

Winter 1933

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Recommended Citation

John S. Bradway, *Training Law Students for the Administration of Criminal Justice*, 24 *Am. Inst. Crim. L. & Criminology* 723 (1933-1934)

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TRAINING LAW STUDENTS FOR THE ADMINISTRATION OF CRIMINAL JUSTICE

JOHN S. BRADWAY¹

Recently the writer had occasion to ask his students what types of law practice they planned to graduate from when their economic condition made possible a selection. Too many of them put down the two—criminal cases and divorce cases. As the Dean of our Law School teaches Criminal Law, and the writer gives the course that is called “Family Law,” dealing with divorce, this reaction of the students was interesting. Recognizing from the start that there was nothing personal in this response, it is equally true that there is nothing particularly new about it. The attitude of the law student is too often in the direction of property and away from persons.

Criminal law on its administrative side is receiving increasingly contributions from a group of experts who are not members of the bar—probation officers, psychiatrists, investigators, and others. There is, of course, a large part of the process in the hands of the police, prison officials, sheriffs, and court attaches. The lawyer often feels that his relation to the situation, while dramatic, is nevertheless limited. The criminal bar in any city is composed of diverse elements; but there is too general a belief that association with this group stamps a young man indelibly as a member of a less desirable class.² The term “criminal lawyer” is not always applied in a complimentary sense. A lawyer definitely identified with this sort of practice can seldom hope to attain the ultra-respectable utopia of the law student—corporation practice. So the incoming lawyer finds strong and perfectly understandable impulses calling on him not to participate in the field of administration of criminal justice. The loss to the community is great.

It is difficult to see how the position of the lawyer in relation to this process and the process itself are to be improved unless a careful study is made of the situation and a plan devised whereby

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²For a brief description of this situation see: Justin Miller, *The Difficulties of the Poor Man Accused of Crime* (1925.) 124 Academy of Pol. Sci. Proc. 63.

greater interest in the subject may be aroused. In the incoming lawyer group, the present system is haphazard, hit or miss.

The remedial suggestions contained in this paper are concerned with an educational program of a practical sort continued throughout the life of the lawyer, from his law school days until he ceases to participate in public affairs.³ Such a program should be of a sort to surmount inertia, competitive attractions, disinclination to handle a disagreeable job, and active controversies with vested interests already in the field. Obviously, this will require the development in the individual law student of considerable initial momentum and a means of reviving it from time to time. This is no small task. All too little has been done in the past. We have relied too much on individual initiative, rather than an organized approach; individual idealism, without much group support; and an indifferent administrative machinery to carry out our ideas. There is need for a more concrete procedure.

Assuming, then, that it is desirable that lawyers should take a keener interest in the administration of criminal law, we come to consider ways and means. We will divide our discussion into the efforts which may be made in law school and those which take place after a man gets into active practice.

1. *Efforts in Law School to Arouse Interest in the Administration of Criminal Justice.*

The law school efforts in this direction are twofold. On the one hand there is certain theoretical material in class discussions; on the other hand there are certain practical problems which may be handled by a legal aid clinic.⁴ The time honored course in criminal law dealt with a series of cases and imparted a knowledge of the rules which courts were in the habit of applying to such fact situations. As the main objective of the case method has been "case analysis and synthesis," the course tended to develop legal scholars interested in the system of law. Some case book writers conceive of legal education as concerned with the study of the science of law,

³For a similar program see: *Medical Care for the American People*, Final Report of the Committee on the Costs of Medical Care (U. of Chicago Press, 1932) 137 and following.

⁴For a fairly complete bibliography of material on legal aid clinics see: *Appendix to the Report of the Legal Aid Committee of the American Bar Association for 1932*, 57 A. B. A. Rep. 175.

rather than the art of law practice. There is not enough encouragement to crusade.⁵

Some law schools which have student bar associations provide a division of the group for the discussion and study of criminal law.⁶ Some of the newer classroom courses introduce sociological material into the discussion or assign outside reading.⁷ This broadening of the scope of the course encourages the student, in addition to learning his rules and developing his analytical technique, to see how those rules operate with respect to individual human cases, to become familiar with the limitations of the law in dealing with social problems, and to take into account the importance of the contributions to the field made by other scientific groups, such as medicine and social work. In this manner the student becomes familiar with the operation of the juvenile court, of probation and parole systems, and a multitude of procedures which are involved in the administration of criminal justice when we break down the water-tight compartment which separates the law from the other social sciences. But even this improvement does not seem to guarantee us actual contact with the facts on the part of the younger lawyers. One wonders how far information which is learned through the medium of the printed page stimulates the individual to the type of action needed here.

A new factor is brought into the educational picture when we give the student a clinical opportunity to participate in the handling of criminal cases under the supervision of lawyers who are already interested in the concepts of the responsibility of a member of the bar in the field. The student learns through such work the value to the community of dealing at first hand with the problems.

In several law schools in the United States experiments are now being made in this direction. They are called Legal Aid Clinics.

The legal aid clinic as a process of legal education has been described at length. Where such a legal aid clinic handles criminal cases it provides specifically an atmosphere in which the student may be observed and observe himself in action under circumstances satis-

⁵See: *The Missing Element in Legal Education*, Annual Review of Legal Education for 1929, Carnegie Foundation for the Advancement of Teaching, p. 3.

⁶Gordon E. Dean, *Bar Associations and the Law School Student Body* (1931) 7 Am. L. School Rev. 316.

⁷Justin Miller, *Social Aspects of Crime* (1929) XIII Sociology and Social Research 526; Justin Miller, *Public Opinion and Crime* (1931) XXX South Atlantic Quarterly 142.

factory for initiating a motivating force.⁸ It is our purpose to describe two of them in order to emphasize the machinery by which a new point of view is made clear to the student.

The method of clinical instruction in law schools puts the student in touch with a flesh and blood client, sees that he is properly supervised, and then requires him to carry on the case in so far as a student may. Of course, the actual trial of the case is conducted by a member of the bar for whom the student acts as assistant. Decisions are also made by a qualified member of the bar. Under such an arrangement it is possible to have the student do the purely routine part of the work, such as interviewing witnesses, preparing briefs, serving subpoenas, and similar matters. One may see also that the social aspects of the problem receive adequate consideration. Taking the case at the beginning and carrying it through to the end under these conditions is a much more colorful and concrete procedure than critically and analytically considering a hypothetical question in which A B, and the State are parties involved. The instructor in such a course comes in close touch with many important characteristics of the student as a prospective lawyer not brought to light by the ordinary routine of the classroom. It is this new viewpoint of the student's personality and ability to meet life which opens the fascinating vistas of clinical instruction. Two examples will suffice—one in a large city and the other in a smaller community.

At Northwestern University Law School in Chicago there was, until it closed temporarily a month ago, a special clinic course devoted to criminal problems.⁹ The instructional and administrative staff consisted of an attorney who was a member of the law school faculty, a stenographer, and a social worker who participated in the social investigation of the case.¹⁰ Cases were referred to this organization by social agencies and from other sources. The attorney,

⁸See COMMITTEE ON THE PUBLIC DEFENDER, Vol. VII, Collected Legal Aid Papers in the office of the National Association of Legal Aid Organizations.

⁹In the catalogue of the Northwestern University School of Law this course is described as follows: "Criminal Branch—Two hours of class work and three to six hours of field work per week, with one or two hours credit, depending upon the amount of work done by the student. Repeated each semester. Each student is required to investigate and prepare for trial a number of criminal cases. Upon the trial, he assists the attorney. In the event he has been licensed to practice he may be given the responsibility of conducting the trial."

¹⁰De Witt E. Wright, *The Administrative Machinery Required for Conducting a Clinic Course* (In manuscript), Paper read before the Round Table on Legal Aid Clinics of the 1932 meeting of the Association of American Law Schools.

whose task was administrative as well as educational, then selected a student for the particular case. He and the law student then proceeded to prepare the case for court, aided by the clinic staff. The investigation included visits to the accused in jail, conferences with witnesses, briefing of law, conferences with the prosecuting attorney, and similar tasks familiar to the lawyer. As a special distinction, however, the social aspects of the problem were dealt with elaborately. The student perforce found himself moving in a progression in which a broad and comprehensive effort was made to see the client as a whole in relation to the community as a whole. When the case came up for trial the student appeared in court with the lawyer and listened. After the case was completed there were conferences with the clinic staff and discussion of social problems so that the student received the well-rounded picture of which we have spoken.

At Duke University in Durham, North Carolina, a somewhat similar process is in operation.¹¹ There the criminal cases are taken as a part of the regular legal clinic work. The clinic staff, or that portion of it which is devoted to a consideration of criminal matters, consists of an attorney, a secretary, and a social investigator. Cases come to the office from the jail. The prisoner sends a request that the Clinic represent him, and a student and the social investigator are then dispatched to conduct the first interview. The second interview is between the student and the lawyer, and while the case progresses the legal and the social sides of it are carried on simultaneously. The student sits in at the trial and listens to what is going forward. He also participates in the proceedings whereby the case is brought to an end. The important thing to remember is that both at Duke University and at Northwestern University the case is not considered as an end merely because there has been a judicial opinion expressed. Closing the case may mean referring it to social agencies in the community or even the application of some special relief measures.

2. *The Student as a Clinic Problem.*

In clinic courses the instructor is concerned, among other things, with the student himself. What sort of man is he? What promise does he give of being a lawyer of which the school will be proud? Is he well-rounded or what are his present limitations? In particular, with respect to the subject of this paper, how does his philosophy of law practice fit in with the best philosophy of the present day regard-

¹¹First Annual Report of the Duke Legal Aid Clinic, page 36. (1932).

ing the function of the lawyer in the administration of criminal justice?

At the outset the students are inclined to take a theoretical and strictly legal view of the whole situation. They can understand the value of the ordinary testimony and character witnesses, but feel that a social investigation, such as a probation officer would make, is foreign to their field and of relatively slight importance. They can understand fighting the case through until the appellate court has passed upon it, but they do not see why it is of any particular value for a lawyer to study the family environment of the accused and endeavor to make constructive suggestions to the court as to the type of punishment which will be most effective for the particular prisoner. They can appreciate the significance of placing a man in jail, but do not clearly visualize his ultimate release when he faces the problems of readjustment in the community. They seem to fear to look over the fence which they have come to believe surrounds the law. In one sense this is not surprising. The law in its logical aspects supplies a reasonably firm foundation for the determination of perplexing questions. When one passes from this foundation to a field where the goal is the indefinite one of the welfare of the individual or of the community, the student feels the loss of certainty in methods of procedure and perhaps jumps to the conclusion that extra-legal processes are unreliable and should be eliminated from the lawyer's thinking.

Experience in the experiments at Northwestern University Law School and Duke University indicates that it is possible to bring to the attention of students an understanding of the case as an individual problem of the client, as well as a problem which may be discussed academically as a rule of law. The increasing interest of the clinic students in the flesh and blood client as a part of the legal problem seems to the writer to be the needed stimulus for greater participation by lawyers in criminal affairs. The technique and the machinery for accomplishing this are as yet all too faulty and ineffective. But a continued study of the problem and the recording, analysis, and classification of reactions of a large number of students will in time supply us with information which will help materially toward our ultimate objective. Let us now take two examples of this process where a more or less abstract conception in the student's mind is replaced by a flesh and blood client as the object of interest. Naturally a degree of anonymity as to the student and the case should be preserved.

3. *Examples.*

A good student was assigned to interview a prisoner in jail who had committed some minor offense in the field of larceny.¹² The accused admitted his guilt, told a fantastic story to justify himself, stated that he desired to plead guilty, and throw himself on the mercy of the court. At this stage of the interview the student terminated it and returned to the instructor, stating that it was obviously a case in which the Clinic would not be interested. When suggestions were made as to further activities the student showed considerable mental resistance and stated that any further investigation was a waste of time and that no lawyer should be expected to participate in such activities. After something of a struggle the student was persuaded to ascertain what could be done about studying the social and economic background of the accused and determine what sort of character witnesses might be available for giving the judge a reasonable basis for imposing sentence. In due course the student admitted that such a picture might be of value to the judge for this limited purpose. After some further urging the student conceded that information gathered by a social agency in the case might have some bearing on the picture. Eventually the student was brought around to the point where he was willing to communicate with the man's family and find out what the relatives thought about the situation, and what help they could give at the time of the trial and when the man was to be released from custody.

The original concept of the case in the student's mind appeared to the writer to be something as impersonal as a letter of the alphabet. Here was X, said the student, who was guilty, who was obviously a liar, and who had therefore passed beyond the ethical fence built around the field of the law. X was not a man to claim the sympathetic attention of a lawyer; he was not "worthy." Before the case was over this approach had been replaced by a picture of a human being, a part of the life of the community around him whose future as well as whose past was an interesting thing for any citizen to contemplate because, while the legal problem might pass out of the lawyer's office and leave little trace of its passage, the man himself was going to continue to be a neighbor. With proper treatment and attention he might be a better citizen. At all events here was a chance to give him some treatment which might save the state further expense in apprehending and incarcerating him for future offenses.

¹²See files of the Duke Legal Aid Clinic.

The second case involved a crime of violence.¹³ Our client, protesting his innocence, claimed an alibi, said that he was being railroaded by some men who wished to put him out of the way for several years, and that he deserved particular help in getting justice. The student, who was only a fair worker, prepared the case on the theory that our client's story was one hundred per cent true. When the matter came before the court, but only then, it was apparent to everyone, including the student, that our client had deliberately built up a false story in the hope that somehow he might escape punishment. The lawyer was able to satisfy the court that the Clinic had no personal interest in the case other than to allow the client to tell his story because he insisted upon his innocence, and that it was not the function of the Clinic to become judge as well as defense counsel in the same case. The student, however, tremendously chagrined at what he conceived to be some failure on his part to read correctly the client's character, became violently opposed to the client and anxious that harsh punishment be meted out to him.

He started out with an abstract concept of the crushing power of the state in criminal affairs being organized to deny justice to a helpless individual. This idea was quite theoretical and sprang out of the student's own inexperience. It had no relation to the real facts of the case but it colored them in the student's mind so that the coloring seemed an essential element. When the picture was suddenly shattered the student's natural reaction was to cast the blame on someone, and the accused himself seemed to be the logical person. As a matter of legal education it was not difficult to persuade the student that the veracity of a client under these circumstances is always a problem to be anticipated and faced by the lawyer with some critical judgment. The more serious task, however, came in convincing the student that even after the client had lied to him and to the court there was still a human problem which would be let loose on society after a certain number of days had passed. It was explained to the student that the continuing character of this problem made some other solution necessary than having the lawyer merely shut the door of his office and let the world go its way.

In neither of these two cases was any startling conversion effected in the mind of the student. The whole enterprise of clinical training in the field of law is too elementary and experimental at present to permit us to hope for perfect examples.

It is interesting, however, that in each case the first mental

¹³See files of the Duke Legal Aid Clinic.

picture was rudely shaken and a definite response made by the student to the facts. It is enough for our purposes at the present time if we develop a process by which such an abstract concept of the student may be supplemented by a picture of a human being.

From the standpoint of the public it is a desirable precaution that ideas as limited and unprofessional as those described above as originally arising in the students' minds be ascertained before admission to the bar. If, after reasonable effort on the part of the instructor, it appears these early ideas are definitely fixed and unchangeable, there may still be opportunity to see about delaying admission to the bar for a greater or less time, as the individual circumstances may require.

4. *Procedures After Admission to the Bar*

The foregoing material may be all very well with respect to training a man while he is in law school. The effectiveness of the enterprise, however, will undoubtedly be enhanced if the process may be made in some way continuous. Probably for most law school graduates the amount of active participation in criminal litigation that they can afford will be definitely limited. Consequently, our task is to provide a means whereby as many as possible will be led to participate in the active work with appropriate remuneration, and others may give their moral support. One answer to this problem is the establishment of legal aid service in the criminal courts.

In the past there has been much discussion of the relative merits of the public defender and the voluntary defender.¹⁴ To the writer this particular form of discussion appears unfortunate. The crux of the situation would seem to be not so much whether the organization is supported by public or private funds, but to see that, however, financed, there is an adequate service in this direction for those who cannot afford to pay a lawyer to represent them. Financing the work is a matter of administrative efficiency. Can one raise enough money

¹⁴For a fairly complete bibliography of material on the subject of the Defender see: *Appendix to the Report of the Legal Aid Committee of the American Bar Association for 1932*, 57 A. B. A. Rep. 175. See also the reports of the Committee on the Defender in Criminal Cases of the National Association of Legal Aid Organizations as follows: 1923 Proc. 75-83; 1922 Proc. 14-18; 1924 Proc. 25-41; 1923-24 Rep. of Com. 63-67; 1924-25 Rep. of Com. 31-38; 1926 Proc. 21-29; 1927-28 Rep. of Com. 105-127; 1928 Proc. 25-36; 1929-30 Rep. of Com. 38-50; 1929 Proc. 30-33; 1930 Proc. 28-32; 1930-31 Rep. of Com. 59-66.

for the private work?¹⁵ Can one keep the public bureau free from politics?¹⁶ The real problem is to maintain a high standard of work.

In whatever way it is established, a high grade legal aid service in the field of criminal law is an admirable atmosphere in which to continue the interest of the members of the bar after law school days.¹⁷ Into some of these legal aid offices will go certain of the younger men for at least a period of training. Others may serve as members of the boards of directors of such agencies. Because the work is of such a nature that no fee is charged, there can be no mercenary aspect. Thus an attitude of idealism may be perpetuated.

Owing to a number of circumstances a movement for legal aid service in the criminal field has been a matter of slow growth. Too often voluntary committees of lawyers start out bravely when a need is felt for some activity in this field. The general experience with such voluntary work is that it proceeds splendidly for a longer or shorter time, depending on the extent of enthusiasm of those engaged in it.¹⁸ Gradually, however, the fire dies out and the enterprise either falls on the shoulders of one or two over-burdened, conscientious people or else comes to an end. Experience for many years in the field of legal aid has proven to those best qualified to judge that service of this kind should be compensated for if it is to be a continuing process. Certainly, if we plan to use legal aid organizations as a means of continuing the education of lawyers with respect to the administration of criminal justice, the agencies should be sustained on a more continuous basis and kept at a high grade of efficiency. As no income is available from clients one looks to the community and seeks to make the service adequate to balance the expense.

5. *A Suggested Plan*

There are experiments in effect at the present time which suggest the direction of a specific remedy. Various apprenticeship methods for young lawyers are in effect in a number of states for

¹⁵See the Annual Reports of the Voluntary Defender's Committee of the New York Legal Aid Society, published as a part of the Report of the Legal Aid Society.

¹⁶See the Annual Reports of the Public Defender of Los Angeles County.

¹⁷For a dramatic description of the work of this organization see: Maguire, *THE LANCE OF JUSTICE* (Harvard Univ. Press, 1928) Chapter 11, *Finances and Voluntary Defenders*.

¹⁸For a description of the relative merits of voluntary committees assigned counsel without compensation, assigned counsel with compensation, and a definite legal aid society or public defender see the Bibliography on the general subject cited above.

varying periods of time. Their purpose is to continue in some orderly fashion the educational processes after the student is actually admitted to the bar.¹⁹ The fundamental idea is capable of great development. Their failure, insofar as they have failed, to provide a complete solution is caused by lack of adequate supervision, the difficulty of securing enough interested and qualified people to act as preceptors, the conditions of a modern law office—which is not equipped to do educational work, and similar factors.

The present system is ineffective in other ways. The students are scattered through many offices and comparison of one man with another is not feasible. There is no way for gathering statistics about the work or studying the operation of the system. The individual law office into which a student goes may be excellent, or quite unsatisfactory, from the standpoint of the education which the student receives. As long as these individualistic conditions exist, it will be possible for men to pass through this preliminary period without being thoroughly tested. The suggestion, then, is to crystallize this work, give it definite form, and regard it as an essential part of legal education.

Building on this foundation, it is suggested that a more definite instructional arrangement be established. The plan assumes the maintenance in each community of a strong central legal aid organization, carefully supervised as to its policies by the local bar association, staffed by an adequate number of highly trained workers, and receiving and disposing of all varieties of legal problems—much in the same fashion as the out-patient's department of a hospital does at the present time. This picture of a legal aid society is familiar in most of the larger cities of the country. The present plan assumes the addition of two factors that are not always found in legal aid societies. The first of these is an instructional staff; the second, a series of highly specialized departments in addition to the general practice.

If young lawyers are to be encouraged to serve an apprenticeship in such an organization, specially qualified instructors will be essential, and the training and maintenance of such a group will be a composite responsibility for law schools, legal aid societies, and

¹⁹For a description of one of the most elaborate of these plans see: *New Rules Promulgated by the Supreme Court of Pennsylvania as to the Registration of Students, the Study of the Law and Admission to the Bar* (1927) 2 Temple Law Quarterly 3; Walter C. Douglas, Jr., *Recent Changes in the Rules Regulating the Conduct of Preliminary Examination of Prospective Law Students in Pennsylvania*, *ibid.* 29.

bar associations. The extent of control which they would exercise over individual young lawyers and the question of whether such training should be compulsory or not is largely a matter of detail to be worked out in specific communities.

In line with the thesis of this paper, one portion of such an instructional work would be devoted specifically to the conduct of criminal cases. It should be comparatively easy to arrange with the judges that in the case of indigent defendants the accused should regularly be represented by this instructional organization and the young lawyers, in cooperation with some older lawyer and a specially trained instructor, should prepare and try the case. Such a procedure promises much. It will give the older members of the Bar a chance to observe the young men in action, under conditions where a mistake by the young man will not be of such serious consequence to the client. In the second place, the young man will gain confidence in his work and will come out equipped to do a more satisfactory piece of work. The young man's interest in the field of criminal law, if he has one, will be based on actual contact with the cases.

There is still a further advantage from such an arrangement. The bar may in time say to the young man coming into its membership, "We lawyers expect a man to be a well-rounded, general practitioner before he specializes. We are not satisfied to have a man specializing all the way through law school and in practice, fit himself into one particular niche and stay there. We want a well-rounded man and we want him to have the balance which comes from general practice. Such experience will enrich their minds and characters and will tend to make them better practitioners in the field of their own specialization."

6. *Conclusion*

The thesis of this paper is that one way to increase the interest of individual lawyers in the administration of criminal justice is by a combination of theoretical and practical contacts beginning in law school and continuing throughout a man's professional career. If we build machinery to produce this result and supervise its functioning we can depend upon the quality and nature of the product. It is submitted that, in addition to the theoretical contacts in law school and through bar associations in the field of active practice, there should be a very carefully supervised process of supplementing abstract conceptions in the mind of the student with flesh and blood

clients. It is unfortunate that the history of legal education indicates wide swings of the pendulum from practice to theory. It would seem as though a better balance may be maintained in the field if theory and practice move along side so that their inter-relation may be appreciated by the student. The plan suggested provides for such a balance. There is good reason to hope that the experiments now being made will point the way to a much more satisfactory administration of criminal justice.