1973


Editors of Colonial Lawyer

Repository Citation

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THE COLONIAL LAWYER
VOLUME 4, NUMBER 2
WINTER, 1973

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For Your Thought

Remember that first day at Law School when the Dean told the incoming class that the Law was to be your new mistress? Perhaps it would do well to take the time to reflect on just what is meant by this imagery. To guide you on your journey the following was part of a speech given by Oliver Wendell Holmes in 1885.

"And what a profession it is! No doubt everything is interesting when it is understood and seen in its connection with the rest of things. Everything is great when greatly pursued. But what other gives such scope to realize the spontaneous energy of one's soul? In what other does one plunge so deep in the stream of life--so share its passions, its battles, its despair, its triumphs, both as witness and actor?

"But that is not all. What a subject is this in which we are united--this abstraction called the Law, wherein, as in a magic mirror, we see reflected, not only our own lives, but the lives of all men that have been! When I think on this majestic theme, my eyes dazzle. If we are to speak of the law as our mistress, we who are here know that she is a mistress only to be wooed with sustained and lonely passion--only to be won by straining all the faculties by which man is likeliest to a god. Those who, having begun the pursuit, turn away uncharmed, do so either because they have not been vouchsafed the sight of her divine figure, or because they have not the heart for so great a struggle. To the lover of the law, how small a thing seem the novelist's tales of the loves and fates of Daphnis and Chloe! How pale a phantom even the Circe of poetry, transforming mankind with intoxicating dreams of fiery ether, and the foam of summer seas, and glowing greensward, and the white arms of women! For him no less a history will suffice than that of the moral life of his race. For him every text that he deciphers, every doubt that he resolves, adds a new feature to the unfolding panorama of man's destiny upon this earth. When I think thus of the law, I see a princess mightier than she who once wrought at Bayeux, eternally weaving into her web dim figures of the ever-lengthening past--figures too dim to be noticed by the idle, too symbolic to be interpreted except by her pupils, but to the discerning eye disclosing every painful step and every world-shaking contest by which mankind has worked and fought its way from savage isolation to organic social life." §

News

No sooner had the Law School Association let it be known that Association members were about to inaugurate the Marshall-Wythe School of Law Annual Fund than the Board of Visitors of the College offered a challenge to alumni and friends of the Law School in the form of authorization for the expenditure of $25,000 from endowment for the purpose of purchasing books for the Law School Library.

The Board took this step to "provide tangible encouragement to the William and Mary Law School Association to raise an equal amount from at least 50% of its membership."

In announcing the establishment of the Fund, the Association indicated that it intends to assist the School on a yearly, sustained basis. Contributions will be sought for several important aspects of the School's program of modern legal education. The funds will be used for areas of the program where the Commonwealth of Virginia does not appropriate money or where support supplementary to the Commonwealth's substantial efforts is necessary.

Gifts to the fund are to be used at the discretion of the Dean for the following purposes: Improvement of the Law Library, financial assistance to students, and faculty development.

One of the important goals of the Law School is the development of greater depth and breadth in the Law Library collection. Increased student enrollment has made necessary multiple copies of many of the standard reference works, and the expanded curriculum requires library resources in the new areas of study.

The ability to offer more scholarship aid to students on admission is another critical area of need at the Law School in order to enable Marshall-Wythe to compete for outstanding applicants with the better endowed schools. Students already enrolled frequently seek financial assistance in order to enable them to finish their education.

The third field in which this year's Annual Fund will be used is faculty development. Ample funds for research and attendance at professional meetings are required to assure the continuing strength of the
Law School faculty. The Commonwealth provides no General Fund appropriations for faculty research, and the amount of money made available for other professional development has not kept pace with the dramatic growth of the faculty in the last few years.

Alumni and friends will soon be contacted by Mr. D. Wayne O'Bryan, President of the Law School Association, and his corps of volunteers. Mr. O'Bryan's letter to alumni and friends appeals to them to "assist in consolidating the remarkable gains of the Law School in recent years and to encourage the further pursuit of excellence." He indicated that checks should be made payable to WILLIAM AND MARY-LAW SCHOOL and sent to Box EH, Williamsburg, Va., 23185. §

Faculty Profiles

SCOTT C. WHITNEY

As conservation becomes a greater problem of man, it begins to become more a problem of men of the legal profession. Mr. Whitney has been interested in wildlife and conservation for many years and has now become a professor at Marshall-Wythe in order that he may instruct students about this growing problem.

Mr. Whitney has received degrees from the University of Nevada, George Washington University, American University and his J.D. from Harvard Law School. He is also a member of many societies and clubs which deal with problems of conservation, including the Explorers Club, Shikar Safari Club International and the International Wildlife Conservation Society. Mr. Whitney has also several years of professional experience and also presently, while teaching full-time, advises the Lieutenant Governor of Virginia on local conservation problems.

In teaching environmental law at Marshall-Wythe Mr. Whitney tries to get his students to understand the problems of conservation versus the energy demand of our country. He believes that a study of environmental problems requires a balanced approach and a study of its impact on society as it is today and into the future. Through affirmative planning this problem can be solved and the solving this problem is the concern of Mr. Whitney in his Environmental Law Classes. §

WALTER L. WILLIAMS, JR.

Doctor Williams comes to the Marshall-Wythe School of Law after serving as an international law specialist in Belgium assigned in support of the Supreme Headquarters, Allied Personal, Europe. As a scholar of international law, Dr. Williams is becoming an integral part of our law school as it expands in size and quality.

Dr. Williams received his S.J.D., and his L.L.M. Degrees in Law from Yale University after receiving a LL.B. Degree from the University of Southern California. Doctor Williams also has a Master of Arts Degree in the field of foreign affairs. He received the 1970 Ambrose Gherini Prize from Yale for his doctoral dissertation upon which his book, Intergovernmental Military Forces and World Public Order, is based.

The field of international law is a broad and interacting system of values and claims. Dr. Williams feels that law is a process of decision making arises out of the interactions of the international society. The "trends" of this decision process are that which Dr. Williams, as a professor, wishes to teach to his students. By analyzing these "trends" with his students, Dr. Williams feels that he is able to help a student find his way through the maze, thus causing a student to be able to apply the law of today, with the trends of today, for the law of tomorrow. §
THE NEED FOR REVISION OF VIRGINIA’S JUVENILE COURT STATUTE

The idea for this article was stimulated by two articles which appeared in the Spring, 1972, issue of the Colonial Lawyer. In one, Mike Inman, now a third-year student at the Law School, described at some length the “eruption” of the prisoners’ rights and prison reform movement in this country during the last three or four years. For various reasons, these two movements—sometimes reinforcing each other, sometimes not—have seized upon the judicial process as the primary tool of reform; as a result the federal district courts and to an increasing degree the state courts are swamped by the habeas corpus and civil rights' actions of convicted offenders. In the second article, a colleague of mine at the Law School, Dick Williamson, makes a strong case, with which I generally agree, for his proposition that the “slow, cumbersome process” of adjudication is not the only and certainly not the best “vehicle through which one can achieve social change working within the system.” As Mr. Inman also concludes, this observation is, at least in some instances, particularly applicable to the prisoner rights and prison reform movements.

Having spent several years in correctional research, administration, consulting, and litigation, I have been heavily involved in the new era of prisoners rights and prison reform which Mr. Inman describes in his article and have come to share many of the same conclusions which Professor Williamson reaches in his. During the past six months I have been fortunate enough to be able to concentrate on a new but related field, that of the juvenile delinquency and child services process. Surveying these fields throughout the nation I am struck, indeed depressed, with the frequency with which I encounter the same inefficiencies, inefficacy, ambiguities, lack of imagination, failures, and abuses which triggered the prisoner rights/prison reform revolution. In addition, unlike the prisoner rights/prison reform fields, the juvenile process, at least in its delinquency adjudication aspects, has already been the subject of adverse rulings and stringently condemnatory appraisal by the United States Supreme Court. Litigation involving the hitherto hidden or ignored abuses and failures of the juvenile system, especially in its corrections stage, is already beginning to appear with increased frequency. Such litigation has a sounder foundation than the prisoner rights cases because of the rehabilitation and treatment obligation imposed by state statutes on state juvenile processes, the closely related developments in the criminal law field during the 1960’s, and the sharper delineation and fuller documentation of issues in the juvenile field through scattered litigation during the past ten years and the relatively intensive analysis of the area by various state and national study commissions.

We in Virginia are fortunate that the Commonwealth has avoided some of the problems besetting other states’ juvenile systems and has developed generally concerned, imaginative and sophisticated juvenile systems at both the state and the local level. It is my impression, however, and I speak as a relatively new citizen of the Commonwealth, that these developments have occurred in spite of, rather than because of, the controlling statutory framework. Based on my own review and discussion with numerous local and state personnel and with law students (often the most perceptive critics of all) I believe that Chapter 16.1 of the Virginia Code (as well as other provisions which I will not address here) is in need of immediate and thorough revision if Virginia is to continue to have a juvenile delinquency and child services system which is progressive and effective and which accurately reflects the will of the people expressed.

W. Anthony Fitch is a graduate of Princeton University and Harvard Law School. He is presently an adjunct professor of law at Marshall-Wythe and also serves as Director of the Metropolitan Criminal Justice Project operating in the City of Norfolk. The views expressed herein are entirely the author’s own and do not reflect those of any organization with which he is associated.
through the General Assembly. In its present form Chapter 16.1 reflects inconsistent purposes and policies, is difficult to use because it lacks any systematic organization, and provides insufficient guidance to the dedicated state and local personnel who must enforce its provisions.

In the remainder of this brief article, I propose to review some of the more important provisions in the present Code, concentrating perhaps unfairly on those sections which I find troubling. Hopefully my personal criticisms and recommendations will provide a basis (and a target) for further discussion.

Section 16.1-158 is the core of the chapter. Pursuant to this section the jurisdiction of the Juvenile Court includes, with certain exceptions, all cases involving children who are allegedly neglected, the subject of custody proceedings, allegedly involved in situations injurious to their welfare, allegedly runaways or habitually disobedient or beyond the control of their parents or incorrigible, allegedly habitually truant; allegedly in violation of any state or federal law or local ordinance, allegedly mentally defective or mentally disordered, or allegedly in violation of any state or federal law or local ordinance, allegedly mentally defective or mentally disordered, or allegedly the victim of various acts by an adult. The effect of this statement of jurisdiction is to make delinquent not only acts which would be criminal if committed by adults, but also vague and ill-defined statuses (endangered welfare, habitually disobedient, beyond control, incorrigible) which are not necessarily the fault of the child and various minor acts (runaway, truancy) which I and others believe can more fairly, more effectively and more economically be dealt with by non-judicial agencies. At the very least, section 16.1-158 should be revised to differentiate between delinquent children, neglected children, and children in need of supervision so that children who have committed no criminal act will not be subject to the harsher Juvenile Court sanctions. A far more preferable revision would remove, perhaps through an orderly transition over a period of years, the juvenile-only offenses from the jurisdiction of the Juvenile Court or, alternatively, require a showing that non-adjudicatory, voluntary referrals had not been efficacious before the Juvenile Court could take jurisdiction. On the other hand, those parts of section 16.1-158 which to some extent create a family court by vesting the Juvenile Court with jurisdiction of most offenses against children should be kept.

The juvenile process is typically commenced upon a police officer's taking a child into custody. Section 16.1-194 governs this procedure and is a model statute. The section sets out the five specific instances in which an officer may take custody, thus furnishing him with clear, easily followed guidelines for his handling of the juvenile.

Until 1972, upon being referred to the Juvenile Court, the child (except in instances of alleged traffic or game and fish law violations) had to be "investigated." This is the classic intake function of the Juvenile Court and is considered essential to the Juvenile Court concept of non-punitive, rehabilitation-oriented processing and treatment of allegedly delinquent children. Section 164 no longer requires this intake investigation and unlike the vast majority of the states and various Model Acts, also provides that "nothing herein shall affect the right of any person to file a petition if he so desires." This provision strips the Juvenile Court judge, the prosecutor (if he is involved), and trained intake staff of the ability to avert adjudication when it is in the best interest of the child and/or the public to do so. The section should be amended to place the final intake decision with the Commonwealth's Attorney, the intake staff or the Juvenile Court Judge. Once the decision is made to refer a child to the Juvenile Court for adjudication of his alleged offense, the Court must decide whether the child...

(Continued page 14)
should be detained in a detention facility or returned to his home pending adjudication and disposition of his case. The controlling statutes properly provide that this detention hearing shall be conducted "as soon...as is reasonably practicable..." (which usually means the next day), that children should not be detained in a jail or other facility used for adults except in separate rooms or wards, and that a child shall be detained only if "there is a substantial risk that such child will commit an unlawful act or will not appear in court for this disposition of his case...or in the opinion of the judge it is necessary for the child's own protection." Unfortunately, children confined in jail are sometimes not really separated from adults, since all age groups may commingle for meals, exercise, recreation, and other required activities or duties; a far preferable provision would absolutely prohibit the use of jails for the detention of juveniles after some date in the not very distant future. Moreover I find it difficult to justify the detention of a child on the ground that he may commit a future unlawful act when such "preventive detention" is arguably unconstitutional for adults. Of course, the provision that such preventive detention can be justified only upon the showing of a "substantial risk" places a heavy burden of proof upon the State to justify such detention and would seem to enable a prepared, aggressive attorney to assure his client's freedom pending trial in almost every case. Finally, assuming the amendment of section 16.1-158 to differentiate between delinquent children, children in need of supervision, and neglected children, as suggested above, a revised detention section should specify the type of detention facility in which each category of child may be detained.

In certain instances a child may be transferred from the Juvenile Court for prosecution as an adult. I find the statutory provisions governing the transfer of a child for criminal prosecution to be among the most troubling in the entire Chapter and to raise serious constitutional and conceptual problems. The Court, before making its transfer decision, is not even required to conduct an investigation of the child's "physical, mental and social condition and personality," such an investigation is discretionary. This social investigation should be mandatory in every transfer case, and, contrary to the present provision, should normally include a psychiatric examination. The investigation should deal only with the needs and characteristics of the child. It should not include, as it must under the present statute, the "circumstances surrounding the violation of the law which is the cause of his being before the court." Such a factual investigation is contradictory to the rehabilitative purpose of these statutes and raises great doubt whether, despite section 16.1-140, "the welfare of the child is the paramount concern of the State" in reality. The statute prohibits the waiver of any child under 15 years of age; my admittedly shallow familiarity with the adolescent psychology and child services fields suggest that this minimum age should be at least sixteen. The Juvenile Court may in its discretion transfer any child charged with an offense punishable by confinement in a penitentiary; this discretion should be narrowed to apply to only the most serious of crimes. In one of the most serious deficiencies of the transfer section, the Juvenile Court is stripped of its authority to make the final transfer decision in certain instances; thus the Commonwealth's Attorney, without a prior hearing in Juvenile Court, is authorized to present to the grand jury cases involving children over fourteen alleged to have committed crimes punishable by death or confinement in the penitentiary for more than twenty years, and cases involving children who are alleged to have committed a felony after prior adjudication in the Juvenile Court for offenses indicating a viciousness of character (which is nowhere defined) or an offense punishable by confinement in the penitentiary. This provision raises serious constitutional issues, is totally antithetical to the supposed purposes of the juvenile process and concept, and reflects a substantial distrust of the ability of the Juvenile Court to render a proper transfer decision. Section 16.1-177.1 allows, in effect, a "transfer without a transfer." Although poorly written, the provision apparently authorizes the Juvenile Court to "deem" certain children over thirteen unamenable to juvenile treatment (again, a finding not required to be based on a social investigation), to conduct a trial (as opposed to the
It is hard to understand how incarceration of a runaway, a truant or an incorrigible child with children who have committed much more serious offenses can in any way ... be beneficial to him.”

usual juvenile court hearing) and to sentence such children, if convicted, as adults. Thus even juvenile misdemeanants may be imprisoned with adults for up to a year. Most serious of all, the statute provides absolutely no standards or guidelines for reaching the various transfer decisions that are required.

In sum, the present statute makes transfer almost automatic in many cases where instead transfer should be in the rare exception. I find it impossible to believe that the adult criminal process can have greater resources for or be more beneficial to the child than the juvenile process. Every transfer decision is an admission of failure on the State’s part to render the help and assistance to children which it is obligated to provide. Transferring the child out of the juvenile process is simply punishing him for the failure of the juvenile system, in the past and at the time of the transfer decision, to provide the assistance and treatment which he needs.24

Section 16.1-173 provides for the appointment of counsel in any juvenile case which might result in the incarceration of the child. The appointed counsel is entitled to reimbursement for his services up to the sum of seventy-five dollars for each charge. I am uncertain that such a low maximum is fair either to the lawyers who serve in the Juvenile Court or to the child whose lawyer, under the present limitation, may be unable to provide the imaginative, comprehensive legal and other services frequently required in representing a juvenile. Fortunately, the Commonwealth of Virginia is commencing in three jurisdictions an experimental public defender program. With the proper monitoring and evaluation this experiment should provide accurate information on the real needs of defendants (adult and juvenile) and the cost of meeting those needs. The General Assembly will then be able to address itself to the documented needs.

Upon finding a child delinquent the Court must determine the proper disposition of the child, the most difficult decision of all given our limited knowledge and resources.25 Under Section 16.1-178(4) the Juvenile Court is authorized, among other dispositions, to “commit the child or minor coming within the provisions of paragraphs (g), (h), and (i) of subsection (1) of Section 16.1-158 of this law to the care and custody of the State Board of Welfare and Institutions.” This means, in effect, that the child will be incarcerated in one of the Commonwealth’s “training schools.” Under this provision the Court may incarcerate not only those children who commit an act which if committed by an adult would be a crime (even though the adult perhaps could not be imprisoned for the same act), but also children who are runaways, habitually disobedient, beyond control of their parents, incorrigible, or truant.26 It is hard to understand how incarceration of a runaway, a truant, or an incorrigible child with troubled children who have committed much more serious offenses can in any way (with the rarest exception) be beneficial to him. It is no answer that such children may rarely be incarcerated.27 Like the transfer of children from Juvenile Court to a criminal court, incarceration of such children and the authority to incarcerate such children is simply an admission of the Commonwealth’s failure or refusal to provide the less extreme, more flexible, more economical and more effective community-based services which are now believed to be most appropriate for such children. As promised above, I have briefly set out those parts of Chapter 16.1 which I believe raise the most serious questions about the processing of juveniles in the Commonwealth. I have also briefly stated my personal views regarding the most desirable revisions of these sections. Needless to say my views and the assumptions, values, and policies which they reflect have absolutely no more validity than those of any other citizen of the Commonwealth. However, I do believe that even the most objective observer would conclude that the Chapter is in need of substantial reorganization and revision. A logical next step would be the development of one or more well-organized Model Statutes with accompanying commentary clearly spelling out the purposes, assumptions, costs, and benefits of the provisions contained therein. Such documents, like, hopefully, the expression of my personal views in the foregoing, should stimulate further informed discussion of the juvenile process. It would then be possible for the General Assembly to revise Chapter 16.1 in a way that will substantially reflect the views of the citizenry of the
Commonwealth and provide clearer guidance and greater stimulus for the dedicated judges, attorneys, planners and child services personnel which the Commonwealth is fortunate in having. §

ADDENDUM

Several of the numerous bills affecting the juvenile process, which are now pending before the General Assembly, deserve comment. Senate Bill 714 would, in part, allow the post-adjudication commitment of children to temporary ("pre-trial") juvenile detention facilities, a disposition now prohibited by § 16.1-197. Such dispositions would result in the indiscriminate mixing, with the concomitant peer group pressures and influences, of delinquent and non-delinquent, seriously troubled and relatively untroubled, children; it would also result in still more serious overcrowding of our juvenile detention facilities, facilities which are not intended, equipped or staffed for the long-term care and treatment or adjudicated delinquents. House Bill 1446 would allow a court not to conduct social investigations before entering disposition orders, a further curtailment, like the 1972 "intake" amendments, of the Court's ability to help the children who come before it. House Bill 1584 contains numerous changes which should not be considered until after the "District Court Bill" (HB 1457) and House Resolution No. 18, calling for a "study and report on the laws relating to juveniles and juvenile courts," are acted upon by the Assembly. §

FOOTNOTES


4. See cases cited supra, n. 3, esp. In re Owens, supra, n.3., and In re Savoy, supra, n. 3.
7. The California General Assembly's Interim Committee on Criminal Procedure recently concluded that:

There is no significant evidence that the juvenile court's beyond-control jurisdiction has been effective in turning runaways, truants, promiscuous girls or other incorrigibles into the kind of children whose behavior patterns satisfy adult expectation. There is even less evidence that Section 601 has produced happier, healthier children who go on to become better adults because of their court, probationary or institutional experience. Time after time, during its hearings on the subject, members of the Committee asked witnesses appearing on behalf of Section 601 for proof that any significant number of minors had ever benefited from its studies, statistics or other evidence that even suggest such a conclusion.

8. Cf. 16 D.C. Code 2301 (6), (7), (8) and (9).
9. See, also, text accompanying n. 26, infra.
11. Contrary to much of the rest of the Chapter, Section 16.1-194 has the effect of providing the same "arrest" procedure for juveniles as for adults, assuming that the "good cause to believe" provision in subsection 4 is equivalent to "probable cause". The one exception is that subsection 3 authorizes the taking into custody of a child whose surroundings mandate "immediate custody for the child's welfare"; despite the inherent dangers of abuse which always accompany such vague standards, this provision is consistent with the neglect jurisdiction of the Juvenile Court.
13. Section 16.1-164 does not specifically mention the intake provision, providing instead that "the court shall require an investigation . . ." and that "the court may then proceed informally and make such adjustment as is practicable . . ." (emphasis supplied.)
18. However, the high detention rates in some Virginia jurisdictions argue against this expectation. Arguably, the phrase ". . . or in the opinion of the judge [detention] is necessary for the child's own protection" establishes a lower standard of proof. This vague provision may be the basis of many detention decisions. Regardless of the basis of detention, in some jurisdictions a large majority of the children who are detained before trial are not incarcerated but instead returned to the community after they are adjudicated delinquent.
Since a child is unlikely to be "rehabilitated" by his stay in detention (usually a few weeks, although there is no statutory limit), this situation, in many cases, reflects either poor pre-trial evaluation and decision-making or a subsequent determination that pre-dispositional detention constitutes sufficient disciplining or punishment. I understand the Fourteenth Amendment to prohibit punishment without the due process of law accorded by the juvenile hearing.


21. In Tilton v. Commonwealth, 196 Va. 774, 85 S. E. 1d 368 (1955), the Virginia Supreme Court held that Va. Code § 16-172.42, which provided that "... the court shall require a full and complete investigation..." made a pre-transfer investigation mandatory in every case. Section 16.1-176, the successor of Section 16-172.42 was amended by Chapter 314 of the Acts of Assembly of 1960 to read that "the court may... require an investigation..." In James v. Cox, 323 F. Supp. 15 (E.D. Va., Richmond Division, 1971), the Court, relying on Tilton v. Commonwealth, supra, stated that pre-transfer investigations are mandatory, but no case decided since the 1960 amendment including those cited by the Court in James v. Cox in support of its statement, so holds. Similarly, the Court in Redman v. Peyton, 420 F. 2d 822, 825 (4th Cir. 1969), assumed that a pre-transfer investigation is mandatory but rests this assumption only upon Tilton v. Commonwealth, supra.

22. The General Assembly must certainly have meant "alleged violation."


25. Cf. United States v. Waters, 437 F. 2d 722, 723 (D. C. Cir. 1970), a case involving the sentencing of a youth offender under the Federal Youth Corrections Act, 28 U.S.C. 5001 et seq: What happens to an offender after conviction is the least understood, the most fraught with irrational discrepancies and the most in need of improvement of any phase in our criminal justice system.

26. See text accompanying n. 7-9, supra.

27. In Winsip v. United States, supra, the Supreme Court held that children alleged to have committed a criminal offense must be proven delinquent beyond a reasonable doubt. The effect of Sections 16.1-158 (1) (g) (h) and (i) and 16.1-178 (4), in light of Winsip, is to permit the incarceration in the State's training schools of children who have not committed any criminal offense on a lower standard of proof that is required for children who have violated the criminal laws.

Statistics which I have seen indicate that quite the contrary is true.

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**INSURANCE** (from page 9)

the following results:

1. a substantial increase in the number of problems taken to lawyers—double the pre-plan usage;
2. a reduction of the client’s initial apprehension about going to a lawyer;
3. an increase in the use of lawyers in the counselling or preventive role;
4. a reduction in the average cost per case from a pre-plan $187 to $165.

Left unanswered at present is the pivotal question of whether the prepaid legal services concept is feasible for wide scale implementation. Other questions, such as what is the average person’s perception of the lawyer’s role, how one decides that he has a “legal” problem, and to what extent increased availability of legal services on acceptable economic terms will change these attitudes, are crucial to the future of prepaid services plans. Hopefully the comprehensive report by the ABA Special Committee on the Shreveport Plan’s first two years of operation, expected to be available very soon, will furnish insights into these and other questions.

Activity, both private and bar-sponsored, in the field of prepaid legal services is widespread and growing. As of March, 1972, twenty-six state bar associations had formed committees charged with the duty of exploration and/or planning in the field. Two state bar associations—California and New Jersey—had nearly reached the point of implementation; and the ABA had underwritten, in addition to the Shreveport Plan, two other pilot projects in California. In the private sector, there are already a dozen open panel plans proposed or in operation, sponsored by unions, consumer groups, commercial insurance carriers, and other non-legal private firms.

The role of the ABA and the rest of the organized bar in this developmental activity is a critical one. As succinctly expressed by David K. Robinson, Past-President of the California State Bar Association:

The organized bar must assume early leadership in this field. Otherwise it may well come under the control of people outside the profession who are governed by different professional and ethical standards.

In its February, 1972, report, the ABA’s Special Committee on Prepaid Legal Services identified numerous privately sponsored prepaid plans, observing that “some of them appear to be entirely conceived and operated by non-lawyers with a view toward creating a vehicle for providing legal services at a profit”, noting further that “lack of
the metamorphosis of
the nation's oldest law school

George Campbell

Several years ago, an administrative decision was made to increase the size of the faculty and the student body of Marshall-Wythe School of Law. During a period of growth and development over the past three years, the number of law students has doubled, the faculty has increased significantly, plans have been finalized for an additional physical facility, the number of applications have tripled, new academic policy and curriculum have been implemented, and student participation in extracurricular activities has exploded.

ENROLLMENT DOUBLES IN THREE YEARS

In 1958, Marshall-Wythe had a total enrollment of 60 part-time and full-time students. The school began to grow at that time as the size of each incoming class increased from 20, to 35, to 50, and then to 75 where it remained relatively static until September of 1970. As requests for admission grew and in an attempt to provide a more extensive legal education for a greater number of students, a decision was made that the size of the law school would be increased from what was considered to be a small law school to one of medium size. It was believed that growth would be most easily facilitated by doubling the number enrolled in each class over a three year period.

In September of 1970, the entering class—the present third-year class—was 182 strong, quite a jump from the 75 of previous years. However, the former figure reflects a greater number of acceptances by entering students than had been anticipated when the offers to matriculate were extended. In 1971 the present second-year class was admitted with 177 students, a class size which was again too large as a result of the attempt to anticipate the number which would accept the invitation for admittance. The phase of growth was completed this year as the present first-year class was enrolled at 150, the figure which had been sought in the previous two years and which will stand as the archetype for the future. At present, the faculty numbers 25, producing a student-faculty ratio of 20 to 1.

Having attained the level of this year's student enrollment of 450, the law school is believed to be at the optimum size to retain some of the benefits of a "small-school" environment, yet afford students the more extensive opportunities available in a larger law school. As Dean James P. Whyte states, "The growth factor is not important for its own sake - it's calculated to provide an atmosphere and a series of opportunities to enable students to get the best legal education we can give them. Growth would not be desirable if it injured that objective".

GROWING PAINS

Marshall-Wythe's expansion has created some problems, among the most note-worthy of which is the grave strain upon the present physical facility. The institution of extensive legal writing requirements into the curriculum, the increase in Moot Court participation, a growing number of independent research projects, and a larger Law Review staff has caused overcrowding in the law library which can be described only as chaotic. Library materials and personnel have had to be assigned to other locations outside the law school building. In order to accommodate the increase in the size of classes, many class sessions are held in Rogers Hall, a building adjacent to the law school. Out of necessity, a number of administrative, faculty, and student activities offices have been moved to a college administrative building, James Blair Hall. These illustrations of present inadequate conditions and general administrative and student discomfort serve as manifestations of the crucial need for an additional law school structure.

Hopefully, the needed additional space for Marshall-Wythe will be attained by a complete renovation of Rogers Hall, the adjacent building which currently houses the chemistry department. Plans call for a remodeling of the three story structure to include classrooms; faculty, administrative,
and student organization offices; a student lounge area; a student dining area; several lecture halls; and faculty and student conference areas. The present law school building will most probably be restyled to provide the much needed accommodations for the growing law library.

Unfortunately, the actual commencement of the renovation of Rogers Hall still remains several years away since that building will not be vacated until after the new college chemistry building is constructed. The work on the new chemistry structure probably will start in the spring of 1973 with a projected completion in the next one and a half to two and a half years. Thereafter, the Rogers Hall project should begin.

NUMBER OF APPLICANTS SOARS

As Marshall-Wythe has grown in size, the number of applicants requesting admission has tripled. In 1970, 770 applications were received for a class which was enrolled at 182; in 1971, 1,292, applications were processed for a class of 177; and in 1972, 2,244 requests for admission were received for a class enrolled at 150.

As a result of the increased demand to gain admittance to the law school, there has been a steady rise in the objective qualifications of Marshall-Wythe students: the median Law School Aptitude Test score for the present first-year class is 616 with a median grade-point average of 3.0 on a 4.0 scale.

For the most part, objective factors are the principal determinants of whether an applicant will be offered admission to the law school. Associate Dean Richard A. Williamson, in charge of Admissions and Placement, affirms that grades and the L.S.A.T. are still the principle basis of determining qualifications for admission, although he has commented, "We're making an effort to place less emphasis on purely objective qualifications; we can become more selective in terms of subjective qualifications because of the quantity of applications as once a certain paint in the L.S.A.T. and the grade-point average is reached, the objective distinctions begin to disappear."

(Continued page 13)
LAW SCHOOL  (from page 7)

Dean Williamson has also observed, “The school has been fortunate in the past in terms of the quality of the applicants because a better qualified applicant can only serve to benefit the public in a profession which demands skill, trust, and intelligence.”

PROFESSIONAL DIVERSITY

With the increase in the number of students, the Placement Program at Marshall-Wythe has sought a wider basis of contact with prospective employers. The mailing done by the student Placement Director has tripled in the past three years. This year, more than 1,000 firms in 30 states were contacted, a fact which reflects the desires of students to seek more diverse types of employment in various geographical areas.

Another product of Marshall-Wythe’s growth has been the expansion of the curriculum by offering a more varied opportunity for legal study in response to the divergent interests of students. At present, the only required courses after the first year are two hours of Constitutional Law and three hours of Criminal Law. More stringent legal writing requirements have been instituted, and a greater variety of courses and seminars are being offered, several examples of which are Consumer Credit, Environmental Law, Land Finance, Regulated Industries, a Juvenile Law Seminar, and a Products Liability Seminar. Professor Thomas A. Collins, Chairman of the Faculty Curriculum Committee, feels that the goal of the present course offerings is “to provide exposure for students in all areas, and the opportunity to develop specific expertise in particular areas.”

New general academic regulations are in the process of being classified and developed, among which is the policy that a student will not be dropped for grade deficiency in the middle of an academic year.

EXTRACURRICULARS CHANNELIZE STUDENT ENERGIES

Increased student enrollment has been a significant causative factor in the growth of new student organizations. Marshall-Wythe offers a student the opportunity of participation in recently formed organizations such as the Environmental Law Group, the Legislative Research Council, the International Law Society, the Post-Conviction Assistance Project, and the Women Law Students Association. A greater number of students are involved in Law Review, Moot Court, and the Legal Aid Program. The law school newspaper, The Amicus Curiae, has expanded to a newsprint format, and the Colonial Lawyer has emerged as a vehicle for more effective intra-student and student-alumni communication. The Virginia Bar Notes continues to meet the needs of Virginia law students preparing to take the bar exam. The Student Bar Association has grown in size, sponsoring a greater number of student organizations and social and professional events; and the law fraternities are likewise expanding in size and service.

The increased interest in and support for extracurricular activities may be explained by a growing interest on the part of students to broaden the scope of their education beyond the confines of the purely academic and even make some contribution to the profession while working toward a degree. As Dean Whyte states, “Students are increasingly interested in and conscious of what is happening in the area of legal education; they seem to be more interested in creating an educational experience which they deem practical, such as participation in clinical programs.”

CONCLUSIONS

In an overall assessment of the growth of Marshall-Wythe, Dean Whyte summarizes, “The law school has made very significant steps toward reaching the type of curriculum we want, and I believe we have been very fortunate in attracting faculty members who’s doing a good job in their special interests.”

As Marshall-Wythe continues in its process of development, the role of alumni becomes increasingly prominent and crucial. The alumni are currently planning a fund-raising campaign to be instituted on a yearly basis, the proceeds from which will contribute to the general support of the law school. Dean Whyte foresees the support of the ever-growing number of Marshall-Wythe graduates as providing a solid foundation for the future growth and improvement of the school: “Our alumni are increasingly interested in the well-being of this law school; their enthusiasm is ever on the rise. Talented and devoted alumni are working to assure the continued development of Marshall-Wythe.”

In the foreseeable future, the present size of Marshall-Wythe should remain relatively constant. Although innovative activities and meaningful opportunities should continue to develop, the major emphasis will be the refinement of the policies and programs of a noteworthy educational institution which professes and meets the objective of offering the community, the state, and the nation a high quality professional.
During the past few years a growing concern has developed among lawyers and bar associations with the problem of providing legal services to the seventy per cent of the American population that is neither rich nor poor at a cost that is less than prohibitive. The problem is a multi-faceted one, having its genesis in the seemingly high cost of such services, but involving, as well, the life-style of members of this group, in which the concept of "preventive law" is unrecognized and legal costs of any nature are acceptable only when inescapable.

Numerous methods have been considered over the years, the aim of which, in part at least, has been to neutralize the justifiable fear of high legal costs among the consuming public. Included among the suggested methods are a modification of the income tax structure to allow a deduction for the cost of personal legal services, the charging of attorney's fees to the losing party, and programs to finance the costs of legal services through lending institutions. Such proposals, however, tend to imply that fear of cost is the sole deterrent to seeking legal services. Furthermore they emphasize the litigatory role of the lawyer, to the exclusion of his role as a counselor, and while recognizing the need for legal services, these measures would do little to generate the demand necessary before they can be effectively delivered to potential consumers.

This article will examine the concept of prepaid legal services as a possible solution to this problem. Exploration of this concept necessitates looking briefly at what the concept entails, presenting activity in the field with possibilities of future development and considering whether the idea represents a viable means of delivering legal services in an economically feasible manner to the 140 million Americans of moderate means.

The concept of group legal services is not a new one, and the number of organizations offering these services to their members has increased rapidly since World War II. With the Supreme Court's decision in United Transportation Union v. State Bar of Michigan, 401 U. S. 596 (1971), holding that such group arrangements are protected under the First Amendment, the proliferation of such plans, now numbering from two to three thousand, can be expected to continue. These group legal plans are generally of the "closed panel" variety, which restricts the member's choice of attorney to one of those pre-selected by the group. Coverage is usually limited to such work-related problems as workmen's compensation, unemployment compensation, and the like. There has been a tendency, however, since United Transportation Union to increase the scope of coverage under some of these plans to include a limited number of personal, non-work-related problems.

Prepaid legal service plans differ from traditional group legal plans in two essential respects. Coverage under the prepaid legal plans extends to any legal problem of a member, with certain exceptions; and the member is free to choose his own lawyer from all lawyers enrolled in the plan, all members of either the local or state bars, or any lawyer anywhere, depending on the plan.

The essential characteristic of a prepaid legal services plan is its function as a system for the delivery of legal services to large numbers of persons, ordinarily associated in common-interest groups in which the costs of the services are prepaid by either the member or someone else on his behalf. To avoid the "adverse selection" effects on actuarial projections which would result from enrollment in the plan by only those members of the group are normally enrolled, thus spreading the risk among a large number of persons. Plans allowing members to join at their option would tend to defeat this objective.

The benefits offered by the plan can be designed in terms of either a specified number of hours of a lawyer's time which may be devoted to any type of
legal work needed or, similar to medical insurance plans, a schedule of maximum amounts allowed for specified legal services. Several methods of paying for the plan have been proposed: direct payment by the member (in which case the cost of collecting payments would be prohibitively high in most instances), payment of a lump sum by a third party (e.g., a union) to the organization furnishing the benefits, or a payroll deduction made by the employer and remitted to the organization.

Under one type of prepaid services plan, represented by the one now in operation in Los Angeles County, the member is restricted in his choice of lawyer to one who has registered to work with the plan, agreeing to abide by its rules and administrative procedures. In contrast, under the prepaid plan currently operating in Shreveport, Louisiana, the member can receive services from any of the 225 members of the local bar engaged in private practice.

The Shreveport Plan, a pilot project initiated by the ABA in January of 1971 to run for two years, is illustrative of what could be developed on a larger scale under the prepaid concept. Under this plan, members of the Shreveport Bar Association have been furnishing legal services to the approximately 600 members of Local 229 of the International Laborers Union. The operation is financed by a contribution from the union of two cents per union member per working hour, with the ABA underwriting any deficiencies up to $25,000. Benefits available to the union member under the plan include:

1. $100 for consultative services, not to exceed $25 per visit;
2. $250 for office work (i.e., investigation, research, negotiation);
3. representation in a judicial or administrative proceeding with maximum allowances of:
   $325 for legal fees;
4. controversies involving immediate parties to the plan;
5. cases customarily handled by contingent fee;
6. filling out income tax returns;
7. any case in which legal representation will be provided the member through any insurance policy;
8. "opinion shopping".

During the plan's first 16 months of operation, there were 132 certifications of eligibility made under it, 72 cases were closed, with 61 billed to the plan which paid 94% of all claims made. Twenty-seven percent of the covered group were using the plan, as of May, 1972, as opposed to a 20% use rate for its first year of operation. Classified by subject matter, the cases billed to the plan broke down as follows:

- Domestic matters 19%
- Auto 10%
- Real property 15%
- Retail Credit and Consumer 8%
- Criminal 7%

While indicating that its analysis of the data was far from complete, the ABA's Special Committee on Prepaid Legal Services reported that the plan had

(Continued page 17)
Since a child is unlikely to be "rehabilitated" by his stay in detention (usually a few weeks, although there is no statutory limit), this situation, in many cases, reflects either poor pre-trial evaluation and decision-making or a subsequent determination that pre-dispositional detention constitutes sufficient disciplining or punishment. I understand the Fourteenth Amendment to prohibit punishment without the due process of law accorded by the juvenile hearing.

21. In Tilton v. Commonwealth, 196 Va. 774, 85 S. E. 1d 368 (1955), the Virginia Supreme Court held that Va. Code §16-172.42, which provided that "... the court shall require a full and complete investigation ... " made a pre-transfer investigation mandatory in every case. Section 16-1,176, the successor of Section 16-172.42 was amended by Chapter 314 of the Acts of Assembly of 1960 to read that "the court may ... require an investigation ... " In James v. Cox, 323 F. Supp. 15 (E.D. Va., Richmond Division, 1971), the Court, relying on Tilton v. Commonwealth, supra, stated that pre-transfer investigations are mandatory, but no case decided since the 1960 amendment, including those cited by the Court in James v. Cox in support of its statement, so holds. Similarly, the Court in Redman v. Peyton, 420 F. 2d 822, 825 (4th Cir. 1969), assumed that a pre-transfer investigation is mandatory but rests this assumption only upon Tilton v. Commonwealth, supra.
22. The General Assembly must certainly have meant "alleged violation."
26. See text accompanying n. 7-9, supra.
27. Statistics which I have seen indicate that quite the contrary is true.

INSURANCE
(from page 9)

The following results:

(1) a substantial increase in the number of problems taken to lawyers--double the pre-plan usage;
(2) a reduction of the client's initial apprehension about going to a lawyer;
(3) an increase in the use of lawyers in the counselling or preventive role;
(4) a reduction in the average cost per case from a pre-plan $187 to $165.

Left unanswered at present is the pivotal question of whether the prepaid legal services concept is feasible for wide scale implementation. Other questions, such as what is the average person's perception of the lawyer's role, how one decides that he has a "legal" problem, and to what extent increased availability of legal services on acceptable economic terms will change these attitudes, are crucial to the future of prepaid services plans. Hopefully the comprehensive report by the ABA Special Committee on the Shreveport Plan's first two years of operation, expected to be available very soon, will furnish insights into these and other questions.

Activity, both private and bar-sponsored, in the field of prepaid legal services is widespread and growing. As of March, 1972, twenty-six state bar associations had formed committees charged with the duty of exploration and/or planning in the field. Two state bar associations-California and New Jersey-had nearly reached the point of implementation; and the ABA had underwritten, in addition to the Shreveport Plan, two other pilot projects in California. In the private sector, there are already a dozen open panel plans proposed or in operation, sponsored by unions, consumer groups, commercial insurance carriers, and other non-legal private firms.

The role of the ABA and the rest of the organized bar in this developmental activity is a critical one. As succinctly expressed by David K. Robinson, Past-President of the California State Bar Association:

The organized bar must assume early leadership in this field. Otherwise it may well come under the control of people outside the profession who are governed by different professional and ethical standards.

In its February, 1972, report, the ABA's Special Committee on Prepaid Legal Services identified numerous privately sponsored prepaid plans, observing that "some of them appear to be entirely conceived and operated by non-lawyers with a view toward creating a vehicle for providing legal services at a profit", noting further that "lack of
"It would be error to regard to the ABA’s efforts in the study and development of prepaid legal services as ... unsullied by any self interest."

specific statutory authority and regulation...creates something of a vacuum”.

The question of by whom, and to what extent the developing plans will be regulated is vital to the legal profession. To the extent that lawyers are involved, regulation is possible through professional channels. Where viewed as insurance or established as a fringe benefit, the plans could be regulated in the manner customary in those fields. One thing, however, is predictable—if such plans proliferate free of effective control and, in the end, short-change their members, the bar, and not the administrators of such plans, will bear the brunt of the resulting public frustration and disfavor.

The ABA has been approached by private insurance carriers, seeking its guidance in the development of a plan or its imprimatur on one already developed. The position taken by the Association has been that it would not be feasible for it to propose a single plan or set of plans, but rather that plans best suited for local needs should be developed by state and local bar associations. The Special Committee on Prepaid Legal Services, while refusing to endorse any plan or advance any prototype, has promulgated, however, the following guidelines as to what such a plan should include at a minimum:

1. full disclosure of the nature and scope of the plan and the extent of the plan’s undertaking (i.e., to what extent is the obligation to provide legal services conditioned upon the funds held by the organization administering the plan);
2. protection of the integrity of the lawyer-client relationship;
3. participation by all concerned parties in the plan’s formulation, adoption, and evaluation.

Implicit in all the ABA’s work in this area is the goal that open panel, or free choice of lawyer, plans remain available to those who prefer them.

Before prepaid legal service plans can play any significant role in the delivery of legal services to middle-income Americans, and especially to the twenty million union members that comprise the largest single potential market for them, there must be some resolution of several existing problems and questions under the Taft-Hartley Act and the Internal Revenue Code.

Initially it must be decided, in order that legal services take their place as a negotiated fringe benefit, whether they are mandatory or a permissive bargaining subject under the Taft-Hartley Act (29 U.S.C. 185, § 8(a)(5) and § 8(d). More importantly, as now written, § 302(c) of the Taft Hartley Act does not include legal services as a fringe benefit which can be paid for by deductions from the employee’s pay, such deductions to go to a jointly-trusteed fund from which the cost of the legal services program can be paid. This is the most widely-used method for paying for health and welfare benefit programs; and its continued unavailability for legal services programs would tend to increase their cost and lessen their potential for wide spread implementation, at least among union members.

Another question arises as to the tax-exempt status of the legal services trust funds that would be created under these plans if the organization qualifies as a non-profit corporation. Section 501 (c) (9) of the Internal Revenue Code, exempts from taxation voluntary employee beneficiary associations which provide for “the payment of life, sick, accident, or other benefits to the members...” The question of whether legal services would qualify under the “other benefits” provision would have to be resolved.

The future of prepaid legal services will also be influenced by the institution of a national health insurance plan. This would undoubtedly free for other purposes a large part of the two billion dollars spent annually on private health plans. Moreover, such a development would no doubt sharpen the interest of private insurance carriers in the development of legal insurance plans.

In the final analysis, however, the future of prepaid legal services depends upon some answers which are simply not yet available. Will lowering or prepaying the cost of legal services entirely change the nature and quantity of problems the average person is willing to bring to a lawyer? Does the average person consider the free choice of lawyer to be an important factor? Would he be as satisfied, perhaps even more secure, in going to a lawyer who had been preselected for him by the leaders of an organization to which he belongs? And, finally, although there is a demonstrable need for legal services, can there be developed a corresponding demand?
Of one thing, however, there can be no doubt. A profession which cannot or will not make its services available to the majority of the people on a basis which they will view as being economically acceptable must face the probability that, in the end, changes will be made in the economic and professional barriers that appear to block the affordable supply of these services. It would be error to regard the ABA’s efforts in the study and development of prepaid legal services programs as an exercise in pure professional responsibility, unsullied by any self-interest. Clearly, any large scale implementation of such programs would be a boon to the legal profession. Having said this, however, it is nevertheless submitted that such programs should be developed, and that they should be developed by the organized bar, whose members are governed by enforceable ethical restrictions by which insurance companies and other private parties are not, unfortunately, bound. Prepaid legal services programs, aside from the undeniably valuable prospect they offer members of the bar, possess a real potential for improving the quality of American justice, by assuring to a greater number of people effective legal redress of grievances, unaccompanied by extreme and unacceptable financial hardship. §

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Alumni News

CLASS OF 1945

LYON G. TYLER, JR. became an Associate Professor of History at The Citadel this academic year. His new address is Box 474, Charleston, South Carolina 29402.

CLASS OF 1949

Listed in Who’s Who in Government and Who’s Who in Railroading is ROBERT R. BOYD. Mr. Boyd is presently serving the National Transportation Safety Board as an Administrative Law Judge.

DIXON L. FOSTER, judge of the Twelfth Judicial Circuit, Lancaster, Virginia, attended the National College of the State Judiciary at the University of Nevada in Reno this past summer. The school was begun several years ago for trial judges all over the United States and provides a four week course dealing with such matters as criminal evidence, jury trials, sentencing and probation, and the like.

RONALD KING took the time to send this piece of advice to present Marshall-Wythe students: “Don’t think of the Rule of Perpetuities as a museum piece. It’s alive and well and may be significant in your practice some day.”

ANDERSON B. SMITH, JR., of the firm of Carneal, Smith and Athey in Williamsburg, has recently been appointed U.S. Magistrate (part time) for the Eastern District of Virginia, Newport News Division.

CLASS OF 1952

ROBERT F. BOYD has been elected to the National Association of College and University Attorneys.

Serving as Judge of the Virginia Beach Traffic Court is HENRY L. LAM. Judge Lam is credited with establishing one of the first, if not the first, traffic schools in the nation for motorcyclists.

CLASS OF 1958

As of February 1, ROBERT C. VAUGHAN’s address will be 36 Paxton Road, West Hartford, Connecticut. Mr. Vaughan is Vice-President and Director of the Pension Department, Underwriters’ Service Agency, Inc. The Vaughan’s had their fifth child and second daughter, Lorilee Ann, in 1971.

CLASS OF 1963

Elected to the Republican State Central Com-
As a class lawyers are often cited as being both dilatory and uneconomical creatures. Perhaps the most uneconomic utilization of the typical attorney's time is the hours he spends on most real estate transactions, primarily as a consequence of the time-consuming title search. For many years, but significantly only in the past few years, forward-thinking attorneys have been successfully experimenting with the use of lay persons in their real estate practices. While the economic benefit is obvious, it has always been optional, dependent only on the individual attorney's desire for efficiency. Recently, however, the option has been threatened and economy measures appear to be mandatory.

Both the role of the lawyer in Virginia land transactions and settlement costs to the buyer of residential real estate are presently under attack from two sides. An attorney was successful in a recent suit in the U.S. District Court in Alexandria against the Alexandria, Arlington, Fairfax, and Virginia Bar Associations, alleging illegal restraint of trade because of their unified minimum fee schedule of settlement and closing costs. On the other side, the Secretary of the Department of Housing and Urban Development, and the Administrator of the Veterans Administration, authorized by §701 of the Emergency Home Finance Act of 1970 to establish standards for settlement costs in HUD and VA insured transactions, have proposed regulations applicable to six areas of the United States, one of which is the Washington, D. C. Metropolitan Area. The regulations would cut the fees of attorneys in Northern Virginia 65% to 75%, and the indication from HUD is that the remainder of Virginia will soon be subject to regulation.1 The regulations, if adopted, could economically foreclose the attorney from practice in residential real estate transactions.

Thus, there is a need for the attorney to reduce his costs of services he provides for a buyer. As mentioned above, one way of reducing these costs may be to incorporate the use of laymen in the process—either paraprofessionals, such as those lay persons or agencies such as title insurance companies or realtors, entitled by law to perform services incident to a land sale creating rights and obligations between the buyer and seller, or paralegal aides, such as secretaries or lay persons working for a lawyer who perform services incident to a land transaction, which services do not of themselves create legal rights and obligations between buyer and seller.

The use of a real estate broker's services is a second alternative for cost reduction. Initially in the
transaction the real estate agent may list a house as being for sale and try to find a buyer, under the authority given by the person wishing to sell the house. After he finds a buyer, the realtor may prepare a contract of sale for the property. The contract, creating preliminary rights and obligations between the parties, is virtually as far as the realtor can go in the land transfer process. The general rule is that the drafting of deeds, mortgages, and instruments constituting the legal means by which the transfer occurs, is the practice of law, and laymen cannot perform these services. In some states simple drafting incidental to lay work is permitted, but only where it does not involve legal judgment on the part of the realtor.2

In a Virginia case, where a real estate broker habitually prepared deeds, deeds of trust, mortgages, and deeds of release in connection with the sale of real estate, charging a $5.00 minimum fee per document, the Court held that preparation of such documents constituted the illegal practice of law. Commonwealth v. Jones and Robins, 186 Va. 30 (1947). Under this decision there are no services incident to the land transfer that laymen in the real estate business can provide which would cut costs.

While an argument could be made that it takes no legal judgment to fill in a form deed, the realtor would be rendering a disservice to the buyer unless he could advise his client of the marketability of title and the legal effects of defects of title, a service which, considering the land recordation system in Virginia, only a lawyer is capable of performing.3 Unlike realtors, title insurance companies in Virginia, as lay agencies, are authorized to provide more services creating legal rights and duties on buyer and seller. Under Va. Code § 38.1-728, title companies may search and abstract titles, issue certificates as to record title, and provide escrow and closing services, and other related services, incident to issuing title insurance policies to the homeowner and mortgagee, but are implicitly excluded from drafting deeds and documents necessary to complete the transaction. Presently in the majority of land transactions where title insurance is involved in Virginia, the companies do not do their own title examinations. The lawyer representing the buyer conducts an examination to assure his client of good title, then sends a copy of his opinion of title, stating any defects of record, to the title insurance company which will insure the title.4

The possibilities for cost reduction in the code section above cited are great, but any opinion expressed to the buyer as to the legal effect of anything in the chain of title by a title company would constitute the unauthorized practice of law by a lay agency. Nor can any lawyer express an opinion as to the legal effect of anything in the chain of title, or render services such as preparation of deeds and other instruments to a client of the lay agency, to do so would violate ABA Canon 47.5 Although title insurance companies are authorized to offer escrow and closing services, the standard practice with larger title companies is to leave closing services in the hands of the attorney.6 The complexities of executing deeds of trust, notes, financing statements, seller's and purchaser's statements, the deed of conveyance, and disbursing funds, must be explained by an attorney, qualified to answer questions as to their legal effect.7

Aside from the complexities of closing services, the same arguments can be made to allow title insurance companies to take a greater part in land transactions as can be made for realtors. In a simple transaction, the legal judgment involved in filling in a form deed would be minimal. But the problem still exists as to advising a client of the marketability of title.

The utilization of the services of paraprofessional realtors and title insurers as a cost reduction means is unrealistic for three reasons. First, they demand reorganization and reassignment of the parts
laymen and attorneys play in the land sale process as it presently exists. Second, realtors and title companies may be unwilling to take on the increased workload of handling simple real estate transactions, regardless of the increased compensation they would receive. Third, the attorney is capable of rendering more competent legal advice and services for the buyer and seller.

Another means of reducing the time spent on each real estate transaction is the computerization of land records and related information. Technologically the extent of use of this electronic method is limited only by the imagination. A computerized searching system has been developed by an abstracting firm in Charlottesville, Title Search Inc., that can simplify the title examination problem. Title Search Inc., comprised of laymen, having programmed the land records for various areas in Charlottesville and Albemarle County in a computer, sells computerized abstracts to lawyers. In response to a proposal of the Virginia State Bar, HUD is financing a similar computerized title system in Fairfax County which could result in low cost abstracts for lawyers and lower fees for the home buyer. The computerized abstracts are an efficient cost-cutting measure, but it is still necessary for a lawyer to examine the abstract and certify the title so the buyer can decide whether he wants to buy the property and so the title company can decide whether the title is insurable. A more sophisticated computerized recordation system, kept up to date and containing a lawyers opinion as to the marketability of every title, could enable lay agencies (real estate or title insurance firms) to engage in conveyancing where form deeds and the computerized abstract would be sufficient. The possibility of this happening is foreclosed by a 1945 opinion by the Virginia Bar Committee on Unauthorized Practice of Law. A group of Arlington lawyers had formed an abstracting firm to search titles, act as agent for title insurance companies, and negotiate and close property transactions. The Committee held that lawyers employed by the lay firm could not advise clients as to the legal effect of anything found in a chain of title. It appears that computers may provide the optimum solution to the cost problem, but certainly not an immediate solution since experimentation with this method is in an embryonic stage.

The most realistic solution for reduction of settlement costs lies in the use of para-legal aides by the attorney. Laymen, by performing parts of the transaction that do not require legal judgment per se, such as abstracting, can save the lawyer time and the buyer money in urbanized areas of the state such as Northern Virginia, where the turnover in real estate is substantial. In the smaller cities and rural areas of Virginia, where the volume of work does not justify hiring a full time abstracter, many lawyers have trained their secretaries to search titles. In the future, these para-legal aides will play a large part in reducing costs. Beyond merely abstracting titles, there will be increased use of the aides in preparing deeds of trust, deeds of release, mortgages, and other documents in an uncomplicated transaction. Where the attorney closely supervises the work of his lay employee, and adopts the work as his own, there would be little danger of incompetency, error, or ethics violation as was possible in the situation in Commonwealth v. Jones and Robins, supra.

Private litigation and governmental regulation to reduce settlement costs to the buyer will inevitably result in changes in the conveyancing system to accommodate the reduced fees. Although one possibility for change would be to permit realtors and title companies to handle uncomplicated transactions, the roles they have traditionally played in land sales could not be readily changed in light of court and Virginia State Bar rulings. By utilizing the services of para-legal aides and computerized title-searching systems, lawyers will hopefully be able to meet the demand for low settlement costs in the most efficient manner possible.

FOOTNOTES

4. Interview with William S. Banks, Executive Vice President, Land Title Corporation of Alexandria, November 24, 1972.

Canon 47 prohibits a lawyer from practicing law through any lay agency, personal or corporate. The most important reason for this is to safeguard the attorney-client relation, that relation "cannot exist by an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation, and not to the directions of the client." 167 Va. 327, 333.
6. Supra, note 5.
8. Supra, note 1 at 21.
10. Supra, note 4.
Of one thing, however, there can be no doubt. A profession which cannot or will not make its services available to the majority of the people on a basis which they will view as being economically acceptable must face the probability that, in the end, changes will be made in the economic and professional barriers that appear to block the affordable supply of these services. It would be error to regard the ABA's efforts in the study and development of prepaid legal services programs as an exercise in pure professional responsibility, unsullied by any self-interest. Clearly, any large scale implementation of such programs would be a boon to the legal profession. Having said this, however, it is nevertheless submitted that such programs should be developed, and that they should be developed by the organized bar, whose members are governed by enforceable ethical restrictions by which insurance companies and other private parties are not, unfortunately, bound. Prepaid legal services programs, aside from the undeniable valuable prospect they offer members of the bar, possess a real potential for improving the quality of American justice, by assuring to a greater number of people effective legal redress of grievances, unaccompanied by extreme and unacceptable financial hardship. §

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Listed in Who’s Who in Government and Who’s Who in Railroading is ROBERT R. BOYD. Mr. Boyd is presently serving the National Transportation Safety Board as an Administrative Law Judge. DIXON L. FOSTER, judge of the Twelfth Judicial Circuit, Lancaster, Virginia, attended the National College of the State Judiciary at the University of Nevada in Reno this past summer. The school was begun several years ago for trial judges all over the United States and provides a four week course dealing with such matters as criminal evidence, jury trials, sentencing and probation, and the like.

RONALD KING took the time to send this piece of advice to present Marshall-Wythe students: “Don't think of the Rule of Perpetuities as a museum piece. It’s alive and well and may be significant in your practice some day.”

ANDERSON B. SMITH, JR., of the firm of Corneal, Smith and Athey in Williamsburg, has recently been appointed U.S. Magistrate (part time) for the Eastern District of Virginia, Newport News Division.

CLASS OF 1952

ROBERT F. BOYD has been elected to the National Association of College and University Attorneys.

Serving as Judge of the Virginia Beach Traffic Court is HENRY L. LAM. Judge Lam is credited with establishing one of the first, if not the first, traffic schools in the nation for motorcyclists.

CLASS OF 1958

As of February 1, ROBERT C. VAUGHAN’s address will be 36 Paxton Road, West Hartford, Connecticut. Mr. Vaughan is Vice-President and Director of the Pension Department, Underwriters’ Service Agency, Inc. The Vaughan’s had their fifth child and second daughter, Lorilee Ann, in 1971.

CLASS OF 1963

Elected to the Republican State Central Com-
mittee and a delegate to the 1972 Republican National Convention was EDMUND L. WALTON, JR. Mr. Walton is now a resident partner in the firm of Simmonds, Coleburn, Towner and Carnam, and the firm’s new address is 4021 University Drive, Fairfax, Virginia 22030.

CLASS OF 1964

THOMAS A. SHIELS, Attorney to the Delaware General Assembly, attended the 1972 Annual Meeting of the National Conference of Commissioners on Uniform State Laws as an Associate Commissioner. The San Francisco meeting was held immediately prior to the ABA Convention and dealt with proposed uniform acts covering a multitude of subjects.

CLASS OF 1967

WILLIAM S. FRANCIS, JR. is now a partner of the firm of Bowles and Boyd of Richmond, Virginia. His address is 6222 West Franklin Street, Richmond.

Recently released from active duty with the USAF as Judge Advocate, RUSSELL A. KIMES, JR. is now an Associate with the firm of Groher and Sullivan in New Canaan, Connecticut. His new address is Box 263, New Canaan, Connecticut 06840.

CLASS OF 1968

SAM T. BEALE, formerly with the firm of Hunton, Williams, Gay and Gibson, is now Vice-President and General Counsel to Reality Industries, Inc. of Richmond.

F. PRINCE BUTLER of Arlington, Virginia, is now a partner in the patent law firm of Griffin, Branigan and Kindness.

MR. AND MRS. NATHANIEL J. “NICK” COHEN became the parents of Francis Lynn Cohen on October 21, 1972.

WILLIAM E. DAVIS is working as legal assistant to Congressman James R. Mann. The Davis’ address is 708 East Capital Street, Washington, D. C. 20003.

Living in Longmeadow, Massachusetts, and President of the LCS Corporation there is ROBERT A. HENDELL. The corporation markets a mini-computer word processing system for law offices and businesses called “Compu-TEXT”.

The C. EDWARD KNIGHTS became the parents of a son, Robert Edward, on September 11, 1972. Mr. Knight was separated from the U.S. Army in January and has begun law practice in Newport News, Virginia as an associate of Jodie L. Atkins.

ALVIN B. MARKS, JR. has been appointed Commissioner on the Waynesboro (Va.) Redevelopment and Housing Authority. He was honored in the 1972 Outstanding Young Men of America.

CLASS OF 1969

WILLIAM C. FIELD was recently reelected to serve a second term in the West Virginia House of Representatives.

Already a member of the Virginia State Bar Association, BARRY M. HOLLANDER passed the Missouri Bar Exam in 1972. His current address is Westgate Apartment 733C, Wiggins Ferry Drive, Creve Coeur, Missouri 63141.

THOMAS D. HORNE, formerly a Captain in the United States Marine Corps, is now Assistant Commonwealth’s Attorney of Loudoun County, Va. His new address is 20 Wilson Avenue, Leesburg, Va. 22075.

CLASS OF 1970

THOMAS E. HANEY, having served a year as Law Clerk to Chief Justice of the Arizona Supreme Court, has been appointed Assistant U.S. Attorney for the District of the Canal Zone. His address is P.O. Box 1857, Balboa, Canal Zone.


We would like to thank everyone for their continued response to our column. We regret we have not been able to print all the material sent, but eventually all material sent will be published. We invite all alumni to drop us short notes on any important changes in your lives and careers. Write to:

Alumni Editor

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Marshall-Wythe School of Law
Williamsburg, Va. 23185

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