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First Year Proposal Adopted

The faculty has adopted a recommendation of the Curriculum Committee to change the Freshman Writing & Advocacy format by eliminating the present "Instructor" position and creating an assistant deanship to oversee the entire program. The new program will carry two credits instead of one, partially to compensate for the void in the curriculum caused by eliminating... cont'd on p. 7

ALDISERT, J.

The increasing tendency to litigate every possible dispute in federal courts is having a deleterious effect on the administration of justice and is leading to a national rather than federal judicial system, according to Judge Ruggero Aldisert of the 3rd Circuit Court of Appeals.

Aldisert, speaking at the Lawyer's Club February 1, cited an unjustified lack of confidence in state courts, and the resultant frenzied manipulation of means to get into federal courts as major wrenches in the judicial machinery today.

We are infected, he said, with "federal courtititis"--the idea "that somehow the federal courts will give you a better reasoned disposition of your case than state courts." And federal judges have been pegged as "glamour boys", getting all the "rave notices," he added, "while there is very little literature lauding state courts and much media criticism of them."

"The public impression is that most substantive judge-made law emanates from Courts of Appeal and the Supreme Court," Aldisert said. "I am not prepared to say that the Court of Appeals and the Supreme Court have made more than modest contributions to substantive law."

Aldisert challenged the familiar rationalization that "federal courts are experts in constitutional problems, and state courts have no expertise in federal constitutional law." Many states, he said, handle more criminal indictments in a year than the whole federal judicial system, and the metropolitan courts in some states handle more constitutional issues in a day than the federal system does in a week. "State judges have had to become experts since the criminal procedure revolution," he said.

In their headlong rush to get into federal courts, litigants have greatly distorted traditional jurisdictional limits. Aldisert criticized a recent decision holding that there is no need to exhaust state remedies before resorting to a federal forum and another letting in a new flood of personal injury/property damage cases. "Now, as a result of the Lynch decision, a litigant has a passport to a federal court if he has a five dollar property claim." The eagerness of some lawyers to get into federal instead of state courts has resulted in "slipshod mixing of negligence and Fourteenth Amendment deprivation cases," so that a garden variety tort becomes a federal cause of action.

Aldisert also criticized the large volume of civil complaints from prisoners coming directly to federal courts, although he emphasized that... cont'd on p. 11
An international group of students and faculty will inaugurate the first summer law school in Paris, France, devoted to the study of international and comparative law. Sponsored by the University of San Diego School of Law and the Institut Catholique de Paris, the six week English language program meets all AALS and ABA requirements to provide course credit at U.S. law schools. The program expects a student body composed of American, Canadian, English, and French law students and young lawyers. The faculty will echo this international flavor. Each course will have an American law professor with European experience as its principal instructor. European professors and practitioners will teach portions of the courses and conduct guest seminars on topics within their special expertise.

Classes will be held at the Institut Catholique de Paris, which is located on the left bank near the Luxembourg Gardens. Rooms are available at the Cite Universitaire, a student housing complex convenient to the Institut.

Classes are scheduled only in the mornings from July 2 to Aug. 10. While there will be occasional afternoon seminars and visits to legal and law-related institutions, most afternoons will be free to explore the rich and varied life of Paris. French conversation and civilization courses will be available for interested participants and their wives. The law program has informal ties with an undergraduate teaching program. Joint tours to interesting places outside Paris will be available some weekends.

Group flights from both the east and west coasts will be arranged. Several weeks will be available for travel in Europe after the course is completed. A tuition discount is available for early registration. For further information, WRITE: Herbert Lazerow, Director, Institute on International & Comparative Law, University of San Diego, Alcala Park, San Diego, CA 92110.

12) No candidates should spend more than $25.00 on his/her campaign.

New officers for the Women Law Students were elected Wednesday. They are: Melissa Lee, President; Gail Rubinfeld, Vice President; Shirley Powers, Treasurer; Sue Hart, Recorder; Val Sherman, Newsletter Editor; and Sue Block, Public Relations Officer.

The national conference of women in law school is being held at the University of South Carolina during the last weekend of our spring break, March 16-18. If you are going south for vacation and would like to come back by way of Columbia for the conference, WLSA will pay your $10 conference fee. Also, Shirley Moscow would be willing to drive to the conference, from Ann Arbor, if there are three people who would like to share the driving with her.

The Baby Maker, starring Barbara Hershey (the "sweetest kid on the block") and Sam Groom (a married white male) in a gripping saga of feverish fetal fabrication. Time Magazine calls it, "An Unconventional Movie..." Bo Burt calls it, "Unconstitutional." Don't miss a chance to see this one Friday nite at 7, 9, 11, Rm. 100 HH. L.s. pay zip. Outcasts 75c.

LAW QUAD DANCE-MIXER

Lawyers Club Lounge, Friday, Feb.2 (today). Law Students free; the uninitiated, four bits. Vibes supplied by Joust Unltd.
LAWYERS GUILD:
Legal Services
CUT

NIXON ENDING LEGAL SERVICES FOR
THE POOR

(from a paper by Alan W. Houseman
of the Detroit Chapter of the
National Lawyers Guild and Director,
Michigan Legal Services Assistance
Program)

In a new attempt to control the
courts, President Nixon has determined
to emasculate, if not eliminate
Legal Services for the Poor. Today
Legal Services faces a struggle for
its existence far greater than its
previous struggles...The struggle
is not solely around what administra­
tive albatrosses will be imposed or
even what excellent programs must
be saved. The struggle is now around
the survival of "legal services," a
concept of legal aid which seeks
to provide--to the poor not only
competent representation and access
to the courts but also seeks to assist
the poor in obtaining some minimal
increase in power within our society...

I. ATTACKS ON LEGAL SERVICES

Attacks on legal services are not
new. However, their intensity and
visibility have increased substantially
within the last 6-8 months.

Vice-President Agnew attacked legal
services in the September issue of
the ABA journal and has made
numerous speeches subsequent to
that attacking what he calls
"ideological vigilantes" who owe
no allegiance to a client and who
do not serve the needs of clients.
He has singled out law reform efforts
of legal services attorneys particular­ly
those focusing on problems (such
as prison reform, school issues,
women's rights, anti-war movement,
free speech issues) which do not fit
into the welfare, housing, consumer,
divorce mold. I have no doubt that
he will soon attack most of the
efforts in this area as well and his
article and speeches do not limit
themselves to non-traditional poverty
law activity.

Far more important, in actuality,
are the actions being taken by the
new Acting Director of OEO, Howard
Phillips, a former organizer for
YAF and one of the most reactionary
of the Nixon people. Phillips has
begun a series of steps which are
not only dismantling the program
but are specifically designed to
route out those programs and attor­
nies who are involved in active,
aggressive "law reform" representation.
It is not clear whether these steps
are part of a plan devised by higher
administration officials or just
the actions of Phillips, but he has
been given the freedom to act.

A. EMASCULATION OF LAW REFORM

Howard Phillips...has begun a direct
attack on the law reform activity
of legal services. First, he is
seeking to eliminate or emasculate
the state and national back-up centers.
Not only have the severe budgetary
restrictions been placed upon back-up
centers limiting their grants to
one month-three month periods, but
centers who face refunding at the
moment have been told that they may
not be refunded at all. The national
office has begun to raise questions
about the political party affilia­
tion of the staff and directors
of the national centers. Their work
product has been attacked, not be­
cause it was professionally competent
or outside the scope of legal ser­
vices, but because it conflicted
with the aims and goals of the present
administration. Indeed, the more
successful the center before the
courts, the more it is attacked.

In addition, back-up centers have
been told that their activities
will be strictly limited to assistance
to local programs and that they will
be unable to carry on legislative
activity and representation of
national groups (e.g., the Center on
Social Welfare Policy and Law repre­
sents NWRO). There has been consider­
able discussion as well about dis-
mantling of the present centers and replacing them with one large national back-up center controlled by the national office of OEO and responsive in all its actions to the Nixon Administration. That center would speak before Congress and federal agencies for the poor.

Secondly, Phillips has had developed for him an intellectual position paper - written by Marshall Boarman (a non-lawyer) - which sets out a rationale for the actions he is taking - both in regard to back-up centers and in regard to all law reform activities of legal services. The paper discusses the legislative history of legal services with the assertion that law reform was not sanctioned by Congress and then goes on to argue that it is impermissible and possibly unconstitutional for the federal government to fund a program which seeks to give one segment of society - the poor - both litigational and legislative assistance denied other segments of society. The paper also argues that law reform seeks to redistribute economically the wealth of society and increase the bargaining power of the poor. Instead, Boarman suggests that the only legitimate activity of legal services lawyers is to assert the presently recognizable legal rights of the poor and assure that they are protected... but not to seek to change these legal rights or increase the relative position of the poor within society.

B. BUDGETARY AND PERSONNEL CHANGES

Every program is presently facing a number of critical budgetary restrictions.

On January 31st, 1973, Howard Phillips sent several telegrams to regional offices which required regional offices to take the following steps relating to grant proposals.

1. No grantee could be funded for a period exceeding June 30, 1973, unless they were already funded.

2. The authority to approve the obligation of funds for grants of assistance to all officials subordinate to Howie Phillips has been rescinded. No such fund shall be obligated without the approval of the director of OEO.

3. All grants for which funding expired prior to January 28, 1973, which funds had not been released prior to January 28, 1973, may be refunded for a period not to exceed February 28, 1973...

4. All new grants would be refunded only for a 30 day period.

5. All grants for which funding expired after February 28 but for which funds were not released prior to January 28, were not to be refunded prior to February 28.

6. All spending was to be held to a minimum and could not exceed the average monthly expenditures reported during the last 12 months. No new program or program components could be initiated or expenditures occurred by any grantee.

7. In addition, these telegrams were interpreted by the Treasury Department to prohibit them from releasing all grant funds for programs who were funded independently of CAP agencies. Thus, many legal services programs around the country, which are funded directly and not through CAP agencies, did not receive their quarterly checks in early February. There is, of course, a contractual relationship involved and no steps have been taken to terminate any of these programs. They have no money to operate and certainly cannot function under such restrictive budgetary limitations.

Obviously an office cannot function with funding only assured for one month or even three months. It cannot hire, plan for the future, or even carry on present litigation. It certainly cannot take on any new cases no matter how pressing the needs of the clients. Moreover, the director and many of the staff spend most of their time preparing reports attempting to justify their existence, a process which becomes
increasingly more difficult each new month.

What is created is a "Catch 22" -- the more competent the center, the less chance of refunding -- the more hurdles placed in the way of operating a program the less able to justify your existence on the basis of past performance.

In addition to these budgetary restrictions, numerous personnel changes have been made in Washington. The Acting Director, Ted Tetzlaff, was fired on Monday of this week. He was replaced by a former New England Life Insurance Executive, Lawrence McCarty. Prior to that, Phillips had imposed new staff on the agency, all of whom had no legal services experience, many of whom were not lawyers (Marshall Boorman was appointed to head evaluations), and some of whom were already antagonistic to legal services. One appointment...was concerned that legal services should not do divorce because it undermined the role of the family. None of these appointments support an aggressive legal services program even in theory.

**C. NEW LEGISLATION**

The Nixon Administration has continued to indicate that it will introduce a bill creating an independent corporation to run legal services, which will be independent of politics. The budget requests for OEO contained 71.5 million dollars, enough to continue most programs at the present level, although 2.3 million less than last fiscal year. As of yet no new bill has been introduced. Moreover, rumor has been circulating throughout Washington that legal services may be transferred to the states and become a part of revenue sharing (whatever that would mean). Obviously, transfer to revenue sharing would, in most states and localities, result in total emasculation of the program.

Before he was fired, Ted Tetzlaff told several of us that no new corporation bill would receive administration support unless it contained the following: appointment of the board by the President without controls; a prohibition on on-duty political activity (similar to what is now in existence); a provision in the legislation empowering the corporation to prohibit off-duty political activity; a complete ban on criminal representation including the information and indictment state; a prohibition on legislative advocacy unless requested by a legislator (a far more limited role than today possible where you can represent client groups.).

**II. ANALYSIS**

Because legal services cannot be transferred by statute to any other agency (HEW or LABOR) except GSA (for the purpose of liquidation), the administration has the supporters of legal services caught in a bind. Either they must accept a corporation and attempt to get the best possible deal with the administration or the program will cease to function. This assumes that it is impossible to completely save OEO although that will surely be an effort made by Congress to do that, an effort which many believe is futile.

In addition, the present actions of the administration relating to budget cuts and failure to receive funds when under contractual obligations to do so, suggests that efforts are being made to substantially undermine the program in its present form and create complete upheaval administratively, thus assuring that whatever new corporation is formed will begin with legal services in chaos and without the strong unity and leadership necessary to struggle for control of the corporation.

The attacks on legal services have forced it to go begging to the ABA for assistance. President Meserve of the ABA will be seeking a meeting with the White House soon to discuss the present harassment tactics and the need for a corporation which is
politically independent. However, he may visit the White House only with ABA officials and not include legal services spokesman. Thus, the ABA may be in a position of negotiating the future of legal services with the Nixon Administration without any bargaining power or leverage from legal services attorneys or the poor.

To respond to the present crisis, legal services attorneys (without any attempt at a representative election) have revitalized Action for Legal Rights (ALR) and have hired a lawyer (Noel Kiores) to work to save legal services. Kiores does have some connections with former OEO directors, Carlucci and Rumsfeld. He indicated in a discussion last week that his strategy was to first stop the harassment and then to seek the introduction and passage of legislation creating a corporation acceptable to legal services.

To stop the harassment, Kiores felt that we could only harass back. Thus, efforts will be made by liberal Congressmen to hold numerous hearings on legal services forcing Phillips and others to contend with adverse Congressional reaction and press. House hearings are scheduled for February 21 and 26; no Senate hearings have as yet been scheduled. In addition, a number of lawsuits are being planned. One would seek to enjoin Phillips from terminating funding without meeting the statutory requirements (hearing) and contractual obligations. Others would focus upon the 30 day funding limitations and other restrictions imposed by Phillips on January 31, which are not authorized by the statute creating OEO.

What is happening is clear. The efforts to stop legal services are an effort to control the courts. The administration cannot get at the courts as easily as it thought--the Nixon Court continues to act contrary to administration viewpoint--but it can take steps to assure that there are fewer activitists bringing suits to the courts which raise issues contrary to the administration point of view.

EQUAL JUSTICE FOR THE POOR: The Rights of Legal Service Attorneys

A great deal of the criticism leveled at legal services activities involves the kinds of responses that have been devised to client problems. While it is conceded that almost all of the activities complained of are appropriate for lawyers, the critics assert that those same activities are somehow inappropriate because of the source of the funding for legal services.

It is absolutely essential to the concept of equal justice that the range of legal services available to low income clients not differ in kind from that which is available to all other clients. The imposition of restrictions on the ability of the legal services attorney to respond to his client's needs is not only unethical but contrary to the very concept of equal justice as well. Therefore, the low income client must be guaranteed that he will not be subjected to a legal system in which he is denied tools and mechanisms which are routinely available to his adversaries. cont'd on p.8
Big Sis

Economists have always seemed peculiarly vulnerable to the criticism that their theories lack sufficient sophistication to be of any practical use. But such a qualification cannot explain the following, quite incredible paragraph that SIS ran across by Wayne State University urban economist, Wilbur R. Thompson, appearing in the CED conference publication, "The National System of Cities as an Object of Public Policy," (1972) p. 102:

"Today, it is more the limited variety and low quality of local employment opportunities in the smaller urban area that creates cause for concern. The narrow range of occupations that emanate from a narrow product base offers little opportunity for upgrading on the job, a still important alternative to formal education. But, probably most important of all, especially in days to come, is the placement problem posed by the highly educated husband and wife team -- professional or technical labor in joint supply. If females would resign themselves to roles as teachers and nurses, if they insist on becoming educated and professional, joint placement would be easier. There are schools everywhere and a clinic, if not a hospital, almost everywhere."

PROPOSAL

cont'd from p.1

Con Law I as a mandatory first year course. (A working draft of the legislation and tentative implementation plans, courtesy of the committee, appears following this article.)

The newly enacted proposal raises two sets of questions. The first will need to be dealt with as the proposal is implemented. The second are questions implicitly answered by the passage of the proposal itself--questions about priorities and aims of legal education.

The major reservation expressed about the implementation of the new program is that seniors, already burdened by other commitments, may be unable to take up the slack caused by eliminating instructors--a move partially prompted by budgetary considerations. Giving seniors seminar credit and giving them more independence and flexibility in planning for their individual sections has been suggested as a way to avoid this problem.

"The present system tends to make senior judges more clerks than teachers, and to dampen their enthusiasm and innovation," said Prof. James Martin, the faculty member most involved with this year's program. Martin said the concern that senior judges will not be able to meet the added responsibilities "is a worry" but added, "I'm hoping some of the enthusiasm I've seen in the undergraduate teaching program can be generated here. Attached to the program will be a seminar; it's not a bogus thing--it will meet and deal with problems of legal education."

Since this specific proposal has already been adopted, the benefit of discussing its potential shortcomings lies in anticipating and building in safeguards against these problems. The program, even after adoption of the new recommendation will be in a state of flux. There is no suggestion," Martin said, "that this thing is locked in or has to go ahead for the next two or three years unchanged. If anything, exactly the opposite is true. With the new assistant dean, hopefully change is built into the system because of the continuity."
Lawyers Guild Notices

1. IMPORTANT. General Meeting of the Guild will be held Tuesday, Feb. 25 at 7:30 in Rm. 116 HH. The meeting will discuss Guild activities for the rest of the semester and a report will be given on the 1973 National Convention held last week in Austin, Texas. A discussion of Justice Rhenquist's judicial philosophy will also take place.

2. Defending the Accused, the weekly seminar series sponsored by the Detroit Guild continues Thursday, March 1 at 8:30 p.m. in classroom 101, Wayne State Univ. Law School. This will cover the defense's case, jury instructions, closing arguments, and misdemeanor bench trials. The series is excellent and admission is cheaper for Guild members than for non-members. If you plan on attending, post your name and phone number on the Guild Bulletin Board under the Library in order that rides can be co-ordinated.

MORE JUSTICE FOR THE POOR

cont'd from p. 6

Much of the critical fire heaped on legal services in recent months has focused on law reform activities. Response is made difficult by the fact that the term "law reform" does not precisely describe a particular kind of activity. Indeed people with differing political and legal philosophies disagree on what the term includes. Most of the analytical models suggested are helpful only in an after-the-fact categorization rather than as a screening device. In any event, what is really at stake is the kind of response the attorney makes to his client's problem.

It has been suggested that legal services attorneys go farther than is absolutely necessary to resolve a client problem. Implicit in this criticism is the motion that legal services clients should be afforded the minimum services. Valid professional objectives do not begin with the least that can be done for the client, rather, the aspiration is to do as much as possible for the client.

Lawyers in both the public and private sectors are forced to temper their desire to do everything possible in a given case by considerations of effectiveness and available resources. Legal services attorneys serving an identified client community with a critically scarce resource face a special problem. That problem obliges the attorney to seek the most good for greatest number.

The legal system has recognized the need for a systematic approach to common problems, whether through "class action" litigation, administration rule-making, or legislation. All are devices available to lawyers acting on behalf of clients; each has been used to the benefit of the clients of legal services.

The courts have provided for class action litigation in cases in which there are many individuals with identical claims. Often the individual claim, important as it may be to the client, does not appear to warrant the cost of litigation. On the other hand, the commencement of many cases seeking similar relief against a particular defendant based upon common facts would clog the calendars of the courts and conserve substantial judicial and attorney energies. Accordingly, attorneys both in private practice and legal services have advised clients to commence action on behalf of a class. The result has been that attorneys and the courts have resolved matters affecting many people efficiently and effectively. Perhaps the controversy about legal services lawyers bringing class actions results from the remarkable rate of success in such legal services litigation; it should be noted, however, that the vast majority of class actions are brought by private counsel for individual clients.

Similarly, clients have always turned to lawyers to represent them in rule-making proceedings before administrative and in the process of drafting and revising legislation. Legal services lawyers have represented clients in such matters, or where patterns of problems have emerged, sought to resolve...
NOTICES

ATTENTION: Important Notice for Candidates

Candidates for positions on the Law School Student Senate must submit their campaign statements (if they want one) to Res Gestae by Feb. 26, 1973 if they wish to be included in the pre-election issue of R.G. 100 words maximum. Also if you have no statement but do want to run AND have obtained the requisite signatures (see the following Election Rules), please notify R.G. of your name and the position you are seeking.

STUDENT SENATE ELECTION RULES

1) The LSSS elections will be held on March 6, 1973 between the hours of 9:00 a.m. and 5:00 p.m. in front of Room 100 in Hutchins Hall, and from 5:00 p.m. to 6:00 p.m. in the Law Club Lobby.
2) Nominating petitions for members-at-large and officer positions may be picked up at the front desk of the Law Club on Feb. 19th.
3) All petitions shall be turned in at the front desk of the Law Club by 12:00 p.m., March 1, 1973.
4) All petitions shall require twenty (20) signatures of bona fide law students excepting the president's, which shall require forty (40) signatures.
5) All candidates who are listed on the ballot may have their pictures taken by the senate photographer. The pictures will be displayed on the day of the election. Dates and times for this will be posted.
6) All candidates for officer positions will also have their names listed for members-at-large.
7) The candidates for each officer position who receive the plurality of votes for that position will be deemed the winner.
8) The seven (7) candidates for the member-at-large positions who have received the highest number of votes and who have not been elected to an officer position shall be elected members-at-large.
9) Write-in candidates may run for any position.
10) All campaigning material must be removed by the day after the election.
11) No campaigning within 20 feet of the polls will be permitted.

Placement News

Videotaped interviews for California - later in the spring an attorney from L.A. will visit our school to video-tape interviews with first and second year students interested in working in California. He is representing a number of small firms in California who are interested in hiring Michigan people, but cannot afford the time and expense of recruiting in the traditional manner. First year students will be interviewed for clerkship positions for summer '74, and second year students will be interviewed for permanent positions after graduation. (The time lag is necessary for the tapes to be duplicated and distributed to interested firms.) ALL INTERESTED STUDENTS ARE ASKED TO COME TO THE PLACEMENT OFFICE AS SOON AS POSSIBLE, SO THAT WE'LL HAVE AN IDEA OF THE NUMBER OF STUDENTS WHO WILL PARTICIPATE.

VISTA will be here on March 5 to interview people interested in their program. Sign-up begins on Monday, Feb. 26.

IRWIN MANAGEMENT COMPANY will interview on Mar. 7. A description of the position is on the bulletin board outside the Placement Office.

BULLETIN BOARD NOTICES - we're getting lots of openings in the mail, and you are urged to keep checking the bulletin board for new items.

HARVARD SURVEY of Public Interest Opportunities - the first installment has arrived, and is in the Placement Office.

If you've taken a job and not yet reported it to our office - please do so. Forms are available in the Placement Office and on the table outside Room 100.

"Graduates in law and engineering had 'no problems,' said Nancy Krieger, director of U-M Law School placement..." -- University Record February 19, 1973

Yeah, those who got jobs. -- J.L. & The Firehouse Gang
There has been some attempt to look at systems in other law schools, but the general impression is that dissatisfaction with present writing or legal research programs, or at least desire to improve them, is widespread, and Dean St. Antoine said he regularly gets requests from other law schools seeking suggestions about ways to improve their research and writing offerings.

But the larger questions raised—the directions we are taking in legal education and the priorities we are choosing for resource allocation—also remain.

For example, are these process or experience related courses and programs (including clinical law) worth the expenditures already made on them and should they be getting a bigger cut of the pie? If so, which other areas should be pared down? And what sort of faculty commitments will changes entail?

"I think the faculty around here likes to play with ideas," Martin said. "That is why they are here, where there is more constant intellectual challenge than in practice. Writing is essentially a process course, and presents problems similar to getting faculty involvement in the clinical law program. A process course isn't per se bad, it's just not the sort of thing you want to make a career of."

Since the exact plans for implementing this proposal are still tentative, but especially since the whole direction of legal education may be undergoing especially careful scrutiny at this time, feedback from RG readers is encouraged.

Justice for Poor

them in the agency or legislature involved. Lawyers have traditionally gone much further, working through bar associations and other organizations without any relationship to clients, seeking major change in public policies ranging from no-fault insurance to major changes in penal codes.

The community, and the individual client, are protected against unethical behavior by attorneys, whether in private practice, local legal services programs or national back-up centers, by the standards of professional conduct, the grievance machinery of the private bar, and the disciplinary power of the courts. In addition, the legal services attorney is subject to the supervision of a project director and the oversight of a Board of Directors consisting of attorneys and others from the community served. The quality of the professional services offered by a legal services program is also subject to evaluation by its funding source as well as a condition of continued support. Thus the legal services lawyer is fully subject to all professional ethical restrictions on his conduct; further restrictions would deny his client full representation of counsel and are totally unwarranted in light of the highly professional representation provided by the legal services program to date.
his quarrel is only with the choice of forums and not the suits themselves. "The reality is that state courts send state prisoners to prisons, yet federal courts have to listen to their complaints. Since state judges send them to prisons, they have a responsibility to answer their complaints. The reforms have to come from the states."

This is only symptomatic of a larger failure on the part of some state officials, as Aldisert sees it. "I flatly charge many of them with abdicating their responsibilities," he said. "These governors, legislators, school board officials, etc. have as much duty to uphold the federal Constitution as we do. A good case can be made that these officials are cop out, ducking these hard issues and leaving the dirty work to the federal courts.

"My caution is first with having the judiciary involved with so many areas of government today. I question the Pavlovian recourse to the courts, using the Fourteenth amendment to question the political decisions of elected representatives of the people."

But Aldisert was not claiming that the courts do not deal with "political questions" -- he agreed with Wechsler that they constantly do "in the sense that the decisions involve a choice between competing values which the courts must either condemn or condone."

Another reason for the explosion of cases heard by federal courts is the ever-increasing number of activities defined as federal crimes or made subject to federal jurisdiction.

"Scratch a Congressional Record and out comes a bill suggesting new societal regulations with civil remedies and criminal penalties all under federal jurisdiction," Aldisert said. "With Department of Justice strike forces operating all over the country, with electronic surveillance, with the growth of federal enforcement agencies of all kinds, we daily witness prosecution of offenses which when you were in college were simply traditional state crimes. We're drifting toward nationalism rather than pure federalism in our judicial system."

Aldisert did not comment directly on the proposal for creating a new super court of appeals to help alleviate the burden on the Supreme Court, since he is a member of the judicial policy making body dealing with this. But the thrust of his speech was that there definitely is a work overload, that the change might best come from the bottom up. Responding to a suggestion that Justice Douglas did not seem to think the Court was overworked at all, Aldisert said, "Justice Douglas is not overburdened -- he has total recall of cases, citations, etc. Everyone else in the federal judicial system is, Justice Douglas isn't overworked." He later affirmed that he was not being facetious in the least, and that Douglas is one of the greatest legal minds he has known.

Aldisert said he likes his job because it carries life tenure. But he added "I'm not sure that as a citizen I like having decisions made by judges who are so damned independent that they don't have to answer to anybody. In the name of liberty and justice, we are getting some philosophical autocratic decisions."

-- jm
TO: The Faculty
FROM: Curriculum Committee -- Report #3
DATE: February 8, 1973

RE: First Year Program Recommendation

A. Background and Proposal

1. At its December 8, 1972 meeting, the Faculty approved the recommendation of the Committee that "Constitutional Law I will be taught as a required first-year course for the last time in 1972-73. In subsequent years it will be offered as a three-hour elective."

2. Approval of the recommendation resulted in reduction of the required First Year course load to 28 hours from the prior 30 hours.

3. The Committee, after consideration of (a) the appropriate course load which might be required under the First Year Program (b) the possibilities for increased emphasis and improvement of required training in writing, research and advocacy in the First Year Program, and (c) the option of requiring the substitution of either an elective, or a required, two hour course as a substitute for the deleted Constitutional Law requirement, proposes the following:

B. Recommendation:

1. "The Writing and Advocacy Program, currently carrying 1 hour of credit, shall be a required course in the First Year program and shall carry two hours of course credit during 1973-74 and thereafter."

2. During 1973-74 the Writing and Advocacy Program be administered by Senior Case Club Judges, under the supervision of an Assistant Dean. Proposed implementation is set forth in Appendix A (III-V).

C. Comment:

1. Under the Committee's proposal the First Year Program will consist of a total of 29 hours of course credit. The proposal contemplates that the writing and Advocacy Program will place increased emphasis on the development of skill in written expression and will extend over both the Fall and Winter terms. Within the limits of administrative feasibility, the Committee suggests that the course load between the two terms be balanced by offering Criminal Law and Torts as a one-semester course in alternative terms (first year students taking one in the Fall term and the other in the Winter term).

2. Attached to this report, as Appendix "A" is a "Writing and Advocacy Program Proposal" setting forth, in greater detail, the reasoning underlying the Committee recommendation.

Parts III-V set forth a plan for implementation which is concurring in by Professor Martin (who has advised and consulted with the Committee throughout its consideration of the Writing and Advocacy Program). The Committee is fully conscious of the fact that the proposal depends heavily on responsible and effective implementation by personnel selected as outlined in Part IV, but feels that the Program has a reasonable probability for improving the Program.

Several faculty members of the Committee feel that the risks inherent in entrusting major responsibility to Senior law students, in view of competing demands upon their time and their limited experience (among other potential risks) may suggest the desirability of continuing to utilize full-time instructors (as at present); nevertheless, they do not oppose the proposed program for 1973-74. We note that Professor Martin has expressed concern over the continued availability of qualified applicants for instructorships in subsequent years and Dean St. Antoine has indicated that continuation of the Clinical program will impose increased budgetary pressures during 1973-74.

All members of the Committee would agree that neither of the two alternative methods of implementation guarantees the optimum program: we differ only as to the relative desirability of available alternatives. The choice is not unlike that faced by some voters in choosing between presidential candidates.

D. The element of Time:

Implementation of any effective Program requires adequate lead time and benefits from early planning (preferable before the end of the Winter term and certainly before the beginning of the Fall term). If instructors are to be hired by Professor Martin he must make offers at the earliest possible opportunity.

The Committee appreciates that hasty decisions are undesirable and that other alternatives may be suggested. We ask only that the time element be kept in mind.

Respectfully submitted,
Olin Browder
Robert Burt
Edward Cooper
Lee Goodwin 75
William Harris 74
Catherine LeRoy 73
Alan Polasky, Chairman
I. Background of Proposal:

A. The Present First Year Program:

As a result of the decision of the Faculty to drop Constitutional Law I, presently scheduled as a two credit hour offering in the Winter semester, the First Year program appears as follows:

<table>
<thead>
<tr>
<th>Fall</th>
<th>Winter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracts 3 hours</td>
<td>Contracts 3 hours</td>
</tr>
<tr>
<td>Property 3 hours</td>
<td>Property 3 hours</td>
</tr>
<tr>
<td>Procedure 3 hours</td>
<td>Procedure 3 hours</td>
</tr>
<tr>
<td>Torts 2 hours</td>
<td>Torts 3 hours</td>
</tr>
<tr>
<td>Criminal Law 4 hours</td>
<td>12 hours</td>
</tr>
</tbody>
</table>

In addition, the current Writing Program carries one credit hour for a remaining total of 28 hours in the First Year.

B. Amendment of First Year Program, as amended by deleting of Con. Law I (2 hours) - Basic Alternatives:

There are several distinct (discrete) but interrelated facets of the First Year program which merit consideration in the proposal to be made to the Faculty. These break down, roughly, into the following:

1. The appropriate utilization of time in the First Year program and the appropriate "load".
2. Possible redesign and revitalization of the First Year "writing-research-case club" program.
3. Potential for injection of new material, by way of, for example:

   a) substitution of a traditional, though redesigned, course for all First Year students in the Winter semester; or

   b) a newly designed "legal process" course, which could take a number of different forms, including one designed as a "tie-in" "contemporary application" analysis of current social and economic problems as they relate to the various First Year courses, or

   c) permitting students to elect a course or seminar from the regular upper-class curriculum, either from a limited choice or from a wide-open selection governed only by permission of the instructor.

II. Tentative conclusions:

A. The Writing Program should be allocated increased importance, content and credit (2 hours in lieu of the present 1 hour); the First Year program will thus carry 29 credit hours. The view has been expressed by both Faculty members and students that a disproportionate work load has been allocated to the First Year. (Currently we require 30 hours of a total of 82 hours required for graduation; as revised, the First Year would require 29 hours versus 53 for the other 2 years).

B. The student course load should, to the extent feasible, be adjusted to bring the Fall and Winter terms into appropriate balance. We would suggest, without however formally incorporating the recommendation for faculty approval at this time, that the Torts course be offered as a unified course in the Winter term; rather than as the present divided offering (2 hour Fall, 3 hour Winter). (On balance, the advantages of equalization of load seem to outweigh the desirability of the present pattern, or other alternatives. We realize that an introduction to Torts in the Fall term has pedagogic values and that shifting the entire course to the Winter term may create staffing problems).

C. Reconsideration of the First Year Writing Program involves basic decisions in several areas: (1) Aims and Content (2) Structural Organization for Instruction Units, (3) Instructional Personnel. Time factors affecting staffing and planning have necessitated intensive consideration by the Committee in light of the desirability of an early faculty decision which will permit administrative implementation of faculty decisions.

Few would dispute the desirability of an effective program of instruction in writing and advocacy. The history of prior programs here (and at other law schools) reveals frequent alteration and less than a full measure of success and satisfaction. Such programs, at least where deemed most successful by relative standards, carry significant costs, both in terms of dollars and devotion of instructional time (to the extent that a relatively low student-instructor ratio seems necessary). Quite apart from "institutional costs" (allocation of financial and time/effort resources of the School), faculty members at major law schools have not always exhibited an intense desire to devote a major portion of their time and energy to this type of activity. Absent assurance of a major institutional and faculty commitment in terms of allocation of effort of existing faculty personnel or a major commitment of financial resources to provide other instructional resources, a program must be designed to provide the best implementation within the existing framework.
III. Outline of Proposal: Supervision of the program will rest with a full-time Assistant Dean whose major job will be the successful implementation and supervision of the program. The program's administration will continue to be structured as part of the required first year case club sections. Senior judges (senior law students) will be assigned the basic small-group instructional responsibility. Their responsibilities will be to prepare exercises and problems, instruct in writing and advocacy techniques and evaluate performance, under the supervision of the Assistant Dean (hereafter Supervisor) who in turn, at least during the first year, will consult with a special faculty committee. The Supervisor will be expected: (1) To supervise the work of the senior judges and junior clerks, (a) to insure that the latter are performing their duties, (b) to exercise final judgment with respect to the appropriateness of problems and exercises, and (c) generally to resolve problems arising in connection with the program. (2) To supervise, with the aid of BLSA and La Raza (if those organizations continue to take an interest) the minority tutorial program. Within the basic guidelines, a measure of autonomy will be afforded each club so that the senior judge (hopefully with advice and support of his case club advisor) may tailor the program to fit interests of the First Year Section in which case club members are enrolled.

IV. Details: Personnel:

A. The Assistant Dean (Supervisor). The Dean believes that we can attract and afford an outstanding young lawyer, for a non-tenure, administrative, position to supervise the program.

B. Judges (seniors) and clerks (juniors). In future years judges and clerks will be selected by the Supervisor after consultation with faculty case club advisors (if they desire participation, and faculty section chairman, if they do not). It is assumed but not required that most senior judges will have been junior clerks or will be selected from those who have displayed superior skill in writing and advocacy in their participation in the Campbell competition.

Judges will be compensated for instruction time, as at present. In addition they may be required to participate in a credit seminar along the lines of the seminar previously offered in "Legal Education". The Seminar will be conducted by the Supervisor and hopefully, with cooperative assistance of one or more interested faculty members. Its goals will include methods of instruction in, and evaluation of, research, writing and advocacy. Sessions will be scheduled to provide "time" for the judges who will be in charge of Case Club exercises. The Supervisor will also have the responsibility for supervising the minority tutorial program in the same manner as that task is now performed by Instructors. The demand on Instructors' time from this responsibility apparently has not been very great.

C. Faculty Advisors. In recent times faculty advisors have served three roles: advisors to the students in their case clubs on personal and academic matters, logical first choice when faculty is sought to assist in judging oral arguments; and sources for greater student-faculty contact through entertainment of students at the faculty member's home. The case club advisor under the current system has little to do with the operation of the case club itself, in part because faculty members do not always cheerfully seek such participation, and in part because under the current system the case club is not a unit independent of the section. (E.g., problems and exercises are usually prepared for the whole section, not for the individual club.) This proposal makes greater participation by the advisor possible. The policy suggested is to encourage faculty participation in problem preparation, etc., but only gently, while maintaining the other functions of advisors.

D. Section Chairman. Under the present system each section has a faculty chairman who has the authority to supervise the section's work. That power is not always exercised (nor was its exercise ever viewed as mandatory). It is suggested that the faculty of each section decide whether or not to have a chairman. If they decide in favor of a chairman, the Dean shall select one, and the chairman and faculty of the section may exercise as much control as they wish with respect to the activities in that section (including the selection of judges and clerks for the following year).

V. Tentative Suggested Program - First Year MBA (Research Writing Advocacy).

A. First Term


2. "Synthesis" Exercise

3. Initial Research and Writing Exercise (§1). Goals should include:

   Identification of Legal Issue Research Organization

B. Second Term

1. Drafting Exercise
   a. Initial Legal Memorandum
   b. Legal Document Draft
   c. Written Critique of Document drawn by another student (contract, lease, etc.)

2. Advanced Research and Writing Exercise (Multi-Course problem)

3. Second-round Appellate Advocacy Exercise

4. An optional alternative might be: An Introduction to Trial Practice
   a. Initial Lectures; Pleading, Evidence, Anatomy of a Trial
   b. Pleadings
   c. Witness Interview
   d. Trial Exercise

VI. Notes: The program set forth represents a program deemed feasible for an 18-hour program carrying 2 hours credit, spread over the first year, directed by an Assistant Dean and structured within the Case Club format, with allocation of major responsibility and a reasonable measure of choice to the Case Club personnel (Judge, Clerk, Faculty Advisor).

It is designed to emphasize development of skills in written expression (including organization), oral expression and legal research. It should also serve as an introduction to the legal process and the lawyer's roles. Materials should be related to areas under consideration in the First Year substantive and procedure courses; hopefully the exercises will fill the desires of students to relate course materials to "real-life, current issues of concern" and afford a basis for relating materials encountered in the various courses, on a selective basis. As the program develops, opportunities will exist for implementation of the aim of the more traditional "Legal Process" or "Legal Method" courses within the format suggested.

A minimum program as outlined appears feasible after consideration of the time parameters of judges and students. Enrichment is possible with additional input by Case Club advisors and others, such as the "seminars" conducted for members of "the College" in 1970-71 and the social, discussion "get-togethers" of the Club.

The Legal Education Seminar should afford an opportunity for discussion of the content and methodology of the suggested program to be implemented by the individual case clubs, including appropriate methods to be followed in both the writing, research, advocacy and discussion phases of the work. To the extent possible, the actual implementation of the program of the club would be further refined by the case club judge and the faculty advisor to that club (recognizing that the degree of commitment of case club advisors may vary). The Supervisor would, of course, be available for consultation with the various case club judges and would, of necessity, have to assume the "trouble shooting" role if that became necessary. As in the past, the senior judges would receive a salary for the actual time spent in connection with the work of the club itself. Recognizing the burdens upon the senior judges, the Seminar itself would be more concentrated in the early phases of each semester and, indeed, if the program is to be implemented, a good deal of the work in designing the program should be completed before the end of the present semester and individual tailoring of the program should proceed, prior to the beginning of the Fall semester.

While a specimen program is set forth we do propose a certain amount of autonomy for each Senior Judge to permit flexibility in developing the program in line with the work of the particular First Year Section and the particular interests of those connected with that particular case club (hopefully developed through cooperative efforts of the case club judge and faculty advisor, though with recognition that the commitments of the latter may vary from club to club). We would be remiss if we did not emphasize that the potentiality of success depends very heavily in this program, as in any program, upon the personnel involved. Given the requisite enthusiasm and commitment of the senior students, the Supervisor, and faculty, we believe the program can be an outstanding success.

There is no guarantee, obviously, that the present proposal will prove to be the long sought for panacea and we would be the first to admit that it constitutes a gamble. Suffice it to say that the majority of the Committee feels that it is well worth trying, and offers reasonable prospects of success. All of us would agree that given unlimited resources a somewhat different program might be proposed. We have, however, proceeded on the assumption that under present circumstances the program is subject to existing limitations on the use of financial resources and faculty time.
SEISIN STREET

BERT, MEET ROSCOE. I BROUGHT HIM ALONG TO LEARN ABOUT TORTS, TOO, DEE?

WELL, ALRIGHT. BUT REMEMBER YOU HAVE A DUTY TO KEEP HIM FROM MESSING THINGS UP.

WHAAP!

ERNE, WADDEY LET HIM DO THAT FOR YOU? YOU_HUH_LITTLER YOU CAUSED AN INJURY!

BUT HE'S NEVER DONE IT BEFORE.

PROXIMATE CAUSE

CREE, NEVER HAVE I SEEN ANYBODY PICK UP FORESEEABILITY SO FAST.

FORESEEABILITY

AND ROSCOE DID IT ON HIS OWN. I HAD NOTHING TO DO WITH IT.

TORTS

DUTY

INJURY

YOU'RE NOT BAD ON VICARIOUS LIABILITY, EITHER.

NOW, I'LL STILL ROSE.

VICARIOUS LIABILITY.

WHAAP!

THERE, HE DID IT AGAIN, AND YOU TOLD HIM NOT TO. YOU CAN'T WIGGLE OUT OF THIS ONE!

WAIT A MINUTE, BERT... WHAT GOES ON WHEN I COME TO SEE YOU?

YOU FALL SOME RIDICULOUS STUNT AND SOMETHING ALWAYS HAPPENS TO ME.

ASSUMPTION OF RISK

RIGHT! SO IT'S NOT MY FAULT YOU ASSUMED THE RISK OF SEEING ME.

THAT'S ENOUGH FOR TORTS, ERNE. NOW YOU'RE GOING TO LEARN ABOUT JUSTIFIABLE HOMICIDE.

M. Slaughter

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