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The Opinion will endeavor to consider fully and thoughtfully all material to determine its relevance and appropriateness before publication. Such consideration will be made with the assumption that freedom of the press within the law school is no less a fundamental right than outside the law school, and in view or the Opinion's recognized responsibility to the members of the student bar, practicing attorneys, and faculty and administration of the law school. The opinions expressed in this publication are those of its editors and do not reflect the opinions of William Mitchell College of Law, its employees, or Board of Trustees.

Editorial

Moot Court Board makes needed rule changes

BULLETIN: As this issue of The Opinion went to press, and after the following editorial was set in type, the Curriculum Committee voted to end long-paper credit for participation in the moot court program.

The action, we think, was premature and, in view of the changes in the program discussed in the editorial below --probably unnecessary. A better approach would have been to wait to see whether the changes had the desired effect.

The committee's decision seems to be a step toward a new long-paper requirement: one that can be fulfilled only by the production of a scholarly article. Certainly, standards for the long paper are in need of review. But standards can be raised without forcing all students to produce one kind of paper. For must future practitioners, a long paper in the form of an appellate brief can be of more value than a long paper in the form of a law-review article. A paper need not be the latter to be of high quality.

William Mitchell's moot court competition will be better, and participants will gain more from it as a result of the new rules promulgated by the Moot Court Board. The board deserves congratulations for recognizing --and dealing with --not only an immediate problem but also an underlying one that even more seriously threatened the future of the moot court program.

The immediate problem was the large number of students taking part in the moot court competition over the last two semesters. So large were the numbers that the board had trouble finding enough rooms and judges for oral arguments. In addition, the large numbers lengthened the time needed for eliminations. By limiting oral argument to competitors with the top 16 brief scores the board s new rules not only keep numbers within bounds but also help assure the quality of argument.

The underlying problem was related to the first. One reason for the large number of entrants is that an increasing number of students saw moot court as an easy way to gain two credits and fulfill their long-paper requirement. Easy? Yes -for those who put minimal effort into their briefs and hoped, usually successfully to be eliminated in the first round of oral argument. That approach to the competition not only threatened the integrity of the moot court program, but was also unfair to contestants who worked hard on briefs and oral arguments.

The new rules will force all contestants to put more nearly equal effort into their briefs. Only those who meet with faculty advisors and rewrite their drafts to the advisors' satisfaction will fulfill their long paper requirement.

The board put many hours into analyzing the moot court program’s weaknesses discussing what must be done --and then deciding exactly how to do it. In addition, the board overcame one of the major hurdles to such changes --the. often-heard objection that "We never did it that way before." It was a difficult task, but one to which the board was equal. --G .M.

Image

Photograph shows the South side of the 1931 building, with a hand holding a photo of the same building in the foreground for comparison.

The Opinion seeks to serve you

Greetings and best wishes for the academic year from The Opinion staff. This year we hope to involve-more students in The Opinion in reporting and photography. Stop by Room 316, The Opinion office if you have the inclination to get involved.

We also plan to print six issues this year. Last year there were four. One reason for printing more issues is to accomplish our goal of expanding the scope of coverage to citywide, statewide and nationwide. You will note that our feature article for this first issue is an exclusive interview with Chief Justice Warren Burger. It is our hope that we can continue to speak with people who are intimately involved with the law in various ways and deal with a variety of topics of interest.

Our new Equitable Relief column is another way we hope to get people more involved. If you have a question or problem send us a letter and The Opinion staff will get you an answer --or at least attempt to.

Contributions from students and faculty are welcomed. And if you know of an upcoming event or have an idea, feel free to stop in. –J. Anderson, editor.

Image

Six-panel comic by Lala Rubakoff.

In the first panel, a student walks toward the library exit as the librarian says, “Goodnight!”

In the second panel, the student exits through the gate tracker, which zaps and causes him to drop his books and papers.

In the third panel, armed guards and bulldogs surround the student, and say “Hold it right there,” and “You are under arrest for second degree library lifting!”

In the fourth panel, the student says, “But officer, I could never do such a thing at William Mitchell! My honor! My self-respect! My…my…”

In the fifth panel, a guard says, “Are you telling us you didn’t just try to walk out with William Mitchell Property?” while a bulldog sniffs and scratches.

In the sixth panel, the student says, “Of course! I stole these books from the “U”!”

Top of the News

Voters to decide on new appeals court

By Fred Hawley

Minnesota is the most populous state lacking an intermediate court of appeals. A constitutional amendment, to appear on the Nov. 2 general-election ballot, would provide a remedy.

As early as 1955, judges and state legislators became aware of a developing backlog and delay in the appeals process. Most attorneys, judges and politicians now support the proposed amendment.

In 1981 the court was able to issue written opinions in only 396 cases, or 28 percent, of the 1,391 filed. This year it is estimated that the number of cases filed will exceed 1,700. A civil appeal now takes about 15 months, and a criminal appeal from 17 to 22 months. The American Bar Association standard for the length of an appeal is five to six months. According to Minnesota Chief Justice Douglas Amdahl, unless there is court reform, most Minnesotans will soon be denied a right to appeal.

Beginning in 1967, the Minnesota Supreme Court took steps to confront the delay, by sitting in panels of five justices, with four votes required for a decision. Action by the state legislature in 1973 brought the number of justices from seven to nine. The high court itself also recommended placing panels of district-court judges to screen cases on appeal, but nothing was done. The Arizona Supreme Court tried that plan with success in 1975, but never implemented it permanently.

To expedite appeals, the Minnesota Supreme Court now uses three-methods of hearing cases: three-judge panels with no oral arguments, panels with abbreviated oral arguments, and en-banc oral and non-oral hearings. But backlog and delays continue to increase.

State Sen. Jack Davies, chairman of the Senate Judiciary Committee, said there have been various obstacles to court reform. Most attorneys initially opposed an appellate court as an apparently costly and time-consuming additional step in the appeal process. During debate attorneys and legislators would express to the supreme court their support for appellate relief, but then return to Davies to express private opposition.

Davies himself supported the use of three-judge panels from the district courts as an alternative to creating a new court. He suggests that panels of three judges are, more efficient and make more courageous decisions than in larger groups of justices, where there is safety in numbers.

Davies said, however, that such opposition, and lengthy debate of the nature of appellate reform, may have delayed the matter to the point of crisis, making the proposed solution better than none at all.

Amdahl, on the other hand, says he objects to the idea of district-court panels because the judges would be reviewing the actions of their brother and sister judges. Therein lies potential for disharmony among district-court judges, he says, creating conflict of interest and a reluctance adequately to review procedural decisions.

Amdahl said he believes that lawyers' initial opposition to appellate reform arose from a misunderstanding of what was being proposed, as well as awareness of the questionable results achieved through such reform in neighboring states.

For instance, since 1977, Iowa has an intermediate appellate court that hears only cases that are rejected by the supreme court, which retains all cases with precedent value. This has earned the Iowa court the nickname of "garbage court." The Iowa appellate court publishes no opinions, and its decisions cannot be cited. Therefore, questions arise as to where the law stands on some issues.

The experience in Wisconsin; where an intermediate court was established in 1978, has been better. Cases may go on to the Supreme Court. Disposition time averages two months, and opinions of the intermediate court are published. Since the Wisconsin appeals court sits in defined geographic districts, however, there is the potential for conflicting opinions between districts.

The appellate courts in both states, however, have provided case-load relief to their respective supreme courts.

One potential benefit of the delay in establishing an intermediate court in Minnesota is the opportunity to observe the experience of new appellate courts in other states. The plan proposed for Minnesota addresses the major logistical difficulties experienced elsewhere, however.

The Minnesota plan is to create a new court of intermediate jurisdiction. This court would consist of 12 permanent judges sitting in rotating panels of three judges each. At least one judge would be chosen from each of the eight congressional districts. The panels would near cases alternately in each of the eleven judicial districts of the state, acting as circuit courts. Other panels consisting of five or seven judges would sit in St. Paul to review the opinions in order to answer concurrence in questions of law.

If the amendment passes a committee of lawyers and judges will set up the procedure for organizing the appellate court, under guidelines of the implementing legislation, which has already been passed.

The appeals court will have original jurisdiction in all cases except first-degree murder and appeals from the Worker’s Compensation Court of Appeals. The Supreme Court will also have the option to issue writs of certiorari in other cases with statewide significance.

This plan is expected to eliminate the present flood of appeals to the supreme court by making the appellate court the court of final disposition in 90 percent of the cases now appealed in Minnesota. The

appeals court should be more accessible to most Minnesotans because it will hear cases throughout the state, instead of sitting only in St. Paul. Delays should be greatly reduced.

Part of the cost of maintaining a new court, estimated at $1.3 million a year, would be offset by a reduction in the number of supreme court justices from nine back to seven, and decrease in staff resulting from smaller work load. Costs to litigants would be reduced by outstate hearings.

Another factor that is expected to reduce the cost to maintain the court system in Minnesota is the combination of municipal, county and district courts into one district-court system. Amdahl says he supports this move, as there is much duplication of function between those courts.

William Mitchell Prof. C. Paul Jones, who served on the Judicial Planning Committee, points out that there is now gradual evolution toward a combination of the courts of general jurisdiction. Jones notes that change in the institutions of the law is often slow and accompanied by resistance from within. But, there is now widespread agreement that the discussed reform and streamlining measures are necessary to the effective administration of justice within the state.

Amdahl credits the League of Women Voters as the group most politically influential in bringing the problem of court reform to attention in the legislature and within the legal profession.

He said he is hopeful that the amendment will be ratified by the voters, as that would allow the Minnesota Supreme Court once again to function effectively in the other duties with which it is charged.

Year	Cases Filed	Decided	Percentage
1957	213	178	84
1967	372	280	75
1977	1065	424	40

State court gains second woman

By Jeanne Anderson

Minnesota is now the only state with two women on its highest court. Mary Jeanne Coyne was appointed associate justice by Gov. Al Quie on Aug. 17. Coyne joins the bench with 25 years of civil practice with the Minneapolis law firm of Meagher, Geer, Markham., Anderson, Adamson, Flaskamp and Brennan.

Coyne is replacing former Justice James Otis, who is retiring, Otis, a graduate of Yale University and the University of Minnesota Law School, served as district court judge in the second. judicial district from 1954 to 1961 when he was appointed to the state Supreme Court.

Coyne said she was surprised by the appointment. She was pulled out of a board meeting on Aug. 17 and told that she was just appointed to the Supreme Court.

“One hour later I was back at the meeting. I was acting as secretary and tried to pick up my notes where l left off. One of the board members leaped to his feet and said, “I think Jeanne has something to tell us.” I told them, and one person said, 'How could you sit there and not say a word?” It was difficult not to. I was in a state of shock.''

A 1957 graduate of the University of Minnesota Law School, Coyne was second in her class. “I was the only female survivor of the original freshman class with four women "she said. “Now it's a vastly different world.”

Asked if she thought that the fact that she is a woman will make a difference in the courts decisions Coyne responded: "That is a difficult question. When I started practicing, the legal profession was a male bastion. There were only two or three other women in Minneapolis law firms at the time. I simply went out and practiced law as well as I could.

I’m sure there were lawyers on the other side who thought that l was an easy target because I was female. I tried to dispel that notion. Men don't practice as male lawyers, so I practiced just as a good lawyer. Now I will try to be just a good judge.''

She said that women generally do tend to think more from a human-relations viewpoint, while men think in terms of right and wrong. "So that in that way I may bring a slightly different viewpoint to the court."

She added, "I also think that wise old men and wise old women come closer to seeing things from the same point of view. My partners used to say that I had a woman's viewpoint, but I'm not certain that's correct. I may have a different viewpoint, but not necessarily a woman's viewpoint.''

Of her 25 years of practice, Coyne was the sole woman lawyer in the firm for 23 years. "But I did have the advantage of knowing older women lawyers, and l found that comforting. And I'm delighted to have Rosalie Wahl on the court," Coyne said.

Coyne said she supports the proposed amendment for an intermediate appeals court. When she clerked with the Supreme Court as a senior in law school 25 years ago, there were about 200 appeals a year. Now there are two more justices, and 1,070 appeals were filed for the 1982-83 term already (See Appeals Court, above.)

"I had a meeting with the chief justice the other day, and he looked sort of sad. He said that five more appeals came in while he was out to lunch,'' Coyne said.

Between 1,600 and 2,000 appeals are expected to be filed this year. "That divided by nine justices means an opinion has to be written every other day. It's simply not possible. I know how long it took me to write a brief. There is not enough time for the kind of reflection needed for a court that sets precedent."

Coyne contended that no one has suggested a better way to solve the problem.

Coyne will have to run for election in 1984, and Supreme Court justices sometimes have opposition. Coyne said that most judges would rather not run for election. "I'm a very non-political person. It’s not one of the more appealing aspects of the job," she said.

Making the transition from advocate to justice has been hectic, Coyne said. "It's been a terrific scramble, because my office is not completely closed up. Trying to pull out after 25 years of practice is quite a chore she said.

"Two weeks ago I was an advocate, and now I'm not. It's a difficult line to cross."

Coyne was sworn in at 10 a.m. Sept. 1 and a few hours later was hearing oral arguments. For the first two weeks on the court she worked from 6 a.m. to midnight. "I felt as if I wore out a pair of glasses after a week," she said. Coyne finally took a whole day off to attend a football game; her first day off in six weeks.

The appellate process is familiar to Coyne. She wrote her first appellate brief alone before she got her bar exam results. "Of course, I couldn't sign it,'' she said. Since then she has argued over 100 civil cases before the Supreme Court.

"I have the dubious honor of losing the first case I argued here. The court had to overrule a long line of decisions to teach that result. Thirteen months later the court reversed. My feelings were hurt."

She thought again: "No, I was really annoyed."

Coyne said that after 25 years it's strange to be on the other side. She said she thinks it will be fun and she hopes she is a good judge.

"Heaven knows, if I'm not it won't be from lack of trying.''

Images

Photos by Jeanne Anderson

Mary Jeanne Coyne, the Minnesota Supreme Court's newest member, is sworn in by Chief Justice Douglas Amdahl.

Justice Mary Jeanne in her new office in the Minnesota State Capitol.

Legal writing raises credit, requirements

By Lea De Souza

Two years ago, students in the Legal Research and Writing course attended one hour of class a week, researched, wrote and rewrote their memos and briefs, gave their oral arguments and were rewarded with two credits.

Last year, the first-year students also met one hour a week with their appointed adjuncts and did the same assignments as the students did the year before, but a new aspect to the course was added. A decision was made that the students needed more guidance in the "research" aspect of the course, and so "research guides" were introduced.

Neither the students nor the adjuncts took them very seriously; sometimes they were completed and handed in, but most of the time they were handed out to students and then forgotten. At the end of the year; these students were rewarded with two credits, as was the practice.

This year, there have been more changes in the program. The biggest change comes with the addition of two credits to the course. To earn these added credits, more is expected from students. Although written assignments have remained consistent with those of previous years, students will be meeting two hours a week and will have to take the research guides more seriously. In fact, completion of the guides are mandatory for a passing grade, although they are not graded.

Prof. Christina Kunz, along with two additions to the legal writing department, Profs. Peter Erlinder and Deborah Schmedemann, worked on the research guides during the summer. (Last year the guides were being written as the year went on.) What they did was edit, and sometimes completely rewrite, the guides that were used last year. They also added two new guides dealing with legislative history and administrative materials.

Students will be required to complete the majority of the guides in the first semester, leaving only two for the second semester. (Last year the department was not so well organized. On the last day of classes a research guide was handed out to the students so that they could look it over during the summer.)

Schmedemann said the newly edited guides will have a "more obvious methodology" to them than before. She also said that William Mitchell's legal writing program is different from most programs offered at other law schools throughout the country. This difference is that Mitchell's program offers research and writing together: theory and practice are combined into one course.

Another aspect offered by Mitchell that is virtually unheard of in many other law schools is the large number of adjunct instructors involved in Mitchell's program. Apart from the three full-time faculty members heading the department, Mitchell has 20 adjuncts, nine of them new this year teaching classes of approximately 13 students each. In addition, two full-time faculty members, Profs. Marcia Gelpe and Douglas Heidenreich, are each instructing a legal writing class.

Gelpe and Heidenreich are instructing these classes to incorporate other subjects with legal writing, and it was felt that the best way to do that was to include faculty members who are involved with other subjects.

Heidenreich said the attempt to integrate the legal writing program with other subjects was made because many members of the faculty felt that there should be more "formal, additional, continuing writing requirements on a regular basis after the first year." Eventually, it is hoped, all members of the full-time faculty will participate in the program, which will help bring legal writing together with all other subjects.

There has been much criticism of the adjuncts by students. Many students contend that there is too much inconsistency in the adjuncts' teaching methods, assignment and grading criteria. One student complained that many adjuncts had never taught before. Another was displeased because they were not easily available for questions.

Nevertheless, there seem to be no plans to move back to the traditional way of teaching, because the advantages of small-group instruction are considered to outweigh the disadvantages.

Image

Peter Erlinder and Deborah Schmedemann are new faculty members assigned to Mitchell's expanded legal-writing program.

4 go to Moot Court Meet

Four William Mitchell students will represent the college in the regional round of the National Moot Court Competition in November.

The four are Susan Bedor, Nicole Nee, Ronn Kreps and David Meyers, members of the top two teams in the college competition last spring.

The regional round will be held Nov. 18 through 20 at Hamline University Law School. Teams from Hamline, the University of Minnesota, the University of North Dakota, the University of Iowa and Drake University will take part.

Winners of the regional rounds go on to the final round in New York City early next year.

New security system installed offered during summer session to stem loss of library materials

By Steven Patrow

To stem the outflow of books and materials not checked out by librarians, the William Mitchell administration and library staff have installed an electronic dam across the library exit.

This screening device, manufactured by the 3M Co., directs a magnetic field, detecting beam of patrons leaving the library. If the beam detects the magnetic strip in a book that has not been checked out by an “electronic" librarian behind the reserve desk, an alarm beep-beeps, and the large tubular arm extending from the machine across the exit locks into place. The violator is trapped -but only if the system has worked.

Problems with the machinery itself and security in general may render the screening device ineffective.

One problem with the system is that some books are not fitted with the tin magnetic strip that actuates the alarm. But even some books that do have the strip fail to set off the alarm.

“Not all the books have been taped yet,” said Peggy Lubozynski, and assistant librarian and second-year student at Mitchell. “Most of the books have been taped, but we’ve already had one student return a book that he accidentally took out; the book didn’t set the alarm off.

I picked a book at random and walked through the exit, and the alarm did not go off. The librarian at the desk then taped the book (the strip is almost impossible to see when in place), and I walked through the exit again … with no resulting beep-beep. I backed up and tried again; this time the alarm went off.

The detecting system was installed to help reduce the approximately $11,000 worth of replacement costs to the college each year for book and document theft.

A memorandum to the administration about a library inspection report dated Jan. 19-22, 1982, stated that the $11,000 figure does not include staff time expended on processing replacement materials. In fact, the report states, “When that figure is factored in the actual replacement cost [the] cost is easily $6,400 or higher than she [the library director] estimates it to be.”

The report also states that student and library staff moral is damaged by those who steal or secretly borrow materials.

“And the dollar figure does not and cannot reflect patron irritation and frustration at being unable to find books,” the report says. “Usually the books most in demand are those which are missing … nor does the dollar figure reflect the demoralization of staff that comes with patron disaffection.”

Associate Dean Melvin Goldberg said the cost of the screening system was low - $13,000 - compared to the cost of books and labor lost each year due to theft.

"We learned we were losing more on the books than the cost of the system," Goldberg said.

Although the system is now in place and has been operating for several weeks, security problems still plague the library and its staff.

Lubozynski said that many times since the device was installed, other access routes to and from the library have been open to potential book stealers.

"During Homecoming the fire doors on the south side of the school were left open all morning so people could just walk in and out with books," Lubozynski said. “The fire doors on the level going down to the basement have been propped open many times – not just unlocked, but propped open.”

Golberg said there were some problems with open fire doors, but that there is a definite commitment to curtail further security breaches. Golberg also said, penalties for stealing books would be severe.

"Under the student code, stealing books is a basis for suspension or expulsion from school," Golberg said. "We assume that students will help enforce security in the library."

Lubozynski said that some of the library security problems are due to user disregard for the new security device, and that violators are not always students. "I saw one faculty member showing four people, no students, how to get by the system," Lubozynski said.

While the detection system may have its technical flaws and some books have not been processed into the system, the library report states in its recommendations that any system is a "vast improvement over no security system at all."

Image

A new security system has been installed at the main entrance to the library. Photo by Scott Harr.

First advanced writing class offered during summer session

As a supplement to the legal writing program, Prof. Douglas Heidenreich offered a seven-and-a-half week legal writing workshop during the summer.

The main objective of the course was to improve students' writing skills and abilities, to help them understand for whom they were writing, and what they were trying to accomplish.

Heidenreich said his intention was to make students more sensitive to their own problems so that they could objectively edit their work. By meeting with the students on strictly an individual basis with the exception of the initial and final class meetings, Heidenreich pursued his goal. By assigning and reassigning short writings, his students improved their skills, especially over the first drafts submitted.

The legal writing workshop is the only advanced writing course now offered. According to Heidenreich, however, "there is no specific plan to offer it next summer, although it is a possibility."

Lecture series announced

Following is a list of upcoming lectures in a series sponsored by the William Mitchell Law Review. The series covers aspects of legal research and writing. The lectures are open to all faculty members and students. They are held at 8:30a.m. in Room 111.

Oct. 7: Writing for your audience

Oct. 28: Writing style and organization of a paper

Nov. 18: Use of the Minnesota State Legislative Library

Dec. 2: To be announced

Jan. 13: Federal legislative research

Feb. 3: Minnesota legislative research

Feb. 24: Writing problems: writing explanatory parentheticals; writing a conclusion

March 17: Use of Lexis

April 14: Microfilm, microfiche and federal documents

April 28: To be announced

Development director sets fund-raising goals

Dian Eversole, Mitchell's third development director, has been charged with establishing the framework for a major capital campaign.

With a budget of $100,000 Eversole's immediate task is to assess the long-range needs of the college.

"First, priorities must be set," said Eversole, who started her job last May 1. "It is my job to research all areas of the school to see where the needs are, to assess what is most fundable and then to report to the board of trustees."

Once the board decides upon the target, the major giving campaign will be launched. "Probably within the next 18 to 24 months," said Associate Dean Robert Oliphant.

Some of the projects being considered are a new library complex, a new wing and the college's own self-sustaining student loan fund.

Eversole comes to Mitchell from the University of Minnesota, where she served as development officer for the Minnesota Medical Foundation. She has worked in fundraising and grand solicitation since 1978, first at the University of Wisconsin-LaCrosse, then as a private consultant.

While planning for the major capital campaign, Eversole is also working on current funding needs. She has developed a plan to hold a series of luncheons on campus for influential people in the Twin Cities.

These luncheons will serve to "clarify Mitchell's image in the community -- to let people know what we do here," said Eversole.

A major fundraising dinner has also been planned for next spring. It is hoped that the dinner, honoring and roasting Judge Ronald Hachey, the college's alumni director, will attract national and state figures.

In developing the capital campaign, Eversole said, she plans to concentrate on individual donors, alumni as well as others. One plan to make donations more attractive is to offer potential donors several methods of giving, including various kinds of deferred gifts.

To assure that this venture does not cost the students money, it has been made a requirement of her position that Eversole generate enough donations to cover the cost of her budget.

"Furthermore," Oliphant pointed out, "the $100,000 development budget was taken out of the balance sheet, not out of student revenue, and the money raised will go directly toward keeping tuition down."

Image

Photograph of Dian Eversole

Moot court rules change, but long-paper credit ends

Bulletin: As this issue of The Opinion went to press, and after the following article was set in type, the Curriculum Committee voted to end long-paper credit for participation in the moot court program.

This fall's moot court competition is being conducted under new rules designed to improve the quality of briefs and arguments, according to member of the Moot Court Board.

One major change is that contestants will compete individually instead of as members of two-or three-person teams. Another is that only the competitors with the top 16 brief scores will take part in oral argument.

In the past, all competitors went through at least the first round of oral argument. Last fall, 45 teams entered the competition, and the board had trouble lining up rooms and finding enough judges. The large number of teams also lengthened the elimination process leading to the final round of oral argument.

"The board agreed that the competition was getting out of hand," said Jim LaFave, chairman of the Moot Court Board. Not only was it difficult to arrange oral argument for so many teams, he explained, but the number of briefs required too many graders, resulting in inconsistent brief scores. The board was also concerned about the poor quality of many briefs, he said.

Board member Seaneen Brennan agreed. "The primary reason for the changes was the poor quality of the briefs in the past," she said.

Both LeFave and Brennan contended that some teams in the past submitted carelessly written and ill-researched briefs and made no effort to go beyond the first round of oral argument. If they did so for two semesters, members of such teams completed their long-paper requirement and received two credits.

"We felt that the competition was being cheapened," said Brennan.

As a result, LeFave and Brennan said, the college was threatening to end the long-paper credit for moot court work.

Under the new rules, each contestant will have to discuss his or her first brief draft with a faculty advisor, then rewrite the brief in accordance with the college's standards for the long paper.

Only students who compete in oral argument will receive credit. One credit will be awarded, and a student may compete in oral argument only once during his or her law-school career.

In the past, no credit was awarded unless students took part in moot court competition twice (or combined one semester of moot court competition with one semester of client counseling).

Another change is that, in the event of a tie, the contestant with the higher oral-argument score will be declared the winner. Under the old rules, the team with the higher brief score won.

Still another change involves the way students will advance to the National Moot Court Competition. In the past, the winning team in the spring competition advanced. Traditionally, the college has sent two teams to the national competition, so the spring second-place team also went on to the national contest.

Under the new rules, the two students who compete in the spring final round will form a team to advance to the national competition. If the college continues to send two teams to the national competition, the two finalists from the fall competition will also go on to the national contest.

In the past, the winners of the fall competition had no opportunity to advance to another level.

LaFave noted that having single competitors instead of teams at the college level will simplify the task of drafting moot court problems. When teams were involved, the problems usually included two major issues so that each member of a two-person team would have an issue to research and argue.

Brennan pointed out another facet of individual competition. It allows students to enter the competition even though they might not be able to find a partner.

Besides, she said, in real appellate practice, "you're the only one who gets up there and argues."

Image

Opinion staff at work on first issue. Working on the first issue are Lea De Souza, who has been appointed assistant editor; George McCormick, associate editor, who expects to graduate in January; Jeanne Anderson, editor; Kate Santelmann, who will succeed McCormick in January; and M. Chapin Hall, a reporter.

Registration delays irk students; plan offered to speed process

By Beth Culp

Students confronted by heat, humidity and long waits during fall registration were less than impressed with the college's new computerized system. Complaints and criticisms echoed through the corridor outside the boardroom; and there were rumbles of mutiny inside the cooler sanctum of Room 111 as students watched their assigned registration times come and go.

Yet, for most students, the ordeal was apparently soon forgotten, since fewer than 10 students accepted the invitation to air their grievances in a forum provided by the SBA Sept. 2.

Associate Dean Melvin Goldberg was present to respond to questions, listen to complaints and hear suggestions from students. Those who attended were presented with copies of a proposal for reform of the lottery system formulated by Robert Price, a senior.

The "Price Proposal" would allow students to register for electives in an order based on the exact number of credits they had received and were currently registered for. For example, a student with 49 credits would register before a student with 48 credits. Students with the same number of credits would be placed in a pool and their names selected at random to determine their priority within that group.

Under the present lottery system, students are placed in three main pools: students with 76-88 credits, 64-75 credits and 48-63 credits are assigned their registration priority through random selection within the applicable pool. As a result, a student with 48 credits could register before a student with 63 credits.

Goldberg says the administration is willing and able to implement the proposal, but will await a formal resolution by the SBA. Goldberg urged students to voice their approval or disapproval of the proposal to their SBA representatives and asked that students who are opposed to the revision to be prepared to state their reasons.

According to Goldberg, if approved by the SBA the system could be operating in time for spring registration. The system could be implemented through computer printouts, which would be sent to each student a few weeks prior to registration. The printouts would match the student's ID number with the number of credits he or she had received (including credits they were currently registered for) and show their assigned registration time.

For those closed out of desired electives at fall registration, Goldberg offered some consolation. "Nobody's law career hinges on getting into a particular course, no matter how great the professor is," he said. "The law will be changing anyway within five years, and if it doesn't change, then it's probably not important."

Logistically, spring registration will be very much like fall registration. The boardroom will again be used because of its location near the computer and because it has the potential for air conditioning, which is important for the well-being of the terminals as well as the operators. Goldberg said, however, that changes would be implemented to maximize efficiency and minimize waiting.

In explaining the long waits experienced by many during fall registration, Goldberg emphasized that it was the first time the new system had been used for the regular registration and that the major failing was in not allowing enough time for each student. As a result, in the future fewer students will be assigned to a time slot. In addition, time will not be taken to print out the registration forms during registration. They will be printed later and made available to students after registration has ended.

Goldberg's ultimate goal is to process students in 15 minutes from the time the arrive. If he is successful, students' initial disenchantment with the new system may be replaced by that rarest of sentiments for law students – gratitude.

An interview with Chief Justice Burger

Chief Justice Warren E. Burger does not often grant interviews. During a visit to St. Paul in late August, however, he agreed to be interviewed by The Opinion's editor. Jeanne Anderson, and associate editor, George McCormick. The interview was conducted Aug. 16 in the Minnesota Club in downtown St. Paul.

Later that day, the chief justice, an alumnus of the St. Paul College of Law (one of the institutions that merged to form what became William Mitchell), spoke to first-year students at Mitchell's orientation program.

The interview was transcribed by the chief justice's staff at the U.S. Supreme Court in Washington.

Q: We could begin by talking a little bit about your trip to Italy. You met with the pope there did you not?

A: Yes, I did briefly. I did not request an audience, but when I got there I found that an audience bad been arranged. I had met the pope twice before: once at the White House and once when I was his host at the Smithsonian Institution on the occasion of presenting him with the Smithson Medal -- a gold medal that is very rarely given by the institution.

Q: The purpose of your trip, as I recall, was to meet with Italian Jurists. Is that correct?

A: I had accepted an invitation for a lecture sponsored by the Supreme Constitutional Court of Italy. Scholars, political scientists, and others were also present on the occasion. My lecture was to explain the background and the history of Marbury v Madison and how the concept of judicial review of the actions or other branches had evolved even though it was not explicit in the Constitution, but only implicit.

I should add, by the way, that it's only in recent years that the constitutional authority to review legislative acts has been placed in Italy's highest court. It's a very recent development.

Q: We had talked a little earlier about your interest in improving the administration of justice. Could you talk brief]y about some of the changes that you've seen since you've begun emphasizing that need?

A: There are substantial improvements, but there is so much left to do that sometimes the unresolved problems make our improvements of the past 10 or 12 years look very, very minor. There are improvements in several aspects, however.

First, in the federal system we now have an acceptance of the idea of court administrators - a manager who assists the chief judges in the management and administration, leaving the judges to do what they are appointed to do. Congress initially gave only one circuit executive for each federal circuit, which is a small beginning, but an important one. All but one of the circuits use a circuit executive, who is a court administrator.

Consistently, for 10 years I asked Congress to broaden that out and provide administrators for the larger district courts: that is, the district courts in the big centers like the Southern District of New York, Chicago, Los Angeles and so forth. Congress, two years ago, gave authority for a pilot program in 14 districts. We now have an administrator for these larger courts. That pilot program will go on for several years and then be evaluated. I am confident that it will prove very effective and that Congress will then authorize court administrators for probably 30 of the federal districts: that is, those having eight or more federal district judges.

Q: Well, it certainly has proven to be valuable in the state court system in Minnesota.

A: Another important development came in 1969 when the legislation for circuit executives had not yet been passed. I made a speech to the American Bar Association, with the title which was in the form of a question: "Court Administrators: Where Would We Find Them."

There were probably not more than a handful of people in the country who could accurately be called "court administrators." We drafted most of them to be on the faculty of the Institute for Court Management that we created in late 1969. This group for the faculty were headed up by Ed McConnell, who is now the director or the National Center for State Courts - and that's another story I'll come back to.

I proposed the creation of the Institute for Court Management, and, under the leadership of Bernard Segal, then president of the American bar, we had that institution created within 90 days. It has trained in its fulltime course of six months more than 350 court administrators. Overwhelmingly, they have been absorbed into the state-systems and we now have a totally new profession created in this country. I'm not sure of the exact figure but it's somewhere between 300 and 400 professionally trained people who are now engaged in court administration.

I think I recall that at that time a national organization of court administrators had fewer than 30 members, and that included many who were clerks of courts, only a handful who were true court administrators.

Now I should add that there are a good many clerks of court who function as court administrators, but it's a minority of them, and in some instances the clerks of court have become court administrators, but the two functions are quite different.

Q: Before the creation of the center was there really no way for an administrator to learn that profession except on the job?

A: That's right. It had to be on-the-job training, and that originated with Chief Justice Vanderbilt of New Jersey, who was really the patron saint of court administrators. He trained Ed McConnell now the head of the National Center for State Courts.

McConnell had been a graduate of the Harvard Law School and the Harvard School of Business, and that was really the beginning: the recognition that courts can't run themselves and chief justices don't have either the time or always the inclination to do it properly. Lawyers, law-trained people, are not generally good administrators.

Q: It's also a waste of the judges' time and talents?

A: Right. We shouldn't have the chief justice of the courts spending time on matters that do not need a lawyer when they need a managerial type, a person who either has instinct or training in administration – or, better yet a combination of both.

Then another step that has been important in improving was the creation of the National Center for State Courts in 1971. I urged the calling of a conference on the judiciary on all the problems of the courts. That was sponsored by the Department of Justice and was held in Williamsburg.

I was asked to make the keynote speech. I did so, and the essence of the speech was that we should create a National Center for State Courts. The courts of the states had no common clearing house for

exchange of ideas, no spokesman. The nearest thing to it was the Conference of State Chief Justices, which had no funding, no structure or organization but it was a beginning.

The National Center for State Courts was then created. It now has a $3-million headquarters building at Williamsburg Va., and five branch offices, one of which is St. Paul. It has performed remarkable service to the states. I believe that most of the states help support it now.

With programs of support from the federal government necessarily changing, the National Center has real problems, but it should be supported by a combination of the private sector and contributions from each of the states because its sole purpose is to serve the state courts - where nine-tenths of all litigation occurs. Happily, now the governing body of that center is made up of the chief justices of the states and their surrogates, who are on the actual board of directors.

Q: You talked about some of these -- I used the word accomplishments; you said you preferred to use the word steps -- and I think indicated that even steps toward the improvement of the administration of justice are really solving the problem and perhaps keeping up with the increasing problem.

You have also talked repeatedly about the steadily rising caseload, not only of the US Supreme Court, but of the federal courts in general, and as I recall you have suggested that there are some things that Congress could do or could not do to at least slow that rise in caseload.

A: To begin with, even though there have been some substantial improvements, the fact is that changes -the increase in litigation - is almost outpacing the improvements. I shudder to think where we would be in the administration of justice in this country if these changes of the past dozen years had not been made.

But there is more to be done than most people realize. There is a great deal of unfinished business.

Just one measure, for example: the courts of appeal in the federal system in the last 10 years have had an increase in their work 16 times as much as the growth in population. The state courts have a comparable increase. The trial courts have had similar increases, but less.

There is an increasing tendency in this country to turn to the courts for the solution of all problems. If Congress or the state legislature doesn't solve a problem, there is a tendency to run to court. Of course, Montesquieu long, long ago, and Lord Bryce, said that this was a peculiar characteristic of the American people -- to bring matters to the courts.

I fear we are not going to change the American people, although I am hopeful that there will be an increasing use of arbitration and other alternative methods of resolving these matters. That is what the Pound Conference in 1976 was all about. The total cost in dollars to process modest claims -- and by that I mean claims of less than $10,000 --I suspect is more than the $10,000 that is involved in the case.

I have cooperated with the Rand Corporation in research, and I am anticipating some reports soon. From what I know of these studies, it may develop that we have a very wasteful practice in dealing with cases, as I say, under $10,000. Something has got to be done about that.

Q: Are there some ideas you think would be good for legislation? Anything that stands out?

A: There are a great many things handled in the court which could be handled administratively at far less expense, far less stress on the participants -- and much speedier. For example, there is no reason why

adoptions need to be handled by judges; there is very little reason why child custody should be a matter for judges, although some judicial review should be available after an administrative procedure. Probate of estates could be done administratively with only contested matters going to a judge.

There are other areas that should be studied and inquired into, and in that respect the Pound Congress in 1976 in St. Paul opened up some of these. I should say, too, that the consequences of the Pound Conference have been very gratifying. A tremendous number of activities and studies were stimulated by that conference. We won't know the results of those studies for some time, but the impact over the next 20 years, I think, is going to be very substantial - very significant.

Q: The original Pound speech surely had considerable impact, did it not?

A: Yes. The Pound speech was made at a meeting of the American Bar Association in the House of Representatives building in St. Paul and his speech was not well received by the American Bar Association, which at that time was not nearly the kind of broadly representative organization it is now.

My recollection is that the ABA had fewer than 25,000 members, and, of course, it's more than 10 times greater than that today - in excess of 300,000. It is potentially a great influence for improving justice in this country. But in 1976, it was time after 70 years from 1906 to take another look at it, and that's what we did. We looked at the unfinished business that pound had laid out.

Q: And you found, as I recall, that this was, the subtitle, as it were, for the conference --you found that there was still plenty of cause for "popular dissatisfaction with justice."

A: No question about it, and it will continue and it will increase unless we do something about it. The problems are more serious today than in 1906.

Q: And, as I noted earlier, you did call there for "new machinery for resolving disputes." You have already talked about greater use of mediation and arbitration. I talked recently with some people who are involved in a new program that has just been set up by the Hennepin County Bar Association with cooperation of the state bar and with funding from the Northwest Area Foundation to again expand the use of mediation. And, as I recall, the emphasis in that program is, rather than imposing a solution on parties to the dispute, to help those parties solve their own through the use of a trained mediator --help those parties solve their own problems.

A: Yes, and we must increase that. If we look at the experience of other countries, we'll see that they do with the fraction of the number of lawyers and a fraction of the number of judges, and yet in most of the countries of Europe, for example, where these processes are highly developed, the justice that is administered is very good. It is as good as ours, generally speaking, on the civil side, and I think it's pretty hard to fault criminal justice in the free countries of continental Europe or in England. As Pound said, we have overdone the adversary system.

Q: It has been suggested that not only because lawyers are trained to operate within the adversary system, but also because their professional obligation is zealously to represent the interest of their clients, that perhaps when a lawyer gets involved in an alternative dispute-resolving mechanism - mediation or arbitration --that there could be some problems for the lawyer.

A: There could well be if lawyers insist on every facet of the aspects of the adversary system; then they will hinder progress. In many of these areas of mediation, even arbitration, trained personnel, something like the paralegals, are entirely satisfactory as advocates for the smaller claims.

One of the reasons the small claims courts have not lived up to their original promise of 50 or 60 years ago was that gradually we were incorporating into the small-claims courts all the aspects of the adversary system --pleadings, lawyers -where a common sense was what was needed.

We've got to turn back to that early concept. Every case, the small cases especially, does not need a lawyer --a trained lawyer from the adversary system.

In the ancient times, the elders of a village or town were the people to whom adversaries went to settle their problems. They didn't need paneled courtrooms and judges with robes and lawyers with all the panoply of the profession. They had a simpler system.

No system of justice, no matter how sophisticated, can really produce anything more than what the late Lord Chief Justice Widgery of England called "rough justice." If we produce a good brand of "rough justice," we are doing pretty well.

Q: There is perhaps a return to that in at least some of these experimental programs -return to that use of the elders, to use the old phrase. The new program that I just mentioned, started by the Hennepin County Bar, will -well, it will use lawyers as mediators in some instances; in others --for example, vandalism involving juveniles --they will use people from the community who, I think, serve as the same function: they are elders; they are people with their roots in the community; conversant with the people and the values of that community and able to use their common sense to arrive at rough justice without the ''paneled courtrooms."

A: I agree very, very strongly with that. Lawyers, we lawyers and judges, have no monopoly on common sense.

Q: We'd like to think so, though.

A: Yes, we do like to think so. We think we have a little bit higher order. But common sense and a sense of fairness is what we need in a vast array of small cases. Judges should be reserved for heavier cases.

Q: If I may, sir, I would like to turn to another issue involving lawyers. You have suggested that far more lawyers than should be the case are not well prepared to represent the interests of their clients in a courtroom, and, since, you have said that there have been some responses not only from the organized bar, but certainly from the law schools. Do you find those responses to be moving in the right direction?

A: Yes I do, very definitely. At first, you recall, the legal profession and particularly the law professors had a rather negative reaction when I made the statement that up-to half of the lawyers who come into the courtroom in some parts of the country were inadequate for the job they were assigned to do. The studies, which were prompted by the Association of American Law Schools and by the American Bar Association, after that confirmed my own analysis -much to the surprise of some.

Now this varies from state to state. I would think that in Minnesota, without being chauvinistic about it, we have a higher percentage of qualified lawyers coming into the courts than in some other places.

The law schools, when they pursued these subjects and the American Bar Association studies found that there was a wide-spread belief among lawyers who graduated in the last I5 or 20 years that the law schools had not prepared them for practical problems for dealing with their clients and with the courts.

One rather humorous development occurred at some point: About two years ago, perhaps three, Harvard announced a $2.5 million program for training in trial advocacy. Some columnist remarked that perhaps the chief justice could be wrong about his evaluation of courtroom performance. But the chief justice and Harvard Law School could not possibly be wrong.

There has been a very wide change in the content of the curriculum of the law schools in the past five years. I'm delighted, of course, that my old law school came out so well in the trial advocacy program. It was really remarkable that they came out as one of the two top in the United States given the great resources and advantages of some of the other law schools.

Q: Well as a student at your old law school, I make no pretense of not being chauvinistic. Students at William Mitchell are very much aware of the fact that last year the trial-advocacy program was awarded the Emilly Gumpert award by the American College of Trial Lawyers, as you know.

A: The Mitchell college team was runner-up in the national competition as well.

Q: Yes -- yes it was. So there are two I think, very good bits of evidence that the program is doing something right. In addition, at William Mitchell-again you are certainly familiar with this -we have a highly developed clinical program, which enables students to follow their interests, be it civil litigation or criminal law labor law, administrative law, and actually to get out and work under the supervision of attorneys. Do you see that as a valuable part of law school training?

A: Very much. Not only a valuable part, I think: an imperative part. Now we mustn’t deceive ourselves. Law schools can't make trial lawyers; they can't make finished practitioners any more than medical schools make physicians and surgeons.

Unlike lawyers however, physicians and surgeons go through internships after they finish their basic medical education. Then they go through residency programs, and they are not permitted to conduct operations in hospitals until they have satisfied the staff of a hospital [that] they are competent, and their work is monitored by senior doctors and the incompetents are weeded out.

We haven't had anything like that in the law, and, unless we think that people’s rights that come in litigation are less important than their health, very much less, we should have been doing something about this a long time ago.

What encourages me is a change in the attitude of both the profession and of the academic community in recent years. I think we are going in the right directions now, and it will produce better practitioners.

Now let me emphasize this: Our law schools have done a superb job of training the students, the future lawyers, in legal analysis legal thinking, but that isn't enough. That is just the beginning, just as it is in medicine. How to do it, how to take care of the client's problems, requires some additional training, and that must begin in the law schools. It can't be finished there, but it's got to begin there, and I think we now recognize that.

Q: Might it be an idea to go beyond, to draw on your parallel with medicine -to go beyond the beginning in law school and perhaps institute something like a residency program once a lawyer gets out of school and begins to practice? Some sort of peer evaluation and continued training: is that practical?

A: That's got to be done. In the federal court system as a result of some of these, as part of some of these developments we now have pilot programs going on in a number of districts requiring an examination before a lawyer is permitted to try cases in the federal courts. That includes the written. examination to be sure they have at least read the Federal Rules of Civil and Criminal and Appellate Procedure and the Rules of Evidence and that they have had some exposure to the practical processes of preparing a case for trial, selecting a jury how to ask questions and how not to ask questions.

We won't have a report on those pilot programs for perhaps another year or two, but I am hopeful that we will have the federal system in every district in the country requiring some proof of capacity before a lawyer can walk into the courtroom and try cases. There is resistance to that, but it is diminishing. I do not intend to let up on this point.

Q: There is perhaps a greater recognition that a person's liberty and property is as important as his health?

A: Or at least somewhere approaching that importance and that something needs to be done about it.

Q: When did you institute this issue of training in law schools?

A: Well, it became more acute to me after I had gone on the bench, but it began on the first years after I came out of law school in St. Paul. I went to the president of the Ramsey County bar and proposed that we could have a clinical program where we would draw in the senior lawyers and judges of the state and federal courts to have a continuing-education program.

As often happens, the president of the bar association disposed of me by making me chairman of the committee. I recall very well how we started; we met in the St. Paul Public Library just across the street from where we are sitting in the Minnesota Club today. We invited just the younger lawyers - I think age 35 was the limit. We then asked a lawyer who was active in plaintiffs' cases to present a program on how to prepare, investigate and try a plaintiff's case.

This was so popular that at the second meeting when we had a defense counsel present, the counterpart on the defense of such a case, we nearly doubled the attendance. And very soon, as those programs continued, we were having lawyers who were 50, 55 and over attending.

I recall particularly one program because I called on one of my former teachers at the law school, Justice Royal Stone of the Supreme Court of Minnesota, who gave two sessions on how to prepare a case for appeal. The first of his sessions was on the analysis of the record and the writing of the brief.

Justice Stone was a superb teacher. He had been a very successful practitioner and then, after about 30 years of practice, went on the Supreme Court of Minnesota. He had been the teacher of Contracts at the law school, and I had succeeded him on his recommendation the year I graduated. He had been assistant reporter to Professor Williston on the Restatement of Contracts.

I repeat, he was a superb teacher, and in these two sessions, I think I learned more

about the process of appellate litigation than in any other comparable period in my life, and had some exposure after that to appellate litigation in the courts of appeal and in the Supreme Court of the United States.

That program continued for several years. As with all such programs, it finished its course. However, at about that time I guess - this was the late 1930s - this program faded out, the whole process of continuing legal education was getting a new emphasis through the American Bar and the American Law Institute and others, and of course, that has been accelerated very markedly in the last five years in terms of these practical subjects, including trial advocacy.

Q: And that seed you planted in the library across the street did bear fruit when Minnesota became the first state in the nation to make continuing legal education mandatary.

A: Yes, Minnesota is one of the three states that were the pioneers on that subject. Then in later years, I think 1956 or '57, I was involved in, but was not the originator of, the Appellate Judges Seminar at New York University.

That was the "brainchild" of the late Justice Frederick Hamley, then of the Supreme Court of Oregon and later on the Ninth Circuit. That was the first comprehensive program recognizing that lawyers who were appointed to the appellate courts in this country did not become qualified appellate judges simply by putting on a black robe and getting a commission from someone.

That two-week program is one of the most outstanding examples of effective continuing judicial education. It has become the model for all such programs.

Q: Sir, you have been very generous with your time. I wonder if we may impose for just a moment longer to go back to something that I passed over when we were talking about dealing with rising caseloads. An idea that you have supported, have indeed advocated, [is the] establishment of a new intermediate court above the courts of appeal to take some of the increasing caseload that is moving to the United States Supreme Court. Is resistance to that idea diminishing; is that a possibility in the near future?

A: Like all suggestions for change in the legal system or the judicial system in this country, resistance to new ideas is the pattern. For example, in 1791, John Jay, the first chief justice of the United States, said that the justices of the Supreme Court could not carry the load of the Supreme Court work and also ride circuit, sitting as trial judges and on adhoc reviewing courts. He asked Congress to create a permanent middle-level court of appeals. Congress did not act on that until exactly 100 years later, in 1891, when [it] created the circuit courts, now the United States Courts of Appeal. I hope we aren't going to wait 100 years to do something about the rising caseloads in the Supreme Court.

I have never taken a flat position on any particular solution, and I have not advocated an intermediate court. However, I appointed the committee chaired by Prof. Paul Freund, which firmly advocated the creation of an intermediate court.

Recently, my distinguished colleague Justice Steens advocated at the American Bar the creation of a court that would decide which cases we would review. That, of course, was not the thrust of the Freund report.

I think we need to study every new proposal. However, I seriously question whether the Supreme Court of the United States would ever approve a delegation to some other body or tribunal of the authority to decide what cases the Supreme Court of the United States would hear. I question whether that's the solution. What we decide to review or decline to review is one of the highest functions of the court. I would not want to delegate that authority to a subordinate tribunal.

If the tendency continues - the rising caseload - there are no nine men in America today, and no nine people who ever sat on the Supreme Court, who could cope adequately with the increasing caseload.

One illustration: The first year of Chief Justice Warren's tenure as chief justice, the Supreme Court of the United States issued 65 signed opinions. That happened to be a rather low year. It has increased steadily since then, and, in the year just ended, I believe it was 141 signed opinions and 10 percuriam opinions.

I repeat, there have never been nine people in America who could adequately treat that many cases, given the dimensions and content of those cases and their constitutional importance, for that work is in addition to screening about 100 applications for review each week. There must be some change.

Q: Your point was well taken. I misstated myself when I said that you have advocated [an intermediate court]. You did, of course, appoint the Freund commission, but, I think more importantly, you have not closed the door to any such solution.

As you are aware, Chief Justice Amdahl and, of course, his predecessor, Chief Justice Sharon, have made the increasing inability [of the Minnesota Supreme Court] to keep up with its caseload in issue before the public; and, last session, the legislature did approve a constitutional amendment that would clear the way for the creation of an intermediate court of appeals.

A: I think there is no question about that. The state of Minnesota needs an intermediate court of appeals to meet the new demands place on its court system.

Q: Critics of that idea suggest that such a court would merely be another step in the appellate process - that eventually the same number of cases would come to the Supreme Court, but that, because of the creation of the new step, there would be more expense and more time for litigants for appellants rather…

A: That can be solved by giving the Supreme Court of Minnesota discretion as to which cases [it] will take, and I would have confidence in that very fine court in its exercising that discretion.

Q: Many states - and the number doesn't come to mind - but many states in recent years have done just exactly what the state of Minnesota...

A: More than 20.

Q: More than 20? From your vantage point as chief justice of the United States, do you see these dire predictions coming true in the other states, or have those courts really made a difference in helping the Supreme Court cope with its caseload?

A: I think on the whole they have served a very useful purpose, and the important thing is that the court of last resort should have total discretion on what cases it will review from the intermediate court of appeals.

Q: Whether it's in the state or within the federal system?

A: Right.

Q: Mr. Chief Justice, thank you very very much for your time. This has been an honor and a privilege.

A: I'm delighted. Each time I come back and see the progress of Mitchell college, when I think of the days when I attended, when we had that old Victorian mansion up near Miller Hospital with between 300 and 400 students at most…

And now I see the magnificent plant and the opportunity that the college now has to train lawyers who for one reason or another cannot or elect not to attend a day school. This is a great development, and I share the pride of all the students and the alumni of the school in what has become truly a great law school.

Images

Three photographs of Chief Justice Warren E. Burger speaking at a lectern in front of a full auditorium.

Hennepin bar starts 'new machinery'

The Hennepin County Bar Association recently established a program to resolve legal disputes through mediation – the kind of alternative to litigation urged by Chief Justice Warren Burger in the accompanying interview.

Called the Mediation Center for Dispute Resolution, the program was established by the county bar group as a result of a two-year study to examine ways to resolve disputes in ways other than formal adjudication.

The program has been funded by a three-year grant of more than $100,000 from the Northwest Area Foundation of St. Paul. The foundation has already given the center $39,025 for the year that began July 1. Another $35,000 will be given the following year and $30,000 will be awarded in the third year, bringing the total grant to $104,025.

The money will be used for a two-part program. The first part, already under way, involves the establishment of mediation services for two groups, low-income people and juvenile offenders. The second part will involve efforts to promote the use of mediation to settle legal disputes. That part will include helping other organizations set up similar programs.

Mediation is a voluntary process in which a neutral third party helps disputants reach mutually satisfactory solutions. The emphasis, according to the center's president, John H. Wolf, is to enable both parties to the dispute to negotiate a settlement each finds fair.

In contrast, in both formal litigation and in arbitration a third party arrives at a resolution and imposes it on the parties. The results of such proceedings "often are acceptable to one party, but totally unacceptable to the other," says Roger V. Stageberg, president of the Hennepin County Bar Association and a member of the center's board of directors.

The center's program for low-income people will use lawyers trained in mediation to help parties solve civil disputes, such as claims arising out of contracts or resulting from personal injuries.

Unlike similar programs in other parts of the country, the center's program will not be limited to minor claims, but will attempt to resolve major civil disputes as well. Minor disputes, Wolf notes, can be resolved informally and inexpensively in county conciliation courts and there is no need to duplicate their services.

The effort to provide mediation services for juvenile offenders has already begun with a pilot project in St. Louis Park, carried on in cooperation with that city's police department. Its emphasis is on solving conflicts and problems identified by the community rather than outside experts. Mediators will include not only lawyers and professionals experienced in working with juveniles, but also city residents whose main qualification is interest in serving the community.

The juvenile program, rare among American mediation programs, will focus on minor offenses, “status” offenses such as truancy and running away from home, and interfamily conflicts.

The county bar association’s interest in mediation grew out of the same concerns often expressed by Burger - the-high cost and delays inherent in the litigation process, and the resulting popular dissatisfaction with the judicial system.

"The bar association viewed this as an opportunity to make the civil judicial system function better for all elements in our community," says Stageberg.

The Northwest Area Foundation's grant to the center was part of its continuing effort to help support programs offering human services, one of several areas in which it makes grants.

The foundation was established in 1934 by Louis W. Hill Sr., son of James J. Hill, the builder of the Great Northern Railway. Originally called the Lexington Foundation, then the Louis W. and Mand Hill Family Foundation, its name was changed to Northwest Area Foundation in 1975 to reflect its growth and its commitment to the eight-state region that provided its original resources.

Curriculum committee changes courses, credits

New courses, new names for old courses, mergers of old courses to create new courses and additional credits for both required and elective courses, all were part of a package recommended by the William Mitchell Curriculum Committee and approved by the faculty.

The areas of estate planning and taxation were most affected by the curriculum changes.

An Estate Planning Survey will now be available as an alternative to the courses in Taxation of Gifts, Estates and Trusts and the Estate Planning Seminar. The new course in Gifts, Estates and Trusts represents a merger of Estate and Gift Taxation and Income Tax Trusts and Estates.

According to Prof. Douglas Heidenreich, chairperson of the Curriculum Committee, the changes in estate and taxation were prompted by a report from faculty members who teach in the area. The report reflected faculty concern that there was some duplication in the existing structure.

Under the revised schedule it is expected that students will be able to move more efficiently through the basic material and interested students could take more specialized courses at an earlier time.

Another change in the tax curriculum is the elimination of corporate tax from the basic Individual Income Tax course. According to Heidenreich, this change was a response to the desires of the tax

instructors, who felt that the amount of corporate tax that could be taught in the framework of the basic course was not enough to do anyone any good --and in fact, could be harmful by adding to the confusion at the end of the school year.

Corporate Tax will remain in the curriculum as an elective with a new survey approach, and will be increased from two to three credits.

The two individual courses in Wills and Trusts have been merged into a single three-credit course in Estates and Trusts. This change has created some problems for students who have taken Wills and desire to, but have not yet taken, Trusts.

"I resent the fact that in order to take Trusts I have to re-take Wills," said Heidi Crissey, a third-year-student who has taken Wills. "I think the administration should offer a wrap-up session in Trusts for those who have had Wills."

(The administration is considering offering Wills and Trusts one more time in spring semester.)

Heidenreich's response to this criticism was that there was advance notice of the merger of the two courses, and that Trusts was offered in the summer to accommodate students. "However," he added, "students should not be required to go to summer school in order to take a course they need. It was the understanding of the faculty that Trusts would also be offered in the fall for those who had taken Wills and wanted to take Trusts."

Another significant curriculum change involved dropping Agency and Partnership as a required course. According to Heidenreich, "'there was much discussion and a difference of opinion, on the part of the instructors teaching in the area, about the appropriateness of dropping the course as required."

He noted that the area had expanded and contracted over time, experiencing changes in credits as well as names.

"At one point Agency was a two-credit course, Partnership was at a two-credit course and Corporations was a four-credit course. The issue has been how much time should be devoted to teaching certain fundamental material."

Changes in the number of credits for both required and elective courses are also a part of the new curriculum.

Legal Writing was increased from two to four credits in order to reflect the time the course actually required. as well as to allow some expansion in the future, Heidenreich said.

A number of electives have been increased from two to three credits; these include Environmental Regulation, Labor Law and Public International Law. Law and Economics has been raised from one to two credits.

Heidenreich acknowledged that the recent trend toward more three-credit electives could create some scheduling difficulties in a system that has been based on blocks of two and four credits. "But as more three credit courses are made available they can be off-set against one another." He added that another difficulty in instituting the three-credit courses was the reluctance of some adjunct professors to teach two nights each week. It was primarily for this reason that some three credit electives meet for additional two-hour blocks every other week.

Loophole

Six-panel comic by Hal Malchow.

In the first panel, the dean of the law school speaks at a podium in front of faculty. He says, “Examinations are but one month away and as dean of this faculty, I want each of you to know that this year we intend to maintain the same high standards that have always marked the Simon Legree School of Law.

In the second panel, he continues speaking, “During the previous year, we broke record for ludicrous workloads, miserly grading, and mind-scrambling racehorses…not to mention scoring the nation’s highest attrition rate.”

In the third panel, the dean points and bangs his fist on the podium. “This year will be no different. Any faculty member caught engaging in straightforward examination, soft-hearted grading, bell curves, bonus points or any form of academic philanthropy will suffer the severest administrative recriminations!”

In the fourth panel, the dean looks down at his notes and says, “Of course, I am obligated to inform you that the 14th amendment due process clause guarantees all tenured faculty the right to adequate notice, fair hearing, and one appeal to an impartial tribunal.”

In the fifth panel, a chorus of voices come from the audience: “Whew! What a relief!!!” “You really had us worried, Blitzkrieg!” “I thought he was serious for a minute!” “Love that due process” “He, he, he, can’t touch me!!” “Had me going!”

In the sixth panel, the dean thinks to himself, “It’s tough to run a law school under the constitution.”

Equitable Relief

Editor’s note: Equitable Relief is a new regular feature that will attempt to answer questions posed by students, faculty members or staff. Questions should be left in the box outside The Opinion office or in the newspapers box in the Communications Center. We’ll get the answers-or tell you why we couldn't.

Questions must be in writing and signed by the writer. Please indicate that the question is for the Equitable Relief column.

Q: I am aware that there have been some administrative changes in the William Mitchell Library. Correspondingly as might be expected, there have been a number of policy changes. Many of these changes are, in my view, welcome, and, while I find others not so welcome, I am sure that they serve a legitimate purpose. There is, however, one change for which I have found no justification: the elimination of the smokers' area from the library.

Are you able to provide any information to suggest a justification of the exclusion of a smoker from using the area that was set aside for smokers? -John Robinson

A: According to Madeleine Wilken, the new director of the library, the library is not in conformance with American Bar Association requirements regarding the number of seats available to students. Since there will be an inspection of the library next spring, it became necessary to begin making changes now.

The smoking area had about 44 seats, which was out of proportion to the number of students using it. In addition, ventilation of the area was inadequate. For both those reasons, Wilkin said, it was necessary to open the smoking area to all students -and to ban smoking there.

Wilkin said she recognizes that "there should be a place for smokers especially at exam time," and she plans to provide such a place. By next spring, she said, she hopes to have found one or two spaces within the library area, with better ventilation, for smokers. In the meantime, she asks smokers to be patient.

Wilkin is moving her office to the microforms room in the library and will be available there as much as possible to hear student questions, comments or complaints. -Lea De Souza

Image

Photograph by Scott Harr. Madeleine Wilkin, Mitchell's new acting library director and a professor of law, held previous appointments at the University of Texas law library, Austin, and at Western New England College Law School, Springfield, Mass.

SBA seeks to shelve old library shelves

By Steven Patrow

Some shelves in the William Mitchell law library were manufactured to store tools – not the leather-bound tools of digests and law reviews, but tools to help maintain automobiles. These shelves are just like the shelves found in auto-parts stores; they have been installed to store books in the Mitchell library.

The Student Bar Association is planning to replace much of this improvised book shelving with modern, more eye-pleasing book shelves.

Paul Tanis, an SBA member and a student representative on the library committee, said the SBA effort to solicit donations for improving the library is still in its development stage, but he said he hopes to begin replacing book shelves within the year.

"This is just a first step in the plan to remodel the library," Tanis said. "We want to create a better study environment for students. We want students to be proud of this school; right now the library is a pit."

A reported prepared for the administration by a consultant to evaluate the library stated that the library facilities at William Mitchell are "ugly, unpleasant, uncomfortable and a hindrance to service and use.''

The SBA program to remodel the library will be funded almost entirely by donations from private sources and from alumni of the college, Tanis said. He said that no student funds would be used for the new shelves except for possible delivery or postal charges.

"We haven't raised any money yet," Tanis said. "We would like to get some of the law firms in the area to donate a book shelf to the school. They would be able to deduct the cost from taxes, and we would install a plaque on the shelf with the name of the donator on it."

Full replacement cost for new shelves were estimated at nearly $75,000, Tanis said. However, that cost will probably be reduced to $50,000 when deductions for the salvaged old shelves and discounts for volume buying are included, he said.

"When you consider the amount, $50,000 isn't a lot of money to spend to improve the library," Tanis said.

Associate Dean Melvin Goldberg said that the administration supports the SBA, but that there should be coordination between the administration and the SBA when soliciting possible support from outside the college. Goldberg said that in trying to get donations from private sources, the school must be careful not to overuse those sources.

Tanis said the SBA will not go ahead with the program until it had full administration support. He said that once the SBA receives official administration support the program to replace the shelves would only take two years.

"We essentially want to replace and add on where we can," Tanis said. "The new shelves will be more space-efficient and will allow us to put in more seating. Right now our seating capacity and shelf capacity doesn't meet ABA standards.''

The present library configuration could use shelf-space improvements, according to a memorandum prepared by the library director. The memorandum states that the library does meet ABA requirements, but that there is:

Inadequate seating and study space. While with the present configuration ... the Library is arguably in conformance with the AALS regulations, neither the spacing nor the location of our seats, nor the allocation of space at carrels and tables, meet the spirit of the AALS and ABA regulations.

The report further states that WMCL students prefer to use other schools' facilities when they can.

Tanis said that by installing the new shelves, the SBA hopes to create a library atmosphere students will enjoy. He said that a library is very important to a law school and that people look at the quality of the library when considering the quality of the law school.

"This library is not a good reflection of the school," Tani said. "I've had students talk to me about their concerns about the library. Our students should want to come here and study instead of going over to Hamline or staying home."

Goldberg said he thinks the school needs a new library and that air conditioning should be installed to cool the library. He said, however, that future development of library facilities must be considered by the development office and the board of trustees.

Tanis said the new shelves will mostly improve the aesthetics of the library, but they might also reduce noise in the library. He said the new bookshelves would be of the same design instead of the current arrangement of several types of shelves.

The effect of such a variety of shelving and its arrangement was another problem the library memorandum illustrated.

''The bookstacks throughout the library area are a motley array of different types," the memorandum stated. "The actual arrangement of the stacks. . .is irritatingly fragmented.''

Tanis said he hopes the new book shelves will eliminate some of those problems.

Image

Photograph by Scott Harr. The shelving throughout Mitchell's library are more often used for storing auto parts. The Student Bar Association has plans to replace them with shelves designed for libraries.

Labor law is key to Badger bar exam

Labor law was the decisive issue on the Wisconsin bar exam for 1981 William Mitchell graduate Terri Wagner.

Two and a half hours into the exam July 27, she went into labor. Bowing to the inexorable law she left the exam picked up her dentist husband, Thomas Kvandeck, and started looking for a Madison physician who would accept her as a patient.

By 11:45 a.m., she was at Madison General Hospital. Her seven-pound daughter, Liv Wagner Kvandeck, was born at 1:18 p.m.

That settled the labor law question. But it raised some other legal issues:

Will Wagner be allowed to retake the exam before the next scheduled testing date in July 1983?

Will she get credit for the four out of 12 essay questions she answered before she left the 1982 exam?

Or will she have to start the whole thing -- the exam, that is, and not the labor -- all over again?

"It seems to fall under the case of first impression,"' Wagner told the Wisconsin State Journal of Madison. "It's something that never happened before, so maybe they will make a special allowance in my case.

"On the other hand, one could argue that I knew my due date was only two and a half weeks away, and I just took a chance and it didn't work out too well."

Erica Moesser, director of the Wisconsin Board of Attorneys Professional Competence, which oversees the administration of the bar exam, was unable to supply the answers.

Later, however, Moesser was able to supply something else – a pair of rubber pants emblazoned with a drawing of University of Wisconsin mascot Bucky Badger They were gifts from the proctors at the exam, which was being held at the university law school.

Wagner had already passed the Minnesota bar exam when she and her husband moved to Washburn, Wis. Despite the proximity of her due date; she signed up for the two-day Wisconsin exam.

The onset of labor caught her not only in the middle of the exam, but also away from home and from her regular physician. "The thought had crossed my mind that something like this could happen," Wagner told the State Journal. "But I thought it would happen during the labor law question."

Students to get new exam numbers

For those students who have finally succeeded in committing their exam numbers to memory, a new challenge is waiting.

Beginning with the December exams, students will be using new exam numbers selected at random by the school's computer. The change is a result of concern on the part of some students that the old system, designed by an outside firm, was decipherable.

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