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STUDENT ADVOCATES IN THE COURTS

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Last Fall the American Bar Association and the American Law Institute, through a Joint Committee on Continuing Education of the Bar, organized a study of the American legal educational system. Later the American Association of Law Schools was invited to, and did, join in the project. A Joint Planning Committee was established to study existing teaching methods in the light of new occasions. Had ancient good become unacceptable in the face of new duties? Was the growing pace of injustice requiring basic changes in law school curriculum? The answer of the Chief Justice the month before was an emphatic "Yes."[1] It was not only time for a change but also time for a change of the Guard. The echo of Ali Aba and the Establishment was more cautious but revolutionary in the light of the recent past.

The change in approach was a complete about-face. Years ago the Establishment was called upon to review and re-appraise its curriculum. But the circulation then addressed to each of the Deans mustered only a few replies. To some the proposed new look was like the present miniskirt—it revealed too much! To others it was a direct affront that was entitled to the cold shoulder that it got. By 1964, however, some of the law schools saw the light as well as the great opportunity afforded them in gearing the law school curriculum to the necessities of our changing society. Boston University law students began to furnish counsel for indigents in the Roxbury District Court.[2] The Massachusetts Supreme Judicial Court in its Rule 11 authorized student representation in courts of limited criminal jurisdiction having authority to confine a person up to 2½ years. Harvard began to furnish student prosecutors in misdemeanor cases. Then along came *Gideon v. Wainwright*, 372 U.S. 305 (1963), and the Criminal Justice Act of

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1 Address before AMERICAN BAR ASSOCIATION, Dallas, Texas, August 10, 1969.

2 Spangenberg, *Legal Services for the Poor—The Boston University, Roxbury Defender Project*, 49 MASS. L.Q. 319 (Dec. 1964).

1964 that implemented it in the federal system. The federal judges in the Northern District of Illinois (Chicago) led by Chief Judge Campbell, organized a defender program among the six law schools in the District.[3] The Southern District of California followed suit with Chief Judge James Carter developing an even more comprehensive project at San Diego Law School.[4] A third program quickly followed in Houston, Texas, which included both federal and state courts. It furnished assistance to assigned counsel. The entire bar of Harris County was subjected to appointment as counsel for the indigent. An equal distribution of the trial load among all of the lawyers was insured through the computer techniques.

However, as in all good things objection soon cropped up from the Bar. It was claimed that student admittance to practice in this manner was illegal because it was engaging in the unlawful practice of law.[5] Approval of the appropriate authority for the student to represent the indigent was necessary. As an assist to this undertaking, the American Bar Association in 1967 approved in principle "the promulgation and adoption of provisions permitting students in the final year of law school to appear in court, under adequate supervision by members of the Bar in good standing, in behalf of indigent persons or the prosecution in both criminal and civil matters." In January 1969 the House of Delegates approved and adopted a "Proposed Model Rule Relative to Legal Assistance by Law Students." It was the result of two years of study under the Chairmanship of the Honorable Alvin B. Rubin, U.S. District Judge for the Eastern District of Louisiana.

As a result of this decade of effort there are presently twenty six states and the District of Columbia that permit students to practice.[6] In addition, a growing number of federal districts are permitting their appearance. The latest State is California, which has long been in the forefront in the promotion of the effective administration of justice but in this instance has lagged far behind. Its Rule[7] became effective as of January 1, 1970. It permits students to appear on behalf of a

3 *The Federal Defender Program*, 15 DEPAUL L. REV. 313 (1966).

4 *Fair Play and Decency*, 3 SAN DIEGO LAW 1 (1966) and *Law Students' Participation in National Defender Projects*, 24 THE LEGAL AID BRIEF CASE 262 (1966).

5 People v. Alexander, 53 Ill. App. 2d 299 (1964).

6 California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Wyoming, District of Columbia.

7 *Rules for Practical Training of Law Students*; *see* State Bar of California Reports, Feb. 1970, p.1.

client in any public trial or hearing provided the permission of the client and the court is obtained and the case is conducted under the supervision of a lawyer of two years' standing. In my view this is the worst of the Rules. It requires not only the approval of the Court but also of the defendant. The former will result in a multifarious administration—some courts permitting participation, others denying it. As to the latter, most defendants will not join in the appointment.

Proposals looking to student participation are pending in some six or eight states including Missouri, Louisiana, Maryland, Maine, Utah, Alabama and Arkansas. It is expected that Missouri will be the 27th State to join in support of the student effort. A special committee of the Bar has only recently unanimously approved a rule and submitted it to the Court. Approval should be forthcoming in the early Spring. A most comprehensive and effective brief on behalf of the four Missouri law schools has been filed with the Missouri Supreme Court and is a model to be emulated. It was prepared under the direction of Professor Gary L. Anderson, S.I.A. University of Missouri, Columbia, Missouri.

The fact that only half of our States have authorized student participation in trials under licensed attorney supervision is beyond my comprehension. The proposal comes highly recommended by the Chief Justice of the United States, the Honorable Warren E. Burger. At the annual meeting of the ABA in August, 1969 he praised the growing number of schools that allowed school credit for legal aid and public defender programs.[8] He also called on the law schools to devote more time to teaching students how to handle "raw facts and real life problems." The prosecutor-defender programs are ready made for this. And in September, 1969, the Council on Legal Education for Personal Responsibility [CLEPR] announced that it would allocate $950,000 a year to law school programs which encouraged clinical experience as a regular part of law school curriculum.[9]

It is apparent that the time is ripe for the law schools to change their curriculum to meet the crying need for clinical experience by the students. Indeed, the third year of law school should be devoted entirely to clinical studies. Students should be assigned to prosecutors, public defenders, judges, constabularies, penal institutions and other criminal justice agencies to follow an intensive year-long program designed by the state bar examiners or the law schools and the public

8 TIME, August 22, 1969.

9 CLEPR Newsletter, Sept. 1969, Vol. II. No.1.

agencies. The Federal Judicial Center has organized several prison clinics in the federal system.[10] They afford legal service to prisoners in both state and federal institutions.

Some legal educators continue to doubt the value of clinical education. They rely on the scholarly skills and standards such as the law reviews, trial and appellate moot court and research projects. These have been helpful in orienting the student in advocacy. The Center itself has engaged quite a few law schools in the latter and their work generally has been superb. Many of us sit in moot courts. I average about five each year. The participants do very well with a cut and dried impossible factual situation. But they could spend the large amount of time consumed with much more profit in an actual case with a live client and real issues. And in addition this would furnish excellent on-the-job training in the basic skills of a good lawyer. Instead of the dead-law of the case, the student deals with the living law of life. The facts are not handed him on a silver platter; no, he must dig them out from unwilling witnesses and often a refractory client. Indeed, the student becomes so involved that "the case" develops into "a cause" to which he devotes his best talents, high devotion and unfailing energies. He learns what the commitment of a lawyer to his client actually involves and is taught to treat it with respect, honor and dedicated service. He lives his case—it becomes part of him and he part and parcel of it. He welcomes its challenges and gives unsparingly of his time to its thorough preparation. What law review, what moot court can create such affinity, such devotion, such determination and, upon conclusion, such satisfaction!

Moreover, experience is the law's peerless teacher. One who has never participated in the trial of a lawsuit cannot hope to understand the workings of the court system. How accurate can he judge the worth of a case before a jury or predict its chances of survival in the courts? The law is made in the courtroom—not in the legislative halls or executive mansions. The exposure to the "give and take" of a trial gives the lawyer a "feel" of a case, he acquires a "courtroom presence" and a keen insight into probable issues and their answers. He becomes accustomed to stress and strain—to maintaining his capacity to think quickly, to discover truth, uncover wrong and balance conflicting virtues. In addition, the experience with clients under the tensions of confrontation in court is an involvement that neither the client nor

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10 Yale at Danbury, Conn.; Washington and Lee at Alderson, W. Va.; Mercer at Atlanta, Ga.; Kansas at Leavenworth, Kan.; Southern California at Lompoc, Cal.; U.C.L.A. at Terminal Island, Cal.; and Washington State at McNeill Island, Wash.

the lawyer forgets. It leads on to a practice that another can never steal.

Finally, the student lawyer learns of the injustices of justice. Furthermore, he resolves to correct them. The chief fault of lawyers today is their refusal to get involved in the improvement of the judicial process. They love delay and technicality when it suits their case. Time changes but lawyers seldom do. However the student lawyer, having no vested interest in the system, quickly recognizes it shortcomings and with the idealism of youth makes it his personal business to correct them. Most of the advances in criminal justice of recent years are due to young lawyers. The criminal branch of the law has been downgraded for years. Specialization has claimed its toll. Now, however, I sense a change in the air. It is because of the attitude of young graduates entering the criminal bar. And this, despite the emphasis in the law schools on specialization and financial satisfaction. The more students we enlist in criminal justice work, the stronger will be our law enforcement.

Finally clinical courses in the law schools will develop more public-spirited lawyers. For example, I once had a call from a lawyer whose name had been reached by the local court on the indigent referral list. He asked the court to permit him to hire a lawyer to fulfill his obligation. The court refused. He wrote me asking that I intervene in his behalf. Upon my refusal, he finally accepted the assignment, tried the case and lost it. He wrote me of his experience. He mentioned that while preparing his case, he had gone to the jail to see his client. He said that he found that it "smelled just as bad" as it did 30 years before when he was a kid lawyer. I replied that the reason that the jail still smelled bad was because lawyers like himself took no interest in improving its facilities. I later learned that he launched a campaign to clean up the jail. The authorities decided to build a new one! If we can get these young students "involved" in the criminal process, they will make certain that we solve our social ills.

Let us welcome the student advocates to our court system. Effective justice is their objective; to honor the law their high ambition; and to serve their fellow man their great interest on earth. It is for us to whet their appetities through clinical studies and hasten their promise of a better day.