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THE SECOND MILE FOR LEGAL AID CLINICS

JOHN S. BRADWAY†

The current Survey of the Legal Profession has produced many interesting and valuable reports.¹ One of these, prepared by Professor Quintin Johnstone, deals with "Law School Legal Aid Clinics."² The report makes clear that the legal aid clinic movement, which is designed to meet one of the major criticisms directed against modern legal education, is rapidly approaching maturity.

It is not the purpose of the present article to supply a reprint of Professor Johnstone's report. That compilation of data should be read in its entirety and appreciated on its own substantial merits. However, reference may be made to three items appearing in it. It suggests a definition of legal aid clinic work, "a law school sponsored program for law student work on legal aid cases." It provides a thumbnail history of the legal aid clinic movement:

The oldest of the present clinics are those at Harvard, Minnesota, and Northwestern. They were all established in 1913. Clinics were set up at Yale, Cincinnati, and Southern California in the 1920's and at Duke, Cornell, Ohio State, Maryland, and Wisconsin in the 1930's.³

It classifies the existing clinics in two categories:

In the first, the law school gets substantial assistance from an independent legal aid society or public defender's office. . . . In the other the law school . . . must maintain its own legal aid office and practice.

† Professor of Law, Duke University.

1. Smith, *The Survey of the Legal Profession: Final Progress Report*, 37 A.B.A.J. 645 (1951).

2. Johnstone, *Law School Legal Aid Clinics*, 3 J. LEGAL EDUC. 533 (1951).

3. The early material on legal aid clinics is collected in A TENTATIVE BIBLIOGRAPHY OF LEGAL AID WORK (1940), published by the National Association of Legal Aid Organizations, Rochester, New York.

These quotations give us a point of departure for the present article which is designed to consider two questions expressly and impliedly raised by the Johnstone report:

- a) There are arguments for legal aid clinics.
There are arguments against legal aid clinics.
Is there any answer for the contrary arguments?
- b) How does the legal aid clinic of today help to visualize the law school curriculum of tomorrow?

REBUTTAL

The Johnstone report lists some four major objections to legal aid clinics in law schools. The present writer does not pretend to speak for the proponents of legal aid clinics who no doubt have their own ideas of the situation. He is merely expressing his own views; but he does believe the unfavorable comments call for some rebuttal. Otherwise, uninformed persons reading the report may go away with the impression that the criticisms therein stated are unanswerable.

Before attempting to grapple with specific objections, it is desirable to comment on them as a group. It seems that no one has gone so far as to meet the legal aid clinic proposal head on and declare flatly that "a program for student work" in connection with flesh and blood clients and real cases is without merit. Rather the comments are oblique. They fall naturally into three groups, in effect: (a) we do not see the value of the program; (b) we have enough trouble already with a crowded law school curriculum without adding to it; (c) the "material"⁴ (clients and cases) used for educational purposes which is made available to the student through legal aid clinics has only limited value because it is not sufficiently representative of general law practice. Preliminarily by way of reply, one may suggest that these objections are not insuperable. The value of the program readily may be made clearer; eventually the problem of the crowded curriculum, irrespective of the impact upon it of the legal aid clinic movement, will have to be faced and not evaded, why not now; and an alert imaginative legal aid clinic staff,

4. Since its creation in 1920, the Committee on Legal Aid Work (now the Standing Committee) of the American Bar Association has supplied an annual commentary on legal aid work. Through its reports and the reports of the National Association of Legal Aid Organizations, now the National Legal Aid Association, the wide scope of the legal problems of poor persons can be observed in detail.

without undue exertion, may supply the students with "material" which a reasonable man would regard as representative of general law practice.⁵

Let us now consider the individual items in the language in which they are clothed in the Johnstone report.

EXPENSE

1. "If properly administered, they [legal aid clinics] are too expensive." In an era of rising costs one does not wonder that those responsible for raising money to operate a law school are constantly harrassed by proposals which, if adopted, would add expense to their budgets. And yet the alternative is a type of stagnation which probably, in due course, would lead to a loss of prestige.

Expense per se has never been an insuperable obstacle to progress in legal education. If it had been, we should look in vain for elaborate law centers, full time faculties, impressive libraries, and three-year curricula. In a temporary moment of discouragement we may yearn for an inexpensive log in the wilderness with Sir William Blackstone on one end and a law student on the other, but with the recovery of our natural enthusiasm for, and pride in, our profession we decline to hamstring ourselves. Alongside of the items mentioned above, the cost of even a first-class legal aid clinic is a mere drop in the bucket. Alongside of the cost of present day medical education, law school expenditures are by no means unreasonable. There is no reason to assume that if we spent on a law student the amount of money now invested in a medical student any of it would be wasted. The question—how much does it cost to turn out a competent lawyer—is less important than the query—what is the value of adequate training to law students, to the profession, and ultimately to the law schools.

It is suggested that what is to be regarded as essential in a law school budget, in the long run, is determined not alone by the faculty or the board of trustees of the university, but by the public, the group from which clients come. If the man in the street wants lawyers who are trained in a particular way or to a certain degree, he will slowly, but surely, make known his

5. Johnstone, *supra* note 2, at 538, refers to Bradway, *Case Presentations and the Legal Aid Clinic*, 1 J. LEGAL EDUC. 280 (1948).

demands and find ways to enforce them. For example, the young law graduate who fails to measure up to what the lay public expects of him can not expect any meteoric rise in the profession. The law school which continues to turn out men who are not equipped upon admission to the bar to render what passes for current standard service to their clients sooner or later will reap the reward of its failure to keep a finger on the public pulse.

At the present moment there is probably no more serious criticism of legal education among practicing lawyers and laymen than the charge that the newly admitted lawyer is allowed to learn the so-called "tricks of the trade" at the expense of his first clients.⁶ Law firms very quickly become aware of the inadequacies in the young men whom they take into their offices.⁷ These neophytes fall roughly into two classes, those who may be able to write a good examination but are not suited to practicing law, and those who gradually become capable of doing what is expected of a general practitioner. When a young graduate hangs out his own shingle, the lay public in due course learns the hard way where to classify him.

One serious reason for the continuance of this problem is the absence from the classroom of the client. Under the case method the client becomes "the little man who wasn't there." Too often solutions are reached in class discussion without reference to his highly individual reaction. Probably most people will agree that there is no substitute for a real case and a real client if we are seeking to provide the law student with a sense of reality and to build in him the necessary self-confidence to meet the demands we are sure the public will make of him. A second serious reason is the prevalence of the phrase "tricks of the trade" with its connotations of superficial cleverness. Without special training the young lawyer too often will learn *only* the "tricks of the trade" and may not realize that behind them are a series of

6. Bryant, *Rotating Internship for Lawyers*, 33 J. AM. JUD. SOC'Y 135 (1949); Cutler, *Inadequate Law School Training: A Plan to Give Students Actual Practice*, 37 A.B.A.J. 203 (1951); *Report of the Committee on Continuing Legal Education of the American Law Institute and the American Bar Association*, ADVANCE PROGRAM 74TH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 95 (1951).

7. As examples of current thinking along lines of improving legal education see: Cheatham, *The Law Schools of Tennessee 1949*, 21 TENN. L. REV. 1 (1950); Morland, *Legal Education in Georgia*, 2 MERCER L. REV. 291 (1951); Storey, *The Modern Law Center*, 4 S.W.L.J. 375 (1950).

desirable basic professional habits, a minimum standard of conduct typical of the better client-servers. The fact that he thinks like a legal scholar does not prove that without more he will necessarily think like a practicing lawyer. It is not that one is better than the other, merely that they are different. Neither young lawyer, nor organized profession, nor law school can afford to allow a continuance of this period of "lag." The public relations repercussions of the failure to give the young lawyer the extra training are not favorable. It is worthwhile to spend some money seeking a remedy. At present the first class legal aid clinic is the most promising remedy. Certainly it costs money to bring the real client and the student together and to supervise the contact so that both student and client will benefit. Certainly we want to do more by way of instruction than to put the student and the client in a room together and piously hope that by hook or by crook the better man may win. But the expense in relation to the value received is not too serious. Properly administered a legal aid clinic is worth all its costs.

THE CROWDED CURRICULUM

2. "The skills, information, and experience sought to be given in clinic work should not be attempted by the law schools because these matters are better left to the early years of practice after admission to the bar."

3. "It is the function of the law schools to give their students a thorough grounding in the rules and concepts of the law, but with the growth of public law this is becoming increasingly difficult to do in the allotted period without the addition of time-consuming courses in practice."

These two objections are essentially the same. They say—let someone else do it at some other time; we have enough troubles of our own with the traditional framework in which we have set the law school curriculum. Before we discuss the validity to these criticisms, we need to know the answer to two questions. Is there an alternative, some other agency besides the law school, which can give adequate legal clinic instruction at the right moment in the training calendar? And, if not, can changes be made in the present framework of the law school curriculum so as to adapt it to present and future needs, which include the need for clinic training?

SUBSTITUTES FOR THE LAW SCHOOL

Other agencies which might offer students this realistic instruction include the individual practicing lawyer, the bar association, the legal aid society, or some new organization outside of the bar and perhaps not yet established. None of these appears equal to the task.

The individual practicing lawyer, we are told, has already demonstrated that he is not able to carry the load.⁸ The apprenticeship system, once the companion of the law school in the educational enterprise, through no fault of its own, but under pressure of extraneous conditions, has lost vitality⁹ and seems likely to lose more. A frank appraisal tells us why. The modern law office, in a competitive civilization, is forced to focus its attention on the client rather than on the student. It does not have time for both. We are told that in areas where traditional apprenticeship still exists the quality and area of instruction available in law office A vary considerably from that which can be secured in law office B. We are told that law apprentices feel they are no more than glorified office boys. The proponents answer that neophytes should learn humility and that someone has to walk over to the post office when it is necessary to buy a three-cent stamp. There is no question but that a lawyer should possess humility; but one suspects there would be fewer apprentice complaints over the need for doing a considerable amount of "leg work" if the lawyer would disregard the client's normal desire for absolute privacy, let the apprentice sit in every time a new client is interviewed, and give the student a chance to

8. Professor Johnstone himself comments: "The disadvantages of the apprentice system, even when combined with law school training, are that few practicing lawyers make good teachers; modern law practice has become so specialized that the apprentice experience would frequently be unrelated to the young lawyer's later work; and the system is likely to be too expensive for the apprentice." Johnstone, *supra* note 2, at 551.

9. In the Foreword to the Johnstone Report, Dean Storey says: "It is a curious phenomenon that, on the one hand, all legal education in our country was originally apprenticeship training and that this has been given up by the law schools while, on the other hand, all the other professions are steadily relying more and more on apprenticeship or internship."

As Dean Harno has expressed it: "The apprenticeship system of legal education went out of existence because law schools were able to present the theory of law better than the apprenticeship system could possibly present it. Legal education lost considerable vitality when the apprenticeship system went out. The legal aid clinic office can reintroduce into legal education the factor that was lost when the apprenticeship went out. It can complement the program of the law schools."

participate in the other profounder professional mysteries. Yet the average lawyer can not, and perhaps should not, sacrifice his duty to the client in favor of his duty to the student. Too often a lawyer can do a particular piece of work better and more quickly than anybody else, and naturally he does it. The individual practicing lawyer as an educational device is no adequate substitute for the law school.

THE BAR ASSOCIATION

The bar association is in no better position to undertake a broad continuing program of basic legal education. Even in the large cities, adequate funds and competent and willing personnel are no more readily come by when the employer is the organized bar than when it is the law school. In the less thickly settled portions of the country, the bar association obviously would be unequal to the task. By way of illustration, where are we to find the competent lawyer to staff the bar association legal aid clinic? There is no pool from which we can draw at will. The men must be trained from the beginning, and except for the existing legal aid clinics no training centers are functioning. A lawyer competent enough to perform such a responsible task is seldom willing to spend his time in what inevitably will come to be largely a routine matter. Such a man has no trouble making more money in more interesting surroundings where he himself has a chance to develop. If he can not command a better income, he is hardly the person to whom to entrust the training of applicants into a learned and respected profession. There are too few competent instructors who are also sufficiently dedicated to continue their efforts under such unpromising and personally unrewarding conditions. The law school, on the other hand, can offer a competent instructor, in addition to his legal aid clinic work, a chance to teach other courses, to write, to do research—a whole bouquet of attractive inducements in pursuit of which to spend his spare time and energy and thereby keep him satisfied. One would guess that a legal aid clinic operated by a bar association would be likely in the long run to turn out a crop of new men less adequately trained than would normally emerge from a similar enterprise operated by the law school.

The bar association for various reasons, therefore, seems no adequate substitute for the law school.

THE LEGAL AID SOCIETY

At first blush, one would assume that the legal aid society (the service organization, not the combined service and education agency) would be an ideal sponsor of the legal aid clinic. It has a plant, a staff, and clients. It might be expected to welcome the chance to make a further contribution to the welfare of the community, this time in the field of legal education. Some such societies have done and are doing outstanding work in the legal aid clinic field.¹⁰ Yet Professor Johnstone tells us that a number of the societies definitely do not want to do this work.¹¹ Another objection is that legal aid societies like bar associations, except possibly in the large cities, are not strong enough and do not have broad enough geographical coverage to bear this extra load.¹²

The legal aid society, therefore, offers at best only a partial solution to the problem, and one which in many places is inferior to that offered by the law school.

Finally, we consider the suggestion that some new agency be set up outside the profession to handle the work.¹³ It is doubtful whether the profession would, or should, favor entrusting such a key task as legal aid clinic work to any agency except one directly under its own control. If one were set up, it might become in time a competitor of the traditional law school. So we are brought back to the law school as the agency which, all things considered, can do a better job and, in all probability, a less expensive job than any of the so-called substitutes.

10. Accompanying the Johnstone Report is a mimeographed brochure, *LEGAL AID CLINIC REPORTS—REPORTS MADE TO THE SURVEY OF THE LEGAL PROFESSION IN CONNECTION WITH ITS STUDY OF LEGAL AID CLINICS*. This is published by the Survey of the Legal Profession and contains invaluable information about the operation of the individual clinics.

11. "Opposition to legal aid clinics is found in some of the large legal aid societies that have had experience with students doing clinic work in their offices. They claim that students are in the way, that adequate office space is not available for a student, that the legal aid lawyers do not have time adequately to supervise students, and that student output of work is so limited as to be of little or no advantage to the societies." Johnstone, *supra* note 2, at 539.

12. The literature on the problem of making bar associations more useful is not limited. See, for example, Barkdall, *Methods of Strengthening Bar Associations*, 35 J. AM. JUD. SOC'Y 9 (1951); Bradley, *What Is Expected of a Modern Bar Association?*, 34 J. AM. JUD. SOC'Y 107 (1950).

13. It is not difficult to list examples of agencies which perform functions once generally regarded as appropriate for lawyers: title insurance companies, collection agencies, lay adjusters. None of these had to do with anything so serious as the training and admission of applicants to the profession.

THE OVERCROWDED CURRICULUM

Consequently, we come to the second question. If the legal aid clinic work is to be done by the law school how may it best be integrated in the present overcrowded curriculum?

It is readily apparent that the three years now generally devoted to legal education are not sufficient to turn out a lawyer completely prepared to perform all the services which the collective client may reasonably expect of him. The student seldom takes all the courses offered in law school.¹⁴ If he did, he would still not cover the entire field of law. There is no reason to suppose that we have reached a permanent condition of equilibrium in the growth of law and that there will be no new fields of law, public and private, arising in the future. In other words, so long as we adhere to the traditional three-year framework, the present congestion and overcrowding are with us to stay. The situation, one predicts, will get worse instead of better. The appearance of the legal aid clinic course on the horizon is not the cause of overcrowding. Many desirable courses are knocking at the door. If we fail to answer the summons, some day we may face a sort of explosion, and it will be our own fault for trying to dress a full grown man in a boy's suit. The alternative is to change the framework.

Perhaps the simplest way to proceed is to forget that there is any magic in a three-year period. We might do better to adopt a concept that legal education is a lifelong task to which the law school of the future should make not a limited but a continuing contribution. Instead of strangling in our efforts to swallow the whole cherry at one awkward gulp, we may do better to take two bites at it.

TWO-SECTION EDUCATION

Under a system of lifelong legal education divided into two sections, we should have the advantage of being able to assign

14. For example, in the writer's school the bulletin prescribes the requirements for the Bachelor of Laws degree:

"... secured a passing grade in courses aggregating the number of semester hours in the first year program, plus forty-eight semester hours. . . ."

"No regular student is permitted to take less than ten course hours per semester. No first-year student is permitted to take courses in excess of the first-year program.

"Second and third-year students are not permitted to take for credit more than fifteen course hours per semester; nor to audit more than sixteen course hours per semester. In exceptional cases"

a more definite objective to each part. In the initial three years we should strive to turn out a man prepared not so much to pass the bar examinations as to be a general practitioner, but no more than a general practitioner. In the later years our goal should be the gradual development of the general practitioner into the specialist, an expert in as many fields of law as possible, or as he may desire. The graduate courses would be grouped, not around a field or academically related fields of substantive law, but around certain positions open to lawyers—judge, district attorney, corporation counsel, trust officer, for example.

It is not so simple to implement the two-section type of legal education as it is to describe it. But once established, the pressure of congestion of the present curriculum will be relieved. We shall no longer confront an eager and serious student with the frustrating choice—you may take course A *or* B *or* C *or* D but you may not, without returning for an entire year, take courses A *and* B *and* C *and* D. We shall no longer need to attempt to decide whether course M is more “important” than course N. At present the curriculum committee in its wisdom, and with no little expenditure of blood, sweat, and tears, determines the relative importance of courses—offering some, rejecting others, allotting, perhaps by a process of divination, a certain number of class hours to each. The distressing part of the process lies in the fact that in some other law school curriculum a different set of courses or hours may be decided upon. Once out of law school, the student may well find himself in a new world of entirely different values. In a law office the client, not the curriculum committee, calls the tune. All fields of law are equally important or, if you will, unimportant until a client enters the reception room. Immediately those fields of law which have a bearing on his case leap into prominence and at its conclusion sink back to their former quiescent status.

A TWO-SECTION LEGAL AID CLINIC

Faced with such wide and unpredictable demands upon his learning and skill, the intelligent prospective client-server for himself, and the bar for its own prestige, will probably see the logic in a proposal for a two-division type of legal education. The student may be willing to postpone acquiring the depth of learning in a single more or less narrow field necessary for the expert until he has obtained the breadth of view, the appreciation

of the law as a seamless web, which is characteristic of the general practitioner. The client-server who possesses both breadth and depth should stand out among his less favored fellows.

The proposed change in the framework of the curriculum would devote the initial three years of training exclusively to what we may call basic courses. In the substantive law fields the descriptive objective would be breadth and integration of one field with another, and in procedure continuity, factors which receive all too little consideration at present. For example, one can conceive of a basic course in contract and later in the process one or more advanced courses in the work of practicing lawyers which might involve aspects of contracts. In the former, the student would cover the whole field and learn enough to qualify as a general practitioner. In one or more of the latter, he would study special kinds of contracts until he knew all there was to know about each and their relation to the lawyer task he was studying. The present courses which attempt to do both probably fail to accomplish either. Among these new courses the basic legal aid clinic course would drop naturally and unobtrusively into place. Here would be taught something which, for want of a better name, we call method—method of thinking and doing—the orderly method, not of the legal scholar, but of the general practitioner. Whether or not at the conclusion there would be something like our present graduation ceremony with the granting of a degree is not at the moment important. It might seem desirable to let a man take his bar examinations and at some later time receive a certificate of excellence as an expert. Some experimentation might help us to decide. At all events, after three years the law student would have a chance to prove whether or not he had acquired the broad knowledge and skills characteristic of the better class general practitioners.

In later years, after admission, the lawyers would be expected, perhaps even required, to return to a law school for organized instruction for as much as a month each year.¹⁵ During this

15. Whether the word "expected" or the word "required" is the proper one depends in large measure upon the extent to which the profession is aroused on the subject. Lawyers being officers of the court, it would seem that the judge would have considerable authority, provided he desired to use it. Again the willingness of many state bar associations to regiment themselves into a closer union by act of court or legislation or both suggests that lawyers individually may be willing to sacrifice some immediate benefit for what in the long run would appear to be gain.

period they would be given advanced instruction, work calculated to develop them into specialists in the fields of their own choosing and to keep them constantly up to the minute.

ADVANCED LEGAL AID CLINICS

Examples of the present advanced legal aid clinic courses are: "Case Studies," "Legal Writing and Drafting of Documents," "Office Practice," "Moot Courts." Courses of this type have perhaps been considered as inexpensive substitutes for the basic legal aid clinic. Those who adopt this view seem to overlook the need that the student has for a foundation before he acquires a superstructure. They also are too modest in imagining the scope of the activities of the practitioner. It is generally agreed that for the lawyer of today and tomorrow both are indispensable. The question is not one of a choice between course A and course B, but rather a professional compulsion not to be allowed to take advanced course B until one has demonstrated at least a minimum of proficiency in basic course A.

One may venture the suggestion that the present practice of offering the advanced courses mentioned above to undergraduates is not conducive of the best results. For example, why should we bother to teach a student trial tactics before we are satisfied that he is competent to interview a client and gather the pertinent facts in the case? Why should we introduce him to the intricacies of the law relating to the construction of deeds, mortgages, wills, and other documents when we have not given him instruction in the step which immediately precedes this drafting process—the infinitely delicate task of selecting the particular document which above all others will best solve this particular client's present problem? Why should we offer him a course in office practice with only hypothetical clients, secretaries, law clerks, partners, when it is possible to confront him with a real client, a real case in a real office? We seem to be putting the cart before the horse. We are expecting the impossible. We want him to learn how to represent his clients in a manner calculated to give them satisfaction, yet we do not allow him to engage in actual combat. We may sharpen his wits with a sort of intellectual shadow boxing, but he needs in addition to be able to perform basic professional routines under realistic pressures which weigh upon the practitioner. The professor's power of

giving a poor grade for inferior work may be awe-inspiring, but it is not very realistic in maturing a law student to the point at which he is competent to shoulder the staggering responsibilities inherent in a real case. Under conditions of actual law practice the student may be stimulated to unusual efforts because a client's rights are at stake; or he may be driven to perform at least a minimum quality of work because the dissatisfied client may report him to the grievance committee or sue him for incompetence. Even worse, if the client having once tested the student's powers of bringing a disputed matter to a satisfactory conclusion, fails to bring him a second case, the latter may assume that he has failed; but he may never know whether it was because the client had no more legal difficulties or because the client considered the lawyer incompetent and took his problems elsewhere.

With a change in the framework of the law school curriculum such as is proposed here, we shall solve the problem of a place for the legal aid clinic courses both basic and advanced. At the same time we shall make room for a lot of other courses which most people agree the student should have. A heroic defense based on present overcrowding to ban the legal aid clinic course from the curriculum will not save the present framework for long. May it not be better to yield gracefully now, rather than to hold out till some future period when the pressure becomes more acute and, in the crisis, find ourselves turning to emergency stop gaps instead of developing now, before the pressure is too extreme, a well considered, elastic, overall program?

Objections 2 and 3 urge that the legal aid clinic course is "better left to the early years of practice after admission to the bar" and there is not time in the "allotted period" for "time-consuming courses in practice." By way of answer, we may observe that there is no suitable substitute for the law school in offering the type of instruction in the legal method of the client-server. If it is to be done well, the law school must do it. To postpone practical training until after admission is both an anti-climax and frustration. The law license on its face declares a man eligible to serve clients. The foregoing objections would normally result in accepted routines or even rules of practice which insist that even after admission he still shall not be allowed to proceed under his own power. It is submitted that to ad-

mit and then impose a condition subsequent would work an unnecessary hardship on the student. Enough clinical training should be given before admission to permit a man at least to hold himself out as a general practitioner. Such a plan protects both student and client. If he has been properly trained as a general practitioner, he should have sense enough to know when he is out of his depth and when to call in an expert.

Finally, the argument of overcrowding is no longer a valid reason for inadequate training. The student was not made for the curriculum, but the curriculum for the student. More time than three years is needed if we are to turn out a mature lawyer. Let us go ahead and take the necessary time to protect the client; but let us do it with a minimum of inconvenience to the student.

THE LEGAL AID CLIENTS

4. "Legal aid deals with such a specialized, limited group of problems and clients that it has little value to the student."

Here again the writer does not feel authorized to speak for all legal aid clinics and to contend flatly that the criticism is entirely unfounded. But it should be made clear that there are several legal aid clinics to which the comment does not presently apply. It is submitted that in any legal aid clinic intelligent action by the person in charge of the course will make available to the student both problems and clients not unduly "specialized" or "limited," and this without unfavorable comment by the practicing profession.

Under these circumstances it is not improper to suggest an amendment to Professor Johnstone's definition, "a law school sponsored program for law student work on legal aid cases." In its place, and for certain schools, it would be more accurate to say "a law school sponsored program for law student work culminating in experience with real cases and clients."

But this excursion into non-legal aid clients and cases should not be taken to imply that the other "group of problems and clients" "has little value to the student." The criticism is based on a misconception of the real object of a legal aid clinic course. Suppose the "material" in a particular legal aid clinic is limited to a single economic class. The limitation, where true, does not destroy the value of the educational program. For one thing there are various fields of substantive law such as family law and

criminal law in which there is little, if any, relation between the nature of the legal problem and the amount of money in the client's pocket. For another thing, the present legal aid clinics are admittedly basic courses. They are designed to turn out men who are equipped to serve the community, not as experts, but as general practitioners. These men in their early years will be unlikely to have too many cases in the more advanced fields of law. Few young lawyers in their first five years take cases to the Supreme Court of the United States or to the appellate courts in their own states. Instead they are seen in J. P. courts and others of first instance. It is more glamorous to talk about preparing a man for participation in the great national and international issues which are settled on appeal. It is more realistic, at the outset of his career, to familiarize him with the type of work which will naturally come to him in the first two or three years. When he is ready to enter more complicated fields, it will be high time to give him an advanced course.

Finally, a legal aid clinic course is not an extension of the substantive law courses in the orthodox curriculum. There is no theoretical objection to assigning the legal aid clinic student a contract case, a tort case, a criminal case, a property case and so on down through the list. But the real topic he is learning is only incidentally law. The legal aid clinic course teaches method—how do you solve a real client's real problem in a mature, professional manner. If the orthodox courses teach law in the grand manner, the legal aid clinic teaches the student to serve clients in a manner which begins simply and ultimately becomes grand.

If we are teaching a student to gather pertinent facts, it makes only a little difference in which field or fields of law the case is eventually categorized. If we are teaching the art of writing letters, it is not too important whether the facts lie in one field or another.

It would appear, then, that there are answers, of a sort, to the objections recorded by the Johnstone Report. The legal aid clinic proposes to teach a man to practice law "in the grand manner," but it is not in such a hurry to introduce him to the problems at the end of the road that it is willing to let him trip over the threshold as he takes his first steps on what is inevitably a long and continuously important journey.

THE LEGAL AID CLINIC COURSE IN TOMORROW'S LAW CURRICULUM

Proponents of the legal aid clinic course are prepared to justify its inclusion in today's law curriculum. In referring to it, they do not employ the word "important" because, as we have said, all fields of law are equally important to the lawyer until the client gives one temporary emphasis. They prefer the term "useful." The basic legal aid clinic course is presently useful because it may be so conducted as to guarantee that no one emerges with the technical right to serve clients until he is qualified actually as a general practitioner. To accomplish this result it introduces the students to (1) a real client, (2) a real case, and (3) real facts—not embalmed in an appellate decision carefully selected and preserved in a case book or a set of hypothetical facts. It provides an element of integration of fields of substantive law which too often is lacking among law school courses and ties in all of the three years' experience at the crucial moment when the student's grasp of the field of law as a seamless web is as necessary as an understanding of any particular course. It teaches method, not the method of the legal scholar but that of the practicing lawyer. But we should not leave the matter at this point. If the word "useful" describes the course in its present setting, among the law school offerings, it also holds the key position in the law curriculum of the future. In a two-division overall framework the legal aid clinic provides the natural transition from the first step, which produces the general practitioner, to the second step, where we begin to mold the specialist; no other course can occupy this particular position. Our immediate problem, then, is not to argue in favor of the legal aid clinic course, but to justify the proposed overall framework of which the particular course is the keystone.

THE NEED FOR THE OVERALL FRAMEWORK

The legal profession today is challenged by various social and economic forces. These forces are not impersonal abstractions. Many of them upon examination prove to be the product of pressure groups composed of very realistic and enthusiastic lay people. If they are allowed to continue their pressure, it seems fair to assume that the shape of the present day legal profession will be modified, perhaps for the better, perhaps for the worse.

Assuming that the legal profession desires to make a contribu-

tion in the direction of what it regards as "better," it should make preparations. One of those preparations is that the profession itself should become more closely knit from *within*. By incorporating, the client-serving portion of the bar may make itself closely knit from *without*. The present situation seems to call for a different sort of strengthening—a greater unification of purpose, objective, and point of view among the law schools, the practicing bar, and the courts. Unless, for example, the law school can find a way to make a more satisfactory contribution to this unity one would hesitate to predict what the future may bring. There are few contributions which law schools can make to this unity which will compare with the creation of this proposed overall framework.

We shall consider three of these forces supported by pressure groups and affecting the profession. The first is, at present, no more than a threat, but capable of becoming something more. It is called "socialized law." The second is a very present problem—lay competition, which we lawyers call "unauthorized practice of the law." The third is the trend toward lack of cohesion in the profession caused by the rush toward premature specialization. The increasing pressure of these three forces on the legal profession justifies an overall framework which will turn out year by year: first, young lawyers with a point of view and skills adequate to start at once to build professional prestige; second, experts better qualified than those we presently know. The penalty for failure to construct this framework is fairly obvious insofar as the client-serving arm of the profession is concerned. If law is socialized, the profession loses more or less of its independence. If the layman takes over all or part of the field of service now occupied by the lawyer, the latter may have trouble finding a new footing. If the bonds which unite the bar are relaxed, we may come to the point at which instead of a profession we shall find merely a number of weak individualistic groups, each going its own way and held together only by a name "lawyer." The consequences of this external pressure to law schools are not so direct, but one does not require much imagination to conclude that if the practicing lawyer as we know him today in whole or in part is pushed out of the picture the law schools themselves may be faced with the need for momentous changes, changes far more drastic than the creation of the overall framework presently proposed.

SOCIALIZED LAW

Socialized law today may be merely a threat,¹⁶ but socialized medicine is a definite program.¹⁷ The proponents of the latter presented to the public their program with the argument that the medical profession was unable to handle the entire health needs of the whole community. Physicians, it was argued, could provide a fine quality of care to those able to pay well for it but beyond this point had made too little headway. We may expect that if and when a program of socialized law is presented to us, the major comparable argument is likely to run along the following lines. Speaking in economic terms, there are three groups of clients—those who can pay a full fee, those who can pay a small fee, and those who can pay no fee. It may be said that while the legal profession does well by the first group, its services to groups two and three leave something to be desired; even more, the argument will run, the quality of those unsatisfactory services can not be substantially improved by any effort of the present legal profession; consequently, a new kind of legal profession is needed and should be publicly demanded.

If the legal profession, the whole profession, sits idly by and allows a program of socialized law to develop, it will have only itself to blame. It has at hand facilities for rendering adequate legal service to those in the lower¹⁸ and middle income brackets.¹⁹ At the moment neither of these facilities has advanced much beyond the larger cities;²⁰ but the essential nature of the work of serving impecunious clients and its minimum standards are well understood; the quality of personnel required is known. What is needed is expansion of present facilities so that in every county of the United States there will be available to all clients services

16. Storey, *The Legal Profession versus Regimentation—A Program to Counter Socialization*, 37 A.B.A.J. 100 (1951); Freedman, *The Legal Profession and Socialization—A Reply to Dean Robert G. Storey*, 37 A.B.A.J. 333 (1951).

17. As long ago as 1932 there was published the controversial MEDICAL CARE FOR THE AMERICAN PEOPLE—THE FINAL REPORT OF THE COMMITTEE ON THE COSTS OF MEDICAL CARE, University of Chicago Press. In later years the problem was focused more precisely.

18. See the program of the Standing Committee on Legal Aid Work of the American Bar Association. The most recent statement is to be found in ADVANCE PROGRAM 74TH ANNUAL MEETING OF THE AMERICAN BAR ASSOCIATION 17 (1951).

19. See the program of the Special Committee on Lawyer's Reference Service of the American Bar Association, *id.* at 75.

20. See EXTENSION OF LEGAL AID INTO SMALLER COMMUNITIES, published by The Survey of the Legal Profession.

adequate to meet the local demand. This will answer the criticisms. This expansion is delayed by a single major factor, the lack of trained manpower.

Money is a minor problem. The major lack—and one which can be filled perhaps in no other way than by the basic legal aid clinic course—is for lawyers who are trained from the moment of their admission to the bar, not alone in the orthodox substantive law courses, but in the skills essential to solving the legal problems of persons of the type who come to legal aid societies and lawyers reference services. If basic legal aid clinic courses were established in every law school, they would turn out annually a stream of men who initially could staff legal aid societies and lawyers reference services. In a few years they would move on to specialties. The important points are that there would be many of them and that they would come into their positions with the initial training of general practitioners. Critics could not complain that they were permitted to learn at the expense of their clients. Within a generation legal aid clinics could provide the client-serving portion of the legal profession with the trained manpower sufficient to put an end to the present threat of socialized law.

UNAUTHORIZED PRACTICE

Unauthorized practice of the law by laymen, the second pressure against the legal profession as a whole, is no mere threat. For the past generation the courts and the client-serving bar, with not too much help from the law schools, have devoted time and attention to finding a remedy. Among the orthodox remedies, which are in general use, the carefully drawn statute²¹ prohibiting the practice of law by laymen and the thoroughly prepared bill in equity have been among the most successful in restraining trespass. But the problem persists, and there is not much to help us believe the situation will become less serious. Another suggestion is certainly not out of order. It is based on a somewhat different analysis of the problem.

How is it that lay competitors in the beginning ever got a foothold in the field in which lawyers are supposed to function exclusively? Among the various explanations which may be offered,

21. The record of the efforts of the American Bar Association to deal with this problem are nowhere better summarized than in Otterbourg, *The National Bar Program against Unauthorized Practice of the Law*, 33 J. A.M. JUD. Soc'y 85 (1949).

two are presently of particular interest and both are traceable in part to inadequate professional training of the lawyer. Clients of young inexperienced lawyers undoubtedly have found, and still find, occasions for dissatisfaction. Clients of older lawyers too often have undoubtedly sought and still do prefer the type of specialized service offered by competing lay agencies. In both instances the client, using such tests as were available to him and not too familiar with professional standards of quality, made what he thought was a sound selection. One way to deal with such dissatisfied clients is to give them, as a matter of law, no alternative except the lawyer.²² Under legislation making unauthorized practice of law a criminal offense the man in the street may come to the lawyer and only to the lawyer, but he still may not like it. An alternative solution, and the one presently suggested, is to make it easy for the public to like the lawyer, to want to go to him for advice on matters small and great, promptly and not as a last resort—in other words, a better public relations program based on lawyers better trained in the task of client-serving. The training of the lawyer of the future should include a viewpoint and a greater degree of skill.

A first-class *basic* legal aid clinic program will produce the desired quality of manpower—not inexperienced, fumbling young lawyers, but new members of the bar who before they receive their license to practice know their way around. The average client meeting a general practitioner who has received this training will not fear that his ordinary case may be mishandled by a tyro. Rather he will be dealing with a professional man who, from the first, is able to give him services of at least minimum standard quality. Under such circumstances there will be less reason to seek the competing laymen. Who knows but that in due course the young lawyer may come to rank in popularity with the young doctor.

A first-class *advanced* legal aid clinic program in time also will supply the profession with mature men who are better qualified than their lay competitors to render service to clients. There are many clients intelligent enough to know whether their cases are better handled by trained lawyers than by trained laymen.

22. An early compilation of the statutes defining the practice of law and imposing penalties for unauthorized practice is HICKS and KATZ, UNAUTHORIZED PRACTICE OF LAW; A HANDBOOK FOR LAWYERS AND LAYMEN (1934).

We may be able to educate the public to exercise a higher degree of discrimination. Thus the legal aid clinic movement properly organized and integrated in an overall framework of legal education will produce men with greater and more specialized skills. It is hard to believe that, if lawyers really do possess greater skills than their lay competitors, the client in the solution of his problems will continue indefinitely to seek the help of the less qualified group.

PREMATURE SPECIALIZATION

The third pressure results in the law student's becoming a specialist before he learns what it means to be a general practitioner. It arises naturally in a period of complexity in civilization when new uses for the services of the lawyer are being constantly discovered. The clients come into the law office with novel problems. The lawyer must prepare himself to cope with them. If enough of them come in, the forward looking practitioner takes as an assistant a man who has had training in a specific field. Soon law school alumni are saying to the curriculum committee "there ought to be a course on this subject." Or a group of laymen, the government, businessmen, or others make it clear to law students that financially attractive openings are waiting for those who have special training. The student draws the not unreasonable inference that specialized training will lead promptly to a remunerative position, to a career perhaps. Even admission to the bar may not be a prerequisite to some of these jobs, and there will be no so-called "starvation period." Regardless of whether the temptation comes from law office or elsewhere, it is a very significant factor in the mind of a student, whose idea of security inclines to a salary rather than to clients, who wants to begin in earnest his life work, who dreads the initial plunge. Those who urge him to do it the hard way, to spend years as an unglamorous general practitioner and be content only step by step to reach the goal of specialization, have no simple task to attract his attention and convince him of their reasonableness.

Supporters of the traditional program—student, general practitioner, specialist—point to the earlier period in American history when ambitious young men could find no more adequate stepping-stone to a career in public life than by way of the gen-

eral client-serving lawyer.²³ They may argue that a program of value in those comparatively simple days is even more necessary in the present era. But for many a law student the argument falls on somewhat deaf ears when contrasted with what looks like a short cut to material success.

There is no reason to recapitulate here the dangers to the individual student implicit in premature specialization. Our present concern is with its effect on the embattled profession. Whatever the individual student may think about the matter, now is hardly the best time to favor policies which tend to loosen the bonds of mutual interest which hold the profession together.

Under the pressures already mentioned—threat of socialized law, unauthorized practice, premature specialization—a close knit bar may hold to its course and under its own control may continue to perform its unique traditional function of public service. A loose knit group, held together merely by a name, "lawyer," will tend to disintegrate until it reaches the point that something else is substituted. Consider, for example, the record of the English barristers. They constitute an exceptionally close knit group. One assumes that a fair portion of the credit for their influence in history is due to the institution of the Inns of Court.²⁴ From the thirteenth century these law school-bar associations have offered men of the law an opportunity to learn how to live and to work together.²⁵ Their lifelong basic

23. "The Profession of the Law in the United States Serves to Counterpoise the Democracy." 1 TOCQUEVILLE, *DEMOCRACY IN AMERICA* 348 (1898).

24. "The organization of the Bar has grown up round the four Inns of Court: Lincoln's Inn, The Inner Temple, The Middle Temple, and Gray's Inn. Each of these bodies is governed by a similar constitution, characterized by Sir Frederick Pollock as 'a survival of the medieval republican oligarchy, the purest, I should think, to be found in Europe.' They are voluntary, unincorporated societies consisting of benchers, barristers, and students; the benchers, who form the governing body, fill vacancies in their number by co-option from among the barristers, and in practice consist of the senior members, including any judges who may belong to the Inn. But no member, whatever his seniority or standing, not even a judge, has any right to be called to the bench." CARR-SAUNDERS and WILSON, *THE PROFESSIONS* 7 (1933).

25. "The new social and economic forces, which began to manifest themselves in the sixteenth century, were antagonistic to the ancient forms of association, and created conditions which, for more than two centuries, were unfavorable to the rise of new forms. The old bonds dissolved, and the new medieval associations, for the most part, decayed; no place was found for them in the social and political philosophy of the time. Early in the French Revolution, which gave expressions to the views prevalent in the eighteenth century, associations of members of the same trade or profession were forbidden. . . . The new forces did not attack directly the ancient associa-

common denominator of shared experience seems to have been invaluable. It is a commodity which the legal profession elsewhere may desire to acquire.

In America it is unlikely that we shall ever have a national Inn of Court. Geographical distances and the size of the bar, to mention only two obstacles, are unfavorable. Nor are forty-eight smaller Inns, one in each state, probabilities. Our law schools have crystallized in one direction and our bar associations in another, and while they may find ways to work together, they are less likely to unite. Our national law schools probably would not favor a system of legal education limited to the law of a single jurisdiction. Yet much will be accomplished if we can persuade the full-time law teacher and the client-serving lawyer to cease to view each other with reserve.

If, then, we cannot have some institution reasonably resembling the Inns of Court, and bringing everyone together for a lifetime of dealing jointly with mutual problems, the immediate question is what we in America can do to help build for ourselves and our successors a more closely knit profession. At the moment it appears that if the students can not all be brought together to live and share experiences in a single building, somewhat the same result may be accomplished by making sure that each of them at least shares the same experiences as the others. A shared experience in the immediate company of others is the best plan, but an experience shared by others even though they are at a distance is better than nothing.

The overall framework which has previously been discussed with basic, followed by advanced, legal aid clinic courses is an example of how that shared experience may be acquired. If we could be sure that every law student became a general practitioner before he became an expert, we should have gone a long way toward a community of experience. If that experience was persisted in over a long period of time, we should expect to have lawyers in Maine more nearly speaking the same language of professional development as their brothers in California. There

tions of physicians, lawyers, surgeons, and apothecaries; they struck with full force at the trading guilds which passed out of the scene, while the former survived though with diminished vitality. In the prevailing atmosphere associations aroused no enthusiasm and little loyalty; they became instruments for the safeguarding of privileges and the enthronement of abuses." *Id.* at 299.

would probably be a greater spontaneous sense of loyalty to the profession and more day to day cooperation in helping to solve its problems.

CONCLUSION

The legal aid clinic courses, then, are not merely isolated incidents challenging the orthodox law school curriculum. They are instrumentalities which, if properly administered, will produce specially informed and more highly skilled manpower essential to the legal profession of today in its efforts to deal with urgent social and economic pressures. To counteract the threat of socialized law they turn out young lawyers who, by a process of participation in the handling of cases of clients not able to pay a full fee, have developed skill and a point of view in such work. The young lawyers will successfully oppose socialized law. The skill and point of view in due course will be recognized by the public as being as useful as any lay substitute could supply. Thus we counteract the trend toward unauthorized practice of the law. Legal aid clinics widely spread counteract the tendency toward internal disintegration in the profession due to premature specialization. These clinic courses offer a common denominator of shared experience on which may be built a loyalty to the profession greater than that which now obtains.

This brings us to the next step to be taken by proponents of basic legal aid clinics. If the widely spread courses are to bear satisfactorily the burden which it is herein proposed should rest on them, two factors are of major present importance: (1) time, (2) content. The Johnstone report throws some light on both of these. At present there is no uniformity among the law schools either as to hours of credit or of topics to be included. Each school proceeds as its local conditions warrant. Obviously such a heterogeneous arrangement needs correction. The name should be available only to a type of instruction which provides at least a minimum standard.

The practice of delaying student contact with legal aid clinic work until the third year grew obviously because it was regarded as premature to allow students, without a substantial amount of law school experience and a wide grasp of various fields of substantive law, to confront real clients. So long as the legal aid clinic course is conceived of in this limited form, the reasoning still holds good. But in some legal aid clinics the contact with

real clients is only one aspect, the culminating aspect, of a process by which students learn basic (or advanced) professional method. Where the area of instruction is thus broadened it includes telling, showing, and supervising the participating student, and finally relaxing the supervision as confidence is gained. Obviously the latter two items (supervising and relaxing supervision) call for contact with actual cases and clients. The two former (telling and showing) do not. Consequently there is no essential reason for requiring that the former be deferred until the last year. In fact, if we can relieve the last year of some of its congestion, we shall have done the student a favor.

There seems to be no insuperable reason why the telling and showing phases should not begin in the first year and continue all the way through school much in the manner in which laboratory work is done in the physical sciences. For example, the basic patterns of interviewing a client in an orderly manner may be taught successfully in the classroom. If they are presented to the student in his first year, his sense of reality—the rules of law functioning in the daily life of real people—never is disturbed. Everything he learns in his orthodox substantive law courses fits into a mental pattern in which there are real clients, real facts, and a sense of fresh expectancy as to cases which are not yet concluded, have not been passed on by appellate courts, nor have been selected for inclusion in a case book.

Similarly, the second year would appear to be an appropriate time for basic instruction in legal writing. Here the student might go through the customary exercises of writing briefs and law review notes, but after he once got the hang of the program he could write real briefs in real cases for real lawyers. Also he could learn to write letters and become familiar with the fundamental routines which need to be learned by a client-server before any legal document is prepared. Ultimately, it may appear that there are three parts to the task of teaching the art: selecting the document which will do most for the client, building the basic framework of the document, and the application of the law to the novel language which must be used in that particular document. It should be possible ultimately to prepare a book or some sort of teaching materials which would include enough of these factors for each class of legal document and thereby increase the area of law practice which can be regarded as largely mechani-

cal. The development of such a book is one of the next steps challenging the ingenuity and resourcefulness of the proponents of the legal aid clinic. Properly organized, it should revolutionize our thinking about the task of teaching legal writing.

With this preparation in the first two years, the legal aid clinic student in his third year would be prepared to tackle the real client, to solve the real case. The advantage of spreading the legal aid clinic work over three years, instead of attempting to crowd it into one, is obvious. It is better to let a law student mature naturally than to force him. More time will be available for orthodox substantive law courses. The logic of elevating the so-called "alternatives" to legal aid clinic work to the graduate area is also obvious. Students entering these advanced courses will start from a solid uniform foundation, and the instructor will be able to devote his full time and attention to the erection of a suitable superstructure.

Perhaps enough has been said here to indicate the direction in which the next steps in the legal aid clinic movement should be taken. The Johnstone report in itself is valuable. But its greatest merit lies in the fact that it opens the door of the future. It is a milestone. It tells us how far we have come and points us along the road yet to be travelled. There is reason to believe that the proponents will take heart and set out with new enthusiasm on what will be a long and hard but greatly rewarding journey.