

11-1972

## The Adversary (Vol. 5, No. 6, November 1972)

Southern Methodist University School of Law

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## Hardin on the Law School

Recently members of the Adversary editorial board conducted an interview with administrator-lawyer (or is it lawyer-administrator... perhaps time will tell) and new President of SMU, Dr. Paul Hardin, concerning four broad areas of specific interest to SMU law students.

(Pres. Hardin was number one in his class at Duke University Law School. He was a professor of law at Duke from 1958-1968 and has been a visiting professor at the University of Texas and University of Pennsylvania.)

1. Position of the Law School and law students in the overall plan for the University:

The four-month-old administration hardly has had time to formulate, much less implement, an overall master plan. The administration now is in the process of reviewing and upgrading the machinery of planning to get the best idea of where things currently stand. Two basic principles guide what planning the administration will do as affects any individual unit of the academic community. One, "we can't do everything." Two, "what we can do we will do well."

As to individual relationships between the law students and the undergraduate community, there is little an administration can accomplish. Dr. Hardin would like to see a strengthened SMU community and certainly doesn't discourage interaction. He points out that there are essentially two peer groups involved, divided by professional orientation and actual personal composition, that account for the lack of integration.

2. Proposal for the UTD Law School:

SMU has officially taken no position in opposition to this proposal. However, SMU has asked the coordinating board to specifically consider that:

- (a) SMU Law School is not now turning away students admissible under The University of Texas academic guidelines.
- (b) SMU Law School has the space and facilities if UT wants to expand.
- (c) SMU is willing to use this space for Texans, admitted under UT standards, to study law.
- (d) The State must (realistically) help those Texans support the tuition load.

The whole concept of the UTD proposal is tied to the position of private institutions in general. The problems are critical, according to Dr. Hardin. By the end of the century, the State could seriously damage the future of private institutions by either an actual plan aimed at absorption or by concerted neglect and failure to consider the availability of private institutions to solve educational problems.

Dr. Hardin feels the State is basically put in this position -- should SMU Law School remain small and become more national, or should it grow in service to the entire nation (but specifically Texas) and make itself more available to qualified Texans? SMU Law School will survive, but the question is whether Texas will take full advantage of the multi-member facility here.

(Cont'd. Page 3)

## How About a Change?

Tomorrow, Nov. 16, SMU law students will have a hand on the wheel that guides the grading system of the Law School. To consider alternatives to the present grading system, a vote will be taken to decide which grading method students prefer.

The ballot will list four grading systems: 1) the present numerical system, 2) A,B,C,D,F with pluses and minuses, 3) pass, high pass, honors, fail, and 4) pass, fail.

Only the third system requires explanation. Pass means that the student's performance counts towards the J.D. degree. High pass means that the student's performance merits special recognition in some significant respects. Honors means that the student's performance has been excellent.

No grading system can satisfy all students and all faculty members. Each system has advantages and disadvantages. For example, the present system is somewhat arbitrary and subjective and causes students, and others to pay undue attention to grades. On the other side, numerical grades tend to make professors take a very close look at exams since they must, if possible, distinguish between grades one point apart.

The difficulties of the present system might be partially eliminated by reducing the number of categories of passing grades. A letter system with pluses and minuses would result in 12 passing grades, as compared to the 40 (60 through 99) under the numerical system, and would offer a more realistic standard of precision in grading. (Cont'd Page 2)

Three pass categories, such as is offered by the pass, high pass, honors system, would provide a compromise between systems of many gradations and simply pass, fail. It would be the system of the fewest categories that the Law School could employ without seriously hampering students in their quest for jobs and without preventing faculty from giving appropriate recognition to top students. For this system to work, the faculty would have to be willing to use the honors classification regularly. Otherwise, a two category system would, in effect, exist and would have some of the same disadvantages of the pass, fail system.

Many law schools (and colleges) have switched from grading systems having numerous pass categories to ones with few pass categories. Has the time come for SMU Law School to do the same?

Lamar Smith

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### WHERE TO, SBA?

Where is the SBA? Well, in case you haven't noticed, the SBA is no longer located in that little office with the red door in the basement of Storey Hall. In a form of constructive eviction, the University has moved the SBA out of its office to make room for the new SMU student attorney.

The SBA has questioned the propriety of the new installation given the infrequency with which the rest of the University community normally visits the law school facilities. The Student Center was proposed as a more logical choice.

Still the carpenters came. The Law School administration promised the SBA a new office in the student lounge, to be separated from the lounge by bookshelves. An additional guarantee was that the SBA would not be evicted from its old office until the new area was completed. This guarantee did not come about. The old SBA office was torn up and revamped before a new office was (Cont'd. Page 3)

## EDITORIAL...

SMU was never the center of the Student Power movement of the late 1960's. Even today the University is still groping with some definition of a shared governance concept. During the past semester several incidents have taken place that cut into the heart of shared governance. They do not pertain to students and faculty sitting on the same committees and making "grand" policy but to basic decisions that have been made in the Law School this semester -- decisions that should have had student input from the beginning, but for various reasons didn't.

Earlier in the year there was the National Moot Court team incident. A decision was made by the administration that the team would be chosen in a certain manner. At the time the Moot Court Board was so muddled in its own in-fighting that it could not take part in the making of that decision. Several people who had excellent potential in the Moot Court program were denied a place. The unilateral decision-making may change with the apparent unity of the Moot Court Board. But the fact still remains that a solution was forced on the students without their meaningful participation.

The next area of lack of effective student input was the extension of the semester break one week. The decision was made by the faculty and administration to extend the vacation. Then realizing that there might be some questions raised about the breach of the school's contract to provide a certain number of weeks of classes, as stated in the catalog, it was decided to obtain a sample of student opinion. The students approved it, but the idea was adequately expressed by University Assembly Rep. Terry Means who said that the students should have been in on the initial decision. The process here was not a shared decision-making but tacit approval of an offer the students couldn't resist.

Third, the recent decision of the University to evict the SBA from its office (story in this issue) shows the complete disregard of the Law School and University for the competence of students to control a portion of their own destiny. Carol Barger was told that the SBA would be moving. She couldn't do much about it. Neither could the SBA. In addition, the administration, in good faith, promised to provide the SBA with another office before they would have to move from the old one. This was not done either.

Another example can be given. Jeff Davis, Chief Justice of Lawyer's Inn brings to our attention the complete (Cont'd. Page 3)

# THE ADVERSARY

SOUTHERN METHODIST UNIVERSITY SCHOOL OF LAW

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Howard Rubin  
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Advertisements may be placed in the Adversary and should be submitted to the Managing Editor in the form desired for publication. The Adversary, SMU School of Law, Dallas, Texas 75222.

3. The creation of the office of a Student Lawyer and the move of that office to Storey Hall:

This proposal had been considered prior to the time Dr. Hardin took office. Trustees had found a need for such a service. His obvious first thoughts were -- We have a legal clinic in the Law School, so if we are to add a student lawyer why not move him near the legal clinic to make use of those facilities. The Legal Clinic has good relations with the Dallas Bar and could help deal with the ethical considerations inherent in this situation. The Clinic also has the necessary law office management experience to help the student attorney. The University will bear the expense of the student attorney with the Clinic providing the administration. It will be necessary to re-educate the students as to the availability of this service as many have previously been denied full legal assistance under Clinic guidelines. Perhaps this will more greatly involve the legal community with the undergraduate community.

4. The possibility of Dr. Hardin teaching in the Law School:

Dr. Hardin finds that there are many conflicts inherent in this suggestion. He has a firm intention to teach, but perhaps not this year because of the demands of the presidency. Another conflict comes in deciding where to teach. "Should I teach a Law School course or take a crack at a University College course in order to emphasize the importance of an undergraduate education?"

If he does decide to teach in the Law School, there are two areas of interest he would like to explore. The first would be to teach a standard course, such as Torts or Evidence, which he enjoys teaching. The other would be to offer a seminar on the legal issues of higher education covering such areas as due process in college disciplinary proceedings, academic freedom and tenure problems, faculty collective bargaining, financing of private higher education, etc. This latter course might be offered next semester.

completed, leaving the SBA in the cold.

The SBA has expressed its indignation at this action by the University although it realizes that the question is now moot.

-- Howard Rubin

## Pass-Fail

The faculty is in the process of establishing a new and more realistic policy towards the pass-fail option. As the proposal now stands, each student will be permitted to enroll in a total of 6 hours of non-required courses under a pass-fail system, with 60 constituting the minimum passing grade. This represents a change from the previous policy which required a 70 grade for a passing mark. The option was retained whereby each professor could prohibit any students from taking a course under pass-fail or could restrict the number of students in a course who may enroll under pass-fail. The professor would register his policy with Mrs. Jury, and interested students would enroll in the course under pass-fail directly with Mrs. Jury, and the professor will not know who is taking the pass-fail option.

The change from a 70 to a 60 passing minimum marks a recognition of the paradox that existed under the previous policy, in which a student could receive a 69 grade (a passing grade otherwise) and fail the course. In addition it was felt that by requiring such a rigorous passing cut-off only students with high grade averages could take advantage of the option, since to do so would require great confidence in one's ability to garner at least a 70 grade.

Such faculty members as Prof. Kennedy and Prof. FitzGerald used such reasoning in supporting the change. Prof. FitzGerald has not permitted any students to enroll under the pass-fail option on the 70 standard, but reports now that he will permit enrollments under the current proposal.

Conversely, it is understood that several professors (including some who approved (Cont'd. P. 4)

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Cont'd. from Page 2 - EDITORIAL.

control that the University has over this dorm. Everything that is done must be checked out with a staff member.

It seems that people who have earned a college degree and who are embarking upon a career that purports to help guide the actions of people everywhere should be given a little more control in the functioning of the Law School. Joint committees are not the only answers. There must be a philosophy on the part of both students and staff that each group trusts the judgment of the other and should work with the other. The fault may lie with the proverbial apathy of the students as well as with the aloofness of the administration. Still, somebody should start effective decision-making procedure. The University should not shun person-to-person relationships and should recognize the need for mutual respect in making decisions which effect all.

### MARK YOUR CALENDARS

#### Thanksgiving Library Hours:

Wed. 11-22 - 8 a.m. - 10 p.m.  
Thurs. 11-23 - Closed  
Fri. 11-24 - "  
Sat. 11-25 - 9 a.m. - 5 p.m.  
Sun. 11-26 - 2 p.m. - 12 p.m.  
Mon. 11-27 - Regular hrs.  
Resume

#### Spring Registration:

Tues. 1-9, First Year Registration (12 - 4 p.m.)  
Wed. 1-10, All Other Students Register (10a.m. - 6p.m.)  
Thurs. 1-11, First Day of Class.

(Cont'd. from Page 3 - PASS-FAIL)  
of the option at the 70 standard)  
may now choose to prohibit  
enrollment under the new plan.  
In addition, downtown attorneys  
teaching courses are endorsing  
the policy of no pass-fail  
options in their courses, it is  
understood.

Upperclassmen interested in  
pass-fail for a non-required  
course can register with Mrs.  
Jury, who will have a list of  
each professor's option under  
the plan. The change from 70  
to 60 does not affect courses  
already completed or in progress.

-- J. C. Labowitz

## SHARED GOVERNANCE CONSTITUTION

A group of students are  
currently working to put forth a  
suggestion to the faculty to help  
them in meeting the requirements  
for shared governance of the uni-  
versity as a whole, and the Law  
School in particular. Under the  
shared governance proposal ad-  
opted by the Board of Trustees  
and set out in the Enchiridion  
handbook, each school at SMU must  
draw up a plan for its own shared  
governance, and the Law School is  
the only school lacking such a  
proposal. In the midst of faculty  
deliberation of this, students  
have been working to formulate  
some suggestions for the system  
of shared governance.

Three weeks ago, the faculty  
was on the verge of considering  
and approving a proposal for a  
constitution that represented the  
faculty's second attempt at formu-  
lating such a document. However,  
Fred Shiver, SBA vice-president,  
asked the faculty to forestall  
consideration of this draft until  
students could study it and offer  
their opinions. The faculty did  
table consideration, and Prof.  
Steele and Dean Galvin appeared  
before an open student meeting to  
discuss elements of the proposed  
constitution.

Subsequently, Prof. Steele  
reported to the faculty that a  
great deal of interest in gover-  
nance was present in the students,  
and that students were interested  
in offering their suggestions to  
the content of such a constitu-  
tion.

The faculty is (Contd. p. 5)

## Recruiting Successes

Getting a head start on most local football teams, SMU Law School has sent people across the area seeking out potential law students -- in other words, RECRUITING. Heading up this year's operation is Professor Scott Morris. He, various faculty members, and some students have covered most of Texas and will be going out of the immediate region to spread the name of SMU far and wide.

Prof. Morris stated that the purposes of recruiting are to seek out quality applicants and to interest students outside of the Texas area. Unlike past years SMU is branching out into the Philadelphia and New York areas and will have a faculty member in Ohio and one in California. Prof. Morris just returned from a 10 day trip to New Mexico and Arizona.

He found that there is an inordinate interest among undergraduates in law school. "It's fantastic! Everybody wants to be a lawyer. These people also know the problems of getting into law school and they are quite worried. I really think SMU will have a lot of top students in next year's entering class." Prof. Morris mentioned that he met some outstanding students at so-called "cow schools" who could do quite well at SMU (in his estimation). He predicted that SMU's admission requirements would go up and it will become harder to graduate from the Law School as these people are admitted.

Prof. Morris stated that in a typical interview, the school's representative gives an idea to the student of what legal education is like. He also points out the various functions of a lawyer in society. The interviewer does not have to caution people about the problems encountered in getting into law school or the problems that arise once one is there. The students being interviewed are sophisticated. "They know what's happening."

Prof. Morris pointed out that one of SMU's greatest selling points is that it offers very good areas of specialization. Finally, SMU does not have the "rat race" prevalent in some State universities. "The classes are small and people are still pretty calm here."

As to the future of the recruitment, Prof. Morris warned that there was not enough money to cover a substantial portion of the country. Still, SMU is becoming more well known this year than in past years. The school, according to Prof. Morris, must recruit students by advertising its natural qualities -- private school, no regional quotas, a good faculty, and a calm student body. SMU must also give more weight to the grades of some of the top students in the smaller, poorer schools. He repeated that these people can do as good a job, if not better, than a lot of the students at SMU today.

Howard Rubin

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### REPORT OF THE FACULTY COMMITTEE ON ADMISSIONS AND FINANCIAL AID

Recruitment of prospective students and formulation of admissions and financial aid policies have dominated the activities of the Faculty Committee on Admissions and Financial Aid this Fall. In addition, the Committee has devoted time to the consideration of a loan program and the establishment of a fee waiver policy for the School of Law.

Student volunteers have been utilized primarily by the Committee in making recruiting trips to Texas colleges and universities. In addition, three out-of-state trips -- New York-New Jersey, Georgia, and Iowa--have been scheduled for student recruiters. In conjunction with the Hatton W. Summers Scholarship program, recent Summers Scholar graduates have been recruiting in the Houston, Louisiana, Arkansas, Oklahoma, and Kansas areas. Faculty members have been given the responsibility for recruiting in Ohio, New Mexico, Arizona, and California.

The Committee has decided to continue using undergraduate average, LSAT score, school attended, extracurricular (Cont'd. Page 5)

# Dogmas for Law Teachers

## SOMETHING FOR (OR AGAINST) EVERYONE

1. A teacher is teaching "only to the law review," or "at a high level," when he is incoherent in the classroom.
2. Legal examinations test legal ability.
3. We stress method, not subject-matter. However, the legal method course is a frill, and the curriculum committee is the most important in law school because it determines the subject-matter offered.
4. Subjecting students to ridicule or sarcasm serves sound educational purposes, and is not merely an outlet for professorial spleen.
5. The art of reading appellate cases is either the most important of a lawyer's skills or the only skill that a law school is able to teach, and so the teaching of skills in drafting, oral or written advocacy, negotiating, trial preparation, and trial presentation should be left to extracurricular activities or arcane seminars.
6. Courses built around the law of a single jurisdiction ("local law courses") cannot be taught in the grand manner. (Exceptions: Constitutional Law; Federal Courts.)
7. Law students are not competent to pass on the legal abilities of law teachers. However, teaching ability should be judged by student scuttlebutt, and publishing an article in a prestigious law review (i.e. one edited by students) is grounds for promotion.
8. Anything less than a centrally supervised court system is chaos; anything more than chaos in a law school infringes on academic freedom.
9. Anyone who has left our faculty was either (a) so undesirable that he was eased out, or (b) so desirable that a fantastic offer was thrust upon him which, after much soul searching, he reluctantly accepted.
10. At a great law school no teacher should teach more than six hours per week -- even if he does nothing else for the students, the school, or the profession.
11. Law teachers welcome just criticism, but . . .

(This commentary was written by Edward H. Rabin, Professor of Law at the University of California, and was gleaned without permission and with our respects to 20 JOURNAL OF LEGAL EDUCATION 340.)

(Cont'd. from Page 4 - REPORT

activities, and recommendations as the basic criteria in formulating an admissions policy. Special facts, circumstances, and qualifications of individual applicants will be given consideration by the Committee in admitting students.

The Committee has proposed to the faculty a financial aid policy whereby all incoming students will be given financial assistance awards based primarily upon need but with some consideration given to academic achievement. The proposed policy would allow a limited number of scholarships to be awarded on the basis of academic record. It is to be remembered that a financial aid policy based solely upon need is applicable to the present first year class. A policy of academic merit plus need is applicable to the present second and third year classes.

The Committee is also attempting to work out a loan program under which students will be referred to a local bank for loans to cover any additional financial need not satisfied by grants and loans made by the law school or other campus financial aid offices. Hopefully, under such a program, the law school will pay a percentage of the interest on loans made to students.

A fee waiver policy has been adopted by the Committee whereby law school applicants, upon a showing of need to the Committee, may have law school admissions fees waived.

Mike Chitty

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CONSTITUTION

currently withholding action on their proposal within the shared governance guidelines until the student suggestions are considered. An ad hoc committee of the SBA, headed by second-year student Bob Roeder, has prepared an alternative document to the faculty's draft, and (at this writing) is planning on presenting it to the students for the determination of a general consensus before making a formal presentation to the faculty, perhaps later today.

The Law School, under the University shared governance proposal, is required to make some kind of implementation of shared governance as soon as possible, and it is hoped that students' views will be well-taken in the faculty deliberations.

J.C. Labowitz

## INCREASED COMMUNICATION

The S.B.A. President and Vice President meet weekly at 9:00 a.m. Thursday with Deans Anderson and Dycus to discuss problem areas in the Law School that have an effect on the students.

In colloquial terms this meeting provides a forum for airing student gripes and getting questions answered. During this semester there have been a few fruits from these meetings.

1. Professors teaching limited courses will publicize methods of student selection.
2. The \$1 per copy charge to students picking up copies of the Law Journals is reflective of increased publication costs. Dean Galvin has always paid this charge in the past, but the cost of publication has risen to \$2 per copy. Students now pay the second dollar for a Journal.
3. The temperature of the library classrooms is controlled by University maintenance, and not by a switch in Miss T's office as rumored. Students have Dean Anderson's assurance that efforts are being made to solve the temperature (Cont'd p. 6)

# EXAM SCHEDULE: FALL, 1972

	8:30 - 11:30	1:30 - 4:30	6:30 - 9:30
Dec. 6 Wed.	Property I-1 Property I-2	Con Law I-1 Con Law I-2	Evidence
Dec. 7 Thurs.		Tax & Fiscal Policy	Law in Soc. I
Dec. 8 Fri	Procedure I-1 Procedure I-2	Texas Practice	Income Tax. I Income Tax. 2
Dec. 9 Sat.	Reg. of Business		Adm. Law 1 Adm. Law 2
Dec. 10 Sun.		Crimes 1 Crimes 2	Cred. Rights
Dec. 11 Mon.	Legal Clinic A Ethics	Corporate Planning 1 & 2	Wills and Trusts
Dec. 12 Tues.	Business Tax	Int'l Organiz. Law Legal Accounting	
Dec. 13 Wed.	Torts I-1 Torts I-2	Tax of Gifts, Trusts & Estates	Bus. Assoc. I-1 Bus. Assoc. 1-2
Dec. 14 Thurs.	Workmens Comp.	Family Law Gov't Contracts Bankruptcy	
Dec. 15 Fri.	Labor Law I Legal Counseling Municipal Corp.		Air Law I Land Litigation
Dec. 16 Sat.	Contracts (all sections)	Negotiable Ins. 1 Negotiable Ins. 2	

## NO EXAMINATIONS:

Advanced Criminal Law II, Comparative Law I, Complex Federal Litigation, Contemporary Tax Problems, Corporate Planning 1 & 2, Intellectual Property Seminar, Legal Clinic B, Patent Law-Practice Court I, Science, Tech & Law, Texas Criminal Trial Practice.

City ordinances against barking dogs must be drafted with forethought and skill to avoid attack under the Constitution. See e.g., Ex parte Hunter, 148 Tex. Crim. 462, 188 S.W.2d 162 (1945). An Ohio case which approvingly cites Hunter, City of Columbus v. Becher, 180 N.E. 2d 836 (1962), aff'ing 184 N.E. 2d 617 (1961), so holds, wherein the court reduces to poetry its holding:

Dogs will howl and cats will yowl  
When placed in congregation.  
These grating sounds may oft result  
In human aggravation.  
Laws passed to curb such pesky noise  
Should fit the situation  
And be so phrased in artful ways  
To cause no obfuscation.  
In other words, the laws so passed  
Must plainly be effective.  
Inaptly framed, they lack the force  
To meet their planned objective.

(Cont'd from Page 5-  
COMMUNICATION)

- problems that have plagued the library since its opening.
- Products Liability and Personal Injury Litigation are courses that a number of students have voiced interest in for second semester. If present efforts to secure instructors for the courses are successful they will be offered.
  - Spring break, which in the past has always been about a month prior to finals, is scheduled right before finals this year due to a late Easter. Discussions about the feasibility of scheduling this break earlier are now in progress due to a strong adverse reaction by the student body.
- People with gripes they want the S.B.A. to bring up in these weekly meetings should contact Carol Barger or Fred Shiver.

## \$BA NOTICE:

Allocations and/or expenses approved by the SBA since the budget was published include:

Entrepreneurs	\$ 45
Law Wives Party	266
Counseling Committee	40
Miscellaneous	30
<b>Total</b>	<b>\$381</b>
Left in Treasury	\$4,130

Louise Everett,  
SBA Treasurer

## NOTES FROM PLI AND SWLF:

SMU Law Students are allowed and in fact encouraged, to attend the programs of the Practicing Law Institute and the Southwestern Legal Foundation. Students may attend these programs without charge if they register in advance. Consult your SBA calendar for dates of all programs. These programs can be of tremendous benefit to one and all.

COME TO LUNCH AT THE DBA: Students are welcome at all Friday luncheons at Dallas Bar HQ's.