Practical Legal Training—No Cause for Alarm

By JOHN S. BRADWAY

PRACTICAL legal training has been the basis for disagreement in two recent articles. A. S. Cutler in the *American Bar Association Journal* directs our attention to "Inadequate Law School Training: A Plan to Give Students Actual Practice[1]." Judge Charles E. Clark in the *Journal of Legal Education* contributes a letter under the title, " 'Practical' Legal Training an Illusion[2]." These articles appear to have a single factor in common—they view with alarm in the former, the alarm is because "our law schools do virtually nothing to acquaint their students with the practical work of the law"; in the latter because "the repetitive attempts to coerce law schools into offering so-called practical training is at best curiously naive, and in general at odd with sound concepts of legal education."

The present note takes a different approach. It suggests to the two gentlemen that there is no real cause for alarm. The problem of providing practical legal training already has been substantially solved by some of us in the law school field. The solution imposes no staggering burden of cost or unconscionable expenditure of time nor is it unrealistic as feared by Judge Clark. Neither does it make use of the traditional apprenticeship method toward which Mr. Cutler is drawn.

At risk of repetition, for our solution has been previously discussed,[3] let me outline briefly the way in which we approached the problem.

FORMULATING THE PROBLEM

Some twenty years ago some of us decided to do something about the continual criticism of legal education made by the client-serving element of the profession to the effect that the recent law school graduate, in Mr. Cutler's words, "has no solid stance because his law school has preferred to make him culturally a professor, but actually a neophyte in his professional life." We noted that law school prospectuses frequently included somewhat hopefully the promise to prepare students for "the practice of law." The hope was not always fulfilled. We were forced to admit that the traditional apprenticeship system on the other hand was no longer in a position, along with the law school, to play the coordinate and complementary role which had been assigned to it in the past.

It appeared that in the modern world law offices suitable to provide instruction of standard type for all neophytes were growing less and less. Many law students upon admission immediately were hanging out their own shingles. Those who submitted themselves to the "apprenticeship system" complained, too often, that they became no more than glorified office boys and that important or confidential work from which they might expect to gain experience was handled exclusively by the preceptors themselves. In other words the decline in effectiveness of the traditional apprenticeship system had left a vacuum. Unless it was filled the public would suffer and the two affected branches of the profession might fall into disagreement as to where the responsibility for suggesting a remedy, lay.

It seemed to us that overall responsibility for seeking a solution rested initially upon the law schools, because they had already done so much to advance legal education. We were encouraged in our belief that prompt action was necessary by the presence on the professional horizon of three clouds which, in due course, became more ominous: socialized law, lay competition in the form of unauthorized practice, and internal disintegration from premature specialization. Here was a challenge.

JOHN S. BRADWAY is professor of law and director of the Legal Aid Clinic at Duke University.

1. 37 A. B. A. Journal 203 (1951).
2. 3 Jour. Legal Ed. 423 (1951).
3. There is a literature on Legal Aid Clinics from which the following material is taken:
Miller, "Clinical Examining of Law Students," 2 J. of Legal Ed. 298-309 (1950).
Harris, "Educational Value of a Legal Aid Clinic," 3 Ohio St. L. J. 300-306 (1937).
David, "The Clinical-Lawyer School: the Clinic," 83 U. of Pa. L. R. 1-22 (1934).
Frank, "Why Not a Clinical-Lawyer School," 81 U. of Pa. L. R. 907-923 (1933).
MacNamara, "Teaching Legal Ethics by the Clinical Method," 8 Am. L. Sch. R. 241-245 (1935).

AN APPROACH TO A SOLUTION

If we had approached the problem as Judge Clark does in his article, we should have started with "courtroom skill" and "drafting legal instruments" and probably we should have reached much the same conclusion that he did, namely, "that the latter is limited, partial and fragmentary at best." If we had approached the problem as Mr. Cutler does in his article, we should have been concerned with eliminating or neutralizing the effect of ivory tower people who "live cloistered, sheltered lives, precisely the opposite of the men who practice at the bar." We should have attempted to ban "a fictionalized story" in moot trails minus "all the drama, uncertainty, and emotional content of the law suit."

We took a different line of attack and posed ourselves a major question—Is it possible to teach a man *how to practice law?* This in our judgment is neither fragmentary nor ivory tower. After some twenty years of trial and error we are satisfied that we are able substantially to answer this question in the affirmative. The means employed is not the time honored *case method* but the *clinical method.* The subject taught is not law—either substantive or procedural—but legal method. There is under the general category of "legal method" the possibility of teaching the *judicial* process and the *scholar's* process. We chose instead as our focal point the mental process of the *client-server.* We believe we have learned how to train an otherwise competent student to think much the same as a standard practicing lawyer and this without undue expenditure of either time or money.

THE GENERAL NATURE OF THE SOLUTION

Here space is lacking to enable us to expound the details of the Legal Aid Clinic course.[4] They have been, and are being put into print as soon as we are reasonably satisfied with what we have done. We are also quick to revise as soon as some better idea comes along. It is only fair to point out with respect to the descriptions which are published that one who reads about the work cannot expect to grasp the process and its implications as well as one who sees it in operation. This is an invitation to visit and inspect.

Our present concern is not to describe how we work, but to distinguish our approach to the problem from those described in the articles by Judge Clark and Mr. Cutler. Judge Clark says: "When we on the bench select our law clerks, to whom we are so indebted both for intellectual stimulus and practical cooperation, we seek out the best brains of the schools trained by law review experience . . . ." Mr. Cutler says: "This disdain for real life and keeping the student aloof from contact with actuality allows him to graduate with his head in the empyreal blue and his feet nowhere" and he recommends participation "from beginning to end in at least two cases per year" in a law office.

We made our major concern neither the needs of the bench nor of the law office looking for the best brains to function in a specialized and limited field as a *clerk;* but the legitimate desires of the well-rounded young man who upon admission to the profession probably will have to hang out his own shingle. We came to believe if we did not help him he all too often would obtain his experience at the expense of his early clients[5] and that the resulting catastrophe would be poor public relations, for himself, for the school, and for the profession.

Since all of us who were making the study of the possibilities of Legal Aid Clinic instruction had had experience in law practice by ourselves we conducted a self-examination. We asked ourselves as of the time when we came out of law school—what did we feel we lacked. The list was grimly revealing. With this preliminary list of topics as a point of departure we consulted many practicing lawyers putting to them similar questions. Naturally, the list grew to be a long one and we have not as yet been able to deal with all the intriguing details. We are able, however, to recognize certain recurring law graduate needs on which there seem to be general agreement. Of these we shall presently refer to three: Lack of self-confidence; lack of a picture of the law as a seamless web; lack of any guide as to the minimum

4. Briefly the instruction falls into two general categories. As a background we break down the thinking of the practicing lawyer into a series of basic check lists and teach the student how to use these check lists. Against that background we supervise the student while he deals with a series of real cases and flesh and blood clients. The analogy to a medical internship is obvious.

5. Mr. Cutler expresses concern for "the poor clients who might suffer while their fledgling attorneys were accumulating this knock-'em-down and drag-'em-out experience at the expense of the clients."

standard of professional conduct displayed by a general practitioner in handling a client's problem.

SELF-CONFIDENCE

Lack of self-confidence is perhaps, of minor immediate importance to a man who plans a future in whole or part as a law clerk. To the man who is preparing to be a practicing lawyer on his own account its absence becomes a matter of monumental significance.

Our experience indicates that instruction with the following characteristics is helpful in separating the men from the boys: individual personal, in addition to class, instruction; focusing of student attention upon the handling of material representing not a completed case immortalized by its inclusion in a case book but a real case which comes into the consciousness of the attorney when a real client steps into a lawyer's office and says: "I want you to help me"; instruction of such a repetitive nature that the lessons in time seep through the upper layers of a student's mind into his subconscious, and become a part of himself so that eventually he reacts almost instinctively and correctly to certain ordinary stimuli; a course which continues long enough so that the student's point of view toward the work would pass through two stages into a third. These stages may be expressed in terms of student reaction to the work as follows; (1) "Oh, what a lovely shiny new toy"; (2) "Oh, what an intolerable bore"; (3) "Ah ha, at last I have enough control of myself so that I can function without irritation at the boring routine of law practice." Instruction of this sort involves the gradual transfer of responsibility from the shoulders of the instructor to the student until the latter is able to carry normal loads and knows when he is overloaded and should ask more mature assistance.

THE LAW AS A SEAMLESS WEB

It is not hard for those of us who teach law in terms of "courses" to fail to realize how bewildered the recent graduate is because of his lack of opportunity to see the law as a seamless web. For pedagogical purposes we have thought it wise to divide the substantive law into "fields." Some of these fields we use as the basis of courses. The student has time in our three, or four, year curriculum to study only a limited number of these courses. His view of the law not infrequently may be described in terms of "spot check" rather than "seamless web." To add to the difficulty, when I teach my course in Family Law I lean over backwards not to overlap your course in Criminal Law or Property, or Contracts or what have you. As a result the student's view of the law tends toward a picture of a series of more or less isolated islands. But this is not the only possible analysis of the area in which the lawyer functions. It may be ideal for the purposes of a legal scholar. We have found a different breakdown helpful for the practicing lawyer—one based on his thinking through various stages of a case from the time the client first appears until the problem is solved as far as it can be by legal sanctions. Approached from this view point of the client's need, the law does look like a seamless web.

To provide a basis for acquiring this seamless web point of view a text book or case book dealing with a specific subject seems an over simplification. A real client with a real case on the other hand is an ideal point of departure. Such a complex situation as a flesh and blood client with a real problem may lead the law student into a dozen different fields of law at the same time. He may even have to seek interprofessional cooperation to bring about a solution and thus relate the functioning of the law to the resources of other social and physical sciences. It is arguable that the value of the orthodox law course is greatly lessened if the student does not cap it with legal aid clinic instruction which helps him realistically to tie up all the loose ends.

STANDARD CHECK LISTS

The functioning of the standard lawyer is upon careful examination found to be largely mechanical. This does not mean that there are not required of him other large areas of non-mechanical activity or that there is no place for inspiration, genius, statesmanship, scholarship. It does mean that it has become possible clinically to standardize the minimum professional conduct which the client expects of a lawyer in handling a case—any case—irrespective of the field of substantive law in which rules for its solution may lie. Over the years we have constructed a series of check lists covering much of the lawyer's minimum obligation. By learning them and becoming adept in their use the young lawyer should be able