

March 25, 1999

The accused stood charged with violating the Northwestern University School of Law Honor Code, Article I, Section 2(h), which reads: "A violation occurs when a student knowingly...undertakes an activity or course of conduct with the purpose of creating an unfair competitive advantage over other students." By a unanimous decision, the Judicial Council returned a verdict of not guilty. The facts and the reasoning for the Judicial Council's decision follow.

The accused took an examination in Banking Law at the end of the Fall semester, 1998. The proctor at the examination, which took place in Williams with approximately 7-10 students, claimed she witnessed the accused write for approximately thirty seconds after time had been called. The accused subsequently admitted writing over time. Disputes remained, however, as to both the amount of time and the substance and length of the answer added after time had been called.

The proctor of the examination testified that the accused added two lines of content to his answer to Question 13 of this 15-question examination. Her basis for this claim rested on her belief that the last two lines of the space provided for an answer to Question 13 had been blank immediately following the end of time allotted for the 40-minute examination. The accused admitted adding two words to his answer to Question 15 of the examination along with the words "OUT OF TIME" at the bottom of this last page of the examination. The last two lines of space available for Question 15 remained blank. Two main factors influence our decision in this case.

First, as to the factual dispute, our attention rested on the *consistency* in the proctor's and the accused's testimony. The physical evidence, the examination itself, confirmed the two blank lines of space noted by the proctor. However, the two blank lines in the completed examination were for Question 15, whereas the proctor claimed she noticed them in connection with Question 13. The proctor's vantagepoint, across the room from the accused's seat, furthered our doubt as to just what the proctor had seen. This, coupled with the fact that no other witness seated around the accused during the examination saw two blank lines in conjunction with Question 13, led us to our conclusion. We considered it reasonable to conclude that the space she had seen on the answer sheet was that at the end of Question 15, and not the last two lines of space provided for Question 13. Guilt beyond reasonable doubt became difficult to conclude upon our examination of the physical evidence.

Second, once the factual discrepancy had been resolved, we faced the issue of the accused's admitted conduct. As noted, the accused admitted adding two words to his answer to Question 15 and the words "OUT OF TIME" at the end of the examination. To have violated the Honor Code, the accused must have "knowingly...undertake[n] an activity or course of conduct with the purpose of creating an unfair competitive advantage." We concluded that, under these circumstances, the addition of the two words used could not have been reasonably anticipated to create an "unfair competitive advantage." However, our decision on this issue, and our ultimate holding in this case, may give rise to serious concerns about the examination process. In light of this possibility, we take this occasion to indicate what we do not decide and the limits of our holding.

We do not, by any means, create a *de minimis* exception to the general rule against writing over time in an examination. We reach our decision due to the context created by the content of Question 15 and the accused's response to that question. The addition of two words in light of this context did not rise to the level of intent required by the Honor Code. That is not to say that the addition of two words—or even one word—might not, in another context, be enough to rise to such a level of intent. The addition of the words “OUT OF TIME” was of no consequence to our ultimate disposition of this case.

NORTHWESTERN SCHOOL OF LAW JUDICIAL COUNCIL

Majority Opinion

March 26, 1999

The Accused in this case was charged with violating Article I, Section 2 (h) of the Honor Code, in that on December 15, 1998, during the Federal Individual Tax Exam, the Accused wrote approximately three minutes over the time allotted for the exam. We, the Judicial Council have unanimously found the Accused not guilty. The relevant facts of the case and our reasoning in coming to this decision follows.

On December 15, 1998, the Accused took a self-scheduled, Federal Individual Tax, exam in Hoyne from 9 a.m. until 12 p.m. There were approximately twenty other students in the room. It is unknown whether any other student in the room was taking the same exam. At 12 p.m., the proctor of the exam entered the room and stood at the desk in front of the room (where a professor would typically stand to lecture). The proctor verbally notified the students that the allotted time had expired. Once time was called, students stopped writing, packed their belongings, and delivered their exams to the proctor. However, at this point, the proctor witnessed two occurrences that created the alleged violation at issue: (1) the Accused writing on the exam for approximately three additional minutes and (2) the Accused clicking a calculator three times during those three minutes. From the proctor's vantage point, the proctor was neither able to see the substance of what the Accused was writing nor the substance of what the Accused was calculating. After witnessing these activities for three minutes, the proctor told the Accused specifically to stop working and to hand the exam in. The Accused complied with this instruction. The proctor then reported this alleged violation to the Honor Code Prosecutor.

At trial, the Accused concedes all of these facts, but disputes the inference that these actions were a violation of the Honor Code. The Accused testified that during those additional three minutes the Accused was not writing in the exam or answering any further questions. Rather, during those three minutes, the Accused filled in the necessary information on the cover of each of the four bluebooks used, including the name of the Accused, the name of the professor, the name of the course, the identification number of the Accused, the date, and the chronological order of the bluebooks. The Accused further testified that the Accused clicked on a calculator three times to turn it off. The Accused demonstrated this procedure for us during the trial.

Based on these facts, we find insufficient evidence to convict the Accused. Section 2 (h) of the Honor Code is violated "when a student knowingly undertakes an activity or course of conduct with the purpose of creating an unfair competitive advantage over other students." However, in this case, no such activity was established. The proctor was the only prosecution witness and was not able to testify as to the substance of what the Accused was writing or calculating. The proctor was unable to testify whether the Accused was writing inside the bluebook or on the outside. The proctor was unable to testify whether the Accused was calculating answers or shutting down the calculator. That evidence is crucial in establishing that the Accused engaged in a course of conduct that created an unfair advantage.

Clearly, in some cases, an inference of wrongdoing could be drawn. However, in this case, the Accused's explanation was entirely consistent with the testimony of the proctor and plausible. Therefore, the prosecution did not prove its case beyond a reasonable doubt. This decision in know way gives license to students to write in their exams past the allotted time. Obviously, if we believed that the Accused continued answering questions in the exam for three minutes, Section 2(h) would have been violated. Even writing in an exam for mere seconds after the allotted time could constitute a violation of Section 2(h). However, the only issue in this case was a factual one – whether the Accused actually did write in the exam for three minutes. And in answering such a question, there need be more than speculation.