

THE ROLE OF THE DUKE LEGAL AID CLINIC *

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In recent years, the legal aid clinic has received increasing attention as a pedagogical device. One of the pioneers in this approach has been the Duke Legal Aid Clinic course. Each year, this course, which is an elective for third-year students, with two hours credit, running throughout both semesters, is revised. New ideas are constantly being tested, incorporated, or rejected. The present state of the course's development should, therefore, be of some interest to those giving or contemplating the giving of such a course.

The present paper, describing the Duke Legal Aid Clinic course as given during the academic year 1955-56, breaks down conveniently into two parts: the objectives and the methods.

THE OBJECTIVES

The over-all objective of legal education, compressed into a brief phrase, is: to teach the student to think like a lawyer. The legal aid clinic has an essential role in that over-all project. Its specific task may be stated in a corresponding phrase, equally oversimplified: to teach the student to think like a general practitioner of law—more specifically, like an above-average general practitioner.

In thus limiting our field to general practitioners, we have disclaimed, for the present, any program of teaching above-average thinking to other groups of lawyers, such as legal scholars, judges, specialists, law clerks, and those lawyers who have one and only one client, whether public or private. It is enough for us, for the present, to find out how the general practitioner of better-than-average quality thinks and then to transmit that commodity to succeeding generations of students. We have elected to focus upon the general practitioner because he seems to us to be not only an essential figure in the public relations program of the profession, but one in real danger of being forgotten, overlooked, and unappreciated. His rôle has been thought by some to lack the glamour and perhaps the material rewards of, say, the specialist. For the law schools to neglect the general practitioner would, probably, do irreparable injury to the internal structure of the profession as a whole and to the respect in which it is held by the public.

There is precedent for our point of view. Consider, for example, the significance attached by the medical profession to its general practitioners. A medical student must become a competent general practitioner of medicine before he is allowed to go forward into the realm of specialization. This basic step is required, at least partially, for the benefit of the public. The practice would seem to be equally applicable to the area of law.

Now, what do we mean by the phrase "the thinking of the general practitioner." I suggest that his thinking should be divided into at least two

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parts: the intellectual and the emotional. If one considers law a science, then its study may call primarily for the intellectual type of thinking. But if we consider, as I suggest we are bound to do, the practice of law an art, then we ignore at our peril the emotional factors that influence the practitioner. I shall direct my attention to these emotional factors.

The general practitioner deals constantly and inevitably with three categories of objects: people, facts, and law. Ability to deal professionally with any one of these three is essential for anyone who aspires to above-average status as a lawyer. The lawyer who, because he does not know how to deal with people, fails to attract or to hold any clients is, indeed, a very lonely person. The lawyer who is dependent upon others to provide him with facts is at a loss when, as often happens, the responsibility devolves upon him personally to go out and get the facts in any specific case. Knowledge of the law is often important, but there are many cases where the general practitioner solves the problem, to the satisfaction of the client and in accord with professional standards, without ever researching rules of law. If he does have to refer to them, however, he needs to be able not only to find them, but to use them in a professional manner to obtain the results desired by his client. All this I include under the emotional aspect of professional thinking.

The next point relates to the quality of the thinking of a lawyer which is required by the general public before it will regard him as an above-average practitioner. At Duke, we have met this problem, on a trial-and-error basis, in the following fashion. We expect the student, by the end of the course, to reveal to us the possession of at least four qualities:

Professional self-confidence. This means that he must convince us that he "feels" like a lawyer. This is an emotional factor and comes about as the result of participation in the activities of the general practitioner rather than by observation. The legal aid clinic is a place where the student learns by doing.

Responsibility toward the program of the organized bar. This also is an emotional factor. The student must convince us that he feels he "belongs" to the profession; that he is "accepted." He must demonstrate the acquisition of this characteristic by his attitude toward making a contribution to the prestige of the bar, by pulling his weight and more. The legal aid clinic affords him this opportunity.

Professional self-control. The student must convince us that he has the ability to cope satisfactorily with the burden of innumerable details which afflict even the most fortunate lawyers and to use with discrimination and professional skill the tools of the above-average general practitioner to accomplish his results. To acquire this type of self-control calls for an enormous amount of patience and experience. It is acquired by participation rather than by observation. The legal aid clinic is the place where it can be secured as rapidly and successfully as possible.

Responsibility toward the professional way of life. I shall not expand this topic beyond the mere statement. It involves the ability to work cooperatively and creatively toward socially desirable objectives with persons trained in other than legal disciplines. The legal aid clinic gives the student some opportunity in this direction.

So much, then, for our objectives. Now let me speak of the methods by which we try to achieve them:

THE METHODS

How do we go about this job? There is nothing magical in our efforts. Rather, there is emphasis on the traditional blood-sweat-and-tears approach. All we can say is that it is easier for a student to learn to be a general practitioner of law by work in the legal aid clinic than in any other way of which we know. Even so, there is no easy way to learn above-average practice of law.

If, perhaps, one factor in our methods deserves comment, it is that of *repetition*. We are not content merely to tell the student.

- a. We *tell* him by lectures, individual conferences, the printed page, and mimeographed materials.
- b. We *show* him by a visual-aid program, consisting of charts, exhibits, still pictures thrown on a screen, field trips, and classroom demonstrations.
- c. We *supervise* him in small group meetings, when he, as a member of the group, is working out an assigned problem; individually, when he is handling a case of a real client.
- d. We *relax* the supervision as soon as he shows ability to proceed intelligently under his own power. We want him to be ready upon graduation either to hang out his own shingle or, if he prefers, to meet the best competition if he goes as a law clerk or otherwise into someone else's law office. In either event, we want him to be able to give a good account of himself as a general practitioner.

This is enough by way of introduction to the actual work we do. By way of elaboration, it is well to describe the day-to-day work we have been doing this year in the Legal Aid Clinic course. This pattern changes constantly from year to year as we find better ways or more important topics.

The First Semester

During the first semester, last fall, we gave the students the usual first-hand experience with real cases and clients. But in addition, in the classroom, in small groups, in individual assignments, we did the following and for obvious reasons:

In the first hour, we told the student what the course was about. We told him with handbook, mimeographed material, pictures projected on a screen, and the old standby, lecture.

In the second hour, we took the class on a field trip to the courthouse, at night, when we would be undisturbed. In groups of four, we piloted students through several offices to show them what records are kept there and how to get at them. The courthouse, as a source of information, is a matter of considerable interest to most general practitioners of law.

In the third hour, one of the members of the staff gave a lecture on searching real estate titles. Mimeographed material was distributed. Then we assigned each student a separate title to search. He was given two months

to complete the job and was required to report to us in writing what he found. Of course, we knew in advance what he would find. The exercise, while not too easy, was, at the same time, not too difficult. Now, every man in the class has some idea of how to search a title. The ice on that function has been broken.

In the fourth hour, I lectured to the class on trial briefs. We told them with a lecture; we showed them with exhibits. And then we assigned each student materials in a real problem from which he was required to produce a trial brief for a practicing lawyer in a real case. Most of the lawyers supplying this material were our own alumni. The student was expected to sit in at the counsel table when the case was tried. Now, every man in the class knows the reason for a trial brief and the way to assemble one and use it. The information is in their heads as well as in their notes. This last is of major importance.

In the fifth hour, I lectured to the class about the work we were to do in the classroom sessions. This had to do largely with two matters; details and professional tools. Patience in dealing with details is a desirable characteristic of the above-average general practitioner. So also is the willingness to use discriminatingly and skillfully the appropriate tool. Both of these characteristics can be taught and learned. Primitive man may have been content to work with his bare hands or with artifacts. We want our alumni to know as soon as possible when to use blacksmiths tools and when to use watchmakers tools and how to use them to the best advantage. It is here that we show the students some of the basic, over-all charts and exhibits in our visual aid collection.

For the next three hours, we gave some basic instruction in the art of legal letter writing. We are concerned not merely with spelling, punctuation, and grammar, but with the appropriateness of the letter. A lawyer, we think, should write not *a* letter, but *the* letter. There is a difference. First, we tried them with a series of three collection letters. They interviewed me as if I were a client and then wrote the letters on the basis of the information they are able to dig out of me. Second, we tried them with a series of three letters opening negotiations with an insurance carrier on a matter arising out of an automobile accident. Again they interviewed me. Maybe they got all the relevant facts, and maybe they did not. Of course, if they did not, the resulting letter was not always *the* letter. Third, we gave them a situation where a lawyer has bought a piece of land for the client for the purpose of setting up a filling station. The transaction, we assumed, was concluded. The client was out of town; so the lawyer was required to write a final letter closing out the whole transaction. We showed the students the whole transaction on the screen and then asked them to write the letter.

Beginning with the ninth hour and running for the next thirteen hours, we introduced to the class the subject of facts. We want them to know how to recognize, gather, evaluate, and marshal facts. I was the "client". They were divided into small groups of four men each. Each group interviewed me, the intention being to teach them how to get *all* the *pertinent* facts necessary for a lawyer to understand professionally his client's problem. Then, we gave them additional hours of exercises calculated to teach them how

to use the facts, once they are gathered and marshalled. The uses include preparation for legal research and laying the foundation for planning a campaign at law.

There was one exception to this routine. In the ninth class hour, we took pains to insure that the class understood fully how much the successful relation of attorney and client depends upon complete confidence by the client in his lawyer. This confidence does not usually come automatically. The lawyer should help it along. To emphasize this aspect of thinking, I invited a psychiatrist to lecture to the class on the method by which he went about gaining the confidence of his patients. Of course, the two situations are not entirely apposite, but we believe that the students understand the thinking process better if they are told about it by a member of a profession so well known for its ability to deal with mental matters.

It was not until the twenty-third hour that we switched to another subject. Here we started to give the class some orderly idea of how to build a legal document. I use the word "build" intentionally because our work is functional and "building" suggests that there are methodical stages in the functional process. In this hour, we dealt, in small groups, with the law partnership agreement.

In the twenty-fourth hour, we studied as a class, not the general matter of building a document, but rather one of the most important stages—the selection of the best document to fit the client's needs and to accomplish for him all that we can. A formbook will help in the matter of routine draftsmanship, but it requires something more than a formbook to determine the best solution of the immediate problem and the document which can best be employed in that solution. This is a question of professional imagination, experience, and judgment.

This brings us to the end of the classroom work of the first semester. Two additional matters should, however, be mentioned. Twice during the semester, I met each student in a personal conference. The first time, we talked about a lawyer's fees; the second time, about the various materials a lawyer should have in his office in order to be able to give his client prompt service. Further, during the semester, each day, a student was on duty in the law school office of the clinic, receiving and handling, under supervision, the clients and cases which happened to come in. In similar fashion, three days a week, a student went to the downtown office, where other members of the staff, who serve part-time, took him through a variety of experiences from watching the trial of a case to discussing some particularly interesting legal problem the staff member was then handling. The idea was that by osmosis something would rub off the lawyer and be absorbed by the student. At least the latter had the chance to ask questions which he might not have raised in the classroom. If he doesn't ask, at least he has had the opportunity.

The problem of student time is on our minds. Each student keeps for us a record of the time he spends working on cases and problems. So far, the record does not disclose that any student has spent more time on this course than we might expect him to spend on any other two-hour course.

The Second Semester

During the second semester, the thread which holds together the series of classroom exercises is: the use of facts in solving a client's problems. There are several ways of solving a client's problems according to law. Of them, we have time in the present course to illustrate three: education, conciliation, and litigation. Our approach is functional, and not the traditional topical one.

During the first hour, we demonstrated what we mean by the phrase "using facts to solve a client's problem." Our illustration was a litigation proceeding by which a person was committed to a mental institution for observation. We showed the students the necessary papers containing the essential allegations of facts. We presented evidence in support of these same allegations—another way of using facts. Two of the staff members then argued the facts according to a prepared script—still another use. And finally, as judge, I made a ruling—still another form in which facts may appear. The situation was then thrown open to questions and discussion.

During the second hour, a staff member lectured on how to prepare a criminal case for trial. We distributed mimeographed material. We assigned to each two students an actual criminal case to prepare for the prosecution. The students, working in pairs for mutual protection, were expected to investigate the facts. (A police escort is supplied if necessary.) They then prepared a trial brief which was submitted to the Assistant Solicitor, and from it, he often tried the case. The students then sat down with the staff member for a post mortem of the case. At the conclusion, the ice in another professional procedure was broken.

During the third hour, we returned to the main semester theme of using facts to solve a client's problems. The topic during this and the fourth hours was education. In education, the lawyer solves the client's problem by providing him with a commodity which may be either information or advice or both. This hour, we illustrated the transmission of information. A staff member impersonated a client. The student, in the presence of the rest of the class, interviewed the "client" and after finding out what his question was, was expected promptly to supply the correct answer. For the convenience of the student, the problem selected was one for which the answer could be obtained readily from the statutes. On the desk, before the interviewing student, lay the correct volume of the statutes. The student had the dual task of keeping the "client" satisfied with one side of his mind, while with another, he searched for the answer and then formulated it appropriately for transmission. It is harder than one might think. It was not rendered easier by the fact that the student knew that everyone else in the classroom was thinking how he would handle the matter if he were sitting there. It is hard, but desirable, for a student to learn bit by bit to function under pressure. The consequences of a mistake here are not nearly so serious as they would be if the student were dealing with his first real client.

During the fourth hour, we held a similar session. Here the commodity which passed from student to client was advice, or perhaps advice and information. This challenge was even more exacting than giving information

alone. In all of these class sessions the students had been supplied in advance with the tools to use. Our question was how much ability had been demonstrated in their use.

During the fifth hour, we regretfully left the area of education and proceeded to a more difficult professional method of solving a client's problem—conciliation. Conciliation, as we use the word, involves a client and an adversary. The lawyer's function is, if possible, to accomplish an out-of-court solution of the differences. We had a series of four exercises illustrating aspects of this method of using facts for the benefit of the client. They proceeded from the simple to the complex. The first was a dispute between attorney and client as to a fee. We handled it as a demonstration. Two staff members, one the lawyer, the other the "client," took part with a script. They went over the script material twice. Then we threw the meeting open to questions and discussion.

The next exercise was one for the small groups. It involved an attempt at compromise of a claim for damages arising out of an automobile accident. In the following hour, we reviewed.

The next exercise was also one for small groups and involved a meeting of creditors of a partnership which was facing possible bankruptcy. We devoted one hour to feeling out the position, another hour to discussing proposals, and a third for review.

The last exercise was also for small groups and involved the efforts of the attorneys representing a group of small businessmen in a small town to find some way of protecting their clients from the anticipated invasion of a series of chain stores.

Following each of these small group meetings, we had a review session in which the groups reported to the class what they had been able to accomplish. We also followed through with exhibits of various sorts of solutions and the legal documents appropriate to them. Thus, the interested student could see the pattern of continuity. There was time for questions and discussion. At the conclusion of this series, we think the students had a fair idea of how to handle any conciliation meeting and how to use both the facts and the appropriate tools in the interest of their clients. This is a slow-motion procedure, an intrasquad practice session, a drill. Later they will be prepared to handle the real thing.

During the thirteenth, fourteenth, and fifteenth hours, we had something of a breather. We invited outside speakers to discuss with the class matters which are not touched upon in other courses in law school but which appear important for a man who is going to hang out his own shingle. The area of possible topics is enormous, and any three are subject to all sorts of objections. But at least we make a beginning of reminding the student that legal education is a life-long task. This year, the three topics were Patent Law, Workmen's Compensation Procedure, and Cross Examination. Next year they may be quite different.

In the sixteenth hour, we returned to the process of using facts to solve a client's problem by litigation. It is important to note that in this course, we are only incidentally interested in the *law* of practice and pleading. That calls for a topical approach, and ours is functional. Most courses in practice and pleading emphasize the substantive law of the subject; we are concerned

with method, quite a different matter, but, nonetheless, important for the general practitioner of law. In this hour, we gave the students experience in how to deal with a lay witness. There is, of course, no substitute for a flesh-and-blood witness. So, we supply the best we can in that direction. We have worked out a cooperative arrangement with the School of Nursing at Duke University by which certain of the student nurses become witnesses. The Legal Aid Clinic class was divided into groups of three. One man acted as judge; one had charge of the direct examination; the third took care of cross examination. Half an hour was devoted to the working out of a problem by this team of four students: three from the law school and one from the nursing school. To these were added two other student nurses, one of whom was used in an advisory capacity by each side.

The problems which were used dealt, naturally, with situations where the nurse had done or failed to do something which might amount to negligence. The facts were contained in hospital or other nursing records. The problems had been developed under the supervision of the Dean of the School of Nursing. Essentially, they were real cases rendered anonymous. We have had good success in these exercises. The benefit to the student nurses is experience in appearing in court as witnesses.

In the next four hours, we presented the final series of classroom exercises in the art of using facts in litigation. The class was again divided into groups of four. In each exercise, there were four roles to be played: judge, attorney for petitioner, attorney for objector, and assisting attorney. With four students rotating, each man got a chance to play each of the roles. The problems were supplemented with further material from our visual aid collection. In one hour, the problem was a petition for the changes of name of minor children. In the next hour, the problem was the settlement of an intestate estate with other complications. In the third hour, we dealt with an extradition proceeding. And finally, we gave the class a chance to see what it is like to handle a matter before a justice of the peace instead of the traditional moot court argument before an appellate court.

The most absorbing exercise was the last one—a moot jury trial or portion thereof. Here again, we were concerned primarily with the use of facts. So, we supplied the students with expert witnesses. The class was divided into groups of four. This allowed two students as counsel for plaintiff and two for defendant. An alumnus acted as judge. There was one expert witness on each side. He was a student from the cooperating school. A jury of undergraduate students was brought together. The exercise took an hour. This year we had five different facts situations. Two of them were presented by a member of the faculty of the School of Medicine, two by members of the faculty from the School of Engineering, and one by a member of the faculty from the Forestry Department. They were based on real cases in which they had been expert witnesses. Sometimes we have had several hundred spectators.

So much for the classroom portion of the second semester.

Additional Exercises

Several additional exercises deserve mention:

Individual conferences. I had, this year, two second-semester conferences with each student. The first one took up what a lawyer may, or more

properly may not, do to make himself available to clientele eager to pay him fees. The second dealt with the concept that *a letter advertises a lawyer*—how may it advertise for better rather than for worse? There are several other matters which I would talk about if I had the time.

Field work. The students continued to go to the downtown office for conferences there. This year, we have had a new county court set up. We made arrangements with the judge and clerk for the students to spend some time with the clerk of this court, finding how he operates, and sitting in the courtroom studying various styles of forensic delivery on the part of the lawyers who appear. The student comments are rich.

The examination. One cannot do justice to this in less than several hours. It is different from orthodox law school examinations. It is probably the most difficult test the students have faced in the three years within the ivory tower.

The Grading

Our grading is, of course, largely a subjective matter. I observe a student write a letter, interview a client, receive criticism, fail to appear for an appointment, and I put down on the grade sheet what I think of him. But the other members of the staff, including the secretaries, also grade him. By a cooperative arrangement, we arrive at something composite which seems to me about as fair as we can make it.

Each student is graded on each case he handles, at the end of each month, at the end of the first semester, on each class exercise. This results in a mass of grades. It also shows us which students are progressing during the year, which are standing still, and which are moving backwards in relation to the class as a whole. What we discover about a man is interesting to prospective employers. It should be of even more interest to boards of bar examiners. To the student, it should be of the highest constructive value. Some of the men are able to learn and profit by it. Others find criticism too harsh for their sensitive natures and prefer to fight back. It is, I suggest, a sign of maturity to be able to profit by criticism. Specifically a student is graded on such items as the following:

- a. At the conclusion of each case:
 - adaptability,
 - dependability,
 - attention to detail, and
 - ability to organize material.
- b. At the end of each month he receives a grade on:
 - ability to work with people,
 - ability to deal with people, and
 - ability to profit by criticism.
- c. At the end of the semester we are interested in:
 - ability to plan and carry out a plan of campaign at law,
 - professional judgment,
 - sensitiveness to ethical considerations,
 - ability to meet the unexpected,
 - creative ability, and
 - professional initiative.

Here is a brief and, therefore, inadequate outline of the course. It still has a long way to go. But we are not ashamed of the progress it has made.