

Legal Aid Clinic: Training for the Art of Law Practice

John S. Bradway

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Bradway, John S. (1933) "Legal Aid Clinic: Training for the Art of Law Practice," *St. John's Law Review*: Vol. 7 : No. 2 , Article 4.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol7/iss2/4>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

LEGAL AID CLINIC: TRAINING FOR THE ART OF LAW PRACTICE

FOREWORD

THE recent change in the requirements for admission to the Bar of the State of New York, while economically advantageous, will increase the number of young lawyers who lack the experience so necessary to be able to furnish the maximum service to their clients. This article is submitted, therefore, to the consideration of the legal profession, educator, practitioner, and legislator, as a possible and practical solution of a present, and increasingly important, problem.—*Editor.*

FOR a long time there have been people who believed that the practice, as contrasted with the science, of law was merely a sort of trade, comparable to plumbing, window washing, and other highly estimable industries in which a routine apprenticeship with any older lawyer would enable a bright young man to pick up everything he needed.¹ Today some individuals are beginning to wonder whether the practice of the law, itself, may not be raised to the dignity of an art. It is possible that there are underlying principles of law practice which are capable of being studied, like the principles of substantive law.

The ideas on this subject are still in an elementary state.² Courses in substantive law form the backbone of legal education, and instruction in Pleading, Briefing, and Practice Court work is too seldom identified with legal scholarship. The result is frequently a theoretical, rather than a practical, approach to a subject which is eminently practical. It may be possible to transfer the emphasis to the practical side of practice without violence to the traditions of legal education. Such a move is desirable in various ways.³ The

¹ On the general subject of the attitude of a generation ago as to the merits of training for theory and training for practice in the law see: Joseph Redlich, *The Case Method in American Law Schools*, Bulletin No. 8 of the Carnegie Foundation for the Advancement of Teaching, p. viii of the Preface, pp. 11, 15, quoting from Professor Langdell.

² See Alfred Z. Reed, *Review of Legal Education* (1929), Carnegie Foundation for the Advancement of Teaching, in which he discusses the missing element in legal education, namely, the emphasis upon theoretical instruction, rather than upon practical training.

³ A particularly pointed attack on the lawyer as a scientifically untrained person, in contrast to a qualified expert, is contained in: T. Swann Harding, *The Barrier of Legalism* (1933) 38 THE AMER. JOUR. OF SOCIOLOGY 612, 613, 618.

change contemplates the practice of law as an art—not a trade.⁴

It is the thesis of this paper that by endeavoring to emphasize the artistry, rather than the trade characteristics, of law practice, a process may be discovered by which to test law students and call attention at an early stage to the distinctions between the more effective group and those who do not show promise in this direction. The result of adopting such a system would be a more effective service to the client, a greater sense of professional responsibility on the part of the lawyer,⁵ and an opportunity for the law teacher to work with certain students who, in time, though not at first, may show promise.

We shall consider hereafter the present atmosphere in which the law student does his work, the opportunities for an approach to the art of law practice, and some illustrations of cases in which failure to display that art has brought a controversy into confusion instead of adequate solution.

1. THE ATMOSPHERE IN WHICH A LAW STUDENT FUNCTIONS.

Much may be learned by a student if he is in the proper atmosphere. One problem, then, would seem to be to create an appropriate atmosphere in which the student may, if he has the ability and inclination, demonstrate his effectiveness for these wider aspects of law practice.⁶

A law school creates laboratory conditions. In order to study the science of law the student *inter alia* is asked to familiarize himself with a series of court decisions, law review articles, and texts, in which the masters of the law

⁴ The conception of law practice as an art is not new. See WELLMAN, *THE ART OF CROSS EXAMINATION* (Macmillan Co., New York, 1927).

⁵ The problem of legal ethics and how to teach the subject is a matter of considerable discussion in bar association and law school circles. A recent development is the introduction of a series of law school courses roughly described as "Courses on the Legal Profession." This was one of the topics for discussion at the meeting of the Association of American Law Schools in Chicago, 1932.

⁶ As an example of the literature in this broader field, see: Roscoe Pound, *Preventive Justice and Social Work*, PROC. OF NATIONAL CONFERENCE OF SOCIAL WORK FOR 1923, p. 151.

have set down their ideas as to a solution of particular problems, and the supporting reasons. These court decisions and allied readings are a thoroughly systematized body of material. The original facts of the case have passed through the organizing mind of the lawyer who first handled the matter, through the organized intellects of the lower and appellate courts, and, finally, through the sifting process which persuaded the law professor to select this particular case or article for study. For laboratory purposes this process is admirable. An orderly arrangement of sets of facts illustrating principles of law and requiring analysis and re-analysis on the part of the student provide material so that he may build up one sort of tough mental fiber. But when the student goes out from the laboratory into the law office these protective devices, such as the case book and the law review article—which have eliminated many disturbing elements and material which did not emphasize a particular rule of law from his concentrated study—are not present. In active practice he meets “nature in the raw,” and it is his task to refine his client’s problems to the point where the courts are prepared to pass upon them.⁷ Even then the subject is not in shape for the legal scholar because it is, for example, merely a brief of law or a record of testimony by which the lawyer hopes to persuade the court to decide the case in his favor. Thus, an enormously large number of extraneous facts are constantly assailing the mind of the young lawyer in active practice, clamoring for attention; and, in place of an orderly premise from which to start his analytical or logical thinking, he finds himself, if he is sufficiently attentive, in a different world of chaotic turbulence. He must discover some way of handling such matters with a minimum of loss of time and uncertainty.

A second readjustment occurs when he realizes the enormous number of cases which come to him in which the questions of law lie in a field of the science in which he has never taken a course.

⁷ The realities of law practice are recorded most effectively in the files of legal aid societies. The emergencies that confront a lawyer are indicated in John M. Maguire’s book, *THE LANCE OF JUSTICE* (Harvard University Press, 1928). In particular, the chapter devoted to the Seamen’s Branch, p. 130.

After having met the general principles of contract law in his course in Contracts, he should have at least a bowing acquaintance with types of problems which arise in that field. But he may be severely snubbed by rules of law with which he has no familiarity. He must fall back on his general analytical powers.

The justification for the law school in omitting a complete preparation in every conceivable branch of the law is that the academic approach, the theory, the conception of law as a science, all these can be acquired only in law school, and in the limited time available the student should strive to develop a special type of tough mental fiber and learn to think like a lawyer. Even if law school curricula were broad enough to offer instruction in every field of law, it would be impossible to compress the material into a three-years' course. Even if it were given, there is no reason to be certain that the student could assimilate it.

One wonders whether this symbolic lawyer whose mental fiber has been selected as a standard type may not be in fact a practicing attorney, rather than a legal scholar, and, hence, a person whose tough mental fiber is composed of a greater number of strands than the student realizes. Certainly success in answering examination questions does not necessarily guarantee similar achievements in the practice of law. There is a difference in conditions of work which should be taken into account in a legal education.⁸

In law practice a man will have no great opportunity for legal scholarship, at least during his early years. His time will be so taken up in attracting remunerative business and taking care of it that only in exceptional cases will he be able to contribute to the science of law from his experience.

It would seem that there are at least four roads lying before the student in law school. By the first, he may indulge in critical self-analysis, find himself totally unfitted for law practice, and go into some other field. By the second, his interests may lead him to associate himself with some busi-

⁸ Recent studies made by the State Bar of California indicate the economic side of the problem, which is as real to the student as the complexities of the law. See: James E. Brenner, *Survey of Employment Conditions Among Young Attorneys in California* (1932) 7 CALIF. STATE B. JOUR. 314; *Earnings of Young California Attorneys*, 8 LOS ANGELES BAR ASSN. BULL. 123.

ness organization and rely on his legal training for the solution of his more difficult problems and as a means of giving him special prestige. By the third, he may come in time to be a legal scholar and, perhaps as a member of a law school faculty or in some other fashion, continue with greater effectiveness the type of work which he did as an undergraduate. By the fourth, however, he finds his way into actual law practice. If a man is sincere in his desire to make a success, he will bend every effort to prepare himself for the needs of that particular type of work. Those who follow the first two paths will find it convenient to become familiar with extralegal matters in the economic field.⁹ Those who proceed along the third road will wish to delve more deeply into academic questions; but those who follow the fourth path are looking forward to a lifetime spent outside the laboratory in a more or less chaotic world that is not organized to supply them with material in the form in which they have been handling it in the classroom or around the seminar table.

Whether the present system of legal education fits a man for the struggle to bring order and harmony out of this chaos—a process one aspect of which we call law practice—depends upon what we believe a practicing lawyer should know.¹⁰ We may submit suggestions, on the basis of the techniques which he needs as compared with those he learns.

2. OPPORTUNITY FOR DEVELOPING VERSATILITY.

Law students learn how to brief cases, to report on them in class, to participate in class discussion in which hypothetical cases form a distinct part, and to write examinations. In so far as the practicing lawyer deals with this type of situation, the training is effective. Where, however, he is forced to cope with other types of situations, he may very well need special training to fit himself to a condition of efficiency. It is, then, important for us to consider how a law-

⁹ For an argument in favor of further instruction in this aspect of law work see: A. Raymond, *The Duty of the Law to the Public* (1930) 7 AMER. L. SCHOOL REV. 108.

¹⁰ Some effort to meet this need is apparent in statutes or rules of court requiring apprenticeship periods. Perhaps the most elaborate of these is the one in Pennsylvania. See: (1927) 2 TEMPLE L. QUAR. 3, 29.

yer's mind is occupied and how much of his time is given over to the type of work for which his orthodox law school training in the classroom does not fit him.¹¹

Any opinion we may express on the subject of how a lawyer spends his time obviously must be of the most general character. It is possible, nevertheless, to outline such ideas very roughly, as follows: There is no reason to emphasize such matters as the office-boy functions of searching records and arranging for the attendance of witnesses or other details-of-the-trade aspect; but correspondence, drawing papers, and pleadings are of greater significance. If a lawyer is a subordinate or clerk in some large law office, his work is likely to be rather a narrow routine. If he is his own master, he frequently spends a substantial amount of his time in forms of dignified publicity, through which he hopes to attract business to himself. Some time is spent interviewing clients, and a considerable portion in building up the materials for a litigated case, an *ex parte* proceeding, or an adjustment of a difficulty out of court or by legislation. Legal analysis and the weighing of legal rules have a place in this procedure, but not with the primary objective of legal scholarship, as is the case in law school training. A certain amount of the lawyer's time, perhaps less than we might at first think, is devoted to actual litigation. In court and before administrative tribunals the training which a man acquires in law school is put in practice, but not in the laboratory manner. All sorts of considerations that have nothing to do with a determination of a rule of law enter into the conduct of the case. Planning and conducting a campaign in a case at law is not a matter of a routine trade technique. It involves not only a knowledge of the rules of law and of law practice but a nice judgment in selecting and applying them to the facts of the case, which include the mental attitudes of the people involved. Finally, after the litigation or controversy is over, the lawyer knots together loose ends, endeavoring to leave the client in that satisfactory frame of mind which will assure his return with other remunerative possibilities.

¹¹ A suggested outline of a lawyer's activities is given by John H. Wigmore, *A Course on "The Profession of the Bar"* (1931) 7 AMER. L. SCHOOL REV. 273.

It would ease the problems of legal education if one could say that these functions beyond the scope of legal scholarship were unimportant or easily learned. The facts are that the art of law practice is never learned by a certain group at the bar. This group is not of primary interest to law schools which are concerned with developing leaders. To be a leader at the bar a man must develop special characteristics. The usual tests of leadership are such matters as income, prestige in the community, and reputation among one's fellows. The evidence of it is the possession of a special technique. We come, then, to consider this technique, the acquisition of which seems to be a prerequisite to leadership in the active practice branch of the legal profession.

3. THE TECHNIQUE OF THE PRACTICING LAWYER.

Training in law school gives a man a mind capable of coping with other legal minds. In so far as the lawyer in his daily routine meets other legal minds, he is at least fairly well prepared. One difficulty arises because the lawyer in practice meets lay minds and his routine training has not prepared him for the contact.

A second element is the ability to look ahead and plan a campaign in a given case. The law student is trained to take a completed case, tear it apart, discover the legal problems involved, and then, as a matter of logical reasoning, determine whether the same rule would apply if one or more of the facts in the principal case were modified. If one relies too much on rules he may not be able to meet situations for which there are no rules or in fields of law with which he is not familiar.

A third factor is that the lawyer has continually before him a single question—What shall I do for this client? The law student, on the other hand, being brought up in traditions of legal scholarship, has another question—What is, or what ought to be, the law on this subject?

Some lawyers add a second objective, namely—How may I discharge my obligations with due fidelity to the court? And a few find reason to add a third, namely—How will my actions affect the welfare of the community?

As a fourth distinction, the legal scholar works from materials found in books. The practicing lawyer feels that he needs to know how to react to situations in real life. His labors bring him in contact with the endless variety of human problems found in flesh-and-blood clients.

The transition from the mental condition of student to that of practicing attorney is, therefore, one of considerable complexity. There are individualists who argue that the best results come from pushing the young man off the end of the plank, as it were, and letting him sink or swim to the best of his ability. There are others who believe that the average young man does better work and develops more effectively if he has the benefit of advice and assistance from some capable and understanding older lawyer during his early years at the bar, if he is not so frightened over the responsibility of his cases that he loses his grip, and if he is so carefully supervised that his chances of making serious mistakes or of failing to recognize legal problems inherent in a particular case are reduced to a minimum. Between these two extreme groups, there are people who have confidence that any young man can attach himself to any reasonably satisfactory law office and there secure the necessary training. Of these three possible methods, it would seem that all are open to objection. In a situation where it is every man for himself, one type of lawyer will tend to emerge. It is a mistake to emphasize too greatly his characteristics or to feel that the entire bar should be composed of graduates from the school of hard knocks. It takes various sorts of lawyers to provide the widespread service required of the bar. If the law school washes its hands of the student and entrusts his further training to the bar generally, there is no particular person upon whom rests the responsibility. Law offices into which he may go vary considerably in effectiveness as machinery for legal education.¹² Either of these methods is full of loopholes and the

¹² The transition of the law office as a place for the training of young lawyers in those elements of practice which are not within the curricula of the average law school is an interesting topic for historical comparison. As an indication one may refer to the following material descriptive of the earlier condition: THE LAW ASSOCIATION OF PHILADELPHIA, Addresses Delivered March 13, 1902, and papers prepared or republished to commemorate the centennial celebration of the Law Association of Philadelphia, Introductory Address by Samuel Dickson, pp. 6, 7. Contrast the pictures there with that in LAW

student may suffer from experience with them. The third procedure, the Legal Aid Clinic, even though it requires more trouble and expense to operate, promises the best product.¹³

Again we come to consider the difference between the comparatively simple task of training a man for a trade and the complex, but infinitely more interesting, task of preparing him to participate in the art of law practice.

In order to enable a man to carry on a trade it is necessary that he have at least a limited number of special techniques which he may follow in a more or less routine manner. When we begin to talk about law practice as an art, the routine procedure of a trade is totally inadequate. The machinery for teaching the art of law practice requires more imagination in conceiving objectives and greater versatility in executing them.¹⁴ The old-fashioned apprenticeship method of teaching law students is inadequate because there is not the variety of problems in any one law office nor the time or the inclination on the part of the average practicing lawyer to encourage neophytes to experiment in this direction and then correct their errors. It is his task to satisfy his client, and he finds it much easier to do this sort of work himself, leaving his problems of briefing or answering a call of the list to the assistant. If he considers these other aspects so important, one wonders what chance there is for the young lawyer to learn them, beyond the harsh trial-and-error method. No one knows how many sensitive individuals who might have made good lawyers have been discouraged at the threshold; nor is the answer merely that the law wants

OFFICE MANAGEMENT, Report of Special Committee on Law Office Management of the Association of the Bar of the City of New York, 1931. For a discussion of the other modifications of a lawyer's life see: Wm. G. Rogers, *Forces Remolding the Lawyer's Life* (1931) 17 AMER. B. A. JOUR. 639.

¹³ There is considerable material dealing with statistics on legal aid clinics. A portion of this may be cited here. The Harvard Legal Aid Bureau publishes an Annual Report. Its work is summarized in: Tilford E. Dudley, *The Harvard Legal Aid Bureau* (1931) 17 AMER. B. A. JOUR. 692. The Legal Aid Clinic at the University of Southern California, which was established in 1929, publishes an Annual Report giving statistics. Similar information is available with regard to the Duke Legal Aid Clinic. In most of the other institutions the Clinic statistics are so involved with the statistics of the legal aid society in conjunction with which the Clinic is operated that a separation cannot be made.

¹⁴ Such books as: WALTER V. BINGHAM and BRUCE V. MOORE, *HOW TO INTERVIEW* (Harper Bros., New York, 1931); MARY S. RICHMOND, *SOCIAL DIAGNOSIS* (Russell Sage Foundation, New York, 1917) suggest the type of development possible in this direction.

only the tougher characters. One would visualize an ideal system of legal education as embodying a chance to learn everything a lawyer needs to know. In practice we may endeavor to approximate this ideal.

Prominent among the items a young lawyer should strive to learn are the various ways of approaching a legal problem which arises outside the laboratory. Not all cases or clients respond favorably to the same methods.¹⁵ A versatile attack, a flexible strategy, a change of legal pace, may well be effective in the art of law practice where the science of the law would prescribe an orthodox logical approach.

There are certain things which every law student ought to know. He should have a power of legal reasoning and analytical ability, familiarity with a fairly wide group of fields of law, and the habit of thinking as a lawyer thinks. Beyond this it would seem that his training should depend, to some extent at least, upon the type of work in which he plans to embark. The present system of elective courses is not a complete answer. The student must get such help as he can from individual members of the faculty in making his selection. While some students may choose with discretion, there are others who are influenced by such circumstances as their personal contacts with the instructor, the hour at which the course is given, the reputation which the course has as to whether it is difficult or simple. It would seem that the opportunities for specialization by the student should run along more clearly defined lines. If a man plans to go into business and not to practice law, it should be possible for him to take a special course in the general field of business law—to include such matters, for example, as Contracts, Agency, Partnership, Corporations, Bills and Notes, Sales, Creditor's Right, Public Utilities, Government Regulation of Business, and similar matters. If he plans a career in the field of legal scholarship, one would think courses might be given him in Legal History, Jurisprudence, Teaching Methods, Law Review Work, the Nature of the Judicial

¹⁵ Too often the young lawyer accepts the client's version of the situation and proceeds to act upon it. Physicians have gone past this stage and the diagnostician is an important part of the medical machinery. There is need for a more careful study of comparative techniques among the various professional groups.

Process, and the more profoundly theoretical aspects of the science of law. If, on the other hand, he plans to be a practicing lawyer, what he becomes will depend to a large extent upon his early opportunities; so his course should be designed to fit him to take advantage of opportunities over as wide a range as possible.

Our ideal lawyer is, first of all, a well-rounded man. In spite of the specialization at the bar a good many lawyers in the United States still live in communities where a man cannot succeed unless he is well rounded.¹⁶ To train a man for the highly technical tasks of legal scholarship and then put him to work briefing cases in an enormous law office is not a great transition. If he is fortunate, he may develop himself and broaden his capabilities. However, in only too many cases such procedure relegates him to the position of research clerk and places him for his entire career at the bar in some back office. There is no one interested in helping such a person to readjust himself.

The orthodox courses in law school do not prepare a man to make this transition.¹⁷ They teach him rules of law, rather than how a leader of the bar applies them. What should be done about it?

4. A SUGGESTED REMEDY.

We have now described a situation and indicated in theory the nature of the remedy. Young men at the bar need more supervision to help them to a readjustment after law school. Now we come to the question of the practical method of putting the ideas into effect. It is a situation which does

¹⁶ On the general subject of the bar in relation to population see the *Report of the Sub-Committee of the Council of the Section of Legal Education and Admissions to the Bar, Appointed to Consider the Question of the Overcrowding of the Bar* (1932) ADVANCE PROGRAM OF THE AMER. BAR ASSN. 25.

¹⁷ The catalogues of various law schools describe in some detail the theory back of their practice courses. These courses may roughly be grouped under the following headings: (1) Ordinary Courses in Practice and Procedure, (2) Moot Courts, (3) Practice Courts, (4) Legal Aid Clinics. The growing interest in legal aid clinics indicates that the fourth classification is recognized as an important one. See the PROCEEDINGS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS for December, 1932, where the first annual Round Table on Legal Aid Clinics was established.

not yield to an isolated approach by either the law school or the bar. Co-operation between the two, a blending of the ideas of both, a working together for a common goal—such ideals characterize the suggested remedy. The law school has given its contribution a name—the Legal Aid Clinic. The bar has worked out various types of apprenticeship. Neither of these enterprises standing alone is a complete answer to the problem. A co-ordination of the two, under skillful leadership, promises much.

The legal aid clinic has been described very extensively elsewhere¹⁸ so that one need not say more here except to give a few illustrations of the characteristics of students which are brought to light by this process and as to whom a helping hand will be most effective. Three illustrations will suffice.¹⁹

The purpose of these illustrations is to make clear that a man in his orthodox courses may proceed to his third year in law school and not reveal characteristics which will impede his progress. Yet, let him try to secure a position in a law office or a client and these same factors will militate seriously against his success.²⁰ May it not be kinder to the student to have the situation out in the open where he and an understanding instructor may face it frankly?

The first man is mentally capable but extremely lazy, socially active, and of a pleasing personality, but either unable or unwilling to appreciate responsibility in connection with a case. His quick-wittedness has enabled him to pass examinations with some degree of effectiveness, but when he is face to face with a real client and a real situation where quick decision and judgment are called into play, he neglects the case, much as he would neglect preparing a lesson in his other courses. When driven into a corner he gives snap judgments about the law and creates in the mind of the instructor a sense of shallowness. The elements of dependability and conscientious planning are absent from

¹⁸ For a bibliography of material on legal aid clinics see Section V of Appendix B of the *Report of the Legal Aid Committee of the American Bar Association* (1932) 57 AMER. B. ASSN. REP. 175.

¹⁹ The illustrations are of actual students in legal aid clinics in which the writer has participated. For obvious reasons a degree of anonymity is desirable.

²⁰ There is a definite literature of criticism of lawyers on the ground that many of them are inefficient. See: W. F. WILLOUGHBY, *PRINCIPLES OF JUDICIAL ADMINISTRATION* (Brookings Institution, Washington, 1929) 400.

his make-up. The future may modify him, but on his present showing an employer of young lawyers would not want him in the office and a client would not come back a second time. Here is a problem which calls for constructive action on the part of the instructor—shall he chide or encourage, impose added burdens or endeavor to arouse interest? If, after a year of conscientious effort to analyze and readjust the student's viewpoint, the student has still not shown sufficient improvement, there may well be justification for the decision that this student is not yet qualified to assume even the modest responsibilities of law practice which are likely to come to him in his first year. In making such decisions, the instructor may have treated the student harshly and prevented him from becoming a member of the profession. However, he has rendered service and prevented a man who is inexperienced from causing trouble to his clients and loss of prestige to the profession.

The second man is an entirely different type. As far as his class work and his examinations are concerned, he is able to make the grade. When it comes to handling actual cases, however, he is completely at a loss. He becomes frightfully confused. The easy flow of his speech is affected. When the sentences come from his lips they reveal a whirling, kaleidoscopic, undigested melange of disconnected ideas without any logical order or sequence. He goes round and round, seeking blindly for an outlet but finding none. If one takes him metaphorically by the hand and leads him through the maze of the clients' stories, the statements of witnesses, and other discordant elements, he can follow. He seems unable, however, to look forward into a case and to construct a plan of campaign or even a tentative frame on which to hang his subsequent thinking.

If he were permitted at the present time to go out into practice, no one can tell what weird consequences might result. And yet, from the law school viewpoint, he is a problem to be solved. Granting that he is not now ripe for law practice, he is a challenge to the ingenuity of an instructor who believes in individualistic instruction. Under a collective system of instruction he would be labeled ineffective and the rest of the class would pass him by. It is a matter of

interest to find out where, if anywhere, he can fit into modern law practice. One is tempted to indulge in the analogy of probation or parole. Here is a man who obviously needs to be under supervision until we can determine whether he will outgrow this difficulty. Merely to turn him loose in an unfriendly world and trust to luck that he will find some sympathetic person to supervise his work is taking too much of a chance with him, with his clients, and with the effect he would produce on the prestige of the bar. For such men it would be highly desirable if there were a group of persons at the bar doing work comparable to the services rendered by probation officers in the Big Brother Movement. But such services should be organized and those who are doing it should be required to show special qualifications for this service.

The third man meets his legal problems with a laugh. It is difficult to tell whether he meets them with anything else. If one were looking for a business-getter as a part of the personnel of a large law office, this man might qualify. Whether or not he can take care of the work after it comes into the office is a matter for serious debate. His efforts at organizing his thoughts in a constructive manner have been conspicuously disappointing. His mind does not seem to penetrate below the outside surface of any case, and it may be that it will never do so.

Such a man is illustrative of a type of student who is effective in one field but not in all. He would not be a third-year law student if he had not had enough intelligence to pass his examinations. Possibly in the years to come the seriousness of various of his problems will cause him to think more deeply and grasp them more firmly. Certainly, at the present time, he is not prepared for law practice. Probably his effectiveness will be limited to a group of cases where the various motions that must be made are simple and easily learned. There may be in some communities a place for a lawyer of this type and it is perhaps too harsh a ruling to say that he should not be admitted to the profession. The question is as to how we are to protect a community against him during the period in which he is learning. Our present system, which is based on a decision instead of a course of treat-

ment, would admit him unless he was unethical. How much better it would be for him and for the prospective clients if an arrangement could be made by which he could secure additional supervision for a certain period of time by people assigned to do this work; and could then be placed in a position where his particular abilities, rather than his deficiencies, could be made available for his own welfare and that of the public that comes in touch with him.

These three illustrations indicate something of the mental processes in the mind of an instructor of a course in legal aid clinic work. Elsewhere, emphasis has been placed on various aspects of legal aid clinic teaching which differentiate it from other courses in law school. The distinction that is made here is that in other courses the student is primarily a member of a class and moves forward with the thinking of the class. In a course in legal aid clinic work each student handles his own cases and advances largely on his own.²¹ Here, then, is an example of extreme individual-

²¹ The practical problem as to how far a law student may participate in legal proceedings without being a member of the bar is answered in two ways. In California an opinion of a Committee of the State Bar Association made the following pronouncement (STATE BAR JOUR., Vol 4, No. 4, 54):

"* * * It is the opinion of the Committee that such legal clinics are proper when personally supervised by lawyers and if operated in conjunction with and subject to regularly established legal aid societies and the committee of lawyers overseeing the activities of the legal aid society. It is further of the opinion that such clinic should not be used by universities or law schools for advertising or publicity purposes, or made capital of, as such conduct would be unethical and would tend to bring the legal profession into disrepute.

"It is further of the opinion that no legal advice or opinion should be given to any person until same has had the personal examination and approval of a lawyer in, and working with, the clinic. Under no circumstances should the opinion of a student be given, although it is proper for the student to work on the same and thus get experience. Where advice or aid is given, it should be the advice or aid of a lawyer who is a member of the State Bar of California."

In the following states special statutes permit the students to appear before the courts: Massachusetts (c. 221 of the Gen. Laws), Colorado (§6019 of Compiled Laws, 1921). In North Carolina a special amendment to the statute prescribes the conditions under which a law school may operate a legal aid clinic (c. 347 of Public Laws, 1931).

It is the general policy of legal aid clinics to see to it that the individual student does not actually practice law. For a description of the administrative details of supervision and conduct of court work see the First Annual Report of the Duke Legal Aid Clinic, p. 12. See, also: Bulletin No. 1 of the National Association of Legal Aid Organizations, a brief entitled *Are Legal Aid Societies Engaged in the Unlawful Practice of the Law Under the Various Statutes Defining That Practice?* Case No. B-20 of the Duke Legal Aid Clinic, a brief

ism in teaching as contrasted with the collective approach of the classroom. As yet, it is in the early stages of experimentation, but promises much. In time, more law schools will feel that they have not done their duty until they have subjected these prospective leaders of the bar to the gruelling experience of clinic training and, after considering the results, have worked out some individualized treatment for each student which may help him to be a better lawyer and a more effective citizen.

The illustrations given indicate that three completed years' study in law school do not necessarily fit a man for law practice. Some men are better prepared at the end of two years than others after four. Instead of forcing a student on the Procrustean bed of a curriculum based on time alone, it would seem more reasonable to say to the student, "We will not set the seal of our approval upon you until you satisfy us that you can both pass examinations and practice law with some degree of effectiveness."²² This latter fact is to be determined not on a time basis but upon the judgment of a group of qualified persons who see the man in action.

If it is impracticable to keep a man in law school for more than three years, the next step is to continue the educational process until he is ripe for responsibility. It may be possible to build up at the bar a group of men qualified and willing to supervise such an enterprise. To them would be entrusted the students who presented special problems. If, after a reasonable period (to be fixed in the individual case), the student failed to show a dependability adequate for practice, he could be rejected. In this fashion, there might be the written examination, as at present, but the examination on the ability to practice law would be a continuing thing, approximating the tests which the young lawyer faces at the hands of his employer or his client.²³

entitled *Attorney and Client Relationships in a Legal Aid Clinic*, by J. Paul Coie. For a set of rules regarding the subject, see: *HANDBOOK OF THE LEGAL AID CLINIC* (Univ. of Southern Calif., 1930).

²² The experiments at the University of Chicago in this field merit study for their application to law schools.

²³ An interesting parallel is found in the work of the medical profession. See: *MEDICAL CARE FOR THE AMERICAN PEOPLE*, Final Report of the Committee on the Costs of Medical Care (Univ. of Chicago Press, 1932) 138, dealing with suggestions for the improvement of medical education.

Such supervisory work by the bar—to be kept at a high standard—should be placed on a salary basis and the supervisors themselves selected for their special ability and only after thorough training.

So our argument proceeds as follows: Law practice is tremendously complex. Preparation of leaders for this practice is not complete until each man has been tested out with respect to all the normal types of situations he may be called upon to face in his practice. This testing process, highly individual in character, calls for special machinery and the co-operation of law school and members of the bar. The result will be a better adjustment of the young lawyer to his environment and an opportunity to weed out those who do not yet give promise of being able to bear the burdens.

DR. JOHN S. BRADWAY.

Duke University School of Law.