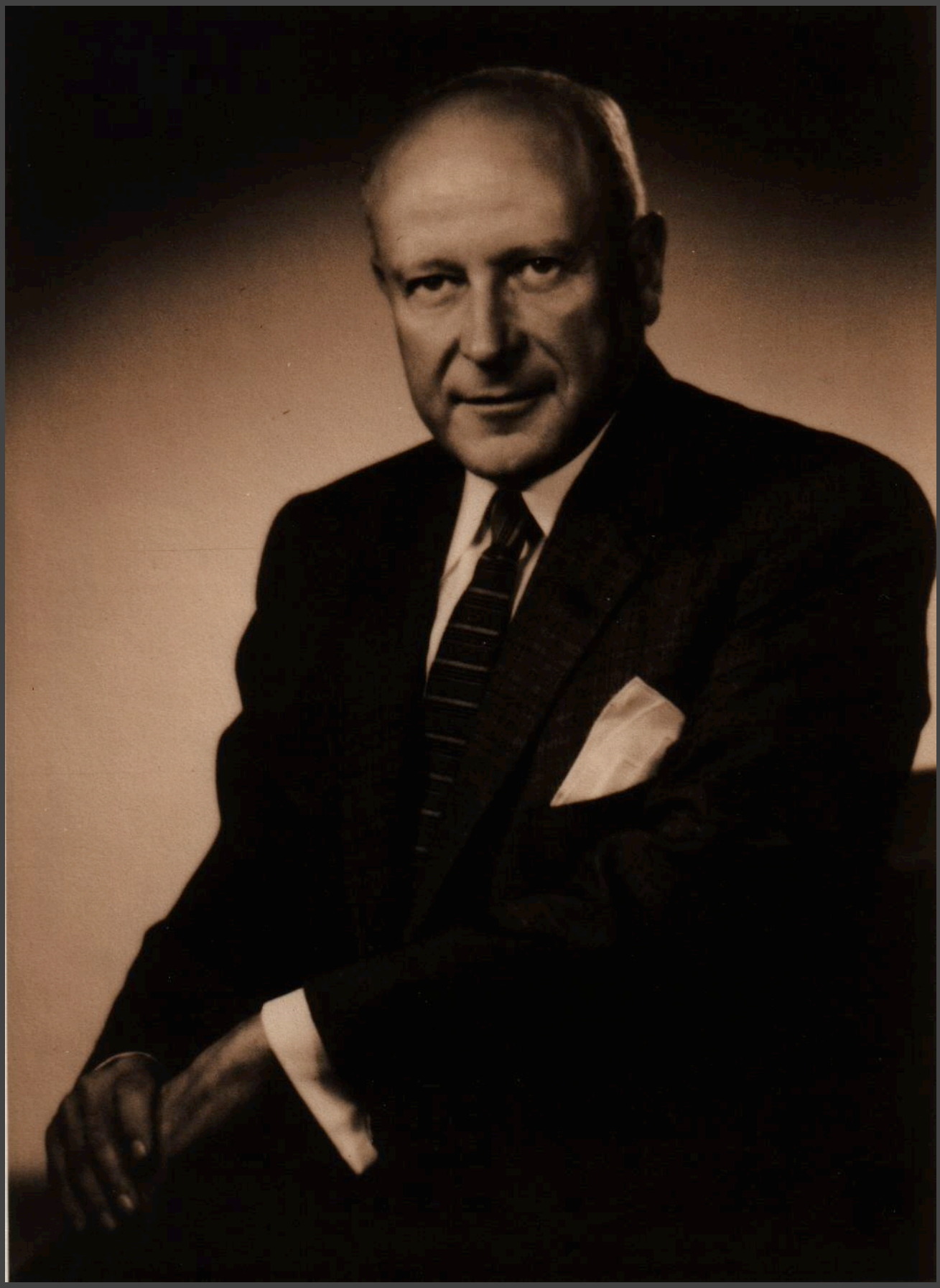


AUTOBIOGRAPHY

HERBERT C. HIRSCHBOECK

TO MERT

AUTOBIOGRAPHY

HERBERT C. HIRSCHBOECK

AUTOBIOGRAPHY

HERBERT C. HIRSCHBOECK

I was born about four o'clock in the morning, Pentecost Sunday, June 5, 1898. My father and mother, Stephen and Katherine Hirschboeck, lived in a lower flat on Cramer Street, just north of Bradford Avenue, on the east side of Milwaukee. I was their first child and, while my father raced on foot a mile to the south to call Dr. Hurth, my mother was left alone to bring me into the world. Dr. Hurth, who lived on Cambridge Avenue, near Oakland Avenue, hitched his horse and buggy and sped through the dark early morning with my father to the flat for post-natal care of mother and child.

At age 81, in the year 1979, I can imagine the limits of communication and transportation of 1898. As a boy I saw the spread of telephone service to homes and the early development of automobiles—nonexistent then. I am grateful to my courageous and able mother and the efforts of my father's race for help.

Writing about one's self can be excused for an old man whose memories tell him of much that he can be grateful for so that he can express his thanks. I entered first grade at St. Peter and Paul's school at the age of 7. School was not far. We had moved to my grandfather's duplex on Webster Place, between Cramer Street and Oakland Avenue. My mother loved me dearly and kept me home under her own tutelage so that throughout my school life I found myself a year older than most of my classmates.

1. Early Years

My father was an amateur photographer and filled albums of pictures of my early boyhood. He took me on picture taking field trips. Sometimes we also went to watch the old Milwaukee Brewers play at old Borchert Field. He was not a very ardent fan but my father had a facility with statistics and knew more baseball lore than most fans I have known.

At the age of twelve I contracted typhoid fever. My mother carefully nursed me at hone during a long illness. My memories of her great care and prayers for me will never fade. She had my little sister, Elizabeth, (born May 10, 1903) to care for and was expecting my younger brother John who was born March 25, 1910.

In the spring of L913 I took the examination at Marquette Academy and was awarded a four year classical course scholarship. Four years of Latin and three years of Greek were required in this course, but interest in English and elocution developed early with stories published in the Flambeau and gold medal awards in the annual elocution contests to reflect this. In my senior year I played the leading role in *The Black Arrow* (an adaptation of Stephenson's story) at the Pabst Theater.

At that time the new St. Peter and Paul school had a large auditorium, which became the home of the Milwaukee Drama Players, an amateur theatrical group of young people from various Milwaukee parishes. Henry Rademacher was the director and such talent as my aunt and uncle, Anita and Walter Heiser,

William (later judge) Shaughnessy and Roland (later supreme court justice) Steinle and many others made up the casts of dramas p£ the period, such as The Man from Home by Booth Tarkington and The Dictator by Richard Harding Davis. I was a stage band but became an actor. A notable sketch comes to mind. One Christmas period "The Bishop's Candlesticks," an episode from Hugo's Les Miserables, was enacted by Judge

Shaughnessy as Valjean, Anita Heiser as the Bishop's house-keeper and me as the bishop. A mandolin orchestra of St. Peter and Paul School in which my sister participated softly accompanied the dramatic scenes with Christmas hymns. I liked to enact character roles.

My father was an accountant. A firm he had worked for went out of business and after a brief period with its successor, Munich Statuary and Altar Co., my father sought employment by others. I worked Saturdays and after school, first for my uncle Ed Coughlin who operated a market on North Avenue. As & delivery helper I went along on the horse drawn wagon running the parcels to the customers' kitchen doors, past their defending watch doge. I learned to dislike dogs. Later when a Model T Ford delivery truck was acquired I learned to drive It. Friday afternoons and much of Saturday mornings were spent in the back room of the market scaling fish and drawing chickens. It became hard for me to eat chicken, however well prepared. One summer I worked at the Munich Statuary and Altar Company which also made plastic advertising displays. For weeks I painted ivory tusks and red harness stripes on white elephants to advertise teas, coffee and spices.

About 1914 I applied to become a summer apprentice in the architectural office of A. C. Eschweiler. While the apprentice had jobs like hauling blocks of ice to the office for the water coders and keeping the cuspidors cleaned, I did get some useful training at the drawing board. Work in the office at the time included St. Thomas Acquinas church, Plymouth Congregational church, and a fine residence on Lake Drive for H. M. Thompson which later became the Cenacle and is now St. Mary's Convent, Episcopal.

Next followed my after school, Saturday and summertime work at the Munich Statuary and Altar Company, the firm in which my father had invested and which he had left for other employment. I became a designer of altars and church furnishings. In the summertime, starting in 1915, I accompanied Frank Bercker, the Company president, on selling tours all over Wisconsin and surrounding states and as far west as Nebraska. I drove Model T Fords over the unmarked, unpaved roads of those years. Roads began to be marked in this period. The Yellowstone Trail, a circle of yellow painted on a telephone pole, marked the route to Minneapolis. Out into Iowa there was the Lincoln Highway which I drove after the rains one time becoming mired in axle deep mud some five times between Dubuque and Earling, Iowa. There was usually a farmer with his team ready at the worst places and for a dollar or two one could get a car freed from the deepest mud. Altars of my designs are still in some Wisconsin rural churches. The Way of the Cross at Holy Hill, Wisconsin, was built by our firm with backgrounds and housing for the sculptures of my design, and I

spent some weeks in the construction there. At noon time I ate with the Carmelite Fathers and Brothers in their meatless refectory.

2. After High School

I finished high school in 1917. Higher education then meant college, but an Arts and Science degree did not seem a goal I should seek.

Marquette University Law School at that time had a four year course to graduation and an LLB degree. The first two years combined college courses in Philosophy and English. My designing and amateur theatrical work tended to emotional expression and I thought some training in colder reasoning would be good education for me. The courses in logic lacked application which the case method of studying law provides, so I decided to go to law school. There was no law school aptitude test in those days and no applicants' waiting lists. At my job I earned enough for tuition and expenses and my parents provided me with a home and other needs. I had no thought of becoming a lawyer. This was my idea of a better post high school education for me. I might progress further in the church furnishing business and make that a career. I did continue this job through four years in law school.

Grandsons and other youths and their parents have talked with me about college or professional education. Juniors in high school today confront this as a major problem of their lives. So what I have written about myself thus far may be excused as an answer to why I went to law school. Why and how I became a lawyer needs some further telling.

Many years in the future, after I had attained recognition as a lawyer and was elected president of the Milwaukee Bar

Association, I was asked to participate in a study by the University of Michigan to verify or correct the questionnaires in use for testing aptitude for various careers. This simply required me to complete an extensive questionnaire covering far wide ranging facts, opinion and preference answers. To compensate for my time and effort I was sent a report telling me that my first ability and aptitude was banking and second architecture.

Perhaps the modern scientific search for career aptitude is improved, or, perhaps I should have been a banker or an architect.

My brother John attended Marquette University College of Business Administration graduating in 1932 in the depth of the economic depression. He then entered the School of Medicine for more years of study to become a Doctor of Medicine. After a few years of practice. World War II took him to medical service in the Navy for several years and, after his return and beginning of practice, an unexpected invitation came from the Jesuit administrators to accept the position of dean of the Medical School. His combined business administration and medical education prepared him well for what then became his career—to develop the School of Medicine into the fine institution it became and is now, continued as the Wisconsin College of Medicine. As he left high school his career could not have been foreseen.

Quite different is the life of my sister, Elizabeth. In high school she knew her vocation was to become a missionary. She corresponded with the Missionary Sisters of St. Dominic of

Maryknoll, New York, and on finishing high school was ready to enter their novitiate. She was smarter than I. Instead of being a year older than her classmates as I was, she was a year younger than hers. She had skipped a grade and was always an excellent student.

Our parents considered age 17 too young for such a life-time decision and, when Mother Mary Joseph of the Maryknoll sisters visited our home and spoke of the Order's plans to educate some members as medical missionaries, it was agreed that Elizabeth would stay home, take the pre-medic and medical courses and internship and, if, after all those years she was still determined, she would enter Maryknoll with our parents' blessing. The book of her life, "Her Name is Mercy" by Sister Maria del Key tells her career in North Korea, in Bolivia and then again in Pusan, South Korea. But all of this life of great humanitarian service as a medical missionary seemed some diversion from her true vocation as a missionary. This she is living now in the walk-up flat in New York's lower east side where she and two sister companions live among the poor—mostly Puerto Rican families—sharing the love of God with them by prayer and living their daily lives in their midst.

I had no vocation as I entered law school in the fall of 1917. The United States had declared war against Germany April 2, 1917. Young men were leaving for military service in National Guard or reserve units in which they bad-been preparing.

Several actors and director Henry Rademacher of the Drama Players left and I assumed the post of director and continued the round of plays put on by this group each year.

My job at the Munich Statuary and Altar Company continued and in addition to designing I added advertising and selling to my tasks including travel, to plan, design and sell furnishings--altars, tabernacles and statuary.

My law school grade for my freshman year 1917-18 was 83.6%.

In the spring of 1918 the prospect of military service loomed, whether by enlistment or by draft. I became 20 years of age June 5, 1918. I made a trip to Chicago bent on enlisting to become an aviator in the Army Air Forces. There were too many others who sought such service. I borrowed a Model T Ford from my uncle Walter Heiser and drove to St. John's Military Academy at Delafield where the enlisting officer for officer's training camps was stationed. He told me: "Young man, your country is preparing a place for you." He told me about the Student Army Training Corps, which would establish units in all colleges and universities. I was told to wait. Meanwhile some of my friends, Mike Dunn, Al Ecks, Joe Griffith and others had been selected for officers' training and by the opening of school in the fall of 191S had become full fledged second lieutenants—except Al who dropped his rifle in parade and was sent home to school without a commission. The others were stationed in various colleges other than Marquette where newly commissioned officers from other schools were then drill officers. The vacant Campbell Laundry Building on Clybourn Street became our barracks and we exercised and drilled at 10th and State Streets, the old Marquette athletic field. Courses were added to the regular curriculum in law school:

International Law, Military Law, and War Aims. The latter, a course in late European history beginning with the rise of Bismark in Germany. Our mess was in the basement of the Methodist Church and later in the basement of the Marquette gymnasium. I studied the Infantry Drill Regulations and became a corporal. We were expecting transfers to regular training camps and I applied for an artillery school but before any transfers the armistice of November 11, 1918 came. This brief service in the U.S. army was noted in my honorable discharge dated December 20, 1918.

I became active in several plays enacted by university students. Herbert Fielding was the c-rector and when he became ill I took over and later directed Charlie's Aunt-and another comedy. William P. ("Pat") O'Brien played the leading roles in each of those plays.

The dean of men. Father Archibald Tallmadge was also head of the Archdiocesan Holy Name Society in Milwaukee, and for ^und raising for the Big Brother service of the Society planned to produce fellow Jesuit Father Michael German's Passion Play. He enlisted my help and the service of women's organizations and others to sell tickets. This was planned for lent 1919 and was to run nightly for a week in the Pabst Theater. I assembled a cast of Marquette players and members of the Drama Players and designed and had settings executed. Father Tallmadge entertained drama writers and critics of the Milwaukee press and the Oberammergau of Milwaukee received great advance publicity so that every performance was sold out.

The national Catholic Charities convention was scheduled for Milwaukee and Father German and I wrote the script for a great masque or pageant. This involved a cast of more than a thousand, whole choruses and classes of dancers, a National Guard company of soldiers and many actors who had played in the Passion Play or Drama Players. The Milwaukee Auditorium was sold out for three performances.

The Milwaukee Passion Play was repeated in 1920 and 1921 at the Pabst Theater to full houses for as many as ten

performances each year. A feature of this play was the absence of a player of the part of Jesus. All the action before and surrounding the passion was vividly portrayed including the trial before Pilate, the despair of Judas and the way of the cross. A crucifixion tableau concluded the play. A statuary corpus hung on the cross above the live actors playing the parts of Mary, Mary Magdalen, John and the centurion. This was bathed in an amber floodlight from above and-a-thin spotlight on the face of the figure on the cross. Slowly the amber light faded leaving all in darkness but the anguished face lit from the distant spotlight which then slowly diminished and the curtains closed and the light faded entirely. There was no applause—silence had been requested of each audience.

4. After Law School

I graduated from law school in 1921 with an average of 81.2% for the course. I had served on the editorial board of the Marquette Law Review and became the business manager in 1920-1921. There is a blemish on my record, a transcript of which one of my partners obtained for my 80th birthday dinner. A grade of 67% in Legal Ethics required that I take the course again the next year. A grade of 80% then removed the condition, The 67% was Father McMahon's response to my way of answering a key question in the final written examination. The question involved advertising by lawyers. I well knew that Canon 27 of the Canons of Legal Ethics prohibited advertising. But I used the occasion to c-s?-t= the use of the term "ethics" to justify the rule. I called it a matter of professional etiquette not of ethics or morality. Fifty-eight years later the Supreme Court agreed in Bates v. State Bar of Arizona, (1977) 433 U.S. 350, treating the rule, now in the Code of Professional Responsibility, as an unlawful restraint in conflict with the First Amendment.

So I received my L.L.B. degree in 1921 and passed the Wisconsin Bar examination.

My employment in the statuary and altar business could have continued but I could not arouse optimism for a future in it for me. We were making and selling copies and were not creating new sculptures. Our catalogues illustrated hundreds of figures of saints to be reproduced in plaster composition from our inventory of models which represented substantial

investment and required large storage areas. These statues were usually painted to lifelike reproductions'. But the taste for these had been waning.

Original wood carvings and marble sculptures in new styling were taking the place of painted plaster images. We imported such from Italy and Germany and the Tyrol but our sources could sell directly and through agencies more closely allied to them.

My last real effort was a catalogue of stations of the cross of which we had more and better models than our competition. Sets of stations copied from Fugel or Feuerstein were still in demand.

Altars, shrines and communion rails were made by us of reinforced plaster composition or of imitation marble called scagliola. But those were imitations, however the beauty of the design. It is easy now to say I should have known this couldn't last. I had come to that conclusion but whether to embark on a new studio and importing venture without the immense overhead of the existing business was tempting. The Conrad Schmitt Studio, which later became my client, was such a venture.

I decided to give the practice of law a trial.

I received a call from T. E. Brennan Co., an insurance counseling firm offering "employment. This involved insurance law and practice but I was offered a two year contract with a two year noncompeting provision. I did not like to be so bound.

Father McMahon called and asked me to visit the office of the Cudahy Brothers Company in Cudahy who were planning to employ a lawyer. I made the trip and was received by John Cudahy he described a plan for legal and other social service to their employees and their families. I do not recall whether I was offered the job, but isolation in Cudahy did not appeal to me.

Throughout law school I had not gone to the courthouse to observe a trial nor had I visited a law office to see how lawyers work. But now I decided to look for a job.

I called at the office of Olwell, Durant and Brady. Bernard Brady, a recent Marquette graduate, had earned praise for work in an Obendorfer Drop Forge Co. case. I saw Mr. Brady who asked me to see Mr. Olwell. After I was able to have an appointment with him he suggested I see Mr. Durant. It took a week or so for Mr. Durant to have me meet him. There were at least six visits to that office, in the last of which Mr. Olwell said I could sit in the library and do briefing for $100.00 a month. The long effort to reach this point had exhausted my enthusiasm for this firm.

In the meantime an employee of the statuary factory whom I will call Joe was put in jail on a charge of adultery. He sent word he wanted to see me. He was my first client and I arranged to have him freed on bail. It seems his wife had thrown him out and he moved to a rooming house. The proprietor had filed the complaint charging adultery of Joe with the proprietor's wife. The wife had not been charged and the proprietor was obviously looking for a cash settlement from

Joe. The case was dismissed. George Shaughnessy, who was then district attorney, gave me friendly advice: to visit the district attorney's office if I had another case of that kind where prosecution could be dropped.

A neighbor employed me to obtain a certificate of survivorship to establish her title to property owned in joint tenancy with her late husband.

A friend suggested the firm of Schmitz, Wild and Gross, a firm with offices in the old First Wisconsin National Bank Building. Adolph Schmitz was an able trial lawyer, Robert Wild was a very busy and able probate lawyer and Edwin Gross, a business lawyer with friends in the Progressive party ^-.en dominant or to become so in Wisconsin.

5. Beginning Law Practice

The firm was accustomed to hiring a young lawyer and give him a desk in spare space, to run errands and handle small matters for firm clients. There was no salary. The office space and phone service and some typing were provided but it was from the young lawyer's own clients or the firm clients in matters assigned to him that he was to expect his compensation. The young lawyer was called "Counsellor". Ed Bark had held this job as Counsellor No. 4 and I accepted and became Counsellor No. 5. I worked at serving and filing papers and collecting accounts for firm clients, including Civil Court actions against debtors. Relatives and friends called me from time to time to write agreements, examine abstracts and assist at closing property sales. A very capable secretary, Ruth Peck, served the partners and me and was receptionist, bookkeeper and telephone operator.

An early case involved the widow Meyer's cow. Mr. Wild lived in the country near St. Martins and Mrs. Meyer was a farm neighbor. She gave him a note to collect and he turned it over to me. Letters to the debtor were unanswered, so a complaint and summons in Civil Court were prepared and served. The note had been given for the purchase of a cow at auction and I did not anticipate any legal defense. But on the return day the maker, who was a neighboring farmer, appeared with an older lawyer who had a rural practice, and who orally stated a general denial of the complaint. This meant the case was ready for trial and I put Mrs. Meyer on the stand and offered

the note. Then the real defense developed from the testimony of the defendant. He said there had been by-bidding at the auction. Mrs. Meyers' son was bidding in competition with him and that, contrary to expectations, the cow was a dry cow and soon had to be disposed of by sale to the slaughter house for less than half of the price bid. I asked Mrs. Meyer if her son had bid at the sale and found this was true. The court awarded her judgment, not for the face of the note, but for only the amount the cow was sold for to the slaughter house. I came back to the office feeling thoroughly whipped. I learned that a promissory note while in the hands of the original payee, not a holder in due course, was open to every defense and proper preparation and inquiry should have let me know what to expect. Informal practice in Civil Court, like before justices of the peace in those days, permitted all kinds of surprises. In four years of law school I had never heard about a "shill" or the term "by-bidding," but I should have learned about it in the course in sales.(1)

The actual practice of law was becoming interesting to me and I worked at it during office hours. But I continued with the Drama Players who had a mailing list of loyal supporters who usually came to the plays. I wrote a few plays staged by the group including a passion play called "Father Forgive Them." Henry Rademacher had, in the past, coached alumni players at Milwaukee Normal School, and he asked me to substitute for him. The leading man in this year's play was

(1) In 1921, a right to bid on behalf of the seller had to be expressly reserved and if notice of such reservation was not given the sale could be treated as fraudulent by the buyer. (§1684t-21(3) and (4) Wis. Stats. 1921; Sec. 402.328(4) Wis. Stats. 1977.)

Clarence Rasmussen who became a very dear friend. Father Tallmadge began planning the Milwaukee Passion Play for Holy Week of 1922. He arranged for me to see other passion plays. One called Veronica's Veil was an annual event early in Lent in Union City, New Jersey and there was another at Canisius College in Buffalo. I designed and had built some new settings for the Milwaukee play and it went on for ten performances at the Pabst Theater ending on Good Friday afternoon. That performance was radio broadcast and I functioned as commentator. Father German*s script made a better play than the others I had visited.

6. Europe

The Milwaukee Passion Play had become an institution. It was being repeated annually. It had dramatic quality others lacked. It would probably continue as excellent amateur theater. My services as director continued to be amateur but the board of the Holy Name Society voted to award me the expense of a tour to see the Oberannnergau Passion Play, traditionally performed by the Bavarian villagers every ten years but delayed by the War to the summer of 1922.

The law firm allowed me a vacation for this and my Uncle Walter Heiser had mentioned to a group at The Wisconsin Club that his lawyer nephew was about to visit Germany. This group had formed the Chemical Import & Export Co. principally to supply the rubber industry with chemicals. Bayer's "Vulkacit" a vulcanizing accelerator introduced before the War was the principal product to be promoted. It would reduce production time to less than one-fourth. But although the German owned American patents had been seized and sold as alien enemy property, efforts to manufacture it here had failed. The Company was quite tentative, having little capital but with enthusiastic officers. They asked me to meet in Aachen with their agent, Mr. Clermont, and accompany him to Leverkussen, the Bayer headquarters, to negotiate for import of Vulkacit. This was lawyer work but the retainer was modest, merely a "supplement to my tour expenses.

Summer of 1922 was a busy tourist season and by the time I applied, trans Atlantic liners were well booked, but I took passage on the S.S. Helig Olav, a Scandinavian liner,

which brought me to Germany via Norway and Denmark to Hamburg at the same price as passage directly to Hamburg. I proceeded to Munich and saw the Passion Play at Oberammergau and went on from there to Koln and Aachen to meet Mr. Clermont. He had arranged a meeting with Bayer officers at Leverkussen across the Rhine. After identification, we were admitted to the vast industrial complex and were brought to an office building and up into a large meeting room of walnut paneled walls and tables in a large U formation. About ten officers came in with their secretaries, including Herr Holm, the Sales Manager, and Dr. Weber, Rechtsanwalt, with his patent staff. After introductions the discussions proceeded in German. Mr. Clermont had to help me although I could speak some with difficulty. Vulkacit would be available and at prices within a range Clermont had proposed but our people would have to obtain license to import from the American owners of the patents. A block of patents, including this, had been acquired by a Sterling Products Co. of Wheeling, West Virginia, but Dr. Weber then traced the ownership through Gracelli Chemical who had granted an exclusive license to Roessler and Kasslacher of Perth Amboy, New Jersey. It was the latter firm which tried unsuccessfully to manufacture the chemical. Dr. Weber and his staff knew a lot more than my clients in Milwaukee of the lack of progress of Vulkacit in America.

With Clermont's help I wrote a cable in English summing up the negotiations and the condition of a sublicense from Roessler. I asked the Bayer officers to approve what I had written in English which they did and the meeting was ended.

Every Bayer officer in the room then became very sociable and spoke with me in perfect English.

About a week later before leaving Germany I received a cable from my clients that the license was available but that Clermont should seek an allowance from the price to offset the royalties. I passed on the message to Mr. Clermont. This ended my law practice in Germany.

My tour included a side trip with my shipmate friend, Bill Stute (later Dr. William C. Stute) of St. Louis, into Switzerland up to The Furka Pass. I also took a trip to Paris for a week. I stopped at Alsheim in Germany to visit relatives and at Kevelaer on the lower Rhine to meet the Bercker family.

I spent a week in London and visited courts in session; then on to Liverpool for return passage on the Canadian Pacific H.M.S. Montcalm to Montreal.

Before leaving home Father Walter, director of the Anima Chorus, asked me to help with a charity performance for the St. Vincent de Paul Society. He wanted to use a cantata called "Belshazzar" as the music and song. I had separated the Book of Daniel from the Bible and had it with me with a copy of the cantata and from these, aboard ship, I wrote "The Fall of Babylon."

On my return home I resumed my place in the Schmitz, Wild and Gross office doing collection work including court proceedings and supplementary proceedings to find assets of debtors which could be seized. A few acquaintances whom I had met in some business connection in the past consulted me and became personal clients. Acquaintances in social contacts

and in the Knights of Columbus, I learned early, expected gratuitous service and could not be counted as clientele.

In October 1922 the Knights of Columbus hosted a convention, a feature of which was a performance in the Milwaukee Auditorium of "The Adventure of Columbus" which I wrote and directed with a cast of over one thousand. In December at the Pabst Theater the Fall of Babylon was performed to full houses for the benefit of the Saint Vincent de Paul Society.

So my theatrical avocation was keeping pace with my efforts to establish a law practice. I toyed with the thought of emulating Pat O'Brien, going down to Broadway and struggling in the crowds of job seeders in show business. Pat had gained employment in several choruses. Another alumnus of Marquette Academy and its elocution contests, was becoming known in Hollywood. This was Spencer Tracy. But I did not have the courage and besides I was more interested in production and direction than performing personally. I remember having written a letter to producer David Belasco applying for a position to which I received no answer.

The Milwaukee Passion Play went on again in the spring of 1923, and about that time I met my friend Clarence Rasmussen who told me of Red Arrow Camp for Boys of which he had now become owner and director. He also had been employed as a high school teacher at the Milwaukee Country Day School. He asked if I would like to help at the Camp and perhaps stage a Camp play. This meant another long vacation but Schmitz, Wild and Gross didn't mind, so I agreed. I had never had a long northwoods vacation and loved my experience at

Trout Lake. I used the script for The Black Arrow in which I had acted in high school as the first Camp play and in later years wrote and directed the boys in The Red Arrow and The Silver Arrow. I took canoe trips as a counselor with boys and in later years spent only a week or two at the Camp for the Camp play.

7. Dunn & Hirschboeck

Michael J. (Mike) Dunn had been employed after law school by William A. Hayes, attorney for the Soo Line, and had spent his time mostly investigating and adjusting damage claims against the railroad. He proposed that we become partners and try to practice on our own. We rented a small office on the sixth floor of the Wells Building. Dunn & Hirschboeck slowly developed a varied general practice. A later specialty had an odd beginning. Mercantile Acceptance Company had its offices on a lower floor but found it convenient to send its personnel who had affidavits to make to us. Because we made no charge for notary fees this became frequent enough for us to become acquainted and ready to serve as attorney in collection of installment obligations and recovery of chattel mortgaged property. We had the time and rendered prompt service. There were collection lawyers who issued replevin warrants for fees as little as $7.50 each. Dunn & Hirschboeck rendered a full and prompt service and tried and concluded replevin actions for $50.00 each. Other finance companies. Midland Finance Company and Motors Acceptance Company and C.I.T. Corporation heard the service was good and brought such cases to us. Many of these were contested cases usually tried in Civil Court.

8. Early Supreme Court Appeals

Two other kinds of cases which reached the Wisconsin Supreme Court in 1926 on appeals by -the firm illustrate the variety of its practice.

Conrad Schmitt Studios was a church decorating firm which had acquired a stained glass firm conducted by Frank Larscheid under the corporate name of Wager-Larscheid Company. The stained glass firm had procured windows to be made in Germany according to Larscheid's designs for Fair view Mausoleum Company for its chapel windows (see Wagner-Larscheid C""5'-y v. Fairview Mausoleum Company, 190 Wis. 357).

I have frequently been asked by young lawyers to explain how clients are attracted. Dunn & Hirschboeck's finance company practice is one illustration. Another is the acquaintance of the Conrad Schmitt Studio's officers who remembered me from my church furniture designing work and called me, assured that I would understand their case. Then, another illustration is Hickey & Velguth v. Sutton, 191 Wis. 313) an action for architects fees. Sutton was Mike's brother-in-law. Relatives in time of need become willing clients. Because we lost both cases in the lower courts, wore should be written about them for whatever lessons to young lawyers may be found in them.

Larscheid had designed and imported two corridor windows for the Mausoleum. They were made in Quedlinberg. For the twelve chapel windows Larscheid had prepared a richer design and had the Van Treek studios of Munich, Germany produce them

in even richer design and coloring. The windows were delivered and installed in the Mausoleum and Mr. Thomas, president of the Mausoleum corporation, was well pleased. But when Rupert Schmitt, secretary of both Conrad Schmitt Studios and Wagner-Larscheid Co., requested payment fro.-?. Mr. Pierce, who was Mr. Thomas* son-in-law and active manager of the Mausoleum, payment was refused with such objections as the windows were not what he bad ordered, they were not Munich windows, they were too dark, they were not like Larscheid's original sketch and besides he was not doing business with Conrad Schmitt. Pierce later demanded of Larscheid that the windows be removed and when this was not done, had the windows removed and stored in a warehouse under a receipt in the name of Wagner-Larscheid Company at its expense, and sent the receipt to Larscheid.

On behalf of our client we filed a claim for mechanic's lien against the Mausoleum real estate and commenced an action to foreclose it. The defendant answered that it had rejected the windows alleging first, that they did not conform with the sketches submitted by the plaintiff; second that they did not conform with the corridor windows; and third that the plaintiff was bound by implied warranty to deliver windows suitable for proper lighting, decorating and ornamenting the chapel. A counterclaim was added alleging that, although the price for the windows was only $200.00 each, the defendant had sold several and expected to sell all to donors who would pay $300.00 each and, since the plaintiff failed to perform, the $100.00 profit lost per window was sought to be recovered. We argued that the counterclaim was inconsistent with defendant's election of nonacceptance of delivery. Under

the Uniform Sales Act a buyer could accept and claim damages or decline to accept and rescind the contract.

There had been no written contract. The answer was also inconsistent in the third defense of reliance on the seller's judgment to raise an implied warranty of suitability under the Uniform Sales Act. This could not stand if the contract in fact was to furnish windows according to the sketches or conforming to the corridor windows or any other specifications.

The trial judge found that the windows were not in conformity with the corridor windows as to color of glass and least amount of paint and did not freely admit light but darkened the chapel to such an extent that artificial light was needed for funeral services and hence are not in substantial compliance with the contract. The trial court added, however: "That considered from am artistic viewpoint, said chapel windows are more beautiful and more valuable than if they had been executed in compliance with Exhibit 2 (sketch) and 8 (revised sketch) and if considered primarily from said viewpoint said windows, as executed and installed, are in substantial compliance with Exhibits 2 and 8." The latter finding rested largely on testimony of defendant's stained glass expert on cross examination. The trial court concluded that plaintiff had failed to perform its contract and that the defendant was not liable but was not entitled to recover anything on its counterclaim.

Plaintiff's argument on appeal stressed the beauty of the windows and one of the chapel windows and one of the corridor windows were brought to the Supreme Court chamber and raised in front of windows in the conference room for the justices

to view. Every reference in the testimony as to Mr. Pierce's anger at learning that plaintiff was a Conrad Schmitt company was emphasized. A total of over 300 pages of printed case and briefs on both sides were filed. Defendant's principal precedent cited was Manitowoc Steam Boiler Works v. Manitowoc Glue Co., 120 Wis. 1 rejecting recovery for partial but substantial performance, where the court said "The general rule of law is firmly established that he who makes an entire contract can recover no pay unless he performs it entirely and according to its terms, " and, referring to the lower court ruling in the boiler contract involved "The result of this action, whereby the defendant is required to pay the full contract price for a boiler of only about half the capacity or value of that for which it agreed to pay is somewhat startling."

The Supreme Court found "what was to be expected in specifications for a work of art; they are indefinite, uncertain and the whole matter was very largely within the discretion of the artist. Manifestly there cannot be drawings and specifications for a work of art in the same sense in which there can be drawings and specifications for a steam boiler."

The court announced a rule for which we had contended and which we had hoped would have been recognized and applied by the trial judge. The fear that a jury could not be made to recognize and apply it led to the course of the mechanic's lien foreclosure, which was not subject to jury trial, as the form of action taken. The rule as stated by the Supreme Court is:

> "Where an artist is directed to produce a work of art in accordance with an approved design, the details of which are left to the artist, and the artist executes his commission in a substantial and satisfactory way, the mere fact that when completed it lacks some element of utility desired by the buyer and not specifically contracted for, constitutes no breach of the artist's contract." [190 Wis. p. 362.]

The decision was as follows:

> "It is considered that under the evidence in this case there was no implied warranty on the part of the plaintiff as to the amount of light which the windows would admit or that they would admit sufficient light to enable a person to read. There being no express contract in that respect, the plaintiff substantially performed its contract and is therefore entitled to recover." [190 Wis. p. 362.]

In the course of the opinion reference was made to the evidence in the record indicating that refusal to accept the windows was based on capriciousness and personal dislike of Pierce for Schmitt whose connection was first disclosed to Pierce after delivery of -the windows*

Hickey v. Sutton involved only $450.00 claimed for preparation of complete building plans for a residence. Hickey and Velguth called themselves architects and builders. Hickey was experienced in construction and Velguth was a draftsman who had attended Cornell University School of Architecture but had not registered as an architect under Wisconsin Statutes. Hickey had persuaded Sutton to let them prepare preliminary plans free of charge. When the change from preliminary free service to chargeable service took place was the issue. There had been a consultation between Velguth and Sutton over the preliminary plans and a change was made and Velguth proceeded with detailed drawings-which expert testimony said were worth $450.00. This was based on a

fee of an architect reduced to 60%, since the building was not erected and there was no supervision.

The case was tried in Civil Court where judgment went against Sutton for $450.00. Appeal to the Circuit Court resulted in affirmance. A defense not asserted in the original answer but pressed in both lower courts was that the plaintiff's, neither of them being registered architects, had contracted to render services as such and because of this illegality were not entitled to recover.

The Supreme Court held that §101.31 Wis. Stat. 1923 requiring registration of architects was not merely a licensing for revenue but a regulation for public safety. As such; the rule in other states barred compensation to the unregistered. Then recent cases in Washington and Michigan which the lower courts had failed to heed, were recognized by the Supreme Court as precedents for a like rule for Wisconsin. The judgments of the lower courts were reversed with instructions to dismiss the complaint.

As the 1920s proceeded our law firm progressed slowly. Mike was in love with a wonderful girl and marriage was hard to support on his half of the firm income. He applied for and, with the help of influential friends, procured a j-ob on the staff of the Wisconsin Attorney General in Madison. It was hoped our practice would grow so that in a few years he could rejoin me.

This same inadequacy of steady income kept me from serious romantic attachment. My friend Al Ecks who, since law school had worked with me in most amateur theatrical productions and

particularly in the Passion Play, had courted and married a beautiful member of the cast. I dated and enjoyed the company of many of the players in our various productions. There were others too, and I found myself falling- in love but inhibited from making any proposal. I saw these girls whom I dated succumb to the proposals of others, one after another, and I became classified as a bachelor. As such my young married friends found me available to meet and escort their single lady friends. All this was in the gay 20s, the prohibition era, about which a book cc-_l^ be written.

Clarence Rasmussen, at the close of his boys camp for the summer, usually planned adventurous canoe trips which he invited me to join. Several of his seniors like Fred Miller would travel with us. One year it was in the Quetico, another year a trip down the Nipigon River, and another year was to take the Algoma Central and Hudson Bay Railway from the Soo up to the Michipicoten River or to the Wartz Lakes for memorable fishing.

Harry Meissner and Armand Tuteur, each with his own practice, "were about to rent office space in the new Empire Building and invited me to join them. My client Conrad Schmitt Studios had branched out into interior decorating and furnishing of offices and homes and I let them take over the furnishing of my new office. They provided walnut furniture—a beautiful desk from Kittinger, which I used ever after, and red damask tasseled drapes adorned the windows. This was the era of ornate movie theaters and I was embarrassed by my elaborate surroundings. Sometimes they served to impress. I was

gaining a variety of retainers, forming business organizations, inventing documentation for Florida land boom investments, avoiding securities laws, planning estates and probating them. I recall an inventor, an engineer who had sold a group

on funding the manufacture of an experimental model of a buoyancy energy engine. This was to harness the force illustrated by a hollow ball rising when submerged in water. It was to be accomplished with pistons in a rotary formation.

About 2 o'clock one morning I was called to the machine shop to witness the first turning of the engine. The inventor and his supporters were there and the filling of the tank in which the engine was submerged began. Breathlessly all heard the turning of a half revolution, and that was it. To make the other half revolution would have required a force greater than the first and the inventor had not found where that would come from. So perpetual motion had to wait another day and another inventor.

Harry Meissner and a number of other lawyers asked me to run against Henry Cummings as sitting Civil Judge. Lawyers who practiced before him were generally unhappy and I received a lot of encouragement. I said, if the Bar Association gave me a vote of approval I would run. The younger lawyers had failed to consider all the Bar Association members of Cummings' age who seldom came to his court. I received less than half the vote and that put to rest any ambition for a judicial career.

9. The Depression

The stock market crash came in 1929. Our firm specialty of legal service for our finance company clients now developed into intensive collection work. In the early 30"s this became a salvage operation in which large boxes of very delinquent files were brought in for us to find some way of collecting. I had developed my own forms of complaint for deficiencies on conditional sale contract resales and chattel mortgage sales. Like other collection lawyers we would schedule many cases for the same day and take our chances on finding some debtors who could raise funds for settlement. While this was the usual course there were some more exciting cases such as the road contractor and his fleet of 20 Reo trucks which he had bought on installment contracts. He took the trucks to odd road jobs up in the Dakotas and, as soon as he learned we were preparing replevin or other proceedings, the trucks would disappear to be reported later in Iowa or somewhere else. Finally we learned he had a job near Sauk City, Wisconsin. With the aid of local counsel in Baraboo we prepared replevin papers and took them to the Sheriff for execution but found him uncooperative. It wasn't until we found a constable in Sauk City who respected his oath of office, that seizure of the trucks began, not without some assault and battery by the contractor's loyal drivers. Eventually the contractor procured the funds to pay up his purchase contracts.

It wasn't until 1931 that Mike decided to return and together we resumed the Dunn & Hirschboeck practice. This

was the deep depression period, hard to describe to the present generation.

My sister professed her first vows as a Maryknoll Sister in January 1931. My mother and I went to Maryknoll. The sleeping car on the Twentieth Century Limited in which we traveled carried only three passengers. On our way home we took the Baltimore & Ohio to stop at Washington which Mother had never visited. I remember whitewashed windows in store fronts in the shopping area and when we sought to join a bus sightseeing tour we were given a limousine for our tour with the head guide as our chauffeur. They couldn't get a bus load of tourists to see Washington.

10. City Attorney's Office

President Hoover and all conservatives were blamed for the economic misery. In the City of Milwaukee a conservative non-partisan had held the elective office of City Attorney but in the 1932 Spring election a young Socialist was elected. He was Max Raskin who had succeeded in joining the Party. The few lawyers in the Party did not make it easy for others to join and none of them expected a Socialist could win as. City Attorney, so Max had been nominated more or less by default. But Max won big along with re-election of Dan Hoan as Mayor. But he had a problem. The assistant city attorneys were not under civil service and his Party had few lawyers who would be interested. He did choose as his Deputy City Attorney William Quick who was a dedicated and able labor lawyer and a long time Socialist. Quick had served a term as judge in the Civil Court but had returned to his practice and now helped Raskin organize his staff. It was from Bill Quick that I received a call inviting me to meet him and Max Raskin. I had tried many cases in Civil Court and a number of them before Judge Quick but that was the extent of our acquaintance.

I was offered the position of assistant city attorney where I would serve the City Comptroller, the City Treasurer and the Tax Commissioner, the officers responsible for all financial affairs of the City. I was not a resident of Milwaukee. My parents had built their home in Shorewood and I lived with them. But, being single, I could move to Milwaukee,

and I accepted the appointment. I took a room with my Grandfather and Aunt Mathilda Heiser on Webster Place in the City. That is how the City of Milwaukee became my client. This left the Dunn & Hirschboeck practice to Mike.

Max Raskin assembled his staff of Deputy and Assistant City Attorneys for an orientation talk by Mayor Hoan who had started years before as City Attorney. His message was that we should uphold the authority and jurisdiction of the council and officers and assert the Home Rule Amendment to the Wisconsin Constitution more than our predecessors had.

My predecessor was Walter Mattison. I moved into his room and found a stack of files of open matters.

Max came in with a copy of a court order from Buffalo, New York. There was a hearing the next day in Buffalo on a motion of the receiver of a shoe store chain to deny priority to the City of Milwaukee claim for unpaid personal property taxes. There was a note in the file that the City's claim for priority was based on a Supreme Court of New York decision. I read the case and told Max it seemed a clear precedent. He told me to go to the hearing in Buffalo. I recall there was only about a Thousand Dollars involved but travel was a lot cheaper in those days. I took a night train out of Chicago and arrived at Court and met the attorneys for the receiver. They were surprised that anyone would appear. I said I was surprised they would make the motion and cited the case. One of them went to the library and brought a volume of the reports of the New York Court of Appeals and turned to the decision reversing the case I was relying on. I had forgotten that "Supreme Court" in New York, unlike in

other states and in the United States, is not the court of last resort and that the Court of Appeals was the highest court. I took an afternoon train home quite chagrined. This was not an auspicious start in my new job.

The waiting room of the City Attorney's office was usually crowded. Many citizens ca;-,e for free legal advice. Elected officers do not turn them away bat assign staff members to hear them. Italians would go to John Megna, Polish to Joe Bednarek, and the German speaking were divided between Ed Knappe and me. My German was inadequate but I helped as much as I could.

Among the early visitors were gentlemen from Fifth Street to meet the new lawyer who would champion their cause. Among Mattison's files was the Fifth Street Freight Case. The street railway company which ran interurban cars over the former Milwaukee Northern line came into the city over Fifth Street to the downtown terminal. The franchise was for passenger traffic only. But it was a great convenience for shippers as far north «s Sheboygan to load the cars with Items of freight. It was quick delivery of milk, for example, to downtown Milwaukee. The Company kept moving the baggage compartment partition farther and farther back to accommodate the freight and the number of cars increased to handle this profitable business. The residents on Fifth Street were aroused and had induced the former City Attorney to sue to enjoin the use of these cars. An injunction had been granted, but so written that physical changes could be made in the cars to avoid it. When the lower court sought to enforce stoppage

of the cars an appeal to the Supreme Court by the Company succeeded in showing that the injunction was not violated but legally evaded because of its inept provisions. (205 Wis. 453 and 209 Wis. 611.) When I got the file it was a second case and a second such trip to the Supreme Court. Mattison, in writing the most recent injunction, had been very careful. This time I had little trouble in getting the Supreme Court to affirm a holding that the Company was in contempt, effectively stopping the freight traffic on Fifth Street. To the gentlemen from Fifth Street I became a hero.

One of Walter Mattison's files involved a Lincoln Fire-proof Warehouse Company case, challenging assessment of the warehouse property. The Wisconsin Supreme Court decision sustaining the assessment (208 Wis. 70) was now appealed to the United States Supreme Court, alleging denial of equal protection of the laws in violation of the Fourteenth Amend-ment to the Constitution. When the brief supporting the appeal was served. Max Raskin asked me if I was admitted to practice in the United States Supreme Court. I was not. Neither was he nor any other member of the new staff. I wrote the brief in opposition but there was no one to sign it. Mayor Hoan was a member of the bar of the United States Supreme Court so he signed it on behalf of the City.

Max proposed that he and I apply for admission to the Court to be able to represent the City in further proceedings. This involved attending the court in Washington, our admission to be moved by a member of the bar of that court and taking the oath.

John MacDill Fox had been a teacher of each of us at Marquette University Law School and now was Dean of the Law School of the Catholic University in Washington. He agreed to sponsor us and set a date but cautioned us to be properly attired in formal morning dress, striped trousers, cutaway coat and the rest. I knew this had been customary dress for lawyers appearing in the Supreme Court but thought that it was no longer observed.

We met Mr. Fox who was formally dressed as we were and went to the old court room, then in the Capitol. There were many other lawyers to be admitted at the same time, mostly in business suits. When our turn came, Mr. Fox launched a flowery introduction and recommendation dwelling on Mr. Raskin's election as a very young City Attorney in a great city. Chief Justice Charles Evans Hughes held his composure, though the impatience of other justices was evident. He finally broke in to direct us to the Clerk's desk to take the oath.

Our brief opposing jurisdiction of the appeal was successful. The Court determined to leave the State Court decision stand, and there was no substantial Federal question to support the appeal. (287 U.S. 567; 53 S.Ct. 23).

In the spring of 1932 the Depression had devastated real estate values. Mortgage foreclosures were crowding the court calendars and there was no relief in sight. The burden of property taxes was sought to be reduced by many means. Taxpayers' committees begged the officials to reduce them and many individual taxpayers challenged the assessed, value of their property. Assessed values had been declining but not to the actual depressed values.

The City of Milwaukee had a Tax Commissioner who presided over the Board of Assessors, consisting of the district assessors. From assessments made by them there was an appeal to a Board of Review which then consisted of the mayor, clerk, tax commissioner and the assessors. (§70.46(1) Wis. Stats. 1931). There was a deluge of appeals and the Board of Review sat all day and into evening sessions for weeks. It was my duty to defend the challenged assessments. Some assessments were adjusted but most were not. I was embarrassed at my success before this friendly board so weighted against the appealing taxpayer. I proposed and the 1933 legislature enacted an amendment changing the composition of the Board of Review to "five residents of the City none of whom shall occupy public office or be publicly employed" appointed by the Mayor and approved by the common council and serving in staggered terms.

Several taxpayers sought the advice of my predecessor, Walter Mattison, and retained him for a major challenge to their 1932 assessments. Twelve actions by nine corporations and three individual taxpayers were commenced. The complaints alleged that the assessments were illegal, in violation of several statutes, and Article VIII of the Wisconsin Constitution and Amendment XIV to the Constitution of the United States. The prayer of the complaint was that the assessments be declared illegal and be set aside and that each of the defendant officers be enjoined from performing statutory duties with respect to assessment and taxation of the properties involved. The principal group of plaintiffs

included Schlitz Realty Co. and members of the Aileen family and other real estate corporations owned by them. There were 31 large properties involved owned by this group. Other properties owned by other plaintiffs were the Plankinton Building, the Doctor Estate and Lincoln Fireproof Warehouse.

Allegations of the complaint were that the assessors and Board of Review refused to consider present economic factors, low rents and over-supply of rental units, current sales and lease terms; that they followed different rules for different properties so that there was a deliberate underassessment in some districts, as much as 20% to 30%, resulting in unjust, inequitable and void assessments.

An order temporarily enjoining the assessments was issued July 28, 1932 ordering a hearing August 6, 1932, and subpoenas were issued to City officers to appear for adverse examination.

The City of Chicago assessment process had been attacked in the courts and delays and injunctions had disrupted annual property taxation. If a large number of high value properties could be kept off the Milwaukee tax rolls there could be a like result.

Bill Quick and I went right to work. We moved to dissolve the injunctional orders, opposed the motion for temporary injunctions, moved to perpetually stay the discovery examinations and to dismiss the actions on the ground that the complaints did not state facts sufficient to constitute a cause of action and because the complaints affirmatively showed that the action could not be maintained for want of equity.

Affidavits in support of the motions for temporary injunction asserted that property values were much below the assessments. To respond to these we had affidavits of assessors and employed three prominent realtors who were able to state opinions that "the aggregate value of all parcels described in the complaint is substantially in excess of the aggregate assessments." Preparation for the hearing was intense, daily and on into evening hours, including analysis of many Wisconsin cases to support the main defense—that a court could not intervene during the annual taxation process before the levy was made in December. Then the remedy of review by certiorari was the proper course.

After the hearing and a brief period of advisement the court on August 27, 1932, vacated all restraining orders and dismissed the complaints with costs and damages.

This saved the 1932 Milwaukee property tax.

Although plaintiffs appealed to the Wisconsin Supreme Court, the decision of the circuit court was affirmed March 1, 1933. (211 Wis. 62.)

The Baltimore Sun, on October 22, 1933, published an article by William J. Parks* entitled: "The Milwaukee 'Miracle' in Bad Times." This pictured the conflict in 1932 and 1933 between "The Taxpayers' Advisory Council," formed by the Real Estate Board, the Association of Commerce, the Building and Loan League and the Citizens' Bureau, against the City

---

* Reprinted in The Milwaukee Journal November 2, 1933. Daniel W. Hoan, in his "City Government, "Harcourt & Brace, 1936 has a chapter called "Emancipation from Banker Influence" covering this period.

administration. This council had demanded a 25% reduction in taxes. The Schlitz Realty Co. and related cases were called "The First Fusillade" in this battle, the taxpayers losing the first round.

The property tax delinquency of the 1932 tax collection had risen to $17,178,026. Of this, $9,742,826 was the 1932 delinquent tax. But the delinquent taxes continued in the process of collection through tax sales to the City, all secured as a first lien against the properties taxed, ahead of all mortgages and other liens.

The traditional form of City orders issued to city creditors provided for payment February 1st the following year. The City had long ago changed from raising taxes at year end for the past year expenses to raising taxes for budget expenses of the following year. With cash on hand the City honored its City orders without discount upon issuance, long in advance of the stated due date. Now with City resources largely illiquid, cash was reserved for payrolls. Other creditors were relegated to the terms of their contracts, the City orders payable the following February. It became a problem for creditors to find banks or others to discount these orders.

Municipal accounting is governed by statutes which provide for appropriation accounts balanced by anticipated revenues and property taxes in the process of collection. Included are appropriations for capital improvements for construction for which bonds had been issued. The bond proceeds are not segregated into separate cash drawers or separate bank accounts

but are mingled with the City's other cash. A taxpayers' lawsuit was begun against the City Treasurer and Comptroller to compel segregation of cash equal to the bond project unexpended appropriations. It was my task to defend these officers and after the trial in which municipal accounting experts adequately explained the accounting and full discussion of the statutory provisions, none of which expressly required segregation in specie, the circuit court dismissed the action.

By June 1932 I had foreseen the difficulties of operating in the face of cash shortages. In consultation with members of the City Comptroller's staff and other officers, the possible liquidation of the City owned tax sale certificates was studied. In my letter of June 13, 1932 to the Common Council I proposed a City Tax Share Plan providing for an issue in small denominations of shares in the fund of delinquent taxes. No action was taken on this but it focused attention on the large illiquid City resources.

Temporary borrowing from the banks had been the accepted means of meeting cash needs. The principal Milwaukee banks had indicated readiness to provide funds and when an $800,000 teachers' payroll was about due this amount was sought to be borrowed. A request by the banks for a conference with City officers was misinterpreted by Mayor Hoan as an ultimatum. He expected demands for curtailment of City expenses. He declined to go to the banks; asserted that the banks knew where his office was.

The Bank of Manhattan had, during the summer, offered to lend money to the City. Its vice president, Mr. Milholland,

conferred with the Deputy City Comptroller and with me about City authority for temporary borrowing and the debt limit, and various forms of short term obligations. The Deputy Comptroller called him new in the face of the rebuff the Mayor was giving the Milwaukee bankers. The result was a joint loan to the City by the Milwaukee banks and the Bank of Manhattan of $2,000,000.

Promptly another taxpayers' suit was commenced against the City, its officers and the banks to declare the borrowing invalid as in excess of the constitutional limit on City indebtedness and to enjoin repayment by the City at maturity.*

Contrary to allegations by the taxpayers, assessed values had declined over several years and at a rate faster than reduction of debt by payment of principal on the City's outstanding bonds. The Wisconsin Constitution, Article XI Section 3 forbade City indebtedness in excess of 5% of the value of the taxable property. A graph showing 5% of annual values in a sharply declining line and outstanding bond balances in a less declining line, illustrated, by the crossing of the lines, that any additional bonds would violate the limit. If temporary borrowing for current expenses within the limits of City resources including taxes in the process of collection was "indebtedness" as that term is intended in the Constitutional provision, the City could be enjoined from repaying the illegal loan. But the court held such temporary borrowing was not such "indebtedness" any more than the teachers' payroll to

---

* Reuther v. City of Milwaukee (Circuit Court for Milwaukee County, February 1933).

be paid with the loan. Obligations in the current budget for which taxes are in the process of collection are not such indebtedness.*

The City Treasurer and City Comptroller whom I served could have seen a short term. advantage in letting the taxpayers' injunction prevail and have the City save $2,000,000. But the shutting off of future bank loans, to say nothing of the long term damage to the City's credit and bond rating would be disastrous. The City Attorney, through me, had joined in the defense of the action. There was a special reason for me doing this. The Bank of Manhattan along with the Milwaukee banks had needed legal opinion of the validity of the loan before release of the proceeds and bad consulted Paul Newcomb of Miller, Mack & Fairchild. Paul had called me. With Max Raskin's approval I went to his office and briefed him fully on the City's financial resources and inapplicability of the Constitutional debt limit. He had given his approving opinion to the banks and now that it was challenged I was obligated to join in the defense of it.

There was other litigation in which my clients, the City Treasurer, the City Comptroller and the City Tax Commissioner, had to be defended.

R. Wallace Parks, in his article in the Baltimore Sun** wrote of the depression conflicts between taxpayers and municipal officers and:

---

* See Municipal Current Expenses and the Debt Limit, H. C. Hirschboeck, 19 Marquette Law Review, 59, Feb. 1935,

** Baltimore Sun, Oct. 27, 1933; reprinted Milwaukee Journal Nov. 2, 1933

> "The Milwaukee fracas was, perhaps, the most spectacular and dramatic tournament of them all. Taxpayers' lawyers resorted to every legal device that their ingenious minds could concoct to beleaguer the city administration, while the City Attorney and his colleagues were worn to a frazzle in conducting the defenses."

The City administration had prevailed in the Courts, so political action was resorted to. A petition for recall of Mayor Hoan had been filed, but, on scrutiny in court, thousands of signatures were questioned and the Council withdrew the petition.

Under Wisconsin initiative and referendum law a petition was filed to limit the City budget and property tax, exclusive of levies for schools, fire and police and principal and interest on bonds, to $2,000,000 per year, including 1934. This was voted on at the November 8, 1932 general election in the City and won; ayes: 91,752, nos: 81,507. This was the only victory, a political one, of the taxpayers groups fighting the administration.

After-the December 1932 tax levy the January and February collection of the current taxes temporarily eased the financial crisis. But over $9,000,000 of delinquency was added to the prior accumulation of over $8, 000,000.

Franklin D. Roosevelt had won the November 1932 election and would take office March 4, 1933. There was optimism that the change would improve the economy. Governor Schmedeman and many new legislators had been elected.

11. Baby Bonds

I was occupied in seeking ways to liquidate the City's accumulation of tax sales certificates. Many statutes needed amendment including municipal borrowing laws and I drew an enabling statute that would permit issuance of notes secured by such certificates. This became §67.12(9) Wis. Stats. 1933. The pride of the City's administration since 1923 had been the public debt amortization fund designed to provide for ultimate elimination of bond indebtedness. Interest earned by the City from any source and added funds which the council by two-thirds vote would transfer became a sinking fund. This was to be managed by the Commissioners of Public Debt with annual audits by the state Commissioner of Banking. It was to be invested in City of Milwaukee bonds or bonds and debt securities of the United States and direct general obligations of cities in Wisconsin. (Ch. 119, Laws of 1923) I drew an amendment which became Chapter 26, Laws of 1933 which included authority to invest in tax sales certificates of the City. My job included helping to lobby these amendments through the new legislature, particularly in explaining the need for them and how they proposed to alleviate the cash stringency.

As the cash became scarcer, questions of priorities were raised. The statutes provided that out of the first tax collections each year the amount levied by the school district should be set aside for the school district. The teachers and school board asserted priority. The answer was that, while the Milwaukee schools are under a separate School

Board, they are not a separate district and the priority did not apply to Milwaukee. The explanation and selling of this opinion to the educators took tine and effort.

The day came when payrolls could not be met and had to be deferred. It wasn't long before the City Treasurer received notices of assignment by employees of their pay, to grocers and others. This snowballed and the determination of validity and priority of assignments became a serious problem.

Some cash came in through sale of tax certificates to the amortization fund and other sources. Examination of all cash balances in City bank accounts disclosed several accounts to which receipts of installments of special assessments for public improvements were deposited. Originally contractors performing such improvements had been paid in certificates representing their right to these installments. But the City years ago had ceased issuing such certificates, but paid the contractors and was itself the sole beneficiary and owner of such deposits. They were no longer trust funds. These deposits were in the larger Milwaukee banks and I was asked whether they could not be drawn to meet the City's current obligations. I ruled that they could. This was one of the first days in March. Checks transferring these deposits to the City's payroll checking account precipitated a rush of the banks to Madison to prevail on Governor Schmedeman to declare a bank moratorium. He did, just before the Presidential inauguration of March 4, after which the national bank moratorium proclaimed by the President took effect.

The cash crisis was described in an article on Scrip by Robert W. Wells in The Milwaukee Journal of January 6, 1975 reviewing the mid 1933 conditions:

> "All of a sudden those who had financial assets couldn't get them.
> The crisis called forth considerable ingenuity. Movie theaters extended credit or accepted checks, even though the checks couldn't be cashed. A&P stores paid suppliers and employees with gift coupons, which could be used to buy groceries.
> With no money in circulation except what people had in their pockets when the moratorium came, the Milwaukee Clearinghouse made plans to issue $125 million in scrip and the Legislature authorized issuance of $10 million in such 'funny money' to banks unable to get scrip from Milwaukee.
> On March 17, Wisconsin became the first state actually to distribute this substitute for greenbacks, with banks allowed to borrow a total in scrip equal to 5% of their deposits.
> By then, most banks which were going to reopen had done so--49 were liquidated and 30 others were consolidated or absorbed into stronger institutions."

I had prepared an ordinance based on the new enabling law which we had earlier lobbied through the legislature. It provided for Tax Redemption Notes of the City in denominations not less than $1.00, negotiable and payable to bearer, maturing in three to four years, with denominations of $10.00 or more to bear interest- payable annually according to coupons attached. The notes were receivable at par by the City Treasurer in payment of City owned certificates for sales- for taxes of prior years. In April this ordinance came before the council which resolved to sit as a committee of the whole, calling on me to explain the program in detail. This ordinance which became §640.10 to 640.16 of the Milwaukee Code had the

usual provisions for a public issue of notes including, however, operation of a note exchange in the City -treasury, and issue of notes to City creditors including employees in satisfaction ,of their payroll claims. They were limited to the amount of City owned tax sale certificates and the management of that security was provided for. It was a long and technical lecture I had to deliver and the questions asked by aldermen were few, but they enacted the ordinance.

The Comptroller's office had bean finding paper and engraving sources and determining the denominations and the accounting procedure.

Printed on each Federal Reserve Note (the dollar bill in your pocket), is the clause: "This note is legal tender for all debts, public and private." The City, obviously, had no authority to make its notes legal tender for private debts, but to make them legal tender for payment of City taxes was not beyond its power. To make them receivable for all City taxes would anticipate revenues of future years—consequently "indebtedness" limited by the constitution. But with $17 million in process of collection held by the City in the form of certificates for sales of taxes for prior years, the notes could be made receivable at par for such taxes. Owners, mortgagees--savings and loan associations and banks—-of tax delinquent property would be assured of par value and formed a large market to absorb such notes if they should become tradable at a discount.

The proposed notes were called "baby bonds" even before any were issued. City employees, teachers, firemen and policemen learned that part of their pay would be in these notes. They were called to meetings which other officers and I addressed to persuade them to become sellers of the notes they would receive to the merchants and to providers of services whom they owed money. Other effort was made to educate the public and banks and savings and loan associations.

The first issue. Series A, was dated June 1, 1933. The notes were to mature in four years and $10.00 and larger denominations bore interest at 5% per annum payable according to detachable coupons. The first Ten Dollar Note, No. 10001, Series A, was issued to me as part of my pay in recognition of my authorship.

The Wells article in the January 6, 1975 Milwaukee Journal on Scrip referred to the City baby bonds as follows:

> "The city as well as the banks was short of folding money. The". 23 now it relied mainly on the property tax, and in 1933 more than half the city's homeowners couldn't pay their taxes. To meet its payrolls—not only the regular employees but also 12,000 unemployed men hired for pick and shovel work--Milwaukee started printing its own money.
>
> The city's scrip was backed by certificates issued against delinquent taxes. This was considered dubious backing and the city money was accepted only at a 10% discount at first.
>
> But as the novelty wore off and merchants competed for city employees' business, the scrip rose to par. Between 1933 and 1938, Milwaukee issued $14.6 million of this substitute for more traditional forms of money."

Years later, January 28, 1939 I received a letter from Comptroller William H. Wendt in part as follows:

> "Dear Herb:
> I have been thinking that with the passing of the city's baby bond period, and the arrival of a new era, in which we again switch to 100% cash basis, that it would be interesting to set up a historical record in the Public Museum covering all phases of the baby bonds and scrip period. Dr. Barrett, when I mentioned this to him, thinks it should be done and will gladly co-operate. Since we are making it a policy to destroy every cancelled tax redemption note, in order to avoid complications, it becomes necessary, in order to establish this exhibit, that each one shall be a genuine unpaid note. I thought perhaps this might be an opportunity to donate number 10001, Series A, owned by you, first of its kind which still remains unpaid on our records."

I donated the bond and received another letter:

> "Your letter of January 30th, giving assurance that you will not need possession of Tax Redemption Note number 10001, Series A, to keep alive your memories of the happy days spent in the city service, is being forwarded, along with the note that you kindly presented for the historical museum record, to Dr. Barrett.
> I am sure that your children and great-grandchildren will have occasion to view this exhibit with pride, and cherish the memory of one who labored to bring this city out from under the unusual period of tax delinquency and financial embarassment [sic] of the past."

By the fall of 1933 the crisis was over so far as my services as Assistant City Attorney serving the financial officers was concerned. A bureau had been set up in the City Treasurer's office to attend to foreclosing long delinquent tax sales certificates and for disposal of the recovered properties. My associate. Harry Kovenock, helped organize this and it became

a unit to be served by him. Max Raskin, the City Attorney, began to assign other work to me, such as defense of the Water Department before the Public Service Commission against an attack by large water users opposing the building of the water filtration plant. I also took some of my accumulated vacation time, shooting prairie chickens and partridge with Clarence Rasmussen and other friends and later a deer hunt in which I shot my only deer.

12. Miller, Mack & Fairchild

I received a call from Arthur Fairchild of Miller, Mack & Fairchild, who had participated as "senior" partner of that firm in the defense of the Reuther case attacking the loans to the City by the Bank of Manhattan and the Milwaukee Banks. He invited me to take a position with his firm. He expressed some concern that my public exposure as assistant city attorney might make me uncomfortable in a small office in a large firm of lawyers doing private work. He commented that his firm had room for only one prima donna. He was referring to Gilbert Hardgrove, a very able partner in important cases, but whose work style isolated him behind closed doors from his partners' cooperation.

I deliberated for a week but decided to accept the position. I had no ambition to run for public office and, while I had enjoyed my year and a half of public service, I did not look forward with enthusiasm to a career as an assistant city attorney. I was not a Socialist. All my social life was with others and I wanted to move back to my parents' home in Shorewood.

I informed Max Raskin of the offer and my decision to accept. He was not surprised. He had given me great, freedom of action and had been most understanding and cooperative. He was the responsible head of the office, had the public recognition for the successes of his staff, and I was happy that I had not failed him. The able collaboration and often leadership of Bill Quick in the litigated cases was very material to our success.

An office farewell party was given for me, with the Mayor and several judges in attendance, and I was invited to bring my father, to let him hear the words of praise. He didn't need this to boost his love for me but he deeply enjoyed the evening.

In writing this piece I started to look for answers to the questions how a lawyer attracts clients. The preceding pages tell how I got a job with the largest and leading law firm in Wisconsin.

If I had once become a specialist in finance company law and more recently in municipal finance law, I was soon to be redirected to income tax law, federal and state, particularly Wisconsin income tax. Revision of the Wisconsin law in 1927 had developed controversies which in 1933 and 1934 were reaching the courts for determination.

The firm represented the Wisconsin Telephone Company and the parent American Telephone & Telegraph Company. Wisconsin in §76.38 Wis. Stats. had imposed annual license fees based on gross income of telephone companies in lieu of other taxes. By deleting the exemption from net income tax these companies found themselves expected to pay tax on their gross income, then, again, on their net income. An early assignment for me was to research the history and basis for such taxation particularly as it affected tax on the income from receipts from interstate commerce, the regulation of which was a power reserved to the United States Congress in Article 8 Section 3 of the federal constitution. I spent a great deal of time in this research, examining hundreds of cases and classifying their holdings. A thick book was soon assembled on this subject,

Numerous cases of other taxpayers engaged in commerce in several states were required to be tried before the Wisconsin Tax Commission to obtain proper allocation of income to Wisconsin and avoid imposition on interstate commerce income. The United States Supreme Court had justified cancellation of entire state income tax assessments where income from interstate commerce was taxed along with income from local business. Over the years since 1934 and 1935, when I tried such cases, the rules have changed.

The telephone company cases, in addition, included issues of accounting, and deduction of research and development expense, allowance of costs on purchases by one ATT subsidiary from another and many others. Weeks were spent in trials before the Wisconsin Tax Commission in Madison. Dozens of Telephone Company officers testified and extensive briefs were filed. Ultimately compromises were made to settle these cases.

Michael J. Cudahy and John Cudahy had income tax cases arising out of their exchange of stock of Northern Refrigerator Line which they owned with the New York Central Railway for shares of a subsidiary. Merchants Dispatch Co.

This exchange had been made in 1929 after Wisconsin, in the 1927 revision of the income tax law, had adopted the federal non-recognition provisions deferring taxation of gain from mere exchanges of securities until disposal of the security received in the exchange.

To the assessor of incomes such a trade was the same as a sale and the now value of what was received was compared with the past cost of what was given up. Despite the federal rules,

the assessor believed that the difference was gain just as much as if the stock had been sold for cash. It had taken a long time for Wisconsin auditors to search the complicated transactions for some deviation from the statutory rules. So long, in fact, that by the time the case had reached the circuit court the period during which the Commission had authority to assess a tax for a prior year had expired. The circuit court so held. Philip LaFollette had been, elected governor and took office in January of 1937. He accommodated the Tax Commission by proposing a law which opened up the period of assessment, even though it had closed. This was Chapter 1 of the laws of 1937. It was signed just before the Supreme Court was to hear the Commissioner's appeal of the circuit court judgment. The validity of any assessment, even bolstered by such a retroactive statute was one issue, but the main issue was application of the nonrecognition statutes. My brief diagrammed all the several steps in the transactions to establish literal compliance with the statutes. Fred Sammond and I argued the cases. The court avoided the first issue of timeliness by treating an exchange of letters while the matter was before the Board of Review as, in effect, a stipulated submission to jurisdiction to make the assessment. The main issue the court decided in favor of the taxpayers so there was no additional tax due from the Cudahys. (226 Wis. 317 and 342) That decision was dated December 7, 1937.

13. Marriage

Since 1933 my office hours had been devoted to such and other cases, but now I was not working nights, Saturdays and Sundays as I had in some periods of my service to the City.

Direction of the Milwaukee Passion Play had been taken over by Father Al Huepper and there were performances in 1931 and again in the Spring of 1935. I took part as an actor playing such diverse roles as Peter and Judas in different years.' The Drama Players had declined and ceased during the depression early 30s.

The ranks of my bachelor friends were thinning and my dates were mostly with friends of my married friends. Willard Bowman, who had served in the City Attorney's office with me, was married. I was his best man and gave a party. Fred Miller, who had finished his college and Notre Dame football career and had joined his father's Miller Lumber Company, was married. Clarence Rasmussen was his bestman and I was an usher at the wedding in Winnetka. Bob Carney, another young lawyer, married Gretchen Sensenbrenner of Neenah, and single men like me and others were invited to the parties at Neenah. I was becoming vulnerable.

Irene Seibel, one of the firm secretaries, was interested in seeing my new car. I had one of the first Ford V8s. She brought along a secretary from the Bendinger and Hayes office for a short ride. Irene's friend lived with her parents on Frederick Avenue in Shorewood, a block and a half from my parent's home on Kensington Boulevard. I told her if she ever needed a ride to let me know.

It so happened that there was a street car strike the next day, June 29, 1934, and she needed a ride which I happily

provided. Her name was Myrtle Janet Dundon. She had attended St. John's Cathedral High School when my sister was there so she knew our family. This indicated she was six or seven years younger than me, but I became interested and asked for a date that evening. She was interested enough to call off a previous date and we went to dinner at Boders, later the Chalet, on the Lake.

Mert, as she wished to be called, was the only child of Maurice and Nan Dundon. She was born in Appleton but came to Milwaukee in time for high school. Our conversations were easy, She knew a lot about lawyers and, I found, about me. My secretary up to the spring of 1932 when I vent to the City Attorneys office, was Mildred Zahn, who then got a job with Miller, Mack and Fairchild in the First Wisconsin National Bank Building were she met Mert. They had taken a vacation trip together to the East Coast, the previous year.

Mert's cousin, George Dundon, was editor in chief of the Marquette Hilltop, the annual of 1921 on which I had served as art editor. Mert and I both attended St. Robert's Church in Shorewood.

One date followed another and each met the other's family.

I no longer felt economically inhibited from exploring the prospect of marriage and found Mert cautious but not reluctant.

I felt sure enough to buy a ring and on a Sunday, a month after we had met, I asked her to come for a ride. In a light mood I took along a ring with a large artificial stone which

had been a prop in a play. We drove West on the Colgate Road and I pulled up opposite the old tavern and put the fake ring on her finger. She let me kiss her, but was silent, wondering what kind of a game I was up to. I drove on and turned up the Lake Five Road and came to a stop in the shade of the trees in front of Charlie Vogel's place. I stopped the make believe and asked her seriously if she would marry me. She said she would and I took out the real ring I had bought and put it on her finger in place of the funny ring. We drove many scenic roads in several counties that afternoon and wound up at Boders on the Lake for Baccardi cocktails and German pancakes.

We talked about the future, of course, and I remember telling Mert that my job at Miller, Mack & Fairchild might not last and that I may want to resume my own individual practice which could mean years of again starving into a practice and possible economic insecurity.

September 29, 1934 was our wedding day. I had assisted the Carmelite Fathers of Holy Hill in rescuing the imported marble and mosaic altar for their church from creditors of the insolvent importing firm. Mert and I thought a wedding there would be-just what both wanted. We asked our St. Robert's pastor, Monsignor Reilly, if he would come to Holy Hill to marry us. He agreed and the Carmelite Fathers told me they would have their seminary choir sing at the mass. Mert’s friend, Marie Kleinhans, and my brother, John, were our witnesses and quite a crowd of relatives and friends drove up to the early service. An aunt of mine compared it with getting married on Pike's Peak at Sunrise.

After breakfast at the Schwartz in Hartford with families and wedding party, we started up North. Mert was a sports enthusiast and this day there was an important football game, Marquette against Northwestern. We stopped at Poy Sippi in a general store which had the game on radio, then on to the Whiting Hotel at Stevens Point.

I had borrowed the use of Rollie and Virginia Williams' cabin on Trout Lake to which we drove the next day. We were greeted by Ernie and Hattie Hauer of Red Arrow Camp next door. That evening we were charivaried by Clarence Rassmussen and Dan and Helen Cardinal and the same bird shooting companions of my hunt of the last year. We had provided for such a surprise and were able to entertain our well-wishing guests.

Dan and Helen Cardinal had us to a memorable partridge dinner with Chateau Yquem wine. Mert made a hit with all my friends.

We had found a house on Cumberland Boulevard in Whitefish Bay and we had bought furnishings and. Mert changed her career to housekeeping. There had been beautiful gifts including a sterling coffee service from Miller, Mack & Fairchild.

I returned to my job in the big law office, I had also been appointed to the 24 member Citizen's Committee on Consolidation in Milwaukee County, an ambitious effort to streamline government. I had served as chairman of committees on public finance of the City Club and Mert expected me to continue civic activity. I had even talked with her about being able to type some of my reports. One of the committee members was Father Peter Dietz who was also pastor of St. Monica's, our

parish. He had been appointed as one of the County's 12 of the 24 member committee. I had been appointed by the City of Milwaukee although I had ceased to be a city resident.

I had known Father Dietz since I served as an altar boy and had been interested in his career described in a book, Peter E. Dietz, Labor Priest. I brought him home after meetings and Mert got to know him and appreciated his stimulating company.

Out of the voluminous reports of the committee little in the way of consolidation of local governments was accomplished. I felt frustrated. I thought there could be consolidation in at least one public function. Consolidation of the park system had been met with a snarl of legal objections, some parks having been donated with restrictions tieing them to one municipality or another. But I made a real effort, and was able to persuade Oliver 0'Boyle, county corporation counsel, and Carl Zeidler, assistant Milwaukee City Attorney, to join with me in a legal opinion answering all the legal objections, so that on a referendum vote the City of Milwaukee ceded its parks to the County government.

In the day time I worked in -the big law office mostly in the field of income taxation in which I reported to a partner who had been an accountant and had become a lawyer and had made great progress in the firm.

Occasionally other kinds of cases were assigned to me because of my general past experience. I enjoyed these. I remember Fox Wisconsin Corp. v. Century Indemnity Co., 219 Wis. 549. We represented the plaintiff, operator of the

Wisconsin Theater. A black boy had been trapped by two ushers trying to repeat a scheme in which he, having bought a ticket, would go to an exit door for a pre-arranged meeting with a dozen of his young friends and let them in free. The ushers had beaten up the lad, giving him a broken ear drum in the process. When Attorney Dorsey, representing him and his parents, demanded compensation, the theater's public liability insurer denied that the insurance covered such a claim because the injury was not "accidental," but inflicted by the insured theater corporation. Dorsey brought action and we tendered the defense to the insurer who declined it. Dorsey obtained a verdict for the lad and his parents which the theater paid and for which we now sued the insurer. The insurance policy as well as the record of the case of the injured showing how the injury occurred and the damages awarded, were part of the complaint. The insurer filed a demurrer which was sustained by the court. The court was convinced that the liability imposed on the theater was not because of bodily injuries "accidentally sustained." On our appeal to the Supreme Court we were able to convince the court that the term "accidentally sustained" unlike some different clauses referred to the injured person and whether or not it was accidental; that is without intention on his part. There were cases to be cited to this effect but as to the position of the insurer and the basis of liability imposed on the insured I was able, by arguing fundamental principles, to change the lower court result:

> "The plaintiff's liability was imposed, not because of any intent or purpose on the part of plaintiff, but because plaintiff was required to use judgment and diligence in the selection and supervision of its servants. 'Sic utere tuo

> ut alienum non laedas' is the maxim which underlies the rule respondeat superior as to liability for the servant's tort. The master must so conduct his affairs that harm will not befall others. It is not that the master has acted through the servant. Qui facit per alium facit per se is a maxim appropriate to the field of contract law."

The theater was liable, not because its management inflicted or intended the injury to the boy, but because the theater hired bad ushers or neglected to supervise them. Since the injury was unintended by the victim it was "accidentally sustained" in the words of the policy. The liability for the damages which the insurer agreed to indemnify was "imposed by law" on the theater under the rule that the master must respond for the acts of its servants.

I enjoyed cases like this in which I was quite on my own. The firm didn't expect its associates to bring in clients. It expected the associates and partners to speak and write for the firm; so much so, that an opinion letter was ".ever signed by the individual author of it but with the firm name. This irritated some clients. Clement Smith, for example, called Art Fairchild to demand who had written a certain opinion and said he was sending his chauffeur down to bring that man to his office for a consultation. So I had a limousine ride to Clement Smith's office where I was able to give him many reasons for the advice in the opinion letter.

I assumed a lot of responsibility in handling even the more important tax cases. There was a difference between a lawyer's argument and an accountant's over-reliance on precedent. The firm had rules, but there was one I learned of after I broke it. I had written a sarcastic piece at the end of a brief

before the Wisconsin Tax Commission criticizing the Commission for its wavering from one side to the other on a certain issue in different cases. The brief was successful. I won the case for the client, but the opinion by the Commission concluded with a sarcastic reference to the firm for its criticism of the Commission. I was told to see the Assessor of Incomes at once to apologize and explain that it was my own comment, not the firm's, which had caused the furor. Partner Fred Sammond was dispatched to Madison to make the same apology to the three Commissioners and to explain that I had violated the rule which required that every brief written by an associate must be reviewed by a partner before it is filed. I had never heard of such a rule.

I was not fired but continued on in the firm with tax cases and probating some large estates. I also worked efficiently and perhaps rapidly and lost patience with delays for consultation in the office. I considered most clients best served by negotiated settlements and was able to bring about many happy solutions of litigated matters in this way.

I assumed more responsibilities than my immediate superior wanted me to and began to worry that I was becoming, in the eyes of some, a prima donna. Art Fairchild had warned me against that when he hired me, so more and more I wanted to become my own boss.

I also made it a practice to write memoranda in sufficient detail of all my negotiations so that I would not forget in a later session what had been agreed in the earlier one and also so that when someone else picked up the file after I had left the firm he would be well able to proceed where I left off.

14. Return to Individual Practice

Mert and I had built our new home on East Montclaire Avenue in Whitefish Bay in 1936. Our daughter. Nancy, had been born October 26, 1935 and was a year old when we moved to the new home. In 1937 we discussed making a change, the giving up of a regular salary for the uncertainties of individual practice and considered these in the light of our home mortgage commitment and our beginning family obligations. I didn't have to remind Mert that we had discussed this before we were married. She had full confidence that I could succeed and that we would be happier without some of the pressures of employment in a large firm.

In January 1938 I told Art Fairchild that I would leave June 1st. I gave this advance notice to allow me to complete many pending matters. There were conferences about why I was leaving and what could be done to change my mind. There was also a concern that I might take along a client or two of the firm. I took no firm clients. Oddly, clients who had come to see me when I was an associate had been assigned to others, for example, the William H. Osborne Estate. When Bill Westenberg, who represented that family, came to the office asking to see me be was sent to Bert VanderVelde, a partner, woo took on the probate of the Estate. Mr. Westenberg reported this to me after I had re-established my practice and he came in with the problems of one of the Osborne family companies, Wisconsin Malleable Iron Company.

I left on June 1, 1938, soon after my mother had passed away. I opened an office in the old First Wisconsin National Bank Building without a client. I gathered what law books I had and moved my office furniture out of our home to the office and hired a secretary.

I was surprised and delighted to find floral bouquets in the new office from old clients I had served before going to the City Attorney's office. Victor Brown and his finance companies had been waiting for me and I immediately had some law business. There were others like Bill Westenberg and the Wisconsin Malleable Iron Company which had been accumulating losses in difficult competition in which steel was winning over malleable iron. I conducted the liquidation with the aid of Mr. Westenberg and began service to the Osborne family which lasted many years. My old finance company clients sought my help, no longer merely in collection business, bat in their corporate and operational matters, in -the writing of new forms and negotiations with state authorities in Madison.

Bill Pierick, a high school classmate, bad become controller of Line Material Company and had hired me in some matters for that firm. He recommended that Bill Caveney, a fellow employee, see me about a partnership matter involving his widowed mother and James Caveney, his father's cousin. Through my service to finance companies I had become known to automobile dealers and some of them employed me. I soon became quite busy.

Ed Larkin of Eau Claire called on me. He rented a little extra room I had in my office in order to establish a Milwaukee

base for service to some clients. He brought some business which he employed me to handle. The General Contractors' Association employed me to appear before the Common Council of Milwaukee and the School Board in support of building projects which the depression had suspended. The Wisconsin Building Trade Employers Association hired me for lobbying in the development of the Wisconsin unemployment compensation law.

I was even called on as counsel to argue an appeal of a criminal conviction for violation of securities law. In this, as the criminal world calls it, I sprang Armour Kenyon. (230 Wis. 425) I was induced to take this case because a large law firm had abandoned Kenyon, its former client, for whom one of its associates had planned and approved the transaction for which he was now prosecuted. The associate's plan was proved not a violation of the securities law but the big law firm had run scared.

In another criminal case. State of Wisconsin v. Chian Ti Su, I served at the request of Marquette University. Chian was Chinese but a native of Java where his father was a prosperous merchant. Chian was a dental student and had his own automobile. One afternoon at Van Buren and Brady Streets his car and that of another driver collided. Chian panicked, driving away at high speed down North Water Street, across the river and West on State Street to 26th Street where another driver forced him to the curb. This driver had witnessed the accident and had pursued him. The police were called and Chian was jailed.

The Milwaukee Journal had been running a series of stories on hit and run drivers and the judges had been severe in sentencing, particularly Municipal Court Judge Max Nohl. There was no defense, but in extenuation, 5 faculty member and the house mother of Chian's residence testified to his excellent behavior and how far away he was from home and, as he thought, from anyone to turn to in trouble. This theme was developed in my address to Judge Nohl and each time he seemed about ready to declare a severe sentence a change in my argument stressed first the Oriental psychology and penchant for panic and then the excellent student far from home whom all his teachers respected and sought to protect and care for, until the judge visibly softened and put Chian on probation and denied him the use of his car for a while.

Walking out of the crowded courtroom a spectator said something about a Chinaman, but this was a reversal of a China-man 's chance.

Months later gifts came to me from Java. A brass smoking set for my office and a large batik of a beautiful sacred elephant. This was hung on our living room wall for a while and then put away, but daughter Nancy begged it for the meeting hall of St. Eugene's church where it now hangs. Chian went on to the University of Goettingen to finish his education.

Other than these and a number of appointments to serve indigent accused persons, I had no criminal law practice.

A good business law practice was being established and my hopes and Mert's confidence were being realized. The case of Caveney v. Caveney, mentioned above, went nowhere in

negotiations and had to be tried. John and James Caveney, cousins, had operated a coal and building supply and material business in South Milwaukee as partners. When John died in 1914 James continued the business in partnership with John's widow, Anna Caveney, who, as housewife and mother of a large family, could not participate in services but left her husband's capital interest in the firm which, under the new agreement, was to be managed by James at the nominal salary of $1,400.00 a year plus his half share of the net profits. Over the years James sent statements to Anna which accounted for his distributions to her up to $15.00 per week in 1931 and fuel supplied to her. His nominal salary was reported but additional payments to him were stated in these accounts as part of "office payroll." The gravel business of the firm began to be supplied from pits which James had acquired in his own name, the proceeds of which he retained without reporting them in the statements.

James died in 1938. The partnership books at the time showed Anna's equity in the firm at $6,700.00 and James' equity at $8,900.00 plus a partnership note, signed by him alone, payable to himself for $16,000.00. Anna sued for an accounting. The circuit court determined that her investment was $34,700.00 and that James had overdrawn to the extent of $3,000.00. After adding interest over the years to the respective account balances the court found there was $43,500.00 due Anna Caveney.

That the court was willing to go over the accounts for such a long period of time rested on proof that a course of deception had been practiced by James. For example, the

firm bookkeeper, when questioned about stating withdrawal by James in the payroll account without disclosing it was a partner's withdrawal, had to state that this was done by James' direction.

The trial had ended in June 1939 and each side submitted requested findings of fact and conclusions of law.

15. Cancer

It was about this time that I discussed a health problem with my doctor brother. A physical examination including proctoscopy in January had been negative, but John arranged for me to be examined by Dr. A. G. Schutte who took a colon spec-r-.en which was determined to be cancerous.

John consulted our uncle. Dr. Frank Hirschboeck of Duluth, and it was recommended that I promptly go to the Mayo Clinic at Rochester, Minnesota. There the diagnosis was confirmed and at the end of June in St. Mary's Hospital there, a colostomy was opened and on July 25th Dr. Claude Dixon performed the colon resection with anastomosis.

I came home in early September but, after a few days of recuperation, succumbed to a fever of about 104° and became alarmed* John called the Clinic and was told to bring me up there at once. Uncle Walter drove us to Madison where John and I took the train to Rochester. On examining me Dr. Bargen, the internist, recommended surgery to find and cure the cause. In Dr. Dixon's absence. Dr. Gregg, the surgeon who had assisted him, believed the infection was in the outer wound, not inside the abdominal cavity. Dr. Charles Mayo (son of Dr. William Mayo) came to decide in favor of no surgery but prescribed sulfanilamide.

From September 20th to October 8th I remained in a precarious condition. I knew that my sister in far off Korea was providing a treatment in her devoted prayers for my recovery which the doctors couldn't supply. There were periods of delirium in which I imagined the most beautifully colored

lights like stained glass windows in a cathedral. There were blood transfusions; finally the fever subsided. I was no longer in danger and the success of the surgery I underwent seemed assured. I was grateful and remain grateful to my sister for her constant prayers, to my brother John for his direction for further examination leading to the discovery of what for so many had become a fatal illness, and to the Mayo doctors and the sisters of St. Mary's Hospital and for the then wonder sulfa drugs. I am happy to write these thanks for the added 40 years of my life which have been given me up to now.

I came home about October 8th for about ten days and then returned to St. Mary's Hospital where, satisfied with my recovery, I was taken to surgery for the closing of the colostomy. It was early in November that I returned home to stay.

I had many visitors during my stays at St. Mary's Hospital. My father and Mert made the trip. Poor Mert! Much more responsibility fell on her than she had ever looked forward to and soften the prospects were bleak. Art Fairchild called on me as did Ed Larkin. Our neighbors Bill and Doey McKinnon came. Bill had been at Miller, Mack & Fairchild when I was there and wondered whether he could join me in my office on my return. Governor Julius P. Heil called me by phone to offer me the chairmanship of the newly created Wisconsin Board of Tax Appeals. Everyone was optimistic about my health and my future.

At home Mert had the wonderful help of good friends like our neighbor Tess Jaekels and her daughter, Joan, who took turns

staying with her and Nancy when Mert's parents could riot. When Tess lost her husband, Ray, a year before, I had taken over his night class in Business Law which he had been, teaching at Marquette University College of Business Administration. Now when I was unable to resume in the fall of 1939 my neighbor Frank Hart took over and conducted the fall classes for me.

16. Hirschboeck & McKinnon

I kept my office open. Ed Larkin was unable to spend much time there, but Georgia Pouches, my young secretary, kept up with phone calls and my mail, sending me letters and papers which needed attention if I was able to give it. Ed Larkin had come to realize that having a Milwaukee office was impractical for him, so when I mentioned Bill McKinnon's wish to move in he was glad to make way. That is when the firm name Hirschboeck & McKinnon was adopted.

A wonderful piece of news had come when I was in the hospital fighting the fever and which bouyed me up as I was recovering. Judge Otto Breidenbach had announced his decision on October 5, 1939 in favor of Anna Cavaney and signed the proposed findings of fact and conclusions of law which I had requested. In my last stay at home before returning to the hospital I had been able to prepare the judgment which was entered October 30, 1939. This was appealed to the Wisconsin Supreme Court by the defendant where it was affirmed in a decision reported in 234 Wis. 637.

Back in my office in late November and December 1939, I found myself busy. The Caveney appeal took some time as well as other matters which I had pending. I remember going to a hearing before the Banking Commissioner in Madison to try to avoid suspension of the collection agency license of a new client referred to me by one of my finance company clients.

Michael F. Cudahy called on me and had me prepare a trust for a gift to his son, Richard. Tax matters for the Cudahys

and their Cudahy Brothers Company were cared for by Clarence Benton and Col. Penner of Reilly, Penner & Benton, accountants. When legal issues arose I was consulted. For example, whether John Cudahy, who was serving as U.S. Ambassador to Poland, was subject to Wisconsin income tax as though he were a resident of the state. At that time the statute used the words "residing in". The distinction between that and the word "domicile", which was not in the statute was the basis for claiming he was not subject to the state tax. This eventually had to be argued in the assessor's office and before the Tax Commission. The claim was upheld but the next legislature introduced the clause which is now in $71.01: "Every natural person domiciled in the state shall be deemed to be residing within the state for the purposes of determining liability for income taxes and surtaxes."

17. Thorp Finance Corporation

In 1940 and 1941 my practice was rebuilding. It was in this period that Francis Conway who headed a small finance company at Thorp, Wisconsin, needed legal help. His company, Thorp Finance Corporation, whose shareholders were local businessmen, had purchased chattel mortgages and conditional sales contracts from a rural cattle dealer named Griesemer of St. Martins to a total face amount of some $50,000.00. Attempts to collect from the debtors disclose! that other finance companies and banks in the area southwest of Milwaukee were also demanding payments of the same debtors for tile same purchases. Mr. Conway called on Victor Brown and his associate Frank Luick of Motors Acceptance Company for advice and they referred him to me. In several weeks of intensive effort in first checking chattel mortgage records in several court houses and contacting debtors on their farms and meeting with competing - banks and finance companies. Thorp was saved from this impending $50,000.00 loss.

Griesemer had the debtors sign several contracts for the same purchase on the claim he didn't know where he could sell them. He sent the contracts by mail to the several banks and companies who purchased them wit.-.cut further inquiry.

As we met with competing holders of this paper, armed with the lien record data and statements from debtors, we were able to persuade some that their paper was subject to that held by Thorp and worthless. In some cases Thorp purchased for ten cents

on the dollar the competing paper. In some cases debtors were persuaded to sign new notes to Thorp sharing part of Thorp's cost of buying the competing paper. Ultimately, with some payments from Griesemer, Thorp's paper was paid off with very little loss.

Griesemer was quite insolvent and while some of the other banks and companies complained of his use of the U.S. mails to defraud them. Thorp did not seek his prosecution. In gratitude, Griesemer in the following years called at my office a few times bringing a dozen eggs from his farm to show his appreciation, Up to the time of this Thorp clean-up of his double financing took place, Griesemer had been heavily in debt and had used the proceeds of sales of paper to cover his own debts.

From this beginning, my services to Thorp developed and continued. In expansion of its business Thorp needed the use of funds, much more than the capital provided by shareholders. Borrowing from banks in those days was helped by pledging the chattel mortgages and conditional sales contracts in trust to secure banks who would participate in loans to Thorp. Setting up such security trust was an early means employed. There were term loans from insurance companies under detailed indentures which had to be negotiated. There was the first issue of subordinated debentures sold to Aid Association for Lutherans, whose attorneys Chapman & Cutler in Chicago, refused to deal directly with the First National Bank Of Chicago, which headed the? group of banks which had granted Thorp lines of credit. The terms of the subordination of the notes to bank loans had to be negotiated by me shuttling back and forth between the

banks and their counsel and Chapman & Cutler, until by making and changing many drafts during the day a provision agreeable to both was developed. Later an issue of sub-subordinated notes called capital debentures was developed for public sale which, after difficult negotiations was approved by the Wisconsin Securities Department. Still expanding. Thorp sought further funds by, public issue preferred stock until in 1968 Thorp had stockholder equity including preferred stock of $21 million, long-term debt of $25 million and short-term debt of $69 million, total $115 million of funds with which it operated. At that stage its business was transferred to a subsidiary of International Telephone & Telegraph Company (ITT) in exchange for convertible Series K preferred stock.

This in the early 1940s was part. of my corporation law practice, I still had to go to court for finance company clients with such small cases as Magoon v. Motors Acceptance Corporation, an action for damages for alleged unlawful seizure of a financed car in which we had to appeal to the Supreme Court for our defense to prevail (238 His. 1).

For Midland Finance Company I brought a replevin action to recover possession of an automobile from Mrs. Beecher DeForest Smith who had failed to make payments. The lady appeared as her own lawyer but had to admit that she was in default. There was no other defense and the car, in the custody of the sheriff, was delivered to the Company. A short time later I was sued by Mrs. Smith, then also without an attorney. In Civil Court the Clerks served lay persons by preparing complaints and issuing summons. She charged that I had fraudulently taken her car

and misappropriated her watch and jewelry which were in the car. I had never seen the car but the finance company and sheriff officers were quick to deny the watch and jewelry claim and the judgment in the replevin action established the legality of the taking. But the irate lady did not stop there. When Mert and Nancy and I were having Thanksgiving dinner at my parent's home she came to the door and pushed her way in to tell everyone that I was a thief and that she was going to get me. I had some difficulty removing her but she had spoken irrationally enough that no explanations to my family were needed. She wrote threatening letters, describing her pearl handled revolver and vowing to put me six feet under the ground. In another letter she threatened my wife and Nancy and I had to ask the Whitefish Bay police to be watchful. I was happy that' none of this reached the newspapers.

18. John Smith

Governor Heil called me and asked me to defend John M. Smith, the state treasurer, in a mandamus proceeding brought by a highway contractor named Lathers based on a supplementary contract given him by the Highway Commission. Lathers had been low bidder but complained during progress of the work that the Commission had misrepresented the soil condition. Instead of "common excavation" he claimed a major part was "rock excavation" payable at the higher rock rate. It had been rumored that such supplements reclassifying estimates, were a frequent practice of taking care of friendly low bidders. Lathers had brought a mandamus proceeding against Fred Zimmerman the Secretary of State to compel him to issue a warrant for payment under the supplemental agreement. There had been an investigation and a demonstration in which a Heil power shovel failed to move some hard pan soil without blasting. This had satisfied Zimmerman who as Secretary of State and auditing officer signed the warrant for payment. But it had not satisfied John Smith, the treasurer, who refused payment. The writ of mandamus obtained by Lathers against Smith ordered him to pay or prove why he should not. The Attorney General declined to represent Smith. It seemed that he stood alone against all of the state capitol.

I was appointed by the Governor as special counsel for Smith. His return to the writ stated flatly that the soil in question was "common excavation" and covered by Lathers' signed original contract a specification of which included "hard pan"

as "common excavation" and that the supplement reclassifying it as rock was unlawful and void. Lathers filed a demurrer.

On a demurrer the facts stated in Smith's return were deemed to be true. According to the rules, if Lathers claimed that the excavation was in fact "rock", there was an issue of fact with the burden of proof on him. The procedure and making the contract without approval of the state engineer and the governor, as the statutes required, was also raised by Smith's return.

The Circuit Court sustained the demurrer without opinion and ordered the writ to issue. Smith still would not pay and directed me to appeal to the Supreme Court.

I received a phone call from the Secretary of State Zimmerman telling me not to appeal, insisting that he, as the auditing officer for the State, wanted his warrant obeyed. He threatened that if I went ahead with the appeal, he, as such auditing officer, would not honor my bill for services. I had not fully discussed the appeal with Smith, but this threat left me no choice, so I appealed. The whole bidding, contracting and auditing procedures were debated and on behalf of Smith it was insisted that the demurrer to his return to the writ admitted the facts he had alleged, that the excavation in question was at most "hard pan" under the contract classification of common excavation and that it was not rock. The Supreme Court held that, without additional allegation of facts showing fraud or gross mistake on the part of the Highway Commission engineer, this classification as "rock" would stand. The Supreme Court affirmed. (238 Wis. 291) The opinion also included a strained

interpretation of statutes which gave the Highway Commission almost plenary powers. The next legislature made a number of changes in these statutes, some of them to give support to what the court had stretched the statutes to mean.

Lathers, not satisfied with his victory, had included in the judgment entered in Circuit Court on return of the Supreme Court mandate to that court a personal judgment against John M. Smith for damages and costs of $463.42 to serve as a lesson to him. Ordinarily officers acting in their official capacities are not so personally liable but when Smith again appealed to the Supreme Court he was in effect told that in honoring a secretary of state warrant for payment he was performing a mere ministerial act which he was to obey without question. (242 Wis. 512).

Fred Zimmerman, pleased with the result, issued a warrant for payment of my fees and disbursements as special counsel.

This venture into law practice in Madison involving internal problems of state government, usually a field for Madison lawyers, was not very happy. But among the highway contracting industry in Wisconsin the case had been watched. Some of the leading highway contractors in the Milwaukee area began to employ me in various legal matters, only rarely involving the Highway Commission. Such firms as Paine-Dolan, Jos. D. Bonness, Inc. and Frank Mashuda were substantial clients and I was called on to address the Road Show meeting of highway contractors, not in any relation to the Lathers case, but on other legal topics of interest to them.

19. World War II

December 8, 1941 Japan attacked Pearl Harbor and law practice changed to war-time business along with all other business of the nation. Wisconsin's heavy industry converted to ordnance production as the country was rapidly armed. Contracting for vast amounts of new supplies and equipment for the military services had to be done rapidly and contractors were expected to bid on and produce products quite different from their usual lines. There was no competition from which to seek competitive bids and contractors had to protect themselves by estimating, including amounts to cover unforeseen but possible costs.

April 28, 1942 Congress enacted the first Renegotiation Act under which contractors' costs and profits were reviewed during and after production to determine amounts of profit which were excessive and required the refund of them to the government.

Army procurement from Wisconsin contractors was done principally through the Chicago Ordnance District headquarters in Chicago and a Renegotiation division was established in that office, manned by Chicago businessmen» accountants and lawyers. It was recognized early that Wisconsin industry might look on this group as a LaSalle Street crowd. To avoid this image it was decided to include some Wisconsin personnel. On the recommendation of Leon Foley of Miller, Mack & Fairchild, I was employed as a renegotiation officer. William D. Vogel was appointed as a cost analyst. Together we called on the

officers of contractors assigned to us to obtain the necessary financial data, annual reports principally, from which normal pre-war earnings were stated to compare with earnings in years of contract production. Other information as to performance, including quality, meeting delivery schedules and cooperation was obtained from procurement personnel. At meetings with our officers and the renegotiation board decisions were made to which the contractors were asked to respond usually in meetings held in the Ordnance District office. In many cases substantial refunds were requested and voluntarily made by contractors. Sometimes the process of negotiation required several meetings and sometimes in the case of unwilling contractors formal demands were made which were enforceable, if not complied with. Comparing a contractor's war-time earnings with his previous normal earnings would not always be fair. Competitors in the same industry were often studied to avoid disparity of refund demands from like contractors. Rewarding of extraordinary war production service in the form of higher profit allowances was done in some cases. To verify such extraordinary service reports and information were obtained from many sources. In one such case telephone inquiries of commanding officers of many arsenals were used. Unlike the excess profits tax which was based on statutory prescribed calculations, the determination of excess profits to be refunded under the Renegotiation Act rested in the judgment of the renegotiation officer and his superiors in the first instance and approved by the renegotiation board after the meetings with the contractor.

The need for this law became apparent when I was called to a contract awarding session in General Hammond's office. He was the Chicago Ordnance District commanding officer. There must have been fifty military and civilian officers in the big room with stenotype operators recording everything. Procurement officers' recommendations had to be brief and well prepared. Millions of dollars of contracts were awarded in minutes. My presence had been requested because an award was proposed for a contractor with whom I had renegotiated. In case that contractor's cooperation came into question I was there to report on it. It was not, so I did not have to report, but the memory of this tremendous war-time contracting remains.

My files as a renegotiation officer were restricted, but the contractors assigned to me included some of the biggest in Wisconsin industry, A. O. Smith Corporation, Briggs & Stratton, Kohler Manufacturing Co., Harley-Davidson were among them.

One not so well known was the Michael Yundt Company located in Waukesha. This was a bottle washing machine manufacturer which its manager, Ray Borchert, had converted to manufacture shells. Borchert had requested that we view the operation in the plant because of production line and heat treating facilities which he had developed. I was asked to accompany their attorney on this visit.

The attorney was Malcolm K. Whyte who called me to ask about transportation to Waukesha. Gasoline was rationed so there was little unnecessary driving. As a civilian officer of the Ordnance District I had extra gas coupons and also had the use of Army cars, one of which I engaged for this inspection

trip. I drove Mr. Whyte to the Yundt plant, made the inspection and obtained additional data which was needed.

Malcolm spoke on this trip of intending to leave the Lecher, Michael law firm of which he was a partner and asked about my office and whether I would be interested in an office sharing arrangement with him. He wanted to leave a large law firm as I had done. We had known each other as fellow lawyers for some years but seldom had dealt with each other except in a recent case before Judge Shaughnessy involving a trust for John Campbell who was Malcolm's client and who sought to have the court authorize invasion of the principal of .the trusty to only the income of which he was entitled. Malcom had not succeeded and perhaps regarded my successful defense as competent. We agreed to think about it but I told him I could not well proceed as the renegotiation officer in the Yundt matter.

I reported this episode to William Odell who was chief of the renegotiation section and asked to be replaced. He agreed to take the assignment personally and later concluded the re-negotiation with the Michael Yundt Company.

20. Whyte & Hirschboeck

Malcolm and I conferred about an office arrangement and ultimate partnership to be established after my service to Chicago Ordnance District. Bill McKinnon who was in Washington was expected to join us later, so the firm name was Whyte, Hirschboeck & McKinnon. We were able to rent adjoining space but war-time shortages and restrictions were an obstacle to any alterations or improvement of the premises. All construction and improvement in the First Wisconsin National Bank Building had stopped but I was able to get a permit for some changes urgently needed by the Bank and included some door and partition changes for our office. It was July l, 1943 that Malcolm moved in. I gave notice to the Renegotiation section that I would complete pending cases but would expect to terminate my employment by the end of the year. In the meantime we carried on separate law practices.

My compensation for my part time service in the Chicago Ordnance District was small. I was classed as a civilian employee in rank comparable to a major but the annual salary was divided by the number of hours a major was on duty in the army to obtain an hourly rate. I do not recall amounts but if a major is on duty 24 hours a day for 365 days this becomes 8,760 hours to divide into the annual pay rate. The pay was really insignificant especially after deductions for retirement fund in which I could not qualify to benefits, .1 relied on my law practice for necessary income. Travel was particularly expensive and difficult. My station was Chicago and I could

get railroad fare to Milwaukee and back but through a cumbersome requisition procedure. So I bought 10 ride fare books with my own funds so that I could spend two, sometimes three days a week in Chicago.

Malcolm and I sought to employ other lawyers; very few were available, most young lawyers being in military service. There were a few temporarily in our service like John R. Devitt and Leo Dursten. Malcolm invited Roger Minahan of Green Bay to join us and I visited Roger in his home to help him decide. He had a Green Bay practice and thought he could continue but he joined us and our firm name changed to Whyte, Hirschboeck, Minahan & McKinnon. This was about September 1943 but by the end of the year it became evident that Roger would have to enter military service and he was commissioned in the U.S. Navy and served in the Pacific.

Instead of having help for our burgeoning practice, Malcolm and I found ourselves committed to take care of Roger's Green Bay clients as well. I probated estates in Green Bay and cared for tax cases for Roger's clients.

Victor Harding had been a young lawyer in the Chicago office of Bell, Boyd & Marshall but had entered the service of the-National Labor Relations Board. He was not in military service because in a college football accident he had been injured and had his spleen removed. This absence of a spleen rejected him for Army service under the rules. Malcolm invited him to come to Milwaukee to join us. Many of our clients were becoming involved in labor disputes "for the time consuming negotiation and litigation of Which neither Malcolm nor I could

find time. Victor Harding filled this need excellently and moved into trial practice for our young firm.

War time brought new problems for clients and new clients sought our services whom we were obliged to decline to serve because of our crowded calendars. We could not cope with the demands on our time despite evening and weekend service.

Balancing the demands on my time of my renegotiation assignments and my own practice had been difficult. Some cases had to be taken to appellate courts in the 1942-43 busy period, like Wenzel v. Conrad Schmitt Studios (244 Wis. 160). I had also been retained by Marshall & Ilsley Bank as indenture trustee for bondholders in the reorganization of the Plankinton Building Company. The Plankinton Arcade, a downtown shopping center ahead of its time, had failed and was being reorganized under Section 77B of the Bankruptcy Act. This had required many court appearances and when the District Court rode rough shod over rights of some of the bondholders I was required to appeal to the Circuit Court of Appeals for the 7th Circuit to obtain a reversal (135 F.2d 273). The District Judge had owed his appointment to his support as U.S. Senator of President Roosevelt's attempt to pack the Supreme Court. He liked to boast of affirmances of his decisions. Despite this reversal he continued to boast of continuous affirmances.

My father had passed away September 27, 1941 and my brother. Doctor John Hirschboeck, moved in with us until immediately after Pearl Harbor he received his orders to proceed as a Naval Medical Reserve Officer to San Diego where he began his war service. He was transferred to Fallbrook, California

serving at a Navy munitions center. It was there that he revived his interrupted romance with Rosemary Bach and invited her to join him. They were married at the Mission of San Luis Obispo. They moved to San Diego until John was assigned to the Naval hospital on Guam where he served during most of the war. Rosemary returned to stay with her sister in Waukesha where their first child, Paula, was born.

My sister. Sister Mercy, had returned to Maryknoll after nine years of medical mission service in North Korea. She and her companion had been denied permission by the United States Department of State to return to Japan dominated Korea in the summer of 1941. Instead, the Maryknoll Sisters undertook establishment of missions in Bolivia. The United States was dependent on natural rubber and when the supply from Malaysia ceased intensive effort was begun to revive production in the Bolivian jungle. Rubber centrals were established among the Indians along the Beni River near Brazil. The native Indians, long neglected, were relied upon to collect and assemble the raw product but it was necessary to assist and direct them and to care for them in many ways. There had been no public health service. A hospital was built at Riberalta and the Maryknoll Sisters staffed it. Sister Mercy was the head medical officer. She also was in charge of public health clinics, brought to the natives at the rubber centrals along the Beni to which she traveled in an old motor boat and sometimes by canoe. She asked her friends for help in supplying medicines arid was answered by many volunteer groups who organized to help. My client Michael F. Cudahy made many purchases of much needed

drugs and Lakeside Laboratories, Mr. Whyte's client, contributed medical supplies of its manufacture.

The Germans had developed synthetic rubber, but our needs had to be filled with natural rubber obtained in this way.

There was a long period when communication from Riberalta ceased. There was a revolt in Bolivia and my sister and her companions became busy in surgery in their hospital which was soon crowded with casualties of the revolt. Sister Mercy became known as Madrecita Mercedes in her Bolivian mission area.

So my brother and my sister served our country in World War II well. Service for about a year and a half in renegotiation for recovery of excess profits was my principal service although time was given to the Selective Service board and in speaking on many occasions.

Mert and I had made an application to Catholic Social Services to adopt a child. In March 1^44, our daughter Catherine Mercy Hirschboeck (born October 14, 1942) was adopted.

21. New Associates and Partners

As the War came to an end young lawyers became freed from their military or government service. Robert P. Harland had been employed by Miller, Mack & Fairchild and I had known him as a good friend of my brother and respected his ability. I kept in contact with his mother to learn bow soon I could speak to him before or after his expected discharge from Naval Intelligence. I was able to reach him in San Diego by phone and to invite him to discuss joining our firm before his return to Miller, Mack & Fairchild. He accepted, visited us and joined us. A. William Asmuth, Jr. had served in OSS during the War and on his return accepted our invitation to join us. We expected Roger Minahan and Bill McKinnon to return and Malcolm and I could count six members for our firm. In July of 1943 we had both determined to limit the size of our firm and had said that six partners would be ideal. But we had been deluged with work and, as rapidly as the new men joined in, the work load seemed to expand. We resisted turning clients away, however, and had to employ additional lawyers as demand developed.

Early in this writing attempts were made to show how a law practice is established and how clients are attracted. Businessmen are observant and communication among them is respected. This is what I meant when I answered the question of young lawyers by telling them it was "by word of mouth." Even competitors will report to each other experience of competent legal service.

My service as an assistant city attorney was also remembered by municipal and county officers and employees who had organized a Milwaukee Government Service League. I was called upon to represent them before committees of the common council and the county board of supervisors. I was also retained to try to prevent limitation of pension plan death benefits which the legislature had enacted in 1941. The city contribution had included under the original law a "lump sum benefit of one-half the final average salary of such deceased member." The 1941 law had added "but not to exceed $1,000.00." In State of Wisconsin ex rel Arthur A. Bartelt, Administrator of the Estate of Walter C. Bartelt, Deceased v. Stormy S. Thompson et al, the Annuity and Pension Board of the Employees Retirement System of the City of Milwaukee, C. R. Dineen and I as attorneys for the petitioner had obtained a peremptory writ of mandamus in circuit court ordering payment of the full benefit of some $1,700.00 unlimited by the $1,000.00 limit provision. This was appealed by the Board and the Wisconsin Supreme Court reversed (246 Wis. 11) holding that because the original law was not expressly a contract between the City and employees the legislature could change it. An appeal to the Supreme Court of the United States was made but that court declined to assume jurisdiction. Sometimes, despite heroic efforts, lawyers cannot win. After this case amendments to municipal pension plans were proposed and some adopted including provisions that the promised benefits in cases of retirement or death of the employee were part of the contract of employment.

22. Michael and John Cudahy

John Cudahy was thrown from his horse at his Hilltop Estate and died September 3, 1943. His brother Michael and James L. Crittenden were named executors and retained me for the probate of the will and administration of the estate. The will had been drawn by Malcolm, my partner, when he was a member of the firm of Lecher, Michael, Whyte & Spohn and included a request to the executors that "if available, the services of my friend Malcolm K. Whyte" be engaged as their attorney. This had been inserted at the specific request of John Cudahy in a note to Malcolm, but Michael resented this and consulted County Judge Michael Sheridan who told him it was the executors' prerogative to employ whom they desired. This was embarrassing to the new partners, particularly when Michael proposed that I serve as the attorney without participation, financial or otherwise, by Malcolm. His opposition to Malcolm could have several explanations but it ignored the fact that John Cudahy had been close to Malcolm ever since their military service in North Russia in World War I. My other service to Michael F. Cudahy and to Cudahy Brothers Company had not been so restricted and while I performed the service my partner did share in the compensation for such other service. Malcolm agreed that I should proceed as Michael insisted. After all, it was the family of John Cudahy which was to be served.

There were many other confrontations in the administration of John Cudahy's estate. He was a participant in the 1918 Trust of Stock of the Patrick Cudahy Family Co. When

his sister, Irene Helmholz, had died it had been determined that a participant's interest was not subject to federal estate tax in Helmholz v. Helvering, 296 U.S. 93. But over the intervening years the Supreme Court had changed until in Helvering v. Hallock, 309 U.S. 106, a similar trust interest was held taxable. But that case could be distinguished. The estate tax officers also asserted a much higher value for stock in Cudahy Brothers Company than Michael Cudahy or anyone connected with the Company would concede. After extended negotiations a lower value was proposed which I thought realistic, though Michael did not. To settle the issues it was proposed that the government give up its attempt to tax the 1918 trust interest and the estate concede the compromised value. Michael refused, but rather than extend litigation at the expense of and possible detriment of the estate he resigned as co-executor. The settlement was concluded.

There was a federal income tax case tried in the U.S. District Court. There was a Wisconsin inheritance tax dispute which was ultimately compromised. A confrontation with the Trustee of the 1918 Trust, First Wisconsin Trust Company, could not be compromised.

The 1918 Trust agreement included a provision that death taxes on the passing of the interest of any participant should be paid by the Trustee, thus requiring the interests of all participants to share in the payment. Unlike the federal estate tax, the Wisconsin inheritance tax had been assessed according to precedents clearly requiring it and when the John Cudahy Estate requested the Trustee to pay the Wisconsin

tax as it had in the cases of prior deceased participants, it refused, asserting a contrary interpretation and contending that the John Cudahy will provision requiring the payment of debts and taxes was, in effect, a gift, relieving the other

participants from contribution. The County Court sustained the trust and the estate appealed to the Wisconsin Supreme Court where the decision was reversed and the 1918 Trust was required to pay the Wisconsin tax on John Cudahy's interest in the Trust (251 Wis. 116).

I was elected to the Board of Directors of Cudahy Brothers Company and served as a director of several of its subsidiaries and also on the board of the Patrick and Anna M. Cudahy Fund, a charitable foundation.

About 1945 Roger Minahan had returned but Bill McKinnon told us not to expect his return to participate in the firm, so the name was changed to Whyte, Hirschboeck & Minahan.

23. Milwaukee Bar Association

I had bee.-, active in Milwaukee Bar Association work including service on the Grievance Committee and one day found myself nominated and in due course elected president in June, 1945. A full one-third of my time had to be devoted to this job. The returning veterans who were lawyers were to be specially served. Review courses and seminars were conducted for them to ease their way back into civilian practice. Public meetings were held addressed by speakers of prominence such as Senator Ball and Joseph Padway on the developments in labor law. A seminar on criminal law procedure included a speaker who spoke unkindly of tactics of the police department and this became a field day for the fomenters of public discord, the press. The lawyers were pitted against the police in headlines and pages of stories which were repeated by the radio news people. I had appointed a public relations committee when my term began but lawyers have been and are quite inept against the writers and their friendly editors. The lawyers' version or position seldom comes through in the publication.

To aid young lawyers a.-.d particularly those just returned from military service we visited the judges and suggested the appointment to serve for indigent accused be made .sp that, the stipend payable for such service from the County could be a source of income to them. We asked the County judges to keep them in mind when appointing guardians ad litem to serve in probate matters. We were told off in a hurry by one of the judges who asked where we, of the bar association, were at

at election time and that such appointments were none of our business and that he would continue to remember those who helped the judges.

Many problems of reform and some cases of unprofessional conduct by lawyers took a lot of time, but I was happy to have been able to render the service.

Mert and I had managed to get a few weeks vacation each summer, -usually at Trout Lake, in Vilas County. Clarence and Peggy Rasmussen had purchased the Gund estate property on Trout Lake and Peggy undertook to operate it as a resort under the name Red Bow, while Clarence continued as director of his Red Arrow Camp for boys. Vacations were spent there several summers. Nancy reached the age where she could enjoy a girls' camp and she attended We-ha-kee in Green Bay near Marinette.

Louise Lemp Pabst had painted a portrait of Margaret (Muggsy) Rasmussen and we commissioned her for a portrait of our two daughters. This has had a principal place in our living room ever since. Edwin and Louise Pabst began to employ my service as attorney. I continued to serve them until they passed away in 1977 and am still engaged in distribution of their estates.

Malcolm and I each had our own clientele for which we were responsible and while we consulted each other freely and cooperated in administration of the firm our practices were quite independent and each seemed to be increasing continually. We were able to delegate work to our able and growing group of associates.

24. Miller Brewing Company

Fred Miller, whose family controlled 34% of Miller Brewing Company, had, after long waiting, persuaded his Aunt Elise John and her daughter, Lorraine, who controlled a like percent, to let him run the Brewery as president. Recovery of breweries after repeal of prohibition had varied. Miller was struggling as a regional brewery but under Fred's management it began to grow rapidly. Miller Beer was sold in clear bottles with foil labels in white and gold. Other brewers used brown bottles. The success of the Miller package inspired a competitor, Blatz, to initiate it. Blatz introduced its new package, a clear glass bottle with foil labels predominantly white and gold in markets away from Wisconsin. The value of the Miller package was being diluted. Art Morsel, patent and trademark counsel, had advised Fred to seek legal protection, not on the basis of trademark infringement, but as common law unfair competition. For this Morsel advised employment of other attorneys and Fred sought my help. An action was brought in circuit court in Milwaukee but the evidence of the unfair competition was in far away parts of the United States--in Washington D.C., in the South and out West. The brewery owned and operated its own plane and our partner. Vie Harding, and Art Morsel were sent on trips all over the country to investigate reported instances and take depositions. Miller distributors had reported that in many bars, which had been liberally supplied by Blatz, patrons' requests for Miller or Miller Highlife were met with look alike bottles of Blatz. The court determined

this was unfair competition and issued an injunction restraining and ordering the destruction of some quarter or a million dollars of labels. Miller could not prove loss of profits because this was in the greatest growth of the brewery and it could not gain by demanding accounting by Blatz of ill gotten profits for there were none. There was no substantial money judgment.

A memo from an officer of the parent corporation of Blatz to the label manufacturer was sort of “smoking gun" evidence in this case, discovered by Vic Harding. In it the officer had commented that the label design was "too close" to the model, but the Blatz officers had gone ahead with it despite this warning. It took a summons and complaint charging the label manufacturer with complicity in the unfair competition, demanding damages, to get the files produced for examination. For this the Blatz president called us "porch climbers."

This case began a period of service as attorney for the brewery and Fred's branch of the Miller family. This service later extended to other branches of the family as well.

Hostile divisions among the relatives who owned the stock of Miller Brewing Company were exploited in 1947 by Michael Stoiber, an ambitious advisor to Fred's elderly aunt, Elise John, and her daughter, Lorraine. His domination of a majority interest had to be appeased for Fred to continue as president and get on with the expansion of the business. A deal was made to keep Stoiber, Fred and Lorraine's attorney, Norman Klug, in

office as executive managers for ten years. But this uneasy triumvirate soon became impossible and Fred and Klug (with the support of Lorraine) discharged Stoiber after a year and a half of service. At the next shareholder meeting the ten year contract was avoided by shareholder vote on my advice and Stoiber sued for the remaining 8-1/2 years salary and damages. The Circuit Court dismissed the action but the Supreme Court on appeal awarded Stoiber up to the time his discharge by the board of directors was ratified by the shareholders (some 3 months). The ten year contract was held voidable because originally made by reciprocal votes of interested directors. It was held avoided by the shareholder action (257 Wis. 13). The exclusion of Stoiber left Fred and his cousin Lorraine and her lawyer, Norman Klug, to function. My service included the liquidation of the large real estate holdings of the Millers in the Oriental Realty Company and in the administration of estates of Fred, his mother and his Aunt Elise John. The day came in 1962 after the tragic death of Fred and the death of his mother when the other family members sold out their interests to the brewery leaving it owned by Lorraine Mulberger and de Rance' Inc., the charitable foundation founded by her brother, Harry John, to which he had contributed his brewery stock. Lorraine later sold her stock (then 54%) to the W.R. Grace & Co. who sold it to Philip Morris. Finally, we served as attorneys for Harry's de Rance' Inc. in the ultimate sale of the remaining 46% interest to Philip Morris.

25. Welfare Committee and the 1950's

Our law firm continued to grow in the 1950s-and I had served as president of the Milwaukee Bar Association Foundation for many years and in 1950-1951 I was called upon by the Milwaukee Community Welfare Council to head a committee to investigate administration of public relief in the county. The committee did a careful study; found no corruption but made some recommendations. What the committee found was a service run by social workers whose viewpoint was often quire different from that of the taxpayer. I remember the shock expressed by some of the workers when I mentioned the criminal offense of vagrancy still on the statute books. At that time "All persons who, not having visible means to maintain themselves, live without employment" were subject to prosecution (§348.351 Wis. Stats 1949). This has been changed to read "A person, with physical ability to work, who .is without lawful means of support and does not seek employment" (§947.02(1) Wis. Stats. 1977). There seemed to be a policy in dealing with relief applicants to accept their statements of eligibility at face value. Investigation or checking or even simple inquiries seemed not required. One response was that "everyone is presumed innocent until proven guilty." This was a misapplication of the constitutional protection of one accused of crime. No one was accusing the applicant It was he who was asserting his eligibility for relief. At a committee meeting I referred to this as an "attitude of

gullibility" on the part of the relief administrators. This is what the press had been waiting for and my accusation of “gullibility" made a front page headline. I felt sorry for the consequent abuse heaped upon the administrators.

The American Telephone & Telegraph Company, Long Lines Division, operated interstate telephone service by furnishing the lines and circuits to which the local companies connected for long distance telephone service beyond the state lines. As such it was a telephone company required to pay a license fee in lieu of property taxes measured by its business within Wisconsin. A computation of air line miles via points of transfer was made to report Wisconsin mileage to be compared with total mileage of a long distance call to determine the Wisconsin portion of toll subject to license fees. Auditors of the Wisconsin Tax Commission who had served in the telephone company income tax cases in the 1930s had developed a new theory of apportioning the toll and the Commission started an action against the Company covering ten years of alleged deficiency of license fees demanding some $2,600,000. Long Lines counsel who had worked with me when I was with Miller, Mack & Fairchild trying income tax cases now sought my help. I was retained for the defense of the action. Legal issues of limitations and interpretation of statutes were involved but the major problem was accounting. From the long-distance telephone toll charged and collected by an originating tele-phone company had to be deducted the taxes and originating commissions to reach the net toll before a Wisconsin mileage percentage could be applied. How many millions of separate

tolls were involved over the years I do not recall but the Tax Commission demanded of the Company thousands of intercompany settlement statements and other detail as well as investigation of cases of long distance calls between points outside Wisconsin which passed through a point of transfer in Wisconsin and calls between two Wisconsin stations which passed through points of transfer out of the state. After many months and continuing requests for studies the Company found it had spent over $75,000 in accounting time. Nothing had been developed to indicate deficiencies anywhere near as large as demanded but the state officers having made the large public demand found it hard to back away. When I finally found state officers amenable to discussion various possibilities of compromise were explored. The Company, anxious to stop the mounting expense and to a-.-cid expense of trial of such a case, approved my efforts and proposed a basis for compromise which was finally accepted to end the litigation.

I made a visit to the Long Lines offices in New York. This was about Easter time and I took Mert and the girls along. We stayed in the Waldorf Astoria and did some sight seeing and watched the Easter Parade. We went on to Washington and toured the important places.

Our finance company clientele was being served by several of my partners and several associates but I had been called on in some major matters such as General Motors Acceptance Corp. v. Commissioner of Banks in which I filed a brief on behalf of the independent Wisconsin companies to support the rules of the Commissioner limiting dealer participation. The rule was

sustained (258 Wis. 56 and 64a). The United States Supreme Court declined to hear the plaintiff's appeal.

Governor Reynolds appointed me as a member of a committee on installment sales, loans and revolving credit. This was in a period in which department stores were introducing revolving credit plans under which as much as 18% per annum interest was being charged on unpaid balances. The Wisconsin statutory limit was 12%. The committee included state officers, bankers, labor organization representatives and law school professors. Many consumer protection proposals were made at a time long antedating the wave of consumer protection laws which were enacted by Congress. Meetings were held in Madison, Sheboygan and Milwaukee and consumed much time without resulting in a report to which, all could agree. But it helped in the shaping of subsequent state legislation.

Years later the department stores' contention that their revolving credit plans were sales at time prices and that the time price excess over the cash price was not interest, was turned down by the Wisconsin Supreme Court in State v. J. C. Penney Co., 48 Wis. 2d 125. While our firm did not appear as attorneys in this case I was consulted by the Commissioner of Banking for my background and knowledge of the development and permissible application of the so-called time-price differential doctrine as an exception to usury laws.

Clients sometimes faced 'income tax problems and I had numerous cases involving Wisconsin income tax. One 'pair of cases involved Michael F. Cudahy in one case and members of the A. 0. Smith family represented by other attorneys in

another, both against- the Department of Taxation. They involved questions of corporation domicile and situs for taxation of income from intangibles as previously treated in some noted decisions by the Supreme Court. The Department of Taxation prevailed (261 Wis. 126).

I had retained the respect and good will of the senior partners of my former employer Miller, Mack & Fairchild and in one matter in which Arthur Fairchild was involved as executor of the estate of Madeline Smith, widow of Clement Smith, I was asked to represent him. Nieces of Clement had claimed that he and his wife Madeline had made a contract under which Madeline was bound to bequeath to the nieces half of the estate Clement had left her. There had been so contract, but the claimants sought to prove from contemporaneous wills of husband and wife and from contemporaneous documents and by cross-examination of Mr. Fairchild as the draftsman of the wills that there was an agreement. Such cross-examination of the attorney and demands that. be produce contemporaneous documents raised the question of privileged communications to the attorney. The trial court held that Mr. Fairchild was not required to produce former wills nor to answer questions as to their contents, but that he could answer whether or not he had been named executor in them. The Supreme Court reversed the latter and affirmed the ruling that all former wills and their contents were privileged (Estate of Smith, 263 Wis. 441).

On April 24, 1951 I was the principal speaker at the Marquette University Law School Banquet. For this address I did some research and pointed out the participation of lawyers

in the development and growth of our country. I discussed the nature of the lawyers' function and participation in society. The title was: "Lets Let the Lawyers Live," in answer to the revolutionary cries against lawyers such as Shakespeare put into the mouth of Cade the rebel in Henry VI (Second part, Act IV, Scene II): "The first thing we do, lets kill all the lawyers!" This address was published in full in 35 Marquette Law Review 99 (Fall 1951).

Our law firm was growing; John Palmer and Martin Browning had come in 1949. We had employed Charles Prieve who had served as clerk to one of the U.S. Board of Tax Appeals judges to assist us in tax cases, but he left in 1950 and I invited Richard Greene who had served as an Internal Revenue Bureau attorney as Assistant Counsel in the Chicago Division, to visit us. Malcolm and my other partners liked him and we offered him a position as partner. Harold Thomson, who had been an associate of Cleary, Gottlieb, Friendly and Hamilton in New York, became an associate of the firm in 1951. These were men of great help in taking care of our growing practice and allowed more time for well earned vacations.

Mert and the girls and I visited the Rasmussens in La Jolla, California for one spring vacation and went with them to Palm Springs for several weeks in the old Oasis Hotel of Frank Lloyd Wright design. Our summer vacations were spent on Trout Lake, Wisconsin at Coon's Camp Franklin in the earlier years and later at Cardinal's Manitowish Lodge. Cathy also attended summer camp at We-Ha-Kee where Nancy had become one of the senior girls.

My business law practice included constant service to

Victor Brown's finance companies, to Thorp Finance Corporation, to Cudahy Brothers Co. and Miller Brewing Company as well as others. This was not spectacular service but included acquisitions through merger and otherwise and recapitalizations and planning including formation of foundations. Few tax issues arose because of careful planning but any which did arise were usually settled without litigation.

But a matter of unusual interest would sometimes engage my interest. George Uihlein died in May 1950. He was a member of the Uihlein family which owned the Schlitz Brewing Company. He left a will with generous trust provisions for his widow and since he was childless the residue of his estate was in trust for his widow's lifetime with remainder to his brother, sisters and nephews and nieces. The widow had rejected the trust provisions for her and elected to take her statutory one-third of the net estate including stock in Schlitz Brewing Company. This changed the plan of George's will and adult sisters were willing to consider all trusts terminated and to share the other two-thirds. I was appointed by County Judge Sheridan to serve as guardian ad litem for some 29 minors who under the will would share the trust remainders on the death of the widow. It would be in their interest to have the trusts continue for the widow's life with principal conserved for them rather than being consumed by their elders. But a major issue was also the burden of the federal estate tax. The estate was appraised at some $7,000,000, with federal estate tax of some $2,500,000. Was the widow's share one-third of

the $7,000,000 equal to $2,333,333, or one-third of $4,500,000 ($7,000,000 minus tax $2,500,000) equal to only $1,500,000. The county court awarded the widow the higher amount leaving the burden of the tax on the residue and held that the trusts be established and maintained through the lifetime of the widow. This was based on the power given by the Will to the widow, by her will, to appoint different shares among the remaindermen and nephews and nieces. It had been contended that the widow's election not to take under the will was also a rejection or disclaimer of this power of appointment. But since a class of appointees had been designated it was held to be a power in trust which such election did not reject. It was not a benefit to the widow but a function the testator expected her to perform in the final selection of distributees of the estate. On appeal to the Supreme Court the latter holding was affirmed but the Supreme Court reversed the decision as to the burden of the estate tax and held that, even though federal estate tax law allowed a marital deduction for the widow's share, thus freeing the amount of it from tax, the tax remained a burden of the estate which must be deducted to determine the "net" estate in which the widow shared (264 Wis. 36). I was awarded a guardian ad litem fee of $20,000 from the estate which was a record fee in those days.

Probate practice became an increasing part of my work. The untimely death of Fred Miller and his son Fred Jr. in an airplane crash, followed in a year by the death of Fred's mother Clara Miller, not only took major service in the probate field but profoundly affected the branch of the Miller family

in its stock interest in the Miller Brewing Company. I represented that branch of the family on the Board of Directors for several years until the management clumsily failed in an attempt to acquire a brewery in San Francisco. This left everyone unhappy, but, without that purchase the Company had some $14,000,000 of surplus cash. This presented an opportunity for Fred's sisters and his family to liquidate their brewery stock. They sold out to the corporation and received the proceeds which they were free to use for their own investments.

During the 1950s my sister. Sister Mercy, had returned from Bolivia and had been assigned with two other Maryknoll Sisters to return to Korea. Gen. Douglas MacArthur had given permission for them to establish medical facilities at Pusan for the care of the millions of refugees from North Korea. Among the refugees were some twenty Korean sisters whom they had trained at the earlier mission in Pyeng Yang and Shin Gishu in the North and a dispensary was opened in March 1950 in Pusan and building of a hospital was begun. The first month there were 2,212 patients cared for. By November the crowds had reached to 2,000 patients cared for per day. This tremendous relief effort was aided by many. Cardinal Spellman of New York gave the sisters $10,000 to start the hospital. This was a gift from the Knights of Malta. In June 1952 Sister Mercy was given an honorary degree by Marquette University.

My younger partners and associates were quite able to serve my clients without too much supervision by me. Robert Harland assumed responsibilities and soon acquired business clients of his own. Harold Thomson took over most of the

work for Thorp Finance Corporation and that in turn led him to work for other similar companies and included establishment of insurance companies for them. Dick Buellesbach and Ralph Schulz became associates and in due course partners. Reginald Nelson and Bob LeMense joined us as did Bob Abendroth and Walter Rynkiewicz. Each year added new associates and partners; Dick Sell, John P. Miller, John B. Haydon. Al Heon, Rick Ninneman, Paul A. Pakalski and Fred Wiviott. Their services were much needed. The day came when Bob Harland, who had attained a substantial personal clientele and had been very profitably serving firm clients, asked to have his name included in the firm name. The response-was inclusion of Vie Harding, his senior, along with him to make the name Whyte, Hirschboeck, Minahan, Harding-and Harland.

26. Some Vacations

With such assured care of our clients there was some time for participating in community and educational service and also to vacation with my family. The month of March began to be set aside for trips usually to Florida, first by train, then by plane and most frequently by car. We stayed at the Anchorage at Nokomis on the Gulf coast one year and from there found houses to rent on Casey's Key. Our hosts for summer vacations on Trout Lake, Wisconsin, the Coon's and the Cardinals, had each bought property in Florida for winter resorts for their summer guests. It was the Coons* Anchorage at which we started and Cardinals had Villa Nakooomis where we often dined.

Our daughters came with us in the early years and our friends, Paul and Grace Hultkrans and their daughter Sally, often stayed nearby. Except for one March on the east coast down on Key Biscayne all these Florida vacations were on the Gulf, moving south year by year as the beaches became more congested and high rise apartments were built, first to Manasota Key and its Beach Club, then to Fort Meyers Beach, then on to Vanderbilt Beach and Naples. We kept up our summer vacations, usually two weeks on Trout Lake. In early years the Rasmussens came at the same time, then the Hultkrans and sometimes the Christensens. Fishing in the north Wisconsin lakes and in the Florida bays and the Gulf were the principal sport which I gave much time to, but I took cameras along and have albums of pictures and reels of movies with which to re-vive pleasant memories.

There were some stag fishing trips to Teal Lake with Frank Hart and up into Canada at Minaki on the Winnipeg River. On this trip I was a guest of Francis Conway of Thorp Finance Corporation. There was also a pheasant hunt in South Dakota one fall with a group including George Hormuth, Paul Boemer, John Monroe and others. Paul Hultkrans and I had a memorable fishing vacation at Craig Lake and nearby lakes in the Upper Michigan properties of Carl Miller Lumber Company.

Our daughter. Nancy, had completed her education at Marquette University and had been certified and was practicing as a physical therapist. Michael T. Jaekels, son of our former neighbors Ray and Tess Jaekels, a young doctor of medicine, resident in Obstetrics at Lewis Memorial Hospital in Chicago, and Nancy were married in St. Monica's Church June 13, 1959 and started their wedded life in Park Forest, Illinois.

27. Dominican High School and St. Monica Church

I served on a committee of the pastors and a few members of St. Robert's Church in Shorewood and St. Monica's in Whitefish Bay to plan for Catholic secondary education on the North Shore of Milwaukee. Because of the lack of a Catholic high school in the area we had sent our daughter Nancy to Milwaukee Downer Seminary. Monsignor Reilly of St. Robert's had established a fund from donations for this purpose and St. Monica's had land two blocks long and a block wide, west of its church and parochial school property. This land had early been acquired when Father Dietz was pastor and he envisioned it as a site for a school. In his early plans he considered an arts and crafts school. His long association as a Labor Priest with craft unions made this appeal to him. But in the 1950's the North Shore suburbs had a white collar population and the committee approached the Dominican Sisters of Sinsinawa, Wisconsin, who conducted high schools and colleges in many places, and invited them to take on the job. With St. Robert's fund, St. Monica's land and added subscriptions the Dominican Sisters assumed the responsibility for building Dominican High School. In appreciation for my service our daughter, Cathy, became the first student registered.

There had been one obstacle to building the high school on St. Monica's land. In the intervening years since its acquisition zoning ordinances of Whitefish Bay had zoned it for residential use. To change it back to institutional use required a three-fourths vote of the Village Board. I had

negotiated deed restrictions to limit use satisfactory to the Village officers but at public hearings considerable opposition was expressed. The first vote was insufficient but on re-consideration at a later meeting the required number of Board members approved the change.

I also served on the building committee for erection of St. Monica's church under Msgr. John J. Barry. The former pastor. Father Peter Dietz, had laid the foundation for a large building and services had been conducted in the basement structure since his death. But, although alternate plans for a small super-structure were considered, I was able to participate in bringing the original plan for a large church to completion. Two of the stained glass windows in the church were designed by me and executed by the Conrad Schmitt Studios managed by my friend, Bernard O. Gruenke. These were the rose window of the litany of the Blessed Virgin and the large St. Monica window in the north wall of the transept, picturing events in the lives of St. Monica and her son, St. Augustine.

28. The 1960's

I was appointed by the governor to a committee headed by Harry Meissner on the "Klein Report." This was a report by am educator employed for a survey to locate and build a branch of the University of Wisconsin in the Southeast area of the State. The report had envisioned an all new campus of some 160 acres outside of the urban centers without much consideration of the cost of such a project. The population curve was yearly swelling with college age youth who would have no place to go. But the committee considered the existing facilities of the downtown Milwaukee Extension Division of the University of Wisconsin and the large campus of the State Teachers College in Milwaukee's Northeast side as suitable for use and expansion. The downtown facilities could well be expanded through an area of substandard dwellings which were being razed and both sites were more accessible than a new campus out in the country. Harry Meissner died before completion of the study and it fell to Joseph Heil and me to carry it to completion. The University of Wisconsin, Milwaukee is the result.

In 1962 our law firm had pretty well outgrown available space in the old First Wisconsin National Bank Building. The Marine National Exchange S^.-.-: had courageously gone ahead with plans for the first major office building in downtown Milwaukee since the depression years. A 22 story new bank building for a block from Wisconsin Avenue South between North Water Street and the River, with a full block of parking structure to the

South was being built. Elliott Fitch, chairman and president of the Bank and a friend and client of my partner, Malcolm, invited us to be tenants. We rented the entire 21st floor and moved in July 1, 1962. Fred Muth, a senior law student employed as a summer clerk, was given charge of the logistics of the move and performed excellently. He became an associate after admission to the Bar and in due tine a partner on whom the firm came to rely in many matters of administration

A year later the firm celebrated its 20th anniversary at a dinner honoring its founders, Malcolm and me. They presented each of us with an Atmos clock suitably engraved to commemorate the occasion.

Some of my clients were growing older and planning their estates. Cudahy Brothers Company, which had been renamed Patrick Cudahy Inc., recapitalized much in the manner of the Ford Motor Company with most of the equity in nonvoting stock which was donated or bequeathed to a private foundation, in this case The Patrick and Anna M. Cudahy Fund, one of the larger charitable foundations in Milwaukee. Through this Mr. Cudahy was able generously to support educational and religious institutions such as Marquette University and the Maryknoll Sisters of St. Dominic. Education of Sisters as doctors of medicine for medical service in the order's missions was one of the projects funded by The Patrick and Anna M. Cudahy Fund.

Victor Brown's privately held finance companies were very successful, but there was no one in his family to carry them on. Pacific Finance Corp. issued stock which it exchanged with Mr. Brown for his stock in his companies. This was

accomplished without recognition of gain for income tax and provided Mr. Brown with a liquid estate of stock listed on the New York Stock Exchange. Mr. Brown was in his eighties and when in a year or so he passed away and soon thereafter his wife died, the transmission of his estate to his daughters and their issue was readily accomplished.

The day came when Michael F. Cudahy had to assume leadership in the affairs of the Patrick Cudahy Family Company, the family's real estate holding and management enterprise, from management of which his sisters had years previously excluded him. Patrick Cudahy, the family founder, had in 1918 set up the corporation and established a trust to hold its stock which he had given to his wife and children who became trust settlors and beneficiaries. I had been serving as a director of Patrick Cudahy Inc., the packing company, and its subsidiaries and now went on the Board of Directors of The Family Company.

As the children began to pass away, they were succeeded as beneficiaries of the trust by their issue (or other settlors or their issue if they died without issue) expect for beneficiaries whom a settlor had appointed for life, under a power of appointment reserved to each settlor in the 1918 trust.

Josephine Cudahy Hoyt, the last of the settlors except Michael F. Cudahy, passed away. She was a widow and had no children but in her will had appointed her beneficial interest to Helen Bischoff, her friend and companion, for life. But in making the appointment she had apparently forgotten that in 1944, she along with other settlors, had executed a partial waiver of her power of appointment releasing her power to appoint such a life beneficiary.

The courts held that, having in 1944 surrendered her power to appoint a life beneficiary, her later will appointing Helen Bischoff was of no effect under the trust agreement, and that, by that agreement, the Josephine Hoyt share was to be-divided and added to the shares of other settlors and their issue. That litigation went on for years (22 Wis. 2d 198, 22 Wis. 2d 200, 26 Wis. 2d 153, 30 Wis. 2d 583.)

While I did not participate as attorney, Michael F. Cudahy wanted to be kept informed so that I assembled briefs from all parties for that purpose.

In this period he had finally persuaded his son, Richard, to leave the practice of law in Chicago and to assume the operation of Patrick Cudahy Inc. At first this extended only to Richard's being able to employ management but later he personally assumed charge. He operated the company with considerable success, but his interest did not lie in a career as a meat packer. Michael, in this period, made very substantial gifts in trusts for Richard and his children; but Richard looked forward to ultimate sale of the packing plant and persuaded Michael to seek a buyer. It was several years before any prospect was found which will be Mentioned later.

In the 1960s and early 70s I chaired a committee to foster contributions by gift and bequest to Marquette University. In addition to publications sent to alumni and other friends of the University, seminars in Estate Planning were conducted in various localities in Wisconsin. These served to acquaint the invited public with the University and practical ways of contributing to its financial support. In 1968 I received a Distinguished Service Award and in 1972 an Alumni Service Award from the University.

Thorp Finance Corporation had been prospering. Like other finance and loan companies it had organized its own insurance companies and offered to its borrowers and installment buyers credit life insurance which would pay up their loans and installment debts in case of death. The premiums were small but the large number of them through the company's chain of offices, numbering over 35, produced a large income for the insurance subsidiary. Income of such life insurance companies was taxed less heavily than regular corporation rates because of amounts of reserves set aside from the premiums and other more favorable accounting. This was regarded as tax evasion or a loophole by aggressive Internal Revenue officers one of whom issued a bulletin to launch an attack on all finance companies operating insurance companies.

This developed into a major tax case against Thorp and the case also included assertion that reserves for bad debts set aside from income annually were too large and should be taxed.

Dick Greene, our tax partner in our firm, had withdrawn from the firm so that I had to assume charge of this major case which was pending in the U.S. Tax Court. At this time acquisition of Thorp Finance Corporation was being sought by other corporations. There had been proposals from CIT Financial and negotiations were begun with ethers and finally with International Telephone & Telegraph Co. (ITT).

My experience in probate and property law and my seniority was recognized in my selection by several law firms ranged on the same side of major issues in Will of Wehr, 36 Wis. 2d 154.

I was asked to make the principal argument in this very complex case in the Wisconsin Supreme Court. Eight law firms, including the largest in Milwaukee, were retained by the several claimants to the fortune which William Wehr had failed to dispose of by his Will. The report of the decision in 36 Wis. 2d includes a large chart of the Wehr kinship and claimants. The court sustained our contention that the unwilled estate passed to the estates of decedent's deceased sister and three brothers including the C. Fredric Wehr's estate. The latter included the Todd We.-.r Foundation which was thus augmented for the good of many charities which benefited from it; one of these was Marquette University.

29. Malcolm Whyte Deceased

In October 1967 my partner, Malcolm K. Whyte, became ill and on November 9, 1967 he passed away. In October 1966 the firm had celebrated his 75th birthday at a formal dinner. I was the principal speaker on that occasion and recounted in addition to vital statistics, education, army service and the like, the principal events of his legal career, the firms he had been associated with and major litigation in which he had participated. He had great, love and zest for the profession, great courage, resourcefulness and persistence in meeting challenges. He had devoted mulch time and expert effort in civic and educational causes. Be was a principal in promotion of the Elvehjem Art Center at the University of Wisconsin and of the Layton School of Arts and for the new school building on Prospect Avenue of Frank Lloyd Wright Institute design. It almost broke his heart when expressway planners routed the Park freeway right through the building so that it was torn down so soon. Be had valiantly fought to stop this freeway. It was never built, although the school fell as a victim to it.

The firm had been solidly built and the surviving partners carried on. I was then 69 years of ago but had the active support from my partners in administration. I relied heavily on Roger Minahan and Robert Bar land and sought to maintain harmony, but the large number of now middle age partners were ready for more democratic participation. There was also a strong move to incorporate the firm as a professional service corporation. Vie Harding had been promoting this for years to

avail the partners of pension and profit sharing plans of the kind which we wrote for our corporate clients. Such plans were not suitable for a partnership, so the firm was incorporated in June 1968 and a pension plan was adopted. The management which had been left to an executive committee of seniors over the years was challenged a year later at a meeting of shareholders and management powers were given to a large board of directors of eleven members. The democrats seemed to have prevailed but despite it the management, to be efficient, had to be in fewer hands and continued to be.

I had reached 70 years of age and was elected Chairman of the Board of Directors and Robert P. Harland was elected President.

After my service on the Community Fund Committee to investigate public relief in Milwaukee I was asked to submit biographical data for Who's Who in America. I was not very active in bar associations since my service as president of the Milwaukee Bar Association Foundation, but in 1965 I had been nominated and was elected to membership in the American Law Institute which was organized in 1926 to promote clarification and simplification of the law. It is composed of the justices of the United States Supreme Court, the chief justice of the highest court in each state, the presidents of bar associations, deans of law schools and 1,500 elected members of the bar from all parts of the country. Its principal project has been the Restatement of the Law. Annual meetings in May of each year and study of volumes of temporary drafts of the Restatements were included on my calendar since my election.

One March vacation which Mert and I took was planned for Dauphin Island in the Gulf below Mobile. We ran into a period of dismal weather and had toured the area enjoying such French oystering villages as Bayou La Battre. After a few weeks we drove west through New Orleans and the Bayou Country of Southwestern Louisiana and on to Galveston and Texas City. At the Holiday Inn there I received a long distance call which lasted hours. Harry John, head of de Rance' Inc., holder of a large minority of Miller Brewing Company stock, had refused to participate in his sister's sale of the majority to W. R. Grace and Company. I had served other branches of the Miller family often in opposition or disregard of Harry and his foundation but I gave him the best advise I could in that phone consultation. He had other attorneys and one able attorney served on the board of his foundation, but he began to consult me from this time in many matters.

Our daughter, Cathy, graduated from Edgewood College in 1964 and was married to Roland P. Paluczak, a University of Wisconsin graduate, an Evans Scholar, who had majored in accounting. The wedding ceremony on June 27, 1964 at St. Monica's in Whitefish Bay was followed by a reception at the Ozaukee Country Club. The young couple departed for Rochester, New York where Rollie took up his work for Eastman Kodak Company and Cathy passed the New York State requirements for a teacher's certificate and began teaching in the schools of Rochester. Their first child was born in Rochester and then Rollie was assigned to Whittier California. They bought a lovely house in La Habra and Mert and I took a train trip to Pomona to visit

them in time for the arrival of Karen, their second child. Mert and I drove to Palm Springs for a week before we returned to Milwaukee.

A few years later Rollie and Cathy had moved to Shreveport, Louisiana where their new home became his base for calling on Kodak distributors and sales outlets in a large territory. We drove to Shreveport to visit them in the spring and continued on to Brownsville, Texas and on South Padre Island for a spring vacation. At that time South Padre Island had very few motels and places to rent and was recovering from the devastating winds and tides of hurricane Beulah, but we found comfortable accommodations and enjoyed our stay. One day I had a phone call from Richard Cudahy, this was in March of 1970. All efforts to sell Patrick Cudahy Inc. had failed and Michael Cudahy had taken ill. Out of the blue a prospective buyer had appeared. Bluebird Packing Company of Philadelphia had been expanding vest and had bought a plant in Chicago which it was hindered from operating because of its inadequate facilities. It desperately needed a nearby plant to operate and offered a favorable price. As a member of the Board of Patrick Cudahy, Inc. I was now asked for my approval of the sale which I granted.

On May 20, 1970 Michael F. Cudahy died. I had served him as attorney for many years. Mert and I rode to the cemetery in a limousine with Felix de Weldon the sculptor (famed for his Raising the Flag on Iwo Jima) who had been commissioned for the nine foot figure of Patrick Cudahy in bronze erected in a park in Cudahy. This had been one of Michael's projects to

honor his father, the founder of the City of Cudahy. Another project was the fountain in Water Tower Park. Before old Patrick had become a packer he had been a stone mason and as an immigrant from Ireland had practiced that trade in Milwaukee. One project he had labored on was the Water Tower and Michael dedicated the fountain to his father's memory.

The probate of Michael F. Cudahy's will, administration of his estate, and carrying out his estate plan became a time absorbing task which his son, Richard, left to me although he had assumed practice of law in Milwaukee associated with other attorneys.

The controlling stock of Miller Brewing Company which had been sold to W. R. Grace & Co. had been for sale by that company. Such prospects as Pepsi Cola and later Philip Morris Co. had been interested but sought also to purchase the minority shares owned by de Ranee' Inc., the foundation conducted by Harry John. He had declined -to sell, but Philip Morris bought the controlling shares from Grace and later continued its efforts to acquire the minority. In this Harry John had consulted me and investment bankers and other's. He finally negotiated a sale of de Ranee's shares for some $90,000,000 which made it the largest charitable foundation in the state. My partner, John Miller, worked with me in this service and so well pleased Harry John that he later succeeded me as de Ranee's attorney after he had withdrawn from our firm.

Our firm had grown to over 50 partners and associates in 1973 as my 75th birthday was celebrated. For the fiscal year

ended June 30, 1973 legal fees collected by the firm had grown to exceed $3,000,000. I had continued to serve as Chairman of the Board with Bob Harland as President. Vic Harding spoke at the birthday dinner and I was presented a silver tray with etched signatures of all my partners and associates as a memento of the occasion.

The stenographers and bookkeepers at the Christmas party in December put on a sketch entitled "This is Your Life, Herb Hirschboeck." They had put great effort into it, interviewing relatives and friends and tape recording some of the responses, Dick Buellesbach's father, Joe, who had played the junior lead in The Black Arrow, the 1917 Marquette Academy class play, reminisced erroneously in telling them that Pat O'Brien and I were classmates and that I had beaten Pat for the leading role. Pat was a junior and I was a senior. We did not compete. But when the girls called long distance to Pat in California, he responded graciously with birthday greetings and said "I have wonderful memories of you and the Academy and I probably better congratulate you now for getting that part because I probably didn't congratulate you then because I wanted to get it." The girls interviewed Judge Raskin who responded with praise for my service as assistant city attorney under him in the early 30's. But their longest interview was of Mert who kept their secret from me but told them much of what I have written in the previous pages including the romance of 1934 resulting from the street car strike. The girls presented an engraved plaque ascribing to me the attributes of wisdom, honor, charity and wit.

I had written a plan for gradual retirement which would have ended my participation at age seventy. In violation of it I was still serving at age 75. It was time for younger members to take full charge. Harold Thomson had attained the full confidence of substantial clientele of mine and of Malcolm Whyte's who were sources of substantial fees as well as clients of his own. His annual fees were surpassing more senior firm members and he had developed business and organizational ability. He was elected president, although not unanimously and Robert Harland became chairman in my place. This was in December of 1974 and at that time the cumbersome firm name of Whyte, Hirschboeck, Minahan, Harding & Harland S.C. was shortened to Whyte & Hirschboeck S.C. to conform with the trend of law firms in large cities generally. Mert and I met Bertha Whyte, Malcolm's widow, and Malcolm Jr. one evening after this change. Bertha was very happy. She had feared that Malcolm's name would be dropped as occurred when Miller, Mack & Fairchild changed its name to Foley & Lardner.

I withdrew from management and administration functions and devoted my time principally to estate and trusts of clients. My income from the firm was reduced accordingly.

A client whom I had served for many years, Alvin A. Pereles, passed away and there began a long period or administration of his estate, a period of six years, involving not only legal problems but responsibility as co-personal representative as well. My service had begun during World War II in the early years of Pereles Bros. Co. and continued throughout the develop-

ment of the successful plastics molding business which ultimately was transferred to Beatrice Foods Co. in exchange for stock. October of 1973 began a stock market recession and liquidating enough of this principal stock investment in order to pay the very substantial death taxes became the responsibility of Marine National Exchange Bank and Mr. Bernard Heifitz and me as co-personal representatives. After completion of administration of the estate and six years of service as co-trustee of trusts for the Pereles children my participation was no longer needed and I resigned as co-trustee.

My uncle, Walter M. Heiser, died. The probate of his will and administration of his estate by the Marshall & Ilsley Bank took considerable of my time as attorney.

Several small business clients still relied on me for advice but I had delegated most service to them to younger members of the firm. Younger associates who in due time became members of the firm included: G. Hans Moede III, Frederick A. Muth, Jr., Allan E. Iding, Larry R. Dalton, Michael T. Hart, Edward J. Heiser, Jr. , Anthony W. Asmuth III, John Scripp, Joseph C. Branch, Richard E. Braun, Steven R. Alien, Timothy K. Hoelter, John C. Cooper III and James A. Feddersen.

30. Elizabeth and John

My sister, Elizabeth (Sister Mercy), had returned from Pusan, Korea as long ago as 1954 leaving the clinic and hospital in the hands of younger sisters. Her health had suffered and she was hospitalized in New York for some time during which I called on her. She had many visitors--one was an army general who had observed the Pusan Clinic at close range and was filled with admiration and solicitude for her. After her recovery she took on administration of a hospital in Kansas City as head of a group of Maryknoll Sister nurses who were put in charge. The hospital was dedicated to provide ser-ice on a racially integrated basis but of particular availability to blacks. My brother, John, and I attended the dedication, the principal address for which was given by ex-president Truman who came over from his home in Independence.

After Kansas City Elizabeth was elected Vicar General of the Maryknoll Sisters with administrative duties at Maryknoll and visitation of the missions. She visited missions in Central and South America and in Africa. But she had never fully re-covered from her illness and she was growing older. It was a time and age when retirement to the order's cloister would have been attractive to some but she had a new idea. She was, after all, a missionary and had to share with others, those mostly in need of it, the great inspiration and consolation of her faith. She envisioned small groups, two or three, living among the people, self-sustaining, and by prayer, example and counsel bringing many to a better life. She rented a flat in the

Puerto Rican district of the lower East Side of New York. She kept the flat with its little chapel in the living room. Another sister, a nurse, worked in a hospital as the bread-winner to provide the rent and food and another sister was associated with the nearby parish, engaged in parish assistance work. She had long given up medical practice and she feels a sense of accomplishment in her present service.

Our brother, John, had as dean built up the faculty of Marquette University School of Medicine from the loosely associated faculty of local practitioners to an excellent body of professional teachers. The projection of the Froedtert Hospital as a teaching hospital to be associated with the School had brought financial support to the School to help in the creation of this new faculty, but the long delays in building the hospital resulted in years of overburdened school budgets with expected income not available. Support from the state had been sought but was unattainable for a Jesuit con-ducted University. Such a school was regarded as Catholic and after many years of seeking alternatives Marquette University was persuaded to surrender the Medical School to nonsectarian and state-control. It became the Medical College of Wisconsin. John had resigned as dean in 1966 prior to the change to assume the position as Coordinator of the Wisconsin Regional Medical Program. This "were a project funded by Congress in the Lyndon Johnson administration to create medical centers made up of cooperating agencies working with medical schools and existing health resources. John and Dr. Fred Madison had formed a University Medical Center of Milwaukee (see Marquette Medical

Review Nov. 1, 1959) for planning for the Southeastern Wisconsin Medical Center and this was developed further by him in his new assignment. John has been honored by his faculty which continues in the new Medical College of Wisconsin and has been given the title of Dean Emeritus. He was also honored with a Distinguished Service Award at the 1976 Commencement exercises. He conducted the Regional Medical Program for several years and later helped St. Mary's Hospital organize the medical service in its new hospital. For years he had taken assignments from the National Health Service in inspecting and evaluating of medical education and hospital projects around the country and determining qualification for financial assistance. But at age 65 he considered it time to retire and he and his wife. Rosemary, found a lovely house in Green Valley, Arizona and made that their home. Mert and I called on them as part of our Tucson March vacation in 1979.

When our office girls interviewed John they taped his greeting for my 75th birthday party. He said "It is fortunate to have been born into a family where parents and children live together in harmony and with genuine mutual respect. Those of you who know Herb will well appreciate how lucky I am to have him as a brother."

I come again to being grateful for our family, my sister and my brother. When I contemplate my four score age I remember 1939 when my brother's diagnosis and advice got me the best surgery and my sister's prayers brought the help to pull me through the crisis to bring me this long life.

31. Mert

Mert has been my perfect partner. No matter how hectic the day and the turmoil thereof Mert provided a home and domestic life to ease every tension. She has been a very good mother to our daughters and has come to enjoy their developing families. There are two grandsons in college and several grandchildren in high school and others in elementary schools- total nine. She has many close friends, some dating from high school with whom she is in frequent contact. She enjoys bridge and plays in several groups, not for fame or money but for fun. She is accomplished in needle craft, more recently in needlepoint, in which she has produced gifts for hosts of friends and in miniature oriental design rugs for her granddaughters' doll houses. All these are of her own design. For more than 17 years she has been a volunteer, a pink lady, at St. Mary's Hospital. Thursday has been a regular day of service there for her and she enjoys friendship with her associates in this work.

A colleen who learned to make and enjoy sauerbraten, Mert took an late rest in and became expert in a varied cuisine and came to enjoy planning our meals. German pancakes had presented some difficulty for her, but one day she saw a recipe for "Seattle Dutch Babies" which turned out to be the perfect German pancake recipe. As grandmother, the annual Thanksgiving Day dinner is a major project for her, enjoyed with us by Nancy's family.

Mert has avoided prominence and public appearances. Her serious ordeals were to sit beside me at speaker's tables and to meet so many strangers.

She never let any health problem debilitate her and was determined in finding answers for and overcoming threatening symptoms. For years her red blood cell count was abnormally low and commented on by doctors who examined her from time to time but with no remedy offered. We finally found hematological expertise on the faculty of what was then still the Marquette University School of Medicine. It was an unusual Spherocytic Haemolitic Anemia condition which could only be cured and which was cured by surgical removal of her spleen. Improved vitality and freedom from worry made ensuing years much more enjoyable. In 1975 and 1976 she once again had a occasion for concern. The presence of a lump at the inner side of her lower spine-had been detected. She had been told to forget about it if it did not enlarge, but memories which we shared of my surgery in 1939 made both of us question delay. One surgeon we consulted considered even exploratory surgery, a very serious risk, and recommended against it. Finally, Dr. Don Wilson advised consulting a surgeon at the Mayo Clinic, so we revisited the Clinic after many years only this time Mert, not I, was the patient. In a few weeks in August 1976 she was examined and the surgery performed without complication. We have always enjoyed fine medical advice and following it has prolonged our happy life together.

We are losing friends by death and illness, but continue to enjoy the company of several of the social groups of many years. A patio group, for example, whose members entertain with garden parties during the summer, had become a smaller group of charming widows, only a few of them had remarried.

Friends with whom we had shared enjoyable vacations in Florida now entertained at their summer homes in or near Milwaukee. This became our Naples group. For more than 25 years Mert and I have entertained our friends in our home on New Year's Eve. This became an annual expected event.

32. Eightieth Birthday

I came to be 80 years old June 5, 1978. Bob Harland asked what the firm could give me, I told him a five minute standing ovation would do. Instead all the men put on tuxedos and -the lady lawyers dressed up for a birthday dinner for me. They gave me a gift for a man who has everything, a multihedral Steuben prismatic crystal* very scintillating and beautiful, but much appreciated by me was that Roger Minahan was the speaker of the evening and most eloquently recounted the history and development of our firm. Roger, whose seniority was next to mine in the firm, had been passed over some years before and had remained aloof from meetings and participation in management. His speech on my birthday was therefore noteworthy and appreciated.

Another gift was from members of the firm who were Marquette Law School alumni. They had all pledged contributions to endow a Herbert C. Hirschboeck scholarship at the law school.

When the lawyers and their spouses gathered for the Christmas party in 1978 there was a further surprise.

This was to include Mert in their expression of appreciation, it was a trip around the world. We were sent brochures of cruises around the world and tours to many exotic places from which to chose. At the dinner Mert had been called upon to say whether she would go on such a trip. I had sometimes spoken on her reluctance to fly and travel but she bravely responded that she would take the offered trip.

---

* Triangle II, Designed by Rush Dougherty. Geometric form of solid crystal cut in triangles, some polished, some unpolished, infinite images reflected within the glass.

Mert and I had previously discussed travel including a trip to Ireland and to the Mediterranean but enough enthusiasms never developed. We would, by preference, wind up in a tour of the Ozarks for example, covering unusual places in Arkansas and spending a week in the Four Seasons on Lake of the Ozarks in Missouri. Now we had all these options offered by the firm.

Ever since I injured a knee in a surf accident on Manasota Key, Florida, in 1958, and Mert had to get me home by air from Tampa, she disliked plane travel. We talked about a West Indies cruise continuing on through the Panama Canal and up to San Francisco, but it took plane flights to and from the cruise ship. Our discussions remained inconclusive.

Meanwhile I continued coming to the office daily with no administration responsibilities but carrying on mostly in estate and trust administration.

Edwin Pabst died in March 1977 of a heart attack and Louise was in terrible grief. Edwin had left his estate to her but had provided alternatives if she should not survive him. These included giving his industrial corporation and associated assets to his employees. She went to the Alfa Machine Co. plant in a dramatic appearance to tell the employees she wanted them to have the plant and to carry on. This we later translated into legal form by having her renounce that portion of Edwin's estate so it could pass directly to the employees. All her friends and her physician tried to help her, to buoy her up, but her grief was inconsolate and on May 3, 1977 she too passed away. The Marine National Exchange Bank and I were personal representatives of both estates and

trustees of the portion of Louise's estate, the farm at Slinger, Wisconsin, which she left in trust for the family who had been caring for her. The house on Wahl Avenue was loaded with antiques and art objects and her many paintings. Some of the latter she had bequeathed to the Milwaukee Public Library together with her silver medal which she had earned as a young artist in Paris, award of the French Society of Artists. The catalogues of auction sales included over 800 items. Both Edwin and Louise, after the above mentioned gifts and remembrance of friends, left the residue of their estates to CARE, INC.

There were other estates of some of my more elderly clients who had passed away and I took care of the affairs of my elder cousin, Celeste Dallmann, and arranged care for her until her death April 1, 1979. A small trust left by my grandfather for my 91 year old aunt Mathilda Heiser, was one of my responsibilities. Older clients still consulted me and I continued to write wills.

The young president of our firm, Harold Thomson, became ill and Bill Asmuth was called upon to preside over the management committee and serve as the firm's chief executive. Harold had been serving clients who had been line. Now, meeting their needs, with my personal counsel and reassignment of responsibilities to attend to their affairs became necessary.

In November 1978 Roger Minahan and Don Peterson decided to launch their own law firm and withdrew from Whyte & Hirschboeck S.C. Roger's family interests and his personal clients were the nucleus of clientele of their new firm. Several young associates who had been serving them also left to continue to

serve them. This division, while it reduced our firm personnel, left all our major clientele for continued service by Whyte & Hirschboeck S.C. The fiscal year of the firm ended June 30, 1979 under Bill Asmuth was its financial best. Clients fees had risen to almost six and a half million dollars for the year.

33. Knighthood

In my days as a young lawyer I had been active in The Knights of Columbus and served as Lecturer of the Milwaukee Pere Marquette Council for a term, conducting all the social affairs and entertainment of a busy urban fraternal organization. In later years I was part of an exemplification team for presentation of the history and future of patriotism of Catholics in America which is the theme of the Fourth Degree of the order. I have continued membership though my activity has long ceased.

For twenty-five years I have annually attended a retreat at Bellarmine Hall in Barrington, Illinois as a member of the Reprobates, group of Milwaukee professional and businessmen originally organized by Matt Carpenter. My efforts for Catholic education which have been referred to belong to more active years and I have settled down to quiet practice of my religion supported by Mert who has always been an example in faith and devotion.

Then in December of 1978 I learned that I was proposed for membership in the Knights of Malta and in January I was elected. There are about a thousand Knights of Malta in the United States and over eight thousand world wide. The title of the order is "Soverign, Military Hospitaller Order of St. John of Jerusalem and of Rhodes and of Malta." The smallest sovereign state in the world is its palazzo at 68 Via Condotti in Rome. Particularly in its European branches whose members are largely of the nobility, its charitable work continues in hospital support and service to the ill. My sister and my brother,

even Mert, were more entitled to invitation to join. I remembered the contribution to the Pusan clinic and hospital of the Maryknoll Sisters which my sister had received from the hands of Cardinal Spellman, the gift of the Knights of Malta.

There were two others from Milwaukee, Steven Keane--a senior in the firm of Foley & Lardner, and Charles Miller--a professor in the College of Business Administration at Marquette. We were to appear for our investiture in St. Patrick's Cathedral in New York on Monday, January 15th and with our wives assembled at the Milwaukee airport Sunday afternoon. It had snowed and continued to snow and flights were postponed and finally cancelled so that we were unable to keep the appointment in New York. I had invited Elizabeth to be with us at the reception and luncheon but had to call her to cancel this visit with her which Mert and I had so much looked forward to.

When in New York a few weeks later Charlie Miller was given the ornaments, insignia of the order, for us and himself. We had been invested in absencia. Our records, baptismal certificates and biographical data, were on their way to 68 Via Condotti in Rome and our contributions to the charitable works of the order were accepted.

This was not a papal honor but one bestowed by fellow Americans intent on assisting in works of the Catholic Church with inspiration from the romantic history of the Hospitallers of St. John of Jerusalem. Long ago the word "military" could have been dropped from its title but the story of the great siege of Malta in 1565 when the Knights turned back the tide of Islamic conquest of the Western Mediterranean remains

important history. Centuries later Napoleon's seizure of Malta and detest by the British left the Knights without a sovereign homeland. As a religious order it was welcomed to Rome in 1834 by Pope Leo XIII and in 1927 was asked by the then reigning pope to establish a branch of the Order for citizens of the United States and Canada.

34. Our Daughters, Nancy and Cathy

On my 81st birthday, at a party given for roe by Grace and Paul Hultkraus, our daughter Nancy presented an unusual gift to me. She had impressed in clay an old Christmas card etching to make a small ceramic tray. The etching, or cut, was of a design for one of the cards which were an annual project for Mert and me. About the end of October each year since 1936, Mert has asked me to make a drawing for the Christmas card of that year. Usually I resisted and stalled but she was firm. A varied assortment of greetings were drawn over the years from religious imagery and symbols to attempts at comic Santa Clauses, each year different. Many were printed so that parts could be colored by Mert. This, plus Mert's urging and her critical appraisal of drawings were her contribution to our annual greetings to all our friends.

Mert and I are very proud of. our daughters, Nancy and Cathy. They are rearing fine families, but are also devoted in service to others. Nancy has become a fine artist in several media, a professional in water color, and conducts the Art classes in St. Eugene's School in Fox Point. Cathy has attended the University for courses to augment her teacher education and qualifications and continues teaching religious education classes and to participate in other educational projects.

Through the portrait of them as little girls by Louise Pabst which hangs in our living room, we have a daily happy reminder of them.

35. Open End

A biographic sketch in Who's Who in American Law, is published in the current Second Edition as follows:

> HIRSCHBOECK, HERBERT CARL, b. Milw., June 5, 1898; L.L.B., Marquette U., 1921. Admitted to Wis. bar, 1921, U.S. Supreme Ct. bar, 1932; partner firm Dunn & Hirschboeck, Milw. 1924-30; asst. city atty., City of Milw., 1932-33; assoc. firm Miller, Mack & Fairchild, Milw., 1933-38; partner firm Whyte & Hirschboeck, Milw., 1943-_; Mem. Am. Wis. 7th Circuit bar assns. Am. Law Inst., Am. Judicature Soc. Home: 405 E. Montclaire Ave. Milwaukee, WI 53217 Office: 2100 Marine Plaza Milwaukee, WI 53202 Tel. (414) 271-8210.

It shows that I began with our firm in 1943 but the end is still open. My active service has diminished. I have petitioned for approval of my resignation as co-trustee in one testamentary trust and soon expect to resign from another. The senior officers of our firm have asked me to stay on usually with something affecting a client or the firm being urged as a reason for deferring my resignation.

But I will end this story here, leaving my tenure with the firm and my life still an open end. In thought I look to my family and many friends and associates with gratitude for all their influences over the years which have made this a happy story for me.

Most of this has been written in the office where reports and files were available for verification. Some has been written at home. Mert asked me what I was writing.

I said "My memoirs."

She said "Has anyone asked you to?"

I said "No."

Thanksgiving Day, 1979, Herbert C. Hirschboeck
November 22.

36 Retirement

My autobiography dated November 22, 1979 at page 147 was open ended permitting me to add a supplement.

Mert and I remained at home in White fish Bay during the 1979-1980 mild winter and spring. In March, 1979 we had flown to Tucson and visited John and Rosemary at Green Valley. Remembering flight delays and long stays in airports on that trip dissuaded us from travel in the Spring of 1980. This aversion continues as this is written, toward the approach of Spring 1981.

Harold P. Thomson who had enjoyed a successful practice and position of leadership in Whyte & Hirschboeck S.C. passed away May 1, 1980, after a long illness. He was 58.

A. William (Bill) Asmuth continued as president having been reelected in July 1980. At June 30, 1979, when my extended retirement age under the firm's pension plan arrived, Bill asked me to remain. But as June 30, 1980 approached I did formally retire - to change from employee status to that of retiree. I continued, however, to have my office and be listed as "of counsel" to the firm.

The term "of counsel" shown on a firm's letterhead customarily indicates a former partner who is retired or semi-retired. There is still work for me to do in serving clients, mostly service to old friends and in winding up estates and trusts for all of which younger associates are assisting and prepared to take over.

Counseling others in the firm is also implied in "of counsel" but it becomes more difficult to keep up with the evolution of the law and practice. Back in the days when I was a finance company law specialist no one could dream of the present vast array of detailed regulation of consumer finance. In a December 19, 1980 letter from Paul A. Volcker, Federal Reserve Board Chairman, to the Federal Trade Commission, declining approval of a new "Credit Practices Rule" he wrote:

> "The volume of government imposed rules and regulations has reached serious proportions and the cumulative effect of adding one regulation on top of another may eventually create an unreasonable and unmanageable burden on the public." (Consumer Finance Bulletin, January 2, 1981)

All law practice has grown increasingly complex. The 1921 Wisconsin Statutes (exclusive of appendix) covered 2,380 pages in two volumes. The 1977 Wisconsin Statutes covered 4,957 pages in four volumes. West's Wisconsin Statutes Annotated is more than 50 volumes. The Revenue Act of 1924 was a pamphlet of 146 pages. The Internal Revenue Code with 1979 amendments is 6,031 pages long. The United States Code Annotated covers ten library shelves.

To keep pace, hundreds of continuing legal education programs are offered by law schools, American Law Institute and American Bar Association, state and local bar associations and a proliferating list: of seminar promotions.* The practicing lawyer must attend a minimum of accredited courses each year to maintain his license to practice. Excepted are lawyers over 70 years of age.

Whyte & Hirschboeck lawyers divide into major specialty groups: trial practice; probate and estate planning; corporation practice; securities; tax; antitrust law, etc. At regular luncheon meetings the participants share knowledge gleaned from seminar attendance. I have been welcome and attend many of these luncheon meetings.

---

* My August 19, 1980 morning mail included: ATS-CLE (Advanced Training Seminars - Continuing Legal Education); WEX (University of Wisconsin Extension) on farm corporations; CLEW (Continuing Legal Education for Wisconsin) on safe place injury law; and the 1980 CLEW Tax Workshop. This morning (February 9, 1981) in addition to ATS-CLE and CLEW announcements came a Waukesha County Technical Institute Seminar program on building estimating and and appraisal and a Practical Environmental Law Course to be given in Washington D.C. and Palm Springs, California 4 days in April or May at $600.

37 Family Memoirs

Mert had asked (pl47) whether anyone had asked me to write my memoirs. Now she suggests that I should. This cane to her after a visit from grandson, Chris, in which I had responded to his questions, among them some about the design and building of our home, how I had personally made the full size drawings and templates for the eight different tudor plaster arches in our living and dining rooms (alcove, three book niches, entry -and stairway and china cabinet^ each arch with its several centers, all in harmony for a rich but restrained background. Mert thought I should write about family events and travel.

It should please her to reminisce with me about our many automobile travels together mostly south in March—-the first roadside daffodils, the first azaleas, the approach to a Florida county seat with its domed courthouse in the center of the square, over a road lined with Spanish moss laden trees, the first warn days.

Or the car trouble, coming down a long curve on US 441 in Georgia when suddenly the engine stopped. We were in a wooded area but vision up and down the road was clear. I parked the Ford convertible on the shoulder and proceeded to check - there was plenty of fuel - I could find no disconnected wiring; but another Ford drove up behind us and out stepped a short, mature lady and a tall lean young man. The little lady asked what was wrong and I told her what had happened and what I had checked. She looked under the hood and probed around the

carburetor and asked the young man to reach in and put the throttle linkage back together and asked me to get in and start the car. No problem - but how a throttle linkage could come apart I do not know. They shushed my thanks; gave us some highway directions and went on their way. I took the license number of their car and on return to Milwaukee wrote to the "Georgia Motor Vehicle Department and learned her name and address and sent her a box of assorted Wisconsin cheese with a thank you note. Her name was Mittie Wooten and she published a small town paper, a copy of which she sent us. The story of the cheese in thanks for the car repair was printed, but with a note of humor for the local readers because in my note I had referred to Slim Jones as her son, when in fact, she was a maiden lady.

I could write of all the places we stayed up and down the Gulf Coast. We stayed two weeks at the Manasota Beach Club, where the mostly Rhode Islanders who were the guests enjoyed excellent meals and the young played tennis, the old played bocci. We drove Manasota Key and then Casey's Key for a place to stay after two weeks at the Beach Club. Up Casey's Key into the private residential area we came upon a vacancy sign in front of a lovely home. We found that the vacancy was a guest apartment over the boat house-garage on the bay side of the lot - beautifully furnished with windows on four sides. The Gulf beach here was very private and we had a beautiful two weeks.

Mert will remember our trip up the Nyaka River with Merl and Peg Sceales and some of our cookouts, particularly of

burnt steak - a two inch thick Porter House broiled over charcoal and served in slices so that each portion was an inch of rare with a half inch of well broiled on each side.

One day Merl Sceales and I had bought a steak for about $11.00 but Paul Hultkrans thought he was being robbed when asked to pay for his one-third. Another day we went with Paul and Grace to Boca Grande, then reached from Placida by ferry. Paul put in a phone call to Milwaukee and learned the acquisition of his employer, Milprint, in which he was a shareholder, had been approved by Phillip Morris. Paul was on his way to becoming a millionaire and this was a happy day.

Our summers with our daughters and their friends in Northern Wisconsin had many events to be remembered. Paul and I had gone with Hugo Matke one day to fish brook trout on the Mishonagan. We were successful and returned to Coon's early and had Hugo cook an outdoor dinner on the Point - brook trout and well fried potatoes - for the Hultkrans, us and our children.

But I have reels of 16mm movies which tell such stories much better than I cap write them; so Mert will have to enjoy the movies instead.

Mert has kept a record of our vacations and the dates of them as well as of the important family events.

38 Of Counsel - Curiosities Remembered

I am still listed "of counsel" to the firm. I have been consulted mostly on fundamental principles; on principles studied by the American Law Institute and stated in the Restatement of Law; on professional responsibility questions; on matters affecting clients I have served and which have been involved in litigation in the cast. In some research involving riparian rights on navigable waters Vie Harding, for example, noted a 1927 Wisconsin Supreme Court report listing me as amicus curiae—so we exchanged experience in that area of law. In 1927 I had been enthusiastic for protection Of the environment—-long before the advent of modern environmental law. I had justified my brief as friend of the court because of my Red Arrow Camp relationship—on behalf of American youth: "to help stem the impending tide of industrialization of God's gifts—Wisconsin's lakes—our heritage and priceless birthright of posterity."

The case (Angelo v. Railroad Commission 194 Wis. 543) involved the validity of a statute under which the Railroad Commission had issued a permit for dredging and removal of marl from the bottom of Lime Lake for sale as soil conditioner because of its lime content. The Northwest Territory Ordinance of 1787 which became part of the state constitution of Wisconsin (Art. IX Sec. 1) provided that all navigable waters and the carrying places between them "shall be common highways and forever free." Judicial interpretation of this had uniformly

been that the states' ownership was "in trust" for all the people and that, except in furtherance of navigation, the state could not grant or sell the trust property to others. My brief did not prevail. But the issues in this early case and others and the exceptions to and applications of the principles became the subject of Vic's consultation with me.

Consultation about development of common law rules in the Restatement of the Law is also illustrated in Reg Nelson's research in defending the Soo Line Railroad in an action by the Town of East Troy, for negligent causing of a train wreck, rupturing a tank car of phenol and consequent contamination of ground water. Development of rules in Restatement Second, Torts, in tentative drafts and in the cases reviewed in the process, particularly ±n the area of public nuisance, assisted in this research.

The mention of East Troy brings to mind an early experience, not involved in counsel in my retirement, but an interesting curiosity.

Like other branches of the law—-environmental protection has expanded in legislation and in regulation at state and federal levels. The 1920's were much simpler. I defended Bradley De Witt on a charge of cutting a tree in a park, a violation of an environmental law of that time. There was an island in Booth Lake, near East Troy in Walworth County. Bradley who, for reasons of health, was living in the country, became curious about who owned it. He found in a Register of

Deeds record that a fanner had included it in a deed to a family who built a summer home on the shore. But the govern-merit survey did not show that this island existed. It was unsurveyed. With the help of Art Belitz, a lawyer employed in title examination by Northwestern Mutual Life Insurance Company, Bradley applied under the homestead laws to acquire a patent and moved to the island, built a shed and started a garden. This alarmed the shore family who appealed to Senator Lenroot to have the Land Office remove the island from land available for homestead. Bradley was acquainted with Senator Norris of Nebraska who prevailed to have the Land Office keep it available. Evidence of geologists was gathered to show that the island must have existed at the time of the survey but was simply omitted. The shore owner, thus frustrated, gave a deed of the island to the township as a soldiers' and veterans' park. Bradley, in enlarging his shed to a shack, did cut down a tree. The sheriff summoned him to appear before a justice of the peace in Elkhorn and Bradley asked me to defend him.

I remember trying to find the justice of the peace. We finally located him in the power house playing cards at the time scheduled for our case. He had been provided with a copy of the deed for the park and to him it was only a question of whether Bradley had cut a tree. The sheriff said he had, but I moved for dismissal of the proceeding on the ground that a justice of the peace had no jurisdiction to try the title to

real estate and whether the deed was effective to make the island a park was the principal issue. The justice realized this limitation on his authority and dismissed the case. Bradley went on for the required time to complete the homestead process and duly received a patent to the island. I should note that such homesteading of unsurveyed islands will probably not occur again. There was an Act of Congress ceding to the State all unsurveyed islands North of a line running at the level of Antigo and, I believe, a later act similarly gave such islands to the South to the state also.

On one of the more interesting canoe trips I took with Clarence Rasmussen, Fred Miller, and others, we obtained Province of Ontario naps of great detail and information about mining claims and other conditions for acquiring property. Around the campfire we planned expeditions for the future and decided to organize a club. "Rashirmil" was formed and officially incorporated in April, 1930 (Reg. Deeds Milwaukee County, Corporation Record, Vol. 73 pp. 88-9). Its stated purpose included "To venture as a body corporate upon projects for discovery of uncharted far places and upon the exploration of unfrequented wildernesses." The officers were to be the Commander, Commissiary and Cartographer. The incorporators were C. H. Rasmussen, Fred C. Miller and H. C. Hirschboeck. Other members could be admitted by unanimous vote. It was a non-stock corporation. The day the Articles of Incorporation were filed the

Wisconsin News came out with a headline something like: "Exploration Group Formed", and our playful club became suspect of serious business.

But time passed—Fred was married, then 1, and finally Clarence, and there were no expeditions to the wildernesses.

One story leads to another until they lose all reference to the consultation at hand. They are politely listened to but with some disbelief, I am sure. That is a reason, for the many citations—to permit verification.

Consultation with my partners and associates cannot long withstand such wanderings; but the greater difficulty for say serving effectively as counsel comes from the radical and sweeping changes in the practice of law. In legal ethics we have outgrown the Canons of Legal Ethics and now are casting out the Code of Professional Responsibility to replace it with a Code of Professional Conduct. An inactive practitioner simply cannot keep up with the changes.

I remember an American Law Institute meeting in Washington when I sat with Charles Goldberg, president of the Wisconsin State Bar, and heard a speaker discuss the application and reach of the post Civil War statutes on civil rights. We were astounded to learn that under these statutes, almost a 100 years old, any number of basic concepts of property, employment, business and government were being challenged. From serving as protection of property the constitution was being most often invoked in the protection of civil rights. The concepts of

those rights have grown and permeated all law and its practice. For every new found variation of a right there is a corresponding responsibility and duty of others to observe that right. There is a contest between populist legislators and so-called activist judges to create new duties and regulations for business, for government and for all society. Trying to learn and believe this whole new world is not easy for an octogenarian.

The frequency of changes and the rapidity of them make law practice volatile. It has seemed prudent to end a counseling session with expression of hope that the law will remain the same through the afternoon and evening and still be the same; tomorrow when the advice is to be acted upon.

39 Hobbies

Vic Harding, next to me in seniority in the firm, continues, with his wife Judy, to take canoe trips. They were up in the Quetico last year and he asked me about the Manitowish which starts as the Little Trout River, an outlet from Trout Lake, adjacent to the Red Arrow Camp grounds. I had taken many canoe trips with camp boys on these streams in the 192O's.

Such recreational activity is sometimes taken by retirees. Malcolm Cowley, in his "The View from Eighty" (Viking, 1980) tells of the many retirement jobs and projects pursued by octogenarians. The late Justice William O. Douglas continued in old age to climb mountain trails. I remember the head of a large Milwaukee corporation who retired to an island in Puget Sound. Walter Bender, an elder Milwaukee attorney continued to spend time at his 'place on Lake of the Woods.

Stiffening knees indicate something less rigorous for me. But I will probably have to decide on some activity to replace counsel in ay old law office. Cowley wrote:

> "A general rule might be that persons called upon to give sage advice—-unless they are doctors--live longer than persons who act on that advice; thus corporation lawyers and investment bankers live longer than the. presidents, Of corporations." (p. 29)

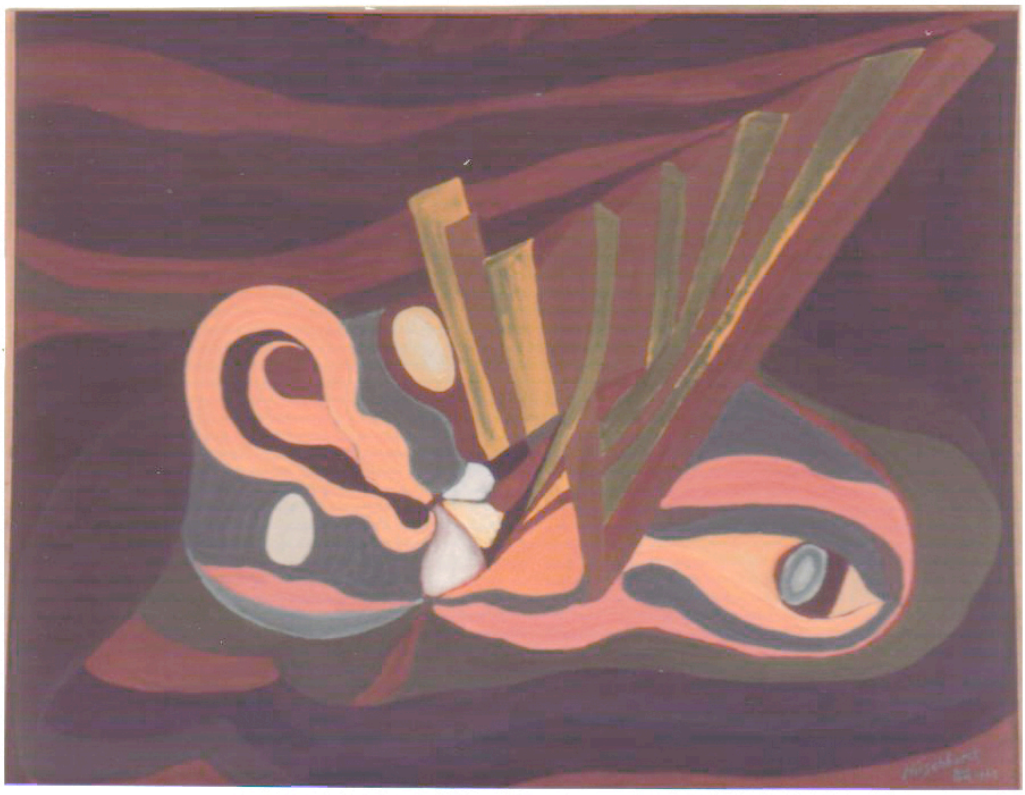
Carving and painting are hobbies often taken up. In March, 1960 Mert and I had returned to Gardners "Bay 'N Gulf" on Manasota Key. I had injured my knee in the surf there in 1958, but we liked this quiet retreat. There was quite a colony of elderly painters in the area and a new art group and show were being organized in Venice. I picked up some supplies and made a few water color sketches. I tried some in tempera and acrylic media and ventured into some "isms" of modern art. One of these pictures we hung in our cottage where it attracted Mrs. Gardner's eye. She was active in Venice circles and asked if I planned to enter it in the show. I told her I did not; that we were leaving before the show date to return home. She asked us to let her show it and she gave it a name, "First Symphony", and entered it as my exhibit. There were 96 entries listed in the Venice Gondolier of March 24, 1960 including mine. Retired Admiral Victor Butcher took second place—-so some retired do enjoy this hobby. The "best of show" award was to Mrs. Arch Wilson. My entry received no-special mention.

After a survey of-retirement activities Cowley comes to a tempting project—-"trying to find a shape or pattern in our lives."

For this, the gathering of the materials—-the remembering of the events of a lifetime as it progressed is advocated. I guess I have been doing this in writing this autobiography. But the finding of a shape or pattern eludes me. Whether I should have been a banker or an architect-—are still questions.

As I painted on Manasota Key, moved by subconscious feeling directing form, the First Symphony evolved. Maybe that, as complex as it appears, is an expression of the form and pattern of my life. Or should I resume painting--enroll in one of the painting classes offered for the retired?

February 12, 1981

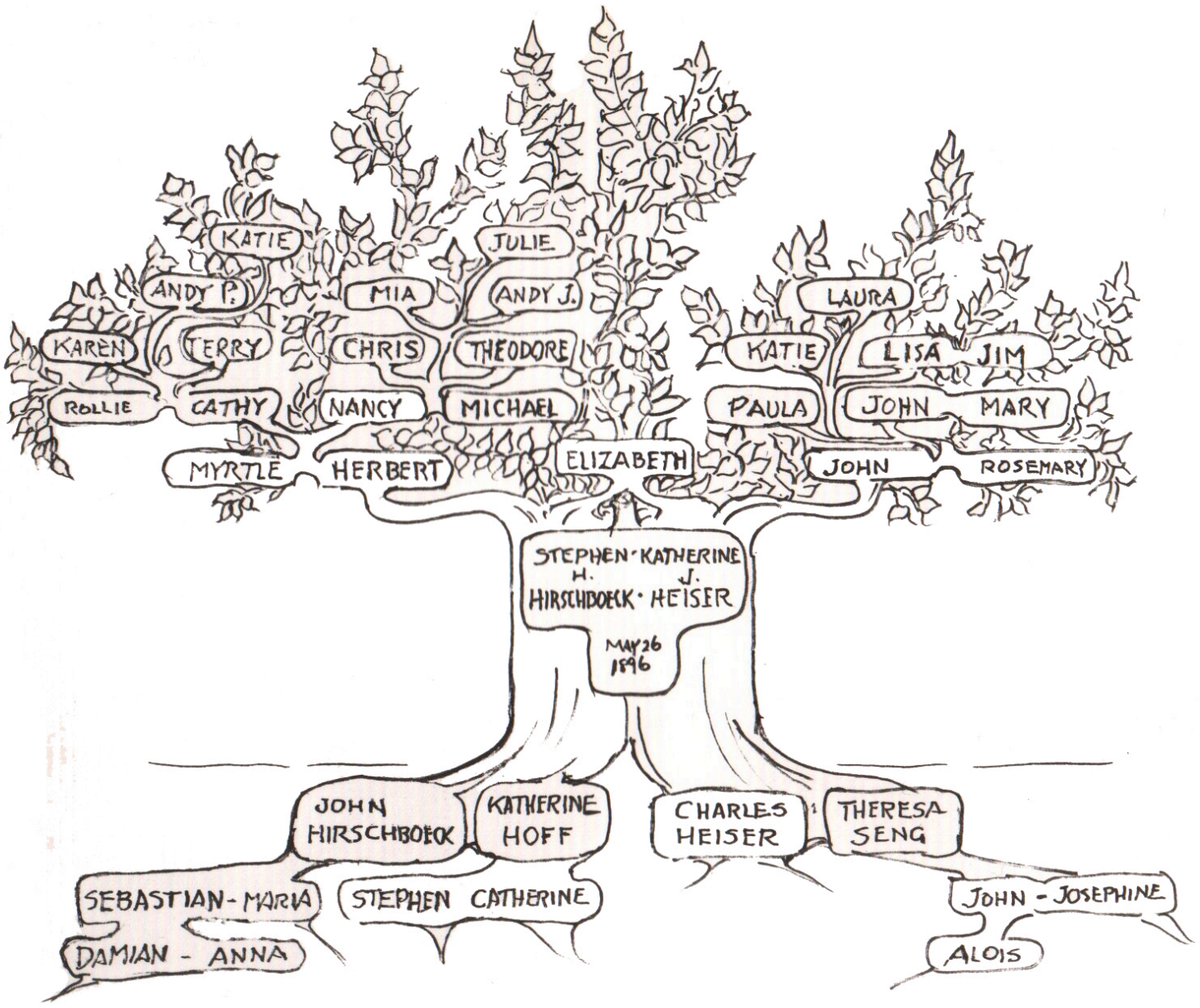


SELF PORTRAIT
Herbert C. Hirschboeck

Exhibited under the title "First Symphony" in the
Venice - Nokomis Art Association Show
Venice, Florida, March 20-26, 1960

GENEALOGY OF THE CHILDREN OF
STEPHEN and KATHERINE HIRSCHBOECK

APPENDIX I


KATIE
ANDY P.
KAREN
TERRY
ROLLIE
CATHY
MYRTLE
MIA
CHRIS
NANCY
HERBERT
JULIE
ANDY J.
THEODORE
MICHAEL
ELIZABETH
LAURA
KATIE
LISA
JIM
PAULA
JOHN
MARY
JOHN
ROSEMARY
STEPHEN H. HIRSCHBOECK · KATHERINE J. HEISER
MAY 26 1896
JOHN HIRSCHBOECK
KATHERINE HOFF
CHARLES HEISER
THERESA SENG
SEBASTIAN - MARIA
DAMIAN - ANNA
STEPHEN
CATHERINE
JOHN - JOSEPHINE
ALOIS

May 26, 1896 is a date to be remembered, especially by Herbert Carl Hirschboeck, Elizabeth Josephine Hirschboeck (Sister Mary Mercy) and John Stephen Hirschboeck. On that date the romance of their parents, Stephen Hubert Hirschboeck and Katherine Josephine Heiser blossomed in marriage/ the starting of a new family.

Katherine Hirschboeck

Katherine Heiser was born in Saukville, Wisconsin, October 9, 1869 to Charles and Theresa (Seng) Heiser and came with them to Milwaukee about 1882. They lived above the Charles Heiser market on Farwell Avenue just North of Ogden Avenue until erection of their new home to the North of the market. She was the first born in the family. The other children, who survived infancy, were Pauline (Coughlin), Charles J. Heiser, Elizabeth (Host), Mathilda, Walter M. and Anita (Brenk). The family attended Old St. Mary's at Broadway and Kilbourn Avenues.

The convent of the School Sisters of Notre Dame in the block bounded by Milwaukee, Juneau, Knapp and Jefferson Streets served in education of girls in its St. Mary's Day School. A memento of Katherine's attendance was a richly bound volume of St. Bonaventure's Life of Christ with a book plate inscribed:

> "St. Mary's Day School, Premium for successful application in Needlework and Polite Deportment Awarded to Miss Katie Heiser, Pupil of Tapestry Department 1st Class. Milwaukee, Wis. July 9, 1884 School Sisters of Notre Dame."

This convent school was also the start of her study of oil painting in which she developed fine craftsmanship in copying the works of artists popular at the time. Her works adorned the homes of her parents and friends and are cherished by her children.

Stephen Hirschboeck

Stephen Hirschboeck was born in Milwaukee, August 25, 1867. His parents were John and Katherine (Hoff) Hirschboeck. They lived on North Water Street at Juneau Avenue but the family soon moved to Kewaskum, Wisconsin. The move was made to allow John to practice his trade of shoemaker independently, rather than to take or continue employment on a production line in one of the then developing shoe factories. There were seven other children Phillipine (Dallmann), Louise (Lewis), Jennie, Josephine, Katherine (Mathias), Herbert (who died in infancy) and Frank.

Stephen was early employed in the Rosenheimer general store in Kewaskum and in selling farm machinery in the surrounding countryside. He returned to Milwaukee as a young man to enter Meyer's Business College to learn bookkeeping. He made this his vocation and served several employers, finally (1915) the Luick Ice Cream Company of which he was secretary at the time of his death (September 27, 1941). One of his achievements was development of cost accounting with charts and graphs which Mr. William F. Luick proudly took him to introduce to members of the ice cream industry at meetings around the country.

Stephen and Katherine

Stephen H. Hirschboeck and Katherine J. Heiser were married May 26, 1896 by Rev. Wilmes in St. Mary's Church, Milwaukee. They lived in Gregg's duplex on Cramer Street just North of Bradford Avenue in St. Peter and Paul Parish. Herbert Carl, their first child, was born there June 5, 1898.

On Webster Place (then Summit Place), the North end 6f the same block, Charles Heiser, about that time, built a duplex and Stephen and Katherine moved to the lower flat where their other children were born: Elizabeth Josephine, March 10, 1903 and John Stephen, March 25, 1910.

A large new home was built by Charles Heiser next door, about 1904, at the corner of Webster Place and Cramer Street, where Katherine's younger sisters, Mathilda and Anita and brother, Walter, lived with their parents. In the early years Theresa (Seng) Heiser's parents, John Evangelist Seng and Josephine Seng lived as part of the family spending their declining years in the big house.

Afterwards and after Anita and Walter had left home,- Katherine's parents sold their big house and with daughter, Mathilda, moved to the lower flat on Webster Place and Stephen and Katherine Hirschboeck moved to the upper flat. But the dreams of Stephen and Katherine of their own home were maturing. On Kensington Boulevard between Farwell and Maryland Avenues in the North end of Shorewood it was built in 1925 and 1926. Their children were still with them. Herbert, a lawyer since 1921 was still single, Elizabeth was in Medical School and John in Marquette University High School.

Elizabeth finished Medical School and interned for a year at St. Francis Hospital in La Crosse. She left for Maryknoll September 28, 1928, received her habit as a Maryknoll Sister April 3;, 1929 and was professed January 6, 1931. The story of her missionary service in Korea and in Bolivia and again in South Korea is told in "Her Name is Mercy" by Sister Maria Del Rey (Scribner 1957).

John, after graduation in Business Administration, entered the Marquette University School of Medicine. He received his M.D. degree in 1937 and had just begun practice of medicine when, in December, 1?41, he entered service in the U.S. Navy for World War II including service in the Naval hospital on Guam. He later served as Dean of the School of Medicine.

But Katherine Hirschboeck had passed away in her home May 16, 1936 Stephen continued to live there, with John, until his death on September 27, 1941. Both were buried in their part of the Heiser lot in Calvary Cemetery; after funeral services in St. Robert's Church which they had attended since building their home in Shorewood.

Burgheim, Bavaria, is a village near Neuburg on the line between Ingoldstadt and Donauworth. In this village on February 4, 1801, Damian Hirschbock and Anna Reichlin were married. Their son, Sebastian, was born January 16, 1807 and, according to the parish registry, on April 28, 1829, he married Maria Elisabetha Maier (born November 14, 1796) and had the following children:

1. Georg Vinzenz V.P. born July 19, 1830
2. Damian born September 27, 1831
3. Viktoria born June 17, 1836
4. Johan d. Bap. born April 15, 1840

This is the family with which Sebastian emigrated to the United States in 1853, with his wife Maria Elisabetha. His oath of intention to become a Citizen states that he landed at the Port of New York about August, 1853, Johan was then thirteen. How they came West is not remembered nor their arrival and early stay in Milwaukee. But Sebastian and Damian settled in Barton, near West Bend, Viktoria married Louis Pfister and lived in Hayton, near Chilton, Wisconsin. George and John remained in Milwaukee. It is the latter who became the father of Stephen. He was active in Milwaukee in 1863 as a member of the Deutschen Maenner Verein, a Catholic young men's society in whose roster were the names of most of the German Catholic families of Milwaukee. The social entertainment, concerts, balls, amateur theatricals and choruses of such societies were a fertile ground for romances. John Hirschbock and Katherine Hoff, daughter of Stephen Hoff were married. Their first born, a son, was born in Milwaukee, August 25, 1867 and they named him Stephen Hubert Hirschboeck. John (the Johan d. Bap. listed as a son of Sebastian) followed his father's and grandfather's trade of shoemaker. Burgheim records state they were shoemakers. But family stories tell of Sebastian having practiced the craft of tower clock building. Whether this was an avocation or a chance of craft is not remembered. The tower clock of the Church in Barter, is said to have been made by him and it is told that when the tower clock of St. John's Cathedral in Milwaukee arrived from Europe it was broken and could not be put in operation until Sebastian rebuilt the damaged parts.

But John was a shoemaker in Milwaukee in a period when custom making of shoes was losing ground to factory made shoes. After trying the production line employment at the Bradley and Metcalf Shoe factory, John decided he didn't like it and took his family with him to Kewaskum in Washington County. There he continued custom boot and shoe making. It was in Washington County that his political

activity in the Democratic party developed. There are two stories of this period. One, old Patrick O'Meara of West Bend loved to tell on John, whose popularity had made him chairman of village and county caucuses many times. O'Meara said that in one Kewaskum caucus there were two slates of delegates, one favored by John and one opposed, to be elected to go to the county caucus. There was a tie vote and, in the excitement, John, who could break the tie, forgot to vote. What O'Meara did not mention was that both slates came en masse to the county caucus and John was able to persuade the county caucus to recognize his slate, so that instead of being a clown for not breaking that tie, he succeeded as an able politician.

The other story relates how John L. Mitchell, son of Alexander and father of famed Gen. Billy Mitchell, was elected United States Senator by the Wisconsin legislature in 1893. Mitchell's opponent was Congressman Edward S. Bragg of the district including Kewaskum. John Hirschboeck's popularity around Kewaskum was such that Bragg, unsolicited, had in his 1885 congressional election campaign promised him the postmastership of Kewaskum. But after winning the election Bragg forgot his promise and appointed Altenhofen, the saloon keeper. When John's friends challenged this Bragg suggested petitions be circulated for each. The result was overwhelming signatures for John Hirschboeck, but despite this Altenhofen was appointed. This failure by Bragg to keep his word was remembered in his big contest for the Sentate in 1893. Friends of Mitchell took John to Madison to tell his story to the legislators particularly those from along the German populated Eastern counties who thought enough of it to change their expected votes so that Bragg who had boasted of assured election by two votes lost by one. Bragg's friends charged that Mitchell with his great wealth bought the election; but this story of how three votes were changed from Bragg to Mitchell is one to remember.

John and Katherine had seven children in addition to Stephen. They are listed in the Stephen Hirschboeck item above. Some of them had come to Milwaukee to live with relatives but the opportunity for the parents to return came with the appointment of John to serve in the U.S. Treasury Department, Internal Revenue Service, as a Gauger which became available to him in the administration of President Cleveland. They built a house on Park Place in Milwaukee between Oakland Avenue and Cramer Street. This was next door to Katherine's brother, John T. Hoff's house and her sister Phillipine Resch and brother Stephen Hoff lived nearby.

The Internal Revenue Service position involved voluminous record preparation and late afternoons and evenings found John with daughters, Josephine and Katherine writing with glass stylus pens to make carbon copies and checking and rechecking reports.

Son Frank had completed Medical School and had gone to the mining area of Minnesota starting as a mine doctor and winding up in the Duluth Clinic.

Santa Claus always care to the Park Place house first after which Stephen and Katherine and their children walked the two blocks to their Webster Place home for more celebration.

John (John d. Bap.) Hirschboeck died February 12, 1911. Katherine, his wife, died a few years later. They are buried in Calvary Cemetery.

Hoff Ancestry

Stephen Hoff, father of Katherine Hirschboeck, mother of Stephen Hirschboeck, was a builder.

Stephen and his wife, Catherine (Liginger) Hoff were born in Bavaria and emigrated to the United States in 1839. An early record is the deed to him from Solomon Juneau, Milwaukee's founder, of property on Astor Street, just North of Knapp Street, dated September 19, 1846. One of the two large brick homes he built on the Astor Street land is still in use in 1978. He also owned other real estate. One lot on Pleasant Street in its abstract shows a transfer from him to Katherine Hirschboeck.

One of his building feats was the reservoir on the height of North Avenue West of Humboldt Avenue. The thousands of wagon loads to to build the hill is reminiscent of building the pyramids.

As a railroad contractor, the Chicago, Milwaukee, St. Paul line across Wisconsin to Watertown was one of his principal jobs.

The Kettle Moraine Scenic Railway which takes tourists on a steam railway ride from North Lake uses track and right of way built by Stephen Hoff for an ambitious railroad intended to run from Milwaukee to Superior, which ended at North Lake. The failure of this project is remembered as a family tragedy.

Heiser Ancestry

Alsheim is a village near the Rhine in Hessen Darmstadt, West Germany. It is on the line between Mainz and Worms, South beyond

Mierstein and Oppenheim. Its vineyards once produced wine exported to the United States, but the nearest available in plenty now is Niersteiner. Charles Heiser, father of Katherine, wife of Stephen Hirschboeck, was born in Alsheim, January 5, 1846. He emigrated as a youth of 18 arriving in New York about 1864 * where he took employment in a butcher shop. He came in the post Civil War immigration into Wisconsin. He settled in Saukville, Wisconsin, where he married Theresa Seng, daughter of John Evangelist and Josephine Seng, January 21, 1869.

---

* Records are unavailable and memories have failed but it is remembered that Charles was in New York at the time of assassination of President Lincoln and there is a German prayer book "Necessary Prayers of the Catholic Christian" inscribed: Remembrance of Pastor Schilling, Alsheim Feb. 1864, which it is believed Charles received on his departure from Alsheim, It is remembered that he had two brothers - one the father of Katie Heiser Lowe, who lived in Ohio and another, the father to Katie Heiser Rehn, who lived in Gimtsneun near Alsheim.

Charles started his own butcher business, building his abattoir along the Milwaukee River south of the village. He, not only did his own slaughtering but was a sausage maker and sacked and otherwise prepared the meat he sold. His customers ranged quite far and he served them by horse and wagon routes to Port Washington, to Newberg and a dozen villages around. It was a successful business and about 1882 he moved it and his family to the East side of Milwaukee. From his market on Farwell Avenue at Franklin Place just North of Ogden Avenue he served his Yankee Hill customers to their satisfaction. The business grew and soon his brother-in-law, Joseph Seng, became his apprentice and before long a successful competitor. Many other relatives learned the trade in his shop, nephews, Gus and Jake Heiser, the Turk boys, and his son, Charles J. Heiser. The best markets in Milwaukee had started with Heiser training.

Charles Heiser knew what his customers warded and got it for them, from barrels of blue points to the finest prime beef obtainable. He personally roamed the packer's coolers to select meat he would cut and sell and deliver to the customers' homes. He built a fine home next to his market but later built another larger home at Crater Street and Webster Place, next to the duplex he had previously built.

His son, Charles J. Heiser, had taken over the business in the 1920's but the senior Charles continued in the selection and purchase of meats, and, when Charles, Jr. died at age 57 on August 29, 1929, Charles Senior resumed most of the management for his son's family.

Charles Heiser died July 23, 1934. His wife, Theresa, had preceded him in death on June 30, 1927. Funeral services were in Sts. Peter and Paul's Church and they were interred in the Heiser lot in Calvary Cemetery.

Seng Ancestry

From a 1935 letter written by Joseph Seng, brother of Theresa Heiser, the descent from Alois Seng of the Village of Stauffen in the Duchy of Bader. is related. Alois' youngest son, John Evangelist Seng, was the father of Joseph and Theresa. As a young man, John, learned the trade of wainright or wagon maker. As a journeyman he traveled Southern Germany and also in Lorraine, France, Italy and Switzerland finally settling in his home town to make and repair wagons. The late 1840*s were restless times. Josephine Kreuter, a belle of neighboring Ehrenstetten, was persuaded against her parents objections to marry John. Of this marriage Joseph and Theresa were

born in Stauffen. The young couple decided to seek fortune in the United States and left for Paris in the Spring of 1848, then on to Havre and after landing in Hoboken, they took a canal boat for Buffalo. They went on to Milwaukee where John found employment making 6 feet cartwheels for the lumber industry. These were for carts under which logs were chained to be taken to the mill. But the independence of having his own business led John and Josephine to open shop in Saukville, Wisconsin.

It was there that the children Joseph and Theresa and younger daughter Josephine (Turk) grew up and it was there that Charles Heiser courted and married Theresa.

As was mentioned earlier John and Josephine Seng lived their declining years in the big Heiser house. Herbert and Elizabeth Hirschboeck, great grandchildren, lived next door. The great grandparents served as babysitters at times and two memories of great grandma Seng remain. Telephones were a rarity in homes in the early 1900's, but there was one on the wall in the Heiser house. Where it rang with only great grandma and two young children there, it was alarming. Great grandma used to walk up to it and cry "Ist niemand zu haus!" - (There's nobody home). But one thing she always had for the children - a jar of twisted candy sticks. She could always assure herself a visit from the children.

END

Thus ends the genealogy of Stephen and Katharine Hirschboeck, leaving for another generation to tell of the lives of Herberts Elizabeth and John and their spouses and families.

Everyone has four grandparents. The Hirschboeck, Heiser, Hoff and Seng families have many members and it is easy to trace links of kinship with many other of the German Catholic families of Milwaukee But this has been the story of the merger of the four in the marriage of Stephen and Katherine Hirschboeck on May 26, 1896.

December 19, 1978.

H. C. Hirschboeck

LET'S LET THE LAWYERS LIVE:

HERBERT C. HIRSCHBOECK

APPENDIX II

MARQUETTE LAW REVIEW .

Vol. 35 FALL, 1951 No. 2

LETS LET THE LAWYERS LIVE!*

HERBERT C. HIRSCHBOECK**

Henry VI was king of England from 1422 to 1471. It was during his reign that the English were defeated in France by the army led by St. Joan of Arc. It was a reign in which the English people suffered from almost total lack of government while heads of great factions contended for power through control of the weak king. Such was the disorder that even a lesser rouser of the people could dare to aspire to the same power. One such leader, known as Jack Cade, led a band of rebels in a march on London until he was slopped in a battle with citizens on London Bridge.

Shakespeare, in his tragedy, *Henry VI*, has put in the mouth of one of Jack Cade's henchmen a cry against lawyers which insurgents and social rebels have echoed in later uprisings in later generations in many countries. Shakespeare has Cade addressing his followers:

> "And when I am King, (as King I will be)"

The followers all shout:—

> "God save your majesty!"

Cade continues:—

> "I thank you good people,—there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers, and worship me their lord."

Then the famous shout from their henchman:—

> "The first thing we do, let's kill all the lawyers!"

And Cade agrees:—

> "Nay, that I mean to do. Is not this a lamentable thing, that the skin of an innocent lamb should be made parchment?—that parchment being scribbled o'er should undo a man?"—
>
> "I did but seal once to a thing, and I was never mine own man since."[1]

Cade's rebellion of 1450 failed and the lawyers of that time were saved. About 27 years later a very famous lawyer was born in London. His father was John More, a butler at Lincoln's Inn. This was not a menial post. Being a butler at one of the inns of court was an

---

* Address delivered at the Annual Marquette Law Banquet. April 24, 1951.

** LL. B., Marquette University; Member of the Milwaukee Ear.

[1] SHAKESPEARE, KING HENRY VI, Second Part, Act IV, Scene II.

honorable position. In later years this butler was admitted to the bar and appointed to the bench and finally to the King's Bench. The son of the butler was called Thomas, and he followed his father into the practice of law and became prominent in the legal profession and distinguished himself in parliament. In 1529 he was made Lord Chancellor of England and is known in secular history as Sir Thomas More. This was in the reign of Henry VIII, and when the king had failed to obtain from the Pope the annulment of his marriage with Katherine of Arragon and had himself proclaimed Supreme Head of the English Church, the Lord Chancellor resigned because he saw in this a subversion of the nature and position of the kingdom and of the traditional legal system. He sacrificed an income of what today would amount to about $50,000 a year. Following his resignation he devoted his life to writing and to the defense of religion. Because he refused to acknowledge the ecclesiastical superiority of the king which Parliament had proclaimed, he was arrested for treason, imprisoned and beheaded. This martyrdom, crowning a life of devotion to principle, gave him titles in Catholic histories of incomparably higher significance than merely Lord Chancellor or Sir Thomas More. He became Blessed Thomas More in 1888 and was canonized St. Thomas More in 1935 by Pope Pius XI.

The most widely read of St. Thomas More's writings is his story of the mythical idealist's country, Utopia. The name of the story survives in a common adjective, "Utopian," which our dictionaries define as "visionary or impractical." Scholars consider that the laws and customs of this fictional people were not his personal ideal? but that the story presents a fanciful society freed from all those things commonly blamed for the existing social ills of his time.[2] But he is often cited as one of the most eminent of lawyers condemning our own profession by the quotation from his Utopia:

> "They have no lawyers among them for they consider
> them as a sort of people whose profession it is to disguise
> matters as well as to wrest laws."

We may take comfort in the thought that the author was merely echoing, as a writer of fiction, the same popular outery which Cade's followers had shouted a generation before. But, coming down to our present generation, we have seen the abolition of the legal profession, not only advocated, but carried out in the Russian Revolution of 1918 and the National Socialist regime which took over Germany in 1933. The legal profession, functioning like our own, was extinguished from these countries of the modern world. They

---

[2] HOLLIS, THOMAS MOR (1934), pp. 55 et seq.

did not kill all the lawyers, but they created conditions under which lawyers could not be of any service and were compelled to seek bureaucratic positions or practice some other trade or perform common labor.

My theme tonight is: "Let's let the lawyers live!" and, at the risk of telling
you very much that you already know, I want to give you some reasons why the rebel cry: "Let's kill all the lawyers!" is sheer madness.

This nation was born in revolt against imperialism and agains denial of representation in government. Because the revolt succeeded, history called it the American Revolution, not merely a rebellion. The Declaration of Independence had 56 signers and 30 of them, a substantial majority, were lawyers. Those who think of lawyers only as shielders of vested interests should be reminded of these 30 patriots of OUT profession who courageously defied the political and proprietary power of that day. The dramatic birth of this nation might well be called an achievement of lawyers.

And, when the declared independence had been won, the task of establishing an enduring government was entrusted to a body of citizens in which, again, lawyers were the majority. The Constitutional Convention of 1787 was attended by 55 members and 28 of them were lawyers. They wrote the greatest charter of the liberties of man and of a government to maintain them ever conceived in the history of mankind.

Let us never forget the debt which we owe to these great lawyers among the founders of our country.

Throughout our history members of the legal profession in great numbers have represented the people in the House of Representatives and the Senate and many presidents and vice-presidents have risen from the ranks of the profession. In the 80th Congress there were 228 lawyers in the House and 64 in the Senate. The same may be said of the legislatures and executive offices of the states. The people of America continue their confidence in lawyers in political life.

But the service to civil society of lawyers in private practice and on the bench, while less glamorous, is as fully deserving of the regard of the people.

The years which followed the adoption of the constitution reaching to the Civil War have been called America's Silver Age. This was the generation of the Websters, Calhouns, Clays and Marshalls— whose part in great political events the histories have made familiar. But these men were, first of all, lawyers and, with hundreds of other lawyers, applied to the society of their time the great principles of

liberty and order and made constitutional government a living, functioning reality.

This was not done alone in celebrated cases or great debates, but mostly in the day to day work in the law offices and ordinary litigation in the courts. It is easy to promulgate a rule of law, but to make it known and understood and observed requires more than a police force, particularly in a society of free men.

As now, it was in those early days the task of the lawyers to advise the individual citizen of his duty and his right, to secure observance of both and to work- out the conflicts of his rights with the rights of his fellow man. The painstaking investigation, analysis, negotiation and litigation in tens of thousands of cases in hundreds of law offices and courts made the constitution and the law known and made them work and preserved social order and securely established this republic with its unique personal liberties.

There was recently published a biography of a great lawyer of that generation. Although he was a North Carolinian and may seem remote to us, his life is of interest to us of Marquette University because he was the first student of our sister university, Georgetown. He was William Gaston of whom Daniel Webster said:

"The greatest of the great men of the War Congress was
William Gaston. I myself came long after him."[3]

While he distinguished himself in Congress during the War of 1812, the largest part of his career was spent in service in the ordinary practice of law and on the bench. Of the hundreds of daily applications of law to facts, unceasingly making the law function in the lives of the people, biographers do not write. But dozens of noted cases attest his ability, courage and humanity, such as the case of *State v. Will*[4] —establishing justification of homicide in selfdefense for slaves. In an era and state which accepted slavery as anestablished institution, he was bound as a lawyer and judge to contend for and decide rights within the framework of that system. To overthrow the system would be a legislator's privilege to attempt. It took the 13th Amendment to the United States Constitution adopted after the Civil War to abolish the system of slavery. In the judicial forum, constitutions and written laws are not overthrown. They are interpreted, exceptions denned and conflicting rules and laws reconciled and accommodated one to the other. In this area of determination as well as in the growth of the unwritten common law, lawyers and judges have ever contributed ably to the endurance and progress of the nation. In the case decided by Gaston, to which

---

[3] SCHAUINGER, WILLIAM GASTON, CAROLINIAN (1949) p. 63.

[4] 18 N.C. 121. (1834)

reference has been made, an overseer had shot a slave with a shotgun, wounding the slave, but not fatally. The slave turned on the overseer and stabbed him to death with a knife. The slave was prosecuted for murder and convicted on the theory that the master's unlimited power did not admit of self-defense as justification for the slave's act. There is not time to follow Gaston's reasoning in support of reversal of the conviction. His decision, within the established laws of slavery, but developing a limitation and exception, was stated thus:

> "Unconditional submission is the general duty of slaves. Unlimited power is, in general, the legal right of the master. However, there are exceptions. It is certain that the master has not the right to slay his slave, and I hold it to be equally certain that the slave has a right to defend himself against the unlawful attempt of his master to deprive him of life."

Thus the slaves of the South in this decision of 1834 won a privilege of freemen —justification of homicide in self-defense— which had been denied to them.

Gaston did not take an amoral approach. He did not heed what the people of North Carolina wanted at the moment. To him the quest was for a sound applicable principle of a philosophy grounded in natural law. The slave, whatever his station in the society of the time, was a human being —a man— endowed with the inalienable right to defend his life.

This feature of our legal system which provides an area of adjustment, development and compromise in interpretation and application of law has served and continues to function as an ameliorating absorber of social shocks. It has saved and will continue to save the people from the oppression of an absolute, unyielding, cold constitution, but it has saved and will also save that constitution from the wrath of an oppressed people.

To lawyers and judges is entrusted the task of making constitutional government workable and successful and, in tin's area of accommodation of abstract rules to the realities of life, our greatest service is rendered. To performance of this task we must bring, not only scientific knowledge and rhetorical skill, but a true philosophy and appreciation of the obligations involved in declaring precepts for human society.

Many examples could be cited of famous decisions in which new rules of conduct were declared or adjustments made between statutory expressions of the current popular will and the fundamental rule of the constitutions, both state and federal. The famous cases necessarily are identified chiefly with the judges who decided them. But the judges gave final expression in their opinions to, not only

their own thinking, but to the work of many lawyers which contributed to the result. It is not given to many of us to serve our fellow citizens in high judicial office, but, as lawyers we participate in many ways in the attainment of ultimate Judicial sanction for a new principle or socially desired adjustment of an old rule of law.

The idea for the new law may have originated with a lawyer, but whether it was a lawyer's or a layman's idea, it surely took a lawyer to give it expression —to write it in the form of a bill for the legislature. Before it was enacted there were perhaps hundreds of lawyers who gave it analysis, developed amendments, argued for it or opposed it. Many of these lawyers were serving individual clients or groups and brought to the deliberations their knowledge of the facts and conditions under which the law would have to function. After the legislative process was completed, other hundreds of lawyers began to advise their clients, the people to whom the law would apply. Issues of interpretation and application were resolved or, if not, they reached the stage of litigation. At least two lawyers contended in each case and, as adversaries, each presented the best evidence and most cogent argument for a decision of the issue favorable to his client. The work of all of these lawyers usually goes unsung. The public learns little of it. The newspapers seldom report it, for it is not news. It is merely the lawyers performing their day to day work—doing only what is expected of them. But from their collaboration has come a new principle or altered rule of conduct; not merely imposed on subjects like an imperial decree, but developed for freemen out of a deliberative process designed to respect their liberties and maintain the constitutionally ordained social order.

The famous cases have immortalized the judges who wrote the opinions; but few remember the lawyer who developed the new concept and so ably argued for it and pained acceptance of it by the court. It is the lot of the advocate to submerge his pride in his success. His achievement rests in the approval of his theory by the constituted authority and to that authority, the court and its judges, the credit must go.

The famous cases which have been concerned with political conflict have been read by historians and have been recorded by them. Many examples of the finest work of lawyers in making our constitutional government a living preserver of our liberties have never come to the historians' notice; many are written only in supreme court reports, but many, many more are not recorded at all for posterity. But every case in court, whether involving great or little interests, has not merely disposed of the particular conflict of the moment between

two parties. It has served to make known. to the laymen concerned, much about law and about government with which they were unfamiliar. It has illustrated the working of our body of laws under our constitution for the keeping of good order. On how well or bow poorly the lawyers and judge discharged their duties in the process, depends the degree of respect these lay participants have, not only of the lawyers, but of the law and the courts as institutions.

The part played by lawyers in little as well as big litigation is important in many indirect consequences, and the adequate preparation for service in the profession and the requirement of proper ideals of service are most important.

William Gaston was a friend and teacher of young lawyers of his day. His admonition to one of Ins students is given by his biographer as follows:

> "To pain the qualifications of an illustrious lawyer Gaston laid down four requisites. It was necessary to devote much time to study, knowledge being evanescent. He must acquire a thorough knowledge of legal science, a facility in expressing thoughts clearly, correctly and agreeably and so arrange them as to illustrate, convince and persuade; he must give an unremitted attention to the interests of his clients and, finally, have an incorruptible integrity. Gaston advised him to make plain, short briefs at first, and always go to original sources. He must read the classics to aid his style. Finally, lie warned him that the most dangerous pest of society was the wicked unprincipled lawyer, whose reason was a slave to his appetite, whose honor was but a fashionable honor, whose religion was pride, revenge and sensuality."[5]

Such are the qualities required of those who would enter upon careers devoted to making our constitutional government real and functioning in the lives of the people, to preservation of their liberties and maintenance of social stability.

Lawyer's work in private practice may be classified as preventive, conciliatory, forensic and constructive. Perhaps the largest service is preventive of disorder and controversy. By analysis of facts, able interpretation of law and prudent advice, the clients come to know and observe the laws and conduct their affairs in harmony with the rights of others and of the public without controversy or litigation.

But, when a client asserts that another has wronged him or seeks defense from charges of another, the lawyer's functions change from counselor to attorney. By skillful negotiation he pursues the conciliatory function in endeavor to compromise the conflict.

---

[5] Supra, note 3, at p. 36.

Most conflicts are compromised or settled by the negotiations of opposing attorneys; but, for those which cannot he disposed of by agreement, recourse to litigation becomes necessary. Law without a sanction is meaningless. For every wrong there must be a remedy. In enforcing the sanctions of the law and securing its remedies for wrongs the lawyer serves as advocate. He becomes pleader and champion of his client's cause in the judicial forum. Here he is an officer of the court, assisting the judge in the solution of the issues; but he is also the attorney of his client, bound by the highest duty of unswerving loyalty to the interests of the client. He and the opposing attorney are adversaries and their contest and skillful debate as adversaries will serve to present all of the considerations to be weighed on each side from which the court, fully informed and aware of all aspects of the issues, is enabled to make an enlightened decision.

But constructive service brings to lawyers, as to others, the greatest satisfactions. To be the organizational architect of a new enterprise is interesting work —to develop the part and function of each participant —to write its charter —to guide the planning of its directors —to see it launched and watch it grow —are all rewarding experiences. The proposal and drafting of new laws is a field in which many lawyers serve to build new and better units into the structure of government. The invention of new instruments of commerce, new securities and new plans for the protection and free flow of credit are all in this field. The creation of pension and profit sharing plans, the writing of fair labor contracts which promote industrial harmony and progress are no less gratifying to the lawyer than his victories in intently contested cases. The victories are soon forgotten, hut the lawyer's handiwork that endures for economic and social good. is his lasting pride.

To laymen of an earlier day much of this was obscure. To Jack Cade's rebels, lawyers were the instruments of autocratic oppression, not the defenders of the people's liberties and the preservers of a social order in which those liberties could be enjoyed. A demagogue could rouse an ignorant mob to urge liquidation of the legal profession; but in our country in this day of universal education we may justly hope that our lay fellow citizens will understand what we are and what we do and say to any demagogue: "Let's Let the Lawyers Live!"

We may justly hope that all that lawyers have done in the founding and building and preserving of our nation of free men will he remembered; that the service of lawyers in rearing and maintaining for the American people a living organic republican government under a written constitution, unequalled

in any other place or time will be appreciated.

And to assure the legal profession of such regard in the years to come, let the lawyers continue to be good guardians of the social order and so serve even' client and so perform every professional appointment that the people will see, by their living example, how well respect for law and lawyers is deserved in this land of freedom and justice under law.