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The University of South Carolina Law School Corrections Clinic

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THE UNIVERSITY OF SOUTH CAROLINA LAW SCHOOL CORRECTIONS CLINIC

Recently there has been a trend toward clinical education in the law schools of this nation, and the University of South Carolina School of Law has chosen to follow this trend by offering several clinical programs to its students. The first such program founded at the law school was the Corrections Clinic. The Corrections Clinic deals with the rendering of legal services to indigent inmates and the study of prison problems. The Clinic is funded by the Council on Legal Education for Professional Responsibility, a subsidiary of the Ford Foundation, which funds numerous clinical programs throughout the nation. Before considering the various types of legal services rendered, the question of the law students' authority to engage in clinical activities should be raised. Students in the Corrections Clinic appear in court only under the supervision of a practicing member of the bar who acts as attorney of record. Two other Clinics at the School of Law, Prosecution and Defense Clinics, have obtained a written order from the Supreme Court of South Carolina which allows students to participate in the Magistrate's and Recorder's Courts under the supervision of a practitioner.[1] Also lending support for student representation is an old South Carolina statute[2] which allows a citizen to represent another with permission of the court provided that no fee or reward is received pursuant to such representation. It further appears that the United States Supreme Court, in the case of *Johnson*

1. The Order from the Supreme Court of South Carolina, dated October 15, 1970, provides:

> During the regular 1970-71 school year and solely in aid of the legal educational program of the University of South Carolina Law School, third year law students whose character and qualifications are certified by the Dean of the School of Law may, at the discretion of the Magistrate or Recorder, appear for the prosecution or defense in the Magistrate's Courts and Recorder's Courts under the direct supervision of an admitted practitioner or practitioners who shall have the sole responsibility of the representation.

2. S.C. CODE ANN. § 56-102 (1962) provides:

> This chapter shall not be construed so as to prevent a citizen from porsecuting or defending his own cause, if he so desires, or the cause of another, with leave of the court first had and obtained; provided, that he declare on oath, if required, that he neither has accepted nor will accept or take any fee, gratuity or reward on account of such prosecution or defense or for any other matter relating to the cause.

v. Avery,[3] has looked favorably upon similar law student activities. The Court in *Avery* held that inmates could not be prevented from initiating themselves or aiding others in initiating post-conviction proceedings unless the state provided some available and reasonable alternative assistance to the inmates. The Court indicated that law students serve a valuable function in this area and that such programs which render aid to inmates have been beneficial not only to the inmates but also to the students, the prison staff and the courts.

Students who enroll in the Corrections Clinic for the first time are assisted by other students who have taken the course previously and were selected to handle continuing cases and aid the new members. There are three distinct areas of work that clinic members participate in: (1) Legal Aid to Indigent Prisoners; (2) Representation of Indigent Inmates Before the State Parole Board; and (3) the Study of Prison Systems.

I. LEGAL AID TO INDIGENT PRISONERS

The Clinic is designed so that a student spends about 75% of his time working on the problems of his inmate-clients. The clients consist of indigent inmates within the South Carolina Department of Corrections and to some extent those at Richland County Work Camp No. 1, who request legal services and are not otherwise entitled to the appointment of an attorney. The inmate must meet the indigency requirements established by the Office of Economic Opportunity and used by Richland County Legal Aid. Present requirements are that the client must not receive in excess of one hundred fifty-eight ($158.00) dollars per month plus fifty ($50.00) dollars for each of his dependants. The majority of inmates have no problem meeting such requirements, but a statement must be signed verifying his indigency. If the inmate has an attorney or is able to afford to hire one, the Clinic does not become involved. The Clinic normally consists of fifteen to twenty students, who are assigned to one of several correctional institutions served by the Clinic. Clinic members interview their clients during weekly visiting hours established at each of the correctional institutions. The following discussion is a consideration of the more common types of problems encountered.

3. 393 U.S. 483 (1969).

A. Pre-sentence Jail Time

Through experience, the Clinic has found that one of the foremost legal concerns of inmates is to have pre-sentence jail time allowed as part of their sentence. In essence, the inmate is requesting the student's assistance in having the amount of time spent in jail prior to his trial and sentencing applied to the sentence he received. Since it is customary for the formal sentence to be dated from the point in time of conviction, the request for pre-sentence jail time is often substantial, and is quite important to the inmate as it will determine his release date and his eligibility for parole. A court is allowed to give credit for pre-sentence jail time pursuant to section 55-11 of the South Carolina Code of Laws,[4] but the case of *State* v. *Sanders*[5] held that a prisoner is not entitled as a matter of right to credit for such jail time. After referring to section 55-11 of the Code of Laws, the court in *Sanders* stated:

> While the request of defendant for credit for his pre-sentence jail time has considerable appeal, there is no statute in this State requiring the trial judge to give a prisoner credit for the time spent in custody prior to trial and, in the absence of such statute, the rule appears to be that a prisoner is not entitled as a matter of right to credit for his pre-sentence jail time.[6]

In his effort to help, the student writes the authorities who had custody of the client during the pre-sentence jail time in order to obtain verification of the dates of incarceration. A letter is then prepared, accompanied by a verification of the time sought, requesting that the trial judge allow this time to be applied toward the inmate's sentence. As there is no right to such time, the judge's decision is final. If the judge decides to grant the request, an order to that effect is signed and filed with the clerk of court in the county of conviction and served on the South Carolina Department of Corrections so that the inmate's

4. S.C. CODE ANN. § 55-11 (1962) provides:
The computation of the time served by prisoners under sentences imposed by the courts of this State shall be reckoned from the date of the imposition of the sentence. But when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation or (c) *the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served shall be reckoned from the date of the commencement of the service of the sentence.* (Emphasis added).

5. 251 S.C. 431, 163 S.E.2d 220 (1968).

6. *Id.*

sentence may be adjusted. Students have assisted inmates in having their sentence shortened as much as 205 days through this procedure.

B. Institutional Transfers

Institutional transfers are within the discretion of the South Carolina Department of Corrections; therefore, the student can only request such transfers. However, the student can work effectively in this area by investigating the need for a transfer and relating such needs to those who have authority to grant a transfer. Often the inmate is not able to communicate his needs to the officials and the clinic member is better able to do so. A common request of many inmates is to be transferred to the county work camps in their home county. Clinic members have been effective here by corresponding with the persons in charge of the county work camp. Often there are valid reasons given for such a request, and the student will tactfully present these reasons for the inmate. Conversely, the student may attempt to discourage a transfer to the county work camp as the rehabilitative programs are relatively non-existent.

One interesting case which was handled by a clinic member involved a mentally disturbed female inmate. She had been raped at the age of twelve by six men and had been a mental patient since that time. She had made repeated efforts to commit suicide. While serving a five year sentence for larceny in South Carolina, she was transferred from the Department of Corrections to the South Carolina State Hospital. While in the hospital the inmate requested that the Clinic aid her in obtaining a transfer to Georgia. A clinic member was instrumental in having the inmate's sentence set aside so she could be transferred to a hospital in Georgia near her family and where she had previously been a patient.

C. Removal of Detainers

A detainer is a notation on an inmate's prison record indicating that he is wanted by another jurisdiction after he serves the sentence for which he is presently incarcerated. Most inmates are concerned when detainers appear on their record because such notation curtails privileges which otherwise might be afforded, such as outside visitation rights and eligibility for parole. Students may initiate the procedure

under the new Interstate Compact on Detainers[7] which may result in a removal of the detainer. The above-mentioned compact or agreement is now operative in twenty-five states and provides that the inmate may request to be brought to trial on the charge for which the detainer was placed on his record. The student sends the proper documents to the jurisdiction issuing the detainer requesting a speedy trial. That jurisdiction then has 180 days to make a good faith effort to bring the inmate to trial, and if the jurisdiction takes no action, the act provides that the detainer be removed from the inmate's record. This allows the inmate to progress in custodial classification and to be eligible for parole along with any other privileges which he was denied because of the detainer. If the jurisdiction responsible for having the detainer placed on the record is a member of the compact and fails to make a good faith effort to bring the inmate to trial, the act further provides that the charges shall be dismissed with prejudice.

If the jurisdiction is not a member, the problem becomes more complex. The inmate may still have the detainer removed from the records of the member state through the procedure previously mentioned, but the jurisdiction with the outstanding charge may assert that it is not bound to dismiss the charge since it is not a member of the compact. However, there is a strong argument that the inmate has laid the groundwork to have the charge dismissed when he is later brought to trial on the ground of denial of a speedy trial by the non-member state. This argument is supported by the United States Supreme Court in *Smith* v. *Hooey*.[8] This case did not specifically deal with a detainer agreement; however, it held that another jurisdiction cannot ignore a request for a speedy trial. It was stated that the constitutional guarantee of a speedy trial is essential to protect at least three basic demands of criminal justice: (1) to prevent undue and oppressive incarceration prior to trial, (2) to minimize anxiety and concern accompanying public accusation, and (3) to limit the possibilities that a long delay impairs the ability of an accused to defend himself.[9] The Court held that these demands were aggravated and compounded in the case of an accused who is imprisoned by another jurisdiction. Another unapplicable case is that of *Dickey v. Florida*,[10] where the denial of a

7. S.C. CODE ANN. §§ 17-221 *through* 17-228 (Supp. 1969).
8. 393 U.S. 374 (1969).
9. *Id.* at 378.
10. 90 S.Ct. 1564 (1970).

right to a speedy trial was the basis for reversing a conviction of a prisoner tried eight years after the commission of the criminal act. The Court held the inmate had been denied a speedy trial because he had been available to the state at all times during the period before trial and had made diligent and repeated efforts to secure a prompt trial. During the delay two witnesses had died and other potential defense witnesses had become unavailable. Police records had been lost or destroyed, and there appeared no valid reason for the delay. These cases lend strong support to the denial of a speedy trial argument when demand is made to a non-member state of the compact.

Normally, most inmates are aware of any detainers as the act provides that the prisoner shall be informed of the source and content of any detainers and shall be informed of the right to request final disposition. If the appropriate authority refuses or fails to accept temporary custody for purposes of a trial, or in the event that the inmate is not brought to trial pursuant to the act, the indictment, is of no further force or effect, and the court enters an order dismissing the same with prejudice. Request for a speedy trial pursuant to this act is deemed a waiver of extradition and is consent to return to the sending state. After the inmate arrives at the receiving jurisdiction, the act provides that the trial must begin within 120 days unless good cause for a continuance is made in open court. While the inmate is in temporary custody of the receiving state, time being served continues to run, but good time is earned only if the jurisdiction which imposed the sentence allows it to be earned. South Carolina does permit the accumulation of good time in such a situation. The act also provides that the receiving state must pay all costs of transportation, keeping, and returning, and that the inmate should be returned to the sending state at the earliest practical time. It should be noted that this act does not apply to inmates who have served in one state and have escaped, and a detainer is placed on the record pursuant to the escape.

D. Post-Conviction Proceedings

Students assist many indigent inmates who desire to attack their conviction under the Uniform Post-Conviction Procedure Act,[11] enacted by the South Carolina General Assembly on May 1, 1969. The proceeding is commenced by filing an application, verified by the

11. S.C. CODE ANN. §§ 17-601 *through* 17-612 (Supp. 1969).

applicant, with the clerk of court in the county of conviction. The clerk delivers a copy to the solicitor of the circuit in which the applicant was convicted and a copy to the Attorney General. The application is made on forms prescribed by the State Supreme Court. Such forms require that the grounds upon which relief is based be clearly stated; however, no argument, citations, or discussion of authorities is necessary. If the application is filed in a county other than Richland, the student assists in preparation of the application, files it with a request that an attorney be appointed to represent the inmate, and offers to assist the attorney. If the application is filed in Richland County, the clinic member represents the inmate at a Post-Conviction hearing where a member of the bar acts as attorney of record. However, the court may dismiss the application without a hearing if it is satisfied that the applicant is not entitled to the relief sought, but the applicant must be told of the intentions to dismiss and given an opportunity to reply. The student must provide advice in setting out all grounds for relief in the application because any ground not included cannot be the basis for a subsequent application. The order resulting from such an application is a final judgment and may be reviewed by the Supreme Court of South Carolina.

Several Post-Conviction proceedings which were initiated by clinic members have been successful in setting aside convictions. One student assisted an inmate in the preparation of and filing of a Post-Conviction Relief Application in which it was alleged that the inmate was not informed of a right to an attorney and a right to a jury trial pursuant to an escape charge. The student filed an application requesting an attorney be appointed to assist the inmate. A hearing was granted, and the inmate received a new trial which resulted in a sentence of one year, whereas, the first sentence had been two years. In this particular case the inmate alleged that the first conviction took place at a county work camp in the presence of only a county sheriff and county judge.

Another interesting case in which a clinic student participated was an application alleging that the inmate was denied the right to counsel in a 1948 conviction of grand larceny and housebreaking where he received a sentence of fifteen years. At the Post-Conviction hearing the State was unable to produce any records concerning the inmate's conviction other than the sentence; therefore, the judge ordered the inmate be released. In this case a clinic member represented the inmate at the hearing and a member of the bar acted as attorney of record.

This is valuable experience for the student because he is allowed to conduct direct examination of the inmate and his witnesses, cross examine the State's witnesses, and present an argument to the judge. A number of the Post-Conviction Applications that are denied are appealed to the South Carolina Supreme Court. The Corrections Clinic is presently involved in some ten or twelve cases being appealed. Although the student is not permitted to argue the case before the Supreme Court, he does receive practical experience in brief writing and appellate procedure.

E. Other Legal Services

Another project required of a clinic member is that he must write a short article to be submitted to the prison newspaper which is published by inmates of the South Carolina Department of Corrections. The student writes an article informing inmates of various areas of the law which may be of interest to them. Articles that have been published concern guilty pleas, habeas corpus, parole, and many others. These articles are informative to the inmates, and serve to discourage frivilous complaints.

Students have also assisted inmates in obtaining medical attention where the inmate complains of neglect. One of the clinic members presented a medical assistance plan to the Richland County Council which provided for weekly visitation by a doctor to the county work camps, and the plan was taken under consideration. Inmates are also assisted in drafting petitions requesting sanity hearings and calculating sentences when good time, work time, and blood time are involved. Further, two students were instrumental in having the prison mail regulations revised.

II. Parole Representation

The Clinic engages in the representation of indigent inmates before the South Carolina Probation, Parole and Pardon Board; however, the inmates must meet the indigency requirements previously stated. The Parole Board consists of six voting members, one from each congressional district of the state. The members of the Board are appointed by the Governor with the advice and consent of the Senate for a period of twelve years.[12] The Board must hold regular meetings at

12. S.C. Code Ann. § 55-551 (1962).

least four times each year and as many extra meetings as may be ordered. In the past the Board has met on an average of twice a month.

Four or five parole cases are selected for each Board meeting and are presented by clinic members. Difficult cases are selected because the Board had previously reviewed the case and where it has decided to grant parole, it does so at the beginning of the hearing without the student having an opportunity to present his case. When the student receives his case, approximately two weeks in advance of the hearing, his immediate concern is to interview the inmate to ascertain his desire for representation and to notify the Board of such representation. The student then proceeds to work on the substance of the case. Although the approach taken is largely decided by the student with supervision from the professor, securing employment, a statutory requirement,[13] and residence for the prospective parolee are necessary for parole. Often the inmate has enough information about employment and residence to enable the student to obtain written confirmation of these requirements. If the inmate cannot offer suggestions, the student must attempt to locate suitable employment and residence from his own resources or obtain assistance from agencies such as Alston Wilkes, Vocational Rehabilitation, and the State Employment Service. If all attempts are to no avail, the student may request provisional parole for the inmate. This allows parole on condition that the missing requirement is satisfied.

Within the two week period prior to the actual hearing, ample time is provided for interviewing the inmate and reviewing his prison file. The student attempts to gain information and recommendations which he feels will benefit the inmate's chances for parole. Once the information is gathered and a short presentation is prepared, the case is discussed with the professor for advice and criticism. Due to the number of persons reviewed for parole and the short time allowed, the clinic member must make an effort to keep his argument concise and to the point. The most effective presentations have been those where the students have included points favorable to the inmate of which the Board was not aware.

Parole representation is no doubt a beneficial service to inmates as the majority of them have no representation, and many are incapable of

13. S.C. CODE ANN. § 55-612 (1962).

presenting a logical and meritorious argument to the Board. The case of *Mastriana* v. *New Jersey Parole Board*[14] states the reason attorneys are not required for parole hearings. The court noted in *Mastriana* that parole is an act of leniency or grace toward a prisoner and that the grant or denial of parole is a matter for the exercise of proper judgment by the paroling authority and is not in any way a judicial function. South Carolina appears to view parole as a matter of grace also. In the case of *Sanders* v. *McDougall*,[15] the court stated:

> A prisoner upon release on parole continues to serve his sentence outside the prison walls. The word parole is used in contradistinction to suspended sentence and means a leave of absence from prison during which the prisoner remains in legal custody until the expiration of his sentence.

When an inmate is granted parole subsequent to a presentation by a clinic member, the benefit to the inmate is obvious, but the benefit to the student is also apparent. As previously mentioned, if the Board had tentatively voted to parole the inmate pursuant to an earlier review of his file, he would be granted parole immediately without a presentation by the student. Therefore, where the student is successful in the presentation, it is evident his efforts have been worthwhile and his argument persuasive. Representation before the Parole Board is an educational experience as it is often the first time the student has appeared before a panel in an effort to convince them toward a particular point of view. Although the parole hearing has no rules of evidence to adhere to, the student is cast before the Board where he must make an effort to represent the inmate to the best of his ability in a situation that has some similarity to an adversary proceeding. The student carefully prepares the salient points he wants to bring out at the hearing, but he must also be ready to respond to any questions that any Board members have. Often the clinic member must be persistent in order to bring out all major points due to the lack of time. The inmate must also be prepared to answer questions directed to him.

The student's presentation to the Board is observed by the professor, and the student subsequently receives a critique. Each clinic member has two or three parole cases during the semester and he is expected to improve with experience. Because of the nature of the cases

14. 95 N.J. Super. 351, 231 A.2d 236 (1967).
15. 244 S.C. 160, 135 S.E.2d 836 (1964).

the student is in no way judged on the outcome of the hearing, but is graded on the manner and substance of the presentation. It is advantageous to relate several student experiences with parole representation to discern the manner in which various cases are handled.

Illustration No. 1

The inmate in this case plead guilty to housebreaking, safecracking, and larceny in General Sessions Court. The clinic member was assigned the case in the manner previously described and upon the initial interview found that the client had received a twelve year sentence and had served four years and two months. This being approximately one third of the sentence, the inmate was eligible for parole for the first time. The client was twenty-two years old at the time of the parole hearing, but he was only eighteen at the time the crimes were committed. He came from a broken home, and his father had died just prior to the commission of the crimes. The major obstacles in this case were: one, that he had been caught drinking twice within the four years he had served; and, two, that he had been arrested for carrying a concealed weapon, but the charges were dropped.

With these and other facts in mind the student set out to demonstrate to the Parole Board that this inmate deserved to be paroled. From information given by the client, the student was able to obtain a letter confirming an employment offer which paid in excess of three dollars an hour, and a letter was also presented to the Parole Board stating that the inmate had an adequate place to reside. The clinic member strongly emphasized the inmate's desire to attend college, and explained that he had completed his application and had taken the college entrance examination while an inmate. He was in one of the first groups to take the examination while in prison and made one of the highest grades ever made by an inmate. The student also presented the inmate's high school transcript to emphasize his ability to succeed in college. A certificate evidencing an honorable discharge from the military along with a document of eligibility for ten and a half months of G. I. benefits were also presented. The student further produced a very impressive letter from a Vocational Rehabilitation Counselor who had worked with the inmate while in prison. This letter reaffirmed the inmate's desire to attend college and expressed the willingness of the Vocational Rehabilitation Agency to assist the

inmate. The inmate's immaturity at the time of the crimes was also stressed. The student presented several letters from persons that the inmate had worked for during the four years of incarceration which indicated he had a good work record and was highly recommended by his supervisors. As anticipated, the inmate was questioned concerning the drinking incidents. At this point, the student read to the Board a letter from the Senior Alcoholic Rehabilitation Counselor which stated that the inmate did not have a problem with alcohol. This appeared to have a noticable affect upon the Board, and the decision was to grant parole.

Illustration No. 2

The inmate in this case was convicted of manslaughter in the Greenville County Court of General Sessions. She received a sentence of ten years for the crime and had served three and a half years when a clinic member was assigned her case for parole representation. The procedure of confirming residence and employment was performed; however, the case was somewhat difficult for several reasons. The inmate had served only three and a half years, thus there might be a feeling among members of the Board that she had not been adequately punished for the crime since only one third of the sentence had been served. Another disadvantage was that her grandmother, with whom she had lived prior to incarceration, was not anxious to have the inmate reside with her; and, it was only after numerous correspondence that the grandmother agreed to provide a residence long enough for the inmate to obtain another place to live. This inmate had also committed a prison infraction within the past year prior to review for parole.

The student prepared a presentation for the Board including matters which otherwise might have gone unnoticed. It was pointed out that the grandmother was seventy-one years old and receiving welfare benefits, and that there was also an aunt at this residence who was unable to work because of blindness. The inmate also had a ten year old son at this residence who was in school. The Board was informed of the inmate's strong desire to aid her family financially and in any way possible. This inmate had a long police record which consisted of mostly drunk and disorderly convictions. It was apparent that she had an alcohol problem, but it was pointed out to the Board that she had now gone three and a half years without the use of alcohol; therefore, she realized she did not need it. The strongest and possibly the

convincing point in this case was the evidence that rehabilitation had occurred. The inmate had taken courses in algebra and geometry, and she was very near to receiving a high school diploma. A certificate evidencing the passing of an IBM Key Punch training course was most impressive. The student presented this certificate to the Board and explained that this was normally a 472 hour course which generally takes six months, but this inmate passed the test despite the fact she received only three and a half months of training. The inmate had also passed a first aid course. The student demonstrated that she had proven her desire to be rehabilitated in prison and the Board decided to give her an opportunity to prove herself in society. There are, of course, numerous cases where the inmate and student have not been as fortunate as in the previous illustrations, but nevertheless, the student prepares the case to the best of his ability.

III. STUDY OF THE PRISON SYSTEM

The final area of Clinic work is the study of prison systems and surrounding problems. This study takes place in a weekly two hour class where the students have an opportunity to discuss their cases and particular problems that may arise. This proves to be a learning process as other students may have similar problems or may have handled similar cases. During the two hour period the students study case law and other materials written on the prison systems. Since the courts are beginning to dispose of the previous "hands-off" attitude toward prison systems, the case law and materials on the subject are increasing. Students receive materials concerning treatment of inmates, sentencing, parole, habeas corpus proceedings, and other materials relating to prison systems. The student also learns the lawyer's role when interviewing his client, and these methods are put into practice during his weekly visits to the correctional institutions. On numerous occasions persons connected with corrections and prison systems are invited to attend the weekly class to inform the students of their ideas concerning prison systems and of methods that are now being practiced.

CONCLUSION

The Clinical program herein discussed is sufficiently flexible to enable it to discard projects which have been deemed the least beneficial and to replace them with more worthwhile endeavors. There is some

indication that in the future students will be allowed to represent inmates at disciplinary hearings which are conducted within the prison system when an inmate has allegedly violated prison rules. This should be beneficial to the student and especially to the inmate who often has no one present on his behalf. Although students have done little work in the federal courts, it is hoped that the clinical program will become more involved with matters worthy of consideration by the federal courts. Specifically, there has been discussion concerning students representing federal prisoners in revocation of probation proceedings. Eventually, the Clinic hopes to offer the students the opportunity of following a Post-Conviction Application to the Supreme Court of South Carolina, where they will argue the case before that court.

The intention is not to present this Clinical program as a model program, but as one which is workable and may be considered a model in that respect. The University of South Carolina Law School had no clinical programs four years ago, however, now it has five such programs presently functioning. Other than the Corrections Clinic, the Law School offers a Student Aid Clinic, Family Court Clinic, Prosecution Clinic, and a Defense Clinic. The Corrections Clinic welcomes any support, advice, or comments from the bar and judiciary which might benefit its present endeavors in the field of clinical education.

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