

Legal Clinics and Law Students: Rocks and Cement for Better Legal Education

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■ In this article, the Director of the Legal Aid Clinic at Duke University replies to C. Clinton Clad, whose article, "The Gap in Legal Education: A Proposed Bridge", was published in our January issue. Mr. Bradway contends that Mr. Clad's metaphor is an oversimplification. The problem of preparing the newly admitted lawyer for practice is not a gap over which a bridge must be built from the theoretical teaching of the law school, but rather, Mr. Bradway holds, a problem of finding concrete to cement together and fill the interstices between the rocks of knowledge acquired in law school.

■ In the JOURNAL for January, 1955, page 45, C. Clinton Clad has given us a stimulating article: "The Gap in Legal Education: A Proposed Bridge". The gap of which he writes is the well-known and extensively discussed area between the theoretical knowledge of the lawyer fresh out of law school and the practical experience which he should have properly to serve his client. The particular bridge which he presents as a solution is a sort of legal clinic to handle the functions both of Legal Aid and Lawyer Referral Service. As the footnotes to Mr. Clad's article indicate, this is not an entirely novel problem. He follows the normal procedure of pointing out what he regards as inadequate in the present efforts toward this type of bridge building and gives us his views on how the defects should be remedied.

With much of Mr. Clad's argument, I am in hearty agreement. He has performed a useful service both in keeping the topic before us and

in assembling a great deal of the material in which others have expressed their views as to a solution. When, however, he takes a dim view of Legal Aid Clinics and their potentialities, I am unable to agree with him. Up to now those of us who operate Legal Aid Clinics have not participated in the discussion, which, for the past two or three years has raged in the pages of the JOURNAL and elsewhere. The articles, able and discriminating, which have been presented, are written by those who may be described as observers rather than participants. There is certainly reason to give audience to some of us who are spending a goodly portion of our lives wrestling with this problem. Whether our point of view is sound or not, only time will tell. But it is fair to assume that we have a point of view and that it is based on hard won experience. My purpose is to restate the problem as I see it; to suggest how the present day Legal Aid Clinics are proceeding by the

trial and error method to solve that problem; to comment upon the extent to which the Legal Aid Clinic with which I am connected is now doing most, perhaps all, of the acts which Mr. Clad urges should be done. My point is not that in principle his demands for a solution are unreasonable, quite the contrary; but it seems to me Legal Aid Clinics already are doing or readily can, in due course, be made to do those necessary acts better, more quickly, less expensively than could other agencies. To many of us participants, the Legal Aid Clinic is quite a remarkable device. In the hands of imaginative, resourceful, hard-working, dedicated people it can accomplish more than is presently apparent to observers.

With this thought in mind I shall take the liberty of restating Mr. Clad's figure of speech involving the "gap" and the "bridge". I shall discuss his remark on page 47, where he states: "In short, it [The Legal Aid Clinic] gives him [the student] a great deal of practical training. But, as with all such ideas, it falls short because the student, not having been admitted to the bar, cannot actually practice law." I shall refer briefly to the work done in the Duke Legal Aid Clinic with such topics mentioned by Mr. Clad, as "facts" and "nonlegal skills".

**A Box, Not a Bridge . . .
The Basic Figure of Speech**

A word picture of a gap with a bridge to be built over it has several advantages in the present situation. It is simple and challenging. I suggest, however, that it may turn out to be an oversimplification. For one thing, it starts too late in the over-all educational process. Some of us who have given the matter thought are rather partial to another phrase—"rocks in a box". We admit that this, too, is not adequate but at least it suggests, to our way of thinking, certain other aspects of the problem which we regard as important and a broader pattern of solution which deserves to be kept in mind.

In our efforts to visualize this particular task of practical training for law students as a basis for our investigations as to the most desirable solution, we start with a phrase that has little novelty about it. We say that the purpose of legal education is to *teach the student to think like a lawyer*. Of the three significant words in this phrase "teach", "think" and "lawyer", we shall have space presently only for the second. Presently there is a widely held assumption that three, or perhaps four, years in the student's life are all one can expect to devote to the law school aspect of this thinking process.

If our pattern of legal education is limited to three (or four) years spent full time in law school, the problem is how to cram into that short period all the student should know. It is obvious that something must be omitted. It is also obvious that we can not, in such a framework, turn out fully matured practitioners. But if we enlarge our horizon so that instead of three years we are looking at a lawyer's professional lifetime, the congestion is relieved. A teaching program which would devote three years to basic data, to be followed by part-time instruction on advanced matters might be of great benefit. Part-time instruction applied over the forty or more years of a lawyer's active professional life would greatly improve the quality of the product which the profession dispenses to

the public. This improvement, in time, would result in benefit to everyone concerned: lawyer, profession, law school and most of all client and general public. The point is that after three years of case method instruction there is a place for something which we presently call the Legal Aid Clinic method.

When I entered law school my mind, as far as law was concerned, was at least open. I thought of it as a box, which, in due course, was to be filled up and on which I should eventually stand when I began to practice my profession. Each course which I took went into the box. To describe each course as a rock may suggest to some readers the idea that my purpose is to disparage the courses which my colleagues teach. My purpose is not by way of criticism merely to illustrate why the gap and bridge figure of speech seems not adequately to cover the present situation. In my first year in law school I placed in the "box" a series of "rocks". Each one was excellent in itself and any defects in them were due to me and not to my instructors. In each of the succeeding years I placed in the "box" another tier or layer of "rocks". Again each one was excellent in itself.

When I emerged from law school and attempted to stand upon this foundation I found two major limitations—the base was not wide enough; the base was not firm enough. If I had had time to come back to law school and pick up more rocks the base would have been wider. But the lack of firmness was another problem.

Rocks are not the equivalent of bricks. In building a brick foundation dovetailing is an asset. Rocks, unless specially shaped, do not fit closely, one against another. There are interstitial areas. They provide not a seamless web of the law such as one deals with in practice, but a broken and interrupted pattern. It took me some years of mistakes and humiliation before I could feel confidence in the firmness of the professional foundation in my own mind.

The Legal Aid Clinic attacks this second problem of the lack of firmness in the professional foundation. To use Mr. Clad's figure of speech, it is concerned primarily with building solid abutments upon which a bridge also to be built will eventually rest. For a time, we tended to think of the legal aid clinic commodity—the substance which is communicated by instructor to student—as another rock. More recently we are beginning to wonder whether the word cement or concrete may not be a more accurate description. Concrete poured into a box of rocks will, in due course, harden and hold them firm, dependable as a base of professional operations.

The rocks in a box analogy leaves much to be desired and we hope in time to discover a better one. But it does serve in the instant situation to point up the problem with which we are dealing. Let us now consider—When should the concrete be poured?

**Learning To Practice Law . . .
Before or After Law School**

Mr. Clad, it seems, would prefer to substitute for the Legal Aid Clinic instruction in law school, a period spent by the student after admission to the Bar in a legal clinic outside of the law school in which services would be rendered to clients who can pay only a small fee or none at all—the traditional domain of Lawyer's Referral Service and Legal Aid. His argument is that persons not admitted to the Bar cannot practice law. I assume that what he has in mind is that a newly admitted member of the Bar does not "feel" like a lawyer until the full sense of professional responsibility rests upon him.

I agree with Mr. Clad that there must be a period when the embryo lawyer gains experience in practical training. I also share his enthusiasm for the excellent public services being rendered by non-law school Lawyer's Referral Services and Legal Aid Societies. I am not so clear, however, that the non-law school Lawyer's Referral Service or Legal Aid So-



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ciety offices are the places for this phase of legal education.

Here again let us define the problem before we set about determining a solution. It seems to me that we have two problems here and that each may require its own form of solution. The first is that of the inexperienced lawyer already admitted to the Bar. The second is of the continuing stream of law students who, through the years, to come, will be applying for admission.

(1) There are probably at the present time members of the Bar who, even though they have licenses, do not know how to practice law. For the sake of everyone concerned, they should seek this instruction. If, in a particular community, it can be given in a Lawyer's Referral Service office or Legal Aid Society and not in a law school, then by all means, we should see that it is given as quickly and as well as possible. But, if it can be given in a law school, I should prefer that solution because a law school is set up to teach, a Legal Aid Society or Referral Service office to serve the public. This problem of the lawyer already at the Bar is at most only temporary. It does not require too much long-range planning. It

should be completely solved in the reasonably near future.

(2) The other problem is of a different sort. Year after year in the future, law students will be readying themselves to practice law. For them, something more permanent in the way of a solution is necessary, concrete as well as rocks. I urge here that a substantial amount of practical training should be given before admission to the Bar and that this instruction should be followed up year after year on a part-time basis as long as a lawyer is in active practice. I also urge that the law school—the law school of tomorrow if you prefer—is the agency upon which the responsibility for this instruction should rest.

Why the law school? The alternatives are not so promising. The individual law office is declining in effectiveness as an educational agency.

The medical profession has abandoned apprenticeship instruction, at least basic instruction in private doctors' offices. A bar association program of education will operate only when the bar association is strong enough and financially able to do a first class job. Even in Pennsylvania and New Jersey, which have prided themselves on their bar association apprenticeship programs, there are rumblings of discontent. Legal Aid offices and Lawyer's Referral Services can hardly be expected to supply the necessary quantity and quality of instruction and supervision. We do not have in this country any agency exactly comparable to the English Inns of Court, which may be described as law school bar associations. The law school with a Legal Aid Clinic attached could expect to provide somewhat the same coverage and continuity. In fact, with due respect to Mr. Clad, it is already well along the road to solving the problem.

Why instruction and supervision? Why not give the young lawyer a license, sit him down at a desk, bring in an impecunious client, shut the office door and hope that the better man may win? The answer is that the profession should not be content merely to have the lawyer learn

to practice law by bull-in-a-china-shop methods. What we want is to have him practice it on the highest professional level, one which will win public respect for lawyers. This means that he should conduct himself in a manner not only to serve himself but to be of value to client, court, profession and community. To attain such a professional goal, a high quality of instruction and supervision for an extended period seem quite essential. We shall come nearer getting a professional grade of concrete from law schools than from some other agency.

When should this instruction and supervision be given? Mr. Clad is content that it should come at a time when the lawyer is licensed to practice law—after admission. My argument is that it should come both before and after. Assuming, however, that instruction beforehand should be given in basic matters and that training in advanced work should come after admission, where should the line be drawn? The medical profession, when faced with a similar problem, decided it by preparing the young doctor to be a general practitioner and then giving him further instruction in specialized fields.

The mental pictures of a general practitioner of law and a specialist may be clarified in a variety of ways. A board of bar examiners already selects topical fields of law in which it requires student proficiency. It might, without too much trouble, list a group of *functional tasks* on which there is some reasonable agreement and require as to each of them that the student must demonstrate a degree of proficiency in execution. After admission, it is possible to determine how many more functions a lawyer should be able to perform in a professional manner before he is allowed to hold himself out as an expert.

It is not unfair to public or student to require that before the latter be handed a license to practice, he should be required to demonstrate not only that he can write an examination set by the board of bar examiners, but can also do in a pro-

professional manner certain basic acts which the public has a right to expect a licensee to be able to do. The Legal Aid Clinic can teach the student how to do them.

Consequences of our present system are not limited to the individual student. There are public relations implications. An inexperienced person in any field of activity tends to make mistakes. For that matter even experienced persons make some of them during the whole of their lives. None of us is proud of these mistakes, particularly when they are avoidable. Many of us labor diligently to keep them to a minimum. I realize the impatience of the law school student to get started earning money. I also realize the bad publicity to student, profession and law school which comes when a person bearing a license to practice makes elementary mistakes. A Legal Aid Clinic operating before the student is admitted will substantially reduce the number of elementary mistakes he is likely to make. A Legal Aid Clinic operating after a student is admitted and while he is preparing himself to become an expert will substantially reduce the number of mistakes, which are not of an elementary character.

Legal Aid Clinic instruction is quite realistic. It deals with professional "tools". It gives exercises in how and when to use them. Of course, in one sense, a man can study law without any law school instruction or supervision, perhaps he may even be able to pass the bar examination. But few of us are willing to approach such a difficult problem in such an inefficient manner. We go to law school because it can give us something we should be a long time in getting for ourselves. So in the matter of learning to practice law—the cement which holds the rocks together.

There is another aspect of the problem which calls for help from the law schools—the varying qualifications of the applicants. Let us suppose that in Jurisdiction X the board of bar examiners decreed that no one should be granted a license to

practice law unless and until he had demonstrated his ability to do in a professional manner fifteen different acts which a reasonable client may expect of a general practitioner of law. These might include such routine practices as writing a letter, interviewing a client, searching a title to real estate, preparing a case for trial, writing a trial brief and others. I mention these because the student in the Duke Legal Aid Clinic learns how to do them before admission. Student *A* may do a creditable job the first time he is confronted with the challenge. Student *B* will, perhaps, show aptitude in interviewing clients but be quite slow in writing a brief or building a legal document. Student *C* may be slow all along the line. To meet such diversity of qualifications requires a flexible individualized type of instruction and supervision. It is not enough to prescribe a period of time—a month—a year. Student *A* will be frustrated because he is ready for law practice long before the end of the period. Student *C* may not be ready after the elapse of the prescribed time. But the public should be assured that *A*, *B* and *C* are not admitted until competent observers are satisfied that they can give a good account of themselves.

It is not enough to prescribe the tasks to be learned. Instruction and supervision are needed to see how well each student is prepared to perform them. What is true for skills before admission is also true for those to be learned when one is becoming an expert. Instruction and supervision are worth all they cost and they can be obtained more effectively and less expensively in a law school than elsewhere.

If Mr. Clad were to examine several groups of young lawyers with varying educational backgrounds but of reasonably comparable native ability, it is not unlikely that he would find those who had Legal Aid Clinic training would deserve to be in a preferred class. In other words Legal Aid Clinics, properly run, need not "fall short" of Mr. Clad's very reasonable expectations.

Learning Skills . . . "Fact" and "Non-Legal"

The Particulars. When Mr. Clad says that Legal Aid Clinics "fall short" he probably has in mind the disciplines which he mentions in the latter part of his article—"facts" and what I take the liberty of paraphrasing as community non-legal skills. I agree with Mr. Clad that a lawyer needs these disciplines. However, I have more confidence than he does in the ability of the Legal Aid Clinic to supply them. This is because the Duke Legal Aid Clinic does go a long way already in supplying them. I am conservative enough not to favor a policy of swapping horses in mid-stream. Let me illustrate:

As to facts: We give lectures, demonstrations, individual instruction in recognizing, gathering, evaluating, processing and using facts in legal proceedings in and out of court. Then the student deals under supervision with real clients who have real problems and real facts. As competence is developed the supervision is relaxed so that the student gradually gains the self-confidence and self-control desirable for a professional person. If the curriculum committee could give us more time we could do a better job.

As to non-legal skills: We again should define the problem. We do not proceed on the theory that a lawyer must be omniscient. It takes him all his life even to learn to be a good lawyer. He should not be distracted by having thrust on him the additional duties of psychiatrist, physician, economist, sociologist and everyone else.

He need not learn the skills of psychiatry if he knows a psychiatrist, when to call him in and how to work with him on an interprofessional team.

In our view of the situation it is enough if he knows when to call in for consultation a physician, an economist, a sociologist, and the like. He also should know how to participate in interprofessional cooperation. In the Duke Legal Aid Clinic we have several exercises to

give the law student experience in dealing with persons who are expert in employing the tools of other professional disciplines. Then in actual cases the law student, always under supervision, has a chance to implement and perfect his skills.

Again, if the curriculum committee gave us more time we could do a better job. But we have demon-

strated that this sort of work is feasible for Legal Aid Clinics. In a university community, the law student has more ready access to qualified non-legal instructors in other professional fields than is likely the case in later years when he lives off the campus. Here is the place to learn when to call them in for

consultation and how to work with them.

Mr. Clad is quite right in criticizing the Legal Aid Clinic. His remarks are a challenge to us to do better. It is not necessary or even desirable for him to dismiss the Legal Aid Clinic as abruptly as he does. It is already doing a lot and is capable of doing a great deal more.

Seventy-eighth Annual Meeting:

Philadelphia Plans Elaborate Entertainment

■ Elaborate plans for the entertainment of members of the American Bar Association attending the 78th Annual Meeting in Philadelphia next August are rapidly nearing completion.

Two of the outstanding events will be an open-air luncheon on the beautiful new Mall fronting historic Independence Hall and a trip to the world-renowned DuPont Estate at Longwood Gardens, the program includes a wide variety of events designed for the pleasure of the visiting delegates.

The Mall luncheon will be a prelude to an open-air meeting of the Assembly and the ceremonies held in co-operation with the John Marshall Bicentennial Commission on Independence Square scheduled for Wednesday, August 24. There in the shadow of the Liberty Bell, which cracked when tolling the death of Chief Justice John Marshall, and of Old City Hall where he so ably presided over the Supreme Court of the United States, leaders of the nation's Bench and Bar will offer appropriate tribute to his memory commemorating the 200th anniversary of his birth. One of the highlights of the event will be the ap-

pearance of the Marine Corps' life and drum unit. The luncheon will be tendered by the Philadelphia Bar Association through the courtesy of the Insurance Company of North America.

At Longwood Gardens, the well-known Savoy Opera Company of the City of Philadelphia will offer a performance of *Trial by Jury* in the famous open-air boxwood theatre on the spacious DuPont Estate. This will be followed by a display of the colored fountains which are a replica of the beautiful fountains on the grounds of the Versailles Palace in France. The Delaware State Bar Association is sponsoring this event. Scheduled for Sunday, August 21, the guests will be transported to Longwood in either busses or special trains through the courtesy of the Philadelphia Bar Association.

Other events planned for the entertainment of the Association members and their wives and families will include the traditional Red Mass which will be celebrated at the Cathedral of St. Peter and St. Paul on Sunday, August 21, a fashion show and tea and a tour of historic houses and Fairmount Park, the largest municipal park within city limits of any

city in the world, for the ladies. This latter tour will include lunch at various country clubs and will be climaxed by a tea at Philadelphia's Public Library on the Parkway. A trip to the Fairless Plant of the United States Steel Corporation for the men and a party at the Zoological Gardens for both the members and their ladies have also been arranged.

In accordance with time-honored precedent, Loyd Wright, President of the Association, will be tendered a reception by the Pennsylvania Bar Association on Wednesday, August 24, in Philadelphia's imposing Art Museum when all members and their families will be given an opportunity not only to greet the officers of the Association and distinguished guests but also to view the best works of many of the old masters.

As a post-meeting attraction, a private travel company is offering a special trip to Bermuda on the S.S. *Silverstar* leaving Philadelphia on Friday, August 26, and arriving in Bermuda on Monday, August 29. The ship will leave Bermuda Tuesday at 5 P.M. and return to Philadelphia on Friday morning about 9 A.M.