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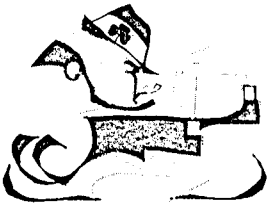


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Dooley's Dictum

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NOTRE DAME

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The clerkship story LAW LIBRARY

More students seek clerkships

By JIM KEARNS
Dictum Staff Writer

"William J., I'm William J." Such might be the words with which William J. Maledon introduces himself in July of 1972 to Justice William J. Brennan of the United States Supreme Court (see story below). As a clerk for Justice Brennan in 1972-73, Maledon will be the third graduate of the Notre Dame Law School since 1967 to clerk for a justice of the nation's highest tribunal.

Frank Gregory was a clerk for the same Justice Brennan in 1967-68, and Paul Meyer clerked for Chief Justice Earl Warren in his last term, 1968-69. And now, according to Professor Frank Beytagh here, himself a clerk for Chief Justice Warren in 1963-64, about one-third of the class of '72 at this law school have expressed interest in obtaining a clerkship of one kind or another.

What does a clerkship entail? Why is it a position to be sought after? How is it to be obtained? With such questions as these, this writer went to Professor Beytagh, and the following paragraphs are largely the result of that interview.

What is involved in a clerkship varies with the personality of the judge and with the type of court the clerk serves; hence, his job can be defined no more precisely than "doing whatever is assigned by the judge to assist him in performing his duties." What this vague charge comes

down to in practice depends mainly on whether the court is a trial court or an appellate court. Broadly speaking, the clerk of a trial court is concerned with the day-to-day preparation of cases for trial and with the process of litigation; he is, for the most part, oriented toward facts and procedure.

On the other hand, the clerk of an appellate court is more concerned with providing the judge with background information on the case at bar, and with finding the law relevant to the issues involved; he is more conceptual and intellectual in his outlook. Such a clerk may well make recommendations to the judge, and help in writing opinions. (Beytagh was quick to point out, however, that the clerk's influence is not so great as to make him, as some believe, a "mini-judge.") Beytagh himself, for instance, served Chief Justice Warren by preparing memoranda which discussed the issues and arguments of a case, by making recommendations, by researching the law involved, and by helping to write opinions.

The usual term of a clerkship is one year, although in isolated instances a judge may prefer two-year terms. But even though the assignment is not a long one, it is, according to Beytagh, a "terribly important experience". The reasons are primarily these two: first, a clerkship of any kind -- trial or appellate, State or Federal -- is a good "bridge" between law school and active practice, be it private, corporate or governmental; it gives the

graduate some "breathing room" for a year, and provides him with an early perspective on the most important thing he will deal with - the courts.

Besides being a good bridge from the classroom to the office, a clerkship also offers the advantage of an additional credential in the graduate's resume, and thus makes him more interesting to prospective employers. The year spent in attaining this feather in one's cap is usually not one of financial deprivation, either, for the clerks' salaries are now reasonably competitive with the offers made by other employers to new law graduates.

Obtaining a clerkship, though, is much easier said than done. Judges look for the "best" people they can find, which usually means an excellent academic record and participation on the law journal. While this latter criterion is still widely adhered to, its importance is slowly diminishing to the extent that the role of the law journal itself is diminishing in the law schools, sharing its prominence with legal aid and moot court organizations.

As for obtaining a prestige clerkship, affirmative assistance from the faculty is absolutely essential, due to the many competitors for such positions. Even with faculty assistance, such as that received by Maledon from Dean Shaffer and Professor Beytagh, success is far from guaranteed, because many of the top clerkships have traditionally been the province of schools such as Harvard and

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Maledon wins S.C. clerkship

The recent announcement of William J. Maledon's appointment as a clerk to Justice William J. Brennan of the U.S. Supreme Court marks the second time in five years that Justice Brennan has chosen a graduate of the Notre Dame Law School for the coveted position.

This year's Editor-in-Chief of the Notre Dame Lawyer will hold, from July, 1972, through June, 1973, the same position as did Notre Dame Law graduate Frank Gregory in 1967-68.

Justice Brennan announced his choice of Maledon at the end of September, a month after Dean Thomas L. Shaffer and professor Frank Beytagh, Jr. had submitted Maledon's name as Notre Dame's nominee for the clerkship.

A graduate of Loyola University in Chicago, Maledon was co-winner of the award for the highest grades in his first-year class here, and was sole winner a similar award at the end of his second year.

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The tenth justice

Bob Lueck

Despite the thousands of words which have been written recently about the resignations of Justices Black and Harlan and the impending political struggle over the naming of their replacements, a recent cartoon by the *Washington Post's* uncanny cartoonist, Herblock, depicted the Court's current impasse the best: the Court as he portrayed it had not nine justices but actually ten. The tenth justice is a familiarly ephemeral, omnipresent character who sits above the bench, not on it, who writes no judicial opinions but instead bides his time and then makes rare decisions which alter the Court's mortal make-up and its path through the fabric of history.

The tenth justice is none other than Father Time and recently he struck twice within the space of a week and removed two of the Supreme Court's most notable figures from the bench. Justice Black, already considered one of the 20th century's most influential jurists, resigned from the Court for reasons of failing health only a matter of days before his death. Six days later, John Marshall Harlan, often Black's opposite on the Court and also a portentous jurist in his own right, followed suit by resigning for reasons of poor health. He is presently undergoing treatment for cancer at the George Washington University Hospital.

The net effect of Father Time's swift sword was to give President Richard Nixon the opportunity to name two more justices to the Court. In his effort to restructure the Court more to his own liking and legal philosophy, he has already put two men, Chief Justice Warren Burger and Associate Justice Harry Blackmun, on the Court. And if the fate of history unfolds the right way, he may be able to name two more justices to the Supreme Court, making a grand total of six Nixon appointees. Justice Marshall is not in the best of health and just how long the venerable Justice Douglas can hold his seat is another question for the tenth justice.

Beyond the current question of who is going to be named to the Court, the relevance of all this judicial-political activity should be clear to us: as practicing lawyers of the future, we will be working with and influenced by the decisions of the Court and the manner in which the administration of justice is shaped and altered by the Supreme Court. There are doubts among several legal scholars, particularly Professor Philip Kurland of the University of Chicago Law School, about the possible falling intellectual and judicial stature of the Supreme Court during the forthcoming years. The doubts have been fostered mainly by the President's unsuccessful attempts to name Haynsworth and Carswell to the Court and his seeming inability or unwillingness to name men of recognized intellectual and legal stature to the Court.

If the President persists in the path he has established during the first two and one-half years of his presidency, then the future Nixon Court may well be portrayed in history as undistinguished. That would be unfortunate since a strong, viable court is needed to lend its authority and power whenever and wherever possible to help solve the pressing issues of the day. But being in the uninfluential position that we are in, the best we can resort to is the simple maxim: "Let us pray."

On the Docket

October 19

First round second year Moot Court arguments, Law School, 101,102, 103, 104; 7:30.

October 20

First round second year Moot Court arguments, 7:30.

October 21

11:15 a.m. Hoynes Forum: Meeting with students interested in practicing in the West - Dean Shaffer; Professor McIntire 6:30 p.m. Cass County Bar Assoc. - Shaffer

October 23

10:30 a.m. - 12:30 p.m. Pre game party Law Lounge (Host: Trial Practice)

1:30 p.m. Notre Dame v. Southern California

October 25

Veterans Day (Classes Meet)

October 28

Mr. Dennis Powell of California

October 29

Rural Legal Assistance, Hoynes Forum, 11:15 a.m., and in other meetings; also, on the 29th, will address Procedure classes

October 30

10:30 a.m. - 12:30 p.m. Pre-game party Law Lounge (Host: Moot Court) 1:30 p.m. Notre Dame v. Navy

Dooley's Dictum

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Subscription rates are \$5.00 per year. They may be ordered by addressing the editors, in care of this newspaper.

Law Wives plan guest speakers, social events

The Notre Dame Law Wives Club has once again scheduled a list of events for the coming academic year which include such activities as a Halloween party for law school children, a toy demonstration and sale at Christmastime and a lecture on "lo-cal" foods.

The Law Wives headed this year by Mrs. Kathy Maledon plan a new and different approach which they hope will provide a better opportunity for the wives to get to know each other. The organization plans two general meetings every month which will include presentations by guest speakers and other social events. In addition, smaller groups of law wives have been formed to take care of special interest events such as swimming, bridge, sewing, gourmet cooking, golf, and bowling.

"Our list of speakers is numerous and varied," Mrs. Maledon stated. "The topics were chosen to deal with every aspect of being a woman; and to stimulate our minds, problems of world importance are being presented."

Upcoming events for the organization include a theatre party for the musical "Hair" when it plays in South Bend and a Halloween party for the children of law students.

November's events include a lecture on "Marriage in law school" by Rev. Dan Boland and a panel on the subject of abortion by Professor Charles E. Rice and Dr. Sue Binkley.

Getting clerkship not easy

Continued from page 1

Yale, or of the judge's own law school. There are some judges, though, such as Justice Brennan and former Chief Justice Warren, who "shop around", and selecting their clerks from various law schools around the country.

Those seeking a clerkship are advised by Professor Beytagh to look for the kind suited to their needs and desires. For example, a student intending to be heavily involved in litigation would do better to seek a clerkship with a trial court than with an appellate court. One whose interests point more toward legal theory would be better trained as an appellate court clerk.

Those who are successful in obtaining a clerkship, at what ever level, are reminded by Beytagh that their performance in those positions reflects directly on the school. "If the clerks from Notre Dame do well," Beytagh says, "the judges will come back for more."

'It won't be done' says Seigenthaler

By BOB LUECK
Dictum Co-editor

In 1969, three criminal cases involving the three major political assassinations of the 1960's were in progress. They were the Clay Shaw trial in New Orleans, the James Earl Ray trial in Memphis, and the Sirhan Sirhan trial in Los Angeles.

Reporters for the Nashville Tennessean covered all three trials for their newspaper and its editor, John Seigenthaler. After the trials had finished, the three reporters and Seigenthaler were lunching together at noon one day and during the course of their meal, they got into a deep and involved discussion of their impressions of the American system of justice as they had seen it in operation during the three trials.

Their discussion was so provocative that it lasted until well past 6 pm that evening, ending with the decision to write a book about the three trials and how badly the system of criminal justice had operated in each case.

On October 1, Seigenthaler discussed his newly published book, *A Search for Justice*, and its conclusions and recommendations before a small crowd of law students in the Engineering Building auditorium. The speech was sponsored by Gray's Inn.

In the Clay Shaw trial, he said, Shaw should never have been brought to trial or even indicted in the first place. Garrison's conspiracy theory was shot full of holes from beginning to end. The New Orleans District Attorney used his power of office to intimidate certain people to testify for the prosecution even though they proved out to be highly unreliable and poor witnesses. They key witnesses were either drug addicts or were suffering from various types of psychiatric disabilities.

DA Garrison was also criticized by Seigenthaler for using the press to promote his various conspiracy theories although as the case progressed along, most reporters were able to see through the DA's sham and balance his statements with several pieces of good investigative reporting.

Seigenthaler also criticized the Judge, Edward Haggerty, for frequently losing control of the courtroom. Some months after the trial, Judge Haggerty was arrested along with several others at a party raided by New Orleans police. The Judge was removed from the bench by the Louisiana Supreme Court.

Garrison was also later indicted in New Orleans on federal charges. Neither Garrison nor Haggerty were criticized by the organized bar associations and both were paradoxically rewarded by the people of New Orleans: they were re-elected to office.

The Ray case brought yet another flurry of criticisms from Seigenthaler, especially of the way Judge Preston Battle controlled the press coverage of the trial and the way defense attorney Percy Foreman conducted himself.

Battle, he said, was desirous of avoiding any possibility of having adverse publicity disrupting the possibility of a fair trial for James Earl Ray and so he put unusually tight clamps on the media. The Judge used the ABA's recently compiled Reardon Report as the source of this authority for control of press coverage of the trial. The control was so stringent that it became a major issue in the trial itself.

In order to cover his defense expenses, Ray had agreed to cooperate with William Bradford Huie and *Look* magazine on series of articles and a book about him and the assassination. A few days before the trial was ready to start, Ray abruptly fired his first attorney, Arthur Hanes of Birmingham, Alabama, and hired instead the famed Percy Foreman.

Foreman took on the case with the agreement that he would get a hefty share of the money from the Huie articles and book. Foreman's trial work consisted of having Ray declared an indigent so that he could receive free legal help from the Public Defender's office, spending about 50 hours investigating the conspiracy theory, concluding there was no conspiracy, and then pleading Ray guilty as charged. For his efforts, Foreman received \$15,000 as expense money and \$150,000 for his fee, not exactly bad pay for defending an "indigent" client.

In the Sirhan case, Seigenthaler criticized the methods of using expert psychiatric testimony in criminal cases. He argued that the McNaghton rule and the Durham rule were inadequate and urged that the American Law Institute's recently devised rule on criminal culpability be used instead. According to him, it has already been adopted by the courts in the federal sixth circuit.

While arguing for reform, Seigenthaler was pessimistic about the organized bar's ability to adequately reform the criminal justice system. They control the system too much already for their own benefit, he noted. They are unwilling to share the responsibility of reform with other relevant groups such as social workers, penologists, and the press.

Propose legal advocacy for retarded

Faculty and student representatives from the Notre Dame Law School met recently with professionals in the field of mental health to discuss the Law School's role in a proposed project concerning legal advocacy for the mentally retarded.

Dean Thomas Shaffer, Professor Charles Murdock, and Professor Charles Rice attended the meeting at Sough Bend's Logan Center, a school for the mentally retarded. Also in attendance were Erin McDonnell, Robert Burgdorf, Thomas Misener, Marcia Pearce, and Gregg Zive, all law students.

As detailed by Logan Center Director G. Linden Thorne, federal or private funding will be sought before the end of this year to establish a program of legal advocacy for the retarded which would serve both as a national resource center and as a model for future statewide or regional projects. Law students will be active in the project in both an academic and a legal context.

Professor Murdock is presently in the process of developing a projected course for the spring term which would be conducted mainly by mental health professionals as well as by attorneys involved in recent ground-breaking decisions dealing with the rights of the retarded.

Student involvement in the project at the present time is being directed by the Public Interest Research Section of the Legislative Bureau. Student work consists of assistance in the development of the program prospectus being prepared for submission to the government. Legal and general investigative research into the problems of advocacy for the retarded is also being carried on. Students will also work with local attorneys in mental health litigation.

Those students interested in working on the project may contact either Russ Boltz, Legislative Bureau Director, or Erin McDonnell, director of the Public Interest Research Section. Professor Murdock has expressed the hope that Student involvement will be supervised by faculty members on a for-credit basis in conjunction with the proposed course.

Participants at the initial meeting were enthusiastic about the project. Proposed drafts of legislation, preparation of model briefs, and development of documentary support for challenges to legislative policies and administrative and judicial decisions are planned.

Logan Center's Thorne provided a partial list of the issues with which the project will be concerned, including rights of due process in public schools, welfare policies, and the right of adult handicapped individuals to be emancipated from their parents.

stoner's Korner

Kommis

Girls enter IM play; field formidable team

By JOHN MEZZANOTTE

Dictum Sports Editor

The last bastion of male chauvinism, the all male LSAA Football League, was under brutal attack last week as women's football team was observed practicing on the hallowed Green Field. Under the scrutinizing eye of Head Coach Larry DiNardo, a man of considerable experience in the game, the eighteen "man" squad was put through the paces. "No longer," quipped one interested onlooker, "will the Notre Dame Law School women be content with merely being athletic fans."

Led by second year signal caller, "Lightening" Cekanski, the Negative Pregnants have already shown sensational form. Split end "Bam Bam" Bolger, Cekanski's favorite pass catcher, together with wide receiver "Max the Knife" Tomasack form the nucleus of the Pregnants attack.

Assistant Coach Jim Lechner informed the Kommissioners yesterday that although the team will work primarily from a winged T formation offense, the versatility of blocking back "Jumpin'" Jess Pendarvis and tailback "Missle" McNamara will enable the club to fool foes with a formidable forte of fancy formations.

Broad shouldered Marie Russo will take on the bulk of the blocking chores at

center, anchoring a line that is sure to bring the much larger male defenders begging for more.

"The team's strongest point is its ability to ward off offensive maneuvers," adds Coach Lechner. The sports fan will readily agree as he conjures a vision of a diminutive Coley O'Brien of the nation's number one Linebacker Bums fleeing from the murderous rush put on by "Chopper Charlotte" Toulouse, McNamara, and "Jolt 'em Judy" Snyder, the Pregnants defensive front wall.

Visiting coaches and sportswriters alike were impressed with the defensive secondary consisting of first year girls, who, by the way, can look forward to two more years as LSAA athletes. Most inspiring of all, however, were the bonecrushing tackles of "Dynamite" Drury who ferociously wards off blockers to smother the unwary ball carrier with her hulking mass.

FROM THE

KOMMISSIONER'S DESK:

The Negative Pregnants are 1-0 to date after thoroughly trouncing the hapless Quarles Quasimodos, 28-0. The devastation was carried out "Lighting" Cekanski's 70 and 30 yard scampers, a McNamara to McNamara bomb, and a pass interception runback for a touchdown. "Jolt 'em Judy" Snyder booted all the extra points.

DOOLEY'S DICTUM

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