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William Mitchell College of Law

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HONORABLE E. BARRETT PRETTYMAN

Judge Prettyman received his A.B. and A.M. degrees from the Randolph Macon College in 1910 and 1911 and his LL.B. and LL.D. degrees from Georgetown University in 1915 and 1946. During his law career he has engaged in private practice in a number of eastern states and has served as Counsel for the Bureau of Internal Revenue and the District of Columbia. Judge Prettyman has been a Professor of Taxation at Georgetown and is a trustee for Randolph Macon College. He was appointed to the United States Court of Appeals for the District of Columbia in 1945.

76 Seniors to Graduate; Hon. E. Barrett Prettyman To Address Class June 13

The Honorable E. Barrett Prettyman, one of the Judges of the United States Court of Appeals for the District of Columbia, has been selected to address the 1961 graduating class at the June 13 Commencement Exercises.

Judge Prettyman, universally regarded as an eminent jurist, will receive an Honorary Degree of Doctor of Laws at the exercises. This is the third time in the school's history that the trustees have elected to bestow that honor on a distinguished member of the profession.

Eighty-two William Mitchell seniors have earned the right to wear the purple tassel on their mortar boards, signifying their successful completion of four years' study of law. These men, flanked by an honor guard composed of the eight top students in the Junior Class, will form a procession at the College and proceed to the St. Thomas College Armory, scene of the commencement exercises.

Seventy-three of the seniors will earn their LL.B. degrees in June. Five men earned their degrees in January.

Four students, Robert B. Alch, Arthur H. Anderson, Earle T. Anderson, Jr. and Frank W. Klopp, will receive Certificates of Completion.

The following men will receive their law degrees this June: Arnold A. Albrecht, St. Paul; John G. Bell, New Brighton; Harold E. Burke, St. Paul; Barton C. Burns, Minneapolis; Seldon H. Caswell, Mpls.; Harry F. Christian, St. Paul; Thomas A. Connelly, St. Paul; George R. Cook, St. Paul; Vincent S. Dahle, New Brighton; James J. Dailey, St. Paul and Anthony A. Danna, St. Paul.

Michael DeLuca, St. Paul; Thomas G. Devine, St. Paul; William E.

Mpls.; Dean A. Nyquist, Mpls., and Michael W. O'Connor, St. Paul.

James R. Otto, Mpl.; Clayton E. Parks, Jr., St. Paul; Franklin D. Peterson, Mpl.; Duncan M. Putman, Mpls.; William R. Rasmussen, St. Paul; James A. Reding, St. Paul; Duane J. Rivard, Mahtomedi; Thomas J. Ryan, St. Paul; Christos B. Sater, St. Paul; William H. Savolainen, St. Paul; John W. Schindler, Mpls.; Clarence H. Schlehner, St. Paul, and Jerome A. Schreiber, St. Paul.

Arthur J. Seifert, St. Paul; Emanuel A. Serstock, Richfield; Louis E. Seubert, St. Paul; Douglas J. Shoemaker, St. Paul; Howard E. Stenzel, St. Paul Park; Hugh Sweetman, Jr., St. Paul; George D. Tallard, Mpls.; Roger A. Tesch, Mpls.; Jesus U. Torres, St. Paul; Lester R. Voell, Richfield; Bruce A. Webster, Mpls.; Robert T. White, St. Paul, and Gregory C. Woessner, St. Paul.

Six members of the graduating class were honored at the 24th annual College Court of Honor dinner on May 3, at Hotel St. Paul. The dinner was held in conjunction with the other St. Paul colleges to present the six outstanding seniors from each school. Those from William Mitchell were Douglas R. Heidenreich, Howard E. Stenzel, Charles A. Johnson, Barton C. Burns, Peter F. Frenzer and Michael W. O'Connor.

Comparative Law New Senior Course

A course in Comparative Law to be taught by an expert in that field has been added to the 1961-62 College curriculum. Dr. Raymond B. Van der Borcht, International Operations Consultant to the General Counsel of the Minnesota Mining and Manufacturing Company, will teach a two-credit course on that subject starting next fall.

Tentative plans call for the course to be opened by a series of lectures covering the great law systems of the world and the judicial organization, legal education and profession of Europe as compared with those of the United States. A lecture on the formative value of the comparative study of law in a well-rounded legal education will also be given.

The remainder of the course will be devoted to reading, interpreting and comparing international cases in the fields of Contracts, Torts and Negligence, and Sales. A final session will consist of a round-table colloquium reviewing salient topics in the course.

The new William Mitchell instructor was born in Belgium and received his Doctor of Law and Doctor of Philosophy degrees from the University of Louvain. He joined 3M as a foreign law advisor in 1953.

College Interest High In Recent Student Bar Campaign

The annual election of the Student Bar Association (SBA) was held on February 27, with the following officers elected for the 1961-62 term of office:

President: Charles L. Langer
Vice

President: Robert M. Reedquist
Treasurer: Dennis J. Holisak
Secretary: Thomas Foster

Charles Langer is a third-year student from Minneapolis and is employed as business administrator of the Metropolitan Mosquito Control District; Robert Reedquist is a first-year student from St. Paul and is employed by State Farm Insurance Company; Dennis Holisak is a first-year student from St. Paul and is employed by Minneapolis-Honeywell Company; and Thomas Foster is a third-year student from St. Paul employed by the Great Northern Railway in its legal department.

The SBA at William Mitchell became affiliated with the American Law Student Association (ALSA) in 1959, and since then interest in SBA has grown in the student body. When the first election was held in 1959, less than 25% of the students voted; in 1960 less than 35%. This year over 75% of the student body voted, demonstrating the students' recognition of the importance of SBA in its dual function as a representative of both the student and the administration.

Unlike the student councils of many high schools and colleges, the Student Bar Association was designed to promote a spirit of cooperation between the student body and the school's administration. The chief function of the Association

is to co-ordinate the efforts of both groups, so that the student may have a better understanding of his future role as a lawyer. The student should, therefore, feel free to present his suggestions and complaints to the SBA.

The William Mitchell Student Bar Association is one of 129 affiliated Student Bar Associations which together compose the American Law Student Association (ALSA). ALSA is the second largest legal group in the United States and is sponsored by the American Bar Association. Through this sponsorship, ALSA receives advice in its attempt to bridge the gap between the student and the practicing lawyer.

(Continued on Page 6)



Walter N. Trenerry, former William Mitchell faculty member and graduate of Harvard College and Law School, gave the address at the 4th Annual observance of Law Day, USA.

Senior Party

A party in honor of the graduating seniors will be held June 9 at the College.

Judge Ronald Hachey of the Ramsey County District Court and president of the William Mitchell College of Law Alumni Association, will be the featured speaker at this traditional affair.

As in the past, Certificates of Appreciation will be presented to the graduates' wives or mothers in recognition of their outstanding role in helping their husbands or sons through law school.

Drexler, St. Paul; Thomas W. Duffy, St. Paul; Roy L. Erickson, Mpls.; Peter F. Frenzer, Mpls.; Gerald E. Frisch, St. Paul; Michael R. Gallagher, St. Paul; James M. Goette-man, St. Paul; Richard W. Greenman, St. Paul; Dale J. Happe, Mpls.; and James V. Harmon, St. Paul.

William F. Harrison, St. Paul; Thomas J. Hartigan, St. Paul; Douglas R. Heidenreich, Mpls.; Roger C. Hennings, St. Paul; Walter Homsey, St. Paul; Donald A. Jacobson, Mpls.; Marvin Jacobson, St. Paul; Russell J. Jensen, St. Paul; John V. Jergens, St. Paul; Charles A. Johnson, St. Paul; James H. Johnson, Mpls., and Kenneth A. Johnson, Mpls.

Paul M. Joyce, St. Paul; Paul J. Kelly, St. Paul; John J. Kirby, St. Paul; Robert F. Lydon, St. Paul; Richard T. McHaffie, Mpl.; Kenneth J. Maas, Jr., St. Paul; Marvin W. Mitchell, Jr., St. Paul; Donald J. Murphy, St. Paul; Thomas M. Murphy, St. Paul; Earl J. Myhre,

Smoke Break For All

Closet Fire Empties Classrooms

The evening of Friday, May 5th, a fire started in the third floor janitor's closet at the College. This is a first hand account of that smoke break caused by one mop and a lighted cigarette.

At first, the students thought the IBM clock on the wall had developed a nervous tick, but when a thoughtful senior popped his head in the door and delivered some dicta about a fire upstairs, they knew it was for real.

At approximately 6:45 P.M. smoke drove the first of the students down from third floor. The egress from all classrooms was orderly and fast. "Canned briefs," and class notes were stuffed into cases, and in a matter of minutes, the "order to vacate" was fait accompli.

By 7:00 P.M., avant garde smoke-eaters were roaring out of the East to do battle with fire in the hallowed halls. They were greeted

with a thunderous ovation by the student body assembled on the green.

With red lights flashing, burly St. Paul firemen (licensees, a learned sophomore noted) snaked their fire hoses up the stairs under the disapproving eye of one Justice William Mitchell who, bold as brass, remained calm throughout it all.

By 7:15 P.M., the hue and the cry, along with the smoke, subsided, and the "all clear" was passed along to the future bench and bar of Minnesota. To a man they returned to the classrooms, attesting once again of their fidelity to that jealous mistress, the study of law.

As members of the Friday Tort class filed back, one student noted that Professor Dulebohn had at long last given his imprimatur to a "smoke break". A learned friend observed however, that it was due entirely to "independent intervening causes".

WILLIAM MITCHELL OPINION

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New Writers Welcomed

This issue marks a milestone in the short history of the Opinion. The reader will note, that we are now blessed with an editorial staff instead of merely an editorial writer. The silent voices and still pens of the student body have at long last come to life, and truly, The

Students Speak. Without further comment from me, except to thank those who submitted manuscripts which, because of space limitations, we were not able to print, I gratefully turn over the editorial column to the editorial staff.

JOHN M. MOYLAN

"Electronic" Research Noted

The day when an electronic computer will be an essential part of the well-equipped law library may not be too far off. In the December, 1960, issue of the Minnesota Law Review there is an article entitled **Searching Legal Literature Electronically—Results of a Test Program**, by Jessica S. Melton and Robert C. Bensing.

In the article, the computer's adaptability to problems of legal sleuthing is favorably and convincingly presented. Far from usurping the lawyer's prerogative, the legally-oriented computer, as de-

scribed by the authors, promises to emancipate lawyers from the manual, time-consuming, and consequently inordinately costly functions of legal research, and to leave them free to apply their abilities to the more intellectually and economically gratifying tasks of substantive case solution.

Having spent upwards of a year learning about and being engaged in legal research of one kind or another, this writer ventures the hope that the advent of the computer will be even closer at hand than the authors of the article foresee. RONALD ORCHARD

New Course Sought

Lawyers, by the nature of their profession and academic background, gravitate to politics and public service. It is in these fields of human endeavor that American parliamentary law plays its most important role. Does it not stand to reason then, that the lawyer should have an understanding of parliamentary procedure? The question begs an affirmative answer.

Ability to serve a deliberate body brings to the lawyer a two-fold benefit: One, it enables him to serve his fellow citizens in a manner admirably suited to a defender

of the rights of the majority and minority; and, two, it will enhance his civic and professional reputation.

Why not then, a course in Parliamentary Law? A seminar could be sponsored by the College or the Student Bar Association. Recommended for seniors, open to all, the cost and time factors would be insignificant in relation to the value William Mitchell students would derive from having a firm grasp of Parliamentary Law, a profitable tool to possess from many points of view.

JOHN T. ULDRICH

"Legal Ethics" Scores Hit With 4th Year Class

Unique within the program of instruction in the fourth year at William Mitchell College of Law is the Course on Professional Responsibility, first presented as a fifteen week course during 1960-61.

The program was organized by the Committee on Professional Responsibility as a series of lectures presented by judges and leading attorneys in the area and included subjects such as "The Lawyer as a Fiduciary", "Fees", "Advertising and Solicitation", and "Law Office Management". Additional lectures were on conflicting interests, special problems in Divorce, Probate, and Criminal practices, trial tactics and tax practice. Discussions followed the formal presentations.

Specific citations were used around which the lectures and discussions revolved. It is felt that this method of lecture, panel group discussions and class participation is preferred to the usual Ethics course.

Students were requested to submit critiques at the end of the course, since this was the first presentation of a course of this type. Reactions were varied as to specific wording, but through the entire group ran the impression of the high caliber of each of the speakers, the excellent personal impressions left by them, and the sincerity and practical delivery of the subjects as presented by those engaged in the problems.

One student mentioned that he acquired "a respect for the legal profession and its ethical values that would not have been possible by a discussion of cases". Many felt that the personal magnetism of the speakers aided them in placing practical applications on ethical theories.

Comments Offered

Comments in relating this course to others, such as Moot Court, were prevalent, and some requested advance cases, citations, and outlines to prevent possible repetition and thus provide additional time for questions and discussion.

Other suggestions were submitted in regard to additional topics on Labor Law, Administrative Agencies, Special Term matters, and Bankruptcy and Reorganization.

There were also requests that additional time be devoted to discussions of the attorney's dealings with insurance companies, police departments, special and private investigators, those in the medical profession, and other outside agencies and individuals engaged in work related to the practice of law.

Criticisms ran to mechanical details rather than to course content or organization.

As stated by one of the members of the class, the result was "fifteen generous servings of 'Legal Ethics' garnished with humor and interesting personalities".

A similar program is anticipated for 1961-62, thanks to the enthusiastic cooperation of the Committee on Professional Responsibility and the speakers of the past year.

State Bar Results

Results of the March, 1961, Minnesota Bar Examination were announced recently, with the following information: Twenty-nine applicants took the examination; twenty-four passed and were admitted to practice, including John Kirby, Kenneth Strom, and Mary Jeanne Wiesen, recent William Mitchell graduates.



William B. Danforth

Danforth Named Assistant Dean

William B. Danforth, full-time faculty member, has been appointed Assistant Dean of William Mitchell College of Law.

Professor Danforth joined the faculty in 1959. He is a graduate of Morningside College, Iowa, and received a J.D. degree from the University of Chicago.

From 1935 until 1953, he was assistant United States Attorney at Sioux City and Mason City, Iowa. He also served in the Navy for two and one-half years after which he entered general practice.

During his undergraduate days, Professor Danforth was active in athletics. He says he is still an enthusiastic spectator. He was Pres-

ident of the student body and a member of the glee club and choir at Morningside.

He is an avid reader of history and fiction as well as in the field of law.

Professor Danforth is a member of the Iowa Bar and American Bar Associations and has applied for admission to the Minnesota State Bar Association.

Placement Bureau Expands Services

The Placement Bureau of the Student Bar Association, under its newly appointed director, Edward R. Soshnik, announced plans for expansion of the services available to students through the Bureau.

In addition to present services, the Bureau plans an extensive promotional program. An increase in job opportunities can be brought about by expanding the system used to inform employers in the area of the number of students seeking full-time employment while attending William Mitchell.

By creating additional interest in graduating seniors, the Bureau will be better able to place those seeking employment after graduation. An increase in the list of employers is also planned.

Mr. Soshnik also stated that by encouraging the alumni who plan a change of employment to submit a resume of educational qualifications and occupational background, together with a small photo, services of the Bureau can be expanded and improved.

Dicta By The Dean

Student reporters are bringing to attention, through articles published in this issue of the Opinion, some of the more significant activities of the current year at William Mitchell. Three times as many students are working on the newspaper staff this year, indicating a healthy increase in interest and pride in the publication which last summer, after just three issues had been printed, surprised the law school world by winning a prize in nationwide competition, placing second to the distinguished and long established Virginia Law Weekly.

Each year the Student Bar Association and the Law Wives grow in numbers participating in worthwhile activities and in their contributions to the law school program. We wonder how the school ever survived without them.

One innovation in the current year's curriculum has met with universal praise from students and from lawyers and judges who have become aware of it. This is the course on Professional Responsibility, given last semester for fourth year students. The written comments and suggestions from students at the close of the course, and the reactions of the eighteen top-flight lawyers and judges who discussed situations in various fields of law practice which involve problems of professional conduct and responsibility, showed a unanimous and enthusiastic conviction that such a course gives to law students a realization, that was never had before, of the importance of right standards and the necessity for constant vigilance in order to avoid the intricate and potentially dangerous involvements so frequently encountered in a busy practice.

We are gratified to be able to report that at a recent post-mortem session every member of the lecturing staff—and they are among the busiest men in the Twin Cities—expressed his readiness to repeat the course next fall.

Other steps to strengthen the curriculum this year are proving effective. The Moot Court program, in giving each fourth year student the experience of trying two jury cases, preparing an appellate brief, and making an appellate argument, in addition to the other vital features of the program, is giving our students better preparation for their careers than ever before. The courses in Legal Writing and Legal Drafting are handicapped by the deficiencies of many law students in training in English composition. Our instructors are required to spend precious time trying to give students training they should have had in college, high school and grade school; but the courses are, in spite of this, supplying training in the writing of legal memoranda, briefs and documents. The legal article published in this issue is a sample of the work done in the Legal Writing Course.

The recent Institute on Investments and Business Abroad, which was more successful than anyone dared hope for, not only brought an unexpected number of lawyers to the school for instruction by a staff of experts on a subject which had apparently never been similarly dealt with before in this area, but it also brought to light a man of rare teaching talent, who was promptly added to our school faculty. As a result, Dr. Raymond B. Van der Borgh will give a course in Comparative Law for our fourth year students next fall. This has supplied a sudden and happy realization to one of our curricular ambitions.

Stephen R. Curtis



New officers, class representatives and chairmen of the Student Bar Association pose for the "Opinion" cameraman. The election held in February, saw a 75% student turnout.

Parke-Davis Case Highlights Trade Issue

BY WILLIAM G. STOCKS

Third year student, William Mitchell College of Law; Tax Accountant, F. H. Peavey and Company; B.A. degree, magna cum laude, College of St. Thomas, St. Paul.

There are many legal problems which must be resolved by balancing the rights of individuals against the common good or welfare of all. The case of **United States v. Parke, Davis & Co.**¹ involves the balancing of rights of a manufacturer to control the price of its products against the rights of the consuming public to be free from restraint of trade.

The precise issue before the United States Supreme Court in the **Parke, Davis** case² was whether sections 1 and 3 of the Sherman Anti-Trust Act³ were violated where a manufacturer, embarking on a program to promote general compliance with its suggested retail and wholesale prices, did not limit itself to announcing a policy of simple refusal to do business with any retailer or wholesaler who disregarded the stated prices, but also refused to deal with wholesalers who supplied the manufacturer's products to non-complying retailers.

Parke-Davis Edict

During 1956, Parke, Davis and Company announced a resale price maintenance policy in its wholesalers' and retailers' catalogue. It also announced a policy of refusing to sell its products to either wholesalers or retailers selling below its suggested prices. In some cases Parke, Davis sold directly to large volume retailers, but the majority of its business was done through wholesalers. In order to insure the success of its announced policy with regard to retail prices, Parke Davis informed its wholesalers that not only would it refuse to do business with wholesalers who did not adhere to its policy but that it would refuse to sell to wholesalers who sold Parke, Davis products to those retailers not observing the suggested minimum retail prices. In order to obtain Parke, Davis products, all the wholesalers without exception indicated a willingness to comply. Several retailers, however, refused to give any assurance of compliance and continued to advertise and sell Parke, Davis products at prices below the suggested minimum retail prices. Their names were furnished by Parke, Davis to the wholesalers who in turn refused to fill their orders. When the price-cutting retailers promised to stop cutting retail prices at the request of Parke, Davis, the flow of products was resumed to those retailers. Several retailers, however, continued selling below suggested retail prices from stock on hand. Parke, Davis then attempted to influence the retailers to stop advertising their products below suggested minimums on condition that other retailers would likewise cease such advertising. The retailers agreed, but the suspension of advertising lasted only a month. One of the retailers again started advertising cut-rate prices and others quickly followed suit despite Parke, Davis's efforts to prevent it. Parke, Davis then decided to abandon its price maintenance policy.

The United States sought to restrain violations of sections 1 and

3 of the Sherman Act⁴, alleging that Parke, Davis had combined and conspired with certain distributors to maintain retail prices on its products in the State of Virginia and the District of Columbia, where there were no fair trade laws in effect.⁵ The United States District Court for the District of Columbia granted a motion to dismiss at the close of the Government's evidence⁶ on the authority of **United States v. Colgate & Co.**⁷, which held that a manufacturer could refuse to deal with customers who failed to observe its announced price maintenance policy. The U.S. Supreme Court noted probable jurisdiction of the Government's direct appeal under section 2 of the Expediting Act.⁸

The Supreme Court, by a 6-3 decision, reversed the lower court and held that Parke, Davis's additional activities⁹ beyond a mere refusal to deal were sufficient to bring them within the prohibitions of the Sherman Act.

The court, speaking through Justice Brennan, reasoned that Parke, Davis's activities went beyond a simple refusal to deal with customers who persisted in cutting prices, and was in effect a combination with the retailers and wholesalers to maintain prices. The court went on to say that the Sherman Act forbids combinations to suppress competition, and though **Colgate**¹⁰ permits a refusal by a manufacturer to sell to price cutters, the refusal must be merely the exercise of his right freely to exercise his own independent discretion as to the parties with whom he will deal and not, as here, something beyond that by which the manufacturer employs other means to effect adherence to his policies.

Harlan Dissents

Justice Harlan, in a vigorous dissent, thought that the majority opinion threw the **Colgate**¹¹ doctrine into discard—although this was expressly denied by the majority. He reasoned that the Sherman Act requires a showing of concerted action to support a charge of conspiracy and that the defensive, limited, unorganized and unsuccessful efforts of Parke Davis to maintain its resale price policy did not amount to that. In Justice Harlan's view, Parke, Davis's actions were properly unilateral.

In the case of **Dr. Miles Medical Co. v. John D. Park & Sons Co.**,¹² the facts were similar to those in the **Parke, Davis** case except that in the **Dr. Miles** case written contracts were involved. Dr. Miles Medical Co. sold its products to wholesalers and jobbers, who in turn sold to retailers. In order to enforce a resale maintenance price policy, Dr. Miles Medical Co. required its wholesalers, jobbers, and retailers to sign uniform contracts whereby they covenanted not to sell at less than a standard price named in the agreement. When

ments conform to state laws, do not violate section 1 of the Sherman Act. If Virginia and the District of Columbia had enacted fair trade legislation, this case would not have arisen.

6. *United States v. Parke, Davis & Co.*, 164 F. Supp. 827 (D.D.C. 1958).

7. 250 U.S. 300 (1919).

8. 32 Stat. 823 (1903), as amended, 15 U.S.C. § 29 (1948), commonly called the Expediting Act. Section 29 provides that "In every civil action brought in any district court of the United States under any of said acts, wherein the United States is complainant, an appeal from the final judgment of the district court will be only to the Supreme Court."

9. The additional activities found to be within the prohibition of the Sherman Act were: (1) Inducing wholesalers to cut off supplies to non-complying retailers, and (2) Discussion with the retailers as to their positive adherence to the plan.

10. 250 U.S. 300 (1919).

11. *Ibid.*

12. 220 U.S. 373 (1911).

John D. Park & Sons Co. obtained Dr. Miles products through inducing certain wholesalers to repudiate their contracts and resold these products at cut-rate prices, Dr. Miles Medical Co. brought a bill in equity to restrain the defendant from inducing any party to the written agreements to violate them.

Restraint Cited

Mr. Justice Hughes, speaking for the majority, held that contracts between a manufacturer and all dealers whom he permits to sell his products fixing the price for all sales, whether at wholesale or retail, operate as a restraint of trade, unlawful both at common law and, as to interstate commerce, under the Sherman Anti-Trust act of July 2, 1890.¹³ Justice Hughes said, "The agreements are designed to maintain prices after the complainant has parted with the title to the articles, and to prevent competition among those who trade in them.

... If there be an advantage to the manufacturer in the maintenance of fixed retail prices, the question remains whether it is one which he is entitled to secure by agreements restricting the freedom of trade on the part of dealers who own what they sell. As to this, the complainant can fare no better with its plan of identical contracts than could the dealers themselves if they formed a combination and endeavored to establish the same restrictions, and thus to achieve the same result, by agreement with each other."¹⁴ Thus written contracts between a manufacturer and wholesalers or retailers, having as their object a scheme to control resale prices, were held to be invalid.

Eight years after the decision in **Dr. Miles Medical Co. v. John D. Park & Son Co.**,¹⁵ the United States Supreme Court was confronted with almost the identical fact situation involved in the **Parke, Davis**¹⁶ case. **United States v. Colgate & Co.**¹⁷ involved the question of whether a manufacturer was in violation of the Sherman Anti-Trust Act¹⁸ by refusing to deal with wholesalers and retailers who resold Colgate products below suggested minimum prices. In addition, the manufacturer frequently urged them to adhere to such prices; requested information on non-conforming dealers; requested from offending dealers assurances and promises of future adherence to prices which were often given, and in fact did just about everything possible, short of entering into written contracts, in order to secure agreements from its wholesalers and retailers to maintain minimum resale prices.

After upholding the trial court's decision that the indictment was defective in that it failed to charge Colgate & Co. with selling its products to dealers under-contracts or agreements which obligated the latter not to resell except at prices fixed by the company, Justice McReynolds summarized his opinion as follows: "The purpose of the Sherman Act is to prohibit monopolies, contracts, and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage in trade and commerce—in a word, to preserve the right of freedom to trade. In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long-recognized right of a trader or manufacturer engaged in an entirely pri-

vate business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell."¹⁹ Thus the so-called **Colgate** Doctrine was born as an exception to the **Dr. Miles**²⁰ case. At this stage in legal history, written contracts to maintain prices were bad, but any act to maintain prices short of written contracts appeared to have the court's blessing.

A scant year after the decision in the **Colgate**²¹ Case, the United States Supreme Court, again speaking through Justice McReynolds, held that a tire manufacturer violates the Sherman Act when it requires all jobbers to whom it sells to execute uniform contracts which obligate them to observe certain fixed resale prices.²² In this case, the written contracts were with jobbers only and no retailers were involved.

Justice McReynolds, in distinguishing **Dr. Miles** and **Colgate** said, "The court below misapprehended the meaning and effect of the opinion and judgment in that cause [**Colgate**]. We had no intention to overrule or modify the doctrine of **Dr. Miles Medical Co. v. John D. Park and Sons Co.**, where the effort was to destroy the dealers' independent discretion through restrictive agreements. Under the interpretation adopted by the trial court and necessarily accepted by us, the indictment failed to charge that Colgate Company made agreements, either express or implied, which undertook to obligate vendees to observe specified resale prices; and it was treated as alleging only recognition of the manufacturer's undoubted right to specify resale prices and refuse to deal with anyone who fails to maintain the same. It seems unnecessary to dwell upon the obvious difference between the situation presented when a manufacturer merely indicates his wishes concerning prices and declines further dealings with all who fail to observe them, and one where he enters into agreements—whether express or implied from a course of dealing or other circumstances—with all customers throughout the different states, which undertake to bind them to observe fixed resale prices. In the first, the manufacturer but exercises his independent discretion concerning his customers, and there is no contract or combination which imposes any limitation on the purchaser. In the second, the parties are combined through agreements designed to take away dealers' control of their own affairs, and thereby destroy competition and restrain the free and natural flow of trade among the states."²³ (Emphasis supplied.)

Colgate Upheld

While upholding the **Colgate** Doctrine—the right of a manufacturer to refuse to deal with those who fail to observe minimum resale prices—Justice McReynolds implies that Colgate's course of dealing and activities other than a mere refusal to deal might have been a sufficient basis for finding implied agreements and that Colgate could have been found to be in violation of the Sherman Act except for the insufficient indictment.

In **Frey & Sun Inc. v. Cudahy Packing Co.**²⁴ both the majority and dissenting opinions agreed that the essential agreement, combination, or conspiracy might be im-

plied from a course of dealing or other circumstances. They also both agreed that whether there was an implied agreement in any case was a question of fact for the jury. They parted company, however, over the trial judge's jury instructions. The majority held that a manufacturer who fixes minimum prices below which wholesalers and jobbers were not to sell, calls attention to these prices on many different occasions, and secures the cooperation of the wholesalers and jobbers in carrying out the plan when they resell at the prices named, is not in violation of the Sherman Act. An instruction to the jury to the effect that they may find an implied agreement from the above facts was, therefore, erroneous, in the majority view. The minority thought otherwise.

The next chapter in the history of resale price maintenance was written by the case of **Federal Trade Commission v. Beech-Nut Packing Co.**²⁵ Here again, a manufacturer attempted to control resale prices by refusing to sell to dealers who would not observe resale price policies as set forth by the manufacturer. After specifically upholding the **Colgate** Doctrine, the court held that a combination and conspiracy to restrain trade was evident in this case because of activities beyond a mere refusal to deal—a conspiracy implied from the circumstances of the case. The court held the following additional activities of Beech-Nut to constitute an implied agreement to restrain trade:²⁶

- (1) The practice of reporting names of dealers who did not observe such resale prices;
- (2) The practice of causing dealers to be enrolled upon lists of undesirable purchasers who are not to be supplied with the products of the company unless and until they have given satisfactory assurances of their purpose to maintain such designated prices in the future;
- (3) The practice of employing salesmen or agents to assist in such a plan by reporting dealers who do not observe such resale prices; and
- (4) The practice of utilizing numbers and symbols marked upon cases containing the names of dealers who sell the company's products at less than the suggested prices.

Although these activities appear to be unilateral, the court condemned them as being cooperative means of accomplishing the maintenance of prices fixed by the company. This case narrows the **Colgate** decision in that it honors the right of a manufacturer to refuse to deal with price cutters, but effectively takes away the manufacturer's means to acquire knowledge of price cutters in order to use his right of refusal to deal.

The trend toward narrowing the **Colgate** Doctrine was continued in the case of **United States v. Bausch & Lomb Optical Co.**²⁷ Here again, there was a sales plan including threats of refusal to deal if minimum prices were not observed by either wholesalers or retailers. In addition a system whereby price cutters were reported and cut off from further distribution was in effect. Further, a wholesaler who continued to sell to a retail price-cutter after receiving such noti-

1. 362 U.S. 29 (1960), reversing 164 F.Supp. 827 (D.D.C. 1958).

2. *Ibid.*

3. 26 Stat. 209 (1890), as amended, 15 U.S.C. §§ 1 & 3 (1958). Section 1 provides that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal . . ." Section 3 uses similar language but deals with the District of Columbia.

4. *Ibid.*

5. Miller-Tydings Fair Trade Act, 50 Stat. 693 (1937), as amended, 15 U.S.C. § 1 (1958). The basic provision of the Miller-Tydings Amendment is that vertical price maintenance agreements on identifiable products, when such agree-

13. See note 3 supra.

14. 220 U.S. at 407.

15. 220 U.S. 373 (1911).

16. 362 U.S. 29 (1960).

17. 250 U.S. 300 (1919).

18. See note 3 supra.

19. 250 U.S. at 307.

20. 220 U.S. 373 (1911).

21. 250 U.S. 300 (1919).

22. *United States v. A. Schrader's*

23. 252 U.S. 85 (1920).

24. 252 U.S. at 99.

25. 256 U.S. 208 (1921).

26. 257 U.S. 441 (1922).

27. *Id.* at 456.

27. 321 U.S. 707 (1944).

Parke-Davis Case — Con't.

cation was subsequently excluded from distribution. The trial court found that the distributor had contracted and conspired with wholesalers and retailers in violation of the Sherman Act,²⁸ which judgment the Supreme Court affirmed. While acknowledging the Colgate Doctrine, the court noted that there was more than mere acquiescence by the wholesalers in the distributor's resale price list, and said that the acceptance by the wholesalers of the distribution plan by cooperating in prices and by limiting sales to approved retailers was sufficient to constitute a Sherman Act violation. The court also noted, by way of dictum, that whether the conspiracy and combination was achieved by agreement or by acquiescence of the wholesalers, coupled with assistance in effectuating its purpose, is immaterial.²⁹

Although the court has, from the time of the Colgate decision, consistently upheld the right of a manufacturer to refuse to do business with a dealer who violates the manufacturer's announced suggested price schedule, it has not, with the single exception in *Frey & Son Inc. v. Cudahy Packing Co.*,³⁰ found a fact situation which it was willing to admit came within the Colgate Doctrine. Not even in the case of *A. C. Becken Co. v. Gemex Corporation*,³¹ where the manufacturer did nothing more than stop selling its products to a wholesaler on a unilateral basis when the wholesaler refused to maintain suggested prices, was the Colgate Doctrine applied. The court held that the right to stop dealing is neither absolute nor exempt from regula-

tion,³² and that, if accompanied by unlawful conduct or conceived in monopolistic purpose or market control, even individual sellers' refusals to deal have transgressed the act.

It is clear that under the Sherman Act and absent any State Fair Trade Laws,³³ a seller may not threaten to stop supplying any wholesaler who sells to price-cutting retailers and may not discuss with his customers their positive adherence to his policies. It is also clear that the seller may not employ agents or salesmen to report wholesalers or retailers who violate the suggested resale prices and may not place such dealers upon lists of undesirable purchasers. Nor may the seller use symbols or numbers marked on cases containing its products in order to ascertain the names of dealers selling at less than suggested prices.

In theory, at least, a seller may still announce a suggested price schedule and stop dealing with those who violate it. However, it seems realistic to conclude that resale price maintenance cannot successfully be accomplished in view of the very strict limitations placed upon the Colgate Doctrine, which is apparently effective only when the methods used are ineffective. When the methods used are successful, there is apt to be found either an implied agreement, unlawful conduct, or monopolistic purpose and, therefore, a violation of the Sherman Act.

28. *Id.* at 3.

29. State fair trade laws authorize minimum resale prices such as Parke, Davis undertook to maintain. The House Committee on Interstate and Foreign Commerce recommended on June 9, 1959, that the Federal Trade Commission Act be amended in order to authorize retail price maintenance throughout the United States. See H. R. Rep. No. 467, 86th Cong. 1st Session (1959).

30. 45 F. Supp. 387 (S.D. N.Y. 1942).
29. 321 U.S. at 723.
31. 256 U.S. 208 (1921).
32. 272 F.2d 1 (7th Cir 1959).

Moot Court in Review

BY JUDGE R. E. HACHEY

Senior students are completing a full year of Moot Court this week, and have tried a total of 34 jury trials since last September. This is the first year that the faculty has devoted two full semesters to the subject.

When the St. Paul and Minneapolis divisions merged in the year 1955, there was no established course called "Moot Court," except reference thereto during such time as could be spared in the practice course.

Beginning with the school year 1958-59, both the St. Paul and Minneapolis divisions conducted a combination course of practice and Moot Court and approximately seven Moot Court cases were tried to a jury. One semester per year was allotted to the course until the present school year, at which time provision was made to devote a full year to the subject.

Students Team Up

Two trials are conducted each Thursday evening known as Court 1 and Court 2. Each senior student is required to try two cases, representing a plaintiff in one case and a defendant in the other. Fact situations covering a variety of interesting jury issues are presented for trial. Students in pairs are assigned to represent the various litigants, and are required to take all partial steps. In most of the cases, the use of interrogatories and pretrial depositions is resorted to. Time limits are set for the preparation and delivery of pleadings and the hearing of various motions prior to trial.

Juries consist of senior students from schools and colleges in the

local area. Presiding jurists consist of Municipal Court and District Court judges of Minneapolis and St. Paul and trial attorneys. Alumni trial attorneys. During such times as the juries are deliberating, presiding jurists offer such comments and critique as they feel disposed.

In some of the trials, fact situations call for the use of medical witnesses. In several instances, members of the medical profession act as attending or examining physicians and surgeons. Other witnesses are provided by the students, some from the students body, others from the citizenry of the community.

Following each trial, the participating students are given time limits to prepare a settled case for the purpose of an appeal. Time limits are also set for preparation and delivery of appellants' and respondents' briefs. Students are likewise required to take all of the necessary steps to perfect an appeal. Two evenings are set aside for the purpose of conducting a "Moot Supreme Court." Associate Justices of the Supreme Court of Minnesota sit as the Appellate Court and hear arguments of two cases each.

In addition to the preparation and trial of jury cases, the preparation of appellate briefs, perfecting an appeal, and argument of an appeal before the Supreme Court, a demonstration of a moot criminal trial is provided for the students. The County Attorney of Ramsey County and an experienced defense attorney arrange to try a moot felony case to a jury, such

as murder in the third degree. During this trial police officials are used as witnesses for the prosecution, and demonstrative evidence includes a complete demonstration of finger print procedures.

In addition thereto, a lecture covering an attorney's proper behavior and demeanor in court is conducted by a District Judge, and a complete lecture concerning the subject of abstracts of title, the historical development of perfecting title to land by actions to quiet title, and title registration proceedings is conducted by the Examiner of Titles of Ramsey County.

Finally, several sessions are set aside for the purpose of covering the statutes and rules of practice concerning the selection of juries and matters touching upon their propriety and duties as jurors, and to critique cases previously tried. The latter is conducted by those instructors in charge of the course.

A total of 120 hours is devoted to the course and is under the direction of William Essling, a practicing attorney and former assistant United States District Attorney, and District Judge, Ronald E. Hachey, of the Ramsey County District Court.

Bar Review Course

The bar review course will again be available at William Mitchell, beginning with an organizational class on June 10, at 2:00 p.m.

Classes will be held at 6:30 p.m. on Monday, Wednesday, and Friday. Fee for the course is \$85.00.

The course is not offered by William Mitchell but is presented by Professor Harry H. MacLaughlin, faculty member.

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

Foreign Law Institute Greeted Enthusiastically

Any doubts as to the increasing interest of the legal profession in the complex field of foreign trade were quickly dispelled by the overwhelming participation by members of the bar and law students at the recent Institute on Investments and Business Abroad presented by The William Mitchell College of Law, February 1 through March 15.

Originally scheduled for five sessions, the Institute was conducted for seven consecutive weeks, with an average weekly attendance of seventy-six.

Having in mind the opening of the new seaway to the upper midwest, the Institute was designed to provide a fundamental understanding of differences in the various legal systems of which the world-trade lawyer must be cognizant, a discussion by leading lawyers of problems involved in the practical aspects of doing business abroad,

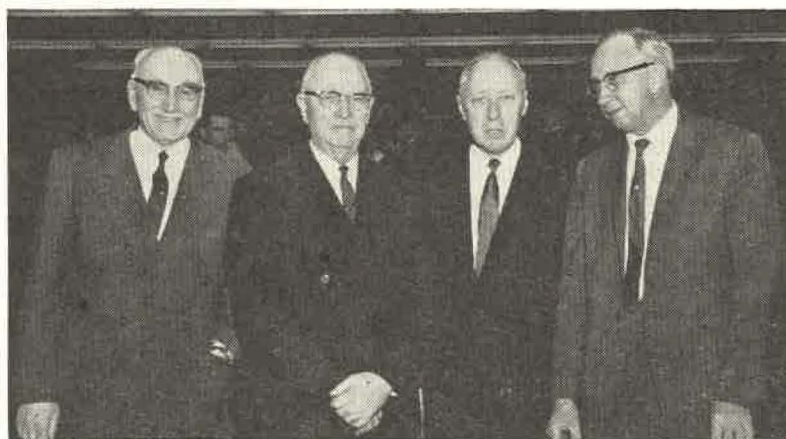
and a presentation of tax implications in individual investments in foreign enterprises. From the response of those in attendance and the correspondence from law schools throughout the country it was made clear to the Planning Committee that these objectives were lucidly brought home.

Following welcoming remarks by William Mitchell's Dean Stephen R. Curtis, and the introduction of many prominent guests, including all of the members of the Minnesota Supreme Court, Dr. Raymond B. Van der Borcht delivered the opening lecture on Contracts under Foreign Law.

In succeeding sessions legal problems incident to doing business abroad were discussed by Messrs. Maynard B. Hasselquist of Dorsey, Owen, Barber, Marquart and Windhorst; J. Patrick Kittler, International Operations Counsel of the Minneapolis-Honeywell Regulator Company; and Richard L. Post, Assistant Secretary, Minnesota Mining and Manufacturing Company and Past President of the Corporate Counsel Association of Minnesota. Discussions included considerations in choosing forms of doing business abroad and problems of organization, taxation, license, and finance in foreign operations.

A detailed analysis of the legal and tax aspects of individual investments abroad was presented by Messrs. David R. Roberts, Tax Counsel of the Minneapolis Star and Tribune; Walter N. Trenerry, and Paul G. Zerby, Twin Cities attorney.

Participants discussed investments by American individuals in foreign land, natural resources, se-



Luminaries attending the opening session of the Institute were introduced by Dean Stephen R. Curtis. Shown are Andrew Johnson, Trustee, Chief Justice Roger Dell, Dean Curtis, and Associate Justice Oscar Knutson, Hennepin County District Judge.

curities, and other property, and the use of foreign situs trusts.

The concluding lecture was given by Dr. Van der Borcht, who had

made an unexpected trip to Europe following the first session, on the differences in property concepts under the common law and civil law.

The Institute was jointly sponsored by the Minnesota State Bar Association, the Corporate Counsel Association of Minnesota, and the Harvard Law School Association of Minnesota, and was prepared by the efforts of a Planning Committee which included Dean Curtis of William Mitchell; David C. Forsberg of Briggs and Morgan; Clarence C. Frame, Vice-President, First National Bank of St. Paul; James H. Geraghty, Chairman, Continuing Legal Education Committee, Minnesota State Bar Association; Mr. Hasselquist; Lamont B. Koontz, Patent Attorney, Minneapolis-Honeywell Regulator Company; Hiram M. Joslin, Counsel on Foreign Operations, General Mills, Inc.; Reino O. Laine, Attorney, Minnesota Mining and Manufacturing Company; Thomas C. Meyers,

Executive Secretary, Minnesota State Bar Association; Roger L. Nordbye, Secretary and General Counsel, Archer-Daniels-Midland Company; Mr. Post; Mr. Roberts; Raymond A. Scallen, of Faegre and Benson; Mr. Trenerry; Kent C. van den Berg, Assistant General Counsel, F. H. Peavey and Company; and Dr. Van der Borcht.

The very gracious William Mitchell Law Wives served refreshments following the first and last session of the Institute.

Throughout, discussions were supplemented by collections of books, maps, and charts held on display during the course of the Institute, as well as by specially prepared synopses for those who attended.

It is anticipated that institutes similar in nature will be held here at the William Mitchell College of Law.



Maynard B. Hasselquist



Richard L. Post



Dr. Raymond B. Van der Borcht

New Alumni Officers Elected

Introduction by

Judge Donald T. Barbeau

The last meeting of the Board of Directors of the William Mitchell College of Law Alumni Association was held February 15, 1961. At that time an election of officers was held, and Judge Ronald Hachey was elected President for the year 1961; William H. DeParcq was re-elected Vice-President; Judge Donald T. Barbeau was elected Secretary; and Harry Holtz was re-elected Treasurer.

The basic purpose of the William Mitchell College of Law Alumni Association as reaffirmed at the last meeting is:

"To promote the welfare of the William Mitchell College of Law by uniting its alumni and the alumni of its predecessor Colleges of Law in its service; to assist the William Mitchell College of Law and its students in the advancement of the means and methods of sound legal education; to establish, supervise and grant scholarships to worthy and needy students desiring legal education at the William Mitchell College of Law; to aid and assist the William Mitchell College of Law in the development and maintenance of a suitable physical plant and proper educational equipment; and to aid and assist the William Mitchell College of Law in the expansion of its library facilities."

A fund drive to sustain this purpose has been started and will be given new emphasis during the latter part of the year 1961.

It is also the intention of the present Board to start a drive to secure a larger rural membership both as members and on the Board of Directors. This matter will be discussed at the next meeting.

ALUMNI ARE REQUESTED TO SEND THEIR CORRECT ADDRESS TO SCHOOL OFFICE.

ALUMNI ATTENTION:

Please send information about yourself, or other Alumni, to:

**WILLIAM MITCHELL
OPINION**

2100 Summit Avenue
St. Paul 5, Minnesota

We want to print news about YOU!

North Dakota Hosts Eighth Circuit Meeting

The Eighth Circuit Convention of the American Law School Association (ALSA) was held at the University of North Dakota on March 17. Robert M. Reedquist, vice-president of the Student Bar Association, (SBA), represented William Mitchell.

The meeting was attended by nine of the thirteen member law schools within the circuit.

Plans were discussed and resolutions were presented to assist delegates in the procedure at the National Convention to be held in St. Louis in August.

Among the speakers were Governor William Guy of North Dakota, Major General Kuhfeld, Judge Advocate General of the Air Force, and Phillip Curd, National Treasurer of ALSA.

RONALD E. HACHEY (LL.B. 1943), is a District Judge of the Second Judicial District and President of the William Mitchell College of Law Alumni Association.

Judge Hachey served in the infantry during World War II as a member of the Rainbow Division. After leaving the military service, he served as assistant United States Attorney from 1951 to 1953. He practiced law in the Twin Cities from 1953 to 1955 when he was appointed to the District Court to replace the late Judge Gustavus Loevinger, who retired.



R. E. Hachey 1955 when he was appointed to the District Court to replace the late Judge Gustavus Loevinger, who retired.

Judge Hachey is the present campaign chairman of the St. Paul-Southeastern Minnesota Chapter of the National Multiple Sclerosis Society, a member of the Board of Directors of the Young Christian Workers and the Minneapolis Catholic Boy's Home. He is also a member of the Ramsey County Bar, the Minnesota Bar, American Bar Associations, and the American Judicature Society.

Judge Hachey and Mr. William Essling are co-instructors of "Moot Court" and have developed the course to its present full year of 120 hours.

WILLIAM H. DE PARCQ (LL.B. 1930), is a practicing attorney and Vice President of the William Mitchell College of Law Alumni Association. He has been admitted to the Minnesota State Bar, Illinois State Bar, U. S. District Courts, District of Illinois, U. S. Courts of Appeal 5th, 7th, 8th and 10th circuits, and the U. S. Supreme Court.



Mr. De Parcq is a former member of the Minnesota House of Representatives and Minnesota Judicial Council. He is currently a member of the American Bar, Minnesota State Bar, Hennepin County Bar and Illinois Bar Associations, a

District of Illinois, U. S. Courts of Appeal 5th, 7th, 8th and 10th circuits, and the U. S. Supreme Court.

Mr. De Parcq is a former member of the Minnesota House of Representatives and Minnesota Judicial Council. He is currently a member of the American Bar, Minnesota State Bar, Hennepin County Bar and Illinois Bar Associations, a

Rare Books Displayed In Library

Several of the alumni and friends have provided William Mitchell with a collection of rare law books which fill the four display cases in the library.

One donation, **Holts Reports**, was given by the Honorable John B. Sanborn, class of 1907. This volume contains the decisions of Sir John Holt, English Chief Justice from 1688 to 1710. Judge Sanborn has also given a copy of Sir Edward Coke's, **A Comment Upon Littleton**, in which Coke comments on this 15th century work of one of the Common Law's foremost creators. Also included is a 1767 edition of **Principles of Equity** by Henry Home, who stated this was the first attempt to digest Equity; a 1761 edition, with translation, of **Justinian's Code**; and a 1539 edition of Pliny's **Natural History**.

From Victor J. Holper, class of 1928, and Editor-in-Chief of West Publishing Co., the library received **Laws of the United States for 1791**, which contains the Constitution, early treaties and Acts of Congress covering the period of its first three sessions.

member of the International Academy of Trial Lawyers, American Judicature Society, Scribes and NACCA.

Mr. De Parcq is also a lecturer on medico-legal problems and author of numerous law review articles throughout the country.

DONALD T. BARBEAU (LL.B. 1942), is a Judge of the Municipal Court of Minneapolis and Secretary of the William Mitchell College of Law Alumni Association.

Prior to his appointment to Municipal Court in 1959, Judge Barbeau was a trial lawyer in Minneapolis. He was elected a member of the International Academy of Trial Lawyers in 1955 and was the youngest member of this organization, which is limited to the five hundred top trial lawyers in the world.

Judge Barbeau is a member of the Hennepin County Bar, Minnesota Bar, and American Bar Associations, and the American Judicature Society. He is also a member of the Minnesota State Committee on Ethics, the Attorney General's Committee on Solicitation and Administration of Charitable Funds and Chairman of the Code of Ethics Committee for the City of Minneapolis.

He was former professor of law for nine years at William Mitchell College of Law.

HARRY L. HOLTZ (LL.B. 1943), is Executive Vice President of the First Trust Company of St. Paul and Treasurer of the William Mitchell College of Law Alumni Association.

Mr. Holtz is treasurer of the Ramsey County Bar Association and a member of the Minnesota Bar Association. He is also Chairman of the Legislative Committee of the Corporate Fiduciaries Association of Minnesota.



D. T. Barbeau



H. L. Holtz

ALUMNI BRIEFS

DOUGLAS K. AMDAHL (LL.B. 1951), summa cum laude, has been appointed Minneapolis Municipal Judge, with the oath being administered by Municipal Judge Donald T. Barbeau, a former law instructor to Judge Amdahl at William Mitchell.

After returning from military service in World War II, which included twenty-two months overseas, Judge Amdahl received a BBA from the University of Minnesota in 1946. He was an instructor of accounting and insurance at the Mankato Commercial College for one year and in 1947 enrolled at William Mitchell College of Law.

Judge Amdahl has been an instructor of law from 1951 to 1960 and served as assistant registrar from 1948 to 1955. From 1955 until his appointment to the bench, he was Assistant County Attorney for Hennepin County.

He is a member of the Hennepin County Bar, Minnesota Bar and American Bar Associations. He is also a member of the American Legion, Delta Theta Phi law fraternity, Veterans of Foreign Wars, Masons, and Shrine.

GERALD E. CARLSON (LL.B. 1936), has been appointed Municipal Judge of West St. Paul.

Judge Carlson practiced law from 1936 to 1941 and was City Attorney of West St. Paul from 1941 to 1953.

He is a member of the Ramsey County Bar, Minnesota Bar and American Bar Associations, and a member of Phi Beta Gamma legal fraternity.

RAY J. QUINLIVAN (LL.B. 1922), a practicing attorney, is Chairman of the Board of Regents of the University of Minnesota and actively participated in the inauguration of newly elected President, O. Meredith Wilson.

Mr. Quinlivan graduated from Carleton College in 1916 and saw military service prior to enrollment in law school. From 1936 to 1948 he was City Attorney for St. Cloud, and in 1935 he was elected to the Board of Regents of the University of Minnesota. He was elected Chairman of the Board of Regents in 1950.

Mr. Quinlivan served five terms as a Minnesota State Senator and is a member of the Stearns County Bar, Minnesota Bar and American Bar Associations, and a member of the International Association of Insurance Counsel.

WILLIAM E. HUSTLEBY (LL.B. 1922), has recently announced his retirement as Director, District 9, Bureau of Motor Carriers of the Interstate Commerce Commission and as Regional Manager for the I.C.C. in Minneapolis.

Mr. Hustleby plans to enter the practice of law in the Twin Cities with special attention to trans-

portation matters. He has been admitted to practice before the I.C.C., Minnesota State Courts, Federal District Court and the U. S. Supreme Court.

HERBERT F. SOMERMAYER, (LL.B. 1957), has been appointed acting manager of the Plant Department at the St. Paul Division of Remington Rand Univac.

Mr. Somermayer is a registered patent attorney and a member of the Minnesota Bar Association, Minnesota Patent Law Association and the Phi Beta Gamma legal fraternity.

RICHARD F. JOHNSON, (LL.B. 1960), has been elected an officer in the Trust Department by the Board of Directors of the First National Bank of Minneapolis.

Mr. Johnson is a member of the Hennepin County Bar and Minnesota Bar Associations and is Secretary of the Twin Cities Society of Security Analysts. He is Chairman of the Investment Committee of Corporate Fiduciaries Association of Minnesota.

RAYMOND W. FARICY, JR., (LL.B. 1960), has announced his association with Schultz & Springer, a St. Paul law firm.

Mr. Faricy graduated with honors from St. Thomas College in 1956. While at William Mitchell College of Law he served as the first president of the Student Bar Association. He was also national representative of Delta Theta Phi legal fraternity.

JAMES F. FINLEY, (LL.B. 1959), has been recently elected Executive Secretary of the Transfer Mens Association of St. Paul, Inc.

He is a member of the Ramsey Bar, Minnesota Bar and American Bar Associations.

Judge Edward D. Mulally, (LL.B. 1942), was appointed to the Ramsey County District Court on April 4th. Judge Mulally served on the St. Paul Municipal bench from 1952 until his present appointment. He was senior Judge of the Municipal Court.

He attended St. Thomas College and completed his pre-law studies at the University of Minnesota.

Judge Mulally joined the Army in 1942, saw duty with both the infantry and the air corps and was discharged in 1945 as a first lieutenant.

Upon his return to civilian life, he practiced law in St. Paul from 1945 to 1952 until his initial appointment to the Municipal bench.

Judge Mulally won the plebiscite of the Ramsey County Bar Association prior to his appointment.

Judge Isla Lindmeyer, (LL.B. 1943), has been elected to the Municipal Court in Shakopee. Judge Lindmeyer was born in New Ulm. She was graduated from Minnesota College of Law and was mayor and city attorney of Shakopee prior to her election.



Treatise on the Civil Law was presented to the College by Richard A. Golling Memorial Fund officers March 15.

Third In Series — Know Your Trustees

Judge Knudson Presides In Hennepin Family Court

What is the Family Court? The Honorable Theodore B. Knudson, Judge of the Hennepin County District Court, describes it as a court which is entirely devoted to matrimonial actions involving families. Its purpose is to hold families together when at all feasible. In Minnesota, the Family Court originated in Hennepin County in 1959, Judge Knudson being named to preside over it.

Judge Knudson, a graduate of Concordia College in Moorhead, Minnesota, received his LL.B. from the Minneapolis College of Law in 1932. A year later he obtained his LL.M. from this same institution. After his admission to the bar in 1932, he practiced law in Minneapolis for 11 years. In 1943 he was appointed Assistant County Attorney of Hennepin County. He continued in this position until his appointment to the Municipal Court Bench in 1947. In June of that year he became Judge of the District Court of Hennepin County.

"No Divorce Mill"

"Contrary to the thinking of many people," the Judge explained, "the Family Court is not a 'divorce mill'. We try to help couples solve their problems before granting a divorce." Judge Knudson is pleased with the advances this Court has made in the past. "We try to awaken people to the significance of what will face them if a divorce is granted." The Judge went on to say that in the majority of cases, both parties in such proceedings are at fault. If a husband and wife realize this, there is favorable chance of reconciliation.

Besides being a trustee and Secretary of the William Mitchell College of Law, Judge Knudson is currently the Vice-Chairman of the National Council of States Committee for Children and Youth, chairman of the Minnesota Youth Conservation Commission. As to

youth and their problems, he said, "Basically, young people are the same today, but they respond to our culture which has definitely changed."

The problems of youth today are of deep concern to him. He states that juvenile delinquency is the product of group dynamics and that various types of vandalism inevitably are the product of group action. "They do not think of their reputation and future. If younger people could foresee the effect their delinquencies have upon their future lives and occupations, this problem would be greatly mitigated."

Judge Knudson was asked what a student can do over and above his academic work to better prepare himself for the practice of law. He replied that an occupation in the business world is beneficial for a sound legal background. "If we are familiar with the practices of the business world, we are better able to help and advise our clients." The Judge indicated that this is the reason an older law graduate is better prepared to meet the everyday demands of a law practice. He also stated emphatically that a law student must become active in civic affairs, for it is in service to his fellow man that his future is devoted. There are too many men today who treat law only as a business. "Law is a profession," he said, "not a business."

As to the qualities of a judge he replied that the most important is judicial temperance. This includes patience, understanding and, above all, willingness to hear the parties out. Other qualities he stressed are an analytical mind and integrity. "Integrity of a judge means, to call them the way you see them," he remarked. "Ability to make decisions is an absolute necessity in such a position."

Case Notes

MINNESOTA HIGH COURT GRANTS PERMISSION TO DEVIATE FROM INVESTMENT RESTRICTIONS IN DR. CHARLES H. MAYO TRUST.

In re Trusts of C. H. Mayo, 105 N.W. 2 900 (October 10, 1960).

The late Dr. Charles H. Mayo created two trusts on August 17, 1917, and March 28, 1919, whereby the trust instruments contained identical investment provisions and gave the trustee authority to "... invest and re-invest ... in real estate mortgages, municipal bonds or any other form of income-bearing property (but not real estate or corporate stock)" The donor died May 26, 1939.

Petitioner, a beneficiary under the trusts, sought an order from the District Court allowing the trustee to deviate from the trust investment restrictions or to construe same to authorize investing the trust corpus in corporate stock, contending that because of an unforeseen inflationary period, the real value of the trust corpus had been reduced more than 50% and that continued inflation was probable.

The trustee countered with expert testimony as to the decline in the rate of inflation in recent years, the unpredictability of future inflation, and the greater advantage to both life beneficiaries and remaindermen under the trusts of continuing municipal bond investments. The trustee also emphasized the failure of the donor, during his lifetime, to exercise his reserved power to amend the trusts.

The District Court held for the trustee and denied the petition.

The Minnesota Supreme Court reversed the District Court and authorized the trustee to deviate from the restrictive provisions of the trusts by investing a reasonable amount of the trust corpus in sound investment issues of corporate stocks.

The high court held that if deviation was not permitted, the dominant intention of the donor to preserve the value of the trust corpus would be substantially frustrated due to the unforeseen inflation since the trusts were created.

The court also reasoned that since the creation of the trusts and since the donor's death, corporate stocks have become a generally accepted medium for trust investment.

Fraternity News

The Delta Theta Phi Law Fraternity capped an active year with its annual Founders Day Banquet on April 29th at the Normandy Hotel. This event, to which alumni members were invited, was held in cooperation with the University of Minnesota Chapter of the fraternity. The main speaker was the Honorable John Graff, Judge of District Court in Ramsey County.

The initiation and banquet for new members was held at the University Club in Saint Paul on April 8th. The main speaker at the banquet was Edward Springer, St. Paul lawyer. The fraternity officers for 1961-62 were also selected. They are: Kevin Howe, Dean; John Chapman, Vice Dean; Donald Paterick, Tribune; Lawrence Culligan, Clerk of the Exchequer; Robert Hynes, Master of the Ritual; Joseph Micallef, Clerk of the Rolls; and Roger Scherer, Bailiff.

Coming events of the fraternity will include the annual picnic to be held in August. This affair will be attended by members, their wives or dates, and prospective members. Plans have also been made for two smokers soon after



Members of the William Mitchell Law Wives Club served as hostesses at first and last meetings of The Institute on Foreign Law and Business Abroad.

'Coffee's The Thing'

Law Wives End Active Year

The William Mitchell Law Wives Club has completed another active year. Since its inception in October, 1959, the club has directed its activities toward service to the College.

Members of the club have acted as hostesses at such functions as the Foreign Law Institute, the Law Day, USA, program, and the Student Bar Association coffee "klutch," and will again present the Graduation Party for seniors and their wives.

the start of the Fall term. The smokers during the past year were held at the University Club and were well attended by members, pledges, and prospective pledges.

New members of Delta Theta Phi initiated on April 8th are: William Christensen, Dennis Holisak, Michael Healy, William Newpower, Roger Scherer, Lawrence Sullivan, Sam Wertheimer, John Weyrens, and Kurt Wolf.

Phi Beta Gamma

Phi Beta Gamma will close out its activities for the year with a Spring Dance in early May. Initiation of new members will take place a week prior to the dance.

Activities of the fraternity during the year included the Alumni Banquet on February 10th sponsored by Walter Dorle, an alumnus and President of Northwestern State Bank of Saint Paul. This was followed on March 4th by a dinner-dance at the Park Terrace. The fraternity also sponsored two smokers for members and prospective members. A summer get-together is also planned.

The Law Wives have also set up a committee to provide jurors for the "Moot Court" trials.

The proceeds from the annual Spring dance and the style show were used to activate the new scholarship fund. Additional funds were also allocated for the purchase of additional serving equipment.

Speakers during the past year presented a variety of subjects to those attending the monthly meetings. The standing committees continued their participation with meetings and activities.

Election of officers for 1961-62 was held May 3, and the results were announced as a part of the Law Day, USA, program. Officers for the following year are:

Mrs. Edward E. (Mary Lou) Reichert, president; Mrs. Charles (Mirth) Langer, vice-president; Mrs. Robert (Kathleen) O'Neill, recording secretary; Mrs. Edward (Jean) Orwall, corresponding secretary; Mrs. Richard (Lois) Merrill, treasurer; Mrs. Paul (Beverly) Rosenthal, public relations; Mrs. James (Mary Ann) Knutson, social chairman; Mrs. Donald (Betty) Hassenstab, hospitality and welcoming committee chairman; and Mrs. Richard (Laverne) Arvold, charity committee chairman.

Retiring president, Mrs. Everett (Martha) Hamilton, was presented with a gold bracelet by the members of the club in appreciation of her service.



Edward R. Soshnik, Placement Bureau Chairman, and Charles L. Langer, SBA President, confer on job-opportunity information available to Mitchellites.

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SBA Reps Will Attend ALSA Meet

As outlined by Charles Langer, the goals of the newly elected officers of the Student Bar Association are:

To staff the William Mitchell Opinion, an SBA publication, and to maintain and surpass the high standard it has already achieved as a legal newspaper;

To assist the University of Minnesota SBA, during 1961-62, when they will act as host for the 8th Circuit Annual meeting of the American Law Student Association. In return, the William Mitchell SBA will solicit the University of Minnesota SBA's aid in attempting

to have the 1962-63 Annual Circuit meeting held at William Mitchell, thereby bringing national recognition to the school;

To send three William Mitchell SBA representatives to the 1960-61 Annual meeting of ALSA to be held at St. Louis, Missouri, August 5-10, 1961. These representatives will attempt to attain positions on the national standing committees.

The president of the SBA has appointed the following standing committee chairmen for 1961-62: Edward Soshnik, Placement Bureau; LeRoy W. Anderson, Lecture Committee; and Carol A. Paar, Editor, *The Opinion*.

The Student Bar Association
of
William Mitchell College of Law
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