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William Mitchell
OPINION

Published by the
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William Mitchell College of Law

Volume 8 [illegible] 9] December, 1966 No. 1

Grad Sets Up Torts Chair, Professorship

A $200,000 grant has been made to William Mitchell by the Margaret H. and James E. Kelley Foundation, Inc., to establish a professorship and chair in tort law.

Mr. Kelley, a 1917 graduate of the St. Paul College of Law and a member of the William Mitchell corporation, is a St. Paul attorney.

The first instructor to hold the Kelley Professorship is Raymond L. Flader, a 1954 cum laude graduate of the St. Paul College of Law. He is one of six new additions to this year's faculty.

Mr. Flader was formerly on the staff of the St. Paul corporation counsel, and has practiced privately. He was a full-time faculty member of the St. Paul College between 1954 and 1956.

The second new full-time professor is Robert G. Lauck, who teaches administrative law and commercial transactions, a combination of the former sales, and bills and notes courses. He received his LL.B. from the University of Kansas and a LL.M. from George Washington University. He taught administrative law during the second semester last year.

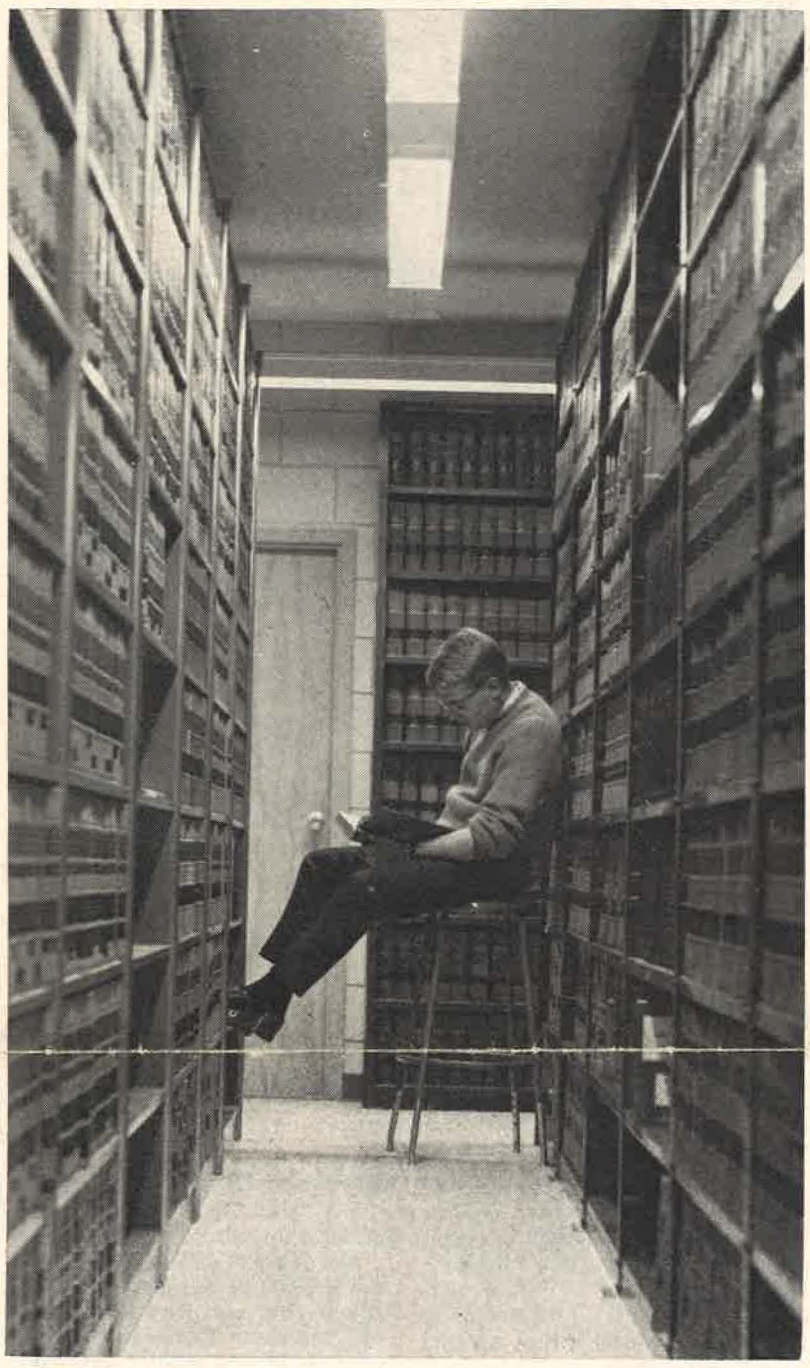
Thomas O. Moe, who also taught last year, is continuing as instructor of income tax laws. He received his B.A. and LL.B. degrees from the University of Minnesota, and is associated with the Minneapolis law firm of Dorsey, Owen, Marquart, Windhorst & West.

Recent additions to the faculty for the second semester are Richard H. Murray, Thomas Vogt and Joseph P. Summers.

Mr. Murray, a graduate of Harvard Law School, will teach creditors' remedies. He is a member of the St. Paul law firm of Oppenheimer, Hodgson, Brown, Wolff & Leach.

A graduate of the University of Minnesota Law School, Mr. Vogt will instruct the fourth year labor law course. He is a member of the St. Paul law firm of Felhaber, Larson, Fenlon & Vogt, and has an extensive background in labor law.

Mr. Summers, who was recently appointed corporation counsel for the city of St. Paul, will teach the fourth year course in local government. He received his LL.B. from the University of Notre Dame.



Opinion photo by Steve Van Drake

'Part-time' Student? The American Bar Association classifies this William Mitchell student studying in the school library and his classmates as "part-time" law students. Dean Heidenreich examines the classification in his column on Page 2.

Bar Exam Results

A total of 232 law school graduates took the Minnesota bar examination in July. Sixty-seven William Mitchell graduates were included, 57 of whom passed — a success-rate of 85 percent.

Of the 165 candidates from the University of Minnesota and other law schools, 145 were successful — a figure of just under 88 percent.

Comparable July, 1965, figures show that 71 percent of Mitchell graduates successfully completed the two-day examination. The figure from other law schools was 75 percent.

Dean Predicts No Hike In Tuition in '67, But Boost Probable by '69

By Robert Hentges

William Mitchell students probably will not face a higher tuition next year. But billfolds probably will get a little thinner in two or three years.

"No plans are in the mill to raise the tuition in 1967," Dean Douglas R. Heidenreich said.

"Of course, a possibility always exists. I make no warranty."

Dean Heidenreich said a tuition boost in two or three years is "in the realm of the probable."

"Freshmen are not likely to complete school without an increase," the dean said. "And I will not promise that the increase will be within the presidential guidelines."

The last tuition boost was $100 to $600 a year in 1965.

Dean Heidenreich said the reason for the probable increase is simple—increases in costs. He said contributions to the school increase every year but not as much as costs.

The 1966-65 budget is some $220,000, the dean said, compared with $155,000 in 1964-65 and $190,000 in 1965-66.

Faculty expansion and increases in "continuation" costs in the library have been the major causes of the budget increases, Dean Heidenreich said.

In 1964-65, the full-time faculty numbered seven. The figure is nine this year.

The dean said continuation costs are the costs of keeping library books current. A new book, of course, carries a continuation cost, he said.

Tuition will comprise some 88 per cent of school income in 1966-67, Dean Heidenreich said. The other 12 per cent comes from a variety of sources, including contributions, he said.

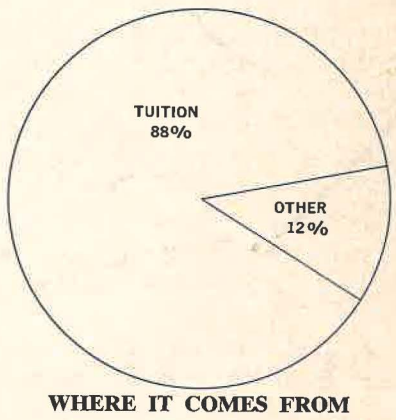
The dean said expenses in 1966-67 are:

Faculty salaries, $135,000 or 61 per cent; administration, including office costs, $25,000 or 11 per cent; library, $23,000 or 11 per cent; general operation, including utilities and the janitor, $17,000 or 8 per cent; office expense, including supplies, $15,000 or 7 per cent, and annual expense, including insurance, publicity, the bulletin and student activities, $5,000 or 2 per cent.

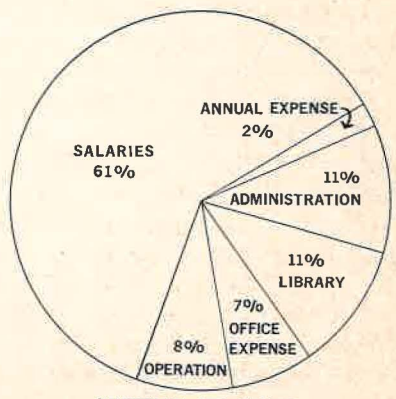
An endowment fund will provide income in two to five years, Dean Heidenriech said.

The dean said the school started the fund "with all that was in the coffers," securities for instance, one year ago. The fund now contains some $100,000, he said, and the school knows of some $120,000 more likely to go into the fund soon.

TUITION
Continued on Page 3



WHERE IT COMES FROM



WHERE IT GOES

Aaskal Has Met Zzilch - - Finally

Aaskal finally met his William Mitchell classmate Zzilch, because Registrar Jack Davies got mad.

"I saw two seniors introduced to each other," Davies said. "That just isn't right, especally in a school this small."

So Davies suggested and implemented the section switches at the start of the school year. Dean Douglas R. Heidenreich calls it "cross-fertilization."

The registrar said the switches enable exchanges of information and "interesting changes of pace." And a student could meet a future associate, he said.

Davies said the switches also mean "any inequities in abilities between sections will not be permanent."

Different quarters of the classes alphabetically will be put into sections at the start of every school year, Davies said, with freshmen and senior sections the same.

TYPICALLY HE'S NONTYPICAL

Mitchell Freshmen Defy Statistics; Backgrounds Vary

By Robin Jacob

What is a freshman at William Mitchell? From any angle examined, he emerges as an almost indefinable creature, a sort of living anti-statistic.

Is he 26 or does his age vary from 21 to 49? Does the fact that he has an average of slightly more than two children do justice to the 50 per cent of the class that is unmarried? We can't even refer to him as a male. There are three females in the class.

His score on the Princeton Law School admission test was a very respectable 531. Even this, however, is somewhat clouded by the fact that his grades as an undergraduate averaged only a middle C. Does this create a picture of a student of above-average ability who did not apply himself too extensively during his undergraduate days? If true, then perhaps some other statistics should be inserted here.

Of the 156 freshmen who entered William Mitchell last year, only 82 are here as sophomores. This latter figure includes some students who were not registered last year, indicating a high mortality rate.

The backgrounds provide many instances in which the study of law seems to be the natural result of family influence. Stephen Scholle has a father who practices law in Minneapolis and a brother, Craig, who is a member of this year's senior class. Hugh and John McGuigan combine their uncle-nephew relationship with family ties to attorneys in St. Paul.

But this doesn't explain what brings a football player from Gustavus Adolphus (Earl Gary), an internal revenue agent (George Stenger), the wife of a physician and a mother of five (Marla Kennedy) and a veteran of over 10 years of radio and television announcing (Pete Evenson) together as law school freshmen.

Evenson's father and father-in-law are both lawyers, which might provide ample motivation for the study of law — if one were 22 and just out of undergraduate school. But what if one is 40, married, the father of two boys, and a successful personality in a career that most would view as highly attractive and glamorous?

A similar story might be told of Ted Craig — similar in complexity, that is. Combine an undergraduate degree from the University of California at Berkeley, a Ph.D. in chemistry from M.I.T., the freedom of a single man and a natural curiosity and there emerges a picture of a freshman thinking in terms of patent law.

What then may be said of the typical William Mitchell freshman? One thing with certainty — he is decidedly nontypical.

WILLIAM MITCHELL OPINION

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December, 1966 Vol. 8 No. 1

EDITORIALS

Judicial Appointments

Last month Minnesota voters elected C. Donald Peterson, 48, a Minneapolis lawyer, to succeed Associate Justice Thomas F. Gallagher, who is retiring after serving 24 years on the Minnesota Supreme Court. Mr. Peterson appears well qualified for the job.

But looking back to the Sept. 13 primary, it is apparent that voters are guided, at least in part, by considerations other than their assessments of the qualifications of judicial candidates. It is also apparent that a familiar name is a distinct asset in races for judicial posts.

Associate Justice Gallagher's son, Mr. Thomas Patrick Gallagher, 32, a Minneapolis lawyer, although losing in the general election, emerged as the top vote-getter in the primary, receiving 106,488 more votes than second-running Mr. Peterson. The voters ignored a pre-primary plebiscite conducted by the State Bar Association. The lawyers and judges polled in the plebiscite ranked Mr. Gallagher fourth and Mr. Peterson third in a field of six candidates, which included three district court judges.

There is no question that Mr. Gallagher's large primary plurality resulted partially from voter confusion between him and his father. Mr. Peterson also likely garnered some votes because his name is well known. Four years ago he was an unsuccessful candidate for lieutenant governor, and his brother, P. K. Peterson, is a former Minneapolis mayor elected last month to the State Railroad and Warehouse Commission.

We doubt that either Mr. Peterson or Mr. Gallagher would contend that they survived the primary because voters objectively decided they were more qualified to serve on the Supreme Court than any of the four other candidates. Mr. Gallagher noted following the primary that even if his name alone did win some votes, that did not detract from his qualifications. Mr. Peterson could have said the same thing. And both would have been correct. But that is not the point. What if they had not been qualified?

Clearly, the elective process is not suitable for selecting judges. There can be no question that many voters are influenced by irrelevant factors, such as the name of a candidate. This is probably more true for judicial races than others, since the press generally focuses its attention on the noisy bipartisan campaigns for such offices as the governorship, relegating judicial contests to secondary positions in the news columns.

The majority of the participants in the Minnesota Citizens Conference on Courts in September recommended that judicial candidates be screened by a committee or commission, which would then submit a list of qualified nominees to the governor. The governor would then make the final appointment from the nominees.

The primary concern of the conferees was to remove political considerations in judicial appointments by the governor. Now when a judge retires during his term, the governor names his successor without nominations.

But such a plan would also eliminate the vagaries of voters in the state judicial system.

Bar-Press Cooperation

In its protection of the rights of the accused, the U.S. Supreme Court had made it clear that trials must be free from prejudice caused by publicity.

A committee of the American Bar Association (ABA) recently completed a 226-page proposal for press coverage of crimes. The press immediately assailed the standards.

It was another skirmish in a 3-year fight.

While the fight goes on, the loser is the one both combatants claim to protect, the people, because coverage of crimes remains essentially unchanged.

Short of a contempt conviction, nothing will force a newspaper to cover a crime in any other than its own way. Someone will always give a reporter a story.

Justice Tom C. Clark said the high court is unlikely to uphold a contempt conviction of a newspaper. U.S. District Judge Edward J. Devitt, one of 10 framers of the ABA proposal, said he doubts the contempt power in the plan would ever be used.

We feel the only hope for progress is an agreement between the press and the bench and bar on a set of standards before emotions reach a point that makes compromise impossible.

The ABA says its proposal is tentative and must get approval of the ABA board of directors and the annual meeting. The press, most recently through the New York Times' Clifton Daniel, says it is willing to meet.

Sessions did take place in Washington before the ABA proposal was completed. But participation in preliminary discussion was insignificant without participation in decisions.

It is time the press and the bench and bar quit feeding vanities.

"That Name Seems to Ring a Bell"

Cartoon for the Opinion by Jerry Fearing

Head of Bar Admissions Takes Office

Prof. William J. Lloyd, retired professor of law and legislation at Syracuse University, became the director of bar admissions for the State of Minnesota Sept. 1, succeeding Prof. Edward Bade.

Mr. Lloyd received his B.A. and L.L.B. degrees from the University of Minnesota, and his L.L.M. degree from Harvard. Mr. Lloyd was appointed to the Syracuse faculty as an assistant professor in 1938 and became a full professor in 1945. Since 1943 he has held the title of Chester Adgate Congdon Professor of Law and Legislation at that university.

He worked on the New York Law Revision Committee from 1947 to 1958, and is currently a member of the New York State Bar Association's committee on legislation. In 1954 Mr. Lloyd was appointed counsel to the New York State joint legislative committee on municipal tort liability. He serves on the Council on Constitutional Law for the Association of American Law Schools.

He edited the Lawyers' Services Letter from 1952 through 1965 and has been listed in *Who's Who* since 1947. He retired from the Syracuse faculty at the end of the summer session.

DICTA BY THE DEAN . . .

Students Aren't Necessarily 'Part Time'

Under the standards of the American Bar Association, a student at William Mitchell is considered a part-time law student. This is so because he does not devote substantially all of his working time to the study of law. However, he undertakes a classroom load of 12 hours per week which is as great as that required in many "full-time" law schools. If he is to be a successful law student he must spend at least 30 hours a week outside of the classroom reading, discussing and preparing his material for the coming week. During the day he is occupied with earning a living for himself and his family, and in this sense he is perhaps a part-time student.

HEIDENREICH

In one way all education is "part-time" education; that is, everyone must take time to eat, sleep, relax and participate in activities which are not strictly a part of the educational process. In another way, however, all education, if diligently pursued, is "full-time" education. The student who works to support himself, whether it be a law-related job or not, is gaining background, experience and knowledge which he should bring into play in the classroom and in his study. He may be a banker who can contribute a good deal of practical experience and knowledge to a classroom discussion in the course in bills and notes; he may be an accountant who has some definite views on the subject of income taxation; he may be a teacher who has first hand knowledge about de facto school segregation; he may be a social worker who copes daily with the problems of divorce and custody.

But not all students have jobs which relate so specifically to certain areas of law. Even the student who spends his days working as a common laborer pouring concrete, painting buildings or tightening bolts on an assembly line learns something about people and about life which will contribute to his understanding of the law and its effects on people. He also learns self-reliance and develops a mature understanding of human nature.

There are any number of schools of jurisprudence and as many approaches to the question of what law is, how it operates and how it should operate as there are scholars who have considered these problems. Nevertheless, rare indeed would be the scholar who would dispute the cliche that "the law does not operate in a vacuum." Indeed, this fact is being recognized today in legal education through the implementation of professional responsibility programs in schools throughout the country. A student at one school may investigate problems of urban redevelopment; a student at another school may become involved in a program which allows him to interview legal aid clients; another may act as a clerk either during the summer or on a part-time basis during the school year for a law firm or a judge; yet another may participate either actively or passively in interviews of welfare clients by a social work agency.

The student should strive to cultivate while in law school the approach of the practicing lawyer and at the same time should seek to emulate the active members of the bar who are the leaders of the community. In the final analysis it is leadership that makes the difference between the average lawyer and the outstanding one, and the lawyer becomes a leader because he understands people and their problems. There are those who would say that the lawyer's laboratory is the library and to a certain extent this is true; but the laboratory of the law is society. The "part-time" student has the opportunity to watch and participate in the experiments in that laboratory while he is learning the basic rules of law, but he must seize that opportunity.

The student at the William Mitchell College of Law has, with the areas of endeavor open to him in the Twin Cities, an opportunity to be more than a "part-time" law student. In fact, the alert, intelligent and resourceful student can be more than a "full-time" law student. He can learn about the very fabric of society. He can see the law in action and consider its effect on the people with whom he comes in contact. If he fails to bring to bear on his every day life the things that he learns in the classroom and at the same time to bring to bear on his classroom work the experience and knowledge which he gains in his every day activities he is losing an opportunity which cannot be duplicated.

The learning process is never an easy one and it is particularly difficult to apply principles to fact situations but the opportunity to do so should never be missed. The student must recognize, however, that this is "the hard way." He is trying to accomplish two things at once and this is always more difficult than taking things one at a time. It requires vigorous exertion and a hearty constitution. It is not the road for the faint-hearted, but for the person who completes the program the reward is worth the effort.

Davies Attends Uniform Laws Meet in Canada

Assist. Prof. Jack Davies participated in the annual meeting of the National Conference of Commissioners on Uniform State Laws in Montreal, Canada, July 31 through Aug. 5.

Mr. Davies was appointed to the commission April 27 to fill the vacancy created by the death of veteran legislator Reuben Nelson.

DAVIES

Accompanying Mr. Davies to the meeting was another commissioner from Minnesota, Maynard Pirsig, professor of law at the University of Minnesota. John Mooty, a Minneapolis attorney, is the third Minnesota comsioner.

The conference is a drafting organization, composed of commissioners from the several states, designed to promote uniformity in state laws. One of its achievements is the Uniform Commercial Code.

Law professors and the senior members of law firms account for the majority of the commissioners. There are also several judges and eight legislators. Mr. Davies is a senator from Minneapolis.

The purpose of the annual meeting was to draft uniform laws and revise past proposals which need improvement. The conference promulgated a Uniform Sales Practices Act designed to control land development exploitation.

It also revised several other acts. The biggest current project is a Uniform Consumer Credit Code which will deal with loans and extension of credit.

The annual convention is a culmination of the previous year's work by various subcommittees. Davies has been appointed to the special subcommittee on uniform marriage and divorce laws and the subcommittee on law school research.

Mr. Davies does not feel there will be a draft this year from the marriage and divorce laws subcommittee.

Commissioners in Minnesota are appointed by the governor, chief justice of the State Supreme Court, and the attorney general.

One of the major duties of each commissioner is to seek enactment of uniform laws and the amendments in his home state.

Mr. Davies' term expires this spring, and traditionally commissioners are reappointed. Says Mr. Davies, "Hopefully, the appointing body will follow tradition."

Wives Elect Four Board Directors

The Mitchell Law Wives elected four members at large to their board during their annual Christmas meeting Dec. 7.

Named to represent first year student wives were Sharon Jardine and Judy Crandall and for second year wives Mickey Hanzel and Pamela Jo Rogers.

The guest speaker was Mrs. William Walsh of the adult education system of St. Paul. She gave demonstrations and ideas on preparations for Christmas.

IN HENNEPIN COUNTY

Students, Judges Pioneer Intern Program

By Lee LaBore

Two William Mitchell seniors and two Hennepin County District Court judges have pioneered a program expected to open new legal internship opportunities to students of this college.

The judges, Luther O. Sletten and Douglas K. Amdahl, agreed to serve as "guinea pigs" to determine the feasibility of combining the duties of courtroom bailiffs and clerks and assigning them to law students.

Both are enthusiastic about the results. "I am confident that this program will expand and involve more judges on the district bench," says Judge Sletten.

Now working for Judge Sletten as his personal attache and courtroom clerk is Bruce Anderson. Another senior, Charles Anderson, works for Judge Amdahl as his personal attache, courtroom clerk and bailiff.

Before adoption of the new program, the judges' bailiffs were employed by the county sheriff and remained under his authority. Courtroom clerks worked under the District Court clerk.

"As each judge has the responsibility for his own courtroom operation," says Judge Amdahl, "I deemed it necessary that I have the authority to employ, pay, direct and, if necessary, discharge courtroom personnel."

The program grew, in part, out of a recommendation of the Citizens League of Minneapolis and Hennepin County that law clerks be made available to district judges.

"The new position of law clerk," the league said, "would mainly involve aiding the judges in connection with legal research and related matters.

"Law clerks could and should be legally empowered to perform courtroom duties now performed by the bailiff, as well as swearing in witnesses and other courtroom functions now performed by the deputy clerk of court."

Cost was also a consideration. The student clerk-bailiffs are paid $5,400 a year, about the same paid to both clerks and bailiffs.

"GUINEA PIGS" AND INTERNS IN COURTHOUSE CHAMBERS
From left, Bruce, Judge Sletten, Charles, Judge Amdahl

Also, courtroom clerks generally have no formal legal training. Such training is often helpful when performing clerk duties, such as maintaining files and records.

While providing assistance to the judges, the student clerk-bailiffs are gaining valuable practical education.

"The privilege of working for Judge Sletten," says Bruce Anderson, "has solidified in my mind the fact that I'm going into the practice of trial law.

"It is said," he continues, "that I aid the judge in researching the law; I feel this is more helpful to me than to the judge. This position has given me courtroom confidence and has improved my knowledge of evidence, procedure and othe varied areas involved in trial litigation."

He says that Judge Sletten often quizzes him and discusses with him points of law and trial technique. "It is a privilege to have such a position."

Those views are shared by Charles Anderson, who says, working with Judge Amdahl "gives me full freedom to witness and partake in his various judicial functions."

"On numerous occasions during trials," he says, "the judge, while sitting on the bench, will write me a note pointing out certain flaws in a trial lawyer's technique, or to objectionable material that was admitted without objection."

"The program has worked exceptionally well and has more than lived up to the most optimistic of our expectations," says Judge Amdahl. "My clerk performs a multitude of duties. He is a research assistant, a sounding board on legal issues, a keeper of order and of files and records, an appointment secretary and a general helper.

"Much of the time that I formerly spent on details," he adds, "is now saved to use for more important judicial functions, and I am certain that the position has been a very valuable one for my clerk, for me and for judicial administration."

Predicting expansion of the program, Judge Sletten says he is "very well satisfied with the present clerk arrangement. Since we have a rotating court calender, the law student has an opportunity to witness criminal, domestic, special term and civil cases from their origin to their conclusion."

Another Hennepin district judge, Theodore B. Knudson, a member of the William Mitchell board of trustees, has adopted the program, and Judge Edward Parker will begin using it in his courtroom Jan. 1.

With the precedent set, other judges also are expected to begin using student clerk-bailiffs in their courtrooms in the future, thus providing valuable job opportunities for William Mitchell students.

The judges have determined, however, that student clerk-bailiff positions should be filled only when a vacancy results from retirement, resignation or reassignment of current clerks and bailiffs. The judges feel that no present employes should lose their positions to provide openings for students.

Similar programs have been adopted in the Allegheny County Court of Common Pleas in Pittsburgh, Penn.; Superior Court in King County, Seattle, Wash., and the Court of Common Pleas in Cuyahoga County in Cleveland, Ohio.

Tuition

Continued from Page 1

Dean Heidenreich said a variety of sources contribute to the fund, such as memorials and wills of graduates and others interested in the school.

"We're not using the earnings of the fund yet," the dean said. "We want to build it up first."

He said the fund eventually will provide an income base for operation of the school.

As far as the dean is concerned, however, the endowment fund should not be viewed as an alternative to tuition.

"I feel you should charge what a product is worth," he said, "not what it costs."

Dean Heidenreich said a comparison of tuitions indicates what the Mitchell product is worth.

According to recent figures, tuitions at night law schools ranged from $1,244 at New York University to $331 for residents at the University of Toledo.

Tuition at Boston College was $1,050. Fordham University charged $975 and Gonzaga University $885.

"Our tuition seems about average," Dean Heidenriech said, "a little higher than the average of public night law schools and a little lower than the average at private schools."

The dean said many night law schools require nine or 10 hours of classes a week, compared with Mitchell's 12.

Law Wives Sell 'Slurps' to Raise Funds

By Mrs. Craig Gagnon
Law Wives Publicist

"La Petite Slurps" are more popular than the William Mitchell Law Wives dared hope when they decided to sell them as their newest money-making project.

By early December, about 1,500 of the furry dolls had been sold. They have big, blue eyes and three-toed feet. They sell for $2 each, and come in red, pink and blue.

If sales continue going so well, the Law Wives may be able to sponsor more scholarships than they did last year. Eight Law Wives scholarships were awarded last year. Mrs. Dennis Letourneau is in charge of doll sales.

Almost all of the money the Law Wives make goes into the scholarship fund. The money we donate goes only for scholarships to the husbands of Law Wives who have paid their dues. Last year our contribution totaled $1,600.

A large group of wives gathered Oct. 5 to begin the ninth year of William Mitchell Law Wives. The meeting was combined with a party for the wives of freshman. Dean Heidenreich impressed upon us that this period of schooling is only the beginning for our husbands, as a lawyer's life is one of continuous study.

LA PETITE SLURP

Mrs. Dan Byrne was chairman of the Freshman Party and presided over the social hour.

The annual dance was held at the Thunderbird Motel Dec. 2. The chairman of this "Snowflake Fantasy" was Mrs. Darrel Hart. Mrs. Robert Ahl and Mrs. William Glew were in charge of tickets.

Young-Quinlan Rothchild will sponsor our style show at the Thunderbird March 11. Mrs. John Hoffman is chairman and Mrs. George Olds and Mrs. Tim Malchow ticket chairmen.

The Law Wives also participate in bridge, headed by Mrs. Bruce Nemer, and bowling, organized by Mrs. James Sundquist.

The Law Wives, too, select and arrange juries for moot court, in which every senior student participates. Mrs. Keith Hanzel heads the committee, with the assistance of Mrs. Michael Murphy, Mrs. Byrne and Mrs. Letourneau.

Mrs. Gerald Regnier will be in charge of the Senior Award Night, part of the commencement activities, put on by junior wives for the seniors, their wives and parents.

The officers this school year are Mrs. Robert Casey, president; Mrs. Clem Commers, vice-president; Mrs. William Sommerness, recording secretary; Mrs. Edward Hance, corresponding secretary; Mrs. Ronald Erickson, treasurer; Mrs. Craig Gagnon, publicity chairman; Mrs. Kenneth Oehlers, hospitality chairman, and Mrs. Clifford Gardner, social chairman.

The Presumption in Actions for Wrongful Death

By James Conway

The wrongful death action, concerned as it is with the moral quality of human conduct, often displays a peculiarly recalcitrant nature, many times demanding individual handling under a discretion "infinitely more subtle than can be expressed in rules." [1]

In 1957, the Minnesota state legislature attempted to guarantee the administration of justice in wrongful death actions through what was considered an inherently logical measure. Minnesota statute 602.04 provides, "In any action to recover damages for negligently causing the death of a person, it shall be presumed that any person whose death resulted from the occurrence giving rise to the action was, at the time of the commission of the alleged negligent act or acts, in the exercise of due care for his own safety. The jury shall be instructed of the existence of such presumption, and shall determine whether the presumption is rebutted by the evidence in the action."

The very real limitations this rule puts upon the discretion of both bench and jury indicate that any progress made by the statute in generating uniform justice in wrongful death actions may, under certain circumstances, be sharply undercut by a tangle of evidentiary conflicts and rivaling procedural considerations. The instant case [2] brings the problem into focus.

Appellant, Mrs. Mary Jane Lustik, brought an action against decedent's special administrator for damages sustained in a head-on collision between vehicles driven by her and by decedent, Ruth Rankila. Mrs. Rankila's trustee had previously sued appellant under Minn. St. 573.02 [3] for the wrongful death of Mrs. Rankila. A motion to consolidate the two proceedings was denied on authority of *Lambach v. Northwestern Refining Co., Inc.* This case held that in light of the statutory provision requiring jury instructions on a presumption of decedent's due care in a wrongful death action, consolidation of such an action with a personal injury suit was improper because of the impossibility of giving meaningful jury instructions.[4] The court in *Lustik* gave the trustee's suit priority since it was first sued, and a jury verdict awarded the trustee $17,648 in damages against Mrs. Lustik. No appeal was taken.

Confronted with Mrs. Lustik's personal injury action, Mrs. Rankila's special administrator moved for summary judgment, contending that the issue of plaintiff's contributory negligence was *res judicata* and that the previous verdict estopped her from asserting this claim. The trial court granted the motion. Mrs. Lustik appealed.

The Minnesota Supreme Court, Otis. J., held that the original verdict awarding damages to the trustees stopped the surviving driver from asserting a claim against the decedent's administrator for personal injuries arising out of the accident. That serious practical difficulties will arise when the collateral estoppel concept is employed in separate trials of actions arising from one occurrence is evidenced by Justice Otis' disapproving observation at the start of the *Lustik* opinion:

We have carefully considered all of appellant's contentions and acknowledge that the statutory presumption of decedent's due care may lead to an unseemly race to the courthouse, as Mr. Chief Justice Knutson predicted in the Lambach **case. However, as long as Minn. St. 602.04 remains on the books, litigants will continue to find themselves burdened with duplicated litigation and with the necessity for maneuvering for tactical advantage of being the first to trial.**[5]

McCormick has called the presumption "the slipperiest member of the family of legal terms." [6]

Every writer of sufficient intelligence to appreciate the difficulties of the subject matter has approached the topic of presumptions with a sense of hopelessness and has left it with a feeling of despair.[7]

The statute in question is at least in part the product of years of judicial wrestling with the role of the presumption in wrongful death cases.

Although Minnesota defendants have always borne the burden of proof on the issue of contributory negligence,[8] the "presumption" of due care in wrongful death cases is deeply ingrained in Minnesota jurisprudence.[9] The presumption, however, seems to have originated in jurisdictions where the burden of proving due care or freedom from contributory negligence was allocated to plaintiffs.[10] There can be little quarrel with the logic of using a presumption to shift the burden of going forward with evidence of contributory negligence in such jurisdictions. The presumption is especially apt when there is no direct evidence or testimony concerning the fatal incident. But the literature is consistent in asking what possible function a presumption can perform in jurisdictions where the burden of proving contributory negligence is already on the defendant.

By the weight of authority genuine presumptions are not evidence, nor substitutes for evidence, but rather mere procedural devices to manipulate the burden of proceeding on a particular issue.[11,12] The Minnesota Supreme Court from 1918[13] to 1939[14] nevertheless consistently held that it was proper to instruct the jury that decedent was presumed to be exercising due care when the action was a wrongful death action.

Despite an occasional expression of uneasiness with this posture,[15] Minnesota's policy remained unchanged until *Ryan v. Metropolitan Life Ins., Co.*[16] when the Supreme Court adopted the Thayer-Wigmore theory of presumptions,[17] holding that presumptions are not substitutes for evidence, and that jury instructions upon presumptions are generally improper.

The application of the Thayer-Wigmore theory was handled in a variety of ways [18] until *Te Poel v. Larson* held it reversible error to instruct the jury on the existence of the presumption.[19] *Te Poel* was quickly followed by *Knuth v. Murphy,*[20] and the anomaly of the due care presumption seemed to have been dealt a death blow.

When in 1957 the state legislature enacted Minn. Stat. 602.04, the impact was of more significance than a mere restoration of the evidentiary concept of the due care presumption, as it had existed prior to *Ryan* and *Te Poel.* Whatever the legislative intent,[21] the statute is a monument to legislative interference with the traditional power of the court to determine matters of law, take judicial cognizance of "presumptions," and decide what evidence actually presents a question of fact for the jury.[22]

As Justice Murphy commented in a recent case wherein the constitutionality of the statute was challenged (and upheld), "The legislature may always alter the form of administrative justice."[23] Whether the framing of a legislative intent in the form of a statute requiring jury instructions of the existence of a presumption furthers the administration of justice, however, is arguable. When such a legislative mandate counters a perceptive and recently-arrived-at comprehension of the anomaly of such a concept in relation to the nature and function of true presumptions, the statute is at best unpalatable. When, in addition, the trier of fact is exposed to a redundant "presumption" which imposes a very real limitation on its power to "make law" by subtly depriving it of sufficient discretion for arriving at a rational decision (despite the probable cautioning of countervailing instructions),[24] the misery is compounded.

A commonly asserted effect of a judgment is that a question of fact or issue of law essential to the judgment and actually litigated to a valid final judgment is conclusively determined between the same parties for the purpose of subsequent actions in which the same question will arise.[25] Because of its conclusive nature, the doctrine of collateral estoppel should be carefully confined to cases where "the advantages to be derived from preventing litigation will not be outweighed by the injustice that may result by foreclosing attack on prior determinations." [26]

There can, of course, be no collateral estoppel where there is reasonable doubt whether a fact was actually litigated. Mrs. Lustik's counsel in the instant case contended that the doctrine was not applicable on several grounds: 1.) The estoppel was not mutual. 2.) The issues were not identical. 3.) The parties were not identical, nor in privity. 4.) Mrs. Lustik's inability to counterclaim gave an arbitrary and unfair advantage to the first person suing. 5.) Under the Minnesota Constitution there is no right without a remedy.

The court spent considerable time on Mrs. Lustik's first contention:

It is contended that estoppel by verdict is not applicable unless the adversary of the party against whom the doctrine is invoked appears in the same capacity in both actions. But this is not the law in Minnesota. What we have held in Olson **v.** Linster[27] **and in** Schmitt **v.** Emery[28] **is that the doctrine may not be invoked against a party to the subsequent action who appears in a different capacity from the losing party in the initial litigation. This fundamental distinction is required by due process which prevents the results of a prior suit from binding adversely a litigant who was a stranger to it and had no opportunity to be heard.**[29]

Already down the appellant is pelted with authorities ranging from Jeremy Bentham [30] to Chief Justice Roger Traynor,[31] all establishing clearly that the doctrine of collateral estoppel may apply against a party to the action and in favor of a complete stranger to the original litigation.[32]

A majority of courts within the United States still hold no estoppel of any sort by judgment unless both parties were bound thereby.[33] Those jurisdictions which have abandoned rigid adherence to mutuality of estoppel, however, appear to occupy the sounder position since strict application of the doctrine often defeats the very purpose for which *res judicata* exists — that litigation be brought to an end.[34]

The articulation of Minnesota's position on this question, however favorable that position may be, is in the instant case somewhat peripheral and misplaced. The very issue of collateral estoppel arises from the inadvisability of consolidating the actions involved, although the consolidation rules [35] are liberal and permissive, even to the point of promoting an occasionally curious result.[36] In the interest of giving both parties fair trials, free from the confusion of conflicting jury instructions, and in a calculated attempt to avoid possible prejudice, the court ordered separate trials. In such a situation, convenience and economics are secondary concerns.

The hardship worked on plaintiff Lutsik by this procedure is pointed out by Gallagher, J., in his dissenting opinion:

The disadvantage to plaintiff . . . is emphasized by the fact that she had no choice as to her position in the prior litigation. She did not choose the forum for it and could only appear defensively therein. She had there no opportunity to litigate her affirmative claims without the statutory presumption embodied in §602.04 against her.[37] **She was without authority to interpose a counterclaim or to present her claims for injuries in a consolidated trial of the two cases. She lacked completely the opportunity of establishing decedent's liability under evidentiary rules not "stacked" against her.**

The court dismissed the plaintiff's second and third attacks succinctly, holding that both the issues affecting liability and the parties to the first action were sufficiently equivalent and related to satisfy the requirements of collateral estoppel.[38] Reliance was placed on Wolfson v. Northern States Management Co.[39] In thus disposing of these contentions, the court denied validity to the fourth assertion. Appellants' fifth argument, taking its life from the other four, fell with them by process of logical necessity.

That plaintiffs' cause could not in justice proceed under the presumption in the original suit without her facing a jury which

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About the Author

CONWAY

A fourth year student, James Conway is a 1963 graduate of St. John's University, where he majored in English. He lives with his wife, Sandra, and son, Matthew, in Minneapolis, and is employed in the law department of the St. Paul Insurance Companies.

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[1] Pound, *An Introduction to the Philosophy of Law*, note 66 at 70 (1954).

[2] Lustik v. Rankila, 269 Minn. 515, 131 N.W. 2d 74. (1964).

[3] Minn. St. 573.02, subd. 1 provides in part: "When death is caused by the wrongful act or omission of any person or corporation, the trustee appointed as provided in subdivision 2 may maintain an action . . . for an injury caused by such wrongful act or omission."

[4] Lambach v. Northwestern Refining Co. Inc., 261 Minn. 115, 111 N.W. 2d 345 (1961).

[5] 131 N. W. 2d at 743.

[6] McCormick, Evidence 639 (1954).

[7] Morgan, *Presumptions*, 12 Wash. L. Rev. 255 (1937).

[8] Comment, 60 Mich. L. Rev. 510 (1962).

[9] Gilbert v. City of Tracy, 115 Minn. 443, 444, 132 N. W. 752 (1911). The due care concept here characterized as a "very strong presumption."

[10] 29 Wash. 1. Rev. 79 (1954). The literature is consistent in granting the logic of using a presumption to shift the burden of going forward with evidence of contributory negligence in such jurisdictions, especially when there is no direct evidence or testimony concerning the fatal incident. Comment, 6 Iowa L. Bull. 55 (1920) and Note, 12 Iowa L. Rev. 89 (1926) treat the function of the presumption in a state (Iowa) where plaintiff in a wrongful death action has the burden of establishing decedent's due care. If, however, the function of a genuine presumption is to merely shift the burdens of going forward with the evidence, there is little logic in demanding a "presumption" in jurisdictions where the burden of proving contributory negligence is already on the defendant. What function does such a presumption perform?

[11] Thayer, Preliminary Treatise on Evidence (1898), p. 337. See also, Comment, "Presumptions of Due Care and Burden of Proof," 14 Boston Univ. L. Rev. 440, 445 (1934).

[12] 111 N.W. 2d at 352.

[13] *But see* Carson v. Turrish, 140 Minn. 445, 452, 168 N.W. 349, 352 (1918). This instruction was given in the *Carson* case: "The burden of proving contributory negligence on the part of the plaintiffs . . . in this action is upon the defendant. The presumption is that the persons injured were in the exercise of due care at the time of the injury." The court disapproved of incorporating a statement of the presumption but held that "considering the immediate connection in which it was given, the charge as a whole and the issues for trial, it could not have misled the jury and should not result in a new trial. Counsel were unfortunate in incorporating a statement of presumption of due care on the part of the plaintiffs. The burden of proof of want of due care, which is simply contributory negligence, was upon the defendant. There was no presumption that either the plaintiffs or the defendants were negligent. There was no presumption that either was not at fault except in the sense that the burden of proving fault was on the other. Where there is evidence bearing on the question of contributory negligence and the burden of proof is put upon the defendant, where it belongs in this state, there should not be added a statement that it is presumed that plaintiff was in the exercise of due care. The statement of the burden of proof gives the law for the guidance of the jury and the plaintiff is not entitled to the statement of a presumption."

[14] Ryan v. Metropolitan Life Ins. Co., 206 Minn. 562, 289 N.W. 557 (1939).

[15] See Gross v. General Inv. Co., 194 Minn. 23, 30, 259 N.W. 557, 560 (1935); Peterson v. Minnesota Power and Light Co., 206 Minn. 268, 274, 288 N. W. 588, 590 (1939) stating "it is perhaps difficult to understand precisely how this presumption operates."

[16] 289 N.W. 557 (1939).

[17] 9 Wigmore, Evidence sec. 2491 (3d ed. 1940). Under the Tayer-Wigmore theory, a presumption vanishes as soon as any contrary evidence has been introduced. See generally, 24 Minn. L. Rev. 651 (1940).

[18] See Lang v. Chicago & N. W. Ry, 208 Minn. 487, 295 N. W. 57 (1940); Duff v. Bemidji Motor Service Co., 210 Minn. 456, 299 N. W. 196 (1941); Moeller v. St. Paul City Ry., 218 Minn. 353, 16 N. W. 2d 289 (1944).

[19] TePoel v. Larson, 236 Minn. 482, 53 N. W. 2d 468 (1932).

[20] Knuth v. Murphy, 237 Minn. 225, 54 N. W. 2d 771 (1952).

[21] Roeck v. Halvorson, 254 Minn. 394, 399, 95 N. W. 2d 172, 176 (1959).

[22] 2 Barron & Holtzoff, Federal Practice and Procedure 1071 (1950).

[23] Lott v. Davidson, 261 Minn. 130, 109 N. W. 2d 336 (1961). "602.04 is not unconstitutional, it merely changes the burden of proof. It is not repugnant to the equal-protection clause nor is it class legislation." For an interesting discussion of some additional constitutional snarls, see "Presumption of Due Care of Decedent in wrongful Death Action," Notes 21 and 24. 44 Minn. L. Rev. 352 (1959).

[24] Roeck v. Halvorsen, 254 Minn. 394, 95 N. W. 2d 172 (1959).

[25] *See generally* 65 Harv. L. Rev. 840, 865 (1952).

[26] *Id.* at 840.

[27] Olson v. Linster, 259 Minn. 189, 107 N. W. 2d 49 (1900).

[28] Schmitt v. Emery, 215 Minn. 288, 290, 9 N. W. 2d 777, 779 (1943).

[29] 131 N.W. 2d 744.

[30] Bentham, Rationale of Judicial Evidence, in 7 works of Jeremy Bentham 171 (Bowring ed. 1843).

[31] Bernhard v. Bank of America Nat. Trust & Sav. Ass'n, 19 Cal 2d 807, 122 P. 2d 892, 895 (1942), frequently reaffirmed. The test here outlined: "Was the issue decided in the prior adjudication identical with the one presented in the action in question? Was there a final judgment on the merits? Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication.?"

[32] San Francisco Unified School District v. California Bldg. Maintenance C., 162 Cal. App. 2d 434, 328 P. 2d 785; Abbot v. Western Nat. Ind. Co., 165 Cal App. 2d 302, 331, P. 2d 997. Both these California cases, relied upon by the court in *Lustik*, foreclosed litigation of issues which were decided adversely to the plaintiffs in previous suits where they appeared as defendants, notwithstanding the fact that defendants in the second action were not parties to the first action.

[33] Collins, *Collateral Estoppel in Favor of Nonparties: A Defendant's Fringe Benefits*, 41 Oreg. L. Rev. 30, 35 (1961).

[34] 65 Harv. L. Rev. 862 (1952).

[35] Minn. Rule 42.01: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary cost or delay." See 2 Youngquist & Blacik, Minnesota Rules Practice p. 375.

[36] Schacter v. Richter, 271 Minn. 87, 135 N. W. 2d 66 (1965). Here a fact question was presented as to injuries sustained in separate automobile accidents common to both actions brought by the same plaintiff. *Held*, trial court did not exceed its power in making a consolidation order.

[37] Prior to Minn. St. 573.02, *supra*, the wrongful death action in Minnesota was prosecuted by the decedent's executor or administrator. Under the 1951 amendment the trustee occupies a comparable position, but may be appointed as representative by the district court where the wrongful death action is instituted. The statute obviates having an administration or executor qualify as representative for the decedent in probate court. See Loegering v. Todd County D.C. 185 F. Supp. 134 (1960).

As Justice Gallagher intimates, an action brought under Minn. St. 573.02 by a trustee is always subject to the right of the defense to plead and prove contributory negligence. See Beck v. Groe, 245 Minn. 28, 70 N. W. 2d 886 (1955), wherein "an action brought under the wrongful death act must be in the name of the trustee . . . for and in behalf of those who have rights within the limits of the statute, and here can be no recovery except by proof of negligence subject to the right of the defense to plead and prove contributory negligence."

[38] 131 N.W. 2d 743.

[39] Wolfson v. Northern States Management Co., 221 Minn. 474, 479, 22 N.W. 2d 545, 548 (1946).

12 Students Assisting In Law Revision

Twelve William Mitchell students are taking part in a pilot program designed to allow them to do detailed research leading to revision of state statutes.

The program was set up by the Law Improvement Subcommittee under the Council on Education in Professional Responsibility. The organization allocated $5,000 to compensate the students, all third and fourth year student volunteers enlisted by Asst. Prof. Jack Davies last spring. Jack Mitchell, fourth-year student, was named chairman.

Initially, the program was designed to clarify ambiguities and check references, generally limiting the study to narrow issues. But Mitchell said all of the issues are not of the housekeeping variety.

For example, he said, one proposal being researched would give the Minnesota courts jurisdiction over a nonresident as a party defendant in much the same way the courts have jurisdiction now over nonresident owners of motor vehicles and of businesses incorporated in other states but doing business in Minnesota.

The students are getting valuable experience in research and legislation and in dealing with those interested in getting legislation enacted, Mitchell said. Each student working on the program will have the opportunity to lobby for certain legislation and to appear at legislative committee hearings on bills submitted as a result of their work.

ABA Membership Urged for Students

Law students in William Mitchell and other schools approved by the American Bar Association may be eligible for associate membership in the ABA within a year.

ABA President Orison Marden said at the American Law Student Association annual meeting in Montreal:

"The prospect of your association becoming the law student division of the ABA is a subject which has caused much discussion during the past year."

He added, "I have thought for many years that when men and women enter law school they are really entering the profession of law and the sooner they come into contact with the profession the better."

200 Turn Out For Fall Smoker

William Mitchell's first social event of the school year, the annual smoker, drew about 200 students and faculty members to the University Club in St. Paul, Sept. 23. Above, one of several card games occupies the attention of players and kibitzers. At left, thirsty students line up for refreshments from one of two kegs brought in for the occasion. The William Mitchell Student Bar Association sponsors the annual smoker.

Writing Course Provides Students Individual Aid

The legal writing course was revised this year to provide increased individual instruction to students.

Mr. Lawrence Perlman is teaching the course with the assistance of five other lawyers.

About 10 students are assigned to each instructor. Most of the instruction is on an individual basis. The class meets as a group only twice a month.

Mr. Perlman said the revised course is similar to that offered at Harvard and several other law schools. Prospective employers are often very interested in the performance of students in legal writting programs, he said.

The course involves instruction in the types of writing required of practicing lawyers. The class assignments include opinion letters and portions of appellate briefs.

Mr. Perlman is a graduate of Harvard Law School. While a student there, he helped establish the Harvard Journal of Legislation. Following graduation, he served as clerk for a year for Judge Earl R. Larson of the Federal District Court of Minnesota. Mr. Perlman is now associated with the Minneapolis firm of Wheeler and Fredrikson.

Another curriculum change this fall was the introductoin of a course in security regulations. Taught by Prof. Walter Anastas, it concentrates on federal statutes and Securities and Exchange Commission regulations. Seven students have enrolled.

Placement Program To Cover Students

The American Bar Association's Lawyer Placement Information Service will cover law students in a pilot placement-assistance project running experimentally to June 1, 1967.

The project is designed to help students find full-time employment in law firms or in other legal positions upon their admission to the bar. A survey of law firms and schools made this year by the committee revealed widespread interest in such a project.

TEACHING METHODS EXPLORED

Anastas Enrolls For Studies in New York

By Paul Buegler

Prof. Walter Anastas participated last summer in a New York University Graduate Law School program of national prominence.

Thirty-one law professors are taking part in a curriculum of instruction and research leading to the LL.M. degree over a period of three 11-week summer sessions and the J.S.D. degree upon completion of a dissertation.

Mr. Anastas said he decided to participate in the program because he feels law professors should have at least an LL. M. and preferably a J. S. D. degree.

He says the legal profession has lagged behind other fields of academic endeavor in requiring higher degrees as a qualification for teaching.

The NYU program provides law teachers an opportunity to earn these academic qualifications while maintaining their status as faculty members during the regular school year.

While the program concentrates on subjects such as jurisprudence, legal history and law and the social sciences, it also includes seminars on legal education. These seminars consider the methods and objectives of legal education.

Mr. Anastas said that the professors who lead these seminars do not attempt to establish any particular method of teaching as preferable, but rather they emphasize the advantages and shortcomings of prevalent techniques.

The case method, developed at Harvard in the late 19th century, received extensive analysis. It is recognized as the most popular method of teaching law and as being valuable in basic courses. Nevertheless, the case recitation technique sometimes tends to waste class time, Mr. Anastas feels.

He contends that reciting a brief is not a teaching tool so much as it is a means by which the professor can learn whether the student has read the assigned material.

Another popular teaching technique is the problem method where the student, in addition to reading text material and cases, attempts to solve practical legal problems. Emphasis is on the solution of problems which do not have text book answers. This technique is handicapped by a shortage of texts designed for problem method teaching.

Mr. Anastas said he favors the adversary method in which students assume the role of plaintiff and defendant and argue the merits of their position.

He plans to try this technique in his course on corporations this year, as well as the so-called socratic method where the instructor fires questions at the students to bring out the significant facts and principles suggested by the assigned course material.

Mr. Anastas also plans to use the seminar approach in his course on securities regulation. Students will take turns leading the seminar discussions.

Optional Lectures Offered Students

Prof. Walter Aanastas offered his second year students in corporations three optional lectures in November and December on procedures for setting up a corporation Minnesota.

The lectures were aimed at supplementing the material covered in the regular course. The students were not required to attend. The Tuesday night sessions had not been offered in previous years.

Dean Hopes for New WM Honor In 2 or 3 Years

Dean Heidenreich said he hopes William Mitchell will be eligible for membership in the Association of American Law Schools in two or three years.

The association is a voluntary grouping of some 111 law schools. The chief advantage of association membership is that credits are generally transferable between member schools.

The main obstacle to Mitchell membership now is an insufficient number of full-time professors, the dean said. The school is about two short of the number required, he said.

William Mitchell now is recognized and fully accredited by the American Bar Association, which means that a Mitchell graduate is eligible to take the bar examination and practice in any of the 50 states.

Wrongful Death Actions

Continued from Page 4

had heard instructions designed to assist recovery by a decedents' estate constitutes a distasteful concept. That the majority opinion should so thoroughly discredit the spectre of the mutuality requirement for collateral estoppel and at the same time immunize the personal representative of the decedent from a suit for which she might have been answerable appears to deny plaintiff the full range of judicial relief to which she is entitled.

The combined chemistries of Minn. St. 602.04 and the doctrine of collateral estoppel may result in somewhat capricious denial of relief in certain settings. The Supreme Court has not solved the problem and no discernible drift in the direction of clarifying the present situation either judicially or by legislation is evident. The following proposals for reform are suggested:

1. If the defendant's burden on the issue of contributory negligence is no greater under Minn. St. 602.04 than without that statute, there is no point in talking about a presumption of due care. To do so will result in confusion and inaccurate attempts to apply a presumption doctrine in an inappropriate setting. The issue in every wrongful death action ought to be submitted to the jury in terms of burden of proof alone, with no mention of a "presumption" which has no operative effect. In every case a true presumption should disappear in the face of testimony by disinterested witnesses, even if that testimony is in conflict or disputed.

2. If Minn. St. 602.04, with its mischievous presumption, retains its foothold in Minnesota law, the concept of estoppel by verdict should be abandoned when a determination adverse to the defendant is reached in the original action through the preferential treatment afforded the plaintiff by the statute.

3. If the statute is retained and no exceptions carved in the present estoppel theory, substantial justice might nevertheless be accomplished by several alternatives:

a. **The doctrine that contributory negligence provides a total defense to recovery in wrongful death actions has had an acute effect upon litigants, both plaintiff and defendant. Although the statutorily revived presumption of due care is an attempt to mitigate some of the harshness with regard to the decedent's estate, in this context a comparative negligence concept might be less prejudicial.**

b. **In a typical** Lustik **situation, consolidation is improper and severance intolerable. Adoption of a rule recommending separate trials on liability and damages in personal injury actions where the issues are not hopelessly intertwined might obviate prejudice to defendants in a fact situation as presented in** Lustik.[40] **A somewhat less appealing possibility would be trial of the negligence question before the court and submitting only the damages issue to the jury.**

The rules of evidence are intended to give justice to all litigants before the court. The rules of procedure are "based on the theory that it is a sound and desirable thing that all spots of irritation between the parties should be brought out into the open and should be fought over and disposed of at one time."[41]

The problems of determining what remedies can be best devised to meet these standards are painfully difficult. Nevertheless, the existence of even one rule which purports to restrict a progressive and intelligent judiciary is an inequity in a system designed to give the right result at the right time to the parties involved.

[40] Otis, J., suggests in a footnote to *Lustik*: "As a practical device to minimize the impact of submitting two different standards of negligence, and to avoid having damages presented by one side and not the other, it may be advisable hereafter to adopt a rule that under circumstances of this kind the surviving claimant's contributory negligence and decedent's own negligence should first be tried in the survivor's action on the question of decedent's liability only. Such a procedure would achieve something approaching an equal footing for the survivor, free from conflicting presumptions, but would not necessarily prevent successive lawsuits."

[41] 46 Minn. L. Rev. 1050 (1960).

WM Students Take Part In Code Project

Three William Mitchell students are reading the Minnesota Statutes of 1965 from front to back with hopes their work will lead to the adoption of a state code of criminal procedure.

They are Charles Anderson and Rosalie Wahl, fourth year students, and Jerry Ingber, second year. They are working under the direction of C. Paul Jones, state public defender and William Mitchell criminal law instructor.

The three are going through both volumes of statutes to pick out laws regarding criminal procedure. Such laws are now scattered throughout the volumes.

After they have completed the reading, they will confer with Mr. Jones to consider recommendations for placing specific laws relating to criminal procedure into a code. Final recommendations will be passed on to the Minnesota Bar Association and the Minnesota Legislature.

The Minnesota Bar Foundation is financing the project through an educational grant.

A Senate judiciary subcommittee named to study problems of law enforcement is expected to make a recommendation regarding a criminal code to the 1967 legislature.

The chairman of the subcommittee, Sen. Harold Krieger, a Rochester lawyer and William Mitchell alumnus, feels there should be a criminal code. He says it would help eliminate uncertainties and questions which sometimes arise in connection with criminal procedure.

OFFICERS OF PHI ALPHA DELTA FRATERNITY
From left, Bonvino, Glew, Tuzinski, Gagnon and Hubbard

Pierce Butler Chapter Pledges 30, Plans District Fraternity Conclave

The local Pierce Butler chapter of Phi Alpha Delta Law Fraternity pledged 30 sophomores and juniors to membership Oct. 18 to open what the chapter anticipates will become the most eventful year in its four-year history.

Officers of the chapter are Grant Hubbard, justice; Craig Gagnon, vice justice; William Glew, secretary; James Tuzinski, treasurer, and Frank Bonvino, marshall.

The chapter is continuing a series of luncheon meetings started last year at which prominent members of the legal profession are invited to speak. The first luncheon this school year was Nov. 9. Associate Justice Robert J. Sheran was the speaker.

The chapter will host on Feb. 25 the District 11 conclave which will bring together chapters from Minnesota, North Dakota, Iowa, Nebraska and Wisconsin at the Radisson Hotel in Minneapolis.

Tuzinski and John Monroe are co-chairmen for the conclave. Tuzinski is District 11 justice and Monroe district treasurer.

They were delegates from the local chapter to the biennial national convention of the fraternity held in Kansas City, Mo., in August.

Phi Alpha Delta is the largest legal fraternity in the country with 98 active chapters. Its members include Associate Justices Tom Clark and William O. Douglas of the U. S. Supreme Court, and United Nations Ambassador Arthur Goldberg.

Many local attorneys, judges, educators and businessmen are also members, including Keith M. Stidd, Minneapolis city attorney; L. Fallon Kelly, former U. S. district attorney; Judge Earl R. Larson of the U. S. District Court, and Deans Douglas Heidenreich of William Mitchell and William B. Lockhart of the University of Minnesota Law School.

ORIENTATION PROGRAM

Student Panel Briefs Frosh

A panel discussion led by five upperclassmen was added to the first year student orientation program this year.

Members of the panel were enthused about the success and value of the innovation in helping prepare new students for the years of study facing them.

The panel was headed by Web Hart, fourth year, president of the William Mitchell Student Bar Association (SBA). Other panelists were Jim Sundquist, fourth year; Bill Schade, third year, SBA vice-president; Tom Kane, third year, SBA secretary, and Dick Oakes, second year.

Bill Sommerness, third year, addressed the entire first year class to set the tone for following discussion sessions.

Hart said that adding a student panel to the regular program of orientation talks by faculty members was a "roaring success."

Hart and the other panelists said the basic aims of the panel generally were to describe to the new students problems they should expect and to emphasize that hard work and not genius is the key to success.

Federal Loan Program Granted for Students

A total of $6,190 was made available to William Mitchell for student loans under a new federal program.

Loans under the program are repaid after the student graduates or discontinues his legal education.

The federal government pays all of the interest accrued while the student remains in school, and half of it after he leaves. Eligible to apply for loans are students whose families have a gross adjusted income of less than $15,000 annually.

West Publishing Head Establishes Scholarship Fund

A $6,750 scholarship fund has been established for William Mitchell by Harvey T. Reid, board chairman of West Publishing Co.

The fund provides for five three-year scholarships. They will be known as Harvey T. Reid Scholarships.

Selection of students to receive the scholarships will be made by Dean Douglas R. Heidenreich on the basis of scholarship, ability, character and need. The recipient must be a Minnesota resident. To retain the scholarship for the second and third years, the student must maintain a satisfactory academic rating.

Each recipient will receive $750 the first year of his scholarship and $300 the second and third years. Only second year students will be eligible.

HARVEY T. REID

Selections Made For Student Bar

Class representatives to the William Mitchell Student Bar Association were elected last month.

The fourth year representatives are Clem Commers, section one, and Jim Sundquist, section two; third year, Bill Sommerness, section one, and Steve Lapadat, section two; second year, Jerry Agnew, section one, and Julius Gernes, section two, and first year, Bill Crandall, section one, and Jerry Hofer, section two.

They are serving with SBA officers elected by the student body last spring.

Web Hart, SBA president, reported that the SBA by-laws may be amended to provide for the election of representatives from the second, third and fourth year classes in the spring. Only freshman representatives would be elected in the fall.

Hart explained that representatives named in the spring would have the summer to work with SBA officers in preparation for the following academic year.

News of Our Alumni

Alumni:

The William Mitchell Opinion is interested in publishing news about the graduates of the college. Please write the Opinion alumni editor of any news about yourself that you feel would be of interest to your fellow alumni.
The Editor

1921

MISS LENA SMITH, who practiced law in Minneapolis since graduating from law school, passed away this fall. She was the third Negro woman to practice law in the United States. Miss Smith was a member of the Hennepin County, Minnesota and American Bar Associations, and was on the board of directors of the Minneapolis Urban League from 1931 to 1942. She was chairman of the legal redress committee of the National Association for the Advancement of Colored People for five years.

1951

THOMAS C. MYERS, executive secretary of the Minnesota State Bar Association, passed away at age 49. He had directed the 4,000-member bar association since 1959. He had been associated with the law firms of Myers & Myers, and Johnson, Sands, Brumfield & Maloney, and with the Farmers and Mechanics Savings Bank. He served as a member of the American Bar Association Joint Committee on the Effective Administration of Justice, and was chairman of the Section of Bar Activities.

A native of St. Paul, Mr. Myers was a member of the Hennepin County, Minnesota State and American Bar Association. He also held memberships in the Inter-American Bar Association, the American Judicature Society and the National Association of Bar Executives.

1959

JOHN P. KING has been elected a municipal judge at St. Charles, Minn.

1961

SHELDON H. CASWELL is now associated with Fred P. Memmer in the firm of Memmer & Caswell in St. Paul.

1963

HERBERT M. ADRIAN JR., has passed the New York State Bar examination and has been admitted to practice before the Supreme Court of the State of New York. He has been associated with the Hooker Chemical Corporation since 1964. Mr. Adrian is admitted to practice before the United States Patent Office, Court of Customs and Patent Appeals, the Minnesota Supreme Court, and the Minnesota Federal District Court. He and his family reside in Lewiston, N.Y.

1963

PAUL W. ROSENTHAL, formerly on the industrial relations staff of the Pillsbury Company, is now associated with the law firm of Miller & Neary in the Plaza Building in Minneapolis. He also serves as counsel for the city of Crystal.

1966

ROBERT E. HALVA has become associated with Richard S. Dobis and Perry L. Williams in the practice of law under the firm name of Dobis, Williams & Halva at 3984 Central Ave. NE., Columbia Heights. Mr. Dobis and Mr. Williams previously practiced law as Dobis & Williams.

JAMES SINCLAIR has become associated with the law firm of Benshoof & Hummel in Detroit Lakes, Minn.

WM 4th In Moot Court

Three William Mitchell seniors competed in the regional round of the National Moot Court Competition in Lincoln, Neb., Nov. 17 and 18. It was the first time the college has been represented at the regional competition.

The William Mitchell team consisted of Bruce Christopherson, Ron Erickson and John Hirte.

JOHN

RON

BRUCE

Although eliminated in the regional round by the University of Kentucky, their brief placed fourth among those submitted by teams from the 12 participating law schools.

Dean Heidenreich said that in past years there were no students who felt they had the time to participate. Many were interested this year, he said.

Each team had to write a 7,000-word brief and prepare oral arguments for either the appellant or appellee in a case in which one Joseph Yugdab contends that evidence leading to his criminal conviction was obtained by wiretap and was inadmissable as evidence.

Winners of the regional competition will compete in the finals in New York this month. Participating students were graded on both their briefs and oral arguments.

The students were not permitted to receive assistance from faculty members of their law schools.

The national competition is sponsored by the City of New York Bar Association.

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