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Many Mchigan law alumni continue to inquire about the Clinical Law Program, now entering its fifth year of full-time operation. Prof. Al Conard's "Letter from the Law Clinic" in the fall, 1973, *Law Quadrangle Notes* gave a perceptive and entertaining glimpse into some of the case situations at the clinic and the types of learning in which clinic students are engaged. This article will sketch the development and operation of our clinical experiment in legal education. A future article will explore the goals, methodology, and problems of clinical legal education. A third and final article will focus on a particular "experiment within the experiment," that of a 1974-75 model project at Michigan exploring issues of legal ethics and professional responsibility in a clinical setting.

Background and History

Back in 1965, Prof. Jim White assisted alumni John Hathaway, Glynn Barnett, and others from the local bar in establishing and securing eventual OEO funding of a local legal aid program. Prof. White, with the aid of Prof. Allan Smith, who was then dean, and Judge Charles Joiner, then associate dean, helped draft and secure Michigan Supreme Court approval of a student practice rule (now GCR 921). Since that time, students from the Law School have been engaged in extensive volunteer practice in the courts of Washtenaw County under supervision of legal aid attorneys. Upwards of 75 students a year volunteer their assistance to this legal services program to help represent poor clients in the county. No credit has been given for these efforts, nor has this program developed a formalized system of training and supervision, though the legal aid staff attorneys have been generous in their individual supervisory efforts, notwithstanding unending caseload pressures.

In 1969, Prof. White developed an experimental clinical law course with the legal aid program for four credit hours. Following this experiment, an *ad hoc* Faculty-Student Committee on Clinical Law was formed to explore the future of clinical work. As a culmination of these efforts, the present Clinical Law I course was established in 1971.

Many forces coalesced in the clinic's establishment. Out of the concern for greater social involvement in the 1960's, many students were demanding more "relevance" in their learning environment. Members of the student body and faculty saw an opportunity for an institution which trained its members for a helping profession, and many for public service, to provide help and public service to the needy in the surrounding community. Other students wanted more "practical" learning or "skills training," whatever the forum. (Law School alumni surveys at U-M indicate many of the Law School "customers" from various classes suggest increasing practice and advocacy courses.) The growth of legal services and court cooperation provided a format where students could engage in the practice of law under supervision without bar membership. Funding also became available for experiments in clinical legal education from the Council on Legal Education for Professional Responsibility, Inc., a New York Organization fostering clinical work under a Ford Foundation grant.

The Clinical Law I Course

The Clinical Component: The Clinical Law I course is a seven credit hour offering for 30 second- and third-year students each term. These student-attorneys, operating in teams of two under faculty supervision, handle cases taken principally from direct court referrals and from the intake lists of the Washtenaw County Legal Aid program. While the Clinical Law Program is totally separate in organization, funding, and operation from Washtenaw County Legal Aid and the non-credit volunteer students from the Law School still working with it, the clinic has, from its inception, worked closely with legal aid, renting adjacent office space near the courts, sharing a law library, and handling numerous cases of clients who come to legal aid for help and who consent to being represented by students at the clinic.

Students in the course are exposed to divorce, custody, paternity, housing, welfare, license restoration, probate, consumer, credit, and bankruptcy law from the legal aid caseload, as well as juvenile deliquency and neglect cases, criminal misdemeanor, and civil commitment cases that come to the clinic by court or private referrals. Their practice ranges from administrative hearings, through the com-

plete range of trial court practice, and into the appeals courts when needed. Students only represent indigent clients in non-fee-producing cases.

While a "trivial" case may be taken on occasion because of bizarre circumstances (such as a "fishing without a license" case by a client who was hearing voices from "powerful places on high" and needed help with the heretical and opposing voice of the court), ordinarily the matters are common disputes that are likely to arise for many practitioners. However, clinic students can find themselves involved in legal battles in which most practitioners could not afford to engage. The clinic was involved in exposing the inadequacies of a local child care facility which resulted in a Senate investigation into alleged abuses. Other clinic students found themselves probing the limits to police searches in non-custodial arrests left unresolved by a recent Supreme Court case, or developing extensive briefs to help a trial judge escape the statute of limitations of the federal Truth in Lending Act when a merchant benefited at the cost of an innocent consumer. The local probate court has involved the clinic in numerous mental health cases to explore the contour of the new law, and Michigan's Supreme Court solicited an *amicus* brief from the clinic in the *Virginia Cramer* case.

The students do all the needed work on their client's legal problems including interviewing, counseling, research, drafting, investigation, strategy and decision-making, trial preparation, and courtroom presentations, including jury trials. They spend a minimum of 20 hours a week (25 hours in the shorter summer term) working at the law office or elsewhere on their cases, plus additional time for the clinic seminar. Most students are motivated to spend considerably more time on their cases.

At all stages of involvement faculty supervisors are engaged with the student-attorneys. They serve as the attorney of record on all cases, participate in and review decision-making, written and performance work of the student. They appear in court with the student-attorney, and work side-by-side as co-counsel throughout the term. While the goal is to have the student-attorney prepared as lawyer-participant in all situations, there are occasions when the supervisor will intervene and actually do portions of the lawyering work. However, deference by the supervisor has, on rare occasion, allowed an accounting for the special dividend of student status. In a drunken driving case, where the student had negotiated a plea to reckless driving with the prosecutor, the student's first and only words in court after the second count was added were: "My client wishes to plead guilty." After the judge swore the client and elicited the facts establishing the offense, the court ruled: "Due to the brilliant advocacy of the Michigan Clinical Law Program, I find the defendant *not* guilty. Counsel, congratulations, you won your first case! Don't expect it to be so easy when you start charging for it." The clinic was uncertain whether this was to be counted as a win or loss since we did not get what we advocated.

While cases are chosen by the supervising faculty members with a view of their suitability for educational purposes, the interests of the client are always of paramount concern. Attempts are made not merely to process cases, but to give them the close scrutiny necessary to identify and respond to all of the client's legal needs with complete and competent legal service.

What the students lack in experience can often be offset in part, if not totally overcome, by added efforts in research, pre-trial factual investigation, and preparation. A child neglect matter was won in a normally hopeless situation when a pair of clinic students, acting on behalf of the children, utilized two weeks available to them to complete a more thorough investigation of the family situation (and the mother's normal and negligent behavior) than the full-time staff at protective services had done in three months. In every case, clinic students are expected to interview all witnesses who will talk with them, obtain whatever information is available from opposing counsel, visit and photograph and/or diagram any relevant scenes. At least a week before trial they are to prepare all *voir dire* questions, *in limine* motions, trial and evidence memoranda to be presented, opening and closing statements, jury instructions, and all direct and cross-examination questions to be reviewed with their supervisor, often in a role-played exercise.

A careful balance is sought between the delivery of responsible legal service to the clients and providing the students with enough autonomy in case decisions so they develop a personal sense of responsibility for the final outcome. Student-supervisor tension can surface when the "senior partner" preempts the "junior partner" in what may seem an overly-protective manner. After 17 or 18 years of schooling, law students are tired of merely preparing to "do something" in a future professional role. They are eager and anxious to be "getting on with it" in their own actual cases, and resent any over-zealous faculty "rescuer" who reminds them of their student status. Yet, while the educational experience of the clinic involves complete immersion of the student-attorney into the new lawyer role, the concern for learning cannot take place at the expense of client interest. Part of the professional learning at the clinic includes protection of client interest and need, though this can be a hard learned lesson when at the cost of student autonomy or self-esteem.

It is hoped that as students gain more experience through the term they have a better capacity to work through a case, and the supervisory function and final faculty review of important actions take on a greater coequal relation.

Seminar Component: Each week, there is a two-hour seminar meeting which considers various lawyer functions—interviewing, counseling, factual investigation, trial preparation and presentation, negotiation, and legal ethics. Drawing upon the theoretical models contained in the readings, the seminar focuses on the problems of decision-making and action confronting a lawyer in practice.

For example, a seminar on trial preparation might turn to a problem of interviewing an adverse witness who does not want to talk with you and has initially refused. The principle to be demonstrated is that the interpersonal relationship created—be it one of trust, acceptance, respect, fear or the opposites of these—affects the factual information that is obtained for your legal theory. Students are pressed to draw on their readings from psychology and their own experiences, to do some hypothetical pre-game planning so that they might have a greater awareness and control over the "social space" that exists between the lawyer and adverse witness.

Students are first to list the various substantive issues of the case upon which testimony will be taken. Those issues upon which the hypothetical witness is likely, or might be induced, to testify are entered in a matrix diagram on the blackboard. Then in a separate column for each element selected, the "expected testimony" of the witness is entered. In the next column, various lines of "desired testimony" are entered for each issue (e.g., admission of the fact your client seeks to prove, establishment of minor omissions or discrepancies in a story that can be highlighted at trial, acknowledgement of an inability to observe initially, or recall with precision due to faded memory, evidence of the witness's suggestibility or tendencies to acquiesce to authority, exaggeration or demonstration of a bias to undercut the testimony). Then in a final column are entered alternative interviewing approaches that utilize psychological learning which might elicit information less like the "expected testimony" and more like the "desired testimony."

Assume the class was considering a case of resisting arrest where the student was to go out and interview the arresting officer. The defense is the arresting officer's use of excessive force against the young long-haired defendant. The matrix has been placed on the board, and it is expected first that the officer will refuse to talk, and if he talks, he

will be guarded about the matter and determined to justify his behavior. The seminar explores the following approaches which are exaggerated to clarify the point: (1) *appeal to sympathy* and the (2) *"rescue fantasies"* of many police (". . . I'm just a law student . . . this is my first case . . . my supervisor told me I had to get a statement of what happened . . . I'm scared . . . will you help me!"); (3) *disassociation from the client* and (4) *promise* (". . . the court assigned this case to us . . . I got stuck with it . . . I'm just doing my job like you, officer . . . this looks like a loser and he's in for it . . . let me know what happened, and I'll talk to the kid about pleading."); (5) *identification with the officer*, (6) *sympathy for officer* (" . . . being a policeman must be tough . . . my uncle's a detective . . . but never forgot being a target for so much anger and hate while on the beat . . . I understand there was a threatening crowd around that night calling you names."); (7) *ego satisfaction* and (8) *suggestion* ("you police are pros with a special talent for 'keeping your cool' . . . I'll bet you felt like smashing this kid's head, like he deserved."); (9) *indirection* (talk about any safe and mutually acceptable subject such as the weather, labor problems in pro-sports and "all the money they're getting," then after an interpersonal relation has been established in which it is agreed that "I talk" and then "you talk" switch topics into the case at hand hoping the interpersonal inertia will overcome earlier suspicion and resistance.); (10) *appeal to principle* (" . . . you can't get a fair trial if no one will talk to your attorney . . . even the guilty have a right to their day in court . . . what if your son got into trouble and faced trial and no one would talk . . ."); (11) *challenge* or (12) *disapproval* (". . . my client's got two witnesses who say you pushed him first . . . they say you're a liar," hoping for a defensive assertion from the officer); (13) *threat* (". . . I guess that this means we'll have to waste your time, our time, and the judge's time in a pre-trial challenge to the arrest . . . when you're under subpoena and oath, what's the judge going to think about us all having to be there taking up valuable court time because of your refusal to talk to the defendant's attorney . . ."; (14) use of *authority* (". . . the prosecutor said he had no objections to my talking to you (ed. if it is true) and wanted you to tell me the details so I can talk to my client about a deal.")

Students are warned of the confusion that inconsistent messages can cause, and the need to select methods that are congruent to one's personality and style or their contrivance will be manifest. One student who returned from interviewing a seasoned and fatherly type officer wanted us to withdraw from the case because the client was "no good" and deserved "jail or worse." In exploring what had happened at the encounter, the student discovered that lawyers had no monopoly on a two-way street of conscious manipulation, and this "nicest damn cop I ever met" had run several numbers on him.

Similar discussion would focus on other items in the matrix, such as how to get the officer to admit details of your defense ("he needed a little help getting into the car"); to exaggerate ("I never touched him ever, yet he went crazy and was attacking everyone"); to show bias and motive (". . . these hippie types can take care of themselves.") Again, students would be pressed to consider the likely perception the policeman would have of the defendant and defense counsel; what is his relation to his supervisors and colleagues; what pressures do they place on him; what is the hierarchy, value, and reward system of the police force; how does it relate to the prosecutor's office and court; how does this affect the officer's perception of his role before trial and in the courtroom. In each instance, students probe to find where there is room for movement by their conscious choice, and where there is none.

After discussing methods of getting facts, students then consider how such information can be preserved for impeachment at trial, how one should structure it into a cross-examination for best effect, and how one can orchestrate it in closing argument on a theme of one's own choosing. Students are encouraged to collapse everything into the trial situation so that the checklists of what do you want, how do you get it, how do you preserve it, how do you use at trial are considered in advance of investigation.

In another example involving a seminar on a negotiation, pregame planning and analysis would draw upon readings in psychology, decision making, and game theory to outline (1) areas of information available, (2) those areas of needed data including opponent's (3) scope of authority, (4) bargaining parameters, (5) past settlement pattern, (6) caseload or other pressures ("never tell me you're planning a vacation"), (7) state of preparation, (8) quality of work, (9) experience, (10) value system, (11) fee arrangement, (12) leverage points, (13) target points, (14) resistance points, (15) willingness to go to trial, (16) exposure risks ("getting beaten by a law student"), (17) reliability of witnesses, (18) jury biases. Students are pressed to consider: the importance of controlling the agenda, using or countering a threat, and avoiding deadlock; whether to make a first offer and what to look for in response; and how to gather information from an opponent's concession pattern. Moot negotiations are videotaped and analyzed in class to demonstrate how to read non-verbal signals for feedback on your approach.

Similar activities are undertaken in the other seminars topics. In addition to readings, students in the seminars are shown film and videotaped demonstrations of lawyer role-models performing certain legal functions, and the students engage in live or videotaped role playing for discussion.

The ethical limits on what representations one can make and on how far one can manipulate reality in investigation, negotiation, and trial are considered, as well as some of the personal risks of a professional role revolving so mightily around analysis, calculation, and manipulation. Alternative dispute settlement methods and their social consequences are considered in contrast to the adversary or "challenge theory" in which they are engaged.

The seminars seek to go beyond "cookbook" or "how you do it" formulas, and demonstrate a method of analysis of a piece of lawyering to understand its interpersonal, institutional, and social dynamics. In all seminar and individual student-supervisor consideration of a problem, the students are encouraged to draw on their clinical fieldwork experience as a learning base for inquiry, analysis, and verification.

Since the clinic cannot teach much about being a lawyer in 15 weeks, it is hoped that students are taught a method or approach to learning from their legal experiences that is more reflective, analytic, and self critical, that draws on "non-legal" readings and theories that are relevant, and that factors in personal, professional, ethical, social, and institutional aspects of a situation to supplement the substantive and skills aspects of the law. If clinical programs can provide students with varied experiences, adequate supervision, and enough time, encouragement, and opportunity for reflection and discussion (often absent in the first years of practice), it is hoped that students will learn a broader and more exciting approach to legal practice that they can transfer to the new fields of legal endeavors and experience they will confront after leaving Law School.

The students continue to be enthusiastic about the clinic. Oversubscription and waiting-lists for the course have increased each year. For those who take it, their anonymous evaluations at the end of the experience seem to confirm that their expectations for the course were fulfilled. One of the 1975 summer students concluded.

I was enthusiastic about the prospect of the clinic experience. The serendipitous glow of helping the first client has faded, as it should have. I came to law school with a specific goal in mind. Until now the curriculum—although often interesting—has had very little relationship to that goal. The clinic experience has shown me that the goal is within the realm of reality and has given me the knowledge and confidence to coordinate the law school curriculum toward the goal. My enthusiasm for the clinic is now based on reason. Thank you all very much!