individual teachers, departments, and committees. They also conduct workshops and seminars for small groups of faculty members on topics of current interest.

Project Funding -- The Center earmarks part of its budget as seed money for instructional experimentation by teachers. The fund is generally limited to novel projects for which some type of evaluative interpretation can be made. Since experimentation related to teaching is necessarily local in nature, the Center seeks to extend the findings from individual projects to the advantage of other teachers and units of the University.

Evaluation -- To evaluate the impact of any instructional arrangement is possibly the most critical and demanding function of CRLT. Evaluation may be directed toward the performance of students or of teachers, to the impact of a course of study, to the budget effects of a particular mode of instruction, or to any other condition within the University which is believed to have a significant influence on the quality of its educational program. Not only does evaluation suggest ways to improve a specific instructional project, but it is also the basis for drawing general applications.

Information Dissemination -- The Memo to the Faculty informs the faculty of developments related to college teaching--new instructional "technologies", e.g., simulation and games, The Keller Plan, etc.; non-print resource materials such as videotapes, computer programs, cassettes, etc.; and the research and theory that supports new modes of instruction. A list of the in-print Memo reports is available upon request.

Research and Development -- The Center seeks outside funds to support research projects and programs that are expected to have long-range significance for university teaching, e.g., development of computer technology as an instructional resource, models for the orientation and preparation of graduate teaching assistants, the residential setting as a resource for education, and self-paced study arrangements.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 5, November 1973

Table of Contents

A Preliminary Profile of Clinical Law Teachers, Page 1
A Further Note on Description of Clinics in Law School Catalogs, Page 6

A PRELIMINARY PROFILE OF CLINICAL LAW TEACHERS

Introduction

Since CLEPR's creation in 1968, clinical programs have grown in number to the point where at least 117 ABA-approved law schools report having some 324 programs involving almost 300 project directors. (CLEPR, Survey of Clinical Legal Education, 1972-73 [1973].) This amount of activity, generated in the main during the last five years, has brought into law school teaching what some people consider a "different breed of cat" -- the clinician.

Because CLEPR has readily available information from its own files on a great number of clinicians, we decided to examine this information to see what we might find out about who the clinician is as far as his age, education and experience are concerned. For this purpose we looked at what our files tell us about the teachers of clinical courses. The definition of a clinical course for the purposes of this inquiry is that which CLEPR has advanced over the years: lawyer-client work for credit under law school supervision.

Because this was only a preliminary inquiry, aimed at stimulating further research and analysis, CLEPR sought to obtain the most easily quantifiable elements which were, as indicated, age, academic background and employment experience. We have not yet compiled the data for teachers in the same age group who teach classroom courses. Certain general information about all law school teachers, however, has been compiled from the Directory of Law Teachers of the AALS and is referred to in this article.

Methodology

Data was compiled on 112 teachers of clinical courses by Martin Vogel, a law student at

New York University, who also aided in the preparation of this Newsletter. Two criteria were used to select these teachers. The first was that they taught in a program funded by CLEPR. (We used this criterion in order to be able to use CLEPR's own files as immediately available material for a preliminary study.) The second criterion was that the same teacher also taught a classroom component of the clinical course. The purpose here was to distinguish between those hired as clinical teachers with duties in the clinic and in the classroom, and those performing day-to-day, attorney-of-record functions limited to the clinic. This distinction is only for purposes of this study and is not intended to delineate what might or might not be a desirable allocation of functions in clinical programs.

The second criterion was impossible to observe in every case. Lack of personal contact with every one of the approximately 100 funded programs and inadequate job descriptions in program proposals and program reports were the reasons for this. Although the bulk of the sample meets the above qualifications, a small number of people considered in the group of clinical professors are faculty program supervisors, seminar personnel and attorneys whose role in the clinical program is not clearly enough defined by the information we have in hand to make the necessary classifications.

Once a list of people involved in CLEPR funded programs who taught a classroom as well as a practice component was established, a standardized data sheet was made out. The primary source of information was personal resumes submitted in connection with program proposals or with reports which are required to be made to CLEPR. This resume information was updated and completed through use of AALS Directories, program reports and, in a few cases, telephone conversations. Summaries of the tabulated data are described below.

Age

Of the 112 people involved in CLEPR-funded programs, the mean date of birth was 1937 (current age: 38), and the median date of birth was 1940 (current age: 33). The exact breakdowns by five-year increments are as follows:

Birthdates	Number	Percentage
1901-1905	1	.9%
1906-1910	0	0
1911-1915	1	.9
1916-1920	3	2.6
1921-1925	2	1.8
1926-1930	7	6.2
1931-1935	17	15.1
1936-1940	32	28.5
1941-1945	44	39.3
1946-1950	3	2.6
Not available	2	

Nearly two-thirds of the group (66.1%) were born between 1936 and 1945, making them between 28 and 37. On the other hand, less than one-eighth of the sample (12.2%) were born before 1931 (over 42 years of age). A random sample of 112 full-time, non-clinical law school teachers taken from the 1972 AALS Directory showed the median date of birth to be 1932, and the mean 1929, or a difference of roughly eight years. If this random sample is accurate, it shows what many have suspected--that clinicians are relatively younger than other law school teachers. This is not surprising, since teaching a clinical course or teaching a course by the clinical method is a relatively new phenomenon as far as most law schools are concerned. It will be interesting to see if in the future after "clinical" becomes middle-aged, the age of clinical teachers continues to be younger than that of non-clinical teachers.

Academic Background

Undergraduate Education

For the most part, the clinicians attended highly regarded undergraduate institutions. The three most popular schools for undergraduate education were Yale, Michigan and Cornell. The breakdown by school is below.

Colleges Attended by More Than 1

College	Number	College	Number
Yale	5	Stanford	2
U. Michigan	5	Princeton	2
Cornell	5	U. Minnesota	2
Dartmouth	4	Rutgers	2
Harvard	4	NYU	2
U. Virginia	3	Texas Southern	2
Berkeley	3	Davidson	2
Northwestern	3	Tulane	2
CCNY	3	Amherst	2
Oberlin	3	Brown	2
UCLA	3	Others	51

Six of the 112 were elected to Phi Beta Kappa. Seven of the sample acquired M.A.'s in the course of their education.

Legal Education

Harvard and Yale were the two most popular law schools, each graduating 12 clinical professors (10%) of the sample.

Law Schools Attended by More Than 1

Harvard	12	U. Virginia	2
Yale	12	Texas Southern	2
U. Chicago	5	Geo. Washington	2
Rutgers/Newark	4	NYU	2
U. Michigan	4	U. South Carolina	2
Stanford	3	Georgetown	2
Northwestern	3	Washburn	2
U. Florida	2	U. Cincinnati	2
U. Southern Cal.	2	Duke	2
Dickinson	2	Columbia	2
Berkeley	2	Others	41

Information received from an AALS tabulation of August, 1973, showed the following law schools were the most responsible for producing law school faculty in general: Harvard, Yale, Columbia, Michigan, Chicago. Thus, the primary sources for law teachers are similar for both clinicians and classroom faculty.

Law School Honors

Of the 112 clinicians sampled, 46 (40%) indicated they had had law review experience, with 33 of the 46 serving as officers. The resumes further showed that 9 were members of Coif and 3 of Wig and Robe.

Advanced Legal Education

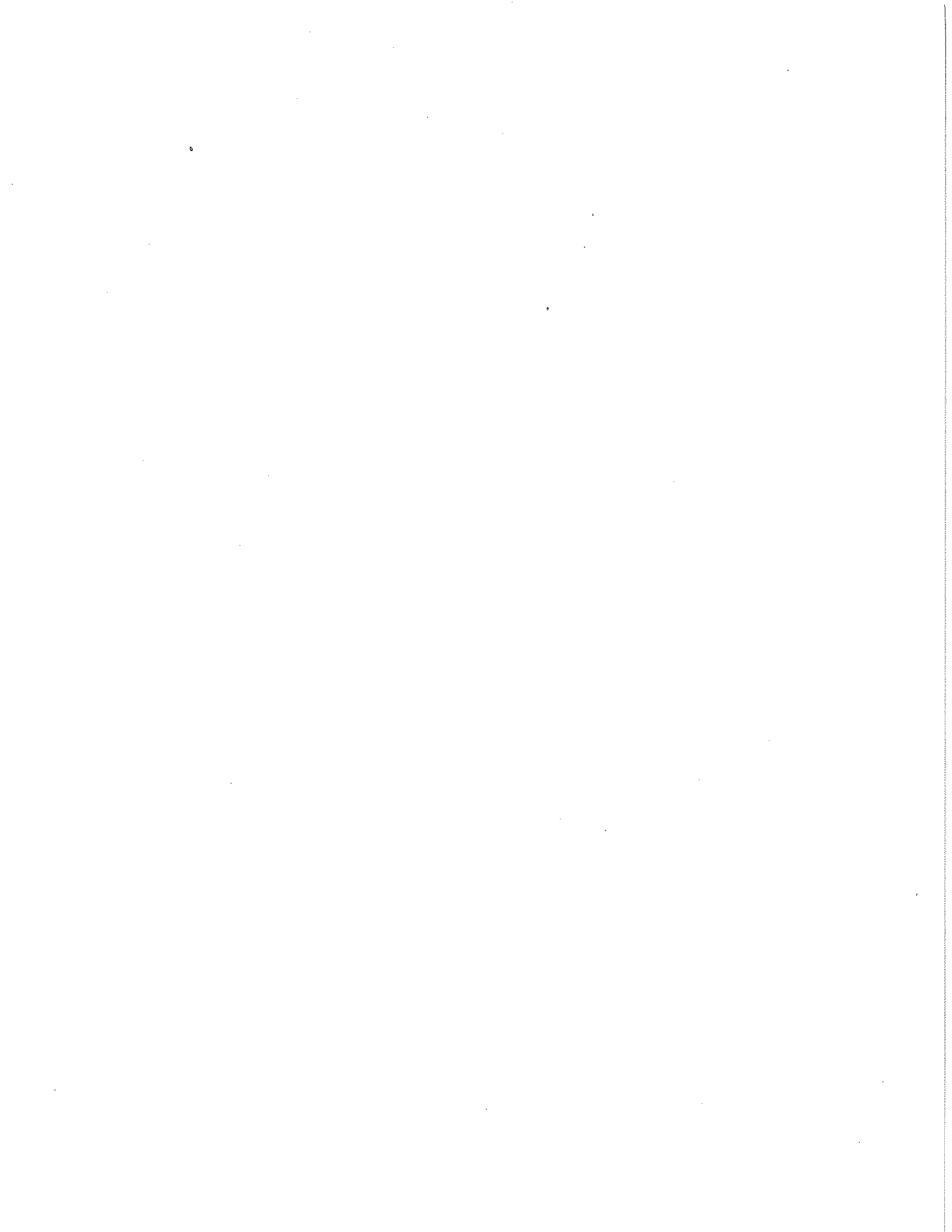
Twenty-three (20%) of the clinical professors had earned the LL.M. The institutions granting the degrees are:

Harvard	10	Northwestern	2
Georgetown	5	Geo. Washington	1
Yale	4	NYU	1

Thus, while it might be assumed that work experience is emphasized in hiring a clinical professor, a significant number have what are traditionally regarded as the requisite academic credentials.

Employment Experience

Reflecting the rapid growth of clinical education programs, the clinical teachers are relative newcomers to their positions. Through the 1972-73 school year, the mean time of employment in the present job was 3.1 years, while the median time was only 2 years. Fully three-quarters of the total sample had been employed by their present institutions for 3 years or less.



group had impressive academic credentials in terms of schools attended and rank in class.

---

1. The clerkship categories were as follows: U.S. Court of Appeals - 5; U.S. District Courts-3; U.S. Courts of Claims-1; State Supreme Courts-4; Other-1.

2. Full-time education beyond the J.D. or LL.B. was categorized as job experience.

* * * * * * * * * * * * * * *

A FURTHER NOTE ON DESCRIPTION OF CLINICS IN LAW SCHOOL CATALOGS

Volume V. No. 6 of the CLEPR Newsletter contained excerpts from the Stanford Law School catalog which described extra-classroom courses offered during academic 1972-73. These excerpts were reprinted as an example of how one school distinguishes among different kinds of extra-classroom work. The rapid proliferation of course offerings which take the student out of the classroom noted in most law school catalogs during the past few years makes such distinctions and--others--important.

CLEPR has now surveyed 100 other law school catalogs selected from those received at its offices in an effort to see how these catalogs present clinical legal education. First, we identified where and under what headings the general descriptions of clinical work most often appear. A brief analysis of these listings below suggests that the way law schools organize their catalogs and describe course content is closely related to their vision of clinical legal education and thus may be of interest to our readers.

Most of the general text describing clinical programs occurs under one of the following three headings: General Information,* Methods of Instruction, Student Activities. When the information regarding clinical programs appears under the first two headings (General Information, Methods of Instruction) it is always for credit. The text usually includes the aims of the clinical program, a brief description of the form or model used, and the areas of law in which the program operates. Often the student practice rule is cited.

When described under these first two headings the aims of the clinical work are almost always educational: "provides a valuable portion of the school's legal education" (Colorado); "students apply legal knowledge to practical problems and thus gain new insight into other course work and develop non-classroom skills" (Columbia); "prepares students for practitioner's role as fact-finder, counsellor, advocate, negotiator and draftsman" (NYU); "provides an opportunity for exercise of professional responsibility under competent supervision" (San Diego). The purposes most often cited are: to apply theory to practice,

*Under this category the following subheads appear: Aims and Purposes of the Law School; Program of Study; The Academic Program; Educational Programs.

to acquire practice skills, to learn professional responsibility. Although service to the community is sometimes cited as a goal, it is usually mentioned as a means rather than an end, or as a secondary purpose of the clinical program. For example: "clinical programs introduced to legal education the idea of giving students experience in practice through the medium of providing assistance to the poor" (Northwestern); "provides practical legal experience for third year students as well as needed services to indigents" (Alabama).

One school (NYU) states, as its first goal, "the emphasis in clinical study is on student development through faculty-supervised activities." Although there is no further explanation of this statement, it is of particular interest since this is not mentioned as a goal of studies included in the regular curriculum.

Several schools emphasize that the clinical programs provide instruction in professional responsibility. None of the surveyed schools mention this point in specific relation to the regular curriculum.

As noted above, many schools include the general text concerning their clinical programs under "Method of Instruction." When described under this heading, the case method is universally mentioned as a technique for first year teaching with the clinical method described as a complement to the case method for use in the second and third years. The conclusion can be drawn that almost none of these schools now considers the case method the only way to teach a student to become a lawyer. The case and the clinical methods are now widely viewed as necessary complements. "Clinical offerings are designed to expand and reinforce the classic casebook method of training lawyers" (Georgetown). Even in the "national" schools, the case method no longer rules alone; the clinical method has become its legitimate partner. For example: Columbia admonishes its students that they "should take a mixture of courses--seminars and clinical offerings," and "students are encouraged to take advantage of the opportunities for clinical work." In many schools the large allotment of credit "up to 15," "a full semester," "10% of total course of study," further attests to these schools' belief in the educational worth of the clinical method.

There may be some significance to the fact that as more schools are increasing their catalog coverage of clinical programs to include its value as an educational technique, some schools are pointing out perceived deficiencies in the case method: "the appellate opinion--a limited vehicle for learning about the legal system" (Yale); "provides no close relationship of student to faculty member" (Northwestern); "teaches student only to deal with facts not with people" (Washburn); "does not instruct in the ethical responsibilities of lawyers and their functions as public servants" (Tennessee); "does not satisfy the demand for a more participatory form of legal education" (Georgetown).

When the general information regarding clinical programs occurs under the heading "Student Activities" it is usually a voluntary program with no credit, or minimal credit, awarded. The aim of such voluntary programs is almost always "community service." "Student volunteers assist those who cannot afford legal counsel" (Notre Dame). The educational benefits of clinical work are not usually mentioned. The University of

Chicago is an exception to this statement: although its Mandel Clinic is listed under the heading "Student Activities" and students volunteer and receive no credit, the catalog states "The program is intended to complement the academic study of law."

Under all three headings, the general text concerning clinical programs usually includes, in addition to the aim of the program, a brief description of the form--or model--used. The four most cited models are "a law school law office under faculty supervision" (Washburn); "faculty supervision of outside placements" (Denver); "agency placements with related classroom course" (Arizona); "students assist attorneys in neighborhood legal service offices" (Notre Dame). The pattern is from complete responsibility of the school for the program (the in-house clinic) to no responsibility of the law school for the program (agency placement with no faculty supervision nor any related classroom work).

There appeared to be a large number of schools operating clinical programs in the third fashion--agency placement with related classroom course. In these programs student fieldwork is the responsibility of an agency, student classwork of the law school. However, some involvement of a faculty member in the fieldwork seems implicit if not always mentioned. It would be difficult to teach a related classroom course without being cognizant of the kinds of cases and problems students were dealing with in the fieldwork placement. This same model is also present in mirror-image form: a seminar, usually in a specialized area of law, with a related fieldwork component in a court or agency. In this model, the fieldwork site is specifically chosen to provide correlative cases to the material studied in the classroom. This model--seminar with related fieldwork--is used in a number of instances in the area of juvenile law with students engaged in both prosecutor and defense activities in juvenile courts (Arizona, Emory, Vanderbilt).

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 6, November 1973

Preface

The clinical program at the University of Michigan Law School operates under the direction of a regular faculty member, who devotes his full time to the program for one term. Thus, each term, academician becomes clinician. Continuity is provided by an attorney, who spends full time supervising student casework, and a clinic manager, who acts as the office's managing clerk.

Professor Alfred Conard, former president of the Association of American Law Schools, abandoned his normal duties of teaching Corporation, Agency and Business Organizations and became a Clinical Director during the fall term, 1972. Professor Conard's description of his experience also appears in the November issue of Law Quadrangle Notes of the Michigan Law School. With their permission, we are pleased to share it with our readers.

LETTER FROM THE LAW CLINIC

Professor Alfred F. Conard, University of Michigan Law School

"Are you really going to work in the law clinic?" For several months, I heard this question delivered with diverse intonations of the lips from colleagues and friends.

It exploded with shocked incredulity from Yves, [1] who believes that clinical work is just another avenue of escape - like pass/fail grading - from the rigor of learning the law. It was intoned with a sigh of despond by Moe, who believes that clinics lower the students' sights from "what the law ought to be" to "how to make money out of the law that now is." It was sung in a taunting tone by Geoffrey, who thought that my "volunteering" two years earlier was a gallant gesture made without any expectation of being called on to perform. It was enclosed in hilarious chuckles by Sandy, who thinks my supervision of students' courtroom procedures - 35 years since my most recent appearance as counsel - is about as useful as Rip Van Winkle showing up to coach Lee Trevino. It was murmured hopefully by Elijah, who longs for a law school dedicated to community service. But the happiest recipient of the news was the dean, whose views of clinical education - whatever they may be - are subordinated to his eagerness to staff the operation.

The Professorial Payoff

Participation in the clinical program offered me many personal rewards. One was participatory observation of the administration of civil and criminal justice in Washtenaw County in 1973. Since I supervised 7 student teams, I was in court much more than any single practitioner could be; in the course of four months, I saw in action every one of the 11 circuit, probate and district judges of Washtenaw County, and learned something of their professional characteristics and ways of doing business. I experienced a spectrum of controversy which could be met nowhere else in private or public practice. The clinic's business embraces misdemeanors (mostly shoplifting, drunken disorders and drunken driving), juvenile delinquencies, child custody disputes, divorces (often accompanied with injunctions against assaults on wives and children), support orders, commitments of mental incompetents, landlords' suits for eviction, tenants' suits to recover seized furniture, disputes over usurious or predated loans, consumers' warranty controversies, drivers' license revocations, school expulsions, and food stamp allocations. I saw and talked with scores of accused persons, and learned from their mouths what they experience, or think that they experience, at the hands of complainants, police and prosecutors. I refreshed and updated my observation of the usual behavior and reactions of judges, bailiffs, clerks, jurors, prosecutors, private attorneys, clients and witnesses. None of these experiences, I confess, will raise my stature as a professor of corporation law. What they enhance is my competence to evaluate the adequacy of justice in American society, and the possible ways of ameliorating its quality. The clinic provides a worm's eye view of justice which is very different from that of a law firm associate, an appellate judge's clerk, a model act draftsman, a presidential commission researcher, or a government counsel staffer - the usual "real world" exposures of law professors.

A second area of personal reward was the chance to teach students in the way a coach teaches players. Tell him in general terms what to do; then watch him do it; whisper suggestions to him as he operates; immediately afterward, review what he did and what he could have done better. Most students respond with fantastic enthusiasm to this kind of a regime. They invest immense and even excessive amounts of time, and turn their minds to problems with unfeigned intensity. It is as different from classroom teaching as coaching football is from lecturing on intercollegiate athletics. It gives a teacher a chance to know young people not merely as students, but as co-workers and companions.

The Students' Payoff

The cynical queries of my colleagues reinforced my own curiosity about whether the clinical program is also good for students, and, if so, in what way. My first stab at getting the answer was to question the 120 students who have participated in the clinical law program in prior years. Their answers were amazing. A clear majority thought that the clinic was "more valuable than any other 7 hours of law school work." Most of the rest rated it "among the best third of my law school courses."

What they got out of it would be, I expected, a harder question. But it proved to be an easy one for the students. A distinct majority identified the primary value as "providing a realistic perception of the flesh and blood situations which are involved in law."[2]

This answer spotlights the most fundamental and pervasive problem of higher education - if not of all eduction. In law schools, most students learn to articulate and manipulate concepts with faint perceptions - or false perceptions - of the human events referred to. As the junior law student's formal education moves into its eighteenth successive year, it moves progressively further from the realities of his own experience to the dry technicalities of novation, double jeopardy, intervening cause, ultra vires and renvoi. The symmetry and simplicity which imparted charm to the abstractions of mathematics and philosophy have been replaced by the crabbed illogic of precedents.

Clinical experience puts color in the empty outlines of the legal comic book. Arrest, bail, divorce, eviction, probation, complaint, summons, and deposition suddenly take on reality and meaning. Questions which were dull and meaningless become important and exciting. Answers which seemed black and white become gray, red and green. Dull legal rules become memorable elements of unforgettable events.

Another product of clinical experience is training in those lawyer skills which receive so little cultivation in the law school version of Socratic discourse. One of these is interviewing, where the student's prior indoctrination (whether based on the classroom or the boob tube) leads him to a cross-examiner's style that is the opposite of a search for facts. Another is counseling, which includes helping the bewildered client to understand and accommodate to the bruising events which he encounters, as well as guiding him to dodge the slings and arrows. A third is negotiation - the art of settling for something when you can't get everything. A fourth is digging out facts - from policemen and police records, from housing inspection reports, from records of prior litigation in related cases, from friends and landlords and neighbors. A fifth is drawing motions, pleadings, stipulations and judgment orders. A sixth is to conduct oneself in court with the correct mixture of deference and assertion toward the court, courtesy and defiance toward opposing counsel, candor and intensity toward the jury, politeness with persistence toward witnesses.

A third output of the clinic experience is a first-hand experience and acquaintance with the sore spots and disease centers of American society. The student meets and defends the outcasts who play a perpetual tag game with police, the transient tenants who are recurrently evicted, the delinquent minors who prefer pinball parlors to home and school, the alcoholics who drive and fight and beat their wives, the embittered mothers who seek divorce (or paternity acknowledgment) and child support, the weary judges who preside over this endless parade of misery. The student comes away with a first-hand knowledge of many of the active agents in the modern morass of poverty and crime.

What's the Hurry?

"Experience, practice, exposure: these come quickly enough, and continue as long as you practice. Why sacrifice for these the once-in-a-lifetime opportunity to learn from professors?" This is the question asked by my fellow-teachers, and perhaps by those students - about 75% - who never take the clinical program.

Experience and doctrine, I would answer, are enhanced by interaction. One wouldn't teach science for three years without conducting a laboratory experiment. Medical

students dissect cadavers, dental students fill cavities, social work students interview and counsel, engineering students build models and test materials - while they are being indoctrinated. Anti-clinicians will respond that the freshman moot court program and the senior practice court supply many of the benefits of experience in a simpler and more economical way. This is true, but living experience can add something that simulation never supplies. At best, a simulated litigation offers verisimilitude rather than verity in matters of pleading, proving and arguing. It offers nothing at all in the areas of interviewing, investigating, counseling and negotiating.

The idea that experience can wait until students are working for a living is fallacious for other reasons. Most law offices do not furnish a neophyte with beginners' instructions; they don't send him to court with a supervisor, then postmortem his performance, then send him again if he did badly. They generally pick those who seem forensically gifted and make them into apprentices to the courtroom masters; the others are immured in tax, securities and probate departments. In smaller firms, neophytes are often sent forth on short notice to hearings for which they have no preparation, no supervision and no post-mortem. Lawyers who hang up their own shingle are condemned to stagger their own way through whatever business comes their way - and suffer the disasters of their untutored mistakes.

It is true that some offices guide their neophytes wisely and well, and that many self-taught lawyers quickly master their arts. But the function of education is to shortcut the long hard road of experience, and there is as much reason to shorten it in the arts of practice as in the realm of theory.

A more bothersome question about clinical study is whether the techniques learned in handling the affairs of the poor are useful in handling the affairs of ordinary citizens; and, even more doubtfully, whether they are useful in handling the affairs of the rich and powerful corporations who furnish the most important sector of legal employment. The techniques are indeed different. In the petty affairs of clinical work, most of the rules of law applied are drawn from the office manual or from the student's memory; in private practice, where more is involved, more research is called for and is done. Negotiation in clinical practice involves a few dollars or weeks in jail; in private practice it may involve millions of dollars and long-term franchises. The scale is different, but the essence is the same. The student who has drawn a petty complaint or negotiated a minor settlement with an older lawyer looking over his shoulder is far more ready to litigate and negotiate a big case.

But the supreme justification for clinical law is not its contribution to competent practice. It is the opportunity to meet the whole spectrum of justice as seen by the poor and maladjusted - the police, the misdemeanor courts, the motor vehicle department, the juvenile court, the divorce court, the courts of small claims and evictions, the truancy boards. There is no private law office and no public law office that offers so diverse a contact with the troubles of one's fellow humans.

To Preserve the Blessings of Liberty

Granting that the clinic is good for students, the question arises whether it is good for clients. What do we do for them? I start with the criminal cases, where plusses and minuses are most easily recorded.

Our biggest criminal business is in bargaining pleas. Prosecutors habitually charge the accused with the maximum offense which could be inferred from the evidence. This is what the defendant will plead guilty to if he chooses not to struggle, and what he will probably be convicted of if he attempts to defend himself. But if a lawyer appears for the defendant, and has any measurable chance of winning, the prosecutor will usually accept a plea for a lesser offense. Nearly every clinic student has obtained a reduction of "driving under the influence of intoxicating liquor" (with automatic license suspension) to "driving while impaired by intoxicating liquor" (which charges 4 points toward license suspension). A few students have obtained reduction of "reckless driving" charges to "careless," or "assault with a weapon" to simple "assault," or of "breaking and entering with intent to commit larceny" to "entering without permission."

If we can't get a reduction, we help our clients plead guilty. This is more complicated than it seems. Twenty years ago, if an accused said he was guilty, he was forthwith adjudged guilty. Today, instructed by Supreme Court reversals, judges do not accept guilty pleas unless the defendant is willing to testify under oath, "I was drunk" or "I did take the merchandise without intending to pay for it," or "I did menace the complaining witness with a knife," and to waive expressly his rights to remain silent, to subpoena witnesses, and to be tried by a jury. If defendants want to get their conviction over with the least delay, it is helpful for them to be told what they must do, and it is reassuring for them to have a lawyer along at pleading and at sentencing.

If defendants insist that they are not guilty, we generally go to trial, whatever we may suspect about the true facts. We try to weed out the really hopeless cases by declining them when the client first comes in, but we don't always succeed. The client's initial story usually drapes him in robes of innocence; when the stains appear, we have already accepted him as a client, and he is entitled to our help in telling his story to the court. Besides, stories that seemed implausible at intake often are corroborated by investigation. And we are sometimes appointed, or requested, by the court to take cases which we would not have chosen for ourselves.

Trying cases of this kind is discouraging, because we haven't picked them as winners, and often lose them. We have the case because no attorney in private practice would want it. Even so, we have had some remarkable successes. Against one prosecutor we won three contests in a row, and he dismissed charges in the next two.

One unforeseen victory involved a couple whose car collided with a lamp-post; they climbed out to inspect the damage. Police arrived, smelled beer, and asked who was driving. The couple refused to say, angry words followed, and the frustrated police charged the couple with drunk and disorderly conduct; they were acquitted. Another success involved a mother who had taken a zipper, and put it in her shopping cart; after it fell out twice, she transferred it to her purse; when she came to the cash register, her four-year-old was screaming to go to the toilet, and she hastily paid for the contents of her cart, forgetting the zipper; the store detective who had been following her shopping tour, arrested her for shoplifting; the judge acquitted her. A third case involved a 16-year-old black who was charged with snatching money from a cash register;

he denied it, but we had only his word to match against that of a very persuasive clerk. Unfortunately for the clerk, we discovered that at the trial of a different defendant he had said our client gave back the money.

Victories are useful not only to the clients who are acquitted, but to a much larger number for whom we obtain dismissals or reduction of charges. The fact that we can and do win leads prosecutors to review their cases with greater care, and concede in advance when their charges are inadequately supported. The prosecutors' responses convince me that our defenses are well prepared in relation to the gravity of the cases involved. We put more time and preparation into each case than do any of the other lawyers - including prosecutors - who practice in the misdemeanor courts.

Our lowest batting average is scored in the drunk cases, because alcoholics are the world's worst self-deceivers. Shoplifters, speeders, and gun-toters will admit their errors, but alcoholics never had more than a coupl'o'beers, and never recall lapses from their normal prudent and gentlemanly (or ladylike) behavior. Even when they purport to plead guilty, the court is forced to reject their pleas because they deny drunkenness, or remember nothing. So we go to trial, and our willingness to go to trial gives us leverage in bargaining for pleas.

Holy Deadlock

In contrast to the colorful criminal cases, the dullest and most unloved are the divorce cases. There is a six-months' backlog of such cases on our waiting list; there always will be, because if it dropped to five months, a hundred more clients would add themselves to it. There is one way of beating the queue; that is, to be an abused wife who is in imminent danger of maiming or death unless her drunken husband is restrained from beating her. This relates to the fact that police in our area will not enter into a family fight unless a court restraining order has been issued, and courts do not restrain the interaction of spouses unless one of them has sued for divorce.

These cases are exciting when the tearful and terrified wife first bursts into the office, and when students answer a midnight call to come out with their restraining order and induce police to expel the defendant. They wear thin when the wife persists in admitting the husband on successive weekends with identical results; and when the wife refuses to help us find the husband whom the court has at last ordered to jail for contempt.

After a divorce petition is filed, there is a two to six months' waiting period, at the end of which a final decree is entered, severing this ill-starred union, except that sometimes the wife vacillates, calls the matter off and calls it on again, and eventually decides to stay married. In how many of the final decree cases, and of the "reconciliation" cases, did we enhance human happiness? We will never know.

Some friends ask whether we are really needed in divorce cases since the Michigan law has been simplified by "no-fault." It is true that a resourceful college graduate with

an uncomplicated case could probably stumble successfully to a valid divorce decree. But if one of the parties had left the state, or if there were any differences about child custody, child support and property division, even the smart college graduate would trip over his own lines. Clinic clients are rarely college graduates and rarely resourceful. Most of them are poorly educated, easily baffled individuals to whom the blessings of no-fault divorce will remain inaccessible if they are not helped by Legal Aid or Clinical Law.

The Hapless Debtor

In a surprising number of cases, we extricate clients from unreasonable demands of landlords and creditors. A couple of girls came in because their landlord threatened to evict them for three months' unpaid rent; they had receipts for each of these months. We first thought the case was so simple that we weren't needed, and told the girls to go to trial and show their receipts to the judge. When they tried this, the landlord claimed that there was a rent deficiency in earlier months. We had to come into the case, and straighten out a dispute which had resulted mainly from the landlord's slovenly record-keeping, and his neglect to investigate carefully before suing.

In another case, a woman who bought a house subject to an existing land contract was being charged with delinquencies which accrued before she bought -- of which the real estate agents had said nothing. Her own cries of distress produced only threats to foreclose. After we entered the case, the realtor paid off the delinquencies; whether he obtained the money from the vendor or took it out of his own commission we never knew. Our mere appearance had apparently changed his attitude toward the buyer's problems.

Some of our consumer cases have been really significant victories. Used car dealers occasionally sell cars which they should know are not in running order, and then fall back on a small print "warranty" which obliges the seller to nothing except paying half the repair charges -- charges which will be set by the seller himself. Students won a big victory over a local car dealer when they persuaded the judge that, notwithstanding the terms of the warranty, a car sold by a merchant must be merchantable. The opinion has been printed in a national reporter of Commercial Code decisions.

More Perfect Justice ?

Like most lawyers, I have described these cases as though our clients were little Snow Whites, pursued by malicious witches. This is not the whole story. Most of our clients have fallen short of the care and prudence of a "reasonable man or woman." In some cases they have been downright delinquent. Most of our divorce plaintiffs have married unwisely, many have contributed to the breakdown of marriage by their own irascibility, prodigality, infidelity or alcoholism. Our accused misdemeanants have been in the wrong places with the wrong people, doing the wrong things. Do they deserve defense?

On the usual plane of legal discourse, we have no doubts. In civil cases, we do not present rights which do not exist. In criminal cases we do not try to prove innocence when the client has told us of his guilt. We do not suborn or encourage perjury.

But we aim higher than merely avoiding wrongdoing. Since the clinic is supported by public and charitable funds, it should make a positive contribution to justice and welfare.

In most cases, it clearly does. Even if tenants are dirty and delinquent, society benefits when their delinquencies are correctly calculated, and a reasonable time allowed for them to find a new shelter. Even if car buyers are greedy and foolish, society benefits when dealers put cars in operable condition before they sell them. Even if wives are insufferable, imprudent and unfaithful, society gains when they are liberated from servitude to alcoholic wife-beaters.

But some cases present more puzzling problems. For example, there is the case of the brothers whose father is in prison for heroin peddling, and their mother on probation for the same offense. The boys are perpetual truants, are frequently engaged in scuffles on the streets, and have no visible means of obtaining the money which they spend on cigarettes, clothes, and pinball machines. The prosecutor filed a petition to adjudge one of the kids delinquent because he stole bills from a restaurant. Should we advise the defendant to concede - since he certainly is a delinquent - or to defend because the particular accusation - stealing bills - is false? Our answer is unequivocal. We defend against a false charge. Even though this kid might be better institutionalized (we disagree among ourselves on this) we think justice is promoted by insisting that the grounds of official action be valid. That is the only way to keep the system honest.

Occasionally we defend an accused whom we strongly suspect is guilty as charged, but who refuses to admit it to us or to the court. This may come about when we are court-appointed to defend (chiefly in juvenile cases) or when we accept the case on a plausible story that later becomes implausible. When we have taken a case and investigated it, it is too late to send the client looking for alternative counsel. He is entitled to have his story heard and we have to give him that chance, even though the performance wastes the time of judges and jurors in a lost cause, while lawyers and witnesses in worthier cases cool their heels. It is a painful business, because losing cases decreases our bargaining power in other cases. Clinicians disagree on what to do in such situations.

Private practitioners have various ways of avoiding trials of these hopeless cases, which would be ruinous to their reputations. Usually, they need only to set a high fee, which the defendant cannot pay. To the few who could pay, the lawyer needs only to point out that a trial would be a useless waste of money.

Unpaid defenders must find some other way to persuade defendants to plead guilty. They may do it by suggesting that the judge will take a more favorable view of the defendant's aptitude for rehabilitation if he pleads guilty. But this ought not to be true, and certainly is not always. Alternatively, unpaid defenders may induce a plea by arguing that "it is a waste of your time - you'd be better off working at your job." This is often untrue, because the defendant has no job, and the courtroom is warmer and more comfortable than his lonely room. It is really the lawyer's and the court's time, rather than the defendant's that the lawyer is thinking about. I believe the honest thing to say is, "I am not going to take up my time and the court's with that story. If you go to trial with it, you go alone." To take this position is not to deny a poor man the rights of the rich, but only to deny him a charade which no paying client would buy.

Our hardest ethical problems, as I view them, arise in civil cases where - strange as it may seem - we have superior bargaining power. An example is a case where our clients had bought for $600 a side of beef which was under weight and under grade. They had paid $100 and were sued for the $500 balance. The sellers had already been convicted of under-weighting in a preceding criminal prosecution for the same transaction. They offered to accept $200 in full payment.

The student lawyer was a shrewd bargainer. He knew it would cost the seller more than $200 to go to trial, plus the unfavorable publicity involved in reviewing the under-weighting. But a trial would cost our client nothing, and give the student a valuable trial experience. The student refused to pay a penny. The opposing attorney berated us for extortion; the judge counseled us to be reasonable. We held fast, and the seller dropped his suit.

Opposing counsel felt that we had taken unfair advantage of the fact that our clients' expenses are paid by the State and by a foundation, while the opponents' are paid by themselves; they asserted that a private practitioner would have settled much more easily. To us it seems that we merely equalized the power of the contestants. The seller was a chain store corporation, well able to pay the litigation costs if the outcome would teach a salutary lesson to delinquent buyers. Instead, they learned a salutary lesson themselves.

The danger of injustice is greater when the party on the other side has very limited recourses, like a small-scale landlord against whom we represent an indigent tenant. The landlord cannot really afford a trial, while we can. In my opinion, we should bargain for no more than we would be likely to get on a trial, even though our bargaining position might enable us to get more. We should not take undue advantage of the public and charitable resources on which we operate. Some legal aid lawyers take a different view; they think that we should get the most we can for our clients by legal means. Despite this theoretical difference, I saw no cases in the clinic where I thought that we had over-reached.

Bar Relations

One of the most sensitive aspects of the clinical law program is the attitude of lawyers and judges toward practice by students who have not "passed the bar," and whose clients pay no fees.

A natural concern of lawyers would be that the clinic takes cases on which the private practitioners might have earned a fee. We hear this complaint now and then, but never from the lawyers who are worried about losing the business. One of our critics was counsel for an automobile dealer, against whom we had filed suits for breaches of warranty on used cars. Another was the father of a young landlord whom we had sued for assaulting a tenant and seizing his furniture. Obviously neither of these lawyers was concerned about our taking business from some other lawyer; they were concerned because we were bringing suits that wouldn't be brought at all if the clinic didn't do it. One young lawyer, from whom we may be taking business if we take it from anyone, expresses quite a different attitude. He thanks us for the opportunity to earn fees in small cases which - if there were no clinic - would be uncontested.

Another vulnerability of the clinical program is suggested by a recent nationally circulated questionnaire asking to what extent law students degrade and delay court proceedings by their ineptitude and ignorance of court procedures. In the clinic program, I saw no evidence of this phenomenon. Whatever the students' weaknesses may have been, they did not delay or embarrass proceedings. They used substantially less time than older practitioners in objecting to evidence, challenging jurors, and requesting recesses to consult clients or explore settlement. In general, they were better prepared on the law and procedure than other attorneys in the same courts. This was primarily because the students spent much more time on preparation for these small cases than any private attorney could afford to. Sometimes it was simply a matter of the law student's being more intelligent and better educated.

A third concern expressed by some judges and lawyers is that law students are too ready to try cases that should be settled or conceded.

One troublesome type of case has arisen where costless services are used on both sides of a dispute; this unusual possibility presented itself in a divorce case where Model Cities Legal Services represented one spouse and the Clinical Law Program the other. Both spouses were prepared to go to trial on their respective rights to household furniture and pets, and respective duties to pay debts incurred during the marriage, although the total resources of both were not enough to remove them from the "indigent" category. Fortunately, both lawyers were able to agree on a reasonable settlement, and impose it on their more litigious clients.

In claims against business enterprises, matters are less easily settled. When we bring suit on behalf of a used car buyer against a dealer on a warranty of fitness, business lawyers are likely to say we are "unprofessional" because we put in far more dollars' worth of time than the total claim of our client. But so does the defendant. Each side is measuring its investment not against the particular case, but against the hundreds of potential claims like it. What startles the dealer's lawyer is the presence of a more-or-less equal antagonist on the other side.

Formation of Attitudes

Every major experience in one's life makes an important impact on one's attitudes and interests. But people can rarely tell about these changes; what they now believe seems to them what they always believed. So I must infer rather indirectly what changes took place in the attitudes of clinic students during the course of their experience.

The most conspicuous change is in their attitude toward courtroom practice. A student learns quickly that he, too, can get favorable judgments, findings, verdicts, and even ex parte preliminary restraining orders by filling out the right papers and saying the right things at the right time and place. And soon after he learns this, he learns that it is mostly a very dull routine, consisting in large part of idle hours waiting in courtrooms and antechambers. The mystery - and with it the mystique - of courtroom law is gone. The thirst to try a case - just for the experience - is replaced by a rather

cool appraisal of the relative advantages and disadvantages of courtroom practice.

A second important change is in students' attitudes toward poor people, of whom they have seldom seen so many so close up. The direction of change depends on where they started. One student told me he was surprised to find that so many of the poor are white; the clinic's clients are about equally divided between whites and blacks. Some start out with the belief that the poor are a bunch of deadbeats who need a bit of goading; they learn that some are the victims of temporary misfortune and that even the incurably poor are more bewildered than malingering, and already numb from goading. Others began with the faith that the poor need only an equal chance in order to become average citizens; they gravitate toward thinking that a considerable segment need something extra. Both wings come closer to recognizing that there is no quick way of making all paupers into burgers; there is a substantial fraction of the population whose members need a regime of education, of employment, of restraint and of support designed for persons of less than average aptitude, incentive and self-reliance. As one student phrased it, their legal problems are only the tip of an iceberg which involves problems in employment, housing, marriage, in drinking, and in every phase of their lives. They will never be in harmony with a society structured around the rights and duties of an "average" American.

Another fruit of the clinic experience is an appreciation of the "revolving door" of criminal justice. We discover that some of the clients whom we counsel are far more familiar than we with the judges, the bailiffs, the clerks and the probation officers; they have been through the mill, and seem likely to come again. Is there any way of breaking the cycle? The best thing we do is to keep people from getting into the cycle, by obtaining dismissals and acquittals of false or exaggerated charges. When the charges are true, but relate to first offenses, we talk with defendants as frankly as we can about how they can avoid repetition. Sometimes we are able to arrange through social workers for better housing or welfare allowances which may alleviate the clients' most emergent needs.

Regarding "causes" of our clients' problems, I think every clinician would agree with the recent conclusion of the Schafer Commission that alcohol is the most abused drug. In at least half of the divorces which we process, the husband's drunkenness is the precipitating agent. Half of our misdemeanors are drunk driving, drunk disorderly conduct, assaults while drunk, or driving without a license which was suspended for drunk driving. At least half of our negligence cases have a heavy odor of alcohol.

An interesting attempt to break the circle of these cases in Ann Arbor is a special federally financed program on alcohol abuse. Misdemeanants convicted of alcohol-related offenses are given a series of lectures and are administered anabuse. We have seen some clients whose addiction seems to have been diminished. There are others who manage somehow to drink too much in spite of the sickening effects of the anabuse dosages. It is interesting to overhear students in the role of trying to communicate to clients - on the clients' level of discourse - the advantages of "laying off the booze." Since we have no instruction in the arts of either Billy Graham or

Karl Menninger,we are not sure how much good we do.

In the dreary parade of drunken offenders, we sometimes find a lighter aspect of alcoholism in its leveling effect. Aside from alcohol cases, the people we see in the misdemeanor courts are mostly the poor, either in work clothes or in hippie paraphernalia. Their lawyers, if any, are usually young and impecunious. But the alcohol offenses bring in a scattering of tastefully well-dressed gentlemen and ladies accompanied by leading members of the local bar. Their cases are often called earlier than ours, but they get essentially the same sentences.

On students' attitudes toward major societal reforms, the clinical experience seems to have a tempering effect. There is less discussion of whether the death penalty should be restored or abolished than of whether police reports should be made available to defense lawyers. Like physicians, clinical lawyers become more engrossed in what they can do for the individual client than in how to excoriate the evils of contemporary society. Several students commented on their loss of faith in "simplistic" societal reforms. In this respect, the University of Michigan clinic may differ from some others, which focus on test cases and class suits, and which give more exercise in planning and research than in client contacts and courtroom conduct. I doubt that this narrowing of focus will be permanent. But I believe that clinic alumni will carry away a heightened sensitivity to the complicated mechanics of reform, and a recognition of the tendency of great principles to run awry in their practical application.

Footnotes

1. This and other personages mentioned here are purely imaginary, and any identification with actual characters, living or dead, would be false and malicious.

2. This was perceived as the foremost benefit by 34 out of the first 52 replies, and was one of the first 5 benefits for 50 out of 52. Next in line was "instruction in techniques of litigation and preparation for litigation," perceived as the foremost benefit by 13 out of 52, and as 1 of the first 5 benefits by 34 others. "Escape from classroom indoctrination," was the next in line as a number 1 choice, but was surpassed in total mentions by "developing an awareness of ethical problems of the practitioner."

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 7, December 1973

CLINICAL WORK IN THE FIRST AND SECOND YEAR OF LAW SCHOOL
by Lester Brickman

This past summer CLEPR issued a set of application guidelines setting forth areas for clinical experimentation which would receive preferential consideration. A series of workshops structured around these guidelines was planned by Professor Lester Brickman of the University of Toledo. Over the past few months, there have been three meetings devoted to "experiments in integrating into the first and second years of the law school's curriculum aspects of clinical work and pre-clinical preparation..." [CLEPR Newsletter, Vol. V, No. 11 (June 1973)].

The workshops were held at the University of Southern California (Oct. 3-4, Professor Thomas Gilhool, co-director), the University of Chicago (Oct. 18-19, Professor Gary Palm, co-director), and New York University (Nov. 1-2, Professors Harry Subin and Stephen Rosenfeld, co-directors). A list of those attending the workshops is set forth at the conclusion of this report.

In this summary of the workshop proceedings by Professor Brickman, no attempt has been made to attribute specific views to individual participants. Nor, because of the wide range of views represented by the participants, could any consensus statement be formulated. Moreover, the process of incorporating discussion into this report has been a selective one. The operative principle has been whether the information would appear to be of interest to this Newsletter's audience. This report utilizes as an organizational overlay the annotated agenda prepared by Professor Gilhool for the U.S.C. meeting and also incorporates its substantive content.

Each of the workshops confronted the issue of what purposes were to be effectuated by providing clinical experiences to first and second year law students. The inadequate preparation of students for extensive third year clinical undertakings was cited as one reason to offer earlier clinical training. Courses in Criminal Law

and Procedure, Evidence, Contracts and Commercial Transactions were among those noted as inadequately preparing students to handle those problems in a legal clinic which might generally be subsumed under the course titles. Whether these courses should be judged by such a standard was a contested issue, though it was generally agreed that the student would need to gain the requisite substantive and procedural background from somewhere in the curriculum.

Whether the motivation for provision of clinical experience early in the law student's career was a means of better preparing students for third year clinical programs or whether it was an attempt to improve the education of the first and second year student as an end in itself, was argued vigorously in the sessions. Those speaking for the preparatory role noted that students who enrolled in third year clinical programs suffered not only from deficiencies in substantive law but in skills as well, including legal research, brief writing, interviewing, counseling and investigating. Upon entering into the clinical program, they were overwhelmed. To compensate, most schools which offer an extensive clinical experience have added some form of crash orientation program. Moving such a program into the first and second years was thought to afford a more orderly transmission of skills and information and to enable more benefit to be received by the student from his third year program. Others suggested that since the clinical learning method introduces new and productive perspective and motivation to legal education particularly by organizing thought and investigation, including investigation of self, around the core clinical concepts of lawyer decision and role, such benefits should not be limited to third year students, or even second year students. Thus two opposing sequences emerged in the meetings with some variations in the middle ranges. At one pole discussions centered on first building strong clinics in the third year and then transferring elements of these clinics into the first two years as they proved successful. At the other pole were schools which either refused to concede the primacy of the third year or which found independent pedagogical value in introducing students in their first year to actual clients. At Antioch, for example, preparation for clinical work begins literally on the first day, with all students participating in a one month introduction to important elements of the lawyering process, including simulation of interviewing and negotiation. The students then move into simulation of all phases of a single client's problem from initial interview through final appeal. By the second semester, actual practice forms the core of the student's work. At Yale, where there exists a less structured first year clinical program, second semester students may obtain up to three hours of credit for work in the program.

NYU, by contrast, plans to build backward from the third year, where the school has developed a broad array of different clinics. In the third year, successful clinics include four elements, each of which might serve as the foundation for a first or second year program: (1) actual legal practice, (2) organized pedagogy for analyzing and developing practice skills, (3) exposure to the dynamics of the lawyering process,

and (4) analysis of issues of professional responsibility. As one element, such as skills training, is developed in the third year, using simulation and specially developed materials, this component can be transferred into the second year as a separate course in lawyering skills. Such a course is now in operation at American University. There students engage in simulated interviewing, counseling, and negotiation for most of a semester. The course is required for students planning to do clinical work in their third year, and permits the clinics to move on to more advanced practice forms. For students who do not go on to clinical work, the course offers an introductory framework for understanding the use of skills in the lawyering process.

The point that clinical education introduces a new motivational element to legal education was echoed frequently, it being observed that clinical education has heightened student interest in traditional courses because of the early insight provided into the relevance of the substantive data. Taking advantage of this motivation by scheduling a large scale clinical experience in the second year and providing some introductory clinical work in the first year was therefore recommended. Some opined that third year students who had already had clinical experience returned to their courses with fresh vigor and renewed interest. Thus, one of the Commercial Law teachers present, who also taught in the clinical program, stated that students who had had or who were then engaging in a clinical experience had better attendance records in Commercial Transactions. It was his feeling that they were more interested because they could see a more direct relationship between the substantive data and what they were doing as lawyers. Some others responded, however, that students who had had a significant clinical experience might conclude that law school was simply holding them back from going into practice and might therefore lose interest in their subsequent traditional courses. One participant summed up this view with the aphorism: How are you going to keep them down on the farm after they've seen gay Paree?

Clinical education in the first year was regarded by several participants as being particularly responsive to deficiencies in the present curriculum. The traditional law school approach of compartmentalizing and segregating subject areas was felt to produce undesirable educational consequences. By erecting artificial barriers between related courses and obscuring common features, the traditional first year curriculum diminishes student acquisition of insights that depend upon the recognition of course commonality; material learned in this manner tends to remain unintegrated with parallel knowledge acquired in other areas. Addition of a supervised and controlled clinical component would supply the integrative reconciliation that would provide the educational bridge between related courses.

Another deficiency of the traditional first year curriculum is its de-emphasis on fact investigation and on the lawyer's role in formulating the facts. The appellate casebook medium in which the facts are already established conveys a message that the process of gathering facts and assembling them into legally significant

statements is a mechanical if not unimportant task. A clinical component in which the student is presented with a fact package that is not predigested into legally operational categories calls for the application of lawyering skills and integrative capacities that can only add to the learning experience that the casebook method intends but cannot achieve.

On a broader scale, inclusion of clinical education in the first year curriculum was advocated on the grounds that the culture of law schools, and to a significant extent, of the legal profession itself, is defined and the role expectations of the student-lawyer are set in the first year. A clinical component makes it apparent to the student that legal education is a continuum and that at the end of the road lies a client; that what the student is learning is how that client's problems may best be defined and solved.

A related point made was the need to place responsibility on the law student for his own activity as early as possible in his career--a responsibility which is at the heart of the lawyer-client relationship and of professional responsibility. Whether the student was capable of assuming such responsibility so early in his career was presented as problematical. Several participants vehemently protested the delegation of authority to a first year student to engage in representation of an actual client. Others responded that with proper supervision the first year student was quite capable of undertaking a great deal more responsibility than was generally supposed. In particular, the experience of Northwestern was cited as evidence for this proposition. While first and second year student participation in the clinic is on a voluntary basis, these students engage in the whole range of clinical activity (under supervision) except appear in court, the latter being reserved for third year students.

Another argument advanced in favor of clinical experimentation in the first year was that a different learning situation would be created with two potential outcomes; a) some students would learn better than if their exposure were limited to the casebook method, i.e., presenting a variety of learning techniques may enable students who do not adapt well to one technique to adapt themselves better to another; b) it will enable some comparisons between presently employed teaching methods and alternative methods. A further development of this latter point was the view that offering clinical experience in the first year as part of an effort at both sequencing the learning process and integrating themes across the law school curriculum was a test of clarity, of purpose, and a necessary condition, and a sign, of measured effectiveness in legal education.

Much of the reaction against clinical experiments in the first year, it was suggested, may have stemmed from a misunderstanding among faculty and students to the effect that clinical education is almost totally divorced from and discontinuous with the traditional goals of legal analysis and research. Using a live or simulated case in the first year which the student is to completely work through requires, by definition, the use of all lawyering skills--including case analysis and research. The student would then see case analysis and research as an integral process, with each skill

unit inseparable from the other. Appellate decisions and other sources of law will be illuminated as to role and place, utility and limits. New relationships among skills and procedural and substantive theory can be exposed. An introduction to these skills during the first year would then lay the groundwork for further integration of skills in the clinical programs and the upper division classes and seminars.

In discussing the further integration of clinical work into the curriculum, various models of first year clinical training were examined. In response to the opposition expressed to giving first year students responsibility for an actual client, the parallel participation model was introduced. Under such a plan freshmen would work on actual clients' cases along with upperclass students but their work product would be used only for evaluation. Thus, the first year student would gain early exposure to an actual client but would not have responsibility for solving the client's problem. Instead, he would sit in on interviews and lawyer conferences, do research, though mostly in satisfaction of course rather than client needs, and then role play the case to its conclusion. By observing the conclusion of the case, whether in the clinic or private practice, the student could retrospectively scrutinize the actual process and the simulated process. Depending on the nature of the case he might perhaps be delegated some limited responsibility such as for field investigation.

Other models were discussed. The value of observatory experience was debated with proponents arguing for law students riding in police cars, visiting jails, law offices and courts. Locating a municipal courtroom in a law school with its docket controlled for cases related to the substantive curriculum was advanced as a feasible and desirable undertaking. Those who felt that the observation mode was not a worthwhile time expenditure absent substantial supervision and interpretation were in reality arguing for other modes since the more structured the observation, the more it approached other first year clinical models.

Another mode advanced was simulation. The one least deviating from the traditional first year curriculum was the "case autopsy" which involves a retrospective discussion of an ordinary casebook case in any traditional first year course from the perspective of lawyer decision, role and the lawyering process. A more substantial departure was envisioned by use of a case from a clinic file, such as the _Hunter v. GOC Finance Company_ case which has been developed by OEO Legal Services for the training of its new lawyers. Introduction of such a case in the course in Civil Procedure would enable role playing in interviewing and preparing witnesses and negotiating with the opposition, legal research, and the drafting of briefs, memos, complaints, answers, interrogatories, depositions and various motions. A companion case introduced into the course in Criminal Law could include interviewing defendants, preparing witnesses, conferring with the prosecutor, plea bargaining, argument and sentencing. Separate courses as opposed to course components were also discussed. Several of the courses used, as a primary component, the OEO training materials, in particular the _Allen_ case, which is an improvement over the _Hunter_ case but which still does not fill all the needs of a concentrated trial practice

simulation-oriented program. The various uses of simulation as a technique thus range from verbal question and answer mechanisms with merely a new focus to the questioning, through role play, drafting, and extensive use of videotape.

Not surprisingly then, a great deal of discussion at each of the meetings was devoted to simulation and whether it should qualify as "clinical" particularly when advanced as the preferred mode for the first year curriculum. The questions posed included whether the particular simulation employed should be measured by the novelty of the device, its departure from verbal simulation (isn't the Socratic method a form of verbal simulation?), by the intensity of its use and/or by its focus, that is, by whether the simulation device focuses on the lawyer's responsibility, the lawyer-client relationship, decision, role, the lawyering process, etc. In an attempt to shed further light on the pedagogical merits of simulation versus other modes, Professor Harbaugh indicated that he planned to develop relevant empirical data. In his experiment, he will use simulation in both first and second year courses at Duke to teach both subject matter (Criminal Procedure) and practice skills. To test the various hypotheses, one third of his class will learn through simulation, one third through actual case files, and one third through the traditional casebook-class discussion approach.

Actual performance of certain limited lawyering tasks was another mode advanced. An example put forth was clinical legal research in which a first year student observes a client interview by a second or third year student and then after discussion with the student-lawyer and supervisor, defines and performs the research task which might include drafting a memo of law, or a motion accompanied by points and authorities. The freshman student would participate in strategy conferences on the use of research in the case and would observe its use in such other lawyering facets as counseling, negotiation, argument, discovery or trial. A number of programs following such a format were introduced. Several schools have tied their first year Legal Research and Writing courses to a clinical program. Students, instead of working on abstract problems, work on actual clinical problems that third year clinic students are involved with. It was reported that the freshman students who were so engaged were much more highly motivated than students enrolled in traditional research and writing courses. A few participants wondered whether the better performance could be attributed to the fact of the experiment rather than the nature of the experiment. That is, whether the students were simply reacting to being involved in an experiment or to being more closely supervised in their work rather than responding to what was hypothesized as the operative principle, namely, that the tie-in with the clinical program increased motivation and learning.

It may be noted that any of the above modes of clinical or quasi-clinical education, separately or in combination, may be used episodically in otherwise traditional courses, intensively as in Clinical Criminal Law, or they may comprise an entirely "new" course as in Contracts as Negotiation, or in Civil Procedure as Introduction to the Lawyering Process, or in Clinical Legal Research. Examples of these modes in their various combinations and permutations were discussed at the workshop

meetings and are presented at the conclusion of this report in a series of brief descriptions of first and second year clinical ventures being experimented with by various schools.

At various points during the workshops, participants raised the issue of how supervision of students would be accomplished in first and second year clinical work. It was uniformly recognized that the quality of day-to-day supervision has had tremendous influence on the success or failure of third year clinical ventures. In response, many schools have been seeking out experienced lawyers with an interest in teaching and at the same time tightly limiting the size of the clinic to assure close supervision of each student. Thus, the issue of cost was broached. Given a limited budget, what kind of tradeoffs will schools be willing to make? What diminishment in emphasis in other areas will be necessary to finance well-supervised programs in the first two years? The underlying assumptions in the discussions of finances were (a) that third year clinics would remain, and that additional funds for the first and second year programs would be required, (b) the number of participating students would be large, including virtually all students preparing for third year clinics as well as many others simply getting their feet wet, (c) first year students especially would need increased supervision, given the strangeness of the substantive law and their unfamiliarity with the lawyering process.

Participants offered some concrete responses. At Yale students begin working with clients in their second semester. About 40 of the 100 students in clinical work are first year. Two faculty members are responsible for supervising all 100 students. Professor Wizner explained that the problems of a 50:1 teaching ratio are alleviated by using local legal services lawyers to assist in supervision, and using third year students, who have participated in the clinical program, as supervisors.

Responses to the supervision-cost problem ranged from: "We can't afford it," to "Farm the students out to Legal Services programs," i.e., diminish law school supervision. Various schools, however, have found a middle ground, namely, using third year students who have "graduated" from the clinic as supervisors. Other schools are using graduate interns with a year or two of practice experience. In addition to their supervisory duties, graduate interns are being used to assist faculty in the employment of simulation techniques in the classroom. Thus, it was suggested that combining simulation and the use of graduate interns for teaching first and second year students might be both inexpensive and effective.

While most of the discussion centered upon the first year curriculum, the second year program, as already noted, also received attention. Clinical education in the second year would free up the third year for exploration of lawyering responsibility, decision and role, and for the pursuit of particular lawyering skills in specialized doctrinal and institutional contexts; it would also allow use of the new perspectives gained from core clinical experience in a full year's coursework instead of the brief interlude in traditional law school courses between clinical and the bar and practice. Were the core clinical program to be consummated in the second year, then the third

year could include a course in Clinical Commercial Transactions. Such a course, in the context of a selected area of commercial law, by intensive doctrinal analysis, consideration of empirical studies of relevant commercial institutions and practices, and clinical placements, would focus upon information-gathering to give content to commercial law concepts and upon counseling decisions. A course in Corrections, to include a practice placement in a prison, would focus upon the functions of correctional policies and upon the uses and strategies of litigation.

A major obstacle to the offering of the core clinical program in the second year is the student practice rule which typically restricts the opportunity for student practice to the third year. As additional experimentation yields data that will lend further credence to the propositions discussed at these workshops, the move to amend the practice rules will no doubt gain strong impetus.

* * * * * * * * * * *

DESCRIPTIONS OF FIRST AND SECOND YEAR CLINICAL EXPERIMENTS (Actual and Proposed)

ANTIOCH

First year students now take a course titled Professional Methods I which provides an overview of interviewing, case analysis, legal ethics and negotiation. The second part of the course, scheduled to begin in November, will introduce the students to clinical experience by assigning them as legal assistants to second year students working on actual cases.

The vehicle for this introduction will be the Alexander case, a personal injury auto accident case drawn from the clinical files. The fact pattern raises questions of negligence, contributory negligence and last clear chance--issues being concurrently covered in first year courses. The facts also suggest questions of financial responsibility (administrative law), traffic violations (criminal law), insurance (contract law) and bankruptcy. The case will be developed in a fashion similar to the method used by the OEO Legal Services Training Program in its New Lawyer Training Program. However, several significant adaptations will be made in recognition of the fact that the case will be spread out over several months, the need for attention to writing and research skills and the lack of resources to provide individualized critique and feedback.

The case will begin with an interview in front of the class by a student or an actor who will play the client. The class will then discuss the interview in relation to interviewing theory as well as the identification of factual areas which need further explanation. This will be followed by a videotaped interview by a faculty member of the same "client" to focus continued discussion on the theoretical and practical aspects of interviewing.

The classes will be divided into 6 law "firms" of 4 members each and all written work will be produced by the firms.

CATHOLIC UNIVERSITY

In Spring 1973, the second semester of the first year Legal Writing course was given over to an experimental undertaking designed to introduce students to skills required in law practice. The object of exposing students to the uses of doctrine in different contexts--such as interviewing, counseling and formal discovery--was to enable them to perceive the relevance of doctrine generally and to increase their motivation to study the substantive law. To sharpen their analytic skills, the students were called on to make decisions in the context of an increasingly complex fact situation, and in the light of a rather large body of applicable law. They were also asked to draft pleadings, questions to ask on deposition and at trial, and a number of other exercises that introduced them to forms of legal writing and case preparation that are more common in much of legal practice than is the legal memorandum or brief.

The interviewing classes began with a student conducting an initial interview of a simulated client who had a consumer problem, followed by class discussion and a comparison with a videotaped interview of the same client by an experienced attorney. The students were then given a five page summary of the facts obtained in the interview and a copy of the complaint and of the contract that the client had signed. They then drafted an Answer containing admissions and denials, two affirmative defenses, an outline of other available defenses and a prayer for relief. After discussion of individual efforts, a model Answer was distributed. Students then drafted a counterclaim on the tort of collection harrassment. Analysis of advice to the client and investigation of witnesses followed. Interrogatories were then prepared and depositions taken. Sessions on negotiations and trial were also held. Throughout there was extensive use of videotapes showing experienced attorneys engaged in the same or related activities.

GEORGETOWN

The student run Legal Aid Society assigns on a volunteer basis interested first year students to individual staff attorneys of the Public Defender Service of the District of Columbia as well as to the Georgetown graduate Legal Intern Program (Prettyman Fellows). In both instances, the students, who number well over 100, receive training in fact investigation, interviewing witnesses, and ethical considerations attendant to the defense of criminal indigent cases in the various trial courts of the District of Columbia.

Second year students may also volunteer for assignment to the Public Defender and Legal Intern programs and a limited number can gain compensation for their efforts as a consequence of several federal grants.

The third year Criminal Justice Clinic is presently considering the use of second year students to handle First Offender Treatment (FOT) defendants rather than third year student litigators. For defendants to be considered for FOT, they must be approved by the U.S. Attorney's Office; approval is usually limited to those accused of shop-lifting, petit larceny and minor drug violations. To complete the program successfully, the defendant may be required to perform one or more of the following: write an essay on the wrongfulness of the act; observe in court for five days; tour the F.B.I.; and/or sign a civil release that he or she will not sue any party involved.

Students at Georgetown may therefore engage in clinical experience throughout their law school career. By the time they engage in litigation during their third year, they have often received a considerable amount of training.

UNIVERSITY OF IOWA

The law school has begun to offer in the first semester a course dealing mainly with ethics, interviewing, fact investigation and negotiation. The first part of the course deals with what it is that lawyers do and focuses on issues of professional responsibility. The second part attempts to explain what really happens during the course of an appellate case. Case files drawn from the clinic are used; training is offered in interviewing, fact investigation and negotiation. The initial interview with the client is simulated as are other activities. On the basis of the student's answers on the final exam, the professor involved feels that these students will be far ahead of their predecessors in terms of dealing with clients and in terms of learning both from the clinic and from their early experience in practice.

LOYOLA, LOS ANGELES
(Proposed Program)

Loyola has proposed to combine its two hour per semester Civil Procedure course and its one hour per semester Legal Communications course (a sort of Legal Methods course) into a new program which will include coverage of the traditional Civil Procedure course but which will, in addition, introduce the student to the practical problems and considerations involved in actual practice. The class will be divided into groups of 25 and will meet on alternate weeks for two hours under the supervision of a graduate teaching fellow. In these seminars, the students will work at drafting pleadings, motions, interrogatories, memoranda and other legal documents in connection with actual cases which are being handled by Loyola's in-house clinic. In addition, the students will undertake legal research in areas required by pending clinic cases. During the week the seminar does not meet, the students will work for several hours in the clinic on cases to which they have been assigned, under the supervision of the graduate teaching fellow and an upper class student assistant. An attempt will be made to compare the students enrolled in the "laboratory" seminar with those who will take the traditional Civil Procedures course.

UNIVERSITY OF MICHIGAN

An experimental undertaking involving one fourth of the freshman class has been scheduled for this fall. Thirty Civil Procedure students are to be paired with thirty upper class clinical students. Since the clinic students work in pairs, two freshmen will be assigned to each team. The regular clinic team will retain responsibility for their assigned civil case and the freshmen will participate to the extent it proves practical at each stage including the filing of papers, preparation of motions and briefs and interviewing of witnesses. Regular Civil Procedure classes will have to be suspended for a week or two to allow freshmen the opportunity to orient themselves to their cases without undue strain.

NORTHWESTERN

The law school operates a legal clinic on its own premises staffed by two Visiting Assistant Professors, two instructors, an Associate Professor and 75 law students drawn from each of the three classes in approximately equal numbers. The clinic maintains a caseload of about 600 cases. About a third involve criminal defense work, another third, domestic relations, and the balance is made up of housing, consumer, welfare, incorporation and other cases of the type normally handled by poverty law offices.

Third year students receive up to four hours of credit per semester. First and second year students volunteer their services and are expected to work at least 7 hours per week. Second year students may take a one credit hour orientation course which is a classroom survey of some of the law and procedure involved in clinical practice and may also take a two hour trial practice course. In the future, these will be prerequisites for taking the clinic for credit.

The clinic has taken freshman and junior volunteers since it opened four and a half years ago and since some students remain the entire three year period, there is always a supply of competent students to provide guidance for those less experienced. Having experienced and inexperienced students work together on cases is felt to create a law office cohesion that is helpful both to morale and to the quality of the legal work done.

Clinical supervisors feel that freshman students generally perform as well as any other students who have not worked in the clinic before. First year students quickly pick up the legal analysis and research skills needed through the supervisory scheme. Participation in the clinic has not been found to interfere with regular academic work. In fact, last year's freshmen (20 chosen by lot from among 70 volunteers) had better than average academic standing.

UNIVERSITY OF SAN FRANCISCO
AND
EMORY UNIVERSITY

The approach presently being used in the freshman Legal Process courses at these schools involves following a lawsuit from the initial interview through the appellate brief. A simulated case file is given to each student. At each juncture in the case, the student is faced with the questions, "Exactly what options did the attorney have to choose from? Did he make the best choice? Why?" The following is an outline of some of the topics treated.

1. Interview - The class critiques a video tape of a simulated client interview. The various techniques consciously or unconsciously employed are identified. The central message is that every action which a lawyer takes (the length of hair, the formality of the office, the choice and sequence of the topics chosen, the form of the question, the inflection of the voice) influences the amount and quality of the information he receives and the receptivity the client will have to his advice.

2. Structuring the Case - The process by which a lawyer sifts through the possible theories and known facts in order to devise a comprehensive litigation strategy is emphasized. The traditional questions of where do you sue (venue) and who do you sue (parties) are studied in a strategic context. The fact that good lawyers are always "judge shopping" to the extent that the law and the facts permit is accentuated, not obscured.

3. Drafting, Filing, and Serving the Complaint - The structure of the complaint is analyzed and various drafting problems noted. The solutions chosen by the case file attorney are critiqued by the class. Also a "how to do it" perspective is given on the traditional civil procedure problems of jurisdiction and service, as well as discussion of some aspects of law office administration (how a filing system is organized, the function of a court appearance calendar, etc.).

4. Discovery - The students are given an overview of the various formal and informal discovery techniques, and then they are asked to determine which device (deposition, interrogatory, motion to produce, or just a phone call to the opposing attorney) should be used in the present case. Then two forms of discovery (interrogatories and depositions) are studied in greater detail. Interrogatories and a transcript of a depositon from the case file are analyzed from the perspective of what the attorney hoped to accomplish and his relative success.

5. Negotiation - By means of a memorandum in the case file summarizing a negotiation and a videotape of an actual negotiation, the possible strategies and techniques (e.g., starting with a high demand and slowly moving down vs. coming in with a "take it or leave it" offer) are analyzed. A few students are then asked to negotiate and then discuss with the class how they reacted to each other's strategic ploys.

6. Direct and Cross-Examination - Once again through transcripts and video tapes students are asked to analyze and critique the attorney's performance both in structure and technique. Here there is discussion of the different functions of various lawyer jobs and the different skills these jobs require. For instance, in a client interview the lawyer has little desire to control what the client says; on cross-examination he wishes very much to control the testimony.

7. Appeal - First, the decision whether or not to appeal is discussed, then the functions and technique of appellate advocacy, both oral and written. Excerpts from both the appellant and respondent briefs are analyzed so that students can see how lawyers interpret the same source and fact materials to their own advocacy. This part of the course is taught in conjunction with the first year Moot Court competition.

The course (which at U.S.F. is three credit hours for two semesters) also includes the Legal Writing Program which is administered by third year Teaching Assistants. The writing program attempts to coordinate the writing assignments with the lecture component of the course and other first year courses. For instance, a writing assignment might be to draft a Memorandum in Support of a Motion to Dismiss (which has been covered in the case file) and also involve an issue of specific performance of an employment contract, a topic already covered in the Contracts course. The course also introduces the students to Professional Responsibility; this is done through presentation of several concrete problems, using the Code of Professional Responsibility as one possible source of aid in resolving the dilemmas which the problems raise.

UNIVERSITY OF SOUTHERN CALIFORNIA

The law school is offering an experimental clinical legal research course to first year students. Instead of attending weekly classes in Basic Legal Research Techniques, 20 students will research and draft pleadings and memoranda for negotiations, arguments and trial in cases pending in the Municipal and Superior Courts of Los Angeles County. Students will participate in office conferences on case strategy and accompany the supervising attorneys and third year students representing the clients in interviews, arguments and trial to observe how their research tasks are formed and how their work is used. Criminal defense work will be with the Greater Watts Criminal Justice Center, a Model Cities project, and consumer work will be with a nearby office of the Los Angeles Legal Aid Foundation.

The experimental students will start the course earlier than the "control" students and will receive five days of intensive training on the mechanics of legal research, thus enabling them to begin their "live" research during the second and third weeks of the semester.

USC is also advancing a proposal which will permit an evaluation of the uses of clinical strategies in the first semester of a law student's career, as a method of teaching substantive principles of law.

WASHBURN
(Proposed Program)

Washburn, which has a clinical semester program for third year students, is planning to add a one-hour required course for first year students for the purpose of giving the freshman student an overview of the legal profession, to enable him to develop a more realistic understanding of his future role as lawyer, and to introduce him to the attorney-client relationship and the attendant professional responsibility concerns. An underlying emphasis is the development of an appreciation of the law as a service profession and the responsibilities to a client and to society that such a perspective mandates. The course will be divided into two components: observation and classroom. The observation component will start with the freshman orientation week and continue throughout the academic year. These supervised and interpreted observational experiences will include police rides, tours of penal institutions, attendance at trials and other observations of attorneys engaged in professional activities, such as negotiating, interviewing, cross-examination, etc. The classroom component will take place during the spring semester and will be team taught by a professor of law and a behavioral scientist from the Menninger Foundation. This team will prepare a series of lectures focusing on the attorney-client relationship, interpersonal relationships, professional responsibility, interviewing and negotiation. To facilitate discussion, after the initial lectures the freshman class will be broken into smaller sections of approximately thirty students. Discussions will be led by members of the faculty. The team would then travel the circuit of the sections so that they will be present once with each of these smaller sections.

Washburn also intends to add a three-hour elective course with enrollment limited to approximately forty second year students each during the fall and spring semesters and thirty students during the summer semester. The course objectives will be to prepare the second year law student for the representation of clients and the full professional responsibility involved in the third year clinical semester course. Four areas will be emphasized:

1. Legal Writing and Draftsmanship. Each student will draft pleadings, motions, trial briefs, wills, and contracts to be used by the third year law clerks in their representation of clients of the Washburn Legal Clinic. A classroom component, Legal Writing and Draftsmanship, would concentrate on those skills used in trial work and office practice.

2. Fact Investigation. Each student would be assigned fact investigations that arise out of the third year students' caseloads including interviewing witnesses, taking their statements and obtaining and preserving evidence. The basic responsibility for the supervision and classroom component will be the faculty member's, but will also include an input by a behavioral scientist who will assist in teaching the interviewing and counseling component.

3. Interviewing and Counseling. Each student will be assigned a number of simulated and real experiences in interviewing and counseling which would be done under the supervision of a behavioral scientist on the staff of the Menninger Foundation. Classroom instruction will have as its objective the development of a basic understanding and skills in interpersonal relationships, including the attorney's interviewing and counseling function.

4. Professional Responsibility. Using the law clerks' contacts with clients and the interns' cases as teaching tools, the instructor will explore in depth the problems and issues in professional responsibility.

LIST OF THOSE ATTENDING CLEPR WORKSHOPS

University of Southern California (Oct. 3-4)
Professor Thomas Gilhool - USC - Co-director
Professor David A. Binder - UCLA
Professor Edward Dauer - USC
Professor John Denvir - University of San Francisco
The Honorable Robert Fainer - Municipal Court of Los Angeles
Dean Edward C. Halbach, Jr. - Boalt Hall
Professor Rodney Jones - University of San Diego
Dean Otis King - Texas Southern University
Professor Bea Moulton - Arizona State University
Dean Murray L. Schwartz - UCLA
Professor Thomas J. Scully - Loyola University (Los Angeles)
Professor Dominick Vetri - University of Oregon
Dean Donald Weckstein - University of San Diego
Guests: Dean Dorothy Nelson and Professors Earl Johnson and Elizabeth Horowitz - USC

University of Chicago (Oct. 18-19)
Professor Gary Palm - University of Chicago - Co-director
Professor David Barnhizer - Cleveland State
Professor Bob Bartells - University of Iowa
Dean George Bunn - University of Wisconsin
Professor Mel Durschlag - Case-Western Reserve University
Professor Jonathan Hyman - Northwestern
Professor Patrick Keenan - DePaul
Assistant Dean Patricia Lydon - University of Minnesota
Professor Jim Martin - University of Michigan
Guest: Dean Phil C. Neal - University of Chicago

New York University (Nov. 1-2)
Professor Harry Subin - NYU - Co-director
Professor Stephen Rosenfeld - NYU - Co-director
Dean Russell Fairbanks - Rutgers (Camden) University
Dean Monroe Freedman - Hofstra University
Associate Dean William Greenhalgh - Georgetown University
Professor Joseph Harbaugh - Duke University
Dean John Irving - Seton Hall University
Professor Elliott Milstein - American University
Professor Arthur Murphy - Columbia University
Assistant Dean Peter Swords - Columbia University
Professor Thomas Willging - Antioch Law School
Professor Stephen Wizner - Yale University
Guest: Dean Robert McKay - NYU

CLEPR personnel attending each of the workshops included:
William Pincus - President
Betty Fisher - Program Officer
Victor Rubino - Program Officer
Lester Brickman - Consultant

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 8, February 1974

Table of Contents

"News and Notes" - Published by Northwestern Legal Assistance Clinic, Pages 2-9
A List of CLEPR Board Members, Pages 10-11

Preface

We reprint below the December 1973 issue of News & Notes published by staff and students of a legal clinic operated by Northwestern University School of Law.

The first article by Professor Hyman, Clinical Education in the First Year, complements CLEPR Newsletter Volume VI, No. 7 which reported on three Workshop discussions of clinical work in the first and second year of law school. We believe the other sections, which contain case statistics and digests and a student's comments on divorce procedures, will interest our readers and may stimulate other clinics to publish regular reports of their activities. The Boston College Legal Assistance Bureau and the D.C. Law Students in Court program are the only others we know of that publish a newsletter. There may be others, and we would appreciate receiving information about them.

The Northwestern publication which follows shows a supervisor's interest in providing sequential education through the vehicle of client service; a student's concern for more than case handling; and the successful management of a varied caseload. It also illustrates the different teacher-student relationship the clinical teaching method makes possible: here students and their supervisors work together as a group with all participating in the teaching-learning experience.

NORTHWESTERN LEGAL ASSISTANCE CLINIC

NEWS & NOTES

360 East Superior Street
Chicago, Illinois 60611
(312) 649-8576

Acting Co-Directors: Thomas Geraghty
Jonathan M. Hyman
Staff Attorneys: Barbara Caulfield
Diane Crawford
Legal Worker: Nancy Ketzenberg

Volume II, No. 2, December 1973

Contents

Clinical Education in the First Year . . . . Page 2
Legal Clinic Statistics . . . . Page 4
Case Digest . . . . Page 5
A Student's View . . . . Page 8

Clinical Education in the First Year

by Jon Hyman

> "Clinical education in the last five years has taken root in the third year of law school .... The belief seems to be that they (third year students) will be older, wiser and more learned. Experience in the clinic supports only the expectation that they will be older." From William Pincus' opening remarks at a CLEPR conference on Clinical Education for the Law Student, June, 1973.

In October, I attended a CLEPR conference devoted to the issue of clinical education in the first and second years of law school. (CLEPR is the Foundation that funds many clinical programs and is in large part responsible for the growth of clinical programs in law schools in the last five years.) Northwestern is one of the few schools that has first year students in a clinic situation, but no one at the conference seemed particularly surprised that it works, or had any serious principled

objections to it. Most of the participants had experienced second and third year students who didn't seem to know much of legal thinking or research or who lacked the independence and judgment necessary to represent clients well. It seemed to be generally accepted that first year students often have the personal characteristics necessary to becoming a sound lawyer, and these were eminently useful in a clinic situation, with proper supervision.

It was suggested that first year clinical practice might help the teaching of ethics and professional responsibility. There was general pessimism that law schools could have much effect on the morality of persons over the age of 21. But it was recognized that the "teaching" of ethics only made sense in a practice situation, where ethical ideas must be implemented through practical necessities, and that the first year might be the time when students are most unformed and most open to being influenced by the role models (hopefully sound ones) provided by the clinical instructors. (The obverse side of this discussion was what to do about the students who revealed themselves in a clinical program to be incompetent, sloppy, irresponsible, dumb, inordinately lazy, etc. The law schools have never been forced to deal with these problems because in the past they have only had the opportunity to observe future lawyers in terms of academic competence. Gary Palm suggested the response should be a J.D. "with regrets".)

The discussion of how to expand clinical education to the first and second years (particularly the first) was tinged with pessimism. William Pincus noted that there was a powerful congruence of historical, ideological and economic pressures which kept the first year program sacrosanct. The latter, which may be the most important, stems from the fact that large first year classes usually make law schools the only money makers (or least deficit spenders) in the university. The bar admission officials, who are generally satisfied with the legal education they received, often establish formal requirements for basic courses that repeat their experience. We all agreed that the socratic method and rigorous analytical thinking is an important part of legal education, and it was assumed that this would continue to be the first order of business in the first year. There are some openings on the periphery, however. Dean George Bunn suggested that the first year legal writing course might be a good place for use of a clinical program, and Bob Bartels noted that there had been some clinical input in the first year legal methods course at Iowa.

There appear to be two models for using clinical practice in law school, particularly in the first year. One, which was favored by some conference participants, is to use the facts of clinic cases as a starting point for discussion, legal research and simulations of interviews and trials. The other is to let these activities grow out of actual work on the clinic case, i.e. not "playing games". I prefer the latter model, and my colleagues at the Clinic share that view. Simulations are important, particularly for something as complex as trial practice, but I think they are most useful if they are continually reflected against work in actual cases, which, because it involves real people and real consequences, engages a person's character in a way simulations alone cannot.

Legal Clinic Statistics

The Clinic has opened 663 cases this year (through December 1, 1973) and has closed 178. There are presently 454 open cases in the Clinic which break down as follows:

Family Law (divorce, child custody, post decree, adoption): 30%

Criminal (felonies, misdemeanors): 29%

Housing (eviction, code enforcement, landlord tenant): 10%

Consumer (wage garnishment, truth in lending, defense of contract claims): 10%

Welfare and Social Security: 5%

Small Claims (Plaintiff and Defendant): 8%

Juvenile: 2%

Community organizations: (Not for profit incorporation, continuing consultation, application for tax exempt status, etc.): 1.5%

Miscellaneous: 3.5%

The percentages above reflect relative numbers of cases - not necessarily percentages of time allocation or priorities. For example, one or two significant large welfare test cases or a serious felony case may involve the time and manpower equivalent to that devoted to fifty or sixty divorces.

The miscellaneous category includes some of the Clinic's most interesting cases: two federal police misconduct suits; two insurance misrepresentation defenses; five criminal appeals; an assortment of cases taken from the Dwight Correctional Center; three employment discrimination cases; appeal from denial of unemployment compensation; a case challenging a juvenile record keeping system in Illinois; the development of a police misconduct litigation manual; representation before the parole board of an acquitted robbery defendant charged with technical violations of parole after his acquittal; representation of a community organization in the sale of one of its buildings to satisfy outstanding debts; obtaining state licensing for a community health center.

Thus, despite the high percentage of family and criminal cases the Clinic offers a wide variety of legal experience to its students.

It should also be noted that nearly every case the Clinic takes is eventually litigated. Our statistics reflect a very small percentage of "advice only" or "referral" dispositions.

Case Digest

Appeals

The Legal Clinic has filed its brief in an appeal in which the major issue is a misdemeanor defendant's right to pretrial discovery. The Illinois Supreme Court recently adopted an extensive set of discovery rules but specifically limited their application to defendants charged with a felony. The appeal asserts that it is a violation of equal protection and due process of law to deny discovery to one category of criminal defendant solely on the basis of the seriousness of offense charged. The brief cites Argersinger v. Hamlin and Mayer v. City of Chicago among others in support of its position. (A secondary issue in the appeal involves the thought-provoking question of whether a kiss on the cheek can be considered "lewd fondling or touching" within the meaning of the contributing to the sexual delinquency of a minor statute).

Criminal Law

The Clinic recently won acquittals, after a bench trial, for two young men (ages 17 and 18) charged with murder. The murder occurred in a building in the Cabrini-Green area approximately one year ago. The evidence against the two consisted of the testimony of a ten year old boy who allegedly witnessed the shooting, and the murder weapon which was recovered by police in the possession of a friend of one of the defendants. In a statement to police, after his arrest, one of the defendants stated that he came into possession of the weapon a few days after the shooting and that it was given to him by a person who told him to keep it because it was "hot". He gave it to his friend shortly before the police recovered it. Last summer, students working at the Clinic conducted a door to door canvas of the building in which the murder occurred. During that investigation a witness was located who stated that the 10 year old boy who allegedly witnessed the shooting was in her apartment playing with her son when the shots were fired and for sometime thereafter.

Students played a central role in preparing the court papers in this case, doing research, and examining witnesses at a bail hearing held during the summer.

In October, Clinic attorneys won an acquittal for a man charged with the robbery of two men at 40 E. Oak St. at 4:00 a.m. The men were robbed as they got into their parked car. The defendant was arrested two weeks after the robbery for a rape charge which was later dismissed and identification papers belonging to one of the victims was found on his person. Both victims of the robbery identified the defendant at a lineup and in court at the trial. However, immediately after the robbery, the victims gave physical descriptions of the person who robbed them to police which did not fit that of the defendant - including the fact that the robber had a goatee and a mustache. The victims, who were white and lived on the southwest side of Chicago, gave a somewhat hazy account of what they were doing in that area at 4:00 a.m. but denied that they had been drinking. The defendant, a black man, had never had a

goatee or a mustache and in fact never shaved. The Clinic had the defendant examined by a dermatologist who testified at trial that the defendant was incapable of growing a goatee or a mustache.

Consumer Law

The Clinic recently successfully represented a client in a Truth in Lending action brought against a Southside automobile dealer. The Clinic's client had purchased a used automobile and subsequently found that the cash price as used in his retail installment sales contract was $500 in excess of the price he had agreed to pay. Upon examination of this contract, it appeared that the dealer had violated the Truth in Lending Act's disclosure requirements in several respects. The Clinic filed a complaint in federal court alleging not only violation of Truth in Lending laws but also fraud involved in inflating the agreed cash price. The case has now been settled with the dealer agreeing to pay our client $1,020 and allowing him to defer his regular payments for the next several months, making nominal payments during that period of time.

The Clinic is interested in filing other Truth in Lending actions and is planning on filing additional actions in the near future. The measure of recovery under the Act is twice the amount of the finance charge with a minimum recovery of $100 and a maximum recovery of $1,000, regardless of actual damages. The recovery can therefore be substantial, particularly in credit transactions involving relatively large amounts, such as the credit sale of automobiles.

Juvenile Law

The Clinic is currently working on several projects in the area of juvenile law. One such project involves the filing of a Sec. 1983 class action suit to require expungement of police and court records of juveniles when detentions have not resulted in an adjudication of delinquency. Current Cook County practice is to temporarily detain juveniles alleged to have committed petty offenses, release them without filing petitions of delinquency and record such "station adjustments" in various police and court files. The suit alleges that this practice of maintenance and dissemination of nonadjudicated findings of "guilt" to public and private agencies violates juveniles' rights to due process and equal protection of law and their constitutionally guaranteed right to privacy.

In another case, the Clinic recently decided to team up with the Department of Children and Family Services to appeal the highly publicized case, In Re Elaine Ross and Susan Ross. In this case, the trial judge removed the girls from the care of their foster parents and awarded custody to their natural parents. What makes this case so interesting to the public is the strong will of the foster parents not to lose their children after caring for them for seven years, and the stamina the girls have shown in insisting on living with their foster parents. This case involves important issues concerning juvenile rights. The girls are thirteen and twelve years, respectively,

and by all accounts, quite mature for their age. Yet, the trial judge in rendering the decision he felt was "in the best interests" of the girls, never considered what the girls adamantly believe to be right for them. One question the appeal will attempt to resolve is what standards courts should apply in determining whether a child should be permitted to make important decisions about his or her own life.

In addition to litigating in the field of juvenile law, Barbara Caulfield is presently participating as an advisory member of the legal subcommittee of the Governor's Study Commission on Children. With the aid of Clinic students, she has been studying juvenile court practices regarding truancy violations in hopes of emphasizing defects which prejudice truants' civil rights. The goal of the study is legislative reform which would result in an overhaul of the present truancy laws and their administration.

Police Misconduct Litigation

The Legal Clinic is involved on many fronts in combatting the problem of police misconduct in the Chicago area. On one front, we are defending victims of police brutality on the criminal charges which are inevitably placed against them as a camouflage for the officers' own misconduct. In one such case our client is a fifty year old white suburban school teacher, who along with her elderly mother, was severely bruised by officers who stopped them for a minor traffic offense. Charges of disorderly conduct and resisting arrest are pending against the client.

As a second line of attack, we represent clients in federal civil actions against officers who have by their improper conduct violated the clients' civil rights. In one recent case, after several months of work and a great deal of student participation, the Clinic succeeded in obtaining a financial settlement on behalf of two young black juveniles. The suit alleged that the youths were part of a crowd which gathered when a white police officer began beating the black occupant of an automobile involved in a traffic accident. A dispersal order was given and when our clients allegedly refused to obey, they were arrested. After being transported to the police station they were kicked, beaten and verbally abused by the arresting officers. The criminal charges lodged against the clients were eventually dismissed and the federal action which gave rise to the financial award was then instituted.

Finally, the Legal Clinic, in cooperation with the Chicago Council of Lawyers, is revising a previously published manual for conducting police misconduct litigation. It is hoped that such a handbook will encourage more attorneys to undertake the representation of clients who have been the victims of improper police action.

Welfare

On November 2, 1973, Judge Lynch granted our motion for summary judgment in

Purnell v. Edelman, holding that the Public Aid Department's adamant refusal to grant emergency assistance to needy public aid recipients until after their utility service had been cut off violated the Social Security Act and the regulations issued pursuant thereto. The Social Security Act authorizes federal reimbursement for state emergency assistance plans which "avoid destitution," and the implementing regulations require that emergency assistance be granted "forthwith". Illinois used the program, but denied emergency assistance to forestall a utility cut-off even when the recipient was without resources and the cut-off was imminent and unavoidable. In practice, it often took several days to restore utility service once it was cut off, and we found one instance where it took Public Aid over 6 months to restore service once it received notice of the cut-off.

Purnell may be counted as one of the progeny of Townsend v. Swank. Townsend made clear that a state which takes federal welfare monies pursuant to the Social Security Act does not have discretion (or much discretion) to vary the terms of eligibility established by Congress and H.E.W. The Supremacy Clause of the Constitution requires strict compliance with federal law.

A Student's View

(The following impressions were noted down by a senior law student after her first experience with representing a client in the Chicago divorce courts.)

Divorce court. The prove-up. All very routine. It is hard to believe it is a divorce, it really is. Could it be that a relationship between two people is being ended, here in this room? The lawyer, without polish and with eyes glued to yellow sheets, mumbles, "Areyouandhaveyoubeenformorethan....", the judge openly yawns, and the plaintiff spouts meaningless, emotionless, flat blacks-and-whites, as if in church:

Very badly
Very well
No
Yes
He beat me
He left

It is amazing how alienated this procedure is from what really happened between two people. The content of the hearing we are forewarned about from the irrationalities of Domestic Relations law, but the form, the coldness, the routine is shocking and unexpected. Doesn't anyone cry, or is that just on TV? In fact, to the attorneys, it is all a big joke. "Hey," says the lawyer to his scared about-to-be-divorced client, "Get a load of some of these stories. They're too much."

While the prove-up may not reflect life's realities, pre and post decree proceedings

tell a different story: they are a study in emotional instability and bitterness. Judge Friedlund sits like a father in pre-trial matters, helping to soothe the wounded feelings of the rejected party. "Now don't bother her anymore," he advises in Solomon-like tones and the husband lowers his eyes. The lawyers seem almost superfluous because the judge is wise in the ways of the world and knows how he wants to handle these things. And "wisdom" is needed in order to know what the parties really mean: if he really wants to have the kid or merely wants her back, if he really can't pay or just wants to torment her.

It is evident that time has passed by the time we get to post-decree Court. The early states of parting are over for the two people; there are at least no longer the obvious signs that one of the parties is very hurt and wants the other back. Instead, there is the bitterness, the hatred, and the resentment that comes with the official breaking off of ties, and of having to fight with each other over money or children when it would be best not to have to deal with each other at all. Each party wanting to "get back" at the other; the estrangement between the two increasing even more. Here, the role of the judge is to calm the two sides, to try to control the raised voices and angry names. The lawyers, on the other hand, reflect and encourage the combativeness and defensiveness of their clients.

Could it be that the Divorce courts only heighten and exacerbate the bitterness? After trying to confront the problems at the pre-trial stage, does the system opt for a safe, routine prove-up and thereby cover up the real problems by imposing its own coldness and name-calling on the situation? Is it any wonder that the parties end up shouting in post-decree court after they have been forced to blandly swear that "he was bad and I was good"? Perhaps they come to believe that was the case.

* * * * * * * * * * * *

A LIST OF CLEPR BOARD MEMBERS

Listed below are the members of the CLEPR Board of Directors as of January 1, 1974

Chairman of the Board:
Orison S. Marden, Esq.
New York, New York

John M. Ferren, Esq.
Washington, D.C.

The Honorable William H. Hastie
Philadelphia, Pennsylvania

The Honorable Florence M. Kelley
New York, New York

Maximilian W. Kempner, Esq.
New York, New York

Otis H. King
Dean, Texas Southern University School of Law
Houston, Texas

A. Leo Levin
Professor, University of Pennsylvania Law School
Philadelphia, Pennsylvania

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

James M. Nabrit, III, Esq.
New York, New York

Dorothy W. Nelson
Dean, University of Southern California Law Center
Los Angeles, California

William Pincus
President, Council on Legal Education for Professional Responsibility, Inc.
New York, New York

John D. Robb, Esq.
Albuquerque, New Mexico

The Honorable Alvin B. Rubin
New Orleans, Louisiana

Howard R. Sacks
Professor, University of Connecticut School of Law
West Hartford, Connecticut

Bernard G. Segal, Esq.
Philadelphia, Pennsylvania

Whitney North Seymour, Esq.
New York, New York

Maynard J. Toll, Esq.
Los Angeles, California

Lyman M. Tondel, Jr., Esq.
New York, New York

* * * * * * * * * * *

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 9, February 1974

THE EDUCATION OF THE ADVOCATE

Preface

The title of this Newsletter is CLEPR's, but the subject is treated by Chief Judge Irving R. Kaufman of the Second U.S. Circuit Court of Appeals in an address delivered on December 6, 1973 at the annual dinner of the New York County Lawyers' Association. With Judge Kaufman's permission, we reprint the text of his remarks starting on the next page.

In his remarks Judge Kaufman states that "...... law schools are uniquely suited to accomplish the marriage between theory and practice.", and also that "Clinical legal education programs can provide the experience of law practice around which the law schools can weave doctrinal and theoretical material."

The Sonnet Memorial Lecture given by the Chief Justice of the United States, Warren F. Burger, entitled "The Special Skills of Advocacy" and delivered at Fordham University on November 26, 1973, dealt with some of the subject matter covered in Judge Kaufman's remarks. The Chief Justice's text appeared in the December issue of the Fordham Law Review.

Text of Judge Irving R. Kaufman's Address
December 6, 1973
at the
Annual Dinner of the New York County Lawyers' Association

I have chosen to speak about the advocate's role as a partner of the court in the obviously important enterprise of dispensing justice. I am especially concerned about the future of this partnership in light of what many perceive to be a decline in the quality of advocacy at both the trial and appellate levels. Although I began to develop this theme several months ago in honor of this occasion, I am happy to see that since then the Chief Justice has also brought his considerable talents to a discussion of this subject in a speech at Fordham Law School.

I am, of course, delighted to share his company, particularly when I recall the words of Learned Hand, spoken by way of introduction to his Holmes Lectures at Harvard on the Bill of Rights: "My subject is well-worn; it is not likely that I shall have new light to throw on it; but it is always fresh, and particularly at the present time it is important enough to excuse renewed examination."

Quality Threatened

I believe my theme bears fresh scrutiny both because the quality of legal representation is seriously threatened and because lawyers are notorious traditionalists who occasionally must be reminded of the need for change. I therefore offer these comments as part of what I hope will be a continuing dialogue within the legal profession, a dialogue aimed at advancing the common interest uniting Bench and Bar--the desire to do justice.

I begin with a deceptively simple proposition: in our adversary system, the quality of justice dispensed by the courts is ultimately dependent upon the quality of advocacy provided by the Bar. If lawyers fail as advocates for want of skill or dedication, then judges will surely fail as well, and the coin of justice will be debased beyond recognition.

This interdependence of Bench and Bar is the linchpin of our legal system. Contemporary developments make this relationship even more crucial.

Explosion in Litigation

As you know, in the past decade we have witnessed an explosion of litigation in the federal system. District Court filings, which stood at nearly 90,000 in 1960, numbered over 140,000 in 1973, an increase of 58 per cent. The number of Supreme Court filings doubled between 1960 and 1972, from over 1,800 to nearly 3,700.

Caught between the District Courts and the Supreme Court are the Courts of Appeals. We have experienced a phenomenal quadrupling of the number of appeals filed, from under 4,000 in 1960 to nearly 16,000 in 1973, a rise of over 300 percent. Moreover, while in 1960 only forty-four cases in 1,000 were appealed, in 1973, 114 in 1000 were appealed. To the extent that raw numbers can tell the story, I submit that the greatest crunch from the litigation explosion has been felt by the Courts of Appeals.

In recognition of this acute pressure, Congress, as many of you know, has established the Commission on Revision of the Federal Court Appellate System to recommend such changes "as may be most appropriate for the expeditious and effective disposition of judicial business" in the Courts of Appeals of the United States. The commission has just completed the first phase of its work--the investigation of the need for revision of circuit boundaries--and I am pleased to report that, although the commission has recommended a realignment of the Fifth and Ninth Circuits, it has left the Second Circuit geographic lines intact. Thus, this great court, now 171 years old, will continue to hear appeals from New York, Connecticut and Vermont.

Appeals Tripled

The commission's conclusion, though reassuring, should not be construed as an indication that Second Circuit has been free from increased appellate filings. On the contrary, the number of appeals in this circuit has tripled in the past thirteen years.

Nevertheless, if I may be immodest enough to say it, I believe our court has responded to the problem with extraordinary efficiency. Although only two Circuits have larger dockets, our median time from filing of the record to disposition of the appeal is the second best in the nation--4.8 months compared to the national average of 6.4. I might add that even in the face of this onslaught of litigation we are the only United States Court of Appeals that has not resorted to a screening mechanism to sift the calendar for cases in which oral argument should be eliminated. So long as we are able to do so, we shall maintain our resolve to continue oral advocacy. We believe deeply in its importance both in guiding dispositions of appeals and in preserving the essentially personal, non-bureaucratic nature of the judicial resolution of controversy.

That we have compiled this record in the face of a vacancy on the court which is now well into its third year is a fact in which I, and my colleagues on the court, take great pride. But I wish also to emphasize that the existence of this vacancy for so long presents an intolerable situation. That Congress, the Administration, or anyone with the effective power of appointment would permit this condition to persist is cynical and inexcusable.

Pressure Grows

While the Second Circuit has adapted itself to meet its burgeoning caseload without compromising its great tradition of excellence, the pressure upon our system of adjudicated justice grows daily. The danger is particularly great at the appellate level. An appeals court is fundamentally a collegial body, in which the essential element of time for reflection and interchange of values and ideas play a critical role. Unfortunately, we now have much less of that luxury than we had in the past.

I have earlier spoken of us--judges and lawyers--as partners in the production of a rare but ever so valuable commodity--justice. Picture our present situation as one in which there is a vastly increased demand for our joint product. A major source of this increased demand is not difficult to discern if we consider, for a moment, the proliferation of new roles for lawyers in the criminal justice system alone, in the mere nine

years since Gideon v. Wainwright.

The constitution, of course, now requires that indigents shall receive full legal representation at public expense in every criminal proceeding which may result in incarceration and on any appeal available as of right. The role of the lawyer is being expanded further by statutes and lower court decisions governing the detention phase of criminal proceedings, sentencing, collateral attacks on convictions and the rights of prisoners and probationers. Similar trends are evident in civil commitment proceedings and most notably, in the juvenile justice system, where about half of all cases involving criminal conduct are processed.

Role Redesigned

Not only are lawyers increasingly expected to participate in more phases of what I characterize as coercive justice cases, but their role at each phase is also being drastically redesigned. A recent report prepared for the Appellate Divisions, First and Second Departments, concluded that lawyers representing indigent defendants should be required in addition, to supervise the provision of a startling array of extra-legal services and information, including "housing information, job counseling, family counseling, psychiatric aid, and medical advisory rehabilitation." It is true that these ever-increasing demands upon the time and skills of advocates place a burden on the profession, but, at the same time, they reflect confidence in the lawyer's role in molding a more just society.

Under present circumstances then, we face the dilemma of a vastly increased demand for the product of our common enterprise and an ever-tightening constraint upon the means necessary to increase output. Our system of justice might respond to this quandary in several different ways.

First, we can reduce the quality of the product. Since we have no competitors we can do the same amount of "business" but deliver shoddier goods. In the context of our trade, that means we can cut down on what we will hear and listen to, cut corners on preparation, become faster, more impersonal and less involved.

'Fairness and Truth'

But this is not the widget business. We are trying to produce fairness and truth. Whatever the temptation, our solution cannot be to debase the goods ultimately delivered to our customers who are, after all, citizens seeking justice. As Learned Hand said, we must not ration justice. Making the product shoddy is no different (unless it is worse) than delivering less of it.

I know that neither judges nor lawyers want to adulterate justice. But there is another possibility when a joint product is to be created under severe time constraints: one partner may seek to shift some of his share of the work to someone else or, as the economists would put it, to externalize his costs. To put the matter in our context, it will be tempting for lawyers to expend less effort and do their jobs less skillfully than before, relying on judges to put in the extra finishing touches necessary to get the

result as perfect as it formerly was. In short, there is a natural inclination to have judges do lawyers' work.

Critical Division

Yet, there is a critical division of roles between lawyers and judges in our legal system. You, the lawyers, are to supply the fullest, most ingenious and most committed statement of your client's case that you can. We, the judges, will supply the dispassion, disinterest and hard pondering of how the clashing interests are to be decided. There is only one reason for these different roles: we are each set up, personally and institutionally, to do our own jobs better than the other could do them.

To put it bluntly, judges can no longer compensate for lawyers who do not present their clients' cases as well as wit and effort allow. It is not the judge's task to marshall arguments, find citations, distinguish other apparent precedent and present the facts--without the aid and guidance of counsel. To the extent we will be able to do it at all without that help, it will be at the expense of pondering and discussing and deciding. That is to say, it will be at the expense of practicing our craft of judging.

Accordingly, judges have been exceedingly troubled by the increasing number of instances of poor legal representation that come to our attention. Chief Justice Burger recognized this in his recent Sonnet lecture. I will not hazard a guess as to the exact percentage of cases which have suffered from inadequate advocacy, but I can say that, in my view, it is not insubstantial.

3 Essential Causes

There are three essential causes of poor advocacy: lack of experience, lack of competence and lack of integrity.

Too many lawyers come into our courts today with only a diploma to justify their claims to be advocates. They are untrained and unsupervised in the immensely practical work of litigation. The legal abstractions on which they have been nurtured, though perhaps appropriate to the law school classroom, are hardly sufficient to assure that justice will emerge in the day-to-day reality of the courtroom. A disproportionate number of very young lawyers are found in the area of criminal advocacy, and to their credit they bring to their work an idealism born of the sense that they are serving, in their work, not merely their client, but are fulfilling a social obligation as well. It is good that they have not yet been hardened by the frequently dehumanizing aspects of the criminal process.

Far from being indifferent to their duty to the defendant, some tend to "find" legal issues that do not really exist. But if a beleaguered trial judge privately grumbles over the extraordinary number of motions, objections and requests to charge that may arise in a case litigated by a young lawyer, I remind him that this fervor is not to be condemned. The adversary process is not threatened by overzealous advocates, but by complacent ones. And yet, there is simply no substitute for experience.

Recent Argument

I recall a recent argument in a criminal appeal in which, after appellant's counsel delivered a rather powerful presentation, the very pleasant young Assistant United States Attorney rose and said quite candidly, "Your honors, this is my first argument and I hope, but I am not sure, that I can answer your questions." I am afraid this "on-the-job-training," as the Chief Justice calls it, will no longer do. And, I might add that it is no answer that the main character of my story was a member of a prosecutor's office, for surely the public is deserving of competent representation to protect our common interest in effective and relatively error-free law enforcement.

There are, in addition, some lawyers who, despite experience and despite their best efforts, are simply not competent as trial lawyers. Whether through education or personal deficiency, some lawyers have clearly not acquired the skills needed to practice in a courtroom.

In his recent speech, Warren Burger discussed at some length the problems posed by inadequate assistance of counsel at the trial level. Let me assure you that ineffective advocacy is a phenomenon not limited to trial counsel. Many appellate advocates do not even know the rules of the courts in which they practice. The filing of late and oversized briefs, without authorization of the court, or the submission of appendices that ignore the Federal Rules of Appellate Procedure or the Second Circuit Rules, is not an unusual event. Moreover, we can no longer tolerate shoddy briefs or arguments, glaringly inadequate because of miscitations, misstatements of fact and missed points.

'List of Woes'

This list of woes does not end with preparation of the brief. Some lawyers treat oral argument as an ordeal to be endured rather than an opportunity to convince the courts of the merits of the client's case. All too often have I witnessed inadequate preparation for oral argument and ignorance of both the functions that oral argument is designed to serve, and the techniques that must be employed to present on argument one's case most effectively. I believe that Karl Llewellyn captured the importance of oral argument when he said:

> "In oral argument lies counsel's one hedge against misdiagnosis and misperformance in the brief, the one last chance of locating a postern missed in the advance survey."

From what I have witnessed, there are lawyers who are as likely to trip over the last postern as discover it.

Quantity, Not Quality

You will recall that earlier I included the want of integrity--the demonstration by some of a cynical disregard of their professional obligations--as another cause of poor advocacy. Fortunately this group is not large. But, there are those whose sole objective is to process as many clients as possible through the system, in order to maximize their income or, in the criminal case, to "cop" the plea as quickly as they can and be

done with the case. When they do go to trial, they have little interest in investigation, research or preparation. Potential defenses and objections tend not to be discovered or made--or perhaps ignored--in the over-riding desire to have the case terminated. The objective is to get on to the next case in assembly-line fashion.

We also encounter some lawyers who are a discredit to their profession by their misplaced zeal when they enter the courtroom. The Chief Justice referred to it as a lack of "manners" and "civility." Quite recently I had the unpleasant duty to condemn the courtroom conduct of attorneys who engaged in what amounted to verbal street-brawling by trading abusive epithets with each other. These lawyers seemed to believe that effective advocacy is measured by the quantity of insults they hurled at each other--a concept which British barristers would find so incomprehensible that the malefactors would be barred from the courtroom. I noted in that opinion for the court:

"We do not believe any civilized legal system need tolerate behavior which makes a mockery of our adversary trial system. Civil litigation provides an opportunity for private parties to dispose of disputes in an orderly and disciplined fashion. But the open forum which our courts provide for conflict resolution is not, nor can it ever be, a license to slander and abuse one's adversary. Such conduct diminishes the integrity of an institution whose usefulness depends upon the respect in which it is held by the public, and by the lawyers who practice in it.

"Advocacy is an art in which the unrelenting pursuit of truth and the most thorough self-control must be delicately balanced. Lawyers, as officers of the court, must always be alert to the rule that zealous advocacy in behalf of a client can never excuse contumacious or disrespectful conduct. Counsel who abuse the adversary system and infect court proceedings with the tactics of street brawlers cast doubt upon their fitness as responsible advocates and betray a trust with which they are invested by the court and public."

Public Trust

In confronting the problem of unethical conduct, we must recognize that it is by virtue of this public trust that the Bar has been permitted to retain supervisory and disciplinary authority over itself. Steps must be taken to minimize the impact of that small group of attorneys whose lack of integrity precludes fulfillment of their duty to client or court. I suggest that if self-supervision proves ineffective, the public will demand review by forces outside the profession.

Lawyers, like judges, must learn to avoid actual impropriety and the appearance of impropriety in the conduct of their lives. I therefore urge the Bar to tend to its own garden, at this time when confidence in our calling has been impaired. The public, in times of stress, has always looked to our independent Bar, and particularly to the lawyers of the Second Circuit--so long considered the foremost in the nation--for guidance. The legal profession must live up to its own history of responsible leadership and service.

Vigorous disciplinary action is the most appropriate response to unethical conduct.

But solutions must also be found to deal with the problems posed by inexperience and incompetence, the other causes of poor advocacy.

The obvious first area to explore is that of legal education itself. We have been wedded for nearly a century to the notion that after three years devoted largely to reading appellate decisions, the law student emerges capable of performing the responsibilities of a trial lawyer. While this is highly flattering to those of us who write appellate decisions, one wonders if it is sound. Without any experience, and with only so much specialized education as he chose to undertake--sometimes only a one semester course in evidence or criminal law, and frequently not even that--the newly-admitted member of the Bar is formally deemed to be as qualified to engage in representation in the courtroom as is a lawyer who has spent a career concentrating on the dynamics of a trial.

Of course, we all know that the reality does not conform to that myth. Yet because we revere the concept that an attorney is, above all else, a generalist, we continue to delude ourselves into believing that a lawyer can undertake any form of legal services, learning his way as he goes along.

It is time to recognize that this philosophy is outmoded. The number and complexity of individual subject matters within the body of the law have geometrically increased. Although I do not favor the legal profession embracing specialization to the extent undertaken by our medical colleagues, I do believe we should recognize the need for specialized training in the area of trial and appellate advocacy. To an extent, some law schools and other groups currently provide minimal training at the postgraduate level. It is worth exploring whether the establishment of undergraduate areas of emphasis--and the awarding of degrees that recognize the completion of such a course--is not in order.

Special Problem

But I return to the special problem posed in the area of litigation, particularly criminal litigation, where the penalty for failure is deprivation of an individual's precious liberty and hence the problem is most acute. To a degree beyond that in any other area, effective trial and appellate advocacy must be the product of experience as well as academic study. This does not limit the role of the law schools in teaching the lawyering process; on the contrary, law schools are uniquely suited to accomplish the marriage between theory and practice. Clinical legal education programs can provide the experience of law practice around which the law schools can weave doctrinal and theoretical material.

But a word of caution: clinical education does not (or at least it should not) mean putting a student in a courtroom and telling him to sink or swim. Even if he does not sink, he may succeed in remaining afloat only by imitating the examples of the more experienced practitioners around him--aping their bad habits, as well as their good ones. The great opportunity presented by clinical education is that students will be provided with some theoretical, as well as practical, understanding of advocacy techniques. Through close supervision by trained professionals, they can learn to perfect their craft, and develop critical standards by which to evaluate their own performance.

The aim is to train not just ordinary lawyers, but extraordinarily good lawyers. And here the Bar has a vital role to play: clinical education is extremely expensive, since it requires trained supervisors to oversee all aspects of the students' work. Experienced members of the Bar are well suited to assist in teaching the art of advocacy. I suggest that the organized Bar should explore ways in which its efforts and the expertise of its members can be used to assist clinical legal education programs in our law schools and other programs looking to the training of advocates.

Quality of Education

I would make one final remark about the quality of legal education offered by our law schools. Law schools seek to provide their students with a sophisticated conceptual apparatus with which to analyze and solve legal problems. It would not, perhaps, be asking too much to request that law schools make a similar effort to expose future members of the Bar to elementary concepts of professional conduct and fair dealing. The love of justice and virtue is a part of the law, and a part of the lawyer's life. In addition to teaching the law as a trade, the law schools should also teach the law as a calling and provide students with a sense of dedication to the use of their professional skills for the greater good.

I might add that to a greater extent than may exist in many other professions, a lawyer's education is never complete. By its nature, the area of concern to the practicing attorney--the body of the law--undergoes continual evolution. A lawyer whose skill is tied to the law as it existed ten years ago rather than today may do his client irreparable harm. Continuing education is therefore a critical component of legal competence.

Specialized training in advocacy, however, is not enough. The profession must develop a means of determining whether the years of preparation have borne fruit. The Bar associations should therefore study the desirability of supplemental oral examinations leading to certificates of ability as trial or appellate lawyers after the applicants demonstrate competence. Our friends in the practice of medicine have found specialty certifications useful to the patient and physician. I note that the California and Texas Bars are utilizing such a program with specific reference to recognition of criminal law specialists.

Need for Generalist

I am not proposing that there is no longer a place for the generalist in the practice of law, and that the profession should henceforth consist of nothing but groups of certified specialists, be they experts in estates, corporations or other branches of practice. I restrict my recommendation to those lawyers who try cases and argue appeals for, in my view, they, more than any other group in practice, hold the liberty and property of their clients in the palms of their hands.

Reform has always been slow in our profession because, as I have already noted, we are traditionalists. Suggestions for changes are made and often die on the vine. The New York Times in reporting on the Chief Justice's talk implied that even if all major

Bar associations agreed to a program to certify trial lawyers, it might take years to implement because Legislatures or legal regulatory bodies would have to move on a state-by-state basis. While this statement may be correct as to practice in the state courts, I doubt its application to the practice in federal courts.

After all, Federal District Courts, Circuit Courts of Appeals, and the Supreme Court have separate admission policies, distinct from state courts, and lawyers are required to apply for special permission to practice before these federal courts. Those who apply are expressing an intention to try cases and argue appeals in those courts. I should think it appropriate, therefore, that consideration be given to the adoption of a rule requiring demonstrated competence in trial or appellate advocacy as a condition for future admission to federal courts.

Panel Proposed

The question whether this rule should be applied nationally and thus incorporated in the Federal Rules of Appellate Procedure, Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure is one upon which I shall not comment at this time. But, I submit we should move forward with some dispatch in this circuit to see what can and should be done in the future with our rules of admission. Accordingly, in the not-too-distant future and with the counsel of some of my colleagues, I shall appoint a committee to examine the problem and make appropriate recommendations for the federal courts of the Second Circuit.

Let me put my remarks in some perspective. I wish to emphasize that my comments are not intended as a general indictment of the legal profession. I have chosen to discuss this problem with our professional leaders precisely because no one is more disturbed by ineffective representation than the dedicated lawyer upon whose work the incompetent one unjustly reflects. I exhort you on behalf of our "customers," the litigants and the general public. They deserve the best we can give. But there is yet another reason for doing your job as carefully and as well as you can--because that is where the fulfillment is.

Excellence and the pursuit of excellence have always been the hallmark of our profession. In the words of Dean Acheson, speaking of the days when he served as a law clerk to Mr. Justice Brandeis: "Justice Brandeis' standard for our work was perfection as a norm, to be bettered on special occasions."

The American Bar Association and associations such as yours recognize the urgent need to adopt this maxim as our professional credo, and I have confidence that they will not rest until it becomes a reality.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 10, March 1974

Table of Contents

On the Visibility of the Legal Clinic - Dean Raymond L. Spring and Professor Donald F. Rowland of Washburn University Pages 1-5

On Teaching Ethics in the Law School - William Pincus, President of CLEPR Pages 6-7

ON THE VISIBILITY OF THE LEGAL CLINIC

by Dean Raymond L. Spring and Professor Donald F. Rowland

There is a wise old saying with which, presumably, everyone is familiar: "Justice must not only be done, it must be seen to be done." Perhaps it may be regarded as a forgivable perversion of that phrase if, in turning our thoughts to the place of the Law School Clinic, we were to begin with the idea that "the Legal Clinic must not only be a part of the curriculum, it must be seen to be a part of the curriculum."

Many of us are now several years and, collectively, several millions of dollars into a serious effort to inject a new element into the process of legal education. The reasons which prompted the taking of the first substantial steps toward a clinical component in legal education have been discussed elsewhere,[1] but it is perhaps a sufficient summary of history to suggest that at least two groups were dominant in providing the necessary pressure--the practicing bar and the law students--and both argued, from different positions, that the law schools were doing an inadequate job of preparing graduates for entry into the practice of law. Another form of pressure, or at least support, for clinical experimentations was found in the availability through the Council on Legal Education for Professional Responsibility of financial support for new clinical programs. Few were so blind to reality as to conceive that clinical education, as part of the curriculum, would be inexpensive, though many perhaps underestimated what the actual cost would be. It was clear that the budgets of most law schools would have been strained, if not burst, by serious clinical efforts without outside help. There was the cherished hope that federal funds would be available for the support of such programs through Title XI of the Higher Education Act; that hope, of course, is still unrealized. Still, as noted above, there was the assistance from CLEPR, and it was enough to get the ball rolling.

Another form of stimulus for the adoption of law school clinical work appeared in a wave of adoptions of "student practice rules" in the states, primarily in the late 1960's.[2] These rules, permitting supervised practice in actual cases by law students, provided the access to real clients necessary to work which was truly clinical in nature.

Thus, it can be said that in the past few years a great deal has been done which has opened the door to the development of the clinical component in the law school curriculum. And the law schools have responded, at least to the extent that a substantial majority of approved law schools in the United States now claim to offer some form of clinical education. So it can now truly be said that training for professional responsibility has been incorporated in the law school curriculum through clinical programs and those who were concerned about lack of adequate training for practice have their fears allayed. Right?

Wrong! The simple fact is that after all the money and effort, clinical education suffers from a too-low profile, a lack of visibility; some of those closest to it seem virtually unaware that it is there at all! A recent issue of the Journal of Legal Education contains two student articles dealing with attitudes toward, or criticisms of, the legal education process. In the first, thirty-five students drawn from two fine law schools engaged in a general discussion of legal education and the legal profession, the transcribed report of which runs some twenty-five pages.[3] In all of that discussion, one student ventured a single comment about a clinical program at his school. No one picked up the point to carry it further. Yet the discussion is filled with the old complaints of "too far removed from practice," "absence of any kind of an ethic," etc. The second article, a twenty page attack on an allegedly archaic curriculum and destructive, if not dangerous, teaching technique (the socratic method) had only this and no more to say of the new clinical movement:

> "The impracticality complaint is not a new one, but merely an old one which has not been corrected. While patchwork efforts have been made to meet the criticism with various clinical programs, it cannot be inferred that any re-thinking of basic assumptions has occurred. Direct contact with the actual stuff of law practice is still not considered fundamental to legal education." [4]

If this is representative of the thinking of today's law students about the role of clinical education in the overall legal education process, then it is clear that it has not truly been incorporated. If clinical programs really exist as an integral part of the curriculum, they will be seen as such by those directly involved, and there will be substantial awareness that a considerable amount of re-thinking of basic assumptions in legal education has been occurring. The truth then must be that it is not that the student discussions referred to here proceeded in blindness to what was and is going on, but rather that the discussants have apparently been offered very little opportunity to see.

Perhaps the best suggestion as to why this has happened has been made by Packer and Ehrlich, in their recent report for the Carnegie Commission on Higher Education, New Directions in Legal Education. A reading of chapter four of that publication will readily demonstrate that the benefits of a fully integrated clinical component in the curriculum

have certainly not been fully visible to the authors. While clinicians may chafe under some of the comments made, we had better accept the summary as a basically sound reflection of the present view of clinical education by much of the law school world. What may be the key to the dilemma they express as one of the reasons for the current popularity of clinical education:

> "Second, clinical education lends itself to being a separate activity; it is by nature removed from the law school and up to the present has been essentially extracurricular. Thus small clinical programs can be added 'on the side' to the curriculum, necessitating no fundamental changes in the life of the law school nor, more significantly, in the lives of most of the faculty."[5]

Small wonder, then, that what is "separate," "removed" and existing only "on the side," is not seen by many as part of the process. What they see is the way it is.

We write from the point of view of those who are committed to the value of the clinical component in legal education. That many do not share this view is obvious, but it is not our purpose to debate that issue here. Rather, because we believe our exposure has been somewhat different than that of some others, and thus our experience, perhaps we can add something to the dialogue by recounting our own experience. To do that it is necessary briefly to describe the character of our own program.

The Washburn Legal Clinic operates as a general practice law firm for an indigent clientele. It "employs" (not for compensation, but for credit) 30 senior law student interns each semester and a smaller number during the summer months. A like number of second year students serve as "law clerks," doing interviewing, investigation and research. These students receive no credit, but since such service receives consideration in the selection of interns, there are ample volunteers. Two full-time members of the faculty act as senior partners and supervisors for the senior interns, and three student directors coordinate activities in various phases of the program. An office staff of three secretaries is headed by an experienced legal secretary. The clinic handled in excess of 1300 cases last year.

Interns receive thirteen hours of credit for participation in the "clinical semester," during which in addition to handling approximately fifteen cases, they attend seminars in Trial Technique, Negotiation and Settlement, Professional Responsibility, Office Management and Practice, Interviewing Technique as well as a general Clinic Seminar. They also attend an "office meeting" once a week, at which current procedure and problems are discussed. Office meetings and seminars are scheduled at noon, during the evenings, or on Saturday leaving the working day clear for the students' practice.

The clinic is housed in two temporary buildings adjacent to the law school. One of these encloses the office space for the secretarial staff and student directors, as well as a conference room and small working library. The other consists of ten small offices shared by interns and used primarily for client interviews. The offices of the clinical faculty are in "faculty row" in the main law school building.

Since the kinds of cases handled are varied: criminal, civil of all types, probate, mental competency and administrative, it is possible to assign a caseload to each intern that is not repetitious and thus each case offers the intern an essentially new experience. The so-called "law reform" case is not sought; if it arrives, it is accepted. Most cases can be seen through from beginning to end by a single intern, although it is on occasion necessary to transfer cases carrying over a semester. Normally interns carry through their own cases to completion, even though their "clinical semester" may have concluded. This is a part of the inculcation of professional responsibility we seek to achieve.

This is a nutshell description of the clinical component at Washburn. It is not our intention to describe what happens to the student, or the benefits conferred, for that is not our purpose here. Suffice to suggest that a review of Professor Conard's excellent article in the November, 1973 issue of this publication will provide a description of experiences similar in many ways to our own.[6]

What is of importance for present purposes, is that we have seen the clinic come to life as a full partner in the process of legal education. Students compete for selection to internship in the clinic; there are regularly 50% more students seeking admission than we can presently provide with spaces. These students--welcomed at orientation as first year students not only to law school, but to the legal profession--literally plan their curriculum for three years to provide the time for the clinical semester. The clinic itself operates a program for first year students consisting primarily of observation in courts, police agencies and correctional institutions, coordinated by one of the student directors. Thus, from the beginning of the first year the student cannot help but recognize that the legal clinic plays a major role in the life of the law school. Those who move into a law clerkship role with the clinic in the second year become acutely aware of what the interns are doing on a daily basis; they begin to experience the responsibility of dealing with real problems of real people, and look forward eagerly to an internship in the third year. Far from diluting the quality of academic performance, the presence of the clinic seems to enhance it. The student is aware, in himself and in his peers, of the transition from student to lawyer as an orderly, integrated process, rather than as having to do with some mystical result derived from graduation and passing the bar. This awareness underlines the importance of gaining the most in understanding the law and its processes through the opportunities available in the academic part of the curriculum.

What, it might properly be asked, of that group who are not selected to internship in the clinic? There are frustrations there, to be sure, but there are other programs--"farm out" programs for limited credit with the District Attorney, City Attorney, Public Defender, Legal Aid, Attorney General and other state agencies. These, we will readily concede, offer less than the experience of the clinical semester; they are limited both in time involved and experiences gained. But the presence of the visible in-house clinic adds greatly to these, and makes them better than they would be standing alone. Students who are disappointed in not being selected for the clinic still have the motivation built up for two years, and the tendency seems to be toward transposing the disappointment into a competitive spirit, and a desire to show that they too are achieving professional status. The effect upon the supervising lawyers in these public agencies is salutory, too. Most of them have come up against the interns in the clinic in the past, and are anxious to have a few of these eager, aggressive and able students on their team.

Yet another tangible result of the integrated clinic appears in the effect on the "academic side" faculty. As we have noted before, the clinical faculty office in "faculty row" and are in daily contact as peers with the faculty as a whole. They participate on an equal basis in faculty meetings and serve on faculty committees involved with all aspects of the program of the law school. Other members of the faculty serve on the legal clinic committee, thus becoming involved in the decisional processes relating to clinical program and intern selection. Thus, it has been an easy transition to achievement of a relationship in which any faculty member is ready and willing to assist or supervise an intern who has a case, or problems within a case, falling within his or her particular expertise. During the past year, twelve non-clinical faculty supervised one or more cases, and all of the remainder rendered some advice or assistance on particular problems. Indeed, some have even ventured so far as to suggest that they "wouldn't mind spending a year or so in full time clinical work!" That this is not an isolated experience is borne out by the Conard article relating to the Michigan experience.

These are but a few of the benefits conferred by the visible in-house clinic; there are more, too many more to be enumerated here. Some have to do with the public face presented by such a program. Members of the local bench and bar take an active and constructive interest, in supervising interns with cases needing an expertise beyond that available in the faculty, participating in critique of cases tried before them by interns, meeting with clinical seminars, and more. Another is in finding that clinical students do not simply learn "how-to-do-it," but continue to learn a considerable amount of law, since every case raises substantive questions to be resolved. Finally (and at least any Dean should warm to this prospect) we were rewarded last year when the local Bar Auxiliary held a special fund-raising project to provide a scholarship for one of the student director positions in the clinic.

Thus, if clinical education is to be "a testing-case for legal education," [7] it certainly deserves a fair trial. And we believe a fair trial involves due incorporation in the process. A clinical program "removed" from the law school, existing, as it were, "on the side" of the regular curriculum can never demonstrate its worth; many will never even know it is there. Some--indeed most--have been concerned with the amount of investment in clinical education. We would not argue that it does not cost, and much more than legal-education-as-we-have-known-it. But like most investments, it is probably money and time thrown away unless there is sufficient commitment to see if it will work. Like the proverbial light hidden under a bushel, its effectiveness is severely impaired if it cannot be seen.

* * * * * * * *

1. See, for example, foreword by Edmund W. Kitch in Clinical Education and the Law School of the Future, University of Chicago Law School Conference Series No. 20 (1970).
2. Id., p. 228
3. 25 J. Legal Ed. 403 (1973).
4. 25 J. Legal Ed. 427 (1973).
5. Packer and Ehrlich, New Directions in Legal Education, McGraw-Hill, 1972, p.37.
6. CLEPR Newsletter, Volume VI, No. 6, November 1973
7. Packer and Ehrlich, *supra*, note 5.

ON TEACHING ETHICS IN THE LAW SCHOOL

by William Pincus

The following remarks were delivered on Thursday, January 24, 1974 at a panel debate on the question "Are Criminal Defense Lawyers Unethical?" under the auspices of the criminal justice section of the N.Y.S. Bar Association:

There are certainly factors which are not conducive to ethical behavior without more effort in that direction. The first of these is the human being who becomes a lawyer, and it is with the human who becomes a lawyer with whom I am concerned. I am one of those who believes that we are not naturally good, but that we must make choices all the time between the good and evil--that this is the essence of the human condition. It is tough. There is nothing tougher. But there it is.

Since this is so, we have to develop an innate sensitivity for the moral and the immoral, the ethical and the unethical.

We are not born with this sensitivity, anymore than we are born with fully developed intellects.

But it is in the nature of the human being to respond positively to things ethical and intellectual if he is educated.

Our Council has been aiding clinical education in the law schools because we believe that both the intellect for things legal and the ethical sense of the lawyer are incomplete unless the professional school becomes the place where theory and practice begin to be joined-- the place where the lawyer-to-be is trained and judged by what he does and does not do, as well as by how well he speaks or writes the theories of law.

In clinical work in the law school, where the law student under supervision works with clients, there is the unique opportunity to observe and judge ethical behavior. While the school has justly been proud of teaching students to think like lawyers, it has been doing only part of its role. Even with respect to thinking, we do not develop as far as we should without the necessity to act on our thoughts. But in the field of ethics, we come out of law school almost totally untouched without clinical experience. Law students need to move into clinics in law school in order to learn how to act like a lawyer with clients, other lawyers, public officials, private citizens, etc. Unless his moral fiber is developed through clinical exercises in the real life decisions of lawyer-client work, the law student is apt to leave law school without an automatically-operating sensitivity to the often difficult choices he must make which involve ethics. He won't know so quickly where to restrain himself and where to prod himself to extra effort. The delay in realizing what should be the proper course of conduct may make the entire difference between ethical and unethical behavior. When it comes to ethical decisions, instinct, spontaneity, and time, indeed, are of the essence, and this takes training all through life, including training in the professional school.

Until the recent development of clinical education in the law schools, this aspect

and others of the law student's maturation into being a lawyer were, not given much attention by law schools, except through classroom references to the Canons of Ethics, now called the Code of Professional Responsibility. Even now clinical education in the law schools reaches only a fraction of the law school population--though the fraction is substantial in a large number of schools.

We are at a crossroads in legal education. The path we take--if it includes clinical education--could do much to create a more positive answer to our question.

What is involved is a matter of basic philosophy about the education of a professional. If we are concerned about ethical behavior, we must start our inquiry with the education of the lawyer, and then go on into the system of justice, the structure and economics of the profession, etc. To omit the professional education of the lawyer from consideration about improving the ethics of a profession is to skip the beginning of the process of moral maturity in a profession. In fact, leaving law school out of consideration in regard to ethics may mean delivering a negative message that only brightness counts, not moral behavior. How often we hear about how bright students are. How little we hear about where their behavior can stand improvement. At the professional school level there is an imperative for combining attention to thinking and action for we are providing access to a profession at this stage--giving the first of the certificates for the ultimate license to practice.

Therefore, the image of the law school must clearly become that of a professional school, concerned with thought and behavior. The law school must move away from being an imitation of other graduate faculties such as those in philosophy and social science, concerned only with thoughts, tests and footnotes. The law school must consciously become more involved with the total development of the lawyer-to-be--for behavior as well as thinking. It must put the law student into the clinical setting to give him this message, to exercise his moral fiber, and to make him realize he is being judged for what he does, which means ethics.

In the process, the law schools themselves will profit as educational institutions. Law schools which condone class cutting will themselves have more to ponder if they have to be concerned about attendance at the clinic, which means attendance on clients. Is attendance or non-attendance on a professor without any moral significance?

In this process, too, the law school will be getting across the message that a lawyer is being educated to serve others as well as himself, and to know that sometimes the service to others may involve costs to himself.

Lately our Council has been putting more emphasis on the clinic as the place to teach professional responsibility--read ethics. We are about ready to print a collection of fifteen actual cases from one school's law clinic, not for their legal doctrines but for their ethical lessons. Each case will have comment on the ethical problems by two practitioners, a law professor and a psychiatrist. Our purpose is to encourage more live teaching and learning of ethics. If this becomes commonplace, we should eventually have less cause to criticize the ethics of criminal lawyers, especially if reform in legal education is accompanied by other reforms outside of law schools.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 11, April 1974

INSTRUCTIONAL EFFECTIVENESS IN LEGAL EDUCATION: SOME OBSERVATIONS AND RECOMMENDATIONS

Russell Burris*
Consulting Group on Instructional Design

University of Minnesota

This paper will describe features of teaching and learning programs which appear fundamental and necessary in the achievement of effective legal education. The focus is on basic questions of instructional design, derived from what is known and theorized about how students develop knowledge and skill to a level of productive performance. The observations and recommendations are drawn from my experience over the past several years with faculty members from the Law School at the University of Minnesota, with the Teaching Methods Section of the American Association of Law Schools and with the Council on Legal Education for Professional Responsibility. While the observations made here are those of a psychologist concerned with the applications of theory and knowledge about the learning and pedagogical processes to more general instructional situations, an impressive roster of law teachers and scholars have helped me establish the legal education context for this summary through their teaching programs and problems.

As in the case with educational programs in other professional and subject matter areas, legal education is under considerable pressure to change. Sources of this pressure are the students, alumni, school administrators, trustees and, most important of all, law professors themselves. The nature of suggested changes present challenges to practices in student selection, curricular arrangement, examination procedure and teaching technique. These challenges demand thorough and thoughtful study

*Readers might find it useful to refer back to CLEPR Newsletter Vol. VI, No. 4, October 1973 which published a related essay by Dr. Stanford E. Ericksen.

by law school administrators and teachers if changes are to be based on something other than educational fad and fashion. The objective of this paper, then, is to identify the more fundamental questions and issues related to teaching and learning effectiveness which need to be considered as changes in instructional designs are developed.

My experience in working with law professors on the course objectives, teaching strategies, operational details and student evaluations for their instructional programs suggests that instructional effectiveness involves more than merely using a particular teaching procedure, technique or technology. Indeed, examples of both effective and ineffective uses of any procedure, technique or technology can be observed in different situations. What is it that makes instructional programs effective? What characterizes the student's successful achievement of performance criteria? What is it a student "knows" when we are willing to say he "knows"? It will be argued here that answers to questions of instructional effectiveness lay within these and variations of these questions. In summary, then, this paper will attempt to identify the issues and questions which are relevant to the behavior of "knowing" within the context of legal education and which are fundamental to describing that behavior.

Criteria for "Knowing"

For good reason emphasis is placed on the necessity of specifying objectives for any instructional program. Inventorying the objectives and purposes of a course, within the setting of an institutional mission and of the curriculum, forces a consideration of the fundamental issues involved in effective teaching and learning. As valuable as intuitions and historical precedent are to course design, instructional effectiveness is more fundamentally related to how well a teacher can distinguish the individual who "knows" from the one who "does not know," and to how well the teacher can describe, or at least recognize, the distinguishing features of those who attain an appropriate level of knowledge and skill. Designs of instruction are strengthened or weakened according to the proficiency with which these fundamental issues are dealt. In order to design an effective educational program or to adequately assess productive behavior one must be able to distinguish and describe what that behavior is. This is not to say that every good teacher must be able to specify the features of competent performance in a formal way. I do argue, however, that the good teacher is sensitive, at some level of awareness and specificity, to the fundamental relationship between these issues and instructional design.

What has impressed me most in observing good teachers and effective instructional programs in legal education, as well as in other subject-matter areas, is the recognition that "knowing" is more than the ability to recall or recognize the facts, principles and elements of a knowledge area, and, further, that "knowing" is more than fitting these facts, principles and elements together into a structure for that particular subject matter. From my observations and study it appears that the good teacher is aware that an adequate description of "knowing" must also account for how a knowledge structure is manipulated and how new data and information are pro-

cessed within that structure in order to solve problems or otherwise perform appropriately. In short, I have been impressed most by those instructional designs which have recognized the distinctive nature of the rules or skills necessary for processing and manipulating new information and data.

In their chapter on Instructional Psychology in the Annual Review of Psychology, Glaser and Resnick (1972, p. 219) make the following statement.

> The studies we have chosen to define the field (instructional psychology) come from a variety of sources and only some of them have an explicit instructional orientation. What is especially striking, however, is their convergence on the analysis of performance in terms of the interaction between task structure variables and the learning and information processing capacities of the individual. Such an emphasis seems to us to be crucial for an instructional psychology which seeks to explicate the conditions under which educationally relevant learning takes place.

What Glaser and Resnick have referred to as "the interaction between task structure variables and the learning and information processing capacities" appears to be essentially similar to what is discussed here as a knowledge structure and the rules for manipulating that structure. Different subject-matter areas have their own symbols for the distinct elements which make up the "vocabulary" for each area. How the elements of the vocabulary relate and fit together as a body of knowledge is also a necessary part of "knowing." Beyond knowing the vocabulary and structure of a subject-matter, however, expertness is characterized by an ability to manipulate that structure in processing new and different data and information to solve problems or otherwise perform appropriately in a specific field of knowledge.

If one thinks of the knowledge skills associated with knowing law as a "language," one is able to speak of the vocabulary, structure and "grammar" (rules of manipulation, processing and transforming) involved in knowing law. It is the grammar which those experts in law seem to share and which distinguish them from the less able or novices.

A situation from medical education could be illustrative here. The medical student is expected to learn to generate an appropriate diagnosis and treatment plan from the patient's signs, symptoms and laboratory information although the information is essentially unique from one case to another. On the basis of prior education and experience dealing with physiology, biochemistry, clinical medicine, etc., there is an anticipated transfer to an appropriate performance in an infinite, or near-infinite, number of possible cases. For the purpose of describing what is processed and manipulated -- or transferred, a term my colleague-in-psychology Dr. Stanford Ericksen used in his discussion of the problem in a previous issue of this Newsletter (Vol. VI, No. 4, October 1973) -- and how this processing and manipulation takes place, it seems reasonable to consider the competent individual as having a body of knowledge which consists of a "vocabulary" with a structure or logical organization. Further, and most importantly, competency in the medical student is marked by the ability to manipulate

or transform this structure according to rules specific to the knowledge domain which is applied to the patient's biological functioning. The internal processing referred to earlier appears to take the form of rules or "grammar" for manipulating or transforming a body of knowledge. The ability to process the patient's information and data appropriately in relation to the body of knowledge relevant to normal and pathological functioning appears to be what characterizes the medical student who "knows."

Performance Criteria and Instructional Design

To be sure, law school teachers have been using case study as an approach to both instruction and evaluation for a long time, and this technique appears to be a way to emphasize the processing, manipulation and transformation skills necessary to solve legal problems -- probably the basic skills involved in "thinking as a lawyer." As an observer of the learning and pedagogical processes, my concerns focus on how the instructor views the structure of a particular knowledge area through the organization of facts and principles, how the instructor believes that structure is manipulated and transformed in problem-solving situations, how the instructor identifies the knowledge and manipulation skills lacking in learner performances and how the instructor designs pedagogical situations to provide learners sufficient practice to learn these skills to some appropriate level of competence. The case study approach may or may not be used appropriately and adequately to answer all these concerns. And similarly, other techniques such as lecture, Socratic dialogue, role playing, simulation and clinical experiences may or may not be appropriate and adequate for learning these skills.

The point here is that instructional effectiveness is less dependent on the pedagogical technique or approach the instructor selects than on an adequate analysis of what characterizes an appropriate level of competence. This is not to say that the pedagogical technique or approach has no relationship to effectiveness. Obviously, good teachers have used the lecture and Socratic dialogue techniques effectively for a long time, and these techniques along with texts appear to be efficient and appropriate for presenting the vocabulary and structure of law. Clinical experiences, simulation techniques and role playing, however, provide the learner with an opportunity for more direct practice of the processing and manipulative skills which are basic to problem solving in law. This is to say that effectiveness is dependent, first of all, on an analysis of the subject matter to be learned and, then, on the selection of the pedagogical techniques and approaches to fit <u>what</u> is to be learned. Let me stress that I have been impressed by how sensitive good law teachers have been to these more fundamental aspects of performance criteria.

Describing a "grammar" which adequately explains how all possible meaningful performances in the "language" of law might be generated is a difficult, if not impossible, task. Controversies still mark the linguistic analyses of more commonly studied languages. However, my argument here is that adequate performance criteria for the design of instruction and for the assessment of competence are derived from analyses of structure, organization, processing and manipulations which account for and distinguish the "expert" in law. The analyses must be carried out within the context of particular

areas of expertise. By observing what different expert lawyers and successful students do in particular situations and what distinguishes them from the less expert, a description of the distinctive elements necessary or adequate performance criteria can be built. And such descriptions begin to specify what must be looked for in assessing student performances and what must be included in a design for an effective program of instruction.

Conclusions and Recommendations

The more traditional modes and media for teaching and learning such as lecture, discussion, Socratic dialogue and textbook have been and are effective in legal education. Indeed, according to the argument presented above, these classroom-oriented approaches to instruction would be expected to be both efficient and effective ways for students to learn the "vocabulary" and logical organization (i.e., structure or "task structure variables") of different subject matter areas which make up "knowing law." Doubts about the efficiency and effectiveness of these classroom-oriented approaches are raised, however, with regard to the opportunity each student has for practice in the manipulation of the "vocabulary" and structure. Client exposures through a clinical program do offer the opportunity to process different information and problems and to manipulate within the knowledge structure the student has acquired previously. And it is this practice in processing and manipulation which is viewed here as a necessary feature of an effective instructional program -- a program designed for students to achieve an appropriate level of competence.

This is not to say that it is impossible for students to get this processing and manipulation practice in the traditional classroom techniques. Obvious restraints, however, force differences which may make classroom practice less than completely effective. This may account for frequently heard statements that learning law is not achieved until a year or two after law school.

Certainly, some practice is more efficiently done in the classroom, but some critical aspects of what is to be learned cannot be practical except in a field situation. What is presented and illustrated in a classroom can be selected to systematically sample the range and features of the manipulations to be learned, but the degrees of abstractness associated with both the problems and the practice make the learning experience less direct for the student.

Client exposure and problem processing are real in a clinical situation, and the many different variables which must be processed to solve problems at an appropriate competence level are present. I am persuaded that these client exposures and clinical problem solving experiences are necessary parts of an effective overall instructional program. But it is obvious also that clinical assignments cannot be made so that each student gains practice across a representative sampling of the manipulations or "grammar" to be learned.

To achieve maximum efficiency and effectiveness a total instructional program must include not only classroom and clinical experiences but, most important, a coordination of students' experiences in these areas. Practice in the two approaches is required so that the total educational program reflects an analysis of what features distinguish competent performance.

In addition to greater coordination of these two approaches, I also believe that greater effectiveness can be gained by providing students with more laboratory and problem-solving experiences across a range of "grammatical transformations." Mathematics and physics teachers have been aware of the educational value of such experiences for a long time. Simulation and role-playing situations, designed to be representative of the critical manipulations necessary for "knowing," can provide the basis of a problem-solving laboratory for the law student. The significance of such a laboratory would be derived from the student's direct problem-solving practice which is not possible in the classroom, and from his processing many problems selected on the basis of critical manipulations to be learned which is not possible in the clinic.

Various techniques and technologies can be used in the design of these laboratory situations. I have observed several impressive uses of programmed learning, television and computer, in legal education. Again it must be emphasized that it is not the use of these techniques and technologies but how they are used and for what purpose within a total program which makes them impressive.

Finally, I cannot imagine a single approach adequate to offer a truly effective instructional program. Except, perhaps, as it may reflect the intuitions of an experienced and sensitive teacher, I also cannot imagine a program involving several approaches achieving maximum effectiveness which is not based on an analysis of what a student "knows" when we are willing to say he "knows."

* * *

References

Burris, R.W. In M.D. Dunnette (Ed.), Handbook of Industrial and Organizational Psychology. Rand-McNally (in press).

Keeton, Robert E. Programmed Problems in Insurance Law. St. Paul, Minnesota: West Publishing Co., 1972.

Maxwell, Richard C. Review of H.L. Packer and T. Ehrlich, New Directions in Legal Education. Michigan Law Review, 1973, 71. 866-875

McClure, Robert. Creditors Remedies. University of Minnesota, revised 1973. (unpublished)

Acknowledgments

I wish to acknowledge the contributions made to my education by Robert McClure, Roger Park and Robert Keeton who have instructional development projects with the Instructional Design Group by Leo Raskind, Donald Marshall, Ferdinand Schoettle, David Graven, Paul Zerby, Richard Maxwell and Frank Remington who have been members of my seminar on teaching and learning for faculty; by Alan Widiss, John Krahmer, Martha Robinson, Robert Riegert, Michael Josephson and Dan Tarlock who as members of the AALS Teaching and Learning Subcommittee spent November 16 and 17, 1972, on the University of Minnesota campus relating teaching and learning issues, theories and projects to their legal education concerns; and by Robert Keeton, Alan Widiss, Peter Maggs, J.J. White, Edward Stein and Robert Oliphant who participated in a CLEPR-sponsored session at the University of Michigan on May 22 and 23, 1973, reviewing current legal education programs for the purpose of identifying needed developmental efforts. In nearly all of these interactions I have been joined and aided by my colleague from the Center for Research on Learning and Teaching at the University of Michigan, Professor Stanford C. Ericksen.

Special acknowledge is given to William Pincus, Betty Fisher and Victor Rubino of CLEPR for their interest, support and challenges given to me as part of their impressive and broader search for effectiveness in legal education.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 12, May 1974

Table of Contents

Grading Clinic Students - by Professor James C. Carr pp. 2-4

Comments on Professor Carr's Essay pp. 5-18

- by Professor David A. Binder pp. 5-7
- by Dean Edgar S. Cahn pp. 7-9
- by Professor Daniel Oran pp. 10-11
- by Dean Murray L. Schwartz pp. 12-14
- by Stephen Wizner pp. 14-16
- by Professor Roger C. Wolf pp. 17-18

Preface

There are some events in life more important than other events. These special events usually have something to do with benefits, privileges, and social status, and they carry meaning for a long time, sometimes for a lifetime. One of these events is being "graded" by a teacher.

Like all rites of passage of long standing, however, the grading process has meanings and significances which elude us after a while. But occasionally something happens to revive interest in the meanings of ancient practices which have survived. Thus the advent of clinical legal education has encouraged a review of grading.

Grading requires an evaluation by someone of what happens in the education process. It brings to the surface some of the fundamental issues of education. A discussion of grading is of necessity a discussion of education. Such a discussion is contained in the comments we have solicited from some clinicians and others in legal education after their reading of an article by Mr. James Carr of the University of Toledo College of Law. His article entitled "Grading Clinic Students" will appear in a forthcoming issue of the Journal of Legal Education. A summary of the Carr article appears below, followed by the texts submitted by our commentators.

GRADING CLINIC STUDENTS

By Professor James C. Carr
University of Toledo College of Law

CLEPR's most recent "Survey of Clinical Legal Education" indicates that of 324 programs at the 117 responding schools, 181 use a binary pass/fail, credit/no credit, or satisfactory/unsatisfactory grading structure.[1] Clinical programs appear to represent the most frequent use of pass/fail by law teachers, and, for most schools, pass/fail is probably reserved for clinics.

The common justification for the widespread acceptance of a variant grading structure appears to be a concern, shared by clinical teachers as well as non-clinical colleagues, that the clinical professor cannot acquire enough data and reliable material to provide a basis for rationally and responsibly assigning the traditional letter or number.[2] Assuming the absence of objectively quantifiable data, users or advocates of pass/fail in clinics fear the apparent consequence, grades based on subjective, personal factors unrelated to ability or performance.[3]

Unlike many of my clinical cohorts who have either chosen pass/fail, or accept it as a condition of their existence, I have concluded that pass/fail is the least acceptable grading method for a clinical teacher. With my prosecutor farm-out program, at least five sources, discussed below, provide information for evaluation, and offer considerably more data than is typically available to the classroom teacher.

1. Written work. Most students write a fair number of memoranda and briefs during the clinic period and a few write extensively. All students maintain files of major work assignments, and students in the trial placements regularly prepare trial forms and maintain case files.

While the classroom or seminar instructor typically reads one written product, I have available several of considerable variety, length and difficulty from each student. These are produced under a range of conditions and circumstances, some of extreme pressure, particularly of time, and others in settings more conducive to reflection and redrafting. I am confident that, in sum, each student's written material displays strengths or weaknesses with greater visibility than with any single examination or research paper.

2. Observation of simulated and actual practice. During the first three weeks of their clinical experience, students participate in an elaborate orientation sequence of simulated trials and hearings. While these sessions are primarily intended to give the students a veneer of experience and confidence, they also allow me an opportunity to assess the student's initial abilities with trial preparation and presentation.

The clinic's size and farm-out structure make it difficult for me to observe the students in actual courtroom situations as often as I would like. But courtroom observation is an important factor in the grade calculation.

3. Group session participation. The students are advised that their participation in our weekly group sessions presents the primary opportunity for me to evaluate regularly their development. Like the seminar or small class instructor, I can determine during these meetings the extent to which the student is an inquisitive and reflective observer of the various legal institutions and practices to which he has been exposed.

4. Informal review of student performance. During each quarter I see most judges and lawyers before, with and against whom the students are appearing. Considerable feedback and comment on the quality of the student's performance and his professional development thereby become available.

5. Responses to evaluation forms. At the end of each quarter I send evaluation forms to all prosecutors for whom a student has worked and all judges before whom he has appeared. These forms solicit narrative comments upon particular topics, and they are an important element in the grading decision. Those to whom I send the forms have regularly observed the student interviewing, negotiating and litigating, and the questions call for evaluation of the student's performance in these and other categories.

Despite this substantially greater quantity and quality of information available to the clinical teacher, a major difficulty with evaluating the clinic student's performance comes from what can be described as the "unevenness" problem.[4] Some of my students have many trials and appeals, some few; for all, the number and types of written projects vary.

The effect of variations in assignments can be reduced by clearly defining the experience to be obtained in each of a variety of topics. Once the clinical instructor has established the areas to be covered, a general equivalence of clinical opportunity will depend upon the teacher's ability to monitor the delivery of an adequate number of varied and worthwhile work opportunities. If these standards are determined in advance, agreed to by the supervising attorneys, and met in the course of the student's clinic activity, variations become less significant.

To further equalize student experience, I select students from time to time to represent the State in habeas corpus cases in the federal district court. This flexible arrangement provides an opportunity to reduce differences in research and trial experience.

It should also be noted that problems of unevenness are not unique to the clinical context. Seminar topics vary considerably in their difficulty and the demands they make upon students. But the seminar instructor can make adjustments in his final evaluation to even out imbalances. Similarly, the clinical teacher can respond to variations among his students' experiences.

Furthermore, the inadequacies of the traditional final examination as an objective or fair evaluator are apparent. Even the most experienced teacher cannot perfectly distill 30, 60, or 90 class hours into a uniform residue of questions. Student distrust of this process appears in their demands for pass/fail grading, faculty forum shopping, and complaints about the invidious effects of grouping professors into hard and easy sections.

Indeed, some of the student enthusiasm for clinical programs may express a faith that the final grade will represent a more responsible and accurate assessment of effort, performance and learning than will be experienced elsewhere in the curriculum. To some extent, I am surprised that student reformers have failed to suggest that grades be reserved for clinics, and pass/fail used for the rest of the curriculum.

More importantly, the ex parte exclusion of clinics from the regular grading system may have adverse consequences upon the quality of its students' work product. Academic and court calendars do not run on parallel tracks, and pass/fail clinic grading may intensify the effect of examination periods on clinic activity. For a period prior to the examinations in graded courses, clinic students may well ask themselves why continue to work for their cumulative average in the clinic (the effect of pass/fail), when they can improve it elsewhere.

The better clinical programs have developed through the regular and reliable delivery of professional quality work products to courts, clients and lawyers. Particularly with farm-out programs, continued opportunity depends largely upon the cooperation of others to make work and experience available. This willingness can be seriously jeopardized by even a few incomplete or poorly executed assignments. I suspect that it is naive to believe that as many students in most clinical programs will give as much time, produce at the same level, or learn as much, if clinic grading differs from other upper-class courses.

Finally, the maintenance of separate grading systems signals a continuing refusal to acknowledge the pedagogical legitimacy of the clinical method. Compelling the clinical professor to utilize a crude and simplistic binary formula delays his admission into the business of legal education as a full partner, and leads to a continued discounting of the value of his work, and that of his students.

---

1. Council on Legal Education for Professional Responsibility, Inc., "Survey of Clinical Legal Education 1972-73," viii, XV-XVI, 93-110 (1973).

2. Redlich, "Perceptions of a Clinical Program," 44 S. Cal. L. Rev. 574, 599 (1971).

3. See White, "The Anatomy of a Clinical Law Course," Univ. of Chicago Conf. Series No. 20, 158, 168 (1970).

4. For expressions of this concern, see Stolz, "Clinical Experience in American Legal Education: Why has it Failed?" Univ. Chi. Conf. Series No. 20, 54-55 (1965); Peden, "Practical Training in Legal Education," 24 J. Leg. Ed. 503, 512 (1972); Levine, "Toward More Descriptive Grading," 44 S. Cal. L. Rev. 696, 701 (1971); Redlich, supra n. 2 at 599-600; White, supra n. 3 at 162, 168.

A CASE AGAINST GRADES IN CLINICAL EDUCATION

By Professor David A. Binder
University of California School of Law

Traditionally, grades have been asserted to have educational value because they increase students' motivation to learn and provide feedback concerning performance. Professor James Carr's article suggests that these rationales are valid in clinical education and as a consequence "grading" will enhance learning and performance in clinical programs. In my view these justifications, whatever may be their general validity, cannot be used to justify the use of traditional grading methods in the clinical forum.

The heart of most effective clinical programs (whether they be "in-house" or "farm-out") is the close working relationship between the student and the supervising lawyer/instructor. This relationship grows out of the dialogues which compose the planning sessions and "post-mortems" that attend each phase of the student's work. Indeed, it is in these sessions that the real learning takes place. Here the student is challenged to consider much more than the result. Ideally, he or she is asked to identify problem areas, consider alternative solutions, articulate reasons for particular decisions and evaluate technical proficiency.

At present, these conferences are carried out in a vein which permits the maximum flow of ideas. Since students see themselves as working with the instructor in a mutual effort they feel free to express their thoughts openly. They are not afraid to test out tentative thoughts. They have little reluctance to criticize suggestions made by their supervisor. If these conferences are to be made subject to "grading" judgments about the quality of performance I am persuaded that their vitality and openness will be considerably diminished.

First of all, grades will render most students reluctant to express ideas which to them are potentially suspect. Psychologists have long noted that most people become reluctant to speak when they know or believe an expression of their ideas will be used to make judgments about them as people.[1] Grades are this kind of judgment; they say one person is better or worse than another. Consequently, one must expect that since in the clinical setting grades would be based in part upon the analysis and suggestions developed by the student in supervising conferences, grades will have an inhibiting influence on the flow of ideas.

To be sure, the normal comments made by an instructor while critiquing a performance could be perceived by students as a judgment about them as people. However, I suspect that in most cases they will not. Comments about performance are, it seems to me, of a different order than the judgment made by a grade. Telling a student with whom one has worked rather closely that he or she handled the information gathering aspects of a negotiation rather well but pointing out deficiencies in the student's analysis of the operative leverage factors is one thing. Telling the student that her or his performance in the overall handling of the negotiation rated a "C" is quite another.

Secondly, grades will inhibit the dialogue which now surrounds student criticism of instructor suggestions. The conferencing process inherent in the clinical milieu involves much more than critiquing a student's analysis and performance. Frequently it encompasses,

for reasons of both pedagogy and professional responsibility, the insertion of instructor ideas. Good education (and client interests) require that students have the opportunity to consider approaches and analyses different from their own, approaches and analyses which to them may, at least at first blush, seem totally erroneous. Good education also requires that students feel free to comment about these different theories and to criticize them when they appear wrong. Indeed, if students are not permitted such opportunity they often will be denied the chance to truly understand why the instructor prefers her or his approach to that of the student's. Similarly, both instructor and student may often be denied the experience of realizing why the student's theory is more satisfactory.

However, student critiques and criticisms will, in all likelihood, not flow freely where the instructor is responsible not only for maintaining a dialogue with the students but also for grading them. One need only turn to common experience to realize that most people do not freely and with full candor criticize those from whom they are seeking a reward.

Moreover, grades will do nothing to enhance the evaluative feedback which already exists in most clinical programs. As noted above, the conferencing process which is part and parcel of most programs provides maximum feedback. Supervisors, whether the program be "in-house" or "farm out," if they are doing their job, are continually conferring with their students and providing an assessment of specific strengths and weaknesses. Grades will not substantially increase the meaningfulness of that feedback. For example, assume a student has just concluded a cross examination in which he failed to deal with the witness' bias but employed leading questions in a highly successful manner when dealing with another issue. Once the supervising lawyer has helped the student consider these strengths and weaknesses, the addition of an overall grade will add virtually nothing to the feedback.

Furthermore, grades cannot be justified on a generalized notion that they will motivate greater student effort and thought. Traditionally, proponents of grades have argued that, operating either as a stick or carrot, grades enhance learning. Almost everyone familiar with learning phenomenon would agree that for some students grades do function as a positive motivational force. On the other hand it seems now fairly well recognized that grades are not always a force for good.

> "Inter-student competition, short-term learning, cramming, cheating, term paper companies, anxiety, and other assorted evils have all been associated with grading, and oftentimes with good reason. The very act of offering a student a grade for good performance shifts the goals away from his main objective of education - the student pursues a letter or a number, rather than striving to develop his total self."[2]

In short, one must recognize that in clinical education as elsewhere grades will motivate some students but inhibit others. Therefore, given the potentially deleterious effect of grades which has already been described, and the feedback that now exists in effective clinical programs, there seems no reason to impose grading in the clinical arena on what must be acknowledged to be an overly simplistic notion about motivation.

Additionally, apart from matters of motivation and feedback, it should be pointed out that

in some respects the clinical process does not lend itself to fairness in grading. Students, even if performing the same tasks, do not encounter problems of similar complexity. Thus, some interviews, cross examinations, etc. present many more and more difficult problems than do others. Under such circumstances how does one fairly compare the performance of students? Is the student who does superbly on the simpler problem to receive a better grade than the one who does only fairly well on a more complex one?

Finally, I feel compelled to note that there is something highly ironical about advocating grades as a method of improving clinical work. One of the primary purposes of clinical education is the development of professional responsibility. This responsibility, in substantial part, is the sense that once one has undertaken to represent a client one does her or his best whether the external reward (fee or grade) is large or small. Under the best of circumstances this kind of responsibility is difficult to develop. As a minimum it requires that lawyers come to realize that much of their satisfaction ought and must come from the feelings (internal reward) attendant to a job well done. Accordingly, to focus students' attention on external rewards - i.e., grades - in order to improve their work, seems to me to focus their attention in the wrong direction.

---

1. Kahn and Cannell, The Dynamics of Interviewing, 70-72 (1959).

2. UCLA Innovator, Volume III, number 3, Spring 1973.

COMMENTARY ON GRADING IN LAW SCHOOLS

By Dean Edgar S. Cahn
Antioch School of Law

I have no quarrel with Professor Carr's dual propositions that clinical work is susceptible of multi-tier grading on at least as objective a basis as traditional courses and that utilizing the same grading system for clinical as for traditional classes would have favorable consequences in terms of upgrading the status of clinical programs.

My problem is a bit more basic, because I find myself at a loss to know what an "A" or "B" or "C" in a traditional subject means. I am in favor of a finely tuned grading system, rather than Pass-Fail or Pass-Fail-Honors. But I think the real problem is the need for defining what one is grading in both the clinical and traditional course settings.

An "A" or "B" in clinical work is rather indiscriminate, because it fails to delineate the elements of clinical work to which the "B" refers. Is it an average of several different grades in different categories of professional competence? Relating grades in the clinical program to the specific skill or competency obtained would be far more informative. And if certain outputs or skills were specified in the clinical program, one could, at least, begin to articulate what an "A" or "B" might mean.

But there are problems. First, it is difficult to say whether performance is idiosyncratic -- the peculiar result of the unique characteristics of the case assigned a student. Will the student be able to perform the same tasks just as competently in other cases? Since the experience of each student is unique, the competency gained will vary entirely with particular cases. Comparisons in performance are difficult to make.

Thus far, no systematic attempt has been made to develop any definition of minimal levels of competency. Therefore, it is not clear whether a grade assesses the student as a student or as a lawyer. Should the standards be the same -- at least in clinical programs?

If the problem of defining what one is grading requires greater specificity in clinical work, the need is at least as acute when it comes to courses. What does an "A" in, for instance, torts mean? I think we assume that it means some basic knowledge of torts doctrine, an ability to analyze a hypothetical fact situation, analyze the legal issues, and apply the doctrine.

But what does that competency mean? In terms of professional performance it probably means that a student could write an extremely competent memorandum of law in a tort case. It does not necessarily mean that one could entrust a tort case to that student; nor does it mean that that student would, in thinking through remedies, draw simultaneously from tort law, restitution and contract law. Furthermore, it provides no insight as to whether the student is a proficient and painstaking researcher; whether he or she could investigate the facts, interview witnesses, negotiate a settlement, prepare for trial, take depositions, or be entrusted to make some preliminary fact inquiries without possibly giving away more information than may be tactically desirable. And it does not tell us how he or she might deal with issues of professional ethics that might emerge.

Depending upon the particular professor and the school, it is not even clear whether a good grade means primarily that the student crammed all the rules and case law (and has since forgotten them entirely), or whether it means that the student is conversant with basic concepts and has a sufficiently agile analytic mind to diagnose an entirely new set of facts to identify the questions that require research.

Until we begin to understand more about the relationship between the competencies needed for the practice of law and the function of traditional courses in developing some of those competencies, we will not know what grades mean in courses.

At best, we can conjecture that there are correlations, that a specific grade is probably indicative of certain things. But it would be more useful if there were some way of testing for the necessary competencies directly, rather than concluding that because a student got "A" in torts, he or she can probably write a good legal memorandum. An "A" in torts may mean only that the student is a good exam taker, knows how to study past examinations given by a professor, to spot in past examinations "types of questions," and to cram.

That overstates the case. But it does not overstate the need for moving toward a systematic attempt to define those competencies which are actually produced in law school both in traditional courses and in clinical programs. It does not overstate the need to begin developing evaluation systems to provide useful and usable ways of measuring whether a

minimum degree of competence has been achieved; whether beyond basic competency, mastery has been achieved; and whether beyond the identification of individual competencies, a profile of the person's strengths and weaknesses can be drawn to provide data on the individual's current level of professional development judged as a professional and not as a student. At present none of the above capabilities exists. And it will require an intensive effort undertaken with considerable rigor.

First-year grades on which we tend to rely most heavily are peculiarly the product of a student's readiness for the highly stylized set of demands made by first-year classes and exams.

They say very little about potential analytic ability or even ability to master doctrines. They measure ability to cope with one pedagogic system and one cognitive style in one highly artificial context.

It is by no means clear what good performance means. It is even less clear what mediocre performance or poor performance means given the developmental curve that students of different educational, cultural, and racial backgrounds may be going through.

Sometimes those who appear the brightest in analyzing, in distinguishing cases and spotting ambiguities, prove most resistant to using rules of law and cases as problem-solving tools where a synthesizing creative ability is required and where one deals with probability and possibility rather than with certainty.

For these reasons it seems to me that the points made by Professor Carr are well taken -- for the present. Hopefully they will become irrelevant in the future if legal educators proceed to define more rigorously what legal education is really supposed to do as preparation for professional competency.

To get at those issues it is necessary to undertake a different and more rigorous exercise. At the Antioch School of Law, we are attempting to identify and specify competencies by developing criteria for assessing different aspects of performance in the clinical program and by instituting what we call "Professional Boards" to provide simulated (uniform) test situations for assessing the development of skills.

In simulated situations, students are observed in and evaluated on their performance in client interviewing, complaint drafting and answering, interrogatories, depositions, negotiations and preparation for trial. The Professional Boards program was instituted on a pilot basis last August and will be expanded to cover all students in the second and third years as part of a larger program of systematic research in competency identification and definition.

If, using the clinical program as the basic standard we can define the requisite competencies, then it will be possible to go to traditional courses and relate performance in them directly to professional competency. At that point, we will have come full circle -- reversing the process Professor Carr suggests by asking whether the grading system for traditional courses should not be modified to mirror the assessment of competencies observed and evaluated in clinical programs.

RESPONSE TO "GRADING CLINICAL STUDENTS"

By Professor Daniel Oran
Antioch School of Law

I agree with most of Mr. Carr's opinion and conclusions. A weak system of clinical grading will contribute to a weak clinical program. Clinical grading which is less precise than academic grading weakens the clinical program. And, it is both possible and worthwhile to develop precise clinical evaluation criteria. Some other points of agreement include: 1) There is no need to rely solely on tests or paper products to judge a student; 2) enthusiasm for the clinical program and client service is cathartic, but students tend to drop clinical work when "real" courses have exams; and, 3) evaluation of many different types of written work, student practice, group sessions, etc., provides a good raw evaluative base.

Most of our disagreements, I suspect, are the result of a slightly different philosophy and a greatly different institutional setting. Mr. Carr says "Students respond to the faculty's unyielding reliance upon what appears to be random selection by exhibiting extreme stress in the first year and a deepening and demoralizing fatalism thereafter." And in conclusion, Mr. Carr states "The lassitude of the third year law student is the product of a fatalistic resignation to inconsistent and unresponsive grading practices." I do not doubt that the behavior noted is real; nor do I doubt that this behavior is symptomatic of a serious problem.

But the problem is not law school grading. It is law school. First year student stress, which often borders on panic, is the product of a total immersion in appellate analysis. This involves modes of thinking which are always far different from and often far more rigorous than those to which the student has previously been exposed. Coping with appellate analysis applied across substantive areas, especially when combined with the lack of adequate feedback discussed by Carr, is simultaneously a challenge and a disorienting experience. On the other hand, the demoralization of most third year and many second year students probably stems from a quite different source. Appellate analysis, while not mastered by each student, has at least been mastered in a large percentage of each student's capacity. It has been applied to a dozen or two subject areas. It has tenuous connections with the real world and with the practice of law. If not bored, students are at least weary by their third year. It was partially to offset this sense of remoteness and irrelevance to the practice of law that Antioch was founded as a clinical law school. As such, we share some but not all of the problems mentioned by Mr. Carr. For example, we do not share to as great an extent the stepchild syndrome. The clinic and classroom are being increasingly integrated and the grading system for each is the same.

Thus, disputes about grading at Antioch can get more openly to the merits than at a traditional law school, because there is no prestige or power component related to one as opposed to another grading system. This does not eliminate all the problems. For example, even though classroom work and clinical work are graded with the same grading system and there is no more "value" attached to success in classroom work than

there is to success in clinical work, the classroom, with its preset syllabus, regular meetings, and written, scheduled examinations, is more measurable. Thus, it seems more comfortable and "performable" to the average student. But because we are a clinical law school, and because we do not farm out work, this problem and the others raised by Mr. Carr are the subject of on-going debate, constant concern and, more important, institutional experimentation at Antioch.

The evaluation of clinical performance is a primary area of experimentation. Accurate clinical evaluation criteria can help demonstrate the unique contribution that clinical programs make educationally, make admissions standards for law school correlate more directly with the ability to function as a lawyer (rather than as a law student), change the basis on which prospective employers judge competing applicants, and increase the perceived importance of making clinical education a permanent and central part of law school training.

Students are both taught and evaluated clinically from the moment they arrive at Antioch. In a series of professionalizing courses they are taught the basic legal skills, such as interviewing, negotiating, research, drafting, etc. This work, as well as the general clinical work (which begins in the first semester of law school), is evaluated on the basis of skills acquisition in specified "skills areas." These include, for example, the ability to develop realistic client expectations, the recognition of ethical problems, skill in fact/law integration, evaluation of alternative forums, etc. We are currently attempting to identify those specific competencies required for professional success and to develop procedures and criteria to test for these competencies. One mechanism under development at Antioch is a series of Professional Boards to be given to students in their second and third years. These will, hopefully, objectively measure each student's clinical achievement. (The "unevenness" problem cited by Carr can be overcome by giving a separate rating for effort and then measuring individual skills against absolute, rather than relative, standards.)

However, rigorous evaluation does not <u>necessarily</u> imply the use of a multi-tiered grading system, as implied by Carr. We have an "Honors/Pass/Fail" system at Antioch. We have it primarily because the overwhelming majority of our students currently want it that way. Most students are willing to "trade off" the possible job-market disadvantages of the inability to produce a traditional transcript after graduation for the lowered level of inter-student competitiveness during three years of law school. These students feel that it is both healthier and more productive to channel their aggressiveness (and there's a lot of it) into a cooperative effort of client advocacy. Our Honors/Pass/Fail system accomplishes the "fine tuning" in the grading process by carefully evaluating individual skills rather than by burying a multitude of factors in one overall letter grade. Thus, the ability to warrant skill to a potential employer or to provide accurate performance feedback to the student is independent of the overall grading system used. At Antioch this has meant that, while the classroom and clinical grading "system" is the same, there is <u>more</u> room for evaluative distinctions in the clinic than in the academic classroom. This is in keeping with the central premises and objectives of a clinical law school.

COMMENTS ON GRADING CLINIC STUDENTS

By Dean Murray L. Schwartz
University of California School of Law

Since I generally support a ranking grading system, I am sympathetic to Professor Carr's effort to justify applying that system to clinical programs and to devise a method of grading that answers the usual objections. Nevertheless, I think he has not proved his case.

The factors that make clinical grading prima facie different from traditional course grading are: (1) the nature of the activity graded; (2) the unevenness or disparity in work assignments among clinical students; (3) the unevenness or disparity of evaluation standards among different clinical supervisors; (4) the differences in the personal relationships between law student and instructor, as between the clinical and classroom settings.

Preliminarily, it should be pointed out that in trying to devise a system for evaluating students working in different field placements, Professor Carr has chosen a clinical experience that probably contains more of the variables than any other.

(1) Nature of the activity graded: Although Professor Carr never quite specifies exactly what is to be graded, this is probably not a serious problem. Young lawyers are customarily graded in practice according to a ranking system while performing tasks that are the same as or similar to those of law students in clinical programs, e.g., by supervising partners in law firms, district attorney or public defender offices. These evaluations proceed for the purposes of determining how much more and what kind of training is needed, for purposes of retention and advancement, and for purposes of client protection. Whatever is being measured, however, Professor Carr's five principal sources of data seem scarcely sufficient for the task.

(a) The quarter-end review of files is limited to what is in the files. Habits of thoroughness and orderliness may be revealed; the measurement of other qualities must depend upon the fortuities of number and complexity of assignment.

(b) Observation of students must be ad hoc, once the simulation period is passed, and Professor Carr does not really tell us how important in his final grading the simulation performance is.

(c) The group session experience presents the "primary opportunity...to evaluate their development." But that is based upon an assumption that is not validated, i.e., group session performance correlates with performance on the job site.

(d), (e) Informal review with judges, et al, is once again fortuitous, and the written evaluations don't add, particularly in the light of Professor Carr's statement that if the external evaluations vary from his, he relies upon the latter.

The above comments on the sources of data should highlight their fortuitous nature and the likelihood that there will not be comparable data bases for students in different field settings. On this score, Professor Carr's attempt to supplement the data base seems successful inversely to the extent to which the clinical experience is itself being evaluated, as for example the injection of habeas corpus cases and the proposed examination.

(2) Unevenness or disparity of evaluation standards among different clinical supervisors: Even if it were possible to assure that the assignments were the same, there would remain the problem of different evaluation standards among different clinical supervisors. Conceivably, this could be mitigated by continuous review by the law faculty member of performances and evaluations with the various clinical supervisors and perhaps a random, regular check of the evaluation of particular students.

How successful that would be is difficult to assess. And, in any event, there would remain the problem of the comparability of the grades with those in traditional courses.

Take, for example, a set of field placements with an appellate judge, who over the years has had a series of law clerks and has certain expectations of them. The field placement clinical law student would inevitably be evaluated by the judge against other students from other schools (where the grading patterns may be different), or against similarly placed--with the judge--students from his own school. How that would compare with grading in traditional courses is not at all clear.

(3) Differences in personal relationships between law student and instructor, as between the clinical and classroom settings: The problem of external evaluation does not exist in those programs that are "in-house," where students work directly for members of the law faculty, who through communications with other members presumably have some notion of what is expected of students for different grading levels. Assume also--a not too easy assumption--that it is possible to devise a common grading base. Here would be no problem of unevenness or inconsistency; there would be only one instructor, who would be familiar with the difficulties of the cases for the students, with the efforts past and current students have exerted, and with the quality of their work. In short, he would have developed certain expectations and be able to measure the current students against those expectations--a simple application of a grading ranking system.

Here a problem of grading is presented that may itself require adherence to a pass/fail system: the problem of the personal relationship between student and faculty member in the clinical setting and its impact on the objectivity of grades.

In a sense, the field placement system is a better system in which to attain objectivity than the in-house program because the grading faculty member is more detached from the graded student. But in the normal student-faculty member clinical relationship,

where both are working on the same case for the same ends, the identification of the faculty member with the student--his triumphs, his mistakes, his failures--must be great. (In this respect, I am somewhat taken aback by the statement in Mr. Carr's paper that "in most instances the supervising attorney rarely alters the student's product, which he files directly in court.") Given the extent to which the structures of legal education attempt in other contexts to strip personal considerations from evaluation--large classes, one anonymous examination--the volte-face in which supervising lawyers evaluate those with whom they have lived and worked closely for a common objective is a very different phenomenon.

Interestingly, Professor Carr relies in this respect on the comparisons with the grading for seminars and small classes. But my impression is that those are the very classes in which objective evaluation criteria are most likely to crumble because of the closer personal relationships that exist.

In conversations with students about their in-house clinical experience--which at our school is enthusiastically endorsed by practically every student--I have been struck by the emphasis the students put upon their personal relations and friendships with their clinical instructors. (Indeed, some significant part of the enthusiasm for clinical programs may be based on just this low student-faculty ratio. Other than in the occasional individual research project or an unusual seminar, where else does today's law student have occasion to share professional and personal experiences with his instructor?) I suspect that in the atmosphere of law schools it may be particularly difficult to attain the objectivity required to rank students when both evaluator and evaluatee are co-workers engaging in real-world professional pursuits for live clients; when they have similar hopes, exchange views on strategy until it is hard to remember who suggested what, and live on a first-name basis.

Thus, I conclude that it is probably better to stay on a pass/fail system for clinical programs of all kinds--at least until a more objective and realistic system can be devised.

CLINICAL GRADING

By Stephen Wizner, Lecturer
Yale Law School

If it is true that numerical and letter grading tend to be arbitrary, or do not reflect accurately or adequately a student's performance, learning, and ability, the solution is not to expand the use of grades into clinical programs where other and better methods of evaluation and sources of motivation exist, but to improve the methods employed to evaluate non-clinical law school work, if possible, and abolish grades altogether.

The purposes of grades are to offer students (and faculty) a measure of how well they are doing, to identify those students unable to perform required work, and to motivate students to work. A final examination or term paper in a non-clinical course can provide evidence of a student's learning of the substantive material of the course, and of

his competence at certain skills such as case analysis. It can also provide an incentive to a student to do the work in the course. But it does not follow that such an examination or paper should be graded on a letter or numerical, rather than credit/fail, basis.

At Yale all courses in the first semester of the first year are on a credit/fail basis. The courses are taught in the usual manner, with final examinations and papers. I can see no reason not to expand this system other than the desire of some faculty members and administrators to have grade averages as a basis for recommending students for employment, and of some students to be able to use grades as a basis for securing desired employment.

It is a fact of life that students with high grade averages get the most sought-after jobs upon graduation from law school -- judicial clerkships, teaching, government "honors" programs, positions with the leading law firms, and the like. Most employers assume that good grades in traditional law school courses reflect excellence in such essential lawyer's skills as case analysis, statutory construction, legal reasoning, and the ability to analyze complex fact situations in terms of legal principles.

Proficiency in clinical work reflects the learning of the equally important lawyer's skills of interviewing, investigating, counselling, negotiating, drafting, oral and written advocacy, and practical knowledge of procedure and evidence. But the student who spends time and is good at clinical work does not as a rule have that effort and talent reflected in his grade average. It may be argued that he is therefore at a competitive disadvantage in the job market because his grade transcript reports "Credit" where his non-clinical classmate's transcript says "A," or "Honors," or "94," and his overall average cannot be raised by superior achievement in clinical studies. If there is any reason for adopting grading in clinical programs it is to avoid this effect.

However, in my experience, those employers who are interested in clinical work want to know more about a student's aptitude for and ability at the practice of law, as shown by his clinical work, than can be conveyed by a letter or number. Consequently, even if grading is to be retained in the traditional curriculum, I don't believe that employment considerations justify its adoption in clinical programs.

While it is possible to grade clinical work, I do not believe that grading is a good method of evaluating such work. Nor is it a necessary or proper device for motivating students in clinical programs. The lawyering skills taught in clinical programs differ from those taught in non-clinical courses, as do the methods by which they are taught and learned, and the manner in which learning can be measured.

In most non-clinical courses, that is to say, courses in which the work involves the reading and an analysis of judicial opinions, the only contact a teacher has with most of the students is an occasional classroom interrogation and the reading of a final examination or term paper. Even if classes were smaller so that instructors had closer relationships with students, the skills taught in non-clinical courses are probably best taught by the case method in a classroom setting with examinations or analytical writing requirements used for evaluation.

Grading may not be a good method for evaluating the amount and quality of a student's performance and learning, but it does work better in these courses than in clinical programs. One can be reasonably objective and evenhanded in grading examinations and research papers. Performance on those specific academic tasks is the sole criterion, and the number of variables affecting the grade is relatively small. A well-designed examination or analytical writing assignment constitutes a reasonably accurate test, in the context of a particular subject matter area, of a student's competence at such legal skills as case analysis, legal reasoning, and the analysis of fact situations in terms of legal principles. In any event, in large classes taught by traditional methods, a written examination or analytical paper is the only feasible method of evaluating student work.

In clinical programs, on the other hand, the number of variables to be evaluated is much greater, and evaluation must be subjective to a large extent. In these programs students have frequent personal contact with the lawyers and clinical faculty who supervise their work. The supervisor has repeated opportunities to evaluate the student's work, to advise and counsel him, to engage in one-to-one teaching. The skills taught in these programs do not lend themselves naturally to measurement by examination or term paper, and there is no good reason for straining to impose such evaluative devices; a student gets so much more out of regular, personal supervision and feedback.

In clinical work anxiety and professional responsibility are natural motivating forces. Rather than working for symbolic awards which artificially induce anxiety, and motivate a student to work, the clinical student is impelled to perform and learn by a feeling of personal obligation to someone else who is depending upon the student's assistance, counsel, and representation of his interests.

If there is opposition or condescension toward clinical programs, it is not because they don't use grades. It is because of the belief that clinical skills should not, need not, and cannot be taught in the law school, and because of the different type of credentials typically possessed by clinical faculty. None of this will be cured by trying to distort clinical programs to make them look like traditional law school courses. And much would be lost by attempting to impose artificial requirements on clinical programs in order to curry favor with skeptics.

GRADING CLINIC STUDENTS--A COUNTERPOINT

By Professor Roger C. Wolf
Catholic University of America School of Law

The quarrel I have with Mr. Carr's article, if quarrel it be, is the emphasis he places upon the need to adopt other than a binary grading system so that clinical educators may be admitted, in his words, "into the business of legal education as a full partner." The emphasis more properly should be placed upon whether the grading system most effectively tells the student where he or she is, ability-wise, in relation to the rest of the class and the ideal.

Mr. Carr addresses in his article most, if not all of the reasons why the pass/fail system has been selected by clinicians as a means of evaluating their classes. In part it may be a product of simply wanting to say to the rest of the world, both academic and potential employers, that what we are about is something different, and the numerical or letter system just does not adequately reflect the student's progress or abilities.

Concededly a pass/fail grade does not solve the problem of adequately reflecting the student's progress and abilities, but it forces those who really care about the individual's ability to probe deeper -- to ask the student, if it be a job interview, what the course was about, what he or she learned -- or to ask the professor for a more precise evaluation of the student in relation to the job for which he or she is being considered.

I favor a pass/fail grade combined with an evaluative letter to the file of each student which, at the student's discretion, may be included in the transcript. (I propose this understanding full well the time demands made by such a method.)

There can be no doubt that the clinician has a greater opportunity than do most professors to observe the student under diverse conditions and while employing the full gamut of legal skills. This is particularly true where the students work in a clinic supervised by the same professors who teach the classroom component. Under these circumstances the professor has the opportunity to observe the student not only in the simulations and classroom discussions, but in the actual implementation of these skills in the office as well.

Because the relationship between the clinician and the student is on such a constant basis and the opportunity for interplay and feedback is so often, the grade becomes less significant as the vehicle to tell the student where he or she is at. Thus, when you discuss with the student a particular problem presented by a client interviewed in the office, the student is also being told (graded ?) on how good the interview was; on how well he or she spotted the legal issues; on her or his ability to solve the problem as a lawyer. This feedback and interplay continue through every aspect of the case as the student constantly is checking back with the supervisor -- either through weekly status reports on each client or through the dialogue necessary between student and teacher to solve the client's problem.

Moreover, I suggest that in the clinical atmosphere, where the students are working with clients and pitting their skills against the lawyers representing the opposing party either in negotiations or in courtroom confrontations, that the competitiveness for the grade becomes less important. Thus the competition no longer is directed against each other but becomes focused on how well the student does against the person who is already a member of the bar and is a practicing lawyer. Albeit the ability of an individual to rationalize is great, I believe that a student emerging from a confrontation with an opposing lawyer -- be it a phone call for an extension of time in which to file a responsive pleading or a negotiation -- is able to evaluate fairly accurately how well he or she did. It is the function of the supervisor/professor to fill in the gaps.

Mr. Carr's suggestion that the hope of many students in taking the clinical offering is that he or she will receive a "more responsive and accurate assessment of effort, performance and learning than will be experienced elsewhere in the curriculum" is well taken. The temptation for a student whose average is not so high may be to take easier courses in order to raise the average, whereas the pass/fail system merely perpetuates the existing average for thirteen more credit hours (if it be a full semester clinic) reducing even further the opportunity for the student to raise his or her average. I believe that the evaluative letter at the end of the semester solves this problem without forcing the adoption of an unsatisfactory grading system.

The evaluative letter would also have the value of providing the potential employer with a meaningful assessment of the student's worth -- set forth in a manner so that the employer can know what the professor considered important and how the student performed.

As for the necessity of adopting a more conventional grading system in order to become a "full partner" with the rest of the law faculty in "the business of legal education," I must confess I am much less concerned. The number of hours devoted in faculty meetings to discussing the grading system and its inequities -- especially around examination periods -- and the intra-faculty tensions created as a result of these discussions is a pot the clinician need not plunge into. If the worry is that the rest of the faculty will not believe the clinician is producing results or is not truly educating the student, that can be solved in a number of ways. The faculty can be given a copy of the teaching plan. Student work product can be circulated throughout the rest of the faculty. Students can be encouraged to discuss cases in the clinic with other faculty members so as to get the benefit of a particular professor's expertise in solving a problem.

Some professors may even choose to evaluate the clinical semester by comparing the student who participated in the clinic when he or she returns to the regular classroom (if this was not his or her last semester) against the student who has not taken the clinical semester.

The business of legal education is not satisfying the rest of the faculty, but rather in training future lawyers and judges, and the grading mechanism chosen has little or nothing to do with that objective.

COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC.

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

Volume VI, No. 13, May 1974

CLINICAL LEGAL EDUCATION AND LEGAL AID - THE CANADIAN EXPERIENCE

by

Professor Frederick H. Zemans
Osgoode Hall Law School

Professor Lester Brickman
University of Toledo Law School

Last fall CLEPR sponsored the first workshop of Canadian law schools devoted exclusively to the subject of clinical law training in Canada. The seminar was co-hosted by the McGill University and Osgoode Hall Law Schools and CLEPR, and was held at the Law School of McGill in Montreal, on Novemer 29th and 30th, 1973. The workshop was organized and co-chaired by Professor Frederick H. Zemans of Osgoode Hall Law School and Professor Lester Brickman of the University of Toledo Law School, who are responsible for this report of the proceedings. A list of those attending is included at the conclusion of this summary of the workshop discussions.

CLEPR's motivation in sponsoring the workshop was to determine whether any of the insights to be gained from the Canadian experience were transferable to clinical education in the U.S. Even though clinical education in Canada is of even younger vintage than it is in this country, certain characteristics of the newly emerging programs in Canada are of great interest - especially so in light of the Legal Services Corporation Act which is to replace OEO Legal Services and which finally appears headed for passage by both the legislative and executive branches. It is expected that the Corporation will be able to enter into contracts with law schools for the operation of community law offices concomitantly with the training of clinical law students. Despite their fledgling status, Canadian programs have begun to amass a wealth of data on the integration of publicly funded legal aid offices and law school clinical programs. This Newsletter canvasses the data in the course of selectively summarizing the workshop proceedings.

Perhaps the principal reason why major initiatives in clinical training did not come to Canada until the early 1970's, is the "articling" period which is still required by

the bars (law societies) of all ten provinces. Overall, the articling process, coupled with the concern of many legal academics that clinical studies might weaken the newly established university-law school academic model, tended to discourage Canadian law schools from experimenting with the clinical methodology. Articling is a one year program of internship between graduation from law school and admission to the bar. During this year, the prospective lawyer clerks or apprentices in the offices of practicing lawyers. So the argument has been routinely made: if students are required to work in a law office for a year under the supervision of a practicing lawyer, why should they be provided such practical training while yet in law school. The argument was responded to by the participants in several ways. Since the quality of the articling experience is not uniform, it is at best a hit and miss proposition and many students receive wholly unsatisfactory training. Moreover, many law offices utilize the students only for the most routine matters. It is not unusual for an articling student to spend his entire year writing memoranda or searching land titles. It is the economic motivation of the employer-lawyer which often takes precedence over the educational welfare of the student. The supervision element distinguishes the clinical program from even the best of articling experiences. No articling experience provides the time for reflection and systemic introspection that is the essence of a well run clinical program; nor are the yields in matters such as professional responsibility or sensitivity to the needs of the legally poor derived from case and client retrospection even remotely comparable.

Now, recognition of the need for clinical legal education is beginning to spread in Canada. As in this country, it was the initiation of federal poverty law programs and specifically legal services offices that eventually stimulated three Canadian law schools in 1971 to initiate clinical training programs. The Dalhousie, Osgoode Hall and Saskatchewan law schools received grants from the Federal Department of Health and Welfare to develop models of community legal services that utilized law students as the primary deliverers of the service. These grants initiated the first Canadian clinical programs and fostered the first full-time staffed community law offices in Nova Scotia, Ontario and Saskatchewan. Although legal aid in Canada falls within the powers of the provincial governments, which were strongly committed to a judicare model for legal aid, the Federal Department of Health and Welfare was interested in determining the relevance of the storefront legal services model for Canada.

The initiation of clinical training programs funded in some instances by sources interested primarily in public service has provided a continuing tension for clinicians who were serving in the dual capacity of clinical director and director of a community legal services office. [The conflict between service and educational goals is commented on in chapter 21 of Clinical Education for the Law Student: Legal Education in a Service Setting and at pages 35-45 of Clinical Education for the Law Student, CLEPR Conference Proceedings, Buck Hill Falls, June 1973.] This tension has allowed a unique Canadian model of clinical training to develop with a greater emphasis on and sensitivity to public service and new role models for lawyers than may be the case in this country.

Most of the ten Canadian provinces have implemented legal aid through a judicare system. The Ontario program is one such example, utilizing the private bar as the

sole deliverer of legal services. The Ontario plan is administered by a Provincial Director and Area Directors in each county. A citizen applies for legal aid to the Area Director's office where it is determined whether he or she is eligible for receipt of a legal aid certificate. The citizen must also undergo a financial interview to ascertain his financial eligibility and whether he is liable to contribute towards the cost of the legal services. If the applicant is able to surmount both the legal and financial eligibility hurdles, he is then able to take his certificate to a lawyer of his choice who is on the county legal aid panel. The Ontario plan has accentuated the client's freedom to choose his own lawyer, despite the evidence that most poor citizens do not know any lawyers and that the bulk of the legal aid panels are composed of junior members of the profession. If a lawyer accepts a certificate, (he is not obliged to do so) he will be paid 75% of the Legal Aid tariff plus disbursements. The 25% of the unpaid tariff is deemed to be the lawyer's contribution to the alleviation of the legal problems of indigents.

In the year ending March 1972 the Ontario Legal Aid Plan paid $10,865,000 to lawyers on issued legal certificates. Of these, fully 80% of the certificates dealt with either criminal proceedings or divorce actions. The areas of law which affect the life of a low income citizen - unemployment insurance, welfare, consumer, and landlord and tenant problems are all discretionary and often deemed ineligible by the Area Director in view of the high cost of these services vis-a-vis the small financial amounts involved. Concerns with the high cost of legal aid and its lack of responsiveness and accessibility have prompted a review of the plan by a Task Force on Legal Aid.

Although method of delivery and the numbers covered vary between provinces, it is fair to say that the Ontario model has served as the prototype for most Canadian legal aid schemes. It is interesting to note that not only is the bar the sole provider of legal aid under the Ontario model, but that the legal profession through its governing body, the Law Society of Upper Canada, administers the scheme through its Legal Aid Committee without any public input. Unlike Legal Services in the U.S., with its "maximum feasible participation" heritage from OEO, there is no consumer participation in the administration of the Ontario program.

A more comprehensive legal services scheme was initiated by the Quebec government in 1973. Under this plan, a low-income person is given the option of being represented by a private practitioner or by one of the sixty-two neighborhood law offices staffed by nearly two hundred lawyers. It was recognized that considerable benefit would be reaped by both the Commission des Services Juridiques (the legal services plan) and its clients if cooperative efforts with Quebec's six law schools were undertaken. Accordingly, the Commission has been seeking to promote both clinical and poverty law training and, in furtherance of such intent, it has offered to set up a community law office to be used as a law school clinic. The Commission is offering to place a community law office at the disposal of each law school for clinical teaching and to pay the salaries of three staff lawyers, support staff and office expenses in return for the university law schools' paying the salary of the full-time professor-director. The legal services Commission stipulated that a

maximum of eight students work in the program each semester, that they receive 15 academic credits and that they not be required to take other courses at the law school during their clinical semester. The offer is under the active consideration of several Quebec law schools. The proposed Quebec model is a demonstration of the economic and pedagogical advantages of a partnership between provincial legal services schemes and law school clinical training programs. Moreover it holds unusual promise as a model for consideration by American law schools.

The University of Manitoba is also discussing a clinical training program which will utilize the facilities of their new provincial legal aid scheme, Legal Aid of Manitoba. The Manitoba scheme, a combination of judicare and community legal services, is in its third year and operates only two neighborhood clinics at present, the majority of legal aid being delivered by the private bar. Professor Roland Penner of the University of Manitoba is also the Chairman of the Board of Legal Aid Manitoba; he anticipates that the Legal Aid plan will open a number of new neighborhood law clinics which the university will use as a clinical setting. The proposed provincial plan contemplates the hiring of a full-time Education Research Director who will be responsible for maintaining liaison with the law school and for providing adequate supervision for the law students placed in the neighborhood projects. While the operation of the clinics would remain the responsibility of Legal Aid Manitoba, the university would be solely responsible for the educational component of the program. Indeed, recognition of the need for adequate student supervision is a crucial component of this proposal. Nonetheless, the proposal has met with reticence on the part of the law school.

Probably because of the judicare pattern outside of Quebec it has been difficult to integrate provincial legal aid systems and clinical training programs. In Nova Scotia and Saskatchewan there were only rudimentary legal aid schemes that were heavily overburdened at the time that federal funding was obtained for neighborhood offices to be the setting for clinical training programs. Ontario, with its sophisticated judicare model, has remained entrenched in its opposition to neighborhood legal services and has to date been unprepared to fund law school clinical programs which involve academic credit, although the Ontario Legal Aid Plan has subsidized Student Legal Aid programs at all six Ontario law schools. (These volunteer student legal aid programs have involved little supervision and, of course, no classroom component.) For the most part, lacking the counterpart of the American legal aid office, Canadian law schools seeking to develop clinical programs have therefore been required to establish their own storefront law offices. In fact, this is what the law schools of Dalhousie University in Halifax, the University of Saskatchewan in Saskatoon, Sasketchewan, the University of Windsor in Windsor, Ontario, the University of Western Ontario in London, Ontario, and York University (Osgoode Hall) in Toronto, Ontario have done.

Financing the operation of a neighborhood law office is an expensive proposition, and so interested law schools have been forced to look initially to sources outside the university. To facilitate their search, the schools have broadened the scope of their programs to include a strong element of public service and community education.

Therefore, outside of Quebec, to date the federal government is the major funding source of clinical training programs utilizing storefront settings, although refunding of the programs which otherwise terminate in April 1974 is uncertain.

The Federal Department of Health and Welfare has assumed a funding role in Canadian clinical legal education for three essential reasons: first, an interest in determining the need for community legal services; second, the impact of legal services on low-income communities; and finally, the exploration of the interaction between the legal profession and the law school with communities and citizens they serve.

The Dalhousie program, called the Dalhousie Legal Assistance Service, was established in 1970 and was the first clinical training course for academic credit in Canada. The program accommodates about 33 students split into 3 sections over the academic year. For the work, they receive 6 credits out of the 15 required per term. While enrolled in the program, students must take three additional courses at the law school.

While ultimate responsibility for the activities of the Service rests with the Faculty of Law at Dalhousie University, the organization is administered by a Board of Directors made up of 3 faculty members, 2 barristers, 2 community representatives, and 3 students. The Service has a full-time staff of ten including the Executive Director, a full-time member of the law faculty whose sole academic responsibility is the teaching and administration load of the clinical program, 2 staff lawyers, an articling clerk, 2 paraprofessionals and 4 support staff. Reflecting its diverse funding base, the Service is heavily involved in a variety of legal education and community service projects including the training of paraprofessionals, major research into community problems, law reform, preventative legal education directed to the community at large, and the education of law students who are encouraged to become involved in all phases of office activity. All of these projects are carried on in the context of a community law office. The aims of service and education are regarded as wholly consonant.

The University of Saskatchewan's clinical training program is set in a community legal services office that is neither operated nor controlled by the University. The office is separately incorporated and is governed by a 24-member Board of Directors. The Board consists of 3 barristers and 21 members of the community. The office personnel consists of a full-time faculty member who is the director and 3 staff lawyers.

The clinical training program is open only to students in their third year of study and it runs for both terms. Students are expected to devote one full day each week to staffing the office. This year there are nine students enrolled in the course. The time spent by students in the clinic is divided into intake work under the supervision of the staff attorneys and community work which includes law reform action and community organizing. In addition to the fieldwork, students attend a weekly class meeting which is divided into a short session for discussion of students' cases and a longer period devoted to an on-going seminar which is the academic part of the

course. This seminar is a vehicle for training in interviewing, counselling, and negotiating techniques. It also focuses study on subjects such as poverty in Canada, community organization, professional ethics, and community legal services. Students are required to produce a major research paper as part of the academic program in one of these areas.

The Osgoode Hall program was begun in September, 1971 and is for students in their second or third year. The program is situated at Parkdale Community Legal Services, a storefront law office in a low income district of Toronto. As of February 1974, the office is governed by a Board of Governors consisting of 7 elected community members and 7 delegates of the law school. The office is staffed by a full-time member of the law school faculty who serves as director, 4 staff lawyers, 1 lawyer who is a part-time member of the faculty, an articling student, 4 paraprofessionals and 3 support staff.

All new cases are discussed with the director or one of the staff lawyers within 24 hours of the initial interview. Students work in groups of five to six and are supervised by one of the staff attorneys. Each group concentrates on an area of law such as landlord and tenant law, consumer or welfare law. These groups meet with their staff lawyer weekly to discuss cases. In addition, each student has a volunteer supervisor who is a private practitioner of some experience with whom the student meets for two hours every week. Students receive 15 credits for their work and do not take any other courses during their clinical semester. At the end of the program they are evaluated on a pass/fail basis and a written evaluation is attached to their transcripts.

The program accommodates 16-20 students each semester. The students do all intake interviews, represent clients before various tribunals and in matters of civil and criminal litigation and handle a number of matters involving negotiations, particularly in family law cases. In addition to their casework, each student participates in two seminars given by the clinical professor. The Lawyering Process seminar is designed to assist the student in developing his legal skills particularly interviewing, negotiating and trial advocacy. In addition, the seminar utilizes the case presentation method to discuss the tensions encountered by the students in assuming the various lawyering roles. The second seminar is issue oriented and is designed to encourage students to critically examine substantive areas of law which they have encountered during the clinical semester. The students are required to lead a seminar session and prepare a major written paper researching such areas as child welfare, housing problems or immigration.

The analysis of the Dalhousie, Saskatchewan and Osgoode Hall projects demonstrates the impact of funding source upon program organization. The emphasis of the Federal Department of Health and Welfare on community input into the programs and the interaction between the legal profession and law schools with the communities they serve were put forth at the conference as major determinants of the perspectives adopted by these Canadian clinical programs.

The newest of Ontario's clinical programs is a product of reflection on their perspectives.

In January 1974, the University of Windsor opened a storefront clinic as part of a full semester program accommodating 15 students per semester. With the experience of prior storefront clinical programs before it, and especially the service-education tension, Windsor has striven to accentuate the academic component by integrating into the daily operation of its law office, the following:

1) A case presentation seminar in which cases handled by students are presented to the rest of the office to explain and illustrate the method and reasoning for handling a particular case in a particular way. The case thereby becomes the focus for an investigation of the many-faceted roles of the lawyer.

2) A second seminar which is directed toward training in such legal skills as interviewing, counselling and negotiations. Videotapes, role playing, and role analysis serve as educational vehicles for this aspect of the program.

3) A third seminar entitled "The Lawyer, the Legal Profession, Legal Responsibility and Ethics" which provides students with a broad perspective of the legal profession. Students are required to produce a major paper for this seminar.

4) In addition to the three seminars, students spend some time each week observing the daily rounds of a practicing lawyer, a judge, or an administrative agency. Each student is asked to keep a journal of his activities, observations, and comments for the period of his placement.

The impact of the source of funding for combined clinical training-community legal services offices continues to pose difficulties for Canadian clinical education. While in Quebec the proposed resolution appears ideal, in the Anglo-Saxon jurisdictions to the east and west of Quebec, there is reluctance on the parts of both the provincial governments and the law schools to become involved in the service aspects inherent in combined clinical-community law office programs. Many at the conference were encouraged to hear that the Dalhousie Law School is taking a broader view of its role and responsibility to the community in which its clinic is situated and is making funds available beyond its usual allocation for the clinical professor.

Another difficulty emanating from the government-as-a-funding-source occurs on the management level. Because the community law offices are designated to provide a service to the community as well as provide an educational milieu, all of the storefront offices are encouraged to have a substantial community input to their Boards of Directors. Thus, as pointed out, in the office used as the setting for the University of Saskatchewan clinical program, 21 out of 24 members of the governing board were chosen from outside the legal profession. Similarly, at the Osgoode Hall Law School project, 50% of the Board members are elected from the community. While these law schools maintain that the administration and government of this type of legal service is an integral part of the total educational experience of the student clinician, they are understandably hesitant to surrender to others control of any

aspects of the legal educational experience afforded the students. One of the proposals advanced at the workshop as a preferred model would entail a division of control mechanisms according to the particular function of the administrative task. Thus the law faculty, and specifically the clinical director, would take responsibility for the students' clinical experience; the director and staff lawyers would handle caseload and office administration; and a community advisory board (or a body with community input) would determine the broad service policies and priorities of the community office. Whether these often diverse interests can achieve a successful fusion will become clearer when sufficient experience is generated by the Saskatchewan and Osgoode Hall programs.

In addition to the impact of federal funding in Canada on the objectives and forms of clinical education, other influences on legal services delivery systems and consequently on legal education were discussed. It was pointed out that the Federal Department of Justice has recently provided small grants to groups across Canada experimenting with the development of legal services delivery systems with emphasis on delivery to the poor and to native peoples. For example, the University of Saskatchewan has received one of the larger grants for their Northern Native Peoples Program.

Federal as well as foundation assistance has been provided for the promotion and training of legal paraprofessionals. As in this country, the introduction of paraprofessionals into the Canadian law office is a new and still experimental step in the development of cost effective delivery systems. The lawyer working in the public sector in neighborhood law offices has found several compelling reasons for employing laymen aside from the obvious rationale of easing a high caseload. Paraprofessionals who are hired from the recipient community can provide valuable input to the formation of office policy while serving as a liaison between the middle class lawyers and poor clients.

The awareness of the potential importance of paraprofessionals in both the private and public law sectors is a new phenomenon in Canada and the educational institutions have not yet had time to adequately respond to the need for training programs. In the last two years seven community colleges in Ontario have become the first educational institutions in the country to offer courses of study for legal paraprofessionals. There is a wide disparity in course content between the different colleges but there is a heavy emphasis on business subjects and the social sciences, in addition to a survey of basic legal subjects. The thrust of the programs is to train laymen to work in the private legal sector. [For an anlaysis of paraprofessional developments in the U.S., see "CLEPR Hosts Paraprofessional Conferences," in CLEPR Newsletter Volume IV, No. 10, March 1972.]

The focal point for experimentation in the utilization and employment of paraprofessionals in the public sector has been the neighborhood law offices themselves. The programs at Dalhousie Legal Aid Service and Parkdale Community Legal Services best typify the range of that experimentation.

The Dalhousie Legal Aid Service carried out one of the first structured training

programs for paralegals during the summer of 1972. The 26 graduates of the course received six weeks of intensive classroom training in divorce and family law. Eight were involved in a full-time training program while the remaining 18 students were in a less intensive program to train part-time volunteers to work with community groups in the family law area. The course was designed and taught by eight second and third year law students working under the supervision of the Director of the Dalhousie office. After the course, four of the graduates were employed full-time in the Dalhousie office where they received additional on-the-job training in a wider range of areas. The program's goal was to train legal assistants to provide counselling in family law problems so that staff lawyers could get more actively involved in community programs of preventative law and law reform. Since that initial training course, Dalhousie has conducted four additional training programs in a variety of poverty law areas lasting three to seven weeks in duration.

The response to the training of paraprofessionals has been less structured at Parkdale Community Legal Services. Paralegals are trained on-the-job in specific areas of law and are expected to work as lay advocates as well as counsellors. Over the last two years the office has trained and employed on a full-time basis seven lay advocates from within the Parkdale community who have worked in the fields of consumer law, welfare rights, income maintenance advocacy, landlord and tenant law, and community education.

Although Osgoode Hall was the recepient of the grant from the Federal Department of Justice to initiate the training program for Parkdale's lay advocates, no formal relationship has yet been explored between the training of the clinical students and of the praraprofessionals. [A workshop devoted entirely to such considerations was sponsored by CLEPR at the University of Minnesota Law School and took place in early May 1974.]

While a number of other matters received attention at the conference, perhaps of overriding concern was the question of funding. As demonstration grants expire, Canadian law schools are having to face the hard questions of the educational merit of clinical programs, particularly in light of the relatively small enrollments characteristic of experimental ventures. If the U.S. experience is any predictor, then the enrollments may be expected to increase and thereby justify the large sums per student presently being expended. The unique features of the Canadian experience were cited by the participants as lending strong motivation for the law schools' continuing to look to community sources for physical facilities and financial assistance. Thus Canadian law schools which accept the validity of the community legal services clinic as the appropriate setting for their clinical programs were urged to lobby for public assistance, patterning their argument after that advanced by university medical faculties who have successfully argued in both countries for public support of medical training and teaching hospitals.

List of Participants

Dean H. W. Arthurs
Osgoode Hall Law School
York University
Downsville, Ontario M3J 2R5

Jean Louis Bertrand
Commission des Services Juridiques
1170 Beaver Hall Square
Bureau 300
Montreal 111, P.Q.

Jean Francois Boulais
Commission des Services Juridiques
Bureau 300
Montreal 111, P.Q.

Professor Alan Bryant
Faculty of Law
University of Western Ontario
London 72, Canada

Professor Andre Cloutier
Faculty of Law
Laval University
Quebec, P.Q.

Professor Irwin Cotler
Faculty of Law
McGill University
Montreal 112, P.Q.

Professor Ian Cowie
Faculty of Law
Dalhousie University
Halifax, Nova Scotia

Professor David Cruickshank
Faculty of Law
University of British Columbia
Vancouver, B.C.

Ms. Maureen Drummy
Administrative Assistant to
Rep. William Steiger
Longworth House Office Building
Washington, D.C. 20515

Dean J. W. Durnford
Faculty of Law
McGill University
Montreal 112, P.Q.

Professor Neil Gold
Faculty of Law
University of Windsor
Windsor, Ontario

Professor Jack Johnson
Faculty of Law
Queen's University
Kingston, Ontario

Mr. and Mrs. Sydney Kentridge
1017 Innes Chambers
Pritchard Street
Johannesburg, S. Africa

Professor Herbert Marx
Faculty of Law
Universite de Montreal
Montreal, P.Q.

Professor Ken Norman
Faculty of Law
University of Saskatchewan
Saskatoon, Saskatchewan

Professor Roland Penner
Faculty of Law
University of Manitoba
Winnipeg, Manitoba

M. le Judge Robert Sauve
Chairman
Commission des Services Jurideques
1170 Beaver Hall Square
Bureau 300
Montreal 111, P. Q.

Professor Frederick H. Zemans
Osgoode Hall Law School
York University
Downsview, Ontario M3J 2R5

CLEPR Staff: William Pincus, President; Betty Fisher, Program Officer; Victor Rubino, Program Officer; Lester Brickman, Consultant.