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# The Evaluation of a Clinical Legal Education Program: A Proposal

Junius L. Allison\*

## I. INTRODUCTION

Bringing the client and the courthouse directly into the training of lawyers is not a new practice. Indeed, until the nineteenth century, the apprenticeship system was the traditional way law students prepared for their profession.<sup>1</sup> The late 1800's, however, saw a shift away from this emphasis on practical training toward the view that the study of law was a science, requiring before practice the classroom mastery of principles of law gleaned from appellate cases.<sup>2</sup> This change was not sudden, however, and for many years the two systems existed side by side; as late as 1917, no state required law school study as a prerequisite for admission to the bar, and 36 of the 49 jurisdictions continued to require a period of apprenticeship.<sup>3</sup> Unfortunately, however, this happy balance did not last. The apprenticeship system soon fell into disfavor in almost all jurisdictions, and the law schools came to adopt the case method as the primary basis for study, leaving little or no room in the curricula for practical experience.

The case method had not consolidated its preeminent position very long, however, before a demand was made for the introduction of clinical experience to balance the scientific approach to the study of law.<sup>4</sup> Slowly, and over much opposition from those who believed

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1. Stevens, *Legal Education: Historical Perspectives*, in *CLINICAL EDUCATION FOR THE LAW STUDENT* (CLEPR 1973).

2. P. STOLZ, *CLINICAL EXPERIENCE IN AMERICAN LEGAL EDUCATION: WHY HAS IT FAILED?* 54 (University of Chicago Conference Series No. 20, 1969). The chief criticism of the apprenticeship method was that the busy practitioner had insufficient time to supervise his clerks, the scarcity of legal texts and the limited range of experience available in the typical attorney's office. See generally Vetri, *Educating the Lawyer: Clinical Experience as an Integral Part of Legal Education*, 50 ORE. L. REV. 57 (1970).

3. Stevens, *supra* note 1, at 47.

4. Professor Vetri, *supra* note 2, at 59, points out that Judge Jerome Frank argued that "the Langdell-Harvard system of studying law solely in a cloistered, academic atmosphere should be completely abandoned. In its place, he urged a law school with a law office at its center. Its purpose would be to study law not in the abstract, but as 'law-in-action'—'learning by doing.'" Further support for the clinical approach was given in the REED, *PRESENT-DAY SCHOOLS IN THE UNITED STATES AND CANADA* (Carnegie Foundation Bull. No. 21, 1928).

in a curriculum of "pure law," some aspects of the apprenticeship system began to appear in a few law schools. The "Legal Aid Dispensary" at the University of Denver first attempted combining the law school with legal aid work in 1904.<sup>5</sup> This experiment was followed by Harvard's Legal Aid Bureau, organized by law students in 1913.<sup>6</sup>

Many factors contributed to the gradual return of experience-based learning, but dissatisfaction with complete reliance on legal analysis was the principal element. As Professor Vetri points out, "[t]his critical shortcoming of modern legal education became too evident to be overlooked any longer. Law schools began to respond; clinical programs were developed. To be sure, this response has resulted in part because law schools are now on safer ground, having proven the legitimacy of the study of legal theory."<sup>7</sup>

The slow growth of the legal clinic is illustrated by the fact that by 1949 there were only seven with paid staff.<sup>8</sup> Even though the number increased to fifteen by 1960, the most dramatic development began with the establishment of the National Council on Legal Clinics, funded by the Ford Foundation in 1960.<sup>9</sup> This represented the first time that clinical legal education programs received outside funding on a national scale. More recently, the Council on Legal Education for Professional Responsibility (CLEPR) has made funds available for these law school projects, and consequently the number and variety of clinical programs have grown substantially. For instance, CLEPR reported that by 1973, 117 accredited law schools were operating 324 separate projects in 30 different fields of law.<sup>10</sup>

Although the structure of the clinical method of teaching differs substantially from the old concept of practical apprenticeship, educators should nevertheless be mindful of the problems incurred when too much emphasis is placed on the practical side of legal education. Indeed, whether it is due to a lack of awareness or to a

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5. R. SMITH, *JUSTICE AND THE POOR* 227 (1967).

6. *Id.* at 145.

7. Vetri, *supra* note 2, at 60.

8. E. BROWNELL, *LEGAL AID IN THE UNITED STATES* 88 (1951).

9. This was a project of the National Legal Aid and Defender Association (NLADA), which was the forerunner of the Council on Legal Education for Professional Responsibility (CLEPR). See generally E. BROWNELL, *LEGAL AID IN THE UNITED STATES* (Supp. 1961); NATIONAL COUNCIL ON LEGAL CLINICS, *PROCEEDINGS OF THE ASHEVILLE CONFERENCE OF LAW SCHOOL DEANS ON EDUCATION FOR PROFESSIONAL RESPONSIBILITY* (NLADA 1965).

10. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, *SURVEY OF CLINICAL LEGAL EDUCATION 1972-73* (1973).

mere lack of initiative, very little has been done to set standards and to develop techniques for evaluating the many clinical programs.

## II. ABSENCE OF STANDARDS

It is difficult, if not impossible, to devise a set of specific standards that can be applied uniformly to all clinical programs. First, getting full agreement on even minimal guidelines is not easy. Secondly, it may not be wise to press for a formula that would tend to work against diversification.<sup>11</sup>

In 1972 there was a serious but abortive effort by a committee of the Association of American Law Schools (AALS) to draft a list of minimum standards for clinical education. Professor Morton Cohen, chairman of the committee, submitted 40 standards for consideration by the committee, each member to make suggestions for modification.<sup>12</sup> No final draft has yet been completed, and various comments made by teachers in clinical education indicate that we are still a long way from agreement.

Some broad guidelines have been proposed by Professor Robert A. Gorman of the University of Pennsylvania. He devised a set of seven objectives to be used in judging a clinical program:

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11. There is a healthy variety among the more than 100 law schools that have courses in clinical education. CLEPR reported that in 1971-72 there were 251 separate programs, some composed of more than one component. It is probably safe to say that no two are alike. They differ as to structure and scope, as to philosophy, as to integration into the traditional law school curriculum, and as to places of operation. There are 145 civil law programs, 89 juvenile court projects, 183 in the criminal law and corrections, 37 specializing in defense work, 19 in the prosecution, 64 not identified specifically, and 63 prison assistance programs. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, SURVEY OF CLINICAL LEGAL EDUCATION 1971-1972 at 1-25 (1972). These and other varieties are more fully discussed by Professor Lester Brickman. Brickman, *CLEPR and Clinical Education: A Review and Analysis*, in CLINICAL EDUCATION FOR THE LAW STUDENT 56 (CLEPR 1973).

12. Professor Cohen gave the following explanation for his proposal:

"[W]ith the growth in the number and variety of legal clinics, and the creation of a new method of educating law students, i.e., the clinical method, to co-exist with the case method, a continuing dialogue has occurred amongst educators, students, judges and lawyers as to optimums in student education and client representation . . . .

"It is . . . with a strong realization that client representation by law students may often involve greater ethical consideration than such representation by an attorney, that we have attempted to create a set of standards for student representation. . . . To avoid the possibility that clinical education will become as boiler plate as a set of forms, we have endeavored to create a set of minimum standards which both permit and encourage variation as well as wholly new methods, while ensuring that those served by the concept, that is the students, clients, and the nation, are protected from the sins of omission or commission of the few."

M. COHEN, *Introduction to First Tentative Draft, STANDARDS FOR LAW STUDENT PRACTICE* (1973).

- (1) The most important goal of any clinical program, and a necessary condition for its existence, is that it possess educational value.
- (2) All clinical programs should be the direct responsibility of a faculty member. Persons who are charged with systematic teaching and supervisory activities should be given faculty status. Practitioners should also be utilized for purposes of training and supervision.
- (3) Each program should demand that students invest substantial time and effort for which they should receive commensurate academic credit.
- (4) The clinical program should be voluntary for both faculty and students.
- (5) The law school should strive, throughout its clinical program, to maintain and encourage those qualities of objective analysis which have traditionally characterized institutions of professional learning.
- (6) Students should not be compensated for participation in clinical programs beyond actual expenses incurred in such participation.
- (7) Standards and operating procedures . . . should be established and coordinated by some individual or committee within the law school.<sup>13</sup>

These general guidelines should be given careful consideration by those proposing or attempting to improve clinical projects even though they fall short of the more detailed standards needed for evaluative purposes.

To date, CLEPR has done more than any other association in the way of establishing evaluation standards by setting minimum requirements for law schools wishing to receive grants for clinical programs. While the prerequisites for funding are few, they have had a significant impact upon clinical education.<sup>14</sup> CLEPR has also developed its own system of evaluation under which a consultant is

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13. Gorman, *Clinical Legal Education: A Prospectus*, 44 S. CAL. L. REV. 537, 561-73 (1971). In the same volume Professor Allen Redlich, University of Wisconsin Law School, lists four "goals:" skills training, education about government, professional responsibility, and provision of legal services. Redlich, *Perceptions of a Clinical Program*, 44 S. CAL. L. REV. 574, 584-87 (1971).

14. See CLINICAL EDUCATION FOR THE LAW STUDENT (CLEPR 1973). See also 1 CLEPR NEWSLETTER, No. 4 (May 1969) (in which William Pincus, CLEPR President, wrote, "Institutions, like individuals, require pressure of outside forces to make them change for the better."); Pincus, *Changing Today's Law Schools*, in 4 CLEPR NEWSLETTER No. 1 (Sept. 1971).

assigned to spend a few days reviewing the particular project.<sup>15</sup> Further, the detailed annual report required of the funded program is so complete that it serves as a system of self-evaluation.<sup>16</sup>

Even though there are no universally recognized standards for clinical program evaluation, various law schools have adopted broad objectives or goals that can serve as informative guidelines in clinical program review. Of course, the objectives themselves should be evaluated as well as the operational aspects of the project. Minnesota, one example of the law schools setting well-defined goals, lists the following:

- (1) To efficiently involve large numbers of law students.
- (2) To deliver quality legal service to citizens seeking and needing legal assistance.
- (3) To provide quality clinical education to each student.
- (4) To involve as many of the non-clinical law school faculty in the clinical courses as possible.
- (5) To obtain competent outside legal talent without cost to the law school.
- (6) To gain a reputation among members of the practicing bar, the law school faculty, and the clients served, for delivering high quality legal service.<sup>17</sup>

Since many of the clinical courses are supported in part by CLEPR grants, specific statements of purpose always are found in the grant applications. While CLEPR has no preconceived notion

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15. In 1969 CLEPR awarded a resident fellowship to Professor Lester Brickman, Associate Professor of Law, University of Toledo. Part of Professor Brickman's responsibilities was to make field visits to observe and report on clinical education projects. Professor Brickman had previously served as consultant to the Legal Services Program of the Office of Economic Opportunity, and in this capacity he made scores of evaluations of local Legal Aid facilities.

In a 1971 memorandum, *CLEPR Evaluations*, the following points are suggested for attention by evaluators: educational impact, service effectiveness, descriptive and statistical data, proposal deviations, problems, response to program, educational materials, and recommendations.

16. CLEPR requires that a questionnaire be completed as part of this annual report. Questions are asked relating to: (1) the mode of operation, i.e., whether it is in the form of a school operated or supervised law office, whether it consists of a placement in another agency with or without on-the-job supervision, whether there is a classroom component, or whether it is work with faculty on selected cases; (2) the location—in law school, outside but used exclusively for program, in another agency; (3) the types of cases most frequently handled; (4) the emphasis on specific training before, during or after client contact; (5) the client's economic status, student contact, responsibility; (6) the enrollment; (7) the student practice rule; (8) the grading; (9) the academic credit given; (10) the supervision; and (11) the budget.

17. Oliphant, *Directing and Managing Legal Education in a Service Setting*, CLINICAL EDUCATION FOR THE LAW STUDENT 356-73 (CLEPR 1973). See also 5 CLEPR NEWSLETTER, No. 2 (July 1972).

of how a program should be structured and operated, it does insist upon compliance with a few broad principles of clinical education as prerequisites to funding: (1) that credit be given; (2) that the clinic directors be members of the regular faculty; (3) that clinic courses be integrated into the regular curriculum; and (4) that the law school have some financial investment in the program.<sup>18</sup> These requirements are, of course, considered when the program is reviewed or evaluated.

A general description of a "model" for clinical legal education was outlined by a group of law teachers at a CLEPR workshop in October 1969. The following summary provides the essential features:

[A] model for clinical legal education was formulated consisting of a preparatory orientation phase followed by concurrent programs of field work and reflective seminars. The preparatory phase would consist of a sort of casebook approach utilizing audio-visual prototypes derived from prior clinical work and simulated classroom situations to train students in interviewing, counseling, investigatory and trial techniques and to develop an awareness of what to look for in real situations. . . .

Field work would consist of experiences with real clients in a variety of possible settings. . . . The range of experiences available to students through field work would depend in part, of course, on whether the state has a student practice rule.<sup>19</sup>

### III. WHAT IS AN EVALUATION?

An evaluation is a judgment—an inventory coupled with an appraisal, an effort to measure the effectiveness of a program. It includes an objective examination of physical resources and a subjective assessment of purposes, of methods used, and of how well people are carrying out their assignments. It involves a visit to the place of operation, a discussion of philosophy with those who are responsible for administration, and interviews with others who are familiar with the objectives, structure, and scope of the project. Factors contributing to an effective evaluation program include careful selection of the evaluators, sufficient background work preparatory to field visits, the gathering of adequate on-the-scene information, the submission of an appropriate written report as soon as

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18. Pincus, *A Statement on CLEPR's Program*, 1 CLEPR NEWSLETTER, No. 4 (May 1969). In a follow-up of this announcement, CLEPR's president discusses "Education Values" in 2 CLEPR NEWSLETTER, No. 1 (Sept. 1969). In doing so he necessarily comments favorably upon program characteristics which he believes to be basic for good teaching. These at least approach an effort to suggest some standards.

19. 2 CLEPR NEWSLETTER, No. 2 (Nov. 1969).

possible after the visit, and encouragement for follow-up efforts by the administrative officials.<sup>20</sup>

It is impossible to devise an evaluation procedure that will be completely satisfactory. To be so, the ultimate effect on students taking clinical courses would have to be measurable against those not exposed to this teaching method. It seems obvious that because of the many variables in such an undertaking and because of the absence of any generally accepted success-failure formula for identifying those who do well or poorly in the practice of law, any attempt to evaluate a given learning experience, which is only a component within a broader instructional program where other methods are used, would produce conclusions that might easily be challenged as invalid on several grounds. This fact, however, should not deter efforts to identify the weaknesses or strengths of a particular program.

#### IV. A CHECKLIST OF KEY CHARACTERISTICS

It is not the purpose of this article to suggest a set of specific standards to be followed in assessing the effectiveness of a particular clinical program, since it is generally accepted that the nature of clinical education renders this effort infeasible. The principal aspects of this teaching technique, however, should be considered when any evaluation is attempted. The following is a list of the most significant facets of clinical legal education.

##### A. *The Concept*

Probably the most important aspect of clinical education is the view of the school administration concerning the objectives and the function of this part of the law school curriculum. Is it an extracurricular activity? Is it simply a how-to-do-it exercise? Is it a convenient vehicle for the school to use to fulfill its service obligation? Is it a concession to student demand for experience in a realistic setting? Is it tolerated as a harmless practice provided not too much time is taken from the "think" courses? Or is it instead a method of teaching that may include all or part of these concepts as well as other benefits, such as being an effective reinforcement of knowledge acquired in the classroom and an opportunity to learn something new

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20. As an example of what might be done in an extended study which would combine legal analysis and social science methodology, see W. STAPLETON & L. TEITELBAUM, IN *DEFENSE OF YOUTH* (1972) in which the authors report on a two year project designed to determine the effect of counsel in proceedings in the juvenile court.



about law and its application? An effective clinical program is a practice in marshalling evidence and in training the most effective use of facts in the resolution of conflicts. It is also a type of work that brings the student face to face with central agencies within the legal system where inequities, gaps in services, overlapping functions, or examples of sound administration may be observed.

To view a clinical program as a release-time arrangement to permit the student to learn the mechanics of law practice is to ignore its full potential. The use of the form book, familiarity with local rules of practice, speaking acquaintance with administrative personnel at the courthouse, and knowing how to get a petition from the filing clerk through the various functionaries to the judge—all are necessary skills in the practice of law, but they can be acquired by a bright novice in a matter of days and must be learned all over again when the young lawyer opens his office in another jurisdiction. Moreover, these routine motions are only incidental to interviewing, counseling, and negotiating, to doing the necessary research, to selecting the appropriate remedy, to drafting documents, and to handling the technical procedures involved in the trial and in the appellate process. Likewise, if too much emphasis is placed on administrative procedures, the student's insight into broader and more significant issues may be lost. For example, a tax problem may embrace principles in economics or sociology and reflect upon the relationship between a tax-paying individual and his government. Similarly, in the area of legislation, more than a superficial knowledge of ground rules is involved in translating a need into a workable regulation that has the force of law.

The experiences of students participating in the clinical program at Vanderbilt University School of Law<sup>21</sup> illustrate the breadth of knowledge that can be gained from a nonrestrictive approach to clinical legal education. One project, the drafting of a statewide public defender bill, exposed the participating students to far more than just legislative drafting.<sup>22</sup> The students reviewed the activities of the two local public defender offices in the state and then examined the practices of appointment of counsel for indigent defendants in the other counties. The legislation enacted in other states also was studied. Next the question of need was examined: What is the volume of criminal cases, county by county? What is the organization and assignments of the prosecution side? What are the costs

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21. For a more complete description of the clinical programs at Vanderbilt see 4 THE REPORTER 2-14 (1973).

22. H.B. 160, 88th Tenn. Gen. Ass'y, 1st Sess. (1973).

involved? Taking the best provisions of other state plans, studies in comparison with the Model Public Defender Act, and the recommendations of the National Legal Aid and Defender Association, a draft was prepared under the supervision of the instructor. During the process, the students were communicating with the special committee of the Tennessee General Assembly, attending public hearings, and discussing the draft with faculty members and key officials in state government. After the legislation was introduced, testimony was prepared and presented to the Judiciary Committee. Even though the proposal was ultimately defeated, the students witnessed the entire political process—its prejudices and vested interests and its honest efforts and public concern.

A second project examined the administration and the practices within a state training school for boys ages 13-15 years who were committed by the juvenile court. In the course of a counseling program with the juveniles (organized by the students on a voluntary, non-credit basis), one student became concerned with the solitary confinement of minors for certain behavior, such as running away and fighting. He found that this punishment was administered summarily, and that there were no hearings until some time after the confinement. Further, there were no written rules or regulations. The student requested and received approval (under the special projects component of the Vanderbilt clinical program) for an extended study of the training school's practices. With the cooperation of the school administrator, the intern observed and analyzed disciplinary procedures over several weeks. The final report<sup>23</sup> (which was selected as the best law school essay on an aspect of Tennessee law) included a suggestion that rules be distributed to the juveniles and proposed a modification of the disciplinary proceedings. It also included comments on the jurisdiction of the juvenile court and a proposed act for the protection of rights of juvenile inmates. The student addressed questions such as recidivism, made numerous references to Due Process requirements in matters relating to minors, and researched such issues as the right to treatment and judicial review of disciplinary hearings.

In a third clinical program, the participating student examined the questions raised by the incarceration of persons financially unable to pay fines levied for violation of the Nashville Metropolitan

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23. L. Croce, *Affording Juveniles Procedural Due Process in Disciplinary Hearings Within Institutions*, March, 1973 (unpublished paper in Vanderbilt University School of Law Library).

Code.<sup>24</sup> In the course of the project the student prepared and filed in the District Court approximately twenty documents, and by the time the final order was signed<sup>25</sup> he had participated in activities that touched upon the following subjects: constitutional law, criminal practice and procedure, federal procedure, federal jurisdiction, the relation between federal and state courts, trial technique, evidence, ethics, and, of course, research and writing—thereby learning the value of academic education. These three examples demonstrate that properly supervised field activities in any branch of the legal system can provide unique learning experience so necessary in preparing a lawyer for the broad requirements of his profession.

### B. *The Director of the Clinical Program*

There can be little doubt that the key person in the program is the director. He is more than a teacher; indeed he is an instructor, counselor, administrator, strategist, expeditor, and interpreter. He is the senior partner in a law firm. It would not be accurate to say that a good clinical program is composed of a good director on one end of a log and the student at the other, but certainly this is the beginning.<sup>26</sup>

An evaluator will seldom find a poor program that has a good director or a good program with a poor director. This implies a full-time teacher, one who has status and tenure within the faculty hierarchy. Because of the intangible qualities and characteristics of a successful teacher in this field, a special training course for clinical directors will not be any more effective at producing the desired result than a school for deans or tort instructors—with the possible exception of a program of straight graduate study or “continuing legal education” workshops.<sup>27</sup>

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24. The United States Supreme Court had previously held that Texas could not convert a fine into a prison term for an indigent defendant without means to pay his fine. *Tate v. Short*, 401 U.S. 395 (1971).

25. *Harding v. Doyle*, Civil No. 6397 (M.D. Tenn. 192).

26. The critical role of the director is suggested by Professor Gary Bellow's emphasis on the educational aspect of a clinical project:

[T]here are a number of advantages in thinking of clinical education as a method appropriate to a variety of educational needs. First, such a characterization focuses attention on what teachers do—on the nature and content of their role in the process—rather than on the problematic features of administration, cost, caseload, and supervisory ratio with which discussions on clinical education have been so much concerned.

Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, CLINICAL EDUCATION FOR THE LAW STUDENT 374 (CLEPR 1973).

27. CLEPR has experimented with this notion by funding (\$195,000) a project at Harvard University School of Law in 1972. 4 CLEPR NEWSLETTER, No. 11 (Apr. 1972).

### C. *The Emphasis*

The question of priority between the educational responsibility and the service aspect of the program must be considered when any attempt at evaluation of a clinical program is made. Keeping in mind the primary purposes of a law school as well as what is ultimately best for the clients, the training institution's first concern must be that of educating students, with the service aspect of its program, important as it is, coming second. The primary responsibility for providing and delivering competent legal services rests with society, and the history of legal aid for indigent clients is full of incidents where bar associations and communities evaded their responsibilities by saying the law school provided the facilities. Moreover, a clinical program alone cannot possibly meet the full needs of the clients. To attempt to do so jeopardizes the educational value of the clinical project having to face an unmanageable case load and a repetition of activities that soon lose their educational value and diminish the interest of the students.

This arrangement of priorities, however, does not leave the law school free of all responsibility. Since the principal value of the clinical approach lies in what has been called the lawyering process, service will be provided and delivered. Also, in order to train law students for their full professional responsibilities not only as practitioners but also as individuals who may occupy key positions in their communities as judges, legislators, and policy makers, they must have more than an incidental introduction to the many problems that cannot be explored in traditional courses in taxation, torts, and property. For instance, many peripheral issues in the broad administration of justice—issues such as crowded dockets, selection and tenure of judges, bail, prison reforms and other needs in the field of corrections, court administration, and activities of the organized bar—must be considered in preparing law students for actual practice. Because a clinical program exposes the law student to these areas of law that are outside of the core curriculum, it is a valuable adjunct to classroom work. The fact that more than 100 law schools have expanded their teaching program to include one or more clinical projects<sup>28</sup> suggests that law faculties believe there is merit in this approach to legal education. National and regional law schools whose curricula must take into account the fact that their graduates will be practicing in various jurisdictions find that the intern's opportunity to study and work within agencies charged with

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28. See note 10 *supra* and accompanying text.

the administration of justice has broad educational benefits transcending local peculiarities.

#### D. *The Supervision*

A law school can hardly afford to expend time and effort in the area of clinical education unless it is willing to provide adequate and competent supervisory personnel. Sending law students to a Legal Services office, to a public defender, to the prosecutor, to a law firm or to any other place where they are participating in lawyering activities without close supervision would be counter-productive, unfair to clients, and a disservice to the interns. Moreover, it would defeat the objectives of a well-conceived clinical program.<sup>29</sup>

For an "in-house" project operated at the law school, adequate supervision is not a problem. It is in the "outside" arrangement where the question of supervision is more acute. If a faculty member is used, the cost is substantial; if a practicing lawyer is relied on, his responsibilities to clients and other duties may make proper supervision of the students impossible. Consequently, experiences with these "outside" programs have often proved unsatisfactory. Students are often assigned to clinical programs operating out of the various government legal offices without the educational objectives of the program first being clearly defined. Moreover, the agencies themselves often do not regard themselves as teachers; they are delivering services, and the students are there to help. In addition, the practicing attorney has one primary purpose—to serve his client. He has little time to do more. The student, on the other hand, requires in-depth exploration of the processes he is participating in if his experience is to contribute significantly to his development.<sup>30</sup>

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29. Commenting on this requirement, Professor Arthur N. Frakt wrote of his one year experience at Rutgers:

Among the impressions which were gained through the year's experience, one stands out. It is that the quality of a complete clinical experience is largely dependent upon the quality of the supervision. Individual students who were assigned to attorneys ostensibly performing the same functions reported great variations in the manner in which they were utilized; the time spent by the attorneys in working with them; and the ultimate amount of work accomplished. Therefore, it is clear that variations in quality of supervision are a primary concern in assigning students to outside public law agencies for clinical experience. If there are serious initial doubts about quality of supervision in a particular agency, I would suggest that no program be undertaken with it.

Frakt, *Supervising Students in Clinics Outside the Law School*, 3 CLEPR NEWSLETTER, No. 2 (Oct. 1970).

30. Leleiko, *Student Practice: A Commentary*, in STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS 11 (CLEPR, 2d ed. 1973).

### E. *The "In-House" or "Farm-Out" Arrangement*

There is probably a wider difference of views on the "in-house" and "farm-out" plans than on any other structural feature of clinical programs. Obviously, each offers its particular advantages.<sup>31</sup> In a program operated at the law school, supervision is easier, the caseload can be regulated (if the project is willing to send away the overflow of clients), research facilities are convenient, less traveling is required, and more accurate records can be kept. In the "farm-out" plan, on the other hand, the office is probably more accessible to clients, the courthouse may be nearer, law office management problems are more realistic, there is more opportunity to work on cases containing substantial issues and to engage in extended litigation, students may work in several agencies and gain a greater variety of learning experiences, caseloads can be controlled without neglecting clients, and the "law office" atmosphere is probably favored by the clients.

A combination of the two plans is preferred. A cooperative project with Legal Services, the Public Defender, the District Attorney, or the Juvenile Court has advantages over a law school operated program, provided there is a clinical supervisor present at the base of activity. The difference in cost will be little, for an instructor also is needed if the clinic is located at the school. Since a project within the law school could not possibly handle the volume of applicants (unless the city has a full-time service and a workable referral system), the combined system would have more of the strengths and fewer of the weaknesses than either of the other plans. In addition, this arrangement would leave the major responsibility for providing services to indigent clients with the public agency, where it should be.

### F. *Other Factors to be Evaluated*

There are many other features of a clinical program that are significant enough to warrant the careful review of an evaluator. Among them are:

- (1) student-instructor ratio
- (2) academic credit given
- (3) number of hours spent per week in field activities
- (4) number of students participating in clinical work

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31. For a discussion of the two plans, plus a combination of the two, see Professor James G. Carr's article, *More on the "Farm Out" and "In House" Clinics*, 3 CLEPR NEWSLETTER, No. 7 (Mar. 1971).

- (5) variety of opportunities afforded the students
- (6) type of summer programs existing
- (7) costs of the clinical program; the percentage carried by the law school
- (8) the existence of a student practice rule and its provision
- (9) teaching materials used
- (10) classroom components required
- (11) whether the courses are considered to be extra-curricular or whether they are a part of the curriculum.

## V. THE EVALUATION PROCESS

### A. *The Administrative Agency*

If a law school is planning its first clinical program or would like to expand an existing one, on what basis does it make these changes? Similarly, if a school is considering a change in the direction and emphasis of its clinical program, if it needs some additional data to support a grant application, or if it wishes to have some outside appraisal of the structure and operation of an established program, what consultative resources are, or should be, available?

The AALS and the American Bar Association (ABA) include legal clinics in their regular accreditation inspections of law schools, but this service is general, brief, and does not focus upon any one aspect of the educational system. Nor is it on call for special purposes. CLEPR has only a small full-time staff, maintaining its evaluation program through ad hoc arrangements with selected personnel who have regular duties elsewhere and reviewing only those projects it funds. The evaluation programs of other foundations and of governmental agencies that provide financial assistance, such as the Law Enforcement Assistance Administration (LEAA), are similarly restricted to projects that are funded by those organizations.

For these reasons, there is a need for a national or regional evaluation service that can be called upon for both special circumstances and routine field visits. This agency would collect data, learn of innovations and unusually successful projects, and serve as an unofficial coordinator, giving a little inspiration here and a few helpful suggestions there. Such a service might contract with CLEPR, LEAA, or other funding agencies to make the evaluations required by those agencies. Additionally, some of the information gathered might be suitable and helpful in the broader accreditation studies. The most logical organization to undertake this service is

the recently created Section on Clinical Education<sup>32</sup> of the Association of American Law Schools. This would, of course, require financing, but because the field is open and the need apparent, the prospects for funding should be favorable.

### B. *The Mechanics*

There are several techniques that can lead to a successful evaluation, and each evaluator will adopt the techniques that he personally prefers. There are, however, some general suggestions that can be modified and adapted to most situations. These cover at least four areas: advance planning, on-the-scene activities, reporting, and follow-up procedures.

#### 1. Advance Planning

After the request for an evaluation has been made and a convenient date fixed for the field visit, the evaluator should learn in advance as much as possible about the program to be studied.<sup>33</sup> Perhaps there are special problems that can be examined preliminarily by the evaluator, and this consideration may determine or at least affect the on-the-site procedures. In many instances, the director of the clinical program can brief the evaluator on critical areas that require special attention. Written information, such as annual reports, interpretive articles, teaching materials, examples of students' work, budgets and statistical data can be supplied in advance, thereby reducing the time required in the field. For the convenience of all parties, a schedule of interviews and places to visit should be arranged prior to time of arrival.

#### 2. On-the-Scene Activities

As a matter of courtesy and because of his knowledge of the program, the director of clinical education should, in most instances, be the first person interviewed. The Dean, the faculty members involved in the program, and a number of students should also be interviewed. Additionally, the supervisors, administrators, and lawyers working at the agencies in which students get their practical experience must be consulted. Comments from judges before whom

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32. In 1972, an attempt was made by Professor Morton Cohen, co-chairman of the AALS Committee on Clinical Education. Under the proposals, task forces were to be established and given responsibilities in several areas such as legislation, funding, and evaluation.

33. J. ALLISON, INTRODUCTION TO AN EVALUATION PROGRAM (National Legal Aid and Defender Association Monograph No. 5, 1970).



interns "practice" and from selected private lawyers familiar with the law school's program may be helpful. Information expected from each will depend, of course, upon his relation to the clinical work. In each case, after the person interviewed has volunteered his observations and impressions, specific questions may be asked on aspects not yet commented upon.

At the concluding session with the director (and perhaps the Dean of the law school), the evaluator should be frank in commenting on his conclusions, making specific oral recommendations. Although an official report will be drafted later, an informal discussion on significant aspects of the program will give the Director an opportunity to react to the impressions of the evaluator, and an exchange of thoughts may serve as preparation for the final report. This conference will provide an opportunity for clarifying aspects of the program that are unclear to the evaluator. More importantly, however, it will allow for on-the-spot technical advice regarding what follow-up is needed and what future assistance is available.

### 3. The Evaluation Report and Follow-Up

The time element is important in this stage of the evaluation process. Much of the interest developed during the prior steps can be lost if there is considerable delay in getting the final report from the evaluating agency to the project. The length of the report will vary with the circumstances, but it should have sufficient comments to support all the recommendations. The draftsman should bear in mind that the report may be presented to the faculty and may be used to support an application for a grant or for additional funding. Because of the significant differences between the various programs, the organization and operation of other projects cannot serve as models, except to the extent that the references may be used as comparisons or may provide suggestions for the development of other programs. In no way should the report discourage experimental efforts in the field of clinical education.

The evaluation program's utility should not end with the evaluation report. If the Section on Clinical Education can obtain the necessary support, it can become a continuing source of assistance to AALS members. Even though the clinical program is closely integrated into the law school curriculum and is viewed not as a separate entity but as one method of legal training, it is inevitable that because of its relation with other agencies in the legal system, special problems will continue to exist. In these instances, an evalu-

ation service of AALS can be an invaluable source of information regarding solutions at other schools to similar problems.

## VI. CONCLUSION

Even though the Code of Professional Responsibility sets only general standards for competency,<sup>34</sup> the competence of individual lawyers is now an area of active inquiry by the courts.<sup>35</sup> Likewise, Legal Services are subject to regular evaluations. While these evaluations have had poor track records, the fault lies with their administration rather than their concept. If the practice of law is subject to scrutiny, it follows that schools for training the lawyers, and certainly parts of their curricula, such as clinical programs, can be evaluated.

*"Legal education on its most basic level is preparation for a profession, the 'public profession of law.'"*<sup>36</sup> There is probably no description of the legal profession that is acceptable to everyone, but as Professors Packer and Ehrlich suggest, "a listing of characteristics that legal education seeks to imprint on its students will give us a more concrete framework from which to begin . . ."<sup>37</sup> A list of these attributes was suggested by Dean Bayless Manning: analytic skills, substantial legal knowledge, basic working skills, good judgment, and an awareness of the total non-legal environment.<sup>38</sup> It seems obvious that by its nature the clinical method is a uniquely suitable way to provide this legal education. The implementation of a reliable technique for evaluating clinical programs will add a measure of objectivity to the traditional subjective appraisal made in a conference room,<sup>39</sup> and we will be in a better position to at least approach the educational goal of producing law graduates with these attributes.

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34. A lawyer shall not "[h]andle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it." CODE OF PROFESSIONAL RESPONSIBILITY, DR 6-101(A)(1).

35. *Mitchell v. United States*, 259 F.2d 787 (D.C. Cir.), *cert. denied*, 358 U.S. 850 (1958); *People v. Ibarra*, 60 Cal. 2d 460, 386 P.2d 487 (1963).

36. H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 22 (1972) (italics supplied).

37. *Id.* at 22.

38. *Id.* at 22-3.

39. The Carrington Report, which was critical of clinical programs, appears to have reached its conclusions by consensus, with little attempt to document the recommendations concerning clinical programs. A.A.L.S. PROCEEDINGS, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: 1971. For a full discussion of this report, see Brickman, Book Review, 1972 U. ILL. L. FORUM, 843-54. See also Del Duca, *Continuing Evaluation of Law School Curricula—An Initial Survey*, 20 JOURNAL OF LEGAL EDUCATION 309 (1968).

