CASE PRESENTATION

That law students would benefit greatly from clinical training similar to that now provided in medical and dental schools is generally recognized today. Unfortunately, however, the wide variety of charity cases essential to the establishment of such a broad clinical program does not exist in the law. For while all the ills of the body and mind fall alike on the indigent and the affluent, the very poverty of the poor keeps them out of many of the most challenging and complex fields of legal controversy. And where a poor man has a serious claim (as in personal injury cases) it often promises a monetary recovery which will attract a practicing attorney and take the case out of charity.

This dearth of clinical material calls for substitute devices. Such devices, if they are to be a real substitute, must have both more breadth and more realism than the mock-trial machinery now in general school use. The present Yale three-unit seminar in Case Presentation is an attempt at such development. Its central idea is to give the student a chance to handle, in as realistic a setting as possible, a complete case from its first appearance in his office to its final disposition in court. In this way he is able to apply all his legal book learning to several types of situations, including the less-legal stages of client interview, fact finding, negotiations with opposing counsel, and arbitration. Complete realism, of course, can never be achieved in such a course, but it is surprising how close to reality it is possible to get when working with enthusiastic and cooperative students.

The course is limited to twelve students. Three cases must be run to take care of this number and, in our experience, no more can be handled if the supervising faculty member is to have time for anything else. Cases of dissimilar types are selected each term. Thus during the present term we are processing a commercial sales case, a labor contract dispute, and a trade-name controversy. The cases are usually actual ones which have been litigated and for which we can obtain not only a transcript of the record but also a complete set of exhibits. We have also experimented with the fabrication of case files with considerable success.[1]

The seminar group is divided into six teams of two each. Each team plays two roles in the course. It takes the part of attorney in one case and

[1] We obtain the actual case files from local attorneys, insurance companies, public utilities, and the American Arbitration Association. All of these, but especially the last named, have been most generous not only in opening their files but also in keeping on the look-out for good cases for us. The fabricated cases work out better in some respects than actual cases, since a greater amount of exhibit and background material can be included than is often found in an actual case file. They have the additional advantage of remaining in our possession, thus permitting re-use in later terms. Fabricating such a case, however, requires considerable time and thought, since every possible stage of the controversy must be worked out and all the necessary exhibits on both sides of the case must be carefully and realistically prepared.

of client in another.[2] There are two reasons for this. In the first place, it is hard to get clients in any other way. The client's job takes time, and when those in the course are required to handle this assignment it is made an accepted part of the "cost" of the course. In the second place, this device acquaints each student with the details of two cases instead of one, thus giving him a better foundation for understanding the general problems dealt with in the course, a greater interest in the proceedings, and an ability to evaluate more intelligently the performance of another firm of attorneys.

When the term begins teams are formed, but no one is told what case he will have. This lack of knowledge adds realism and interest to the initial client-attorney interviews. Separate conferences with the supervising instructor, at which assignments as clients are given out, are arranged for each team. At this time the clients are told briefly what facts led to the dispute, and are given the raw material in the file, such as transcripts, statements of witnesses, and exhibits. The clients are then expected to familiarize themselves thoroughly with the controversy and also with enough background material to enable them to play their roles convincingly for the rest of the term.

Much of the program's success depends on the willingness of the participants to do a thorough and convincing job in their client roles. We have had more success in this respect than we had dared hope for. The students, realizing that a good deal of the value of their own work as attorneys depends on how well their clients play the game, do their best in their turn as clients.[3] Perhaps their most difficult task initially is to tell a reasonable story to their attorneys without handing the whole case to them on a platter. Having some knowledge of the law, they must guard against sorting the relevant from the irrelevant and thus giving their lawyers leads which a real client would not supply. The only advice we can give them on how to handle this situation is to use restraint and common sense. This they have uniformly done.

At the end of the first week of the term, a general session is held at which conferences between clients and attorneys are staged. The opposing attorneys in each case are sent from the room, but the opposing clients remain

[2] In the assignment of roles to the teams, care is taken to see that the same two teams do not participate in reverse roles in two cases. To avoid this possibility, the assignments are worked out in advance in this fashion:

	Case 1	Case 2	Case 3
Client	Team 3	Team 6	Team 4
Attorney	Team 1	Team 4	Team 3
Client	Team 5	Team 2	Team 1
Attorney	Team 6	Team 5	Team 2

[3] Some of our students have gone to unusual lengths to fit themselves for their roles. They have talked to men in New Haven who are in the industry or position which they are supposed to represent to get the over-all feel of the situation; they have read trade journals to learn the vocabulary and acquaint themselves with the institutional pattern; and they have enthusiastically assumed and carefully maintained characters in keeping with the parts they have to play.

with the group to get the benefit of watching the performance, and are simply told to pass on to their attorneys nothing they hear.

Since the client's story is the attorney's introduction to the case, the facts first come to the attention of the attorneys as unsorted bits of information presented by a biased informant, so that the lawyers are faced with problems of finding facts and formulating theories which are much closer to the problems of a practicing attorney than those usually present in mock-trial work where the student attorneys work from a record or a condensed fact statement.

Each client-attorney conference is followed by a critical discussion. Stress is placed on the need for establishing cordial relations with the client and for creating an impression of confidence and understanding which will leave him with the feeling that he is in good hands. The client-attorney interview, however, serves mainly to introduce the attorneys realistically to their cases; and, except for pointing out obvious errors, little attempt is made to criticize the student's manner of handling his client. Our only guide would be personal taste, and we have not felt justified in inflicting that on the students.

After the attorney-client interviews, it is up to each team of attorneys to build its case and to evaluate it. In this process, the clients are always available for consultation. The clients are expected to disclose further information and the names of other material witnesses. These are usually willing draftees from the general student body, who are briefed on their stories by the clients as part of their job. Such documents as would not naturally be turned over at the first meeting are also furnished on request. But clients are not supposed to volunteer information even after waiting in vain for their attorneys to discover its importance and inquire as to its existence; thus any evidence missed by the attorneys remains missed throughout the case. Fabrication of evidence not in the file presented to the client at the start of the course is permitted only with the consent of the supervising instructor, and such permission is given only if the fact requested is one which probably was present but was overlooked in the actual case. There is one exception to this rule. Any real-life fact can be used without permission even though it is not in the file.[4] Some of the high points of our cases have resulted when such facts have been brought to light for the first time at the trial.

Two weeks are allotted for preliminary work in preparation for the next problem—the settlement conference with the attorneys on the other side. A meeting of the group is held in the interval, at which an experienced local attorney talks to the group about the techniques of negotiating settlements. The meeting is informal, "around the table," with plenty of opportunity for questions and discussion.

The stage setting for the settlement conferences is much the same as for the client-attorney conferences. One firm of attorneys is "in office" and is visited by the lawyers for the other side. The rest of the group is again present as audience. Before every conference, each firm (with the other

[4] Thus real weather reports, trade data, customs in the industry, and the like are always usable if they can be established as actual facts.

firm out of the room) gives the audience its idea of a reasonable settlement and how far it has been authorized to go by the client.

The student attorneys are faced at this stage of the proceedings with the dual problem of talking opposing counsel into an advantageous settlement and of convincing their clients that the proposed settlement is a good one. And they frequently discover that their client is more difficult to handle than opposing counsel have been. The importance of having thoroughly studied and evaluated his case before embarking on an attempt to settle is driven home to the student in these conferences as it can be in no other way.

The students are instructed to settle the case if they feel that it can and should be settled. Part of their grade is determined by the wisdom they show in settling or not settling, and by the terms reached if it is settled.[5]

The next step in each case is an arbitration hearing. Mr. J. Noble Braden, Tribunal Vice-President of the American Arbitration Association, has introduced this phase of the course with a talk on the arbitration process, presenting not only the history and legal background of arbitration but also giving advice on the proper way to initiate, prepare, and present a case in arbitration. Then come actual hearings, which are full-dress affairs before experienced lay arbitrators. This makes the students adjust themselves to an unfamiliar presiding official. The differences in types of arbitrators illustrated in the three hearings conducted each term have been most revealing.[6]

All necessary procedural steps are taken by the students to bring their cases to arbitration.[7] If the controversy involves a contract with an arbitration clause, the hearing is brought about in accordance with its terms. If no contract provision is made, a submission agreement is entered into. If the case is to be arbitrated according to the Rules of the American Arbitration Association, the regular steps set out in those rules are followed, including the submission of a panel of arbitrators to the parties for their selection of an arbitrator.

One arbitration hearing is held each week, and no limit is set for the duration of the hearing. It is started in the early afternoon and sometimes runs until well into the evening, though the average case is disposed of in the afternoon hearing. Witnesses are presented, examined, and cross-examined just as in an actual hearing.

After the hearing, a critique session is again held, with the arbitrator participating whenever possible. Detailed criticism of the performances of

[5] Settlement of the case, however, does not mean that the course is over for the settling attorneys. Despite the lack of realism this involves, the case is carried on from that point as if there had been no settlement. The students apparently have no difficulty in taking in their stride this necessary compromise with reality.

[6] We have enjoyed the maximum amount of cooperation from business men and lawyers who have been asked to sit as arbitrators and judges in our cases. Since this involves the giving up of a good part of one day on their part, this response has been most gratifying. Without such cooperation the course would lose much of its effectiveness, since presenting a case to a faculty member as arbitrator or judge is bound to result in a diminution of interest and effectiveness.

[7] Any procedural moves to prevent or stay arbitration by appeal to a court, if appropriate in the jurisdiction in which the case is laid, may also be employed by counsel at this time if they feel that such moves would be to their advantage.

the participating attorneys is given, with special attention paid to failure to take advantage of the flexibilities of the arbitration process, to poor organization of a case, and to failure to refrain from witness-baiting, or argument with opposing counsel, or other conduct likely to make a poor impression on an arbitrator. All through the critique the differences between arbitration and trial are pointed out, and the importance of presenting a clean-cut picture of the factual controversy in terms understandable by a lay arbitrator is stressed.[8]

The final problem in the course is trying the case in court. This relitigation at trial of the same issues that were arbitrated so dramatically points up the great differences between the two methods of submitting disputes that any loss resulting from the unrealistic duplication of proceedings is far outweighed by the teaching opportunities afforded by the contrast. In few other ways can the far-reaching effect of the technical rules of evidence on the progress and outcome of a trial be so convincingly demonstrated. After a student has struggled without success to get into the record a vital piece of evidence which he introduced in arbitration without the slightest difficulty, he clearly sees how much of the successful prosecution of a case at trial depends on knowledge of these rules and careful preparation of his case with them in mind. Several of our students have felt that this lesson, learned in this way, was the most valuable single contribution of the course.

A few lecture and work-shop sessions are scheduled, to be held before the trials. At one of these we have a prominent local trial lawyer or judge discuss with the group the generally accepted do's and don'ts of the courtroom. Another meeting is devoted to practice in the actual solution of some of the more common problems of evidence, such as, for example, how to lay the foundation for the admission of a hospital record. One student is assigned the role of proponent, another the role of opponent, and a third the role of witness. Problems and roles are assigned in the morning. That afternoon at the practice session they are worked out and the handling is criticized in our practice-court room with the instructor as judge.

In taking the cases to trial, the students observe all of the procedural rules and formalities. Pleadings are drawn and served by the attorneys, subpoenas are served, and pre-trial motions are argued and disposed of. In all pre-trial proceedings the instructor sits as the judge. For the actual trials, however, judges and experienced trial lawyers are invited to sit. Juries are used in those cases where a jury is available and is properly demanded, the jury being made up of volunteers from the student body.[9]

The trials start in the afternoon and run as far into the evening as is necessary to conclude them. The judge is instructed to have no special

[8] Full attendance at all arbitration hearings and trials is compulsory for the members of the course even though they do not actively participate in the particular proceeding being staged. It is felt that the experience of watching others work and of noting their errors in handling is of sufficient educational value to justify the time which must thus be spent. And all members of the group are expected to participate in the critique sessions, thus giving the participants the benefit of their impressions. It is gratifying to note how much more intelligent and pointed these criticisms become as the course progresses.

[9] In past terms the voir dire has been omitted to reduce the length of the trials, but we have decided to add this step to our trials this year, despite the additional time required, in the interests of further realism and training.

mercy on counsel, but to conduct himself as if he were sitting in an actual case. No evidence is admitted—no matter how essential to a case—just to "keep the trial going," and if a directed verdict is proper it is granted. This occasionally results in a short trial, but the knowledge that this is the way the trials are run also results in a high level of preparation.

Critique sessions are, of course, held after each trial, providing an opportunity to discuss and criticize in some detail not only the verbal skills exhibited by the attorneys in examining witnesses and arguing to the jury, but also the interesting questions of procedural and substantive law involved.[10]

After four terms of experience with the course, we recognize many ways in which it can be improved. The participating students themselves have made many useful suggestions, some of which we have already adopted and some of which we hope to incorporate in the future. The details of workshop and practice sessions particularly can be much expanded and improved. There is no limit other than time to the possibilities of expansion by the addition of further steps to the case development. Only this limit has prevented us from adding an appeal of each case—a feature which would be worth while not only for its own sake but also for its usefulness in driving home the importance of keeping an eye constantly on possible appeal when building the trial record.

The course might easily be expanded to a year, and we have toyed with this idea. But since this would halve the number of students who can be exposed to this training, and since we now have three or four applicants for each place in the course every term, we have not felt that such a move would be justified.[11]

Students are uniformly enthusiastic about the course despite the fact that it requires more hours of work per unit than almost any other course in the curriculum. Its popularity is probably due in the main to the fact that the work is fun and gives students the feeling that they are really "lawyering." After months of studying legal theories and rules in books, they are uniformly anxious to try their wings by applying this knowledge. But the value of the course, as we see it, does not rest alone on its provision of this opportunity to practice legal skills. It also gives to a student his only chance in law school to see a legal problem in whole. The interrelationship of the human and conceptual elements in litigation is brought into sharp focus, as is the way in which substantive and adjective law interlock and complement each other at all levels of practice. And the knowledge that there is much more to handling a case than knowing where to find the law or arguing in court—and what that more is—is a knowledge which we feel should be brought home to every law student at some point in his academic career. To realize most effectively on this collateral value, the course should

[10] Whenever possible, these sessions are held immediately after the trial, but if it has been unusually long they are scheduled for the next day. The importance of holding the critiques as soon after the trial as possible, so that the details of the performance will still be fresh in the minds of the members of the group, cannot be over-emphasized.

[11] One of the chief practical objections to the present course is that the amount of faculty time required to supervise the work is somewhat out of proportion to the number of students who participate.

be given to fourth termers rather than to sixth termers, as it now is, thus giving the participating students a final year of school in which to bring to their reading of appellate decisions the broader understanding and more realistic viewpoint gained in the course.

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