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REMARKS OF

BENJAMIN R. CIVILETTI

TO THE

NORTHEASTERN UNIVERSITY SCHOOL OF LAW

ALUMNI ASSOCIATION DINNER

Boston, Massachusetts

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REMARKS OF

THE HONORABLE BENJAMIN R. CIVILETTI

ATTORNEY GENERAL OF THE UNITED STATES

The topic for my remarks this evening is clinical education. I decided to speak on this subject because Northeastern University Law School has been a leader in the clinical approach to legal education for many years. Moreover, you now have as your dean Professor Michael Meltsner, who is an outstanding authority on clinical teaching of the law and is the co-author of a provocative book entitled "Toward Simulation in Legal Education." I hope Dean Meltsner does not mind my leaning on his pioneering effort.

The Department of Justice has great interest in the quality of training given law students. We are particularly interested in innovative clinical programs emphasizing trial practice.

After all, we are the largest litigating law office in the United States, having more than 4,000 practicing lawyers in our six litigating divisions and in the offices of United States Attorneys. A very large percentage of them are engaged in trial work. Many of them are fresh from law school. Thirty-six percent or more than a third of them have been at the Department of Justice for two years or less. Unlike private practice, the volume of work of the Department does not permit us, except for the biggest cases, to have large trial staffs each headed by an experienced trial lawyer. Thus many Department of Justice trial lawyers are young and inexperienced.

In an effort to remedy this problem, in 1974 under William Saxbe, the Attorney General's Advocacy Institute was created. While the Institute had an excellent beginning its efforts were modest. Accordingly, Attorney General Bell in 1978, with my assistance as Deputy Attorney General, decided to enlarge and strengthen the course of training at the Advocacy Institute.

We wanted the Institute to reflect the advances made in advocacy training in the last five years and to help lead the way for constant improvement. We examined the work of the best of the new trial advocacy programs, such as the one at Hastings Law School in California, and the National

Institute for Trial Advocacy. We asked the attorneys in the field what they needed -- and what was good and bad about what was being done. A task force of assistants and legal division attorneys enthusiastically gave a great deal of their time to help create a new program. Furthermore, when I was Deputy Attorney General, I took a personal interest and active role in the Institute, for the first time engaging as consultants top educators in trial advocacy to examine the Institute and assist in the development of the new courses and programs.

We created completely new courses in trial and appellate advocacy. Our new program includes: (1) two weeks of intensive civil or criminal trial advocacy work; (2) a third week of training in problems related to advocacy, such as grand jury work or motion practice; (3) a five-day appellate course; and (4) a series of specialized trial seminars for experienced attorneys.

Each day of the new courses is devoted to workshops in advocacy problems, from simple direct and cross-examination to the use of demonstrative evidence and expert witnesses. Each lawyer performs every day, and the workshops are supplemented by lectures and demonstrations. Moreover, the lawyers are trained by the most experienced and able lawyers in the Department. They receive a critique of the live

performance, and they are also videotaped for replay with one of the instructors, for an in-depth examination of the performance. The training is rigorous and intensive. In the appellate course, the oral arguments are subjected to the same sort of criticism, with two of the three arguments videotaped for further critique, in addition to the questioning of the presiding panel.

Each course utilizes a variety of legal problems, as contrasted with one criminal or civil case in prior courses. In placing a much greater emphasis on the learn-by-doing method of instruction, with each participant performing a courtroom exercise and receiving critiques each day, the number of workshop hours has significantly increased. At the end of each course there are two days of full trials before federal district and appellate court judges from around the country.

These judges, like others who aid the program by giving of their time voluntarily, should be commended for their work. The Institute and the entire Department owe them a great deal of thanks.

We have also expanded and updated the program's physical facilities. We have built four mock courtrooms to provide realistic settings for the courses and have purchased new electronic equipment, essential to these valuable training techniques.

I think it fair to say that the Advocacy Institute at the Department of Justice is filling a need in legal education and training which in an ideal world should be filled by our law schools. I recognize that during the past decade a large number of law schools have made tremendous strides toward enriching the students' experience with clinical courses. Nevertheless, I also am aware there is still a great debate in progress in academic quarters as to the value of clinical courses.

Many distinguished professors and some distinguished judges tend to forget three basic facts. Law school population has grown enormously. Two, 75 percent of the law students are bored with their third year. Three, a large proportion of law school graduates do not have the opportunity to join prestigious firms. These firms in effect run their own clinical programs. Their beginning lawyers are paid up to $35,000 a year for the privilege of working under the close supervision of an experienced trial lawyer, appellate lawyer, corporate lawyer, etc. These young lawyers wait over five years before they are permitted to open their mouths in a courtroom.

A large proportion of law school graduates today go into small firms or federal, state or local government offices and are immediately thrown into practice. Much of that practice

is litigation. The same thing is true of the large number of lawyers who go into the small firms or even open their own offices. We do not send doctors, dentists, or teachers into their professions with so little training and experience in their fields.

As I have already indicated, we at the Department of Justice found that, due in part to lack of adequate clinical training, most law schools do not train their graduates to try lawsuits. The time has come for many law schools to stop re-examining their curricula to see if they can't do a better job in training their graduates to practice law, and to do it. I am aware that the curriculum is a perennial topic for discussion in law school faculty meetings; it is suggestive of Mark Twain's description of conversation about the weather: an internationally boring topic.

I think that legal educators can learn much from the experience of medical educators. I recognize the parallel is far from close and it has dangers but I still think we have much to learn from the doctors. During the medical student's first two years he gets a very thorough grounding in the medical and biological sciences, both in the classroom and in the laboratory. In his or her third and fourth years, the medical student, through a series of carefully designed rotations, works in the wards of a hospital, each of which has

patients being treated for his or her particular ailment by the various medical specialists. A medical student not only observes; he practices under the close supervision of interns, residents, senior residents, and professors of medicine.

I have not heard anyone call the Harvard Medical School a trade school, yet the medical student in his last two years performs many routine services which no one could call academic, although they require considerable skill. Thus, a third or fourth year medical student may remove a patient's stitches, prepare the patient for an intravenous solution, or even do spinal taps, all under supervision of a resident physician. We understand this as necessary to the sound training of a physician and we do not denigrate that training by referring to it as trade school work.

I believe that many law schools could introduce changes in their curricula which would bring to legal education at least some of the advantages of the training in medical education. I agree that those changes should not begin with the first year of law school. The existing intensive emphasis in the first year on legal analysis through the dissection of appellate judicial opinions in the basic divisions of the law is sound. But at the end of the first year, each student should be given an opportunity to indicate whether or not he/she elects clinical training as a specialty. I anticipate that less than 25 percent

would elect any intensive clinical program. The clinical electors would then for their second year have a curriculum of required courses, plus a few electives. For example, the student clinical electors would be required to take, among others, courses in evidence, trial practice, advanced criminal law and procedure, and professional responsibility.

In the third year, the clinical electors would devote at least half of their time and half of their course credits to clinical work in the clinics operated at the law school or, where necessary, outside the law school under the close supervision of a law school professor.

Since it can be anticipated that in the vast majority of law schools only a relatively small fraction of students will opt for intensive clinical experience in their third year, students who do not so elect should not be denied an opportunity to take clinical courses. But admission would be subject to two general conditions. First, the clinical electors should have first choice for the limited number of places available in the clinical courses. Second, there are some types of clinical courses for which second-year students are sufficiently prepared to qualify for admission. On the other hand, in schools located in areas having court rules which permit students to try cases -- so-called student practice rules -- it is a mistake to permit students to participate in

this work until after they have taken evidence, criminal and civil procedure, professional responsibility, and a trial practice course. This means that these clinical offerings should not be open to other than third-year students.

In sum, I recognize that both second year students and students who do not elect to have intensive clinical training should have some opportunity for clinical work. Nevertheless, I urge that those schools in a position to offer intensive clinical training to third-year students should adapt their curricula for the second year to prepare those students who elect an intensive clinical experience for their third year of intensive clinical work. Second, I believe all law schools should make genuine efforts to offer a variety of quality clinical courses.

The time has come to cast aside the endless and tedious debates between the scholars and the clinicians. There is no conflict between clinical law school courses taught by competent, well-trained professors, and classroom courses in substantive and procedural law and policy. As Dean Redlich of New York University has put it: "Law schools should not have to choose between teaching law as an intellectual discipline and teaching skills. We can do both, and each can enrich the other."

For those law schools who reject this idea, I ask this question: "What are you going to do about the third year in

which students are showing increasing dissatisfaction and malaise?" Large numbers of them, at least in schools located in large metropolitan areas, are getting student jobs as law clerks in the law firms. Some of them are volunteering or working for very low pay in pro bono work. The one thing most third-year students are not doing is to continue to study course material intensely and many of them are not even faithfully attending their law school classes.

Let me acknowledge that clinical education is alive and growing at many of our law schools. One of the beneficial, synergistic effects of that life and growth has been the support that clinical education has given to legal services for the poor. Several law schools, though not so many as would in my view be desirable, have formed legal service or legal aid offices in-house; that is to say, the law schools themselves have formed a law office serving the needs of the poor. Modeled after the Neighborhood Legal Services offices, or Legal Aid Society offices, they impose strict limits on the incomes of their clients to determine eligibility for service. The professional staffs of these offices are usually composed of a few highly overworked lawyers who are assisted by many law students. A few other law schools, almost invariably with the aid of outside sources of funding, have established so-called public interest law firms. I regard both of these developments as highly desirable. At one and

the same time, they provide a vital service for their clients while offering good clinical experience for law students.

Turning to public interest law clinics, I must say first of all that these clinics seem to me to have achieved more public benefit than almost any other development in modern legal history. A few of the cases they have brought are open to criticism but these clinics have on the whole made a solid contribution by making it possible for a more balanced point of view to be presented both to the agencies and the courts. More pertinent, however, is that several of the public interest law firms have law students working in the positions equivalent to junior associates in the ordinary law office, usually for one of the six semesters that normally comprise formal legal education. Although one occasionally hears complaints that students are not given a rounded experience while working at the public interest law firms, on the whole it is my distinct impression that the clinical value of the work by students at the public interest law firms far outweighs the criticisms.

I can not leave this subject without reporting to you that positions in the Department of Justice have been filled by lawyers who spent several years working in the Neighborhood Legal Services program, or in public interest law firms,

either as experienced lawyers or as students. While the number is not large, these men and women occupy key spots in the government. One of them is Jim Moorman, who is Assistant Attorney General for the Land and Natural Resources Division of the Department of Justice. Another is Alice Daniel, Assistant Attorney General in charge of the Civil Division, who was Acting President and General Counsel of the Neighborhood Legal Services Corporation. Still another is Joe Onek who is Assistant Counsel to the President. There are several others in less exalted but nevertheless important positions in the federal government.

There is one effect of the rise in clinical legal education for legal aid and public interest type clinics which, in my view, transcends all others: these clinics have confirmed the faith of those young men and women who believe law can lead them to a life of service to the needs of the poor and to the public. To be sure, corporate practice also serves a completely legitimate need but many law students in recent years have wanted more than the opportunity to serve business. They have gone into the law in numbers far beyond those in the forties, fifties, and early sixties seeking to serve; to use their skills as an instrument to achieve a better, a more humane and a more just society. If this were the only benefit to be derived from these clinics -- and it

clearly is not -- it would provide sufficient support for the proposition -- to which I strongly subscribe -- that clinical legal education must continue to grow in both volume and quality and should, for those students who elect it, constitute at least half of the last year in law school.

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