Summer Brief-Writing Project Results

When the United States Supreme Court reversed the narcotics conviction of Fleming Smith, *Smith v. Illinois*, 390 U.S. 129 (1968), it provided a fitting climax to a unique brief-writing experiment conducted at the Law School in the Summer of 1965. Now that almost all of the appeals have been decided, the results can be reported.

Fleming Smith's case was one of about 60 transcripts of record—indigent criminal appeals—which the Public Defender of Cook County selected from his considerable backlog and delivered to the Law School in June, 1965. The staff who were to prepare the briefs and abstracts of record in these appeals consisted of eighteen law students, whose names appear later. Four had just received their degrees, and the other fourteen had completed their second year. Academically, they represented a fair cross section of their respective classes, C and B averages being about equally represented. The money for their modest compensation and for project expenses was contributed by three foundations, five law firms and one practicing lawyer.¹

Working under the direction of Marshall Patner (J.D. '56) of the Chicago Bar, the full-time supervisor of the project, the students prepared the abstracts and wrote the briefs in over 50 appeals during the ten-week duration of the project and a voluntary cleanup period that extended into the succeeding Autumn Quarter. When completed, the student briefs and abstracts were delivered to the Public Defender's staff, who examined them and, in almost all cases, filed them without change. Assistant Public Defender Frederick F. Cohn (J.D. '62) provided the principal liaison with the project. Other assistants who reviewed some of the written work were James J. Doherty and Marshall Hartman (J.D. '57). By special arrangement with the Public Defender's office, nearly all of the oral arguments in the Appellate Court were presented by Marshall Patner. In a few instances the students wrote memoranda or partial briefs for outside lawyers who argued their own appeals.

Illinois law gives all indigent persons a statutory right to counsel for appeal from a felony conviction. In practice, about half of such convictions in Cook County are appealed, and a large proportion of these appeals are assigned to the Public Defender. Many are totally without merit, so the threshold problem of constructing an

¹New World Foundation; Chicago Community Trust (George Firmanich Fund); Wieboldt Foundation; D'Ancona, Pilsam, Wyatt & Raskind; Lehman, Williams, Bennett & Baird; Mayer, Friedlich, Spiess, Tierney, Brown & Platt; Schiff, Hardin, Waite, Dorschel & Britton; Sonnenschein, Levinson, Carlin, Nath & Rosenthal; Harry N. Wyatt. The total cash receipts of the Project were $23,350; total expenditures were $24,063. The Law School absorbed the deficit.

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arguable theory for appeal is often a severe test of a lawyer's ingenuity. In terms of their potential for reversible error, the cases assigned to the project were no better than an average cross-section of the Public Defender's cases. Indeed, because they were drawn from a backlog from which the more promising or more urgent appeals had already been removed, the project's cases probably contained more than their proportionate share of the stale and unworthy. Despite this fact, the percentage of reversals obtained in appeals where students wrote the briefs and abstracts proved to be somewhat higher than the percentage of reversals in all criminal appeals in the Appellate Court during the same period. The results are shown in the following Table:

Disposition of Criminal Appeals Briefed by University of Chicago Law School Summer Brief-Writing Project, and Disposition of All Criminal Appeals, Illinois Appellate Court, First District, 1965-67.

<table>
<thead>
<tr>
<th>BRIEF-WRITING PROJECT APPEALS</th>
<th>ALL APPEALS</th>
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<tr>
<td></td>
<td>1965-67</td>
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<tr>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Affirmed</td>
<td>38</td>
</tr>
<tr>
<td>Affirmed in part and Reversed in part</td>
<td>3</td>
</tr>
<tr>
<td>Reversed or reversed and remanded</td>
<td>12</td>
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<tr>
<td>Total cases disposed on the merits (excludes appeals dismissed)</td>
<td>53</td>
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It appears from the foregoing Table that 23 per cent of the project's cases were reversed or reversed and remanded, and that an additional 6 per cent were reversed in part. The project's total of 29 per cent is significantly more than the comparable total of 22 per cent for all cases disposed of by the First District of the Appellate Court during the same period. In addition, two other cases, affirmed by the Appellate Court, were later reversed by higher courts. When these two cases (4 per cent) are included, the proportion of project cases in which some relief was obtained on appeal is a remarkable 33 per cent.

Most of the relief obtained in the Appellate Court was for insufficient evidence (8). The next highest category was prejudicial rulings on evidence (3). Other relief was for illegally obtained evidence (2), denial of a statutory right (1), and inadequate counsel (1).

Fleming Smith had been convicted of selling narcotics. There were three witnesses against him, a police informer who claimed that he had purchased narcotics from the defendant and two police officers who provided the informer with marked money and arrested him after the transaction. On cross-examination the informer gave his name as James Jordan. He then acknowledged that this was an alias, but was sustained in his refusal to reveal his true name. The brief prepared by students Barbara Hillman and Leonard D. Levin argued that the court committed error in this ruling because once an informer has appeared and testified he is no longer protected by the “informers privilege” and his “true identity must be revealed for purposes of cross-examination and impeachment.” The Appellate Court rejected his argument and affirmed the conviction, but the United States Supreme Court reversed on the theory urged by the students: “To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself.” Smith v. Illinois, 390 U.S. 129, 131 (1968).

Another record assigned to the students was the jury trial of Lee Roy McCoy, convicted of killing his wife and sentenced to twenty to thirty years. After compiling an impressive list of errors made by counsel in the course of the trial, student Bruce H. Schoumacher wrote a brief urging that the conviction should be reversed because of the incompetence of counsel, even though reversals on this ground are almost unheard of when (as in this case) defendant is represented by counsel of his own choice. In what was probably the most significant opinion written in one of the project's cases, the Illinois Appellate Court reversed and remanded on the theory urged in the student's brief. The Court wrote:

"The general rule adopted by our courts is that where a defendant is represented by counsel of his own choosing, his conviction will not be reversed for incompetency of counsel unless it can be said from the record that the representation was of such low caliber as to amount to no representation at all, or that it was such as to reduce the trial to a farce . . . While we do not believe that the representation given the defendant in this case reduced the trial to a farce, we do believe that the caliber of representation afforded the defendant in this case was such as would deprive the defendant of any chance of being found not guilty. We therefore conclude that the defendant did not receive adequate representation in the trial of this case, which resulted in substantial prejudice to him." People v. McCoy, 80 Ill. App. 2d 257, 263-64, 225 N. E. 2d 123, 126 (1967).
Since appellate courts rarely reverse a conviction because of the incompetence of retained counsel, the McCoy case, where this result was obtained through the efforts of a second-year law student, is probably unique. Through a combination of hard work and good luck this same student, Bruce H. Schoumacher, worked on 10 appeals—more than any other student—and saw 4 of his cases reversed, a higher proportion than any other student.

Following is a list of the students who worked on the Summer Brief-Writing Project, and their present employment:

Howard B. Abrams (J.D. '66), Assistant Public Defender of Cook County
Robert G. Berger (J.D. '66), Legislative Research Center, University of Michigan Law School
Charles C. Bingaman (J.D. '66), Assistant Director, Institute of Continuing Education of the Illinois Bar
Ronald D. Boyer (J.D. '65), Assistant State's Attorney, Iroquois County, Illinois
Robert C. Funk (J.D. '66), private practice in Hammond, Ind., but now in Germany with U.S. Army
Roger C. Ganobick (J.D. '66), private practice in Shrewsbury, Mass., but now in Alabama with U.S. Army
William Halama (J.D. '65), private practice in Los Angeles
Barbara J. Hillman (J.D. '66), private practice in Chicago
Leonard D. Levin (J.D. '65), studying at The Hague, Holland
Alfred E. Lipton (J.D. 66), Appellate and Test Case Division, Legal Aid Bureau of Chicago
Craig A. Murdock (J.D. '65), private practice in Denver
John D. Ruff (J.D. '67), Government Employees Insurance Company, Chevy Chase, Md.
Marc P. Samuelson (J.D. '66), Internal Revenue Service, San Francisco
Bruce H. Schoumacher (J.D. '66), private practice in Nebraska, but now with U.S. Air Force in Nebraska
Robert A. Shuker (J.D. '66), defending indigent juveniles in Cook County Juvenile Court for Chicago Lawyer Project
Robert C. Spitzer (J.D. '66), Legislative Reference Bureau of the Commonwealth of Pennsylvania
Henry A. Waller (J.D. '66), Woodlawn Neighborhood Office, Legal Aid Bureau of Chicago

The Summer Brief-Writing Project was also assisted by the volunteer efforts of four Chicago attorneys and eight members of the Law Faculty, who read drafts of student work and counseled with the authors. Those assisting included Steven Larson, Michael Lew, Leonard Spalding III, and Bernard J. Nussbaum (J.D. '55), of the Chicago Bar, and Dean Phil C. Neal, Assistant Dean James M. Ratcliffe, and Professors Walter Blum, Geoffrey C. Hazar, Edmund W. Kitch, Dallin H. Oaks, Bernard D. Meltzer, and Hans Zeisel. Professor Oaks organized the project and provided general supervision. A copy of his final report of the project is available on request.

After the project was concluded, Justice Joseph J. Drucker of the Illinois Appellate Court, First District, urged that some of the experience of the project be preserved and made available generally by having some of the participants publish a manual and checklist for indigent appeals. Financing was provided by the Center for Studies in Criminal Justice of the University of Chicago Law School. The work was supervised by an ad hoc lawyers' committee consisting of Jason Bellows (J.D. '53), Elmer C. Kissane, Professor Edmund W. Kitch, Francis X. Riley, Thomas P. Sullivan, and Professor Dallin H. Oaks (chairman).

The Appointed Counsel's Guide for Illinois Criminal Appeals was written by Marshall Patner, with research assistance by Robert C. Funk (J.D. '66) (a brief-writing project participant) and with research and editorial assistance by Peter Kolker (J.D. '66). The Guide, which consists of an annotated checklist of subjects to be considered in preparing a brief and abstract for a criminal appeal, was published by Callaghan & Company. Copies have been distributed to trial and appellate courts in Illinois and will be given to each court-appointed counsel without charge.

Dallin H. Oaks & Marshall Patner

APPENDIX

Disposition of Summer Brief-Writing Project Cases

1. AFFIRMED

People v.


II. AFFIRMED IN PART, REVERSED IN PART
People v.

III. REVERSED OR REVERSED AND REMANDED
People v.

IV. AFFIRMED BY APPELLATE COURT, BUT REVERSED BY HIGHER COURT
People v.

Continued from page 3

The significance of the second attempt by the New York legislature to induce the states to unify divorce law lies in the dramatization of a substantial change in the reasons for uniformity of state law and perhaps even in the methods of obtaining uniformity. When the National Conference was formed seventy-five years ago, the liter­ature concerning its formation emphasized the fact that then in our federal system about the only method of obtaining uniformity of state law was by voluntary adoption by state legislatures of identical law. It was thought, as the United States Constitution was then interpreted, that Congress could not unify commercial law or divorce.

Today, seventy-five years later, Congress can clearly unify the law concerning commerce by enactment of a law which applies not only to all inter-state transactions but to all transactions affecting interstate commerce. After the case of Katzenbach v. McClung, 379 U.S. 294 (1964), involving the Civil Rights Act of 1964, it is hard to imagine an area in which Congress cannot unify law by its enactment. If we can imagine an area, it may be the area of divorce.

In the seventy-five years since the founding of the National Conference, two other methods of obtaining uniformity of law have developed. The clause in the federal constitution concerning interstate compacts, long dormant, has come into its own with compacts on such matters as education, and air and water pollution. In addition, the United States government has become a member of the Hague Conference on Private Interna­tional Law and the Rome Institute for Unification of Private Law and as a member of these organizations and of the United Nations and its constituent organizations, the United States is now participating in the drafting of conventions or treaties designed to obtain world uniformity of private law.
III. 

II. 

AFFIRMED

People v. 


II. AFFIRMED IN PART, REVERSED IN PART

People v.


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