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Trial Ad Competition Gets New Name, Support

By Terry Hokenson

Trial advocacy competition at William Mitchell has recently acquired both a distinguished new name and a generous new benefactor, according to Professor John Sonsteng.

Sonsteng, in his sixth year as coach of William Mitchell's trial ad teams, announced that Minnesota Supreme Court Chief Justice Douglas Amdahl has agreed to lend his name to the annual competition. Henceforth it will be known as the "Chief Justice Douglas K. Amdahl Trial Advocacy Competition." Amdahl is an alumnus of William Mitchell and secretary of its Board of Trustees.

The Competition's new benefactor is St. Paul attorney Thomas J. Lyons, who has pledged $2500 annually to the program. Lyons is a graduate of Georgetown University Law Center, but became an enthusiastic supporter of the William Mitchell program, he said, because of all the lawyers he has met since entering practice in 1967 who are Willi.am Mitchell graduates.

"I respect them and therefore I respect the educational process that produces them," said Lyons. "I think the program is a real asset to our legal community and I'm proud of it," he said. "It's up to us who are in practice to encourage the faculty, students and staff who are involved in the program."

William Mitchell teams have won four out of the last five regional competitions, and have placed second and third in separate national competitions in the last five years. Prof. Sonsteng is understandably proud

of this record. "The quality of the trial ad students is incredible," he said. "I think it has to do with the maturity and the mix of our students. I think we're sort of special that way."

The program itself has also. been revamped to better accommodate new participants. The competition now has two divisions, one for seniors and one for non-seniors. Division I, called the Mary O'Malley Lyons Advanced Division in honor of Thomas Lyons' mother, is open to students who will graduate within 1 1/2 years.

The top four teams in Division l, each consisting of two students, advance to the regional competitions. The first place team will represent the college in the American Trial Lawyers Association (ATLA) competition. The second and third place teams will represent the college in the American Bar Association regional competition. The fourth place team will help the other teams prepare and will travel with them to the regional competitions.

The first place team in Division I will receive the R. Ross Quaintance Award, which was first awarded last year to Bill Cashman and John Skinkle. The top four teams in Division I will receive two academic credits.

Division l competition proceeds by a double elimination process. On Saturday, Nov. 1, each team tries its case on one side in the morning and on the other side in the afternoon. Each team that wins both trials goes on. The finals will be held Wednesday, Nov. 19, in Room 111 at William Mitchell. Everyone is invited to attend.

Division II is open to all non-seniors, including first-year students. The competition will proceed by the same double elimination process as in Division I but there will be no finals. The top four teams will be selected and invited to help Division I teams prepare for their finals. Seniors eligible for Division I will judge Division II teams.

The trial ad program has attracted the active support of many former William Mitchell competitors. Prof. Sonsteng and Dean Jim Hogg met with 16 of 22 former students who went to regional competitions under Sonsteng. Eight of them, all active trial or arbitration lawyers, have volunteered to coach and travel with the teams.

The competition dates are:

Division I

Nov. 1-1st and 2nd rounds

Nov. 8-3rd and 4th rounds

Nov. 19-Final rounds

Division II

Oct. 18-1st and 2nd rounds

Oct. 25-3rd and 4th rounds

Nov. 12-Final rounds

A brochure, rules and materials concerning this year's competition is available in the Law Clinic.

Image

Professor Eric Janus is Project Director for the Intensive Practice Clinic program

Intensive Practice Clinic is Launched

By Jon Weitzman

William Mitchell was-recently awarded a grant of $34,400 from the United States Department of Education to defray a large part of the expense involved in setting up a new and unique experimental clinical program for 3rd and 4th year students.

The six-credit, full-year Intensive Practice Clinic, which began this semester, gives students expertise useful in the general practice of family law, according to Professor Eric Janus. It is primarily designed for the majority of students who will start out in smaller practices where they won't have the resources for the extensive on-the-job training they might get in larger firms.

The course combines classroom and simulation with client clink work. The classroom and simulation portion covers such areas as psychology, social work, accounting, etc., and is being taught by Professor Robert Oliphant. This section may be taken separately as a two-credit Applied Family Law course.

The second component, limited to six students, consists of closely supervised representation of actual clients in family law matters. Linda Gallant, a graduate of William Mitchell with six years of experience in family law practice, is the supervising attorney for this portion of the course.

This new part of the clinical curriculum is unique in that, to the best of Professor Janus's knowledge, there is no other course offered by any other school in the Upper Midwest that has the intensity of focus of the Intensive Practice Clinic. It is part of the long-range direction of the clinic program to focus explicitly on general practice. Professor Janus sees it as the first step in sending people out into the field with general practice competency.

Image

Students and alumns socialized at Homecoming Sept. 12. Over 350 alumns attended, a 70% increase over last year.

SEXUAL HARASSMENT AT WMCL

An Update and Retrospective

By Charli Winking

On September 2 the Minnesota Office of Lawyers Professional Responsibility filed a petition with the Minnesota Supreme Court urging that disciplinary action be taken against Geoffrey Peters, former dean of William Mitchell, for alleged sexual harassment of female employees and students. The petition was filed nearly three years after eleven women employees, former employees and students filed a complaint with the Minnesota Department of Human Rights alleging sexual harassment by Peters and Michael Carlson, then treasurer and controller.

The usual procedure followed in discipline cases is for the Court to appoint a referee (usually a retired or sitting district court judge, according to Professor Ken Kirwin) to conduct a hearing on the merits of the petition. A recommendation for discipline is then made to the Court, to which the Board may concur or

make its own recommendation. The final decision is up to the Court, with possible sanctions ranging from disbarment to a reprimand.

The hearing, expected to be held in the next few months, will be the first time that the merits of the women's charges against Peters have ever been addressed in a formal and open way.

Whatever the outcome in Peters's particular case, it is significant that the Board has in effect determined that sexual harassment by the dean of a law school does violate Minnesota's ethical code for lawyers. The complaint notes that Peters's actions "had the purpose or effect of substantially interfering with his students' and employees' education and employment and creating an offensive educational and employment environment."

The final decision is up to the Court, with possible sanctions ranging from disbarment to a reprimand.

Also, whatever the outcome may be, unanswered questions will remain: How did the situation get to the point where a law suit was filed, costing the college an estimated $300,000 in a settlement and inestimable harm to its reputation? Why are some of the women still suffering emotionally 3 1/2 years later? More importantly, perhaps, could the same thing happen again?

Geoffrey Peters came to William Mitchell as dean in August, 1980, from the National Center for State Courts in Williamsburg, Virginia. In May, 1983 eleven women -employees, former employees and students -filed an internal complaint, alleging nearly 40 incidents of sexual harassment over the previous two years. The college asked Thomas Kane, an attorney with Oppenheimer, Wolff, Foster, Shepard & Donnelly, to investigate the charges. The firm represented the school at that time and James Oppenheimer, who headed the firm, was also a Mitchell trustee.

The complainants received a promise in writing that their identities would remain confidential, as a condition of their cooperation. At that point, according to the complainants, they wanted the harassment stopped, they wanted the school to adopt a procedure for dealing with allegations of harassment, and they wanted Peters to receive counseling.

. . . the Board has in effect determined that sexual harassment by the dean of a law school does violate Minnesota's ethical code for lawyers.

Some time in July, 1983 the attorneys reported that the women's complaints were groundless. One of the complainants says that she never saw the results of the investigation. However, in August, 1983; the women discovered that their names had been revealed to the college's administrators. They received a letter from the lawyers with "b.c.c." (blind carbon copy) typed at the bottom, showing that the letter' which contained their names, had been sent to the administration, The attorneys reportedly said that it was their recollection that the women orally waived their confidentiality.

It is really at this point that persons who were involved in the suit feel that the crisis point was reached. The women insist that they did not want to make the issue public. They feel they had attempted to cooperate with the Board, hoping to change the policies at the college.

However, one of the complainants says, they felt used. They felt that the attorneys and the trustees treated them as complete adversaries rather than as employees and students. "The board's attorneys jumped immediately into a litigation posture," she said. "I think any good faith effort to set up procedures, to begin talking . . . anything at that time would have been viewed positively."

The women insist they did not want to make the issue public. They feel that they had attempted to cooperate with the Board, hoping to change the policies at the College.

However, the six-month statute of limitations for filing human rights complaints was running, and the women felt that they were being stalled. Therefore, in October, 1983, complaints were filed with the Minnesota Department of Human Rights making the allegations public for the first time.

Professor Doug Heidenreich agrees that perhaps the situation could have been defused at that point. He, as well as the complainants, points to the fact that no internal procedures were available. Under the centralized administrative structure at that time the person to complain to was the person accused - Geoffrey Peters. In addition, no procedures were available to have an independent investigator available.

Heidenreich said that Thomas Kane, the lawyer who headed the initial investigation, was in effect a personal representative of the college. His impression is that the response of the trustees, assisted by Kane, was an attempt to stonewall.

"It was absolutely outrageous, like the Nixon White House," Heidenreich said. In addition, Heidenreich pointed out, Kane had to realize that he would continue to work closely with Peters in the future. Heidenreich does not feel that a fair and objective examination of the charges was attempted.

Peters continued to maintain that the women were merely disgruntled employees, angry about their termination of employment.

An attorney who was then an adjunct professor at the college says that he feels the trustees dismissed the women as "cranks and flakes " and simply "refused to believe that Geof Peters could do such a thing."

Whatever the reason, complaints made by eleven women were found to be groundless. The human rights complaint was filed and became public, and the press got involved.

"The board's attorneys jumped immediately into a litigation posture ... "

In November 1983, the Minneapolis Star and Tribune revealed that four former and current employees at the National Center for State Courts (Peters's former employer) had given statements to the women's attorney alleging sexual harassment by Peters during 1978-79. The board of trustees then appointed a committee to meet with Peters to review his ability to continue effectively as dean. One of the board members was quoted in the press as saying that Peters would not make the decision on his own.

Then, on November 6, Peters resigned as dean, saying that the allegations made it impossible for him to perform his job as dean, and citing pressures on his family by the "unceasing harassment by the press." Peters remained as a tenured professor and was granted an indefinite leave of absence.

Interestingly, it seems to be universally agreed that the role of the press in the case was extremely powerful. Heidenreich agrees. "There was absolutely no chance of anything ever happening without the press," he said. He felt that the coverage by the television stations and the print media, particularly Dave Anderson of the Star and Tribune, was critical in forcing the college to deal realistically with the~ problem.

Heidenreich noted that the members of the board and many of the faculty members seemed to be more concerned with the bad press the school received than in dealing with the merits of the charges. "However, I feel that a little sunshine is a good thing," he said.

The complainants agree. One of them noted that the women had attempted to work within the college for over five months, from May until October, and nothing happened. She feels that nothing positive was attempted to try to solve the problem until after the press became involved. She agrees that the constant pressure exerted by the media coverage was critical in forcing some resolution.

In March, 1984, the college reached an agreement with Peters. He resigned his tenured position, receiving $26,400 in salary for the remainder of the academic year. The school also paid his attorney's fees, $3,000 for employment counseling, bought his Summit Avenue house, and agreed to defend him against a lawsuit. He also took a job at a Twin Cities insurance company headed by a Mitchell trustee.

Under the centralized administrative structure at the time the person to complain to was the person accused…

At the end of March, eight women filed a $3 million suit in Hennepin County District Court, alleging sexual harassment and discrimination. Peters, Carlson, and Peter Hamilton, a professor, were accused of sexual harassment. Robert Oliphant, then associate dean, was named as a defendant also.

Oliphant was not accused of any harassment, but the suit alleged that he knew harassment existed and failed to act. The Oppenheimer firm was also named as a defendant for its alleged failure to keep the names confidential in exchange for information. The suit was settled in June, 1984, for an estimated $300,000.

The trustees issued a statement recognizing that the women "asserted their claims of sexual harassment in good faith," without directly conceding that a pattern of harassment existed. The trustees also hoped that the agreement would "restore any loss of compensation, dignity and reputation" suffered by the women.

In another statement as part of the settlement, Oliphant "vigorously denied" any harassment, but agreed to the settlement in the "best interests of the college."

Thus, over one year after complaints were first raised, after a cost of hundreds of thousands of dollars, national publicity and a great-deal of agony and suffering, the suit was settled.

Since that time the college has adopted a policy against harassment and procedures to deal with complaints. Elle Baudler, a 1985 graduate, was a student member of the committee which drafted the policy and procedures. She feels that the policy could prevent a repeat of the earlier situation if t}le people on the committee are careful and act independently. The complainants also must feel that it is safe to go to the committee, she says.

Baudler feels that the most important issue dealt with was the fact that no formal policy existed for making a complaint. "When someone is complaining of harassment by the person in control there is no recourse," she said.

Baudler felt that the procedures developed are intended to resolve disputes early, before the situation gets out of hand. The procedures also call for the appointment of an independent investigator, with no

ties to the school. In that way, she said, the investigator has nothing personal at stake, but can remain truly independent, thorough and objective in her or his assessment of the validity of complaints.

Baudler said that she felt the goal of the committee which drafted the policy was to encourage openness, and stressed that she hoped it would reassure students and employees that the school is a good, environment in which to word and study.

The human lights comp1aint was filed and became public, and the press got involved.

Prof. Kirwin, who also served on the drafting committee and is currently chair of the committee on sexual harassment and discrimination, concurred that a conscious effort was made to design the procedures in a way which would encourage both students and staff to utilize the process.

Kirwin stressed that students, faculty and staff are given equal representation on the committee, along with one alumnus or alumna. In this way, if, for example, a faculty or administration member is again accused of harassment, a student or staff member would be assured of having at least two peers hear the initial complaint.

Independence of the faculty representatives is also intended by having the faculty representative elected rather than appointed by the dean, as is the usual policy on college committees.

In addition, Kirwin said, it was informally decided to have only tenured faculty members elected to the committee. Again, this would increase the chance of independence, since the faculty members would not have to fear a negative tenure recommendation if a complaint was made against the dean or a faculty member who would be voting on tenure in the future.

Finally, the procedures provide for the appointment of an outside investigator, paid for by the trustees. The names of the current investigators are posted on the board outside the dean's office.

The policy contains a strong statement condemning sexual harassment in any form, and protects any complainant from retribution arising from the filing of a charge. The trustees approved this policy in August, 1984.

According to Kirwin the policy has not yet been utilized. Any speculation on its effectiveness is premature. He encourages all students, faculty and staff members to become familiar with the policy and procedures (printed in the student handbook) and stresses that a real attempt has been made to ensure that there is now a neutral forum to provide an early and open resolution, preventing the situation from growing too far out of control.

Kirwin feels that it is easy to see the board’s mistake in retrospect but believes that the trustees acted in good faith. He said he is unable to address the merits of the earlier investigation conducted by the school’s attorneys. However, he assured that in the future any investigation will be conducted by an independent investigator, knowledgeable in the area of sexual harassment and without ties to the college.

Heidenreich agreed, assuming that the new procedures work as written, that an objective evaluation early on could have prevented the issue from becoming public. He said that he has no confidence that the board of trustees or the executive committee would react differently, even now. Therefore, he feels that independent action would be the key factor.

The effects of the ordeal remain, however, in other ways. One of the complainants says, “I still have nightmares and dreams about it. I think everyone is still affected in some way. The stress still has a big effect on all of us.”

Heidenreich also said that he feels some deep rifts developed among the faculty, which still remain. He said that there is no overt animosity, and does not feel that the attitudes affect the operation of the institution in any way, or affect positions taken by people on other issues. However, he said he has no respect for some people any longer, and that obviously affects his personal relationships with them.

. . . It seems to be universally agreed that the role of the press in the case was extremely powerful.

One student, who was active in the Support Committee Against Sexual Harassment (SCASH) said that it was a big disappointment that only about five or six faculty members spoke out publicly, urging the school to conduct an investigation and search for the truth. She said she was personally disappointed especially because none of the faculty who spoke out were women.

She felt it was important for people to join together under the circumstances to demand that the school act to discover the truth and then deal with it. Only in that way are the best interests of the college truly served.

Heidenreich feels that many of the faculty members simply did not want to be bothered with the emotional and time-consuming hassles involved. Others, he said, were probably playing the odds, betting that Peters would prevail and deciding to stand by the person who signed their prospects for tenure. Many also had personal friendships with Peters.

Still others, he feels, in good faith relied on the trustees to handle the situation. They assumed that an investigation would be undertaken and an objective assessment would be made.

Whatever the final determination may be at Peter’s disciplinary hearing, the wounds inflicted on the participants on both sides and on the college are slow to heal. The damage inflicted can never really be undone. Even discussing the issue again will probably arouse some cries of outrage over dredging up old scandals.

However, the board has approved what appears to be a very strong and potentially effective policy, which should prevent a recurrence. Ideally, heightened sensitivity to the problem of sexual harassment at work and at school will also assist in prevention. But the policy and procedures will only work if they are utilized, and awareness of the procedures are a critical first step.

Steenson Named Reporter for Tort Reform Committee

By Jon Weitzman

William Mitchell's own Professor Mike Steenson was named Reporter for the Special Committee on Tort Reform, American Bar Association's Litigation Section, in August. Tapped for the prestigious position by Marc Whitehead, Chairman of the Committee, Professor Steenson will be responsible for drafting the report once the Committee completes its study. The final report is scheduled for release on October 9th.

The Special Committee on Tort Reform, composed of private attorneys from all over the country, has set for itself the task of making recommendations for comprehensive tort reform. They are studying the impact of reform in five major areas:

1. caps on 4amages, including the possible conversion of punitive damages from extra payment to the plaintiff (windfall?) to a fine payable to the state (to be given to charity);

2. proposed elimination of joint and several liability;

3. regulation of attorney's contingency fees;

4. uniform statutes of limitations; and

5. alternative dispute resolution.

Professor Steenson said that all fifty states have instituted at least some level of tort reform in some of these areas. For example, there are approximately twelve states that have either abrogated or limited joint and several liability. The study is to determine which of these and many other suggested reforms will be most useful to Congress and the judiciary. It is the hope of the Committee that the Report has a positive impact on this important area of the law and that its recommendations are heeded in determining the future of tort reform.

The staff of the Opinion wishes Professor Steenson sincere congratulations and the best of luck in this important, additional work he is taking on.

Image

Photograph of Professor Mike Steenson

COMMENTARY

This Bus Is Not De Minibus

This issue of the Opinion is being mailed to 5000 graduates of William Mitchell, courtesy of the Alumni Association. We hope to be able to continue to reach the alumni by increasing our advertising sales. Our circulation will increase from 2000 to 7500, while our rates will remain the same.

Our goal is not simply to grow in size. We hope to play a role in knitting together the past and present members of the William Mitchell community. We'd like to help alumni feel more in touch with the College and with us, its present body of students, faculty, administrators, and staff.

As we try to catalyze the formation of a sense of common purpose among those of us who are here now studying, teaching, working, growing, questioning-not to say struggling, hoping, sweating: engaging all human emotions-it makes sense to include those who have gone before us. Of course we are not alone in this quest.

What makes William Mitchell College of Law the vital place it is, is the synergy of able administrators, talented teachers, dedicated staff, and our students, with their remarkable mix of ages, cultures, races, sexes and life experiences. And certainly our common focus-the law-adds a peculiar potency to the atmosphere.

We are diverse in our personal quests and we are usually submerged in them. But we are in a specially advantageous position here to step out of our tunneling for a moment and to make something of the

fact that we are creating the world we live in, the world that those who come after us will inherit. It matters that we think of this now.

Whether we realize it or not, we are leaving a legacy in our present pattern of action and inaction. Whether this legacy is a maze of independent careers or whether it is a network of both private and common quests is the issue.

Regardless of the disparity of our individual purposes, all of us should participate in the shaping of the common enterprise we call William Mitchell. Why? Because we all benefit from those who have done so until now, and because we want those benefits to continue. Furthermore, we expect those benefits from others, so we should recognize a reciprocal duty to give them to others.

Isn't it ironic when the law, which has in our form of government so fundamentally a public purpose, is narrowly regarded by its students in terms of their private careers? Is it right that competition should be so apotheosized as to relegate, cooperation to the mean confines of interest groups and cliques?

Some of us remember twenty years ago when students demanded seats on the college and university committees which governed the educational process and were considered radicals. Now student seats on such committees at William Mitchell go begging for takers. Where is the competition when it comes to community service?

Students should not let fear of imagined adverse repercussions suppress the urgings of their intuitions of justice. These intuitions should instead be exercised and developed. If, after the legal and factual intricacies of a contract case have been dissected, you find the outcome simply unfair why not say so? Most likely you will express the feelings of dozens of other students, and a spirited discussion will ensue. Most professors welcome this kind of spontaneous challenge. Two or three students willing to push beyond the programmed lessons can transform an entire law course, creating an esprit where there was none before.

Suppose you have ideas about how an entire course should (or shouldn't) be taught or graded. Write an open letter in the Opinion! Write a memo to the academic affairs committee! Talk to the professor! Sound your ideas out with other students or professors. Don't assume, just because your ego has been crushed between the wheels of first-year law courses, that you can't think a valid thought about how law can better be taught. Scores of people like you have said nothing in the past, so nothing has changed.

I’ve got an ax to grind on that note. I think certain skills-oriented courses like Trial Ad, Civil Practice, and Alternative Dispute Resolution should be graded pass/fail. Students in these courses should not be distracted by the anxiety associated with letter grades. Some students come to these courses with natural talent or prior related experience. Why not encourage others to benefit from their example, instead of being hampered by anxiety about how they will compare? Less-experienced students may learn a hell of a lot by their mistakes, yet their grades may not reflect their learning as much as their mistakes. On the other hand, the grades of more experienced students may reflect less what they learned than what they brought into the course.

Recalling the public purpose of the law, we should also recognize that an institution of legal education has a duty to advance the healing of historic injustices and the growth of an inclusive society. This duty is especially sharp when the issues are joined in its halls. If virtue can be taught, the lesson of William

Mitchell's sexual harassment scandal three years ago was that virtue may be taught with much pain. The College now has an exemplary sexual harassment policy in place.

The College also recognizes its responsibility to address the issue of historical racial injustice, as its efforts to recruit -minority students show. We must at the same time, in all humility, recognize that the task is a fearsome one and our response inevitably tentative and flawed. Even to speak categorically of "minority students" threatens to perpetuate the historic tendency of the dominant culture in our society to efface the distinctions of personal and cultural identity which make each "minority" person an individual.

The College must push on courageously, sensitively, creatively, with strong affirmative action and appropriate follow-through. It is not a matter of guilt or atonement, personal or collective. It is a matter of responsibility to the future, personal and collective.

Part of this responsibility entails a harder look at William Mitchell's relationship to the community which surrounds it. We can and must do better than institute defensive measures against perceived threats of violence. Couldn't those $1600 parking spaces be more creatively invested in the neighborhood, perhaps in scholarships and services? Isn't our relationship to the immediate neighborhood more than a peripheral geographic fact?

The personal quest for a good legal education thus flows into and out of a common quest for the same, and both of these flow into and out of the public quest for justice. If we who are the present inhabitants of these halls are thus to expand our perspectives horizontally, we must also expand them vertically, in time. To those who have gone before us, we are the future. Yet you who have preceded us represent the future to us, as models of practicing lawyers and as providers of support and encouragement. Alumns, we need you.

-Terry Hokenson

Image

Opinion staff (left to right): M. J. Dempsey, art and production manager; Terry Hokenson, editor; Charli Winking, associate editor; Paul Motin, business manager; Jon Heitzman, associate editor.

OPINION WINS ABA/LSD AWARDS

The staff is proud to announce that the opinion won three national awards in the 1985-86 ABA/Law Student Division law school newspaper competition.

In Category I, Entire Newspaper-Reporting Over the Year, The Opinion was runner-up to a first-place tie between the University of Chicago Law School and Brooklyn Law School.

Associate Editor Charlann Winking’s editorial entitled “Racism and the Law,” published in the April 1968 issue, took first place in Category 6, Editorial on Brader Aspects of the Law.

Finally a Cartoon by Tim Helgeson (reproduced on this page) took runner-up in Category 7, Editorial Cartoon on Internal Law School Affairs. Over fifty law schools participated in the competition.

Image

Single panel cartoon depicting Ronald McDonald behind a counter, handing out meals to a line of students dressed in graduation caps and gowns. Caption reads, “I know you’re disappointed in not graduating the Ordway, but just wait till you taste your Happy Meal.”

Used Exams Made Available

The following policy regarding the availability to students of used exams was recently proposed by the Student Board of Governors and approved without opposition at a faculty meeting on Tuesday, Sept. 16, 1986:

"All final exams [shall] be made automatically available to the Student Bar Association, for distribution to students at cost, in the following manner:

1. An extra copy of each course examination will be made by Copying Services and turned over to the Dean of Students or his/her designee;

2. The exam copies will be kept in a secure place until all tests and makeup tests are given;

3. After all exams are given the Dean of Students or his/her designee will release the exam copies to the S.B.A. President or his/her designee;

4. The S.B.A. will then make the exams available to the student body at the cost of making a copy;

5. Any faculty member, full-time or adjunct, may prevent the distribution of his/her exam by notifying, in writing, the Dean of Students of his/her wish to withhold the exam;

6. Such notification is an affirmative duty and must be done with each exam;

7. If an exam is to be withheld, no reason need be given -it is entirely discretionary."

VIEW FROM THE TOWER

New Standards of Student Academic Progress Are Needed

By Prof. Doug Heidenreich

Throughout the period of my law school teaching I have increasingly questioned the usefulness of our ostensible academic standards of student retention. In other words, I wonder why the law school should kick anyone out for failure to pass courses or to achieve any particular grade point average. I believe that William Mitchell College of Law should do away with its retention role and adopt a different system.

What are we trying to do in legal education? Although the small minority of law teachers that have thought about that basic question hold conflicting views, I will indulge in a fundamental assumption: we are trying to train students to be morally decent, imaginative lawyers who will work for the common good using technical kill that they develop in law school.

In training students with this goal in mind we must satisfy ourselves that each graduate has a basic set of kills and a body of knowledge that will enable her to be a "good lawyer” in the broadest sense. Therefore we should not graduate any student that has not mastered these core skills and developed this body of knowledge.

We purport to believe that every William Mitchell graduate must know something about contract law and tax law and several other fields of legal theory. We do not, however, require our graduates to demonstrate an adequate grasp of each area. If a student gets an unsatisfactory grade in the Property Law course we say, "Oh well, if he can counterbalance that with a higher grade in say Family Law, then it's O.K. We will graduate that student even though he has not demonstrated that he has an adequate grasp of Property law." This is wrong. It does not then follow, however, that we should dismiss students who get off to a rocky start or who don't grasp the arcane intricacies of the Uniform Commercial Code the first time around.

We make a second crucial assumption: we act as if a student's performance on the final exam in a course demonstrates the degree to which the student has mastered the skills and accumulated the knowledge that we consider critical to a basic understanding of the subject area. We privately admit that a student can have a bad day or that an exam may be, at least in part, deceptive or too narrow in scope or otherwise a poor exam-one that does not measure the thing that we claim it will. Nevertheless practical consideration compel us to indulge in the presumption that the exam always does what it is supposed to do for all students.

We sometimes say that a student that does not achieve a cumulative grade point average of a certain level doesn't have the stuff to be a good lawyer, but we don't believe it. We all know that some students – indeed most students – that do not achieve the necessary grade point average are given at least one more try. The "double immersion" program that the faculty adopted last spring is ample proof that the faculty has little fait in this third assumption. We realize down deep inside that different students learn at different speeds and in different ways.

I suggest that we do away with the retention standards and substitute the following system. Each graduate should demonstrate by achieving at least a C-grade in each required course that she has at the least marginal degree of skill and knowledge necessary to a fundamental understanding of the subject matter. If a student writes an exam that generates a grade below the required minimum, that student should take the course again as many times as necessary to reach the C-level in that course. No student should be allowed to take another course, a prerequisite for which is a course in which the student has yet to achieve at least a C-grade.

Students taking non-required courses should achieve a grade of C in those courses in order to get credit but students whose grades fall below that level in a non-required course should not be compelled to repeat the same course. Thus under this proposal if Torts is required a student must take the Tort course until she achieves a satisfactory grade and cannot take a course for which Torts is a prerequisite – Products Liability, for example – until she does so. However, if the student gets a D in Remedies, the student would get no credit towards graduation and could either take remedies again or take another 2 credit course.

When a student achieves satisfactory grades in all required courses and in a prescribed number of credit hours of nonrequired coursework the student should be graduated. If some prescribed period of time passes, perhaps six years, and the student has not achieved the necessary grades the student should then be dismissed because it would be economic exploitation to allow a student to continue under circumstances that demonstrate that whatever the reason, the student is highly unlikely to complete the work for a degree.

Ideally this system should be coupled with a reduction in class size and a closer interaction between students and faculty but it makes sense even under present circumstances.

Does this proposal violate ABA Standard 304(c) that says that a law school shall not retain a student when the student's "inability to do satisfactory work is sufficiently manifest" that allowing the person to continue would "inculcate false hopes, constitute economic exploitation, or deleteriously affect the education of other students"? I do not believe so. The time limit should take care of that problem. In any case, application of our current standards subjects us to the same criticism.

Would this system make class ranking more difficult? Probably. So what? If it makes sense, administrative convenience should not dictate whether or not we adopt it.

I solicit responses in the form of oral or written comments to me but better still in the form of letters to the editor or articles in this publication. Let's get serious about what we are doing here.

Uniform Uniform Code?

By Patrick O'Donnell

White shirts. Dark suits. Neck ties. Shined shoes. Trimmed hair. Briefcases. Raincoats. Shoe rubbers.

"They all look the same," I thought, looking over the second, third and fourth year students I passed in the stairwell that first night of classes two years ago, "Am I going to have to look like that too?," I wondered, resistant at the thought and uncomfortable with its probable inevitability. "It's the uniform," I reluctantly acknowledged, "as well as its wearers."

Such was the impression stamped on me by my first weeks of law school. Moreover, I'm certain I am not the only law student who has pondered the transition into the legal profession and the habimentary trappings one must gather along the way. For while many students begin school as suit-and-tie professionals, just as many do not. A simple look around a first-year classroom points out this fact: compare the number of suit-coated students with the number of blue-jeaned students. The ratio is probably roughly 3-1 in favor of the blue-jeaned. Likewise, a look around a second or third-year classroom will show how the ratio gradually changes, until in the fourth year it is proportionately reversed.

Many students welcome the change. The new attire is seen as new prestige and the first step down the road toward five and six-digit incomes. Others, however, resist donning the new uniform and projecting the lawyerly image associated with it. This latter group, usually comprised of stubborn non-conformists, uses several tacks to resist surrendering independent identities while concurrently retaining professional credibility:

1. Avoid white shirts. Wear blue, yellow, light brown, striped or plaid shirts. Do not wear black, tie-dye, paisley, western or sequined shirts.
2. Avoid vests. Wear a vest only when necessary, such as when appearing in court. Do not wear denim, down or Coast-Guard-approved vests. Do not string watch chains across your belly.
3. Avoid three-piece suits. Wear a sports coat with complementary trousers or pic up a pre-1960s suit at a garage sale. Do not wear polyester leisure suits or all-white (Mark Twain-Steve Martin type) suits, and do not pull your coat sleeves up to your elbows when in court. Never wear studded amulets.

4. Avoid wingtips, oxfords and slip-on loafers with tassels. Wear boots, tennis shoes or canvas shoes. Do not wear duck shoes, moon boots or trendy sandals during winter.
5. Avoid conventional brief cases. Find an old leather briefcase – the more it resembles a saddlebag, the better the find-or use a bookbag, backpack or small suitcase. Do not use baskets, shopping bags or retired mail carrier bags.
6. Avoid off-white raincoats. Contrary to the prevailing view among prospective attorneys, owning a raincoat is not a prerequisite to bar admission. Avoid raincoats with too many buttons, belts, buckles or anything that takes more than seven minutes to put on. Do not wear Army surplus ponchos, yellow vinyl hooded raincoats or carry a see-through umbrella adorned with Flintstone or Jetson characters.
7. Pierce an ear. Be discreet here. Wear a diamond stud post, a god bead, a small ring or something similar. Do not wear dollar signs, swastikas, dangling colored hoops or cutesy plastic costume jewelry.
   8. Cut or grow hair. Wear hair shorter or longer than the norm. Rule of thumb: get no haircut that requires a blow dryer. Do not spike, spray paint or Mohawk-cut hair, do not shave your head, and do not grow hair so long that it must be parted to sit down.
   9. Grow facial hair. Wear a beard or mustache. Do not braid things into beard, and do not grow handlebars so long that they endanger those around you when you tum your head or grow them beyond a length which requires tucking them behind the ears.

Actually, the best advice way to maintain your individuality is to disregard points 1-9. Be yourself. Sidestep concern over outward appearance, and bespeak your character through words and action. Just because one wears be required uniform, it does not follow that one is required to become uniform. Uniforms need not shape the wearers within them. Keep your values, your ethics, and keep the rest of the world guessing.

Image

What is going on here? 1) Author has overdone facial hair; 2) first-year classes have turned a student's head around; 3) the shirt pockets are missing.

THINK, AMERICA

The whole is equal to the sum of its parts.

Which part am I, America?

Am I the part which fills your nightmarish

Dreams as you sing "Hail to the Chief”?

Do you gasp at the thought that your

Daughters of the American Revolution

Have become part of my revolution?

Do you fear the time when flesh colored

Band-Aids will match my flesh?

As you scream,

Send them back!,

Think, America.

Think of your garbage piling up.

Think of not seeing your face in freshly

waxed floors.

Think of writing letters of complaint and

Stuffing them into over-stuffed mailboxes.

Think of what to do with your busing

Plans and Bedford Stuyvesant, Black Bottom

And whole cities.

Think of the problems of finding new niggers.

Think about what to do with liberal whites

And the new status of Indians.

Think about the problems of identification.

Think about the N.B.A. and about your role

In the Olympics.

Think about whose back you have built

Your economic status on.

Think the slaves

Think the shit work.

Think the rent paid by shit working people

Think your dependence on shit working people

Think the foundation

Think survival

Think America

Which part am I

America?

Think

-L. Ivory Giles has lived and worked with youth in neighborhoods around William Mitchell for many years. He performs many of his poems to jazz accompaniment. “Think, America” comes from Mr. Giles book, Songs from my Father’s Pockets, published in 1982 by Shadow Press. Reprinted by permission of the author. ©Llewllyn Ivory Giles

SALSA Welcomes New Students

By Susan Aasen

Members of the Spanish-speaking American Law Student Association (SALSA) conducted their first meeting of the year in early September. This meeting was held to introduce first-year minority students to numerous upper-class persons representing Hispanic, Philippine, American Indian, and Black interests. Visitors included Michael Martinez, attorney and U of M alumnus; Joe Gonzales, La Raza Legal Alliance member and Hispanic community advocate; and Professor Andrew Haines, WMCL faculty.

Luis Caire, former SALSA President, facilitated the meeting. He expressed dismay about the lack of a strong Hispanic presence. He indicated that several Hispanic students were around last year for SALSA benefits and hoped that they would return services to those who need help.

SALSA is entering its second year of a continued effort to provide academic and cross-cultural support to minority law students. Students who attended this most recent session received practical suggestions about balancing educational and personal needs. This session served as a vehicle for minority students to discuss common concerns, fears, and disillusionment. A dominant topic was the subtle, sometimes overt, racism and stereotyping occurring in legal institutions.

One student shared her difficulty in adapting to mainstream legal analysis. Legal issues highly sensitive to a minority person interfere with the thought process and progress with classmates. It was pointed out that, by the time a minority student gets through the emotional trauma and internalizes the, rage, much of a minority person's energy is wasted. Thus, there is little energy left to follow class discussion.

Students were encouraged to maintain a cultural support group and network with those people organized to provide constructive assistance.

SALSA’s ongoing support services include a legal writing tutor and mentors for first-year classes. Attorneys from local firms are donating their time in support of this effort.

BOOK REVIEW

A HISTORY OF AMERICAN LAW

Lawrence M. Friedman

A Touchstone Book, 781 pp.

Paperback, $18.95 Reviewed by Steve Eide

Journals, casebooks, legal briefs, courtroom transcripts, legal commentaries, books about famous judicial figures, histories of the Supreme Court-the law generates a lot of paper and ink. But amid these mountains of pulp no one but Lawrence Friedman has ever written an entire history of American law.

Friedman's first history, published in 1972, has recently been revised and reissued. The book ranges from colonial law to the 1980s and is recognized as a monument of one man's scholarship. But in chronicling the law's history, Friedman also chronicles the class, race, and sex bias found in history.

A long colonial period preceded the 1776 Declaration of Independence, a time when courts more resembled committees or boards of directors than today's courts. Colonial courts not only meted out punishment for the occasional sin, drunkenness, fornication, or for taking a canoe without permission; they also ordered canals built and guard watches set.

Not only do such primitive proceedings seem distant from the contemporary judicial system but, this late into ever-increasing corporate power, it's hard to imagine the U.S. as a revolutionary country. But it once was, and after overthrowing the king's army, many revolutionaries sought to overturn the king's law also. After the French revolution, Friedman states in the second chapter, some liberals advocated adopting French civil law. Some advocated starting completely over, abandoning English common law "in favor of natural principles of justice." No one quite defined or drew up "natural principles of justice," but the revolutionary ardor that desired such a system is evident.

The influence of English law was large and never completely abandoned, if only for the mundane but practical reason that it was the only law Americans knew. What's more, many of the revolution's heroes, like Thomas Jefferson and John Adams, were lawyers trained in English law. But whether the founding fathers did or didn't want to break cultural ties to England, there was no reason to emulate the mother country's complex judicial structure. An older culture, with feudalism's vestiges lingering, England has over 100 courts: courts for nobility, church courts for family and inheritance law, admiralty courts, merchant courts, courts for mines, and on and on.

America also differed from England in another huge way-land. Land-scarce England conferred rank, privilege, coats of arms, and even divine sanction to the powerful land-owning nobles, but this country had land, land, land from the Atlantic to the Pacific littoral, land available to those whose blood wasn't blue. Unlike England, where land transfer involved labyrinthine legal procedure, with odd names like feoffment and livery of sezin, the U.S. developed simpler, standard forms of legal transfer.

Friedman calls easy land transfer one of the innovations of American law. Of course women couldn't own property, a social restriction that Friedman credits with leading to another major innovation - the trust fund, a strategy available to the wealthy. If property couldn't be willed to wives or daughters in fee simple, it could be willed to a man along with specific provisions on how the property be used for the woman's benefit.

Images of the past linger in contemporary thought. Perhaps the idea that anyone willing to work hard can succeed arose during those land-plenty times of the past. Not only was land more available, but on the frontier where standards weren't and couldn't be as high as the East, careers in everything, especially law, were more accessible. In Green Bay, 1816, Charles Reaume acted as justice of the peace on the basis that "he could read and write a little."

In his court, it was said, "a bottle of spirits was the best witness that could be introduced." Once, when the losing party scraped up some whiskey for the judge, Reaume ordered a new trial and reversed his prior decision on the strength of this "witness".

In a chapter called "Outposts Of the Law", Friedman presents a colorful cast of pistol and knife-packing attorneys and judges, as well as dueling lawyers and criminal lawyers-the latter meaning that the lawyers were crooks. While Friedman makes clear that there was legal talent on the frontier, and that many ambitious lawyers flocked West to prosper in lucrative, honest work, he also fully presents the scrounging of lawyers on the make, and how legality blurred into legality. He quotes Joseph G. Baldwin who wrote about these times.

And such a criminal docket! What country could boast more largely of its crimes? What more splendid role of felonies! What more terrific murders! What more gorgeous bank robberies! What more magnificent operations in the land offices! .. Such superb forays on the treasuries, State and National! And in INDIAN affairs! ... the romance of a wild and weird larceny . . . Swindling Indians by the nation! Stealing their land by the township! ... Many members of the bar, of standing and character, from other States, flocked in to put their sickles into this abundant harvest.

So much for the frontier, but back East the class structure was rapidly solidifying. In the late 19th-century, Friedman writes in "Judges and Court", the judges were "lily-white" and represented old America. They were educated in traditional ways, and they lived out their careers in a general environment that exalted the values of American business (though not necessarily big business). From 1776 to 1891, each New Jersey chief justice, with one exception, was Protestant.

Outsiders eventually scratched their way into the profession, but the scratching was long, hard, and occasionally VICIOUS. Mrs. Myra Bradwell, married a to lawyer, studied law and passed her examination. In 1869 she tried to gain admission to the Illinois bar but was denied. She and appealed and lost, but the legislature allowed her entrance several years later. And many old-line lawyers, Friedman writes, weren't happy about Celts, Jews, and other "undesirables" aspiring to the profession. He quotes a lawyer named George T. Strong who makes an 1874 diary entry, writing that Columbia Law School should make admission harder, "either a college diploma, or an examination including Latin. This will keep out the little scrubs (German Jew boys mostly) whom the School now promotes from the grocery-counters . . to be 'gentlemen of the Bar'."

A history of American law naturally entails a mass of details. But the pacing is well-handled, Friedman's prose never bogging down under the maze of legal and historical minutiae. There are occasional stylistic touches, as when he describes America's industrial revolution: "The modem law of torts must be laid at the door of the industrial revolution, whose machines had a marvelous capacity for smashing the human body."

Despite the body-smashing talent of the machines, for decades workers had no recourse to personal injury suits against employers. Using borrowed English doctrine, where the industrial revolution occurred first, American judges adjudicated in favor of enterprise, their idea of progress, and against workers. It was horrifying to think, Friedman writes in "Torts", that railroads and businesses should take on the role of providing pensions for the widows and orphans of men killed at work. But this attitude began to wobble toward the end of the 19th century.

Politically, the rage of the victims counted for very little in 1840, not much in 1860; by 1890, it was a roaring force. Labor found a voice and agitated in every forum for protection . . . . The law of torts was therefore never a perfect engine of oppression. It was an imperfect instrument from the start, showing symptoms of its own mortality.

Labor received the same shabby treatment regarding union organizing. In a chapter entitled "Administrative Law and Regulation of Business", Friedman chronicles the rise of the guilds. Doctors, nurses, barbers, plumbers, pharmacists, even embalmers banded together to drive out marginal competition and maintain high fees.

On the plus side, guilds promoted professional standards. But one wonders what standards "19th-century barbers maintained long before styles, shaped perms, blow drys, and ph-balanced shampoos. Friedman suggests that white middle-class judges were sympathetic to the aspirations of other white, middleclass professionals, and the judiciary accordingly granted them the right to organize. But the thought of labor forming its own organization filled their minds with as much horror as all the phantasms and terror of an Edgar Allan Poe story.

Friedman uses the occasional metaphor. He compares law to geological formations, with new laws piling upon old ones, different influences -French, Latin, British common-law -accruing, pressing, displacing. At the end of the book, he compares the law to a mirror, a mirror that reflects the wishes, needs, plotting and irrationality of society's individuals and interest groups. And the judiciary, like society, renders injustice, partial justice, and justice and will continue to do so, he says, until society changes.

Other areas, mentioned in the book include race and poor laws, crime and punishment, the rise of law schools, the rise of corporations, and railroads. In all the areas and time periods, Friedman discerns a tension in the law, straining between supporting the status quo and society's need for progressive change. "Often, when we call a law "archaic", we mean that the power system of its society is morally out of tune," Friedman writes. And he's given us many examples of law eventually changing, in land, labor, torts. The fact that laws and institutions can eventually change when their usefulness, or lack of it, is outstripped by society's need for change is a nice reminder in today's political climate.

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