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The Opinion is an independent publication of the Student Bar Association of William Mitchell College of Law. Its purpose is to provide information, commentary and a little fun on topics of interest to students, faculty, administration, support personnel and alumni. We welcome contributions from all members of the College community. The Opinion editorial board is solely responsible for this publication's contents. Opinions expressed in this publication do not reflect the opinions of William Mitchell College of Law, its employees, or the Board of Trustees unless specifically authorized by and attributed to them.

Nien Cheng to Kick Off Distinguished Speakers Series

by Edie Michalski and Donn McLennen

The societal underpinnings of the legal system -including history, literature, philosophy, and religion -will be examined in three provocative lectures that are part of the celebration of the 90th anniversary of William Mitchell College of Law during the 1990-91 academic year. The lectures are free and open to the public. The lecture series begins Wednesday, August 29th at 7:30 p.m.

Nien Cheng, author of Life and Death in Shanghai, was born in Beijing in 1915. While studying at the London School of Economics she met the man she would marry in 1935. Dr. K'ang Chi Cheng was a diplomat and an executive with Shell Oil in China They had one daughter, Meiping, born in 1942 while Dr. and Mrs. Cheng were at the Chinese Embassy in Australia. Before Pearl Harbor brought the United States into World War II, Mrs. Cheng toured the U.S. to speak out about China's war of resistance against Japan. She taught English at St John's University in Shanghai until 1951 when it was forced to close because of the Korean War. In 1957 Nien Cheng's husband died of cancer. Mrs. Cheng stayed in China working with Shell Oil as an "advisor to Management" until 1966.

In 1966 The Cultural Revolution swept China. It was opposed to anything western, ancient or anti-Mao. Mrs. Cheng's European education and lifestyle made her and her daughter vulnerable targets for the Red Guard. As the China she knew changed about her she felt certain she had nothing to hide therefore nothing to fear. She went on living a quiet life until August 1966 when she was taken into custody by the

Red Guard. She was labeled a class enemy of the Revolution and accused of espionage. Mrs. Cheng spent six and a half years as a political prisoner, the entire time wondering whether her daughter was dead or alive.

In 1973 Nien Cheng was released from custody despite her refusal to confess to any crimes against the regime. Upon her release she learned that her daughter had been killed by the Red Guard.

Nien Cheng stayed in China until 1980. She emigrated to Canada where she lived until the United States granted her legal entry as an immigrant 1983. She now lives in Washington, DC.

Life and Death in Shanghai was published in 1986 in England. In 1987 it was published in the United States. Since its appearance in 1986 it has been translated into a dozen languages, spent 13 weeks on the New York Times bestseller list, was excerpted in Time and The Reader's Digest and was chosen as a main selection by the Book of the Month Club.

Life and Death in Shanghai has been described as a vivid account of "stubbornness and courage under the most extreme duress." Mrs. Cheng is a powerful voice for freedom and democracy in China and an example of what it means to cling boldly to one's values and ethics in the face of much adversity. She lectures around the world about her experiences in custody and on the current situation in China.

Nien Cheng's lecture is co-sponsored by the Student Ethics Committee, the Asian Law Students Association and Amnesty International at William Mitchell College of Law.

Life and Death in Shanghai will be on sale in Hachey Commons prior to and during Mrs. Cheng's lecture. Proceeds of the sale will go to the sponsoring student organizations and to the Torture Center which aids torture victims from around the world.

From the Desk of the Dean

by James F. Hogg, President and Dean

To our new students, welcome and to our returning, students, welcome back! Hopefully you have all had a refreshing and enjoyable summer.

August 15th marks the beginning of William Mitchell's 90th year of service to the community -a time to reflect on the past and plan for the future.

With our new Warren E. Burger Library we are better equipped than ever before. This library is on the leading edge in every respect including technology and has been receiving outstanding reviews from many different quarters. For the first time in its history, the College planned and built its own building to its own design and with its own funds and credit. As one person said recently, it has sunk its roots. The fact that the College could do so reflects a level of satisfaction with past performance and hope of future performance on the part of both alumni/ae and the community. Major financial support was required from both groups and both responded strongly. A full report of the fund-raising campaign will be provided at the time of dedication of the library on September 16th. Chief Justice and Mrs. Burger will be with us for that occasion and Justice Sandra Day O'Connor will give the keynote address.

Applications for admission to the College were up substantially again this year -they have been steadily increasing over each of the last five years. This year there were between four and five applications for every place in class. Qualifications of those admitted are also continuing to rise and diversity is further improved. In short, there is obviously a very high demand for the College's services.

I have great confidence in the faculty's ability to meet and. exceed student expectations. Our full time faculty count is now up to 34 and we continue to attract very strong new members of the faculty. They take pride in good teaching but in many cases they also make major contributions outside the College to the work of the profession. Last year we benefitted from the help of seventy-four adjuncts (judges and practicing lawyers) who taught many of the rich listing of elective courses offered at the College. And in addition, we had the help of nearly 50 more who contributed much to the work of our legal writing, moot court and other competition programs.

We have the resources to be an outstanding institution, a leader in the country among those schools which offer a flexible program. Our challenge is to achieve the objective of which we are capable. That challenge requires that we have a well-thought-out plan and the will to execute that plan. That plan must focus on the critical values of integrity and ethics, on diversity, and on excellence of performance.

In the past, the College has produced graduates with remarkable records of success in many walks of life. And these accomplishments were attained with far less resources than the College now has. The College's future, like its past, lies inextricably woven with the careers of its graduates. I am confident that the present complement of students will continue and build upon the accomplishments of the first ninety years.

LOVE IN THE LAW: A Love Letter to One Ls

by Wiese/Olson

Before I attended law school (hereinafter referred to as L.S.) I would have never appreciated the following sentence:

'The warranties contained herein are in lieu of all other warranties, express or implied, as to the products or its use or performance. Purchaser hereby waives any claim it may have against seller for any loss, damage, or expense of any kind whatsoever caused by the software or by any defects herein, the use or maintenance thereof, or any servicing or adjustment thereto, with the exception of willful misconduct or gross negligence on the part of seller."

Now I am really into disclaimers and limiting my liability. I'M A GEEK AND I LOVE IT. Love in the, love in the, love in the Law. Love, love, love, love in the Law!

I'm sitting in a room with no windows shaking from all the caffeine I have ingested. I'm nervous, sweaty and have a low self-esteem. Actually, I'm an ego maniac with an inferiority complex. In addition, I'm balding, overweight and have developed an ulcer. Above and beyond these feelings and characteristics mentioned I have become extremely anal.

I was just like you (first years) at one time. I was happy, creative and easy going! I cared about things that were meaningful. BUT NOW I only care about money, grades and fueling my ego. I will in all likelihood, end up a lonely man in an Ivory Tower.

What can a person like me possible say to help you nice, innocent first years? GO BACK! I don't care where you came from, just go back. You are entering an institution that will change your perspective and decision-making process.

Assuming you do stay I would like to state my observations looking back on my first year.

1. You will do poorly on your first legal writing paper, so start preparing yourself for the shock. In some cases (such as my own), you will continue to do poorly, don't worry about it. It is you the professor doesn't like, not your writing.

2. The people who talk the most in class get the worst grades (with the exception of Tom Gitis).

3. There is always an exception.

4. Grades are important but they are beyond your control.

5. Desperately try to retain the common sense you possess now, a year from now you will not be able to answer a question with a simple ''yes or no." You will always ask for additional information, definitions or more facts and still only be able to answer with: “it depends.”

6. Talk to each other! Try to develop a sense of comradery versus a competitive individualistic approach. L.S. is a great place to meet new friends (i.e. Tony Schertler), and characters (i.e. Richard Ellison).

7. Keep your body in shape! This will relieve the stress that you will be accumulating.

8. Maintain a social life, go to movies, party, have fun. If you forget how to relax your life will be meaningless.

9. Give L.S. the perspective it deserves. If you want L.S. to be your life it will be. BE CAREFUL OF WHAT YOU WISH FOR, YOU MAY GET IT.

10. Regardless of your grades, you are a good person. Individuals that evaluate others by their grades do not trust their own instincts about people. If you tie your self-esteem to your grades only 26 out of 260 of you will have a high self-esteem. GRADES MAY DETERMINE WHERE YOU START THE RAT RACE BUT THEY DO NOT INDICATE WHERE YOU WILL FINISH IT.

11. Outlines are useful, but don't waste your time actually writing them, buy or weasel them from other students.

Finally, remember, the first week of school is the last week of vacation. So enjoy the first week of the rest of your life.

The most important thing I can tell you, is that if you maintain a sense of who you are and what you want from life, L.S. will be a good experience. You will have fun and be able to use the knowledge you have attained in creative and useful ways. You will be the person you want to be. If you let L.S. overwhelm you and run your life you will become (like me) an ego maniac with an inferiority complex.

If I would have read this article my first week of law school I would have thought: "what a cynical JERK." **NOW I'M A GEEK AND I LOVE IT. I LOVE MYSELF AND I LOVE ALL OF YOU. Love in the, Love in the, Love in the Law. Love, Love, Love, Love in the Law.**

Image

Formal, black and white photographic portrait of Warren E. Burger captioned: Past OPINION articles have been reprinted on pages. 7-10 in honor of the Warren E. Burger Law Library.

“Separate But Better Off?" or is "One Person, One Vote" Still Valid?

by Lowell J. Satre, Jr.

A student body referendum, which was held in the spring of 1990, proposed to add two special seats to the William Mitchell SBA board to represent the students of color. Although the referendum was defeated in the form in which it was proposed, it is probable that many members of the Mitchell community still feel that the underlying issue is not yet resolved: How will the minority experience and perspective be represented in SBA and otherwise within the William Mitchell student body? This underlying issue will not go away, but will possibly reappear in a different form. Perhaps this is one of those elusive questions "capable of repetition, but evading review" or evading a solution acceptable to all.

My college philosophy professor used to say, "You've got to tell wherein." If he were teaching a course in the philosophy of law at William Mitchell, perhaps he would say, "You've got to distinguish." In this article I propose to offer a few distinctions which may have escaped some people who have thought, or spoken, or written on this issue.

First of all, I ask, what was the real issue? The question presented to the student body in the referendum could have been framed as: "Shall two special seats on SBA be created, to be filled by means of elections within a constituency defined as consisting exclusively of students of color represented by the minority organizations on campus?" Many members of the William Mitchell community "heard" (or claimed that they heard) a very different question being asked: "May students of color be seated on SBA, or not?"

These two questions were not identical, but were treated, to all intents and purposes, as though they were identical. Students who expressed honest doubts with the proposal, both at SBA meetings and elsewhere within the community, "heard" a not-so-subtle message: "If you have any misgivings with - the proposal to create 'set-aside' SBA seats for students of color, you therefore must believe that students of color, as such, should be excluded from SBA." The authors of two articles in the May issue of The Opinion were capable of distinguishing between these questions, but for reasons I cannot fathom, did not do so.

At this point, a brief aside: Was the idea of exactly two seats essential to the proposal? Why not, let us say, four seats: one for each of the four minority organizations on campus? Or why not just one seat, rather than two? Patrick Metcalf, a member of ALSA, was quoted in the Docket as suggesting that one eat should be sufficient because of the relatively small number of minority students involved. Perhaps this suggestion should have gained more attention than it did. At least it should have been on the ballot as an option.

Michelle Darif's article in *The Opinion* addressed the issue of students of color voting twice for SBA representatives -once in their respective class or section, and again in the minority caucus. She

suggested that if there were any ethical problem involved in "double-voting," this should simply be left to the conscience of each student of color. But I suggest that Ms. Darif did not address the real issue. The "bottom line" is that if this referendum had passed, every student of color at William Mitchell would be entitled, as a matter of right, to "double vote" for SBA representatives -because of his or her color and every white student would be denied this “double vote" -again, because of his or her color.

I am sure that most members of the William Mitchell community have always accepted the axiom "One person, one vote" as a fundamental truism of constitutional law. Is this principle suddenly to be abandoned as inadequate for our day? Shall we replace it with ”One person, one vote for whites; one person, two votes for persons of color?"

Pamela Boney' s article assumed that a candidate of color cannot win an SBA election in his or her class or section because there are not enough students of color in any given section to "swing" the election toward that candidate. She assumed that white students will arbitrarily refuse to vote for candidates of color for racist reasons.

It is one thing for a potential SBA candidate to decline to run in a general election because she or he "prefers to represent the students of color specifically." It is quite another thing to assume that a candidate for color cannot win a general election because of pervasive racism in the student body. Such an assumption must be based on facts. What are the facts? How recently have students of color run in general SBA elections at William Mitchell, and with what results?

I was very surprised that none of the contributors to the May issue of *The Opinion* saw fit to mention a Black student named Humphrey Nwaobia. In the fall of 1987, Mr. Nwaobia ran for SBA representative and won the election, although he ran against another candidate (a white male). Although Mr. Nwaobia later withdrew from law school for medical reasons, he proved -within the memory of many students who are still here -that it is possible for a candidate of color to run for an SBA seat ai William Mitchell in a contested election, against a white candidate -and win.

Ms. Boney's article assumed further that the reason white students will allegedly refuse to vote for minority candidates is that they think of student of color as "not smart enough," as "here only to meet affirmative action quotas," etc. Again, are these allegations merely assumptions, or have white students actually been heard to make such re marks on campus? If I overheard such a remark, I would report the speaker to the Committee on Discrimination, and I would be willing to appear as a witness against that person in a hearing. People with such racist attitudes do not belong at William Mitchell.

Speaking personally, if one of my minority friends were to run for an SBA seat, I would be honored to serve as his or her campaign manager -if the candidate thought I had the organizational skills to do so. I would suggest to my classmates, on an individual basis, that they should vote for this candidate, both because of his or her ability to represent the class or section, and also precisely because William Mitchell desperately needs to affirm diversity at this point in its history. Yes, SBA needs representatives of color, but it has not yet been proven that the only possible way to obtain these representatives of color is through the expedient of "set-aside" seats. And I, for one, sincerely believe that Humphrey Nwaobia showed us that there is another way.

Another brief aside: Some people have suggested that the gay/lesbian students and the Jewish students might caucus with OCU (Organization for Cultural Unity, the umbrella minority caucus) and take part in

the minority election. From a chance reference in The Opinion, however, I suspect that they might be made to feel unwelcome because they are not necessarily "students of color who are perceived as nonwhite."

Some brief words from the dissent of the late Justice William Douglas in Wright v. Rockefeller, 376 U.S. 52, 66-67 (1964) are, I feel, of relevance at this point

Racial electoral registers, like religious ones, have no place in a society that honors the Lincoln tradition- "of the people, by the people for the people." Here the individual is important, not his race, his creed, or his color ... The racial electoral register system weighs votes along one racial line more heavily than it does other votes. That system, by whatever name it is called, is a divisive force in a community, emphasizing differences between candidates and votes that are irrelevant in the constitutional sense ...

When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic idea, it should find no footing here.

"Separate but equal" and "separate but better off' have no more place in voting districts than they have in schools, parks, railroad terminals, or any other facility serving the public.

Although, of course, Justice Douglas was speaking specifically of state action while we at William Mitchell are not, his words are directly on point, and far more eloquent than anything I could possibly write.

It is precisely because of my heartfelt, "gut-level" commitment to equality, diversity and unity at William Mitchell that I cannot yet concede that the principle of "one person, one vote" is unworkable in our common life within this law school community. To abandon this principle would involve a rather major philosophical shift for me. I am willing to participate in reasonable dialogue with those whose views differ; I am willing to consider the possibility of being persuaded, but I am not yet persuaded.

It is my hope that this short article has made a small contribution to a more thoughtful definition, distinction and discussion of the real issues which I believe were involved in the student body referendum in the spring of 1990.

An Era of Strict Construction?

by Michael J. Varanl

I would like to thank John Keller for his assistance in the preparation of this piece.

The recent resignation of Justice Brennan from the Supreme Court along with the President's appointment of Judge Souter has opened the door to many questions concerning the direction the Supreme Court will take in the 1990's. Any political "slotting" of Judge Souter's vote on issues may seem a bit premature, nevertheless a couple of factors are evident to indicate Souter's tendencies in areas of constitutional interpretation.

First, Souter's appointment is a political choice. His choice was designed to avoid a congressional blood bath over filling a vacancy on the Court, similar to the one the Reagan administration faced during the Bork confirmation hearings, while at the same time forwarding the Nixon-Reagan-Bush judicial philosophy of "strict constructionism." (Indeed, the popular media is filled with statements from administrative aides stating that Bush does not want judges to "legislate from the bench.") Because Judge Souter does not have a large "paper trail" on important federal constitutional issues, it is expected and hoped that he will not face as severe and grueling a confirmation hearing as Judge Bork.

The second factor which may strongly indicate Judge Souter's ideological bent is his New Hampshire roots. Judge Souter was recommended to the President by his closest advisor, former New Hampshire governor John Sununu. It was, coincidentally, Sununu who appointed Souter to the New Hampshire Supreme Court. I am compelled to believe that Sununu, an avowed conservative, has recommended to Bush a choice that. is in line with the "strict constructionist" approach. While to the reader this may seem sort of a "stretch" to reason so, in an appointment such as this there definitely is an "I know someone" type of referencing which occurs. A Supreme Court nomination is no exception to this.

The following is by no means intended as a deep study predicting how Justice Souter will fall on issues which reach the Court. Rather, my purpose here is to point out areas where he may have an impact upon the Court and the law which will likely be distinct from his predecessor but which will affect the relationship between the individual and his/her government.

Turning to some of those issues which will face the Court in the 1990's, much has been made in the mass media of the abortion and related right-to-privacy issues. The question most wish answered is whether Souter would vote to overturn Roe v. Wade. A look at a recent case in this area, Webster v. Reproductive Health Services, may be instructive. In Webster, a divided Court did not reach Roe's "trimester" analysis with respect to the issues presented in the case. Four Justices (Rehnquist, White, Kennedy, and Scalia); however, were willing io abandon the "trimester" approach, effectively "legislating from the bench" in direct conflict with President Bush's avowed policy. The only reason the Court did not reach a decision to overturn Roe was Justice O'Connor's assertion that the "trimester" analysis was not at issue in Webster md such a decision would be an inappropriate extension of constitutional law.

If a Court which included Judge Souter were to hear a challenge similar to the Webster case, he could be the solid fifth vote to overturn Roe v. Wade. Presumably Souter, more conservative than Brennan (who was among the majority in *Roe* and a dissenter in part in Webster), would vote more in line with White, Rehnquist, Scalia, Kennedy, and possibly a O'Connor, to either limit Roe's application or overturn it outright. If Souter is resistant to overturning Roe outright, he still might be amenable to allowing more state control in distinct areas, following the trend of Webster. Examples might be longer waiting periods, tougher parental consent laws for minors, etc.

There are other issues, besides abortion, which are of concern but seemingly are -unmentioned by the popular media. Where Souter stands with respect to Fourth Amendment issues in the face of the mounting Federal litigation efforts caused by the "war on drugs" is largely unknown. In recent cases involving "searches and seizures" a conservative Burger-Rehnquist Court has applied the Fourth Amendment more toward limiting police misconduct (as distinguished from other governmental misconduct); making it easier to establish probable cause for search warrants; expanding exceptions for warrantless searches; limiting who can claim violation of Fourth Amendment rights; and narrowing the application of the "exclusionary rule" against the government. This trend against the individual in areas

of constitutionally protected criminal rights has accelerated in recent years even with Brennan on the Court. A big question exists regarding where Judge Souter stands in these areas. A good guess; even with the absence of Justice Brennan on the Court, the acceleration of this trend will continue.

Finally, I wish to make mention of one more individual issue which may reach the Court again in the 1990's: flag burning. Flag burning in and of itself is a politically charged and emotional issue. As a legal issue, however, flag burning presents an interesting first amendment issue regarding the individuals right to free expression. In the recent case, Texas v. Johnson, the Court, with Brennan writing for the majority, held the Texas law prohibiting desecration of the flag unconstitutional in part because the individual interest in free expression (even if it is expression against the state) outweighs the state's interest in protecting the flag as a symbol. If this issue revisits the Court in the 1990's, this outcome is not assured. Once again. a more conservative Judge Souter may join m holding the individual expressive nature of flag burning subordinate to the government interest asserted. . .

The list of issues also includes affirmative action, separation of church and state, and possibly other first amendment issues, but space and time considerations do not permit me to cover these areas. What the bottom line is: an individual's protection from encroachment by the enormous force of government depends. in large measure, upon its relative value attached collectively by the Justices of the Supreme Court Presently, we are in a period where the collective valuation leans more towards government than it has in the recent past. With the nomination of Judge Souter, look for this trend to continue.

ZOO U.

by Mark Weitzman

Black, white and blue pen and ink illustration of a college dorm room. Two snakes are present-one reading a book and the second entering with a dead rat in it's mouth. Cation reads: ''Look what I got from the cafeteria--and it's still warm."

A Proposal for More Effective Teaching at William Mitchell

by Professor Neil W. Hamilton

The faculty, administration, and trustees of WMCL have for many years been committed to effective teaching as the principal goal of all full-time and adjunct faculty members. Recent faculty initiatives to improve teaching have been ad hoc efforts to improve the curriculum or the teaching methodology in particular courses. For example, reform efforts in recent years have focused on clinical education, small group instruction, the Practicum, legal writing, and required courses in the first and second years.

The only systematic means of improving the teaching of all professors, adjunct and full-time, tenured and untenured, is a form for anonymous end-of-course student evaluation of teaching adopted in 1981-82. The results, tabulated by the administration and the Student Bar Association, are available to instructors and students after final grades are submitted. The form was designed principally to assist students in course and instructor selection and to' provide feedback for instructors. The scholarly literature in 1981 did not support giving student evaluation of teaching significant weight in personnel

decisions. My experience is that the attention and weight given to student evaluations by individual teachers are highly variable.

For untenured full-time faculty, the principal means of evaluating and improving the effectiveness of teaching has been occasional announced class visitation by members of a subcommittee of the tenure committee. For adjunct faculty, similar tenure subcommittee review occurs every four to five years on a rotating basis. For tenured full-time faculty, similar tenure subcommittee review on a rotating basis was discontinued in 1985 because the reports became virtually indistinguishable in their use of superlatives to describe performance.

For several reasons now is the time for the college community to make a concerted effort at improving the teaching effectiveness of all faculty.

a) From the late 1970s through the mid1980s, the study of student evaluation of teaching became one of the most frequently emphasized areas of American education research. This literature is rich in suggestions-to improve teaching and how we evaluate it. One key finding is that the use of peer evaluation of teaching based on classroom visitation for personnel evaluations is unwarranted. (Much of the research reported in this article is taken from Marsh, Students' Evaluations of University Teaching, 1 *Int. J. of Educ. Research* 253-388 (1987) and K. Doyle, *Evaluating Teaching* (1983).)

b) The tenure committee is now reexamining the standards and' procedures for granting or terminating tenure. Fair assessment of teaching effectiveness is critical for personnel decisions.

c) The scholarly literature shows some tendency for student ratings of teaching to improve over the first year of an instructor's teaching career, followed by a slow drop over the remaining years. Most faculty do not seem to use their increased experience to improve their teaching. As our faculty becomes more senior, the need for an effective teaching improvement program grows stronger.

An effective teaching improvement program would serve several purposes:

a) provide useful diagnostic feedback to each faculty member about the effectiveness of and possible improvements in his or her teaching.

b) provide information for students and student advisors to use in the selection of courses and instructors; and

c) provide a basis for (i) peer reinforcement of quality teaching, (ii) personal incentives for the improvement of teaching, and (iii) administrative facilitation, recognition and reward of improvements and quality in teaching.

To fulfill these purposes, the college community should consider a teaching evaluation and improvement program with four separate elements. First, the student evaluation form adopted in 1981'-82 should be revised to reflect current scholarship and given substantially more weight. Second, instructor self-evaluation may usefully supplement student evaluation of teaching. Third. each instructor should, on a rotating basis, have an intensive semester-long instructional improvement consultation with a respected external consultant or master teacher. Fourth, at the request of any instructor, the faculty development committee should appoint a peer support group of several faculty to provide diagnostic help in teaching.

Student Evaluation of Teaching Effectiveness

Analysis of the literature on evaluation of teaching indicates strong support for the reliability and validity of student ratings of teaching effectiveness. Reliability of ratings is determined from the degree. of correlation among responses of different individual raters or groups of raters. While the correlation between responses of any two students in the same class is typically in the .20s, the correlation between average responses of different classes taught by the same professor is estimated at .95 when responses from each class exceed 50 students:

Student ratings are difficult to validate, since there is no single criterion of effective teaching. The construct validation approach has attempted to demonstrate that student ratings are logically and theoretically related to such indicators of effective teaching as student learning, changes in student behavior, instructor self-evaluat1on, and the evaluation of trained external observers.

Student learning, particularly if inferred from an objective, reliable and valid test, is the most widely accepted criterion of effective teaching. Studies of multiple sections of the same undergraduate course taught by different teachers where student learning is measured by common examination show a reasonably high positive correlation between the overall rating students give the instructor and the average achievement for the students within each section. Students do a reasonably good, albeit imperfect, job of distinguishing among teachers on the basis of how much the students have learned.

The validity of student evaluations as an indicator of teaching effectiveness is buttressed by the fact that students' evaluation of teaching shows significant agreement with instructor self-evaluation of the same course at both the undergraduate and graduate levels. Systematic observation by and evaluation of teaching by trained external observers also is positively correlated with both students' evaluation of teaching and student achievement.

In contrast, ratings by colleagues based on classroom visitation are not significantly correlated with student ratings, self-evaluations, ratings pf trained external observers, or student achievement. Peer evaluations of untenured faculty also do not appear to be reliable. These findings indicate that the use of peer evaluations of university teaching_ for personnel decisions is unwarranted.

Furthermore, evaluations from a student, body like ours should correlate even more highly than the norm with what is learned. William Mitchell students are substantially older, more mature, and more experienced than the undergraduates surveyed in many studies of student evaluation of university teaching. For example, approximately 80% of William Mitchell students clerk before graduation. William Mitchell students also have a number of adjunct practicing lawyers and judges with whom to compare full-time teachers. This background should provide a basis of mature judgment about effectiveness of teaching in assisting student learning.

The literature of student evaluation of teaching strongly support redesign of the current student evaluation form to give it more diagnostic power and a greater importance in the evaluation and improvement of teaching at the college.

Bias in Student Evaluation of Teaching

Critics of student evaluation of teaching argue that student ratings are biased by factors unrelated to teaching effectiveness. For example, one simplistic bias, hypothesis is that if an instructor gives students

high grades, demands little work of students, and teaches small classes only, then he or she will be more favorably rated. A number of studies clearly refute that hypothesis.

The most common background characteristics said to bias students' evaluations of teaching effectiveness are class size, workload and difficulty, prior subject interest, the reason for taking the course, expected grades, years of teaching experience, lecture style at the expense of lecture substance, and gender or race of students and/or instructor.

The following is a summary of research findings on each of these potential sources of bias.

i) Class size. Class size does have a moderate effect on some aspects of effective teaching -primarily group interaction and individual rapport, but not generally on the overall ratings of course or instructor. These effects are non-linear where small and very large classes are evaluated more favorably. The unexpected higher ratings for very large classes may be attributable to the students' systematic selection of classes taught by particularly effective instructors, thus increasing class size.

ii) Workload and difficulty. Paradoxically, at least based on the supposition that workload and difficulty is a potential bias to student ratings, higher levels of workload/difficulty are found to be positively correlated with student ratings. A related argument is that it is only after graduation when a student enters the real world that he or she will come to appreciate the harsh and demanding teacher, and thus student ratings for such a teacher will be understated. Retrospective alumni ratings of instructors are highly correlated with current student ratings. These studies demonstrate that student ratings are stable over time and that added perspective does not alter ratings given at the end of the course.

iii) Prior subject interest Prior subject interest is a variable that is largely determined by the course rather than the instructor. It is positively correlated with student ratings of teaching, particularly the value of student learning, although the effect is small.

iv) Reason for taking a course. Elective courses tend to be rated more highly by students than required courses, but the degree of correlation is modest and the effect of this variable is small.

v) Expected grades. Class average expected grades are modestly correlated with class average student evaluations of teaching effectiveness. This is explained in several alternative ways. The validity hypothesis explains this correlation by proposing that better expected grades reflect better student learning, and that a positive correlation between student learning and student ratings supports the validity of student ratings. The student characteristics hypothesis posits that preexisting student variables such as prior student subject interest may affect student learning; student grades, and teaching effectiveness so that the unexpected grade effect is spurious. The grading leniency hypothesis proposes that instructors who give higher than deserved grades will be rewarded with higher than deserved student ratings, and that this is a serious bias in the ratings. The evidence available clearly supports the first two hypotheses but is weak and inconsistent with respect to the grading leniency hypothesis. In any event the size of effect of grading leniency on student ratings is likely to be small.

vi) Years of teaching experience. To the extent that there is any correlation at all, it appears that student ratings may increase during an instructor's first years of teaching and decrease somewhat thereafter.

vii) Lecture style at the expense of lecture substance. The Dr. Fox studies have focused on the influence of instructor expressiveness on student evaluation of teaching. In the original studies, a professional

actor presented a lecture with little educational content in an enthusiastic and expressive manner and was rated favorably by students. Later research indicates that in situations most like a university classroom, where students know before the lecture that they will be tested and graded on the materials, the Dr. Fox effect is not supported. Manipulation of instructor expressiveness then only affects student rating of instructor enthusiasm and manipulation of content coverage then only affects student ratings of instructor knowledge and organization/clarity. If students are given no incentives to perform well. instructor expressiveness has more impact on student ratings.

viii) Gender or race of students and/or instructor. Three empirical studies indicate that the gender of the *students* has very little impact on student ratings. Professor Marsh reports that several large studies suggest that the gender of the *instructor* has little relation to student ratings although two other studies conclude that the results are mixed on this question.

None of the data currently published focuses on the degree to which race of the instructor or student may affect student ratings of teaching. Professor Taunya Banks, a recent speaker at the college, is currently studying the perception of Hispanic-American and African-American students about law school.

The multi-section studies establishing the validity of student ratings have been concerned exclusively with those kinds of cognitive learning that are conveniently measured by objective classroom examinations. Student learning can also be affective, for example, by being more open to information or ideas, coming to value them, and modifying values or personal philosophies.

Even if it were conceded that gender or race of students or instructor does not bias student rating of teaching aimed at cognitive learning, it may be that student rating of teaching aimed at affective learning would be influenced by the gender or race of students or instructors.

The evidence available suggests that affective learning may be influenced by the race and gender of the student or instructor. For example, a recent finding of the Harvard Assessment Seminars is that while women's satisfaction with their academic experience is more closely tied to their grades than men's, women's *overall satisfaction*, with their college experience is less tied to grades than men's. It is influenced far more-by personal relationships and by informal encounters and meetings with faculty and advisors.

Professor Banks, reporting on student volunteer responses to a questionnaire administered at a number of schools, finds that 11 % of the women respondents and 6% of the male respondents believed that the gender of the professor affected their voluntary class participation.; 71 % of the female students compared to 56% of the male respondents also believed that women professors are more encouraging. Professor Banks also found that 17% of white male students perceived respect from very few professors compared to 31 % of African-American and 33% of Hispanic-American students.

Similarly, survey research focused on law students at Berkeley just published in the *Berkeley Women's Law Journal* finds that while approximately 70% of the white male students reported that there was no difference in level of comfort with a professor who was female or a person of color, 57% of the women students responding said that they were more comfortable with a female professor, and 46% of the women students said that they were more likely to speak in a class taught by a woman. Forty-seven percent of the students of color were more comfortable in a class taught by a professor of color, and

37% of the students of color indicated that they were more likely to speak in such a class. Nearly three-fourths of both groups of students felt that the small number of female professors or professors of color at Berkeley had deprived them of significant role models in the field of law.

Instructor Self-Evaluation

Instructor self-evaluation of his or her own teaching using the same instruments as completed by the students is a widely accepted indicator of teaching effectiveness. Studies including large numbers of courses indicate significant student-teacher agreement on every dimension of the evaluation instruments used. Significant disparities between student ratings and faculty self-evaluation should motivate faculty members to revisit and think through approaches to instruction:

Intensive Instructional Improvement Consultation Program

A substantial body of literature indicates that student feedback to an instructor without consultation is only modestly effective. Evaluative data are more likely to contribute to instructional improvement when the data are communicated to the teacher by a respected master teacher or expert consultant in individual or small-group consultation over a long period of time. Semester-long consultations could occur on a rotating basis for every instructor. The use of expert counsel helps both to provide a reasoned interpretation of all available information, including the impact of potential biases, and to prevent unwarranted weight being given to quantifiable numerical responses.

The consultant could also observe and evaluate a number of classes during each consultation. Systematic observations by external observers trained and asked to rate the frequency of quite specific behaviors are positively correlated with both student ratings and student achievement. In a very ambitious observation study, Murray collected 18-24 sets of external observer reports for each of 54 instructors. While the median correlation between any two individual observational ratings was .32, the median reliability for the average response across the 18-24 reports for each instructor was .77. Thus high reliability appears to depend upon a sufficient number of ratings of each teacher by a number of different observers. Multiple classroom observations by a single expert consultant would have a lower reliability than the trained external observer studies. An expert consultant could also assist in planning regular programs and an annual teaching workshop to improve teaching effectiveness.

Peer Support Groups

While the use of peer evaluation of teaching through classroom visitation is unwarranted in personnel evaluation, peer discussion of teaching materials and methodologies is very useful in improving teaching. At the request of any instructor~, the faculty development committee would appoint several faculty members to provide diagnostic assistance by visiting classes, reviewing teaching materials and discussing methodologies with the instructor.

Summary

The faculty and administration must make difficult decisions about institutional priorities and commit the resources to carry out the four elements of this program: the redesign of

the student evaluation form, ·teacher self evaluation, an intensive instructional improvement consultation program, and peer support groups.

Faculty and administration. must also be willing to give colleagues opportunities and resources. to improve their teaching. Some experiments will fail; but we must respect and reward the process of both experimentation in teaching and assessment of experimentation.

The introduction of a broad, carefully planned teaching evaluation and improvement program will lead to more effective teaching at the college. Symbolically, adoption of such a program sends a message to all constituencies that teaching is being taken seriously. The program will provide a basis for diagnostic feedback to improve teaching. student course and instructor selection,' peer reinforcement of improvements and quality in teaching. and administrative facilitation, recognition and reward of improvement and quality in teaching.

FISHING

By Richard Kent Ellison

Introduction

Welcome. My name is Richard Ellison. Tony Schertler and myself will be sharing this column. Out of deference to Tony I announce that I am mainly responsible for this installment.

I sense the rising revulsion of the common Mitchell student at hearing another word regarding the following three issues: 1. Professor Haines/discrimination, 2. Mandatory Pro Bono?, 3. Faculty strife. Thus this installment of "The Magic Word" will be devoted to an attempt to purge and refresh my own brain and the brains of others. This purging will serve two purposes. Firstly, to give this author and the reader a break from the aforementioned topics. Secondly, to equip the reader with a new tolerance level for divergent ideas that might be discussed in this column in future editions.

Argument

This literal "brain-wash" will be accomplished by means of two sections. The first section, the star a trek trivia challenge, will allow you, the reader, to test your knowledge of the fi1scinaJing TV series against me, the author. Section two, random thought shocker, will allow you to expand your thought parameters by means of non-sequitur.

Section I - Star trek-trivia Challenge

Please note: These questions are based solely on the old television series that originally aired in the late sixties. Please submit all answers in writing to The Opinion office attention: Richard. Answers along with the name of the winner will be published in the next column. Hint: Unless otherwise specified, every question here has something to do with phasers.

1. Easy - Hamline level

    a. What is the main difference between phaser #1 and phaser #2?

    b. In what episode did Kirk order a double-red alert and why?

2. Harder - Mitchell Level

    a. In what episode did Kirk order phasers to be fired at 1/100th power?

b. In what episode did Kirk use the phaser rifle? The phaser mortar?

3. Hardest - U of M level

a. In what episode did Kirk order phasers to be fired but all of us really saw photon torpedoes come out?

b. What was the only episode where phasers and photon torpedoes were fired simultaneously?

4. **Bonus/Challenge - Medical School Level -Topic not limited to phasers**

a. In what episode did Spock say these exact words*: "Power up, all instruments activated, all lights green, all go."*

b. What is the hardest substance known to Star-fleet command?

Section II - Random Thoughts Shocker

1. Although law school sharpens you up, it also makes you boring.

2. "2001 A Space Odyssey," "Dirty Harry," and "Jaws" were the best movies ever made.

3. "Air Supply" along with “REO Speedwagon" and "Jimmy Buffet" are the worst bands.

4. Drugs are the preferred scapegoat of the chronically lame.

5. Mitchell is the best Law school.

6. Nixon and Reagan had the right idea just not enough power.

7. Creme egg and catsup.

8. "Any cop will agree that there is an insatiable public appetite for sex, drugs, alcohol, and gambling ... vice titillates. There is even an element of excitement about it among abolitionists ... The unsteady executive who lacks an inner compass will be buffeted to and fro."

Anthony V. Bouza, The Policy Mystique, An Insiders Look at Cops. Crime and the Criminal Justice System, Plenum Press, New York 1990 Pages 27-28.

9. Say this 35 times silently: "I cannot go wrong by getting a law degree. It's like a Visa card. It's everywhere I want to be."

Conclusion

This concludes the brain wash.

Clinic Curriculum | A Gold Mine Of Opportunity

by Resa Gilats

As a recent graduate of William Mitchell, I remember that after the initial fear of the first year wore off, I held on to the comfort of the classroom for as long as I could. I put off Trial Advocacy until my last

semester. Unlike many of my classmates I entered law school without any pre-law coursework or attorneys in my family to help me. My exposure to attorneys and the court system was very limited.

In my third and last year of school, however, I realized that if I did not take any clinic courses I would graduate in the spring with Trial Advocacy as my only direct experience in the practice of law. As it turned out. I took Civil Practice, an elective, fall semester and Trial Advocacy in· the spring. These two courses are known as “skills" courses and while they provide students excellent opportunities to develop practical skills, both courses use practice exercises rather than real settings. There is no question in my mind that these courses helped me build. confidence in my lawyering skills. However, the three clinic courses I took provided the environment and supervision I needed to synthesize my knowledge and skills.

Two years ago William Mitchell faculty endorsed as a primary goal of the clinical education program the concept of contextual integration. By this the faculty means, "integrating the knowledge and skills students have learned in law school, with themselves -their values, aspirations, strengths and limitations -and with their environment -social, psychological, political, professional -to form ethically grounded, productive lawyers and human beings." In my first year I had some vague notion that something would happen during law school so that when I graduated, would feel I was a competent lawyer. I had heard that law school was a vocational school where one is trained to do a job. The reality, I believe, is that the current curriculum at William Mitchell leaves the integration process to each student's own initiative.

William Mitchell's clinic curriculum is a gold mine of opportunity. Clinic courses are all elective courses so each student must think about whether or not they want to take a clinic course. Detailed descriptions of the clinics are included in the *Student Handbook* but the names alone show the variety of experiences available: Administrative Law, Appellate Intern, Attorney General, Civil Litigation, Civil Rights, Criminal Appeals, Estate Planning, Family Law, Immigration Intern, Independent Clinic, Judicial Intern, Labor and Employment Law, Legal Aid to Minnesota Prisoners (LAMP), Legislation, Misdemeanor, Tax, U.S. Attorney, and Work of the Lawyer.

Even for students who do not want to be practicing attorneys, clinics allow students to explore options and confirm or change their decision about how they want to use their law degree. The Independent Clinic provides students the opportunity to set up a clinical experience designed to meet their own needs and interests.

For students who know they want to practice, the client representation clinics provide an excellent opportunity to handle matters for real clients-before graduation. The Civil Litigation, Family Law, and Tax Clinics are clinics where students handle their own case load under a supervising professor. Professor Ann Juergens, Professor Peter Knapp, and Professor Roger Haydock teach the Civil Litigation Clinic; Professor Bob Oliphant teaches the Family Law Clinic; and Professor Curt Stine teaches the Tax Clinic.

Students learn civil procedure, family law, or tax theory in class but client representation clinics involve students in all phases of a case. In Civil Litigation Clinic students may conduct direct and cross-examination at trials and hearings for clients. Students may also draft complaints and affidavits or prepare for depositions; negotiate and settle cases and draft the Satisfaction of Judgment once the case is settled; or they may write appellate briefs. Last semester, a student tried a jury case in state court in Hennepin County.

The Family Law Clinic offers as broad a spectrum of opportunities. Students in that clinic will handle a family law matter to completion, including appearing at the final hearing or trial. Students will prepare Summons and Petition, Notice of Motion and Motion, Note of Issue Stipulation, and final order documents including Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree. Family Law students may also be involved in preparing discovery documents -interrogatories and answers to interrogatories -as well as garnishment proceedings and document preparation. Tax Clinic students represent taxpayers and participate in audits and appeals involving the Minnesota Department of-Revenue or the Internal Revenue Service.

Working with real clients can be very satisfying. When describing the experience; Professor Juergens says. “It’s challenging to see how you really DO act when faced with ethical dilemmas in contrast to how you ideally THINK you will act in the crunch. This is valuable self-knowledge." Professor Juergens also says that students in Civil Litigation Clinic ''will spend time focusing on strategy (e.g., what should your approach to direct examination of this witness in light of your client’s relationship with him/her? What should your approach to this opponent be in light of your ultimate goals for the client? What should your entire approach be in light of your client's life context?) and planning for holistically satisfying outcomes.”

Last fall I took the Attorney General and Judicial Intent Clinics. This past spring I took the Work of the Lawyer Clinic with a field placement in a small, private firm in Woodbury. My clinic experiences, especially my internship with Judge Petersen in Ramsey County, were the highlights of law school for me. I was able to graduate with a sense of integration -a direct result, I believe, of my clinic experiences.

Clinic courses are not a soft, easy way to go in law school The work and schedule are demanding. However, for students who will not be clerking outside of law school, clinics provide a rich opportunity to integrate skills and knowledge and to gain exposure to the court system, attorneys in various settings, and to real clients with real legal problems. Students who are clerking outside of school may find the opportunity to explore an area of interest not otherwise afforded them in their clerk position. William Mitchell's clinical curriculum offers something for everyone. But it is up to each student to take advantage of the opportunities while they are available. Take the initiative - take a clinic.

Students are encouraged to ask clinic professors and staff about the clinical curriculum at William Mitchell. The Clinic Administrator in the Law Clinic, Room 316 is available to answer questions and help students plan their clinic curriculum. Students should feel free to stop by or call the Law Clinic at 290

Resa Gilats is a June 1990 graduate of William Mitchell College of Law. She has been employed as Student Manager in the Law Clinic since January 1988.

Commentary On Campus

By Cathryn Saylor Peterson

Notes & Comments

Welcome first years! We are glad you are here and hope you will make time in your schedule not only to read The Opinion but also to participate in writing it. You may submit your articles for publication by

placing a typewritten manuscript of no more than six (6) double-spaced pages in The Opinion mailbox, located in the communication center.

To the returning students and faculty we can only say: "We're baaaaack!" We look forward to your continued contributions to the Opinion which promises to be even bigger and better than before.

Summer Vacation

To ease the trauma of reentry into academic life I take refuge in recalling the time I spent at "the lake." (''The lake" is a curious local expression referring to any one of the 10,000 lakes in the state.) In my mind, it is a glorious day. The sun is shining and the temperature is a perfect seventy-five degrees. Time takes on a new meaning, a new dimension, here at the lake. It is no longer the enemy, the burglar of your being, the arsonist of your tranquility, or an unflinching and uncompromising taskmaster. Rather, time takes on the visage of a friend, an ally, a tangible presence which you welcome into your home like a revered relative - too long absent.

My attention turns from the ephemeral dimension of time to the activities of the most numerous inhabitants of the lake -the birds. I am amused at the variety of bird life which abounds here. Where I come from, Colorado, there seem to be two types of birds; sparrows and bigger sparrows. Here, I see hummingbirds dart tentatively around the sugar water-feeder, ever mindful of their diminutive stature in comparison to the rest of the animal kingdom. The black-on-orange orioles stop in for a quick hors d' oeuvre, followed by an elegant pale-yellow finch. In contrast, a bright yellow and black gird, which I can't identify from my bird book, comes quickly on the finch's heels. However, my favorite is the reluctant cardinal who retreats back to the pines at a scintilla of danger.

The ducks in the bay seem more numerous every year. Ten or more of them will line up on the dock in front of me, unabashedly sunning their feathered nakedness and not the least bit daunted by my presence. Another hoard of them will casually shop for breakfast in the waters surrounding the dock.

Overhead two non-descript birds engage in a boisterous exchange suggesting to me either mortal combat or a sexual interlude. Somehow that mental hint of primeval behavior causes my mind to bend back towards law school and the variety of 'birds" with which we attend law school. I imagine a new psychological categorization in which law students are analogized behaviorally, to various birds. I slim my categorization to contain ducks, swallows, or seagulls.

Note, if you will how difficult it is for the duck who has been languishing and pleasantly paddling on the surface of the lake to abandon the waters and take flight. The water-laden wings beat furiously as it strains to gain enough altitude to clear the forest shoreline. One can almost imagine the trees issuing an audible sigh of relief, when its top have finally been cleared.

Then there are the reckless swallows which execute maneuvers in their well established boundaries, over the dock, under a boat cover, where they have established their base camps. These kamikaze birds speed through the air effortlessly, swooping in close formations and patterns instinctive to them. They defend their territory with ferocity by performing high-speed, close-order drills just unnerving inches above mortals heads.

Compare the swallow and the duck with the seagull (a type of Kem, I believe). Perhaps not as flashy as the swallow, the seagull, however, is every bit as courageous. They circle overhead ever mindful of

opportunity. With their wings hugged tight and beaks pointing out their target, they dive headfirst, piercing the surface of the water and capturing their prey.

There are more categories to examine and greater subtleties to elaborate, but I withdraw from this line of free association as I am brought sharply back to reality by the realization that, once again, attending law school and becoming a lawyer has reconceptualized and pervaded much of my mind. Now, about the various flora ...

One L; "Who Is This Cardozo Guy?"

By Mike Broback

The first year law student normally has difficulty learning to read cases efficiently. Far from an enjoyable task, plodding through cases involves sifting through convoluted fact situations, looking up the definitions of terms the student would be happy merely to be able to pronounce, and stabbing at phrases and paragraphs within the case which the student believes must be the law of that case. Making the student's task even more difficult, particularly in the older cases, is the fact that many opinions are rambling, unintelligible discourses which give no clue as to the reasoning used by the Judge in that case.

This is a frustrating state of affairs for the first year student. Light exists, however, at the end of this tunnel. As you, the first year student, become more proficient at swiftly reading cases and deftly plucking from them relevant legal concepts, you may learn to appreciate and to actually enjoy opinions written by certain Judges. By the end of your first year, you will give greater weight, and will actually recall the opinions of some judges and will undoubtedly find forgettable other judges' opinions. This writer has concluded that the strongest opinions have been issued by the greatest legal minds. In the writer's opinion, the finest legal mind the common law has ever seen belonged to Benjamin Nathan Cardozo.

Benjamin Cardozo was born in New York City in 1870. His grandfather, Michael, was nominated for Justice of the Supreme Court of New York state, and his father, Albert, also became a Judge in that Court. Albert Cardozo resigned from the Court in 1874 amid a scandal brought about by his relationship to the notorious Boss Tweed, who had offered the Judgeship to Albert. When he was 15, Cardozo became the youngest student ever at Columbia University. He graduated with the highest honors at the age of 19.

Cardozo was a slight man physically and had little to do with the sports or social life of the college. He was a lover of classical literature and was reserved in manner and spirit. He was chosen to give the commencement oration at Columbia, and his speech was entitled ''The Altruist in Politics." This speech was an attack on those advocating an absolute community and equality of wealth. He considered and rejected the political altruist's substitution of the community for the family, and the movement's substitution of community ideals over those of the individual.

As a lawyer, Cardozo was not a showman. He was a persuasive legal advocate who would not appeal to the passions or prejudices of a jury. Many lawyers admired Cardozo and sought his counsel. In 1913, Cardozo was elected a Justice of the Supreme Court of New York. (New York's Court of First Instance). Within a month, he was elevated to Associate Judge of the Court of Appeals (New York's Court of Last Resort); four years later, Cardozo was appointed a regular member of that Court. Cardozo's tenure on

the New York Court of Appeals stands unchallenged as the golden age of the development of the common law of this country. Some of the most important decisions in-the history of the common law were rendered by the New York Court of Appeals during Cardozo's tenure there.

You, as a first year student, will probably first come across the New York Court of Appeals in the Palsgraf case; a case which defines (as much as any case does) negligence. Contrast the Palsgraf decision with the MacPherson v. Buick Motor Co. case (1916). Cardozo's opinion in MacPherson was a monumental Tort's opinion. In holding an automobile manufacturer liable to an ultimate purchaser for a defective vehicle which caused the purchaser injuries, Cardozo extended the duty of care of the manufacturer to the purchaser, and not just to the deal (as per precedent). In so doing, Cardozo stated:

"The dealer was indeed the one person of whom ii might be said with some approach to certainty that by him the car would not be used. Yet the defendant would have us say that he was the OM person who ii was under a legal duty to protect. The law does not lead us to so inconsequent a conclusion."

In 1926, Cardozo was appointed Chief Judge of the New York Court of Appeals. Another member of that Court, Irving Lehan, in his memorial to Cardozo after Cardozo's death in 1938, described the qualities which made Judge Cardozo a great judge. Lehman noted the honesty and integrity' of Cardozo's mind:

"He was not content to arrive at a conclusion by traditional methods of legal reasoning, nor to justify, by rationalization, a conclusion dictated by impulse or even by social philosophy. He was not content to accept an unjust decision merely because ii rested firmly on old precedents, nor, on the other hand, was he content to cast aside lightly long accepted rules and precedent merely because they dictated a conclusion which might be unfair to a particular litigant."

In this regard, first year students should read and re-read the Palsgraf decision. According to Lehman, Cardozo was also an appraiser of sorts. He was an appraiser of logic and history; of custom and morality, of certainty and of flexibility; and of form and substance. Finally, Cardozo was conservative (in an apolitical sense). In speaking of a concept you will come to know as "stare decisis," Cardozo states:

"Certainly and regularity have at least a presumption in their favor. They show us the well-worn ways, and in conduct generally, so in law, what we have done in the past, we are likely to continue to do till the shock of a perturbing force is strong enough to jolt us out of the rut."

Address Before the State Bar Association, 55 Rpt. of New York State Bar Association, p.284.

In his lectures entitled "'The Nature of the Judicial Process," Cardozo describes what it is that judges do. These lectures should be required reading for first year students. The nature of the judicial process is one in which an individual's background, philosophy, personal values and unique interpretations are factored into a decision along with black letter law, precedent, and arguments of counsel. You may have a feeling by die end of your first year that: you've become disassociated with your own values and beliefs, subsuming them in favor of-rationalization dictated by black letter rules and case law. You should not be afraid to inject your own values into your perception of what is right in a particular case.

Just as a great judge like Cardozo had trouble deciding cases, so will you have trouble reconciling the law with your own values.

We go forward. with our logic, with our analogies, with our philosophies, till we reach a certain point. At first, we have no· trouble with the paths; they follow the same lines. Then they begin to diverge; and we

must make a choice between them. History or custom or social utility or some compelling sentiment of justice or sometimes perhaps a semi-intuitive· apprehension of the pervading spirit of ow law, must come to the rescue of the anxious judge and tell him where to go.

We're Off and Running

Welcome first year students and welcome back veteran WMCL students. We are kicking off a new school year with an early 'orientation' issue of The Opinion. We are pleased to include a special insert in honor of former Chief Justice Warren Burger to commemorate the dedication of the new library.

This year, The Opinion is committed to publishing six issues and we strongly encourage everyone to contribute their thoughts, criticisms, topic ideas, or even musings. The Opinion is here to act as a forum and in order to be successful, people must contribute. We would especially like to encourage first and second year students to join us so that The Opinion remains alive and well after we graduate.

We hope you enjoy this issue and request that you put any comments in writing and drop them off in The Opinion mailbox. We also invite students at the University of Minnesota and Hamline law schools to· submit articles. In particular, we would appreciate receiving notices of upcoming events of interest to law students and faculty.

Richard J. Oldsen

Student Bar Association President's Report

By R. Anthony McLeod, President, SBA

Welcome back! If everything went as it should, you will be reading this first edition of the *Opinion* in a brand new Hachey Commons. H it is not done yet, it will be done soon. A special thanks goes out to Dave Edwards and Dan Palmquist for getting the ball rolling last year. Dan was a key player in finding a new and better food service vendor while also starting the recycling program. Dave worked out other financing and the innovation of a remodeled Hachey Commons. Now that we have a beautiful new library and commons area, please treat both areas with respect.

Student Groups:

Attention all student groups! Get your proposals together now! In a few weeks the SBA will hold a meeting to set the operating budgets and program budgets for each of the student groups. Once the money is allocated, there will be no more! If you want to start a new organization you must; 1) Hold a meeting and adopt a charter of rules/constitution, etc., 2) have the group recognized by Jim Brooks, Dean of Students, and 3) have the SBA recognize the group.

To be recognized, the group may not discriminate and the group may not engage in political or profit-making· activities. Political activities are generally seen as those activities which influence legislation, promote candidates for election, or engage in other activities that threaten the non-profit status of the SBA. Also, no group may make profits from SBA funds. If your group wants to engage in political or profit-making activities, you must incorporate and take your chances with the IRS.

SBA Agenda:

The SBA is supportive of the recycling effort The Commons has designated areas for recyclable waste. Please pitch in and help out

The SBA will present a few issues for referendum during the first year elections. The first issue, which will be presented by me, is an amendment to the constitution. The amendment is a series of checks and balances for the SBA president. First, the president should be elected at-large so we will know who will be our leader. There will be no write-in candidates. This is to force the candidates into the public eye so we may know and question them. Furthermore, the SBA will be empowered to overturn various presidential decisions. The amendment is meant to spread power over the whole SBA and not just in the president.

A second issue is the cleaning up of the SBA rules. The constitution calls for the election of a Law School Division (LSD)' representative for the ABA to serve on the SBA board. No one remembers the last time this was done. I propose that the line calling for the election be removed and any LSD rep that exists be appointed. to the board in an ex-officio capacity. The Opinion editor is also a non-voting member of the SBA. I would propose the same non-voting status for that officer.

The last issue is a revival of the minority amendment to the SBA board. The new amendment should take into consideration the worries the students have about the previous amendment

More details on these issues will be presented to the student body at a later date. Now you are up to date on some of the things the SBA has been working on. If you have questions or concerns, please contact me or your SBA rep, or drop by one of our meetings.

Letter to the Editor

by Sue Nipe, Second Year Student

It was one year ago that I was a first year student attending orientation. I had given up a 12-year public relations career to return to school to get my law degree. I vividly remember that hot night; my fears and apprehensions contributed to the heat to make it a very uncomfortable evening. yet, at the same time, I was excited. I had made a life-altering decision, and I was anxious to begin this new chapter in my life. But I had questions. Part of any person's job in public relations is to keep up with the media; to do your job you must know what is on the radio and television rand in magazines and newspapers. I had been reading about William Mitchell since I knew I was going to be spending three years of my life here. I clipped the news articles.

As I was going around the tables in Hachey Commons looking at what the various student organizations had to offer, I was trying to find someone to talk to about the items that had made the news. I finally stopped at the tables for the Ethics Committee and the Student Bar Association. Both said I should talk to Sandy Glass-Sirany, the SBA President. I found her and said I had a lot of questions.

She encouraged me to put my questions to the administration. We proceeded to the church across the street for speeches and introductions. I had my questions all prepared, but I was not given an opportunity to ask. We proceeded to our Legal Writing sections and met with our faculty advisors. As he began to talk about ethics, I asked my questions. They were questions that deserved an honest answer.

What I got was defensiveness and an answer that “we had problems, but we don't have them anymore." I wasn't satisfied, but I didn't push it. I should have. Students as well as faculty and staff deserve better. We have a right to answers, as tough as they may be able to give.

I knew from high school, college and work that the only way to find out what I wanted to know was to get involved. One can find answers if others refuse to give them. I was elected to the Student Bar Association board of directors. I joined the Minnesota Justice Foundation and volunteered at Chrysalis. I joined the National Lawyers Guild and helped get speakers for the Alternative Practices Conference. I was one of two student representatives to the school's budget committee. I participated in the Minority Affairs Committee. It took all of this and more to find some of the answers.

I didn't have answers when I came to William Mitchell; I had questions, but the administration failed to provide me with the answers, so I had to find them myself. I had no idea one year ago what answers I would find or how deeply and centrally those answers would affect me.

I had students in my section and other students angry at me for raising issues regarding women, gays and lesbians, and students of color. I had students in my 'Section and other students angry at me for finding answers that changed their positive, wholesome view of the school. H they are still angry at me, I would suggest their anger is misplaced. The messenger is not the person with whom one should be angry. The people who create the answers are the appropriate targets.

Eight months ago I wrote an article in this same newspaper that generated discussion the rest of the year. But I stand by what I said in that article; in fact, I believe it now more than

ever. William Mitchell is the most dysfunctional institution with which I have ever been associated. At various times over the summer, I have tried to make sense of my first year. It was the worst year of my life in many ways. I survived it, but I want to understand it so I don't have to repeat it I spent very little time with my family and friends -my contacts were largely with unresponsive books. It was difficult getting back into study habits after not being in school for 13 years. The year was also difficult because of the attitudes and values I saw in the people around me. I spent the entire year questioning whether or not I really wanted to enter the field of law and have to work with people who are so uncaring and so in need power and control. I found these people everywhere I turned -from the board of trustees and administration to faculty, staff and students. Even though it had been my dream for ten years, it wasn't until mid-summer that I realized I did, indeed, want to be a lawyer. I now know that law needs more people who don't need to attack, criticize, or dominate others to achieve their own goals.

I won't rehash everything that happened last year, but a few events of the summer need to be mentioned. First, Josie Johnson, the only person of color on the board of trustees and one of the few women, resigned because "the environment at Mitchell does not support and encourage diversity nor civility and is presently unable to prepare students to defend our freedom of speech." Then, a memo from Dean Hogg was circulated in which he described Owen Heggs, a new board of trustees member. Hogg states, "He (Heggs) believes in the firm's philosophy of no quotas, no affirmative action -admission by proven qualifications." "He was both interesting and stimulating and would make an excellent addition on the board." I also worked at the college this summer, experiencing another facet of the institution. During my employment, I saw employees modeling the same kind of behavior which the administration embraces. It seems one must be a white male or a woman who unquestioningly and

unthinkingly follows the white male before concerns or complaints are heard, let alone taken seriously. Finally, Professor Chris Jones resigned after this year.

I repeat my statement -William Mitchell is a dysfunctional institution. It will take serious intervention and confrontation before it can be hoped that there will be any change. Last year, I did a mid-year evaluation of my performance on the SBA. Several students said they didn't want to know what was going on; they just wanted to get their degree and get out of here. I was appalled. But this summer, that attitude was confirmed in a news article. The headline was "Studies find indifference pervades young adults." I honestly don't understand it Are there. so few people who are willing to ask questions, to take risks, to be courageous in the face of adversity? If so, why are the law schools filled? Aren't we going to have to ask questions, take risks and be courageous on behalf of our clients? Are we faced with so much dysfunctionalism in our personal lives that we are unwilling' to confront it at school and work?

Students have been hurt. We have had professors who have been affected by the environment at William Mitchell and that certainly carries over into their work. We have had tuition raised. Even if one were to believe the administration's response that no tuition dollars have been spent on the litigation, there are obviously residual effects on the operating budget And this year, $9.6 million of the $10 million budget is coming from students' tuition or fees. We deserve some answers for $9 .6 million.

While Dean Hogg continues to verbalize his commitment to achieving diversity, his actions speak otherwise. If Dean Hogg is truly interested in doing the right thing for the college, he will resign. The problems of the college are too intertwined with Dean Hogg's values, actions, and reactions. It will take a fresh, new person who has proven qualifications to achieve the diversity that William Mitchell so desperately needs. We need to quit denying we have problems, face them squarely and honestly and begin the process of repairing the damage.

I challenge all students to question, become involved and begin doing what you will be expected to do as a lawyer. We have a tough year ahead of us.

Law Students Mandatory Pro Bono

by Edie Michalski and Doug Shimonek

A committee of students and faculty at William Mitchell has been formed to consider implementation of a mandatory pro bono program for students at the college. The committee has already considered the benefits of such a program and is currently developing a proposal to be presented to the faculty and administration for the fall of 1990. The committee's original goal was to require students to perform twenty hours of pro bono service during their academic career.

While student reaction to the idea of pro bono service has been largely positive, the difficulty pf implementing such a ~gram remains. Students and professors who -support the program have opposed the idea of using already over-taxed student tuition dollars to cover expenses.

Harvard's law students recently voted to approve a plan to have mandatory pro bono for law students by making public interest legal work a curriculum requirement According to an article in the Boston Globe, the students voted in a record turnout for the Harvard plan that could become a model for free legal service programs in law schools throughout the nation.

The need is there. The student group supporting the Harvard plan says 95 percent of the country's lawyers service 1 percent of the population. If law schools throughout the country develop their own mandatory pro bono programs, student will provide desperately needed legal services. Hopefully that service will be ongoing after they complete law school.

Both the Harvard plan and the William Mitchell plan will need the law school faculty's approval to become policy. Other law schools with mandatory pro bono programs include: Tulane University, Florida State University, Valparaiso University and the University of Pennsylvania.

Shimonek and Michalski are members of the Student Ethics Committee.

An Exclusive Interview with Chief Justice Warren E. Burger

September 30, 1982

Chief Justice Warren E. Burger does not often grant interviews. During a visit to St. Paul in late August, however, he agreed to be interviewed by The Opinion's editor, Jeanne Anderson, and associate editor, George McCormick. The interview was conducted Aug. 16 in the Minnesota Club in downtown St. Paul.

Later that day, the chief justice, an alumnus of the St. Paul College of Law (one of the institutions that merged to form what became William Mitchell), spoke to first-year students at Mitchell's orientation program.

The interview was transcribed by the chief justice's staff at the U.S. Supreme Court in Washington.

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We could begin by talking a little bit about your trip to Italy. You met with the pope there, did you not?

Yes, I did briefly. I did not request an audience, but when I got there I found that an audience had been arranged. I had met the pope twice before: once at the White House and once when I was his host at the Smithsonian Institution on the occasion of presenting him with the Smithson Medal -a gold medal that is very rarely given by the institution.

The purpose of your trip, as I recall, was to meet with Italian jurists. Is that correct?

I had accepted an invitation for a lecture sponsored by the Supreme Constitutional Court of Italy. Scholars, political scientists and others were also present on the occasion. My lecture was to explain the background and the history of Marbury v. Madison and how the concept of judicial review had evolved even though it was not explicit in the Constitution, but only implicit.

I should add, by the way, that it's only in recent years that the constitutional authority to review legislative acts has been placed in Italy's highest court It's a very recent development.

We had talked a little earlier about your interest in improving the administration of justice. Could you talk briefly about some of the changes that you've seen since you've begun emphasizing that need?

There are substantial improvements, but there is so much left to do that sometimes the unresolved problems make our improvements of the last 10 or 12 years look very, very minor. There are improvements in several respects, however.

First, in the federal system we now have an acceptance of the idea of court administrators -a manager who assists the chief judges in the management and administration, leaving the judges to do what they are appointed to do. Congress initially gave only one circuit executive for each federal circuit, which is a small beginning, but an important one. All but one of the circuits use a circuit executive, who is a court administrator.

Consistently, for 10 years, I asked Congress to broaden that out and provide administrators for the larger district courts: that is, the District courts in the big centers like the Southern District of New York, Chicago, Los Angeles and so forth. Congress, two years ago, gave authority for a pilot program in 14 districts. We now have an administrator for these larger courts. That pilot program will go on for several years and then be evaluated. I am confident that it will prove very effective and that Congress will then authorize court administrators for probably 30 of the federal districts: that is, those having eight or more federal district judges.

Well, it certainly has proven to be valuable in the state court system in Minnesota.

Another important development came in 1969, when the legislation for circuit executives had not yet been passed. I made a speech to the American Bar Association, with the title which was in the form of a question: "Court Administrators: Where Would We Find Them?"

There were probably not more than a handful of people in the country who could accurately be called "court administrators." We drafted most of them to be on the faculty of the Institute for Court Management that we created in late 1969. This group for the faculty were headed up by Ed McConnell, who is now the director of the National Center for State Courts -and that's another story I'll come back to.

I proposed the creation of the Institute for Court Management, and, under the leadership of Bernard Segal, then president of the American bar, we had that institution created within 90 days. It has trained in its full0 time course of six months more than 350 court administrators. Overwhelmingly, they have been absorbed into the state systems, and we now have a totally new profession created in this country. I'm not sure of the exact figure but it's somewhere between 300 and 400 professionally trained people who are now engaged in court administration.

I think I recall that at that time a national organization of court administrators had fewer than 30 members, and that included many who were clerks of courts, only a handful who were true court administrators.

Now I should add that there are a good many clerks of court who function as court administrators, but it's a minority of them, and in some instances the clerks of court have become court administrators, but the two functions are quite different.

Before the creation of the center was there really no way for an administrator to learn that profession except on the job?

That's right. It had to be on-the-job training, and that originated with Chief Justice Vanderbilt of New Jersey, who was really the patron saint of court administrators. He trained Ed McConnell. now the head of the National Center for State Courts.

McConnell had been a graduate of the Harvard Law School and the Harvard School of Business, and that was really the beginning: the recognition that courts can't run themselves, and chief justices don't have either the time or always the inclination to do it properly. Lawyers, law-trained people, are not generally good administrators.

It's also a waste of the judges' time and talents?

Right. We shouldn't have the chief justice of the courts spending time on matters that do not need a lawyer when they need a managerial type, a person who either has instinct or training in administration -or, better yet, a combination of both.

Then another step that has been important in improving was the creation of the National Center for State Courts in 1971. I urged the calling of a conference on the judiciary on all the problems of the courts. That was sponsored by the Department of Justice and was held in Williamsburg.

I was asked to make the keynote speech. I did so, and the essence of the speech was that we should create a National Center for State Courts. The courts of the states had no common clearing house for exchange of ideas, no spokesman. The nearest thing to it was the Conference of State Chief Justices, which had no funding, no structure or organization, but it was a beginning.

The National Center for State Courts was then created. It now has a $3-million headquarters building at Williamsburg, Va., and claims of five branch offices, one of which is St. Paul. It has performed remarkable service to the states. I believe that most of the states help support it now.

With programs of support from the federal government necessarily changing, the National Center has real problems, but it should be supported by a combination of the private sector and contributions from each of the states because its sole purpose is to serve the state courts -where nine-tenths of litigation occurs. Happily, now the governing body of that center is made up of the chief justices of the states and their surrogates, who are on the actual board of directors.

You talked about some of these – I used the word accomplishments; you said you preferred to use the word steps – and I think indicated that even steps toward improvement of the administration of justice are really solving the problem and perhaps keeping up with the increasing problem.

You have also talked repeatedly about the steadily rising caseload, not only of the US Supreme Court, but of the federal courts in general, and I recall you have suggested that there are some things that Congress could do or could not do to at least slow that rise in caseload.

To begin with, even though there have been some substantial improvements, the fact is that changes - the increase in litigation -is almost outpacing the improvements. I shudder to think where we would be in the administration of justice in this country if these changes of the past dozen years had not been made.

But there is more to be done than most people realize. There is a great deal of unfinished business.

Just one measure, for example: the courts of appeal in the federal system in the last 10 years have had an increase in their work 16 times as much as the growth in population. The state courts have a comparable increase. The trial courts have had similar increases, but less.

There is an increasing tendency in this country to tum to the courts for the solution of all problems. If Congress or the state legislature doesn't' solve a 'problem, there is a tendency to run to court. Of course, Montesquieu long, long ago, and Lord Bryce. said that this was a peculiar characteristic of the American people -to bring matters to the courts.

I fear we are not going to change the American people, although l am hopeful that there will be an increasing use of arbitration and other alternative methods of resolving these matters. That is what the Pound Conference in 1976 was all about. The total cost in dollars to process modest claims -and by that I mean less than $10,000 – I suspect is more than the $10,000 that is involved in the case.

I have cooperated with the Rand Corporation in research, and I am anticipating some reports soon. From what I know of these studies it may develop that we have a very wasteful practice in dealing with cases, as I say, under $10,000. Something has got to be done about that.

Are there some ideas you think would be good for legislation? Anything that stands out?

There are a great many things handled in the court which could be handled administratively at far less expense, far less stress on the participants and much speedier. For example, there is no reason why adoption need to be handled by judges; there is very little reason why child custody should be a matter for judges, although some judicial review should be available after an administrative procedure. Probate of estates could be done administratively with only contested matters going to a judge.

There are other areas that should be studied and inquired into, and in that respect the Pound Congress in 1976 in St. Paul opened up some of these. I should say, too, that the consequences of the Pound Conference have been very gratifying. A tremendous number of activities and studies were stimulated by that conference. We won't know the results of those studies for some time, but the impact over the next 20 years, I think, is going to be very substantial - very significant.

The original Pound speech surely had considerable impact, did it not?

Yes. The Pound speech was made at a meeting of die American. Bar Association in the House of Representatives building in St Paul, and his speech was not well received by the American Bar Association, which at that time was not nearly the kind of broadly representative organization it is now.

My recollection is that the ABA had "[fewer] than 25,000 members, and, of course, it's more than 10 times greater than that today in excess of 300,000. It is potentially a great influence for improving justice in this country. But in 1976, it was time after 70 years from 1906 to take another look at it, and that's what we did. We looked at the unfinished business that Pound had laid out.

And you found, as I recall, that this was, the subtle, as it were, for the conference - You found that there was still plenty of cause for "popular dissatisfaction with justice."

No question about it, and it will continue and it will increase unless we do something about it. The problems are more serious today than in 1906.

And, as I noted earlier, you did call there for "new machinery for resolving disputes." You have already talked about greater use of mediation and arbitration. I talked recently with some people who are involved in a new program that has just been set up by the Hennepin County Bar Association with cooperation of the state bar and with funding from the Northwest Area Foundation to again expand the use of mediation. And, as I recall, the emphasis in that program is, rather than imposing a solution on parties to the dispute, to help those parties solve their own through the use of a trained mediator- help those parties solve their own problems.

Yes, and we must increase that if we look at the experience of other countries, we'll see that they do with a fraction of the number of lawyers and a fraction of the number of judges, and yet in most of the countries of Europe, for example, where these processes are highly developed, the justice that is administered is very good. It is as good as ours, generally speaking, on the civil side, and I think it's pretty hard to fault criminal justice in the free countries of continental Europe or in England. As Pound said, we have overdone the adversary system.

It has been suggested that not only because lawyers are trained to operate within the adversary system, but also because their professional obligation is zealously to represent the interest of their clients, that perhaps when a lawyer gets involved in an alternative dispute resolving mechanism-mediation or arbitration -that there could be some problems for the lawyer.

There could well be if lawyers insist on every facet of the aspects of the adversary system; then they will hinder progress. In many of these areas of mediation, even arbitration, trained personnel, something like the paralegals, are entirely satisfactory as advocates for the smaller claims.

One of the reasons the small-claims courts have not lived up to their original promise of 50 or 60 years ago was that gradually we were incorporating into the small-claims all the aspects of the adversary system -pleadings, lawyers -where a common sense was what was needed.

We've got to turn back to that early concept. Every case, the small especially, does not need a lawyer -a trained lawyer from the adversary system.

In the ancient times, the elders of the village or town were the people to whom adversaries went to settle their problems. They didn't need paneled courtrooms and judges with robes and lawyers with all the panoply of the profession. They had a simpler system.

No system of justice, no matter how sophisticated, can really produce anything more than what the late Lord Chief Justice Widgery of England called "rough justice." If we produce a good brand of "rough justice" we are doing pretty well.

There is perhaps a return to that in at least some of these experimental programs -return to that use of elders to use the old phrase. The new program I just mentioned, started by the Hennepin County Bar, will -well, it will use lawyers as mediators in some instances; in others for example, vandalism involving juveniles -they will use people from the community who, l think, serve as the same function: they are the elders; they are the people with their roots in the community and able to use their common sense to arrive at rough justice, without the "paneled courtroom".

I agree very, very strongly with that. Lawyers have no monopoly on common sense.

We'd like to think so, though.

Yes, we do like to think so. We think we have a little bit higher order. But common sense and a seme of fairness is what we need in a vast array of small cases. Judges should be reserved for heavier cases.

If I may sir, I would like to turn to another issue involving lawyers. You have suggested that far more lawyers than should be the case are not well prepared to represent the interests of their clients-in a courtroom, and, since, you have said that there have been some responses not only from the organized bar, but certainly from the law schools. Do you find those responses to be moving in the right direction?

Yes I do, very definitely. At first, you recall, the legal profession and particularly the law professors had a rather negative reaction when I made the statement that up to half of the lawyers who come into the courtroom in some parts of the country were inadequate for the job they were assigned to do. The studies, which were prompted by the Association of American Law Schools and by the American Bar Association, after that confirmed my own, - much to the surprise of some.

Now this varies from state to state; I would think that in Minnesota, without being chauvinistic about it, we have a higher percentage of qualified lawyers coming into the courts than in some other places.

The law schools, when they pursued these subjects, and the American Bar Association studies, found that there was a widespread belief among lawyers who graduated in the last 15 or 20 years that the law schools had not prepared them for practical problems for dealing with their clients and with the courts.

One rather humorous development occurred at some point: About two years ago, perhaps three, Harvard announced a $2.5 million program for training in trial advocacy. Some columnist remarked that perhaps the chief justice could be wrong about his evaluation of courtroom. performance. But the chief justice and Harvard Law School could not possibly be wrong.

There has been a very wide change in the content of the curriculum of the law schools in the past five years. I'm delighted, of course, that my old law school came out so well in the trial advocacy program. It was really remarkable that they came out as one of the two top in the United States, given the great resources and advantages of some of the other law schools.

Well, as a student at your old law school, I make no pretense of not being chauvinistic. Students at William Mitchell are very much aware of the fact that last year the trial advocacy program was awarded the Emily Gumpert award by the American College of Trial Lawyers, as you know.

The Mitchell college team was runner-up in the national competition as well.

Yes -yes it was. So there are two, I think, very good bits of evidence that the program is doing something right. In addition, at William Mitchell -again you are certainly familiar with this -we have a highly developed clinical program which enables students to follow their interests, be it civil litigation or criminal law, labor law, administrative law, and actually to get out and work under the supervision of attorneys. Do you see-that as a valuable part of law-school training?

Very much. Not only a valuable part, I think: an imperative part Now we musn't deceive ourselves. Law schools can't make trial lawyers; they can't make finished practitioners any more than medical schools make physicians and surgeons.

Unlike lawyers, however, physicians and surgeons go through internships after they finish, their basic medical education. Then they go through residence programs and they are not permitted to conduct

operations in hospitals until they have satisfied the staff of a hospital [that] they are competent, and their work is monitored by senior doctors and incompetents are weeded out.

We haven't had anything like that in the law, and, unless we think that people's rights that come in litigation are less important than their health, very much less, we should have been doing something about this a long time ago.

What encourages me is a change in the attitude of both the profession and of the academic community- in recent years. I think we are going in the right directions now, and it will produce better practitioners.

Now let me emphasize this: Our law schools have done a superb job of training the students, the future lawyers, in legal analysis, legal thinking, but that isn't enough. That is just the beginning, just as it is in medicine. How to do it, how to take care of the client's problems, requires some additional training, and that must begin in the law schools. It can't be finished there, but it's got to begin there, and I think we now recognize that.

Might it be an idea to go beyond, to draw on your parallel with medicine -to go beyond the beginning in law school and perhaps institute something like a residency program once a lawyer gets out of school and begins to practice? Some sort of peer evaluation and continued training: is that practical?.

That's got to be done. In the federal court system, as a result of some of these, as part of some of these developments, we now have pilot programs going on in a number of districts requiring an examination before a lawyer is permitted to try cases in the federal courts.

That includes the written examination to be sure they have at least read the Federal Rules of Civil and Appellate Procedure and the Rules of Evidence, and that they have had some exposure to the practical processes of preparing a case for trial, selecting a jury, how to ask questions and how not to ask questions.

We won't have a report on those pilot programs for perhaps another year or two, but I am hopeful that we will have the federal system in every district in the country requiring some proof of capacity before a lawyer can walk into the courtroom and try cases. There is resistance to that, but it is diminishing. I do not intend to let up on this point.

There is perhaps a greater recognition that person's liberty and property is as important as his health?

Or at least somewhere approaching that importance and that something needs to be done about it.

Mr. Chief Justice, thank you very very much for your time. This has been an honor and a privilege.

I'm delighted. Each time I come back and see the progress of Mitchell college, when I think of the days when I attended, when we had that old Victorian mansion up near Miller Hospital with between 300 and 400 students at most…

And now I see the magnificent plant and the opportunity that the college now has to train lawyers who for one reason or another cannot or elect not to attend a day school. This is a great development, and I share the pride of all the students and the alumni of the school in what has become truly a great law school.

Image

Informal, black and white group photograph of Warren E. Burger addressing a group of students captioned: Katie Fashant (pictured in the center) listens intensely to Chief Justice Burger in Hachey Commons in the Spring of 1989.

Image

Formal, black and white portrait photograph of Warren E. Burger

Image

Black and white photograph of Warren E. Burger addressing a large group of people in an auditorium. Captioned: U.S. Supreme Court Chief Justice drops in at William Mitchell. Chief Justice Warren Burger paid an unexpected visit to WMCL on Monday, August 16. Burger, who is a 1931 alumnus of the school, addressed the incoming class of 330 students between orientation meetings. Said the Chief Justice. "Whatever your goals may be, whatever your ambition, just remember that you can always get there from here."

Chief Justice Visits Alma Mater

From the September, 1979, edition of the *Opinion*

On August 15, Chief Justice Warren E. Burger (Class of 1931) visited William Mitchell College of Law, touring much of the campus. He also met with members of the administration, faculty, and office staff, as well as Student Bar Association leaders, including SBA officers Sue Bates and Bob Birnbaum.

The Chief Justice was very enthusiastic about the efforts of the College to create a legal education center on campus, and urged that it be expanded to include a variety of bench and bar related entities. He also remarked that he was very impressed with the recent renovation of the physical plant at Mercer, where similar efforts had been completed.

Chief Justice Burger departed for Washington, D.C. on an afternoon flight, retun1ing to host a farewell dinner for Attorney General Griffen Bell. Dean Burton acknowledged his appreciation of the visit, saying, "It was very gracious of the Chief Justice to take time from his very busy schedule in order to visit our campus."

BURGER ERA BEGINS

by Roger A. Christianson

From the October; 1969, edition of the *Opinion*

Seldom in American history has a man been given the opportunity to affect the lives of all his countrymen and those of future generations. The power of the Supreme Court, good or evil, can scarcely be underestimated. If it cannot shape the destiny of our country, it unquestionably can exert an enormous influence in that direction.

Thus, it was with great pride that William Mitchell College of Law greeted the nomination and Installation of Warren E. Burger as the 15th Chief Justice of the United States.

The nomination not only represented the additional contribution of the state of Minnesota to a position of national leadership, but also was a great victory for the night law student. There never before has been a night law student present on the Supreme Court

Chief Justice Burger's appointment bears special significance in a period of important social and economic change. The new Chief Justice when appearing before the Senate Judiciary Committee refrained from espousing any fixed doctrines and since his appointment has carefully avoided obvious attempts by national writers to label his political philosophy. His efforts are most appreciated in avoiding any erosion in the politics of hope and individual rights. Those who attempt to label Burger at this point are making a great mistake based on the views of those who know him best.

Born in St. Paul in 1907 Justice Burger lived his early life on that city's east side where he attended public high school while carrying newspapers and working at various other part-time jobs. Following his graduation from high school he attended the University of Minnesota for two years and then entered night law school at what was known as the St. Paul College of Law. As do-most evening law school students, he worked during the day while attending classes at night.

Justice Burger was an outstanding law student and was graduated in 1931 with the L.L.B. magna cum laude. Immediately upon graduation he became associated with the law firm of Boyesen, Otis and Faricy. Justice Burger eventually became a partner in that firm which was later to become known as Faricy, Burger, Moore and Costello. He practiced law in St Paul until 1953 when he was named an Assistant Attorney General of the United States. During his two years with the Attorney General's office he distinguished himself as chief of that office's civil division.

Soon after his graduation from law school Justice Burger joined his law partner James C. Otis, as a member of his alma mater's part-time faculty. He taught courses in contracts and trusts and later became a member of the law school corporation. He continued to teach and to serve as a corporation member until leaving for Washington upon his appointment as Assistant Attorney General.

During his years of practice and teaching in St Paul, Justice Burger was active in Bar Association work and civic affairs. Years later he was to give this advice to his law school's graduating seniors:

"It makes little difference which political party you decide best expresses your point of view. A political party is merely a tool, a means to an end. But identify yourself with one of them. Never be afraid of any local, state or national area -never, never be afraid to take sides no matter how controversial the occasion or the problem may be."

In 1955 and again in 1964 Justice Burger delivered commencement addresses at his alma mater. He has continued to take an active interest in his law school and is numbered among its most generous and loyal supporters. In 1964 William Mitchell College of Law bestowed upon him the honorary degree of Doctor of Laws. The citation, prepared by one of Justice Burger's oldest friends, Harry A. Blackmun, Judge of the· United States Court of Appeals for the Eighth Circuit and a member of the school's Board of Trustees, read in part:

"He has stood for Integrity In profession, for vigor in advocacy, for responsibility in government, for progressive change, and for the resolution of human problems."

In 1955 as Justice Burger was about to leave his position with the Attorney General's office and return to the practice of law in Minnesota, he was nominated by President Eisenhower to fill a vacancy on the United States Court of Appeals for the District of Columbia. Since that date he has served as a distinguished member of that Court which deals with so much controversial and difficult litigation.

Throughout his career the new Chief Justice has been interested in legal education and in the improvement of the profession. His article, A Sick Profession, 21 Fed. Bar J. 228 (1967), attests to his interest in the training of the legal bar and his concern for its prestige. He has given generously of his time to Phi Alpha Delta Law Fraternity's Inns of Court program, a program designed to produce interest and competence in advocacy among law students. He served as chairman of one of the subcommittees of the American Bar Association's Committee on Minimum Standards of Criminal Justice and, when Judge J. Edward Lumbard stepped down as chairman of the entire committee Justice Burger succeeded him.

His associates in the local bar remember him as a fair yet vigorous advocate and he enjoys their highest esteem and respect. There has been and will continue to be great speculation over the course that the court may take under his guidance; as to this, only time will tell. However, those who know Justice Burger are confident that his leadership will be firm and that his decisions will be sound and these virtues are of the utmost importance in these difficult times.

Night Visitor

From the December, 1980, edition of the *Opinion*

There they were, minding their own business -students Lynn Zentner and Mary Stanislav, studying in the state public defender's office, at William Mitchell around 9 p.m. the day after Thanksgiving.

Then they heard a voice~ "Who's minding the store around here?" ·

"It's Charlie; the guard." they thought, without looking up.

Then the owner of the-voice introduced himself. He turned out to be an: old grad - who had achieved a modicum of success in his legal career.

Warren Burger was his name and Chief Justice of the U.S. Supreme Court was his game.

Burger, in his home town for the Thanksgiving holiday, was visiting his alma mater along with his nephew. Since it was the day after the holiday itself, Burger expected to find classes in session and perhaps, Dean Geoffrey Peters in his office.

He settled for Zentner and Stariislav. He chatted with them for 20 minutes or so, touching on such topics of his days as student, and then adjunct professor, at Mitchell: his views on law school faculties, the need for trial advocacy program, and Mitchell's move to a new building.

Then he was off. But, before he left the quiet, empty building, Burger delivered a message for Peters:

''Tell him this is a night law school."

Please, Mr. Chief Justice, *Evening* law school.

Image

Formal, black and white profile photograph of Warren E. Burger

Chief Justice Burger Stresses Importance of Courtroom Etiquette

The importance of ethics, professional responsibility and proper behavior in the courtroom., where "too often ... the conduct of the lawyers resembles the people in the back alley or barroom brawl," was emphasized by Chief Justice Warren E. Burger, '31, in his remarks at both the student convocation and the dedication program Oct 29.

Calling it the "essence of advocacy in the courts," he said proper behavior is "the lubricant of a civilized society, and keeps the inherently pretentious adversary system that we employ from becoming something like a barroom or a back alley brawl."

Chief Justice Burger urged that American lawyers follow the example set by the British system, which places great emphasis on manners and decorum in the courtroom. There lawyers learn the· importance of proper etiquette and professional responsibility early. He quoted advice given him many years ago by James C. Otis, Sr., father of Minnesota Associate Justice James C. Otis, that with the proper manner you can say almost anything to a judge in the courtroom.

'Law students from their first day in law school should be trained in ethical standards and the manner to be applied in the courtroom, said the chief justice. "It is sometimes said that we have too many lawyers in the United States, and l don't know whether that's true or not," he said. "We don't have too many *good* lawyers."

The most important thing in determining an effective lawyer is judgment, said the chief justice. "If scholarship and learning are not backed up by judgment, the lawyer is not an effective representative for his client"

As an evening law school William Mitchell can help students develop judgement by giving them exposure to teachers who can relate their own experience and judgment gained in the daily practice of law, and by giving the students the opportunity for a combination of both work and study. All but two of the chief justice's classmates worked while going to school. ''Blending their daily learning with their daily work they developed a high degree of judgment, he said.

Chief Justice Burger compared the situation to the British system. where barristers receive on-the-job training as did many famous legal minds in American history. "We grew up in the tradition of these men and women," he said.

In the student convocation. Chief Justice Burger urged the students to, as lawyers, take a critical look at the present legal system for needed change, and not to be afraid to try something new. ''If it doesn't work, back up and start over again. That is the genius of common law." he said, adding that they should always keep this in mind and not hesitate to tell the judges, the legislators or the public that there may be a better way of doing things.

At the dedication program, Chief Justice Burger praised William Mitchell's new facilities, but reminded his audience that the law school is made by "its faculty, its students, its spirit and its attitude.” Behavior,

ethics, professional responsibility and professional conduct should be at the top of the students' aspirations, because "people judge the Bar on what they read and what they see and what they hear about the conduct of lawyers; all the learning and all the scholarship in the world will not change that… Without these things the profession will not maintain the confidence of the public and it will not deserve the confidence of the public. If you will demand adherence to these great standards then this magnificent building that you now have will be more worthwhile, but if you fail to make that the primary object of your law school career, then no building will do it for our profession."

WMCL To Dedicate New College Campus

From Summer, 1977, *Alumni Rap*

Chief Justice Warren E. Burger, '31, will participate in the dedication ceremony for the new campus of William Mitchell College of Law, Saturday, Oct 29, on the college grounds.

Chief Justice Burger will speak at the dedication ceremony as well as a student convocation preceding it.

The day will begin with the convocation for students in the St. Paul's United Church of Christ at 1:30 p.m. The dedication ceremony, to be held on the college lawn, will include greetings by William Mitchell grandson of Justice William Mitchell, for whom the college was named. There will also be remarks by Dean "Bruce W. 'Burton and Judge Ronald E. Hachey, '43, president. of the William Mitchell Board of Trustees, and special music by the Augsburg Brass Quintet. Msgr. Terrence l Murphy, president of the College of St. Thomas, will give the invocation.

A reception and tours of the campus will follow the ceremony.

Formal invitations to the dedication ceremony have been sent to all alumni. Any alum who has not received an invitation is encouraged to contact the Development Office so that an invitation may be forwarded.

Warren Burger, Mrs. William Mitchell Help Dedicate New College Campus

From the Fall, 19n, *Alumni Rap*

“This afternoon we salute William Mitchell's brilliant past; we commend William Mitchell to a noble future!" declared Judge Ronald E. Hachey, '43, president of the William Mitchell Board of Trustees, at the campus dedication ceremony Oct. 29.

Chief Justice Warren E. Burger, '31, highlighted the day with special remarks at both the dedication ceremony and the student convocation preceding it. Mrs. William Mitchell, wife of the grandson of Justice William D. Mitchell, for whom the college is named, brought greetings to the dedication audience from her husband, who was unable to attend the celebration.

The student convocation, held in St. Paul's United Church of Christ, drew an enthusiastic audience of students, faculty and staff to hear Chief Justice Burger's remarks and the announcement of special student award winners. There were also remarks by Harvey Reid, donor of the new Warren E. Burger

Entrance Scholarship, Justice Rosalie E. Wahl, '67, for whom the new Rosalie E. Wahl Moot Court Competition Award is named and Student Bar Association president Albert Bonin, '79.

The winners of these awards were announced and introduced to the audience.

Following the convocation the crowd moved across the street to a bright yellow and white striped tent on the college lawn, to the music of the Augsburg Brass Quintet There they were joined by alumni and other friends of the college for the dedication program.

Chief Justice Burger was introduced at the dedication program by Justice George M. Scott, '51, of the Minnesota Supreme Court. Dean Bruce W. Burton welcomed the audience and introduced special guests present, including Mrs. Warren Burger, Mrs. William Mitchell. Mr., and Mrs. Harvey Reid, Minnesota Supreme Court Justices James Otis, Walter Rogosheske, Fallon Kelly, John Todd, Lawrence Yetka and Rosalie Wahl; Federal District Judges Harry MacLaughlin, Edward Devitt, Miles Lord and Donald Alsop; Minnesota Attorney General Warren Spannaus; Minnesota State Treasurer James Lord; David Donnolly, immediate past president of the Minnesota State Bar Association; Dean Carl Auerbach and Associate Dean Robert Stein, University of Minnesota Law School; President Paw Wildman of Southwestern University School of Law; Dean James White, Consultant on Legal Education of the American Bar Association; and Prof. Millard Ruud, Executive Director of the Association of American Law Schools. Also present were members and spouses of the Board of Trustees and the William Mitchell Alumni Board of Directors.

Monsignor Terrence J. Murphy, president of the College of St. Thomas, gave the invocation at the dedication program.

Following the program wine and a large array of hors d'oeuvres were available under another tent around which people gathered to meet old friends and discuss the day. Members of the Law Spouses were available to furnish information to those who wanted to tour the college building and the Legal Education Center.

The day climaxed with a special dinner at the St. Paul Athletic Club in honor of Chief Justice Burger. The guests were entertained by members of the Minnesota Opera Company. The executive vice president of the St. Paul Area Chamber of Commerce, Amos Martin, presented President Hachey with a plaque honoring William Mitchell College of Law.

The highlight of the evening was the unveiling of ail oil portrait of Chief Justice Burger which will hang in the college hall.

Image

Black and white, group photograph of five people seated on a stage captioned: Left to right: Monsignor Terrence Murphy, President - College of St. Thomas; George Scott, Associate Justice, Minnesota Supreme Court, Mrs. William Mitchell, granddaughter of William Mitchell; Chief Justice Warren Burger, Supreme Court of the United States; Ronald E. Hachey, Judge, Ramsey County District Court.

Law School Honors Chief Justice Burger

From the Winter; 1977, edition of the *Alumni Rap*

Chief Justice Warren E. Burger; '31, of the U.S. Supreme Court, has been honored as the most distinguished ,judicial alumnus of William Mitchell College of Law.

Dean Bruce W. Burton and Asst. Dean Marvin, J. Green, '60, visited his Supreme Court Chambers in Washington, D.C., Dec. 9 to present rum with a framed picture of the new law school building, along with sepia prints of the seven buildings in which the school and its predecessors have been located.

During their visit to his chambers, the deans and Chief Justice Burger discussed William Mitchell and legal education in general. The Chief Justice showed the deans his actual '"working office" which contained many artifacts, mementos and law books in use at the time for analyzing and writing of opinions.

Dean Burton said the Chief Justice also showed the deans some "outstanding" pieces of art, including an oil painting of his Swiss grandfather and an early photograph of the building which had been the home of the St. Paul College of Law when he attended and later taught there. Both were hung in the "inner" office.

"Chief Justice Burger recalled very vividly the days when he was an evening law student while working as an accountant to finance his legal education," said Dean Burton. "He also recalled the Summit Avenue area where the new (school) quarters are located, since he had been a long-time resident of Summit Avenue prior to his appointment to the federal bench.''

Asst. Dean Green commented on the vigor and "impressive personal impact" of the Chief Justice's presence and his alert memory of persons and things from his days in St. Paul.

Both deans were impressed with the heavy work load of the Chief Justice, and his generosity in taking time to meet with them. During their visit the Chief Justice received several emergency telephone calls from various parts of the country involving problems of the federal district and federal circuit courts. Preparations for conferences the next day prevented him from accepting an invitation to a banquet that evening honoring departing Majority Leader Sen. Mike Mansfield and Minority Leader Sen. Hugh Scott at the White House, said the dean.

“The Chief Justice works a bone-crushing schedule, and I don't really see how he can keep up with all of the demands on his time,'' said Dean Burton.

Image

Informal black and white snapshots of Burger and another man looking at blueprints on a table. Captioned: Left, the Chief Justice and Dean Hogg go over the plans for the Warren E. Burger Law library which was completed in the summer of 1990.

Image

Informal black and white snapshots of Burger and three others making small talk. Captioned: Above, Chief Justice Burger and Minnesota Supreme Court Chief Justice share a light moment at Homecoming 1988.

NASTY HABITS

Tamara Tegeler

Paul McCartney Concert: Ames Iowa

We arrived in Ames about two hours before the concert was scheduled to begin, found a convenient parking spot, and wandered around seeing the wondrous opportunities McCartney had creating for the Iowegian economy. Three airplanes circled the stadium with banners chiding McCartney and his band about their anti-meat crusade which said: 1) "Ames Welcomes Paul MooCartney," 2) "I Wanna Hold Your Hoof," and 3) "Paul, Don't Have A Cow, Man." The concert was held outdoors at the University of Iowa Cyclone Stadium. Beyond lacking basic organizational skills in herding a crowd and having no garbage cans, the concert/extravaganza was handled fairly well.

I don't think I've ever been so impressed with the sound quality at a concert before. The people who arrange the sound system deserve medals. My stereo should sound so good! McCartney was eager to perform and in full control. His voice was deep, full, and forceful. He wailed and screamed and gave it his all. I've never heard him sound so good. There were all those special vocal qualities that make your favorite McCartney tunes stand out, but better.

McCartney did several songs from his new album, 'Flowers In The Dirt,' and his solo career, but a very healthy part of the concert was Beatles material. He took the stage just after dark with his Hofner bass and started off with "Pieces of Eight." The first Beatles song he performed was “The Long and Winding Road." Shortly after, McCartney went into an awe-inspiring version of "Sgt. Peppers" with a guitar solo we mere humans felt privileged to experience. Hopefully, the Iowa performance of "Sgt. Peppers" will be on the impending tour album. I was thrilled when they launched into "Birthday." Considering its competition, I really thought it had no chance of making the final play list. After asking the crowd if we still had enough-energy to dance, McCartney went into a rambunctious, played-up version of "Can't Buy Me Love." It was a million times better than the mono recording they graced us with on the CD. The bad was really rockin', you could tell they were having fun on stage. The funky version of "Comin' Up" was quite a production number -again the CD version is lame and could not compare.

Perhaps the grandest concert spectacular of all times came late in the show when the lights came up to show McCartney sitting at the piano and he sweetly started to sing: "When you were young and your heart was an open book ... " The guitars were thunderous. There were explosions, smoke, and green lazers flailing wildly in formation with the music. This was the "Live & Let Die" to end them all. Near the end, green lazers surrounded McCartney at the piano like some kind of surreal forcefield as he closed the song. This in itself was almost worth the price of admission.

There was so much material to choose from over the span of his career, its hard to imagine how McCartney made the selection for the concert. Other than what was previously mentioned, the concert included equally enthralling and well performed versions of: "Jet," "Band On The Run," "Back In The USSR," "Eleanor Rigby," "I Saw Her Standing There," and the near mandatory singalong "Hey Jude." McCartney also did a short tribute to John Lennon, singing a mix of "Strawberry Fields," "Help," and "Give Peace A Chance." For the encore, McCartney came out alone, armed only with a guitar, and sang "Yesterday." The finale was ''Carry That Weight" from 'Abbey Road.'

Even though the "I'm-a-veggie-Linda's-a veggie-wouldn't-you-like-to-be-a-veggie too" mentality didn't go over too well, McCartney seemed genuinely happy and enthusiastic. He was all waves and smiles. Throughout the entire concert he worked the crowd like the pro he is. (He must have mentioned Iowa or some to part of the Midwest at least ten times just to hear the crowd yell). After a decade of mediocrity,

this concert reaffirmed my failing faith in Paul McCartney. One tends to forget the brilliance of his music and become acclimated to what an extraordinary talent McCartney is, but the beauty comes in rediscovering, really listening, and not taking the music for granted.

Jeff Lynne: Armchair Theatre

Its amazing. Jeff Lynne looks and sounds just like he did in the seventies. All the hallmarks of ELO continue. The lush, layered sound of synthesizers, strings, rich harmony, and catchy melodies are here. Every twang, every crescendo and swell will sound familiar. Lynne has definite talent for blending classical and fifties music with a Beatles sound for a style that's uniquely his own. Lynne's style is so obvious, if he has even breathed near a recording you can tell. On 'Armchair Theatre' Lynne continues this tradition with a little help from famous friends including: George Harrison, Bob Dylan, Tom Petty, Steve Winwood, and the late Del Shannon.

Three of the eleven tracks on 'Armchair Theatre' are remakes of oldies you wouldn't expect to hear on a current pop album: "Don't Let Go," "September Song," and "Stormy Weather." "Don't Let Go" is a happy, boppin' rockabilly tune (complete with saxes) that suits Lynne's talents perfectly. Lynne does competent, traditional versions of the old standards; "September Song" and "Stormy Weather." His voice is pleasant and powerful enough to pull it off, but the originals remain supreme. Both songs have more slide guitar than necessary and they brought to mind warped visions of Don Ho in possible videos.

The current single "Every Little Thing" (NOT the Lennon-McCartney song) is most like the power-driven pop of ELO you probably remember: dippy lyrics, but catchy. 'Lift Me Up" follows a close second for the ELO clone title with the slower, but big production number swells and high-pitched background vocals. "Don't Say Goodbye" is a slow, even tempo song that seems dreary in comparison with ''Now You're Gone" and "What Would It Take." these three songs are merely variations on a common lyrical theme. Just don't listen to the words and the blatantly obvious theme won't bore you, but then the plodding similarity of the tunes may. Lynne closes the album with some oh-so-subtle environmental preaching in accord with today's rock-with-a-conscience trend on "Save Me Now." He is the earth singing to us about its woes. Like most songs in this genre, there was good intent, but its a good thing the song is short.

'Armchair Theatre' is a competently performed and well produced album. Most of the songs focus on relationship -love lost/love about to leave -nothing terribly deep or original, but pleasant for listening value. If you never liked ELO or are still sick of them, don't buy this album.

Book Review

By M. O'Sullivan Kane

By Gabriel Garcia Marquez
Chronicle of a Death Foretold
143 pp. New York:
Ballantine Books. $5.95

For years South America, India, Africa, and other countries, ethnocentrically dubbed by western writers and critics as "non-western world literature," or "third-world literature," have-been as overripe melons,

baking and splitting in the sun and pouring forth a literary manna few Western, mass readers have yet to taste. No amount of urging this manna on the end of any cultural spoon is enough. Such writers as Marquez, Achebe, Rushdie, ..._ etc., must and should be read. It is nothing less than deliberate ignorance and cultural shortsightedness to exclude these and other writers from our "canons" of literature.

It is difficult to offer up this slim volume from Marquez's opus without suggesting, strongly, that the remainder be read. However, if you have relegated his works to summer reading for summers yet to come, this novella will provide an elegant appetizer to such works as *One Hundred Years of Solitude* and *Love in the Time of Cholera*. But do not, for an instant, imagine that this work is any less a feast than all the rest.

One critic aptly distilled the character of this book into the description; "a metaphysical murder mystery." Marquez constructs his story and characters around the murder of a man that resulted from the rejection of a newly wedded bride due to anatomical "defects." The murdered man was widely known in the village to have perpetrated these defects. In response, the twin brothers of the bride salvage the family honor by killing the man.

However, there is no culmination of a plot, no psychological conclusions to be drawn, nor any justice, in the form of some roughhewn detective, done. Rather, Marquez uses the murder as yet another incident in the villagers' lives which are filled with greater and lesser private and public incidents. With Marquez, it is never the end result of the story, but the manufacturing of the story which renders the reader awestruck.

Characteristically, Marquez treats us to fascinatingly simple and complex characters such as the murder man's mother, Placida Linero, who has a reputation for accurately interpreting others' dreams, if they are told to her on an empty stomach. However, with loving irony, Placida was unable to divine "any ominous augury" from her son's dreams just prior to his death.

An explanation of the action in the novel is an exercise in the ridiculous. It is important to understand that Marquez is like a loving god, an amused and bemused observer to his creations' behavior. The only intervention is the moment at which he decides the story must be begun and at which point it will end. It is the telling of the tale wherein lies genius. His prose style is the experience. In a voice that surely is as enduring as Homer's, Marquez reminds us of one of the elements of literature that has been largely lost since the advent of mass-marketed books; the importance of the voice of the author and the consummate craftsmanship in that element alone that can still be attained. As a reader, I cannot stress enough the greatness of this writer. Or his place in the celestial spheres of literature. Any work of his a relished read. In approaching this "critique" of Marquez, I am reminded of Shaw's words; "a critic is a legless man teaching running."

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