

# THE LEGAL AID CLINIC: A MEANS OF BUILDING TOUGH MENTAL FIBER

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The Legal Aid Clinic is a piece of machinery set up to accomplish two purposes: Like any other legal aid society, it gives legal aid service to poor persons; also, it provides a certain process in the field of legal education. Medical education has made familiar to us the "clinic" and its uses. In similar fashion, though the analogy is not complete, the legal aid clinic helps the instructor to study a group of applicants for admission to the Bar and to pass upon certain of their qualifications.

This article, which is the fifth of a series on the general subject,<sup>1</sup> concerns itself with one phase—the opportunities for a study of character of the students as they struggle with human and legal problems of an intensely practical sort. The discussion will be grouped under three headings: (1) A brief survey of the background indicating the need for additional elements in legal education; (2) The legal aid clinic as a factor in supplying those elements; and (3) Certain illustrations of student characteristics brought to light in the process.

## TRENDS IN LEGAL EDUCATION

Today legal education is in a process of transition. The community makes demands upon the legal profession of a somewhat different sort from those made even half a century ago. Therefore the task of training men to meet the new requirements calls for the widest vision, the soundest planning. For a long time the law teaching profession has been testing out new ideas in this general direction. As a background it will be well to keep in mind two facts: First, the case method of study is a fundamental element in developing a tough mental fiber necessary in the analysis of legal problems; second, there are other phases of mental fiber to be developed in the law student. A brief survey of what is being said and written will indicate the direction of the thinking on this second fact. The selection is from among the most recent material available and includes statements by law professors, judges, lawyers and laymen.

Addressing the Alumni Association of the Law School of the University of Pennsylvania a few months ago, Mr. Associate Justice Roberts of the Supreme Court of the United States, a former leader of the Philadelphia Bar and for thirty years a professor of law at the University of Pennsylvania, is reported to have said, *inter alia*:

"Case history, which has established a precedent under conditions, both social and economic, which no longer exist, does not fit

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<sup>1</sup>For the previous articles, consult: Bradway, The Nature of a Legal Aid Clinic, (1930) 3 SOUTHERN CALIFORNIA LAW REVIEW, 173; Bradway, The Legal Aid Clinic as a Law School Course, (1930) 3 SOUTHERN CALIFORNIA LAW REVIEW, 320; Bradway, Legal Aid Clinics and the Bar, (1930) 3 SOUTHERN CALIFORNIA LAW REVIEW, 384; Bradway, Administrative Problems of the Legal Aid Clinic, (1930) 4 SOUTHERN CALIFORNIA LAW REVIEW, 103.

in the new order. I see the case system as patch-work, the pieces of which do not fit together.

"There is much to be said for case work as against a lecture course but the danger is too much specialization. The curriculum's inadequacies must be corrected. Economic and social conditions control law standards. Historically trained men are of little aid in meeting new problems.

"It is the duty of a lawyer to aid the court in meeting new problems and new eras and the lawyer must be trained to think things out for himself and not look to the past for his material."<sup>2</sup>

At the most recent meeting of the Association of American Law Schools there was presented a volume of material on this subject. The president in his address grouped his ideas under the following three heads:

- (1) The law school does not deal with the law broadly as a science.
- (2) The law schools make too much use of a technique which overemphasizes litigation.
- (3) The law schools fail to lay proper emphasis upon legislation as a substitute for litigation.<sup>3</sup>

At the same meeting, Professor Dickinson conservatively suggested:

"What we have done in the past development of American legal education has been to wisely follow a successful model. If in the present matter we would wish to act with traditional caution, the course indicated would be for a law school which was willing to experiment conservatively, and which was in a position to disregard more radical schemes of reform on the one hand and on the other hand the pressure from the bar for more purely vocationalized training, to revise its curriculum in the direction of compressing into narrower compass that part of the second and third year work which is now devoted to topics of commercial and property law, and to fill in the openings thus created with work in the other departments of law which would thus be made available to the bulk of the student body."<sup>4</sup>

In discussing this paper, Professor Hama divides the law schools of the country into various groupings—each with an objective of its own. He sees legal education largely through the eyes of the law student:

"We must recognize too that most law students do not know in law school what they will do a few years after graduation. Nevertheless, I suspect that this hit-and-miss preparation belongs with our pioneering tradition and will in time become almost as obsolete. . . . I am sometimes amazed at the extent to which lawyers and law teachers still unconsciously think of their professional brethren as participants in court room activities. When I look about me, at least in New York, and consider what most of my own acquaintances are do-

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<sup>2</sup>Philadelphia Public Ledger, March 28, 1931.

<sup>3</sup>Edson R. Sunderland, *The Law Schools and the Legal Profession*, (1930) Proceedings of the 28th Annual Meeting of the Ass'n of Am. Law Schools, 29; reprinted in (1931) 7 *Am.L.School Rev.* 93.

<sup>4</sup>John Dickinson, *The Aims and Methods of Legal Education*, (1931) 7 *Am.L.School Rev.* 133, 141.

ing, I see little reality in the assumption. These men are almost solely business counselors. They rarely permit a case to go to a lower court, except as a preliminary to an authoritative construction by a court of last resort. Cases are created for such purposes, with the facts pointing as strongly as possible in the desired direction. Current disputes are settled in a conference, or by arbitration. The calendars of metropolitan courts are crowded, but the business, for the most part, is not of the first significance. . . . I want the men trained in the profession of the law to be the masters, not the slaves, of these giants [enormous business corporations]. . . . The law we attempt to teach should be avowedly pragmatic."<sup>5</sup>

Professor Beale in the same discussion considers the matter from yet another angle. He says:

“. . . the course should be so arranged that everything necessary for a lawyer's education can somewhere be taught.

“It is true, of course, that in teaching one provides both knowledge of rules of law and mental training and capacity to apply them, and that enough of each of these things should be taught to make a man a lawyer. But, in determining what these matters are, it must be clear that the utmost mental training will be secured, not only by a thoroughness of treatment, but by treating all subjects that present new difficulties to the student; and in securing a sufficiency of knowledge of principles of law we must be sure that the curriculum covers substantially all the general principles that a lawyer will find it expedient to have in mind in dealing with a legal problem. . . . By the time a student had come to the fourth year he would be prepared to do work comparable to that done in lawyers' offices, and he might be instructed in the subject-matter of the year's work in a method more like that of the lawyer's office.”<sup>6</sup>

The keynote of these comments is that beyond the case system something else must be added to legal education to cover the entire field—to develop all of the tough mental fiber that a lawyer needs in actual practice. He must be a searcher after truth for its own sake. He must also be a leader among his fellows, equipped to give his utmost to the client, to the court, to the community and to the legal profession. The law school is called upon to develop the student to assume acceptably this fourfold responsibility. These comments do not find fault with the case method of legal education. They accept it as fundamental and point constructively to additional goals to be sought by the law school curriculum—that is, training a man to be a well rounded lawyer.

At the same meeting of the Association of American Law Schools, a clergyman, a representative of the capitalist group and a representative of organized labor addressed the meeting on the layman's viewpoint of “The Duty of the Law School to the Profession.” It is obvious from their remarks that they also felt a need for something else in the law school curriculum.

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<sup>5</sup>John Hanna, Discussion of Dickinson: The Aims and Methods of Legal Education, (1931) 7 Am.L.School Rev. 141, 144-145.

<sup>6</sup>Joseph H. Beale, Discussion of Dickinson: The Aims and Methods of Legal Education, (1931) 7 Am.L.School Rev. 145, 146-147.

The clergyman expressed it by saying:

"Recently a lawyer of no little consequence has said to me that the greatest and most dangerous forces for lawlessness in our land are the men, graduated from our Law Schools in the last 20 years and entering upon their professional life without the sanctions of a moral and spiritual idealism! . . . There are realms of court behavior where legal learning is not necessary for decision; and a Judge who within these technical limits offends the moral and social sense of the people should be subject to a method of removal far less complicated than the ordinary law of impeachment. . . . It is a terrible thing for a man to get such an attitude toward his own profession as to turn that profession into his own damnation."<sup>7</sup>

The representative of capital expressed it thus:

"They would first ask you to train more lawyers who understand the ordinary business process. . . . A second prayer . . . would be for more lawyers who are good workmen in their own fields. . . . Finally, . . . business may legitimately demand of the legal profession that it give the business community definite aid in foreseeing, and in providing for, those ultimate social and economic consequences with which we are mutually concerned."<sup>8</sup>

The representative of organized labor was even more specific. He asked:

"Should there not be—or is there?—in connection with the law school something equivalent to a laboratory in which teachers and students may, through contacts maintained with the community at large, search out the facts of daily life and, by investigation and analysis, test the laws relating to them? Can not the legal scholar, like the chemist, bring under his scrutiny all the elements necessary to thorough enquiry and research? Is the great teacher of the law given ample opportunity to talk with the people, to know them, to learn their problems, to walk with them and become acquainted with their point of view? How else can he really know the law, if he does not know its consequences for good or evil in the life of the people without whom the law is nothing?"<sup>9</sup>

The attitude of mind in the law school field is but one aspect of a widespread movement in educational circles. For example, in an eastern college—Haverford—an experiment is already on foot. The president says:

"We propose to employ every reasonable means to detect those who have the ability, the ambition and the character to make useful men.

<sup>7</sup>Bishop Edwin H. Hughes, *The Law and Idealism in Public Opinion*, (1930) Proceedings of the 28th Annual Meeting of the Ass'n of Am. Law Schools, 42, 43-50 *passim*; reprinted in (1931) 7 *Am.L.School Rev.* 102.

<sup>8</sup>Anan Raymond, *The Duty of the Law School to the Public*, (1930) Proceedings of the 28th Annual Meeting of the Ass'n of Am. Law Schools, 51, 54-55; reprinted in (1931) 7 *Am.L.School Rev.* 108, 110-111.

<sup>9</sup>Victor A. Olander, *The Duty of the Law School to the Public*, (1930) Proceedings of the 28th Annual Meeting of the Ass'n of Am. Law Schools, 57, 65; reprinted in (1931) 7 *Am.L.School Rev.* 112, 118.

The breed of college men can be improved by a selective process. Personality and social poise must also figure in our choice; for although men may develop their individual talents in unrelated fields, they are in a world where co-operation and social forbearance are conditions of an effective life. We are not seeking for intellectual prodigies at the age of eighteen, but well-balanced youths who have some idea of what they want and are willing to work for it. The simplest way to put it is that we are looking for the kind of boys whom we should like to have for our own sons."

Here we have a chorus insisting that certain elements in the character of the young lawyer should receive more attention in the educational process. A better rounded viewpoint is required of the Bar—a completely adequate mental equipment for balancing one social interest against another—a broad understanding of the complexities of life and the part which the law and the lawyer play in solving human problems.

It may be granted at once that a three-year law course can not do everything. The question is whether we can readjust that course so that it will develop and produce both the analytical type of mind and something else. That "something else" is also a characteristic of a "good" lawyer. If we are to turn out "good" lawyers, what do we mean by "good" lawyer and how nearly may we expect to attain the objective?

It is possible to approach the matter from the standpoint of mental fiber. One of the purposes of legal education is to build in the student a tough mental fiber. Mental fiber consists of many strands. A good lawyer possesses at least a minimum number of such strands. The case method develops the analytical strand. It leads the student to original sources for his material. It teaches him to reason and to ascertain what is likely to be the law in a given set of circumstances. We are told that is not enough. So we come to consider other strands of mental fiber which a lawyer needs when the question presented is not "What is the law?" but "What am I going to do for this client?"

Among the strands that might be mentioned, a few stand out prominently. We list them as follows:

(1) First, there is the ability to translate a client's story into the field of legal thought, and to classify it under some recognized heading where the analytical process may begin. An examination in law school in the field of Contracts carries with it the implication that all the questions are in the field of Contracts. The Bar examinations and the demands of clients require a different sort of classification. The client has no label on his collar telling what sort of legal problem is his.

(2) Second, there is the mental process by which facts are gathered, diagnosed, evaluated with reference to each other, arranged and appraised from the standpoint of whether or not a legal problem is presented. The case-book facts raise a legal problem in every instance. But not every client's facts go so far. A lawyer should learn to distinguish social, business or other extra-legal problems and develop some satisfactory method of dealing with them.

(3) Third, there is the mental process of selecting the goal towards

which to aim. What the client wants and what the law will permit him to have often are different. What the client wants and what the lawyer is willing, as a matter of ethics, to do for the client are not always the same. The process of determining a goal is a mental task of some magnitude. It requires imagination—social and economic—as well as legal vision, sound judgment, a consideration of the possible goals and a selection of the best. And it is no mean task to become able to say which goal is the best.

(4) Fourth, there is a process of evaluating the means of reaching the goal. There are several available means of doing this: conciliation, arbitration, litigation, legislation. The lawyer must ask himself which of them is best in the present case. He must be governed by what he must *do* for the client, not solely by what is the law.

(5) Fifth, there is the mental process of dealing with the temperamental elements in clients, opposing counsel, witnesses and others. The process involved in writing a letter or making a good telephone conversation is in some respects like that of drawing a pleading or drafting a contract, will or deed. In other respects, it is quite different. A good lawyer can write a good letter. Many law students can not. A good lawyer can conduct a conciliation conference. Many law students can not. A good lawyer can satisfy his client even though the case is lost. Less ability by the lawyer often results in a visit by the client to the Grievance Committee of the Bar Association with a consequent diminution of prestige to the lawyer and to the profession.

Other mental processes might be catalogued and studied. The ability to attract clients in a legitimate manner, the ability to run a law office with due regard to the welfare of the employees, the ability to act intelligently in the presence of a problem about which the lawyer knows nothing—all these are strands of that total mental fiber which is the hallmark of a good lawyer and which it is the purpose of legal education to develop.

We admit the essential part played by the case method and the resulting toughness of certain strands of mental fiber. Our next problem is: How much attention to these other mental fibers should be given in the law school and how much should be left to chance after a man has been admitted to the Bar? In every law school there is, certainly, a group of students who, even though they can pass examinations, are not qualified to practice law. After their graduation, as the years go by, their employers and their clients find this out. The practical question is: If we can find out enough about a man before he gets to the Bar to indicate his inability, as yet, to practice with reasonable success, do we not owe a duty to the student, to the community, to the court and to the legal profession to delay him at the threshold? Is not there a reasonable demand of the public that we devise methods for ascertaining with some certainty the present fitness of a prospective lawyer? Would not the Bar be more highly thought of than it is at present if before we sent them into the world we were fairly sure that our young lawyers were dependable counsellors? Are we not justified in saying to certain candidates for admission: "Though you may know rules of law, you do not know how to apply them in solving human problems and therefore, as yet, you are too immature to be a lawyer"?

Assuming that these questions answer themselves, the problem is: How can we make such tests?

#### THE LEGAL AID CLINIC AS A FACTOR IN SUPPLYING THE DEMANDS

The legal aid clinic is a piece of machinery which tests the student's mind for these other strands and helps him to develop them. It takes him in his third year, with a background of theory, and throws him bodily into the life of the community. The clinic is a legal aid society connected with a law school and combining in itself an educational side as well as a side of professional service to poor persons. To such an office come a multitude of people with a greater variety of legal problems than arise in other law offices. The law student, under sufficient supervision to prevent him from ruining the client's legal rights, does everything in the case short of practicing law. He interviews the client, determines what the case is about and considers the goal and the means of reaching the goal. Always under supervision, he plans a campaign and works it out. He has a chance to know what the client thinks about cases. He makes mistakes and suffers for it. He sits in court and watches an attorney try a case which the student has prepared for trial. If he has the ability, he begins to act like a dependable lawyer. If he does not have the ability, those who supervise him learn it from his actual performance. To them he is not, as yet, fully qualified to practice law even though he may be able to pass examinations. There are strands of mental fiber in his makeup not yet sufficiently tough.

The instructor in such a course adopts two points of view to aid in testing the qualifications of the student. He asks himself whether in his own law office he would employ a particular student. He also endeavors to see the student through the eyes of a client. He assumes that he is a client who has brought the case in question to the student. If a client should reasonably be satisfied as to the work done, the instructor comes to the conclusion that the student has shown reasonable aptitude. The process is much that of apprenticeship. When a man proves that he is seasoned, he passes the course.

But there is no inelastic measurement. It is obvious that one man may prove good in briefing and not so good in meeting clients. Another may be an expert in trying cases, but may lack the ability to diagnose certain problems. The "perfect lawyer" seldom appears. Few are pre-eminently successful in every aspect of professional work. Allowance must be made for this by the instructor, yet many a student may find from a year's supervised work in this course enough about himself to save him ten years of struggling with phases of law practice in which he is not specially gifted.

The successful operation of the course requires, therefore, intelligent supervision and the heartiest co-operation by the student. In other courses the student and instructor are on different sides of the desk. In this work student and instructor are on one side of the desk facing a client. The distinction is fundamental. It is different from other law school work. It is a process.

#### STUDENT CHARACTERISTICS BROUGHT TO LIGHT IN CLINIC WORK

This process is a sifting of characteristics. These traits are brought out not by recitation in class but by actual contact with flesh and blood cases.

If under such circumstances, which approximate closely actual practice, a student rises to the top, one may assume with a reasonable degree of assurance that he is dependable. On the other hand, if he does not meet the test it is fair to assume that he is not yet ready, that he needs instruction in some particular, that his period of supervised education should not cease if he still wants to be a lawyer. The records of some unsatisfactory students will make this clearer.

The following illustrations are of border-line students. The facts are modified just enough so that the students involved may not feel that they are being sacrificed to make a Roman holiday.

Student No. 1 has a sense of the importance of money. His future will be protected by inherited wealth. He believes he is better than other students because of his family's social position. He declares that money is the only logical goal of endeavor and that altruism and professional service are devices of weaklings who can not make their way in a community where "dog eat dog" seems to be the sole motto. He thinks that serving clients for no money at all is evidence of lack of mental balance.

In dealing with legal aid clinic clients he is arrogant and disagreeable in his manner, regarding them as a sort of swine. He does not care to go into certain sections of the city in serving papers because his social position might be impaired if he were seen there. He does not care to adjust a case by bringing the two parties together—they might come into active conflict in his presence. Yet, analytically, he is a good student. The writer's reaction to him is that he is immature, that he has an anti-social viewpoint to such an extent that probably he will not make much if any contribution to the welfare of the legal profession. His clients are to him matters of business and not of professional service. It is obvious that only certain types of legal business may be entrusted to this man in the present state of his mental fiber. The future *may* modify him but the writer would not care to entrust all sorts of legal matters to him.

Student No. 2 is much less mature in his analytical thinking than is No. 1, yet he has the same assurance. In meeting clients he always knows the answer. Many times he gives wrong advice, and has to be corrected. He regards this as an interference with his right to advise as he thinks fit and resents it. On two occasions this student has conferred with the client after being given proper instructions as to the law and has restated it wrongly to the client. He is unable to write a letter which conveys the correct impression and assumes that the recipient will gather his meaning from an abrupt, brief statement. In his other work, he has managed to pass examinations and become a third-year law student. In contact with actual cases he is so undependable that when he interviews the client, the writer has directed the office staff to listen to every word and report before the client leaves the office. As a practitioner and in his present immaturity, he would be a menace to clients. One observer commented that he was "bullheaded and reckless." His mental fiber lacks something.

Student No. 3 is as able a student as No. 1. He is much more gracious in manner and courteous to clients. Yet his mental processes stop after he has talked to the client. He sees no reason to hurry the solution of a case. The writer referred to him a matter in which a husband was beating his wife and the wife's life was in danger. Immediate action was necessary. A week later



when a check-up was made on the active cases, the docket card did not show that any work had been done. A day or so later word was received that the woman had been beaten up twice since the case had been referred to the clinic and, in consequence, was in the hospital. The case was taken from this student and given to another. In his other work, the ability of Student No. 3 to master the problems has led him to let down on his own effort. He would not, in his present state of mind, be dependable as a lawyer. He does not take an interest in his work. He would make a strange advocate in the present condition of his mental fiber.

Student No. 4 has abilities which consist in meeting a client and answering the easy questions. As soon as difficult questions arise, he believes it is beyond the jurisdiction of the clinic. He finds abundant reasons to support this point of view. He is indefinite about planning the campaign in a case, going to five or six different people for advice and becoming so confused that he does nothing. It appears that the practice of the law is too hard for him or that he does not put enough of himself into it. If one had time to sit over him and tell him each step to take and see that he took it, he might come through successfully. But what employer or client is going to do that for him in practice? In his present state of mind he gives the impression of not knowing what it is all about.

Student No. 5 is equally hazy, equally uncertain of what to do. His mind can grasp the legal proposition but he does not have the mental energy to do more than reason. Activity is shunned at every step. Responsibility is shirked. He waits for someone to tell him to do things. In two important matters he has failed to realize and report developments in the case to the attorney supervising it. As a result the cases have been shifted to other students. He does not seem to understand the seriousness of such lapses in actual practice. He gives the impression of not trying to improve his position. He is not dependable because detail work bores him. He appears to vision his future as a judge and not as a lawyer. But few people step directly to the bench from law school.

Here are five characteristics—an anti-social or anti-professional viewpoint, a reckless disregard of the law in advising people, laziness, lack of dependability, lack of conscientious attention to detail. If a man has too much of any one of these characteristics, he is not likely to live up to his fourfold obligations as a practicing lawyer. The machinery of the legal aid clinic brings to light such characteristics and others. In due course the clinic will supply us with a most accurate fund of material along these lines.

Other students demonstrate immaturity in some respects but not in others. One young woman excused herself for not handling a pressing matter by saying that she just had to go to a bridge party. A man asked to be relieved of a certain type of case in which he had to serve papers because he had asked his father and the father had refused to allow the student to go into that part of town. Another man in the presence of a woman client who was weeping because of his harsh manner of questioning her sat still for twenty minutes and then admitted that he did not have any idea what to do but did not want to leave her alone. Another student gave a client absolutely wrong advice and when this was corrected by the instructor spent half an hour in the corridor with the client assuring him that the student's advice really was correct and

to disregard the instructor. Still another man, in an effort to adjust a case, went directly over the head of counsel on the other side and tried to persuade the other party to settle directly with the opposing party. These matters show a type of ineptness which was much more obvious at the beginning of the year than at the end. A student who does not improve and makes as equally unnecessary mistakes in May as he did in the previous October is not showing reasonable promise of becoming a good lawyer. These men are not yet ripe for admission to the profession. The test in the clinic has shown in them characteristics which are not those desired by employers or clients. For that matter, the courts and the profession have no great need for members of the Bar whose mental fiber lacks toughness in these respects. Time may cure them but it does not seem unreasonable to say that that time should be spent under supervision outside the Bar rather than as lawyers without supervision risking the rights of clients.

The clinic screens out this unseasoned material. In the future as its technique improves it will bring to light other difficulties of students. But even in its present form, it goes far to separate, before they get into the profession, those who are qualified or show promise of being able to qualify as good lawyers from those who do not. The medical profession has long recognized the value of this test in seasoning the young man. Why should the law lag behind?

The fire of professional development burns brighter if the slate is separated from the coal before fuel is placed in the furnace. There are fewer clinkers, more heat, less ashes. The process is one of setting up machinery to take out the slate, adjusting it as accurately as possible and then rejoicing in the product—a larger group of members of the profession who are good lawyers in the broadest sense of the term, and at the same time good neighbors, dependable citizens. In this I can not help but hark back to the motto of my old college: "*Non doctior sed meliore doctrina imbutus.*" We do not seek to produce intellectual prigs but men imbued with more solid doctrine.