

LEGAL AND MEDICAL EDUCATION COMPARED: IS IT TIME FOR A *FLEXNER REPORT ON LEGAL EDUCATION?*

ROBERT M. HARDAWAY*

I. INTRODUCTION

In 1907, medical education in the United States was faced with many of the problems¹ that critics feel are confronting legal education today: an over-production of practitioners,² high student-faculty ratios,³ proliferation of professional schools, insufficient financing,⁴ and inade-

* Assistant Professor, University of Denver College of Law. B.A., 1966, Amherst College; J.D., 1971, New York University. The author wishes to acknowledge gratefully the assistance of Heather Stengel, a third year student at the University of Denver College of Law, in the preparation of this article and the tabulation of statistical data.

1. See A. FLEXNER, *MEDICAL EDUCATION IN THE UNITED STATES AND CANADA* (1910).

2. See Ruud, *That Burgeoning Law School Enrollment*, 58 A.B.A.J. 146, 147 (1972). In *Argersinger v. Hamlin*, 407 U.S. 25, 37 n.7 (1972), Justice Douglas, in response to Justice Powell's contention that there were insufficient lawyers to provide representation for all defendants facing a jail sentence, noted that "there are 18,000 new admissions to the bar each year—3,500 more lawyers than are required to fill the estimated 14,500 average annual openings."

In discussing the tremendous increase in lawyers, one author asserts:

That there is a lawyer explosion is not to be denied. One need only consider but a few reported facts to become aware of a growing feeling of claustrophobia experienced in this regard, especially if we consider that we now have between 105,000 and 110,000 law students in 157 American Bar Association approved schools. The latest figure which appeared in *The Wall Street Journal*, Oct. 29, 1975, placed the figure even higher and said: "Their enrollments have more than doubled in the past 10 years, to 110,713 student in 160 law schools last year." James D. Fellers, President of the American Bar Association affirmed this explosion in his address at the opening of the Association's Annual Meeting on August 12, 1974, when he said: "As you know, this country's law schools are literally bursting at the seams."

Snyman, *A Proposal for a National Link-up of the New Legal Services Corporation Law Offices and Law School Clinical Training Programs*, 30 J. LEGAL EDUC. 43, 48 (1979) (footnotes omitted). See also Outlook, University of Denver Newsletter, Jan. 1981. The AALS/LSAC DEMAND FOR LEGAL EDUCATION REPORT (1981) contained statistics on the present and future numbers of attorneys in the United States. Interestingly, the report notes 518,000 attorneys in 1980, and projects 610,000 and 750,000 attorneys for 1984 and 1989 respectively (allowing for a 10% error). Thus the AALS/LSAC foresees almost a 50% increase in the number of attorneys within the next ten years.

3. See P. SWORDS & F. WALWER, *THE COSTS AND RESOURCES OF LEGAL EDUCATION* 47-48 (1974); Swords & Walwer, *Financing Legal Education*, 64 A.B.A.J. 1880, 1882 (1978).

4. ABA LEGAL EDUCATION AND ADMISSIONS TO THE BAR SECTION, *LAWYER COMPETENCY; THE ROLE OF THE LAW SCHOOLS* (1979) [hereinafter cited as CRAMTON REPORT]. According to the task force:

quately trained graduates entering the profession.⁵

In response to these conditions in medical education, Arthur Bevan and Nathan Colwell asked the Carnegie Foundation to review an American Medical Association (AMA) survey of American medical education.⁶ It was recognized that serious recommendations for reform would have to come from outside the profession and that any recommendations must come from a completely impartial group having nothing to lose or gain from any reforms.⁷

Abraham Flexner, who was not a doctor and who knew very little

Legal education, with minor exceptions, is not adequately funded today. Costs of higher education in general, and legal education in particular, are likely to rise in response to general inflationary pressures much faster than new resources can be found. New funding resources must become available if legal education is even to be maintained at present levels of effectiveness. Of necessity, new funding resources must be developed if law schools are to undertake, even on a modest scale, expansion of present training in basic skills or fields like trial advocacy. Because it is evident that the cultivation of new resources will fail to yield enough to meet all priority demands, the legal profession and the law schools will be required to generate new efficiencies and new methods of spreading existing resources to meet those demands.

Id. at 28.

Swords and Walwer likewise note the inadequate funding of legal education:

Between 1955 and 1970, per-student instructional cost increased 33% on the average, i.e., average per-student instructional cost increased annually at a compound rate of about 2.0% in excess of the general rate of inflation. This figure might be compared with that set forth for higher education generally during the 1960's in the final report of the Carnegie Commission of Higher Education. The Commission found that during the 1960's the annual increase in cost per student rose from the historical rate of cost of living plus 2.5% to a new cost of living plus 3.4% (5.0% for private instructions). If the Commission's figures, which refer to total costs of education and not merely to instructional cost, are assumed to be representative of instructional cost alone, it appears that legal education—in terms of the richness of the educational experience created by dollars spent on individual students—has not fared as well as other branches of higher education in recent times.

P. SWORDS & F. WALWER, *supra* note 3, at 11 (footnotes omitted).

5. See generally Burger, *The Future of Legal Education*, 15 STUDENT LAW. J. Jan. 1970 at 18; Cantrall, *Law Schools and the Layman: Is Legal Education Doing its Job?* 38 A.B.A.J. 907 (1952); Christensen, *Horizons of Legal Advocacy*, 12 SUFFOLK U.L. REV. 34 (1978); Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695; Harum, *Internship Re-examined: A "Do" Program in Law School*, 46 A.B.A.J. 713 (1960); Jackson, *Training the Trial Lawyer: A Neglected Area of Legal Education*, 3 STAN. L. REV. 48 (1950); Kaufman, *Advocacy as Craft—Law School is More Than a "Paperchase"*, 60 A.B.A.J. 802 (1974); Landman, *The Curriculum of the Law School*, 47 A.B.A.J. 156 (1961); Lawless, *Training the Trial Lawyer*, 52 JUDICATURE 374 (1969); Stason, *Legal Education: Post-Graduate Internship*, 39 A.B.A.J. 463 (1953); Vanderbilt, *The Future of Legal Education: We Must Face the Realities of Modern Life*, 43 A.B.A.J. 207 (1957); Wright, *Progress Toward Legal Internship*, 53 JUDICATURE 184 (1969); Comment, *A Legal Internship Program for the University of Mississippi Law School?* 41 MISS. L.J. 112 (1969).

6. M. KAUFMAN, *AMERICAN MEDICAL EDUCATION* 164 (1976).

7. *Id.*

about medical education, was commissioned by the Carnegie Institute to make an independent and comprehensive study of medical education.⁸ His study, *Medical Education in the United States and Canada*,⁹ was based on comprehensive inspections of the nation's medical school facilities and a detailed analysis of medical school facilities and financing. His most significant findings were as follows: (1) There was an "enormous over-production of uneducated and ill-trained medical practitioners,"¹⁰ (2) there existed "many . . . unnecessary and inadequate medical schools,"¹¹ and (3) "Colleges and Universities [had] in large measure failed . . . to appreciate the great advance in medical education and the increased cost of teaching it along modern lines."¹² Flexner's chief recommendation was dramatic: to reduce the number of medical schools from 155 to 31 regional institutions¹³ by process of

8. *Id.* at 167.

9. A. FLEXNER, *supra* note 1. Kaufman notes that Flexner's success in ferretting out so many facts about medical school conditions was due in large part to a misunderstanding of Flexner's mission: many medical school administrators believed that Flexner's report would result in a Carnegie grant to their school; thus they were "more than candid" with Flexner. M. KAUFMAN, *supra* note 6, at 168.

10. A. FLEXNER, *supra* note 1, at x. Flexner noted in this regard that "Taking the United States as a whole, physicians are four or five times as numerous in proportion to population as in older countries like Germany." *Id.*

11. *Id.* at xi.

12. *Id.* Flexner was especially critical of the lack of properly financed and equipped laboratories, *id.* at x, and the fact that medical schools were supported primarily by tuition and fees. *Id.* at 126-42.

It is now clear that medicine cannot be, and is not, properly taught on the basis of receipts [T]he coil is tightening around schools not yet in position to devote even all their fees to instruction In order to secure a balance, economies must be effected, as has been already pointed out, at the expense of teaching, by inadequate equipment, uneven development . . . etc.

Id. at 136. *Cf.* P. SWORDS & F. WALWER, *supra* note 3 (present day financing problems in legal education); Swords & Walwer, *supra* note 3 (same).

13. A. FLEXNER, *supra* note 1, at 154. Flexner justified this dramatic reduction in medical schools by stating:

Reduction of our 155 medical schools to 31 would deprive [no geographic area] . . . that is now capable of maintaining [a medical school]. It would threaten no scarcity of physicians until the country's development actually required more than 3500 physicians annually, that is to say, for a generation or two, at least. Meanwhile, the outline proposed involves no artificial standardization: it concedes a different standard to the south as long as local needs require; it concedes the small town university type where it is clearly of advantage to adhere to it; it varies the general ration in thinly settled regions; and, finally, it provides a system capable without overstraining of producing twice as many doctors as we suppose the country now to need. In other words, we may be wholly mistaken in our figures without in the least impairing the feasibility of the kind of renovation that has been outlined; and every institution arranged for can be expected to make some useful contribution to knowledge and progress.

Id.

reconstruction and merger,¹⁴ thereby accomplishing the dual objective of enabling the remaining institutions to consolidate their resources¹⁵ and reversing the trend toward professional "overcrowding."¹⁶ In addition, Flexner recommended that schools should have well staffed and well equipped laboratories¹⁷ and should be associated with a modern hospital in which students would be closely supervised in a clinical setting.¹⁸ Despite recognition that his proposals would entail vastly in-

14. *Id.* at 151. In discussing the necessary reduction, Flexner explained how the process merely involves eliminating negligible schools and merging others:

To bring about the proposed reconstruction, some 120 schools have been apparently wiped off the map. As a matter of fact, our procedure is far less radical than would thus appear. Of the 120 schools that disappear, 37 are already negligible, for they contain less than 50 students apiece; 13 more contain between 50 and 75 students each, and 16 more between 75 and 100. That is, of the 120 schools, 66 are so small that their student bodies can, in so far as they are worthy, be swept into strong institutions without seriously stretching their present enrollment of the 30 institutions that remain, several will survive through merger. For example, the Cleveland College of Physicians and Surgeons could be consolidated with Western Reserve, the amalgamation of Jefferson Medical College and the University of Pennsylvania would make one fair-sized school on an enforced two year college standard; Tufts and Harvard, Vanderbilt and the University of Tennessee, Creighton and the University of Nebraska, would, if joined, form institutions of moderate size, capable of considerable expansion before reaching the limit of efficiency.

15. *Id.* at 151-55.

16. *Id.* at 14. Flexner could not resist applying a familiar economic law: "According to Gresham's law, which as has been shrewdly remarked, is as valid in education as in finance, the inferior medium tends to displace the superior." *Id.* According to Flexner, "overcrowding with low-grade material both relatively and absolutely decreases the number of well-trained men who can count on the profession for a living." *Id.* The question of whether Gresham's law applies to the legal profession is a matter of disagreement; see A. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 199 (Carnegie Foundation Bull. No. 15, 1921) for his statement of indifference toward economics:

Law schools, especially night schools and state university schools with low tuition fees, by making legal education more easily attainable, served as training schools for a new type of law school graduate who might or might not practice according as the opportunity should later arise. They thus broadened or demoralized—in any case transformed—the profession they were originally designed to serve. They moved forward of their own momentum, creating a new field in addition to cultivating the old. They taught the many a little law, instead of starting a relatively few on the road to becoming expert professional lawyers.

17. A. FLEXNER, *supra* note 1, at 91-104.

18. *Id.* at 105-24. Flexner further stated:

In the end the final test of a medical school is its outcome in the matter of clinicians. The battle may indeed be lost before a shot is fired: a low average of student intelligence and inferior laboratory training will fatally prejudice even excellent clinical opportunities, for they rule out certain essential features of clinical training on a modern basis. . . . Doctors have after a fashion been made by experiences—i.e., their patients paid the price; further, some graduates of every feeble school in the country have passed state board examinations or obtained hospital appointments . . . ; it still remains true that to do full duty by the young student of clinical medicine, his teachers need access to acute cases of

creased expenditures for medical education,¹⁹ Flexner nevertheless disapproved of any school relying primarily on tuition and fees as sources of income,²⁰ finding that such reliance rendered a school inherently unable to properly teach medical skills.²¹

According to Flexner, an adequate medical school could exist only as a department of a university with a sizable endowment.²² Flexner's insistence on increased financial support for medical schools probably would have been as futile as today's recommendations for increased financial support of law schools²³ had it not been for Flexner's proposed enforcement mechanism: State boards should refuse to permit examination and licensing of schools failing to meet Flexner's standards.²⁴

disease in respectable number and variety; that the school which lacks such medical facilities is in no position to teach modern medicine.

Id. at 105.

19. *Id.* at 126-42.

20. *Id.* at 141-42. Flexner maintained that "the picture is on the whole fair and reliable. Medicine is expensive to teach. It can in no event be taught out of fees." *Id.*

21. *Id.* at 138. "In the majority of larger schools dependent on fees, . . . [t]he laboratories are slighted or starved; the dispensary is neglected in order [to pay] dividends or salaries." *Id.*

22. *Id.* at 142.

23. CRAMTON REPORT, *supra* note 4, at 28, 30-32. The authors state that, "Legal Education, with minor exceptions, is not adequately funded today." The Report suggests several potential sources of support for legal education: federal and state programs, law firms and members of the profession, private donations, and the organized bar. For a similar but more detailed survey of potential sources of support for legal education, see P. SWORDS & F. WALWER, *supra* note 3, at 251-86.

24. A. FLEXNER, *supra* note 1, at 167-73. In regard to the exact role state board licensing should play, Flexner suggested that:

The state boards are the instruments through which the reconstruction of medical education will be largely effected. To them the graduate in medicine applies for the license to practice. Their power can be both indirectly and directly exerted. They may after examination reject an applicant, an indirect method of discrediting the school which has vouched for him by conferring its M.D. degree. A small percentage of failures the doctrine of chance would lead one to expect; an increasing proportion must cast increasingly serious doubt on any institution. A more direct and therefore more salutary method is needed, however, in dealing with schools bad beyond a reasonable doubt. In such instances the board should summarily refuse to entertain the applicant's petition because his medical education rests upon no proper preliminary training or was received under conditions that forbid thorough or conscientious instruction: the full weight of its refusal would fall with crushing effect upon the school which set him forth. No institution can long survive the day upon which it is publicly branded as feeble, unfit, or disreputable. For the purpose, however, of saving the victims whose cruel disappointment will in time destroy these schools, the arm of the state boards should for the present go beyond the rejection of individuals to the actual closing up of notoriously incompetent institutions. The law that protects the public against the unfit doctor should in fairness protect the student against the unfit school.

Id. at 167.

The impact of the *Flexner Report* was magnified by the nation's press, which took up Flexner's appeal across the country.²⁵ Editorials of major newspapers demanded reforms;²⁶ officials and professors of medical schools who resisted the onslaught or attempted to defend current conditions were swept up in the tide of reform.²⁷

In the aftermath of the *Flexner Report*, over half of the medical schools closed their doors.²⁸ In 1924, Flexner evaluated the results of his report and noted that "[t]he weak schools in all sections of the country, particularly in the South and West, where they were most abundant, [had] been almost wholly eliminated";²⁹ facilities and equipment had been greatly improved; laboratories were now taught "by full-time, specially trained professors . . . [T]here has been a 'great reform' in the medical curriculum. The two- or three-year nongraded medical courses of the past have been replaced by a four-year graded curriculum, separating the preclinical from the clinical subjects."³⁰

There has been no report on legal education comparable in impact to the *Flexner Report*. The 1921 *Reed Report* on legal education,³¹ also commissioned by the Carnegie Institute, argued chiefly for "diversity" among law schools. The report, which disappointed legal educators, had no vision of the future of legal education. As a result, it had little impact then or later. A subsequent series of Carnegie reviews of legal education³² were primarily surveys and offered little in the way of substantive recommendations for reform. The 1934 Annual Review of Le-

25. M. KAUFMAN, *supra* note 6, at 169-70. "Newspapers from coast to coast, with few exceptions, accepted his findings as the truth." *Id.*

26. *Id.* at 170.

27. "The Flexner report in effect was an obituary for a great many medical colleges." *Id.* Some officials defended the substandard schools on the grounds that

"poor schools . . . existed for the poor boy," [and that] "every now and then in the army of the unfit" appears "a genius who eventually becomes a great physician or great researcher" An editorial in *American Medicine* used Flexner's brother, Simon, as an example of the need for the "low standard" schools. Simon Flexner had graduated from the University of Louisville, and the editor declared that if such an institution produced one such man in a decade "that school has justified its existence." That example, however, was a questionable one; Flexner did not receive his training at Louisville.

Id.

28. *Id.* at 178.

29. Flexner, *Medical Education 1909-1924*, 82 J.A.M.A. 834-35 (1924).

30. *Id.*

31. A. REED, *supra* note 16.

32. See, e.g., A. REED, ANNUAL REVIEW OF LEGAL EDUCATION 26 (1934); A. REED, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA (Carnegie Foundation Bull. No. 21, 1928).

gal Education, for example, offered such conclusions as: "[T]he salaried university professor is destined . . . to occupy an important . . . position in the professional world."³³ The Carnegie surveys were soon superseded by the ABA Section of Legal Education and Admissions to the Bar. The most recent report of the ABA Section, commonly known as the *Cramton Report*, made twenty-eight rather general recommendations dealing with such matters as lawyer competency, accreditation, and financial resources.³⁴ Despite these reports, the results have been disappointing, especially in the area of financial resources. A recent study by Swords and Walwer, entitled *Financing Legal Education*, has given a bleak outlook for law school finances.³⁵

The purpose of this Article is to explore the common elements of legal and medical education and to compare the reform movements in each profession, with a view toward finding an explanation for the widely differing conditions that exist today in the education of each profession.³⁶ For example, why is it that medical education can provide facilities and training costing up to ten times that provided law students?³⁷ Why do medical schools receive outside financial support

33. A. REED, *supra* note 32, at 26.

34. CRAMTON REPORT *supra* note 4, at 307.

35. See Swords & Walwer, *supra* note 3 in which the authors maintain that "[m]erely to keep pace with inflation, law school expenditures will have to double every eleven years or so. This will be extremely difficult, and opportunities for growth will be few. Expenditure increases will have to be financed for the most part by increases in individual tuition charges." *Id.* at 1885.

36. See generally STANDARD MEDICAL ALMANAC 265 (2d ed. 1979); Swords & Walwer, *supra* note 3.

37. Swords & Walwer, *supra* note 3, at 1882. The 1976 average per-student costs were in the range of \$1,200-\$3,000. *Id.* See also Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979). In considering a specific example of a university clinical program and the enormous program costs involved, Barnhizer states that in 1976 the present budget for the basic clinical program at Cleveland State University will have to quadruple, from \$110,000 to \$400,000, to provide all its third year students with an adequate clinical learning process. *Id.* at 97-99. Barnhizer further notes:

Presently, the resource base of legal education is exceedingly narrow, with nonexistent federal assistance, inadequate alumni contributions, and university administrations that are often quite satisfied to skim off the top of a law school's resources. Legal education must begin to expand its sources of funding to include the federal government, the private bar, and to seek to retain a larger share of the income generated from tuition revenues.

Id. at 100. Cf. STANDARD MEDICAL ALMANAC, *supra* note 36, at 269, 282 (average per-student medical expenditures amounted to \$66,958.40 in 1976, nearly 2000% of the total expenditures on law students for the same year. Table 6 shows 58,266 students attending medical schools, and Table 34 indicates that combined public and private school expenditures for that year equalled \$3,901,400,000).

paying up to 95% of the costs of medical education³⁸ while law schools are supported primarily by tuition and fees?³⁹ Why do medical students enjoy a faculty-student ratio of one to three while law students suffer under a ratio of one to twenty, or worse?⁴⁰ Why do medical students receive considerably more skills training than lawyers?⁴¹ And finally, why do graduates of medical schools enjoy significantly higher incomes than law school graduates?⁴²

II. MEDICAL AND LEGAL EDUCATION: HISTORY

A. *Medical Education*

Prior to 1907, there were significant parallel developments in legal and medical education.⁴³ Both professions experienced a gradual trend from apprenticeship training to formal school training during the nine-

38. STANDARD MEDICAL ALMANAC, *supra* note 36, at 280. A summary of medical school sources of revenues reveals that for the 1976-77 academic year, tuition and fees accounted for *only* 4.9% of resources. *Id.*

39. Swords & Walwer, *supra* note 3, at 1884. A striking example of a law school's reliance on tuition is revealed in the 1976-77 statistics on private schools. Reportedly, private schools relied on tuition for between 70% and 95% of their income. *Id.*

40. STANDARD MEDICAL ALMANAC, *supra* note 36, at 265; Swords & Walwer, *supra* note 3, at 1883. Recent figures indicate that the average student faculty ratios vary between 20-1 and 27-1. *Id.*

41. For discussions on the development of the extensive skills training afforded to medical students, see H. HOUSER, OBJECTIVES IN AMERICAN MEDICAL EDUCATION 68-88 (Health Care Research Series No. 17, 1971); NATIONAL ACADEMY OF SCIENCES, REFORM OF MEDICAL EDUCATION (The Fogarty International Center Proceedings No. 1, 1970); T. PUSCHMANN, A HISTORY OF MEDICAL EDUCATION (1966); J. RICHMOND, CURRENTS IN AMERICAN MEDICINE (1969).

42. As far back as 1952, authorities noted the vast differences evolving between physician and lawyer salaries. In his article, *Economic Inventory of the Legal Profession: Lawyers can take Lesson from Doctors*, 38 A.B.A.J. 196 (1952), Arch Cantrall noted that for all non-salaried independent practitioners in the United States, lawyers averaged slightly higher salaries in 1929 (\$5,534) than doctors (\$5,224). The statistics change drastically, however, 20 years later, as physicians experienced a 125% increase in salary (\$11,744), while lawyers benefited from a mere 46% increase in salary (\$8,083). By 1949, physicians earned almost 50% more than lawyers. *Id.* at 197. For a recent comparison of physician and lawyer salaries, see also P. STERN, LAWYERS ON TRIAL xx (1980). Stern reports that in 1977 the median income for ABA-member lawyers was \$32,000 compared to the much higher median income for physicians of \$55,000. See generally DAVID J. WHITE AND ASSOCIATES, INC., ANNUAL SALARY SURVEY (1980), for a recent report on lawyers and corporate counsel salaries computed geographically for 23 United States cities.

43. See generally H. HOUSER, *supra* note 41; M. KAUFMAN, *supra* note 6; T. PUSCHMANN, *supra* note 41; J. RICHMOND, *supra* note 41; W. WARTMAN, MEDICAL TRAINING IN WESTERN CIVILIZATION (1961). See also CLINICAL EDUCATION FOR THE LAW STUDENT (1973); Gee & Jackson, *supra* note 5; Samad, *Reappraising American Legal Education through a Comparative Study*, 13 CLEV.-MAR. L. REV. 375 (1964).

teenth century.⁴⁴ In the early days of the American colonies a medical apprenticeship was run in much the same manner as any other apprenticeship, such as printing or blacksmithing.⁴⁵ There were a few physicians trained in Europe⁴⁶ who ventured to brave the hardships of colonial life, but with this exception, the apprenticeship system reigned supreme. The inadequacy of apprenticeship training was soon recognized. One self-ordained critic of the day observed that the “[p]ractitioners instead of endeavoring to instill into their pupils a due respect for the health of their fellow creatures, consider them only as they do their patients, from whom they expect to receive handsome fees.”⁴⁷ The need for change in the medical profession became evident by the late 1760s, as numerous leading physicians expressed the desire for reform.⁴⁸

In 1765, the College of Philadelphia opened its doors as the nation’s first medical school.⁴⁹ This event marked the beginning of the end of apprenticeship as the exclusive means of medical education. As the speaker at the new college’s commencement address observed, the ap-

44. M. KAUFMAN, *supra* note 6; Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162, 163 (1974).

45. Miller, *Medical Apprenticeship in the American Colonies*, 8 CIBA FOUNDATION SYMP. 502-07 (1947), *cited in* M. KAUFMAN, *supra* note 6, at 7.

“The term of apprenticeship for medical training in colonial America was generally from five to seven years. As in other trades, boys were bound to their masters at relatively young ages.” M. KAUFMAN, *supra* note 6, at 7. For examples of the young apprenticeship system see J. TONER, *CONTRIBUTIONS TO THE ANNALS OF MEDICAL PROGRESS AND MEDICAL EDUCATION IN THE UNITED STATES BEFORE AND DURING THE WAR OF INDEPENDENCE* 104 (1874). John Bard began his apprenticeship to John Kearsley of Philadelphia at age 14 or 15, Benjamin Rush studied under John Redman from ages 15 to 21, and James Lloyd apprenticed under Dr. Clark of Boston from ages 17 to 22. *Id.*

46. N. DAVIS, *CONTRIBUTIONS TO THE HISTORY OF MEDICAL EDUCATION AND MEDICAL INSTITUTIONS IN THE UNITED STATES OF AMERICA, 1776-1876*, at 9 (1877).

47. *Boston Gazette*, Dec. 15, 1776. Letter *cited in* M. KAUFMAN, *supra* note 6, at 16 n.22.

48. M. KAUFMAN, *supra* note 6, at 12. Mr. Kaufman notes that American contact with British military surgeons during the Seven Years War convinced American physicians of their own inadequate medical training. *Id.*

49. M. KAUFMAN, *supra* note 6, at 20. William Shippen, Jr., and John Morgan, British medical students, founded the school after making specific plans to do so upon their return from Europe. “They even decided what each would teach. Shippen would have anatomy and obstetrics, Morgan theory and practice of medicine. . . .” W. BELL, *JOHN MORGAN: CONTINENTAL DOCTOR* 73 (1965).

For a more thorough discussion on the first medical college, see G. CORNER, *TWO CENTURIES OF MEDICINE: A HISTORY OF THE SCHOOL OF MEDICINE, UNIVERSITY OF PENNSYLVANIA* (1965). *See also* Corner, *Beginnings of Medical Education in Philadelphia, 1765-1776*, 194 J.A.M.A. 719-21 (1965).

prenticeship system had resulted in inadequately trained doctors wreaking "havoc . . . on every side, robbing the affectionate husband of his darling spouse, or rendering the tender wife a helpless widow, increasing the number of orphans . . . and laying whole families desolate."⁵⁰

As early as 1766, Thomas Bond began giving clinical lectures at the Pennsylvania College Medical School. He argued that lectures and reading provided insufficient preparation for a doctor and that clinical education and "[i]nfirmarys [were the] Grand Theatres of Medical Knowledge."⁵¹ In 1769, Samuel Bard's "Discourse on the Duties of a Physician" argued for the establishment of a teaching hospital which could provide clinical experience for the medical student.⁵²

By the time of America's frontier expansion, standards established by recognized medical schools began to decline as a result of the need for quickly and cheaply trained doctors to accommodate the many rural areas.⁵³ Thus, schools that had required a six-month course of study in 1813 reduced the training period to four months in response to admission pressures as students flocked to those schools offering an M.D. degree in the shortest possible time.⁵⁴ Medical schools began to multiply between 1810 and 1877, and seventy-three medical schools were established during this period.⁵⁵ Because of this proliferation, schools found it more difficult to turn a profit⁵⁶ and the pressures on

50. J. MORGAN, A DISCOURSE UPON THE INSTITUTION OF MEDICAL SCHOOL IN AMERICA 24 (1765).

51. W. BELL, *supra* note 49, at 145.

52. See J. LANGSTAFF, DOCTOR BARD OF HYDE PARK 102-03 (1942). Bard called for the hospital in an address before the first graduating class of Kings College. He wanted as the primary function of the hospital to provide treatment for the poor. After the graduation dinner, Bard began a drive for donations by passing around a "subscription paper." "Sir Henry Moore [the governor of the province] put himself down for 200 pounds and before they adjourned nearly 1000 pounds were raised toward the construction of a New York hospital." *Id.* at 103.

53. See M. KAUFMAN, *supra* note 6, at 39.

54. *Id.* at 40.

55. N. DAVIS, *supra* note 46, at 41.

56. M. KAUFMAN, *supra* note 6, at 42. In describing the widespread intermedical school competition to provide the best training, Kaufman relates some of the cutthroat practices between colleges:

For instance, the medical college at Willoughby, near Lake Erie, in northern Ohio, ran a battle with medical men and local citizens from Cleveland. In 1843 the entire faculty of the Willoughby school determined to move to Cleveland, obviously encouraged by the advantages of being in a major city where clinical resources would be more readily available. They were also impelled by the possibility of attracting more students, thus increasing their compensation. The Cleveland Medical College was established by the resigning professors after they had gained an affiliation with Western Reserve College.

standards increased. By 1850, medical education standards lagged far behind those of legal education. In 1850, for example, at Yale University only twenty-six percent of its medical students held B.A. degrees, compared to sixty-five percent of its law students.⁵⁷ Although attempts to license doctors had been made as early as 1825, most efforts were largely unsuccessful.⁵⁸ The American Medical Association, formed in 1846, initially was unsuccessful in setting similar standards; but by 1860, it succeeded in adopting requirements such as a three-year course of study, including a minimum four-month clinical component.⁵⁹ Despite these attempts, the AMA reported in 1871 that medical schools continued to multiply, prompting predictions that such proliferation would result “in the utter downfall of scientific medicine in the United States, and the inauguration of a universal system of Quackery.”⁶⁰

Faced with an outpouring of poorly-trained practitioners, some

Western Reserve would grant medical degrees to students recommended by J.P. Kirtland, John Delamater, David Long, and Erastus Cushing, the medical faculty.

In November 1843 it was discovered that the officers of the Willoughby school were spreading rumors that Western Reserve could not legally grant medical degrees, an allegation that Dean J.L. Cassels of the Cleveland school denied. The rumors continued to plague the new college. The students of the Cleveland Medical College held a mass meeting and adopted a series of resolutions expressing their anger at the fact that so many people were actively “engaged in carrying out their designs to mislead.” The resolution declared that a majority of the physicians in the Western Reserve “regard Cleveland as the only place in northern Ohio fit—because of its size, situation, and commercial importance for a medical school” and that the professors “did right in severing connections with the ‘Willoughby University of Lake Erie,’ . . . which was in notorious and intimate union with the Ohio Rail Road Company.”

The following February, 1844, an editorial in the Cleveland Herald indicated that Willoughby had “erected a medical school with the expectation that with the Ohio railroad, the village would become very prosperous, but the one has failed and the other is about to follow.” Finally, in 1846 the Willoughby school was moved to Columbus, where it would have more clinical instruction, as well as the ability to attract more students.

Id. at 42-43 (footnotes omitted).

57. Bell, *The Medical Institution of Yale College, 1810-1885*, 33 *YALE J. BIOLOGY MED.* 169, 174 (1960).

58. The Vermont State Medical Society proposed stricter licensing requirements, leading to extended discussions in reforming medical education. The climax of reform interest was the Northampton convention of New England medical schools and societies which ended, however, in disaster because of the opposing views of the colleges and societies. M. KAUFMAN, *supra* note 6, at 78-80.

59. 13 *TRANSACTIONS OF THE AMA* 31-35 (1860), *cited in* M. KAUFMAN, *supra* note 6, at 106-07.

60. 22 *TRANSACTIONS OF THE AMA* 147 (1871). Another author concurs with this unnecessary proliferation, as medical diploma mills produced thousands of doctors, sent out “to the slaughter of innocents. . . .” King, *Shall We Have a Higher Standard of Medical Education?*, 8 *ST. LOUIS CLINICAL REC.* 341-48 (1882), *cited in* M. KAUFMAN, *supra* note 6, at 119.

states finally began to establish stricter licensing requirements. In 1871, New York set up medical examining boards,⁶¹ and by 1896, twenty-three states required an examination as a prerequisite to acquiring a medical license.⁶²

Johns Hopkins Hospital and Medical School, established in 1876, became the model for the modern medical school. The hospital became an integral part of clinical medical education, which made intensive use of laboratories. Heavily endowed by its benefactor and affiliated with a university, Johns Hopkins was the first medical school to prove that a "superior medical college could be developed in the United States."⁶³ Reportedly, the underlying key to Johns Hopkins' success was its nonreliance on student fees for financial support.⁶⁴

In 1891, the newly formed National Association of Medical Colleges joined the National Conference of State Medical Examining and Licensing Boards in approving a minimum three-year medical curriculum. By 1893, 96.3% of all medical schools required three years of study.⁶⁵ In addition, by 1900 the AMA had raised its standards by refusing to recognize any society or organization whose M.D. members had earned their degree in less than four years of graded medical education.⁶⁶

Despite these notable improvements, critical deficiencies in medical education continued into the early twentieth century, as the 1910 *Flexner Report*⁶⁷ dramatically revealed.

B. *Legal Education*

Legal education in the United States, like its medical counterpart, began in the era of the apprenticeship.⁶⁸ Similar to the medical educa-

61. *Recent Medical Legislation in New York*, 52 N.Y. MED. J. 46 (1890).

62. See Parsons, *Preliminary Education, Professional Training and Practice in New York*, 26 J.A.M.A. 1149, 1149 (1896). Of those 23 states, 16 had two unified boards of examiners, four had two separate boards, and three had three separate boards. *Id.* at 1149-50.

63. M. KAUFMAN, *supra* note 6, at 149.

64. *Id.*

65. See *Medical Education in the United States*, 22 J.A.M.A. 393, 394 (1894). A dramatic change in requirements is seen by comparing the 1893 statistic of 96.3% to the 1880 statistic, where only 26.8% of colleges required more than two years of medical education. *Id.*

66. See *Association News*, 34 J.A.M.A. 1559 (1900). This move toward enhancing medical education represents a renewed effort by the AMA which, in light of previous wasted efforts, had been reluctant to act. M. KAUFMAN, *supra* note 6, at 109-17, 159.

67. See notes 11-14 *supra* and accompanying text.

68. Grossman, *supra* note 44.

tion reform movement, the early thrust of reform in legal education was to formalize training. While medical education reform went in the direction of providing more practical clinical and laboratory instruction, legal education reform went in the direction of improving methodology, as exemplified by Dean Langdell's adoption of the case system of teaching at Harvard Law School in 1870.⁶⁹ By 1870, a vast difference in the philosophies of legal and medical education was apparent. The need for clinical education in medicine, espoused by Thomas Bond as early as 1766,⁷⁰ had been adopted as doctrine by Flexner, who stated that "[i]n the end the final test of a medical school is its outcome in the matter of clinicians."⁷¹ In contrast, the philosophy of legal education was, as summed up by Dean Langdell, "First . . . law is a science; second . . . all the available materials of that science are contained in printed books."⁷²

The Langdellian revolution in legal education was so complete that by the time reformers were calling for a greater emphasis on clinical and skills training in legal education,⁷³ the American law school, its curriculum, and its financing structure had become so solidified that only piecemeal changes were thought to be feasible.⁷⁴

A brief review of the history of legal education is necessary to understand the early divergence of philosophy in medical and legal education and the resulting differences in the infrastructure of legal and

69. CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL 231 (1918).

70. M. KAUFMAN, *supra* note 6, at 21.

71. A. FLEXNER, *supra* note 1, at 105.

72. *See, e.g.*, Frank, *What Constitutes a Good Legal Education*, 19 A.B.A.J. 723 (1933).

73. *See* note 86 *infra*.

74. *See* Paper delivered in Houston at the ABA Dean's conference and the American Judicature Society, *Thinking About the Fiscal Future of Legal Education* (Dec., 1980). This recent report on the future of legal education suggests an even more bleak prospect for law schools. Since increasing finances and inflation may force schools to increase student-faculty ratios and provide less personal instruction, which will be replaced by videotapes. The report asserts:

The dismal conclusion suggested by this fiscal logic is that some law schools will strive to deal with the ravages of inflation by reducing the size of their full time faculty since this is one part of the budget that lends itself to expedient control. Such a move would at least enable the school to provide the remaining faculty with decent raises. Many graduate schools have adopted such a course.

Id. at 5.

In order to avoid this compromise, the paper suggests several alternative plans, including increasing the amount of annual giving, raising tuition, and increasing government grants. The real issue that this paper brings to light is that since present law school standards may not even be able to be maintained in the near future, the needed changes in the clinical area look even more dismal.

medical education as they exist today. Legal education in colonial America consisted of apprenticeship training under a member of the bar. This training was usually supplemented by reading from treatises such as Blackstone's *Commentaries*.⁷⁵ Later, chairs at a handful of universities such as Harvard and Columbia were established; these chairs subsequently developed into schools of law.⁷⁶ The first law school in the United States, Litchfield, was founded in 1784 as an adjunct to existing apprenticeships.⁷⁷ Harvard Law School, established soon after Story was appointed Professor of Law in 1829, was to be the model for legal education as Johns Hopkins was the model for medical education. Langdell's publication in 1871 of *A Selection of Cases on the Law of Contracts* revolutionized legal education, and, despite initial vigorous criticism, it soon spread the case method of instruction to other law schools.⁷⁸ With academic respectability there also came an expansion in the number of law schools. Land grant colleges and western expansion provided the impetus for the expansion of legal education to those unable to procure it at the elite institutions of Harvard and Columbia. Law schools increased from twenty-one in 1860 to sixty in 1890. By 1916, there were sixty-four "night" law schools with more than 10,000 students and seventy-six "day" schools with 11,000 students.⁷⁹ By 1878, Harvard had established a three-year course of study for a law degree, and by 1909 it required a B.A. degree for admission to the law school.⁸⁰ Most other schools had followed suit by the 1920s.⁸¹ By 1879, most states required some sort of examination as a prerequisite to bar admission; by 1917, a majority of states permitted time in law school to fulfill the apprenticeship requirements.

The Carnegie Foundation *Reed Report*,⁸² in 1921, strongly favored a diversity of law schools with varying standards⁸³—a viewpoint opposite that held by Flexner, who recommended fewer medical schools with a higher uniform standard. The ABA *Root Report*, however, did recom-

75. Samad, *supra* note 43, at 378.

76. *Id.* See also Prashker, *Legal Education in the United States*, 28 ST. JOHN'S L. REV. 30 (1953).

77. Samad, *supra* note 43, at 378.

78. Gee & Jackson, *supra* note 5, at 733.

79. R. STEVENS, LEGAL EDUCATION: HISTORICAL PERSPECTIVES, IN CLINICAL EDUCATION FOR THE LAW STUDENT 43-45 (1973).

80. *Id.* at 45-46.

81. *Id.* at 46.

82. A. REED, *supra* note 16.

83. *Id.* at 416-20.

mend a requirement that all lawyers attend law school for three years,⁸⁴ and by 1940 most states required law school attendance.⁸⁵ Today, Langdell's Socratic case method remains largely intact, with some variations,⁸⁶ having weathered Jerome Frank's call for practical training,⁸⁷ Cantrall's plea for skills training,⁸⁸ the neo-realists' demands for curriculum restructuring,⁸⁹ and Chief Justice Warren Burger's view that the failures of legal education are "represented to a large extent by treating Langdell's case method of study as the ultimate teaching technique."⁹⁰ Thus as one critic has noted, "Dean Langdell's victory may have become too complete."⁹¹

While medical education reformers were largely in agreement on the need for practical and clinical experience⁹² and differed only as to the means of reaching that goal, those in legal education have been split on basic philosophical issues. Writing in 1933, Jerome Frank stated his belief that the case method was deficient in that it taught "rules without

84. J. Auerbach, *Enmity and Amity: Law Teachers and Practitioners, 1900-1922*, in PERSPECTIVES IN AMERICAN HISTORY 551, 565-66 (1971).

85. R. STEVENS, *supra* note 79, at 48.

86. It has been suggested that one modification in Langdell's method is the emphasis on the use of the method to teach "thinking like a lawyer," rather than in "learning" a particular substantive area of the law. *Id.* at 49. Questions concerning the "efficiency" of the case method were raised in Joseph Redlich's study of the case method in 1914. J. REDLICH, *THE COMMON LAW AND THE CASE METHOD* (Carnegie Foundation Bull. No. 8, 1914). Reed's 1921 and 1928 reports raised similar problems with the case method. For a more recent criticism of the case method, see Landman, *supra* note 5. In discussing the recognized inferiority of American elementary schools, high schools, and colleges, as compared to European schools, Landman asserts:

The case method has undergone a similar fate except that its undoing has been due to its own inherent defects. A study of one hundred or so heterogeneous, truncated appellate court decisions can give no one a mastery of a legal subject. Langdell himself realized this. He published his own textbooks [*sic*], a *Summary of Contracts*, as an appendage to his case book. No two professors agree on the nature of the case method in operation because in its unadulterated form it is unworkable.

Id. See generally Frank, *supra* note 72; Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL EDUC. 1 (1964); Harum, *supra* note 5; Holmes, *Education For Competent Lawyering—Case Method in a Functional Context*, 76 COLUM. L. REV. 535 (1976); Lawless, *supra* note 5; Vetri, *Educating the Lawyer: Clinical Experience as an Integral Part of Legal Education*, 50 OR. L. REV. 57 (1970).

87. Frank, *supra* note 72.

88. Cantrall, *supra* note 5, at 907.

89. Grossman, *supra* note 44, at 162.

90. Burger, *supra* note 5, at 19.

91. Grossman, *supra* note 44, at 165.

92. A. FLEXNER, *supra* note 1, at 20-27.

facts."⁹³ Unlike the reaction to Frank's medical counterpart, however, there was fierce opposition to the call for practical training by those who saw skills training and clinical education as a detraction from academic respectability.⁹⁴ Many critics viewed practical training as nothing more than superficial exercises. Hutchins referred to practical training as merely "tricks of the trade."⁹⁵ Still other critics of practical training in law school conceded the need for this type of training, but insisted that practical skills could be obtained after graduation and admission to the bar. One critic flatly stated, "[W]e can rely upon our students acquiring the local 'know how' after graduation."⁹⁶ The notion that the law school had no responsibility to produce graduates able to practice law upon graduation and could rely on post-admission training has been attacked by William Pincus as a "classic case of locking the stable door after the horse has escaped, *i.e.*, after a partly educated and untrained lawyer is given a license to practice."⁹⁷

93. Frank, *Why Not a Clinical Law School?*, 81 U. PA. L. REV. 907 (1933). Frank observed that:

The trouble with much law school teaching is that, confining its attention to a study of upper court opinions, it is hopelessly over-simplified. Something important and of immense worth was given up when the legal apprenticeship system was abandoned as the basis of teaching in the leading American Law Schools [T]he law schools should once get in intimate contact with what clients need and with what courts and lawyers actually do. . . .

Id. at 913.

94. Wote, *Modern Trends in Legal Education*, 64 COLUM. L. REV. 710 (1964). Wote states: Most importantly, the "how to of thinking" rather than the "how to of doing" must be the principal concern of legal education. Case study, problem analysis and exposition, a search for basic values and abstract principles of law, are clearly more important and more within the practical competence of law schools than the knowledge of where to file what in order to perfect a lien.

Id. at 721.

95. R. HUTCHINS, *HIGHER LEARNING IN AMERICA*, 43, 47 (1936), *cited in* Grossman, *supra* note 44, at 189. Hutchins believed:

[T]he tricks of the trade cannot be learned in a university, and . . . if they can be, they should not be. They cannot be learned at a university because they get out of date . . . and cannot keep up with current tricks, and because tricks can be learned only in the actual situation in which they are employed.

If critics such as Wote and Hutchins were correct in their criticism of proposals for practical training in the legal profession, one wonders if perhaps the medical education is totally off the mark in insisting upon two years of learning "tricks of the trade" in a teaching hospital as a prerequisite to graduation.

96. Stason, *supra* note 5, at 466.

97. Pincus, *Clinical Training in the Law School: A Challenge and a Primer for the Bar and Bar Admission Authorities*, 50 ST. JOHN'S L. REV. 479, 480 (1976). Pincus added that

[W]here there is so much . . . education and training, one may be pardoned for a substantial degree of skepticism about the newly revived concern in the organized bar and in some state supreme courts for competency *after* admission to the bar.

Id.

Closely related to Frank's call for practical "real life" training and the subsequent debate it engendered was Cantrall's call in the 1950s for skills training and instruction as to the "function" of a lawyer. Cantrall felt that "*as a minimum*," a graduating law student should be competent to examine a title, write a deed, institute and prosecute suits, and perform other routine lawyerly tasks.⁹⁸ Cantrall emphasized that "[s]ociety looks to the law schools to properly train young men and women to be, *upon graduation*, lawyers to whom the people can look for adequate, competent lawyer-services."⁹⁹

The response to Cantrall's call for reform was vigorous. Stason argued that it would take at least ten years to sufficiently elevate the competency of a practicing lawyer to accord with Cantrall's list of legal skills,¹⁰⁰ implying that since the task was hopeless, the teaching of such skills should not even be attempted. In response to Cantrall's claim that medical schools give better professional training than law schools,¹⁰¹ Stason replied that medical schools have the advantage of a fourth year and an internship and that if law schools were given the extra fourth year, legal education could be expanded. Additionally, Stason noted the law schools' inability to bring live clients into contact with law students (aside from some insignificant legal aid cases) in the same manner as medical schools have effectively done with patients and medical students.¹⁰²

Although the theory versus practice controversy has continued unabated,¹⁰³ articles on the debate may soon become academic. Even if the Realists' theories were to become widely accepted, it is now recognized that broadly based clinical education and skills programs require budgets far exceeding those of existing law schools.¹⁰⁴ Moreover, as noted, the existing structure of law school financing has become so solidified over the past fifty years that the chance to obtain financing even approaching that available to medical schools may have passed forever.¹⁰⁵

98. Cantrall, *supra* note 5, at 909. Cantrall thought that other required tasks should include defending a criminal, preparing tax returns, and operating and dissolving an individual proprietorship, a partnership, and a corporation. *Id.*

99. *Id.* at 907.

100. Stason, *supra* note 5.

101. Cantrall, *supra* note 42.

102. Stason, *supra* note 5, at 464.

103. CRAMTON REPORT, *supra* note 4.

104. *Id.* at 22-27.

105. *Id.* at 25. In discussing necessary resource reallocations to augment the law school role in

In contrast, medical reformers, by raising standards so dramatically in response to the *Flexner Report*, forced the hand of those able to provide support. If society wanted doctors, they would have to be highly trained, and society would have to pay for them. Today, medical education relies on tuition and fees for less than 5% of its income.¹⁰⁶

Legal education, on the other hand, by devising a teaching method which enabled law schools to be run "on the cheap,"¹⁰⁷ was soon "expected to be self-supporting."¹⁰⁸ Having established this pattern, legal reformers now face the difficult task of developing a means of paying for practical training¹⁰⁹ after fifty years of self-supporting legal education.

improving lawyer competency, the Task Force maintains that major institutional barriers must be overcome before the reallocations will be feasible:

The present law school curriculum is the product of an intricate set of mutually reinforcing factors. It is affected in important ways by bar admission requirements and bar examinations, by legal employers' views, by student expectations and priorities drawn from other sources, and by the academic calendar and standard pattern of instruction.

Id.

106. See STANDARD MEDICAL ALMANAC, *supra* note 36, at 281, table 32.

107. Stevens, *Two Cheers for 1870: The American Law School*, in 5 PERSPECTIVES IN AMERICAN HISTORY 405 (1971). Stevens states:

In fact, over the last one hundred years, the inherent conflicts in the purposes of legal education have been heavily accentuated by its remarkable underfunding. Even the leading law schools have faculty-student ratios which are unheard of in any marginally acceptable college and unthinkable in any other graduate or other professional school. This underfunding of legal education is probably attributable to the Langdellian model—for the case method seemed to work as well with two hundred students as it did with twenty. Indeed, Langdell's greatest contribution to legal education is the highly dubious one of convincing all and sundry that law schools were cheap.

Id. at 534-35.

108. *Id.* at 444-45. The author maintains:

It was the vast success of Langdell's method too, which established the large-size class. While numbers fluctuated, Langdell in general managed Harvard with one professor for every seventy-five students. The schools attempting to emulate Harvard could barely ask for a "better" faculty-student ratio. What was more, any educational innovation which incidentally allowed one man to teach ever more students was not unwelcome to university administrators. Although the university-affiliated law schools were slowly put on a nonprofit basis, the "Harvard method of instruction" meant that from the first they were expected to be self-supporting.

Id.

109. CRAMTON REPORT, *supra* note 4, at 25. The ABA Task Force suggests that the ABA should augment its financial support of law school training programs such as the project sponsored by the National Institute for Trial Advocacy. *Id.* at 5. The ABA also suggests that lawyers and law firms could provide schools assistance in legal training by making financial and time contributions. Additionally, the federal government should be willing to ameliorate the problem of rising tuition, which will accompany law school improvements, by increasing their financial assistance to law students. *Id.* at 6.

III. THE MEDICAL MODEL

Despite the continuing debate between Langdellians and Realists, the Council on Legal Education for Professional Responsibility (CLEPR) reports that many law schools have not found it necessary totally to accept or reject either view.¹¹⁰ Clinical education of some type has now been introduced into the majority of the nation's law schools.¹¹¹ The emphasis of the debate has now turned to the question of the extent to which the teaching of practical skills should be expanded¹¹² and the degree to which practical training should be allowed to impinge upon traditional academic offerings.¹¹³ In the meantime,

110. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION (1978-79). The CLEPR survey provides data on the numerous types of clinical programs offered at 134 different law schools. The combined schools offer 487 separate programs encompassing 59 different fields of law. While the survey asserts that approximately 90% of the ABA approved law schools offer some type of clinical program to their students, the types of programs offered at individual schools vary from intensive programs such as a school operated and supervised law office to those involving minimal outside work combined with regular classroom courses. The report states that almost 50% of the schools surveyed implement the school operated and supervised law office, which is supposedly "generally" educationally superior to those that have only a "tenuous education connection to the law school." *Id.* at viii.

111. *See generally* Harum, *supra* note 5; Sacks, *Remarks on Involvement and Clinical Training*, 41 U. COLO. L. REV. 452 (1969). In his article, Sacks discusses the potential benefits of clinical training and several programs sponsored by the Council on Education in Professional Responsibility and its predecessor, the National Council on Legal Clinics. These programs include: the Defender Clinic at the University of Tennessee, The Local Government Project at Washington University, The Wisconsin Correctional Summer Internship Project, American University Legal Assistance Project, Ohio State University Project, the Stanford Poverty Law Project, L.S.U. Social Legislation Project, St. Louis University Court Project, Northwestern University Counseling Training Project. *See also* Vetri, *supra* note 86.

112. Powell, *Clinical Education in Law School*, 26 S.C. L. REV. 389 (1974). Justice Powell discusses the emphasis of practicality in law school and concedes that there are indeed some benefits from clinical programs. In his discussion, however, Justice Powell states further:

But it would be improvident to assume that all that passes as clinical education necessarily leads to the sound learning of practical skills. It is just as possible for students to learn bad habits as good ones, and in the case of an ill-defined and largely unsupervised clinical program, it is just as likely. In short, the claim that clinical legal education is the path to learning lawyer's skills should not be accepted uncritically.

Id. at 393.

113. *Id.* Justice Powell sees a full scale introduction of clinical training into the law school curriculum as a real threat to traditional legal education:

The difficulty is that training in the practical skills cannot be accomplished without some denigration of the historic commitment of law schools. In simplest terms this is the commitment to build in each student the intellectual foundation for a lifetime in the law. Of course, the addition of one or two clinical courses to a three-year curriculum constitutes no threat to the traditional academic program. But a full scale attempt to teach the

many law schools have traditionally incorporated, if not "integrated," clinical courses into the curriculum.¹¹⁴ Therein, however, lies the problem: In creating a *modus vivendi*, a process of compromise has resulted too often in a fuzzying of the goals and purposes of clinical and practical education. The result is often a clinical program attached to, but not really part of, the law school—the proverbial "orphan child." How to bring practical and academic training together is now the challenge.

It is submitted that the medical education model provides a framework for answering that challenge. Applying the medical education model to legal education is not, of course, a new idea. Cantrall suggested this in 1952 in his paper *Economic Inventory of the Legal Profession: Lawyers Can Take Lesson from Doctors*, in which he observed that the success of medical education is attributable to the use of top-ranking physicians serving as models for students to observe as opposed to relying on post-mortem reports of incorrect surgeries. By comparison, Cantrall criticizes the law professor's reliance on improperly tried cases to teach students how to practice law.¹¹⁵

broad range of lawyer's skills might well cut deeply into the traditional values. This, in my view, is a prospect that should be approached with extreme caution.

Id. See also Clark, "Practical" Legal Training: *An Illusion*, 3 J. LEGAL EDUC. 423 (1950).

In his letter to the Section of Legal Education and Admissions to the Bar of the ABA, Justice Clark simplistically summarizes his adamant feelings against the encroachment of clinical training on today's legal education:

I shall argue that law school training is now effectively efficient, more so than other types of professional education; that there is no real basis for the criticism implicit in this pressure for practical training; that the latter is limited, partial and fragmentary at best; and that the present-day legal education in problem analysis and exposition and in thorough documentation of sources is much more important and valuable, as well as more within the practical competence of the schools.

Id.

114. See AALS/ABA COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION, GUIDELINES FOR CLINICAL LEGAL EDUCATION 29 (1980) [hereinafter cited as AALS/ABA CLINICAL GUIDELINES]. In commenting on the need for integration of the faculty within the total curriculum, the committee recommends:

To the extent practicable, all members of the law school faculty should be encouraged to teach in the clinical studies curriculum by either conducting a classroom component or supervising law student work, or both. For example, in the context of developing an integrated procedure-evidence-trial advocacy curriculum, consideration should be given, where applicable, to having individuals teaching traditional procedure, evidence, administrative law, or professional responsibility courses teach or team teach the classroom components of the clinical legal studies curriculum.

Id.

115. Cantrall, *supra* note 42, at 198-99. Cantrall explains:

The medical student is taught how to do it right in the first place. He watches the operations of eminent surgeons. He sees top-ranking physicians examine living patients. He learns to take a pulse. He listens to heart and lungs. Most important of all, he does

It has been suggested that to appreciate the deficiency in clinical legal education it is necessary to contrast medical and legal education.¹¹⁶ Judge Lefever compared the extensive training and supervision of the medical student with the training of a law student and inquired,

Would you want a medical school graduate who had never even *witnessed* a surgical operation to perform an emergency appendectomy or other serious surgery upon you or one of your loved ones? Certainly not, yet under the training provided generally by the legal profession throughout the United States the public must submit to similar treatment at the hands of the inexperienced and untrained lawyer who has just been graduated from law school.¹¹⁷

Lefever noted that there had been no "on the job" training in the medical profession until Dr. William Osler introduced it in 1884.¹¹⁸ "Perhaps," Judge Lefever concluded, "the legal profession needs an Osler of the bar."¹¹⁹

There has been disagreement, however, over whether legal education is analogous to medical education. One authority sees an analogy between the medical and legal professions, but maintains that the "unique nature" of lawyering necessitates its own educational structure.¹²⁰ Others have seen any analogy between legal and medical education as being "far fetched," primarily because of the intense specialization in medicine, which they claim will never materialize in the field of law, and the inability to duplicate conditions of practice in law as has been done in medicine.¹²¹

One may wonder why the public would allow medical students and interns to perform operations under supervision, where a life is at stake, but not allow a law student to conduct a minor trial under supervision. Is the reason for not applying medical methods to legal education that

things not merely once, as a law class visits a courthouse, but literally hundreds and hundreds of times, until they are second nature. And at the same time he is being taught the theory of medicine. He learns to read x-rays, not by reading in a book about a patient dying because someone did not read an x-ray correctly, but by reading hundreds of x-rays under expert supervision.

Id. at 199.

116. Comment, *supra* note 5, at 113-14.

117. Lefever, *Legal Internships*, 6 J. LEGAL EDUC. 504, 506 (1954).

118. *Id.* at 506-07. Osler scorned "to think that there are sent out year by year scores of men called doctors who have never attended a case of labor or seen the inside of a hospital ward."

119. *Id.* at 507.

120. Smith, *Vertical Expansion of the Legal Services Team*, 56 A.B.A.J. 664, 665 (1970).

121. Clark, *supra* note 113, at 425.

such methods of teaching are inappropriate and unworkable? Or is the real reason that it would be too expensive and thus impracticable?

It is perhaps revealing that the same critic who saw the analogy of medical to legal education as "far-fetched" felt it necessary to cover himself:

But if we could reproduce in the law the condition of medical training, I should say that we certainly must pause at the thought of actually doing so. The expense of medical training is now recognized to be backbreaking, not merely for the individual student, but also for the particular institution and its community involved. Perhaps there is no more serious problem of modern education than how any even strong university can now support the tremendous expense of its medical department. Practically every university of which I have knowledge is suffering from the weight of its medical deficit which swallow up funds urgently needed for all other departments. . . . We cannot make Legal education in the image of the medical training; in view of the latter's plight we should count ourselves lucky that we cannot.¹²²

The "plight" of the medical student, however, seems to be that he now receives far more extensive and expensive practical training, supported from a variety of sources. The critic's suggestion seems clear: if law schools can continue to operate "on the cheap," there will be no drain on university and other resources needed to provide medical students with a thorough clinical education. How, it may be asked, did legal education ever get to such an inferior position in relation to medical education?

The answer has its roots in the sister reports of Flexner and Reed. The *Flexner Report* made specific recommendations for higher standards,¹²³ lower student-faculty ratios,¹²⁴ and intensive laboratory and clinical education,¹²⁵ and effected these changes through the mechanism of state board licensing requirements.¹²⁶ The *Reed Report*, on the other hand, had no impact on legal education. Reed's conclusion that it was impossible to achieve a "unitary bar," and that "different types of lawyers may be determined by the economic status of the client rather than the nature of the . . . service rendered,"¹²⁷ was useless as a

122. *Id.*

123. A. FLEXNER, *supra* note 1.

124. *See* note 16 *supra* and accompanying text.

125. *See* note 18 *supra* and accompanying text.

126. *See* note 25 *supra* and accompanying text.

127. A. REED, *supra* note 16, at 419.

basis for reform. While the later ABA *Root Report* did legitimize the three-year law school, the damage of Reed's omissions had already occurred. To a large extent, the future of legal and medical education was predetermined in the period between 1910 and 1921.

Two challenges face legal education today: Can the proven methods and standards of medical education be applied to legal education?; and, are financial resources available for such application?

A. *Medical Methodology Applied*

It is submitted that the answer to the first question is yes. A law student needs a "laboratory" just as much as the medical student. For the law student, the laboratory is the courtroom, the judge's chambers, the law office, and the conference room. All of these can be created within the confines of the law school. In mock situations under close scrutiny, the law student can plead his case, cross-examine a witness, negotiate his plea, or draft a contract. Just as in science courses, a law course can be paired with a laboratory. In the laboratory component of a course in contracts, for example, students might draft a contract under the watchful eye of a professor or graduate assistant, engage in mock negotiations, or argue a motion to dismiss. In the criminal procedure laboratory, the student might draft a criminal complaint, file and argue motions to suppress, or represent a mock client at a bail hearing. In a civil procedure laboratory, students could draft complaints, answers, and motions. There should exist a rough correlation between the laboratory assignment and the subject matter of the paired academic course. Thus, students might be drafting and arguing a motion to dismiss for lack of personal jurisdiction in a civil procedure lab during the same week that personal jurisdiction was being taught and discussed in the regular academic class. In short, each academic subject could be paired with a laboratory. Wills would be drafted in the probate lab, articles of incorporation in the corporations lab, partnership agreements in the unincorporated associations lab, and so on. In addition, trial practice labs could give each student an opportunity to observe and participate in numerous trials, so that like the medical intern performing an appendectomy, his skills would become second nature. Although such practicums are presently offered on a limited basis in many law schools,¹²⁸ they should be made a mandatory component of

128. AALS/ABA CLINICAL GUIDELINES *supra* note 114 at 71-72. The Committee's report

all required courses so as to achieve the same effect as the laboratories of their medical counterparts.

B. *The "Teaching" Law Center*

There are, of course, limits to what can be simulated in the laboratory. Chief Justice Burger has lamented that "law students can deal with a corporate spin-off, or a vertical merger, but they don't know enough to save a client from a fast talking encyclopedia salesman."¹²⁹ Some experiences just cannot be recreated in the laboratory. Professional responsibility is an example. An ethical problem posed in the classroom or laboratory may be resolved by reference to selected standards or decisions within the general framework of the student's personal values and mores. But in actual practice, the student has to face stark problems of application. For example, the standard requiring that an attorney inform on a client who has professed a desire to commit a future crime¹³⁰ may be experienced in a different light by the student who, having established a close professional relationship with an actual client, is faced with this actual dilemma. The problem suddenly takes on new and pressing dimensions that could never be exper-

includes an excerpt from the 1979 Report of the Harvard Law School Committee on Clinical Education concerning the use of simulation in traditional courses:

There has been a growing use of simulated cases or problems in law school classes which focus upon a particular field of substantive or procedural law. The cases or problems may vary greatly in complexity and size, from the semester-long "case" utilized in Federal litigation to the smaller scale problems or cases used in courses like Business Planning or International Legal Process. There is no authoritative count of the use of cases or problems of this sort in the current curriculum. [Subject-oriented courses that have made extensive use of simulated exercises include Alternate Methods of Dispute Resolution; Litigation Workshop; Family Law Practice; Federal Tax Workshop; Federal Litigation; International Legal Process; Tort Litigation Workshop.]

The advantage of simulated cases or problems over traditional instructional formats is that they facilitate the teaching of complex factual or litigation materials with greater depth, intensity, and verisimilitude, while permitting the students' experience to be structured by the instructor with a view to academic objective and time constraints. Student motivation to master such materials and to participate in class is stimulated by role assignments. In addition to advancing student understanding of aspects of legal doctrine or institutions not easily conveyed through traditional instructional methodologies, the use of cases or simulated problems can also serve to teach related lawyering skills, such as the development of strategic judgment in the selection of alternative procedural courses in litigation or the dovetailing of tax and corporations issues in corporate acquisition negotiations. . . .

HARVARD LAW SCHOOL CLINICAL COMMITTEE REPORT 4-5 (March 20, 1979).

129. Burger, *supra* note 5, at 18.

130. See ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, THE ADMINISTRATION OF CRIMINAL JUSTICE 124 (1974). Rule 37(d) provides the standard for the lawyer's duty to reveal his client's intent to commit certain kinds of crimes.

ience in the classroom or laboratory. The classroom solution is simply too easy when there is no actual personal relationship involved. The same conflict applies to many other classroom solutions, and the student nurtured on these solutions often finds himself unable to cope when representing a live client. Skills training cannot be left to the bar or to employers. Many students cannot obtain positions in law firms where they can be constantly supervised and trained. It has been observed that:

[T]he idea that experience can wait until students are working for a living is fallacious. . . . Most law offices do not furnish a neophyte with beginners' instructions; they don't send him to court with a supervisor, then postmortem his performance, then send him again if he did badly. They generally pick those who seem forensically gifted and make them into apprentices to the courtroom masters; the others are immured in tax, securities and probate departments. In smaller firms, neophytes are often sent forth on short notice to hearings for which they have no preparation, no supervision and no postmortem. Lawyers who hang up their own shingle are condemned to stagger their own way through whatever business comes their way—and suffer the disasters of their untutored mistakes.

It is true that some offices guide their neophytes wisely and well, and that many self-taught lawyers quickly master their arts. But the function of education is to shortcut the long hard road of experience, and there is as much reason to shorten it in the arts of practice as in the realm of theory.¹³¹

It can no longer be accepted that it is impossible for law schools to provide students with clinical experience comparable to that provided by medical schools. The same objections now made against legal skills training were made to the *Flexner Report* on medical education.¹³² There should not be such a thing as second class law students who graduate without any practical or clinical experience, while other students take advantage of elite programs. As one observer has noted:

Since *every* medical student participates in the clinical program, and is placed in a clinical situation where he might treat the average citizen as well as the most socially unpopular member of the community for gunshot wounds received in violently resisting lawful authority, no one finds fault with such an "educational" undertaking. The implications for the

131. Conrad, *Letter from the Law Clinic*, 26 J. LEGAL EDUC. 194, 197 (1974).

132. Wright, *supra* note 5. The author maintains that "A medical clinic can give the intern the breadth of training which a legal clinic cannot hope to emulate." *Id.* at 184.

law school world are obvious.¹³³

It should also be recognized that clinical education on the medical school model must involve *direct* supervision by faculty members. While the practice of farming out students to outside agencies or firms for so-called "internships" provides an inexpensive source of labor to the agency or firms and requires little or no outlay of resources by the law school, such programs provide an experience little better than what the student usually receives after graduation. The assigned supervisor at the outside agency or firm generally has the primary responsibility of performing his own duties; teaching a student is often at least a hindrance or at best a nuisance. The result is that a student is often assigned menial, unenlightening tasks to earn his keep.¹³⁴

Contrast this with the medical model in which a third-year student is assigned to work in a teaching hospital under the direct supervision of a doctor, who, as a faculty member, has joint responsibility for teaching students and for providing medical care to patients. His salary is generally paid in large part by the university, and teaching is a primary responsibility.¹³⁵

Legal skills training could also be provided by the establishment of the "teaching law center," similar in concept to the medical profession's teaching hospital so adamantly demanded by Flexner. The objection that "no one has yet discovered a way to bring live clients (some minor legal aid cases excluded) into the law schools, or how to take the law schools to the courtrooms and law offices"¹³⁶ is no longer valid. The initial steps toward establishing a teaching law center have already been taken by the University of Tennessee Law School. The clinical program of that school has taken over legal aid, as well as some public defender responsibilities for the county in which the law school is situated.¹³⁷ Considered studies have been made showing the feasibility of

133. CLEPR, *Clinical Education—What Is It? Where Are We? Where Do We Go From Here?* 16 STUDENT LAW. J. 17, 17 (Aug. 1971) (emphasis added).

134. The alleged extent to which a student increases a clinician's work is probably accurate. In the law school, it has been recognized that: "[t]he academic environment of the law school is a continual reminder that our primary purpose is to teach. When clinical offices are not part of the law school, the teaching mission can be over-ridden by other, powerful factors inconsistent with the best path to student learning." Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 100 (1979).

135. See generally H. HOUSER, *supra* note 41; H. PACKER & T. EHRlich, *NEW DIRECTIONS IN LEGAL EDUCATION* (1972).

136. Stason, *supra* note 5, at 464.

137. For a brief description of the Defender Clinic at the University of Tennessee, see Sacks,

a national link-up of the new legal services corporation law offices and laws school clinical training programs.¹³⁸

Envisioned is a teaching law center attached to the law school through which both legal aid and public defender services would be rendered. Staff attorney/professors, like doctors at teaching hospitals, would be paid by both the state and the law school; each staff member would be responsible for the joint duties of representing clients and supervising law students. Private attorneys could be invited to establish offices in the center. As adjunct professors, they would be paid to supervise students working on nonindigent cases. In this way, student experience could be expanded into areas not found in present law school clinics: antitrust, probate, complex litigation, etc. Clinical medical students in teaching hospitals often treat fee paying patients, the proceeds going to the hospital and the medical school. While such an in-house apprenticeship might be expected to arouse the opposition of practicing attorneys since the students would be working on fee generating cases, it should be pointed out that practicing doctors do not object to medical students treating fee generating patients. The sacrifice required of all practicing attorneys would be minimal, and their acquiescence would go far in meeting their responsibilities to legal education. In any case, a percentage of any fees earned would go toward law school support of the clinic.

It has long been advocated that preclinical classroom training in law could reasonably be limited to two years.¹³⁹ This would free the third

supra note 111, at 454. See also Snyman, *supra* note 2, at 54 (discussion of the feasibility of situating justice courts directly inside law school buildings).

138. Snyman, *supra* note 2. The extent of the author's proposed involvement of the law student with the corporation is well stated:

I am pleading not just for a token involvement by law schools, but a total commitment to assign their third year students to such corporation law practices. A token involvement will only mean a waste of time, and may soon lose the interest of the students, who in turn must realize that such a program requires the total involvement of the student in the affairs of the corporation practice with full responsibility for the continuation of the cases they are handling and to see them through, irrespective of university vacations. There should therefore be a continuity of service.

Id. at 53.

139. Allen, *Legal Education Reform: The Third Year Problem*, 16 *STUDENT LAW. J.* Aug. 1971 at 4. In discussing the futility of the third year, Allen quotes another author's perceptive statement of the problem: "Probably most law professors today, and certainly most law students, would agree that the usual third year program in legal education is sterile and uninspiring—in short, a big bore." *Id.* at 5. See also Davis, *That Bulky Law Curriculum*, 21 *J. LEGAL. EDUC.* 300 (1969); Stolz, *The Two-Year Law School: The Day the Music Died*, 25 *J. LEGAL EDUC.* 37 (1973). Stolz discusses the 1972 proposal of the ABA to allow some law schools to grant a J.D. to law students

year for laboratory and clinical work or permit retention of a three-year program if laboratories were paired with academic courses. A fourth year could be added for purely clinical work. The idea of a fourth year of law school is not new. It has been considered by several critics¹⁴⁰ and exists in slightly modified form in several states as a fourth year "clerkship" requirement.¹⁴¹ What is new is the notion that income could be generated from clinical programs to help offset the cost of the program.

IV. FINANCING

The 1979 ABA Task Force on Lawyer Competency reported a need for funds to finance

[T]wo quite different kinds of activities: 1) for the extension and improvement of existing skills training, such as that now provided at many law schools in trial advocacy, and 2) for the development of teaching materials of established quality, easily replicable in a number of law schools, for teaching other aspects of lawyer competency, such as interviewing and fact investigation.¹⁴²

The report makes a plea for increased funding from some traditional sources: CLEPR, other federal and state programs, the ABA, members of the profession, law firms and legal employers, private donations, and the like. As has been noted, however, the financing structure of legal education finds its roots in the period of 1907-1921, and it is unlikely that federal and state grants for legal education will suddenly balloon to the present levels of support for medical education. As in the past, legal education today is still supported in the same way as medical education was in 1910—primarily by fees and tuition. It must be remembered, however, that the vast increases in support for medical education came only *after* the medical profession adopted many of

after two years of school. The ABA Standards for Law Schools were sought to be revised, consolidated, and brought up to date in 1964; however, the revision was voted down by a meeting of the Section on Legal Education. *Id.* at 37-38.

140. See note 102 *supra* and accompanying text.

141. F. KLEIN, S. LELEIKO & J. MAVITY, *BAR ADMISSION RULES AND STUDENT PRACTICES RULES* (1978). According to the recent statistics, nine states now have an apprenticeship or clerkship component as a requirement for admissions by examination. New Jersey, for example, requires its prospective members of the bar to take an eight- to ten-week course in skills and methods so that they will be familiar with the procedures and techniques of the New Jersey practice of law. New Jersey, however, will permit a prospective member to serve a full time clerkship, lasting at least nine months, to satisfy the course requirement. *Id.* at 517-18.

142. CRAMTON REPORT, *supra* note 4, at 28.

Flexner's revolutionary proposals. Once the state boards refused to license students graduating from schools failing to meet Flexner's standards, it became apparent that medical education could not produce doctors untrained in clinical laboratory skills. Society had no choice but to find the means for financing the tremendous clinical and laboratory costs of medical education. Today, no effort should be spared in increasing funding for legal education from traditional sources.¹⁴³ Nevertheless, is there anything else that can be done to promote the establishment of teaching law centers and mandatory clinical and laboratory training in legal education?

It is submitted that many of the proposals can be implemented within the present financing structure. For example, a law school, the state, and the county could jointly finance a law center attached to the law school, moving legal aid and public defender offices to the law center. Arrangements could be made for the law school and state to share the salary cost of legal aid attorneys and public defenders who would serve also as adjunct law professors. Such practicing professors would have dual responsibility: to serve the clients and train the stu-

143. *Id.* at 30. In discussing potential resources, the report asserts:

Are potential resources of this magnitude available? We are not sure. Law schools' principal source of revenues at the present time is student tuition and fees (or their counterpart in terms of state support at the publicly supported law schools). It is a fact of life, whether one likes it or not, that tuition charges for legal education will continue to increase at about the rate of increase of family disposable income. If this figures [*sic*] increases faster than the rate of inflation, law schools may be able to use tuition increases at a lower rate than the rate of inflation, tuition increases at that rate will not provide funds for program improvements.

The likelihood that student tuition charges will continue to increase emphasizes the importance of scholarship and loan funds to the goal of open access to the legal profession on the part of all socio-economic, ethnic, and minority groups. The Task Force recommends that the ABA take a strong position in support of federal and state programs providing financial assistance to law students. . . . The most beneficial kind of governmental aid to legal education is direct aid to qualified law students who are pursuing professional education. Student financial assistance helps maintain the diversity of the legal profession and assists in providing funds for its improvement. A more highly competent bar provides benefits to all of society. It is also the type of aid that is at least likely to be accompanied with detailed regulation of educational requirements and programs.

Federal and state programs providing financial assistance to law students should be broadened as well as continued. Few programs provide grant money as distinct from loan guarantees. The guaranteed loan program should be modified in view of recent inflation and high interest rates. Limits of \$5,000 per year per student and \$15,000 in total loan are unrealistic in a day in which tuition charges alone are breaking \$5,000 per year at private law schools, all other costs are rising sharply, and many students come to law school with loan accumulations from their undergraduate studies.

dents. Members of the legal profession should be asked to make an indirect financial contribution to the law school by concurring in the clinic's imposition of legal fees on clients able to afford it. Such fees would then be used to support the law school program. This system would also permit the training of students in areas of the law not traditionally limited to indigents, such as antitrust or probate. The local bar association could also contribute by promulgating and supporting more liberal student practice rules¹⁴⁴ permitting such activity.

A certain part of the law center should be set aside for private law firms (preferably those engaged in general practice), the members of which would also be appointed as adjunct professors and paid a salary to train students. A proportion of the fees paid to the firm would go to the law school to support its program.

Legal laboratories for skills training and trial practice belong in a

144. As of 1978, according to F. KLEIN, S. LELEIKO & J. MAVITY, *supra* note 141, 47 states and the District of Columbia sanction some form of student practice:

Alabama, Supreme Court Rule; Alaska, Alaska Bar Rule IV-44; Arizona, Supreme Court Rule 28(e); Arkansas, Rule XII of the Rules Regulating the Practice of Law; California, State Bar Rules; Colorado, Colo. Rev. Stat. § 12-1-19 (1963), Rule of Civil Proc. 226; Connecticut, Rules for the Superior Court § 42A; Delaware, Supreme Court Rule 55; Board of Bar Examiners Rule BR-55.2, 55.3; District of Columbia, Court of Appeals Rule 46, III; Superior Court Crim. Div. Rule 44-1(f); Florida, Article XVIII of the Integration Rule of the Florida Bar; Georgia, GA. CODE ANN. (1973) §§ 9.401.1, 9.401.2; Hawaii, Supreme Court Rule 25; Idaho, Supreme Court and State Bar Rule 123; Illinois, Supreme Court Rule 711; Indiana, Supreme Court Admission and Discipline Rule 2.1; Iowa, Supreme Court Rule 120; Kansas, Supreme Court Rules: #215; Kentucky, Court of Appeals Rule 2.540; Louisiana, Supreme Court Rule XX; Maine, Supreme Judicial Court Civ. Pro. Rule 90; Crim. Pro. Rule 52; M.R.S.A. Title 4 § 807; Maryland, Court of Appeals Rule 18; Massachusetts, Supreme Judicial Court Rule 3:11; Michigan, Administrative Rules GCR 921; Minnesota, Supreme Court Rules on Certified Law Students, Rule 1; Mississippi, Miss. CODE, Art. 5; Missouri Supreme Court Rule 13; Montana, Montana Student Practice Rule; Nebraska, REV. STAT. § 7-101.01; Supreme Court Rule of Legal Practice by Approved Law Students; Nevada, no rule; New Hampshire, Supreme Court rule 23; New Jersey, New Jersey Rules of Court 1:21-3(c); New Mexico, Supreme Court Rules of Civil Procedure #84; New York, JUD. LAW §§ 478, 484; North Carolina, Supreme Court Rules Governing Practical Training of Law Students (Appendix IX-A); North Dakota, Supreme Court Rule; Ohio, Supreme Court Rule II; Oklahoma, Supreme Court Rules on Legal Internship; Oregon, Supreme Court Rules for Admission of Attorneys; Pennsylvania, Supreme Court Rule 11; Puerto Rico, Rules and Regulations of the Supreme Court, 11(e); Rhode Island, no rule; South Carolina, Supreme Court Rule 12; South Dakota, S.D. COMP. LAWS ANN. § 16-18-2.1; Tennessee, Supreme Court Rule 37 § 19; Texas, TEX. REV. CIV. STAT. (1975 Supp.) Title 14, Art. 320q-1; Rules and Regulations Governing the Participation of Qualified Law Students . . . in the Trial of Cases; Utah, Supreme Court Law Student Practice Rule; Vermont, no rule; Virginia, Supreme Court Third Year Student Practice Rule, Paragraph 15 of § IV of the Rules for the Integration of the Bar; Washington, Supreme Court Rule 9; West Virginia Supreme Court of Appeals Rule 6.000; Wisconsin, Supreme Court Rules for the Practical Training of Law Students; Wyoming, Supreme Court Rule 18, Right to Practice Law.

different category because they obviously cannot generate income. However, laboratories could be financed in part through the elimination or reduction of small seminars in narrow and esoteric areas of the law. Such seminars have already been the subject of much criticism.¹⁴⁵ The use of graduate or upperclass lab assistants¹⁴⁶ could further reduce the cost.

The combination of law center fees, a reduction in the number of small seminars, and a broader use of graduate assistants could significantly contribute to the achievement of the medical model in legal education. It is submitted that a tightening of law school standards, thus requiring law schools to provide mandatory clinical offerings and skills training laboratories, would provide an impetus toward more comprehensive financing of legal education. As in the case of medical education, higher standards, duly enforced by state bar examiners, would provide incentives to consolidate legal education resources, thus decreasing the number of law schools financed primarily by tuition and fees. With the quantity of annual law school graduates reduced to a number for whom jobs are available in the market place, scholarships for each student could be increased, since the available scholarship money pool could be divided among fewer applicants. With the wasteful lawyer "glut"¹⁴⁷ reduced, law graduates would have greater prospects for employment, and therefore might qualify for bank loans of the type now only available to medical students, whose prospects for employment are now generally brighter than those of the average law student. In other words, additional financing of quality legal education

145. See CRAMTON REPORT, *supra* note 4 at 23. The task force appropriately asserts:

While smaller classes do figure in the law school experience, some of them are small simply because they furnish instruction relevant to a less heavily chosen career alternative or are less frequently elected for other reasons. A small but significant number of law students, for example, contemplate a career in legal services for the poor or a practice with international dimensions. To them, a course in welfare law or consumer protection law in the first case, or a course in international business transactions in the latter, is as essential a part of basic instruction as the course in business organizations. But since fewer students take these career paths, the enrollments in courses covering such areas are, on the average, much lower. The instruction can be, but typically is not, significantly different in nature and method from that furnished in large classes.

146. See Trakman, *Law Student Teachers: An Untapped Resource*, 30 J. LEG. EDUC. 331 (1979). The author envisions the use of law student teachers to ameliorate the prevailing atmosphere of impersonality, so strongly felt by first year students. More importantly, the law student teacher is also seen as a tool to meet the need for extensive manpower in providing clinical programs. *Id.* at 346.

147. See note 2 *supra* and accompanying text.

can come from law center revenues, internal restructuring, and a consolidation of resources that are now spread too thinly.

V. CONCLUSION

It has been submitted that a comparison of legal and medical education reveals several areas common to both. Medical methods of clinical and laboratory training can be adopted by legal education with appropriate modifications, which take into account the special nature of the law as a profession. Enforcement of standards for clinical and laboratory training would provide incentives to consolidate available and potential resources for legal education.¹⁴⁸ It has also been suggested that many of the recommendations of the *Flexner Report* for reform in medical education in 1910 are applicable to legal education today. These include recommendations to consolidate resources, to discourage the proliferation of self supporting schools, and to provide intensive skills training of the type associated with a low student-faculty ratio.

It is recognized that many of the objections to the *Flexner Report* on medical education would be applicable to an analogous report today on legal education. For example, Flexner was criticized on the grounds that his proposals, if implemented, would decrease the number of doctors and thus deny access to the "poor boy." Flexner's response to such charges of "elitism" was:

So enormous an overcrowding with low-grade material both relatively and absolutely decreases the number of well-trained men who can count on the profession for a livelihood. According to Gresham's law, which, as has been shrewdly remarked, is as valid in education as in finance, the inferior medium tends to displace the superior.¹⁴⁹

Thus if Flexner was elitist, it was from the standpoint of the patient. A patient lying on the operating table, looking up at the doctor who is about to perform a delicate operation upon which the patient's life depends, quickly becomes an elitist: he wants the best trained doctor available. Likewise, the indigent client charged with first degree murder becomes an elitist: he wants only a skilled, trained practitioner to represent him—not someone who got his training "on the cheap." The

148. Unfortunately, the most recent statistics reveal that presently only four states (Delaware, New Jersey, Rhode Island, and Vermont) have a clinical training requirement for admissions by examination to their respective bars. See F. KLEIN, S. LELEIKO & J. MAVITY, *supra* note 141, at 13-17.

149. A. FLEXNER, *supra* note 1, at 14.

same is true of the client wishing the best representation in his civil suit for damages in a personal injury action. To charges that the recommendation of the *Flexner Report* would result in depriving less affluent students of the ability to get an inexpensive education, and suggestion that for the “sake [of the poor boy], the terms of entrance upon a medical career must be kept low and easy [on the premise that] [w]e have no right . . . to set up standards which will close the profession to ‘poor boys’,”¹⁵⁰ Flexner further responded:

What are the merits of this contention? The medical profession is a social organ, created not for the purpose of gratifying the inclinations or preferences of certain individuals, but as a means of promoting health, physical vigor, happiness—and the economic independence and efficiency immediately connected with these factors How, can anyone seriously contend that in the midst of abundant education resources, a congenial or profitable career in medicine is to be made for an individual regardless of his capacity to satisfy the purpose for which the profession exists? It is right to sympathize with those who lack opportunity; still better to assist them in surmounting obstacles.¹⁵¹

If one looks at the legal profession from the standpoint of the society it was designed to serve rather than from the viewpoint of the individual student wishing to enter a profitable career, the charge of elitism directed toward proposals for skills training and resource consolidation cannot stand. Today, objections to Flexner’s proposals could be answered further by pointing to affirmative action programs, expanded scholarships, and liberal loan guarantee programs. In addition, six-month or one-year programs for “paralegals”¹⁵² could be expanded for those wishing to make the law their profession but who are unwilling or unable to meet the more rigorous demands of a three- or four-year program requiring extensive clinical and laboratory training. Present marginal or unaccredited law schools could be adapted for such training. Paralegals could provide the kind of representation now so desperately needed to meet the increased demand for legal tasks requiring less skill, such as defense of minor traffic offenses or other misdemeanors, or noncontested divorces, minor bankruptcies, under the general supervision of a licensed attorney. This would, of course, require changes in state practice rules so as to allow court appearances in minor cases by

150. *Id.* at 42.

151. *Id.*

152. Smith, *supra* note 120. The author suggests that a subprofessional career group in the legal field could be developed to meet the needs of society. *Id.*

licensed paralegals, but it would free licensed attorneys for work requiring greater legal skills. Just as nurses in the medical profession are licensed to perform certain medical tasks not requiring the direct attention of a doctor, so should paralegals be given an expanded role in performing legal tasks. Such an expanded role for paralegals would perform a dual function: First, it would open up the legal profession to more students interested in the law as a profession while simultaneously countering charges of elitism, and second, it would provide the manpower for those legal tasks presently in demand but unfulfilled because of the high costs of a licensed attorney, such as defense of minor violations and misdemeanors.¹⁵³

It should be apparent that the suggestions proposed are the result of only a brief comparison of medical and legal education. A study of legal education on the scale of the *Flexner Report*, however, could provide the basis for fully exploring the issues raised here. Like the *Flexner Report*, a similar legal education study should be conducted by someone outside the profession. It is not too late for a *Flexner Report* on legal education.

153. *Id.* In support of his idea, Smith refers to Canada and England, where legal assistants are presently being effectively used to ease the burden on lawyers. *Id.* See also Fuchs, *Lawyers and Law Firms Look Ahead—1971 to 2000*, 57 A.B.A.J. 971 (1971). In response to the ever increasing demands on lawyers, the author asserts that lawyers will be making much greater use of lay assistants in the near future. As a result of younger lawyers turning more toward government and public welfare services, and combined with the high cost of maintaining legal practice, many lawyers will find themselves turning to lay assistants to meet the increasing demand for legal services. *Id.* at 972-73.