

Conference Board concerning both their desire to participate in this type of exchange and the outright addition of a foreign professor.

V

CONCLUSION

Applicants or interested institutions are urged to write to the Conference Board for any further information. If there should be a delay in reply, it is hoped that the writer will understand that the program is just developing and that several months may elapse before a reply can be given.

SOME SUGGESTED ADDITIONS TO THE SMALL LAW SCHOOL'S PROGRAM

QUINTIN JOHNSTONE * AND KENNETH H. YORK †

Apart from the basically rigid curriculum imposed by minimum requirement specifications of the American Bar Association and the Association of American Law Schools, not to mention the state bar examiners, there are certain embellishments to the program of any law school—large or small—the desirability of which can no longer be disputed.

It is easy for the small law school to seek the minimum level of performance and let it go at that. Additional enterprises such as publications, legal aid clinics, practice court programs, legal research and writing courses, etc., make demands of money and manpower that the small school simply does not have. The College of Law at Willamette University is a fairly typical example. However, within the past two years certain progress in overcoming these unavoidable obstacles has been made at the school, and, despite the encumbrances, some highly desirable accessories have been worked into the program—*e.g.*, a legal aid clinic, a specially adapted practice court plan, and a novel type of legal publication.

The success of some of these enterprises may justify the referral of the methods to other teachers perplexed by similar situations.

I

LEGAL AID CLINIC

About two years ago, it was decided that our law school program would benefit if a legal aid clinic were established and operated by the law school. In cooperation with the local county bar association, such a clinic was set up in the fall of 1948. Administration of the clinic is in the hands of the law school, with basic policies being the joint responsibility of the law school and the county bar association.

* Assistant Professor of Law, Willamette University College of Law.

† Associate Professor of Law, University of Southern California.

Financially, a school-administered legal aid clinic can be a heavy burden on the university, but our clinic has been so organized that it adds very little to the annual budget of the law school. The financial contribution of the law school to the legal aid clinic consists only of office space and the part-time services of a faculty member who is director of the clinic. The time the faculty member spends on clinic work rarely amounts to more than one hour per day. The remaining financial needs of the clinic, such as telephone and stationery, are supplied by a Community Chest grant of \$300 per year.

Rules made by the county bar association limit the types of cases that our clinic can take to civil cases in which the client is financially unable to employ counsel, and this excludes all cases that attorneys customarily take on a contingent fee basis. Criminal cases may not be taken, although research and investigation assistance may be given to any attorney representing a defendant in a criminal case by appointment of the court. Divorce cases may be taken only if it appears that the client or the children of the marriage would be better off if there were a divorce. Some divorce cases have not been taken until the clinic has exhausted all reasonable efforts at reconciliation. Cases that the clinic does not have jurisdiction to take are referred to local attorneys if the person seeking advice so desires. Referrals are made in rotation from a list, supplied by the bar association, containing the names of local attorneys willing to take such referrals. About 30 per cent of the attorneys in the county doing general practice work have asked to have their names put on this referral list.

Clinic cases are mostly of three kinds: domestic problems, particularly divorce and adoption; evictions; and collection cases, in which there usually is an attachment or garnishment. A large percentage of the clinic's cases are referred to it by public or private welfare agencies.

Legal aid clinic work forms the basis of a separate course in the law school curriculum. Course credit is given and the course is required of all third year students. Regular office hours are held each afternoon, with office hour assignments being rotated among the students. Substantially all of the interviewing, negotiation, research, drafting, and investigation is done by students, but (except for initial interviews) only after consultation with the faculty director. No advice is given to any client except as approved by the faculty director. It is our opinion that problems in interviewing witnesses, negotiation of settlements, and investigation of facts are more effectively treated in legal aid clinic work than in practice court; hence the lack of emphasis on those matters in practice court.

The clinic never appears of record in any litigated case, nor will the local courts permit a student to make court appearances for clients of the clinic. In litigated cases, appearances are made by one of several local attorneys interested in the school and the clinic. However, because of the completeness of the students' part in the preparation (and frequently settlement) of these cases, the attorneys aiding the clinic have rarely had much work to do in clinic cases.

Unlike legal aid clinics in metropolitan communities, our organization has not been overburdened with cases. Except at examination time, no backlog has developed from delays caused by undue volume. At times, in fact, more students have been assigned to legal aid than the subsequent vol-

ume justified. This has made it necessary to supplement the legal aid clinic course with other types of work—primarily research work in connection with proposed legislation or pending litigation. This research assistance has been done for and at the request of local and state government authorities, attorneys for such authorities, and local bar associations. Because we are located in a state capital, an unlimited number of student research projects for public officials can be secured if desired. However, almost any district attorney or city attorney will welcome faculty-directed research aid on cases or problems that are causing him difficulty. Such research projects have the advantage of requiring that student work be adapted to the pragmatic standards of actual practice.

Our legal aid clinic serves a community with a population of about 100,000. The average standard of living in this community is above the national norm, with the result that similar legal aid societies in eastern industrial communities of the same size have a larger volume of cases. However, any law school in a community with a population not in excess of 250,000 should be able to operate an effective legal aid program following a relatively simple pattern such as ours. Law school legal aid clinics in communities of large population must, of necessity, be more ambitious projects than ours if any genuine effort is made to accommodate any and all persons financially unable to afford legal counsel in civil matters.

II

PRACTICE COURT

In adapting our practice court course to a small school with a small faculty, we have taken some steps that probably are innovations. Our objectives in practice court have been twofold: first, to give each student as much experience as possible in oral courtroom work; and second, to teach the essentials of trial and appellate practice in the courtroom. Such matters as research techniques, investigation of facts, interviewing of witnesses, pleading, negotiation of settlements, and arbitration—matters emphasized in some practice court courses—have been ignored or touched on only when necessary for adequate coverage of our major consideration, courtroom practice. The course is open only to third-year students, and three semester hours are allotted to it.

It has been our feeling that students will become more thoroughly trained in courtroom practice if they approach the problem on a step-by-step basis and reach a certain level of mastery of one step before moving on to the next. Thus one to three weeks are devoted to each of the major steps in a lawsuit; then, toward the end of the course, after each step has been separately considered, complete trials are held combining the various steps. The topics given separate consideration are *voir dire* jury examination, opening statements, direct examination, qualifying expert witnesses, introduction of documents and real objects into evidence, cross-examination, offers of proof, closing arguments, and oral arguments on appeal. These topics are considered in the order named, except that we have been commencing the course with oral arguments on appeal as this is a relatively

simple subject and serves as a good opportunity to concentrate on speaking form and style.

Throughout the course, almost all of the classroom time is allocated to simulated courtroom work by the students. On each of the steps in a lawsuit fact problems are assigned, and, in advance of the classroom sessions, the students prepare for trial on these problems. Some of the problems consist of condensed statements of synthetic facts prepared by the instructor, others consist of transcripts of trial testimony from actual cases, appellate opinions in which unusually complete statements of facts are given, or actual appellate briefs with detailed statements of fact. Until the end of the course, when complete trials are held, the assignments require that these facts be used in trying only one step in a lawsuit. For example, when the topic of opening statements is being considered, a series of factual situations will be assigned and opening statements must be given based on these situations. The assignment might consist of the facts as disclosed in an appellate court's opinion, such as that in the *Palsgraf* case,¹ or as disclosed in the appellate briefs on file in *State v. Broadhurst*,² or as disclosed by a trial court transcript or a statement of facts by the instructor. The same types of materials are used in obtaining the facts for problems on other topics, including those involving interrogation of witnesses. Most of the appellate argument problems are based on briefs, abstracts, and records in cases scheduled for argument before the Supreme Court of Oregon. The students are required to make oral arguments, without notes, based on these materials, and are subjected to protracted questioning from the bench. Attendance by the participating students is then required at the actual oral arguments before the Supreme Court a week or two later.

In all of the problems, except in the complete trials at the end of the course, students in the class are assigned as attorneys for plaintiff and defendant and, when necessary to the problem, as witnesses and jurors. The assignment may require a witness to be friendly or unfriendly, as evasive as possible or directly responsive. The Oregon rules of evidence and procedure control in all cases.

As each step in a lawsuit is successively considered, readings are assigned to aid the students in preparing the problems for trial and to give them a general knowledge of the procedure and practice in relation to the step in question. Most of the monographs in the Practising Law Institute's Trial Practice Series are required reading, as are parts of Goldstein's *Trial Technique*, Schweitzer's *Trial Guide*, and parts of the annotated Oregon code. These readings are supplemented by some lectures.

Our practice court course employs two major departures from most such courses. One is in the extensive use of student trials of fact problems in a topic-by-topic approach to trial practice; the other is in a system, used for the first time this year, whereby most class meetings are held in small groups. Ability in oral courtroom work requires experience in doing those things that attorneys do while trying a lawsuit in a trial court or arguing a case on appeal. It was our opinion that most practice court courses fail in that not enough courtroom experience is given the students. Participation in

¹ *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99 (1928).

² 196 P.2d 407 (1948).

one or two trials or appellate arguments is about all the courtroom experience that the average practice court course gives each student.

This past year, our class of forty students was divided into groups of six to eight students, with one student in each group assigned as presiding judge. Each group met in a different room at the same hour, and each judge presided over the trial of that day's docket of problems assigned his group. Depending upon the length and difficulty of the problems, two to eight problems could be tried in a class period of eighty minutes. For each problem before each group specific students had been assigned a week or so in advance of trial to act as attorneys and, when necessary, as witnesses and jurors. Each group remained intact for several weeks, and then new groups with new judges were formed. Only the abler students were assigned as judges, and no student acted as judge for more than six weeks in the entire semester. Following the trial of each problem, the group either critically discussed the trial or written criticisms of the attorneys' work were prepared. The written criticisms were submitted to the instructor, who later turned them over to the attorneys to be used as a guide in correcting their mistakes in later trials.

This system of small trial groups enables each student to participate as attorney, judge, juror, or witness in almost every trial problem, and to act as attorney in approximately one out of every three problems. However, to be successful, the plan requires complete cooperation on the part of the students, and the necessity of such cooperation was put up to our students at the beginning of the term. The response was excellent. The judges maintained a level of decorum typical of any well-run courtroom, the problems were well prepared, and the discussions and written criticisms were generally good. Even though we made this a course with only a pass or fail grade, the evidence indicated more work was done on this course than on any that this group of students was taking at the time.

The instructor's part during the class hours, except for an occasional lecture or discussion before the entire class, was to go from classroom to classroom and check on the effectiveness of the students and of the problems. The instructor's administrative work in making problem assignments was substantial, not only in assembling an adequate number of diversified problems but in rotating student assignments so that each student had sufficiently varied assignments.

The last several weeks of our practice court course are devoted to complete trials using condensed facts prepared by the instructor. These condensed facts may not be departed from by any witness. An element of uncertainty is injected by not fully informing the attorneys what the witnesses will testify to, and in this respect our trials apparently resemble those of Professor Wilson at Cornell.³ Judges and attorneys from Salem have been very cooperative in presiding at these trials. First-year students, liberal arts students, wives of law students, and others act as jurors and witnesses. The system has worked effectively, although we could possibly improve the course by taking advantage in these full trials of the system used by Pro-

³ Professor Wilson's system is briefly described in Green, *Realism in Practice Court*, 1 J. LEGAL ED. 421 (1949).

fessor Green⁴ or that used by Professor Hunter.⁵ However, synthetic facts do have an advantage in that the instructor can provide a greater number of trial problems and more difficult ones than are likely to arise under either the Green or Hunter systems.

III

A SERIES OF LEGAL HANDBOOKS

At about the same time that the legal aid clinic program was established at Willamette, the decision was also made to undertake a legal publication.

A number of factors make the entry into the overcrowded field of law reviews at this late date a venture of some hazard. As has been said, there seems to be no limit to the number of persons who are not interested in another law review, and it must be conceded that the essentially limited ground has been thoroughly plowed and harrowed. Aside from the fact that very few conventional law reviews are self-supporting, the competition for material and the pressure of meeting quarterly deadlines has led to the publication of some rather esoteric material and to some downright desperate space-filling.

The situation at Willamette (and this is probably true of about any small school contemplating a legal publication) is further affected by the existence nearby of a well-established and superior example of a law review of the more or less standard type, adequately exploiting the material of local interest and fully supplying the demand for such a publication.

Further considerations giving some pause were a total absence of funds—which obviously precluded any commitments for a quarterly, semi-annual, or other periodical type of publication—and a student body too small to produce enough capable authors of case notes to make publication of such material worth while.

The specifications for the publication were thus determined by the limiting factors and were reached by the simple elimination process. These specifications were:

1. A publication without fixed deadlines and no commitments as to date or number of issues.
2. Preferably a publication of which each issue would be complete or a definite part of an entire project.
3. Subject matter: Different from that of the typical leading articles and case notes of the law review, but within the research capacities of the average student.
4. A publication that the individual general practitioner in Oregon—the sole apparent source of revenue—would be willing to buy.

As we mulled over the implications of the last specification, the rather novel notion occurred to us of simply asking some lawyers what they needed or would like to have. This proved somewhat more adroit than might be suspected. It is most strange that so little attention has been paid by teach-

⁴ *Ibid.*

⁵ See Hunter, *Motion Pictures and Practice Court*, 1 J. LEGAL ED. 426 (1949).

ers in charge of research programs or legal writing courses to the needs and desires of that neglected individual, the general practitioner. The aids and books supplied by the large law publishers necessarily have the defect of ignoring the purely local ground rules and problems that occupy most of the harried lawyer's time, simply because the field is not extensive enough for profitable commercial exploitation. On the other hand, the belated rehash of a cold—or at least cooling—decision of the nearest state supreme court, which comprises the bulk of published student research, has value only as a pedagogical device—or as a source for another case note. There is thus present within a few blocks of almost any law school in the country a considerable demand for the very type of research work which can be done by the average or less than average student of law, who usually needs the practice most and who rarely gets it.

The first suggestion of the local attorneys was for a compilation of instructions to juries which the Supreme Court of the State had approved. This is a much-needed tool for the trial lawyer and judge. The form books on instructions are too general, there is no ready index to instructions in reported cases, and the collection of a file of such instructions is laborious in the extreme. Other suggestions were for a handy but detailed booklet or checklist on the steps of appellate practice; the same for probate work; a manual on pre-trial proceedings in federal district courts, and several others of generally similar types.

The format of the publication was thus determined as a series of handbooks on more or less local problems of practice and procedure, the contents to be determined by the lawyers themselves, and the work to be done in part by the senior students taking the required course in Legal Research.

In beginning work on the compilation of instructions to juries for the first issue, the student editorial boards, over a period of some months, prepared a card index of every mention of "instruction" by the Oregon Supreme Court. The cards were indexed alphabetically by subject. A part of the research work of the senior students consists in taking an assigned number of these cards and procuring the full text of each instruction together with a brief statement of the court's relevant comments. This is mostly mechanical, but so indeed is practically all the real work of research; and the students, in order to obtain the full text of an instruction, frequently have to refer to the briefs on appeal of the parties or even to the transcripts of the record on file with the Clerk of the Supreme Court—an excellent, if dull, practical exercise.

Upon the prospectus outlined above the alumni association of the school—all practicing lawyers—financed the initial issue, covering *Instructions to Juries as Commented on by the Supreme Court of Oregon*⁶ from "Adverse Possession" to "Automobile Accidents." This booklet was mailed without further charge to every lawyer in Oregon. It met with an unexpectedly enthusiastic response, and sufficient contributions were immediately made to finance another handbook, *A Checklist of Appellate Procedure in Oregon*. The manner in which the series has been welcomed by the attorneys is best illustrated by the fact that substantial contributions to each subsequent issue

⁶ 34 A.B.A.J. 513 (1948).

have been made from surplus funds by the Oregon Bar through its Board of Governors.

In response to demand, further issues of the handbook series have been devoted to a continuation of the compilation of instructions to juries. Each issue is prepared for loose-leaf binding, and supplementary material is readied for publication from time to time to keep the series up to date. There is sufficient work involved in fulfilling the current demand for these and similar legal aids to occupy the publication for several years.

In conclusion, then, it is urged that consideration be given by smaller schools, or even by the larger ones with a surplus of manpower available for research, to the possibilities inherent in this type of publication, which can make use of the work of each member of the student body regardless of his capabilities for creative research. At the same time it can perform a considerable service to practicing lawyers—who, after all, aren't such bad people for a law school to cater to.

