

NOVEMBER 2006

*REPORT on A HISTORY OF THE NEBRASKA FEDERAL DISTRICT COURT*

By John R. Wunder and Mark Scherer

REVIEW:

Unfortunately, health matters have delayed this project. In August of 2004, John Wunder suffered a surprise heart attack which required a five month period of recuperation. Some progress was then made, but his health started to deteriorate in the fall of 2005 which led to heart surgery in January 2006. The surgery went quite well, but the after effects were highly problematic. He spent much of January in the hospital beginning the recovering period for bronchitis, lung blood clots, and pneumonia. In that period, he invited Mark Scherer who holds a PhD in History from UNL and a law degree from Ohio State to join him as a co-author, and they agreed that the first volume would become a top priority. Mark Scherer is now assistant professor of history at the University of Nebraska at Omaha and continues his legal work for a firm that specializes in appellate work in federal circuit courts of appeal.

PLAN AND ACCOMPLISHMENTS:

The plan for the first volume is to detail the history of the Nebraska Federal District Court during the court's first four judges: Elmer Dundy, William McHugh, William Munger, and Thomas Munger. Three and one-half chapters are completed on Dundy. At present, Wunder will be working on finishing Dundy, and Scherer is working on the transition from Dundy to the Mungers, who are of no relation. This involves the very short term of McHugh and all of the controversies over his appointment. McHugh handled very few cases during his several months in office.

The plan then calls for 3-5 chapters on the Mungers. Those will involve legal issues involving World War I free speech disputes, nativist/anti-German activities, post-war martial law and labor unrest cases from Nebraska City and Omaha and elsewhere, and substantial litigation regarding prohibition in Nebraska. William Munger served from 1897 to 1915 and Thomas Munger served from 1907 to 1941. It is likely we will cut off shortly after the conclusion of William Munger's term, ending in the 1920s. That remains to be determined by the evidence available. It is worth repeating that Thomas Munger kept substantial numbers of personal letters and memos that provide intriguing insights into his judicial philosophy and decision-making. This evidence is remarkable as most federal judges destroy this kind of valuable historical material. There is so much that the Court, after this project is over, might want to consider employing an archivist/editor to choose the best of the Munger records for a collection to be published. We are quite prepared to argue that the Munger records are the richest and largest repository of a federal district judge in all of American legal history. They are a very special evidential set.

It is our hope to make substantial progress starting in January 2007. We would hope to be near completion of the first volume sometime before the end of 2007.