

CAN A RACIST BE A LAWYER? - RACIST IDEAS ARE IDEAS
NONETHELESS, AND ONCE WE BEGIN PENALIZING PEOPLE FOR THEIR
OPINIONS IT IS IMPOSSIBLE TO PREDICT WHERE THE PROCESS WILL
STOP

Chicago Tribune - August 3, 1999

Author: Steven Lubet. Steven Lubet is a professor at Northwestern University Law School.

Benjamin Smith's homicidal rampage, in which he murdered an African-American businessman and an Asian graduate student and wounded six Jews returning home from synagogue, has focused renewed attention on the so-called World Church of the Creator and its "Pontifex Maximus," Matthew Hale . Though Hale--an avowed racist and anti-Semite--has completed law school and passed the Illinois bar exam, he has twice been turned down for a law license on the ground that he lacks the required "good moral character."

He may be worse than that. If Hale had anything to do with Smith's bloody attacks, he should be indicted and jailed, never mind whether he should practice law.

But if it turns out Hale had no direct connection to Smith's crimes, then, distasteful as it may be, he should not be denied a law license simply on the basis of his loathsome views. While every decent human impulse urges us to squelch Matt Hale in every possible way, we are ultimately better served by reaffirming the 1st Amendment and reluctantly seeing him admitted to the bar. Racist ideas are ideas nonetheless, and once we begin penalizing people for their opinions it is impossible to predict where the process will stop.

In the McCarthy era, numerous communists and suspected communists were denied admission to the bar on "character" grounds. It was thought at the time that communist lawyers would use their subversive wiles to undermine the judicial system by sneakily persuading judges to render communist-sympathizing opinions. Of course, all such fears were misplaced. Radical lawyers did no harm to the profession and a few, such as the late William Kunstler, became icons. By 1970, the Supreme Court pretty much put an end to ideology tests for bar membership and, in any event, there is no recorded instance of communist-inspired trickery doing any damage to the courts.

The same would hold true for racist lawyers. The genius of our judicial system is its transparency. Lawyers make arguments, judge's rule on the law, and it all happens in full public view. Lawyers with poisonous positions usually lose, and even when they succeed, the system is self-correcting in the long run. And if it turns out that the courts are receptive to Hale's hate, well, we have a lot more to worry about than one pathetic Prairie State bigot.

There is even the possibility that Hale, unwittingly and ironically, might do some good as a lawyer. To the extent that he manages to protect the free speech rights of his racist confederates, well, those same rights will apply with equal force (and, thankfully, in greater number) to the minority activists whom he despises. The joke will be on him, because every extension of the rule of law will strengthen the democratic virtues he disdains.

Finally, there is also the contention that Hale should be disqualified because he would no doubt refuse to represent minorities. But take a walk any day down Wall Street,

LaSalle Street or Wilshire Boulevard, and you will encounter hundreds of high-class law firms--and thousands of well-paid lawyers--with hardly a minority client in sight. Face it, egalitarianism just isn't a priority in the legal profession, especially when it comes to choosing clients. The great majority of attorneys do virtually no pro-bono work at all, leaving the poor and oppressed to fend for themselves. An aspiring lawyer could proudly proclaim, "I will only represent the wealthiest corporations and if that pretty much ends up excluding minorities, tough luck." In fact many do precisely that, although not so explicitly, with absolutely no impact on admission to the bar.

It might make lawyers feel good to keep Matt Hale out of the club, but it won't make any real difference. Here's an idea that will: How about asking practicing attorneys to devote just a little time each month to counteracting racism or helping the poor? The Pontifex Maximus could fulminate all he wants. That'd show him!

Edition: CHICAGO SPORTS FINAL

Section: COMMENTARY

Page: 11

Index Terms: CAREER; ETHICS; BEHAVIOR; ISSUE; LAW

Record Number: CTR9908030019

Copyright 1999, Chicago Tribune