SUMMER SCHOOL

After a long absence, the Law School is offering a summer program of two two-credit courses on weekday evenings from June 25 through July 25. The courses are Political and Civil Rights with Professor Hirsch, which will emphasize Constitutional voting rights, problems of freedom of religion and Bakke discrimination problems, and Real Estate Planning with Professor Gray, focusing on planned transactions, the law of brokers, condominiums and tax considerations.

PROFESSOR McCLELLAN

Between working on the Legal/Medical Committee of the Allegheny County Bar Association, the Board of Pennsylvania Legal Services Centers, the Board of Directors of Local Neighborhood Legal Services, the House of Crossroads Drug Rehabilitation Program, the Board of Directors of the Margaret Milliones Corporation for Public Education, and the Black Lawyers Association of Western Pennsylvania, Professor McClellan has been preparing two articles – one on remedies and damages for violations of Constitutional rights and an article dealing with the intrusion of law into medical decisions planned for summer publications.

During March, Professor McClellan attended the Association of American Trial Lawyers (ATLA) conference for the Third Circuit in Philadelphia. Principal areas discussed were trial tactics and strategy, and trends in liability in medical negligence cases and proof of damages in personal injury cases.

TAX MOOT COURT

Two Duquesne teams performed spectacularly in the recent Muel Tax Moot Court Competition at SUNY-Buffalo. First place honors and a Best Brief award went to Clark Kerr (2D) and Bruce Reale (2D), who won both of their preliminary arguments and bested teams from the University of Toledo and University of Cincinnati in the final round. The team of Elly Heller (2D) and Ken Horoho (2D) defeated teams from the University of Detroit and Case Western Reserve in their preliminary arguments.

STAFF ADDITION III

Juris would yet again like to congratulate former Editor-in-Chief Tom Kline and wife Paula on the birth of their daughter, Hilary Megan, on Thursday, March 15. The baby checked in at 5 pounds, 14 ounces and no doubt will bring her “light brown hair and big blue eyes” to future editorial consultations.

LAW BASKETBALL II

Duquesne’s Law School basketball team narrowly missed winning one championship but ran away with another during a four-day period in March. Competing in an invitational tournament at the Western New England College School of Law, the Duquesne team, which was coached by Dan Penetar (3D) and captained by Larry Baldasare (3D), defeated law school representatives from the University of Delaware and New York University before losing a semi-final game by one point to eventual champion St. John’s University.

Upon their return, the Law School successfully defended their university intramural title by defeating Beta Pi Sigma, 57-47. Members of the well-traveled team are Mike Baggett (3D), John Bell (3D), Bob Del Greco (2E), Ken Horoho (2D), Dave Horvitz (1D), Norman Matlock (3D), Tom Newell (1D), and Paul Vey (4E), as well as assistant coaches Nick Bires (3D) and Bill Walker (1D).

LAW HOCKEY?

Yes, Law hockey. Proving that Duquesne Law students are always searching for new means of venting their frustrations, Duquesne’s official Law School street hockey team – the Holders – made it to the first round of the intramural playoffs in late February after three years of trying.

This year’s Holders were oldest rookie Art Baker (3D), Rick Dell (1D), Mike Fagella (3D), John Fraraccio (3D), Yaier Lehrer (3D), Tom Lowery (2D), coach Joe Messina (3D), Tom Newell (1D), Rich Sax (2D), John Spinia (3D), MVP Wayne Stander (3D), goaltender Martin Vinci (3D), Dan Whalen (3D), and three-year veterans John Bell, Jim Haines and Dan Penetar – “Original Holders” all.
The following colloquy on law clerking was between Robert D. Taylor, Editor-in-Chief, of Jurist and its former Editor-in-Chief, Thomas R. Kline. Kline served as a law clerk for now-retired Justice Thomas W. Pomeroy, Jr.

JURIS: What job options did you entertain when you were about to graduate from law school?

KLINE: I considered many ideas ranging from private firms to government agencies. The job that I wanted first before embarking on whatever direction my legal career would ultimately take, was a clerkship, preferably with an appellate judge.

JURIS: What made you choose law clerking?

KLINE: It wasn't a matter of my choosing. It was a matter of being chosen. So many events in job-hunting are fortuitous. I happened to be lucky enough to be in exactly the right place, at the right time, for, in my opinion, the right judge.

JURIS: I've heard some law clerks say, not always positively, that law clerking is simply an extension of the law school experience.

KLINE: I think it is in many ways an extension. Traditional law school training, with its emphasis on analysis of appellate decisional law, equips you to become a clerk for an appellate judge. The transition is natural, in contrast to what is almost universally described as an unnatural break between graduation from law school and entering into practice. I don't think, however, that it is necessarily a negative feature. As an appellate clerk, you are an integral part in the development of the law which a few months earlier you were remotely studying as a law student. You are given a unique opportunity to learn at an incredibly rapid rate about both the law and about our courts. In fact, I cannot remember any time in my intellectual development that the rate of growth was either as rapid or recognizable to myself. I could only view this as beneficial.

JURIS: What have you learned that students and practitioners of law should know about the administrative mechanisms of the Pennsylvania Supreme Court?

KLINE: I think the matters they should know about the mechanics are clearly defined in the Appellate Rules. One of the foremost transgressions is not following the relatively simple rules. Everything that an appellate practitioner must know can be found there. The real learning for a law clerk is derived from his participation in the decision-making process.

JURIS: Tell us about the law clerk's involvement in that process.

KLINE: Before describing the process, I should emphasize that there is no standardized procedure and that what I am about to describe is extracted from my limited experience as one law clerk for a particular judge. It does not necessarily have universal application. Each judge has his own decisional process which he finds workable and best suited for his needs. In Justice Pomeroy's office, law clerks were involved in many ways. Their main job was to assist in the drafting of majority opinions (M.O.'s). They aided in the drafting of separate opinions, that is, concurring opinions and dissenting opinions (C.O.'s and D.O.'s). Further, they helped in the drafting of allocatur reports. They reviewed opinions and reports circulated by the judges. In addition, there were more mundane chores including, but not limited to, library duties. There is a nineteen-page memorandum entitled "Administrative Duties of TWP (Thomas W. Pomeroy) Law Clerks," which I suppose demonstrates that clerking involves more than assisting the judge in opinion writing.

JURIS: You mentioned allocatur reports. What exactly is an allocatur report, and how does one come to be assigned to a particular Justice to write it?

KLINE: Following a petition for allocatur filed with the Supreme Court Prothonotary, the Chief Justice randomly assigns one Justice to write a report. That report is a memorandum usually a few pages in length, which summarizes the relevant issues and applicable law and recommends disposition (either grant or denial). These reports are in effect mini-opinions, but written only for other members of the Court; they are not shown to the parties or filed of record. If the reporting judge recommends granting the petition, another judge must join him for the Court to review the case. If the reporting judge recommends denial of the petition, he can be overruled by two other judges. Occasionally, a judge who disagrees with the reporting judge will write a counter-report expressing the reasons for his disagreement and recommending an opposite disposition.

JURIS: Did law clerks themselves write allocatur reports?

KLINE: Justice Pomeroy's law clerks would prepare rough drafts of allocatur reports. Although unpublished, allocatur reports would never be circulated without first receiving careful editing and revising by the Judge.

JURIS: Why not publish the allocatur reports?

KLINE: Mainly because they function as an inter-office memo. They do not, nor should they have, precedential value. They serve as a convenient form of communication between the judges, where the reporting judge can give his candid appraisal of the merits of a given petition.

JURIS: Were Justice Pomeroy's law clerks involved in making the decision whether to go along with a report of another judge?

KLINE: Yes. At least one clerk would review and react to the reports of other judges. Allocatur reports filter into each office daily. They present many issues, which unless frivolous, and a good many are, represent a welcome diversion from the main task of research and work on opinions. The clerk assigned to review another judge's allocatur report has before him both the petition and response (the Brief in Opposition), if any, the opinions of the tribunals below, and the allocatur report. In short, he has a small prepackaged legal problem. The law clerk would review that "package," jot down notes, and attach a recommendation of his own to the report. The Judge would, of course, then make his own independent review. This allocatur review procedure, although time-con-
suning, was not only thorough, but also exposed the clerk to a potpourri of legal issues daily. I believe that this screening process served both the Judge and his clerks well.

**JURIS:** Did you begin your clerkship writing allocatur reports?

**KLINE:** Most of Justice Pomeroy's law clerks were weaned on allocatur reports. Because I came in the middle of a very hectic period, when the court was striving to reduce its backlog of cases which had been argued but not yet decided, I immediately began to work on an opinion.

**JURIS:** What happened after the Judge and clerk decided on a course of action in the case?

**KLINE:** Justice Pomeroy's clerks would be working so closely with him that memos were not required. There was a constant dialogue. A clerk could always return to the Judge's office and say, "Oh, I have an afterthought," and discuss it at length.

**JURIS:** Did someone try to hoodwink you?

**KLINE:** The most charitable way to describe the particular case to which I am referring is that it was difficult to ascertain from the printed record what exactly was being represented. It seemed logical to check the original record to be sure. After looking at the original record, it became apparent that what was seemingly represented in the printed record was not in fact in the original. Following this initiation, I became cautious, almost always wanting to see the original record.

**JURIS:** Did the clerks have a position paper to write before drafting an opinion?

**KLINE:** Justice Pomeroy's clerks would be working so closely with him that memos were not required. There was a constant dialogue. A clerk could always return to the Judge's office and say, "Oh, I have an afterthought," and discuss it at length.

**JURIS:** Continue molding an opinion. How did a law clerk prepare, and how did his preparation influence the Judge's decision?

**KLINE:** The nature and amount of preliminary preparation would depend on the type of case involved. Some cases required extensive background reading and research; others do not. In either event after I felt confident, I would go into the Judge's office for a conference—briefing the Judge on the case and presenting him with my recommended disposition. In preparing for the conference with the Judge, I would make two separate analyses, the first based upon my independent judgment and the second based upon an anticipation of the Judge's position. Through a combination of those perceptions, I would attempt to explain to the Judge how and why I thought the case should be written. It was important to understand that the case usually would have been assigned to the Judge to write an opinion because he was in the majority in a tentative conference vote following oral argument. He, therefore, was already familiar with the case. By checking the Judge's "Journal," a log which reflects his observations at oral argument, I could discover the Judge's former impressions and the tentative conference vote. The decision at that point had only tentatively been made. Often many of the judges were undecided, and could be influenced by a convincing opinion, even though that opinion is written at variance with the conference vote. When a case is "submitted," that is, one that was not argued orally, then there is no guidance on the Court's or the Judge's predilection. In some instances, "submitted" cases were more difficult to assess than those which were argued.

**JURIS:** What happened after the Judge and clerk decide on a course of action in the case?

**KLINE:** After the initial discussions, the Judge would say, "Go to it." At that point I would draft an opinion, sometimes taking days, and type it in rough form. (My typing skills have improved remarkably). When completed, the draft would be placed on the Judge's desk. He would then take his pen to the opinion, working from the rough draft. Recommended revisions and alternative drafting by the Judge would follow. The Judge would suggest additions and deletions. We would then have additional meetings to discuss his proposed changes and the need for additional drafting, if any. Eventually, the rough draft of the clerk would evolve into a final copy of a majority opinion by the Judge to be circulated among the other judges for their consideration at the next conference. In that process, the clerk's rough draft represented merely a starting point, not as some might naively think, a ghost written final copy.

**JURIS:** What sort of productivity requirements or deadlines does a Pennsylvania Supreme Court law clerk work under?

**KLINE:** There is a sense of urgency, especially in the court now, to dispose of cases. There are box scores of which everyone is well aware. The numbers in a sense reflect productivity. But high standards should not be sacrificed for the sake of assembly-line justice. There is a balance, in which the ultimate measure must be the quality of opinions which in turn reflects the quality of justice.

**JURIS:** How does a law clerk feel the most pressure?

**KLINE:** The time of greatest stress undoubtedly occurs before and during Court opinion conference. The pressure begins to mount when opinions written
by other judges begin to multiply rapidly on the clerk's desk near or at the preconference deadline set by the Chief Justice. Each opinion must not only be read, but also must be carefully reviewed. Before the conference began, each other judge's opinion would be assessed on the basis of our Judge's position, and generally, a decision would be made as to whether a separate opinion was warranted. This review went beyond studying the proposed M.O. of the other judge. It always entailed a study of the "paper books" in the case, and sometimes included a fresh look at the original record.

JURIS: You would first write up a review with your comments on the other judge's circulated opinion?

KLINE: Yes. The clerk would make an assessment of the opinion and make a recommendation to join, to write a C.O., D.O., to merely note a dissent, or, for some reason, to concur in the result of the case but not join the opinion. The clerk would write or type comments on a "comment sheet" recommending what position he thought that the Judge should adopt and attach it to the circulated opinion of the other judge.

JURIS: What about the pressure of conference?

KLINE: The clerk who goes to conference is not only depended upon by the Judge for ministerial tasks, but also for assistance in the drafting of separate opinions. If C.O.'s and D.O.'s are to be circulated it is best to have them completed before the end of conference. There is not usually an ultimate deadline, because circulated M.O.'s of other judges can be "held" or be "down" subject to a concurring or dissenting opinion. In other words, concurring and dissenting opinions can be sent in after conference. That, however, is not ideal, because part of the reason for circulating a separate opinion before conference or at least sometime early during a conference week is so that other judges may join it. If the Court is divided, a case may eventually be reassigned if a majority accepts our Judge's position.

JURIS: So often, a per curiam order is handed down by the Court without explanation. Is full consideration given to every case?

KLINE: Absolutely. Accompanying almost every p.c. opinion is a "Dear Judge" letter which discusses the issues involved, sometimes at length. A "Dear Judge" letter can exceed twenty pages in length. In any event, careful consideration is given to every alleged error, even where, for example, a criminal defendant with a right to appeal from a felonious homicide conviction, raises fifteen or twenty separate issues. A full opinion may not be warranted, but the discussion within the Court is thorough, despite the tedious task of dealing individually with each one of the many questions raised.

JURIS: Do you think a special canon of professional ethics should be designed for law clerks?

KLINE: I don't see any compelling need. If there would be a disputable law clerk, there are certainly adequate policing powers available. One possible area, however, that could invite a potential conflict is the Appellate Rule which allows law clerks to practice law with the approval of their judge outside of the appellate court in which they clerk. Clerks of Justice Pomeroy did not concurrently clerk and practice law, and, therefore, no ethical problems were evident.

JURIS: Do you foresee any difference in clerking for a Justice with an established philosophy as opposed to a younger Justice without one?

KLINE: Sure. They represent two totally different kinds of challenges. For a judge with an established philosophy that extends over a decade, there are a multitude of considerations to take into account every time a clerk looks at any case and tries to make an assessment for him. It is very fulfilling to be part of that kind of tradition. That, of course, was my experience as the very last law clerk that Justice Pomeroy hired. On the other hand, to work for a recently elected judge gives a clerk the opportunity to go through the initial growing pains, with each decision representing new ground in molding a judicial philosophy. That is not to say that every decision falls neatly into a slot after a judge has been on the bench for a number of years. Rather, I am suggesting that certain clearly defined positions in certain areas of law become evident in time, and they become guideposts for the clerk. In some areas, however, there is no definitive position even after a substantial period of time, especially in novel and complex cases, many of which reach the Court.

JURIS: Are there many Duquesne alumni clerking with the Court?

KLINE: There are a number of recent Duquesne graduates. Justices Pomeroy, O'Brien, Larsen, Manderino and Chief Justice Eagen all employed Duquesne clerks during my time with the Court. I would say a quarter of the current law clerks graduated from Duquesne.

JURIS: Where does one learn about law clerking?

KLINE: There have been a number of articles written on the subject. For example, in Volume 26 of the *Vanderbilt Law Review* in 1973 there was a symposium on the subject. So, there are things to be read. The real pedagogy, however, must come from the Judge. That is the fundamental relationship, and the essence of clerking.

JURIS: There are "professional" law clerks. What do you think of them?

KLINE: There are different schools of thought by judges on the utility of law clerking beyond one year. One theory is that law clerks are more vigorous in their first year and that the judge will benefit more from a constant infusion of recent law school graduates. On the other hand, the longer one is at the job, the more secure and knowledgeable he should become and the better he knows his judge and the Court. Most clerks, I think, would agree that law clerking becomes stale sometime after a year or two. Beyond that period it becomes an individual choice, a personal decision for the judge and the clerk who desires a longer relationship.

JURIS: What intangibles did you carry away from your judicial clerkship?

KLINE: I carried away so many intangibles that I consciously find influencing my writing, my thinking, and even my personality. Most important, I carried away a standard set by the Judge. I aspire to that standard and will take it with me throughout my life as a lawyer.
REFLECTIONS OF A LAW CLERK

by Marcel Weiner

Mr. Carl Rice, former senior law clerk, who was recently appointed administrative assistant and state reporter for the Superior Court of Pennsylvania, by President Judge William F. Cercone, graduated from the evening division of the Duquesne University School of Law in 1971. Prior to graduating, Mr. Rice worked as a Juvenile Court probation officer. Addressing himself to the question of whether his work as a probation officer led to his interest in law and clerking, Mr. Rice described the similarity of the two positions. “Even though it is titled Probation Officer, the work of a Juvenile Probation Officer is similar to some extent to a law clerk, since it involved working in close relationship with the juvenile court judges, primarily Judge Maurice B. Cohill and Judge Patrick R. Tamlia. A Juvenile Probation Officer conducts background investigations and individual case work studies. Then, after the adjudication phase, he is called upon to discuss the case with the trial judge so as to render placement evaluations and recommendations in order to assist the Judge in his disposition of the juvenile’s case. This close staff-judge relationship was something I learned to appreciate initially at juvenile court.”

The function of a law clerk was described by Judge Frank in Marble Palace as that of a supplemental set of eyes and legs for the judge. Mr. Rice’s description of his duties reflect that view. “The job of a law clerk is one of gathering and articulating relevant information and analysis on a particular case or issue and bringing this research to the attention of his judge who ultimately renders the final disposition on that informed basis. The function of an appellate law clerk is one level above the trial court where the actual litigants and witnesses appear; the law clerk’s focus is upon legal research and writing. Much time is spent laboring over briefs, lower court records and law books, in order to prepare legal memorandums and proposed draft opinions on each case for incorporation into the judge’s final opinion.”

Of particular interest to individuals considering a position as a law clerk are Mr. Rice’s duties in assisting his judge in the selection and training of new law clerks. Selecting a new law clerk is not an easy task. Class standing, although very important, is “no more important than any of the other major indicators of individual drive and motivation. We look at a broad range of attributes, including academic standing, general and legal background and experience, language and writing ability. It is also helpful if the applicant has clerked with private attorneys, the District Attorney or Public Defender’s Office, or has published articles through Law Review.”

Although many skills required of a new law clerk are developed in law school, as Mr. Rice stated, “There is a lot to learn. It is not always an automatic talent. While developing a coherent and articulate writing style comes more naturally with some individuals than others, it is a talent that can be learned and acquired through disciplined effort and on the job experience. New law clerks definitely show an improvement in their writing style once they learn from their judge what well-researched and well-prepared legal drafts must include. Through the supervision of the judge, they are guided as to what to look for in each case, and to identify the techniques which are utilized in the briefs that tend to lead them either in the right or wrong direction. In receiving feedback from a seasoned judge, they can eliminate some of the common writing pitfalls. They soon acquire the techniques of writing more quickly, concisely and to the point. Owing to the broad jurisdiction of the Superior Court of Pennsylvania and the huge volume of appeals filed here, law clerks must learn to get directly to the issue at hand and resolve the case as thoroughly and yet expeditiously as possible.”

“Accordingly, the pressure on a Superior Court law clerk is great. The law clerk’s main function is as a legal researcher and preparer of drafts. Since it is the judge who makes the final decisions, the law clerk must check each step of his product with the judge in order to incorporate the judge’s thoughts and legal holdings relating to each issue. In studying with a judge for a significant period of time, an experienced law clerk becomes so familiar with his judge’s legal philosophy that it may be possible to predict, to a certain extent, what that judge’s probable decision on an issue might be based upon his past rulings on similar legal issues, and from many prior conversations with him on related areas of law. However, since there are at least two sides to almost every legal issue it is very hard at times to make a prediction or recommendation to the judge in a way that would not inject the law clerk’s own philosophy. An appellate law clerk must discipline himself to realize that he is a member of a staff whose overall goal is to achieve the objectives of the judge for whom he or she works.” Mr. Rice also warns new law clerks about the so-called Ivory Tower syndrome. “Even though the appellate judge and his staff are somewhat removed from the routine courtroom activity experienced by private attorneys, they must NOT become isolated from the ground level legal world. They have to be able to read a record consisting of only black and white print and yet experience the sensitivity of what that record and those proceedings were all about. They must be able to understand what the attorneys, the lower court judge and the jury experienced. As much as we are confined by the record, we also must not divorce ourselves from the overall experiences of what’s really going on, as a practical matter, in the trial court. “It is also important for the clerk and judge to establish a spirited working environment in which each can fully and openly communicate. Initially the judge assumes a role much like a professor of law. But, once a close relationship is developed, the judge is also able to transcend this type of narrow one-way relationship and even insist that his staff become open and candid in their exchange of ideas and information with him. To that extent it’s a two-way street and it makes for a very meaningful professional relationship.”

In the seven years that Mr. Rice has worked for Judge Cercone, he has established the trust that is the foundation upon which a successful working relationship has grown. “My situation is rather unique in that I’ve stayed on with the court for a longer period than many other previous law clerks. Since each appellate judge has several law clerks there’s a constant change in personnel.

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1 Judge Cohill is now serving as a United States District Court Judge for the Western District of Pennsylvania.
2 J. Frank, Marble Palace (1958).
In this way our judge has the continuity of experience provided by permanent staff employees, coupled with the fresh views and ideas provided by recent law school graduates. This is the system that has developed in our office and it seems to be a workable practice utilized by other appellate court judges as well.

"It's quite common for a judge and his staff to spend two to three weeks in drafting an opinion. The number and nature of the issues determine the effort and time that must ultimately be put forth in drafting a particular opinion. In some cases we may have to prepare numerous revised drafts before the Judge approves his final version."

Considering the effort and time invested in a difficult, controversial case, one would expect a certain amount of frustration and disappointment when one of Judge Cercone's opinions is reversed. "Basically, we try to treat that situation as a part of the nature of the job. We realize, as an intermediate court, that there is a higher court to which a case can be appealed. Many cases do have very strong arguments on both sides. We also realize that the Pennsylvania Supreme Court may have a different opinion on a particular legal issue. As long as we remain confident that our position was well-researched, logically written with current and appropriate citation of authority, we recognize and accept the fact of an occasional reversal."

Perhaps the most serious problem facing the Superior Court is its backlog of cases. "As most people in the legal community know, the Superior Court of Pennsylvania has recently and publicly stated that the Superior Court of Pennsylvania is in a state of 'emergency' regarding its backlog and the number of increased appeals that have been presented to the court in recent years. In 1953 this Court had 503 appeals to handle. In 1958, there were 1,697 cases and in 1977 there were 3,700 appeals. Last year 4,606 appeals were filed in the Superior Court, an all time record high volume. The only real solution would be a complete reorganization and expansion of the Superior Court. As a temporary approach, the Supreme Court has recently authorized the Superior Court to sit in panels of three judges rather than the seven as previously required. Currently there is a proposal before the Pennsylvania legislature to expand the current three panel system to approximately seven panels of three judges each."

"Perhaps the major reason for the backlog is the antiquated make-up of the present Pennsylvania appellate system. The Pennsylvania Superior Court, established in 1895, is the primary intermediate appellate court of general jurisdiction covering state-wide appeals from Courts of Common Pleas of each of the sixty-seven counties in the State of Pennsylvania. There has been no increase in the number of active Superior Court judges, set at seven, since the Court's creation in 1895! Yet by comparison with similar appellate courts of other states, New Jersey has 22 appellate court judges, Illinois has 34, Texas 47, California 56, and neighboring Ohio has 38. The Superior Court's jurisdiction covers a wide range and variety of legal problems. Under the Appellate Court Jurisdiction Act, the Superior Court handles the great majority of all criminal and civil appeals.

"The backlog is greatest with criminal cases. There is such an increase in crime generally that we find ourselves inundated with these appeals. Every case has to be read, evaluated, and written in the form of a full opinion, or at least a shorter-type memorandum opinion. This puts a severe strain on the Court, just in the area of criminal law alone. But in addition, litigation has increased all across the United States in all areas of the law. As a result, there are some appeals that have been pending in the Superior Court for a year or possibly two. The judges of the Superior Court work extremely hard. Their output, in the number of opinions filed per year per judge, probably exceeds any other appellate court in the nation. The American Judicature Society (an independent national legal organization whose function is to study and make recommendations for efficient court administration) was recently commissioned by the Pennsylvania Supreme Court to make a comprehensive study of the Pennsylvania appellate courts. In its report of December 1978 it found that the Superior Court of Pennsylvania is probably the most overworked intermediate appellate court in the United States, working at a capacity far above what can be reasonably be expected of human beings. Compounding the problem of pure numbers of appeals, there are other situations beyond their control which preclude them from rendering an opinion as quickly as they would like. If the lower court record is incomplete and the appeal briefs written in an inarticulate manner, the case takes longer to research, decide, and write.

"One new procedure being adopted presently is a program of computerizing the administration of the Superior Court. Since the computer can provide an instant read-out of all cases on the docket, we can keep closer tabulations on which cases have been pending the longest and should receive immediate attention. Another comprehensive plan that has been discussed is a reallocation of jurisdiction among appellate courts by having criminal and civil appellate divisions.

"Better quality appellate briefs from the lawyers would also greatly aid the court in its work. Many briefs are excellently written, but quite a lot of briefs are haphazardly prepared, with inadequate citation of authority and misplaced logic. The primary and basic rule that is taught in law school seems to be violated the most in brief writing . . . inadequate preparation. For example, the brief might not focus correctly on the significant issues and may not have the appropriate or most recent cases cited. As a result, the attorney may be arguing a principle that, within the last six months or so, has been overruled or modified by another appellate decision. The most significant way a lawyer can best advance the result he or she is seeking is to be adequately prepared."

In making clinical programs available to students, law schools have made a positive contribution towards increasing the efficiency of the judicial system by adding an important dimension to a student's legal education. At Duquesne Law School, the various federal and state clerkship programs, the district attorney clinical program, the neighborhood legal services clinical program and the other practically oriented programs have received praise and support from the students. President Judge Cercone was the first state Superior Court judge to formalize a student clerkship program within his office. In describing his experience with Duquesne University in supervising the student law clerks, Mr. Rice was positive about the benefits to the students and the contributions that the students have been making. His enthusiasm for the program can, perhaps, also be explained by his memory of his last years in law school. "I would categorize our experience with the Student Clerkship program as very worthwhile and the students very receptive to this new concept of court-law school co-operation. The students benefit from this type of program by receiving on-the-job exposure to real appellate cases. Frankly, many students become bored and disillusioned in reading case after case from other jurisdictions of ancient vintage. As a result, they are very enthusiastic when they can actually participate in the process of a real pending case moving along the judicial system."

To be a law clerk for the Superior Court of Pennsylvania is an intriguing prospect in that this Court is facing a tremendous challenge at this juncture in its history.
Ms. Phoebe Northcross is currently the senior Law Clerk for Judge Joseph F. Weis of the Third Circuit Court of Appeals. Ms. Northcross is from Passaic, New Jersey, and received her undergraduate degree from Smith College in Massachusetts. From there she went to Washington D.C. where she worked for Congressman John Conyers of Detroit. Ms. Northcross then worked for the National Labor Relations Board. She graduated from Duquesne University School of Law in 1977 where she was editor of the Law Review during the school year of 1976-1977. After graduation, Ms. Northcross began working for Judge Weis.

A judicial clerkship is one job alternative for law school graduates. Ms. Phoebe Northcross illustrates that option; she is a law clerk for Judge Joseph F. Weis of the Third Circuit Court of Appeals in chambers located on the fifth floor of the Federal Courthouse, Grant Street, in Pittsburgh.

Judge Weis' procedure for selecting law clerks is typical. Law students who want the prestige of working for the Federal Circuit Courts of Appeal may apply to all of the circuits. Judge Weis insists upon a law clerk who has been a member of Law Review, and he prefers someone who has held an editorial position. The Judge interviews prospective law clerks in his Pittsburgh office and during this time his staff also meet the applicants and evaluate the various candidates. But, of course, any final decisions are made by the Judge.

In the past, Judge Weis has had two law clerks working for him at any period of time. Working for Judge Weis involves a two-year commitment, unlike working for many other judges who hire only for one year. Judge Weis uses a system whereby he hires one new clerk each year. That way there is always one law clerk in the office familiar with the work that has to be done. Thus, one law clerk is always capable of training the other. But Federal money has recently been allocated for the hiring of a third law clerk for each of the circuit judges. Exactly what effect a third clerk will have on the other clerks' work is still uncertain.

Ms. Northcross explained that she has found the two-year commitment beneficial; her second year is as intensive as her first. Contrary to what she has heard other law clerks say, Ms. Northcross believes the second year is also a time of personal growth and learning. She is now more comfortable with her job and so has the time to consider what future in the law she wants to pursue. Being a law clerk, she is exposed to diverse legal problems and so she is provided with a unique opportunity to evaluate which legal speciality would be best suited to her interests and talents. Since Ms. Northcross is now familiar with the procedures of Judge Weis' office, she believes her second year has been one of greater value to the Judge also.

The typical day of a law clerk in Judge Weis' office begins at eight or eight-thirty and ends between five-thirty and six, five days a week. Judge Weis' personal working habits involve continuous work, so this is the schedule followed by his clerks. Occasional weekends are spent working; long hours are especially prevalent in the first few months of clerking since one is unsure of how to approach the various aspects of the job. It takes longer to complete assignments initially, and a new clerk is more likely to reread and rewrite everything to make sure it's the best work possible.

Most of the time Judge Weis' clerks work in Pittsburgh. Every four to five weeks, however, one clerk will accompany Judge Weis to Philadelphia where the Judge will hear cases with other members of the bench. The clerk accompanies the Judge to help him with last minute details of the cases. It is the time when cases are actually heard that decides if a clerk's work has been adequate or not. It is the clerk's job to research the cases and bring all important issues applicable to the case at hand to the Judge's attention. The clerk sits in on the hearings in Philadelphia and it is an embarrassment to the clerk to discover something the clerk has not even brought to the Judge's attention.

The Federal Court of Appeals sits in confidence so a clerk is not to discuss her work with anyone else, or even discuss who will make up the panel to hear any given case. This is to keep the hearings as fair as possible. The court wants to avoid an attorney's changing a position or defense to suit the particular judge's predisposition. Thus, the Philadelphia sessions are completely secret until posted in the clerk's office.

The Third Circuit sits in the Virgin Islands in addition to Philadelphia, but the clerks do not accompany the Judge there due to the cost factor. Wherever the Judge is sitting, though, his working schedule revolves around projected hearing dates. Approximately every six weeks new cases come in. Thus, six weeks before cases are heard, a judge will get copies of the briefs of cases scheduled to be heard and considered. A bench memo is written on the issues raised in the briefs. This memo, written by the law clerk, is similar to a "Legal Research and Writing" memo. The difficulty of the case and the quality of the briefs de-
termine the difficulty of writing the memo. The clerk prepares a memo and photocopies pertinent cases, noting on them why these are important to the issues at hand. Then these cases and the bench memo are used to refresh the Judge's memory as he sits in hearing of the case. The Judge asks questions from his bench memo notes. The memo is the starting point for any further research that needs to be done on the case.

After oral arguments are completed, the judges confer. At that conference, a tentative decision is made as to how they will rule on a case, whether it will be an extensive opinion or a *per curiam* or a judgment order affirming the lower court's decision, who is to write the opinion, whether there are to be any dissenting opinions or concurrences, what the gist of any such dissent or concurrence will be, what the position of the majority of the court will be, and whether any additional issues need to be mentioned. The Judge then assigns the opinions she will help write. If the clerk's research does not support the position taken by the judges, the law clerk has an opportunity to persuade the Judge to take another approach. If the clerk can find legal support for her views, an argument can be made to the Judge.

Since Judge Weis was a practicing attorney in the Pittsburgh area for many years as well as a District Court Judge, he has a vast working knowledge of the law. Therefore, he is capable of relying on the briefs and his own knowledge of the law for the simpler cases confronting him. He may assign research of a more difficult case to a clerk in areas of the law that he knows the clerk is familiar with or interested in. The clerk then proceeds to focus on the particular issues that troubled the Judge.

Once the Judge is back in Pittsburgh, he writes a rough draft of the opinion to which he has been assigned at the conference. Using that rough draft as a guideline, the law clerk starts her work.

Though five or six opinions may be due at one time, Judge Weis makes it a point to be involved in writing all of them. Even if the law clerk has written a thorough memo it will be molded into an opinion by the Judge who will write his own draft. Some judges completely depend on their clerks to write the opinions, but Judge Weis does not. The Judge may have two or three cases supporting the opinion to help the law clerk get started. The opinion is then passed back and forth between the Judge and the law clerk he has assigned to work on the opinion. Three or four drafts may be written before the Judge brings the second law clerk into the process. The first law clerk's job is to embellish the opinion - add whatever legal support is needed, legislative research, and anything else needed to complete the opinion. Once that is done to the Judge and law clerk's satisfaction, it becomes the job of a second law clerk to read it and make changes and comments. The second clerk is uninvolved with the initial shuffling back and forth, and can bring an objective perspective. Then, the Judge and the clerks work towards the finished opinion.

Law clerks receive help with their work from student interns provided by Duquesne University and the University of Pittsburgh Law Schools. Between three to five students work for the Judge each semester. The student interns help with the research and writing of memos. Both the Judge and law clerks select assignments which will be given to the law students. Upon completion of their work, Judge Weis discusses their assignments with them. This gives the interns a taste for the work of law clerking, allowing them to decide if it is the sort of work that would be of interest to them upon graduation.

An internship with a judge is an excellent way to discover if the alternative of applying for a position as a law clerk makes sense for a graduating law student.
In the modern legal environment, practical experience is necessary for survival and success. Nevertheless, most law schools still insist on teaching in the Grand Manner which ignores in its choice of curricula whole areas of the law deemed indispensable to modern practice. In fact, most law schools still employ traditional methods. Where this approach is used, it appears that the emphasis is on developing good analytical abilities and, in effect, teaching one how to think. Ideally, the substantive content of the law was culled through apprenticeships. Curiously enough, apprenticeships are a relic of the past; but the absence of apprenticeships is not detrimental to the larger law firms since they can afford to absorb the costs incurred in training new associates. However, by strongly adhering to the traditional method and abolishing the apprenticeship system, it is clear that the profession has shifted the burden of training graduates to the big firms or government, while the smaller firms must inevitably suffer because of their financial inability to cope with the problems engendered by the prevailing system.

The trial bar and law schools are subject to further attack. Law firms, clients and graduating law students complain that a law degree is no guarantee of competence in the courtroom. Modern legal education sadly neglects some of the most important skills required of a lawyer. It is, generally, the visible criteria that law schools neglect, and perhaps it is this factor which is at the root of the problem addressed by our Chief Justice.

Communications skills, written and oral, are often referred to as the lawyer’s stock-in-trade. These are the skills or services a client buys. It follows that law schools across the country have the responsibility of ensuring that each and every graduate has achieved the requisite level of competence with respect to both written and oral skills.

Since official communication is in writing, these skills are of paramount importance. As in the other areas discussed below, most schools do not fulfill the duties entrusted to them. Although many offer a first year legal research and writing course, there is no attempt to teach students how to separate general legal es from specific matters of substantive importance. This can readily be seen in the typical boilerplate or ironclad language used by drafting attorneys. Specifically, instead of writing, “I devise by my land to my nephew, Herbert,” an attorney may use language such as, “I bequeath, devise, grant and convey such real property of which I am possessed to the only living male heir of my older brother on the day of execution of this writing.” This illustration is not intended to demonstrate the myriad workings of estates and trust law, but rather to show the lack of precision and clarity that characterizes most legal writings, regardless of their source. The Judiciary, in many cases, sets uncanny precedent in this area. Opinions are too lengthy and often garbled. Many opinions are shrouded in a veil of verbose mystery which may take subsequent generations of lawyers to unravel.

Admittedly, writing quality is something that can be attributed to experience. This, however, is no reason for schools to shirk their responsibilities of encouraging and developing students’ writing skills. In certain respects, law reviews can be considered attempts to fulfill this duty. Since most law students will never have the opportunity to participate in this experience, the basic limitation is one of quantity. Does this mean that schools should disregard their duties to the majority and devote their resources to the “gifted” few? Even in the appellate moot court programs, how much emphasis is placed on clerical and secretarial skills? Typical instructions include: Limitation of 42 pages if 12 characters per inch, but if less than 12 but more than 10, then 35 pages; typed matter not to exceed 6 1/2 by 9 inches with footnotes counted as twice their actual measurements. P.S. Follow United States Supreme Court Rules for brief format. Although the value derived from writing and preparing appellate briefs is generally not in issue, there is little emphasis on the quality of writing. However, the quality of writing is most probably reflected in a student’s grades on essay exams. This is ironic since an exam is a writing in which comparatively little time is spent organizing ideas and thoughts.

The skills required in preparing and drafting legal documents are closely connected to writing quality. A student studies contracts in his or her first year, but when was the last time someone asked a law student in school to draft a basic contract? If the purpose of law school is not to impart substantive law, since it can easily be researched, then why not concentrate on developing skills that a lawyer may draw upon in his daily business? Such emphasis would aid an attorney in fulfilling his duties not only to his clients, but also to the adversary system, as required by Canon 7 of the Code of Professional Responsibility. By some standards, this is more logical than spending 3 days of class time on the “fee tail heir male,” a long defunct system of postal delivery! Since any imprecision in drafting can and often will lead to litigation, the development of such skills serves a legitimate professional and judicial interest.

Oral argument serves the imperatives of appellate justice in several ways. It heightens a judge’s sense of personal responsibility and provides him with an opportunity to test his own thinking in a direct way with counsel available to correct error. So the judge assimilates ideas more readily by oral rather than written transmission, and some ideas are more readily transmitted by oral means. Thus, the quality of decisions is likely to be enhanced.

The adequacy and effectiveness of oral argument is the subject of much debate. The truth of the matter is that some students are more gifted than others, just as in writing, but again I emphasize that this does not and should not constitute grounds for a school to abdicate its function with respect to conscientious development of oral advocacy skills. The traditional teaching method affords little practice in developing this area of expertise. Certainly, classroom response is insufficient, especially in light of the fact that students have a choice of whether or not to respond. While many schools have appellate moot court programs, they are generally elective. This situation reflects a lack of emphasis, as well as planning. In the long run, these types of programs further the interests in administration of justice since oral advocacy can be particularly enlightening, but only if it is effective.

The last significant area neglected by most law schools is client counseling. Client counseling is the medium in which many Americans meet and work with attorneys. It is the seed of many relationships, and can have a powerful image-creating effect. For example, it has been said that a doctor who has an exceedingly good bedside manner will

(continued on page 12)
Exasperated, I blurted out “But what is the answer?” The rumpled old man, gathering his papers together and shuffling toward the exit, muttered “We don’t know ... we just don’t know.” The semester ended.

We had spent an entire semester probing the ownership of hapless fish swimming into and out of ragged nets; of foxes caught and released from traps; of gems secreted under the window sills. The law has grown. We were becoming lawyers.

We were becoming lawyers, and knew not our metamorphosis.

Thus it was. Young, impatient minds, trained to listen receptively to arguments that appear unworthy of attention, to become skeptical of easy solutions; to question critically both that which seems sound and that which seems unwise.

We were becoming lawyers.

Never again could we return to the exhilarating security of certainty, of knowing the answer to any problem worth grappling with. We were doomed to a lifetime of uncertainty, of doubt, of never being sure of the advice we are paid to give, of the arguments we elect to make, of the judgments we render.

We, as the rumpled old man, no longer knew...

We had become lawyers.

I think of my student days -- of the exasperation and fear -- as I listen to the new rebels. And I wonder. Has legal education become irrelevant? Ought we to embrace extensive clinical programs as the Chief Justice suggests? Or are such “solutions” the new placebos, cleverly disguised substitutes for the false starts and arduous thought that forged our predecessors? Must we, as the food industry, attractively package and pre-cook our ingredients so they can be instantly served rather than carefully, painfully coaxed to fulfillment?

And, if we must, will we still graduate lawyers -- or will we end with clever technicians unable to stray from pre-programmed paths?

If only I could yet ask the rumpled old man. How reassuring would be his doubt.

I am troubled by the new rebels. Troubled because they rebel against that which is familiar. Yet, I am troubled far more because there is the seed of truth in what they say. For I, too, am not sure we are on the right path. We can no longer spend a semester puzzling over the plight of fish ensnared in tattered nets. The law has grown. We must hurry. Students must study codes and restate-ments that did not previously exist ... they must exhibit knowledge in fields undreamed of by our predecessors. Slowly, inexorably, our curriculums have expanded. We have been forced to place a premium on the ability to assimilate and regurgitate the learning of others; to penalize, inadvertently, those inquisitive students who take time to challenge what they are taught, who yet search for solutions to the old man’s questions. The outline and the canned brief have replaced the slow, arduous nurturing of thought that was the hallmark of the man in the rumpled suit.

And, in such a climate, do the new rebels really pose a threat? Are we any less likely to mold worthy successors to this ancient profession we so briefly occupy by weaning students from the outlines and sending them to the clinics?

I wonder if the glare of controversy has blurred our vision. Do we squabble only over wrappings, ignoring that which lies beneath the tinsel? Should we cease such bickering and instead search together for the essential content of a legal education; for the gifts the old man gave each of us that made possible our metamorphosis? Is it time to concede that any method lacking the old man’s gifts is not worth preserving ... and any method that makes use of his gifts cannot fail?

I think of this as I read Isaac Asimov’s autobiography. His father, awed by the knowledge Isaac had crammed into a book, asked “How did you learn all this, Isaac?” Isaac replied “From you, Pappa.” Unbelieving, the father protested that he knew nothing of what his famous son wrote. Isaac answered. “You didn’t have to, Pappa. You valued learning and you taught me to value it. Once I learned to value it, all the rest came without trouble.”
The rumpled old man taught us to value learning...and to appreciate and respect the subtleties and variations of the law. He taught us there are no limits to the wisdom a lawyer can acquire, save the limits of his own imagination and desires. With that knowledge, much more comes without trouble.

And, he taught us more. He taught us why it is important that we learn and help mold the law. Not only to win cases, fame and wealth...but to protect us from ourselves. For it is the law that shields us from our own base instincts. Without law -- good laws and just -- where would we hide? What would provide the protection we must have? Again, a non-lawyer -- Robert Bolt in his play *A Man For All Seasons* -- captures best this gift of the rumpled old man. Thomas More, engaged in a battle for his life, announces to Roper that he'd give the Devil himself benefit of law. When Roper protested, More said "What would you do? Cut a great road through the law to get after the Devil?" Roper replied that he'd "(C)ut down every law in England to do that."

Thomas responded:

"Oh? And when the last law was down, and the Devil turned round on you -- where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast -- man's laws, not God's -- and if you cut them down -- and you're just the man to do it -- do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake."

I have long forgotten the rules and precedents the old man taught...but I have not yet lost my respect for the law or the value of learning he instilled. Nor have I forgotten why I must continue my efforts and remain vigilant. I cannot falter...for my own sake.

We are lawyers -- charged with preserving the old man's gifts, and passing them on to new generations. How we do it does not matter...that we do it is imperative.

Now that I have identified some of the more troublesome problems, I would like to propose the following solutions. First, law schools should adhere to the traditional approach, but only in the first year. In addition, course offerings should be expanded to include new areas of development. Second, schools should place increasing emphasis on practical skills, including intensive development of written and oral skills with particular emphasis on drafting and oral advocacy. Trial tactics, appellate moot court and clinical programs should be required for all students. Finally, in light of the fact that more than 80% of disciplinary proceedings are brought for problems arising from client neglect, a client counseling course should also be required for all students. In the final analysis, institution of these reforms will not only serve the interests of clients and the legal community as a whole, but also the courts as well.