Legal Aid Clinics for Ontario Law Schools

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LEGAL AID CLINICS FOR ONTARIO
LAW SCHOOLS

L. S. FAIRBAIRN

The purpose of this article is to evaluate the experience in the United States of student participation in legal aid. It is also an attempt to suggest that a variation of the U.S. 'legal aid clinic' is not only adaptable to existing Ontario schemes of legal aid and legal education, but will also yield substantial reciprocal benefits to law students and the Ontario Legal Aid Plan.

The meaning of the term 'legal aid clinic' is by no means exact. Generally, however, the reference is to a "law school sponsored programme for law student work on legal aid cases." The law school may participate actively by maintaining its own legal aid office and practice, or confine its sponsorship to supervision of cases assigned to students by a local legal aid society. The first organized adventure of law students into legal aid was by the University of Denver School of Law in 1904, followed by Harvard, Minnesota, and Northwestern in 1913. By 1950, the annual volume of civil and criminal cases handled by legal aid clinics was 350,000. In 1951, there were 28 law school-sponsored clinics and since that time the legal aid clinic programme has assumed increasing importance in American legal education.

I do not propose to discuss other aspects of the practical training of law students in this article such as the moot court and mock trial programmes which are present, in varying degrees of sophistication, in Ontario law schools. Suffice it to say that there is some doubt as to the efficacy of such programmes as practical training devices. In the words of Mr. Justice Rand:

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1 Johnstone, Law School Legal Aid Clinics 3 J.Legal Ed. 535.
2 Id. at 535.
4 Id. at 541.
5 Brownell, Legal Aid in the United States, 1950 Draft Report at 169; Supra footnote 1 at 541.
6 Legal Aid Clinics for Law Students: A Symposium 7 J.Legal Ed. 204 at 216.
The benefits of accessory devices, such as mock trials and analogous show-pieces, have always seemed somewhat dubious to me. There is too thick an air of make-believe about them. For a small percentage of students they may be of some value, but I doubt that all the motions of moot courts are worth the first real encounter exhibited to the young lawyer.7

The scope of student activity in all clinics includes “interviewing of clients and witnesses, research, drafting of pleadings, simple contracts, affidavits and releases; courthouse filing, correspondence, and all the preparation of office records such as files, dockets and timesheets.”8 In approximately one-third of the clinics, students make court appearances in small claims, police, or municipal courts.9 In addition to these fairly routine matters, some clinics have initiated a briefing service for lawyers,10 and a Criminal Research Department for incarcerated defendants.11 In at least one clinic a scholarship was established for a legal aid scholar to research long range problems which involve the local legal aid society.12

Participation in legal aid clinics has been said to give the student a solid grounding in law office management and routine, a better understanding of the role of judges, juries, and public prosecutors, a keener awareness of the functions of social agencies and the possible availability of non-legal solutions to many problems. Such participation has been credited with increasing the student’s professional self-confidence and giving him a sense of responsibility to underprivileged groups. The general tenor of arguments favouring legal aid clinics, from the point of view of benefitting the student, is that they give the student a greater appreciation of the practice of law, thereby counterbalancing the emphasis on abstract legal reasoning prevailing in most law schools.

Student legal aid clinics also help to satisfy the bar’s demand for more practical training for students, to provide good public relations for the law school, to relieve the pressures of time and work load on lawyers in legal aid clinics, to provide better quality of preparation with respect to legal aid cases, and even to preclude the socialization of the legal profession.13 Critics of legal aid clinics or, indeed, of any student participation in legal aid, argue that students are inexperienced, that it is difficult to obtain adequate supervision, that the educative value is negligible, that the law students do not have time, that practical education is not the job of the law school.

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8 Supra, footnote 1 at 542.
10 Duke University; 1 J. Legal Ed. 280 at 282.
12 Supra, footnote 3 at 21.
13 Bell, Legal Aid in New Jersey: The Answer to a Socialized Legal Profession, 1950 36 A.B.A.Jour. 355.
and, finally, that except for large centres, there are not enough cases to operate a clinic. Some legal aid directors feel that students are a nuisance and require too much supervision to be of real assistance, but the preponderance of opinion favours student participation, and regards it as a positive advantage to both the legal aid society and the student. Contrary to lay opinion, the quality of law practised by clinic students in small claims and petty criminal cases is often equal to or better than that practised by the harried legal aid society or volunteer lawyer.

The prevalence of legal aid clinics in the United States and the corresponding absence of school-sponsored clinics in Ontario may be explained by contrasting the development of theories of legal education in the two countries. In the United States almost full responsibility for legal education was assumed by the universities. The consequence of this development was the severance of law schools from the practice of law. Emphasis in the law schools, in true Langdelian fashion was placed on the case method, using upper-court decisions. The apprentice system was virtually abolished. The experience of a student crossing the threshold between reading law and practising law was barely short of traumatic for both the student and the bar. The resultant outcry by the bar for more practical experience made American law schools amenable to the notion of legal aid clinics.

In Ontario, however, the rise of the university law school and "formal academic instruction in the science of law" is a comparatively recent development and a skeletal resemblance of the apprentice system still remains. The trend in Ontario legal education has been toward shortening the period of apprenticeship and basing

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14 Legal Aid and the Law Student: Four Truisms 8 J.Legal Ed. 321 at 323. "A student, to be sure, lacks the experience of a practising lawyer. Even here though, we should note that legal aid societies and district attorneys customarily employ young lawyers. It is questionable whether the mere fact that one has passed the bar serves to distinguish him adequately from a good third-year student. In any event, the student has enthusiasm and, what is more, he will have time to prepare his case—a commodity that is not enjoyed by the usual harried attorney."

15 Id. at 324. Students often may assist an indigent defendant when his claim would otherwise be dismissed as too trivial to warrant the effort of a lawyer. "But students have time at their disposal, and they are young, eager and industrious. They would be happy to bring suit to recover a small sum, or a nearly worthless television set, and in so doing, they would benefit the individual client."

16 Supra, footnote 1 at 536-538.

17 A Four Year Law Course in Ontario, 31 Can. Bar Rev. at 894.

18 Frank, A Plea for Lawyer-Schools, 56 Yale L.J. 1303 at 1304.

19 Supra, footnote 17 at 894.

20 Id. at 894-96.
the approach to law-school study on the premise that law is a science or a philosophy rather than an art.\textsuperscript{21} This pedagogical approach tends to perpetuate and reinforce itself as more and younger law professors, who are post-graduate products of American or Canadian university law schools, come to the law schools with little or no experience in the practice of law.\textsuperscript{22} In 1957-58, for example, 31 per cent. of all professors and associate professors of law were post-graduates of American law schools. Only 4 per cent. had no period of general practice. In 1963-64, 41 per cent. were post-graduates of American law schools and 36 per cent. had no period of general practice. 62 per cent. of all professors with American post-graduate degrees had no period of general practice.\textsuperscript{23} Since professors who have had no period of general practice and who have been influenced to some extent by the Langdellian flavour of American legal instruction quite naturally tend to treat law as a science or philosophy, much greater emphasis is placed on the case method of teaching.

The notion that students may be ‘mobilized’ as a legal aid force to assist in many of the minor legal and administrative tasks which plague any legal aid operation has not been given serious consideration in Ontario.\textsuperscript{24} Although the degree of sophistication which legal aid clinics in the United States have attained is varied, a very high degree of sophistication is possible. For example, 76 Harvard law students handled 1345 civil cases (presented and pending), and 174 court appearances in criminal cases in 1963-64. The annual reports of the clinics for that year disclose a very high degree of self reliance. Neither the Legal Aid Bureau (civil matters), nor the Voluntary Defenders (criminal matters), is supervised by the Law School staff. A member of the Boston Legal Aid Society was available for consultation with the ‘Bureau’ one afternoon a week, and two members of a “Defender Committee” were available for periodic consultation with the Voluntary Defenders. (Rule 11 of the Massachusetts Supreme Court permits 3rd year students to appear on behalf of indigent defendants provided that the conduct of the case is supervised by a “recognized Voluntary Defender Committee.”) The day to day operation of the clinic is carried on entirely by the students, with secretarial, library, and interview facilities provided by the Law School.\textsuperscript{25}

\textsuperscript{22} See Rand, \textit{Supra} footnote 7 at 403. On the question ‘Should law professors have some period of practice before teaching’? “Some, undoubtedly, are endowed not only with superior minds but with an instinctive and imaginative sense of realism. Others, with equal reasoning or analytical gifts, would benefit, undoubtedly, from a substantial period of practice.”
\textsuperscript{23} See Teachers’ Directory, Association of Canadian Law Teachers, 1957-58 and 1963-64. In the 6 years preceding 1963 the proportion of Ontario law professors with no period of general practice increased by 32 per cent.
\textsuperscript{24} Meredith, A Four Year Course of Theoretical and Practical Instruction, 31 Can. Bar Rev. 578 at 591, where it was recommended by the Dean of Law at McGill University that legal aid clinics such as those in the United States be given serious consideration.
\textsuperscript{25} 1963-64 Annual Reports, Harvard Legal Aid Bureau, Harvard Voluntary Defenders.
It would appear that if the American success in this programme could be duplicated in Ontario, it would constitute a partial answer to some of the criticisms levelled at the ailing Ontario Legal Aid Plan. Among the criticisms which the present Joint Committee\(^{27}\) studying the plan must consider are these: there are not enough volunteers; the scope of legal assistance is too narrow (it ought to include appeals); the Plan is inadequately financed; the facilities and staff are inadequate to provide proper service and investigation.

Two questions pose themselves for resolution. Ought law schools to endorse and assist student participation in legal aid?\(^{28}\) What benefits, in the light of American experience, would accrue to the Ontario Legal Aid Plan by employing student assistance? The answer to the first question will be found by determining how closely the present conditions of legal education in Ontario parallel the conditions in the United States which first made American law schools amenable toward school-sponsored clinics.

In Ontario, legal education is accomplished in three stages. The first stage consists of three years of theoretical education in the classroom designed to give the student a general grounding in the principles of law. Theory is followed by one year of articles, or apprenticeship to a law firm. Ideally, the third and final stage should consist of a synthesis of theory and practice in the six-month Bar Admission Course.

As will be pointed out in the conclusion, it is not suggested that a prototype of any American clinic be transplanted \textit{in toto} to Ontario. In order to determine, however, whether the present scheme of legal education would be enhanced by school endorsement and assistance of student participation in legal aid, it is of value to speculate on the opinion of American clinic-advocates as to the shortcomings of the three-stage programme of legal education in Ontario.

As stated above, there is a marked tendency in the first stage to base legal instruction on the premise that law is a science or philosophy and to abandon the premise that law is also an art. In a few years when the law professors trained under the case method in Canada or the United States virtually supplant the teacher-prac-

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\(^{26}\) R.S.O. 1960, c. 207, s. 52.

\(^{27}\) The Joint Committee on Legal Aid was appointed on June 21, 1963. The function of the Committee is:

\begin{quote}
1. To enquire into and report upon the existing Ontario Legal Aid Plan;
2. To investigate and report upon Legal Aid and Public Defender schemes in other jurisdictions;
3. To consult with any person, organization or association and to receive their views and proposals regarding legal aid;
4. To conduct public hearings and receive deputations, briefs and representations in respect of legal aid in all its aspects.
\end{quote}

\(^{28}\) Practical Training in Legal Education, 1959 Can. Bar Jour. 121 at 125:

\begin{quote}
... However, we must acknowledge the fact that the busy lawyer just does not have enough time to devote to teaching students, and \textit{something should be done to transfer at least part of that responsibility to the law schools}.
\end{quote}

(italics mine)
tioner, the metamorphosis will be complete, and Ontario law schools will be virtual prototypes of the university law schools in the United States. Indeed, the similarity is already striking. Some observers, such as Jerome Frank, are highly critical of this approach to legal education:

The undiluted Langdell principles are nowhere in good repute today. But they are still the basic ingredient of legal pedagogy, so that whatever else is mixed with them, the dominant flavour is still Langdellian. Our leading law schools are still library-law schools, book-law schools. They are not as they should be, 'lawyer-schools'.

Frank was one of the radical advocates of clinical training for law students. He envisaged the core of a law school as a sort of 'sublimated law office' with law professors carrying on part-time practice assisted by the students. While his conception of legal education is unorthodox, his criticisms of the case method are most discerning. In another article he wrote:

The 'hunches' that produce many judicial decisions, the numerous stimuli that cause verdicts to be rendered by juries, cannot be discovered in the printed opinions of upper courts. For as noted above, a judicial opinion is not only *ex post facto* with reference to the decision. It is a 'censored exposition' written by a judge, of what induced him to arrive at a decision which he has already reached.

Frank believed that the law schools breed too great a reliance on *stare decisis*, and that students ought to be more aware of the factors that influence juries, the uncertain character of facts, how legal rights can turn on the faulty memory of a witness, the effects of fatigue, alertness, impatience, prejudice, conscientiousness, and open-mindedness of judges, as well as the methods of negotiating contracts, settlements, and controversies.

Where in the Ontario system of legal education does a law student acquire his sense of professional self-confidence, or professional responsibility, or his skill to select and use the tools, both legal and non-legal, which will solve a client's problem? Where does the Ontario law student attain his best understanding of the role of judges, juries, crown attorneys, and court clerks? Where does he develop the essential lawyer-skill of interviewing? Finally, where does he discover the host of social agencies which may be of assistance to a client? These are some of the advantages which students have experienced in clinic work. Ought the law schools to concern themselves with these aspects of legal education? It would appear that the tendency in Ontario law schools is one of increasing withdrawal from teaching the practice of law, and, as will be pointed out later, many of the attributes mentioned above are not always effectively dealt with in the period of articles or the Bar Admission Course.

29 *Supra*, footnote 23.
30 *Supra*, footnote 18 at 1312.
31 *Id.* at 1320.
32 *Supra*, footnote 21 at 911.
33 *Id.* at 918.
34 *Supra*, footnote 6 at 204-216.
35 *Supra*, footnote 1 at 536.
It cannot be an easy task for legal educators to determine the premise upon which they will base legal instruction. In the words of Henry Shepherd:

He must wonder, also, about his pedagogical methods. Should he try to teach law out of casebooks à la Langdell; or should he employ the clinical methods of legal aid work, actual and moot courts, and real and psuedo law offices, as Judge Jerome Frank wants him to do; or should he try to make the law school an arm of the university and seek to 'educate' his students, as he has been bid to do by Robert Maynard Hutchins? Is the case method outmoded, or even wrong, or should its use be ancillary to textbook and practical work? Are lectures a waste of valuable time, and are there sufficient time and manpower available for seminars? Should the pedagogical approach to law study begin from the premise that law is a science, a philosophy, or an art? Does the competitive marking system promote independence of thought or parroting and cramming? Would he himself have been a better dean or professor if he had spent more, or some years in private law practice.36

There can be little doubt that the object of the university law schools is, "(1) education in the qualities that should be found in the legal practitioner; (2) education that will train a man not merely in the work of solving problems of individual clients but of the society in which he lives; and (3) to act as a centre of research, criticism and contribution to the better understanding of the laws by which societies are held together."37 These objects were reflected by S. E. Smith, who referred to law as "the science and the art of regulating human relations,"38 and by I. C. Rand who suggested that it is the task of the law schools "to bring the minds of students to a familiarity with the great ideas of law. . . ."39 Some authors and educators have even suggested that every law school curriculum should contain a legally-oriented course in sociology.40 Dean Wright, of the University of Toronto law school has been most outspoken on the subject of law school objects. In one article, he adopted and endorsed the objects outlined by Professor Leach of Harvard: Students should be encouraged to develop a sense of relevance, comprehensiveness, foresight, lingual sophistication, precision and persuasiveness of speech and self-discipline in habits of thoroughness.41

What I am suggesting is that our schools must not be afraid to step outside the boundaries of law itself and examine the results achieved by our existing law: to assess and re-assess the results in light of possible objectives, indeed, in light of whatever information is available.42

Unfortunately, some of Dean Wright's unprofessed disciples in thought have not only stepped "outside the boundaries of law itself," but, to some extent, have convinced students that law has no boundaries at all. Often the student is left in doubt or entirely ignorant

39 Supra, footnote 7 at 405.
41 Supra, footnote 37 at 146.
42 Id. at 155.
of the state of the existing law, although, if asked, he could expound at length on what the law should be.

To eliminate the reader's possible misgivings, it should be stated that clinical training is not tendered as an alternative to, or substitute for, the teaching methods presently employed in Ontario law schools. It is submitted, however, that student participation in legal aid is not only consistent with the objects stated above, but, as American experience has shown, it is a valuable accessory device in achieving those objects. It is interesting that the seven objects pronounced by Professor Leach of Harvard (and endorsed by Dean Wright of the University of Toronto) represent the thought of a professor at the law school which has the most sophisticated legal aid clinics in the English-speaking world. Professor Bradway of Duke University, the foremost exponent of clinical training for law students in the United States, believes that in one sense clinic work is a new departure in legal education:

... but in another, it is a return to fundamentals by taking into the law school the best elements of the apprenticeship system ... to produce a tough mental fibre, well rounded as to rules of law and their application, a broad social vision, and a strength of character in the broadest sense.

It is one thing to speak of legal "qualities of mind", of the "great ideas of law", of the science of "regulating human relations", and of producing a highly trained "analytical mind":

But he must be taught to act as well as to think. He must learn how to react to problems which involve temptations to do things that are unethical. He must come to realize that law is only one method of solving human problems and not always the most effective method. He must gain judgment, experience, poise, and a professional manner. He must fit himself and his learning into a law office and a community as by an apprenticeship. The clinic course is aimed in this direction.

Again, it might be said that this is not the job of the law school; the young lawyer will have opportunity enough to seek these attributes in the early years of practice. This, it is submitted, is mere academic escapism. In any event it was not the view adopted by the Special Committee of the Conference of the Governing Bodies of the Legal Profession in Canada which was appointed in 1958:

We think that there can be no substitute for the knowledge that a student acquires from dealing with real problems, and with living people, and from observing a lawyer in actual practice. However, we must acknowledge the fact that the busy lawyer just does not have enough time to devote to teaching students, and something should be done to transfer at least part of that responsibility to the law schools.

In the matter of legal education, Ontario goes further than the United States. It requires a year of apprenticeship and a further six months in a 'Bar Admission Course'. The very existence of this postgraduate practical training makes it easy for Ontario law schools

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43 J. Bradway, Legal Aid Clinics in Less Thickly Populated Communities, 30 Mich.L.Rev. 905 at 921.
44 Id. at 915.
45 Supra, footnote 28.
to disclaim responsibility for practical training. How far do these latter two stages go toward filling the void left by the initial stage of legal training?

In 1947, the Committee on Continuing Education of the American Bar Association was examining the possibility of “post-law school internship training” on a national scale. The plan under discussion was identical in its essentials to the period of articles presently effective in Ontario. Jerome Frank’s criticism was characteristically pointed:

In other words, the idea is this: have law students spend three long years being mis-educated—i.e., receiving incorrect impressions of how courts and lawyers conduct themselves—and then have the students spend another post-graduate year unlearning those false impressions. Landell’s ghost still controls these professors.

Frank’s main concern was the apparent abandonment of the pedagogical premises that law is an art, as well as a science and philosophy. This concern was also expressed by G. L. Archer who suggested that the case method yields only knowledge which is the “superficial result of the mild compulsion of college classrooms,” and by J. Bradway who, while admitting that the case method develops a good “analytical mind”, pointed out that it does not follow that one with a good analytical mind makes a good practicing lawyer. The reader may well take exception to Frank’s contention that law students actually receive false impressions about the practice of law in the first stage of training, but how effective is the period of articles as a teaching tool to give the student an accurate impression? In discussing this point Shaw stated:

A knowledge of human nature and of the best method of handling clients can only be gained by actual contact. In law offices, however, contact with clients is necessarily and properly the sole prerogative of the employer, not the apprentice. Unless, therefore, the law office has a considerable volume of court work, which will involve meetings with witnesses, whether friendly or hostile, and direct contact with solicitors on the other side, in which work it may be possible to share, it may safely be said that the student or apprentice obtains no experience of that personal aspect of his profession which is at least as important as any other aspect.

Frank and Shaw are very much ad idem on the subject of “human nature” or the practice of law as an “art.” Who can refute Shaw’s contention that “artistry remains a quality of whatever is undertaken of a professional nature”? Shaw also points out that the

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47 Supra, footnote 18 at 1328.
49 Supra, footnote 43 at 915.
51 Supra, footnote 7 at 394.
practical experience gained by apprentices is by no means uniform. A student can gain a great deal from his apprentice year, or virtually nothing, or some degree of benefit between these two extremes. It is avoiding the issue to say that a law student should spend a stated length of time in a law office, without ever assessing what he has learned in that period. In as much as Shaw's comments were directed at a four-year apprentice system, their weight increases three-fold when applied to a single year of apprenticeship. His criticism is even more damming in light of the fact that only 22 per cent of the students enrolled in the present Bar Admission Course (1964-65) articled with more than one firm. It is probable that many of the remaining 78 per cent who did not have the initiative, opportunity, or inclination to change, were receiving an "over-specialized" practical training. The necessity for practical training during law school was felt by Dean Rand who suggested that attendance in law offices in "the periods between school years should, save in exceptional circumstances, be obligatory..." The Bar Admission Course, as mentioned above, should, ideally, be a synthesis of theory and practice. The success of the synthesis depends largely upon the extent of the practical experience to which the theory may be related. Since it is probable that a fair proportion of articled students do not receive excellent grounding, the Bar Admission Course resolves itself into another academic course on practice and procedure. But upon examination it appears that practice and procedure courses often are really courses in the substantive law of practice and procedure. In any event, certain aspects of practical training cannot be imparted by the Bar Admission Course which is, in large measure, a return to the lecture-seminar method of instruction. Since it is questionable whether the year of articles and the Bar Admission Course go very far toward filling the void left by the first stage of legal education, the withdrawal by Ontario law schools from

52 Id. at 364. "It must be reiterated that under the present system of apprenticeship the practical experience gained by each apprentice is, to say the least of it, not uniform. The creation of whole-time teaching staffs and the making of a law degree the sole qualification for admission as a solicitor, must obviously be accompanied by provision for practical experience, not merely on the scale attained under the present system of apprenticeship but, if possible, in a manner more uniform, more comprehensive and more continuous. This practical experience can be gained by the institution of legal clinics working either as an integral position of the university's law faculty or in co-operation with and in subordination to, legal dispensaries where such exist."


54 Supra, footnote 7 at 412.

55 Indeed, to a great extent, the Bar Admission Course proceeds upon this assumption.

56 Supra, footnote 6 at 208, also 245-246.

57 Supra, footnote 53. Ledain suggests that the Bar Admission Course is not a substitute for "that part of practical training which cannot be imparted in such a programme". 
teaching the practice of law is, it is submitted, premature. In short, the schools ought seriously to concern themselves with the question of student participation in legal aid.

What benefits can accrue to the Ontario Legal Aid Plan by more intensive training, organization and recruiting of student talent? It would be naive to suggest that student participation even approaches a complete answer to the inadequacies of the present Ontario Legal Aid Plan. The criticisms levelled at Legal Aid in Ontario ought to be recalled at this point.58

At the thirty-first annual meeting of the National Legal Aid Association in Washington in 1953, it was observed that . . .

Many of the veteran legal aid directors and attorneys felt that they could use students in manageable numbers in legal aid bureaux and handle the conflicting aims of training students and serving the public to the advantages of both.59

As was pointed out above,60 it is possible to have a highly productive student clinic with only casual supervision and virtually no formal instruction from the legal aid society, or by the staffs of law schools.61 The Harvard Voluntary Defenders appoint a student Training Officer. Training materials on interview procedure, office procedure, sample interview reports, step-by-step procedure in District Court appearances, and procedure for handling post-conviction research, were compiled. Travel directions, the constitution and by-laws of the Voluntary Defenders, the common crimes in Massachusetts, misdemeanors, felonies, criminal procedure, and even a check list of questions to ask in recurring situations, are among the materials with which each student is equipped.62 The problem of intensive supervision of students, therefore, need not arise. If much of the students' training can be left to the students themselves, under general surveillance by the staff of the law school and the local legal aid society, the benefits to Legal Aid of knowledgeable assistance in many of the minor matters which plague them is almost self-evident. The practical result would be to increase the volume of cases which the local society is capable of handling, and to remove some of the strain on existing Legal Aid personnel. Since the students' services are both gratuitous and available, a partial answer is found to the problem indicated in the criticisms63 that the Ontario Legal Aid Plan is both inadequately financed and does not have sufficient staff for proper service and investigation on legal aid cases.

In addition to easing the pressure in Legal Aid offices, it has been suggested that students can aid the expansion of legal aid

58 Id. at 5.
59 Supra, footnote 6 at 205.
60 Id. at 5.
61 Supra, footnote 1 at 544.
62 "Faculty members are rarely consulted on clinic matters at Harvard or Yale."
63 Copies of these materials are being studied by the Legal Aid Committee at Osgoode Hall Law School with a view to their adaptation.
64 See text at footnote 27.
activities by doing leg work, preparing research memoranda, representing indigent clients in classified cases, and initially interviewing clients and preparing a synopsis of the legal problem for the legal aid lawyer.\footnote{Supra, footnote 14 at 322.}

One of the criticisms of Legal Aid in Ontario is that its scope is too narrow and that it ought to include appeals. Of necessity the carriage of a case to appeal entails much time, expense and research. The notion of students preparing research memoranda is by no means novel. At Duke University, the clinic students have initiated a “Briefing Service” for lawyers desiring trial briefs.\footnote{At Duke University. With “encouraging regularity” the lawyers were adopting the student brief as their own. Supra, footnote 8.} The Harvard Voluntary Defenders maintain a separate Criminal Research Department and have supplied the Massachusetts Defender as well as incarcerated individuals throughout the United States with research memoranda. Certainly students could be of similar assistance to the Ontario Legal Aid Plan if it expanded its activities to include appeals.\footnote{Perhaps law schools in less populated areas would stress this type of participation to supplement any deficiency in legal aid cases. For an interesting experiment conducted by Duke University on locating legal aid clinics in sparsely populated areas see footnote 43. Supra, footnote 1 at 542.}

A survey of the Legal Profession in 1951 in the United States showed that between twenty and fifty law students participated in legal aid work in the average clinic. The statistics indicated that up to one hundred and fifty students participated in such work in a single year at Yale and Minnesota.\footnote{1963 Annual Report, Legal Aid Bureau, United Charities of Chicago. The students’ participation totalled 4,050 hours. “In addition to taking supervised initial client interviews, the students made investigations, did legal research, prepared cases, drafted documents and generally facilitated the work of the Bureau.” It is interesting to note that, in 1964-65, the Osgoode Hall Legal Aid Committee, in terms of participation, exceeded this combined effort by five members.} The 1963 Annual Report of the Legal Aid Bureau operated by the United Charities of Chicago reveals that it employed the assistance of 93 students from the Northwestern and University of Chicago law school clinics.\footnote{1963 Annual Report, Legal Aid Bureau, United Charities of Chicago. Supra, footnote 1 at 542.} While students formerly could not appear in court in Chicago, an interview in October of 1964 with Mr. Mayo H. Stiegler, Director of Member Services and Executive Member of the National Legal Aid Association, indicated that there was a rapidly growing trend to allow students to argue in court in that area.

These comments are not exhaustive of the means by which student talent has been usefully employed to the advantage of legal aid societies and indigent defendants. It is hoped, however, that this discloses sufficient evidence of the reciprocal benefits which have accrued to the legal aid societies and to students in their legal education. Unanimous endorsement of clinic programmes is to be found
among graduate lawyers who were former participants in such pro-
grammes. The values of clinic training as a supplement to theoretical
education at law school are beyond dispute. As mentioned before,
clinic training is not intended to supplant a sound training in sub-
stantive law.

We are agreed, I think, that it is desirable to offer a law student the
maximum training in the functional techniques and skills of law practice
consistent with sound training in substantive law.

Organization of student participation in legal aid in Ontario has
been largely ad hoc. There is no evidence of formal organization or
recognition of student participants by the Law Society, legal aid
clinics or the law schools. When student participation in legal aid
has been encouraged in Ontario, the response of students has been
enthusiastic. The educational value to students and the benefit to
the legal aid clinics, will vary according to the degree of sophistica-
tion in the organization of student participants. As pointed out above,
it is not necessary that the law schools, or the legal aid clinics become
too directly concerned with the detailed management of student or-
organizations, although some surveillance is essential.

It is submitted that Ontario law schools ought to be as concerned
with “the maximum training in the functional techniques and skills
of law practice” as is consistent with the existing programme of
teaching substantive law. The present tendency is to drift further
away from that “maximum”.

A law school, in initiating a student legal aid programme, should
proceed in several stages. In the first stage, maximum use ought to
be made of student energies to produce training materials of the type

69 Supra, footnote 1 at 539.
70 Supra, footnote 6 at 216.
71 Id. at 209.
72 At least this was so until 1964-65. By the end of this academic year
86 students from the Osgoode Hall Law School and 12 students from the
University of Toronto Law School will have handled slightly more than 100
legal aid cases in the Magistrate’s Division, and Family Courts. This repre-
sents between 7 and 10 per cent of the legal aid court appearances in York
County. The faculties of both schools are “considering” school endorsement
and assistance of the programme.
73 Since this article was written the Osgoode Hall Legal Aid Clinic (with
the appointment of two faculty advisers) formally received school indorse-
ment. Within the American definitions (supra, p. 1), it qualifies as the first
law school-operated legal aid clinic in Ontario.
74 Supra, footnote 68.
75 Supra, footnote 71.
employed by Harvard.\textsuperscript{76} Since Ontario students are permitted to act as "agents" for clients in Division Court, Family Court, and in Magistrate's Court on summary conviction, a reference manual should be compiled containing the step-by-step procedure in those courts. In addition to detailed procedure, this manual should include memoranda on rules of evidence, pleading to sentence, cross-examination of witnesses, proper interview methods, courtroom decorum and the preparation of trial briefs.\textsuperscript{77}

With this groundwork accomplished emphasis can shift to dealing with actual cases. Only third-year students should be permitted to argue cases, but the assistance of second-year students can be employed in preparation, thus lightening the work load of the third year student in each case and making it possible for third-year students to handle more cases, while sowing among second-year students the seeds of interest in legal aid.\textsuperscript{78}

The emphasis thus far has been on litigation because student activity in Ontario has, to date, been confined to court appearances for indigent defendants. As the programme expands, however, the periphery of activity will be less restricted. Ultimately, students could prepare investigation reports, interview stories, and research memoranda,\textsuperscript{79} acquiring, of course, the concomitant experience.

At least two faculty advisers ought to be appointed to act as a catalyst to the programme in its initial stage and later be available for general consultation.\textsuperscript{80} Only completed work and final theories of defence should be reviewed by legal aid personnel.\textsuperscript{81} As the programme matures and subsequent upper classmen acquire some cumulative experience, student supervision can supplement faculty and legal aid surveillance.\textsuperscript{82}

\textsuperscript{76} Supra, at 15.
\textsuperscript{77} Such a manual is being compiled by the second and third year students at the Osgoode Hall Law School. Such manuals were first used by Indiana and Duke Universities.
\textsuperscript{78} At the Osgoode Hall Law School the experience has been that two men working together work truly as a "team". Investigation and case preparation tends to be more thorough than is the case when an individual must shoulder the entire responsibility.
\textsuperscript{79} It is precisely this type of attention which "over-taxed" legal aid clinics are often unable to give cases.
\textsuperscript{80} Faculty advisers would assure a measure of continuity from year to year and provide general surveillance over the conduct of the programme. In addition to these routine tasks, the faculty would give periodic advice in "difficult" cases, act as spokesmen for the worth of the programme should it be publicly assailed, and aid in establishing student assistance in legal aid as a recognized programme in Ontario similar to the recognition obtained by student programmes in the United States. Faculty assistance gives additional prestige to the programme from the point of view of the legal aid applicant, and imparts additional confidence to student counsel. The constant development and improvement of the programme as an assistance to Legal Aid and as an instrument of practical education would be seriously impaired without such an endorsement.
\textsuperscript{81} i.e., to preclude unnecessary interference with the administration of legal aid clinics.
\textsuperscript{82} At Harvard periodic case checks are made by student directors. See Annual Report 1963-64, Harvard Legal Aid Bureau.
In the initial stage, the only school facilities required would be the use of a room for keeping files and for occasional interviewing, and some secretarial service.

A minimum of three student officers should be carefully selected by the two faculty advisers and the student government: a general head and Liaison Officer; an Office Manager, if permanent quarters were provided, and a Training Officer. All students desiring to participate ought to be examined in a short interview by the student officers to assure an easy familiarity with the training materials. Since service to the public is as important as the educative aspects of such a programme, membership qualifications should be established, but it would, indeed, be unfortunate if there were an over emphasis on scholastic achievement.

Such a structure, it is submitted, would yield the maximum benefit to Legal Aid with minimum burden on the law schools and legal aid clinics. Subsequent advancement of the programme would depend to a large extent on the educational authorities, and the requirements of the new Ontario Legal Aid Plan which will undoubtedly have a wider scope than the present plan.

Jerome Frank said that the difference between reading law and practicing law "is like the difference between kissing a girl and reading a treatise on osculation". Most law students are already aware of the difference. Legal aid and the law student would both be benefited should Ontario educators seek to unite the two.

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83 Members of the Harvard Legal Aid Bureau are chosen from the top five per cent of the class, while members of the Harvard Voluntary Defenders (criminal matters) are selected on the basis of a rigid interview given by the elected student officers.

84 e.g., Northwestern University Law School in Evanston requires 50 hours work in the legal clinic for academic credit. See also footnote 43, (supra), at 915 for a description of the clinic course at Duke University.

At a forum on "The Future of Legal Aid in Ontario" conducted at the University of Toronto on February 11, 1965, Professors Willis and Friedland were "doubtful" of the educative value of student participation in legal aid. Mr. Patrick Hartt, Q.C., was strongly in favour of such participation and stated that "Some of the best cases I have seen in Magistrate's Court were handled by students." Mr. Andrew Bruin, Q.C., M.P., indicated that student participation would be a valuable "supplement" to any proposed scheme of Legal Aid in Ontario.

85 Supra, footnote 18 at 1317.