"CASE PRESENTATION" AND THE LEGAL AID CLINIC

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In a note entitled "Case Presentation," appearing in the Autumn issue of the *Journal of Legal Education*,[1] Messrs. Addison Mueller and Fleming James, Jr., have suggested the following criticism of legal aid clinics:

> That law students would benefit greatly from clinical training similar to that now provided in medical and dental schools is generally recognized today. Unfortunately, however, the wide variety of charity cases essential to the establishment of such a broad clinical program does not exist in the law. For while all the ills of the body and mind fall alike on the indigent and the affluent, the very poverty of the poor keeps them out of many of the most challenging and complex fields of legal controversy. And where a poor man has a serious claim (as in personal injury cases) it often promises a monetary recovery which will attract a practicing attorney and take the case out of charity.
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> The dearth of clinical material calls for substitute devices. Such devices, if they are to be a real substitute, must have both more breath and more realism than the mock-trial machinery now in general school use. The present Yale three-unit seminar in Case Presentation is an attempt at such development. Its central idea is to give the student a chance to handle, in as realistic a setting as possible, a complete case from its first appearance in his office to its final disposition in court. In this way he is able to apply all his legal book learning to several types of situations, including the less-legal stages of client interview, fact finding, negotiations with opposing counsel, and arbitration. Complete realism, of course, can never be achieved in such a course, but it is surprising how close to reality it is possible to get when working with enthusiastic and cooperative students.

These words apply generally to legal aid clinics. They hardly do justice to some such clinics, which have found locally satisfactory answers to this well-recognized problem and have been improving those answers year after year. It was perhaps fifteen or twenty years ago that we first met this type of criticism—that our realistic material was pedagogically inadequate because it was restricted to the legal ills of a single economic class. Some of the critics seemed to feel that this defect could not be remedied and that it was fatal to the success of the legal aid clinic movement.

Those of us who were active in legal aid clinic work at the time were not discouraged. We were accustomed to being misunderstood, and zealous to develop our work past the Cinderella stage. During the years several answers to the line of comment appearing in the foregoing quotation have emerged. I shall refer here to three of them which we have introduced at the Duke Legal Aid Clinic. No doubt there are others, since the resourcefulness of instructors in this field must be at least average. Our approaches are grouped around our effort to evaluate not so much the criticism as the probable condition of mind of the critic.

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1 1 J. LEGAL ED. 129 (1948).

Some critics appeared to feel that it is not quite nice to have a law student deal with poor clients. A similar attitude, perhaps, prevailed at one time as to the teaching of domestic-relations law. To these critics we argued that the legal aid clinic is a cultural course and should be judged by the standards of cultural courses. Another cultural course, Constitutional Law, was somewhat in point. It was not likely that many of the students taking that course would have occasion to spend their professional careers arguing cases before the Supreme Court of the United States. Yet we felt that this probability was no reason for not taking the course. Constitutional Law informed the student culturally about great social and economic movements as seen through the eyes of the Supreme Court. This was one end of the rainbow. We argued that the well-rounded law student, whether or not he planned to spend his life in such work, should also see the other end of the rainbow—the administration of justice according to law in the dark alley, the over-crowded tenement, the police court. He should humanize himself, contribute to the public welfare, and buttress his faith in the democracy of the bar by handling the cases of poor people where there is no possibility of a fee. Viewed in this light, the fact that we served a single economic class was our advantage and not a detriment.

We went further, and urged that the legal aid clinic is a course in character building. If a student handled these cases and found himself indifferent to humanitarian considerations, or failed to find a secure peg on which to hang his idealism, we had some doubt as to whether his character was such as to warrant our recommending him for admission to the bar. We read the preamble to the Canons of Professional Ethics of the American Bar Association, and found its emphasis upon our duty as a profession to maintain justice pure and unsullied. We read the next sentence: "It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men." We thought we had something there. After all, we said, a lawyer is something more than a bulldog, a technician, a shrewd administrator of an arcane body of rules. He ought to be an informed and rightly motivated community leader.

Others seemed to think that legal aid clinic work was pretty far afield from orthodox legal education, and insisted upon a "practical" course. Practice courts, moot courts, and similar exercises were well-tried means of teaching practice. Why attempt something so radical as a clinic? We argued to these gentlemen: (1)That the legal aid clinic is a course in method and not in law, either substantive or procedural; (2) that in the limited time available, basic method is all we have time to teach; (3) that we can teach basic method comprehensively so as to cover the fundamentals of the whole field of method and prepare the student to take advanced work in special fields like the practice court; (4) that a law school which does not teach a man method before he is admitted to the bar is, in effect, not discharging its full duty to the student, the profession, and the public. Young lawyers who do not know how to do what their clients expect of them are a menace to the man in the street and poor advertisements for the legal profession.

Under these circumstances, it was the factors in the area of method, and neither the variety of legal problem nor the economic condition of the client, which became of major importance. If we were, for example, teaching basic method in letter writing, it made no particular difference whether the

letter dealt with a case in contract or in tort, or in some other field, or whether the client could pay nothing or a million dollars for a fee.

We found it convenient to divide our method work into four phases. We *told* the student in written and oral form. We *showed* him in laboratory exercises. We *supervised* him while he worked out basic method in legal aid clinic cases. Finally, we *relaxed the supervision* to enable him to mature on his own account and become accustomed to the burdens of professional responsibility.

If method is our goal, the objection that our clients are not financially able to pay fees, and that their cases are inadequate from a teaching standpoint, loses much of its force. Some people have agreed with us.

Still another group of critics brushed aside the importance we assigned to culture and method, and expressed the view that we ought to teach the sort of law which would enable the student to earn fees from upper- and middle-class clients. As a partial concession to these gentlemen, and without losing faith in either of these first two objectives, we added to the legal aid clinic course a group of cases specifically providing the student with realistic legal problems such as come to the office of the general practitioner. For the past fifteen years we have obtained from members of the bar every autumn a group of cases on which they were currently working and for which they desired trial briefs. One of these was obtained for each student in the legal aid clinic. Under supervision, he conferred with the lawyer who had submitted the case, marshaled material, and wrote the trial brief. Not infrequently, he sat in at the trial. Each spring we have obtained from members of the bar, usually in the student's home town, a case for each clinic student. These cases were at the stage where the requirement was an appellate brief. The student, under supervision, wrote the brief and sometimes sat in at the argument. The top distinction in this phase of clinic work is to have the lawyer adopt the student's brief as his own. This happens with encouraging regularity at least once or twice a year. Throughout the year we maintain a briefing service of a sort, limited by our ability to handle the volume of cases. Each student, under supervision, works on one or two or more of these cases, producing memoranda of law.

The reader will note that the emphasis in this work is still on method; but it is clear that realism is present—perhaps as much as, perhaps more than, would be the case if the student were serving an apprenticeship in a large law office.

There are various ways of handling a legal aid clinic course and meeting objections as to the pedagogical value of material presenting itself to be handled. The one described above happens to fit local conditions in Durham, and might not be appropriate to the circumstances existing in the larger metropolitan area of New Haven. But there is no need to despair of our ability to give the clinic student realistic work with all classes of clients or in a variety of fields of law. It is merely a matter of imagination, ingenuity, resourcefulness, and perspiration.

The note written by Messrs. Mueller and James and the work it describes are both excellent. Surely the students at Yale who take the work will benefit substantially from it. Surely the instructors are justified in the enthusiasm they show. The only point the present writer wishes to make

is that the assumptions set forth in the two introductory paragraphs quoted above are rebuttable at the hands of one who is willing to give the clinical approach to law training a thorough hearing.

Legal aid clinic work does not lend itself readily to exposition in written form. The concept is still so new that different readers draw different inferences from the words published in an attempt to describe it. The proper procedure is to come and see a legal aid clinic in operation. There are, certainly, valid criticisms of the movement. The proponents are generally aware of the limitations and are striving hard to improve the technique. Their progress is encouraging and promising enough to warrant a more widespread development of the clinic device.

Messrs. Mueller and James have taken the first step away from orthodox law courses and in the direction of a legal aid clinic. They are properly pleased with the results. This is natural and commendable. They should be encouraged to take the next step into the unorthodox, and expand their laboratory work into a real legal aid clinic. New Haven, a much larger city than Durham, will no doubt provide ample legal aid material. Their own resourcefulness will insure a plentiful supply of other sorts of work.