

nificance, and that all I have done is to suggest the desirability of offering a prize for the invention of a title which will convey a true notion of our work and free us from any suspicion of misrepresentation.

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## The Legal Aid Clinic as an Educational Device

By JOHN S. BRADWAY

*Professor of Law, Duke University*

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[A discussion of the papers read at a Round Table Conference on Legal Clinics, held at the Thirty-First Annual Meeting of the Association of American Law Schools]

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The Legal Aid Clinic as a device in the field of legal education has aroused much interesting discussion. All too little data is available regarding it.<sup>1</sup> Its chief protagonists are those who have been actively in charge of the administrative side of the work. More distant observers have drawn diverse inferences as to the nature and advisability of establishing such an agency. It is constantly necessary to restate the central idea in the light of new evidence.

The reasons for the diversity of viewpoint are not far to seek. Each commentator approaches the subject from his own background. His particular law school curriculum may influence him. How will a new course fit into an established plan? Back of this is a very real divergence of opinion as to the specific objectives of a legal education. Back of that is the dissimilarity of communities in which law schools are set up. It may be impossible to resolve the differences in viewpoint. Time alone will tell. But one may make the effort. Because Legal Aid Clinics are in successful operation in some law schools there is a presumption that they may be useful elsewhere. Obviously, to fit a new piece of machinery in so com-

plex a situation as a law school requires skill at adaptation. There should be a flexibility in the agency itself and a high degree of patience and understanding of its nature. Any sincere experiment deserves the keenest critical judgment coupled with an openness of mind.

Recent discussion has centered, among others, around five questions to be discussed here.<sup>2</sup> Does the use of the word "clinic" in legal education bind us unreasonably to the connotations which it has acquired in the field of medical education? Is the clinic course properly classifiable in law school catalogues as a practice course? Is the ideal goal of legal education so permeated with the imprint of legal scholarship that a course which emphasizes the responsibilities of a lawyer as a citizen is out of place? Is it possible to use as a basis for a part of legal education material as complex as human beings or are we restricted to reported decisions of courts and similar non-active facts? Do the orthodox courses in a law school curriculum cover the ground so that there is no need for this new device? This paper will suggest answers to each of the above questions in the negative.

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<sup>1</sup> Material on legal aid clinics may be secured by reference to 8 *Temple Law Quarterly*, 185, January, 1934, and *University of Chicago Law Review*, 469; 245 *Journal Criminal Law and Criminology*, 723.

<sup>2</sup> The points raised here are the substance of a discussion at the meeting of the Round Table on Legal Aid Clinics of the Association of American Law Schools at Chicago, December 29, 1933.

### I. *The Significance of the Name "Legal Aid Clinic."*

The word "clinic" in both ecclesiastical and medical vocabularies<sup>3</sup> involves the idea of a bedside treatment. While a word is only the shell of an idea, it is a bit startling to the legal observer to arouse implications of a class of law students sitting at a bedside while a will is prepared in anticipation of the client's immediate demise. If we even invite a client into a classroom full of students, we can hardly expect a complete revelation of personal confidences. The use in law of the word "clinic" differs materially from the meanings found elsewhere.

In fact legal aid clinic interviews take place between one student and the client with the instructor present only on occasion, particularly at the beginning of the year. The interviewing room is no amphitheatre, but a modest office such as any young lawyer might afford. It contains a desk, two or three chairs, a bookcase and some useful literature. On the walls may be a motto or a notice as to the type of service rendered by a legal aid clinic, or a print of John Marshall. Amid such surroundings the client discloses his innermost secrets and the first stage in the case occurs.<sup>4</sup>

After the interview, the situation is discussed with the instructor before the client leaves. This protects the public against rash curbstone opinions. Still later, in class discussion, the facts of the problem may be presented, but without identifying names. There is no more pub-

licity here than in any large law office where seventy-five or a hundred lawyers are engaged with an equally large clerical force. In the clinic conditions are as nearly like those in a large law office as it is possible to make them. The personal relationship between student and client is fostered. In communities where the legal aid organization registers its cases with the social service exchange a general rule has been adopted by the National Association of Legal Aid Organizations regarding the registration of cases.<sup>5</sup> Always the consent of the client is a prerequisite. Many times the problems involved are of such a sort that for an adequate solution aid must be secured from the clergy, the physicians, the social workers, or other professional groups. In such cases consent of the client is always secured. There are occasional instances of mentally unbalanced persons applying, for whom the best social solution seems to be confinement in an institution. There are interesting questions of ethics involved as to the duty of an attorney to confine his own client against the latter's protests.<sup>6</sup> But the same problems might arise in any law office.

While it is not completely descriptive, the word has acquired over a period of years a usage which may be stated somewhat as follows: A Legal Aid Clinic as contrasted with a medical clinic is: A device in the field of legal education to bridge the gap between theory and practice. Students are brought in contact with real clients under conditions approximating those of actual practice by reputable lawyers. They are encouraged to see a case through the eyes of a law-

<sup>3</sup> Webster's New International Dictionary (1931) defines the word "clinic" as follows:

- (1) A bed rid patient, especially in a hospital.
- (2) Eccl. Hist. One who received baptism on his deathbed, or postponed it until then, believing that sins committed after reception of this sacrament could not be atoned for.
- (3) Med.—a. Instruction of a class by examination and treatment of patients in its presence.
  - b. The gathering of students at a clinical lecture.
  - c. An institution connected with a medical college or hospital devoted to the free treatment of patients.

<sup>4</sup> At the law schools of Southern California and Duke a Handbook on the work of the Legal Aid Clinic has been prepared. This describes the working of the office. See, also, the annual reports of the work published by the directors of the clinics at the following law schools: Southern California, Duke, Northwestern, Harvard, Minnesota.

<sup>5</sup> See Handbook National Association of Legal Aid Organizations, page 71 (1930).

<sup>6</sup> Thus, in case No. 694 of the Duke Legal Aid Clinic the client was defendant in a criminal prosecution and obviously and admittedly guilty. In working an appeal to the court for a reasonable plan for rehabilitating this offender who had a dozen entries on his record, it was possible to urge a sentence in either the county workhouse or the state penitentiary. Counsel for the clinic, having in mind the physical condition of the prisoner and the opportunity for doing a piece of work which might prevent a repetition of the affair, urged and secured a commitment to the state penitentiary. There the man might obtain treatment for acute alcoholism.

yer rather than through those of a judge or a legal scholar.

It is not unlikely that in time law will develop a phraseology of its own to cover this situation. Until then an acquired usage must suffice.

## II. *Is the Legal Aid Clinic a Practice Course?*

Those who prepare the annual bulletins of law schools, arrange the courses in logical order and segregate them under more or less arbitrary headings, such as "Public Law Courses," "Business Law Courses," and similar titles, are looking for some group to which to relate the Legal Aid Clinic instruction. An extreme urge for classification may become procrustean. Too often only a single aspect of the clinic is considered in making the decision. Looking at the matter from the background of the case method of study, the first impulse is to put the clinic work in the same category with courses in practice and procedure.<sup>7</sup> If one be-

lieves that the clinic work is mainly a personally conducted tour through the geography of the court house, the label is accurate. But this does violence to the facts. The clinic is a method of approaching law as a whole rather than a section of either its substantive or procedural aspects. It offers a study of a most complicated mental process. One certainly may teach the practice of law through the clinical method. Given enough material, one may also teach any field of substantive law by the same method. In a given clinic case the student frequently learns far more substantive than he does procedural law. But it is not a course in substantive law. It deals with a living case. It is a matter of planning a campaign and carrying it out. The goal is a satisfied client rather than a gratified instructor.

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work of the legal aid clinic; students submit reports, assist in the conduct of cases, and, in general, engage in specialized forms of legal aid practice. Open to certain third-year and graduate students. One unit each semester, repeated second." At Northwestern University:

"Civil Branch: Six hours a week in two clinic sessions of two and one-half hours each and two class hours, with a credit of two semester hours. Given in both semesters, but required for only one. The work at the Legal Aid Bureau of the United Charities includes handling of clients, drafting of legal instruments, an appearance in court, examination of records of all kinds, and generally all such work as the clerk in a general law office might be expected to perform. Students who propose to take this course in any year, whether during either of the two semesters or during the summer session, must register for the particular semester (or for the summer session) before the commencement of the fall semester. The number of students who may take the course during the summer session will be strictly limited to twelve, to be selected in the order of registration for the summer period. The number who may take the course during either of the two semesters will be strictly limited to one-half of the number of students in the school eligible to take the course during those semesters. Due to the peculiar nature of the course, the above rules are subject to no exceptions.

"Criminal Branch: Two hours of class work and three to six hours of field work per week, with one or two hours credit, depending upon the amount of work done by the student. Repeated each semester. Each student is required to investigate and prepare for trial a number of criminal cases. Upon the trial he assists the attorney. In the event he has been licensed to practice he may be given the responsibility of conducting the trial.

"Industrial Injuries Branch: One hour of class instruction, and three or more hours of field work per week, with one hour of credit. Each student is required to investigate and prepare several cases for hearing before the Illinois Industrial Commission. He participates in the trial of the case under the supervision of the attorney in charge."

<sup>7</sup> The clinic course is variously described.

At Duke University:

"Students under supervision of qualified attorneys and in co-operation with the members of the Durham Bar, the court officials, and social agencies in the community, engage, so far as students may, in the actual handling of cases from the first moment of interviewing the client until the case is disposed of by litigation or otherwise. There are class discussions, term papers, and written reports on certain aspects of the work. Students must demonstrate dependability in action and adaptability to office routine. Two hours throughout the year. Two sections."

At the University of Southern California:

"Law office practice with special attention to the relation of the law to social institutions, and the application of ethics to law practice. Students handle actual cases for legal aid clients, so far as they may lawfully do so, under supervision of members of the bar, and prepare reports on each case; co-operating with the bar, associations, public defenders, Industrial Accident Commission, organized charities, the Institute of Family Relations, and with members of the bar; special individual instruction and practice in interviewing clients; analysis of the case problem; formulation of a plan of action; drafting of common legal papers; elementary office management; arbitration; conciliation; lectures by qualified members of the bar and social workers on the work of the bar, office practice, and social-legal institutions. Required of all third year students; open only to students who have completed course in Code Pleading, and course in Evidence, and who have completed or are taking courses in Practice Court, and Trial and Appellate Practice. One unit, each semester. Two units, summer session.

"II. Research work in specialized fields of substantive or administrative law connected with the

One suggests that instruction in legal ethics by the clinic method might make substantially more headway with the students than the topic does when presented by the lecture, case or seminar methods. The delicate techniques and subtle appreciations of the proprieties which distinguish the best practitioners never are found in reported decisions of appellate courts because they do not appear in disbarment proceedings. The study of cases in this field is a stressing of negations. The lawyer must not do so-and-so under pain of disbarment. It is similar to the pedagogical rules providing that the student must not fall below a certain standard. By the clinical method one may see legal ethics as an affirmative challenge. One is not to be satisfied with a course of ethical conduct which an observer might grade as a "D", but seeks a "B" or an "A". One can only surmise the effect of this procedure on a new generation of lawyers. There is a fair chance that the result will be an improvement over the present situation.<sup>8</sup>

The clinic, then, is not strictly speaking a course. It is classifiable with other methods of instruction such as the seminar, the research, the lecture, and the case methods. There are certain aspects of law which one can teach more effectively by the clinic method than otherwise. There are some materials which lend themselves best to a clinical approach. Time and experience will tell these strengths and weaknesses. But even now the method is a relief to the student bored by the three year struggle to brief cases.<sup>9</sup> The creative opportunity to see a case from beginning to end, to study how one part fits into another before coming to rest in the opinion of a court of last

resort is an interesting contrast to a constant effort at analysis.

### III. *Is there an Unbridgeable Gap between the Scholar and the Citizen?*

We must agree upon the objectives of legal education before we can determine the relative value of the different pieces of machinery employed to accomplish them. It is conceivable that the scholar, the trial lawyer, the jurist, the law teacher, the counsellor, or the citizen may be selected as symbolic of the goal and efforts made to erect educational machinery which will emphasize characteristics popularly supposed to be identified with the symbol.

Many of those in legal clinic work have come to the conclusion that the well rounded practicing lawyer is the objective of their particular form of training. They argue the Law School Period is too early in his career for a man to specialize without danger to his own growth. Many law students do not know into what sort of legal work they are to go after graduation. Many do not care to become a mere cog in the machine of a large law firm, a goal to which ability in briefing leads. To develop a sense of ease in dealing with as many fields of law as possible, to demonstrate to himself the strong and weak points of the student in dealing with unexpected and unfamiliar situations, to test resourcefulness, dependability, adaptability, leadership in the community—these are typical of the purposes of clinic training. The specialist, the expert, the student with only one talent, the genius all take their places nearer the circumference than at the center of clinic attention. The symbol is the lawyer dealing with individual clients rather than any specialized branch of the profession—however honorable that branch may be.

Some seem to assume that the lawyer as a citizen is a figure inconsistent with the lawyer as a scholar. If there can be a combination of these two goals, a blend-

<sup>8</sup> For a discussion of the problems of teaching legal ethics, see Handbook of the Association of American Law Schools, December, 1930, at page 95; December, 1929, see the report of the Committee on the Teaching of Professional Ethics in Law Schools.

<sup>9</sup> For a criticism of case study by students, see the following: Leslie Craven in "A Lawyer Looks at a Lawyer's Training," 19 American Bar Association Journal, page 407; Robert E. Ireton, "The Case System—A Criticism," 64 U. S. Law Review, 635.

ing of the symbols might make the lawyer of the next generation a greater force in the community and increase the respect which the man in the street holds for him.

It is the objective of legal aid clinic machinery to train men to deal with practical aspects of the law. Because of the wide range of material there is an opportunity to take advantage for educational purposes of its many sidedness. If the instructor desires to stress public service as an ideal, the students may be encouraged to see law practice as a practical means of recognizing social values in the application of particular rules of law. At the same time, the ideal of scholarship need not be lost sight of. Thorough workmanship, according to the highest standards, may be insisted upon.<sup>10</sup> In the last analysis, the best service to the client necessarily involves the best that the student and instructor can give. The clinic machinery must be flexible. It must embrace many goals. In the hands of a competent instructor the divergence of symbols is purely academic. One cannot be separated from the other. At present there seems to be no other device as effective. Devotion to the ideals of scholarship may satisfy the individual's own desire for truth or win him recognition within the limited circle of scholars, but something more is needed to battle unceasingly and courageously the forces of inertia and lack of moral responsibility which tend to lower the prestige of the legal profession in the eyes of the general public.

The clinic strives to turn out a well rounded man prepared to render public service in whatever field of law practice he may find himself, rather than the occasional genius. Considering the need for this type of man at the bar today and the lack of geniuses, a satisfactory case can be made out for clinic instruction.

Those who operate legal aid clinics believe that twenty years after graduation an average man trained by the clinical method to see the social needs of his clients will have made more contributions toward the social welfare of his community and his profession than another average man not thus trained.

#### IV. *Is it Possible to Use Human Beings as Material for Legal Education?*

Much existing legal education ignores the one factor which will be present in all law practice—the human equation. The classroom under the case method of instruction is more like a museum than a laboratory. There, under conditions of comparative isolation, one may study rules of law at rest. Reported decisions of Supreme Courts and other published material are in a sense lifeless. One may break off at the end of an hour and take up the same case at the next instructional period. The materials may be systematized, classified and worked over year after year. One with a passion for orderliness may apply it here.

Law practice is utterly different. To give a student an idea of the chaotic condition to which he must adapt himself and out of which he must develop some system for handling the matters entrusted to his care requires a different type of workshop. It is somewhat like that in which the chemist works. The chemist, for example, deals with dangerously active elements. If not properly handled, they may destroy him and the laboratory. The young lawyer needs this baptism of fire, this sense of the consequences of ill advised activities while he is still under supervision. One cannot experience contact with clinic work without strain and upheaval. To many men the readjustments are as significant as those which the student must make to any of the newer ideas in legal education. If one argues the value of such a readjustment period in the expanding of a man's mental horizon the clinic experience will contribute its full share.

To the student who is choosing a life

<sup>10</sup> As an example of this reference may be made to the collection of briefs prepared by students at the Duke Legal Aid Clinic on questions of law submitted by practicing lawyers and Judges. They are described in some detail in the first and second Annual Reports of the Duke Legal Aid Clinic.

work, nothing is more essential than a bird's eye view of the area which he is planning to enter. The orthodox law school curriculum does not give him this, but he can find it in the clinic. He is then in a position intelligently to decide and others may judge and advise him on his fitness and qualifications. If he cannot "take it," the sooner he finds out, the better. It is poor social engineering to prolong his period of ignorance. A man trained to do only those things that interest him is at a disadvantage when confronted with conditions requiring activity. A lawyer must look after his client whether or not he is interested. The law student who can not adapt himself to this procedure is of little value.

Human beings are much more disconcerting material to deal with than are cases in books or theories of law, but whether a man can deal with them or not is a question which should be of interest to Bar Committees on Admissions.<sup>11</sup> In fact there is reason to argue that if clinical experience were substituted for the routine bar examinations, the results would be better than those obtainable under the present method. It is submitted that an Admissions Committee should know much more about the applicant than comes from reading his examination paper. Clinical training will supply this information. Admitting the difficulty of dealing with human beings as a basis for legal education, the results, in the opinion of those best qualified to judge, justify the effort.

#### V. *Is There Anything New for a Legal Aid Clinic to Teach?*

When we endeavor to justify the clinic course on the ground that it teaches something the other courses do not cover, we must either generalize or take for our example a particular curriculum and a particular legal aid clinic. In general the clinic course is a synthesis of all the courses. In another sense, it is not related to

any of them. Those which approximate it are legal ethics, research and briefing, office management, and a practice court and a moot court. The student bar association is most closely related. Where the same material is covered the approach and goal of endeavor is a fresh one. But new fabrics are involved. In the substantive law field, the student may and does run into a mass of legal rules not mentioned in any other course. In the field of procedure the student starts the case at the beginning and stays with it all the way to the end. He deals with techniques not taught in other courses; conciliation, activities before city councils, organization of material, planning campaigns.

The specific new topics which a student may learn in the clinic work are numerous and varied. For instance, he acquires much information as to the way in which one builds up a law practice.<sup>12</sup> This subject is perhaps the most significant in his earlier years. It requires the making of extensive contacts, the inspiring of confidence and observance of the niceties of etiquette. Nowhere else than in a legal aid clinic does the student have a chance to learn how to do this.

Another example is the acquisition of judgment in the use of legal resources respecting specific cases. It is not enough to know that there are so many legal rules dealing with the case or that the law is on one side or the other. There is a creative rather than an analytical problem to solve. What are we going to do for this client? A student does not appreciate the implications of that question until he has had clinical experience.

Still another example is practical experience in co-ordination and applying in a specific case the resources of fields outside the law. The human problem remains to be solved after the legal ques-

<sup>11</sup> See Leon T. David, "Legal Aid and the Lawyer," 7 *The State Bar Journal* (Calif.) 28, at page 23.

<sup>12</sup> The prevailing reticence regarding where cases come from and how to get them is as unwise as are stories of the mythical stork in another connection. Experiments in this direction are indicated by the process of advertising. See "The Lawyer's Dilemma," 9 *Los Angeles Bar Association Bulletin* No. 4, December, 1933. See, also, the radio broadcasts by the American Bar Association during the spring of 1933, published by the University of Chicago Press.

tions have been disposed of. The person accused of crime some time or other must be taken out of confinement and readjusted to the community. The domestic problem may call for a divorce, but there may be even a greater need of medical care. A wage claim may be collected, but the employee needs a new job. There is a social value in an educational process which forces the student to see his client as a human being rather than an unimportant incident in a question at law.<sup>13</sup>

It is not enough to know how to file a complaint. A man must learn when is it good policy in a given case to file a complaint and when not. It is important to know how to prepare a brief which correctly states the law. It is also important to know how to gauge the human element in presenting the argument so as to make it convincing to the particular person or persons to whom it is addressed. It is important to know a rule of ethics, but it is not enough. A man should have the sensation which comes from an oppor-

tunity to make an unethical choice and with that knowledge decide upon the proper procedure.

The clinic course teaches much that is new.

#### *Conclusion.*

Legal Aid Clinic work like most other courses is what the instructor makes of it. There are unique opportunities because of the material used. The name is a bit misleading, but that can be corrected either by the adoption of a legal usage or by finding another. It should not be difficult to realize that this is not a course in practice. Rather it is an orientation in the field of the lawyer. It would be a pity if in practice a gap should develop between the scholar and the lawyer. There is already too much social distance between the law teacher and the practitioner. Human beings are an indispensable source of information for the law student. They may not be easy to handle, but they are the factors with which he must work. He should know about them. The clinic course may teach anything provided material is available. Time will tell its strong and weak points.

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<sup>13</sup> Experimentation in the practical solutions of problems which lie in the interstitial file between law and the other social sciences are now in progress at the Duke Legal Aid Clinic. In due course, information will be available regarding the result.