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NEW DEVELOPMENTS IN THE LEGAL CLINIC FIELD.

BY JOHN S. BRADWAY

A legal clinic is one of the pieces of machinery used in training persons who desire to become lawyers. It corresponds, to a large extent, in the legal field to the well known medical clinic in the field of training for the medical profession. Philosophically the legal clinic represents a cooperation between the legal aid movement and the law school movement to fill certain definite needs felt by legal aid societies, bar associations and the law schools themselves.

1. THE PLACE OF THE LEGAL CLINIC IN TRAINING LAW STUDENTS.

The development of legal training in law schools in general has been to emphasize the theoretical aspects of the law in contrast to the practical.¹ There is no thought in this statement of criticising law schools for doing a poor job. The situation has been more or less forced upon them by conditions of the curriculum.

The fact does remain, however, that the graduate of a law school unless he has had special training in addition to that supplied by the usual law school course, does not have a sufficient grasp of the practical problems of his profession to permit him to take hold of it at once with complete confidence.

When, years ago, law students as a matter of course were attached to the office of some older practicing attorney, they received this training. At present the requirements for admission to the bar appear to be gradually increasing in severity and the tendency appears to be for a law student to go through the law school course rather than to study in an attorney's office.² Law schools have recognized the problem of giving this practical training and have endeavored to meet the situation by various devices. Moot court arguments, mock trials and courses in practice and procedure are familiar methods now employed. State Boards of Examiners and bar associations have also been thinking along these lines. It would therefore appear desirable to consider whether

¹ TRAINING FOR THE PUBLIC PROFESSION OF THE LAW, Alfred Z. Reed, 1921, *passim*.

² THE PROGRESS OF LEGAL EDUCATION, 1922, STANDARDS AND STANDARDIZERS IN LEGAL EDUCATION, 1924, SOME CONTRASTS BETWEEN AMERICAN AND CANADIAN LEGAL EDUCATION, 1925, ANNUAL REVIEW OF LEGAL EDUCATION, 1926, 1927, issued by The Carnegie Foundation for the Advancement of Teaching, *passim*. See also PRESENT DAY SCHOOLS IN THE UNITED STATES AND CANADA, Alfred Z. Reed, p. 207, *et seq.*

the existing machinery is completely adequate to supply these needs and if we find that it is not so, then to suggest the establishment of new machinery which shall be more effective.

2. THE GOAL OF LEGAL TRAINING IN PRACTICE.

If we define specifically what we are striving to attain by teaching law students how to practice law in addition to the theoretical background, we will perhaps be able to see more clearly how the existing machinery might be made more satisfactory. A perusal of the standards for legal education adopted by the American Bar Association in 1921³ induces the conclusion that prominent among the ends to be sought by this kind of training are efficiency and strength of character.⁴

The practicing attorney knows that only a portion of his time is devoted to the academic study of the law. Much effort is spent in routine office work, in personal contacts with clients, opposing parties and members of the bar, witnesses and other persons. More is spent in examining records and doing what is technically known as "leg" work.

All this, or much of it, is of a non-legal nature. We may classify much of it under the head of "Human Problems" rather than "Legal Problems." Any attorney to be able to solve these human problems needs something more than a theoretical knowledge of legal rules. The moot court and the mock trial do not supply this need.

A somewhat parallel case may be found in the training for the medical profession where the medical student operates upon a corpse in order to secure a part of his experience. No one thinks for a moment that the training that a medical student gets in work on a corpse is *per se* adequate to enable him to prescribe medicines for, or to conduct surgical operations upon, a living person. Mock trials and moot court arguments are like corpses in this respect. They lack the vital human elements of the specific John Doe and Richard Roe who become for the time being the most important facts in the life of a practicing attorney. In one sense the duty of the attorney is to take a theoretical rule of law out of the books and make it applicable to a specific human controversy which includes innumerable elements that the rule of law foresees only in a general way. Unless the practicing attorney soon gets to understand the human element in his profession, there will be little practical value in his theoretical knowledge.

³ Proceedings of the American Bar Association, 1921, pp. 656, 679.

⁴ Proceedings of the Pennsylvania Bar Association for 1924, v. 30, p. 178 *et seq.* referring particularly to Paragraphs 7 and 9 of the American Bar Association Standards.

The writer for some years was associated as counsel for the Philadelphia Legal Aid Society and later the Philadelphia Legal Aid Bureau. In this capacity he was enabled to observe a group of young lawyers who had just come to the bar and who were struggling to handle efficiently and ethically a large group of cases. The first efforts of the recent law students were almost pathetic in their lack of understanding of even such elementary matters as to what to say when a client walks into the office; how to get a client to tell his story in a reasonably compact form; how to select from the multitude of facts which the client presses upon them, those few which had legal significance; how to word a letter to the opposing party; and how to exercise judgment in dealing with the opposing party so as to accomplish the result desired by the client with a minimum of effort, expense and delay.

In another respect these same men seemed lacking in an understanding of the practical operation of the ethics of the legal profession. Few, if any of them, had read "Canons of Ethics" of the American Bar Association. All, perhaps, had had a course of lectures in legal ethics, but when a specific individual came in and wanted assistance to do something which was dishonest, the young attorney did not know how to handle the situation. Few of them felt at the beginning any specific limitation as to the duty of a lawyer toward his client and in favor of the rights of the public at large and of the court. It was not that the men were inclined to be unethical in their conduct, but merely that they were faced with new problems for which their earlier training had not prepared them, and consequently, in the crisis they fumbled and hesitated where they should have been firm and confident as to the proper road to follow.

The writer believes that this experience will be corroborated by every legal aid executive in the United States.

This seems to point to a period in the life of the young lawyer when he is practically inefficient and practically unable to determine what is and what is not ethically right. The existing machinery does not bridge this gap adequately and the time, therefore, seems ripe for new machinery which, taking a young man in this critical stage, will supply him with efficiency and give him a background of legal ethics in practice rather than in theory on the basis of living cases rather than academically interesting dead cases.

3. BUILDING HABITS OF EFFICIENCY AND STRENGTH OF CHARACTER.

The psychiatrists are persuasive in their argument that a man's char-

acter is a combination of his habits.⁵ If good habits are built into him his reaction normally will be along lines which the community approves. If other kinds are built in, then his character may not be commended. If we assume that this is true as a general proposition, then the task of training men for the practice of the law is largely a matter of training them in habits of efficiency and habits of good moral character. This is most readily accomplished, not alone by lectures, but by carefully conducting the student through a series of experiences to himself so that he will react and will be taught how to react properly. The machinery for this may consist of an older attorney giving his time gratis for this service or by cooperation with a legal aid society.

There are many evidences of a desire to translate this conception into practice by establishing a sort of legal internship.⁶ There is a recent development in Pennsylvania which particularly emphasizes the necessity for it.⁷

It is suggested that to accomplish practically the goal of efficiency and strength of character, a number of elements are necessary. Some of these may be enumerated as follows:

(1) There should be supervision of the student during this transition period by instructors of irreproachable ethical standing who at the same time have attained a degree of practical efficiency.

(2) There should be provision for the student to become familiar with enough cases in number and of a sufficiently diversified type to enable him to secure a broad practical understanding of the relation between human and legal problems.

(3) There should be adequate means for protecting the interests of the clients, especially during those periods of the year when the law school is not in session.

(4) There must be some method of insuring the attendance of the student at the legal clinic meetings.

⁵ John B. Watson, *BEHAVIORISM*, *passim*.

⁶ Wm. V. Rowe, *LEGAL CLINIC AND BETTER TRAINED LAWYERS—A NECESSITY*, 11 *Illinois Law Review* (1917), 591-618; John H. Wigmore, *THE LEGAL CLINIC*, 12 *Illinois Law Review* (1917), 35-38; Wm. V. Rowe, *THE PEOPLE'S LAW BUREAU*, 15 *Illinois Law Review* (1921), 424-436; John H. Wigmore, *LEGAL CLINICS*, 23 *Case and Com.* (1917), 973.

⁷ *Temple Law Quarterly*, October 1927, p. 3 *et seq.*, *NEW RULES PROMULGATED BY THE SUPREME COURT OF PENNSYLVANIA AS TO REGISTRATION OF STUDENTS, THE STUDY OF THE LAW AND ADMISSION TO THE BAR*, with introduction by Robert VonMoschizsker, Chief Justice of Pennsylvania; see also on p. 29, *RECENT CHANGES IN THE RULES REGULATING THE CONDUCTING OF PRELIMINARY EXAMINATION OF PROSPECTIVE STUDENTS IN PENNSYLVANIA*, Walter C. Douglas, Jr., Secretary Pennsylvania State Board of Law Examiners. After correspondence with Mr. Douglas the writer believes it likely that these rules will be construed to include legal internship in legal aid societies in Pennsylvania.

(5) The student should be given opportunity at least to share the responsibility of the conducting of the cases.

Many other essential elements will no doubt occur to every one.

4. HOW A LEGAL AID SOCIETY IN CONJUNCTION WITH A LAW SCHOOL MAY OPERATE A CLINIC TO ACCOMPLISH THESE RESULTS.

(1) There should be supervision of the student during this transition period by instructors of irreproachable ethical standing who at the same time have attained a degree of practical efficiency.

The writer suggests that in the absence of any evidence to the contrary, we are thoroughly justified in assuming that the members of the faculties of law schools and the executives and the directors of legal aid societies do possess the necessary qualifications of efficiency and ethical standards to be proper supervisors of an actual legal clinic. Bar associations may and should be asked to contribute interest in this direction thereby making the supervision three-fold.

The average practicing attorney to-day is too busy to do very much work along lines of legal internship. The law school graduates who are placed in the large law offices are usually a few of the leaders of the class. The rank and file of the men graduating from the law school, if they are connected with an office at all, frequently get into one where there are fewer cases and where the men at the head of the firm are so occupied that there is little opportunity for careful supervision over the law student or newly admitted member of the bar. It is not unlikely that to load on to the shoulders of these older men unusual responsibilities in connection with the interne, will result rather in breaking down the system or making it perfunctory. There is a further thought as to the ethical standing of the attorney. It may create friction with the bar at large to refuse to accept a particular member of the bar as a legal supervisor of legal internes because his ethical standing is not regarded as of the best, and this matter may have to be faced. The legal aid society thus becomes the practical means of solution because it can make a place for the student.

(2) There should be provision for the student to become familiar with enough cases in number and of a sufficiently diversified type to enable him to secure a broad practical understanding of the relation between human and legal problems.

Contrasting the private law office with the legal clinic as a piece of machinery for effectuating this purpose, we again are impressed with the fact that the interne needs a great volume of cases for his observation

and a great diversity in the type of cases. It is unlikely that he will secure this even in a large private law office. In a legal clinic the opportunity is exceptional.

Legal clinics operated in conjunction with legal aid societies offer a means whereby the interne may observe all the legal aid cases that are handled. These are very numerous. Most legal aid organizations are without doubt the largest law offices in their respective communities. For instance, the New York Legal Aid Society handles about 30,000 cases a year, the Chicago Society about 17,000 cases, the Los Angeles Public Defender about 19,000 cases and the Philadelphia Legal Aid Bureau about 14,000 cases.

The quoted figures on legal aid organizations indicate that each year they handle in excess of 150,000 cases throughout the United States.⁸ Here is a vast accumulation of material, which may be used in somewhat the same way that a student uses material in a laboratory, for finding out as a practical matter how the law works and what are the human problems in the administration of justice.

It may be of interest to refer to the numbers of cases handled by the various legal aid organizations which are now connected in one way or another with legal clinics. The following table shows the name of the legal aid organization and the number of cases which it handled during the respective years 1924, 1925 and 1926:

	1924	1925	1926
Chicago L. A. B.....	14,643	14,691	16,418
Minneapolis L. A. S.....	1,514	1,720	1,742
Harvard L. A. S.....	80)	85)	73) ⁹
Boston, L. A. S.....	7,759)	7,378)	8,134)

As a further step we should investigate the diversity of these cases. A second table given below analyzes the types of these same cases handled by the Chicago, Minneapolis and Boston Legal Aid Societies for the year 1926 and indicates what percentage of the cases involved contract problems, what percentage involved torts, etc.

⁸ The statistics of legal aid organizations are printed and available with the reports of the Legal Aid Committee of the American Bar Association in the Proceedings of the American Bar Association from 1922 to date. They are also to be found in the Proceedings of the Pennsylvania Bar Association under its Committee on Legal Aid Work for the years 1923 to date. For further reference as to these figures, see the Proceedings and Reports of Officers and Committees of the National Association of Legal Aid Organizations issued from year to year since 1923.

⁹ The Harvard and Boston Legal Aid Society figures are bracketed because while the Harvard Legal Aid Bureau is an independent organization, its students work in some respects with the Boston Legal Aid Society. L. A. S. stands for Legal Aid Society, L. A. B. for Legal Aid Bureau.

Type of Case	Chicago	Minneapolis	Boston
Cases involving contractual relations....	55.5%	46.0%	34.4%
Cases involving torts.....	10.9%	6.6%	13.9%
Cases involving real and personal property..	10.6%	15.7%	12.0%
Cases involving estates.....	3.0%	2.4%	5.9%
Cases involving domestic relations.....	13.3%	20.2%	22.7%
Cases involving criminal law.....	1.1%	4%	2.1%
Miscellaneous	5.6%	8.7%	9.0%
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

The foregoing figures make it clear that the average run of cases involve contractual relations as the most important group. This is because of cases such as wage claims, loan shark problems, installment contracts and similar types. Domestic relations are probably the second in size and these involve desertion, non-support, divorce and the other matters coming under this general head. The fact that there are few cases in the field of criminal law may be remedied by the establishment of special clinics in the criminal field, as is being done at present at Northwestern University Law School.

In addition to the number of cases and the diversity of cases, we may also show the disposition of cases handled by legal aid organizations. This will tell us what kinds of legal problems on a procedural basis are available for study by a legal interne, and what experience he may obtain. The table shows the disposition of the same cases on a percentage basis handled by the Chicago, Minneapolis and Boston Legal Aid Societies for the year 1926 and as indicated runs the whole gamut of procedure from the time the applicant comes to the office door until the case is completely disposed of after court action.

Disposition of Case	Chicago	Minneapolis	Boston
Refused at first interview.....	0.1%	11.7%	5.4%
Advice given—case referred.....	58.8%	39.0%	43.8%
Client unable to advance costs.....	0.1%	.....	.5%
Case terminated by client.....	16.5%	9.7%	8.8%
Investigated—Advice given.....	9.8%	12.5%	3.8%
Investigated—case referred.....	1.6%	.7%	1.0%
Investigated—refused .....	.2%	4%	.6%
Information secured and documents drawn	.1%	.....	1.6%
Adjusted without court action.....	9.5%	22.3%	9.0%
Disposed after litigation.....	3.3%	3.7%	16.8%
Miscellaneous .....	.....	.....	8.7%
	<u>100.0%</u>	<u>100.0%</u>	<u>100.0%</u>

It is unlikely that there are such statistics available as to the work in private law offices, but there can be no question that their presence in legal aid societies contributes to the importance of these agencies as a basis for the establishment of legal clinics.

(3) There should be adequate means for protecting the interests of the clients especially during those periods of the year when the law school is not in session.

With all that has been said and is to be said of the value of the legal clinic to the student of the law school and to the bar association, we should not forget that the most important service is that rendered to the client. Any piece of legal machinery will justify itself only on the basis of results it produces in actual cases. If the service to the individual client is not adequately performed, no one will come back for further help and in due course the clientele will fall off. If the attention of the law school is allowed to be diverted from the clinic during the vacation period and if there be no other supervising agency, there will be a resulting loss to the clients' cases that were undertaken during the school year but not completed.

This situation emphasizes the necessity of having the clinic tied up closely with an active legal aid organization which will carry on the work throughout the year and see that at all times the maximum of service is rendered to the individuals. The situation at Harvard, between its clinic and the Boston Legal Aid Society, at Chicago between Northwestern University Law School and the Chicago Legal Aid Bureau, and at Minnesota between the Legal Clinic and the Legal Aid Society, presents evidence that this works out in practice by the simple device of having the legal aid society shoulder the task of handling the cases.

(4) There must be some method of insuring the attendance of the student at the legal clinic meetings.

The value of legal clinic work is secured by actual participation in the work. To secure the interest of the student sufficiently to get him to contribute a part of his time to this part of the training, two devices are employed. At Harvard the work in the legal clinic is made a reward for scholarship in the same way in which the work on the law review is an honorary distinction. At Northwestern University and the Minnesota University Law School, legal clinic work is compulsory in the same way that a course in practice is compulsory, examinations being given at the end and the student's grades being counted towards graduation.

(5) The student should be given opportunity at least to share the responsibility of the conduct of the cases.

In all the legal clinics the student is given a large amount of responsibility. He is required to interview the client and after a conference

with an older attorney, to advise the client as to the law and as to the next steps to be taken. The process of gathering together witnesses, of getting their stories from them, of searching the records, of preparing briefs, in fact of doing everything about a case except actually trying it in court, is available for students under these circumstances.¹⁰ Fortunately we have a very detailed system of the way in which students react as to this work where examinations have been given. At Northwestern University the students have almost unanimously declared their approval of the system.¹¹ In other words, this piece of machinery which we have been discussing, actually works.

5. THE HISTORY OF LEGAL CLINICS.

The idea back of the legal clinic is not a new one and it has been tried out on many different occasions. We learn of a dispensary at the University of Denver in 1904. It soon closed because funds were not available to enable it to do the great mass of work which came to it.¹² Mr. Briesen, long President of the New York Legal Aid Society, found one at Copenhagen which had been established in 1885.¹³ In 1907 Northwestern University Law School made an arrangement with the Chicago Legal Aid Society whereby law students might be taken on the staff of the society. This organization has continued to the present time. In 1913 the Minnesota Law School created a similar arrangement with the Minneapolis Legal Aid Society. In the same year the students at Harvard Law School established a legal aid society of their own.¹⁴ In 1914 George Washington, Yale in 1915, and University of Tennessee in 1916 followed suit.

After the war the Northwestern, Minnesota and Harvard organizations survived. In the last two years informal arrangements have been established at Yale, Cincinnati, and Pittsburgh,¹⁵ in connection with

¹⁰ For a detailed description of the Harvard Legal Aid Bureau see its Annual Report for 1926-7, p. 4. See also Reports of Officers and Committees 1926-1927 of the National Association of Legal Aid Organizations, Committee on Law Schools, p. 135.

¹¹ John H. Wigmore, *THE LEGAL CLINIC; WHAT IT DOES FOR THE LAW STUDENT*. The Annals of the American Academy of Political and Social Science, v. 124, p. 130 (March, 1926).

¹² 3 N. Y., Legal Aid Review No. 2 (Apr., 1905), p. 5. See also 5 N. Y. Legal Aid Review No. 1 (Jan., 1907), p. 1.

¹³ 5 N. Y. Legal Aid Review No. 4, p. 25.

¹⁴ See reports of the Harvard Legal Aid Bureau issued frequently in printed form to date.

¹⁵ See paper by Gustav L. Schramm, Esq., read before the third annual meeting of the Pennsylvania State Association of Legal Aid Organizations—shortly to be published.

the local legal aid societies.¹⁶ The Northwestern Law School clinic has added work in the criminal as well as the civil field.¹⁷

The foregoing brief outline indicates that in this direction, as in legal aid work generally, there was a splendid growth just prior to the war. Because of the age of the men, legal aid work suffered tremendously during the years 1917, 1918 and 1919. The establishment of the National Association of Legal Aid Organizations in 1923 gave new impetus to the idea and from that time it has gone steadily forward. Its first responsibility was for the internal organization of the work but in 1926 it found an opportunity at the suggestion of its Vice-President, John H. Wigmore, to create a committee on Relations with Law Schools.¹⁸ This committee is now engaged in the work of studying the plan so that it may recommend its best features for the combined attention of law schools and legal aid societies.¹⁹ A paper on this subject was read before the Association of American Law Schools at the 1927 midwinter meeting by Charles M. Hepburn, of the Indiana University Law School.

6. THE WORK OF LEGAL CLINICS.

The name Legal Clinic may appear much more complicated than the reality. The work has been described elsewhere.²⁰ It may be in point here, however, to give a few facts about it. The connection between the law school and the legal aid society is created at Northwestern and Minnesota by making the attorney for the legal aid society a member of the law school staff or by assigning a member of the faculty for the purpose of giving either all or a part of the regular practice course in

¹⁶ See discussion in fifth annual proceedings of the National Association of Legal Aid Organizations to be published shortly.

¹⁷ For information as to the operation of the Northwestern Clinic see March, 1926, issue of the *Annals of the American Academy of Political and Social Science*, p. 130. See also *Annals of the Raymond Foundation for the Support of a Legal Clinic for the Poor*, Bulletins 1 and 2, as to the Criminal Branch of the Clinic. As to the work of the Minnesota Clinic see March, 1926, Issue of the *Annals of the American Academy of Political and Social Science*, p. 136. As to the work of the Harvard Legal Aid Bureau see reports of the Harvard Legal Aid Bureau published annually. As to general work of the organizations see reports of Officers and Committees of the National Association of Legal Aid Organizations, 1926 and 1927; Report of Committee on Relations with Law Schools, p. 135.

¹⁸ Proceedings of the Fourth Annual Meeting of the National Association of Legal Aid Organizations, p. 38.

¹⁹ See report of this committee in the Reports of Officers and Committees of the National Association of Legal Aid Organizations, 1926-1927, p. 135.

²⁰ See authorities collected by Mr. Reed in *PRESENT DAY LAW SCHOOLS*, chapter XI, pp. 207-219.

legal aid work. This coordination is desirable so the students may feel themselves at all times under the control of the law school.

The legal aid attorney maps out his course of procedure and receives his students in the offices of the legal aid society rather than in the class room. The students are put to work interviewing the legal aid clients as they come in, in looking up records, in serving papers, in searching for witnesses or in any other work that comes up. Each student keeps track of his time and reports constantly through the day or that portion of the day which he spends in the legal aid office, as to the matters in hand. He gives no advice without the approval of the legal aid attorney and checks every step before he takes it.

At Harvard more responsibility is given to the students. At Yale, Pittsburgh and Cincinnati the students do other work than merely attending the cases. The system is flexible and should properly be kept so, having always in mind that the training of the student is the real goal.

The writer is advised that the clinic at Northwestern Law School is operated without expense to the school. At Minnesota the cost never exceeds \$1000 a year. This is mainly spent as a contribution to the salary of the legal aid attorney. The Harvard society reports that its expenses are less than \$500.00 a year.

The interesting point is that this simple arrangement is the clinic. It consists of the students and the attorney in charge who is sometimes a member of the law school faculty and sometimes a legal aid attorney. In the case of Harvard the students operate their own organization. Add to this an office, a few records of cases, a few sets of office furniture, and a multitude of clients, and you have the entire machinery.

7. CONCLUSION.

The most important value of a legal clinic is that it represents a common ground upon which faculties of law schools, members of bar associations and legal aid groups may meet to consider and work out on a practical basis the noble experiment of more efficient lawyers, and lawyers of stronger and more ethical character. The idea is no panacea. It is a specific device intended to accomplish a specific result and, judging from the experiences of the past, its success will depend almost entirely upon the vision of the men who plan it.

To the law school it offers an opportunity for bridging over the gap which too often exists between the theoretical training even under the "Case" method and the actual practice of the profession.²¹ To the legal

²¹ WHAT THE BAR AND LAW SCHOOLS CAN DO FOR LEGAL AID WORK, Wm. Draper Lewis, Proceedings of the Fifth National Conference of Legal Aid Bureaus and Societies (1923), p. 12.

aid society it means an addition to the staff, increased manpower in handling the cases, and a means of interesting the younger men in the field of legal aid work so that eventually a law student may look forward to a career of public service in a legal aid society in the same way in which he now looks forward to the duties of the office of District Attorney or of a member of the firm in a large law office. To the bar at large it offers a means of building in the younger men habits of efficiency and good character on a well planned, thoroughly supervised basis rather than on the theory that any young man thrown haphazard into the midst of the legal profession, if he has the right stuff in him, will make his way out. The experience of grievance committees of bar associations is that many young men do not rise to the surface after such an experience and the reputation of the bar suffers accordingly. Charles Evans Hughes has described legal aid work as being "the arm of the bar out-stretched in helpfulness to those who need this expert service." It is equally true to say that legal clinic work in connection with a legal aid society is an arm of the bar out-stretched in helpfulness to the new members and prospective members of the bar, pointing a practical finger along the way they should go and existing for the good of the student, the bar associations and the public.

Philadelphia, Pennsylvania.