THE LEGAL AID CLINIC COMMODITY

By John S. Bradway

During the last quarter century or so interested persons have been building up a record on "Legal Aid Clinics." The curious reader will find published material in different categories: historical, critical and otherwise. The movement to which this label has been applied has been vigorously attacked and defended. In the past few years the discussion has developed into a debate—both heated and illuminating—directed substantially to the question whether the responsibility for this phase of the overall program of life-long legal education should rest with the law schools or with the organized bar. But, in spite of this wealth of material, the discriminating observer will probably admit that not all of the field is adequately covered. Specifically, the emphasis of the writers has been placed more with the label than with the basic idea behind it; more on the shell, the outside covering, than the core; more with the administrative machinery than with the product. As a result we see, all too often, a straw man set up who is easily misunderstood, misrepresented and demolished. The facade may appear glamorous or absurd depending upon the point of view. But there is reason to spend more time and attention on the essential legal aid clinic "commodity." As we use the word "commodity" it means the substance, the quid pro quo, the benefit which passes, or is supposed to pass, during the educational process, from the legal aid clinic instructor to his student. This commodity, which in the past, all too often, has appeared as an arcane concept, is the subject of the present article.

1 A reasonably complete collection of published material on Legal Aid Clinics is to be found in Tentative Bibliography of Material on Legal Aid Work, published by the National Association of Legal Aid Organizations, p. 57 et seq. (1940). A more recent compilation includes some publications since 1940. See appendix to Harrison Tweed, The Legal Aid Society—New York 1876–1951, p. 111 (1954). In the Annual Handbook of the Association of American Law Schools appear the reports of the Committee on Legal Aid Clinics.

2 The major criticisms together with other valuable material were collected for the Survey of the Legal Profession by Quintin Johnstone, Law School Legal Aid Clinics, 3 J. Legal Educ. 535, 538 (1951).


4 The late O. L. McCaskill, one of the most vigorous critics, summarized his objections in a letter included in Johnstone, supra note 2 at 539.

[16]
It seems convenient to approach the subject by a brief introduction in which we shall comment upon: the significance of the label and the standards by which we may hope to evaluate a particular legal aid clinic. Then we shall proceed to the body of the paper dealing with: the commodity, and the functional program by which it may be implemented.

The Significance of the Phrase "Legal Aid Clinic"

The phrase "legal aid clinic" is a hybrid. Part of it is borrowed from the history of the legal profession. The rest is an adaptation from a process accepted by medical education. The borrowing from the bar gives us an indication of the sort of "material" (human beings with their problems) which is used in the legal aid clinic course. But it offers no obvious clue to what we expect the student to learn by being exposed to that material. The adaptation from medical education is a sort of illustration as to how the idea may be implemented. But it does not tell us, except by analogy, very much about the basic commodity in the field of law.

We place the phrase, "legal aid" as a milestone in the progress of the bar as it moves first toward organization and then to professional maturity. One of the indicia of an adult profession is the adoption of a public relations program. In that program it has proven wise to include a humanitarian plank. In the case of the legal profession legal aid work is that humanitarian plank. Its genesis is a constitutional guarantee of "equal protection of the law." One aspect of that guarantee is recognized in terms

---

6 Definitions of the concept to which we apply the name "Profession" are supplied by Roscoe Pound, The Lawyer from Antiquity to Modern Times, p. 4 et seq. (1953), John H. Wigmore, Introduction, Orrin N. Carter, Ethics of the Legal Profession, p. xxi (1915).

For a discussion of the history of professional growth, see A. M. Carr-Saunders and B. A. Wilson, The Professions. It is suggested that the criteria of yesterday are not necessarily those of today or tomorrow. Our medical brothers have found a place in their overall program for "Preventive Medicine." One may anticipate more interest in the future in preventive law.

6 Note the respect accorded professional humanitarian service in the following language of the American Bar Association Committee on Professional Ethics and Grievances in its Advisory Opinion #148.

"The defense of indigent citizens, without compensation, is carried on through the country by lawyers representing legal aid societies, not only with the approval, but with the commendation of those acquainted with the work. Not infrequently services are rendered out of sympathy or for other philanthropic reasons by individual lawyers who do not represent legal aid societies. There is nothing whatever in the Canons to prevent a lawyer from performing such an act, nor should there be. Such work is analogous to that of the surgeon who daily operates in the wards in the hospitals upon patients free of charge—a work which is one of the glories of the medical profession."

7 On the state level, several constitutions (for example, North Carolina and Pennsylvania) contain the same idea in different words.

"All courts shall be open and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law and right and justice administered without sale, denial or delay."
of economics. Everybody, without regard to the amount of money in his pocket, is promised the same quality of justice according to law. In implementing that guarantee different terms are applied to the program as directed to the various income brackets. Legal Aid Work is the name used when we are speaking of that part of the public relations program of the organized bar which brings the equal protection of the law to persons in the lowest income brackets. A legal aid society is an organization which has as its sole object the implementation of this part of the bar association public relations program. A legal aid clinic, then, is a law office which serves real clients who are persons in the lowest income brackets. But it has also an educational function.

The word “clinic” in our phrase is an adaptation from the field of medical education. Technically the word has significance in terms of “bedside” treatment. In a larger sense it covers an advanced period in the training of the prospective physician when he learns to treat not only the disease or injury but the patient who is suffering. Lectures, text books and laboratory work all have their place. But it would be turning the clock back to attempt to produce physicians equipped to meet public demands of today who have not had clinical training. As we graft the word to the phrase legal aid clinic, it does not mean that a lawyer, like the traditional psychiatrist, should have a couch in his office. It does mean that in addition to the instruction about law which he now obtains through the medium of the lecture method, the case method, the seminar method, the student should also acquire and possess an additional “something.” What that “something,” that “commodity” is, we shall discuss later in these pages. Presently it is enough to state that it is something which can best be learned first hand through a teaching device which we call a “legal aid clinic.”

An inquiry into the need for setting up legal aid clinics is justified in terms of what they may be expected to contribute to the public prestige


9 The philosophy behind the legal aid movement has been set down definitively by REGINALD HEBER SMITH, JUSTICE AND THE POOR (1919).


11 Webster’s New International gives as a primary definition: a clinic—“a bedrid patient, esp. in a hospital,” and then continues, “3. Med. a. Instruction of a class of medical students by the examination and treatment of patients in the presence of the pupils.”

12 The need which has called forth efforts to define that “something” is described in balanced fashion by ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES, p. 146 et seq. and again at 172 et seq. (1953).
of the legal profession. The acceptance of any sort of professional leadership by the general public is a battle continually to be fought and won—not a conclusion complacently to be assumed. The public makes up its mind about the worthwhileness of a particular profession largely in terms of its own personal contacts with the individual members of that profession. If the public expects the young lawyer to have a certain commodity and finds out, the hard way, that he does not, it is likely to recoil. One may rationalize that no one wants to serve as a guinea pig on which a young lawyer makes his inevitable preliminary mistakes. One hears rumors to the effect that the public prefers the young doctor and the mature lawyer. If this be really so, one explanation may be that the young physician upon emerging from his orthodox training is thought to command qualities or characteristics not possessed by the young lawyer. It is a not unreasonable assumption that clinical training may be the factor which makes the difference. If this assumption is justified then, indeed, the legal profession should lose no time in meeting a legitimate public demand.

Standards for Evaluating Legal Aid Clinics

It is clear that the title “legal aid clinic” is merely a label. Our interest is in what lies behind the professional curtain. A law school might conceivably advertise that it offered “Legal Aid Clinic Training.” Upon inspection this might mean merely a tub thumping publicity device in the course of which the students who submitted themselves to the discipline and the clients who came in seeking shelter from some personal storm would both be exploited. Some standards are certainly indicated and they may well be expressed in terms of benefit to student and client.

At present we do not have any official standards. In one sense the label “Legal Aid Clinic” might stand for almost anything. In a general way there has been discussion of possible minimum standards at the annual meetings of the Round Table on Legal Aid Clinics of the Association of American Law Schools. But that group is still in the stage where the speaker is more interested in telling his colleagues about his local administrative machinery than in the less obvious topic of “commodity.”

One may conceive of at least three possible types of legal aid clinics in terms of service rendered. In one type the needs of the student are subordi-
ominated to those of the client. In a second, the needs of the client are sub-
ordinated to those of the student. In the third, a bona fide effort is made
to balance the needs of these two groups and to see that each receives a
maximum of attention. Obviously this latter type has more to recommend
it by way of service than have either of the former two.

It is more difficult to operate a legal aid clinic where two objectives must
always be kept in mind than it is one with a single purpose. One's recollec-
tion goes back to the circus days with the daredevil bare-back riding two
horses at the same time. But the effort is more than justified if it appears:
that the students begin law practice able from the first to give a good ac-
count of themselves; the clients emerge from the strain of one "case" sat-
sified that if another catastrophe confronts them they want to return. An
approved legal aid clinic, then, should be prepared to conform to the high-
est standards of practice as agreed upon by the practicing arm of the pro-
fession and the highest standards of instruction as accepted by law teachers.

We have now looked briefly at a definition and at an approach to a
standard of quality We are therefore better prepared to deal directly
with the "commodity," the something that passes from instructor to stu-
dent, or, under the direction of the instructor, is gained by the student
through this particular ordeal of blood, sweat, and tears. Just as there is
no official definition or set of standards so, as yet, there is no agreed com-
modity The writer is familiar with the commodity in his own law school.
In the following pages he does not purport to speak for all legal aid clinics
only his own. Neither does he intend that his remarks shall be inter-
preted as condescending. There are many excellent legal aid clinics and
any one which is taking its responsibility seriously deserves support and
encouragement from all the rest. Here then we have one version of the
"commodity"

The Commodity

Before we can make much headway particularizing about the nature
of the commodity, it is necessary to devote some space to its general setting.
This task will require that we refer briefly to one of the major problems of
legal education. Many people recognize it as the need for "practical train-
ing", but this still does not tell us what we mean by practical training.

15 The work of the Duke University Legal Aid Clinic has been described at least in part in
BRADWAY, LEGAL AID CLINIC INSTRUCTION AT DUKU UNIVERSITY (1944), BRADWAY, CLINICAL
PREPARATION FOR LAW PRACTICE (1946), BRADWAY, BASIC LEGAL AID CLINIC MATERIALS AND
EXERCISES (1950).

16 See Harno, op. cit. supra note 12 at 173, REGINALD HEBER SMITH, LEGAL SERVICE OFFICES
It does not do much more for us than substitute one label for another.

Fortunately we have as a starting point in our effort to locate and define our commodity a phrase. It is, of course, an oversimplification. But it still has a sufficiently wide acceptance to warrant our using it as a point of departure. It is not unusual to sum up the object of all legal education by saying that it is designed to teach the student to think like a lawyer. Our commodity then fits somewhere into the overall task of teaching a student to think like a lawyer.

Obviously the initial question is—how does a lawyer think? The answer depends, among other items, upon the function he happens to be performing. In each function there are of course questions of standards of quality. But for the moment we are concerned with area of functions.

The word lawyer is a common denominator class term: it covers at least three distinguishable functions. A lawyer may be: a client server, a judge, a legal scholar. In each of these roles he thinks like a lawyer. But in each his horizon and his emphasis are determined in large part by his role.

The horizon of the client server\textsuperscript{17} covers not only law but much "raw material." He deals with human beings, with facts and with law; perhaps in that order of importance. The thinking of the client server as it differs from that of the judge and the legal scholar, if it may be telescoped in a single word, is a species of "logistics." His purpose is to solve his client's problems as well as he is able under all the circumstances. If the solution of the problem requires it, and generally only then, he takes the matter to the judge. The attention of the judge is largely focused upon making technical decisions. Applying the law to received fact situations occupies much of his time. This judicial function is in a sense more restricted, more specialized than that of the client server. The judge is not called upon to function in as many "cases" as is the lawyer. The horizon of the legal scholar is obviously on a more theoretical level. His object of interest is frequently the seamless web of the law or a reasonable portion thereof. He takes material after the judge has finished his work and processes it further.

The functions of these three "lawyers" may in turn be likened in some degree to: the prospector and miner who discover and marshal the crude ore; the man at the smelter who refines it; and the jeweler who fashions it into a thing of beauty. They all deal with the same material but, like

\textsuperscript{17}The concept of a lawyer as a person who as often as possible drags his client into court for a solution of the problem is unrealistic. An educational system which gives too much emphasis to such a concept is out of focus. In England the division of the profession into barristers and solicitors points obviously to the need for two educational programs. Thomas G. Lund, \textit{The Legal Profession in England and Wales}, 35 J. Acr. Juv. Soc'y. 134 (1952). But in the United States there is an occasion for a system which will turn out persons qualified to give a good account of themselves in both directions.
workers on an assembly line, each contributes something unique to its development.

The internal development of each stage of legal education is naturally of great significance. But we should also keep in mind that the relationship of each stage to the ones that precede and follow it deserves attention. If we are to place our work in understandable fashion it should be against a background not merely of a three or four year law school course but against the broader canvas of a lifelong training.

It seems to us that the most logical point at which to give the student our commodity is before he receives his license to practice. A good argument can be made for two phases of legal aid clinic instruction—one before admission and the other continually thereafter. This later stage would improve his skills and keep him constantly abreast of the times. One may observe comparable post-admission training in the hands of the medical profession.

Therefore, when we use the phrase: to think like a lawyer, we may be referring to the common denominator of all legally trained people, or the specialized thinking of any one of the groups. Our present legal aid clinic work is confined to teaching the thinking of the client server—the prospector and miner, the man who deals with the raw materials—people, facts and, to a degree, law.

It would be possible to develop legal aid clinic training for judges and legal scholars. At present, however, our researches have taken us no further than the commodity which is of value to the client server. We have circumscribed our field even more rigidly. We recognize that there are among client servers. (a) the general practitioner; (b) the specialist. It would not be difficult to develop clinic training for specialists but in our limited time we have thought it wise to focus our attention on turning out qualified general practitioners.

The three “lawyers” mentioned above represent the core of the profession. Peripheral groups who may or may not deserve the appellation include: law clerks, employees of business concerns, bureaucrats. Here again clinical training may be made available. And, no doubt, if it were, the results would be beneficial.

Our present legal aid clinic is committed to the task of giving its students a commodity which will help them to think like general practitioners of law. Now there are good, bad and indifferent general practitioners. Our nar-

---

18 Bar Association Committee on Continuing Legal Education are doing an excellent pioneering job. Whether they are strong enough to do the whole job depends upon the particular bar association. Whether the quality of the commodity is adequate depends upon the quality of instruction, one would surmise that in the hands of a permanent board of persons thoroughly familiar with the best pedagogical devices more progress could be made.
rowing horizon centers upon the above average general practitioner. Such a man should be a credit to himself, his profession and by no means least, his law school. He should be good public relations.

The Content of the Commodity

The content of the commodity which an above average general practitioner of law should have at the time of his admission to the bar may be expressed roughly in three directions:

1. a command of the law,
2. a command of professional skills,
3. a sound professional viewpoint.

The question is—how much of this order should the legal aid clinic attempt to fill.

A command of law, seems, presently to lie beyond the limit of our immediate objectives. No doubt one may teach law by the clinical method in addition to the lecture, case, and seminar methods. Whether to do so is economical of time and effort—whether the clinical method is best—is a query which, so far we have not attempted to answer. Perhaps some day we shall find the subject at the top of our list of unfinished business. It does not now occupy that position.

Legal Aid Clinic students learn a lot of substantive law. In this term we include substantive law of practice and procedure. What they learn they tend to remember perhaps better than if they had learned it some other way. But we have not conceived of ourselves as in competition with the other methods of teaching law. We are here to supplement. The law the students learn in our work is valuable; but it is a by-product.

Some orthodox persons have urged that it is not possible to teach the traditional law school courses by the clinic method. For example, suppose the program of the course calls for a contract case to be discussed at 10 a.m. on a particular Monday morning. We have no assurance that there will be a client in the office on Monday morning at 10 a.m. If he should be there, it is a matter of chance that his problem—the situation which brought him to us in the first place—will be something in the field of contracts. But as we approach our type of instruction this objection melts away.

Again we realize that in the substantive law course all the cases in the

---

19 The proposal for a complete clinical training has been advanced by Judge Jerome Frank, *Why Not a Clinical Lawyer School?,* 816 U. OF PA. L. REV. 907 (1933). See also by the same author, *Courts on Trial,* p. 231 (1949).

20 The uncooperative client is an obstacle to a legal aid clinic program based on a topical concept. He is not when the basic theory is functional. On a topical basis the purpose of the instruction would be not much more than an extension of the substantive law courses the student has already taken. Thus, we should need for each student a contract case, a tort case, a criminal case, a property case, etc. This is one reason we have adopted the functional approach.
case book belong there. The title of the book delimits the field and there is little space for extraneous material. The client on the other hand often brings us problems the answers to which, upon examination, are seen to lie in a dozen different fields of substantive law at once; and may be elsewhere.\textsuperscript{21} The instructor may be quite within his specialized rights to call a problem out of bounds. The client server who follows this routine does not always receive a passing grade from his client.

Certainly if we are to come to the point of attempting to teach substantive law in the clinical manner much careful study and experimentation will be necessary.

Perhaps we may say that our contact with substantive law is largely a matter of showing the student how to use the rules of substantive law as tools with which to help solve the client's problem. We may list this as instruction in law or instruction in skills. At all events we are much, but not exclusively, interested in the use of rules of law. And for our purposes it is not too material whether the rule of law lies in one law school course or another. We might analogize that we are not concerned in teaching the student to drive Fords or Cadillacs or Chevrolets or DeSotos. We are concerned that he should know how to drive an automobile.

A command of professional skills is a must in the equipment of the above average general practitioner. In an earlier period of development of the legal profession this item, which we describe loosely in terms of professional skills, was taught in a law office apprenticeship. The decay of the apprenticeship system, due to a variety of causes, has made necessary not a substitute (with its connotations of inferiority) but an improved successor.\textsuperscript{22} We do not need to digress for the purpose of discussing the apprenticeship system. What we do need is to indicate how the legal aid clinic approach to the teaching of skills different from what one may call the orthodox law school approach. The distinction is emphasized by contrasting the two words—functional and topical.

The topical approach is the one generally adopted by orthodox law in-

\textsuperscript{21} Apparently no one has specified the nature and direction of the obligations owed by a law school. Certainly there is a duty to legal scholarship, to the legal profession and to the public. But there is also reason to argue an obligation (a) to the individual prospective client of that law student and (b) to other professions. Perhaps in no other way can professional leadership maintain its position in a world in which political leadership exerts such power. If the professions support each other it may be that the political forces may be restrained within reasonable limits.

struction. We may surmise that it starts with a concept which is referred to as "the seamless web of the law." As long as the law school faculty consisted of a single instructor the unity—the seamless quality of this concept—could be maintained to a degree. But law continued to grow, expand, proliferate. Eventually no one teacher could keep abreast of the increase, so a second instructor was added and then a third and a fourth. The choice was between the shallowness of comprehensive unity and the narrowness of profound specialization. Specialization seems to be winning but the result is not complete gain to the student.

It was not too difficult when the law outgrew the reasonable grasp of one instructor to add another and divide the task between them. Far more significant was the decision which had to be made when the volume of law became so great that the student could not absorb it in the period of time offered by a law school. It seemed best at the moment to offer instruction in some areas of law and not in others. Perhaps later the distinction between required and elective courses was introduced. Here again the results were not completely satisfactory. But our concern is as to the basis on which it was determined to emphasize field of law A and ignore field of law B.

The orthodox yardstick may be represented by the word "important." Important courses are included. But importance is often a subjective matter—one thing to a curriculum committee, another to a client. We have preferred to employ a different measuring rod "usefulness," and apply it to utility in terms of the needs of the general practitioner. If item A is one he will use 10 times a year and item B something required 100 times in the same period, objectively speaking B is more useful than A.

A professional viewpoint is the third requisite in the equipment of the above average general practitioner of law. To do a completely comprehensive job in this direction is beyond our powers—certainly in the limited

23 It is convenient to blame the topical approach to law upon its first great English teacher, Blackstone. In his Commentaries on the Laws of England in the introduction, he is the legal scholar in the midst of a civilization in which legal education in the Inns of Court was the accepted procedure. He is arguing:

"The advantages that might result to the science of the law itself, when a little more attended to in these seats of knowledge . . . (the university)." He tells us (p. 30, 31) "For I think it past dispute that these gentlemen, who resort to the Inns of Court with a view to pursue the profession, will find it expedient, whenever it is practicable, to lay the previous foundations of this, as well as every other science, in one of our learned universities . . . " "If practice be the whole he is taught, practice must also be the whole he will ever know." In this tradition came, in the United States, Kent and Story. Today with the weight of legal education in the United States being carried largely by the universities, and with nothing comparable to the Inns of Court to handle the so-called "practical training" one might even argue in paraphrase of Blackstone, "If science be the whole he is taught, science must also be the whole he will ever know."

time available. But we are able to make a contribution here. We assume that in his other courses in law school the student acquires a professional viewpoint toward the law. In our work we endeavor to encourage him to adopt a similarly mature attitude toward two other essential items: people and facts.\textsuperscript{25} The emphasis on people and facts in the orthodox law school courses does not always prepare the student for the events of a general law practice.

With these preliminary considerations and decisions in mind we centered our attention upon developing a specific functional and not topical program. We wanted our students to be able to think like above average practicing lawyers with respect to professional skills and with a professional point of view.

**Our Functional Program**

As far as professional skills are concerned we have organized our work to give the student, in the time available, a maximum opportunity to gain.

1. Professional self-confidence,
2. Professional self-control.

As far as a professional viewpoint is concerned we have organized our work to give the student, in the time available, a maximum opportunity to gain.

3. A mature sense of responsibility toward the legal profession and its public relations program,
4. An inclusive sense of obligation toward interprofessional cooperation in the public interest.

While the foregoing is ambitious, it seems to us preferable to fall somewhat short in promoting a sound program than to be self-complacent about completing one which is no better than second rate. Our next task in this paper is to discuss implementation.

**Professional Self-Confidence**

Our experience leads us to believe that if a student has done a particular act his recollection of his efforts will give him more professional self-confidence the next time he is called upon to perform the same or a similar act. If the act is of academic character it can be performed in the law library from materials available in printed books. But we know that many of the actions which early clients expect young practicing lawyers to be able to perform call for activity outside the traditional "ivory tower." It requires much time and a little imagination and effort to work out a program of exercises in which the student performs a series of professional

acts using the tools of the practicing lawyer. For example: A title to real estate may be searched in the courthouse and the student’s work checked by someone with experience. After the first effort in this field the student will never again be completely at a loss how to proceed in such a situation. Similarly we may give the student a trial brief to prepare in a pending case and then encourage him to sit in the courtroom on the day of trial along with counsel of record and see what happens. A conference between the student and the lawyer who tried the case should produce many questions and much valuable information. The instructor may assign the student the task of drafting a statute for some group with humanitarian objectives and require him to confer with the proponents and sometimes watch the legislative machinery in operation. In fact the list of possible assignments is limited only by the time available. Of course, repetition is a wonderful way of teaching self-confidence. The student who searches two real estate titles, writes two trial briefs, prepares two statutes is that much further along toward self-confidence than the man who has gone through the motions only once. But at least one participation breaks the ice and introduces the student to a new world. In the old world he was pretty much an observer; now he is a participant. The difference is easy to describe but a profound gain in self-confidence to experience.

Professional Self-Control

The second group of skills in which we are interested may be described in terms of professional self-control. There is no more important achievement on the part of the general practitioner than the ability to deal with details rapidly yet accurately and with endless patience. Certain types of minds are impatient over details. But for client servers professional self-control is a must. The client may not be able to follow the thinking of the lawyer in all its abstract ramifications. But he can reach a pretty shrewd conclusion of the value of his counsel by the way in which the latter deals with problems obvious to the lay mind. The “lex” may not care about the “minimis,” but the client certainly does have an interest in what the lawyer does about details. The lawyer who conducts himself in disregard of his client’s thinking is not unlikely to find himself without a client.

In teaching professional self-control it was necessary for us: to consider these details; to arrange them in some logical order; to introduce the student to them; and to provide him with some professional tools for handling them. The story of this process is long and elaborate and there is space presently only for a very cursory reference to it.

20 In the functional world many major problems are merely a congeries of minor problems and if one can learn patiently and systematically to unravel the major bundle, the individual items turn out not to be impossible.
Framework

We constructed a two-dimensional framework. Horizontally—left to right—it represented a series of stages in the functional thinking of the general practitioner while endeavoring to solve his client’s problems. Vertically and comprehensively we show areas of thinking which should engage the attention of the lawyer as he progressed from one stage to the next. The two dimensions then are: continuity and comprehensiveness.

As a matter of continuity we break down the lawyer’s thinking into two parts:

A. While he was taking hold of the client’s problem
   Stage (1) Facts
      a. Gathering facts from client,
      b. Gathering facts from other sources,
      c. Evaluating facts.
   Stage (2): Facts and Law
      a. Processing facts with the law of evidence,
      b. Gathering all relevant substantive law,
      c. Evaluating theories of law in terms of preference.
   Stage (3) Plan of campaign
      a. Gathering possible plans of campaign,
      b. Evaluating plans of campaign in terms of
         1. what the client wants,
         2. what is possible,
         3. what is ethically proper.

B. While he was closing out the client’s problem
   Stage (1) Preparation for the closing crisis,
   Stage (2) The crisis whether in or out of court,
   Stage (3) Consolidating one’s position and concluding the problem.

This framework is broken down in considerable detail and exercises are given the student to illustrate these various stages and their importance in the overall picture.

At the same time in terms of comprehensiveness we recognize six areas of concern to the above average practicing lawyer:

Area 1 The client’s problem which is to be solved.
Area 2 Any legal writings which may help in the solution.
Area 3 Ethical questions which the lawyer needs to recognize and answer for his own protection at least.
Area 4 The office routine. If a lawyer has only one case this does not bother him too much, but as soon as he has more than one at a time it becomes an increasingly significant factor.

27 In this connection we have found it helpful to develop a visual aid program consisting of charts, exhibits and slides.
Area 5: The client and other people involved in the problem and what is to be done to, by, for them.

Area 6: The resources of the community which may have to be tapped to facilitate a solution.

A two-dimensional framework of this sort helps to induce an orderly arrangement of details in the student’s mind. He has a sort of map of the journey he is taking with his client. He should be able to tell at every stage of the way (1) where he is; and (2) what sorts of problems need to be solved at this stage. Experience in using this framework is helpful in building professional self-control.

Tools

A framework has its values. One of them is an orderly place on which to hang tools. The tools of a functioning lawyer include books and office equipment. But they also include lists of steps to take in dealing professionally with certain situations which recur with such frequency as to permit an orderly lawyer to arrange them in the form of a check list. Every time a lawyer faces such a situation he knows there are a certain number of steps which ought to be taken, questions which ought to be raised and answered. A tested check list is an easy way to make sure that one has not overlooked one or more of these steps. In the notes the reader will find one of these check lists.\(^2\)

The idea of tools—of check lists to use in connection with the framework is an advance toward thinking like an orderly general practitioner of law. Our particular check lists are susceptible of improvement. From time to time we revise them. But even in their present more or less primitive condition they are better than bare hands. It is important to recall that they are intended to be used as guides, as reminders, not as strait jackets.

Professional Responsibility

In a negative sense professional responsibility is discharged if a lawyer avoids violating the rules of law and canons of ethics set up to protect the public from the possibility of harm. This is hardly a sufficient standard for

\(^2\) CHRONOLOGICAL CHECK LIST: This is a check list, not a strait jacket. Follow it not slavishly but with a view to covering all the points before you are willing to admit the interview is over.

1. Show client customary courtesies.
2. Start at once trying to build client confidence in you but do not overdo it.
3. Start client talking and keep him on the point. Ask specific, not general questions.
4. Go over the story (a) to locate the point of beginning, (b) to pick up each crisis and examine it under a microscope, (c) to examine the circumstances surrounding the client's decision to seek a lawyer and yourself, (d) to "Shepardize" the facts.
5. Now repeat the story to the client and have him check it. Remember your purpose is to obtain "all" the information your client has at the first interview.
our purposes. Our concern is on the affirmative side. We want our students to feel that the least they can do is to make positive contributions to the profession of which they are, or intend to become, members. The problem here is twofold: to ascertain the types of activity which will lead to an increase in the prestige of the bar; and to encourage the student to undertake one or more of them as a part of his career.

The Survey of the Legal Profession recently completed supplies us with a list of possible activities.

Arousing student interest in making a contribution is, perhaps, not too difficult. The legal aid clinic student comes to us when, if ever, his desire to live a dedicated life is seeking a vehicle for expression. If that expression takes the form of an article or law review note the result is of academic importance. In similar fashion if a legal aid clinic client appears with a problem calling for crusading by knights in shining armor a legal aid clinic student may find in him a vehicle for self-expression. Examples of this type of opportunity cover a wide range: from protecting victims of the loan shark, to implementing the Reciprocal Enforcement of Support Act. In any community there are dozens of jobs for practical idealists in which a socially desirable goal may be advanced. All that is required is imagination to bring together the task to be performed and the student eager to demonstrate his willingness to make a professional contribution. If the junior bar saw to it that each new member was assigned some professional task to his liking, mature responsibility would have a better chance to continue to grow than is sometimes the case today.

It is in this area that the student learns that he needs not only to solve the problem but to improve the welfare or happiness of the client who has the problem. The medical profession long since learned this lesson.

**Inter-Professional Cooperation**

The final item in our legal aid clinic "commodity" we call inter-professional cooperation. If the client brings to the lawyer a problem, the solution to which may be found exclusively in the field of law, it is often hard enough to accomplish the desired results. When the problem is of such a complex nature that the lawyer must tap the resources of other professional fields, medicine, sociology, economics and the rest, further training is necessary. Our experience indicates that a substantial portion of the matters brought to us by clients requires that if we are to do a piece of work which shall be satisfactory to the client and to our own professional standards,

---

20 It might be helpful if the Canons of Professional Ethics adopted by the American Bar Association could be rewritten so as to bring out the affirmative implications.

30 For a summary see Albert P Blaustein and Charles O. Porter, The American Lawyer (1951).
we should cooperate with those who are trained according to some other professional discipline than our own. It is unrealistic to talk in terms of teaching the law student economics, sociology, medicine and everything else he should know. There is not time. To become and remain a first-class lawyer requires a man's full efforts during his whole lifetime. To spend part of that lifetime in making him what may be no better than a second-rate economist, sociologist, physician is not too reasonable.

A better argument can be made for a program which helps the law student to learn how to work effectively in double harness with economist, sociologist, physician and the rest. In our work we have special exercises which bring together law students and students in related fields: engineering, medicine, forestry. The exercises are in the form of a jury trial with the neighboring students serving as expert witnesses; but the purpose is to teach inter-professional cooperation.

The idea is capable of considerable expansion and improvement. We are working on the improvement by the trial and error method. The expansion must await a period when the curriculum committee is able to give us additional time.

Functional Teaching

In the preceding pages, we have devoted attention to the difference between functional and topical approaches to law. So far our comments have been directed to what to teach. To round out the picture it is wise to refer briefly to how we teach it.

The clinical teaching method differs from the lecture method in material and student participation. In the clinic one deals with real problems. He gets up out of his classroom chair and moves around. He uses not only the law library but the courthouse and the community as his area of operations. The clinical method differs from the case method in material, approach and in student participation. In the clinic he deals with unsolved problems rather than with those already concluded and now immortalized in appellate reports and case books. He must act prospectively as well as think analytically. He constantly uses not only the field of law but, as needed, the fields of other social and physical sciences as his area of operation. The clinical method differs from the seminar method. In the clinic his responsibility is to solve as well as to raise questions. Perhaps the main features which distinguish the functional approach from that of the other methods are: that it devotes more attention to details and to repetitions; and that it deals with a real client who has a real problem and who insists that he be satisfied with its solution.

The focus of our attention is the practicing lawyer, not the judge or the legal scholar. We have said that all three deal with the same basic material but at different stages of an assembly line process. The position of the practicing lawyer on this assembly line makes it apparent that he will often have to be prepared for a wider range of situations than fall to the professional lot of either of the other two branches of the overall profession. The general practitioner should somehow learn to meet the unexpected. When the unexpected arises in court it is often possible to arrange a continuance and give the judge a chance to take the matter under advisement. The legal scholar chooses his own time to express his views on a rule of law. But the practicing lawyer meets the unexpected head on, day in, day out. He must be right, in what he does, enough times to retain the confidence of his clients and the general public.

Again by way of oversimplification we may say that often the judge and legal scholar can do their thinking after the event. More often the practicing lawyer must do his at the time of the event, or if possible, before. We assume that we can take a number of events which are likely to confront the general practitioner of law, and find out an orderly routine to follow in dealing with each one. By teaching this routine to the student we can place it in the conscious portion of his mind. By repetition we can go far toward implanting it in the subconscious portion of his mind. When we have it in this deeper area we may expect the student to react to the unexpected not only instinctively but in the orderly manner in which he has been taught.

With this thought before us our teaching becomes a more elaborate process than is sometimes the case in law classrooms. Then too often the student is satisfied to get the material in his notes; confident that pre-examination cramming will supply whatever may be necessary for a passing grade. The examinations for which we are preparing our men are of a quite different sort. They are given by the lay public and not by law teachers. The “grades” are not always subject to the operation of a kindly instructor’s mind. Consequently getting items in one’s class notes, or procuring a copy of canned lecture notes is merely a waste of time and money.

Functional teaching in the legal aid clinic involves four steps:

1. We tell the student. We tell him in a variety of ways: by class lecture, by written materials, by visual aids. We encourage his questions and endeavor to answer them.

2. We show the student. We show him by demonstrations and exercises in which he participates. We put on these demonstrations and exercises before the class, before small groups, in individual conferences. We do not merely tell the student how to interview a client. We show him how
One instructor plays the part of a client and another that of the lawyer. The interview contains examples of average and below average interviewing and the student is expected to recognize them. One of the instructors plays the part of the client and the student, in the role of the lawyer, participates under his own power in interviewing. Thus we show him.

(3) We supervise the student. We supervise him by putting him in touch with real clients who have real problems. At first, supervision is provided for protection of both student and client.

(4) We relax the supervision as the student demonstrates a growing mastery of the necessary professional skills and points of view.

We believe that a student who for a year, has been subjected to this type of discipline and makes reasonable efforts to grasp what he has been exposed to should be able to give a good account of himself when he hangs up his own shingle.

Conclusion

We have now discussed the background of our legal aid clinic work and the "commodity" which passes, or is supposed to pass, from instructor to student. We are interested in training men to give a good account of themselves as above average, orderly general practitioners of law. This means that we expect them to know their way around a world inhabited by people and facts as well as by legal concepts. What we want them to get out of our work is not so much static knowledge but ability to use professional tools to solve human problems in a manner to satisfy the client as well as to conform to the best professional practices of lawyers. We have grouped these specific objectives under four headings labeled: Professional Self-Confidence, Professional Self-Control, a Professional Viewpoint toward the Profession, and a Professional Interest in Inter-Professional Cooperation for the benefit of the public. We speak of our approach as functional in contrast with the traditional topical way of dealing with legal matters. Finally we employ much repetition to help instill sound orderly professional routines by which the young lawyer can meet the unexpected in a dignified manner.

It is our opinion that a law student who has had this type of training is more nearly a lawyer than one who has not. We further believed that this type of training offers more than could be secured by the apprenticeship system or any of the usual modifications thereof. The public demands the best and it is our task constantly to improve our "commodity" to keep abreast of public demand.