

LAW STUDENTS AND LEGISLATION:

REPORT ON THE PASSAGE OF TEXAS SENATE BILL 66, THE TEXAS LAW STUDENT PRACTICE BILL.

Senator Charles Herring of Austin, Texas introduced a bill¹ in 1969 in the Texas Senate that, had it been passed by the Legislature and signed into law by the Governor, would have amended the State Bar Act² to add the following:

... provided, however, that bona fide law students, while attending a law school approved by the Supreme Court of Texas may assist licensed attorneys in the trial of cases for indigents under such rules and regulations as may be promulgated by such Supreme Court, but only to the extent and in the manner therein prescribed. The Supreme Court shall designate the qualifications of such students which shall be prerequisite for their eligibility to render such assistance in the trial of cases.

That bill passed the Texas Senate in 1969 and was sent to the State House of Representatives, where it was referred to committee, and where the bill died.

In an effort to prevent a repetition of that process during the 1971 session of the Legislature, Del Fullen, Circuit Governor for the American Bar Association Law Student Division, called a special meeting in Houston of all eight law schools in Texas. At that conference, attended by five of the law schools, Texas Technological University Law School was designated the coordinating school, and Jeffrey Wentworth, its Student Bar Association President, was appointed chairman of the Texas Model Court Rule Committee. Mr. Wentworth was given responsibility for coordinating efforts of law students in Texas in working toward the goal of adoption of a rule permitting supervised practice by law students in Texas.

Serving on the committee were Circuit Governor Fullen, the seven other Student Bar Association Presidents, and the three class presidents of Texas Technological University Law School. In addition, Professor Murl Larkin of Texas Technological University Law School agreed to serve as Faculty Advisor of the committee.

At a meeting in Waco, Texas, at Baylor Law School in November, 1970, representatives of all eight law schools agreed to push for adoption of the ABA Model Court Rule³ with two minor exceptions.

Of the thirty-one states that have adopted some sort of a student practice rule to date,⁴ twenty-six did so by state supreme court rule;⁵

1. S.B. 212 (1969).

2. Vernon's Ann. Civ. St., art. 320a-1 (Cum. Supp. 1970) amended art. 320a-1 (1959).

3. State Rules Permitting The Student Practice of Law 29 (Council on Legal Education for Professional Responsibility ed. 1970).

4. Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, West Virginia, Wisconsin, Wyoming.

5. Arizona, Arkansas, California, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, West Virginia, Wisconsin, Wyoming.

four did so by state statute;⁶ and one did so by a combination of statute and rule.⁷ The Chief Justice of the Supreme Court of Texas had indicated that the Court was powerless, absent an empowering statute, to adopt a student practice rule. For that reason, the Texas Model Court Rule Committee deemed it necessary to utilize the combination statute-rule method.

In January, 1971, Senator Herring introduced the same amendment to the State Bar Act that had been introduced two years earlier, which was designated as Senate Bill 66. It was referred to the Senate Jurisprudence Committee, where it was favorably reported by a unanimous vote. The Board of Directors of the State Bar of Texas, in January, 1971, was asked to endorse the ABA Model Court Rule; however, action on that request was tabled. The Bar was also asked to endorse S.B. 66. Instead, the Bar passed a resolution calling for a special committee to be established to study the possibility of a legal intern program to run for the year immediately following graduation from law school. The State Bar further resolved to oppose S.B. 66. The State Junior Bar, however, by its Board of Directors, endorsed S.B. 66 by a unanimous vote in February, 1971. At the same time that Senator Herring's bill was endorsed, the Junior Bar asked the State Bar to reconsider their refusal to endorse the bill; this request was denied. Seven of the eight law school deans in Texas took the step of endorsing the bill, and the remaining dean refused only because he felt the bill to be too restrictive, in that second-year students might not be permitted to practice.

On April 15, 1971, Senator Herring's bill was passed by the state senate, 31-0. That day the bill was referred to the House, where it was sent to the House Judiciary Committee. With the encouragement of the Speaker's office, the Judiciary Committee convened for hearings on the bill on Thursday, May 20, 1971. The hearing was held at 8:00 p.m., but notice of the hearing was not issued until only one and one-half hours before, thereby preventing anyone not then present in the Capitol Building to appear. Representative Hale, the Chairman of the Committee, spoke against the bill, introducing into the record a letter from the President-Elect of the State Bar, who strongly opposed the bill. The House sponsor, Representative Nelson Wolff, explained the bill, and Mr. Jeffrey Wentworth, of the Model Rule Committee, testified in its favor.

A motion to suspend the rules in order to report the bill out favorably without requiring it to be referred to a subcommittee was defeated, and the bill was sent to a subcommittee. This subcommittee amended the proposed act in three particulars: First, the right to practice was restricted to third-year law students; second, the rule-making power was vested in a nine-member committee of lawyers, five of whom were to be appointed by the State Bar President and four of whom were to be

6. Colorado, Georgia, New York, South Dakota.

7. Nebraska.

appointed by the State Junior Bar President; and third, the right to in-court appearance by students was restricted to municipal courts and justice courts only. Needless to say, the latter restriction virtually gutted the bill.

After being reported out of committee, the bill was placed on the Consent Calendar for May 29, 1971, along with 101 other bills. Due to extended debate on legislative reapportionment, the Consent Calendar for May 29 was delayed until the next day, at which time all 102 bills were removed from the Consent Calendar by the so-called "Dirty Thirty"—members who were thereby indicating their displeasure over the redistricting bill, as well as opposing mass consideration of a large number of bills without greater time for due consideration and analysis.

Finally, the Consent Calendar of May 29 was considered by the House on the last day of the regular session, May 31. With the assistance of Representative Bob Salter of Waco, Representative Wolff amended the bill on the House floor, in that, first, the rules and regulations for student practice should be promulgated by the joint committee within ninety days after the effective date of the act, and second, that a qualified law student should be allowed to appear for trial and motions in all courts of Texas. As amended, the bill was passed by the House, and within minutes of adjournment of the regular session, the state Senate approved the bill. The Governor of Texas signed the act into law on June 7, 1971. The full text of Senate Bill 66 as passed and approved is included in Appendix A to this comment.

*Jeffrey Wentworth**
*James Alexander***

APPENDIX A

AN ACT

to amend Section 3 of House Bill No. 74, Chapter 1, Acts of the 46th Legislature, Regular Session, 1939, as amended by Senate Bill No. 477, Chapter 2, Acts of the 46th Legislature, Regular Session, 1939, codified as Article 320 a-1, Section 3, Vernon's Texas Civil Statutes, relating to the practice of law and providing that law students, while attending a law school approved by the Supreme Court of Texas, may assist licensed attorneys in the trial of cases under rules promulgated by such Supreme Court; repealing all laws and parts of law in conflict to the extent of conflict; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 3 of House Bill No. 74, Chapter 1, Acts of the Regular Session of the 46th Legislature, 1939, as amended in Senate Bill

*Chairman, Texas Model Court Rule Committee; President American Bar Association-Law Student Division.

**Notre Dame University Law School Legislative Bureau.

No. 477, Chapter 2, Acts of the Regular Session of the 46th Legislature, 1939, codified as Article 320 a-1, Section 3, Vernon's Texas Civil Statutes be, and the same is hereby, amended so as to hereafter read as follows:

"Section 3. All persons who are now or who shall hereafter be licensed to practice law in this State shall constitute and be members of the State Bar, and shall be subject to the provisions hereof and the rules adopted by the Supreme Court of Texas; and all persons not members of the State Bar are hereby prohibited from practicing law in this State except as provided below. A bona fide law student attending a law school approved by the Supreme Court of Texas who has completed two-thirds of the required curriculum for graduation as computed on an hourly basis, may, with the consent of the presiding judge, assist licensed attorneys in the trial of cases. His participation in the trial of cases shall be governed by rules and regulations which shall be promulgated within 90 days after this Act becomes law by a joint committee composed of five members of the State Bar designated by the president of such bar and four members of the State Junior Bar designated by the president of such bar. The presiding officer of the joint committee shall be chosen by the committee members from the members designated by the State Bar. All rules and regulations promulgated within 90 days after this Act becomes law by the joint committee shall be subject to approval by the Supreme Court of Texas, but shall contain at least the following minimum requirements: (1) that a qualified law student may file instruments and motions and handle other routine matters before any court or administrative body of this State; (2) that a qualified law student may make an appearance for the purpose of trial and the arguing of motions, provided that he is accompanied at such appearance by an attorney licensed to practice law in this State, in all courts of this State; and (3) that a qualified law student may not appear in or conduct any contested hearing or trial, before any administrative tribunal or in any of the courts, unless accompanied at such appearance by an attorney licensed to practice law in this State.

"Within the meaning of this section, all persons furnishing evidence of or complying with any of the following provisions shall be deemed as now licensed to practice law within this State, viz:

"(a) That he is now enrolled as an attorney at law before the Supreme Court of this State.

"(b) A license or the issuance of a license by the Board of Legal Examiners of this State authorizing him to practice law within this State.

"(c) A license or the issuance of a license to practice law within this State by any authority, which, at the time of the issuance thereof, was authorized by the laws of this State, then in effect, to issue the license.

"(d) Where an attorney, licensed before October 6, 1919, has lost or misplaced his license, issued by legal authority, and where the proof of its issuance is not available in the records of the Court in Texas in which he claims it was issued, then his status as a licensed attorney in

this State may be established by a certificate of the District Judge in the District of his residence that such person has been engaged in the practice of law within this State for a period of five (5) years immediately and continuously next preceding the effective date of this Act, and, within the judgment of said District Judge, said attorney has theretofore been duly licensed to practice law under the laws of the State of Texas and is of good moral character. Before any such certificate shall be issued by a District Judge, the Judge shall give an opportunity to the president of the local bar association in the county of said attorney's residence to be heard.

“(e) Any proof satisfactory to the Supreme Court of this State that he is and was, upon the effective date of this Act; authorized to practice law within this State.”

Section 2. All laws and parts of laws in conflict herewith are hereby repealed to the extent of the conflict.

Section 3. The fact that it is necessary and desirable that law students be given practical training in the actual trial of cases under the direction and supervision of licensed attorneys and the crowded conditions of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted.