

## THE OBJECTIVES OF LEGAL AID CLINIC WORK

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The legal aid clinic is a device to improve legal education in the United States, with objectives in the field of practical training<sup>1</sup> and public service.<sup>2</sup> With the changing social and economic conditions of the times have come new opportunities<sup>3</sup> for the lawyer, and the law school is endeavoring to provide men equipped to take advantage of them.<sup>4</sup> The major factors, which

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1. See Folsom, *A Practical Practice Court* (1936) 8 Rocky Mt. L. Rev. 130-133; Shaw, *Practical Training for the Law Student: The Apprenticeship System of Legal Clinics* (1937) 15 Can. B. Rev. 361-368; Green, *Integrating Law School and Community* (1933) 7 Am. L. School Rev. 821-826; Hulney, *Practical and Cultural Value of Law as a Course for College Students* (1931) 37 Case & Com. 6-9; Haggen, *Training of the Practical Man* (1933) J. Soc. Pub. Teach. Law 14; Pound, *What Is a Good Legal Education?* (1933) 19 A. B. A. J. 627-631; Pound, Frank, and Vanderbilt, *What Constitutes a Good Legal Education?* (1933) 7 Am. L. School Rev. 887-909; Bogchi, *A Plea for the Teaching of Law as a Vocation* (1928) 47 Calif. L. J. 55; Sykes, *Practical Law Taught at the Law School of the University of Mississippi* (1929) 2 Miss. L. J. 43-47; Horack, *Present Day Preparation for Practice* (1929) 13 Minn. L. Rev. 95-101; Seligson, *Practicing Law Courses* (1938) 24 A. B. A. J. 200-202; Fraser, *Training Tomorrow's Lawyer* (1938) 22 Minn. L. Rev. 107-116; Hull and Seligson, *What the Law Schools Can Do for the Practicing Profession* (1937) 8 Am. L. School Rev. 924-929; Hanft, *Legal Education Yields to the Times* (1937) 47 Yale L. J. 214; Sunderland, *The Law Schools and the Legal Profession* (1930) 7 Am. L. School Rev. 93, 101; Beale, *The Aims and Methods of Legal Education* (1931) 7 Am. L. School Rev. 133, 146-147.

2. Parkinson and McComb, *Are the Law Schools Adequate Training for the Public Service?* (1935) 8 Am. L. School Rev. 291-300; Anderson, *Lawyers' Responsibility for Evils of Government* (1932) 135 Nation 393. For an appreciation of the lawyer's contribution in public affairs, see Stinchfield, *We Examine the Record—of the American Lawyer* (1937) 23 A. B. A. J. 829; Shepard, *Education of the Lawyer in Relation to Public Service* (1915) 4 Am. L. School Rev. 23; *The Lawyer's Service to the General Public* (1934) 7 Am. L. School Rev. 1017 (a symposium held at the Thirty-First Annual Meeting of the Association of American Law Schools, Dec. 28, 1933).

3. Stone, *The Public Influence of the Bar* (1934) 48 Harv. L. Rev. 1. For a sympathetic consideration of the qualities developed and the opportunities offered by the practice of law, see Brandeis, *The Opportunity in the Law* (1905) 39 Am. L. Rev. 555. For other discussions of the changes in the work of the lawyer, see Ransom, *The Lawyer Today* (1930) 16 A. B. A. J. 586; Rogers, *Forces Remolding the Lawyer's Life* (1931) 17 A. B. A. J. 639; Jackson, *The Bar and the New Deal* (1935) 21 A. B. A. J. 93; Manton, *A "New Deal" for Lawyers* (1933) 58 A. B. A. Rep. 293.

4. See *Handbook of the Association of American Law Schools and Proceedings of the 35th Annual Convention* (1937) 58; Wickser, *Common Ob-*

have contributed to the growth of legal aid clinics, may well be mentioned at the outset.

The number of poor persons requiring free legal aid as evidenced by the statistics of legal aid societies<sup>5</sup> is larger than one might suppose. The obligation to provide such persons with equal and exact justice<sup>6</sup> is increasingly recognized by individual lawyers,<sup>7</sup> by legal aid societies,<sup>8</sup> and by the organized bar.<sup>9</sup> The Legal Aid Committee of the American Bar Association declared in 1938<sup>10</sup> that legal aid work is a responsibility of the organized bar as a part of its general primary task of improving the administration of justice.<sup>11</sup> Legal aid societies need the moral and financial support of the organized bar.<sup>12</sup> This comes most satisfactorily from lawyers who are informed and sympathetic with the subject. If the bar and the legal aid societies are to carry on this professional humanitarian program, it is necessary that somewhere there should be a systematic effort to provide information under favorable conditions. The law school is a logical point<sup>13</sup> for such a contact, and experience with actual

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jectives for Law Schools and Bar Examiners (1934) 7 Am. L. School Rev. 1126. A reading of the objectives as stated in the catalogs of the country's law schools will demonstrate the pedagogical awareness of the new demands and opportunities.

5. See Statistics of Legal Aid Work for 1936 (1937) 62 A. B. A. Rep. 727.

6. See, for a general discussion of the influence of Magna Charta on American institutions Hazeltine, *Influence of Magna Charta in American Constitutional Development* (1917) 17 Col. L. Rev. 1; Dealey, *Growth of American State Constitutions 1776-1914* (1915) 35; for citations to each state constitution, see Stimson, *Federal and State Constitutions* (1908) 148-149.

7. Smith, *Justice and the Poor* (1919) 133.

8. *The Growth of Legal Aid Work in the United States* (1936) (Bulletin No. 607, U. S. Bureau of Labor Statistics). Foreword by Mr. Justice Roberts.

9. *The Work of Legal Aid Committees of Bar Associations* (1938).

10. *American Bar Association Advance Program* (1938) 113.

11. See Purpose Clause of American Bar Association (1937) 62 A. B. A. Rep. 3.

12. Tweed, *Legal Aid Work and the Bar* (1937) 35 Legal Aid Rev. No. 1; Acheson, *The Bar and Legal Aid* (1935) 33 Legal Aid Rev. No. 1; Charles Evans Hughes, Jr., *Address* (1935) 33 Legal Aid Rev. No. 1, p. 4; Stinchfield, *The Work of the American Bar Association* (1936) 22 A. B. A. J. 843; Davis, *Address* (1938) Bulletin No. 94 of Nat. Ass'n of Legal Aid Organizations.

13. See Morgan, *The Legal Aid Clinic in Handbook of the Association of American Law Schools* (1916) 41, 147; Hepburn, *Law Schools and Legal Clinics in Handbook of the Association of American Law Schools* (1927) 91; Cheatham, *Modern Trends in Legal Education* (address delivered at a symposium on "Trends in Legal Education," held April 6, 1938, on the

legal aid cases is a practical method of acquainting the student with the legal needs of a great section of the public.

A second factor is the awakening of the bar to its professional responsibilities in the field of legal work now the scene of unauthorized practice conflicts, for which the legal aid clinic offers special training.<sup>14</sup> During the period when the lawyer thought of his labors as being largely in the court room,<sup>15</sup> the bar and the law schools were perhaps justified in emphasizing litigation, appellate decisions,<sup>16</sup> and the judicial process<sup>17</sup> as the only essential educational material. More recently statutes and case law in the unauthorized practice field have carved out for the bar, free from lay competition, a much wider domain.<sup>18</sup> The insistence upon a monopoly involves significant corresponding obligations to provide adequate service to the public. The lawyers have rested their position in the main on a legislative foundation which is subject to change at the will of the people. The only basis which will be found satisfactory year in and year out is public confidence. Lay agencies can be kept from encroachment upon the domain of the lawyer by his demonstrating to the public that the lawyer can do a better job. The job calls for services which in England are provided by the

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occasion of the dedication of Liebe Hall Building of the Louisiana State University Law School).

14. Hicks and Katz, *Unauthorized Practice of Law* (1934).

15. For an example of an unauthorized practice statute construed as limited to the practice of law in court, see *Atlanta Title and Trust Co. v. Boykin* (1931) 172 Ga. 437, 157 S. E. 455.

16. Redlich, Weaknesses of the "Case Method" in American Law Schools: Suggestions Looking Toward Improved Instructions (1915) 4 Am. L. School Rev. 1.

17. The emphasis upon judicial decisions as a basis for classroom is indicated by the recent contrasting demand for more consideration of legislative matters. See Dodd, *Statute Law and The Law School* (1922) 5 Am. L. School Rev. 24; Simpson, *Use of Statutory Materials in the Teaching of Equity* (1933) 21 Geo. L. J. 457-70; Baer, *Need of Training in Public Law* (1937) 12 Calif. S. B. J., 35-38; Hughes, *Teaching of Statute Law* (1930) J. Soc. Pub. Teach. Law 11-21.

18. Palmer, *A Definition of Law* (1936) 22 A. B. A. J. 69; Boldman, *Unauthorized Practice of Law—Definitions and Limitations* (1936) 41 Com. L. J. 505-507; Haffee, *The "Law Practice" Statute of Missouri* (1934) 5 Mo. B. J. 105; R. S. Mo. (1929) sec. 11692 (terms "practice of the law" and "law business" defined); Willis, *A Definition of Law* (1926) 12 Va. L. Rev. 203-214; *Meunier v. Bernich* (La. App. 1936) 170 So. 567; Note (1937) 11 Tulane L. Rev. 316. Cf. note 15, supra. See Hicks and Katz, *Unauthorized Practice of the Law* (1934) 15 for a series of "Statutes Relating to Unauthorized Practice." See also (1938) 5 Law and Contemp. Prob. No. 1 (a symposium on The Unauthorized Practice of Law Controversy).

solicitor,<sup>19</sup> as well as those in which the barrister<sup>20</sup> is proficient. Since the orthodox objectives of legal education have been in the direction of the barrister, the new opportunities for public service in what corresponds to the solicitor's field call for a new sort of law school training.

A third factor is the realization that the mental equipment of the lawyer consists of many different fibres, including practical skills. The history of legal education<sup>21</sup> is a record of attempts to provide a reasonable balance of information and skills. In frontier periods, when the burden rested upon the practicing lawyer, he provided apprenticeship on the basis of traditional examples<sup>22</sup> which emphasized skills. To supply desired information came the lecture,<sup>23</sup> eked out with the textbook.<sup>24</sup> Accompanying the growth of law schools came a sharing of responsibility with the practitioner and in due course the case method.<sup>25</sup> The full time law teacher has affected a tolerant indifference to what he thought of as the tricks of the trade and has sought a more scholarly atmosphere.<sup>26</sup> The last quarter century has been marked by a decline in the effectiveness of the law office as an educational device.<sup>27</sup> Many students are unable to secure law office connections.<sup>28</sup> Of those who do, some suffer

19. Christian, *A Short History of Solicitors* (1896).

20. Williams, *The Barrister and the Solicitor in British Practice: The Desirability of a Similar Distinction in the United States* (1935) 14 Tex. L. Rev. 55.

21. Reed, *Training for the Public Profession of the Law* (1921).

22. Plucknett, *The Place of the Legal Profession in the History of English Law* (1932) 48 Law Q. Rev. 328, 335-338; 2 Holdsworth, *History of English Law* (3d ed. 1923) 493-499.

23. Reed, *Training for the Public Profession of the Law* (1921) 131, 159, 364, 365, 376-377; Berle, *Modern Legal Education in 9 Encyc. Soc. Sci.* (1935) 334, 337.

24. Reed, *Training for Public Profession of the Law* (1921) 371, 377, 384-385, 411-412; Fish, *The Rise of the Common Man, 1830-1850* (1927) 206-208; Warren, *History of the American Bar* (1911) 177, 550; Beale, Langdell, Gray, Thayer, and Ames—*Their Contribution to the Study and Teaching of Law* (1931) 8 N. Y. U. L. Q. Rev. 385; Berle, *Modern Legal Education in 9 Encyc. Soc. Sci.* (1935) 338.

25. Redlich, *The Common Law and the Case Method* (1914); McGhie, *The "Case Method" of Teaching Law in the United States Law Schools* (1937) 13 N. Z. L. J. 96-97; Ireton, *The Case System: a Criticism* (1930) 64 U. S. L. Rev. 635.

26. Hull, *Training in the Art of Practicing Law* (1936) 19 J. Am. Jud. Soc. 142.

27. See Hale, *The Legal Aid Clinic as an Educational Agency* (1933)

2 Duke Legal Aid Clinic News Letter No. 3.

28. *The Economics of the Legal Profession* (1938).

from exploitation<sup>29</sup> due to inadequacy of compensation or limitation of opportunity, or both.<sup>30</sup> If the law school is to retain the position of leadership which it has secured in recent years, it is almost imperative that it provide a means by which the balance between skills and information may be maintained.<sup>31</sup>

The legal aid clinic is a means by which the law school may meet these three needs. There is much to the art of law practice beside the elementary and obvious tricks of the trade which may be learned by the student on his own account. Here is an opportunity to turn out good craftsmen, with confidence that the artists will take care of themselves. It may be that a solution to the problem of character building, character examinations, and professional ethics may be found in a procedure by which instructor and student face actual law practice and recognize, diagnose, and avoid unethical procedures. The legal aid clinic offers the law student a moving picture of current law practice, an opportunity to acquire necessary skills which heretofore have received inadequate attention, and a professional point of view. Its significance will be clearer if it is compared with other similar proposals and experiments.

#### THE COMPARABLE EXPERIMENTS

Comparable experiments have been and are being made by law schools, bar associations, and groups of lawyers. Courses in practice,<sup>32</sup> moot court arguments,<sup>33</sup> briefing,<sup>34</sup> drafting legal documents,<sup>35</sup> and office practice<sup>36</sup> give the student a still or a slow motion picture of certain specific types of problems he may reasonably expect to meet in practice. In spite of their un-

29. Berle, *Modern Legal Education* in 9 *Encyc. Soc. Sci.* (1935) 340.

30. *A Model Program* (1937) 1 *Am. L. Student Rev.* 1, 2.

31. Vanderbilt, *Some Convictions as to Legal Education* (1938) 24 *A. B. A. J.* 717.

32. Burke, *Methods of Teaching Pleading and Practice* (1925) 5 *Am. L. School Rev.* 539; Hepburn, *Practice Court Work* (1925) 5 *Am. L. School Rev.* 543; Seligson, *Practicing Law Courses* (1938) 24 *A. B. A. J.* 200-202; Wooten, *Classes in Court Practice and Procedure* (1925) 5 *Am. L. School Rev.* 546.

33. *Legal Education and Moot Courts* (1920) 6 *A. B. A. J.* 102; (1929) 15 *A. B. A. J.* 483; Cooley, *Brief Making and the Use of Law Books* (3d ed. 1914); Bachrach, *Reflections on Brief Writing* (1932) 27 *Ill. L. Rev.* 374.

34. See *Legal Education and Moot Courts* (1920) 6 *A. B. A. J.* 102; (1929) 15 *A. B. A. J.* 483.

35. See *Notes on the Art of Drafting Contracts* (1934), prepared for the students of Cornell Law School.

36. Clark, *Office Practice* (1923) 5 *Am. L. School Rev.* 155.

doubted value they still leave room for something else. Their objectives too often are limited to experience in the litigation process or facility in dealing with hypothetical cases and appellate court decisions which bear a relation to an actual case somewhat like that of ghosts and cadavers to a living person. They fail to include tasks performed under the sobering pressure of the practicing lawyer's responsibility to client, court, profession, and community.<sup>37</sup> The student who takes these courses may not realize the need to learn how to deal with the unexpected, how to employ other techniques than those involved in litigation, to handle a live client, to do work which approximates complete perfection and which the client pays for and has a right to expect rather than to gain a passing grade. Proposals have been made and some experimentation has been conducted by bar associations and groups of lawyers. Among them may be mentioned a junior bar,<sup>38</sup> an interlocutory bar,<sup>39</sup> a graded bar,<sup>40</sup> and lecture courses.<sup>41</sup> Valuable as these are, they suffer from certain limitations of finances and administrative difficulties in securing competent instructors. Frequently, they are information-giving courses which follow accepted law school classification of topics and methods and which necessarily assume in the listeners a background of practical experience. The legal aid clinic provides that background of practical experience. The legal aid clinic provides that background before admission to the bar and helps to determine fitness for admission.<sup>42</sup>

Changes in social and economic conditions have presented a challenge to the leadership of legal education. To meet the challenge requires initiative, imagination, a flexible and experimental attitude, a desire for aggressive action. It also requires a specific device which may be developed to meet a number of the more obvious needs. The legal aid clinic is such a device. It may be considered with respect to objective, material, and method.

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37. Bolte, *Ethics for Success at the Bar* (1928) 59-69; Sims, *The Lawyer's Duty to The Public—Its Origin* (1924) 10 A. B. A. J. 811; Sims, *The Lawyer's Duty to the Judges* (1925) 11 A. B. A. J. 449.

38. Reed, *Annual Review of Legal Education* (1929) 30.

39. *Id.* at 29.

40. *Id.* at 28.

41. See (1938) 1 *The Bar Executive* 2.

42. Frank, *Why Not a Clinical Lawyer-School?* (1934) 82 U. of Pa. L. Rev. 1-22; Gardner, *Why Not a Clinical Lawyer-School?* (1934) 82 U. of Pa. L. Rev. 785, 1802.

THE OBJECTIVES, MATERIALS, AND METHODS OF A  
LEGAL AID CLINIC COURSE

The clinic method is a means of presenting certain material and is aimed at certain objectives. It is comparable to the apprenticeship method, the textbook and lecture method, the case method. It may be employed to teach contracts, torts, future interests, real property. A fair case may be made out for basing a property course on documents needed to accomplish actual current transfers of property, using the case law to illustrate why a particular provision is inserted or stricken out of a proposed deed or mortgage or abstract of title. Torts may be taught by having the student serve an internship with a workmen's compensation board, an insurance adjuster, or a city solicitor, the cases serving to explain why a particular step was or was not taken. At present the development of the clinic method has been more conservative.

While the objectives vary somewhat from one clinic to another,<sup>43</sup> it is possible without doing too much violence to group

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43. The following descriptions were taken from the catalogs of universities operating legal aid clinics:

*University of California.* "Legal Aid. Practical problems; open to a limited number of students working under the supervision of the Alameda County Legal Aid Society."

*Duke University.* "Legal Aid Clinic. The objectives of the courses are: to give the students experience in actual cases; to develop creative skills, techniques and mental habits; to encourage a sense of responsibility to client, court, profession and community. Students under supervision of attorneys and in cooperation with members of the Durham bar, court officials and social agencies in the community, engage, so far as students may, in the handling of actual cases from the first interview with the client until the final disposition of the problem by litigation or otherwise. In the first semester, class discussions are devoted to problems of office organization, interviewing clients, and planning a campaign in a legal case. Trial briefs are prepared for lawyers in active practice. In the second semester, the emphasis is on dealing with members of other professional groups as expert witnesses. Appellate briefs are written for lawyers in active practice. Exercises are provided in drafting legal documents. Opportunity is afforded for special work in field of particular interest. The course affords practical applications of the principles of legal ethics and legal etiquette. Students are expected to demonstrate adaptability to office routine, dependability in action, maturity of legal judgment. Required of all third year students except those selected for Current Decisions II."

*Harvard University.* "Founded in 1913, the Harvard Legal Aid Bureau, during all but two years, has served a dual purpose in the Law School. It not only affords practice for the law students in the actual handling of cases, but also constitutes a social contribution to the community. Financed and housed by the Law School, the Bureau is composed of about thirty students from the second and third year classes, selected on a scholastic basis. Provision is also made that any third year student of average scholastic standing may participate in the work of the Bureau under the

them under three general purposes: The first is to provide the student, as a participant in actual cases under supervision of members of the bar, with a series of pictures so that he may develop familiarity with the background of law practice, which is so familiar to the practicing lawyer that he assumes it. The second is to offer the student a series of opportunities to develop the necessary legal skills, techniques, and mental habits of a creative rather than analytical character. The client expects the lawyer to tell him "What shall I do next?" which includes the question, "What is the law?" The third objective is to help the student develop the point of view that the lawyer is not

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supervision of its members. This privilege is extended to the third year students as far as is possible.

"The Bureau is conducted under the direct supervision of a practicing attorney who is a member of the Boston Legal Aid Society. The normal procedure is for each member of the Bureau to have three office hours a week, and to spend such further time as is required by the cases assigned to him. The students handle the cases from the first interview with clients to the appearance in court, if necessary, in turning to the practicing attorney for advice and approval in the important steps of the cases.

"The Bureau serves clients without fee, accepting only those whom it is felt could not afford the services of a practicing attorney. Although this limitation necessarily excludes the handling of cases involving large sums of money, the Bureau nevertheless deals with a large number and variety of cases. Five or six hundred cases are handled each year.

"The Bureau is closed in April to allow time for the members to study for examinations, but all cases accepted before that time are continued until closed. During the summer, starting in July, the Bureau is ordinarily kept open under the direction of one of the permanent members of the staff. The personnel of the summer staff is usually composed of men in the second- and third-year classes and some men who, though graduated in June, remain in Cambridge to gain this experience before going into practice."

*Ohio State University. "Legal Aid Clinic.* Practical experience in handling actual cases for legal aid clients under supervision of the Director of the Clinic; preparing reports on each case; cooperating with public defenders, organized charities, the Family Bureau and members of the bar; drafting legal papers; negotiating with parties and assisting in the trial of cases."

*Northwestern University. "Legal Clinic.* Two hours per week for eight weeks in classroom work immediately preceding the clinic work are devoted to study of the courts in Chicago and their procedure. Required for graduation of all students except members of the Legal Publications Board, and recommended for members of such Board if their programs will permit. Not more than twelve students will be registered for any period. Students who take clinic work during any period may complete their program by taking individual work in some one of the other courses in which they are registered for the semester, or in exceptional cases, in other subjects. The work of the clinic is conducted at the Legal Aid Bureau of the United Charities, and includes consultation with clients, interviews with witnesses, drafting of legal instruments, appearances in court, examination of records of all kinds, assistance in the conduct of trials, and generally all such work as the clerk in a general law office might be expected to perform."



only a gentleman and a scholar but a public servant. It is assumed that his undergraduate college training shows him the way to the first and his other law school courses emphasize the second.<sup>44</sup>

The material presented to the student to enable him to attain these objectives consists of: (a) actual legal aid cases handled either by a legal aid society or a legal aid clinic located in the law school building, the student serving as law clerk or assistant to the legal aid attorney; (b) a series of class room exercises designed to provide a slow motion replica of the events in actual cases whereby the student conditions himself gradually to the significance of creative legal work under responsibility; (c) miscellaneous exercises with actual cases.<sup>45</sup> The method employed consists of: (a) a series of class room meetings in which the student takes the various steps involved in planning a campaign in a case and carrying it out; (b) an arrangement where student and instructor work side by side on the various cases that arise, exchanging points of view, holding innumerable conferences, learning by doing.

#### A DESCRIPTION OF A CLINIC COURSE

In selecting an illustration of a legal aid clinic, it is inevitable that the writer's acquaintance with his own organization determines the choice. It would be a mistake to assume that this is the only satisfactory example. There are many excellent agencies, and anyone contemplating the establishment of a new one will do well to examine them all,<sup>46</sup> consider his own re-

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44. The effort to develop in the student an appreciation of legal scholarship is indicated by student participation in law review work.

45. The various types of Legal Aid Clinic instruction may be classified roughly as follows: (1) informal use of law students by legal aid societies (this type is illustrated by the Legal Aid Societies in New York, Philadelphia, Pittsburgh, Milwaukee, Madison, and Washington); (2) informal understanding between law school and legal aid society (Yale Law School—New Haven Legal Aid Society); (3) Law School Legal Aid Bureau operated largely by law students (Harvard Legal Aid Bureau); (4) law school—legal aid society partnerships (University of Maryland—Baltimore Legal Aid Bureau, University of Minnesota—Minneapolis Legal Aid Society, University of Cincinnati—Cincinnati Legal Aid Society, University of Louisville—Louisville Legal Aid Society, Northwestern University—Chicago Legal Aid Bureau, University of California—Alameda County Legal Aid Society, University of Southern California—Los Angeles Legal Aid Foundation); (5) exclusive law school clinics (Ohio State University Law School and Duke University Law School).

46. The Legal Aid Clinics at Harvard, Duke, and Ohio State University Law School publish annual reports.

sources, and make a modest beginning, developing and expanding as opportunity and local conditions offer. The following outline of the class work in the Duke Legal Aid Clinic will give a picture of the slow motion method.

*First Semester.* This is the elementary conditioning period when the student is learning how to use legal tools. It is generally limited to a survey of purely legal resources and remedies in solving clients' problems.

Two hours are devoted to a preliminary consideration of a law office and the courthouse as the frame in which a lawyer does his work. A field trip to the courthouse under the direction of a staff member provides an opportunity for certain elementary instruction. It is surprising how many students have never before been in a court room or have any conception of the office of the clerk, let alone the quarters of the register of deeds, the tax department, and the other typical sources of legal facts.

Three hours are given over to instruction in writing legal letters. The instructor impersonates a client and presents a problem calling for a letter, *e. g.*, a simple collection of a debt, a negligence case involving correspondence with an insurance company, a real estate transaction in which the lawyer must certify a title. The student interviews the instructor, obtains the facts, and then dictates to a stenographer in the class room what he considers an appropriate letter. Discussion follows.

The balance of the first semester is devoted to experience in interviewing clients. Undergraduate students in the public speaking course impersonate clients in cases where the facts are taken from the the closed files of the clinic and rendered unidentifiable. There are two stages in this work: (a) a series of interviews in which the sole objective is to learn how to get the facts from a client; (b) a series of interviews in which the objectives are to get the facts, to decide in general what to do for the client, to determine how to get there, and to settle definitely upon the first step to be taken.

In addition, each student writes a trial brief for a local attorney in a case actually pending, and usually sits at the counsel table during the trial; handles one or more criminal cases; handles his share of the civil work in the office; and participates as a member of a committee of the class in work familiar to a lawyer, such as conferences concerning the value of work if a

fee were to be charged, administrative problems of the law office, and public relations matters.

*Second Semester.* It was originally planned to emphasize here interprofessional resources and community facilities available in solving clients' problems, but the need to give the student further experience with and facility in handling still other legal tools has resulted in a diversified program.

Six hours are devoted to class room interviews where the student is required to obtain the facts, plan the campaign, and as a first step draft a document. Undergraduate students in groups of two or more are used as synthetic clients. The law student must learn how to handle several people at once and still get the necessary data, give brief impromptu statements of the law on whatever subject may arise, and organize his material. At present the students are graded on three steps in the process: the notes they take in the class room as indicating the facts; the original outline of the documents; and the list of problems which they believe should be solved before the final draft of the document is made. Since such final draft can usually be obtained from a form book, emphasis is placed upon the preliminary thinking and organization of material.

Six hours are spent with interprofessional problems. Problems are selected in the fields of medicine, accounting, and engineering; and students from these other departments of the university appear as expert witnesses under circumstances which approximate a portion of a mock trial. The law students conduct direct and cross examination.

Each student prepares an appellate brief in a pending case for some lawyer of his choice with whom he desires to make a contact.

The committee discussions continue as in the first semester. This class room routine is designed as a slow motion process to emphasize, clarify, and organize in the student's mind certain skills of a creative rather than analytical type which he will find useful in his practice. It is assumed that his other courses provide him with plenty of experience in analysis. The actual clinic cases, handled under supervision of a practicing lawyer,<sup>47</sup> provide the student with similar material at normal speeds.

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47. There was a time when the Harvard Legal Aid Bureau operated without the services of a supervisory attorney, but at the present time it

## GRADING IN THE LEGAL AID CLINIC COURSE

The system of grading in effect at the Duke Legal Aid Clinic is designed to determine not only whether the student passes the course, but also his abilities with respect to the bar examiner, future possible employers, and future possible clients. With this in mind the primary concern is not, "Does he know the law?" but "Does he have some idea what to do for his client at each step, and is he able to do it?" The following table of characteristics on which grades are submitted indicates the comprehensive nature of this effort to understand the student as a prospective practicing lawyer.

(1) At the conclusion of each case the student is graded on adaptability, dependability, attention to detail, and ability to organize material. (2) At the end of each month the student is graded on ability to deal with members of the office staff, ability to deal with other persons such as witnesses, lawyers, and court clerks, and ability to take criticism. (3) At the end of the semester the student is graded on ability to plan a campaign, legal judgment, sensitiveness to ethical considerations, ability to meet the unexpected, and creative ability. (4) In the briefing work, the following specific characteristics are graded: the ability which the student showed in analyzing the problem, the ability the student showed in using the library and in gathering material and organizing it, and the ability shown by the student in writing the brief. (5) In handling of criminal cases the following matters are specifically graded: interviewing, fact gathering, fact evaluation, organization of material, plan of campaign, and value of student's work to case.

The results of this grading system are kept as permanent records in the clinic office so that when, as frequently happens, people write asking for recommendations with respect to a particular student or former student, it is possible to tell not only whether his grade was 70 or 73, and that he stood fifteenth or twenty-third in his class, but a good deal about the sort of man that he is, as reflected in the minds of members of the staff in connection with events arising normally in law practice.

The information thus secured about the law student is useful in other ways. It is possible to help him to overcome the

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appears that all legal aid clinics have such a supervisor, either a member of the law school faculty or an attorney for a legal aid society.

weak points in his abilities, or to warn him to engage in types of legal work which will not expose his weak side. There is also the challenge in a number of cases to refuse to pass the student not because he is not intellectually capable of passing a bar examination, but because he has as yet to demonstrate a degree of maturity sufficient to warrant a law school in letting him serve his first clients. Eventually boards of bar examiners and grievance committees should find use for this information.

#### EVALUATION

The important question is the extent to which the material and methods are successful in accomplishing the three objectives of giving a picture of law practice, providing experience in skills, techniques, and mental habits, and developing a point of view.

Progress in the writer's legal aid clinic has been delayed by a number of factors: his own limitations as a teacher, the lack of land marks and guide posts in a pioneering enterprise, the apprehension of the local bar that the office would attract clients who could pay a fee,<sup>48</sup> ignorance and timidity on the part of the legal aid client class in seeking legal redress for their difficulties, conservatism on the part of law students in entertaining visionary social viewpoints, doubt by the general public as to whether we had our feet on the ground. It has required much time and many modifications of the original plan to meet these very natural obstacles.

It is proper to mention a number of administrative problems which can be worked out. First, there is no way of controlling the volume of cases which come in or their variety. The task of the staff is to care for this volume and variety as it appears, but to see that the student is not overloaded or discouraged by being given too many cases of the same sort. If the student feels that he is being used instead of educated, the sense of exploitation will come to him and that will seriously affect his cooperative spirit. There is nothing magical about controlling the volume. It is merely a matter of constant supervision and occasional conferences with the student so that, when he is disturbed, he will feel entirely free to come in and discuss the matter.

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48. For a complete set of rules on this subject, see *The Legal Aid Society (New York) Office Regulations* (September, 1934) sec. 1: Applicants.

The question of time is important as bearing upon the students' other courses. It is a very simple matter for a student to become so absorbed in the vital problems arising in the clinic work that he tends to neglect his work elsewhere in the curriculum. Again there is no magical formula. In the Duke Legal Aid Clinic it is expected that each student will spend not more than 150 hours per year out of class in doing clinical work.<sup>49</sup> He is required to keep a record of the time he spends just as he would keep it if he were a clerk or a member of a firm in a large law office. The record thus available is one factor in determining whether or not to give a student additional work. Students are frequently instructed that under no circumstances should they permit clinic work to interfere with their class room work. If it seems likely that such an interference will take place, they are expected to talk the situation over with some member of the staff with a view to working out a solution.

It is our experience in dealing with the students that at the start they take an amazingly long time to accomplish what seems a very simple piece of work. One of the desirable features of the course is training in speeding up certain routine procedures and making decisions, and in acting directly and courageously instead of in an irresolute, fumbling, and foggy-minded manner.

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49. The catalog of the Duke Law School describes the Clinic in the following terms: "The purpose of the Clinic is twofold: to provide legal assistance for indigent persons, and to acquaint the student, by direct contact under faculty supervision, with certain of the problems of 'law in action' which may escape emphasis in the study of 'law in books.' The student is obliged to synthesize his theoretical knowledge in applying it to concrete situations which may often cut across course boundaries. He is trained in the technique of fact-gathering, the strategy of a law suit, the handling of clients, and the management of a law office. Classroom work is given supplementing the handling of actual cases. The practice in the Clinic is of a sort calculated to stress the ethical responsibilities of the lawyer and the social implications of his work. The latter aspect of this work is developed further by contacts established between the Clinic and various agencies of social welfare in North Carolina.

"The Legal Aid Clinic is in effect a large well-rounded law office offering the student experience in interviewing clients, preparing cases for adjustment or for trial in court, briefing, investigation of facts, and other tasks familiar to the practicing attorney. Between two hundred and three hundred cases a year are received by the Clinic. Only those applicants who are unable to pay counsel fees and only those cases where there is no opportunity for a contingent fee are accepted by the Clinic.

"The activities of the Clinic are centered in a suite of offices in the Law School Building. In addition to the Director, a staff of four members of the North Carolina State Bar assist in the educational activities of the Clinic and in representing its clients in court proceedings. Work in the Legal Clinic is required of members of the third-year class."

It is quite possible to operate the clinic course so that it does not overlap other law school courses. It is an entirely different approach to the material from the one employed in the class room. If a student has a clinic case involving a contract, incidentally he has to know contract law and also something about drafting legal documents. The fact that he must call upon experience gained in other courses means that in a sense he is reviewing his work there, but the clinic task is to deal with the material of the legal contract under circumstances where the rights of a living client are at stake. Since the atmosphere is entirely different, there is no overlapping. If the case involves litigation the course does not overlap other courses in pleading, practice, or in practice court. In those courses the student goes through a procedure in slow motion. In the clinic course he sits as an assistant to an attorney who supervises the pleadings and conducts the trial of the case. The whole atmosphere is different. But while the student must draw from his experience in the other courses to perform the work required in the clinic course, that is only a part of his problem.

The clinic course is more one in applied legal ethics than anything else. Since the emphasis is on steadying and improving character,<sup>50</sup> it is not a repetition of anything else in the law school curriculum, although it may incidentally deal with the same material.

One who teaches a course in legal aid clinic work should abandon any thought of handling the problem in the way he handles a casebook course. The only thing that can be done is to adapt oneself to an administrative process and deal with it somewhat the way the dean of a law school deals with his administrative problems, or more particularly the way in which the managing partner of a large law firm looks after the business in his office.

Three practices of the Duke University clinic, which are designed to meet objections, deserve particular notice here:

(A) All legal aid organizations are committed to the obligation of restricting their service to clients and cases where no

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50. Of the mass of material on the subject of training for character see particularly *The Ethics of the Professions and of Business* (1922) 101 *Annals* 1-236; Cohen, *The Law—Business or Profession* (Rev. ed. 1924); Jessup, *The Professional Ideals of the Lawyer* (1925); Rutherford, *The Influence of the American Bar Association on Public Opinion* (1937).

fee can be paid. They have adopted a series of four steps in dealing with the problem. First, everyone is told that the clinic's competence is limited to cases of clients where no fee can be paid. Second, the applicants are required to disclose their financial status as a prerequisite. Third, even after the case has been accepted for investigation, the right is reserved to withdraw at any time that it appears that a fee can be paid. This occurs frequently.<sup>51</sup> Fourth, a standing offer has been made to the local bar that if any member of the bar desires to take in his own office any case that is currently in the clinic office, he is welcome to do so, provided only that he will give it the same attention and care in the interest of the client that the clinic would bestow upon it. In practice a number of lawyers send cases to the clinic because they are glad to be relieved of the necessity of spending time and energy on matters that are hopelessly unremunerative.<sup>52</sup>

(B) A transition from the theoretical to the practical was essential if the confidence of the public, the bar, and the students was to be secured. The procedure employed has been described above. The progress in building up confidence is indicated roughly by three measuring rods. One is the views of the members of the staff who as practicing lawyers are in a position to determine such questions as whether a student has handled a particular case well or poorly, and also to express an opinion on his skill or lack of it in certain phases of his work. Again, expressions of opinion from students who have graduated and have found the course of practical value in their work encourage the thought that there is usefulness in the work; some students who never took the course have written back after embarking upon practice, saying that they wish they had taken it. A third measuring stick is the opinion of lawyers and judges with whom the students come in contact either working on cases or afterward in practice. There seems to be a growing circle of people who appreciate what has been accomplished. This appreciation appears in correspondence.<sup>53</sup>

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51. The Duke Legal Aid Clinic rejected 386 of the first 2000 applications made to it.

52. Of the first 2000 applications received by the Duke Legal Aid Clinic, 149 came from lawyers.

53. See *Annual Reports of the Duke Legal Aid Clinic for 1935, 1936, 1937*.



(C) Helping the student to view the lawyer as a public servant is a most important goal. There is reason to spend time thinking how the students who have taken the course can be equipped (1) with a wide comprehension of the problems confronting the lawyer in his efforts to solve individual and group human difficulties through the use of the resources of the legal field, through the use of the resources of other professional fields, and through the use of the resources of the lay community,<sup>54</sup> and (2) with a desire to make a professional contribution to improving the situation.

Obviously, the foregoing objective is subject to criticism as visionary, imponderable, and elusive. At present there does not seem to be any satisfactory criterion of success except what the students themselves do when they get into practice. Their interest and participation in bar association work, social legislation, and legal aid service are widely attested and may be explained largely on the basis of the inspiration of handling legal aid cases at the beginning of their careers.

The methods employed in developing the desired viewpoint may be grouped under the heading of personal example, individual conference, opportunities to engage in legislative work, contact with social workers, lawyers, civic leaders, and others, and class room exercises in the use of interprofessional resources. Personal example requires that the instructor and staff members themselves participate actively in community activities.<sup>55</sup> Individual conferences in the handling of specific cases show the

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54. For a consideration of the various attitudes which a lawyer may take toward his work, see Cheatham, *Cases and Materials on the Legal Profession* (1938) 83; also Cheatham, *What the Law Schools Can Do to Raise the Standards of the Legal Profession* (1933) 7 *Am. L. School Rev.* 716.

55. Service by staff members on state and local bar association committees, committees of state conferences of social work, and local councils of social agencies and charitable organizations provide opportunities for this type of training. The following partial list of the activities of the staff of the Duke Legal Aid Clinic is illustrative: (1) national activities—American Bar Association, National Conference of Social Work, National Association of Legal Aid Organizations, Round Table on Legal Aid Clinics of the Association of American Law Schools, National Social Work Council, (2) state activities—North Carolina Bar Association, North Carolina Conference for Social Service, North Carolina Mental Hygiene Society, State Probation Commission; (3) local activities—Durham Bar Association, Junior Bar Association, Recorder's Court, Council of Social Agencies, Durham Crime Study Club, Durham-Orange County Mental Hygiene Society, Durham Rotary Club, and various other social and civic agencies.

student various possible solutions of the client's problem and indicate why the staff member thinks one solution is better than the rest; it is hoped by this means to develop a critical attitude in the student toward plans of campaign.<sup>56</sup>

These conferences take place regarding various aspects of the work. For example, in the handling of a single case the following routine is observed: (1) When the applicant appears, the registration clerk secures his name, address, and certain facts necessary to determine his ability to pay a fee. (2) The applicant is then interviewed by the student, who obtains the facts, determines in his own mind what the client wants, and decides tentatively how to go about it. (3) The student, before advising the client or allowing him to leave, confers with a staff member, checks and corrects his impressions, determines tentatively whether or not the case is to be accepted, and what is to be done. (4) The student then resumes his conference with the client on the basis of the staff member's check up. If advice alone is required, the student gives it after making sure that what he has to say is appropriate. If more than advice is necessary, the student confers with the staff member before and after each step. Sometimes the staff member takes the step. If the case proceeds to litigation, the staff member tries it with the student organizing evidence, writing a trial brief, and in general acting as assistant. During these conferences the educational task consists in weighing various points of view—the student's, the average lawyer's, the socially minded lawyer's. Social considerations determine many of the decisions. Thus the student is exposed to the social aspects of the individual case.

Legislative matters also receive attention. In recent years

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56. The student in handling certain cases is required to work not only with the staff member but with other lawyers, court officials, judges, social workers, physicians, psychiatrists, public health officials, clergymen, and members of the general public. From all these persons he receives points of view that frequently differ from the legal point of view. In his conferences with the staff member the student is encouraged to evaluate these various attitudes.

Cf. McCaskill, Book Review (1934) 29 Ill. L. Rev. 270: "I have never believed in the legal clinic as an adjunct to legal education, because I have believed that it is wasteful of a student's time, and that there were more efficient ways of teaching legal technique. However [the book under review] does not argue its value for teaching technique, but points a picture of an opportunity for forming lasting ideals for service. Therefore, shall we put young men to work at service instead of telling them that leaders of the bar in the past have not done this or that?"

the writer's office and the students have been interested in various phases of the preparation and presentation of certain projects designed to promote the general welfare. Among them are a modern bastardy procedure,<sup>57</sup> an adoption practice,<sup>58</sup> a sterilization routine,<sup>59</sup> a state-wide adult probation set-up.<sup>60</sup> Among the interests which have not appealed to the legislature are the uniform small loans law and a bill to deal with the habitual offender. Thus the social aspect of group problems is brought in.

In handling clinic cases the law student comes in contact with laymen and representatives of other professional groups, learns to work with them, and exchanges points of view, philosophies, and practical experiences. Thus the student has a chance to see what the public expects of the lawyer and to prepare himself accordingly.

The class room exercises have already been described. Whether participation in such exercises produces the desired viewpoint or not is a question which cannot be answered definitely because, as yet, there are no adequate measuring rods. Building a viewpoint is not usually a dramatic affair such as an impassioned lecture which changes the course of a man's life. It is comparable to teaching standards of conduct in the home, building self respect in probationers and parolees. An examination will reveal how clear an understanding of social factors the student has achieved; but there is more to the problem than the inculcation of passive knowledge. There is need for students impelled to act. Whether or not a particular student will act in a socially acceptable fashion depends upon many factors beyond the control of the clinic staff. It is submitted that until more accurate measuring rods of accomplishment have been developed, the test of effectiveness should be what the course offers the student. On such a basis the present clinics have no reason to be ashamed of their progress.

#### CONCLUSION

Legal aid clinics have come into existence experimentally because of the existence of three needs: the need of legal aid

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57. North Carolina Code (1935) sec. 276 ff.

58. North Carolina Code (1935) sec. 191.

59. North Carolina Code (1935) sec. 2304(m) ff.

60. North Carolina Code of 1935 (1937 Supp.) sec. 4665.

societies for more lawyers who understand the work, the need in legal education for meeting the problems of the changing times, and the need of the bar for increased effectiveness in its public relations work. The legal aid clinic is the most promising experiment in the field, and it has demonstrated certain very real values with a promise of development along other lines. It sounds out the strengths and weaknesses of the law student in respect to the tasks he will have to perform as a practicing lawyer. It provides a means for strengthening his weak points and, when the system has been perfected and coordinated with the work of admissions committees of bar associations, should provide a means for keeping out of the profession many who are able to pass examinations but are not able to practice law. It offers the student a chance to develop a social viewpoint. Further progress in this direction will depend upon our securing more adequate measuring rods.