Roles and Relations in Legal Practice

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LAW SCHOOL DEVELOPMENTS

Once a year this department will carry figures on law school registration. In addition it will provide a medium for the description of experiments in curriculum, teaching method, and administration. Like "comments," the typical law school development note will be characterized by brevity and informality; unlike them, it will be descriptive rather than argumentative and will deal primarily with devices which have been tested in actual operation. As a general rule, the authors will gladly answer inquiries and, to the extent available, upon request supply copies of materials referred to.

ROLES AND RELATIONS IN LEGAL PRACTICE

EDWIN H. GREENEBAUM* and PHYLLIDA PARSLOR**

Legal education in the United States has concentrated almost entirely on intellectual training for the law and neglected too much, in our view, other aspects of professional competence. Intellectual training, by the same token, has suffered in its pedagogy by ignoring the personal and emotional dimensions of the relation of law student to the law. The current movement toward clinical education in law schools is in part a response to these problems. Clinics, however, present some problems of their own: 1) Because clinics have students serving real clients, they cannot be conducted in the earliest phases of legal education. As a result, many attitudes and responses become established before professional training is encountered. 2) Where clinics are in agencies which serve clients who walk in from the street, there is frequently insufficient control over the content and demands of the program, and coordination with the remainder of the curriculum is difficult. 3) In serving clients in clinics, students may have no preparatory training, but must get all their training "on the job". Roles and Relations in Legal Practice is an attempt to commence students' professional training in a manner which does not depend on external clients, in which the volume and content of work can be effectively regulated, and which can be introduced, assuming that the course proves itself in its developing phases, into the earliest phases of the curriculum where it can serve to prepare students for clinics and assist the students in their initial adjustment to law and legal education.1

In general, the course has as its purposes introducing law students to interpersonal phenomena as related to their future law practices and leading students to reflect on lawyers' roles and their personal relations to these roles. The course studies selected work and decision making roles frequently played by attorneys, evaluating the professional issues—personal, ethical and legal—typically confronted in the various contexts. For each project students are given a problem-fact situation calling upon the students to perform a task commonly performed by attorneys. Legal materials sufficient to deal with the legal aspects of the problem are provided and readings from related disciplines are assigned. The teaching methods include role-playing, videotape

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1 The course is being conducted with a group of exclusively first year students for the first time during the fall term of the 1975-76 school year.
playback and small group discussion. Attorneys who deal with the problems as a recurrent matter in their practice are invited to discuss the issues with the class. Where the project has involved interviewing, counseling or negotiation, the visiting attorney will usually have done the class exercise, and a videotape of his work is presented as a focus of discussion. Throughout the course the reading materials and visiting attorneys are selected to present a variety of viewpoints and approaches, and students are encouraged to evaluate critically the offered models.

The pedagogical goals of the course may be stated more particularly as follows:

1) Greater understanding of personal and interpersonal phenomena in the law.
2) Insight into lawyers' roles: what constitutes their accomplished performance and what their proper limitations.
3) Knowledge of the roles and competencies of other professions and how lawyers may relate to and work with them.
4) Greater explicit recognition of detail in behavior and interactions which will give less room for the distortions of transference, projection, repression and other unconscious mental mechanisms.
5) Promote introspection and self-awareness in transactions to make more frequent the awareness of inappropriate responses in time to do something appropriate about them; also, use of awareness of inappropriate response as a tool in understanding.
6) Promote introspection and awareness of inappropriate response to legal doctrine and institutions.
7) Promote understanding of the ways in which professionals may constructively help and support each other in the personally and ethically difficult aspects of their work.
8) Application of the understanding acquired in lawyers' activities, including making decisions and recommendations, interviewing, counseling, negotiation, advocacy and collaborative work.

An idea of the topics covered in the course can perhaps be conveyed by a listing of the chapter headings of the teaching materials: 1) Decision to Prosecute—Making a Recommendation to a Superior; 2) Explanations of Behavior—Theories of Personality; 3) Initial Interviews of Clients; 4) Negotiation—Plea Bargaining; 5) Explanations of Behavior: Pathology, Attorneys and Referrals; 6) Collaboration and Planning—Continuing Relations with Clients; 7) Explanations of Behavior—Groups; 8) Representing Juveniles; 9) Counseling in and Settlement of Marital Disputes; 10) Negotiation, Advocacy and Litigation—A Pretrial Conference; 11) Advocacy and Litigation—Producing Testimony at Trial; and 12) Evaluation and Unfinished Business. Reflection on this list will disclose four basic interpersonal/interrole relationships which the course explores: (1) professional counselor to layman client, (2) subordinate professional to superior, (3) collaborative relations among professionals and (4) competitive relations as in negotiation and litigation. These relations, however, frequently do not appear in “pure” form. For example, there are aspects of negotiation in most interpersonal activities, and competitive negotiations are often found to include collaborative efforts. In addition, potential reference to superior authority is usually in the background of lawyers' activities.

The required work in the course includes role playing exercises, written memoranda, class meetings and individual conferences. An idea of how the course operates may be obtained from a step by step description of a series of exercises, and

more materials are included than we have been able to use in a one-term, three-credit hour course for two reasons: to give some choice of emphasis and to permit use of a portion of the materials as part of a first-year orientation or tutorial program without prejudicing a separate upper class elective.
for this purpose we will set out the program of Chapter 4, "Negotiation—Plea Bargaining." This chapter includes an initial interview of the defendant by his attorney, conferences among the defense attorneys and the prosecutors to discuss plea bargaining strategies and goals, negotiation for a plea between the defense attorney and prosecutor, and a subsequent interview between attorney and client. Each student is assigned to a role as client, defense attorney or prosecutor. In the interview exercises, the prosecutors serve as unseen observers; while in the conference and negotiation sessions, the clients serve as observers. The device of an unseen observer of interviews and negotiations is used in the course to provide an uninvolved witness to the interaction and to promote a more active discussion of the events.

Assignment 1: Initial Interview. The student playing the role of client is given confidential information describing the client's situation and the events in question as the client knows them. The client has been accused of committing a robbery at a tavern following a drinking bout, and the defense attorney, having learned of the charges from a phone call to the prosecutor's office, is provided in his confidential information statutes relevant to the charges and to sentencing, information on the operation of probation and parole in the jurisdiction, an article in the phases of alcohol addiction, and information on facilities for the treatment of alcoholism in the community. (The observer-prosecutor receives these same materials.) The client interview is video taped, and the participants view the tape in its entirety. Following the interview, the attorney prepares a memorandum of the interview for the office's file on the matter; the client prepares a memorandum critiquing the work of the attorney; and the observer prepares a memorandum describing the interview, commenting on the techniques and accomplishments of the interviewer and on the role playing of the defendant.

Assignment 2: Strategy and Goals Conferences. Students are assigned to read an article on plea bargaining and another on negotiation processes. Having been told that the defense attorney has made an appointment with the prosecutor to attempt to reach an agreement regarding the appropriate disposition of the case, the defense attorneys and prosecutors are assigned to meet separately to discuss negotiation goals and strategies. The attorneys and prosecutors are given additional confidential information which has resulted from their investigations. Observers assigned to each group (the clients of the previous assignment) prepare minutes of the meetings for the instructors, and the attorneys each prepare a statement of their individual negotiation goals and yield limits. (The attorneys are cautioned that they must accept the individual differences of their clients which inevitably result from different role interpretations.)

Assignment 3: Negotiation. Each defense attorney negotiates with a prosecutor, in the presence of an observer, for a plea (the clients observing an attorney other than their own). The participants view the video tape made of their negotiation and prepare a memorandum reporting and evaluating the events of the negotiation and its results.

Assignment 4: Interview. The defense attorneys meet with their clients in the presence of an unseen observer to counsel the client in light of the negotiation with the prosecutor and to see if the client is willing to accept the results of the negotiation. The interview is video taped and reviewed by the participants. The attorney prepares a memorandum of the interview for the office's file, and the observer prepares a memorandum describing the interview, commenting on the techniques and accomplishments of the interviewer and on the role playing of the defendant.

As will be evident from what follows, we make regular use of video tape equipment in role playing exercises. In situations where video tape recording is not feasible, an observer (unseen, if a one-way screen is available) can record the events of the interview either on his own or supplementing an audio recording.
plishments of the interviewer and on the role playing of the defendant. These mem-
oranda are passed on to the client who in turn produces a memorandum evaluating
and critiquing the work of the attorneys and commenting on the entire process of the
handling of his case.

In the classes following these exercises, in which the various issues raised by them
are discussed, video tape excerpts from the students’ work are used to focus and
stimulate discussion, to present contrasts and to demonstrate behavioral phenomena.
A practicing prosecutor and defense attorney do the negotiation exercise and visit the
class. After viewing a video tape of their work with the class, the visiting attorneys
discuss the issues with the class and relate the ways in which the exercise is similar to
and different from events which they encounter in their practices.4

As can be seen from the description of the work in just one chapter of the
materials, the students produce during the course a substantial number of written
memoranda reflecting their developing understanding of the course subject matter.5
In light of this written product, we have felt a final examination to be unnecessary.

The implications of using role playing in place of actual practice experience is a
subject which deserves fuller discussion than we will present here. Our view is that
use of simulation and actual practice as a focus of clinical teaching each present
pedagogical opportunities and limitations. Role playing which involves, as it does in
our course, all students experiencing the “same case” and playing the roles of
clients as well as of attorneys facilitates the elucidation of students’ conceptions of
human behavior and roles and the demonstration of aspects of the students’ individ-
ual and group behavior of which they are unaware, especially in regard to authority
relationships in the context which is presently dominant in their experience, i.e.,
legal education. Discussion within the group of the shared, but diversely ex-
perienced, problems is very productive. Role playing, of course, has administrative
and logistical advantages. Nevertheless, there are aspects of legal practice which our
course does not reach very directly, which is to say that a single clinical experience or
method of instruction does not effectively accomplish the complete range of goals of
clinical education.

The class meets for period-and-a-half sessions (75 minutes) on a flexibly scheduled
basis. For example, during a term in which a three-credit hour course would ordi-
narily meet 45 times over 15 weeks, this course meets 30 times, but three class
meetings a week are arranged on the school’s class schedule. This enables the course
to meet three times a week when a substantial block of discussion time is useful, and
not meet at all during a week in which there is an extended series of exercises (as in
Chapter 4, above) or when it facilitates the scheduling of individual conferences be-
tween the students and instructors. There are at least two such conferences with each
student, during which the student can share his reactions to the course and the in-
structor can communicate his evaluation of the student’s work.

The class is a task oriented group having as its objectives the accomplishment of
the goals enumerated above. There is a frequent misconception that any group which
concerns itself with interpersonal transactions must be a “therapy group” fraught
with dangers to individuals’ emotional security. While group discussion in the course
does include the sharing of individual reactions and experiences which group mem-
bers consider relevant and are willing to share, neither we nor the class consider the

4 Use of video tape for this purpose is very desirable to provide the attorneys a private
setting for the exercise and to allow them an opportunity to see their own work before discus-
sing it with the students. Without video tape, however, a live demonstration is possible,
which we used on an occasion when our video tape equipment malfunctioned.

5 During one 3-credit-hour, 14-week term, the students prepared 13 memoranda.
group to be concerned with therapy, except that as an educational experience the
course may lead to increased insight and maturity.

At the same time, a few individual class members have consulted us regarding per-
sonal problems and have, as appropriate, been counseled by us or been referred to
others for counseling. The particular student's concern may be with matters rele-
vant to his career or more purely personal, but in either case the course has provided
an occasion for a student who feels in need of counseling to obtain it. Further, the
concern with whether the class is intended for therapy provides a good opportunity to
examine the competency and requirements of various professions.

The aspects of the students' work which we consider susceptible of evaluation are:
responsibility, accomplishment in role playing, increased insight and maturity, and
reflection in the student's work of the course's cognitive content. There is some-
times concern expressed about the possibilities of evaluation in a course not primarily
concerned with the recognition, understanding, development and application of legal
doctrine. The present course has, in fact, considerable cognitive content, regarding,
for example, interpersonal objectives and skills in lawyer operations, the impact of
personal and interpersonal phenomena on legal doctrine and institutions, and the
roles of attorneys and other professionals. This cognitive content is reflected in exer-
cises, class discussion and memoranda, and while skill in role playing and contribu-
tions to class discussion are recognized and given credit, a student whose written
memoranda reflect increased knowledge and understanding of the course's cognitive
content is evaluated as having done well.

We have offered the course on a graded basis. While other forms of evaluative com-
munication are offered in the course, making grading unnecessary for this purpose,
many students taking the course would wish their work in a course less oriented to
the manipulation of legal doctrine on a final examination reflected in their school
standing, and we feel we can ask the questions of competence and excellence nor-
manly reflected in the award of grades.

By the time this manuscript appears in print, the course will have been offered
seven times, and we have developed considerable confidence in its effectiveness. It is
an easy success with the students. They are invited in the course to examine and dis-
cuss what it is like to be a lawyer, how what they do in law school relates to their
future practice, and a number of lawyers' tasks not otherwise much examined in law
school. These things are very much on students' minds, and they appreciate their in-
clusion in the curriculum. Further, the class is a relatively small group, in contrast to
the students' usual law school experience. Several students have commented to us
that they have found active participation in class possible for them for the first time. It
also seems a revelation to many students that they can relate to each other as profes-
sionals for the purpose of constructive support and not just as competitors and
strangers.

From the instructor's viewpoint, we recognize that the objectives we have set out
are not ones which can be fully achieved in a one term, three hour course. They are
objectives for a career. In this beginning students learn to recognize certain issues,
learn the value of reflection and self-awareness, and are introduced to concepts upon
which are based skill and accomplishment in lawyers' interpersonal professional ac-
tivities.

A question of great importance is the qualifications needed to teach the course.
Law professors have not for the most part experienced as students the kind of educa-
tion offered in this course, and law faculty do not as a rule have training in the related
behavioral disciplines. We coped at first through the device of team teaching. One of
the team is a traditionally trained law professor, and the other is a psychiatric social
worker, serving on the law faculty, with experience in probation and parole, family
counseling and the professional education of social workers. With the low student-faculty ratio which we consider desirable for the course, however, the course cannot be made widely available to students on the assumption that a behavioral scientist with a primary interest in the professional training of lawyers must be in attendance. Of course some law faculty may have background in behavioral disciplines, and such background can be developed somewhat in leaves of absence for that purpose. Law faculty can also obtain analogous student experience in professional training in another discipline, such as social work, clinical psychology or psychiatry. Since having the benefit of such a leave, the lawyer member of this team has taught the course on his own with satisfactory results. We believe that law professors will be able to teach the course adequately if they develop somewhat the relevant competencies and have available for consultation, very preferably as a member of the law faculty, a behavioral scientist with the relevant interests and expertise.

During a sabbatical year in England, the lawyer member of this team tried to better equip himself by means of: undertaking a supervised case as a student social worker; observing and participating in training of student social workers in a University setting; observing and participating in training programs for probation officers (student and in-service) and their supervisors; observing and participating in a training seminar for general medical practitioners focusing on doctor-patient relations; participating in a study group on group behavior; pursuing a supervised reading program in personality theory, sociology and professional-client relationships.

For their cooperation and tutelage in these endeavors, we are especially grateful to Miss Nan Bridgford, Fieldwork Teacher, Blackfriars Settlement, London; Miss Olive Stevenson, Reader, and Dr. David W. Millard, Lecturer, Department of Social and Administrative Studies, University of Oxford; Dr. R. Gosling and Dr. S. Bourne, Tavistock Institute of Human Relations; Miss Joan McCarthy, Associate Principal Probation Officer, Miss Evalyn Cleavely, Mrs. Sue Dumoulin, Mr. Tony Leach, Senior Probation Officers, Inner London Probation and After-Care Service; Mr. John E.T. Harper, Regional Training Officer, Probation and After-Care Service (Southeast Region).