

A**FTER** his journey to America in the 1830s, Alexis de Tocqueville wrote, "There is hardly a political question—in the United States that does not sooner or later turn into a judicial one."

Today, if the French philosopher's ghost were making a return visit, he would likely observe, "There is hardly a question—of any nature—in the United States that does not sooner or later turn into a judicial one."

Across America, legal scholars and experts warn that the nation's system of justice is strangling on its own costliness and complexity. Chief Justice Warren Burger, former Attorney General William French Smith, and Derek Bok, president of Harvard University and former dean of the Harvard Law School, agree that the country suffers from too many laws, too many lawsuits and too many legal entanglements.

At UMC the Center for the Study of Dispute Resolution was created last year in an effort to help rectify the system. By forming the center, UMC became one of the first universities in the nation to establish an alternative dispute resolution program. But the impetus for starting the program, and others like it, has been building for years.

In 1984 the number of civil suits filed in federal courts was double the number filed in 1975 and more than four times the number filed in 1960, greatly outstripping population growth. The corresponding effects of this lawsuit binge are staggering. In Los Angeles County superior court, for example, litigants face a five-year delay, due in part to a 72,000-case backlog.

And while litigation has soared, court and legal fees have kept pace. A 1984 Rand Corp. study of thousands of asbestos-related lawsuits shows that only 37 percent of the expenses and compensation paid by defendants and insurers went to asbestos victims. The other 63 percent went to pay litigation costs.

In every segment of society, interest in alternative methods of preventing and resolving disputes is flourishing. Numerous organizations representing business, government and dispute resolution professionals have entered this field in the past few years.

At UMC the major goal of the Dispute Resolution Center is to promote "more effective, efficient, just and humane methods of preventing and resolving disputes."

"There's a lot wrong with the current system of legal services and courts," says the center's director, Leonard Riskin, who believes lawyers can go a long way toward deflating the courts' swollen caseloads. This can be achieved, Riskin says, by a more



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UMC's DISPUTE RESOLUTION CENTER: Justice Outside the Courthouse

By JIM KELTY

pervasive use of non-litigating methods of dispute resolution, such as mediation and arbitration.

I**N A MAJOR** curriculum innovation, the center is introducing alternative dispute resolution instruction in all of the Law School's first-year courses. "If this kind of instruction is going to have any impact on law students, it has to begin in the first year,

and it has to be part of the courses the students and teachers take most seriously," Riskin says.

By learning alternative skills, Missouri's law students are learning to steer clients away from the costly litigation jungle—except in cases that warrant formal treatment.

This kind of multifaceted lawyer will be crucial in the future if the nation is going to return to an era when courtroom dockets were not miles long. As legal scholars point out, many of today's court cases involve disputes that would have been settled by less formal means 20 to 30 years ago. But in recent years, an outpouring of new laws and judicial decisions has expanded the rights of individuals and, in turn, caused a lawsuit

avalanche. With employees suing employers, students suing teachers, taxpayers suing bureaucrats, children suing parents and friends suing friends, disputes that used to be resolved inside families, schools, community groups and churches have spilled over into the legal arena.

A large percentage of these conflicts, Riskin says, can be more efficiently handled through methods such as mediation.

THIS METHOD involves the use of a third party neutral who, without authority to impose a solution, helps the disputing parties reach agreement. Mediation offers some clear advantages over litigation in numerous areas such as family law, Riskin says. For example, in child custody mediation, lawyer-mediators can become thoroughly familiar with the various needs of both parties and can then propose alternatives finely tuned to such needs, he explains. "Furthermore, lawyer-mediators can identify a myriad of legal issues that must be addressed in the final written agreement and press the disputants to reach decisions.

"It [mediation] is cheaper, faster and potentially more hospitable to unique solutions," Riskin adds.

"Mediation is a more cooperative process and that's why I like it," says student Barbara Eldred of Columbia, who explains that the competitive nature of litigation often results in needless emotional trauma. "In divorce cases, for example, attorneys often encourage clients to get the most property and most money they can, and that's the only objective. But often this creates a lot of hostility and bitterness between litigants that wasn't there before."

While divorce and child custody mediation is becoming increasingly popular and producing agreements with high rates of compliance, mediation is also being used to help solve complex disputes, such as environmental, racial and community matters.

At the center, says Riskin, one of the long-range goals is to establish a program to deal with disputes in the Columbia community. Student mediators would help people resolve conflicts such as neighborhood, consumer and landlord-tenant disputes.

The center already has become affiliated with alternative dispute resolution centers in Kansas City and St. Louis and has opened clinical placement opportunities for students.

The center also plans to aid the wide dissemination of alternative legal knowledge by publishing two law school course books.

These will enable other law schools to implement UMC's approach.

WE BELIEVE our dispute processing curriculum program is more comprehensive and integrated than any yet proposed or undertaken by a mainstream law school," Riskin says.

Mizzou's curriculum offers advanced courses in mediation and labor arbitration—which involves the use of third-party neutrals who issue binding decisions—and soon will include specialized advanced courses in divorce mediation, environmental dispute resolution and corporate dispute resolution.

In the area of corporate disputes, the use of "mini-trials" has been one of the most exciting developments. This procedure has been successfully used in several large inter-corporate disputes, with speedy and cost-effective results.

A mini-trial involves presentations by both parties to a panel of top-management representatives from each side, along with a neutral adviser. The neutral adviser is typically a trial lawyer or former judge who will be in a position to assess convincingly the parties' respective chances for success in a lawsuit.

"Mini-trials succeed by narrowing the dispute, promoting dialogue on the merits of the case rather than just dollar values, and converting what had grown into a typical lawyer's dispute back into a businessman's problem by removing many of the collateral legal issues in the case," says Eric Green, a Boston University law professor who recently led a UMC-sponsored training program on dispute resolution.

ONE OF THE LARGEST mini-trials on record occurred in 1983 between American Can Co. and Wisconsin Electric Power Co. American Can, alleging a breach of contract, had filed suit against Wisconsin Electric for \$41 million, and Wisconsin Electric had made a counter claim of \$20 million.

It was estimated the court trial would take 75 trial days and the costs of the process, both in terms of money and valuable management time, would be quite substantial. But after hiring a Washington, D.C., company specializing in "dispute resolution and conflict management," the parties were able to reach a settlement agreement through the use of a mini-trial lasting only three days.

In another case involving two manu-

facturing companies, Automatic Radio and TRW, five years of conflict ended after three days of mini-trial. The parties estimated they saved more than \$1 million by avoiding trial.

At the center, mini-trials are being studied as another promising alternative to the high costs, delays and inadequate remedies so often associated with litigation.

"We're trying to make students effective in solving their clients' problems as efficiently as possible," says Professor James Westbrook, a member of the center's internal advisory committee.

In addition to molding better students, the center helps practicing lawyers improve their skills through an ongoing series of intensive training programs, which began last spring.

Other projects of the center include:

- Sponsoring brief conferences for lawyers, judges and the general public that survey alternative methods of dispute processing.
- Publishing the *Missouri Journal of Dispute Resolution*. The journal's second issue came out this summer.
- Establishing a lecture series in which distinguished dispute resolvers and scholars address faculty and students.

WE'RE TRYING to keep legal education up-to-date, but at the same time we realize that some disputes in this society need to be litigated," Westbrook says. "One of the reasons we decided to call our center the Dispute Resolution Center rather than the alternative dispute resolution center is because we have no desire to downplay the importance of traditional litigation. We simply want to provide the best education possible for students."

The center was created on the initiative of the faculty and Dean Dale Whitman. For the first three years, it will receive \$300,000 from the Campus Development Fund and the provost's office. Additional support is expected from government, business and charitable foundations. Recently the center received a two-year grant totaling nearly \$100,000 from the Fund for the Improvement of Post-Secondary Education, a part of the U.S. Department of Education.

"The center adds a new dimension to legal education, which traditionally has focused upon litigation and the lawyer's role as advocate," Riskin says.

By adding this dimension, the faculty expects to broaden permanently the law student's vision of what it means to be a lawyer. □