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Student Practice as a Method of Legal Education and a Means of Providing Legal Assistance to Indigents: An Empirical Study

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Student Practice as a Method of Legal Education and a Means of Providing Legal Assistance to Indigents: An Empirical Study

A Study for
The American Bar Foundation

THE MARSHALL-WYTHE SCHOOL OF LAW

Williamsburg, Virginia

DOCUMENTARY SUPPLEMENT

During the past year and one-half, Albert J. Wicks, Douglas J. Stanard, Lawrence D. Diehl, and Samuel F. Boyte, members of the WILLIAM AND MARY LAW REVIEW, prepared an extended empirical research project with the cooperation and financial assistance of the American Bar Foundation. The purpose of this study was to survey the operation of student practice acts and rules in effect throughout the United States. The present publication reflects the results of the survey. The analyses, conclusions, and opinions expressed herein are those of the authors and not of the American Bar Foundation, its officers and directors, or others associated with its work.

The Documentary Supplement of the WILLIAM AND MARY LAW REVIEW is designed for special projects which do not fit the conventional format of scholarly articles or staff commentary.

William and Mary Law Review

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FOREWORD

SOCIAL PSYCHOLOGY AND THE LAW: A COURTSHIP OF MUTUAL ADVANTAGE†

KELLY G. SHAVER*

The past few years have seen the relationship between social psychology and everyday phenomena and problems come full circle. Although early interest in social psychology arose from informally observed qualities of and relationships between real people, laboratory experimentation gradually replaced field observation as the preferred method of social-psychological research. The present movement back to the applied problem technique is a result of several contemporary pressures, including growing disenchantment with experimental methodology, developing interest in research topics which lend themselves to field work, concern among granting agencies that their decreasing resources be devoted to projects with more immediate application, and changes in the values and career goals of doctoral students. As a result, new journals and newsletters have been published to increase communication among researchers dealing with applied problems. Interdisciplinary research institutes and professional societies have been founded, and closer ties have been established between social psychologists and practitioners in fields where traditional concern has been less with empirical research than with the decisionmaking processes of society. Nowhere is this trend more apparent than in the relationship between social psychology and the law.

Although psychology and, to a greater extent, psychiatry have been involved with the law at least since development of the M'Naghten insanity defense rule, this contact was, for many years, limited to the participation of expert witnesses at trials. This emphasis upon testimony can be described more accurately as entailing adversary opinion, rather than empirical research. Psychology's involvement began only at the

† An expanded version of this discussion was presented as part of a symposium entitled "Whither Social Psychology II" during the meeting of the American Psychological Association, Montreal, Canada, 1973.

* B.S., M.S., University of Washington; Ph.D., Duke University. Associate Professor of Psychology, The College of William and Mary. The participants in this study express their sincere appreciation to Dr. Shaver. His guidance, good humor, and especially his fortitude helped bring the project to fruition.

trial stage, the units of data analysis were small (typically limited to the person whose mental condition was at issue), and the interpretation placed on the data was substantially more important than the data. Forensic psychiatrists testifying for prosecution and defense rarely disputed the actual behavior of a defendant; rather, their disagreement was with the meaning which should be attached to that behavior.

Although forensic psychiatry continues as a highly visible aspect of the interchange between psychology and the law, there has been a dramatic increase in recent years in the participation of social psychologists in other aspects of the legal system. Originally limited to the use of social-psychological data by parties to an action, as in *Brown v. Board of Education*,¹ contributions from social psychology have expanded to include not only experiments with direct bearing on the operation of the criminal justice system but also comprehensive studies of portions of the system itself.

One recent example of the participation by social psychologists in adversary proceedings involved selection of a jury for the conspiracy trial of the Harrisburg Seven.² On the assumption that the government had chosen Harrisburg, Pennsylvania, as the site for the trial because it provided, among other things, the best opportunity to empanel a politically conservative jury, a number of social psychologists employed both survey and in-depth interview techniques to aid the defense in jury selection. Results of these interviews were used by defense attorneys in their interrogations and peremptory challenges of the potential jurors. That the jury finally selected could not reach a verdict on the crucial conspiracy charge (when, on the average, four out of five Harrisburg residents would have been hostile to the defendants) suggests that extensive jury screening, even in the absence of a control group, did affect the trial outcome.

As the investigators noted, this type of social scientist participation in an adversary proceeding raises a number of important practical, political, and ethical questions. For example, concern has been expressed that the success of this and other efforts on behalf of defendants ultimately will prove self-defeating when the prosecution adopts similar methods. Possibly, but this result presumes that individual defendants and the government are at present equal consumers of what knowledge is available—an assumption which appears tenuous at best. Considering

1. 347 U.S. 483 (1954).

2. See Schulman, Shaver, Colman, Emrich & Christie, *Recipe for a Jury*, *PSY. TODAY*, May 1973, at 37.

the substantial advantage prosecutors seem presently to have over defendants, the increment in their favor will be minimal compared to the increment in information available to defendants.

There is also some apprehension that researchers actively engaged in partisan causes lose scientific objectivity. Although it may be that objectivity can be retained only with difficulty, the presumption of value-free social science is fast losing support. Indeed, most social psychologists would agree that at least their selection of problems for study, and possibly their choice of methodology, is highly determined by personal values. All that can even purport to be objective is the specific procedure, once it has been selected. Even here, the extensive literature on experimenter bias suggests that social-psychological methodology is, after all, a human enterprise subject to human failings.

Another category of interchange between social psychology and the law includes studies performed apart from any particular legal proceeding but which nevertheless have rather direct implications for aspects of the operation of the criminal justice system. Two recent examples of such research are a study of testimony validity conducted jointly by social psychologists and an attorney³ and a simulation of a prison environment.⁴

In the first situation, study subjects were shown a two-minute color and sound film of an automobile negligence incident and then asked to describe the film under conditions designed to approximate a legal interrogation. Independent variables were the nature of the overall atmosphere of the interview (supportive or challenging) and the kinds of questions employed to expand on the subject's free report of the film (moderate guidance, multiple choice, or leading questions). Although subjects enjoyed the supportive atmosphere more than the challenging one, atmosphere had no significant effect on the accuracy or completeness of recall. In contrast, although question type produced no overall differences in reactions to the interview, it did affect recall.⁵

3. Marquis, Marshall & Oskamp, *Testimony Validity as a Function of Question Form, Atmosphere, and Item Difficulty*, J. APPLIED SOC. PSY., April-June 1972, at 167.

4. P. Simbarido, C. Haney, W. Banks & D. Jaffe, *The Stanford Prison Experiment: A Simulation Study of the Psychology of Imprisonment* (ms. of narration, Stanford Univ. 1972).

5. As the questions became more specific, completeness of testimony increased while the accuracy of material recalled decreased slightly. This apparent trade-off between accuracy and completeness, which became more pronounced for difficult items, has some important implications for courtroom examination techniques. For example, an attorney who desires to construct a complete record while minimizing the opportunity for damaging cross-examination should, when possible, use a number of witnesses to

The second example of relevant social-psychological research, the prison environment simulation, stemmed not from an interest in criminal correctional procedures but rather from an effort to extend a line of research into the antecedents and consequences of deindividuation (the removal of personal identity). Paid male volunteers were prescreened with various personality tests and then randomly assigned to serve either as "guards" or "prisoners" for a two-week psychological study. The prisoners were arrested by the local police and transported without explanation to a simulated prison. Upon their arrival, they were searched, stripped naked, and deloused. Uniforms were issued to humiliate them further and to remove the last traces of their individuality. The guards, whose uniforms and equipment were designed to enhance their anonymity and give them the trappings of authority, were given no special training. They were simply told to "do what was necessary to maintain law and order."

There was no prearranged schedule of operation; the guards were free to establish activities, rules of behavior, and punishments for rule infractions or "displays of improper attitude." On the second day of the study, there was a rebellion which the guards put down by force. To break the prisoners' solidarity, the guards arbitrarily dispensed special privileges to some prisoners. As the days passed, guards became increasingly capricious in their administration of the prison, often refusing prisoner requests to use toilet facilities. The prisoners began to accept their total helplessness. By the sixth day, it had become apparent that not only were the guards and prisoners virtually living their roles but so also were the warden, the prisoners' relatives (who had been given visitation privileges), a former prison chaplain who was evaluating the validity of the simulation, and even an attorney the prisoners had requested. As a result, the proposed two-week simulation was terminated after six days. A series of encounter groups were then conducted in an attempt to deal with what the participants had observed in themselves during the course of the study.

This simulation was concluded less than a month before the riot at the New York Attica penitentiary. One of the demands made by the prisoners at Attica, and one repeated by those in other prisons since, was that they be treated like human beings. The results of the simulation suggest the inherent difficulty in meeting that demand.

establish a complete picture and refrain from overly specific questioning of any particular one.

A final category of interchange between social psychology and the law involves broad assessment of larger portions of the legal system. Areas of recent inquiry have included social-psychological studies of the police,⁶ extensive investigation into the jury system,⁷ and research into aspects of legal socialization.⁸ The study which follows continues the tradition by examining part of the training of future legal professionals—trial practice by law students.

6. Rokeach, Miller & Snyder, *The Value Gap Between Police and Policed*, J. Soc. ISSUES, no. 2, 1971, at 155.

7. H. KALVEN, JR. & H. ZEISEL, *THE AMERICAN JURY* (1966).

8. Symposium, *Socialization, the Law, and Society*, J. Soc. ISSUES, no. 2, 1971, at 1.

William and Mary Law Review

DOCUMENTARY SUPPLEMENT

STUDENT PRACTICE AS A METHOD OF LEGAL EDUCATION AND A MEANS OF PROVIDING LEGAL ASSISTANCE TO INDIGENTS: AN EMPIRICAL STUDY

I. INTRODUCTION

In apparent response to arguments that clinical training is a necessary and neglected element of legal education as well as an appropriate vehicle for providing needed legal assistance, more than 40 states have adopted court rules or legislation permitting limited law student participation in the practice of law. The arguments advanced in support of student practice recently have gained added impetus as a result of the increased need for indigent representation generated by the ruling of the Supreme Court¹ that there is a constitutional right to counsel in all cases involving possible incarceration.

Although authorization of student practice by the vast majority of states indicates that the concept has been generally accepted, the question whether current court rules, legislation, and law school programs are optimum or even adequate to meet the recognized need has remained unanswered. This situation was acknowledged by Professor Charles Knapp of New York University when he recently wrote that "there is precious little hard information now available on the performance of student lawyer programs."²

This study, national in scope, was undertaken to collect and analyze data to aid the legal profession in identifying specific problems associated with student practice. The information was gathered through the direct questionnaire method of survey. Comprehensive questionnaires³ were sent to groups of individuals with first-hand experience in all aspects of student practice. The responding groups included participating stu-

1. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

2. Knapp, *Comparisons and Comments*, in *STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS* 1, 20 (1971).

3. See Appendix II. Several questions used in regression analysis are reproduced in Appendix V.

dents, supervising attorneys, program directors, law school deans, state attorneys general, state bar associations, judges before whom students have practiced, and clients whom students have represented. The questions were designed to elicit perceptions concerning the educational, legal, and social impact of student practice. Four basic statistical methods were used to evaluate the responses: examination of the means of the entire responding population and of individual groups, correlation analysis, analysis of variance, and regression analysis.⁴

The data analysis is intended to assist states and law schools in evaluating existing rules and programs to determine whether they are fulfilling their educational, social, and legal goals. Among the areas which have been treated are the origin and development of student practice; an empirical analysis of the impact of student practice from educational, legal, and social perspectives, including the impressions and perceptions of clients who have been represented by student lawyers; and an examination of student practice as fulfilling the constitutional requirement of "assistance of counsel" and, in contrast, as a potentially disruptive influence on the legal system.

Student practice appears to have been accepted largely on the force of persuasive logic, with only scattered, localized empirical studies of student experience. It is hoped the results of this study will provide the "hard" information so necessary to evaluation of existing student practice rules and implementation of programs facilitating increased student involvement in the legal community.

II. STUDENT PRACTICE RULES: ORIGINS AND DEVELOPMENT

Student practice rules and legislation may be attributed to two independent developments affecting the practice of law. The first is the reform movement in legal education resulting from a recognition of deficiencies in the Langdell "case" method.⁵ The second is the recent judicial expansion of the sixth amendment right to counsel in *Gideon v. Wainwright*⁶ and *Argersinger v. Hamlin*,⁷ *Gideon* extending the right to counsel to defendants accused of felonies and *Argersinger* expanding the right to include all cases where the possibility of a jail sentence exists. Because these developments tend toward the accomplish-

4. For a discussion of the methodology of this study, see Appendix I.

5. See Stolz, *Clinical Experience in American Legal Education: Why Has It Failed?*, in *CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* 54 (E. Kitch ed. 1970).

6. 372 U.S. 335 (1963).

7. 407 U.S. 25 (1972).

ment of sometimes conflicting goals,⁸ a brief examination of their background is essential to an understanding of their influence on student practice rules and the related problems addressed in this study.

A. The Reform Movement in Legal Education

Prior to the twentieth century, a legal education was ordinarily acquired through an apprenticeship. A clerk-student was trained in a law office by copying papers and reading the books of his attorney-employer.⁹ The use of law schools to educate prospective lawyers generally was unknown.¹⁰ The apprentice system, however, proved ineffective and eventually lost its original influence¹¹ because of the "practitioner's lack of time and interest to educate, the scarcity of legal texts, and the fact that most law practices embraced a narrow range of interests."¹²

During the mid- to late-nineteenth century, an alternative to the apprentice system was offered by two influential legal educators, Theodore W. Dwight of Columbia Law School and Christopher Columbus Langdell of Harvard Law School. Although their approaches varied,¹³ both men believed that better lawyers would result from law school

8. See Leleiko, *Student Practice: A Commentary*, in *STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS* 1, 8-9 (2d ed. 1973).

9. A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* (Carnegie Found. Bull. no. 15, 1929).

10. Before the Civil War, however, there existed lecture series at proprietary schools which systematically presented the law using Blackstone as a base. "The lectures, and particularly the notes a student would make from them, were a far more efficient way of learning the general outlines of law than the random information that could be gleaned from the practice of a single lawyer who might, or might not, have some talent as a teacher and some time to spend with his charge." Stolz, *supra* note 5, at 56. Subsequent publication of American texts, including KENT'S COMMENTARIES, reduced the effectiveness of proprietary schools by providing the student-clerk with the same material he could obtain at the lectures. *Id.*

11. The demise of the apprenticeship system has been aptly described as follows: "The clerkship requirement, which used to be so widespread in America, has just about disappeared completely. No one mourns it, as it was administered, because the clerk was trained to be an office boy—not a lawyer." Remarks by William Pincus, American Bar Association Young Lawyers Section Annual Meeting, Aug. 14, 1972. Another factor leading to the decline of the apprentice system was the development of office machinery eliminating the need for the copying of documents by student-clerks. See Stolz, *supra* note 5, at 59.

12. Vetri, *Educating the Lawyer: Clinical Experience as an Integral Part of Legal Education*, 50 ORE. L. REV. 57 (1970). See generally Stolz, *supra* note 5, at 54.

13. For a detailed examination of their individual philosophies and techniques, see Stolz, *supra* note 5.

training in which principles and rules would be abstracted from cases. In the 1890's, this "case method," stressing the use of the library as the sole laboratory of the law school, was first instituted under Langdell's guidance at Harvard. By 1920 almost all law schools had instituted three-year programs using the case method as the basis for legal education.¹⁴

In the 1930's, the emphasis on legal analysis and the "waning significance of the legal clerkship as a device for inculcating practical skills" ¹⁵ was criticized by those desiring to place clinical or "live" training into the law school curriculum. One of the earliest and most vocal of these critics was Judge Jerome Frank, who advocated the abolition of the Langdell case method because of its "exclusion from consideration of the all-too-human clashes of personalities in the law office and courtroom." ¹⁶ Judge Frank proposed a law school centering around a law office with teachers who would guide students through subjects "not discoverable in an ordinary law office. But the bulk of the teaching staff would be in active practice. We would have not a law school but a *lawyer school*." ¹⁷ Although Judge Frank's views were never put into practice,¹⁸ his arguments and criticisms of the case method indicated a need to reevaluate the system of legal education and the goals it sought and seeks to achieve.

In recent decades, methods of legal education have continued to come under attack, not only by educational reformers but also by students,

14. See Stolz, *supra* note 5, at 64. The adoption of the case method in most law schools coincided with the promulgation in 1921 of American Bar Association standards which suggested that, as a condition to admission to the bar, a student was to have three years of legal study or the equivalent thereof. See Stolz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL ED. 37, 37 n.1, 42 n.21 (1973); Stolz, *supra* note 5, at 59 n.15.

15. Vetri, *supra* note 12, at 59.

16. Frank, *What Constitutes a Good Legal Education?*, 19 A.B.A.J. 723 (1933). It has been said that Judge Frank "came within an ace of calling Langdell an emotional cripple who retreated into the library because he could not cope with the real world." Stolz, *supra* note 5, at 72.

17. Frank, *supra* note 16, at 727.

18. Early attempts to incorporate clinical programs into law school curriculums were inadequate in meeting the deficiencies of the case method:

[I]n the days when legal clinics were first attempted—the late twenties and thirties—legal education was moving in hard on the larger dimensions of the commercial world. Law professors were fascinated by the skill of lawyers adapting old forms to the new needs of commerce, by the problems of regulating the economy, and in general, by the legal problems of those that could afford the best legal talent on Wall Street. The problems that clients brought into legal aid clinics were then almost precisely opposite to

judges, lawyers, and the public.¹⁹ Certain recurrent criticisms deserve mention.

First, it has been argued that the exclusive use of the case method fails to achieve the primary goal of legal education—the preparation of lawyers for practice.²⁰ The case method does not develop such skills as fact gathering, client interviewing, negotiation, document preparation, and the planning of case strategy.²¹ One leading critic of current legal education, Chief Justice Warren Burger, has stated that the “modern law school is not fulfilling its basic duty to provide society with people-oriented and problem-oriented counselors and advocates to meet the broad social needs of our changing world.”²² His primary concern has been the heavy emphasis given in law schools to the *solutions* to problems: “Most of the graduates of this system became fine lawyers after several years of supervision by seasoned lawyers or alternatively by the trial-and-error method at the expense of hapless clients. But at the outset many tended to be filled with solutions in search of problems—*solution-trained* without being *problem-oriented*”²³ The Chief Justice also points out specific deficiencies of the young lawyer, stating: “The shortcoming of today’s law graduate lies not in a deficient knowledge of law but that he has little, if any, training in dealing with *facts* or *people*—the stuff of which *cases* are made. It is a rare law graduate, for example, who knows how to ask questions—

the fashion—they were local, usually simple and, within the framework then conceived as possible, tediously repetitive in form and content.

Stolz, *supra* note 5, at 71.

19. The traditional form of legal education, however, is not without its supporters. See, e.g., McClain, *Legal Education: Extent to Which “Know-How” in Practice Should be Taught in the Law Schools*, 6 J. LEGAL ED. 302 (1954), where it is argued that there is a need for scholarship and strong analytical reasoning. See also Clark, “*Practical Legal Training an Illusion*,” 3 J. LEGAL ED. 423 (1951), in which clinical education is criticized as entailing excessive costs and manpower.

20. See Peden, *Goals for Legal Education*, 24 J. LEGAL ED. 379 (1972).

21. See Peden, *The Role of Practical Training in Legal Education: American and Australian Experience*, 24 J. LEGAL ED. 503 (1972). For additional criticism in this area, see Ferren, *Goals, Models and Prospects for Clinical Legal Education*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 94 (E. Kitch ed. 1970); Council on Legal Education for Professional Responsibility, Inc., *Clinical Education—What Is It? Where Are We? Where Do We Go from Here?*, STUDENT L.J., May 1971, at 17 [hereinafter cited as *Clinical Education*]; Note, *The Student Practice Rule: A Proposal for Expansion*, 6 SUFFOLK L. REV. 1007 (1972); Comment, *A Legal Internship Program for the University of Mississippi Law School?*, 41 MISS. L.J. 112 (1969).

22. Burger, *The Future of Legal Education*, STUDENT L.J., Jan. 1970, at 18, 19 (italics omitted).

23. *Id.* at 21.

simple, single questions, one at a time in order to develop facts in evidence either in interviewing a witness or examining him in a courtroom." ²⁴

A second related criticism alleges the failure of traditional methods of legal education to prepare a student for trial advocacy.²⁵ This need has been noted by former Supreme Court Justice Tom C. Clark, who warns emphatically: "We must do something now for the time is late—almost too late—to adequately develop the dedicated core necessary to preserve the art of courtroom advocacy." ²⁶

A third criticism, familiar to most law students and legal educators, is that the third year of law school is boring, repetitive, and devoid of educational value.²⁷ Specifically, it is argued that the methods of legal analysis have been mastered in the first and second years and that continued emphasis on legal analysis makes third-year study meaningless.²⁸ Supporting this view is the suggestion that, given the present-day complexity of law and society, a student cannot familiarize himself with the substance of all areas of the law in which he might practice and that, therefore, a significant portion of a student's legal education should be devoted to classifying problems and locating the applicable law.²⁹

Of the various proposals³⁰ for correcting these three deficiencies, one of the most popular remedies is the use of clinical programs under the

24. *Id.* at 20.

25. See, e.g., Anderson, *Gideon: A Challenging Opportunity for School and Bar*, 9 VILL. L. REV. 619 (1964).

26. Clark, *Problems of Change*, 1968 UTAH L. REV. 347, 352. Another former Supreme Court Justice, Robert H. Jackson, also noted the lack of skill in trial advocacy of recent law graduates. See Jackson, *Training the Trial Lawyer: A Neglected Area of Legal Education*, 3 STAN. L. REV. 48 (1950).

27. See, e.g., Gellhorn, *The Second and Third Years of Law Study*, 17 J. LEGAL ED. 1 (1964).

28. See Johnstone, *Student Discontent and Educational Reform in the Law Schools*, 23 J. LEGAL ED. 255 (1971). Judge Frank believed that legal analysis could be mastered within six months. See Frank, *supra* note 16, at 726.

29. See Gorman, *Legal Education Reform: A Prospectus*, STUDENT L.J., May 1971, at 8.

30. Three basic approaches have been suggested: curriculum reform, abolition of the third year of law school, and clinical education. See Allen, *Legal Education Reforms: The Third Year Problem*, STUDENT L.J., May 1971, at 4. There are, of course, variations of and valid arguments supporting each approach. Student practice is an extension of the clinical reform movement, and discussion herein will be limited to this approach. For proposals on curriculum reform, see Davis, *That Balky Law Curriculum*, 21 J. LEGAL ED. 300 (1969); Gellhorn, *supra* note 27; Johnstone, *supra* note 28. For support of the two-year law school, in which legal education would be directed to preparing a student for admission to the bar, see Gorman, *supra* note 29; Stevens, *The Three Responsibilities of Legal Education: Time for Clarification*, 1 TEXAS TECH. L. REV. 87

supervision of trained attorneys, either in the law school or in private or public law offices outside the control of the school.³¹ Clinical programs vary widely³² in terms of supervision requirements, extent of student participation, types of clients served, program financing, and types of cases included, but they generally have the common objective of developing specific legal skills needed by a practicing attorney—skills not gained through the case method of study. Proponents of clinical education argue that handling “live” cases relieves students of third-year boredom while providing them an opportunity to serve society.³³ Moreover, it has been suggested that professional responsibility is inculcated by permitting supervised client contact.³⁴

Changing philosophies toward legal education have led to the establishment of student practice programs in numerous states. Whether the goals of clinical education have, in fact, been met, or at least approached, by the implementation of current student practice rules and legislation is one of the problems to which this study is addressed.

B. Expansion of the Right to Counsel

Although the educational justifications for student practice have existed for many years, it was not until the late 1960's that most of the present programs were implemented. The major impetus for this spurt

(1969); Stolz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL ED. 37 (1973).

31. A recent study indicates that school-operated and school-supervised law offices are used more often than any other single clinical model. For a detailed examination of clinical programs in use in individual schools, see COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC., *SURVEY OF CLINICAL LEGAL EDUCATION 1972-73* (1973) [hereinafter cited as *SURVEY*]. For general arguments supporting clinical programs, see Anderson & Kornblum, *Clinical Legal Education: A Growing Reform*, 57 A.B.A.J. 591 (1971); Sacks, *Remarks on Involvement and Clinical Training*, 41 U. COLO. L. REV. 452 (1969); Swords, *The Future of Clinical Legal Education in American Law Schools*, STUDENT L.J., May 1971, at 24; Wright, *Progress Toward Legal Internship*, 53 J. AM. JUD. SOC'Y 184 (1969); *Clinical Education*, *supra* note 21.

32. Among the variations are the traditional legal aid clinic, exposure to governmental agencies, clerkships to private attorneys or judges, and “in-house” clinics operated by the law school. Comment, *A Legal Internship Program for the University of Mississippi Law School?*, 41 Miss. L.J. 112 (1969). There are also variations in the school's control over the educational impact on the student. For example, some schools use the “integrative” seminar, where students return to school to discuss their cases with professors in order to prevent an inadequately supervised student from picking up bad habits from private attorneys or public defenders. See *Clinical Education*, *supra* note 21, at 24.

33. See Swords, *supra* note 31.

34. See Peden, *supra* note 21.

of growth was the aforementioned Supreme Court decision in *Gideon*.³⁵ Because this decision placed on the legal system an increased burden of providing legal representation for indigents, the idea of using qualified law students in the courtroom materialized in the form of student practice rules and acts. In *Argersinger* specific recognition was given the possibility of using students in the courtroom to help meet the demands for counsel created by the Court's decisions.³⁶ Whether student advocates have provided adequate representation and thus contributed to the social goals of *Gideon* and *Argersinger* forms another area of inquiry in this study.

C. Growth of Student Practice

A 1905 announcement of the University of Denver School of Law noted the existence of a Legal Aid Dispensary where "[s]tudents meet the clients, write up the office docket and diary, keep the office files, prepare the pleadings and defend them in court, brief the cases, examine and cross-examine witnesses and argue to court and jury; in fact conduct the entire litigation" ³⁷ This program led, in 1909, to enactment by Colorado of the first student practice act in the United States.³⁸ It was not until 1957, however, that two other states followed suit,³⁹ although Massachusetts had permitted the representation of indigents in civil cases on the strength of its highest court's statement in 1935 that "[t]he gratuitous furnishing of legal aid to the poor . . . in the pursuit of any civil remedy . . . do[es] not constitute the practice of law."⁴⁰ Under this rationale, students appeared as citizens aiding indigents and not in their capacity as students.⁴¹

35. *Gideon v. Wainwright*, 372 U.S. 335 (1963). For a detailed examination of the use of student advocates in response to *Gideon*, see Anderson, *supra* note 25; Cleary, *Law Students in Criminal Law Practice*, 16 DEPAUL L. REV. 1 (1966); Monaghan, *Gideon's Army: Student Soldiers*, 45 B.U.L. REV. 445 (1965).

36. *Argersinger v. Hamlin*, 407 U.S. 25, 40-41 (1972) (Brennan, J., concurring).

37. Announcement of the University of Denver School of Law, 1905-06, reproduced in Merson, *Denver Law Students in Court: The First Sixty-five Years*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 138 (E. Kitch ed. 1970).

38. COLO. REV. STAT. ANN. § 12-1-19 (1963) provides: "Students of any law school which has been continuously in existence for at least ten years prior to the passage of this section and which maintains a legal aid dispensary where poor persons receive legal advice and services, shall when representing said dispensary and its clients and then only be authorized to appear in court as if licensed to practice."

39. MASS. SUP. JUD. CT. R. 3:11 (1957); WYO. BAR R. 18 (1957).

40. *In re Opinion of the Justices*, 289 Mass. 607, 615, 194 N.E. 313, 317-18 (1935).

41. See Ridberg, *Student Practice Rules and Statutes*, in CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 223 (E. Kitch ed. 1970).

Although a few states established student practice rules in the decade following 1957, the primary growth of student practice began in 1967 when it was authorized in seven states.⁴² The promulgation of the American Bar Association's Model Rule⁴³ in 1969 prompted most states to adopt similar rules or to originate their own standards of student practice.⁴⁴ Today, of the 44 states having law schools, 40 have authorized law students to appear in court.⁴⁵ The District of Columbia also permits student practice, as does New Hampshire, a state without a law school.⁴⁶ As a result of a recommendation of the Judicial Conference of the United States in 1971,⁴⁷ student practice is expanding on the federal level, with seven district courts and two circuit courts now permitting court appearances by students.⁴⁸

III. EDUCATIONAL IMPACT

State legislation and court rules permitting student practice have been stimulated in part by the need to train students in the various skills required by practicing attorneys, many of which skills, such as client contact methods, fact gathering and analysis, preparation of trial tactics, and trial advocacy, are not conveyed by the exclusive use of the traditional case method. This section of the study will compare perceptions concerning the adequacy of legal education by case method with perceptions of the education received by students participating in student practice. Factors which may influence the quality of education provided by student practice will be examined to suggest methods for improvement. The factors chosen for study include the various types of student practice rules, specific characteristics of supervisors, and the effectiveness of supervision in each of the activities in which students participate.

A. Adequacy of the Traditional Case Method

Exclusive use of the traditional case method was thought by the respondents to provide an inadequate legal education.⁴⁹ While program

42. See Knapp, *supra* note 2.

43. See Appendix IV.

44. For an analysis and comparison of individual state rules and acts, see Appendix III.

45. For the full texts of the state rules and acts, as well as an excellent summary classification table of their provisions, see STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS (2d ed. 1973).

46. *Id.*

47. REPORT OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 80 (1971).

48. See Leleiko, *supra* note 8, at 12.

49. Appendix II, question 46.

directors, supervising attorneys, and students rated the case method as poor, deans and judges evaluated its exclusive use as merely less than satisfactory. The differences in response are statistically significant⁵⁰ but, nonetheless, susceptible to logical explanation. Most deans and judges were educated under the case method, and their personal experience is limited to that method. Students and supervising attorneys, however, are directly exposed to both the case and clinical methods and may evaluate the case method from the perspective of available alternatives.

There was general agreement among all groups about alternatives to the case method. It was felt that the exclusive use of real world situations to educate law students would also be inadequate.⁵¹ Another proposal, the use of mock clinical situations instead of clients with real problems, was strongly disfavored by all categories of respondents.⁵² However, a program combining "real world" clinical methods with the case system was rated from good to excellent.⁵³ These responses evidence a consistent preference for an educational system in which the case method is used as a foundation, supplemented by clinical programs affording exposure to the problems of actual practice.

In addition to being questioned about general attitudes toward the case method, respondents were asked to evaluate the ability of the traditional system to train a student in specific skills.⁵⁴ The case method was rated from satisfactory to good as a means of imparting skills in research and legal analysis. This rating is consistent with the basic tenet of the Langdell method that the law is best studied by extracting the rules of decision from individual cases. Analysis of facts and preparation of appellate briefs were believed to be taught satisfactorily by the case method. Again, these results are to be anticipated in light of the recognized strengths of the Langdell system.

The case method was considered to be poor to very poor with respect to training in other activities. Criticism was most severe concerning the efficacy of the traditional approach in teaching client contact methods, fact gathering, preparation of court documents, and trial advocacy. Consistent with their general attitudes toward the case method, deans and judges were less critical, to a statistically significant degree, of the

50. See Appendix I, note 13.

51. Appendix II, question 47.

52. *Id.*, question 5.

53. *Id.*, question 48.

54. *Id.*, question 49.

ability of the case method to impart these basic skills than were program directors, supervising attorneys, and students.⁵⁵

B. Perceptions of the Educational Value of Student Practice

Initial inquiry into the effects of student practice was made concerning the claim that traditional legal education terminates in a third-year boredom for law students.⁵⁶ It has been argued that clinical education and student practice relieve tedium by channeling a student's energies into more varied and satisfying activities. Respondents to the survey agreed that as a result of student practice third-year boredom is decreased.

This response specifically supports the use of student practice for third-year students but leaves open the question of student practice in the earlier stages of law school. Further inquiry was made to determine whether first- and second-year students should be permitted to participate.⁵⁷ All categories of respondents believed that first-year students should not be included. This response is consistent with the principle expressed earlier that legal analysis taught by the case method remains the necessary foundation of legal education.

Whether second-year students should be permitted to participate in student practice is a controverted issue. There was a significant difference between the responses of program directors, supervising attorneys, and students, all of whom favored such participation, and the opposing opinions of deans, judges, and bar associations. The split may again be explained by the differing perspectives of these groups. On the positive side are the program directors, supervising attorneys, and students—parties who view the programs in terms of their educational benefits. Judges, bar associations, and, to a lesser extent, deans may be more concerned with ensuring adequate client representation and would limit second-year participation on those grounds.

Inquiry was also made into the related question of whether there should be minimum academic qualifications for participating students.⁵⁸ Although it was agreed that at least a passing academic record is needed, there was no agreement as to any higher standard. The proposition that only the top 50 percent of a class should be admitted to student

55. *Id.*

56. *Id.*, question 20.

57. *Id.*, question 10.

58. *Id.*, question 6. Student respondents had a mean grade-point average of 2.86 on a 4.0 scale, with a range from 2.0 to 3.8. *Id.*, question 105.

practice met with slight disagreement, while further restrictions limiting participation to the top 25 or even 10 percent were more strongly disfavored. All respondent categories, however, agreed that students with high academic ranking tend to perform better than those with average grades.⁵⁹ In general, the responses indicate that notwithstanding the better student practice performance of students doing superior academic work, participation should not be limited to such students.

Open participation is consistent with both the educative and social purposes of student practice. As an educational matter, *all* students should have the opportunity to be trained in the various skills required of a practicing attorney. The social goal of ensuring an adequate source of counsel for indigents may be met more fully by removing student practice limitations based on classroom performance. Arguments in favor of open participation, of course, rest upon the assumption that students with minimally satisfactory academic credentials can perform adequately in the practical situation. The responses indicating superior clinical performance by highly-ranked students do not compel the inference that the performance of other students will be unacceptable. The assumption that students with satisfactory academic credentials can perform adequately in student practice would seem justified by the fact that admission to the bar requires no more than minimum academic credentials.

Two questions were employed to assess the educational value of student practice. The first asked the respondents to compare generally the legal education received by a participant in student practice with that received by a nonparticipating student.⁶⁰ All categories of respondents rated the legal education which includes student practice from better to much better, implying that student practice is perceived as having a strong, positive impact on a law student's education.

The second question elicited perceptions of educational impact according to specific activities engaged in by a practitioner.⁶¹ The training in specific activities through student practice was compared to that gained by nonparticipants, with the range of responses indicating that an education including student practice varies from somewhat better to

59. *Id.*, question 40.

60. *Id.*, question 39. Although students and supervising attorneys rated the education received through student practice more favorably than did the deans, program directors, and bar associations, the differences were not statistically significant.

61. *Id.*, question 41.

much better than the education received by a nonparticipating student.⁶² Activities in which student practice was perceived as having less significant benefit include research, analysis of legal issues, and the preparation of appellate briefs. These responses are consistent with the previously discussed opinions that the education received by students in these areas under the case method rates from satisfactory to good. Thus, although exposure to these activities is increased by student practice, training in them received by a participating student cannot be said to be significantly better than that imparted by the case method alone.

The specific activities in which student practice was perceived as providing superior training are client contact methods (interviewing, advising, negotiating), fact gathering, preparation of court documents, the use of discovery techniques, and various aspects of trial advocacy. Again, the responses rating student practice as better than the case method in these areas correspond to the evaluations of the case method as poor to very poor vis-à-vis the specific activities. Significantly, perceptions of the strongest educational impact are in areas with which legal writers have been most concerned, that is, fact gathering and trial advocacy.⁶³ It appears that student practice has filled some of the educational gaps left by the case method system⁶⁴ and, at least with respect to the various practical skills, must be given an overall favorable rating.

62. These categories of skills and activities are the same as those used in question 49 to evaluate the case method, thus providing a basis for comparison and analysis.

63. For a discussion of the criticisms of legal education in these areas, see notes 20-26 *supra* & accompanying text.

64. Over 90 percent of the student respondents had participated in the pretrial activities of interviewing and advising clients, gathering and analyzing facts, researching and analyzing legal issues, and preparing court documents, while from 60 to 90 percent had engaged in such activities as negotiating settlements, using discovery techniques, preparing trial arguments, making pretrial motions, conducting direct and cross examination, and raising timely objections at trial. Less than half of the students had prepared appellate briefs, and only a quarter had presented oral argument on appeal. Appendix II, question 109. The students worked an average of 20 hours per week in student practice. *Id.*, question 107. Although 70 percent spent lesser amounts of time, the few students who spent as many as 50 hours per week somewhat inflated the average.

The average number of cases in which a student had participated was 29. *Id.*, question 106. The range of response, however, was from one to over 200, and two-thirds of the students had participated in less than the average. Sixty-six percent of the students had participated in civil cases in court, while 76 percent had been involved with such cases out of court. With respect to criminal cases, 63 percent of the students had participated in court and 58 percent, out of court. Thirty-seven percent of the responding students had appeared before administrative tribunals. *Id.*, question 108. While not indicating the exact fields of law in which students had participated, the figures do show

C. *Factors Influencing Student Practice Education*

The quality of education acquired by a law student participating in student practice is dependent upon complex variables too numerous to be analyzed completely on the basis of the data gathered in this survey. Nevertheless, a substantial number of factors believed to be relevant in measuring the value of such education were examined.

The broadest factor considered to have a possible effect on the education received by the student practitioner is the nature of the state student practice rule which authorizes participation.⁶⁵ Variations in the major provisions of such rules might be thought to produce significant differences in the educational value of student practice. No significant differences were discovered, however, when the responses concerning the comparative value of student practice generally and for specific skills were classified according to the various rule provisions in the jurisdiction of the particular respondent. These provisions concerned student qualifications, nature of the client, nature of the case, nature of the tribunal, extent of practice permitted, and the extent of personal supervision required. It appears, then, that there is no significant relationship between the education received by a student and the student practice rule provisions authorizing his practice.

It is equally apparent, however, that the state rules are not followed literally. For example, many attorneys personally supervise "in fact" ⁶⁶ much more than required by the rules, and students may be expected to engage in many activities not expressly authorized. Thus, while student practice rules seem to provide basic limitations and procedures governing student appearances in the courtroom, there is no direct correlation between the literal import of the rules and perceptions of the education obtained thereunder. Indeed, the perceptions may reflect only the day-to-day implementation of the rules, thus necessitating an inquiry into narrower factors.

Student practice has been implemented primarily through various types of clinical programs.⁶⁷ The educational impact of student practice

a broad involvement in civil, criminal, and administrative matters, with many students participating in more than one area.

65. For an analysis and comparison of individual state rules and acts, see Appendix III.

66. See note 70 *infra*.

67. Many differences are observable among clinical programs presently in force. In a recent survey by the Council on Legal Education for Professional Responsibility, Inc. (CLEPR), 34 percent of the programs surveyed provided for the gathering of facts, 31 percent included drafting and brief writing, 30 percent involved case strategy, and

must therefore be studied in relation to the differing contexts of clinical programs with which the respondents were familiar.⁶⁸ Both for the general evaluation and for the specific activity questions, no statistically significant differences were observed among responses which could be attributed to the particular type of clinical program. It should be noted, however, that the type of program most strongly perceived as providing a much better education for participating students as compared to nonparticipating students was that in which students worked outside of the law school *without* law school supervision.⁶⁹ The relevancy of this finding should be considered in the context of specific supervisory characteristics and supervision activities.

Factors relating to the various types of supervisors, their backgrounds, the number of students they supervise at a given time, and their specific

less than 30 percent provided for training in negotiation and trial advocacy. *See* SURVEY, *supra* note 31, at viii. The CLEPR survey considered 324 clinical programs at 117 reporting schools and included many programs not specifically oriented toward student practice. The figures found in the present study concerning participation in specific activities of clinical training may be reconciled when it is recognized that the present survey was specifically directed to programs which involve students in the courtroom. By the very nature of these student practice programs, students are permitted to participate in all forms of trial and posttrial activities, as well as the pretrial activities of client contact found to occur in high percentages of *all* clinical programs.

The specific kinds of programs and the percentages of the respondents participating in each in the present survey were as follows: law school operated and supervised (in-house programs)—45 percent; placement of students outside of school with some school supervision—29 percent; placement outside of school without school supervision—12 percent; classroom course with occasional outside case handling—3 percent; students working with faculty on selected cases—1 percent; and, a combination of several of the above models—10 percent. Appendix V, question Q-4. All of these programs were elective and gave some academic credit, 78 percent giving the equivalent of one classroom course credit. *Id.*, question Q-6.

In house programs represented only 28 percent of the total in the CLEPR study, while programs involving placement without supervision constituted 24 percent. One explanation of the discrepancies between the CLEPR study and the present survey may be the methodology used here. Questionnaires were sent directly to law schools, rather than to placement agencies, and the schools probably used their own in-house programs to complete the questionnaires as a matter of convenience. *See* Appendix I. Another explanation may be that where programs involve student participation in court, they are less likely to be without some law school supervision, in order that the school may retain control over the education received by a student in trial advocacy and ensure compliance with the supervision requirements of student practice rules.

68. *See* Appendix V, question Q-4.

69. With reference to perceptions of the general educational impact of student practice requested in question 39, respondents involved in placement programs outside law schools without school supervision supplied a rating of 1.333, as compared with 1.675 for those involved in placement programs with law school supervision and 1.615 for those familiar with law school-operated programs.

supervision methods were examined⁷⁰ to determine the influence, if any, of such factors upon the supervisors' perceptions of the educational impact of student practice. Although no significantly different educational evaluation was associated with the type of supervisor—outside placement or in-house—placement supervisors tended to assign a slightly higher educational valuation than did law school (in-house) super-

70. Supervising attorneys initially were asked to characterize themselves as one of five kinds of supervisors generally found in most clinical programs. Appendix II, question 94. The largest group of respondent supervisors were nonpaid attorneys not on a law school staff. This group, typical of placement-type clinical programs, represented 26 percent of the responding supervisors. Twenty-four percent of the supervisors were permanent law school staff members assigned fulltime to clinical programs (in-house supervisors). A third group, paid attorneys not on the law school staff, constituted 22 percent of the responding supervisors. The final two groups, public defenders and law school staff members assigned parttime, each numbered 6.5 percent.

Supervisors also were asked how long they had practiced as trial attorneys. *Id.*, question 95. With a range from one to 40 years, the average was 8.8 years. However, over one-half of the supervisors had less than four years of trial experience, and only 25 percent had experience of more than 15 years. Law school staff members serving as supervisors had not engaged in fulltime trial practice, on average, for over 11 years. *Id.*, question 96. Eighty percent of the supervisors in this group, however, had practiced fulltime within the past six or fewer years.

A related area of inquiry was whether the attorneys had undertaken any specialized training before becoming a student practice supervisor. *Id.*, question 100. Only seven supervisors indicated any such training; of these, five characterized their training as "on the job," while only one attorney indicated having had any formal instruction. As a group, then, the supervising attorneys responding to the questionnaire had a moderate amount of trial experience but little formalized instruction in student supervising techniques.

Two critical questions concerned the number of students a supervisor works with at one time and the hours per week spent with each student. *Id.*, questions 97 & 98. With a range of one to 45, the average number of students a supervisor works with concurrently is nine. Although 60 percent supervise nine students or fewer, 10 percent of the responding supervisors work with more than 20 students at a time. Thus, the average was somewhat inflated because of the few attorneys who supervise very large numbers of students. Concerning the hours spent each week with a student, the average is 5.3 hours; although the range is one to 40 hours, all but one supervisor spends 16 or fewer hours per week per student.

A final area of inquiry concerning supervising attorneys was an examination of the activities they personally supervise, irrespective of whether the supervision is required by state rule or by the individual program in which they participate. *Id.*, question 99. Seventy-eight percent of the attorneys personally supervise students in the negotiation of settlements and the preparation of court documents. Approximately 70 percent supervise activities such as analysis of legal issues, use of discovery techniques, selection of trial arguments, making of pretrial motions, conduct of direct and cross examination, and preparation of appellate briefs. Less than 50 percent of the attorneys, however, personally supervise the advising of clients, legal research, analysis of facts, raising of objections in court, or presentation of oral argument on appeal. In the areas of interviewing clients and gathering facts, only 38 percent of the attorneys provide personal

visors,⁷¹ a trend for which two separate explanations are plausible. It may, of course, be that students in placement programs actually receive better training in clinical skills than do students participating in in-house programs. An alternative possibility, not disposed of by this survey, is the perspective of student practice of each of the two types of supervisors. In-house supervisors associated with law schools would be concerned specifically with the educational goals of clinical programs and might be somewhat more critical when their full potential is not realized. Placement supervisors, however, while *believing* that students receive an excellent training, might not have any specific educational goals in mind and may in fact be providing substandard supervision. This analysis is supported, in part, by responses indicating that supervision by a fulltime law school staff member is considered better to much better than that provided by an unpaid placement supervisor.⁷²

Another factor meriting examination is the average number of students supervised at one time by an individual supervisor. Although there was no statistically significant difference in response according to the number of students supervised, respondents supervising fewer students at a time were more likely to perceive the greatest educational impact of student practice, both generally and in all specific activities.⁷³ With respect to the average number of hours spent by the supervisor with each student over a given period of time, however, there was a significant difference in perception of educational impact as between those supervising each student more than 10 hours per week and those spending three or fewer hours.⁷⁴ Supervisors devoting the greater amounts of time perceived a higher educative value in student practice than did those spending less time with their programs. These differences held true for evaluations of student practice generally and for all of the

supervision. It is significant to note that most state rules and acts require very few of the above activities to be personally supervised. It thus appears that much "in fact" personal supervision is used in individual clinical programs.

71. The mean response of nonpaid placement supervisors to question 39 was 1.400 and that of paid placement supervisors, 1.500. Law school staff members rated the educational impact of student practice at 1.900.

72. Appendix II, question 42.

73. Responses to question 39, broken down by the number of students supervised by each responding attorney, were as follows: 1-9 students—1.333; 10-19 students—1.909; 20-40 students—1.500. A similar pattern was obtained upon a breakdown of responses to question 41.

74. Responses to question 39, broken down by the time spent by the responding supervisor with each student, were as follows: 0-3 hours/week—1.800; 4-9 hours/week—1.167; 10-40 hours/week—1.111.

specific activities examined. The perceived educational value of student practice thus varies directly with the time devoted to supervision of the student.

There also appears to be a direct positive correlation between the amount of supervision provided at particular stages of a case and its perceived effectiveness.⁷⁵ The greatest amount of supervision was reported at the document preparation and trial stages, where supervision also was perceived as most effective. Interestingly, there was a significant difference in the responses of supervising attorneys and students as to the amount of supervision given in the fact-gathering stage of a case. While supervisors saw themselves as providing a relatively high amount of supervision with similar effectiveness, students indicated the amounts given were lower with only average effectiveness. It seems fair to say that students desire more supervision in gathering facts while supervisors are overestimating the aid they provide at this stage.

A final area of significance relative to supervision techniques involves the factors considered in the assigning of a case to a student.⁷⁶ Over 60 percent of the supervising attorneys reported considering the complexity of the facts and legal issues, while more than 50 percent of the supervisors consider the amount of time a case will involve, the probability of its going to trial, and the nature of the client, as well as the abilities and particular interests of the student. Significantly, although approximately two-thirds of the law school staff supervisors consider the overall educational benefit of a case to the student, less than one-fifth of the placement supervisors do so. This finding is consistent

75. Appendix II, question 91. Responses were elicited concerning the topics discussed by students and supervisors and the times at which these discussions occurred. *Id.*, question 110. Although over 70 percent of the students discussed their general progress, case strategy, trial tactics, and evaluation of work with their supervisors, only 45 and 37 percent did so with respect to the gathering of factual information and client contact methods, respectively. Seventy-one percent of the students reported that discussions occurred in most, if not all, of the cases in which they participated, while 14 percent had consultations only with respect to the most difficult cases and 8 percent, only the first few cases handled. Taken together, these statistics indicate that the normal supervisory procedure involves consultation on a case-to-case basis, dealing primarily with general progress, case strategy, and trial tactics.

Various respondents were asked to name the three areas in which the most supervision is given and to list the three activities with the least supervision. *Id.*, question 89. The most supervised activities are advising clients, analyzing legal issues, and preparation of court documents. The least supervision is provided in interviewing of clients, gathering of facts, and legal research.

76. *Id.*, question 104.

with the earlier suggestion that in-house supervisors are more concerned with the education of a student than are placement supervisors.⁷⁷

D. Adverse Educational Effects of Student Practice

Discussion of survey data thus far has indicated that student practice has a positive impact on a participant's legal education. Nevertheless, clinical programs have been criticized by some legal educators as requiring too much of a student's time, with the consequence that his interest in classwork diminishes, and, ultimately, his academic performance suffers. Of the student, supervisor, and program director respondents, 46 percent reported that participation in student practice adversely affects a student's normal academic performance.⁷⁸ These adverse effects, although appearing to be, for the most part, minor day-to-day problems, must be weighed against the overall positive effects attributed to student practice. A need for further inquiry into the specifics of adverse effects is indicated.

IV. PROFESSIONAL RESPONSIBILITY

Proponents of clinical education frequently have cited education in professional responsibility as a primary benefit to be realized by a departure from traditional legal teaching methods. A widely shared view at a 1956 conference of the Association of American Law Schools was that "the broad impact on problems of public responsibility of the legal profession, of movements in legal education since Langdell's institution of the case method in 1890, was a negative one."⁷⁹ Clinical education is only one of a number of suggested means of instilling professional responsibility. Others include cocurricular activities,⁸⁰ "pervasive" approaches,⁸¹ social problems⁸² and perspective⁸³ courses, and approaches with such exotic names as "fertile chaos."⁸⁴ The problems

77. No significant differences were found in responses of the two types of supervisors with respect to other factors considered in the assigning of cases.

78. *Id.*, question 90. The most frequent complaints include poor class attendance and lack of preparation when present. A loss of interest in the case method was also noted.

79. J. STONE, *LEGAL EDUCATION AND PUBLIC RESPONSIBILITY* 79 (1959).

80. Weckstein, *Perspective Courses and Co-curricular Activities*, 41 U. COLO. L. REV. 398, 407 (1969).

81. Smedley, *The Pervasive Approach on a Large Scale—"The Vanderbilt Experiment,"* 15 J. LEGAL ED. 435 (1963).

82. Weckstein, *supra* note 80, at 401.

83. *Id.* at 400.

84. J. STONE, *supra* note 79, at 398.

involved in teaching professional responsibility have been abundantly described and debated in the literature.⁸⁵

Significant efforts have been made during the past 15 years to employ clinical methods, including student practice, to foster a higher sense of professional responsibility. Incentive for these experiments has emanated not only from the persuasive arguments in the literature but also through the generosity of the Ford Foundation, which has made various grants totaling several million dollars for the purpose of supporting improvements in clinical education and professional responsibility generally.⁸⁶

The interest in instilling professional responsibility has been sustained despite some questions that have arisen as to the possibility of achieving any substantial results.⁸⁷ A study of 1964 law school graduates found that the percentage of "ethical" responses to a study questionnaire increased by only 6.4 percent between the first and third years of law school.⁸⁸ Furthermore, even this figure is somewhat deceptive in that it masks a contradictory trend among individual students: approximately 20 percent of the students provided more ethical responses after three years of law school, but 15 percent chose less ethical answers

85. For a comprehensive bibliography, see 41 U. COLO. L. REV. 467 (1969).

As of the late 1960's, however, the meaning of the fundamental concept of "professionalism" had received little discussion in the literature. Watson, *The Quest in Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91, 132 (1968). A currently accepted formulation of professional responsibility suggests that the concept embraces professional ethics, public responsibility, and professional competence. Sacks, *Student Fieldwork as a Technique in Educating Law Students in Professional Responsibility*, 20 J. LEGAL ED. 291, 292-93 (1968).

86. In 1959 the Foundation donated \$850,000 to the National Legal Aid and Defender Association to be devoted to upgrading the public responsibility of the profession. This grant led to the creation of the National Council on Legal Clinics, which conducted clinical programs in professional responsibility. After the National Council exhausted its financial resources, its work was taken up by the Council on Education for Professional Responsibility of the Association of American Law Schools, which received a grant of \$950,000 in 1966 from the Ford Foundation. Subsequently, in 1968, the Foundation funded a separate entity, the Council on Legal Education for Professional Responsibility, with a \$6 million grant to cover the first five years of an expected ten-year existence, during which it is to support experiments in clinical education.

87. See Smith, *Is Education for Professional Responsibility Possible?*, 40 U. COLO. L. REV. 509, 510-11 (1968).

88. W. Thielens, *The Influence of the Law School Experience on Professional Ethics of Law Students*, August 31, 1966 (unpublished paper in Columbia University Library). Thielens' results are discussed in Smith, *supra* note 87. His study covered four eastern law schools, sampling members of the entering class in 1961 and the same class when it graduated in 1964. The questionnaire consisted of five conflict of interest fact situations for which the students were to select the correct "ethical" response.

upon graduation. Defenders of education in professional responsibility have noted that the 1964 study made no attempt to distinguish responses according to the type of ethical training the students had received.⁸⁹ Another study which did account for training differences, however, appears to offer some support for the conclusions reached in the 1964 study.⁹⁰

It was not within the scope of the present survey to inquire whether students who had participated in student practice went on to become more professionally responsible attorneys than students who did not participate. Rather, the survey was limited to asking whether certain characteristics of professional responsibility are associated with students while they are involved in student practice, particular emphasis being given certain provisions of the American Bar Association Code of Professional Responsibility thought to present the greatest difficulty for students.

A. Compliance with Minimal Standards of Professional Responsibility

The ethical aspect of professional responsibility embraces the necessity of adherence to the minimal rules of the profession, as well as attempts to fulfill higher ethical goals.⁹¹ The first component is reflected directly in the ABA Disciplinary Rules; the second is at least partially incorporated within the whole fabric of the Code of Professional Responsibility.⁹²

That the moral guidelines of the profession constitute an important aspect of student practice is supported by 85 responses from program directors and students indicating that student practitioners do encounter actual ethical questions; only five respondents asserted that stu-

89. Weckstein, *supra* note 80, at 399.

90. R. Simon, Evaluation of the 1963-64 Professional Responsibility Program, 1965 (unpublished report for the National Council on Legal Clinics). The results of this study are discussed in Smith, *supra* note 87, at 525-26. Smith quotes the study's summarization of results and comments on it: "Program students on the average showed a greater shift in the more ethical direction . . . than did the control students . . . [but] were no more likely to show an increase in per cent ethical response. . . ." If I read [Simon's] statistics correctly, she corroborates in most respects the findings of Thielen in terms of percentage ethical change." *Id.* at 526.

91. Sutton, *The American Bar Association Code of Professional Responsibility: An Introduction*, 48 TEXAS L. REV. 255, 258 (1970).

92. *Id.*; Wright, *The Code of Professional Responsibility*, 14 ST. LOUIS U.L.J. 643 (1970). But see Wallace, *The Code of Professional Responsibility—Legislated Irrelevance?*, 48 TEXAS L. REV. 311 (1970).

dent participants do not meet such problems.⁹³ Apparently, the profession agrees that student practice is something other than a harmless educational experiment, since unethical acts by students were thought to be at least as likely to be reported to responsible officials as were similar acts by attorneys.⁹⁴

In view of some assertions in the literature that students may become as deeply involved in 50 dollar disputes as do practicing attorneys in major antitrust litigation,⁹⁵ respondents were asked⁹⁶ whether a student's zeal might be inconsistent with his professional responsibility,⁹⁷ especially where there is an emotional commitment to the client or the case. Although no group thought an excess of zeal occurs more often than occasionally, the responses of judges reflected a substantially greater awareness of the problem than did student responses; program directors and supervising attorneys took a position midway between these two groups. The polarities of opinion may indicate widely differing concepts of the proper balance to be struck between commitments to the legal system and to clients.

Campus activism was not thought⁹⁸ to create conflicts of interest⁹⁹ for student practitioners, presumably because it was felt students effec-

93. Appendix II, question 103. A somewhat sadder confirmation is found in the fact that of the 225 respondents, three reported malpractice actions resulting from student practice, 16 reported instances of judicial discipline, 27 reported instances of prejudicial handling of client interests, and one respondent reported a student being prohibited from joining the bar because of unprofessional acts. *Id.*, question 111. It should be noted that the actual numbers reported have questionable significance. Because no details of the instances were supplied, there was no check on redundancy among the reports; since there were usually several respondents from each program, it seems likely that the same instances would be reported by more than one person. Furthermore, the respondents were not limited to reporting instances from within their own jurisdiction or within any time limit, thereby creating the possibility that one instance might be reported by respondents from several jurisdictions. Although the specific numbers reported are of doubtful significance, the fact that *some* instances were reported indicates that there are ethical realities which students must face.

94. *Id.*, question 64.

95. AMERICAN BAR ASSOCIATION, REPORT OF THE AMERICAN BAR ASSOCIATION SECTION ON JUDICIAL ADMINISTRATION (1969).

96. Appendix II, question 50.

97. See ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 7-102.

98. Appendix II, question 76.

99. ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 5-101. Although this disciplinary rule appears to speak primarily to financial conflicts of interest, its broader purpose is to ensure that the client will have the full commitment of his attorney. "When a client engages the services of a lawyer in a given piece of business he is entitled to feel that, until that business is finally disposed of in some manner, he has the undivided loyalty of the one upon whom he looks as his advocate and champion." *Grievance Comm'n v.*

tively separate ideological goals from client interests. This conclusion is supported by responses indicating that students are only slightly more willing to work hard for a disadvantaged client than for other clients.¹⁰⁰ Even this slight perceived tendency to discriminate between types of clients was diminished in jurisdictions where students are bound by the standard state oath instead of some special student variation.¹⁰¹

Any popular conception that student practitioners are likely to stir up litigation and to solicit clients¹⁰² is refuted by responses to questions on this subject.¹⁰³ A comparison of responses from states where students are limited to the representation of indigents with responses from jurisdictions where students may represent any individual indicates that students in the former category are less likely than those in the latter category actively to seek clients, either for their programs¹⁰⁴ or themselves.¹⁰⁵

Regardless of the type of representation permitted, however, the incidence of student solicitation of clients was perceived to be insubstantial. Opinions differed significantly among the respondent groups, but most groups reported that solicitation seldom occurs.¹⁰⁶

There was a clear consensus¹⁰⁷ that students very rarely advise a disadvantaged client to take questionable action because of purported

Rattner, 152 Conn. 59, 65, 203 A.2d 82, 84 (1964). The rule thus would appear to prohibit an attorney from accepting employment if he could not give his full assistance to the client for ideological or political reasons.

100. Appendix II, question 83. Although there were no statistically significant differences among group responses to this question, it is interesting to note that the students themselves indicated the least student preference for disadvantaged clients. Students were also thought to have a slight preference for representing indigent clients rather than the state. *Id.*, question 82.

101. The correlation between question 83 in Appendix II and question Q-9 in Appendix V indicates that there is only a .040 probability that it could occur by mere chance.

102. See ABA CODE OF PROFESSIONAL RESPONSIBILITY EC 2-3, 2-4.

103. Appendix II, questions 51 & 52.

104. Mean response for question 52B according to permitted client type in the particular jurisdiction is as follows: indigent and state—5.269; indigent only—5.412; state and any individual—5.133; any individual—4.286; no rule provision—4.947.

105. Mean response to question 52A breaks down by permitted client type as follows: indigent and state—4.917; indigent only—5.235; state and any individual—5.125; any individual—3.500; no rule provision—4.529.

106. Interestingly, programs in which supervisors had had formal training were the most likely to report the stirring up of litigation. The correlation between questions 51 (Appendix II) and Q-3 (Appendix V) was such that there was only a .001 probability it could occur by mere chance.

107. Appendix II, question 53.

inequities in the legal system.¹⁰⁸ The respondent groups also agreed that students generally will attempt to prevent a client from taking illegal action, both in connection with a particular case¹⁰⁹ and in his affairs generally.¹¹⁰ Since it would seem that occasions for students to advise clients against improper client action rarely arise, it is noteworthy that five of the 19 client respondents reported that their student advocates had told them not to undertake certain actions because they were illegal.¹¹¹

Responses also generally indicate a disinclination on the part of student practitioners to advance arguments known to be contrary to existing law.¹¹² Although the Code of Professional Responsibility recognizes that there may be legitimate occasions for such arguments, it warns against abuse of the practice.¹¹³ As to whether students advanced such arguments to the prejudice of their clients' interests,¹¹⁴ judges tended to perceive a significantly higher incidence of the practice than other respondents, although even they indicated it seldom occurs. There was, moreover, general agreement that students are less likely to use arguments known to be contrary to existing law than are either newly licensed attorneys or typical attorneys of average experience.¹¹⁵

All respondent groups agreed¹¹⁶ that students adequately maintain client confidences.¹¹⁷ For the most part, it was thought that the students protect confidences as well as do newly licensed attorneys¹¹⁸ and typical attorneys of average experience,¹¹⁹ although there was some very slight indication to the contrary. A higher degree of supervision generally was associated with better protection of confidences.¹²⁰ In addition, the type of client represented has some significant relationship to student protection of confidences, with respondents from jurisdictions

108. See ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 7-102.

109. Appendix II, question 15A.

110. *Id.*, question 15B.

111. *Id.*, question 128.

112. See Appendix II, questions 55 & 66.

113. ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 7-102.

114. Appendix II, question 55.

115. *Id.*, question 66.

116. *Id.*, question 16.

117. See ABA CODE OF PROFESSIONAL RESPONSIBILITY DR 4-101.

118. Appendix II, question 44A.

119. *Id.*, question 44B.

120. Questions 91A, 91B, and 91E correlated significantly with question 44A. Questions 91E and 91F correlated significantly with question 44B. These correlations would appear to be important as indicating the effect of supervision generally rather than at a specific stage of a case.

in which students may represent any individual indicating a lesser degree of confidence protection than did those from states in which only indigents may be represented.¹²¹

B. Ethical Aspirations

At another level of professional responsibility, the practicing bar is concerned not with mere compliance with ethical minimums but with the broader question of whether a sufficiently high ethical standard has been established. Stated otherwise, ethical standards, beyond ensuring minimally acceptable practices, should encourage the pursuit of loftier professional goals. An attempt to set forth these aspirations is embodied in the Ethical Considerations of the Code of Professional Responsibility.¹²²

There was wide agreement that student practice instills in the student an awareness of the effects of his actions and that personal involvement with clients introduces him to the human aspects of the practice of law.¹²³ A greater range of opinion was evidenced by the different respondent groups when asked whether students show more concern for professional responsibility and ethics than do either newly licensed attorneys¹²⁴ or typical attorneys of average experience;¹²⁵ judges felt that students are no more responsive to problems of professional responsibility than are practicing attorneys, while bar associations suggested that students are significantly more concerned than are experienced attorneys. Other respondent groups fell in between these two extremes, with students generally comparing favorably with licensed practitioners.

Students were thought by all respondent groups to be more sensitive to deficiencies in the legal system than is the average member of the legal profession.¹²⁶ It also was generally agreed that student practice motivates students to correct deficiencies in the system, although there

121. Mean response for question 44B breaks down according to nature of client permitted to be represented by students as follows: indigent and state—3.134; indigent only—3.214; state and any individual—3.154; any individual—4.000; no rule provision—3.227.

122. See Sutton, *supra* note 91, at 258.

123. Appendix II, question 28. Although there was substantial disagreement among the respondents as to the effects of supervision on the student's feeling of responsibility for his client's interests, a large majority believed that increased supervision is beneficial, at least up to some undefined point. *Id.*, question 71. Perhaps the best interpretation of this response is that the respondents recognize the possibility of excessive supervision, but they do not believe that point is often reached.

124. *Id.*, question 78.

125. *Id.*, question 79.

126. *Id.*, question 80.

was a tendency to perceive this effect as moderate rather than substantial.¹²⁷

A widely noted study of the New York City bar indicates that general ethical conduct is likely to be affected by peer group influence.¹²⁸ If, as some have argued,¹²⁹ this influence is more significant than influences derived from legal studies, then a sampling of perceived student impressions of the legal profession, soon to become the student's peer group, should be revealing. Respondents were asked whether they felt student respect for various aspects of the legal profession is increased or decreased by student practice.¹³⁰ Although this question produced some of the most varied responses in the survey, there was, on balance, an indication that students tend to gain some slight respect for the legal system as a result of student practice. Judges consistently reported the greatest perceived increase in student respect for the legal system, while program directors tended to find some decrease in respect. Students themselves reported a slight decrease in respect for the abilities and ethics of individual members of the bar, a very slight increase in respect for the legal profession and the legal system as a whole, and no change in their opinions of the courts.¹³¹

A factor bearing a significant relationship to the responses concerning student respect was the type of good character certification a respondent thought should be required for student participants.¹³² For each question, respondents who believed character certification should be made by both the dean and by bar members were significantly more likely to find an increase in student respect for different aspects of the legal system than respondents who believed no certification of character should be required. Development of student respect also appears to be

127. *Id.*, question 77.

128. J. CARLIN, *LAWYERS ETHICS: A SURVEY OF THE NEW YORK CITY BAR* 148 (1966). Carlin concluded that the common standards of honesty within the profession were no different from those of outsiders but that adherence to the type of ethical standard for the profession expressed in the Code of Professional Responsibility is affected by the setting in which a lawyer operates, by his own inner disposition to conform, and by the influence of other attorneys with whom he has contact.

129. Smith, *supra* note 87, at 534.

130. Appendix II, question 24.

131. *Id.*

132. Mean responses for questions 24A through 24E break down according to the program character certification that respondents thought should be required as follows: by dean—(24A) 3.820, (24B) 4.000, (24C) 3.375, (24D) 3.400, (24E) 3.540; by bar—insufficient response; by both—(24A) 3.372, (24B) 3.405, (24C) 3.023, (24D) 3.023, (24E) 2.881; by no one—(24A) 4.736, (24B) 4.792, (24C) 4.167, (24D) 4.400, (24E) 4.545; other—(24A) 3.917, (24B) 3.952, (24C) 3.542, (24D) 4.166, (24E) 4.083.

related to the degree of supervision. Perceptions of increased student respect for the ethics and abilities of bar members tended to be greatest for respondents associated with programs with small numbers of students assigned to each supervisor.¹³³ If ethical conduct indeed is affected by peer group influence,¹³⁴ then the relationship of close supervision to increased student respect is perhaps the most important finding in this area of inquiry. Since the decisive peer influence will come from what the student believes to be the operational norms, both in terms of competence and ethics, of members of the profession with whom he has contact, a close relationship with his supervisor can be expected to have a significant effect on the student's opinion of the lawyers who will become his peers.

V. ASSISTANCE OF COUNSEL

Discussion of survey results thus far has concentrated on the impact of student practice as a method of education in general legal skills and in professional responsibility. Equally important, however, are the effects of student practice on the administration of justice. To this end, inquiry was made into the quality of representation provided by the student practitioner and the effects of student practice on the functioning of the legal system. A brief examination of the societal need for additional sources of legal assistance and the justification for student practice in this respect will provide a helpful perspective.

A. Development of the Right to Counsel

The sixth amendment provides: "In all criminal prosecutions the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."¹³⁵ In 1963 the Supreme Court held in *Gideon v. Wainwright*¹³⁶ that the assistance of counsel in a state felony trial is a fundamental right; conviction without legal representation in such cases violates the accused's right to due process under the fourteenth amendment. Nine years later in *Argersinger v. Hamlin*¹³⁷ the Court extended the right to counsel to all cases in which the possibility of a jail sentence exists, stating that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misde-

133. The relationship between questions 24A and 24B and question 97 was such that there was less than .05 probability that it would occur by mere chance.

134. See note 128 *supra* & accompanying text.

135. U.S. CONST. amend. VI.

136. 372 U.S. 335 (1963).

137. 407 U.S. 25 (1972).

meanor, or felony, unless he was represented by counsel at his trial.”¹³⁸

Although these decisions evidence the desirable social goal of ensuring that persons facing possible incarceration be represented by counsel, it is clear that to provide counsel to all criminal defendants will have a substantial impact upon the legal system, both in terms of the need for more attorneys to represent indigents as well as the additional financial burdens placed on the system. Concurring in *Argersinger*,¹³⁹ Mr. Justice Powell discussed this “magnitude problem.”

The *Argersinger* majority had estimated that only 1,575 to 2,300 fulltime attorneys would be needed to represent *all* indigent misdemeanants (excluding traffic violators)¹⁴⁰ and that the burden created by its decision would be insignificant in light of the total number of attorneys in the United States.¹⁴¹ Further alleviating the burden, reasoned the majority, were the numerous admissions to the bar annually and the increased demand for admission to law school.¹⁴² Taking exception to

138. *Id.* at 37.

139. *Id.* at 45-66. Justice Powell also dealt with three other major problems occasioned by the majority's holding in *Argersinger*. First, noting that the sole criterion provided by the majority for determining the necessity of counsel is the likelihood that imprisonment will result, he indicated that since the fourteenth amendment also protects property rights, either equal protection problems will be encountered or the *Argersinger* rule will have to be extended to all offenses. Justice Powell's second area of criticism involved the ramifications of requiring a trial judge to decide, without first hearing any evidence, whether to appoint counsel or foreclose the option of imposing a prison sentence. Not only would such an election amount to a *de facto* overruling of the legislative determination of the appropriate range of punishment, he reasoned, but with so many local courts making independent determinations of the offenses for which they would impose imprisonment, the inevitable result will be that two individuals charged with the same offense in two different locales may receive unequal treatment. Finally, Justice Powell suggested that since many small towns and rural areas are simply without adequate resources to assure the representation required by *Argersinger*, the consequence must either be nonenforcement of many laws or the elimination of incarceration as an available penalty. *Id.* See Note, *Meeting the Challenge of Argersinger: The Public Defender System in North Dakota*, 49 N.D.L. REV. 699, 706 (1973).

140. 407 U.S. at 37 n.7. See also Note, *Dollars and Sense of an Expanded Right to Counsel*, 55 IOWA L. REV. 1249, 1261-62 (1970). For a pre-*Gideon* discussion of the need for indigent representation, with possible solutions and recommendations, see SPECIAL COMMITTEE OF THE BAR OF THE CITY OF NEW YORK & NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, *EQUAL JUSTICE FOR THE ACCUSED* (1959). The concept of indigency is discussed in Note, *Judicial Problems in Administering Court-Appointment of Counsel for Indigents*, 28 WASH. & LEE L. REV. 120 (1971).

141. As of 1971 there were 355,200 attorneys in the United States. U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 153 (1971).

142. For a study of the increased demand for legal education, see Rudd, *That Burgeoning Law School Enrollment*, 58 A.B.A.J. 146 (1972).

this analysis, Justice Powell maintained that the increased need for attorneys is more properly appraised in terms of attorneys available in fact rather than by using aggregate numbers.¹⁴³ He suggested that to expect 1,575 to 2,300 of those attorneys actually available to represent all indigent misdemeanants was unrealistic,¹⁴⁴ also arguing that the majority's use of aggregate figures had ignored the effect of local distribution of attorneys upon their availability.¹⁴⁵

A second aspect of the magnitude problem is the increased cost to taxpayers of providing indigents with counsel. To provide appointed counsel for all indigent misdemeanants (excluding traffic violators) has been estimated to require annual expenditures of from 50 million to 62.5 million dollars. The cost of providing the same defendants with public defenders would range from 31.5 million to 46 million dollars annually.¹⁴⁶ In either case, it is clear that a substantial increase in available resources will be required. The possibility of using student practitioners to alleviate the increased burdens on the legal profession and on public funds presaged by *Gideon* and *Argersinger* is a primary focus of this study.

B. Students as an Available Resource

Although the use of students as a source of legal assistance has been criticized,¹⁴⁷ the recognized need for and concomitant costs associated with an increased number of attorneys to represent indigents suggests that the possibility of utilizing law students cannot be summarily re-

143. 407 U.S. at 56-57 (concurring opinion).

144. *Id.*

145. *Id.* at 58-61. The number of attorneys required to defend all criminal cases has been estimated at between 6,000 and 8,000. REPORT OF THE CONFERENCE ON LEGAL MANPOWER NEEDS OF THE CRIMINAL LAW, 41 F.R.D. 389, 393-94 (1966). See also Cleary, *Law Students in Criminal Law Practice*, 16 DEPAUL L. REV. 1 (1966); Junker, *The Right to Counsel in Misdemeanor Cases*, 43 WASH. L. REV. 685 (1968); Note, *Meeting the Challenge of Argersinger: The Public Defender System in North Dakota*, 49 N.D.L. REV. 699 (1973).

146. See Note, *Dollars and Sense of an Expanded Right to Counsel*, 55 IOWA L. REV. 1249, 1263 (1970). These figures are based on an estimate that between 1 million and 1.25 million indigents will require representation. The number of attorneys used to compute the additional costs is the range (1,575 to 2,300) cited by the majority in *Argersinger*. See also Allison & Phelps, *Can We Afford to Provide Trial Counsel for the Indigent in Misdemeanor Cases?*, 13 WM. & MARY L. REV. 75 (1971). But see Note, *Criminal Law—Sixth Amendment—Right to Court-Appointed Counsel for Indigents*, 47 TULANE L. REV. 446 (1973), in which it is contended that "implementation of *Argersinger* will not result in a burdensome drain on state funds and legal manpower, nor will it substantially affect the timely disposition of cases." *Id.* at 452-53.

147. See, e.g., 8 LAND & WATER L. REV. 343 (1973).

jected. Concurring in *Argersinger*, Justice Brennan stated: "Law students as well as practicing attorneys may provide an important source of legal representation for the indigent. . . . I think it plain that law students can be expected to make a significant contribution, quantitatively and qualitatively, to the representation of the poor in many areas, including cases reached by today's decision."¹⁴⁸ Former Justice Tom C. Clark, recognizing the legal profession's failure to provide adequate representation for the indigent defendant, has urged law schools "to organize defender programs that will bring the third year student in touch with criminal law in action."¹⁴⁹

In a majority of the states which currently authorize some form of student practice, participation is not limited to American Bar Association-approved schools.¹⁵⁰ Moreover, although some schools are located in relatively small communities, many are located in or near large population centers. Accordingly, when the radius of reasonable travel around the schools is considered, it is apparent that large numbers of individuals have access to student representation. The use of students will by no means satisfy the demand for attorneys created by *Argersinger*; it could, however, provide a valuable source of assistance.

Aside from any practical problems with or limitations on student practice programs, there are constitutional requirements which may limit the extent to which students may represent indigents either in lieu of members of the bar or under their supervision. The most difficult constitutional question that must be considered is whether such student representation fulfills the sixth amendment requirement of assistance of counsel.

C. Adequacy of Student Representation

1. Standards of Adequacy

Although constitutionally "ineffective" counsel will render void a conviction,¹⁵¹ the courts generally have been unable to articulate the precise standards of "fairness" and "justice" which satisfy effectiveness of counsel requirements. Instead, determinations have been made as

148. 407 U.S. at 40-41. It has been suggested, however, that because of geographical distribution of law schools and the relatively small number of eligible students, it is improbable that students will contribute significantly to the defense of the poor. 8 LAND & WATER L. REV. 343, 350 (1973).

149. Clark, *Problems of Change*, 1968 UTAH L. REV. 347, 351.

150. For an analysis of the various state student practice rules and acts, see Appendix III.

151. *Powell v. Alabama*, 287 U.S. 45, 52, 58, 71 (1932).

to whether an attorney's service was so inadequate that the proceedings were reduced to a "farce," "mockery,"¹⁵² or "travesty of justice."¹⁵³ Moreover, it has been held that a charge of inadequate legal representation can prevail only if the evidence indicates that what was or was not done shocks the conscience of the court¹⁵⁴ and that counsel should be judged not by hindsight but by the likelihood that there was "reasonably effective assistance" under the circumstances.¹⁵⁵

Although such broad standards may provide judicial flexibility in dealing with the nebulous concept of assistance of counsel, they do little to provide satisfactory standards for the attorney or his client. Thus, although it may be argued that the use of students will not render a proceeding a "farce" or "mockery of justice,"¹⁵⁶ any realistic determination of the adequacy of student representation must go beyond these basic generalizations.¹⁵⁷

Analysis of the case law reveals two basic categories of inadequacy of counsel for purposes of the sixth amendment: "(1) procedures which involve such a high probability of prejudice that due process is automatically deemed lacking; and (2) discretionary judgments which under the particular circumstances amount to a denial of effective assistance."¹⁵⁸ In the first category may be placed such matters as physical and mental incapacity, conflict of interest, insufficient time for preparation, intoxication, or inadequate notice.¹⁵⁹ It has been suggested that adequate supervision will eliminate the possibility of these factors dis-

152. See, e.g., *United States v. Cox*, 439 F.2d 86, 88 (9th Cir. 1971) ("poor" or "careless" trial tactics not enough); *Cappetta v. Wainwright*, 433 F.2d 1027, 1029 (5th Cir. 1970) (The standard is not whether petitioner would have fared better if his counsel had been more experienced, knowledgeable, or aggressive, but whether counsel's alleged "ineffectiveness reduced the proceedings to a farce or a mockery of justice."); *Bouchard v. United States*, 344 F.2d 872, 874 (9th Cir. 1965) ("farce or mockery of justice"). See also *Foster v. Beto*, 412 F.2d 892 (5th Cir. 1969).

153. *United States v. Dilella*, 354 F.2d 584, 587 (7th Cir. 1965) (errors of judgment not sufficient to constitute ineffective assistance).

154. *Schaber v. Maxwell*, 348 F.2d 664, 668 (6th Cir. 1965).

155. *Moore v. Beto*, 458 F.2d 386, 387 (5th Cir. 1972).

156. For an example of a statutory proposal designed to avoid constitutional infirmity, see *Forum Juridicum*, 30 LA. L. REV. 476 (1970).

157. For suggested standards of review, see Schneider, *Constitutional Limitations on Law Student Representation of Criminals*, STUDENT L.J., April 1968, at 10; Note, *Effective Assistance of Counsel for the Indigent Defendant*, 78 HARV. L. REV. 1434 (1965); Note, *Effective Assistance of Counsel*, 49 VA. L. REV. 1531 (1963); Comment, U.C.L.A.L. REV. 400 (1956).

158. Schneider, *supra* note 157, at 12.

159. *Id.*

qualifying students.¹⁶⁰ It should also be noted that most matters which fall into this category are individual in nature and should have no particular application to students as a group. In fact, the character certification requirements of the various student practice programs would appear to decrease substantially the likelihood of their occurrence in a particular situation.

Nevertheless, it may be argued that the inexperience of student lawyers may deprive the client of procedural due process. The sixth amendment, however, has not yet been interpreted to require assistance of experienced counsel. Every attorney must handle his first case and "no court has gone so far as to hold erroneous the appointment of a fledgling lawyer in the absence of demonstrated prejudice to the accused attributable to his counsel's inexperience."¹⁶¹ Although inexperience may sharpen the court's eye with respect to the adequacy of student representation, the applicable standard should be no different from that used in reviewing alleged incompetence of a newly licensed attorney.

The second category of inadequacy, prejudicial discretionary judgments, must be analyzed at three distinct stages of litigation. Adequate pretrial proceedings require a thorough investigation of a client's case and research of the applicable substantive and procedural law. At this stage, it seems unlikely that students would engage in the "courthouse steps" advice frequently associated with appointed counsel.¹⁶² In fact, students may be more proficient in legal research than are many practicing attorneys, since current methods of legal education emphasize legal research and factual analysis. Student practice merely entails a more specific application of this general procedure. Minimal guidance by an attorney should ensure adequate pretrial preparation.

The greatest challenge to student adequacy at the trial stage is inexperience. A law student, close to graduation, however, is not in a position much different from that of a newly licensed attorney; each has little, if any, experience in trial tactics and procedures. It is submitted that a student may actually be better equipped than his newly licensed counterpart, since his activities are closely supervised by an experienced attorney. Although a student's enthusiasm and desire may

160. Comment, 35 Mo. L. Rev. 367, 375-76 (1970). Obviously, however, if supervising attorneys were required to be present at all stages of litigation, the benefits of student practice as a means of relieving the burdens on the legal community created by *Gideon* and *Argersinger* would be diminished.

161. Waltz, *Inadequacy of Trial Defense Representation as a Ground for Post Conviction Relief in Criminal Cases*, 59 Nw. U.L. Rev. 289, 307 (1964).

162. See Monaghan, *Gideon's Army: Student Soldiers*, 45 B.U.L. Rev. 445, 460 (1965).

compensate for his lack of experience, youthful vigor is not always a substitute for experience.¹⁶³ Accordingly, when a student is involved in cases with the most serious consequences for the client, closer in-court supervision may be warranted.

At the posttrial stage, as at pretrial, the skills required are those of research and issue evaluation. Once again, sufficient guidance could be provided without eliminating the advantages of using student practice to alleviate the caseload of attorneys.

It would appear, then, that a literal interpretation of the sixth amendment does not preclude the use of students in the courtroom. The controlling question seems to be whether the assistance provided by the student is "adequate." In this regard, a threshold inquiry was made into the respondents' views of constitutional adequacy requirements to build a proper perspective for a more detailed inquiry into student performance.

Respondents were asked to indicate their degree of agreement or disagreement with seven statements concerning the meaning of the sixth amendment requirement of assistance of counsel.¹⁶⁴ Apparently disapproving of such extreme standards as "farce" or "mockery of justice," the responses seem to indicate that it may be possible to draw finer lines in defining the sixth amendment requirement.¹⁶⁵ Most respondents indicated slight agreement with the proposition that membership in the bar is not constitutionally required¹⁶⁶ and that the Constitution requires *effective*, rather than experienced, assistance of counsel.¹⁶⁷ In addition, the responses evidence a slight disagreement with the proposition that assistance of counsel is to be judged by the presence or absence of judicial character in the proceedings as a whole.¹⁶⁸ Finally, there was slight agreement with the proposition that mere tactical blunders, errors in judgment, lethargy, or mental or physical disability do

163. *Id.* at 461.

164. Appendix II, question 92. These statements were selected from various court discussions dealing with the adequacy issue. Although originally intended to measure precisely the legal community's opinion of the meaning of assistance of counsel, it was subsequently decided that because the factual situations to which these statements were addressed were not presented in the question, an attempt to interpret the responses in other than an informational manner would be misleading and inaccurate.

165. *Id.*, question 92A. The consensus was to "disagree slightly" that only if the proceedings amounted to a mockery of justice would representation be constitutionally infirm.

166. *Id.*, question 92B.

167. *Id.*, questions 92C & 92G.

168. *Id.*, question 92E.

not render assistance of counsel inadequate; an extreme case would have to be shown.¹⁶⁹

2. *Student Performance: In General*

Together with the respondents' general perceptions of the constitutional requirements for effective assistance of counsel, additional responses were elicited to determine whether students in fact provide adequate representation. The ultimate empirical test of student adequacy would be a comparison of all cases in which students have represented clients with similar cases in which counsel have been licensed attorneys. Such an undertaking, of course, would be impractical if not impossible. Therefore, the determination of whether student representation meets constitutional requirements was made by direct inquiry into the opinions held by those who have worked with, observed, and been represented by students, and by students themselves. Examination of these observations and perceptions provides a valid basis for determining the effectiveness of student representation in general. Moreover, analysis of such data may help further to isolate those factors which influence a student's effectiveness.

In general, the respondents indicated slight disagreement with the general proposition that student representation is inadequate,¹⁷⁰ implying slight agreement that students generally render constitutionally adequate representation.¹⁷¹ As might be expected, students expressed the greatest confidence in their abilities to represent a client adequately. By way of contrast, judges, who arguably are in the best position to gain an objective overview of the student's performance, indicated some reservations about the adequacy of student representation. Standing alone, however, this response should not be taken as a complete condemnation by the judiciary of student abilities.¹⁷²

169. *Id.*, question 92F.

170. *Id.*, question 2. It should be noted that in most jurisdictions, supervising attorneys are held accountable for the level of representation provided by the student. See Appendix V, question Q-8.

171. In thirteen reported instances, a student was dropped from a student practice program because of inadequate representation. Appendix II, question 101.

172. Chief Justice Burger, while sitting on the Court of Appeals for the District of Columbia Circuit, made it a practice to poll his peers informally concerning the general quality of representation provided by trial attorneys. The highest percentage of effectively represented cases ever reported was 25 percent. Burger, *A Sick Profession*, 27 *FED. B.J.* 228, 229 (1967). Given the propensity of the judiciary to criticize the performance of licensed attorneys, it is not surprising that judges are also critical of the performance of students.

Further study of the responses indicates that those closely associated with students (supervising attorneys, deans, and program directors) tended to agree with the students while respondents having less familiarity with student practice programs (bar associations and attorneys general) concurred with the judges. This pattern of response is subject to varying interpretations. Arguably, those more closely associated with students have a better awareness of the capabilities, desires, and preparation of students. Those not closely associated with students but familiar with and adapted to the "established" bar may view the student as less than adequate because the use of student practitioners is new and may be difficult to accept. On the other hand, those individuals closest to the students may be primarily concerned with the educational aspects of student practice, not the quality of representation provided, while respondents outside the educational arena may be in the best position to form an objective opinion concerning the quality of student representation. It should be noted that since all respondents may have possessed reservations about student adequacy with respect to a particular aspect of representation, there may have been a reluctance to take a strong general position for or against student adequacy. In an effort to achieve a more detailed analysis of the strengths and weaknesses of student advocacy, respondents were asked to evaluate student representation in light of a number of variables believed to be of potential significance.

3. Factors Affecting Student Performance

(a) Specific Activities

To discover particular areas of reservation based upon observation or knowledge of student representation in individual stages of litigation and to define more exactly the legal community's perceptions of student adequacy, the entire process of representation was divided into sixteen separate stages, and the perceived level of student representation was measured at each stage.¹⁷³ Student respondents indicated that in 10 of the 16 stages they provide adequate or more than adequate representation.¹⁷⁴ As with the general adequacy question, student views were

173. Appendix II, question 35. Responses were not elicited from bar associations or attorneys general, as it was determined that their knowledge of student performance at individual stages of litigation would be minimal.

174. Of the students responding to the survey, 85 percent had participated to some degree in pretrial activities. For the trial stage of the proceedings, this percentage decreased to 62 percent. Finally, only 32 percent of the student respondents had taken part in posttrial activities. For a more detailed numerical breakdown, see Appendix

reinforced and disputed, respectively, by other groups of respondents. The extent and nature of association of the various respondent groups with student practice programs may again explain the differing evaluations.

There was general agreement among all respondents that students adequately interview clients, gather facts, research the law, prepare court documents, make pretrial motions, and prepare appellate briefs. Students are perceived as most adequate in performing two skills traditionally emphasized in law school, legal research and preparation of appellate briefs. This finding, while reinforcing the conclusion that the case method adequately imparts these skills, suggests the necessity for more emphasis in law schools on other vital but neglected skills required in trial practice. Most respondents agreed that students are slightly less than adequate in negotiating settlements, using discovery techniques, selecting trial arguments, using direct and cross-examination, and raising timely objections. One possible explanation for the finding that students are perceived as inadequate in certain areas is that respondents used a stricter standard in measuring adequacy in these areas than that employed in evaluating other stages of litigation or in judging general adequacy.¹⁷⁵ Equally plausible, however, is that the lack of exposure to these activities in law school training leaves the student practitioner relatively unprepared when called upon to perform them.¹⁷⁶

(b) Nature of the Case

A second factor which aids in measuring the adequacy of student representation is the nature of the cases with which students deal.¹⁷⁷ In 13 of 16 categories of cases presented, students, consistent with their previous pattern, indicated the strongest belief in their abilities and adequacy.¹⁷⁸ Again, the judges expressed the strongest contrary view.

II, question 109. It should be noted that as the amount of participation in the successive stages decreases, the availability of data and its usefulness as a basis for conclusions about the adequacy of representation at such stages is correspondingly reduced.

175. These six activities, together with advising clients, for which the composite response was also less than adequate, all may be considered vital to the disposition of a case. Moreover, all have a sense of immediacy about them which may have prompted the respondents to scrutinize student performance more closely than in other less "vital" activities.

176. Apparently, it is now assumed that the law school graduate can provide adequate representation at all stages of litigation. This assumption appears ill founded, since it seems unlikely that, in the context of practical litigation skills, a diploma or license transforms the "inadequate" third-year student practitioner into an adequate attorney.

177. Appendix II, question 36.

178. In the areas of securities, taxation, and antitrust litigation, the law school deans

In areas traditionally considered to involve the most difficult legal questions, such as antitrust, corporate reorganization, and tax, all respondents agreed that student representation was somewhat less than adequate.¹⁷⁹ There may be several explanations for the low rating given students in these areas. First, the difficulty of the legal and factual questions may require a degree of experience and sophistication that students generally lack. Second, participants in student practice frequently may intend to pursue careers in general, rather than corporate, practice and thus may not have taken specialized courses necessary to provide a proper foundation for practice in such areas. Finally, it is likely that few cases in these areas are handled in student programs, with the result that the opportunity for observation is minimal; this lack of opportunity to observe may limit the meaningfulness of the responses.

Two other case types, felony and tort, elicited mean responses indicating between adequate and less than adequate student representation.¹⁸⁰ Since the legal doctrines at issue in these cases are not normally particularly difficult, it may be that the respondents employed a stricter test in evaluating student performance in these areas than was used in others. The seriousness of the consequences for the unsuccessful defendant, whether incarceration or financial devastation, may have prompted respondents to scrutinize student performance more closely.

This interpretation is supported by the significant difference in the composite mean responses with respect to misdemeanors and felonies.¹⁸¹ The result is notable because the questionnaire was answered approximately one year after the Supreme Court in *Argersinger* held that counsel is required in *all* prosecutions in which incarceration is possible, regardless of the classification of the offense. *Argersinger* was premised, in part, on the proposition that even in misdemeanor cases a defendant's rights may be seriously jeopardized. The disparity between responses in misdemeanor and felony contexts seems to indicate that the legal community either rejects the Supreme Court's view that the consequences are equally serious in either case or accepts such view but is applying a higher standard of adequate representation in felony cases. Equally plausible, however, is the proposition that students do not perform as well in felony cases. It is submitted, nevertheless, that students were measured by a higher standard in felony cases, since for misde-

expressed more confidence in student ability than did the students. Neither respondent group, however, considered the level of representation to be adequate.

179. Appendix II, questions 36L, 36N, & 36P.

180. *Id.*, questions 36B & 36I.

181. *Id.*, questions 36A & 36B.

meanor cases, which involve similar issues, there was general agreement that students fulfill sixth amendment requirements.¹⁸²

(c) *Nature of the Client*

A third factor which may affect the adequacy of student practice is the nature of the client represented. Although the respondents generally agreed that students do a good job in representing indigent clients,¹⁸³ it was thought that an equal or slightly better level of representation is provided to nonindigents.¹⁸⁴ Apparently, the nature of the client has a minimal effect on the quality of representation.¹⁸⁵ Supporting this conclusion is the fact that the nature of the client was reported in relatively few instances to influence the decision to assign a case to a particular student.¹⁸⁶

(d) *Supervision*

Although there was general agreement that students are prepared for the transition from classroom to student practice,¹⁸⁷ there was a reluctance among respondents to permit students to enter the courtroom without supervision.¹⁸⁸ The unwillingness to grant students in-court independence was greater for civil actions than for misdemeanors but was greatest with respect to felonies.¹⁸⁹ Consistent with their previously discussed reservations as to student adequacy, the judges held the strongest belief that in-court supervision is necessary to meet constitutional requirements of adequate counsel.

182. Interestingly, student representation is perceived as more than adequate in the environmental law area. *Id.*, question 36O. Since such cases involve difficult and novel questions of fact and law, it might be expected that environmental law cases would be perceived as a category in which students provide less than adequate representation. One explanation for the response may be that, although environmental law is a new area, it is one which is emphasized in the law schools. In addition, because the area is developing, respondents may have had no established norm of adequacy against which to compare student activity.

183. *Id.*, question 45.

184. *Id.*, question 43. When asked to consider all factors, there was general agreement among respondents that student practice should encompass the representation of nonindigents. *Id.*, question 7.

185. Students were considered to be slightly more willing, however, to work harder for a disadvantaged client than for either a nonindigent (*id.*, question 83) or the state (*id.*, question 82). The respondents agreed that any boredom students might experience while representing indigents would not be attributable to the nature of indigent legal practice. *Id.*, question 17A.

186. *Id.*, question 104A(6).

187. *Id.*, question 4.

188. *Id.*, question 3.

189. *Id.*, question 1.

A comparison of the level of representation afforded a client with the amount of supervision provided to the student practitioner¹⁹⁰ illuminates the representation/supervision relationship. In the areas in which students are considered to provide the highest level of representation—interviewing clients, gathering facts, and researching the law—the respondents indicated that supervision was at its lowest. Students were considered to be more than constitutionally adequate in each of these areas,¹⁹¹ suggesting the inference that the case method adequately prepares students in research techniques and that client interviewing and fact gathering are skills which can be developed with little supervision.

In five other activities—advising clients, negotiating settlements, using discovery techniques, selecting trial arguments, and direct examination—although student performance was rated slightly less than constitutionally adequate,¹⁹² the level of representation was indicated to be at least average.¹⁹³ It should be noted, however, that this inadequate, albeit average, level of performance was generally perceived as slightly better than that of newly-licensed attorneys.¹⁹⁴ The inference which may be drawn is that representation in these areas by newly licensed attorneys, as well as by students, does not meet constitutional requirements. In only two of the trial stages, cross-examining witnesses and raising objections, did students receive a representation rating below average.¹⁹⁵ This is consistent with responses to the adequacy question, indicating slight student inadequacy in these two areas.¹⁹⁶ Moreover, respondents specifically selected these activities as those in which students are least competent.¹⁹⁷

With the exception of the three areas of minimal supervision,¹⁹⁸ the other activities receive approximately equal amounts of supervision. However, when required to make a specific determination, respondents indicated that the areas of client advising, legal issue analysis, and court document preparation generally involve the most supervision.¹⁹⁹ Of these three activities, only with respect to advising clients did the re-

190. *Id.*, question 89.

191. *Id.*, question 35.

192. *Id.*

193. *Id.*, question 89.

194. *Id.*, question 37.

195. *Id.*, question 89.

196. *Id.*, question 35.

197. *Id.*, question 89.

198. These activities are interviewing clients, gathering facts, and researching the law. See text following note 190 *supra*.

199. Appendix II, question 89.

spondents indicate that student performance, notwithstanding supervision, is slightly less than adequate.²⁰⁰ Why document preparation and legal issue analysis receive greater amounts of supervision than activities in which students are considered weaker is not clear. It is submitted that more supervision is necessary in those areas in which student representation is perceived as less than adequate.

This conclusion is supported by the strong indication that levels of student representation increase with the amount of supervision.²⁰¹ It should, however, be noted that an element of caution was indicated concerning the extent to which supervision should be increased. Although a direct relationship between quality of representation and amount of supervision was suggested, the responses also indicated that there is a point at which excessive supervision may hinder, rather than aid, the quality of representation.²⁰²

4. *Comparison to Licensed Attorneys*

Our legal system is premised, in part, upon the assumption that a lawyer, upon passing a state bar examination, possesses at least the minimum requisite skills and knowledge to provide any client with adequate assistance. Accepting this assumption as valid, the analysis of student adequacy is obviously aided by a comparison of student performance with that of attorneys, both newly licensed and experienced.²⁰³ Such a comparison also yields some inferences as to the validity of the proposition that a license evidences adequacy of representation.

The analysis²⁰⁴ was based upon the sixteen stages of litigation employed in the basic adequacy question. Compared with a typical attorney of average experience, student practitioners were considered slightly less competent in all but the two stages of the litigation process in which students are best prepared—researching the law and preparing appellate briefs. Compared with newly licensed attorneys, on the other hand, students were considered to provide a quality of representation that is equal to or better than that of such attorneys in all stages of litigation except cross-examination.

It is important to note that in terms of constitutional adequacy, students were considered less than adequate in seven steps in the litigation

200. *Id.*, question 35.

201. *Id.*, question 69.

202. *Id.*

203. Definitions of these two categories of attorneys at the beginning of the questionnaire (*see* Appendix II) presumably were used by respondents throughout.

204. Appendix II, question 37.

process.²⁰⁵ However, cross-examination is the only activity with respect to which student representation was considered both less than adequate generally²⁰⁶ and below the level provided by newly licensed attorneys.²⁰⁷ This analysis gives rise to the serious implication that newly licensed attorneys are also somewhat less than adequate in the remaining six activities—advising clients, negotiating settlements, using discovery procedures, selecting and organizing trial arguments, conducting direct examination, and raising objections. Such an implication is, of course, contrary to any theory of legal education that law school graduates are competent to perform all tasks necessary to represent all clients who seek their counsel.

Certainly, the possibility that newly licensed attorneys may provide constitutionally inadequate service is, in itself, no justification for subjecting the public to additional substandard representation by students. If, however, recent graduates are incapable of meeting constitutional criteria, it would appear that corrective action should be taken. The analysis of the educational impact of student practice earlier in this study suggests the value of such programs as a supplement to the apparently inadequate case method.

5. *Client Opinion*²⁰⁸

Although the typical client probably is unable to determine whether student representation fulfills sixth amendment requirements, his opinions of a student's performance clearly are significant. All but one client surveyed expressed satisfaction with his student lawyer's performance,²⁰⁹ and no client considered the work of an attorney any less important because a student was able to represent him.²¹⁰ Most clients indicated that they would have taken their problem to a licensed attorney had a

205. *Id.*, question 35.

206. *Id.*, question 35M.

207. *Id.*, question 37M.

208. Because only 19 clients responded to the survey, a note of caution must be sounded with respect to the meaningfulness of findings and conclusions to be drawn from their responses. Nevertheless, general descriptive characteristics of responding clients provide some insight into their perceptions of the worth of student practice programs. Fifty-eight percent of the clients utilized student services only once, while 32 percent used them two or three times. See Appendix II, question 112. The average age of the client respondents was 34 years, with a range from 16 to 66. *Id.*, question 115. Seventy-four percent were male. *Id.* Student assistance was sought most frequently because of criminal or domestic difficulties. *Id.*, question 116. Most respondents learned of student practice programs through friends or licensed attorneys. *Id.*, question 119.

209. See *id.*, questions 113 & 114.

210. *Id.*, question 125.

student not been available.²¹¹ Students generally were considered credible by the clients,²¹² and only very seldom was it deemed necessary to consult the student's supervising attorney to verify the accuracy of the student's advice.²¹³

Most clients reported having to go to court with their problems;²¹⁴ more often than not, the supervising attorney accompanied the student lawyer.²¹⁵ When the supervisor was present, the student did at least as much talking as the licensed attorney.²¹⁶ Significantly, only in one reported instance was a student corrected by the court for an error.²¹⁷ Despite an overall favorable perception by clients of their representation by students, opinions were mixed as to whether a licensed attorney should accompany and supervise a student in court.²¹⁸

The consensus by clients was that representation in general would have been no better or worse had a licensed attorney handled their cases,²¹⁹ but students were perceived as being more concerned²²⁰ and willing to put more effort into a client's case than a licensed attorney, whether experienced²²¹ or not.²²² Finally, there was general agreement that the next time a lawyer is needed, student representation will be sought.²²³ Although students may not measure up to all the strict standards imposed upon licensed attorneys by the legal community, they have made a favorable impression upon their clients.

VI. EFFECTS OF STUDENT PRACTICE ON THE LEGAL SYSTEM

It has long been recognized that the American system of judicial administration is in need of reform. Recurring criticisms have included the inaccessibility of the system to the indigent,²²⁴ court congestion,²²⁵

211. *Id.*, question 124.

212. *Id.*, question 123.

213. *Id.*, question 127. This response confirms the perceptions of all other respondents in question 13.

214. *Id.*, question 129.

215. *Id.*

216. *Id.*

217. *Id.*

218. *See id.*, question 132.

219. *Id.*, question 130.

220. *Id.*, question 131.

221. *Id.*, question 137.

222. *Id.*, question 136.

223. *Id.*, question 135.

224. *See, e.g.,* Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 20 J. AM. JUD. Soc'y 178 (1937).

225. Baier & Lesinski, *In Aid of the Judicial Process: A Proposal for Law Curricular*

and public dissatisfaction with the system.²²⁶ While many suggested improvements emphasize the need to streamline court procedures and methods, the use of student practitioners is another approach which may contribute significantly to alleviating these problems. It is in this context that the impact of student practice on the legal system has been examined.

A. *The Problem of Inaccessibility*²²⁷

Although judicial expansion of the right to assistance of counsel has focused on the needs of the indigent,²²⁸ the public and bar associations recognize that prohibitive costs deprive middle income persons access to legal assistance as well.²²⁹ Consequently, various programs, including the use of paraprofessionals, lawyer referral services, and prepaid legal insurance programs, have been instituted to increase the availability of legal services to those above the poverty level but nevertheless unable to provide for their legal needs.

The use of student practice programs as an additional means of increasing access to legal services for low and middle income persons involves the initial determination of whether students can provide adequate legal assistance. Responses to the survey, taken as a whole, indicate that properly operated student practice programs can meet constitutional standards.²³⁰ On the premise, then, that students are a potentially effective source, an inquiry was made into the extent to which students are being utilized to provide greater accessibility to the system.

and *Student Involvement*, 56 J. AM. JUD. Soc'y 100, 101 (1972); Burger, *State of the Federal Judiciary*, 14 St. Louis U.L.J. 649 (1970); Oglesby & Gallas, *Court Administration—A New Profession: A Role for Universities*, 10 AM. BUS. L.J. 1, 5 (1972). See also Burger, *Has the Time Come?*, in *QUEST FOR JUSTICE* 207, 208 (1973), in which it is stated that from 1959 to 1972 filings in the United States district courts almost doubled.

226. Wigmore, *Roscoe Pound's St. Paul Address of 1906*, 20 J. AM. JUD. Soc'y 176 (1937). Pound delineated causes of dissatisfaction with all judicial systems, as well as those peculiar to the American system. See Pound, *supra* note 224.

227. In the context of this discussion, "access" refers not to legal barriers (such as standing or primary jurisdiction) which prevent an individual from taking his case to a court but to the practical availability of counsel for individuals who must appear in court, as well as for those in need of legal advice generally.

228. See *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Gideon v. Wainwright*, 372 U.S. 335 (1963). The combined effect of these cases is recognition of a right to counsel in all cases in which the possibility of incarceration exists. The need to lower financial barriers for plaintiffs in civil cases has also been recognized. *Borden v. Borden*, 277 A.2d 89 (D.C. Mun. Ct. App. 1971).

229. See generally B. CHRISTENSEN, *LAWYERS FOR PEOPLE OF MODERATE MEANS: SOME PROBLEMS OF AVAILABILITY OF LEGAL SERVICES* (1970).

230. See notes 151-207 *supra* & accompanying text.

It appears that the use of student attorneys by those of moderate income levels is minimal. An obvious reason is that only eight states permit students to represent other than indigent clients.²³¹ It may be suggested that limiting student representation to indigents evidences an attempt by the states to provide legal services for those with the greatest need. If this is the case, the states are perceiving the problem incorrectly, since it is likely that the needs of those of moderate income for assistance in obtaining adequate legal services may be equally as great.²³² A second limitation on the ability of existing student practice programs to alleviate the problems of access is the size of the programs. Although each of the 65 student respondents to this survey had handled an average of 29 cases,²³³ it is manifest that if student practice is to absorb more than a fractional part of the expected caseload stemming from *Gideon* and *Argersinger*, current programs must be expanded substantially.

It was generally agreed by respondents that the availability of student practitioners results in a moderate increase in use of the legal system by indigents.²³⁴ Responses indicated, however, that the attendant administrative burden was large enough to offset moderately, and perhaps substantially, any financial savings that might result from meeting indigents' needs with students instead of court-appointed attorneys or public defenders.²³⁵ Although the perceived increase in the use of the legal system indicates that the problems of access are being reduced, at least to a limited extent, an examination of the countervailing contention that courts are being overburdened is clearly in order.

B. Court Congestion

No one has suggested that student practice include the use of students to decide cases in order to relieve the caseload of the judiciary; there have, nevertheless, been proposals to provide student law clerks to assist regular trial judges.²³⁶ As a practical matter, however, a more important

231. THE INSTITUTE OF JUDICIAL ADMINISTRATION, STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS, *Chart I—Summary of State Rules and Statutes*, 28 (2d ed. 1973). See Appendix III.

232. Christensen, *Delivery of Legal Services to Persons of Low and Modest Income: "In the Shade of the Old Atrophy,"* in *QUEST FOR JUSTICE* 100, 101 (1973).

233. Appendix II, question 106.

234. *Id.*, question 33.

235. *Id.*, question 88.

236. See, e.g., Baier & Lesinski, *supra* note 225, at 100.

concern of student programs ought be to decrease, or at least avoid increasing, burdens on the courts in terms of cases litigated.

As indicated above, the availability of student practice apparently does stimulate more frequent use of the legal system by indigents. If the increase is a reflection that real needs are being met, it would appear that any objection to student practice as overburdening the courts is unwarranted. A more legitimate concern is whether the manner in which students handle their cases causes more administrative problems than would otherwise be the case. To determine whether student advocates delay or disrupt the judicial process, two factors were examined: the time required to settle a case, and the possibility of disruptions in the actual trial process.

1. Delay of Settlement

Although the survey responses indicated occasional slight delays in getting a suit to trial because of student participation, there was general agreement that student involvement in the process does not delay settlement.²³⁷ The fact that delays are infrequent and slight, however, is not necessarily attributable to the abilities of the students. Student practitioners appear to enjoy some advantage over practicing attorneys in obtaining assistance from court personnel. For example, the respondents found clerks of court somewhat more accommodating to students than to practicing attorneys, both in setting court dockets²³⁸ and in assisting them to gain access to court records.²³⁹

There was wide agreement among the respondents that there is no change in the number of controversies settled by negotiation when one party is represented by a student.²⁴⁰ Responses to another question,²⁴¹ however, indicate that student practice may have a slight negative impact on some aspects of the negotiation process but a positive impact on others.

Somewhat surprisingly, perceptions of a positive impact on the negotiation process were associated with high student-to-supervisor ratios.²⁴² This correlation may indicate either that the closely supervised student hinders negotiation because more decisions are made in conjunction

237. See Appendix II, question 30.

238. *Id.*, question 67.

239. *Id.*, question 68.

240. *Id.*, question 29.

241. *Id.*, question 84.

242. The correlation between questions 84 and 97 was such that there was only a .037 probability that it could have been predicted by simple chance.

with the supervisor or that supervisors who oversee large numbers of students are less likely to know of problems that have impeded negotiations involving their students.

To the extent that plea bargaining is a desirable means of avoiding delays in disposing of criminal cases, student practice may have some negative impact on the process. Survey respondents rated students somewhat less likely to plea bargain than either newly licensed attorneys or typical attorneys of average experience.²⁴³ Any adverse effects of student disinclination to plea bargain, however, are mitigated somewhat by the general feeling of respondents that the interests of a client were very seldom or never prejudiced when students did bargain.²⁴⁴

Student practice does not appear to detract notably from the possibility of final resolution of controversies at the trial stage. In general, respondents indicated a slight increase in the number of appeals and habeas corpus actions but a slight decrease in malpractice suits brought by student-represented clients.²⁴⁵ The interpretation of these responses most favorable for student practice is that the availability of student advocates makes possible appeals and habeas corpus petitions that, as a practical matter, might otherwise be unavailable. This inference is somewhat contradicted, however, when compared to the finding that the likelihood of appeal is lowest in jurisdictions where students may represent only indigents.²⁴⁶

One other potential source of delay in settling a controversy is the possibility that school-related diversions may interrupt the continuity of student representation. There appear to be reasonable grounds for criticism of student practice on this point, since respondents generally agreed that continuity of representation is moderately disrupted by examination periods, graduation, and vacations.²⁴⁷ Somewhat expectedly, the continuity problem decreased in direct proportion to the number of students involved in the program,²⁴⁸ presumably because in large programs, there are more students who can make necessary substitutions.

243. Appendix II, question 65.

244. *Id.*, question 54.

245. *Id.*, question 34.

246. The mean response for question 34A breaks down by program limitations on the types of clients permitted to be represented as follows: indigent and state—2.925; indigent only—3.750; state and any individual—3.429; no rule provision—3.000.

247. Appendix II, question 85.

248. The correlations between questions 85A, 85B, and 85C and question Q-7B (Appendix V) were such that there were only .001, .032, and .018 probabilities, respectively, that they could have been predicted by simple chance.

2. *Disruption of Trial*

If the courtroom appearances of students were perceived as training sessions with the judge as instructor, student practice might place an onerous burden on the courts with possibly serious dilution of the principal judicial functions. Respondents, however, clearly indicated that student practice programs do not operate in this manner. There was general agreement that only infrequently do judges assume an educational role during a trial; more importantly, the rights of litigants are not compromised when such action is taken.²⁴⁹

The respondents expressed slight agreement with the proposition that judges *should* take time during a trial to correct prejudicial error for the sake of the educational goals of student practice.²⁵⁰ Where non-prejudicial errors are involved, there was less inclination to permit judges to intervene for the sake of educating the student.²⁵¹ The possibility that such judicial intervention might itself be prejudicial to one of the parties did not appear to trouble the respondents.²⁵² Moreover, apprehension of possible prejudice from intervention seems to decrease as a jurisdiction gains more experience with students in the courtroom.²⁵³ Finally, it should be noted that respondents generally agreed that a judge's interest in educating the student rarely prolongs trials.²⁵⁴

The fear has been expressed that zealous young lawyers might clog court machinery in their eagerness to make a name for themselves.²⁵⁵ Students, as well as young licensed attorneys, might be expected to show off their recently acquired legal expertise during the course of trial argument. The experience of the survey respondents, however, indicates little reason to anticipate such conduct. Although trial disruption from student use of new and complex legal arguments²⁵⁶ was cited as potentially more troublesome than a judge's interest in educating the student, the answers indicated that trials are seldom disrupted by either problem. Moreover, when respondents were asked whether the participation of student advocates generally impedes or facilitates the course

249. Appendix II, question 56.

250. *Id.*, question 8A.

251. *Id.*, question 8B.

252. *Id.*, question 9.

253. The correlation between question 9 and question Q-5 (Appendix V) was such that there was only a .044 probability it could have been predicted by simple chance.

254. *Id.*, question 58.

255. *Argersinger v. Hamlin*, 407 U.S. 25, 58 (1972) (Powell, J., concurring).

256. Appendix II, question 57.

of a trial, the composite response indicated "no effect," with no significant variation among the respondent groups.²⁵⁷

When students were compared with newly licensed attorneys, the possibility of disruption was thought to be about the same, although there was an indication that students were slightly less likely to disrupt the trial by advancing spurious evidentiary objections or by their general courtroom demeanor.²⁵⁸ Students, however, were thought to be slightly more disruptive of the trial process than were experienced attorneys.²⁵⁹ In all aspects of trial advocacy, differences between students and experienced attorneys, though small, were consistently indicative of slightly greater disruption in the case of students, with one notable exception: The general courtroom demeanor of students was thought to be very slightly *less* disruptive than that of experienced attorneys. Particularly because student demeanor also compared favorably with that of newly licensed attorneys, the importance of the favorable comparisons, although slight, should not be overlooked. Even before portions of the legal profession became incensed at the tactics used in the "Chicago Seven" trial, the lay public had been disturbed by the general lack of manners exhibited by trial attorneys.²⁶⁰ That student demeanor compared favorably with that of practicing attorneys thus may not be as much a compliment to students as a condemnation of the courtroom conduct of attorneys.

There was general agreement among all respondents that in-court supervision tends to decrease the disruptive influence of students.²⁶¹

257. *Id.*, question 86.

258. *Id.*, question 18.

259. *Id.*, question 19. Students in large programs compared less favorably in several areas than did their counterparts in smaller programs. For example, the correlations between questions 19D, 19E, and 19H and question Q-7B (Appendix V) were such that there were only .004, .005, and .020 probabilities that they could be predicted merely by chance. No explanation for this result was suggested by the data generated by this survey, but there are several plausible possibilities. Students in large programs may derive the confidence to interject themselves forcefully into the trial from their association with a large, established program. Some support for this hypothesis is supplied by responses indicating that students from older programs are more disruptive in their cross-examination of witnesses than are students from newer programs. The correlation between question 19F and question Q-5 (Appendix V) was such that there was only a .007 probability it could be predicted by chance.

Another possible explanation is that as a respondent's observation of students increases, he becomes less tolerant of student faults. Finally, students associated with large programs are more likely to appear in busy urban courts where disruptive delays are more irritating and, hence, more likely to be reported.

260. See Burger, *supra* note 172, at 229.

261. Appendix II, question 31.

For example, respondents from states requiring the presence of a supervisor during student appearances in criminal trials reported that students are only slightly more disruptive than experienced attorneys in making motions; responses from jurisdictions which permit students to appear alone indicated significantly more disruption.²⁶² Similarly, procedural objections were observed to be a source of student disruption significantly more often where supervisor presence in civil trials is not required.²⁶³ In other activities, while the variation in response was not statistically significant, there was a consistent correlation between the required presence of a supervisor and a lower level of disruption.

C. Respect for the Legal System

Respondents to the survey agreed that, as a general principle, student practice had little effect on either the public image of the courts or the perceived abilities of licensed attorneys.²⁶⁴ The absence of a more pronounced beneficial image as a result of student practice is seemingly attributable to the limited public awareness of the permissibility or availability of student assistance,²⁶⁵ since a higher degree of public awareness is directly associated with increased respect for the judiciary and the legal profession.²⁶⁶

Although all client respondents indicated no loss of respect for practicing attorneys simply because students were able to handle their cases,²⁶⁷ there was a difference of opinion among other respondents whether an attorney's association with student practice has beneficial effect on his position in the community.²⁶⁸ Supervising attorneys, judges, and program directors were in substantial agreement that respect for such attorneys increases slightly, but bar associations noted a slight negative impact.

262. Mean response to question 19A breaks down according to criminal court supervision requirements as follows: required—2.791; not required—1.833; no rule provision—2.429.

263. Mean response to question 19B breaks down according to civil court supervision requirements as follows: required—2.867; not required—2.545; no rule provision—2.217.

264. Appendix II, questions 25B & 26C.

265. *Id.*, questions 73 & 74.

266. The correlation between question 25B and question 74 was such that there was only a .026 probability it could be predicted by chance. Probability scores for the correlations between question 26C and questions 73 and 74 were .024 and .011, respectively.

267. Appendix II, question 125.

268. *Id.*, question 27B.

A second area of inquiry was the effect of student practice on the profession's self-image. Although respondents clearly disagreed with the proposition that the bar disregards its commitment to improve the legal system by permitting student practice,²⁶⁹ the adverse reaction to the statement that the bar uses student practice to avoid its responsibility to provide counsel for indigents was less pronounced.²⁷⁰ Within the legal community itself, there was, in general, a slight indication that association with student practice commands increased respect for both participating attorneys and courts.²⁷¹ A notable exception was the response of the bar associations indicating a slight loss of respect on the part of attorneys for courts in which there is substantial student practice.²⁷²

Although even the slight net increase in respect for the legal system reflected in the survey response is significant in light of the current decline in prestige generally, it is important to determine whether some underlying component negative effects of student practice serve to reduce the overall positive impact. Certain factors which may detract from public respect for the legal system have thus been isolated.

The first area examined was the potential impact of student practice on the operation of the jury system. Several questions were posed in varying formats, but responses generally indicate that student practice has little or no effect on the functioning of the jury system. Responses to a general inquiry into the effect of student practice on the jury system indicate a slight positive impact;²⁷³ there is, nevertheless, a suggestion that juries may sympathize with clients represented by students.²⁷⁴

Because some lay and professional commentators have attributed the decline in respect for the legal system in part to the actions of attorneys themselves,²⁷⁵ an inquiry was made into potential effects of student

269. *Id.*, question 12.

270. *Id.*, question 11.

271. *Id.*, questions 26A, 26B, 27A, & 27E.

272. *Id.*, question 26B.

273. *Id.*, question 87. When jury-related questions were analyzed in terms of program characteristics and role of respondent, no significant relationships were observed.

274. *Id.*, question 32.

275. In a speech to the American College of Trial Lawyers, Chief Justice Burger (then Chief Judge of the Court of Appeals for the District of Columbia Circuit) stated, "My final proposition can be roughly stated as follows: (1) the legal profession as a whole has very poor standing; (2) there are many causes for this, one of them being the incompetence, the misconduct and the bad manners and lack of training of a great many lawyers who appear in the courts . . ." Burger, *supra* note 172, at 228.

practice upon attorney conduct. The vehicle used to test the impact on attorneys was a hypothetical comparison of an attorney's conduct when his adversary is a student with his actions when he is opposed by either a newly licensed or experienced attorney.²⁷⁶ Respondents generally agreed that when opposed by a student, an attorney is no more likely to use better arguments²⁷⁷ but slightly less likely to avoid serious negotiation, to raise arguments known to be contrary to existing law, or to misuse procedural devices in an attempt to force tactical errors.²⁷⁸ It should be borne in mind that in each case the perceived favorable effects on attorney conduct were slight. There was general agreement that an attorney is no more likely to use unfair tactics against a student than against a newly licensed attorney;²⁷⁹ however, responses indicate a slightly greater likelihood of an attorney's using unfair tactics against a student than against a typical attorney of average experience.²⁸⁰

Certain program characteristics correlate significantly with responses to the questions on attorney performance. Respondents from states which limit student practice to court appearances, for example, indicated that attorneys were slightly more likely to use weak arguments against students than against other experienced attorneys, while respondents from states which also permit student drafting of court documents observed the opposite tendency.²⁸¹ Moreover, attorneys in states where

The Chief Justice said that his remarks were based largely on his own experiences, observations, and some questioning of his peers. *Id.* More systematic investigations have confirmed this thesis, especially with respect to unethical conduct of attorneys. Compare J. CARLIN, *LAWYERS ETHICS: A SURVEY OF THE NEW YORK CITY BAR* (1966), and J. CARLIN, *LAWYERS ON THEIR OWN; A STUDY OF INDIVIDUAL PRACTITIONERS IN CHICAGO* (1962), and Ladinsky, *The Impact of Social Backgrounds of Lawyers on Law Practice and the Law*, 16 J. LEGAL ED. 127 (1963), with J. HANDLER, *THE LAWYER AND HIS COMMUNITY: THE PRACTICING BAR IN A MIDDLE-SIZED CITY* (1967). Indeed, one criticism of the ability of clinical legal education to inculcate high norms of professional responsibility is that students are more likely to be tainted than helped by associations with practicing attorneys. Smith, *Is Education for Professional Responsibility Possible?*, 40 U. COLO. L. REV. 509, 534 (1968).

276. Appendix II, questions 62 & 63.

277. *Id.*, question 61.

278. *Id.*, questions 62B-E & 63B-E.

279. *Id.*, question 62A.

280. *Id.*, question 63A. Judges and supervising attorneys believed that opposing attorneys would be less inclined to take advantage of students, while program directors, bar associations, and students (somewhat expectedly) held the contrary view.

281. Mean response for question 61B breaks down according to extent of practice permitted as follows: in court—2.800; in court and court documents—3.325; in court and counseling—2.667; in court, counseling, and court documents—3.154; in court and limited documents—insufficient response; any activity—2.444.

students are restricted to handling indigent cases were thought to be less likely to engage in delaying tactics than attorneys in states where students may represent nonindigent clients.²⁸² This result may be due less to the impact of student practice than to attorneys' concepts of the most efficient way to dispose of a case against an indigent, in which there is presumably less financial benefit from a successful prosecution of the case. This hypothesis is supported by the fact that respondents who imputed financial significance to student-represented cases were more likely to believe that attorneys would attempt to take advantage of the students.²⁸³

This finding has some importance in that it may indicate that the slight beneficial impact on attorney conduct that respondents associated with student practice may in fact be due to the nature of the cases in which students normally participate: there may not be enough at stake for the attorneys to concern themselves with taking advantage of students. If the correlation between sharp practices and financial considerations is disregarded, an equally plausible explanation for the apparent slight improvement in attorney behavior is that student opposition is believed to pose too small a threat to require any extra maneuvering. This explanation is confirmed by an analysis of the survey results, which indicate that attorneys in states with older student practice programs were thought to use less forceful arguments against students than were attorneys with less experience against student practitioners.²⁸⁴

There was strong agreement that student practice has a positive effect on the professional responsibility of attorneys associated with student practice programs.²⁸⁵ Respondents from states with older programs were more likely to report a positive effect than were respondents from states less experienced in student practice.²⁸⁶ The perceived beneficial effects of student practice on the sense of professional responsibility of attorneys associated with student practice are also significantly related

282. Mean response to question 63D breaks down according to client type as follows: indigent and state—2.940; indigent only—2.909; state and any individual—3.538; any individual—3.667; no rule provision—3.727.

283. The correlations between questions 62D and 63D and question 72 is such that there are only .019 and .010 probabilities, respectively, that they could be predicted by simple chance.

284. The correlations between questions 61A and 61B and question Q-5 (Appendix V) are such that there are only .021 and .030 probabilities, respectively, they could be predicted by chance.

285. Appendix II, question 81B.

286. The correlation between question 81B and question Q-5 (Appendix V) is such that there is only a .027 probability it could be predicted by chance.

to program size, smaller programs having a more positive influence.²⁸⁷ Finally, the general impact of student practice on educators associated with such programs was thought to be positive.²⁸⁸

VII. ANALYSIS OF MULTIPLE RELATIONSHIPS

The foregoing survey analysis has consisted primarily of examination of the influence of a single variable on one other variable, that is, a study of one-to-one relationships. For example, the adequacy of student representation was examined in relation to the amount of supervision provided the student, then in relation to the size of the program, and so on, each factor being considered in isolation from other factors. A more sophisticated analysis can be achieved through examination of the simultaneous interrelation of several variables.²⁸⁹ By such an approach, weight is given to the effect the variables have on each other, as well as their effect on the aspect of student practice being studied. This "regression analysis,"²⁹⁰ because of its implicit recognition that clinical education functions amid complex and interdependent influences, results in a more thorough and accurate assessment of student practice.

Ideally, regression analysis requires that all respondents be asked the same questions. Since in this survey identical questions were posed only to deans, students, supervising attorneys, and program directors, the analysis of multiple relationships has been limited to the responses of these groups. Moreover, multiple relationship analysis should include

287. The correlation between question 81B and question Q-7B (Appendix V) is such that there is only a .027 probability it could be predicted by chance.

288. Appendix II, question 81C. Although the response concerning the beneficial impact of student practice on legal educators was not sufficiently more positive than that concerning the effect on participating attorneys to be statistically significant, it was numerically more positive. That there was some difference is interesting because it may offer some support for the criticism that many of those teaching courses in professional responsibility have not personally confronted the problems involved. Respondents frequently reported that students do encounter actual ethical problems in the course of student practice and that they discuss such problems with the educators in the programs. That the educators are thought to experience a slightly larger increase in professional responsibility than do the attorneys associated with student practice may indicate that the educators are in some small way learning from their students' experiences. Such an inference, however, is not compelled by the statistical return and is only very tentatively suggested.

289. The discussion which follows is intended only to summarize some of the most significant relationships readily observable from the regression analysis. Complete results are set forth in charts in Appendix V. Methodology used in performing this analysis is discussed in Appendix I, notes 22-24 & accompanying text. Many of the relationships touched upon here may form the basis for further inquiry.

290. See Appendix I, notes 22-24 & accompanying text.

all conceivable factors having a possible influence on the subject under study. Unfortunately, practical considerations limited the scope of the questionnaire used in this survey. For example, inquiry was not made into program budgets or supervisor personalities; hence, such factors are absent from the analysis. These considerations can form the basis for further study of student practice.

*A. Adequacy of Representation*²⁹¹

When analyzed in terms of multiple relationships, several factors influencing adequacy of student representation are found to have effects which may be somewhat at variance with those indicated by the simpler one-to-one analysis. The factors analyzed concurrently included the training of supervisors, the longevity of programs, provisions of state rules, amounts of supervision, and supervisor accountability.

Employment of trained supervisors appears to have a significant impact on improvement of student representation. The data, moreover, indicate that a student performs better when supervised by a person having formal, rather than informal, training. Perceptions of the adequacy of representation are also largely influenced by the amount of experience a jurisdiction has had with student practice programs, programs of greater longevity being associated with higher degrees of student adequacy than newer programs. In addition, regression analysis suggests that state rule provisions permitting students to engage in any type of attorney activity have some slight association with improved student performance.

Although analysis of multiple relationships deemphasized the impact of the amount of supervision upon the level of perceived student adequacy, it does reveal some interesting relationships. For example, when there is no school-oriented supervision, student performance is thought to be measurably less effective, but when there is extra incentive for close supervision, as where the supervisor himself is held accountable for the student's mistakes, student performance is perceived more favorably.

*B. Educational Impact*²⁹²

Of the factors affecting the educational value of student practice, use of trained supervisors again has the greatest positive impact. In contrast to the finding with respect to student adequacy, however, formally

291. Appendix V, Chart A.

292. *Id.*, Chart B.

trained supervisors are not associated with an increase in educational benefits, but, indeed, with a slight decrease. This finding may, perhaps, be traceable to the respondents' expectations. Where schools become committed to student practice programs to the extent of incurring the expense of providing formally trained supervisors, those involved may simply expect too much from the programs. Thus, it appears reasonable to view any resulting disappointment in relation to unmet expectations; in absolute terms, the educational benefit to the students may be the same as or greater than in programs in which supervisors have only informal training or none at all. It should be noted in passing that the few reported instances of unusual types of supervision and supervisor training were also associated with decreased educational benefits.

As was the case with adequacy of student representation, multiple relationship analysis indicates that perceptions of the educational benefits of student practice improve as the jurisdiction gains more experience with the program, as the students are permitted to engage in more activities (in this case, to appear before any court), and when personal accountability for the student's performance is imposed on the supervisor. One noteworthy factor apparently having a slight adverse impact upon the educational value of student practice is the automatic acceptance into a program of any student enrolled in an eligible law school. As has been noted previously, respondents to this survey did not favor setting extremely high academic standards for admission to programs.²⁹³ On the other hand, regression analysis suggests that the abandonment of academic standards in determining eligibility for participation is not a suitable alternative.

*C. Overall Benefit to Students*²⁹⁴

When the inquiry is broadened to include the general utility to students of participation in student practice programs, perceptions again are found to be significantly more favorable as the level of supervisor training rises, as the jurisdiction gains more experience, and as the range of student activities expands. State rule provisions permitting students to represent any individual, rather than indigents only, appear significantly beneficial, while slight negative effects are associated with rule provisions limiting student appearances to trial courts.

293. See Appendix II, question 6.

294. Appendix V, Chart E.

*D. Impact on the Community*²⁹⁵

In terms of general benefit to the community, student practice is again more favorably perceived where trained supervisors are employed, where supervisors are held personally accountable for the level of representation provided by the student, and when there is a broad range of permissible student activity. The positive effect of these factors is to be anticipated in light of their similar effect upon the previously discussed aspects of student practice. An unanticipated finding is that with respect to community impact, the size of the program appears significant, the smaller programs being associated with more favorable ratings. In terms of sheer numbers, the larger programs might be thought to have greater potential for community impact. That the smaller programs are favored may indicate that the respondents placed more value on quality than quantity of impact.

If, however, the findings relating to program size are to be credited, then it becomes difficult to account for other findings, particularly the seemingly broad endorsement for programs that stress the volume of community service. Programs that do not restrict student participation through educational or moral prerequisites, that do not provide course credit for student practice similar to that given for other academic courses, and that do not severely limit the number of students a supervisor may handle at one time were associated with the most favorable ratings for community benefit. Such programs seemingly emphasize the maximum utilization of resources to increase the volume of service with a concomitant relaxation of the requirements which might ensure higher quality of service. The proper interpretation of the conflicting perceptions as to community impact of large and small programs may be that shortcuts can be taken only where the number of students involved is relatively small. This relationship suggests a need for further study.

*E. Value to the Legal Profession*²⁹⁶

Perceptions of the value of student practice to the legal profession again appear to become more favorable as respondents gain more experience with a program. Although supervisor training methods did not have the significant impact in this area that was noted in connection with other aspects of student practice, on-the-job and atypical methods of training appear to have a detrimental effect. The effect of student

295. *Id.*, Chart F.

296. *Id.*, Chart D.

practice upon the legal profession is apparently affected by the nature of student commitment; programs which require good character certification of participating students and those in which the student earns academic credit equivalent to that offered in other courses were associated with higher ratings.

*F. Education for Professional Responsibility*²⁹⁷

Some rather different findings appear in the analysis of student practice as a method for teaching professional responsibility. In contrast to all other aspects of student practice except educational benefit, a higher degree of professional responsibility among students was not associated with supervision by an attorney trained in supervisory techniques. Student practice methods have been urged and accepted in substantial part on the basis of their anticipated success in imparting professional responsibility. Although some of the expectations have not been fulfilled, there is still agreement among all respondents that student practice is valuable in teaching professional responsibility. Again, as with educational benefits, greater expectations of trained supervisors relative to actual achievements in teaching professional responsibility may account for the lack of correlation between use of trained supervisors and greater perceived success in improving students' ethical conduct. Increased supervision, undistinguished as to supervisor training, however, is associated with improved professional responsibility among students.

Another factor whose effect upon student ethics is contrary to its effect upon other facets of student practice is provision that the supervisor be personally accountable for the student's actions. That this factor is associated with more negative views of professional responsibility is not surprising, since it seems reasonable that students will be less attentive to ethical considerations when someone else is responsible for their actions. Nevertheless, the fact that high levels of supervision, implying lessened student independence, are associated with high levels of professional responsibility suggests a conflict and a need for further research.

A final factor demanding further study is the effect upon the student's sense of professional responsibility of standards for admission to student practice programs. Surprisingly, both the requirement of good character certification and the granting of automatic approval to any enrolled

297. *Id.*, Chart C.

student were associated with less positive views of student practice as a means of instilling professional responsibility.

VIII. CONCLUSION

All groups whose opinions were sought in the survey indicated that student practice is beneficial to the student, to the community, and to the legal profession. There were, however, some reservations expressed as to the adequacy of client representation by students. Moreover, although all respondent groups reported that student practice confers at least some benefit on the legal profession, there were significant differences in responses depending upon the respondent's association with a program; those in closest contact with student practice programs generally perceived the greatest contribution.

The specific aspects of student practice received ratings which were generally consistent with its favorable overall evaluation. Training in client handling, fact gathering, trial advocacy, and related techniques is perceived as effectively complementing legal education by the case method. That student practice should not replace, but be utilized in conjunction with, other educational methods is indicated by the fact that no respondent group would permit participation by first-year law students, while some would limit eligibility to the third year.

Two conclusions were reached concerning professional responsibility among students. First, it appears that student practice exposes students to situations in which they must make decisions as to an ethical course of conduct. Those decisions, however, need not be made alone; the assistance of the program supervisor should guide the student through most of the difficulties which might face an impecunious newly licensed attorney. Second, although the ethical behavior exhibited by students may not be on the high plane desired by some commentators, it generally is deemed adequate in terms of the articulated norms of the profession.

Respondents perceived student practice as having a minimal impact on the legal system itself. Indigent access to the legal apparatus was thought to be improved as a result of student practice but is still restricted by the limited size of existing programs. The process of settling cases was not believed to be affected significantly by the involvement of student practitioners. With respect to trials, the general court demeanor of students was thought to be less disruptive than that of experienced attorneys, although some disruption of the trial process

was reported in situations where students apparently had sufficient confidence to interject themselves forcefully into the proceedings.

The requirements for supervision of students are seen by some as mere concessions to the opponents of student practice. A close reading of the responses in this study, however, indicates that supervision plays more than a political role. Respondents consistently reported that students are incompetent to perform certain functions without close supervision. Interestingly, student performance in some of these areas, although deemed inadequate, was thought to be on a par with that of newly licensed attorneys.

The effectiveness of student representation appears directly related to the level of supervision. Greater amounts of supervision also were associated with increased educational benefits, improved education in professional responsibility, and minimized disruption of the legal system. Beyond indicating the value of supervision, these findings justify the very existence of student practice programs. Student practice is premised, in part, on the proposition that it is preferable for an aspiring attorney to acquire the skills he will need in practice while a student, under professional supervision, than to do so at the expense of the first clients who walk through the newly licensed attorney's office door. If, contrary to the findings, students could perform well without supervision, there would be little educational need for clinical experience.

The results of the study indicate that there is also a direct relationship between the quality of a student's performance and the amount of experience he has in a given activity. Moreover, the activities associated with substantial participation and good student performance are also associated with a high level of supervision. These findings raise the question whether student performance in such activities would remain adequate if the level of supervision were reduced. If so, it would seem that the emphasis of supervision would more profitably be placed on activities in which the student has less experience.

The need for close supervision, however, limits the ability of student practice to provide the additional legal representation called for by *Gideon* and *Argersinger*. If in-court supervision by an attorney is required in every case, the effectiveness of student practice in easing the burden on the profession of providing legal assistance to indigents is diminished. On the other hand, if it is recognized that the need for supervision varies with the individual student and the case being handled, then even though the decision as to the amount of supervision required in a particular instance proceeds from the presumption that

full supervision is necessary, such presumption should be rebuttable. Although most state rules now presume that students are competent to deal with misdemeanor cases but conclusively presume that, unsupervised, they are incompetent to handle felony cases, *Gideon* and *Arger-singer*, read together, indicate that this distinction may not be justified. It seems inappropriate for the rules to set up either presumption; rather, the burden should be placed upon the student practice program to justify any unsupervised appearance.

APPENDIX I

METHODOLOGY

Research about the law, as opposed to research within the law,¹ is a relatively recent phenomenon, beginning with the work of Dean Roscoe Pound and Karl Llewellyn at the turn of the twentieth century.² Nontraditional research methods, however, have not gained general acceptance; a recent liberal estimate is that only one-sixth of the nation's law teachers occasionally deviate from traditional methods of legal research.³ Notwithstanding the relatively small percentage of law professors involved, the total product of this nontraditional research is substantial, as indicated by the number of institutions established to pursue such tasks and by the private foundation support given them.⁴

One method of nontraditional research is the empirical legal impact study, a variation of which was employed in this project. Such a study has been defined as follows:

A legal impact study represents an attempt to ascertain how a particular law affects the conduct and attitudes of those individuals, groups, or other relevant units located in jurisdictions where that law is in force. By its very nature such a study involves one essential comparison; the comparison between actual behavior patterns in jurisdictions having the law in question and the behavior patterns which would have existed in those same jurisdictions had the law in question never been enacted. . . . [T]his comparison is one which by definition cannot actually be made⁵

As this description indicates, the task of the researcher is to approximate the ideal. The suggested approach is to survey a jurisdiction before and after a particular law is enacted and to make comparable surveys at each time in a jurisdiction which has no such law.⁶

Deviation from this ideal research design is one of the compromises which had to be made in the course of this study. Almost all student practice acts in the United States were passed before the project began; hence, the possibility of preenactment analysis was foreclosed. Although a comparison of attitudes in student practice and non-student-practice states seemed an attractive alternative, the possibility that comparison results would be affected by variables unrelated to student practice was so great that had this approach

1. See Cavers, "Non-traditional" Research by Law Teachers: Returns from the Questionnaire of the Council on Law Related Studies, 24 J. LEGAL ED. 534, 538-40 (1972).

2. See Rehbinder, *The Development and Present State of Fact Research in Law in the United States*, 24 J. LEGAL ED. 567, 568 (1972). Lesser roles are attributed to Brandeis and Holmes. *Id.* at 569.

3. Cavers, *supra* note 1, at 543.

4. See generally Rehbinder, *supra* note 2.

5. Lampert, *Strategies of Research Design in the Legal Impact Study—The Control of Plausible Rival Hypotheses*, 1 LAW & SOC. REV. 111 (1966).

6. *Id.* at 130-32.

been utilized, a large, heterogeneous group of each type of state would have been required.⁷ Because only seven states presently do not permit student practice, the elimination of plausible rival hypotheses appeared practically impossible.

Research Objectives

Once the decision was made to analyze student practice by means of some type of empirical study, a more precise definition of the purposes of the project suggested two alternative avenues of approach. The first was essentially exploratory—an attempt to find out what is happening in states where law students are permitted to make court appearances on behalf of clients. The second approach was the statement of and an attempt to prove or disprove hypotheses about the effects of student practice. The latter approach was initially appealing because it appeared to offer more opportunity for sophisticated analysis.

The statement of a testable hypothesis, however, presupposes a theoretical framework derived from basic information about the field to be examined.⁸ In light of the initial stimulus for this project—namely, the lack of data about the effects of student practice—it was apparent that there was little upon which to base the formulation of hypotheses. Previous writings had been limited to descriptions of student practice rules and particular program models and general subjective arguments in favor of or opposed to student practice. In this context, the statement of hypotheses would have been somewhat artificial and only of secondary importance to the more necessary task of collecting basic data about the effectiveness of student practice, both as an educational vehicle and as a means of delivering legal services.

Theoretical generalizations might be attempted after examination and classification of the information obtained in this study, but the actual testing of specific hypotheses could best be achieved either by reevaluation of the data collected or by further research. An attempt has been made at various points in this study to suggest apparent relationships which could provide the theoretical basis for hypothesis formulation and testing.

Research Design

With the focus of the project having been placed primarily on exploratory work, the task of obtaining the desired information was begun. Ideally, the records of cases in which students participated should have been compared with those in which there was no student participation; similarly,

7. *Id.* at 126-27.

8. According to one description of the social research process, several phases are involved. After beginning with observations of phenomena, the researcher attempts to classify the phenomena in some manner, developing at this point some rudimentary theory. Only after this has been done does the process of testing hypotheses begin to test theory. W. CRANO & M. BREWER, *PRINCIPLES OF RESEARCH IN SOCIAL PSYCHOLOGY* 17-19 (1973). For a very clear popular treatment of the implications of what is meant by a "theory," see G. McCAIN & E. SEGAL, *THE GAME OF SCIENCE* 85-93 (1969).

the work of young attorneys who participated in student practice while in law school should have been compared with that of attorneys who had no comparable experience. Such comparisons would have been the most direct means of evaluating both the effectiveness of student representation and the educational benefit of participation in student practice programs. Nevertheless, such direct examination of student representation was not feasible since most student work is in courts not of record and because available time and resources were insufficient for follow-up research on participating and nonparticipating students.

From the inception of the project, it was determined that its scope would be national, in part because there was no local model to examine, but more importantly, because the existing empirical research had focused on single-jurisdiction programs.⁹ The lack of a local program was advantageous to the extent that it reduced the preconceptions of the researchers, although it also eliminated the possibility for direct observation of student performance.

In lieu of either direct observation or comparisons of court records, a mail survey of persons associated with student practice was selected as the most practicable approach. The principal disadvantage of this method was its inability to accumulate original data about the effects of student practice. Instead of entailing first-hand observation or the interpretation of recorded numerical data, the study involved an analysis of the respondents' subjective perceptions about student practice. It was clear from the outset that the research would be at least one step removed from "actuality." Accordingly, most of the questions sent to all respondents were designed to be generally evaluative. Rather than inquiring into the number of students in a particular program who provide adequate representation to their clients, for example, the questions were intended to evoke opinions on the general adequacy of student practitioners as a group.

Notwithstanding that the study deals primarily with second-hand perceptions of student performance, it represents more than a "man on the street" attitude survey. The respondent groups were selected on the basis of their proximity to student practice. Although it is not claimed that the respondents represent a normal sample of the population, the survey did include a rather exhaustive questioning of many of those in the best position to evaluate student practice from first-hand experience.

The Questionnaire

Determining the content of the questionnaire again involved a reassessment of the purposes of the research. Because the objective was primarily exploratory, an attempt was made to gather as much data as practicable about most aspects of student practice. In anticipation of creating a data bank which could be used for purposes other than the immediate project, it was further decided to obtain information in sufficient depth to reduce

9. Note, for example, the studies collected in *CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* (E. Kitch ed. 1970).

the need for subsequent questioning. Accordingly, the questionnaire items reported in Appendix II reflect not only an attempt to exhaust the subject matter reported but also a conscious effort to discover inconsistencies in response and to provide data helpful in developing relationships other than those discussed in this effort.

Achieving both breadth and depth obviously entailed asking a great many questions. Consequently, some compromises were necessary to avoid presenting the respondents with an overly discouraging task. For example, questions were formulated to facilitate ease of response. The majority of the questions were multiple choice and could be answered merely by circling the appropriate response.¹⁰ In addition, an attempt was made to limit the number of questions requiring the consultation of records. As a result, the very interesting area of financial considerations had to be almost entirely omitted from the study.¹¹

Most of the questionnaire items were sent to all respondent groups; however, one other method adopted to shorten the questionnaire was to pose some questions only to those subpopulations thought to be in the best posi-

10. Many of the items on the questionnaire are designed after the Likert method of scale construction, using multiple-choice responses that range from "strongly agree" to "strongly disagree." See W. CRANO & M. BREWER, *supra* note 8, at 239. Others use a similar format but ask for comparisons from "much better" to "much worse," or ask about the change in an item perceived by the respondent, ranging from "increase greatly" to "decrease greatly."

Although the Likert-type item was developed to construct attitude scales, it was used in this questionnaire primarily to simplify response. Nevertheless, it was necessary to consider the problems inherent in attitude-scale construction. Among the threats to validity considered were acquiescence (tendency to agree with positively worded statements), extreme-response sets (individual proclivities toward generally choosing either extreme or moderate choices in a range of answers), language difficulty, and social desirability. *Id.* at 255-59.

Language difficulty was thought to pose little problem because most of the respondents could be expected to be highly educated. Despite the fact that at least a college education could be assumed for most respondents, a few complaints of ambiguity were received. Clients were thought to be a more likely source of language difficulty, and the questionnaire items addressed to them were stated in clear and simple terms. No complaints of confusion were received on those items.

An attempt was made to minimize the effects of acquiescence by balancing questionnaire items to provide an approximately equal number of statements favorable and unfavorable to liberal student practice rules. A mixture of questionnaire items was also employed to minimize extreme response sets, both strongly and moderately worded statements being used. In any event, this problem has been suggested to have a minimal effect on questionnaire validity. *Id.* at 257.

Social desirability posed a different problem. When a person is uncertain of his own feelings, he is likely to choose what he believes to be a socially desirable response. *Id.* at 256. It seems unlikely that there is any social stigma attached to any particular feeling about student practice, but it does seem likely that a respondent, if uncertain about his feelings about a particular aspect, would shape his answer to conform to his overall opinion about student practice. The survey met this potential problem by attempting to avoid asking any respondent group questions about subjects with which such group would have had no experience.

11. Pessimism about the effect of a respondent's having to consult records appears to have been justified in light of the generally poor response to the few questionnaire items which entailed such consultation.

tion to answer them. In some instances all respondents were asked a general question about a certain area of inquiry, while more specific questions in the same area were directed only to certain subpopulations. Most of the factual questions describing the various programs were sent only to program directors. Although the other questionnaires were shortened substantially at the cost of extending the program director questionnaires, confining most of the program description questions to the directors tended to limit analysis by restricting the opportunities for associating some answers by other respondents with particular program models.

Before compiling the data, the questionnaire was verified to establish that the respondents had interpreted the questions in the manner intended. Most subject areas in the questionnaire, especially those calling for evaluations of some phase of student practice, were treated in series of questions, the individual questions appearing in varying formats in different parts of the questionnaire. The primary purpose of this approach was to probe slightly different aspects of the same subject. Because of the logical connections among the questions in each series, however, it seemed reasonable to expect some consistency of response to related questions if the items were interpreted by the respondents in the manner intended by the research design. In order to test the validity of the questionnaire items, Pearson product-moment correlations¹² were run on those evaluative items answered by the majority of the sample. Correlations normally approached a level of significance which would occur only one in twenty times simply on the basis of chance (a statistical significance of .05).¹³ Since this level of statistical significance generally is considered acceptable by social statisticians, the consistency of response can be said to indicate that the respondents were generally perceiving the questionnaire items in the intended manner.¹⁴

12. For a description of Pearson correlations, see D. DOWNIE & R. HEATH, *BASIC STATISTICAL METHODS* 86 (1970).

13. Throughout this study, statements that a relationship between items or differences in responses have "statistical significance" refer to what is known as "testing the null hypothesis." This hypothesis is that there is no relationship or meaningful difference between the items or responses, respectively. Given the operation of chance, it is possible that in some cases there could be the appearance of a relationship between two items or of a meaningful difference in one item when it is associated with another item. Testing the null hypothesis involves asking how often the apparent relationship could appear if in fact there really were no relationship. For the purposes of this study, a relationship is considered significant if there is no more than a .05 probability that the appearance of a relationship was the result of mere chance. It should be noted that this level of discrimination still leaves the possibility that one out of twenty apparent relationships will be false, the result of nothing more than chance. *Id.* at 167. This fact has great importance in an exploratory study such as this where apparent relationships are merely noted by observation and rationalized after the data has been collected, instead of being used to confirm predictions made on the basis of prior theory. See W. CRANO & M. BREWER, *supra* note 8, at 109.

14. Of course, such a correlation does not prove that the questions are measuring precisely what was intended but rather proves only that the questions had *something* in common. W. CRANO & M. BREWER, *supra* note 8, at 105. It does, however, lend support to the conclusion that the respondents were operating in the intended conceptual framework.

The consistency of response for subject matter (and hence the validity of the questionnaire) was further indicated by the achievement of high consistency levels for purportedly similar questions despite substantial differences in response pattern among the various subpopulations. The answers to the evaluative questions asked of all subpopulations were intercorrelated within each subpopulation and then across all populations. Average intercorrelations across the entire sample indicated a higher degree of consistency than the same correlations performed within each subpopulation, a result lending credibility to the significant correlations achieved on the subject matter tests run across the entire sample.

Respondent Selection

To reduce the possibility of biased responses from those with commitments to particular programs, the sample population was made as geographically diffuse as practicable by surveying respondents from all states with student practice rules. A further attempt to reduce bias was the selection of respondents with varying degrees of association with student practice. It seemed obvious that students and program directors should be included because of their close participation in all phases of student practice. Because both groups represent apparent sources of pro-student-practice bias, however, the survey was not limited to them.

With the hope of obtaining more objective evaluations, responses were elicited from law school deans, bar associations, and state attorneys general. Moreover, these respondents could serve as political lightning rods for any complaints about the programs. Judges were included on the assumption they would have the most objective viewpoint of all. Attorneys supervising student court work were surveyed in the expectation they would offset the subjectivity of students' evaluations of their own efforts.

Although another highly desirable source of respondents would have been attorneys who had represented opposing parties against students, there appeared no feasible means of identifying or surveying a representative sample from this group. Clients who had been represented by students were included in the sample population in an attempt to obtain objectivity. However, differences in the type of questionnaire sent to clients and the method of questionnaire distribution raise doubt about the usefulness of these returns.¹⁵

For four of the subpopulations, the sample selected for the survey approached a total canvas. Questionnaires were mailed to all state attorneys

15. A number of questions sent to the clients were intended to examine the same areas examined through the other respondents. Due to the potential problem of language difficulty, however, the wording of the questions was revised in an effort to stress clarity. There is no means of determining how much may have been lost in the translation.

Most schools were unwilling to permit questionnaires to be mailed directly to clients, claiming such a procedure would violate principles of client confidentiality. Whatever the merits of that argument, the result was that questionnaires were sent to the schools for distribution to the clients. This procedure allowed the school to see the contents of the questionnaire and enhanced the possibility of a biased selection of clients.

general and bar associations and to virtually all deans and program directors at American Bar Association-accredited law schools with student practice programs. Only in those states with more than three law schools were some of the schools omitted, and omission was completely arbitrary. Whatever bias is present in the sample was introduced in the student, client, judge, and supervising attorney subpopulations, because respondents in these categories were selected either from lists supplied by the law schools or by the law schools themselves. In neither case were the respondents selected randomly from a complete list of all possible members of the subpopulation. Although the potential for bias in this method of distributing questionnaires was recognized, the inability to obtain names and addresses by any other means necessitated the procedure.

Response

The volume of response to the questionnaire¹⁶ was affected by the method of distribution as well as the length of the questionnaire. Approximately one-half of the questionnaires were mailed directly to respondents on the basis of names and addresses obtained from the law schools and, for state attorneys general and bar associations, other sources. The remaining questionnaires were mailed to law schools in packets, each of which included a request that the school distribute the questionnaires to three students, three judges, three supervising attorneys, the program director, and the law school dean. The use of these packets increased considerably the number of questionnaires distributed but did little to increase the response. It is likely that there simply were fewer than three supervising attorneys associated with some programs and fewer than three judges before whom some students regularly practiced. Another factor which undoubtedly reduced the return from the packet mailing was the possibility that some schools had one person serving both as program director and supervising attorney. Several of the returned questionnaires indicated this fact. In addition, it is possible that some law schools failed to distribute all of the questionnaires they received, especially since many of the schools receiving packets had earlier declined a request to supply names of individuals to whom questionnaires could be mailed directly.

Notwithstanding that many of the program description questions were included only on the questionnaires distributed to program directors, all of the questionnaires remained longer than desirable. It was hoped that the subpopulations chosen would have sufficient interest in the results of the study to respond to the large number of questions. Stamped, self-addressed envelopes were included with the questionnaires to facilitate return, and, as previously noted, the questions were selected in an attempt to minimize

16. A total of 225 individuals representing 36 states responded. The total number of individuals responding from states which permit student practice were as follows: Arizona-6, Arkansas-1, California-9, Colorado-11, Connecticut-6, Florida-12, Georgia-5, Idaho-5, Illinois-3, Indiana-9, Iowa-5, Kansas-13, Kentucky-4, Louisiana-3, Maryland-2, Massachusetts-14, Michigan-9, Minnesota-3, Mississippi-1, Missouri-6, Montana-2, Nebraska-4, New Jersey-3, New York-5, North Dakota-1, Ohio-20,

the necessity for consulting records. Despite these efforts, 55 individuals wrote letters refusing to answer the questionnaire because of its length or complexity. A complicating factor was that other national studies were being conducted simultaneously, seeking participation by some of the same respondents. In fact, during the course of this project, the American Association of Law Schools wrote the authors of this study asking that its members not be burdened with more questioning.

Considering the high probability that many of the questionnaires mailed never reached respondents, the anticipated low return from a mail survey as opposed to personal interviews, and the complexity of the questionnaire, the percentage return was not as disappointing as the unexplained figures might indicate. In absolute numbers, the total of 225 returns was sufficient to support the analysis reported, although extensive analysis of some specific items was impossible due to distribution of responses into inconveniently small groupings.

Subpopulation Weighting

Statistical weighting of the responses from the different subpopulations presented a more complex problem. To attach equal weight to all responses

Oklahoma—19, Oregon—3, Pennsylvania—12, South Dakota—1, Tennessee—8, Texas—2, Washington—1, West Virginia—1, Wisconsin—13, and Wyoming—3. In addition, there were four respondents from states which do not expressly authorize students to participate in court. These responses were not considered in the compiled data used in the analysis of the questionnaire. The total of 225 also excludes 19 client responses which have been considered separately.

All geographic areas of the United States were fairly represented. The geographic distribution of respondents was as follows: Eastern states (Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania)—42; Southern states (Florida, Georgia, Kentucky, Louisiana, Mississippi, Tennessee, West Virginia)—34; Midwestern states (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin)—87; Southwestern states (Arizona, Arkansas, Oklahoma, Texas)—28; and Western states (California, Colorado, Idaho, Montana, Oregon, Washington, Wyoming)—34.

The responses also reflect the variations in student practice rule provisions. Concerning the nature of the client, 169 respondents were from states limiting student representation to indigents, while 28 were from states authorizing the handling of the case of any individual. This return corresponds closely to the number of states limiting representation to indigents (34) and permitting representation of any individual (8). As to the types of cases allowed to student practitioners, 197 respondents were from states authorizing students to handle both civil and criminal cases, while the states of 16 respondents limit student practice to criminal cases and those of four, to civil cases. Concerning the extent of practice allowed, the respondents were again representative of the variations in state rules: Forty-nine respondents were from states limiting activities to "in court"; 97, to "in court" and "court documents"; 16, to "in court" and "counseling"; and 45, to "in court," "court documents," and "counseling"; 11 respondents were from states permitting any activity by a student. The distribution of respondents also reflects another important aspect of student practice rules—the amount of personal supervision required. As to civil cases, 134 respondents were from states requiring personal "in court" supervision; the states of 183 respondents have similar requirements as to specific types of criminal cases.

The number of respondents in each category from whom questionnaires were received is as follows: deans—26, program directors—24, judges—40, supervising attorneys—50, students—65, state bar associations—9, and attorneys general—11.

was unsatisfactory for several reasons, including the significantly different numbers of respondents from the various subpopulations (ranging from nine bar associations to 65 students). Weighting the responses, however, presented two major problems: (1) such weighting would be totally unrepresentative of the actual number of the members of each population in the legal profession; and (2) because subjective responses were solicited, problems would arise concerning the relative weight to be given the opinions of one subpopulation in comparison to any other group.

To resolve the difficulties involved in weighting responses, answers to each of the questions were simply classified according to subpopulation. For more than 300 important questionnaire items, there was a significant difference in response based on subpopulation. For these questionnaire items, responses are discussed in the text of the study by subpopulation.

Primary Data Analysis

Data analysis was performed using computer programs from the Statistical Package for the Social Sciences (SPSS).¹⁷ Since the primary function of the survey was to report the evaluations of student practice by those associated with the programs, most analysis was limited to computing mean responses for the entire sample and for each subpopulation. Additional analysis was performed on some of the questionnaire items, however, using SPSS correlation, analysis of variance, and regression programs. Most of this analysis attempted to discover significant relationships, if any, between certain variables, without seeking to pinpoint the exact nature of such relationships. It is suggested that further work in this area may be directed profitably toward determining whether any of these relationships are causal or whether there are other underlying variables which explain the apparent relationships.¹⁸

Correlation analysis was utilized for several purposes, including verification of the questionnaire by checking consistency and determination of the thoughtfulness of the responses to the various questions. There initially was some concern that respondents might alter their manner of answering as they progressed through the lengthy questionnaire, either by becoming sloppy or by developing some animosity toward the questionnaire. To the extent that such attitudes were a problem, however, the effect appears to have been limited to either a failure to return the questionnaire or a refusal to answer questions at its end, especially those necessitating consultation of records.

Correlation analysis also was used to determine whether there was a positive or negative association among the respondents' answers to certain items relating to varying subject matter.¹⁹ For example, such analysis was

17. N. NIE, D. BENT & C. HULL, *STATISTICAL PACKAGE FOR THE SOCIAL SCIENCES* (1970).

18. Among the possibilities which complicate making claims of causality between two variables are potential hidden third factors, multidimensional causation, and confounding of the independent and dependent variables. W. CRANO & M. BREWER, *supra* note 8, at 101.

19. See H. BLALOCK, *SOCIAL STATISTICS* 285 (1960); W. CRANO & M. BREWER, *supra* note 8, at 101.

used extensively in relating the degree of supervision to the level of student performance in and educational benefits resulting from particular activities, such as interviewing clients or cross-examination in court. Because computing SPSS Pearson Correlations is less complex than using the SPSS analysis of variance program, the former procedure was used whenever the variables involved were either interval variables or variables for which there were only two possible meaningful responses.²⁰

Analysis of variance²¹ was used primarily to discover whether the way an individual answered one question was associated with the way in which other questions were answered. Its most frequent use was in comparing responses to a nominal variable with responses to an interval variable, although it was used occasionally to compare two continuous variables. Analysis of variance also was employed to determine whether the individual subpopulations had responded to items in a sufficiently different manner to make average responses for the entire population meaningless for those items.

*Regression Analysis*²²

Most of the relationships explored by correlation and analysis of variance concerned variables which were subjectively selected on the basis of an apparent logical connection with some other variable. Consideration of these relationships was limited to two-way analysis. It was recognized, however, that due to possible interrelationships, associations among variables might differ when several variables were considered simultaneously. Because the complexities of such analysis were beyond the scope of this project, only a very tentative effort was made to explore such multiple interrelationships.

Regression analysis is not necessarily an analysis of causation, but it does have a predictive value of use for this study.²³ The SPSS stepwise regression program includes elements of discriminate analysis—the independent variables are considered in the order in which they contribute to predictions of how a respondent will answer the dependent variable. The final product is an equation including coefficients for each of the independent variables, which, together with a respondent's answer to those variables, ideally would permit a prediction of the way he would answer the dependent variable. For some of the dependent variables, regression equations were formed which theoretically could predict responses with 99 percent accuracy. At this point, however, several important qualifications must be noted which appreciably affect the interpretation of the results.

20. For a discussion of "interval" and "nominal" variables and their implications for measurement, see J. DAVIS, *ELEMENTARY SURVEY ANALYSIS* 9 (1971).

21. See H. BLALOCK, *supra* note 19, at 242. Analysis of variance is not possible with the basic SPSS procedures described in N. NIE, D. BENT & C. HULL, *supra* note 17. Version Four of the package, however, provides two-way analysis of variance as a statistic available for the "Breakdown" subprogram. *Id.* at 134.

22. See Appendix V.

23. For a general description and brief mathematical explanation of regression analysis,

One important assumption which had to be violated in the regression analysis was that of identity of the population used in each step of the analysis. For the most accurate results, the very same respondents should be examined each time a new variable is introduced into the regression equation. Strict adherence to this assumption, however, would have resulted in an unusably small number of cases for computation, since it would have meant eliminating a respondent from all analysis if he failed to give a meaningful response for any one of the variables considered in the regression equation. By using an optional version of the SPSS program,²⁴ it was possible to eliminate a respondent only when he failed to answer the particular variable being considered at that step in construction of the regression equation. The number of cases used for computation is set at the smallest number of cases upon which any single correlation is based. Thus, the number of cases remains constant as the equation is constructed, although the same respondents may not be used throughout the process.

An even more basic qualification about the regression analysis pertains to the specific purpose of such analysis. As noted above, regression analysis (as used in this study) is predictive, not cause determinative. Therefore, the fact that a certain set of independent variables can be used to account for 99 percent of the variation in the dependent variables does not necessarily mean that that combination of variables causes the variation. It only means that if the answers to the independent variables are known, the answer to the dependent variable may be predicted with more or less accuracy. Furthermore, it may be possible to predict the dependent variable response with equal accuracy from an entirely different set of independent variables.

For example, if it is known that a voter is philosophically conservative, it may be predicted that he will vote for the Conservative Party candidate in an election where the only other candidate is a member of the Liberal Party. An equally accurate prediction might be made if it is known that the voter has an intense personal dislike for the Liberal Party candidate. Despite the accuracy of prediction possible by knowing either fact, the actual cause for voting for the Conservative Party candidate might be that the voter has been promised a political appointment by that candidate. Equally high predictive values might be assigned to each of the three known facts about the voter even though only one, the possibility of political appointment, was causal. On the other hand, another bit of voter information, such as hair color, having neither causal nor predictive value, would be excluded from the regression equation for all practical purposes.

Even in light of these caveats about the regression analysis, its usefulness should still be acknowledged. The fact that one alternative method of organization appears to be associated with a more positive evaluation of some aspect of student practice should at least create a certain presumption in favor of that alternative. Because some statistical assumptions were not strictly followed for the purposes of regression analysis, however, great reliance should not be placed upon some of the finer distinctions that might

see N. NIE, D. BENT & C. HULL, *supra* note 17, at 175. For a more technical explanation, see H. BLALOCK, *supra* note 19, at 273.

24. N. NIE, D. BENT & C. HULL, *supra* note 17, at 187.

seem apparent. Nevertheless, when the impact of one variable appears markedly more important than another in predicting evaluations, its prominence should be noted. Moreover, results of the regression analysis should be given particular attention when they appear to be confirmed by the results of analysis of variance among the variables concerned.

APPENDIX II

STUDENT PRACTICE QUESTIONNAIRE

Some questions for which the response was insufficient or ambiguous have been eliminated both from the textual analysis and from the list printed below. A total of 183 questions were sent to the various respondents. Throughout the questionnaire, the following abbreviations are used: D=Dean, P=Program Director, J=Judge, A=Supervising Attorney, S=Student, G=Attorney General, B=Bar Association, and T=Total Mean Response. The numbers following each letter indicate the corresponding mean response of the individual group. For example, in question 1, D-3.885 indicates a response between "agree slightly" (3) and "no opinion" (4), tending to approach the latter response. Total averages marked with an asterisk (*) indicate that the responses from the various respondent groups are so significantly different that the total average does not accurately reflect the entire population.

Several other questions, together with responses which were subjected to regression analysis, appear in Appendix V.

Throughout the questionnaire comparisons are frequently made between the ability and performance of students participating in student practice and that of two categories of practicing attorneys. In answering questions containing such comparisons, respondents were instructed to consider those categories to be defined in the following manner:

NEWLY LICENSED ATTORNEY: A recent law school graduate who did NOT PARTICIPATE in any type of student practice program, and who is in his first year of the general practice of law.

TYPICAL ATTORNEY OF AVERAGE EXPERIENCE: An attorney of average experience, who did NOT PARTICIPATE in any type of student practice program, and who has been in the general practice of law from five to ten years.

GROUP I

Indicate your AGREEMENT or DISAGREEMENT with each of the following statements by circling the appropriate symbol:

8. The trial court should be concerned with the educational goals of student practice to the extent of taking time during trial to . . .
 - A. correct prejudicial error.
D-3.320 P-3.125 J-2.846 A-3.041 S-3.484 B-3.111 G-3.900
T-3.218
 - B. correct non-prejudicial error.
D-3.609 P-3.875 J-3.132 A-3.766 S-4.429 B-4.222 G-4.100
T-3.879
9. The trial court should not correct student errors during trial because of possible prejudice to the parties.
D-4.375 P-4.042 J-4.410 A-4.571 S-3.969 B-3.667 G-3.545
T-4.200
10. Students should be allowed to participate in student practice during the . . .
 - A. third year of law school.
D-1.440 P-1.250 J-1.541 A-1.500 S-1.375 B-1.778 G-1.400
T-1.442
 - B. second year of law school.
D-4.056 P-3.043 J-4.192 A-2.684 S-2.968 B-4.125 G-2.818
*T-3.235
 - C. first year of law school.
D-5.944 P-5.682 J-6.217 A-4.781 S-5.450 B-6.000 G-5.778
*T-5.550
 - D. at no time.
D-6.909 P-6.895 J-6.750 A-6.774 S-6.768 B-6.286 G-6.333
T-6.745
11. By relegating many indigent client cases to students instead of to court-appointed licensed attorneys, the bar is sidestepping ITS responsibility to provide counsel to those who cannot afford it.
D-5.231 P-3.583 J-4.200 A-4.510 S-4.844 B-5.333 G-4.000
T-4.545
12. By allowing student practice, the bar is disregarding its commitment constantly to improve the quality of the legal system.
P-6.250 J-5.725 A-6.041 S-6.385 B-6.667 G-5.818 T-6.131
13. Clients feel they must double check student advice with a supervising attorney before relying on it.
P-5.333 J-5.000 A-4.980 S-5.646 G-2.000 T-5.329
14. Students are just as committed to a \$50 tenant case as a practicing attorney is to a \$1 million antitrust case.
D-3.615 P-2.435 J-2.111 A-2.898 S-3.092 B-2.778 G-2.700
T-2.849

15. As a rule students are willing to attempt to prevent clients from taking illegal actions . . .
- A. in connection with the client's case.
D-2.692 P-2.409 A-2.362 S-1.969 *T-2.262
 - B. in connection with client affairs unrelated to his case.
D-2.913 P-2.864 A-3.065 S-2.415 *T-2.744
16. Students protect their client's confidences sufficiently.
P-2.500 A-2.306 S-2.569 B-2.778 T-2.483
17. Assuming students become bored handling indigent cases, the reason(s) is (are):
- A. The legal nature of indigent cases
D-4.000 P-3.750 A-4.385 S-4.696 T-4.355
 - B. Repetition of the same types of cases
D-2.120 P-2.391 A-3.205 S-2.483 *T-2.598
 - C. Lack of guidance from supervisor
D-3.826 P-3.810 A-4.154 S-4.661 T-4.260
 - D. Excessive guidance from supervisor
D-4.478 P-4.900 A-4.919 S-5.051 T-4.899
 - E. Lack of supervisor's enthusiasm
D-3.955 P-3.947 A-3.947 S-4.448 T-4.160
 - F. Too much enthusiasm from supervisor
D-5.364 P-5.450 A-5.222 S-5.379 T-5.353
 - G. The factual nature of indigent cases
D-3.909 P-4.263 A-4.538 S-4.678 T-4.460
 - H. The socio-economic level of the client
D-5.182 P-4.950 A-5.167 S-5.103 T-5.110
 - I. Students do not become bored
D-3.217 P-3.292 A-3.095 S-4.066 *T-3.540

GROUP II

In each of the following questions indicate whether disruption has occurred **MORE FREQUENTLY** or **LESS FREQUENTLY** in the situations presented by circling the appropriate symbol:

MUCH MORE FREQUENTLY	MORE FREQUENTLY	SAME AS	LESS FREQUENTLY	MUCH LESS FREQUENTLY	UNKNOWN
1	2	3	4	5	6

18. Compared to a newly licensed attorney, how much more or less frequently does a student disrupt a trial . . .
- A. in making motions?
P-2.800 J-2.857 A-3.135 S-3.100 B-3.600 T-3.027
 - B. in making procedural objections?
P-3.158 J-2.947 A-3.162 S-3.306 B-3.400 T-3.162
 - C. by the manner in which he makes evidentiary objections?
P-3.150 J-3.000 A-3.179 S-3.083 B-3.000 T-3.093

- D. by making spurious evidentiary objections?
P-3.474 J-3.150 A-3.405 S-3.217 B-3.200 T-3.269
- E. in conducting direct examination?
P-2.900 J-3.105 A-3.103 S-3.163 B-3.000 T-3.093
- F. in conducting cross examination?
P-2.750 J-2.947 A-3.184 S-3.125 B-3.200 T-3.047
- G. by his courtroom demeanor?
P-3.095 J-3.263 A-3.139 S-3.280 B-3.000 T-3.207
- H. in making opening and closing statements?
P-3.125 J-3.108 A-3.118 S-3.196 B-3.000 T-3.130
19. Compared to a typical attorney of average experience, how much more or less frequently does a student disrupt a trial . . .
- A. in making motions?
P-2.353 J-2.432 A-2.789 S-2.864 B-3.000 T-2.674
- B. in making procedural objections?
P-2.667 J-2.474 A-2.923 S-2.674 B-2.800 T-2.692
- C. by the manner in which he makes evidentiary objections?
P-2.500 J-2.703 A-2.895 S-2.761 B-2.000 T-2.722
- D. by making spurious evidentiary objections?
P-3.118 J-2.486 A-2.919 S-2.696 B-2.600 T-2.746
- E. in conducting direct examination?
P-2.063 J-2.658 A-2.757 S-2.660 B-2.400 T-2.608
- F. in conducting cross examination?
P-2.250 J-2.474 A-2.676 S-2.809 B-3.000 T-2.629
- G. by his courtroom demeanor?
P-3.000 J-2.973 A-3.056 S-3.149 B-2.800 T-3.049
- H. in making opening or closing statements?
P-2.333 J-2.757 A-2.757 S-2.907 B-2.500 T-2.750

GROUP III

In each of the following questions indicate whether there has been an INCREASE or DECREASE by circling the appropriate symbol:

INCREASED GREATLY	INCR'D	INCR'D SLIGHTLY	NO CHANGE	DECREASED SLIGHTLY	DECR'D	DECR'D GREATLY	UNKNOWN
1	2	3	4	5	6	7	8

20. As a result of student practice, the traditional "boredom" that has been associated with the third year of law school was . . .
D-5.308 P-5.750 J-6.050 A-6.023 S-6.031 B-5.778 *T-5.882
21. Where supervisors have had specific training in methods of student practice, the educational value of student practice has . . .
D-1.883 P-2.875 A-2.333 S-2.152 T-2.257

22. The scope of the student practice rule in this state should be increased/decreased in the following areas:
- A. Nature of the client
D-3.000 P-2.917 J-3.485 A-2.854 S-2.444 B-3.444 G-2.900
*T-2.880
 - B. Nature of the case
D-3.048 P-3.261 J-3.364 A-2.905 S-2.419 B-3.556 G-2.700
*T-2.905
 - C. Activities in which a student may participate
D-3.056 P-3.000 J-3.438 A-2.762 S-2.435 B-3.444 G-3.000
*T-2.867
 - D. Extent of personal supervision required
D-3.571 P-4.217 J-3.235 A-3.524 S-4.032 B-3.556 G-3.400
*T-3.712
23. As a result of student practice, bar members' earnings have . . .
P-3.455 J-4.235 A-3.435 B-4.286 G-3.857 *T-3.785
24. As a result of student practice, student respect for the . . .
- A. abilities of the bar members has . . .
D-3.833 P-4.455 J-2.650 A-4.000 S-4.547 B-4.167 G-3.222
*T-4.050
 - B. ethics of the bar members has . . .
D-4.353 P-4.591 J-2.850 A-4.200 S-4.629 B-4.000 G-3.333
*T-4.210
 - C. legal profession has . . .
D-3.500 P-4.182 J-2.524 A-3.436 S-3.875 B-4.000 G-3.333
*T-3.598
 - D. legal system has . . .
D-3.737 P-4.304 J-2.524 A-3.976 S-3.953 B-4.333 G-3.444
*T-3.803
 - E. courts has . . .
D-3.789 P-4.522 J-2.348 A-4.024 S-4.000 B-4.667 G-3.111
*T-3.822
25. Because student practice has shown that students are able to perform some of the tasks previously performed only by attorneys, has there been an increase/decrease in the respect for the abilities of licensed attorneys . . .
- A. on the part of the clients?
P-3.933 J-3.765 A-3.467 B-4.333 G-3.556 *T-3.701
 - B. on the part of the public in general?
P-4.000 J-3.667 A-3.571 B-4.333 G-3.444 T-3.724
 - C. on the part of the courts?
P-4.063 J-3.571 A-3.647 B-4.286 G-3.778 T-3.755

26. Has the prestige of courts in which there is substantial student practice increased/decreased . . .
- A. in the eyes of attorneys?
P-4.071 J-3.440 A-3.636 B-4.429 G-3.444 *T-3.693
 - B. in the eyes of other judges?
P-3.867 J-3.444 A-3.382 B-4.000 G-3.667 T-3.559
 - C. in the eyes of the general public?
P-3.867 J-3.696 A-3.852 B-4.333 G-3.444 T-3.800
27. Has the prestige of attorneys participating in student practice increased/decreased . . .
- A. in the eyes of other attorneys?
P-3.583 J-2.889 A-3.147 B-3.857 T-3.188
 - B. in the eyes of the general public?
P-3.900 J-3.222 A-3.552 B-4.286 *T-3.594
 - C. in the eyes of clients for whom the student worked?
P-3.143 J-2.750 A-3.063 B-3.375 T-3.027
 - D. in the eyes of clients for whom the student has NOT worked?
P-3.833 J-3.083 A-3.680 B-4.333 *T-3.655
 - E. in the eyes of judges?
P-3.188 J-2.625 A-3.028 B-3.571 T-2.956
28. Personal involvement with clients causes the student's awareness of the human side of the law to . . .
- P-2.045 J-1.735 A-1.630 S-1.708 B-2.375 T-1.765
29. When one party is represented by a student, the number of controversies settled by negotiation . . .
- P-3.762 J-4.032 A-4.000 B-4.667 T-4.000
30. When one of the parties is represented by a student, the time it takes a suit to reach trial . . .
- P-3.950 J-3.625 A-3.727 S-4.051 B-3.714 T-3.852
31. If the student's participation does in fact result in disruption of the trial, the presence of the supervising attorney in the courtroom causes such disruption to . . .
- P-5.200 J-5.719 A-5.324 S-5.170 B-5.000 T-5.329
32. When a client relies on student representation, jury sympathy for the client tends to . . .
- P-3.818 J-3.389 A-3.643 S-3.600 B-4.000 T-3.611
33. How much has the availability of student representation caused the use of the legal system by indigent clients to increase or decrease?
- P-2.348 J-2.545 A-2.359 S-2.328 B-3.000 T-2.405

34. Compared to similar cases with no student representation, please specify whether each of the following actions has increased or decreased as a result of student practice:

A. Appeals

P-2.950 J-3.182 A-3.225 G-3.000 T-3.137

B. Habeas corpus petitions

P-2.905 J-3.500 A-3.128 G-3.111 T-3.179

C. Malpractice suits

P-4.000 J-4.000 A-4.114 G-4.250 T-4.074

GROUP IV

In each of the following questions indicate the LEVEL OF ADEQUACY for the situations presented by circling the appropriate symbol:

MUCH MORE THAN ADEQUATE	MORE THAN ADEQUATE	ADEQUATE	LESS THAN ADEQUATE	MUCH LESS THAN ADEQUATE	UNKNOWN
1	2	3	4	5	6

35. From a constitutional viewpoint, how adequately are a client's interests protected by a student's level of representation in each of the following areas?

A. Interviewing clients

D-2.714 P-2.565 J-2.588 A-2.578 S-2.313 T-2.502

B. Advising clients

D-3.000 P-2.913 J-3.171 A-3.178 S-2.859 T-3.016

C. Negotiating settlements

D-3.250 P-2.913 J-3.471 A-3.156 S-3.183 T-3.203

D. Fact gathering

D-2.333 P-2.435 J-2.543 A-2.426 S-2.406 T-2.431

E. Research of the law

D-2.048 P-2.174 J-2.270 A-2.174 S-1.815 *T-2.057

F. Analyzing facts

D-2.857 P-2.783 J-3.189 A-3.043 S-2.615 *T-2.875

G. Analyzing legal issues

D-2.762 P-2.652 J-3.135 A-2.681 S-2.508 *T-2.715

H. Preparation of court documents

D-2.611 P-2.565 J-2.919 A-2.936 S-2.492 *T-2.705

I. Use of discovery techniques

D-3.222 P-3.000 J-3.161 A-3.130 S-3.033 T-3.096

J. Selection and organization of trial arguments

D-2.950 P-3.136 J-3.000 A-3.119 S-3.016 T-3.044

K. Making pretrial motions

D-2.850 P-2.696 J-2.833 A-2.837 S-2.644 T-2.756

L. Direct examination

D-3.000 P-3.261 J-3.237 A-3.093 S-3.036 T-3.117

- | | | | | | | |
|---|---------|---------|---------|---------|---------|---------|
| M. Cross examination | D-3.316 | P-3.391 | J-3.605 | A-3.333 | S-3.214 | T-3.359 |
| N. Proficiency in raising timely objections | D-3.421 | P-3.304 | J-3.474 | A-3.244 | S-3.397 | T-3.368 |
| O. Preparation of appellate brief | D-2.118 | P-2.700 | J-2.818 | A-2.316 | S-2.351 | T-2.428 |
| P. Presentation of oral argument on appeal | D-2.412 | P-3.167 | J-3.188 | A-2.643 | S-2.877 | T-2.841 |
36. From a constitutional viewpoint, how adequately could a client's interests be protected by a student's level of representation in each of the following types of cases?
- | | | | | | | |
|-----------------------------|---------|---------|---------|---------|---------|----------|
| A. Criminal misdemeanor | D-2.455 | P-2.391 | J-2.974 | A-2.571 | S-2.270 | *T-2.518 |
| B. Criminal felony | D-3.773 | P-3.455 | J-3.784 | A-3.538 | S-3.190 | *T-3.494 |
| C. Marital relations | D-2.636 | P-2.591 | J-3.237 | A-2.738 | S-2.377 | *T-2.691 |
| D. Landlord-tenant | D-2.409 | P-2.409 | J-2.895 | A-2.356 | S-2.047 | *T-2.371 |
| E. Welfare | D-2.409 | P-2.500 | J-2.806 | A-2.378 | S-2.226 | T-2.427 |
| F. Debt or contract | D-2.571 | P-2.591 | J-3.000 | A-2.533 | S-2.426 | *T-2.597 |
| G. Consumer fraud | D-2.545 | P-2.818 | J-3.000 | A-2.581 | S-2.339 | *T-2.601 |
| H. Employment grievance | D-2.864 | P-2.952 | J-3.156 | A-2.775 | S-2.617 | T-2.823 |
| I. Tort | D-2.857 | P-3.318 | J-3.500 | A-3.154 | S-2.695 | *T-3.056 |
| J. Custody/adoption | D-2.818 | P-2.636 | J-3.118 | A-2.698 | S-2.393 | *T-2.681 |
| K. Securities | D-3.222 | P-4.190 | J-3.821 | A-3.679 | S-3.367 | *T-3.618 |
| L. Corporate reorganization | D-3.667 | P-4.238 | J-4.148 | A-3.821 | S-3.531 | *T-3.825 |
| M. Labor | D-3.412 | P-3.762 | J-3.878 | A-3.379 | S-3.373 | T-3.523 |
| N. Taxation | D-3.235 | P-3.857 | J-4.000 | A-3.655 | S-3.400 | T-3.613 |
| O. Environmental law | D-2.700 | P-3.143 | J-3.357 | A-2.594 | S-2.564 | *T-2.807 |
| P. Antitrust | D-3.667 | P-4.190 | J-4.154 | A-3.714 | S-3.766 | T-3.878 |

GROUP V

In each of the following questions indicate whether the object of the comparison is BETTER or WORSE than the alternative specified by circling the appropriate symbol:

MUCH BETTER	BETTER	SAME AS	WORSE	MUCH WORSE	UNKNOWN
1	2	3	4	5	6
37. How much better or worse is a participating law student than (1) A NEWLY LICENSED ATTORNEY, or (2) A TYPICAL ATTORNEY OF AVERAGE EXPERIENCE in each of the following areas?					
A. Interviewing clients					
(1) D-2.783	P-2.364	J-3.000	A-2.689	S-2.640	*T-2.705
(2) D-3.818	P-3.348	J-3.677	A-3.409	S-3.269	T-3.459
B. Advising clients					
(1) D-2.870	P-2.591	J-3.063	A-3.089	S-2.820	*T-2.912
(2) D-4.045	P-3.652	J-3.875	A-3.814	S-3.824	T-3.836
C. Negotiating settlements					
(1) D-3.043	P-2.591	J-3.125	A-3.000	S-2.960	*T-2.964
(2) D-4.182	P-3.957	J-3.938	A-3.927	S-3.776	T-3.922
D. Fact gathering					
(1) D-2.696	P-2.273	J-2.781	A-2.636	S-2.712	*T-2.647
(2) D-3.500	P-3.174	J-3.152	A-3.136	S-3.059	T-3.167
E. Research of the law					
(1) D-2.870	P-2.318	J-2.706	A-2.605	S-2.481	*T-2.586
(2) D-3.136	P-2.696	J-2.794	A-2.738	S-2.392	*T-2.691
F. Analyzing facts					
(1) D-2.913	P-2.727	J-3.147	A-3.000	S-2.808	T-2.926
(2) D-3.727	P-3.591	J-3.824	A-3.698	S-3.471	T-3.645
G. Analyzing legal issues					
(1) D-2.913	P-2.545	J-3.176	A-2.955	S-2.827	*T-2.902
(2) D-3.667	P-3.565	J-3.788	A-3.452	S-3.255	T-3.500
H. Preparation of court documents					
(1) D-2.739	P-2.727	J-3.000	A-3.044	S-2.673	*T-2.846
(2) D-3.818	P-3.652	J-3.324	A-3.523	S-3.275	T-3.465
I. Use of discovery techniques					
(1) D-2.826	P-2.727	J-3.065	A-2.977	S-2.878	T-2.911
(2) D-4.045	P-3.826	J-3.645	A-3.568	S-3.510	T-3.662
J. Selection and organization of trial arguments					
(1) D-2.783	P-2.762	J-3.000	A-2.952	S-2.708	T-2.842
(2) D-3.864	P-3.773	J-3.781	A-3.525	S-3.696	T-3.703
K. Making pretrial motions					
(1) D-2.870	P-2.524	J-2.914	A-2.795	S-2.652	T-2.756
(2) D-3.909	P-3.318	J-3.382	A-3.375	S-3.277	T-3.412
L. Direct examination					
(1) D-2.870	P-2.682	J-3.086	A-2.975	S-2.896	T-2.922
(2) D-4.091	P-3.783	J-3.824	A-3.780	S-3.761	T-3.825

M. Cross examination

- (1) D-2.955 P-2.818 J-3.200 A-3.026 S-2.978 T-3.012
 (2) D-4.273 P-4.091 J-3.941 A-3.925 S-3.870 T-3.981

N. Proficiency in raising timely objections

- (1) D-2.905 P-2.762 J-3.118 A-3.189 S-2.827 *T-2.974
 (2) D-4.048 P-4.000 J-3.727 A-3.821 S-3.756 *T-3.837

O. Preparation of appellate brief

- (1) D-2.947 P-2.111 J-2.875 A-2.611 S-2.574 *T-2.675
 (2) D-3.350 P-2.556 J-3.227 A-2.943 S-2.733 *T-2.928

P. Presentation of oral argument on appeal

- (1) D-3.000 P-2.467 J-2.955 A-2.800 S-2.756 T-2.775
 (2) D-3.286 P-3.214 J-3.636 A-3.367 S-3.250 T-3.350

38. How much better or worse does a law student protect the interests of his client than . . .

A. a newly licensed attorney?

- D-2.727 P-2.455 J-2.919 A-2.750 S-2.636 B-2.500 G-3.000
 T-2.717

B. a typical attorney of average experience?

- D-3.810 P-3.043 J-3.784 A-3.244 S-2.982 B-3.000 G-3.556
 *T-3.317

39. How much better or worse is the legal education received by a student participating in student practice (who intends to pursue trial practice) than that received by a nonparticipating student (in your school)?

- D-1.880 P-1.783 J-1.559 A-1.448 S-1.500 B-1.833 G-1.667
 T-1.604

40. How much better or worse is the performance in student practice of a student with high academic standing than one with average academic standing?

- D-2.250 P-2.476 A-2.471 S-2.667 B-2.333 T-2.507

41. How much better or worse is the educational preparation of a participating student as compared to that of a nonparticipating student in each of the following areas?

A. Interviewing clients

- D-1.720 P-1.524 J-1.500 A-1.488 S-1.456 T-1.517

B. Advising clients

- D-1.880 P-1.571 J-1.500 A-1.634 S-1.589 T-1.623

C. Negotiating settlements

- D-2.040 P-1.524 J-1.600 A-1.675 S-1.655 T-1.690

D. Fact gathering

- D-1.960 P-1.571 J-1.563 A-1.659 S-1.732 T-1.697

E. Research of the law

- D-2.542 P-2.091 J-1.906 A-2.205 S-2.281 T-2.207

- F. Analyzing facts
D-2.240 P-1.818 J-1.781 A-1.879 S-1.929 T-1.909
- G. Analyzing legal issues
D-2.500 P-1.955 J-1.938 A-2.075 S-2.107 T-2.103
- H. Preparation of court documents
D-1.920 P-1.636 J-1.625 A-1.561 S-1.491 T-1.610
- I. Use of discovery techniques
D-2.000 P-1.909 J-1.517 A-1.700 S-1.600 T-1.706
- J. Selection and organization of trial arguments
D-2.040 P-1.714 J-1.719 A-1.846 S-1.618 T-1.762
- K. Making pretrial motions
D-2.000 P-1.619 J-1.710 A-1.838 S-1.574 T-1.725
- L. Direct examination
D-2.000 P-1.810 J-1.594 A-1.737 S-1.615 T-1.719
- M. Cross examination
D-2.042 P-1.667 J-1.625 A-1.658 S-1.615 T-1.695
- N. Proficiency in raising timely objections
D-2.042 P-1.714 J-1.613 A-1.737 S-1.673 T-1.735
- O. Preparation of appellate brief
D-2.348 P-2.278 J-1.958 A-2.143 S-2.204 T-2.181
- P. Presentation of oral argument on appeal
D-2.261 P-2.250 J-1.810 A-2.207 S-2.021 T-2.095
42. When compared to supervision by a NONPAID attorney NOT on the law school staff, supervision by a . . .
- A. PAID attorney NOT on the law school staff is . . .
D-2.292 P-2.222 A-2.235 S-2.311 B-2.000 T-2.256
- B. law school staff member working FULLTIME in student practice is . . .
D-1.480 P-1.273 A-1.813 S-1.776 B-2.500 *T-1.691
- C. law school staff member working PARTTIME in student practice is . . .
D-1.917 P-2.045 A-2.727 S-2.426 B-3.000 *T-2.371
43. When compared to his ability to handle INDIGENT cases, a student's ability to handle NONINDIGENT cases of a similar nature is . . .
D-2.720 P-2.900 J-2.667 A-2.897 S-3.000 B-2.600 G-2.900
T-2.858
44. How much better or worse does a student protect a client's confidences . . .
- A. than does a newly licensed attorney?
P-2.955 J-3.030 A-2.925 S-3.073 B-3.000 T-3.006
- B. than does a typical attorney of average experience?
P-3.143 J-3.121 A-3.125 S-3.327 B-2.800 T-3.185

GROUP VI

In each of the following questions indicate your evaluation of the situation presented by circling the appropriate symbol:

EXCELLENT	GOOD	SATISFACTORY	POOR	VERY POOR	UNKNOWN
1	2	3	4	5	6
45. What kind of a job does a law student do in representing an indigent client?					
D-2.080	P-1.957	J-2.237	A-1.978	S-1.935	B-2.556 G-2.100
T-2.051					
46. How would you evaluate the exclusive use of the "case" method of legal education as an approach to preparing a student for practice?					
D-3.615	P-4.304	J-3.660	A-4.085	S-3.923	B-3.778 G-3.091
*T-3.871					
47. How would you evaluate the exclusive use of "real world" situations as a method of preparing students for practice?					
D-4.080	P-4.000	J-3.270	A-3.213	S-3.484	B-3.778 G-3.364
*T-3.519					
48. How would you evaluate a program combining "real world" situations with the "case" method as an approach to preparing a student for practice?					
D-1.560	P-1.826	J-1.378	A-1.804	S-1.615	B-1.444 G-1.556
T-1.621					
49. How would you evaluate the traditional "case" method as an approach to providing a student with the ability adequately to . . .					
A. interview clients?					
D-4.208	P-4.545	J-4.167	A-4.522	S-4.406	T-4.380
B. advise clients?					
D-3.542	P-4.043	J-3.917	A-4.130	S-4.000	T-3.964
C. negotiate settlements?					
D-3.875	P-4.348	J-4.171	A-4.370	S-4.297	T-4.245
D. gather facts?					
D-3.458	P-3.870	J-3.806	A-4.043	S-3.985	T-3.887
E. research the law?					
D-2.160	P-2.565	J-2.595	A-2.587	S-2.813	T-2.605
F. analyze facts?					
D-2.160	P-3.217	J-2.973	A-2.978	S-3.046	*T-2.923
G. analyze legal issues?					
D-1.920	P-2.391	J-2.757	A-2.333	S-2.631	*T-2.467
H. prepare court documents?					
D-4.417	P-4.480	J-3.800	A-4.196	S-4.476	*T-4.272
I. use discovery techniques?					
D-4.167	P-4.130	J-3.944	A-4.174	S-4.210	T-4.136

- J. select and organize trial arguments?
 D-3.458 P-3.826 J-3.865 A-4.022 S-3.921 T-3.865
- K. make pretrial motions?
 D-3.958 P-3.826 J-3.778 A-4.130 S-4.197 T-4.026
- L. conduct direct examination?
 D-4.125 P-4.391 J-4.054 A-4.391 S-4.390 T-4.291
- M. conduct cross examination?
 D-4.167 P-4.478 J-4.135 A-4.478 S-4.448 T-4.362
- N. raise timely objections?
 D-3.792 P-4.000 J-3.892 A-4.304 S-4.274 *T-4.115
- O. prepare appellate briefs?
 D-2.875 P-2.864 J-2.824 A-2.717 S-3.082 T-2.893
- P. present oral argument on appeal?
 D-3.125 P-3.350 J-3.242 A-3.244 S-3.750 *T-3.399

GROUP VII

In each of the following questions estimate HOW OFTEN the situations presented occur by circling the appropriate symbol:

- | VERY
OFTEN | OFTEN | OCCASIONALLY | SELDOM | VERY
SELDOM | NEVER | UNKNOWN |
|---------------|-------|--------------|--------|----------------|-------|---------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
50. How often do students become emotionally committed to their cases or clients to an extent that is inconsistent with their obligation to the legal system?
 P-3.773 J-3.176 A-3.674 S-4.048 T-3.726
51. How often do students stir up litigation and legal disputes among indigent or minority group clients?
 D-4.458 P-4.913 J-3.735 A-4.429 S-4.424 B-2.875 G-3.625
 *T-4.272
52. How often do students go outside the program to seek clients for . . .
 A. themselves?
 D-5.273 P-5.522 J-4.619 A-5.135 S-5.407 B-4.500 G-4.333
 T-5.186
 B. the program?
 D-5.053 P-5.000 J-4.571 A-4.895 S-5.018 B-4.000 G-3.857
 T-4.856
53. How often do students advise disadvantaged clients to seek illegal or fraudulent remedies because of the alleged handicaps that such clients face in the present legal system?
 P-5.609 A-5.275 S-5.446 T-5.420
54. How often do students use plea bargaining to the extent that it damages the client's interests?
 D-5.053 P-5.111 J-4.793 A-5.273 S-5.022 B-5.000 T-5.047

55. How often do students raise arguments known to be contrary to existing law to the extent of prejudicing a client's interests?
D-5.150 P-5.545 J-4.528 A-5.108 S-5.204 B-4.600 *T-5.063
56. How often do the judge's efforts to assist the student by correcting his mistakes during the trial result in prejudice to . . .
A. the opposing party?
P-5.471 J-4.900 A-5.182 S-4.854 B-5.400 T-5.056
B. the student's client?
P-5.529 J-5.067 A-5.182 S-4.857 B-5.400 T-5.102
57. How often is the trial disrupted by a law student's use of legal arguments based on recent formal training on new and complex developments (e.g., U.C.C.)?
P-4.118 J-4.714 A-4.156 S-4.025 B-3.800 T-4.248
58. How often do judges tend to prolong trials by correcting harmless error for the particular purpose of furthering the educational goals of student practice?
P-4.944 J-4.514 A-4.941 S-4.829 B-4.800 T-4.789
59. How often do juries tend to display sympathy for the student to the extent that it carries over favorably to his client?
P-5.000 J-4.478 A-4.292 S-4.500 B-5.500 T-4.523
60. How often does the inexperience of a student in courtroom practice and procedures have an adverse effect on juries to such an extent that it results in prejudice to his client?
P-5.250 J-4.826 A-4.680 S-4.774 B-5.000 T-4.811

GROUP VIII

In each of the following questions indicate whether the situation is **MORE LIKELY OR LESS LIKELY** to occur under the circumstances presented by circling the appropriate symbol:

- | MUCH MORE
LIKELY | MORE
LIKELY | SAME
AS | LESS
LIKELY | MUCH LESS
LIKELY | UNKNOWN |
|---------------------|--|------------|----------------|---------------------|---------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 61. | When opposed by a student, how much more or less likely is a licensed attorney to raise arguments that would be easily rebuttable . . . | | | | |
| | A. by a newly licensed attorney? | | | | |
| | P-3.100 J-2.944 A-3.270 B-2.833 T-3.091 | | | | |
| | B. by a typical attorney of average experience? | | | | |
| | P-2.632 J-3.194 A-3.216 B-2.833 T-3.071 | | | | |
| 62. | When opposed by a student rather than a newly licensed attorney, how much more or less likely is a typical attorney of average experience to . . . | | | | |
| | A. use unfair tactics? | | | | |
| | P-2.905 J-3.361 A-3.333 S-3.037 B-3.000 T-3.166 | | | | |

- B. raise arguments known by him to be contrary to existing law?
P-2.900 J-3.514 A-3.350 S-3.154 B-3.000 T-3.250
- C. bypass serious negotiation and force disputes into litigation?
P-2.895 J-3.167 A-3.333 S-3.320 B-2.857 T-3.212
- D. use pretrial delay tactics (motions to dismiss, continuances, etc.) in an effort to create opportunities for procedural error?
P-3.150 J-3.167 A-3.436 S-3.118 B-3.167 T-3.217
- E. make excessive use of pretrial discovery procedures in an effort to gain damaging disclosures?
P-3.111 J-3.152 A-3.579 S-3.163 B-3.167 T-3.264
63. When opposed by a student rather than a typical attorney of average experience, how much more or less likely is another typical attorney of average experience to . . .
- A. use unfair tactics?
P-2.619 J-3.306 A-3.432 S-2.519 B-2.833 *T-2.954
- B. raise arguments known by him to be contrary to existing law?
P-2.700 J-3.486 A-3.421 S-3.057 B-2.833 T-3.195
- C. bypass serious negotiation and force disputes into litigation?
P-2.750 J-3.139 A-3.500 S-3.122 B-3.000 T-3.163
- D. use pretrial delay tactics (motions to dismiss, continuances, etc.) in an effort to create opportunities for procedural error?
P-2.950 J-3.083 A-3.474 S-2.940 B-3.167 T-3.120
- E. make excessive use of pretrial discovery procedures in an effort to gain damaging disclosures?
P-3.000 J-3.091 A-3.595 S-3.100 B-3.167 T-3.215
64. How much more or less likely are bar members to report unethical acts by students than they are similar acts by licensed attorneys?
P-2.316 J-3.212 A-2.743 S-2.750 B-2.286 G-2.875 T-2.780
65. In a given situation, how much more or less likely are students to use plea bargaining . . .
- A. than a newly licensed attorney?
P-3.500 J-3.333 A-3.469 S-3.519 B-3.000 G-3.750 T-3.463
- B. than a typical attorney of average experience?
P-3.889 J-3.788 A-3.719 S-3.980 B-3.250 G-4.125 T-3.855
66. How much more or less likely are students to raise arguments known to be contrary to existing law . . .
- A. than a newly licensed attorney?
P-3.350 J-3.294 A-3.528 S-3.400 B-3.333 T-3.397
- B. than a typical attorney of average experience?
P-3.350 J-3.147 A-3.500 S-3.463 B-3.500 T-3.386
67. How much more or less likely are court clerks to accommodate students when setting court dockets than they are practicing attorneys?
D-1.696 P-1.667 J-1.676 A-1.913 S-2.292 G-2.222 T-1.955

68. How much more or less likely are court clerks to assist students requiring access to court records than they are practicing attorneys?
 D-2.522 P-2.476 J-2.139 A-2.348 S-2.328 T-2.337

GROUP IX

In each of the following questions indicate the response of your choice according to the directions found in the question.

69. As the amount of supervision increases, a student's level of representation (check one) . . .
 A. increases. 110
 B. decreases. 11
 C. increases to a point and then decreases. 68
 D. decreases to a point and then increases. 3
 E. does not change. 9
70. As the amount of supervision increases, the educational value of student practice (check one) . . .
 A. increases. 105
 B. decreases. 10
 C. increases to a point and then decreases. 76
 D. decreases to a point and then increases. 3
 E. does not change. 1
71. As the amount of supervision increases, a student's feeling of responsibility for his client's interest (check one) . . .
 A. increases. 53
 B. decreases. 48
 C. increases to a point and then decreases. 50
 D. decreases to a point and then increases. 10
 E. does not change. 36
72. Some would say that attorney fees are lost due to student practice. Assuming that this is true, to what extent would this loss be offset by fees generated in defending nonindigent clients against claims lodged by indigents (who are represented by students)? (circle one)

COMPLETELY	SUBSTANTIALLY	MODERATELY	SLIGHTLY	NOT AT ALL	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
P-2.000	J-3.273	A-2.696	B-3.000	G-2.333	T-2.750

73. How much public awareness is there as to the PERMISSIBILITY of student practice in your state? (circle one)

EXTENSIVE	SUBSTANTIAL	MODERATE	SLIGHT	NONE	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
D-3.364	P-3.650	J-3.676	A-3.651	S-3.613	B-3.667 G-3.111
T-3.589					

74. How much public awareness is there as to the AVAILABILITY of student practice in your state? (circle one)

EXTENSIVE	SUBSTANTIAL	MODERATE	SLIGHT	NONE	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
D-3.455	P-3.762	J-3.730	A-3.674	S-3.583	B-3.750 G-3.400
T-3.631					

75. How helpful are students in discovering and bringing to action legal problems that might otherwise go undetected? (circle one)

EXTREMELY HELPFUL	VERY HELPFUL	HELPFUL	SLIGHTLY HELPFUL	NOT HELPFUL AT ALL	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
D-3.391	P-3.000	J-3.400	A-3.122	S-2.569	B-3.000 G-3.375
*T-3.022					

76. How much of a conflict of interest is created by student involvement with campus or political issues? (circle one)

EXTREME	SUBSTANTIAL	MODERATE	SLIGHT	NONE	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
D-4.238	P-4.389	J-4.286	A-4.457	S-4.224	B-3.400 G-3.591
T-4.250					

77. To what degree are students motivated to correct deficiencies in the legal system because of their experience in student practice? (circle one)

EXTREMELY	SUBSTANTIALLY	MODERATELY	SLIGHTLY	VERY SLIGHTLY	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
D-2.810	P-2.905	J-2.643	A-2.690	S-2.431	B-2.250 T-2.618

78. How much more or less concern do students show for professional responsibility and ethics than do newly licensed attorneys? (circle one)

MUCH MORE CONCERN	MORE CONCERN	SAME CONCERN	LESS CONCERN	MUCH LESS CONCERN	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
D-2.545	P-2.364	J-3.053	A-2.674	S-2.569	B-2.714 G-2.778
*T-2.673					

79. How much more or less concern do students show for professional responsibility and ethics than do typical attorneys of average experience? (check one)

MUCH MORE CONCERN	MORE CONCERN	SAME CONCERN	LESS CONCERN	MUCH LESS CONCERN	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
D-2.545	P-2.318	J-3.026	A-2.500	S-2.305	B-2.000 G-2.500
T-2.510					

80. Are students less or more sensitive to deficiencies in the legal system than the average member of the legal profession? (circle one)

MUCH LESS SENSITIVE	LESS SENSITIVE	SAME	MORE SENSITIVE	MUCH MORE SENSITIVE	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
P-3.957	A-4.159	S-4.185	B-3.889	T-4.120	

81. What kind of influence does student practice have on the professional responsibility and ethics . . .

VERY POSITIVE INFLUENCE	POSITIVE INFLUENCE	NO INFLUENCE	NEGATIVE INFLUENCE	VERY NEGATIVE INFLUENCE	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
A. of students involved in student practice? (circle one)					
D-2.238	P-1.909	J-2.061	A-1.957	S-1.933	B-2.250 T-2.005
B. of attorneys involved in student practice? (circle one)					
D-2.167	P-2.000	J-2.152	A-2.068	S-2.056	B-2.500 T-2.101
C. of legal educators involved in student practice? (circle one)					
D-2.053	P-1.857	J-2.115	A-2.194	S-2.096	B-2.429 T-2.099

82. Are students less or more willing to work hard on a case for a "dis-advantaged" client than for the state? (circle one)

MUCH LESS WILLING	LESS WILLING	SAME	MORE WILLING	MUCH MORE WILLING
(1)	(2)	(3)	(4)	(5)
P-3.591	A-3.545	S-3.476	T-3.519	

83. Are students less or more willing to work hard on a case for a "dis-advantaged" client than for an advantaged client? (circle one)

MUCH LESS WILLING	LESS WILLING	SAME	MORE WILLING	MUCH MORE WILLING
(1)	(2)	(3)	(4)	(5)
P-3.429	A-3.386	S-3.206	T-3.304	

84. Is the process of "justly" settling controversies by negotiation impeded or facilitated by having a party represented by a student? (circle one)

GREATLY IMPEDED	IMPEDED	NO EFFECT	FACILITATED	GREATLY FACILITATED	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)

J-2.844 A-3.143 S-2.933 B-3.000 T-2.979

If you feel the process is IMPEDED or GREATLY IMPEDED, do you think that it is impeded because of the student's . . . (check all that apply)

A. lack of experience? 30

B. lack of confidence in ability to negotiate? 21

C. lack of skill in negotiation? 23

D. inability to evaluate merits of claim or defense? 12

- E. inability to evaluate monetary value of claim? 15
 F. unequal bargaining position with licensed attorney? 13
 G. overconfidence in ability to prosecute claim or defense? 10
 H. eagerness to gain courtroom experience? 13
 I. other? 4

If you feel the process is FACILITATED or GREATLY FACILITATED, do you think that it is facilitated because of the . . . (check all that apply)

- A. "open and shut" nature of cases typically assigned to students? 5
 B. student's aversion to risking trial litigation? 3
 C. student's desire to achieve "justice" instead of merely seeing his client "win"? 21
 D. student's commitment to his client's case? 31
 E. challenge to a student of a one-on-one encounter with a licensed attorney? 23
 F. cooperation shown by the student? 15
 G. eagerness of student to master the negotiating process? 21
 H. sympathy of the opposing attorney? 0
 I. other? 7

85. How much has the continuity of representation by students been interrupted by . . .

EXTREMELY SUBSTANTIALLY MODERATELY SLIGHTLY NOT AT ALL UNKNOWN

(1) (2) (3) (4) (5) (6)

- A. examination periods? (circle one)

D-2.875 P-2.875 J-3.593 A-2.953 S-3.133 B-3.333 T-3.099

- B. vacation periods? (circle one)

D-2.958 P-2.952 J-3.464 A-2.884 S-3.344 B-3.500 T-3.164

- C. graduation? (circle one)

D-3.087 P-2.667 J-3.577 A-2.805 S-2.982 B-2.800 T-3.000

86. Is the course of a trial impeded or facilitated by participation of a student advocate in the courtroom? (circle one)

GREATLY
IMPEDED

IMPEDED

NO EFFECT

FACILITATED

GREATLY
FACILITATED

UNKNOWN

(1) (2) (3) (4) (5) (6)

J-2.771 A-3.171 S-3.047 B-2.750 *T-3.000

87. What impact does the use of a student advocate have on the functioning of the jury system? (circle one)

VERY
POSITIVE
IMPACT

POSITIVE
IMPACT

NO
IMPACT

NEGATIVE
IMPACT

VERY
NEGATIVE
IMPACT

UNKNOWN

(1) (2) (3) (4) (5) (6)

J-3.095 A-2.743 S-2.712 B-2.667 *T-2.789

88. Some would say that the availability of student representation causes an increased use of the legal system by indigents. Assuming that this is true, to what extent would such increased use offset any tax savings resulting from using students instead of paid court-appointed attorneys or public defenders?

COMPLETELY	SUBSTANTIALLY	MODERATELY	SLIGHTLY	NOT AT ALL	UNKNOWN
(1)	(2)	(3)	(4)	(5)	(6)
D-3.750	P-3.417	J-3.250	A-3.067	S-3.023	B-3.500
T-3.228					G-3.400

GROUP X

89. Indicate the LEVEL OF REPRESENTATION (R) and the ACTUAL AMOUNT OF SUPERVISION (S) in the following activities according to the following scale:

- (1) Very high level of representation/amount of supervision
- (2) High level of representation/amount of supervision
- (3) Average level of representation/amount of supervision
- (4) Low level of representation/amount of supervision
- (5) Very low level of representation/amount of supervision

A. Interviewing clients

(R) D-2.235	P-2.400	J-2.912	A-2.154	*T-2.445
(S) D-2.750	P-3.158	A-3.282	S-4.063	*T-3.562

B. Advising clients

(R) D-2.529	P-2.316	J-3.412	A-2.590	*T-2.789
(S) D-2.438	P-2.500	A-2.368	S-2.750	T-2.573

C. Negotiating settlements

(R) D-2.647	P-2.368	J-3.647	A-2.872	*T-2.990
(S) D-2.000	P-2.389	A-2.359	S-2.661	T-2.459

D. Gathering facts

(R) D-2.235	P-2.368	J-2.618	A-2.256	T-2.385
(S) D-3.188	P-3.333	A-3.200	S-3.953	*T-3.565

E. Researching the law

(R) D-2.118	P-2.211	J-2.171	A-1.974	T-2.100
(S) D-3.188	P-2.833	A-3.100	S-3.813	*T-3.405

F. Analyzing facts

(R) D-2.294	P-2.421	J-3.118	A-2.667	*T-2.706
(S) D-2.438	P-2.556	A-2.500	S-3.000	*T-2.731

G. Analyzing legal issues

(R) D-2.375	P-2.421	J-2.882	A-2.513	*T-2.592
(S) D-2.500	P-2.500	A-2.425	S-2.672	T-2.558

H. Preparation of court documents

(R) D-2.294	P-2.632	J-3.176	A-2.615	*T-2.743
(S) D-2.125	P-2.111	A-2.350	S-2.578	T-2.398

- I. Use of discovery techniques
 (R) D-2.471 P-2.368 J-3.545 A-2.757 *T-2.886
 (S) D-2.313 P-2.389 A-2.553 S-2.754 T-2.594
- J. Selection and organization of trial arguments
 (R) D-2.647 P-2.444 J-3.176 A-2.711 *T-2.803
 (S) D-2.250 P-2.278 A-2.553 S-2.574 T-2.488
- K. Making pretrial motions
 (R) D-2.588 P-2.611 J-3.118 A-2.611 *T-2.771
 (S) D-2.375 P-2.278 A-2.632 S-2.533 T-2.527
- L. Conducting direct examination
 (R) D-2.588 P-2.722 J-3.265 A-3.000 *T-2.972
 (S) D-2.563 P-2.500 A-2.474 S-2.869 T-2.669
- M. Conducting cross examination
 (R) D-2.647 P-2.778 J-3.647 A-2.972 *T-3.104
 (S) D-2.563 P-2.389 A-2.500 S-2.783 T-2.623
- N. Proficiency in raising timely objections
 (R) D-2.765 P-2.722 J-3.382 A-3.000 *T-3.038
 (S) D-2.563 P-2.667 A-2.500 S-2.934 T-2.737
- O. Preparation of appellate brief
 (R) D-2.267 P-2.133 J-3.600 A-2.455 *T-2.741
 (S) D-2.571 P-2.267 A-2.618 S-2.793 T-2.652
- P. Presentation of oral argument on appeal
 (R) D-2.533 P-2.438 J-3.821 A-2.733 *T-2.988
 (S) D-2.571 P-2.313 A-2.533 S-2.768 T-2.620

Indicate by appropriate letter from the list above . . .

- A. The three activities in which students are most competent?
 (1) E (2) D (3) A
- B. The three activities in which students are least competent?
 (1) M (2) N (3) L
- C. The three activities in which there is the most supervision?
 (1) B (2) G (3) H
- D. The three activities in which there is the least supervision?
 (1) A (2) D (3) E
90. Does participation in student practice adversely affect a student's normal academic performance? Yes 64 No 36
 If yes, in which of the following ways? (check all that apply)
- A. Missed classes because of length of trials _____
 P-4 A-1 S-15 T-20
- B. Missed classes due to general time requirements of program _____
 P-3 A-3 S-18 T-24
- C. Missed classes because of need to meet with clients during class hours _____
 P-4 A-1 S-13 T-18
- D. Unprepared for classes because of lengthy trials _____
 P-2 A-1 S-7 T-10

- E. Unprepared for classes because of general time requirements of program _____
 P-4 A-4 S-18 T-26
- F. Unprepared for classes because time taken to meet with clients interferes with study time _____
 P-3 A-1 S-13 T-17
- G. Loss of interest in the "case" method _____
 P-4 A-1 S-19 T-24
- H. Grades in other course work have dropped _____
 P-2 A-1 S-8 T-11
91. Indicate the amount of actual DIRECT SUPERVISION (S) and the DEGREE OF EFFECTIVENESS (E) of such direct supervision when given at each of the following STAGES using the scale below:
- (1) Very high AMOUNT of supervision/DEGREE of effectiveness
 - (2) High AMOUNT of supervision/DEGREE of effectiveness
 - (3) Average AMOUNT of supervision/DEGREE of effectiveness
 - (4) Low AMOUNT of supervision/DEGREE of effectiveness
 - (5) Very low AMOUNT of supervision/DEGREE of effectiveness
- A. In training the law student BEFORE assigning him a case
 (S) P-2.944 A-2.457 S-3.355 *T-3.017
 (E) P-2.882 A-2.853 S-2.967 T-2.919
- B. When the case is ASSIGNED
 (S) P-2.333 A-2.286 S-3.197 *T-2.781
 (E) P-2.333 A-2.400 S-2.803 *T-2.605
- C. The legal research stage of the case
 (S) P-2.944 A-2.972 S-3.258 T-3.121
 (E) P-2.722 A-2.444 S-2.803 T-2.678
- D. Fact gathering stage of the case
 (S) P-2.833 A-2.886 S-3.305 *T-3.098
 (E) P-2.722 A-2.629 S-2.914 T-2.793
- E. Document preparation stage of the case
 (S) P-2.444 A-2.333 S-2.456 T-2.414
 (E) P-2.556 A-2.417 S-2.190 T-2.321
- F. During the trial
 (S) P-2.056 A-2.257 S-2.572 T-2.361
 (E) P-2.556 A-2.472 S-2.327 T-2.413
- G. At the completion of the case
 (S) P-2.944 A-2.970 S-3.236 T-3.104
 (E) P-2.765 A-2.806 S-2.964 T-2.884
- H. At the end of the semester
 (S) P-3.765 A-3.323 S-3.415 T-3.454
 (E) P-3.471 A-3.111 S-3.075 T-3.155
- I. At the supervisor's discretion throughout the handling of the case
 (S) P-2.563 A-2.438 S-2.750 T-2.615
 (E) P-2.438 A-2.484 S-2.532 T-2.500

92. With reference to the sixth amendment requirement of "assistance of counsel," indicate your agreement or disagreement with each of the following statements by circling the appropriate symbol:

AGREE STRONGLY	AGREE	AGREE SLIGHTLY	NO OPINION	DISAGREE SLIGHTLY	DISAGREE	DISAGREE STRONGLY
(1)	(2)	(3)	(4)	(5)	(6)	(7)

A. Mere improvident strategy, bad tactics, mistakes, carelessness or inexperience do not necessarily amount to ineffective assistance of counsel, unless taken as a whole the trial was a mockery of justice.
D-4.250 P-4.700 J-4.455 A-4.524 S-4.328 B-2.778 G-3.143
T-4.308

B. Membership in the bar is required to satisfy the sixth amendment.
D-4.105 P-5.158 J-4.000 A-4.762 S-5.672 B-3.778 G-3.857
T-4.816

C. The accused must have assistance of experienced counsel.
D-4.250 P-3.900 J-3.778 A-3.857 S-4.703 B-4.556 G-4.714
T-4.222

D. The only requirement is that the accused receive a fair trial.
D-3.611 P-4.550 J-3.778 A-3.976 S-3.758 B-2.889 G-4.143
T-3.850

E. The test is whether there is the presence or absence of judicial character in the proceedings as a whole.
D-4.941 P-4.684 J-4.057 A-4.413 S-4.302 B-4.000 G-3.286
T-4.335

F. The most that can be said is that courts generally will not afford relief from claimed tactical blunders, ignorance or errors in judgment, lethargy, or mental or physical disability on the part of defense counsel unless an extreme case is put.
D-3.526 P-2.950 J-4.697 A-3.357 S-3.270 B-3.333 G-3.571
T-3.539

G. Assistance of counsel means effective assistance of counsel.
D-1.524 P-1.700 J-1.833 A-2.093 S-2.406 B-1.889 G-3.429
T-2.085

93. In each of the following areas, select the statement which you believe best characterizes the utility of student practice:

A. Value to the student

- | | |
|---|------------|
| 1. Student practice is imperative for all law students. | <u>(1)</u> |
| 2. Student practice is imperative only for those students who will be engaged in trial practice. | <u>(2)</u> |
| 3. Student practice is a helpful supplement but not imperative to a student's legal education. | <u>(3)</u> |
| 4. Student practice is an interesting supplement but not imperative to a student's legal education. | <u>(4)</u> |
| 5. Student practice is of no value to the student. | <u>(5)</u> |
| 6. Student practice is harmful to the student. | <u>(6)</u> |

D-2.667 P-1.905 J-2.053 A-2.000 S-2.172 B-2.333 G-2.444
T-2.164

B. Value to the community

1. Student practice makes a vital contribution to the community. (1)
2. Student practice makes some contribution to the community. (2)
3. Student practice makes no contribution to the community. (3)
4. Student practice is harmful to the community. (4)

D-1.667 P-1.476 J-1.579 A-1.605 S-1.406 B-1.778 G-1.728
T-1.548

C. Value to the legal system

1. Student practice makes a vital contribution to the legal system. (1)
2. Student practice makes some contribution to the legal system. (2)
3. Student practice makes no contribution to the legal system. (3)
4. Student practice is harmful to the legal system. (4)

D-1.667 P-1.381 J-1.632 A-1.429 S-1.359 B-1.778 G-1.667
*T-1.492

GROUP XI

(The following questions were asked of various groups of respondents, as indicated.)

SUPERVISING ATTORNEYS

94. Please characterize yourself as one of the following types of supervisors: (check one)
 - A. Law school staff member permanently assigned to program 11
 - B. Law school staff member assigned parttime to program 3
 - C. NONPAID attorney NOT on the law school staff 12
 - D. PAID attorney NOT on the law school staff 10
 - E. Public defender 3
 - F. Other 7
95. How many years experience do you have (or have you had) as a practicing TRIAL attorney? Average 8.761
96. If a law school staff member, how many years has it been since you worked in fulltime trial practice? Average 11.286
97. On the average, how many students do you supervise at one time? 9

98. On the average, how many HOURS PER WEEK do you supervise and work with EACH student? 5.275
99. For the following activities, indicate those that you IN FACT personally supervise.
- | | |
|--|-----------|
| A. Interviewing clients | <u>16</u> |
| B. Advising clients | <u>25</u> |
| C. Negotiating settlements | <u>32</u> |
| D. Gathering facts | <u>15</u> |
| E. Research of the law | <u>20</u> |
| F. Analyzing facts | <u>25</u> |
| G. Analyzing legal issues | <u>28</u> |
| H. Preparation of court documents | <u>32</u> |
| I. Use of discovery techniques | <u>28</u> |
| J. Selection and organization of trial arguments | <u>28</u> |
| K. Making pretrial motions | <u>29</u> |
| L. Conducting direct examination | <u>29</u> |
| M. Conducting cross examination | <u>28</u> |
| N. Proficiency in raising timely objections | <u>25</u> |
| O. Preparation of appellate brief | <u>27</u> |
| P. Presentation of oral argument on appeal | <u>20</u> |
100. Did you undertake any specialized training before becoming a student practice supervisor? Yes 7 No 36
- If yes, indicate the type of training you had (check all that apply).
- | | |
|---|----------|
| A. On the job training | <u>5</u> |
| B. Formal instruction before beginning work with student practice | <u>1</u> |
| C. Individual research | <u>4</u> |

PROGRAM DIRECTORS AND DEANS

101. Have students been dropped from any student practice program because of inadequate representation? Yes 13 No 32
102. Program is: Elective 45 Required 0

PROGRAM DIRECTORS AND STUDENTS

103. Do students encounter actual ethical problems in the course of student practice? Yes 85 No 5
- If so, do they discuss those problems with (check all that apply) . . .
- | | |
|--------------------|-----------|
| A. supervisors? | <u>77</u> |
| B. other students? | <u>64</u> |
| C. others? | <u>19</u> |

PROGRAM DIRECTORS AND SUPERVISING ATTORNEYS

104. In deciding whether or not to assign a case to a student, which of the following factors do you consider: (check all that apply)

A. Factors regarding the CASE:

- (1) Complexity of the fact situation 39
- (2) Complexity of the legal issues involved 42
- (3) Probability of the case going to trial 26
- (4) The amount of time a case will involve 33
- (5) The probability of a lengthy trial 19
- (6) Nature of the client involved 28
- (7) Other factors 11
- (8) No factors: Whatever case happens to come along 10

B. Factors regarding the STUDENT:

- (1) Ability of the student to handle a particular case 31
- (2) Individual interest of a particular student 25
- (3) Overall educational value to the student 19
- (4) Other factors 3
- (5) No factors regarding the student 7

Of the above factors, please list the three which you consider to be most important in assigning cases, in order of importance:

- (1) B1
- (2) A2
- (3) B2, B3, A1

STUDENTS

105. What is your grade point average? (adjust to a 4.0 system) 2.857

106. In how many cases have you participated in student practice? 29.175

107. On the average, how many HOURS PER WEEK do you participate in any aspect of student practice? 19.800

108. In what fields of law do you participate? (if more than one, indicate how many of each)

- A. Civil matters in court 42 Out of court 48
- B. Criminal matters in court 41 Out of court 38
- C. Administrative matters before tribunals 24 Not before tribunals 18

109. In which of the following activities have you participated in your student practice program? (check all that apply)

- A. Interviewing clients 60

- B. Advising clients 60
 - C. Negotiating settlements 53
 - D. Gathering facts 63
 - E. Research the law 62
 - F. Analyze the facts 63
 - G. Analyze legal issues 61
 - H. Preparation of court documents 59
 - I. Use of discovery techniques 39
 - J. Selection and organization of trial arguments 46
 - K. Making pretrial motions 45
 - L. Conducting direct examination 44
 - M. Conducting cross examination 39
 - N. Raising objections 40
 - O. Preparation of appellate brief 30
 - P. Presentation of oral argument on appeal 15
110. At which of the following times did your supervisor consult with you concerning your progress? (check one)
- A. On each and every case 26
 - B. Only on the most difficult cases 9
 - C. On most cases 19
 - D. Only on the first few cases you handled 5
 - E. Only at the end of the semester 0
- Check all of the following topics that were discussed with your supervisor.
- A. General analysis of progress 52
 - B. Preparation of case strategy 57
 - C. Aid in gathering factual information 29
 - D. Suggestions for substantive research areas 39
 - E. Trial tactics 49
 - F. Client contact methods 24
 - G. Evaluation of your work 47

ALL GROUPS

111. Are you aware of any of the following resulting from student practice? (check all that apply)
- A. Malpractice actions 3
 - B. Instances of judicial discipline 16
 - C. Instances of prejudicial handling of a client's interests irrespective of any resultant actions against the student or supervising attorney 27

- D. Students being prohibited from joining the bar because of unprofessional act 1

CLIENTS

112. How many problems have you taken to student lawyers for help?
Average 2.211
113. For how many of these problems have you been SATISFIED with the way the student handled your case (even if you lost)? Average 2.158
114. For how many of these problems have you been DISSATISFIED with the way the student handled your case (even if you won)?
Average .053
115. What is your . . .
- A. age? Average 34.158
 - B. sex? 14 male 5 female
116. Why did you go to the student lawyer for help? (check all answers that are correct for you)
- A. Accused of a crime that could have caused you to go to jail 7
 - B. Accused of a crime that could have cost you money 6
 - C. Trouble with spouse 4
 - D. Trouble with landlord 3
 - E. Trouble with someone who said you owed him money 3
 - F. Trouble with taxes 0
 - G. Trouble with your job 0
 - H. Discriminated against because of race, sex, religion, or national origin 2
 - I. Trouble with your child 2
 - J. Accident in which you or someone else was hurt 1
 - K. Other 5
117. If the problem was that you were accused of a crime, what happened?
- A. You were found NOT guilty. 4
 - B. You were found GUILTY and had to go to jail. 0
 - C. You were found GUILTY but your sentence was suspended. 0
 - D. You were found GUILTY and put on probation. 2
 - E. You were found GUILTY and had to pay money. 0
 - F. You were found GUILTY and had to go to jail and pay money. 2
 - G. Other 5
118. If the problem was not a crime but was one of the other problems listed in question #116, what happened?
- A. You got everything you were asking for. 7

- B. You got part of what you were asking for, but not everything. 3
C. The other person (or business) got everything he was asking for.
2
D. The other person (or business) got part of what he was asking for,
but not everything. 2
E. Other 1
119. How did you hear that a student lawyer might be able to solve your
problem?
A. From a friend 9
B. From a lawyer 5
C. From the police 0
D. From something you read 4
E. From someone in the student program 1
F. From a community action agency 4
G. Other 3
120. Besides your student lawyer, did anyone else in the student program
talk to you about your problem? Yes 13 No 5
If yes, who else did you talk to?
A. Another student 2
B. Your student's supervisor 7
C. A worker in the office 0
D. Other 5
121. Do you know any other people who have used student lawyers?
Yes 11 No 8
If yes, have most of them been satisfied with the job the student did
for them? Yes 11 No 0
122. Did your student lawyer ever tell you it might be necessary to break
or "bend" the law to solve your problem? Yes 0 No 18
123. Do you believe your student lawyer always told you the truth?
Yes 18 No 1
124. Would you have taken your problem to a lawyer if a student had not
been able to help you? Yes 14 No 3
125. Since a student was able to handle your problem, do you think a law-
yer's job is any less important than you did before? Yes 0 No
19
126. Did your student lawyer tell anything to other people that you did
not want him to tell? Yes 1 No 18
127. Did you believe what the student said without checking it with his
supervisor? Yes 16 No 2

128. Did your student lawyer ever tell you not to do something because it would be against the law? Yes 5 No 13

129. Did you have to go to court because of your problem? Yes 14
No 5

If yes, did your student lawyer go with you? Yes 14 No 0

How often did the judge correct a mistake the student made?

Never 13 One time 1 A few times 0 A lot of times 0

Did your student's supervisor also go to court with you?

Yes 9 No 5

If yes, who did the talking in court?

Student 7 Supervisor 1 Both 2

130. How much better or worse would it have been if a lawyer had handled your problem without any student?

MUCH BETTER	BETTER	SAME	WORSE	MUCH WORSE
(1)	(2)	(3)	(4)	(5)

Average 3.000

131. How much more concern or less concern for your problem do you think a lawyer would have had than the student did?

MUCH MORE	MORE	SAME	LESS	MUCH LESS
(1)	(2)	(3)	(4)	(5)

Average 3.421

Circle the correct word or words to tell if you AGREE or DISAGREE with each of the following statements:

AGREE STRONGLY	AGREE	NO OPINION	DISAGREE	DISAGREE STRONGLY
(1)	(2)	(3)	(4)	(5)

132. A law student needs to have a lawyer present in the courtroom when the student is handling the case.

Average 3.105

133. A law student does a very good job in handling the problem of a person who cannot afford to pay a lawyer right now.

Average 1.684

134. Student lawyers only get cases which lawyers do not want to take because the people cannot pay.

Average 3.211

135. If I have a choice, I will want to have a student handle my problem the next time I need a lawyer.

Average 1.789

136. The law student did not work any harder on my problem than someone who RECENTLY became a lawyer would have worked on my problem.

Average 3.474

137. The law student did not work any harder on my problem than someone who has been a lawyer for a long time would have worked on my problem.

Average 4.000

APPENDIX III

ANALYSIS OF STUDENT PRACTICE RULES AND ACTS

The A.B.A. Model Rule,¹ promulgated in 1969, has had a great influence on the many student practice rules and acts appearing in the various jurisdictions since that time and provides a valuable frame of reference for analysis of the state and federal rules presently in force.² Although varied and complex, almost defying categorization,³ the rules share common elements, including manner of promulgation, purpose, student eligibility, types of clients who may be represented, activities permitted, supervision required, and standards of professional responsibility. An examination of these elements will provide a general overview of the various rules and the distinguishing features among them.⁴

Promulgation of the Rules

Of the 42 jurisdictions authorizing student practice, 35 have rules promulgated by court order, while in the other seven the rules were enacted by statute.⁵ Although most states have legislation prohibiting the practice of law by any person other than a licensed attorney, state constitutions generally provide that the court of last resort of the state has the exclusive power to define the practice of law. Legislative enactment of student practice rules generally has been upheld on the ground that "the statute acts only as an aid to the court, not as an infringement of its inherent power."⁶

1. See Appendix IV.

2. Knapp, *Comparisons and Comments*, in *STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS* 1 (1971).

3. Ridberg, *Student Practice Rules and Statutes*, in *CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* 223 (E. Kitch ed. 1970).

4. A note of caution must be inserted. It appears from the data that the value of student practice is not so much a function of the state rules as it is of the individual programs and standards set within the programs. Agreement is herein expressed with the statement that "it is necessary to go beyond the statutes and rules, in some cases to an examination of the approved 'programs' required to be devised, and in any case to the actual operation of the system itself . . ." Knapp, *supra* note 2, at 1-2.

5. *STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS*, Chart I, at 28-35 (1971) [hereinafter cited as *STATE RULES*].

6. Comment, *Legal Internship in Missouri*, 35 Mo. L. REV. 367, 375 (1970), citing *Hoffmeister v. Tod*, 349 S.W.2d 5 (Mo. 1961). But see Note, *Law Student Appearance*

On the federal level, authorization of student practice has been by rule of court.⁷

Purpose of the Rules

The A.B.A. Model Rule contains the following statement of purpose: "As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted."⁸ The purposes emphasized evidence the background and developments leading to the rules themselves. The first purpose, reflecting the impact of the *Gideon* decision, is the provision of increased legal services for the poor; the second, encouragement of clinical education in law schools, emphasizes the need for developing trial advocacy skills among law students.⁹

Only 13 states have adopted the dual goals set forth in the Model Rule's statement of purpose. Georgia has expanded the educational goal to include the "establishment and operation of legal aid agencies by law schools in this state and the utilization of the services of third-year law students in such legal aid agencies as a form of legal intern-training and service that will provide competent and professional legal counsel."¹⁰ Several states list only one of the purposes set forth in the Model Rule. Michigan, for example, emphasizes the need for legal services for all persons, regardless of ability to pay;¹¹ its rule was promulgated expressly to comply with *Argersinger* by providing student counsel for indigent defendants in all criminal cases. Other states stress only the educational goal. The stated purpose of the Nebraska rule, for example, is "to provide senior law students with supervised practical training in the practice of law during the period of their formal legal education,"¹² while New Mexico's purpose in promulgating its rule was merely "to permit a clinical program for the University of New Mexico School of Law."¹³

The majority of states, however, provide no specific statement of purpose; nevertheless, the intent of such rules usually may be found in their provisions. Indicia of purpose may be the extent of supervision required, the function of a student as described in the rule, and the nature of clients and cases covered. Statutes permitting representation of all clients, indigent

Rule, 7 WILLAMETTE L.J. 210 (1971), where it is argued that in light of judicial decisions which had construed the constitutional limitations on the court's power to define the practice of law, the Oregon Supreme Court did not have authorization to enact student practice rules. Doubt as to the authority to promulgate a rule as between the judiciary and legislature in Alabama is suggested in 1 CUMBERLAND-SAMIFORD L. REV. 332 (1970).

7. See Leleiko, *Student Practice: A Commentary*, in STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS 12 (2d ed. 1973).

8. See Appendix IV.

9. A conflict in these purposes has been suggested: "If a rule is primarily aimed at educational advancement, why should students be limited to the oftentimes repetitive problems of the poor?" Ridberg, *supra* note 3, at 224.

10. GA. CODE ANN. § 9-401.1(b) (1973).

11. MICH. S. CT. R. 921(1) (1965).

12. NEB. S. CT. R. LEGAL PRACTICE BY APPROVED SENIOR LAW STUDENTS I (1969).

13. N.M. S. CT. R. CIV. P. 94(1) (1970).

or nonindigent, are generally socially oriented, while provision for extensive supervision bespeaks an educational purpose. Occasionally, these two factors are balanced to permit maximum service to the public while retaining supervisory control where needed.¹⁴

Two other purposes of student practice rules have been suggested.¹⁵ The first is the civic purpose served when students represent the state in criminal cases, thus reducing public expenditures by providing legal services at nominal cost. The second is the development of student professional responsibility through the requirement, imposed in many states, that before a student may participate in a student practice program, he must take an oath or file a certificate that he is familiar with the Code of Professional Responsibility.

Student Eligibility

Two general approaches have been followed in determining a student's eligibility to participate in student practice. The Model Rule provides for the certification of students according to their individual characteristics and the standards met by their law schools. Specifically, the Model Rule requires enrollment in an A.B.A.-approved law school, completion of at least four semesters of legal studies or the equivalent thereof, and certification by the law school dean that the student is of "good character" and "competent legal ability" and is being adequately trained to perform as an intern.¹⁶

Seventeen states require that a student be enrolled in an A.B.A.-approved law school.¹⁷ Other rules either require the school to be "accredited" or "approved" or specifically name acceptable law schools.¹⁸ Somewhat ambiguous, perhaps, is Iowa's requirement that the student be enrolled in a "reputable" law school.¹⁹ Delaware, Idaho, New York, and Oklahoma do not specify formal requirements which must be met by eligible law schools. All federal courts require that the student be enrolled in an A.B.A.-approved law school.²⁰

The Model Rule requirement that a participating student have at least four semesters of legal studies or the equivalent thereof has been widely followed.²¹ Exceptions are Colorado, which is alone among the states in requiring no advanced standing;²² California and Connecticut, which require only three semesters;²³ and Michigan and Oklahoma, which express their

14. See, e.g., CAL. STATE BAR BD. & GOV'RS R. FOR PRACTICAL TRAINING OF LAW STUDENTS (1969).

15. Knapp, *supra* note 2, at 5.

16. See Appendix IV.

17. See STATE RULES, *supra* note 5.

18. *Id.*

19. IOWA S. CT. R. 120 (1967).

20. See STATE RULES, *supra* note 5, Appendix B.

21. Although terminology in state rules varies from "four semesters" to "¾ required credits for graduation," "senior year," or "third year law student," all are substantially equivalent.

22. COLO. R. CIV. P. 226 (1909).

23. CAL. STATE BAR BD. & GOV'RS R. FOR PRACTICAL TRAINING OF LAW STUDENTS III(B) (1) (1969); CONN. R. S. CT. 42A(3) (b) (1971).

requirements in terms of semester hours.²⁴ Most of the federal rules follow the "four semester" A.B.A. standard, although the United States District Court for the District of Connecticut requires only two semesters, and the District Court for the District of Columbia provides no semester restriction.²⁵ The latter rule must be read in light of the limitation on student representation to defendants charged with minor offenses; the absence of semester requirements reflects a belief that even first-year law students are competent to handle such cases. Only the United States District Court for the Eastern District of Pennsylvania distinguishes qualifications according to the activities to be performed;²⁶ two semesters of preparation are a prerequisite to participation in pretrial activities, while four semesters of legal studies are required before actual court appearance.

A majority of rules require the law school dean to certify the student's "good character" and "competent legal ability." It has been argued that these standards are elusive and provide the certifying dean insufficient guidance for the exercise of his judgment.²⁷ The point may be of little significance, however, since a recent study indicates that "certification is basically a matter of form and administration, as long as a student meets the mandated minimum requirements."²⁸ Other states require the additional approval of either the judge of the court in which the student is to appear, the highest court of the state, the program director, or even a special intern committee.²⁹ Whatever their differences, the rules are nearly unanimous in requiring the written consent of a client to representation in court by a student.

The second approach to student certification entails approval of individual clinical programs,³⁰ generally by the highest court of the state.³¹ Whether this approach to certification is at substantial variance with the alternative of determining student eligibility on the basis of student and school characteristics is questionable. One author has suggested:

Though the break between program oriented rules and rules which concentrate primarily on individual certification is readily discernible, the end result in practice is likely to be the same. A program's guidelines will necessarily set forth standards of eligibility for participation and could even require that individuals seek court certification. Similarly, courts in states with individually oriented cer-

24. MICH. S. CT. R. 921(3) (1965); OKLA. R. S. CT. ON LEGAL INTERNSHIP I(A)(1) (1967).

25. U.S.D. CT. D. CONN. R. 26(3)(b) (1972); U.S.D. CT. D.C. R. 91 (1973).

26. U.S.D. CT. E.D. PA. R. CIV. P. 9½(II)(E) (1972).

27. For a discussion of the problems created by these standards, see Knapp, *supra* note 2, at 8-10.

28. Leleiko, *supra* note 7, at 9-10.

29. See OKLA. R. S. CT. ON LEGAL INTERNSHIP III (1967).

30. See STATE RULES, *supra* note 5.

31. But see IND. S. CT. R. A.D. 2.1(2) (1969), allowing law schools to participate in determining what programs are permissible.

tification procedures could easily require individual applicants to name the organization they intend to work for.³²

A final eligibility requirement in many states, apparently formulated in recognition of the need for developing a sense of professional responsibility, is a certification by the student of his familiarity with a particular code of ethics or the rules of the state court. Ten states require specific written certification that the student is familiar with the Code of Professional Responsibility, while five states administer special oaths to legal interns.³³ These oaths generally attest to a familiarity with the state court rules and code of ethics and include an affirmation that the student will uphold the laws of the United States and the state of practice. Kansas alone requires both a written certification of familiarity with the code of ethics and the subscription to a legal intern oath.³⁴ On the federal level, familiarity with the code of ethics is required by the Courts of Appeals for the Third and Fourth Circuits,³⁵ while an intern oath is required in the United States District Court for the Middle District of Louisiana.³⁶

Nature of the Client

A growing controversy among legal educators and the judiciary is whether students should be limited to the representation of indigent clients. The impetus provided to student practice by *Gideon* and *Argersinger* was founded upon the need for legal representation of the poor. It is arguable, however, that social contributions can be made by providing legal services to anyone with a case which a student is competent to handle.³⁷ Moreover, such a policy, by reducing the repetition of similar cases which tends to occur when only indigent clients are served, could better fulfill the educational goal of training students in broad, practical skills in many areas of the law.

32. Ridberg, *supra* note 3, at 225-26.

33. See STATE RULES, *supra* note 5.

34. KAN. STAT. ANN. § 7-124 R. 213(III) (g) (Cum. Supp. 1969).

35. 3RD CIR. R. 9(II) (a) (iv) (1972); 4TH CIR. R. 13(f) (1972).

36. U.S.D. Ct. M.D. LA. R. 1J(2) (f) (1972).

37. Such limitations place unnecessary restrictions on a developing internship program. A successful, balanced internship program should provide internships in a wide variety of practice areas. Truly the poor need legal aid more than the wealthy do, and a law school contributes greatly to society by emphasizing legal aid work. But in our quest to contribute to society we must remember that we make our best contribution by educating lawyers. A law school should not adopt a bias in favor of one social class or another.

Runkel, *Willamette's Internship Program and the Proposed Student Practice Rule*, 6 WILLAMETTE L. REV. 12-13 (1970). See also Note, *The Student Practice Rule: A Proposal for Expansion*, 6 SUFFOLK L. REV. 1006, 1019 (1972), where it is argued that a broadening of the rules not only would add to a student's development of practical skills but also would be socially valuable by "making it economically feasible for law firms to engage in 'pro bono work.'"

Presently, only eight states expressly authorize the representation of "any individual," while three others reach the same result by avoiding any restrictions upon the persons who may be represented.³⁸ The remainder of the states follow the Model Rule, which limits representation to indigents, emphasizing the social purpose of student practice in this respect. Of these latter states, only two specify the meaning of the term "indigent" within their rules. Georgia defines indigent as a "person financially unable to employ the legal services of an attorney as determined by a standard of indigency established by a judge of the superior court . . ." ³⁹ Michigan, rather than defining the term, sets forth five factors which are indicative, but not determinative, of indigency.⁴⁰ Among these are a client's earning capacity, his outstanding debts and liabilities, his receipt of any form of public assistance, and "any other circumstances which would impair the ability to pay an attorney's fee as would ordinarily be required to retain competent counsel." ⁴¹

The federal court rules vary on this question according to the types of cases in which student representation is allowed and the supervision requirements imposed. Three district courts permit the representation of any client. In the Northern District of Ohio, however, the appearance of a student as counsel must be agreed to by *all* parties to the litigation.⁴² Two district courts and one circuit court limit a student's clients to indigent prisoners, this as a corollary to the two types of student cases permitted—habeas corpus petitions and civil rights actions on behalf of prisoners.⁴³ The remaining federal courts limit the clientele to indigent individuals, following the A.B.A. standard.

The Model Rule does provide for another type of client: "An eligible law student may also appear in any criminal matter on behalf of the State with the written approval of the prosecuting attorney or his authorized representative and of the supervising lawyer." ⁴⁴ Although such representation does not serve the rule's purpose of providing counsel to indigents, "it can nevertheless be educational for the student, and it may serve the additional purpose, in these days of soaring public budgets and ever-increasing taxes, of providing legal assistance for the state and other public authorities at a nominal cost." ⁴⁵ Presently, 31 states specifically permit students to represent the state, generally upon the terms stated in the A.B.A. model. In addition, the District of Columbia, Indiana, and Ohio allow students to assist governmental agencies in civil and nonfelony criminal cases before courts and administrative bodies.⁴⁶

38. See STATE RULES, *supra* note 5.

39. GA. CODE ANN. § 9-401.1(c)(2) (1973).

40. MICH. S. CT. R. 921 (1965).

41. *Id.*

42. U.S.D. CT. N.D. OHIO APPEARANCE AND PRACTICE BY LAW STUDENTS 1 (1972).

43. See STATE RULES, *supra* note 5, Appendix B.

44. See Appendix IV.

45. Knapp, *supra* note 2, at 5.

46. See STATE RULES, *supra* note 5. It has been suggested that this type of representation results not only in cost savings to the government but also provides excellent ex-

A third category of clients authorized by the Model Rule is essentially a specific type of indigent client—the indigent inmates of correctional institutions or other persons who request assistance in preparing applications and supporting documents for postconviction relief. Sixteen states, two federal district courts, and one circuit court have adopted this or a similar provision.⁴⁷ In addition to providing students with exposure to areas of criminal law otherwise untouched by the traditional law school curriculum, such provisions serve the laudable purpose of improving the quality of postconviction motions and reducing the number raising frivolous questions.⁴⁸ The Montana Practice Act is specifically directed to this type of activity at the Montana State Prison. The rule recognizes that “because of their indigency such prisoners are unable to secure legal assistance in drafting such requests and their petitions are often unintelligible, insufficient, contain no statement of facts, supporting documents, nor proper reference to the proceedings of which they are complaining, nor any brief covering the applicable law.”⁴⁹

*Nature of Activities Permitted*⁵⁰

The activities authorized by student practice rules reflect, to some degree, the amount of confidence which courts and legislatures have in the ability of student practitioners to perform various tasks. For rules having their genesis in the impact of *Gideon* and *Argersinger*, the primary student activity is appearance in court. Because, however, “[l]itigation requires interviewing clients and witnesses, research and preparation of legal papers, discovery, motion practice, conduct of the trial and possibly appeal,”⁵¹ these related activities have been widely authorized.

All states authorizing student practice, with one exception, provide for student appearance in the courtroom.⁵² Most states allow student repre-

perence to students in facing problems from the government perspective. For further development of arguments advocating the amendment of student practice rules to permit students to represent administrative agencies, see Leleiko, *supra* note 7, at 16-17.

47. See STATE RULES, *supra* note 5.

48. Comment, *Legal Internship in Missouri*, 35 Mo. L. REV. 367, 372 (1970). The success of such programs was noted in *Johnson v. Avery*, 393 U.S. 483, 495-96 (1969) (Douglas, J., concurring), where the following statement of the legal counsel for the Bureau of Prisons was quoted: “The experience at Leavenworth has shown that there have been few attacks upon the [prison] administration; that prospective frivolous litigation has been screened out and that where the law school felt the prisoner had a good cause of action, relief was granted in a great percentage of cases. . . . We think that these programs have been beneficial not only to the inmates but to the students, the staff, and the courts.” Barkin, *Impact of Changing Law Upon Prison Policy*, 47 PRISON J. 3, 8 (1969).

49. MONT. S. CT. R. (1966).

50. The extent of supervision required for a given activity is a consideration closely interrelated with the activity authorized. “Although the two must be considered together to get a full understanding of any particular rule, . . . [separate treatment facilitates] what would otherwise be an extremely complex problem of description.” Knapp, *supra* note 2, at 15.

51. Leleiko, *supra* note 7, at 3.

52. See STATE RULES, *supra* note 5.

sensation of indigents in civil as well as criminal matters, consciously or unconsciously reflecting a broader social policy than was expressed in *Argersinger*. Montana alone limits student practice to criminal matters,⁵³ while Nebraska is the only state with a restriction to civil cases.⁵⁴ Following the example of the Model Rule, most rules permit appearances in any state court, with 27 states authorizing students to appear before administrative tribunals as well.⁵⁵ Iowa and the District of Columbia restrict student representation in criminal matters to misdemeanors.⁵⁶ Federal rules generally permit representation in criminal as well as civil cases.⁵⁷

The Model Rule expressly authorizes student preparation of pleadings, briefs, and other documents relative to litigation,⁵⁸ the attorney of record assuming complete responsibility for these documents; in addition, the document must be signed by the supervising attorney and contain the name or signature of the student.⁵⁹ A number of the states permitting a student to appear in court, however, do not expressly authorize the preparation of court documents, a situation which could result in serious administrative problems. In this context, it has been argued: "If a state is willing to permit a student to appear in a matter, it seems there should be also an express grant of authority to prepare (or at least assist in preparing) all the necessary papers in connection therewith, subject to whatever supervisory requirement may seem appropriate" ⁶⁰ Failure to authorize such activities could seriously detract from the educational value of student practice in two ways: first, by impeding the development of drafting skills and, second, by reducing the student's appreciation of the mechanics of filing the documents involved in litigation.

The Model Rule does not specifically authorize a student to advise a client as to recommended courses of action, nor does it deal with the process of negotiation and settlement. It has been suggested that the rules in this area, with their emphasis on litigation, are too narrow and fail to make proper provision for activities which prepare for, or even avoid, litigation.⁶¹ To meet this deficiency, 12 states expressly authorize counseling or advising, while eight states permit negotiation by students.⁶² The California rule is the most extensive in this area, permitting counseling in the presence of a supervising attorney, and negotiating, investigating, and interviewing clients and witnesses for the purpose of obtaining facts, without such per-

53. MONT. S. CT. R. (1966).

54. NEB. REV. STAT. § 7-101.01 (1967); NEB. S. CT. R. LEGAL PRACTICE BY APPROVED SENIOR LAW STUDENTS II(A) (1) (1969).

55. See STATE RULES, *supra* note 5.

56. IOWA S. CT. R. 120(1) (1967); D.C. CT. APP. R. 46A(I)(a) (1969).

57. See STATE RULES, *supra* note 5, Appendix B.

58. See Appendix IV.

59. California is unique in providing specific requirements concerning the use of a student's name, carefully limiting such use to filed documents and letters on the supervisor's letterhead relating to litigation. See CAL. STATE BAR Bd. & Gov'rs R. FOR PRACTICAL TRAINING OF LAW STUDENTS VIII (1969).

60. Knapp, *supra* note 2, at 14.

61. *Id.* at 16.

62. See STATE RULES, *supra* note 5.

sonal supervision.⁶³ Such provisions fill a gap other states either have failed to consider or deliberately have left open in the belief that students are not competent to perform the functions in question.

The presentation of oral argument on appeal is expressly permitted in 11 states.⁶⁴ Most of these states require personal supervision at this stage, although it is arguable that this is solely for the student's benefit rather than the client's protection since the arguments are prepared outside the courtroom and the parties have advance knowledge of the arguments of the opponent which must be met.⁶⁵

Other activities provided for by student practice rules in the various states include the taking of depositions in California⁶⁶ and Texas⁶⁷ and the arguing of motions, also in Texas.⁶⁸ Several federal courts authorize students to "represent an indigent person in bankruptcy court before the referee and hold consultations and prepare any documents for filing or submission to the referee in connection with such representation."⁶⁹ Authorization of student practice in specialized fields is a viable means of easing pressures resulting from overcrowded dockets. Such specialized activity would expose students to new areas of the law, expanding the variety of cases available in present clinical programs.

Supervision Requirements

From an educational standpoint, the existence of adequate supervising attorneys capable both as practitioners and as teachers is essential to the preparation of students for practice. In addition, it has been argued that since the state has a responsibility to the poor to provide a minimum standard of representation which would be "hardly discharged if they are represented by inexperienced and unassisted counsel," states should require a student to be supervised by a practicing attorney licensed in the state.⁷⁰

The Model Rule and most state rules provide that a supervising attorney must "assume professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work."⁷¹ Beyond this, the rules specifically state the times at which the supervising attorney must be "personally present" with the student and situations when only "general" supervision is required. These requirements vary with the nature of the activity or case, the nature of the tribunal in which the student is appearing, and the emphasis which the rule places on educational or social purposes.

63. See CAL. STATE BAR BD. & GOV'RS R. FOR PRACTICAL TRAINING OF LAW STUDENTS VI(A)(1), VII(C)-(D) (1969).

64. See STATE RULES, *supra* note 5.

65. See Comment, *Legal Internship in Missouri*, 35 Mo. L. REV. 367, 371 (1970).

66. CAL. STATE BAR BD. & GOV'RS R. FOR PRACTICAL TRAINING OF LAW STUDENTS VI(F)(2) (1969).

67. TEX. S. CT. R. GOVERNING THE PARTICIPATION OF THIRD YEAR LAW STUDENTS II(A)(1) (1971).

68. *Id.* The presence of a supervising attorney is required.

69. BANKRUPTCY CT. U.S.D. CT. NEB. R. B-15(b) (1972).

70. Knapp, *supra* note 2, at 16.

71. See Appendix IV.

The Model Rule permits a student to appear in court in any civil matter without the personal presence of a supervising attorney.⁷² Although this position has been adopted in the majority of rules presently in force, 12 states require personal supervision. In Connecticut, Nebraska, and Ohio, the personal supervision requirement may be waived by the presiding judge.⁷³ A few states require personal supervision in civil cases involving specified monetary amounts. Oklahoma, for example, requires the presence of an attorney in all civil matters where the claim for relief exceeds \$2,500,⁷⁴ while Kansas requires personal supervision in cases involving more than \$300.⁷⁵ The federal rules are divided on this issue, with five courts requiring personal supervision in civil cases.⁷⁶

As to criminal cases, the great majority of states follow the Model Rule by requiring the presence of an attorney in proceedings where there is a constitutional right to counsel. Although such a requirement ensures the effectiveness of counsel, it tends to impede one of the purposes of student practice—to relieve the burden of indigent representation created by recent Supreme Court decisions. Massachusetts' answer to this objection is to require only general supervision of a student in court, with an explicit statement that such supervision is not to be "construed to require the attendance in court of the supervising member of the bar."⁷⁷ Michigan specifically recognizes the practical implications of *Argersinger* by requiring personal supervision only in criminal or juvenile cases involving the possibility of imprisonment in excess of six months.⁷⁸ Kentucky employs a similar rule, requiring the personal presence of an attorney in cases punishable "by a fine of more than \$500. or by confinement for more than twelve months" ⁷⁹ In the states allowing students to appear on behalf of the state, the student may appear alone, provided he has the consent of his supervising attorney and his client.

No rule requires supervision of student preparation of court documents. As previously noted, however, these documents usually must bear the name of the student and be signed by the supervising attorney who, because of his assumption of responsibility for the student's product, effectively is compelled to oversee such work.

The various rules are not in accord as to whether the presence of an attorney is required when a student is giving advice to or negotiating on behalf of a client. In seven states there is no requirement for supervision of either counseling or negotiation.⁸⁰ In other states supervision is required at varying times. California and Wisconsin require supervision of counseling

72. *Id.*

73. See STATE RULES, *supra* note 5.

74. OKLA. R. S. CT. ON LEGAL INTERNSHIP VI(D) (3) (1967).

75. KAN. STAT. ANN. § 7-124 R. 213 (II) (b) (1a) (Cum. Supp. 1969).

76. See STATE RULES, *supra* note 5, Appendix B.

77. MASS. S. JUDICIAL CT. R. 3:11(3) (1957).

78. MICH. S. CT. R. 921 (1965).

79. KY. CT. APP. R. 3.540(C) (1969).

80. See STATE RULES, *supra* note 5.

or the giving of advice but not of negotiation.⁸¹ Minnesota provides for direct supervision at "critical stages in or out of the courtroom";⁸² Arizona permits unsupervised counseling by a student, but only after prior consultation with and consent of the supervising attorney.⁸³

State control over the qualifications of supervising attorneys is generally limited to a requirement that the attorney be a member of the state bar. Some states are stricter in that a minimum number of years of active practice is required.⁸⁴ Two states permit only full-time faculty members to act as supervising attorneys.⁸⁵ Recognition of the practical limitations upon the effectiveness of supervision is found in various provisions setting a maximum on the number of students, ranging from one to ten, who may be under the supervision of an individual attorney at the same time.⁸⁶

There is disagreement among legal educators concerning the type of supervisor who can best serve both the social and educational goals of student practice. The Council on Legal Education for Professional Responsibility, in criticizing the use of private attorneys as supervisors, has stated:

The experienced and highly able practitioner often reacts to situations arising in practice in an "intuitive" manner. Early in his career, he no doubt gave careful consideration to various circumstances arising in his practice and, in an equally careful manner, formulated his responses. With the passage of time and repetition of related social and legal fact situations, certain of his responses became second nature. He no longer had to think about what to do—he just did. Teaching is a process which requires looking at the obvious, reducing this experience to its fundamental constitutive elements and analyzing each such element. Because the experienced practitioner often is not aware that he is going through a decision process, he is unable to subject his responses to this kind of analysis.

But it is the heart of supervision as teaching that each decision in the litigative process be identified, delineated in detail, expressed explicitly, and analyzed within the context of competing alternative strategies.⁸⁷

Although the A.B.A. Model Rule and most other rules do not differentiate between placement and in-house supervisors, the stated purpose of the Model Rule "to encourage law schools to provide clinical instruction"⁸⁸

81. *Id.*

82. MINN. S. CT. R. STUDENT REPRESENTATION OF INDIGENT CLIENTS (1967).

83. ARIZ. S. CT. R. 28(e) (II) (D) (4) (1970).

84. See STATE RULES, *supra* note 5.

85. *Id.*

86. *Id.*

87. Council on Legal Education for Professional Responsibility, Inc., *Clinical Education—What Is It? Where Are We? Where Do We Go from Here?*, STUDENT L.J., May 1971, at 17, 23.

88. See Appendix IV.

suggests a preference for school involvement in and control over the clinical education a student is receiving.

Professional Responsibility

Apart from the oath and certification requirements previously discussed, many rules make specific reference to aspects of professional responsibility involved in student practice. Arizona and Ohio, for example, expressly provide that the rules of law and evidence relating to privileged communications between attorney and client shall apply to communications made or received by students.⁸⁹ Moreover, even in "states which have not considered the problem, it is probable that students authorized to engage in limited practice would in terms of that practice be considered attorneys for purposes of maintaining confidentiality of client communications."⁹⁰

Several rules address the problem of unethical solicitation of clients. Oklahoma is typical in prohibiting the use of its intern program as a vehicle to secure new or additional clients for the supervising attorney.⁹¹

A number of rules establish committees to hear complaints of student breaches of ethics and to provide appropriate remedies. The committee functions are variously set out as "receiving filed grievance reports,"⁹² "examining program operation,"⁹³ or "suspending students for unfavorable character reports."⁹⁴ Many of these committees also perform the broader function of evaluating general aspects of student practice programs, filing reports with the court semiannually⁹⁵ or annually.⁹⁶

A final area of significance in relation to professional responsibility is the potential malpractice suit against a student resulting from his performance under a student practice rule. Only Georgia addresses this problem, requiring a legal aid agency to obtain "appropriate coverage of malpractice liability insurance"⁹⁷ as a condition to its participation under the rule.

APPENDIX IV

A.B.A. MODEL RULE (1969)

I. Purpose.

The bench and the bar are responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who repre-

89. ARIZ. S. CT. R. 28(e) (VI) (D) (1970); OHIO S. CT. R. 2(2) (A) (1969).

90. Leleiko, *supra* note 7, at 6-7.

91. OKLA. R. S. CT. ON LEGAL INTERNSHIP VI(B) (1967).

92. TEX. S. CT. R. GOVERNING THE PARTICIPATION OF THIRD YEAR LAW STUDENTS VII (1971).

93. CONN. R. S. CT. 42A(6) (1971).

94. MD. CT. APP. R. 18(F) (1970).

95. WISC. S. CT. R. FOR PRACTICAL TRAINING OF LAW STUDENTS VIII (1971).

96. N.M. S. CT. R. CIV. P. 94(2) (1970).

97. GA. CODE ANN. § 9.401.1(g) (1973).

sent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted.

II. Activities.

- A. An eligible law student may appear in any court or before any administrative tribunal in this State on behalf of any indigent person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:
 - 1. Any civil matter. In such cases the supervising lawyer is not required to be personally present in court.
 - 2. Any criminal matter in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer is not required to be personally present in court.
 - 3. Any criminal matter in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer must be personally present throughout the proceedings.
- B. An eligible law student may also appear in any criminal matter on behalf of the State with the written approval of the prosecuting attorney or his authorized representative and of the supervising lawyer.
- C. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

III. Requirements and Limitations.

In order to make an appearance pursuant to this rule, the law student must:

- A. Be duly enrolled in this State in a law school approved by the American Bar Association.
- B. Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis.
- C. Be certified by the dean of his law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.
- D. Be introduced to the court in which he is appearing by an attorney admitted to practice in that court.

- E. Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the State from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

IV. Certification.

The certification of a student by the law school dean:

- A. Shall be filed with the Clerk of this Court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification shall continue in effect until the date he is admitted to the bar.
- B. May be withdrawn by the dean at any time by mailing a notice to that effect to the Clerk of this Court. It is not necessary that the notice state the cause for withdrawal.
- C. May be terminated by this Court at any time without notice or hearing and without any showing of cause.

V. Other Activities.

- A. In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this Court, but outside the personal presence of that lawyer, including:
 - 1. Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.
 - 2. Preparation of briefs, abstracts and other documents to be filed in appellate courts of this State, but such documents must be signed by the supervising lawyer.
 - 3. Except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of this Court, assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the Court on behalf of such a client must be signed by the attorney of record.

4. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.

B. An eligible law student may participate in oral argument in appellate courts, but only in the presence of the supervising lawyer.

VI. Supervision.

The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

A. Be a lawyer whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled.

B. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

C. Assist the student in his preparation to the extent the supervising lawyer considers it necessary.

VII. Miscellaneous.

Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything he might lawfully do prior to the adoption of this rule.

APPENDIX V

REGRESSION ANALYSIS

The following charts were derived from regression analyses performed using the Statistical Package for Social Sciences. (See Appendix I, Regression Analysis, for an explanation of this type of analysis.) Responses for all of the questions listed below were included in the calculations; those which made a significant contribution (better than .01 statistical significance) are listed in the "Items" column of the table for each analysis. The "Cumulative Variation" (multiple R^2) column indicates the portion of the total variation in response to the subject matter of the analysis attributable to each item. As this score approaches 1.000, it indicates that the listed items can be used to predict almost all of the variation in response.

"Relative contribution of the items" (the last column of each table) represents the standardized regression coefficient (beta) for each item, that is, the coefficient each item has in the equation created to predict variation in the subject of inquiry. As a standardized score, the coefficient reflects the equation after the units of measurement for each item have been

equalized. It also is the path coefficient of each item and can be interpreted as the multiple correlation value for the item.

Relative importance of the item for the equation is indicated by its absolute value; the direction of its impact, by its positive or negative sign. A negative sign indicates an inverse relationship, that is, that high scores on the dependent variable (the question or questions which are the subject of inquiry for each chart) are associated with low scores on the regression item (the independent variable) and that low dependent item scores are associated with high independent variable scores. A positive sign indicates a direct relationship between the independent and dependent variables. The meaning of a high score on the dependent items can be determined by referring to Appendix II. For the independent regression items listed below, affirmative responses are given higher scores than negative replies or nonreplies.

The standard error indicated for each table represents the error of each equation when it is used to predict the amount of variation represented by the final figure in the cumulative variation column. F-level statistics have not been repeated in each table, but the statistical significance of each of the regression equations is better than .001.

Items used for the regression analysis include the following questions employed in the survey and varying program characteristics derived from the state rules.

QUESTIONNAIRE ITEMS

- Q-1. Where approval of the dean is necessary for admission of a law student to your program, which of the following criteria are considered in making this determination? (check all that apply)
- A. Academic standing 11
 - B. Good character of the student 12
 - C. Automatic approval for enrolled law student eligible under your state's student practice rule or act 24
 - D. Other 4
- Q-2. What is the limitation, if any, on the number of students per supervisor? Range: 2 to 25
- Q-3. A. Are supervisors trained specifically for student practice programs in your school? Yes 7 No 36
If yes, what is the method of training? (check all that apply)
- B. On the job training 7
 - C. Formal instruction before beginning work with student practice 5
 - D. Individual research (self-instruction) 4
 - E. Other 4

- Q-4. Which of the following models *best* describes your student practice program? (If more than one program, base choice on *major* program)
- A. Law school operated and supervised law office (in-house) 68
 - B. Placement outside of law school but with job supervision in whole or in part by the law school 44
 - C. Placement outside of law school with no supervision by law school personnel 18
 - D. Classroom course with occasional outside-of-class case handling 4
 - E. Students work with faculty on selected cases 1
 - F. No placement or law school operated program, but a student may solicit work with an attorney on his own 0
 - G. Other 15
- Q-5. In what year was your program established? (If more than one program, indicate your *major* program) Earliest: 1906 Latest: 1972
- Q-6. Is course credit equivalent to the credit given a normal classroom course? Yes 35 No 9
- Q-7. A. How many students enrolled in your school were *eligible* to participate in student practice in academic year 1971-72? Median: 160
- B. How many students actually participated during that year? Median: 55
- C. How many students participated in *all* of your programs involving student practice during academic year 1971-72? Median: 95
- Q-8. Indicate who is held accountable in your state for the level of representation afforded the client:
- A. The student 43
 - B. The supervising attorney 171
 - C. The law school 36
 - D. Other 12
 - E. The question is unsettled in this state 20
- Q-9. Students are bound to the code of professional responsibility in your state by . . .
- A. standard oath. 16
 - B. special student oath. 13
 - C. requirement to read and be familiar with the state code of ethics. 37
 - D. other. 6
 - E. not bound to any code of responsibility or ethics. 6

Q-10. Amount of supervision as derived from overall mean responses to "supervision" portion of question 89 (Appendix II). Population Mean: 2.745

STATE RULE PROVISIONS

Restrictions on types of clients students may represent—

SR-1 State and indigent clients only 169

SR-2 State and any individual 28

Nature of cases in which students may participate—

SR-3 Criminal or civil 197

SR-4 Criminal only 16

SR-5 Civil only 4

SR-6 Other 5

Tribunals before which students may appear—

SR-7 Any court 72

SR-8 Specific courts 44

SR-9 Trial court only 5

SR-10 Administrative tribunals only 0

SR-11 Any court and administrative tribunal 75

SR-12 Other 27

Extent of practice permitted to students—

SR-13 In court 49

SR-14 In court, all court documents 97

SR-15 In court, counseling 16

SR-16 In court, counseling, court documents 45

SR-17 In court, specific documents 0

SR-18 Any activity 7

SR-19 Other 0

Required personal supervision in court—

SR-20 Civil cases Yes 134 No 56

SR-21 Criminal cases Yes 183 No 19

SR-22 Appellate proceedings Yes 116 No 19

Chart A

Adequacy of Representation
(Derived from total
means for questions
36A through 36P,
Appendix II)

Items	Cumulative	
	Variation	
	Attribut-	Relative
	able to	Impact
	Items	of Items
	(R square)	(Beta)
Q-3A	0.016760	-1.84117
Q-9E	0.30637	-1.13323
Q-5	0.42148	1.27658
Q-8B	0.53603	-1.11358
Q-4C	0.79718	0.89704
Q-9D	0.98174	0.55499
Q-1D	0.99984	-0.15642
Q-3C	0.99989	-0.00789
SR-18	0.99989 ^a	-0.00056

^aStandard error of final regression, -.00741.

Chart B

Educational Impact
(Derived from total
means for questions
41A through 41P,
Appendix II)

Items	Cumulative	
	Variation	
	Attribut-	Relative
	able to	Impact
	Items	of Items
	(R square)	(Beta)
Q-3A	0.11965	-1.89756
Q-5	0.26687	1.32098
Q-8B	0.34365	-1.28204
Q-8E	0.60141	-0.97835
Q-3E	0.94499	0.72568
Q-1C	0.99816	0.23294
Q-3C	0.99968	0.04206
SR-7	0.99993 ^a	-0.01636

^aStandard error for final regression, -.00648.

Chart C

Education for Professional
Responsibility
(Question 81A, Appendix II)

	Cumulative Variation Attribut- able to Items	
Items	(R square)	(Beta)
Q-3B	0.06843	0.33826
Q-9C	0.11900	-0.47341
Q-10	0.14891	2.75816
Q-3A	0.23512	1.49161
Q-8B	0.32026	1.95073
Q-6	0.51369	2.03121
Q-1C	0.87353	1.19132
SR-2	0.98619	0.44015
Q-1B	0.99962 ^a	0.13085

^aStandard error of final regression, -.01406.

Chart D

Effect on Legal Community
(Question 93C, Appendix II)

	Cumulative Variation Attribut- able to Items	
Items	(R square)	(Beta)
Q-3B	0.09919	2.34132
Q-9C	0.17397	-0.35491
Q-6	0.22375	-2.28193
Q-5	0.28998	1.20737
Q-10	0.36350	-1.73243
Q-4E	0.56043	-1.65465
SR-2	0.80638	-0.90625
Q-1B	0.96952	-0.49230
Q-8E	0.99991	0.18183
Q-3E	0.99992 ^a	0.00269

^aStandard error of final regression, -.00607.

Chart E

Overall Effect on Student
(Question 93A, Appendix II)

Cumulative Variation		
Attribut- able to Items	Relative Impact of Items	
Items	(R square)	(Beta)
Q-3B	0.07528	2.35883
Q-9E	0.12645	-0.59778
Q-4G	0.18142	-1.68189
SR-2	0.23764	-1.16859
Q-9C	0.26910	0.36056
Q-5	0.29839	2.13321
Q-3A	0.35304	-3.59666
Q-8B	0.44835	-2.21079
Q-10	0.83501	-2.15519
Q-1D	0.94252	0.49268
SR-9	0.98540	0.23606
Q-8A	0.99977	-0.13183
Q-4D	0.99981 ^a	0.00714

^aStandard error of final regression, -.01922.

Chart F

Effect on Community
(Question 93B, Appendix II)

Cumulative Variation		
Attribut- able to Items	Relative Impact of Items	
Items	(R square)	(Beta)
Q-3B	0.09510	0.98069
Q-9D	0.13098	-2.15009
Q-7B	0.15776	3.22700
Q-7C	0.22715	0.12266
Q-1D	0.25984	1.40684
SR-5	0.30347	0.81154
Q-6	0.33562	-1.65510
Q-9A	0.35658	-0.48854
SR-3	0.38107	1.25941
Q-3A	0.40963	-3.47858
Q-8B	0.46987	-2.76038
Q-8E	0.54753	-1.15054
Q-2	0.61027	-0.96811
SR-8	0.80095	1.34839
Q-9E	0.91496	-0.64566
Q-4E	0.99502	-0.37258
Q-1B	0.99947	0.07482
SR-7	0.99973	-0.01885
Q-1A	0.99997 ^a	0.02194

^aStandard error of final regression equation, -.00577.