Law Quadrangle Notes

The University of Michigan Law School

Volume 20, Number 3, Spring 1976

CONTENTS **law quadrangle notes**

Cover: One studies where one finds a place to study (photo from the archives).

Photo Credits: Mark Mestel—1(St. Antoine, 2(Allen), 5(Pierce), 8, 11, 12; Bob Kalbach, U-M Information Services—3; U.S. Army Photograph—2 (Ellsworth); Official White House Photo—1 (Payton); Declan Haun, Black Star—cover

Publications Chairman: Professor Yale Kamisar, University of Michigan Law School; **Managing Editor:** Harley Schwadron, University of Michigan Information Services; **Editor:** John R. Hamilton, University of Michigan Publications Office; **Graphic Designer:** Art Spinney, University of Michigan Publications Office; **Student Contributors:** Mark Mestel, Bruce Johnson; **Produced:** University of Michigan Printing Services.

Vol. 20, No. 3 **Spring 1976**

Law Quadrangle Notes, issued quarterly by the University of Michigan Law School. Second-class postage paid at Ann Arbor, Michigan. Office of publication, 409 E. Jefferson, Ann Arbor, Michigan 48109.

SEND FORM 3579 TO: Law Quadrangle Notes, Law School, The University of Michigan, Ann Arbor, Michigan 48109.

u·m notes

St. Antoine Is Re-Appointed To Law School Deanship

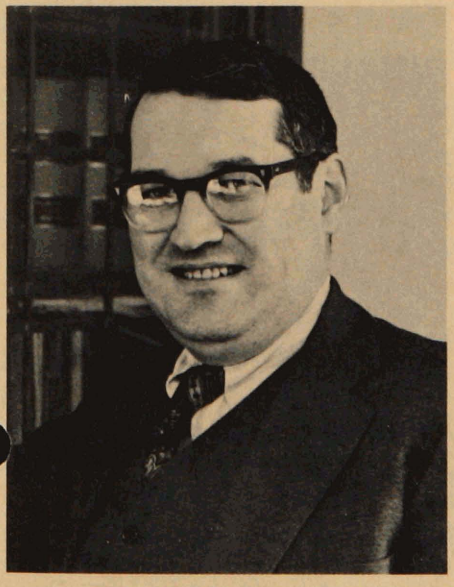
Theodore J. St. Antoine, dean of the U-M Law School since 1971, has been reappointed to the deanship.

The appointment was approved in February by the Regents. In recommending the re-appointment, U-M Vice-President Frank Rhodes noted faculty and student "enthusiasm" for Dean St. Antoine to continue in the post. "To this enthusiasm I wish to add my own admiration for his leadership within the Law School," said Rhodes.

St. Antoine has been a member of the law faculty since 1965. Previously he practiced labor law in Washington, D.C., mostly at the Supreme Court level.

In addition to his teaching and administrative duties at U-M, St. Antoine remains active in the labor law field. He is currently serving as president of the Resource Center for Consumers of Legal Services in Washington, D.C., a group which advocates pre-paid group legal plans.

Recently St. Antoine was appointed to a 26-member national task force to improve procedures of the National Labor Relations Board (see other *Law Quadrangle Notes* story). He also served as chairman of Michigan Gov. William Milliken's special Workmen's Compensation Advisory Commission, which produced a study of the state's problems in the workmen's compensation field.



Theodore J. St. Antoine

Payton, Whitman Join Michigan Law Faculty

Two women, including a former editor-in-chief of the *Michigan Law Review*, have accepted full-time appointments to the faculty of U-M Law School.

They are Sallyanne Payton, who has served as chief counsel for the Urban Mass Transportation Administration (UMTA) in Washington, D.C., and Christina Brooks Whitman, who is completing a one-year clerkship with Justice Lewis F. Powell, Jr., of the United States Supreme Court.

"Sally Payton and Christina Whitman are as fine a pair of appointments as the Law School has made within my memory," said Dean Theodore J. St. Antoine. "That they also happen to be the first two women to join the faculty as regular professorial appointees is a truly delightful bonus."

Sallyanne Payton

Whitman is a 1974 graduate of the U-M Law School, where she headed the *Law Review* during her senior year. She received the Abram W. Sempliner Memorial Award for outstanding work for the Review and the Maurice Weigle Scholarship Award for exceptional achievement by a first-year law student. She also earned a B.A. degree in English literature and an M.A. degree in Chinese language and literature, both from the U-M.

Payton has been with UMTA, a Department of Transportation agency, since 1973. Previously she served on the White House Domestic Council as a staff assistant responsible for community development, Bicentennial planning, and progress toward self-government for the District of Columbia. She has also been a lecturer in law at the University of Virginia Law

Christina Brooks Whitman

School and was an associate of the Washington, D.C., law firm of Covington and Burling before taking on her White House assignment.

Payton is a 1968 graduate of the Stanford University Law School, where she was a member of the board of editors of the *Stanford Law Review*. She currently serves on the board of trustees of her alma mater and on the board of visitors of its law school. Her undergraduate degree was a B.A. in English, also from Stanford.

St. Antoine said Payton will bring to the Law School faculty a "much-needed expertise" in transportation and will be active in teaching administrative law and regulation. "Prof. Whitman's broad background in Chinese history and culture," the Dean added, "will undoubtedly lead her to become part of Michigan's rich tradition in international and comparative law."

"Both Profs. Payton and Whitman can be counted on to bring to the classroom an infectious enthusiasm about their subject and a lively spirit of inquiry," St. Antoine said. "I envy their students."

Allen Named AALS Head; Asks Lawyer Support

Acknowledging "new and acrimonious tensions" between legal education and the organized bar, the new president of the Association of American Law Schools (AALS) says legal education needs financial support of lawyers and judges in order to carry out needed reforms.

At the same time, AALS President Francis A. Allen has condemned efforts on the part of the bar and the judiciary to control curriculum and dictate other changes at law schools.

Allen, a U-M law professor and former dean of the Law School, said:

"This is an era in which our institutions have sustained serious losses in confidence. In such a time it is not surprising that legal education should be subjected to criticism.

"The bar itself has felt the lash of public criticism," Allen said. "And in some measure the criticisms of the law schools by the profession represent its reaction to these attacks."

Allen assumed the presidency of the AALS Dec. 27, succeeding Charles Myers of Stanford Law School. The association, which works to raise standards of legal education, includes 132 leading American law schools.

In his presidential address before the AALS in Washington, D.C., Allen noted financial problems facing many law schools.

"In these days of fiscal stringency we urgently need the support of the bar and the judiciary to assist in devising new, even radically innovative, bases for the financial support of legal education. Without such support many of the reforms most sincerely urged upon the law schools by some lawyers and judges are doomed to fail before they start."

Allen cited a number of recent proposals to control curriculum content at

Francis A. Allen

law schools—such as the so-called "Clare proposal" in New York and "Rule 13" in Indiana—as being a "form of governmental interference that cuts into the sinews of American legal education."

Under the Clare Proposal, lawyers who wish to practice in two federal district courts in New York City would have been required to study a specified curriculum at law school. The proposal has since been rejected by federal judges in New York.

The new Indiana rule, adopted by the Indiana Supreme Court and scheduled to take effect in 1977, requires students to study specific courses in order to take the Indiana state bar examination.

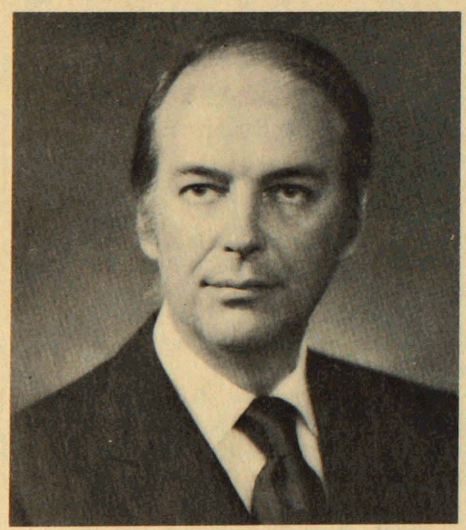
Allen said these proposals, "taken against the advice of most law teachers who have addressed the subject," would disturb "a long-established division of labor wherein the content of educational programs has, in general, been determined by the schools and the testing of proficiency of applicants for professional practice has been performed by the bar and the courts."

Allen also took issue with a proposal before the American Bar Association—which is the major accrediting agency for law schools—calling for the elimination of a system of tenure for law professors as a requirement for a school's accreditation.

"There are few competent and conscientious law teachers or scholars who would today question the penetrating power of economic analysis in the consideration of some legal questions, the utility of techniques of social

alumni notes

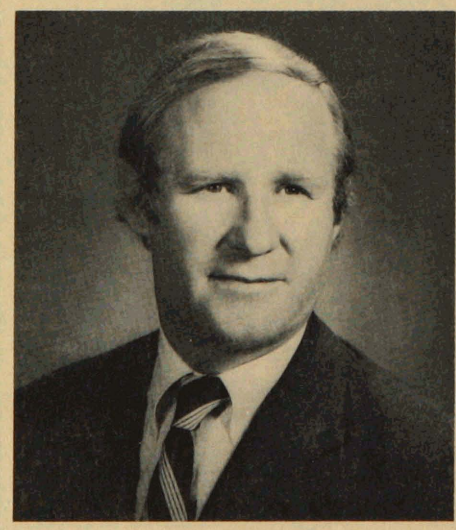
EDITOR'S NOTE: *A more complete listing of items about other law alumni is carried in the summer issue of* Law Quadrangle Notes, *Alumni information should be sent to Prof. Roy F. Proffitt, Director, Law School Relations, Hutchins Hall, Ann Arbor, MI 48109.*



Robert Ellsworth

Robert Ellsworth, a member of the U-M Law School class of 1949, became U.S. deputy secretary of defense on Jan. 2. He had been nominated for the post by President Ford. Ellsworth since 1974 had served as assistant deputy of defense, in charge of international security affairs. Among previous posts, he served as U.S. permanent representative on the Council of the North Atlantic Treaty Organization, with rank of ambassador. From 1961-67 he was a member of the U.S. House of Representatives from Kansas. He received his undergraduate education at the University of Kansas, graduating in 1945.

Robert B. Fiske, Jr., who graduated from U-M Law School in 1955, was named by President Ford as United States attorney for the Southern District of New York. Upon graduation from law school, Fiske joined the New York City law firm of Davis Polk & Wardell, where he remained for the past 20 years except for a four-year stint as an assistant U.S. attorney. At Davis Polk, Fiske was a litigation partner specializing in securities cases. In addition to his professional pursuits, the 45-year-old Wall Street lawyer is a hockey enthusiast and Sunday school teacher. He graduated from Yale University in 1952. At U-M Law School he served as associate editor of the *Michigan Law Review*. While still a law student he worked for one summer as a student assistant in the federal prosecutor's office in New York.



Robert B. Fiske, Jr.

research developed outside the law schools, or the insights gained by viewing contemporary problems from the broad perspectives of historical sequences.

"These enrichments of law teaching and scholarship are valuable, not because they conform to current intellectual fads, but because they respond to felt needs experienced by competent legal scholars in the course of their work." And, said Allen, "many lawyers have enjoyed the fruits of such scholarship in their practice of law."

Prof. Allen is the third member of the U-M law faculty to head the AALS. The late Prof. Edson R. Sunderland was president of the association in 1930, and Prof. Alfred Conard served as president in 1971.

Prof. Allen, who now holds the Edson R. Sunderland Professorship at the Law School, served as U-M law dean from 1966-71. Formerly he was a member of the law faculties of Northwestern University, Harvard University, and University of Chicago.

He has contributed many articles on criminal justice and constitutional law to legal and social work journals and has written and edited two books of legal analysis. Last year he was elected a fellow of the American Academy of Arts and Sciences.

In 1973 Prof. Allen, along with Prof. Robert Burt of the Law School, represented a state mental patient in a Detroit court case examining the legality of experimental brain surgery. In the case, which received considerable national attention, a panel of three judges ruled that experimental psychosurgery could not be performed on any person involuntarily detained in a state mental hospital, even if consent were given to the experiment.

Among other activities, Allen in the 1960's served as chairman of the U.S. Attorney General's Commission on Poverty and the Administration of Federal Criminal Justice, which laid the groundwork for legislative reforms in the treatment of indigent persons brought before federal courts.

Allen gave the prestigious Oliver Wendell Holmes, Jr., Lecture at Harvard University in 1973 and the Storrs Lecture at Yale University in 1975.

He is a member of the American Bar Association, American Correctional Association, Council of the American Law Institute, and the Advisory Committee on Probation and Corrections of the Federal Judicial Center, among other affiliations.

Peter O. Steiner

Professor Peter Steiner Elected AAUP Head

Peter O. Steiner, professor of economics and law at The University of Michigan, has been elected to a two-year term as president of the American Association of University Professors (AAUP).

Prof. Steiner will assume office following the association's 62nd annual meeting in Santa Barbara, Calif., June 24-26. With 75,000 members, the AAUP is the nation's largest professional association of college and university teachers.

This will be the first time in the 62-year history of the AAUP that a U-M faculty member has held the presidency.

Prof. Steiner said he hopes the association can continue to "mobilize the effective force of the academic community in defense of academic values and thus in defense of higher education itself."

"Our efforts," said Steiner, "must occur at three levels: first, in the defense of individual faculty members and particular faculties that find their personal and academic freedom, employment, or other rights threatened; second, on behalf of identifiable groups such as minorities, women, non-tenured faculty, and those nearing retirement whose rights have been neglected or newly infringed under the guise of financial exigency; third, in support of the profession as a whole, its economic welfare, its role in academic governance, and its professional status."

Prof. Steiner has been active in AAUP affairs for several years, including service on committees dealing with economic status of faculty, academic freedom, and tenure. He was chairman of the AAUP's Committee on the Economic Status of the Profession from 1970-73 and chairman of the AAUP Task Force on the Wage-Price Freeze in 1971-72.

Prof. Steiner has been professor of economics and law at Michigan since 1968, and from 1971-74 he served as chairman of the U-M Department of Economics.

Prior to joining the Michigan faculty he taught at the University of Wisconsin and at the University of California at Berkeley.

Last year, while visiting professor at the University of Nairobi in Kenya, Steiner was asked to go into central Africa to help establish negotiations with Marxist guerrillas who were holding two Stanford University students and one Dutch woman as hostages.

"For nearly a month, gaining release of the hostages became the sole focus of my life," the U-M professor recalled in a recent interview. "I lived with the issue day and night." In the end the negotiations were successful and the hostages were released.

In addition to his academic appointments Prof. Steiner has served the federal government and non-profit organizations. He has been a consultant to the Department of the Treasury, the Bureau of the Budget, and the American Council of Graduate Schools. He has served as a member of the Presidential Task Force on Productivity and Competition, and the Higher Education Advisory Committee on Wages and Prices.

Prof. Steiner has also been a faculty research fellow of the Social Science Research Council, a Guggenheim Fellow, and Ford Faculty Research Fellow.

Prof. Steiner is the author of many books and scholarly articles. His most recent book, *Mergers: Motives, Effects, Policies*, was published by the U-M Press in 1975.

He received an A.B. degree, magna cum laude, in 1943 from Oberlin College and an M.A. (1949) and Ph.D. (1950) in economics from Harvard University.

Other U-M professors besides Steiner hold leadership positions with national educational and scientific organizations. Currently U-M Prof. Wilbert J. McKeachie is serving as president of the 37,000-member American Psychological Association, and Prof. Charles Gibson of the U-M history department this year was elected president of the American Historical Association. Prof. Francis A. Allen of U-M Law School is president of the Association of American Law Schools (See related *Law Quadrangle Notes* story.)

"Banner Year" Reported For Law School Fund

Samuel Krugliak of Canton, Ohio, national chairman of the U-M Law School Fund, has announced that 1975 was a "banner year" for the fund.

The recent campaign, which ended Jan. 31, 1976, showed an increase in every major category, according to Krugliak. Contributions of $453,148.36 were received from 4,942 donors. More than 43 per cent of living Law School alumni participated during the past year.

Krugliak said "private giving continues to be crucial to the well-being of the school. Over the years virtually every aspect of legal education at Michigan has benefitted from the fund."

A complete report on the 1975 Law School Fund drive and a listing of alumni activities will appear in the summer issue of *Law Quadrangle Notes*.

New Clinical Program Focuses On Elderly

A group of U-M law students is at work on a new clinical law program to improve legal services available to the elderly.

The project, known as the Michigan Senior Citizens Law Program, is supervised by Prof. Steven D. Pepe in cooperation with the U-M Institute of Gerontology.

In addition to providing free legal services to needy senior citizens of Washtenaw County, the Law School will develop materials on the legal issues affecting the elderly. These materials, including a *Lawyer's Manual on the Law of the Elderly* and a working bibliography for practitioners, will be made available to Michigan lawyers and will be used in conjunction with an upcoming conference of the Law School's Institute of Continuing Legal Education.

The Michigan senior citizens law group will also provide technical assistance to other state agencies that serve the elderly and will perform outreach functions to encourage older people to take advantage of available legal services.

"When government-funded legal services programs for the poor are established, their services often go to those groups who actively seek them, or those groups of minorities who are more visible or glamorous for young lawyers to represent," Pepe said. "The aged are often left out. Many seniors do not recognize that they have legal problems. Furthermore, many older citizens are too proud to seek 'free' help, or are somewhat fearful and anxious about the uncertainties or difficulties of seeing a lawyer."

Sixteen per cent of all Americans older than 65 are below the federal subsistence-income poverty level, but only six per cent of the caseload of publicly funded legal service programs is devoted to older people, Pepe pointed out.

The U-M effort is one of 11 similar projects around the country funded by grants from the Administration on Aging, a unit of the U.S. Department of Health, Education, and Welfare. The clinic will focus on problems relating to such issues as social security, supplemental security income, food stamps, Medicare and Medicaid, nursing homes, incompetency and guardianship, housing, property tax exemptions, consumer complaints, and probate (with the permission of the probate court judge).

The project, which initially involved six students, will be expanded to 10 or 12 student participants next fall. The program has received the endorsement of both the State and Washtenaw County bar association. —*Bruce Johnson*

"The Legal Profession" Is New Course Offering

A new and unconventional course on "The Legal Profession" has been approved by the Law School faculty as part of a restructuring of the traditional first-year curriculum.

Beginning next year during the winter term, first-year students will be able for the first time to choose an elective course from a group that includes "The Legal Profession."

"The Legal Profession" will be team-taught in eight sections by Profs. Paul Carrington, David Chambers, Richard Lempert, Steven Pepe, John Reed, Joseph Sax, and Peter Westen. These professors proposed the innovation this year for the following purposes:

—To train students to think critically about the issues of professional responsibility, professional training and the delivery of legal services.

—To provide students with a broader view of the social importance of legal services and of the varieties of service which they might perform, partly for the purpose of helping students in career planning.

—To meet various bar requirements for training in legal ethics and to prepare students for bar examinations in ethics.

—To bring first-year students into contact with a much larger segment of the law faculty and with respected members of the bar.

All 240 students in the three-credit course will meet twice a week to hear lectures by one of the instructors or an invited guest on topics ranging from fee setting and group legal-services plans to "The Lawyer Personality" and "The Economics of Public Interest Advocacy." Two additional meetings each week will feature small discussion groups, where one emphasis will be on interdisciplinary readings.

A dissatisfaction on the part of the faculty with the "sameness" of traditional first-year instruction—with its reliance on analysis of appellate opinions almost exclusively—and a feeling that law students were not being helped to develop a sense of what it means to be a lawyer were the principal considerations that led to the new format, according to Dean Theodore J. St. Antoine.

"It's important to encourage law students to explore economics, sociology, history, and other disciplines to enhance their capacity for viewing legal problems against a broader background," St. Antoine said. "And in one way or another, there's been a very wide concern over legal ethics in the narrow sense and professional responsibility in general—a lawyer's place in society.

"Of course nobody thinks any course will turn a burglar into a saint, but we do hope that this new offering will provide students with an appreciation of the responsibilities and obligations of the profession," he added.

To make room for the new first-year elective, the current five-hour torts will be shortened to four hours and taught all in the fall term, and one of the current six-hour courses (either property, civil procedure, or contracts) will be condensed to a five-hour offering during the winter term.

Other winter term electives that will be made available to first-year students include Anglo-American legal history, economics of public policy analysis, European legal systems, international law, law and psychiatry, law and society, legal control of bio-medical sciences, legal philosophy, legislation, and Soviet law. But since the spaces in these courses for first-year students will be limited, most students are expected to elect "The Legal Profession."

Prof. Chambers will administer the lecture series for the new course and will serve as over-all chairman next year.—*Bruce Johnson*

Two 1975 Grads Selected As Supreme Court Clerks

Two 1975 graduates of the U-M Law School have been selected as law clerks for U.S. Supreme Court Justices for the 1976-77 court term.

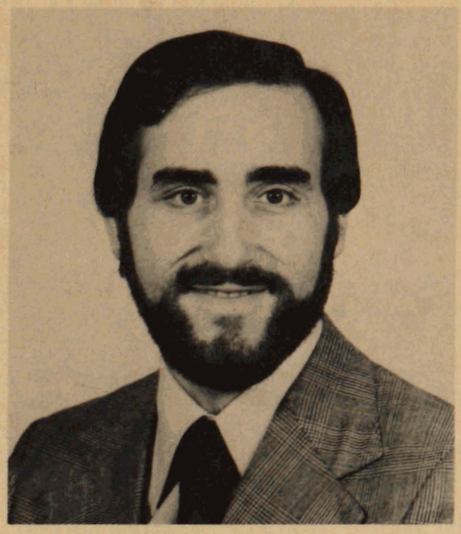
Susan Low Bloch, currently serving as law clerk to Judge Spottswood Robinson, III, of the U.S. Court of Appeals for the District of Columbia Circuit, will clerk for Justice Thurgood Marshall. Mark F. Pomerantz, now serving as clerk to Judge Edward Weinfeld of the U.S. District Court for the Southern District of New York, will clerk for Justice Potter Stewart.

Susan Low Bloch

Ms. Bloch received an A.B. from Smith College in 1966, where she earned Phi Beta Kappa honors. She then received a master's degree in mathematics from the U-M in 1968 and another master's degree in computer and communication sciences from the U-M in 1971. In Law School, she served as note editor of the *Michigan Law Review* in 1974-75 and graduated first in her class. Her husband, Richard, is a 1968 graduate of the U-M Law School.

Pomerantz, a 1972 graduate of Harvard College, was editor-in-chief of the *Michigan Law Review* in 1974-75. While in law school, he won the Abraham W. Sempliner Memorial Scholarship and (as did Ms. Bloch) a Henry M. Bates Memorial Scholarship.

The selection of Bloch and Pomerantz continues the Law School's representation among Supreme Court clerks. Currently, Mr. William J. Davey is clerking for Justice Potter Stewart and Christina B. Whitman (who will join the U-M law faculty this fall) is clerking for Justice Lewis F. Powell, Jr.



Mark F. Pomerantz

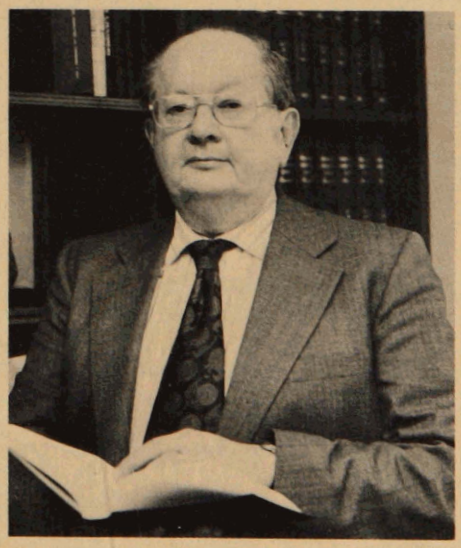
Associate Dean Pierce Named To State Unit

William J. Pierce, associate dean of U-M Law School, has been appointed by Gov. William G. Milliken to serve on the state's Administrative Law Commission, which reviews rules and procedures of state agencies.

"The quality of the law and practice in this vital area determines in a very major way how citizens are treated when dealing with their government," Gov. Milliken said in announcing the appointment.

Among other things, said the governor, there is a need to review the existing procedures and and conduct of contested hearings in the various state agencies and to recommend appropriate legislation to standardize and streamline the present procedures."

A member of the U-M law faculty since 1951, Pierce serves as director of the U-M Legislative Research Center and as chairman of the executive committee of the Institute of Continuing Legal Education, headquartered at the Law School.



Associate Dean William J. Pierce

Among other positions, he is currently executive director of the National Conference of Commissioners on Uniform State Laws. From 196-64 he played an active role in a constitutional reorganization of the Michigan government.

Among U-M law graduates appointed to the Administrative Law Commission, in addition to Pierce, are James A. Park (chairman), a Lansing attorney; David J. Dykhouse (vice-chairman), a Detroit attorney; William C. Whitbeck, Lansing attorney; and Robert E. Waldron, who is executive director of Associated Petroleum Industries of Michigan.

Dean St. Antoine Selected For NLRB Task Force

U-M Law School Dean Theodore J. St. Antoine has been selected to serve on a 26-member task force to improve procedures of the National Labor Relations Board (NLRB).

St. Antoine will serve as chairman of a task force subcommittee studying unfair labor practice proceedings, the NLRB announced.

Three separate subcommittees were appointed to study procedures and rules of the NLRB, the 40-year-old independent agency which administers the nation's primary labor relations law.

The NLRB said St. Antoine's committee will "deal with unfair labor practice proceedings, covering alleged violations of the law by employees, by unions, or by both."

In making the appointment, NLRB Chairman Betty Southard Murphy noted Dean St. Antoine's "rich background in labor law, in practice in Washington, and in teaching in Ann Arbor." St. Antoine has served as co-chairman of the American Bar Association's (ABA) Committee on Practice and Procedure under the National Labor Relations Act, and as secretary of the ABA section of Labor Relations Law. He is a member of the American Law Institute and the Industrial Relations Research Association.

The NLRB says the task force includes outstanding representatives of labor, management, academia and the general public. Members were nominated by the ABA, Federal Bar Association, U.S. Chamber of Commerce, National Association of Manufacturers, Institute of Collective Bargaining, AFL-CIO, International Brotherhood of Teamsters, United Auto Workers, and the NLRB, among other groups.

"Law Review" Examines Rights To Information

Legislation, constitutional issues and legal cases dealing with the question of public access to government information, and the countervailing question of individual privacy have been examined in a detailed, 369-page study in the *Michigan Law Review*, a publication of The University of Michigan Law School.

Titled "Project: Government Information and the Rights of Citizens," the study was begun last year in an effort to provide comprehensive background material for use by lawyers, journalists, and others involved in the privacy question.

"The study is basically descriptive and meant to serve as a research tool," noted Robin Neuman, editor-in-chief of the *Michigan Law Review*. Serving as editor of the project was Erica Ward, who has graduated from the U-M Law School and now works with a law firm in Washington, D.C. About 15 other law students participated in the project as researchers and editors.

Among other things, the *Law Review* examined the government classification system; the issue of executive privilege; the Freedom of Information Act which was amended last February; state and proposed federal "open meeting" laws; constitutional right to privacy; and the Privacy Act of 1974.

In general, said the study, "few aspects of government-citizen relations are more central to the responsible operation of a representative democracy than the citizen's ability to monitor governmental operations."

Regarding the government the government's system of classifying certain information, the Law Review study recommended a number of changes, including elimination of needless classifications and establishment of an independent review authority to oversee classification procedures.

It also warned that, until Congress enacts a comprehensive open-meeting act, federal administrative agencies can continue to conduct a significant part of their activities in private.

On the issue of personal privacy, the *Law Review* noted that broad constitutional protections were supplemented by the federal Privacy Act of 1974, which restricts information gathering activities of federal agencies. Among other things, the act authorizes agencies to collect only relevant and necessary information; permits individuals to have access to personal records; and requires publication of the existence and characteristics of all personal information systems kept by federal agencies.

Copies of the *Law Review* study may be obtained for $5 from the Business Manager, *Michigan Law Review*, The University of Michigan Law School, Hutchins Hall, Ann Arbor, MI 48109.

Harry Edwards Joins Harvard Law Faculty

Harry T. Edwards, a member of the U-M law faculty since 1970, will become a faculty member at Harvard Law School in the fall. Edwards spent the 1975-76 academic year at Harvard as visiting professor.

"Harry Edwards was one of our most outstanding classroom teachers," commented U-M law Dean Theodore J. St. Antoine. "He was an extremely thorough and productive scholar, and he was obviously in the forefront of the legal profession, most notably in the area of sex and race discrimination in employment. We are sorry to have lost him."

A 1962 graduate of Cornell University, Edwards received his law degree from Michigan in 1965, serving as assistant editor of the *Michigan Law Review*. He worked for five years with the Chicago law firm of Seyfarth, Shaw, Fairweather & Geraldson before joining the U-M faculty. In 1974 he was visiting professor at the Free University of Brussels, Belgium, as part of a U-M faculty and student exchange program with that institution.

Edwards has written extensively on labor law subjects, including collective bargaining, equal employment, and labor law in the public sector.

He is a member of many organizations, including Order of the Coif, Industrial Relations and Research Association, and National Academy of Arbitrators. Among other activities, he has been active in Ford Motor Co. and United Auto Workers negotiations; has been a hearing officer for the Michigan Civil Rights Commission; and served as chairman of Ann Arbor Model Cities Legal Services.

Rivera, Borgsdorf Leave Assistant Deanships

Two assistant deans at the Law School, Rhonda K. Rivera and Charles W. Borgsdorf, will step down at the end of the school year to accept new positions.

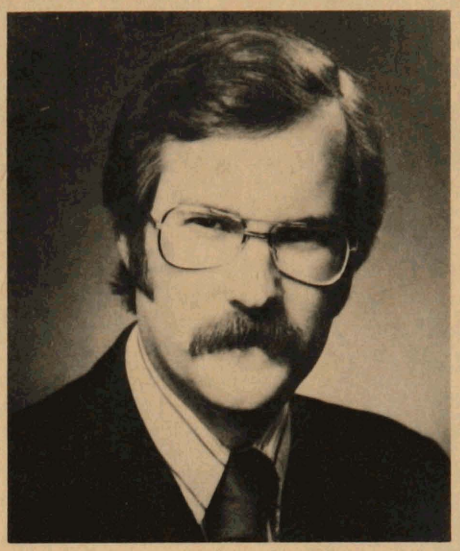
Rivera, who has been in charge of course scheduling, academic counseling, and new student orientation, is taking a teaching post at Ohio State University Law School. She had been on the U-M staff since 1974.

A graduate of Douglass College of Rutgers University, Rivera received a master of public administration degree from Syracuse University (1960) and a law degree from Wayne State University Law School (1967). She has taught at several institutions, including American University in Puerto Rico and Hope College, and was an assistant dean at Grand Valley State College before coming to the U-M.

Borgsdorf, a 1969 graduate of U-M Law School and assistant dean since July, 1973, will join the Ann Arbor law firm of Hooper, Hathaway, Fichera, Price & Davis. Borgsdorf has supervised the graduate program and administered the case club writing and advocacy training for first-year students.

Before joining the U-M staff Borgsdorf was associated with the New York City law firm of Shearman and Sterling and taught business law for two years at McMaster University in Hamilton, Ont.

Recent Events



Roger P. Brosnahan, Minnesota attorney who was president of the Minnesota State Bar Association when a mandatory continuing legal education requirement for lawyers was instituted in that state last year, was the featured speaker at an annual dinner sponsored by the Institute of Continuing Legal Education (ICLE) in Ann Arbor. The dinner honored authors and lecturers who contributed to ICLE publications and programs over the past year. Brosnahan said the mandatory legal education program is working well in Minnesota. The requirement, he said, applies to all judges and lawyers in the state regardless of the number of years they have been practicing law. If a lawyer fails to meet the continuing education requirement, he cannot practice, said Brosnahan. The program is designed to help young lawyers acquire skills and also to upgrade skills of more experienced attorneys through refresher courses on new laws and rules, law office management, and other questions. Another speaker at the ICLE dinner, Michigan Bar President **George Bushnell, Jr.**, predicted the mandatory legal education for lawyers is "bound to come" in Michigan. He noted that the recent endorsement by the American Bar Association of advertising by lawyers is a first step towards "certification for lawyers, and this concept cannot survive without continuing legal education." The Michigan bar has been studying the mandatory education issue at the request of the Michigan Supreme Court. As of this writing, mandatory requirements are in effect in Minnesota and Iowa. Currently ICLE provides education programs for lawyers on a voluntary basis.

ON REASONS FOR DECANAL DISENCHANTMENT AND THEIR WIDER IMPLICATIONS

by DEAN THEODORE J. ST. ANTOINE

[Based on the Dean's Report to the President of the University for the Year 1974-75]

With more glibness than prescience, I reported last year that the Law School seemed to be moving away from the dramatic days of the late '60s, when major curricular revisions and new admissions policies were adopted in response to society's increasing concern with the status of women, minorities, and the poor. Instead, I suggested, we were headed back to confrontations with such old dragons as straitened budgets and clamorings from outside the University for limitations on the autonomy of the Law School. In the event, I proved to be only half right. The ancient foes were there, as predicted, but in addition the year 1974-75 saw a revival of militancy among minorities, women, and other groups calling for still further changes in our programs and policies. Once again we witnessed the whole panoply of rallies, demonstrations, and picket lines, although this time, fortunately, these activities were characterized by an air of rationality and decorum that had not always prevailed in earlier encounters.

Last year I discussed at length the preservation of the law schools' autonomy and the maintenance of adequate funding for them. In previous reports my predecessor, Francis A. Allen,and I dealt with the specific problems of curricular reform, student admissions, and faculty recruitment, and with the overarching problem of safeguarding the integrity of legal education while responding sensitively to the assorted claims of society, individuals, and diverse groups. I have no desire to replow the same ground so soon, at least not in any attempt to turn up new generalizations about the law schools' common predicament. If you will indulge me, therefore, I should prefer to offer a few observations from the more personal vantage point of a law dean who stands about midway between inaugural and valedictory.

Law school deans are not supposed to enjoy their jobs. Even if one did, it would be bad form to admit it. Since the odds are that, after only four years in the post, I shall find myself second or third in seniority among any group of ten deans I happen to be in, it's probable that a good many incumbents are in fact *not* all that enthusiastic about their

positions. Before I go on to speculate why this may be so, and why the reasons may have some bearing on the broader questions of student discontent, the reshaping of the curriculum, and all the rest, I think I should make a small confession. Regardless of whether he (or she) relishes the daily routine, I do not see how the dean of a major law school can fail to realize that, deserving or not, he has been accorded the greatest honor that is likely to come his way during a professional career. He has been selected for leadership by a band of distinguished colleagues, and he has been provided a platform with a guaranteed audience for his views on any question of law or public policy which he has the wit and will to address.

Still, deans quit. And they are resigning at a faster rate today than they were a generation or two ago. I am sure the reasons are varied, and often manifold. Except in rare instances, I doubt that a school's budgetary difficulties, as such, are a principal cause, much as we might want university presidents and other central administrators to think they were. The recent trend toward appointing younger deans is probably part of the explanation for shorter tenures. Ordinarily, one doesn't enter the academic world to become an administrator; teaching and scholarship are the attractions. A person who becomes a dean at forty will feel that much creative work is being left undone. Yet there may be a growing uneasiness about one's capacity or inclination to return to the drudgery of compiling footnotes after a ten or fifteen year hiatus. As this realization develops, so may an itch for an early return to research. Two other reasons for decanal disenchantment may have wider implications for the whole of legal education, however, and those are the ones on which I wish to focus.

The first is a matter of trivia—a veritable mountain of trivia. Shortly after my initial appointment, Angus Campbell, our part-time colleague from the Institute of Social Research, told about a recent survey conducted among university faculty members and administrators. One question dealt with the sources of anxiety. Among teachers, the primary cause was found to be what was termed "qualitative overload"—a concern that their work would not measure up to the exacting standards they demanded of themselves, and assumed their colleagues demanded of them. On the other hand, there was relatively little worry about so-called "quantitative overload"—that is to say, teachers were seldom concerned about the amount, as distinguished from the quality, of their production. With administrators, it was just the other way around. They worried about meeting deadlines, about answering correspondence, about how much they were getting done—but hardly at all about how well they were doing, about the quality of their decisions. I have never repeated this account to a fellow university administrator without eliciting the same wry grin of recognition.

Despite the surface humor, there is a disturbing message here for academic administrators. We are being overwhelmed by an avalanche of paper, from the federal and state governments, from the university itself, from individuals and groups within and without the institution. We are caught up in a frantic round of travel and activity—much of it almost too pleasurable and beguiling—in the unaccustomed roles of fund-raiser, publicist, and emissary to the great and near-great. We lack the time for needed introspection. All this is true of nearly every university administrator, of course; but for deans of small, thinly staffed units like law schools, there is an extra wrench. Their jobs do not take them into a congenial headquarters company of fellow administrators performing similar functions; they are placed in an isolation booth to grapple with tasks their faculty colleagues do not fully understand, and they themselves do not fully credit. How many lawyer-scholars are prepared to give up the satisfactions of research, or the rewards of practice, for such an assignment? And how much will law schools stand to lose if deans cannot find a few hours now and then to ruminate with their faculties on the nature of the academic enterprise?

In my view, there is a second, still deeper reason for disquiet. An alarming number of students and others have come to doubt the adequacy of legal education, and they tell us so in no uncertain terms. The often strident challenges arise in two quite different quarters—among the idealistic reformists, who find the conventional curriculum deficient in "social relevance," and among the practical, no-nonsense types, who think we should dispense with our fine-spun theories in favor of some realistic pointers on how to get on with the business of practice. As law faculties have fumbled uncertainly amidst the cacophony to fashion an appropriate response, there have been times when I have been tempted to lament, with Yeats: "The best lack all conviction, while the worst/Are full of passionate intensity." But that would be unfair. We can hardly blame anyone for questioning our priorities, when a Nobel Laureate like Paul Samuelson is ready to join in one of the hoariest of complaints: "There is a conflict of interest, let us face it, between training people for a career and the creation of scholarly knowledge." Even that doughty champion of traditional research values, our former colleague Spencer Kimball, concedes that the law schools' "going operation has never been subjected to rigorous tests. . . . Let us then say . . . that the burden is on us all to prove that any of what we do in law school is worth doing." So far, legal educators have failed to provide a convincing justification for what they are about, or, alternatively, to face up to the need for fundamental change. Small wonder, then, that even the hardiest incumbents of positions of supposed academic leadership occasionally lose their nerve, and shrink from the encounter. And if, as is likely, they happen to be persons who are by nature consumer oriented, the stress will be all the more painful.

While I wish Spencer Kimball well in his efforts, through a series of massive studies sponsored by the American Bar Foundation, to "see first what lawyering is and then how it can best be learned," I should not be surprised if in the end it comes down, here as in so much else, to a qualitative judgment, or even to a leap of faith. All I myself can do is testify to what I see, or at least think I see: with regard to even the practical strategies of the world, including the world of law, wisdom comes from those who have thought the hardest, not those who have done the most. In the eminently utilitarian endeavor of winning the big law suit, it is the theory of the case, not the trial hijinks, that prevails.

We must not fall victim to that heresy of modern man which Hannah Arendt describes: "In order to be certain one had to *make* sure, and in order to know one had to do." Whatever the mechanics in contemporary society may believe, contemplation remains the highest of man's activities, and law will not last long as the most intellectual of the professions if we lose sight of that truth. In saying this I intend no narrow applications; I wish only to espouse an attitude. I do not mean, for example, to decry such salutary developments as the increasing attention now paid clinical law in law school curricula. But there, too, for me, the principal merit of the clinical experience in the academic setting is the opportunity for expanded observation and study, rather than the participation in live events. The primary aim of law school, for which we must offer no apology, should be the enlargement of the life of the mind. That is the means to the fullest, richest professional existence, and, still more important, an end in itself. Again it is Hannah Arendt who says it all: "For if no other test but the experience of being active, no other measure but the extent of sheer activity were to be applied to the various activities within the *vita activa*, it might well be that thinking as such would surpass them all. Whoever has any experience in this matter will know how right Cato was when he said: *Numquam se plus agere quam nihil cum ageret, numquam minus solum esse quam cum solus esset*—'Never is he more active than when he does nothing, never is he less alone than when he is by himself.' "

On The State of "The Word"

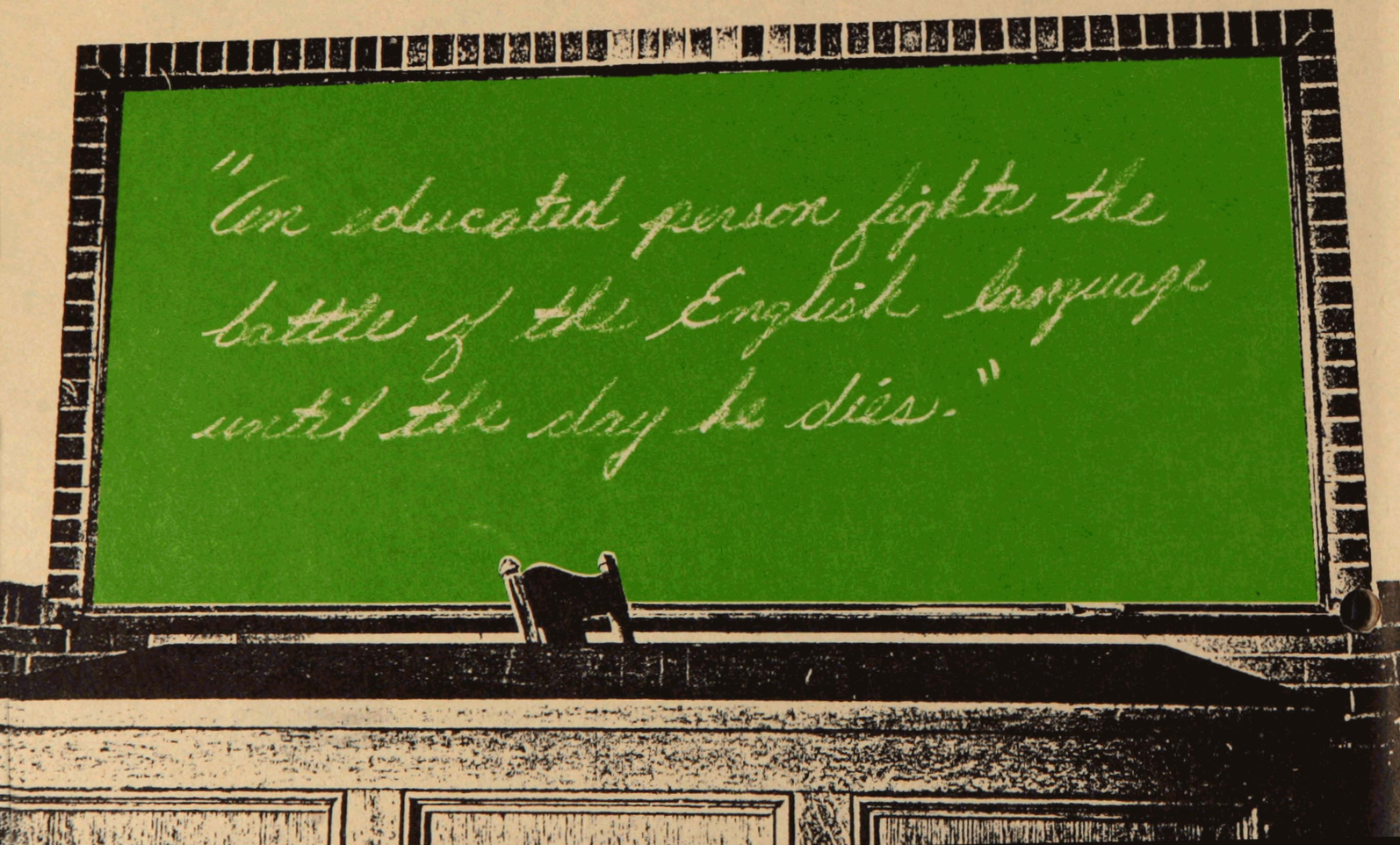
by Francis A. Allen

Edson R. Sunderland Professor of Law
University of Michigan
President, Association of
American Law Schools

[Based on Professor Allen's comments at the dedication of the Baron de Hirsch Meyer Library Addition, University of Miami Law School, Coral Gables, Fla., December 17, 1975.]

[I]t is a pleasure to participate in the dedication of a new library facility. This is a reaffirmation of values important to us all. It is an act of faith.

"In the beginning was the Word," St. John informs us. Being wholly ignorant of the theology of the Logos, I am unable to deduce satisfactorily what St. John intended to be understood by this declaration. But if Mr. Justice Holmes was right when he asserted that the law is a calling of thinkers (and I believe he was correct), then St. John's proposition can be accepted freely as one of the basic axioms of legal education. The arts of reading, writing, and thinking are so inextricably intertwined that it is hardly possible to conceive of a student gaining full command of one of these skills without mastering the others. I have never been impressed by Dean Langdell's comment, a century ago, that the library is the laboratory of the law school. The statement is not wholly wrong, but the law has many laboratories—the clinic, the classroom, the courtroom, the legislative committee room, the research institute. But the library is the repository of the word, and here facility in its use can be acquired, and here new applications of the word can be created and cast abroad. The library is, therefore, not simply a utilitarian tool. It is a symbol of the place that the word occupies in our thought and action. The dedication of a law library, therefore, is always a significant event.



The word has not prospered in our time. This assertion can hardly be described as news, but the fact it communicates is no less alarming on that account. Evidences of the decline in our uses and understanding of language surround us. One of the more important syndromes of this pathology is the precipitous falling off of the scores in the verbal division of the college board tests during the past decade. For a time we could complacently ignore the decline in these averages, for (as everyone knows) averages are deceptive. When, however, it becomes clear, as it is now clear, that the absolute numbers of students entering college with the highest verbal capacities have significantly lessened in recent years, complacency can no longer be defended.

Why should this and other patent evidences of our eroding verbal skills alarm us? I am not one who believes that the great issues of our time are primarily semantic, that all will be set to rights if we accept and apply the prescriptions of the doctors of linguistics. Our problems are not simply verbal; they are constructed out of the stuff of human passions and the conflict of human interests. But as Aristotle observed, without verbal capacities we cannot think; and without thought we lose any prospects we might otherwise possess of reaching rational solutions to the problems that beset us.

What has brought about this decline in the vitality of the word? Most of these difficulties stem from an endemic loss of respect for language; but this observation, however true, does not provide the reasons for the phenomenon. Perhaps the explanation resides partially in the fact that English is only one of the native languages in our great polyglot community. Although the juxtaposition of languages has sometimes enhanced the expressiveness of our speech (and these gains we would not gladly surrender), it has more often reduced our communication to a least common denominator and has conditioned us to embrace the lowest levels of communication. Perhaps in part our sorry verbal state is the consequence of a perverted egalitarianism. Let usage be determined by resort to democratic polling; whatever is widespread is right; and let the logic of language and its capacities for precise communication survive this assault as best they can. Under the influence of such views we fail to expose our high school and college students to language as a problem for study. We confuse creativity with imprecision. We deny our children the knowledge that proficiency in the use of language is a never-ending struggle, that an educated person fights the battle of the English language until the day he dies. Television and the other visual media have no doubt exacerbated these conditions. Like fish born without eyes in the gloom of underground waters, our children lose or never gain capacities for language because they can survive without them. Not only do these factors reduce us to a state of verbal infirmity, but we are also rendered dangerously vulnerable to those who manipulate language and cut into its juices and sinews to sell soap or ideology. We need to read George Orwell again.

Even in the law schools where in the past the word has been cultivated as assidously as in any part of the university, our commitments to the verbal skills have weakened. The crises that threaten to engulf our society have produced demands for new kinds of legal education. Some of these demands are soundly based. We need greater direct involvement with persons who have legal problems, a greater emphasis on problem-solving, a greater attention to the techniques for acquiring the new knowledge requisite for curing or mitigating our social ills. But we become confused and ineffective when, under the pressure of these needs, we assume that we can weaken our commitment to the word. Holmes, as he so often did, graphically conveyed our true situation: "It is one thing to utter a happy phrase from a protected cloister," he wrote, "another to think under fire—to think for action upon which great interests depend." This is surely true. Law is both thought and action.

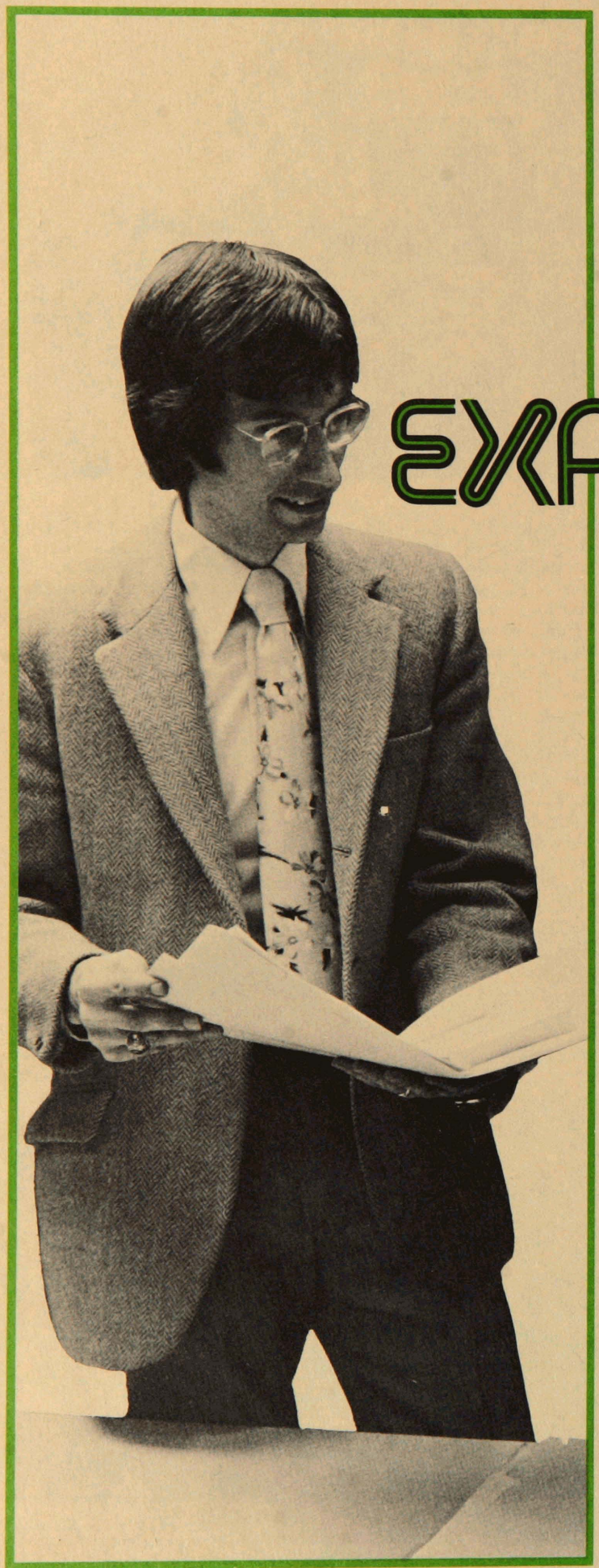
We are called to "think under fire" and "to think for action." But let it not be overlooked that to think under fire presupposes the capacity to think. This capacity is not a free gift of the gods; one must strive for it. One must learn to think in the quiet of libraries and in the rough-and-tumble of classrooms before the word upon which great interests depend can be effectively spoken. In short, the word, and the demands it imposes on those who seek to cultivate it, has not become less important for legal education. It is more important than ever.

There is nothing new about the resistance of students to the discipline of the word. The history of universities since the middle ages provides continuing evidence of an uncanny capacity in the young to evade the demands of liberal education. The present era, however, appears to have released especially powerful cultural constraints in opposition to the word and the discipline it demands. These constraints are felt in varying degrees by almost all of our students and even by some of our young faculty. Much in these attitudes reflects aspirations for a greater humanity and an enlarged freedom. I am prepared to believe that there are elements of what is good and necessary in some of these tendencies. I cannot comment on them further here, but there is one thing that I am prepared to assert: A man or a woman who seriously aspires to a life of professional or intellectual achievement must whole-heartedly accept the sometimes-painful conditions that the word lays down. This is one issue that cannot be straddled. One remembers Karl Llewellyn's marvelous song, sung more-or-less to the tune of the *Battle Hymn of the Republic*:

> Ma, I want to be a lawyer;
> But I don't wanna learn how to read!
>
> Ma, I want to be a lawyer;
> But I don't wanna learn how to write!

Karl was not mistaken. This is something one cannot have both ways.

In these times law libraries may have to perform a somewhat subversive function. On occasion they may have to lure and then entrap skeptical students, and demonstrate to them the pleasures as well as the pains associated with the life of the law and the life of the mind. To change the figure, the library may not only serve as a place where finger exercises are practiced, but as a hall in which nocturnes and symphonies can be enjoyed, and, one hopes, be composed. . . . Legal education in the United States is strengthened by the facility we dedicate today, as is, I believe, our commitment to reason and compassion in these troubled times.



THE CLINICAL LAW EXPERIMENT: Goals, Methods, and Problems

by Steven D. Pepe

Associate Professor
University of Michigan Law School

In the fall 1975 *Law Quadrangle Notes*, the first of this series of articles gave an overview of the history and operation of the fieldwork and seminar components of Michigan's Clinical Law I course. This second article on the clinical law experiment will sketch some of the goals of Michigan's clinic, its educational method, and various problems and shortcomings. A future article will describe a special project in the 1974-75 academic year to use the clinical setting more effectively to confront issues of legal ethics and professional responsibility.

In the evolution of clinical legal education across the county, there has been little agreement on questions of: What it is? What it should do? What it does do? And how it does it?

A wide range of programs have been labeled "clinical." Some rely heavily on simulation with little or no client contact or real life exposure. Others place students in various legal settings such as public interest law firms, offices of the attorney general, legal service and public defender offices with varying degrees of supervision.[1] Other programs are "in house", where the law school runs a law firm with faculty as the "partners" and the students as "associates."

The programs also vary with respect to the nature of the legal activities they undertake. Some look for more complicated "test case" litigation where students have less direct involvement in seeing a case through or in acting as counsel or trial attorney. Some focus on legislative reform and advocacy with fewer contacts with individual clients. Others take more routine and less complicated cases and attempt to maximize the involvement of students in the lawyer activ-

ities. As noted in the last article, Michigan's Clinical Law I is an "in house" program involving more commonplace civil and criminal cases, with any "test case" implications arising from the ordinary caseload, and not being actively solicited.

The goals, methods, and problems sketched in this article relate to Michigan's Clinical Law I, though much is transferable to other types of clinical programs. This account presents many of the goals in a descriptive mode for purposes of simplification and clarity. However, in so doing the presentation is to some degree inaccurate. These assertions about goals and methods are in large measure ideals and speculations made from the perspective of a biased participant-observer. They are goals to be aspired to and not concrete accomplishments. They have not been submitted to empirical testing. They are by no means a consensus view in academic circles—not even of Michigan's faculty. They are shaped substantially by writings and discussions with clinical colleagues, Jeanne Kettleson, Gary Bellow, and Bob Condlin who work in Harvard's clinical program.[2]

Yet, ideals and speculations serve useful functions that must, of necessity, precede consensus and proofs. First, such thinking provides models or theories to give direction in making new programs concrete. Second, they serve as rough tools of measurement and comparison with which one can test and criticize. Finally, notwithstanding their tentative nature, they provide some hope and purpose in the difficult and often isolated task of initiating programs on uncharted ways. Clinical legal educators must struggle to refine their goals, improve the methods to achieve them, and define units of measurements and evaluation techniques for assessing how well the goals are or can be fulfilled. The following is a simplified overview of some of the issues involved in this effort.

Goals and Purposes of Clinical Law I

The clinic's central and unique educational focus, both for the seminar and individual student-faculty analysis, is the field experience—the civil and criminal cases on which the students are engaged. The over-all goal of the clinic is to help the students become more reflective, analytic, and self-critical in their new lawyering role. In addition to the substantive law and performance skills involved in their cases, the clinical learning environment provides students with personal, institutional, professional, and ethical dimensions for exploration. Skillful use of these learning opportunities can provide students a deeper, more structured and coherent understanding about the social experience, institutions, and interactions that comprise the legal culture. Surely, only a limited portion of the lawyer's world can be explored in the context of a brief clinical course. Performance skills cannot be mastered in 15 weeks, and substantive legal knowledge may become obsolete. However, if Clinical Law I can demonstrate to students and involve them in a mode of being a lawyer that strives not only for quality work product and skill in performance, but also for greater social understanding and professional probing and responsiveness, they may find this an exciting approach and learning process to serve as a model for their future professional efforts and growth.

The more specific goals of clinical work can be clustered in the following groups.

Social and Community Goals

The Clinical Law Program provides extensive legal services to low income individuals in Washtenaw County. It serves hundreds of clients each year with their civil and criminal problems that might otherwise not have legal assistance, or would increase the burdens on other public legal service programs. The law school, through the clinic, provides a community service helping to fulfill the professional obligation of lawyers to make legal counsel available. The primary concern of providing competent legal service for legitimate client interest is stressed throughout the term.

In the context of certain cases, clinic students encounter, often for the first time, specific consequences of poverty, race, and class that pervade our legal and social system. Expressions of amazement are common in the clinic when somewhat idealized conceptions of our law and social institutions confront the harsher realities. The casebook ideals of impersonal rules, due process, and equal justice confront personal domination and the arbitrariness of legal institutions when, for instance, a policeman plays to the prejudices of a particular judge by distortions and omissions, or when an elderly tenant is afraid to testify against his landlord for fear of retaliation. Also, romanticized notions of the lawyer as "champion of justice"—"righter of wrongs"—require an adjustment of one's "white hat" when dealing with a demanding or untrustworthy client whose anger or contempt for the world encompasses also his counsel. While some students are drawn to cynicism in response, most turn their skills, training, and efforts to the difficult professional task of serving their clients as well as they can, and express greater understanding, empathy, and concern.

For a few students, the clinical experience encourages alternative career plans in criminal, poverty, mental health, consumer protection, or other public interest fields of law. However, this is a minority. Most students are headed in other career directions. For them it is hoped that this demythologizing exposure to a few of the distressing aspects of our social and legal system will be of value to them in some future public or private endeavor.

Educational Goals

Ethics and Professionalism: While it is difficult to say the clinic teaches ethics, it does highlight the pervasiveness of ethical issues in legal practice and the need to struggle with them openly. The student-lawyers make choices in their cases and are implicated in the outcomes of such decisions. Student responsibility for the consequences of their actions and choices is stressed, be it to a client advised to reject an offered settlement and face a trial, or to other lawyers or institutions where a client wants to lie on the stand or renege on a settlement. In many classroom situations the student can walk away from intellectualized arguments on a position, with no need to resolve the issue after exploring the alternatives. However, in the clinic a decision often *must* be made.

Students can see how their feeling level complicates rational analysis of a problem and how, at times, their desires and self-serving agendas make rationalization dishonest and incomplete. If clinical supervision can foster open exploration of the cognitive and emotional aspects in the struggle to arrive at ethical action it can contribute to professional responsibility.[3]

---

1. Apart from the Clinical Law II course, Michigan sends a handful of students to Washington, D.C. each year for a twelve-credit-hour clinical semester. These students are placed either with the Center for Law and Social Policy, or the Office of the Legal Advisor to the State Department. Additionally two students this term are working with the Children's Defense Fund in Washington.

2. Jeanne Kettleson, "Field Supervision in the Lawyering Process Course," unpublished paper prepared for a study committee of the Association of American Law Schools; Robert J. Condlin, "Toward a Theory of Field-work Instruction," unpublished paper presented at the 1975 meeting of the Association of American Law Schools; Gary Bellow, "Clinical Education as Methodology," from *Clinical Education for the Law Student* (CLEPR 1973).

3. The special efforts to create a better method for doing this were undertaken in the 1974-75 year at the clinic and will be explored in the next article.

4. See the Condlin and Kettleson references of footnote 2. For the underlying work in education psychology see Argyris & Schon, *Theory in Practice: Increasing Professional Effectiveness* (1975), Argyris, *Intervention Theory and Method* (1970).

[R]omanticized notions of the lawyer as "champion of justice"—"righter of wrongs"—require an adjustment of one's "white hat" when dealing with a demanding or untrustworthy client whose anger or contempt for the world encompasses also his counsel.

Legal, Analytic, and Performance Skills: The clinical setting helps develop lawyer skills in interviewing, counseling, investigation, trial preparation and presentation, argument, and negotiation. As noted in the last article, it does this by using various role models of more skilled lawyers, theoretical models where appropriate readings are available, and, finally, opportunities for students to perform and be evaluated in their performance. Initial efforts in clinical instruction have revealed how inadequate are the materials, theoretical insights, and supervisory methods for the development of competency in legal performance skills. In these areas much work is needed.

In addition to the performance skills, the clinic offers an opportunity to utilize the analytic skills that the students have developed in their traditional law school classes. Clinic students engage in theoretical legal analysis and the application of principle to factual problems confronting them. In an optimal clinical experience students should be pressed to use their knowledge of the law and facts to elaborate client goals, isolate alternatives, deliberate and forecast consequences, and balance options in their decision making. Such activities call on all the habits of thought, canons of relevance, and capacities for evaluation and prediction that are stressed in traditional law classes. It demonstrates in actual case handling the need for rigorous cognitive disciplines and the importance of their mastery before one can be creative and successful in legal practice.

In the clinic the basis for their application is broader than is often available in the traditional law school case or problem class. Students must apply their analytic skills not only to the substantive legal and factual aspects, but also to the interpersonal and emotive involvements (often communicated in gesture and other non-verbal ways), to the institutional and bureaucratic setting, and to performance and execution skills. They must confront a sea of raw, undistilled facts in a situation where valuable information must be culled from interactions of parties or potential witnesses; and where logical analysis is complicated by feelings, memory, and changes of attitude over time. The analytic habits of thought learned in the distinct fact situations of their classroom cases or problems must be maintained and applied with added vigor to cope with the conflux of data in an ongoing case.

Institutional Understanding: In addition to legal analysis, interpersonal understanding, and performance skills, students in the clinical setting must understand the institutions in which they are involved—the courts, prosecutor's office, police department, probation department, welfare department, friend-of-the-court, protective services. Students encounter decision-making processes, power and authority relationships, hidden agendas, access and leverage points, plus the effect of personality, bias, and emotion that limit the scope of rationality in these institutional settings. Such an exposure gives the students a more thorough understanding of institutions in a lawyer's world. Such a framework provides opportunities to probe the institutional rules, the participant's roles, and the various rituals involved. Against such a background, the theory of substantive and procedural law and the operations of lawyers take on a different meaning.

Integration of Understanding and Integration of Involvement: Law school courses neatly divided the legal world into categories for study—civil procedure, torts, contracts, commercial transactions, trial practice, evidence, creditors' rights, bankruptcy, family law, civil rights, law and psychiatry, federal courts. Actual cases require students to draw together their learning. A single clinical case challenging the prejudgment repossession provisions under the Uniform Commercial Code drew together all of the above noted subject areas. In addition to the integration of substantive law, the student was also confronted with the interrelation of policy, rules, institutions, personalities, roles, and social processes involved in this case. Finally, in this case the student had an opportunity in seeing the case through to observe how his norms, values, talents, conceptual inputs, and personal efforts affected, and were affected by, this network of laws, institutions and personalities.

In clinical experiences there is an integration of understanding: (1) of legal theories; (2) of institutions and personalities; and (3) of the lawyer as interactor with these. In addition to this *integration of understanding* within each of these three areas, there is also an *integration of involvement* of the three areas themselves, for the students can integrate their legal learning and their personal abilities, efforts, and values with the system in which they operate.

To capture the potential for learning in this experience, the students must be more than participants in the system. They must have direction and encouragement to take the time necessary to step back and act as observer and questioner. Better models for this type of clinical supervision need to be developed. If supervised clinical experiences can foster habits for students to move from action and intense involvement to withdrawal and critical reflection it can infuse the study of law with better means for understanding the legal system in operation, its wholeness and connectedness. More study and writing in this area of learning is essential. It offers legal educators ways of examining, and possible bridging in part, the distinctions between legal theory and legal practice, between one's values and how they affect facts and decisions, between seeking objective and universal rules and acting when immersed in a subjective and particular case, and between rational thought and irrational feeling.

Knowledge of Self: In the clinic students are no longer "getting ready" for some future role, but are beginning their legal careers. They can begin to see this "professional self" unfolding in actuality and start to define its content. Students have many conceptions of the "type of lawyer" they want to be. The clinic offers them some opportunity to make real-life choices and take a fixed stance in a professional undertaking to test their personal beliefs and expectations. Students can gain insight into how they present themselves as a lawyer. They can obtain a perspective on the capacities and shortcomings of the lawyer's role and their new professional self. They can see the potential conflicts between this professional role and their private sense of self, and its various consequences.

Their visual lawyer-selves can be captured on videotape

in the clinic for replay and critique. Probing can reveal how emotions, such as anger, influence their behavior; how they and others use or respond to authority and power; how much they empathize; how much they self-aggrandize; how gesture and other non-verbal signals affect communication and effectiveness in a task. By seeing how these aspects of themselves are perceived by others, students can become aware of, and hopefully choose, alternative behaviors of greater effectiveness. They can also recognize and respond to these aspects in others with whom they interact. Role playing the position of client, prosecutor, opposing counsel, a judge or government bureaucrat can facilitate insights into how they are perceived from different perspectives and offer alternative approaches in an endeavor.

Individualized and Collaborative Learning: The Clinical Law I experience, with its low student-faculty ratio, direct supervision, and joint work on separate cases, provides an opportunity for students to have a continuous and somewhat more personal contact with their teachers than in most law classes. It allows more individualized learning experiences tailored to the particular needs and capacities of the student.

In addition, clinic work offers students an opportunity to undertake collaborative learning in contrast to the competitive atmosphere of many law school situations. Clinic students interchange ideas with other students and with their faculty colleagues. When students are able to draw on their own past experiences and present work, and when their efforts and judgments can make a substantial difference in a situation, then joint work on common problems by students and teachers lessens the disparity of authority between them, and gives students a greater share of responsibility for their own educational experience. Hopefully, this more supportive atmosphere and the enhanced responsibility of students encourages them to undertake greater initiatives and risks of speculation, self-criticism, thought and effort that are essential for this learning experience.

Sense of Self-Esteem and Craft: By immersing students in their professional identity, exposing them to real problems which they begin to master through imposition of high standards of analysis and action, it is hoped the clinical experience will foster habits of thought, modes of introspection, and competencies of performance that provide students with a sense of self-esteem and craft in their professional endeavors. If these professional habits are positively reinforced and found gratifying they are more likely to be repeated in the future.

Learning to Learn from Experience: As students develop their analytic and practice skills in the clinic, an important goal is helping them evolve methods for setting standards and criteria of effective legal performance. Students should look to conceptual models or theories of lawyer function where available, but since the literature is limited and incomplete, they must learn to look to experience—the performances of themselves, their colleagues, and their lawyer role models. From this, they can generate models of their own. Once standards of effective conduct are established, they are compared to the student's actual behavior, creating a tension, a need to know more and to alter behavior. Students should then be encouraged to take responsibility to find ways of overcoming knowledge gaps and performance gaps.

To help students develop habits of searching for models or criteria for evaluating performance, clinical supervisors need a greater understanding of how one receives, maintains, analyzes, and uses information. How does one generalize rules from events, actions, intuition, and concepts? How are such rules or models tested and altered from experience? How do rules or theories get internalized and affect knowledge and action?

If clinical legal education can create better methods to help students learn from experience, generate and test performance models, measure their performance and needs to know against such models, and take responsibility for structuring their learning environment to cope with this, given their individual interests, values, strengths, and weaknesses, then legal education can better equip students to learn and grow in their future experiences once they have left law school.

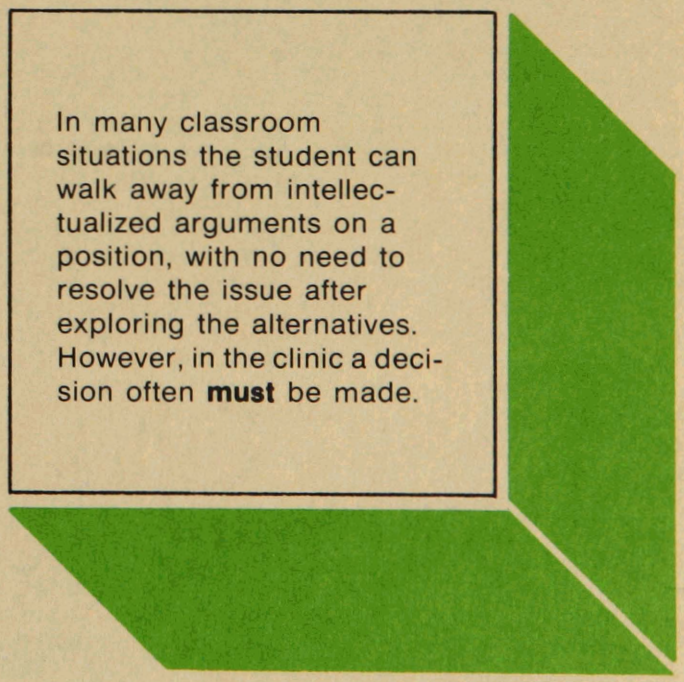
Relation to Law School and Legal Careers: Clinic work broadens student exposures and allows students to bring their experiences back to their regular classes. By demonstrating the crucial importance of modes of analysis and areas of substance, plus developing a greater awareness of how learning from theory and from experience interrelate, students approach their traditional classes in a more perceptive and motivated way.

Clinical work also provides a wider basis for making future career choices and selecting more appropriate law school course electives. In addition to those few students who choose to enter some public legal service work, other students focusing on private practice have a better understanding of what strengths and interests they have. Students can confirm or correct inclination and aspirations regarding: large firms or small firms; more "people oriented" or more "institution oriented" practice; litigation or legal counseling and planning work. Regardless of the directions taken, it is likely that the decisions are made more wisely and fitted more suitably to the personality and interests of the individual, possibly avoiding an initial year or so of practice trying something unsuitable but difficult to alter.

Relation to Legal Education: In addition to the community and student goals noted above, clinical legal education offers legal educators the opportunity of exploring alternative ways to educate, ways of using field experience as a source of learning. There is a need to understand this more systematically and develop more effective methods and materials for experientially based learning. Some brief thoughts on methods and problems follow.

Methods and Problems

Clinical modes of learning and problems have appeared in descriptions of the clinic in the last article, and in the statement of goals here. The following brief review of methods and shortcomings can highlight the themes, but not explore them in any depth. Yet, even this cryptic account may provide a perspective on the scope and challenge of future work in this field.



As noted above, the core for effective clinical learning is a constant movement between reflection and action, thought and experience, theory and practice.

Cognitive Approach: The cognitive approach used so effectively in traditional law school teaching methods is essential to the clinical method. It is involved in the development of legal work product. But in addition, logical analysis, classification, synthesis, and generalization are required to choose or develop, to test and use theoretical models for effective lawyer performance. Furthermore, such habits of thought are needed to provide the conceptual framework for use by the students in their clinical work as a reference point from which to view, compare, and structure their experience. Thus, as noted before, cognitive efforts for learning take place not only on the substantive legal work, but also on practical, institutional and human dimensions.

Role Model Identification: Paralleling the selection or building of theoretical models, students learn through identification and emulation of role models. Use of videotaped demonstrations of skilled attorneys plus those of the supervising attorneys provide role examples. The lower student-faculty ratio and the closer working relations on lawyer tasks facilitate the modeling process as students are beginning to define their professional sense of self. The demonstration of other role models and critiquing of performances, often involving the supervisor's behavior, provide alternatives and test the available models.

Experience as Teacher: Philosophers have asserted that all theory is rooted in experience. Educational psychologists indicate that understanding of necessity flows from the factual events and interconnections of experience. Experience gives cognitive thought its content and meaning. One could say that experience speaks a language to the participant which, though unstructured, incomplete, and unclear, is nonetheless real. Practicing attorneys commonly describe the difference in understanding that accompanied their initial lawyering experiences from their understanding developed in law school.

Thus, experience has something to teach that classroom cases and problems cannot provide to the same extent of factual complexity and emotional depth and involvement. Experience would have unplanned lessons to teach clinical students even if nothing more were provided. Yet, if nothing more were offered in clinical law, it would have no place in a university law school environment. Such learning could come tuition-free in summer clerkships and after graduation.

Experience has meaning through structure and organization, analysis and comparison, testing and fitting into a fuller conceptual framework. All humans have capacities for this. After all, we learn most of what we know and do outside of school. Nonetheless, educational programs such as clinical law can provide experience its lesson plan by better structuring experience and guiding students in their testing and understanding it. A clinical course can collapse in time the types of experiences had. It can select and sequence them better than the serendipitous encounters of initial practice. It can provide a supervised and a supportive environment with protections for client and student that are required for a student to take the necessary risks for effective learning. Finally, it can provide the time, encouragement, and direction for a more reflective approach to experience.

Role Identity: In the clinic, students must adopt a new role and identity—that of attorney-counselor. This role has many expectations imposed on it: the lawyer as competent, effective, supportive, impartial, work-oriented, devoted to client interests, yet "professional" and detached. To begin to cope with these role expectations, students need to know masses of information about the law, unwritten local practices, other lawyers, judges, performance skills, and themselves. When flooded with all these expectancies in their first lawyering task, plus possibly a raging fear of failure, students' anxiety levels begins to reach the top of the graph. We lawyers have an intense need to master and control our life situations. We do this largely by imposing some sort of conceptual order on it. We need a consistency and coherence in our positions and roles. These forces motivate the students to find means of coping, or understanding and learning, in order to relieve the tensions of this new and unfamiliar role. The adaptive pattern of most law students in such situations of strain is to learn, to search for role models with which to identify, and to proceed in a cautious trial and error manner. In the clinic, they are not abandoned in this dilemma, the supervisor is available to help guide them through it.

Role Strains and Conflicts: While the pressures the students face can be a source of excellent motivation for learning, they can also be a source of possible dangers. Feelings of insufficiency, of fear, or loss of control can become overwhelming and cause a blocking or paralysis. The need to find methods to cope can induce students to accept role and performance models uncritically, and want the course turned into a "how you do it" skills course where student responsibility and autonomy are largely sacrificed and limited by the authority and level of practice skills of the supervisor. Such a lowering of standards and levels of satisfaction in the performance of skills will indeed relieve the role tension the students face and allow them to say they are performing adequately. Yet such lowered levels of satisfaction relieve tension too easily and limit professional development.

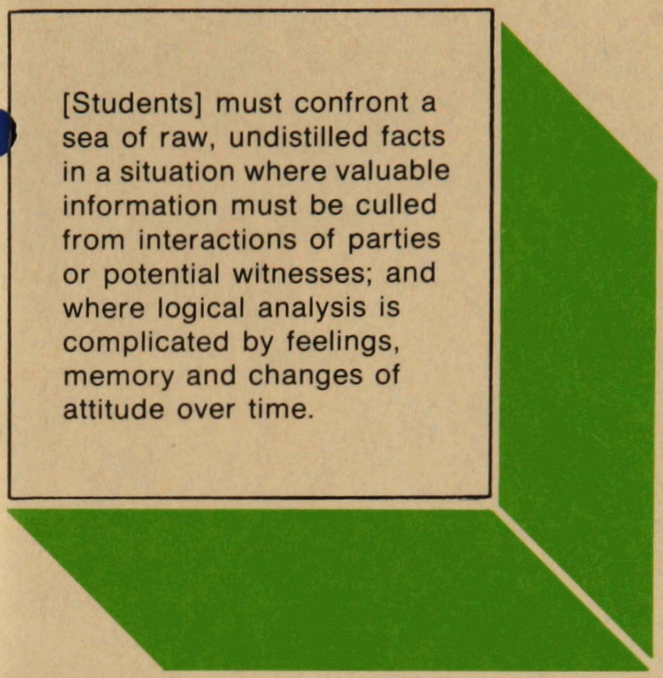
In addition to the strains of adjusting to a new role, there are strains coming from the multiple roles the learners are involved in—that of lawyer, client advocate, officer of the court, student, husband or wife—each imposing its own expectancies and demands which often conflict with one another. Methods for exploring these and finding satisfactory resolutions arise in seminars and individual supervisor-student sessions. A fuller presentation of the use of psychological input and psychiatrists in this endeavor will be explored in the next article.

Dilemmas in Learning to Perform: The methods of clinical learning that involve model identification, use of experience, role identity, and role conflict exist to some extent in any clinical program run by relatively skilled and intelligent supervisors. In addition to these methods, there are beginning to be evolved methods of fieldwork supervision that structure and integrate the other methods more systematically in the encounter between the supervisor and student. We are attempting to experiment in Clinical Law I with one method of supervision which is outlined here in its rudimentary state.[4]

At the stage where students have adopted or developed a theoretical model for performance, clinical fieldwork offers them an opportunity to implement it. When their performance is not consistent with their espoused model, a dilemma exists. The evolving supervisory method seeks to capture this dilemma as a learning opportunity for exploration by the following process.

First, supervisors must identify the performance objectives or theories that the students assert. Second, they must help the students recognize any inconsistency or ineffectiveness in their behavior when compared with the performance model to which they aspire. Then, an explanation of this discrepancy is undertaken. Was their performance ineffective because they did not do what their model called for, or was the model inaccurate and in need of rejection or modification? In future performances, can they improve their behavior or their theory?

This process of articulating performance objectives and models, performing, evaluating behavior in light of the espoused goals, explaining discrepancies, and altering behavior or modifying the theory requires an atmosphere of



openness, honesty, and trust that is difficult to create and maintain. There is the danger that the process will be too painful for the student, triggering psychological defense reactions that block learning, and making this a learning experience they will not repeat. Therefore, means to reinforce and encourage use of the process must be devised. Supervisors will need to be more perceptive, responsive, and sensitive to help themselves and the student be open and comfortable in giving and receiving feedback on lawyer performance.

If the good feelings of openness, honesty, insight, and growth can overcome the painful feelings of exposure, embarrassment, and frustration, then these students in their future practice of law may wish to continue this process of self evaluation and become better learners and performers. In addition, clinical educators experimenting with this process should improve their effectiveness as teachers and devise more sophisticated theories of legal practice to see if lawyering skills can be improved.

Problems in Clinical Teaching: If the goals and methods stated in this article are clinical law's "espoused theory," the problems of clinical education can be identified in exploring the inconsistencies in practice between these stated objectives and the operation of the clinic. Thus, if the supervisory model just described is turned on the clinical method itself, we can confront shortcomings, test and refine the theory, and improve the behavior. As with the students, clinicians will need an atmosphere of openness, support, and trust in this effort. They will need time to withdraw from engagement and reflect.

More understanding is needed of how experience-based learning fits into the law school curriculum. What is the proper balance between classroom work, simulation, and actual fieldwork, and how should these approaches be related. How can the course and supervisory methods be made more systematic in integrating substantive and procedural law with lawyering skills, institutional understanding, human relations, and professional responsibility. How much should supervisors present materials and give answers to students, intervene in handling some aspects of a case, or lay out their own conceptual systems and hypothesis about the lawyer world. Alternatively, how much should supervisors press the students to experience and develop their own models, conceptual frameworks, and allow them to make mistakes to learn from failures. How can students who desire to acquire sufficient skills to get them through their tasks be encouraged to go beyond uncritical acceptance of lawyer performance models and avoid bad habits. How much clinical work must be done individually, how much can be done in larger groups? This relates to the problem of making clinical experience less expensive and more available to the students who cannot get into an oversubscribed clinical course. How should clinical supervisors be selected, what talents and backgrounds should they have? How should they be trained? In addition to these problems, there is a need for better teaching materials—readings, films, videotapes, audio tapes, simulations, programmed presentations—to make clinical teaching more effective. Underlying this is a need for more study or research on lawyers in practice to develop a better literature about what they do, the world in which they operate, and the interrelations and consequences of these subjects. Finally, there is a need for better modes of evaluating and measuring effectiveness of clinical teaching.

The scope of this new effort is extensive. Its financial costs greatly expand law school budgets. It is still uncertain whether this experimental method will become a permanent addition to lawyers' professional training. To establish a legitimate place in the academic setting for clinical legal education, much work is needed to refine and improve its theory and operation. To this task the Michigan Law School has made a substantial commitment.

Second-class Postage
Paid at
Ann Arbor, Michigan