THE CLASSROOM ASPECTS OF LEGAL AID CLINIC WORK

LEGAL AID CLINIC courses have received substantial attention in legal periodicals. Emphasis has been placed upon the dramatic contact between the law student and a flesh and blood client, and upon the maturing and inevitable responsibility which instructor and student share. In addition to these activities, and in preparation for them, there have grown up at the Duke Law School, in response to demonstrated needs, certain classroom exercises. They supplement the handling of actual cases. Experience has indicated that it is fair, neither to the student nor to the client, to require an inexperienced neophyte to handle a real case.

The process of learning how to practice law in the grand manner may be facilitated by a combination of classroom work and supervised contact with the actual legal problems. The object of the present paper is to describe parts of this process, but it should be kept clearly in mind that classroom instruction is only a part of the entire Legal Aid Clinic course.

The phrase "classroom instruction" as applied to clinic work may raise in the mind of the reader the thought that what is given is substantially the same as in "moot court" or "practice court" courses. A closer examination will reveal fundamental distinctions in the objectives, material, and method.

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1 Much of the material is collected in Bradway, The Objectives of Legal Aid Clinic Work (1939) 24 WASH. U. L. Q. 173; See also Brown, Lawyers and the Promotion of Justice (Russell Sage Foundation, 1938) 95 ff.


3 Reed, Training for the Public Profession of the Law (1921) 281 ff.
Among the clinic objectives are some of immediate value to the student: a slow motion process, providing a picture of certain phases of a case in action, from the time the client walks in the door until the files are finally closed, with emphasis upon certain critical stages; a focusing of student attention upon certain considerations which should weigh heavily with a practicing lawyer at each of these critical stages; the development by participation of experience and orderly habits of dealing with a case in motion, in addition to those already acquired with respect to a case in a case book. Long time goals include: developing in the rising generation of law students a legal technique in the handling of cases; improving relations between the bar and the public by encouraging each lawyer to recognize the extra-legal as well as the more narrowly technical tasks involved in connection with the client and his case; promoting a broad professional view of the functions of the lawyer. The purpose is not to give training in pleading, court room demeanor, and the trial of particular issues; but the development and presentation to the student of certain situations in a variety of legal matters—mostly outside the court room—in which the lawyer must do a substantial amount of thinking.

The class room material consists of actual cases (not hypothetical) already handled by the Legal Aid Clinic, finally closed, and, with due respect to considerations of the confidential character of the information, rendered unidentifiable. Because one cannot bring a flesh and blood client into the class room as the surgeon does in his medical clinic, a group of lay volunteers act as "artificial clients" and present the facts of the particular case. Note that a lay person, and not the instructor or a law student, is used.

A law student, selected from the class, acts as the attorney. He goes forward with the interview and gathers the facts. Then there is a class discussion of the manner in which the situation was handled. Later, the instructor has a brief individual conference with each student as to what he got out of the experience. From this simple basis a wide variety of exercises has been developed.

Other courses at Duke Law School which deal with some aspects of the same problem as those considered in Legal Aid Clinic work are: a first-year course in Legal Bibliography; a second-year required course in Research and Briefing, and a course in Practice Court. The Legal Aid Clinic approach to the material is so different as to constitute a new course. It is assumed that the students have learned certain principles in their other courses both substantive and pro-
cedural and, in the clinic, under supervision, they are expected to apply them to cases under conditions closely approximating those of law practice. Since certain types of experience are not provided in their other courses, the classroom work supplies the deficiency.

The young lawyer, as a clerk in a large law office, will not be likely, perhaps for several years, to secure such experience, and if he goes into practice for himself, he learns, at the expense of his client by the humiliating trial and error method. The legal profession cannot afford the loss of prestige incident to inferior work on the part of the younger members of the bar.

The present article is devoted to a consideration of four classroom exercises: the first interview between lawyer and client; the preparation incident to disposing of a legal difficulty ending in the drafting of a legal document; the use of facts in legal processes; the solution of a problem in which the resources of another professional field—medicine, engineering, chemistry, accounting, for example—are essential. The illustrations are taken from the work of the Duke Legal Aid Clinic because this material is more readily accessible to the writer. Equally interesting and valuable work is being done in similar courses at other law schools.

I. The First Interview

When the client opens the door of the lawyer's office for his first interview in a new case, the lawyer's mind should, inter alia, direct itself to the following matters: winning the client's confidence, which is a public relations task; taking the necessary steps to keep this case, and the rest of the work in the office, moving forward; securing and recording the facts; analysing the client's lay story and translating it into a series of legal concepts so that it may receive attention comparable to the services rendered by a physician under the designation "diagnosis."¹ Exercises requiring the student to think through the recurring fundamentals in these stages of any case occupy the early part of the first semester. In the balance of the term, along with the other work in the clinic, the class is introduced to the later steps such as: planning the campaign; determining the goal; selecting the best means of achieving the goal; carrying out the plan with necessary

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¹ There is a large amount of material on the subject of interviewing both by lawyers and other professional groups. For example, Bingham, How to Interview; Brown, Legal Psychology (1926).
modifications; and closing the case. It will be noted that the student must do creative as well as analytical thinking.

Eight class meetings are devoted to this fundamental outlining of a case in action.

At the first hour the student is required to deal with clients who have legal problems but who also have difficulties of temperament or character. Facts in real cases are more difficult to secure than from case book or hypothetical statement. Until the student learns to deal with the emotional client, he may not be able to get the necessary information. The client may be suspicious of lawyers, or timid, or overcome with grief; he may be a liar, or so aggressive that he wants to tell the lawyer how to run his business, or so angry that considerations of reason do not affect him. He may be ignorant or indifferent about the details of his problem. He may even be of a type which is prepared to criticize or attack his own lawyer if matters do not turn out as he hopes they will. The technique to be employed in disposing of such human problems and getting on with the case deserves some attention. An example of this will be given later.

At the second hour the student confronts the first step in the problem of "legal diagnosis." In many cases there is one main legal theme and if the lawyer can grasp that, the other parts of the difficulty fall into an orderly procession. His task is to translate the client's story into one or more fields of law so that he can deal with it. He should remember that anything he wants to tell the client must be re-translated into language comprehensible to a layman. The types of situation available for classroom work in this direction are: matters which seem quite simple to the client but which legally are very complex and require careful thought by the lawyer and adequate explanation to the client; problems which seem complex or even impossible of solution by the client, but which the lawyer recognizes as being quite simple; problems having a single legal thread running through them but involving the interests of two or more persons.

The third stage assumes that the obvious problem in the case has been grasped and invites the law student to investigate the various interesting legal by-paths opening out from the main highways. Experience indicates that this is one of the hardest tasks for the young lawyer. He may not realize that there are by-paths, and he may discover in himself a certain rigidity of mind which, having seized upon the main theme, objects vigorously to being distracted by what
seem unimportant side issues. The experienced practitioner will recognize the danger that lies in wait for the man who does not have a complete grasp of the case.

It is not very difficult to present to the class illustrations in which, in addition to the main problem, there are two or more subordinate matters and grade the student on his ability to detect these items and bring them into the light of day.

The fourth step may be described as training in the art of organizing complicated material. Where there are several witnesses with several stories that do not completely agree, an evaluation process must take place. In situations where several documents have bearing on the case, the student should learn to consider each document by itself and then put them all together and study them as a unit.

The fifth step lays emphasis on fact-gathering and presents a situation in which the client does not have all the facts. The task of the student in such a case is first of all to recognize that all the data are not available and, secondly, to make up his mind where to go to get those necessary bits of information he does not have. This requires routine information about fact sources in his community, a substantial amount of imagination, and at times a sixth sense. Illustrative cases may present situations in which other witnesses know something about the case and if the student handles the client properly he can find out who these other witnesses are. Again, the unknown items may be matters of public record, and the student is called upon to decide to what public office he should go to secure the missing information. The most difficult situation in this field is where the unknown links in the chain are in the possession of the opposing party. In such a case the student is called upon to develop some ingenious way of persuading the opposing party to make a revelation.

The sixth step leaves the field of diagnosis and fact-finding and gives attention to the judgment involved in the decisions essential to planning the campaign. Obviously, the first problem confronting the lawyer is the goal toward which he will strive in his client's behalf. Where there is only a single possible goal, the problem progresses at once from the field of strategy to that of tactics. Wherever there are two or more possible objectives the mental process of making a selection involves some of the profoundest qualities of judgment. Decisions must be made in the fields of law, ethics, business and social desirability.

To emphasize further the plan of campaign, two hours are de-
voted to similar problems in which legal and ethical obstacles exist.\(^6\) If the Statute of Limitations has run, if the defendant is judgment-proof, if one’s own client has impractical or even anti-social ideas, the case will come to a complete stop unless the student can devise a solution. Again, if the client presents what a lawyer suspects to be perjured testimony, if there is already another lawyer in the case with whom the client has become dissatisfied, or if the client desires the lawyer to do something which is purely unethical,\(^6\) a different set of questions must be disposed of before the matter moves on.

This type of exercise cuts across the orthodox law school courses. It assumes that the purpose of legal education is to teach the student to think like a lawyer and requires that he analyze certain situations in which the practitioner should ask himself, and attempt to answer, certain questions. It starts not from a field of law, but from a case. It proposes to develop skilled craftsmen in the use of fundamental creative skills, techniques and mental habits.

The following illustration requires the student to determine the goal and the means of reaching the goal. This, of course, includes all steps prior thereto. The client is an undergraduate student. His cooperation is enlisted by offering him a chance to test his mental powers in conference with a law student. He does not have a trained legal mind though he may propose later to attend law school. A few days before the class meeting he has visited the instructor’s office and secured a copy of the problem given below. A rehearsal is held and he is advised as to the nature of the person he is to represent and told what to say if the law student asks certain types of questions. It is a play without dialogue in which the actor improvises in character, keeping always within certain limits as to plot and climax.

The following statement presents the facts of an actual case handled by the Duke Legal Aid Clinic. The law student does not see the facts. He does not know that he is to handle the case until he is called on in class. He then goes to the next room, is introduced to the “client” and brings him back before the class for the interview. In the meantime the undergraduate student has familiarized himself with the accompanying data and knows something about the nature of the real client into whose shoes he steps for the exercise.

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\(^5\) See CHEATHAM, CASES AND MATERIALS ON THE LEGAL PROFESSION (1938) cc. 4 and 5, p. 137 ff.

\(^6\) For examples of such situations, see the Opinions of the New York County Lawyers’ Association, Committee on Professional Ethics, Questions Nos. 70, 95, 206, and 281.
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PROBLEM IN PLANNING A CAMPAIGN

The Purpose

To give the student some experience in handling the "unexpected"; more particularly to present to the student actual cases that will test his ability to gain the confidence of an emotional client and at the same time ascertain the legally relevant facts.

The Facts of an Actual Clinic Case Upon Which the Interview Is Based

Our client, A, is a farmer of about fifty years of age. He is not well educated. A rents his land from B, a man of between thirty-five and forty years of age, who lives on an adjoining farm. B began to "date" C, A's eighteen year old daughter. A thought B was too old a man to be going with C and discouraged their meetings. However, B and C continued to go together. One moonlight night B and C were sitting together within a few yards of A's front porch. B was making love to C, but C would not say anything as she realized that her father might be near. A saw the couple, approached them and told C that she could not see B any more. C declared that she would see B when she wanted to. A retorted that if she did she could not stay in his house. Shortly after this argument, B and C left in B's car and drove into X City and lived there in a cheap boarding house as man and wife for a few days. When A found out the whereabouts of his daughter he went to X City and found her in a house of prostitution. C apparently liked the change of environment as she refused to return to the farm. Some months later, on finding out that she was pregnant, she returned home. The baby was born and C has stayed with her father ever since. B, the father of the child, would not marry C. A spoke with B several times, but no satisfactory arrangements could be made. On one occasion when A asked B to support the baby, B and two of his brothers severely beat A, and A is of the opinion that they would have killed him if A's wife had not appeared on the scene. A now wants to see "justice" done, and he has made up his mind to kill B. A has an attorney, M, in C City, and though he has not told M of his ambition to kill B, he has talked with him about the legal aspects of the matter.

Outline of Interview as It Should Progress

As soon as the student asks the client "what his trouble is" or the equivalent the client should state: "I am going to kill B." The client should then wait for the student to take control of the interview. The client should confine his answers to the exact questions asked and make the student "draw" the story out of him. Remember the client is not supposed to be a reasonable man. He is very emotional, and his answers should indicate that above all he wants to avenge the insult inflicted on the family name.

The law student has the job of convincing the client that he should not murder B. The client should finally agree that one of the student's proposals would be a better solution of the problem. The client must remember that he is a typical farmer who has firmly made up his mind to kill B.
Suggestions to the Client

1. Confine answers to the very question asked. Do not elaborate unless asked to do so by the student. Do not anticipate questions.

2. Do not suggest to the student that there is more than one problem in the case.

3. Do not take a hostile attitude toward the student, but before the client should reveal his story the student should have made definite steps to have gained the client’s confidence.

The Problems

1. The first problem will arise after the student has asked a few preliminary questions and when A tells the student that he is going to murder B. What will the student say? What will his reaction be to this unexpected statement? A’s statement presents the first crisis of the interview. The student’s problem is to find out in as tactful and painless a way as possible why A wants to kill B. He must win the client’s confidence before he can expect A to tell his story.

2. Assuming that the student does secure A’s story, what should his “next step” be? He should try to find some way by which he can convince A that his proposed murder is not the best solution to his problem. To tell A that in so many words would be futile. To tell him that his act is anti-social and punishable as a crime would likewise probably be useless, as A has doubtless thought the matter over some time. One method of approach would be to ask A what he would like to have done to B if A should decide not to murder him. Such a question would set A thinking about other means by which “justice” could be obtained. If A does not suggest any lawful means of punishing B, then it is up to the student to suggest the various legal possibilities, civil and criminal, that A may use in order to punish B. Once A intimates that a certain line of action would meet with his approval it is up to the student to convince A that the proposed action provides a better solution to the problem than does A’s proposed murder.

3. Assuming that the student gets the client to tell him his story and convinces the client that there is a better solution to his problem than the one first thought of by B, how does the student bring the interview to a close? How does he protect himself against any criticism if A should change his mind and kill B? What is his last advice to A? Does the student advise the client to get in touch with his lawyer, M?

II. Preparation for Disposing of a Case by Drafting a Legal Document

During the second semester the students are introduced to a series of situations for which an appropriate solution is the drafting of a
legal document. The work differs from that presented in the earlier part of the year in objective, material and method.

Among the objectives are: teaching the student how to gather, evaluate, marshal and systematize data to be employed in drafting a document but not necessarily to draft the document itself; satisfying the student that the form book, while valuable, is not a substitute for individual training and experience; contrasting the development of a proceeding which is to be settled out of court with the unbroken series of examples of the litigation process presented to the student in his other courses.

The material consists of a case involving two or more artificial clients based upon a type of document selected in advance by the members of the class. When this type of exercise was originally planned, it was natural to think of certain documents related to the substantive law courses and to provide the student with exercises to enable him to answer questions such as: "How do I draft a will;" "How do I prepare a lease." Further experience suggests that no matter what kind of document the lawyer is drawing there are certain steps which he must take. At each step there are certain considerations which should weigh with him, and if he fails to develop in himself a solid mental routine in approaching the task of drafting, the completed document may be lacking; and his client and his own reputation may suffer. The effort is: to find out something about those fundamental stages of thought; to present dramatically to the student cases which will help him to recognize the type of problem; and to help him think through the customary solutions which lawyers employ. Consequently, the student is not required to draw the text of the document, but instead to go through an exercise in which the fundamental mental processes of the lawyer, in every case involving the drawing of a document, may be presented.

Experiments in this direction have indicated at least four phases of the subject. One or more class periods are devoted to each of them. The simplest situation is one in which the interests of a single person are involved. If the client wishes to draw a will or a release or an affidavit, the lawyer need think in terms of one individual. This does not mean that the will must be a simple will; or the release

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7 There is much material on the general subject of drafting legal documents. For example, Lavery, Language of the Law (1922) 8 A. B. A. J. 269; Punctuation in the Law (1923) 9 A. B. A. J. 225; Simple Documents (March, 1937) 16 Mich. State B. J. 123.
a simple release; or the affidavit a simple affidavit. If the lawyer has only the one person’s interests to think about he has a less complex situation than if two or more persons are involved. Naturally, the second step would be to present cases in which the interests of two or more persons are to be determined. There will be clashes of opinion which must be resolved before the case may proceed to the next stage. Contracts, leases, incorporation problems are examples. Failure to train the students to think about these matters may result in dissatisfied clients, inefficient work, and loss of prestige to the profession.

A third stage is found in cases in which the client wishes to accomplish something wholly or partly unethical, illegal or impracticable. A group of promoters plan to incorporate and issue securities under circumstances which will tend to defraud other persons of their money; a client wishes to have a paper device set up to shield certain illegal operations such as transportation of forbidden commodities into a jurisdiction. The lawyer is here confronted with preliminary problems, beside which the actual task of drawing a document may be simple. Much criticism has been directed against the profession, particularly in connection with its activities in corporate finance and big business, or with the evasion of income and other taxes. A sense of common honesty is not enough to enable the student to deal with shrewd and forceful clients. The lawyer who has had experience in handling such matters possesses a distinct advantage over his neighbor who runs head-on into them without any previous warning. The task is to discover how to accomplish a proper result with due consideration for the ethical matters involved and to explain to the client why certain steps should not be taken.

A fourth situation is presented, perhaps the most complex of all. Here a client comes in with a proposition to be solved. He does not know or even think about the possibility that a document, or perhaps a series of documents, may be necessary for its solution. The lawyer must determine the best goal, select the method of reaching it and then convince the client what document or series of documents is indicated. Here again the exercise of judgment both in the legal, social and business fields is necessary. In a given case the ultimate document may be much simpler than the preliminary thinking.

The method involves a first step of preparing the “client” on a more elaborate scale than is necessary in the first part of the course. It is assumed that the law student knows how to conduct an interview
and plan a campaign. A dispute between the "clients" adds com-
plexity to the simple facts and forces thought on the negotiations
which, so often, precede the drafting of the document. The class
at large is required to keep notes of the development of the inter-
view and record the facts which seem necessary. After the class hour,
each student sees the instructor for a personal conference. He brings
with him: the class notes; an outline of the document containing the
paragraph headings; a list of questions relating to fact, law, and pro-
cedure which must be answered before the document is complete.
The instructor brings to the same conference a completed instru-
ment embodying the facts of the particular case. Each examines the
work of the other and discussion follows.

The following "case" will illustrate the procedure. It is an ex-
ample of the second stage and involves a conflict of interests among
three persons which may be resolved by the preparation of a separa-
tion agreement. The facts are those of an actual case handled by
the Duke Legal Aid Clinic, with the exception that the parties have
been assigned arbitrarily certain property which, in the real situation,
of course, they did not possess. The law student does not see these
facts or know the parties until he meets them at the door of the class
room. It has been found useful, for several reasons, to inform the
law student in advance what the particular document under considera-
tion will be. If he has not taken the course in Family Law, he would
be at a disadvantage when confronted with this separation agreement.
By letting him know the name of the document, but no other facts
in the case, he may be persuaded to do some individual research in
a form book or elsewhere, and come to class prepared to participate.
The undergraduate students have familiarized themselves with the
facts as given below and know something about the nature of the real
clients.

PROBLEM IN PREPARING TO DRAFT A DOCUMENT

Purpose

The object of this interview is to present a situation in which the attor-
ney will consider a separation agreement advisable, and to furnish all the
data necessary for the preparation of such written agreement.

Suggestion to Student

Such an agreement is lawful. Briefly, it requires the parties to live
apart, from and after the time of signing. The provisions of the agree-
ment deal with the division of property, custody of children, mutual rights
of inheritance, etc.
It is suggested that the student lawyer be required to draw from the clients all the pertinent facts. It is desired, however, that the clients volunteer as much immaterial data as possible. The object here, of course, is to give an extreme example of the usual office interview—in which the lay mind is not trained to see the relevancy or irrelevancy of particular facts. Thus, it is necessary that the attorney elicit the essential information.

The Parties

The factual set-up here is that John Mack is the drudge type of husband. He has been nagged by his wife until he is willing to concede almost anything to be able to enjoy peace and quiet. The “clients” are privileged to interject anything into the interview which will picture him as a “worm.”

The wife, Mary Ann, is a nagger. She is a free spender and has some pronounced social ambitions. The “clients” are privileged to inject anything into the interview which will emphasize these characteristics.

The son, James Mack, ten years old, is intended to raise certain issues in the interview. The first, of course, is his custody. He should volunteer information at intervals during the interview which will either embarrass his mother or father, or which will confuse the student attorney.

Particulars

John Mack, 38 years old. Salesman. Average earning power—$300 per month. He holds his job through acquiring clients who have confidence in him, rather than through aggressiveness. He is willing to agree to a divorce.

He holds title to the home in which the family lives. This home was purchased with earnings which he made before his marriage. He has $1500 in a savings account in the bank. He has bonds in the safety deposit box with a market value of $9,000. These last two items represent, for the most part, inheritance since his marriage.

He owns a 1933 Ford which he uses in his work; the title to a second car, a Pontiac sedan, is recorded in the name of his wife, but his name is on the notes which represent the unpaid balance. This unpaid balance is $400. There are ten notes of $40 each. He paid the down payment on this car. His wife has had exclusive use of this car since its purchase recently.

There is a complete outfit of furniture in the home. John paid for it, but his wife assumes that it was given to her. He has personal property which the average man usually owns. His only extravagance is in fishing tackle.

Mary Ann Mack, 35 years of age, is interested in but one thing in this interview. That one thing is money. She has no objection to a divorce, in fact she would welcome the freedom incident to such a decree, but feels very strongly that John is her permanent meal ticket, and, therefore, will not, under any circumstances, agree to divorce. She wants to get all he has now and a substantial portion of his future earnings as well.
One of her important considerations for marrying him was the fact that she believed he would inherit considerable money and real estate. The last of his ancestors having died, she feels that everything is now available. She feels that she has a club over John's head because his name was McKowski and he has established himself in this community as Mack.

She owns fifteen acres of timber and farm land of uncertain value. She was devised that property by a member of John's family. She would like to reduce this land to cash, but her husband refuses to join in the deed.

James Mack, as was said before, is to present the custody problem and is to volunteer embarrassing information during the interview. Late in the interview he advises the student attorney that one of the reasons he prefers his mother to his father is that his mother's boy friend gives him money with which to attend the movies.

As has been suggested, the "clients" may elaborate any of the characteristics mentioned herein.

III. THE USE OF FACTS IN LEGAL PROCESSES

During the second semester attention is given to the use of facts in legal processes. In the first semester, the emphasis is placed on their collection. There is no more difficult problem for the lawyer than how to use his facts to the best advantage in litigation. In moot court proceedings the facts are often presented in typewritten form. The student secures his own witnesses and tells them what he wants them to say. In a real case, the witness is a vehicle by which essential facts are put on a court record. Failure to protect the witness before entering the court room may mean loss of the case. The careful lawyer thinks about this matter in his office. In the clinic exercise, rules of evidence and trial practice are of secondary importance. The litigation process is merely a peg on which to hang an exercise in thinking; a device for teaching the student how to apply certain substantive and procedural rules learned elsewhere. The primary consideration is a human problem to be solved through the medium of a witness who may be frightened or become stubborn, or forget, or lie. How can such distressing obstacles to the development of the case be anticipated and avoided—is the question addressed to the class.

The material is the stenographic notes of testimony in an actual case.

The objectives include: drawing the line between preparation and unethical coaching; helping the student to reach an objective and unemotional basis for evaluating facts which are needed to make out a case; realizing something of the necessity under ethical limitations
for dramatizing the witness's story so as to give proper emphasis to the significant phases; studying the human facts which have no place in a system of strict logic but which play an important part in an actual trial; teaching the student that the careful preparation for trial is more likely to win than any last-minute inspiration.

The thinking of the lawyer as emphasized by this exercise may be grouped under three headings. First, what witnesses does one need to prove a particular case; what witnesses are available; how valuable and legally relevant is their testimony. The considerations here dovetail with the course in evidence.

The second stage is concerned with elementary matters such as seeing that the witness has clearly in mind the facts which are within his knowledge; that he understands the significance of his testimony in relation to the whole case; that he has some idea of the legal relevance of certain facts and the inadmissibility of others; that he appreciates the importance of matters such as the tone of voice, emphasis, demeanor, order of presentation of information. By such exercise the student learns how to draw the line between legitimate conferences and improper coaching. If the instructor requires the student to write out and submit for criticism his opening address and direct examination, a step is taken in the direction of order, system, clarity of thought, and elimination of the necessity for objections and arguments as to relevancy and competency.

The third step is in the field of cross-examination. The art of the cross-examination has received the attention of experts. Less has been said as to the task of protecting the witness who is to be cross-examined. The present exercise asks the student to assume that his opponent in court is a shrewd, resourceful veteran who can call to hand all the subtle devices developed by generations of trial lawyers. The attorney who puts the witness on the stand should have given attention to such matters as: has everything possible been done to make cross-examination unnecessary; does the witness know how to handle himself in the event certain obvious attacks are made upon him; has everything possible been done to protect the case from breaking down. While, at first, it may appear that this field is so

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8 See, for example, Baer, CROSS-EXAMINATION AND SUMMATION (1933); Hirman, YOU MAY CROSS-EXAMINE (1936); Wellman, THE ART OF CROSS-EXAMINATION (1936).

9 Osborne, THE PROBLEM OF PROOF, (2d ed. 1926) 177 ff.; American Bar Association Committee on Legal Ethics, Opinion No. 117 (1934); American Bar Association, CANONS OF PROFESSIONAL ETHICS, No. 39.
complex that no chance of classification exists, further study will reveal certain situations which may be handled in approximately the same fashion, wherever they occur. For example, if one is dealing with a character witness there are certain obvious lines of cross-examination which are designed primarily to question the basis of his information. Similarly, it seems possible to work out routine with respect to such individuals as the eye-witness, and the man who expresses a lay opinion on some subject. Even if the whole field cannot be charted there is value in directing the attention of the student to the more customary situations and giving him such aid as is possible in dealing with them.

The method is quite simple. A transcript of testimony is selected because it contains an examination representing one phase of the problem of preparing the client. It may show poor or excellent work by the lawyer. In either event it has educational value. The pleadings and the particular direct and cross-examination are abstracted together with lists of the witnesses on both sides and the reasons for presenting them. A brief statement of the issues is helpful. The undergraduate student who is to impersonate the witness is given a copy of the direct and cross-examination. The law student who is to participate receives a copy of the pleadings in advance of the class meeting.

In class the instructor states the issues and calls upon the designated law student to indicate what sort of witnesses he would look for, whether for plaintiff or defendant, to develop the case. He then places the "witness" before the class and examines him directly in the exact words of the actual case. When this is complete he calls upon the law student to conduct such cross-examinations as seem appropriate. Thereafter the cross-examination as conducted in the actual case is read to the class and discussion follows on the topic: what the attorney who placed the witness on the stand might have done to improve his presentation of the facts. The class is thereby enabled to familiarize itself, not only with series of questions which may be used to produce a certain result, but with the answers.

In the individual conference, after the class session, the instructor begins by addressing to the student a question like the following: "Suppose you had once tried this case and now in preparing for a retrial you were checking over the testimony of this particular witness, what improvements would you make?"

In the accompanying illustration the witness was obviously not
properly prepared and his testimony was more useful to the opponent than to the party which called him. The facts were not complicated. A woman returning home after an appendectomy claims she was seriously injured when the bus, in which she was riding, ran off the road. The defenses were that no negligence was proven and that the plaintiff's difficulties were due to a neurotic condition and not to the accident. The witness is for the plaintiff.

PROBLEM IN PREPARING A WITNESS

Direct Examination

Q. Were you interne at K—— Hospital in 1935, doctor?
A. Yes, sir.

Q. Were you on duty when Mrs.—— was brought there?
A. Yes, sir.

Q. Did you make any examination of her at that time?
A. Yes, sir; I don't recall everything, I recall a few things.

Q. Did you make a record of your examination?
A. Yes, sir.

Q. Have you your records with you?
A. Yes, sir, I have it. Here is the hospital record.

Q. At the time you made your examination of Mrs.—— when she was brought there, please state what you found with reference to the incision in her abdomen.
A. I will read what I have. Was coming back from—— Hospital——

COURT: Just refresh your recollection and tell what your recollection is.
A. The recollection I have got—I can remember the patient in bed. I was called after she was put in bed and I remember her in bed and where the bed was in the ward.

Q. You may refresh your recollection from what you have on the paper and I will ask you what the examination showed?
A. The examination showed that the wound was partly torn open. That is the record I have here.

Q. State if you please whether or not she was in any pain?
A. I don't think she was in much pain, but she was very nervous and excited, I remember that very well.
Q. Do you recall whether or not you gave her a hypodermic?
A. I think I have seen on the records where we did, but I don't recall that.

Q. What were hypodermics administered for?
A. Well, for nervousness and pain.

Q. Was she suffering from any shock?
A. I don't think so.

Q. Did you see her after that or did you just make a first examination?
A. Well, I probably saw her about every day making rounds there. I am sure that I did, but I cannot recall any subsequent visits to her except when I took off her dressings and examined the wounds and that is all that is clear in my memory now.

Q. In other words, your memory now is just about what you obtained from the chart which you made at that time?
A. Yes.

Q. Did you write that, doctor?
A. Yes, sir.

Q. Do you know what physician attended her? Do you know what surgeon attended her?
A. Dr. ———.

Cross-Examination

Q. Dr. ———, she was classified as a neurotic patient at the time?
A. I see that I have made notation on here.

Q. Please explain what you mean by neurotic tendencies?
A. Well, I guess that she was easily excited, I think is what I probably meant in that case. She was very excited over the accident and felt in her own mind that she was in a very serious condition.

Q. Was she hysterical about it?
A. Well, there is a fine discrimination there between being neurotic and being hysterical. I don’t know that I could tell the difference. I would not say that she was hysterical.

Q. They are right close akin, aren’t they, for the distinction is very hard to draw?
A. Yes, sir, in the common way we term it. I guess a neurologist could make quite a distinction.
Q. It is a tendency to exaggerate her real condition?
A. I see that in part.

Q. I notice here that you say she was rather poorly nourished?
A. Well, we always—when a doctor sees a patient in bed, if he is recording the history, he generally mentions her general appearance, and she didn't strike me as being obese or well-nourished person.

Q. That wound that appeared to be torn healed up nicely in a few days, didn't it?
A. I don't remember about the healing of it in any way. I have only the record to go by. I can remember removing the dressing and the first time I saw her, but I can not picture the wound in my eye, or I can not remember about the healing, but the records would indicate it.

Q. I would like for you to look at this and see if you didn't state that the wound did heal up nicely?
A. On the second day, I have here a notation, doing nicely, complains of pain, still nervous. On the 26th, two days later, she had no complaints, doing well.

Q. Had no pains?
A. Had no complaints, and on the 28th, patient of neurotic tendencies, no complaint; on the 30th feeling very well, up and about the ward, discharged, condition improved.

Q. Did you state in—look at that page that is turned over, look at the bottom of it and see if you recall from the observation of report that her wound had healed nicely?
A. Wound which was broken open in automobile accident is healing nicely. That has no date to it. It was probably taken the next day or—

Q. After she came in there?
A. Yes, sir.

Re-Redirect Examination

Q. Did you make this notation right here?
A. Yes, sir.

Q. Patient coming back from ——— Hospital from which she was discharged recently with a surgical operation; was in automobile accident and partially tore open the wound in her abdomen?
A. Yes.
On a new trial the attorney would have much to do with this situation. The witness does not know his facts and he has no idea as to what he is supposed to tell. The cross-examiner reduces the value of his testimony very materially by the simple expedient of drawing him into discussion of topics which he has no reason to know about and then revealing his ignorance of those topics. One questions why counsel who conducted direct examination did not make a more determined effort to protect his witness.

IV. INTERPROFESSIONAL CONFERENCES

During the second semester the students are invited to consider several cases in which the aid of other professional groups outside the law is necessary for a solution. The medical school, the engineering department, the accounting department, and the forestry department, have coöperated in examples of this exercise. The temptation is to speak of it in terms of the direct and cross-examination of expert witnesses, but its scope is considerably broader.

The present exercise differs from other practice courses in objective, material and method. The enterprise is joint. Both coöperating departments expect to derive benefit. While the immediate objectives differ somewhat depending upon which other department is working with the Legal Aid Clinic, the following statement as to the medical school will be illustrative. The medical school at Duke University has incorporated this exercise into the instruction in "Legal Education" because it wants its students to have some familiarity with the rôle of expert witness; it is desirable that physicians know enough about legal problems to be able promptly to recognize their presence, render what amounts to legal "first aid" and call in a lawyer before further complication can arise; the welfare of the community will be advanced if doctors and lawyers have learned how to work together in specific cases. The law school, on the other hand, desires to provide its students with such obvious immediate elementary training as functioning in a public forum as well as a classroom, and preparing an expert witness for direct and cross-examination. On a long time basis the goals are familiarity with the resources of a non-legal field which may be necessary to solve a problem in litigation, the increase in professional prestige which results

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19 Forbus and Bradway, Medico-Legal Investigation (1933) 26 So. Medical Journal 768.
from more effective service to the public, and a broader mental horizon for the younger generation of lawyers.

The purpose of this exercise is not to teach trial practice but to enlarge the student's thinking to include, with all the resources of the law, certain non-legal ways to serve the real clients; and to aid him to acquire ease in the application and use of certain procedures developed by other professional groups. The medium of a "trial" is merely one way in which the thinking necessary in such a situation can be brought to the attention of the class. As handled at the Duke Legal Aid Clinic the facts cannot be modified by either side in the hope of winning a victory; and legal technicalities are reduced to a minimum. Similar results could be obtained by the use of conciliation procedure and after that technique has been further perfected, it is possible that it will be substituted for the present litigation.

The material is a case selected by the members of the faculty of the cooperating department—usually a matter in which one or more of them have appeared as expert witnesses in the actual trial. The cooperating department picks two or four students to act as witnesses—an equal number for each side. Four Legal Aid Clinic students are designated as counsel, two on each side. In a general preliminary meeting an exact statement of facts is agreed upon and allocations of students are made.

In preparation each side works out in writing the questions and answers of the direct examination. This requires a series of meetings between the law students and their cooperating witnesses. In these meetings occurs a breaking down of professional barriers and the establishment of a sense of mutual respect—two of the most important products of the exercise. The direct examinations, submitted in writing in advance, are subjected to criticism and correction by the Legal Aid Clinic staff, thus avoiding many of the occasions for objections and providing experience in the production of evidence.

As the date for the exercise approaches, the facts and major issues are mimeographed so that each spectator may have a copy and thus eliminate the necessity for a time-consuming explanation. A lawyer in active practice is invited to act as judge. Notices are posted so that all those interested may attend. Sometimes 200 or 300 persons, students and others, are present and remain for the two or two and one-half hour period.

On the occasion of the exercise a jury is selected from among the
spectators; both sides make opening statements, direct and cross-

examination and closing arguments. The jury retires and agrees

upon a verdict. The audience also is given an opportunity to express

an opinion, then a member of the faculty of the coöperating depart-

ment explains and discusses the case.

The following problem is based upon an actual situation familiar
to the members of the Engineering Department. Two engineering

students appeared as expert witnesses, and learned something about
court room technique. The law students who participated were ini-
tiated into the process of using data in the engineering field in the
disposition of a case at law. That the process was based on litiga-
tion was an incidental matter.

PROBLEM IN AN INTERPROFESSIONAL CONFERENCE

A. B. Clothier operates a store on the south side of P—— Street in

the heart of the business district of a metropolitan city. R. I. T. Co. oper-

ates a single-deck, double track elevated railway down the middle of

P—— Street, the buildings on both sides being four stories in height.

The R. I. T. Co. has applied to the city council for permission to erect

an additional double track steel structure over and above the present one

for the purpose of operating an express. A city ordinance provides as

follows:

"To erect any structure of such dimensions adjacent to an existing

structure, and in such manner that the owner of the property on which

the existing structure is located would thereby be deprived of more than

ten per cent (10%) of the natural daylight he originally received, when

all existing structures conform with the city building code, is forbidden."

A. B. Clothier brings this suit to obtain an injunction which will re-

strain the erection of this added structure, basing his bill on the grounds

that it violates the above city ordinance. He claims that he would be de-

prived of a very considerable amount of natural daylight, because of the

proposed addition to the structure, which would have the effect of reducing

the natural daylight reaching and entering his store, to such an extent that

the attractiveness of his display and the general merchandising appeal of

his store would be seriously diminished and would greatly reduce the in-

come-producing value of his business. He further claims the use of arti-

ficial light would be expensive and would be inferior in quality to the

natural daylight which he now receives and which is vital in matching

colors in cloth.

R. I. T. Co. in defense claims that the ordinance would not be violated

by the erection of this proposed structure. The defendant bases its claim

upon exhaustive laboratory tests conducted by Mr. ———, prominent

illuminating engineer, on scale models, which he claims show that not more

than six per cent of the light originally reaching the store would be cut off
by this proposed structure. Moreover, not more than eight per cent of the original light would be cut off when a passenger train is considered to be passing in front of the store in normal operation.

Therefore, the sole issue in this case is whether the city ordinance would be violated if permission were given for the erection of this proposed structure.

CONCLUSION

Here are four class room exercises participated in by students of the third-year class at the Duke Law School in preparation for their work in handling the actual clinic cases. These exercises by themselves might be interesting, but they would not constitute a Legal Aid Clinic course. Given, as they are, supplementary to the other work, they provide an admirable transition from the case book courses to the flesh and blood client. The instructor beginning the year with careful supervision over every contact between student and client and every step of the case is enabled gradually to relax his control and allow the student to work into a position where, after graduation and admission to the bar, he is better able to make his own decisions and supply his own initiative. If he makes mistakes in the class room, they may be corrected before the client suffers.

Moot court courses are concerned largely with trial practice and court room demeanor. Office Practice and Research and Briefing courses contemplate certain of the labors of the lawyer in his office. The Legal Aid Clinic course assumes that the student has complete instruction in all these subjects in the orthodox courses and then gives him the additional experience of working under the direction of members of the bar with real cases and clients in situations where responsibility is a factor. When it appears that the student is not yet ready for this responsibility or that his previous training has not given enough emphasis to certain necessary skills and techniques, the class room work, described here, is employed to fill the gap. The cry of duplication is not justified.

If the student has taken a course in contracts and has learned in office practice how to draft a contract he may still be totally unable to interview a client who wants a similar document drawn and continue with the case until a suitable instrument is completed and executed and the client satisfied with the result. If he has taken a course in torts and has been taught how to draw pleadings in a negligence case he may still be uninformed as to how to protect his witnesses so that they will have a chance to tell the truth, the whole truth and nothing
but the truth. If he has completed work in the field of real property and can prepare a deed he may still know little or nothing about how to conduct a transaction in which the purchase or sale of an actual piece of real estate is involved. He may not even realize that failure, on his part, to clear up the title for the purchaser, can result in an action against him personally for negligence, incompetence or mismanagement. He may be able to write law review notes better than a simple collection letter, to argue a case on appeal in the Supreme Court, while he stumbles over a comparatively insignificant matter before the justice of the peace. When the client asks, “What shall I do?” he may have had no experience in any exercise which requires of him a more elaborate answer than “the law on the subject is so and so.” In short, there is a gap between the experience of the orthodox law school graduate and the polished practitioner. This gap may be filled by a law office clerkship, personal experimentation, or legal aid clinic work. It is demonstrable that the legal aid clinic provides the most satisfactory aspects of the traditional law office apprenticeship, and that the law office itself is less and less in a position to continue to render this service.  

The picture of the classroom work is not complete unless one includes a reference to the other disciplines embodied in this part of the course. Instruction is given in: the types of information available in the various public offices of the courthouse; legal letter writing (a matter of importance); the conciliation process by which perhaps 90% of clients’ problems are solved, rather than by litigation; the operation of a law office including policies, records, following up on the cases after they are once received. Because of lack of time only slight attention is given to charging fees and the dissatisfied client, but in the field of briefing the students prepare for lawyers in active practice office memoranda, opinions of law, trial and appellate briefs. To consolidate all this into a two-hour course for both semesters requires experience and student interest. This latter factor is improved by organizing the class as a sort of informal law partnership, with the staff as senior and the students as junior partners. The results are encouraging. It has been found necessary to place a definite limit upon the time a student may spend in the legal aid clinic. This is to insure that he gives adequate attention to other courses.

11 On the decline of the law office as an educational device, see (1934) 8 Temple L. Q. 133.
There seems to be every reason for widespread experimentation with the legal aid clinic device. It adds a new dimension to the orthodox case method of teaching law. It supplies the element of professional responsibility which must be shared by student and instructor. It enables the student to determine *in limine* whether law practice appeals to him as a life work. It enables the instructor to signify when a student has demonstrated a mature efficiency such as to warrant allowing him to deal with real clients on his own account. It conditions the willing, earnest, but inexperienced student as he comes in contact with the actual client who relies upon the legal aid clinic for professional services. It promises much for the future of legal education. It has already made good a number of its promises.

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