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Prof. Wattson's Passing Noted With Sorrow

William Mitchell suffered a great loss in the death on March 5, 1962, of Professor Marshman S. Wattson, a member of the college's full time faculty since the opening of its present building in 1958, and for the past several years executive secretary of the Minnesota branch of the American Civil Liberties Union.

The deep respect and affection "Marsh" Wattson inspired in those who knew him and his work have been and are being expressed in many ways. The thoughts of those who knew him primarily through his work in the cause of individual freedom, which began at least as far back as his college days, are shown in the moving editorial in the March 7, 1962, Minneapolis Star, that is reprinted in this issue of The Opinion with the permission of the Star. Those of his fellow members of the Lake Harriet Yacht Club, of which he was a director and had been Commodore, were indicated when an anonymous donor presented to the club, shortly before his death, the Marshman Wattson Trophy, to be awarded for the highest total number of points earned during each season.

The feelings of his present and former students at William Mitchell, who knew him as a great and inspiring teacher and a wise counselor, are being shown by the establishment and growth of the Marshman S. Wattson memorial book fund, which is to be devoted to procuring for the college library books in one or more of the fields in which he was particularly interested. His wisdom, experience, sound judgment, and devotion to the maintenance and improvement of the standards of legal education will be remembered by and continue to inspire his fellow faculty members and those who serve in the future on the William Mitchell faculty.

Professor Wattson was born in Hibbing, Minnesota, on March 28, 1912. His family moved to Minne [sic] the same university in 1935. At the University of Minnesota Law School he was an associate editor of the Minnesota Law Review, a member of Phi Alpha Delta legal fraternity, and a member of the honorary legal fraternity, the Order of the Coif.

He practiced law in Minneapolis from 1935 to 1942. During most of this time his partner was Earl R. Larson, now United States District Judge for the District of Minnesota. He began his teaching career as a lecturer in business law at the University of Minnesota, where he taught from 1937 to 1942.

In 1942, he entered government service with the Office of Price Administration in Washington, D.C. Later, he served as a Navy officer aboard an assault transport during World War II.

After the war, from 1946 to 1954 he taught at the University of Indiana Law School, first as an assistant professor and from 1950 to 1954 as an associate professor. He then returned to Minneapolis and resumed the private practice of law.

In 1955-1956, he was a Visiting Associate Professor at the University of Minnesota Law School.

Professor Wattson was president of the Minnesota chapter of the United World Federalists, a board member of the Hennepin County Mental Health Association, a member of the First Unitarian Society of Minneapolis, the Citizens League of Minneapolis and Hennepin County, the 13th Ward DFL, and the Minnesota State and Hennepin county Bar Associations, He served as chairman of the Tax Section of the Hennepin county Bar Association in 1960-61.

The story of "Marsh" Wattson would be incomplete without the names of his family: his wife Helen, known to her friends as "Peggy"; his sons, Robert, a freshman at the University of Minnesota, and Peter, a senior at Southwest High School, Minneapolis; his daughter, Marcia, a freshman at Southwest High School; his brother, George, of Minneapolis; and his sister, Mrs. J.H. Davenport, of Indianapolis, Indiana. His devotion to them and their devotion to them were the finest things in the life of a fine man.

Image

Professor Marshman S. Wattson

Judge Goodrich To Address June Grads At Commencement

The Honorable Herbert F. Goodrich will deliver the 1962 annual commencement address to the graduating Seniors of William Mitchell College of Law. The commencement exercises will be held at the College of St. Thomas Armory on June 12, 1962, at 8:00 p.m.

The Board of Trustees of William Mitchell will bestow on Judge Goodrich an Honorary Degree of Doctor of Laws. This will be the fourth Honorary Degree granted by the school. Previous degrees have been granted to: The Honorable John B. Sanborn, of the United States Court of Appeals, Eighth Circuit; Mr. John D. Randall, the 83rd President of the American Bar Association; and the Honorable E. Barrett Prettyman, of the United States Court of Appeals for the District of Columbia.

Seventy-one seniors are scheduled to receive Bachelor of Laws degrees in addition to four mid-year graduates, who are; Jere A. Miller, St. Paul; Alph J. Overby, Minneapolis; David T. Riddiford, Minneapolis; and Stephen W. Shaughnessy, St. Paul.

The graduating Seniors will form a procession at William Mitchell and move to the College of St. Thomas Armory for the commencement exercises. Eight honor students from the Junior Class will serve as Marshalls. This is the first graduating class that commenced their legal education at the new building which was completed in 1958. Our speaker, Judge Goodrich was born in Anoka, Minnesota, on July 29, 1889, where he attended elementary and secondary school. He received a Bachelor of Arts degree in

1911 from Carleton College, Bachelor of Laws from Harvard Law School in 1914, and in 1929 an LL.D. from the University of Pennsylvania.

Judge Goodrich was an instructor of law at Iowa University from 1914 to 1922, and during part of these years, he served as the acting dean. From 1922 to 1929, he was named Professor of Law at the University of Michigan. In 1929 he became Professor of Law at the University of Pennsylvania where he later became Dean of the Law School. President Franklin Delano Roosevelt in 1940 appointed Judge Goodrich to the United States Court of Appeals, Third Circuit, where he presides today.

Judge Goodrich is recognized as a leading legal scholar and educator. He is the author of Goodrich on Conflict of Laws and co-author of Procedural Rules, Service With Forms and Cases on Conflict of Laws. He has also written numerous law review articles.

Image

Photograph courtesy of Fabian Bachrach. Honorable Herbert F. Goodrich, seated.

Race for Secretary Ends in Tie - SBA Election Results Announced

Since some politicians are lawyers, and most lawyers and law students have an affinity for politics, it is not unusual that election time at William Mitchell for the SBA posts provided some interest in the future of student government. Emerging this year form behind a barrage of posters, campaign promises, personal appearances, and smoke filled rooms, as the newly elected officers, were Milton H. Bix as president, Kevin Howe as vice president, and John F. Kelly as treasurer. The election resulted in a tie for secretary, making necessary a later election. Retiring for another day, and in some cases another try, were Tom McCoy, Bill Mortensen, and Donald J. Giblin, all of whom pledged their support to the new slate.

It was a non-incumbent race all the way, with last year's officers retiring to the alumni or other elective posts. Among the graduating seniors previously on the Board were its president, Charles "Chuck" Langer; vice president, Tom Gruesen; and secretary, Tom Foster. Retiring undefeated to the post of Dean for Delta Theta Phi was Dennis Holisak, former treasurer.

Like most elections this one brought a few surprises. Upsetting some of the pre-election guesses was Kevin Howe, who came in over Bill Mortensen in the Vice President race. If Milton Bix's win over Tom McCoy was neither an upset nor a surprise, it was simply because nobody was willing to make any prior predictions. Since all the contests were close, the Giblin-Kelly race was no exception, but it was the Rivard-Mitchell vote that proved the real surprise with both contestants polling the same number of votes. It was this last development that sent the parliamentarians scurrying for the bylaws, only to find that the Student Board of Governors had to make the decision, which decision was not available at press time.

For president of the Student Bar, Milton H. Bix. "Milt" or "Miltie," as he is known, is a law clerk with the Great Northern Railway, married to a schoolteacher named Michelle. Originally a Minneapolis resident and graduate of the University of Minnesota, Milt now lives in St. Paul so he can be close to school. A member of Phi Alpha Delta, Mr. Bix asked if he could express his appreciation to those who voted for

him, and sincerely hopes that he will be worthy of the confidence that the student body has placed in him.

Image
Milton H. Bix

Coming up as the new vice president is a junior, Kevin P. Howe. Kevin is a member of the same section as Milt which is a virtual hotbed of political activity. Kevin is an experience hand in organizational activities. A former Dean of Delta Theta Phi, he comes originally from Bemidji by way of St. John's College, the University of Minnesota, and Fort Sill. He is single and resides in Minneapolis. His evenings are spent in class or at his books; his daytime activities include a place with Investors Diversified Services Sales Promotion Department.

Image
Kevin P. Howe

The new secretary will be either Ken Mitchell or Joe Rivard. Ken is married, with four children, lives in Minneapolis and will divide his time between City Hall, the William Mitchell Opinion, Delta Theta Phi, and maybe his new position. Mr. Rivard, a resident of St. Paul, is an adjuster for Mutual Service Insurance Company, married, with one child, and, the only political science major in the entire election, so it's a case of good luck to both, or either.

The only freshman on the board is John Fallon Kelley. John who comes to William Mitchell form St. Thomas, is married. His wife's name is Mary Ann. He is employed by the Great Northern Oil Company. Not exactly a stranger to the profession of law, with father Fallon Kelly as a former United States Attorney, John has pledged his best efforts during the coming year.

Image
John F. Kelly

Harry Morgan to Speak at Senior Graduation Party on June 8th

Mr. Harry W. Morgan of Macalester College will be the featured speaker for the senior graduation party, June 8, 1962, at William Mitchell College.

Mr. Morgan has been a resident of Minnesota for two years. He was born in Marlow, Oklahoma, and later moved to Salinas, California. After a four year tour with the United States Air Force, Mr. Morgan entered Rutgers University, where he was president of the student body.

Today Mr. Morgan is interested in promoting a better understanding of the American way of life for people from foreign countries. He is assistant to the president of Macalester College. He is the director of the Macalester International House and the founder and active member of his own program, "Ambassadors for Friendship". He is also active in the Macalester program for International Journalists, a program designed to promote a better understanding of the American way of life among journalists of other countries. Mr. Morgan's speech to the graduation party, "Adventures in International Understanding," will discuss the origin and objective of this program.

"Ambassadors for Friendship", because of Mr. Morgan's efforts, is an internationally known program. Readers Digest, in "People to People in Action,'' lists Harry Morgan's adventures in understanding as one of the sound accomplishments in promoting a better understanding of the American way of life. In describing his work in the program for International Journalists, the Christian Science Monitor calls it "An American Experience".

Upon the recommendation of former Secretary of State Christian Herter, Mr. Morgan was selected as one of the outstanding men of the United States in 1960 by the Junior Chamber of Commerce for his successful efforts in international relations.

Bar Exams To Be Held July 6-7

Dean Robert Hamilton, Director of Minnesota Bar Examinations, has announced that the next Minnesota bar examination will be held July 6 and 7, 1962.

The examination will include questions on the following topics: Constitutional Law, Real and Personal Property, Contracts, Torts, Sales, Negotiable Instruments, Private Corporations, Equity, Wills, Minnesota Practice, Evidence, Criminal Law, Legal Ethics, and Federal Taxation.

The bar examination has been reduced from a three day to a two day examining period. The questions for the Minnesota bar examination are obtained and prepared by leading law professors throughout the country. The questions are graded by young lawyers who have displayed legal scholarship.

EDITORIAL

If a man's true measure is his service to his fellow men, then Marshman Wattson was "eight feet tall."

Had "Marsh" Wattson concentrated on his own affairs as most normal men do, he certainly would have laid up a greater fortune during his life, cut off at just short of 50 years. Had he been just normally self-centered, he could have been much, much more widely known.

Instead, quietly and modestly he devoted most of his time and effort to unsung and sometimes unpopular public service, especially in the preservation of individual freedom. Many people who have benefitted – or may in the future benefit – from his work have never heard his name. And he was no more dedicated to the defense of freedom of speech for people who thought as he did than to the same freedom for those who opposed everything he believed in.

A democracy such as ours always needs citizens like Marsh Wattson, and this country has seldom needed them more than it does at the present. He will be missed, both as a man and as a symbol of outstanding citizenship. -Editorial, Minneapolis Star, March 7, 1962.

Scholarship Program to Expand By Donations and Contributions

The scholarship fund at William Mitchell is in the process of developing and expanding through the contributions of lawyers, law firms, and some industries. The Minnesota State Bar Foundation has been one of the contributors to the scholarship fund from the outset. The William Mitchell Law Wives and a group of insurance companies constitute other major sources of revenue for the fund. Several of the prominent law firms of the Twin Cities are now contributing.

More students apply for aid than available funds will accommodate, according to Dean Curtis. "The school is in need of a much enlarged scholarship program," he says.

"The need exists," he adds, "to aid students in law school, or those planning to enter, who are barely getting by financially and will be better law students and better lawyers if they have some help in the way of tuition scholarships.

"An enlarged scholarship program will aid in a program now being undertaken by the school to interest more qualified college students in the legal profession," he added. A part of this program is to provide scholarship money to compete with scholarship funds offered by other professions.

Any student wishing to apply for a scholarship may obtain an application for scholarship from the Dean's office. Scholarships are awarded on the basis of scholarship, need, and the availability of funds. There is no specific scholastic average that a student must have in order to qualify. The faculty Committee on Scholarships decides which students should receive scholarships.

Early Plan to Farm Results in Successful Practice for Kelley

Mr. James E. Kelley, retiring first president of the William Mitchell Alumni Association, was born in Pinnconning, Michigan. His parents moved to Ashland, Wisconsin. Upon graduation from Ashland High School in 1913, Mr. Kelley was torn between two careers, farming and law. After some deliberation he decided to follow law in an attempt to earn enough money to buy a farm. In the spring and summer of 1914, Mr. Kelley worked as a bookkeeper for the Page and Hill Lumber Company at Bay River, Minnesota, in an effort to save sufficient money so he could attend St. Paul College of Law. Through the efforts of Clarence Halbert, who was then the secretary of the St. Paul College of Law, Mr. Kelley found a job as a law clerk with the firm of Orr, Stark & Kidder, at the astronomical salary of thirty dollars a month. In 1917 he graduated from law school and remained with Orr, Stark and Kidder until the summer of 1918, when he entered the United States Army. Upon discharge, Mr. Kelley asked his classmate, Mr. Gerhard Bundlie, if he wanted to form a partnership. Mr. Bundlie told him that if he didn't starve and could keep alive for the next three months, he would consider it. They formed the partnership of Bundlie and Kelley with offices in the Guardian Life Building in the City of St. Paul. The firm is now Bundlie, Kelley and Torrison with offices at 425 Hamm Building.

In 1923, Mr. Kelley persuaded Margaret Louise Hamm to marry him and for the past thirty years the Kelleys have lived at 2901 East Old Shakopee Road, Bloomington, Minnesota.

In tune with his earlier plans, Mr. Kelley turned his home into a quasi-farm. One of his prime interests is beef cattle; consequently he has registered guernseys at his Bloomington farm. In addition, he has cattle farms in South Dakota and Georgia. For a good many years Mr. Kelley has been an ardent hunter, principally a big game hunter, hunting just about everything on this continent. As you walk into his office two handsome heads of mountain sheep radiate an air of the wild; don't ask where they were purchased. In all the big game he has shot, including grizzly bear and moose, for sheer thrill and excitement Mr. Kelley feels that bagging mountain sheep was paramount to them all.

Mr. Kelley is presently president of Kelley Land and Cattle Co., a Minnesota corporation. It is a closely held corporation owned by the Kelley family. He is a member of the board of directors of the Northwestern National Bank of St. Paul, a member of the board of trustees of St. Luke's Hospital and of Northland College at Ashland, Wisconsin. For twenty-five years he was general counsel, a member of the board of directors and of the executive committee of the Theo. Hamm Brewing Co. Recently Mr. Kelley retired as president and as a member of the Board of directors of United Properties, which controls the Emporium of St. Paul, among other businesses. He is a member of the Ramsey County, Minnesota, and American Bar Associations and was the first president of the William Mitchell College of Law Alumni Association.

Image

James E. Kelley

Alums Begin Fund Program

Judge Ronald E. Hachey, president of the William Mitchell College of Law Alumni Association, announces that the Board of Directors of the Association has enthusiastically adopted a program to conduct an annual campaign among alumni to raise funds for the operating expenses of the law school. This places our alumni in step with the alumni of all other colleges and universities in supplying an additional source of income for the operation of the school's program. The work of conducting the campaign will be done by the school staff. To make this possible the Alumni Association has appropriated funds to pay the expenses of the campaign until sufficient contributions are built up to carry on the effort.

Dean Curtis describes this announcement as a vital turning point in the development of William Mitchell. As he puts it, "William Mitchell has no problems that additional sources of income cannot solve."

Lawyers, Students Hear Dr. Van der Borght

Two lectures, open to the public, were given by Dr. Raymond Van der Borght on March 23 and 30, which outlined the development of European anti-trust legislation for William Mitchell students and lawyers of the Twin Cities area.

The lectures were part of a 16-lecture course in Comparative Law being taught by Dr. Van der Borght at William Mitchell College. The course, discussing those areas in which common law and civil law meet, is believed to be unique among night law schools.

In his two lectures Dr. Van der Borght outlined the present development of anti-trust legislation in the individual common market countries. During the two evenings the different solutions to the problems of big business were discussed. The greatest difference for the American lawyer, as pointed out by Dr. Van der Borght, is the European attitude toward bigness in business. For the European, bigness is not an evil per se, and much of the evolving legislation takes this conciliatory approach to the problem. Theory is not the only difference. A law of over 100 paragraphs as passed in Germany was compared with the Belgian law which, in its brevity, is similar to the American law.

The advent of anti-trust legislation in the common market of Europe is seen to have far reaching implications for American business. Dr. Van der Borght feels that in time a common anti-trust law will evolve for all the common market countries and that such a law will be similar to the Belgian law. "For, as Dr. Van der Borght stated, you don't need a lot of little nets to catch the fish when one big one will do."

Dr. Van der Borght has been a resident of St. Paul since 1953 and is a foreign advisor to the legal department at Minnesota Mining and Manufacturing Company. Dr. Van der Borght is a holder of Ph.D. and J.D. degrees from the University of Louvain, Belgium, and is the instructor for the second semester Comparative Law course at William Mitchell.

DICTA By The Dean

The death of Marsh Wattson was a very real loss to William Mitchell and a sad personal loss to those of us who had worked with him on the full-time faculty for three and one-half years. In addition to his teaching experience he contributed a sound judgment on policy matters. He is being sorely missed.

The school had the unique pleasure on February 13 of a visit from a distinguished European jurist. Dr. Erich Schalscha, a retired justice of the West German Supreme Federal Court of Justice in Karlsruhe, spoke to a group of our students. He described the differences and similarities between the German court system and practice and our own.

Our senior students are having a fascinating experience in the new course in Comparative Law being given this semester by Dr. Raymond B. Van der Borght. I know, because I am auditing the course. The concern some students had as to the value of studying a system of law different from our own vanished with realization that an understanding of a different approach to a problem can, under the tutelage of a skillful teacher, result in a clearer understanding of our own law's approach to the same problem.

Two of the lectures in Comparative Law were devoted to what Dr. Van der Borght called "The Dawn of Anti-trust in Europe". Realizing the interest some Twin Cities lawyers have in this subject, we invited members of the bar to attend.

Our Board of Trustees, on the recommendation of our full-time faculty, has just appointed Miss Jeanette J. Bluhm to be a member of the fulltime faculty. Miss Bluhm has been teaching this year on a part-time basis. We have been interested, too, in the remarks of some senior students that, at first, they were skeptical about having a woman teacher; "but", they said, "we soon forgot about that."

William Mitchell has recently received some valuable and interesting gifts. One of our most distinguished alumni and his wife have given 200 shares of Minnesota Mining and Manufacturing stock to our mortgage fund. I wish I were free to tell you their names. The shares, at the present market, are worth about $14,000. Another valuable and most interesting gift will be presented at Commencement. Try to be there. Magnificent portraits of Chief Justice John Marshall and Justice Roger B. Taney have just been presented by Mrs. Clifford A. Taney, Jr., of Minneapolis. Mrs. Taney's late husband was related to Justice Taney and was a partner of our esteemed alumnus, G. Aaron Youngquist, '09, whose widow not long ago started our growing collection of portraits by her donation of a set of autographed portraits of the members of the United States Supreme Court as of 1932.

Our Commencement programs have developed a standard of distinction that will be difficult to maintain. Since 1959 our speakers have been Judge Edward J. Devitt, President John D. Randall of the American Bar Association, and Judge E. Barrett Prettyman. This year we again meet the standard, and again through the courtesy of Mr. Lee H. Slater, President of the West Publishing Company, and with the persuasive assistance of Judge John B. Sanborn. Those of us who have heard Judge Herbert Goodrich know him to be a dynamic speaker of exceptional ability and blessed with a charm and wit that put him in a class in which few men belong. His record as professor at three law schools and dean of two, as the inspiring Director of the American Law Institute, and as a most distinguished judge assures us of a memorable Commencement.

Comments on National Indemnity Co. v. Lead Supplies, Inc.

(article includes footnotes)

By Kenneth J. Figge

as a part of the course in Legal Writing. He received a B.BA from the University of Minnesota in accounting. He is employed by Minneapolis Honeywell in the General Accounting Department of the Aero Division. He is married and has a daughter. He lives in St. Paul.

The problem arising when two or more policies of insurance are in force at the same time on the same risk was recently before the Federal District Court, Minnesota, in the case of National Indemnity Co v. Lead Supplies, lnc.1

The precise issue before the court in this case was the determination of the obligations of each insurer when multiple insurers had issued policies resulting in concurrent overlapping coverage; and to provide for the coverage of the other policy, one policy contained an "excess insurance" clause and the other a "pro rata" clause.

The insured, under a policy issued by Travelers Indemnity [Travelers], was the owner of a fleet of tractors and trailers. The policy contained a clause providing that the insurer shall not be liable for a loss covered by another policy for a greater proportion of the loss than the applicable limit of liability stated bears to the total applicable limit of liability of all "valid and collectible" insurance. The lessee of one of the tractor-trailer units was insured by Casualty Underwriters, Inc. [Casualty] under a policy containing a clause providing that this insurance shall be excess over any other "valid and collectible" insurance. The

lessor was also insured by National Indemnity Co. [National] under a policy containing a "contingent liability endorsement." While an employee of the lessee was operating the tractor-trailer unit in the ordinary course of his employer's business, he was involved in an accident which resulted in personal injury to a third party. The third party obtained a judgment against the owner, the lessee and the driver-employee.

The action in the National Indemnity case was initiated by National for the purpose of determining the rights and liabilities of the three insurance companies. Jurisdiction was based on diversity of citizenship; therefore Minnesota law was applied. The court found that National, the insurer of the lessor, was not liable because the contingent liability endorsement contained in the policy specifically excluded coverage while the vehicle was engaged in transporting goods. This was the case at the time of the accident. Both Travelers and Casualty were found liable by operation of law. Travelers, the insurer of the lessor, was liable under the state Motorist Financial Responsibility Law2 and Casualty, the lessee's insurer, was liable under the doctrine of respondeat superior. The driver comes within the coverage of both policies as an additional unnamed insured. The Travelers policy contained a "pro rata" clause3 while the conflicting clause in the Casualty policy was an "excess" clause.4

It was the contention of Travelers that the primary tortfeasor rule should be applied.5 Under this rule the party whose misconduct directly caused the accident would be liable for the entire loss. The court rejected Travelers' contention stating, "[the] primary tortfeasor [rule] is of no assistance as both insurance companies stand in the shoes of the active wrongdoer. Neither has greater equities than the other. The solution must come from an examination of the agreements contained in the policies."6

The issue in the National Indemnity case arises because of the conflicting provisions of the "other insurance" clauses in the policies. "Other insurance" clauses are necessitated by the possibility of double insurance. "Where there are several policies which insure the same party, upon the same subject matter, and assume the same risk, this constitutes double insurance. . . . It should be borne in mind that the insured is entitled to put one satisfaction for the loss which he sustains by reason of his liability for damages sustained by a third party. This rule is not affected by double insurance."7 The purpose of an "other insurance" clause in a policy is to define the coverage of the policy when double insurance exists. This is necessary to comply with the rule that an insured is entitled to but one satisfaction for his loss. "Other insurance" clauses were first used in property insurance policies to limit the extent of the coverage and thus discourage self-inflicted losses in anticipation of collecting under two or more policies. Insurance companies have universally inserted clauses that define the extent of the coverage when a given loss or occurrence is also covered by a policy of another insurance company. "Other insurance" in this context should be distinguished from "true" excess coverage, the only purpose of which is to provide additional protection, with premium payments computed accordingly. "Other insurance" clauses in auto liability policies have arisen as a result of public demand for expansion of coverage. The public demand for expanded coverage has brought about provisions for "other drivers," "nonowners," and such other additional omnibus, or unnamed insured.8

These omnibus clauses are " ... largely the product of competition among auto liability insurance underwriters .... "9 As in the property field "other insurance" clauses are inserted in automobile liability policies to limit or tailor the risks in cases involving overlapping coverage. The broadening of risks has

increased the incidence of double insurance and thus has also increased the frequency of the application of "other insurance" clauses.

There are three common types of "other insurance" clauses.10
1) The "escape" clause, whereby the policy will not cover the insured in a double coverage situation.
2) The "excess" clause, whereby the insurer declares itself liable to the limits of its policy but only for the amount of the judgment in excess of other collectible insurance.
3) The "pro rata" clause, whereby the insurer obligates itself for a ratable share of the loss in the same proportion which the limit of its own policy coverage bears to the total coverage protecting the insured.11

The courts have historically followed four approaches to resolving the conflict between the various combinations of clauses. These approaches reflected the methods used in resolving conflicts in property insurance cases. The first method was a complete reliance upon the date of the policies. This was largely a rule of convenience and was based on erroneous reasoning. " . . . [R]elying on the date of the policy . . . ignores the fact that neither clause takes effect until the moment of the loss, and at that time both policies are in force." 12

Traveler's contention is illustrative of the second approach holding the primary tortfeasor primarily liable. This method has been largely rejected for it ignores the case in which the primary tortfeasor is not named as an insured in either policy.13 The primary tortfeasor rule does not provide for the case in which the primary tortfeasor is the named insured in both policies.14 A third method, which has been largely repudiated in automobile liability cases, is one which looks to the terms of the "other insurance" clause to determine which clause is more specific in defining its coverage. The courts would give effect to the more general clause and hold the insurer under the more specific clause liable.15 When the court "gives effect" to a clause it enforces the provisions of the clause. By "giving effect" to the clause the court allows the insurer to either escape liability completely or pay only the excess over the other coverage. The difficulty with this rule is that there is "no test for determining which is more specific."16 The fourth approach is one in which the courts interpret the policies as they exist. This is the approach utilized by the Minnesota Federal Court in the National Indemnity case.

The court cited as the controlling Minnesota case, Eicher v. Universal Underwriters,17 in which Universal was the insurer of the driver under a policy containing an "excess" clause. The other insurer, Motor Vehicle Casualty, had issued a policy to the owner of the automobile providing that its coverage would be on a pro rata basis when the automobile was operated by another party with the consent of the owner. In determining liability of the two insurers the court gave effect to the "excess" clause and held Motor Casualty liable to the extent of its policy. Justice T. Gallagher cited McFarland v. Chicago Express, Inc.18 and Speier v. Ayling 19 with approval and stated, "This construction does not appear to do violence to the terms of the policies and appears to be practical and convenient of application where situations of this kind are presented."20 In the National lndemnity case Judge Nordby stated, "It follows from the teaching of the Eicher case, which adheres to the better rule, that the coverage extended by Casualty is not 'other insurance' within the meaning of the Travelers 'other insurance' provision. An insurance company, like any other obligor under a contract, cannot be held responsible for more than it became obligated to perform."21 The Minnesota court in deciding the case upon a strict interpretation

of the "other insurance" clause found its authority for applying this rule to the exclusion of the others in Woodrich Construction Co. v. Indemnity Insurance Co. of North America22 where the court held that a construction of the language employed must be relied upon rather than the primary tortfeasor doctrine or any other arbitrary rule. In the Woodrich case the Minnesota court made it very clear that the conflicts would be resolved only by an interpretation of the terms of the policy. The court stated that "any language in any of our decisions subject to a contrary interpretation is expressly overruled."23

In the McFarland case the Seventh Circuit Court held that a policy containing an "excess" clause was not "other valid and collectible insurance" within the meaning of the "other insurance" provision of a policy containing a "pro rata" clause. In this case the double coverage was on a leased truck and liability attached to both policies by reason of a single accident. The court based its decision on a construction of the language employed by the respective insurers. In Air Transport Manufacturing Co. v. Employers Liability Association,24 a case based on facts virtually identical with those in the McFarland case, the court resolved the conflict by a proration between the insurers but based its determination upon a construction of the language of the clauses and conditions of both policies.

The interpretation of the language rule has been subjected to criticism by courts in other jurisdictions. Perhaps the case most critical of this method is Oregon Automobile Insurance Co. v. U. S. Fidelity & Guarantee.25 This case, involving a conflict between an "excess" clause and an "escape" clause, was decided by disregarding both clauses and pro rating the loss between the insurers. The reasoning of the Ninth Circuit Court in reversing the holding of the trial court, which had given effect to the "excess" clause, was that if neither policy had contained an "other insurance" clause the result would be a proration of the loss; if effect was given to both clauses the insured would be left without any coverage which would result in an absurdity, and that all other methods were arbitrary and insufficient. In criticizing these other methods the court stated, "Their reasoning appears to us completely circular, depending, as it were, on which policy one happens to read first. Other cases seem to recognize the truth of the matter, namely, that the problem is little different from that involved in deciding which came first, the hen or the egg."26 The court stated that the provisions could not be distinguished as to their meaning and intent, and that there could not be a rational choice made between them. A further reason for disregarding both "other insurance" clauses was that they were mutually repugnant. The McFarland case and the Oregon Auto case, which were decided at approximately the same time, illustrate the two schools of thought for the decision of cases involving conflicting "other insurance" clauses. These cases can be distinguished. The McFarland case involved an "excess" clause and a "pro rata" clause while in the Oregon Auto case there was a conflict between an "excess" clause and an "escape" clause This distinction is material, as is the divergent approaches utilized by the courts in resolving the conflicts.

The method which calls for a construction of the terms of the conflicting clauses still enjoys the weight of authority.27 However, the views expressed in the Oregon Auto case have since been accepted in several other states.28 In a case of first impression the Supreme Court of Missouri in Arditi v. Mass. Bonding and Insurance Co.,29 involving two "excess" clauses, followed the Oregon Auto case and disregarded the "other insurance" clauses stating, "In our opinion the 'other insurance' provisions of the two policies are indistinguishable in meaning and intent." In the case of Lamb-Weston, Inc. v. Oregon Auto,30 the court reached the ultimate in applying the doctrine of the earlier Oregon Auto case

when the court stated, "In our opinion, whether one policy uses one clause or another, when any come in conflict with the 'other insurance' clause of another insurer, regardless of the nature of the clause, they are in fact repugnant and each should be rejected in toto."31

The conflict in the Lamb-Weston case was between an "excess" clause and a "pro rata" clause. In holding these clauses repugnant the court extended the holding of the Oregon Auto case to include all conflicts. Although the Oregon Auto case met with both approval32 and disapproval33 even those approving did not expect the court to so extend the doctrine. In an often cited Minnesota Law Review article34 the authors, after referring to the Oregon Auto case as a refreshing new approach, stated that it was doubtful that the holding would have been the same had a "pro rata" clause been involved.

Cases involving conflicting "other insurance" clauses hinge upon the interpretation given to the words "other valid and collectible insurance." In all "other insurance" clauses the condition precedent to the application of the clause is that there must be other collectible insurance covering the same loss. Therefore, if it can be decided which policy constitutes "other valid and collectible insurance" within the meaning of the "other insurance" clause of the second policy, the determination of the liability will follow logically. This determination can only be made by an examination of the terms of each policy. That the agreement between the insurer and the insured expressed in the policy creates a contractual relationship between the parties is not subject to question. The courts following the majority view attempt to give effect to this contract. In giving effect to the contract the opinion in the National Indemnity case stated that as in other contract the obligor cannot be held responsible for more than it agreed to become obligated to perform. As between a "pro rata" clause and an "excess" clause the terms of the policy containing the "pro rata" clause expressly stating that the insurer shall pay or indemnify makes this "valid and collectible insurance." It therefore follows that a policy containing a "pro rata" provision will always constitute "other valid and collectible insurance" within the meaning of "other insurance" in any other policy.

As between a "pro rata" clause and either an "escape" or "excess" clause, the "pro rata" clause by its terms gives effect to these clauses. Neither an "escape" or "excess" clause can be construed to be other "valid and collectible insurance" within the meaning of this phrase in a policy containing a "pro rata" clause. By their terms they expressly exclude coverage in these circumstances. In the Oregon Auto case the court was justified in its conclusion for that case involved a conflict between an "excess" clause and an "escape" clause. As between these clauses neither can be construed as being other "valid and collectible insurance." There is authority for giving effect to the "excess" clause, as against either as "escape" or "pro rata" clause, but the reasoning applies only to the "true" excess insurance as found in property insurance.35

The argument against the reasoning of the Minnesota Federal Court in the National Indemnity case is that giving priority to the "excess" clause stems from the property insurance field where the "excess" insurance is "true" excess insurance and the premiums are determined accordingly.36 A further argument is that the moral hazard common in the property field does not exist in automobile liability for the insured cannot enrich himself through liability insurance. These contentions do not lack validity and appeal when applied to a conflict not involving a "pro rata" clause. As long as the three common types of "other insurance" clauses are in existence there is a possibility of six different conflicts. The reasoning

of the court in the Oregon Auto case, that the clauses are mutually repugnant and should be disregarded is valid and applies in four of these situations. The two exceptions are where a "pro rata" clause is in conflict with either an "excess" or an "escape" clause.

Where it is possible for the court to give effect to the terms of the agreement is should do so. It is possible to give effect to either an "excess" or an "escape" clause when either is in conflict with a "pro rata" clause. The Oregon court in the Lamb-Weston case ignored a portion of the contractual agreement between the insurer and the insured under the policy with the "pro rata" clause. The opinion of the Minnesota Federal Court in the National Indemnity case expressly restricts the scope of its holding to those cases involving a policy containing a "pro rata" provision. "Policies containing only 'pro rata' clauses are in harmony and consonant with each other in that each asserts, . . . the same method of computation for resolving the concurrent insurance problem. [When] multiple 'excess' clauses conflict or, . . . where an 'excess' clause conflict[s] with an 'escape clause, [if] such policies are to be construed and applied according to their terms, an intolerable situation would be created. 'Escape' and 'excess' provisions are indeed mutually repugnant of each other...37

In an attempt within the insurance industry to find a solution to the double insurance problem, some companies have established inter-company committees to study means of resolving the conflicts. The approach of these committees has been primarily based on the description of the accident without regard to the "other insurance" clauses. The classifications of accidents are necessarily broad and general and are themselves productive of disputes.38

Legislation has been suggested to provide the solution to the problem.39 The proposed statutory control includes: (1) a reduction in the types of permissible clauses to allow only "excess" and "pro rata"; and (2) a legislative limitation and determination of the application and scope of these clauses.40 Any legislation on this subject would necessarily apply only to an adjustment or settlement between the insurance companies while clearly establishing that each insurer is liable to the insured and to the public to the limit of the coverage. In the absence of legislation the trend is toward proration of the loss in all cases where the clauses are mutually repugnant and to give effect to one clause when a reasonable interpretation of the terms allows. If there is no contractual agreement between the insurers, a case by case handling of the conflicts is necessary to determine the intent of the insurers.41

Footnotes

1. 195 F. Supp. 249 (D. Minn. 1960), aff'd. 292 F. 2d 214 (8th Cir. 1961).
2. Minn. Stat. §170.54.
3. Paragraph 14 of "Conditions". "Other Insurance. If the Insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit or liability of all valid and collectable insurance against such loss; …"
4. Paragraph 5 of the "Hired Autobiles" endorsement. "Other Insurance. This insurance shall be excess insurance over any other valid and collectible insurance for Bodily Injury Liability for Property Damage Liability and for Automobile Medical Payments.''
5. Waylander-Peterson Co. v. Great Northern Ry. 201 F. 2d 408 (8th Cir. 1953).
6. 195 F. Supp. at 252.
7. 8 Appleman, Insurance Law and Practice §4911 (1962).

8. Ashlock, Automobile Liability Insurance: The Omnibus Clause, 46 Iowa L. Rev, at 86 (1960).
9. Ibid.
10. Automobile Liability Insurance – Effect of Double Coverage and "Other Insurance'' Clauses, 38 Minn. L. Rev. 838 (1954).
11. There is a fourth type which reduces the limits available under the policy by the limits of the other policy. See Peerless Casualty Co. v. Continental Casualty Co., 144 Cal. App. 2d 617, 301 P. 2d 602 (1956).
12. Russ, The Double Insurance Problem--A Proposal, 13 HASTING L. J. 183. (1961)
13. Id. at 184.
14. 13 HASTINGS L. J. at 185 (1691).
15. Ibid.
16. See note 12 supra at 185.
17. 250 Minn. 7, 83 N.W. 2d 895 (1957).
18. 200 F. 2d 5 (7th Cir. 1952).
19. 158 Pa. Super. 404, 45 A. 2d 385 (1946).
20. 250 Minn. at 14, 83 N.W. 2d at 900.
21. 195 F. Supp. at 255.
22. 252 Minn. 86, 89 N.W. 2d 412 (1958).
23. Id. at 98, 89 N.W. 2d at 420-421.
24. 91 Cal. App. 2d 129, 204 P. 2d 647 (1949).
25. 195 F. 2d 958 (9th Cir. 1952).
26. Id at 960.
27. 76 A.L.R. 2d 502 (1961).
28. See note 12 supra at 188.
29. 315 S.W. 2d 736 (1958).
30. 219 Or. 110, 341 P. 2d 110 (1959). Modified 219 Or. 110, 346 P. 2d 643 (1959). In modifying, the Oregon Court discussed only the question of the method of sharing the loss and from the original equal sharing changed to a sharing in proportion.
31. Id. at 119.
32. See note 10 supra.
33. See Citizens Mutual Automobile Insurance Co. v. Liberty Mutual Ins. 273 F. 2d 189 (6th Cir. 1959) and cases cited therein.
34. See note 18 supra.
35. 38 MINN. L. REV. at 854-855 (1954).
36. Ibid.
37. 195 F. Supp. at 254.
38. 13 HASTINGS L. J. at 188 (1961).
39. Id. at 191.
40. 13 HASTINGS L. J. at 191 (1961).
41. Ibid.

Some New Developments in the Law of Defamation

(article includes footnotes)

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Each day of each week, the communications industries of the United States are at work grinding out tons of printed material. Consumer analysts estimate the average American family subscribes to two newspapers and three national magazines. Add an assortment of periodicals, books, pamphlets, bulletins and journals and the reader has a fair idea of the American's quest for the written word. In 1960, there were eight national magazines with circulation of over six million copies.1 The Associated Press and the Universal Press International News Services report news events featured in daily newspapers totaling circulation of thirty million copies per day.2 Under such mass production, not even the most discriminating publisher can escape the risk of a defamation suit. The following commentary is concerned with an examination and evaluation of such a suit.

On February 19, 1960, four members of the Tocco family filed suits in the United States District Court for the Eastern District of Michigan alleging that they had been defamed by the publication of an article entitled "The Hoodlum Network", appearing in the February 23, 1959 issue of Life magazine. The Tocco complaints alleged that the public might assume from the article that the Toccos were "racketeering relatives" of the individuals named and pictured in the article. Federal Court jurisdiction was founded on diversity of citizenship, and the four actions were consolidated for hearing.3

Michigan has a statute of limitations barring libel actions brought more than one year after the accrual of the cause of action.4 The Toccos argued that they had filed their suits within a year of the cover date of the issue and should not be barred. Defendant Time, Inc. urged the court to adopt the "single publication doctrine" in the absence of interpretive state law. The first acts of "publication"5 the defendant contended, had occurred prior to February 18, 1959, more than one year before the filing of the suits. The Court was drawn to the logic and necessity of the defendant's position and adopted the "single publication" rule. The "multiple publication" rule, the Court reasoned, "would destroy the statute of limitations as a statute of repose". Each communication to a third person is considered a separate publication under the "multiple publication" rule. Hence, the defamed has available as many causes of action as there are publications. The "single publication" rule attempts to limit the defamed to a single cause of action by considering all communications arising from one edition or utterance as embodied in a single publication.

The Court then proceeded to a more important aspect of the case and held the "single publication" rule barred suits in the forum state on causes of action which arose and were still actionable in foreign states.6 The Court rejected the theory of Hartman v. Time, Inc. 7 that the "single publication" rule terminates at a state's boundary and does not preclude all actions arising from a multi-state libel. "If I were to follow this holding it would simply mean that notwithstanding the adoption of the ‘single publication' rule the forum state would be required to hear part of a nation-wide defamation action. This would bring about a result inconsistent with the 'single publication' rule. (citation omitted) Putting it another way, by accepting Hartmann, this Court would be abnegating the doctrine that a forum's

judicial door will not swing open to hear and action which is alive in the state where it arose but barred in the forum".8

The decision in the Tocco case is of moment because the Court met head-on the question of conflicting statutes of limitation, discussed it in its opinion, and then refused to hear defamation suits alive in other jurisdictions. It is this major digression from the traditional and orthodox law of multi-state defamations that makes the case deserving of comment.

The history of the law of defamation is a relatively recent one. It was designed to protect the "reputation"9 of individuals from malicious and untrue statements that were set to some type of written or printed form and communicated to a third person. At the time of its development, the number of third persons who might read and comprehend the defamatory material was relatively few. Even if the libel was published in a newspaper, the number of readers was still restricted to one locality or at most, to one state. Accordingly, the law developed that a separate and distinct libel occurred each time the statements were read and comprehended by a different individual. Each libel gave rise to a cause of action. This system was workable until the advent of the modern era of mass production in the field of communications. Today, we have nearly simultaneous transmission of a set of ideas or statements into every state of the nation. Life magazine in 1960 was read by more than six million individual readers weekly.10 The sum total of the causes of action which might thus arise from a single defamation would be many times as great as the estimated number of all the reported law decisions in the English language.11

The consequences of these multiple causes of action are scarcely attractive. A litigious or vindictive plaintiff, or one who is merely seeking a bargaining position for purposes of extortion, can subject a defendant to repeated suits in every court in which he can get jurisdiction. Under the multiple publication rule, the causes of action are considered distinct and hence a judgment in one court is not res judicata in another.

Yet the multiple publication rule has received the unqualified acceptance of Restatement.12 One would surmise the Restatement authors did not have multi-state publication in mind, but illustration 7, par. 5 of sec. 377, Restatement, Conflict of Law (1934), deals with a publication in two states and locates the place of wrong in that jurisdiction where the plaintiff was well and favorably known.

Regardless of the Restatement position, the movement of the law courts and the legislatures has been toward consolidation and limitation of causes of action in an effort to reduce litigation.13 The Uniform Single Publications Act was approved by the Conference on Uniform State Laws and the American Bar Association in 1952.14 As of November 1, 1961, seven states had adopted the Act.15 Chances that it will be adopted in all states within the near future are slim.16 The only Uniform Acts that have met with much success are those having the support of the commercial interests. But the good effects of the Act are still many. Many courts have adopted its principles even though their legislatures have not acted.17

The single publication principle is founded on the reasoning that the victim of a defamation has suffered only one tort and hence, has only one cause of action. Under this view the single tort is committed at the place of earliest publication and radiates into other states only in its damaging effects. Judicial rather

than legislative adoption of the rule has caused some diversity in the substantive law as to what acts constitute a publication. Courts have held that a publication occurs when the libelous matter is mailed to subscribers or placed in the hands of carriers for shipment to distributors,18 or when periodicals are initially placed on sale to the public in the forum state.19 At any rate, the courts all agree that publication occurs before the cover date of a national magazine.

Opponents of the single publication doctrine may consider the rule to be one of expediency. But it should be remembered that the law of defamation seeks to balance the competing policies favoring free communications and protection of reputation. There is no balance provided by the multiple publication doctrine when a publisher can be forced to defend repeated and numerous suits against the same plaintiff for a single libelous publication. Contemporary legal commentators all seem to be in accord that the single publication doctrine, and preferably that set forth in the Uniform Single Publication Act, must be accepted.20

The adoption of the single publication doctrine resolves only a part of the problem. The Uniform Single Publications Act does not touch conflicts of laws or the difficulty of proving the law of all states in one action. The need of establishing workable guidelines in the choice of law is obvious.21 There are at least ten different and inconsistent theories as to the applicable law that from time to time have been adopted by some court or suggested by learned writers.22

1. Law of each place of "impact".23 This is the Restatement rule. Where there is interstate publication, this must obviously mean a different law for each state where there is circulation. A national communication puts every state on an equal footing as far as impact is concerned. Seemingly, this destroys the discriminatory utility of impact as an aid to the proper choice of law. To say that there are fifty causes of action because there are impacts in as many jurisdictions is to ignore the fact that one integrated tort has been committed, even though many states are concerned. A basic objective of conflicts rules is to avoid the possibility of having many laws applied to one transaction, merely because it has many state contacts.

2. Law of the first place of "impact" .24 This is a carryover from the invasion of privacy law, an attempt to fix liability where the "seal of privacy" was first broken. However, the damage there may be relatively slight. It may be fixed by pure chance or by the publisher's deliberate choice. It would be impossible to determine when magazine sales hit all states simultaneously.

3. Law of the place of predominant "impact".25 This is the place where the plaintiff in fact suffered the greatest harm to his reputation. The difficulty here lies in determining that place. Otherwise, it seems to have much merit.

4. Law of publisher's domicile (or state of incorporation).26 This place may have no relation to the injury. It also allows the publisher to choose the law, an undesirable feature. However, the state in which the publisher is incorporated has a very legitimate interest in applying its policies to the defendant. It can certainly be logically argued that the state intended its defamation law to act as a deterrent to control the publisher's activities.

5. Law of the publisher's principle place of business or main publishing office.27 This theory is much the same as 4. above.

6. Law of the place of publisher's act.28 In a nation-wide publication, this is very difficult to determine. What is the publisher's act? Editing? Printing? Mailing? Delivery to wholesalers? Shipping by carrier?

7. Law of the place of principal circulation.29 This again may have little or no relation to the injury.

8. Law of the place of the principal activities to which the defamation relates.30 This theory may have useful application in some cases but in many others would have little relation to the actual injury.

9. Law of the plaintiff's domicile.31 This theory is founded on the belief that the plaintiff's reputation will be most harmed in his home state where he has the most permanent significant social interests. This theory has diminishing validity as a determinant of the applicable law when the plaintiff is a person of national reputation. Neither is it of much validity when a publication is restricted to a few states, none of which is the plaintiff's domicile.

10. Law of the forum.32 This theory has been used in more defamation cases than any other, often perhaps by default, when the parties did not recognize the conflicts problems involved. This practice allows the undesirable practice of "forum shopping". Accordingly, the ostrich approach is not a valid criteria for a choice of law.

An analysis of these theories indicates that no one theory standing alone is always valid. The best approach to any conflict of law problem is to look to the interests of the states involved. The states with the greatest concern for the policies of favoring free communications and protection of reputation are, respectively, the state where the defendant's editorial policy is determined and the state in which the plaintiff resides. Another state where a defamatory statement may happen to be published does not have nearly so strong an interest in the outcome of the particular litigation. From the point of view both of state interest and efficient judicial administration, it therefore seems that the choice of law should ordinarily be limited to those two states.

Of the two states, preference should be given to the law of the plaintiff's domicile. The nature of the federal system should limit the extent to which one state's policy may be projected into and imposed upon other states. Each state's interest, strongest for harm caused within its borders, diminishes beyond those limits.33 Therefore, if a newspaper chooses to publish material in states about residents of those states, it should do so at the peril of encountering a less favorable law.

Whatever interests a third state does have are more likely to favor free access to information for its residents than protection of the reputation of an out-of-state citizen. However, there may be times when the plaintiff has maintained substantial and continuous business or professional contacts with a third state. In such cases, consideration of the law of the third state may be warranted.

Under the usual conflict of laws principles, the forum's statute of limitations will be applied.34 The statutes in almost two-third of the states provide that libel actions shall be barred after one year. The

majority of the remaining states have a two-year period, and none provide for a period of longer than three years.35

Courts also generally hold that the accrual of a cause of action is determined by the law of the forum.36 But strangely, when a defamation is involved, the courts have a practice of using the law of the state whose substantive law was chosen to determine when the cause of action accrued. Thus the ruling of the forum's statute of limitations depends on the law of another state. There seems to be little reason why this confusion should not be avoided by following the usual rule of applying the forum's test of accrual.

The date of accrual in defamation suits is dependent primarily on whether the single publication or multiple publication doctrine is applied. There is a single date of accrual, that of the earliest publication, under the single publication doctrine. There are as many accrual dates under the multiple publication doctrine as there are individual readers of the defamatory material.

A real difficulty occurs when a single publication state adopts a multiple publication conflict of laws rule. The absurd result reached when this happens is illustrated by Hartmann v. Time, lnc.37 In that case, the appellate court held that under Pennsylvania conflicts law, the place of injury was determinative of tort liability. Therefore, reference to the law of every jurisdiction in which publication occurred was necessary. This was done in spite of the fact that the suit would have been barred by Pennsylvania internal law which followed the single publication doctrine. We may pity the District Court judge for his unenviable assignment to determine the law of forty-eight states and then give instructions to the jury covering the law in all states still following the multiple publication rule.

The rule of the Hartmann case declares in effect that the forum must open its doors to the evils of piecemeal litigation and cluttered dockets which its internal law of single publication is designed to avoid. The court in the Tocco case, presented with this precise problem, found no necessity for reaching such an incongruous result. It expressly rejected the multiple publication rule for conflicts purposes as being inconsistent with the finding that the single publication rule prevailed in Michigan as a matter of internal law.

The Tocco decision will be criticized as unduly restricting the plaintiff's right of action. The writer finds little merit in such argument. There is no sound reason why the plaintiff should not be required to bring his suit within the period proscribed by the statute of limitations of the state in which he brings his action. Neither is there any sound reason why the statute should not begin to run with the initial publication date.

There are very sound policy reasons, on the other hand, why a court should not hear cases that would be barred under the state's internal law. A state's policy of restricting actions, as evidenced by its adoption of a single publication rule, should not be defeated by the law of a foreign state. To use the court's words in the Tocco case, "the judicial door should not swing open to hear an action which is alive in the state where it arose but barred in the forum."

Footnotes

1. HANSEN, THE WORLD ALMANAC OF FACTS FOR 1962 (1962) at 541.
2. Id. at 542.
3. Tocco v. Time, Inc., 195 F. Supp. 410 (E.D. Mich. 1961).
4. MICH. COMP. LAWS, §609.13 {1948) " ... a libel action must be brought within one year ... from the time the cause of action accrues and not afterwards."
5. 196 F. Supp., at 410. The article was composed and edited in New York City. It was then sent to Chicago where printing plates were made. One set of the plates was retained in Chicago, another was sent to Philadelphia, and a set of moulds and shells from which a third set of plates were made was sent to Los Angeles. Printing began and subscription copies were mailed. Magazines destined for newsstand distribution were transported to local distributors, copies went on sale in major cities. All of this occurred before February 18, 1959.
6. 185 F. Supp., at 411.
7. 166 F. 2d 127 (3 Cir. 1948), 1 A.L.R. 2d 370, cert. denied 334 U.S. 838 (1948).
8. 195 F. Supp., at 412.
9. 62 HARV. L. REV. 1041 (1949 and 32 MINN. L. REV, 734 (1948).
10. HANSEN, THE WORLD ALMANAC AND BOOK OF FACTS FOR 1962 (1962) at 541.
11. Prosser, Interstate Publication 51 MICH. L. REV. 962 (1953); 35 VA. L. REV. 627 (1949). The fantastic number of suits which could be brought by the victim of a defamation is not entirely in the realm of theory. An eager but misinformed reporter for the Associated Press once mistakenly reported that “Annie Oakley, daughter-in-law of Buffalo Bill, lies in a cell at Harrison Street Station, sentenced for stealing the trousers of a negro in order to get money with which to by cocaine.” Annie thereafter proceeded to bring fifty different actions against as many newspapers. She won forty-eight, with damages ranging from $500 to $27,000. Similarly, an Ohio congressman named Sweeney sued Pearson and Allen for accusing him of opposing the appointment of a foreign-born Jew to the Federal bench. Sweeney claimed an estimated total of $7,500,000 in damages in bringing a number of actions reported as anywhere from sixty-eight to three hundred.
12. RESTATEMENT, TORTS §578, comment b (1938) "Each time a libelous article is brought to the attention of a third person, a new publication has occurred, and each publication is a separate tort. Thus, each time a libelous book or paper or magazine is sold, a new publication has taken place which, if the libel is false and unprivileged, will support a separate action for damages against the seller."
13. e.g. FED. R. CIV. P. 18 (a)
14. “Sec. 1. [Limitation of Tort Actions Based on Single Publication or Utterance; Damages Recovered.] No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon a single publication or exhibition or utterance, such as any one edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions. Sec. 2. [Judgment as Res Judicata.] – A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in Section 1 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance."

15. Arizona, California, Idaho, Illinois, New Mexico, North Dakota and Pennsylvania.
16. Only two Uniform Acts have been adopted in all states. And they took an agonizing twenty-four years (Uniform Negotiable Instruments Law) and thirty-seven years (Uniform Stock Transfer Act). Even the Uniform Sales Ace is still ignored by a dozen states after nearly half a century.
17. e.g. Gregoire G. P. Putnam's Sons, 298 N.Y. 119, 81 N.E. 2nd 45 (1948): Hartmann v. Time, Inc., 166 F 2d 127 (3 Cir. 1948), 1 A.L.R. 2d 370, cert. denied 334 U.S. 838 (1948): Winrod v. Time, Inc. 78 N.E. 2d 708 (Ill. App. 1st D. 1948).
18. Backus v. Look, Inc. 39 F. Supp. 662 (S.D. N.Y. 1941).
19. Polchlopek v. American News Co. Inc., 73 F. Supp. 309 (D. Mass. 1947).
20. 32MINN. L. REV. 762 "Only a uniform statute can provide a satisfactory solution"; Prosser, Interstate Publication 51 MICH. L.R. 994 (1953); 60 HARV. L. REV. 948 (1947).
21. Dale System, Inc. v. Time, Inc., 116 F. Supp. 527 (D. Conn. 1953) "The terrifying babel of media having publications of nation-wide and international scope urgently requires the development of a conflict of laws rule which shall provide the certainty so essential for the protection of the public ..."
22. See generally Palmisano v. News Syndicate Co., 130 F. Supp. 17 (S.D. N.Y. 1955) and Prosser, Interstate Publication 51 MICH. L. REV. 959.
23. O'Reilly v. Curtis Pub. Co., 31 F. Supp. 364 (D. Mass. 1960); Brewster v. Boston Herald-Traveler Corp., 188 F. Supp. 565 (D. Mass. 1960).
24. Donahue V. Warner Bros. Pictures, Inc., 194 F. 2d 6 (10 Cir. 1952).
25. Neiman-Marcus Co., v. Lait. 107 F. Supp. 96 (E.D. N.Y. 1952).
26. Hartmann v. American News Co., 69 F. Supp. 736 (W.D. Wis. 1947).
27. Addressograph-Multigraph Corp. v. American Expansion Bolt Mtg. Co., 124 F. 2d 706 (7 Cir. 1941), cert. denied 316 U.S. 682 (1942).
28. Grant v. Readers Digest Assn., 151 F. 2d 733 (2 Cir. 1946).
29. Backus v. Look, Inc., 39 F. Supp. 662 (S.D. N.Y. 1941).
30. See generally Palmisano v. News Syndicate Co., 130 F. Supp. 17 (S.D. N.Y. 1955).
31. Dale System, Inc., v. Time Inc., 116 F. Supp. 527 (D. Conn. 1953).
32. Holden v. American News Co., 52 F. Supp. 24 (D. Wash. 1943), appeal dismissed 144 F. 2d 249 (9 Cir. 1944).
33. For an interesting discussion of this point, see 74 HARV. L. REV. 1457 (1961).
34. Miles v. McGrath, 4 F. Supp. 603 (D. Md. 1933); Cf. Carroll v. Warner Bros. Pictures, 20 F. Supp. 405 (S.D. N.Y. 1937); RESTATEMENT, CONFLICTS OF LAWS §603, 604 (1934).
35. See ANGOFF, HANDBOOK OF LIBEL (1946).
36. Alropa Corp. v. Rossee, 86 F. 2d 118 (5th Cir. 1936); Winrod v. Time, Inc., 78 N.E. 2d 708 (Ill. App. 1st D. 1948).
37. 166 F. 2d 127 (3 Cir. 1948), 1 A.L.R. 2d 370, cert. denied 334 U.S. 838 (1948).

Rare Books on Display in Library

By Carolyn Meyer

Enclosed in a glass case in the library at William Mitchell is a collection of books which indeed have a rare antiquity. These ancient books are rare not only because of their antiquity, but also because of the contribution these books have made to a society ruled by law. Most of the volumes here mentioned were donated to the library by Judge John B. Sanborn, '06.

One of the more unusual items of the collection is a parchment by Pliny, the Elder (A.D. 23-79), who first produced this work, Natural History, in A.D. 77. To his contemporaries Pliny ranked second only to Aristotle as a natural historian. Pliny himself died as a result of the noxious fumes from the eruption of Vesuvius. He had sailed to investigate the scene of the holocaust and declined to seek safety, even at the risk of death and thus was killed.

His writings were known to be numerous, but the only one that has reached our times is his now famous Natural History. This great work contains extracts from over 2,000 of Pliny's contemporaries. Subjects treated in Natural History are mathematics; a physical description of the world; Pliny's view of nature, which is largely pantheistic; geographies; maps; a study of man; insects; comparative anatomy; and various other subjects, a veritable encyclopedia of the ancient world. The volume in the library was published in 1539 and is a treasured addition to the collection.

In addition the collection contains a 7th edition of Sir Edward Coke's Institutes of Laws of England or Coke Upon Littleton, published in 1670. Coke (1552-1634) is regarded by some as the greatest common law lawyer of all times. His knowledge of the law of his time was unequalled, and to him more than anyone we owe the reduction of the chaos of old authorities to the comparatively orderly state of law as he left it. As a judge he is noted for his unswerving adherence to the Common Law, which he successfully upheld against the Church, the Admiralty, the Star Chamber, and even the royal prerogative.

Out of the latter days of the Roman empire came Justinian’s Institutes. Justinian had found the law of the Roman empire in a state of great confusion. The law then consisted of two masses: old law and new law. The old law was comprised of all statutes still effective, passed in the earlier days of the republic, decrees of senate, and innumerable writings of jurists, who were it seems equally as prolific as their modern day peers.

The new law consisted of ordinances of later emperors, for which there was no one complete collection. Therefore, Justinian felt it necessary to collect as much of the law as was regarded as binding into a reasonable corpus and purge away the contradictions and anomalies therein.

Actually he did not codify the law, but consolidated it. He gave to posterity not one code, but two digests or collections of extracts which are new only to this extent, that they are arranged in a new order, and that words have been modified in order to bring one extract into harmony with some other.

Holt’s Reports, a report of the cases that Sir John Holt presided over when he was Lord Justice of England from 1688-1710, also comprises an important part of the rare book collection. Holt is best known for the firmness with which he upheld his own prerogatives in opposition to the authority of parliament. Once, having been requested to supply assistance to help the soldiery in quelling a riot, he assured the messenger that if any of the people were shot he would have the soldiers hanged, and went himself to the scene of riot to prevent bloodshed.

The edition of Holt's Reports contained in the library was published in 1738.

Principles of Equity by Henry Home, published in 1767, is also a valuable part of the collection. Home himself has described this book as the first attempt to digest equity into a regular system.

The newest acquisition is one of the rarest and most exciting. It is a set of Blackstone's Commentaries, of which two volumes are actually the first edition, published in 1768 and 1769, the other two volumes being from the fourth edition printed in 1770. They were the gift of Howard W. Babcock, '41, United States Attorney at Las Vegas, Nevada. The Commentaries, of course, were the principal source of the knowledge of English law in the early days of America.

Several other books, among them a Corpus Juris Civilis published in 1688 and loaned to the library by Dr. Raymond B. Van der Borght, are also included in the rare book collection.

Professor Danforth Relinquishes Private Practice to Teach Law

By William Mortensen

The appointment of William B. Danforth as Professor of Law in 1959 and as Assistant Dean in 1961 has brought to William Mitchell a man of unusual dedication. To accept this position Mr. Danforth left a well established law practice in Mason City, Iowa, sold his home and moved his family to another state, thereby fulfilling a long held dream of teaching at a law school. Mr. Danforth, who received his A.B. at Morningside College, Sioux City, Iowa, and his Doctorate in Jurisprudence at the University of Chicago, is dedicated to the concept of improved leadership within and by the legal profession.

Summing up Mr. Danforth's early professional career, the Honorable Henry N. Graven, U. S. District Judge for northern Iowa, writes:

"Mr. Danforth served as Assistant United States District Attorney for the Northern District of Iowa from sometime in 1933 until the fall of 1952. I commenced my service as judge of this District in March, 1944. During the period from 1944 to 1952 Mr. Danforth handled a great many cases before me. He has had a long and intensive experience as a trial lawyer. His cases were always well and thoroughly prepared and very well organized. His briefs were excellently done and written in a scholarly manner. He handled his cases in a calm and dignified manner. He displayed a broad and keen knowledge of the legal principles involved. He showed a good understanding of the essential facts in the lawsuits handled by him. He has a very pleasing personality."

During this period, as was then permitted, Mr. Danforth also maintained a private practice. He resigned from federal employ in1952 to go into partnership with Nathan Levinson of Mason City, Iowa, and the firm had a substantial practice when the opening at William Mitchell came up.

As Assistant United States District Attorney, Mr. Danforth tried a multitude of interesting civil and criminal cases. The criminal cases included mail fraud, bank [sic]hensive that an irate ex-convict who had been prosecuted by her husband might return for revenge. While Mr. Danforth was practicing in Mason City, a man he had earlier convicted was later again apprehended by the law, and he called Mr. Danforth to ask if he would defend him.

Mr. Danforth is a man of intense but purposely confined interests. He is a legal scholar and, as his Legal Writing students know, he makes voluminous notes on recent decisions and law review articles.

He is an avid sports fan. He restricts his interest in sports to that of a spectator, although at Morningside College he earned letters in football, track and basketball, captaining the latter team in his senior year.

Mr. Danforth has an insatiable appetite for reading, principally channeled in history and political science, concentrating on the American scene in both, and mystery thrillers for lighter reading. As his favorite American he unhesitatingly names Abraham Lincoln.

A keen interest in music is another facet of this remarkable man. He has a trained voice and has sung in church choirs all his life. Beethoven and Debussy are his favorite composers. He has a "Hi-fi" and record collection and takes advantage of the Twin City FM stations with his radio, that is piped into speakers in every room of his home in Edina. To his family's never-ceasing wonder, on Saturdays he reads, watches sports shows on television, and listens to classical music on FM, apparently following all three.

While majoring in history and political science at Morningside, where he graduated, Bill Danforth met and married a Methodist minister's daughter. The Danforths have two children, Bob, age twenty-three, a senior at the University of Minnesota Law School, and Barbara, twenty-one, a senior at Iowa State, majoring in child development.

Growing up in the small Iowa farming community of Blencoe, population 300, son of a now retired banker, Bill Danforth came by his friendly and modest manner quite naturally. His father, who at eighty-five still goes to the bank every day, is described as highly literate, self educated and the leader of the community. His bank was one of the few banks that reopened after the moratorium. His mother, age seventy-four, still gives book reviews and has served twenty-five years as a Sunday school superintendent without missing a Sunday.

Image

Mr. Danforth and Mr. Fitzgerald

Teaching A Challenge to Mr. Fitzgerald

By Kenneth Mitchell

One of the important advantages of attending William Mitchell is the opportunity to meet, know, and study law under members of the practicing profession. Although there are many such instructors on the staff, one of them who spends a considerable amount of time going from classroom to courtroom and back to the classroom again is Patrick W. Fitzgerald, who teaches evidence to the second year students. On the staff of William Mitchell for the past seven years, "Pat" Fitzgerald has also been with the firm of Moonan & Moonan during that time.

Asked if he felt that teaching has helped him in his practice, he said he most certainly felt it did. He also said he likes to teach because of the challenge it represents and the opportunity to discuss the various

aspects of evidentiary law with his students. Never a man to insist upon his own personal viewpoints, Mr. Fitzgerald's genuine interest in the law and the students' development are two of his most outstanding characteristics.

But if his abilities as a teacher are well known, they are based on a sound academic background from Creighton University in Omaha, Nebraska, where he took an LL.B. in 1951, the only difference here being that "Pat's" legal education runs not only through his college days but back through his family as well. The "Fitzgerald Clan" of uncles, cousins, and brothers is made up of lawyers, so while some come to the law from other walks of life, "Pat" was raised on it.

Nor is "Pat" the last of the Fitzgeralds by any means, with a younger brother at Cleveland Marshall night law school in Cleveland, Ohio, two younger daughters Kathleen Julia and Margaret Mary, who may likewise have to carry on the family tradition. In fact, the only non-lawyer in the house appears to be his wife, Veronica, who is content to let her husband carry the family honors. Such contentment is not easy to come by, for as any lawyer's wife knows, the law is a jealous mistress, not only during law school days but after it.

Obviously the demands of two professions do not leave much time for outside activities, at least not while court is in session; but what time there is, he devotes to his family, a few social organizations, and golf. He is, however, a member of Delta Theta Phi law fraternity, which has a chapter at William Mitchell, Toastmasters International, the Minnesota, Nebraska, Hennepin County and American Bar Associations, and the Minneapolis Golf Club, which should explain in part his abilities as a raconteur and his excellent performances as master of ceremonies at various after-dinner affairs.

All in all, a very well liked and very much respected member of the profession, Mr. Fitzgerald has contributed much to the progress of William Mitchell. It is interesting to note, in this respect, that he believes that night law schools have a very definite part in developing new members of the profession and feels that this particular school has made a great many strides in recent years with new facilities, courses, and challenging objectives. Since he is not alone in his interest in better education and better lawyers, the future of the school, it would seem, is well assured.

Fifth in Series -Know Your Trustees: Rachie Serves on School Faculty

Mr. Cyrus Rachie, member of the Board of Trustees, has been with William Mitchell since the merger in 1956 and has been an ardent supporter of this institution in its growth. Mr. Rachie needs no introduction to many students, as he has been serving on the faculty since December, 1961. At Dean Curtis' request he took over the second year class in Real Property at that time to carry on for the ailing Mr. Wattson. His years of practice have served as a basis for many practical applications of the text material and, as the sophomores will testify, he has given them insight into the maze of real property law by his clear and concise lectures.

Mr. Rachie began teaching law first in 1934 at Minneapolis-Minnesota College of Law. With the exception of his years in the United States Navy, he continued his teaching until shortly before the opening of William Mitchell. The list of subjects he has taught reads like a law school bulletin and

includes Real Property, Wills and Abstracts, Title Examination, Criminal Law, Trusts, Future Estates, and Agency.

One of Mr. Rachie's former students, now a judge, has said that he found him to be one of the ablest teachers and finest lawyers with whom he has been acquainted. Two judges on the bench today, Judge Amdahl and Judge Barbeau, also former students of Mr. Rachie, are familiar to William Mitchell because they taught here before being appointed to the bench, and Judge Amdahl is again teaching. A number of our state legislators and high state officials, judges, and prominent lawyers have had the benefit of Mr. Rachie's teaching.

Mr. Rachie is presently living in Edina with his wife, Helen, with whom he will celebrate his twenty-fifth wedding anniversary in November. They have three children, two daughters and a married son who is presently attending the University of Minnesota Law School. One of his daughters is in junior high school in Edina, while the other attends St. Olaf college in Northfield, Minnesota. Mr. Rachie's hobbies include golf, hiking, and water skiing.

Although Mr. Rachie was born in Willmar, Minnesota, he was raised in Minneapolis and attended South High School. He enrolled at the National University in Washington, D.C., now George Washington University, and was graduated with his LL.B. in 1932. After returning to Minnesota, he became a Special Assistant Attorney General for the State of Minnesota. He remained in that position until 1950. Shortly after, he was general counsel for the Lutheran Brotherhood in Minneapolis until, 1961, when he left to go into private practice. Just recently he became assistant to the general counsel for Gamble Skogmo.

Mr. Rachie said, in an interview, that he believes William Mitchell is making its mark among the law schools of the country. He feels the success of the school can be attributed partially to the use of the Princeton Law School Admission Test and to the other entrance requirements for students. It is interesting to note that Mr. Rachie and Mr. John Burke were assigned the task of finding a suitable location for the William Mitchell College of Law. He told of the agreement with the College of St. Thomas
in regard to the purchase of land and of the good relationship that has been established between the two institutions.

As a teacher, Mr. Rachie has very definite ideas about the method of teaching in a law school. He stresses fundamentals to their fullest extent. Of course, he feels the communication must be established on a level of the students. He has little time for those who try to show their "genius" to the students while teaching them. He said night law school students are difficult to teach because of the circumstances involved, that is, students working days and going to school and studying nights. "It sometimes takes a good deal of 'pounding' to get through to the students," he says.

In closing, Mr. Rachie said he felt it no crime to teach in a simple manner, expressing law on the students' level. This philosophy is seen by the sophomores and that class feels most fortunate to have him as instructor in Real Property.

William Mitchell is thankful to have Mr. Rachie as a trustee. His wide and varied practical experience in the law and his understanding of his fellow men are attributes that are helping William Mitchell in its growing years.

Image

Cyrus Rachie

Mitchell Law Wives

By Mrs. Paul Rosenthal, Publicity Chairman

"Service" must be the key to success, for it is by directing its many activities of service to the College during the 1961-62 academic year that the William Mitchell Law Wives organization has achieved an unprecedented measure of success.

The third Annual All-School Ball was held at the Golden Steer on March 3. Chairman of the Ball, Mrs. Sherman Kemmer, planned an hors d-oeuvre and cocktail hour, for the 150 couples who attended.

Mr. Gordon Locksley, hairstylist, television personality, and director of his own salon, will entertain at the “Spring Fashion Court” on May 9, at the Boulevard Twins. The elegant fashions from Anthonies, Inc., will be shown by professional models. Prizes, a coffee hour, and bridge complete the plans for the evening. Mrs. Jere Maertz, chairman of the event, announced a near sell-out two weeks before the show.

The proceeds from the annual dance and style show provide scholarships for William Mitchell students. A silver service will be purchased with additional funds.

Members of the club have acted as hostesses at many school functions and will again present the Graduation Party for the seniors and their wives.

Jurors were arranged for Moot Court by Mrs. Robert O’Neill, Mrs. George Fricker, and Mrs. James Mason. Speakers during the past year presented a variety of subjects to those attending the monthly meetings. The club heard a talk on the Immigration and Naturalization Service by its Regional Counsel, Mr. Charles Gordon, a member of William Mitchell’s faculty. Such outstanding lecturers as Judge Douglas K. Amdahl, Judge of Municipal Court of Hennepin County, and also a faculty member; Mr. James C. Noonan, a senior student and Superintendent of Woodview Detention home; and Miss Jean J. McVeety, attorney at law, were brought to the group by Program Chairman, Mrs. Charles Langer. The students and wives joined to observe Law Day, U.S.A., and to year Mr. Raymond A. Scallen, alumnus of William Mitchell, speak on “The Significance of Law Day U.S.A. to Law Students.”

Officers elected for the 1962-63 year are: Mrs. Donald Hassenstab, president; Mrs. Martin Conway, vice president; Mrs. James Hall, recording secretary; Mrs. Donald Giblin, corresponding secretary; Mrs. James Knutson, treasurer; Mrs. Paul Rosenthal, public relations; Mrs. Richard Arvold, social chairman; and Mrs. James O’Neill, hospitality chairman. Retiring president, Mrs. Edward Reichert, was presented with a silver tray by the members of the club in appreciation of her service.

Image

Mrs. Jere Maertz and Mrs. Sherman Kemmer

SBA Ends Active Year

By Thomas Foster, SBA Secretary 1961-62

The Student Bar Association provides the modus operandi for channeling the interests and energies of law students. S.B.A. activities provide an opportunity for students to develop leadership, responsibility; and interest in fellowman, qualities which society demands from its professional man, the lawyer. S.B.A. interest runs high at William Mitchell and this is evidenced by the spirited elections and attendance at monthly meetings.

It cannot be denied that S.B.A. serves a social purpose also. In fact, the first function of the 1961-62 S.B.A. Board of Governors, with the assistance of the law wives, was a Senior Coffee Klatch on April 28, 1961. This was a farewell and good luck party for 1961 seniors.

Early in the fall term, S.B.A. sponsored an All-School Smoker at the University Club to orient the Freshmen. This gave them an opportunity to meet fellow students and the faculty members, whom Dean Curtis introduced. The treasurer, Dennis Holisak, reports that the beer bill evidenced the fine attendance at this event.

One of the first business matters on the fall agenda was the election of a new vice-president. Tom Gruesen, a senior, was elected by the S.B.A. Board. President Charles Langer reported on the American Law Students Association Convention he attended at St. Louis, Missouri, in August.

Among other business matters was a proposed amendment to the constitution regarding restriction of first year students from holding offices, which became quite a controversial issue. It was contended by Mr. Gruesen that first year men were not experienced and qualified enough to hold office. However, Mr. Anderson pointed out that this would, in effect, limit the first year students from holding any office for two years, which would result in a lack of interest in the association. Mr. Anderson's view prevailed and the constitution was not amended.

Coffee, Tea, or Milk?

A committee was appointed to investigate the possibility of installing vending machines in the lounge to serve soup, sandwiches, milk and cigarettes. However, the school administration felt that this would result in excessive refuse around the school building. Hungry students may now find the words to Campbell's "soup and sandwiches" in the school library.

A significant step was taken by Charles Langer in appointing another committee to study a William Mitchell student no-interest fund based on need and good standing. Bob Findorff is chairman, the committee of Leroy Anderson, Charles Langer, Carol Paar and Tom Foster. Although still in its embryonic stages, it is hoped that the project will be fruitful.

The 1961-62 S.B.A. claims several "firsts" in the way of achievements. It is now handling arrangements for caps and gowns for graduating Seniors. It is also handling arrangements for the first group graduation pictures. The S.B.A. has also established a "Marsh Wattson Library Memorial Committee" under the chairmanship of Bill Mortensen. Two twenty-five dollar memorials were sent in memory of Mr. Wattson, one to the Minnesota Civil Liberties Committee, the other to the Unitarian Society.

Congratulations are in order for the one-man committee of Leroy Anderson who had charge of arranging the 1961-62 lecture series. His fine choice of lecturers included Mr. Samuel Morgan, of Briggs and Morgan, a St. Paul law firm; Walter Mondale, Minnesota Attorney General; and Judge Edward Devitt, Chief Judge of the United States District Court. Each gave a very informative and excellent talk. Students, however, were conspicuous by their absence. Only ten per cent of the entire student body availed themselves of the opportunity to learn the law in an informal manner. The poor attendance at our lecture series was both discouraging and disappointing.

Mr. Anderson and the writer talked to many students to find an explanation for the lack of attendance at the lecture series. The majority of the students seem to feel that they have too much school work to do and could benefit more by this work, and, of course, the old standard-no time-too busy. The no time and too busy students' argument is answered by the attendance of Bob Findorff at all of these lectures. Bob maintains a high average, has six children, is personnel manager of Donaldson's, and is class representative. Of course, the question, "Can I learn something?" is answered by the attendance of our respected and learned law professor, Mr. John Dulebohn.

It is hoped that the new Board of Governors will continue the fine work of Mr. Langer and that student work will improve.

Phi Delta Delta Elects Officers

Epsilon Phi Chapter of Phi Delta Delta, Women's International Legal Fraternity, held its annual elections on April 18 in the offices of Elizabeth Drake, Minneapolis. High Priestess, Eleanor Kesterman; Priestess, Helen Murray; Registrar, Frieda Pinger; and Chaplain, Elizabeth Egan were elected for the following year and will be installed at the May meeting.

The chapter has two candidates for national office. They are Honorable Isla Lindmeyer, Judge of Municipal Court, Shakopee, Minnesota, president, and Carol Paar, third year student at William Mitchell, secretary. Judge Lindmeyer has held numerous chapter offices and is active in the Minnesota State Bar Association. Miss Paar is active with the William Mitchell Opinion and has been a legal secretary.

Plans are being completed for the breakfast to be held on June 14, in conjunction with the Minnesota State Bar Association convention, to which all licensed women lawyers of Minnesota will be invited. Anna O. Blum, who will speak at the breakfast, is president of the National Association of Women Lawyers. She is engaged in the practice of law with her brother in Monroe, Wisconsin, and is a graduate of the University of Wisconsin Law School. She is a member of Phi Beta Kappa and the Order of the Coif.

Delta Theta Phi Founder’s Day Banquet May 5th

Delta Theta Phi fraternity held its spring initiation and banquet on April 7 at the St. Paul University Club. Pledges were initiated into full membership and new officers for 1962-63 were elected. They are: Dean, Dennis Holisak; Vice Dean, Tim Dordell; Master of Ritual, Paul Magnuson; Clerk of the Rolls, Larry Sullivan; Clerk of the Exchequer, Dan Meaney; Tribune, Jack Wayrens; Bailiff, Rod Hynes. Mr. Roland Thorson, Minneapolis attorney, spoke on the "Dram Shop Act."

The annual Founder's Day banquet will be held on May 5 at Napoleon's in St. Paul. This affair will be celebrated with the Mitchell senate of the University of Minnesota; all members and alumni of the fraternity are invited to attend. The speaker for the banquet will be Dr. Raymond B. Van der Borght of the William Mitchell faculty.

Other spring semester activities included a buffet luncheon-smoker on February 13 at the St. Paul University Club. Sixty actives and pledges were in attendance. A second buffet luncheon-smoker was held at the St. Paul University Club on March 6, attended by approximately 40 actives and pledges.

New Chapter of Phi Alpha Delta Organized

Hereinafter, references to "PAD" by William Mitchellites will not connote a place unfamiliar to most night law students. The ninety-second chapter of Phi Alpha Delta (PAD), the nation's largest law fraternity, is being organized here, with the official installation to be held soon.

The fraternity was given an appropriate sendoff on March 9, 1962, at a reception at the University Club for the group's national Supreme Justice, Anthony A. Di Grazia of Chicago. Attending in addition to thirty-five students and prospective members, were Dean Curtis, an alumnus of the John Marshall chapter at the University of Chicago, and several other alumni of the fraternity now living in the Twin Cities area.

All were treated to a chicken and shrimp lunch following the social hour.

Supreme Justice Di Grazia outlined briefly the purposes and advantages of belonging to Phi Alpha Delta, stressing the distinction between a professional fraternity and an undergraduate social fraternity.

He pointed out that the benefits for alumni members are often as great as for student members. PAD has a strong national organization and there are active alumni chapters in 49 cities. It publishes a national directory of alumni by locality, which is widely used by members for reference of business.

"Tony," as he is called by those who know him, related personal experiences in his own practice in being able to call on fraternity brothers, not known to him, in distant cities for certain information or for assistance of his clients.

In keeping with the motto of Phi Alpha Delta, which is "Service to the Student, the Law School and the Profession," some of the benefits available to actives include student loans through the national endowment fund, placement services maintained by alumni chapters, and a lending library. A national placement service is currently being organized.

PAD sends its quarterly fraternity publication "The Reporter" to each active and alumni member, without charge, for life.

"Our fraternity has no bias clause and a policy of no discrimination is followed in practice, as well as having it on paper," commented Mr. Di Grazia.

Dean Curtis discussed his associations with the fraternity and gave his best wishes to the new chapter. The Dean stated that bis first desire was to see a strong Student Bar Association and since that now is an accomplished fact, he is in favor of active fraternities at William Mitchell.

Other PAD alumni on the faculty include William B. Danforth, assistant dean, John Scott and the late Marshman S. Wattson.

Heading the organizing committee of the group is Sherman Kemmer, senior. Assisting him are Charles L. Langer, L. Mercy Lillehaugen, Lyle Howg, Michael Lillehaugen, Don Zibell and Dennis Maher.

Members of the membership committee are Wayne A. Vander Vort, chairman, Milton Bix, Rex David, Richard Truax, and Walter McLeod, Jr.

The local chapter will be named after a prominent Minnesota jurist or lawyer.

Phi Alpha Delta boasts a long list of distinguished jurists and public figures among its members. The alumni roster includes former vice presidents Richard M. Nixon and the late Alben W. Barkley; two members of the U.S. Supreme Court, Tom C. Clark and William O. Douglas, as well as retired members Harold H. Burton and Charles E. Whittaker.

Among the forty-four U.S. judges who are PAD alumni are commencement speaker Herbert F. Goodrich, of the Third Circuit Court of Appeals, and Earl R. Larson, judge of the U.S. District Court for Minnesota.

ASLA Prints Booklet On Federal Placement

Are you a student graduating this year, or in 1963, or an alumnus looking for a new position? If you are, there is an interesting and informative booklet available to you, put out annually by the American Law Student Association, which provides specific details on a wide range of opportunities for employment with the United States Government. This publication gives you the kind of information you need to determine whether and where there are openings for you -and not only lists requirements, nature of work, location of position, salary and opportunities for promotion, but also contains results of a survey made by the Junior Bar Conference of the American Bar Association, of present government employees, showing how they feel about the jobs they hold. The results are quite revealing and range from caliber of supervision and associates through pay and promotions, to social value of work and professional recognition.

A new feature of the booklet for 1962 is a tabulation of a survey report showing which agencies employ attorneys in various specialty fields, listing the agencies alphabetically from admiralty to veterans affairs, thus providing a better insight for a man desiring to specialize in one of these fields. It appears that the

greatest opportunities, numerically, lie in the fields of taxes, labor, veterans affairs, antitrust, finance, real property, and trade regulation, in that order, with almost 1200 attorneys throughout all agencies doing tax work. It is interesting to note that in this survey, 10,852 attorney positions are reported in all agencies, and almost 2,000 new opportunities will be available during 1962 and 1963; and this figure does not include agencies reporting an indeterminate number of openings.

What about salary possibilities? Most agencies tie their salaries to the government service pay scale, and start their men at GS-7 ($5355 per annum), or GS-9 ($6435) if you qualify for their Honors Program, which generally means graduation in the top fifteen percent of your class. The top basic salary is GS-18 ($18,500), with GS-15 ($13730) and up generally being reserved for supervisory and management personnel. As for salary increases, these agencies are authorized to each next higher grade after a minimum of 1 year in the lower grade; so a GS-7 may go to GS-9 ($6435), then to GS-II ($7560) in as little as two years, and many agencies do promote to GS-11 in such minimum time, where competence has been satisfactorily demonstrated. Also, automatic “in grade” increases are provided at regular intervals: GS-7’s and GS-9’s get an increase of $165 after each 52 weeks in grade, unless advanced in grade during that time; GS-11’s through GS-14’s get $260 additional each 78 weeks, and GS-15’s get another $325 each 78 weeks.

How about, for example, becoming a Special Agent for the F.B.I.? This agency reports an indeterminate number of openings from now through June of 1963, starting at GS-10 ($6995), plus up to $997 in overtime pay, for men between 25 and 41 who meet Bureau standards and are graduates of accredited law schools. Agents can advance to GS-13 ($11,935), and if picked for supervisory positions (filled from within the Bureau) they can qualify for the higher grades.

As another example, take the now-prominent NASA (National Aeronautics and Space Administration) which has openings for five attorneys from June 1962 through June 1963, who will start at GS-7 if they have an LL.B. degree and are members of the bar, or at GS-9 if they also have a year of experience, or at GS-11 with two years of experience.

Prayer

I pray that today I will have the knowledge to discover, and the wisdom to clarify, the legal issues, the ability to see, and the unbiased mind to recognize, the true facts; the heart to know, and the gentleness to understand, the human problems, and the patience and logic to reach, and the courage to declare, the just decision.

All these things, Lord, I ask that at the close of this day my conscience may truly say, "today you were worthy to be called 'judge'."

Douglas K. Amdahl, LL.B. 1951
Judge of Municipal Court Minneapolis

Alumni Briefs

1915

Raymond A. Scallen, senior partner of Faegre & Benson, and chairman of the Minnesota State Bar Association World Peace Through Law Committee, was the speaker at the law school's Law Day U.S.A. program on May 2.

1943

Harry L. Holtz, former executive vice president, has been elected president of the First Trust Company of St. Paul. He is also treasurer of the William Mitchell Alumni Association, and has been named by Governor Elmer L. Anderson to a thirteen-man Advisory Committee on Gift and Inheritance Tax Regulations.

Judge Donald T. Barbeau of the Minneapolis Municipal Court was honored at a luncheon sponsored by the Minneapolis Legal Secretaries' Association on December 8, 1961. He was presented with an inscribed desk set in appreciation of his moderating and co-ordinating a ten-week course for the secretaries at Vocational High School, Minneapolis. The luncheon was held at the Minneapolis Athletic Club.

1947

Roman H. Weide has been appointed to the Minnesota State Advisory Committee on Gift and Inheritance Tax Regulations by Governor Elmer L. Andersen. Mr. Weide is assistant director of advanced underwriting for Minnesota Mutual Life Insurance Co. He joined the company in 1941 while studying law, returned in 1956 as an assistant in the advanced underwriting department after spending some time as a tax attorney with the state, and was also special assistant attorney general.

1952

Robert J. Monson, Eugene R. Murray, and Harry E. Paulet are now associated in the practice of law in St. Paul. Mr. Monson is chairman of the Legislative Committee of the Minnesota State Bar Association.

1953

Robert C. Sullivan was recently promoted to assistant trust officer at Northwestern National Bank, Minneapolis, in the trust administration division. He joined the bank's trust and real estate division in 1953, after several years in real estate and insurance business.

1954

Robert J. Hasling has been promoted from an attorney in the law and claims department to assistant counsel, according to Harold J. Cummings, President of Minnesota Mutual Life Insurance Co. He joined the company in 1949, received his LL.B. in 1954, and was appointed claims attorney in 1957.

Walter S. Speakman, Minneapolis attorney since 1955, died November 17, 1961, at the age of 57.

James W. Diment, formerly a partner of the law firm Larson and Diment, has joined the Probate Division of the Trust Department of the First National Bank of Minneapolis.

1958

Robert T. Cates has announced the opening of an office for the general practice of law in the Pioneer Building in St. Paul. He was formerly a member of the legal staff of the St. Paul Insurance Companies in St. Paul.

Theordore R. Muller is now associated in the practice of law with Brehmer & McMahon in Winona, Minnesota.

1959

Richard W. Copeland, Anoka attorney, is enrollment chairman of the Anoka County Red Cross. He held the highest rank in his class in 1959. Now a member of the law firm of Weaver, Talle & Copeland in Anoka, he was formerly with Cummins, Cummins, Hammond, Cummins & O'Brien in St. Paul, during which time he had been active in the St. Paul Community Chest drives as a member of the volunteer speaker's bureau.

1960

David C. Johnson is now associated with John F. Dablow of Cambridge, Minnesota. He was formerly a claims examiner for the Employers Mutuals of Wausau.

Harry P. Schoen and Charles F. Gegen have formed a partnership for the practice of law at Hastings, Minnesota, known as Gegen & Schoen. Schoen had practiced in Hastings, and Gegen had been with West & Gowan, Pine Island, Minnesota.

Patrick F. Flaherty announces that he has entered the practice of law and is associated with the firm of Van Valkenburg & Moss of Minneapolis.

Richard F. Johnson, formerly an officer at the First Trust Bank of Minneapolis has joined The Glidden Company of Cleveland, Ohio as an Assistant to the Director of Financial Relations.

1961

Harry F. Christian is now with the firm of Hensen, Hazen & Lynch, in St. Paul.

Anthony A. Danna is now with the law firm of Paulos, Eggleston & Libel, St. Paul, Gerald E. Frish is now with the law firm of Gottlieb & Shaw, St. Paul, and James V. Harmon is now with the law firm of Carlsen & Carlsen, Minneapolis.

Douglas R. Heidenreich is now associated with the Minneapolis law firm of Erickson, Popham, Haik & Schnobrich, Roger C Hennings is now with the law firm of Douglas, Sheets & Bell, St Paul, and John V. Jergens is now a partner in the firm of Albertson, Norton & Jergens, with offices at Forest Lake and Stillwater, Minnesota.

John J. Kirby and Seldon H. Caswell are now practicing in North St. Paul under the firm name of Caswell & Kirby. Caswell was editor of The William Mitchell Opinion during his law school days.

James A. Reding is with the law firm of Schermer & Gensler, Minneapolis, and Robert T. White is now associated with the law firm of Miley, Narveson & Williams, St. Paul.

ALUMNI ATTENTION:

Please send information about yourself, or other Alumni to: WILLIAM MITCHELL OPINION 2100 Summit Avenue St. Paul 5, Minnesota. We want to print news about YOU!

State Bar Convention Minneapolis June 13-15

Federal Court Benches Now In Mitchell Moot Court Rooms

By James Gibbs

Most students by this time must have noticed the judges' benches that now grace the classrooms on the lower floor, the second floor, and the two south rooms on the third floor. If these benches look well used, it is because for many years they stood in the old Federal Court House in Minneapolis, which is now replaced by a new Federal Court House. The benches were secured from the Federal Government for William Mitchell College of Law by Dean Curtis.

These historic benches, dating back some seventy years also served other great judges, including our own Judge John B. Sanborn, '07.

For many criminals these benches served as a last stop; for many plaintiffs and defendants in civil cases, they were the end of many hours, days, weeks and even months of negotiation and litigation. Now they will assume the position of a starting point for young men and women about to embark on a career of law. They will serve as the first court bench approached by students at William Mitchell.

To get a bit of history on these benches, a visit was paid to the chambers of the Honorable Gunnar Nordbye, Judge of Federal District Court, in the new Federal Court House in Minneapolis. The Judge spent some of his precious time telling of what he considered to be a few of the landmark cases decided from our moot court benches.

The first case mentioned by Judge Nordbye, was one which, from his point of view, had a great deal of human interest coupled with historical value. It involved rough notes made by a Capt. Takenton on the

Lewis and Clark Expeditions. These notes were found in a home in St. Paul and a dispute rose as to ownership.

Another interesting case was Time v. Life T.V., 123 F. Supp. 470. This suit concerned the trademark of Life magazine and its use by a T.V. manufacturer.

Freshman students will encounter one of Judge Nordbye's decisions in their Introduction to Law course. This too was decided from our moot court benches, and it was one of the first cases leading to the break-up of the monopoly of ASCAP.

As to criminals cases, the Judge said prohibition brought a deluge upon the courts. There were cases involving the making of moonshine, murder, and bank robberies. Judge Nordbye thinks perhaps the Kid Cann white slavery case received as much notoriety as any that he has heard. The Twin City Rapid Transit case also was well publicized.

One case mentioned that was particularly interesting involved the Wilson Strike of a couple of years ago. Here, it will be remembered, the court found it necessary to restrain former Governor Freeman in his use of troops at the plant. In this case three judges presided, with Judge Nordbye writing the opinion.

The Judge hesitated in naming one case in importance over another. This seems significant in that notoriety is not the essence of good law, and the cases excluded are as important to our system of law as the ones that "made the headlines".

One case Judge Devitt felt to be particularly interesting was the case of a Danish immigrant, who, while wanting his U.S. citizenship, refused to take the part of the oath that required him to take up arms in defense of his country. Mr. Hanson, the immigrant, based his refusal on sincere and long standing religious beliefs. The court gave citizenship to Mr. Hanson. He took the oath of citizenship, with the bearing-of-arms clause excluded. The decision was based partly on the fact that Judge Devitt could not conceive of a man Mr. Hanson's age being called to military service.

Judge Devitt felt the Thompson v. Lillehei case must be listed as one of the most interesting. That case was a malpractice suit against Dr. Lillehei of the University Hospital and involved brain damage to Mrs. Thompson while donating blood for her daughter's heart surgery. The case was decided in Dr. Lillehei's favor.

Thus we have history in our moot court rooms.