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## Ann Arbor and Legal Aid

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# *Ann Arbor and Legal Aid*

**How a progressive bar association met a most important social problem.**

**I**N THE FALL of 1913 an Ann Arbor landlord sued his foreign student tenants for their arrears in rent. The students' counsel asked for a jury trial and defended the claim on the ground that the landlord had constructively evicted his tenants by failing to provide adequate heat during the winter. The jury

*By* JAMES J. WHITE

believed the students and freed them from their obligation to pay rent.

Counsel for the students in that case was a law student, Edgar Eisenhower. Mr. Eisenhower has since become a prominent lawyer on the west coast and bears a name made even more prominent by his brother's Presidency. His case offers a precedent for student appearance by University of Michigan law students; his success sets a goal for the emulation of each of those students.

Under the auspices of Court Rule 921, the law students of the University

of Michigan again appeared in the courts in Washtenaw County in 1965. Since the leasing of its office in August 1965, the Washtenaw County Legal Aid Society has been open nearly 50 hours per week and has been staffed exclusively by second and third-year law students from the University of Michigan Law School. The bulk of the practice has been in family law — divorce, support, custody — but there have been a substantial number of creditor-debtor cases, a handful of misdemeanor defense cases, and a large batch of miscellaneous cases.

The students' role in this clinic can best be understood in the context of a typical case: A case will usually be commenced by an interview at the clinic between a student and the client. During that interview the student will collect data on the client's income and assets to determine whether he is eligible for the service. If he is eligible, the student will examine him to determine what the facts are and what the client hopes can be done to solve the problem. Typically, the student will then



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make an appointment to see the client at some later time. After the interview he will record the facts, his conclusions, and his recommendations for action on a form available at the clinic. At the end of each day all of these forms are examined by a member of the Washtenaw County Bar Association. That member of the bar usually becomes the supervising attorney for the cases opened that day and directs the student either to proceed as planned, to take no action until he consults with the attorney, or to reject the client because he is not eligible for service. If the lawyer tells the student to proceed, the student, with the consent of the client, may commence negotiation with a creditor, prepare divorce pleadings, or take any other appropriate action. During the course of the case the student will report to the supervising attorney as he needs further assistance.

If the case is one which will culminate in a court appearance, a divorce for example, the student will appear in court on behalf of the client. Although Court Rule 901 authorizes judges to permit students to appear in court without the presence of a supervising counsel, the judges in Washtenaw County have usually required that a supervising attorney be present in the courtroom during the student's appearance. Without exception the judges have permitted students to argue before them and to examine witnesses in their courts. The student's activities on behalf of his indigent client from the interview through negotiations to trial closely parallel those which the practicing attorney would undertake on behalf of the same client. He bears no small responsibility and one may properly ask whether his competence is equal to that task.

### Student Competence

I know of no foolproof test by which to measure the subtle combination of intelligence, knowledge, perseverance, judgment and other personal characteristics which make one a competent lawyer. If the won-lost score of clinic cases is a measure of competence, then the students are highly competent practi-

tioners, for the clinic has won 12 out of 19 contested suits. Of course such a measure omits consideration of the lawyer's role in settled cases and in other uncontested situations where he is simply giving advice.

Perhaps the best evidence of the quality of the students' performance is the feedback which we receive from lawyers and judges in Washtenaw County. The feedback indicates that most of the students are performing in an extraordinarily competent manner. It tells us that many of them have quickly learned the idiosyncrasies of local attorneys and public officials. It tells us that many of them have been novel and imaginative in argument and thorough in preparation. It is a story which should please the members of the Michigan faculty and the members of the Michigan bar as well.

Of course, there have been mistakes and there have been complaints. One student failed to have a supervising counsel sign a pleading before it was filed. Other students have surely failed in negotiations where more experienced and able negotiators would have succeeded; a few cases have not received the attention which they deserved. By and large however, these mistakes have been limited to the variety expected of an inexperienced lawyer. They have been embarrassing to him but not greatly injurious to his client's cause.

Doubtless this picture of instant legal facility does not ring true to many; how can one so quickly acquire ability which many others have achieved only after years at the bar? The answer is this: the student attorney isn't an accomplished legal practitioner; he is accomplished in a different skill—the simultaneous handling of one or two cases selected from a narrow slice of the legal spectrum.

Because he has only a few cases and because these are the first in a life devoted to legal practice, the law student will be greatly motivated to do a good job on those cases. Now anyone who frequents the Pretzel Bell in Ann Arbor or has worked on a law review knows that many law students spend only a

small part of their day in preparation for class. The desire to succeed at their first case and the novelty of the first real case stimulates most students to spend much of this available time interviewing the client, talking to witnesses and researching the law. No private attorney could or would be expected to spend the same amount of time on so few cases. So the student may make up in time what he lacks in experience.

A second quality which makes the student a good legal aid attorney is one probably at its height in law school and in decline thereafter. This is his naivete, his absence of cynicism. He has not yet suffered the embarrassing disappointments that come from unquestioning belief in the client's story. Because he has not acquired this patina of cynicism, he may overcome the poor person's suspicion more readily than an older but wiser attorney. His warmth and openness are likely to have a therapeutic effect on the client. But more important, his patient ear may ultimately collect data from the client which will form a meritorious legal claim but which would not have penetrated the cynical, impatient ear of an older lawyer.

The record, the feedback and my own observations all indicate that the student's intelligence, devotion to the task and idealism combine to make him an able representative of the poor.

#### **Legal Aid Impact**

Unquestionably the legal aid clinic has had an impact on the indigent community in Washtenaw County. It has represented poor persons of Washtenaw County in more than 580 different circumstances. It has procured or is in the process of procuring 19 divorces; it has successfully defended 10 misdemeanors and it has counseled poor persons and negotiated on their behalf with creditors on untold occasions. The lawyers who conducted the volunteer service which formerly existed in Ann Arbor are the first to acknowledge that acquiring a telephone number and opening an office exclusively for service of the poor has tremendously increased

the number of persons who seek and receive free legal service. Many who would have gone without legal counsel in years past because of limited facilities or ignorance of them or because of fear of seeking help have been well served this year.

The clinic's impact on those who would take advantage of the poor is less certain. Of course, we hope that the availability of competent legal help for the poor person will cause the overreaching seller and the unscrupulous creditor to maintain their activities within the bounds of legality and conscience. At this point there is no evidence of any such pervasive salutary effect.

#### **Impact On The Bar**

It is not possible to loose one hundred aggressive, idealistic and intelligent students into the placid Ann Arbor legal community without some impact on that community. This impact is not easy to measure, but I believe that it will ultimately be extensive and desirable. I believe that the students will cause the bar to reappraise and perhaps change some of its ideas and practices. The students are more critical and inquisitive than the average lawyer has the time or inclination to be. Since the student is not seeking integration into local society and the local bar association, he does not feel the compulsion which a neophyte attorney may feel to conform to the standards and practices of the local bar. He has less to lose in questioning the propriety of ancient customs.

The attitude of the bar on representation of the poor illustrates this potential for change. A year ago many Ann Arbor lawyers would have questioned the notion that the poor should have as effective and thorough legal representation as those who can pay. An even greater number would have denied the legal aid attorney the use of such standard weapons in the practitioner's armory as delay and the threat of a long and expensive trial. Today I perceive a change in these attitudes among the bar; I believe the change is

mostly attributable to the law student contact with them.

The students will have a different kind of desirable effect on the legal community in their operation as a direct conduit of the most current theories, developments and cases from the classroom to the Ann Arbor legal scene. A recent clinic case illustrates this fact. Section 2-302 of the Uniform Commercial Code authorizes a court to strike down a contract or part of a contract which it finds to be unconscionable. There have been few cases interpreting this section and there is still much question about the kinds of cases which it will cover. In the case in question students attacked as unconscionable an "add-on" clause giving a conditional seller a security interest in the items sold on time and items previously sold and paid for as well. Such a clause is not inherently unconscionable, but the students argued that the add-on clause in the context of that case (an illiterate debtor and a finely printed form contract) was unconscionable.

I believe that the students will have a substantial positive and continuing impact upon the bar. The students act as a conduit of current legal theory and as a wholesome stimulus to question and improve the status quo.

The negative impact on legal practice predicted by some — a massive migration of clients from private attorneys to the clinic — has not occurred. Through its control of the Board of Trustees of the Legal Aid Society and in its role as supervising attorney, the bar has exercised the power to decide which cases to take and what economic standards to employ for client eligibility. We have no evidence that there is extensive understatement of assets or income by clients to receive the service, nor is there any indication that the present standards have deprived members of the bar of many clients who could pay.

#### Law School Impact

The fundamental impact on the law school has been on the one hundred-

odd students who have worked in the clinic. For these students the law and the words in law school have a new, real dimension. To one student "voir dire" is no longer just a French phrase, it now calls forth the image of a little old lady juror who responded to a standard voir dire question by identifying the opposing counsel as "little Bobbie who used to live down the street and wet his pants all the time."

These students have observed the futility of a good legal theory if the evidence to support it can't be mustered; they have suffered the frustration of attempting to serve an irresponsible or uncooperative client who won't take advice. For them law school has become continuing legal education.

The clinic experience has had only a small impact on the law school as a whole, but I believe that the ultimate impact will be substantial. The experience of the students may hasten the addition to the curriculum of courses on counseling and on the specific problems of the poor. At minimum the students will enrich the classroom discussion and challenge the professor's theories with their experience. Henceforth no teacher of evidence will be able to state without fear of contradiction that an exception to the heresy rule is *always* applied thus and so. No teacher of commercial transactions will be able to state categorically that Section 2-302 cannot be used to protect a consumer from simple overreaching. All of the students (and perhaps even the teachers) will benefit from this real-life enrichment.

#### Conclusion

The first year's operation of the Washtenaw County Legal Aid Society has been an exciting one. Students have demonstrated greater competence than any of us had a right to expect, and the sponsoring bar has been increasingly receptive to the students' activities and to the fundamental idea of adequate legal representation for the poor. Most important, the indigent persons have been effectively served at very little cost to the taxpaying public.