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Professor Dulehohn to Retire from College Faculty

John F. Dulebohn, 78, the product of a 90-acre Pennsylvania farm who was always "inclined to two professions -teaching and law," will retire the end of this school year as a William Mitchell professor.

The decision was prompted by concern for the students. Mr. Dulebohn suffers an ailing hip, and anticipates he might undergo "one of those new fangled operations."

"I was concerned that I might not be able to finish another year," he ex-plained. "It would be bad for beginning students to start with one instructor, and then have to switch over to another."

Mr. Dulebohn has been a member of the faculty of William Mitchell and one of its predecessor schools, the Minneapolis-Minnesota College of Law, for 12 year.

Mr. Dulebohn this year teached first-year torts and assisted with third-year legal writing. He has also taught agency, equity, evidence, and legal research.

Reared on a farm about 40 miles west of Gettysburg, Penn., he attended the Gettysburg Academy and Gettysburg College, a Lutheran liberal arts college.

A college friend came to Minnesota after graduation. He urged Mr. Dulebohn to do the same.

"I said I was going to California, but would stop here for a visit," Mr. Dulebohn recalled. It turned into a long visit. He enrolled in the University of Minnesota Law school, and obtained a position teaching part-time at Augsburg College Prep School to earn his way through law school.

"I was always encouraged by my parents to go just as far as I could education-wise," he recalled. "It was then looked upon as a duty for those with the native ability."

After receiving his law degree, he enlisted in the ordinance department of the Army on the assurance he would be shipped to France. He was. That was during World War I.

"I couldn't see life in a military camp doing nothing but eating and exercizing" in stateside duty, he said. He remained in France following the armis-tice in the army of occupation, attended the University of Nancy in France and received a diploma in civil law.

Although hoping to be discharged in the East so he could visit his family and friends there, the Army insisted on bringing him as far west as Iowa. He was a sergeant when discharged.

He returned to Minnesota and established a private practice in Minneapolis. But several months later he joined the Minneapolis Street Railway Co., as a trial lawyer.

"My main interest in the law was in trial work," he said. He estimates he tried more than 1,800 cases for the company, including several before the Minnesota Supreme Court.

He became general counsel of the Twin City Rapid Transit Co., holding company for the Minneapolis and St. Paul railway companies, in 1947. He retired from the company in 1952.

Two years later he accepted an offer to join the faculty of the Minneapolis-Minnesota College of Law. That culminated his twin inclinations to teaching and law.

Mr. Dulebohn originally rejected teaching in favor of Jaw because he felt the latter offered superior opportunities. And to today's law students, he says, "there is a great future in the field of law."

He and his wife reside at 4801 S. Lyndale Ave., Minneapolis. They have two sons and two daughters.

Murphy Resigns; C. Paul Jones Joins WM Faculty

James W. Murphy, full time profes-sor of Criminal Law, Family Law and Municipal Corporations since the fall term of 1963, has resigned to accept another position. A portion of Mur-phy's duties will be assumed by C. Paul Jones, Minnesota's first State Public Defender.

Mr. Murphy had brought a deep background in common, military, and civil law to his classes at Mitchell. A native of Maspeth, Long Island, New York, he was a graduate of Cumber-land University Law School, Army Officers Candidate School in 1942, Tulane University College of Law, where he earned an LL.B. in civil law, and the University of Minnesota. A Lieutenant Colonel in the Infantry Reserve, he served as a war crimes liaison officer in Europe after V.E. Day, taught at the Third Army Intelligence School, practiced law in both Louisiana and Florida, and has codi-fied the ordinances of thirty-one cities in nine states. He spent last summer at New York University, and recently published a comparative study of various evening law school curriculums in the ABA Journal.

C. Paul Jones, who formerly taught criminal law at William Mitchell and the old St. Paul and Minneapolis col-leges of Jaw, will take over Mr. Mur-phy's duties in freshman Criminal Law at Mitchell. Jones, 38, was named Minnesota's first public defender by the Minnesota Judicial Conference and began his duties in that post in Janu-ary. Jones has been active in private practice in the Minneapolis firm of Dorfman, Rudquist, Jones & Ramstead, and as Assistant Hennepin County Attorney and assistant U.S. District Attorney.

Robert G. Lauck, who currently teaches Administrative Law second semester, will teach a new, six credit course in Commercial Transactions next fall. The subject matter of that course is now covered by separate courses in Sales and Bills and Notes. Lauck will also be moderator for a newly created seminar in Government Contracts, an elective course limited to a small number of senior students.

Juris Doctor Diploma to be Awarded Graduates for First Time This Year

Image: William Mitchell College of Law, Saint Paul, Minnesota.

On the recommendation of the faculty, the board of trustees has conferred upon [blank] the degree of Juris Doctor and has granted this diploma as evidence thereof.

Given in Saint Paul in the State of Minnesota the thirteenth day of June in the year of our lord one thousand nine hundred and sixty six.

Signed by the Secretary, President, and Dean. Signatures illegible

Chief Justice Knutson to Address 64 Grads; Will Receive Honorary Degree

By James S. Lane Ill.

Chief Justice Oscar R. Knutson of the Minnesota Supreme Court will share honors with sixty-four graduating seniors when he receives an honorary Doctor of Laws degree at William Mitchell College of Law commencement exercises at 8:00 p.m., Monday, June 13, in the St. Thomas College Armory.

Fifty-eight seniors are candidates for the Juris Doctor (J.D.) degree. The J .D. was adopted a year ago by the Board of Trustees upon the recommenda-tions of the full time faculty and the Section of Legal Education and Ad-mission to the Bar of the American Bar Association.

Six seniors are candidates for the LLB.

Graduating seniors in the upper 10 per cent of their class who have main-tained a B average will be candidates for academic honors. The graduate who in the judgment of the faculty scholarship committee has made the most scholastic progress in his final year will receive the United States Law Week Award, a year's complimentary sub-scription to Law Week.

Acknowledgment of honors gradu-ates and award of certificates of ap-preciation to the wives of graduating seniors will be made at the annual senior class party for graduates and their wives and guests at the law school on Friday evening, June 10. The law wives will serve refreshments.

Chief Justice Knutson will be the first Minnesota Supreme Court Justice to receive an honorary degree from William Mitchell in the recent history of the Jaw school.

The 66-year-old resident and former mayor of Warren, Minnesota (1936-1941), attended St. Olaf College and graduated from the University of Minnesota Law School with an LLB. in 1927. He practiced law until 1941 when he was appointed to the Min-nesota District Court bench. Seven years later he was appointed an As-sociate Justice of the Minnesota Supreme Court.

In 1962 Governor Elmer L. Ander-sen appointed him Chief Justice, suc-ceeding the late Roger L. Dell, who retired.

Chief Justice Knutson is a mem-ber of the Minnesota State Bar As-sociation, American Bar Associa-tion, and American Judicature Society. He has a daughter and twin sons, one of whom, Richard H. Knutson, St. Paul, is a William Mitchell senior and candidate for the J.D. degree.

Other graduating seniors are:

Marshall W. Anthony, William F. Archerd, James W. Bassett, Paul M. Binsfield, John E. Brandt (LLB), Frank J. Brixius, Wayne R. Brusewitz, Robert L Bullard, Lee A. Carlson, Robert I. Christensen, Andrew R. Clark, Thomas G. Clifford, James L Daniels (LLB.), William F. Davern, John Doyle, Rudolph P. Ebersberger,

William E. Falvey, Michael F. Petsch, Joseph E. Flynn, John L Frost, James J. Galman (LLB.), Philip A. Gartner, Robert E. Halva, Aaron L Hardt, Quentin J. Hietpas, Donald A. Hillstrom, Floyd A. Hillstrom, Vincent K. Hutterer, Wallace E. Jacobson, Carl L Johnson, Daniel R. Johnson, Richard H. Knutson, Robert W. Lund-gren (LLB.), Paul F. McCloskey, Jr., Dick L Madson, Robert E. Mathias, Albin Medved, Thomas E. Mulcahy, James J. Nelson, John D. Nelson, Joseph M. Nemo, Jr. (LLB.), Donald E. Notvik, Thomas J. O'Meara, Ronald E. Orchard, Eugene R. Ouradnik, Richard A. Peterson, Jack A. Postlewaite, Charles H. Potter, Frederick E. Rafferty, John P. Scherer, Thomas J. Schindler, Lew S. Schwartz, Harry A. Sieben, James D. Sinclair, John R. Speakman, Russell M. Spence (LLB.), Russell J. Sudeith, Jr., William W. Thompson, Ronald N. Thorn-ton, Stanley C. Townswick, Richard P. Ulrich, Arthur L Vandersteen, Raymond R. Waechter, Gary L Williams.

Image: Chief Justice Oscar R. Knutson

Scholarships Received By 12 WM Students

Twelve William Mitchell students received scholarships totaling $3,505.34 in February.

They are George R. Olds and Keith A. Hanzel, both first year students; Craig W. Gagnon, second year; Fred Keiser, Clifford Gardner, Charles Anderson, John Hirte, and Ronald Erickson, third year; and Joseph Flynn, Gary Williams, Robert Halva and Floyd Hetlston, fourth year.

Among the scholarship sponsors were the Law Wives, the State Bar Foundation, and the Ramsey County Lawyers' Wives.

Scholarship recipients are selected on the basis of need and academic standing.

Editorials

Minnesota Reapportions

When the U.S. Supreme Court handed down its monumental reapportion-ment decision in Reynolds v. Sims two years ago, the court did not establish specific requirements of the "one-man, one-vote" principle. The court declared that "the equal protection clause requires that a state make an honest and good faith effort to construct districts, in both houses of the legislature, as nearly of equal population as is practicable." But, added the court, "for the present, we deem it expedient not to attempt to spell out any precise constitu-tional test." Dissenting Justice Harland complained that the court was con-tinuing "to avoid the consequences of its decisions" by speaking in generalities and "simply assuring us that the lower court 'can and . . . will work out more concrete and specific standards'."

The impact of uncertain standards was demonstrated during the recent special session of the Minnesota Legislature, which was convened to establish new legislative districts. When the legislators sat down to the difficult task, they were met immediately with the question of what deviations from ideal populations would be tolerated by the courts. The uncertainty slowed the clanking machinery of the Legislature with the effectiveness of summer oil on a cold winter morning.

The house and senate, although both controlled by the same caucus, initially charted divergent paths. The leadership of the House shaped a plan which generally remained within 10 per cent of the ideal populations of legislative districts. The proposal sliced through many counties to remain within the 10 per cent standard.

Senate leaders insisted that the Equal Protection clause would permit greater deviations if designed to preserve political sub-divisions. The U.S. Supreme Court did sanction the desire of a state to "maintain the integrity of various political subdivisions, insofar as possible" and so long as equal population re-mained the dominant consideration.

Gov. Karl Rolvaag once insisted that deviations remain within five per cent. His bipartisan reapportionment commission, :however, found the standard un-workably stringent. The governor concurred that the standard should be ex-panded to 10 per cent.

Proponents of 10 per cent maximum deviations were accused of arbitrarily picking a standard lacking judicial authority. They replied that the legislature should not skirt the brink of unconstitutionality in establishing a new appor-tionment plan.

There also appeared a likelihood that whatever bill would be produced by the legislature and signed into law by the chief executive would face a chal-lenge in federal court.

All of which made clear that the question is far from settled, and that the federal courts will see many reapportionment cases in the days to come.

Replace Dulebohn?

When Professor John F. Dulebohn announced his retirement plans to Dean Heidenreich, the dean told him that other teachers could be found to take over his classes but that no one could be found to replace him. Mr. Dulebohn modestly demurred. Although we were loath to disagree with Mr. Dulebohn on points of law, we must, in this instance, concur with the dean.

Hart, Shade, Kane and Murphy Fill Student Bar Association Posts

Webster Hart, 27 year old third- year student and Honeywell employee, was handed the Student Bar Association Presidency May 13 by a 15 vote 23, margin over classmate John Regan.

Sophomores Bill Shade and Tom Kane were voted Vice-President and Secretary, respectively, in the all school election. Mike Murphy, freshman won the Treasurer's post.

Hart is a January, 1962, graduate of Stout State University at Menomonie, Wisconsin with a degree in industrial technology. Married and the father of three children, Hart brought no previous formal experience in student government to the campaign for the SBA president's chair.

Bill Shade, a 1962 Macalester graduate in economics, bet his sophomore rival Steve Lapadat in the race for vice-presidency. Shade and his wife, Sandy, live in St. Paul where Bill clerks for Tyrrell, Jardine, Logan and O'Brien.

Sophomore St. Paulite Tom Kane, 23, bettered sophomore Joe Daly in the run for the SBA secretarial job. Married, no children, Tom was the president of a social fraternity at the University of Minnesota, from which he earned a degree in political science-history.

Freshman Mike Murphy, St. Paul, took the treasurer's seat from opponent sophomore Ed Hance. The 26 year old Murphy graduated from S. John's University in 1961 with a B.A. in English. He earned a Master's degree in that subject at the University of Minnesota in 1964. While at St. John's, Murphy served as president of the student council his senior year. He works in the trust department of the Northwestern National Bank of St. Paul, and has one son, Timothy.

Cartoon: A Big Hurdle Ahead

Add description

Justice Dell Dies in March

William Mitchell lost a loyal friend and alumnus and the legal profession a distinguished jurist with the death of Roger L. Dell, retired chief justice of the Minnesota Supreme Court.

Judge Dell, 68, who retired from the bench in 1962, died March 8 at Northwestern Hos-pital in Minne-apolis following heart surgery.

He graduated from the former St. Paul College of Law in 1920, and be-gan his legal career in Fergus Falls. He was a senior member of the firm of Dell, Rosengren and Rufer.

He earned a reputation in the field of negligence law, representing both plaintiffs and insurance companies. Judge Dell also was defense counsel in several widely publicized criminal trials. He was noted for his ability to marshal facts and to present them dramatically to jurors.

His career on the bench began in 1953 when he was appointed associate justice of the Supreme Court. He be-came chief justice a year later.

Sweeping changes in the adminis-tration of the state's court system fol-lowed his appointment. The Legislature granted the chief justice supervisory powers over district courts.

Judge Dell secured the reduction of the number of judicial districts to per-mit more flexible and efficient use of judicial personnel. With consolidation of districts, judges in less populated areas became available to assist judges with heavier work loads. He also was instrumental in establishing a policy of employing out-state judges to assist in Twin Cities metropolitan courts.

Judge Dell felt that the bar itself -not the Legislature -should shoulder the cost of policing the legal profession. He obtained from the Supreme Court an order requiring payment of regis-tration fees by lawyers. The fees are used to pay for supervision of ethical standards of the profession.

As a jurist, he earned a reputation for closely-reasoned opinions. One of his most important decisions, In Re Mayo, broke new ground by holding that trustees may invest in securities expressly forbidden by the trust instru-ment, if adherence to the donor's in-tent would diminish the corpus of the trust.

A member of the college corpora-tion, he headed the drive which success-fully paid off the college's building debt last year. He left the College $25,000 in his will.

Dicta by the Dean

One of the most important elements in a progressive law school is the support of the alumni. A strong- and active alumni association is vital to the continuing success of any law school and this is particularly so at William Mitchell Our alumni include federal judges state court judges, some of the nation’s outstanding trial lawyers, bank presidents, and others prominent :in nearly every imaginable field of endeavor. We are proud of them and they are excellent ambassadors of good will for William Mitchell.

Our alumni have been most generous and helpful whenever we have appealed to them for financial help or other support. However, these ap-peals have been made on a haphazard basis. Our alumni organization has been a loosely knit one and we have not taken advantage of the vast reservoir of support available to us. We are taking steps to remedy this situation.

At a recent meeting of the alumni board a nominating committee was appointed and plans for an alumni banquet were discussed. It was decided that a banquet will be held in the fall of 1966, probably in September. A committee will be appointed to make the arrangements and information will be sent to all alumni early this summer. The alumni banquets in the past ba11e proved to be entertaining and enjoyable; they have provided an opportunity for recent graduates to meet and mingle with older alumni. Look for an announcement soon.

With the addition of another member to our secretarial staff we have been able to begin work on an alumni directory. While we have most of the basic information, the job of compiling and checking the names and addresses is extensive. We hope that we will be able to have the directory completed and in the mail sometime this summer; however it is important that we keep our file of addresses up-to-date. Therefore we urge you to submit to the school office the appropriate information whenever your address bas been changed.

Another project which we have in mind for the future is the preparation and distribution of a report letter to bring information about the operation of the school to the alumni during the school year. This would expand upon and supplement information published in the William Mitchell Opinion. We have distributed such reports to the members of the corporation on a periodic basis and we hope that during the coming school year we will be able to make similar reports to all the alumni.

With the development of our endowment program the help and continuing support of the alumni is .needed more than ever. It is basically through the gifts of the alumni that this fund will grow so as to provide the firm financial foundation that the school must have. Some alumni have come for-ward with gift already; the continuing gifts of the alumni will provide a living endowment program that will be nourished by an annual alumni drive. The strengthening of the alumni association would make it possible to initiate such a drive within the next year.

We hope that all alumni who find it convenient to do so will accept our invitation to come in and look over the school and chat with the Dean and the members of the faculty. We solicit the suggestions and questions of the alumni. Alumni are frequently puzzled about such things as current en-trance requirement, the Law School Admission Test score, current curriculum, etc. We will be happy to answer any such questions that might arise.

The enthusiasm and interest of the alumni is an essential element in the continuing progress of William Mitchell. We hope to encourage, promote and solicit that enthusiasm and support in every way possible, particularly during the coming months. Any suggestions which will help to accomplish that end will be greatly appreciated and seriously considered.

The textbooks in the William Mitchell library are being catalogued and the project is expected to be completed by next fall, according to Librarian Carol C. Gordon. She reported the books will be cataloged by both author and subject to assist researchers seeking specific textbook materials

Sign-out cards are being put into books on reserve. All texts which may be removed from the library will have cards in them by next fall.

The statutes of four states were added to the library during the past year, bringing the total to 33. The law school is purchasing a Canadian law digest to provide access into the Canadian Law Reports.

U.S. v. Trott: Disturbing Thoughts on the "Evil Mind"

Article includes footnotes

About the Author

James R. Sinclair, a senior at William Mitchell, is a 1961 graduate of the University of North Dakota at Grand Forks. His bachelor's degree was in mathe-matics. He is employed by the Minnesota Highway Department and lives in St. Paul with his wife, Mary Ellen, and son, James.

At common law the concept that an act could not be declared criminal unless it was coupled with a culpable state of mind was given unqualified acceptance. This is attested to by Blackstone's sweeping statement that to constitute any crime there must first be a "vicious will." 1 This concept is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent duty of the normal individual to choose between good and evil.2

The concept of an evil mind coinciding with an evil act to constitute a crime appealed to the intense individualism of early Americans and they followed it with but few exceptions.3 Even when criminal statutes made no mention of criminal intent the courts assumed that intent was so inherent in the idea of the offense that it required no statutory affirmation.

As the industrial revolution swept across this country, it brought in its wake many new problems never contemplated by the framers of the com-mon law. Scattered cities became highly populated urban centers. Farms and fields disappeared under a growth of factories. Highways and roads became congested with high speed pleasure and commercial vehicles. In at-tempting to solve the problems arising from these rapid changes, the legis-latures enacted numerous and detailed regulations which increased the duties of those in control of selected industries, trades, properties and activities affecting the public health, safety, and welfare. The lawmakers sought to make these regulations more effective by invoking sanctions to be applied by the familiar technique of criminal prosecutions and convictions.4

These offenses did not fit neatly into any of the accepted classifications of common-law offenses, such as those against the state, the person, property, or public morals. Many of these offenses are not in the nature of positive aggressions or invasions with which the common-law so often dealt, but are in the nature of neglect, where the law requires care, or inaction where it imposes a duty. Many violations of these regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize.

One of the first of the cases interpreting laws of this type was Barnes v. State5 in which a Connecticut tavernkeeper, at the midpoint of the nineteenth century, was convicted of selling liquor to a habitual drunkard even though he claimed not to have known him to be such. Other early cases convicted persons of selling adulterated milk without proof of knowledge of the adulteration. 6

At the turn of the century, New York passed statutes imposing money penalties for violation of tenement regulations. When New York landlords con-tended that a guilty intent was necessary to establish a convic-tion, Judge Cardozo replied:

The defendant asks us to test the meaning of this statute by standards applicable to statutes that govern in-famous crimes. The analogy, however, is deceptive. The element of conscious wrongdoing, the guilty mind accom-panying the guilty act. is associated with the concept of crimes that are punished as infamous. . . . Even then it is not an invariable ele-ment. . . . But in the prosecution of minor offenses, there is a wide range of practice and of power. Prosecutions for petty penalties have always constituted in our law a class by themselves. . . This is true though the prosecution is criminal in form.7

In time, prosecutions growing out of this type of legislation reached the United' States Supreme Court. The Court followed the trend that the state courts initiated, upholding con-victions under statutes not requiring a criminal intent.8

The broad language of many of these decisions, both on the federal and state levels, indicated that there was no limit on the power of the legislature to declare an act unlaw-ful without the element of intent. In United States v. Balint, the Supreme Court stated that intent may be ex-cluded from any statute the purpose of which would be obstructed by such a requirement.9 Again, in the C., B. & Q. R. Co. case, the Court said that there is an undoubted competency in the lawmaker to declare an act crimi-nal, irrespective of the knowledge or motive of the doer of such act.10

It was apparent that such a broad power would easily be subject to abuse and the Court began to attach certain limita-tions. In the Tenement House case,11 Judge Cardozo indicated that these powers existed in re-gard to statutes with petty penal-ties. Most of the cases limited the power to statutes recognized as within the public health, safety or welfare laws.

In the case of Morissette v. United States,12 the Supreme Court of the United States restricted this power to those crimes which were unknown to the common-law thus incorporating within the Constitution the distinction between crimes malum per se and malum probibitum. The Court in the following statement indicated that it did not think that the re-striction should halt here.

Neither this court nor . . . any other has undertaken to delineate a precise line or set forth comprehensive criteria for distinguishing between crimes that require a mental element and crimes that do not. We attempt no closed definition, for the law on the subject is neither settled nor static.13

Although no definite guide lines had been established indicating which crimes required a mental element, certain threads seem to wind through all these cases which somewhat indi-cate what these guide lines should be. Most of the cases upholding con-victions without proof of knowledge or intent fell into the broad classi-fication of crimes known as public welfare offenses. They can be roughly subclassified at (1) illegal sales of in-toxicating liquor, (2) sales of impure or adulterated food or drugs, (3) sales of misbranded articles, (4) violations of anti-narcotic acts, (5) criminal nuisances, (6) violations of traffic regulations, (7) violations of motor vehicle laws, and (8) violations of general police regulations, passed for the safety, health, or well-being of the community.14 In all of the cases in this area, the defendants either had access to knowledge which would have indicated to them the illegality of their act or they were carrying on an activity that could result in harm to the general public.

In the frequently cited Minnesota case, Shevlin-Carpenter Corp. v. Minnesota,15 the defendant was convicted of cutting timber on state lands after his permit to do so had expired. He had in his hands the means for de-termining the illegality of his act and could not be heard to say that he did not know the contents of the permit. In the case of D. C. v. Brooke,16 the defendant has been given notice of his failure to connect his property with the city sewer system but failed to do so. In another famous case, United States v. Balint,17 the defendant sold narcotics without com-pleting the official form required by law. He claimed that he did not know that this particular drug came under the statute. The court stated that the purpose of this statute was to re-quire every person dealing in drugs to ascertain at his peril whether that which he sells comes within the in-hibition of the statute, and if he sells the inhibited drug in ignorance of its character, to penalize him.18

All of this indicates that although the element of common law mens rea has been greatly modified since Blackstone's statement that a "vicious will" is necessary to constitute any crime,19 it is still present in today's law. The decision of the Supreme Court in Lambert v. People of California 20 reaffirms this. Defendant was convicted under a Los Angeles ordi-nance making it unlawful for any convicted felon to be or remain in Los Angeles more than five days with-out registering with the police depart-ment. She claimed that she did not know of the law and her conviction was reversed by the Supreme Court in a five to four decision. The court stated that while the lawmakers have a wide latitude to establish an offense and to exclude elements of knowledge and diligence from its definition, the conduct declared unlawful by this ordinance was wholly passive and un-like the commission of acts or the failures to act under circumstances that should alert the doer to the consequences of his deed. The Court indicated that the important factors in its decision were that the ordinance punished conduct that was completely passive, that there were no circum-stances that would alert a person to the registration requirement, and that the purpose of the ordinance was merely a convenient aid to law en-forcement officers, enabling them to keep an eye on potential criminals. The court indicated that the decisive factor was the lack of notice that the defendant was violating the law. "Where a person did not know of the duty . . . and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process." 21

The recent case of United States v. Trott22 indicates the tendency of the lower federal courts to restrict the effect of the Lambert decision to the precise facts upon which it was based.23

Trott had been deported from the United States in October, 1962, because he had re-entered the country without the consent of the Attorney General after a previous deportation. About a year later, he was found in Balti-more and was indicted under title 8, section 1326, United States Code24 for being found in the United States after having been excluded.

At the close of the government's case, which included evidence that Trott had re-entered under an assumed name and had lied to the Immigration and Naturalization Service, defendant moved for judgment of acquittal on the ground that the government had failed to prove willfulness.

Before ruling on the motion 'the court heard defendant's testimony. He testified that he had bribed crew members of a British ship to aid him in stowing away. He said that he thought the ship was going to England and was surprised when he arrived in New York, where the crew members insisted he go ashore. It was also shown that he had over $400 in American money but no British money with him and that he had a girlfriend in New York whom he visited. Defendant was found guilty.

The court's decision was based both on the ground that willfulness need not be alleged or proved, and on the ground that willfulness had been proved. In holding that willfulness need not be alleged or proved, the court cited most of the cases that have been mentioned in the above dis-cussion. They distinguished the Lam-bert case on the ground that the ordi-nance in that case made unlawful a conduct that was wholly passive whereas this statute made unlawful being found in the United States, and that the word "found" as used in the statute necessarily implied a re-entry, open or surreptitious.

Thus the court restricted the application of the rule of the Lambert case to instances where the conduct declared illegal is wholly passive. This distinction does not seem to have been necessary in this particular case since it seems obvious from the facts that the circumstances were such that Trott had notice that he could not re-enter the country without obtaining permission. He had twice before been deported for this very reason. It also ap-peared from the government's evidence that he used a fictitious name when entering and that he had lied in other ways to the Immigration and Naturalization Service. Thus, there appeared to be no reason to distinguish this case from the Lambert case.

This decision, as well as several others in past years,25 is in conflict with the trend of the past fifteen years to re-establish some semblance of the common law requirement of mens rea to the so-called malum probibitum offenses. They are in conflict with the fundamentals of sound law . in a society of free men.26 As Holmes wrote in The Common Law, "A law which punished conduct which would not be blameworthy in the average member of the community would be too severe for that community to bear." 27 Certainly it would not be blameworthy for a member of a law abiding community to do an act which he did not know was illegal, where he had no probable means of knowing it was illegal, and where there was no public policy compelling him to know or learn of its legality.

Suppose that the ordinance involved in the Lambert case had made it un-lawful for a convicted felon to enter the city of Los Angeles without having first registered with the Los Angeles police department. The conduct which would be proscribed in this situation is nearly identical with that in the Trott case in which the proscribed act was re-entry into the United States without getting the permission of the Attorney General. It is not wholly passive conduct but instead is a posi-tive act. Certainly a violation of this ordinance would not seem to be any more blameworthy than the violation involved in the Lambert case, yet the lower federal courts upheld the one because it makes unlawful something which is wholly passive.

If a person is to be held responsible for his acts, he must have had notice that the doing of these acts was blame-worthy. This notice may take several forms. It might mean actual knowledge of the illegality of the act. It might mean knowledge of circum-stances which indicate a probability that the offender had knowledge of the illegality of his act. The situation in the Trott case is a good example of this type of notice. It might mean knowledge that his act may have a harmful effect on persons or property so as to place a burden on him to take extra care.

The packager or distributor of foods knows that if his product is adulterated it may have an adverse effect on persons consuming it and thus is required to know that his product is not adulterated. The driver of an automobile knows that his automobile can cause great harm and thus is required to observe the laws and signs and if he does not, he is deemed to have willfully violated the laws. It might mean that the person is in such a po-sition as to require him to as-certain whether certain acts are illegal or not. The person hand-ling narcotics is on excellent ex-ample. The distribution of nar-cotics is an activity which the government, in the interest of the public welfare, controls. Thus, any person involved in the

distribution of narcotics must ascertain for himself that his actions do not come under the proscriptions of the various narcotics acts.

The decision of the Supreme Court in the Lambert case was monumental in that it restored to the law the re-quirement that an act must be coupled with a modern form of mens rea, that is, notice or probability of notice of the illegality or blameworthiness of a person's conduct. This decision should not be restricted to acts that were wholly passive but should apply to all acts or omissions to act which are defined as crimes.

"No man should be held criminally responsible for conduct he could not reasonably understand to be pro-scribed." 28

Footnotes

1 4 Blackstone Commentaries 21.

2 Morissette v. United States, 342 U.S. 246, 250 (1951).

3 One of these exceptions was the denial of lack of knowledge as a defense to statutory rape. This exception has recently been abolished in California. People of California v. Hernandez, 393 P. 2d 673, 39 Calif. 361 (1964).

4 Morissette v. United States, 342 U.S. 246, 254 (1951).

5 19 Conn. 398 (1849).

6 Commonwealth v. Farren, 9 Allen 489 (1864) ; Commonwealth v. Nichols, 10 Allen 199 (1865) ; Commonwealth v. Waite, 11 Allen 264 (1866).

7 Tenement House Department v. McDev-itt, 215 N .Y. 160, 168; 109 N.E. 88, 90 (1915).

8 See Shevlin-Carpenter Corp. v. Minne-sota, 218 U .S. 57 (1910); United States v Balint, 258 U .S. 250 (1922); United States v: Behrman, 258 U.S. 280 (1922); Chicago, B & Q. R. Co. v. United States, 220 U.S. 559 (1911) ; United States v. Dotterweich, 320 U .S. 277 (1943).

9 United States v. Balint, supra note 8, at 254.

10 C., B. & Q. R. Co. v. United States, 220 U.S. 559, 562 (1911).

11 215 N.Y. 160, 168, 109 N.E. 88, 90 (1915) .

12 342 U.S. 246 (1951).

13 Supra at 254

14 Sayre, Public Welfare Offenses, 33 COL. L. REv. 55, 73 (1933) .

15 218 U.S. 57 (1910).

16 214 U.S. 250 (1922).

17 258 U.S. 250 (1922) .

18 Id. at 254.

19 4 Blackstone's Commentaries 21.

20 355 U .S. 225 (1957).

21 Id. at 228.

22 227 F. Supp. 448 (D. Md. 1964) .

23 See Keyes v. United States, 258 F. 2d 774 (Ninth Circuit) (1958), United States v. Jurwick, 258 F. 2d 844 (Second Circuit)(1958).

24 "Any alien who -

(1) bas been arrested and deposed or excluded and deported and thereafter

(2) enters, attempts to enter, or at any time is found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or application for admission from foreign contiguous territory, the Attorney General has expressly consented to such aliens reapplying for admission, or (B) with respect to an alien previously excluded and de-ported, unless such alien shall establish that he was not required to obtain such advance consent under this chapter of any prior act shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than $1,000 or both." 8 U.S.C. Sec. 1326 (1952).

25 See cases cited in note 23.

26 See Miller, On Common Law Mens Rea, 42 Minn. L.R. 1043 (1957).

27 Holmes, The Common Law, 50 (1881).

28 United States v. Harris, 347 U .S. 612, 617 (1954).

Alumni Briefs

1935

Earl F. Paul, salary consultant for American Oil Company, will take early retirement June 1 after more than 28 years of service with that company. A native of Walnut Grove, Minn., Paul now lives in Deerfield, Ill., where he has served as village treas-urer, police magistrate, municipal justice, and magistrate of the Lake County Circuit Court.

1951

Lyle B. Overson has joined the general practice of A. J. Berndt and H. J. Tachohl at Mankato.

Former State Representative George Wangensteen, Grand Rapid has appointed judge of the 9th Judicial District. Governor Rolvaag picked Wangensteen, 38, to succeed Judge Arnold C. Forbes, Bemidji, who retired.

1954

Earl L. Johnson has formed a partnership with Simon and Richard Meshbesher. The firm of Meshbesher and Johnson is engaged in general practice with offices located in Minneapolis.

1955

George H. Neperud has announced the opening of an office for the general practice of law at Litchfield, Minn.

John B. Burke, Sr., St. Paul, has been appointed Chairman of the Rules and Calendar Committee of the Hennepin County Bar Association.

1956

Robert Bakke, Delano, has been appointed Judge of the 10th Judicial District by Governor Rolvaag to succeed Judge Roland Johnson who recently retired.

Robert B. McCarthy has announced the opening of an office for the general practice of Jaw in the First Federal Building, St. Paul.

1957

Chester Durda, assistant county attorney since 1957, took his oath as a Hennepin County municipal judge on April 27 to succeed Judge Edward J. Parker who was recently appointed to the district bench to replace Judge Irving R. 'Brand. Durda has worked in the County Attorney's office since 1952, and was in charge of the criminal division for the past four years.

1958

John M. Meyer hast taken up private practice as a sole practitioner at Sauk Centre, Minn.

Frances A. Kocourek has been appointed manager of contract ad-ministration for the Sperry Rand Cor-poration's Univac Defense Systems Division. Kocourek was formerly con-tract manager for Navy programs in-volving Univac.

1960

Wilton E. Gervais became a partner in the firm of Robins, Davis and Lyons, St. Paul, last fall.

1961

Obert M. Undem has been elected president of Fidelity Bank and Trust Co., Minneapolis, largest state-chartered bank in Minnesota. Undem, 32, was formerly executive vice-president and trust officer. A graduate of Carleton College, Northfield, he holds a master's degree from the Harvard School of Business Administration.

1962

Kenneth C. Spates, St. Paul, has joined the law firm of Barnard and Hilleren at Benson, Minn.

1963

James B. Gunderson, a resident of East Oakdale Township, has joined the Stillwater and Forest Lake law firm of Albertson, Norton and Jergens, as a partner.

Marion Dailey Mason and James Dailey Mason announce formation of a partnership for the general practice of law at Mankato, Minn., under the name of Mason and Mason.

Cochrane, Thomson & Bresnahan announces the association of Robert J. Milavetz with the firm.

1964

Richard D. Arvold has assumed the duties of representative for the West Publishing House in this area.

John E. Walsh is now a partner in the firm of Eckberg & Walsh, Stillwater, Minn.

Allan E. Mulligan is associated with the firm of Larkin, Hoffman, Daly, Corcoran and Lindgren, Minneapolis. Leroy C. Corcoran, 1935, formerly a partner in that firm, has accepted an appointment as Deputy General Counsel to the Small Busi-ness Administration, Washington, D.C.

Eugene A. Parsons is now associated with Merchant, Merchant & Gould in the practice of Patent Law.

1965

William F. Messerli and R. Thomas Roe have announced the formation of a partnership to engage in the general completing the most successful year in their short history. practice of law under the name of Messerli and Roe.

NO 6 P.M., SATURDAY CLASSES, PLEASE

Students Favor 3-night Schedule

A heavy majority of William Mitchell students favor three-night class schedules. By thin majorities they turn thumbs down on 6 p.m. classes and summer sessions.

And almost three-fourths of the students say no to Saturday morning classes.

Those are the results of a questionnaire distributed to students by the administration in March.

The administration is considering future schedule changes to better utilize classroom space and was inter-ested in student opinions, said Dean Heidenreich.

"It is not imminent," he said. "But we do feel we are getting to the point that if we are going to continue to grow without expanding the building, then we will prob-ably have to make some schedule changes to utilize class-rooms now vacant Wednesday nights and late Tuesday and Friday nights.

"It may well happen," the dean said, "that a class such as legal drafting -which we prefer to break into small segments for individualized instruction -might be sched-uled for 8:20 on Tuesdays."

A total of 362 were enrolled as of last fall. Heiden-reich said the capacity of the building is about 400.

The invitations on the questionnaire to express com-ments or suggestions bore fruit of many flavors, ranging from a suggestion that the study of law might well be prompted by installation of an ice cream machine in the lounge to a recommendation of shorter class periods.

Two hundred three students said they would favor oc-casional 8:20 p.m. classes Tuesdays so they would be in school only three nights a week. Fourty-six expressed disfavor. "I believe three evenings a week would be conducive to better study time," said a first year student

The students nearly split in half on 6 p.m. classes, but the nays carried with 130 compared to 119 in favor of setting ahead the class schedule by half an hour.

One hundred fourty-three replied no to summer sessions; 106 said they favor the idea.

"Summer sessions would be fine if one could complete law school in three years," commented a fourth year student. "Attending school the year around would be tough, but time goes so fast with all the work that three years would shoot by very rapidly."

Another student, in his second year, took the opposite view. "Summer school should be out of the question," he said. "Law school is nothing but an endurance 1esr combined with suspense -waiting for grades. A hus-band and father needs three months to get reacquainted with his family and society in general."

The Saturday morning class suggestion was turned down 198 to 51. A second year student wrote the succinct comment, "Saturday mornings?? What cheek, sir."

A total of 177 students said they favor occasional Wednesday evening elective classes so they could omit Tuesday or Friday classes. Seventy-two said they would oppose them.

The responding students offered a range of other sug-gestions. Numerous second-year students recommended salary increases for part-time instructors. An Opinion spy alleges the idea was planted by a potential beneficiary.

Image

Admiring-one of the decorations at the Law Wives' Style Show are, from left, Mrs. Robert Mathias, model; Mrs. Eugene Ouradnik, poster chair-man; Mrs. James Melius decorations chainnan; Mrs. Clement Commers, model, Mrs. John L Frost, president; Mrs. John R. Hoffman, ticket chairman; and Mrs. William Reed harpist.

Law Wives Complete Most Successful Year

By Jane Casey Law Wives Publicist

As the school year drew to a close the William Mitchell Law Wives were completing the most successful year in their short history.

This year the organization counted 112 paid members who worked dili-gently to insure the success of all the projects undertaken. A large and enthusiastic group of freshmen wives was greatly responsible.

We predicted in the fall Opinion issue that our new fund raising project, sale of the "William Mitchell Law Wives Cook Book", would be a success. It was.

Profits from the sale to date total nearly $950. If married students have been enjoying more varied menus it is because their wives have been trying the marvelous recipes in the cookbook.

About 150 couples attended the annual "Blue and Gold Ball" last December at the Thunderbird Motel. Dean Constantine taught dancers the latest discotheque dances during intermission.

The last fund raising event of the year was the Style Show in March. also held at the Thunderbird. The hard-working members of the committee produced a delightful show. Florence Liemandt, Young-Quinlan Rochild's fashion coordinator, was the moderator.

Four hundred thirty-five women attended the program, and our fund was increased by $340.

The Law Wives donated $25 to the Good Shepherd Home for Girls in St. Paul. We received a letter of appreciation from the Mother Superior. The. Law Wives each year undertake a charity project.

The Law Wives last year awarded three $200 scholarships. We have set aside $1,600 to be divided into eight $200 scholarships which will be awarded next year by the college's scholarship committee.

The final activities on this year's calendar were a potluck dinner for election of new officers for the coming year, and ·the Senior Award Night sponsored by the junior wives to honor graduating seniors and their wives and parents. Award Night is scheduled for June 10.

Prof Davies Named to Uniform Laws Commission

John T. Davies, full-time instructor and Registrar at William Mitchell since last fall, has been appointed. by Governor Karl F. Rolvaag, Minnesota Attorney General Robert Mattson and Chief Justice Oscar Knutson to the Commission on Uniform State Laws effective April 27, 1966.

Started in 1892, the Commission meets annually at the site of the American Bar Association Convention where it con-siders, approves, and amends uni-form law proposals in a one week con-ference. The Commission is composed of approximately 170 members, with three to five delegates representing each state in the country.

Mr. Davies, who teaches Legislation and Conflict of Laws, will join Uni-versity of Minnesota Professor Maynard Pirsig and Minneapolis Attorney John Moody in representing Minne-sota on the Commission.

Davies succeeds to the unexpired term of the late Ruben Nelson.

LANE ATTENDS ALSA MEET

Third year student James S. Lane III represented William Mitchell Col-lege of Law at the Eighth Circuit Con-ference of the American Law Student Association (ALSA) in St. Louis, Missouri, March 24-26.

Theme for this 17th annual con-ference was "The Lawyer in Politics." Fifty-three student delegates from twelve eighth circuit law schools sat in on four conference sessions featuring talks by two United States congress-men, the Young Republican National Committeeman for Missouri and president of the St. Louis Young Republican Club, and a St. Louis at-torney who was former general coun-sel of the Democratic Policy Com-mittee and special legal assistant to the majority leader in the United States Senate.

A comprehensive report of Lane's impressions of the Conference has been circulated among class representatives at Mitchell.