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6 *Contemp. Drug Probs.* 3

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Providing legal services to the addict: an experimental law school clinical program

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The need for legal services as a component of drug rehabilitation programs is frequently encountered but seldom satisfied. Addicts seeking to rearrange their chaotic life styles bring a host of legal problems to the door: undissolved former marriages, unresolved questions of child custody, revoked driver's licenses, pending criminal cases—the litany is one familiar to every caseworker. As efforts toward rehabilitation progress, additional legal problems frequently become obstacles: employment discrimination, eligibility for government benefits, expungment of criminal records—the list is as endless as the red tape which entangles it.

At present, the resources available to meet this need are sporadic at best. The ideal answer—a full-time legal staff—is a resource few drug programs can afford.¹ Some programs utilize part-time volunteer lawyers, who often lack expertise about drug using behavior, and soon discover that the

workload vastly exceeds the several hours per week they have available to donate. Legal Aid agencies may be available in the community to accept referrals, but frequently the client fails to follow up on the referral, or becomes discouraged as his case is bounced from one lawyer to another, none of whom seem to have patience with the "unreliability" of their client, or much familiarity with the drug rehabilitation program in which he or she is enrolled. Most often, the case worker attempts to fill the void by "playing lawyer," stumbling through a maze of statutes and regulations, making an endless progression of phone calls before finding the appropriate bureaucrat who offers a definite "no," which may well turn out to be the wrong answer.

The purpose of this article is to suggest a virtually untapped resource to provide legal services within drug rehabilitation programs: the law school clinical program. Although the clinic is a familiar teaching model to physicians, nurses, social workers and other professionals, it is a relatively recent innovation in American law schools.² Nonetheless, there has been remarkable growth since law school clinical programs began to proliferate 10 years ago. Much of this growth has been inspired and financed by the Council on Legal Education for Professional Responsibility, funded by the Ford Foundation.³ Today, 40 states have adopted special rules permitting law students to counsel clients and represent them in court, as long as the students are supervised by a licensed attorney.⁴ The growth of law school clinics happily coincided with a growing awareness of the unmet legal needs of vast segments of our population. Law school clinics have frequently focused on these needs, with enthusiastic students providing representation to the poor, the elderly, members of Indian tribes, and inmates in correctional institutions.

Recognizing the potential of law school clinics as a response to the unmet need for legal services in drug programs, the National Institute of Drug Abuse in 1976 funded a 3-year experimental program at Loyola Law School in Los Angeles. Loyola offered an ideal setting for this experiment. The school was already operating a community legal assistance office in

which a staff of attorneys was supervising students providing representation at the California Institute for Women, and those in the surrounding community who could not otherwise afford counsel. A course in drug abuse law was already an established part of the law school curriculum,⁵ and the law school also sponsored a continuing legal education course in the prosecution and defense of drug cases for practicing lawyers.

The training design was relatively simple. After a brief period of orientation and academic training, the students would be placed on site 1 or 2 days each week at several drug programs in Los Angeles County. Working under the full-time supervision of an experienced attorney, the students would counsel patients regarding legal problems, and, where appropriate, undertake representation of the patient. As a long range goal, it was anticipated that the student's case work would expose legal problems which recurred with some frequency, and might be dealt with most effectively by law reform efforts, such as class action litigation.

The program has now been in operation for nearly 1 year. While a complete evaluation is premature at this point, we hope that recounting the experience of our first year's effort will assist others seeking to structure programs to meet the legal needs of drug rehabilitation patients.

Selection of placements

Since the number of drug rehabilitation centers in Los Angeles County far exceeded the supply of students and supervisors available, we could be extremely selective.

The first step was to become familiar with the variety of drug rehabilitation centers and the services they provided. That led to the development of a series of priorities in choosing centers for law student placement.

(a) We sought rehabilitation centers which had been in

operation several years, assuring an on-going relationship between law students and their clients.

(b) Similarly, we sought out centers where there was a relatively high rate of rehabilitation achieved—either self-described, or by reputation. Again, there was an expectation that such centers could offer an on-going relationship between law student and client, and could provide nonlegal “back-up” for legal solutions.

(c) Third, we sought to expose the law students to a variety of drug treatment modalities. It was postulated that clients in different treatment modalities might present different sorts of legal problems.

(d) A variety of client populations was also seen as a value. We hoped that at least one rehabilitation center might be primarily black, another primarily Chicano and another offering extensive services to women addicts. We felt that servicing such minorities would “sensitize” law students and provide a much-needed community resource.

(e) Locale and proximity to the law school was of some weight, considering the size of Los Angeles County and the consequent necessity for law students to spend long periods of time traveling to and from the centers. This element probably played the smallest part in choosing placement centers.

In addition to meeting these priorities, we felt it necessary to insist that certain conditions be met before law students could be placed in a rehabilitation center. The Canons of Ethics under which lawyers and law students work require both confidentiality and noninterference in the lawyer-client relationship.⁶ As a practical matter, this required:

1. A place where would-be clients and law students could talk confidentially.
2. An assurance that a client would not be required to tell the

counselor the nature of the legal problem, or reveal the substance of such a confidential communication to another rehabilitation staff member, before seeing a law student.

3. A further assurance that, if it became necessary in the course of representation, the legal staff would be free to sue the rehabilitation center on behalf of a client. It was foreseen that right to treatment, termination problems, disciplinary dismissals and similar issues might emerge and suggest a conflict of interest between client/patient and the drug center. It was important to the clinical program that the integrity of the lawyer-client relationship not be compromised because the students were also functioning as part of the rehabilitation staff unit.

4. Finally, there was an expectation that the rehabilitation centers would assist in scheduling appointments, helping with administrative details, and educating the participating law students about drug addicts and their rehabilitation.

Selection and preparation of students

Eight students were selected to participate in the program. Each of the students was interviewed in advance, both to assess his/her capacity to undertake the responsibilities the program would demand, and to insure a full understanding of what demands the program would make upon them. Two of the eight students were female, and four were second-year students.

At the beginning of the fall semester, all of the students were required to enroll in the regularly offered course in drug abuse law, which introduced them to the pharmacology and physiology of abused drugs and the various modalities of treatment. Since this course focuses primarily on criminal law practice, it was necessary to supplement this with "crash" lectures on current California family law, housing law, parole and probation revocation, administrative law, and other areas

of law it was anticipated they would encounter. Several "workshops" based on simulated court proceedings were also arranged, providing the students an opportunity to examine and cross-examine expert witnesses, including a chemist and a physician. Experts were also brought in as guest lecturers.⁷

The students were further required to enroll in a course in lawyering skills, which allowed them to "practice" in simulated cases the variety of pretrial lawyering tasks of interviewing, counseling, negotiating and arguing pretrial motions. In the interviewing sessions, drug rehabilitation counselors were brought in to role play the part of addict-clients and to discuss the special problems of interviewing drug addicts: hesitancy to rely on or trust lawyers; lack of good recall; the range of manipulative possibilities; unreliability, and so on. This session was video-taped for the participants.

During the spring semester the students also participated in a more elaborate simulated video project based on an actual case. They were given tasks of preparing witnesses and legal theories and conducting the trial of the case before an actual judge. The possibilities of learning and improving trial skills in "rehearsal" and in front of the camera were exploited in this teaching experience. An ongoing classroom seminar continued during the spring semester, and supplemented learning in those areas of practice most needed by the students.

Various field trips provided the students with insights and information which would otherwise have been difficult to communicate in a classroom setting alone. A trip to Synanon, one to a chemical laboratory specializing in street drug identification, and observation of a legislative hearing dealing with changing drug classifications under California law were all part of student training.

Law students are not authorized to accept cases or to advise clients on the law without approval from a member of the bar supervising that student. Consequently, there is a very active, ongoing process of student supervision from start to finish on

each case. The law student is given a tremendous amount of responsibility in choosing legal theories, recommending alternative courses of action and keeping up on their cases. It is fair to say, however, that no major decisions are made on client's legal matters without substantial supervisory attorney involvement.

The supervising attorney was assisted in this task by a student director. The student chosen for such a position is expected to be somewhat more experienced in lawyering skills than his or her peers. The tasks of student director include an initial supervisory function, advising the other students about procedures, legal possibilities and generally looking over written work and oral presentations.

Civil caseload

Since the state provides lawyers for any indigent defendant charged with a crime for which a jail sentence can be imposed, and since most drug addicts are indigent, we originally decided not to spend the limited resources of the program duplicating the existing Public Defender system. The program initially represented few clients in criminal contexts. For a variety of reasons set out below, it was decided to increase the amount of student and supervisory time devoted to criminal representation. The breakdown of civil to criminal cases during the first year still weighed heavily toward the civil side.

It is possible, when representing indigents, to entirely fill up caseloads with family law matters. There is a paucity of services provided in this area, and a tremendous amount of work to be done. It was felt that each student could and should gain some exposure in this area of law, but we should avoid making these cases a "steady diet" for the students. Consequently, the students handled a limited number of these domestic matters. Similarly, other problems that drug addicts frequently experience and need help with include debt collection, social security disability entitlements and collections, landlord-tenant problems, auto accident cases; and we have been involved in each of these areas as well.

It was expected that legal problems in certain areas might predominate: for example, employment problems, license revocation, rehabilitation for professional licensing and criminal record sealings. The program accepted most of these types of problems when they arose; but they arose less often than expected.

Finally, problems in relatively unanticipated areas of the law emerged: neglect and dependency (juvenile) proceedings against addict parents; tax assessments based upon seized drugs; "old" criminal arrests; bigamy; embezzlement; and so on.

There are a series of variables which the program has not yet been able to assess as to the cause/effect relationship between drug programs and caseloads. For example, certain students brought back few, if any, cases to be worked on. Is the significant variable the individual student, the modality of treatment of the rehabilitation center, or the staff and/or outreach policies of a particular drug center, etc.? Hopefully there will be a programmatic analysis of these variables as we gain additional experience.

A major goal of the program, of course, was for the students to recognize and deal with the relationship between the legal problems presented by the clients, and the drug using behavior that may have precipitated or exacerbated it. In a number of the cases presented, that relationship was nonexistent or forced. It seemed in those instances the legal problems were more closely related to the client's status as an indigent than to his or her status as a drug addict.

In other cases, however, dramatic examples of this relationship were revealed.

One such case was that of Mr. A., brought before the court for sentencing. The law student had participated in a plea bargaining session which reduced the charges against the client in exchange for his admitting to possession of a hypodermic

syringe. The consequences of such a plea included the reduction of his possible sentence to a 90-day sentence if he received an adverse probation report. Mr. *A.* didn't hit it off well with his probation officer and was deemed "uncooperative" when he refused to submit to an examination of his arms. To the probation officer, he was just another drug addict with a bad attitude.

His recommendation: jail. But there was more to Mr. *A.* and his issues than met the probation officer's eye and the law student argued convincingly with the judge to convey those other things. First, the four-page rap sheet contained many charges never filed or proved and a careful examination of it revealed that Mr. *A.* hadn't been convicted of a crime since 1968! Second, he put into a persuasive and reasonable perspective why Mr. *A.* had not wanted to submit to an examination of his arms: that Mr. *A.* had undergone extensive blood-testing and was fearful those needle marks would be held against him; that Mr. *A.* had been told it was his right to refuse to be examined and was simply exercising that right. Third, the student spoke strongly about the benefits of employment and a drug rehabilitation program over prison, arguing with particularity about the program Mr. *A.* was involved in from the student's own 8 months' experience with the center and as part of that rehabilitation team. Probation was granted.

Another client, Ms. *B.*, presented several legal problems—one, a highly suspicious sale of heroin charge and the second, a family law problem. In the second matter, Ms. *B.*'s ex-husband had virtually kidnapped their son after exercising visitation over one weekend. Then he went into court, filing papers to deny her custody and visitation on the ground of her being charged with a heroin sale: through investigation the students discovered that Ms. *B.* was having a drug problem and finally a settlement was worked out in the best interest of the child as well as the mother. The addict's legal problems had begun their snowball effect: a phenomenon we're all familiar with. But the students' involvement with the familiarity with the drug center

in these, as in many other instances, redounded immeasurably to the benefit of the clients themselves.

Criminal caseload

As previously noted, we initially intended to undertake representation in criminal cases very rarely, feeling we should not attempt to duplicate services rendered by the Public Defender. We soon discovered, however, that the civil cases taken on by the students offered them little opportunity to appear in court and utilize the skills imparted in the preparation phase. This was a source of great disappointment to the students. We also discovered that the clients were frequently dissatisfied with the representation afforded by the Public Defender, and were anxious to have the students represent them. We then decided to accept a limited number of criminal cases.

Since the motivating factor in accepting these cases was to expose the students to courtroom proceedings, an attempt was made to accept only "triable" cases in which a jury trial appeared likely. Since 91 percent of opiate cases are disposed of by a plea of guilty,⁸ finding triable cases might appear to require a good deal of selectivity, but we had little difficulty in finding all the "triable" cases we could handle.

One unique aspect of California drug laws is the continued enforcement of a prohibition against appearing under the influence of a narcotic drug.⁹ Although the Supreme Court long ago held that one cannot be punished for the *status* of being an addict,¹⁰ that decision has little practical effect because the addict is liable to arrest at any time for "being under the influence." Although a misdemeanor, the offense carries a mandatory penalty of 90 days in jail. In proving its case, the prosecution relies upon the "expertise" of the arresting officer to establish that symptoms such as droopy eyelids, constricted pupils, dry mouth, slurred speech and needle marks are characteristics of being under the influence of narcotics. These are also characteristics of being under the

influence of alcohol and other noncontrolled substances. Thus, such cases offer an ideal setting for students to grapple with medico-legal issues in challenging the expertise of the police officer and offering independent expert testimony on behalf of the defendant. In one of the clinic's cases a student obtained a writ of mandate from an appellate court compelling the trial court to appoint a medical expert, at state expense, to testify on behalf of a defendant charged with being under the influence of a narcotic, in order to rebut the accusing officer's expertise and to offer additional evidence.

California law also permits the arresting officer to seek a urine sample from a defendant arrested for being under the influence. In two of the cases handled by the clinic, the defendant refused to give a urine sample, providing us the opportunity to litigate the effect of such a refusal when the prosecutor seeks to comment upon it to the jury.

While the criminal cases sometimes required a heavier commitment of supervisory time, they certainly offered the students valuable courtroom experience they might not have otherwise acquired, as well as an opportunity to put to practical use much of the information about drugs and drug laws they had mastered in their classroom work. The criminal cases also presented the clinic with opportunities for law reform yet to unfold.

Law reform potential

Law reform was a long range goal of the clinic. During the first year, we expected to do no more than identify recurring problems that might be dealt with more effectively by efforts directed toward legislative reform or class action litigation. We were assisted in this effort by an informal liaison with the California Council of Methadone Programs, and other local organizations, which have consulted the clinic with regard to several issues potentially affecting large numbers of patients. By way of example, two problems can be described which raise issues of law reform potential.

The federal regulations governing confidentiality of drug treatment records contain an explicit prohibition against enrolling police informants in drug treatment programs.¹¹ A rather blatant violation of this regulation occurred in *Armenta v. Superior Court*, 61 Cal.App.3d 584, 132 Cal.Rptr. 586 (1976), where the Santa Barbara County Sheriff's Department enrolled an undercover informant in a methadone program with instructions to arrange to buy drugs from patients enrolled in the program. The court, while upholding the federal regulations, held that their violation did not require exclusion of the evidence thereby obtained. While the *Armenta* case came to us too late to permit intervention, the police disregard of federal regulations described therein is apparently not unique. Hopefully, the next time it occurs we will have an opportunity to challenge the practice.

The second example involved the long-standing policy of the Los Angeles Police Department to book all defendants found under the influence of narcotics on a charge of "possession" on the questionable theory they had to possess the drugs in their bloodstream before they were injected. The defendants are never formally prosecuted for the felony possession offense, since the policy of both prosecuting agencies, the city attorney and district attorney, is to charge only the misdemeanor of being under the influence where no contraband drugs are seized. The inflated charge at booking requires the defendant to post higher bail than would be required if he were originally booked for the misdemeanor. While the courts have recently required that a defendant be warned of the "possibility" he will be ultimately charged with being under the influence, so he can seek an immediate medical examination or urine specimen,¹² the problem of inflicting punishment in the form of higher bail can be effectively raised only in the context of a class action.

As these examples illustrate, law reform efforts require a consciousness of the issues to be raised, access to a large cross-section of cases in which these issues can be litigated, and substantial personnel to work on the issues. One advantage of a

law school clinical program is that all of these conditions are ready-made, presenting great potential for law reform activity.

It is also of incomparable benefit to the students to learn to work on larger cases and to be a part of effectuating law reform. These training experiences are hard to duplicate.

Conclusion

In our experience the law school clinical program provides a highly viable alternative for meeting some of the need for legal services in drug rehabilitation programs. This year has demonstrated that we can offer a unique opportunity to learn from real-life experiences and, simultaneously, offer high quality legal services to a needy clientele. The chief ingredients are providing adequate preparation of the students, exercising selectivity in the cases that are accepted, and maintaining close supervision of the student's work. While California permits supervision at a ratio of ten students to one lawyer, we found an eight to one ratio pushed supervision to the outer limits, especially when the caseload was broadened to include criminal cases requiring more frequent court appearances.

Notes

1. Lowinson, Langrod and Alperin, "Legal Services as a Tool in Treating the Addict," 130 *Am. J. of Psychiatry* 592 (1973).
2. Kitch (ed.), *Clinical Education and the Law School of the Future* (U. of Chicago Law School Conference Series No. 20, 1970).
3. Pincus, "Clinical Practice Innovations in Law Schools," 28 *Brief Case* 47 (1969).
4. Council on Legal Education for Professional Responsibility, Inc., *State Rules Permitting the Student Practice of Law: Comparisons and Comments* (2d ed. 1973).
5. Uelmen & Haddox, *Drug Abuse and the Law* (West Pub. Co., 1974).
6. ABA Canon D.R. #4:101; California Business & Professions Code § 6068(e).
7. Experts included: Joseph Shannon, M.D.; Thomas Ungerleider, M.D.; Forrest Tennant, Ph.D.; Joseph Gunn of Los Angeles Police

Department; Michael Nasatir, Esq.; Ronald Markman, M.D.; Richard Niedorf, Ass't. D.A.; Victor Haddox, M.D.

8. Johnson & Bogomolny, "Selective Justice: Drug Law Enforcement in Six American Cities," III The Technical Papers of the Second Report of the National Commission on Marijuana and Drug Abuse, p. 563 (1973).
9. California Health & Safety Code § 11550 (1975).
10. *Robinson v. California*, 370 U.S. 660 (1962).
11. 42 C.F.R. § 2.19 (1975).
12. *People v. Johnson*, 133 Cal.Rptr. 123 (1976).