REPORT

of

REVISOR OF STATUTES

******

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

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Submitted to the Legislature of the State of Minnesota

JANUARY 1973

STATE OF MINNESOTA
REVISOR OF STATUTES
SAINT PAUL

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January 1, 1973

The Honorable Alec G. Olson
President of the Senate

and

The Honorable Martin O. Sabo
Speaker of the House of Representatives

State Capitol
Saint Paul, Minnesota 55101

The Revisor of Statutes transmits herewith his Report to the Legislature as required by Minnesota Statutes, Section 482.09(9), concerning statutory changes recommended or discussed or statutory deficiencies noted in opinions of the Supreme Court of Minnesota between November 15, 1970, and November 15, 1972.

Respectfully submitted,

Joseph J. Bright

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Revisor of Statutes

REPORT OF THE REVISOR OF STATUTES
TO THE
LEGISLATURE OF THE STATE OF MINNESOTA

CONCERNING CERTAIN OPINIONS OF THE SUPREME COURT

The Revisor of Statutes respectfully reports to the Legislature of the State of Minnesota, in accordance with Minnesota Statutes, Section 482.09(9), which provides that the Revisor of Statutes shall:

> "Report to each regular biennial session of the legislature concerning any statutory changes recommended or discussed or statutory deficiencies noted in any opinion of the Supreme Court of Minnesota filed during the two-year period immediately preceding November 15 of the year preceding the year in which the session is held, together with such comment as may be necessary to outline clearly the legislative problem reported."

The opinions of the Supreme Court of Minnesota concerning statutory changes recommended or discussed, or statutory deficiencies noted during the period beginning November 15, 1968, and ending November 15, 1972, together with a statement of the cases and the comment of the court, are set forth on the following pages, in the order of the sections discussed.

TABLE OF CASES

REVERSED TABLE OF CASES

ERICKSON v. KALMAN, 291 Minn. 41, 189 N.W. 2d 384, August 6, 1971

In this case a mother established three "joint and several" bank accounts for herself and two daughters. The mother and one daughter died within a few hours of each other. The deceased daughter's estate's administrator claimed a share in the accounts. The supreme court, reversing the district court, upheld the claim. Three justices dissented.

Both the opinion of the court and the dissenting opinion discussed at length the intentions and legal presumptions about the intentions of the mother, the original depositor. Justice Kelly, in dissent, thought the state of the law confusing and unsatisfactory and suggested new statutory language to remove the problems of proof about intent:

> The device of depositing funds in a joint and several account with rights of survivorship may be very useful in instances in which small estates are involved. It has been referred to as the "poor man's will." The uncertainties and the litigation which have evolved in a number of cases would indicate, however, that if such an account is intended as a will, it should be described as a poor "poor man's will." In order to avoid uncertainties, our legislature might consider enacting legislation adopting the rule set forth in Jorgensen v. Dahlstrom, 53 Cal. App. (2d) 322, 332, 127 P. (2d) 551, 556, where the court

interpreted a statute similar to Minn. St. 48.30, stating:

"In the absence of fraud, unsound mind or undue influence, the deposit or transfer of a fund in a bank as a joint tenancy account, payable to either or the survivor of the parties to the agreement, vests the title thereto immediately in each of them and after the death of one of such depositors the fund becomes the absolute property of the survivor."

Such legislation would reach an intended result where joint and several accounts are used by knowledgeable people. Attorneys, in advising as to the benefits of using or not using such accounts, could with reasonable certainty point out all the legal consequences. I have no doubt that the ordinary lay person in opening accounts is advised by the financial institution that the money will be paid out in accordance with our statutes. Because of our rulings that a mere presumption is created, many cases will have to be decided when evidence may not be available because witnesses may have died, may fail to remember the particular incident, or because of the application of the Dead Man's Statute.

STATE v. HALVORSON, 288 Minn. 424, 181 N.W. 2d 473, November 20, 1970

This action arose out of the so-called implied-consent law, Minnesota Statutes, Section 169.123. Under this law, the refusal of a driver to permit the alcoholic test makes mandatory the revocation of the driver's license for a period of six months. The refusal of the driver to submit to a chemical test is subject to sanction only if, as stated in section 169.123, subdivision 2,

> The test shall be administered at the direction of a peace officer, when (1) the officer has reasonable and probable grounds to believe that a person was driving or operating a motor vehicle while said person was under the influence of an alcoholic beverage, and (2) the said person has been lawfully placed under arrest for alleged commission of the said described offense in violation of Minnesota Statutes, Section 169.121 [operating a motor vehicle while under the influence of an alcoholic beverage or narcotic drug], or an ordinance in conformity therewith.

The question before the court was whether the "peace officer" who would have directed administration of the test to the defendant, had she not declined it, fell within the meaning of subdivision 1 of this section. Section 169.123, subdivision 1, defines "peace officer" to mean:

> ...a state highway patrol officer or full time police officer of any municipality or county having satisfactorily completed a prescribed course of instruction in a school for instruction of persons in law enforcement conducted by the university of Minnesota or a similar course considered equivalent by the commissioner of [highways].

The commissioner of highways (now the commissioner of public safety) promulgated rules in accordance with this law as to the course of instruction required by a peace officer.

In the trial the question arose as to whether the particular officer had the qualifications of a peace officer under the statute. The court said in the concluding paragraphs of the opinion:

> Although we might surmise that more detailed interrogation of Officer Oltman would have established that he had had the requisite course of instruction, we cannot hold as a matter of law that his special qualifications were proved. A license revocation proceeding is civil in nature, notwithstanding the vague language in section 169.123, subd. 6, that the judicial hearing 'shall proceed as in a criminal matter.' State v. Normandin, 284 Minn. 24, 26, 169 N.W. (2d) 222, 224. The defendant, therefore, is not clothed with those substantive constitutional rights associated with criminal matters. The defendant is not entitled to a presumption of innocence, and the state is not required to establish compliance with statutory conditions by proof beyond a reasonable doubt. The legislature nevertheless has manifested an intent that the peace

officer's qualifications must be proved by a fair preponderance of the evidence.

Whether or not the legislature would better achieve its basic statutory purpose by a clearer indication as to whether both the arresting officer and the testing officer must be 'peace officers' and, more importantly, whether the legislature, or in this case the commissioner of public safety, should more clearly define the special qualifications, if any, of such officers is not for us to decide. We, like the trial court, must take the statute and the regulation as we find them.

288 Minn. 431

Section 169.123 was amended by the 1971 legislature but not in any way that affects the comments of the court.

GRABER v. PETER LAMETTI CONSTRUCTION COMPANY, 197 N.W. 2d 443, March 24, 1972

Graber contracted silicosis in the course of employment but discovered it more than four years after his last exposure to silica dust. On the basis of Minnesota Statutes, Section 169.33, Subdivision 3, which requires that claims be made within three years of the last exposure, the supreme court denied compensation remarking, "...much as we may disagree with the legislative enactment, we are compelled to affirm the commission's decision." (197 N.W. 2d 445.) The court went on to discuss the nature of silicosis which may cause disability long after the last exposure to silica dust. The court suggested that the language of the statute prior to Laws 1949, Chapter 500, Section 1, be restored so that claims may be made for three years after the disease is "contracted", a term which has been construed to mean the time when clinical symptoms appear. (Yaeger v. Delano Granite Works, 236 Minn. 128. 52 N.W. 2d 116 [1952].)

JOHNSON v. BIALICK, 200 N.W. 2d 172, (Minn.), July 28, 1972

Johnson had a workmen's compensation claim against a corporation controlled by Bialick. The corporation did not have the required workmen's compensation insurance and has no assets. Johnson's claim was paid from the Special Compensation Fund and the custodian attempted to fix liability on Bialick. The supreme court declined to do so and commented:

> Relator suggests that dire results will follow if the organizers of thinly capitalized corporations are allowed to escape liability for failure to provide workmen's compensation insurance for the corporation as required by law. However, this is properly a matter for the legislature to consider.
>
> We point out that the legislature has adequate tools to remedy this situation if it is as dangerous as suggested by relator. In 1963, Minn. St. 1961, § 290.92, subd. 1(4), of our income tax statutes was amended to include in the definition of "employer" officers of corporations who have legal control, either individually or jointly with another or others, of the payment of wages. L. 1963, c. 666, § 1. Minn. St. 290.92, subd. 6(7), provides that all employers are personally and individually liable to the State of Minnesota for taxes required to be withheld that are not paid to the state. A similar remedy could easily be written into the Workmen's Compensation Act if the legislature so desires.
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> 200 N.W. 2d 175

PARSONS v. HICKEY, October 6, 1972

This case concerned the place of residence of a candidate for the legislature. Section 203.38, subdivision 1, gives jurisdiction of errors in state elections to the supreme court and county elections to the district court. The supreme court took jurisdiction but stated the categories of "state" and "county" elections were not satisfactory:

> No provision is made for such a proceeding involving a district election in which more than one county but less than the whole state is involved. It is obvious that this must be a legislative oversight as it could not have been the intention of the legislature to leave candidates in such districts without any remedy. We have accepted original jurisdiction in such cases in the past without any question being raised. See, e. g., State ex rel. McGrath v. Erickson, 203 Minn. 390, 281 N. W. 366 (1938); Moe v. Alsop, 288 Minn. 323, 180 N. W. 2d 255 (1970). The same is true with respect to the office of judge of the district court, even though the boundaries of the district are coterminous with those of the county. See, In re Candidacy of Daly, ____ Minn. ____, ____ N. W. 2d ____ (filed September 8, 1972). We now hold that in proceedings brought under § 203.38, subd. 1, involving districts extending into more than one county but less than the whole state and in all proceedings involving the district court, whether the boundaries of the district are coterminous with the county or not, the proceeding is properly brought in this court.

The following amendment to section 203.38, subdivision 1,

would integrate the supreme court's construction into the text of the subdivision:

203.38 [ERRORS AND OMISSIONS, REMEDY.] Subdivision 1. When it shall appear by affidavit to any judge of the supreme court in the case of ~~a state election~~ an election of a district court judge or an election by voters in more than one county, or to any judge of the district court of the proper county in the case of ~~a county~~ any other election:

(a) That an error or omission in the placing or printing of the name or description of any candidate on official primary or general election ballots has occurred or is about to occur; or

(b) That any other error in preparing or printing the ballots has occurred or is about to occur; or

(c) That any officer of a political party or political party committee has failed to properly make or file a certificate of nomination; or

(d) That any wrongful act, neglect, or error by any election judge, county auditor, canvassing board or member thereof, secretary of state, or other person charged with any duty concerning an election, has been or is about to be done,

then the judge immediately shall order the officer,

person, or board charged with the error, wrong, neglect, or failure to correct the same or perform the duty forthwith or show why he should not do so. Failure to obey the order is contempt of court.

LEHMAN v. WESTERN AIRLINES, INC., 291 Minn. 6, 188 N.W. 2d 883, July 16, 1971

The plaintiff was one of several employees laid off by Western Airlines because of a strike by other employees. The plaintiff and 35 others claimed unemployment compensation. The department of employment security and the supreme court found that, "They did not recognize, condone, sanction, or in any way participate in the strike. They were authorized by their officials to cross the teamsters' picket line." 291 Minn. 8. Nevertheless, they were not entitled to unemployment compensation according to Minnesota Statutes, Section 268.09, Subdivision 1, Paragraph (5), because their unemployment was the result of a labor dispute. The court agreed that, "...the policy of the law may, in some instances, operate unfairly.", but stated that the legislative branch was the place to seek any appropriate change. 291 Minn. 10.

STATE v. NORTH STAR RESEARCH AND DEVELOPMENT INSTITUTE, 200 N.W. 2d 410, (Minn.), July 7, 1972

North Star was a corporation organized under the nonprofit corporation law to perform research projects for customers who contracted for its services. The history of its organization and operation is fully set out in the opinion of the court. North Star leased real property from the Minneapolis School District for successive terms, each of less than three years. The court held that the real estate was exempt from real property taxation under Minnesota Statutes, Sections 272.01, Subdivision 2 and 273.19, Subdivision 1, because it was leased to a nonprofit corporation organized under the nonprofit corporation law, which was in fact not conducted for a profit and the lease was for less than three years. It was suggested by North Star that it was exempt as a charity. Commenting on its refusal to decide that question the court stated:

> 2. Our decision on the first issue is dispositive of the case and there is no necessity for determining the "purely public charity" issue. Besides, it would be preferable to give the legislature an opportunity to limit or define the property of purely public charities that may have an exempt status, particularly in view of the fact that Minn. Const. art. 9, § 1, as amended November 3, 1970, specifically gives the legislature power to limit or define the property of a purely public charity to be exempted from

tax. See, L. 1969, c. 925.

> We unhesitatingly concede that the legislature, rather than this court, should determine the policy of this state with regard to the exemption, if any, from taxes that corporations such as North Star should be given. We urge the legislature in their judgment to limit or define these exemptions as it is empowered to do under our State Constitution. This court should not usurp the power so recently granted the legislature by the people to decide these questions when it is unnecessary to do so. 200 N.W. 2d 425

Justice Murphy dissented. Chief Justice Knutson joined in the dissent and suggested that Minnesota Statutes, Section 273.19, Subdivision 1, be amended to cover otherwise tax exempt property when consecutive leases of the property total more than three years.

> Obviously, the statute was intended to permit short-term leases of public property to avoid payment of taxes. But when the lease is made, as was done here, for 2 years 11 months, with subsequent leases being made of similar duration, it seems to me that the purpose of the statute has been completely ignored. I think that when a lease of this kind is followed by subsequent leases extending in the aggregate beyond the statutory period, the property should become taxable, if not ab initio, at least from the time of the subsequent lease periods. Otherwise, the statute is used as a device for evading the payment of taxes when every intention was to lease the property for more than 3 years. I cannot believe that the legislature intended that property could go tax-free simply by drafting a lease for slightly less than 3 years and then continually making subsequent leases for similar

periods. If the statute can be so construed, I think it should be amended by the legislature so that when a lease for less than 3 years is followed by subsequent leases whereby the property is held for more than 3 years, it should become taxable at some point in time.

200 N.W. 2d 438

HOENE v. JAMIESON, 289 Minn. 1, 182 N.W. 2d 834, December 11, 1970

This was an action for a declaratory judgment that Minnesota Statutes, Section 297A.25, Subdivision 4, permitting a sales tax on road-building materials purchased by contractors is unconstitutional.

The tax reform and relief act of 1967 imposing a three percent sales tax on sales at retail had a provision now coded section 297A.25, which deals with exemptions. Subdivision 1 (h) of that section specifically exempts from the tax the gross receipts from the sale of all materials used or consumed in industrial production of personal property intended to be sold ultimately at retail, including the production of road-building material. Minnesota Statutes, Section 297A.25, provides in part:

> Subdivision 1. The following are specifically exempted from the taxes imposed by sections 297A.44:
>
> * * *
>
> (j) The gross receipts from all sales of tangible personal property to, and all storage, use or consumption of such property by, the United States and its agencies and instrumentalities or the state of Minnesota and its agencies, instrumentalities and political subdivisions.

Section 297A.25, subdivision 4, which was the

provision challenged in these proceedings, was drafted by a conference committee of the House and Senate at the 1967 Extra Session. It excludes certain sales from the exemptions otherwise conferred by the sections cited, in the following language:

> Nothing herein shall exempt the gross receipts from sales of road-building materials intended for use in state trunk highway or interstate highway construction, whether purchased by the state or its contractors.

The basic issue before the court was whether the imposition of a sales tax on materials purchased by contractors for use in state trunk highway or interstate highway construction unconstitutionally invades the state trunk highway fund created by Minnesota Constitution, Article 16, Section 6, expenditures from which are limited to trunk highway purposes.

The court stated:

> As we have indicated, subd. 4 appears to have been an afterthought designed to take advantage of the Federal Government's major participation in the construction of trunk and interstate highways. Section 297A.25, subd. 1 (j), expressly exempts from the sales tax purchases of personal property by the United States Government and by the State of Minnesota. That provision is clearly consistent with the immunity which state and Federal governments ordinarily enjoy. We perceive no legislative intent to apply the exemption or nonexemption equally to contractors and to the state in other

> kinds of highway construction. As we have suggested, but for subd. 4, it would appear that purchases by the state would be exempt and purchases by the contractors would be subject to the tax. We therefore hold the application of the statute with respect to contractors and the state is severable as a matter of law.

The court held that the sales tax imposed by the "Tax Reform and Relief Act of 1967," on the purchase of materials by contractors for use in the construction of state trunk highways is not an unconstitutional invasion of the state trunk highway fund protected by Minnesota Constitution, Article 16, Section 6.

The court however held that Minnesota Statutes, Section 297A.25, Subdivision 4, is unconstitutional as to the purchase of material by the state itself for use in the construction of state trunk highways.

The court said:

> As we have indicated, all of the parties assume that the tax is invalid as to purchases by the state. In this assumption, we concur. Clearly, the imposition of a 3-percent sales tax on direct purchases diverts that amount from the trunk highway fund to the property tax relief fund. The precise amount of the tax is mathematically ascertainable in every instance. We have no difficulty, therefore, in holding the tax unconstitutional as to purchases made directly by the state.

The 1971 legislature took no action to correct the language of section 297A.25, subdivision 4. The court's

opinion indicates that the same result would be reached if subdivision 4 were repealed but a more conservative correction would only delete the reference to the state in that subdivision.

ROSS v. ROSS, 200 N.W. 2d 149, (Minn.), July 14, 1972

In this case the supreme court held that the Dramshop Act, Minnesota Statutes, Section 340.95, applies to every person who supplies liquor to another and not only to commercial liquor vendors. The court expressed concern about the propriety of the principle of strict liability in cases involving social suppliers of liquor.

> Our decisions have imposed on licensed liquor vendors strict liability because--
>
> "...such business or activity can best bear the loss occasioned by a violation of law regulating the business or activity, even though the violation was unintentional or did not involve any deviation from the standard of due care."
> Dahl v. Northwestern Nat. Bank, 265 Minn. 216, 220, 121 N.W. 2d 321, 324.
>
> It may well be that the legislature in light of our present holding will amend the Civil Damage Act to permit one who is not in the liquor business to assert the defense of due care. This, however, is not our prerogative.
> 200 N.W. 2d 152

Justice Rogosheske, in a concurring opinion, went into the problem at greater length:

> ...I cannot endorse the language of the opinion which might be read to imply that the strict liability we have held the statute imposes upon a commercial seller of liquor can, with equal justification, be imposed upon a social host even though he may or may not carry either the type of, or

sufficient, liability insurance to protect against the risk of such liability....

As briefly alluded to in the opinion, it is "strict liability" without regard to fault in the sense that the dealer, and now the host, engaged in any intentional or negligent misconduct....

It thus seems to me that it is necessary to note that the result of our decision may be to effectively dull one edge of what has been a sharp two-edged tool fashioned by the legislature to protect the health, safety, and welfare of the public by carefully controlling the commercial sale or transfer of liquor to minors or intoxicated persons. Inevitably, attempts will now be made to amend the statute, or our construction of it, and to inject into it the element of fault or proof of negligence. I offer these observations in aid of those who will seek to improve the statute and its application. In this developing area of law, where we have not yet been directly confronted with whether or not nonstatutory common-law liability based on negligence should be imposed on private individuals, and indeed on commercial vendors,[3] it is important to keep clearly in mind the host of public policy considerations which must be weighed in resolving the threshhold issue of whether such a remedy should be in addition to or a substitute for the liability imposed by our Civil Damage Act. (footnote omitted)

200 N.W. 2d 154, 155

JENSEN v. DOWNTOWN AUTO PARK, 289 Minn. 436, 184 N.W. 2d 777, March 5, 1971

WIBSTAD v. CITY OF HOPKINS, 291 Minn. 206, 190 N.W. 2d 125, September 10, 1971

ALMICH v. INDEPENDENT SCHOOL DISTRICT NO. 393, 291 Minn. 269, 190 N.W. 2d 668, October 1, 1971

McGUIRE v. HENNESSY, 193 N.W. 2d 313, (Minn.), December 30, 1971

HANSEN v. D. M. & I. R. RY. CO., 195 N.W. 2d 814, (Minn.), March 10, 1972

OLANDER v. SPERRY AND HUTCHINSON CO., 197 N.W. 2d 438, (Minn.), April 28, 1972

ALTENDORFER v. JANDRIC, INC., 199 N.W. 2d 812, (Minn.), July 21, 1972

Minnesota Statutes 1971, Section 466.05, Subdivision 1, has been construed by the supreme court in a series of cases. The section requires notice to municipalities of tort claims within 30 days of the event giving rise to the claim. The section has been persistently criticized as harsh and the court has suggested that it may find merit in arguments that it is constitutionally defective.

In Jensen v. Downtown Auto Park the court found that a letter written to the mayor and council of Minneapolis was not sufficient notice within the statute. The court commented that the result was harsh but noted that the legislature had not taken any opportunity to correct the situation since the leading case of Aronson v. City of St. Paul, 193 Minn. 34, 257 N.W. 662, (1934).

In Wibstad v. City of Hopkins, the plaintiff gave notice on the 33rd day after the injury. While the injured party is incapacitated the time for notice does not begin to run until 90 days have elapsed. Wibstad had been hospitalized for two days after the injury but was not so incapacitated after that to prevent the time for notice from running. The court remarked that the result was harsh but compelled by the language of the statutes.

Almich v. Independent School District No. 393 held that an insurance claim form on a postcard which was not directed to the governing body was not sufficient notice and also that actual knowledge by school board subordinates does not waive the statutory requirement. The harsh result and legislative inaction were mentioned again.

In McGuire v. Hennessy notice addressed to the city of Minneapolis was given to the city attorney who forwarded it to the city clerk after the 30 day period had elapsed. Following precedents the court held that the city attorney is not the proper officer to receive notices under section 466.05 and commented on the harsh rule.

Hansen v. D. M. and I. R. Ry. Co. held that actual knowledge by the municipality is not a substitute for statutory notice and that a cross claim for contribution or indemnity also requires statutory notice. Notice given

within 30 days of the service of the summons and complaint on the third party plaintiff is not sufficient. The court quoted the district court's comments on the harshness of the rule.

In Olander v. Sperry and Hutchinson Co., the supreme court declined to require "strict compliance" with the notice requirements of section 466.05 as to the "time, place, and circumstances of the loss or injury." It adhered to "strict compliance" only as regards the "timeliness or manner of service" of the notice. The plaintiff urged that section 466.05 is unconstitutional and, although the court decided the case on other grounds, it commented, "It should be noted that judicial patience should not be confused with judicial impotence, especially where constitutional rights may be concerned." 197 N.W. 2d 440. The harsh results with the present state of the law were reiterated with disapproval.

Another opportunity to consider the constitutionality of section 566.01 occurred in Altendorfer v. Jandric, Inc. The court decided the case on other grounds, "...again recommending to the legislature its renewed consideration of the several situations in which the statute seemingly produces harsh results." 199 N.W. 2d 816

O'BRIEN v. JOHNSON, 200 N.W. 2d 32, (Minn.), July 21, 1972

This opinion is the latest stage in fifteen years of litigation. Mrs. O'Brien is a substantial judgment debtor. She and her husband established a homestead in a commercial building that was their principal asset. This defeated efforts of Johnson, the judgment creditor, to levy and execute the judgment on the building. O'Brien v. Johnson, 275 Minn. 305, 148 N.W. 2d 357, (1967). In the 1967 case the court urged that corrective legislation be enacted. 275 Minn. 311. Pursuant to Minnesota Statutes, 510.07, Mrs. O'Brien has now conveyed her homestead to her children free from the judgment. The court thought this result a violation of equity and justice but compelled by the statute until the legislature acts to change it.

IN RE BARTHOLET, 198 N.W. 2d 152, May 19, 1972

This disbarment proceeding occurred because of abuses in the appointment of appraisers of estates by a probate judge. Justice Otis, concurring, suggested that S. F. 176 of the 1971 legislature would remedy the underlying defect in the statute and stated:

> ...Endeavors by the organized bar to put an end to the practice of vicarious generosity on the part of probate judges in approving the payment of excessive fees to appraisers have met with little success in the legislature.[1] While we do not suggest that the practice is necessarily widespread, the fact remains that respondent is not the only probate judge who has used his office to curry favor with colleagues, local officials, and friends....
>
> Fees which are grossly out of proportion to the time and responsibility expended constitute nothing more than a gratuity, the granting of which is now grounds for disciplinary action against the judge.[2] As long as appraisers are permitted to be paid on a percentage basis, without regard to the time and skill required to perform their duties, courts invite the kind of misconduct which has led to this disbarment. The time is at hand when it is incumbent on our profession, which has unequivocally condemned this indefensible practice, to eliminate it once and for all. (footnotes omitted)
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> 198 N.W. 2d 155, 156

STATE v. STAAT, 291 Minn. 394, 192 N.W. 2d 192, November 12, 1971

The defendant was found unconscious in a park and brought to a hospital in that condition. He was searched by an orderly in the course of treatment and drugs were found on his person. He argued that the drugs could not be admitted in evidence because their presence was information of his physician and an orderly working under the physician's direction and therefore privileged by Minnesota Statutes, Section 595.02, Paragraph (4). The trial court disagreed. The supreme court affirmed the trial court and, though other questions were raised, rested its decision on the conclusion of the trial court that the orderly was not an agent or servant of the physician. The supreme court remarked that the trial court could have found the opposite and been sustained on appeal. It suggested that the difficulty of applying the statute to cases of this kind could be reduced by more particular provisions in the privilege statute:

> ...it is intended to emphasize the problem confronting the courts in applying statutes enacted when their potential application to cases such as this was quite certainly unanticipated and to seek to demonstrate that our statute is in urgent need of revision. Had the trial court found the facts justified invoking the privilege in this case, criticism of the result could justifiably be directed only at the

statute and not at a trial judge's factual finding of a disputed fact. Surely the time is here when a reconsideration of the statute, such as was given when legislation requiring the reporting of treatment of gunshot wounds and of child-abuse cases was enacted, would result in the balancing of two competing public policies--the need to encourage defendants afflicted with drug addiction to seek medical attention without fear that the physician will be compelled to disclose incriminating evidence in court, and the need to ensure that those trafficking in drugs will not be able to use the privilege as a shield to conceal the commission of a crime and thereby defeat the proper objectives of the administration of justice.

291 Minn. 403

STEINHAUS v. ADAMSON, September 29, 1972

Steinhaus was killed in an automobile accident. Mr. and Mrs. Adamson were in the other automobile but both suffered amnesia. A trustee for Steinhaus sued Mr. Adamson. The principal evidence was the physical remains of the automobiles and their tracks. Minnesota Statutes, Section 602.04, provides that a dead person in a negligence action is presumed to have not been negligent himself. The presumption can be rebutted by evidence. The trial court held that no evidence had been introduced to rebut the presumption in favor of Steinhaus. The supreme court reversed saying that the jury should determine both whether the presumption was rebutted and the comparative negligence of Steinhaus and Adamson.

The court reviewed the cases construing section 602.04, rejected certain precedents and held that the presumption is only procedural, even though the jury must decide whether it has been rebutted. After its discussion of the precedents and the absurd results that could follow from some of the various possible interpretations of section 602.04, the court stated flatly, "It would be much better if the statute were repealed."

Justice Todd, dissenting, thought the section unconstitutional.

STATE v. MYTYCH, 194 N.W. 2d 276, February 4, 1972

STATE v. RAWLAND, June 30, 1972

In State v. Mytych the supreme court repeated its criticism of the M'Naghten Rule test of criminal insanity as "archaic and inadequate". 194 N.W. 2d 280. However in State v. Rawland, the court, in a long opinion by acting Justice Gunn, comprehensively reviewed and restated the interpretation of the M'Naghten Rule and removed many of the difficulties that had been the basis of earlier criticism. The court also suggested that difficulties would occur with several of the possible alternatives.

STATE v. FALCONE, 195 N.W. 2d 572, March 3. 1972

This case involved the admission at trial of testimony of the defendant at a grand jury hearing. In the course of discussion of the general operation of secrecy in grand jury proceedings, the court observed in a footnote:

> ...strict denial of discovery after indictment is in need of reconsideration in the light of well-reasoned proposals to provide pretrial discovery by defendant of the minutes, witness lists, and documents submitted to the grand jury.
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> 195 N.W. 2d 576, footnote 8.

McLAUGHLIN v. STATE, 291 Minn. 277, 190 N.W. 2d 867, (1971)

McLaughlin was convicted of uttering a forged prescription and sentenced to an indeterminate term not to exceed 20 years. On appeal he argued among other things that the sentence was a cruel and unusual punishment. The court rejected the contention but suggested that the legislature consider the possibility of review on appeal of sentences for serious crimes:

> We reiterate what this court stated in State v. Gamelgard, 287 Minn. 74, 80, 177 N.W. 2d 404, 408 (197): "*** We are not prepared at this time to hold that the appellate jurisdiction afforded to this court in all cases by our constitution embraces appellate review of sentences. We do, however, recommend the problem illustrated by this case to the legislature for its consideration in light of widely expressed views that sentences in serious criminal cases should be subject to review by appeal." See, A. B. A. Standards, Appellate Review of Sentences (Approved Draft, 1968).
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> 291 Minn. 284 (footnote)