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William Mitchell
Opinion

Volume 20 | Number 6 | April 1978

Professor Draws Controversy

by Loretta Frederick and Tom Copeland

The controversy surrounding the teaching methods of Professor Andrew Haines has arisen again this year, and many students have come forth with statements expressing their objections to and support of William Mitchell's only black professor.

The members of the Student Bar Association's Board of Governors have been besieged by students expressing concern over the level to which the conflicts have risen. Some students have alleged that Haines is not adequately prepared for classes, that he has no respect for his students, and that his teaching methods and style are objectionable. As a result of this controversy, two Board members drafted a letter addressed to the administration of the school.

The letter outlined the present state of the controversy, including the fact that the students in Haines' Business Organizations II classes were in a state of upheaval over the situation. The letter noted that questions about Haines' teaching methods have arisen every year since he began teaching at William Mitchell in 1972 and that the last two faculty evaluations showed Haines to be rated very low by the students in his required courses. In conclusion, the letter suggested that in cases where students' objections are repeated over several years and faculty evaluations are low, the complaints should trigger a more extensive evaluation of any professor.

On March 30, the SBA met and the Board voted to have SBA President Al Bonin read the letter to the other members. After it had been read aloud, the Board voted on whether to adopt the letter as the official position of the SBA. Discussion centered around the possible effects of such an adoption on the individual members. Several third and fourth year students suggested that perhaps the first and second year members who had not yet had Haines as a professor might not be in a position to vote on the matter. Fear of Professor Haines' retaliation against the individual members was a significant reason that the vote was 5-5. Al Bonin cast the tie-breaking vote, the result being that the letter was sent from Al Bonin, President of the SBA Board of Governors and not as an official letter from the Board. Professor Haines stated later that their concern indicated nothing but "paranoia."

Assistant Dean Curt Stine later told Bonin that the administration would draft a responsive letter to him, but, at this writing, no letter has been received to our knowledge.

One of Haines' students dropped Business Organizations II earlier this semester, stating that she feels she was forced out of the class for expressing her disapproval of Haines' behavior and teaching methods. Haines had written a letter to the administration asking that the student be removed from the class for being "disruptive." There is some question about exactly what actions prompted this letter.

Shortly after news of Haines' letter was out, several members of that class circulated and signed a petition expressing their belief that the student in question did not have a disruptive influence and asking that she not be removed. When Stine met with the students presenting the petition, he said that he would forward it to Haines. When the petitioning students learned that, they withdrew the petition expressing the fear that Haines might retaliate should he discover their identity and involvement with the petition. The student decided as a result of all the controversy that she had no choice but to drop the course.

Early in March, one of Haines' second year students had sent a letter to the Board of Trustees expressing strong support for Professor Haines. She suggested that much of the problems were a result of racism among students. She also asked that the Trustees take a position on the matter. Judge Ronald Hachey, President of the Board of Trustees, responded in a letter to the student in which he stated that, while he was in agreement with her as to Haines' teaching abilities and character, the Trustees could not take an official position on academic matters such as this.

This type of problem might entail administrative action which the Board of Trustees is not empowered to take. They do, however, make the final decision on which professors are granted tenure. Haines is one of eight professors who are being considered for tenure at the end of this academic year.

Students from Haines' Business Organizations II classes have met with Stine on two occasions to voice their concern over Haines' teaching methods and his professional relationship to his students.

Continued on page 11

Three Year Degree

by Tom Copeland

Mitchell students will be able to attain a law degree in three years beginning in the fall of 1978 if the accreditation council of the American Bar Association (ABA) gives its approval this spring. Currently students can graduate in 3½ or 4 years. (See Dean's column.)

Assistant Dean Curtis Stine told the OPINION that this program would be "unique" in that no other law school in the country offers this kind of choice of schedules for its students.

Mitchell's board of trustees authorized the establishment of this program at their March 14th meeting. According to Stine, this program will not mean an increase in the size of the student body. The intent of the program, he said, "is to provide the greatest amount of flexibility for students and not to change Mitchell into a day law school." It would make more efficient use of the building which now sits idle many hours of the day and it would take off some of the current pressure in scheduling classes, he said.

The details of this program have not yet been finalized. Stine suggested that a separate section of those students planning to graduate in three years might begin classes at 2:30 p.m. Such students would have to sign a formal agreement not to work more than 10 hours a week. How a breach of this promise would be enforced was not made clear. It is not known yet whether current first year students will be able to take advantage of this program beginning next year.

Professor of the Year: Kirwin

by Sally Oldham

This year's choice for the Distinguished Professor of the Year award is Professor Kenneth Kirwin. Selection was made through a process of student nomination and final selection by the SBA. Some of the factors taken into consideration were teaching ability, measured in part by student evaluations (in which Kirwin ranked among the top ten), availability outside of class, assistance to student groups and associations and participation in SBA and school sponsored activities.

Professor Kirwin grew up in Morris, Minnesota, a town of 5,000 located in the west central part of the state. He attended high school in nearby Alberta and it was during this period that he decided to pursue a legal career. Kirwin earned a B.A. in Political Science from St. John's University where he was active on the college newspaper. In 1963 he entered law school at the University of Minnesota and was a member of the law review staff, authoring works on insurance law, double jeopardy, and the right to proceed without counsel. Early in his legal education, Kirwin envisioned a practice in a mid-sized Minnesota town, such as Rochester or St. Cloud. However, it was not long before he began to consider teaching as a career. Kirwin credits Dean Lockhart, who was his Constitutional Law professor at the University, with much of the inspiration for his desire to become a law school professor. In fact, adds, Kirwin, Lockhart was one of the major influences in his life. Another University professor, Yale Kamisar, was also an important person in shaping Kirwin's goals.

Upon graduation, Kirwin clerked for a year with then Associate Justice Sheran of the state SupremeCourt. Kirwin remembers that he was also offered a clerkship with Harry Blackmun, who at that time, was on the Eighth Circuit bench in Rochester. The offer, however, came after he had already accepted the position with Justice Sheran, a clerkship that Kirwin remembers as a very valuable experience.

In 1967 Kirwin joined the old Lindquist firm, which had twelve attorneys. During his three years there, Kirwin concentrated on appellate work, doing legal research and writing briefs.

Kirwin came to Mitchell in 1970. He recalls that his first assignment was facing a class of fourth year students. "Perhaps a second year group would have been a little less unnerving," says Kirwin. That first semester Kirwin taught both Constitutional Law and Professional Responsibility. He picked up Workers Compensation the second semester and has taught those same classes every year since.

During his nonworking hours Kirwin likes to spend his time with his three sons, ages 11, 13, and 14. The boys all play hockey and Kirwin confesses that "I like to get out on the ice a little myself."

As was reported in the last OPINION, Kirwin has been active in the lawyer advertising controversy. He argued against the Minnesota Bar Association's restrictions on advertising before the state Supreme Court on February 6.

Editor's Note: This year's senior class has commenced a campaign to raise funds for the purchase of purchasing a traveling plaque to commemorate this award. Students interested in making contributions should leave them in the Used Book Store.

Professor Kenneth Kirwin

EDITORIALS

Street Law Needs Support

It appears that the future of the Street Law program at William Mitchell lies in the hands of the student body. Unless a significant interest is shown in such a program in the near future, William Mitchell will be passing up an excellent opportunity to make a real contribution to its students' legal education and to the community.

Last year four students, on their own initiative and with the approval of the administration, prepared and presented a week-long program to students of two St. Paul public high schools. The focus of the class, which was presented as one segment of the Civics and Government courses offered to high school seniors, was to expose students to a wide range of legal issues and problems.

The preparation by the Mitchell students was extensive, as the program covered several of the areas of law that tenants, consumers, spouses, parents, voters, and defendants of the future were interested in covering. The high school students who participated in the lectures and discussions became increasingly involved and interested as the week progressed, and the teachers were very pleased with the program.

Early this year, discussions were held among the students, the administration (Assistant Dean Marv Green) and the faculty (Professor Roger Haydock). The purpose of the meetings was to explore the possibility of incorporating a street law program into the curriculum and offering it as a course for credit. Several other law schools, the list headed by Georgetown University, have implemented expansive, highly structured programs for credit. Law students taking the course are responsible for preparing and teaching a street law class in a public high school for an entire semester or quarter.

At this stage, the administration does not feel that it can move ahead with the incorporation of Street Law into the curriculum unless a significant number of students indicate an interest. There are two possible approaches to take.

First, a program could consist of a group of students who volunteer their time and efforts to create a limited, informal and non-credit program similar to that offered last year.

The second approach would be to establish a more organized and structured program with credit being given to students who meet pre-determined criteria and goals as defined by the faculty and administration. This type of program would entail the participation of a coordinator and a faculty member as well as a financial commitment by the school. The establishment of such a course would require the approval of the Curriculum Committee, the faculty and the administration. If a Street Law course were prepared and presented to the school for approval, the issue would be the educational value to the students of participation in such a program.

We submit that the academic success of the "for credit" Street Law programs in other law schools is proof positive that a course for credit can be established in such a fashion as to offer a significant addition to students' legal education.

Furthermore, it is imperative that William Mitchell students, as well as the school, recognize the importance of making this contribution to the education of the lay community in St. Paul.

A large percentage of the legal problems that young adults experience result directly from their misunderstanding of basic legal concepts and procedures. Tenants make unenforceable oral agreements with landlords before signing leases. People co-sign promissory notes without realizing the extent of their personal liability. Consumers execute installment contracts for the purchase of appliances without a full understanding of the rights and obligations that flow from their legal relationships with the seller or lender. Physical and emotional violence characterizes many marriages because the parties are not aware of the relief that is available through the Family Court.

An awareness of the various methods of dealing with legal problems, including when to seek the assistance of an attorney, is a necessary part of survival and prosperity in our society. Unfortunately, many people are ill-equipped to deal with the increasing complexity of their legal relationships. The Street Law program affords William Mitchell the opportunity to make an invaluable contribution towards the education of high school students who will soon be joining the ranks of adulthood and full legal independence.

We urge students, faculty and administration to seriously consider initiating such a program at William Mitchell. Only if significant interest is shown will Street Law become a reality for the public high school students of this area. The rewards, both academic and personal, are tremendous.

Mitchell has a unique opportunity to educate a large number of people and raise its level of visibility and its reputation in the community through this program. Let's not let it slip through our fingers.

Editors's Note: Rene Rofuth is the student who will be coordinating any efforts to set up a Street Law program. Interested persons should contact her as soon as possible.

LETTERS

The following are excerpts from a letter to the Editor written by a Minneapolis attorney in response to last issue's editorial on Gay Rights.

As an alumnus of William Mitchell College of Law, I received a copy of the March, 1978 issue of the William Mitchell OPINION. I noted an editorial entitled "Why should a Human Rights issue be put on the ballot?" I would like to respond to it as I do not believe that "sexual or affectional preferences" is a legitimate "human rights" issue nor do I believe that it qualifies as a civil right and receive the protection of non-discrimination laws.

It would be perhaps be best to start with the Preamble to the Minnesota State Constitution originally adopted in 1857 and re-enacted in 1974, which expresses gratitude from God as the Source for our civil and religious freedom. This language may come somewhat as a surprise to many who commonly believe that all rights are derived from the government or at the expense of different individuals. The view that rights were derived from God was the basis of both the natural rights theory and also those who looked to the Bible as the basis of authority.

The Biblical basis for rights is found in the book of Genesis: "Where God said, Let us make man in our image, after our likeness"..."So God created man in his own image, in the image of God he created him: male and female he created them." This passage provides the initial concept of civil rights and liberties and if one can point to a condition at the time of his or her birth, I believe such person is entitled to the freedom from discrimination on the basis of that condition. This concept forms the basis of non-discrimination between persons of different races or different sex because such persons were created in that condition in the image and likeness of God and are equal in His sight. Therefore, they are entitled as a matter of right to make the claim to non-discrimination between and among persons. The concept of being created in the image and likeness of God is the basis of human worth and dignity and has much broader implications than the non-discrimination issue but I want to limit myself primarily to the non-discrimination matter. Homosexuals are not able to demonstrate that the sexual or affectional preference is a condition at birth. Indeed, they admit that it is something that arises after ones birth. Thus their claim could not qualify on that basis.

The second basic concept of civil rights and liberties and non-discrimination arises out of God's special concern for the powerless, downtrodden, poor and oppressed. This is found in one form or another in at least 100 passages in the Bible.

However, the homosexual does not claim that they are unemployed, powerless, or poor. Many are in responsible positions and they do not claim as the basis of their assertion that they are poor or oppressed. It is rather an effort on their part to obtain public acceptance of their behavior or life style. Neither can the behavior be claimed as a civil right based on God's concern for justice as it is in direct contradiction to God's laws and commandments.

In recent years we have seen the rise of many persons, including homosexuals, who demand "rights" not based upon a condition at birth or based on God's special concern for the poor, powerless or downtrodden. These claimed "rights" are based upon a narrow, self-centered or hedonistic claim. Usually the moral issue is obscured or eliminated altogether. Indeed, if one attempts to raise objection based on religious values, the objection is dismissed as of no-consequence and often there are false cries of the violation of the doctrine of separation of church and state.

A clear distinction should be made between a *person* and the *behavior* of a person. Clearly a person is entitled to the equal protection of the law as any other citizen. This is guaranteed under the Fourteenth Amdendment and is part of the gift of God's grace which is available to all including homosexuals. Thus if the law establishes a given right and one can qualify for this right, then the equal protection clause guarantees that it be available to all who qualify without discrimination. However, the law does discriminate to a considerable degree on the basis of behavior. Discrimination on the basis of behavior is the foundation of the criminal law and also tort law as well as many other areas of the law. It is also widely available to individuals in many of their private transactions as well which are not controlled by law. At most I believe that the homosexuals has a right of privacy claim but cannot claim more than that.

I remember that homosexuals initially merely claimed the right to be left alone when the matter of homosexual behavior first became a public issue. This appears to have possible validity under the concept of the right of privacy. But now the claim is significantly different. It demands public and private acceptance in a broad number of areas including employment, housing, education, and public accommodations despite obvious objections to the behavior on the part of many. History has shown that acceptance of homosexual behavior is evidence of the decline of a society and slide toward disintegration.

Those who wish to condone or elevate homosexuality to a "right" not only are in opposition to Biblical values but also claim a "wisdom" which is not found in the history books.

Homosexuality by definition is outside of a legally contracted marriage relationship. But shouldn't a society give preference by law to legally contracted marriages? This ordinance does not do that. Shouldn't we affirm as a society the importance of the family through the marriage relationship? The state has considerable interest in the concept of the family and a considerable body of law has developed along with that interest. Shouldn't the family unit be affirmed as an essential element of society. This is self-evident to me that it should do so. The family unit contains the best possible structure for love, trust, justice, mercy and a sense of identity which has been established.

Let me close by saying that I hope you and the other students on the staff of the William Mitchell OPINION will begin to see that ones stance on this issue is not as self-evident as your editorial indicated. There is far more at stake here than is on the surface of things. Much of value is being omitted in the emotion and excitment of the issue. As future lawyers you will need to provide a reasoned judgment which represents that best you can offer especially when others are not doing so.

Very truly yours,

Thomas W. Strahan

Editor's Note: The OPINION staff disagrees with the position taken by this writer. We urge you to vote "NO REPEAL" of the St. Paul Human Rights Ordinance on April 25th.

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STATEMENT OF POLICY

The William Mitchell Opinion is published by the Student Bar Association of the William Mitchell College of Law for the purpose of educating and informing Mitchell students and alumni of current issues and affairs of law and the law school. In furtherance of that purpose, the Opinion will present the views of any student, faculty member, alumni, or the administration. Because of space limitations in a tabloid newspaper, and because the Opinion strives for factually and accurate and stylistically uniform copy, all contributions are subject to editorial review and possible abridgment, although every effort is made to maintain a writer's original style.

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 of the Opinion's recognized responsibility to the members of the student bar, practicing attorneys, and faculty and administration of the law school. Editorials represent only the opinion of their writers.

DEAN'S COLUMN

Accreditation Sought for 3 Year Program

Query: Should a student whose job demands are 10 hours or less per week during part of his or her law school career be permitted to carry 16 credits at such times, rather than 12 credits, and thereby graduate in three years?

The American Bar Association, in its Standards and Rules of Procedure for Accreditation of Law Schools, has limited our authorized credit load to 12 hours per semester per student because of the presumption that there is a uniform heavy work load during the period of matriculation. This presumption is not universally valid.

Our Placement Director at William Mitchell College of Law, Peg Riehm, recently went through the files of all 986 students who were enrolled early in the Spring Semester of this year. Her analysis disclosed that there are around 80 first year students and 40 second year students who were unemployed. It is likely that many such students might desire to accelerate their legal education by carrying more than 12 credits per semester, at least until they achieve a higher level of employment.

With this in mind, and giving important weight to the fact that flexibility in scheduling is an important feature for any person who works full time or part time while attending law school, William Mitchell College of Law has developed a proposal which we will soon present to the American Bar Association. This modest proposal is to permit students who are working fewer than 10 hours per week to carry a total of 16 credits in afternoon, evening and, probably, Saturday morning classes.

What this would mean is exemplified by the schedule below showing the five possible "tracks" under which students could matriculate. The maximum period of time that a student could remain in law school is 6 years, which would mean that the student was carrying the minimum load of 8 credits per semester from the very beginning to the completion of his or her legal education. The next longest track would be the normal 4-year track where no student would carry more than 12 credits in any given semester and would never attend summer sessions. Next comes the present 3 ½-year track whereby a student will carry 10 or 12 credits per semester and 4 credits in each of two summer sessions, for a total matriculation of 3 ½-years. The proposal we will present to the American Bar Association would allow William Mitchell College of Law to add 2 more tracks to its flexible scheduling.

One proposed track would allow a student to carry 16 credits during 2 semesters of law school and 12 credits each semester thereafter while attending two summer sessions of 4 credits each. The net result would be a graduation in 3 calendar years.

The second proposed track would allow a student to carry 16 credits in each semester for 2 years and 12 credits each semester in the third year with a graduation scheduled for the end of the third year.

Because the proposal is highly unusual, it is not known at this time whether it will meet with approval from the American Bar Association. The law school is simply asking for a temporary approval to try such an experimental program for a couple of years and to test out the academic and other results thereof as we go along.

Closely related to such a proposal is a concept which I support in the strongest terms and which I believe many trustees support in principle. This concept is to restructure tuition and gear it directly to the number of credits carried. For example, if a fixed dollar charge per credit were established, then a student carrying 8 credits would multiply such a fixed charge times 8 and pay that amount of tuition per semester; the student carrying 16 credits per semester would multiply 16 times such a charge and pay that tuition; students with credits ranging between 8 and 16 would likewise compute their tuition fees on a per credit unit basis.

It would also be important in such a connection, I believe, to allow a proportionate rebate to students who diminish their credit loads without total withdrawal from the law school. For example, if a student's outside work load increased during the semester and the student felt obliged to cut the credit load from 16 to 10, the student should be able to apply for a rebate of a percentage of the tuition attributable to the 6 credits which were dropped.

As Assistant Dean Stine has earlier announced, our student grade records are in the process of being transferred to a computer system. During the course of 1978-79 we should be able to determine a number of important factors which would allow the restructuring of the payment of tuition along the lines outlined above. For example, it can be determined how many students drop how many credits in the first two weeks, four weeks, six weeks, eight weeks of each of the two semesters; and it can also be determined how many students withdraw from school altogether during such periods. Given the data generated during the next school year and the budget projections for 1979-80, it should then be possible to arrive at a fixed amount per credit unit to be charged during 1979-80 and to set up a system of rebates for partial and full withdrawals in that year.

Until 1979-80, however, tuition payment methods will be in accord with the long time established policies of the school. Once the appropriate data has been assembled during Spring, 1979, however, an extensive proposal for making such a change will be published for discussion among trustees, students and other interested parties.

Apart from the proposed change in tuition methods of payment, however, it is my strong desire to be able to launch the "flexible scheduling" experiment outlined above during Fall 1978 and monitor the results thereafter.

To the graduating seniors of 1978, best wishes for the bar exam and thereafter. To the returning classes, we look forward to showing you some campus improvements and pleasant surprises in the facilities of the law school when you return next August. In the meantime, good luck during exams and have a pleasant summer.

Tracks A - E	1st Yr. Credits	Sum. Sch.	2nd Yr. Credits	Sum. Sch.	3rd Yr. Credits	Sum. Sch.	4th Yr. Credits	5th or 6th Yr Credits
Present Track A (four yrs.)	12+12	0	12+12	0	10+10	0	10+10	0
Present Track B (3½ yrs.)	12+12	4	12+12	0	12+10	0	10+0	
Present Track C (Irregular students with minimum loads) (six yrs.) (max.)	8+8	0	8+8	0	8+8	0	8+8	0+8 8+8
Proposed Track D (3 yrs.)	16+16	4	12+12	4	12+12	0	0	0
Proposed Track E (3 yrs.)	16+16	0	16+16	0	12+12	0	0	0

Tuition Goes to $1900

The Board of Trustees, upon Dean Bruce Burton's recommendation, has tentatively fixed regular tuition at $1,900 per year for 1978-79. This figure is up $150 from the $1750 tuition cost which has been in effect for 1976-77 and 1977-78.

Tuition comprises 69% of the revenue for the 1978 operating budget, according to Dean Burton.
The next largest source of income is Development of Transfers Revenues, which provide 13.5% of the Operating Budget revenues. In addition, the 1978 Fundraising Campaign figures show that 54.2% of the revenues received come from foundations and 25.4% from corporations.

Dean Burton remarked in an interview with the **OPINION** that even with the tuition increase, the cost of a legal education at William Mitchell remains relatively low in comparison with other private law schools. While tuition at most private law schools is typically $100 per credit, he said, next year's rate for Mitchell students will average out to less than $80 per credit.

Burton attributes the lower tuition costs at William Mitchell to several factors. First, the heavy use of part time instructors means a significant reduction in the usual faculty salary expenses. The school currently employs approximately 85 part time instructors, most of whom are attorneys practicing in the Twin Cities area. Burton estimates that the teaching load they carry is comparable to that which would be carried by 20 full time faculty members. The part time instructors are generally willing to teach for less money than it would cost to employ a full time professor to teach the same number of courses. Burton says that this is due to the fact that "practicing attorneys really enjoy the change of pace" and the challenge that teaching afford them."

Reduced operating expenses are also due to the fairly comprehensive but relatively inexpensive fringe benefits package that the school acquired through a process of bid solicitation.

The $150 raise in tuition is the first in two years and represents a 8.5% increase for that two year period. As such, it is easily attributable to the increased costs of operating (including fuel expenditures), and the cost of living hike that the nation has seen over the last two years, as well as the effects of inflation.

The tuition for the year 1979-80 is not yet determined, but may be based on the per-credit cost as explained in this issue's Dean's Column.

LL.M. at WMCL

by Tom Copeland

By as early as the fall of 1979, Mitchell could have an LL.M. Master of Laws program in the area of Estate Planning, Trusts and Estate/Gift Taxation. At its March 14th meeting Mitchell's board of trustees authorized Assistant Dean Curtis Stine to develop a proposal for such a program which must receive approval by the American Bar Association before it can be implemented.

Stine said that the area of taxation was chosen because it is a growing field which is undergoing important new changes. Masters programs are becoming more common and this is a "good one to have if you're going to have one," he said. Stine feels very positive about the program's impact and benefit to the school.

The only other estate planning program, as far as Stine knows, is at the University of Miami. Neither the University of Minnesota nor Hamline Law Schools have Masters programs.

Mitchell's Masters program will be a small one. Stine said that it would probably compare in size with the LL.M. Taxation program at William and Mary College of Law in Virginia which has twelve full time and sixty parttime students. It is not certain yet whether Mitchell's program will be full or parttime but it is likely that classes will be held at night. The program will be for the general practitioner as well as for someone who has just finished law school. Additional faculty will have to be hired and plans are to make the program pay for itself.

I want to extend my heartfelt thanks to all of you who contributed your time and talents to the OPINION this year. It has been a thoroughly enjoyable, amusing, hectic, rewarding, exhausting, exciting learning experience for all of us. And it couldn't have been done without you. Thanks.

Counterpoint on Juvenile Justice

Juvenile Rights Need Protection

by Bob Davis

As a legal specialization, juvenile law is an area little understood but frequently criticized; the juvenile justice system has been described as ineffective at best and a haven for young criminals at worst.

The Institute for Judicial Administration and the American Bar Association in the late 1960's joined to form a study commission to analyze the problem and formulate possible reforms to deal with the failings of the existing juvenile justice system.

As reported in the last issue, the OPINION interviewed Professor Maynard Pirsig for his evaluation of the Joint Commission's proposals. The recommended reforms would radically restructure the juvenile system, eliminating broad areas of judicial discretion in favor of more stringent proceedings, in order to guarantee recognition of the juvenile's due process rights. The recommendations would also replace as the justification for sentencing the juvenile's "need for rehabilitative treatment" with the "proportionality" principle.

Prof. Pirsig agreed with many of the recommendations as necessary modernizations, providing safeguards against discretionary abuses that have come to typify the juvenile courts. However, the programmatic restructuring of the juvenile system with "proportionality" as the guiding principle, Pirsig argued, was an unjustifiable abandonment of the fundamental philosophy of American juvenile justice, that juveniles are not responsible in the same sense as adults are for their behavior, that juveniles are more malleable than adults, and that society's best interests are served by rehabilitation and treatment, rather than punishment, of the juvenile delinquent.

Abiding by the basic tenet of Anglo-American jurisprudence that "truth" emerges most clearly in the context of confrontation and controlled adversity, the OPINION solicited a response to Prof. Pirsig's remarks on the IJA/ABA Joint Commission's recommendations in an interview with Mr. William Gatton. Mr. Gatton, an attorney working out of the offices of Legal Assistance of Ramsey County, is head of the Juvenile Justice Pilot Project of Saint Paul and a member of the Legal Services Corporation's ad hoc committee for review of the recommended reforms. Mr. Gatton specializes in juvenile defense work and has made reform of the existing juvenile justice system one of his major professional concerns.

Addressing his remarks initially to Prof. Pirsig's reported comments, Mr. Gatton declared that the underlying premise of the Joint Commission's work was not, in his mind, the failure of the existing juvenile justice system but rather the intrinsic injustice of the system as it now operates. The Supreme Court decisions dealing with juvenile justice. notably *Kent v. U.S.*,383 U.S. 541 (1966), *In re Gault*,387 U.S. 1 (1967), and *In re Winship*, 397 U.S. 1470 (1970)—all serve to highlight this lack of essential justice.

Furthermore, Mr. Gatton argued, the statistics indicating a rapid acceleration in juvenile crime—a 140% increase in arrests between 1967 and 1974, and a 400% increase in juvenile arrests for violent crime, according to FBI statistics—are only marginally relevant. Even if statistics were valid, which Gatton doubted, the success of a court system is not measured by the incidence of criminal behavior.

While deterrence of crime is one purpose of the courts, the essential purposes, in Gatton's view, are to give a just, predictable institutionalized response to predefined kinds of socially disruptive conduct, giving a fair hearing and rendering a just disposition. Gatton averred that the purpose of sanctions should be to deter further crimes. Of much greater importance, however, is the operation of the justice system itself, stringently adhering to procedural due process requirements, "recognizing and protecting the constitutionally guaranteed rights of the accused citizen."

Regardless of a defendant's criminality, he or she is still a citizen, and any dissimilarity of treatment by the justice system of the "most guilty" and the "most innocent" could only be characterized as an institutional failure. Gatton stressed that the failure of the existing juvenile system lies in the lack of due process restraints and the non-recognition of the juvenile as a citizen entitled to all the protections available to the accused in the adult justice system.

Gatton felt that these principles would substantially remedy many of the more egregious inequities in the present system. Justifying his advocacy of this change in philosophy, Gatton explained that in his experience "treatment is much more intrusive and destructive than control; far less disruptive for the individual and his life are specific sanctions chosen by means of objective standards and imposed for defined kinds of misbehavior."

Gatton elaborated on the kinds of objective standards and uniform sanctions recommended by the Joint Commission, illustrating that kids can still be held to a lesser degree of responsibility while disposed of in a system comparable to the adult system. Based upon the idea that juvenile sentences should follow a schedule that parallels proportionately the sanctions imposed by the adult system, all offenses would be classified into one of five categories, the categories being delimited by the sanctions used for adults committing the same offense.

The first category consists of offenses punishable with a sentence of more than 20 years incarceration for adults, while the second, third, fourth, and fifth categories involved crimes punishable with sentences of declining severity. For example, the sanctions available for a class one offense—which in Minnesota would only include murder—would be two years incarceration or three year's participation in some program less severe than incarceration. Of course, any state enacting the proposals would be free to substitute its own periods for those of the Joint Commission.

The essence of the reforms, Gatton noted, was not the time periods of the sentences, but the uniformity of disposition. Under the present system the disposition of an adjudicated juvenile offender can range from court to court, as the different juvenile judges exercise their discretionary powers differently. Dispositions can also vary from offender to offender in the same court, the sentence sometimes even varying inversely with the age of the offender.

Gatton pointed out that the most severe sanction available to the juvenile court is commitment to the Commissioner of Corrections until age 21, which would mean a 17 year old offender could be sentenced to a maximum of 3 years, while a 14 year old offender could get a maximum of 7 years.

"What could be fair about making length of incarceration dependent upon the age of the offender?" Gatton asked.

Furthermore, commitment is often made with release contingent upon rehabilitation. This has the result that co-offenders may be subject to unequal sentences because one is better able to mimic the preferred norms of the correctional institution.

These obvious inequities in sentencing necessarily undermine the avowed goal of the system, Gatton feels, because "the beginning of rehabilitation takes place only when the offender feels he has been treated fairly."

Aside from the question of proportionality, Gatton expounded on other areas of disagreement with Professor Pirsig, focusing on the "evils" that result from the broad discretionary powers afforded the juvenile court. Pirsig expressed the view that wide discretion is necessary if the court is to adjust sentencing to meet the needs of the individuals. Gatton took the stance that broad discretionary coupled with procedural informalities would only breed arbitrary adjudications.

Underlying these procedural defects. Mr. Gatton felt, was the notion of "parens patriae." Referring to the *Gault* case, Gatton noted that Justice Fortas has said that parens patriae is a dubious concept as applied to the juvenile justice system. He continued by nothing that the parens patriae doctrine arose originally in the probate courts to protect juvenile equity rights, but the current use in the juvenile justice system is a "twisted misapplication." Elaborating, Gatton argued that the parens patriae doctrine has become a means of controlling the "poorer classes," and through design or inadvertence, a vehicle of class bigotry.

The original juvenile justice system was based upon two premises: that kids, being less responsible than adults, shouldn't be subjected to criminal sanctions, and that the state has a right to insure the proper rearing of children, intervening if necessary. The original subjects of juvenile court proceedings were largely the children of poor immigrants, Gatton explained, but now consist largely of blacks, Indians and Chicanos, and poor whites whose behaviors the court tries to force into a middle-class mold.

"Even though you hear of burglary rings being broken up in the suburbs, you never seem to see the white suburban kids in juvenile court," said Gatton.

Denying that the state has any right to intervene in child rearing problems, Gatton argued that "the role of the state in juvenile proceeding should not be parental, because the interests of the state are always antithetical to those of accused offenders." The juvenile court's proper role, according to Gatton, is limited to an administration of the state's "coercive response to illegal behavior, used in an attempt to deter, control and if necessary to incarcerate." The response should be "to criminal behavior only, and not to the criminal's needs."

Commenting on Pirsig's characterization of the juvenile court as operating in a context of unity or interest for the parties involved Gatton contended that this attitude—that the state can administer to both its own and the defendant's interest simultaneously—is more typical of totalitarianism than democratic societies. Gatton analogized with the Soviet Union, where the apparent trend is to define "disagreement with government as a symptom of mental illness," requiring "treatment for the individual's own benefit."

Gatton stressed that in his view the government had no right to refashion the personality of citizens found guilty of criminal behavior, whether adult or juvenile. While the government has not only a right but an obligation to respond to socially disruptive criminal behavior, the form of that response is critical. Gatton would distinguish between "control" and "treatment," the former being the application of predefined sanctions whenever certain kinds of predefined prohibited behavior occurs, and the latter entailing commitment of an adjudicated offender to rehabilitation programs in order to bring his personality and lifestyle into conformity with the authorities' views of what is "proper."

"In a democratic society the state has no business trying to treat people against their will," Gatton believes.

Pirsig's assertion that the lack of resources underlies the apparent lack of success of the juvenile system's attempts at rehabilitation, Gatton stated, is a spurious charge; "there is no evidence that pumping more dollars into the system will increase effectiveness. While there are possible methods by which a person might be effectively 'treated,' modifying his or her behavior away from criminality, there are no means available that are ethical." Gatton then quoted the hypothesis of Emil Durkheim, late 19th century French sociologist, that "if all crime were eliminated, new crimes would arise," indicating that crime is an inescapable by-product of a viable, free and pluralistic society. "Eliminating all criminal deviancy would necessarily eliminate productive nonconformist behavior," precluding the creativity that is a free society's major human resource.

Mr. Gatton acknowledged that he basically agreed with all the Joint Commission's recommendations for the implementation of the "proportionality" principle; the Commission proposes that objective standards replace the subjective standards—the juvenile court's perception of the juvenile's needs—now used, that specified and statutorily limited sentences replace the frequently used "commitment until cure," and that judicial justification be required whenever the sentence of the court is other than the least restrictive alternative for intervention into the lives of the offender and his or her family.

Commenting on the procedural improprieties that would never be tolerated in the adult justice system, Gatton cited as an example the joinder of offenders and offenses. In the name of judicial convenience, otherwise separate crimes and separate defendants are too often lumped together in a single petition placed before the couurt and tried simultaneously. While a failure to afford separate trials for separate and unrelated charges is grounds for retrial, if not reversal, in adult criminal proceedings, it is routinely permitted in juvenile proceedings.

Another institutional failure, Gatton explained, was the segregation of juvenile proceedings from other judicial operations. While most other judicial functions alternate between judges whose calendars typically rotate from family, to civil, to criminal court, juvenile court usually becomes the specialized province of one or two judges. The inescapable result is that multiple offenders invariably come before the same judge with a decreasing likelihood of impartiality of the court.

This problem is aggravated by the absence of a jury for the determination of

Continued on page 10

Update on Minority Recruitment A Follow-Up

by Tom Copeland

Last November the OPINION ran an article about minority recruitment at Mitchell which reported that minorities made up less than 1% of the student body. The article also indicated that the school had no policy or recruitment program towards increasing the number of its minority students.

Since that time there has been an increase in the number of informal efforts to recruit minorities to Mitchell. Minority applications are up. According to Registrar Jack Davies, there are at least six or seven more black applicants for next year which represents a substantial increase in terms of percentages over last year. "I only wish the increase was greater," he told the OPINION.

Davies also said that about five Native Americans have applied so far for admission next year. The school sent out letters to every Native American in the United States who took the LSAT encouraging those who were interested in law school to apply to Mitchell. The letter also informed potential applicants of the $25,000 Northwest Foundation grant available for financial aid for Native Americans who enroll at Mitchell. Davies added that letters have also been sent out to Native American community leaders in this area encouraging applications and calling attention to the grant. Currently there are no Native American students at Mitchell.

In Davies' opinion, "The school is continuing to do what it can to provide the best opportunity for the minority applicants it gets." He said that the school's policies have always been "reasonable" and that there are no plans to make a formal increase in recruitment efforts. Yet he added, "There is some talk of promulgating a formal minority recruitment policy but in any case this will wait until after the *Bakke* decision." The Supreme Court is considering the constitutionality of an affirmative action program in the *Bakke* case and their decision is expected sometime this spring.

Davies said that Mitchell relies primarily on word of mouth to contact people in the minority communities about the school's program. He indicated that Professor Andrew Haines has done a considerable amount of this kind of work for the school and that his efforts have probably had some effect in the increase in minority applicants.

In an interview with the OPINION, Haines outlined what he has done in this regard since last fall. He has spoken at employment companies and the Minnesota Affirmative Action offices telling people about opportunities for minorities at Mitchell. With the help of fourth year student David Peak, he has contacted minority undergraduate counselors and local social agencies such as the Urban League, Legal Aid Societies, and the Martin Luther King Center. Haines has also made a number of personal contacts as a part of his efforts.

Haines indicated that in the past he has made largely informal efforts to recruit minorities but that after the OPINION article appeared he contacted Davies and the administration about doing something more formal. Haines felt that his earlier informal efforts had not produced enough minority applicants so he decided to step up his activities and become a more visible recruiter. He said that Davies and the administration have been encouraging and supportive.

"Recruiting is very important," said Haines. "It sets a tone, establishes a sense of encouragement." He indicated that he is only able to do so much in the time that he volunteers for this work. He said that Mitchell presently has an unstructured policy towards recruitment that needs to be more formalized. One-shot efforts are not enough, he said.

Haines suggested several activities that Mitchell could do that when added together could make a difference: make formal contacts and follow-up visits to undergraduate schools, distribute posters and bulletins about the school, hold an open forum at Mitchell to attract minorities, send out members of the administration to speak and recruit, etc.

Haines is presently the only black professor at Mitchell. He began teaching here parttime in 1972. He expressed concern that there aren't more minority teachers at Mitchell. Haines explained that not many blacks are attracted to teaching; there being just over 100 black law school teachers in the entire country. Haines concluded by saying that he was afraid that the pending Supreme Court decision in the *Bakke* case will result in a cutting back of minority recruitment everywhere. "I don't have much faith in what their singular minds will weave."

Thanks to Mark Anfinson for help with this article.

Administration Criticizes Opinion Reporting

The printing in the November **OPINION** of an article entitled "Recruiting Minorities" has resulted in a number of disagreements between the newspaper and the administration. The article, written by second year student Tom Copeland, included the statement that $14,000.00 available for minority scholarships was not given out by the school last fall. The figure had been obtained from a student member of the Scholarship Committee. After the article was printed, the **OPINION** learned from Peggy Riehm, Committee member and Placement Director, that the figure was actually $4,000.00.

Dean Bruce Burton and Assistant Dean Curt Stine claim that the article and the editorial statement which followed it accused the administration of mismanagement of funds and attacked the integrity and honesty of the administration and staff. They maintain that the **OPINION** failed to meet journalistic standards by not rechecking the $14,000 figure before publication and after receiving a letter from Burton which purports to state that the amount available was actually $4,000.00.

Editor Loretta Frederick freely admits that "the paper unintentionally erred in printing the $14,000 figure without rechecking directly with the administration." But she expressed surprise at the administration's interpretation of the paragraph in question as impugning the school's and Burton's integrity. Frederick told Burton and Stine in an interview last week that the statement about unused scholarship money was not meant to imply that the money was being midhandled, but that the reason it remained unused was the paucity of minority applicants. Frederick also stated that she was dismayed that the statement had been so interpreted and indicated that there had been no attempt made by the **OPINION** to challenge the administration's integrity.

Here is what was printed about the scholarship money as it appeared in the November issue:

"According to [Steve] Rowley, who is the student representative on Mitchell's scholarship committee, there is $14,000 in scholarships for minorities that was not given out this fall. $10,000 of this money has gone unused for over three semesters. The only two applications for aid this fall were turned down because the students didn't show sufficient financial need."

The **OPINION** submitted the story to the Dean before publication and asked for his comments. In Burton's reply, which was printed immediately following the article, the Dean wrote:

"To date two foundations have granted the school a total of $4,000 for minority scholarship purposes; one private donor has indicated the intent to make a $500 grant as a part of a major effort by other donors. Assistant Dean Curtis Stine reports that to date the Financial Aid Committee has allocated $2,625 and has a pending application under consideration for a portion of the balance."

Michael Moriarity of the **OPINION** editorial staff responded to the Dean's reply in an editor's note which was printed at the end of the article:

"Although there were only a few scholarships designated for minorities, it doesn't explain how $14,000 in minority scholarships accumulated over the past several years. According to **OPINION** sources, these scholarships were never awarded."

Moriarity told the **OPINION** that he wrote the editorial statement because the dean's reply was not responsive to the question of how much scholarship money had accumulated over the years. According to Moriarity, Frederick and Copeland, it was not clear to them that Burton's reply indicated directly that there was $4,000 rather than $14,000 in scholarship funds.

In addition to the dispute over the correct scholarship figure, Burton and Assistant Dean Curtis Stine recently raised objections as to the conduct of the author of the article. "It's false, misleading, and, in my judgment, irresponsible journalism," charged Dean Burton in a letter to Frederick dated March 29.

Stine told the **OPINION** that the inaccurate $14,000 quote in the article was a very serious matter. He said that it alleged a breach of the administration's fiduciary duties, their highest duty of care.

Stine was not responsive when asked by the **OPINION** why the administration had waited four months to raise its objections to the way the scholarship figures were handled. Stine did say that it was the responsibility of the **OPINION**, not the administration, to print a retraction.

In Burton's March 29th letter to Frederick he indicated that he did not intend to grant any more interviews to Copeland. He did say that he would continue to speak with other members of the **OPINION** staff. Frederick told him that it was her editorial decision to print the article as it appeared and therefore it was her responsibility. At the time the article appeared Copeland was not on the editorial staff. Burton replied that Copeland's name was on the article and that he was primarily responsible for making the correction. Burton said that he had every right to refuse to grant interviews to any reporter, including anyone from the Tribune or the Dispatch, who failed to meet journalistic standards by not rechecking the facts.

Copeland wrote a letter to Burton dated April 1 asking that he reconsider his decision: "I made a mistake in not rechecking this figure before publication. This oversight did not occur because of any ill will or bad faith on my part. My intention was to write a fair and accurate article about a controversial issue." Copeland has not received a reply to his letter as of this writing.

In preparation for the above follow-up on minority recruitment, Registrar Davies also refused to be interviewed by Copeland, saying that he had lost respect for the reporter. Another **OPINION** reporter interviewed him for the article above.

In a further development, on March 31st Stine wrote to Frederick suggesting that the **OPINION** should adopt a set of ethical journalistic standards in conducting its affairs for the future. The letter also suggested that the **OPINION** join the Minnesota Press Council which is a professional journalism group that hears questions questions of journalistic ethics. Stine admitted that these requests were prompted by the controvery surrounding the scholarship figures.

Copeland charged that Stine's suggestions, when taken in this context, were harassment of him and the **OPINION**. This Stine flatly denied. Stine also said that the administration would not bring charges against the **OPINION** before the Press Council over the minority recruitment article if the **OPINION** joined the Council. He expressed the hope that in the future such a controversy between the administration and the **OPINION** could be handled to everyone's satisfaction by resorting to the standards of ethics and the Press Council. The Press Council has no enforcement power other than to rule that a story is a breach of ethics by the newspaper.

Since talking with Stine, the **OPINION** has decided to adopt the code of ethics of The Society of Professional Journalists and is looking into whether it is possible to join the Press Council.

Evaluating Student Evaluations

by Tom Copeland

Of what value are the student evaluations to the faculty, the administration, the tenure committee, or other students? The results of an unscientific survey of members from each group indicate that the evaluations are useful in only a limited way. Most of the professors we talked with indicated that written student comments on the bottom of the evaluation forms were the most helpful to them. Yet a substantial majority of students don't bother to write any comments.

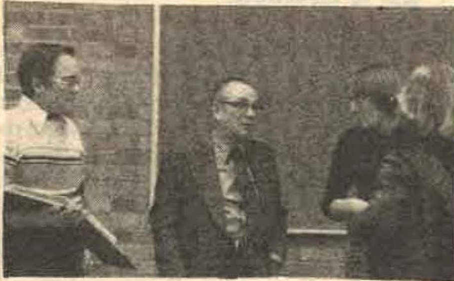
Here is a random sampling of faculty comments on the student evaluations:

Jack Davies: "They are interesting, distressing sometimes. They do provide additional motivation that is worthwhile."

William Danforth: "I don't want to put down the evaluations, but they are of no value to me at all. I have my own way of teaching, and I'm too old to change. I'll continue to teach the same way until I'm fired."

Walter Anastas: "They seem to be little more than popularity contests. There is such a wide divergence of views from year to year, semester to semester, and even within the same class. This is hard to explain, since I always teach the same." Anastas sees some value in the written comments. In fact, he stated that he looks "only at the bottom section." "The most valuable evaluations I get are from former students after they've graduated. The tension of law school has gone out of them, and thus they provide a much more equanimitious view. It's hard for students to give objective criticisms while still in school."

Douglas Heidenreich: He reads the written comments but has found that they don't say much and he doesn't put much credence in the evaluations. He has never found comments to be consistent enough to warrant any changes by him. Heidenreich said that it would be much more valuable to find out what students felt about a professor 2-5 years after they had graduated from law school.



Professor William Green

William Green: He has found only some of the written comments helpful to him. Other things such as class reaction, examinations, personal conversations, and more thoughtfully written comments have been more useful to him in judging his effectiveness. Green also indicated that comments from students after they have become alumni are of the most value to him.

Kenneth Kirwin: He appreciates the faculty evaluations and feels that they provide "helpful suggestions and insights." In fact, before the SBA and administration initiated the evaluation process, Kirwin used to do it on his own. Since Kirwin doesn't get too much oral feedback, he finds that the written comments are the most useful and regrets that only one-quarter of the forms include any written comments. However, students do frequently approach him with ideas of topics to discuss in class and with interesting cases.

After the student evaluations are turned in they are read and considered by members of the administration. The administration feels that it is important for faculty members to read the written comments.

The evaluations are also examined by a subcommittee of the school tenure committee, according to its chairperson, professor Douglas Heidenreich. They make up one of the criteria that are taken into account in evaluating a professor for tenure. In addition, it is the policy of the Dean to call in a large number of seniors to ask them their opinions of teachers at Mitchell. Their comments are made anonymous and are then turned over to the tenure committee.

The tenure committee is made up of the five professors who now have tenure at Mitchell plus two non-tenured members. In addition to Heidenreich the tenured members are Kenneth Kirwin, Bernard Becker, Michael Steenson and Marvin Green. The non-tenured members are

Professor Mel Goldberg

Kyle Montague and Melvin Goldberg. The committee was formed at the start of this semester and so far has only looked at first year professors from the fall semester.

The tenure committee will make recommendations to Dean Bruce Burton who in turn will make recommendations to the board of trustees. The trustees make the final decision on who gets tenure. At the end of this academic year eight professors are up for tenure and will be recommended to the board of trustees unless Burton withdraws their names. The administration declined to give the names of these professors to the OPINION.

The five current tenured faculty and the additional eight up for tenure were made eligible by an "Employment, Promotion and Tenure Policy Statement" adopted during the last academic year by the board of trustees. (The administration also declined to give a copy of this document to the OPINION.) No tenure committee existed at that time to evaluate these professors. The general nature of the school's tenure policy is that professors will receive tenure after five years of teaching unless they are notified that they will not be recommended by the end of their fourth year.

Assistant Dean Curtis Stine said that no students were directly involved in the decision of who gets tenure. "If this was the late 60's it might be different," he commented.

In summary, student evaluations have received a mixed response. They are definitely read by a number of people but their impact is difficult to measure. Students have used them to help make their decision about what section or course to take. It appears, however, that the most useful portion of the evaluation, the written comment, is not being utilized to its fullest extent.

This article was written with the help of Mark Anfinson and Rick Kampa.

Faculty Evaluations

4.64 Danforth - Ad. Civil Procedure
4.62 Grant - Real Estate Seminar
4.62 Bowers - Government Contracts
4.58 Beddow - Family Law
4.53 Hay - Corporate Tax
4.52 Heidenreich - UCC
4.51 Miller - Anti-Trust I
4.48 Heidenreich - Negotiable Instruments
4.48 Brand - Trusts
4.41 Kirwin - Professional Responsibility
4.37 Haines - Employment Discrimination
4.33 Pirsig - Criminal Law
4.29 Finch - Labor Law
4.23 Gatton - Business Plan
4.20 Orwoll - Medical Malpractice
4.19 G. Johnson - Remedies
4.17 Levy/Kamph - Bankruptcy
4.17 Burton - Property I
4.17 Davies - Conflicts
4.16 McElroy - Int'l. Business Trans.
4.14 Prince - Environmental Law
4.12 Montague - Insurance Law
4.10 Marino - Evidence
4.10 Newell - Law Office Management
4.08 M. Green - Criminal Law
4.07 Daly - School Law
4.06 Davies - Legislation
4.02 Olson - Jurisprudence
4.02 Greener - Pension Law
4.01 Anastas - Corporate Practice Seminar
3.99 Meyers/Burton - Property I
3.98 Oakes - Sex-Based Discrimination
3.97 Goldberg - Administrative Law
3.95 Wm. Green - Property Law Seminar
3.92 Heidenreich - Professional Responsibility
3.88 Haines - Professional Responsibility
3.87 Weiser - Business Organization I
3.86 Burton - Legal Process
3.85 Anastas - Securities Regulation I
3.85 Diehl - Health Law
3.82 Hemphill - Copyright
3.77 Wm. Green - Property
3.74 Tuttle-Patent Law
3.73 G. Johnson - Wills
3.71 Brennan - Legal Accounting
3.69 Nyberg - Land Use Planning
3.67 Wm. Green - Wills
3.66 Castner/Kamph - Civil Rights
3.66 Davies - Legal Process
2.65 Haines - Business Organization I

Above are the results of the student evaluations of faculty for the fall semester 1977 conducted by the SBA and the administration. The ratings should be regarded with some caution. The above number for each professor represents an average of the ratings students gave in response to sixteen separate questions. Students responded to questions about a professor's knowledge, presentation, responsiveness to questions, ability to clear up confusing subjects, etc. The highest possible rating was 5.00; the lowest wasd 1.00. The complete results are to be found in the SBA notebook on file at the reserve desk in the library. Also in the notebook are the results from previous years' evaluations.

Numbers alone, of course, are not an accurate reflection of a professor's effectiveness as a teacher. Year-long classes which end this spring are not included in the above results. These classes along with the second semester courses will be evaluated by students in another survey before classes end this spring. SBA representative Charlie Giannetto was responsible for compiling the fall semester evaluations.

"NOW PLEASE, I SIMPLY CAN'T CONTINUE UNTIL YOU ALL STOP WHIMPERING!"

Irving Younger on Legal Education

(Editor's note: Anyone who has taken one of Professor Haydock's clinics knows of Professor Irving Younger* and his well deserved reputation as a lecturer on Evidence and Trial Techniques. His enthusiastic, clear and concise manner has made him one of the most popular CLE lecturers in the country. Recently, Professor Younger was in Minneapolis to present a seminar for the National Practice Institute. NPI's Michael Moriarity interviewed Younger for UPDATE, NPI's monthly publication. The following is a portion of that interview.)

by Michael Moriarity

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M: ...You mentioned trial competency at the beginning. Chief Justice Burger is getting a lot of flack for his comment saying that 50% of the trial lawyers are incompetent. Would you go along with that? Is it that high a percentage?

Y: I have no way of knowing. I can say that in the lower courts of New York City it is that high, and even higher. But whether that's true across the board, I don't know and neither does he. He was trying to make a point.

*Irving Younger has been both a trial attorney and a judge, and is now the Samuel S. Leibowitz Professor of Trial Techniques at Cornell Law School. Since 1975 he has been the Northwest Regional Director of the National Institute of Trial Advocacy (NITA). He is past Chairman of the Committee on the Teaching of Trial Advocacy, ABA Litigation Section; and Chairman of the Trial Advocacy Section, American Association of Law Schools (AALS).

M: Do you feel that that is a failure of the law schools?

Y: Well, it's a failure of the profession and the law schools are an important part of the profession. So, of course they share the responsibility, but it's not exclusively the failure of the law schools. It is the failure of the law schools in that law schools have until very recent years paid no attention to the training of advocates. Most of the leading law schools have thought of the trial specialties as kind of beneath the level of intellectual dignity that's accorded to the rest of the curriculum. You know, negligence was the weak sister. Criminal law was the in-law. Corporate stuff. Taxation, that's what challenged the ablest members of the academic branch of the profession. So that's what was emphasized. But, there are other ways in which the law schools are responsible.

I think, by and large, the law schools for a long time have been graduating people who ought not to be members of the bar. And they have been graduating them, because some notion of democracy, that really anybody that wants to, can be a lawyer. I mean anybody can pass a bar examination if they try enough times. Anybody can get through a character committee. The fact is, it's been the expectation that the law schools would screen out the incompetents and the undesirables, and they haven't, they don't. The myth of flunking out of law school is a myth—nobody flunks out of law school.

Irving Younger

M: What about the arguments that the students today are more qualified and competent, intelligent?

Y: They do seem to be more intelligent. I have no way of saying they are more competent, qualified. They are more intelligent. Generally, the younger the lawyer is, the better the performance he'll put on. The problem that I myself perceive in the quality of advocacy in the trial courts is not a problem of inexperience. It was a problem of the middle age or older guy who just didn't know what he was doing and wasn't going to learn, no matter what.

M: Do you think there is a need to have a regular specialized field of trial attorneys?

Y: I don't think it's possible. Maybe somebody could figure out how to make it work in the United States. I haven't been able to so it's just a pipe dream, as far as I'm concerned. If you're going to have a specialization, it's got to be barristers/solicitors in the sense that if it's going to mean anything, only someone who has the appropriate certification should be allowed to try cases, at least in serious cases in courts of general jurisdiction. And, that's not...you just can't have that in the United States...It's contrary to too much of our tradition. So you are not going to have that.

M: Is the answer a federal bar exam, or a trial bar exam?

Y: Well, if somebody could figure out what you're going to test, fine. I couldn't...A lot of things you pick up in the courtroom...I don't have any doubt that people can be trained to an acceptable degree of competence. The training is expensive and intensive, and it's essentially the NITA system of immersion, you know, total immersion. Three weeks and do nothing else. And, you will not be a disgrace in the courtroom. And, that's all we're aiming for. But that is expensive. It's very difficult to institute a program of that type in law school and probably doesn't work as well in law school as it does if the students are already lawyers...thinking of nothing else but improving their trial skills. And, in any event, we don't have enough NITA programs to permit everybody to go through.

M: So...you would advise law students and lawyers just to start going to the courtroom more and watching.

Y: That's one of the things...Sure.

M: I can see where maybe some law students might have the time, but lawyers, I just can't see.

Y: Well, they can try and there are some trial lawyers in NYC who don't do office work. They have partners, associates to do it, or they just don't take that kind of work. They spend all of their time in the courthouse and when they have a spare hour, they're sitting in the courtroom watching...watching a judge, because they're going to have to try cases before that judge, or watching some senior lawyer, you know, some well-known lawyer, trying to pick up things. They really are full-time students. And, it's a complicated enough specialty so that it takes that kind of concentration.

I think law school is too long. Obviously, this is not realistic; I don't expect this to happen in the next twenty years. But, I think given the native intelligence of the undergraduate in preparation and the people coming to the good law schools these days, and there are maybe forty or so really good law schools all around the country. Given the caliber of the people coming to those schools three years is far too long. Well, you know...in the third year you're taught more information, that is to say, rules of law from different fields. Do you realize that the law changes so quickly that it is pointless to learn that stuff. What

Continued on page 14

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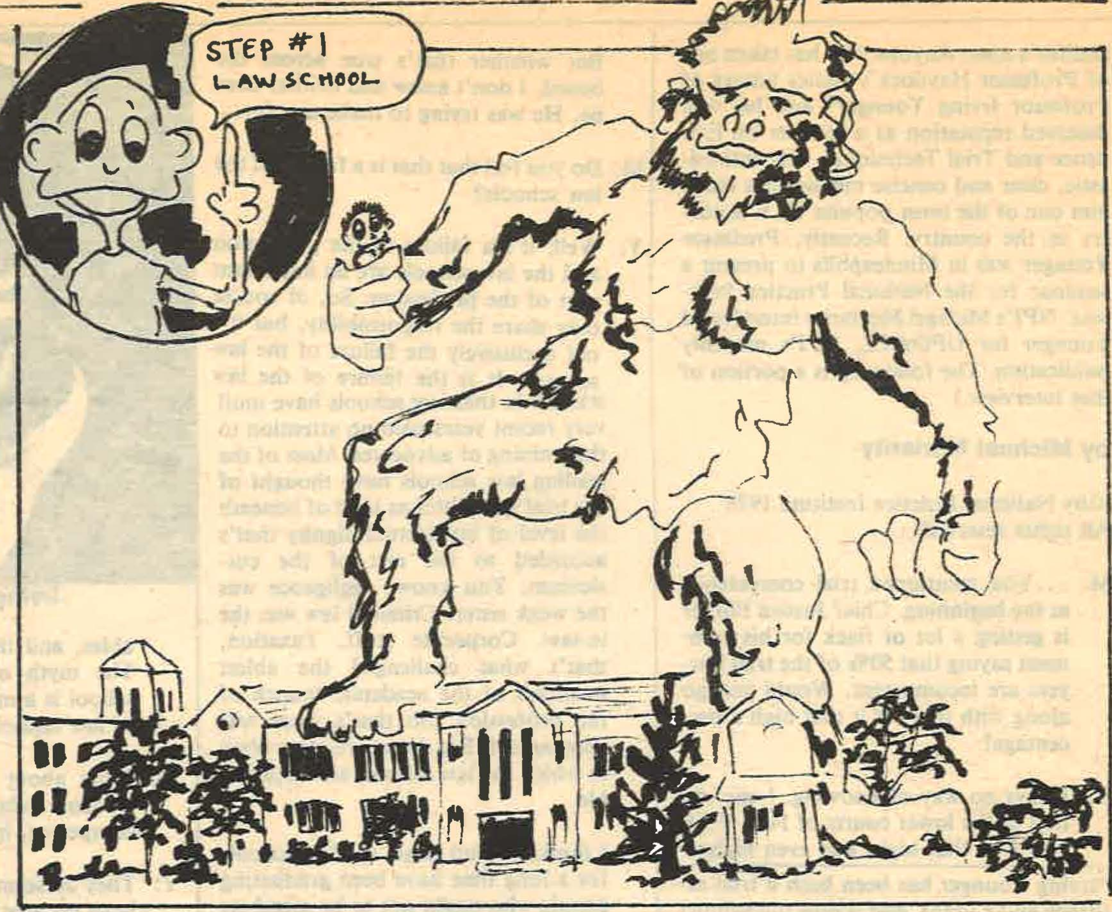

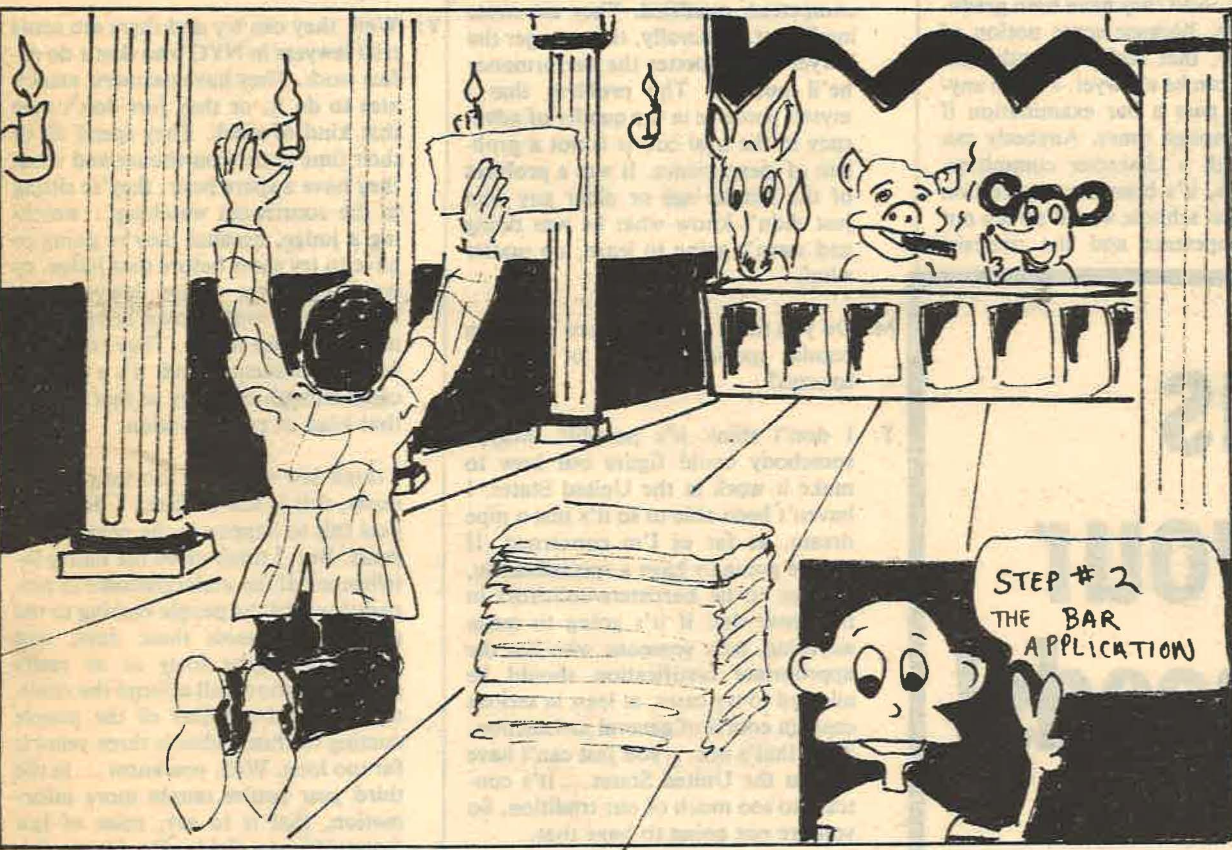

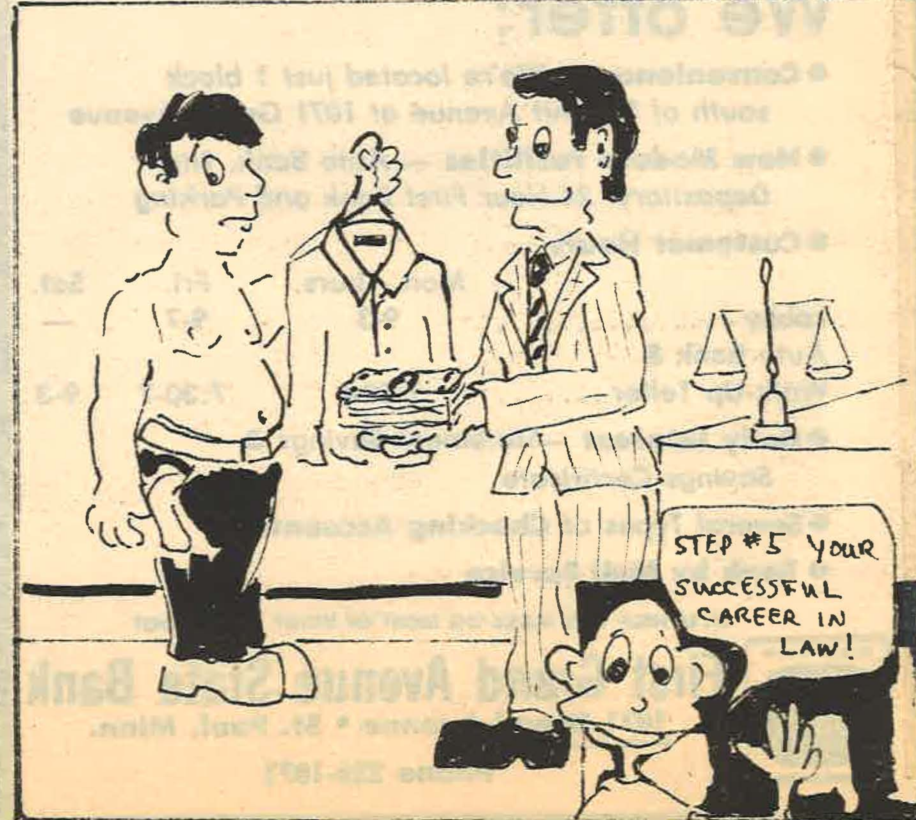

Case of the Missing Directory Part II

by Tom Copeland

Literally hundreds of letters and calls have poured into the *Opinion* office demanding to know of any further developments after your reporter's article about the SBA and the student directory appeared in the February *Opinion*. Your reporter has been besieged in the hallways by students who have pleaded for more information. Your reporter's home phone hasn't stopped ringing. Without a doubt, the student directory has replaced the parking controversy as the hottest issue on campus.

So just what exactly has happened since the previous article?

The following story has been carefully pieced together from interviews with informants who because of the very sensitive nature of this issue prefer to remain anonymous. Your reporter's lips are sealed.

As you will remember, last spring the SBA hired one Peter Hill to compile a student directory. Both sides accused the other of causing delays until the SBA told Hill in November that he had breached his contract and his services were no longer required.

Upon later discovering that they had paid Hill $1400 of the $4300 contract, the SBA sent a representative to meet with a prominent professor, reported to know a good deal about the UCC, about possible legal action against Hill. This professor told the SBA that the issue was a fact question that could go either way in court. The SBA might be able to recover the $1400 or Hill might be able to recover $2900 in a counter claim action. Legal action looked risky. Now what?

At its March 4th meeting the SBA decided to try to settle with Hill. An SBA representative contacted Hill and told him that the SBA would agree to not file suit against Hill if Hill would agree not to file suit against the SBA.

According to my informant, after the SBA told Hill that he had breached the contract (which, by the way, remains missing), Hill was willing to let the whole matter drop. But after reading your reporter's article, Hill became outraged. He felt that the article was completely unfair to him. He decided to turn the matter over to his attorney for possible legal action against the *Opinion* and/or the SBA. He then told the SBA that he would refuse to release them from any possible liability unless he was paid $500.

Boy, it's nice to know that someone out there is reading the *Opinion* and that your reporter's articles are having such an impact on people's lives.

Faced with the offer to pay off Hill for $500, the SBA once again acted with dramatic decisiveness. At their March 30th meeting they voted to "let sleeping dogs lie" and hope for the best. No one from the SBA has since communicated with Hill so it is likely that he will first learn of their answer to his offer from this article. Hi, Peter.

Your reporter felt that this vital story wouldn't be complete, however, without hearing from Mr. Hill directly. Our readers deserve nothing less.

In an exclusive interview with the *Opinion*, Hill refused to answer any questions about the directory issue.

"Why not?" we asked.

"Because I've referred the matter to my attorney," said Hill.

"Who is your attorney?" we asked.

"That's nothing that I'm going to disclose to you," said Hill.

"Well, what did you think of my article?" we asked.

"It was totally inaccurate," said Hill. He refused to discuss what he felt was inaccurate about it and we hung up.

A half hour later Hill called your reporter back and offered a glimpse into his side of the controversy with the SBA. "I'm out of pocket," he explained, saying that he had spent more on supplies for the directory than the $1400 he had received. He complained about the way he had been treated by the SBA and indicated that they had caused the directory to be delayed. He mentioned again that the matter was in the hands of his attorney. Our second exclusive interview was over.

As of press time, no action has yet been taken by Hill against the SBA, the *Opinion*, or your reporter. Maybe this article will move things along. Whether the SBA or Hill is in the right, your reporter can't say. Any actions against the school's beloved *Opinion* will certainly be met by a tremendous outcry of the student body. The *Opinion* editor is prepared for an historic battle if necessary. Your reporter plans to leave town after finals are over. Watch the bulletin board outside the *Opinion* office for late breaking news. Your attention has been appreciated.

Grades

No More 95's

The Academic Affairs Committee voted 5-2 at its March 23 meeting to recommend to the administration and faculty that an administrative floor of 60 and a ceiling of 91 be imposed upon the grades used in the computation of the grade point averages and academic status. The faculty as a whole discussed the recommendation and agreed to take no formal action until their next meeting on May 11.

Any grade below 60 would be treated as a 60 for computation of a student's average and any grade above 91 would be treated as a 91 for that purpose. The Academic Affairs Committee voted unanimously to retain the present 100 point grading scale for purposes other than computation of averages. They agreed to advise students of the actual grade given by the instructor even though a student's transcript would reflect only the administrative grade.

It was suggested that the transcript bear a schedule noting the distribution of grades, with an explanation of the ceiling and floor and its application to the transcript. The grades would be distributed as follows: 60-64, F; 65-70, D; 71-79, C; 80-85, B; 86-91, A.

The recommendation was the result of the committee's concern about the effects of one very low grade on a student's academic status. It was felt that a student who receives a very low grade should not necessarily be forced into probationary status (or expulsion) as a result of the averaging in of all grades without a floor.

In setting the grading floor at 60, the committee was establishing a 6 point spread for F's. The Committee agreed that a ceiling should be created which would parallel the floor, and so chose 91 as the top grade to be reflected on a transcript. The scale now has an equal point spread for A's as for F's (6 each).

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Work-Study Student Profiles

Law Jobs Through School Program

The William Mitchell Work/Study Program is nearing completion of its second successful year in operation. Nearly fifty students have participated in the program to date. These students have received on-the-job legal education and have made contacts in the legal community that have often led to other law related jobs after the end of the program. The Work/Study Committee is now recruiting applicants for the next academic year. The Committee is projecting that there will be funding for about 26 jobs. You should consider applying.

Application for the Work/Study Program involves essentially a two step process. First, to be considered an applicant must complete and submit a Graduate and Professional School Financial Aid Service application (GAPSFAS) by June 15th. GAPSFAS applications are available in the Placement Office. Second, the applicant has to meet the eligibility requirement of establishing a sufficient financial need under the GAPSFAS analysis. Once the applicant has met the eligibility requirement he or she will have the opportunity to interview for three Work/Study jobs. The employer will make the final determination of which student gets the job. Based on past experience, close to 100% of the eligible applicants have been hired.

The Work/Study funds are used to finance law clerk positions at nonprofit organizations, such as MPIRG and Legal Aid, and government agencies. Currently students are placed with the following government agencies: The United States District Attorney, the Hennepin County Attorney, the Minnesota Attorney General, the Judicial Advisory Service and the State Department of Vocational Rehabilitation. Faculty research assistant positions are also available in the school. Similar positions will be available next year.

The jobs pay, on the average, $4.50 per hour. Students arrange their schedule with the individual employers with the average work week being 20 hours. Most students have had no problem in arranging time off for exams or clinical work.

As most students are painfully aware, the job market for law clerks and attorneys is very competitive. Legal work experience will not only broaden the student's education but will give the Work/Study participant an advantage in securing future employment. Therefore, current first and second year students are especially encouraged to apply.

Several of this year's participants have shared their experiences in the program and describe their job duties as follows:

The student's primary task is to assist the attorneys in preparing appellate briefs. The required in-depth research on a variety of criminally related legal issues is both interesting and instructive. Since the attorneys also represent other state agencies (Bureau of Criminal Apprehension, Crime Victims Reparation Board, Peace Officer Standards and Training Board, State Fire Marshall's Office) some time is spent giving these agencies legal advice on a variety of issues. Finally, the Criminal Division is occasionally called upon by an outstate county attorney to assist in the prosecution of an important case or to assume total responsibility for such prosecution in the event of conflict of interest on the part of that county attorney. This presents the law clerk with the opportunity to utilize the available research tools in an attempt to answer the questions that arise in preparation for and during the trial.

To assist the Attorney General's Office and in particular the Criminal Division to carry out these research responsibilities a WESTLAW on-line computer research terminal was installed. The law clerk has virtually unlimited access to the computer terminal and the increased research speed increases the usefulness of the clerk to the Division.

An Economic Crime Unit operating with funds provided by a Law Enforcement Assistance Administration Grant has been established as an independent part of the Criminal Division. The Unit has special initial prosecutorial powers in the "white-collar" crime area. This recent addition provides an added dimension to the scope of activities undertaken by the Division and the law clerk.

The Minnesota Public Interest Research Group (MPIRG) is a student supported organization dedicated to public interest research and advocacy. Although MPIRG's projects vary considerably, most involve some facet of environmental or consumer protection. During my rather brief stay at MPIRG, I have been involved in issues relating to consumer credit insurance, Department of Natural Resources land use policy, misleading automobile advertising, power plant siting, and mental health commitment procedures.

The duties which a law clerk at MPIRG might be asked to undertake are similarly varied. While a good deal of time is spent performing conventional legal research and writing memoranda, I have also had an opportunity to prepare pleadings, to draft proposed statutes, administrative rules and a municipal ordinance (Senator Davies' Legislation Survey has proved of inestimable value), to answer routine legal questions raised by citizens both over the phone and by letter, and to edit law-related publications for lay audiences. The legal research experience is particularly valuable since very few of the questions to be researched have "settled" answers. I have often been called on to creatively research and argue by analogy to substantiate MPIRG's legal position.

I have found my experience with MPIRG both educational and enjoyable and would recommend it highly to anyone with an interest in environmental or consumer law.

Duties: County Court judges are not provided with government paid law clerks, as are District Court judges. Therefore, one of the main purposes of the Advisory Service is to provide legal research assistance to County Court judges. The judges submit their legal question to the Advisory Service Director, Stephen E. Forestell. The Director gives the legal research project to one of the law clerks. The law clerk's duties are to research the problem and then write a legal memo to the Director regarding the issues involved in each case. The job provides students with a good opportunity to sharpen their legal research and writing skills.

Three William Mitchell seniors, Loretta Frederick, David Peake, and Angela McCaffrey have worked at Legal Assistance of Ramsey County through the work study program. As law clerks they've had a wide range of civil practice experience in the areas of family, landlord-tenant, public housing, consumer, mental health, employment discrimination, education, real estate, welfare and administrative law.

Under the Supreme Court rules regarding certified student attorneys L.A.R.C. law clerks have made appearances in various court hearings and trials under the guidance and supervision of staff attorneys.

L.A.R.C. law clerks have also had the opportunity to participate in major litigation and class action task forces. They've also gained experience in legislative advocacy and bill writing and the administrative hearing procedure.

The U.S. Attorney's office, as an arm of the Justice Department, represents the federal government any time it sues or is sued. The majority of actions are criminal prosecutions for bank robbery, kidnapping, illegal firearm sale, drug distribution, check forgery, etc. But the U.S. Attorney also represents the myriad federal agencies which, although possessed of abundant legal counsel, cannot represent themselves in litigation.

Former Judge Andrew Danielson is the U.S. Attorney for the District of Minnesota. His staff includes 12 Assistant U.S. Attorneys. This number should increase to 16 or 18 in the near future to match the expected appointment of two more federal judges.

Action at the Office is varied, challenging and fast-paced. Clerking duties include researching and writing memoranda, motions and Eighth Circuit briefs. But there is liberal opportunity to second chair at trial—organize exhibits, keep track of witnesses—and conduct preliminary hearings to determine probable cause for arrest.

A preliminary hearing is perhaps the nearest thing to real trial experience that a law student can participate in. The prosecuting attorney asks leave of court to permit the law clerk to conduct the hearing. The attorney sits down and you are on your own. You question the witnesses, usually law enforcement agents, trying to establish that none of the defendant's constitutional rights have been violated and that just cause exists for detention.

An armload of hornbooks will not help when defense counsel's first objection comes in. Somehow, with self-preservation at stake, the adrenaline flows and against the barrage of a thousand silly things to say, a passable if not proper response emerges.

The chance to spar in court is a heady feeling. It makes the long hours rummaging in *F.2d* writing other people's briefs worthwhile. The requirements of research and the opportunity for court time combine to provide a valuable introduction to criminal and civil practice in federal court.

GATTON

Continued from page 4

issues of fact. Noting that "a jury is the best protection against arbitrary and excessive abuse of discretionary powers," Gatton stressed that "disallowing a jury trial diminishes the defendant's right to proof of an offense beyond a reasonable doubt; without a jury, the matter before the court will not be likely to receive the deliberation which the matter deserves."

Addressing himself to other portions of the Joint Commission's recommendations, Gatton acknowledged disagreement with some of the proposals. The Commission's recommended removal of status offenses—truancy, curfew violations, et al —behaviors deemed improper for the juvenile but but non-criminal for an adult, - from within the juvenile courts jurisdiction impressed Gatton as a desirable reform. However, Gatton felt that for the same reasons victimless crimes should remain punishable by the juvenile court.

Reiterating his belief that proscriptions and sanctions directed towards the juvenile should parallel those prohibitions and punishments designed for adults, Gatton said, "Just as it is unfair to punish a kid for behaviors acceptable in adults, it would be anomalous to allow juveniles to misbehave with impunity when adults are punishable for the same criminal acts. As long as adults are punished for victimless crimes, juveniles should be held to the same standards." Gatton felt that the Commission's recommendation that victimless crimes be eliminated, together with status offenses, from the reach of the juvenile court system was inconsistent with the basic tenor of the rest of the reforms. Gatton was quick to point out that these areas of disagreement with the Commissiion's proposed reforms did not lessen his conviction that the proposals are the "best development in juvenile court thinking in many years."

The Joint Commission's recommendations are comprised of comprehensive evaluations of the existing juvenile systems, proposals for extensive institutional reforms, and meticulouusly detailed standards for implementation of the recommendations, the voluminous extent of which is only hinted at in these interviews with Professor Pirsig and Mr. Gatton. But the thrust of the Commission's work, a proposed redefinition of the juvenile system, is revealed by the discussion of the "proportionality" concept. For Gatton, "proportionality is fundamental to justice, since liability should be directly related to the offense committed." While Gatton does not deny that the juvenile offender should be held to a lesser degree of responsibility than the adult offender, he feels that, nevertheless, sanctions should be related to the comparative seriousness of the offense.

Gatton's essential criticism of the traditional juvenile system is that "the juvenile is denied recognition of his constitutional status as a citizen." The juvenile system's effectiveness in serving the public interest, while important, cannot replace the need for constitutional due process in the system's procedures. "The constitution confers rights upon the individual, not the public," and without scrupulous recognition and protection of those individual rights, regardless of the accused's age, the interest of the public and society are compromised.

Bar Exam

Bar Results

The results of the February Bar Exam were released to each school on Monday, April 17. These figures are only for the William Mitchell students who took the Exam in February.

92% passed among WMCL first-time takers of the exam (85/92)

73% passed among WMCL repeaters (11/15)

90% passed among WMCL students overall (96/107)

Mitchell Seeks Blue Ribbon Approval

by Loretta Frederick

William Mitchell will attempt to add seating for about 400 more law students to the present 205 seating capacity of the WMCL library before the spring of 1979. William Mitchell College of Law has applied to the Association of American Law Schools (AALS) for accreditation as one of that organization's voting members. The standards by which applicant law schools are measured are significantly more stringent than those applied by the American Bar Association in its accrediting procedures. As a result, WMCL has to initiate a few renovations in its physical plant to meet the higher AALS standards.

The biggest hurdle that WMCL must overcome before the AALS inspection, which is scheduled for spring 1979, is the library seating capacity. Study space for sixty percent of the student population must be made available before AALS will accredit the school. At press time, no specific plans had been confirmed to expand the library to the necessary size and the remedy for the problem of meeting this requirement remains to be found, according to Assistant Dean Curt Stine.

Another aspect of physical plant renovation involves the faculty law library which is being moved to rooms 106-107. The construction or acquisition of book shelving in those rooms will be completed in the "not too distant future," Stine said. The space on the third floor which will be left after the faculty library is moved will most likely be converted to more student study room.

The Assistant Dean emphasized the benefits to students that would result from AALS accreditation as he discussed the efforts being made by the school to meet the higher standards.

One of the most important reasons for seeking accreditation is that AALS schools do not generally admit transfer students from non-AALS law schools. Accreditation of William Mitchell would make a Mitchell student's transfer to another state (which may well have only AALS schools) far easier than it is at this time.

This transferability would be very helpful in light of the percentage of ABA approved law schools that are also AALS accredited. Of the 163 ABA schools in the U.S., 132 (or 80.7%) are now AALS accredited. "Mitchell's admission to this group would also give it one of the votes in the AALS decision making process and fuller participation in its activities," Stine said. In addition to its role in maintaining high standards for legal education in the member schools, AALS adopts positions and advocates its policies in other forums. For example, the AALS law schools, after reaching a consensus on the issue, submitted an amicus brief to the U.S. Supreme court in the *Bakke* case.

The final decision on Mitchell's admission to the group will be made by the accrediting board during next year's midsemester break (1979-1980) as part of the annual AALS convention.

Continued from page 1

According to Haines, only one student has approached him personally to discuss objections to his teaching methods.

Haines granted an interview with the OPINION last week for the purpose of discussing his reactions to student criticism. He stated that he had no comment on Bonin's letter to the administration and that he has met with the administration to discuss the matter. He said that his reaction to the charges and controversy now is "past the outrage stage" and that he is now convinced that the problem is not with him.

He also stressed that the students who have objected to his teaching methods have not come directly to him to express their concerns (with one exception). When the reporter suggested that the reason was students' fear of his retaliation, he responded, "Yes, I bite people's heads off!"

Haines does not feel that his competence is the issue. He said that he feels sorry for people who can't cope with their own tensions. When asked to elaborate, he explained that students, especially those in their second year, are generally under a lot of pressure with heavy school work, jobs and sometimes family problems. They have a fear of low grades or flunking out which is sometimes self-fulfilling. And Haines feels that in his case, these stresses are exacerbated by some students' inability to deal with their racial tensions. He stressed that he's "not going to be psychologically manipulated by a bunch of kids who can't deal with their own problems."

Haines feels that students seem to project their problems onto him. He noted that there are several instructors at William Mitchell who use methods of teaching that students should find more outrageous than his are alleged to be. He said that it was ridiculous the way some people grade students; giving away high grades with the class averaging in the 80's, or letting them grade themselves. He noted that those types of professors are not getting hassled by students; neither are those who have attendance policies similar to Haines'. He thinks that some students aren't really concerned about learning, but are just looking for an easy way out of law school.

Haines feels that his organization and class preparation compares well to the whole body of instructors. He stated that worrying about tenure is "the least of his concerns." He noted that black professors elsewhere are having problems with getting tenure, also. He stated that the whole situation with black professors can be seen as a nationwide problem.

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Can Students Give Legal Advice?

by Camille Doran

3rd year law student: "My uncle called from Montana to ask for some legal advice. This neighbor of his was going to dam up the creek which runs through both their ranches. My uncle wanted to know what he could do about it, but I wasn't sure if I should be giving him advice..."

1st year law student: "Well, I'd only been working on this job for three weeks when one of the ladies from the front office pulled me aside to ask about this dispute she was having with her landlord. I knew a little so I could help her but I didn't know if I could give people legal advice..."

2nd year law student: "My folks wanted me to draft them a will, so I got some drafts of wills and brought them home for my parents to check over. I kept encouraging them to see a lawyer about the whole thing because I just didn't feel that certain about it..."

These situations present difficult, but not uncommon, problems for the law student. Since she/he hasn't yet passed the Bar, how much legal advice, if any, can the student give?

Minn. Stat. §481.02 prohibits unauthorized practice of law by any person who has not passed the Minnesota Bar. But the unauthorized practice seems to be limited to *charging* persons for legal services rendered. On its face, the statute doesn't speak to giving legal advice without charge.

The ABA has defined legal practice more broadly than the Minnesota statute. In the Code of Professional Responsibility, legal practice entails the "rendition of services which call for the professional judgment of a lawyer." (EC3-5, Canon 3). Professional judgment is described as the "lawyer's educated ability to relate the general body and philosophy of law to the specific legal problem of the client." This would include giving free legal advice, according to the ABA.

What can happen to a law student who does give legal advice when asked? The William Mitchell Student Code states that a student is subject to disciplinary action if she/he commits any illegal act against any person or property. Mitchell Professor Kenneth F. Kirwin says this would include violating the Minnesota statute against unauthorized practice of law. But if a student just gave legal advice, presumably this would not violate the statute. However, Kirwin cautions that the Minnesota Supreme Court, via **Gardner v. Conway**, 234 Mn 468, seems willing to interpret the statute more broadly by the use of inherent authority. If so, students giving legal advice could violate the statute and would be guilty of a misdemeanor or subject to injunctive action.

So what should law students do when asked for legal advice? One response that Professor Kirwin recommends for students who are asked for advice by close relatives is that the student go ahead and do the initial research into the problem. The student can then give the results to the relative requesting it who in turn would contact an attorney. Since the preliminary work was already completed, this should result in a reduced fee. The best overall response seems to be for the law student to say that she/he presently is unauthorized to practice law and that even giving advice could subject him/her to prosecution by the state or disciplinary action by the school.

Nick Schaps: In Memoriam

Nick Schaps, Jr., graduated from William Mitchell in January, 1976. He died in Bethel, Alaska, on March 20, 1978. Two pieces follow: The first, a reprint (with permission) of an Oliver Towne column that appeared in the March 24, Saint Paul Dispatch; the second, some comments by Roger S. Haydock.

Nick Schaps, Jr., could have made a comfortable and rewarding career in the Ramsey County attorney's office.

"But he had this thing on his mind," said his father. "He wanted to go someplace in the world where people really needed someone to fight for their legal rights and bring them justice. I guess it began with him even when he was at Cretin High School, at St. Thomas College and four years at William Mitchell."

During and before and after his school days, Nick worked with the disadvantaged, as a job counselor helping the Chicanos, the blacks and poor whites find work.

As a senior law student and after he passed the bar examinations, Nick worked in the juvenile department of the Ramsey County attorney's office.

But it wasn't enough.

So last Oct. 1, Nick Schaps packed his gear and went to a small fishing community near the Bering Sea called Bethel, Alaska. Its 3,300 residents are mostly Indians and Eskimos.

Nick went as a VISTA volunteer.

And when he went, he had paid all his student loans and cleared all his debts incurred to put himself through law school.

"Nick stayed as an assistant county attorney just long enough to earn enough money to pay everybody back," his father, Nicholas Schaps, Sr., said.

In Bethel, Alaska, he rented an old truck body, remodeled into a small house. He did his own cooking and lived in a raised bunk "close to the ceiling where the most heat came from the stove."

He lives primitively by St. Paul standards, certainly a Spartan existence by comparison with his lawyer colleagues back in St. Paul.

But he loved it. He worked with the people in Bethel, trying to solve their legal problems to make their lives better.

If he missed anything, it would have been his fiance, Lori Mitchell. She was marching to the same drum beat, teaching school in far off Bogota, Colombia—about as far from Nick as two people in love could be.

"Last Christmas, he flew down there to spend two weeks with her and maybe they talked about her coming to Alaska eventually... I knew that Nick wasn't planning to leave when his tour was up," said his father.

I asked him about that when he stopped in on that Christmas trip and he said, "Dad, I've never been happier... I'm not sure I'll come back..."

He did.

On the night of March 12, a Sunday, as was the custom, the senior Schaps called Nick from their Arden Hills home. He said he hadn't been feeling well, had a bad cold or something, but was staying on the job.

As the Schaps learned later, Nick's chest pains got worse the day after he talked with them on the phone. He got some medication and kept on working through the week. But the pains got worse. He went to the Bethel hospital. His symptoms were diagnosed as severe pneumonia. He was put into an oxygen tent, but he didn't respond.

Monday, March 20, Nicholas V. Schaps, Jr., 29, died among the people he had learned to love in the short time he was there. And they had learned to love, respect and admire this legal man, who could have lived the easy, comfortable life in a big city with the accoutrements of his profession's success.

They said goodbye to him in Bethel at a memorial Mass. Then Nick Schaps came home.

He was buried on Good Friday, ironically on the same day as another man almost 2,000 years ago, who also gave his life for the poor, the sick and sad in spirit. Both men had "this thing."

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Candid Cameras in the Court

by Michael T. Norton

The second part of the state Supreme Court experiment with media coverage took place on March 24, 1978. As reported in the February OPINION, the Supreme Court had previously suspended its rules and allowed audio and video coverage of arguments involving Reserve Mining and the Pollution Control Agency. Observers have termed the experimental coverage successful, although there has been no official comment from the Supreme Court.

The latest media coverage involved the controversy between Minneapolis businessman Robert Short and the Minneapolis City Council. Mr. Short had obtained a restraining order and permanent injunction enjoining the City Council from building a parking ramp at public expense. The ramp was approved by the Council in order to cement a contract with a developer for a tract in the Loring Park development district. The oral arguments of the respective parties before the Supreme Court were filmed and an edited version appeared on some editions of local television news programs.

The immediate future of further media coverage of the Supreme Court or trial courts is unclear. According to David C. Donnelly, Chairman of the Media/Bar Committee of the State Bar Association, the Board of Governors has given the Committee the responsibility to explore the whole question of taping appropriate portions of trial court proceedings. The recently enlarged Media/Bar Committee will be looking at those portions of a trial that do not involve the participation of the jury. For example, motions, final argument and sentencing in trials of public importance could be taped without infringing on a litigant's rights. While the jury is present at final argument, the jury is sequestered at that point, so potential damage to a litigant's rights would seem to be improbable. It is already common practice for court reporters to supplement their manual recording of final argument in cases likely to be appealed by also recording the arguments on tape. Any future experiments in other courts would be governed, at a minimum, by the strict standards approved by the Supreme Court for the taping of its own proceedings.

In spite of the success this limited experience in the Supreme Court has apparently enjoyed, it has met with resistance. While some lawyers oppose media coverage in the courts, the greatest resistance so far has come from the ranks of judges. The Honorable Hyam Segell of the Second District wrote an open letter to the Bar of Minnesota after the first taped coverage of the Supreme Court in February. In that letter, Judge Segell voiced some of the genuine concerns that taped coverage of courts arouses. However, these concerns have proven to be groundless in those jurisdictions which regularly allow cameras in the court room. And, since future experiments will probably be confined to the non-jury aspects of a trial, there would seem to be no more chance of damage to a litigant's rights than there is under current practices.

The issue of cameras in the courtroom comes before the State Bar Association at its convention in June. One action item is whether the Supreme Court should be urged to adopt permanently the temporary rules which first allowed videotaping of that court's proceedings. Prior to the convention, a program on cameras in the trial court will be held for purposes of discussion and debate only.

Supreme Court reaction to taped coverage of its own activities is expected at the convention. Chief Justice Sheran will deliver his annual State of the Judiciary message to the convention on June 23. At that time he will undoubtedly give the official court response to the camera experiment. It is also possible that he will indicate how far he would like to see the experiment go, since he first proposed the idea of the recent limited experiment at last year's convention.

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Stayin' Alive

Hustling for a Living

*** Show me a pimp that's spent more than a weekend in jail and I'll show you a creature rare in Minnesota.

*** An Iowa minister, arrested for propositioning a female undercover officer, beat the rap when the officer failed to tell the difference between the minister and his brother. An old trick.

*** A well-to-do doctor from St. Paul reported that his runaway daughter was believed to be in the Grant and Nicollet area of Minneapolis. He hired a retired F.B.I. agent to determine her whereabouts. The agent distributed circulars containing the girl's picture and an offer of a $1,000 reward for her return.

The agent went to a bar near downtown Minneapolis and engaged in a conversation with an unidentified black male who stated he could return the missing daughter in exchange for an immediate cash payment of $500 and $500 more upon return of the daughter to the bar. The agent agreed to the terms and paid the money. The man walked out of the door with the $500 and was never seen again.

*** An early release program in a downtown Mpls. center has become a haven for outstate runaways.

Item: The juvenile squad went to the bus depot to meet the father of a runaway from Winona, MN. The father stated that his daughter called him and said she'd been robbed at the center by a white male, 35 yrs. old. First name: George. Released from St. Cloud, on parole for robbery. George's room was searched and the father's checkbook found. The daughter refused to return home. Both daughter and George arrested.

*** A north Minneapolis middle aged mother of a daughter habitually arrested for prostitution secured the release of her daughter from a juvenile detention center. The mother split the proceeds ($350) of her daughter's previous three nights' work. They left the center together and counted the money on the detention center steps.

*** Age limits? One sexually active prostitute died at age 16 from advanced syphilis.

*** A call came in on a Saturday night. A 230 lb. steelworker was beating up a gay individual inside a Hennepin Ave. bar. the officers questioned the steelworker as to his motivation. He replied: "That SOB called me 'sweetheart' and I'm going to kill him."

Officers noted he had been drinking and calmed him down. They sent him down the street for a cup of coffee to sober up.

Ten minutes later, another fight call at the same bar. The steelworker had finished his coffee and returned to the bar to finish off the gay. Steelworker booked for assault.

*** One street walker named Marie has been working a well-known downtown hotel in Minneapolis for 35 years. She can be seen plying her trade outside the main entrance several nights a week. She does not need to work every night. She lives in a beautiful apartment in Edina.

Marie says she's not as good as she used to be. But, in an age of specialization, she's been told by man she still gives the best—in town.

*** Back a few years, there was a morals squad officer named Frank who made Dirty Harry look like Jesuit. He was called a man of a thousand faces. He'd go into a bar dressed like a railroad worker out of a job. He'd put the bust on a woman who'd try to "console" him.

At a nearby hotel, an elderly clerk reported a man registered to a single occupancy entering the elevators with a young woman on his arm.

Frank overheard the call to headquarters and caught enough of the conversation to remember "Room 704."

The officers assigned to the case arrived at Room 704 first. There was a loud rap at the door. A young man opened the door but kept the chain locked. "What's the matter?" he asked.

"Police. We've had a complaint. Have you got a woman in there?"

"Aw give me a break," said the young man. "I'm going in the Army in the morning." He slammed the door.

Just then Frank appeared, drew a bead on what happened and pounded loudly on the door.

"Police," he said as he pounded. "Open up."

All three cops standing outside the door overheard a male voice whisper—, the muted voice of a young female saying "O, my God," and the unmistakable snap of a girdle.

The two officers broke out laughing. Frank stood there, his jaw taut and resolute.

The two officers left. Frank remained behind listening. He knew the man and his woman would have to come out some time.

Note: The author is a veteran police officer in the Twin Cities. All names are made up. All incidents actually happened.

Continued from page 12

Those of us who knew Nick remember him the way Oliver Towne described. But we remember more. Much more. We remember his upbeat, enthusiasm for life, his open sharing of his thoughts and feelings, his two sportcoats, his optimistic comments about law school and the practice of law, his ability to hit a baseball and run like the blazes, his pragmatic approach to solving problems with a balanced sense of advocacy and fairness, his adventuresomeness tempered with realism, his questioning "why is it like that and why can't it be like this" attitude, his organized files, and his gentle spirit. Nick was the pebble thrown into the lake that created a ripple effect of care and concern and love for all those he touched. The waves will continue long after his death.

He touched our lives as surely as the Alaskan spring and summer would have touched his life. We will miss him.

MEMORIAL FUND

A Nicholas Schaps, Jr., Memorial Fund has been started at William Mitchell. The Fund will be used to support and promote something that Nick Schaps believed in and worked for. The exact use of the Fund has not yet been determined, but possible uses include an annual scholarship for a disadvantaged student or for a student who specializes in environmental law or for some related purpose.

Many individuals have expressed an interest in contributing to such a Memorial, and all gifts to the law school received in the name of Nick Schaps will be placed in such a Fund. Please make checks payable to the William Mitchell College of Law and include a note earmarking the amount for the Memorial Fund. All contributions, and any questions or suggestions, should be directed to Gerald Bjelde (227-9171) at this address:

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SPORTS

by Ken Davis

GOLF

A mass mailing to alumni and a poster campaign in the school halls are attempts by organizers of the fifth annual golf tournament to hypo interest in the event. An additional interest-generating factor is the arrival of the trophy case and golf trophy to the school.

A field of 144 is expected for the tournament which will be held May 22nd at 1:00 on the challenging Mendota Country Club Course. It is hoped that this field will include increased numbers of students and women. This year's representation by these groups already appears to be headed upward according tournament organizer, Chris Sitzman. Several foursomes of students and women have already expressed an interest in competing in the event.

All students, faculty and alumni are invited to participate. Applications are available in the Alumni office or may be obtained by calling Debbie at 227-9171. Prompt filing of applications is urged as a full field is expected. Those who are unable to attend may send donations of door prizes to Debbie in the Alumni office. With the cooperation of the weatherman the day promises to be a relaxing and invigorating plunge into summer.

VOLLEYBALL

A summer volleyball program is being initiated by sports director Bob Gjorvad. A sign up sheet for teams and individuals is posted outside the Used Book Store. It appears that the games will be played on Sunday afternoons, probably on the front lawn of the school. Other details are not yet finalized. Watch the bulletin board for further details.

SOFTBALL

The Softball season is scheduled to begin May 30th with 18 teams participating. Teams may sign up at the Used Book Store and are encouraged to do so promptly as the 18 spots are being rapidly filled. A $20.00 entry fee is due the first night of play.

Although a definite format has not been decided upon, it appears that the league will expand to include 2 nights of play. One suggestion is that the league be divided into two classes, with teams being placed in a class with other teams of equal ability. This may eliminate the despair felt by a team trailing the defending champion Como Bombers, 40 to 0. An offshoot of the increased competitiveness made possible by a two class league is that the consumption of alcohol may decrease because of a lack of the despair mentioned above.

Two additional suggestions are forwarded with the belief that they will contribute to an enjoyable season. The first of these is a printed schedule which will eliminate the confusion that exists on game night. Another area where confusion reigns is rules. Printed copies of the rules would eliminate much of the irrational discourse that occurs during the games. Although someone is sure to challenge the rules as overboard, vague, or discriminating, printed rules will be of some use to the rest of us.

Continued from page 7

are you taking in the third year? Admiralty? In five years, the law of admiralty will be wholly changed. You taking taxation? That's nice. The next time the Congress gets up the energy, they're going to change everything.

So...there's no purpose served in learning it. You've got to learn how to use the library. You've got to learn how to analyze the legal question. You've got to learn some basic stuff ...the stuff that underlies everything else is essentially the first year curriculum. And I would be prepared to defend the proposition that given the kinds of students we have today, and the fine facilities of the law schools, that fourteen months is more than enough. That is to say, two summers and the intervening academic year. And, then I would send people to the very best clinical program that there can be, which is a job. Any job in any kind of law office is better than any clinical program in any law school. And, if people have a yen for trial work, then fine. Apprentice them to some kind of trial office, D.A., public defender, or private law office and let them learn it that way. And then after a year or two, send them to a NITA type program.

M: You're saying then that clinical training is probably the most valuable thing you're going to get in law school.

Y: That's right. But, I also think that most clinics in most law schools are not worth the enormous amount of money and causes of effort expended to make them run because BETTER than any clinical program in law school is a job. So, what I'd rather do, is turn people out of law school after two years. Or, even less. Go to work.

M: Some kind of provisional license...?

Y: Provisional license, or else I'd say to take the bar examination, you need two years of law school and one year of work. The third year is a job, any kind of job. So long as it's in the law.

Students in County Bar

Ramsey

The status of students membership in the Ramsey County Bar Association is a little nebulous at this time. The RCBA is, however, voting on their new by-laws at the annual meeting on April 27. The by-laws provide the enabling legislation that would permit the Executive Committee to pass a resolution allowing students to become members. The next Executive Committee meeting is scheduled for May 4.

According to Jane Harens of the RCBA, they are definitely "envisioning student membership in the various standing committees." On July 1, the new members of all standing committees will be appointed by the incoming president.

Any students who are interested in membership on a committee should contact Harens at 222-0846 after May 4 and before July 1, 1978.

Hennepin

The Governing Council of the Hennepin County Bar Association recently approved and established a dues structure for student members of the Association. The cost of student membership is $5.00 with an additional $5.00 required for membership in the Minnesota State Bar Association.

Student members will receive all mailings of the Association and have all rights of membership, except the right to hold office or vote at any Association, Section or Committee meetings. This will enable students to keep abreast of current events within the legal profession, in addition to participating in actions of the committees or sections of the Bar Association.

Memberships in the Association and participation on committees can be particularly beneficial to students either in furthering their education regarding specific substantive fields of law, as well as providing an opportunity for the student to meet and become acquainted with members of the profession who work within specific fields of law in which the student may have an interest. Obviously, this knowledge of the members of the legal profession may serve advantageous at the time the student is looking for employment within the legal profession.

RETURN TO:

Hennepin County Bar Association
700 Cargill Building
Minneapolis, Minnesota 55402

Telephone: 335-0921

Please forward additional information regarding student membership and the activities of the Hennepin County Bar Association.

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by Jim Haigh

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Cut crystal with fresh flowers. Pressed linen tablecloths and napkins. China. Butter served on ice. Silver sugar server with matching sugar tongs. Art deco furnishings in a renovated moturary. This is **The Little Prince.**

The name is appropriate; one is treated royally here, though not as royally as one could expect to be treated if one were born into higher rank. Mostly, this is a basically sound restaurant with few pretensions and aimed at particular classes of people. It will not try to cultivate the connoisseur, nor those who demand their food served in a purely functional setting. Dinners here are graceful, compact, and based on suburban middle class tastes. Steaks, shrimp, prime rib and chicken are not adventuresome dishes yet this is the scope of **The Little Prince** menu. All things considered, they carry it off well, and with a relatively successful attempt as style.

The restaurant is quite large and the rooms are furnished differently, ranging from sparse modern to Victorian to art deco. One may have drinks at the piano bar (the player is reputed to be quite good) or in the large parlor. Upon entering the restaurant, one is struck immediately by the beauty of the wood furnishings and the tasteful interior renovation that has preserved much of the original woodwork.

After being seated under an art deco inspired mirror and stained glass of a parrot, the waitress brought us real sourdough bread sticks as appetizers. This was quickly followed by a fresh spinach salad. We had ordered veal and shrimp, respectively, and we were more than pleased when our dinners arrived. An interesting practice: after the salad and before the main course, a small helping of sherbert to clear the palate.

Fresh-steamed broccoli and cauliflower and carrots in brown sugar accompanied both main courses. Having had an opportunity to order either a parsley or a baked potato, we tried both and were pleased. The baked potato was done superbly, the parsley potato more uniquely — boiled whole with a thin glaze of butter and parsley. The fresh vegetables were a real treat and more so since the staff cooked them correctly; they tasted like spring and had excellent texture.

The shrimp came freshly boiled, and were large, firm and succulent. The shrimp we can heartily recommend, and when we return, it will be to have the fresh shrimp. However, the veal was a real disappointment, and should be avoided. It was tough and chewy, having a particularly pungent taste that wasn't helped at all by the burned mushroom sauce accompanying it.

We had ordered the house wine, chablis, in a carafe, and were pleased by its character and dryness; it went well with both the shrimp and the so-called veal. The house wine list is relatively undistinguished, but you won't embarass yourself trying to read and order from it. There is another wine list that presumably lists the better, vintage wines. But unless you particularly crave a particular year, don't go to the trouble of asking for it.

We liked **The Little Prince.** Be forwarned that the meals here are expensive and average around $12-14 per plate. However, the food was basically good; the service was efficient, unobtrusive, and knowledgeable; and the staff has obviously tried to bring together some elements of stylish dining into an integrated whole. In sum, it was an experience in classical middle class dining.

This is my last column for the **Opinion.** I have tried to give the students at WMCL some advice, some insight, and some thoughts on what to do when you are done with studying. I trust I've been somewhat successful. I couldn't see all the restaurants suggested to me, and I truly regret not being able to write about them. Thank you for your contributions. There is a boom in new restaurants right now. The **Opinion** needs someone to cintinue to write about life outside of WMCL — particularly regarding food. Contact the **Opinion** office if you'd care to write about dining in the Twin Cities.

Moot Court Report

Tim Cashin and Dave Newman won this year's spring Moot Court Competition in which 38 students had participated. The second place team consisted of Bob Streitz, John Varpness, and Jim Ryan.

Dean Burton authorized the addition of two more members of the Moot Court Board for next year; last year's Board of four students having been rather overworked in their efforts to coordinate the growing program.

The new Board consists of five regular members: Mary Seymour, H.J. Schmidt, Mark Hallberg, Bob Streitz, and Sue Doral. Barb Gislason was elected to coordinate next year's Client Counseling Competition. Board members have an option of receiving 2 credits or ¼ tuition for serving a full year.

Law Review

New Editors

The new Board of Editors for Volume 5 of the William Mitchell Law Review was elected on April 9, Lori Gille having been elected Editor-in-Chief the previous week. The newly-chosen Executive Editors are Jerry Anderson and Bob Webster. Eight Editors have been elected for next year's volume: Frances Grahm, John Guthman, Rebecca Joike, Bob King, Miki McGee, Dave Moskal, Dave Sparby, and Perry Wilson. The new Business Manager of the Law Review is Robert Preston.

A meeting has tentatively been schduled for Sunday, May 28 at 7:00 P.M. in the Law Review office, Room 318. All students interested in writing for the Law Review are invited to attend this meeting to discuss future volumes and the workings of the Review. Any further questions may be forwarded to the staff in 318 and information may be obtained by telephone (224-1239).

Recycle Recycle Recycle Recycle Recycle Recycle Recycle

The bins are here!

Finally the faculty has no more excuses for not cleaning off their desks. There is no reason for students to procrastinate any longer about cleaning out their lockers and brief cases. We have the perfect place for disposal of all the white paper that has undoubtedly been accumulating all year.

A massive recycling project has been instituted by the SBA and is now in operation throughout the school. All faculty members have been issued cardboard containers for the collection of the appropriate types of paper. In addition, bins have been placed in the lounge and other locations for students' recycling use.

All white paper described below, with the specific exceptions noted here, is recyclable. White letterhead, plain or bond copying paper (not glossy or coated or any carbon paper), white typing and writing paper (tear the covers off the notebooks first), computer printout paper, white windowless envelopes, and white NCR paper and forms are acceptable. Newspapers, magazines (including the OPINION), colored papers or tissue paper yellow legal paper and food wrappers and containers are all *not* recyclable through this project. Everyone is encouraged to participate - not dissipate.

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William Mitchell
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