Vanderbilt Law Review

Volume 24
Issue 6 *Issue 6 - Symposium on Legal Paraprofessionals*
Article 2

11-1971

The Legal Paraprofessional: An Introduction

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The Edncation of Legal Paraprofessionals: Myths, Realities, and Opportunities

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I. INTRODUCTION

The response to the challenge of training legal paraprofessionals is in a state of disarray. This is due not so much to poor planning on the part of the trainers as it is to the inherent difficulty of designing a training program for a role that as yet has no clear boundary lines. On the one hand, this difficulty invites the trainer to give full rein to his imagination in breaking new ground, but on the other hand, the instability in the area has been sufficiently great to scare off would-be participants from a much needed dialogue about how to develop training con-

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cepts. This article attempts to identify the threshold questions that need to be confronted before the trainer can proceed intelligently; to explore the major training trends in the country today; to examine some of the myths that may be clouding the issues; and finally, to highlight the opportunities for a creative input into the development of an educational process designed to launch a new career in the law.

II. THRESHOLD QUESTIONS AND DEFINITIONS

The first barrier for a trainer to surmount is his passion to define with precision the job functions that will be undertaken by his students. It is too early to frame any precise definition of these functions,[1] and furthermore, in some instances the very absence of a definition can be pedagogically opportune.[2] A second obstacle that the trainer must overcome is his temptation to divide the tasks performed by the legal paraprofessional into "legal" and "nonlegal" activities, or into the "unauthorized practice of law" and the "authorized practice of law." The former distinction is probably impossible to make,[3] while the latter distinction clearly will engage the distinguisher in a wasted expenditure of resources.[4] A third hurdle for the trainer is his anxiety about assigning a definitive title to the individual who will be the recipient of his training. The field is already suffering from an overdose of terminology: "lay practitioner,"[5] "sublegals and paralegals,"[6] "legal paraprofessionals,"[7] "legal executive,"[8] "legal service assistant,"[9] "ombuds-

1. An empirical study of what legal paraprofessionals are actually doing, however, has been made by the American Bar Association Special Committee on Legal Assistants. American Bar Association Special Committee on Legal Assistants, The Utilization of Legal Assistants By Law Firms in the United States: Liberating the Lawyer, Preliminary Draft, June 1971. For a discussion of other important questions that have not been satisfactorily answered see notes 174-75 *infra* and accompanying text.

2. *See* p. 1086 *infra*.

3. K. LLEWELLYN, JURISPRUDENCE 4 (1962). *See also* Nelson, *Drafting of Real Estate Instruments: The Problem from the Standpoint of the Realtors*, 5 LAW & CONTEMP. PROB. 57, 59 (1938).

4. *See* ABA CODE OF PROFESSIONAL RESPONSIBILITY EC 3-5 (1969).

5. Robinson, *Appearances by Laymen in a Representative Capacity Before Administrative Bodies*, 5 LAW & CONTEMP. PROB. 89, 96 (1938).

6. R. YEGGE, W. MOORE & H. HOLME, NEW CAREERS IN LAW ii (1969).

7. T. Ehrlich & B. Manning, Programs in Law at the University of Hawaii 10 (Dec. 1970). *See also* Ehrlich & Headrick, *The Changing Structure of Education at Stanford Law School*, 22 J. LEGAL ED. 452, 456 (1970); R. White & J. Stein, Paraprofessionals in Legal Services Programs: A Feasibility Study 14 (Dec. 1968) (Report of the National Institute for Justice and Law Enforcement to the Legal Services Program, U.S. Office of Economic Opportunity); Rothmyer, *The Emergence of the Paraprofessional*, JURIS DOCTOR 14 (Mar. 1971).

8. INSTITUTE OF LEGAL EXECUTIVES, BECOMING A LEGAL EXECUTIVE (1970). The Institute, which is based in London, trains persons to work for solicitors. They are known not as solicitors or barristers but as legal executives. *See also* Q. JOHNSTONE & D. HOPSON, LAWYERS AND THEIR

man,"[10] "lay advocate,"[11] "legal nurse,"[12] "legal technician,"[13] "legal counselor,"[14] "lay counselor,"[15] "legal assistant,"[16] "legal administrative technician,"[17] "lay assistant,"[18] "lay representative,"[19] and so forth.[20]

With great hesitancy, this article uses the term "legal paraprofessional." The term is used not so much because it necessarily is destined to become the household phrase of this field, but because it generically carries with it a broad frame of reference. Thus, a legal paraprofessional may be described as an individual who: (1) is not a licensed attorney;[21]

WORK: AN ANALYSIS OF THE LEGAL PROFESSION IN THE UNITED STATES AND ENGLAND 40 (1967); Sproul, *Use of Lay Personnel in the Practice of the Law: Mid-1969*, 25 BUS. LAW. 11 (1969).

9. G. Cooper & M. Rosenberg, Legal Service Assistants: Report on Legal Training Phase of a Joint Demonstration Program 1969-1970 (1970). *See also* G. Cooper & M. Rosenberg, Institute for Legal Service Assistant's Manual (1969).

10. G. HAZARD, THE OMBUDSMAN: QUASI-LEGAL AND LEGAL REPRESENTATION IN PUBLIC ASSISTANCE ADMINISTRATION No. 3 (1969) (Research Contributions of the American Bar Foundation).

11. Sparer, Thorkelson & Weiss, *The Lay Advocate*, 43 U. DET. L.J. 493 (1966). *See also* J. Martin, J. Fitzpatrick, & R. Gould, Delinquent Behavior: A Structural Approach 188-89 (1969).

12. Early, *The Need for Legal Nurses*, 74 CASE & COM. 34 (Sept.-Oct. 1969).

13. Hennessey, *Develop Legal Technicians*, 7 L. OFFICE ECON. & MGT. 257 (1966).

14. Weil, *Grant Used to Train Laymen as Legal Advisers on Rights*, Washington Post, March 6, 1971, § B, at 1, col. 1.

15. N.Y. Times, Dec. 1, 1970, at 20, col. 4.

16. Brown, *The Education of Legal Assistants, Technicians, and Paraprofessionals*, 22 J. LEGAL ED. 94 (1969). *See also* Brown, *The Authorized Role of the Legal Assistant*, 36 UNAUTHORIZED PRACTICE NEWS 9 (1971).

17. Smith, *Vertical Expansion of the Legal Service Team*, 56 A.B.A.J. 664 (1970).

18. Special Committee on Lay Assistants for Lawyers, American Bar Association, Status Report (Jan. 1969). *See also* Fuchs, *More Effective Use of Lay Personnel in the Law Office*, 7 LAW NOTES 7 (Oct. 1970); Ryan, *Use of Lay Assistants by Larger Law Firms*, 20 LEGAL ECON. NEWS 1 (Apr. 1969).

19. 58 MICH. L. REV. 456 (1960).

20. *See* W. STATSKY & P. LANG, THE LEGAL PARAPROFESSIONAL AS ADVOCATE AND ASSISTANT: ROLES, TRAINING CONCEPTS AND MATERIALS 3-4 (1971) (published by the Center on Social Welfare Policy and Law, Columbia Law School; *reprinted in* NATIONAL CLEARINGHOUSE FOR LEGAL SERVICES, INC., A COMPILATION OF MATERIALS FOR THE LEGAL ASSISTANT AND THE LAY ADVOCATE (M. Ader ed. 1971)). *See also* Fishman & Porter, A Comprehensive Bibliography on New Careers and the Use of Subprofessionals in Human Services (1968).

21. There are some foreign attorneys not licensed to practice in the United States who work in American law offices and whose function is equivalent to that of a legal paraprofessional. *See, e.g.*, Mitgang, *The Storefront Lawyer Helps the Poor*, N.Y. Times, Nov. 10, 1970 (Magazine) at 34. In large law firms there are inevitably some attorneys who perform tasks demanding fewer skills than the tasks performed by attorneys at the partner level. The difference between the activities of legal paraprofessionals and the tasks performed by attorneys at the bottom of the law firm hierarchy is often slim. Harry Hennessey strongly advocates the use of unlicensed law school graduates for legal paraprofessional work: "Another excellent potential source of legal technicians are the young men who have not succeeded in passing the bar examination. Why should law firms spend all their energies competing for young lawyers in a very tigbt market and then have these young lawyers doing semiclerical work? Wouldn't it be much more practical to make room for the boys

(2) is not a law student clerking for a lawyer during his law school years; (3) is not a legal secretary, at least to the extent of a legal secretary's typing and appointment-keeping functions; (4) is engaged directly or indirectly in an agency relationship designed to respond to the actual or potential "claims" of third parties that arise out of that broad arena called "the law;"(5) performs activities that hitherto were performed by lawyers; (6) undertakes activities that lawyers have hitherto failed to undertake but that we "normally" would have expected lawyers to perform;[22] (7) may be an employee of, or otherwise responsible to, a lawyer; and (8) may operate independently of a lawyer. Admittedly, this is a broad definition. It must necessarily be so, however, because of the range of educational[23] programs with which this country has experimented to date.

More importantly, the term "legal paraprofessional" is used because it raises those imponderables to which we need to direct our attention.[24] We do not know what "legal" means, or, more accurately, we do not know what it does not mean.[25] The prefix "para" also gives us pause, because there are so many definitions to choose from; among them are "beside," "alongside of," "closely resembling," "involving substitution," and "beyond."[26] Finally, what do we mean by a "professional?"[27]

This last question forces us to confront an even more fundamental question. Does a paraprofessional work with a professional or does he

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who have had a rough time on the bar examination? While they could never be partners, they could develop a great proficiency in a narrower field of the law and as long as they were under supervision of a lawyer they should be able to perform a great deal of valuable service, both to the public and to the profession." Hennessey, *supra* note 13, at 259.

22. For example, architects prepare and interpret construction contracts for their clients. Q. JOHNSTONE & D. HOPSON, *supra* note 8, at 347-48. Other examples are prison social workers and jailhouse lawyers who often help inmates with their legal problems when lawyers are either not available or not trusted. Jacob & Sharma, *Justice after Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process*, 18 U. KAN. L. REV. 493, 591, 594 (1970). *See also* Johnson v. Avery, 393 U.S. 483 (1969) (legitimizes certain activities of the jailhouse lawyer when a licensed attorney is not available); Note, *The Right to Non-Legal Counsel During Police Interrogation*, 70 COLUM. L. REV. 757 (1970).

23. The words "training" and "education" are used interchangeably throughout the article. No attempt has been made to limit the word "training" to a trade school orientation, or the word "education" to a liberal arts orientation.

24. In discussing any new career in law, such as the legal paraprofessional, one is forced into painful chores of definition and redefinition.

25. *See* text accompanying notes 2-4 *supra*.

26. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1634 (1961).

27. *See* A. CARR-SAUNDERS & P. WILSON, THE PROFESSIONS (1933); W. MOORE, THE PROFESSIONS: ROLES AND RULES (1970); L. TAYLOR, OCCUPATIONAL SOCIOLOGY 115 (1968). *See also* Goode, *The Librarian: From Occupation to Profession*, 31 LIBRARIAN Q. 306, 310 (1961); Snow, *Professional Course for the Legal Secretary*, 8 L. OFFICE ECON. & MGT. 503 (1968).

supplant him? This is the primary unknown in the field today and is the basis for many of the controversies that exist. When the term "paraprofessional" is used, does it simply mean that the established professions —for example, medicine, education, and law—need help,[28] or is it a signal that society is searching for alternative mechanisms to deliver professional services because the professions themselves have failed to provide the quality and quantity of services expected in exchange for their exclusive rights to practice? Happily, there is no easy answer to this question, because insofar as "paraprofessionalism" has the potential of being *both* an aid and a threat to the professions, society will be the beneficiary regardless of the ultimate direction taken. When a professional receives aid from a paraprofessional, services may be delivered more efficiently and economically. In addition, the use of paraprofessionals poses a threat to the professional by encouraging society to reexamine his role. This examination would be valuable for society, but it would be even more beneficial to force the professional himself to question the wisdom of possessing exclusive practice rights. We should resist any attempt to limit the challenge of paraprofessionalism to merely improving and assisting the professions as presently structured. The term "legal paraprofessional," therefore, is used throughout this article to denote the duality of the challenge posed by paraprofessionalism to the legal profession. The issue is not simply whether the legal profession should be bolstered, but also whether the time has come to expand the legal profession. It will be within the context of this duality that this country's programs for educating legal paraprofessionals will be discussed.

III. RECRUITMENT CRITERIA

How true is it that law schools do not train law students—that they simply pick candidates for the bar examination? How cynical is it to

28. *See* G. BOWMAN & G. KLOPF, NEW CAREERS AND ROLES IN THE AMERICAN SCHOOL: A STUDY OF AUXILIARY PERSONNEL IN EDUCATION (1967); U.S. EMPLOYMENT SERVICE HEALTH CAREERS GUIDEBOOK (1965); American Dental Association, Annual Report on Dental Auxiliary Education 1967/68 (1968); American Dental Ass'n Council on Dental Education, Requirements for an Accredited Program in Dental Hygiene Education (1965); American Institute of Architects, A Program for Architectural Technicians' Training (1968); H. Huckle & M. Laners, Training for New Careers in the Community College: Education, Police, Recreation, Welfare, Parole/Probation (1969) (New Careers Research Project, Seattle University); A. Trebach, Report on Conference on Subprofessionals in Police Departments (Jan. 1967) (Institute for Youth Studies, Howard University); Vera Institute of Justice, New Health Manpower for New York City (Oct. 1970); Burnham, *Dental Hygienist in Dental Practice*, 60 J. AM. DENTAL ASS'N 367 (1960); N.Y. Times, Mar. 22, 1971, at 1, col. 1; Garfield, *The Delivery of Medical Care*, 222 SCIEN. AM. 15 (Apr. 1970); Fuchs, *Why More Physicians?*, N.Y. Times, Dec. 19, 1970, at 27, col. 1.

suggest that the great institutions of learning are great because they recruit great students? Is it true that when we examine our knowledge of the recruitment-education-placement cycle, we find that we have considerable understanding of recruitment and placement, but that we know almost nothing about what takes place between these two poles? Whatever the answers to these questions may be—if indeed the not-too-subtle touch of rhetoric in each of the questions calls for any answers at all—the fact remains that the impact of recruitment on educational programs for legal paraprofessionals is monumental.

Program planners initially need to determine what qualifications they want their trainees to possess before they enter the training program. Should they have a high proficiency in the liberal arts skills of reading and writing, as arguably evidenced by master's degrees, bachelor's degrees, associate's degrees, and high school diplomas? Some training programs have recruited from groups of people with excellent academic credentials.[29] Other training programs have recruited individuals who are undereducated[30] and, in some cases, the so-called underprivileged and disadvantaged.[31] From which groups should the trainees be selected?[32] There is no single answer to this question. A number of factors, varying from program to program, influence the selection criteria. In many instances, the funding sources are of paramount importance. Monies available, for example, from the Office of Economic Opportunity, the Department of Labor, and the Department of Health, Education and Welfare, frequently may be used only for training people below the poverty line who are underskilled and undereducated. Another factor influencing recruitment criteria is the nature of the job for which the training is being offered.[33] Will the legal paraprofessional be doing con-

29. *See, e.g.*, Institute for Paralegal Training, This is a Lawyer's Assistant (1970). Plans are under way at University Extension, University of California at Los Angeles, to inauguarate a legal paraprofessional program to train legal specialists in probate work. *See* p. 1118 *infra*.

30. *See, e.g.*, Holme, *Paralegals and Sublegals: Aids to the Legal Profession*, 46 DENVER L.J. 392, 409 (1969) (referring to the program at Dixwell Legal Rights Association and quoting from D. Hunter, Research Report on Dixwell Legal Rights Association, New Haven, Connecticut (Summer 1967)). For a condensed version of this report see F. RIESSMAN & H. POPPER, UP FROM POVERTY, (1968). *See* p. 1121 *infra*.

31. McGee, *Lay Advocacy and 'Legal Services to Youth': Summaries on the Use of Paralegal Aides*, 47 J. URBAN L. 127, 129 (1969). *See also* H. Huckle, Strategies of Change: Training for New Careers (1969) (Seattle University, New Careers Project); Institute for Youth Studies, Howard University, & U.S. Dept. of Labor, Manpower Administration, Experimental and Demonstration, New Careers for the Disadvantaged in Human Service (1970) (Findings No. 9); National Institute of Law Enforcement & Criminal Justice, Rehabilitative Planning Services for the Criminal Defense, PR 70-3 (July 1970).

32. *See generally* W. STATSKY & P. LANG, *supra* note 20, at 29.

33. *See generally* Selinger, *Functional Division of the American Legal Profession: The Legal Paraprofessional*, 22 J. LEGAL ED. 22 (1969).

siderable writing, as required in the preparation of preliminary pleadings for lawyers,[34] or will he be engaged primarily in oral advocacy, as demanded in representation of welfare clients at hearings?[35] It might be argued that an individual performing the former tasks should come to the training program with significant reading and writing skills, whereas those undertaking the latter tasks will not need these traditional talents. This argument, however, is specious. First, it is almost impossible to identify any function of a legal paraprofessional that does not tax his reading and writing abilities. The welfare advocate, for example, must be able to read and understand the constantly changing welfare regulations, and to write letters and reports on behalf of the welfare client.[36] Furthermore, even if it were possible to isolate functions that call only for oral skills or for writing skills, it is unlikely that a legal paraprofessional would be satisfied with such a limited role, and it would be difficult to find an employer who would be able to keep him busy over a long period of time.[37] The "good" legal paraprofessionals are able to talk, to read, and to write. Secondly, it is simply inaccurate to maintain that these skills are possessed only by the holders of degrees and diplomas,[38] or that individuals without academic credentials cannot develop these skills. It undoubtedly is easier and safer for the recruiter to search out those with the most credentials, but this unimaginative approach will lock out a great many qualified people.

Perhaps the most significant recruitment criterion is one geared to the capacities of the training program. What will the program offer? Will it simply be a short-term operation in which the trainee will be drilled, for example, in the techniques of drafting the myriad papers involved in an uncontested divorce? If so, then the recruiters may have to seek candidates who already have a proficiency in the liberal arts skills.[39] Or will the training program be able to provide its students with remedial assistance? If the trainers are able to take on this challenge in conjunction with their efforts to impart the "content knowledge" of a legal paraprofessional's job, then the pool of potential trainees is vastly increased.

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34. *See, e.g.*, Turner, *The Effective Use of Lay Personnel*, 38 KAN. B. A.J. 301 (1969).

35. *Cf.* Senior Citizens Project, California Rural Legal Assistance, The Fair Hearing (1970) (unpublished training outline in the file of the Program for Legal Service Assistants, Columbia Law School).

36. W. Statsky & P. Lang, *supra* note 20, at 10-20.

37. *See* p. 1093 *infra*.

38. *See generally* F. Newman, W. Cannon, S. Cavell, A. Cohen, R. Edgerton, J. Gibbons, M. Kramer, J. Rhodes, & R. Singleton, Report on Higher Education (1971) (advance draft).

39. Of course, any program that utilizes screening mechanisms, such as test scores and prerequisite credentials, has an obligation to confront the issue of cultural bias.

Finally, the recruiters and trainers must assess the capacity of the applicants to cope with the phenomenon of time. In all jobs, the importance of the worker's ability to develop a sense of scheduling and availability consistent with the work habits of his coworkers is axiomatic. The legal paraprofessional is no exception. The problem of time is even more complex because of its interrelationship with the worker's motivation and with the way he feels about himself. Those trainers who posit that training people to develop a sense of time is impossible or who feel that instilling this ingredient is beneath their energies do their programs a disservice. Moreover, trainers should not delegate to the recruiters the duty of recruiting trainees who already are sufficiently motivated to arrive at work on time, to keep appointments, and to leave their personal problems on the street side of the punch clock. This is not to suggest that legal paraprofessionals are any more prone to faulty motivation than other workers; instead, it is to alert the trainers to the danger of assuming motivation as a given and of failing to take some responsibility for its absence in any of their graduates.

These threshold questions on recruitment are critical. If they are not clearly resolved at the outset and the overall program runs into difficulty later, then the trainers are apt to blame the recruiters for selecting poor trainees, and the recruiters are apt to blame the trainers for failing to do the job of training.

IV. Training The Legal Assistant and the Lay Advocate

In this examination of what legal paraprofessionals should be taught, the legal assistant, who usually works directly under a lawyer's supervision, will be treated separately from the lay advocate, who often works independently of a lawyer. This is not because the two categories of legal paraprofessionals are fundamentally different in terms of what they need to know to perform their jobs. The discussion of "systems" in reference to the legal assistant also will apply to the lay advocate, and the examination of the "pre-clinical experience" in reference to the lay advocate also will apply to the legal assistant. The separate treatment is primarily a matter of convenience for purposes of analysis.

Two points need to be reemphasized at the outset since they apply both to legal assistants and to lay advocates. First, the liberal arts skills of reading and writing are critical to all legal paraprofessionals. A training program must either recruit people who are already proficient in these skills,[40] or creatively address itself to the challenges of remedia-

40. *See* note 29 *supra*. The Institute for Paralegal Training uses this approach. *See* p. 1120 *infra*.

tion.[41] Secondly, it is axiomatic that any training program will collapse if the students come into the program without adequate motivation or, much more to the point, if the training program is counterproductive to the development of a student's motivation. In a very real sense, education is the identification, inculcation, and channeling of motivation. If this is done well, then there is strong support for the argument that the acquisition and execution of the content of a worker's job will take care of itself. This argument is particularly persuasive in the case of the legal paraprofessional because of the difficulty in defining for him the precise nature of the content of his job. This very difficulty requires that the trainer be able to shift the focus of his training from the content of the job to the personality of the trainee. At the end of a training program, the self-image of the trainee may be far more important than his facility to draw up a preliminary draft of a will for his employer or to present the "right" kind of documentary evidence at an unemployment compensation hearing.

The suggestions in the following two subsections are aimed primarily at assuring that the training program does not do more harm than good by thwarting the development of the trainee's motivation.

A. The Education of Legal Assistants

1. *The Myth of "Routine Tasks."*—Educators and practitioners have stressed that effective use of legal assistants depends on the "systemization" of law office procedures.[42] Practitioners who plan to use the paraprofessionals, therefore, must be taught that the practice of law should be a "business"[43] grounded in solid principles of organization.[44] Unfortunately, this emphasis on systemization has led to the conception of the legal assistant as the master of the "routine." For example, the Association of American Law Schools Committee to Study the Curriculum has stated: "[P]ara-professional training must be primarily concerned with how the mechanical tasks of the law are to be performed, not with why, nor with the judgmental questions of which tasks should be performed."[45]

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41. *See* p. 1117 *infra*. The College for Human Services follows a program that includes remedial training.

42. Turner, *Effective Use of Lay Personnel Revisited*, 1970 L. OFFICE ECON. 115 (calls for "the scientific method in the law office"). Reprints of Turner's article are available from the ABA.

43. Strong, *Small Law Firms*, in AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON LEGAL ASSISTANTS, THE UTILIZATION OF LEGAL ASSISTANTS BY LAW FIRMS IN THE UNITED STATES: LIBERATING THE LAWYER, 44 (June 1971) (Preliminary Draft).

44. *See generally*, Hourigan, Today's Lawyer in a Changing Society, in American Bar Association Third National Conference on Law Office Economics and Management (1969).

45. Association of American Law Schools Comm. to Study the Curriculum, Individual Training for the Public's Profession 36 (Sept. 1970) (Tent. Draft No. 2).

Other writers have said that the legal assistant is involved in tasks that are "highly standardized"[46] and that he will free the lawyer from "menial lay tasks"[47] that are "essentially repetitive."[48] If this is true, then the job of training is simply one of preparing people for relatively low-skilled responsibilities—of fitting the trainees into a "law-by-the-numbers" approach.

If the result of the systems approach is that legal assistants will perform only the routine, mechanical tasks in a law firm, then the result is grossly misguided. This is not to say that the legal assistant should have nothing to do with the so-called routine functions of a law practice. In fact, forebears of the legal assistant historically have performed the most routine and standardized tasks in law offices.[49] The mechanical

46. M. Comras & W. Willier, Consumer Law Training and Practice Materials for Lay Persons (Jan. 1971).

47. Fuchs, *More Effective Use of Lay Personnel in the Law Office*, 7 LAW NOTES 7 (1970).

48. *Lawyers: Call for Restructuring*, TIME, Mar. 29, 1968, at 76.

49. It is not clear at what point in history the lawyer began making use of nonlawyer office assistants. In colonial days the lawyer often had an apprentice, but the apprentice usually did not assist in the practice of law. His main function was to prepare copies of documents in longhand. With the coming of the Industrial Revolution, however, many law offices began to specialize and became concerned with organization and efficiency. This desire for specialization and efficiency led to an influx of a wide variety of trained lay assistants: typists, switchboard operators, librarians, investigators, and others. In addition, supportive services were provided by such specialists as certified accountants, fiduciary accountants, tax and investment specialists, and research assistants. All these persons actively assisted the lawyer in some aspect of this law practice. The addition of new personnel with new functions brought about the need for an in-house organization specialist. Many offices hired a nonlawyer to oversee the operation of the office and designated him the "office manager." His immediate superior was usually the managing partner of the law firm. Other supervisory roles also were created, such as head stenographer and finance manager. Thus lawyers no longer personally directed their nonlawyer assistants. This preoccupation with organization and efficiency, which reached a high point in the early part of the twentieth century, was not without its critics. It was claimed that the lawyer had shifted from a professional to a "business getter;" that the lawyer no longer gave personalized legal services; that legal affairs now were handled by a "corporate machine;" and that the practice of law consisted of preparing forms according to office procedure manuals. Whatever the lawyer could standardize allegedly became part of an assembly-line system of legal services, handled chiefly by a "small army" of salaried nonlawyer assistants. In spite of this criticism, however, law offices continued to make extensive use of legal assistants and by no means relegated them to the performance of routine tasks. The lawyer may have hired his nonlegal personnel to relieve himself of some of his routine chores, but once his assistants demonstrated ability, they were delegated more demanding responsibilities. A recent study of a Wisconsin law office showed, for example, that women who began as secretaries or bookkeepers were given the responsibility of recording minutes of directors' meetings, issuing proxy statements, supervising the filing of tax returns for the organization, and attending to other significant administrative matters. Dodge, *Evolution of a City Law Office*, 1955 WIS. L. REV. 180, 187. *See generally*, J. HURST, THE GROWTH OF AMERICAN LAW: THE LAW MAKERS 1-2 (1950); R. SWAINE, THE CRAVATH FIRM AND ITS PREDECESSORS: 1819-1948 (1948); Dawson, *Frankenstein, Inc.*, 19 THE AMERICAN MERCURY 274 (1930); Lundberg, *The Law Factories: Brains of the Status Quo*, 179 HARPERS MAGAZINE 180 (1939); Smith, *The Business Getter*, 4 THE AMERICAN MERCURY 199 (1925).

tasks, however, are only the legal assistant's starting point, from which he should move quickly to the more difficult tasks that call for a full range of judgmental abilities. If he does not make this move, then neither he nor his employer will tolerate the other very long.[50] It is a false spectrum that places the lawyer's competence in judgmental matters at one end and the legal assistant's competence in mechanical tasks at the other end. Rationalizing the practice of law into systems that accommodate the legal assistant is fine, as long as the legal assistant's needs, deficiencies, and ambitions as a human being are not overlooked.

The potential weak link in the momentum toward systemization is that the program planners may assume that standardization will eliminate the occasions for the legal assistant to make independent judgments. These occasions may be minimized, but they can never be eliminated. On paper, it is possible to conceptualize the legal assistant as part of a legal service delivery system based on controlled assembly-line principles, in which the legal assistant becomes a specialist in the routine and the repetitive. In fact, this system will break down if it downplays the role of the legal paraprofessional as a significant decision-maker within the law office. The lawyer will find in practice that the most useful legal assistant is one who can be trusted to make decisions under general supervision. Any attempt at systemization must take account of this fact. Moreover, both the legal assistant and the lawyer will insist on it. The legal assistant can be trained to handle the so-called "routine"[51] tasks for which the lawyer is overtrained. The legal profession, however, must be prepared to see him go far beyond the "routine."[52] Exactly how far will depend more upon the working relationship that develops between the lawyer and the legal assistant than upon any preordained, systemized plan. The most that can be achieved from the system or the plan will be that it will serve as a very useful starting point and frame of reference from which continued development can take place.

50. For example, at the San Francisco Pilot Project, run by the Special Committee on Legal Assistants for Lawyers, the trainers used a film in the training of the legal assistants. "This film with its references to 'transferring the drudgery to the secretary' was not very popular with the legal assistants." ABA Special Comm. on Lay Assistants for Lawyers, San Francisco Pilot Project Report: Training for Legal Assistants 6 (1970) (Preliminary Draft) (the name of the Committee was subsequently changed to the Special Committee on Legal Assistants).

51. One senior partner in a Wall Street firm recently defined a "routine" task as one that someone else in the office performs.

52. For statistics on how legal assistants are being used see AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON LEGAL ASSISTANTS, *supra* note 43, at 10-12. It is to be anticipated that as legal assistants gain competence in estate planning, real estate transactions, blue sky work, and so forth they themselves will be given assistants who will handle the more routine functions of a legal assistant's job.

2. The Difference Between a Lawyer and a Legal Assistant.—Any training program should view the role of the legal assistant as similar to that of the lawyer, because both engage in activities that range from repetitive tasks to those calling for judgment and independent initiative. If this view is not taken, then not only will legal assistants be poorly motivated in, and indeed hostile to, a structure in which they receive only menial assignments, but also the attorneys will find that the legal assistants have added nothing more than the traditional clerical personnel have always provided.

What then is the difference between the lawyer and the legal paraprofessional? The conceptual difficulty of determining the answer to this question of where the line is drawn is monumental. It is submitted, however, that the profession is overly preoccupied with this question. The only answer is that the legal paraprofessional is someone who does anything that a lawyer lets him do, up to and including everything that a lawyer does. A resolution of the boundary question will come in the day-to-day interaction between lawyer, legal paraprofessional, and client. It cannot be blueprinted in advance. The real issue is who has final responsibility for what the legal paraprofessional does. To whom is he accountable? If the problem is approached from this perspective, there is less danger that the legal paraprofessional will be undertrained or indeed mistrained. Legal paraprofessional training, therefore, should not have as its goal the training of an individual to perform only mechanical tasks. The training should be geared to a full development of the legal paraprofessional's decision-making faculties. This training approach, which envisions no inherent difference in what the lawyers and legal assistants do, is bound to provoke some reaction from the organized bar, which might feel that it will lead to the unauthorized practice of law by legal assistants. Similarly many members of the bar would agree with the following observation by Johnstone and Hopson:

> It appears to be axiomatic in the United States that whenever a particular task or combination of tasks performed by lawyers grows to mass volume proportions, and the mass demand promises to continue, laymen will eventually take over performance of these tasks unless deterred from doing so by unauthorized practice laws. In part this results from more efficient lay specialization and standardization and from more aggressive lay advertising and solicitation.[53]

The axiom has been borne out in many areas: title insurance companies, real estate brokers, negligence insurance companies, fiduciary trust companies, trust and estate departments of banks, incorporating agencies, collection agencies, insurance adjusters, mortgage review companies,

53. Q. JOHNSTONE & D. HOPSON, *supra* note 4, at 157-58.

law publishing companies, accounting firms, architectural associations, credit reviewers, and private investigators.[54]

The current stance of many in the profession, however, is to stop fighting the existence of lay competitors and to begin competing with them at the level of organization and management,[55] particularly through the effective utilization of nonlawyers. The presence of these nonprofessional specialists in the marketplace may force lawyers to lower the cost and improve the efficiency of the services they render to their clients in order to meet the competition of these groups.[56] Since high-sounding ethical pronouncements from the bar will neither abate the demand that paraprofessionals are filling nor prevent their utilization, the challenge for the legal profession is to train legal assistants so that they can be fully integrated into the practice of law according to a rational systems approach.[57]

3. Curriculum Approaches to a Training Program for Legal Assistants.—How then should this training be effected? Substantive law courses on the college level for legal assistants can provide a useful background framework. Given the probable abstract nature of these courses, however, their practical value will be limited unless the trainees already have had a number of years of experience in a law office, which would be invaluable and would enable the trainee to grasp the abstractions and to put them in perspective. The difficulty with the approach of the proposed curriculum for training legal assistants advanced by the Special Committee on Legal Assistants of The American Bar Association,[58] is that it does not place enough emphasis on experience as a pedogogic tool. Although the Committee recommended that a "student internship" for legal administrators[59] be taken during the summers following the second and third years of the four-year program,[60] it made

54. *See* Symposium, *The "Unauthorized Practice of Law" Controversy*, 5 LAW & CONTEMP. PROB. 1 (1938); Q. JOHNSTONE & D. HOPSON, *supra* note 8, at 13-356.

55. For example, the currently blossoming phenomenon of the association or corporation run by laymen and manned by lawyers and laymen shows how the principles of personnel management of lay assistants may be effectively utilized outside the traditional law office. This phenomenon has provoked considerable reaction from the organized bar and has inspired a substantial volume of literature on the "unauthorized practice of law." *See, e.g.*, Symposium, *supra* note 54. As early as 1913, George W. Bristol criticized the assumption by these groups of many services formerly provided by lawyers. *See* Bristol, *The Passing of the Legal Profession*, 22 YALE L.J. 590 (1913).

56. *See* Sproul, *supra* note 8, at 22.

57. *See generally* K. Strong, An Analysis of Law Firm Management (1970).

58. ABA Special Comm. on Legal Assistants, Proposed Curriculum for Training of Law Office Personnel 13 (Apr. 1971) (preliminary draft).

59. *Id.*

60. ABA Special Comm. on Legal Assistants, *supra* note 58, at 18.

the internship training "optional" for the two-year legal assistant program.[61] Even summer internship, however, is not enough. There is a need to integrate a clinical element into the substantive law courses. For every course there should be an element of field work; thus, each classroom hypothetical should give way to the "real" law office problem. This is not necessarily to say that every institution training legal assistants should adopt the cooperative model of education.[62] Instead, it is argued that whenever possible a course should be structured around a clinical experience in which a student not only gets to see the substantive aspects of the course within the context of live situations, but also gets to feel the responsibility of performing a particular task.[63] It is this experience that gives meaning to courses on "Real Estate," "Legal Research," and "Business Organizations."[64]

Besides their abstract nature, another problem with college curricula for legal assistants or legal technicians is their compartmentalized focus. Meramec Community College, for example, has separate courses in "Income Taxation," "Law Office Management," and "Legal Accounting."[65] This tends to follow the traditional approach of isolating the component parts of an experience for the purpose of analysis. Consideration should be given to teaching the courses on a more integrated basis. Instead of semester courses on individual substantive topics, why not have courses or seminars of shorter and more flexible duration, such as one on "The Corporate Client as Taxpayer," which would deal with the "flow" of a legal assistant's responsibilities in management, accounting, and tax law? Considerable room exists for innovation both in the classroom and in on-the-job training settings. It would be extremely unfortunate for curriculum developers to fall back on the unimaginative approaches that burden so much of contemporary education.

B. The Education of Lay Advocates

Lay advocates historically have thrived in a dynamic environment.[66] Thus the first responsibility of a lay advocacy training program is to

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61. *Id.*

62. *See* pp. 1112 & 1117 *infra*.

63. *See* Kitch, Clinical Education and the Law School of the Future in Clinical Education and the Law School of the Future 14 n.9 (E. Kitch ed. 1970) (The University of Chicago Law School Conference Series No. 20) (refers to the Mock Law Office Competition to develop skills in preventive law and planning).

64. *See* note 119 *infra* and accompanying text.

65. *See* notes 124-25 *infra* and accompanying text.

66. During the American Colonial period, almost anyone could become an attorney or judge without having to meet rigorous admission requirements. Toward the end of the eighteenth century,

recognize that the lay advocate is an action-oriented individual, whose arena is the claims process. This legal paraprofessional argues before an unemployment compensation board on behalf of a recently laid-off

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for example, the Massachusetts legislature authorized litigants to be represented in court by "attorneys-in-fact" who were appointed by the litigants and who were not regularly admitted "attorneys-at-law." The distinction between layman and professional became meaningful only in the nineteenth century when the professionals became organized, acquired a monopoly over special legal business, and developed protective devices in the form of laws regulating unauthorized practice. Today this monopoly, at least with respect to court representation of clients, is almost absolute, except in a few states such as West Virginia, where laymen are allowed to represent clients in court in limited instances. W. VA. CODE ANN. §§ 50-4-20 to -21 (1966) (on the Justice of the Peace Court). A number of courts also permit a layman to advocate for a client in an informal, friend-of-the-court fashion, without being a substitute for a lawyer. *See generally* 1 A. CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA (1965); R. POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES (1953); A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921); VERA INSTITUTE OF JUSTICE, THE MANHATTAN COURT EMPLOYMENT PROJECT 12, 23 (1970); C. WARREN, HISTORY OF THE AMERICAN BAR (1911); Carmody, *Former Addicts Advising Courts on Drug Cases*, N.Y. Times, May 31, 1971, at 17, col. 5; Zillmer, *The Lawyer on the Frontier*, 50 AM. L. REV. 27 (1916).

The reverse is true with respect to quasi-judicial tribunals, which generally allow laymen to appear before them as advocates. Consequently, the growth of administrative agencies in the twentieth century has provided the major impetus to the development of the lay advocate role as advisor and intermediary. The extraordinary complexity of access routes to agency benefits has created a great need for the services of an agency specialist who can assist the public in its dealings with the agency. Lawyers have not been able to meet this demand because there are not enough lawyers available and because the potential remuneration from a multitude of small claims is not sufficient to entice lawyers. Lay advocates thus have emerged as a major source of manpower to respond to this need. Grass roots organizations, such as ward clubs, have acted as intermediaries for voters with governmental agencies by providing benefits including free income tax advice and assistance in obtaining veteran's benefits. Trade unions have made referral and lay advocacy services available, particularly during strikes when union members have a pressing need to tap whatever benefits are available from governmental agencies. During the 1950's, for example, the United Auto Workers of America made a "Union Counselor" available to assist striking employees in obtaining unemployment compensation and other benefits. The UAW still employs individuals in this capacity who undergo a specified in-house training curriculum. Other labor organizations, such as the AFL-CIO, now provide their members with intermediary services through the union or rehabilitation counselor. *See generally* D. MCKEAN, PARTY AND PRESSURE POLITICS 26 (1949); C. MERRIAM & H. GOSNELL, THE AMERICAN PARTY SYSTEM: AN INTRODUCTION TO THE STUDY OF POLITICAL PARTIES IN THE UNITED STATES (3d ed. 1946).

The administrative agencies also have encouraged the development of lay advocacy by establishing standards of admission to practice before them. Laymen are permitted to practice before a number of federal, state, and local agencies, although often it is required that they first demonstrate their skills through a testing procedure. For an extensive list of the federal agencies that permit laymen to practice before them see F. VON BAUR, STANDARDS OF ADMISSION TO PRACTICE BEFORE FEDERAL ADMINISTRATIVE AGENCIES (1953) (also published in *Practice of Laymen Elsewhere in the Government*, 15 FED. B.J. 227 (1955)). One prominent example is the United States Department of Health, Education, and Welfare, which permits welfare recipients to be represented by nonlawyers during administrative Fair Hearings. 36 Fed. Reg. 3034 (1971). *See generally* Sperry v. Florida, 373 U.S. 379 (1963) (nonlawyer may represent patent applicants in Florida before U.S. Patent Office when authorized by Secretary of Commerce); Goldsmith v. Board of Tax Appeals, 270 U.S. 117 (1926) (CPA must ask for hearing to appeal denial of his application to practice before the Board); *Attorney Admission Requirements*, 7 LAW NOTES 4 (1970); Bailey, *Practice by*

worker;[67] petitions a judge, a district attorney, and a complainant to permit a young defendant to enter a job placement and counseling program as an alternative to the normal criminal justice system;[68] exerts pressure on a landlord to provide essential services for a tenant;[69] and tells a merchant that he should abide by his promise to come to a customer's home to repair his television without charge during the first ninety days.[70] The lay advocate's primary focus is people; his challenge is to deal with the resistance of people and institutions to change, and his task is to particularize the individual's needs in order that the third party may recognize and respond to the justice of the claim.

Clearly the form of training that the lay advocate receives should be in accord with the activism necessitated by his responsibilities. He cannot be trained from a book, and the passive nature of a lecture makes it of only limited value as a training tool. This is not to say that the lay advocate does not need to be well versed in the subject matter of his advocacy. On the contrary, his grasp of "the law" must be thorough. The question is, how should he come by this grasp? How should his education be structured so that it is in tune with the complexities of our legal system and the dynamism of interpersonal relations?

1. *The Training Program Should Be Participatory.*—The variety of tasks and work settings for the lay advocate is immense. Every lay advocacy program is likely to be different in terms of its resources, its loyalties, the priority of its objectives, and its tendency to ingratiate or

Non-Lawyers Before the United States Patent Office, 15 FED. B.J. 211 (1955); Gall, *Practice by Non-Lawyers Before the National Labor Relations Board*, 15 FED. B.J. 222 (1955); Gellhorn, *Qualifications for Practice Before Boards and Commissions*, 15 U. CIN. L. REV. 196 (1941).

The Office of Economic Opportunity has brought further encouragement to the concept of lay advocacy and, more importantly, has provided a source of funding for programs with a lay advocacy orientation. One significant concept that has grown out of the "war on poverty" is the training and employment of the poor to provide some serviees that hitherto had been provided exclusively by the professional. For example, many "nonprofessionals" have been employed in the health and teaching fields, and teams of "blockworkers" and "outreach workers" have been hired to assist the poor in their claims before social security, welfare, and health agencies. In 1969 the Division of Legal Services of the Office of Economic Opportunity convened a National Conference on Legal Paraprofessionals in Washington, D.C., to make recommendations to OEO on how it could lend guidance and support to the substantial corps of lay advocates already existing in the country. *See generally* F. RIESSMAN, STRATEGIES AGAINST POVERTY 37-40 (1969); J. STEIN, CONFERENCE ON LEGAL PARAPROFESSIONALS: DRAFT CONFERENCE REPORT (1971).

67. W. Statsky & P. Lang, *supra* note 20, at 15.

68. *See, e.g.*, Carmody, *Former Addicts Advising Courts on Drug Cases*, N.Y. Times, May 31, 1971, at 17, col. 1; Vera Institute of Justice, The Manhattan Court Employment Project, at 23 (1970); *cf. id.* at 12.

69. G. Cooper & M. Rosenberg, Legal Service Assistants, *supra* note 9, at 24-27.

70. Cahn & Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME LAW. 927, 934, 951 (1966).

antagonize those segments of society with whom it must deal. The uncertainty that results from not being able at the outset to define and predict the precise nature of the program is, on the one hand, cause to wonder whether any training is feasible. On the other hand, this uncertainty is an opportunity to ensure that the training program will be successful. The lay advocate trainees can be invited to participate fully in the evolving process of defining their own role. Since it is clear that the student most receptive to learning is one who is deeply involved in the learning process, what better way is there to involve a student than to make self-discovery the focus of his learning? What better way is there to tap the creativity of a student than to make him feel the responsibility for creating his own role? One possible way to implement this proposal is to require the student to submit at the end of his training period a thesis that describes his job, or at least his conception of its boundary lines. The key lesson to be absorbed by each student is the paramount importance of flexibility—being able to define and redefine his role in light of his constituency's needs and of the actions of third parties.

Trainers need to draw the trainees into a genuine learning partnership that will identify and work out the unknowns of the job. The training should not consist of an enunciation by the trainers of principles to be applied by the trainees, because such an approach casts the trainees only as receptors. The training instead should consist of an exploration of where the trainees are, where they want to go, and where they think they are able to go. This approach casts the trainees as initiators and enhances their self-respect. If the training program is able to foster this image in the trainee, the subject matter or content of the training program will almost take care of itself. In short, a goal of the training is the elevation of the self-respect of the trainees.

2. *The Training Program Should Have a Workshop-Clinical Orientation.*—While the students are undergoing formal training, there should be supervised, on-the-job work opportunities that feed directly into the classroom phase of instruction. Admittedly, obtaining temporary placements that are adequately supervised can be as difficult as it is expensive. The experiment in clinical education for lawyers has demonstrated this.[71] One way to provide experience but avoid the difficulties of providing temporary placements is by the creative use of audio-visual equipment and role-playing techniques.[72] All of the trainees could be

71. Kitch, *supra* note 63, at 5.

72. Adult Education Association of the U.S.A., How To Use Role Playing and Other Tools for Learning, Leadership Pamphlet No. 6 (1955). *See also* W. Statsky & P. Lang, *supra* note 20, at 94-98.

asked to play alternating roles of advocates, clients, and third parties in simulating the real thing and, through audio-visual equipment the trainees could hear or see their performances.

Some type of clinical experience is necessary in any lay advocate training program to generate an emotional response that will enable the trainee to deal with abstractions. Reading landlord-tenant law is as ineffective as listening to a lecture on the same topic. Before the training program introduces abstractions to the trainees, an experiential foundation must be laid in order to ensure absorption of the abstractions. If the beginning of the training includes courses in our legal system and an introduction to the law of the area of the trainee's work responsibility, the effect may be twofold: it may turn the student off, and it may cause him to become dependent on knowing the abstractions in order to perform his job. This dependence may be at the expense of the student's drawing on his own resources in the performance of his job, which, as any good clinical experience does, enables the student to identify his frustrations. Having experienced a real problem and having felt the extent of his ability to resolve this problem, the student is then ready to cope with the abstraction, to question a lecturer intelligently within the framework of a recent and vivid experience, and to decide, with his trainer, what he needs to know and how best to obtain this knowledge.

3. *The Training Program Should Be Grounded in the Student's Pre-Clinical Experience.*—The training program must firmly locate its starting point and frame of reference in the trainee. A substantial portion of the training program must be guided by the trainee's abilities and past experiences. Before the trainee is unleashed into a clinical program, the trainer must know the student's pre-clinical training experience, and, even more importantly, must make the trainee understand the value of his pre-clinical experience. Too many training programs for the lay advocate assume that he comes to the program *tabula rasa*, without ever having had lay advocacy experience. This not only is inaccurate but also counterproductive and condescending. What parent has not spoken up for his child before school officials? Who has not called upon simple and unsophisticated principles of self-advocacy at grocery stores, post offices, and even police stations? We live much of our lives asserting claims and trying to manipulate the responses to them. This is the very essence of lay advocacy. The trainees must be made to realize that they are not embarking on a bold new experiment in human services. Somewhat like the character in Molière who suddenly discovers that he has been speaking prose all his life, the lay advocate trainees need to perceive their jobs within the framework of their prior advocacy experiences.

One particular program that has incorporated this pre-clinical experience as an integral part of its training is the Neighborhood Youth Diversion Program in New York City.[73] In conjunction with the Vera Institute of Justice and the Institute for Social Research of Fordham University, the project created a paraprofessional judge role to provide a community forum for the resolution of disputes involving juveniles outside the regular New York criminal justice system.[74] The judges, called "Forum Judges," are community people who volunteer several nights a week to conduct "Forum Hearings" involving complainants and youngsters. Their jurisdiction is consensual in that all participants agree to attend the Forum and to abide by its recommendations.

The training program for the Forum Judges relied heavily on audio-visual facilities. Before any formal training in conflict-resolution and mediation took place, the trainees were asked to participate in a role-playing experience involving an adult and a youngster who were embroiled in a fictitious dispute. The job of the trainee was to "do anything he wanted" to get these disputants together. Each trainee did this in front of a camera for about twenty minutes and after all the tapings, the trainees collectively viewed the screenings to determine which techniques were effective.[75] These techniques were easily identified by the trainees. The trainer then announced that the rest of the training program would consist of the development of those techniques that they had brought to the training program. Conflict-resolution had been demystified by showing the trainees that they had been mediators for a good part of their lives and that they were not going to be taught to be mediators, but instead were going to be given a setting in which to use and refine the mediation skills that they already possessed. Pedagogically, this realization was a significant incentive to the self-development of the Forum Judges.

This same approach can be used in a lay advocacy training program. Furthermore, it can be intimately tied into a student-as-teacher concept. Suppose, for example, that the program is designed to train consumer lay advocates. There could be a number of courses in "The Trainee as Consumer." The training sessions would be structured around a number of specific, personal topics such as: the steps I had to go through the last time I bought a car; the number of companies that were involved; the pieces of paper that I had to sign; the oral statements

73. *See* Statsky, *The Training of Community Judges: Rehabilitative Adjudication*, COLUMBIA SURVEY OF HUMAN RIGHTS LAW (Jan. 1972) (forthcoming publication).

74. W. Statsky, Procedure Manual and Training Materials for Forum Judges 44 (1971).

75. *Id.* at 103.

made to me by the dealer; what I did when they told me that the delivery date was to be delayed; what I did when I discovered three months later that the spare tire was missing; and what the insurance cost meant to me. From the group discussions on these topics, a considerable amount of information and a number of techniques should emerge. In the process, the trainees will be learning from each other and consequently will be made to feel that they are making an important teaching contribution. The technical aspects of consumer law can be fed strategically into the group discussion by the trainers, but only after it is clear that the trainees are unable to arrive at these technical principles on their own and only insofar as the introduction of these principles or laws naturally evolves from the discussion.

Another way to encourage trainees into a self-training frame of mind is to get them to write their own training and work materials. For example, it might be possible to tape-record a group's discussion on the individual topics that relate to the lay advocate's job. Teams of lay advocates could then be assigned to listen to the tapes, write down the points that they felt were important, and compile them in manual form. Although time-consuming, the process would be worth the effort because the trainees would be more likely to identify with this manual and use it on the job than they would be with a more polished manual written by a lawyer.

4. *The Training Program Should Emphasize the Nonlegal Aspects of Lay Advocacy.*—Finally, the training program should devote considerable attention to the proposition that every problem the lay advocate faces will not necessarily be a legal problem calling for the application of statutes, regulations, and court opinions. According to Justice Douglas, "The so-called 'legal' problem of the poor is often an unidentified strand in a complex of social, economic, psychological, and psychiatric problems."[76] This is not to argue that the lay advocate must hold degrees in five or six social sciences.[77] It is rather to suggest that the lay advocate must be equipped with a strong dose of common sense in recognizing and dealing with the numerous aspects of a problem and must be ready to call on those more expert than he in a particular discipline when he has gone as far as he can go.

5. *Summary.*—It should be noted that some trainees may resist

76. Hackin v. Arizona, 389 U.S. 143, 148 (1967) (Douglas, J., dissenting). The problems of the middle and upper classes, too, are problems which can be solved only by getting input from a number of disciplines.

77. *See* A. Smith & B. Curran, A Study of the Lawyer-Social Worker Professional Relationship (1968) (American Bar Foundation, No. 6).

this focus on participatory education and the pre-clinical training experience. These approaches place a great burden on them to draw on their own innate talents. Many trainees may prefer to sit back and "be taught the law." Trainers who are unaccustomed to a loosely structured training format may be tempted to pour onto the trainees a considerable amount of law and procedure. This temptation, however, should be strongly resisted, because a training program that treats the lay advocate trainee as one who applies legal principles and a program that tries to equip him with volumes of legal materials will produce an advocate who will tend to be dependent on the abstraction. There are, however, no absolute answers in dealing with the claims process. The trainee, therefore, should feel that he is alone when confronting a third party on behalf of a client and that all that separates him from success is his own ingenuity. This training approach will more likely produce an advocate who is flexible enough to recognize that a variety of approaches can be taken in resolving a problem and that he has the responsibility to draw on his own native talents to identify and attempt these approaches.

V. THE SITUS, STRUCTURE, AND CONTENT OF PRESENT TRAINING PROGRAMS

A number of individuals and institutions in this country have directed their attention to the training of legal paraprofessionals.[78] This

78. A very preliminary and incomplete listing of the entities that have made a contribution to training or that are on the verge of making a contribution would include the following: Allegheny Community College, Pittsburgh, Pa.; American Association of Junior Colleges, Washington, D.C.; Association of American Law Schools Paralegal Committee and the Committee to Study the Curriculum, Washington, D.C.; American Bar Association, Special Committee on Availability of Legal Services, The Special Committee on Legal Assistants for Lawyers and the Young Lawyers Committee on Legal Paraprofessionals, Chicago, Ill.; Berkeley Neighborhood Legal Services, Berkeley, Cal.; Blackstone Associates, Washington, D.C.; Boston College National Consumer Center, Brighton, Mass.; Bowling Green State University, Department of Business Law, Bowling Green, Ohio; California Continuing Education of the Bar, California Rural Legal Assistance, Senior Citizens' Project, San Francisco, Cal.; University of California, Los Angeles, University Extension and School of Law, Los Angeles, Cal.; Campbell College, Buies Creek, N.C.; Catholic Law School, Washington, D.C.; Center on Social Welfare and Policy Law, New York, N.Y.; Chaffey Junior College, Philadelphia, Pa.; Colby Community College, Colby, Kan.; College for Human Services, New York, N.Y.; Community Health Advocacy Department, Bronx, N.Y.; Council of Elders, Roxbury, Mass.; Columbia Law School, Program for Legal Service Assistants, New York, N.Y.; Cumberland County College, Vineland, N.J.; Cuyahoga Community College, Metropolitan Campus, Cleveland, Ohio; Denver College of Law, Denver, Colo.; Dixwell Legal Rights Association, Inc., New Haven, Conn.; Federal Trade Commission, Washington, D.C.; Ferris State College, Big Rapids, Mich.; Georgia Consumer Services Program, Atlanta, Ga.; Glendale College of Law, Los Angeles, Cal.; University of Hawaii, Honolulu, Hawaii; Institute for Continuing Legal Education, Rutgers University School of Law, Newark, N.J.; Institute for Paralegal Training, Philadelphia, Pa.; La Salle Extension University, Chicago, Ill.; Lincoln Neigh-

part of the article will examine the great diversity in the locations in which legal paraprofessional training programs are being conducted, in how these programs are organized, and in what is being taught. The organization and content of these programs will be discussed in the context of their situs. There are at least two reasons why the situs for training is important. The first and most basic reason is the quality of the training. We want an institution that is best equipped to train legal paraprofessionals to meet their needs and the needs of the job. Secondly, it is important because of the social impact of the training locus. An ad hoc training program conducted over six summer weeks by a community agency is not likely to have the same impact on our vocational class structure, for example, as would a two-year curriculum in "legal technology" at a community college. A training program of the latter type, which is geared to the amassing of credentials for the legal paraprofessional and which encourages a sense of unity among all legal paraprofessionals, will greatly increase the visibility of this developing breed of workers.

The content of several training programs is presented in depth because it is felt that it will illustrate the areas in which paraprofessionals are being trained. Although few empirical studies have been made of what legal paraprofessionals are actually doing, an examination of the content of training programs should suggest some tasks that they are capable of performing.

A. In-House Training

Most legal paraprofessionals in this country today have been trained on the job. This situation is the result of a number of factors. First, many people question our preoccupation with long periods of classroom involvement. Secondly, very few academic programs for legal paraprofessionals currently exist. Lastly, the informality and flexibility of the in-house training structure is very much in tune with the present stage of legal paraprofessionalism, in which an employer often

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borhood Service Center, New York, N.Y.; Los Angeles City College, Los Angeles, Cal.; Los Angeles County Bar Association, Los Angeles, Cal.; Meramec Community College, St. Louis, Mo.; University of Minnesota, General College, Minneapolis, Minn.; National Association of Legal Secretaries, Long Beach, Cal.; National Client's Council, Washington, D.C.; National College of State Trial Judges, University of Nevada, Reno, Nev.; Office of Economic Opportunity, Office of Legal Services, Washington, D.C.; Peirce Junior College, Philadelphia, Pa.; Proctrory Law Institute, New York, N.Y.; San Francisco Bar Association, San Francisco, Cal.; University of Southern California, Extension Division, School of Law and University College, Los Angeles, Cal.; United States Army, Judge Advocate General School, Charlottesville, Va.; University of West Los Angeles, Los Angeles, Cal.; University Research Corporation, Washington, D.C.; Utah Law School Research Institute, Salt Lake City, Utah; University of Washington, Seattle, Wash.

does not know what a legal paraprofessional can do until he does it. Once the legal paraprofessional demonstrates some competence in a particular area, his employers rejoice in the discovery and slowly feed this individual more responsibility in that area. At this critical point, the training "program" consists of close observation and perhaps written procedural instructions.[79]

The in-house training program frequently is created to respond to immediate needs. For example, two partners may decide that a particular secretary should be given increased responsibilities because of the recent arrival of a large and complex client. They put together a package of materials, which includes old forms and files, and call it her "Manual." The program can also be self-imposed. An inmate may be asked[80] by a co-prisoner to help him write a writ of habeas corpus. The inmate starts studying an old copy of the *Yale Law Journal* and reads available briefs that other inmates or their lawyers have written. Another example would be a group of mothers who feel that their children have not been disciplined fairly in school, and who organize themselves into a group of "Concerned Parents."[81] In the process of exchanging their experiences at meetings, they learn how others have coped with the school bureaucracy and come away with new approaches to their common problems. The immediacy of a specific problem in all these instances has provided a tremendous incentive to training and accounts for much of the popularity of the in-house, on-the-job model of training legal paraprofessionals.

This kind of education is similar to the early apprenticeship system of training and sanctioning lawyers.[82] The only difference between the old system and the "apprenticeship" of legal paraprofessionals is that legal paraprofessionals are never officially sanctioned after the prescribed period of training. One possible exception to this generalization may be found in the legal secretary's transition to the position of Professional Legal Secretary. A legal secretary who has had five years of experience is entitled to take a two-day examination, upon the successful completion of which she can be certified by the Board of Certifying Professional Legal Secretaries of the National Association of Legal

79. *See* pp. 1091-96 *supra*.

80. Larsen, *A Prisoner Looks at Writ-Writing*, 56 CALIF. L. REV. 343, 348 (1968); Spector, *A Prison Librarian Looks at Writ-Writing*, 56 CALIF. L. REV. 365 (1968). *See also* note 22 *supra*. Sometimes this involves payment of a fee to the inmate.

81. *See* The Advocate, Apr. 1970, at 1 (Newsletter of the Lay Advocate Service of the Queens Coalition of Concern).

82. A. CHROUST, *supra* note 66, at 172.

Secretaries.[83] The professionalization of the legal secretary could easily be said to move her further away from purely clerical responsibilities and into the realm of legal paraprofessional activities.[84]

B. Law Schools

Law schools have been groping for a role in the education of legal paraprofessionals. A number of assumptions have been made to support the proposition that the education for this new career should be the function of law schools: (1) law schools have a monopoly on wisdom in legal education; (2) law schools possess a level of prestige and acceptability that could be transferred, or at least temporarily and partially loaned, to the embryonic legal paraprofessional; (3) law students must be taught to relate to legal paraprofessionals and vice versa; and (4) lawyers and legal paraprofessionals often perform the same tasks. These assumptions, of course, are subject to challenge. It could be argued, for example, that law schools are having enough trouble trying to educate lawyers and are not capable of taking on the challenge of training legal paraprofessionals.

There are two law schools in the country that have started legal paraprofessional training programs, Denver College of Law and Columbia Law School. Each of these programs has been created as a satellite operation, each was funded primarily from outside sources, and no law school credit has been granted to any of the participants.[85] A third law school that will be considered here is Boston College, although its involvement with the training of paraprofessionals has been even less extensive than that of Denver or Columbia.

1. *Denver College of Law.*—In the last few years, the Denver College of Law has initiated a number of programs for legal paraprofessionals.[86] In the fall of 1968, Denver offered a twenty-hour "paralegal course" to twenty housing specialists from the Metro Denver Fair Housing Center, most of whom had a high school education and some of

83. National Association of Legal Secretaries, *Professional Status for the Legal Secretary*, 72 CASE & COM. 26 (Jan.-Feb. 1967). *See also* National Association of Legal Secretaries, Manual for the Legal Secretarial Profession (1965); National Association of Legal Secretaries, Professional Course for Legal Secretaries: Study Guide Workbook (1966).

84. See pp. 1084-87 *supra* for the definition of legal paraprofessionals.

85. Credit has been given, however, to law students who have worked in various capacities in the program.

86. Denver's most recent effort in this area was a conference on the training and employment of paralegals, which it sponsored in cooperation with the American Bar Association and the Association of American Law Schools Paralegal Committee. Letter from Robert B. Yegge to William P. Statsky, Mar. 30, 1971 (on file at the Program for Legal Services, Columbia Law School).

whom had college degrees. Law students provided the training, which included courses not only in the housing area but also in consumer law, welfare law, employment law, domestic relations law, and criminal law.[87] The classes were designed to provide an overview of these areas of the law in order to equip the trainees to identify potential legal problems, to render advice to clients, and to act as a liaison between lawyer and client.[88] Another program was held in May 1969, when Denver law students, law professors, and local attorneys offered a twenty-five-hour "paralegal course" to twenty caseworkers from the Denver Department of Welfare.[89] At that time, the law school, along with the Denver University Department of Political Science, also developed a "training institute" for command officers of the Denver Police Department. This institute was aimed at senior police officers, who received instruction in the legal and sociological context of their work.[90] In the fall of 1970, Denver tried a new approach designed to affect more people than the small number enrolled in its two earlier courses. The law school offered a seminar called "New Careers in Law," which was designed to permit law students to study the legal problems of the poor while developing training materials for legal paraprofessionals who were working in neighborhood legal services offices. The specialties for which materials were to be developed included consumer claims adjustor, tenant claims adjustor, welfare claims adjustor, domestic relations paraprofessional, ward heeler (to represent clients before agencies), intake and referral worker, and environmental consultant. At present, however, these training materials have not been put in operation.[91]

Denver's most ambitious project has been its association with the Denver Resident Education and Information Center. The Center is a neighborhood-based legal services office that has one lawyer and five "paralegals." Residents can come there to discuss problems, legal or otherwise, with the paralegals, who are nonprofessional community resi-

87. Holme, *supra* note 30, at 415-16.

88. Houtchens, Paralegal Training for Metro Denver Fair Housing (Dec. 11, 1968) (unpublished memorandum on file at University of Denver College of Law, Administration of Justice Program).

89. Houtchens & Merson, Report on the Paralegal Course for Employees of the Denver Department of Welfare (July 22, 1969) (unpublished memorandum on file at University of Denver College of Law, Administration of Justice Program).

90. Research and Demonstration Project in New Careers in Law 17 (1969) (Proposal of the University of Denver College of Law). *See also* Preliminary Report on A Survey of Paralegal Training in the United States 28 (1971) (conducted by the University of Denver College of Law for the Special Committee on Legal Assistants of the American Bar Association).

91. L. Brickman, New Careers in Law Seminar (Aug. 1970) (unpublished memorandum on file at Program for Legal Service Assistants, Columbia Law School).

dents.[92] The paralegals do not counsel clients on specific legal problems, but do discuss the general legal context of their problems and provide legal aid lawyers with a more complete description of the facts than the lawyer would have had time to obtain.[93] Denver College of Law coordinated the training of the paralegals, which involved four weeks of all-day instruction and was conducted mainly by Denver Legal Aid lawyers and law students.[94] Training materials for the paralegals covered a large number of legal topics—welfare, social security, consumer problems, housing, and human rights.[95] These materials included elaborate checklists, questionnaires, and how-to-do-it guidelines.[96]

2. *Columbia Law School.*—In October 1969 the Program for Legal Service Assistants of Columbia Law School completed a six-week course for seventeen minority students to become Legal Service Assistants.[97] The course was taught by law professors, law students, and legal service attorneys.[98] The content of the program was developed in a seminar for law students, who attempted to define the role of a legal paraprofessional in a neighborhood law office and to determine how best to provide training to fulfill that role. The course was divided into four areas—general introduction to law, landlord-tenant law, domestic relations law, and welfare law.[99] The objective of the training was to develop a Legal Service Assistant (LSA) generalist who could function in a number of areas of law rather than a specialist who was expert in a particular area.

The scope of the LSA's activities greatly exceeded expectations. This was due primarily to the willingness of legal service attorneys to delegate responsibilities to the LSA's and to the effectiveness of on-the-

92. Legal Aid Society of Metropolitan Denver, Model Cities-Legal Services Proposal 11 (Aug. 13, 1969).

93. *Id.* at 5. The paralegals refer people to the neighborhood lawyer who can best deal with the problem.

94. S. Harper, Memorandum to Para-Legal Instructors (undated) (unpublished memorandum on file at the University of Denver College of Law).

95. Denver Resident Education & Information Center, Para-Legal Training (1970).

96. *See, e.g.*, Denver Resident Education & Information Center, Paralegal Worker's Handbook § 10:6, at 17 (1970).

97. G. Cooper & M. Rosenberg, Legal Service Assistants, *supra* note 9, at iii. This pilot program was a joint undertaking with the College for Human Services, which provided the students with a 2-year Associate in Arts degree, and Community Action Legal Services, Inc., which provided job placements in New York City neighborhood law offices. For a more detailed discussion of the College for Human Services see p. 1117 *infra*.

98. During the 6-week course the trainees spent 3 days a week at Columbia Law School.

99. G. Cooper & M. Rosenberg, Institute for Legal Service Assistants Manual, *supra* note 9, at i. The general introduction to law included a discussion of our legal system, private rights versus public interest, and other similarly broad topics.

job training.[100] The following is a sample listing of LSA activities from October to December 1969:[101]

1. Welfare Law
   a. represented office clients at administrative hearings;
   b. prepared welfare budgets;
   c. drafted preliminary court papers appealing administrative decisions;
   d. negotiated with welfare centers in order to avoid hearings and court action;
   e. trained other legal paraprofessionals in welfare law.
2. Family Law
   a. drafted summonses and complaints, mainly in uncontested divorces;
   b. collected evidence;
   c. served court papers and filed papers in court;
   d. drafted adoption papers;
   e. drafted factual reports on child abuse cases.
3. Housing Law
   a. negotiated with landlords;
   b. drafted replies to eviction notices;
   c. determined the extent of landlord housing violations as possible "defenses" to eviction proceedings;
   d. acted as court witnesses to these violations;
   e. assisted clients in obtaining rent information under the rent control procedures of New York City;
   f. requested city inspections;
   g. helped organize tenant groups;
   h. assisted clients in public housing procedures.

The greatest incentive in the on-the-job training phase of the program was that the LSA's saw the immediate results of their activities. Since this made them want to gain further knowledge, they subsequently demanded more training from their supervising attorneys and from the representatives of the law school.[102]

3. *Boston College School of Law.*—In 1971 the National Con-

100. W. Statsky, Supervision Report on Sixteen Legal Service Assistants Now Working in Ten Community Law Offices in New York City: Field Report II 3, 4 (Mar. 31, 1970) (unpublished memorandum in the file of the Program for Legal Service Assistants, Columbia Law School).

101. W. Statsky, Field Report on Sixteen Legal Service Assistants Now Working in Nine Community Law Offices in New York City: Field Report I 7-16 (Dec. 9, 1969) (unpublished memorandum in the file of the Program for Legal Service Assistants, Columbia Law School).

102. *Cf. id.* at 23-24.

sumer Law Center of Boston College School of Law established a brief course for community-based consumer advocates, who will be employed by the city in its "little city halls."[103] The training program focused on developing three skills in paraprofessionals: (1) proper interviewing techniques; (2) the ability to identify legal problems and to find a means for their solution; and (3) the ability to resolve certain problems themselves and to maintain a working relationship with the institutions that can resolve other problems.[104]

4. *Alternatives to the "Satellite Model."*—The most extensive study of the role of the law school in legal paraprofessional education has been conducted by the Association of American Law Schools Committee to Study the Curriculum.[105] Besides examining the future of legal paraprofessionalism, the Committee evaluated every aspect of present law school structure, particularly the tradition of creating a unitary profession in which all members have the same training, skills, and ability to handle legal problems.[106] It proposed a multi-tiered law school that would provide a one-year, narrowly defined program for students with minimal qualifications,[107] a broader program of basic professional training to be completed in approximately two years,[108] and a four-year course to allow the best students to see law's full impact upon and relationship with other disciplines. Unlike Columbia, Denver, and Boston College, however, the Committee did not adopt the satellite model. It pointed out that while the training of LSA's should be as practical as possible, it should be an integral part of a law school for a number of reasons:

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103. M. Comras & W. Willier, *supra* note 46.

104. *Id.* at ii. *See also* William Mitchell College of Law, Second Annual Seminar in Government Procurement Law for Non-Lawyers (1971).

105. Association of American Law Schools Comm. to Study the Curriculum, *supra* note 45. The Committee, when it drafted its Second Tentative Draft, thought that the case had been made for legal paraprofessionalism. Pointing to Columbia Law School's experience with Legal Service Assistants, the Committee viewed legal paraprofessionalism "as a means of improving the availability of legal services to the poor." *Id.* at 35.

106. *Id.* at 9.

107. This proposed one-year program, which would lead to certification as an LSA, would involve 32 weeks of training in the following topics: the Federal Government, Representing Misdemeanants, Representing Tenants, Family Counseling, Representing Consumers, Claims to Public Services, Small Claims, Administrative Litigation, Industrial Accident Claims, and Welfare Claims. *Id.* at 79.

108. *Id.* at 13. In 1970 Stanford Law School introduced a new 2-year law degree, the Master of Jurisprudence (J.M.). Although this is a nonprofessional degree, it should not be considered a step in the direction of legal paraprofessionalism. "It is designed for students whose primary career interests are in fields outside the legal profession but who wish to obtain training in law." Ehrlich & Headrick, *supra* note 7, at 457.

> One is that it is possible to structure programs encouraging interaction between future professionals and para-professionals which gives better insight into the roles of the others, and thus better self-understanding as well. Especially the para-professional program is likely to be strengthened by the possibility of one-to-one supervision by professional students. Secondly, the paraprofessional movement needs the dignifying leadership and placement service of law schools. Separate programs in community colleges and similar institutions will have great difficulty attracting students and faculty and in placing their graduates. A third reason is that the proximity of Professional and Para-Professional Programs facilitates mobility of students between them. To the extent that licensing requirements permit, excellent para-professional students can be moved over to the more demanding program, while professional students lacking adequate motivation or intellectual competence could be moved over to the para-professional track, with the possibility of a later return to the profession on the basis of para-professional achievement.[109]

C. *Four-Year Colleges*

Many colleges presently offer what is loosely called a pre-law curriculum option, which is sometimes recommended for undergraduates contemplating law school. It usually consists of a heavy dose of courses in history and political science. Generally speaking, this option has not generated much enthusiasm among students and has not been accepted as the definitive route to law school. The question arises, however, whether the pre-law curriculum in college can be made into a program for training legal paraprofessionals. The primary exponent of this approach has been Professor Louis M. Brown, a pioneer thinker in the field of legal paraprofessionalism,[110] who has advocated a bachelor's degree with a major in law.[111] Courses would be developed to train the students to distinguish between the facts and the law[112] and to cope with the normal, repetitive problems that lawyers face daily; the unique or unusual problems would still be the exclusive domain of a law school.[113] Professor Brown is now developing a four-year undergraduate curriculum leading to a B.S. in Law degree that will be offered by the University College of the University of Southern California.[114]

No other four-year college has adopted this model of a law major, although many institutions, such as Hunter College in New York City,[115]

109. Association of American Law Schools Comm. to Study the Curriculum, *supra* note 45, at 35.

110. Brown, *A Suggestion Concerning Pre-Law School Education: A Review of Dean Gavit's "Introduction to the Study of Law,"* 25 S. CAL. L. REV. 177 (1952).

111. Brown, *The Education of Legal Assistants, Technicians and Paraprofessionals, supra* note 16, at 100.

112. *Id.* at 101.

113. *Id.* at 102.

114. Los Angeles County Bar Association, Survey on Training and Employment of Legal Paraprofessionals (June 15, 1971).

115. Letter from Mauro Casci to Center on Social Welfare Policy and Law, July 1, 1971 (on file at the Program for Legal Service Assistants, Columbia Law School).

are carefully examining this possibility. There, of course, have been college programs structured around business law that do not call their students potential legal paraprofessionals. Campbell College in North Carolina, for example, offers an undergraduate program in Trust Education that prepares people to work in such settings as the trust department of banks. They receive courses in fiduciary law, tax law, accounting procedure, and general trust administration.[116] Drexel Institute of Technology in Philadelphia is a four-year college that alternates periods of classroom work and paid job placements on the cooperative model. Although it does not offer any degree program or courses designed specifically for the legal paraprofessional, Drexel does place some of its business students in Philadelphia law firms. Some students work in the antitrust departments of these law firms as research assistants, and others work in the tax departments as tax accountants.[117] This cooperative theory of education places great emphasis on the "classroom in the field" in which the "instructors" are the practitioners themselves.

The Special Committee of the American Bar Association on Legal Assistants has called for a four-year college curriculum designed to produce a "Legal Administrator."[118] The curriculum would include legal and technical courses, like Income Taxation and Office Procedures, in the first two years, and predominantly social science and business courses, like Economics and Industrial Relations, in the last two years.[119] At the end of the four-year period, the Legal Administrator

116. Letter from Norman A. Wiggins to William P. Statsky, Apr. 6, 1971 (on file at the Program for Legal Service Assistants, Columbia Law School).

117. W. Statsky, Philadelphia Field Trip: Laymen in the Private Sector (June 1970) (unpublished memorandum on file at the Program for Legal Service Assistants, Columbia Law School); Letter from Stewart B. Collins to William P. Statsky, July 10, 1970 (on file at the Program for Legal Service Assistants, Columbia Law School).

118. ABA Special Comm. on Legal Assistants, *supra* note 58.

119. *Id.* at 19. The entire course design would be as follows:

First Two Years	*Credits*
Law	10
Elementary Accounting	4
Office Procedures	5
Communications	12
Behavioral Sciences	3
Data Processing	3
Social Science	10
Legal Research	3
Estates and Trusts	9
Civil Trial & Appellate Practice	9
Business Organizations	9
Income Taxation	4
Real Estate	4
General Law	4

should be able to assist lawyers directly by preparing or interpreting legal documents and by compiling relevant technical information from legal digests and practice manuals.[120] The General College of the University of Minnesota is currently exploring the possibility of implementing this four-year curriculum.[121]

D. *Community and Junior Colleges*

Many proponents of paraprofessionalism feel that the two-year community and junior colleges are destined to become the major situs of legal paraprofessional training, and these institutions are expending a great deal of energy in this direction. As early as 1968, the American Bar Association's Special Committee on Availability of Legal Services was exceedingly optimistic about the future of junior colleges in this field.[122] Since then, a number of community colleges have entered the field, and numerous others are contemplating such a move.

Third and Fourth Years	*Credits*
Statistics	5
Economics	5
Sociology	6
History	3
Industrial Relations	3
Principles of Marketing	3
Fundamentals of Management	3
Insurance	3
Finance	3
Speech	5
Electives	50
Internship	3-6

120. *Id.* at 13. The Committee has stated that Legal Administrators who have completed the suggested curriculum should be able to perform all the following tasks, some of which would not be classified as legal: (1) Apply knowledge of law and legal procedures in rendering direct assistance to lawyers engaged in legal research; (2) Design, develop, or plan modifications of new procedures, techniques, services, processes, or applications; (3) Prepare or interpret legal documents, or write detailed procedures for engaging in practice in certain fields of law; (4) Select, compile, and use technical information from such references as digests, encyclopedias, or practice manuals; (5) Analyze procedural problems that involve independent decisions; (6) Plan, supervise, and assist in the installation of relatively complex office equipment; (7) Give advice regarding the operation, maintenance, and repair of relatively complex office equipment; (8) Plan projections, operations, or services as a member of the management unit responsible for efficient use of manpower, materials, money and equipment.

121. Letter from Roger A. Larson to William P. Statsky, July 1, 1971 (on file at the Program for Legal Services, Columbia Law School). *See also* Maeroff, *Fordham Trains "Teacher-Advocates"*, N.Y. Times, July 31, 1971, at 24, col. 6 (the Fordham Advocate Community Organizer Teacher Training Program of Fordham University).

122. The Committee thought that thousands of junior college students would "cherish the opportunity for a career in the law as a valued Assistant." ABA Special Comm. on Availability of Legal Services, Report No. 3, at 14 (1968).

1. *Training Programs for Work in the Private Sector.*—The first community college to inaugurate a formal program for legal paraprofessionals was Meramec Community College in Missouri. The program was established after a feasibility study that questioned 2,000 bar members had shown that about 400 full-time legal assistants could be employed within five years.[123] At the heart of Meramec's curriculum was a course called "Introduction to Legal Technology," which included "a general discourse on the purpose of training legal technicians, the role of the attorney in modern society, legal ethics, legal research and terminology, an introduction to legal drafting and writing, probate matters, and other topics . . . ; a detailed study of the structure and jurisdiction of courts and administrative tribunals; and detailed study of the commencement and trial of civil cases."[124]

The curriculum was divided into Legal Technology Courses, like Wills, Law of Property, and Sales, and General Courses like English Composition and Elementary Typewriting.[125] If at the end of two years a student had earned 32 credits, with sixteen of these in the field of legal technology, Meramec would award a Certificate of Proficiency in legal technology.

123. Adams, *New Course to Free Lawyers of Routine*, St. Louis Post-Dispatch, Aug. 28, 1969, at 7, col. 1. The feasibility study was conducted by a Meramec Citizens Advisory Committee, in cooperation with the St. Louis Bar Association.

124. Meramec Community College, Curriculum Announcement in Legal Technology 3 (1969).

125. *Id.* at 2-3. The course design of the curriculum was as follows:

(1) *Legal Technology Courses*	*Credits*
Introduction to Legal Technology I	3
Introduction to Legal Technology II	3
Wills, Trust, & Probate Administration (including estate & inheritance taxes)	3
Business Organization (including Corporations, Partnerships, & Agency)	3
Sales & Credit Transactions (including the Uniform Commercial Code)	2
Advanced Legal Writing & Drafting	3
Law of Property, Real Estate Transactions, Contracts, & Lease	2
Insurance Law & Claims Investigation	2
Income Taxation	2
Law Office Management	2
Legal Accounting	1
Bankruptcy, Domestic Relations	1

(2) *General Courses*	*Credits*
American Government Survey	3
English Composition	3
Elementary Typewriting	3
Machine Transcription	3
Principles of Shorthand	3
College Accounting or Applied Accounting	3
Oral Communications	3
Human Relations	3

The next major community college to establish a training program was Cumberland County College in Vineland, New Jersey.[126] Its two-year program was divided into four semesters and offered a mixed collection of practical, legal, and liberal arts courses.[127] Even though this program is for students in their first two years of college, some of the individual course descriptions in the areas of legal technology sound very much like the typical law school offering. The basic property course, for example, would seem to contain at least an introduction to the standard concepts of conveyancing, zoning, and mortgages.[128]

126. *The Legal Technician Program in Cumberland County*, N.J.S.B.J. 44 (Fall 1970).

127. Cumberland County College, Legal Technology Curriculum 1 (1970). The entire course design was as follows:

(1) *First Semester*	*Credits*
English Composition	3
Accounting Principles I	4
Business Law I	3
Social or Behavioral Science Elective	3
Business Office Machines	1
Physical Education	1
(2) *Second Semester*	
English Composition	3
Accounting II	4
New Jersey Legal System	2
Business Law II	3
Social or Behavioral Science Elective	3
Physical Education	1
(3) *Third Semester*	*Credits*
Humanities Elective	3
Science or Mathematics Elective	3
Techniques of Legal Practice and Procedure I	4
Mechanics of Property Transactions	3
Principles of Family Law	2
(4) *Fourth Semester*	
Humanities	3
Science or Mathematics Elective	3
Techniques of Legal Practice and Procedure II	4
Advanced Business Law	3
Administration of Estates	2
Legal Office Management	3

128. *Id.* at 2-3. The course description for the basic property course is as follows: Mechanics of Property Transactions: "This course covers forms and procedures for personal property, secured transactions, bills of sale, transfers of securities, assignments, bulk sales, real property titles, liens, mortgages, planning, zoning, agreements, assessments, release of liens, searches, foreclosures, variances and subdivisions." The course descriptions for Techniques of Legal Practice and Procedure, Advanced Business Law, and Legal Office Management also are similar to many law school courses: Techniques of Legal Practice and Proeedure: "This course coordinates with other Legal Technology courses and provides specialized training in the actual preparation of legal documents on a case method. Questions of statute of limitation, client interviews and interview forms, com-

The Special Committee of the American Bar Association on Legal Assistants has proposed a two-year curriculum for the legal assistant that borrows from the four-year curriculum it recommended for the legal administrator.[129] The first two years of the curriculum proposed for the legal assistant are exactly the same as that for the legal administrator[130] and are also very similar to the programs offered by Meramec and Cumberland. Unlike Meramec and Cumberland, however, the Committee has placed greater emphasis on the dominant role of the lawyer in the tasks undertaken by the legal paraprofessional. For example, the description for the course in Real Estate states that: "The graduate should be prepared to perform, *under the supervision and control of a lawyer*, all the routine matters and prepare the appropriate documents involved in the more common types of real estate transactions, and conveyances and actions . . . ."[131]

A trend toward developing these two-year programs has resulted in a number of community colleges in this country either just beginning or currently planning a training program for legal paraprofessionals. The Community College of Allegheny County in Pittsburgh has a two-year curriculum leading to an Associate of Science degree for the "Legal Secretarial or Legal Executive Assistant."[132] Cuyahoga Community College in Cleveland offers legal technology courses in wills, trusts, and probate administration.[133] La Guardia Community College, part of the City University of New York, is contemplating a cooperative program in legal technology.[134] Peirce Junior College in Philadelphia is "investi-

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plaints, interrogatories, depositions, answers, motions, orders to show cause, third-party practice orders, medical records, judgments, pretrials, settlements and releases are some of the topics discussed." Advanced Business Law: "This course presents procedural information on such topics as incorporation, partnerships, agency, bankruptcy, collections, corporate records, meetings and annual reports, stock transfer and issue, shareholders agreements, tradenames, licenses and contracts." Legal Office Management: "This course will provide the ethical considerations applicable to the legal technician, office organization, specialized bookkeeping and accounting for attorneys, fees and billing procedures, scheduling and calendaring, filing, legal research, management of personnel, proofreading, management of investigation and file preparation, legal drafting, management and organization procedures for specialized areas of law, special considerations with respect to attorney's trust account, preparation of law office forms, check list and files, and office financial statements."

129. ABA Special Comm. on Legal Assistants, *supra* note 58.

130. *See* p. 1112 *supra*.

131. ABA Special Comm. on Legal Assistants, *supra* note 58, at 15 (emphasis added). The course would cover, for example, deeds, contracts, leases, deeds of trust, mortgages, actions to quiet title, and foreclosure actions.

132. Community College of Allegheny County, Allegheny Campus, Bulletin (Summer 1971).

133. Cuyahoga Community College, Announcing the Legal Technology Series (1971).

134. Letters from Ann Marcus to William P. Statsky, Dec. 8, 1969, and Apr. 13, 1970 (on file at the Program for Legal Services, Columbia Law School). La Guardia has been coordinating

gating the possibility of offering a legal assistant program."[135] Finally, in the fall of 1971, Los Angeles City College began a two-year curriculum for legal paraprofessional training leading to an Associate in Arts degree.[136] It is obvious that community and junior colleges are not satisfied with only a subordinate role in the ultimate training of legal paraprofessionals; consequently, many already have and more soon will implement independent training programs of their own.

2. *Training Programs for Work in the Public Sector.*—The programs at Meramec and Cumberland, as well as that recommended by the American Bar Association's Committee, deal with legal paraprofessionals working for lawyers in the private sector. The only two-year college that has trained students to work for lawyers in the public area of poverty law has been the College for Human Services in New York City.[137] The college's objective is to humanize the public service agencies "by educating people from low income communities to serve as assistants to professionals in schools, hospitals, welfare centers," public program law offices, and similar institutions.[138] During the two-year program, the student spends two days a week in the classroom and three days a week in the field on a paid work-study basis. The freshman year introduces a "core curriculum" that first examines the "images of man" and then the nature and ways of changing groups, institutions, and society. The sophomore curriculum is more departmental and places greater emphasis on a professional education.[139] At the end of the two-year period, the graduates are awarded an Associate in Arts degree, and those who are trained in legal work are placed in neighborhood legal service offices in New York City.[140]

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its efforts on this proposal with the Program for Legal Service Assistants, Columbia Law School. *See* Program for Legal Service Assistants, Columbia Law School, Survey on Employment of Trained Laymen in Private Law Firms (1970), which has been prepared for execution in connection with the La Guardia proposal.

135. Letter from G. Russel Waite to William P. Statsky, June 7, 1971 (on file at the Program for Legal Services, Columbia Law School).

136. Los Angeles County Bar Association, *supra* note 114. For a listing of other community colleges see Preliminary Report on A Survey of Paralegal Training in the United States, *supra* note 90.

137. *See* note 97 *supra* and accompanying text. The College for Human Services was formerly called the Women's Talent Corps. It conducted its program for Legal Service Assistants in conjunction with Columbia Law School and Community Action Legal Services, Inc. Rothmyer, *supra* note 7. Most of the substantive legal training was provided by Columbia Law School.

138. Developing a Core Curriculum for the College for Human Services 1 (Nov. 15, 1969) (proposal submitted to the National Endowment for the Humanities).

139. Houston, *Black People, New Careers and Humane Human Services*, 51 SOCIAL CASEWORK 291, 297 (1970). Change, however, is still an underlying theme of the curriculum at this stage.

140. *See* note 97 *supra* and accompanying text.

E. Miscellaneous Existing Entities

There are a number of other existing educational entities that are considering programs for training legal paraprofessionals. Continuing Education of the Bar organizations,[141] correspondence schools,[142] and even high schools[143] may move into the area. The most noteworthy efforts, however, have been made by university extension systems. In 1971, for example, the University of Southern California Extension Division offered a two-unit course in "The Role of the Legal Assistant" that was designed to develop skills in organization of factual material for litigation and preventive law.[144] It also compared roles of the lawyer, the legal assistant, the legal technician, and the paraprofessional. In addition, the University Extension Division of the University of California at Los Angeles is developing a legal specialist training program.[145] The pilot plans are "to offer an intensive two to three month probate course . . . leading to certification of approximately 25 trainees."[146] The program will recruit men and women with A.B. degrees and will screen them to determine their verbal and concept-mastery skills.[147]

F. New Training Entities

The final training situs that needs to be considered is one that is established solely for legal paraprofessionals. In this category there are three types: the Ad Hoc Training Institute, the Permanent Training Institute, and the Permanent Training Institute-cum-Union.

1. *The Ad Hoc Training Institute.*—An ad hoc training institute is one that is created "on the spot" to respond to a particular training need and to demonstrate the effectiveness of a certain training concept. It usually goes out of existence after its work is complete. The best

141. *E.g.*, California Continuing Education of the Bar; New Jersey Institute for Continuing Legal Education.

142. *See, e.g.*, the brochures of La Salle Extension University of Chicago for its programs in claims adjusting and law.

143. *See* New York City Board of Education & Committee for a Comprehensive Education Center, Proposal for an Experimental Secondary School Research Project 25 (1970).

144. University of Southern California, Extension Division, The Role of the Legal Assistant (1971). The course was taught by Professor Louis M. Brown. *See* note 114 *supra* and accompanying text.

145. *See* note 114 *supra*. The program is being developed in cooperation with the UCLA School of Law and the Committee on Legal Paraprofessionals of the Los Angeles County Bar Association.

146. Letter from Alice Le Bel to William P. Statsky, May 13, 1971 (on file at the Program for Legal Services, Columbia Law School).

147. *Id.* The program will total about 250 hours on a 5-hour day, 5-day week basis. As more information about legal needs and career opportunities is gathered, additional programs, like corporate specialization, probably will be added.

example of an ad hoc institute is the San Francisco Pilot Project, which was conducted from August 18 to September 5, 1970, by the American Bar Association's Special Committee on Legal Assistants.[148] Practicing probate lawyers and their legal assistants were asked to attend workshops that were supposed to develop a training format. The expectation was that the three-week program would help lawyers to analyze how they could use nonlawyers to get their work done.[149] If this training structure worked in probate practice for San Francisco lawyers, then theoretically the model could become a prototype for use in any area of law practice throughout the United States.[150]

The first week of the three-week program was attended only by legal assistants already employed by practicing probate lawyers. Their prior work experience in this area—mainly as legal secretaries—ranged from one week to 21 years. Each trainee was given a copy of the *Code of Professional Responsibility*,[151] which served as the basis for the discussions on the potential negligence liability of legal assistants, the ethical restraints under which lawyers and their employees work, and the need for the development of a code of ethics specifically for the legal assistant. The trainees were then introduced to legal research in the area of probate law.[152] "The legal assistants were generally surprised but quite receptive to the idea presented . . . that there were certain types of legal research which they could be trained to do."[153] The final day of the first week provided a discussion of the elements of probate and a survey of the state and federal tax aspects of probate.[154]

The first four days of the second week of the program were attended by practicing attorneys only. The program for this week was conducted mainly by the American Management Association and consisted of an examination of the eight units of "essential management functions": the

148. ABA Special Comm. on Lay Assistants for Lawyers, *supra* note 50; *see* AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON LEGAL ASSISTANTS, *supra* note 43, at vi.

149. Letter from Luther J. Avery to Members of the Probate Committee of the Bar Association of San Francisco, June 4, 1970 (on file at the Program for Legal Services, Columbia Law School).

150. *Id.* As the American Bar Association observed: "A program similar to this one would be feasible for on-the-job training in a large law firm, among groups of law firms, or for a bar association. A project such as this seems particularly appropriate for the activities of the continuing legal education programs existing on a state and local basis because it represents a part of the continuing evolution of the role of the lawyer in society." ABA Special Comm. on Lay Assistants for Lawyers, *supra* note 50, at 4.

151. ABA Special Comm. on Evaluation of Ethical Standards, Code of Professional Responsibility (Final Draft 1969).

152. ABA Special Comm. on Lay Assistants for Lawyers, *supra* note 50, at 5-6.

153. *Id.* at 6.

154. *Id.*

nature of management; planning; organizing; controlling; standards and appraisal; communications; motivation; and decision making.[155]

The third and final week brought the legal assistants and the lawyers back together again. The objective was "to give the lawyer and legal assistant an opportunity to plan and work together to project the work flow of a probate, to develop a probate manual, and to write a job description with standards of performance for the legal assistant."[156] A good deal of attention was given to the critical path method of flow charting, which details the steps in a probate with respect to their sequence and time requirements. The emphasis was on "programmed learning" and the development of a manual as a "control device" because it was a "written standard of performance to which the individual may be held."[157]

2. *The Permanent Training Institute.*—The second kind of new legal paraprofessional training entity that requires examination is one that is permanent and on-going in nature. Three programs will be discussed: the Institute for Paralegal Training in Philadelphia, the Dixwell Legal Rights Association, Inc., in New Haven, and the proposed program of the Lawyers' Committee for Civil Rights Under Law to train legal paraprofessionals in Mississippi.

(a) *Philadelphia Institute for Paralegal Training.*—In late 1969 and early 1970, three practicing attorneys formed the Institute for Paralegal Training, a school for lawyers' assistants in Philadelphia.[158] Their initial class consisted of approximately 30 women who were recent graduates of prestigious undergraduate colleges. Each student paid 500 dollars for a three-month, 190-hour course in corporate law.

The Institute has a vigorous placement division that stresses how its students can save valuable time by performing fairly routine tasks. It charges a placement fee to hiring attorneys and guarantees students a proportionate tuition refund if a position is not found.

The pilot curriculum was in corporate law. The trainees used training materials and forms that were specially designed to equip them to prepare preliminary drafts of both simple and complicated corporate documents, to assist the lawyer in complying with securities regulations,

155. *Id.* at 7. Each session included a filmed presentation by a recognized management authority of the core of the material presented in that unit of the course. These consisted mainly of short case study films that were not geared to the subject matter of a law practice. The American Management Association believes that management is a distinct discipline, the principles of which can be applied by any business. *Id.* at 8.

156. *Id.* at 9.

157. *Id.* at 9-10.

158. *See* note 29 *supra.*

and to coordinate the myriad events involved in a corporate practice. Fifteen topics were covered in the three-month course:[159] (1) Introduction to the Corporation; (2) Formation and Structure of Corporations; (3) Shareholders' and Directors' Meetings; (4) Corporate Equity and Debt Securities; (5) Corporate Distributions; (6) Qualification in Foreign Jurisdictions; (7) Employment Agreements; (8) Stock Options; (9) Stock Restriction Agreements; (10) Regulations of Public Sales of Securities; (11) Additional Documents Relating to the Public Sale of Securities; (12) Securities Exchange Act of 1934; (13) Listing Application to Stock Exchanges; (4) Acquisition and Merger Agreements; and (15) Closing Papers and Closing Binders. The Institute plans to branch out from this corporate format into such areas as probate and real estate law.

(b) *Dixwell Legal Rights Association.*— A pioneer legal paraprofessional training entity is Dixwell Legal Rights Association, Inc., an OEO-funded organization in New Haven, Connecticut. Dixwell claims to be the only legal services training and technical assistance agency in the community worker field[160] and offers a number of training services in this area. First, it trains local residents for legal paraprofessional and community organization jobs in New Haven. Secondly, it invites other legal services programs to send their community workers to New Haven for a period of training. Thirdly, Dixwell occasionally sends a team of its trainers to other parts of the country to conduct training programs. Finally, Dixwell is a constant source of training materials, guidelines, and manuals that are made available to anyone on request.[161] Dixwell's graduates work not only in the traditional neighborhood law offices and community centers, but also in such newly created positions as "patient advocate" at the Yale-New Haven Hospital[162] and inmate advisor in a Connecticut prison.[163]

(c) *Lawyers' Committee for Civil Rights Under Law.*—In early 1971, the Lawyers' Committee for Civil Rights Under Law helped prepare a proposal designed to provide more legal services to the poor in Mississippi.[164] Pointing to the overwhelming caseload of legal service

159. Institute for Paralegal Training, *supra* note 29, at 3-5.

160. Dixwell Legal Rights Association, Inc., Progress Report, Apr. 16, 1969-May 15, 1970, at 6 (1970).

161. *Id.* at 1-15. For a listing of some of the pamphlets available from Dixwell see Brickman, *Legal Paraprofessionalism and Its Implications, A Bibliography*, 24 VAND. L. REV. 1213, 1222-23 (1971).

162. Dixwell Legal Rights Association, Inc., Progress Report, April 15, 1969, at 11 (1969).

163. Dixwell Legal Rights Association, Inc., Lay Advocacy in a New Setting: Report on Para-Professional Work with Inmates in a State Prison (May 1969).

164. Lawyers Committee for Civil Rights Under Law, Preliminary Proposal for a Program of Training Legal Para-Professionals and Lawyers for the Minority/Poverty Community in Mississippi (1971).

attorneys, the proposal posits trained legal paraprofessionals as a realistic solution to the problem. "In order for there to be any substantial extension of legal services to the poor, the work of the lawyers themselves must be used to best advantage. Basic principles of economy of time and effort must be employed so that the lawyer's skills may be extended to the maximum number of people in need. This can be accomplished only through the training and use of lay clerks and lay advocates."[165] To accomplish this purpose, a training facility was recommended that would train legal paraprofessionals and provide on-the-job training in the use of legal paraprofessionals for poverty lawyers.[166] It is anticipated that some of the graduates of the paraprofessional program could become lawyers through the apprenticeship-bar examination route.[167]

3. *The Permanent Training Institute-cum-Union.*—The prototype of the Permanent Training Institute-cum-Union is an English organization called the "Institute of Legal Executives." The Institute, as a "professional body," has two objectives: (1) to educate and train legal executives and (2) "to advance and protect their interests."[168] In many respects the legal executive is the equivalent of an American legal paraprofessional. He is neither a solicitor nor a barrister and works under solicitors in a private or public practice. American paraprofessionals, however, have no organization comparable to the Institute.

Similar to the American Bar Association's call for more legal assistants, the Institute has argued that more legal executives are needed because they perform a vital service for solicitors. In a 1969 memorandum prepared for the Lord Chancellor's Legal Education Committee, the Institute said:

> It is probably true to say that most of the largest Solicitors' offices and a large proportion of the smaller offices would be unable to function effectively in day-to-day management of legal affairs without the assistance of Legal Executives. There simply are not, and it seems unlikely that there will be in the forseeable future, sufficient Solicitors to perform the duties at present carried out by Legal Executives . . . . Any consideration of the future of legal education in the profession ought therefore, in the Institute's view, to have regard to the training of Legal Executives who represent a high proportion of those members of the legal profession with whom the public have daily contact.[169]

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165. *Id.* at 9.

166. In addition, the facility will recruit minority individuals to train to be lawyers through the apprenticeship system in Mississippi. *Id.* at 11-12.

167. *Id.* at 14. *See* MISS. CODE ANN. § 8654 (1956). This law-school-in-the-streets approach is designed to overcome the alleged resistance of the Mississippi legal establishment to the concept of legal services for the poor.

168. The Institute of Legal Executives 3 (1969) (pamphlet) (The Institute's address is Maltravers House, Arundel Street, Strand, London, W.C. 2, England). *See also* Sproul, *supra* note 8, at 11.

169. Institute of Legal Executives, Education and Training of the Legal Profession 1 (June

Although the solicitor has the ultimate responsibility for the legal executive, the latter often manages departments of law firms and supervises other employees.[170] Another value of the legal executive is said to lie in his detailed knowledge of practice and procedure and of the law in his particular specialization.[171] He often is also involved in conveyancing negotiations, managing the firm's accounts, drafting papers and otherwise preparing for litigation, administering an estate, or performing any other task delegated to him.[172]

The education program of the Institute is intense and is geared to the passage of an Associate and a Fellowship examination. To take the Associate exam, a student must have completed two years of instruction at one of the 125 colleges of further education and colleges of technology throughout England. When the student has passed the Associate examination, attained the age of twenty, and completed three years of employment, he may apply to the Institute as as Associate. Associates continue their studies in three areas of law, and then take the Fellowship examination. If they pass, are 25 years old and have had at least eight years of experience, they may be admitted to the Institute as Fellows and awarded the Legal Executive Certificate.[173]

VI. THE SITUS FOR TRAINING: THE FUTURE

The current broadly based experimentation to determine the best situs for legal paraprofessional training is indicative both of the confusion of program planners and of the creativity they have brought to bear on the problem. In a field fraught with unknowns, there are only two propositions that one can feel reasonably comfortable with: (1) on-the-job learning is very effective; and (2) it is highly probable that the training program that recruits competent, stable trainees will end up with competent, stable workers. With only these two truths, it is rather difficult to pronounce the law school, the four-year college, the two-year college, university extension, or a newly created institute as *the* most desirable entity for training. Such a pronouncement is even more diffi-

12, 1969) (memorandum by the Institute for use of the Lord Chancellor's Legal Education Committee).

170. Institute of Legal Executives, Becoming a Legal Executive 1 (1970).

171. Institute of Legal Executives, *supra* note 169, at 8.

172. Institute of Legal Executives, *supra* note 170, at 2-4. The Institute has its own journal to help organize and upgrade its legal executives. *See, e.g.*, 8 THE LEGAL EXECUTIVE No. 3 (May 1970).

173. Institute of Legal Executives, *supra* note 169, at 5. *See also* Institute of Legal Executives, Syllabus & Regulations for the Associate Examination (1970); Institute of Legal Executives, Syllabus & Regulations for the Fellowship Examination (1969).

cult to make when another uncertainty is added to the picture—the issue of status. This issue raises a number of unanswered questions. Do we want a training entity that will help to professionalize the legal paraprofessional?[174] What is the relationship between credentials and job performance? How concerned must we be with the careers and job security of the legal paraprofessional,[175] and how does this concern relate to the quality of his training program? At present, we simply do not have all the answers to these questions. They do illustrate, however, how educational issues are almost inevitably confused with the mythologizing process of inaugurating, developing, and sanctioning an occupation.

The uncertainty in the field of training paraprofessionals should not be a cause for despair because we can continue to expect imaginative responses to the challenges of legal paraprofessional education. Instead, it should suggest that at this point, it is too early to outline the shape of the definitive training entity. There are, moreover, two other reasons why it is not yet possible to designate the most desirable training entity: first, no one type of institution has been able to bring sufficient resources to its training program to enable us to assess its full potential; and secondly, no one type has shown that it clearly is unsuited for training paraprofessionals. Thus, the best we can do is make some preliminary judgments on what the different institutions have already done and hazard a guess about the direction in which events may lead us.

A. Law Schools

Law school involvement in legal paraprofessionalism to date has been inadequate, except that law schools have helped to focus the attention of the profession on this field. The problem with law schools is that they tend to adopt the bar review model for legal paraprofessional training; they give the trainees a heavy dose of law on a crash basis. The range of activities being undertaken by legal paraprofessionals, however, is very wide; consequently, they cannot be trained properly in one or two months in a law school, or in any other school. Only frustration can result from this approach. The law school experience then becomes little more than an orientation period, with the actual training burden being shifted to the supervising attorneys in the neighborhood law offices in which the paraprofessionals are placed. These attorneys, however, will not be equipped to provide the training because of their busy schedules

174. ABA Special Comm. on Lay Assistants for Lawyers, *supra* note 50, at 3, 5, 53. The Committee suggests this question by its statement calling for a "new profession."

175. *See* Clines, *Dead End Found in "New Careers,"* N.Y. Times, Mar. 1, 1971, at 58, col. 1.

and because of their belief that a legal paraprofessional comes to them already trained. In the final analysis, the legal paraprofessionals will be forced to train themselves on the job, and in the process will feel that they have been shortchanged by the law school and by their supervising attorneys.

There are, however, no compelling reasons why the one-year law school model would not work. Recognizing this, the Committee of the Association of American Law Schools to Study the Curriculum has suggested that legal paraprofessional training be institutionalized in the law school so that a more comprehensive education can be provided.[176] The strongest argument in favor of training lawyers and legal paraprofessionals under one roof is that it would shorten the time that it will take for the profession to confront and evolve an answer to the ultimate question—what is necessary to train a person to perform the tasks of the lawyer? This question is quite separate from the question—what is a lawyer? The latter question invokes the credential-union rules. The former question addresses itself to an analysis of legal needs and of effective delivery systems to respond to those needs. We do not know yet whether legal paraprofessionalism is directed toward broadening the entry lines to lawyerhood or simply toward providing lawyers with competent helpers.[177] Placing legal paraprofessional training in a law school will force us to decide its direction. Because many law schools will be naturally reluctant to meet this issue, and because when it is met, it should not be resolved abruptly,[178] it is anticipated that very few law schools will conduct training programs in the near future. The role of most schools will be limited to providing representatives on legal paraprofessional committees and to assisting other institutions through consultant contracts in the design of training programs.

B. Community Colleges

Community colleges will continue to move into the training picture. Major funding resources will probably be directed to them, perhaps through the American Association of Junior Colleges in Washington, D.C. Two developments, however, are likely to counter this trend: (1) lawyers and legal paraprofessionals alike will begin to demand more technical knowledge than community colleges will be providing, particu-

176. *See* pp. 1110-11 *supra*.

177. *See* pp. 1086-87 *supra*.

178. *See* Graham, *Educators Fear Paralawyer Proposal*, N.Y. Times, May 31, 1971, at 6, col. 6 (describes a meeting of the Association of American Law Schools on the report of its Committee to Study the Curriculum, cited at note 45 *supra*).

larly as legal paraprofessionals are demarcated into a number of specialties; and (2) a movement for the "credentialization" of the legal paraprofessional will grow. These two developments will cause legal paraprofessionals to look elsewhere for training, except to the extent that they are satisfied with the liberal arts education and general introduction to the field provided by community colleges. Community college education for paraprofessionals could then become a steppingstone to training by other institutions that will be better equipped to provide specialized training and more highly recognized degrees than the Associate in Arts and the Associate in Science degrees.

C. *Future Alternative Training Entities*

In the unlikely event that the legal profession broadens its entry lines, then the multi-tiered model of the law school proposed by the Committee of the Association of American Law Schools to Study the Curriculum[179] will be adopted. Unlike the Committee's model, however, the law school will be organized by specialities, rather than in terms of first and second class students. If the entry lines are not opened, then we should expect to see legal paraprofessionals organize their own institutions. It may be that different organizations will develop for legal paraprofessionals who work for lawyers—the legal assistants—and for those who are independent of lawyers—the lay advocates. These institutions could be either exclusively training entities, such as the nursing schools in the medical profession, or they could be accrediting institutions, such as the Institute of Legal Executives in England.[180] The latter model could be tied into a two-year or four-year college program, or even into university extension training programs.

VII. TRAINING THE TRAINERS

It is not mandatory that all legal paraprofessionals be taught by lawyers. Indeed, there are aspects of lay advocacy training that should be taught by nonlawyers, or at least by lawyers who are not preoccupied with the concept that advocacy involves only the application of statutes and regulations. This country, nevertheless, is looking to lawyers for teaching manpower and for curriculum consultation. Consequently, it is absolutely essential for lawyers to examine their own self-image and to determine which of their self-conceptions might hinder their development as teachers and as curriculum consultants.

179. *See* pp. 1110-11 *supra.*
180. *See* pp. 1122-23 *supra.*

The Association of American Law Schools' Committee to Study the Curriculum was quite correct in suggesting that lawyers have adopted a shroud of omnicompetence[181] characterized by a belief that not only is the lawyer able to do everything, but that he must do it alone.[182] Moreover, many lawyers consider that a very personal devotion to detail is part of the process of becoming a lawyer. "It is only by drudgery that the exactness, accuracy and closeness of thought so necessary for a good lawyer are engendered."[183] Because every case is potentially a world unto itself, it is arguably impossible to find a case "on all fours." Lurking behind the apparent indestructibility of every *Dred Scott* case is a potential *Brown v. Board of Education* decision. To the extent that lawyers are inclined to treat each case as a totally unique entity, they naturally will be reluctant to delegate significant responsibilities on their case to legal assistants, or to work with lay advocates on them. Lawyers, therefore, need to overcome their fear that delegation of responsibility to legal paraprofessionals leads, by definition, to an encroachment on the sacred process of individualizing every case.

This process could be the distinguishing factor between the bureaucrat and the professional. The bureaucrat fits cases into categories on the basis of common characteristics, while the professional perceives the distinctive aspects of every case.[184] Law school training encourages this tendency in a lawyer by fostering a "no-answer" mentality. Woe unto that law student who presumes to have uncovered "an answer" to a law school examination question and who fails to set out a myriad of alternative approaches to the fact situation and to recognize that each fact situation is unique. Unfortunately, this frame of mind may cause the lawyer to be reluctant to work with a legal paraprofessional on a case until he can be convinced that there will be no interference with his concept of lawyering as an individualizing process. Conceivably, he may never be convinced of this.

This attitude is misguided for a number of reasons. First, there is

181. Association of American Law Schools Comm. to Study the Curriculum, *supra* note 45. *See also* Selinger, *supra* note 33.

182. This belief has its roots in colonial times and the frontier days, when the lawyer "carried his office in his hat."

183. 1 G. WYTHE, GREAT AMERICAN LAWYERS: A HISTORY OF THE LEGAL PROFESSION IN AMERICA 55 (W.D. Lewis ed. 1907). *See also* J. FRANK, LINCOLN AS A LAWYER 3 (1961); A. LINCOLN, *Notes for a Law Lecture*, in COMPLETE WORKS OF ABRAHAM LINCOLN 140, 142 (J. Nicolay & J. Hay ed. 1894) ("if any one . . . shall claim an exemption from the drudgery of the law, his case is a failure in advance").

184. P. Lang, Bureaucracy 12 (1970) (training materials of the Senior Citizens' Project of California Rural Legal Assistance).

no basis for assuming that the legal paraprofessional cannot be trained to assist the lawyer in identifying and coping with those parts of a case that distinguish it from every other case. If, for example, a legal assistant is asked to summarize a lengthy transcript of a pre-trial deposition, the legal assistant can be trained to pick out ambiguities and inconsistencies as well as common themes. Secondly, lawyers themselves use standardized forms, procedures, and checklists that have been prepared on the basis of the common experiences of other practitioners. Moreover, although lawyers hold themselves out as individuals who will take every case up to the United States Supreme Court, they do not practice law this way. Cases are treated and disposed of on the basis of their prior experiences, and lawyers do accept the notion of a "binding precedent," on the basis of which they recommend no further action. Yet, even though legal paraprofessionals can and do fit into the day-to-day operations of a busy lawyer, they, as delegatees of responsibility, may threaten a lawyer's image of himself and the image that he wishes to project to the public. Finally, lawyers need to determine the extent to which they are given to self-righteousness. It would be extremely unfortunate if lawyers adopt the position that laymen should be discouraged from engaging in any "legal" activities because they are not subject to the same ethical restraints as are members of the legal profession.[185] As Professor Walter Gellhorn said in 1941 on the subject of the practice of laymen before administrative agencies: "Lawyers have not yet established monopolistic control over the moral virtues. As a profession they can claim no inherent godliness. . . . [T]he profession's code of ethics, immediately relevant to the discharge of lawyer's duties, is not so esoteric that it cannot be adapted to the conditions of administrative practice, and there made applicable to nonlawyers as well as the legal practitioner."[186]

Trainers need to understand the three kinds of prohibitions that limit, correctly or incorrectly, the scope of what a legal paraprofessional may do. First, there are legal prohibitions. They cannot, for example,

185. W. Read, Memorandum on the Right to Practice of Legal Service Assistants 24 (May 4, 1970) (unpublished memorandum on file at the Program for Legal Service Assistants of Columbia Law School).

186. Gellhorn, *Qualifications for Practice Before Boards and Commissions*, 15 U. CIN. L. REV. 196, 203-04 (1941). The author goes on to say in the article: "It is here that the solution lies, if it is to be feared that lay practitioners will be unmindful of ethical values. Standards of conduct can be readily established by the agencies as can standards for admission to practice. The commercialization of administrative practice by unbridled solicitation of business, advertising, and fee-splitting is not an inherent consequence of accepting nonlawyer representatives. The need is to fortify the machinery for defining, detecting, and expelling corruption, rather than to erect a barrier against all who are not of the lawyer caste." *Id.* at 204.

try cases in most courts or hold themselves out as licensed attorneys. Secondly, there are competency prohibitions. If a legal assistant has never been trained to draft a corporate security and does not have the ability to understand one, then this legal assistant will never handle this task. Finally, there are psychological prohibitions, which stem from the images that lawyers have of themselves and of what nonlawyers can do. If a lawyer is absolutely convinced that only lawyers can comprehend and draft corporate securities, then he will not delegate these responsibilities to legal assistants. This prohibition is by far the most prevalent and counterproductive because most lawyers have not yet fully opened their minds to the potential of legal paraprofessionals. This, in turn, causes some of the competency problems, because the legal paraprofessional will not be given the opportunity to demonstrate his abilities if the lawyer has a limited conception of what an assistant can do. Consequently, the training program for the legal paraprofessional is likely to be unnecessarily narrow.

VIII. CONCLUSION

The legal paraprofessional movement is destined to make a significant impact on our system of delivering legal services and has been correctly called inevitable.[187] Within the last few years the plans for developing this career in law have generated considerable enthusiasm. The energies expended in this direction are worthwhile as long as educators and program planners maintain a proper perspective on legal paraprofessionalism by recognizing its background and by understanding what this movement can and cannot be expected to accomplish.

First of all, educators and program planners should always keep in mind that legal paraprofessionals spring from a long history of lay assistants to lawyers[188] and of lawyers substitutes.[189] The idea of a nonlawyer participating in society's systems for delivering legal services is not new. What is new is the attention that is being devoted to this idea and the very recent emergence of countless programs that have experimented with variations on the idea. At its present stage, the legal paraprofessionalism movement should be viewed, to a large degree, as the consolidation of practices that have been with us for a long time.[190]

Secondly, there is a danger of forgetting that the primary ingredient

187. Ehrlich & Headrick, *supra* note 7, at 467.

188. *See* note 49 *supra* and accompanying text.

189. *See* note 66 *supra* and accompanying text.

190. If the paraprofessional movement is viewed in light of its long history, the question for the consolidators then becomes: what is the next logical step?

in any legal paraprofessional program or movement must be public service. It is very easy to become involved in program and curriculum design and to forget that these efforts must be calculated to satisfy the public's need for legal services. A law firm that reorganizes in order to take advantage of legal assistants should pass on a considerable share of the cost-savings to the consumers of the firm's services. Likewise, a lay advocate who is licensed to provide representation for clients in administrative proceedings should not be free to charge his clients excessive fees.[191] Society has a right to expect that legal paraprofessionalism will assist the legal community in lowering the cost of legal services without sacrificing the competence of the service rendered.

Finally, educators and program planners must recognize the value of legal paraprofessionalism as a vehicle for discovery and reexamination. Programs quite properly have been engaged in the task of identifying the functions for which a lawyer is overtrained. They also should determine whether there are some areas, such as divorce and automobile accident liability,[192] that need to be taken away from lawyers because a lawyer's services are not required. This is not to say that legal paraprofessionalism should turn into an antilawyer phenomenon. It is instead to suggest that lawyers should take advantage of the insights and achievements of legal paraprofessional programs to reassess the range of activities for which society has come to depend upon lawyers, and that they should determine whether the legal profession's manpower shortage is in any way due to the fact that lawyers are overextended in areas that do not necessarily call for the presence of lawyers.

In spite of the opportunities presented by legal paraprofessionalism, however, there exists a danger of over-expectation. Legal paraprofessionalism is clearly not the final answer to all the problems of the legal profession. It is only one ingredient in a reform that has produced such proposals as group legal services,[193] specialization,[194] and legal insurance.[195] Moreover, the practicing attorney should not expect that a corps of legal assistants can bring him efficiency and economy overnight. It is true that the legal paraprofessional offers some hope for improvement

191. Gellhorn, *supra* note 186, at 204.

192. U.S. NEWS & WORLD REPORT, Dec. 14, 1970, at 32 (interview with Chief Justice Warren E. Burger).

193. *See* Gallon, *Group Practice—A Potential Bonanza for All Lawyers*, 3 LAW & POVERTY 15 (May 1969).

194. *See Special Committee on Specialization and Specialized Legal Education*, in 79 A.B.A. REP. 582 (1954).

195. Stolz, *Insurance for Legal Services: A Preliminary Study of Possibility*, 35 U. CHI. L. REV. 17 (1968).

in the mechanisms for delivering legal services, but legal paraprofessionals are going to bring with them their own set of problems. It will be a long time before they are finally integrated into the legal profession as we know it today. The stance that will be most conducive to progress will be open-mindedness. We do not know what answers legal paraprofessionalism will bring us, nor have we even formulated all of the questions that it will raise. We should be ready, however, to listen to these questions as they are identified and to evaluate thoroughly the answers that are proposed. It may well be that the task of listening will be even more difficult than the responsibility of evaluation.