# CLINICAL PREPARATION FOR ADMISSION TO THE BAR

We have set up three pieces of machinery designed to produce a desirable product in the field of legal education; the pre-legal, which is intended primarily to provide a sound and broad cultural background; next, instruction in law schools, organized in large measure to cultivate certain mental processes necessary to attack legal problems [1]; finally, in the post law school period, occasional opportunities are afforded for increasing technical efficiency and broadening viewpoints. In two respects, at least, the process, viewed as a whole, is incomplete. The transitions from one stage to the next are unsatisfactory. The post law school training has been left largely to the initiative of the individual.[2] This article will discuss aspects of these inadequacies.

## The Transitional Machinery

The transition from general academic training to law school routines is sufficiently abrupt. In spite of a pre-legal curriculum and orientation courses, large numbers of first-year law students spend their time in a sort of mental fog. Granting that many who desire to study law, but who are not qualified for the work, should be weeded out as soon as their ineffectiveness is discovered, this transition in individual cases may impose unreasonable burdens of adjustment. To a much greater degree the change from the academic approach of law school to the complexities of practice is unsettling. From a condition of fairly close supervision in laboratory surroundings, where they strive to develop certain types of mental fibre, law students are ushered into the keenest sort of general competition. Demands are made upon them for which

[1] *The Common Law and the Case Method, Bulletin No. 8 of the Carnegie Foundation for the Advancement of Teaching,* DR. JOSEF REDLICH (New York City, 1914), p. 23, and following, for a discussion of the Training of the Legal Mind.

[2] *Review of Legal Education in the United States and Canada for the Year 1932,* by ALFRED Z. REED, the Carnegie Foundation, New York, 1933, gives, p. 26, list of the requirements for admission to the bar.

the case method of instruction has not prepared them. Their reactions cannot be predicted.[3]

To fill this transitional gap, machinery of a more or less experimental character is in effect in many states.[4] It varies from an occasional conference between the newly admitted lawyer with an older member of the bar to a regular apprenticeship or probationary period. Pennsylvania has a high standard of requirements for this apprenticeship.[5] These devices are to be judged with respect to the purposes for which they have been established.

One would like to see the younger lawyers technically qualified and ethically sound. The present training, taken as a whole, does not assure the bar that the incoming recruits will sustain professional prestige at a high level.[6]

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[3] See 1930 and 1931 report of the Harvard Legal Aid Bureau, p. 6, and following, for a discussion of consequences of failure to observe the rules.

[4] See *Review of Legal Education, supra,* note 2, for provisions of the eight states requiring some form of apprenticeship.

[5] *New Rules Promulgated by the Supreme Court of Pennsylvania as to Registration of Students, The Study of the Law and Admission to the Bar,* by ROBERT VON MOSCHZISKER, 2 *Temple L. Q.* 8.

[6] At the meeting of the Pennsylvania Bar Association, 1933, SENATOR PEPPER, speaking with regard to the proposed recommendations to the Supreme Court for modification in rules, said [39 *Reports of Pennsylvania Bar Association,* p. 119 (1933)]:—

"It is not characteristic of the elderly to be hopeful, but I am both elderly and hopeful to this extent, that I believe that sooner or later we shall recognize the essential difference between the examination on substantive law, the law that the student has studied as law in his law course, and the examination on the art of applying it, involving the local statutory enactments, procedure and practice, his knowledge of the workings of the court in his jurisdiction, and all that which should be the subject of strict examination, and I believe the time is coming when we shall expect the State Board to examine men first at the end of whatever period of time is determined upon, upon the substantive law which they have studied, for the purpose of testing their preparation in that subject, the adequacy of the instruction that they have obtained in their law school, and that then, before they are admitted to the Bar, an appreciable time, at least six months, will elapse, during which they will be preparing, whether by clerkship or by attending an intensive course designed to fit them for the subsequent examination of an entirely different type, of the old-fashioned board of examiners type, respecting their knowledge of local statutes and procedure, and that it will only be after the passage of both those examinations that ultimately final admission to the Bar will be accorded . . .

"The function of the clerkship is to fit a man for that type of examination which is so distinct from the type of examination for which the law student is prepared in his school that it ought not, it seems to me, to be mixed up with the other, and it ought not to be imposed upon a student after an inadequate period of intensive preparation, at a time when nervously and physically he is not in a position to do himself justice, and I believe that ultimately we are going to separate the examination into two stages that we are going to have an examination

The customary form of examination for admission to the bar, while effective to test knowledge of substantive law, gives little idea as to what the man will do with a case in action. A written paper or brief conference does not indicate clearly, to the examiner, abilities to maintain a client's rights under long-continued pressure or to react ethically in the presence of the temptations which our competitive civilization places before the young lawyer.

Originally, the apprenticeship system was the only device.[7] It shared the field with lectures and textbooks. More recently it was all but eliminated by the case method. Today there are evidences that it is finding more favor. But it is difficult to reinstate it because the conditions under which it flourished have passed. The experiment, if applied in its original form, is not entirely satisfactory. Today one may find fault even with the use of this term. It suggests relationship to a mechanical trade rather than to a profession. It has limiting historical connotations.

## The Defects in the Transitional Machinery

Modern legal apprenticeships are not completely effective for a number of reasons. First, the system produces a disturbing lack of continuity in the experiences of the student. Too often he has the sense of starting all over again with his legal education without much chance to make use of what he has learned in law school. His reaction may be that the academic training was of little prac-

on the substantive law, and those who pass that will then be subjected, at the end of a stated period, to an examination on the procedural law and matters of practice and statutory enactment in the jurisdiction, and that final admission to the Bar will come only after successful passage of that second examination. I firmly believe that the logic of the situation is ultimately going to carry us to that conclusion, and it is because it is a step in that direction and not because I believe it to be final that I am going to vote for the recommendation of the Committee for the continuous six months clerkship, which at present is to be provided for as following the examination, but which I think ultimately will follow the examination on substantive law and precede an examination on the fruitage of the six months in the office."

[7] The most pleasing descriptions of the earlier system are contained in reminiscences such as the volume of addresses delivered March 13, 1902, to commemorate the Centennial of the Law Association of Philadelphia. See, for example, p. 366, *"John Cadwalader's Office"*, by JOHN SAMUEL.

For a more critical estimate see ALFRED Z. REED, *"Training for the Public Profession of the Law"*, the Carnegie Foundation, 1921, p. 13.

tical value. Again he may believe that the practice of the law is not interesting because so little of it deals with law before appellate courts. In either case he is in a strange world. If handling cases and clients was limited to the mechanical performance of certain routines, it would be comparatively simple to provide opportunities for a man to go through each of an accepted series enough times to insure proficiency. The lawyer knows that his work is much more complex. One must gain painfully experience in exercising sound judgment. There is an art to be mastered rather than an apprenticeship served. But it is sometime before the newly admitted member of the bar realizes such things.

A second weakness of this transitional period lies in the fact that even the most effective law office into which the student may go for his training is not primarily an educational agency. As a consequence, his position is a difficult one. In law school he has been the most interesting factor, the focus of the educational process. In the law office too often his inexperience relegates him to a position of glorified office boy performing a set of irritatingly limited functions. He fails to develop in a well-rounded fashion. If the lawyer at the head of the office can do a particular piece of work more quickly or more effectively than can the assistant, he does it himself. The major objective of the modern law office is service to clients and the student must fit into a system in which he is only an incident. Interviewing a client, deciding the various steps to be taken in a case, planning a campaign exercising judgment about matters of strategy, weighing considerations, policies, temperaments, assuming final responsibility are examples of the sort of tasks which the lawyer feels he should not allocate to a student. To be sure, one law office varies from another with respect to the amount of time and interest it can give to legal education. But even so, there is no uniformity of progress among the apprentices. The product of the system is not held up to a universal standard.

Another handicap of the apprenticeship system from the student's standpoint lies in the fact that the lawyer in dealing with one or two students does not have the same opportunity of comparison that the law teacher enjoys. The basis of grading

law students is not any abstract measuring system. It is worked out from the relative merits of the members of a class that give satisfactory ground for evaluation. To evaluate the labors of one man or two is difficult, particularly where the test is the personal opinion of the preceptor. He may do the student an injustice. Even under favorable conditions the lawyer is not primarily an expert in legal education.

The student, plunged precipitately from the spotlight of law school attention to the bottom of a new ladder, is not always able to adjust himself. One man feels himself competent to handle more important business than what is given him and views the apparently trivial assignments as so much drudgery without corresponding benefit to him. Another is appalled by his inexpertness and lacking perhaps the encouragement of an understanding preceptor fails to make the most of his opportunities. The present system is characterized by rugged individualism.

Lastly, the requirement of the apprenticeship aspect of the training, after he has a law degree and perhaps a license, may make the student impatiently feel that the intervening time is just something to spend. He does not always demonstrate enthusiasm for this period as an incomparable opportunity and challenge to learn how to practice law in the grand manner.[8]

For the foregoing reasons it is submitted that the apprenticeship system in the light of modern conditions is subject to improvement. Other professional groups, primarily the physicians, have met and solved this difficulty to a reasonable extent. Perhaps we may learn something from them.

## The Suggested Remedy

There is a difference between dealing with theoretical questions in a classroom and facing problems of human beings. Medical schools balance textbooks and lecture materials with actual clinical experience. It is felt that a medical student is not qualified

[8] See DEAN WILLIAM G. HALE of the University of Southern California Law School, *"The Legal Aid Clinic as an Educational Agency", II Duke Legal Aid Clinic News Letter* (No. 3, February 1, 1933).

to deal with a patient until he has had months of training under expert supervision, learning routines and exercising judgment. The failure of the legal profession to make full use of the clinical approach to legal education is one of the reasons for the situation discussed in the preceding paragraphs.[9] The name "Clinical Education" is a modern term for a modern form of apprenticeship. It is our purpose here to consider briefly the devices by which a law student may at the time of graduation approximate the expertness of his medical brother.

As a piece of machinery in the transitional field between law school training and actual practice at the bar perhaps the most effective that has as yet been devised is the legal aid clinic.[10] It makes for the least break in the continuity of educational experience. It gives the student a chance to familiarize himself with the work of law practice as a whole and to demonstrate whether or not he has the capacity for initiative, dependability, resourcefulness and adaptability to office routine. He makes his transition by degrees.

The instructor is necessarily a man who has had experience both in law practice and in legal education. He possesses special interest in both fields and in the interstitial problems between. The instruction presents fairly uniform contacts with the different aspects of practice. The student has wide opportunities to develop the variety of mental processes involved in practicing law as contrasted with those more specialized ones required of the judge or the scholar.[11]

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[9] ALFRED Z. REED, *The Annual Review of Legal Education of the Carnegie Foundation*, New York, 1930, p. 3, and following, *"The Missing Element in Legal Education"*. See also JEROME FRANK, *"Why Not a Clinical Lawyer School?"*, 81 *Univ. of Pa. Law Rev.* 902-923.

[10] A substantial amount of material dealing with the subject of legal aid clinics is collected in the footnotes to an article, 79 *Univ. of Pa. Law Rev.* 549. Subsequent articles on the subject will be found in 30 *Mich. Law Rev.* 905; 12 *St. John's Law Review* 236-253; 8 *The State Bar Journal of California* 261.

[11] As an example compare the mental process prescribed by JUDGE CARDOZO in his book, *"The Nature of the Judicial Process"*, Yale University Press, New Haven, Conn. (1921), with the work of the average general practitioner. Lawyers estimate, unofficially, that perhaps seventy-five per cent. of the work coming to their offices never gets to court at all and therefore must be handled by procedure outside of the litigation procedure.

Legal aid clinics are in existence in a number of law schools.[12] There is no set plan of organization or operation. The Harvard Legal Aid Bureau is largely under the control of the students. Only honor men are permitted to participate and there is little faculty supervision. At Southern California, on the other hand, the work is essentially a course in the law school under faculty supervision and with offices in the law school building. There is material available describing the technical differences.[13]

It is important to picture the steps by which a case proceeds through a clinic office. It should be kept in mind that we are dealing with a law office that in all but two respects is like other law offices. No fees are charged. Only poor persons are eligible as clients. Law students do such work as they may without actually practicing law. The twin objectives are service to the client and a supervised training for the student.

The office of a typical clinic is arranged so that there is first, a waiting room for clients, one or more interviewing rooms, a library and conference room and offices for the members of the staff. This gives the student some idea of the geography of the law office and the administrative tasks incident to its operation.

The office is open for clients during certain specified hours. They are received in the waiting room by a clerk who records information as to their ability to pay a fee. Those who can pay fees are told they must secure some other attorney. The clinic does not recommend attorneys except where the bar association has supplied a list for the purpose. The other applicants, one by one, are ushered into the interviewing room where the student is seated behind a desk. While at the beginning of the course the instructor presides or, at least, is present, in time the student is

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[12] The clinic is a definite required course in the Law Schools of Duke, Northwestern, Minnesota and Southern California, and for certain honor students at Harvard. Clinical opportunities are offered students at Yale, Cincinnati, and elsewhere.

[13] See *Handbook of the National Association of Legal Aid Organizations*, Chapter 12—The Committee on Relations with Law Schools—for an outline of the work of this committee in the technical aspects.

See also an article in manuscript, *"The Administrative Machinery Required for Conducting a Clinic Course"*, by DEWITT C. WRIGHT, read at the meeting of the Asociation of American Law Schools in Chicago, December 29, 1932.

given the sole responsibility for the conference.[14] The student then proceeds to secure from the client the preliminary facts. Afterwards he confers with the instructor who suggests the need for additional data, points out appropriate steps to be taken, cautions against various dangers and, in general, helps him to organize his thinking to deal with unexpected problems. This conference, between the instructor and the student, takes place before a client is permitted to leave the office so that there may be no misapprehension in the client's mind as to what he is to do or what is to be done for him. This gives the student the satisfaction of starting at the beginning.

Once the case is accepted, it is routed through the office. If it falls within the domain of office practice one section of the staff takes it in hand and supervises the student while it is being carried through. Here he learns such practical matters as organizing facts and faces the highly delicate tasks of conferring, negotiating, writing letters. If litigation is necessary, another section of the office staff takes charge, supervises the drawing of papers, sees that they are filed properly in the office of the Clerk of Court, instructs the student in the details of interviewing witnesses and assembling their information. When the case comes in court, the attorney who is a member of the staff, conducts the trial with the student sitting beside him. Occasionally, with the consent of the court and opposing counsel, the student may be permitted to address the jury, but ordinarily his activities in the court room are those of a junior. If a complete solution of the problem calls for legislation, the student is encouraged to draft and urge the adoption of new laws. Thus he sees the matter through to a finish.

## What the Student Learns

In one sense a law student learns not so much law as techniques. The case method introduces him to the delights of reason-

[14] The complicated nature of interviewing a client has been recognized by such groups as social workers. See *"Interviews. A Study of the Methods of Analysing and Recording Social Case Work Interviews"*, 1 *Studies in the Practice of Social Work;* published by American Association of Social Workers, New York (May, 1928).

ing about the law. Clinical instruction emphasizes the human and other factors which are often as important as the law and which always are present. The student learns the satisfactions which come from a piece of work done to the approval of court and client. He receives practical experience in the delicate task of making adjustments among different sorts of clients and translating their lay stories into the field of legal thought. He familiarizes himself with the extremely difficult work of planning and carrying out campaigns. He sees the need for satisfying the client before closing the case. He must adapt himself to an office system and work with others. He prepares an office memorandum of law, a trial brief, as well as the brief on appeal of his law school moot court. He becomes familiar with information one may secure in the courthouse, the problem of court costs, and the various aspects of the time element in law practice. There is always someone at his elbow to keep him from committing the more serious mistakes.

Most important of all, he sees a case as a whole,[15] instead of working on a section of it here and there. He gets used to thinking of a case in action instead of one at rest in the case book. He supplements his knowledge of legal analysis from experience with situations in which he is acting creatively, constructively for a client. He adds to the self gratifications of acquiring data the ideal of contributing by his work to the well being of individual clients and the whole community. Gradually, the basis of his relationship with the law and the legal profession is enlarged so that if he feels a sense of professional obligation, it has a chance to develop in an atmosphere where he serves all his clients without the possibility of a fee.[16]

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[15] As an example of a case in which the students had contact with the matter from the very beginning until the final decree of the appellate court see Brewer v. Valk, 204 N. C. 186 (1933). It should be noted that in this case the students not only handled the matter to the point where the act was declared unconstitutional but subsequently drafted a new act which was adopted by the legislature and now appears as Section 2304 (h) and following of the 1933 Consolidated Statutes of North Carolina.

[16] For a specific statement of the functioning of such a clinic, see the first and second Annual Reports of the Duke Legal Aid Clinic, 1932 and 1933. See also the first, second and third reports of the Southern California Legal Aid Clinic Association, 1929, 1930, 1931.

## The Elements of Clinical Instruction

The art of practicing law like any other art is composed of at least two closely related aspects which present formidable problems to the beginner. There are a large number of routines. There is the necessity for acquiring judgment and a master touch. It is essential that a man learn certain specific ways of doing things. If he is preparing a brief there are certain places where he must always look for authorities in both the statute and the case law. If he neglects to follow this routine a very serious blunder may result. If a client is to be interviewed there are certain recognized processes to be followed in the interview to develop the facts. If a suit is to be started, there are certain specific steps to be taken involving the time element and form element. Handling them is a matter of routine. One must force one's self to adhere to the system. A few repetitions of experience will serve to create familiarity with the surroundings.

Clinical instruction provides the student with an opportunity to learn a substantial number of these routines. It also gives him a chance to demonstrate his ability in the field of strategy. This is the distinctive element. In the long run the best men who come to the bar are those who have learned a series of routines and who in addition have demonstrated more than ordinary ability in planning campaigns and carrying them out.

Planning a campaign in a case after one has all the facts is a different type of activity. There seems to be no word in the legal field which accurately describes the way a seasoned veteran at the bar meets situations that arise with an alert preparedness. It involves reading character, measuring the human elements, phrasing a sentence so that it will be most effective to the person who hears or reads it. To keep cases moving forward, to avoid unnecessary disputes, to bring in line recalcitrant parties, witnesses and bystanders is an ability which is suggestive of military operations. It would seem as though there were no way to learn it completely because each case presents a new series of problems not met with before. Experience alone is not enough. There should be some innate abilities in the individual which fit him for the part of directing strategy.

Through the legal aid clinics now in existence there is pouring a flood of material from which a student, under supervision, may secure examples illustrating various points in the process. In a few years when the clinical method of instruction becomes better understood much more information will be available and it will be possible to classify many of the routines and to suggest simple forms of strategy. Even at present the instructor has a most remarkable opportunity to study the abilities of the individual student.

## Practical Objectives of Clinical Instruction

It is important, therefore, that we set down the practical objectives of clinical instruction. On behalf of the student, they include subjecting him to a seasoning process under conditions calculated to bring out his strong and weak points. In general, clinical education assumes that the best type of law student is the man who shows qualities of leadership, initiative, dependability, accuracy, adaptability, and a strong sense of ethical and social responsibility. Legal scholarship, ability to analyze and criticize a court decision, to find the rule of law are necessary, but they are only a few of the many points at which a client or a prospective employer will judge a young attorney.

On the one hand, we have the man who goes into general practice and who from lack of ability is never able to handle well, more than perhaps five per cent of his work. At the other extreme is the expert who immediately upon admission begins to specialize in some field of practice, for instance, as a research briefer, or in some particular field of substantive law. Neither of these extreme men seem to possess the ideal qualities of a well-rounded lawyer. One, through lack of ability, has only a limited field for the expression of his talents, and the other, through self-imposed limitation, has cut himself off from the main current of the stream of law practice. More likely than either of these to prevail in modern competitive life is the man who specializes in general practice and plans to fit himself to handle well at least ninety per cent. of whatever cases come to him. Because of the greater variety of situations arising in a legal aid organization than in the average

law office and the consequent opportunity of the student to familiarize himself with a great number of legal difficulties just as they present themselves, he emerges from the experience with his abilities marked. He has made progress toward becoming an expert in general practice. If afterwards he desires to specialize he will be an abler man because his foundation of contacts with practical affairs will be broader. If, on the other hand, he has failed to show promise we admit him to the bar with notice and at our peril.

From the standpoint of the practicing lawyer this educational process has distinct advantages. If all prospective law students in a given community were to have legal aid clinic experience, it should be comparatively simple for the lawyer who desired an assistant to select from a large number of possible applicants the one best fitted for the lawyer's own particular needs. A clinic has much information about the relative general abilities of various students. The lawyer would save time and the student much heart burning in making adjustments. Even now lawyers are turning to the existing legal aid clinics for this sort of information and young lawyers are applying to clinic directors for permission to continue their education by working in the office without compensation.

Finally, through this process the public would benefit because only those men would be permitted in general practice who had shown ability to deal with real situations. For the borderline men, probationary periods might be established so that the interneship would be not merely a matter of six months or a year, but like the indeterminate sentence, be based rather on the demonstrated ability of the student. There might be an arbitrary minimum and maximum time limit.

A machine will turn out the type of product for which it is devised. Clinical instruction in law properly supervised will produce a group of men who show abilities in the directions suggested above. At the same time it throws into bold relief the ineffective characteristics of individual applicants. The students who lead the clinic class are not necessarily those who are pre-eminent in the classroom. Instead of letting men into the profession to ex-

periment on clients or become square pegs in round holes in some law office, we have a chance by a sort of preview, to see them in action and decide on the basis of performance under conditions of actual practice.

This is no panacea but it certainly promises on the basis of its present achievements better results than a period of apprenticeship. There is expense, trouble, difficulties confronting those who would establish the legal aid clinic system of instruction. But for those to whom the prestige of the bar at the hands of the public is a consideration the obstacles are merely so many challenges.

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