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Education for Law Practice:

Law Students Can Be Given Clinical Experience

by John S. Bradway • Professor of Law at Duke University

■ A pioneer and tireless worker for legal aid for the poor, for the availability of competent legal services for persons of moderate means, and for clinical and practical experience for law students while they are in the law schools, Mr. Bradway has written a challenging article as to the "additional ideas" developed under his direction at the Duke University Law School and the scope and quality of the pre-admission training which he thinks the law schools can and should provide for their students. He wants young men and women "to know lawyering" as well as law, when they come from law school. The problems are being explored and experimented with from many angles—"law centers," legal aid clinics, low-cost referral bureaus, etc., but Mr. Bradway thinks that the immediate, primary challenge is to the law schools and that they can and should meet it. The article in our January issue (page 15): " 'Lawyer Schools' or 'Policy Science'?: Yale Law School's 'Manifesto' Stirs Debate", discussed some of the problems and potentialities, as does an editorial in this issue: " 'Law Reviews' or 'Legal Aid' ".

■ George Wharton Pepper in the early chapters of his *Philadelphia Lawyer* described the system of legal education in an earlier day. It was based on a practical apprenticeship with a superstructure of lectures. Our present system, in contrast, has a base of casebook instruction. The apprenticeship factor has dwindled in importance. Concurrent with the diminishing emphasis on "practical" work, there has been an increasing volume of protest from practitioners that the modern law student is lacking in practical experience, skills, and justifiable self-confidence. It is argued that the neophyte may be able to handle a problem of law, but that he is unequal to the responsibilities presented by a client who has a problem of law. This is a serious lack in the educational process; the forgotten man of the law school classroom—the "flesh-and-blood" client—is the focus of attention in the law office.

Two examples of informed comment may be mentioned. In a recent issue of the JOURNAL (33 A.B.A.J. 259; March, 1947) Reginald Heber Smith of Massachusetts wrote: "The honest equation is that education in a law school plus apprentice training plus passing the State's Bar examination equals a lawyer. Eliminate apprentice training and there is a chasm." Still more recently (33 A.B.A.J. 470; May, 1947) Phil Stone of Mississippi, contributed an editorial: "What Is the Matter with Our Law Schools?" In the course of it he asked: "What do they (the law school graduates) mainly lack?" He answered it in part with the following: "They seem to know too much law and too little human nature."

Such frank expressions of opinion should not be ignored. At any time in a competitive civilization, a profession which does not grow constantly more effective is likely to find itself losing public confidence. Presently, with the impending National Survey of the position of the contemporary legal profession in the community, an added argument impels us to do something about the matter. What can be done?

Additional Ideas for Practical Experience Are Being Developed

The prospect is by no means barren of ideas. The best solution proposed to date is the Legal Aid Clinic. This device provides the law student, before he takes the Bar examination, with training comparable to that given to the medical student before he faces his first patient on his own responsibility. Legal Aid Clinics are not novelties. For many years they have been maintained at law schools; for example, at Harvard and Northwestern. More recently, at Duke University Law School, some additional ideas have been developed. Thus, we know how to give such training in both the metropolitan centers and the less thickly settled areas.

The Legal Aid Clinic is not so much a course as an experience. Just what does the student obtain from

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the experience? Legal Aid Clinic training may be divided roughly into two categories: The minimum without which no one even should be allowed a certificate to practice law, and the advanced work which an experienced lawyer finds necessary to maintain himself in the front rank of his profession. While such a division must be largely arbitrary, the training in the first category seems obviously something to be required of all lawyers, whether they plan to be clerks, heads of their own offices, or specialists. Boards of Bar examiners and practitioners may with profit cooperate in making improvements; the obligation for providing the actual instruction rests for the present with the law school. Curricula crowded with substantive law, including courses in the substantive law of practice and procedure, certainly have their place; but time before admission to the profession must be found for basic practical training so that the student may know the fundamentals of how to handle a client who has a legal problem. An educational equilibrium which existed a century ago between practice and theory, and which is now out of balance, must be regained, else criticisms by the public, as well as by the profession, will continue.

The client-serving lawyer has his method of approach to a legal problem just as do the judge and the legal scholar. For the student to attain the practitioner's viewpoint, he must make a transition from the classroom to the law office as a base of operations, and from the printed page of an appellate decision to the community as a source of facts. The Clinic work provides supervision during this transition.

Nature of the Instruction in a Legal Aid Clinic

It is easier to demonstrate than to describe the nature of what is taught in a Legal Aid Clinic course. An example is in order. The Duke University Legal Aid Clinic course is as practical as it can be made. The instructors assume that the incoming student knows nothing about the use of the rules of law he has learned elsewhere. So they begin at the beginning—not with the printed decision of an appellate Court selected for a place in a casebook. The student is put through certain exercises in which the purpose is not so much to teach law as to develop resourcefulness, justified self-confidence, sound habits of thinking and acting on a professional plane. The word "method" rather than "law" comes to mind as descriptive of the course.

The incoming student steps from the classroom into a law office. He takes his place, not as a glamorized office boy, but as a junior partner. One object of the office is to serve the client as well as the better-class local law offices do. But equally important is the educational aspect. Thus the student becomes in due course acquainted with filing systems, follow-up systems, office records. Some day he expects to be head of his own office, and he wants to know how the administrative tasks should be handled. He deals with office secretaries and learns how to dictate papers. This training in orderly thinking is a basic requirement in understanding how to formulate ideas and express them. He attends staff conferences, observes how policies and non-legal factors affect the progress of a case. He begins to make the thousand and one human contacts which become a part of the day-to-day routine of the practitioner. These events taking place during the whole academic year beat upon the student and gradually change him from an observer to a participant in the legal life of the community. This is more than a course. It is an experience.

Preparing the Law Student To Deal with a Client

The most significant part of this experience occurs when the student faces the "flesh-and-blood" client. It is true the legal aid client cannot pay a fee, but he can and does suffer from injustice unless a trained professional is available to give legal aid. He appreciates services rendered. He criticizes and finds fault when mistakes are made. The student who deals with him, irrespective of the kind of case which brings him to the office, learns human nature, acquires a sense of professional responsibility. If there is any idealism in his nature, he responds to the physical evidence of a need. He absorbs legal ethics in a way no book could bring the subject home to him.

To postpone this experience until after admission to the Bar and to allow the unsupervised young lawyer to gain his knowledge of human

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Concerning the Author: John S. Bradway, now Director of Duke University's Legal Aid Clinic, has long been battling for legal aid to the poor and for the utilization of law students and young lawyers in ways which will give them needed practical experience and also help to fulfill the profession's public responsibility. He was born in Swarthmore, Pennsylvania, in 1890. After attending Haverford College and the University of Pennsylvania Law School, he was admitted to the Bar of his State in 1914, to the California Bar in 1930, and to the North Carolina Bar in 1931. He taught law at the University of Southern California for about two years, but went to the Duke faculty in 1931. He has worked and written exhaustively on legal aid subjects for many years and has been a member of our Association since 1923.

nature from the mistakes he makes in dealing with his first clients is a poor contribution to the public relations needs of the profession. If the clinic student errs, there is an experienced person at his elbow to protect the client and point a warning. The common sense of such a process is obvious.

Supervision at the Duke Legal Aid Clinic requires preparation of the student for these contacts with a real client. The preparation consists in giving him a framework, a check list, a road map to indicate how to think through the infinite variety of problems which arise. If he has in mind an orderly approach and is willing to keep to the trail, he will come out at some fairly logical point rather than lose himself in the underbrush along the way.

The framework is based on the assumption that an experienced lawyer thinks in a certain way and should ask himself certain questions when he is taking hold of a case. It appears that this particular routine may be divided into three steps—gathering the facts, marshaling the law and the facts, and planning the campaign.

Objective Experience Gained in Gathering the Facts

Gathering facts in a real case is more complex than reading a statement in an appellate decision or listening to a professor propound a hypothetical situation. In the Legal Aid Clinic the student must ascertain the sources from which facts may be secured, the obstacles to obtaining them, and the methods of surmounting the obstacles. The client is usually the best source, but not all clients readily divulge "the truth, the whole truth, and nothing but the truth." One must have a method of determining whether one has all the facts and whether what one has is or is not a fact.

Next to the client, the courthouse and the public records contained therein provide a useful source of facts. The Duke law students make a personally conducted tour of the courthouse and parts of its contents. They are then assigned problems which require them to procure data therefrom. In the process they have the chance to observe many legal papers prepared by the leading local lawyers. What better opportunity could there be for a student determined to master his profession? Another assignment is the compilation of a set of forms, a notebook with citations, a collection of pamphlets, a file of notes on subjects which the young man thinks may eventually be useful to him.

Marshaling the Law and Facts and Planning What To Do

Marshaling law and facts is another serious matter. Duke Legal Aid Clinic students study it in a variety of ways. They prepare for trial actual cases which come to the clinic office. They provide a briefing service without cost to lawyers. The student gains experience. The lawyer has a brief containing authorities available in the extensive collections of the Duke Law Library. This is no small advantage to the practitioner in a small community. In the course of this work, the student has a first-hand experience in making contacts, interviewing witnesses, gathering evidence, preparing exhibits, writing memoranda of law, trial briefs, appellate briefs, sitting at the counsel table while the trial takes place, conferring with trial counsel afterwards to learn more about the strategy of the case.

Planning a campaign for a client is the third step in taking hold of the case. In many respects, it is the most elusive, complex, responsible function performed by a lawyer for his client. To carry out a plan of campaign in a case at law may require technical skill. But to plan the campaign calls for imagination and statesmanlike qualities. The decision —what shall I do for my client?— is momentous. It is broader than the query as to what is the law. The lawyer who makes the decision must be prepared to weigh merits and demerits, count the cost, appraise the consequences. While the Legal Aid Clinic student at Duke has time only to begin his acquaintance with this problem which will be with him his whole professional life, he at least does make a beginning.

The mental process of the lawyer in closing out a case at law requires quite a different sort of thinking. But this also is taught. The decision as to a plan of campaign points the way to the road to be followed. Now the lawyer's responsibility is to see the client safely to his destination —or at least as far as possible along the way. If the solution determined upon in the plan calls for giving advice, it is clear to the experienced lawyer that giving advice is often a difficult and dangerous task. A young lawyer is not always in a position to do a satisfactory piece of work in this connection if he has not been instructed on the subject. Again if the plan calls for conciliation and a settlement of the case out of Court, a new set of techniques not included in the litigation process should be learned. This also constitutes part of the course.

Students' Records Should Be Considered by Bar Examiners

The grading is also different from that employed in the orthodox classroom courses. There is no examination paper to use as a basis. Rather, there are two tests: Does the client appear satisfied? Would the supervising attorney want the student as an assistant in his own office? Since tests of this sort will confront most young lawyers in their first year of practice, they do not seem out of place in a Legal Aid Clinic course.

These students must be able, not only to write a good examination paper, but to show that they may be depended upon to do a task assigned them, show judgment as to when to seek advice, profit by constructive criticism, and work pleasantly with other people. It is obvious that in the light of such tests, a Legal Aid Clinic student may well occupy a different position in his class from that which he is used to in his other courses. Boards of Bar examiners may well look to the Legal Aid Clinic records of applicants for admission

to the profession, to provide desirable information.

The Legal Aid Clinic teaches the basic steps in these and other situations with which the client-server should be thoroughly acquainted. As a result, the student knows how to think constructively instead of being bogged down in a confusion of detail. Without such training, the young lawyer is not merely an object of amused tolerance to his older colleagues, he is a menace to himself and others with whom he may come in contact. To insist that he obtain this type of experience as a clerk in a law office is to view only the most favorable and exceptional aspect of the situation. Many law students never serve a clerkship at all. How much time the modern law office can spare for such instruction is a question. How many lawyers will allow a young man to do a piece of work which the older men can do quicker or better might be worth an inquiry.

The Challenge to Law Schools and the Profession

Old fashioned apprenticeship training based on the law office is no longer a satisfactory answer to a vital professional need. To permit the newly admitted lawyer to learn at the expense of his early clients is to lower seriously the prestige of the profession. This situation happens too often for complaisant inertia.

Here is a challenge to the law schools. Do they possess the imagination, resourcefulness, leadership, flexibility, courage, to use the existing examples as points of departure for experimenting until they find a device suited to their own local conditions? This we are interested in knowing. The problem is of long standing, and basic to the profession. A reasonably satisfactory solution exists. The Bar may well ask of the law schools—what are we waiting for?