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William Mitchell Opinion - Vol. 1, No. 1, May 1959

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William Mitchell College of Law, "William Mitchell Opinion - Vol. 1, No. 1, May 1959" (1959). The Opinion. 1.

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William Mitchell

OPINION

Published by the Student Bar Association William Mitchell College of Law

Vol I

ST. PAUL 5, MINNESOTA, MAY, 1959

No. 1



The William Mitchell College of Law constructed in 1958.

59 Will Graduate June 16, Tom Armory

Fifty-eight men will receive LL.B. degrees and one a certificate of completion at graduation ceremonies in the St. Thomas Armory at 8 p.m., June 16.

This will be the first graduating class to complete its studies in the new building of the William Mitchell College of Law.

LL.B. degrees are awarded to those who have completed law school and are eligible to take the bar examination. Certificates of completion are awarded special students who have finished law school but must complete undergraduate requirements before taking

Students earning degrees are Carl D. Allert, Ernest A. Beedle, Jr., Lloyd O. Bergman, Wallace V. Blomquist, Joseph J. Campbell, Richard W. Copeland, Earle C. Dunn, George E. Elwell III, Patrick K. Fallon, James R. Feehan, James F. Finley, Paul F. Gilles, H. Lewis, Dwight R. J. Lindquist, Robert W. Long, James M. Loonan, Conrad H. Lund, Thomas F. Mc-Cann, William J. McGraw, James P. McGuire, John C. McKasy, William E. Manley, Martin J. Mansur, Victor J. Michaelson Jr., Stanley H. Moberg, Robert J. Neary, Arthur W. Nelson, Patrick J. Nolan Jr., Harold L. Peterson, William S. Posten.

Bruce A. Poulsen, Paul H. Ray, and Kenneth G. Ziebarth Jr.

Gene H. Rosenblum, Robert L. Russell, Roger S. Schmitt, John E. Schwarz, Kenneth E. Scott, Alonzo B. Seran Jr., Kenneth D. Siegfried, Robert E. Sielaff, Edward W. Simonet Jr., Victor Staszewsky, William F. Truman, William A. Torell, Thomas L. Ulman, Andrew J. Wambach Jr., Charles R. Weaver, Rainer L. Weis, Nickolas E. Westman, John R. Wilkinson and James E. Zueg.

Stephen F. Kujawa will receive a certificate of comple-

Students who graduated in February and will participate in the Gerald M. Gorgos, Stanley J. Hennessy, Paul A. Joyce Jr., Hartford man, Ward T. Beadnell, John W. R. Kittle, Howard A. Knutson, Lee Campion, Willis M. Forman, John Roy Larkin, Allan E. Levin, James J. Hennessey, Robert A. Hughes, Robert F. Johnson, John P. King, Graham P. Lambert, Douglas J. McClellan, Kevin C. McQuire, Allen R. Markert, John R. Moonan, James J. Moran, Joseph D. O'Brien, Louis Plutzer, Alvin C. Schendel, Clayton M. Scott, Lloyd O. Sherv-heim, Harold R. Sinykin, Marvin S. Sinykin, Gerald H. Swanson, Charles J. Ungemach, William M. Vollbrecht, Charles R. Wahlquist

ALSA Insurance Plan Offered

One of the immediate benefits offered by the newly organized Student Bar Association is life insurance for William Mitchell students at moderate cost.

Through its affiliation with the American Law Student Association policies of \$5,000.00 and \$10,000.00 of life insurance are offered at annual premiums of \$25.00 and \$50.00 respectively.

This is term insurance with double indemnity and premium waiver features. It remains in force if the insured enters military service. Within eight years after the insured entered law school, the policy may be converted to any one of the several types of permanent plans — 20 payment life, life paid-up at 65 etc.

Mitchell Students Form Bar Association Affiliated With ALSA

A chapter of the Student Bar Association was established at William Mitchell College of Law with the adoption of a constitution by the student body in March.

Affiliated with the American Law Student Association, purposes of the new organization are to further scholastic attainment, promote understanding among students, faculty and alumni, increase interest in the legal profession, and provide social activity.

SBA is the result of efforts by the American Bar association to establish a student organization which would act as a stepping stone for students entering the legal profession. Since its founding ten years ago, SBA has set up mock trials, workshops, placement bureaus, a life insurance program and other valuable aids to law stu-

Raymond Faricy, '60, was elected president of the new

Robert H. Schumacher, '61, vice-president, Mary Jeanne Wiesen, '60, secretary, and Gerald Rummel, '60, treasurer.

Affairs of SBA will be managed by its Board of Governors composed of the officers, two representatives of each class and exofficio members.

Charles Williams and Charles

Langer represent the freshmen or class of '62, Howard Stenzel and James Johnson, '61, William Hudson and Roger Plunkett, '60.

Members ex-officio are Phyllis Gene Jones, '60, editor of the William Mitchell Opinion, Gerald Kalina, '60, chairman of the committee on lectures, Joseph Thompson, '60, chairman of the placement bureau committee, and Dean Stephen R. Curtis, acting as faculty advisor.

Activities of SBA will be financed by a student activity fee beginning next fall. For the remainder of this semester, contributions will be the source.

In commenting on the organization of SBA, students have recognized it as the "only link between William Mitchell College and national law student activities" and "a vehicle by which student prob-lems can be effectively presented."

Ray Faricy, president, and Mary Jean Wiesen, secretary, will attend the tenth anniversary meeting of the American Law Student Association August 22-27 in Miami. Any other SBA member planning to attend should contact local officers for certification as an official delegate.

Bar Review Starts June 13

The bar review course formerly conducted by Phillip Klein and Ray Flader will be continued this year as the State Bar Review Course and will be held at the William Mitchell College of Law starting June 13.

In addition to the regular lectures on fundamental law and principles most often found in past bar examinations, special attention will be given to the actual writing of bar exam questions and subsequent discussion.

Instructors for the five week course will be Phillip Klein, former Assistant Dean and Registrar of William Mitchell; Walter F. Mondale, University of Minnesota graduate now in private practice; Douglas Am-**Assistant** Hennepin

County Attorney for civil matters; William Essling, former Assistant U.S. District Attorney and instructor in practice; C. Paul Jones, Assistant U.S. District Attorney and author of a text on Minnesota criminal law and procedure; and Cyrus Rachie, counsel for the Lutheran Brotherhood association and former instructor in property law.

Classes will be held at 6:30 p.m. on Monday, Wednesday, and Friday and at 1:30 p.m. on Saturday of each week. Fee for the course

Further information may be obtained by contacting the State Bar Review Course, 550 Midland Bank Bldg., Minneapolis.



First officers of the Student Bar Association are Robert Schumacher, vice president, Raymond Faricy, president, Mary Jeanne Wiesen, secretary, and Gerald Rummel, treasurer.

WILLIAM MITCHELL OPINION

Phyllis Gene Jones Editor Robert Schumacher News Editor John Moylan. Editorial Director Seldon Caswell, Gerald Kalina, Mary Jeanne Wiesen Associate Editors Staff: Richard Bastie, Michael Donohue, Charles Freeman,

Thomas Grueson, William Hudson, Gerald Kalina, John Kirby, Roger Plunkett, Edward Rasmussen, Gerald Rommel, Gerald Schreiber, Robert Stasen and Paul Wendtland.

Published by the Student Bar Association of William Mitchell College of Law, 2100 Summit Ave., St. Paul 5, Minnesota. Issued semi-annually.

Volume 1

May, 1959

The Students Speak —

Frats Bias Clause Hit

Fraternities have been an integral part of the college and university scene for almost a century, and the idea of a college or university without a Greek letter group seems almost inconceivable by now.

The stated purpose of most professional fraternities (as opposed to the purely social kind found on most undergraduate campuses) is the improvement of scholastic standards and professional opportunities of students who are of compatible or "congenial" backgrounds and interests. To the extent that fraternities carry out these purposes, they serve a useful function. However, it is in their interpretation of the phrase "compatible backgrounds" that many fraternities have attracted criticism from both school administrators and outside observers.

Since fraternities have become organized at the national level and alumni chapters have obtained a voice in their national policies, the word "compatible" has become synonymous with "white" and "Christian". Thus the fraternities, at the national level at least, have justified the exclusion of racial and religious minorities from

For a local chapter to defy the national body on this point is very rare, but it has been done in a few instances. The Amherst College chapter of Phi Kappa Psi pledged a Negro in 1948 and was promptly disowned by the national fraternity. In 1953 the Amherst and Williams chapters of Phi Delta Theta were suspended for violating that organiza-

These are exceptions, however. In most cases the impetus toward the removal of bias clauses has come from school administrations rather than from the fraternities themselves. Thus in 1953 the administrations of Columbia and Dartmouth gave their chapters until 1960 to integrate, with or without national sanction, and New York University gave its nationally affiliated groups five years to break off their national ties, become strictly local organizations and integrate.

It will be interesting to see where the impetus comes from at William Mitchell for come it must, and with all deliberate speed.

—John M. Moylan

Library Expansion Announced, Early State Reports Donated

The law school library will be expanded this summer to provide stack room for an additional 8,000 volumes.

adjoining the library will be painted and tiled and lighting States. fixtures will be installed furnishing 1,200 square feet to house the four new double-faced steel stacks which have been purchased, Miss Mary Hagberg, law librarian, an-

In addition, new shelving will be installed along the walls of the present study area of the library.

A recent and valuable donation is a complete collection of all State Reports prior to the National Reporter system. Given by the St. Paul law firm of Morgan, Raudenbush, Morgan, Oehler and Davis, the collection is valued at more than \$5,000, Miss Hagberg said, and difficult to obtain.

New volumes of special interest include Davis, Administrative Law; demic year are noon to 11 p.m. Merten's Law of Federal Income Monday through Friday, 9 a.m. to Taxation; Moore's Federal Practice; 6 p.m. Saturday and 10 a.m. to Nichols' Eminent Domain; Powell, 7 p.m. Sunday.

The unfinished expansion room Real Property; and Toulmin on Anti-Trust Laws of the United

> Other acquisitions are The Code of Federal Regulations, NLRB and Tax Court Reports and the United States Supreme Court Digest.

The library now has the entire American Digest System, complete Reporter System, Annotated Case Series, citators for the entire National Reporter and for states adjoining Minnesota. Six complete legal periodicals have of preparing a brief for trial. been added and seven others have been filled in where necessary.

The library budget for acquisition of new books totals \$8,800 of which \$3,800 is the annual fixed cost for continuations of existing volumes, Miss Hagberg indicated.

Library hours during the aca-

FRATERNITIES

DELTA THETA PHI

More than 25 new members were pledged bringing the total number of actives to 70.

Newly elected officers are Kenneth J. Maas Jr., Dean, Peter Caster, Vice Dean, Michael O'Connor, Tribune, Clarence Schlehuber, Clerk of the Exchequer, Roger G. Cook, Master of the Rolls, Wilton Gervais, Master of Ritual and Stephen Shaughnessy, Bailiff.

Plans are under way to send delegates to the national Delta Theta Phi convention in Detroit in August.

PHI BETA GAMMA

Gamma chapter (Minneapolis) and

form the Delta Gamma chapter of Phi Beta Gamma at Mitchell College of Law.

Phi Beta Gamma held a dinner dance at the St. Paul yacht club in Lilydale on the Mississippi Friday,

Initiation of pledges and election of officers will be held soon.

Award of a scholastic key to the active senior with the highest average is planned.

PHI DELTA DELTA

Alpha Epsilon chapter (Minneapolis) and Alpha Psi chapter (St. Paul) have each relinquished their respective charters and are joining in procuring a new charter for a chapter to be called Alpha Epsilon

An organizational luncheon was Delta chapter (St. Paul) merged to held Saturday, May 9, at Napoleon's. ing cast on.

Job Service Launched

To aid law students in finding employment after graduation, a placement committee has been organized as one of the permanent committees of the William Mitchell College of Law Student Bar Association. Joe Thompson, '60, has been appointed chairman of the group, and serving on the committee are Carl Swanson, '60, James D. Mason, '62, and Edward Soshnik,

Letters have been sent to more than 70 insurance companies and many of the larger corporations to introduce them to this service, and it is hoped that the committee will be able to place all seniors who desire jobs. In addition, it is planned to have the committee members attend the Ramsey and Hennepin County Bar Association meetings and have notices published in the Minnesota Law Journal, "Bench and Bar."

When it becomes financially possible, the committee intends to publish an employment booklet, containing the photographs, addresses, and qualifications of each graduating senior. Because of the lack of time and personnel, the committee will not, at least at the present time, deal with the placement of students while attending

Any employer who may have a position for a law graduate in the near future is asked to contact the William Mitchell Placement Committee, William Mitchell College of Law.

Books For Freshmen

FIVE LITTLE FEOFFERS, by Dean Fraser.

WHO STOLE THE SURREY OR THE TROVER BOYS IN COURT, by T. O. Feasor.

QUIA TIMET, by Orville Faubus. RESTATEMENT OF THE USE OF

LAW BOOKS, 800 volumes. REVISED LEGAL ETHICS, Nikita Kruschev.

SIMPLE SEISEN AND OTHER POEMS, by Philip J. Klein.

CRIMINAL CONVERSATION IN A NUTSHELL, by Giovanni Casa-

DeParcq Stresses Trial Preparation

William De Parcq, nationally known Minneapolis trial lawyer, spoke to over 200 Mitchellites April 14. Sponsored by the Lecture Com-Minnesota, and statutes for all the mittee of the Student Bar Association, Mr. De Parcq discussed ways

> Directing his remarks primarily to personal injury cases, Mr. De Parcq stressed the importance of obtaining all the facts from the client in taking statements. "Milk him dry of all pertinent information," he suggested. "Let the client do all the talking, you size him υp".

The importance of photos, plats, graphs and other visual aids was stressed. Demonstrative evidence, according to Mr. De Parcq, can be William effective in convincing a jury and securing satisfactory settlements.

> This lecture was the first of a series planned to supplement the law school curriculum. the direction of Gerald Kalina, a series of four lectures varied in content, is being planned for 1959-60. All lectures are designed to be informative, providing insight into the working life and every day problems of a practicing lawyer.

> Suggestions for lectures in the future may be submitted to the lectures chairman.

> Q. And how soon after the accident, or when was the next time you were in the Melody Bar?

A. The day they put the walk-

DICTA

by the Dean



This first issue of the William Mitchell Opinion is a significant and appropriate marker for a momentous year in the history of this law school. The student editors are giving an auspicious launching to a project of the recently organized Student Bar Asociation, a project that will mean much to our students, alumni and faculty and to other friends of the

This has been an exciting, even strenuous year. The two divisions of the school have become one, the two faculties one, and all are hard at work in our handsome new building. We began last September with 442 students, graduated 26 in January, and now, after a normal number of withdrawals, have an enrollment of about 360. Our first year class last fall numbered 159, of whom 88.6% held bachelor's degrees, again demonstrating that the William Mitchell College of Law is in a very real sense a "graduate" professional school.

Our full-time faculty, composed of John F. Dulebohn, William A. Green, Charles E. Nadler and Marshman S. Wattson, is both able and devoted. We have been fortunate indeed to have such men to carry the heaviest part of our teaching load. Professor Nadler, who has taught at Mercer University Law School at Macon, Georgia, for many years, has been a Visiting Professor at William Mitchell this winter and spring. His teaching of Private Corporations and Creditors Remedies has enriched our program notably. His nine week Institute on Bankruptcy was attended by 85 lawyers and bankers and did much to establish our school as an important factor in the continuing education of lawyers in the Twin Cities area.

We have just added another highly competent man to our fulltime faculty for next fall. William B. Danforth of Mason City, Iowa, brings to us an excellent educational background, a long and distinguished professional career, and both skill and desire for teaching and research. Such strengthening of our full-time teaching staff insures the success of our entire operation. A beautiful, functional building is a great asset, but a law school can be no better then its teaching. This full-time faculty is augmented by a group of 30 part-time teachers who are not only successful and respected lawyers but thoroughly competent instructors as well.

Another vital department of our school is also making progress. The library, under the skillful direction of Mary Hagberg, was miraculously assembled in time for classes last fall and has been growing ever since. We have purchased \$9,000 worth of new books. We have received as a gift from the St. Paul law firm of Morgan, Raudenbush, Morgan, Oehler and Davis a complete set of state reports from all states prior to the National Reporter System, a set appraised at \$5,680. Cash totaling \$5,175 was given by friends of the law school to be used for the purchase of books or shelving over and above budgeted amounts. Because the stack room in our new building did not have the capacity that had been anticipated, we have had to use most of the money from the last gift for the purpose of additional shelving, and it will be necessary to finish and equip the unfinished area adjoining the library as an additional stack room. Incidentally, if any of our alumni have law books they wish to dispose of, we urge them to communicate with us. Many books that may seem valueless to a practicing lawyer are of real value to a law school library.

In April the school survived successfully its first inspection, since the merger, by John G. Hervey, Adviser to the Section of Legal Education and Admissions to the Bar of the American Bar Association. Mr. Hervey was delighted with the new building and praised the full-time faculty, the librarian, the progress in the library and the enforcement of admis sion standards. He complimented the Board of Trustees on the successful job of merger that had been accomplished. He criticized our low faculty salaries and the lack of uniformity in grading. He said there was too much high grading. Steps are being taken to remedy these conditions.

The William Mitchell College of Law Alumni Association, which includes alumni of all of our predecessor schools, has recently undertaken a program to raise money for the support of the school. This news is most encouraging. No law school can meet the standards that are required today without the generous and continuing support of its alumni. As I have attended bar association meetings in Minnesota, it has been a genuine delight to see the interest and enthusiasm our alumni have in what is going on at 2100 Summit Avnue. Some of our alumni at Minnesota Mining and Manufacturing Company obtained a gift from the 3-M Foundation that enabled us to furnish the Student Lounge, which has become a popular spot.

You are entitled to have a report on another aspect of the operation of your institution. Perhaps it could be called "public relations". Educational institutions in our area have extended the red carpet. Dean William B. Lockhart of the University of Minnesota Law School and his family have been most friendly, interested and helpful. The College of across the most beautiful boulevard in America, has displayed all of the good characteristics that neighbors are presumed to have, and no others. Our Board of Trustees has revealed exemplary patience and tolerance in dealing with a new dean.

I am sure we all look forward to a new year of progress and accomplishment.

Stephen R. Curtis

Knudson Heads Family Court

Hennepin County District court reached a milestone in Minnesota legal history this year with the creation of a domestic relations court presided over by Judge Theodore B. Knudson.

In 1958 Judge Knudson surveyed representative family courts throughout the country and presented a lengthy report to other judges of the district bench. Upon recommendation of a special subcommittee, the new court was established and Judge Knudson named to preside.

Informality is the keynote and primary concern is for children of the disorganized

Judge Knudson was a member of the Minnesota State Bar committee which drafted the youth conservation commission act. He has taught at William Mitchell and is secretary of the William Mitchell College of Law corporation. Before his appointment to the district bench he served as assistant Hennepin County attorney.

Bust of Mitchell Presented

Nordbye Dedication Speaker

Dedication ceremonies May 6 marked the presentation of a bronze bust of William Mitchell to the school which bears his name. Speaker for the occasion was the Honorable Gunnar H. Nordbye, Chief Judge of the United States District Court for the District of Minnesota.

The bust was presented by a grandson, also named William Mitchell who has served as general counsel for the Atomic Energy Commission and is now practicing law in Washington, D.C. The words engraved on the marble pedestal on which the bust is mounted in the school's entrance hall aptly characterize William Mitchell as "One of the Greatest of American

William Mitchell, son of Scotch parents, was born Nov. 11, 1832 in Canada. Graduating from college at Cannonsburg, Pennsylvania in 1853, he practiced law in Virginia for several years. Seeking his destiny in the West he arrived by steamboat in Winona, Minn. in April, 1857 in the midst of a land depression.

He practiced in Winona until earning a reputation as a very able lawyer. During the early years of Minnesota's statehood he took two cases to its supreme

Elected judge of the Third District court in 1874, he earned the respect of the local bar with his fair and intelligent handling of trials, his dignified and reserved manner and his ability to grasp and deal with the legal problems involved. In 1881 he was appointed associate justice of the Minnesota Supreme Court of Governor John Pillsbury. He held this position almost 19 years and was a great influence in the formulation of the law of this state and the nation.

To the amazement of legal scholars across the country, Minnesota voters failed to re-elect him in 1899. He died eight months later on October 21, 1900.

The opinions Justice Mitchell wrote from the supreme court bench have been used continuously by text writers for both the principles established and the clarity and form of writing. He started with the origin of the law involved in a given case and then discussed the development of the rules and their applicability to the present question. With consideration to progress and common sense he arrived at a principle and applied it to the case at hand. Then an opinion was formulated and conclusions set forth clearly and comprehensively so that others also might gain insight into the prob-

At the time of his death he was regarded by practicing attorneys, law teachers writers as one of the most able judges and legal writers in the nation. In 1920 he was ac-



-Photo by PAUL WENDTLAND

Student Wives Meet Faculty Wives

Feminine chatter filled the halls when the distaff contingent

visited "hubby's haunts" April 29. William Mitchell faculty wives

entertained 93 law students' wives at an open house aimed at

familiarizing them with their husbands' activities in law school.

matters over to Mrs. Curtis who introduced faculty members and

staff assistants. Mrs. Charles Nadler, wife of Professor Nadler,

told of impressions of Russia she formulated on a visit there.

Emphasis throughout was on the feminine viewpoint, After refresh-

Dean Stephen R. Curtis opened the meeting and then turned

Bust of Associate Justice William Mitchell created by John

Girls Learn All-

claimed as one of the greatest jurists ever to sit on any bench in the United States.

Seeking the inspiration and professional qualties created by Associate Justice Mitchell, the corporation chose his name for the new school in 1956 when the St. Paul College of Law and the Minneapolis-Minnesota College of Law merged. The latter represented a consolidation of the Minnesota College of Law which had previously merged with the Y.M.C.A. College of Law, and the Minne-apolis College of Law which had previously merged with the Northwestern College of Law.

Six Named To Court of Honor

Six students of the William Mitchell College of Law have been named to the College Court of Honor sponsored by the Chamber of Commerce and Junior Chamber of Commerce of St. Paul. They were guests at a banquet May 12 in the

The dinner is given annually for the six top students in the graduating classes of each of St. Paul's colleges in recognition of scholastic achievement. Mitchellites honored are Alonzo

B. Seran Jr., Richard W. Copeland, Robert W. Long, James F. Finley, Harold L. Peterson and Thomas L. Ulmen.

CASE NOTES

REIMBURSING COMPANY FOR COST OF RELOCATING FACILITIES

State Highway Commission v. 332 P.2d 1007 (N.M.)

In this case the New Mexico court held that a state statute providing for reimbursement of utility companies by the state for necessary relocation of utility facilities because of road construc-tion under the Federal Aid Highway Act, 23 U.S.C.A. 151 et seq., was violative of the state constitutional prohibition against donation of state funds in aid of private corporations.

Similar statutes have been approved in other states including Minnesota. Minneapolis Gas Co. v. Zimmerman, 91 N.W.2nd 642. The court refused to follow the decisions of such jurisdictions and stated that the Minnesota court's view that the use of rights-of-way by utilities for locating their facilities is one of the proper and primary purposes for which highways are designed "has never been the policy in New Mexico." CONSTITUTIONAL LAW

SUCCESSIVE STATE AND FEDERAL PROSECUTIONS BASED ON SAME ACTS

Abbate v. United States, 359 U.S. ..., 79 S.Ct. 666 (1959) Bartkus v. People of State of Illinois, 359 U.S. ..., 79 S.Ct. 676 (1959)

In the first of these cases, the Supreme Court, in a six to three decision, held that a prior Illinois conviction of conspiracy to destroy property of telephone companies in violation of an Illinois conspir-acy statute did not bar a subsequent federal prosecution for conspiring to willfully and maliciously injure or destroy means of com-munication operated and controlled by the United States, even though the same property and the same act were involved in both prosecutions. The majority of the court speaking through Mr. Justice Brennan, followed and applied the principle stated in United States v.

CONSTITUTIONAL LAW . . . Lanza, 260 U.S. 377, 43 S.Ct. 141, REIMBURSING UTILITY 67 L.Ed. 314 (1922) that "an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be pun-Southern Union Gas Co., ished by each," and that the Fifth Amendment bars only successive prosecutions by the federal gov-

> In the second case, the Supreme Court in a five to four decision, held that where a defendant was tried in federal court under an indictment charging him with robbery of a federally insured savings and loan association and was acquitted, a subsequent trial in a state court based on the same acts, on a charge of violation of a state statute, did not deprive him of due process of law under the Fourteenth Amendment. Speaking for the majority, Mr. Justice Frankfurter said that although the state prosecution was based upon evidence gathered by the federal prosecuting officials, it was conducted separately from the prior federal prosecution. He concluded by pointing out that a number of states have statutes which bar a second prosecution if the defendant has been once tried by another government for the same offense and suggested that experience gained from the construction of these state statutes may give aid to Congress in its consideration of adoption of similar provisions.

Mr. Justice Black dissented in both cases. He contended that double prosecutions for the same offense, even if they are by two different governments, are "so contrary to the spirit of our free country" that they violate both the Fifth and Fourteenth Amend-

Mr. Justice Brennan, dissenting in the Bartkus case, stated that the issue to be determined was how much the Federal authorities must participate in a state prosecution before it "so much infects the conviction" that it must be set aside, and that the state trial in this case was actually a second prosecution by the Federal Gov-ernment, in violation of the Fifth Amendment.

How Not To By William Green

other legal publications are filled physical act, is insufficient, even if with learned dissertations on "How such act is prevented or defeated To Do It." One of the favorite topics for discussion is "How To Plan An Estate." Since the positive aspects of the subject have not been so fully covered elsewhere, a new approach may be indicated. With this in mind, we offer a few

the Fire Fast.

enclosed in an envelope, in a stove present proponent, a beneficiary named in the will, promptly and Lesson 2. How Not to Revoke a carefully removed the will from the envelope and secreted it, leaving the envelope reposing peacefully in the stove. Within two hours, the fire was lighted. The decedent supposed the will had spoliation, manifesting the testa-

legal periodicals and unaccompanied by the necessary by fraudulent devices Graham v Burch, 47 Minn. 171, 49 N.W. 697, 28 Am. St. Rep. 339 (1891).

ments, wives toured the building.

Note: The happy ending. In Graham v Burch, 53 Minn. 17, 55 N.W. 64 (1893) it was held that the deceitful beneficiary who had prebrief lessons on "How Not To Undo vented destruction of the will An Estate Plan," based on specific would not be charged as a trustee decisions of the Minnesota Supreme ex maleficio by reason of her fraudulent acts because it was Lesson 1. How Not to Revoke a established that the testator there-Will by Destruction, or, Light after learned that the will had not been destroyed and "died with that The testator, intending to destroy knowledge, and without manifesthis will by burning, placed the will, ing any further desire of making any further attempt to destroy the in which a fire had been laid, but | will." The testator "must be deemed not yet ignited. He then stepped to have ratified her act, and to have out of the room for a moment. The abandoned his purpose to destroy

Will by Subsequent Instrument, or, Don't Go Into Battle Too Fully Armed.

Because of the testatrix' age, her physical and mental condition (she was under guardianship at the time been burned as he intended. Held: of execution of her will) and exist-Revocation invalid and will propering family antagonism, great and ly admitted to probate. For an successful precautions had been effective revocation by destruction, taken to insure that her will, leav-

mentary capacity. Thereafter, at a | of the court: time when she was ill and hospitalized (hospital charts recorded her condition as "confused, irrational"), her children employed their own attorney, S, to petition for removal of her guardian. After the husband of one of the children had visited the testatrix "without invitation" and had "discussed with her the distribution of her property", the children's attorney held a thirtyminute conference with the testatrix (at which one of her children was also present) and "told her that he would prepare the necessary paper to 'cancel' her will." The attorney then returned and reported to the children. "He produced a petition for general administration of Mrs. Marsden's estate. It recited that Mrs. Marsden had 'died intestate at Mankato' and was complete in every other detail except the date of death, which event had not yet occurred, and the name of the administrator, which was supplied by the assembled heirs after a vote by acclamation. Achilles, who, though well-nigh invulnerable, never went into battle without being fully armed, could not have acted more forehandedly than Smith did on this occasion."

The attorney returned to his office in another city, prepared and sent an instrument of revocation, the will itself must be destroyed, or | ing much of her estate to a favorite | and gave the children instructions | met." In re Marsden's Estate, 217 bear some marks of defacement or grandchild, could not be success as to its execution. The testatrix Minn. 1, 13 N.W. 2d 765 (1944). fully attacked on the grounds of executed this instrument only 8 Lesson 3. How Not to Make Certain

"On March 8, Mrs. Spencer, Mrs. Cary, and Lee Marsden, accompanied by two witnesses selected by Lee and brought from Watonwan county for the occasion, went to the hospital, and the revocation prepared by Smith was then and there signed. The attending physician was not present, nor was he consulted as to Mrs. Marsden's condition, nor was the nurse in charge present. Mrs. Marsden was no longer able to write her own name, and signed by mark the instrument submitted to her." Held: Purported conclusive revocation of a prior revocation procured through undue will." Where the subsequent will is influence, and hence invalid. This made it unnecessary for the Court of continuing the prior will in to determine the testatrix' comperevocation. The Court said:

"A further discussion of the evidence relating to the revocation can be of no benefit to anyone except to serve as an object lesson on how length by the Minnesota Court in and when not to attempt to get a will revoked. The revocation here is so saturated with undue influence that it must sink of its own weight in the sea of justice even without the additional impetus supplied by the 'irrational' mind of its rather than by a revocation clause signer. The burden of establishing undue influence which the law imposed upon the proponents of the revoked will (2 Page, Wills [Perm. Ed.] p. 718, § 871) has been fully

tor's intent to revoke. Intent alone, undue influence or lack of testa- days before her death. In the words That a Will Will Stay Revoked,

or, To Be Sure It's Really Revoked, Destroy It.

The testatrix executed a will in 1915. In 1918 she executed a new will containing a clause expressly revoking all prior wills. In 1920, she burned the second will in the presence of witnesses, and declared to them that she did so for the purpose of revoking the second will and leaving the first will in force. Held: First will properly admitted to probate. Execution of a second will containing a revocatory clause does not operate as "a present and force," the first will remains in tency at the time of the purported force. In re Tibbetts' Estate, 153 Minn. 53, 189 N.W. 401 (1922).

The "diverse results" reached by courts in various jurisdictions in this situation are discussed at the Tibbetts case. See also 7 Minn. L. Rev. 158. A will cannot be revived or reinstated or remain in force upon revocation of a later will if the earlier will has been validly revoked by destruction in the later will. See Atkinson on Wills, 2nd Ed., Sec. 92, p. 474. The Minnesota lawyer who wishes to make sure that he has eliminated any possibility of revival of a superseded will, either on the basis of a presumed intent on the part of the testator, or on the basis of

Continued on P. 4, C. 4

Supreme Court Adopts New Bar Exam Procedures

Minnesota Supreme scientiously made great sacrifice of Court has issued an order revising the procedures for bar examinations.

Effective with the March 1960 no longer make up their own expersonally. Instead, the Board will use questions secured from experienced law teachers outside the cult and important tasks. state, subject to such revision as the Board may find advisable.

The Board will employ members of the Minnesota bar, ordinarily recent law graduates of high standing, to grade the answers upon the basis of standards fixed by the Board for each question after consultation with the grader for each question, representatives of the approved law schools in Minnesota, and the Director of Bar Admissions, a new office created by the Court order.

In explaining the order Chief Justice Roger Dell pointed out that the new procedures were unanimously recommended to the Supreme Court by the State Advisory Council at a meeting attended by four members of the Board of Law Examiners, including its Secretary, the President of the Minnesota State Bar Association, the Secretary chairman of its Legal Education William Mitchell College of law and the University of Minnesota Law School.

Chief Justice Dell said, "In the past the very able lawyers on the Board of Law Examiners have con-

time and energy to perform examining tasks for which their experience in law practice had not prepared them. In accordance with the wishes of the Board members, examinations, the seven members the leaders of the organized bar, of the Board of Law Examiners will and the advice of the deans of the two approved law schools in Minaminations and grade the answers nesota, the Supreme Court has unanimously authorized the Board to employ experts for these diffi-

"Preparing a good law examination requires the experience and technique of a teacher. We will use teachers to prepare the questions, but we cannot use them to grade the answers.

"To grade the answers we are turning to highly qualified recent law graduates, who have demonstrated by their law school records that they are expert on examination writing and examination answers. For expert direction of the examination process we have authorized the Board to appoint a Director of Bar Admissions and hope to secure for this position an experienced law teacher.'

Chief Justice Dell made it clear that the new procedures do not relieve the Board of Law Examiners of its responsibilities. "The Board still remains in complete control over the questions used at of the Bar Association who is also the examinations and the standards applied in grading the answers, but Committee, and the deans of the the Board will have the benefit of expert advice and assistance in fulfilling its responsibilities."

> "The Chief Justice pointed out that the new procedures are patterned after those followed for many years in

California, where the bar examinations have been highly successful.

When asked whether the purpose of the new procedures was to tighten up on bar admissions, the Chief Justice replied, "Not at all. Our purpose is to insure that young men and women seeking admission to the bar will be faced with questions of the same quality and character they have already experienced in law school, and will be graded by the same kind of standards they have satisfied in law school. Both the Board and the Court are anxious to make sure that all qualified applicants are admitted to practice, and that those not qualified are excluded. We are satisfied that the new procedure will insure this result."

One additional change in the procedure requires that before examination results are finally determined not less than the top 20% of the failing papers shall be independently graded by the three members of a Review Committee appointed by the Court from the Board of Law Examiners.

Chief Justice Dell explained that this independent review of the borderline cases was recommended by the American Bar Association, the National Conference of Bar Examiners, and the Association of American Law Schools.

In order to finance the additional costs of these improved procedures the Supreme Court increased the application fee for the examination from \$25 to \$50 effective with the March 1960 examinations. The examinations in March and July 1959 will be conducted in accordance with the former procedures.

University of Indiana Law school, remaining eight years before returning to private practice in Minneapolis. He taught property and judical remedies at U. of M. Law school in 1955 and 1956 and became counsel for American Civil Liberties Union in 1958, a position he now holds.

Sanborn Resigns, **Burke Elected School Trustee**

John G. Hervey, advisor to the Section on Legal Education and Admissions to the Bar of the American Bar Association, was the main speaker at the annual meeting of the William Mitchell College of Law Corporation, April 1.

Mr. Hervey made the first inspection of the law school since the merger and occupation of the new building.

Andrew N. Johnson presided. John B. Sanborn, member of the board since 1935 and Chief Judge of the U.S. Court of Appeals, Eighth Circuit, resigned as a trustee of the corporation.

He was succeeded by John B. Burke of St. Paul, member of firm of Scott, Burke & Scott. Mr. Burke was head of the building committee which planned and constructed the new law school. He is also a member of the House of Delegates of the American Bar Association and a past president of the Minnesota Bar.

Trustees re-elected are Andrew N. Johnson, Hon. Theodore B. Knudson, Hon. William D. Gunn, Cyrus Rachie, Hon. Arthur A. Stewart, Hon. Albin S. Pearson and James H. Mulally.

Judge Stewart has been named vice president succeeding Judge Sanborn and Judge Pearson, treasurer, succeeding Judge Stewart.

"Your Honor, my client pleads innocent by reason of insanity and to prove this he has retained

Georgia Expert, Charles Nadler, Conducts Bankruptcy Institute A nationally known authority on bankruptcy and corpora-

tion law, Charles E. Nadler, of Macon, Ga., is a visiting professor at Mitchell College this semester.

Prof. Nadler conducted a special nine-week institute on bankruptcy for practicing attorneys in the metropolitan area to which law students were also invited.

> classes in creditors remedies and private corporations. A native New Yorker, Prof. Nadler was graduated from Columbia University with B.S. and B.Ed. degrees. He taught mathematics and Latin in Ohio schools and studied law at the Youngstown College of Law.

In addition he is teaching regular

After practicing for 30 years in Youngstown and Cleveland, Ohio, he joined the faculty at Walter F. George School of Law, Mercer University, at Macon, stipulating that his salary would be deposited in the student scholarship fund at the school. Royalties from his book "Georgia Corporation Law" also go to the scholarship fund.

He is author of The Law of Bankruptcy, The Law of Debtor Relief and Casebook on Creditor and Debtor Relations and an associate editor of the Commercial Law

Prof. Nadler has become an avid traveler and with his wife Freda has circled the world twice, includ-

Prof. Nadler will return to William Mitchell to teach here in the fall of 1960, Dean Curtis announced today.

ing visits in Australia, Asia and a 23 day stay in Russia.

"Travels abroad have made us deeply appreciative of how wonderful our country and way of life are," he said. They are now planning a trip to the African interior.

Mrs. Nadler graduated from Wesleyan College and is now a member of its board of trustees. She worked as a newspaper woman in Chicago and has served as chairman of the Macon Council on World Affairs.

Prof. Nadler is a member of the American, Georgia, and Macon Bar Associations and an honorary member of Phi Alpha Delta law fraternity. A member of the National Bankruptcy Conference he is chairman of its committee on Chapter XIII (Wage Earners Procedure) of the Bankruptcy act.

The Student Bar Association William Mitchell College of Law 2100 Summit Ave. St. Paul 5, Minn.

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Prof. Charles E. Nadler

-HOW NOT TO DO IT (Cont'd)

testimony as to his actual intent, will not rely solely on a revocation clause in the new will, but will have his client destroy the old will immediately after execution of the new one. However, this should not be done as a matter of routine. The lawyer and his client should first consider whether the plan of disposition in the old will would be preferable to intestacy. If so, it may be advisable to retain the old will, in the hope that it will be revived or treated as remaining in force if the client, by some unhappy chance, revokes the new will but fails to replace it with still another one. Even when destruction of the old will seems advisable, retention of a copy of the old will—preferably a photostatic copy—will usually be desirable, either to preserve a record of the development of the ultimate testamentary plan or (if the plan of the old will is preferable to intestacy) to ward off possible attacks by irate omitted heirs by showing that it would be easy to establish the old will as a destroyed will under M.S.A. Secs. 525.26-525.262, and thus thwart their desires, even if the irate ones successfully attacked both the validity of the new will and the validity of the revocation of the old one.

W. B. Danforth, Mason City Trial Lawyer, Joins Mitchell Faculty

torney in Mason City, Iowa, will long ambition to enter research become a full-time faculty member at William Mitchell College beginning with the fall semester, Dean Stephen R. Curtis has announced.

A graduate of Morningside College, lowa, with a J. D. from the University of Chicago Law School, Mr. Danforth was assistant United States District Attorney at Sioux City, Iowa, for 16 years.

After two and one-half years in the Navy, he entered general prac-

Tests To Aid Future Students

Applicants for admission to William Mitchell college are now required to take the Law School Admission Test given by the Educational Testing Service of Prince-

Designed to provide data for use in counseling law students, the test will be used as a criterion in the selection of students. However, no applicant will be accepted or rejected solely on the basis of the test. Consideration will be given to prior school records, application form data and individual interviews.

"Properly used," says Dean Stephen R. Curtis, "this law school admission test can result in a large saving of time, money and energy for both the law school and the applicant, who may not be adequately equipped to pursue the study of law with profit. It is better for such a person to be forewarned of probable difficulty than to struggle through his first year of law school, only to fail."

Sixteen prospective students took the test April 18. Another test is scheduled for August 1 at William Mitchell. A \$10 fee is charged each applicant for the examination.

William B. Danforth, trial at-tice and is now realizing "a lifeand teaching.

With his wife, son and daughter, Mr. Danforth will move to the Twin Cities this

Other full-time faculty members

John F. Dulebohn, a native of Pennsylvania, is a graduate of Gettysburg college and University of Minnesota Law School. After military service in World War I, he studied at the University of Nancy, France, receiving a diploma in Civil Law.

He joined the legal department of Twin City Rapid Transit Co. in 1920 advancing to general counsel in 1947. He resigned to enter private practice in 1952 and began teaching in 1955.

William Green attended Williams College, Williamstown, Massachusetts, and received his B.A. in philosophy from the University of Minnesota. During his senior year at the University of Minnesota Law School he received the Order of the Coif and was president of the Minnesota Law Review. From 1935 to 1950 he was associated with Mitchell, Kapron, Marsh, Angulo and Cooney in New

Returning to Minneapolis he entered private practice and began teaching. Mr. Green is a member of the Phi Delta Phi legal fraternity, Phi Beta Kappa, Sigma Phi Epsilon, and a director of the Legal Aid Society of Minneapolis.

Marshman S. Wattson is a native of Hibbing and graduate of University of Minnesota and University Law School where he wrote for the Minnesota Law Review. After a two-year association with a Twin Cities firm, he formed a partnership in 1937 with Earl Larson. Mr. Wattson was an attorney for O.P.A. in Washington in 1942 and was a Navy communications officer for three years.

In 1946, he began teaching at me as his attorney."