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COMMENT

The Lack of Practical Training in Law Schools: Criticisms, Causes and Programs for Change

William T. Vukowich*

EVER SINCE LEGAL EDUCATION moved out of the law office and into the university, critics have complained that law school graduates lack the practical knowledge, skill and ingenuity essential to effective performance in the role of a practicing attorney.¹ The criticism emanates from the bench,² the practicing bar,³ and the educators themselves⁴—the severity and tenor of the comments varying with the critic and his particular sphere of endeavor. One of the practitioners' primary complaints relates to the lack of practical experience with routine legal tasks and court procedures in law schools.⁵ The practical experience suggested by some as being necessary would include such tasks as the probate of a will, administration of estates, and the filing of corporate and partnership tax returns.⁶ Another commonly heard complaint is that law school graduates have little or no understanding of how to cope

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¹ A. REED, *THE MISSING ELEMENT IN LEGAL EDUCATION — PRACTICAL TRAINING AND ETHICAL STANDARDS* 1-4 (1929).

² See, e.g., Burger, *A Sick Profession*, 42 WIS. BAR. Bull. 7 (Oct. 1969); Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); Tauro, *Law School Curricula Must Change to Give Bar More Trial Lawyers*, 4 TRIAL 48 (Oct.-Nov. 1968).

³ See, e.g., Cantrall, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A.J. 907 (1952); see generally Dunn, *Legal Education and the Attitude of Practicing Attorneys*, 22 J. LEGAL ED. 22 (1969).

⁴ See Boden, *Is Legal Education Deserting the Bar?*, 37 INS. COUNS. J. 1 (1970).

⁵ See Dunn, *supra* note 3, at 224-25. The author reports a survey of the Illinois Bar which revealed that, while 69 percent of those responding rated their legal education high in preparing them to serve clients and employers, 88 percent felt that they would have been even better prepared if they had been exposed to more practical experience with actual legal problems and the courts.

Regarding the lack of ability to competently perform the attorney's role in the courtroom, see Burger, *supra* note 2, at 7, and Tauro, *supra* note 2.

⁶ Cantrall, *supra* note 3, at 909; see Frank, *What Constitutes a Good Legal Education?*, 7 AM. L. SCHOOL REV. 894 (1933).

with real-life fact situations.⁷ Commentators point to the pedagogical use of appellate decisions and argue that this exclusive emphasis distorts the students' view of the work done by attorneys and courts, and fails to impart to the students an appreciation of the importance of finding, marshalling and presenting facts at the trial level.⁸ Finally, some critics feel that law students should receive more exposure to the non-legal problems which confront attorneys in their day-to-day practice,⁹ such as experience in human relations¹⁰ and office management.¹¹ In sum, although the commentary lacks unanimity as to the direction and extent of the desired training, critics agree that law schools are producing graduates deficient in varying aspects of the practical skill necessary to function as competent attorneys.

Although the present mode of legal education does afford the opportunity for some development of these requisite skills, the law schools' main emphasis is on theoretical studies. In this respect, it cannot be argued that they are failing in their task. While most graduates are incapable of immediately trying a case, drafting a will, or doing many of the things that "lawyers do," these graduates do have a good understanding of the substantive law underlying most of their activities.

A number of causes can be identified as being at the base of this emphasis on the theoretical and the concomitant de-emphasis of the practical. Commentators frequently fail to consider the full range of causes. Usually they attribute the lack of practical training to

⁷ See Cooper, *Preparation for the Bar*, 15 J. LEGAL ED. 300-02 (1963).

⁸ Boden, *supra* note 4, at 7; Cavers, "Skills" and Understanding, 1 J. LEGAL ED. 395 (1949); Cooper, *supra* note 7, at 302-06; Frank, *supra* note 2, at 1315.

A related comment is that students are not exposed to the realities of the decision-making process which is necessary at each step of the preparation of a case prior to trial. E.g., Frank, *supra* note 2, at 1340; see Cooper, *supra* note 7, at 300.

⁹ E.g., Frank, *supra* note 6, at 895; see authorities cited in Freeman, *Legal Education: Some Farther-Out Proposals*, 17 J. LEGAL ED. 272, 273 n.4 (1965).

¹⁰ See, e.g., Griswold, *Intellect and Spirit*, 81 HARV. L. REV. 292, 304 (1967).

¹¹ See, e.g., Cantrall, *supra* note 3, at 909. The suggestion is not a new one. See Mercer, *The Law Schools and the Practicing Lawyer*, 4 AM. L. SCHOOL REV. 217, 221 (1916).

Two other criticisms that have frequently been made deal with the substantive law which is taught, rather than the failure to teach practical skills and give practical experiences. They are nonetheless concerned with the preparation of students for practicing law. One is that law schools fail to teach professional responsibility. E.g., Boden, *supra* note 4, at 12-13. The other is that law schools' emphasis on social change detracts from students' time devoted to learning practical law. *Id.* at 2-7; see Macaulay, *Law School and the World Outside Their Doors: Notes on the Margins of "Professional Training in the Public Interest"*, 54 VA. L. REV. 617, 626 (1968). These criticisms have long been debated in bar and academic circles and have by no means been resolved.

one or two reasons, then propose a solution which would overcome one of the reasons stated. When the full gamut of causes is considered, however, the solutions proposed by these writers are often seen to be inadequate or impracticable.

Basic to any explanation of the lack of practical training is an understanding of the university setting itself, and the ramifications of that setting which decrease the feasibility of practical study.¹² One obvious but rarely considered aspect is the physical environment itself.¹³ Unlike the practical facilities available in other professional schools, such as medical schools which are operated in conjunction with and in close proximity to medical centers, the law school facility usually consists of merely a number of large lecture rooms bearing little similarity to the courtroom and law office where the student will ultimately practice. Although most law schools have moot court rooms, they are more frequently designed and used for lectures than for mock trials. While it is feasible for the medical or science-oriented schools to provide significant practical training in an educational facility which duplicates the students' future career environment, it is patently impossible to provide any *meaningful* practical training within the existing law school facilities.

A more crucial, though less visible factor is the intellectual environment of the university. Universities are generally regarded as the traditional citadels of knowledge and theory,¹⁴ rather than training grounds for the development of career-oriented skills.¹⁵ In the evolution of our academic system, educators have come to view the academic pursuit of knowledge as an end unto itself.¹⁶ Legal

¹² See Stolz, *Clinical Experience in American Legal Education: Why Has It Failed?*, in *CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* 54, 59-61 (E. Kitch ed. 1970). See also Abram, *Educating the Lawyer as a Policy-Maker*, 6 *TRIAL* 41, 42 (April-May 1970); Burger, *supra* note 2, at 12; Neal, *The Functions of a Law School*, 15 *UNIV. OF CHICAGO LAW SCHOOL RECORD* 1, 6 (Winter 1967).

¹³ See McClain, *Is Legal Education Doing Its Job? A Reply*, 39 *A.B.A.J.* 120, 122 (1953).

¹⁴ See *TAXONOMY OF EDUCATIONAL OBJECTIVES, HANDBOOK 1, COGNITIVE DOMAIN* 28-34 (1956); Neal, *supra* note 12, at 6-7.

¹⁵ *TAXONOMY OF EDUCATIONAL OBJECTIVES, supra* note 14, at 7-8; see Clark, "Practical" *Legal Training: an Illusion*, 3 *J. LEGAL ED.* 423 (1951).

¹⁶ A committee of educators has noted:

Because of the simplicity of teaching and evaluating knowledge, it is frequently emphasized as an educational objective out of all proportion to its usefulness or its relevance for the development of the individual. In effect, the teacher and school tend to look where the light is brightest and where it is least difficult to develop the individual. *TAXONOMY OF EDUCATIONAL OBJECTIVES, supra* note 14, at 34.

scholars, in the same vein as other academicians, generally apply their knowledge outside of the classroom only in a limited way,¹⁷ such as the preparation of *amicus curiae* briefs or the preparation of articles for publication — a manner significantly different from the way their students will attempt to use the same basic knowledge. Related to this is the fact that legal educators are persons who — though they possess the credentials to practice law — have decided that law practice is not their “cup of tea.” One could thus assume that they see more merit in the intellectual than in the practical.¹⁸ Among most law school faculties, professional experience ranks relatively low among the qualifications for faculty employment.¹⁹ Consequently, many legal educators have little practical experience themselves and are unable or disinclined to teach practical matters.²⁰ Since the materials which are emphasized in any curriculum are those which the educators are best able²¹ or most eager to teach,²² the faculty’s paucity of interest and experience in practice is a prime cause for the lack of any meaningful practical training in law school.

In addition to what appears to be a value-judgment by the faculty in their preference for the theoretical, there is the very practical consideration of the relative ease of teaching the theoretical. In a university, it is much easier to teach knowledge than to develop skills.²³ Development of skills and exposure to practical matters would require a great deal of individualized treatment,²⁴ whereas teaching knowledge can be done in a large classroom, requiring little or no individual attention.²⁵ Furthermore, in law schools, as

Law schools also stress analysis, problem solving and synthesis. But these, too, are theoretical and more easily taught than skills.

¹⁷ See, e.g., Frank, *supra* note 2, at 1314.

¹⁸ Freeman, *supra* note 9, at 273.

¹⁹ In a recent commentary, one writer points out that:

Success in practice and reputation among practitioners are nearly as unimportant as bar examination results; editorship of the law review at a leading school is worth more than a partnership in a leading firm. Producing a practitioner’s treatise, however much prestige it brings in the profession, may well be the academic kiss of death. Stevens, *Aging Mistress: The Law School in America*, CHANGE 32, at 36 (Jan.-Feb. 1970).

²⁰ See Frank, *supra* note 6, at 895. See also Cantrall, *supra* note 3, at 908.

²¹ See Boden, *supra* note 4, at 5-7; Burger, *supra* note 2, at 16.

²² See Boden, *supra* note 4, at 2; Cantrall, *supra* note 3, at 910; Sneed, *Some Anxieties of Legal Education*, 21 SW. L.J. 617, 622 (1967).

²³ TAXONOMY OF EDUCATIONAL OBJECTIVES, *supra* note 14, at 7-8, 28-34. See McClain, *Legal Education: Extent to Which “Know-How” in Practice Should be Taught in Law School*, 6 J. LEGAL ED. 302-04 (1954).

²⁴ See Stevens, *supra* note 19, at 38; Kitch, *Foreword to CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* at 5, 21 (E. Kitch ed. 1970).

²⁵ Kitch, *supra* note 24, at 21.

in other parts of the university, evaluations and rankings are generally considered important. It is much easier to evaluate students' acquisition and application of knowledge than it is to evaluate their development of skills or acquisition of practical experience.²⁶

One final ramification of the university setting which must be considered is the pedagogical use of the "case method." Although ostensibly designed to provide a look at the real world of the law, many argue that it does not enhance, but in fact detracts from the development of legal skills.²⁷ Although it is called the case method, appellate *decisions* rather than *cases* are discussed.²⁸ As Judge Frank has described the study of appellate decisions in the classroom, "[w]hat the student sees is a reflection in a badly made mirror of a reflection in a badly made mirror of what is going on in courtrooms and law offices."²⁹ Although the case method is useful for "inculcating a certain type of legal reasoning,"³⁰ its overuse tends to distort reality and fails to give students experience with "real" cases.³¹

Turning from the causes of the lack of practical training which are inherent in the university setting itself, consideration must be given to external factors which have impeded greater emphasis on the development of practical skills in the legal education process. The foremost of these is the growth of the "law" itself. As the economy grew in the early 1900's the practice of law grew and new branches of the law sprang out to meet new commercial and social needs. Law office training became more and more inefficient and impractical for learning the ever-increasing body of knowledge required, and law school education grew to be the basic means of preparation for the legal profession.³² Today the law is growing at an even greater pace. Not only is there more law in the traditional fields, but new fields of law, such as environmental law and consumer protection, are rapidly emerging.³³ Furthermore, social

²⁶ See TAXONOMY OF EDUCATIONAL OBJECTIVES, *supra* note 14, at 34.

²⁷ E.g., Frank, *supra* note 2, at 1315. See Dunn, *supra* note 3, at 222.

²⁸ See the problem discussed in Cooper, *Preparation for the Bar*, 15 J. LEGAL ED. 300, 303 & n.10 (1963).

²⁹ Frank, *supra* note 6, at 899.

³⁰ Griswold, *supra* note 10, at 298-99.

³¹ *Id.* at 299-300; Cantrall, *Legal Education: The Extent to Which "Know-How" in Practice Should Be Taught in Law Schools*, 6 J. LEGAL ED. 316, 322 (1954); Cavers, "Skills" and Understanding, 1 J. LEGAL ED. 395, 398-401 (1949).

³² See A. REED, *supra* note 1, at 4; Stolz, *supra* note 12, at 59-60.

³³ 1968 AALS PROCEEDINGS, PART I, SEC. 2, REPORT OF THE NEEDED LEGAL SERVICES PROJECT, at 129; Friendly, *The Idea of a Metropolitan Law School*, 19 CASE

changes have created new classes of clients — the poor and members of social minorities — who have problems unique to and disruptive of traditional legal concepts and values.³⁴

The implications of this growth and expansion for modern legal education are obvious. First, there is much more substantive law to be taught. Second, our past experience with the law's rapid growth and the consequent problems thus created for the practicing lawyer has shown the necessity for legal education "to equip lawyers to deal with problems of the unknown future as well as the immediate present."³⁵ These implications create obvious pressures to teach more substantive law and to discuss problems of the future. In structuring the law school curriculum to satisfy these needs, less time is available to devote to the practical and skill-oriented aspects of the practice of law.

Another external factor that is related to the increasing growth of the law, the development of new fields of specialization, and the emergence of new classes of clients is an increasing diversity of students' goals. It has been stated, perhaps too simplistically, that there is no standard lawyer — individual lawyers perform vastly different functions.³⁶ Today, with new fields of law and new classes of clients, this truism is a consideration more important for legal

W. RES. L. REV. 7, 10 (1967); Katzman, *There is a Shortage of Lawyers*, 21 J. LEGAL ED. 169 (1968) (referring to the California bar); see Pincus, *Reforming Legal Education*, 53 A.B.A.J. 436-37 (1967); Reuschlein, *Activities of the Association*, 22 J. LEGAL ED. 119, 121 (1969); Sneed, *Some Anxieties of Legal Education*, SW. L.J. 617, 622-25 (1967); Speidel, *A Matter of Mission*, 54 VA. L. REV. 606, 611 (1968).

³⁴ See Nader, *Law Schools and Law Firms*, 54 MINN. L. REV. 493, 494-97 (1970).

³⁵ AALS, ARTICLES OF ASSOCIATION OF THE AALS, art. 6, pt. 7, *Approved Association Policy Regarding Breadth of Offering*, at 10-11 (1969); see Nutting, *Training Lawyers for the Future*, 6 J. LEGAL ED. 1, 3-4 (1953).

³⁶ Stevens, *supra* note 19, at 35; see M. MAYER, *THE LAWYERS* 92 (1967).

A poll of first-year law students at Harvard (see N.Y. Times, Feb. 3, 1971, col. 3) dramatically illustrates the change of goals among recent students. The poll revealed the following preferences:

FIELD OF INTEREST	PERCENT OF FIRST-YEAR LAW STUDENTS
Business corporation	2
Corporate law firm (without pro bono work)	8
Corporate law firm (if time allowed for pro bono work)	10
General-practice law office	12
Criminal law	3
Government	11
Teaching	3
Civil rights, civil liberties, poverty law	21
Non-legal	6
Other	5
Don't know	21

education than ever before. Students today have many different career opportunities and a greater diversity of goals than they did just a few years ago. This makes it difficult to create programs of practical instruction. Because different specializations require different skills and entail different experiences,³⁷ teachers with a wide variety of backgrounds would be required to conduct a full spectrum of practice-oriented courses and programs. But with the lack of practical experience among present faculty members,³⁸ it is doubtful that the schools would be able to undertake the teaching of the full range of specialized skills, and economic factors weigh against the feasibility of hiring a number of practitioners to teach the required skills.³⁹ Thus, divergent student goals, one of the factors indicating a necessity for training in specialized skills, is also a cause behind the impracticability of such training.

Another major external factor — a significant cause and at the same time one of the effects of the lack of practical training in law schools — is the emergence of a type of "de facto" apprenticeship in the practice. In the past, it has been traditional for the graduates of the more "elite" law schools to enter immediately into an established law practice, usually a large law firm or governmental office;⁴⁰ they only rarely have gone into practice for themselves.⁴¹ These graduates receive practical training, which is probably far superior to any which *could* be given by law schools,⁴² under the tutelage of the experienced practitioners in the law offices with which they become associated.⁴³ Consequently, it has not been com-

³⁷ There would still probably exist a common ground of skills necessary to all the specializations, such as interviewing clients, trying cases, and drafting pleadings. See McClain, *supra* note 23, at 303; cf. Burger, *supra* note 2, at 12.

³⁸ See notes 18-20 *supra* & accompanying text.

³⁹ See text accompanying note 51 *infra*. This more specific training might easily be achieved through clinical education. If the program offers a great variety of participating law offices, students could more easily get training for their chosen careers. See, e.g., Runkel, *Willamette's Internship Program and the Proposed Student Practice Rule*, 6 WILL. L.J. 1, 4-11 (1970).

⁴⁰ See J. CARLIN, *LAWYERS ON THEIR OWN* 31-33 (1962). See generally Runkel, *supra* note 39, at 25-34.

⁴¹ J. CARLIN, *supra* note 40, at 34 n.16; Griswold, *Legal Education: The Extent to Which "Know-How" in Practice Should be Taught in Law Schools*, 6 J. LEGAL ED. 324, 328 (1954) (less than 3 percent of Harvard's graduates go into practice for themselves).

⁴² See Abram, *Educating the Lawyer as a Policy-Maker*, 6 TRIAL 41, 42 (April-May 1970); Lefcoe, *Annex C*, 1968 AALS PROCEEDINGS, PART I, SEC. 2, *Report of the Comm. on Curriculum* 32; McClain, *Is Legal Education Doing Its Job? A Reply*, 39 A.B.A.J. 120, 122 (1953); Ritter, *Views of Our Readers*, 39 A.B.A.J. 69, 70 (1953).

⁴³ Ferren, *Goals, Models, and Prospects for Clinical-Legal Education*, CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 94, 97-98 (E. Kitch ed. 1970); see Neal, *supra* note 12, at 6-7.

elling for the leading law schools to offer programs in practical matters. The same opportunity is not available, however, for the many⁴⁴ graduates who enter practice by themselves or who join small offices where they receive little assistance.⁴⁵ One might expect that law schools whose graduates generally enter practice by themselves would emphasize practical training more than they do. But this is not the case, for a variety of reasons. First, the leading law schools generally set the pace for legal education and their curricula are models for other schools. Secondly, casebooks, which so strongly influence the scope of instruction, are generally written by teachers at the elite schools and the materials generally emphasize the theoretical rather than the practical. Finally, the high financial costs of practical training can least well be borne by the non-elite schools — paradoxically, the schools whose students need it the most.⁴⁶

For the large as well as the small schools, the adoption of a curriculum and pedagogical technique which emphasize skills and practical training would involve considerable cost, in terms of both the financial expenditure⁴⁷ and the sacrifice of time which would otherwise be devoted to more theoretical study. The major economic obstacle would be the cost of the expanded faculty necessary under such a program of education. If it is to be effective, practical training would require closer individual supervision than is now undertaken in law schools.⁴⁸ But the present faculty-student ratio at most law schools is too high to permit this supervision in any effective or practical way.⁴⁹ The problem could be obviated by

⁴⁴ J. CARLIN, *supra* note 40, at 30 n.9, 33 n.15, About one-half of all practicing attorneys are sole practitioners. *Id.* at 17. Somewhat less than half of these started out as sole practitioners. *Id.* at 30 n.9. (Statistics are from Illinois bar).

⁴⁵ See J. CARLIN, *supra* note 40, at 9-11; Cantrall, *supra* note 3, at 909; Friendly, *supra* note 33, at 12-13.

⁴⁶ An additional ramification of the lack of practical training in law schools is that students' opportunities are limited; they lack necessary practical training and are consequently ill-equipped to go into practice on their own. They must join established practices to gain the experience an attorney needs. Cf. Bien, *Training Lawyers vs. The Study of Law*, *The Columbia Law School News*, vol. 25, No. 1, at 6 (Nov. 4, 1970); Nader, *supra* note 34, at 494-96.

⁴⁷ See McClain, *Legal Education: The Extent to which "Know-How" in Practice Should Be Taught in Law Schools*, 6 J. LEGAL ED. 302, 311 (1954). One writer comments: [T]he law teachers' journal, *The Journal of Legal Education*, is a graveyard of ideas which died or were stillborn because the authors never considered the traditional financial limitations of law schools. Stevens, *supra* note 19, at 40.

⁴⁸ See Comment, *Legal Education Can Be Cheaper, Quicker and Better*, 22 CASE W. RES. L. REV. 515, 517 (1971); Kitch, *supra* note 24, at 20-23; Stevens, *supra* note 36, at 38.

⁴⁹ See Comment, *supra* note 40.

either reducing the student enrollment or increasing the size of the faculty,⁵⁰ but either solution would create intolerable economic burdens — one through loss of revenue from tuition, another through added salary expenditures. Similarly, proposals to enlist part-time involvement by the practicing bar would involve not only the same salary cost to the school, but would also impose a cost on the practitioner in his loss of valuable billing time for which the usual part-time faculty salary would be insufficient compensation.⁵¹

The second cost which would be incurred as a result of an expanded practical curriculum is the loss of much of the teaching and study time which is now devoted to the courses in substantive law. While many writers believe that practical training is sufficiently important to warrant much more time than is presently available in the three years of study,⁵² as many believe that the minimal value received from practice-oriented courses does not warrant their inclusion in the curriculum at the cost of losing courses which are more theoretically and substantively oriented.⁵³

This dichotomy of opinions regarding the costs and relative merits of the practical as opposed to the theoretical can be compared to the rift in philosophies concerning the appropriateness of schools as a training ground for practical skills. Many writers suggest that law schools are solely responsible for correcting the present deficiencies in practical training,⁵⁴ believing that such training is an essential element of the institutional education,⁵⁵ especially for those graduates whose initial practice does not afford them an effective apprenticeship. An opposing group of commentators feels that legal education is not equipped to offer practical training and should concentrate on the more valuable theoretical training which it is best able to provide, leaving the practical training either to a required

⁵⁰ See Kitch, *supra* note 24, at 20-23.

⁵¹ See, e.g., McClain, *supra* note 47, at 909.

⁵² E.g. Burger, *supra* note 2; Cantrell, *supra* note 3. But see Comment, *supra* note 48, at 523-25, where Professor Haskell suggests compressing the present three-year course of study into a more concentrated two-year course.

⁵³ E.g. Clark, "Practical" Legal Training an Illusion, 3 J. LEGAL ED. 423 (1951); McClain, *supra* note 42, at 123; Nutting, *supra* note 35, at 3-5. The ever-increasing diversity and quantity of substantive law to be learned is a major factor buttressing this latter view. See notes 32-35 *supra* & accompanying text.

⁵⁴ E.g. Boden, *supra* note 4; Cantrall, *supra* note 3; Frank, *supra* note 2.

⁵⁵ The arguments usually proceed by analogizing legal education to medical education. E.g., Frank, *supra* note 2, at 1311, 1314 (1947). However, the analogy is a poor one because of differences in both the nature of the education and the requirements of the practices. See Clark, *supra* note 53, at 425; McClain, *supra* note 47, at 311-12.

apprenticeship prior to admission to the bar⁵⁶ or to a "de facto" apprenticeship in a law office,⁵⁷ as is the present custom.

In response to this controversy, various proposals for increasing the practical expertise of graduating law students have been made by the practitioners and educators. Some have been implemented in the law schools, with varying degrees of success in spite of the obstacles inherent in the university setting. Most schools presently offer a variety of courses intended to give students some exposure to practical tasks. A basic course in legal research and writing is usually required of all students. Many schools offer electives in courses such as business planning and estate planning which can incorporate exercises in the drafting of instruments, preparation of memoranda and problem solving. Most schools now offer courses related to the process of litigation, such as pleading and practice, trial practice, and moot court. Even courses in negotiation have been offered with some success.⁵⁸ A factor common to all these courses is that they generally require more faculty time per student and credit hour; consequently, enrollment in these courses is frequently limited and students are able to participate in only a few of the courses. Furthermore, these courses involve a theoretical aspect in addition to their apparent practical direction, and the relative emphasis placed on the two elements will vary with the inclinations of the individual instructor. Despite their obvious limitations, these courses are a widely accepted accommodation to the need for practical training.

The last decade has witnessed the expansion of clinical programs in law schools. These programs represent a more direct and comprehensive approach to the problem than do practice-oriented courses. While the debate regarding the value and appropriateness of clinical education wages on among legal educators, it is clear that it *can* serve as an effective vehicle for teaching practical skills and giving students experience with actual legal problems and legal institutions.⁵⁹ Clinical programs offer students opportunities to experience, or at least observe firsthand, what practicing attorneys do.

⁵⁶ See Joiner, *Legal Education: The Extent to Which "Know-How" in Practice Should be Taught in Law Schools*, 6 J. LEGAL ED. 295, 300-01 (1954); Ritter, *supra* note 42, at 70.

⁵⁷ E.g., McClain; *supra* note 48, Neal, *supra* note 12.

⁵⁸ E.g., Peck & Fletcher, *A Course on the Subject of Negotiation*, 21 J. LEGAL ED. 196 (1968).

⁵⁹ Ferren, *supra* note 43, at 94-98; see 1968 AALS PROCEEDINGS, PART I, SEC. 2, *Report of the Comm. on Curriculum* 11-12; Boden, *supra* note 4, at 11-12; Kitch, *supra* note 24, at 13-14.

Like other modes of practical training, however, clinical programs involve increased costs.⁶⁰ Thus, the issue with respect to the utility of clinical education is the same as that concerning all practical programs: Is the program worth the costs in financial resources and in time lost from theoretical work, considering the skills, experience and knowledge to be gained from the program? In this context it is difficult to generalize as to the efficacy of such programs, since different programs at the various schools involve varying costs, depending on the amount of faculty supervision and time spent on the program.⁶¹ One important factor which must be considered in an assessment of these programs is that they are not centered in the law school, unlike other practical programs, and consequently are not hampered by the university setting.⁶² On the other hand, student participation in such programs is even more limited than in other practical programs, and the benefits are thus available to only a select few.

Although the incorporation of practical courses and clinical programs into the legal curriculum has alleviated some of the deficiencies, their present limitations in terms of student enrollment make them inadequate as an ultimate solution to the problem. Recent proposals by commentators would attempt to reach a broader base of the student population.⁶³ Chief Justice Burger has suggested that one-half of each student's third year be devoted to working under the supervision of a trained trial lawyer.⁶⁴ He believes that every competent lawyer needs training in litigation and feels that his program should thus be required or at least uniformly available to all interested students. There are, however, obvious problems with his proposal. First, it assumes that work with a trained lawyer would be more profitable than theoretical studies; as discussed above, many experts would disagree.⁶⁵ Secondly, it assumes that many trial lawyers would willingly cooperate. The Chief Justice

⁶⁰ See text accompanying notes 47-53 *supra*.

⁶¹ See, e.g., Friendly, *supra* note 33, at 11; Kitch, *supra* note 24, at 22-23.

⁶² See text accompanying notes 12-31 *supra*.

⁶³ Some have proposed that apprenticeships be required before admission to the bar but after graduation from law school. See authorities cited note 56 *supra*. This would not be the responsibility of legal education and will not be discussed here. For a discussion of the efficacy of required apprenticeships, see Stolz, *supra* note 12, at 62-65.

It has also been suggested that practical matters might be taught in weekend and evening sessions by members of the bar. See Nutting, *Training Lawyers for the Future*, 6 J. LEGAL ED. 1, 7 (1953).

⁶⁴ Burger, *supra* note 2, at 14, 16.

⁶⁵ See authorities cited note 53 *supra*.

suggests that one lawyer could supervise about three students. Thus, for a class of 100 students, about 17 lawyers would have to participate for a full year or about 34 for a half-year. But the Chief Justice stresses that the supervising attorneys should be "the best trial lawyers available."⁶⁶ Considering the scarcity of good trial lawyers; as the Chief Justice himself emphasizes, and the great costs which such a program would impose on them as well as the law schools, such a program seems unrealistic.

Judge Frank would have the law school "resemble a sort of sublimated law office."⁶⁷ Students would work with law professors who had extensive experience practicing law. Under the law professors' guidance, students would work on cases, observe court proceedings, and generally experience what lawyers do. Such a program, however, would cut into the time available for theoretical work to an extent even greater than other practical programs. Also, the physical environment of law schools is simply not conducive to transformation into a "sublimated law office." Finally, the costs would be greater since such a program would entail smaller faculty-student ratios than presently exist.

Another suggestion which is frequently made deals with the greater use of practicing attorneys as part-time professors.⁶⁸ Practitioners would, it is assumed, inject more practical matters into the curriculum. Many schools do, of course, employ practitioners as part-time faculty members, but generally only in small numbers. There are a number of reasons for this limitation. First, both the American Bar Association⁶⁹ and the American Association of Law Schools⁷⁰ discourage too great a participation by part-time personnel. Secondly, it is often difficult to attract the better practitioners because salaries are lower than income from practice and because the obligation to teach a regularly scheduled course often interferes with practice. Third, some legal educators possess an intellectual snobishness which causes them to regard practitioners as ill-suited for

⁶⁶ Burger, *supra* note 2, at 14.

⁶⁷ Frank, *supra* note 6, at 895; Frank *supra* note 2, at 1329.

⁶⁸ Boden, *supra* note 2, at 10-11; see Cooper, *Preparation for the Bar*, 15 J. LEGAL ED. 300, 307 (1963). See also 1968 ASSOCIATION OF AMERICAN LAW SCHOOLS PROCEEDINGS, PART I, SEC. 2, *Report of the Comm. on Curriculum* 16.

⁶⁹ ABA, LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS IN THE UNITED STATES, *Minimum Standards of the ABA for Legal Education*, Standard 1(d), at 28 (1967).

⁷⁰ AALS, ARTICLES OF ASSOCIATION OF THE AALS, Art. 6, Sec. 6-1(4)(b), at 7 (1969).

classroom instruction.⁷¹ Fourth, full-time faculty often feel that practitioners disrupt the schools' routines by failing to adhere to grading standards, by lecturing too much or too little, and by occasionally missing classes or being unprepared due to pressures from their law practice.⁷²

There appears to be no easy solution to the problem. Any proposal for more practical training in law schools will encounter obstacles caused by one or more of the following factors: lack of a physical and intellectual environment conducive to skills training; the educators' preference for the theoretical and consequent disdain for the practical; the rapid growth of substantive law which precludes any sacrifice of time spent on the study of substantive law; and finally, the financial costs of such programs, which are presently viewed as prohibitive.

The development of legal skills requires time, concentrated effort, and the proper environment. Unless major changes transpire, law schools will remain ill-equipped to provide these essentials. Considering that practical techniques and expertise can best be acquired while practicing, and that substantive law and theoretical knowledge can best be learned in the institutional setting, the prevalent attitude of educators seems correct — that the law school should not take on the full responsibility of training students in practical matters, but should leave such skills to be acquired after graduation. For the graduate who enters into a sort of "de facto" apprenticeship upon graduation, the present system provides a workable and efficient way to learn all that is necessary to function effectively as an attorney. It is the graduate who joins a very small firm or the graduate who enters practice for himself who suffers under the present system. He often finds himself ill-equipped to artistically or skillfully represent his clients.

What will evolve in the future is unclear. The need for practical instruction will persist, but so shall the need for theoretical instruction. As the schools respond to the ever-broadening scope of the substantive law which must be taught, the probability of any change in the direction of more practical study rapidly diminishes. Thus, it appears that the student, educator and practitioner must accept the likelihood that graduates will continue to lack competent practical training.

⁷¹ Boden, *supra* note 2, at 11; Stevens, *supra* note 19, at 36.

⁷² See J. CARLIN, *LAWYERS ON THEIR OWN* 6-8 (1962).

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