

# Prosecution clinic's future is debated

By Julie Bird

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Controversy surrounding a criminal prosecution clinic at the NU College of Law since before its inception in 1979 has led to a review by law college officials and could lead to changes in the program.

Originally, criticism centered on the decision to have a prosecution clinic at UNL without a similar defense program. The battle was mostly ideological—law students and faculty took sides on whether it was ethical for the school to become involved in the prosecution and possible jailing of misdemeanor offenders to give law students trial experience.

Since then, the clinic apparently has created a burden on the public defender's office and the county judges, according to several county officials.

They complained about a recent increase in the number of misdemeanor cases filed and the reluctance of some students to plea bargain, which would reduce the caseload.

John Strong, dean of the law college, said the program will be reviewed at the end of the semester and the clinic could be discontinued if the problems warrant it.

The clinic was designed to fill what the law faculty felt was a void in trial experience, Strong said. Although a civil clinic was and still is operating through the Legal Aid office, Strong and others said students also need criminal law experience.

## Review records

Gale Pokorny, who formerly worked at Legal Aid, was hired as a full-time faculty member to supervise the students registered for the prosecution clinic. The seniors taking the class are granted a limited practice under Pokorny's supervision.

The clinic operates through the Lancaster County Attorney's office. Like other prosecutors, students review police and sheriff arrest records for cases which might merit prosecution, Pokorny said. He reviews cases before the students see them, weeding out some in the process.

Students then do some preliminary investigation to help determine if charges should be filed, Pokorny said. If they decide to file charges, they do so when a suspect is arraigned in county court, he said.

The students follow up a case, questioning witnesses and police and checking out the scene of the incident, Pokorny said. During some investigations, the student decides there is not enough evidence to convict and drops the charges, he said.

Last semester, the nine students in the clinic were assigned 365 cases, Pokorny said.

## Problems begin

That's apparently where the problems of case overload begin, officials said.

Dennis Keefe, Lancaster County public defender, said that in the past year his office's caseload increased more than 50 percent. He quickly added that not all of the increase could be attributed to the clinic, but said it played a part. He could not say exactly how much was attributed to the clinic.

"Nobody has the data," Keefe said. "I'm just reacting to the deputies' grumbings."

Although Keefe said he didn't think the clinic had created a major problem, he added that since the clinic began there had been an "immense, unbelievable jump" in the number of cases filed, with an approximate increase from 460 cases to 660 cases. The law students only handle misdemeanors.

County Judge Jeffre Chevront agreed there have been more misdemeanor charges filed and said he has seen the effects in the courtroom.

"I think the people (at the law school) have to realize there are only so many criminal justice resources to go around," Chevront said. "When you add something to one agency it will have an effect on the others."

He said although most of the students' cases are not very serious and some are "pretty small potatoes," the program still has placed "somewhat of a burden on the court."

"That's not saying we're unwilling to do it (handle the cases)," he added.

## Less willing to bargain

Chevront said it seemed the students were less willing to plea bargain a case in lieu of trial, therefore making more trial cases.

"Young lawyers get their first case and want to go to trial," he said. "If all cases were tried, the judicial system would fall down."

A large percentage of the law students' cases are tried as compared to other prosecutors, Chevront said, but added he didn't know what the percentage was.

Dick Goos, chief deputy public defender, said he feels his office is defending cases that would otherwise be settled out of court.

He echoed Keefe, saying that taxpayers were paying for the clinic in terms of defense time and court time, because the clinic was expensive, caused trouble for the defendant and was harmful to the court's economy of time.

"We had to use up a lot of time with their cases that could have been spent on more serious criminal matters," Goos said.

One time-consuming situation Goos mentioned was the filing of multiple counts stemming from the same inci-

dent, something he said was done rarely by other prosecutors.

## Multiple counts

"We never had multiple counts before," Goos said. "The only reason I can think of is they want the case to go to trial. Then there's a reluctance to settle for plea bargaining."

Goos said he thought students were inclined to go to trial for "experience."

"If they're going to court for experience, that's wrong," he said. "It's not been a particularly healthy climate."

Pokorny said he thought the extra work students put into investigating cases before filing charges resulted in fewer cases ultimately going to court. The other deputy county attorneys who are more pressed for time might be more likely to file charges on the sole basis of a police incident report, he said.

Of the 365 cases assigned to the students last semester, 46 resulted in no charges, Pokorny said, adding he

thought that was probably a higher percentage than with the other prosecutors.

"I assume someone is unhappy because they lost a case," Pokorny said, referring to criticism from defense attorneys. "No one has ever come to talk to me."

He said 23 cases ended in dismissals. The cases were not frivolous, he said, but often a witness decides not to testify or the victim is satisfied with restitution and decides not to pursue the matter.

## Extra cases

A student who took the course last semester said he thought that because of the clinic some cases went to trial that probably wouldn't have otherwise.

"The laws are on the books, but I don't think they would always go through on prosecution," Ralph Rayburn said. "I didn't have any ethical problems with it, but I don't think students should be encouraged to learn at someone else's expense, someone who otherwise wouldn't be subjected to the experience."

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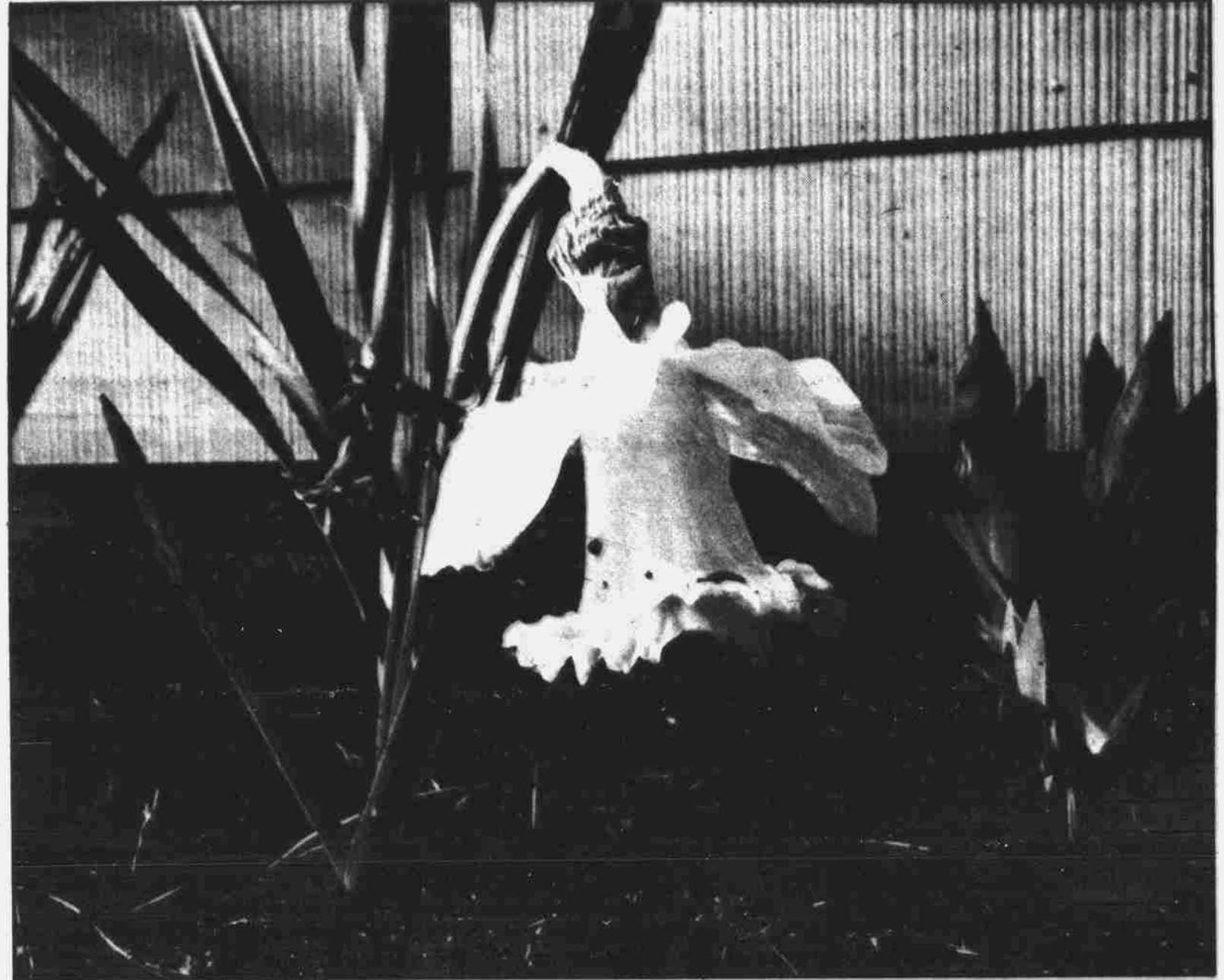


Photo by Colin Hackley

A fading flower of spring signals the onslaught of finals, an increase in temperatures and the arrival of summertime.

## Bong bill effect delayed until May

Nebraska's bong buyers can rest easy until May 2, even though Gov. Charles Thone Wednesday signed the Legislature's ban-the-bong bill, which would be in effect today because it contained an emergency clause.

Wednesday afternoon Senior U.S. District Court Judge Richard Robinson in Omaha signed a temporary restraining order against the state, blocking civil or criminal actions under provisions of LB991 until May 2 at 9:30 a.m., when a hearing on the new law's constitutionality is scheduled.

The restraining order stemmed from a suit filed in Omaha's U.S. District Court by Don Fiedler, an attorney representing several head shops called the Nebraska Trade Accessories Association and Omaha Bruce Van Langen, who entered the suit on behalf of all pipesmokers in the state.

The suit names Thone, Attorney General Paul Douglas, Douglas County Attorney Donald Knowles and Nebraska State Patrol Superintendent Col. E.J. Kohmetscher as defendants.

LB991 would, as signed by Thone, outlaw the sale of drug paraphernalia in the state, but critics have said the law is too vague and will not meet constitutional muster.

## Fight expensive

Terry Moore, co-owner of Dirt Cheap Enterprises, 227 N. 11th St., said that the fight against the bong bill has

already been expensive and will cost even more.

Moore estimated Dirt Cheap's paraphernalia business at \$250,000 a year, a figure which is increasing yearly. The shop has a corner on three-fourths of the drug paraphernalia business in Lincoln, he said.

If the bill had gone into effect at the moment Thone signed it, Dirt Cheap would have lost \$12,000 - 15,000 in merchandise in its inventory, Moore said.

With a sign on the front window which read, "Business as Usual," Moore commented that it was "to let people know that's what it's going to be."

## Customers concerned

There had been concern by customers about what police might do if the restraining order had not been obtained. Moore said he was not worried because "we have good relations with the police and they would be showing bad faith if they tried to stop us (since they knew the NTAA was trying to get the restraining order)."

Moore added that a "certain group of parents put pressure on the Legislature and were going through the legal channels. We're not bitter or antagonistic about it. We're also going through the legal system."

Throughout Dirt Cheap signs abounded which read "Support Your Local Head Shop" and one said "These items not intended for illegal use."