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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 abridgement, 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. The opinions expressed in this publication are those of its editors and do not reflect the opinions of William Mitchell College of Law, its employees, or Board of Trustees.

Trustees to decide tuition hike Monday

The amount of the tuition increase William Mitchell students will have to pay next year will be decided by the Board of Trustees Monday.

The college administration plans to present four options -- tuition increases of 15, 18, 21 and 25 percent. The differences in revenue between the proposals would be met by dipping further into the college's endowment fund.

When the trustees last met, on March 4, they tabled the budget issue to give the administration time to prepare options to the 25-percent tuition hike that was then the administration's only proposal.

Following the March 4 meeting, the Opinion reported that the board had rejected the proposed 35-percent increase. According to Dean Geoffrey Peters, however, the board's motion included only a directive to include optional proposals. But Judge Ronald Hachey, a member of the board, indicated in talks to classes that the board considered a 25-percent increase to be untenable.

Peters, nonetheless will include the 25-percent figure as one of the four options he will present to the board Monday. He said that such an increase represents the most "fiscally sound" option.

Supreme Court notes Mitchell centennial

March 9, 1981, marks the centennial of the appointment of Justice William Mitchell to the Minnesota Supreme Court. To commemorate this occasion, a ceremony honoring Justice Mitchell was held on March 9 at the Minnesota Supreme Court.

Appointed to the Minnesota court at a time the state and nation were experiencing unprecedented social and industrial growth, Justice Mitchell was instrumental in the development of Minnesota common law. During his nineteen years on the court, Justice Mitchell achieved national recognition for the clarity of his writing and for his concise legal analyses. Legal scholars have placed Justice Mitchell among those who mark the highest achievement in our nation's state courts. His opinions are cited and quoted frequently in law school casebooks.

William Mitchell was born in Stamford, Welland County, Ontario on November 19, 1832. He was the first of ten children born to Scottish immigrants John Mitchell, a cabinetmaker and farmer, and Mary Henderson Mitchell. In 1848 William Mitchell enrolled in Jefferson College, now Washington and Jefferson College, a small Presbyterian liberal arts college in Canonsburg, Pennsylvania. A determined scholar, William Mitchell graduated from Jefferson College in 1853 and moved to Morgantown, Virginia. There he taught for two years at the Morgantown Academy and read law in the office of Edgar C. Wilson. In March of 1857, William Mitchell was admitted to the Virginia bar.

In April, 1857, William Mitchell traveled to Winona, Minnesota, where he settled and established his law office. William Mitchell continued in successful practice with politically active law partners until his election to the district court bench in 1873. He was reelected to this post in 1880. That same year, the Minnesota Legislature increased the size of the Minnesota Supreme Court from three to five judges and directed the governor to appoint two additional justices to serve on the court until the next regular election. On March 9, 1881, Governor John S. Pillsbury signed the commission appointing William Mitchell associate justice of the Minnesota Supreme Court. This certificate was recently donated to William Mitchell College of Law by the Minnesota Historical Society.

William Mitchell subsequently was elected to three consecutive six-year terms as associate justice of the Minnesota Supreme Court. With a legacy of over 1600 opinions, Justice Mitchell is remembered for his clear writing style, sharp analytical ability, direct manner, and abundant common sense. Justice Mitchell's statements on proximate cause in Christianson v. Chicago, St. Paul, Minneapolis & Omaha Railway, 67 Minn. 94, 69 N.W. 640 (1896), and his statements on negligence per se in Osborne v. McMasters, 40 Minn. 103, 41 N.W. 543 (1889), are excellent examples of his direct style and are considered classic statements of the law in those areas. While Justice Mitchell is probably best remembered for his decisions involving negligence and tort law, his decisions on issues of contract, agency, and property law bear the same lucid enduring quality of his tort decisions.

In 1898 Justice Mitchell lost the endorsement of the Republican Party to a prominent Republican politician. Despite the support of the Democratic and Populist parties, Justice Mitchell's bid for reelection failed, causing a great outcry of protest from legal scholars throughout the country. After his last term ended on December 15, 1899, Justice Mitchell returned to private practice in St. Paul, joining his son, William DeWitt Mitchell, in partnership. On August 21, 1900, at the age of 67, Justice William Mitchell died of a stroke.

Volume 7, issue 1 of the William Mitchell Law Review will feature a Tribute to Justice William Mitchell, with accompanying comments by Chief Justice Warren Burger and Chief Justice Robert Sheran.

Image

Photograph of Justice William Mitchell

New Opinion schedule

This Opinion, Volume 23, Number 4 is one of two issues that will be published this semester. In the past, the Opinion has been published three times a semester but we have chosen instead, to publish the larger paper twice a semester and publish the Opinion Briefs four to six times during the same period.

The mimeographed Briefs enable us to keep students current on school news -- something we were unable to do under our old format. Although the Briefs are distributed solely to students we will continue to mail the Opinion to Mitchell graduates. We are currently looking at ways in which we can make our mailings more timely.

We hope that we will always be able to mail the Opinion to graduates, but the Opinion, too, must face up to problems generated by the current economic crunch. In our last issue of the Opinion, Volume 23, Number 5, we will provide you with more information on this subject.

Image

Photograph of issues of the Opinion Briefs

Mitchell student loses reverse-bias suit

Scott McAdams' reverse discrimination case against the University of Minnesota Law School was thrown out of court by Judge Edward Devitt on March 3, 1981. Devitt's opinion states that the "plaintiff's perseverance in this apparently personal crusade is difficult to understand." Currently, McAdams is a fourth year student at William Mitchell.

Count one of the suit alleged that McAdams was denied a place reserved for him in the 1978 law school class when the University learned that he was not a minority group member. The University's motion for summary judgment on count one was granted.

Count two challenged the University's Special Admissions Program. McAdams failed to demonstrate sufficient causation to establish his standing to challenge this program. Count two was dismissed for lack of subject matter jurisdiction.

McAdams' action against the University began with his application to seven law schools in 1977. He applied to Stanford, Lewis and Clark, and William Mitchell, and the Universities of Arizona, Colorado, Iowa and Minnesota. William Mitchell was the only school that accepted McAdams. He began law school at Mitchell in the fall of 1977.

Early in 1978 McAdams applied to the university again He received two letters from them in May of that year, one of them stating that he had been rejected. The other letter said that a space had been reserved for him, but because he had not responded the space had been offered to another student. When McAdams inquired over the phone about the reserved space mentioned in the letter, he was told that the letter had been sent due to a mistake in identity.

McAdams theorized that the university extended the acceptance in the belief that he was a different Scott McAdams, a minority group member, and that the offer was withdrawn when the university became aware that he was not a member of a minority group. McAdams tried fruitlessly to find a minority group member named Scott McAdams. At one point, he sent postcards to persons listed as McAdams in the telephone directory.

During his deposition, when asked for factual support for his theory underlying the denial of admission to the law school, McAdams replied, "I just have a belief. I don't have any facts."

Devitt granted the university's motion for summary judgment stating that “plaintiff's complaint is based on little more than fanciful speculation.”

In count two, McAdams charged that he would have been admitted if considered under the University's Special Risk Program. The university conceded that a certain number of seats were reserved for special admissions and that "non-minorities were not entitled to or otherwise considered under the Special Risk Admissions Program." (The opinion makes no mention of McAdams' claim that he is a member of the minority of "poor, white Norwegian testors with a rural background".

The University argued that even if there were no special admissions program, and positions were allocated solely on the basis of projected first year averages (PFYA), McAdams' admission would have been highly unlikely.

An applicant's PFYA is calculated from the student's undergraduate grade point average and LSAT score.

There were 310 applicants ranked ahead of McAdams in 1977 and 136 ahead of him in 1978, as indicated in the left-hand column. McAdams contended that all applicants ahead of him may have withdrawn from the list, but the court viewed that occurrence as highly unlikely based on the University's 54% acceptance rate (54% of the students offered a spot actually accept). This rate of acceptance would leave 167 persons ahead of McAdams in 1977 and 73 ahead of him in 1978. The court found that the allocation of fifteen spots to the Special Admissions Program had little effect on McAdams' rejection. McAdams was denied standing to challenge the program for failure to establish a causal link between his rejection and The Special Admissions Program.

McAdams, on the advice of counsel, would not comment on Devitt's decision.

The following table illustrates McAdams' relative PFYA ranking.

Year	McAdam’s PFYA	PFYA of last person admitted	Number of persons between McAdams and last person admitted

1977	10.4	11.78	310
1978	10.51	11.41	136

Image

Photograph of Scott McAdams

Image

Cartoon of four stereotypical Vikings and Norwegians sitting outside the Admissions Office for Special Admissions Applicants. The title is “If McAdams had won”

By Mason

Sun to shine on void-for-vagueness rule

By George McCormick

A catch phrase of constitutional law -- void for vagueness -- may be the reason for some unusually good-suntans this coming summer.

Citing the principal behind that phrase, a Hennepin County Municipal Court judge late last year dismissed a charge against a woman ticketed for sunbathing without a bathing-suit top at Lake Calhoun last summer.

The defendant was charged with violating a Minneapolis Park and Recreation Board ordinance forbidding anyone from being in any park or on any beach “without being properly clothed.”

A law is void on its face if it is so vague that ordinary persons must guess at the specific conduct it proscribes, said Judge H. Peter Albrecht in a memorandum accompanying his Dec. 5 order.

“In the case-at bar,” Albrecht declared, “the cited ordinance is facially defective in that it totally fails to specify what clothing is considered ‘proper.’ Considering the wide variety of clothing styles and changing tastes in our society it cannot be said with any degree of clarity what clothing is proper and what clothing is improper.”

The judge noted that his decision did not preclude the city from prohibiting nudity or semi-nudity in public parks, "but, rather, that an ordinance prohibiting such conduct must be worded with enough specificity to enable citizens to know what degree of dress or undress is prohibited.

"It cannot constitutionally do so through the enactment and enforcement of an ordinance the violation of which may depend upon whether or not a particular passerby or policeman considers one’s dress to be improper.”

Similarly, Albrecht noted, an ordinance prohibiting “annoying conduct" was struck down by the U.S. Supreme court for vagueness because “conduct that annoys some people does not annoy others.” Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971).

Albrecht's order leaves the way open for enactment of a more specific ordinance. So far, however, the park board has not done so.

The defendant in the case was represented by John M. Stuart, an assistant Hennepin County public defender. (Stuart contributed an article to last spring's issue of the William Mitchell Law Review).

Image

Six-panel Cartoon called Loophole by Hal Malchow

A man in a Hawaiian shirt and sideways ballcap (Loophole Lassiter) speaks at a podium. He says "As a candidate for student office I appreciate this opportunity to appear at this forum where you, my fellow law students, may hear the issues, examine qualifications and otherwise obtain the kind of information essential to a reasoned and intelligent selection of student leadership."

In the second panel, he says "My opponent's mother sells heroin."

In the third panel, he says "I understand, of course, that my statement raises a sensitive question in the mind of each and every responsible voter in this audience."

In the fourth panel, he continues "Which opponent?"

In the fifth panel, he says "Well, neither the thirst for public service nor the emotional frenzy of campaign politics can drag Loophole Lassiter to the lowly level of namecalling."

In the sixth panel, he thinks to himself "You can't play softball with a resume on the line."

Otis addresses January graduates

William Mitchell College of Law awarded Juris Doctor degrees to eight-five graduates in a ceremony held January 11, 1981 in St. Paul's United Church of Christ.

An honorary degree of Doctor of Laws was presented to the Commencement speaker, James C. Otis, Associate Justice of the Supreme Court of Minnesota. Justice Otis is a former William Mitchell College of Law faculty member who has served on the Supreme Court since 1961. His wife, Constance Otis, currently serves as a member of the Board of Trustees of the College. Dean Geoffrey Peters presented Justice Otis with a portrait of his late father, James C. Otis, Sr., who served for more than 20 years as a trustee of the St. Paul College of Law, predecessor institution to William Mitchell College of Law. Mr. Otis served as president of the College. Both of his partners - Chief Justice Warren Burger and Roland Faricy, Sr. - were members of the faculty at that time.

Text of Justice Otis's speech

President Dietz, Dean Peters, Members of the Graduating Class, and friends -

It is hard to imagine a more gratifying personal experience than to share with this graduating class the honors conferred on us by William Mitchell today. It is a matter of the most profound satisfaction to be more closely identified with this great institution. I am deeply grateful.

I want to add my congratulations to all of the graduating class who now join the ranks of a venerable group of alumni from all parts of the United States, distinguished men and women many of whom are leaders in the bench and bar, in business, education, and government.

This is an institution which is uniquely equipped to prepare serious-minded students for the real world of the law. It offers the input of lawyers and judges who have experienced the day-by-day tangible and difficult problems of the practicing bar, and at the same time it has provided the essential academic expertise of a fulltime professional faculty. The excellence of your education is borne out by the fine record the school has consistently made each year on the bar examinations. On behalf of all of us in the profession I welcome you to our ranks. You and your family have earned and deserved the satisfaction I am sure you relish after these endless years of being wedded only to your books.

In recognition of your labors and achievements, I am authorized to say that the Supreme Court has granted each of you permission to take the rest of the afternoon and evening off before you start cramming for the bar exams. Use the time wisely. Devote it to whatever long neglected and deferred domestic chore your spouse may select for you.

If I may digress for just a moment, it is only fitting that we pay tribute this afternoon to one of the great friends and benefactors of this Law School, John B. Burke. It was not only through his dedication to William Mitchell that the school was organized as an offspring of the St. Paul College of Law and the Minnesota College of Law, but it was he who headed up the fund drive which made it possible to buy and renovate the buildings which the school now occupies. These graduation ceremonies were his special interest. He is and will be greatly missed.

I find it difficult to express adequately my appreciation for the honorary degree the school has awarded me this afternoon. My father, my wife Constance, and I have had close ties with the school in one capacity or another for over 75 years. My father was a graduate of the St. Paul College of Law, taught there for many years, and was President of the School when it became accredited by the American Bar Association. I taught ethics in the old building on the College Street for seven or eight years in the early 1950's.

In all candor, I'm not sure I always brought my father unleavened joy and peace of mind. There was the time, for example, when at the age of 10, I picketed our home with a sign saying, "J.C. Otis, attorney-at-law, is unfair to labor." He was slow in paying me the allowance I had earned. Happily or unhappily, depending on how one looks at it, I was finally paid but the incident came to the attention of the Associated Press who took my picture and spread the story on the front page of almost every metropolitan newspaper in the country. The good-natured flak my father endured continued for years. I know if he were here today he would not only take great pride and pleasure in my receiving this honorary degree, but I hope he would find it in his heart to forgive my occasional adolescent derelictions.

A graduation ceremony is a time for celebration and not for lugubrious prophecies of doom. Nevertheless it seems appropriate in the brief time we are all here together to ponder the role lawyers play, or should play, both in their professional and in their civic lives.

As you all know, within the space of only five or six years, three fine new law school facilities have been acquired or completed in our metropolitan area. They have a combined enrollment of over two

thousand students. The number of lawyers licensed to practice in Minnesota has risen from about 3,500 to more than 11,000 in the last 15 years. Legislators, grant-making foundations, and the business community when solicited for support for these institutions invariably ask "Aren't there too many lawyers? Should we publicly or privately finance the education of those who leave the state or don't intend to practice?" My answer has always been an unequivocal "No" and "Yes."

In the first place, the study of law is not quite the same as attending a vocational-technical school to learn a trade. It isn't even just an academic exercise. It is an intense and demanding course in intellectual calisthenics. Learning the rules is almost incidental to learning the art of reasoning, the probing, of questioning, and challenging the validity of long revered or traditional truths.

A chancellor of Oxford University put it this way:

"Some of you in after life may go into the Home Civil Service or the Indian Civil Service, or the Colonial Service; some may join the Army; some will go into business; some may become country gentlemen; some may embark on a political career; some may enter the Church; and a few of you may even become schoolmasters or dons. To all of you I will make this promise.

"To none, except perhaps the last class, will anything that you learn from me be of the slightest possible use to you in after life, except perhaps this. If you pay due attention to your studies and apply your minds diligently, you should, when you leave Oxford, be able to know when people are talking rot. And that," he continued, "is in my view the main purpose of education." He added this:

"In the world in which I have learned to endure, - more and more harassed by articles in the newspapers and the magazines, by arguments on the hustings, or in Parliament, by the interminable and generally sophistical discussions and declarations on the radio and on the television, I have been able to appreciate the advantage which any person enjoys, who is able to see through the illogical fallacies, the suppressions of truth, the misrepresentations of fact, the ingenious juggling with statistics which pour in upon ones eyes and ears day to day. Blessed indeed is he who recognizes instinctively the hallmark of nonsense." Unquote.

This, in my opinion, is the essence of a legal education. In any event, we do not limit the study of music to musicians, or the study of art to artists, or the study of literature to budding authors. Neither should the study of law be limited to those who plan to practice law.

But there are other compelling reasons why there is more room for lawyers than ever before. The rights of indigents in civil matters have long been neglected and cry out for protection. The Chief Justice of the United State, Warren Burger, an alumnus of this School, noted in his report to the American Bar Association last February: Quote:

"We should make no mistake about it; there is a risk that lawyers may be "pricing themselves out of the market.' This must be met by the profession; or it will be dealt with by external forces. As late as 1965 only five percent of the poor were able to receive needed legal services. That year the Federal Government and this Association joined forces to initiate the first federally-funded program for legal aid to the poor. The next step was creation of the Legal Services Corporation in 1973, with this Association again giving leadership. Currently that body has 5,000 lawyers who reach more than ¾ of the Nation's poor. Its current annual budget is in excess of 300 million dollars."

In June of last year the Chief Justice had this to say at the American Law Institute:

"It is surely plain by now that both federal and state courts share the burdens of what has been called 'the litigation explosion.' Some thoughtful observers tell us that this enormous expansion of litigation is a result of the failure of the political processes to meet the peoples' expectations. This is not the time or place to explore the source or scope of those expectations. But it is reasonably clear that in the past two decades peoples' expectations have indeed been fanned to new heights - heights which some social scientists, and others, see as beyond what our society can provide."

The concerns expressed by the Chief Justice echoed those of congress year ago in adopting the “Dispute Resolution Act” which declared:

“For the majority of Americans, mechanisms for the resolution of minor disputes are largely unavailable, inaccessible, ineffective, expensive or unfair;

“Each individual dispute, such as that between neighbors between a consumer and seller, and a landlord and tenant, for which adequate resolution mechanisms do not exist may be of relatively small social or economic magnitude, but taken collectively such disputes are of enormous social and economic consequences;

"The inadequacy of dispute resolution mechanisms through the United States is contrary to the general welfare of the people;"

Once our profession recovered from the shock waves of the Bates case which had all of us traditionalists reeling, that case emerged as a giant stride toward making legal service available to those who are “legally indigent - that is to say, unable to afford what has heretofore been the luxury of legal counselling. Advertising, store front legal clinics prepaid legal services, all have combined to bring professional services to persons of modest income who have never had a lawyer, do not know a lawyer and are bewildered and frightened by the justice system. In short, there has been a tremendous unmet need for reaching a large segment of the community, probably the majority of the population, who have been unaware of their legal rights and unable to assert them. There is every reason to believe that these are some of the potential clients who will benefit most from the proliferation in the number of law school graduates. Let us hope that it is so.

But in a much larger sense I truly believe that the country needs lawyers - today more than ever before. Granted this may be a self-serving appraisal, the legal profession has traditionally followed a commitment of subverting narrow parochial interest to the interests of the common weal. Other speakers have reminded us that half of the signers of the Declaration of Independence and half of those in the Continental Congress were members of our profession. Many risked their "lives, their fortunes, and their sacred honor" to confront an unjust sovereign establishment. They were rebels in the best sense of the word. America needs rebels today mavericks - doubters - nonconformists, if you will, men and women like yourself with the education, intellect, and courage to bring about changes in an all too imperfect society. We are beset with a malaise in the body politic - what is to me an alarming swing to the far right, not just politically, but emotionally. It is distressing to say the least that with a burgeoning population of young lawyers; the number in public office, especially in the legislature, is diminishing, almost vanishing. We are rapidly approaching the 21st Century for solutions. "Restore public hangings and wipe out crime” is the slogan. The enormous problems our generation has foisted on your

generation are legion - pollution, rape of the land, waste of national and human resources, a population explosion of unwanted, unloved, rejected, and abandoned children - denial of the legitimate expectations and opportunity for fulfillment of tens of thousands of uneducated and unemployed urban dwellers Herein lies the seeds of rebellion.*

l don't envy you the task of setting things right, but I would urge you to use your God-given talents and the fine legal education you have received, to get on with the job. Be bold, be innovative, be aggressive, be persistent, and above all, be good citizens, willing if need be, to risk the comforts of conformity by championing just causes however unpopular they may be.

In the words of Learned Hand, “Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can even do much to help it."

Let me dwell for a moment on a more perplexing and troublesome moral dilemma faced by our profession: Who is the keeper of our conscience? Where does our obligation as a counsellor and advocate end? When does our duty to the judicial system, or the integrity of the profession, or the public welfare override our obligation of unswerving loyalty to our client?

Watergate was a devastating indictment of those in high office, not simply because it was a betrayal of a public trust, but because those who played a major role were members of the legal profession and callously ignored their oath which I quote to "conduct themselves in an upright and courteous manner, to the best of their learning and ability, with all good fidelity as well to the court as to the client and to use no falsehood or deceit, nor delay any person's cause for lucre or malice.”

The young, bright lawyers whose promising careers were ruined by Watergate weren't felons bent on crime as a career - they were importuned, lulled, mesmerized inch by inch into believing that loyalty to their chief was total justification for their subverting morality to expediency. Archibald Cox became a hero because he was only one of the very few who stood their ground.

Another example of concern to lawyers who advise corporate clients doing multi-national business is referred to in a fine article on “Applied Ethics” in the Carnegie quarterly, as follows:

“The cases range in degree of complexity, beginning with 'dilemmas of virtue,' where there is no doubt about the correct conduct but where the temptation to do wrong can be very strong - the taking of a bribe by a financially strapped businessman, for example.

"More difficult moral situations, which hone students' critical skills, involve 'dilemmas of principle,' in which individuals are torn between conflicting moral obligations that cannot be fulfilled at the same time. An ordinary case of bribery presents no such problem. But a bribe offered to a businessman in a country where the practice is not only tolerated but expected poses a more perplexing dilemma."

Here again is the kind of decision which should give a lawyer no trouble. Yet I sense a prevalent rationalization among many in the profession that it may be reprehensible for a foreigner to bribe an American public official but it is something quite different for Americans themselves to bribe officials with whom they do business overseas.

You have the right to pick and choose what clients you will represent, what cases you will handle, and what tactics you will employ in conducting your practice. Hungry for business, though you may be, a lawyer's reputation for honor and integrity in dealing with clients, with other lawyers, and their client,

with the court, and with the public, is a fragile priceless commodity. To earn it requires patience, forbearance, and sometimes financial sacrifice, but it is the most valuable asset you will ever have. Treat it with respect.

Again, my sincere thanks to William Mitchell for the honor you have done me. Good luck and Godspeed to all of you who today become doctors of jurisprudence. May your legal careers be long, challenging and rewarding." Thank you.

*The world is out of sorts, Oh cursed spite, That I was ever born to set it right.

Deaf retiree loses chance at jury duty

By Janice Culnane

Ten years ago Leo Latz, who is deaf, was called for jury duty; he showed up but did not have an interpreter. By chance, he ran into a friend from work who explained to the jury clerk that Latz was deaf. Latz was immediately excused. He remembers thinking that this was his one chance to be a juror, and he would never be asked again.

Latz is now retired and on both the advisory committee for Petra Howard House (a half-way house for deaf persons) and the Minnesota Department of Vocational Rehabilitation Advisory Task Force. From 1976 to 1978, Latz was a member of the state planning agency which played an important role in passing the Hearing-Impaired Services Act.

So in March of last year when Latz got another summons for jury duty, he wasn't going to be satisfied with sitting in on orientation, watching the slides, and missing the dialogue. He wasn't going to be satisfied with going to the government center and hoping he'd be able to get the idea across that he was deaf and couldn't service.

This time Latz was ready. He called the Interpreter Referral Service at the Minnesota Foundation for Better Hearing and Speech and told Director Patty Wilier that he'd be needing an interpreter for jury duty. She called Hennepin County and was told that Latz would be dismissed.

Again in May and September jury duty summons were sent to Latz, but the courts wouldn't pay for an interpreter. Latz told the jury clerk that he was willing and able to serve and wanted the courts to appoint an interpreter. In a phone conversation (via teletype) with Wilder he said, "I think someone has to establish a precedent, and I think I should go through and take a chance."

Latz considered asking his brother, a Minneapolis Lawyer, for help but thought it might be too much trouble for him. Instead, he contacted the Legal Advocacy Project for Hearing Impaired Persons (LAPHIP), and retained David McQuillen.

Then Latz got the chance he had hoped for - a summons was sent to him at the end of October. He was to report for jury duty Nov. 17.

Jack Provo, district court administrator, authorized a certified interpreter to be provided at county expense. Provo explains, "our position is to not automatically disqualify (deaf persons) for jury service by reason of their handicap."

Chief Judge Eugene Minenko agreed to leave the question of Latz's serving up to the judge or lawyers involved.

When Latz showed up for his first day of jury duty, Pam Gabrielson, a certified sign language interpreter, was there. This time, unlike his experience ten years before, the lecture and slide show were both interpreted. Later, his name was called, and he was selected for a drunk driving case. Latz made it through the questioning by the opposing attorney but was eliminated by a peremptory challenge.

Latz waited until afternoon on the second day before his name was called. He was shown to another waiting room.

A bailiff came in and took the jury selection "drum" out of the room. Latz recalls (the bailiff) came back and said I was excused. No explanation... nothing. It seemed funny."

The third day Latz's name was called, and again he went to the other room to wait. Latz says, "I was the first one called. The minute I sat down, the judge and lawyers went in the other room. I waited for about twenty minutes. The judge and lawyers came back. The judge congratulated me for trying to be on the jury, but I was excused."

Judge Dana Nicholson presided over the case. He states, "I didn't question him at all. As soon as he was called, the interpreter came with him."

Since Nicholson had seen an article about Latz in the Minneapolis Tribune, he knew who Latz was. He asked the two litigants to step into the corridor to "discuss the problem." He decided to let the litigants decide whether Latz should serve. He said to them "Do you want him or not? I have some doubts. I want your feelings." The lawyer for one of the litigants told Nicholson that he didn't think that he'd like Latz to serve. The other party thought about it for a while and agreed, because of the concern with having an interpreter in the jury deliberation room. "So I excused him from the jury," Nicholson says.

Because there were more jurors than would be needed for the week, jurors were randomly dismissed from further duty. Latz says, "They picked my name... so I never got the chance."

But Leo did come close, and Minnesota almost became one of the first states to impanel a deaf person on a jury. David McQuillen says it is too bad Leo couldn't have gotten on one of the times. It's a shame because of the morale in the deaf community. It would have been a big plus."

However, McQuillen believes it is just a matter of time before a deaf person becomes a jury member. He says "'it will happen in Hennepin County. It's bound to happen. That's what has come out of Leo's case so far."

Judge Minenko doesn't agree, even though Hennepin County policy allows deaf persons to serve. Because the ultimate decision will be left up to the judge and lawyers involved, they can eliminate the deaf person, Minenko says. He says that this is a very complex issue which raises many questions and potential problems.

Nicholson says the expense to the community is not justified. However, he also adds ''The civil liberties union may want to make an issue about not wanting to deprive anyone of their rights because of expenses."

Larry Goldberg, clinic supervisor at the National Center for Law and the Deaf, in Washington D.C. says that the cost of an interpreter is "no more or less expensive than making the courts accessible to other persons. You are not looking at costs when you are looking at giving people opportunities."

The thirteenth person in the jury room is Nicholson's main concern. He believes allowing an interpreter in the jury room would be "quite improper" He emphasizes the jury is to be closed to outsiders, and an interpreter would be an outsider.

Gabrielson disagrees. She believes people are concerned about the thirteenth person in the jury room because they don't understand the role of the interpreter. She Says interpreters cannot give an opinion when they are in that role. Gabrielson also declines to comment on any aspect of Latz's experience specifically, and suggests reading newspaper articles about Latz's cases or talking to Latz directly.

[Sign language interpreters receive national certification on the basis of their skills and understanding of the Interpreter Code of Ethics. This code deals with issues of giving opinions or suggestions while interpreting or breaking confidentiality by discussing what was interpreted. Violations could result in suspension or revocation of an interpreter's certification.]

The future for deaf persons who wish to serve on a jury is uncertain. Minenko explains Hennepin County policy is not to eliminate a prospective juror who is deaf. "Basically, we do not want to [eliminate deaf persons as a matter of policy] and say if you don't like it, go to the supreme court," he says.

However, it may come to that. It is possible that Latz will challenge being excused. As McQuillen says, "Leo was dismissed without being asked any questions. No effort was made to find out if Leo knew (about the subject matter of the case). Leo is a college graduate. It is a concern because of the fact we feel Leo was qualified.

"We have no quarrel with disqualification for the reason that Leo was not capable. Our quarrel is with disqualification because of deafness," McQuillen adds.

Though no case has been filed yet, that is an option Latz and McQuillen are considering.

Legislation which would give deaf people the right to sit on a jury is another option. As McQuillen explains, "What we'd like to see, in the future, is deaf persons not disqualified automatically by the judge.''

Generally McQuillen is pleased that the court paid for an interpreter, and hopeful because Latz was not disqualified by Judge Minenko. McQuillen says he is optimistic (about our chances) of perhaps getting a judge in the future to get a closer look at a deaf person before deciding to disqualify for cause."

Images

Illustrations of the sign language alphabet

Photograph of a woman interpreting for a group.

Few states address issue of deaf jurors

Only a handful of states have even considered legislatively the issue of deaf jurors. Larry Goldberg, clinic supervisor at the National Center for Law and the Deaf says, "Some states have laws which expressly exclude deaf jurors. These statutes are what really hurt the efforts of deaf persons attempting to be on a jury."

In other states, like Minnesota, the statutes are silent, and the issue of whether a deaf person will be allowed to serve depends on a variety of facts. Judith Hewes of the Center for Jury Studies in Virginia says that Arkansas' requirement that jurors be able to understand English has been used to eliminate deaf persons, under the reasoning that sign language is not English.

According to Hewes, California, Delaware, Massachusetts, Oklahoma, Oregon, Texas and Washington have all passed legislation which permits deaf persons to serve on a jury.

Some of these state statutes have included provisions dealing with the problem of the interpreter's role. Hewes says the California statute specifically “details the fact that the interpreter is not to be involved," and the judge has specific instructions to read to the interpreter.

Although instructions and statutory regulations vary, Hewes notes that the following provisions might typically be included:

--the interpreter is not allowed in the jury room without the consent of both parties;

--the interpreter is not permitted to discuss the case of jury deliberations with any persons, including the jurors;

--jury members are not to talk to or ask questions of the interpreters; and.

--the interpreter is to be sworn in.

Massachusetts has special instructions to be read by the judge so the parties involved ''mutually understand the interpreter's role," Hewes says.

Determining who is responsible for the costs of the interpreter is a problem. Hewes notes that states have resolved this problem in several ways.

In Massachusetts, a local chapter of Deaf Senior Citizens got the state to agree to pay the $10 an hour fee. The court submits an expenditure statement to the state for interpreter services.

California has a policy splitting the interpreter's fee; in civil cases the court pays, in criminal cases the state pays.

In Texas, a private organization for the deaf has agreed to pay the expenses of that state's only deaf juror.

California, Massachusetts, Oklahoma, Texas and Washington have all had deaf persons serve on the jury. The deaf juror in Washington was a career consultant for deaf persons. In 1979, when he served, he was a member of the Governor's Committee on Employment of the Handicapped.

According to Hewes, “The deaf jurors that serve are professionals. They know their rights and have access to qualified interpreters. They know [deafness] is not a handicap."

Image

Photograph of a sign-language interpreter at work.

Clerking: Lots of experience, little pay

(Editor's note: To prepare this article on clerking in the Twin Cities, law firms were selected randomly to participate in a survey. More than 75 telephone calls were made to reach the person responsible for hiring clerks. Three firms refused to participate in the survey. Thirty firms, an equal number from Minneapolis and St. Paul and an equal portion of small, medium and large firms, agreed to participate. All employers were guaranteed anonymity of responses. Of those 30 firms, 19 actually returned the survey.)

By Chuck Friedman

William Mitchell students are clearly the choice of employers who hire clerks, according to a survey of 19 law firms in the Twin Cities. Meanwhile, a larger percentage of graduates hired as attorneys by these same firms come from the University of Minnesota.

Of the 19 firms responding to the survey, 11 indicated a preference for hiring clerks from William Mitchell, while only three named the University of Minnesota and five said they had no preference among the three Twin Cities Law schools. At the same time, over the past five years these same firms hired 29 U of M graduates, 22 Mitchell graduates, two Hamline graduates and 17 graduates from outside the state of Minnesota.

One reason for the discrepancy may be found in the fact that seven of the 11 firms explained their preference for Mitchell clerks in part because of the favorable class schedule these students have. Other reasons given for the Mitchell preference included the varied background and experience evident among Mitchell students, alumni preference for hiring Mitchell clerks and the dedication of clerks from the school. Those firms that preferred U of M students cited alumni affiliation and academic preparation as important factors.

What criteria do these firms have for selecting clerks? Of the 19 firms, only six required a specific class rank. Two accepted applications from only the upper third; two consider only the upper 25 percent; two require prospective clerks to be in the upper 15 percent. Those firms indicated that there was a direct correlation between rank and job performance. Five of the firms that do not require a class rank indicated that rank was not an accurate forecast of success.

The one factor most commonly considered by prospective employers is the applicant's personality during the interview. To a much lesser extent, these employers look to references, from previous employers, indications of a willingness to work hard and a sign of future loyalty to the firm.

Starting salaries for clerks in the Twin Cities have increased in the past year. Based on the survey, the average starting hourly wage of a first- or second-year student is $6.25, while third and fourth year students can expect to begin at an average of $7 per hour. Among firms that believe that their wage could be considered a "living wage", the average was slightly higher, $7.20 and $7.75 respectively.

Four employers do not believe that their salary schedule represents a living wage, while six did not respond to the question. Among those 10 firms the average starting salary was $5.50 and $7.75 respectively. Said one employer, "For the most part, the firm considers the clerkship an opportunity to gain experience."

While these are the wages being paid to the clerks, of those firms that responded to a question about billing, the average billing rate to clients for work performed by clerks was $25 per hour.

The prospect of increasing salaries during the term of employment is not good. Only six of the 19 firms grant a cost-of-living increase, and that is granted on an annual basis. Only five of the firms indicated that merit raises are given after six months of employment. Eight firms consider clerks for merit raises after approximately the first year. On the other hand, six of the firms do not make it a policy to grant merit raises during the clerk's term of employment.

If law students expect important benefits to be a condition of their employment, they should look to types of employment other than clerking. Most firms will pay for mileage traveled while on the job, and eight provide clerks with the cost of parking. But only seven of the 19 firms provide hospitalization insurance. Three offer life insurance; four compensate for illness; three grant holiday pay; five provide a paid vacation after one year.

For such salaries and benefits, the employer is usually seeking someone to research legal issues. All but one of the job descriptions included research as a term of employment. Twelve of the firms said that they seek clerks for investigation. Other duties ranged from drafting of documents and pleadings to service of process and collection work.

Only three of the firms hire clerks on less than 20-hour-per-week basis, nine on a 20-to-30-hour-per-week basis, and seven on an over-30-hour-per-week basis.

For most clerks that means less time to prepare for classes. Ten firms reported that students "sometimes" have spare moments to prepare for class while on the job, but six indicated that clerks are never allowed to study. Meanwhile, all the firms responding reported that students can expect to receive time off to prepare for final examinations. All but one of the firms that hire clerks on less than a full-time basis reported that clerks have some flexibility in choosing the hours they wish to work.

While most employers did not find fault with the kind of legal background their clerks had had, those responding most often cited a need for improvement in writing skills, including grammar and spelling. Three indicated that clerks needed a more practical understanding of the business aspects of a legal firm. While three stated that clerks should have more clinical training, one said that there should be less emphasis on the practical and more emphasis on the theoretical.

Finally, what is the likelihood that a firm will hire its clerks after they graduate from law school? Twelve of the 19 employers indicated that half or over half of their clerks were kept on the payroll. Only two indicated that they had not hired any of their clerks over the past five years.

Image

Photograph of two judicial clerks working.

Creighton team tops client-counseling meet

A team from Creighton University School of Law emerged as winners of the 1981 Region VIII Client Counseling Competition held March 6-8. The William Mitchell Client Counseling Society played host to Creighton, Drake, Hamline, Iowa, Minnesota, Missouri-Columbia, Missouri-Kansas City, Nebraska, North Dakota, South Dakota, Washington University and William Mitchell law schools.

The Region VIII competition was the only one of the fifteen regional competitions to use a variation of the traditional double elimination format. Under the Region VIII format, each team had to win two rounds before losing two rounds in order to continue in the competition.

Representing William Mitchell were Jim McWhinnie and Ginger Miller, who place ahead of the team of Vicki Bailey and Peter Bologna in the 1981 competition held in February.

In the final round of competition the teams from Creighton, Hamline and South Dakota faced each other, with Creighton's team of Micheala Nicolarson and Marilyn Haase emerging as the victors. Nicolarson and Haase will now advance to the National Competition to be held March 25-29 at Michigan State's Thomas Cooley School of Law in Lansing, Michigan.

Judges for the final round were attorneys Paul Springer and Linell Jones and Dr. Nancy Balogna a clinical psychologist.

The 1981 Client Counseling topic, “Discrimination in Employment and Credit", was chosen by the American Bar Association Client Counseling Competition. Jackie Leimers, a third year law student at

Valparaiso University and the student liaison to the Client Counseling Committee, attended the competition. Leimers commended the William Mitchell Client Counseling Society for running what was, from her perspective, "a superior competition."

Each round of the competition consisted of three or four minute client interviews followed by fifteen minute discussions among the two counseling attorneys. A panel of three judges then selected the winning team from each round.

At a luncheon held between rounds on Saturday, Lynn Lammer, Client Counseling Society President, presented Associate Dean Melvin Goldberg with a: plaque in recognition of his role in building the Client Counseling program at William Mitchell.

During Goldberg's tenure as adviser Mitchell sent three teams to the national competition. Lammer also introduced Professor Paul Marino, who will replace Goldberg as adviser to the Client Counseling Society. In recognition of his new duties, Marino was presented with a sweatshirt with the word "coach" prominently displayed.

Image

Photograph of 3 people at a table.

Law provides grist for illustrator's mill

By Rich Ruvelson

G.R. Cheesebrough, nationally known and locally based illustrator says he has only one regret. That is succumbing to the pressure of a major lobbying effort by bowlers. For years he had heard the question at art shows “Do you do bowlers?" He began to think there was something to the criticism. So he started hanging around bowling alleys, hanging "incognito" and he produced the much sought after prints. The result? Of 200 limited edition prints, he sold only six.

While bowlers may not sell, or buy, for that matter, Cheesebrough's subtle and whimsical characterizations of the legal profession can be found in law offices, and judges' chambers throughout the country. In the William Mitchell boardroom there is a series of four Cheesebrough prints.

Cheesebrough's admiration for his antecedents, the British caricaturists of the 19th century, is evident in his inimitable drawings of “establishment” types of work and at play. "At work” there are judges and attorneys whimsically portraying many of those wonderful legal maxims which we have all come to know and (some of us) love. “At play” Cheesebrough features golfers, hunters, and tennis players, though now avoiding bowlers.

Cheesebrough, who has had no formal art training, began drawing as a little nipper. Raised in Minneapolis he drew cartoons for the West High School newspaper. Then he attended the University of Minnesota where he was enrolled in the Marine Platoon Leaders course. He served in the Marine Corp for three years and followed that by stints in New York and San Francisco.

"While I was in San Francisco, I took some original drawings to a Union Street gallery. I'd never sold anything before, and the owner said that they'd sell," he said. They did. "After that I started moonlighting in the art business," he added.

When Cheesebrough returned to Minneapolis, he worked for Campbell-Methune, a Minneapolis advertising agency, for six year. In 1970 Cheesebrough became a free lance illustrator. "I wanted to be my own boss," he said.

Among Cheesebrough's favorite characterizations is the legal profession "The law is theatre, with so many things that can go into a visual," said Cheesebrough. The first series of legal prints was completed in 1968 while Cheesebrough was still at Campbell-Methune. The two black and white limited edition prints sold then for $5.00. Today, a signed limited edition legal print by Cheesebrough could not be purchased for under $75.00.

"People buy my work, not because it's fine art, but because they see themselves or someone close to them in it," said Cheesebrough. "My work is whimsy. People laugh. You don't see anyone chortling or being amused over wildlife paintings," be added. That may be, but many of the same people who enjoy wildlife art would probably find themselves amused at the sight of Cheesebrough's hunters.

Cheesebrough works in his St. Paul studio Monday through Friday from 6 a.m. to 11 a.m. Monday is his day for administrative chores. The billings and signing of prints must get done. The rest of the week is spent creating originals, which may later be reproduced as limited edition prints; posters, for various cultural events in the Twin Cities; illustrations, for book and magazines; or privately commissioned caricatures.

Cheesebrough had achieved success in a difficult area, despite the lack of formal art education. "An art school would ruin me. I have art students visit me occasionally. They don't develop their own style; they just copy their instructor's," claims Cheesebrough.

Cheesebrough does only watercolors and pen and ink drawing. "I prefer the title illustrator to artist," he said. "I enjoy my work. I don't agonize enough to be an artist." He teaches an art course of sorts at North Hennepin Community College. In his "I Can't Draw a Straight Line Cartoon" class, he attempts to teach students how to draw story line illustrations and develop their own cartoon characters.

Cheesebrough-signed limited edition prints are available at Grand Avenue Frame and Gallery on Grand Avenue in St. Paul, as well at the Art Cellar in the Burnsville and Ridgedale malls. He also sells out of his St. Paul studio and at various art shows throughout the area. For purchasers of his prints, Cheesebrough says he would be "more than happy" to personalize or remarque (pencil a small original drawing on the print) it.

Images

Photograph of G.R. Cheesebrough

Legal caricature by G.R. Cheesebrough

Photograph of Kermit the Frog reading The Opinion

Women gain on law faculties

Women made "considerable progress" toward obtaining tenured law school teaching positions during the 1970s, according to a new study for the American Bar Foundation.

The study found women held 10.5 percent of all tenure-oriented teaching positions in 1979, compared to 2.2 percent in 1970.

Women law professors were also teaching a wider variety of courses than in the past when most taught family law and legal research, the study said.

The report by former American Bar Foundation research attorney Donna Fossum also said women are more likely than men to teach at the law school from which they received their J.D. degree.

One-fourth of the women professors in 1976 were "inbred," compared to less than 18 percent of the men. These law teachers tended to spend more time as lower-ranked faculty than professors recruited from outside a law school, the study found.

More women professors taught constitutional law than any other course, "a fact that is perhaps surprising until one considers this area encompassed civil rights and discrimination law, topics obviously of special interest to women," the report noted.

Compared to male faculty members, women were underrepresented in most commercial law fields, including corporations, securities and antitrust law.

But the study found women and male professors "were teaching in remarkably similar proportions in almost half of the substantive areas of law teaching, including the stand first-year courses of civil procedure, contracts, criminal law, property and torts."

It concluded that women made their fastest gains in law school teaching between 1967 and 1975 when the number of tenure-oriented positions increased 80 percent.

"Now that... the market for law professors is not in a period of rapid expansion, it remains to be seen if women will continue to make significant inroads in the field of law teaching," the report said.

Those women who obtain teaching positions in a tight job market face additional pressures not confronting their male colleagues, according to another study released this month. The report by the American Bar Association's section on individual rights and responsibilities said negative student attitudes presented "one serious problem" for women professors.

"We don't know the attrition rate of women - how many leave teaching as a result of this performance pressure. But we do know that the integration of women in law school faculties is not a foregone conclusion," said project director Elizabeth Ashburn.

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