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Student Rights and Teacher Conduct at William Mitchell

By Mike Morehead

Think back to that seemingly distant time when you registered for your first law school class. Remember the pile of introductory material, your very own student handbook, the registration shuffle, and signing the enrollment forms. Remember the array of smiling, friendly faces and helpful organizations, all welcoming new students to law school. For many of the new students, just entering law school was itself a dream come true.

Think back on that time now after one or more years of law school. Ask yourself if. you knew what your legal relationship was with the school when you were asked to sign your first enrollment form. Did you have any idea of the rights and privileges you were entitled to as a law student? Did you know what duties or obligations were owed to you by the school? The individual faculty members? The administrators? Is your understanding of your rights as a student any better after one, two or three years of law school? What are your rights as a WMCL student? The goal of this article is to raise questions as to what rights WMCL students possess.

The registration form which students must s1gn contains a statement requiring students to adhere to the rules and regulations contained in the student handbook. The student handbook contains few, if any, rules governing faculty or administrative personnel. Indeed, research in this area revealed no current written regulations setting forth standards of conduct or professional ethics for any of the lawyers teaching at WMCL. The most that was found was an outdated employee handbook. Even this handbook does not discuss student rights or the ethical duties of teaching lawyers. The single exception is WMCL's sexual harassment policy.

The American Association of Law Schools (AALS), of which WMCL is a member, has candidly recognized the need for ethical standards for teaching lawyers. On several past occasions it has attempted to draft proposed ethical standards for lawyers employed in the teaching profession. Each time its committees have reported the need for such standards, and each time they have abandoned their task in the face of bitter infighting as to what standards should be formulated. The American legal teaching profession, in essence, has failed miserably in its attempts to set rules of conduct for its own members. To a large extent, lawyers teaching in Minnesota law schools belong to a profession without enforceable rules of conduct.

But what about the Model Rules of Professional Conduct? Simply put, the MRPC were designed for the practicing lawyer. Many of the rules specifically refer to the attorney-client relationship, thus excluding the teacher-student relationship. A few of the more general rules could, via a proper interpretation of the preamble to the MRPC, be applied to the teaching profession. Despite this, the Lawyers' Board of Professional Responsibility seems very reluctant to involve itself with ethical issues involving lawyers working in the academic field. The Board continues to drag its feet in resolving the sexual harassment complaint against WMCL's former dean.

In another matter, the board stated that a WMCL student has no standing to complain about a lawyer who failed. to teach WMCL classes on several occasions. The Board found no cause for action against this lawyer even though the student alleged that the lawyer was absent from a significant number of classes. The lawyer involved was paid a full salary as if he had rendered all services and attended all classes. One can only wonder what action the Board would have taken against a practicing attorney who billed a client for services that were never rendered. From an ethical standpoint, what separates the practicing attorney from an attorney employed in the field of legal education?

In its letter to the student the board stated that only WMCL, as a party to the employment contract, had standing to lodge a complaint against the lawyer. As of this date, WM CL has yet to file a complaint against this lawyer even in the face of student complaints and a written request that it file such a complaint. The Lawyers' Board of Professional Responsibility does not require a complainant to have standing in order to file a complaint against a practicing lawyer. Why then is it insisting on standing when a student files a complaint against a teaching attorney?

What about the SBA? The SBA consists of a small group of dedicated students who try very hard to improve student life at WMCL. They are, however, largely unsupported by the general student population. In addition, the SBA is primarily a social organization rather than a governing organization. It has no direct power to change any of the rules at WMCL. The SBA could, with proper student support, become very influential in developing and implementing student rights. Based on recent attendance at past SBA open forums, there appears to be a general lack of student interest in the SBA.

The laws governing educational malpractice are unsettled. One trend, however, is clear. Parents and students are no longer willing to routinely accept either inferior educational services or unprofessional conduct from educators. This point was dramatically brought home at WMCL when a group of students filed sexual harassment complaints against various WMCL professional employees. A look at litigation around Minnesota within the last few months provides some insight.

In Winona, Minnesota, a group of vocational students are seeking a tuition refund by suing their school in small claims court. These students are alleging that the school failed to provide competent

instruction. They base their claim largely on allegations that the school was unable to find or retain competent full-time instructors for a given course. This reportedly resulted in a hodgepodge of misdirected, uncoordinated instruction by six different teachers which left the students feeling that they had received very little if any of the education for which they had paid.

In Moorhead, Minnesota, a group of college students complained to the administration about the conduct of an instructor who failed an excessive number of students. The students sought the removal of the instructor. The administration ultimately gave students either the option of an administrative pass or removal of a failing grade from their records accompanied by a refund of tuition.

In Superior, Wisconsin, an assistant professor, involved in a merit pay dispute with the University of Wisconsin-Superior, took the unorthodox action of staging a one-person strike. He withheld his services from his employer. Specifically, the service he withheld was the turning in of graded final exams. This resulted in the students becoming innocent victims of a labor dispute between a school and one of its teachers. Ultimately, the dispute worked its way into a court, where, as of this writing, it was still pending. Student graduation dates, GPA's and overall morale could be , adversely affected by lengthy litigation of this matter.

In Minneapolis, Minnesota, last fall's student newspaper for the University of Minnesota Law School carried an article about one of the school's professors who had allegedly failed to turn in grades for-up to two years. (And you thought WMCL professors who were a few weeks late with their grades were bad.) The article outlines the history of how one law school dealt with conduct by a teaching lawyer that, from all appearances, seems to be blatantly unprofessional if not unethical. Student reaction to the manner in which the matter was handled did not appear to be favorable.

The legal education profession is, in many ways, no different than any other profession. As in other professions, the vast majority of teaching lawyers are true professionals who conduct themselves in an honest, ethical manner. In my three and one-half years at WMCL, I found this statement to be applicable to the faculty at WMCL. Yet the true test for any profession is not how it deals with its responsible members, but rather how it deals with the small percentage of its members whose conduct is either unprofessional, unethical, or illegal. A profession that has no ethical standards, sets weak standards, or fails to reasonably enforce standards should not be classified as a profession.

Law students spend years learning about peoples' rights, principles of fundamental fairness, and standards of ethical conduct for lawyers. What rights do these same students have when they are confronted by questionable activity on the part of a law school, its administrators, or its faculty? Does a contract exist between a student and WMCL? If so, is it an expressed contract? An implied contract? A quasi contract? What are the terms of the contract? Is the duration of the contract a semester? A year? Three years? Of what importance is the fact that WMCL has a virtual monopoly over part-time legal education in Minnesota?

To whom do the various faculty members of WMCL owe a duty? The students? The school? What happens when students have a conflict with the school? Does a faculty member have a legal obligation to the school that takes precedence over possible duties owed to students? Are faculty members employees, agents, or independent contractors? To what extent are students third-party beneficiaries to the contracts that exist between the faculty and WMCL?

Ask yourself what legal theories you could use against an instructor who is two years overdue with final grades? What right does a student have to challenge a faculty member who shows up for class and admits that he or she is unprepared? What equitable arguments can a student make if she is suspended for excessive absences from a class when some faculty members neither require nor take attendance? When can a student demand a full or partial refund? Should a student be entitled to a refund if a teacher misses 10% of his class time? 25%? 35%?

What rights do students have to prevent WMCL from utilizing' the J .D. program tuition to subsidize the L. L. M. or the C.L.E. programs for graduate lawyers? To what extent can students block the use of. funds from tuition to indemnify current or former WMCL employees accused of gross misconduct?

The list of questions pertaining to law students' rights could continue for quite some time. The reality of the situation is that law students have few established rights. The likelihood of obtaining these rights is quite slim. Law schools are not about to spontaneously develop rights for their students. Individual students who attempt to assert or establish student rights simply lack the power to wage an effective campaign against an established school. The SBA, unsupported by the general student population, is equally ineffective in dealing with the problem.

Remember what few rights you, as a law student, have when you register for next year's classes. Read the back of the registration form and ask yourself just who that form was intended to protect. Look over your new student handbook for the sections on student rights and faculty duties. If you can't find these sections try-to make a list of what rights you have as a student. Finally, if you believe that your rights have been violated, try to determine how you would go about establishing or enforcing your rights. If you're really a glutton for punishment, try to convince someone with authority that you have student rights. When you run out of steam ask yourself if the system is fair.

Image

Blue and white Escher-influenced illustration of a three-dimensional graph structure with disembodied hands holing open books and a mortarboard hovering above in a spotlight.

Image

Tri-color illustration of a tightly spaced group of students sitting at desks.

Mitchell's Gay Community Organizes

By J.M.S.

Homosexuals. You've got 'em. William Mitchell. They emerge, they thrive and, before you know it, the halls are painted apricot, the new library is dedicated to Gertrude Stein, and food service starts vending an affordable, yet palatable Chablis.

"Horrors," you say. But it doesn't stop there.

Soon a moot decorating team is organized. Phyllis Schlaffly is burned in effigy. And the students start calling their professors "Darling."

There is a new organization on campus. It's not for everyone.

If you were raised as I was, you were probably taught what I refer to as the "homosexual myth." Because you believed everything you heard at that age, you probably fell for it hook, line and sinker. The "myth" goes something like this:

"Homosexuals are born. They grow up normally but, at some point, something goes wrong. The males go to school to become lisping garment designers, limp-wristed hairdressers and playwrights. The females drive trucks. They lurk in arcades and playgrounds seeking to "convert" young, unwitting innocents to their lifestyles. (They can't reproduce, you see, so they must recruit.) They spend their sordid adult lives in a shallow pursuit of hedonistic self-indulgence and, in the end, they die from syphilis."

Perhaps, as you matured and became more enlightened, you discarded the "myth" along with several other things your mother told you (e.g., Santa exists, dead guppies go to heaven, and if you make a funny face often enough, your face will 'freeze' and people will laugh at you until you die).

However, many people, especially marines and television evangelists, cling to the old "myth" and are seemingly compelled to share their views with anyone who will listen.

Although the administration and student body have been accepting for the most part, homophobic sentiment is not alien to William Mitchell.

Earlier this year twelve posters were put up to announce an organizational meeting of our group. These posters were tasteful and demure. However, in the span of thirty-six hours, eight posters were removed and three were defaced, while one remained unscathed.

This occurrence is one indication that a group for gay men and women at William Mitchell is needed.

For the benefit of those unaccustomed to gay parlance, we use the term "coming out" to describe the process of identifying and revealing our sexuality to ourselves and to others. This can be a slow and painful process.

"Coming out" requires courage. To understand this one must recognize that many of our inhibitions are justified. Openly gay men and women chance discrimination, ridicule, estrangement from family and friends, and, in some cases, physical violence. It's no piece of cake, and this is especially true for budding lawyers. Ironically, the profession that boasts its commitment to justice and individual dignity is often a bulwark of bigoted thought. Hostility from one's classmates in law school makes the "coming out" process even more difficult.

Clearly, a visible and supportive group of people who have shared or are sharing similar experiences would be of great benefit to the student in the throes of "coming out." Although ours is a social group, we also function indirectly as a support group. There is strength, pride and reassurance in numbers.

The group meets about once each month. A typical meeting involves a lot of eating and talking. Some of us do our share of drinking, as well. Anyone able to do one or more of the above would fit in very well.

Because of the nature of the group, discretion is assured and expected from all those who attend. We want to make the meetings comfortable for those who choose to maintain a "low profile:"

Inevitably, some people may view our organization as an attempt to "flaunt" our sexuality. Often it seems that any squeak from the gay community evokes charges that "these people are trying to cram

their lifestyles down our throats." But the critics should look to the type of romance "flaunted" by society as a whole, especially in the entertainment and advertising industries. We can't compete with Ward and June Cleaver. We won't even try.

We hope that, given time, our group will emerge as a visible and positive force in the William Mitchell community.

Recently a large billboard was erected just outside of Lynchburg, Virginia, the Moral Majority's mecca. It read, "Someone you love is gay." The world would be better if people would realize this to be true. We are confident that with increased visibility and involvement, myths and stereotypes will shatter and William Mitchell's gay community will come to be admired and appreciated.

Anyone interested in attending the meetings may call Marty at 872-1900 or Vicki at 451-6259. Announcements of future meetings are published in the Docket.

IS AN ERA DYING OUT OR BEING KILLED OFF?

Family Farms: The Brooding Crisis

By Mike Helgeson

One Saturday afternoon several weeks ago, I sat in my favorite chair going through the week's mail. It's just another routine I've developed while in law school. On Friday nights, I drive to my rural home and then on Saturday afternoons, after looking heavenward and saying a precautionary prayer, I open the mail. Invariably, there are advertisements for things we can't afford to buy and bills for things we should have done without. There may be a school report announcing that my son is failing algebra or a note informing me that one of my daughters has called the band teacher a "nerd". Of course, my Saturday prayer isn't always answered. Sometimes there is bad news, too. Fortunately, the news that weekend was rather benign and I was just breathing it sigh of relief, when "W', my eleven-year-old daughter, told me that Amanda hadn't been in school for several days. Amanda lives on a nearby farm and is one of W's friends and classmates. Her protracted absence made me think of something vaguely contagious.

"That's too bad," I said, thinking that the flu or whatever was likely headed our way.

"Oh, she won't be back till after the funeral," Herr K said. (Herr K'. is the algebra student in our family and his statement sparked my attention.)

W quickly added that the funeral would be for Amanda's father. "Cause he shot himself," she said.

Herr K elaborated, "He drove the cows out of his barn, set it on fire, then blew his head off with a shotgun." Then, trying to make sense of it, he said, "He must've had problems."

"What kind of problems?", W asked.

"Bad ones", my son responded.

It seems that Amanda's father had inherited a farm from his father some thirty years ago. During the early seventies, he expanded. He mortgaged his farm to buy more land and equipment. Each year he had to borrow money at ever-increasing interest rates to finance his operation. For a while, his land appreciated fast enough to secure these loans, but then came double-digit inflation, sagging farm prices

and depreciating land values. His credit dried up and his loans came due and he blew his brains out. He had problems, bad ones, and his reaction to them was extreme, but his problems were not unique. Multiply these problems times several hundred thousand farm families and you obtain a figure in human misery that has not been seen in rural America since the Great Depression.

A few facts and figures may indicate the enormity of the problem.* In Minnesota alone, farmers lost $18.5 billion between January 1981 and January 1985. Yes, I said ‘billion'! In the past four years, state farmland has declined in value to about one-half 1981 levels.

(In the first six months of 1985, state farmland values dropped an unprecedented 26 percent.) Approximately 30,000 state farms now have debt-asset ratios that are 70 percent or worse. Thus a farm that was worth $400,000 in 1981 is now worth about $200,000. If a 70 percent debt-asset ratio applies, then this farm is encumbered with $140,000. With declining land values, it is obvious that this farm will have difficulty in securing further credit for operating expenses. It is not surprising that 5,000 farms were liquidated between June 1, 1984, and June 1, 1985.

At the same time that the debt-asset ratio has risen, the prices of commodities has fallen. Corn now sells for about $2.00 per bushel and wheat sells for about $3.00 per bushel. Unfortunately, these grains cost $3.00 and $5.00 respectively to produce.

In short, farmers, especially those who purchased land or bought equipment on credit during the seventies when interest rates were exceptionally high, have been caught between the mill stones of unbearable debt and shrinking income with which to pay that debt.

Were farmers merely overly greedy and short sighted? The greed part of this question I leave to you, but the short-sighted aspect must be answered with an emphatic "no!" During the seventies, farmers were encouraged to expand by government agencies which assured them that they would be able to sell all that they could produce to a hungry world. Politicians asserted that we were the food factory of the world and that fore1gn sales of farm commodities would cure our foreign exchange problem. Yet, now, with the 1985 Farm Bill, government policy is to freeze price supports for two years and then to phase them out altogether. Price supports used to at least assure a farmer that he could obtain a large percent of his production costs.

Although the farm crisis is national in scope, Minnesota has undertaken to implement some remedial measures. According to Martha Ballon, 3rd year student at WMCL and assistant to the State Commissi9ner of Agriculture, the RIM (Re-invest in Minnesota) program pays farmers to take marginal, erosion-prone land out of production. There is also an Interest Buy-Down program to aid farmers in re-negotiating their loans by providing state guarantees regarding principal and absorbing part of the interest. Farmer-to-farmer financial counselling has also been instigated. Nevertheless, for those farms with over 70 percent debt-asset ratios, liquidation may be the only alternative to forced sales. The bottom line is that there will be fewer and fewer family farms. But does it matter?

It may seem that the present farm crisis is simply a continuation of historical trends. The number of family farms has been declining for a long time in the face of mechanization, greater efficiency and capital intensification.

Since World War II, the number of family workers in agriculture has dropped from 18.1 million to 2.2 million in 1983. Government policy has been partly responsible for this. The Committee for Economic

Development (CED), which was formed in 1942, has consistently favored shifting farm families out of agriculture and into the industrial sector. In 1962, a CED report asserted that "the movement of people from agriculture has not been fast enough." This report recommended lower price support payments to "discourage further commitments of new productive resources to those crops unless it appeared profitable at lower prices." It would seem that government encouragement of agricultural expansion on one hand and the CED's proposals to discourage agricultural expansion, except where it was profitable (large corporate farms) on the other hand is another example of conflicting governmental policy. Unfortunately, the family farmer has to pay the price, but (s)he won't pay it alone.

The entire rural economy will be adversely impacted by the decline in the family farm. It has been demonstrated that a farm dollar multiplies about nine times within the farmer's community; thus, for every six farms that are lost one local business will also be lost. The displaced farmer and small town businessperson will have to seek their livelihoods elsewhere. Elsewhere probably means in the cities where there is already a high rate of unemployment. The outlook entails shrinking rural populations (both on the farm the small town), increasing concentration of farm land in fewer hands and a larger urban labor pool

Does it matter if there are fewer family farms? It matters to me, it matters to Amanda (remember Amanda?) and I hope it matters to you.

** The author wishes to acknowledge his debt to MPIRGS's Jan-Feb 1986 Statewatch for much of the factual matter included in this article.*

DOWN ON THE FARM

by Richard W. Rousseau

Set: The interior of an "Issues Barn" at a county fair in southwestern Minnesota. [Note to the director - For the conventions of this play the big map was constructed to depict the uses of Minnesota land.]

Characters: Dora -age 47
Lyle -age 29

Action: DORA enters -looks at the map -pauses -circles the map -pauses. Enter LYLE unnoticed by Dora. They both stand looking at the map. DORA looks up -is startled.

LYLE: Hello Dora.

DORA: [Unsure at first, then] Lyle... Lyle Tollifson.

LYLE: Right. It's good to see you Dora.

DORA: It's been a long time, Lyle.

LYLE: Five years.

DORA: Five years is a long time.

LYLE: I heard about Mark, I'm sorry.

DORA: He hit the ten-mile corner going too fast. It never was banked right. He just went off the road into Amundson 's shelter belt. He'd been drinking, but I'm sure that's all there was to it ... it was an accident.

[Lyle nods]

DORA: It's been three months now. We'd just had our twenty-seventh wedding anniversary.

LYLE: I'm sorry, Dora. I just wanted you to know that.

DORA: Thank you, Lyle --I appreciate your saying that.

LYLE: [Shifts, looks at the floor, clears his throat, looks at the floor.] Well ....

DORA: Well, you're living in the Cities now, is that right?

LYLE: Chicago.

DORA: Oh? I must have heard wrong then.

LYLE: Must have. I never have lived in the Cities. From here I went on up to Moorhead, then over to Wisconsin. l was at the bank at Madison there. And then to Chicago.

DORA: You're a long way from home then.

LYLE:. Judy's visiting her folks up in Halstad. We come back to Minnesota a couple of times a year,

DORA: What brings you down here?

LYLE: I never could resist the county fair . . . Mark and I built this barn together. And he's the one who wrote the slogan too: "This barn's not made for hogs or cattle. What we raise in this barn is Minnesota Issues"

DORA:· This was Mark's issues barn.

LYLE: Yep.

DORA: Clyde Johnson led the first discussion in here, Isn't that right?

LYLE: That's right. On land uses. That's why the map is colored the way that it is. Different colors represent different land uses. The beige is farm land, the light green is pasture. Dark green is forest. These represent iron mines up here.

DORA: That was ten years ago wasn't it?

LYLE: Right. It was a Bicentennial project -there was a sizable Federal Grant that funded this project.

DORA: It's a shame no one uses it anymore. Last year the 4-H used it a couple of times, but that's about it.

LYLE: I'm surprised. With all of the problems around here now, I'm surprised it's not being used a lot more.

DORA: This is the fairgrounds, Lyle. People come to the county fair and they want to forget.

LYLE: I was' sorry to hear about your farm.

DORA: You left at a good time, Lyle. You picked a good time to move. Clyde Johnson should have gone then too. He's not at the bank anymore, you know.

LYLE: l heard that he left town.

DORA: He had to. His nerves. were so bad. His wife told Millie Moeton that he never slept, he'd get up in the middle of the night and go and sit at his desk; the one-he had in the house. Then he'd go to the bank in the morning and he'd sleep at the meetings. So he really had to leave.

LYLE: That's too bad.

DORA: Well, he brought a lot of it on himself, you know. He spent the 1970's peddling, loans door-to-door like they were Watkins products.

LYLE: At the time things looked good for the farmer. We believed that it was the ideal time for the farmer to assume a loan. I'm sure Clyde believed he was helping the farmer ... as well as himself. The farmer could use the money from the loan to expand. On the expanded farm he could grow more, and the more he could grow the more he could sell. We believed a farmer could sell everything he could produce back then. The Russians were buying our wheat. The newspapers and the evening news had countless stories about a world famine-A Starving World that had to be Fed. The President and the Secretary of Agriculture were telling farmers to invest in more land and more equipment. They advised farmers to plant more acres and they promised that everything grown would be purchased by a desperate, starving market. By encouraging farmers to take out loans, Clyde believed he was helping them to a very profitable future.

DORA: He was thinking about the profits for himself.

LYLE: That too. That's only good business, Dora. One hand washes the other.

DORA: Well, he should have tried, to do something to help-when all those great promises turned out to be empty. Mark believed the promises. He bought my Uncle Robert's half section and doubled the size of this farm. We put in irrigation. We tripled our output. But nobody wants it. All those great promises of a hungry world buying up everything the American farmer could grow were lies. We've got more surplus today than we have ever had. The world doesn't want our food.

LYLE: The world wants it. But the world is buying it from the developing nations. Argentina and Brazil can sell it cheaper than we can-that's what it amounts to.

DORA: Well it's not the farmer that's keeping the price of food up -I can tell you that. Take cereal -how much do you think a box of bran flakes sold for 40 years ago?

LYLE: l really don't know.

DORA: 35¢. A box of Nabisco Bran Flakes cost thirty-five cents in 1946. I remember my mother giving me a quarter and a dime to go to the store and buy a box. Today that same box of bran flakes costs $1.63. Now I know that the price of everything has gone up over the past forty years, but here's the telling part. In 1946 when the price of bran flakes was 35¢ a box, my father got $8.00 per bushel for his wheat.

This year when the cereal costs $ 1.63 all Mark was able to get for a bushel of wheat was $3.16. The price of food keeps going up every year but the American farmer keeps making less.

LYLE: It's a complicated business, Dora.

DORA: Well Lyle, I'm tired of hearing that it's a complicated business. I know that we were given a lot of advice from politicians and from bankers in the 1970's. We took their advice in good faith. We borrowed more than we should have. But we did it in good faith.

LYLE: No one forced you to borrow. No one told you that you had to do it. No one told you that it was your duty. The farmers that over-invested in the l 970's did it because they wanted to get rich.

DORA: Don't tell me that the bankers didn't want to get rich.

LYLE: l won't. The bankers wanted to get rich. Clyde Johnson wanted to get rich. So did I. I still do. I'm a banker, and I want to get rich. I'm not going to apologize for that.

DORA: Mark took out the loans and expanded our operation so that he'd have something to pass on to the kids. He did it so that he could pass on the farm. He wanted a good sound dependable farm that the kids could inherit, make money from, and pass on to their kids. That's why he did it. Not to get rich.

LYLE: Alright Dora, I understand that. I'm really not arguing with you. All I am saying is that this is business. And as with any business there is a certain amount of risk and there are no guarantees.

DORA: Don't you talk to me about risks. Do you know who you're talking to Lyle Tollefson? I'm a farmer. Don't tell me about there not being any guarantees. All I've ever known are risks: wind, rain, hail, drought, rootworm and grasshoppers. Wondering whether we 're going to plant too early or harvest too late. Watching rising costs and falling prices. The only thing I know for sure is that you can't count on anything. But I also know this: when a farmer makes an agreement with a bank in good faith -and when that farmer does everything possible -and then some -to honor that commitment and produce way more than he's ever produced -and then because of what happens in Russia or Argentina or Wall Street or Washington, D.C. the farmer is blamed and the farmer is told that he can't make good on his agreement and the bank tells the farmer to hand over his farm, a farm that's been in the family for four generations that's not business, that's robbery!

LYLE: Dora, when you use your land as collateral, and you can't repay your loan, then the bank owns your land. That's what collateral is about.

DORA: We will pay back the loan.

LYLE: That's no longer possible. It doesn't compute. You've lost the fight. The final punch was rendered by deflated land values. Over the past four years your collateral has dropped in value by over 56%. Your land has gone from being worth over $2,100.00 per acre to a little less than $950.00 per acre.

DORA: The land hasn't changed, Lyle.

LYLE: On paper it has and that's what counts. You are now in a position where your debt is greater than 40% of the value of your land. What that means Dora, is that no matter how efficiently the farm is operated, you now owe more in interest than you can earn from the crops.

DORA: You seem to know a great deal about my finances.

LYLE: I've been doing some checking. I'd like to make you an offer. I think I can give you a better deal than you can get if you settle up with the bank.

DORA: Are you saying that you want to buy the farm?

LYLE: I'm saying that I have some clients who are willing to assume your debts.

DORA: Why would they want to do that?

LYLE: For tax purposes.

DORA: You mean they're not farmers?

LYLE: No.

DORA: You want me to sell my land to people who have never farmed so they can use it for a tax write-off?

LYLE: Essentially. that's what I'm saying.

DORA: And that's why you drove down here and that's why you looked me up?

LYLE: That's right.

DORA: I used to think the world of you.

LYLE: And I've cared a great deal about you. I still do: Mark was like a father to me.

DORA: Don't! Please don't say, anymore.

LYLE: Dora, please let me explain. Please? [Dora looks at him.] You are going to lose your farm. That is a foregone conclusion. There is nothing you can do about that now. But you can do something to make the best of that situation. Let me explain my offer. I guarantee you, it's much more lucrative than any other arrangements you could possibly make.

DORA: No.

LYLE: Dora, think about your kids. Think about the future. Think about yourself. Think about where you're going to be. Think about what you're going to do with the rest of your life.

DORA: I'm going to be here for the rest of my life.

LYLE: But you don't have to be. You can go somewhere else. Anywhere you like.

DORA: You've got dollar signs in your eyes, Lyle. Dollar signs so big they've made you blind. You no longer can see anything that's true or honest or genuine ...

LYLE: I see exactly what's there. I can see exactly what you're going through and I can see how wrong you are. I know who I am. I was born here, raised here, and I had my first job in this town. I know my way around. I know that what's true and honest and genuine is as relative here as it is anywhere else. This Issues Barn here -this monument to free speech (that's hardly ever used) was inspired by a fat government grant -by income provided from that grant -not by civic pride. Rural America is not more moral than the rest of America. It just thinks that it is.

DORA: I'm going home now.

LY LE: Dora, in another couple of weeks it will be too late. The foreclosure notices are real. They are going to foreclose on your land and they are going to do it soon. In another couple of weeks you will have to settle up with the bank and there won't be any alternative. I can get you a good price right now.

DORA: That land has been in the family for four generations now. Four generations of farmers here. And we were farmers before we came to this country. My two youngest children want to be farmers and my two oldest are sorry they're not. That's my farm down the road. The fields are filled with bolts and sheering pins and horseshoes and busted pieces of plows. My children, my husband. my uncle, my mother, my father my grandparents, and their parents -we've all left bits and pieces of things -bits and pieces of our lives -left lying in those fields. That's my land. And that land will never be anything but my land ... I'm going home now . . . I'm sure you can find your way out, Lyle -you know your way around.

[Lights fade to black as LYLE looks at the map.]

Image

Black and white, pen and ink stock illustration of a farm.

Students Attend La Raza Law Conference

By Tony Leal

Two SALSA members - Tony Leal and Robert Contreras-traveled to Iowa City, Iowa, to attend the annual regional La Raza Legal Alliance Conference. The alliance is a Hispanic organization made up of attorneys, law students and support personnel who are dedicated to promoting the equality of all Hispanics in the legal profession. The purpose of the conference is to strengthen the regional network of its members, as well as, informing and educating each other on current events in the Hispanic community.

The conference held March 14-16 in Iowa City, Iowa, included a wide spectrum of colorful speakers whose topics ranged from the revolution in Nicaragua to bilingual education in America. Each had a personal message to deliver and each pad a forceful impact on the participants at the conference.

Arturo Ramirez, founder of La Raza Legal Alliance and graduate of the University of Iowa Law School, told of his struggles in becoming a professional; "I was a truck driver after graduating from law school and before taking the bar." After passing the bar, Ramirez finally became a professional. However, he stated, ''It took me a couple of years to learn the ropes by going to seminars, obtaining the proper forms, and setting up a business." Ramirez now heads a seven-member law firm in Houston, Texas, litigating cases which include immigration, tort, and real estate law.

Paul Neuhauser, a professor at Iowa College of Law, enlightened the group with a talk on corporate law. He was followed by Carlos Cuevas, Staff Attorney for-the Legal Assistance Foundation in Chicago who emphasized the humanitarian aspect of legal assistant work. Other speakers at the conference included William Hines, Dean and Professor of the University of Iowa College of Law, and the Assistant Dean of Academic Affairs, Nancy "Rusty" Barcelo.

In the area of international law, Francis Campbell, Council Minister of the Nicaraguan Embassy in Washington, D.C., discussed the present government's efforts towards improvement. He admitted

mistakes have been made but asserted that the Ortega administration is providing stability that Nicaragua needs to move into the future. Moreover, he emphasized that the mining of Nicaraguan ports by the U.S. was a breach of international law and that the World Court will condemn the action.

To make a counter argument, James Anaya, a Native American who is a graduate of Harvard Law School, pointed out the injustices to the native Indian tribes in the western part of Nicaragua. "Atrocities have occurred with no apparent reason for them," said Anaya.

Patrica Diaz-Dennis of the National Labor Relations Board in Washington, D.C. said, "I dedicated myself to learning my craft ... I studied during my law school years because I didn't want any door closed because of low grades." Diaz-Dennis added that women must establish their competency as attorneys without sacrificing their femininity.

Tony Baez, Executive Board member of the National Association for Bilingual Education, said the issue in Bilingual is not whether Spanish should be the prominent and foremost language in teaching. but whether the children's native tongue can be used as a learning tool in public education. He is in favor of providing effective bilingual education that will ease the transition from Spanish to English of primary school students.

All in all, the conference left me with an educational view on domestic and world affairs that concern us, directly and indirectly.

Image

Black and white snapshot of three men in discussion captioned: Robert Contreras (left) and Tony Leal (center) talk with Dean James Hogg about the La Raza Legal Alliance Conference.

Getting to Know the Neighbors

By Paul Prentiss and Kathleen Corley

The private world of a William Mitchell law student often revolves exclusively around imminent classroom and work demands. As a result of the time spent in school, a significant amount of time is spent in what many perceive to be a crime zone: the neighborhood surrounding William Mitchell. The general impression many students have of this neighborhood is of a slum area comprised of thieves and rapists, an area not to be ventured into, especially after dark, without their eyes wide open and a tight grip on their valuables.

Such a perspective may be well founded, based on a few aggravated incidents and a seemingly continual flow of vandalism attacks. However, this perspective and the circumstances justifying it should not automatically be attributed to the community fabric. A closer look at this neighborhood (District 8, Summit-University) reveals a tightly knit community, well organized, protective of its members and, yes, even the WM students that walk its streets.

On Thursday, February 27, the local Board of MPIRG, together with the WM Women's Law Caucus, sponsored a panel discussion at WM dealing with crime in the WM vicinity, notably rape, assault and vandalism. Panel members included St. Paul City Councilman Bill Wilson, Anne DeGroot (organizer of Take Back the Night campaign), and local community activist and director of the Summit-University

Planning Council, Greg Finzell. Also present was Dean of Students James Brooks, who chairs the Security Committee.

At the meeting, the discussion took an unexpected but interesting twist. Sparked by a seemingly innocuous question addressed to Councilman Wilson about the community's reaction to the WM parking lot proposal, a very straightforward discussion ensued about the community's general attitude about the school, its students, and the underlying myths about the community which have surfaced because of the controversy surrounding the parking lot.

Mr. Finzell, who works closely with the community as the Executive Director of the Summit-University Planning Council, said that the general feeling in the community was that WM was pulling a political grandstand play to get the parking lot approved by exploiting the "danger" inherent in the community, as evidenced by the recent shootings of a Control Data employee and a WM student.

Councilman Wilson echoed that sentiment by relating discontent among the community about the school's perpetuation of the "myths" that the area is infested with criminals. He said that this community is one of the most well organized in the Twin Cities.

The inhabitants know and look out for each other. Wilson added that most crime in the area is committed by persons coming from outside the neighborhood. He said that positive changes have been taking place over the last ten years. Unfortunately, the impact of violence is strong, particularly when it reinforces preconceived ideas. In addition, positive change does not receive the same amount of publicity.

The facts and figures support Wilson's claim. The population of the district with four or more years of college increased from 1970 to 1980 from 1,041 to 2,025. This is a 94.5% increase and constitutes 22.3% of the population. The overall percentage figure used for St. Paul in 1980 was 19.8%

The crime statistics are more recent and are based on data supplied by the Saint Paul Police Department. From 1980 to 1984, crime in the district decreased from 3,492 total crimes to 2,942, IO% of the city total in 1984. Crimes against individuals dropped more significantly from 450 to 362, 18.3% of the City's total.

In 1970, 22.4% of the housing units were owner-occupied. In I 980, that percent increased to 31.6%. The number of rental units decreased from 66.2% to 56.0%. Vacancies, however, increased from 11.4% to 12.4%. (This information comes from the *District 8, Summit-University Data Profile, 1985* and was published by the Department of Planning and Economic Development of the City of Saint Paul. It is on Reserve in the library.)

The statistics give a perspective on the composition of residents and general makeup of the neighborhood. Crime still happens. WM students are assaulted, and their property vandalized. As Jim Brooks pointed out, that is the concern and responsibility of the School and an issue for the Administration. Wilson and Finzell said that they understood that, but suggested that it was important for the College both students and administration, to understand that it wasn't their concern alone. The community is concerned about violence and crime and is no more willing to tolerate or accept it than the College. However, like any other resident in any other neighborhood, William Mitchell must establish a link, some sort of interaction that will make it an integral part of its surroundings.

Bill Wilson pointed out that "Block Clubs" are organized in man neighborhoods of the Summit-University area. These are established groups that could serve as contacts for additional organizing. Finzell suggested a reciprocal interchange between educational institutions, grade schools, high schools and WM. Jim Brooks added that a connection could be made between the Clinic programs and the Community. As the neighborhood is encouraged to respond to students' needs, the students can be encouraged to be aware of and responsive to neighborhood concerns.

Brooks, Finzell and Wilson agreed to stay in regular contact. The local MPIRG Board and the Women's Law Caucus will work with all parties to organize a Community Forum for the Fall of 1986. Student residents will be contacted with information about neighborhood groups and community contact persons and services·

William Mitchell is the resident. It is through the school that the migratory students gain their legitimacy. The school has a vested interest in what happens in this neighborhood, and students share in that interest as students.

Image

Formal, black and white photograph captioned: St. Paul City Council Member Bill Wilson

Image

Classic black and white, clip-art illustration of a wildly over-populated suburban neighborhood

Racism and the Law

By Charli Winking

Given, two men; "A" and ''B". "A" and his followers (numbering in the thousands) have entered into a conspiracy to violate a number of laws in several states · and cities of C. In so doing they intend to disrupt totally the established social order. "A" himself continues to violate the law flagrantly and is arrested, oh, let's say 40-50 times. Incidentally, the laws which "A" and his -cohorts are violating are over 50 years old and have been upheld by the highest court in C. In addition, the laws are supported by the vast majority of the registered voters in the affected states.

"B", on the other hand, is a duly elected official in state M. He has sworn to uphold its constitution and laws, and does so with a vengeance. His officers arrest "A" and his co-conspirators time and time again. Police battle with the demonstrators, attempting to enforce the law, and some of "A's" followers are killed. "B" calls out the National Guard to restore order, attempting to do his duty, restore law and order, and maintain the status quo, as the voters desire. "A" is finally murdered.

To which of these men should C dedicate a national holiday? A dedicated public official trying to uphold valid laws, or a convicted criminal who attempted to lead a revolt against the established social order? Would your analysis change if you knew that "A" was really Martin Luther King, Jr.? And "B" was actually George Wallace/ Bull Connor/ Ross Barnett? And that the laws that were resisted were those requiring segregation in all public facilities?

This is a hypothetical that I have never discussed in law school. It's a little blatant and obvious, I admit, but aren't they all when it comes to the final analysis? The issues and questions underlying this hypo, however, are far from trivial and need to be addressed.

Racism in one form or another is rampant in our society. Most of us, I hope, consider ourselves to be more enlightened than someone like George Wallace. Racism today is a bit more subtle and sophisticated than the "segregation now/ segregation forever" school of thought once so popular.

Most of us are appalled by the approval given to "separate but equal" by the Supreme Court in Plessy V. Ferguson in 1896, and would certainly never advocate a return to such archaic thinking.

But the fact remains that Plessy and the "Jim Crow" laws enacted in its wake were the acknowledged and approved law of the land for over 50 years. The law did not create racism, and I am not implying that lawyers are more racist than the rest of the population.

However, most of the laws were drafted by lawyers. Lawyers were required to ensure that those laws were carried out. And lawyers were eager and willing to argue that those laws were constitutional and should be upheld, despite the cost in wasted lives and the degradation and great loss of dignity suffered by those who were forced to live under segregation.

The law (and the lawyers) then, have been a necessary tool to implement the racist mentality that refused to allow blacks and whites to drink from the same public drinking fountains, send their children to the same schools, or use the same toilets. And lawyers today continue to drag out the battle over segregated schools and affirmative action, to name only two areas. It appears that the phrase "with all deliberate speed" is a legal term of art, not meant to be taken in its usual, plain-meaning sense.

We, the lawyers, craft creative and sophisticated arguments to support racists. We argue that we have a duty to represent our clients vigorously, but, do we have to accept the clients in the first place? Does the Code forbid us from considering whether justice will be served in deciding whether or not to pursue a case?

It is doubtful that more than a handful of us will ever need to face the issues in such straightforward terms. This is Minnesota, for God's sake, not Mississippi! There are no racists here! Are there?

Professor Derrick Bell, in his book *Race, Racism and American Law* proposes an analogy to encourage group discussion and self-analysis on the issue of racism. Bell suggests that most whites view the racial plight of blacks as an injustice that should be corrected. But, he contends that *on a priority scale, eliminating racism would rate only slightly higher than the campaign to save the whales.*

Bell concludes that "racial equality, like whale conservation, should be advocated, but with the understanding that there are clear and rather narrow limits as to the degree of sacrifice or the amount: of effort that most white Americans are willing to commit to either crusade."

Let's consider some specific examples, relevant to our real-life experiences as law students and applicants for positions with law firms, to determine the limits we are willing to accept.

> William Mitchell, in an attempt to compensate for past discrimination in education and the professions, chooses to implement a quota to increase the number of minority students accepted. Do you object? Is that reverse discrimination against whites? If you are a white

applicant rejected by the college, while a minority applicant with lower "predictors" (GPA and LSAT) is admitted, do you feel that minorities are getting special treatment?

A prestigious law firm institutes an aggressive affirmative action policy and hires a minority applicant with a lower GPA , no law review experience, etc. than a white applicant. Do you grumble that minorities can only get their feet in the door if the law firm lowers its standards?

A minority student asks what you feel is a ridiculously inane question in class. Do you immediately assume that the stupidity of the question is due to the race of the student, or do you recognize that all of us have asked ignorant questions?

The S.B.A. gives a share of student fees to groups that represent the interests of Black/ Hispanic/ American Indian/ women/ gay/ lesbian students. Do you resent paying fees to support "those minorities"? Do you feel that "those groups" cater only to special interests, or do you feel that it is critical for all of us that William Mitchell maintains and supports a diverse population?

Recently Hispanic and American Indian students filed a complaint against members of the S.B.A. who allegedly made statements similar to some of the above concerning funding of so-called minority student groups at an S.B.A. meeting. According to the complaint, one S.B.A. member suggested that the S.B.A. allocate $1000 as a cost reduction for the upcoming student-alumni dance as a "gift" from the S.B.A. The complaint alleges that the white student said that the S.B.A. should be able to do this, "if we are giving money to those minorities." (An Indian student who was present at the S.B.A. meeting says that she was humiliated by hearing a white student, refer to "those" minorities in such a manner.)

The white students involved deny that racism motivated the comments and contend that in the context of the discussion it is clear that race was not an issue.

As The Opinion is going to press Dean Brooks has scheduled a meeting with all of the students involved in the complaint. He hopes that some conciliation and discussion will take place, and that the matter can be resolved in a way that satisfies all of the parties. Dean Brooks encourages a "healing process."

This article is not intended as a comment on the merits of the complaint, nor is it meant to be an indictment of the white students as blatant racists. Whatever one's position on the complaint at issue here, it seems to be an appropriate time for all of us to examine the excess baggage we carry with us through life-the stereotypes we choose to believe, the assumptions we make about other races/ sexes/ sexual orientations. Do we foster an "us" and "them" view of the world?

(One white S.B.A. member said that he does not believe that any racism was behind the student's comments, but the fact remains that one student was humiliated. "'And that", he said, "makes me want to cry.")

It is especially critical for us to recognize that we as lawyers will possess powerful tools which have been used to subjugate a substantial segment of the population. We can continue to use those tools to shield the racism so prevalent in American society. Or, we can use the tools as swords to fight for equality.

Image

Black and white clip art illustration of racially and sexually diverse group of people

The Competitions ...

By Robert Contreras

TRIAL ADVOCACY

The team of Bill Cashman and John Skinkle were successful in capturing first place in the Trial Advocacy Competition at William Mitchell.

The faculty advisor, Professor John Sonsteng, described the competition as very intense. Sonsteng said, "It is an extracurricular activity which provides an educational benefit."

In regional competition at Denver, Colorado, the team did not fare as well. "All the teams were good, the team performed well, we just lost," said Sonsteng. He emphasized that he was proud of the team because they were well prepared for the competition.

The purpose of the competition is to test the oral advocacy skills of law students. The competition provides an excellent opportunity for students to practice and perfect their oral advocacy skills.

NEGOTIATION

Clair Schaff and Eric Satre were the first-place winners in the Negotiations Competition. The faculty advisor. Prof. Roget11aydock, described the event as a good experience for those who participated in the first annual event.

In regional competition, the team traveled to Baltimore, Maryland. Haydock said, "The team was good and well prepared, but just came up short." There were ten teams at the regional, but only first and second place awards were given. The other eight teams, including William Mitchell, were unranked.

The purpose of the competition is to advance the negotiating skills of law students. The students are taught to work with the other side, but still obtain the best possible settlement for their client.

MOOT COURT

In Moot Court competition, Lisa McNaughton and Catherine Wasson were successful in their quest for the first-place trophy. Sharon Van Dyck, member of the Moot Court Board of Directors, described the " ... quality of competition this year as very competitive."

The purpose of the competition is to test the appellate advocacy skills of the students. The success of the program depends entirely upon the students. The more competitive the students are, the better the end product. In this case, the team of McNaughton-Wasson will turn out to be one of the finer representatives William Mitchell will send to regional competition in the winter.

Image

Informal group photo in office setting captioned: Bill Cashman (left) and John Skinkle (right) flank Elise Colosey, their behind-the-scenes partner.

Image

Informal photo in office setting captioned: Clair Scheff, Eric Satre

Image

Informal photo in courtroom setting captioned: Lisa McNaughton Catherine Wasson

Tuition Rises But Compares Well Against Other Schools

From a news release.

A $6. 7 million total budget for William Mitchell College of Law for the 1986-87 academic year, which calls for a tuition increase of 8 percent, was approved at the March 18-meeting of the college's Board of Trustees.

The decision ended a lengthy budget process that started last October, according to Bruce Hutchins, finance director and treasurer for the college. A number of meetings involving administrators, faculty, staff, students, and trustees were conducted to review the budget with a "zero-based" approach. "That is, every budget item was submitted, reviewed, and justified based on actual needs," Hutchins said.

Image

Finance Director Bruce Hutchins

Hutchins explained that the law school's budget is "largely tuition dependent" with tuition and fees counting for about 90 percent of the school's income: Other income sources include: investment earnings, rental income from offices in the LEC (Legal Education Center) Building, and private contributions (i.e., alumni/ ae annual fund). Long-range budget plans call for an increase in non-tuition revenue sources, Hutchins said.

The tuition increase, according to Hutchins, will help pay for a number of improvements and added services at the college including:

Two additional tenure-track faculty positions;

An improved student/ teacher ratio;

Necessary maintenance of existing buildings (deferred from previous years);

Continuing Operation Facelift projects;

Expanded security personnel (added staff and hours); and

Remodeling of Room 111 (to install classroom-type seating).

One factor in the tuition increase is the projected entering first-year class of 290 students (down from this year's 330) and an enrollment of 30 students in the new graduate tax program which starts this fall.

James Brooks, dean-of students, explained that the reasons for the anticipated enrollment decrease include: improving student/teacher ratios; responding to an over-all decrease in new-student applications and decreasing the student body proportionately; and attempting to eliminate overcrowding in required classes.

Hutchins agreed that it was "a well-thought-out decision" to plan for fewer first-year students and, in fact, this strategy was based on recommendations of the law school's long-range planning committee.

Planning for and funding of a new library facility are not included in the budget. A separate, capital campaign fund-raising effort is planned.

Tuition costs will increase from $2, l 00 to $2,270 per semester for parttime students and from $3,070 to $3,320 per semester for full-time students. Per credit tuition will increase from $287 to $310 per credit for students enrolled with eight credits or less.

How does William Mitchell's tuition compare with other schools? Quite favorably, _according to Hutchins. In 1985, in comparison to the other 12 independent law schools, William Mitchell had the fifth lowest tuition (see chart I). Also in 1985, compared to similar-sized law schools, William Mitchell's tuition was the third lowest (see chart 2). Tuition figures for a number of schools for 1986-87, including the University of Minnesota, are not-yet available. For a comparison of William Mitchell's tuition with Hamline University's costs, see the Minnesota chart.

"These figures show that William Mitchell continues to be reasonably priced," Hutchins said. "We remain in the lower end of the tuition spectrum, and we are committed to making every effort to remain there."

CHART 1: COMPARISON OF FULL-TIME TUITION OF INDEPENDENT LAW SCHOOLS (non-university affiliated)

Law School (least expensive to most)	**1984-85***	**1985-86****
South Texas College of Law	4198	4928
Dickenson School of Law	4970	5390
Detroit College of Law	4800	5700
New England School of Law	5695	6100
William Mitchell College of Law	5774	6140
Thomas M. Cooley Law School	5265	6240
Franklin Pierce Law Center	6100	6500
John Marshall Law School	5650	6650
California Western School of Law	6950	7000
Brooklyn Law School	7300	8000
Southwestern University of Law	7090	8000
New York Law School	7300	8000
Vermont Law School	6800	8000

CHART 2: COMPARISON OF FULL-TIME TUITION OF SIMILAR-SIZED PRIVATE LAW SCHOOLS

Law School (least expensive to most)	**1984-85***	**1985-86****
University of Tulsa	5263	5850
Creighton University	5300	5724
William Mitchell College of Law	5774	6140
Marquette University	6180	6650
Wake Forest University	6150	6800
Washington & Lee	6615	7100
St. John's University	6637	7656
DePaul University	7150	7990
University of Denver	7453	8460

Emory University	7620	8400
Fordham University	7800	8600
Boston College	8215	8920
Case Western Reserve	8215	8750
Washington University	8400	8800
Vanderbilt University	8681	9800

CHART 2A: TUITION INCREASE PERCENTAGES

TYPES OF SCHOOLS	1984-85**	1985-86**
Independent Law Schools (Avg.)	9.89	11.63
Similar-Sized Private Law Schools (Avg.)	9.95	9.83
William Mitchell College of Law	9.98	6.34

COMPARISON OF TUITION AT HAM LINE UNIVERSITY FOR 1986-87
(University of Minnesota law school figures not yet available)

	1985-86**	1986-87**
Hamline University	6410	6860
percent of increase	7.91	7.02
William Mitchell	6140	6640
percent of increase	6.34	8.14

*American Bar Association figures
** William Mitchell survey

Images

Black and white, casual portrait captioned: Finance Director Bruce Hutchins.

Uncaptioned, black and white, informal photograph, presumable, James Brooks

Alumni Office Builds Bridges Between Past and Present Students

By Sally Sherman

Located in LEC 205, the Alumni/ae and Development Office is frequently considered off-the-beaten track to the William Mitchell community. Our services, however, extend not only to alumni/ae, but to current students as well.

WMCL has nearly 6,500 living graduates. The college maintains relations with the group through social, professional and fund-raising activities. Traditional alumni/ae events include Homecoming, an annual golf tournament, class reunions, the MSBA convention activities and the fall phon-a-thon. We also work closely with the Alumni Board of Directors, which serves as a liaison between the College and alumni/ae.

In the past these events were the result of the hard work and dedication of past Alumni/ ae Director, Honorable Ronald E. Hachey. The traditions begun under Judge Hachey are now continuing and expanding through the new director, Barbara J. Fintel. In an attempt to more fully understand alumni/ ae interests and needs, the Alumni Association has sponsored breakfasts to introduce Barbara and Dean James F. Hogg and to allow graduates the opportunity to discuss issues and concerns.

The Alumni/ae Office is also designing a survey to identify graduates' interest in, assisting with admissions and career services. The survey will also be used to build our out-of-state network of alumni/ae. Beginning with an Arizona Chapter, we hope that Texas, Washington, D.C., Florida and California will soon follow.

The Alumni/ ae Office's scope goes beyond William Mitchell graduates. We have become increasingly involved in student events, co-sponsoring this year's Student Hockey game and the Student-Alumni Dinner Dance. One other prominent goal for the office is the start to bridge the gap between students and alumni.

We rely heavily upon students during the fall phon-a-thon, where student volunteers call alumni to bring them up to date on College activities and also to seek support for the annual fund. ***This year the students set a record for the annual fund, increasing alumni/ae response from 22% to 30% in one year; an increase of 36%!***

The Alumni/ ae and Development Office is committed to serving the William Mitchell community, by enhancing alumni/ ae relations, building community awareness and bridging the gap between students and graduates. Alumni/ ae and students alike are encouraged to let us know how we can be of help. Hopefully this office is not so far off-the-beaten track after all.

WHOSE SIDE WAS THE LAW ON?

Th Gulf of Sidra

According to news stories following the exchange of fire between the U.S. and Libya in the Gulf of Sidra, Colonel Khadafi told his people in a 'mouse that roared' fashion that Libya won a resounding victory over the American imperialists and that the American Sixth Fleet retreated from the Gulf of Sidra promptly upon Khadafi's demand. From Washington comes word that the good Colonel fired first; that we were justified in firing back: that the Sixth Fleet exercises in the Gulf of Sidra made it clear to the Colonel and the world that the U.S. would defend its and others' navigation rights in international waters.

Secretary of State Shultz apparently failed to obtain support for the tough U.S. policy against Libya. In fact, Mr. Andreotti, Italy's Foreign Minister, suggested that the. U.S. should have brought the matter before the International Court of Justice.

The Gulf of Sidra incident came barely a week after U.S. naval vessels in a much less widely reported "incident" sailed to within six miles of the Soviet Black Sea coast near Sebastopol to assert the "right of innocent passage" under international law. Predictably and unlike Colonel Khadafi, the Soviets did not shoot at the U.S. vessels but protested through normal diplomatic channels.

Foreign Minister Andreotti did apparently agree that once fired upon by Libya the US fleet was "legally" justified in firing back. The news item also quotes an unnamed U.S. official as saying that because ''virtually all countries" except Libya do not recognize Libyan control over the Gulf of Sidra, it makes no sense for the U.S. to seek a "legal opinion" on the matter.

And that brings us to the question of legality.

Whatever one's political view may be as to the wisdom and the efficacy of the "Reagan doctrine" which may be the underlying motivation for the U.S. behavior in the Bay of Sidra, the use of such terms as "legal opinion", "right of innocent passage", "legally justified" and the like, compels a closer look at the international law issues that are at stake here. The invocation of principles of international law in support or justification of actions taken by governments-no matter how outrageous those actions may be-is not new or unusual.

In the case of the US-Libyan confrontation, who is right? Can the Colonel declare the Gulf of Sidra off limits and ask the Sixth fleet to leave? Can the Sixth Fleet freely enter the Gulf of Sidra and hold its exercises there so long as it stays more than twelve miles from the Libyan coast? Suppose for a moment that the Colonel had taken a more statesman-like position in the matter and, rather than firing six missiles, had pursued his legal remedy before the International Court of Justice, as Mr. Andreotti suggested the U.S. should do: who would win? The answer is not as clear as the unnamed U.S. official or the hysterical Libyan Colonel would have us believe.

Until the middle of the 17th century the oceans were a no-man's territory, where the tule of brute force prevailed; where men-of-war hunted the perceived enemy where privateers and pirates hunted any likely prey. When the Spanish and later the British began to claim whole oceanic regions of the world as their own sovereign territory to the exclusion of all others in order to secure their own trade routes, a young legal scholar of the young Dutch Republic wrote a tract entitled "De Mare Librum"-"Of the Free Ocean" --that became the foundation of what is still today the prevailing International Law of the Sea. The oceans are open to all, said Hugo Grotius, free for all to carry on trade among nations. No nation owns the oceans.

The question is: where does "territory" end and where does "high seas" begin?

The concept of "territorial sovereignty", the idea of exclusive territorial jurisdiction and power, on which the modern nation state is based, has traditionally been held to extend some distance into the ocean-originally about three miles into the sea beyond the fringe of the land at the low water mark (as far as a cannon could reach?). That three-mile zone is the "territorial sea" within which the coastal state can exercise its sovereign powers. Over time the claims of countries to the territorial sea have gone beyond the original three-mile limit and we can no longer say that there is a uniform practice of nations in that respect.

It was not until the 1950's that the Law of the Sea was codified in a series of multilateral conventions under the auspices of the United Nations Conference on the Law of the Sea. The Convention that deals with the matter at stake in the Gulf of Sidra conflict is the Convention on the Territorial Sea and the Contiguous Zone of April 29, 1958. That Convention became effective when -enough ratifications were deposited in 1963, just over two decades ago.

Libya did not ratify the 1958 Convention; the U.S. did. Libya, therefore, is not bound by the terms of the Convention. Libya may be bound, as is any nation by the rules of customary international law, provided it did not effectively protest those rules as not applying to it.

In the Anglo-Norwegian Fisheries Case, the International Court of Justice ruled that the baseline configurations universally used in determining the extent of the territorial waters along a country's coastline did not apply to Norway. Norway had consistently and publicly protested the adoption of those configurations because of the peculiar shape of its coastline. Norway, therefore, had the right to arrest British fishing vessels operating within the Norwegian territorial sea-as determined by Norway pursuant to its own well publicized configurations.

Colonel Khadafi has made it quite plain over the past several years that he regards the Gulf of Sidra as Libyan territorial waters. What of it? If we apply the rule of the Fisheries Case, the Colonel may well win.

There are also customary rules regarding inlets and bays. The 1958 Convention on the Territorial Sea largely codified those customary rules. The 1983 U.N. Convention on the Law of the Sea (not yet and perhaps never to be effective) incorporates those same rules without substantial changes. Again, Libya is not bound by either Convention.

What are the rules of customary international law? The basic rule on bays is that if a bay is more than 24 miles across as measured between low water marks at the mouth, a country cannot claim the bay in its entirety as territorial sea. The rule further says in effect that, if the' mouth of the bay is more than 24 miles wide, you can take your 24-mile-long ruler and move it down into the bay until you can connect two low water points 24 miles apart and claim everything between that line and your coast as territorial sea. Since 24 = 2 x 12, that rule is based on the assumption that a country is entitled to claim at most a twelve-mile territorial sea.

The interesting thing is that the 1958 Convention is silent .as to the actual width of the territorial sea. The reason is simply that there was and still is no universal agreement as to that width and that the claims of various countries range all the way from the traditional three-mile zone to 200 miles as in the case of Argentina, Brazil and at least a dozen other countries. The Convention does provide for a twelve mile "contiguous zone", that being a zone in which the coastal state has less than full sovereign territorial rights. The implication is that the territorial sea is comprised within that contiguous zone, and thus the maximum territorial sea can be only twelve miles deep according to the Convention.

Libya as late as 1977 claimed only a twelve-mile territorial sea. The Colonel changed all that, as he is entitled to do unless he is bound to the contrary by a Treaty or Convention - which he isn't.

Now, the Gulf. of Sidra is part of a huge indentation in the coast of North Africa that runs from Cap Bon, just north-east of Tunis to a -point just north-east of Cyrene, a distance of almost 700 miles. At its deepest point the indentation is some 250 miles from the baseline to the coast. Of that indentation Libya now claims an area enclosed by a line running from about 150 E. to 200 E., or roughly 300 miles across, the infamous "line of death." Measured by that baseline, the bay would be about 150 miles deep at the deepest point of the indentation.

In the Lotus Case in 1927 France objected to Turkey's assertion of jurisdiction over the conduct of the crew of a French vessel outside of Turkish territorial waters after it had collided with a Turkish ship. France claimed Turkey could not do what it did, because there was no rule permitting it to do what it

did. The Permanent Court of International Justice held that it was up to France to show the existence of a rule prohibiting Turkey's behavior which France couldn't. End of case.

There is no clear rule that says: 'Khadafi, you can't claim territorial sovereignty over the Gulf of Sidra' any more than there is a rule that says: 'Brazil, you can't claim a 200-mile territorial sea.' Or: 'Mr. Reagan, you can't claim a 200-mile Exclusive Economic Zone,' as was done in I 983. And so by the logic of the Lotus Case, Khadafi again wins.

Finally, what about a claim of “innocent passage"?

The right of innocent passage was formulated so as to permit vessels of other nations to enter a country's territorial waters, either to proceed to a port or to pass through the territorial sea along the shortest route between two points on a vessel's course. The passage must be "innocent"-that is to say, it must not be a threat to the country's security. The right of innocent passage is available even to-war vessels in international straits. That principle was established in the Corfu Channel Case (1949) between Great Britain and Albania, although the International Court of Justice criticized Britain for having taken provocative action. The provocative nature of the British mission in that case was evidenced by Britain's announcement at the time that it was going to test the right of innocent passage through the Corfu Channel with armed minesweepers. Albania, about as paranoic as the Colonel, put mines in the channel, resulting in death and injury to British naval personnel.

The rule of the Corfu Channel Case is limited to international straits through which ships must pass to get from one point on the high seas to another. It might cover the recent activities of U.S. naval vessels in the Black Sea. The Gulf of Sidra, however, is not a strait. The Corfu Channel Case is not a precedent for that reason, as well as for the reason that the rule of **stare decisis** is expressly inapplicable in World Court cases.

The Sixth Fleet was inside the "line of death" for the announced purpose of military exercises and testing Libya's claim to a greater than twelve-mile territorial sea. Provocative indeed.

If the Colonel's claim to territorial rights over the Gulf of Sidra were to be upheld, as it well might, it is difficult to see how the activities of the Sixth Fleet would be shielded by the innocent passage concept.

The case is likely to come before the World Court because neither the U.S. (see Nicaragua Case!) nor Khadafi are likely to submit themselves and their dispute to the compulsory jurisdiction of the Court and that is too bad. Both parties have resorted to the kind of self-help that makes this world a dangerous place to live in and that does not promote the development of sound rules of law in international relations.

If the US feels compelled to beat up Khadafi, that's one thing. Perhaps it is good foreign policy, perhaps it is not. But let's not justify our actions by trying to make people believe we are doing it for the lofty purpose of defending the perceived legal rights of others. on the High Seas. Is our Atlantic Fleet going to hold naval exercises within the claimed 200-mile territorial waters around Brazil without asking Brazil's permission? And if Brazil says 'no', are we going to do it anyway? I submit that it would be a losing case if brought to arbitration or before the World Court.

Images

First: Large three color map of the Mediterranean Sea focusing primarily on the Libyan coast.

Second: Three color, clip art illustration of Uncle Sam

Third: Three color illustration of Earth seemingly rising out of a latitudinal/longitudinal grid

Take A Break! RELIEF IS ONLY A BLOCK AWAY

By Michelle Moran

So, it's Saturday and you've been in the library since it opened at 9:00 a.m. Your eyes are burning and you have been having trouble keeping your mind from wandering. It is a gorgeous day outside; a fact you can hardly appreciate from your stuffy study carrel. You have sworn revenge on the copy machine; that is, if you can ever get near it. It's only noon. You need a short break.

Yet somehow, the vending machines in the lounge seem like dismal company. Well, take comfort. You are in the midst of a great neighborhood. With only an hour or two to spare (Oh c'mon, you can spare an hour) you really can get away from it all without going too far from that carrel. ln fact, you don't even have to get in your car. Leave those books in your locker and take a walk down Grand Avenue.

One of my personal favorite "getaway" spots is Grand House Antiques, located at 889 Grand. Just two doors from Victoria Crossing, the store looks more like a private home. Step inside and the proprietor, Donald Empson, is happy to leave you alone to browse amongst his wares. Empson has just about everything from silver, glassware, and linens to light fixtures, picture frames, dressers, and lamps. And best of all, his prices are reasonable. If something isn't already on sale, Empson has been know to "make a deal."

Another fun antique store is Uptown Antiques, located at 1039 Grand. Again, you are free to browse amongst the wide, ever-changing collection.

Not the antique store type? How about art galleries? Bream Gallery, at 96 l Grand, boasts a fine selection of original art from the contemporary to the antique. Inside you'll find a range from oils, prints and sculptures to hand blown glass. Worth a browse.

So maybe you're one of those types who takes solace in food? Well again there is a list of "getaway" eats to check out. Of course for ice cream lovers, there is the delights of Haagen-Dazs, located within Victoria Crossing at 867 Grand. If you're looking for an old fashioned atmosphere, walk a little further down to the Grande Ole Creamery at. 750 Grand. Here, both ice cream and cones are homemade. You 'll find both shops have a flavor for everyone.

Another personal favorite is Ciatti's Italian restaurant located at Grand and Victoria, again within Victoria Crossing. Ciatti's offers a wonderful minestrone as well as assorted pastas and other various Italian dishes. Ciatti's is also known as an evening spot for the evening students who like to stop off for a "bump" after class.

Just across the hall from Ciatti's in Victoria Crossing is Cafe Latte. Hardly a West St. Pauler exists who doesn't know about the sinful treasure of tortes, cheesecakes, and chocolate fanfare offered at Cafe

Latte. Of course, the Cafe is also known for its homemade soups, breads and salads. Almost any item is a good indulgence. If it's coffee you 're after, Cafe Latte, like Haagen Dazs, offers cappuccino, expresso and other real (non-vending) varieties.

If you are the deli food type, stop down to The Little Apple at 720 Grand. This New York-style deli houses a bakery, restaurant and take-out deli. Beer and wine are available as well. Their outdoor deck is perhaps the most fun on a warm day (if we ever get one).

If you're the pizza type, you can choose between Domino's at 975 Grand and the Italian Pie Shoppe at 777 Grand Avenue. Domino's is relatively quick and rather inexpensive. Good choice if you're in a hurry. If you decided to indulge, try the Italian Pie Shoppe. The restaurant itself is quaint with antiques everywhere, including a jukebox that plays Elvis songs. The pizza is a bit more expensive than the Domino’s, but it's made with real Italian pepperoni (the kind with the fennel seeds in it).

If you are really, really hurrying, head one block to Lee Ann Chin1sJocated in the Milton Mall, adjacent to the Seven Eleven. Lee Ann Chin's is the McDonald's of Chinese takeout. At least in speed, anyway. The food is truly wonderful and reasonably priced. While it is primarily a take-out, limited seating is available.

Not hungry, but just need to get away? A number of places are just for browsers. Milton Mall offers Avenue Gallery, which is full of wonderful gadgets, toys and original art. You can pick up a neon sculpture or hand blown champaign glasses here. Victoria Crossing has three buildings which offer a variety of merchants from cheap books at Odegard's Discount Store to lavish bath oils at Garden of Eden.

A little spring fever, perhaps? You can get a head start on your tan while pretending to be in Jamaica at two nearby locations, Grand Tan and Prime Design. Prime Design is closest to school (at 975 Grand) and offers the better prices of the two. However, those of you obsessive/ compulsive types may wish to use the facility at Grand Tan, located at 758 Grand. The advantage there is a personal tape deck and headphones, This way you can stop at the reference desk on the way and check out a taped lecture. Imagine sunning to the sounds of products liability, moot court tactics or negotiable instruments. If you aren't the compulsive/ obsessive type, take a reggae music tape and really pretend you are in Jamaica.

If you think tanning is too vain, treat yourself to the Japanese massage bed, Grand Tan offers in addition to tanning beds. Or better yet, try professional massage at Sister Rosalind Gefre's Professional Massage Center located at 760 Grand. Either choice is a winner, especially if your neck is stiff from dozing off while sitting to read statutes.

Maybe you just need to get out and take a walk. Grand Avenue has a wide variety of shops and services. And, of course, a walk down Summit Avenue is also a sight for statute sore eyes.

If none of these appeal to you and you don't have a creative thought of your own to brighten up weekend studying, then sore eyes to you.

Image

Eyvind Earle-influenced, clip art illustration of a countryside scene

Reviewing the Bar Reviews

By Patrick O'Donnell

Although no law school offers it in its course catalog, almost every law student considers it a required course. It's the course that no one likes, but everyone takes - the bar review.

Two companies dominate the bar review business on the William Mitchell campus: Minnesota Bar Review/ BRI, Inc. and Josephson-Kluwer Legal Education Center. While there are other bar review courses available in Minnesota-namely HBJ Multistate Exam Workshop, Minnesota Bar Review, Inc. and PMBR Multistate Legal Studies, Inc. (full addresses and phone numbers at the end of this story) - MBR/BRI and Josephson-Kluwer are the most visible at Mitchell because they maintain company representatives on campus, and actively solicit students to enroll.

How do they compare?

BACKGROUND:

Josephson-Kluwer. Newly formed through a 1985 merger, the Josephson and Kluwer Companies separately offered bar review courses long before they combined. Josephson first offered its course about 15 years ago, and Kluwer began its course in Europe more than 20 years ago.

The company keeps no tally of the number of students currently taking the course, according to Ursella Krawczyk, Josephson-Kluwer Regional Office Manager.

MBR/BRI. Initiated in Minnesota 27 years ago by Walter Mondale, MBR/BRI is affiliated with the national BAR/ BRI bar review. BAR/BRl originated in the San Francisco Bay area.

Approximately 80-90 percent of the last graduating Mitchell class took the MBR/ BRI course, according to Paul Ziccareffi, MBR/BRI Campus Coordinator: "Conservatively 80 percent of the graduating class, but it could be as high as 90 percent."

COST:

Josephson-Kluwer. Current cost is $645. This covers the cost of the regular bar review course and the professional responsibility bar review course, Krawczyk noted. Students can enroll at any time by paying $50 down to freeze tuition at the current rate; regardless of when they actually take the course. Balance is then due shortly before the actual course begins, after graduation.

MBR/BRI. This year's cost is $575, plus a $50 refundable book deposit. This pays for the regular bar review course; the professional responsibility bar review course is an additional $25 for those already enrolled in the regular course and $50 for those not enrolled. Paying a $50 down payment locks the enrollee in at the current price, just as with Josephson-Kluwer.

Students can expect these prices to increase, Ziccarelli predicted. Although the annual rate of increase is not absolutely predictable, it is generally around $50, he said.

COURSE COMPOSITION:

MBR/BRI. This 6-week, 118-hour course is offered twice yearly, in January and June. It covers all subjects on the bar examination, including multistate subjects, utilizing lecturers, outlines, video tapes,

audio tapes, and practice examinations. There are also first-year course outlines available to students who sign up early.

The course focuses on the recurring topics that typically frequent the bar examination, Ziccarelli said: "to help students key in on issues that almost always come up oil the bar exam."

Outlines include individual volumes on each course on the Minnesota section of the bar exam, and capsulized review volumes for the multistate portion. Practice examination, likewise, focus on both the Minnesota essay section of the exam and the multistate multiple choice section.

As for the class sessions, "the lecturers are nationally recognized in their areas," Ziccarelli noted. Students can attend the lecture sessions at night, or watch the lectures on video tape the following morning, he added.

Audio and video review tapes are also available to all course enrollees.

Josephson-Kluwer. The Josephson-Kluwer course is a 7-week, 175 hour review, offered before the winter and summer bar examinations. The course covers the Minnesota and multi-state sections of the bar examination, and consists of pre-tests, lectures, sample examinations, course outlines and audio and video tapes. Pre-course books covering first and second-year courses are also offered to students who enroll early.

The bar review course begins with pre-diagnostic examinations which assist students in focusing on the areas in which they need the most review, Krawczyk explained. Each subject is covered comprehensively enough to prepare even those who have never had classes in that particular area, she said. "We'll give you enough to make you comfortable."

Practice examinations, covering both the Minnesota and multistate sections of the bar examination, are used extensively. The practice examinations are then graded by attorneys, Krawczyk said. "Students are reinforced throughout the course itself by the testing," she said. Outlines are complete, comprehensive and continually updated, Krawczyk said. There are Minnesota summaries and two volumes of multistate materials.

Evening lectures sessions are conducted by the faculty during the summer review course. Video tapes of the lectures are then available the following morning for review. The winter course employs lectures on video tape exclusively; there are no live faculty lectures.

As with MBR/ BRI, audio and video review tapes are available.

SUCCESS RATES:

Josephson-Kluwer. While Josephson-Kluwer has no exact statistics on the numbers of its graduates that successfully pass the bar examination, the success rate is very high, Krawczyk stressed.

MBR/BRI. Pass rates have been around 90 percent on the multistate section, Ziccarelli said, and about 78-85 percent on the Minnesota section.

The Opinion judges neither as best. In fact, it is unlikely that anyone has taken both courses and is qualified to make such a judgment. In the end, which course will work best for an individual is probably a matter of personal tastes and preferences.

For more review course information, contact any of these bar review services available in Minnesota:

HBJ Multistate Exam Workshop,
Harcourt Brace Jovanovich Legal and Professional Publications, Inc.
176 W. Adams St., Suite 2050
Chicago, IL 60603
(312)782-6616

Josephson-Kluwer Legal Education Center
1821 University Ave., Suite S 243C
St. Paul, 55104
644-6070;

Minnesota Bar Review/BRI, Inc.
510 First Ave. N.,
Minneapolis 55403
338-1977

Minnesota Bar Review, Inc.
861 W. Butler Square,
100 N. 6th St.,
Minneapolis 55403
338-1977

PMBR Multistate. Le1al Studies, Inc.,
211 Bainbridge St.,
Philadelphia, PA 19147
(215) 925-4109 or
655 San Lorenzo St.,
Santa Monica, CA 90402,
(213) 459-8481, (800) 523-0777.

Image

Informal portraying of young man sitting at a table. Captioned: David Legan is a student rep for Josephson/ Kluwer.

Image

Snapshot of two people at a table in a large conference area

Quotable Quotes from April 10 Women's Law Caucus Program

WOMEN IN THE HOUSE * WOMEN IN THE COURT

Image
Black and white photograph of woman addressing audience from a podium. Captioned: Minnesota Supreme Court Justice Rosalie Wahl – “The struggle never ends”

Image
Black and white photograph of woman addressing audience from a podium. Captioned: DFL Rep. Linda Scheid – “You just have to get down and meet people.”

Image
Black and white photograph of woman addressing audience. Captioned: Hennepin County District Court Judge Cara Lee Neville-- “Men build ladders; women weave webs”

Image
Black and white photograph of woman addressing audience from a podium. Captioned: Aviva Breen, Executive Director of the Commission on the Economic Status of Women - "We need a bigger corps of us out there”

College Proposes Discrimination Policy
By Charli Winking

The Board of Trustees of William Mitchell has requested that the Joint Trustees/ Faculty Human Relations Advisory Committee draft a proposed policy on discrimination at the school. The committee has drafted a preliminary proposal which amends the Policy on Sexual Harassment to encompass discrimination.

The draft is being circulated to the faculty, and requires the recommendation of the faculty, the committee and ultimately the board.

The "Statement of Policy'' says that "discrimination and sexual harassment, in any form or degree, are inimical to such an environment and will not be tolerated. Each member of the William Mitchell Community must act in accordance with this Policy." In addition, the College will "encourage institutional and individual sensitivity to the problems of discrimination and sexual harassment." The policy is viewed as, "but one of many necessary steps toward the maintenance of an environment free from that misconduct."

The proposed definition of discrimination is very broad, going beyond state and federal anti-discrimination law. Discrimination is defined as "adverse treatment because of race, color, creed, religion, national origin, sex, affectional preference, marital status, status with regard to public assistance, age, or disability."

The proposal establishes a procedure to resolve claims of discrimination, delegating to a committee the authority to receive complaints and to determine whether and how the policy has been violated. The committee may impose sanctions, including counseling and warnings, if violations lire found.

The seven-member committee is composed of faculty, staff, students and alumni/ae, with an independent investigator hired to assist the committee in administering the policy.

According to Professor Ken Kirwin, a member of the committee which drafted the proposed policy, the policy was not suggested in response to any complaints. Instead, it is meant to be an affirmative statement condemning discrimination, as well as an established procedure for handling complaints which could arise.

Image

Stylized, black and white illustration captioned: TEZCATLIPOCA God of Education

BOOK REVIEW | What Makes Juries Listen

By Sonya Hamlin

Reviewed by Steve Eide

Now Rhetoric finds its end in judgment-for the audience judges the counsels that are given, and the decision is a judgment and hence the speaker must give the right impression of himself, and get his judge into the right state of mind.

-The Rhetoric of Aristotle

Precedent, good witnesses, good evidence, and legal briefs sometimes aren't enough in a court of law. What wins over juries, as Aristotle noted over 2,000 years ago, takes psychological insight to present the right image to the jury, and communications skills to put you and your case across.

What Makes Juries Listen by Sonya Hamlin also assumes these long-known premises. But the/ similarity between her and Aristotle ends there. Though body language, facial expressions, and spatial relationships certainly existed in his time, Aristotle's primer doesn't go into them. Neither does it deal with the problem of how to catch and hold the attention span of a juror whose consciousness was shaped by the fast pace and visuals of TV. Hamlin's text does-and much more.

Hamlin's *modus operandi* is to sketch a courtroom scenario, a scenario that includes what's going on in the minds of the jurors as well as the mind, and motivations, of the lawyer. Around the time of the opening statement, for instance, the jurors are nervous. They're in an unfamiliar setting, an official setting with the decor and symbols of the state. They're expected to make an important decision about the law, about someone's fate.

The lawyer, in contrast, needs to get the jurors focused on their task, not their anxieties. The lawyer wants the juror to follow things from his or her point of view, to begin to receive the lawyer's attitudes toward the client, and the facts in the case.

But there's also a subtext in this setting, a psychological subtext where the jurors are judging the lawyer. What kind of car does he drive? Does she drink wine or beer? Does he ever wear jeans? Does Hamlin recommend anything to the lawyer? Let me count the ways.

If you're representing a conglomerate, try to humanize yourself by telling a story, or tell your anxieties, Hamlin advises. This may overcome a feeling of . the lawyer as the hired gun for the impersonal and profit-oriented corporation. "Think about the stereotypical image they may have about a trial and a

lawyer. What can you do to lead them into new territory and new ideas? What first impression can you-change and how?"

Other advice from the "Opening Statement" chapter includes: *What Results Do You Want to Achieve?* Make a list of what points you want the jury to retain and include them in the opening statement. *What Does the Jury Expect?* Think about where you are in the trial and "custom design" your opening. *Creating the Content*: "What's the best, most memorable or most interesting way to say it? How do you add flavor, quality, and drama?" (This is especially important for the TV shaped mindsets.)

These are but a few examples of Hamlin's advice. There's also advice on spatial relationships: Don't stand behind a lectern if you want to appear human. It's too authoritative. There's advice on how to handle expert witnesses. Let him or her talk at first because the expert is accustomed to feeling important. They don't want to feel like the lawyer's lackey. There's advice on body language: "Standing with your weight on one foot is very disarming ... You are actually off balance and allowing yourself to be so. It makes you look softer, more vulnerable, like you could be pushed over." The reader receives tips on how and when to use charts, how to organize arguments, how to take notes, how to observe potential jurors to ensure a good selection, how to use facial expressions, the voice, what to say if a witness suddenly says something damaging to your case. The book is, in short, long -or, in other words, comprehensive. In another mood, one might say exhaustive.

If a technique works during opening statement, direct examination, and final argument, Hamlin will mention that technique in each chapter devoted to those procedures. Such comprehensiveness helps the lawyer who reads, for instance, only one chapter, but can provoke some weariness for someone reading straight through. But there is such an abundance of information in the book that any lawyer will benefit from reading it, though some of what Hamlin advises is simply common sense or things that would be picked up in the usual circuit of law courses, textbooks, and professional schmoozing. And professional schmoozing is, in a sense, how Hamlin researched the book. Besides being an actress, lecturer running a communications consulting firm for law offices, and being affiliated with the Department of Justice, she runs communications seminars for lawyers. Many of the techniques recommended here have been tested.

The question of whether justice is better served by any of these techniques is never addressed in the book. The system is an adversarial one, so go to your corners and may the best man (the best body language, the best voice projector, the best facial expressions) win. A reader can't help but wonder if the old phrase "all the justice money can buy" should have an addendum: "And all the justice an acting seminar will get"

But one of the advantages of Hamlin's book is that it reminds us how closely linked are language and psychology. Any psychological insight that's imparted in the book is not only the clue of where but how to begin constructing legal arguments. But at the price or'$55 any purchaser of *What Makes Juries Listen* may want to wait until after a practice is established.

Steve Eide is a free-lance writer who has been published in Minnesota Lawyer, City Pages, Twin Cities Reader, Minnesota Daily, The Surveyor and The Great River Review.

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