

## THE LEGAL AID CLINIC AND ADMISSION TO THE BAR

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At the meeting of the Association of American Law Schools on December 28, 1934, the Round Table on Law School Objectives and Methods<sup>1</sup> presented for discussion a statement from which the following sentences are arbitrarily taken, "Fourth: The immediate task of law schools is to develop and teach a system of legal thought which is suited to the necessities of the times \* \* \* It (the law school) must think of itself as offering not merely a training for law practice—which today is scarcely susceptible of definition—but a broad preparation for responsibility in the conduct of affairs."<sup>2</sup> Statements of this sort recognize the need to train a law student for professional service as a leader in a community where social and economic conditions are changing. The difficulties in developing the "system of legal thought" and the "broad preparation for responsibility" may be regarded as insuperable or as opportunities for pioneering work depending upon the mental fibre of the individual.

It is customary to insist that the lawyer's obligation extends to his clients, the court, the profession and the community.<sup>3</sup> Expressed in other terms the lawyer upon admission should be prepared to take advantage of openings leading to a career as an advocate, an office lawyer, a briefing expert, a public official representing the state or a political subdivision, counsel for interests before legislative committees, a member of the law making body, a community leader using the resources of the law and cooperating with representatives of other professions in solving individual and group problems which lie only partly within the field of the law, a judge, or a law\*teacher.<sup>4</sup> The need

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<sup>1</sup> Program and reports of committees 32 Annual Meeting Association of American Law Schools, p. 16.

<sup>2</sup> George K. Gardner, "Why not a Clinical-Lawyer School?" (1934), 82 University of Pennsylvania Law Review 785 at 802.

<sup>3</sup> Warville Legal Ethics, second edition, 1920, p. 21.

<sup>4</sup> See the classification of the functions of a practicing lawyer by Professor Elliott E. Cheateham in his cases and materials for a course on "The Legal Profession," Columbia University, 1933.

then is not for more lawyers but for men trained for broader service.

A whole lifetime spent exclusively in training would not be adequate to cover everything in the field of law. The educational problem then is divisible into three parts—to teach the student what is absolutely essential, to teach him a technique for learning the rest, and to draw a line between what is essential and what is not. This last is likely to be determined by practical considerations. At present there are no figures to show how many or what percentage of young lawyers fail to pass the examination of professional life because their training has been inadequate. There is a distinction between eliminating from the bar in advance men who are not fitted for the work, and discouraging a man after he has been admitted by allowing him to face problems for which he is unprepared. The average student does not know in advance what positions may open to him and so feels more than anyone else the need for preparation for the indefinite future. Admission to the profession might well be reserved for a smaller group of more thoroughly tested, experienced survivors of a more comprehensive and continuous educational process. If machinery can be devised to this end it will benefit the profession, the applicants, and the public.

Legal education today is thought of usually as the three years spent in law school. The law school protests that it cannot lengthen the period. The problem is then to provide either for an interval of readjustment of work or to build new machinery to supply what the law school does not give. Experimentation by law schools and other interested groups should be stimulated until an acceptable solution has been achieved. Bar associations, Junior bar associations, courts, boards of bar examiners are such interested groups. In particular the matter should be of concern to bar examiners whose functions are in effect to admit or reject.

The law student may think of the law school segment of his training as an exquisitely sculptured piece of a column which is not carefully attached either to the base on which it rests or the superstructure which it is intended to support. The lack of continuity and comprehensive planning for a lifetime, at least from the student's viewpoint, threatens the usefulness of

the whole column.<sup>5</sup> The law student's viewpoint may be especially valuable to us because to him the situation is highly personal.<sup>6</sup> He may well recognize limitations of time and expense, but he may equally well demand that he be provided with a technique with which to meet in some reasonable fashion the unexpected, the unknown.

This article will advance the thought that legal education is a process broader than the three year law school training; that there is need for a more comprehensive view of the entire process and more continuity to cross the gaps between the parts. After suggesting a remedy an effort will be made to indicate the importance of such a remedy to bar examiners.

### I. THE GAP IN LEGAL EDUCATION

If one may refer to a lawyer's training as being in fact a continuous process from the cradle to the grave it is possible to divide it into four periods. In the first of these he acquires a cultural background. In the second, through the case method,<sup>7</sup>

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<sup>5</sup> See introduction by Norman Thomas to Morris Gisnet's, "A Lawyer Tells the Truth," J. P. Kahn Co., New York, 1931, particularly at page 12.

<sup>6</sup> See an article by William Piel, Jr., president of the Harvard Legal Aid Bureau, entitled "The Student Viewpoint Toward Clinic Work," read at the Round Table on Legal Aid Clinics, now in manuscript, but to be published during the spring of 1935 in the American Law School Review.

<sup>7</sup> "The weakness of the case method may be said to lie in the fundamental fallacy that the law is exclusively to be found in books. This defect was aggravated by the limitation to which the Langdell school was prone—that the books used were always collections of reports." Quotation from article by Max Radin on the Legal Profession and Legal Education, Encyclopedia of the Social Sciences.

A survey of some of the literature in early years of the century when the case method was making its way indicates that the objections were based on ignorance of the purposes of the case method, on apprehension as to the amount of time it would consume, on fear that the less orderly quality of case material would be harder for the student to grasp than the smoother arrangement of the textbook or lecture. Other objections seemed to go more deeply into the matter. There were those who said that the case method seemed to sacrifice principle for precedent; that there was no need for the inductive method in legal education; that even if the Socratic method is a desirable educational procedure, the study of judicial opinions is still not inductive, and that the case method fails to present the whole law in any particular jurisdiction; that casebooks rapidly become obsolete, and finally, that the established tradition is in favor of the lecture or textbook method.

See in general the following: Wall, G. W., Proc. of the Section of Legal Educ., Assoc. of Amer. Law Schools (1906), p. 77; S. E. Baldwin, Proc. of Assoc. of Amer. Law Schools (1904), p. 14; Beale, J. H., *Ibid.*,

he develops his analytical powers and learns certain rules of law.<sup>8</sup> The third period today is one of adjustment after he has graduated from law school, and it continues until he has reached what one may call an established position at the bar. The fourth period which continues from the time he is well established in practice until his final retirement is not so much one of education as it is of applying what has been learned. But few people take the trouble to view the process of legal education thus broadly.

In theory a remedy for the ills of the present system of legal education is more continuity between the first and the second and the second and third stages.

Pre-legal training is not favored in academic circles.<sup>9</sup> So during the first year of law school the student must "find" himself in a field which in theory should be an integral part of community life but which in fact is a special province so carefully marked off as to render of little use much which has previously been learned both as to content and manner of approach. Orientation courses cover a wide variety of subjects from explanations of the case method to historical surveys of common law procedure, lectures on the respective duties of court and jury, philosophy of the law, on the work of bar associations, and on legal ethics.<sup>10</sup> All of these contribute some-

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p. 14; Training for the Public Profession of the Law, Carnegie Foundation Bulletin, No. 15, 1921, p. 382, 383; *Ibid.*, p. 384; Gray, J. C., 22 *Amer. Law Rev.* 763 (1888); McClain, Emlin, 16 *A. B. A.* 403-46 (1893); Beale, J. H., *Proc. of Assoc. of Amer. Law Schools* (1902), p. 48; Baldwin, S. E., *Proc. of Assoc. of Amer. Law Schools* (1903), pp. 30-31; Penfield, W. L., 25 *Amer. Law Rev.* 245; Keener, "The Inductive Method in Legal Education," 17 *A. B. A. Reports*, 488-89 (1894) (See also for discussion of this paper, 17 *A. B. A. Reports*, 373-387); Redlich, Dr. Josef, "The Common Law and the Case Method in American University Law Schools," Carnegie Foundation, Bulletin No. 8, 1914, p. 13; *Ibid.*, p. 24; Redlich, p. 39; Landman, J. H., "Anent the Case Method of Studying Law," 4 *N. Y. U. Law Rev.*, 151, 152; Baldwin, S. E., *Proc. of Assoc. of Amer. Law Schools* (1903), p. 40; 31 *A. B. A. Reports*, p. 1017 et seq., and p. 1111; Redlich, Dr. Josef, "The Common Law and the Case Method in Amer. Univ. Law Schools," Carnegie Foundation Bulletin, No. 8, pp. 26, 27.

<sup>8</sup> For a statement to the effect that the contribution of the law school is method, technique, and inspiration see "Law and Literature," B. N. Cardozo, Harcourt Brace and Co., 1931, p. 163.

<sup>9</sup> See Leon Green, Vol. 3, Northwestern University Information, No. 20, January 28, 1935, "Preparation for Law School."

<sup>10</sup> The following names of first year courses which seem to warrant their inclusion under the title "orientation" indicate a variety of points of view. Harvard, Organization and Standards of the Legal Profession; Yale, Court Organization and Legal Ethics; Columbia,

thing to the picture, but none of them go far enough in relating the experience of the student in his undergraduate life to that of his graduate training so as to make a continuous process. Such an educational shock is justified by those who have passed through the ordeal as a means of eliminating students who are not effective.

Far more serious is the gap between the second and third stages because here we are dealing with men upon whom the law school has set its stamp of approval. When such a man fails to make the grade in law practice the school necessarily must bear a share of the blame. It may evade responsibility by contending that it purported to do no more than provide a part of the training.<sup>11</sup> If that be so the student should be appraised

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Development of Legal Institutions; California, Legal Bibliography and Legal Ethics; Chicago, The Pre-professional Courses, and Introduction to the Law; Northwestern, Court Organization; University of Pennsylvania, Auxiliary Reading Course.

<sup>11</sup> Taken at random from five leading law schools in the eastern portion of the United States are the following statements. The difference in language is noticeable. Whether the actual instruction differs materially is beyond the scope of this note.

Yale University takes the extreme position:

"It is the aim of the school to give all students in the regular curriculum preparation for the practice of law in any state, and also by the encouragement of scholarship and research to lay a foundation for the profession of law teaching and for legal authorship."

Duke University is very similar:

"The School of Law offers such courses in its curriculum as will provide an adequate preparation for the practice of law in any state. Through facilities for study and research, training is afforded for those looking to the teaching of law as a profession, as well as those desiring to specialize in particular branches of the law."

Harvard is more diversified:

"The school seeks as its primary purpose to prepare for the practice of the legal profession wherever the common law prevails. It seeks to train lawyers in the spirit of the common legal heritage of English speaking peoples. Along with and inseparably connected with this purpose are two others; namely, the training of teachers of law, and the investigation of the problems of legal adjustment of human relations and how to meet them effectively."

Columbia edges toward the other extreme:

"The School of Law is designed (1) to afford a thorough and scientific professional education for prospective lawyers, judges and other administrators of justice, and (2) to encourage research and the non-professional study of law in order that the nature and function of law may be comprehended, its results evaluated, and its development shaped to meet the needs of modern life."

of the fact and some provision made for him to secure the extra training. At one time there was such provision. Historically, legal education in this country began as a matter of apprenticeship in individual law offices.<sup>12</sup> With the development of text books and law schools the study of the law as a science became popular, and for a time while the machinery upon which the apprenticeship system rested still continued in an effective condition, the two types of training ran along side by side. During the last fifty years the mechanical devices for giving these two types of training, the law school and the law office, have steadily moved farther apart.<sup>13</sup> The law teacher has become more a full time specialist and less of a practitioner.<sup>14</sup> The law school, being freed from the innumerable interruptions incident to practice has made excellent progress in its own direction. The law office, confronted by competition,<sup>15</sup> changing demands upon the lawyer, the need for a highly increased efficiency and other factors, has become less and less effective as

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The University of Pennsylvania provides another extreme as follows:

"The aim of the school is to guide students in acquiring a practical and historical knowledge of American and English common law, American constitutional law and certain fields of statutory law, and to develop in them the ability, judgment and technique to use this knowledge in the solution of legal problems."

<sup>12</sup> See Alfred Z. Reed, "Training for the Public Profession of the Law," Bulletin 15 of the Carnegie Foundation (1921).

<sup>13</sup> For an interesting discussion indicating the line drawn between the law teachers and practicing lawyers, see Reports of the North Carolina Bar Association, Vol. 34, 1932, p. 99 and following, where the report of the Committee on Incorporating the Bar was being discussed. The original draft of the report had included as members of the examining board for admission to the bar the Deans of certain law schools.

<sup>14</sup> See Alfred Z. Reed, "The Opportunities of a Board of Bar Examiners," 2 The Bar Examiner, p 31; Harlan F. Stone, "The Importance of Actual Experience at the Bar as a Preparation for Law Teaching," 37 Reports of A. B. A. 747 (1912).

<sup>15</sup> Encroachments by lay agencies on the field of the bar have been met by legislation. 8 California State Bar Journal, p. 31. Los Angeles Bar Association Bulletin for January 15, 1931, p. 159. See William K. Clute, "The Illegal Practice of Law by Lay Agencies," Michigan State Bar Journal, April, 1932, page 263. See also "Unauthorized Practice News," a current review of bar activities to curb the unlawful practice of the law, published by the American Bar Association Committee on Unauthorized Practice of the Law; and Vol. 19, No. 1, Minnesota Law Review, December, 1934, Report of the Committee of Unlawful Practice to the Minnesota Bar Association, page 155.

a training ground for students<sup>16</sup> although as a means of serving clients in many respects<sup>17</sup> it kept abreast of the times.

Some who despair of getting a comprehensive picture of what a lawyer should be, have fled to the solution of specialization.<sup>18</sup> If the student is led into the narrow path of specialty before he gets a broad picture of his profession and its responsibilities there are many serious consequences. It may take him years to realize the limitations of his experience. It may limit his opportunities to make headway except in his chosen field. It tends to over-emphasize in his mind the desirability of doing what interests him rather than taking the less agreeable road of facing the essential drudgery of law practice. There is no loss of dignity involved in adapting oneself to routine matters

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<sup>16</sup> The decline of the law office as an educational device is being more and more widely recognized.

The Report of the Commissioner of Education, United States Dept. of Interior, 1914, Vol. 1, p. 226 ff., indicates that in 1893 half of the law students derived their education from private study to study in offices. In 1911 this had dropped to one-third.

Specific comments upon the unsatisfactory character of the law office training will be found in Reed, A. Z., "Present Day Law Schools in the United States and Canada," Carnegie Foundation Bull. 21 (1928), p. 213.

The Bulletin, Vol. 1, No. 2, 1930, published by the section of Legal Education and Admission to the Bar of the American Bar Association. Report of the California Survey Committee published by the State Bar of California (1933), p. 5.

Harlan F. Stone, "The Public Influence of the Bar," 48 Harvard Law Review, p. 1, November, 1934, at p. 13. See also William G. Hale, "The Legal Aid Clinic as an Educational Agency," 2 Newsletter of the Duke Legal Aid Clinic, No. 3, p. 2 (1933).

<sup>17</sup> The readjustment of the law office to meet new conditions is indicated in various ways. Bar associations such as the Association of the Bar of the city of New York have begun to appoint committees on law office management (see report of this committee published by Baker Voorhies & Co., New York, 1931). There are a series of cases where the lawyer has been reprimanded for untidy and unsystematic office procedure. See for example the following cases in which negligent practice has been a basis for disbarment or discipline: *March v. State Bar of California*, 291 Pacific 583 (1930); *People v. Hillyer*, 297 Pacific 1004 (1931). In *re Woods*, 13 S. W. (2d) 801 (1929). The preamble of the Canons of Professional Ethics as adopted by the American Bar Association speaks of the importance of developing the system and dispensing justice "to a high point of efficiency and so maintain that the public shall have absolute confidence in the integrity and impartiality of its administration."

<sup>18</sup> See George K. Gardner, "Specialization in the Law School Curriculum," 81 University of Pennsylvania Law Review 684 (1933). See also an article on "The Modern Legal Profession," in the encyclopedia of the Social Sciences emphasizing the lack of cohesion in the legal profession and its division into classes with an accompanying loss of prestige.

and there may be much gain in character. There is no rational basis for contending that the ethical justification supporting the general practitioner in the field of law is less worthy than that supporting the legal specialist. To practice law in order to aid clients to solve their problems is as lofty a basis for life as to spend one's time working out rules of law which ought to apply to complicated sets of facts. There is a precedent for a more adequate allocation of man power within the legal profession. In the medical profession there is a place for the general practitioner and the specialist is all the better for some years spent in acquiring a general understanding of the entire field in which his profession functions.<sup>19</sup> For the lawyer there is, at present, no such comprehensive system.

The danger to the profession of premature specialization of the individual is great. The future of the bar depends upon intelligent leadership. This commodity is obtainable only by the sense of mutual relationship which comes from a period of common experience.<sup>20</sup> Specialization continued to a logical conclusion might spell disintegration of the bar at a time when intra-professional cooperation is urgently needed.

For a long time the growing gap between the theoretical and practical was not considered serious. It was the new graduates confronted with an utterly different set of facts from those they met in law school who found themselves unprepared.<sup>21</sup> The theory of the complementary character of law

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<sup>19</sup> See "Medical Care for the American People" for the final report of the Committee on the Costs of Medical Care, 1932, University of Chicago Press, p. 139, where the statement is made: "According to the committee's studies the real needs of the people call for three to five times as many well trained general practitioners as specialists, and most schools, therefore, should concentrate their energies on producing well qualified general practitioners."

<sup>20</sup> One of the most effective factors in creating this mutual relationship and ability to work together on the part of highly individualistic lawyers is the law school-bar association movement. See the Reports of the Duke Bar Journal and the Law Journal of the Student Bar Association of the Ohio State University.

<sup>21</sup> James G. Rogers, "Are the Law Schools Adequately Equipping for the Profession", *The Bar Examiner*, No. 5, March, 1934, p. 106. The problem of the student is based upon how to start, the matter of an income and prevailing competition. Robert Armes, "Suggestions from Law School Graduates as Where and How to begin Practice," 27 *Harvard Law Review* 260 (1914). C. C. Converser, "Lawyers' Incomes and Others," 1923 *Proceedings North Dakota Bar Ass'n.*, p. 118. Young B. Smith, "The Over Crowding of the Bar and What Can be Done About It," 7 *American Law School Review* 565. An employment

office training was not supported by the facts. Some found places in law offices and some did not. Sometimes the law

survey of the State Bar Association of California, 8 Los Angeles Bar Association, No. 3, November 17, 1932.

There is no adequate device by which mistakes of young lawyers can be checked. One hopes they are mercifully forgotten by the clients who go elsewhere. The employer of young lawyers quietly replaces his erring assistant. No statistical record is kept. Yet in the minutes of the staff meetings of the Duke Legal Aid Clinic one comes across interesting examples of mistakes which, committed in law practice, might be serious.

In Case No. D-2 the student was instructed to prepare a brief on one side of the case. He reported he had examined the law and had come to the conclusion that the authorities favored the other side. Consequently, he refused to write the brief on grounds that it would be intellectually dishonest to do so, when convinced the law was otherwise. The court decided the case in favor of the position which he was asked to defend. One may imagine the reaction of a client or a practicing attorney to such a viewpoint.

In Case No. 133 the student neglected the problems in spite of repeated urging. Finally he entered the following note on the record, "I do not care to handle this case. It involves too much bickering with females, and can not be settled without extended litigation, which can not be settled before the school year ends. I would appreciate another case assigned in its place." One may be too careful as to the clients he is willing to accept.

In Case No. 599 the student was required to prepare a legal document for a client who needed it at a certain instant. In spite of three weeks opportunity he came to the last day without having performed the task. Then his family arrived to take him home for the Christmas holidays and he drove off with them leaving word with the stenographer that he was sorry but he had not completed his labors. The staff of the clinic finished the work.

One should not infer from these illustrations that clinic students are fools or incompetents. Many of them do admirable jobs. The point is that the student without supervision is likely to commit errors of great significance.

In at least two cases known personally to the writer a student neglected to file a paper, and a judgment by default was taken against the client. Nothing will be gained by a recital of the details.

The presence of similar problems in the Harvard Legal Aid Bureau is attested by a series of remedial steps reflected in the annual reports. For example, in the report for 1932-33 it is said:

"Still unsolved, however, although attacked annually since the inception of the Bureau, was the problem of insuring that the legal advice and assistance received by clients would be reliable and effective. That seems an obvious object of concern to a legal aid clinic or law office, but hardly one calling for special mention. In the light of the Harvard Legal Aid Bureau's peculiar circumstances, however, it assumes strikingly unusual contours. . . . There is no doubt that if the members had unlimited time for each case they could, without any supervision, produce sound results with substantial regularity. But time is distinctly limited, and every saving compatible with thoroughness must be made."

The solution adopted was to secure the services of a member of the bar to supervise.

See Case No. 58, Legal Aid Clinic, Duke University, in which the student attorney discussed the case with the opposing client. See also

offices provided adequate training and sometimes they did not.<sup>22</sup> The lawyers tended to think that the law school should make provision for complete training but what was everybody's became nobody's business. When the organized Bar became strong enough to realize that it must increase the standards for admission both as to technical proficiency and as to character a series of remedial devices were proposed.

In states like Delaware, New Jersey, Pennsylvania, and Rhode Island, an internship period is required by statute or rule of court.<sup>23</sup> Other proposals for a graded bar<sup>24</sup> or for a junior or interlocutory bar<sup>25</sup> have been made. The problem has been to provide training for the law student comparable to that which the old apprenticeship system afforded and yet of such a sort as may be adapted to modern conditions.

These various devices, when viewed critically, all fail in some respect to meet the entire need. If the objective is to

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Case No. 145, Legal Aid Clinic, Duke University, in which the student had a debate with the client on the other side and advised him as to the law. See Case No. 262, Legal Aid Clinic, Duke University, in which the student neglected to secure certain information needed to determine whether the client should make a will or not. The client was unconscious before the information was secured, and died without regaining consciousness. Fortunately, the information indicated that no will was necessary.

If such mistakes occur in the presence of a high degree of supervision it is reasonable to assume that others of a similar sort or perhaps more serious will arise where there is no supervision.

<sup>22</sup> See the encyclopedia of the Social Sciences, Vol. 9, p. 340 at 342, article on "The Legal Profession and Legal Education," A. A. Berle, Jr., where the statement is made regarding law offices: "to some extent also their profits are due to the use of cheap labor in the sum of young lawyers recently graduated, of whom a new group is available every year."

<sup>23</sup> In general see pamphlet of West Publishing Company entitled "Rules for Admission to the Bar," 1934. In particular see: Delaware—Revised Code 1915, Section 3734, and Rules of Court. New Jersey—Rules of Supreme Court. Pennsylvania—See Rules of the Supreme Court and Explanation Thereof in 2 Temple Law Quarterly, page 3 and page 29. Rhode Island—See General Laws of 1923, page 322, Section 2, and Rules of Supreme Court.

<sup>24</sup> Graded Bar. Alfred Z. Reed, "Review of Legal Education" (1929), p. 28.

<sup>25</sup> Interlocutory Bar. Lloyd U. Scott, The Bar Examiner, Vol. 111, No. 5, March, 1934, p. 99, "Junior or Interlocutory Bar." Alfred Z. Reed, Annual Review of Legal Education, 1929, "The Missing Element in Legal Education," pp. 28-31. 13 A. B. A. Journal 551, Reports of the Committees on Legal Education of the Association of the Bar of the City of New York, for 1929, 1930, 1931. 38 Pennsylvania Bar Association Rep. 157 (1932), New York Times, June 24, 1934, p. 25. New York Times Editorial, June 26, 1934, p. 18. William A. Roberts, "A New Field for Service—The Junior Bar," 21 Jour. A. B. A. 179, March, 1935.

prepare a man for responsibility in the conduct of affairs, certain factors would seem to be essential. First, adequate supervision of the work of untrained men in order to protect the client; second, individualized instruction to meet the student's particular needs; third, a training ground which because of the variety of problems coming to it will give the same broad basis of educational opportunity as the hospital, in contrast to the physician's office, gives the medical interne. For the protection of the public and the prestige of every profession an adequate remedial device should function before the student is free to practice. In this regard the example of the medical internship is persuasive.<sup>26</sup> A new device is called for in the third period of legal education and it is suggested that the most effective experimentation toward it at the present time is the legal aid clinics sponsored by the law schools.

## II. THE LEGAL AID CLINIC

The Legal Aid Clinic movement<sup>27</sup> in the United States<sup>28</sup> has gone through three periods. The first lasted from 1893 until 1907. In the prior year some students at the Law School of the University of Pennsylvania established a legal dispensary.<sup>29</sup> Nothing is known about it except its name which suggests an analogy to the internship under supervision given by the medical profession to prospective physicians. In 1904 the University of Denver established a legal aid clinic where the law students under supervision handled actual cases.<sup>30</sup> This functioned for six years and then, because of lack of funds to

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<sup>26</sup> For a series of books emphasizing to the medical student the need for seeing his client as a human being before he thinks of him as a disease or an injury, see Emerson, *Physician and Patient*; Draper, *Human Constitution*; Draper, *Disease in the Man*. See also Abraham Flexner, *Medical Education in the United States and Canada*, Carnegie Foundation, 1910, p. 91, and following for a description of the progress of the clinical movement in medical education.

<sup>27</sup> For a searching criticism of the use of the word "clinic" as applied to a device in the field of legal education, see John M. Maguire, "Legal Aid Clinics—A Definitional Comment," 7 *The American Law School Review*, p. 1151 (1934).

<sup>28</sup> See 57 Reports of the American Bar Association 516, for a bibliography of materials on legal aid work. On p. 518 there is a section devoted to materials on legal aid clinics.

<sup>29</sup> See Proceedings at the Dedication of the New Building of the Department of Law, University of Pennsylvania, 1901, at page 231.

<sup>30</sup> 5 *New York Legal Aid Review*, No. 1.

meet the heavy public demand for service, was abandoned. In 1907 Arthur Von Briesen, who was president of the New York Legal Aid Society, made a report<sup>31</sup> on the work of an organization in Copenhagen which was substantially that of a dispensary. This first period then was merely a time of groping.

The second period begins with the establishment in 1908<sup>32</sup> of an actual clinic at Northwestern University Law School in conjunction with the Chicago Legal Aid Society. In 1913 the law school of the University of Minnesota and the Minneapolis Legal Aid Society struck up a similar partnership,<sup>33</sup> and the same year a group of students at Harvard University established the Harvard Legal Aid Bureau.<sup>34</sup> George Washington, Yale and Tennessee in the next three years developed training of this sort on a less elaborate basis.<sup>35</sup> None of these last three experiments survived the blight of the World War.

The period from 1916 to 1926 is blank. The clinics at Harvard, Minnesota and Northwestern survived but no others were started. In 1927 the University of Cincinnati Law School and the Legal Aid Society in Cincinnati set up an arrangement for training students.<sup>36</sup> In 1929 the University of Southern California opened still another kind of clinic entirely under the control of the law school.<sup>37</sup> In 1930 the University of California and the Oakland Legal Aid Society established mutual relations.<sup>38</sup> In 1931 Duke University followed the example of the University of Southern California.<sup>39</sup> Less formal arrangements exist in Washington, D. C., where the Washington Legal Aid Bureau, the Catholic University of America, George Wash-

<sup>31</sup> 5 Legal Aid Law Review, No. 4, p. 25.

<sup>32</sup> 2 Chicago Legal Aid Review 9.

<sup>33</sup> Report of Proceedings of the 3rd Conference of Legal Aid Societies, p. 45.

<sup>34</sup> Tilford E. Dudley, "The Harvard Legal Aid Review," A. B. A. Journal, Vol. 17 (1931), pp. 692-694.

<sup>35</sup> The material supporting this statement is contained in general correspondence with the writer. See also the catalogue of the University of Louisville Law School.

<sup>36</sup> 3 University of Cincinnati Law Review 165.

<sup>37</sup> The Southern California Legal Aid Clinic Association has published several annual reports describing its work.

<sup>38</sup> See Vol. XXIII, No. 15, University of California Bulletin, School of Jurisprudence, Announcement for 1930-1931, page 14.

<sup>39</sup> The Duke Legal Aid Clinic has published Annual Reports from its inception. These describe its work in some detail.

ington University, and Georgetown University cooperate.<sup>40</sup> The University of Louisville, Yale, Stanford, Washington University in St. Louis, the University of Pittsburgh in Wisconsin, and Ohio State give training<sup>41</sup> in this direction.

Year	Number of Cases
1929	10
1930	88
1931	98
1932	No Record
1933	400

This third period of clinic development is marked by a variety of types as well as by increasing interest on the part of the law schools. Of the various types the Harvard Legal Aid Bureau<sup>42</sup> is operated by law students. The work is open only to honor men in the second and third year classes and there is no law school credit given. The greater bulk of the enterprises following the example of Northwestern Law School<sup>43</sup> do give law school credit and require the work from third year students before graduation. At Duke<sup>44</sup> and Southern California the offices of the clinic are maintained in the law school building so that there is no need for an outside legal aid organization. Ad-

<sup>40</sup>The information contained here is secured from correspondence with the Washington Legal Aid Bureau.

<sup>41</sup>The information regarding the work in these various organizations is contained in correspondence with the writer. As an example of the work the following record of the Legal Aid Bureau in Madison, Wisconsin, will show something of the volume of business.

<sup>42</sup>The Harvard Legal Aid Bureau publishes an Annual Report which describes its work in detail. The Report for 1933-34 gives the set of rules by which the office is operated.

<sup>43</sup>Criminal Branch. See the Chicago Bar Association Record, Vol. 10, No. 3, December, 1926, p. 58. See Annals of the James Nelson and Anne Louise Raymond Foundation for the support of a legal aid clinic for the poor, Bul. No. 2, published by the Raymond Foundation, Northwestern University School of Law. See the Northwestern University Bulletin, Vol. 27, No. 21, January 17, 1927. See also DeWitt Wright, "The Administrative Machinery Required for Conducting a Clinic Course," a paper read before the Association of American Law Schools, 1932-33—Mss.

Regarding the work of the main clinic at Northwestern University, see as the most recent statement a paper by Nellie M. MacNamara, entitled "Teaching Legal Ethics by the Clinical Method," read before the Association of American Law Schools, 1934, and to be published during the spring of 1935 in the American Law School Review. Regarding the work of the Workmen's Compensation Branch, see E. P. Albertsworth, "A University Clinic for Injured Industrial Workers," 16 A. B. A. Journal 26 (1930).

<sup>44</sup>No. 6 Bulletin of Duke University, Announcements for 1934-1935, June, 1934, page 14, describes the clinic and its place in the law school training.

ministratively this has its advantages particularly in communities where no legal aid organization exists.

The Southern California Legal Aid Clinic<sup>45</sup> supplies an example of a law office designed to care both for the client and the student with a full volume of cases coming to it and entirely under control of the law school. Clients are admitted through a separate side entrance in the law school building. Ascending the stairs to the second floor they come to a waiting room. Beyond that is a small hallway where sits a registration clerk who inquires from each applicant his name, address, and certain facts designed to indicate his financial condition. This is necessary because legal aid organizations to avoid conflict with the bar limit their clientele to those persons who cannot afford to pay a fee and to those cases where no contingent fee can be secured.<sup>46</sup> Beyond this registration hall there is a small room providing a degree of privacy for interviewing clients. There the student meets the client and learns how to extract from him the facts. The student then withdraws and confers with a member of the clinic staff who is a member of the bar. This is to secure supervision of the student and protect the client. After reassuring himself as to the nature of the legal questions involved and working out at least a preliminary plan of campaign the student returns to the client and tells him what to do next. A large percentage of cases are taken care of merely by giving the applicant legal advice.<sup>47</sup> Still another group of problems

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<sup>45</sup> Material describing the work of the Southern California Legal Aid Clinic is contained in a handbook prepared in 1929 when the work began. Leon T. David has revised this handbook and has gained greater experience in the administrative field. See also Leon T. David, "The Clinical Lawyer School; The Clinic," 83 *University of Pennsylvania Law Review*, November, 1934.

<sup>46</sup> All legal aid organizations are limited in their jurisdictions by the financial condition of their clients and the possibility that the case may contingently develop a fund out of which a fee could be secured. For example, the charter of the New York Legal Aid Society sets forth its purposes as follows:

"The purpose of this society shall be to render legal aid gratuitously, if necessary, to all who may appear worthy thereof, and who are unable to procure assistance elsewhere, and to promote measures for their protection."

See also Rules of the New York Legal Aid Society, published September 1, 1934, Rule No. I(d) which describes in detail the procedure by which the applicants for aid are investigated to determine whether or not they are poor persons.

<sup>47</sup> Percentage of cases where the matter was settled by giving advice and investigation alone:

require investigation, conferences, correspondence, and adjustments outside of court. Here the student, under supervision, handles the matter to the end. In perhaps ten percent of the cases court work is required.<sup>48</sup> Here the student studies how to prepare a case for court including the drawing of a trial brief. While he does not actually try the case he sits along side of the staff member who does try it and functions as a junior. The educational opportunities are not as great as if the student was in unrestricted charge of the case but considering the obligation to render adequate service to the client they are effective. The volume of business at the University of Southern California is approximately 3,000 cases a year and this gives experience without undue expenditure of time<sup>49</sup> to the 80 or 100 members of the senior class during the year.

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Year	% Advice and Referred Cases	% Investigated and Advice Given Cases
1924	48.5	5.5
1925	47	3.4
1926	41.4	11.
1927	47	9.2
1928	44.5	19.18
1929	53.1	10.24
1930	52.9	8.69
1931	46.15	13.54
1932	44.71	8.40
1933	48.10	7.98

<sup>48</sup> Information regarding the percentage of cases in law offices handled by litigation is difficult to secure. The best available data comes from the National Association of Legal Aid Organizations records. They show the following:

Year	Round Number of Cases Classified	Percentage of Those Cases Handled by Litigation
1924	55,000	5.6
1925	56,000	6.5
1926	66,000	7.2
1927	86,000	5.7
1928	101,000	6.9
1929	97,000	4.25
1930	121,000	4.1
1931	156,000	4.66
1932	202,000	5.24
1933	242,000	8.49

<sup>49</sup> While clinic work necessarily requires the student to give attention to his case when attention is needed there is plenty of opportunity to determine a maximum amount of time which the student shall spend. For example at the Northwestern Clinic and Minnesota, students are assigned for certain definite hours in the legal aid bureau. At the Duke Legal Aid Clinic an estimate has been made based on the number of hours a student would normally expect to spend on a two-hour course during the year

Behind the scenes as far as the client is concerned there are stenographers, file clerks, attorneys in charge of litigation, and the director of the clinic. From them the student learns the routine of a busy law office. The legal aid clinic, then, is a model law office operated by a partnership consisting of senior partners who are full fledged members of the bar and a group of changing junior partners who are there to learn what they can from contact with actual cases and clients.<sup>50</sup>

### III. THE NATURE OF THE TRAINING IN THE CLINIC COURSE

As at present organized the clinic course offers five opportunities<sup>51</sup> to the student.

a. The first field is the routine of professional work. A practical course in practice may be contrasted with a theoretical course in practice. In the latter, one may learn to draft legal documents as in office work,<sup>52</sup> or one may prepare plead-

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including classroom work and preparation. The students are required to keep a time book in which they enter the time spent in handling their work. Occasionally this time book is inspected and if it appears that one student has been spending a greater amount of time than the average of the class the matter is adjusted administratively so that that student is relieved for the time being. During an experience of three years it has been found that those few students who exceeded the amount of time allotted did so because of their particular interest. It is, however, perfectly possible by various administrative devices to limit the students' time although the more responsibility he has toward the case the more it may be necessary for him to concentrate his attention at a particular hour instead of preparing for a final review of the course as he may do in his other work.

<sup>50</sup>In the Duke Legal Aid Clinic work the class is divided into three committees: (1) A Committee on Public Relations, which studies the sources from which cases come to the clinic; (2) a Committee on Office Routine, which studies the administrative side of a law office including the assembling of materials in one case which may be of value to another student in another case; (3) a Committee on Evaluation of Student Work, which sits occasionally during the year for the purpose of discussing with the student what size fees should be charged in the cases handled by the student if a fee were to be charged. In performing this work the students secure an experience comparable to that of members of a law firm meeting for the consideration of office matters.

<sup>51</sup>The following articles include specific statements by law students as to what they learn or synopses of cases handled by legal aid clinics show opportunities for the student to learn. 83 *University of Pennsylvania Law Review* (1934), p. 31; the *South Atlantic Quarterly* 337, July, 1932; 23 *Hospital Social Service* 211 (1931); 3 *Southern California Law Review* 384.

<sup>52</sup>See the courses offered in the catalogues of the law schools of Iowa, Ohio State, South Carolina, Stanford, Texas, West Virginia, Wisconsin, and Yale Universities.

ings, draw briefs and argue in moot courts, and similarly go through certain predetermined motions for the purpose of gaining expected experience. Specific routines may be taught more quickly and effectively in a classroom than by using actual living cases. But law practice consists in a variety of general activities such as exercising mature judgment before, during and after using a specific routine. An effective lawyer is distinguished by his discretion in selecting the correct mode of procedure as well as by his ability to carry it to completion.

The practical course takes a man down to the courthouse and teaches him its geography. It introduces him to the sheriff and the court clerk and other officials with whom in the future he will be spending a substantial amount of time. It leads him to acquaint himself with the minimum fee bill, the items of court costs,<sup>53</sup> the technique of locating a witness and serving papers on him, the swift routines that may be achieved, for example, by the use of printed blanks, and the style of pleadings most useful in the jurisdiction in which the young lawyer is to practice. He learns how to search a title under conditions where a mistake may cause his client damage, and to read a court record which may contain errors. He weighs considerations in examining witnesses. He comes to know something of law office organization. Perhaps he finds that time is an essential element in law. He is dealing with new and unexpected material.<sup>54</sup> The situations grow out of an actual case, not from a classified heading in the instructor's notebook. They are interrelated parts of a whole lawyer's problem, not scientifically selected museum specimens. It is objected that this type of knowledge is easily acquired and that once gained it becomes a part of the lawyer's subconscious mind. Why bother to teach it? The answers are practical. It is essential to the lawyer in the fourth part of his

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<sup>53</sup> The chaotic condition of court costs in the United States will justify a far more extensive study than has heretofore been given it. For suggestions in this regard, see John M. Maguire, 36 *Harvard Law Review* 361; the Reports of the Standing Committee of Legal Aid of the American Bar Association, 49 *Reports of American Bar Association*, p. 386, and 50 *Reports of American Bar Association*, p. 456. Arthur L. Goodhart, "Costs," 38 *Yale Law Journal* 849, May, 1929. Kenneth Dayton, "Costs, Fees, and Expenses in Litigation," 167 *The Annals*, p. 32, May, 1933.

<sup>54</sup> For a recognition of the importance of experience in dealing with this preliminary material see R. W. Aigler, "The Grading of Examination," 2 *Bar Examiner* 166.

career to know how to get results. As a matter of saving time and insuring a comprehensive approach the material may be organized and given to the student in concise, orderly form. But the experience is also valuable for the light it throws on the student himself. Supervision over the novice is justified both to direct him if he is capable and to eliminate him if unfit. If an applicant displays inability to be orderly, systematic and conscientious in his detail work, if he does not have the routine professional characteristics it may prove that he cannot be trusted to be his own master in the more important branches of law. At least one is put on notice. The profession cannot afford the loss of prestige which accompanies a procedure of letting the recent graduate treat the members of the public like guinea pigs for experimental purposes.<sup>55</sup>

Supervision in learning the professional routine shortens the third period and so, in the long run, saves time.

b. The second field involves gaining a conception of law as of one piece.<sup>56</sup> In the classroom for obvious reasons the texture of the law is cut into more or less arbitrary segments, each with its own patterns. The segments have been given more or less rigid boundary lines over which one passes at his peril. The instructor, for example, in a course in Taxation who insisted upon discussing cases that dealt with the law of Contracts might well be criticized for wasting the time of the class. Nowhere in the orthodox law course are these jig-saw pieces put together into one picture, and the student must make a definite mental adjustment to be able to work in the field of law as a unit. The working out of a single case in a law office may very well require the application and skillful blending of rules from a dozen different fields of law. Practice in synthesizing principles taken from various courses, the ability to work with a complicated rather than a simple problem, experience in evaluating the effect on a single set of facts of diverse and even conflicting rules, judgment in diagnosing legal ques-

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<sup>55</sup> There are numerous statements that the work of the clinic is not limited to this sort of routine effort. Justin Miller, Preface to the First Annual Report of the Southern California Legal Aid Clinic Association (1930).

<sup>56</sup> For a comprehensive approach to this problem, see Summary of Studies in Legal Education, by the Faculty of Law of Columbia University (1928). The chart on page 64 suggests the need for a synthesis.

tions from sets of facts presented by laymen rather than those laid down by an appellate judge writing an opinion, or a legal scholar presenting an hypothetical case—these matters are essential to the lawyer in his fourth period and so should be mastered in the third.

The man uninitiated in the whole field of law, having been trained to see points of law in connection with a course, tends in practice to seize the first legal question he recognizes in a case and to devote his attention to it oblivious of the possibility of others. He needs to learn to look over the whole case and display a quasi judicial cast of mind before committing himself or his client. The principles of this work may be taught. Time is not wasted in developing correct mental habits. Supervised instruction will enable the student more quickly, with less fumbling and fewer mistakes, to cover the ground.

c. A third field of opportunities for clinical training arises because of the presence in the case of a client or clients and other lay persons. How to receive a client in the office, how to deal with conciliation, arbitration, legislation or education procedures when one has been taught only the process of litigation,<sup>57</sup> how to control angry, misinformed, suspicious, treacherous people, and how to satisfy a client at the end of the case so that he will continue to have confidence in his attorney—these are human problems. They present two new difficulties to the student—the greater demand by the client and the greater variety of factors.

A higher standard of proficiency is required in practice than in the classroom. Class contact is a laboratory relationship between student and instructor. It makes no difference except in the matter of the student's grade whether he answers the isolated question of law correctly or not. His standard is too often labor sufficient to pass the course. In practice the client as a matter of simple justice demands that in return for

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<sup>57</sup>In this respect it is possible to gather information from the techniques developed in other fields. The physician's bedside manner, the social workers tactful approach are capable of being taught. There is every reason why the lawyer should have at his command other facilities than those involved in litigation. One suggests such books as: Mary S. Richmond, "Social Diagnosis"; Bingham, "How to Interview." See also the series of studies in the methods, techniques, organization and purposes of social work published by the American Association of Social Workers.

an adequate fee his attorney advise him correctly—not seventy per cent correctly—as to law and procedure. In this respect the young lawyer is at his client's mercy. He gets no second case unless the client brings it. Here again a man by the trial and error method in time may find how to handle himself and deal with this novel material. He may make his mistakes and go forward according to his opportunities and abilities. We are accustomed to point to the careers of the successful men as justifying the present policy of "hands off." We have not spent enough time studying the larger number of failures. The change in the nature of the examination requires far reaching readjustments.

Extra-legal considerations which never enter into the mind of the law teacher control many a client. The student may be perfectly right from a legal standpoint and still lose his client. An inadvertent remark, a failure to recognize a whim, a perfectly innocent but misunderstood conference with opposing counsel, may cause loss of confidence. Human problems are quite as much factors of law practice as are legal problems. A successful lawyer can handle both. The accumulated experience of the legal profession affords ample material from which principles and rules of conduct may be formulated so as to provide an orderly method of instructing the novice. A man cannot reach the fourth stage without this experience. He will save time and perhaps ultimate disaster by accepting supervision while he is learning. The loss of a client because of lack of confidence in one lawyer is a blow to the prestige of the profession as a whole.

d. A fourth field lies in the direction of applied legal ethics. It is easy to recognize an ethical problem when it arises in a case reported in the books. It is sometimes difficult for the uninitiated to see the same problem amid the confusing and obscuring factors in practice. A substantial number of breaches of ethics occur because the lawyer either did not "diagnose" them in time or was ignorant that they constituted a violation of the rules.

There is an allied field sometimes spoken of as that of legal etiquette. A man who violates a rule in the field of legal etiquette is not disbarred, but he may lose caste with his professional brethren and with the public.

There is a belief that the law student, by associating for three years with the members of the faculty of his law school and the student body, will absorb the necessary qualities of gentlemanly conduct, and consequently, legal education can hardly expect to give him more systematic attention. The belief is not always justified by the facts.<sup>58</sup> A man may follow all the rules which in social intercourse mark the gentleman and at the same time may, and often does commit indiscretions and solecisms in professional situations. A lawyer's ethical responsibilities are to the court, the client, the profession and the community. The law school curriculum accomplishes much in emphasizing the first. Economic pressure ordinarily will take care of the second even in the absence of ethical idealism. The third and fourth require special training, otherwise the accepted viewpoint may not be secured.

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<sup>58</sup> See *Marsh v. State Bar of California*, 291 Pac. 583 (1930). For a case in which both parties were at fault, see *La Porta v. Leonard*, 97 Atl. 251 (1916). The court remarked regarding an interchange of comment between plaintiff and defendant both of whom were lawyers:

"Therefore, the defendant (the older lawyer) upon this trial insisted that, while the remarks which are the basis of this action may not be entitled to receive recognition in any logical compendium of the retort courteous, they may without question be properly classified under the classic appellation of a 'tu quoque.' And, if to this it be answered that in a court of law his legal status thus acquired is no answer to the plaintiff's claim for damages, his insistence is nevertheless that the jury should have had the opportunity to consider the offense in question, in conjunction with the serious accusation which provoked it, and that in the light of this provocation the offense charged to him might appear to be but the natural and indignant ebullition of a learned advocate, whose ripe experience in the trials of the forum had reached the didactic stage of the sere and yellow leaf, which entitled him to paternally admonish a neophytic junior, whose practical vision of a legal career is usually circumscribed by the buoyant and unstable perspective of the radiant hues of incipient morn."

*Smith v. State Bar*, 294 Pac. 1057 (1930); *In re Kopleton*, 241 N. Y. S. 171 (1930); *In re Penn*, 188 N. Y. S. 193 (1921).

*In re Farmer*, 131 S. E. 661 (1926), the defendant sought unsuccessfully to defend himself by offering "a large number of affidavits from citizens of Wilson County who testify to his general good character, and one in particular which states that, while he may have exhibited some faults and frailties in his immature years, it has been a gratification to his friends to witness the calm, equable and well poised manner in which he has approached his riper manhood."

*In Petition of Board of Law Examiners*, 210 N. W. 710 (1926), a scheme involving wholesale cheating among a group of applicants for admission to the bar was exposed and "each candidate" dealt with "largely on his merits."

Here again is a field where a man without supervision but with good luck may struggle onward to a position of importance at the bar. But the odds are against it. A mistake is costly. The client is lost and the prestige of the legal profession has received a severe set-back. It is inefficient to permit a continuance of conditions where a man unsupervised may enter this third period.

e. A fifth field is that of the creative, strategical planning of a campaign in a case. The law student who reads an important decision of a judge observes the mummified remains of what was once a living conflict. In the classroom the instructor brings the mummy back to a semblance of life. In real practice one starts at the beginning and lives the case through to the end. Orthodox law school training does not extend to the teaching of this technique. The analogy is to a military campaign.<sup>59</sup> Training for one set of conditions such as the classroom, does not necessarily fit a man for general practice where the circumstances are different. The term "legal tactics" may be applied to such tasks as drafting a complaint or an answer. Legal strategy is the art of conducting a complete campaign in a case from beginning to end. The young lawyer without a knowledge of the principles of legal strategy will be delayed.

The campaign begins with the ascertainment and evaluation of the facts. In his class work the student begins with a set of agreed facts. He does not learn how to sift the wheat from the chaff, how to weigh and organize the basis of the case, to decide whether he has everything, and to judge the relative effectiveness of his witnesses in the minds of court and jury. One should have imagination to think—not what is the law, but how to accomplish in a perfectly ethical manner what the client desires, or what is best for him. The determination of rules of law is a process incidental to the campaign.

Here again the unsupervised young lawyer may gain success by the sole force of his ability and devotion to duty. But he does so at an unnecessary expenditure of time and effort. He

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<sup>59</sup> Much may be learned by reading such books as Henderson, "Stonewall Jackson," Longmans, Green and Co., London, 1902. Similarly the law student might profitably spend time in the court room watching the trial of cases or reading the transcript of testimony in celebrated contests.

may lose clients who are dissatisfied with his early bungling efforts. Much of the process may be systematized and instruction in it presented in an orderly manner.

Here are five aspects of the lawyer's task which the student does not meet in his classroom. The practical details of practice, the synthesis of various fields of law, the human element in every legal proceeding which causes constant deviations from a logical procedure, the problems of legal etiquette and the creative task of planning a campaign and of carrying it out. In each one of these fields, as in the periods devoted to cultural background and law school study, the law student without supervised instruction may win his way through the disheartening events of his third period and emerge a good lawyer. Supervision in the first two periods is an accepted standard. With supervision in the third period he will more quickly and safely find a bridge across at least a certain part of the morass and will be better prepared for the balance of the journey. Viewing his career as a whole, supervision during the third period means to him the saving of time. To the legal profession it means stopping one of the leaks by which the prestige of the profession is constantly lowered in the eyes of the general public. So much for the problem of the student. The law school calls for a different set of considerations.

#### IV. LEGAL PROBLEMS IN THE ESTABLISHMENT OF CLINIC WORK

Several legal problems present themselves in connection with the establishment of a clinic organization. The first of these is whether a university, as a corporation, may operate a law office. The answer to this question depends in large measure upon the wording of the statute in the particular state defining the practice of the law. Universities have solved problems of this type in three ways. In North Carolina there is a special clause to the statute exempting legal aid clinics from its operation.<sup>60</sup> In California there is an opinion from the Board of Governors of the state Bar declaring that operating a legal aid clinic is not in opposition to the spirit of the statute.<sup>61</sup> Elsewhere there are statutes which answer the first question by answering the second.

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<sup>60</sup> See North Carolina Code 1931, Section 199(e).

<sup>61</sup> See 4 California State Bar Journal, October, 1929, page 54.

The second question is as to the right of a law student to practice law. Here again the states have solved the problem in various ways. In a number of them special statutes permit the law student to appear in court.<sup>62</sup> Elsewhere an interpretation of the statutes indicates that a law student may perform those functions in a law office which a lay law clerk or a lay stenographer might perform.<sup>63</sup>

The third question arises where the university cooperates with a legal aid society. Here the problem is whether the legal aid society itself is a corporation practicing law as opposed to the statute.<sup>64</sup> In some jurisdictions specific exemptions are provided for legal aid societies.<sup>65</sup> Elsewhere it seems clear that the legal aid society as a corporation is not within the spirit of the laws preventing corporations from practicing law.<sup>66</sup> The

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<sup>62</sup> See Massachusetts General Laws, Chap. 221; but see also *Sherwin-Williams Co. v. Mannas and Sons*, 191 N. E. 438 (1934). See also Compiled Laws of Colorado, 1921, chapter 133, Section 5997 and following.

<sup>63</sup> See January, 1934, issue of the New York State Bar Association Bulletin, an article by W. S. Taft. See also Practice of Law by Non Pecuniary Corporations, A Social Utility, by Henry Weihofen, 2 University of Chicago Law Review, December, 1934, p. 119.

<sup>64</sup> In some 29 states there is no specific statutory provision prohibiting a corporation from practicing law. At the same time the cases clearly indicate that a corporation can not practice law either on the ground that such activity is outside of the scope of a corporate charter or because of the common law theory of the need for close attorney and client relationship: *People v. Merchants Protective Corp.*, 189 Cal. 531, 209 Pac. 361 (1922); *People v. California Protective Corp.*, 76 Cal. App. 354, 244 Pac. 1089 (1926); *Townsend v. State Bar Association*, 210 Cal. App. 291, 291 Pac. 837 (1930); *In re East Idaho Loan & Trust Co.*, 49 Idaho 280, 238 Pac. 157 (1930); *N. J. Photo Engraving Co. v. Carl Schomet & Sons*, 122 Atl. 307 (1923); *State v. Retail Credit Men's Association*, 163 Tenn. 450, 43 S. W. (2d) 918 (1932); *State v. James Sanford Agency*, 69 S. W. (2d) 896 (1934).

<sup>65</sup> States expressly prohibiting corporations from practicing law but exempting legal aid organizations or charitable corporations from the operation of the statute; Georgia (Ga. Gen. Laws, Pt. 1, Title 13, p. 191); Illinois (Smith-Hurd Rev. St. 1933, chap. 32, No. 411); Louisiana (1 La. Gen. Stat. 1932, title 6, chap. 1, No. 444); Massachusetts (7 Mass. Ann. Laws 1932, Chap. 221, No. 46); Michigan (Mich. Comp. Laws 1922, No. 11361); Minnesota (1931, P. L. 119); New York (Gilbert's Ann. Crim. Code and Penal Law 1933, Art. 24, No. 280); Pennsylvania, 1933 (P. L. 66); Rhode Island (R. I. Gen. Laws 1923, Chap. 401, Nos. 44-46); Utah (Utah Rev. St. 1933, 6-0-39); West Virginia (W. Va. Code 1932, Chap. 30, Art. 2, No. 2854); North Carolina (N. C. Code 1931, Chap. 4, No. 199a).

<sup>66</sup> States which by express provisions prohibit the practice of the law by corporations but do not specifically exempt legal aid or charitable corporations: Maryland (1 Md. Code Ann., Art. 17, No. 19); Missouri (1 Rev. St. 1919, Chap. 5, No. 667); Ohio (Page's Gen. Code Ann. 1930, No. 8623); Oregon (32 Code Ann. 1930, Chap. 4, Nos. 504-

legal aid society operating not for profit is in an entirely different category from the trust company, the collection house, or the adjustment agency against which the statutes are primarily designed.

If the statutes are set up for the purpose of preventing a business organization established for profit from competing with the bar then obviously the legal aid society being not for profit is in a different category. If the objection lies in the fact that a corporation has no soul and there should be no intermediary between the lawyer and his client it would seem that the 35 Canon of Professional Ethics as adopted by the American Bar Association made it clear that a legal aid organization is not such an intermediary. If the argument is based on the fear that the corporation may stir up litigation the records of legal aid societies themselves, which indicate that less than ten per cent of their cases get in court and that many of them are ex parte matters, should be a convincing answer.

It does appear, however, that it is wise for a university planning to do clinic work to provide statutory protection and thus avoid one type of problem which needs to be faced.

#### V. THE VALUE OF CLINIC RECORDS TO BOARDS OF BAR EXAMINERS

The legal aid clinic device is effective to bridge the gap in the third period of a lawyer's training. It provides a method of supervision, continuity and comprehensive approach to the needs of the law student. Because of its effectiveness it is already beginning to be recognized by the other agencies operating in this field. The young lawyer is beginning to seek it as an addition to his training.<sup>67</sup> He finds the volume and diversity of the clinic cases useful for educational purposes.

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505); Texas (Gen. Laws, 1933, Chap. 238, Senate Bill 62); Virginia (Vir. Code 1930, No. 3426a); Washington (5 Rem. Rev. Stat., 1932, No. 3231) (relates entirely to trust companies and banking corporation).

<sup>67</sup> See Los Angeles Bar Association Bulletin, Vol. 9, No. 8, April 19, 1934, "Legal Aid Clinic Committee," p. 185.

Recently the Legal Aid Society of Cincinnati has inquired from a number of the younger lawyers at the Cincinnati bar as to their reaction to the work of the clinic, and what they learned from it. The answers were voluminous and copies of the letters are in the hands of

The bar generally appreciating the public service aspect of the work is giving moral support and at times actively participating in the establishment of legal aid organization.<sup>68</sup> The interest of the law schools has been described. It is significant that at least in one instance a board of bar examiners has allowed law students to take their internship in a legal aid society.<sup>69</sup>

The full value of the clinic work to the board of bar examiners remains to be explored. The following suggestions will indicate something of that value.

There is probably no problem confronting bar examiners more acute than to get the facts<sup>70</sup> regarding the applicant for admission. Time honored sources of information are a written examination, law school grades, a personal interview, and recommendations, usually in writing from lawyers or citizens.

Important as are these materials as a basis for decision, their limitations should be kept in mind. The written examination tests memory and analytical power,<sup>71</sup> but not creative ability, imagination, persistence, dependability, and judgment

the writer. In summary, it may be said that they emphasized the following six points:

1. It gives the law student his first opportunity to apply the rules and principles of law which he has learned.

2. It teaches him the mechanics of the local court procedure which he would otherwise have to learn gradually, even with disadvantage to himself and client.

3. It teaches him how to meet and deal with clients.

4. It furnishes the senior law student with a sort of transition period between the little world of the law school and the larger sphere of outside competition.

5. It imbues him, to a greater or less extent, depending on the man, with the humanitarian and social ideals of the practice of law.

6. It develops patience, self-control, initiative and a habit of paying closer attention to detail; likewise a broader viewpoint, tolerance, and sympathy for the so-called "other half."

<sup>68</sup> See the Reports of the Legal Aid Committee of the American Bar Association from 1923 to date. See also Reports of the Legal Aid Committee of the Pennsylvania Bar Association 1923 to date.

<sup>69</sup> See letter February 21, 1935, M. W. Acheson, Jr., Esquire, President of the Pittsburgh Legal Aid Society to the writer.

<sup>70</sup> See Charles E. Clark, "The Selective Process of Choosing Law Students and Lawyers," 2 The Bar Examiner 274, for an argument in favor of gathering such facts.

<sup>71</sup> See 2 The Bar Examiner 133, Richard R. Powell, "Suggestions for the Preparation of Questions for a Bar Examination," in which he states:

"The applicant must be able efficiently to distinguish the significant from the unimportant; he must display facility in comparing significant data and thereby ascertaining relative importances; he must possess the body of law information enabling him to perform the tasks just stated and to have probably correct "hunches" as to points of law concerning which he has read no

in dealing with actual cases and clients. The examinations to which the lawyer will be subjected at the hands of the court, his professional colleagues and his clients will not often bear resemblance to the written examination. Law school grades are more effective because they include an element of judgment of the man acquired by three years of contact with him. Yet this contact is not a constant factor.

A personal interview with a board of bar examiners is necessarily brief.<sup>72</sup> Recommendations as to character and ability are easy to secure.<sup>73</sup> In none of these cases is there material which supplies a picture of what the student is likely to do under conditions approximating those of real practice.

The clinic supplies just such data and bar examiners might well investigate the possibility of developing further its usefulness. The clinic grades represent the judgment of men who are practicing attorneys. They are given after a period of working with the student as in any law office. They represent no abstract standard of grading such as the lawyer with only one student in his office must apply, but a comparison of the student's work with that of a number of his fellows. Those who give the grades have the time to devote thought to the whole subject of the student's fitness for law practice and are not so likely to be influenced by questions as to whether he has fitted well into a particular office. In several states graduates of certain law schools are admitted without further examination.<sup>74</sup> If the law school judgment is to be accepted in toto it is not unreasonable to argue that a portion of it be taken.

The clinic course reveals certain definite matters regarding the student. If correlated with the work of bar examiners it could reveal much more. As an example the grading at the Duke Legal Aid Clinic is taken.<sup>75</sup> There the staff consists of five practicing lawyers—one of whom directs the clinic work.

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cases; and lastly he must be able to present persuasively a conclusion to which he has arrived by the foregoing processes. The bar examination should, therefore, seek to test the existence of these needed equipments."

<sup>72</sup> See Alfred J. Harno, "Lights and Shadows in Qualifications for the Bar," 2 The Bar Examiner 14.

<sup>73</sup> In extreme cases it is necessary for the bar examiners to employ a detective. John B. Gest, "Character Investigations," 2 The Bar Examiner 51.

<sup>74</sup> Rules for Admission to the Bar, West Publishing Co. (1934).

<sup>75</sup> See the 3rd Annual Report, Duke Legal Aid Clinic, 1934, p. 39.

In addition there are two secretaries. Each student is graded by each one of these seven persons. Every month the grades are recorded on the general impression which the student has made on the staff member for that month.<sup>76</sup> No detailed numerical device is employed, but the men are grouped according as they are average or better or less than average. A second grading occurs when a student has completed a case. The case and his conduct of it are discussed in staff meeting and each staff member then records a mark.<sup>77</sup> Finally at the end of each semester each student is graded by each staff member as to character. Arbitrarily ten characteristics have been taken.<sup>78</sup>

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<sup>76</sup>At the beginning of the year everybody starts off doing average work. As the year progresses some of the men's work shows up better than average and some less than average which gives some idea of the progress being made and gives an opportunity for conferences with the students whose work is not satisfactory.

<sup>77</sup>The value of this grade lies in the fact that each staff member who has worked with the student on the case has an opportunity of discussing his impression of the work and of making clear to the other members of the staff how much of the work in the case and how much of the responsibility was borne by the student himself.

<sup>78</sup>The following characteristics are taken rather arbitrarily. It is regarded as desirable to consider such matters experimental.

"We have proceeded generally on the theory that the pre-legal education was designed to give the man a broad cultural background. The case method in law school seems to us effective for the purpose of developing his analytical abilities and helping him to be a good legal scholar.

"Our problem in the clinic is to work out those characteristics which seem to us more peculiarly necessary for the practicing lawyer and the judge.

"Our thinking began with the question as to who was going to test the law student after we got through with him. We thought that the judge and his opponents in the legal profession would test him on the analytical side. But in addition to this we felt that he would be subjected to merciless examinations by prospective employers and by clients. We tried then to figure out what characteristics we thought would appeal to people of these two classes.

"At the present time we have a list of ten characteristics to which we have applied names that are more or less descriptive. We are trying out this list and grading the men according to it. We felt that many more characteristics might be included but that ten was a convenient basis for grading purposes and if in time some of these showed up as being unsatisfactory for one reason or another, it would be very easy to substitute others.

"First, we put the word 'adaptability.' By this we are thinking of the student's ability to adjust himself to the wide variety of situations which a man meets in practice. In the classroom according to the casebook type of instruction, the material is pretty largely arranged along standardized lines. If the class you are attending is one in the course in Trusts you may be reasonably sure that all questions arising will be in the field

When the time comes, including the final examination grade to report what the student has done during the year an elaborate basis is all ready. The results are fair because they repre-

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of Trusts. In law practice we never know what may come along. One day you may be rushed with business and the next few days nothing may come in. Can you handle uneven volumes of business and still do satisfactory work? Can you bear the drudgery of law practice in a cheerful manner or are you the type of person who can only work on the type problem that interests you?

"The second characteristic we have named is 'dependability.' Can I as an employer of labor hand over to a student a job to be done and then forget about it, or must I keep the student in mind all the time? As a client can I have confidence that my lawyer will be doing the right thing at all times?

"The third heading is 'imagination.' This word perhaps is poorly chosen. It is selected to indicate creative ability. Can the student take the utterly disorganized story told him by the lay client and see legal possibilities in it which may form a basis of plans of campaign? When he comes to answer the question 'What shall I do for this client?', is his mind such that he has a wide and rich variety of possible courses of action among which to choose, or is he limited to a few routine steps? I think we might also include the idea of resourcefulness under this heading.

"The fourth topic is 'attention to detail.' Can a man force himself to handle the details of practice and do each bit day after day in a systematic manner or is he of the erratic type that relies on inspiration to win his cases for him? For the man who has not expected it, the detail of law practice is a deadly thing. Some men do not get over this feeling toward it. It seems to us that they make poor lawyers in the long run.

"The next topic is 'ability to organize material.' This is also a part of the general idea of creative ability. It involves the power on the part of the student to develop the different facts in the case to the point where they may be dealt with in the field of law. It also requires a certain orderliness and systematic quality of mind. For instance, a well-planned brief, a thoroughly organized report of facts would display ability in this field.

"Ability to deal with people is so important that we have made two headings for this. The first of these is the 'manner to clients.' Is the student able to deal with clients in a manner calculated to win their confidence and respect?

"The other heading on this division is 'manner to members of the staff.' How does the student conduct himself as a member of a law firm? Can he work well with his fellows or is he essentially a square peg in a round hole?

"The eighth heading involves the ideas of 'initiative and persistence.' Is the student a self-starter and does he keep on the trail of the case or is he the sort of person who must be stirred up to action?

"The ninth heading is entitled 'judgment.' By this we mean a quasi judicial cast of mind in dealing with the problems that come to a lawyer. In a sense a lawyer in his own office is a court of first instance where the client's problems are considered, both as to the question of whether a suit should be started and on every other conceivable ground. Does the student show a matured ap-

sent grading by several different persons rather than by one. They are comprehensive because each staff member sees different aspects of the student's work and forms an opinion on those observations, but the whole group reports a better rounded picture. They are based on the comparative standing of the man in relation to his fellows and not on some abstract standard of individual excellence or personal whim. They proceed on certain definite lines. They do not limit the thought to whether the student can analyze a set of facts and apply a rule of law. They inquire—"If I were an attorney hiring a young lawyer in my office, would I take you?" "if I were a client for whom you had handled one case, would I bring you another?"

The suggestion that such a device is of value to bar examiners is made with less hesitation because of the experience which directors of legal aid clinics already have in recommending former students to lawyers. The practice of writing to a law school for information regarding a student applicant for a position in a law office or elsewhere is fairly common. But what has the average law school Dean as a basis of reply?—perhaps his own personal observation of the student, the opportunities for which vary greatly, and the grades in the various courses. If the position to be filled calls for the sort of work a law student does in school the grades are of value. But if the work is of another sort the value declines. Grades from clinic work, on the other hand, supply just that basis of general understanding of the student which is needed to determine a priori if he is likely to fit, well, into a particular situation. Because the information is useful here it is reasonable to suppose it will be useful to bar examiners.

At present the enterprize is still in an experimental con-

proach to matters of this sort or is he hysterical, impatient, irritable and easily thrown out of his stride?

"The tenth heading is 'sensitivity to ethical considerations.' By this we mean, not recognition of the fact that a lawyer should not steal his client's money. Almost any student knows this as a matter of fact. There are, however, a multitude of amenities, proprieties, and points of legal etiquette which the most cultured gentleman may well violate unless he recognizes the possibility of the existence of such an unwritten code. The student, we think should show himself sensitive to the proprieties of the case, sensitive to the prestige which he occupies in the eyes of his fellow lawyers, and sensitive to the position which the general public gives him."

dition. It is possible to expand it and mold it. It suggests an advance in the task of supplying material on the basis of which a bar examiner may reach a decision.

## VI. CONCLUSION

We have then made the following points. Law school training should be broad enough to include preparation for responsibility in community leadership. The present system of legal education does not provide this because of the gap at the end of the second period. The remedial devices already set up to cross that gap are in relative stages of advance but the one which promises most is the legal aid clinic. The legal aid clinic over a period of years has developed a technique and different types of machinery so that those who are interested in setting it up have a variety from which to choose. The responsibility of the clinic is essentially this task of preparing the student for leadership in the community. It helps him to develop within himself a technique for meeting the unexpected. The records kept by clinic organizations will provide the instructors with an invaluable list of factors pointing toward the character of the student. Already in one state the Board of Bar Examiners has recognized a value in this sort of training. The boards of Bar Examiners throughout the country should investigate this information and should correlate their work with it. The result would be a clearer determination of those students who are qualified for admission to the bar and a clearer segregation of those who are not yet qualified.