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THE CLINICAL DEFENSE SEMINAR: A METHODOLOGY FOR TEACHING LEGAL PROCESS AND PROFESSIONAL RESPONSIBILITY

Rose Elizabeth Bird*

Clinical education presents a unique opportunity for the law schools of this country to teach legal process and professional responsibility while satisfying the desires of their student bodies for relevancy and for training in the skills and techniques of trial advocacy.1 An alliance between the world of academe and the world of practice, which has not previously existed, could result. Until now these worlds have been antagonists more often than allies, yet each could gain much from a more cooperative relationship. With this goal in mind, a clinical defense seminar was instituted at Stanford Law School two years ago. This article will describe the approach and methodology employed and attempt to analyze the results.2

AN HISTORICAL PERSPECTIVE

Clinical education has been the stepchild of legal education for a long time.3 If it had not been for the financial support of

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1. The author wishes to express her gratitude to the students of Stanford Law School and the University of Santa Clara School of Law for taking part in the experimental course which is described in these pages. Without their enthusiasm and help, as well as the cooperation of Sheldon Portman, the Public Defender of Santa Clara County, Dean Thomas Ehrlich and Anthony Amsterdam of Stanford Law School, the Hon. R. Donald Chapman, the program would not have been possible.


the Ford Foundation through the Council on Legal Education for Professional Responsibility, Inc., and the demand by law students for more relevancy in the law school curriculum, there would have been little development in clinical education. The historical roots for the resistance to clinical courses by law school faculties gives some insight into what is basically wrong with much of legal education today.

The law school as it presently exists was shaped in large part by the philosophy of Christopher Columbus Langdell who was Dean of the Harvard Law School in the late nineteenth century. He instituted the case method approach which viewed the law as a science which could be taught by an analysis of legal rules and doctrines in appellate case law. This was the beginning of the "academic" approach to the study of law. The case method was a response to a general dissatisfaction with the apprenticeship system whereby the aspiring young lawyer worked in a law office under the supervision of an experienced attorney to gain proficiency in the law before he began to practice independently.

From the beginning, the universities looked upon the apprenticeship system and the practicing lawyer, who controlled the apprenticeship system, as rivals. The development of the case method with its emphasis on doctrine and substantive law gave to the academicians the weapon they needed to downgrade the legal profession as it was practiced. Early in this century, the movement toward the academic training of young lawyers took hold and the requirements for bar examinations were changed to allow the substitution of university law training for apprenticeship. The law schools came to reflect more and more a kind of elitism which began to grow into a disrespect for the practitioner.

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5. Id. at 174.
6. See Auerbach, Enmity and Amity: Law Teachers and Practitioners, 1900-1922, in 5 Perspectives in American History (Fleming and Bailyn eds. 1971).
and the competitive apprenticeship system. It was but a brief step to the complete elimination of the apprenticeship system.

The "gap" which is always being "bridged" when the student enters practice after graduation from law school and the passage of the bar, finds its roots in this original enmity based essentially on early competition. The divorcement of scholarship from the practice of the law was one of the most unfortunate aspects of the development of law schools in the United States.

THE PRESENT PROBLEM

The law school suffers today, in part, because many of those who teach have little or no knowledge of the real world of the practitioner other than what they have been able to glean from decisional law. As a result, many professors fear development of clinical programs because one always fears what one knows least. Under the "publish or perish" syndrome, teaching has become a secondary function in the law school and students considered a necessary evil. As a result, the law schools have become a refuge for individuals who have little interest in the practice of the law.

The student in the clinical setting must study and comprehend the complexity of the legal system and its participants. This type of course is not so refined and bled of all its life that students become bored by it. They must marshal the facts, apply them to doctrine, and see if the reality of the system as it actually works (as opposed to theory) will bring about the desired result. The facts are not predigested, nor the doctrines defined, nor the judgments entered. The student must create the case. This is analogous to the development of the playwright. Certainly, enough of law school is geared to turning out appellate critics that the system could stand a few playwrights within it.

Moreover, much of the work of law faculties is spent in compiling casebooks rather than in original research which might bring new insights into the legal process. This fact alone should give pause to those who so ardently oppose change in the form of clinical education. If the students are asked to participate in, and observe the legal process at first hand, one certain result will be more original research in this area. The realization that the students may demand some insight into the system and that the professor may not be able to supply it exacerbates the present sit-


ation. One cannot hide behind "legalese" and "scholarship" when teaching in the clinical setting. There are no absolutes, no concrete answers. Rather, in litigation one deals with an imperfect system. Multiple strategies must be employed to attain a goal, nothing is given; approach and manipulative abilities often bring the desired result although doctrine or legal principles should have easily resolved the issue. It is perhaps partly a fear of attempting to teach something without having first experienced it that is frightening to many teachers who have a vested interest in keeping the present system intact.

In the clinical setting, doctrine is not inculcated to be regurgitated for examination. Rather, the student must identify the problems and issues, collect the pertinent facts, apply the correct doctrine and legal principles, and then develop proper strategy to achieve the desired result. At the conclusion, he must be able to identify the different phases of the process, justify the actions taken and accept the responsibility for the result.

Instruction in a clinical course is individualized and the teacher comes to know his students as colleagues rather than pupils. It is not inaccurate to equate the role of the clinical teacher to that of a coach. One works individually with the student at close range on all aspects of a problem. The approach differs with the individual personalities involved. Versatility and flexibility are of primary importance. Just as the student in this individualized setting reveals himself, so too does the instructor. To the traditional professor, this type of closeness is uncomfortable. This is especially true for those individuals who took the academic route to escape the tensions and pressures of practice. Further, to the person who is more interested in research, the disorderliness and untidiness of the real world, the pressures of dealing with a myriad of persons and events can become overwhelming. This is often turned into a contempt for the practice of the law which is reflected in many of our law schools. It is far easier to condemn and to ignore than it is to deal with problems that are difficult.

The clinical approach to legal education not only brings with it a revolution in the methodology of teaching and a strong commitment to teaching as a worthy endeavor but it requires a change in the type of person who is selected to teach these courses. The Council on Legal Education for Professional Responsibility in a recent newsletter pinpointed this fact. It concluded that most of the individuals who are presently teaching these courses are a "different breed of cat."9 They were found to be younger (me-

dian date of birth was 1940), and to have been teaching only a short period of time (median time was only 2 years). Most had had no teaching experience prior to accepting their instructoral roles (fully 81.9%), and most, if not all, had practiced prior to coming to their law school. Few came directly from law school and clerking into teaching, the traditional route to success in academe.

Given the historical perspective, the fact that a different type of teacher has to be selected with a real commitment to teaching, it is not surprising that clinical education has met so much resistance. However, the public and the profession demand change. As early as 1921, it was recognized that the law schools were not fulfilling their promise. “The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly.” Recently, the Chief Justice of the United States Supreme Court has spoken on the subject. In his appraisal of the shortcomings of the profession, he did not spare the law schools.

A second cause of inadequate advocacy derives from certain aspects of law school education. Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to the lawyer’s function. With few exceptions, law schools also fail to provide adequate and systematic programs by which students may focus on the elementary skills of advocacy.

This article does not advocate “apocalyptic solutions to largely misunderstood problems,” nor suggest that students should “get out of the sterile air of the classroom into the vital atmosphere of functioning legal institutions.” Clinical education is not a “shibboleth” nor a panacea for the problems that are evident in our institutions and our society. However, little is going to be done about them if the law schools turn away and continue with “traditional” education. If the goal of legal education is to train students to “think like lawyers,” that is, to approach problems rationally and to think logically, then many methods should be utilized to attain that goal. A recent description of “conventional legal education” should convince the reader that what is currently passing for legal education leaves much to be desired.

10. Reed, Training for the Public Profession of the Law, 15 CARNEGIE FNDN. FOR THE ADVMT. OF TEACHING BULL. 281 (1921).
12. Id. at 4-5.
13. H. PACKER AND T. EHRlich, NEW DIRECTIONS IN LEGAL EDUCATION 37 (1972) [hereinafter cited as PACKER AND EHRlich].
14. Id.
Conventional legal education consists of (1) relatively large classes that engage in analyzing "cases" (usually the opinions of appellate courts) by the Socratic method (the teacher asking questions, the students answering); (2) seminars on topics removed from those treated in large classes and utilizing a diversity of materials; and (3) independent research, mainly on or for the law review.

A properly planned and supervised clinical program can be as rigorous as the more traditional approach to learning substantive law and doctrine. It does not suffer from the serious limitation of the traditional method since students not only learn doctrine but they also learn how to weigh and analyze facts. As one recent critic has pointed out, "the modern law schools do a superb job in teaching law as distinguished from practice which is so much concerned with gathering, analyzing, marshaling, interpreting and presenting facts." Most clinical teachers have experienced the problem of the bright student who has been trained to deal with doctrine and principles in a tight and logical manner. However, when he approaches a problem where he must select and analyze the important facts and determine the relevant doctrine, he has a great deal of difficulty. He is a product of a system whose view of the law is limited to doctrinal considerations.

Clinical education is not simply a substitute for the first year of practice, nor is it an escape from the "rigors" of intellectual pursuit, nor is it just a process of teaching "how to" and practical skills. Students should come away from a close scrutiny of the legal system as it actually works with new insights as to what the law ought to be and what is wrong with the system as it is presently operating. A student learns to analyze the multiple and complex goals of the participants within the system, to identify the methods used, and to understand the resolution of the conflicts and inconsistencies. His experience enriches the faculty by bringing to their attention new and untapped areas of legal research. Clinical education has a contribution to make to the law schools, its faculties and students, as well as to the profession at large.

15. Id. at 38.
17. Dean Abraham S. Goldstein of Yale Law School recognized one important contribution of clinical education to the rest of the curriculum:
   It has seemed to me in the past that clinical education is most effective when it takes students who are turned off in a variety of ways and makes concrete for them a lot of very abstract things. And for many of them it turns them back into the academic exercise in a very, very effective way.

PACKER AND EHRlich, supra note 13, at 41.
THE CLINICAL DEFENSE SEMINAR

In the pages which follow, a clinical defense seminar is described in detail. Before embarking on an outline of the course, it might prove useful to define the term “clinical” in this context. It is not a program which releases the student from the law school. The clinical program, as it will be described, is part of the regular curriculum of the law school. It is not a few hours devoted to learning “how to” and it is not a substitute for learning on the job. It is an attempt to place the law student in the role of an attorney within the legal system and to encourage him or her to analyze the legal process from that perspective.

A close and detailed study of the student as he performs his role is utilized to move the student from a personalized analysis and evaluation to a consideration of the system itself. As the student studies himself, he studies those around him, and ultimately the legal process. The individualization of instruction helps the student to study and analyze himself and his “role”, and in the process perceive the legal system from a unique vantage point. The student feels the pressures, tensions, limits, and expectations of those who act within the system. He then returns to the classroom where he can analyze his impressions and the psychological dynamics of the process. This analysis cannot be underestimated as the Carrington Report pointed out.18

In addition to understanding and intellectual skill, the effective generalist may require certain emotional or psychological traits which are associated with the skills described. As an advocate, he should be aggressive. But his aggression should be controlled. This is especially important in negotiation or planning for the avoidance of disputes. It is important to possess a sensitivity to the consequences of stress, not only on others with whom the professional may deal, but also on himself. It is useful to understand the psychodynamics of power, especially as they operate on one’s self; thus, it is important to recognize the responsibility of power over others, without being infatuated by it. The model generalist should also feature the craftsman’s sense of autonomy, which enables him to withstand criticism, to express unwelcome opinions, and to cope with conflicting claims to his loyalty. He should possess a larger-than-ordinary time per-

18. The Carrington Report was issued in 1971 to the Association of American Law Schools, Training for the Public Professions of the Law: 1971, Pt. 1, PROCEEDINGS § 2 (Association of American Law Schools, 1971 Annual Meeting); it set forth model curricula for legal education. The chairman of the group was Professor Paul Carrington of the University of Michigan School of Law. See PACKER AND EHRLICH, supra note 13, at 47 for an extended discussion of this important report.
spective which enables him to sacrifice present benefits for large future ones. He should share an interest in the general welfare; the cynical lawyer is an ugly menace, not only to others, but ultimately to himself. At the same time, he should not be so committed to his personal view of what constitutes the general welfare that he is unable to reckon with the differing views of others. Even in his commitment to rigorous rationality, he should not forget that some social problems may yield more readily to poetry than to the reasoned use of power.\textsuperscript{19}

As the student learns to articulate his role (or roles) and the dynamics of the situation, he begins to perceive what is actually happening in the legal process. For this to be meaningful, however, the student must have substantive knowledge of that field and he will come to recognize that without it he cannot perform the tasks assigned in a satisfactory manner. The luxury of time and the close instructoral supervision, which leads to thoughtful analysis and the application of theory to practice, give the student a unique opportunity to study the legal system in a new and different way.

This type of clinical approach affords the teacher of law an opportunity to fully realize the root meaning of education, to lead forth. The focus is on the student with responsibility pinpointed. The student must carefully analyze his performance, identifying his strengths and weaknesses. Gone are the days when a student could coast through class dissolving into the crowd in a large lecture hall, as often is true in large classes at law school.

The student is forced to make conscious choices, view their result, and analyze the success or failure of his conduct. One begins to learn professional responsibility when one learns first to accept responsibility for one's own acts. Thus the student is the raw material. Responsibility is focused on him; he must analyze his own decision-making process and accept responsibility for the result. The student outlines his goals, the tools employed, and completes an analysis of what succeeded, what failed, and why.

The clinical teacher has a unique role to play that is quite different from that of the traditional law professor.\textsuperscript{20} First, the person must be a practicing attorney who has had first hand experience with different types of litigation. In order to introduce the student to the intricacies of the court system, the individual must also be more than a dilettante. Diversity and flexibility are

\textsuperscript{19} Packer and Ehrlich, \textit{supra} note 13, at 104.

the key words, for not only must the clinical teacher be able to
conduct a seminar but he or she must also supervise the progress
of cases in court. If student analysis is sloppy and the rigors of
intellectual endeavor are missing, responsibility rests directly with
the teacher.

The clinical teacher who supervises students in court is not
simply giving the student what he or she would absorb in the
first year of practice. Rather, the clinical supervisor must teach
and raise questions which will point out what is transpiring as
the system is being manipulated. Alternative institutional re-

sponses must be considered. "[T]he restructuring of existing
systems as part of a constant stream of issued stimuli, designed
to confront . . . students with a series of alternative operational
structures to effectuate decision-making should be explored."21
It is imperative that the student properly and competently repre-

sent his client. To ensure this, the supervisor must be "demand-
ing to a fault."22 It is here that standards of excellence are estab-

lished—"exhaustive preparation; conscientious work; imaginative
application of legal doctrine; exacting analysis; pride in crafts-
manship; thorough investigation; complete devotion to a client's
cause consistent with the demands of one's other responsibilities;
sensitivity to the ramifications of role."23

*The Genesis*

A grant from the Law Enforcement Assistance Administra-
tion was made to the Santa Clara County Public Defender's Office
and Stanford Law School for a coordinated program to develop
and to demonstrate the feasibility of methods for the clinical train-
ing of law students in skills required for criminal trial advocacy.24
The grant covered three semesters of law school and approximately
forty students were processed through the course. Thirty-five of
these students were from Stanford Law School and the other five
were enrolled at the University of Santa Clara School of Law. At
the completion of the grant period, Stanford Law School picked
up the costs of the seminar for a ten month period (until June,
1974) while a decision was to be made by the faculty on the ex-

pansion of clinical education.

During the course of these two years, new methods of clini-
cal instruction were developed combining seminar sessions, crit-

21. Cf. Brickman, *CLEPR and Clinical Education: A Review and Analy-
22. Id.
23. Id.
24. For details of the grant see Bird, *Supporting Services for Defenders-
icisms of individual students based upon their videotaped performance of segments of a mock trial (including client interviewing, investigation, voir dire examination of jurors, direct and cross-examination, preparing a defendant to testify, plea negotiations, and final argument to jury), plus closely supervised appearances in court handling actual cases.

An attempt was also made to teach professional responsibility and ethics in a meaningful way. The program provided an opportunity for students to view the criminal justice system at close range, both as participants and observers, to study the manner in which the system worked, and to analyze its strengths and weaknesses.

The Objectives

The objectives of the Clinical Defense Seminar were manifold. It was hoped that students would develop important trial skills while studying the criminal justice system as a legal process and the role of participants within it. The analytical skills of the students were sharpened by forcing them to look at the reality of the system and avoid the shibboleths that have grown up about it. Not only was the system analyzed but the students were taught that self-knowledge and self-analysis were important to growth and an understanding of the decision-making processes of the lawyer.25

This active observation on a systematic basis of one aspect of the legal process was to be the catalyst for an understanding of society by studying and appreciating one of its institutions at close range. The aim was to explore, not to indoctrinate; to challenge prejudices, not to reinforce them; to stimulate the exchange of ideas and intellectual inquiry, not to discourage it.

The mental processes of decision-making, including the strategic and tactical decisions of the advocate and the impact these decisions had on the system as a whole, needed to be explored within the confines of the law school.26 In order to completely understand the criminal justice system, one must weigh tactical decisions made by advocates. For example, the pressures of time often force an advocate to select a particular course or argument when other choices are available. It is important for the student to understand how the issues were framed and the choices made.

25. For the importance of training in interpersonal relationships see Sacks, Human-Relations Training for Law Students and Lawyers, 11 J. LEG. ED. 316 (1958-59).
Instead of focusing on abstract sociological studies, the student must analyze from his own experiences.

The student was forced to look objectively at himself and the system; to get away from the rhetoric of easy villains and simple solutions. For example, it is almost a cliché to state that a person who has private counsel receives superior representation to those represented by institutionalized defense. Heavy caseloads and bureaucratic approaches are often cited as the culprits. However, a closer examination reveals that the system itself is often depersonalized and dehumanized in our larger cities. This is true whether the person is represented by private or public counsel. Students observed that institutional demands dictate the result, not the manner of representation.

The objective of the program was to develop a rigorous analysis of a legal process while the student learned the skills of the advocate and the self-knowledge that can only come from self-analysis and acceptance of professional responsibility.

The Classroom Component

The seminar consisted of three different components which were designed to complement one another. First, a four hour classroom session was held each week throughout the semester. Students were given an extensive reading list to digest prior to each session. They were expected to be able to discuss issues raised in the class utilizing these readings as references.

The seminar sessions were broken down into the following topics:
1. The Role of Defense Counsel in the Criminal Justice System
2. Interviewing
3. Investigation
4. Preliminary Examination
5. Pre-trial Motions and Extraordinary Writs
6. Motions to Suppress Evidence
7. The Raising of Trial Objections
8. Direct Examination
9. Cross-Examination
10. Voir dire of Prospective Jurors
11. Opening Statements and Final Arguments
12. Preparing a Defendant to Testify
13. Psychiatric Testimony and the Expert Witness
14. Sentencing and Post Conviction Strategy
15. Professional Responsibility and Ethics
16. Critical Analysis of Criminal Justice System

Each of these subjects was considered in depth at the weekly seminar which met seventeen times over the course of one semester.

Course Syllabus

An extensive reading list of background materials was compiled so that the student would be exposed to a number of viewpoints on a variety of subjects in the criminal justice system. For example, the readings included extensive writings covering doctrinal considerations, expositions on the law governing the area under review, hornbook descriptions of “rules”, discussions by trial lawyers of their methods and objectives, and sociological and psychological analyses. Compiled with an eye to integrating theoretical concepts with the practical day to day reality of trial practice, these readings helped the student gain a broad perspective of the entire system.27

Demonstration Tapes

Demonstration or model tapes were devised to stimulate class discussion at the seminars and to illustrate graphically the manner in which attorneys and courts handle different phases of a criminal trial. Using this technique, the student followed a mock criminal case from its inception (initial interview of the client) to its completion (final argument to the jury). During the course of viewing the tapes, the student was able to visualize the complete criminal defense process. It was important that he not only understand the segments of a trial, but that he visualize the whole in order to critically evaluate the entire process.

The tapes were produced so that the performances were not letter perfect. It was felt that as a teaching tool it was more helpful if the students were required to analyze the tapes, identifying the strengths and weaknesses of the defense counsel, the prosecutor, and the judge. This enabled them to begin to hone their analytical abilities and to make judgments concerning content and procedure. The closer the demonstration tapes were to the actual reality of the court system, the more valuable the teaching tool. In order to assure some verisimilitude, a practicing district attorney, defense counsel and judge were used. The filming was done in an actual courtroom and investigators were used to play the role of witnesses.

The mock case had to be carefully scripted in order to ensure its usefulness as a vehicle for classroom discussion. It was

27. See APPENDIX A for full course syllabus.
important to illustrate to the students the varying techniques and skills that are required at different stages of a criminal case. For example, the manner in which a police officer would be cross-examined by defense counsel would vary greatly depending on the stage of the case. Since preliminary examination is often used by defense counsel as a method for discovery, many questions may be asked to which counsel does not know the answer. The nature of the questioning is essentially open-ended. At trial discovery is no longer necessary, therefore, the cross-examination of that same police officer is tighter and more precise. The answer is made part of the question since leading a prosecution witness is permissible.

In California, there is a statutory vehicle for pre-trial motions to suppress evidence;\(^\text{28}\) students must understand this procedure and use it correctly. Therefore, the tapes of the demonstration case covered the examination of the same police officer at one of these hearings.

The mock case was written about a young man of eighteen years who was charged with cultivation of marijuana, a serious felony. The facts were relatively simple. The police receive an anonymous tip that marijuana is growing in the backyard of the defendant's uncle's home. They go out to the residence and arrest the defendant and seize the marijuana without a search warrant. The defendant had been left to care for the home and yard while his uncle and aunt were on vacation. The timing of the vacation was such that either the uncle, the defendant, or one of the uncle's foster children could have planted the marijuana. The defendant denies any knowledge of it but admits to defense counsel that he had taken care of the backyard when his uncle was away and had watered the garden as part of his duties. At the time of the arrest, one of the foster children runs away.

These facts gave the student the opportunity to test out legal issues, for example, the seizure of the marijuana from the backyard by the police without a warrant. Further, as the case progressed the student developed his strategy and defense. Since others may have been involved, he had to use his judgment to build a successful defense. Choices were made and the consequences of those choices were felt.

The first demonstration tape was an interview with the client in the mock case done by a deputy public defender who handles this task as a regular part of his duties. An attempt was made to have this represent the type of interview that is regularly done.

by the office. The same forms were used and the amount of time spent with the client was approximately the same as in an actual case. The students were asked in seminar to analyze the factual information gained, the interpersonal relationship between attorney and client, and the strengths and weaknesses of the interview.

Next, the students were asked to analyze the tape of a preliminary examination in the mock case. A critique of the performance was made and the purposes of the preliminary hearing were reviewed. The techniques used and the skills employed in examining witnesses were considered and the rules of cross-examination were discussed. An evidentiary hearing to suppress evidence after a holding order and a bind over to superior court was next considered by the students. The same witnesses were called but the manner of examination differed since the defense was interested in suppressing evidence by proving to the judge that the officers had acted illegally.

The pre-trial investigation of witnesses, utilizing tapes of interviews with several witnesses involved in the case by investigators or attorneys was filmed. The students were asked to discern the varying techniques used to obtain information and to analyze the strengths and weaknesses of the investigators. Direct and cross-examination of the same police witnesses at trial were shown and a comparison was made with the tape of the preliminary examination and the motion to suppress. The varying modes and methods of examining witnesses were considered. As the purpose changed, the methods and the information elicited also changed.

It was discovered that students were not able to apply the legal concepts they had learned in their traditional course in evidence as a tool in the courtroom. As a result, several tapes were made of different witnesses in the mock case with the prosecutor asking questions. Some of the questions and some of the answers were inadmissible. The students were asked to assume the role of defense counsel and to make proper objections. After each objection, the tape was stopped and the student was asked to articulate in the formal manner of the courtroom the basis of his objection. Another student played the role of prosecutor and attempted to justify the question or the witness' answer. A third student played the judge and made rulings on the objection. Then, the class was asked to analyze the legal issue presented and the propriety of the ruling. In this manner, the student learned the difficult task of hearing, as opposed to reading, objectionable questions or answers. He began to gain some skill in articulating clearly and concisely the reasons for his objections.

Tapes of an actual attorney preparing the defendant in our
mock case were presented to help the student focus on direct examination and to consider the ethical problems involved in preparing a witness for testifying at trial. The classroom discussion covered both the substantive issues, the techniques used, the interpersonal relationships and the ethical problems involved.

Voir dire of the same juror in the mock case by a number of different attorneys—public defenders, private counsel and district attorneys—was filmed to illustrate the variety of approaches and styles utilized as well as the skills and techniques employed. Additionally, two tapes were made of individuals who had served on actual juries. They presented their impressions of the proceedings and the attorneys involved. This latter videotape sensitized the student to view the process from the juror's perspective.

Final argument to a jury was handled in a similar fashion. Both public defenders and private attorneys were asked to give a final argument in the mock case. They were specifically asked to discuss the circumstantial evidence instruction that is given in California^29 and to define for the jury proof beyond a reasonable doubt. These legal concepts are present in every criminal case and they are often difficult for the young attorney to handle. The students analyzed style, skills and techniques, methods of persuasion, the use of facts and their application to the law and the differences between the public defender and the private practitioner.

Expert witnesses present many different problems in both preparation for and testimony at trial. In this tape, the students followed the development of the psychiatric defense of diminished capacity from the initial interview with the psychiatrist to his direct and cross-examination at trial. Part of this exercise was designed to acquaint the students with the law in this area and to sensitize them to problems inherent in dealing with expert witnesses.

29. CALJIC INSTRUCTION No. 2.00-.04. CALJIC INSTRUCTION No. 2.00 provides:

   The testimony of a witness, a writing, a material object, or anything presented to the senses offered to prove the existence or nonexistence of a fact is either direct or circumstantial evidence.
   
   Direct evidence means evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact.
   
   Circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn.
   
   An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.
   
   It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct evidence and circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.
All of these tapes were integrated into the seminar where they were used as a catalyst to promote discussion and analysis. As students learned the techniques of critical analysis of performance and as they saw the trial come alive in its segmented form, they began to perceive the whole process and to transfer some of their insights to the workings of the system itself.

The Trial Manual

A training manual was written to give the students the necessary information they required regarding the organization of the Santa Clara Public Defender's Office, the court structure, criminal procedure and the substantive law which they needed to know before they handled cases in court. An attempt was made to educate the student as to the differences between misdemeanors and felonies in terms of the defendant's rights and the court involved. Sample pretrial motions, with applicable code sections, were included to enable the students to handle requests for 1) appointment of court psychiatrists; 2) challenging of a judge for cause; 3) discovery; 4) motion to dismiss an information or indictment; and 5) motions to suppress evidence. Preliminary examinations were considered in detail with special sections on the purpose, type of objections raised, goals sought, and problems of plea bargaining. The post-conviction section stressed the importance of special proceedings such as the California Mentally Disordered Sexual Offender laws, narcotic addiction procedures, and the habitual criminal statute. It is important that students understand their responsibilities at sentencing. The language used by the judge at the time of sentencing, the recommendations made by the probation department and the participation of the prosecutor affect the result. Often, alternative recommendations must be written and submitted to the judge. In order to do this, the student must familiarize himself with the agencies that may be helpful. Since the student will

30. See Appendix B for the contents of the trial manual.
34. CAL. PEN. CODE § 995 (West 1972).
36. See In re Davis, 8 Cal. 3d 798, 505 P.2d 1018, 106 Cal. Rptr. 178 (1973); CAL. WELF. & INST'NS CODE § 6300 et seq. (West 1972).
38. CAL. PEN. CODE § 644 (West 1970).
probably handle either an appeal or an extraordinary writ before the completion of the semester, the rules of court governing appellate practice were outlined. A complete listing of the table of contents of the Trial Manual is contained in Appendix B.

**The Simulation Component**

To see ourselves as others see us is an experience most of us never have. Videotape made this a reality for the students. Each student was asked to prepare and to conduct exercises on videotape. A concerted effort was made to make these as realistic as possible; actual judges sitting in their own courtroom were used with witnesses and jurors drawn from the community. In every case, the other participants were asked to evaluate the performance of the student. As a result, the student not only received the supervising attorney’s views but also those of the bench, the client, the witness, and jurors. The tape recordings included the following:

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39. For example, the students who are videotaped voir diring a juror are evaluated by that juror and others who are in the audience. The following questionnaire was completed by each juror.

1. How would you rate the forensic ability of the defense attorney; his tone of voice; his choice of words and phrasing; his ability to project?
2. Do you feel that the defense attorney was sincere with the jurors?
3. Was the defense attorney able to establish rapport with the prospective jurors?
4. Was the attorney repetitive in his questions?
5. Did you come away with a feeling of confidence in the defense attorney?
6. Did you see any purpose in the type of questions being asked by the attorney? Explain.
7. Would you place your trust in the defense attorney?
8. Did the attorney embarrass you in any way? How?
9. Did you associate the defense attorney with his client?
10. Did you feel the attorney was being fair and honest with the jurors?
11. Did you feel the attorney educated you in any way concerning the case or the law?
12. What do you think is the role of the defense attorney at voir dire as a result of watching this exercise?
13. How would you characterize the defense attorney at this time? What type of person do you think he/she is?
14. Did you like the attorney? Did he/she raise any feelings of hostility in you?
15. Would you feel confident in having this attorney represent you if you were charged with a similar offense? Why? Or Why not?
16. Did you feel the defense attorney was acting out a role? Do you think he/she could have avoided this appearance? How?
17. Do you think the defense attorney handled himself/herself properly in his/her dealings with the judge and the prosecutor? What would you fault in his/her performance?
18. Any other comments you would care to make about the defense attorney to help him/her improve his/her weak points and spot his/her strengths.

40. For the importance of this type of interaction see Sacks, *Remarks on Involvement and Clinical Training*, 41 U. COLO. L. REV. 452 (1969).
1. interviewing a client;
2. interviewing a hostile witness;
3. voir dire of juror with student assuming first the role of prosecutor and then that of defense counsel;
4. cross-examination of a hostile witness at trial. (Again, students were asked to prepare the prosecutor's examination as well as that of defense counsel.);
5. the preparation of a defendant to testify at trial and the actual examination at trial;
6. plea negotiation with a district attorney on an actual case;
7. final argument to jury.

All of the tapes were spin-offs from the original demonstration tapes which the students were studying and following in the seminar with the exception of the plea negotiation which involved an actual case.

After each of these videotape exercises, the student and the supervising attorney sat down together and watched the performance on videotape. The student was encouraged to analyze the strengths and weaknesses of his own performance. As was done with every activity, the student learned to analyze and assess the case, the problems, the client, the opponent and himself. The dynamics of interaction between individuals was discussed and dissected. The student came to ask himself—"How did I do? What worked? What didn't work? Why?"

Mock sessions in which the student was asked to examine witnesses at various stages of a case were also held. These were not filmed; they were based on actual cases. During these sessions emphasis was placed on skill training while encouraging the student to play the various roles of judge, prospective juror, prosecutor, defense attorney, and probation officer. In this way, the student gained some knowledge of the "role" each of these individuals plays within the system. This was important since all of the student's actual courtroom time was spent as a defense attorney.

The Courtroom Component

An integral part of the program was the courtroom component. This segment was indispensable for it brought reality and responsibility into the course. The simulation component gave the student the opportunity to study and analyze. Actual courtroom experience allowed the student to translate the doctrine and theory of the classroom into practice while experiencing the tensions and pressures of a real trial. It was at this point that the
student found that he had to accept responsibility for his actions. Whatever he did affected his client. If his analysis of the problem was faulty or if his strategy failed, there were consequences which he had to face. The actions of the other performers, the client, judge, jury, prosecutor and probation officer, often reflected the initial choices and actions of the student lawyer. It was at this stage that the student began to fully comprehend his responsibility.

Under the California Student Practice Act, students were able to handle cases through the public defender's office. Each student was slowly seasoned by moving him through three stages of graduated difficulty:

Stage One—the interviewing of clients, the representation of clients at arraignment and sentencing calendars, and juvenile detention hearings.

Stage Two—the representation of clients at court trial, evidentiary motion to suppress evidence, plea negotiations, pre-trial motions, and field investigations.

Stage Three—the representation of clients at jury trial, motions to dismiss and to suppress evidence in Superior Court, the research, writing and arguing of extraordinary writs and appeals in the appellate courts.

As a result of these experiences, the student acquired the fundamentals of interviewing and negotiating. The techniques and skills needed to handle a client in the criminal justice system were developed. The etiquette of the courtroom and the rules which apply when dealing with fellow attorneys were learned. Once the student had mastered these basics, he was ready to move to a more sophisticated level where the intricacies of advocacy and the subtleties of litigation were explored at first hand.

The supervising attorney was always present to contribute constant feedback in terms of performance. Where possible, analysis of what was happening and why was explored as it occurred. The individual and the system were constantly scrutinized. A team approach was employed to encourage students to work and to learn from one another. More than one student was usually present any time one of the seminar members was handling a matter in court. As a result, the student received not only the assessment and views of the supervising attorney but also received feedback from his peers.

Professional Responsibility

One of the most difficult subjects to bring to life and make meaningful for law students is the traditional course in legal
The clinical model has a special contribution in this area since the student is meeting ethical problems each day.

The traditional course given in most law schools is a study of the rules as set forth by the state and American Bar Associations plus a consideration of case law which has developed. As a result, the ethics course is one of the dullest of all the courses offered in the law school curriculum. Recently, there has been a good deal of comment concerning the finished product. "I find no pleasure in saying that the majority of lawyers who appear in court are so poorly trained that they are not properly performing their job and that their manners and their professional performance and their professional ethics offend a great many people."

The life blood of professional responsibility and ethics is found in the practice of the law, not in a recitation of rules and the digestion of doctrine from case law. Abstract discussions are fine, but reality is fraught with fine lines and multiple shades of grey. It is in the actual application of the rules that one comes to appreciate the real issues.

In the seminar, the issues considered by the students after they have completed at least half the semester are taken from actual problems which have arisen in the institutionalized defense setting. The students themselves have encountered many of the problems. By discussing, exploring and questioning the situations which are posited, the student begins to appreciate the intricate

44. The following ethical problems were presented to the students:

I. Role Definition
   A. Whom do you defend?
      1. Your client has a good defense to a rape charge. However, you know that he is guilty and unremorseful. Fears of recidivism aside, you know that the woman has been severely shocked by this experience and your examination of her at trial will be a trying experience for her. Do you take this case, find him another lawyer, or persuade him to plead to a lesser charge? If you take the case, how do you handle the victim?
      2. Some legal services offices refuse to handle divorce cases, due to restrictions on staff and time. The Santa Clara Public Defender's office does not handle cases that can result in only fines. How "serious" need a case be before it warrants an attorney? Who defines "seriousness"—the lawyer or the defendant?
   B. How far does your responsibility to your client extend?
      1. You have secured for your client the best deal possible, but you know that if he had a job, a permanent home, and some family counseling, he would get probation instead of jail.
      Your client makes bail (or is acquitted at trial or finally gets out of prison) and goes back on the streets.
and often misunderstood concept of what constitutes an ethical
standard in the criminal justice system.

Should counseling services be part of a defense office?
How much time can the attorney in solo practice invest in
changing clients' lives? Should an attorney ever consider
this his or her responsibility?

2. Your client can't make bail and won't be released on his
own recognizance (OR). Do you offer to put up bail
yourself? Would it make a difference if you felt he would
get no jail time even if found guilty of the charge?

Your in-custody client, who had no money on him when
booked, would like some money for the canteen. Do you
supply it?

C. The rules of evidence preclude your getting certain infor-
mation, crucial to your client's defense, before the jury. What do
you do? Does your decision depend on how serious the
charge against your client is? On whether or not you agree
with the particular rule of evidence?

D. Your client's case presents squarely an important issue which
the courts have been sidestepping for some time. You feel
that they cannot avoid it in this case and that they will have to
rule favorably to the defense, thus benefiting many defendants
across the state. The district attorney, agreeing with this
analysis, has offered to reverse his previous position and give
your client an excellent plea bargain. Do you take the offer
or go for the court decision? Does it depend on whether or
not your client is in jail? What do you tell your client?

E. Your client pleads guilty. What is defense counsel's role in
protecting that plea from collateral attack later? Do you in-
form the judge if he has not given a proper Tahi
advisement? (People v. Tahl, 65 Cal. 2d 719, 423 P.2d 246, 56 Cal. Rptr.
318 (1967)).

F. Time and resource constraints.
Your client has a winable Penal Code section 647(f) (drunk
in public), but because she was picked up on Friday night,
she has already spent 3 days in jail. The arraignment judge
will let her off with credit for time served. What do you do?
Your client can pay only the minimum fee. Do you take an
extraordinary writ on a pre-trial matter you are convinced you
should win?

Should you bother to attack priors when you know that the
lower courts will rule against you and you will inevitably have
to take it higher?

II. Decision-making
A. Attorney-Client decisions.
1. Your client is innocent but will lose his job if he has to
report to court one more time. The District Attorney
has no objection to a small fine and the judge agrees. Do
you plead him into a charge you know he did not com-
mit?

Your client is charged with two misdemeanors and has
failed to appear for trial. The district attorney offers a
misdemeanor that is relatively minor and will drop the
other charge. However, since the defendant is on OR,
his failure to appear can be pressed as another mid-
emeanor. The judge indicates that he will accept a plea
to the district attorney's offer in the defendant's ab-
sence, but that if matters are not solved that day, he will
issue a bench warrant on the failure to appear. Your cli-
ent has told you a not-guilty story. Do you plead him
out without his personal consent? Suppose that the judge
has indicated that he will impose only a suspended sen-
tence?

At arraignment calendar, a defendant in the box (charged
with petty theft and never interviewed) tells you he wants
Cost of the Program

In a time of rising costs and limited academic budgets, the opponents of clinical education often utilize this rationalization to plead guilty because he has been denied OR and doesn't want to spend more time in jail. The judge has indicated he will give the defendant a light sentence, probably credit for time served and a small fine. What do you do?

2. Your client is charged with a serious felony. He claims he is not guilty but the evidence is overwhelming and you see no defense that would be successful. Because of confusion in his own office, the prosecutor offers a less serious felony with recommendation for a short county jail sentence. If your client is convicted of the serious felony, he will go to state prison for a long time. The defendant still wants to go to trial after you have discussed these possibilities with him. You believe, however, that you can convince him if you put sustained pressure on him and bring in another attorney who will scare him about the trial and its consequences. What do you do? Your client tells you a not-guilty story. At the preliminary hearing, the district attorney offers a misdemeanor. The judge on the superior court calendar is a “hard sentence” and you fear that the defendant may receive a long county jail sentence from him. Do you accept the plea bargain? What if your client wants to accept it but you think he has a strong case for trial?

How much pressure do you exert to persuade your client to accept a plea bargain? Does the answer change if the client is irrational? stupid? incompetent? highly suggestible?

3. You are court-appointed counsel for a client who insists on representing himself. There are problems—obvious to you—concerning admissibility of the prosecution’s evidence, but the defendant has no legal training. What do you tell him? If he refuses to cooperate with you, do you proceed with the defense?

4. Clients with mental deficiencies.
   (a) Your client, charged with a serious felony, is mentally incompetent to stand trial. The district attorney offers a misdemeanor as part of the plea bargain. You believe the defendant will be convicted of the felony if he goes to trial and that if he is found not competent, he will spend at least a year at Atascadero State Hospital. Do you plead him to the misdemeanor even though he is not competent? Do you hide this fact from the judge? What if the defendant is charged originally with the misdemeanor? The court has a crowded calendar and offers a suspended sentence. You know your client is not competent to understand the offense. Do you plead him in and accept the suspended sentence? Suppose you suspect that your incompetent or insane client is dangerous and will probably resort to violence if returned to the community. Do you plead him out in the situations above? Do you work as hard on technical defenses or proof at trial as you would for a client you believed was innocent or a victim of society? Suppose you felt your client would not be dangerous to others but might try to harm himself? What are your responsibilities in this area?
   (b) The municipal court sentencing judge does not like to discuss cases in chambers before calendar. Your
(the cost factor) as a valid reason for precluding any development of a clinical program. However, studies which have been

client is very stupid (or retarded or incompetent). You know this judge will give a lighter sentence if he knows this fact. You also know that your client will be very humiliated by such a public statement from his attorney. What do you do? If you are a public defender on sentencing calendar and have never seen this defendant before and have no idea how he will react, what do you say to the judge?

(c) You learn from the judge that he will give your client a jail sentence. Your client does not want jail. You can get another judge if you request a special sentencing hearing under Penal Code section 1204. What is ethical?

5. The untruthful client.
The defendant acknowledges to you that he is guilty of the felony charges, but he wants to tell a story to the jury that he believes will get him off. You know this testimony is not the truth. Do you let him take the stand and give this testimony under oath? Do you argue this story to the jury in final argument? How do you question the defendant if he takes the stand?

Suppose your client has witnesses who are willing to corroborate his fictitious story on the stand. He wants them called. Do you call them?

You are a young law student interviewing in the jail. You suspect the client is lying. You tell him how crucial it is for his attorney to know the truth and assure him of the confidentiality of his statements to you. He refuses to change his story. Do you confront him with your suspicion? Keep it to yourself but let the attorney you work for know?

As an attorney, you are sure your client is lying and feel certain that the district attorney will exploit this at trial to your client's detriment. What do you tell your client? If you go to trial, do you put him on the stand? Do you argue the story as if you believed it? Do you find the defendant another attorney?

B. Attorney-Office decisions.

1. One of your fellow public defenders has been struck by his client during voir dire in a felony trial. The judge has relieved him as counsel of record, and the office has sent you over to take the case. You ask for a mistrial or a continuance to allow you sufficient time to prepare yourself to defend this client. The court refuses, and threatens contempt if you do not proceed. You feel in good conscience that you are not competent to defend this client without additional preparation, but your office has told you that it is their policy to follow the court's orders and proceed with trial. You feel that if you proceed, you will not be able to competently represent him. What do you do?

(a) You know for a fact that a certain judge is very rough at trial if he believes the defendant to be guilty. You have a technical defense that depends on correct rulings on evidence. You believe that if you go into this judge's court, he will not make the rulings necessary to win the case before the jury. However, another judge, whose department is open, is a stickler on evidence and will keep out the testimony. Your office has informed you that under their policy you may not affidavit the first judge on this basis. What are your responsibilities?

(b) You are a public defender in a county office. Your
done in this field reveal that clinical courses are not substantially more expensive than the more traditional seminar-type courses.  

Fundamentally, the issue is one of educational priorities. For a school concerned about replacing traditional small sections with clinical offerings, academic considerations are far more significant than the budgetary implications of such a change.

The program described in this article cost the Stanford Law School approximately $1,200 per semester for videotaping. No other costs were borne by the school other than the costs for duplicating seminar reading materials and the salary of the instructor. These expenses were comparable with the cost of more traditional course offerings. Trial and appellate litigation expenses were absorbed by the cooperating defender office since these involved operating costs that the office would have had to pay if its own attorneys handled the cases. If the present course were carried out without the videotaping component, the course would cost no more than upper division seminars currently offered at the school.

Clinical programs present an opportunity for cooperation with other law schools in joint programs. This would help to defray the costs while ensuring intra-school coordination to avoid an inundation of students from competing schools into the system with the attendant irritation of all involved. The practical problems that the legal system encounters in terms of absorption, especially in the institutionalized defense field, should not be lightly

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45. In conclusion, it appears clear that insofar as instructional costs are concerned, clinical programs are no more expensive than a large number of other courses and instructional programs offered in small classes which have come to constitute a significant proportion of most law schools' upperclass programs.


47. Library costs were avoided by setting up a system whereby books were checked out to the seminar and kept on loan during the semester in the office at the law school so they would be easily accessible to the participants.
dismissed when dealing with a number of competing courses from different institutions. Coordination can prevent disaster and ensure the continuation of programs. In the Clinical Defense Seminar, a joint program with the University of Santa Clara Law School was attempted for one semester with extraordinary success. Not only did the arrangement work in terms of the system, but the students mutually benefited from exposure to new approaches to and views of the subjects covered. From the standpoint of economy and enrichment, a trend toward joint programs should be encouraged.

Benefits to Service Agency

The benefits to a defender office from a program of this type are not inconsequential. In this experimental course, a Trial Manual which outlined the workings of the office and the substantive law which a new lawyer must become familiar with was developed for the first time. Further, the program developed the curricula and materials for a meaningful training program which could be instituted as part of the office's continuing program of skill development. New and experimental techniques were tested and refined. A pool of talent, trained and tested, was developed from which the defender office could select new attorneys. Effective advocates were trained who could bring new insight to the criminal justice system and to the practicing bar.

In practical terms, students handle a large volume of work that ordinarily would have to be done by an already overworked staff. For example, in our program the students handled all interviewing of clients at the Palo Alto Jail Facility each week of the semester. Without this contribution, the office would have had to hire two full time interviewers for that office. The arraignment and sentencing calendars in the San Jose Municipal Court system, consisting of ten departments, were covered by students three mornings a week throughout the school year. The motions calendars, which consisted of pre-trial evidentiary motions to suppress evidence, motions of limine, motions to strike priors, or to contest the validity of confessions were pre-

48. Special credit for their willingness to experiment should be given to Professor Marc Poché of the University of Santa Clara and Dean Thomas Ehrlich of Stanford.
50. See F. HAIGHT & J. COTCHETT, CALIFORNIA COURTROOM EVIDENCE 359-63 (1972).
pared and handled by students. These activities included submission of written memoranda of points and authorities to the court at the conclusion of the evidentiary hearings. The most experienced students tried misdemeanor cases including offenses such as disturbing the peace,\textsuperscript{53} theft,\textsuperscript{54} resisting arrest,\textsuperscript{55} assault and battery,\textsuperscript{56} malicious mischief,\textsuperscript{57} possession of dangerous drugs or narcotics,\textsuperscript{58} unemployment insurance fraud.\textsuperscript{59} In terms of staff time alone, the defender office receives services from a student program which can be measured in budgetary terms.

A rewarding aspect of the program has been the exchange of ideas and the identification and articulation of problems within the criminal justice system. If those in the academic sphere study the system critically, the long-run effect will surely be an improvement of the system. Theory and practice will merge for once instead of going their separate ways.

The utilization of students within the institutionalized defense setting has tremendous potential for improving the services that a public defender office renders. In an operation in which heavy caseloads are the rule, the student can take cases and because he has the time and the supervision to do a quality job, standards of excellence can be established for the different stages of the litigation process. Further, the depersonalization of the services of large defender offices has been a by-product of limited staffing and funding which has been exacerbated by a zone system of defense—different attorneys handling different aspects of the same case. Students can help to bridge the gap between attorney and client. Their presence may also underscore this type of problem for the defender office so that methods are developed and new procedures implemented to overcome this unfortunate situation. The benefits to the office, the student, and the court system are considerable and should not be underestimated in an evaluation of this type of a program.

**Evaluation of the Program**

The accomplishments of this experimental program were modest but not insignificant. It was generally felt that the course succeeded in individualizing instruction; the development of videotape as a tool for analysis was an unexpected plus. For the first

\begin{itemize}
  \item \textsuperscript{53} CAL. PEN. CODE § 415 (West 1970).
  \item \textsuperscript{54} CAL. PEN. CODE §§ 484, 488 (West 1970).
  \item \textsuperscript{55} CAL. PEN. CODE § 148 (West 1970).
  \item \textsuperscript{56} CAL. PEN. CODE §§ 240, 242-43 (West 1970).
  \item \textsuperscript{57} CAL. PEN. CODE § 594 (West 1970).
  \item \textsuperscript{58} CAL. HEALTH & SAFETY CODE § 11350 (West Supp. 1973).
  \item \textsuperscript{59} CAL. UNEMP. INS. CODE § 2101 (West 1972).
\end{itemize}
time in their law school careers, the students were placed center stage and no one upstaged them.

It was demonstrated that it was possible to teach techniques and approaches in interpersonal relationships. Using one case with ten students going in seriatim to the district attorney to discuss plea bargaining, it was obvious from the varying results—anywhere from an offer by the prosecutor to one student of one misdemeanor to an offer of several felonies to another on the same case—that technique, approach, preparation, and personality all played a decisive role.

Students often took the initiative in articulating the areas in which they perceived a need. It was never contemplated that the raising of objections at trial would be such a difficult hurdle. Videotapes of direct examinations and mock sessions were developed to meet this student demand. The videotapes were designed to teach the student to spot objectionable questions and answers and then to consider strategically whether the objections should be raised at trial. Mock sessions were also used to develop this skill while giving the students additional training in direct and cross-examination.

The attempt to bridge the gap between theory and practice (which the course was instituted to accomplish) was largely successful, for the student became familiar with the legal process and, more particularly, with the court system—its etiquette and procedures. The courtroom became familiar territory to all of the students. They learned by doing.

It was obvious during the course of the semester that the students developed a sense of responsibility for the client’s welfare and an appreciation of their role as officers of the courts. This was a significant step from the freedom of student life; it was a signal of the maturation process which developed during the course. The students took responsibility for decision-making. They learned to approach the task of the trial lawyer from the perspective of problem solving. They returned to their more traditional coursework with heightened interest.

One of the most important accomplishments was the development of a feeling of professional responsibility by the student for his client, the courts, and society. At a time when ethical standards of lawyers are being questioned, it was heartening to see these young men and women take responsibility for their actions and accept the importance of an ethical code. Part of this growth came from a realization that both the profession and the law school cared about standards of excellence. These young people know that when they take the oath of office and embark on their
legal careers, they will not be learning the practice of the law at the expense of their clients. By assuming responsibility for their competence, the law school demonstrated to the students the meaning of professional responsibility.

The law is one of the few professions which does not as yet require actual practice under licensed, competent and experienced supervisors before commencing independent work. Clinical education can begin to remedy this lack. The student will benefit by more intensive preparation; the client will benefit by more effective representation; the law school will benefit by turning out students better fitted to pursue the profession they have chosen.

The opportunity to work closely with the students was the most rewarding aspect for the instructor. It was possible to watch the growth and development of the individual students as they met obstacles to progress and learned how to overcome them. Some of the students had difficulties with self-confidence, some with writing and the analysis of problems, others with diffidence. Working closely with an individual to help that person become a more competent and accomplished lawyer was most gratifying. Whether or not they become criminal trial lawyers, these seminar students are now better able to cope with the difficulties they will encounter as young lawyers, and is that not, in the final analysis, the proper role of the law school and the law faculty?
APPENDIX A

THE COURSE SYLLABUS

Seminar Session #1: The Role of Defense Counsel


Gair, *Trial Tactics in Civil Cases*, in *Legal and Criminal Psychology* Ch. 4, at 75-95 (H. Toch ed. 1961).


The Prosecution Function, from the ABA publication Standards Relating to the Prosecution Function and the Defense Function.


*Annals of Law—In Criminal Court—II*, New Yorker, April 21, 1973, at 44.

Seminar Session #2: Interviewing the Client


Seminar Session #3: Preliminary Hearing


Jones v. Superior Court, 4 Cal. 3d 660, 483 P.2d 1241, 94 Cal. Rptr. 289 (1971).

Seminar Session #4: Pre-Arraignment Stage (1)

Checklist of defensive considerations between bind-over and arraignment.


Seminars Session #5: Pre-Arraignment Stage (2)

- The motion to suppress evidence.
  
  
  

Seminars Session #6: Pre-Arraignment Stage (3)

- Discovery, pretrial writs, and defense planning.
  
  **Discovery**
  
  **A. Morrill, Trial Diplomacy** Ch. XII, at 179-211 (1971).
  
  
  
  
  **B. Witkin, California Evidence** 964-77 (2d ed. 1966).

- Pretrial Writs
  
  **A. Amsterdam, B. Segal & M. Miller, Trial Manual for the Defense of Criminal Cases—I, at 2-257 to 2-267; 2-341 to 2-359 (1971).**
  
  **B. Bailey & Rothblatt, Investigation and Preparation of Criminal Cases—Federal and State, 81-90 (1970).**

Seminars Session #7: Jury Trial—Voir Dire

- **Discovery**
  
  **A. Morrill, Trial Diplomacy** Ch. I, at 1-22 (1971).
  
  
  **Hafif, Adequate Voir Dire, 44 Cal. St. B.J. 858 (1969).**
  
  **Nunnelley, Practical Trial Techniques, in California Criminal Practice** 549-57 (California Continuing Education of the Bar 1964).
  
  **A. Cutler, Successful Trial Tactics** 76-82 (1949).
  

Seminars Session #8: Cross-Examination

- **Discovery**
  
  **A. Morrill, Trial Diplomacy** Ch. IV, at 54-85 (1971).
  
  
  **a. General Rules of Evidence—2-313 to 2-326.**
  
  **b. Handling Prosecution Witnesses—2-327 to 2-377.**
  
  **L. Friedman, Essentials of Cross-Examination** (1968).
  
  **a. Purposes, Objectives and Preparation—1-36.**
  
  **b. Scope and Tactics—67-76.**
  
  **c. Impeachment—133-44.**
Tessmer, Criminal Trial Strategy (1968).
   a. Preparation for Trial—27-49.
   b. Examination of Witnesses—75-113.

   c. Objections to Evidence—112-17.


Seminar Session #9: Direct Examination
L. Friedman, Essentials of Cross-Examination (1968).
   b. Techniques—89-111.

H. Spellman, Direct Examination of Witnesses (1968).
   b. Techniques of Direct Examination—77-96.
   c. Redirect and Rebuttal—269-77.


Seminar Session #10: Trial Objections
Heafy, Trial Objections (California Continuing Education of the Bar).

Seminar Session #11: The Psychiatric Defense
Diamond, Preparing Psychiatric Testimony, in 1 California Criminal Law Practice, Ch. 15 (California Continuing Education of the Bar).

Tessmer, Criminal Trial Strategy 104-06 (1968).
Complaint in the Case of John L. Frazier.
The Ezra Pound Case, in Readings in Law and Psychiatry 338-95 (R. Allen, E. Ferster, J. Rubin, eds.).

Seminar Session #12: Opening Statements and Closing Arguments
CLINICAL DEFENSE SEMINAR 277


Erdmann, Some Random Thoughts on Not Opening to the Jury, 1 CRIM. LAW BULL. 24 (1965).


Seminar Session #13: Plea Negotiation


ABA STANDARDS RELATING TO GUILTY PLEAS, 3.1-3.4.

Kaplan, The Guilty Plea, 1 STANFORD MAGAZINE, at 50.

CAL. PEN. CODE §§ 1192, 1192a, 1192.1 (West 1970).


Seminar Session #14: Post-Verdict Proceedings and Sentencing


H. PACKER, LIMITS OF THE CRIMINAL SANCTION, Chs. 5-6, at 71-135 (1968).


Seminar Session #15: Professional Responsibility


M. SCHWARTZ, CASES AND MATERIALS ON PROFESSIONAL RESPONSIBILITY AND THE ADMINISTRATION OF CRIMINAL JUSTICE 74-87 (1962).

Note, 52 COLUM. L. REV. 1039 (1952).

Blumberg, The Practice of Law as a Confidence Game, I LAW & SOC. REV. 15.
APPENDIX B

THE TRIAL MANUAL

I. SERVICES AND FUNCTIONS OF THE PUBLIC DEFENDER'S OFFICE

A. Philosophy and History of the Office of the Public Defender in Santa Clara County
   1. Philosophy of the Office
   2. The Responsibility of the Defense Lawyer in Criminal Cases
   3. History of the Santa Clara County Public Defender's Office

B. Office Organizational Structure and Policies
   1. Public Defender Office Organization
   2. Office Flow Chart
   3. Members of the Public Defender Staff
   4. Specific Office Policies
   5. Financial Eligibility—Statement of Policy
   6. Financial Forms for Parents of Juvenile Clients
   7. Investigation Division Orientation

C. Courts Covered
   1. Roster of Courts and Judges
   2. Calendars of Courts Covered

D. Office Forms
   1. List of Office Abbreviations
   2. Completed Court Action Forms
   3. Completed Personal History Form
   4. Two Types of Financial Affidavit Forms
   5. Closing Statistical Memoranda Form
   6. Bar Referral Letter
   7. Request for Investigation Form
   8. Request for Information Form
   9. Superior Court Calendar Memo (Green Form)
   10. Medical Release
   11. Petty Theft Release Form

E. Frequently Used Code Sections and Penalties
   1. Penal Code
   3. Vehicle Code
   4. Business and Professions Code
   5. Welfare and Institutions Code

II. PRETRIAL PROCEEDINGS

A. Information and Instructions for Public Defender Clients

B. Misdemeanor/Felony
   1. Flow Charts
   2. Distinction between a Felony and a Misdemeanor
   3. Grand Jury Indictments

C. Release from Custody and Arraignment
   1. Own Recognizance Release
   2. Bail
   3. Speedy Trial Requirements
   4. Felony Speedy Trial Requirements
   5. Certification to Juvenile Court
   6. Amendment of Complaint, Information, Indictment
   7. Extradition

D. Conflict Situations
   1. Request for Severance
   2. Standard for Determining Conflict
E. Plea Bargaining and the Guilty Plea
   1. Plea Bargaining
   2. Waiver of Rights on Guilty Plea
   3. Withdrawal of a Guilty Plea

F. Pretrial Motions
   1. Disqualification of a Judge
      a. Peremptory Challenge
      b. Challenge for Cause
      c. Declaration of Prejudice
   2. Request for Court Appointed Psychiatrists
   3. Discovery and Sample Motion
   4. Privilege Against Self-Incrimination
   5. Depositions and Pretrial Probation Reports

G. Motions to Suppress and Motions to Dismiss
   1. Penal Code Section 1538.5 Motion
   2. Penal Code Section 995 Motion

H. Determination of Priors

III. PRELIMINARY EXAMINATIONS
   A. Definition and Applicable Code Sections
   B. General Objective and Considerations
   C. Identification Issues
   D. List of Lesser Included Offenses for Disposition
   E. Commonly Used Grounds for Objection with Evidence Code Sections
   F. Frequently Used Trial Objections
   G. Narcotic and Dangerous Drug Measurements
   H. Completed Green Form After Preliminary
   I. Investigation Requests and Completed Yellow Form

IV. DIMINISHED CAPACITY AND INSANITY
   A. Diminished Capacity Defense
      1. Crimes Requiring a Specific Intent
   B. Incompetence to Stand Trial Due to Insanity
      (Penal Code Section 1368)
   C. Not Guilty by Reason of Insanity
      (Penal Code Section 1026)

V. POST CONVICTION SETTING
   A. Motion for a New Trial
   B. Special Proceedings
      1. Mentally Disordered Sex Offender Law
      2. Narcotic Addiction—California Rehabilitation Center
      3. Habitual Criminal Statute
   C. Sentencing
      1. The Expanded Role of Defense Counsel
      2. Sentencing in Superior Court
      3. Language Used at Time of Sentence
      4. Special Code Sections Pertinent at Time of Sentencing
      5. Probation
         a. Eligibility for Probation
         b. Conditions for Probation
6. Commitment to California Youth Authority
7. Punishments for Narcotic Offenses
8. Mandatory County Jail Sentences
9. Miscellaneous Sections
10. Probation Violation Hearings
11. Caveat

D. Suspension and Revocation of Driving Privileges

VI. LANTERMAN-PETRIS-SHORT ACT
   A. Procedural Guide
   B. Flow Chart for LPS
   C. Appendix of Forms

VII. APPEALS AND EXTRAORDINARY WRITS
   A. Right to Appeal
   B. Extraordinary Writs and Appellate Briefs

VIII. SEALING OF RECORDS AND CERTIFICATES OF REHABILITATION
   A. Dismissal of Convictions and Sealing of Records
   B. Certificate of Rehabilitation

APPENDIX (I & II)

I. COMPLETE LIST OF CODE OFFENSES WITH PENALTIES
   A. Penal Code Offenses
   B. Vehicle Code Offenses
   C. Health and Safety Code Offenses

II. SAMPLE BAIL SCHEDULE