

## 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.