

Editorial Forum

STUDENT INTERNSHIPS: A MODEST PROPOSAL

In 1967 the Conference of California Law Students drafted a "student internship proposal" calling for increased law student participation in the legal process under the supervision of licensed attorneys. The Board of Governors of the State Bar of California is considering this proposal along with others. We feel that the Board of Governors should adopt the student internship proposal in whole or in such modified part as they deem advisable.

The student internship proposal is unique. It was drafted by a body representing the students of all accredited and the major nonaccredited law schools in California. The proposal is based on a complete investigation of the practices of the seventeen jurisdictions which permit some form of law student participation in the legal process.¹ Knowledge of the successes and failures in other jurisdictions was used to draft a proposal suited to California's needs. A measure of the success of the drafting job is the favorable reaction received from most of the district attorneys, public defenders, and legal aid offices in the state.

The Conference proposal rests on two premises. First, there is a burgeoning need for legal services of all types in California, particularly among the poor.² Legal aid centers are having an increasingly difficult time in keeping abreast of the interviewing load and, at the same time, in freeing lawyers for court work.³ Second, current legal education in California is in most instances devoid of immediacy, practicality, and actual experience. The trial practice and moot court programs offered by most California law schools have not filled this gap. Aside from sapping the enthusiasm of law students, this gap makes the recent graduate extremely uncomfortable when faced with a practical problem. Worse yet, much of the educational burden is shifted from the law school to the practicing bar, usually at the expense of an unfortunate client.⁴

Granted these premises, the solution to both problems lies in bringing the law student into the legal process. The Conference proposal would do this by amending the *Business and Professions Code* to permit student internships.⁵ At present, sections 6125-26 state that only active members

¹ See Conference of California Law Students: Student Internship Program Memorandum pt. IV (Sept. 25, 1967) (on file with the *California Law Review*) [hereinafter cited as Memorandum].

² Memorandum part II, at 1.

³ *Id.* at 3.

⁴ M. MAYER, *THE LAWYERS* 107-08 (1966).

⁵ See Conference of California Law Students, Proposed Student Internship Statute (Final

of the state bar are allowed to practice law, making the unauthorized practice of law a misdemeanor.

The student internship proposal would alleviate the educational deficiency noted above by allowing the student to enter the currently forbidden areas of counselling, negotiation, and in-court appearances for nonjury trials. There are a number of safeguards. All work done by the student must be under the "immediate and personal supervision of an active member of the State Bar."⁶ The term "immediate and personal" will probably require the actual presence of the supervising attorney only when he deems such presence necessary.⁷ The supervising attorney retains full responsibility for any and all work done by the student. Additionally, a student must have completed at least one-half of the credits necessary for a degree, must have participated for one semester or its equivalent in a preinternship program, and must be certified for participation by the dean of his law school. The program itself must be established or formally approved by a local bar association or law school or a state or federal governmental agency or court before which the student appears.⁸ Finally, student participation is limited to representation of the indigent and to appearances on behalf of governmental entities.

Experience in other states indicates that the adoption of this or a similar proposal would allow legal aid offices and governmental agencies to tap a large source of manpower. Massachusetts probably has the most successful programs, with students from Harvard Law School alone being involved in four of them. The form of each program is different. A Massachusetts court rule allows senior law students, certified by the deans of their law school, to appear in certain criminal cases. There is no express court rule or statute permitting civil appearances.

Students make court appearances in criminal cases in both the Voluntary Defenders and the Student District Attorney program. There is a great deal of supervision by practicing attorneys in the Student District Attorney project.

In the civil area court appearances are made by students from the Community Legal Assistance Office and the Harvard Legal Aid Bureau.

A grant from the Office of Economic Opportunity created the Community Legal Assistance Office in Cambridge, Massachusetts in October

Draft, September 16, 1967) (on file with the *California Law Review*). The CCLS also prepared a Proposed Student Internship Rule for possible future submission to the Supreme Court of California. The Rule was submitted to the State Bar simultaneously with the proposed statute.

⁶ *Id.* § 6125.1(a).

⁷ *Id.* § 6125.1(d)(2).

⁸ *Id.* § 6125.1(b)(1).

1966. Since then four full time attorneys and one hundred ten second and third year students have handled 2,179 cases.⁹ Participation in CLAO is based on an interview and interest. There is some degree of attorney supervision in CLAO. Solo appearances are made by CLAO members, but each case is discussed with one of the licensed attorneys.¹⁰ The most difficult cases are handled by the staff attorneys, but as a CLAO member gains experience, he is allowed to handle more complicated cases.

Solo appearances by members of the Harvard Legal Aid Bureau have been accepted by Massachusetts courts for over fifty years.¹¹ The Legal Aid Bureau averages about 1600 cases per year.¹² Membership in the Bureau is limited to forty second and third year students selected on the basis of grades. There is very little supervision by practicing attorneys in the Harvard Legal Aid Bureau. An attorney of record's name appears on all Bureau pleadings, but his supervision is limited to a visit to the Bureau office on one afternoon a week. Otherwise the Bureau member is on his own.

Most legal aid work does not involve appearance in court. All too often there is nothing that a lawyer can do for an indigent. There has been no fraud, no overreaching but merely bad judgment on the part of the individual. In these cases, and in the cases where some legal relief is available, counselling may be just as important as any legal relief. The law student, who is not involved in the struggle for a livelihood, has the time to devote to this "social work" that court-appointed counsel lacks. The law student can bear much of the brunt of interviewing in legal aid offices, freeing the staff for court appearances. Court appearances by students could greatly multiply the effectiveness of existing legal aid staffs. All of these benefits are technically barred now because they constitute, or might constitute, the unauthorized practice of law.

If anyone needs adequate counsel, it is the poor man. This statement assumes that the poor man gets his day in court, but unless he can reach a lawyer, he does not get that day. If the interviewing process is blocked, or if his case can't be handled for lack of manpower, he gets no representation. Adoption of the student internship proposal would help the California indigent receive that representation.

⁹ CLAO Newsletter, February 23, 1968, at 2-3, col. 1 (on file with the *California Law Review*).

¹⁰ Letter from Mrs. Margaret Brown, former participant in CLAO, March 15, 1968 (on file with the *California Law Review*).

¹¹ Memorandum part IV, at 89.

¹² Memorandum part IV, at 94-96.

CONCLUSION

Any proposal to involve law students in the legal process is a matter of degree, as evidenced by the different standards employed in the programs of Massachusetts alone. The Conference student internship proposal is just one such program, and was offered to the Board of Governors subject to modification. If modification occurs, it can take many forms. It is possible, for example, to limit the program to third year students; to remove the preinternship requirement; to require decanal or judicial approval of the supervising attorney; to require the approval of the trial judge in addition to that of the supervising attorney for solo student appearances; to limit solo appearances to civil cases or preliminary appearances in criminal cases; to allow programs only in formal association with a law school; or to alleviate the absolute responsibility of the supervising attorney.

The list is by no means exclusive, but insofar as the Conference is concerned, any modification should be considered in the light of its effect on the two goals of the proposal—expansion of the spectrum and scope of legal education, and extension of legal services. Both of these goals would be seriously affected by restriction of the number of programs available and the qualifications of the students able to participate in them. The second goal, that of extended legal services, would be totally precluded by modification calling for the continuous presence of the supervising attorney. That type of modification would also hamper the quantitative aspect of student involvement.

However the Board of Governors chooses to modify the proposal, it should adopt some position favoring increased student participation in the legal process. To do otherwise would be to ignore the national trend, and to defeat the rising expectations in the law school classroom and among the indigent.

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