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A LEGAL CLINIC

(The following is a memorandum sent by Dean Jorge Bocobo of the College of Law to the President of the University, recommending the establishment of a Legal Clinic. It is through the force of his arguments as set forth in this memorandum that the Board of Regents approved the recommendation.)

UNIVERSITY OF THE PHILIPPINES
COLLEGE OF LAW

Manila, August 27, 1918.

MEMORANDUM FOR THE PRESIDENT RE NEED OF A LEGAL CLINIC

Pursuant to your instructions, I have the honor to submit this memorandum on the need of a Legal Clinic.

General Nature.—The Legal Clinic idea has been adopted, in various forms, in the University of Copenhagen and in the Universities of Minnesota, Northwestern, Harvard, Yale, Tennessee, George Washington and perhaps other institutions of learning.¹ The plan to which the proposed Legal Clinic for the University of the Philippines is most akin is that now being successfully carried out in the University of Minnesota.² Dean Wigmore of Northwestern University, who is one of the foremost legal educators and legal reformers in the United States, advocates substantially the same plan as that now before the Board of Regents, for consideration.³ In fact he intimates the possibility of its establishment by the University of the Philippines.

The Legal Clinic is to be under the immediate charge of a member of the permanent faculty, who has had sufficient and adequate practice. The members of the Senior class will be assigned, in groups of three or four, to the Clinic for a period of time, possibly a week or so. The students on duty will not act as mere clerks of the professor in charge, but will be more or less like junior partners in an ordinary law office. They will directly assist throughout the stages of a case, whether it be taken

¹ See XI Illinois Law Review pp. 591, 595-598; and 27 Harvard Law Review pp. 161-2.

² For a description of the Minnesota Legal Clinic, and its successful operation, see Handbook of the Association of American Law School and Proceedings of the 16th Annual Meeting held at Chicago, Illinois, Dec. 28-29, 1916, pp. 150-155.

³ See XII Illinois Law Review, pp. 37-38.

to court or compromised. Credit will be given towards graduation for satisfactory work done in the Clinic, there being no necessity for changing the curriculum, for this work may come under "Practice Court", or "Trial Practice", or "other required work" provided for in the Catalogue. Further particulars are described in my memorandum of April 9, 1918, on this subject.

Advantages.—1. The students will have actual practice, thus applying their theoretical knowledge acquired in the class-room to real cases. As Prof. E. M. Morgan of the University of Minnesota says, the Legal Clinic "gives the student a practical demonstration of the law as it is practised".⁴ The value and limitations of proof, the credibility of the client and witnesses, the intricacies of practice and pleading, the incidents of a trial, the vitalizing of abstract propositions of substantive law, the discriminating of material from immaterial facts, and numberless other things will be revealed to the student by actual experience. The graduate will thus be able to practice law immediately upon passing the bar examination, without the difficulties usually met with by new practitioners.⁵ It might not be inappropriate to add that the Supreme Court, by extending the law course from three to four years and allowing law students to spend the fourth year either in a law school or in a law office, seems to desire that in the last year the practical side of legal instruction be emphasized.

It may be said that the Practice Court in the College of Law is enough. While I am not in favor of completely abolishing the Practice Court—for I believe it should be continued in a modified form side by side with the Legal Clinic—yet, inasmuch as the whole proceeding in such a court is a sham, no great benefit is derived therefrom. The medical student is not taught diagnosis and treatment by placing before him a man who is in sound health but is assumed, for the sake of "practice", to have certain symptoms. A sick man is intrusted to his care; our College of Medicine and Surgery assigns students to patients in the General Hospital. Neither does the student in Education—candidate for the high school teacher's certificate—get practice in teaching by conducting a class made up of his classmates who are assumed to be high-school pupils; in our College of Education, there is a University High School with real high school classes. At this juncture, I might remark that the College of Law is the only professional school of the University which does not furnish actual practice to the students. The medical students have their patients in the General Hospital; the Pharmacy students are trained in the Hospital Dispensary; the Veterinary students have laboratory experience and treat sick animals; the agricultural students work on the college farm; the Engineering students have their shops and

⁴ See Handbook of the Association of American Law School and Proceedings of the 16th Annual Meeting held at Chicago, Illinois, Dec. 28-29, 1916, p. 155.

⁵ See Handbook of the Association of American Law School and Proceedings of the 16th Annual Meeting held at Chicago, Illinois, Dec. 28-29, 1916, pp. 147-148; XXIII Case and Comment, p. 973; XII Illinois Law Review, p. 37-38.

laboratories; the Forestry students do field work in the Maquiling Forest Reserve; and the Education students get their pedagogical training in the University High School. But the College of Law depends upon the *artificial* moot court.

Prof. E. M. Morgan of the University of Minnesota Law School has this to say on the moot or practice court:⁶

"The striking defect in the practice court is its want of reality, its lack of the human element. In actual practice the client does not usually seek a lawyer until his affairs are pretty badly tangled; he does not distinguish the material from the immaterial facts; frequently he is uncertain or entirely ignorant as to essential points in his case. A most searching examination of the client, not only as to what he knows or doesn't know in the premises, but also as to the existence and location of persons likely to have any relevant information, is frequently necessary. The client may be a defendant against whom a default judgment has already been entered, or he may otherwise have unwittingly prejudiced his rights. In the practice work, these conditions cannot be reproduced. The student has no responsibility to a real client, no real rights to enforce or to protect; the so-called witnesses are ready to his hand; they are usually able clearly and intelligently to tell their stories, and to distinguish the material from the immaterial."

The conditions just named exist in our moot court. Many of our graduates have informed the undersigned, orally or in writing, that there is need of more practical work in the conduct of cases. This, in spite of their having had moot court work.

2. But if practical training in the application of the substantive as well as the adjective law is important, of greater moment is the inculcation, by actual example and experience, of the high ideals of the legal profession. The subject of Legal Ethics is taught in this college, it is true, but the teaching thereof is done in the classroom and is not drawn from cases which the students actually handle. In reviewing the history of legal education, which has passed from training in a law office to attendance at a law school, Mr. Hampton L. Carson of the Philadelphia Bar, in an address before the American Bar Association in 1914, said that by this change we have lost "to a menacing extent, that which gave tone to the profession. We have lost the old-fashioned preceptor, setting an example of deportment, of dignity, of professional morality, through meeting his clients in the presence of his students, or by talking familiarly to them of the standards set by tradition based upon the conduct of the best and purest in the profession."⁷

I believe in the law school method, but there must also be a period of training in a law office, for, as Mr. Carson has said, apprenticeship in a law office furnished opportunities to the pupil of "observing how a high-minded practitioner adhered in letter, in spirit and conduct to his professional oath to act at all times 'with all

⁶ See Handbook of the Association of American Law School and Proceedings of the 16th Annual Meeting held at Chicago, Illinois, Dec. 28-29, 1916, p. 150.

⁷ Report of the 37th Annual Meeting of the American Bar Association, p. 897.

due fidelity to the court as well as to the client'.⁸ By adopting the proposed plan, therefore, the University creates a powerful instrumentality which will make for the development of character. Mr. William V. Rowe of the New York Bar Association says that in a Legal Clinic "the student *lives* in an atmosphere of the law, and absorbs the spirit of its practice, day by day, in the course of actual dealings between lawyer and client. As in the case of the Inns of Court and the English barristers' and solicitors' offices, the student unconsciously develops in such an atmosphere, under the influence of character and personality working in the harness of the law, the trained professional conscience and practical sense—the instinct for right and the consciousness of wrong."⁹

3. The University, by turning out graduates equipped with such practical training as is necessarily acquired in a Legal Clinic, will contribute to a betterment of the administration of justice in the islands. The "law's delay" is often due to the inexperience of recently graduated lawyers. I will cite just two examples. If the young attorney would draft only undemurrable complaints and answers, or if he knew when he really has a tenable ground for demurrer, this pleading—which in most cases serves but to retard the course of a litigation—would not be so frequently resorted to. And a new lawyer who has no actual experience often attempts to introduce inadmissible or irrelevant evidence. The time wasted in the argument and decision on the propriety of proof goes far to protract a trial. The members of the Board of Regents will readily think of many other instances.

Incidentally, if the University takes the lead in this respect and other law schools in the Philippines should follow, no little improvement would be wrought upon our judicial system.

4. The Law Faculty will have additional material for study. It is to be expected that the professor in charge of the Legal Clinic will in many cases ask the opinion of various members of the faculty on cases falling under their respective subject, because each professor specializes in his line. This will afford the Law Faculty a wider field of research, based on actual cases.

5. Another advantage of establishing the Legal Clinic in the University of the Philippines is that our institution will be one of the first to carry into practice a method which according to Dean Wigmore is "the method of the future".¹⁰ Our University has acquired a high reputation in the United States because of the two years' college work as a pre-requisite to admission to the College of Law and also because its law course is a four-year and not a three-year course, in both of which innovations our University is among the first in point of time, and is ahead of most law schools in the United States. Why, then, should not the University of the Philippines be again one of the pioneers, by adopting the Legal Clinic plan? I venture

⁸ *Id.* pp. 897-898.

⁹ *XI Illinois Law Review*, pp. 597-598; 607-608.

¹⁰ See Editorial in *XII Illinois Law Review*, pp. 37-38.

to say that such a step will in no small measure add to the good name of our University as a progressive and wide-awake institution. The fame of our institution in America has more than a mere sentimental value. Thus, our graduates would be given full credit in the very best Universities; and the American people would have a still better opinion of the capacity of the Filipinos.

Possible Objections.—It may be said that when the Clinic loses a case the reputation of the University might be impaired. In the first place, the Clinic will accept only those cases in which success is reasonably certain. In this connection, I might state that as the College of Law has specialists in every branch of the law, who, as above stated, will naturally be consulted in doubtful cases by the professor in charge of the Clinic, there would seem to be little fear that cases in which there is great probability of failure might be taken up. In the second place, the offices of the Attorney General in the various States and in the Philippines also lose cases, and patients die in University Hospitals in the United States and in the Philippines. Yet I do not believe any loss of prestige has resulted in either case.

It might also be asked whether the experience to be gained by the students will be sufficiently varied to warrant favorable action by the Board of Regents. I do not expect that in the first few months there will be a stream of clients going to the Clinic. But I am confident that in time the office will have enough work to do, for various reasons, among which I may mention these: (1) Prospective clients will be sure that they will get square deal from the lawyer in charge, as he is a public official, particularly bound to keep faith with everybody; (2) They will know that such an official does not depend upon fees for his living, as he gets a regular salary, and hence he would not—indeed he will not—charge exorbitant fees as is done in many private law offices. Nor would the legal profession have any ground to object to the Clinic's requiring only *reasonable* fees. (3) The public will know that the professor in charge, who is himself an able and experienced lawyer, gets the advice of specialists in every line—the members of the College of Law Faculty. (4) Like a regular law office, the Clinic will have work other than the trial of cases. (5) There is a marked tendency among the Filipino people to look to the government for help and protection. In this respect, there are at least two fields in which the Clinic can render great service to the people. I refer to the collection of wages and the fight against usury. As for the latter, everyone knows how widespread and deep-rooted the evil is. The attorney of the Bureau of Agriculture has many cases on hand. With the establishment of the Legal Clinic, if the University offers its cooperation to the Bureau of Agriculture, the campaign against usury will receive added impulse and gain in effectiveness.

It is probable that in the first two years or so, the office will have very few big cases unless an old lawyer of wide fame is placed at the head of the Clinic. But the complexity of a case has no necessary connection with the amount involved: a small litigation may and often does raise many fine points of law.

Conclusion.—To recapitulate, the Legal Clinic is in successful operation in leading American Universities and is advocated by prominent attorneys and legal educators in the United States. Its advantages are: (1) actual practice of the law by students; (2) moral education; (3) more speedy administration of justice; (4) additional material for study by the Law Faculty; and (5) reputation to be gained by the University of the Philippines in the United States. In connection with the first point, one thing is to be borne in mind; the College of Law is the only professional school of this University which does not afford real practice to the students, the moot court being unsatisfactory for "lack of the human element". There is no lowering of prestige of the University if a case is lost; and the experience to be had by students will be varied. The Clinic can be particularly useful to the masses in the collection of wages and in the campaign against usury.

Like every other innovation, the Legal Clinic is open to doubts and is attended with difficulties. But I believe that in view of the advantages already set forth and the success it has attained in other universities, especially in the University of Minnesota,¹¹ it is worth while to try the experiment here. Individual opinions may be at variance in regard to the details of organization and execution, but there would seem to be no grave objection to the main idea. The Board of Regents will make such modifications as that body may deem wise. What the undersigned recommends most is that a Legal Clinic of some sort be established in this University.

Respectfully submitted,

JORGE BOCOBO
Dean, College of Law.