HEARING ON PROPOSED
STUDENT PRACTICE RULES

File No. A-7 (46727)
April 9, 1982

Court-C:
Attorney-A:

C: We have for consideration this morning, proposals for amendments to the proposed student practice rule, and a petition for an order mandating a particular dimension of papers for filing I think we'll take up the student practice rule. But at the outset I want to express the concern of the chief justice, who is absent because of some appearance in Duluth, in which he is making a presentation in respect to the intermediate court But in his absence, he has asked me to express concerns over the existing rule, which those of you who are interested, and will make presentations might want to respond to on very short notice, but because they have rather far-reaching significance, I think the chief and the court would not want to pass on the chief's proposals until other interested entities have been given an opportunity to respond. But at the outset, perhaps it would be appropriate if I called attention to the matters which the chief has asked me to present.

In Rule 101, the Chief suggests that the end of that paragraph there be these words added: "or any indigent person who is a party to a civil action or is accused or a crime." As it now reads, it is just any indigent person in a civil action. I'm not quite sure what the implications would be but that is the proposal, to add the words, "whose is a party." In

paragraph 102, subparagraph 5, as a matter of clarity, the Chief has suggested, instead of "has been identified to and accepted by the client," that it read "has been identified as a student and accepted by the client." That may be just a matter of grammer. But the more far-reaching and substantial change that concerns the Chief, is an amendment to Rule 104 and 204, in paragraphs 5 of each, which now provides--paragraph 5 reads: "The attorney who supervises students shall appear with the students at all trials." And the Chief would add: "trials, hearings and other proceedings,"--in both 104 and 204. And the Chief would delete entirely paragraph 6 in those two provisions. Paragraph 6 is to the effect that the attorneys who supervise students shall appear with the students at all other proceedings, unless the attorney deems his or her personal appearance unnecessary to assure the proper supervision. It is his feeling that the purpose of the rule, traditionally, has been to educate law students and not to provide staff for attorneys. He would like to have interested parties consider that rather substantial, and perhaps far-reaching amendment. Again, because he is absent and because it does have impact on both the prosecutors and defendants and others, we will not decide that matter until everyone's had an opportunity to consider it.

So today the presentations should be on--addressed only to the extension who are here wish to address those considerations. But otherwise it will be simply the rules as proposed and of which you have all had notice. I am advised that there will be representation from the University of Minnesota, Hamline University and William Mitchell College and Miss Kathy Sedo--

you are here--you wish to be heard?

A: Yes I do your Honor.

C: Alright, you may be heard.

A: May it please the court, good morning. My name is Kathryn Sedo, I am a clinical instructor at the University of Minnesota Law School and I am here to speak on behalf of the law school in favor of the adoption of these students practices rules. I have submitted to the court a statement which sets out a brief history of our clinical program and the reasons for which we support the proposed rules. I am not going to reiterate every statement in that written statement. But I do want to highlight a couple of concerns that we feel are important, and are the main reasons why we request that you adopt these proposed rules.

As you can see, the proposed rules separate out general student practice from clinical practice and the main implication for our program is that, with regard to clincal student practice, we would now be able to represent non-indigent clients. And we feel that is an important change for several reasons. The main purpose, as we were just discussing, and Justice Amdahl was discussing and the comments asked to be made, of a clinical program is that the students be educated. And we feel that the rule as it exists, limits our ability to fully educate and completely educate our students in the practice of law. We are allowed only to represent government agencies, government units or indigents clients in civil actions or criminal actions. And, particularly in the clinics that I would in, the legal aid clinic, the civil clinic, that means that basically we can

practice poverty law. And it, we feel, limits the experience that the students can have, and unnecessarily so. There is much more to the practice of law than just representing indigent clients. There are many areas of law that indigent clients do not have matters, legal matters which need to be worked on, and for that reason, to give the students a broader perspective, a more realistic, if you will, view--

C: Counsel, I don't wish to interrupt the presentation, but I'd like to ask you preliminarily to tell how you arrived--in other words what brought this about, and how you arrived at it in the meetings. The reasons why I think that's probably more important is the fact that we adopted students practice rules and amended them through the years so we are in favor of the philosophy that all of you are expounding. But for the rest of the court, to let the court know how this came about and then in explaining how this came about, would you explain your reasoning in having two student practice rules. With the point in mind as to whether or not you did discuss and resolve the fact that you are not creating an equal protection--a lawsuit be brought. As you know we have a lot of students appearing before our court and petitioning our court for various claimed discriminatory practices. My question would be, how do you arrive at the conclusion that there should be two separate rules for two separate groups of students?

A: Certainly. Well, originally we proposed just one rule. It was from the University of Minnesota, it was my proposal, Dean Stein and I submitted it to the court and asked that the student practice rule be changed. And we originally submitted just one

rule that removed the indigency requirements for all student representation. As a result of that proposal, a committee was setup. Had Justices Wahl, Scott, Simonett on it, and a representative of each of the law schools, Hamline, Mitchell and the University of Minnesota. The committee met, we discussed concerns that the law school had, the the court had with the new proposed rule and then all of the law school members of the committee--Roger Hadock, David Kogan, and myself--met several times and revised the rule to meet some of the current concerns that we all had and that the court had. Some of the main reason why we divided it into two rules was so that we could have clinical programs represent non-indigent clients and leave the present rule as it is in regards to students working in prosecuting attorney offices and public defender offices and legal aid offices the same. We did not want to allow students to go and work for a private attorney or in a private firm and be authorized to represent clients and appear in court. And we felt that leaving it one rule was maybe too broad and would allow that type of practice. We also felt that the purposes in a clinical program were so much different--the goals of the clinical program were so much different than the goals of students who work in a prosecuting attorney's office or a public defender's office that it would also be useful to separate the rules into two separate components. Our primary purpose is to provide education for our students. And to be frank, it seems to me that with regard to a public defender's office, a prosecutor attorney's office, their primary goal is to provide

service. And therefore, their use of students and their training of students is very different from our training of students. And so it seems that we wanted to separate-out the two types of student practice, because they are very different, and the goals of them are very different.

C: Counsel, is it contemplated on these non-indigent persons in civil cases will pay a fee for this representation?

A: Well, at the present time, we at the University of Minnesota have no plans to set up a fee generating program. The plan is to continue on with representation of clients at no charge, but just to broaden the type of cases and the type of clients that we are able to serve. My idea, one of my ideas behind this, that we would now be able to serve the so-called "working poor." They are the people who make too much money to qualify for legal services, but are unable to pay for attorneys on an hourly rate that is being charged these days. For example, someone who makes the minimum wage does not qualify for legal services, but at $3 and $4 an hour they are hardly able to afford an attorney. And so our feeling is that we will be able to serve a segment of the population that's now unserved. I can't speak for the other law schools, their representatives are here, and my, I guess my desire with that is that you ask them when they have their opportunity to speak what they intend on doing.

C: Counsel, my recollection is that there was some concern too, that in the area of environmental law, for instance you might want to take a case that might be a public interest case, where conceivable people could scrape up enough money, but you would never get this kind of case in your practice.

A: That's correct. At this point, we can only represent indigent persons, and for example we have an environmental law clinic, which is run by a woman who practices, who is an assistant attorney general for the PCA and they do represent the PCA in hearings now, but we have interpreted the rule to mean that we can't represent a group or a public interest group or a non-indigent person in an environmental or public interest case. And it is certainly a narrow interpretation of the rule, but we felt that in order to represent the types of clients in an environmental law clinic that we'd like to, in the private sector, that we are requesting that the rule be changed.

C: You wouldn't want to foreclose the possibility that some time in the future that you might collect some fees, if this is broadened and expanded?

A: No. I don't want to say that . . .

C: Well that's what I wanted, I didn't want you to be on record saying that you wouldn't do it.

A: No, I don't want to be on record saying that we would never do it.

C: Because after all a medical school is always . . .

A: And the dental school, they have always had a minimal fee or a sliding fee scale.

C: One other question I wanted to ask you is, when Justice Otis read these proposed amendments that the chief justice wanted considered, I know that you haven't had any time, but what effect would that have for you or others members of the staff would you have to actually accompany the students?

A: Well, we accompany our students to every proceeding, every hearing, every motion. With one exception, I don't go to conciliation court with my students. It seems like overkill to send a lawyer and a student along with a client in a proceeding that is very informal and for the most part where the other side is not represented by counsel. It's also the situation at conciliation court where if you lose you have a de novo review at the municipal court level. So I've always thought that if the student really messed up that I would then be able to appeal it and not have to worry about it.

C: Didn't you give consideration to providing two students, one for plaintiff and one for defendant, in the conciliation court?

A: It seems to me that we'd have a little bit of conflict of interest. But, as I have said, I have no problems with the Chief Justice's concerns because it is our policy at our program to send, because it is an educational program, to send someone along with the student, to allow the student to handle the hearing or the trial or whatever it is, and to provide some feedback to the student on their performance. We feel that's a very important part of the education process.

C: Counsel, what if Uncle Fred practices law, and says to his nephew or his nephew persuades him to let him work in the law office while he's going to law school so that he can make enough money to pay for his tuition. How do your rules take care of this? How he spends an awful lot of time in Uncle Fred's office?

A: With regard to the clinical student practice rule, you must be enrolled in a clinical program at the time of your original certification and it has to be sent to the dean and the dean

has to send it on to the court. So I can't imagine that a student would be allowed to practice under the clinical practice rule because of the requirement that you be enrolled in a clinical program and the dean certify you to the court as being duly enrolled.

C: What I mean is that, as to you and other professors at the school, handling the clinical program, would you be supervising him working in Uncle Fred's office?

A: No.

C: Well, would he be able to do the same thing?

A: He would be able. We added 1.05 and I believe it's 2.05 to allow students to continue to be able to clerk in the traditional arrangement that they now have. Students do work in attorneys office and draft motions and pleadings, that the attorney then reviews, and handles a large part, maybe acts as a paralegal even, for the attorney. They get paid for it, but they aren't actually representing the client and they are not allowed to appear in court on behalf of that client. And we are, these rules would allow the student to continue to do that but not broaden it to enable them to represent the client in court. The other part of what I was going to say is with regard to Rule 1, the general student practice rule, again the indigent person requirement is still in there and I don't believe that they would qualify in the clerkship situation under the general student practice rule because we still have the indigency requirement, and they wouldn't qualify under the clinical student practice rule because we have the enrolled in a clinical program.

C: But suppose you have the student who enrolled in the clinical program, gets certified, stays in the program, but also ambitiously gets a job in a law office. Then what do we do with him? Is he out there with a blank ticket?

A: It has not been interpreted that way. We do have students in our program who clerk but they are not allowed to do, to represent clients other than in our clinical program.

C: What I'm driving at, wouldn't it be relatively simple that their appearance has to be on a case certfied by the program, by yourself. In other words, unless you approve the case that he appears on, and that takes care of the dual problem and goes back to the Rule 101.

A: Generally, when we go into court we have to make a motion each time to allow the student to be able to handle the matter. I know I do and I usually introduce myself. I say the student has been certified, he's enrolled in the program and I ask that the student be allowed to handle the matter. And then on a case by case basis that motion is either granted or not granted.

C: May I make a statement. And in making a statement does not mean that I subscribe to it, but it's a statement that has been made to LEAA funds and things and, it was consideration given, you speak of broadening out into ecological suits and the next step class actions and then we run into the standard screen that came up, well, they're just out their promoting all kinds of litigation, just for the purposes of educating or providing, in the other program a job for people, or here just for purposes of educating students we're going to go out and make all kinds of lawsuits over different things. Was that considered or dealt with?

A: Well, first off, I believe that when the legal services program program . . .

C: I don't think, I'm not saying that's what you're going to do, but I'm say, and I don't think the other program did it, but that criticism . . .

A: Well, I appreciate, you hear that criticism, and I guess my response to that would, particularly with regard to our program, is that we handle very few cases. I mean, the type of supervision that I given to my students does not allow me to handle more than 6 or 7 students a semester. It's very very particularized. There's a lot of one-on-one contact, one-on-one talking with the students, a lot of court appearances which are very time consuming. I don't have time to handle that many more than 6 or 7 students. Each of those students can only handle a handful of cases. They don't have the skills the ability, the way that we make them work on the cases is much more detailed and intensive than you normally would do in private practice. The amount of work that we are going to be able to handle is small. It has been small and it's going to continue to be small just given the individualized nature of the instruction. And for that reason, there also has been some concerns expressed to me that the legal service corporations are somewhat upset that we may be cutting back our representation of indigent clients and in a time when budgetary cuts are taking place, this is not a good thing, according to them. But the number of cases we handle is so small that I don't think we're going to have an effect one way or another on anything.

C: What would be your source of non-indigent clients?

A: Well, right now our source is, we call the legal service corporations when we are looking for clients and they refer people to us. We get referrals from friends of friends, we get referrals throughout the University system. I'm not sure how we would, we haven't dealt with that problem because we don't, we haven't had it yet.

C: LAMP too?

A: LAMP is Legal Assistance to Minnesota Prisoners and they get their referrals all from the prison system. So I don't think, they are only allowed to represent people who are incarcerated, so I don't think it would affect LAMP.

C: I have a bit of curosity about the . . .

C: I didn't follow you. . . LAMP is one where you get indigents.

A: You have to be incarcerated.

C: Ya, but they are still indigent.

A: That's correct, yes.

C: I want to return to the conciliation court. How do, apparently your representation there is not extensive?

A: No, I think I've had 3 in this year. Three times the students went over without me.

C: How does the client and student come together?

A: Well, the client calls in with a problem. All of the ones we've been in on this year have been landlord-tenant security deposits problems, and they know that we are able to handle those kinds of cases. One was a students, one was a woman who was referred by a legal service organization, and the student has gone

into conciliation court with the client to try to get the security deposit back. And I might add that the students won both times and the other sides appealed so we are now in municipal court.

C: What occurred to me is that sometime you have a business man who can take care of himself who is a defendant or a plaintiff, as the case may be, but it may be two little people one on each side and I can appreciate the potential of confict of interest that you referred to, although in an educational process that may not necessarily be so unless you are thinking in terms of the university's relationships if there were people who were thinking that the university law school was taking up sides, aligning itself on the one side, preferring some to the others. Is that not a problem?

A: It's not been a problem. As I said, it's the normal attorney-client relationship is formed and there are people who take attorneys and people who do not take attorneys into conciliation court.

C: Does the clinical professor become part of the representation for the client--having client-lawyer relationships?

A: Well ya, I'm the one who is professionally responsible for the work that gets done. And in our clinic at least, no pleadings are typed, no letters go out without my approval, and no advice is ever given to a client without my approval.

C: What is the situation in federal court? What do you do there? Is what you seek here co-extensive with what is being allowed there?

A: The federal rule has no indigency requirement, and we would be bringing the state rule in align with the federal rule. At the present time I personally don't have any civil cases in federal court. Generally, I guess the other thing I might add, generally our students do not have the skills to handle very complicated and extensive lawsuits. Neither do we have the resources to do that. So we are not going to be taking the complex litigation type cases just because the student are--it's beyond their skills when they are first beginning. So we rarely get into the federal district court. Bankruptcy, we use to do some bankruptcies, but we don't even do those any longer. I have a couple, I also supervise a tax clinic, and I have one or two cases that I recently just filed in district court. We have a couple, we do a fair amount of social security disability, and I have one of those in federal district court. But, it's very rare that we take any type of litigation in federal district court. I might add, I had my research assistant since . . .

C: Those appeals from federal disability--social security things--are those orally argued or are they on the record?

A: You can request oral argument, but they are on the record. There's no new testimony that's given.

I had my research assistant check the student practice rules for states around Minnesota, in this area. She looked at Iowa, North Dakota, South Dakota and Nebraska and Illinois, and none of those states have an indigency requirement on their student practice rule. She also checked New York, and there is also no indigency requirement in New York. So as far as we could tell, the ones that she checked, none of the other states had an

indigency requirement for their clinical student practice. So, as well as the federal district court, many other states are similarly situated so that they don't require it. So the change in the rule would bring us in line with, as far as we could tell, most everyone else in this area.

I guess the final thing that I would like to say, back to the conciliation court issue, with regard to representing students in hearings, trials and other proceedings. If we accepted conciliation court, I mean that would be exactly what we are doing now, I personally have no problems with any of the suggestions of Justice Amdahl for change. And in fact, would support them with the possible exception of the conciliation court issue that I just raised. I have nothing further to say if anyone else has any questions, I'd certainly be . . .

C: I don't have any question but I want to say this that I think you and Dean Stein are to be highly complimented for what I think is quite a historical in University law school philosophy, and I commend you for it.

A: Well, thank you very much.

C: Dean Young, do you wish to be heard.

A: May it please the Court. My name is Steve Young and I am the Dean at Hamline University Law School and I would just like to say what a pleasure it is for me to appear before this court, being a newcomer to Minnesota and to the very fine traditions of legal practice which you have here. I also find it a particular pleasure to appear here when Justice Otis is presiding here this morning. I don't suppose there is very much I would like to add given the comments of Mr. Justice Scott that

he would have accepted the philosophy behind the notion of student practice. I drafted my remarks, and wanted to bring to the attention of the court, if you will, the educational reasons why I feel in particular that this change is very important. We have Professor David Cobin of our faculty here, who I would call upon to answer any particular questions regarding the kinds of clinical activities that we now have at Hamline. I may say briefly, that, Professor Cobin's emphasis in the prior years has been to focus on what is known as simulation as opposed to live client clinics. This is where you try to recreate within the walls of the school the experience of the real world. There are two different theories in legal education on the importance of this. My own feeling is that you need both simulation as a way to introduce students to the notion of real practice under a controlled setting. Where you can maximize the supervision and the critique, and you can control the environment, you can control the facts, you can control the legal issues, you can control the mock trial. On the other hand, in the second and third years of legal education it seems to me there's a great deal to be gained from exposing students to the opportunities of making decisions--of practicing more integrated kind of thinking, more inductive kind of thinking, because they have to deal with a real client, a real situation, a real panel of judges, a real conciliation court. My particular concern is that we are moving into a new era of legal education. And it seems to me that in the last century we have emphasized the division, if you will, between law schools and the practice of law. This is particularly the kind of model of legal education

which is associated with the sacratic method of teaching, with case study, with university based law schools. And as we all know, there is considerable concern over this divorce at the present time. With students, with some faculty members, with the bar, and with the bench. The way to overcome the separation, it seems to me, is to try to achieve a new merger between the theoretical side of legal education. Teaching people to think like a lawyer, critiquing their work, asking them the hard probing questions, in an atmosphere which is removed from a particular case. But at the same time, also emphasizing the kind of experiential skills which one needs in order to be effective as an attorney or just as a person who has law-training, whether you work for a corporation or for federal government, or in state government or elected office. Therefore, it seems to me that what has been suggested here, with these proposed student rules, is terribly important to open up for the law schools new directions in legal education. And I think it is the responsibility of the court considering your general oversight of both the practice of law and if you will, to a large extent, the quality of justice which we have not only in Minnesota, but in the country, to consider very seriously opening up for those of us in legal education, these opportunities. If the court has any questions, I would be pleased to respond.

C: Thank you Dean.

C: Dean Peters of the William Mitchell College of Law.

A: Good Morning. I would like instead of making my own presentation to introduce to the Court, Professor Pheobe Hobin who has

appeared before you on other matters and who is our acting director of the clinic while Roger Hadeck is on a sabatical leave. And she will make a presentation of behalf of the college.

C: Miss Hobin.

A: If it please the court, I, in view of the fine presentations of both Dean Young and Kathy Sedo, I don't have much to add. I do want to make a couple of points though that are of a slightly different nature than those that were raised. We, of course, affirm, very strongly the position that they have taken relative to the educational import of this rule for our students. We find that some of the bulk of the practice of many lawyers are things that we can't handle. That we can't give our students tax problems of the small business practitioner, real estate work, will writing, estate planning for someone who doesn't have a great deal of money. All of these are areas that attorneys, many attorneys, spend the bulk of their practice time that our students have not been able to have under the present student practice rule. We are very concerned that this Court continue the direction that it's taken and allow us to expand our programs in order to accommodate this educational goal, which I think is very great. Especially, at a time when law schools, the quality of legal education, in terms of preparing practitioners is being called into serious question and all the law schools are making a concerted effort to train lawyers to be better practitioners sooner when they emerge from the law school. So we are very hopeful that the Court will agree with us on this. The other matter that hasn't been

raised too much I guess today is that we are seriously losing important sources of funding that we have had in the past, that have been a little bit easier to obtain. We did have a federal grant in 1978 at William Mitchell for our juvenile law clinic, and another one in 1980 for our elderly law clinic which was not renewed. We are hopeful, I hope it's not a pipedream, we are hopeful that we could in fact, with a fee-generated clinic, at some point, defray some of these expenses. Clinical education is terribly expensive. We have a clinical staff essentially of 45 people. Everyone from full-time professors, such as myself and Professor Hadock, to attorneys who supervise the students in court. It's a big staff and the kind of supervision that we want and that we demand from our people requires that we pay them, obviously. Not just us who are hopefully paid. But also our supervising attorneys in court who are not on, are not full-time. But in fact, are practitioners. The high quality of supervision that we want is what we're paying them for. We're paying for them for their educational functions and not for them to have a student to do some of their work for them. That's not the purpose. So in order to maintain the kind of quality that we have always had, and that we want to continue to have, we just plain need money. It's our hope that with some time and perhaps with a federal grant for some seed money, we could represent clients who could pay a little bit at least. And we are hoping that we could at least consider the possiblity of following the kind of model that teaching hospitals have had for years. That that's not only good for the doctors but it's good for the patients to be practicing

in a clinical setting. We are not at all adverse to the idea of a fee-generated clinic at William Mitchell and in fact that's one of the main points that I want to make today, is that we're hopeful that you will allow this so that we can pursue sources of funding that we haven't had before. We similarly have a very strong commitment to representing indigent clients and have no intention of curtailing any of that. The problem is that without some funds from somewhere we may have to curtail some of our programs.

I guess I would like to make one response to the comments of the Chief Justice to the concerns of the Chief Justice. I have a background that gives me two perspectives on this. One is, is just as a clinical professor, I know that the students in our clinical programs are always supervised at every stage of the proceedings. If not by one of us, they're supervised by one of the people of our 45 person unit that's a supervising attorney. They're always there. So in terms of the clinical student practice within the confines of the program there is no problem with the Chief Justice's concern, and, in fact, I think we already meet it. I do know though, and this is the other phase of my own experience here, is that from working in the county attorney's office as a student myself, again, not under the auspices of a clinical program but just by virtue of the student practice rule when I was a student, there were times when we appeared, as Mr. Justice Scott knows, times when we appeared in very small proceedings relatively speaking, without supervision, and usually only after a fair amount of experience and with an attorney right down the hall. I

realize and understand very much the concern of the Chief Justice about this kind of practice. Again, I don't think within the confines of the clinical student practice rule this is ever a problem. But it may be a problem in the general student practice rule for students who are working in the county attorney's office or the public defender's office. I would call to the court's attention the fact that the current proposed rule does have a provision requiring that the agency for whom the student is working, certify to the law school and to the court that the student will be properly supervised under the Rule. And under the Rule it is fairly clear that only with the attorney's special authorization that the . . .

C: On what kind of activity would a student pursue without supervision?

A: Well, when I was a student, it was preliminary hearings, on some occasions, in felony matters. Admittedly, these are important hearings. I don't believe that I ever saw a public defender appear without a supervising attorney. I was in the county attorney's office and did appear, occasionally, in preliminary hearings, without supervision, without direct supervision with me in the court. My understanding now, of course, that the preliminary hearing is no longer really with us, but my understanding now is that students will occasionally appear on very short hearings, not requiring the production of any witnesses. There might be sentencing that a student will go down on with instructions from the supervising attorney and a file that is clearly marked with what the student is to do. Only in an instance when the student has done it before and

has been in the office a considerable of time. Most of the attorneys are very reluctant, in my experience, are reluctant to send students in unless they are personally certain that that student fully understands not only this individual proceeding but has been there long enough to understand what's going on.

C: What voice does the client have in either objecting or approving?

A: Well, again, in our clinical program, it's always made very clear to the client at the beginning, who the student is, the fact that it is a student, the fact it's up to the client whether they wish to be working with a student, knowing that they always have the option of saying no. This is made very clear. When it comes to these kinds of court proceedings that we're talking about, again, I never in the time I was in the county attorney's office saw a public defender, a student working in the public defender's office, appear alone, without a supervising attorney. I know it was done, but I didn't see it myself and my understanding that when it is done, it's only done with the client's authorization. The client knows that this is a student right at the outset.

C: When you, as part of the staff of the county attorney went down, was that for an educational experience or was it simply to provide manpower?

A: When I was? In my instance it was both really. Once I worked in summer as an intern through a program from the State Public Defender's Office. And I think there's no question we did provide manpower, but it was an educational experience such as I've never had before. It was the best of my career and as you

known I then started working there full-time, as a result of that educational experience. To me it was just unparalleled.

C: With respect to the paragraph 6 which is the concern of the Chief, in one

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C: . . . is there any criteria for determining whether it is necessary that each supervisor have his or her own criteria?

A: Well, Your Honor, I think it is probably safe to say that while each supervising attorney has a considerable amount of discretion in what they allow their law clerks to do, there are some common guidelines that they all follow. One of them is just an evaluation of the student and whether or not the student is sufficiently experienced to handle whatever the proceeding is that is involved. That's the first consideration. The second is the nature of the proceeding. I mean, there are some that just simply are not terribly difficult, and don't require, don't require more than a general understanding. And those . . .

C: What the Chief may be concerned about it is that there are the exigencies of staff sufficiency that might override some of these judgemental . . .

A: I think that's a legitimate worry. I can't say that that's not a legitimate worry at all. On the other hand, I think it's probably not going to happen very often. It's going to be with very short matters that aren't going to pose any real jeopardy for anybody.

C: Counsel, can I ask a question please. I don't know if you have a copy of Mr. Abramson's letter that was submitted to the Court?

A: I took a look in the office

C: It just raises an issue that poses--is legal ethics taught before they enroll in the clinical . . .

A: Yes, it is. At William Mitchell, professional responsiblity is a prerequisite to clincial courses.

C: May I ask, is that also true at the University?

A: (Answer cannot be heard)

C: And at Hamline?

A: That is correct.

C: Okay.

A: (The rest of the answer to Justice Todd's question cannot be heard, the speakers were not at the microphone.)

C: Well, legal ethics is a required course in both schools, so if there is some validity to this concern, it's just a matter of timing of the course. Then apparently at William Mitchell you time the course ahead of the . . . thing. I thought it was a reasonable worded consideration.

A: Yes. We also require trial skills, trial advocacy, so that the student has some familarity with courtroom proceedings before they get into clinics as well--for most of the clinics.

C: Judge Wahl.

C: Counsel, with regards to the general student practice rule, and the questions that have been asked with regard to the use of student attorneys in prosecutor's and defender's offices and so what. Any my recollection is that when the Rule was first promulgated, the clinical programs were in fact only one, the one beginning at the University of Minnesota, and they were in their very infancy and at the very outset the student practice

rule and some of the proponents of it were the prosecutors and defense attorneys who needed bodies. They didn't, of course, at that point have in mind legal education particularly. The fact is that it is one of the best places where a student can get into court and do a lot of things. But from the outset they were here in this provision, was in the Rule, which was subsequently broadened, that they didn't have to be there if it were a kind of routine proceeding that they knew a student could do and they didn't have to worry about, the student knew if it was a problem and they could go and fetch them. My own experience is then that in the public defender's office here in Ramsey County they used a particular experienced student on bail right at the outset. They were there when people were brought in from being incarcerated overnight. And I also know that in some places, and I'm not sure how true this is of Ramsey of Hennepin or outstate, but I think it's probably in the metropolitan area, that students are used in the juvenile area and that they are used in like support and collection, in this kind of thing. And I guess my question is, when we don't have here the people who know whatever their needs and purposes are, I guess my question is, is it likely that if the presence of an attorney is required every time a student goes into court, they're not going to have any real incentive to hire student attorneys to do the particular work that they've been doing. What effect would that have on legal education or the operation of their offices? You may not be able to answer that.

A: I think that's a very important point. I can't answer specifically whether or not they would have the incentive. My question was

when this was first raised this morning was exactly that. What would be the advantage under the general practice rule for an office to hire somebody if they had to be quite as concerned as we are in the clinical setting with the educational purpose. I think to put this requirement, in a sense put it back on the old rule which is what we're talking about applying it to the general student practice rule. The student who isn't enrolled in a clinical program but is a law student and practicing in the county attorney's office for instance. It, there is so much educational value just from being there. Those lawyers are not, are not teachers. Are not enrolled with the clinical program but what a student learns from being in those offices is just incredible. That to me, to put that requirement in that setting would be to put an additional burden on the original student practice rule which I think would be perhaps unfortunate. I think as long as the attorneys know that under the proposed rule that they are required to certify that they will supervise the student in the appropriate way as long as there is a specific authorization for the student to appear alone in this kind of a hearing. It seems to me that we aren't going to have that much of a problem and we'll still be getting students into those offices, which I think is a serious concern that you raise that there would be no real reason to hire them if the attorney had to birddog them every second. On the other hand, in a clinical program, when they are enrolled in a clinical program, we have direct responsibility for what they do. And they are always supervised

in that setting. And there I think it's appropriate to require that they be. The educational purpose is absolutely primary in that instance. I don't think that's it's wrong to have both an educational and an assistants purpose under the general student practice rule because the education is always there, so why can't we hold those offices with our students.

C: It seems to me that constitutionally, in criminal matters, the accused is entitled to a full-fledged attorney in all stages of the proceedings and there is some slight risk of eroding that right. But in civil matters where they need legal assistance, there isn't that constraint and in the one instance of criminal cases you're at least verging on giving second class representation. In civil cases, however, it seems to me that, I don't mean this facetiously, but maybe a second rate representation by a student is better than none. Which is the alternative in a lot of the cases. The, so to that extent, perhaps, the concerns expressed by the Chief might be compromised. Do you want to react to that?

A: When you say be compromised, are you saying that in one instance it would be alright and in the other it wouldn't?

C: Well, I'm suggesting that there are different considerations.

A: Well, I think . . .

C: Counsel, when you make those comments to Justice Otis' would you add the other consideration that from the students working from prosecuting attorney's there is no constitutional problem.

A: Ya. I think part of my, because my background is from the prosecutor's office, the problem just simply didn't arise as much. I share your concern with respect to defendants in

criminal matters. I think there is no question that there is a much more serious area of inquiry that has to be made before a student can represent a defendant charged with a crime, more even, a petty offense. As a practice matter in our clinic, in the misdemeanor clinic and in the felony clinic, it just simply isn't done without the supervision of an attorney. They may talk to the client, and of course it's all done with the client's full knowledge of who the student is. But the representation in court is always done under the supervision of an attorney. In private offices it is a problem. I don't have, I guess I don't have any difficulty, with supporting the Chief Justice in his concern that in defender's offices there be a supervisory attorney present. Again, I hate to say that we should lock ourselves into this under the general student practice rule because there is so much educational to be gained for the law student who works in those offices and would the defendant hire them if they had to be with them every second. If they couldn't make some of those decisions. But I fully appreciate what you're saying and I do think that there is a difference. The other thing that I want to say about this is, a difference between the civil and the criminal kind of case, the other thing I'd like to say though is that we found from our students that the amount of work and energy that they put into their criminal defense clients, preparation or cases that most attorneys don't spend more than a very little time on, defending a speeding charge for instance, it's just wonderful. The clients feel that the students do more for them than their attorneys ever did, in many instances, and they

say that. They usually wind up being kind of friends with their student attorneys because the student attorney has spent so much time with them. So that in many ways, because we don't have a very large sample of clients, we don't have, each student doesn't have too many clients, they can devote a good deal of time to it. So that what they lack in experience, they make up in diligence, to some degree. Again, that doesn't completely answer the problem. I am very sympathic with--I wouldn't want somebody to go in on a felony case representing a defendant without a supervisory attorney. I wouldn't allow that myself at all.

C: I'd like to discuss with you just a moment the economic overtones of the Rules. And your statement does raise the concern, if it is one, that you're going to have students competing with your graduates for business. Now you put that theory to rest and others have too this morning by saying that well, it's only a small number of cases the students, and it's going to be a reduced fee, in any event. But then you go on and say in the next paragraph, seem to say that this could be a source of substantial funding. How do you reconcile those two? And the rule doesn't speak to fees here.

A: I think, firstly, there is, it is very accurate to say that our sample of clients is going to be small so that to the extent we siphon clients off from the private bar, I think it's going to be a very small number. Secondly, we anticipate, although again we don't wish to lock ourselves into this, but we anticipate that the majority of those new sources of clients will be people that, the sort that Kathy was talking about, that simply don't have enough money for, to hire full legal

representation or their claim isn't big enough. But they make too much money to qualify for legal assistance. Again, those people admittedly if there were any great numbers, there might be some great numbers with the recent graduates, but I don't think that's a matter of serious concern that we're going to be going to wholesale competition with the bar. For one thing, the way the Rules are drawn, that provision is only available to a student practicing in a clinical course. In other words, it's only the law school clinic itself, it's not, it's just what can be handled within the confines of the building, in a sense, and we just don't anticipate that we're going to have that many clients. Now, when I say, a potential source of funding, we are hopeful that we could defray some expenses this way. We don't envision this, I don't think, as a substantial source of funding at this point. You just don't know, but somehow I just can't see 3M coming to us for representation.

C: You don't see an increase in the enrollment in your special courses in . . .

A: Yes, we do anticipate that. If only because the students will be able to practice other than poverty law. And there is no question that to be able to work in a real estate clinic or a corporate tax clinic, or something like that, working with a small business, would be much more attractive to a lot of students than practicing poverty law.

C: I think it's very important . . . concern to me (cannot hear Justice Peterson's statement clearly)

C: Counsel, I think what strikes me is that when you're saying you're going to control this within the clinic, and the supervision

clinics by all three of you here today. So I assume that that means that sometime you can be fooled by cases. They come in, they look like nothing, and all of a sudden they can expand into maybe a pretty contingency tort case. If that's at the time the director than says heh, this is really more appropriate in the private sector, in other words, it's a management thing I would assume that if something burgeoned into a pretty tort claim, you wouldn't try to handle it through a student.

A: No, that's right.

C: That to me is just an administrative problem.

A: Yes, and again I think that's something that we are so concerned about, about not going beyond what a student can handle. Both in the language of the Rule itself and in its actual practice, that I don't think we need to worry about that. I appreciate what you're saying, but I just think that there would be control on that.

C: One other question. We received a letter from an attorney outstate in legal services and wants the Rule to be amended to allow students from out-of-states law schools to participate on the grounds that apparently your students won't go. Is there a problem like that?

A: Well, I've never discussed that problem with anybody from Duluth for instance saying, gee, I wish your students would come up here. As I say, I haven't been aware that that has been a problem. I think to extend it to outstate students is, would be to the predjudice of our own students, and I guess I have some difficulty with that. I'm concerned about the educational experience of the Minnesota law students in our

state so. It may be . . .

C: Judge Simonett . . . I can't speak for him, but he's talking about selling a vacuum, not competing. Where your students aren't available, is there any objection to bring someone in from North Dakota?

A: Well, I guess I haven't really thought about it enough. I just saw that letter this morning right before we came in.

C: Question by the court cannot be heard

A: Answer to question by someone in court cannot be heard.

C: Maybe you can come down and . . . Miss Hobin do you feel that I'm cutting you off?

A: No, no. Unless you have something else you wanted to ask me I'm through.

A: Justice Wahl and I had a discussion about this. The original rule we proposed had no limit of just being Minnesota law schools. And we were concerned about the certification process. The way it's set up now it's the deans of the three law schools that have to certify to the court that they know the students, the students of good moral character and proper acacemic standing, and you, you know these deans, you would be relying on their certification. You may well not have that same control, or knowledge of the other law schools or the quality of the education and the training of the student. And so you'd have to work on the certification process, it seems to me, a little bit, and I'm not certain exactly how you would want to change it, but that was part of our concern when we were discussion that. Originally, we had not put it in and maybe Justice Wahl can speak to her concern about that.

C: You've expressed what our discussion was. But it occurs to me that we could also waive the rule, we could waive the requirement in specific instances where in fact there isn't a Minnesota student attorney willing to go there and do that job. And if this was known amongst legal services and so forth outstate, it might be handled on that basis.

C: That word willing, attracts me. I would have assumed that there was an expense factor involved in transportation and housing if the case lasted for any length of time, which is inprobable. But whether it's just a reluctance of the student to make the effort and the time, I would have a different reaction to that.

A: Well, you'd be talking mainly about summer employment it would seem to me. I don't think there's any student who's going to commute to Duluth or to northern Minnesota to, for employment during the school year. So you're talking about them hiring students for the summer, and I don't know, it seems that in the job market today, I can't imagine a student turning down a summer employment up north. I mean, I've been hearing them complain, they've all been complaining to me about finding jobs for the summer. So I don't really know how much trouble they have up there, but I know that the job market's tight and I know that a lot of students would certainly consider for a summer going up there. But again, all I can say is I just wanted to repeat our discussion and talk about this concern. I really don't have a strong, and I don't think we do at Minnesota, at the University, have a strong feeling one way or another about

what you should do, and I do think that the waiver is always an option, as Justice Wahl said.

C: Counsel, could I just ask another question that I had before. Structurally, would it be a problem at the University if the ethics course was put in place along with some trial advocacy?

A: Well, it would mean basically that only third year students could enroll in the clinical program.

C: I see. But structurally it would be a problem?

A: It would be. A lot of the students at William Mitchell have four years, and maybe I didn't say that. But they do have four years in the school and generally our students do take it as a second year or end of the second or a lot of them don't take it until third year, and it's not offered the first year so that would mean that all, if we required it before hand, then all of our students in the clinical program would have to be third year students. And that's a pretty, that would be a big limitation. I see Dean Stein has kinda his hand up.

A: (Dean Stein) And where you supervise every student anyway . . .

A: That's correct. I spend a lot of my time talking with students about professional, not a lot but some of my time, talking with students about professional responsibility issues. And as I mentioned, we have a seminar the first semester of enrollment. They meet every week for two hours and we spend a fair amount of time. We have one whole class, two hours, just on basic professional responsibility issues and then we spend several weeks on interviewing and counseling in the professional responsibility aspects come up in that part of the course. We do negotiations and other types of mock negotiation sessions, and

we talk about the issues there so they do get a good training and in a factual context in professional responsibility. Thank you.

C: Dean Stein, did you want to add anything?

A: No, thank you. Thank you Justice Otis and members of the Court. I will make this very brief. I think that Professor Sedo really responded on the professional responsibility issue and the question isn't so much when you have the course but do you have some sensitivity and training on those issues and I think we do that in our clinical program. I would just like to add that this Court has in so many areas been a leader in the country and I think in the areas of student practice you have demonstrated that same kind of leadership. I'm pleased that this particular proposal came about through collaboration between the three law schools. I think it's good for the three law schools to work together in this area and it's been a very healthy exercise to interact with members of this Court. I personally think this will help us to have an improved clinical education program, and I hope the Court will adopt the rule.

C: Dean Young.

A: I would like to respond briefly to the question of outstate practice. One of the things that appealed to me about the new rules especially the rule for clinical student practice, is that I think it gives us an opportunity and incentive to think about that kind of service. The limitation as I have seen it, it one of credit hours. So when you lay that against the problem of time and transportation, for example, Professor Cobin was just

telling me a number of years ago we had some conversations with a hospital up in Fergus Falls, which I have yet to visit but I gather it's a fair ways away. For a student to participate in that kind of a program, they would have to give up, they would have to reduce their credit load during the semester, in fact, either take more courses in summer school or extend their legal education to make those credits up. Our faculty has recently adopted an internship proposal which allows students in a case-by-case basis to participate in an internship for more than three credits. We had a young woman who had an internship in Washington, D.C. apparently, last year, four semesters, she spend the full semester there and received, I think, it was eight credits for that experience. We had to be satisfied as to the supervision and what she would be doing and the quality of the writing. But I think under this proposal we, the school, would be in a position to explore with people in outstate these kinds of experiences. I don't think the volume would ever be that high of students, and therefore if there were an area that wanted students from Wisconsón and North Dakota, I would have no objection to that. But I think that the rule would give us flexibility to begin this. When a survey of our second and third year class, last fall, 30 percent of the students indicated an interest in going back to outstate Minnesota to find areas of practice where there are needs. And it's something that we're particularly interested in and how to facilitate giving them the training and experience to serve that part of the community.

C: Dean Young, one of the possibilities or the needs that seem to be pointed up here is the development of a system of communications between those programs outstate who really need the students and their communicating with the clinical programs in the law schools so that you can make those opportunities known and get people back and forth. So that maybe would be a way to handle this need. I think the question of outstate students also arises, we have a number of Minnesota students who go to law school out-of-state intend to return to Minnesota, come back for the summer from whatever town they came from, Duluth, or whatever, want to practice in a local program, and that might be a typical waiver kind of case if there was no competition. But I understand that basically it's true. The rule was to provide education for Minnesota students. But this is a tangential kind of thing.

C: Dean Peters have you anything to add?

A: Nothing of value.

C: Anything that is not of value, you're welcome to say.

A: Mr. Justice Otis, obviously I support the rule. I think the concerns that have been expressed are real ones. As to the clinical student practice rule I think it is important that the clinical programs involve supervision by Minnesota attorneys associated with three law schools as to the general student practice, I do not think it is as critical if there are needs, although I agree with Justice Wahl's comment that if there needs, there are perhaps other ways of meeting them. We have students that do in fact clerk in Duluth. We have students that literally commute to Duluth and live in Duluth while going to

William Mitchell. I do not believe that that is a problem. If it is a problem, I think it is one of communication rather than the lack of access to students. The other concerns that were expressed concerning the association of the supervisor/ and the types of hearings at which the supervisor/ should be present. My belief is that the, there has not been a holding if I am not incorrect on this, by any court indicating that a student does not meet the sixth amendment requirements even in criminal matters and so as to the question of whether or not in the defense cases where that rule would apply in a situation where under Archsinger the defendant would in fact have a right to counsel that where student counsel has been provided in other states and where that has been challenged, my belief is that the courts have upheld that as equivilant to counsel when under the supervision of a licensed attorney. So my belief is that there is not a constitutional issue and as has been expressed previously, the students in these types of cases, particularly in misdemeanor and petty offenses cases, frequently do more than a licensed attorney would do. So the quality of work that is done by the student, adequately represents the interests of the client. In the case of prosecution in criminal matters, and in the case of all civil matters, it doesn't seem to me that those issues are present. So I would support the rule and hope that the Court would adopt it.

C: Is there anyone else who wishes to be heard on these proposed rules before we get to the second. . . If not, we will proceed with the . . .