

STETSON: THE FIRST PUBLIC DEFENDER CLINIC

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I. INTRODUCTION

A tribute to the beginnings of clinical education must begin with a special tribute to Dr. Paul Barnard, who is truly the father of clinical legal education as it exists today in the State of Florida. Anyone attempting to write an article about the beginnings of clinical education in law schools would do a disservice if he did not recognize Dr. Barnard as the creator of the newly defined clinical process of legal education in the United States.

In 1962 Dr. Barnard taught criminal law to first-year law students. Not too many people knew that Paul¹ was a former member of the Federal Bureau of Investigation and had a background in law enforcement. I specifically recall talking to him about several of his cases. As a Federal Bureau of Investigation investigator, he was, at one time, assigned to a Florida case that involved a

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1. Paul always wanted to upgrade the profession of teaching in law school. One way was to recognize the degree of Juris Doctor. Paul believed professors in law schools, teaching full time, were entitled to the title of “Doctor,” and he thought all teaching professors should, as a matter of respect, be addressed as “Doctor.” As a matter of practice, he was addressed as “Doctor” when he taught at Stetson. When the students became seniors and participated in the clinic, a new form of bonding and working together occurred and Dr. Barnard once again became “Paul.” Dr. Barnard, upon his retirement from teaching, became my chief assistant public defender in charge of Pasco County, and we knew him simply as “Paul.” At these different times and with different titles, he wore several hats. In this Article, I will take the liberty of using both “Dr.” and “Paul” as the occasion might suggest.

“contract for hire” killing of a well-known circuit judge and his wife. The case became rather famous in that the defendant was a lawyer who eventually entered a nolo contendere plea. On appeal, the Second District Court of Appeal in *Peel v. State*,² rendered an excellent landmark opinion defining and explaining the plea of nolo contendere.³ A local lawyer was the attorney for the defendant and later became a circuit judge in Pinellas County.⁴ We used *Peel v. State* many times on appeal and before him as a judge quite successfully. As a result of this case, and a few others, the Public Defender Clinic keeps copies of all opinions involving or reversing any local judge. As far as I know, those files are still in existence.

Peel may have led to Paul’s further interest in the law and his enrollment at Stetson University College of Law. Following graduation, he began a career on the faculty and thereafter devoted most of his time to the teaching of criminal law, criminal procedure, and the Public Defender Clinic.

Once, I asked Paul what he hoped to achieve by teaching in law school. His answer was, “I want to be like so and so.” I really did not get the name, but he knew it well. I asked, “Who is that?” He said that he was the person who convinced Billy Graham to dedicate his life to the ministry. Paul said he hoped to accomplish this in teaching; he hoped to turn law students into dedicated lawyers. Well, I think he has done that and more.

II. THE BEGINNING

I was appointed as the public defender for Pinellas County, pursuant to a special act of the Florida legislature, which was effective October 1, 1961.⁵ I opened the office with one secretary and one investigator. The caseload was overwhelming for a new criminal defense lawyer. During the first year, the office represented 281 defendants, covering over 300 felony charges. There were also thirty-one defendants whose cases were pending as of October 1, 1962. Of the original 281 defendants, 189 defendants pled guilty, and of the 92 cases tried that first year, 36 defendants were found not guilty.⁶

2. 150 S.2d 281 (Fla. Dist. App. 2d 1963).

3. *Id.*

4. The lawyer was Harry Fogel, an outstanding criminal defense lawyer, who subsequently passed away while serving as a circuit court judge in Pinellas County, Florida.

5. 1961 Florida Laws 61-2677.

6. Annual Rpt. to the Pinellas County Commn. (Oct. 1962).

Because of the many concerns I had, I quickly turned to my friends at Stetson University College of Law for help. At that time, the dean of Stetson was Harold L. Sebring, a former Florida Supreme Court chief justice. The vice dean was Richard T. Dillon, who would later succeed Dean Sebring and become the dean of the law school.

The members of the faculty, who had been concerned with the inability of the legal education's traditional methods to fulfill students' needs for practical experience, conceived the clinical approach. Initially, I talked to four people — Dean Sebring, Vice Dean Dillon, Professor Calvin (Cal) A. Kuenzel, now deceased, and Dr. Paul Barnard, professor of criminal law at Stetson, now retired. There were many informal discussions that took place over the ensuing months. Hours were spent languishing over the traditional methods of "on the job" training and the possible future transition of legal training in the law schools. The prevailing assumption was that a young lawyer would learn the techniques of trial practice and professional responsibility from the first law firm that ultimately employed him.

We all questioned how law schools could teach and develop the practical methods and skills necessary for the practice of criminal law. Stetson law students had been participating in the St. Petersburg Bar Association Legal Aid Program, but did not seem to be getting enough out of it. The faculty was casting around for a program to fill the need. There was something inherently appealing about using the public defender's office to create a defender clinical program because of the theoretical and practical goal of securing civil rights for persons too poor to afford a private attorney.

To learn more about turning theory into practice, Cal and Paul agreed to work with me at the public defender's office during Summer 1962. They wanted to get a feel for the practice of criminal law as it related to the formalized training in law school. Those summer months could be likened to a semester in law school. The first realization was that because time was short, it might be better to work on cases that were on appeal. Our initial thinking was that appellate practice would be ideal for law students and the teaching environment. I had tried several cases involving bad checks returned for insufficient funds. Criminal charges on bad checks represented a large percentage of charges being filed at that time. Cal and Paul were intrigued with some of the legal problems concerning worthless checks, and because Cal was teaching commercial law at the time, they made a great team. The Florida

Statutes provided that the “return” attached to a check from the bank for “insufficient funds” was prima facie evidence that the person wrote the check knowing that there were not sufficient funds in the bank to cover the check.⁷ Cal and Paul looked at several cases and noted that some defendants were convicted for having insufficient funds when in fact the checks were returned for improper signature or improper title and not for insufficient funds. At trial, the proper objections were made and the issues preserved. They found the cases that they wanted and wrote an excellent brief on the constitutional issue of legal inferences relative to the connection between the crime charged and the resulting reason for dishonoring the check.

That fall, after school had started again, I argued the check cases before the Second District Court of Appeal. I was, of course, prepared to argue the far reaching constitutional aspects of the law, having the benefit of Cal and Paul’s research and brilliant briefs. As I began my constitutional argument probing the rational basis of presumptions based on presumptions and inferences, one of the judges stopped me and asked the most elementary of questions, “What is a worthless check, and what are the elements of the crime?” After recomposing myself and explaining each and every element of the crime, my time expired, and I could only hope that the judges would read Cal and Paul’s excellent brief. The decision — Per Curiam Affirmed.⁸ Several lessons were learned from this experience, one of which is do not assume what a judge knows or might know.

However, the more important lesson was in our thinking that law students would be best suited for handling appeals. From our experience that summer, it was quickly determined that law students would be limited by time — a semester or even a year. The experiences for the student would be restricted to research, and the time expended would not allow for direct and immediate contact with a client — something we all wanted to interpose. It was evident that a student could not investigate a case, be effectively involved with a client, prepare for a jury trial or prepare an appellate brief, and present oral argument all within a semester, let alone a school year.

In the aftermath of Paul’s experience with the “bad check” appeals, he wanted to work on other criminal cases in his spare time

7. Fla. Stat. § 832.07(1)(a) (1964).

8. *McCormick v. State*, 161 S.2d 48 (Fla. Dist. App. 2d 1964).

and without pay. Under the legislative guidelines at the time, there was a provision in the statute for lawyers to volunteer their services and assist the public defender; these lawyers were to be called “special assistant public defenders.”⁹ There were no other specifics and no other obligations. Paul Barnard became the first special assistant public defender, without pay, in the State of Florida. The title later became important, because it allowed him to participate and represent clients assigned to the public defender, as well as supervise the law school clinic students when they would appear in court.

Paul and I would spend countless hours, if not days, working on cases and talking about the law, teaching, motions, crime, education, philosophy, and religion. Most of all, we would discuss how students could experience a transition from law school into the actual practice of law. At one time, we actually envisioned, conceived, and proposed a four-year trial advocacy law school that would lead to a special degree in trial practice. In our discussions, we knew that we could use law students for investigative purposes and research, but this was not enough. We were interested in exposing the law students to the realities of the practice of law where they would be an integral part of “one-on-one” client representation.

We had hoped that The Florida Bar would share our interests and, therefore, submitted a proposal to The Florida Bar Legal Education Committee for its consideration. Paul and I appeared before the Committee at The Florida Bar offices in Jacksonville, Florida, and made a presentation for a student practice rule that would allow law school students to appear in court prior to passing the bar. Our presentation fell on deaf ears. To think of an internship similar to medical schools was out of the question. The Committee’s immediate response was that law student representation would somehow lead to incompetent representation and prolong the judicial process.

Though discouraged by the initial rebuke, Paul continued with his efforts to learn what other law schools were doing throughout the country. The responses to his letters were encouraging, and Paul discovered several things. First, there were only five law schools in the country that offered more than a year-long course in criminal law — Stetson was one of them. Second, as far as he could discover, no state had a student practice rule like the one he envisioned.

9. Fla. Stat. § 27.53(2) (1965).

III. MORE CONCERNS

In the earlier years, and prior to the clinic, there was concern about the quality and competency of new lawyers entering into the profession of criminal law. The faculty at Stetson University College of Law shared these concerns. Generally, the faculty expressed unrestricted enthusiasm for a clinical program, but knew that specific improvements had to be made in the teaching of ethics. In this futuristic plan for a law school clinical program, litigation skills and substantive criminal law would be taught through a hands-on process, and ethics would be an indispensable part of a structured classroom curriculum. Mandatory hours would have to be devoted to professionalism and ethics. This concern led to the vision of a structured clinical legal education program whereby senior law students, under the supervision of a qualified and experienced attorney, would ethically and honorably represent indigent clients accused of a crime.

For the first year and a half, the clinical program was strictly voluntary, and the students received no credit toward graduation. The faculty was very selective in approving students for the program.¹⁰ Paul Barnard was the attorney in charge. In the early years, the public defender could represent only persons charged with a felony.¹¹ The first clinic operated with students in teams of two. They were given assignments at the beginning of the semester that included the arraignment of persons charged with felonies, clients facing jury trial, and prisoners seeking new trials.

Under supervision, the students conducted client interviews and investigated certain aspects of the case stemming from the interview. The students were required to do legal research and find

10. The following people deserve special recognition:

Spring semester, 1963: Clarence A. Boswell, Jr., Joseph D'Alessandro, James C. Dauksch, Alan Elster, Donald Ewald, Mercer Fearington, Richard Hagin, Louis St. Laurent, James F. Littman, James R. McAtee, Robert F. Pittman, and Paul Steinberg.

Fall semester, 1963: Marshall Conrad, James C. Dauksch, Lewis Dinkins, Charles Edwards, James Eubank, Robert Halvorsen, Edwin Krassner, Larry Levy, Robert Michael, Raymond Williams, and Edward Winter.

Spring semester, 1964: George R. Arnold, Fred Blankenhorn, Edward Brackin, Tom Bruckman, William Chappell, Larry Ingram, Monte Klein, Pat O'Neal, and Jack Watson.

Fall semester, 1966: Edward Bunn, William Casler, Iven Lamb, Dan McCormic, Bruce McManus, John Pilcher, James Seay, Ted Steffens, Robin Vaillancourt, and Edmund Whitson.

11. Fla. Stat. § 27.51(1) (1965).

support for their positions. Initially, the students researched the constitutional issues,¹² as well as the charging statute; then, the students investigated and substantiated the critical facts. The students then presented their findings and recommendations to Dr. Barnard. If a trial was scheduled for one of their clients, the students prepared a trial memorandum for use at the trial. Students, at times, were allowed to sit at counsel table and, in some nonjury cases, were allowed to participate in the actual proceedings.

The concept was to create a clinical program in which the student was not merely a law clerk for other criminal defense lawyers, but rather where the student actually practiced criminal law under the supervision of an experienced and qualified lawyer. At the beginning, the clinic was poorly funded, and the students had to pay for their own meals and car mileage. As the course developed, more and more of the students' time and money were required. Through the joint efforts of all involved, one of the first law school clinical programs in the nation was established. The students' accomplishments in the clinic represented the beginning of a controversial new idea in legal education. But still, the law did not provide for a law student to legally represent a client in the courtroom.

IV. *GIDEON v. WAINWRIGHT*¹³ — *THE RIGHT TO COUNSEL*

One must recognize a most significant event that occurred at about this same time — the case of Clarence Gideon. His now famous case had proceeded through the Florida courts and was before the United States Supreme Court. The attorney general for the State of Florida, through his newly appointed assistant attorney general, Bruce R. Jacob, appeared in opposition to the newly appointed counsel for Clarence Gideon, former Justice of the United States Supreme Court Abe Fortas.¹⁴ It was reported that Justice Fortas resigned from the Supreme Court just in time to represent Clarence Gideon. The assistant attorney general was later to become Dean Bruce R. Jacob at Stetson University College of Law. Sentiment had been building relative to the establishment of a constitutional right to counsel for indigents. It was inevitable that

12. Such constitutional issues related to arrests, searches and seizures, confessions, and line-ups.

13. 372 U.S. 335 (1963). *Gideon* was argued on January 15, 1963, before the United States Supreme Court, and the decision was rendered on March 18, 1963. *Id.*

14. *Id.*

a decision recognizing the right to counsel was forthcoming. The United States Supreme Court in *Gideon* made it mandatory for all defendants charged with a felony to receive legal counsel at public expense if the defendant was indigent and could not afford a private attorney.¹⁵ The Supreme Court also made the ruling retroactive, which allowed prisoners convicted over the years without an attorney to petition for a retrial on the basis of *Gideon*.¹⁶ If a defendant had a competent attorney or entered a valid, proper, and legal waiver of the right to counsel, then relief would not be available.¹⁷

V. *JOHNSON v. ZERBST*¹⁸

A case of equal importance and overlooked by many is *Johnson v. Zerbst*. In this 1938 case, the United States Supreme Court, on a petition for writ of habeas corpus, stated, “[W]hether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record.”¹⁹ The result was that one could not presume a waiver from a silent record. Prior to *Gideon*, defendants would appear in court without an attorney. The judge would inquire whether the person had an attorney, whether he would get an attorney, or whether he wanted to waive his right to an attorney. Whatever happened, the clerk of court would note what occurred in what was called “the clerk’s minutes.” These “minutes,” recited in almost every case, reflected that the person waived their right to an attorney. The impact of *Johnson* was that these recitations by the clerk were not a “record.”²⁰ In other words, the clerk’s records were not actual transcripts of what occurred; hence, there was a “silent record.” The result of *Johnson* and *Gideon* was that hundreds of inmates became qualified for a new arraignment or trial, because no court reporter was present, no transcript existed, and no record was made relative to any waiver of the right to counsel. Consequently,

15. *Id.* at 340.

16. *Id.*

17. *Id.*

18. 304 U.S. 458 (1938).

19. *Id.* at 465. The Court also stated, “[W]e ‘do not presume acquiescence in the loss of fundamental rights.’ A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege.” *Id.* at 464 (quoting *Ohio Bell Tel. Co. v. Pub. Utilities Commn.*, 301 U.S. 292, 307 (1937)).

20. *Id.* at 465.

there is now a court reporter present, and everything is transcribed that occurs at every stage of any criminal proceeding.

VI. RULE NUMBER 1

The Florida Supreme Court was mindfully aware of the foreseeable consequences; hence, Florida Criminal Procedure Rule Number 1²¹ was approved and adopted in a per curiam order dated April 1, 1963, one month after the *Gideon* decision.²² “Rule 1” provided the mechanism for expediting and processing cases for reconsideration. The advent of *Gideon* demonstrated the need for increased representation, a need that the law students helped to fill.²³ The Stetson University College of Law Public Defender Clinic was of immeasurable aid in helping to resolve some of the problems that necessarily arose from the *Gideon* decision.

VII. THE TRANSITION

Judge John U. Bird was the Sixth Judicial Circuit’s senior circuit judge in those days and handled all of the criminal cases in Pinellas County, Florida. Busloads of prisoners were being brought back and housed in the county jail. At one point, Judge Bird told me that he was actually grateful for the opportunity to reevaluate the sentences he had previously imposed. The law, prior to *Gideon*, provided for a new, for those days, idealistic social reform called an indeterminate sentence, whereby the court would sentence everyone to the state prison for six months to the maximum sentence, regardless of the defendant’s background or the circumstances of the case.²⁴ The idea was for the parole commission to investigate and evaluate each person and “determine” the length of the sentence. Unfortunately, the parole commission never got around to it, and most of the inmates or “Gideonites,” as they were later called, were serving the maximum sentence under the statute. Once we got the word out that Judge Bird would review each person’s sentence, the cases were resolved with some dispatch. This, in turn, gave us all some breathing room to work on the more serious cases.

21. Fla. R. Crim. P. 1 (1963).

22. *In re Crim. P.R. No. 1*, 151 S.2d 634 (Fla. 1963).

23. The Florida legislature created a state-wide public defender system, effective July 1, 1963. Fla. Stat. § 27.50 (1963).

24. See *Carnley v. Cochran*, 118 S.2d 629, 632 (Fla. 1960) (discussing the indeterminate sentence and Section 921.18 of the Florida Statutes).

Through all of this, Paul and the clinic students, over several semesters, became experts on “Rule 1,” an experience that would not soon be forgotten. Suffice it to say that Paul and the students were able to provide immeasurable assistance to those in need.

Around that time, I was interviewed by a newspaper reporter from the *St. Petersburg Independent*²⁵ and asked about the declining “Rule 1” caseload. I explained to the reporter that if a defendant did not qualify for a new arraignment or new trial under “Rule 1,” and he had a private attorney, then we would look at the only thing left to question, the prior representation by the attorney of record. The legal question shifted from “right to counsel” to “right to competent counsel.” In a way, it was a compliment to the prior lawyer if we could not find anything else to question, and we were left to look only at the question of competency of counsel. The truth is, we did not find many problems where attorneys were previously involved. During the interview, the reporter asked if I was ever involved in a case in which I might have argued that I was incompetent. After answering negatively, but acknowledging that it could happen and that it was possible, he asked if I would file such a motion. I responded that if the situation were such, I would have no hesitancy to file the motion and withdraw. The next day, I recall that my picture appeared on the front page of the newspaper with a caption that said I admitted my incompetence. The clinic students thought it was funny (and I did, too) and posted the picture on the school bulletin board. Now, I am not so sure it was so funny.

VIII. RULE NUMBER 2²⁶

After our failed presentation to The Florida Bar, Dean Sebring suggested to Paul that he prepare a model rule for law student participation and submit it directly to the Florida Supreme Court; it was no small matter that Dean Sebring was a former member of the Florida Supreme Court. That is exactly what Paul did. He drafted a model rule for student practice, molded the rule, redrafted, edited, and reedited the rule, and submitted it in its final form by motion to the Florida Supreme Court. At the hearing on the motion, Paul Barnard stood alone and argued his brief before the Florida Supreme Court sitting en banc. The other law schools made their

25. The *St. Petersburg Independent* was subsequently purchased by the *St. Petersburg Times* and is no longer published.

26. Fla. R. Crim. P. 2 (1964). This rule allowed for senior law students' participation in criminal cases.

dislike for the rule known by failing to attend the hearing. The Florida Bar, represented by some of its most respected members, rose in opposition to the motion. The breakthrough for clinical legal education came when the Florida Supreme Court announced Rule Number 2, authorizing select senior Florida law school students to represent indigent defendants charged with felonies in circuit court under the supervision of the public defender. This rule has since changed considerably and can now be found in Chapter 11 of the Florida Bar Rules.²⁷ Initially, the rule was only used in Florida by the Stetson Public Defender Clinic students. Other law schools were, at first, reluctant to participate.

The student practice rule evolved even though there continued to be some opposition from various local segments of the Bar. The criticism came from several lawyers who handled criminal cases. Some attorneys said they were opposed in principle to anyone practicing law who had not been admitted to The Florida Bar. Others suggested that the students should be involved in an internship, but only after they were admitted to the Bar. It was also suggested that if any mishap occurred, a defendant might appeal on the grounds of incompetent counsel. This latter suggestion did not occur throughout our entire clinical experience at Stetson.

IX. FUNDING — THE FORD FOUNDATION

During this earlier period (1961–1963), Stetson University College of Law was “picking up the tab” and paying the bills. One has to understand that while Paul was pursuing The Law Student Practice Rule, he was also running the Public Defender Clinic, teaching classes in criminal law, attending to his faculty duties, and working with me on some pretty serious cases, without pay, as a special assistant public defender. As a result, there were some considerable questions regarding the ability of the law school to continue financing these endeavors, and in particular, pay a professor’s salary while he was off doing these other non-traditional things.

It was at this time that I became active in the National Legal Aid and Defender Association (NLADA). The Ford Foundation, through NLADA, was granting seed money for innovative legal programs throughout the country. So, as Paul was preparing his proposal for a model rule, I was preparing and proposing a request

27. R. Regulating Fla. B. 11-1 (1999).

for funds to establish a law school clinical program at Stetson University College of Law, comparable and parallel to the proposed Law Student Practice Rule before the Florida Supreme Court. As it happened, the same day that Paul appeared before the Florida Supreme Court to argue in support of his proposed rule, I flew to New York to appear before the Ford Foundation Committee and requested and presented the proposed grant for Stetson University College of Law. It was pure irony that we were both scheduled to make our presentations at the same time and on the same day.

In October 1963 the National Defender Project, sponsored by NLADA and the Ford Foundation, announced a grant of \$18,553.00 to the clinic with a commitment to provide additional funds for two more years. The amount does not seem like much now, but it was huge then. Labeled the "Defender Project," the grant was made to enlarge and solidify what was already in operation. Without the grant, even though we had full faculty and student support, it would not have been enough to keep the clinic going. Specifically, the grant paid Paul one-half of his salary, so that he might devote one-half of his time to supervising the clinic program and one-half to teaching criminal law and procedure. It also provided a \$150 grant for each participating student per semester, as well as funds for mileage, meals, a full-time secretary, and office and case expenses. Stetson also continued to maintain its budgeted support of the program, as it has done to this day.

The new criminal law clinic was called the Public Defender Clinic. The formal class met once a week, usually in the evening. Informal meetings occurred constantly throughout the week with Dr. Barnard and the supervising attorneys. The clinic later developed into a two-hour course.²⁸ Students were assigned to various types of cases in various stages to familiarize them with all aspects of pretrial and trial work. The students were able to learn practical details about bail bonds, probation and parole procedures, courtroom arguments, evidence, and rules of ethics. In 1965 the Public Defender Clinic expanded to a full-year course, focusing on preliminary hearings in the justice of the peace court in the first semester and felonies in the circuit court in the second semester. Direct representation of a client first occurred when the clinic students were allowed to appear in the justice of the peace court. It was there that the students truly represented defendants in court. We were seeing for the first time the fruition of all of our work.

28. The clinic is now a five-hour course that is taken for one semester.

X. SOME REFLECTIONS

There were so many cases, so many students, and so many successes. When I look back at the specific cases, I know that Dr. Barnard and the clinical students were an integral part of the clinic. I wish I could recall the cases and connect the specific names of the students involved with each case. Perhaps if I mention particular cases, they may recall and know that they were a part of our success. A salute to those students is certainly in order.

On many occasions, then and afterward, where it appeared that all of the facts and the law were against us, we adopted what we would later fondly call a “Motion to Jam.” This motion was generally a result of our “think tank” approach to trying cases and almost always involved conjuring up constitutional issues, which oddly enough, were sometimes successful. One afternoon, we were working on a murder case and coming up with nothing. All of a sudden, Paul pulled a pair of scissors from his desk and started cutting a piece of cardboard paper into what appeared to be a wedge-shaped diamond about eight inches long and six inches high. When he completed this process, he proudly hung this piece of cardboard on his venetian blind in his office. It hung there for years with the words “Motion to Jam” prominently inscribed thereon.

Paul and the Stetson students became especially adept at the pretrial motion practice. From my perspective, it was exciting to see the deliberative exercise of creative minds searching and seeking out the unexplored territory of the law.

One example of Paul and the clinical students’ ingenuity involved a nine-page “Extraordinary Motion for New Trial.” As far as I know, the Criminal Rules of Procedure did not provide for such a motion, but it got filed, heard, and denied. We appealed. Our client, William Reddick, was charged, along with two others, with murder in the first degree.²⁹ A motion to sever by private counsel was denied, and Reddick changed his plea from “not guilty” to “guilty.”³⁰ The other defendants went to trial and were found guilty of murder in the first degree.³¹ Very soon thereafter, the judge sentenced all three to the electric chair.³² The two defendants who went to trial appealed, and their cases were reversed, because the

29. *Reddick v. State*, 190 S.2d 340, 341 (Fla. Dist. App. 2d 1966).

30. *Id.*

31. *Id.*

32. *Id.*

lower court denied their motions for a severance.³³ At a new trial, one of the defendants was found guilty of murder in the second degree and was sentenced to life imprisonment.³⁴ The other defendant was then allowed to plead guilty to second degree murder with the concurrence of the state attorney and was also sentenced to life imprisonment.³⁵ It was at this point that William Reddick, while waiting on “death row,” contacted our office. I went to the Florida State Prison to see him. Shortly thereafter, I filed a Petition for Clemency and appeared in Tallahassee before the Pardon Board and was promptly turned down.³⁶ When I came back, we all went to work trying to figure out what to do. What came out was a nine-page motion that covered the “waterfront” with the “kitchen sink” thrown in. The lower court denied our motion in a five-page order, stating that it was being denied as a “Petition for Rule 1.”³⁷ The appellate court reviewed the lower court’s order and stated, “We deem it unnecessary to refer further to the nine page petition except to observe that in the morass of *allegata* therein there were only two matters of sufficient substance.”³⁸ The appellate court found “that Reddick’s constitutional rights were violated when he was indirectly coerced into pleading guilty and also when his motions for severance seeking separate trial were denied.”³⁹ The “petition” was granted, reversing the order denying our “Rule 1” motion, and Reddick was given a new trial.⁴⁰ At the time, our research did not contemplate “Rule 1” as the proper remedy, but who can complain about the result.⁴¹

Paul and I put together a casebook on criminal procedure that we both used to teach the criminal procedure course at Stetson. Fortunately, I still have a copy and was able to refresh my recollection of the many cases worked on by the students in those early days. A note of interest was that we needed some research done for the book, and, during one summer, we hired one of the brightest first-year law students that I have ever known. Upon graduation, he became an assistant public defender in our office, and he currently

33. *Id.* at 341–342.

34. *Id.* at 342.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* Incidentally, what the court deemed a petition, we termed a motion.

39. *Id.* at 349.

40. *Id.*

41. A private attorney was retained, and a plea was entered as to second-degree murder with a life sentence.

teaches at Stetson University College of Law. His name — Jerome “Jerry” Latimer.

In reviewing that casebook, I came across two cases that established new law in the State of Florida and were the product of the clinic. Both cases were a direct result of the famous *Peel* case, the same case that Paul had worked on as a Federal Bureau of Investigation agent. The two cases were *Smith v. State*⁴² and *Ashby v. State*.⁴³ They both involved the plea of nolo contendere.⁴⁴ For those uninitiated, a nolo plea in the law is an “implied plea of guilty.”⁴⁵

The *Smith* case was a situation where the defendant entered a plea of nolo contendere to the capital offense of rape and was sentenced to die in the electric chair.⁴⁶ Our position on appeal was that a nolo plea was a plea for mercy, and once accepted, the extreme penalty could not be meted out.⁴⁷ The Florida Supreme Court, citing and distinguishing the *Peel* case, reversed the lower court and allowed Smith to withdraw the plea.⁴⁸ The decision’s conclusion provided “that such a plea in a case like the present one is inappropriate.”⁴⁹ Our conclusion was that a death sentence could not be imposed as a consequence of the plea of nolo contendere.

A sequel to the *Smith* case was the *Ashby* case. There, two defendants filed a Motion to Suppress evidence, which was denied by the lower court.⁵⁰ Ashby then withdrew his plea of “not guilty” and entered a plea of nolo contendere, reserving the right to question the propriety of the ruling on the Motion to Suppress.⁵¹ This withdrawal and reservation was unheard of at the time. The Second District Court of Appeal, in reversing the lower court,⁵² distinguished the *Peel* case again and held that a person can indeed preserve certain issues for appeal, even after an implied plea of guilty or plea of nolo contendere has been entered.⁵³ Both cases

42. 197 S.2d 497 (Fla. 1967).

43. 228 S.2d 400 (Fla. Dist. App. 2d 1969).

44. *Smith*, 197 S.2d at 498; *Ashby*, 228 S.2d at 402.

45. As an aside, the Author notes that a waiving of a jury trial was commonly known as a slow plea of guilty, because the judge tried the case without a jury and generally found the defendant guilty.

46. *Smith*, 197 S.2d at 498.

47. *Id.*

48. *Id.* at 499.

49. *Id.*

50. *Ashby*, 228 S.2d at 402.

51. *Id.* at 402–403.

52. *Id.* at 408.

53. *Id.* at 403.

made legal history in Florida and remain the law of the State, another credit to the lawyers and clinical students involved.

Another example of the ingenuity of Paul and the clinic students occurred when we were appointed to represent two defendants involved with the taking of a mural off the wall of the municipal building in St. Petersburg, Florida.⁵⁴ Motions were filed to disqualify the municipal judges because of their conflicts of interest. At the time, there were five or six municipal judges, no substitutes, and no one knew what to do. There was also a motion to change the venue on the municipal charges, but again no one knew where the case could be transferred. Hearings were never scheduled on the motions, and no convictions were ever obtained in the municipal court against the two defendants. At the preliminary hearing on the felony charge of grand larceny in the justice of the peace court, and later in the circuit court, motions were filed claiming that real property could not be the subject of larceny and that the taking of the mural from the wall was merely malicious destruction of public property. When the purported mural, actually a tapestry, was brought into court, it was completely destroyed and of little value. As a result, numerous motions attacking the value were presented, requisite to a charge of larceny. The question then became whether the value of the tapestry should be assessed as the real property value at the time the tapestry hung on the wall or the value after the tapestry was removed from the wall and totally destroyed.

In the meantime, Paul discovered that one of the defendants in custody had only one penny in his pocket when he was arrested and jailed. He was adjudicated insolvent or indigent, and we were already appointed by the circuit court. As a result, Paul filed a petition for a writ of habeas corpus in the Florida Supreme Court, contesting the constitutional right to bail when it was contingent upon money and nothing else. Paul and I went to Tallahassee to argue for the petition. A visiting judge, sitting in for one of the justices, stated that he could understand our position if it concerned only a misdemeanor — completely ignoring or not understanding the constitutional complexity of what we were presenting. The petition was denied, but thankfully the law has since changed. The final outcome in this case was one defendant was found not guilty

54. *Wall v. State*, 214 S.2d 384, 384–385 (Fla. Dist. App. 2d 1968). The details of this case are primarily from the Author's recollection as the attorney of record.

at the consolidated jury trial, and the other, though found guilty, had his case reversed on appeal.⁵⁵

The first and only case in which one of our assistant public defenders was ever held in contempt of court got everyone's attention. Our office had represented Laurie Dale Hooks on several occasions. He had previously pled guilty to three charges of forgery and was placed on probation for three years.⁵⁶ One month later, he went to trial on a charge of breaking and entering and was found "not guilty."⁵⁷ The trial judge,⁵⁸ based upon the testimony and evidence produced at the jury trial, revoked Laurie Dale Hooks's probation.⁵⁹ The attorney on the case⁶⁰ moved to disqualify the judge on the grounds that the judge might be a witness and requested a subpoena to be issued for him.⁶¹ The judge found the attorney in contempt for requesting the subpoena and imposed a \$100 fine or 30 days in jail.⁶² Needless to say, we all spent considerable time and effort to bring about the reversal of both cases. At issue was whether we could subpoena a judge as a witness, and whether a person's probation could be revoked based upon the testimony and evidence before a jury that led to a person's innocence — close questions of contempt and double jeopardy. In the end, both cases were reversed because of the judge's failure to disqualify himself, and our proposed questions were never decided.⁶³

On another occasion, a student stood to make an objection and allowed an inordinate amount of time to pass — dead silence. At first, one thought that the student had forgotten the grounds for objection. As it turned out, Dr. Barnard, apparently drawing upon his experience with the Federal Bureau of Investigation, arranged for the student to be wired with a listening device while he (Paul) stayed in the back of the courtroom with a small transmitter and whispered instructions to the student. The experiment did not last long, but it did provide for a change of pace.

A special highlight for the clinic occurred when two students worked on a case for a jury trial, and the defendant was found

55. *Id.* at 385.

56. *Hooks v. State*, 207 S.2d 459, 460 (Fla. Dist. App. 2d 1968).

57. *Id.*

58. Circuit Judge Joseph McNulty, a former judge of the Second District Court of Appeal, now deceased, was the trial judge.

59. *Id.*

60. Terry Furnell was the assistant public defender.

61. *Id.*

62. *Id.* at 461 n. 1.

63. *Id.*; *Furnell v. State*, 206 S.2d 23 (Fla. Dist. App. 2d 1967).

guilty. We asked the students to prepare and argue the motion for a new trial. On the day of the hearing, the judge refused to allow the students to appear and argue the motion. The case was appealed to the Second District Court of Appeal on its merits, with the additional issue of the refusal of the lower court to allow the students to argue the motion.⁶⁴ On appeal, the students obtained a reversal on the merits, but the appellate court affirmed the circuit judge's ruling denying the students the right to be present and argue the motion for new trial.⁶⁵ The appellate court reasoned that the students had not previously appeared on record in the trial.⁶⁶ However, the record reflects that the same two students appeared and successfully argued the issues of the case before the Second District Court of Appeal and obtained a reversal.⁶⁷ For the first time in the history of the State of Florida, and maybe even the country, two law school clinical students appeared and successfully argued a case before an appellate court.⁶⁸

Innovation was always a part of the Stetson Public Defender Clinic. Our experiences in the courtroom led us to consider the teaching of theatrics, a practice unheard of in a law school setting. Being in the courtroom was likened to being "on stage," because we were all watching and critiquing the students' performances. It became important that the students were aware of their "stage presence" and did not, as we observed, pick their noses, scratch their behinds, or stand on one foot and let the other shoe dangle or fall. Former Assistant Public Defender Stephen M. Everhart, currently a professor at Stetson University College of Law, was quite interested in this aspect of the practice of law and became our mentor. I trust that the training continues today as Stetson students continue to excel in trial advocacy under the leadership and coaching of Professor Everhart.

Stetson University College of Law can take credit for many first time achievements. Florida Criminal Procedure Rule Number 2 has been amended several times to now include clinical programs for state attorney offices, county attorney offices, legal aid offices, and other government agencies.⁶⁹ The clinic has come a long way since

64. *Dixon v. State*, 191 S.2d 94 (Fla. Dist. App. 2d 1966).

65. *Id.*; Ron Fedderson, *Stetson Graduates Make Historical Appeal of Felony*, 83 St. Pete. Times 7B (Sept. 10, 1966).

66. *Dixon*, 191 S.2d at 96.

67. *Id.* at 97.

68. The students were Peter Behuniak and Sammy Cacciatore.

69. Fla. R. Crim. P. 2 (1999).

1962. Stetson graduates who participated in the Public Defender Clinic have made numerous favorable comments regarding their experiences. Typically and quite appropriately, students have termed the Public Defender Clinic the most beneficial course in law school, which ties the theoretical approach to the practical. Students who were hesitant to practice criminal law now have no hesitation accepting a criminal defense case.

XI. THOSE WHO ALSO SERVED

My very first “paid” assistant public defender was Allen Allweis. He worked with Paul and the students from 1962 through Spring 1963. He went on to become a well-known assistant state attorney and one of the better prosecutors in the Sixth Judicial Circuit for Pinellas and Pasco Counties. Jack White, a Stetson graduate, took his place as an assistant public defender and was an integral part of the Stetson Public Defender Clinic. He handled one of the first oral arguments ever held on the Stetson campus. In late 1963 the Second District Court of Appeal scheduled, for the first time, oral arguments to be held in the newly remodeled courtroom in the old wooden law school library building at Stetson University College of Law. We represented Maurice Chavigny, who was previously represented by private counsel and convicted of the murders of a popular, well-known army general and his wife. The jury recommended mercy.⁷⁰ Hence, the death penalty was not imposed.⁷¹ Instead, the circuit judge sentenced Maurice Chavigny to two consecutive life sentences.⁷² The contention on appeal was that the second life sentence was impractical if the first life sentence was, in fact, served.⁷³ Jack White concluded his appellate argument before the three-judge panel by saying, “You will have to chase Maurice Chavigny through hell, fire, and purgatory in order for him to serve

70. *Chavigny v. State*, 112 S.2d 910, 911 (Fla. Dist. App. 2d 1959).

71. *Id.*

72. *Id.*

73. *Chavigny v. State*, 163 S.2d 47, 48 (Fla. Dist. App. 2d 1964).

his second life sentence.”⁷⁴ That night, the courtroom in the old library building caught on fire.⁷⁵

Following *Gideon*, additional staff became necessary. Joseph F. (Joe) McDermott, one of our best trial lawyers,⁷⁶ Carlton L. (Woody) Weidemeyer,⁷⁷ our appellate specialist, and Frank White,⁷⁸ the first black attorney in our office and in the courthouse, joined the staff as assistant public defenders and worked very closely with the students in the aftermath of *Gideon*. We often thought of the clinic as a two-way street. The lawyers helped the students, and the students helped the lawyers; we all learned something and the clients benefitted. During a period of one month in 1964, we went to jury trial twenty-three times and obtained seventeen “not guilty” verdicts, a feat unheard of today.⁷⁹

Further comment needs to be made. In the late 1950s and early 1960s, women in law school were few and indeed a rarity. A woman in law school, the courtroom, or involved in a criminal case was most unusual and was certainly not accepted by the “brethren.” Then came one extraordinary Stetson law student named Susan F. Schaeffer. Paul Barnard shocked everyone and accepted Ms. Schaeffer into the Public Defender Clinic, the first woman *ever* to enter into the clinical arena at Stetson University College of Law. My recollection was that she teamed up with Robert W. (Bob) Pope and did not, or could not, show up for *my* criminal procedure class, because they were out investigating some defender case. In those days, it was an excused absence if you were working on a defender

74. The details of the closing argument come from the Author’s recollection as co-counsel to Mr. White. After extensive negotiations with the United States and French governments and the State of Florida, Maurice Chavigny was eventually paroled on both convictions and deported to France. The Author has received a Christmas card every year from him for over thirty years.

75. Photographs on file in Stetson University College of Law’s archives confirm that a fire occurred in the courtroom around this time period.

76. He told me after he left the office that he represented the poor, the indigent, and the down-trodden for so long that he became one.

77. Upon graduation from Stetson University College of Law, he clerked for the Second District Court of Appeal.

78. At that particular point in time, there were separate bathrooms and drinking fountains in the courthouse, and the local restaurants would not serve us. We lived through it all, fought our own “Selma,” and persevered, especially Frank. He was one of the best trial lawyers in the office, if not the State of Florida. He went on to become my first chief assistant in charge of the St. Petersburg office. He later became a circuit judge in Pinellas County and is now retired.

79. During one week, eight defendants were scheduled for jury trials, and seven went to trial, three of which went to trial in one day. The jury found six of them not guilty. I could hardly remember my name on Friday. I never want to try that again.

case. Susan Schaeffer later became an assistant public defender and succeeded Frank White as my chief assistant in charge of the St. Petersburg office; she was probably the first woman chief assistant public defender in the State of Florida. She went on to become a circuit judge and is now the chief judge of the Sixth Judicial Circuit. The reason I mention this is, and I do not know who should get the specific credit, Chief Judge Schaeffer is directly responsible for the acceptance of women in law school, the courtroom, and the practice of criminal law in the State of Florida.⁸⁰ Women are now an integral part of the practice of law, including criminal law, and Stetson University College of Law is, was, and will continue to be at the forefront.

One last word on Dr. Paul Barnard. One cannot count the number of students' lives that have been influenced and changed because of the invaluable clinical experience nurtured by him. No one can accurately estimate the total impact that Paul has made in the teaching of future lawyers. Dr. Barnard is indeed the counterpart of that man who turned Billy Graham's life around to the service of God. I think he has done that and more.

80. My daughters-in-law, Maureen Jones Jagger and Melissa B. Jagger, are lawyers today thanks to those who came before. I need to also thank them and their lawyer husbands for their editorial expertise. Melissa served on the *Stetson Law Review* and became my editor in chief.