

TOWARDS A COMPREHENSIVE APPROACH TO CLINICAL EDUCATION: A RESPONSE TO THE NEW REALITY†

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INTRODUCTION

Almost fifty years ago Jerome Frank asked, "Why Not A Clinical-Lawyer School?"¹ Recent developments in the legal profession have focused renewed attention upon that question. Recent developments in clinical education have made it possible to design the model for a "lawyer school." The model described in this article represents an attempt to respond affirmatively to Frank's question but in a way which retains the benefits and protects the values underlying legal education on the university law school model.

The current debate over the proper role of clinical education in the university law school curriculum stems from a dilemma as old as the profession itself.² The truly competent lawyer is an artist, and to be-

† The approach and the precursor of the model presented here were developed and substantially implemented at the Antioch School of Law between 1973 and 1976. Both the development and implementation depended upon the contributions of our faculty and student colleagues at Antioch. The Article reflects their ideas and contributions throughout. We are particularly indebted to the founding deans, Jean Camper Cahn and Edgar S. Cahn, and to Susan R. Chalker, H.R. Cort, Eugene Mooney, Frank Munger, Ann Richardson, Daniel Seikaly, John Sizemore, Francis Stevens, Burton Wechsler, David Caney, Bruce Comly French, Leslie Gerwin, Bert Mason, William Mauk, and John Mola, all of whom made special contributions to the development of the ideas, the model, and our thinking.

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1. Frank, *Why Not a Clinical-Lawyer School?*, 81 U. PA. L. REV. 907 (1933).

2. For that reason, an article such as this presents a dilemma. The debate has produced an extensive literature. Although the literature has informed and influenced our analysis, this article

come an artist at law requires the better part of a lifetime. Social need and economic reality, however, limit the time and resources that can be allocated to pre-admission training. Democratic ideals have dictated, perhaps most clearly in this country, that upon admission to the bar the newest lawyers be presumed the equal of, and licensed to handle any matter available to, the most experienced members of the profession. Contemporary shifts in the profession and in the legal system have brought this ideal distressingly close to reality. This new reality has forced the legal profession, law students, and society itself to question with greater intensity whether the training students receive in law school prepares them adequately (or as well as it might) for the practice of law.³

is a product of our experience. With our colleagues at the Antioch School of Law, we developed a method of analysis and a curriculum model. The intervening years have afforded us an opportunity to refine them. Our purpose in writing this article is to present the method and illustrate it with a concrete model. To do this, we thought it also necessary to summarize our perceptions and assumptions about legal education and the process of professionalization.

The dilemma stems from the fact that our perceptions and assumptions are neither new nor so uncontroversial as the assertions in the text might suggest. Most could be traced to and have been extensively debated in the literature. To develop these ideas fully in the text or to document the history and debate through the footnotes, however, would make the article too long and would be inconsistent with our purpose. At the same time, we recognize that our failure to develop and document the ideas may mislead those not versed in the literature and cause those who are to reject them out of hand.

We have attempted to resolve this dilemma gracefully. In the early portions, we have identified the contemporary writings which address these ideas directly or which collect or identify the historical sources in which they have been developed and debated. Throughout, we have noted additional sources which we believe usefully illustrate or qualify an idea presented in the text or upon which we have relied for data or for the analysis presented. Finally, we have attempted to present a part of the early Antioch experience in the notes and have identified selected unpublished documents that document this experience. (These documents have been described in an appendix, see Appendix, *Antioch School of Law 1972-1978: Selected Documents and a Historical Note*, *infra* at 788-92, and copies have been filed in the law libraries of the authors' schools and with the *Washington University Law Quarterly*. In this article specific documents are identified by references to the document number assigned in the Appendix.)

3. Several recent publications reflect the current debate, identify contemporary research and proposals addressing the issues, and provide a guide to the history. See FINAL REPORT AND RECOMMENDATIONS OF THE COMMITTEE TO CONSIDER STANDARDS FOR ADMISSION TO PRACTICE IN THE FEDERAL COURTS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES, 83 F.R.D. 215 (1979) (the Devitt Committee's recommendations to address deficiencies in the competence of federal trial lawyers); AALS/ABA COMMITTEE ON GUIDELINES FOR CLINICAL EDUCATION, GUIDELINES FOR CLINICAL LEGAL EDUCATION (1980) (proposed guidelines for clinical education to assure minimum educational standards with extensive notes by the project director and separate papers by project consultants) [hereinafter cited as AALS/ABA CLINICAL GUIDELINES]; ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS

Responses from the academic community have ranged over a broad spectrum. A strong minority has argued that law schools cannot respond effectively to these needs and that clinical training is inconsistent with the nature and function of a university law school.⁴ Others have attempted to analyze and redefine the objectives of legal education and suggest ways in which legal education might be restructured to achieve those objectives.⁵ In practice, however, most schools have sought to address perceived deficiencies directly through the establishment of rather extensive skills simulation and live clinical programs.⁶ But these clinical programs and simulation offerings for the most part have been perceived as skills training additions to the established curriculum.⁷ Few individuals or faculties have attempted to articulate a comprehen-

(1979) (analysis and recommendations for law school responses to the problem) [commonly known as the *Crampton Report*]; ABA SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION, LAW SCHOOLS AND PROFESSIONAL EDUCATION: REPORT AND RECOMMENDATIONS (1980) (a concise summary and analysis of the history and of recent and on-going research sponsored by the American Bar Foundation) [hereinafter cited as LAW SCHOOLS AND PROFESSIONAL EDUCATION]; H. PACKER & T. ERHLICH, NEW DIRECTIONS IN LEGAL EDUCATION (1972) (a significant analysis of the history and contemporary trends in legal education); A. PARTRIDGE & G. BERMANT, THE QUALITY OF ADVOCACY IN THE FEDERAL COURTS (1978) (report and analysis of the empirical research underlying the Devitt Committee's recommendations); SELECTED READINGS IN CLINICAL LEGAL EDUCATION (1973) (essays on clinical legal education with a comprehensive bibliography); CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE (Kitch ed. 1970) (papers from a conference surveying the state of and prospects for clinical education at the beginning of the 1970s); *Legal Education*, 1977 B.Y.U. L. REV. 689 (symposium devoted to the relationship between legal education and lawyering competency); *Symposium: Clinical Legal Education and the Legal Profession*, 29 CLEV. ST. L. REV. 345 (1980) (the most recent collection of writings on clinical education); *Symposium on Legal Education*, 53 N.Y.U. L. REV. 291 (1978) (articles and critical commentaries on a range of issues).

4. See, e.g., Allen, *The Prospects of University Law Training*, 63 A.B.A.J. 346 (1977); Carrington, *The University Law School and Legal Services*, 53 N.Y.U. L. REV. 402 (1978); McGowan, *The University Law School and Professional Education*, 65 A.B.A.J. 374 (1979).

5. See, e.g., AALS CURRICULUM STUDY PROJECT COMMITTEE, TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971, 1971 AALS PROCEEDINGS Pt. 1, Sec. II [commonly known as the *Carrington Report*], reprinted in H. PACKER & T. ERHLICH, *supra* note 3, at 93-328. *The Carrington Report* provided the most radical contemporary proposal for restructuring legal education and renewed Reed's 1921 call for greater diversity in law schools models (A. REED, TRAINING FOR A PUBLIC PROFESSION OF LAW (1921)). Apart from experiments such as Antioch's teaching law firm, Northeastern University's cooperative model, and Southwestern's SCALE program, the call has been largely ignored. See Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 841-926.

6. Gee & Jackson, *supra* note 5, at 877-92, provides a summary.

7. *Id.* See also Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979); Bellow & Johnson, *Reflections on the University of Southern California Clinical Semester*, 44 S. CAL. L. REV. 664 (1971); Ferren, *The Teaching Mission of the Legal Aid Clinic*, 1969 LAW & SOC. ORD. (ARIZ. ST. L.J.) 37.

sive set of educational objectives and to design a three-year curriculum to meet those objectives. We believe that this task can be done, and in this article we describe one model through which the process could be initiated and the results evaluated within the economic and educational structure of the contemporary university law school.

The particular model we describe is a clinical model, a model that integrates classroom, simulation, and clinical instruction in all three years of the curriculum. We believe such a model should be developed and tested for at least three related reasons. First, we believe the contemporary debate over the proper role of clinical education has misconceived the issues. The dichotomy between legal theory and practical skills is false. The practice skills underlying lawyering have a theoretical foundation that should be developed and articulated. More importantly, clinical cases can and should be used to develop and expand the kinds of rigorous legal and factual analytic skills now sought primarily through the classroom. Second, the debate is proceeding in a vacuum. The clinicians are playing against a stacked deck. Experimentation with a comprehensive model will yield the kind of comparative data necessary to make focused dialogue possible. And finally, even if universal education on a comprehensive clinical model is not feasible, the existence of practice laboratories within the university environment will enhance the academic community's ability to develop the theoretical foundations of law and lawyering and to design other and more effective educational programs to achieve a broader range of educational objectives.

An entire law school could be, and indeed 'for a brief shining moment' almost was, built on a model similar to the one we describe.⁸ We are persuaded, however, that such a law school is neither feasible nor consistent with the values underlying the university model of legal edu-

8. Antioch admitted its founding class in 1972. During the first two years, much of the institutional activity was devoted to developing a curricular structure and an organization through which a teaching law firm composed of some twenty-five lawyer teachers could deliver educational services to some 400 law students and supervise approximately 120,000 hours of student time devoted each year to delivering legal services to more than 1500 clients. A model which included all of the curriculum components described here had been developed by the fall of 1974 and was fully implemented during the 1974-1975 and 1975-1976 school years. In subsequent notes addressing the Antioch experience, we use this period as the benchmark primarily because that is the model from which we worked and is the period for which we have the clearest documentation for the experience. See Appendix, *Selected Antioch Documents and a Historical Note*, *infra*, at 788-92. For a brief published description of the program during this period, see Gee & Jackson, *supra* note 5, at 862-66.

cation.⁹ We are equally persuaded that as a small experimental program the model is feasible and could be incorporated into the curriculum offered by almost any large established urban law school without unduly distorting its resource allocations or imperilling its university functions.

Against this background, this article has two objectives. First, we have attempted to formulate the issues and establish a framework within which a comprehensive curriculum model can be developed: a model which would fully integrate a rigorous classroom and clinical curriculum and which would enable law students to acquire not only the knowledge and skills traditionally required by American law schools but also additional professional values and skills which would make them more effective lawyers, both at the time of graduation and throughout their professional lives. Second, we have attempted to describe one program that comports with this planning framework and that could be developed and implemented as an experimental program by an established urban law school without unduly distorting its existing curriculum.

The article is divided into five parts. Part I describes what we see as the basic assumptions and educational objectives upon which the traditional law school curriculum and existing clinical programs are based. Our analysis in this part is simply a statement of our perception of the theory and practice of contemporary legal education. It is based upon our own experiences supplemented by a review of recent and rather extensive research by others. We do not attempt to restate this documentation, apart from noting some of the principal sources that have informed our analysis. In Part II, we articulate the educational assumptions upon which the comprehensive model is based and formulate the issues that must be addressed to design and implement a program based upon that model. This part seeks to establish a framework within which a concrete program can be developed and implemented.

In Parts III and IV, we attempt to illustrate the application of this planning framework by developing a three-year curriculum in some

9. The Antioch experiment continues. The School, however, has substantially modified its curriculum, its graduation requirements, and the organization of the teaching law firm partly because the School could not sustain the fiscal and workload pressures the model imposed and partly because the faculty was persuaded that other approaches were more promising. See Antioch School of Law: Self Study 1978, App., Doc. No. 19. See also *Antioch Law School: Business as Unusual*, 38 NLADA BRIEFCASE 13 (1981) (for a less rigorous but more current report).

detail. We have chosen a representative urban law school¹⁰ and developed both the architects' sketches and a set of detailed preliminary blueprints to illustrate the model and to demonstrate its feasibility or at least to provide a concrete example against which its feasibility and desirability can be explored. In Part III, we provide the architects' sketches. First, we describe the curriculum and characteristics of the school and provide an overview of the proposed program. Then, we describe the program from a consumer perspective: What courses and experiences would the individual student have during a three-year program? And finally, from a faculty and from an institutional perspective: How does one organize a faculty and plan a schedule that provides these courses and experiences within a university law school environment? Part IV is the heart of the article. In it we take the existing curriculum of the selected school and, through a series of detailed tables and notes, seek to demonstrate one way the program could be planned and organized in a feasible manner.

In Part V we discuss the costs and benefits. We compare the educational experience we postulate students graduating from the proposed program would acquire with that acquired by law graduates through traditional programs. We also discuss some unresolved problems that introduction of the proposed model into a law school operating on the university model might present.

I. EXISTING APPROACHES TO LEGAL EDUCATION¹¹

A. *The Traditional Approach*

Traditional law school curricula utilize the appellate court decision as the primary instructional unit. These court opinions are organized into courses which address what have been perceived as central subject areas of the law—substantive and procedural. They are supplemented with legislative and textual material.

10. The school is the Cleveland-Marshall College of Law of Cleveland State University. See text accompanying notes 39 & 40 *infra* for a description of its characteristics.

11. From 1974 through 1976, the Fund for the Improvement of Post Secondary Education, the National Science Foundation, and the Council for Legal Education for Professional Responsibility provided substantial support to Antioch for a series of projects to develop means of measuring professional competencies. This part of the article is an expanded version of an essay submitted as part of the project director's semi-annual report to the Fund in February, 1976. Anderson, Progress Report: Development of Means of Measuring Competencies of Students of the Antioch School of Law, at I-1 to I-9 (1976), App., Doc. No. 17 [hereinafter cited as FIPSE Report].

Through such curricula, law schools reasonably claim to impart to students a working knowledge of basic legal concepts sufficient to enable them to perceive and analyze the kinds of law problems that commonly arise in practice. In addition, through use of the appellate case method, law schools can reasonably claim that they have taught a rigorous type of legal analysis. Conservatively estimated, a law student should have read, analyzed, and been challenged to apply to other circumstances over two thousand appellate decisions during the three year curriculum. Students should know how judges approach facts and how they construct, define, and apply rules. In addition to providing an understanding of various law subjects and to stimulating the development of analytical skills, law schools also teach students the ways of doing legal research—how to find relevant sources of law.

Law schools traditionally have required students to demonstrate the ability to apply research and analytical skills competently in the performance of two tasks: writing legal memoranda and appellate briefs. Competence in analysis is also required in writing essay examinations. The correlation between competence in the performance of this task and the performance of actual lawyering tasks has been assumed but not accurately measured.¹² The task itself is certainly not a lawyering task.

The criteria for measuring competence in legal analysis are largely unarticulated.¹³ Law schools appear to have proceeded on the assumption that as long as the faculty is composed of persons who have high standards and have demonstrated competence, it is reasonable to assume that an individual student is competent if his or her products have been assessed and found adequate by twenty to thirty different law teachers in a variety of contexts over a three-year period. Given the number of times the same skills are evaluated by different evaluators in similar settings, these assumptions are probably reasonable.

12. See Kelso, *In Quest of a Theory for Lawyering: Some Hypotheses and a Tribute to Dean Soia Menschikoff*, 29 U. MIAMI L. REV. 159, 159 (1975). See also Nichlos, *Examining and Grading in American Law Schools*, 30 ARK. L. REV. 411, 417-418 (1977).

13. Many law teachers have articulated components of legal analysis and of lawyering competence generally; see, e.g., Kelso, *supra* note 12, at 161-76. But the problem of developing criteria useful for measuring competence has proved elusive. For many years, the development and testing of such criteria constituted the major institutional research effort undertaken at Antioch. The status and history of that work through early 1976 are described in the FIPSE Report, *supra* note 11. The project ultimately led to the development of a comprehensive model for measuring lawyering competencies. See Cort & Sammons, *The Search for "Good Lawyering": A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397 (1980), for a full description.

The successful graduate from a traditional program should be competent to clerk for a judge or an experienced lawyer, and perhaps to act as an advocate before an appellate court. He or she has been trained and has demonstrated competence in performing the tasks required for those jobs. Whatever its prior validity, however, the assumption that most law graduates undertake this kind of apprenticeship is no longer realistic. Clerking for judges or arguing appeals is not and cannot be the first law job of most law graduates. Increasing numbers of new lawyers, especially those in poverty or "public interest" areas, do not have the opportunity or the inclination to clerk for experienced lawyers. Rarely in this country is it required.¹⁴

Lawyers are licensed to represent clients: individuals, institutions, or interest groups. To do this, they must be able to interview and counsel their clients. They must be able to investigate and classify facts from raw data. They must be able to negotiate and litigate with persons who have interests adverse to or differing from those of their clients. They must be able to advocate their clients' interests before persons having the power to make decisions affecting those interests—judges, administrators, legislators, and others. To do this competently, they must know more than how to analyze the law and predict how an appellate court might apply it to a given set of facts.

The movement toward clinical legal education among most law schools has been in part a movement in response to those problems.¹⁵ The approach suggested in this article may be easier to understand if some of the apparent assumptions underlying clinical legal education are understood.

B. *Approaches to Clinical Legal Education*

Clinical education in law school is usually understood to include some form of work in which students handle actual cases for real clients.¹⁶ Under this definition, all clinical programs are experience based and presumptively reflect a competency based approach to legal educa-

14. Delaware, Rhode Island, and Vermont require brief post law school office apprenticeships prior to admission. See DEL. S. CT. R. 52, R.I. S. CT. R. 1(e), and VT. S. CT. R. 3(e)(1). See Krivosha, *Query: Would a Residency Program Help Improve Lawyer Competency?*, 65 JUD. 6 (1981), for an expression of renewed interest in such requirements.

15. Concern over lawyer professional responsibility also provided a strong stimulus. See text accompanying notes 36-38 *infra*.

16. See, e.g., Pincus, *Clinical Training in the Law School: A Challenge and A Primer for the Bar and the Bar Admission Authorities*, 50 ST. JOHN'S L. REV. 479, 479 (1976). The connotation

tion. Existing programs, however, embody different approaches that span a broad spectrum. This spectrum can be defined and most existing programs can be classified with reference to three models of clinical legal education.¹⁷

1. *The Unplanned Experience Approach*

Two types of programs typify this end of the spectrum. Some law schools simply have established a clinic, hired some staff attorneys, and authorized students to earn credit by working on cases with those attorneys in their third (and sometimes in their second) year of law school. Others gave credit to students for work outside the school in the offices of legal agencies. Case selection and assignments were usually made in light of attorney interests or agency goals, limited by student practice rules for the particular jurisdiction.

The apparent assumption underlying such programs is that a student will be required to use his or her analytical skills in new contexts, to acquire additional skills, and to perform new lawyering tasks under the supervision of an experienced attorney. Ideally, the experiences generated should produce in the student the self-learning skills necessary to enable him or her independently to acquire other skills and perform other lawyering tasks with some competence after law school. Given the limited experience of many clinical staff attorneys and agency supervising attorneys, along with the limited number of experiences any one student can have, the assumption seems over-idealized.¹⁸

In such a program, evaluation comes primarily through feedback to the particular student. Most law faculties do not make a competency judgment based upon clinical performance for at least three related reasons. First, the number of experiences (in contrast to the number of experiences in appellate analysis and legal writing generated within the course curriculum) is too small, the evaluations too few, and the attorney/evaluators too inexperienced to warrant a presumption on the quantitative basis used in the traditional curriculum. Second, the tasks

may change in light of the definition recommended in AALS/ABA CLINICAL GUIDELINES, *supra* note 3, at 12.

17. These models sufficiently define the spectrum to set the background against which the proposed model was designed. For more comprehensive discussions, see Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEG. EDUC. 162 (1974) and AALS/ABA CLINICAL GUIDELINES, *supra* note 3, at 76-81 and sources cited therein.

18. And has long been so recognized; *see, e.g.*, Cahn & Cahn, *Power to the People or the Profession?—The Public Interest in Public Interest Law*, 79 YALE L.J. 1005, 1030 (1970).

performed are not delineated, are not necessarily the same for each student, and are not necessarily repeated by any student for different evaluators. Third, in most areas, performance criteria are even less clear than are the criteria for legal analysis. Thus, apart from political compulsion or expediency, programs of this type presuppose that some experience is better than none and that these experiences may provide an important set of independent learning-by-doing skills.¹⁹

2. *The Planned Experience Approach*

The mid-point of the spectrum (and the point around which most programs are now clustered) can be defined by a model that concentrates its resources in one or a few separate programs, each focused upon a particular category of cases. For example, a clinic falling in this category may have specific programs focusing on criminal misdemeanor, tenant defense, or welfare benefits cases or, at a different level, complex litigation such as employment discrimination cases. Some programs narrow the focus further by limiting the kinds of cases accepted in terms of the ultimate tasks required, such as a counselling clinic on the problems of the elderly as opposed to a litigation clinic in criminal misdemeanors. Typically, schools offering such programs also require or offer classroom components to supplement or reinforce the experience, an employment discrimination course or seminar as a prerequisite or concurrent requirement to enrollment in an employment discrimination clinic.²⁰ Such programs require conceptual knowledge of a limited area of substantive law and procedure and are likely to generate a more controllable set of recurring tasks.

The assumptions underlying this approach are similar to those underlying the "unplanned experience approach," but they have more apparent realism. The probability that students will master the substantive concepts and the skills necessary to perform the tasks required is increased to the extent that the work is concentrated in a limited area. On the other hand, the assumption that self-learning skills

19. Some law faculties would not even accept this limited formulation. For the most part, these schools have rejected the idea that clinical supervisors should be faculty and have only grudgingly permitted credit to be awarded for the work. See Gee & Jackson, *supra* note 5, at 890-91.

20. Most of the programs funded by the U.S. Department of Education under Title XI of the Higher Education Act, 20 U.S.C. § 1134, conform to this model. For brief descriptions of the projects funded for 1980-81, see *Selected Summaries of Law School Clinical Programs*, 29 CLEV. ST. L. REV. 735, 735-815 (1980) [hereinafter cited as *Clinical Summaries*].

are acquired and are transferable to other areas of practice becomes more critical. The student typically can obtain significant experience in one or at most two areas. The difficulties in evaluating what students have learned and law faculty attitudes toward certification of the results appear similar in programs based upon either the planned or unplanned experience approach.

3. *The Comprehensive Experience Approach*

A few schools have experimented with a more comprehensive form of clinical education, one which extends through two or even three years of the educational process. The strongest effort to develop such a program was that initially made at the Antioch School of Law which established a teaching law firm and a program that attempted to integrate a three-year clinical requirement with a rigorous classroom curriculum. Relatively little has been published about the theory underlying the original program or describing its components.²¹ The following section articulates what we believe are the assumptions underlying such a comprehensive model.

II. THE COMPREHENSIVE MODEL: ISSUES AND ASSUMPTIONS

The model described below reflects a comprehensive approach to legal education. We believe the model can be better understood and evaluated if the issues it is designed to address and the assumptions underlying it are articulated.

The issues and assumptions fall into two categories: those which address the relationship between skills and substantive information in legal education and those which address the process of professionalization. In the first section, we discuss the educational assumptions upon which the model was constructed and define the issues it was designed to address. In the second, we articulate some issues and assumptions about the relationship between legal education and professionalization.

21. The FIPSE Report, *supra* note 11, at I-11 to I-16, provides a succinct set of architects' sketches for the program as it was organized in the 1975 school year. THE ANTIOCH SCHOOL OF LAW CATALOG: 1976, App., Doc. No. 16, at i-iii, 11-12, 46-65, describes the curriculum and clinical organization for that year in sufficient detail to permit useful comparison with the proposed model.

A. *The Educational Process: Some Issues and Assumptions*²²

Any educational process must produce self-learning skills in its students. Students must learn a method of learning independently that will enable them to solve problems they will confront outside the educational environment. Professional education is unique only in that the kinds of problems the person in the profession is expected to be able to solve define the profession. They are foreseeable.

Classroom and clinical teaching have a common foundation. Both proceed from a conviction that learning is enhanced if the student is confronted with and challenged to solve concrete problems. In the classroom, appellate decisions present the problem. Through the Socratic method, we have developed a methodology which can impart intellectual skills of a high order while compelling students to master substantive information deemed basic to a sound understanding of law and the legal process. Few seriously challenge the value of Socratic case method drill in basic substantive courses as a method of training students in the intellectual skills we classify as "thinking like a lawyer."²³ Students are required to construct principles of the law inductively by comparing fact patterns, results, and modes of judicial reasoning. In class, they are challenged to adapt and apply these principles to hypothetical fact patterns. In this way, students construct the law as it has been constructed by judges, and they acquire necessary legal reasoning skills as they solve problems and fit the pieces into a pattern. In the clinical apprenticeship, the actual case (or discrete problems arising from it) constitutes the material for instruction. The student is presented with a problem and challenged to solve it. The Socratic method is equally useful as a teaching method to guide students in the development and testing of hypotheses. The methodology can and should be equally rigorous in either type of instruction. The process is essentially the same.

The differences between the two types of instruction define and limit the objectives each can be used to achieve. The case method class provides an effective and far more efficient means of developing the analytic skills required to define and apply legal principles to different sets of facts. It is also a more efficient method for covering the broad range

22. This section is also based upon an earlier version included in the FIPSE Report, *supra* note 11, at I-9 to I-11.

23. See G. BELLOWS & B. MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* 28-34 (1978) (for a summary analysis and collection of authorities).

of legal concepts and principles deemed basic to a sound legal education. It is not particularly effective, and certainly not sufficient, as a means of developing the analytic skills necessary to define and develop raw data into the kinds of fact patterns to which legal principles can be applied. The appellate case method as presently organized is also insufficient as a method of teaching students to integrate and apply legal principles across subject areas to solve legal problems.²⁴

The clinical method is uniquely suited to achieve both the expanded analytic skills objective and the integrated understanding objective. The client initially presents a diagnostic problem. The student must develop facts and law in relation to the client's objectives. The process is reflexive. With the understanding so developed, the student must analyze the means by which the client's objectives (as defined originally or redefined in the counselling process) may be achieved to the maximum extent feasible. Because the facts have not been pre-edited and the issues have not been preformulated, the clinical case can provide an instructional unit through which problems can be presented and solved whole.

Seen in this way, both types of instruction employ the same basic analytic techniques. Both can be used to develop rigorous, essentially intellectual, analytic skills. The materials used differ, and these differences define the educational objectives that can be most effectively achieved by each. But there is a further difference, the difference between the ways in which students are expected to demonstrate they have acquired the requisite knowledge and analytic skills.

The need to maintain efficiency has led to the use of the essay examination and, increasingly, multiple choice examinations in the large case method course. The need to provide competent legal services coupled with the reality of clinical material compels students to perform and generate, and teachers to evaluate, the full range of lawyering tasks and lawyering products. (Unfortunately, the debate over clinical education has proceeded as if clinical students were only being trained in the performance of specific tasks and has failed to recognize that clinical problem solving is in essence a complementary means by which an expanded set of analytic skills can be developed, expressed, and evaluated.) The significance of this difference, the distinction in product

24. This is not an inherent deficiency; it simply reflects the organization of most casebooks around specific legal subjects.

generated, can be illustrated indirectly by a brief analysis of the role of simulation in legal education.

Simulation in legal education started in the first socratic case class. The essence of the method is to challenge the student to apply the case at hand to a simulated fact situation, a hypothetical.²⁵ The typical essay examination uses the same method. Here is a simulated case: use your knowledge of the law and your analytic skills to identify and solve the problems presented. Almost from the beginning, law schools have used two forms of simulation courses to develop and test skills in two areas. Legal writing courses and seminars with research paper assignments require students to apply their analytic and legal research skills to the solution of a problem and to demonstrate their ability by preparing legal memoranda.²⁶ Simulation is also the basis for appellate moot court programs: the student is given the record below (usually a sharply truncated version) for a simulated law suit and asked to prepare an appellate brief and oral argument. The recent 'discovery' of simulation techniques stems from a recognition that the basic method can be extended to compel students to apply the basic intellectual skills to additional lawyering tasks.²⁷

All these instructional methods also provide opportunities to teach students skills associated with the particular task as well as basic analytic skills. The socratic classroom has long been seen as a valuable, if limited, training ground for oral advocacy. The development of basic writing skills has long been a significant (and sometimes a necessarily dominant) objective of legal writing programs. Simulation and clinical offerings properly have been seen as extending the range to include skills necessary to perform additional tasks such as interviewing and counselling, negotiation, drafting, and litigation tasks. Proponents of the various methods of instruction, however, have sometimes lost sight (both in the debate and in the classroom) of the fact that using concrete problems to develop analytic skills is common to all.²⁸

25. For an illustration of the extent to which socratic simulation in the large classroom course can be used to teach skills other than traditional case analysis skills, see Kelso, *supra* note 12, at 176-197.

26. In fact, the serious research seminar and law review work are clinical programs for scholars. The problems are not simulated and the hope is that the product will be useful.

27. See, e.g., M. MELTSNER & P. SCHRAG, TOWARD SIMULATION IN LEGAL EDUCATION, 9-20 (1975); Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, in AALS/ABA CLINICAL GUIDELINES, *supra* note 3, at 191.

28. See, e.g., Barnhizer, *supra* note 7, at 73. For a more extended analysis of the use of the clinical method for rigorous training in analytic skills, see Munger, *Clinical Legal Education: The*

In this framework the true issues are those of cost and effectiveness. Few classroom scholars, even among the most traditional, would refuse to concede that the marginal increase in analytic skills developed in the large case method class declines rapidly after the first year or year and a half. Students either have mastered or have abandoned the efforts to master the basic technique at the level required for class participation. The question that confronts legal education is how the balance of the curricular time and other educational resources can be most effectively employed. The scholarly tradition has argued that the expanding complexity and subject matter of the law dictate that these resources be applied to provide broader exposure to law topics and to law-related disciplines in which law scholars have or can develop expertise. The clinical vanguard has argued that a substantial portion of these resources should be redeployed to require students to develop further the basic intellectual skills by applying them in the performance of additional lawyering tasks and thereby providing students with training in skills incidental to those tasks.

In a large measure, legal education has resolved the issue by refusing to come to grips with it. Most law schools impose few requirements upon students after the first year. Most law schools offer a potpourri of advanced programs responding in some measure to faculty interests and student demand.²⁹ This essentially laissez-faire system has encouraged diversity and experimentation. We do not challenge the benefits or the values of the system. We do, however, suggest that it is time to begin the process of reassessment and that experimentation with more comprehensive models can serve as an appropriate and necessary part of this reassessment.

Against this background, a comprehensive approach to competency based legal education³⁰ requires a reasoned attempt to address at least five issues. First, the institution must identify those areas of law in

Case Against Separatism, 29 CLEV. ST. L. REV. 715 (1980); *Compare id. with Allen, The New Anti-Intellectualism in Legal Education*, 28 MERCER L. REV. 447, 455-57 (1977).

29. These and most of our other assumptions about curricular offerings and enrollment patterns are supported by the exhaustive research reported in E. GEE & D. JACKSON, FOLLOWING THE LEADER? THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA (1975) [hereinafter THE UNEXAMINED CONSENSUS] and D. JACKSON & E. GEE, BREAD AND BUTTER?: ELECTIVES IN AMERICAN LEGAL EDUCATION (1975) [hereinafter ELECTIVES].

30. We use "competency based education" to connote an educational program in which the faculty has agreed upon a basic set of educational objectives, in the cognitive or affective domains or both, and has approved specific offerings and means of evaluation to maximize the extent to which those objectives are demonstrably achieved. The basic approach is that suggested in TAX-

which knowledge is deemed prerequisite to competent practice. While the issue is theoretically open, the profession appears to have adopted a consensus set of requirements that includes, and extends well beyond, the basic first year curriculum. Almost two thirds of the courses a typical student takes are ordinarily either de jure or de facto requirements.³¹ Second, those tasks which all lawyers should be able to perform competently and the skills required for their performance must be identified. All schools deem legal analysis and research skills to be basic, and most require that students be able to demonstrate those skills in writing legal memoranda and appellate briefs and thereby acquire the writing and technical skills necessary to perform those tasks.³² Most schools have not decided what other lawyering tasks should be used to develop the basic intellectual skills and the other skills necessary for their performance.

Third, the clinical cases available for use in the educational program must be analyzed to determine the frequency with which and the variables under which particular tasks are presented in each type of case. Fourth, some hypotheses must be adopted specifying how and in what sequence skills should be taught. What knowledge and skills are necessary before any experience can be meaningful? What is an appropriate progression of tasks and range of contexts to permit the student to progress through levels of performance to that level defined as represent-

ONOMY OF EDUCATIONAL OBJECTIVES: HANDBOOK 1 THE COGNITIVE DOMAIN (Bloom, ed. 1956) and HANDBOOK 2 THE AFFECTIVE DOMAIN (Bloom, et al. 1964).

A research team recently completed a major study of competency based programs in higher education including the program at the Antioch School of Law. For a report and analysis of Antioch's program, see Jones, *Antioch School of Law*, in ON COMPETENCE: AN ANALYSIS OF A REFORM MOVEMENT IN HIGHER EDUCATION (G. Grant, ed. 1977). For an attempt to define and analyze the significance of the competence movement in higher education based on the same series of studies, see G. GRANT, *et al.*, ON COMPETENCE: A CRITICAL ANALYSIS OF COMPETENCE-BASED REFORMS IN HIGHER EDUCATION (1979).

31. See THE UNEXAMINED CONSENSUS, *supra* note 29, at 26-28, and ELECTIVES, *supra* note 29, at 60, 69-73. De facto requirements have not satisfied some segments of the bar. See, e.g., INDIANA SUP. CT. R. 13 and S. CAROLINA SUP. CT. R. 5A which impose specific course requirement for students desiring to sit for the bar. The rules express the courts' concern that law schools were not themselves dealing with the issue of lawyer competency or teaching lawyering skills. See Givan, *Indiana Rule 13: It Doesn't Invite Conformity—It Compels Competency*, LEARNING & L., Summer 1976, at 16 (views of the Chief Justice of the Indiana Supreme Court); Littlejohn, *Ensuring Lawyer Competency: The South Carolina Approach*, 64 JUD. 109 (1980) (views of an Associate Justice of the South Carolina Supreme Court). Though the concerns may be valid, such interventions will take the issue away from the individual institution and make experimentation more difficult. See note 68 *infra*.

32. See THE UNEXAMINED CONSENSUS, *supra* note 29, at 27.

ing professional competence? Fifth, the types of cases available to the program must be analyzed to determine whether they are, and if so, how they can be organized to be, useful as teaching vehicles (in both cost and pedagogical terms).³³ The latter three issues have received little explicit attention, at least from the standpoint of comprehensive curriculum planning. They must be addressed, however, if reasoned judgments are to be made identifying how the requisite skills and areas of substantive knowledge can be most effectively and efficiently taught: in a large classroom environment, from the available clinical cases, or through seminar or simulation offerings.³⁴ The program described below illustrates a model through which these issues can and would have to be addressed in the implementation process.³⁵

33. THE ANTIOCH SCHOOL OF LAW CATALOG: 1976, *supra* note 21, at 42-64, illustrates how these issues were addressed there. After describing the model we develop these issues further in discussing how it would be implemented; *see* text accompanying notes 83-87 *infra*.

34. We should make an implicit bias explicit. We believe the traditional subjects can be most efficiently taught in the large classroom. Once the basic tasks and skills have been agreed upon, we believe types of clinical cases should be selected on three criteria: (1) Does the subject matter of the cases complement the subject matter of contemporaneous classroom courses? (2) Do the cases present opportunities to perform lawyering tasks identified as basic with sufficient frequency and in appropriate contexts to provide meaningful training in the necessary skills? (3) Can the cases be organized so that a cost-effective balance can be maintained between client service and student educational objectives. We would use simulation training to fill the gaps: to provide preliminary training where necessary to qualify the student for work on actual cases and to provide training in basic tasks that cannot be generated regularly by the available clinical cases. Again, these ideas are further developed below. *See* text accompanying notes 56-68 & 83-90 *infra* and note 85 *infra*.

35. There is a sixth issue that must be addressed. Any effort to use a comprehensive clinical approach requires a different form of evaluation. The quantity of similar analytical experiences focused on a limited set of tasks (*e.g.*, memoranda and brief writing) is likely to be reduced sufficiently to bring into question the quantitative assumptions which make traditional law school certifications with respect to those skills presumptively valid. Correlatively, while the quantity of exposures to other tasks and skills will increase, the quantity of exposures to any particular task or requiring the application of any particular skill and the number of different evaluators are not likely to be sufficient to warrant the assumption that mere completion validly establishes competence in all areas. These problems, coupled with the fact that the approach challenges the traditional approach, require the development of performance criteria and measurement tools for the specific tasks and skills. These tools are also needed to develop meaningful data to test the hypotheses upon which the curriculum was originally planned. A full discussion of the competency based evaluation problems is beyond the scope of this Article. For an analysis of how these issues were initially addressed at Antioch, see FIPSE Report, *supra* note 11. For a description and analysis of a comprehensive evaluation system that evolved from the Antioch effort *see* Cort & Sammons, *supra* note 13.

B. *The Process of Professionalization: Some Issues and Assumptions*³⁶

A competent lawyer should possess three attributes. He or she must have the substantive knowledge and intellectual skills necessary to the job. He or she must have the additional skills necessary to utilize the knowledge and intellectual skills in the performance of actual lawyering tasks. Finally, he or she should have a set of professional norms that will ensure that the knowledge and skills will be effectively utilized on behalf of each client and in ways consistent with the profession's obligations to society. We state below our assumptions about how professional norms are acquired and internalized.

Ordinarily, norms are acquired in the process of socialization, in becoming a part of a social group. In an earlier day the acquisition of professional norms was incident to becoming a part of the profession. At that time, the profession was smaller and its norms were more widely shared and susceptible to effective enforcement through apprenticeship screening and informal sanctions. The apprentice who failed to behave acceptably was likely to have his or her apprenticeship terminated. The lawyer who deviated from acceptable norms was likely to encounter effective economic and social sanctions.

The substitution of the formal law school educational requirement for the required apprenticeship and the expansion and balkanization of the profession have altered the process of professionalization. The profession no longer requires (and many law graduates never undergo) a significant apprenticeship. The profession has few effective informal sanctions and does not effectively impose meaningful formal sanctions. Accordingly, the question whether and how law schools might best contribute to the professionalization of potential lawyers has become more critical. Indeed, concern about this issue (coupled with concerns

36. The profession has long been enamored with questions of professionalization and professional responsibility. Since Watergate, the literature has exploded. The following section represents our own conclusions, written without specific resort to the literature. Although many of our assertions represent oversimplifications and some would be debated, the analysis is generally consistent with the literature and reported research. For a pre-Watergate analysis, see Lortie, *Laymen to Lawmen: Law School, Careers, and Professional Socialization*, 29 HARV. EDUC. REV. 352 (1959). For a recent and comprehensive report and analysis based upon empirical research, see F. ZEMANS & V. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* (1981). For a summary analysis and report of other research, see *LAW SCHOOLS AND PROFESSIONAL EDUCATION*, *supra* note 3. We do not attempt here to document the debate fully. (See note 2 *supra*.)

centering on the need for training in practice skills) has provided the major impetus for the development of existing clinical programs.

Knowledge of acceptable professional norms and problems confronting the profession can be achieved through the classroom; internalization cannot. The traditional law school curriculum is designed to stimulate one form of professionalization. By enforcing high standards of intellectual performance and by demonstrating their own adherence to these standards, law teachers do create a professionalizing environment. For those students who succeed (make law review, participate in moot court, etc.), the process is often successful. But it is deficient in at least two respects. First, for those who pass but do not excel in academic work, such standards are unrealistic. Since they cannot achieve satisfaction in an environment that rewards success based upon academic achievement, they are forced to seek alternative standards. Law schools have not provided meaningful alternatives. Second, the academic standards suggest that the primary value is service to self; the student is competing with other students to achieve satisfaction on the basis of individual achievement. Service to community and responsibility to others is not a dominant or even a significant feature.³⁷ Clinical programs try to address these problems, but existing clinical programs also suffer from two deficiencies: The experience is short and limited, and it comes too late.

We postulate that professionalization is a legitimate objective. We postulate that for many law graduates and young lawyers, neither law school nor the profession as presently structured has any effective mechanisms by which this objective can be achieved. In developing this model, we have assumed that a three-year program combining the intellectual rigors of a traditional law school curriculum with the professional rigors of a clinical program can and should be designed to achieve a kind of professionalization different in type and degree from that provided by existing programs.³⁸

37. We do not mean to ignore the significance of law teachers as role models. Many by inspirational example have an affect on the professionalization of their students which extends well beyond the classroom. *Cf.* Allen, *supra* note 2, at 347 (eloquent statement of the ethical training provided by great law teachers). But as a general proposition, we believe these assertions largely unchallengeable. *See, e.g.*, Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 1979 A.B. FOUNDATION RESEARCH J. 247 (for a report of an empirical study of student attitudes).

38. We do not claim that this or any other model of professional education can correct character deficiencies established in the pre-law school years. *See, e.g.*, Pipkin, *supra* note 37, at 265-

III. THE MODEL: ARCHITECT'S SKETCHES

The proposed model contemplates establishing a teaching law firm within an urban law school. Four full-time members of the faculty would be the firm's supervising partners. Six clinical fellows, highly qualified lawyers with two or three years practice experience, would be the firm's junior partners. The program would have seventy-five students. They would serve as the firm's paralegal assistants (for their first year and a half) and as its junior associates (during the final year and a half).

We believe such an experimental program could be initiated by an established urban law school with an enrollment of 750 students or more, 30 or more full-time faculty members, and an existing commitment to clinical education on the planned experience model. Size is important because the model will require reallocating to the proposed clinical program some teaching resources that may be presently devoted to seminars or other enrichment areas. The program can be designed to build upon existing clinical offerings, yielding some economies of scale. For a school of adequate size with a substantial commitment to clinical education, we believe that a program whose enrollment constitutes ten percent or less of the student population need not unduly distort the school's other programs. The school must be located in an urban environment in order to ensure access to a broad spectrum and large quantity of legal matters so that the clinical curriculum can select matters to meet specified educational objectives as well as for their service potential.

We have chosen the Cleveland-Marshall College of Law to illustrate the model and to demonstrate concretely how such an experimental program might be implemented. Three reasons informed this choice. First, the College has the required characteristics: almost 1,200 students (over 600 full-time and slightly less part-time); a representative approach to legal education; more than forty full-time faculty members; a well established clinical program supervised by four faculty members with regular participation by others; and an urban location with easy access to a broad spectrum of legal matters.³⁹ Second, prefer

72. See also F. ZEMANS & V. ROSENBLUM, *supra* note 36, at 171-72 (for analysis and other authorities); LAW SCHOOLS AND PROFESSIONAL EDUCATION, *supra* note 3, at 20-22 (for a summary).

39. Unless otherwise indicated, the information on the College's enrollment, faculty, and curricular requirements and programs was taken from BULLETIN OF CLEVELAND STATE UNIVERSITY: CLEVELAND-MARSHALL COLLEGE OF LAW ISSUE (October, 1981) [hereinafter cited as BULLETIN].

the concrete to the abstract: An analysis based upon an existing program should provide a more persuasive demonstration that the idea is feasible and should make more focused debate possible. Last, but not least, for the past two years the authors have used the College's programs as their frame of reference to develop the model.⁴⁰ Thus the blueprints were available.

In this part of the article, we provide a narrative summary and overview of the proposed program. In Part IV, we develop the preliminary blueprints against this background.

A. *A Structural Overview*

The College operates on an academic quarter schedule.⁴¹ Students must spend 90 weeks in residence and must earn at least 126 credits to graduate. Fifty-three (53) credits must be earned in required offerings. In addition to the required forty-five (45) credit first year curriculum, students must successfully complete one of the College's three-credit skills institutes (a clinical practicum or a simulation skills offering); one of the four-credit writing institutes (designated two quarter seminars requiring a substantial research and writing project); and one of the professional responsibility offerings (either in a one credit separate offering or in one of several other designated courses). The student's other credits (minimally seventy-three (73), typically eighty-two (82)) are earned in elective offerings.

The College permits third year students to earn fourteen (14) credits in its established clinical programs. In addition to a specialized clinical program in employment discrimination (and a street law program), four members of the faculty and one staff attorney work primarily in the College's clinical program, which offers a variety of planned experience programs.⁴²

Under the proposed model, each year the College would admit twenty-five to thirty first year students into an experimental program in

40. The model was initially prepared in response to a challenge from the College's dean, Robert L. Bogomolny. It has not been considered by the College's faculty.

41. For this reason, we describe the model using credits and courses scheduled on an academic quarter calendar. Adapting the model to an academic semester schedule presents no greater problems than shifting a traditional curriculum from a quarter to a semester schedule.

42. During the current year, the College had had two additional visiting clinical faculty whose positions are supported by a grant from the Department of Education's Law School Clinical Experience Program. (For a description of this project, see *Clinical Summaries, supra* note 20, at 746-47 (1980).

order to obtain a three-year student population of seventy-five. These students would be required to complete two summer sessions, extending their course of study to eleven quarters. As a result, students in the program would be required to take 145 credits (and typically would take and earn 163 credits) for graduation. Of these, thirty-three (33) credits would be earned in direct clinical offerings and the remainder in academic offerings. Under the preliminary blueprints, students in the program would earn seventy-seven (77) credits in required classroom courses: fifty-five (55) in basic courses presently offered and largely required for all students; seven (7) credits in courses that could be adapted from (or offered as electives in) the College's established curriculum; and fifteen (15) in courses designed for and restricted to students in the program.⁴³

Although the actual areas of practice and the clinic structure chosen would depend upon the faculty's analysis of the types of cases available in the Cleveland area, the model contemplates that the firm would have three divisions (or departments). Each division would be supervised by a faculty member assisted by two clinical fellows and would be divided into two sections. Each section would concentrate on teaching and practice in a single area of the law.

Two of these divisions would accept both beginning and advanced students. Beginning students would work as paralegals on basic service cases, such as eviction defense or post-conviction remedies cases. Advanced students would work (under the state and federal court student practice rules) as principal counsel on the same basic cases and as associate counsel on more complex matters in the same area (such as representation of a tenants' organization in efforts to finance and acquire a building to be converted into cooperative apartment housing). The third division would also be organized into at least two sections and would accept only advanced students to work on complex matters. Existing clinics such as the College's Employment Discrimination clinic illustrate the kind of clinical section that would be established in this division. These sections (and sections established by other members of the faculty) would continue to be open to regular students as well as to those in the proposed program.

43. See Tables 1 and 2 at text accompanying notes 69-77 *infra*.

B. *The Student Perspective*

During the three-year program, each student would earn thirty-three (33) credits in clinical work and from 112 to 130 credits in academic offerings.⁴⁴ The academic program would include the College's present required core curriculum with three substitutions. Writing assignments in the first year of a seventeen-credit Professional Methods sequence would be substituted for the present first year three-credit Brief Writing and Advocacy and Legal Research requirements. A six-credit Senior Project requirement would be substituted for the four-credit institute requirement. Required participation in the clinical program and the Professional Methods sequence would satisfy the three-credit skills institute and one-credit professional responsibility requirements.

Students in the clinical program would have fewer academic electives. Seventy-seven (77) of their academic credits would be earned in required courses: fifty-five (55) in courses presently offered by the College (the first-year courses plus Evidence, Criminal Procedure, and Administrative Law); fifteen (15) in courses specially designed for the program (primarily the Professional Methods sequence); and seven (7) in courses presently offered or which could be offered for all students (the proposed Law Government Seminar, for example, would be a clinically related requirement for students during their externship but could be open to other students). Students would earn their remaining classroom credits (24 to 53) in elective courses, although even here several choices would have to be justified in light of their selection of clinical electives.⁴⁵

Students would enroll and work in the clinic in every quarter except their first and last. During the first quarter, students would take Professional Methods I and II to orient them to the profession and the law and to provide training in basic law student and clinical skills. In their first four clinical quarters they would take Basic Clinic I and II and Professional Methods III and IV. Two quarters would be spent in one section of the division which handled private law matters (landlord-tenant, consumer, family, and the like); the other two quarters would be spent in one section of the public law division working on basic

44. See Table 2 *infra* at text accompanying notes 73-77.

45. *Id.* During the second and third years, students would be able to choose among various advanced clinical offerings. However, in each quarter each student would also have to be enrolled in an academic elective the faculty had determined was significantly related to the chosen clinical elective. See note 65 *infra* and accompanying text.

cases there (such as statutory entitlement, immigration, criminal defense, and post convictions remedies). The Professional Methods sequence would provide the academic forum to teach necessary substantive and procedural concepts, to resolve ethical and legal problems posed by actual cases, and to assure that basic research, writing, and other skills were acquired, using simulation and other assignments where necessary. Equally important, the sequence would provide the principal forum in which students would integrate their classroom and clinical experiences into a solid theoretical framework.

The advanced clinics would extend over the next five quarters. During one quarter, students would work outside the College as interns in a government agency in order to gain a different perspective on the law in operation. The mandatory Law-Government seminar would require them to share and integrate their experiences into a theoretical framework through readings, discussions, and a paper requirement. The other four quarters would be divided among three advanced clinics. One quarter would be spent in a practice management clinic during which each student would serve as a law firm manager for one of the clinical sections. Two quarters would be spent doing trial and other advanced clinical work in one of the two divisions handling basic clinic cases, or in the advanced clinic division doing work on more complex matters in a specialized field of law. The other quarter would permit the student to explore in less depth another area of practice in one of the sections in the advanced clinical division.

Throughout this period, students would be required to take at least one academic offering each quarter that related directly to the work they were doing in the clinic. During their third year they would also be required to take Professional Methods V, an applied jurisprudence offering, and complete a six-credit senior project that would integrate some aspect of their practice experience into an intellectual framework and demonstrate their competence in research, analysis, and writing.

During the three-year program, a typical student would earn more than 100 academic credits in traditional courses and some twenty-five (25) academic credits in offerings designed to enable him or her to integrate theory and practice. During the same period the typical student would devote more than 1300 "billable hours" to the supervised practice of law: almost 500 as a paralegal assistant, more than 350 as a legal intern in a government agency, and almost 500 as a junior associate in

the teaching law firm.⁴⁶ He or she would work on both private and public law matters under the supervision of at least five different attorneys, in at least five different areas of practice, and in both a medium-size law firm and a government agency.

C. *The Faculty Perspective*

The faculty and clinical fellows would be responsible for supervising 75 students when the program became fully operational. Under conservative conversion assumptions the supervision of ten clinical credits earned imposes a faculty workload equal to that required to teach a one credit classroom offering.⁴⁷ Thus, supervising ten students for a three-credit clinical experience would be the equivalent of teaching a three-credit classroom course. On this basis the entire program (including required special academic offerings) would require a teaching staff capable of delivering 134 teaching units, sixty-one (61) units in direct clinical supervision, fifteen (15) in senior project supervision, forty-six (43) in the Professional Methods sequence, and fifteen (15) in other clinically related requirements.⁴⁸

The model contemplates that the regular faculty would devote approximately one-half of their time to clinical and senior project supervision and the other half to classroom teaching in traditional or clinically related offerings. A typical annual workload for a member of the faculty working in the program might consist of eight (8) units of direct clinical (or senior project) supervision, six (6) units of clinic re-

46. The model anticipates that students would devote and document at least 40 hours of clinical work for each clinical credit. See note 82 *infra* and accompanying text.

47. The literature almost invariably discusses the problem in terms of appropriate student/faculty ratios. See, e.g., *Project Director's Notes*, in AALS/ABA CLINICAL GUIDELINES, *supra* note 3, at 82-83; Swords & Walwer, *Cost Aspects of Clinical Education*, in AALS/ABA CLINICAL GUIDELINES, *supra* note 3, at 145-47. The number, logistical demands, and degree of complexity of the cases and the number of student hours of work the faculty member must supervise are at least as critical as the number of students. Supervising five students each working forty hours per week on cases likely to go to trial may be far more demanding than supervising ten students each working ten hours per week doing research on a single complex matter. Although far from perfect, our experience at Antioch and elsewhere suggests that a formula which measures a clinical teaching load based upon a number of student hours supervised is more accurate than the commonly employed student/faculty ratio standards. This analysis was originally and more fully developed in Anderson, *The Clinical Program* (Sept. 26, 1973) and Seikaly & Anderson, *Faculty Workload: Preliminary Report* (Jan. 24, 1975), App., Doc. Nos. 4 and 9. See also note 82 *infra*.

48. See Table 3 at 769 *infra*.

lated academic offering, and four (4) units of traditional classroom offerings.

The establishment of the clinical fellow position, a limited term junior faculty position, is central to the proposed model. Obviously, it reduces costs. Less obviously, but even more importantly, we believe it is essential to developing and maintaining the program.

Basic services cases in some quantity and in selected areas are the clinical equivalent of the appellate decision in classroom instruction; they provide basic instructional units for both the basic and part of the advanced clinical program. The integration of theory and practice requires numerous matters arising in a finite area of the law, raising similar questions and requiring the performance of the same tasks in a variety of situations. Such practice cases are to clinical education what an appellate case sequence is to classroom education: the foundation upon which everything is built.

The initial design and implementation of a clinical curriculum for a specialized basic service clinical section poses intellectual challenges sufficient to engage the most experienced lawyer and teacher. Few teachers or lawyers, however, can long sustain the professional tension imposed by a workload which requires that they maintain and manage a large caseload and provide individualized supervision and evaluation for students on repetitive matters at the same time.⁴⁹ Young legal services attorneys, prosecutors, and public defenders either advance from routine to complex matters or leave public service. Clinical teachers move toward complex matters or flee to the classroom, usually a bit of both. Supervising basic service cases in the clinic is like teaching in an intensive first year legal writing program. No one challenges the necessity or value of a rigorous program, but few teachers have been able to sustain the required effort and enthusiasm for more than a few years.⁵⁰ The solution we believe lies in the creation of a short term junior faculty position: the clinical fellow.⁵¹

As designed, the model contemplates that clinical fellows would receive two year appointments and serve on eleven month contracts, pri-

49. Tyler & Catz, *The Contradictions of Clinical Legal Education*, 29 CLEV. ST. L. REV. 693, 701-02 (1980). For an early articulation, see Anderson, *supra* note 47, at 326.

50. Tyler & Catz, *supra* note 49, at 711-12.

51. The position could be designed as a graduate fellowship leading to a master's degree or as junior instructorship. Models for both exist. For purposes of this analysis we have used the instructorship model.

marily as clinical supervisors with limited classroom responsibilities. Like most young teachers, they would need more time to prepare. They would come to learn as well as teach. Thus, although they would be available for all four quarters each year, we have assumed that their average workload will not exceed twenty-four (24) credits. Typically, this workload might consist of sixteen (16) units in direct clinical supervision and eight (8) units in classroom teaching in the small sections of the professional methods sequence or in clinically related seminars.

The four regular faculty would be able to provide at least seventy-two (72) teaching units. The six clinical fellows would generate an additional 144 units. Thus the law firm teaching staff would have a teaching capacity exceeding 200 units, well in excess of the demands imposed by the program. The surplus capacity would provide the time and flexibility needed to enable faculty to develop academic interests in non-clinical classroom offerings and to provide supervision for third year students in the College's regular program who seek limited clinical experience.

D. *The Institutional Perspective*

The College has made a substantial investment in its clinical program. One member of the faculty supervises a specialized clinic outside the general clinical program as part of her regular teaching responsibilities. During the current year, four regular members of the faculty, two visiting faculty,⁵² and one staff attorney are responsible for the existing third year clinical program. On the average, forty percent of the faculty members' time is allotted to clinical supervision; ten percent to teaching in clinically required courses, and fifty percent to other classroom teaching. During the four quarters from fall, 1980, through summer, 1981, 52 third-year students enrolled in the general clinical program and earned approximately 700 credits.⁵³

The proposed model has been designed to utilize the College's existing clinical and classroom resources in a way that would make it possible to implement the experimental comprehensive program with a modest reallocation of its resources. The analysis of the teaching units required to meet the needs of the proposed program and those pres-

52. See note 42 *supra*.

53. These figures are based upon a review of enrollment figures and classroom teaching assignments for the 1980-81 year. The allocation of faculty time is an estimate based upon observation and discussion.

ently required for the existing program suggests that the four faculty positions, supplemented by six clinical fellows, could comfortably accommodate both. Obviously, maximum efficiency would require significant changes in the existing teaching responsibilities of those members of the faculty now assigned to the clinical program, but the proposed program should not significantly distort the College's other programs or the work of other students and faculty.⁵⁴

The proposed program will generate direct and indirect costs as well as benefits for the institution and the populations it serves. These can be better evaluated against the more detailed plans for the program. To these we now turn.

IV. THE MODEL PROGRAM BLUEPRINTS

In the preceding discussion, we have attempted to describe the proposed program and articulate its theoretical foundations. In this part, we develop these foundations and offer detailed blueprints for a program based upon the model. By so doing, we hope to accomplish two things. First, we want to demonstrate that the model is feasible. Too often, models seemingly attractive in the architects' sketches have failed because their proponents were unable to produce the engineering blueprints from which actual programs could be constructed. These are the blueprints. Second, we want to create a framework within which specific problems or questions could be addressed. The model establishes only the framework. To implement a program at the College or adapt one for other schools, additional work would be required. We believe these blueprints provide a planning framework within which changes could be considered and made with an understanding of the consequences of each change for other parts of the model. By having blueprints that identify the relationships between the parts, proposed changes can be assessed more realistically.

A. *The Comprehensive Curriculum*

The model employs three curriculum components that must be specially designed for the program: the seventeen-credit Professional Methods sequence, the Basic and Advanced Clinics, and the Senior

54. There will, of course, be additional costs associated with student recruitment and admissions, recruitment of clinical fellows, course development and scheduling, committee oversight and evaluation, support staffing, and other administrative needs. See Tables 5 and 6 at notes 91-100 *infra* and accompanying text.

Project. The other program requirements, the clinically related requirements and electives, can be drawn from or offered as part of the regular curriculum.⁵⁵

Like the traditional law school curriculum, the program curriculum can be divided into two parts: the basic curriculum required of all students and the advanced curriculum in which students may choose from a variety of paths to complete their requirements. We discuss each separately.

1. *The Basic Curriculum (five quarters)*

The introduction of clinical work and the Professional Methods sequence in the first year and the addition of three academic courses to the required curriculum would extend the basic course of study for the program from three quarters to five quarters. During this period, program students would earn thirteen (13) credits in the Professional Methods sequence (PM I-IV), twelve (12) credits in Basic Clinic I and II, and forty-eight (48) credits in required classroom courses.⁵⁶ Tables 1 and 2 below show how this work could be scheduled. The following narrative describes the specially designed components students would take during this period and how they would fit within the required classroom curriculum.

a. Professional Methods I and II

The Professional Methods sequence is central. It would constitute a series of seminar offerings designed to complement and integrate the student's contemporaneous clinical and classroom work. It is here that the practice skills and tasks of the clinic would be set in their theoretical framework, and the theoretical framework laid in the classroom would be tested, reinforced, and deepened through intensive study of actual cases.

Professional Methods I and II would be offered in the fall quarter before students undertook any direct clinical work. The first course would be designed as an intensive three-credit introduction to legal

55. The Law-Government, clinically required practice management, and legal delivery systems seminars would also have to be specially designed, but they could be offered as part of the College's regular curriculum. *See* text accompanying notes 63-65 *infra*.

56. Under the proposed schedule, program students would not complete Property and Evidence until the winter quarter of their second year. *See* Table 1 at text accompanying notes 69-72 *infra*.

reasoning, lawyering, and the profession to be completed before the regular curriculum began. Using lectures and demonstrations, classroom and seminar discussions, and simulation exercises, students would be provided with an overview of the legal system and the lawyering process as a whole and an intensive introduction to basic legal analysis and its application to selected tasks in a single area. The major simulation exercises would require students to prepare case briefs and legal analysis memoranda. The course would provide students an orienting perspective to the profession and the academy and an intensive introduction to basic law student and lawyering skills.⁵⁷

Professional Methods II (two credits) would extend through the balance of the first quarter. Students would be introduced to legal research, using problems generated in the clinic where possible, and would receive basic training in clinical procedures, professional responsibility, and basic clinical tasks, such as initial interviewing and fact investigation, sufficient to prepare them for entry into the clinic. To the extent feasible, case files and presentations of selected cases by advanced clinical students would provide vehicles for exercises and for illustrating topics being covered in standard first year courses such as Torts, Contracts, and especially Civil Procedure. The balance of the Professional Methods sequence (PM III-V) would run concurrently with the various clinical cycles (Basic Clinic I and II and Advanced Clinics I-IV).

b. Professional Methods III and IV and Basic Clinics I and II

The Basic Clinic program would be organized into two divisions, one handling private law matters and the other handling public law matters (civil and criminal). Each division would have two basic service sections. For example, the private law division might have a landlord-tenant section and a section addressing a selected category of consumer problems. The public law division might have one section for post conviction remedy cases and another for employment related administrative claims (unemployment compensation and social security

57. The Professional Methods I course could be offered to all entering students. A model and preliminary syllabus for such a course and a rationale for its addition to the required curriculum have been developed. See Anderson, *An Introduction to Law and Lawyering: A Modest Proposal*, 36 U. MIAMI L. REV. — (forthcoming 1981). The proposed course was based on the Professional Methods I course designed and offered at Antioch. See THE ANTIOCH SCHOOL OF LAW CATALOG: 1976 *supra* note 21, at 50.

entitlements, for example).⁵⁸

The Basic Clinic program would extend over four quarters beginning with the winter term of the first year. Each student would enroll for two quarters in one section of the private law division and for two quarters in one section of the public law division. Enrollment would be limited to assure even distribution of basic clinic students throughout the four sections during all four quarters. Students would be required to spend twelve (12) hours per week working as paralegal assistants and would earn three clinical credits per quarter.⁵⁹

Professional Methods III and IV would serve as parallel seminar offerings. Throughout Basic Clinic I, students in each clinical section would be enrolled in the seminar section of PM III taught by the clinical fellow responsible for their clinical section. Each section's syllabus would be designed to introduce students to appellate decisions, statutes, and other materials necessary to enable them to understand and analyze the legal issues presented by the cases on which they are working. Through seminar discussions, students would develop an understanding of these materials and would participate jointly in the discussion and analysis of issues arising in the clinic. At the same time, the clinical fellows would utilize these materials to illustrate issues raised in the related classroom courses that students were taking or had completed. The PM III seminar would employ simulation exercises to ensure that students receive training in and a balanced exposure to essential basic tasks identified in each syllabus. The basic method of instruction would involve a rigorous application of the appellate decisions and other materials to actual problems arising in the clinical cases. Additionally, the use of clinical assignments and, where necessary, simulation exercises would require students to demonstrate their ability to apply these basic analytic skills to specific tasks in the subject area.⁶⁰ Under this design, students would earn two credits per quarter

58. The subject matter for the four sections would be chosen by the faculty based upon the types of legal problems and lawyering tasks commonly presented by cases available in each category. The specific syllabi for PM III and IV sections would be constructed on this basis. See text accompanying notes 83-87 *infra*.

59. This allocation of credits is based upon the academic rule of thumb that a student in a basic case method course is expected to spend two to three hours preparation for each hour in the classroom. Thus, a three credit classroom offering should entail twelve (12) hours work each week for a student. We have employed this formula in planning student workloads and computing clinical credits throughout.

60. For a brief description of the teaching methodology employed in a comparable offering at Antioch, see Cort, Sammons, Catz, Tyler & Anderson, *AALS Clinical Legal Education Panel:*

for their work in PM III (and in PM IV).

For Basic Clinic II and PM IV, students would rotate into a clinical section in the other basic service division. The PM IV seminars would have objectives similar to those in PM III, but the nature of the assigned projects and tasks would reflect the students' prior experience and take into account the different sequences in which their clinical experiences relate to their classroom courses. The syllabi for the four sections of PM III and IV and Basic Clinic I and II must be coordinated to ensure that each student receives training and is required to perform those tasks deemed basic by the faculty, for example, a substantial research and writing project, an appellate brief and argument, and a thorough initial interview and fact investigation.⁶¹

c. The Required Classroom Courses

The College presently requires all students to take Civil Procedure (8 credits), Contracts (8), Torts (8), Property (8), Constitutional Law (6), and Criminal Law (4). Because of their relation to the clinical work, students in the program would also be required to take Administrative Law (4 credits), Criminal Procedure (3), and Evidence (6) as part of their required curriculum. Each of these courses would provide a necessary foundation for and supplement to the clinical curriculum. Program students would take these courses in a slightly different sequence than other first year students in order to increase the extent to which the classroom and clinical work were complementary.⁶²

2. *The Advanced Curriculum*

The advanced curriculum would extend for six quarters, from the winter term of the students' second year through the spring term of their third year. During this period, each student would earn twelve (12) credits in advanced clinics offered within the teaching law firm and nine (9) credits in a government internship. They would earn from eleven (11) to seventeen (17) credits in clinically related required and elective classroom offerings and from eighteen (18) to forty-one (41)

Evaluation and Assessment of Student Performance in a Clinical Setting, 29 CLEV. ST. L. REV. 603, 618-19 (1980) [hereinafter cited as Panel Discussion].

61. Private Law Division: Work Plan and Organizational Model 1974-1975, App., doc. No. 6, contains two illustrative syllabi.

62. See Table 1 at text accompanying notes 69-72 *infra* and text accompanying notes 85-87 *infra*.

credits in other academic electives. Finally, during their third year, they would take Professional Methods V and complete a senior project.

Tables 1 and 2 below illustrate how the work would be scheduled and distributed. The following narrative describes the program components for the second and the third year and discusses their relationship to the elective academic curriculum.

a. The Second Year: Advanced Clinics I-III and the Clinically Related Requirements and Electives

During the final three quarters of the second year, each student would complete three advanced clinics. To maintain caseload and student distribution, enrollment would be staggered so that in each quarter one third of the students would be enrolled in each type of clinic. The clinically related required or elective classroom offerings would be drawn from the existing curriculum or added to the list of offerings available to non-program students.

In Advanced Clinic I (three credits) each student would serve as a managing intern in one of the clinical divisions for one quarter. These students would be assigned responsibility for managing case assignments and work flow for a section of the law firm. They would be required to participate in the design and implementation of law management systems. The clinically related requirement would be a two-credit seminar focusing upon practice management and contemporary legal delivery systems and upon problems of professional responsibility related to practice management and to the distribution of legal services to society.⁶³

Advanced Clinic II would be the one-quarter government internship. Students would be placed for one quarter in a position with the executive, legislative, or judicial branch in a selected federal, state, or local office in the Cleveland area. They would work at least 30 hours each week and would earn nine (9) credits. Students would be required to document their time and activities, and supervisors would be required to complete detailed performance evaluations at the end of the period. During the internship period, students would take a Law-Government seminar addressing selected problems in the administration and implementation of the law. Each student would identify a problem within

63. For a brief description of a more ambitious version of this seminar, see THE ANTIOCH SCHOOL OF LAW CATALOG: 1976, *supra* note 21, at 56.

the parameters of the course that was relevant to the work he or she was doing and prepare and present a paper addressing that problem.⁶⁴ (Students would be permitted, but not required to take one additional academic elective in the school during this term.)

Advanced Clinic III (three credits) would be elective. Subject to workload distribution requirements, students would select a clinical offering in a complex area of the kind presently available to third year students (the Employment Discrimination clinic, for example). Each student would be required to take an approved related academic offering, such as Sex Discrimination and the Law or Federal Jurisdiction.⁶⁵

b. The Third Year Clinics: Advanced Clinic IV and Clinically Related Electives

Third year students would be required to earn six credits, three in the fall and three in the winter quarter, working in one advanced clinical section. They would also be required to take one academic elective each quarter whose subject matter was relevant to their clinical work.

The design contemplates two patterns. Students electing Advanced Clinic IV (A) would return to a basic service section and work to master advanced skills in an area in which they had already mastered the basic law and practice skills. For example, a student might return to the landlord-tenant section to develop an understanding of and skills in the trial process by handling a substantial number of basic landlord-tenant cases. Simultaneously, students would develop a deeper understanding of urban housing problems through academic study and clinical work on more complex housing matters. Alternatively, students enrolling in Advanced Clinic IV (B) would choose one of the specialized advanced clinical sections which might have only one or two large multi-year matters. There, the student would acquire intensive experience in the limited number of tasks required during the two quarter period and gain depth and breadth in the area through academic study and through studying the evolution of a complex matter over time. The student's Senior Project might focus upon a related area to establish a true concentration.

64. For a description of subsequent implementation of the initial design, see *id.* at 53.

65. Underlying the whole model is the concept that students should be required to integrate practice and theory at every stage. Once the elective clinical offerings had been established, the related academic electives for each could be identified from the BULLETIN, *supra* note 39. These electives would include both substantive offerings and skills courses.

c. The Third Year: Professional Methods V and the Senior Project

During the fall quarter, third year students would take Professional Methods V and begin work on their Senior Projects. PM V would be a four-credit summative offering designed to require students in the program to integrate their clinical experience and academic study into a jurisprudential framework. For students in the program, PM V would also serve as the forum in which they would develop and refine their Senior Project proposals.

The Senior Project is central. A clinical program extending over a three-year period should afford students the opportunity to integrate acquired experience into a theoretical framework. One of the principal deficiencies of the traditional curriculum is that there are few third year programs designed to assure that the marginal student achieves an acceptable level of competence in basic tasks before graduation. The Senior Project requirement is designed to ensure that both integration and acceptable competence are achieved.⁶⁶

Each student in the program would be required to develop a proposal and justify it in terms of his or her clinical experience or career plans. The project would require substantial research, legal or empirical, and be designed to produce a product that demonstrates the student is competent in legal analysis, research, and writing and can relate these skills to the lawyering process. The schedule contemplates that students would design and obtain approval for their senior projects during the fall term, submit a draft to their individual project advisors before the end of the winter term, and submit the completed project by the middle of the spring term. The faculty workload has been computed to allow substantial individual supervision by faculty. To assure uniformity, each project proposal would be initially reviewed and each

66. In theory students in the program might participate in law review as an academic elective. In practice, we believe traditional law review participation would be unlikely given the demands of the program. The Senior Project requirement would provide students in the program an opportunity to produce scholarly work of publishable quality. Several of the senior theses completed at Antioch during 1975-76 were subsequently published. See, e.g., French, *The Frontiers of the Federal Mandamus Statute*, 21 VILL. L. REV. 637 (1976); Gerwin, *A Study of the Evolution and Potential of the Landlord Tenant Law and Judicial Dispute Settlement Mechanism in the District of Columbia—Part I: The Substantive Law and the Nature of the Relationship*, 26 CATH. U.L. REV. 457 (1977), and *Part II: A Critical Examination and Proposal for Reform*, 26 CATH. U.L. REV. 641 (1977); Thompson, *Piercing the Veil of State Action: The Revisionist Theory and a Mythical Application to Self-Help Repossession*, 1977 WIS. L. REV. 1.

finished product would be juried by a panel that included the advisor and two other members of the faculty with relevant expertise.⁶⁷

d. Academic Electives

Program students would have the opportunity to take between eighteen (18) and forty-one (41) credits in academic electives open to all College students and not necessarily related to their clinical work. (See Table 2.) Realistically, students in the program who seek to cover traditional electives such as the basic commercial, corporate, and tax offerings would have few 'free' electives.⁶⁸ In effect, by enrolling in the program, they would have elected to take a planned and integrated curriculum rather than retain the apparent freedom permitted in the standard curriculum. (The implications of these restrictions for students and for legal education are discussed below.)

3. *The Curriculum in Tabular Format*

The development and implementation of the program described above would require careful scheduling and analysis. A change in any one part would require adjustments in other parts. The program described has been designed to fit within the College's existing curriculum and schedule. Tables 1 and 2 summarize the program schedule and provide a format in which specific adjustments could be considered and the consequences to other parts determined.

Table 1 sets out the three-year schedule of required and elective offerings for students in the program. Each offering is classified to show: (1) whether it would be open to all students or restricted to students in the program; (2) whether it would be taught by faculty assigned primarily to the program or by faculty teaching primarily in the traditional classroom offerings; (3) whether students would earn academic classroom or clinical credit; and (4) whether the offering is a requirement or an elective for all students or for students in the program.

67. For a detailed description of a similar program, see Antioch School of Law Thesis Program, App., Doc. No. 10.

68. For example, a student who sought to take the subjects identified in the Indiana or South Carolina Rules, *supra* note 31, might have no 'free' electives unless his or her clinically related electives overlapped with subjects required by the Rules. See BULLETIN, *supra* note 39, at 70-86 for listing of electives.

TABLE I
SCHEDULE OF REQUIRED AND ELECTIVE OFFERINGS
FOR STUDENTS IN COMPREHENSIVE CLINICAL PROGRAM

| Year & Quarter | Title of Offering | No. of Credits | Classifications | | |
|--------------------|--------------------------|----------------|--------------------------|-----------------------|----------------------|
| | | | Enrollment ⁶⁹ | Faculty ⁷⁰ | Credit ⁷¹ |
| <u>First Year</u> | | | | | |
| <u>Fall</u> | | | | | |
| | Professional Methods I | 3 | R* | C/Fac | A/RCS |
| | Professional Methods II | 2 | R(25) | C/Fac | A/RCS |
| | Civil Procedure | 4 | Open | A/Fac | A/RAS |
| | Torts | 3 | Open | A/Fac | A/RAS |
| | Contracts | 3 | Open | A/Fac | A/RAS |
| <u>Winter</u> | | | | | |
| | Professional Methods III | 2 | R | C/Fac | A/RCS |
| | Basic Clinics I | 3 | R | C/Fac | C/RCS |
| | Civil Procedure | 4 | Open | A/Fac | A/RAS |
| | Torts | 3 | Open | A/Fac | A/RAS |
| | Contracts | 3 | Open | A/Fac | A/RAS |
| <u>Spring</u> | | | | | |
| | Professional Methods III | 2 | R | C/Fac | A/RCS |
| | Basic Clinic I | 3 | R | C/Fac | C/RCS |
| | Criminal Law | 4 | Open | A/Fac | A/RAS |
| | Torts | 2 | Open | A/Fac | A/RAS |
| | Contracts | 2 | Open | A/Fac | A/RAS |
| <u>Summer</u> | | | | | |
| | Professional Methods IV | 2 | R | C/Fac | A/RCS |
| | Basic Clinic II | 3 | R | C/Fac | C/RCS |
| | Constitutional Law | 3 | Open | A/Fac | A/RAS |
| | Administrative Law | 4 | Open | A/Fac | A/RCS |
| | Criminal Procedure | 3 | Open | A/Fac | A/RCS |
| <u>Second Year</u> | | | | | |
| <u>Fall</u> | | | | | |
| | Professional Methods IV | 2 | R | A/FAC | A/RCS |

69. "Open" means that the offering would be open to all students, including students not in the program. "R" or "Restricted" means enrollment would be restricted to students in the program. Those offerings marked with an asterisk (R*) might be open to other clinical or nonclinical students depending upon how the course or clinic is structured.

70. "A/Fac" means faculty primarily assigned to classroom teaching. "C/Fac" means faculty primarily assigned to the clinical program. The division of teaching responsibility has been made to facilitate calculation of workload, not to suggest a formal classification of faculty.

71. The designation "A/RAS" means the offering is required of all students and the credits earned would be academic rather than clinical. "A/RCS" designates an academic offering required of students in the program. "A/EAS" designates an academic elective, open to all students. "A/CRE" designates an academic, clinically related elective, open to all students, but required for program students enrolled in the related clinical offering. "A/CRR" designates an academic, clinically related requirement, an offering required for each program student enrolled in the related required clinical offering. "C/RCS" designates a clinical offering required of students in the program. "C/ECS" designates a clinical elective open to students in the program and to other third year students.

TABLE 1 CONTINUED

| Year & Quarter | Title of Offering | No. of Credits | Classifications | | |
|-----------------------------|--|-------------------------------------|--------------------------|-----------------------|----------------------|
| | | | Enrollment ⁶⁹ | Faculty ⁷⁰ | Credit ⁷¹ |
| <u>Winter</u> ⁷² | Basic Clinic II | 3 | R | C/Fac | C/RCS |
| | Constitutional Law | 3 | Open | A/Fac | A/RAS |
| | Property | 4 | Open | A/Fac | A/RAS |
| | Evidence | 3 | Open | A/Fac | A/RCS |
| | Clinically Related Requirement ("CRR") | 2 | R* | C/Fac | A/RCS |
| | Advanced Clinic I | 3 | R* | C/Fac | C/RCS |
| | Property | 4 | Open | A/Fac | A/RAS |
| | Evidence | 3 | Open | A/Fac | A/RCS |
| | Academic Electives | 0-3 | Open | A/Fac | A/EAS |
| | <u>Spring</u> | Clinically Related Elective ("CRE") | 2-4 | Open | C/ or A/Fac |
| Advanced Clinic III | | 3 | Open | C/ or A/Fac | C/ECS |
| Academic Electives | | 5-10 | Open | A/Fac | A/EAS |
| <u>Summer</u> | | Law-Gov't. Seminar | 3 | R* | C/Fac |
| | Advanced Clinic II (Internship) | 9 | R* | None | C/RCS |
| | Academic Elective | 0-3 | Open | A/Fac | A/EAS |
| <u>Third Year</u> | | | | | |
| <u>Fall</u> | Senior Project | 2 | R* | C/ or A/Fac | A/RCS |
| | Professional Methods V | 4 | Open | C/Fac | A/RCS |
| | Adv. Clinic IV (A or B) | 3 | Open | C/ or A/Fac | C/ECS |
| | CRE | 2-4 | Open | C/ or A/Fac | A/ECS |
| | Academic Electives | 0-4 | Open | A/Fac | A/EAS |
| | <u>Winter</u> | Senior Project | 2 | R* | C/ or A/Fac |
| Adv. Clinic IV (A or B) | | 3 | R* | C/ or A/Fac | C/ECS |
| CRE | | 2-4 | Open | C/ or A/Fac | A/ECS |
| Academic Electives | | 3-8 | Open | A/Fac | A/EAS |
| <u>Spring</u> | Senior Project | 2 | R* | C/ or A/Fac | A/RCS |
| | Academic Electives | 10-13 | Open | A/Fac | A/EAS |

Table 2 summarizes Table 1 and illustrates how the various types of clinical and academic offerings would be distributed in each term and for the entire program.

72. Beginning in the Winter Quarter, students in the program will be required to complete three advanced clinics during their second year, two required and one elective. Students will be required to enroll in these offerings in different sequences. This will provide some flexibility for students and assure level enrollments in advanced clinical offerings in the College's internal clinics throughout the year.

TABLE 2
SUMMARY
DISTRIBUTION OF CREDITS
FOR STUDENTS IN COMPREHENSIVE CLINICAL PROGRAM

| Year & Quarters | Title of Offering | No. of Credits | Classifications | | | | | |
|--------------------|--------------------------|-------------------|--------------------------|--------------------------|--------------------------|--------------------------|------------|------------|
| | | | Academic | | | | Clinical | |
| | | | <u>RAS</u> ⁷³ | <u>RCS</u> ⁷⁴ | <u>EAS</u> ⁷⁵ | <u>ECS</u> ⁷⁶ | <u>RCS</u> | <u>ECS</u> |
| First Year | | | | | | | | |
| <u>Fall</u> | | | | | | | | |
| | Professional Methods I | 3 | | | 3 | | | |
| | Professional Methods II | 2 | | | 2 | | | |
| | Civil Procedure | 4 | 4 | | | | | |
| | Torts | 3 | 3 | | | | | |
| | Contracts | 3 | 3 | | | | | |
| <u>Winter</u> | | | | | | | | |
| | Professional Methods III | 2 | | | 2 | | | |
| | Basic Clinic I | 3 | | | | 3 | | |
| | Civil Procedure | 4 | 4 | | | | | |
| | Torts | 3 | 3 | | | | | |
| | Contracts | 3 | 3 | | | | | |
| <u>Spring</u> | | | | | | | | |
| | Professional Methods III | 2 | | | 2 | | | |
| | Basic Clinic I | 3 | | | | 3 | | |
| | Criminal Law | 4 | 4 | | | | | |
| | Torts | 2 | 2 | | | | | |
| | Contracts | 2 | 2 | | | | | |
| <u>Summer</u> | | | | | | | | |
| | Professional Methods IV | 2 | | | 2 | | | |
| | Basic Clinic II | 3 | | | | 3 | | |
| | Constitutional Law | 3 | 3 | | | | | |
| | Administrative Law | 4 | | | 4 | | | |
| | Criminal Procedure | 3 | | | 3 | | | |
| Second Year | | | | | | | | |
| <u>Fall</u> | | | | | | | | |
| | Professional Methods IV | 2 | | | 2 | | | |
| | Basic Clinic II | 3 | | | | 3 | | |
| | Constitutional Law | 3 | 3 | | | | | |
| | Property | 4 | 4 | | | | | |
| | Evidence | 3 | | | 3 | | | |
| <u>Winter</u> | | | | | | | | |
| | Clinically Related Req. | 2 | | | 2 | | | |
| | Advanced Clinic I | 3 | | | | 3 | | |
| | Property | 4 | 4 | | | | | |
| | Evidence | 3 | | | 3 | | | |
| | Academic Electives | 0-3 | | | | 0-3 | | |

73. "RAS" means the offering is required for all students.

74. "RCS" means the offering is required for students in the program.

75. "EAS" means the offering is an elective available to all students.

76. "ECS" means the credits will be earned in an offering which is an elective available to all students, but which has a relationship to an advanced clinical offering which makes it an appropriate concurrent elective for that clinic.

TABLE 2 CONTINUED

| Year & Quarters | Title of Offering | No. of Credits | Classifications | | | | | | |
|---|------------------------------------|-------------------|-----------------|-----|-------|------|----------|-----|---|
| | | | Academic | | | | Clinical | | |
| | | | RAS | RCS | EAS | ECS | RCS | ECS | |
| <u>Spring</u> | Law-Gov't Seminar | 3 | | 3 | | | | | |
| | Advanced Clinic II (Internship) | 9 | | | | | 9 | | |
| | Academic Electives | 0-3 | | | 0-3 | | | | |
| <u>Summer</u> | Clinically Related Elect. | 2-4 | | | | 2-4 | | | |
| | Advanced Clinic III | 3 | | | | | | | 3 |
| | Academic Electives | 5-10 | | | 5-10 | | | | |
| <u>Third Year</u> | | | | | | | | | |
| <u>Fall</u> | Senior Project | 2 | | 2 | | | | | |
| | Professional Methods V | 4 | | 4 | | | | | |
| | Adv. Clinic IV (A or B) | 3 | | | | | | | 3 |
| | Clinically Related Elect. | 2-4 | | | | 2-4 | | | |
| | Academic Electives | 0-4 | | | 0-4 | | | | |
| <u>Winter</u> | Senior Project | 2 | | 2 | | | | | |
| | Adv. Clinic IV (A or B) | 3 | | | | | | | 3 |
| | Clinically Related Elect. | 2-4 | | | | 2-4 | | | |
| | Academic Electives | 3-8 | | | 3-8 | | | | |
| <u>Spring</u> | Senior Project | 2 | | 2 | | | | | |
| | Academic Electives | 10-13 | | | 10-13 | | | | |
| <u>Summary & Totals</u> ⁷⁷ | | | | | | | | | |
| First Year (4 Quarters) | | 58 | 31 | 18 | 0 | 0 | 9 | 0 | |
| Second Year (4 Quarters) | | 51-60 | 11 | 13 | 5-16 | 2-4 | 15 | 3 | |
| Third Year (3 Quarters) | | 36-45 | 0 | 10 | 13-25 | 4-8 | 0 | 6 | |
| TOTALS | | 145- 163 | 42 | 41 | 18-41 | 6-12 | 24 | 9 | |

B. *The Workload Analysis*

The organization of a teaching law firm to provide a comprehensive clinical curriculum must satisfy two conditions. The program faculty must have enough teachers to supervise students and cases and to teach the specially designed classroom portions of the curriculum, and the work must be scheduled in a way that will make it possible to plan and distribute these responsibilities throughout the year. In this section, we

77. These figures assume students will not take less than twelve (12) nor more than fifteen (15) credits in any advanced quarter.

provide blueprints for organizing a teaching law firm for the program described above and articulate the basis upon which this organization has been designed.⁷⁸

Under the American Bar Association's accreditation standards, the maximum teaching load for a faculty member may not exceed sixteen semester or twenty-four quarter credits for a nine month academic year.⁷⁹ The preferred load is twelve or eighteen respectively. The manner in which clinical supervision and teaching should be translated into classroom teaching equivalents has been the subject of some debate and insufficient analysis.⁸⁰ A conservative standard equates supervising of ten clinical credits earned to teaching a one credit classroom course.⁸¹ We have employed this standard to calculate faculty and clinical fellow workloads throughout.

The accepted academic norm for student work appears to be that the student should devote two or three hours out of class to prepare for each hour spent in the classroom. This means that a student carrying fifteen hours in classroom courses should be working forty-five (45) to sixty (60) hours per week: fifteen (15) in the classroom and thirty (30) to forty-five (45) outside. Applying this standard to clinical work, a student should be devoting three to four hours each week for each clinical credit. We have applied this standard throughout to allocate credits and schedule student work. To be sure that the proper balance is maintained, students in the program would be required to maintain and submit for approval detailed weekly time and activity reports documenting their clinical work.⁸²

An efficient schedule requires that student enrollments be scheduled to provide a predictable and level number of students and work hours

78. The application of this methodology to an actual program is illustrated by the three division plans prepared at Antioch prior to the start of the 1974-1975 and 1975-1976 school years. See Private Law Division: Work Plan and Organizational Model, 1974-1975, App., Doc. No. 6; Antioch School of Law Public Law Division Plan: 1974-1975 Academic Year, App., Doc. No. 7; Criminal Division: Clinical Plan 1974-1975, App., Doc. No. 8. See also Private Law Division Work Plans (1975), App., Doc. No. 13; Antioch School of Law: Division Plan Public Law Division, 1975-1976, App., Doc. No. 14; and Criminal Division Plan: 1975-1976, App., Doc. No. 15.

79. Standard 404, APPROVAL OF LAW SCHOOLS: ABA STANDARDS AND RULES OF PROCEDURE (1979) [hereinafter cited as ABA STANDARDS].

80. See, e.g., AALS/ABA CLINICAL GUIDELINES, *supra* note 3, at 82-83.

81. See note 47 *supra*.

82. The result we reach appears to be consistent with the ABA's new guideline, at least as it is interpreted in the Project Director's Notes. See AALS/ABA CLINICAL GUIDELINES, *supra* note 3, *Guideline X(A)* at 27 and *Project Director's Notes* at 96-98. The reasoning by which we reach this result is not.

A student carrying fifteen (15) credits in traditional classroom offerings should be devoting

in the clinic throughout the year. Only in this way, can appropriate numbers and kinds of clients and legal matters be maintained. The program curriculum and schedule described above have been designed to achieve this objective.

The program is designed for a teaching law firm that would have four regular members of the faculty, six clinical fellows, and seventy-five students (with appropriate supporting staff and facilities). The four faculty members would have nine-month contracts. Each could provide a maximum of twenty-four (24) units of clinical and classroom teaching, for an annual maximum of ninety-six (96) units. Because the program is experimental, we have used eighteen (18) units as the standard, generating an annual output of seventy-two (72) units. The six clinical fellows would hold two year appointments on four quarter, eleven month contracts. In theory each could assume thirty-two (32) units of clinical and classroom teaching responsibility. Because learning as well as teaching would be a part of their program and because they would be less experienced lawyer-teachers, we have used a twenty-four (24) unit workload as the standard for this program.

Applying these standards, Table 3 shows the teaching workload required for the clinical and specially designed classroom offering described above and scheduled in Table 1. The right half of the chart shows the workload for each offering; the left half shows how this workload would be distributed quarter-by-quarter during the year.

forty-five (45) to sixty (60) hours to study of law: fifteen (15) inside the classroom and thirty (30) to forty-five (45) outside. Apart from attempting to limit outside employment to twenty (20) hours per week and requiring some form of attendance monitoring (see Standard 305, ABA STANDARDS, *supra* note 79, and Interpretation of Standard 305(A)(iii) adopted August, 1980, *included in* INTERPRETATIONS TO ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (1981)), few schools require any documentation of student time.

We believe that time sheets should be required and that all clinical programs should specify the minimum number of hours required for the award of clinical credit. First, accountability and professional responsibility are better served. Second, precisely because clinical work cannot be regularly scheduled, some such procedure should be required to protect the integrity of the credits awarded. Finally, time and activity records provide a significant source of data for clinical planning and evaluation. We do not suggest that credit should be awarded on the "taxi meter" theory. Documenting the requisite amount of time should be a necessary, not a sufficient, condition for the award of credit.

No lawyer likes time sheets and clinical law teachers and students appear to have adopted a positively academic abhorrence to them. Indeed, to the best of our knowledge, Antioch and the University of Miami clinical programs are the only programs which require and enforce detailed law firm time and activity reports for all clinical work. The minimum standard is 50 and 55 hours per semester credit at the respective schools. We base our conclusions on our experience with those programs.

TABLE 3
PROGRAM FACULTY WORKLOAD PROGRAM

| Offering | Credit | | Students | Sections* | Students/ Sect.* | Teaching Units | Total | | | | Teaching Unit Distribution | | | | |
|---------------|--------|-------|----------|-----------|------------------|----------------|-------|------------|--------------|--------------|----------------------------|------|--------|-------|--------|
| | Acad. | Cl. | | | | | Acad. | Fall Acad. | Winter Acad. | Spring Acad. | Summer Acad. | Cl.* | Cl.* | Cl.* | |
| PM I | 3 | | 25 | 1 | 25 | 3 | 3 | | | | | | | | |
| PM II | 2 | | 25 | 2 | 12/13 | 4 | 4 | | | | | | | | |
| PM III | 4 | | 25 | 4 | 6/7 | 16 | 16 | 8 | 8 | | | | | | |
| Basic Cl. I | | 6 | 25 | 4 | 6/7 | 15 | 15 | | | 8(25) | 8 | | | | |
| PM IV | 4 | | 25 | 4 | 6/7 | 16 | 16 | 8 | | | 7(25) | | | 8 | |
| Basic Cl. II | | 6 | 25 | 4 | 6/7 | 15 | 15 | | 7(25) | 2 | | | | 8(25) | |
| CRR | 2 | | 25 | 3 | 8/9 | 6 | 6 | | | 2 | | | | 2 | |
| Adv. Cl. I | | 3 | 25 | | | 8 | 8 | | | | 3(8) | | | 2(8) | |
| Law- | | | | | | | | | | | | | | | |
| Gov't. Sem. | | 3 | 25 | 3 | 8/9 | 9 | 9 | 3 | 3 | | | | | 3 | |
| Adv. Cl. II | | 9 | 25 | | | | | | | | | | | | |
| Adv. Cl. III | | 3 | 25 | | | 8 | 8 | | | | 3(8) | | | | |
| PM V | 4 | | 25 | 1 | 25 | 4 | 4 | | | | | 3(9) | | 2(8) | |
| Adv. Cl. IV A | | 6 | 12 | | | 7 | 7 | | 4(12) | | | | | | |
| Adv. Cl. IV B | | 6 | 13 | | | 8 | 8 | | 4(13) | | | | | | |
| Sr. Project | 6 | | 25 | | | 15 | 15 | 5 | 5 | 5 | | | | 5 | |
| Totals | 28 | 33*** | | | | 134 | 134 | 24 | 15(50) | 18 | 21(66) | 18 | 12(42) | 13 | 13(42) |

* The number of sections and the number of students per section are omitted for offerings where these numbers do not affect workload calculations.

** Number in parentheses is the number of program students who will be participating. Thus, Basic Clinic II in the Fall will require approximately 7 teaching units to serve (25) students.

*** Students would take either Advanced Clinic IV A or B, not both. Thus, the total clinical credits earned by any student would equal 33.

Under the schedule set forth above, the winter quarter would have the greatest number of students working in clinics within the teaching law firm. Table 4 provides a preliminary staffing chart and illustrates how students might be distributed among the three divisions and various sections during that quarter. The small number of students assigned to regular members of the faculty preserves adequate time for supervision of the clinical fellows and for other teaching responsibilities. Actual assignments would be based upon the types of caseloads being maintained in each section.

C. *The Implementation Process*

In Part II we articulated the assumptions upon which the model was based and the issues it was intended to address. In Part III we described a program through which the assumptions could be tested and the issues addressed. The preliminary blueprints set out in this Part partially address these issues. The rest must be done in the implementation process. In this section, we identify the issues that remain and describe how they might be addressed in the implementation process.⁸³

First, the required classroom curriculum covers all subjects generally required by American law schools and adds several to the list. To that extent, the blue print specifies a curriculum which covers those areas law schools have determined to be basic to a sound legal education. On the other hand, the list is skewed toward courses that complement the anticipated clinical offerings. The fact that a substantial number of credits must be earned in special program offerings reduces the number of academic electives to a point where program students might opt out of academic courses deemed basic but not required; such as corporate, taxation, or commercial law offerings. If these areas were not the focus of advanced clinical offerings, the faculty would have to consider whether additional classroom requirements should be specified.

Second, although our judgments may be implicit in the illustrations, the additional nontraditional tasks and skills to be required are not specified. The implementing faculty would need to make these determinations which would then become a criterion for evaluating proposed clinical offerings. Are the tasks regularly generated by the kinds of cases the clinical section proposes to handle among those deemed

83. The issues are discussed in the same sequence they were initially posed. See discussion at text accompanying notes 29-35 *supra*.

TABLE 4
PRELIMINARY CHART OF CLINICAL STAFFING
AND STUDENT DISTRIBUTION
FOR WINTER QUARTERS

| Cl. Offering | (No. of students) | Div. I (Private Law) | | Div. II (Public Law) | | Div. III (Other Adv. Cl.) | |
|----------------|-------------------|-------------------------|---------------------|-------------------------|---------------------|------------------------------|--------------|
| | | Sect. A C/Fellow | Sect. B C/Fellow | Sect. A C/Fellow | Sect. B C/Fellow | C/Fac. | C/Fellow (2) |
| Adv. Cl. IV A | 12 | 3 | 3 | | | | |
| Adv. Cl. IV B | 13 | | | 3 | 3 | | 7 |
| Adv. Cl. III | 8 | | | | | | 8 |
| Adv. Cl. II* | 9 | | | | | | |
| Adv. Cl. I | 8 | 1 | 1 | | 1 | | 2 |
| Basic Cl. I | 25 | 6 | 6 | | 6 | | |
| Total Students | 75 | 10 | 10 | 4 | 4 | | 17 |

*Less Internship 9
Total in Clinic 66

basic? In the aggregate, to what extent do the clinical sections provide experiences in all tasks deemed basic? The definition of basic lawyering tasks and an analysis of the extent to which the clinical offerings provide adequate opportunities for their performance will make it possible to determine which basic tasks must be taught through simulation offerings in the Professional Methods sequence or in clinically related seminars.

Third, the blueprints do not attempt to analyze the available kinds of cases in terms of their potential educational value. This issue is critical, but it must be addressed locally, especially to select types of basic service cases.⁸⁴

Fourth, the question of sequencing is only partly addressed. The description of Professional Methods I and II reflect our belief that the traditional basic research and analysis skills should be acquired before any clinical experience can be meaningful. So too, our description and rationale for using basic service cases in specialized areas of the law reflect our belief that repetitious drill in basic tasks in the same context is fundamental and should precede work on the more complex matters. But much additional planning remains.⁸⁵

84. For example, tenant defense cases are superb clinical teaching vehicles in the District of Columbia. The legal issues are well developed and the case volume available. The kinds of tasks and issues presented and the way the court system is organized make it possible to build exciting clinical and classroom offerings around them. The same cases in Miami, Florida, would be much more difficult to use for a basic clinical section. The law is less developed and the cases are heard in dispersed locations. In Miami, it would make more sense to develop a specialized advanced clinic selecting cases designed to develop the law. *See* Panel Discussion, *supra* note 60, at 618-19; Private Law Division: Work Plan and Organizational Model 1974-75, *supra* note 61.

85. The implementation process requires additional comment. The issues are not discrete. The model assumes the implementing faculty would have agreed upon a working definition of lawyering competencies to be required of all graduates. This definition would necessarily include a definition of the tasks lawyers should be able to perform and the skills required for each task. Within this framework, a type of basic service case could be evaluated to determine its educational value. What tasks does the type of case regularly present? Do the tasks occur in settings or are the products of a type that make it feasible to evaluate the competency with which the individual student performs them? What skills are required to perform each task and what are the risks to the client if performance is inadequate? What substantive information is required to enable the student to address issues this type of case presents? What is the probable ratio of supervising lawyer/legal intern time required to assure these tasks are properly performed?

From this analysis, a clinical syllabus could be developed identifying specific educational and service objectives the clinical section would seek. From the same analysis, a Professional Methods seminar syllabus could be planned specifying the materials and exercises for the course in terms of the information to be comprehended and the tasks to be mastered in the classroom and simulation environments and the teaching and evaluation strategies to be employed. From a series of such analyses, the program faculty could select case types, agree upon educational and evaluation

The introduction of the Professional Methods sequence and Basic Clinic to the first year curriculum and the addition of three courses to the required academic curriculum poses obvious problems. The question of sequencing must be reviewed. Some students would be engaged contemporaneously in classroom study, clinical work, and professional methods seminars that directly complement each other. For example, a student enrolled in Basic Clinic II in a section working on landlord-tenant cases would be taking the basic course in Property at the same time. Other students would enroll in a basic clinic and Professional Methods seminar section immediately after they have completed the complementary basic course. For example, a student enrolling in a consumer law section for Basic Clinic II (fall-winter in the second year) will have completed Contracts and Civil Procedure. Finally, some students would have had a narrow but intensive clinical experience and seminar prior to taking the related traditional classroom course. Again, under the suggested schedule, a student who completed Basic Clinic I and PM II that concentrated on landlord-tenant problems would bring these experiences to the Property course.

Each of these situations has potential advantages and disadvantages. Clinical experience may be more meaningful when the classroom instruction has been completed. Conversely, a compelling argument can be made that students who have acquired experience with life situations in the field bring an awareness to the classroom that strengthens their ability to benefit from the theoretical instruction. Contemporaneous classroom and clinical involvement may intensify and enhance both experiences.

Practical reality requires scheduling offerings in a way that will expose students to all three sequences. The syllabi and teaching in each PM II and III section can and must be tailored to accommodate these differences to the extent feasible, but the collection of student performance data to measure the effect of different sequences should be a part of the experiment.⁸⁶

Fifth, the analysis, evaluation, and organization of clinical cases into

objectives, and plan student rotations with respect to an agreed set of basic competencies that constituted the educational objectives of the Basic Curriculum. The process would be similar for planning the Advanced Curriculum.

86. A second problem stems from the fact that the expanded required curriculum means that some second year program students could be taking basic courses with entering first year students. This would alter the classroom dynamics for both. For a school such as the College, which has a night division, the problem could be eliminated by assigning second year students to basic course

cost-effective education programs is difficult but essential. Each clinical section must project the following with respect to the cases it proposes to handle: the number of cases that can be handled at any time; the average length each case will remain open; the number of hours and the ratio of supervisor-student hours each will require; and the frequency with which particular tasks will be presented and the products that will be required to dispose of each. The separate section designs must be coordinated into a program through which students meet educational objectives and through which faculty and students can competently meet the client service objectives while also meeting their other responsibilities.⁸⁷

The program model assumes that planning would start with the analysis of available cases and the design of clinical sections. The basic classroom curriculum is substantially determined. Once the clinical sections and their syllabi have been designed, the remaining objectives must be achieved through the design of the Professional Methods sequence and the selection or design of clinically related requirements and electives. These are the credits reserved to bridge the gap and make both the clinic and the classroom more meaningful. These are the credits reserved to make possible the development of simulation offerings to expose students to those tasks which are deemed basic but which are not generated with sufficient frequency to make clinical instruction feasible. These are the credits reserved to ensure that classroom time will be available to address, reflect upon, and resolve the problems of professional responsibility that the clinic would generate.

In sum, the model provides a vehicle through which a comprehensive curriculum can be developed. The preliminary blueprints illustrate the structural components and provide guidance for the construction and operation of these components. We believe they demonstrate the feasibility of the task; we can do no more.

sections taught in the second year to night division students. For other schools, it is a problem that would require additional attention.

87. The sixth issue, *see* note 35 *supra*, must also be addressed in the implementation process. The faculty would have to adopt criteria by which student performance would be measured and means by which such measurements can be recorded and compared. A consensus around a definition for lawyer competence appears to be emerging. (*See generally*, ALI/ABA COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, A MODEL PEER REVIEW SYSTEM 1-26 (Discussion Draft, April 15, 1980) and sources cited therein; *see also* Cort & Sammons, *supra* note 13, at 405-18.) There is far less consensus over the specific criteria for measuring competence. We have only begun to address the measurement problems. *See* Cort & Sammons, *supra* note 13, at 418-37, for a review and a proposed system.

D. *The Costs: A Preliminary Analysis*⁸⁸

The projection of direct costs of the program for any particular institution would be a relatively simple matter. With information about faculty and secretarial salaries and benefits, combined with supporting costs for a school's existing clinical programs, an accurate budget could be simply constructed. The projection of a cost model is more difficult.

The leading analysts of the data available on the costs and resources for legal education leave the clear impression that for every two accredited law schools there are at least three university accounting systems, none of which are alike.⁸⁹ The difficulty is further compounded by the fact that academics in general and law teachers in particular have never maintained the kinds of records from which the cost per unit of output could be accurately measured. Nowhere is this situation more true than for clinical education.⁹⁰

Nonetheless, we believe it is important to project and analyze the costs for the model. Even using liberal projections, it is relatively simple to demonstrate that the additional instructional costs of the program are within the resources of many schools. In addition, the method used for the projections provides an analytic framework that we believe could be applied to develop cost projections and analyses for any school (and could also be used to better assess the cost-effectiveness of existing clinical programs). Finally, we believe two categories of indirect costs, student aid and administration, not included in the instructional cost projections would be significant and warrant explicit discussion. We begin with our analysis of the instructional costs.

1. *Direct Instructional Costs*

Instructional costs include faculty and clinical fellow compensation and other personnel and non-personnel costs necessary to support the program. Table 5 provides a projection of these costs. The accompanying notes explain how the projections were reached.

88. This analysis is *not* based on the College's financial data.

89. P. SWORDS & F. WALWER, *THE COSTS AND RESOURCES OF LEGAL EDUCATION: A STUDY IN THE MANAGEMENT OF EDUCATIONAL RESOURCES 2-4* (1974) [hereinafter *COSTS AND RESOURCES*]. See also Putz, *Including Clinical Education in the Law School Budget*, in *CLINICAL EDUCATION FOR THE LAW STUDENT* 101, 108-10 (1973); Swords & Walwer, *Cost Aspects of Clinical Education*, in *AALS/ABA CLINICAL GUIDELINES*, *supra* note 3, at 133-34. We have conformed this discussion to the terminology used by Swords and Walwer to the extent possible.

90. See text accompanying note 82 *supra*.

TABLE 5
INSTRUCTIONAL COSTS PROJECTION
AND ANALYSIS

| | |
|---|-------------------------|
| Personnel Costs ⁹¹ | |
| Faculty (four at \$40,000 for nine months) | \$160,000 |
| Clinical Fellows (six at \$25,000 for eleven months) | 150,000 |
| Support Staff (five secretaries at \$15,000 per year) | <u>75,000</u> |
| Total Personnel Costs | 385,000 |
| Non Personnel Costs (duplication, travel, etc.) ⁹² | <u>40,000</u> |
| Total Instructional Costs | <u><u>\$425,000</u></u> |

Proportion attributable to Program Components:

$$\frac{\text{Teaching Units Required for Program}}{\text{Total Teaching Units Available}} = \frac{134^{93}}{216^{94}} = 62\% \text{ (approx.)}$$

$$\text{Program Instructional Costs} = 62\% \times 425,000 = 264,000 \text{ (approx.)}$$

Table 6 translates these direct costs into costs per student credit earned. (Again the accompanying notes explain how these computations were made.)

91. All compensation figures include fringe benefits. The figures were estimated by adjusting the 1978-80 median figures reported by Swords and Walwer for estimated inflation effects and rounding up for ease of computation.

92. The figure is consistent with Swords and Walwer's projections and the College's experience.

93. See Table 3 at 769 *supra*.

94. The faculty will provide 72 and the clinical fellows 144 units. See text at 753 *supra*.

TABLE 6
PROGRAM COMPONENTS: INSTRUCTIONAL COST ANALYSIS
COST PER TEACHING UNIT⁹⁵

| Total Cost | Teaching Units | Cost Per Unit |
|------------|-------------------|------------------|
| \$264,000 | 134 | \$1960 (approx.) |

| Cost Per Student Credit Earned | | | |
|-----------------------------------|----------------------------|----------------------------|--|
| | Credits Earned per year | Teaching Units Required | Cost per credit earned ⁹⁶ |
| Classroom ⁹⁷ | 550 | 58 | \$ 207 |
| Clinical-Direct ⁹⁸ | 600 | 61 | 199 |
| Clinical-Internship ⁹⁹ | 225 | 0 | 0 |
| Senior Project ¹⁰⁰ | 150 | 15 | 196 |
| Total | 1,525 | 134 | \$ 173 |

A compelling theoretical argument can be made that the program is costless. Although the cost per credit students earn in the program is relatively high (approximately \$200 per credit) the program only constitutes one third of their curriculum. The program imposes extensive basic classroom course requirements and severely limits the number of 'free' electives students can take in the general curriculum. As a result, program students are likely (and could be required) to earn well over half their credits in large classroom courses where the cost per credit earned would be lowest. In short, the average cost per credit earned for

95. See Table 3 at 769 *supra*.

96. $(\text{Teaching Units Required} \times \text{Cost per Unit}) \div \text{Credits Earned}$

97. See Table 3 at 769 *supra*. The fact that the cost per classroom credits slightly exceeds the cost per clinical credit in this analysis is coincidental. Obviously, if some of the restricted offerings were opened to non-program students (*e.g.*, PM I, the Law-Government Seminar, or PM V), the number of credits earned would increase and the cost per credit earned would decrease.

98. See Table 3.

99. See Table 3. The instructional costs for this program are included in the Law-Government Seminar. Swords and Walwer treat such internship programs as essentially costless. (See Swords & Walwer, *supra* note 89, at 155-56.) The real costs will be those associated with administration and coordination.

100. See Table 3. Senior projects have been treated as direct clinical supervision for purposes of workload computations.

all credits taken may not differ significantly for program and non-program students.¹⁰¹

We suspect that the instructional costs in reality will be somewhat higher, but certainly not so high as to make these costs a prohibitive factor. The indirect costs (and the non-financial costs discussed in Part V), however, require more careful consideration.

2. *Indirect Costs*

No generally accepted models exist for allocating general indirect costs (university overhead, law school general administration, library costs, and so on) to specific programs.¹⁰² For the most part, the lack of data and models are unimportant because these items would probably not materially affect the results of a cost comparison between the traditional and the proposed program based upon direct costs.¹⁰³ Two items, however, require special attention: direct administrative costs and student financial aid.

The program would require administration beyond that normally attributable to a clinical program. The program would need a special and more extensive admissions program; the internship program would require extensive administration and coordination; and the coordination and scheduling of program components and student enrollments would require substantially more work than other programs. These would probably be the most significant items. Whether these needs were to be met by creating one new position or expanding the responsibility and staff of existing offices, the additional work and costs would be substantial.

The need for financial aid for students in the program would also be disproportionate to the needs of the rest of the studentry. The program contemplates an additional two quarters of work. Tuition for program students might be increased to reflect this or the costs attributable to the extension might be deemed a cost of the experiment. The same requirement would deprive students of potential earnings for two summers and the nature of the proposed program is such that students would not be able to accept significant outside part-time employment during their three-year curriculum. Based upon a somewhat dated

101. COSTS AND RESOURCES, *supra* note 89, at 179-86, develops a "costless clinical model" analysis at more length.

102. Swords & Walwer, *supra* note 89, at 137-39.

103. *Id.* at 139.

analysis, considering the combined effect of a proportionate tuition increase and a loss of projected student earnings, the cost to a student in the program could exceed the cost to a student in the traditional program by forty percent (40%).¹⁰⁴ It is unlikely students would be able to absorb the additional cost. If the program is to be attractive and is to be available to students irrespective of financial need, the need for student financial aid would be significantly higher for program students. Any institution contemplating such a program would have to consider these costs seriously.¹⁰⁵

V. PROJECTED COSTS AND BENEFITS AND A RATIONALE

In previous parts we attempted to articulate the theoretical foundations for the model and illustrate how a program could be constructed to implement and test the model in a financially feasible manner. We now identify some non-financial costs that must be weighed against the projected benefits.

A. *The Educational Benefits and Costs*

The proposed model is designed to combine the benefits of a guild apprenticeship system of training with those generated by modern law school training. We believe the combination has a synergy which will produce benefits that neither could produce alone and that both could not produce if offered sequentially.

The program extends the period of study by two quarters and makes it possible to offer students academic training approaching the present minimum required by most law schools,¹⁰⁶ combined with three years of part-time practice in a closely supervised professional environment.

104. COSTS AND RESOURCES, *supra* note 89, at 285-86, projected average student earnings from part-time employment at approximately seventeen per cent (17%) of total costs including tuition, fees and living expenses for an unmarried student as of 1972-73. Assuming student earnings have increased in proportion to educational costs and assuming a tuition increase of two-ninths (or 22%), the combined increase in cost and decrease in resources from a student perspective would be forty per cent (40%). Our research has not revealed any better or more current bases for a projection.

105. Reportedly, by 1979 the percentage of tuition and fees represented by loans had risen to fifty-eight per cent (58%) with grants accounting for another eleven percent (11%). See White, *Law School Enrollment Continues to Level*, 66 A.B.A.J. 724, 725 (1980). Given the current uncertainty over the future of federally encouraged loan programs, the financial aspects are likely to become more critical from a student perspective.

106. For example, a student currently can graduate from the College with 142 credits of which fourteen (14) might be earned in clinical offerings and 128 in academic offerings. A typical stu-

Standing alone, these attributes make the program attractive. But the synergy stems from the integration of the two. The direct reinforcement of classroom instruction by contemporaneous application in practice of the knowledge acquired, combined with the availability of actual practice experiences as vehicles for discussion in the classroom should enhance the educational value of both. Spreading the supervised practice experience over three years permits a progression of tasks and experiences that would be difficult to replicate in one year of full-time experience.

To illustrate, during the first basic clinical rotation (two quarters), a student assigned to a landlord-tenant section would probably work on at least four eviction defense cases, most of which would be opened and closed within that period. He or she would see and participate in the process whole, from initial client interview through settlement or trial. Simultaneously, the student would be taking the regular first-year course in civil procedure. In the Professional Methods III small section, he or she would be studying intensively the landlord-tenant relationship, especially the local law and regulations that govern the relationship and the local procedural rules that apply to these eviction cases. To the classroom, he or she would bring actual problems and experiences and the need to obtain real solutions because a real client was relying upon the work. The same need would force the student to do research and investigation more intensely. In addition to the customary faculty feedback, the student would receive evaluations shaped by the supervisor's need to utilize the product in a real case. Finally, the student would see how research and analysis translate into legal documents such as pleadings, briefs, trial memoranda, and settlement contracts. During this period the student should master a limited body of substantive and procedural law as well as traditional research, analysis, and writing skills. Additionally, he or she should begin to acquire non-traditional skills in areas such as client interviewing and witness preparation. The student would bring this background to the basic property course, and consequently place these experiences in a broader and more meaningful perspective.

In the third year the same student would have the opportunity to return to the same clinical section and practice at a more advanced level. With the basic mastery acquired earlier, the student would be

dent in the proposed program is likely to earn 126 academic credits, two less than the current minimum.

able to concentrate upon developing actual litigation, trial, and practice management skills through the clinical experience and in the related academic offerings. Professional Methods V and the Senior Project would provide the student an opportunity to place the entire experience into a theoretical framework. We believe this integrated experience/classroom model must generate a kind of learning that cannot be achieved in the classroom program or through a third-year clinical program.¹⁰⁷

Similar kinds of synergy are built into all parts of the model. Application of the planning assumptions described in Part II to the actual design and implementation of specific clinics and their related academic offerings should make it possible to enhance these benefits at every stage. But students electing to participate in this program would pay a price.

The price may seem high. First, the student who sought to take the courses presently deemed basic to a sound legal education would have little freedom to explore the periphery. The choice of the advanced clinic sections and senior project topic would represent the main elective choices. And even here, the structure of the clinic would limit the range. In effect, the student would be choosing a major field of concentration from among limited options. For all practical purposes, students choosing to enter the program would be electing to take a prescribed curriculum.¹⁰⁸ Second, students would be electing a three-and-one-half year curriculum. Apart from the increased financial burdens associated with the loss of summer and part-time employment opportunities, they would be required to work year round in a demanding curriculum and would not have the traditional summer placement exposure through which many law students obtain jobs.¹⁰⁹

We believe applicants and students would perceive the benefits as outweighing the price. For many students today the elective curriculum is neither exciting nor demanding, and a substantial part of the apparent freedom is illusory. The extended work required is more sig-

107. The illustration describes the law school career of a former student and colleague. The final product is evidenced by Gerwin, *supra* note 66.

108. So long as the choice was an informed choice, this aspect does not seem to raise any serious ethical or educational issues. The problems posed by students who later seek to transfer to the regular curriculum are discussed below.

109. The Antioch experience suggests the internship provides at least as great an exposure to future job opportunities. See, e.g., THE ANTIOCH SCHOOL OF LAW CATALOG: 1976, *supra* note 21, at 40.

nificant because the psychological demands of a year round clinical program are greater than those imposed by the traditional nine month curriculum. But the number of full-time students who choose to take a continuous program, and the number of part-time students who must do so, suggests these demands are not insurmountable. The loss of the placement potential from a summer job would, we believe, be substantially offset by exposure to potential employers through the clinic and the internships.

One significant measure of the costs and benefits to students would be the size and quality of the applicant pool and the percentage of students the program retains. As long as programs of this type remain small and experimental, the Antioch experience suggests student demand would vastly exceed the supply of positions.¹¹⁰

B. *The Process of Professionalization*

Students would work each day for almost two-and-one-half years in a law firm supervised by four senior and six junior partners. They would work under the direct supervision of at least four and probably six of these lawyers. They would work in a close-knit community with seventy-five of their peers. Their work would be required to meet standards set by competent and experienced lawyers who have the need and the time to ply their craft at the highest levels they could achieve. Students and faculty would also have the responsibility and the time to ensure a quality product. In short, the clinic should create a professional environment comparable to that achieved only in the most highly qualified law firms. Equally important, it would be a teaching law firm whose products were lawyers as well as legal services to clients. The community would be small enough to develop and enforce high standards of professional conduct, and the practice would be diverse enough to illustrate the application of these standards in varied areas.

The integration of the clinical with the academic process would also generate benefits that could not be achieved through a comparable post-law school apprenticeship. Because the faculty clinicians would be academic teachers as well as practitioners, and because they would understand and be able to illustrate the benefits of the classroom, stu-

110. During the 1973-76 period, Antioch received 1000 to 1500 completed applications for 150 first year positions each year. We believe this ratio of applications to positions compared favorably to the ratio for all but the most prestigious law schools in the country. See Admissions/Orientation, Antioch School of Law: 1977 (unpaginated report), App. Doc. No. 18.

dents should be able to benefit more fully from their academic work. The clinical community would set and enforce norms extending to the classroom as well as the clinic.

The standards imposed by the teaching law firm and the demands of simultaneous clinical and classroom requirements would have two additional effects. First, they would subject program students to pressures not imposed on those in the traditional program. These pressures, however, are simply a part of the price.¹¹¹ Second, the existence of these pressures and the presence of a small teaching law firm with a special curriculum within a large law school are likely to create special problems for the institution.

C. *The Institutional Costs and Benefits*

If the planning framework we suggested in Part II is accepted, the program's potential benefits to the educational and professionalization process are obvious. Less obvious, but also significant, are the collateral benefits that would inure to the institution as a whole. First, the fact that the experiment is undertaken would legitimate the process of experimentation in legal education. Although many schools have experimented with special programs, these programs have come primarily in the form of side shows: a third year course here, a skills simulation requirement there. The educational community has been reluctant to engage in broader experimentation with the model itself. The proposed model makes such broader experimentation possible without committing the institution to change before the results have been established.

Second, the model would introduce a practice laboratory into the academic setting. When Langdell and his contemporaries established the university model for legal education, appellate decisions were perceived to be the only data readily available for scientific study and instruction. Since that time, the methodology of social science has made it possible to study rigorously other forms of social data. But the use of this methodology in law has been restricted by the nature of professional practice and the lawyer-client relationship. There has been relatively little academic study of the lawyering process, and that little has focused primarily upon observable phenomena that occur in the adjudicative process. The existence of a teaching law firm within

111. For a brief description of those pressures at Antioch, see Anderson, *Introduction: Some Reflections on the Problems of Being Part of a Teaching Law Firm*, THE ANTIOCH SCHOOL OF LAW CATALOG: 1976, *supra* note 21, at i-iii.

an academic community would permit documentation and study of additional parts of the lawyering process in a controlled environment. (Although such research raises serious ethical questions, the protocols and procedures used in teaching hospitals suggest they are not insurmountable.) Thus, the teaching law firm would not only produce documented cases which would be valuable to classroom teachers, it would also generate data that would make it possible to study the lawyering process itself.

Third, the teaching law firm would be an educational laboratory in which the process by which laypersons become lawpersons can and should be studied. We have already indicated the need for evaluation and the establishment of measurable performance standards. Models for this have been developed and can be refined.¹¹² Beyond this type of educational research and experimentation, however, the existence of a small sample of students who are going through a practice experience contemporaneously with their academic education would make it possible to begin to test some of the assumptions upon which traditional legal education has been based. For example, how does performance on a three-hour essay examination in a particular subject correlate with a student's ability to apply that knowledge in a practice environment? How do present admission criteria correlate with ability to engage in professional practice as opposed to ability to succeed in an academic environment? The existence of the program should make it possible to design and implement mechanisms by which these questions can be addressed.¹¹³

The potential costs are, however, also apparent. We believe a program on this model would attract a large pool of applicants. We believe the nature and demands of the program are such that the standards for admission should be high.¹¹⁴ If we are correct, program

112. See notes 35 & 87 *supra*.

113. Antioch was both a practice and an educational laboratory, but most of its resources were necessarily concentrated in delivering educational services to students and legal services to clients. Although, as our earlier notes suggest, substantial research has been attempted, the faculty has had too little time to fully realize the research opportunities. Major research advantages should flow from implementing a small experimental program on the model described within a larger academic institution.

114. We would hope they would be high but not traditional. The present reliance upon law School Admission Test Scores and undergraduate academic records to determine who shall become lawyers seems to us excessive. Although they may be relatively reliable as predictors of minimum intellectual ability, they provide an inadequate basis for selecting from within the pool of intellectually qualified applicants.

students would perceive themselves as, and would be perceived by other students to be, an elite group. This would affect the institutional dynamics of the school. If the faculty were mature and fully supported the program, the effect should be healthy. But the risks are there and should be considered.

The program would also present additional institutional problems. One is inherent in the proposed institutional structure: a small experimental program within a larger traditional institution. Some students would seek to transfer out of the clinical program. For example, a student who has completed the basic curriculum with 'law review' grades might decide that membership in the traditional elite offered more benefits than membership in the experimental elite. If the number of students seeking to opt out were predictable and not large, the problem could be met by adjusting first year enrollments. Although such transfers could be prohibited, if the admission standards equalled or exceeded those for students admitted to the school's traditional program, this would raise ethical concerns of some substance. We believe that careful admission screening could minimize this problem, but here we have little to offer but personal conviction.¹¹⁵

REPRISE

It would not be feasible for any large law school to attempt to offer the kind of curriculum we proposed to all of its students. The cost would be too high to be acceptable to the profession or the educational community. We are burdened by our success. Law schools have demonstrated that mass production can produce a product of reasonable quality at a relatively low cost. For the foreseeable future, notwithstanding protests about product quality, neither society nor the profession is likely to be willing to finance legal education on a medical school model. Certainly, few state or private institutions of higher education are going to be eager or able to absorb these costs on a large scale. (We also suspect that the legal services generated by a large teaching law firm might well distort the demand for services in the private and public sectors to an extent that would be unacceptable to the profession.)

That the industry is presently capable of producing "Model T's" on a

115. Antioch did experience some student transfers, but after the first year (1972-73), the numbers were insignificant. However, the difficulties in transferring from one school to another are probably substantially different from those associated with an intra-school program transfer.

cost-effective basis does not mean that it should not continue to invest in research and development and experiment with ways in which the model can be improved. The model we seek to test may not lead directly to a new generation of "fuel efficient" lawyers; but like much high technology research, it may demonstrate what is possible at a "state of the art" design and it should generate "technological spin-offs" which can be applied to improve the existing production process.

Given this, the question remains: Is this a cost-effective investment of scarce experimental resources? We submit that it is. First, one of the advantages of the present model of legal education stems from the fact that basic courses can be taught to large groups. If the faculty-student ratio is maintained at 1:25 overall and if basic courses can be taught at a ratio of 1:100, surplus teaching resources are generated which can be devoted to smaller, more intensive projects. Traditionally, these have been allocated to seminars and simulation offerings or to more specialized courses to enrich the general curriculum. The proposed model simply requires an allocation of a part of these resources to an experimental clinical curriculum. Second, for a large urban law school, size alone would make it economically effective to implement such a program. The marginal cost of adding a student to a large section of a basic course is small. The size of the faculty and studentry would make it possible to create a small program without drawing upon a disproportionate share of the 'surplus' teaching resources. The program can be designed to limit the clinical student's participation in non-clinically related seminar electives in order to ensure that the program does not draw upon that part of the surplus allocated to enrich the curriculum for other students.

Finally, the model as designed would actually reduce the cost per credit earned below that incurred in most faculty staffed clinical programs, and well below the estimated national standard for quality clinical education. A stable population of students and cases would make it possible to plan a more effective use of faculty time. Extending the program over a three-year curriculum would make it possible and appropriate to delegate certain types of supervision to advanced students. The use of specialization and basic service cases would increase the number of students and cases an attorney can effectively supervise. The establishment of the two-year clinical fellow positions working under faculty supervision would reduce the average personnel cost of

supervision.¹¹⁶ We project an average instructional cost of about \$200 per credit earned for both the clinical work and specially designed academic offerings in the program. The median instructional costs projected for faculty supervised clinics nationally in 1979 was \$510.¹¹⁷ In short, we believe the program is cost effective in comparison with other forms of clinical education and that it represents a sound investment of law school resources available for experimental education.¹¹⁸

Between 1971 and 1973, an experienced traditional law teacher advised Antioch on how it might organize its programs to meet traditional accreditation standards. After one visit in 1973, he is reported to have returned to his own faculty with the report, "I have seen the future, and it doesn't work." Many who were there during the succeeding three years thought they had seen the future and had made it work. For many who have since departed, the Antioch of that period was and always will be 'a once and future place.' The model we describe here reflects our perception (on a smaller scale) of what Antioch almost was and could have been. The components were all designed and tested. Individually, they succeeded. But the pressures proved too great to hold them in place.

The model has been designed to eliminate the financial and workload pressures that ultimately made it impossible to sustain the original design at Antioch. We believe it could be made to work. Equally important, we hope the description of the model and its components will contribute to and help refocus the debate and dialogue over clinical education within the academic community and the profession. If it does no more, it will have done enough.

116. This is an incidental effect. We believe the use of graduate students or junior faculty in two-year appointments is educationally appropriate and necessary in a clinical program which expects to handle substantial numbers of basic service cases. Two years is probably the maximum period during which a young lawyer can maintain interest in and profit from a steady diet of basic services cases in a single area. During that period, lawyering and teaching skills develop rapidly; after that period the diminishing returns do not justify the effort required. See text accompanying notes 47-51 *supra*. See also Tyler & Catz, *supra* note 49, at 701-02.

117. COSTS AND RESOURCES, *supra* note 89, at 177-78.

118. We have not discussed the potential for attracting external funding to support this program, although we believe the potential is substantial. Given the extended period necessary to implement and evaluate such a program, we believe any school should weigh the potential benefits against the projected costs that would be incurred without relying upon external support. If the program is justified on this basis, external resources can be sought to reduce the additional costs, but the program should not be initiated if its continuation is contingent upon the success of these efforts.

APPENDIX

The Antioch School of Law 1972-1978 Selected Documents and a Historical Note

Historical Note

The Antioch School of Law was conceived as an experiment in legal education. The founding deans set out to challenge virtually every assumption underlying the contemporary model of legal education. Some of their ideas did not work; others were beyond the School's resources and capabilities in its first years; but many were translated or transformed into a working model.

A developmental history of the School would be necessarily complex. Certainly it is not a history that can be reflected in a brief note and a few selected documents. Nonetheless, we concluded it would be worthwhile to sketch and document a part of that history because the model we describe is a product of our experience at Antioch. Accordingly, we have prepared this note and culled the documents described below from our files to guide any who might wish to pursue the model or probe the School's history further.

The School's history can be divided into four phases: a planning phase, a design and implementation phase, a reflection and adjustment phase, and a consolidation phase. The planning phase occurred between 1970 and 1972. With a grant from the Office of Economic Opportunity, the Urban Law Institute and its co-directors, Jean Camper Cahn and Edgar S. Cahn, developed the framework for a new type of law school, commissioned a feasibility study, negotiated an affiliation with Antioch College, acquired the physical facilities, and began selecting the faculty and studentry. This phase culminated with the admission of the founding class in 1972.

The design and implementation phase took place between 1972 and 1976. During that period, the deans, faculty, and students combined to translate the initial ideas into a working model. Although some of the ideas fell by the wayside, throughout this period, the guiding principle was that each of the original ideas should be developed and tested in operation insofar as humanly possible. By 1976, a complete model had been designed and substantially implemented.

The reflection and adjustment phase extended from 1976 to 1978. The School's fiscal resources proved too limited to sustain all parts of the model. The faculty and students decided that the benefits from some components did not justify the human costs. This phase culminated with a comprehensive self-study in the summer of 1978. The consolidation phase began in 1978. The School consolidated its programs on a modified model developed and selected

through the 1978 self-study.^{A-1}

We used two criteria to select the documents described below. First, we included documents such as School catalogs which were issued at significant times. These provide documentation for some of our assertions and illustrate the Antioch model at various points in its evolution. Second, we included internal documents that illustrate the process through which the Antioch model was developed and identify sources in which some of our ideas were originally expressed. We have provided a brief annotation for each document to describe its contents and its place in the School's history. Copies of these documents have been filed with the *Washington University Law Quarterly*, the University of Miami School of Law Library, and the Cleveland-Marshall College of Law Library.

Selected Documents

Document

No.

1. *Antioch School of Law: Catalog 1972-1973* [1972]^{A-2}

The School's initial Catalog described the teaching law firm and a new kind of curriculum as the founding deans had envisioned them at the end of the planning phase. The faculty and students were challenged to transform these ideas into a working model during the design and implementation phase.

2. *Three Student-Faculty Committee Reports* [Summer, 1973]

During July and August, 1973, two student-faculty committees undertook to address a critical issue. In light of the first year's experience and the strictures of the ABA accreditation standards, how could a curriculum and a teaching law firm be organized and implemented to meet the educational needs of students and the shared desire that the School become a productive law firm? These reports established the basic curriculum design that was implemented and articulated some of the reasoning underlying its various parts.

3. Mooney, "*Clinical Evaluation Progress Report*," (August 21, 1973) (memorandum to the deans, distributed throughout the School).

In July, 1973, Eugene Mooney joined the faculty as a visiting professor

A-1. The authors' experience spanned the period from 1973 to 1978. Professor Anderson joined the School in the summer of 1973 and remained until the summer of 1976. He returned as a consultant for the self-study project during the summer of 1978. Professor Catz came to the School in 1975 and remained through the 1978 self-study period. The founding deans departed early in 1980 and the School may have entered a new phase. Our knowledge of these developments is limited.

A-2. Where the authorship or date of issue for a document is not shown on the document itself, we have included the information in brackets to the extent it has been determinable.

and was appointed the School's vice dean for academic affairs. In addition to working with the two student-faculty committees, he was asked to work with a group of client representatives to develop recommendations for an organizational structure through which the teaching law firm's educational and service objectives could be achieved. The memorandum describes the administrative structure that was implemented and which continued with minor modifications until mid-1975.

4. Anderson, "*The Clinical Program*" (September 26, 1973) (memorandum addressed to E. Mooney, subsequently circulated within the School).

Professor Anderson joined the faculty at the same time as Professor Mooney. They worked together with the student-faculty committees and Professor Anderson began to apply his private law firm experience within the clinical program. The memorandum responds to Document No. 2 *supra*, arguing that the need to move from a generalist model to specialized clinical sections was a necessary condition to achieving meaningful education or client service objectives through the teaching law firm. The memorandum and its appendices articulates the rationale for specialized basic clinic sections and an approach to measuring faculty workload. The 1974-1975 Division Plans, Document Nos. 6, 7, and 8, indicate the extent to which these principles had been accepted by the end of the year.

5. *Curriculum Committee Report* (February 24, 1974).

A student-faculty curriculum committee attempted to project the faculty needed to offer classroom courses and clinical programs to meet students' actual and perceived needs. The report was never formally acted upon, but served as a significant discussion document at the time and reflects an evolving methodology for computing teaching and clinical supervision caseloads and some of the tensions inherent in a teaching law firm.

6. *Private Law Division: Work Plan and Organizational Model 1974-1975* (August, 1974) [Anderson and Gerwin]
7. *Public Law Division: Division Plan 1974-1975* (August, 1974) [Sizemore and Mola]
8. *Criminal Division Clinical Plan 1974-1975* (August, 1974) [Seikaly and Mauk]

The teaching law firm was organized into three divisions during the summer of 1973. One member of the faculty was appointed head of each division to coordinate the work in that division. During the summer of 1974, the three division heads each employed a student assistant and undertook to develop a work plan and organizational model for each division. Individually, the work plans describe the allocation of students and faculty to the sections in each division. Collectively, the plans were coordinated to assure the law firm was organized to meet its teaching and

client service responsibilities for the succeeding year. These documents perhaps best illustrate the kind of planning and organization needed to manage a teaching law firm.

9. Seikaly and Anderson, "*Faculty Workload: Preliminary Report*," (January 24, 1975) (memorandum and draft committee report).

By fall, 1974, both size and distribution of faculty workload had become major concerns at Antioch. Using the methodology reflected in document Nos. 4, 6, 7, and 8 above, Professors Seikaly and Anderson prepared a draft committee report suggesting that the supervision of 15 student credits earned in the clinic be deemed the equivalent of teaching a one-credit classroom course and analyzing the existing distribution of faculty workload. The personnel committee was unwilling to accept the 15:1 ratio as a standard, but the methodology for measuring clinical workload in terms of student credits and hours supervised became commonplace. *See, e.g.*, Document No. 14, *infra*.

10. *Antioch School of Law Thesis Program: 1975/1976* [Spring, 1975] [Munger]

Frank Munger joined the faculty in 1974 and assumed primary responsibility for designing a program to implement the School's Senior Thesis requirement. The requirement was first implemented and tested during the 1974-1975 school year requirement. This document describes the program and procedures developed and applied during that year in the form codified for the 1975-76 school year.

11. Cahn and Cahn, "*Administrative Responsibilities and Structures*," (May 30, 1975) (memorandum from the deans addressed to faculty, staff, and students).^{A-3}

The memorandum announced the appointment of Professor Anderson as academic dean and described responsibilities of that office and of the clinical director, division heads, and other administrative positions and the planned organizational structure for the clinic for the 1975-1976 school year.

12. *Private Law Division Workplans 1975-1976* [August 1975] [Dixon]
13. *Private Law Division Catalog: Academic Year 1975/1976* (September, 1975) [Dixon and Binder]
14. *Division Plan: Public Law Division 1975-1976* [August 1975] [Sizemore]
15. *Criminal Division Plan: 1975-1976* [August, 1975] [Popkin and Kowalski]

The division planning process was repeated, albeit in a less collegial atmosphere.

A-3. During 1975, members of the faculty and staff organized and obtained recognition for a union. Document Nos. 11-15 should be read with an awareness that they were prepared during a period of tense labor-management relations.

16. *The Antioch School of Law Catalog: 1976* [January, 1976]

The 1976 Catalog describes the curriculum structure and organizational model that emerged during the design and implementation phase. It should be compared to Documents No. 1 above and No. 19 below.

17. Anderson, *Progress Report: Development of Means of Measuring Professional Competencies of the Antioch School of Law* (February, 1976) (project director's semi-annual report to the Fund for the Improvement of Post-Secondary Education) ("Section VI Financial Statements and Budget" deleted)

The Fund for the Improvement of Post-Secondary Education, the National Science Foundation, and the Council on Legal Education for Professional Responsibility provided substantial funding from 1975 to 1977 to support a series of projects to enable the School to develop means to measure competency in the performance of lawyering tasks. This progress report describes a theoretical approach and the work in process.

18. *Antioch School of Law: 1977* (undated)

Each year the School prepared an "annual report" which is submitted to the ABA Council of the Section on Legal Education and Admissions to the Bar and distributed to other institutional friends. The 1977 report provides additional information on the operation of the School and includes a list of the senior thesis proposals approved during 1975, 1976, and 1977.

19. *Antioch School of Law: Self-Study 1978* [Fall 1978]

By 1978, parts of the model had been modified; others had been abandoned. The School determined that a comprehensive self-study and redesign was necessary. During the summer representatives of the administration, faculty, staff, and students developed and analyzed the costs and benefits of possible alternative models. Their report and proposals were presented in the fall and an alternative model was finally approved in October, 1978. The self-study document provides a detailed history of this planning process as well as describing the model finally approved.