LAW / SCIENCE PROJECTS

1981-1982

CURRENT AND PROPOSED

© 1981, Franklin Pierce Law Center

TABLE OF CONTENTS

ENERGY LAW.....

ENVIRONMENTAL LAW.....

HEALTH LAW.....

HIGH TECHNOLOGY.....

PATENT/TRADEMARK/COPYRIGHT.....

LAW/SCIENCE IN THE COMMUNITY...

LAW/SCIENCE INTERFACE
AT FRANKLIN PIERCE LAW CENTER..

TABLE OF CONTENTS

Page

ENERGY LAW

Energy Law Institute 1

District Hearing and Cooling Systems: Regulatory Problems Associated When a Resurgence Happens in the Industry 2

Workshop on Public Utility Litigation 3

The Franklin Hollis Distinguished Lecture 3

Brief to the United States Supreme Court Defending the Constitutionality of Provisions of the Public Utilities Regulatory Policies Act of 1978 (PURPA) 4

Article for the Natural Resources Newsletter, Published by the American Bar Association Section on Natural Resources 5

Assisting in the Preservation and Expansion of Federal Income Tax Incentives for Developers of Renewable Energy Sources, Including Hydroelectric Power Sources 6

Consulting Services to Public and Private Developers of Renewable Energy Projects 6

Assisting Senator Humphrey and the Senate Subcommittee on Energy Regulation in Improving the Licensing of Hydro-electric Projects 7

Two Papers Involving Private Research; Measuring Effectiveness in the Telephone or Electric Utility Industry 8

International Energy Policy, The United States and Canada: Relevance for New England 9

International Energy Policy Seminar 10

People's Energy Project 11

New Mexico Energy Project 12

Exparte Proceeding on Davisville Dam Project 13

Building Small-Scale Power Plants 13

Representing Cogenerators (Proposed project) 14

Conference For the Northeast on the Impact of the Public Utilities Regulatory Policies Act on Dispersed Power Production (Proposed project) 15

Energy Conservation Proposal 15

National Science Foundation Proposal on Load Management (Proposed Project) 16

ENERGY LAW (continued)

Page

Formulation of a National Organization That Could Assist and Advise People Who Are Interested in Small-Scale Power Generation 17

ENVIRONMENTAL LAW

Radiopollutant Releases to the Atmosphere From Standard Design Nuclear Power Plants--A Continuing Study 18

Detection Procedures for Pesticides in Food, Soil, Water and Non-Target Organisms for Illegal Residues 18

Environmental Law Clinic 19

Workshop and Handbook for Local Officials and Concerned Citizens 20
(Proposed Project)
Radioactive Waste Disposal Decisions and Their Effect on Successive Generations (Proposed Project)..... 21

Water: Solutions for East Coast Scarcity (Proposed Project)..... 21

Compilation for Regulatory Information Service (Proposed Project)..... 22

A Biologists Manual for Assessing Small Scale Power Plants 22

Revision of the Current New Hampshire Mining Law (Proposed Project) .. 23

Cleaning Up Hazardous Waste in New Hampshire (Proposed Project)..... 23

HEALTH LAW

1981 ATLA SURVEY ON JURY VERDICTS 24

Alternatives to Current Lookalike Generic Drugs 24

The Family and Housing Law Clinic of Franklin Pierce Law Center 25

Human Leucocyte Antigen Blood Test Question 25

Limits of Life 26

Social and Legal Aspects of Health Care Financing: An Overview 27

Guide on the Minimum Standards for Conditions for Confinement With All Jails in New Hampshire, Particularly regarding Light and Air Ventilation 27

Cancer Policy in the United States During the Pre-Reagan Administration 28

A Patient's Right to Refuse Treatment 28

Multidisciplinary Study on the Impact of Court and Court Process on Children 29

HEALTH LAW (continued) Page

Health Law Institute 31

One-Day Clinic on Trial Techniques for Health Law Litigations 32
(Proposed Project)
Death and Dying Workshops Symposia (Proposed Project) 33

A Relationship Between Franklin Pierce Law Center and the Wholistic Health Community in Concord, NH (Proposed Project) 34

One Day Conference For Lawyers and Judges on Child Development and the Law (Proposed Project) 34

A Study on Institutional Health Care: The Prison System (Proposed Project) 35

Claims by Victims of Black Lung Disease: A Study (Proposed Project) 35

HIGH TECHNOLOGY

Current Technology, How it Works (Law/Science Working Group, In-House Lecture Series) 36

Preparing a Data Bank for a Computer-Supported Anti-Trust Case 36

Reasonable Royalties in Different Industries for High Technology Projects 37

Study on Arbitration to Expedite Resolution of Disputes Involving Highly Technical Issues of Fact 37

International Treaties and Technology Transfer 38

Informal Conference on Genetics Research and the Law 39
(Proposed Project)

Legal Trouble-Shooting for the Oil Industry (Proposed Project) 39

Performance Standards for Products (Proposed Project) 40

Programs on Scientific Proof (Proposed Project) 41

Technical Innovation Legislation in New Hampshire (Proposed Project) 42

Electronic Mind Control: A Discussion Session 42

PATENT TRADEMARK COPYRIGHT

Workshop in Patent/Trademark/Copyright Research Techniques (Proposed Project) 44

A Seminar on Copyright Piracy in the Entertainment Industry (Proposed Project) 45

PATENT TRADEMARK COPYRIGHT (continued)

Page

Intern Program for Students Interested in the Arts, Copyright, and Entertainment Law (Proposed Project) 45

Researcher for National Inventors Council (NIC) 45

Franklin Pierce Law Center and the American Bar Association Section on Science and Technology 46

LAW SCIENCE INTERFACE

Law/Science Interface 47

Program with New Hampshire State Legislature Committee on Science and Technology 48

Guest-Lecture Series Sponsored by Franklin Pierce Law Center 49

New Hampshire Technical School Teaching Positions 49

Development of an Educational Program for Scientific and Technical People That Does Not Lead to a Law Degree (Proposed Project) 50

Contacts with Alumni in Law/Science Related Positions Coordinated Through Lisa Mitchell (Proposed Project) 50

"Bridging the Gap" -- A Concentrated Program in United States Law and Practice for Foreign Lawyers (Proposed Project) 51

Development of a Working Relationship Between the American Association for the Advancement of Science and the Franklin Pierce Law Center's Working Group (Proposed Project)..... 52

Law/Science Research Project 53

The Franklin Pierce Law Center Program on Government Regulation in New Hampshire 54

Program for Government Regulation 55

The Effect of Monopsony Purchase Under Rate of Return Regulation 55

Current Literature in the Law/Science Field (Survey) 56

Francis W. Davis Lecture Series 56

Computer Database for Franklin Pierce Law Center (Proposed Project) . 57

The Moral and Ethical Thinking and Judgmental Bases of the Same, of Lawyers, Judges and Law Students, Entering, Leaving and Post-Law School, Through Utilization of Harvard's Kohlberg Techniques ..... 59 (Proposed Project)

INTRODUCTION

Law/science is a broad subject heading. If you tap into Lexis or check a legal index you won't find it. If you look in a dictionary you won't find it. It is an elusive creature that exists through people who look at scientific areas and the impact of science on the world and then see a correlation to the legal community.

From June 15 - August 1, 1981 thoughts and project descriptions relating to law/science were collected. The following is a composite picture of the FPLC law/science creature, based on the data offered by the people who have present or proposed programs in the law/science area.

This Report is provided in response to student demand to know what law/science projects exist at Franklin Pierce Law Center. It is designed for use by students, faculty, alumni and administration. Through it, a networking system can be developed between students of similar interests as well as faculty, alumni, and possible funding organizations.

The outline of the Franklin Pierce Law Center law/science animal will be described in sections. The parts are alphabetically arranged, as there is no established way to describe this unique being. This highly arbitrary ordering system merely serves as a guide.

ENERGY LAW

CURRENT

TITLE: ENERGY LAW INSTITUTE (ELI)

CONTACTS: PETER BROWN, DIRECTOR OF ELI AND PROFESSOR OF LAW, L.L.B. COLUMBIA LAW SCHOOL, 1963

LARRY SMUKLER, DEPUTY DIRECTOR OF ELI AND ASSISTANT PROFESSOR OF LAW, J.D. 1976, TEMPLE UNIVERSITY

MARTIN RINGO, SENIOR FELLOW IN ECONOMICS, ELI; PH.D. BROWN UNIVERSITY, 1980

LAWRENCE PLITCH, SENIOR RESEARCH FELLOW, ELI; J.D. 1978 FRANKLIN PIERCE LAW CENTER

WILLIAM WILSON, SENIOR RESEARCH FELLOW, ELI; J.D. 1978 FRANKLIN PIERCE LAW CENTER

JOEL RUSSELL, SENIOR RESEARCH FELLOW, ELI; J.D. 1978 BOSTON UNIVERSITY

ROBERT OLSON, RESEARCH FELLOW, ELI; J.D. 1980 FRANKLIN PIERCE LAW CENTER

JOHN FOX, FELLOW IN ECONOMICS, ELI; PH.D. BROWN UNIVERSITY

TIME FRAME: BEGAN 1978; ONGOING PROGRAM

GOAL: "THE ENERGY LAW INSTITUTE, SIMILAR TO ITS COUNTERPARTS, THE PATENT/TRADEMARK/COPYRIGHT FOUNDATION AND THE PROGRAM ON GOVERNMENT REGULATION, SEEKS TO EXPLORE THE RELATIONSHIP BETWEEN ENERGY LAW AND REGULATION AND VARIOUS DISCIPLINES, INCLUDING ENGINEERING AND ECONOMICS. IN EXPLORING THESE RELATIONSHIPS, THE ENERGY LAW INSTITUTE PERFORMS BASIC RESEARCH FOR A VARIETY OF CONTRACTING AGENCIES AND ORGANIZATIONS ON ENERGY LAW, REGULATION, AND REGULATORY AND INSTITUTIONAL RELATIONSHIPS AND SYSTEMS. THE INSTITUTE ALSO PROVIDES TECHNICAL ASSISTANCE TO VARIOUS PRIVATE AND PUBLIC GROUPS AND ORGANIZATIONS. TO ASSIST AND PROMOTE INFORMATION TRANSFER, THE INSTITUTE HAS ALSO CONDUCTED SYMPOSIA AND CONFERENCES ON MUCH OF ITS RESEARCH AND TECHNICAL ASSISTANCE WORK TO DATE. FROM TIME TO TIME THE INSTITUTE ENGAGES IN JOINT RESEARCH PROJECTS, ESPECIALLY WHEN THE PARTNER IN THE JOINT PROJECT PROVIDES A CAPABILITY WHICH WOULD SUPPLEMENT THE ACTIVITIES OF THE INSTITUTE."

"Presently, the principal activities of the Institute involve research into legal, regulatory and institutional problems confronting specific energy technologies. At the present time the Institute is under contract with the United States Department of Energy, the National Conference of State Legislatures, the United States Army Corps of Engineers, and the Argonne National Laboratory. The research services provided under these contracts concern legal and regulatory problems associated with the development of small-scale hydropower; technical assistance to state legislatures in the development of small-scale hydroelectric policy; and legal and regulatory obstacles and incentives to the development of district heating facilities." For more details, please see the 3/31/81 issue of Statement of Capability for the Energy Law Institute.

Other programs include investigation of:

(1) Rural renewable energy resources

(2) Energy Taxing Systems--packaging for financial institutions requirements for business

(3) Public Utility Rate Making

(4) Energy Conservation Systems

(5) Educational programs about energy law

(6) Public Utility Regulation Seminars for lawyers. Beginning October 1981 at Franklin Pierce Law Center. Issues discussed will include litigation techniques in public utility regulatory proceedings.

Numerous students are employed at ELI, and most faculty and staff welcome volunteers on their personal projects.

CURRENT

TITLE: DISTRICT HEATING AND COOLING SYSTEMS: REGULATORY PROBLEMS ASSOCIATED WHEN A RESURGENCE HAPPENS IN THE INDUSTRY

CONTACTS: LARRY SMUKLER, ENERGY LAW INSTITUTE , DEPUTY DIRECTOR
BILL WILSON, ENERGY LAW INSTITUTE , SENIOR RESEARCH FELLOW
TOM GETZ, J.D. 1982

TIME FRAME: 1980-1982

GOAL: STUDY FOR ARGONNE INSTITUTE LABORATORIES

The Institute is presently under contract to the Argonne National Laboratory (ANL) to perform certain tasks as a component of ANL's study of district heating. The tasks to be performed will focus on the legal and regulatory obstacles and incentives to the development of district heating facilities, and include gathering data from state regulatory authorities, preparing position papers for a report to be presented to the Economic Regulatory Administration of the Department of Energy by Argonne, and presenting information contained in those papers to the participants of workshops to be scheduled.

District Heating and Cooling (DHC) is a process that provides space heating and air conditioning services and steam or hot water for industrial purposes. The basic configuration of a DHC system involves a central generating plant with pipeline distribution of the transfer medium to surrounding buildings. The report is designed to provide regulators with an overview of the special needs and problems of such systems.

CURRENT

TITLE: ENERGY LAW INSTITUTE
WORKSHOP ON PUBLIC UTILITY LITIGATION

CONTACT: LARRY SMUKLER , DEPUTY DIRECTOR, ELI

TIME FRAME: OCTOBER 19-23, 1981

GOAL: OFFER THE OPPORTUNITY TO IMPROVE LITIGATION SKILLS AND SUBSTANTIVE KNOWLEDGE OF ATTORNEYS INVOLVED IN PUBLIC UTILITY MATTERS

Workshop attendees will work on an individual basis with leading Public Utility Commissioner, experts and attorneys in all phases of public utility litigation; from prehearing preparation to appellate oral argument. Each attendee will be involved in a "mock" regulatory proceeding. These proceedings will be video-taped, analyzed and critiqued by the faculty.

CURRENT

TITLE: THE FRANKLIN HOLLIS DISTINGUISHED LECTURE

CONTACT: LARRY SMUKLER, DEPUTY DIRECTOR, ELI

TIMEFRAME: OCTOBER 22, 1981

GOAL: PROVIDE TO FRANKLIN PIERCE LAW CENTER PERSONNEL AND INTERESTED PARTIES FROM THE COMMUNITY AN EXPERT TO SPEAK ON PUBLIC UTILITY TOPICS

This lecture is being established in memory of Franklin Hollis through the generosity of his family and friends. Franklin Hollis was born in Concord, New Hampshire and admitted to the New Hampshire bar in 1930. He was a longtime member of the firm Sulloway, Hollis, Godfrey and Soden. In addition, he was director of the Concord Electric company and closely involved with public utility regulation and associated issues. He also was director of Exeter and Hampton Electric company and counsel for the Public Service Company of New Hampshire.

It is hoped that this lecture will become an annual affair.

CURRENT

TITLE: BRIEF TO THE UNITED STATES SUPREME COURT DEFENDING THE CONSTITUTIONALI OF PROVISIONS OF THE PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978 (PURPA)

CONTACT: LARRY PLITCH J.D. 1978 , SENIOR RESEARCH FELLOW , ELI
PETER BROWN , DIRECTOR, ELI
LARRY SMUKLER, DEPUTY DIRECTOR, ELI
ROBERT OLSON, J.D. 1980, RESEARCH FELLOW , ELI

TIME FRAME: 1980 - AUGUST 30, 1981, ORAL ARGUMENT, 1981 - 1982
DECISION, SPRING, 1982

GOAL: SEE TITLE

"The provisions of the Public Utilities Regulatory Policies Act of 1978 (PURPA) at issue in this case were enacted pursuant to two plenary powers of Congress: the power to regulate interstate commerce and to protect and enhance the national security of the United States ('the War Power'). The provisions of PURPA were part of the National Energy Act, a comprehensive piece of legislation which was designed to reduce or eliminate the harmful economic effects of rapidly increasing oil prices on the American economy and the threat to national security posed by the dependency of the United States on oil imported from a political unstable and troubled region of the world; the Persian Gulf and North Africa.

"The threats to the American economy and national security occasioned by the Energy Crisis were and are immediate and serious. Congress, in addressing these problems, chose a number of measures including the ones at issue in this case. The measures at issue are principally designed to encourage conservation of electricity and natural gas through different costing methodologies, rate designs and measures to control consumption of electric and gas service. (Titles I and III of the Act). Electric power from co-generators and small power producers utilizing renewable energy resources is to be encouraged under Sections 201 and 210 of the Act. Utilities that are regulated by state regulatory commissions and those that are unregulated are covered by the provisions of PURPA which are at issue here.

"There can be no question that the provisions at issue are directly and substantially involved in resolving the economic problems posed by rapidly escalating oil problems and threats to national security that are occasioned by our dependency on foreign oil.

"The recent decisions of this Court unquestionably support the constitutionality of the provisions at issue. Under the gloss placed on the Usery decision by the recent holding in Hodel, the provisions of PURPA meet none of the tests which Hodel requires for there to be a violation of the Tenth Amendment. This Court has also stated that the examination of a statute based on the war powers will differ from the examination required for a statute enacted under the commerce powers. National survival is the preeminent interest to be protected by the war powers provisions of the Constitution, and, as such, Congress may ask more of the states when it acts pursuant to the war powers. Given the imminence of the threat to national security posed by

BRIEF TO THE UNITED STATES SUPREME COURT DEFENDING THE CONSTITUTIONALITY OF THE PROVISIONS OF THE PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978 (PURPA)

foreign oil dependence and the substantial and direct nexus between the provisions of PURPA and the threat to be addressed, it is clear that the provisions do not violate the Tenth Amendment."

CURRENT

TITLE:	ARTICLE FOR THE NATURAL RESOURCES NEWSLETTER, PUBLISHED BY THE AMERICAN BAR ASSOCIATION SECTION ON NATURAL RESOURCES.
CONTACT:	LARRY PLITCH, SENIOR RESEARCH FELLOW, ELI, J.D. 1978 ERNIE BAYNARD (AMERICAN BAR ASSOCIATION)
TIME FRAME:	ARTICLE IS DUE AUGUST 31, 1981
GOAL:	ANALYSIS OF HODEL V. VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION, INC., 49 U.S.L.W. 4645 (1981) AND THE PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978 (PURPA), (FERC V. MISSISSIPPI, U.S. Sup. Ct. Docket No. 80-1749).

This article is an extension of research for the United States Supreme Court brief currently being worked on by the Energy Law Institute researchers. It would discuss the issues raised by the Tenth Amendment challenge to PURPA, the gloss that Hodel has placed on National League of Cities v. Usery, 426 U.S. 833 (1976) and the ways in which PURPA is sensitive to state sovereignty concerns and the principles of federalism.

TITLE: ASSISTING IN THE PRESERVATION AND EXPANSION OF FEDERAL INCOME TAX INCENTIVES FOR DEVELOPERS OF RENEWABLE ENERGY SOURCES, INCLUDING HYDROELECTRIC POWER SOURCES

CONTACT: WILLIAM WILSON, SENIOR RESEARCH FELLOW, ELI, J.D. 1978

TIMEFRAME: 1980-1982

GOAL: POLICY ADVICE TO THE SENATE FINANCE COMMITTEE AND THE JOINT COMMITTEE ON TAXATION REGARDING THE DESIGN OF TAX INCENTIVES FOR RENEWABLE ENERGY DEVELOPMENT

The Energy Law Institute is following up in its work with the last Congress on the development of various federal tax incentives for renewable energy projects. As originally proposed, some provisions of the current administration would reduce the circumstances under which these incentives, particularly the Energy Tax Credit, could be used. The Institute is working with with staffs of Senators' Humphrey (NH), Matsunaga, (Hawaii) and Mitchel (Maine) to preserve the current availability of the investment and energy tax credits for renewable energy projects and to improve the timing of the depreciation deductions available for such projects.

TITLE: CONSULTING SERVICES TO PUBLIC AND PRIVATE DEVELOPERS OF RENEWABLE ENERGY PROJECTS

CONTACT: WILLIAM WILSON AND THE STAFF OF THE ENERGY LAW INSTITUTE

TIMEFRAME: 1981 AND ONGOING

GOAL: USE INFORMATION ALREADY ACQUIRED IN THE COURSE OF THE MULTIPLE STUDIES DONE ON THE PROBLEMS ASSOCIATED WITH DEVELOPING ALTERNATIVE ENERGY TO ASSIST IN THE DEVELOPMENT OF SPECIFIC PROJECTS ACROSS THE COUNTRY.

ELI is involved in assisting a number of public and private clients with problems in financing, organizing and structuring of the activity, licensing, dealing with various regulatory bodies and marketing the power from alternative energy facilities.

In regard to financing the activity, ELI will assist developers in designing and implementing the financing structures that are the most appropriate for their activity. In particular, ELI will assist developers to seek and obtain "creative financing" terms which are compatible with the revenue characteristics of the renewable energy project. In the area of power marketing, ELI will assist developers in determining the power sales provisions which best suit the needs of their projects and in negotiating arrangements with power purchasers which provide such results.

TITLE: ASSISTING SENATOR HUMPHREY AND THE SENATE SUB-COMMITTEE ON ENERGY REGULATION IN IMPROVING THE LICENSING OF HYDROELECTRIC PROJECTS

CONTACT: WILLIAM WILSON, SENIOR RESEARCH FELLOW, ELI

TIMEFRAME: 1981 - 1982

GOAL: MODIFY THE CURRENT LICENSING SYSTEM TO REDUCE CONFLICT, DELAY AND UNPRODUCTIVE REDUNDANCY

Currently, most hydroelectric projects must satisfy state and federal licensing requirements. While both processes have recently been improved, there remain opportunities to reduce redundancy and conflict in the interface between the federal system and that of many states.

Basically, the staff of this project have five functions:

(1) To assist in designing the format for hearings on hydroelectric licensing in New Hampshire and the District of Columbia.

(2) To assist in formulating issues.

(3) To provide briefings for the Senator and his staff prior to the hearings.

(4) To provide expert testimony in the hearing and assist the Senator in the evaluation of hearing testimony.

(5) To assist the Senator and the Subcommittee in the formulation of legislative action based on the findings from the hearings.

The first Energy Regulation Subcommittee hearing will be at Franklin Pierce Law Center on August 7, 1981. The second hearing is planned to be held in Washington, D.C. sometime after the summer Congressional recess.

TITLE:	TWO PAPERS INVOLVING PRIVATE RESEARCH: MEASURING EFFECTIVENESS IN THE TELEPHONE OR ELECTRIC UTILITY INDUSTRY
CONTACT:	JOHN FOX, ENERGY LAW INSTITUTE, FELLOW IN ECONOMICS
TIMEFRAME:	ORIGIN: IN LATE 1970's END: NOT IN THE NEAR FUTURE
GOAL:	TO CONTINUE TESTING MODEL DEVELOPED IN A PAPER TITLED, " AN EMPIRICAL INVESTIGATION OF REGULATORY EFFECTIVENESS IN THE TELEPHONE INDUSTRY."

The title of the first paper is "An Empirical Test of Regulatory Effectiveness in The Telephone Industry." In this paper, an empirically testable model is developed which distinguishes between unregulated profit maximization, Averch-Johnson behavior, and evasion of regulation by vertical integration. The test was based on the characteristics of the capital demand function of the telephone utilities.

The test was conducted using pooled cross-section and time-series data for selected telephone utility subsidaries of American Telephone and Telegraph Corporation and General Telephone and Electronics Corporation. The empirical results for both the AT&T and the GT&E subsidiaries indicate that they are evading regulation through vertical integration.

The title of the second paper is, "An E pirical Determination of the Behavior of Electric Utilities." In this paper, an empirically testable model is developed which distinguishes between unregulated profit maximization, Averch-Johnson behavior and total revenue maximization. The test is based on the characteristics of the electric utilities input demand functions.

The test wss conducted using cross section data, for the years 1967 and 1973, from selected utilities. The results weakly indicate that the utilities are unregulated profit maximizers.

TITLE: INTERNATIONAL ENERGY POLICY, THE UNITED STATES AND CANADA: RELEVANCE FOR NEW ENGLAND

CONTACT: LARRY RAICHT, LECTURER IN LAW

TIMEFRAME: Two semesters 1981-1982 Academic year.

GOAL: To project New England's energy supply - demand to 2005, identify potential gaps in supply, examine possibilities of energy imports from Canada and analyze most effective means of obtaining them and constraints.

Raicht and ELI economists will put together a model that will permit realistic forecasts (given present technologies) of New England's energy demand over the next twenty-five years. Once these gaps and their duration are identified, with the help of seminar members, Raicht will attempt to identify possibilities of filling the gaps through energy imports from Canada. The seminar will also examine alternative arrangements, e.g., commercial contracts, state/province agreements, international treaties, through which energy supplies from Canada may be assured for New England. An essential prerequisite is an analysis of the institutional framework in Canada, i.e., the legal, constitutional and political constraints on energy exports to the United States. For instance, discussions are now underway between certain New England States and the Quebec power authority for the import of electricity. There is some evidence that under existing Canadian legislation Canadian Federal authorities could pre-empt an agreement between Quebec and New England utilities in the event another Canadian province required the electricity being exported to New England. Raicht and members of the seminar would analyze means to avoide the possibility that energy supply contracts with Canada could be interrupted and thus ensure energy supply security for New England.

The model to be constructed will cover the entire range of energy supplies consumed in New England - - including electricity, natural gas, and other fuels. The end result of the information collection, forecasting, and analysis of the various means of assuring energy supplies for New England from Canada and constraints that might inhibit state/province federal or commercial arrangements will be a report containing recommendations to the six New England Governors.

Members of the seminar will be expected to participate extensively in the entire process, including discussions of the structure of the model to be used for forecasting, the legal and constitutional regimes in both Canada and the United States, analysis of advantages and disadvantages of alternative methods to assure New England energy supplies from Canada, and the constraints on any of these approaches. In addition, the seminar will examine the United States (i.e. New England) and Canadian energy situations in the context of the evolving global energy problem. Guest speakers will be discussing certain aspects of the international situation and past United States/Canadian energy negotiations.

CURRENT

TITLE: INTERNATIONAL ENERGY POLICY SEMINAR

CONTACT: DR. LAWRENCE RAICHT, LECTURER IN LAW

TIMEFRAME: TWO SEMESTER COURSE

GOAL: FIRST SEMESTER: Members will participate extensively in information collection and research. To enable them to discuss intelligently analytical and legal concepts, they will also need to become familiar with the legal and institutional framework effecting energy "particularly its export" in Canada.

SECOND SEMESTER: The object of the seminar will be to construct a model to permit forecasts of New England energy supply and demand over the next twenty-five years, the possibilities of agreements with Canada to meet potential supply gaps and constraints on such agreements "particularly legal and constitutional." It is expected that the results of the seminar's work will contribute to a report to be submitted to the six New England Governors.

The First Semester course will be limited to second and third year students only. Participation in the first semester is a prerequisite for the second semester. During the first semester, students will discuss, evaluate global energy situations during the past ten years, particularly the effect on the United States and Canada. Students will be expected to gather information on New England energy supply and demand, assist in structuring model for forecasting same over the next twenty-five years.

The Second Semester seminar will examine possibilities of negotiating agreements with Canada on energy. Alternatives will also be considered, such as international agreements, state-province agreements and commercial arrangements. Members will be expected to participate actively in class in effort to identify the most feasible policy for New England Regions.

TITLE: PEOPLE'S ENERGY PROJECT

CONTACT: JOHNNY SMILEY, 1982
LARRY HOTT, NLG, 120 BOYLSTON ST., BOSTON, MA.

TIME FRAME: BEGAN AROUND 1978
NO ENDPOINT AS YET

GOAL: OPERATE A RESEARCH PROJECT, MAINTAIN CONTACT WITH OTHER LEGAL TEAMS WHO ARE INTERESTED IN ANTI-NUCLEAR MOVEMENTS, OPERATE A CLEARING HOUSE OF INFORMATION ON ANTINUCLEAR TOPICS, POSSIBLE PLANNING AND ADVISING FOR AN OCCUPATION OF A POWER PLANT, AND APPELLATE WORK OR PARTICIPATION IN JURY TRIALS OF ACTIVISTS.

"For the past six years civil disobedience has been used as a tactic to fight the frowing menace of nuclear pollution. Frustrated by the failure of the federal intervention process to halt the contruction of power plants in their areas, grassroots organization have turned to peaceful occupations of power company property to make themselves heard.

The issues are complex but a single thread is obvious. People desire a say in the development of their communities and resources. They feel the organizing effort must be local, decentralized, and controlled from within. Although the ultimate concern is the safety of the power source, it is clear that the economics of nuclear power can have disastrous effects as well.

The Clamshell Alliance was formed to fight the use of nuclear power in New England. The Anti-Nuke Clearinghouse was developed by the Franklin Pierce Law School chapter of the National Lawyers Guild to maintain and disseminate material concerning the criminal defense of anti-nuclear activists.

To aid the Alliance, lawyers and legal workers have formed a team to handle arraignments and subsequent trials of activists. They also give advice on issues such as injunctions, state and federal statutes, appeals, legal education, negotiating tactics, police surveillance, affirmative suits, and harrassment."

Anyone is welcome to work on the project.

TITLE: NEW MEXICO ENERGY PROJECT

CONTACT: DAVID STAFFORD, J.D. 1980
EDA GORDON, 1214 LOS ARBOLES NW,
ALBUQUERQUE, NM 87107

TIME FRAME: 1980 - ONGOING

GOAL: PROVIDE LEGAL SUPPORT FOR COMMUNITY ORGANIZING EFFORTS AS WELL AS PROVIDE INFORMATION ON
(1) ENERGY ISSUES IN NEW MEXICO
(2) IMPACT OF DEVELOPMENT ON LAND, AIR AND WATER

"The economy of the State of New Mexico is based on energy development: oil, gas, coal, and uranium. Since the discovery of uranium outside Grants, NM in 1956, the multi-national energy corporations have exploited this resource in disregard of the occupational and environmental health hazards that the uranium fuel cycle produces. The corporations have left in their path abandoned mine shafts surrounded by radioactive debris, strip-mined canyons impossible to reclaim in the arid Southwest climate, exposed huge piles of tailings that disseminate radon gas in the air and water, and an ever-growing list of dead and dying resulting from cancer as a result of radiation exposure in the uranium mines or in adjacent communities. For Indian and Spanish-speaking peoples in the Grants mineral belt, uranium development means cultural genocide.

The New Mexico Energy Project will assist ongoing community efforts to stop the energy exploitation of New Mexico on three different fronts:

(1) Opposition to a proposed geothermal power plant in the Jemez Mountains which are a sacred water source for neighboring Indian Pueblos.

(2) Education, community organizing and investigation around United Nuclear uranium tailings spill at Churchrock, on the Navajo Nation. On July 16, 1979, a uranium tailings dam broke, and swept 100,000 tons of radioactive uranium mill tailings downstream possibly contaminating livestock of the Navajo peoples.

(3) Opposition to the proposed Waste Isolation Pilot Project for storage of high and low-level military nuclear waste near Carlsbad, New Mexico.

CURRENT

TITLE: EXPARTE PROCEEDING ON DAVISVILLE DAM PROJECT

CONTACT: TIM MILLS, J.D. 1982
BECKY SCHAFER, J.D. 1982

TIMEFRAME: 1981-1982

GOAL: OPPOSING THE PRELIMINARY PERMIT AND APPLICATION FOR A LICENSE FOR CONSTRUCTION OF A HYDRO-ELECTRIC PROJECT

This is an action by riparian landowners to stop the flooding of their land. Petitioners have studied the regulations and followed administrative proceedings by filing a "comment" with the Federal Energy Regulatory Commission. They may file a petition to intervene at a later date.

CURRENT AND PROPOSED

TITLE: BUILDING SMALL-SCALE POWER PLANTS

CONTACT: JOHN VANACORE (A GARBAGE-BURNING PLANT) J.D. 1983
ART BRENNAN (A HYDRO-ELECTRIC PLANT) J.D. 1983

TIME FRAME: VANACORE: BEGINNING 1982 OR 1983
BRENNAN: BEGAN 1979

GOAL: VANACORE: A BUSINESS VENTURE
BRENNAN: SELF-SUSTENANCE

Vanacore worked in garbage-burning plants prior to law school. After exploring the legal problems of permitting in New Hampshire, the Environmental Protection Agency regulations for burning paper and plastic, and local town ordinances for such power plants, John will act on building his plant.

Brennan secured a piece of land in Weare on the Piscataquog River. An old mill site stood on the land. After discussing his plans with the Water Resources of New Hampshire people, and collecting information on hydroelectric turbine manufacturers, he is ready to move on the project. All that remains is a study on the engineering involved, and interested investors. The plant will be a small, seven-kilowatt plant. It lies near power lines for easy entrance into the utility system.

TITLE: REPRESENTING COGENERATORS

CONTACT: LARRY PLITCH, SENIOR RESEARCH FELLOW, ELI, J.D. 1978

TIME FRAME: FALL 1981 - JULY 1982

GOAL: ASSIST THE ENERGY LAW INSTITUTE IN ITS TRANSITION FROM UNITED STATES GOVERNMENT SPONSORED RESEARCH TO PRIVATELY FUNDED CONSULTING WORK TARGETING COGENERATORS AS A SPECIFIC POTENTIAL CLIENT GROUP FOR MARKETING INITIATIVES.

One of the Energy Law Institute's more attractive markets for short-term private legal consulting activity involves industrial and commercial cogeneration. Many concerns ranging from apartment buildings in urban centers to paper/pulp plants in forestry areas can benefit greatly from the energy efficiencies that cogeneration offers. Through such measures, as upgrading boiler capacities, self-generation of power and selling excess electricity to local utilities (at marginal cost based rates), hundreds of enterprises could realize significant energy savings.

The Energy Law Institute is ideally suited to assist these potential cogenerators in several ways. Services can include: coordinating (packaging) and assisting in the procurement of the requisite engineering and architectural servies, arranging for and advising on the various financial strategies available, negotiating purchase power contracts with utility companies and representing the client in any legal action that may be necessary, including public service commission proceedings and appeals there from.

Activity in the private sector is needed to stabilize Energy Law Institute's financial situation as the Reagan Administration radically reduced the funding capabilities of federal agencies.

PROPOSED

TITLE: CONFERENCE FOR THE NORTHEAST ON THE IMPACT OF THE PUBLIC ITILITIES REGULATORY POLICIES ACT ON DISPERSED POWER PRODUCTION

CONTACT: LARRY PLITCH, SENIOR RESEARCH FELLOW, ELI, J.D. 1978

TIME FRAME: FALL/WINTER 1981

GOAL: EXPLORE HOW THE PUBLIC UTILITIES REGULATORY POLICIES ACT (PURPA) HAS ENCOURAGED DISPERSED POWER PRODUCTION

The Energy Law Institute is presently exploring the possibility of jointly conducting with a prominent Washington, D.C. law firm, a two-day conference on this topic.

Discussion at the conference would focus the affects of PURPA on the development of decentralized power production. This idea focuses on the transition from large, fossil-fuel central generating plants to decentralized, renewable energy projects. The concept, as it is typically put forth by its proponents, usually includes the change from private utility company controlled power to local citizen organized and operated facilities, i.e. community self reliance.

Developers, policy makers, legislators, alternative energy advocates and others would be invited.

TITLE: ENERGY CONSERVATION PROPOSAL

CONTACT: WILLIAM WILSON, SENIOR RESEARCH FELLOW, ELI

TIMEFRAME: 1981 - 1984

GOAL: PROMOTE ENERGY CONSERVATION IN THE EXISTING NEW ENGLAND BUILDING STOCK

This proposal would create a project team comprised of the Energy Law Institute, the New England Congressional Institute and the Technical Development Corporation. The project team will initially identify and analyze legal and institutional obstacles to the further utilization of energy conservation measures in the existing New England building stock. After this identification and analysis of conservation obstacles, the project team will develop a program to reduce or eliminate those obstacles and increase incentives for further energy conservation. In addition, the project for will provide technical assistance to legislatures, regulatory authorities and individuals in order to increase the adoption of energy conservation measures.

PROPOSED

TITLE: NATIONAL SCIENCE FOUNDATION PROPOSAL ON LOAD MANAGEMENT

CONTACT: JOHN FOX, SENIOR RESEARCH FELLOW IN ECONOMICS
PETER BROWN, DIRECTOR OF THE ENERGY LAW INSTITUTE

TIMEFRAME: BEGIN 1982
END EIGHTEEN MONTHS AFTER START

GOAL: STUDY AND MAKE RECOMMENDATIONS CONCERNING THE IMPLEMENTATION OF LOAD MANAGEMENT TECHNOLOGIES

Demand for electricity fluctuates over the day. In order to meet demands at peak times, utilities need to have additional energy-producing systems such as gas turbines. These alternative systems increase the cost of providing electric service as they are not used intensively and tend to have low thermal efficiencies. This increases the utilities' capital and fuel costs. If peak demand could be reduced the costs associated with these peaking units could be reduced, thus reducing the consumers' rates.

Two methods have been suggested for reducing peak electricity demand. First, peak load pricing could be used. This means higher prices during peak use periods to discourage consumption during peak periods. Second, load managementdevices could be used. Load managementdevices turn off certain appliances (e.g. water heaters and air conditioners) during the system peak. These methods could be considered complimentary rather than competitive.

ELI proposes to identify and study the legal and institutional barriers to the implementation of direct load management in the United States. The United States has lagged far behind Europe in implementing load management in spite of it advantages. Thus it is reasonable to suspect that there are strong legal and institutional barriers to the implementation of direct load management in the United States.

PROPOSED

TITLE: SOLAR EASEMENTS

CONTACT: MARCUS HURN

TIME FRAME: 1981

GOAL: SMALL RESEARCH PROJECT, perhaps generation of forms for creation of such easements in N.H. or other states.

Lacking a doctrine of ancient lights or solar energy conscious building code design for many years, U.S. law is not safe for the dweller in a solar house who is near enough to a property line to get a shadow from new construction. Answer—get easements and covenants. Such incorporeal heriditaments are tricky to design without loopholes or deal-killing over-drafting. Might look toward a do-it-yourself kit (1?) or some sort of pamphlet for lay people interested in solar rights.



PROPOSED

TITLE: FORMULATION OF A NATIONAL ORGANIZATION THAT COULD ASSIST AND ADVISE PEOPLE WHO ARE INTERESTED IN SMALL-SCALE POWER GENERATION, AND TWO SPIN-OFF PROJECTS:
(1) THE ESTABLISHMENT OF A MONTHLY PERIODICAL DEALING WITH SMALL-SCALE POWER GENERATION
(2) FORMULATION OF A LOBBYING GROUP FOR SMALL-SCALE POWER GENERATION PRODUCERS

CONTACT: JOHN VANACORE J.D. 1983

TIME FRAME: BEGINNING 1982

GOAL: SEE TITLE

"At present, the government is the only group who is supplying data and support to people interested and already involved in small-scale power generation. The Department of Energy, in conjunction with the Public Utilities Regulatory Policies Act, has a monopoly in this area. Given that the political forces in this country are usually in a state of flux, along with funding and information dispersal services, it is apparent that some sort of private organization is needed to provide security to people who want to take advantage of low head hydro plants, or similar small-scale power generation plants. A national organization of this type could be headquartered at Franklin Pierce Law Center.

"This national organization could be administered through a board of directors or similar group who would produce the monthly periodical and perhaps direct a lobbying group. The organization could be supported through membership fee, subscription to the periodical, and advertising revenues.

"The periodical could be in a monthly format. Each issue would be colored in a specific manner, such as, one issue could highlight Northeast Hydropower, another issue could highlight Northeast Wind Generation, a third issue could highlight West Coast Hydropower. A fourth issue could discuss geothermal power production. A fifth issue could focus on the use of garbage for power production."

Subscribers to the publication would be small-scale power producers and related industries. The Franklin Pierce Law Center institutes have already been exposed to contacts in the field, and by developing such a national organization, the Law Center could expand its contacts in the private sector.

The national organization could collect and make available legal information and business data concerning small-scale power production, and also have access to technological data from other sources, such as Massachusetts Institute of Technology. The organization would provide a strong law/science interdisciplinary connection for Franklin Pierce Law Center.

TITLE: RADIOPOLLUTANT RELEASES TO THE ATMOSPHERE FROM STANDARD DESIGN NUCLEAR POWER PLANTS--A CONTINUING STUDY

CONTACT: AL PAYNE , J.D. 1982

TIME FRAME: 1979-1984

GOAL: AID ENVIRONMENTAL PROTECTION AGENCY, AND NUCLEAR REGULATORY COMMISSION IN FORMULATING AND/OR VERIFYING EMISSION RELEASE REGULATION

One paper was published in June, 1981 as an Environmental Protection Agency Environmental Monitoring Report, titled "Atmospheric Releases from Standardized Nuclear Power Plants: A Wind Tunnel Study." Two more parts of this study are to be published. Their titles are:

"Diffusion in the Vicinity of Standard Design Nuclear Power Plants, Part I: Evaluation of Diffusion Parameters in a Simulated Neutral Atmospheric Boundary Layer"

"Diffusion in the Vicinity of Standard Design Nuclear Power Plants, Part II: Evaluation of Diffusion Parameters Downwind of Two Standard Design Nuclear Power Plants"

CURRENT

TITLE: DETECTION PROCDURES FOR PESTICIDES IN FOOD, SOIL, WATER AND NON-TARGET ORGANISMS FOR ILLEGAL RESIDUES

CONTACT: JOE MAJKA, J.D. 1983

TIMEFRAME BEGAN IN SUMMER 1981 - INDEFINITELY

GOAL: SEE TITLE

CURRENT

TITLE: ENVIRONMENTAL LAW CLINIC

CONTACT: CAROLYN W. BALDWIN, ESQ. , DIRECTOR, ENVIRONMENTAL LAW CLINIC

TIME FRAME: 1978-PRESENT

GOAL: TO FOSTER AND PROMOTE THE USE OF LAW TO CONSERVE AND ENHANCE IN THE PUBLIC INTEREST THE NATURAL RESOURCES OF THE STATE OF NEW HAMPSHIRE . . . AND THE WISE USE OF THOSE SAME NATURAL RESOURCES.

The Environmental Law Clinic provides New Hampshire citizens, municipal boards and commissions, planning agencies and environmental groups with a source of legal information. It further serves as a central resource in the state to identify common land use and environmental problems and to develop creative, viable legal solutions.

Students review New Hampshire legislation and court opinions, including Superior Court opinions, which affect land use and environmental concerns in the state, for publication in a Quarterly newsletter. Other types of projects include memoranda in response to queries directed to the Clinic, preparation of briefs in suitable cases, research and document preparation for private attorneys working on land use or environmentally related cases, and legislative drafting.

A weekly seminar is held in conjunction with the Clinic. During these sessions the group takes a broad look at the interplay of federal, state and local government law in the regulation of land use and protection of the environment. The seminar considers some of the economic and social factors, along with scientific concerns, that enter into decisions on these matters, and the economic and social ramifications of such decisions. Guests from appropriate disciplines are invited to participate from time to time in the seminar sessions.

Typical of the issues researched by the Clinic are:

* Solar access: private land-use control mechanisms to assure continuing access to sunlight for solar heating devices

* Merger of contiguous parcels in common ownership

* Methodology for environmental zoning--wetlands, steep slopes, shorelands, aquifer protection, etc.

* Obligations of towns to take over private roads in a development

* Taxation of property subject to conservation restrictions

PROPOSED

TITLE: WORKSHOP AND HANDBOOK FOR LOCAL OFFICIALS AND CONCERNED CITIZENS

CONTACTS: ENVIRONMENTAL LAW COUNCIL OF NEW HAMPSHIRE / ENVIRONMENTAL LAW CLINIC

CAROLYN W. BALDWIN, DIRECTOR, ENVIRONMENTAL LAW CLINIC

TIME FRAME: 1981-1982 (A THREE-MONTH PERIOD)

GOAL: THIS WORKSHOP, AND THE HANDBOOK PREPARED TO ACCOMPANY IT, ARE DESIGNED TO INTRODUCE LOCAL OFFICIALS, INCLUDING SELECTMEN, PLANNING BOARD MEMBERS AND CONSERVATION COMMISSIONERS, AS WELL AS CONCERNED CITIZENS, TO THE NEW HAMPSHIRE HAZARDOUS WASTE LEGISLATION AND REGULATIONS. "THIS WORKSHOP WILL FOCUS ON LEGISLATION, ADOPTED IN THE CURRENT SESSION OF THE NEW HAMPSHIRE LEGISLATURE, PROVIDING A MECHANISM FOR SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES. AN UNDERSTANDING OF THE BILL THAT OUTLINES A PROCESS FOR LOCAL AND STATE INVOLVEMENT IS ESSENTIAL IF ANY SITING PROPOSAL IS TO BE SUCCESSFUL."

Both the Environmental Protection Agency and the state of New Hampshire have recognized that to be politically acceptable, the process of facility siting must involve extensive citizen understanding and input. The entire matter of waste disposal has a severe credibility problem which will not easily be overcome. By adopting legislation that involves local input from the very beginning, the New Hampshire legislature has attempted to provide a framework in which the necessary education, exploration and negotiation can take place with a minimum of public alarm and political grandstanding.

The Environmental Law Council proposal will address New Hampshire legislation specifically and focus on the methods designed by this state to meet the requirements of RCRA and the need to site disposal facilities.

We have counseled communities and citizens' groups concerned about hazardous waste issues and have reviewed the proposed regulations and legislation before its final adoption. The Clinic has accumulated a substantial collection of materials on the law relating to hazardous waste, both federal and state. We are in frequent contact with the State Planning Office and the Bureau of Solid Waste Management, and work closely with them on any undertaking that relates to the development of a successful program for managing hazardous wastes in New Hampshire.

Both the Clinic and the Council members are familiar with the workings of New Hampshire legislation and town government. We have close ties with other agencies that work with municipalities, in particular the New Hampshire Municipal Association and the regional planning agencies, as well as the State Planning Office.

A handbook will be prepared, designed both to accompany the workshop and to stand as an independent reference work for the use of New Hampshire town officials who may be called upon to deal with a hazardous waste facility proposal.

See Carolyn Baldwin for more details.

PROPOSED

TITLE: RADIOACTIVE WASTE DISPOSAL DECISIONS AND THEIR EFFECT ON SUCCESSIVE GENERATIONS

CONTACT: BRUCE DEMING , J.D. 1983

TIME FRAME: 1981-SPRING 1982

GOAL: STUDY OF THE TECHNICAL/MORAL DILEMMAS INVOLVED IN NUCLEAR FUEL CYCLE ISSUES

Through workshops or lectures, an interchange of philosophical and technical viewpoints on the nuclear fuel cycle could be established. Possible topics might include nuclear waste disposal issues, strategic arms limitations dilemmas, and the roles lawyers might play in addressing these concerns. Outside speakers from such institutions as the Nuclear Regulatory Commission, the United States Air Force, academic institutions, and public utility organizations could serve to broaden participants' knowledge and awareness of fuel cycle issues. Because of the number of technical fields represented within the student body at Franklin Pierce, educational activities in this area would prove to be of significant value to all those involved.

PROPOSED

TITLE: WATER: SOLUTIONS FOR EAST COAST SCARCITY

CONTACT: JOEL RUSSELL, SENIOR RESEARCH FELLOW, ELI

TIME FRAME: 1981-1982

GOAL: MODEL FOR EAST COAST WATER PLANNING

In the West, legal institutions play an active role in allocating water uses. In the East, no such legal framework exists. The solutions in the West are not easily translated into the Eastern setting because of different topography and water supply. Institutions and structures developed for western water conservation can not be exactly duplicated in the East.

Active work in water law for innovative legal and technical solutions is needed. The issues could be explored and solutions proposed during a regular course on water law, a seminar or independent study project.

PROPOSED

TITLE: COMPILATION FOR REGULATORY INFORMATION SERVICE

CONTACT: JOEL RUSSELL, SENIOR RESEARCH FELLOW, ELI

TIME FRAME: 1981-1982

GOAL: EVENTUALLY, A COMPUTER DATABASE TO HOLD ALL THE INFORMATION CURRENTLY GATHERED BY ELI. COMPUTER FILES COULD BE TIME SHARED TO SUBSCRIBERS OF THE SERVICE

Because field rules and policies keep changing for scientists, engineers and technicians on an almost monthly basis, a service is needed to keep field workers up-to-date. This service could start in a few areas, such as federal environmental regulation, and then expand into state regulations and other areas of regulation.

Students could research and collect the data as well as enter it into the database system. Businessmen, scientists and others could purchase access rights to the data.

PROPOSED

TITLE: A BIOLOGISTS MANUAL FOR ASSESSING SMALL SCALE POWER PLANTS

CONTACT: JOEL RUSSELL, SENIOR RESEARCH FELLOW, ELI

TIME FRAME: 1981-1982

GOAL: A MANUAL THAT SUPPLIES INFORMATION TO FIELD BIOLOGISTS THAT CAN HELP IN ENFORCING ENVIRONMENTAL LAWS RELATING TO POWER PLANT PLANNING, CONSTRUCTION AND OPERATION.

PROPOSED

TITLE: REVISION OF THE CURRENT NEW HAMPSHIRE MINING LAW

CONTACT: STELLA POPE , J.D. 1982

TIME FRAME: BEGINNING 1981

GOAL: A NEW LAW THAT PROVIDES CLEAR GUIDELINES AND A MEANS FOR ENFORCEMENT OF THE EXISTING LAW

As a result of a mining company's efforts to begin a granite quarry in Henniker, the present mining law was revealed to have many loopholes and confusing provisions as well as a confusing system for enforcement of New Hampshire laws. Revisions could be made if the Department of Resources and Economic Development cooperated or supported the action.

Current law states there are two different sets of rules for mining. One set is for companies that mine hard rock. The second set is for companies that mine sand and gravel. Each set of laws could use more explanation.

The laws also divide the enforcement duties into two sets, state and local enforcement duties. But the duties lack instructions on how to fulfill the obligation. A revised law could provide this information so local and state officials can best enforce the law.

PROPOSED

TITLE: CLEANING UP HAZARDOUS WASTE IN NEW HAMPSHIRE

CONTACT: NANCY METZ , J.D. 1977, DIRECTOR, ENTREPRENEURIAL WORKSHOP

TIME FRAME: ONE SEMESTER

GOAL: ESSAY

Materials have already been collected on this topic by a previous student in the Entrepreneurial Workshop. At this point, the materials need to be updated and organized into a form, suitable to be sent to the New Hampshire legislature, town governments, or a New Hampshire commission that deals with this topic.

This material is open to anyone from the law center who would like to use it.

HEALTH LAW

CURRENT

TITLE: 1981 ATLA SURVEY ON JURY VERDICTS

CONTACTS: EDIE PARKER (COORDINATOR), J.D. 1981
ELLEN REINHART , J.D. 1982

TIME FRAME: BEGAN 1980
END: FALL 1981

GOAL: A STUDY ON JURY VERDICTS IN NEW HAMPSHIRE

There has been no complete guide for litigators concerning jury reactions to various personal injuries cases or other civil actions. For instance, the survey contains data on the average award by New Hampshire juries for loss of a limb.

Editing of the survey is still in progress. Help is apparently welcome.

CURRENT

TITLE: ALTERNATIVES TO CURRENT LOOKALIKE GENERIC DRUGS

CONTACT: DAVE BOBB , J.D. 1983

TIME FRAME: STARTED SPRING 1981

GOAL: A SHORT PAPER TO BE SUBMITTED TO THE OHIO STATE PHARMACEUTICAL ASSOCIATION MONTHLY JOURNAL

Preliminary research has been done. Writing is the next step.

CURRENT

TITLE: THE FAMILY AND HOUSING LAW CLINIC OF FRANKLIN PIERCE LAW CENTER.

CONTACT: BRUCE FRIEDMAN, DIRECTOR , FAMILY AND HOUSING LAW CLINIC
ELLEN MUSINSKY, ASSISTANT DIRECTOR , FAMILY AND HOUSING LAW CLINIC

TIMEFRAME: 1977 - THROUGH PRESENT

GOAL: SERVE THE LOCAL CONCORD AND SURROUNDING COMMUNITIES' FAMILY AND HOUSING NEEDS AND RELATED LEGAL PROBLEMS

The Family and Housing Law Clinic does two kinds of cases that could be considered of a law/science nature(1)Cases that tie into the principles of child development - in which social workers, psychologists and psychiatrists are utilized in developing the case, and (2) Disability cases that involve medical reports, psychiatric evidence and standards.

In the Spring, the Clinic may be offering a program on administrative advocacy that primarily focus' on disability cases. It is anticipated that the course will be open to second year students. Students will be able to handle clients from the interview stage to the hearing before the administrative judge.

CURRENT

TITLE: HUMAN LEUCOCYTE ANTIGEN BLOOD TEST QUESTION

CONTACT: ELLEN MUSINSKY OR BRUCE FRIEDMAN OF THE FAMILY AND HOUSING LAW CLINIC

TIMEFRAME:BEGAN 1980 END IS UNDEFINED

GOAL: INVESTIGATION ON HUMAN LEUCOCYTE ANTIGEN BLOOD TEST EVIDENCE PROBLEMS

"Is it really admissible in paternity cases to use the Human Leucocyte Antigen Blood Test"? Should it be admissible in court?

The issue raises the appropriate use of HLA as scientific proof in the courts. Though decided in many states, the issue is open in New Hampshire. Research is on hold as pending cases raising the issue have settled."

TITLE: LIMITS OF LIFE

CONTACT: LANCE SHADER, J.D. 1982

TIME FRAME: AN ONGOING AREA OF INTEREST

GOAL: LAW REVIEW ARTICLE

"The law has been characteristically described as always lagging behind the latest technological developments. Nowhere is this fact more painfully evident than when a society attempts to define at what point a human being is alive.

"Traditionally, the medical profession has relied upon the lack of respiration and pulse as indicators of death. The law was pleased to follow along with this definition. With the advent of sophisticated resuscitating techniques and life-prolonging machinery, it became evident that a second definition of death had emerged: cerebral death'. And so, in cases in which decerebrate patients are being sustained by machinery, or patients with extensive brain injury are being considered as potential organ donors, there develops a wide split of opinion as to which definition of death to apply. Because life was traditionally discussed in cytological terms (the life of a human as living tissue), but now is discussed in 'quality of life' terms, the definition of life has been taken out of the solely medical realm.

The solution to a standardized and generally accepted definition of life now awaits discussion by lawyers, legislators, theologians, ethicians and philosophers in conjunction with the medical profession.

Although they are not usually discussed in the same context, the status of a human embryo and of a decerebrate patient in a vegetative state are logically linked together by society's definition of life. The milieu about the right to life of a fetus or a comatose catatonic patient, the ethics of taking an organ from one to give to another, the obligation imposed by law or the doctor to use 'extraordinary means' to prolong life, and other difficult issues, has its origin in defining what is or is not alive.

For the semester's work I catalogued and analyzed the many current definitions--medical, legal, religious.

Also, I wrote a brief discussion of philosophical, ethical, anthropological and psychological viewpoints on what constitutes a human being, emotional attachment to the physical body, and the fear of mortality.

My objective was to publish a law review article that collated and catalogued the cornucopia of definitions of life from conception to burial."

Any further activity or research in this area would still be of interest.

CURRENT

TITLE: SOCIAL AND LEGAL ASPECTS OF HEALTH CARE FINANCING: AN OVERVIEW

CONTACT: AL PAYNE , J.D. 1982

TIME FRAME: 1980-1982

GOAL: A PAPER AND DISCUSSION OF SUBJECT MATTER

"During the past year I studied under Professor Ken Wing, who has a dual teaching position in the School of Public Health and the School of Law at the University of North Carolina." The paper was a product of the two-semester undertaking. Any continued discussion in this area would be welcome.

CURRENT

TITLE: GUIDE ON THE MINIMUM STANDARDS FOR CONDITIONS FOR CONFINEMENT WITH ALL JAILS IN NEW HAMPSHIRE, PARTICULARLY REGARDING LIGHT AND AIR VENTILATION

CONTACT: ARPIAR SAUNDERS , ASSOCIATE DEAN OF ACADEMIC AFFAIRS, ASSOCIATE PROFESSOR OF LAW

TIME FRAME: 1980-1982

GOAL: PRODUCTION OF A GUIDE DEALING WITH SENSORY DEPRIVATION QUESTIONS

Prisons regulate inmate behavior in a variety of ways. Physical space, light, heat, food are all apportioned to prisoners without their control. This guide would examine the health problems people suffer when physically regulated to amounts of light, heat and air. Both physical and mental problems are being considered. The prisons are catalogued according to their physical characteristics, and trends will be noted if certain problems occur more frequently in certain prisons with certain characteristics.

Health records of prisoners, architecture of the prisons, and behavior patterns for inmates within the prisons, will be examined.

CURRENT

TITLE: CANCER POLICY IN THE UNITED STATES DURING THE PRE-REAGAN ADMINISTRATION

CONTACT: DR. JERRY COHEN ,J.D. 1980
NANCY METZ , J.D. 1977, DIRECTOR, ENTREPRENEURIAL WORKSHOP

TIME FRAME: AN ONGOING PROJECT

GOAL: A WORKSHOP

"Cancer policy is a much bandied expression in the federal agencies today. Although various pronouncements suggest an integrated comprehensive intonation to this simple phrase, realities emerge in a different vein. In truth, United States cancer policy is an amalgam of various laws, regulations, and extrapolations from scientific data which vainly strive to achieve the comprehensive end result desired. Furthermore, the very scheme of administration lacks the cohesive efficiency to emerge successful. Finally, the name of the amalgam itself, cancer policy, belies an overall regulatory approach, whereas, in truth, it touches just one aspect of a much larger problem.

"Attempting to criticize cancer policy is like trying to dissect a pile of thorns covered with jelly. Each time you pull out a thorn some jelly comes with it. Each time you approach one regulatory modality you find yourself back in the initial policy considerations which gave rise to the entire mass. Whether one approaches case law, regulation, or the foundational statutes, certain basic policy considerations constantly emerge--either simplistically or dressed in scientific garb, adorned with statistical proofs."

-from Dr. Cohen's manuscript
on the subject

CURRENT

TITLE: A PATIENT'S RIGHT TO REFUSE TREATMENT

CONTACT: NANCY METZ, J.D. 1977

TIME FRAME: 1981-1982

GOAL: A WORKSHOP OR ESSAY OR ACADEMIC CREDIT

Whether a patient has the right to refuse treatment or a drug is not clear under current state law. Research on this issue could provide information useful to lawyers and health care professionals. A student could work on this through the Entrepreneurial Workshop or the Health Law Institute.

PROPOSED AND CURRENT

TITLE: MULTIDISCIPLINARY STUDY ON THE IMPACTOF COURT AND COURT PROCESS ON CHILDREN

CONTACTS: BRUCE FRIEDMAN, DIRECTOR, FAMILY AND HOUSING LAW CLINIC
SUSAN MATTICE ,STUDENTS OF THE 1981 CHILDREN'S RIGHTS CLASS CLINIC STUDENTS, AND CERTAIN INDEPENDENT STUDY STUDENTS

TIME FRAME: SEPTEMBER 1980-SUMMER 1981

GOAL: 100-PAGE REPORT THAT DISCUSSES THE IMPACT ASPECTS OF THE EFFECT OF THE JUDICIAL SYSTEM ON CHILDREN

This research/action project by the Franklin Pierce Family and Housing Law Clinic examines and responds to problem areas within selected of New Hampshire's justice system which might contribute to various problems among children and youth. The ultimate goal is to identify and avoid possible behaviors which, however well-intentioned, nonetheless contribute to delinquency and further contact with the criminal justice system.

Through the efforts of a variety of professionals, and through appropriately chosen methodological techniques (including interviews, surveys, literature review, and construction of model service delivery system), several related goals are being met.

The project goals are:

A) To provide sorely needed data regarding the impact of court procedures and the roles and behaviors of attorneys on juveniles from high-risk families.

B) To reduce adverse consequences on juveniles of certain court processes, counselling and lawyering practices on juveniles.

C) To provide the research needed to allow the Court to avoid the adoption of procedures demonstrated to be problem-producing elsewhere.

D) To recommend specific procedures and statutes to lessen delinquency and eventual commitments to Youth Detention Centers.

E) To cooperate with the following agencies and examine the effectiveness of the following items:

1) the Mediation Project
2) the Guardian Ad Litem Statute (RSA 458:27)
3) the new domestic violence statute (RSA 173) and program
4) the new juvenile code (RSA 169:B)

The New Hampshire Crime Commission awarded us a grant entitled: Juveniles for Justice.

Scope and Limitations

The study has been divided into two research efforts. One component is a survey of the Clinic's terminated population. This research is intended

to explore five questions:

1) What type of family does the Clinic serve? Do our families tend, for instance, to represent violent families, alcoholic families, or other disturbed family systems? If this is the case, does the legal system treat these families in a different fashion than those families not noted to have these types of problems?

   A) If these disturbed family systems are treated differently, are they referred for counseling? Are guardian ad litems appointed for the children? If so, can we document any differences in family adjustment post-divorce between families with intervention and families without intervention?

2) What happened post-divorce to women who were awarded physical custody of the children? Have finances changed drastically post-divorce, and if so, how have these changes affected family adjustment?

3) Is the legal system doing its job? The adversarial system ultimately demands compromise and agreement. These agreements become stipulations and proposed decrees which are finally ruled on in a court of law. Generally non-custodial parents are court-ordered to pay support and visitation agreements are made. Are these stipulations adhered to (i.e., support payments), and if not, what measures are taken by the legal community to insure that these orders are met?

4) What is the level of consumer satisfaction with the legal system (i.e., with the attorney and the court process)? How does their overall satisfaction affect family adjustment?

5) Is there a pattern of increased acting out behaviors such as delinquency or school-related problems in these post-divorce family systems?

The sample population consists of clients, male and female, who have sought services related to a divorce issue, whether it be the divorce itself, custody issues, visitation, child support, or other related issues. This population had finalized divorces from one month to four years prior to the survey. Socioeconomic status is low income (i.e., a family of four's gross yearly salary can be up to $10,128) and data will pertain only to this population. Geographic area is limited to Merrimack County, New Hampshire, which is a mixture of rural and urban communities. Not all subjects will have received their final divorces with the Family and Housing Law Clinic, and comparisons will be made between Clinic intervention and private attorney intervention. All subjects have at least one child.

The second research effort will consist of two parts. One part is to survey and interview specific legal personnel (i.e., judges, marital masters, etc.) to determine their views of the divorce court system in New Hampshire. The second part is an analytical exploration into varying divorce court systems across the United States as well as a look at alternative European systems. The underlying goal of this endeavor is that as a legal clinic, it is important to be aware of changing court methods, research regarding the effects of divorce, and ultimately client satisfaction so that we can continue to provide quality service to our clientele; and as a result, we will be in a position to suggest systemic chances where appropriate.

TITLE: HEALTH LAW INSTITUTE

CONTACT: ROBERT RINES, PRESIDENT AND PROFESSOR OF LAW
ROBERT SHAW, DIRECTOR OF THE PATENT, TRADEMARK,COPYRIGHT FOUNDATION (PTC)
NANCY METZ, J.D. 1977, DIRECTOR OF THE ENTREPRENEURIAL WORKSHOP
PAUL PARNESS, J.D. 1981
PENNY COURNOYER, J.D. 1980
EVERETT WEBER, M.D., J.D. 1980
GRAHAM CHYNOWETH, J.D. 1983
HARRIET FISHMAN, J.D. 1982
WENDY BREUNINGER, J.D. 1983
MIKE GOCLOWSKI, J.D. 1983
DAVE BOBB, J.D. 1983
CHURCH STAFFORD, J.D. 1983
RICK SAGER, J.D. 1983
GERRY COHEN, M.D., J.D. 1980
SCOTT PETERSON, J.D. 1983
TIM MILLS, J.D. 1982
MARK WISNER, J.D. 1982

TIME FRAME: 1981-1982, THOUGH SOME PROJECTS HAVE LONGER DURATION

GOAL: SOLVE HEALTH CARE LEGAL PROBLEMS BY PROVIDING AN ALTERNATIVE MEANS OF EDUCATION FOR LAW STUDENTS AND HEALTH CARE PROFESSIONALS INTERESTED IN HEALTH LAW

There are several aspects to the Health Law Institute:

A) One-day workshops are being planned for fall and spring (Fishman and Chynoweth).

B) An interface is being worked on with Dartmouth Medical School so that law students can take courses that deal with the legal aspects of medicine (Chynoweth).

C) One student (Stafford) is working on developing contacts with hospital administration to start joint lectures or seminars.

D) Several FPLC students and faculty are working with Massachusetts Institute of Technology trouble shooting the legal problems of Food and Drug Administration regulations pertaining to medical devices that the Harvard/M.I.T. Biomedical Engineering Center is developing (Peterson, Shaw, Metz, Chynoweth, Wisner, Mills).

E) One student (Breuninger) is developing contacts with attorneys in the field through American Bar Association sections, (TIPS) Torts and Insurance Practice Section, Science and Technology and Forum Committee on Health Law .

F) Commitment procedures in New Hampshire mental hospitals are being studied (Metz).

G) Seminars on informed consent and medical records are being roughed out (Metz). Students can work on these from the point of initial research to complete administration of the seminar.

H) Development of a clearing house on health law and law/science topics could occur (Bobb). Such a clearing house could have the Health Law Institute personnel interacting with members of the Law/Science Working Group. The clearing house could be a special service to hospitals, doctors and pharmacists, as well as lawyers in the health law area. It could be another community outreach program. It could be tied into the Franklin Pierce Law Center DATABASE as developed by Hugh Gibbons, Chris Clark and Scott Peterson.

PROPOSED

TITLE: ONE-DAY CLINIC ON TRIAL TECHNIQUES FOR HEALTH LAW LITIGATORS

CONTACT: MIKE GOCLOWSKI , J.D. 1983

TIME FRAME: PLANNING: FALL 1981
IMPLEMENTATION: SPRING 1982

GOAL: SEE TITLE

After working with a trial attorney for one summer, and seeing the quality of litigators in the health law field, it could be helpful for young attorneys, or new attorneys to the field, to gain pointers on health law litigation. A one-day clinic with successful health law litigators could be a profitable and useful option for New Hampshire attorneys.

The Clinic could have lectures, a sample trial, and discussion period with the experts.

PROPOSED

TITLE: DEATH AND DYING WORKSHOPS SYMPOSIA

CONTACTS: RICK SAGER, J.D. 1983
WENDY BREUNINGER, J.D. 1983
CHURCH STAFFORD, J.D. 1983
DAVE BOBB , J.D. 1983
NANCY METZ , J.D. 1977
GREG ULIASZ , J.D. 1983
PENNY COURNOYER, J.D. 1980
PETER MINKOW, J.D. 1981
LANCE SHADER, J.D. 1982

TIME FRAME: 1981-1982

GOAL: ONE-DAY PROGRAM

Various students have had experience with Hospice, Death and Dying courses, and organizations who deal with those problems. Some students wrote papers (Sager), entered essays in competitions with that theme (Bobb & Bruninger) and worked in that area (Stafford, Connoyer).

Now an attempt is being made to bring in lecturers for a one-day program in the fall. It is hoped that the program will attract students from other law schools as well as students from nursing schools, medical schools, schools of gerentology and similar fields.

Attorneys as well as professionals from other fields will be invited. Continuing Education credit could be arranged for the health care professionals.

Presently there is no official coordinator of this project at this time--just a small group of interested students and alumni. Some funding for a workshop can be secured through the Law Student Division of the American Bar Association, the Student Interdisciplinary Council.

PROPOSED

TITLE: A RELATIONSHIP BETWEEN FRANKLIN PIERCE LAW CENTER AND THE WHOLISTIC HEALTH COMMUNITY IN CONCORD, NH.

CONTACT: RUTH SCRIBNER, ASSOCIATE PROFESSOR OF LAW
DR. STEPHEN BELL, NORTH STATE STREET, CONCORD
KATHLEEN KLINA, PETERBOROUGH

TIME FRAME: BEGINNING 1981
END DATE UNCERTAIN

GOAL: A PANEL DISCUSSION AND/OR EXCHANGE OF SERVICES BETWEEN THE TWO COMMUNITIES

The relationship could be between law students, faculty and staff and the twenty or so members of the wholistic health community in Concord. The wholistic health professionals include chiropractors, psychiatric nurses, and others. The group of professionals is interested in securing state legislation that would be favorable to their art.

The panel discussion could open up a discourse between the two groups to see what each can do for the other. An exchange of services could evolve with members of the wholistic health community. For instance, wholistic health community professionals could help anxiety prone first year students. In exhange, Franklin Pierce Law Center students could help wholistic health community members with legislative strageties and licensing problems.

PROPOSED

TITLE: ONE DAY CONFERENCE FOR LAWYERS AND JUDGES ON CHILD DEVELOPMENT AND THE LAW

CONTACT: BRUCE FRIEDMAN, DIRECTOR, FAMILY AND HOUSING LAW CLINIC

TIMEFRAME: TENTATIVELY TO RUN IN NOVEMBER 1981

GOAL: DISCUSS IMPLEMENTATION PROCEDURES AND IMPLICATIONS OF THE NEW JOINT CUSTODY LAW AND OTHER ASPECTS OF CHILD DEVELOPMENT AS IT RELATES TO THE LAW

The conference could be co-sponsored by another source. Most likely, the Comprehensive Children and Youth Project.

PROPOSED

TITLE: BEHAVIOR MODIFICATION IN PRISONS AND/OR MENTAL INSTITUTIONS

CONTACT: MARCUS HURN (DEAN SAUNDERS ALSO INTERESTED)

TIME FRAME: 1981-1982

GOAL: RESEARCH & WRITING, PERHAPS SOME HELL RAISING

Dr. Frankenstein is alive and working in penology. Unfortunately he is not confining his practice to the deceased. Seriously, there is a constant, diversified pressure to use experimental techniques of operant conditioning, electro-stimulation, and or drugs, to "fix" convicts and mental patients. Modern experiments have included use of a hypnotic drug which paralyzed the voluntary muscles leaving the victim of aversive therapy terrified and helpless on a respirator while an authority figure made use of his highly suggestible state to lecture on the need for reform. Proposals have been published to require remote EEG transmitters be implanted in parolees convicted of violent crime, to allow monitoring of their excitement levels, perhaps coupled with remote release of implanted drugs. Simple time release implants are already feasible. Constitutional and legal controls are a muddle. Courts seem bizarrely deferential to "scientific experts." Lots of variations for narrow study. Work on a more general analysis might have to go in stages or be divided by a group.

PROPOSED

TITLE: A STUDY ON INSTITUTIONAL HEALTH CARE: THE PRISON SYSTEM

CONTACT: ARPIAR SAUNDERS , ASSOCIATE DEAN FOR ACADEMIC AFFAIRS
BRUCE FRIEDMAN , DIRECTOR, FAMILY AND HOUSING LAW CLINIC

TIME FRAME: 1981-1982

GOAL: A FEASIBILITY STUDY ON HOW COMPUTERS AND OTHER METHODS COULD MAKE THE PRISON HEALTH CARE SYSTEM MORE EFFICIENT

The processing of health care records in prisons could possibly be more efficient through the use of computers or a new system of record-keeping. Problems developed in the past when prisoners were transferred and their health files failed to totally transfer with them. A computerized system for prison doctors and wardens could speed up access to the health care information and provide for complete histories on each inmate.

This study is currently in the planning stage. More data will be available from Arpy Saunders in mid-fall 1981.

PROPOSED

TITLE: CLAIMS BY VICTIMS OF BLACK LUNG DISEASE: A STUDY

CONTACT: VINCE DOOLEY , ATTORNEY AT LAW, FACULTY OF FPLC

TIME FRAME: 1981-1982

GOAL: INVESTIGATION OF CURRENT FEDERAL FUNDING METHODS FOR BLACK LUNG DISEASE VICTIMS

In 1977 the Congress passed a bill declaring "all victims of Black Lung Disease must be compensated." The bill established a fund for initial compensation. In 1978, Congress amended the bill forum so that claims that come under state Workmen's Compensation claims may be handled by many different private companies, and as a result, the 1978 legislation presents a problem of proration on these successive companies.

Dooley would be interested in discussing this project with any interested party. He would prefer that someone wrote a paper first, let him look at it, and then kick around ideas. Attorney Dooley is primarily interested in the indentification of problems associated with this problem.

HIGH TECHNOLOGY

TITLE: CURRENT TECHNOLOGY, HOW IT WORKS
(LAW/SCIENCE WORKING GROUP, IN-HOUSE LECTURE SERIES)

CONTACTS: WAYNE TRAYNHAM, J.D. 1981, NANCY METZ, J.D. 1977

TIME FRAME: THE SERIES RUNS (OR TRIES TO RUN) EVERY YEAR

GOAL: BASIC INFORMATION FROM IN-HOUSE EXPERTS AND FREE EXCHANGE OF VIEWS ON SCIENTIFIC ISSUES

The Law/Science Working Group is made up of people with various scientific talents and backgrounds. Invoked to provide a forum for informal exchange the series can be done by students, faculty, staff and alumni. The forum is open to anyone who would like to discuss a law/science issue. Topics in the past have included how nuclear power plants and computers work and what pharmacists and toxicologists do.

CURRENT

TITLE: PREPARING A DATA BANK FOR A COMPUTER-SUPPORTED ANTI-TRUST CASE

CONTACT: MICHAEL WALKER, J.D. 1983

TIME FRAME: BEGAN SPRING 1981; END FALL 1981

GOAL: AN IN-HOUSE LEXIS-TYPE SYSTEM FOR ALL PRETRIAL DISCOVERY MATERIAL

This is part of a job experience with American Legal Systems. Most of the work relates to information transfer.

CURRENT

TITLE: REASONABLE ROYALTIES IN DIFFERENT INDUSTRIES FOR HIGH TECHNOLOGY PRODUCTS

CONTACT: BOB SHAW, DIRECTOR OF PATENT/TRADEMARK/COPYRIGHT FOUNDATION

TIME FRAME: 1980-FALL 1981

GOAL: STATISTICAL ANALYSIS

This study is to learn what constitutes reasonable royalties for different products in different industries. For instance, what is the reasonable royalty for a piece of computer hardware? Should the inventor ask $500,000.00, or $1,000,000,000.00, or be content with $100.00 a month? The study is a Patent/Trademark/Copyright Research Foundation Project. The results will be in the form of a statistical analysis, utilizing data obtained through a survey of member companies of the Patent/Trademark/Copyright Foundation.

CURRENT

TITLE: STUDY ON ARBITRATION TO EXPEDITE RESOLUTION OF DISPUTES INVOLVING HIGHLY TECHNICAL ISSUES OF FACT

CONTACT: BOB SHAW , LECTURER IN LAW, DIRECTOR, PATENT/TRADEMARK/COPYRIGHT FOUND.
ROBERT RINES, PRESIDENT AND PROFESSOR OF LAW

TIME FRAME: BEGAN FALL 1980
ENDING FALL 1981

GOAL: A STUDY ON BUSINESSES WHO USE THE COURTS, ARBITRATION, AND MEDIATION

This study uses information secured from 51 of the Fortune 500 companies. It containes the reactions of legal officials regarding the way they make their legal decisions, particularly their aversion or favoring of certain methods of settling claims of unfair competition, trade secret litigation, and patent infringement suits.

Students at Massachusetts Institute of Technology assisted in the statistical compilation of the data.

The report may or may not be published at a later date.

TITLE: INTERNATIONAL TREATIES AND TECHNOLOGY TRANSFER

CONTACT: TIM MILLS , J.D. 1982

TIMEFRAME: 1981

GOAL: A SECTION OF A MANUAL CURRENTLY BEING COMPILED BY PRESIDENT RINES ON TECHNOLOGICAL TRANSFER

This section of the manual is a compilation of treaties affecting the transfer of all types of technology - patenting, licensing and know-how. Trademark and copyright transfers are also included.

The section begins with the 1883 Paris-Union Convention that covered the procedures to be used for technology transfer between about 100 nations. The United States implemented this treaty during the period 1900-1920 and ratified it during the teens. The convention sets out guidelines for how to transfer technology. It has been revised over the years, with the last revision occurring in 1975.

The section ends with the 1978 Patent Cooperation Treaty (PCT). About twelve signatories agreed to the treaty, among them the United States, Switzerland, and Germany.

The manual itself was started in 1979, this section will be completed by August 1, 1981.

PROPOSED

TITLE: INFORMAL CONFERENCE ON GENETICS RESEARCH AND THE LAW

CONTACT: HUGH GIBBONS, PROFESSOR OF LAW

TIME FRAME: PLANNING WILL TAKE SEVERAL WEEKS DURING FALL OF 1981. ACTUAL SEMINAR WILL RUN ONE DAY.

GOAL: DISCUSSION AND AN EDITED TRANSCRIPT FROM MEETINGS ON GENETICS AND HOW IT RELATES TO PATTERNS THAT RUN THROUGH THE LAW AND SCIENCE RELATIONSHIP.

PROPOSED

TITLE: LEGAL TROUBLE-SHOOTING FOR THE OIL INDUSTRY

CONTACTS: MARK CONNELLY, J.D. 1983
ROBERT SHAW, LECTURER IN LAW, DIRECTOR, PTC FOUNDATION

TIME FRAME: 1981-1983

GOAL: CONTRACTS WITH OIL COMPANIES WHEREBY STUDENTS RESEARCH THE LEGAL PROBLEMS OF CURRENTLY OPERATING DEVICES AND THOSE DEVICES ABOUT TO BE MARKETED

An attempt is being made to establish a relationship between big oil and Franklin Pierce Law Center. Two areas presently being considered are Alaskan pipeline technology and the Eastport project.

Since this project is currently in the negotiation stage, other information is confidential and can only be secured through the above contacts.

PROPOSED

TITLE: PERFORMANCE STANDARDS FOR PRODUCTS

CONTACTS: A. WEINSTEIN , RESIDENT FELLOW, PTC FOUNDATION 1981 - 1982
NANCY METZ , J.D. 1977, DIRECTOR, ENTREPRENURIAL WORKSHOP
BOB SHAW , LECTURER IN LAW AND DIRECTOR, PTC FOUNDATION
TOM FIELD , PROFESSOR OF LAW

TIME FRAME: POSSIBLY 1982 - 1983

GOAL: TO ESTABLISH A MODEL FOR ESTABLISHED PERFORMANCE STANDARDS FOR PRODUCTS IN GENERAL

The products might include ski bindings (or other sports safety equipment), headlights (or other auto safety equipment), prosthetic devices (or other medical products), and some kind of aviation safety product.

"Questions for each product could cover:

(1) Is there a standard in effect?

(2) Is there more than one standard in effect?

(3) Were there statutory constraints, and, if so, what were they? If not, what were the factors used in arriving at the standard? For example, to the extent that the named products tend to reduce a risk otherwise present, was a risk-risk calculus used?

(4) Closely related to constraints is the issue of data availability and use; for example, was/is there an adequate data base to allow effective application of mandated or optional guidelines?

(5) Somewhat related to constraints is the issue of the forum in which standards are or may be set; for example, was it private (e.g. ASTM), public (e.g. an administrative agency or a trial court), international (political?), or some combination?

"As a first step, it would seem to be useful to answer each question for each product--and perhaps, to select another example or two to fill in missing cells in the array (at a somewhat later stage). Following this, it would seem to be possible for a comparative analysis, e.g. what are the pros and cons of each forum? The ultimate goal might be to generate a model or models for the establishment of performance standards with reference to matters catalogued above and others sure to be identified. As I see it, the major contributions of technical people would be to determine how well what was said to be done was done, and how realistic, in view of numerous state of the art evaluations, proposed elements in a paradigm might be. It will be easy enough, for example, to say, in a vacuum, that certain matters need attention and quite another to assess capacity to provide such attention."

PROPOSED

TITLE: PROGRAMS ON SCIENTIFIC PROOF

CONTACTS: ROBERT RINES , PRESIDENT AND PROFESSOR OF LAW
NANCY METZ , J.D. 1977 , DIRECTOR, ENTREPRENURIAL WORKSHOP

TIME FRAME: A ONE-SEMESTER PUBLICATION PROJECT OR A TWO-SEMESTER SERIES OF PROGRAMS

GOAL: A PUBLICATION AND/OR A SERIES OF PROGRAMS

Previous programs on scientific proof examined the role of the polygraph, the use and accuracy of the oximeter (a device for testing levels of intoxication) and applied forensic dentistry. Material from these programs need to be edited for publication as a series of handbooks. Additionally, the materials could serve as the foundation for rerunning the programs at Franklin Pierce Law Center this year.

The following is an outline of part of the topics covered in prior programs:

(1) General Forensic Sciences
   A. Forensic Odontology
   B. Forensic Pathology
   C. Forensic Psychiatry
   D. Forensic Toxicology
   E. Forensic Physical Anthropology

(2) Use of Scientific Evidence
   A. Positive and Negative Personal Identification
      1. Blood Tests
      2. Teeth
      3. Finger and Body Prints
      4. Hair Samples
      5. Anthropological Examinations
      6. Eye Witness
   B. Polygraph
   C. Hypnosis
   D. Narcoanalysis
   E. Mechanical Recorders
      1. Radar
      2. Aircraft Flight Recorders
      3. Tape Recorders
   F. Intoxication

1. Breathalizer
2. Blood Alcohol Test

G. Document Examination

H. Dinton and Getler Tests

PROPOSED

TITLE: TECHNICAL INNOVATION LEGISLATION IN NEW HAMPSHIRE

CONTACT: NANCY METZ, J.D. 1977
STEVE SLOVINSKY, J.D. 1981

TIMEFRAME: A TWO-SEMESTER PROJECT

GOAL: AN ACADEMIC AND POLITICAL EXPERIENCE

Several states' legislatures have provided in their statutes for promotion of innovation.

In the past few years, some effort has been expended to determine the position of the New Hampshire legislature on this issue. Contacts were made with legislature committee members in New Hampshire of the Science and Technology Committee, and the DRED office.

TITLE: ELECTRONIC MIND CONTROL: A DISCUSSION SESSION

CONTACT: GEORGE DISHONG, J.D. 1983

TIMEFRAME: 1981-1982

GOAL: DISCUSSION OF THE POTENTIAL TECHNIQUES AS WELL AS ETHICAL PROBLEMS OF ELECTRONIC MIND CONTROL

The discussion of electronic mind control could center around feasibility, and applications. In general, if it is concluded that the electro-magnetic energy of the brain is laden with information and if this information can be decoded, then information could be supplied to the brain by generating a properly coded energy package.

If this is feasible, the technology for accomplishing the objective would be extensive; the legal and moral concerns are frightening and the extent of "good" that could be accomplished is exciting.

PROPOSED

TITLE: ELECTRONIC EAVESDROPPING: A CASE WHERE RIGHTS ORIGINALLY PROTECTED BY TECHNOLOGICAL LIMITS ARE NOW FIXED BY LAW AT THEIR PREINNOVATION STAGE

CONTACT: MARCUS HURN

TIME FRAME: 1981-1982

GOAL: HISTORICAL STUDY of the interaction between legal institutions and technology which undercut their premises.

In the days when eavesdroppers really hung from eaves and wire tappers had to tap in, the law of trespass plus the intrinsic limits on human sight and hearing (even with preelectronic enhancement) were sufficient with preelectronic enhancement) were sufficient for most people to maintain security, wherever the culture had led them to have what later came to be called "a reasonable expectation of privacy." Prof. Hurn believes that doctrine, developed in direct response to nontrespassory electronic snooping is essentially a benign form of feather bedding--a legal refusal to permit technological innovation to change the bounds of behavior set by pretechnological attitudes and capacities.

PROPOSED

TITLE: CONTAINERIZATION--EFFECTS ON COMMERCIAL AND/OR LABOR LAW

CONTACT: MARCUS HURN (PROF. DICKINSON ALSO INTERESTED)

TIME FRAME: 1981-1982

GOAL: STUDY OF OBSOLESCENCE OF LEGAL AND ECONOMIC INSTITUTIONS

When shipping, both domestic and international, switched from transporting bagged, boxed, baled or otherwise inspectable and small unit goods to carrying huge sealed steel cans it neutralized an elegant system for insuring contractual performance reaching back to the middle ages, and set off a multilateral war in labor law reaching (unhelpfully it seems) the Supreme Court. Either effect or both would make a good focus for self-education in commercial and/or labor law.

PROPOSED

TITLE: NEWSPRINT vs. CRT

CONTACT: MARCUS HURN

TIME FRAME: 1981-1982

GOAL: RESEARCH & WRITING. Legal theory development on one or more of the particular issues. Broader analysis of the legal/institutional constraints on deployment of such a radically different information network.

AT&T, among others, is ready to initiate video yellow page service in a number of markets. This foreseeably expands to full news service, want ads, electronic "catalogue" shopping, and electronic funds transfer. Major metropolitan newspapers consider themselves threatened with destruction (and they would be just the beginning). Predictably, they are preparing a broad political and legal attack designed to prevent deployment. Strategy is a mix of first amendment and antitrust rhetoric and/or law with the arcana of F.C.C. regulatory procedure.

PROPOSED

TITLE: WHO CLEANS UP WHEN COMPUTER DESIGNED ENGINEERING PROJECTS FALL DOWN, BLOW AWAY, OR POP THEIR WINDOWS

CONTACT: MARCUS HURN

TIME FRAME: 1981-1982

GOAL: GENERATE KNOWLEDGE & THEORIES ABOUT THESE MEGATORTS

The Kansas City and Hartford Arenas both have fallen in, the Hancock Building wouldn't hold windows and a lot of people got killed in the Kansas City Hyatt, possibly because somebody forgot about metal structures and harmonics. Some or all of these and less notorious architectural horrors were initially blessed and built, not upon actual design and stress tests with real materials, buy by computer simulation. The computer angle may or may not be interesting to the researcher. Plenty of useful self-education could be done just learning to unravel who is or may be liable to whom, on architectural/engineering fiascos.

PATENT

TRADEMARK

COPYRIGHT

PROPOSED

TITLE: WORKSHOP IN PATENT/TRADEMARK/COPYRIGHT RESEARCH TECHNIQUES

CONTACT: TOM STEELE, LAW LIBRARIAN

TIME FRAME: TWO HOURS IN FALL OF 1981

GOAL: A LEGAL REFRESHER COURSE

This workshop is a two-hour non-credit refresher course that will introduce the attorney to materials primarily used by attorneys in the areas of intellectual and industrial property. A few of the tools mentioned in the workshop are the Patent Gazette, 37 CFR, 35 U.S.C. and The Patent Quarterly.

The workshop will include a discussion of patent search techniques not available at Franklin Pierce Law Center, but available through other data bases such as Diamond Library at University of New Hampshire and the libraries at Massachusetts Institute of Technology.

PROPOSED

TITLE: A SEMINAR ON COPYRIGHT PIRACY IN THE ENTERTAINMENT INDUSTRY

CONTACT: GEORGE GROCHALA, J.D. 1983

TIME FRAME: 1981-1982

GOAL: INTRODUCTION TO FRANKLIN PIERCE LAW CENTER OF A RELATIVELY NEW AREA OF LAW--ENTERTAINMENT LAW--WHICH HAS IN ITS COMPONENTS MANY SCIENTIFICALLY TECHNICAL ASPECTS INVOLVING LAW AS WELL AS TRADITIONAL ONES. AN EXAMPLE: HOME BOX OFFICE FREQUENCY PIRACY.

The seminar could be developed after contacting several prominent professors and practicing attorneys in the field and gathering them at Franklin Pierce Law Center for a weekend seminar (preferably during fall foliage season).

Any help is welcome to get this seminar off the ground.

PROPOSED

TITLE: INTERN PROGRAM FOR STUDENTS INTERESTED IN THE ARTS, COPYRIGHT, AND ENTERTAINMENT LAW

CONTACT: F. DANE BUCK, PROFESSOR OF LAW

TIME FRAME: UNDEFINED; THINKING ON THIS BEGAN AROUND 1977-1978; NOTHING DEFINITE AS YET

GOAL: EXPANSION OF THE CURRENT INTERNSHIP PROGRAM

Dane Buck would serve as a faculty liaison to an interested student. The student would have to establish the relationship, such as with the New Hampshire Council on the Arts, or the New Hampshire Council on the Humanities, or similar organization . The student would have to find a legal advisor at that organization who would supervise his or her work. The student should develop an outline of the work he would do, or a general description of the field he would be studying. In return, the organization could regularly dip into the second and third year interns for predictable manpower.

PROPOSED

TITLE: RESEARCHER FOR NATIONAL INVENTORS COUNCIL (NIC), ACADEMY OF APPLIED SCIENCE

CONTACT: ROBERT RINES , PRESIDENT AND PROFESSOR OF LAW
NANCY METZ , DIRECTOR, ENTREPRENEURIAL WORKSHOP , J.D. 1977

TIME FRAME: BEGIN FALL 1981 FOR ONGOING WORK

GOAL: ACADEMIC CREDIT

A researcher is needed to respond to inquiries from inventors who want to know what happened to a specific device, patent or market. Academic credit for this could be secured through the Entrepreneurial Workshop.

Other work for the NIC is also available in the form of editing and publishing materials currently held by the NIC.

CURRENT

TITLE: FRANKLIN PIERCE LAW CENTER AND THE AMERICAN BAR ASSOCIATION SECTION ON SCIENCE AND TECHNOLOGY

CONTACT: WENDY BREUNINGER, J.D. 1983
ROBERT RINES, PRESIDENT
NANCY METZ, J.D. 1976 AND ASSISTANT TO THE PRESIDENT

TIME FRAME: 1981-1982

GOAL: TO ESTABLISH A WORKING RELATIONSHIP WITH COMMITTEE MEMBERS AND STUDENTS AT FRANKLIN PIERCE LAW CENTER

Three workshops, held by the section during the past few years, concerned,:

(1) Improving federal procurement processes in technological areas to stimulate innovation and business opportunities in the small business sector;

(2) Improving incentives to innovation and new technological risk-taking through changes in federal government and agency policies towards patents and their antitrust interfaces.

(3) Economic implications of regulation: integration of cost/benefit analysis into federal regulatory decision-making

The material from these workshops could be used as the basis for a study of industry and government solutions to problems raised in the workshops.

Wendy Breuninger is developing contacts with committee members as to their current projects. She would like to place other students in contact with the committee members if they are interested in working on the projects.

LAW SCIENCE INTERFACE

CURRENT

TITLE: LAW/SCIENCE INTERFACE

CONTACTS: CHRIS CLARK, J.D. 1982
HUGH GIBBONS, PROFESSOR OF LAW
SCOTT PETERSON, J.D. 1983

TIME FRAME: 1981-ETERNITY

GOAL: AMASS IDEAS ABOUT LAW/SCIENCE AND STUDY THE IMPACT OF IDEAS ON LAW/SCIENCE

This project is to establish a system and develop a process for collecting, cataloging, storing, and cross-referencing law/science ideas.

Chris Clark will function as liaison between existing law/science ideas in the universe and the collecting process at Franklin Pierce Law Center. He will talk to writers, call up universities, legislative committee members, consulting firms, and any others he finds who have a law/science interface. The information he collects will then be tied to the seven paradigms Hugh Gibbons proposed on the law/science interface as reported in IDEA, Vol. 22 issue No. 1 1981.

At present, there exists no one who handles this information. The project is in its infancy. More data on the project will be available in mid-Fall 1981.

TITLE: PROGRAM WITH NEW HAMPSHIRE STATE LEGISLATURE COMMITTEE ON SCIENCE AND TECHNOLOGY

CONTACTS: MARK WISNER, J.D. 1982
JOE MAJKA, J.D. 1983
JOHN DALSEY, J.D. 1983
ARNIE WHYTE - CHAIRMAN OF THE COMMITTEE AND STATE REPRESENTATIVE

TIMEFRAME: BEGAN LATE 1980 - THROUGH PRESENT

GOAL: INFORM STATE LEGISLATORS SO THAT BETTER POLITICAL DECISIONS AND LEGAL ENACTMENTS ARE MADE.

Several students have been involved with Representative Arnie Whyte, chairman of the New Hampshire Legislature Committee on Science and Technology. Two alumni, J.D. Bernardy, J.D. 1981, and Wayne Traynham, J.D. 1981 worked on a paid basis with the issue of siting a low-level radioactive waste disposal facility in the state, and Wayne Herscher, working as a student intern for credit from the law school, wrote an energy policy statement for the state. Joe Majka and Mark Wisner worked on a volunteer basis on a variety of projects including the energy policy statement during Spring 1981.

Presently, Majka and Dalsey are working on three projects: the energy budgets for gasohol production; energy guidelines in New Hampshire; and methods for reducing oil consumption in New Hampshire. The projects will terminate in the form of reports to the New Hampshire state letislature.

CURRENT

TITLE: GUEST-LECTURE SERIES SPONSORED BY FRANKLIN PIERCE LAW CENTER AND THE LAW/SCIENCE WORKING GROUP

CONTACTS: BILL BEAUMONT , J.D. 1982
JIM HAMILTON , J.D. 1981
MIKE WALKER , J.D. 1983

TIME FRAME: A YEARLY SERIES, NOT PLANNED AS YET.

GOAL: TO HAVE SPEAKERS FROM OTHER INSTITUTIONS OR PRIVATE BUSINESS SPEAK ON CURRENT HIGH TECHNOLOGY OR SCIENCE POLICY ISSUES

Various expert lecturers were invited to speak at the Law Center. In 1981, two speakers came from the Nuclear Regulatory Commission and Brown University. The lectures were on a variety of law/science topics, including the benzene problem. The programs try to provide stimulation to law students with science backgrounds.

CURRENT

TITLE: NEW HAMPSHIRE TECHNICAL SCHOOL TEACHING POSITIONS

CONTACTS: JIM MONAHAN , J.D. 1982
AL PAYNE , J.D. 1982
MARK WISNER , J.D. 1982

TIME FRAME: ON A PER-SEMESTER BASIS

GOAL: TEACHING COLLEGE-LEVEL COURSES ON A PART-TIME BASIS IN A SCIENTIFIC FIELD

Teaching in the Continuing Education Department of the New Hampshire Technical School system provides Franklin Pierce Law Center students a means of stimulating their science background, a way to earn money, and a chance to interact in the Concord community.

The Technical School has evening classes that run ten to thirteen hours per week on subjects from engineering to mathematics to biology and nutrition, and similar areas. The courses are at the college level and lead to a variety of degrees.

PROPOSED

TITLE: DEVELOPMENT OF AN EDUCATIONAL PROGRAM FOR SCIENTIFIC AND TECHNICAL PEOPLE THAT DOES NOT LEAD TO A LAW DEGREE

CONTACT: ALVIN S. WEINSTEIN, RESIDENT FELLOW, PATENT/TRADEMARK/COPYRIGHT FOUNDATION, 1981-1982

TIME FRAME: 1981-1982

GOAL: PROVIDE LEGAL EDUCATION FOR SCIENTISTS AND TECHNICAL PEOPLE WHO ARE NOT INTERESTED IN A THREE-YEAR J.D. PROGRAM, BUT NEED TO KNOW THE LAW IN ORDER TO EXPEDITE THEIR BUSINESS OR RESEARCH PRACTICES

After discussion with a group of technical and scientific managers to exchange concerns and concepts regarding the legal and business problems that frequently plague their work, an academic program would be developed that would provide guidance for handling the problems. The objective of the educational program would be to develop " . . . an understanding of an ability to work with legal principles that interact with technology and science within the business enterprise." (Alvin Weinstein)

Weinstein will develop the educational outline, and assist in recruiting faculty and students, as well as assist in developing promotional techniques for the program.

PROPOSED

TITLE: CONTACTS WITH ALUMNI IN LAW/SCIENCE RELATED POSITIONS COORDINATED THROUGH LISA MITCHELL

CONTACT: MARK WISNER, J.D. 1983
LISA MITCHELL, PLACEMENT DIRECTOR

TIMEFRAME: 1981 - UNDEFINED END

GOAL: PROVIDE CAREER AND COURSE SELECTION GUIDANCE AS WELL AS HELP DEVELOP JOB CONNECTIONS AND AN AWARENESS OF JOB POSSIBILITIES IN THE FIELD.

The project could be started by writing alumni who are knowledgeable in a certain area. Information could be requested on kinds of products, kinds of clients, kinds of support staff needed and how to deal with them, tips for dealing with government agencies, various courts as well as other information.

PROPOSED

TITLE: "BRIDGING THE GAP" -- A CONCENTRATED PROGRAM IN UNITED STATES LAW AND PRACTICE FOR FOREIGN LAWYERS

CONTACT: ROBERT RINES PRESIDENT AND PROFESSOR OF LAW AND ROBERT VILES, DEAN

TIME FRAME: UNDER CONTINUOUS CONSIDERATION TO DETERMINE DEMAND (1979-)

GOAL: A SHORT TERM, HANDS-ON EXPERIENCE IN U.S. LAW FOR FOREIGN LAWYERS

"This program would be tailored particularly for foreign lawyers in government, corporate and private practice for whom a one-year or longer graduate program of legal studies in the United States is not feasible or appropriate. The program will be designed to provide in a short period of active interchange a significant immersement in both the theoretical foundations adn the practical workings of the American legal system. The structure of the program as an interchange would recognize that the fresh insight and perspective of foreign practitioners is highly valuable to American lawyers much more isolated geographically and linguistically.

Program Format

* Specialized, concentrated courses and seminars in small-class settings .
* Workshops organized around typical problems encountered by foreign practitioners in United States law and practice
* Short-term placements with private law firms, corporate legal departments and federal and state governmental agencies in areas of attendees' interests
* Access to the American legal system in operation through observation, interviews, and interchange with judges, attorneys and officials
* Academic research opportunities, including computerized library research facilities
* Close association with American law faculty and advanced law students under the coordination of the program counselor for foreign lawyers

Program Substance

* Introduction ot the United States legal structure and system

  --role of ocmmon law and statutory law in the United States legal system

  --role of the lawyer in the adversary system

  --federal/state relationships, division of powers, due process, equal protection and other features of the United States constitutional framework, especially with respect to state and federal regulation

* United States legal process and practice

--library skills; how to find and use United States law

--introduction to civil procedure, from pretrial discovery through appeal

--trial advocacy and administrative practice

--law office management, organization and economics; fee arrangements

--legal ethics and professional responsibility; specialization among lawyers

* Introduction to sales transactions under United States law (Article 2 of the Uniform Commercial Code and related law)

* Fundamentals of United States company law, including agency and partnership concepts, antitrust policies and securities regulation

* Technology transfer and protection of industrial property rights

* Products Liability law, consumer protection law, unfair competition law, United States foreign trade law (antidumping provisions, countervailing duties, import-export regulations, 'Buy American' Act, and the like) and other law affecting trading in the United States

* Other topics arranged according to attendees' interests"

PROPOSED

TITLE: DEVELOPMENT OF A WORKING RELATIONSHIP BETWEEN THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE AND THE FRANKLIN PIERCE LAW CENTER"S WORKING GROUP

CONTACT: MARK WISNER, J.D. 1982

TIMEFRAME: BEGIN AS SOON AS POSSIBLE

GOAL: UNCERTAIN, IMMEDIATE GOAL IS INFORMATION EXCHANGE AND DEFINITION OF PROSPECTS FOR THE FUTURE

CURRENT

TITLE: LAW/SCIENCE RESEARCH PROJECT

CONTACT: HUGH GIBBONS, PROFESSOR OF LAW

TIME FRAME: STARTED 1978
END UNDEFINED

GOAL: TO PROVIDE A COMPLETE DESCRIPTION OF THE RELATIONSHIP BETWEEN LAW AND SCIENCE

"Law/Science" is one of those elephants that looks different to everyone. To some it looks like patent law or environmental law, to others it looks like using LEXIS for legal research, to others it is changing law to adapt to a technological society. Law/science is, in truth, all of those, and far more. The aim of the law/science research project is to, first, draw an outline of the entire elephant so that its parts may be seen, and, second, to study the dynamics of those parts, the ways in which law and science interact with each other. The focus of the project is intentionally global--the search for the whole elephant. Because the little devil is so elusive, however, we must look to the particular, to the tracks of the animal: cases, statutes, books and articles from many fields.

The primary mechanism of this search is conversation between people who are studying different aspects of the whole. This conversation runs from the more formal setting of the law/science research seminar to talks in the office and the Big Bird, to telephone calls in the middle of the night from those who think they've seen the ghost of an elephant. It is Chris Clark's responsibility to extend this conversation outside of the Law Center by making contacts with others who are on the same track. There are a large number of programs at other schools that deal with a variety of science/society questions. Many of them involve the law. It is Chris's job to find out what they are up to.

Since there is nothing more boring than idle, uninformed conversation on global questions, and since information about the law/science relationship is scattered all over the place, it is essential to the project to have a systematic way of gathering and retrieving information. Scott Peterson's job is to develop a computerized system for storing law/science information that will make it available to all of us who converse upon the subject. It should be a warehouse of our own ideas as well as published information, so that it can serve as a medium for continual dialogue.

I would invite anyone who is at all interested to get a copy of The Relationship Between Law and Science and talk with me at any time.

CURRENT

TITLE: THE FRANKLIN PIERCE LAW CENTER PROGRAM ON GOVERNMENT REGULATION IN NEW HAMPSHIRE

CONTACT: CAROLYN BALDWIN(FOR ENVIRONMENTAL TOPICS) DIRECTOR, ENVIRONMENTAL LAW CLINIC
TOM FIELD, PROFESSOR OF LAW
TOM STEELE, LAW LIBRARIAN

TIMEFRAME: 1978 - ONGOING

GOAL: BRING TOGETHER FACULTY AND STUDENT INTERESTS TO BEAR ON THE DYNAMIC FIELD OF GOVERNMENT REGULATION, PARTICULARLY ON ISSUES THAT INVOLVE SCIENCE AND TECHNOLOGY. THE PROGRAM RUNS ANNUAL PROJECTS DESIGNED TO PROVIDE LAW STUDENTS WITH SIGNIFICANT LEARNING EXPERIENCES, AND TO CONTRIBUTE TO THE COMMON GOAL OF MAKING ADMINISTRATIVE LAW IN NEW HAMPSHIRE COMPREHENSIBLE AND ACCESSIBLE.

"It is hard enough for private citizens to understand their legal rights and obligations. For government employees and legislators, faced with a seemingly endless stream of legal requirements, the task is even more difficult. In fact, it would seem to be impossible for them to keep abreast of all the federal and state laws that govern their daily tasks.

How then, are individuals charged with public service to fulfill this obligation effectively and legally, particularly in a state like New Hampshire which employs few government attorneys?

One way is to use second and third year law students who receive scholastic credit in exchange for contributing their knowledge of law to state officials. The match is a natural one bringing together a valuable resource and a strongly felt need at no cost to the taxpayer.

Such a relationship has been developing for several years, involving state government and the Franklin Pierce Law Center. Intern coordination at the Center is provided by the Program on Government Regu tion, which is engaged in a variety of regulatory and legislative activities. Students undergo classroom instruction in administrative (regulatory) law and legislative procedure, followed by application for a state government internship for credit."(David Sandberg, Concord Monitor 1981).

PROGRAM ON GOVERNMENT REGULATION

One project from 1980 - 1981 year was a monograph by student John Dabuliewicz. The monograph, titled: Significant Judicial Decision of the Last Decade which have Shaped Administrative Law in New Hampshire was one section in a series of studies being done at the law center. The series is an attempt to compile all New Hampshire Supreme Court decisions since 1970 affecting four dominant areas of administrative law: delegation, rulemaking, adjudication and judicial review.

This program at Franklin Pierce Law Center is not primarily a law/science program, however, various projects do touch on law/science topics.

CURRENT

TITLE: THE EFFECT OF MONOPSONY PURCHASE UNDER RATE OF RETURN REGULATION

CONTACT: MARTIN RINGO, SENIOR FELLOW IN ECONOMICS, ELI

TIME FRAME: 1980-PRESENT

GOAL: A PAPER AND CONTINUED DISCUSSION

The paper has been produced. The introduction reads as follows: "The effects of monopsony (single-buyer) power on market behavior are usually relegated to a secondary role in standard textbooks. Outside of the academic discussion, it is more often used as an "end-all-arguments" reason to invoke certain policy. This note addresses a simple question: what effect does monopsony power in an input market have on the output of a monopolist? The exercise is performed for an unregulated and rate of return regulated monopolist. The results are what would be intuitively expected. That is, monopsony power decreases the equilibrium quantity of the final product, and hence, presumably increases the monopoly deadweight loss. There is an interesting auxiliary result that the output effect of the monopsony power apparently dominates the substitution effect for the rate of return referenced input (capital) producing a decrease in the equilibrium purchase."

Further discussion on this topic is welcome.

CURRENT

TITLE: CURRENT LITERATURE IN THE LAW/SCIENCE FIELD (SURVEY)

CONTACTS: JUDY NORCROSS, J.D. 1982 AND ASSISTANT LAW LIBRARIAN
TOM STEELE, LAW LIBRARIAN

TIME FRAME: EVERY THREE MONTHS THE LISTING IS PUBLISHED IN IDEA

GOAL: TO PROVIDE A REFERENCE TOOL

This is a 10-15 page listing of all law/science literature, including patent, trademark and copyright materials along with science policy.

In addition, it includes a listing of current materials in the areas of the law/science interface. The listing concentrates on materials dealing with intellectual and industrial property and science policy. The first such listing appeared in Volume 22, Number 1, of IDEA, The Journal of Law and Technology. The listing will continue to appear every quarter.

Both English language and foreign language materials are included in this work.

CURRENT

TITLE: FRANCIS W. DAVIS LECTURE SERIES

CONTACT: ROBERT H. RINES, PRESIDENT AND PROFESSOR OF LAW

TIME FRAME: A YEARLY SERIES

GOAL: BRING IN OUTSIDE SPEAKERS TO FRANKLIN PIERCE LAW CENTER

This series of lectures and other presentations has been established in memory of Francis W. Davis, inventor of power steering and a principal benefactor of the Franklin Pierce Law Center.

The Francis W. Davis Series on Law and Technology, initiated in 1978, includes several informal presentations arranged by the student Law/Science Working Group for each academic year. In association with the Academy of Applied Science, the Annual Francis Wright Davis Distinguished Lecture series brings to the Law Center world-renowned leaders in science and technology with concerns for the impact of technology and innovation upon society and the legal order.

PROPOSED

TITLE: COMPUTER DATABASE FOR FRANKLIN PIERCE LAW CENTER

CONTACTS: SCOTT PETERSON, J.D. 1983, PROJECT CONSULTANT
HUGH GIBBONS, PROFESSOR OF LAW
ROBERT VILES, DEAN AND PROFESSOR OF LAW
JEANNIE WALDEN, BUSINESS OFFICE
SUE COLEMAN, J.D. 1981
STEVE MATZUK, J.D. 1980

TIME FRAME: ORIGIN: 1978
END: UNDEFINED

GOAL: COMPUTERIZATION OF FRANKLIN PIERCE LAW CENTER

A computer database can serve many functions at Franklin Pierce. A partial listing follows:

(1) Accounting in the Business Office

(2) Development of a law/science database

(3) The Family and Housing Law Clinic docket

(4) Forms generation for the Family and Housing Law Clinic

(5) Word processing

(6) Library transactions

A. Acquisitions

B. Interlibrary loan

C. Finances

(7) Registrar grade-keeping

(8) Admissions mailing lists

(9) Law Students Cooperative inventory

(10) Economic modeling for Energy Law Institute economists

(11) A program to come up with synonyms for LEXIS

(12) Typing the Annual Review and IDEA

(13) Editing and reproduction of class handouts to lower costs. Specifically for Contracts course

(14) A litigation support system for complex litigations--particularly for Appellate Defender program. Indexing of testimony, exhibits and documents could be made for easy cross-referencing.

FRANKLIN PIERCE
LAW CENTER LIBRARY
CONCORD, NEW HAMPSHIRE

COMPUTER DATABASE

"There are numerous activities at the Law Center which might beneficially utilize a small computer. Because of the rapid proliferation of computer technology, it is advantageous for the Law Center as an institution to increase its experience with computers. There are also educational benefits of computer availability within the Law Center. A general purpose computer (as opposed to a dedicated word processor or fixed function tool such as LEXIS) can perform a variety of legal and law school related tasks.

It is recommended that the Law Center purchase a single user computer that can run the CP/M operating system. In addition, the computer system should include a dual 8" floppy disk drive with online capacity of at least 1 Mbyte, a daisy wheel printer, word processing software, high level languages (one for easy use and one emphasizing portability), and accounting software. A specific system is suggested with a detailed budget totaling approximately $12,000.

The initial investment should result in a system capable of satisfying the business office's accounting needs. In addition, the system should serve as a seed, a resource generally available to the Law Center community. The system should be used to explore the feasibility and usefulness of a computer in applications throughout the Law Center. Those applications which successfully pass from speculative to the proven could justify the purchase of additional computers."

-Scott Peterson

PROPOSED

TITLE: THE MORAL AND ETHICAL THINKING AND JUDGMENTAL BASES OF THE SAME, OF LAWYERS, JUDGES AND LAW STUDENTS, ENTERING, LEAVING AND POST-LAW SCHOOL, THROUGH UTILIZATION OF HARVARD'S KOHLBERG TECHNIQUES

CONTACT: ROBERT RINES, PRESDIENT AND PROFESSOR OF LAW, AND NANCY METZ, J.D. 1977

TIME FRAME: 1982-1983

GOAL: "SUCH A STUDY, WITH COMPLETE ANONYMITY PROTECTION, COULD GIVE US IMPORTANT INSIGHTS INTO THE LEVELS OF APPROACH AND CONDUCT IN THE LEGAL PROCESS, POSSIBLE SUPPLIMENTAL EDUCATIONAL NEEDS, AND BETTER UNDERSTANDING OF THE INTERFACING AND IMPROVEMENT OF THE ACTIVITIES OF THE LEGAL SECTOR OF SOCIETY AND VIS-A-VIS OTHER SECTORS THAT HAVE BEEN COPIOUSLY STUDIED AT HARVARD, CARNEGIE-MELLON AND OTHER INSTITUTIONS.

THE MORE REALISTIC ORIENTATION OF LAW STUDENTS IN ETHICAL BEHAVIORISM, THE IMPROVEMENT OF THE CONDUCT AND RELEVANCE OF THE LEGAL SYSTEM, THE ORIENTATION AND CONTINUING EDUCATION OF THE BAR AND BENCH IN THESE AREAS, AND THE POSSIBILITY OF ULTIMATE COMPARISON WITH THE LEGAL SYSTEM AND ITS PARTICIPANTS AND TECHNIQUES IN OTHER LANDS, INCLUDING THE FORMALLY TRAINED BENCH OF, FOR EXAMPLE, OTHER HIGHLY INDUSTRIALIZED COUNTRIES SUCH AS WEST GERMANY, ARE AMONG THE POSSIBLE SPIN-OFFS OF SUCH A STUDY."

"The interview techniques can be engineered through assistance by those who have been applying these testing, evaluation and rating techniques for at least the past decade to various types of persons and professionals other than lawyers."

Further Robert Rines has said:

"I would see the development of a several-phased study starting with a feasibility pilot study, a full-scale interview program in New Hampshire (perhaps extending to other New England states), and third, a comparative study with the legal profession of other relevant lands."

PROPOSED

TITLE: THE JURISPRUDENCE OF CLASSICAL LIBERALISM IN A TECHNOLOGICAL AGE or EVILS OF CONVENTIONAL SCIENTIFIC THOUGHT AS A GUIDE TO SOCIAL POLICY

CONTACT: MARCUS HURN

TIME FRAME: FALL 1981

GOAL: READING COURSE COMBINING JURISPURDENCE, HISTORY OF IDEAS, KNOWLEDGE THEORY & TWO CASE STUDIES. ANALYTIC PAPER.

The influence of Cartesian Rationalism and its modern offspring, the Cult of Heirarchical Planning is so great that I've found almost no student, lawyer, politician, or regulatory official who <u>really</u> can conceive of any way to approach the problems of industrial society except by some command-based, coercive, centralizing effort to organize everyone and everything. The exceptions are romantics without an alternative vision susceptible of actualization. To be honest, I think of these readings as a concentrated effort to destroy a lot of thought-cliches that pass for ideas and to sensitize a few students to patterns of thought and behavior which threaten disaster in almost all public policy fields as well as several of the professions, particularly medicine and architecture.

The plan is to read four books, related only by my own mad scheme. The first is <u>Ancient Law</u> by Henry Maine, a short classic on the actual evolution of the underlying philosophy and substantive provisions of classical Roman law. (It also is an admirable example of the English Historicist school of Jurisprudence.) The second is <u>Law, Legislation and Liberty</u>, by Nobel Laureate Freidrich Hayek. This is the latest, best defense of classical (19th century) libertarian-liberalism and a fine critique of Legal Positivism. It is totally reality-based, unlike its better known competition (Rawls & Nozick), with careful attention to (1) how the mind works, (2) how behavior, rules, and law evolve, and (3) how legal and economic institutions begin degeneration toward totalitarianism.

After these we get practical. Jane Jacobs' <u>Death and Life of Great American Cities</u> is an exceptionally clear headed attack on modern zoning and planning practice, giving it much of the blame for urban blight. I believe she is right largely because this field of public policy is dominated by persons ignorant of the evolutionary processes described by Maine and afflicted with the arrogant rationalism with which Hayeck has long battled. The second case study and last required reading is <u>The Unsettling of America: Culture and Agriculture</u> by Wendell Berry. This covers, with other useful topics, the purposeful conversion of our agricultural communities to capital intensive, ecologically unstable monocultures run by soil destroying fertilizer junkies.

After reading these four and surviving discussion at frequent intervals with the instructor and other participants, you would write an analytic (i.e., no research) paper on either one of the two case studies or a similar one raised by one other book mutually agreed upon (nuclear licensing would fit perfectly, and so would B.F. Skinner's Walden Two--the constitution of the technological "utopia" so to speak).

Enrollment by permission and severely limited.

PROPOSED

TITLE: HOW TO RUN A LAW OFFICE ON A MINICOMPUTER

CONTACT: MARCUS HURN
TOM STEELE
HUGH GIBBONS

TIME FRAME: 1981-1982

GOAL: WORKSHOP

Given the new technology, a private practitioner should be able to use a microcomputer instead of a secretary. Forms can be on disc, tape recorders can answer phones, accounting can be programmable, dockets listed, and other information filed into the system. Briefs can be written, edited and generated through the computer system and a line printer.

The system would be cheap, easy and useful. Some schools use it today.

[Ed. Note: Nancy Metz currently uses such a system in the Maine office.]