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The Anatomy of a Clinical Law Course

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The Anatomy of a Clinical Law Course

James J. White†

I. INTRODUCTION AND GENERAL COURSE DESCRIPTION

Since the summer of 1965 when the Michigan Supreme Court first authorized law student practice on behalf of indigent persons, students at the University of Michigan Law School have been engaged in extensive practice on behalf of indigent persons in Washtenaw County. Between 75 and 125 second and third year students at the University of Michigan Law School each semester have worked at the Washtenaw County Legal Aid Clinic under the direction of the OEO Staff attorneys. Students receive neither credit nor pay for such work and their activities are not directly supervised by the faculty. That volunteer experience has become an important and continuing part of the extracurricular legal education at Michigan and an analysis of the strengths and weaknesses of that experience would undoubtedly be illuminating. However, I intend to devote the pages that follow not to the Michigan volunteer experience but to a description of a credit course which I conducted at the Washtenaw County Legal Aid Clinic in the summer of 1969. For want of a better title we called the course “Clinical Law.”

In the spring of 1969 the faculty of the University of Michigan Law School approved “Clinical Law” on an experimental basis. I had asked the faculty to authorize a course for six or eight semester credit hours but the faculty consensus was that four hours was sufficient time to be devoted to such an experimental course. On the optimistic assumption that a student gives forty hours of his time for each semester credit hour that he receives, we concluded that a student should perform 160 hours of work in the clinic to receive his four credit hours.

We offered the course as part of the eight-week summer term in 1969 at the University of Michigan Law School. The course was open to any student who had completed his freshmen year and ten students were chosen by lot from the 25 who applied for admission.

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to the course. As part of his 160 hour work commitment, the student was required to attend a series of evening seminars and several meetings with county officials. Except for an occasional appearance under the supervision of one of the staff attorneys at the Washtenaw County Legal Aid Clinic, all of the students' clinical work was done under my supervision and, with a few exceptions, I was the counsel of record in the cases handled by the students in the course.

All of the cases for the class work came from the case load at the Washtenaw County Legal Aid Clinic, an OEO supported neighborhood legal office located in downtown Ann Arbor approximately three quarters of a mile from the law school and a block from the local courts. At the outset of the course I assigned each student six divorce cases, a bankruptcy case, and at least one "miscellaneous" case. The choice of several divorce cases as a course starting point served two purposes. It gave the students interviewing practice under supervision, and it gave them an opportunity to appear in court and examine a witness in a noncontested matter. Other cases were chosen simply because they were available in sufficient numbers or, in some instances, because they offered unusual and interesting issues.

During the eight weeks we held five evening seminars. The first dealt with the interviewing process and was conducted by Dr. Mohammed Shafii, a psychiatrist on the medical school faculty who had taught in the law school previously. We held that seminar in the second week of the course after each student had had at least one interview at the clinic. The student reaction to the seminar was mixed however. I think it likely that some of the students learned a substantial amount, but that we could have done a much more effective job had we devoted several seminars to interviewing. In the second seminar we discussed a particularly complex housing case on which five of the students were working. (The locus for that seminar, a local beer hall, detracted substantially from the amount and type of work which we accomplished.) At the third seminar two students presented a discussion of the Michigan landlord-tenant law. A local judge who has had more experience with the 1968 Mich. "Tenant's Rights" law than any other judge in the state (students at the University of Michigan have been conducting a rent strike during the past year), participated in that seminar and offered his interpretation and analysis of the Michigan law. The fourth and fifth seminars were devoted to the discussion of the jury decision process and of jury selection respectively. In the fourth seminar we invited two jurors who had recently served on cases in which students
in the course had been involved to talk about their experiences as jurors. In the fifth seminar an able Ann Arbor practitioner and a professor in the political science department who is studying juror selection by lawyers spoke on the art of juror selection.

During the course each student submitted a daily time sheet. These time sheets show the amount of time put in on each task for each client everyday during the course and one can distill a great deal of data on the student experience from them. When the course is completed, nearly all of the students will have devoted in excess of 200 hours to course work. This work will have been performed on behalf of 97 clients, 32 of whom have received more than ten hours of student labor at this writing and several of whom have received more than 100 hours of student work. It developed that the course ran heavily to litigation and by the time the work is completed in late 1969, the students in the course will have conducted at least five jury trials, four nonjury trials, and half a dozen contested motions. This is all in addition to the 15 or 20 noncontested divorce cases and two dozen noncontested divorce motions. The chart which follows is a composite of the students’ work; it gives a general picture of the distribution of their time among the various areas into which the course cases fell.

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<th>Meetings</th>
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The chart gives some interesting indications about how our plans did and did not work out. Note that approximately one quarter of the total student work was devoted to divorce. This includes time spent interviewing the client, discussing the interview with the teacher, preparing pleadings and appearing in court. It developed that many of the divorces were in a dormant state and could not be completed until after the course was over; in others the clients drifted away or chose to drop the divorce proceedings. Note also the large
amount of time spent on criminal cases. Although we did not have sufficient criminal cases available at the outset to assign one to each student, eight out of the ten students eventually took part in a criminal or quasi criminal case. These ranged from misdemeanors (contributing to the delinquency of a minor; contention in the street) through traffic cases (wrong right turn) to the defense of a paternity suit brought by the state on behalf of an ADC mother. Because they presented truly adversary proceedings, dealt with something of obvious importance to the client, and moved along with much greater speed than the usual civil case, criminal cases attracted a substantial amount of the students' time and interest. The chart also shows that we landed several sizeable landlord-tenant cases but that we had insufficient bankruptcy and welfare cases to give each student an adequate exposure to those areas. Only one welfare case, (and it an atypical one dealing with social security benefits to the aged) and only three bankruptcy cases developed fully during the course.

As cases were settled or became dormant, we attempted to assign new cases to students with an eye toward giving them an experience in all of the areas in which we had cases available. The chart shows that we were not entirely successful in this endeavor and it should be equally obvious that except for the initial divorce exposure we were quite unable to give cases to the students in any planned order.

In a typical case the student would not conduct the initial interview, for we would get the case from the clinic director only after it had been accepted and the clinic director and I had determined that it was a case suited to the course needs. Upon receiving a case the student lawyer would contact the client, conduct a second interview and then commence the appropriate action. He was free to talk with me when he thought that necessary and commonly we would have a discussion at the outset to determine the appropriate action. If that action involved the drafting of an answer, complaint, or any other document, I would go over a draft of that document with him and both of us would sign it.

In the courtroom the students conducted the examination of all of the witnesses in noncontested divorce cases and, with one exception, made all of the arguments in both the contested and noncontested motions. In jury trials our general pattern was to permit the student to make the opening statement and to conduct the direct examination of our witnesses; I would then conduct the cross-examination of the opposing party's witnesses and make the closing argument.
II. Five Sample Cases

The flavor of the course work is perhaps best conveyed not by charts and totals, but by a study of several examples of student cases. Below is a description of five of the cases which students handled during the summer course. These five cases are not representative of all of the cases which students handled in the course, but an examination of the students' work on these cases will give an accurate and full-bodied taste of the students' work in the course.

Landlord Tenant—Ruth Layman

Mrs. Layman first came to the clinic to seek a divorce. While the divorce was pending, her landlady served her with a "seven-day notice" to quit, the first step in the Michigan eviction procedure. Mrs. Layman reported to her student lawyer that the premises were defective in a number of ways and specifically that the stairs were rickety, several light fixtures were inoperative, that the sink had not worked since she had come to the apartment and that the roof leaked. She stated that the landlady had promised to repair the premises, and that she (Mrs. Layman) had failed to pay the previous month's rent. The student lawyer determined that the appropriate action would be to file an answer to the complaint which followed the "seven-day notice" and to counterclaim for a reduction in rent on the theory that the landlady had committed a substantial breach of her obligations under the oral lease and under Michigan law. In addition he determined that it would be appropriate to ask for a jury trial both because a jury would be more favorably disposed to our arguments than a judge would and because the request for a jury would give us breathing space of at least ten days in which to draft an answer, a counterclaim and to prepare for trial. The case, originally set for trial on July 16, was first adjourned to August 6 on the judge's motion and then to August 13. In preparation for the trial the student lawyers interviewed a building inspector in Ypsilanti, a health inspector in Ann Arbor, two of Mrs. Layman's friends and examined and took pictures of the premises.

In mid June, shortly after the action was commenced, the landlady locked Mrs. Layman out of the apartment by nailing the door shut. Shortly after Mrs. Layman gained readmittance with the aid of a sheriff's deputy, she fell on a broken tread on the outside stairs and had to go to the hospital to have her leg treated. Accordingly the student lawyers filed additional counterclaims for the damages resulting from the lockout and for the damages resulting from injuries suffered in
the fall. The second counterclaim brought a Detroit law firm into the case to represent the liability carrier of the landlady. During the first week in August the student lawyers subpoenaed the Ann Arbor health inspector and two friends of Mrs. Layman to insure that they would be present in court on August 6. On August 6 all appeared in court bright eyed and bushy tailed only to find that the court had put the case over for another week to August 13 but had failed to get word to us. On August 13 the student lawyers again appeared with their witnesses (and with a supervising counsel from the clinic) only to find that the attorney for the plaintiff was not there. The court dismissed the case.

Subsequently the court permitted plaintiff to file a new suit in which she claimed rent and other damages identical to those claimed in the first case. The court denied our motion to strike all claims for rent and damages which had accrued prior to August 13 and set the case for trial on August 27.

On August 27 the case was tried before a jury of six in the 14th Judicial District Court in Ypsilanti. One student lawyer made the opening statement and conducted the direct examination of two of the five defense witnesses. The other student conducted the examination of the remaining three defense witnesses. The testimony both as to who caused the dilapidation of the premises and who was obliged to repair was sharply conflicting. The jury returned a verdict for eviction and for $240 of back rent. (The $240 represented reduction of approximately $140 from the amount of rent which plaintiff claimed and which would have been due at the agreed rental rate of $120 per month.)

Default Divorce—Linda Jefferson

Sometime late in 1968 Mrs. Linda Jefferson had come to the Legal Aid Clinic to seek a divorce from her husband. A student lawyer had commenced the divorce by filing a complaint and by June 7, 1969, the compulsory six-month waiting period from the filing of the complaint to the taking of a default had passed and the case was ready for a default to be taken. The student lawyer's work to procure a divorce consisted of drafting a variety of papers including a judgment of divorce, a "military affidavit," a motion for default and a motion for waiver of fees together with an affidavit of indigency. The student had also to interview the client to determine what facts needed to be included in the judgment and to go over the questions and answers necessary to procure a judgment. Finally, the student conducted the examination of the client in court to procure the divorce.
Contributing To The Delinquency Of A Minor—Larry Gates

Gates was an unfortunate 17 year old who was charged with contributing to the delinquency of three 14 year old girls who had run away from school and stayed away from home for two nights. The Michigan statute provides that one is guilty of “contributing” if he does acts which tend to bring another within the jurisdiction of the juvenile court. The defendant admitted that he had been in a car with the girls, that he knew they had stayed at a motel in Ypsilanti overnight, and that he had failed to tell their fathers where they were, but Gates denied having sexual relations with any of them, that he had given any of them alcohol or that he had behaved in any way improperly toward them. Prior to the trial the student lawyers had filed a demand for a bill of particulars. In response to that demand, the prosecutor allowed the students to examine the police report which contained a long and somewhat vague statement allegedly taken from the defendant after his arrest. Since the trial was before a newly appointed judge whom we believed to be favorably disposed toward defendants such as ours (a gross miscalculation), we waived the right to a jury at the last minute and tried the case to the judge. At the trial the prosecutor presented the parents of two of the girls, a police officer, and put two of the girls on the witness stand. The girls’ testimony about the defendant’s acts was conflicting and not particularly damaging but the police officer testified that Gates had told him that he had suggested that the girls spend the night in a specific motel in Ypsilanti. The student lawyers conducted the direct examination of Gates to bring out the facts that Gates had not suggested the motel, that he had not had sexual relations with any of the girls and in fact that he had only ridden in the car with them. (On cross-examination the defendant added nothing to his credibility by denying that he had made any statement whatsoever to the police officer.) Much to our surprise and chagrin, the judge convicted the defendant and from the bench sentenced him to 60 days in jail. That same day the student lawyers filed a claim of appeal and set the wheels in motion to free the defendant on $250 bond. Our next step was a motion in the Circuit Court (to which the appeal was taken) for the production of a transcript at public expense. At this writing the appeal is still pending and has not yet been argued.

Paternity—Henry Peterson

The Peterson case was both the most successful and most frustrating effort of the summer. It was successful because it ended in a complete
victory for the client; it was frustrating because it did not end in a full-scale trial at which the student lawyer who was loaded for bear could have shown his stuff. Peterson had been named as the defendant in a paternity action started in 1968. He admitted that he had had sexual intercourse with the plaintiff (an ADC mother who was suing as a condition to keeping her ADC), but he denied that he was the father. He reported that various and assorted others had also slept with the plaintiff. Prior to our entrance into the case, the plaintiff had answered a series of interrogatories which had been submitted to her but they seemed to be of little help, and none of the many who had allegedly slept with her was willing to come forward.

On the chance that they might reveal something, the student looked into the plaintiff's hospital records. There he found that the baby was probably premature and that it had probably been conceived a month or more after the last date on which plaintiff stated in her answers to the interrogatories that the defendant and she had had sexual intercourse. The student subpoenaed the medical records and the doctor who attended the birth to testify at the trial. In anticipation of an objection to the admission of the hospital records and the doctor's testimony, the student did a great deal of research on exceptions to the doctor-patient privilege. On the second day of trial after the jury had been selected and both sides had announced their witnesses, the plaintiff failed to appear in the courtroom and the court dismissed the case with prejudice. The student had prepared all of the witnesses and would have given the opening statement, and have conducted all of the direct examination.

Consumer Credit—Merollis

In the spring of 1969 a foreign student at the University of Michigan came to the clinic to complain that he had purchased a used car from a Detroit dealer for $600 cash and that the car needed a complete overhaul after only 40 miles of driving. He reported that he had taken the car to three mechanics in the 24 hours after its purchase and that each had reported that it needed a complete engine overhaul and suffered from numerous additional defects. The client also reported that the dealer had refused to let him test drive the car out of the lot because he “did not have plates for it.” The clinic commenced suit against the dealer on a warranty and a fraud theory and against General Motors on an express warranty theory based upon GM's advertising. The complaint sought compensatory and punitive damages.
At the commencement of the summer Merollis (the dealer) moved for a change of venue from the 15th District (Ann Arbor) to a district in Wayne County (Detroit). A student prepared a memorandum and affidavit in answer to that motion and Merollis withdrew it without oral argument. Then GM moved for a summary judgment on the ground that no agency had been alleged and that the advertising alleged could not constitute an express warranty sufficient to support relief in this case. The same student (who had just finished her freshman year) briefed and argued that motion (against an adjunct professor who is perhaps the most able advocate in Ann Arbor). At this writing the case has not come to trial nor has the judge ruled on GM’s motion.

The five cases just described are full of lessons, lessons both for the critical examiner of clinical courses and for the students who participated in the cases. In the following pages we will consider some of the former lessons, those about clinical courses and their educational value. For the moment consider a few random things which a student participant in some of these cases might have learned. First one gets a revealing look at the judicial machinery in motion in several of these cases. He sees that even the most “summary” of proceedings, an eviction, takes three months or more from beginning to end, and he is astounded to find that one must prepare and file at least fifteen and occasionally as many as twenty-one separate documents to take a non-contested divorce from start to finish. Such a student might be stimulated to ask himself why the machine could not be made to move faster and to operate with a lesser input of paper.

Second these cases expose a student to a magnificent menagerie of documents and processes which seldom appear in person in the law school curriculum. These are jury instructions, questions for voir dire, motions, and affidavits to support such motions. If he has done his job correctly, the student will have considered the possible uses of voir dire (To get information? To give it? Both?) and as the judge mumbles down his list of instructions while the earnest and bewildered Mrs. Jones looks up from the jury box, a thoughtful student might wonder whether those instructions really influence the jurors’ behavior in the way intended.

These cases also teach the bitter lesson that even powerful legal doctrine is often impotent before an intransigent judge or disingenuous witness. The experience of the Gates case should cause the student to ask the utility of the Miranda doctrine in the face of almost certain police testimony that the Miranda warnings were given. The students in the Layman case surely wonder why the judge did not
even listen to their apparently irrefutable argument that a dismissal which does not specify whether it is with or without prejudice is presumed to be with prejudice and therefore to foreclose further consideration of issues which could have been raised in the dismissed case.

Finally the cases pose some knotty ethical questions: If the answer to a question would clearly be privileged (if the privilege were asserted) may the cross-examiner nevertheless put the answer before the jury by the way he phrases the question? "Miss X is it true that you reported to your Doctor on February 17, 1968, that your last menstrual period had commenced on December 19, 1967?" The plaintiff's failure to appear on the second day of the Peterson case spared us our moment of truth on that question. Would you have asked the question in the form suggested?

It is indisputable that there was much to be learned both for the student and for the critical observer of clinical courses in this summer's experience. Let us pass now from the examination of the unrelated tidbits of knowledge which individual students might have acquired to ask what generalizations, however tentative, one can draw from this summer's experience.

III. Some Conclusions on Course Mechanics

A bothersome threshold question for one contemplating a clinical course is, Whom do I admit to such a course? Some assume that only seniors are ready for such a course; others suggest that the experience should come earlier in a student's law school career so that he can carry some of his learning back to his subsequent courses in law school. The ten students in the Michigan course were almost equally divided among those who had completed only the freshman year, those who had completed two years and those who were only a few credits short of graduation. Sad but true, I was able to discern no systematic difference among the students on the basis of their progress in law school. I conclude that any willing student who has completed his freshman year is competent to undertake a clinical law course. If one chooses to discriminate against any group on the basis of its progress through law school, that discrimination should be based upon factors other than their presumed competence.

The second thing which is clear from the student experience this summer is that it is difficult, probably impossible, to give each student a uniform experience along a carefully charted path. In the first place cases have a way of getting settled or getting postponed so that what one hopes to do next week, he inevitably does next month and what
one plans for next month may occur next year. It is perhaps possible to minimize the diversity of experience by having students conduct discussions of their cases in seminars. We tried that with some success on one occasion, but I am not certain that such discussions are an efficient way of spending one’s time in a clinical course.

The third thing which is apparent from studying students’ course evaluations and time sheets, is that the course causes some, though not necessarily excessive, interference with other classes. Each student reported that he had missed at least four classes during the summer because of commitments to the clinical law course; some reported that they had missed many more classes than that and that the course caused them to be unprepared for numerous additional classes. This was so despite the fact that most students in the course had only one other class (typically a class which would meet once each day five days a week). This experience suggests that it would be difficult to carry on a satisfactory clinical law program during the regular semester if the students had more than two courses in addition to the clinical course.

Another lesson on mechanics which the course taught was the difficulty (at least for this teacher) in evaluating student performance in the clinical context. I offered the course on a graded or a pass-fail basis at the students’ option. Only three out of the ten students chose to take it on a pass-fail basis. The problem in determining grades arose partly from the fact that I was unable to view the student work objectively after I had worked side by side with each of them for eight weeks and partly from the fact that the students’ experience was so diverse that there were very few tasks which all of them performed. The problem was pleasantly compounded by the fact that each of the students was remarkably diligent and none could be identified as a sloth to whom a lower grade might appropriately be assigned. After much agony I gave each of the students in the course an “A.” If I were to offer it again, I would require that the students take it on a pass-fail basis.

A final conclusion on the mechanics of the course, and a most important one, is that clinical law courses are very expensive. The law school budget supported the Michigan course by paying my salary and that of my secretary for the eight-week term. In fact I devoted all of my working hours to the course for the eight weeks during the summer and will eventually have devoted at least an additional two weeks of working time to the course when all of the cases have been closed. The expense inherent in a 10-1 student-teacher ratio is amplified by the demands which the course makes on the teacher. The
course makes all of the physical and emotional demands that trial practice makes on a trial lawyer. I found myself worrying over cross-examinations, over missed trial opportunities, and about improper rulings in quite the same way that one might worry on behalf of his own clients in private practice. Because of the irregularity of court calendars and the almost constant attention which the students on various cases required, I found that I was able to devote no time whatever to several research projects which I had in progress during the course. Although the cost per student could have been reduced somewhat by raising the number of students to fifteen or perhaps twenty, I am clear that I could not have supervised more than twenty students without seriously degrading the quality of the supervision. As it was, I was not able to supervise all of the court appearances which the students in the course had. Make no mistake, therefore, clinical law, properly done, is an expensive proposition. It is expensive first because it requires a low student-teacher ratio and secondly because it requires even more of the teacher's time and energy than a traditional course for a comparable number of credit hours would require.

IV. SOME THOUGHTS ON THE EDUCATIONAL VALUE AND APPROPRIATE GOALS OF A CLINICAL LAW COURSE.

How best one teaches what to whom is a question much asked but little answered. In the context of legal education the appropriate answer to that question has been a point of conflict for several centuries between advocates of clinical law in its various forms and advocates of classroom law. The following thoughts will do nothing whatever to resolve that conflict; they are offered only as the best guesses of a teacher and his students who have sampled a clinical law course.

Before one attempts to identify things which seem to be efficiently teachable and some which seem not to be teachable in a clinical law course, it is perhaps appropriate to ask the degree of legal difficulty, of challenge to one's analytical ability, which inheres in legal aid cases, the grist for most clinical courses. It is now gospel that the caseload of many legal aid societies runs heavily to divorce and is repetitive, dull and uninteresting. One accepting that gospel might logically infer that cases taken from a standard legal aid case load would not present legal problems worthy of a lawyer's intellectual inquiry. In the Michigan course we found that inference to be inaccurate and found rather that the cases with which we dealt in the course raised questions of frightening complexity and great practical difficulty. Consider the following questions which were presented by cases handled in the course this summer:
1. Is it a violation of the constitutional prohibitions on imprisonment for debt or of the due process or equal protection clauses to sentence an indigent (under the court's contempt power and without trial) to jail for six months for failure to comply with a court order to support his illegitimate child?

2. May a plaintiff in a paternity suit who has put the paternity question in issue by suing and who could be made to answer questions under oath relative to her conception, nevertheless assert the doctor-patient privilege to prevent the introduction of evidence about the time of her conception and the length and weight of her child?

3. Does the newly enacted "Michigan Tenant's Rights law" which authorizes a tenant to present "defenses" in an eviction action, mean that a lease is now to be read like a contract and that any substantial breach of that lease by the landlord frees the tenant from any obligation under it? Does a substantial breach by the landlord go only to a rent reduction or does it bar eviction as well?

4. Is a statute void for vagueness under the fourteenth amendment which makes it a crime for one to do any act which "tends to bring a juvenile under the jurisdiction of the juvenile court"?

5. Is it a violation of the federal law or of the equal protection clause for a federally subsidized cooperative housing project to operate under a tenant admission procedure which fills its housing with students who are "temporarily poor" to the exclusion of the local, "permanent" poor?

The cases dealt with in the course this summer raised each of the foregoing questions and many more which were equally thorny. Their solution demanded not only careful and thorough case analysis, but also interpretation of hastily drawn and imperfectly drafted statutes and a good deal of imaginative argument. Whatever the nature of the "average" legal aid case, our experience demonstrates that even the most casual selection process can cull a substantial number of challenging cases out of a standard clinic caseload.

Smashing headon into difficult legal problems may be highly stimulating but then so is a roller coaster ride and the question remains: What can one best learn and teach in a clinical setting? Consider first two things which our experience suggests are not well taught in a clinical context. The consensus of my students and me was that the students learned very little substantive law during the eight-week course. I had hoped at the commencement of the course that we might use the seminar format to give a rather broad instruction in landlord-tenant law, welfare law, and certain aspects of commercial law. Apart from our effort in the landlord-tenant area, we had no success with
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such projects. Of course individual students acquired a great deal of learning in the very narrow areas where they happened to do intensive research on specific cases. Unless one drew all or nearly all of his cases from a single substantive area (e.g. divorce) and supplemented the clinical work with substantial classroom work, teaching substantive law in a clinical course would be hopeless. Even if one so concentrated his cases and supplemented them, I am not sure that the clinic setting is an efficient one for teaching substantive legal principles. The cases are so diverse and the experience so unpredictable that the learning is necessarily haphazard and unsystematic.

Second I saw no evidence that the clinical experience teaches “social awareness.” Some advocates of the clinical experience argue that the skin-flinted conservative can be made into a compassionate liberal by an eight or ten week exposure to legal aid practice. I saw nothing in my students nor have I seen anything in our volunteer students of past years which supports that thesis. It is my impression that the quality of legal work is quite unrelated to the student’s political philosophy, and that exposure to legal aid clients, clients who are sometimes dirty, occasionally illiterate and often disingenuous, is just as likely to reinforce a student’s negative views of the poor as it is to alter those views.

If it does not teach substantive law and if it does not teach social awareness, what then is the unique educational value of a clinical experience? The eight-week experience this summer suggests to me that the clinical experience is uniquely suited to learning and teaching of at least three kinds of things:

1. Standards of professional behavior.
2. Interviewing skill.
3. Trial practice.

The term “standards of professional behavior” is hopelessly ambiguous; I use it here not to describe the fundamental values with which a student comes fully equipped. Only a fool would suggest that even the most powerful law teacher could recast a twenty year old liar or do much else about the fundamental values which his environment has instilled in him. Yet there are a variety of values of lesser magnitude, habits of performance and lawyer behavior, which students must somehow adopt before they become full-fledged lawyers, and it is these to which I refer by the term standards of professional behavior. Some of these are the habits which we now attempt to inculcate in the first year: attention to detail, careful analysis, concise writing. It should be self-evident that one can have a greater impact
upon the behavior patterns of his students in the clinical setting in which there is one teacher and only ten students than he can in the classroom with one hundred students. Because there are fewer students and because the clinical teacher is actually playing the lawyer role, he serves as a more intimate, realistic and therefore more powerful model.

I found the students eager to understand their obligation to the client, to be given standards as to how much time and effort a lawyer owes his client. They were anxious to know how a good lawyer handles the difficult but low-paying case; how a lawyer properly resolves the many conflicts which can arise between his current client’s interest and his own long-range interest. (e.g. Do I represent this plaintiff in his charge of police brutality and so alienate all of the police in the county on whom I must depend for testimony in personal-injury cases? Do I take an appeal in this unimportant case and so make the judge my eternal enemy?)

The course experience provided plentiful examples for learning proper lawyer behavior and its rewards. On at least four occasions students in the course won motions or cases because they were more careful, more diligent, and better prepared lawyers than their opponents were. One student’s brief caused the opposing attorney to drop his motion for change of venue. If the opposing attorney had prepared as well as the student had, he would have won the motion. In another case a student caused a default judgment to be opened eleven months after it had been entered and after another lawyer had advised the client that the judgment could not be opened. In a third case diligent research uncovered a new and successful defense to a paternity suit. These and other experiences like them contain several lessons about lawyer behavior which were not lost on the students. As one student put it in his course evaluation: “Exposure to the rewards of... conscientious preparation is surely not premature.”

Not only did the cases serve to inculcate the value of preparation, they also displayed the necessity for deviating from the local practice norms when that deviation was in the client’s interest. In several of the cases which the students won they submitted memoranda of law in circumstances in which local practitioners would not have done so; in other cases they asked for things to which they were entitled (e.g. a jury trial in a traffic case, a bill of particulars in a misdemeanor case) which were not commonly requested in the community. Moreover I attempted to reinforce these lessons by pointing to the performance of some of the most able members of the bar in Ann Arbor
and by inviting one such member to participate in a seminar discussion. I hope and believe that most of the ten students in the course have carried away some clear ideas about acceptable standards of lawyer performance—of the way pleadings should look, of the kind of preparation one should undertake for trial, and above all about the necessity of “rocking the boat” when such behavior is appropriate to protect a client’s interests.

A second and quite different thing which can be taught in the clinic study is the skill of interviewing. No one will deny that we do a largely ineffective job of teaching interviewing in the traditional law school curriculum; mostly we ignore the problem. Its quantity and variety in domestic relations cases make the legal aid clinic a fertile place for interviewing training. We devoted only a small part of the Michigan course to interviewing; that work consisted of 1) my observation of one or more interviews by each student, 2) a discussion with the student of his interview after it had taken place, and 3) a seminar on interviewing conducted by a psychiatrist and myself.

The interviews which I observed presented a rich and taxing set of problems for the student-interviewer. In at least half of them the client was in tears at some point during the interview; most of the interviews required the student to ask about intimate, financial or sexual details of the clients’ lives. After each interview we would discuss the client’s case (Does she really want the legal consequence for which she asked? Why didn’t you ask her whether she had had sexual intercourse with her husband after the fight which she described?). Although this experience was even more of the blind leading the blind than usual, my impression is that the students became more sensitive to the job they were to accomplish in the interview and more skillful in drawing out the client and putting the client at ease. It would be an easy matter to devote an entire clinical law course to the systematic teaching of interviewing.

Trial practice is a final skill which can be readily taught in the clinic setting. When our course is completed, students will have conducted at least five jury and four non-jury trials, more than fifteen noncontested divorces and will have argued at least six contested motions. Each of the students will have examined a witness in an uncontested matter and more than half of the students will have examined witnesses in contested matters before juries. More than anything else, the summer course turned out to be a course in trial practice. The cases with which we dealt exhibited all the pesky problems about which one would talk in a trial practice course: the importance of facts re-
search, the drafting of pleadings, interrogatories and motions, the
selection of a jury, the art of examining and cross-examining witnesses,
of making opening statements and closing arguments and many other
problems of trial tactics.

If one were to hold out a clinical course as a full-scale trial practice
course, he would have to overcome the inevitable scheduling problems
which arise because of the settlement or adjournment of cases. And
he would have to schedule at least some classroom work to insure that
the students, whose trials would vary, had some exposure to problems
which did not arise in their own trials. These problems of scheduling
and of the diversity of student experience would be a small cost to
pay for the stimulation inherent in doing real work on real cases.

One can identify a variety of other intangible educational benefits
to be derived from a clinical course. Several of my students stated that
two years of law school had dampened their initial desire to become
lawyers but that the course experience of handling cases on behalf
of real people had revitalized their interest in becoming lawyers. Surely
too there are intangible benefits to be derived by the teacher. I am
certain that I learned more this summer than any student did and I
enjoyed the course at least as much as any of the students. (Although
I did not volunteer this information to my students, one member of
the class and I were jointly conducting the first jury trial for each of
us one day this June.)

Students in the course, and other students vicariously, may derive
benefits in their traditional law school courses from the clinical expe-
rience. On several occasions students who were taking evidence con-
currently with the course were delighted to find that the principles
which they had learned only a few days previously in evidence class
were actually applied in trials. Another student who had just finished
his freshman year commented with obvious amazement that much of
what he had learned in civil procedure was relevant and indeed nec-
essary for a lawyer to know. Surely a student who has handled a
bankruptcy, bargained with a creditor and represented a tenant in an evi-
cition suit, will better understand traditional courses in creditors' rights,
commercial transactions and landlord-tenant law and will have better
and more incisive questions to ask. Indeed one of my colleagues who
teaches family law has reported to me that legal aid students ask much
more relevant questions and stand for less chaff than the ordinary stu-
dent. Still it is unclear to me whether this value, this enriching of tra-
ditional courses by contribution of clinical experience, is a marginal
one which occurs only infrequently or whether it is a phenomenon
experienced by each student who has had a clinical exposure.
V. CONCLUSION

It appears that clinical law, and especially clinical law practiced on behalf of the poor, will occupy the position in the law school universe of the seventies which was held by international and comparative law in the sixties and late fifties. It promises to be the darling not only of our students but also of the foundations and the federal government and the latter two will doubtless entice all of us into a mindless and unbecoming scramble to spend their money. (A colleague of mine once opined that a law school would accept and operate a "skunk farm" if there were any money in it.) It will be hard utterly to waste that money, for even the most ill-conceived clinical program is worth something, but it will take more careful planning and more thoughtful and deeper analysis than anyone has yet offered to insure that such money is spent in an efficient and effective way. Notwithstanding the questions and doubts expressed above, I remain a wholly partial and largely irrational advocate of clinical law and offer the course description on the foregoing pages principally as a datum for the analysis of observers more objective than I.