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Robert G. Meiners

CLERKSHIP, A LEGAL ANACHRONISM?

BY ROBERT G. MEINERS*

SERVICE as a clerk in the law office of a practicing attorney, by one who himself aspires to become a lawyer, is by no means a modern invention. It is a custom which has been handed down from generation to generation, for several centuries. "Legal education in the United States had its roots in English history, and in England preparation for the practice of law has been, in the main, through apprenticeship training." [1]

In those early days, substantial fees had to be paid for the privilege of serving one's apprenticeship under a lawyer with an established reputation.[2] Gradually, this form of training gave way to university study. Clerkships, however, have not been completely eliminated from the American scene, and it shall be the purpose of this article to examine the role played by clerkship in our system of legal education with consideration given to its objectives, the problems which it poses, and its advantages and disadvantages.

Before examining the five states having clerkship requirements, it should be noted that "clerkship" will be used hereafter to mean a law "practice" clerkship as distinguished from a law "study" clerkship. The former is a requirement in addition to the completion of a prescribed course of study in a law school, in order to qualify one for admission to the bar. The latter is a method of qualification for the bar, exclusive of any law school training. Although there are some states which still recognize a law study clerkship, it has, in general, fallen into disuse.

There are presently five states which have clerkship requirements. It is interesting to note that four of these states, Delaware, New Jersey, Pennsylvania and Rhode Island, were members of the original thirteen colonies, and the fifth, Vermont, entered the Union in 1791.[3]

As far as duration is concerned, the clerkship requirements in these five states vary from six to nine months. They also differ as to when the applicant may or must undergo his clerkship. This varies as follows: (1) merely requiring that the stipulated length of time be completed before admission to the bar, thus allowing the student to decide whether he shall fulfill his obligation during the summer months or wait until law school and the bar examinations have been

* A.B., Muhlenberg College; LL.B., Dickinson School of Law; LL.M., Harvard; Assistant Professor, University of Santa Clara, College of Law.

[1] Harno, *Legal Education in the United States* 4 (1953).

[2] Currie, *The Materials of Law Study* 17.

[3] Editorial, *Added Clerkships Are Anachronistic,* 27 HARV. L. REV. 2 (1958).

completed; (2) requiring a certain amount of the clerkship to be completed after law school and the bar examination.

There are also variations as to the other requirements. The requirement as to what a clerk must do during this period varies from a very general statement to certain specified requirements. Further, none of the rules provided for any remuneration, and whether or not any is given varies greatly. Finally, as to the preceptors themselves, there is a difference in requirements ranging from the simple one that they be attorneys of that state to the more stringent requirement that they have practiced for a certain minimum length of time and have been approved by a committee.

Delaware[4]

The clerkship is of six months duration. The rules do not define what is meant by clerkship nor do they set forth in any degree of specificity the duties of the clerk. They also do not state when the clerkship may be performed other than that it must be completed before admission to the bar.

Delaware has the strictest requirement of the five clerkship states regarding the length of time which one must have practiced law in order to qualify as a preceptor, the period being ten years. As an alternative to this, any justice, state judge, or United States judge in Delaware can act as a preceptor. There is no requirement for any examination of the preceptor.

New Jersey[5]

The duration of the clerkship requirement is nine months, and although it was reduced from twelve months in 1948,[6] this is still the longest period required by any of the five states. This nine month period may be served at any time after the successful completion of eight months work at an approved law school, and it may be fulfilled at any time prior to, or subsequent to, the bar examination.

New Jersey is the only state which sets forth certain assigned duties of the clerk. These duties include attending different courts and observing the proceedings. The only other specified duty is to become "acquainted" with the usual duties of the sheriff and certain other county officers. Totaling the number of days during which the clerk must attend court,[7] this requirement comes to less than one month out of a nine month requirement.

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[4] See Rule 31(2)(A)(f), Rules of the Supreme Court of Delaware.

[5] See Rule 1: 20-7, Rules of the Supreme Court of New Jersey.

[6] 19 BAR EXAMINER 204 (1950). Originally it was five years. Gradually, attendance at a law school was credited against part of the clerkship.

[7] One day must be spent in each of the following courts: Supreme (arguments); Superior, Appellate Division (arguments); Superior, Law Division (contested motions, pretrials and jury

All persons admitted to practice as attorneys after June 27, 1958, are counsellors-at-law.[8] At the present time any counsellor-at-law, who was eligible to serve as a preceptor on July 1, 1959, (one who had been a member of the New Jersey bar for at least three years) and any other counsellor-at-law, who has been engaged in the general practice of law for at least five years, may be a preceptor.

Rhode Island[9]

This state requires a six month clerkship which may be completed at any time prior to admission to the bar. No specific duties are prescribed for this period. Preceptors must be general practitioners within the state. This apparently excludes judges.

Pennsylvania[10]

The time requirement in this state is six months. Pennsylvania requires that at least four months be served after the bar examination, thus giving the preceptee an election as to only two of his six months. As to the manner in which the clerk must occupy himself during the necessary period, there is only a general statement that he "apply himself in the preceptor's legal business."

Pennsylvania's idea of the necessary qualities in a preceptor are similar to Delaware's in that a length of time is specified during which the preceptor must have engaged in the active practice of law. However, the time specified is five years as compared to Delaware's ten. Clerking for a judge who has served in a judicial capacity for five years is also permitted. The necessary practice need not be a general practice. As will be discussed later, this could be significant because a clerk could become associated with a preceptor who has a highly specialized practice, and therefore he could conceivably receive instruction in only one phase of the law.

Unlike most states, Pennsylvania places a limit upon the number of clerks that can be registered with a preceptor at any one time, the maximum being three. Also, Pennsylvania goes further than any of the other states in its qualification of preceptors by requiring that the preceptor be approved as to his fitness by both the State and County Boards of Law Examiners.

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trials, 1 day each); Superior Chancery Division, Non-Matrimonial (contested motions, pretrials and final hearings, 1 day each); Superior, Chancery Division, Matrimonial (contested motions and final hearings, 1 day each); County (criminal); District and Municipal (1 day each); Workmen's Compensation (trials); U.S. District; Federal Referee in Bankruptcy. In addition, one day must be spent observing the state legislature.

[8] Rule 1: 21, Rules of the Supreme Court of New Jersey.

[9] Extracts from the Rules, Admission to the Bar, State of Rhode Island. See also Rules for Admission to the Bar, West Publishing Co. (1955).

[10] See Rules 8 and 10, Rules of the Supreme Court of Pennsylvania.

Vermont[11]

This state also has a six month requirement. The time when this period may be served is, more or less, at the option of the applicant, as long as it is served during the two years immediately preceding his admission to the bar. Thus, he can fulfill his entire obligation during the summer months when most courts are in recess.

The rule does not attempt to state the duties of the clerk, other than to say that he must "study." The only requirement for a preceptor is that he be an attorney in the state. Apparently, this would preclude judges.

In turning our attention from the specific requirements to the objectives of the clerkship system, we find that these objectives are generally said to be two-fold,[12] the inculcation of professional ethics and the gaining of "practical," "technical" knowledge. While some mention is made of the first of these objectives, by far the greater number of writers stress the second, or the gaining of the "how-to-do-it" ability. A representative statement would be the following:

> . . . The purpose of the clerkship is to give the applicant a practical idea as to the way in which problems of court and office are dealt with and at the same time a conception of the proper standards of professional conduct which daily contact with a reputable older lawyer should confer.[13]

Especially in teaching of "practical" things, the claim is repeatedly made that the law schools are not doing the job, cannot do the job, and, in any event, should not do the job. A few of the comments should suffice to give a clearer picture. To the effect that law schools are not doing the job, one writer has said: "The most vocal criticism of legal education is that it is not practical enough, or stated more broadly, that it does not adequately train the young lawyer in the skills of the practice." [14] To the effect that they cannot do the job, the Dean of Temple Law School has said: "Personally, I am inclined to agree with those who say that in the nature of things, it is impossible for the law schools to graduate lawyers who are fully qualified to practice on receipt of their diplomas." [15] In commenting that law schools should not do the job, it has been said that ". . . the law office is better equipped than the law school to do some parts of the educational job." [16]

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[11] See Rule 4, Rules of Admission of Attorneys in Vermont.

[12] Currie, *The Law Practice Clerkship*, 24 PA. BAR ASS'N. Q. 223 (1953).

[13] Jackson, *Character Requirements for Admission to the Bar* 11 (1952) also found in 20 Fordham L. Rev. 305 (1952).

[14] Harno, *supra* note 1 at 146.

[15] Boyer, *Preceptors and The Law Practice Clerkship in Pennsylvania*, 28 PA. BAR ASS'N. Q. 31 (1956).

[16] Cavers, *Skills and Understanding*, 1 J. LEGAL ED. 395, 400 (1948).

While it is usually the older generation of lawyers who tend to view with alarm the alleged lack of practical knowledge on the part of young law school graduates, this is by no means a universal rule. A former Harvard Law Review editor, in practice only two years, referred to the "brutal realization" by the young lawyer of his own inadequacy.[17]

An incidental objective, which is not mentioned too often, is that by having a preceptor during his law school career, the student can have guidance in his studies, especially in the selection of elective courses. There are two obvious errors to this view, however. First, it is possible that the student will interpret a personal preference on the part of his preceptor as a universal attitude of the profession. Second, a preceptor who has been out of school for a number of years, ". . . and is unfamiliar with the present-day law school practice of placing old labels on new courses and new labels on old courses,"[18] may give the wrong advice.

The medical internship analogy is often applied to the clerkship system. If an internship is needed in the medical profession, some say, *a fortiori* it is needed in the legal profession. Sometimes the argument is even more colorful, as for example:

> . . . Would you want a medical school graduate who had never *observed* an actual surgical operation to perform an emergency appendectomy or other serious surgery upon you or your loved ones?
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> Certainly not, yet under the training provided generally for the legal profession throughout the United States the public must submit to similar treatment at the hands of the inexperienced and untrained lawyer who has just graduated from law school.[19]

The answer to this is that the success of the medical internship is due in large part to the fact that the intern trains in a hospital. There is a staff of doctors on hand to train him and the hospital has financial support greater than any one practitioner could claim which enables it not only to afford all the latest equipment, but also to pay the intern a wage. Naturally, an internship in an individual doctor's office would be quite another thing.[20] The legal profession's lack of facilities comparable to those available to the medical profession has led at least one writer to remark that: ". . . [I]t is considered impracticable to require

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[17] Silver, *Law Students and the Law: "Experience-Employment" in Legal Education,* 35 A.B.A.J. 991 (1949).

[18] Fuller, *Legal Education and Admission to the Bar in Pennsylvania* 89 (1952).

[19] Lefever, *Is a "Legal Internship" Necessary?* 26 PA. BAR ASS'N. Q. 139, 140 (1955).

[20] *Kansas City Lawyers' Committee Investigates and Disapproves Internship Proposals,* 30 J. AM. SOC'Y. 192, 194 (1946). Note, 98 U. PA. L. REV. 710 (1950). Kirkwood, *Requirements for Admission to Practice Law* (1949).

intern training for lawyers because of the lack of the facilities comparable to hospitals for medical interns." [21]

Is there really a danger that without a clerkship requirement the public will be injured due to bungling, inept young lawyers? The professional journals are replete with statements such as this one made by a judge:

> Immediately upon admission to the bar, the new lawyer is privileged (1) to try a murder case, upon which the outcome of which a man's life as surely hinges as in a delicate surgical operation, (2) to advise a testator . . . Life, liberty and property are at stake! . . . The legal profession should not educate its members at the expense of the public. . . .[22]

To this, and similar comments, it might be answered, true, the young lawyer technically is privileged to do these things just as he is technically privileged to single-handedly defend General Motors in an anti-trust action or draw up a new bond indenture for United States Steel. But, as a practical matter, will he? A former dean of the University of Pittsburgh Law School expressed the view that the so-called "practical deficiencies" of young law school graduates were greatly exaggerated.[23] Further, even if there were a real danger that the young lawyer would, because of lack of training, inflict injury on his client in particular or on society in general—and Dean Currie did not believe that this danger exists—a six month clerkship could not cure it.

In consideration of the same matter, the views of another educator are pertinent. Dean Stason of Michigan took note of all the criticisms that have been made and listed all the practical skills in which the critics desire the young lawyer to be competent. He came to the conclusion that it would take a minimum of ten years to become competent in all of these skills, and that many lawyers would not succeed even then.[24] Also pertinent is the fact that forty-five states do not require a period of clerkship for admission to the bar. Is there any evidence that the public at large in this overwhelming majority of states is suffering at the hands of young lawyers who begin their practice without the benefit of clerkship? It would seem that the answer is "no" and that this alleged problem is more theoretical than real.

When the Kansas City Bar considered a proposal for the adoption of clerkship requirements (and decided against it) they made the point that in fact an informal clerkship system already existed. It was their experience that even the young graduates, who intended to go into practice on their own eventually,

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[21] Brenner, *Reports of Consultant and The Advisory and Editorial Committee on Bar Examinations and Requirements for Admission to the Bar* 7 (1952).

[22] Lefever, *supra* note 19.

[23] Currie, *supra* note 12.

[24] Stason, *Legal Education: Postgraduate Internship,* 39 A.B.A.J. 463 (1953).

will first get a position with an established firm or an older practitioner in order to gain practical experience. With Dean Currie, they shared the doubt that anyone had ever been seriously injured by receiving incompetent advice from an immature attorney. And, even if such were the case, they doubted that a six month clerkship would make any difference. Nor were they concerned with the possibility that a businessman might be forced into bankruptcy because of bad advice about a complicated financial problem. As a practical matter, a businessman probably would not consult a young lawyer fresh out of school for advice about such a problem.[25]

As a matter of fact, how many young lawyers do start out on their own immediately upon admission to the bar? If the graduates of Harvard Law School are any criterion, the answer is not many. Less than three per cent of them go into practice on their own as soon as they complete school. Dean Griswold has said:

> The overwhelming proportion of the graduates of our school, and I dare say of most other schools, go into offices and handle practical matters under the supervision of experienced and able lawyers, and *actually get a remarkably fine apprentice training without the stigma and subservience that are almost inherent in a formal apprentice system.*[26] (Emphasis added.)

As was noted before, one of the objectives usually attributed to the clerkship system is the inculcation of professional ethics. In this connection, Pennsylvania instructs its preceptors to help their clerks "understand the ethics, duties, responsibilities, and temptations of the profession . . . [and] . . . develop in each student a high standard of character." [27] No one will argue that this is not a commendable aim. In actual practice, however, Pennsylvania's hopes in this regard appear to be falling short of the desired goal. In a state-wide survey conducted by the Junior Bar Association, it was found that over forty per cent of those who had recently undergone a six month clerkship had received no instruction whatever in "ethics." [28]

In fact, the question has been much debated, whether or not "ethics" can be "taught" at all. Most of the controversy concerns whether or not the law school, rather than a clerkship, is the proper place to attempt it. There are those who say that it can be successfully taught and those who say that it cannot. A reason-

[25] Kansas City, *supra* note 20.

[26] Griswold, Legal Education: Extent to Which Know-How in Practice Should Be Taught in Law Schools, 6 J. LEGAL ED. 328 (1954). Dean Griswold also said, regarding the alleged incompetence of young attorneys that, "I doubt very much, though that the suffering of the public at the hands of the young lawyers is very serious."

[27] Rule 8(b), Rules of the Supreme Court of Pennsylvania.

[28] *The Law Practice Clerkship in Pennsylvania—A Survey and a Point of View*, 25 PA. BAR ASS'N. Q. 225 (1954).

ably safe generalization would be to say that in any event, there is much dissatisfaction with the job which the law schools are doing in this area. This is one of the conclusions which was drawn as a result of a survey of eighty-five law school deans.[29]

Even if it were conceded that the law schools are not and cannot "teach ethics," is a clerkship the answer? At least one writer thinks that it is not because, "The careless words of the practicing lawyer give our students the definite impression that once out of law school *winning* is what counts—ethics are for the after dinner speeches." [30]

If, on the other hand, preceptors earnestly carried out their duties, a clerkship might be an effective vehicle for inculcating ethical standards. Just as a student in law school can be inspired by the close association with a distinguished professor, so a clerk could be inspired by associating with his preceptor. It might even have a salutary effect on the preceptors since, as one dean has suggested, it might, ". . . help to make lawyers more conscious of their professional responsibility if they knew they must be good examples to young men." [31] However, while clerkship might be a means to accomplish this, the same results can be accomplished without clerkship if the other members of the bar scrupulously live up to the standards of the profession. Most young lawyers will be working alongside older lawyers. The few who open up their own offices will still, in their every day practice, come into frequent contact with other lawyers. Thus, every day of one's professional life he would be rubbing shoulders with his brethren. If all did their utmost to make their own professional conduct an example for others, each man would be a teacher for all his associates. Furthermore, a more stringent enforcement of the grievance machinery and disbarment proceedings would deter those few who cannot or will not comply with the high standards of the profession. And of these few, even fewer would be practicing if the character investigation of all applicants for bar admission were more thorough.

Directing our attention to some of the problems posed by a clerkship system, we find that one of the major dangers existing is that the system will lead to exploitation.[32] It is possible that the clerk will be looked upon, not as a student to whom an obligation to teach is owed, but rather, as a free or low paid office

[29] Cheatham, *The Inculcation of Professional Standards and the Functions of the Lawyer.* The dean of a New York law school criticizes any attempt to "teach" ethics by expressing the doubt that "a knave can be changed into an honest man by preaching to him." Report of the Committee on Legal Ethics, 55 REPORT OF THE N. Y. STATE BAR ASS'N. 173, 174 (1932).

[30] Stevens, *Professional Responsibility—The Role of the Law School and the Bar,* 6 J. LEGAL ED. 203, 208 (1953).

[31] Cheatham, *supra* note 29.

[32] Rose, *Apprenticeship and Probationary Plan for Admission to the Bar,* 5 ALA. LAWYER 85, 88 (1944). See also 98 U. PA. L. REV. 710 (1950).

boy. This may be especially applicable in the case of the first and second year students since the preceptor may view their legal knowledge with misgivings, and, fearful lest they make a mistake that will cost him money, give them either no legal work or work of such a routine and insignificant nature as to offer them no challenge.

This could not happen? Lawyers are too altruistic to condone such practices within their own profession? A look at the record shows otherwise. In response to the criticism voiced against the system by the then Dean of the University of Pittsburgh Law School,[33] the Pennsylvania Junior Bar conducted a survey and discovered that during this period, which was designed to transform inept law school graduates into practicing attorneys, ninety per cent of the clerks did some non-legal work for their preceptors; only one-third had any experience in preparing a case for trial; only one-half had ever attended a court trial; only ten per cent were given the opportunity to become familiar with specialized tribunals; under one-fourth had any experience in bankruptcy, labor law, tax law, business law or domestic relations; and only one-third ever searched a title.[34] This is not a problem peculiar to Pennsylvania. Recent criticism of the clerkship system as it exists in Rhode Island pointed out that, "More than one law clerk has found to his disappointment that, for the most part, his duties consist of *running errands.*" [35] (Emphasis added.)

A second danger exists in that a clerkship requirement will work an economic hardship on students and raise still higher the constantly rising financial barrier to the profession. Not only in most cases are the clerks paid absolutely nothing, but ". . . There is even a widespread notion to the effect that it is somehow *improper* to give the applicant substantial compensation during this period."[36] Another commentator has said, "It is embarrassing if he or she is not paid and at the same time, *it violates the whole theory if he or she is paid.*" [37] (Emphasis added.) On this problem of economic hardship, Dean Griswold has said:

> I would be very sorry to see a formal apprentice system in this country. . . . It tends to be quite undemocratic because it is extremely hard for the young man to get into the field unless he has the means to get by the apprentice period. There is a very real economic problem here.[38]

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[33] Currie, *supra* note 23.

[34] *Supra* note 28. In a discussion among the members of the Executive Committee of the Junior Bar ". . . there were recounted hours spent as office boys, messengers, file clerks and researchers, *at no salary.*" Smith, *Rule of Reason,* 17 THE SHINGLE 16 (1954).

[35] Di Prete and Brill, *Should the Clerkship Requirement be Abolished?* 6 R. I. BAR J. 3 (1959).

[36] Currie, *supra* note 23 at 231.

[37] Krawitz, *The Rural Lawyer and the Preceptor System in Pennsylvania,* 28 PA. BAR ASS'N. Q. 368 (1956).

[38] Griswold, *supra* note 26.

By way of contrast, it is interesting to see two comments with a different point of view. One advocate of the system shrugs off this aspect of the problem by saying, ". . . this must be accepted as part of the terrific cost of proper professional training." [39] A former Chairman of the New Jersey Board of Bar Examiners said that this is something which the student should realize in advance, therefore, ". . . we simply have ignored the problem of the expense that is involved." [40]

It is indeed a pity that the clerks, especially those with families to support, cannot ignore it. To them it is a very real and pressing problem. It should be remembered that since 1950, young men have faced a military obligation. This means that many of them are entering law school at an older age and with a wife and family. A survey in one state shows that only thirteen per cent of the law school graduates were under twenty-five at graduation and twenty-one per cent were over twenty-eight. Almost three-fifths were married and more than one-half had more than one dependent.[41] In a large city, sixty per cent of the graduates were married, forty-three per cent had between one and three dependents, and twenty per cent had three or more.[42] Should these men who are willing to tackle a chore as difficult as gaining admission to the legal profession while acting as the head of a family have still another roadblock thrown in their path? Is the legal profession becoming one for only the sons of the wealthy?

On the matter of remuneration, this same survey indicates that over half of the clerks received nothing, over seventy-five per cent received no more than one hundred dollars per month and almost ninety per cent received under one hundred and fifty dollars per month. This made it necessary for fifteen per cent to work part time at paying jobs, the majority as laborers.[43]

A system whereby a student must seek out a lawyer willing to act as his preceptor presents another danger. It is fraught with the possibility of racial or religious discrimination.

> Under [a clerkship] system the [student] is to a considerable extent denied the chance to use as a weapon in combatting discrimination, his law

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[39] Lefever, *supra* note 19.

[40] Park, *Legal Internships*, 6 J. LEGAL ED. 504, 512 (1954).

[41] *Supra* note 28.

[42] Smith, *supra* note 34.

[43] *Supra* note 28. A survey conducted by the editors of the University of Pennsylvania comparing the economic condition of Pennsylvania clerks with New Jersey clerks indicates that the latter generally fare better.

Remuneration	*Pa.*	*N. J.*
Nothing	48%	22%
Mere expenses	14%	24%
$150/mo. & under	24%	40%
$150/mo. & over	14%	14%

Note, 98 U. PA. L. REV. 710 (1950).

> school record and the reputation he establishes in law school among his fellow students and teachers.[44]

In rejecting clerkships, the Kansas City Bar was critical of the system because of the hardship on the boy from the wrong side of the tracks in finding a preceptor.

There is an old saying about a chain being as strong as its weakest link. An analogy can be drawn in the clerkship program. Such a program will be as good as the men who carry it out. Bad preceptors will make for a bad program. But what makes for a "good" preceptor or a "bad" one? What qualities should the preceptor possess? It is submitted that the most important qualities in a preceptor are: (1) professional competence; (2) an ability to teach; (3) high ethical standards.

He should be competent in his chosen profession or one of the objectives of a clerkship system, the learning of technical skills, is destroyed. After all, the neophyte lawyer can learn the wrong way to do things by himself; he does not need an inept tutor. A preceptor must have the ability to teach. The most skillful lawyer in the world may be unable to convey the reasons for this skill to his pupil. The preceptor must also have the ability and patience to communicate with the preceptee on a level at which the latter can comprehend. Finally, he must be a man of great moral stature or another objective of a clerkship, the inculcation of professional ethics, is lost. If the teacher is a rogue, there is a danger that the pupil may become one also.

A committee appointed by the New Jersey Supreme Court to investigate the clerkship system in that state, listed three "principal weaknesses" in the existing system and the first of them concerned preceptors. The committee said that, ". . . law-office economics and the pressing pace of present-day practice . . . make it difficult for counsellors to find or to afford the time to do an adequate preceptoral job." [45]

What do the states consider to be the desired qualities in a preceptor? A look at their requirements is not very illuminating. In most of them it appears that any attorney qualified to practice before the courts of that state is qualified to act as a preceptor. If it is assumed that every member of the bar possesses the three qualities suggested, then there is no problem. But apparently not all states accept this assumption, for some require that the preceptor have practiced a certain number of years. This should at least minimize the possibility that the preceptor is not well versed in the technical skills of the profession, for these

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[44] Fuller, *supra* note 18 at 87.

[45] Report of the New Jersey Supreme Court's Committee on Training for the Practice of Law 39 (1957).

skills are generally achieved by repeated experience.[46] This being so, the practitioner with a certain minimum number of years experience should possess a reasonable degree of skill. Where the arbitrary line is drawn, will depend on the individual judgments of the drawers.

The fear that all attorneys are not also qualified preceptors was another reason why the Kansas City Bar refused to adopt a clerkship system.[47] In fact, the statement has been made that the difficulty involved in obtaining qualified preceptors has led to the rejection of a proposed clerkship in three different states.[48]

Should the states go further and require that, in addition to the required number of years of practice, the preceptor be approved by a board of examiners? A further question is, approved as to what—competence, teaching ability, ethics? Pennsylvania, which is the only state having such a requirement, does not tell us. It merely requires that, "The preceptor shall have been approved as to fitness by the State Board and the County Board." [49] A writer in commenting favorably on this rule has said that it is one thing to file charges with a grievance committee but quite another to disapprove a preceptor.[50] It is interesting to note that certain persons have been disapproved in that state, ". . . for the reason, to put it euphemistically, they were too much specialists in one line to give students needed general advice, as, for example to put it less euphemistically, ambulance chasers. . . ."[51] On the other hand, it has been said of such a system of approval that, ". . . one wonders whether this effort accomplishes very much other than freeing students of the risk of wasting their time with obvious incompetents." [52]

Another consideration is the time problem. The preceptor may be a competent lawyer, good teacher and a man of the highest possible moral scruples, and still the clerkship could be a failure. This is because the demands of a busy practice may be such that he does not have a sufficient amount of time to devote to his clerk. It has been said that, ". . . If an active lawyer is willing to take on a student, his practice prevents his giving the student the attention he deserves."[53]

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[46] Cavers, *supra* note 16.

[47] One of their major criticisms was the difficulty of obtaining the services of sufficient experienced and qualified practitioners. Kansas City, *supra* note 20.

[48] Note, *Restrictions on Admission to the Bar: By-Product of Federalism,* 98 U. PA. L. REV. 710 (1950). The states were Kansas, Michigan and Texas.

[49] Rule 8, Rules of the Supreme Court of Pennsylvania. "Fitness" is not defined.

[50] Appel, *The Pennsylvania System,* 7 Am. L. Sch. Rev. 928 (1933) and also found in 3 BAR EXAMINER 10 (1933). The author says that ". . . Particularly in the large counties, the local boards have been courageous enough to disapprove a lawyer as a preceptor when they felt that his influence is not the sort which they wished to continue."

[51] Douglas, *Pennsylvania's New Requirements for Bar Admission,* 14 A.B.A.J. 669 (1928).

[52] Kirkwood, *supra* note 20.

[53] Appel, *supra* note 50 at 931.

It should be remembered that the preceptor is not primarily a teacher, but a practitioner, earning his living from his practice. If it comes down to a question of making a choice between sacrificing some of this practice or devoting less time to his clerk, which choice will the preceptor make?

Another danger lies in the fact that if the preceptor does not devote a sufficient amount of time to his student so that the relationship between them is perfunctory and a mere formal adherence to the rules, it gives the latter the impression that his chosen profession "winks at half-truths." [54] Indeed, in rejecting a proposed clerkship system, the Michigan Bar examined the system in other states and reported that, ". . . in too many cases there has been only perfunctory, if any performance . . . by preceptors." [55] More evidence of this possibility is found in the fact that when the clerkship system first went into effect in one state, many students were hard put to find preceptors, but today there are very few, if any instances, where this is so. Is this because prospective preceptors have discovered that they were not really expected to do anything beyond a mere formal compliance with the rules? [56]

Should, therefore, the board, when they certify a preceptor, specify that he give a certain amount of time to this undertaking? It has been said that if this were done, ". . . it is doubtful whether enough preceptors, ready, able and willing to perform can be found."[57]

Looking at the system from a different angle, one writer has pointed up another problem. ". . . As soon as the law graduate learns enough to be of value he either wants a partnership or starts out by himself—with some of the older man's best clients." [58]

A justice of the Supreme Court of New Jersey recently made the statement that his state ". . . would abandon its clerkship requirement tomorrow, if [it] had a proper substitute." [59] There have been a number of proposals made for alternatives to the clerkship system. Would one of these be a "proper substitute"?

One proposal sometimes offered as an alternative is to have a "Junior Bar" whereby the young attorney is given a license to practice in all the courts of the state. But, he would keep a diary of all his activities for a two to five year period during which he is more or less "on probation," and at the end of which period

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[54] Fuller, *supra* note 18 at 83.

[55] *Report of the Committee on Legal Education and Admission to the Bar,* 17 MICH. STATE BAR J. 47, 49 (1938).

[56] Fuller, *supra* note 18.

[57] Kirkwood, *supra* note 20.

[58] *Readers Defend and Oppose Legal Internship,* 30 J. AM. JUD. SOC'Y. 59, 62 (1946).

[59] Justice Nathan L. Jacobs, quoted in 28 HARV. L. REV. 6 (1959).

his activities would be reviewed by a committee of lawyers who would look for two things: legal incompetence and/or unethical conduct. If either were found by the committee they would take away the license. Unlike a grievance committee proceeding, the burden would be on the young lawyer to prove that he was entitled to a permanent license.[60] The most glaring fault of such a system is the opportunity which it presents for discrimination. Needless to say, it has not met with any success.

Another proposal is that of Dean Stason of Michigan. He would have a system under which the law graduate would take two bar examinations. After the first, he could practice only in certain lower courts. The second bar examination would be on "practical" matters. Also required would be a one year attendance in an "Institute for Post-graduate Professional Education." This requirement, however, would not be imposed on all, but rather only on those who did not get a job in a large law firm where they would be under supervision anyway.[61] The injustice of such a system, especially on those who for one reason or another do not begin their career in a "large" firm (whatever that is), probably accounts for the lack of enthusiasm with which it has been greeted.

Legal Aid Clinics are often mentioned as alternatives to a clerkship system.

> A Legal Aid Clinic is a teaching device which provides clinical training for law students in a way which is quite like the experience provided for the medical student during the latter's internship. It is also a law office in which a part of the staff consists of law students who, by doing part of the work at that office under the immediate supervision of qualified attorneys, learn some of the difficulties of extracting relevant facts from unskilled witnesses and gain experience in applying their school-learned theories to those facts and recommending proper action. . . . The students . . . gain valuable experience that is not available elsewhere in the curriculum, experience that helps them to bridge the gap between the classroom and the courtroom and office.[62]

Professor Bradway, the "tireless pioneer in this field," [63] would take issue with the last portion of the above definition. He views such a clinic not as a bridge over any gap but rather as concrete to cement together and fill the interstices between the rocks of knowledge acquired in law school.[64] Regardless of the simile one uses, the fact remains that the clinic is a way in which a student can gain practical experience. Another point to be noted in favor of such

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[60] Scott, *Junior or Interlocutory Admission to the Bar,* 3 BAR EXAMINER 99 (1933).

[61] Stason, *supra* note 24.

[62] Boyer, *Legal Aid and Legal Education,* 18 THE SHINGLE 205 (1955).

[63] Harno, *supra* note 1 at 174.

[64] Bradway, *Legal Clinics and Law Students: Rocks and Cement for Better Legal Education,* 41 A.B.A.J. 425 (1955).

clinics over clerkships is that they would eliminate ". . . the unpredictability of the older lawyer responsible for the training." [65]

What do the students who have received training in clinics think of them? A survey of graduates of two different law schools revealed a unanimous opinion that they were valuable aids.[66] This is in marked contrast with a survey of lawyers in one state having a clerkship requirement. In that state it was discovered that ". . . the great majority of Junior Bar members polled indicate a vigorous dissatisfaction with the clerkship system." [67]

There are two factors which weigh against the use of a clinic—their great cost and the fact that to be effective they must be in a city of some size.[68] However, after ten years experience with his program at Duke, Professor Bradway considers it to be a success.[69]

To conclude, we have seen that clerkship, while a relic of a bygone age which flourished for a time and then, with the advent of the university law school, gradually withered, did not die. Further, whether its advantages outweigh its disadvantages is a matter on which reasonable men differ. Other writers have concluded:

> Unless the benefits of clerkship are great enough to justify the additional . . . period of training which the law school graduate must endure, it seems inevitable that the requirement will some day be abolished.[70]

And even some who advocate the system recommend a spelling out in detail what the requirement will be so that preceptors will know what is required of them,[71] while others do not think that this will remove enough of the bad features of such a system to warrant its continuance.[72]

There are other considerations relevant here. It has been pointed out that forty-five states see fit to do without a clerkship requirement, and it is interesting

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[65] Winters, *Legal Aid and Legal Internship Should Go Together,* 30 J. AM. JUD. SOC'Y. 35, 36 (1946). The University of Pittsburgh has, since 1951 required its students to attend one summer session devoted to working out "practical problems." Its former dean is of the opinion that it gives the participants as much practical experience as a clerk gets in six months. Currie, *supra* note 12. Such courses are not without their critics, however. One writer has said that law schools only teach "manuevers" and that "practice and procedure can be learned efficiently and effectively only by practice and that practice must be out on the battle-ground and not in the classroom." Souter, *Internship for Lawyers,* 29 J. AM. JUD. SOC'Y, 186 (1945).

There are also those who think that law schools should practice law. See Frank, *A Plea for Lawyer-Schools,* 56 YALE L. J. 1303 (1947) and *Why Not a Clinical Lawyer-School,* 81 U. PA. L. REV. 907 (1933).

[66] Harno, *supra* note 1 at 175.

[67] *Supra* note 28.

[68] Johnstone, *Law School Legal Aid Clinics,* 3 J. LEGAL ED. 535 (1951).

[69] Bradway, *Legal Aid Clinic Instruction at Duke University* (1944).

[70] Di Prete and Brill, *supra* note 35.

[71] Boyer, *supra* note 15.

[72] Currie, *supra* note 12 at 238.

to note that the American Bar Association has never once recommended a clerkship.[73] Also significant is that a survey of law school deans indicated that forty were opposed to it, sixteen were doubtful about it, and only eight were in favor of the clerkship system.[74]

It would seem, then, that:

> The post-law school clerkship requirement is like "hazing" in college—those who have been through it don't see why the succeeding generations shouldn't overcome the same barriers that impeded and annoyed them.[75]

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[73] Currie, *supra* note 12 at 237.

[74] Cheatham, *supra* note 29.

[75] *Supra* note 28 at 229.