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Journey for the Pole: The Life and Times of Fred H. Blume, Justice of the Wyoming Supreme Court

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The Land & Water Law Review is pleased to announce that it has been authorized to publish this thesis, authored by The Honorable Michael Golden, Justice of the Wyoming Supreme Court. This biography of Justice Blume offers a unique glimpse into the history of one of Wyoming's most notable jurists and the role that he played in shaping this great state.

This biography has been divided into two sections. The first considers Justice Blume's life up to the point that he was named to the Wyoming Supreme Court, and was published in the previous issue of *The Land & Water Law Review*. The second section, which reviews Justice Blume's contributions to Wyoming law and his vast knowledge of Roman law, is published in this issue.

JOURNEY FOR THE POLE: THE LIFE AND TIMES OF FRED H. BLUME, JUSTICE OF THE WYOMING SUPREME COURT

Michael Golden

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(Published in Volume 28, Number 1)

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VII. THE DECADE OF THE 1920'S

As we survey the second half-century of Blume's life, two major promontories loom large over the surrounding landscape of events, activities, and interests that filled those years. One was the tenure of his judicial service; the other, his Roman law translations. We will, of course, explore those peaks; however, we will also traverse the foothills and outcroppings of the surrounding terrain on which we will find equally valuable material that will help us sketch the personality and character of our subject.

His judicial service began in the second year of the decade of the 1920's. It was a decade in which the Blumes became settled in the capitol city of Cheyenne and the routine of court work, and Blume won the first of five consecutive judicial elections. In this decade his judicial talents caught the attention of one of this country's greatest legal scholars; at the same time he labored mightily on his Roman law translation. It was during this same decade that Wyoming lost three public servants who had been giants in the young state's history.

Upon the Blumes' arrival in Cheyenne, Blanche Blume wasted no time in getting them involved in the social activities of the day. Judging from the newspaper clippings in the scrapbooks she kept over the years, she effortlessly took her place in Cheyenne society. They entertained at home informally and often. They also attended informal and formal gatherings. According to the society pages of the local newspapers, there were dinner parties, dances, Sunday visits, bridge sessions, breakfasts, and luncheons in which she took part on a regular basis.

Blanche's energetic and outgoing nature was not spent on only purely social activities. It served the judge well in the nonpartisan judicial elections to which he was now subject. A few months after Blume had taken his place on the court, he and Blanche were campaigning to secure his first full eight-year term. His opponent was Volney J. Tidball, well-respected district court judge from Laramie. Having been popularly elected as county superintendent of schools in Sheridan County in 1916 and in 1918, Blanche Blume enjoyed campaigning, and she was effective. Representative of the wide acclaim she received as she campaigned on the judge's behalf is this assessment from one of the votes cast for the judge when he defeated Tidball:

Please accept my most hearty congratulations on your election and just want to add that you had better watch out or that wonderful little wife of yours will beat you the next time you

are out for election, for men and women alike in this valley
are strong for her.³⁸²

While the judge won his election in 1922, the man who had appointed him a few months earlier did not win his. Robert D. Carey narrowly lost in the Republican gubernatorial primary to John W. Hay, a banker and sheepman from Rock Springs.³⁸³ Less than two years later, Carey lost something far more valuable than an election—his father died. When Carey lost his father, Blume lost a friend and idol, and Wyoming one of its legendary founders. Joseph M. Carey, aged 79, died on February 5, 1924.³⁸⁴ At the memorial service, Blume eulogized his friend by measuring the value of his life from three standpoints: to himself, to his immediate family, and to public service.³⁸⁵ He observed that Carey's life, over all, was marked with happiness and contentment. He had been a "kind and indulgent husband and father,"³⁸⁶ who had reared his children well. In his many years of public service, he left enduring monuments to his city, state, and nation.³⁸⁷

A few years later it fell again to Blume to speak of the passing of another of Wyoming's legendary first citizens. On December 20, 1927, Justice Charles N. Potter died. On behalf of the court, as he had become Chief Justice in 1926, Blume wrote:

During approximately seven years that two of us have worked with him we had a good opportunity to learn his character, his work and his worth. * * * He was a man of tender heart. His friends noticed on many occasions, when something occurred or was said which appealed to the tender feelings of men, that his countenance would instantly change and made it apparent that he had difficulty in preventing the tears welling from his eyes. * * * He loathed prejudice of every kind, including religious prejudice, deeming that inimical to the welfare of his country. His work as a jurist can hardly be overstated. We * * * may strive to emulate, but we cannot hope to excel the thoroughness with which he investigated every question on which he wrote an opinion. This thoroughness and the thirty-three years of service on the highest bench in the state give him * * * probably the most prominent place

382. Letter from Minnie C. Corum to Fred Blume (November 13, 1922) (H89-28, WHR, *supra* note 5). Blume received 28,506 votes which surpassed Tidball's vote-count by 6,000. Erwin, *supra* note 98, at 1248.

383. LARSON, *supra* note 88, at 454.

384. LARSON, *supra* note 88, at 447.

385. CHEYENNE STATE LEADER, February 17, 1924.

386. *Id.*

387. *Id.*

among the founders and expounders of the jurisprudence of this state. His fame is not ephemeral. It is lasting. * * * And we that are left behind, to carry on the work, can but hope that we may in some small degree and measure succeed in following his footsteps.³⁸⁸

Potter, Kimball, and Blume had worked well together over the years of their association on the court. In particular, Potter had high regard for Blume and knew that he would also serve the court and the state with uncommon ability. As described by Fred Fobes, Clerk of the Wyoming Supreme Court from 1906 to 1964, "Justice Potter once remarked to me that Justice Blume was a natural jurist and would become most highly respected and honored for his work on the bench of this court."³⁸⁹

Potter's vacancy was filled by William A. Riner. At age forty-nine, Riner joined Kimball, also aged forty-nine, and Blume, aged fifty-three—a comparatively young court. Born in Iowa, Riner was an infant when his parents moved to Cheyenne in 1879. His father, John A. Riner, who practiced law, was a member of the state's constitutional convention, and was appointed in 1890 as the United States District Judge, a post he held until his retirement from active service in 1921.³⁹⁰ William Riner had received his undergraduate degree in 1899 from the University of Southern California. In 1902, he earned his law degree from the University of Michigan and practiced briefly in Lansing, Michigan, before moving to Cheyenne later that same year. Like Kimball and Blume, he was affiliated with the Republican party. From 1902 to 1908, he was in private law practice; from 1908 to 1911, he served as city attorney for Cheyenne; and from 1911 to 1912, he was United States Attorney. For the next ten years, he was in private practice. In 1922, he was appointed to the state district court in Cheyenne and was serving on that court when appointed to fill Potter's vacancy.

In the last days of the decade, one more larger-than-life actor on the Wyoming stage took his final curtain call. Francis E. Warren, aged 85, died on November 24, 1929.³⁹¹ Blume's friend, Patrick J. Sullivan, was appointed to fill out Warren's senate term.³⁹²

The path of Blume's life had intersected the lifepaths of distinguished Wyoming citizens whose work had contributed greatly to the

388. Potter Memoriam, *supra* note 351.

389. Letter from Fred S. Fobes to Ernest A. Wilkerson, President of the Natrona County Bar Association (April 20, 1957) (album, Blume Room, University of Wyoming Law School, Laramie, Wyoming).

390. ERWIN, *supra* note 98, at 1005, 1333.

391. LARSON, *supra* note 88, at 448.

392. *Id.* at 450.

creation of Wyoming and the establishment of a solid foundation of government on which the state's future would depend. In the decade of the 1920's, Blume's judicial talents caught the attention of a distinguished citizen of the world and one of this country's greatest legal scholars. By early 1922, Blume's judicial opinions had attracted the eye of John H. Wigmore, dean of the law school of Northwestern University in Evanston, Illinois, and author of numerous, highly acclaimed legal publications, including the prodigious *Treatise on Evidence*.³⁹³ In February of that year Wigmore wrote the first of many letters the two men would exchange over the next two decades. Wigmore's maiden letter expressed the satisfaction of both himself and his close colleague Albert Kocourek, a professor of Roman law studies, at seeing Blume's reference to their work, "Evolution of Law Series," in his opinion in *Crago v. State*, 28 Wyo. 215, 202 P. 1099 (1922).³⁹⁴ Wigmore told Blume:

That the Bench should venture to exhibit acquaintance with that type of legal learning is indeed a new departure in judicial literature. We had hoped that some lawyers were reading those books of ours, but our hopes had hardly aspired to contemplate perusal by the judiciary. Some day, no doubt, there will be original thinking in that field by Americans, and to have stimulated it will be our satisfaction.³⁹⁵

In the fall of 1922, Blume received word from another source of Wigmore's continued interest. Graddus R. Hagens, a lawyer from Casper, Wyoming, and a graduate of Wigmore's law school, informed Blume that Wigmore thought Blume's "opinions show him to possess a mind of greatest capacity and fine legal learning."³⁹⁶ Wigmore was interested in having Blume teach a summer term at the law school.³⁹⁷ Hagens was happy to apprise Blume of Wigmore's high regard. He said:

In our travels through life we have so many bricks thrown at us that if we do find a flower occasionally in the way, I think it should not be passed by unobserved but should be given to the owner so that he may enjoy its fragrance while it lasts and therefore, I am passing this on to you.³⁹⁸

393. Among the many articles on Wigmore, see Albert Kocourek, *John Henry Wigmore*, 27 J. AM. JUDICATURE SOC'Y 122-24 (1943) and William R. Roalfe, *John Henry Wigmore—Scholar and Reformer*, 53 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 277 (1962).

394. Letter from John H. Wigmore to Fred Blume (February 22, 1922) (H69-10, WHR, *supra* note 7).

395. *Id.*

396. Letter from Graddus R. Hagens to Fred Blume (November 25, 1922) (album, 'Blume Room, University of Wyoming Law School, Laramie, Wyoming).

397. *Id.*

398. *Id.*

A few days later, Wigmore invited Blume to join the law school faculty for the summer term of 1923.³⁹⁹ Wigmore praised Blume's judicial work, saying:

Some of us in this faculty have already noticed with interest your learned opinions appearing in the reports, and I venture to say at the outset that we have hailed with satisfaction the products of your talent.⁴⁰⁰

Wigmore then described a nine week session, June 25 to August 25, for which Blume would receive \$625 if he gave a lecture five times a week for the entire summer term.⁴⁰¹ The subject matter of the course would be of Blume's own choosing, as would be his method of instruction.⁴⁰²

Blume discussed Wigmore's offer with Potter and Kimball; in light of the accumulation of work caused by Potter's six month illness, Blume would not be able to accept.⁴⁰³ Blume explained the situation to Wigmore and expressed the hope that in the future the offer would be extended again.⁴⁰⁴ Blume also used this occasion to tell Wigmore about his translation of the Justinian Code.⁴⁰⁵ Ever persistent, Wigmore replied that "we are simply not going to resign ourselves, without a struggle, to the result to which it would doom us if you follow the inclination therein indicated."⁴⁰⁶ Wigmore then made a strong pitch for Blume to reconsider. He assured him that the amount of course preparation would not be severe. Stating the purpose of modern legal education to be "stimulating the student's mind to think," Wigmore believed that a supreme court judge, possessed of "a broad and matured mind," could "stimulate a Socratic discussion" by merely "reading ahead each day fifty or one hundred pages of the selected cases."⁴⁰⁷ Appealing to Blume's Roman law interest, Wigmore enticed him by informing him that the law school possessed one of the country's best collections of Roman law studies which he could sample first hand and which the library could loan him as necessary.⁴⁰⁸ Switching to yet another ploy, Wigmore extolled

399. Letter from John H. Wigmore to Fred Blume (November 28, 1922) (album, Blume Room, University of Wyoming Law School, Laramie, Wyoming).

400. *Id.*

401. *Id.*

402. *Id.*

403. Letter from Fred Blume to John H. Wigmore (December 11, 1922) (H69-10, WHR, *supra* note 7).

404. *Id.*

405. *Id.*

406. Letter from John H. Wigmore to Fred Blume (December 18, 1922) (H69-10, WHR, *supra* note 7).

407. *Id.*

408. *Id.*

the abundant cultural and recreational diversions offered by Chicago.⁴⁰⁹ "If you are working as hard as circumstances indicate this winter, it is perfectly certain that you will need a thorough change next summer."⁴¹⁰ In closing, the charming Wigmore said he would "decline to let the scintilla of hope be extinguished that you can see your way to accepting our invitation."⁴¹¹ Blume's sense of duty to the court remained firm. He regretfully told Wigmore that Potter's condition made it impossible for him to come.⁴¹²

The two men continued to correspond. Blume sent Wigmore a copy of a paper on the Roman lawyer which he had delivered at the annual meeting of the Wyoming State Bar Association.⁴¹³ In late December, 1923, Wigmore again invited Blume to teach the summer course;⁴¹⁴ again, Blume had to decline due to the press of the court's caseload.

Our state being comparatively young in the field of jurisprudence, we have to take more time in deciding cases than they do in other states, and work has been accumulating on our hands to a very great extent; more so than any of us, as a matter of fact, ever anticipated.⁴¹⁵

Wigmore offered, and Blume declined again in 1924 and 1925.⁴¹⁶ In 1926, Potter and Kimball chose Blume to serve as chief justice, and Blume pressed his colleagues to exert a sustained effort to bring their work current. Although Potter died in late 1927, Justice Riner as Potter's successor continued the pace and the court's work was current by 1928.⁴¹⁷ Finally, the timing was right for Wigmore's dogged persistence to bear fruit. In 1928, Blume accepted Wigmore's offer for the summer term of 1929; he would lecture on Roman law.⁴¹⁸

409. *Id.*

410. *Id.*

411. *Id.*

412. Letter from Fred Blume to John H. Wigmore (December 27, 1922) (H69-10, WHR, *supra* note 7).

413. Letter from Fred Blume to John H. Wigmore (January 23, 1923) (H69-10, WHR, *supra* note 7); 1915-1922 Proceedings of the Wyoming State Bar Association, Ninth Annual Meeting, Appendix, at 40-56 (1922).

414. Letter from John H. Wigmore to Fred Blume (December 6, 1923) (H69-10, WHR, *supra* note 7).

415. Letter from Fred Blume to John H. Wigmore (December 19, 1923) (H69-10, WHR, *supra* note 7).

416. Letter from John H. Wigmore to Fred Blume (November 10 and 21, 1924); letter from John H. Wigmore to Fred Blume (December 10, 1925); letter from Fred Blume to John H. Wigmore (December 23, 1925), courtesy of Fred P. Blume, nephew, Cheyenne, Wyoming.

417. Letter from Fred Blume to John H. Wigmore (November 16, 1928), courtesy of Fred P. Blume nephew, Cheyenne, Wyoming.

418. Letter from John H. Wigmore to Fred Blume (November 13, 1928); Letter from Fred Blume to John H. Wigmore, *supra* note 416, courtesy of Fred P. Blume, nephew, Cheyenne, Wyoming.

Wigmore asked his colleague Kocourek to provide Blume with helpful suggestions in his course preparations.⁴¹⁹

Blume greatly enjoyed the summer of 1929 at Northwestern.⁴²⁰ He lectured to a class of fifty students, most of whom did excellent work.⁴²¹ Wigmore taught *Evidence* that term and Blume enjoyed visiting with him as time allowed. At the term's end, Blume, and others, dined with Wigmore. On that occasion, Wigmore told his companions he was retiring as dean of the law school and was assuming emeritus status.⁴²² Over the following years, until Wigmore's untimely accidental death on April 20, 1943, at the age of eighty,⁴²³ Blume exchanged correspondence with Wigmore and Kocourek, reporting to them his progress in translating the Justinian Code.⁴²⁴

Although Blume had begun his translation project before his appointment to the court, he had not advanced appreciably with that effort by the time of his appointment.⁴²⁵ During the decade of the 1920's, however, Blume made substantial headway with this awesome challenge. As a preface to our examination of Blume's translation of the Justinian Code, a brief overview of Roman history provides the necessary background with which to better appreciate the nature and extent of Blume's accomplishment.

In his two-volume classic *Panorama of the World's Legal Systems*, Dean Wigmore usefully summarized the historical development of the sixteen well-defined legal systems of the world. In treating the Roman legal system, he described the three stages through which that system passed.⁴²⁶ As one surveys this small segment of legal history, he is truly cognizant that "his first sentence tears a seamless web."⁴²⁷ The first stage of the Roman system was the period of the Republic. Placed at about 400 B.C., the earliest formulation of Roman law was known as the Twelve Tables. A crude code of a dozen chapters, the

419. Letter from John H. Wigmore to Fred Blume (December 6, 1928); Letter from Albert Kocourek to Fred Blume (December 7, 1928), courtesy of Fred P. Blume, nephew, Cheyenne, Wyoming.

420. Letter from Fred Blume to John H. Wigmore (August 26, 1929), courtesy of Fred P. Blume, nephew, Cheyenne, Wyoming.

421. Letter from Fred Blume to Max Radin, Professor of Law, University of California (September 5, 1929); Letter from Fred Blume to F.M. Tung, a student (October 15, 1929), both courtesy of Fred P. Blume, nephew, Cheyenne, Wyoming.

422. Letter from Fred Blume to John H. Wigmore, *supra* note 420; Letter from John H. Wigmore to Fred Blume (September 10, 1929), both courtesy of Fred P. Blume, nephew, Cheyenne, Wyoming.

423. Roalfe, *supra* note 393, at 277-78.

424. Letter from Fred Blume to John H. Wigmore (July 27, 1931), courtesy of Fred P. Blume, nephew, Cheyenne, Wyoming.

425. Annexed notes, *supra* note 30, at 7.

426. See generally, 1 WIGMORE, PANORAMA OF THE WORLD'S LEGAL SYSTEMS 373-448 (1928).

427. 1 SIR FREDERICK POLLACK AND FREDERIC WILLIAM MAITLAND, THE HISTORY OF ENGLISH LAW 1 (2d ed. 1898), quoted in Edward Re, *The Roman Contribution to the Common Law*, 29 FORDHAM L. REVIEW 447 (1961).

tables themselves are not extant. Apparently this code was chiefly procedural, not substantive, in nature. In this first stage, the juristic functions of a legal profession were not fully developed. Notions of justice commingled with general politics and had yet to be sharply distinguished. Given the embryonic nature of the system, the role of the thinker and adviser upon legal questions—the juriconsult—was similarly undeveloped. We do have the names of some who played that role in that early stage. Quintus Scaevola and, later, the other and more famous Scaevola, taught Cicero in his preparation to become an advocate. In this period the advocate was the dominant player of the legal profession. In the last century of the Republic, the major figure was the advocate Hortensius. It is during the waning years of this period, however, that we see the emergence of the juriconsult—the professional judge and jurist.

The second stage was known as the period of the Early Empire. The advocate's role had been eclipsed by that of the juriconsult. Under Emperor Augustus, the official juriconsults issued written opinions which all others were obliged to follow. From this a body of consistent and logical fixed principles developed. In the period of the second and third centuries A.D., Roman juristic science reached its high water mark. Justice was now sharply distinguished from general political administration. Law schools thrived. Juriconsults systematically announced legal principles. Among the many professional jurists, the five greatest names were Julian, the judge; Ulpian and Papinian, the counsellors; Quintilian, the professor; and Gaius, the jurist. These scholars wrote learned treatises concerning questions of law. Among these five principal juriconsults, Papinian's recorded opinion prevailed in case of divided views. To Ulpian, we owe such familiar law-Latin epigrams as "*Volenti non fit injuria*." To him we are forever indebted for the foundational legal principle "Justice is the constant and perpetual will to allot to every man his due." Driven by the writings of these professional jurists, the law steadily and logically developed. One of Gaius' writings, the *Institutes*, presented an enlightened advance in legal thinking. By classification and abstraction, he generalized concrete rules into principles forming a system.

The third stage of the Roman law system was known as the Later Empire. It is this period which becomes important in the context of Blume's translation of the Code and Novels of Justinian. It was during this period that Emperor Theodosius II in 438 A.D. and Emperor Justinian in 530 A.D. caused the compilation of the codes which bear their names. In Theodosius' time, the Roman Empire had been divided into the Eastern and Western Empires. Our immediate focus is on the century and a half from 400 to 550 A.D. Theodosius II, aged seven, became emperor of the Eastern Roman Empire in 408.⁴²⁸

428. 4 WILL DURANT, THE STORY OF CIVILIZATION - THE AGE OF FAITH 103 (1950).

Over his forty-two years of rule, during most of which his older sister, Pulcheria, presided, the Eastern Empire experienced peace, while the Western Empire suffered war and disintegration.⁴²⁹ In 429, Theodosius II commissioned a group of jurists to codify all laws in the Empire since Constantine's accession in 312.⁴³⁰ Published in 438, the Theodosian Code "was accepted in both East and West, and remained the law of the Empire until the greater codification under Justinian."⁴³¹

In the intervening three quarters of a century between Theodosius II and Justinian I, as many as fifteen emperors appeared on the stage of Roman history.⁴³² In 527, Justinian, aged forty-five, succeeded his uncle, Justin, as emperor.⁴³³ In the nearly ninety years since the publication of the Theodosian Code, changing conditions in the Empire rendered useless many of that code's strictures; the statute books containing the laws passed during that span of time were compiled in disarray.⁴³⁴ The laws of the nations within the Empire conflicted with the laws of Rome.⁴³⁵ Instead of being an accessible logical body of law, Roman law was now an unwieldy accumulation.⁴³⁶ Acting to bring order into this sorry state of affairs, Justinian appointed a corps of ten jurists, the most active of whom was Tribonian, "to systematize, clarify, and reform the laws."⁴³⁷

Justinian directed Tribonian and his colleagues to compile a new collection of imperial enactments consisting of those enactments which had accumulated since the publication of the Theodosian Code in 438, the enactments contained in the Hermogenianus Code published in 295, and the enactments contained in the Gregorianus Code published in 291.⁴³⁸ Justinian ordered these jurists to omit everything obsolete or unnecessary, to remove all repetitions and contradictions, to make additions or changes if appropriate, and to combine several enactments if convenient.⁴³⁹ The jurists arranged the enactments in titles according to the subject matter; within each title, they arranged the enactments chronologically.⁴⁴⁰ Beginning in 528, Tribonian's com-

429. *Id.*

430. *Id.*, 3 WILL DURANT, *THE STORY OF CIVILIZATION—CAESAR AND CHRIST 653-55* (1944).

431. DURANT, *supra* note 428, at 103; *see also* CLYDE PHARR, *THE THEodosian CODE xvii* (1952).

432. PHARR, *supra* note 431, at xxvi.

433. DURANT, *supra* note 428, at 104.

434. *Id.* at 111.

435. *Id.*

436. *Id.*

437. *Id.*

438. HERBERT F. JOLOWICZ, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW 485* (1932); 1 A.H.M. JONES, *THE LATER ROMAN EMPIRE 284-602*, at 476-77 (1964).

439. JOLOWICZ, *supra* note 438, at 485.

440. *Id.*

mission within a year's time had completed the *Codex* as the first part of the overhaul.⁴⁴¹

Four years later, the jurists completed and published the results of the second part of their task, the *Digests* or *Pandects*.⁴⁴² In this body of law were the opinions of the great Roman jurists still having the force of law.⁴⁴³ In that same year, 533, they issued the *Institutes*, an official handbook of civil law.

Upon the completion of the *Institutes*, Justinian directed Tribonian to prepare a second edition of the *Codex* published four years earlier. In that four year period, Justinian had enacted a large number of laws and he wished to incorporate them into the *Codex*. When this revised *Codex* was published in late 534, Justinian forbade any reference to earlier laws; only the revised *Codex* could be used.⁴⁴⁴ Book 1 contained ecclesiastical law, the sources of law, and the duties of higher officials.⁴⁴⁵ Books 2-8 contained private law.⁴⁴⁶ Book 9 contained criminal law and Books 10-12 contained administrative law.⁴⁴⁷

Although Justinian died in 565, after his death additional legislation enacted in his lifetime was published as *Novellae*, that is, new enactments.⁴⁴⁸ Although the *Codex*, *Digest*, and *Institutes* were in Latin, the *Novels* were in Greek.⁴⁴⁹ In combination, "these publications became known as the *corpus juris civilis*, or Body of Civil Law, and were loosely referred to as the Code of Justinian."⁴⁵⁰

Soon, the Empire, invaded by the Germanic tribes, fell. The magnificent Roman legal system that had developed over its one-thousand year history was gone. For five centuries, Justinian's lawbooks were unknown. During that period systematic justice was virtually non-existent; legal education, dead.

About 1100 A.D., in the city of Bologna, Irnerius resurrected Justinian's lawbooks and led a general intellectual revival in northern Italy.⁴⁵¹ He lectured on the Code and Digest of Justinian. After another century, thousands of law students from all over Europe came to Bologna and formed a well-organized university. Other universities were formed in northern Italy. This was an age of developing scholarship. Irnerius and the scholars who followed were known as glos-

441. *Id.*

442. *Id.*

443. *Id.*

444. JOLOWICZ, *supra* note 438, at 499-500.

445. *Id.*

446. *Id.*

447. *Id.*

448. DURANT, *supra* note 428, at 112-13.

449. *Id.* at 112.

450. *Id.*

451. See generally, 2 WIGMORE, *supra* note 426, at 981-1041.

sators, since they “descanted” the Roman texts with explanations. Azo, a glossator, figured prominently in this period. Each scholar contributed to these glosses. Justinian texts were copied by hand and distributed all over western Europe. Bracton, in England in 1250 A.D., had his copy. With the advent of bookprinting in the late fifteenth century, one of the more popular books was Justinian’s *Corpus Juris* in the gloss style.

In the period following Irnerius and the glossators, a new type of jurist appeared on the scene, the commentators. These men issued opinions on law-cases and also wrote independent treatises. Applying the ancient principles of Roman law to the Germanic customs, the commentators were transforming Roman law into Italian law. Italian law professors were invited into Europe. Law faculties were established in Spain, France, Germany, and the Netherlands. By the third century after Irnerius, the leadership in Roman law passed from Italy to South France. In France in the 1500’s the major figure was the great professor Cujas. Wigmore noted that when the German professors cited Cujas, “They lifted their hats at the mention of his name.”⁴⁵² In France in the late 1600’s, Colbert codified civil and criminal procedure, commercial law, colonial law, and maritime law. In the 1700’s Pothier’s name loomed large as a judge and jurist. In 1804, the Code Napoleon was established and soon translated into numerous languages.

By the 1700’s the primacy in Roman legal scholarship next passed to the Netherlands. There, Grotius, renowned in international law, and Noodt were learned in Roman law. Under the Dutch influence, and no doubt due to its political feuds with England, Scotland also became Romanized.

By the 1800’s, Germany became the leader in Roman law studies. Professor Carpzov of the Leipzig law faculty was influential in the development of Roman law there. Other Roman law scholars included Savigny, Windschied and Von Ihering. German scholarship in the field was known the world over.

Eventually, “Romanesque” legal systems developed in the remaining continental countries. Codification of the national laws occurred in the new nations of Latin-America. Romanesque models were used in Dutch South Africa, Quebec, Louisiana, Islamic Turkey, Egypt, and Japan. At the time of Wigmore’s *Panorama* the “Romanesque” system governed nearly one-sixth of the world’s inhabitants. Today the legal systems of the mentioned jurisdictions continue to be largely based on Roman law.

452. 1 Wigmore, *supra* note 426, at 1011.

England, which of course is a common law country, did not escape the influence of Roman law. Although the debate continues about the extent to which the common law of England borrowed Roman legal principles, there is no question interaction occurred. An examination of the Roman law influence upon the common law during the formative years primarily focuses on the span of time between the pre-Norman period of English legal history, when Britain was a Roman province, and Lord Mansfield's time in the eighteenth century, when England was a powerful commercial nation. Professor Edward Re has profitably explored this subject in his illuminating article "The Roman Contribution to the Common Law."⁴⁵³ The English common law, of course, is the foundation upon which most of the common law jurisdictions of the United States, including Wyoming, are based.

Against this historical backdrop, we now turn to Blume's project. Beginning shortly after his appointment to the court and continuing steadily for the next eight years, Blume worked in what he described as "plodding" fashion and in "spare moments" translating the second or revised Justinian *Codex* and *Novels* into English. He "worked as a lone wolf, having no one with whom to consult or to give me advice."⁴⁵⁴ The "spare moments" of which Blume spoke became, in relentless accumulation, hours, days, weeks, months and years. "I devoted to it substantially every evening until 11 o'clock at night or later, and every Saturday afternoon and every Sunday with few exceptions. I limited my social life to the minimum."⁴⁵⁵

For the first few years, he wrote in long hand. This turned out to be physically injurious to his writing hand. "[A] year or two after I began, my right hand and arm would work no longer so I had to resort to a typewriter, which is not so good for a translator. It took me a year or so before I was able to write longhand again."⁴⁵⁶

Working in this fashion, Blume produced a first rough draft. Then, he carefully perused the text a second time.⁴⁵⁷ During this phase, he identified "several hundred passages in the text which seemed to me to be obscure."⁴⁵⁸ Focusing on those obscure passages, he intensified his reading on the various subjects treated in those passages and made the necessary corrections. As he revised, he wrote notes

453. Re, *supra* note 427; see also W. Hamilton Bryson, *The Use of Roman Law in Virginia Courts*, 28 AM. J. LEGAL HIST. 135 (1984); M.H. Hoeflich, *John Austin and Joseph Story: Two Nineteenth Century Perspectives on the Utility of the Civil Law for the Common Lawyer*, 29 AM. J. LEGAL HIST. 36 (1985).

454. Annexed notes, *supra* note 30, at 10.

455. *Id.* at 8.

456. *Id.*

457. *Id.*

458. *Id.*

to serve as explanations for his selection of a particular translation from among the various possibilities.⁴⁵⁹ “The notes necessitated, of course, extensive reading, and I had by that time acquired books on nearly every phase of the subjects dealt with in the Code.”⁴⁶⁰ Consisting of books in English, French, German and Italian, his Roman law collection totals some one thousand volumes and monographs.⁴⁶¹ “My notes, illustrating almost every phase of Roman law, occupy nearly half the space [of the finished product] and I consider these notes the most valuable portion of my translation.”⁴⁶² Of his notes he would also say:

I made these notes not for scholars in the Roman law, but for neophytes in that law. * * * I went on the theory of lawyers generally, that the best part of a text consists of the notes thereof. Later I realized that the length of the notes made the work too long and that it would probably never find a printer.⁴⁶³

Blume’s monastic toil culminated in a typed manuscript in the spring of 1929.⁴⁶⁴ “The translation and notes consist of fifteen paper-bound, typewritten volumes and count some 3,000 pages or more.”⁴⁶⁵ His work, however, did not end with that manuscript. At various times over the next three decades, Blume revised and polished.

In the initial years of what became a life-long undertaking, he had entertained hopes of publishing this scholarly product. Indeed, in 1924, he corresponded with Thomas A. Swan, Dean of Yale Law School and a former schoolmate of then Governor Robert D. Carey, about the prospects of publication.⁴⁶⁶ Over the next three decades, Blume’s publication hopes ebbed and flowed during his collaborative association with Dr. Clyde Pharr, a classical languages scholar, who spearheaded a translation of the Code of Theodosius II which began in 1933 and came to fruition in 1952 with the publication of the English translation called *The Theodosian Code*.⁴⁶⁷ Having completed the Theodosian project, Pharr and Blume returned their attention to Blume’s translation of the Justinian Code. For the next ten years,

459. *Id.*

460. *Id.* at 9.

461. Letter from Fred Blume to G.D. Humphrey (March 22, 1957) (H69-10, WHR, *supra* note 7).

462. *Id.*

463. Annexed notes, *supra* note 30, at 10.

464. *Id.* at 9.

465. Letter from Fred Blume to G.D. Humphrey, *supra* note 461.

466. Letter from Fred Blume to Thomas A. Swan (February 18, 1924); Letter from Thomas A. Swan to Fred Blume (April 24, 1924); Letter from Fred Blume to Thomas A. Swan (May 26, 1924) (H89-28, WHR, *supra* note 5).

467. PHARR, *supra* note 431.

Pharr kept alive Blume's hopes of publication. In the spring of 1959, Pharr informed Blume that, most likely, *The Code of Justinian, A Translation, With Commentary, Glossary, and Bibliography*, by Fred H. Blume and Clyde Pharr, would be published by either the University of Texas Press or the Princeton University Press.⁴⁶⁸ Regrettably, as we shall see later, that work has never been published.⁴⁶⁹

As the decade of the 1920's closed, Blume looked forward to the next decade, one in which he would again face re-election, be introduced to Clyde Pharr and the Theodosian project, enjoy the friendship of a four-legged companion, receive further recognition from Dean Wigmore, dedicate a state supreme court building, support a Democratic senator who opposed a presidential "court packing" plan, and welcome his brother William's young son into his home.

VIII. THE DECADE OF THE 1930's

Blume was unopposed in the 1930 general election and received 48,041 votes to secure his second term of eight years on the bench.⁴⁷⁰ His close friend, Robert D. Carey, returned to public service by winning a seat in the United States Senate.⁴⁷¹ Carey would serve only one term of six years in that position; in the 1936 election, Casper attorney Harry H. Schwartz would defeat him.⁴⁷²

In late May, 1933, Blume received an inquiry from a professor of Greek and Latin at Vanderbilt University, Nashville, Tennessee, wanting to know if Blume would be interested in joining a project which would translate all of the source material of Roman law, including the Theodosian Code.⁴⁷³ This simple inquiry was the start of a scholarly collaboration and friendship which would span the next three decades. The classical languages professor was Clyde Pharr. Ten years younger than Blume, Pharr had been born in Saltillo, Texas, in February, 1885, and had earned both an undergraduate degree and his doctorate at Yale.⁴⁷⁴ Before joining the Vanderbilt faculty in 1924, Pharr taught Greek and Latin at Ohio Wesleyan and Southwestern Presbyterian Universities.⁴⁷⁵ Pharr's Roman law library was "prob-

468. Letter from Clyde Pharr to Fred Blume (March 11, 1959) (H69-10, WHR, *supra* note 7).

469. See *infra* text accompanying notes 618 through 644. We will explore the Blume-Pharr association in more detail in the chapters that follow.

470. ERWIN, *supra* note 98, at 1267.

471. LARSON, *supra* note 88, at 448.

472. *Id.*

473. Letter from Clyde Pharr to Fred Blume (May 27, 1933) (H69-10, WHR, *supra* note 7).

474. 7 WHO'S WHO IN AMERICA (1977-1981) 452 (1981); Rowena Rutherford Farrar, *Clyde Pharr-Practical Scholar*, HOLLAND'S THE MAGAZINE OF THE SOUTH (July 1934) (H69-10, WHR, *supra* note 7).

475. *Id.*

ably the most complete * * * in the United States, not excepting those at Yale, Harvard, and Columbia."⁴⁷⁶

Blume was interested in Pharr's project and immediately wrote to him.⁴⁷⁷ After recounting his efforts with his Justinian Code translation, including the preparation of his valuable notes, Blume advised that the translation project "should be such as will make it readable and interesting * * * to the American lawyer and the student of Roman laws and customs. If that is done it would at the same time be of value to all other English-speaking people."⁴⁷⁸

Over the next several years the two scholars exchanged correspondence about the proposed project. In expressing his hope that Blume would join the project as a consultant, Pharr told him, "From several sources I have heard some very fine commendation of your work on the Code of Justinian and so far as I have been able to judge it seems to be of a high quality and to meet the requirements of modern scholarship as to accuracy and use of the work done by other scholars."⁴⁷⁹ According to Pharr, "it is essential that [our project] be done well and that we should make a translation as nearly definitive as it is possible for modern scholarship to produce."⁴⁸⁰ To this end, Pharr had selected "a few representative scholars whose judgment would be valuable."⁴⁸¹ In addition to Blume, Pharr would ultimately enlist as consultants the likes of J.B. Thayer and Roscoe Pound of Harvard, Ernst Rabel and Hessel E. Yntema of Michigan, Max Radin of California, Allan Johnson of Princeton, A. Arthur Schiller of Columbia, and Ernst S. Levy of Washington,⁴⁸² as imposing a constellation of intellectual stars as had ever been assembled.

As Blume considered the magnitude of Pharr's proposed project, he had hopes "that it might become a work which could with confidence be utilized by the courts of this country, either on account of analogy or contrast."⁴⁸³ Blume explained:

I do not know how many of the courts in this country use the Roman law to illustrate their decisions. * * * I fear, however, that I have for some time been the only one on a court of last resort in a purely common law state who has made

476. Farrar, *supra* note 474.

477. Letter from Fred Blume to Clyde Pharr (June 1, 1933) (H69-10, WHR, *supra* note 7).

478. *Id.*

479. Letter from Clyde Pharr to Fred Blume (June 24, 1933) (H69-10, WHR, *supra* note 7).

480. *Id.*

481. *Id.*

482. PHARR, *supra* note 431.

483. Letter from Fred Blume to Clyde Pharr (June 30, 1933) (H69-10, WHR, *supra* note 7).

any extensive use of it, and even I have made limited use of it for fear of appearing to be pedantic. That ought not to be so, since there are many occasions on which we could well learn from the civil law.⁴⁸⁴

Agreeing to join in Pharr's proposed project, Blume informed him that until that project was under way he would "go along my way in perfecting my work on the Code."⁴⁸⁵ He explained:

I have delayed trying to find a publisher for it, fearing that, unless I made the utmost research of every principle stated in the notes, I might make a mis-statement. As a result I have felt compelled to investigate every subject of the Roman law in all its details, and as you say, that is a good deal to do for any one man. * * * I have gone over it three or four times, and I am still going over it, as I study the various subjects separately and the laws of the Code in connection therewith. I was fortunate enough to have the German translation which I consulted constantly. I have to some extent used the French translation. * * * In addition to numerous general works on the Roman law, I also constantly used the Basilica (which frequently shed a world of light) and Cujas, Donellus, Perez and innumerable special works on various subjects which contain direct reference to the Code or treat of a subject like that dealt with by particular rescripts in the Code.⁴⁸⁶

Blume suggested that he send Pharr a copy of a portion of his work "so that you can see the nature of it."⁴⁸⁷ Blume sent a copy of his translation of Book Two of the Code.⁴⁸⁸ After reading this material, Pharr made some critical suggestions which Blume accepted gracefully:

I also have glanced over the criticisms. I sincerely thank you. Judges of the appellate court are very much used to criticism. We have to criticize each other continually, and when we are through, then the criticism of the bar commences. College magazines on law add their due proportion. So I always welcome criticism. It is apparent to me that some of your criticisms are well taken, some deserve fuller consideration, and I think some of them probably ought not to be accepted.⁴⁸⁹

484. *Id.*

485. *Id.*

486. *Id.*

487. *Id.*

488. Letter from Fred Blume to Clyde Pharr (January 26, 1934) (H69-10, WHR, *supra* note 7).

489. *Id.*

Impeded by scarcity of funds, Pharr's Theodosian project, as the initial unit of Pharr's vision of "a more extensive project for the collection and translation of all the source material of Roman law, together with commentaries and glossaries,"⁴⁹⁰ was not officially begun until 1943.⁴⁹¹ As that project was not actively underway in the 1930's, Blume was content to continue polishing his Justinian Code translation and perform his judicial duties. But there were lighter duties to perform as well.

In 1934, Blume and his wife bought a dog. Bozo, a deep brown livered-colored Irish rat-tailed water spaniel, was destined to become a public figure, as well as Blume's friendly and loyal companion for the next twelve years. They bought Bozo in Denver, Colorado, when he was one year old.⁴⁹² He quickly became devoted to Blume, and Blume to him. He walked the judge to work, spent the day with him at the office, and returned home with him in the evening. Bozo's main form of recreation was swimming, of course. "Whenever the weather is warm the dog has been accustomed to beg and beg me to take him out to the lake to swim."⁴⁹³ As the result of an apparent run-in with an automobile in 1936, Bozo suffered a shoulder injury that left him with a severe, yet uniquely distinguishable limp. Easily identifiable because of his peculiar "hippity-hop" gait, Bozo became familiar to many Cheyenne residents in the neighborhoods around the capitol area. "There is hardly an afternoon of the week when you cannot find Bozo, with Judge Blume, strolling about the city's streets."⁴⁹⁴ The two were usually on their way to buy an ice cream cone for Bozo as he had developed "an appetite for ice cream cones that would put a normal six-year old boy to shame."⁴⁹⁵

Despite Blume's playful diversions with his faithful companion Bozo, he and the other two members of the court, Kimball and Riner, continued doing the excellent work which had earlier attracted John H. Wigmore's attention. The quality of their work was again recognized by Wigmore in 1936. In the April issue that year of the American Bar Association Journal, Wigmore offered a "relative appraisal of the State Supreme Courts as to judicial ability * * * based on a study of their opinions on points of evidence law, covering the eight year period 1925-1932."⁴⁹⁶ Grouping the courts broadly into four classes, Wigmore placed the Wyoming Supreme Court in the

490. PHARR, *supra* note 431, at vii.

491. *Id.*

492. WYOMING EAGLE, September 26, 1946.

493. Letter from Fred Blume to Dr. Zepp (August 22, 1944) (H89-28, WHR, *supra* note 5); WYOMING STATE TRIBUNE - CHEYENNE STATE LEADER, March 8, 1938.

494. WYOMING EAGLE, October 12, 1938; September 26, 1946.

495. *Id.*

496. John H. Wigmore, *Grading Our State Supreme Courts: A Tentative Method*, 22 A.B.A.J. 227-31 (1936).

highest class. As the basis for appraisal, Wigmore used these qualities:

- I. *Intelligence, i.e., intelligent grasp of the principles of law involved, and careful reasoning in their application. * * **
- II. *Style, i.e., finish of style of exposition. * * **
- III. *Liberality, —i.e., readiness to take the progressive view when the issues call for it. * * **
- IV. *Learning. * * **
- V. *Expert wisdom, i.e., intelligent and sympathetic vision of the background of the whole case,—that quality which enables the Court to attain the main economic or social or moral objectives of the law in the case and to perceive the equities of the parties, and not lose sight of those objectives and equities by automatically applying particular technical rules * * *⁴⁹⁷*

In his concluding comments, Wigmore made clear that his “grades represent the work of each Court as a whole bench, not of individual judges. This is as it should be; a court must be appraised by its collective performance.”⁴⁹⁸ Wigmore, however, gave specific recognition:

But honor to whom honor is due; and it seems appropriate to note here the names of those who had the most frequent opportunities to make valuable contributions in their opinions: in Kansas, Burch; in Louisiana, O’Niell; in Maryland, Parke; in Massachusetts, Rugg; in Minnesota, Stone and Wilson; in Mississippi, Smith; in Nebraska, Rose; in New Hampshire, Branch, Peaslee, and Snow; in New York, Cardozo; in North Carolina, Brogden and Stacy; in Ohio, Marshall; in Oregon, Rossman; in Pennsylvania, Kephart; in South Carolina, Cothran; in South Dakota, Campbell; in Texas, Nickels; in Virginia, Prentis; in Wisconsin, Rosenberry; in Wyoming, Blume.⁴⁹⁹

In addition to his judicial work and his Roman law translation, Blume took account of national affairs and, when sufficiently moved by a particular issue, voiced his concern. A splendid example of Blume “the American citizen” is his support in 1937 of the politically courageous position taken by Wyoming’s Democratic United States Sen-

497. *Id.* at 229.

498. *Id.* at 231.

499. *Id.*

ator Joseph C. O'Mahoney in opposition to President Franklin D. Roosevelt's legislative effort to add six justices to the United States Supreme Court. O'Mahoney was no stranger to Blume, having practiced law before him in Cheyenne before being appointed in November, 1933, to complete Senator John Kendrick's term on the latter's death at the age of seventy-six.⁵⁰⁰ O'Mahoney was elected to his own six-year term in 1934.⁵⁰¹ As explained by Professor Larson:

For a few years O'Mahoney appeared to be a loyal New Dealer, ready to support President Roosevelt on everything. Then in 1937 he distinguished himself by becoming one of the leaders in opposition to Roosevelt's Supreme Court reform plan. This annoyed the President briefly, but on the other hand, it endeared O'Mahoney to his constituents.⁵⁰²

Constituent Blume expressed his gratitude for O'Mahoney's patriotic stand in these words:

My dear Senator:

During my long residence in Wyoming I have very seldom written to our Representative or our Senators, expecting them to use their own best judgment in matters coming before them. I am not one of those who expects our representatives to vote on every question just as I would vote, nor do I think it right to get angry at them simply because on this question or the other they may differ with me. But I think I would be wanting in my duty if I did not write you at this time.

I have seen, in yesterday's paper and in this morning's paper, your position on the Supreme Court matter. I want to commend you on the stand which you have taken. I am very much pleased at your independent stand on this matter. I think it is very patriotic.

There are many things involved in connection with that issue. The expansion of the power of the Federal Government — in other words, the economic question — is only one of the questions that is involved in that issue. Many other points, perhaps in the long run much more important are involved, including that of freedom of speech, that of religious liberty, and other matters of that kind. If additions to the Supreme Court should be made in order to get it to give opinions expanding the power of the Federal Government in economic

500. LARSON, *supra* note 88, at 448, 450.

501. *Id.* at 450.

502. *Id.*

matters, the court can also be expanded for the purpose of insuring opinions that personal liberty can be infringed with impunity, so that the issue before the country today involves one of the most fundamental points of our constitutional government. And while I have no offspring and therefore am perhaps not a great deal concerned, yet I have love for my country and its liberties of the future * * * ⁵⁰³

O'Mahoney replied, assuring Blume he was most encouraged "to have the approval of a sound and liberal thinker as I have always known you to be."⁵⁰⁴ He added:

While I have long been of the opinion that the courts have over-stepped the boundaries of judicial power in passing upon the wisdom and propriety of legislation, I see no cure for this difficulty by what amounts to a legislative invasion of the judicial power.⁵⁰⁵

Shortly after his exchange of correspondence with O'Mahoney, Blume and his two colleagues Kimball and Riner, personifying the state's judicial power, moved into a new building. In May, 1937, they moved from their quarters in the state capitol building, which had housed the supreme court since the early days of statehood, to the recently completed supreme court building across the street to the south, on land that had been a city park. The new building cost \$363,000.⁵⁰⁶ Serving again as chief justice, Blume was the principal speaker at the dedication ceremony.⁵⁰⁷ The court settled comfortably into its new home. He wrote a friend:

We have moved into the new building. It is a fine structure and credit to the state. I like my new quarters, because they are more commodious and give opportunity to turn around. I hate to be cramped in the quarters in which I work.⁵⁰⁸

He also informed his friend that as part of the dedication ceremony,

[T]he voices of some of us are to be deposited in a little depository, to be opened fifty years from now. But when the

503. Letter from Fred Blume to Joseph C. O'Mahoney (April 29, 1937) (H89-28, WHR, *supra* note 5).

504. Letter from Joseph C. O'Mahoney to Fred Blume (May 3, 1937) (H89-28, WHR, *supra* note 5).

505. *Id.*

506. WYOMING STATE TRIBUNE, May 4, 1937.

507. *Id.*

508. Letter from Fred Blume to C. Watt Brandon (April 15, 1937) (H89-28, WHR, *supra* note 5).

end of the fifty years comes, the officials then in charge will probably have forgotten all about what took place a half century before their time and will never think of opening up the depository. Such is life.⁵⁰⁹

It can be happily reported that the judge's pessimistic prediction was not fulfilled. On May 10, 1987, the depository was opened. And neither those in charge nor their successors who carry on the traditions and the important public service of those who have gone before have forgotten either what took place then or the enduring value of what they did during the years in which they were the guardians of the institutions of our self-government.

On his other homefront, Blume and his wife were also adjusting to a new addition to their family unit of two. Their young nephew Fred Paul Blume, about aged ten, had come to live with them. Young Fred's father William, had died of pneumonia in 1928 in Dickinson, North Dakota, just after his son's birth in 1927. The boy had been raised by his mother. Tragically, his mother had fallen gravely ill, and there was no one to care for the youth. The Judge and Blanche welcomed the lad into their home and raised him as their own until, in the closing days of World War II in 1945, he joined the Navy.

In addition to directing her boundless energy and indomitable spirit toward the raising of her young nephew, Blanche also directed them toward Blume's 1938 re-election campaign. Although Blume had been unopposed in 1930, he now faced an opponent who would prove in this campaign and future ones to be persistent if not successful. Seeking to unseat Blume, who sought his third consecutive term, was lawyer John J. Spriggs, Sr. of Fremont County. Wasting no time and leaving nothing to chance, Blume's long-time friend from the Sheridan years, C. Watt Brandon, now owner and publisher of the *Kemmerer Gazette*, wrote an article on Blume for the newspaper's March 11, 1938, issue. Singing Blume's praises, Brandon informed his readers that Blume was scheduled in May to deliver a paper before the Riccobono Seminar on Roman Law at the Catholic University in Washington, D.C.⁵¹⁰ For that May meeting Blume prepared a 102 page paper entitled, *The Code of Justinian and its Value*. He later described the meeting as "a rather notable occasion, being the Fiftieth Anniversary of the Teaching by Beale. There were present, aside from other notables, the three greatest textbook writers on our law, — Wigmore, Williston and Beale."⁵¹¹

509. *Id.*

510. *KEMMERER GAZETTE*, March 11, 1938.

511. Letter from Fred Blume to Clyde Pharr (December 28, 1943) (H69-10, WHR, *supra* note 7).

In his bid for re-election, Blume enjoyed wide support from the practicing bar. For example, forty-two members of the Cheyenne bar association signed a petition endorsing his candidacy.⁵¹² Typical of the individual expression of support he received from the state's lawyers was this one from Milward L. Simpson, then a Cody lawyer and later to become the state's governor and, still later, United States Senator:

I want to say to you here and now that it is for the benefit of all of the lawyers, as well as the laymen in the State of Wyoming, to keep the present Supreme Court intact.

I offer my services in what ever way they may be needed to bring about your reelection. And may I add that I am sure you will win in a walk.⁵¹³

Simpson's prediction was accurate. Blume's margin of victory over Spriggs was nearly thirty thousand votes—54,040 to 24,417.⁵¹⁴

Beginning the labors of his third term, Blume could look back with great satisfaction. Much had been accomplished. But, characteristically, Blume looked forward. Dark clouds of uncertainty and the terrible probability of war on a world scale were rolling in. The decade of the 1940's had arrived.

IX. THE DECADE OF THE 1940's

The dominant personality of the first half of the decade of the 1940's was, of course, Franklin D. Roosevelt. Blume was not particularly fond of him. In early January, 1940, in a letter to his old friend from Audubon, Judge Hal Mantz, after telling him about his hearing problem, Blume said, "If only Roosevelt would restore my hearing! He has bestowed his bounty upon millions, out of the abundance of his heart, and I do not see why he has overlooked me."⁵¹⁵ A few months before the 1940 election, Blume wrote David J. Howell, a former attorney general of the state in 1924 under Nellie Tayloe Ross who was the nation's first woman governor,⁵¹⁶ that

[t]he nomination of Wilkie suits me fine. The nomination of Roosevelt did not. * * * If Roosevelt is re-elected we shall

512. KEMMERER GAZETTE, *supra* note 510.

513. Letter from Milward L. Simpson to Fred Blume (March 3, 1938) (H89-28, WHR, *supra* note 5).

514. ERWIN, *supra* note 98, at 1287.

515. Letter from Fred Blume to Hal Mantz (January 12, 1940) (H89-28, WHR, *supra* note 5).

516. LARSON, *supra* note 88, at 457-58, 460.

get into the war. I doubt very seriously that Hitler will be able to invade England, so that the war will probably continue for a long time, and before it is over we shall probably get into it, with the result that we shall have, probably, a public indebtedness of one hundred billion dollars before we are through. God knows what that will mean.⁵¹⁷

His strong feelings against Roosevelt had not changed when, on the eve of the 1944 election, he wrote another friend living in Sheridan:

I said some seven or eight years ago to the Kiwanis Club that in a hundred years from now the opinions of the Supreme Court of Wyoming would rest in the dusty tombs of the past if the New Deal is continued,—the time mentioned at that time will be very much shortened.

I doubt whether I will come up for this election. I am upset and I like to visit Sheridan when my mind is more at ease. I have a magazine this morning, the magazine of Wall Street, which expresses the opinion that Roosevelt will be re-elected. If that occurs I want to be able to sit at my own fireside and get over the grief without anybody seeing me.⁵¹⁸

Blume experienced more palpable grief on three other occasions in this decade. In April 1943, his friend John H. Wigmore was killed in a Chicago taxicab accident. Among the countless mourners invited to attend a memorial service in June of that year, Blume was unable to attend because of the court's oral argument schedule.⁵¹⁹ Expressing his sorrow for the loss of that great scholar, Blume wrote to Leon Green, dean of the law school at Northwestern:

While he lived to a mature old age, yet there seems to be no reason why aside from the accident, he might not have been spared to us for some years longer. All who came in contact with him were his friends and in his passing I feel a personal loss. It is hardly necessary to say anything about his career. That he left an indelible imprint upon the field of law is beyond question. In fact, he left behind him an enviable record which many might attempt to emulate without success.⁵²⁰

517. Letter from Fred Blume to David J. Howell (September 6, 1940) (H89-28, WHR, *supra* note 5).

518. Letter from Fred Blume to Chester V. Davis (October 30, 1944) (H89-28, WHR, *supra* note 5).

519. Letter from Fred Blume to Dean Leon Green, Northwestern Law School (June 1, 1943) (H89-28, WHR, *supra* note 5).

520. *Id.*

He closed his letter by asking Dean Green to convey to Mrs. Wigmore the Blumes' deep sympathy. Dean Green quickly answered:

I appreciate your letter and regret that you can not be here for the memorial exercise. As you know, you stood at the top in the Wigmore family of judges. I am sending your letter on to Mrs. Wigmore, and know that she will appreciate it very much.

I have not had the pleasure of sitting down with you in a long time. I hope when you come this way you will let me know, so that we can have you out at the school. I still read your opinions and find them heartening.⁵²¹

In late October, Blume received word from Wigmore's long-time secretary, Sarah B. Morgan, that Mrs. Wigmore had died suddenly of a heart attack in August "after four months of intense grief."⁵²² She added:

Mr. Green sent your letter of June 1 to Mrs. Wigmore, and I find it on her desk marked for answer. I know that she appreciated receiving this word from you.

Please give my regards to your very nice wife. I well remember those happy days when you taught in our school. What ever happened to your translation?⁵²³

Three years later, on September 25, 1946, the judge again experienced grief when he found his beloved Bozo dead when he went to get him for their morning walk to the court.⁵²⁴ Blume penned this tribute:

An Epitaph to Bozo

The best friend of my life has left me. Bozo Blume, my companion of many years, quietly passed away in his sleep in the early morning of Wednesday, September 25th. The quiet passing was befitting his truly gentle nature. I had been gone for a month a short time ago. He grieved and would not eat. Perhaps that hastened his demise. I shall miss him. I shall miss the look of his trusting eyes as he watched—either wanting to go to the office with me, or go home with me, or to

521. Letter from Dean Leon Green to Fred Blume (June 3, 1943) (H89-28, WHR, *supra* note 5).

522. Letter from Sarah B. Morgan to Fred Blume (October 21, 1943) (H89-28, WHR, *supra* note 5).

523. *Id.*

524. WYOMING EAGLE, September 26, 1946.

get the meal which he expected at my hands. I shall miss his eager actions when he knew that I would take him to go swimming. I shall miss his joyous barks as he greeted me when I returned from a visit away from home. As said by Byron:

“Tis sweet to hear the watchdog’s honest bark
 Bay deep-mouthed welcome as we draw near home;
 ‘Tis sweet to know there is an eye will mark
 Our coming, and look brighter when we come.”

But the friendly bark of the faithful watch dog has been silenced. Bozo, who knew instinctively when I was worried, who watched me contentedly when I was happy, has passed to the Great Beyond. No more will the citizens of Cheyenne see the hippity-hop of the kindly, friendly, gentle dog; no more need they stop their cars as he carefully but slowly crossed the streets; no more will the children pat him on the head as they used to do when he came into their presence. A better friend than Bozo man never had. I bowed my head in grief when I found him without life. The tears which came welling into my eyes as I stood before the awful presence of death, should be pardoned. Dogs have souls. When I, too, shall pass to the Great Beyond, perhaps once more will I meet Bozo, to travel with me through the long paths of Eternity.

Fortunately, Blume’s grief on these occasions was diluted to some extent by the renewal of Clyde Pharr’s Roman law translation project initiated a decade earlier. In May, 1943, Blume received word from Pharr that the project now enjoyed adequate funding and work would begin immediately on the translation of the Theodosian Code.⁵²⁵ Blume was pleased that the project was still alive in spite of the war. “When the second world war started in 1939 I thought that all efforts in connection with the translation of any of the Roman law would be useless.”⁵²⁶ Blume confessed to Pharr that on account of the war he had put off finishing the corrections of his valuable notes on the Justinian Code.⁵²⁷ Now that Pharr’s project was moving forward, however, Blume pledged to finish his corrections within the year and send Pharr his manuscripts.⁵²⁸ He also offered “to serve in any capacity with your work which you may want.”⁵²⁹ Blume estimated that

7). 525. Letter from Clyde Pharr to Fred Blume (May 25, 1943) (H69-10, WHR, *supra* note

7). 526. Letter from Fred Blume to Clyde Pharr (May 28, 1943) (H69-10, WHR, *supra* note

7). 527. *Id.*

528. *Id.*

529. *Id.*

“perhaps half of the Theodosian Code is preserved in the Code of Justinian.”⁵³⁰ Obviously, then, his Justinian translation would be of immeasurable value to Pharr’s work.

Between May and December, 1943, Blume perused his Justinian translation, making corrections as he deemed necessary.⁵³¹ In late December, satisfied with his work product, he sent Pharr a copy of his complete translation of the Justinian Code and Novels.⁵³² Blume’s own words describe the emotion he felt, “I am now about, in a measure at least, to bid my last farewell to the Justinian Code, as I would to a child, and to say goodbye to the Justinian Novels, as I would to a brother.”⁵³³ Along with his translation, he sent Pharr a narrative explaining the history and background of his undertaking. “It will explain how a man in a State ‘away out West’ came to be interested in the subject and furthermore I do not want to leave an impression of a claim of an erudition which I do not possess.”⁵³⁴

Pharr’s reaction to Blume’s work came within ten days:

Frankly, I am quite overwhelmed by the indication of extremely sound research and scholarship by your work. It is a challenge to all of us to continue on the job until we have done something that we feel we can present to other scholars.⁵³⁵

Pharr recalled, apologetically, his earlier criticism of Blume’s translation of Book Two of the Code, which Blume had sent Pharr in 1934:

I remember criticizing part of your manuscript some eleven years ago. At that time, I was a beginner in Roman law, although I have been engaged in classical scholarship. Because of my rather superficial knowledge of Roman law at that time, I criticized certain features of your manuscript which, in the light of further knowledge, I now gladly revise.⁵³⁶

Moreover, Pharr expressed his admiration for the confidence and courage Blume’s work revealed:

530. *Id.*

531. Letter from Fred Blume to Clyde Pharr, *supra* note 511.

532. *Id.*

533. *Id.*

534. *Id.*

535. Letter from Clyde Pharr to Fred Blume (January 8, 1944) (H69-10, WHR, *supra* note 7).

536. *Id.*

I am delighted that you stand by your guns and many of the statements which you have coined to express the close relationship between Roman Law ideas and other legal ideas, including those found in our own period.⁵³⁷

In closing, Pharr praised Blume again:

Once more allow me to congratulate you most sincerely on the completion of a magnificent task. You place us all, both those of the present and those of the future, greatly in your debt. Though I am sure you are too modest to say so yourself, I shall feel content that you were justified in writing with Horace *Exegi monumentum aere perennius*.⁵³⁸

With his spirits buoyed, Blume continued to review his work and reconsider what part of the Theodosian Code was replicated in the Justinian. In the spring of 1944, he advised Pharr that he now believed that not more than one-fourth of the Theodosian Code was contained in the Code of Justinian.⁵³⁹ Nevertheless, Pharr found Blume's work invaluable. Pharr was hopeful the two scholars could meet in the future. He wrote Blume:

There are many Roman law problems that I should like to discuss with you. You have worked in this field very fruitfully and you have done some independent thinking. I do not wish to flatter you but it seems to me that your contributions to the interpretation of the Code of Justinian will prove to be of far greater value than those of any other living scholar.⁵⁴⁰

The method devised and implemented by Pharr for the Theodosian translation was simple and straightforward. Working with a few Vanderbilt colleagues and graduate students under their supervision, he prepared rough drafts of translations of the Code, a book at a time. Next, he and his Vanderbilt colleagues revised and retranslated. Then, they issued the revision in mimeographed form to the consulting editors for criticisms and suggestions.⁵⁴¹ To prepare to

537. *Id.*

538. *Id.*; "I have built a monument more lasting than bronze." HORACE, ODES, III, xxx, 1.

539. Letter from Fred Blume to Clyde Pharr (March 18, 1944) (H69-10, WHR, *supra* note 7).

540. Letter from Clyde Pharr to Fred Blume (April 4, 1944) (H69-10, WHR, *supra* note 7).

541. Letter from Clyde Pharr to Blume (June 9, 1943) (H69-10, WHR, *supra* note 7); see also PHARR, *supra* note 431, at vii.

read and criticize the entire translation, Blume on his own read the Theodosian Code.⁵⁴²

An examination of the Pharr-Blume correspondence, particularly that exchanged during the period 1943-1965, reveals that their personal friendship grew with each passing letter. As mentioned earlier, Pharr hoped to visit Blume in Cheyenne to "see your library * * * and the environment under which you have been working."⁵⁴³ Blume hoped the war would end soon so that when Pharr visited "we can have some gasoline and enjoy some of the western scenery. We have some very beautiful mountains close to Cheyenne."⁵⁴⁴ To the prospect of Pharr's visit, Blume added:

I must, however, say in that connection that you must not expect too much wisdom from me and go away disappointed. My 'wisdom' comes from the books. * * * Only occasionally occurs a thought of my own.⁵⁴⁵

In their correspondence Blume introduced Pharr to his best friend, Bozo. Bozo had been featured in a local newspaper article as Blume's "Hearing-ear" dog, in reference to Blume's having begun to experience hearing problems in the early 1940's. Blume sent Pharr a copy of the article. Pharr looked forward to meeting the celebrity canine, saying, "On the basis of my present knowledge I am ready to give him my vote and my unqualified support in preference to Fala."⁵⁴⁶ Pharr's plans for a trip west, however, never materialized, and Blume was never able to arrange a visit south. Despite their long years of scholarly association and their growing friendship, they never met in person.

That these two Roman scholars never personally met did not inhibit the quality of their easy working relationship during the Theodosian translation. In addition to reading, criticizing, and suggesting revisions or corrections of the materials as Pharr would send them to him, Blume also drafted a translation of three of the Code books and part of another.⁵⁴⁷ Committed to the work he assiduously applied his talents to all the material. He "went through each of the preliminary drafts with punctilious care."⁵⁴⁸ Considering that for the active

542. Letter from Fred Blume to Clyde Pharr (July 18, 1944) (H69-10, WHR, *supra* note 7).

543. Letter from Clyde Pharr to Fred Blume (January 8, 1944) (H69-10, WHR, *supra* note 7).

544. Letter from Fred Blume to Clyde Pharr, *supra* note 542.

545. *Id.*

546. Letter from Clyde Pharr to Fred Blume (November 4, 1944) (H69-10, WHR, *supra* note 7). Fala, of course, was President Roosevelt's dog, and a celebrity in his own right.

547. PHARR, *supra* note 431, at vii-viii.

548. Letter from Fred Blume to American Council of Learned Societies, Washington, D.C. (September 17, 1957) (H69-10, WHR, *supra* note 7).

life of the project, 1943 to 1952, Blume's own active life went from sixty-eight to seventy-seven years of age, and he also handled more than his share of the court's work as he again held the position of chief justice, one must marvel at his powers of endurance. Acknowledging the burden, he confessed to Pharr, "A hard day's work in the office is not conducive to make a man of my age want to read Latin in the evening, which might be recreation to you but labor to me."⁵⁴⁹

To ease the burden of work under which he was laboring, Blume employed a diversion perhaps suggested to him sixteen years earlier by his friend Wigmore who had been "an avid reader of detective stories."⁵⁵⁰ As Blume confided to Pharr, "So I have learned to regale myself with light literature which a good many judges and lawyers find to be the greatest relaxation,—though doubtless that would appear frivolous to you."⁵⁵¹ Concrete proof that Blume, like Wigmore, was an omnivorous reader of "light literature" still exists today. At the University of Wyoming College of Law, in the Blume Room,⁵⁵² one will find today a large cardboard box stuffed to overflowing with paperback detective stories and western novels. Erle Stanley Gardner's *Perry Mason* series abounds, as do stories by Louis L'Amour, John D. MacDonald, Luke Short, Mary Roberts Rinehart, Will Henry, A.B. Guthrie, Jr., Agatha Christie, Ellery Queen and others. Frequently one finds on the front pages of these books a brief note of evaluation in the judge's handwriting. Of L'Amour's *Burning Hills* the note reveals:

This book published & read before. The date 1956 is a fraud. But it is not a bad story. R 8/14/56. C. 1 a little slow. R 7/3/63.

He had, of course, read the piece twice, seven years apart. Of Jan Valtin's *Wintertime*, he observed:

A sad story. R 11/10/54—About Germany & Russia after the war. R 6/29/61. 10/16/68. Perhaps somewhat overdrawn.

And, of Luke Short's *Hardcase*, he commented:

R 12/16/60—Quite a story. 6/22/60—Quite a yarn but, of course, it's really silly—11/17/68.

549. Letter from Fred Blume to Clyde Pharr (April 2, 1945) (H69-10, WHR, *supra* note 7).

550. Roalfe, *supra* note 393, at 283, 299.

551. Letter from Fred Blume to Clyde Pharr, *supra* note 549.

552. The Blume Room is dedicated to the memory of Fred Blume and houses the three thousand volume library of classical and Roman law and other literary works which he collected and used in his lifetime and bequeathed to the law school on his death.

Consistently through the life of the Theodosian project, Pharr praised Blume's contributions. In early 1945, Pharr informed him, "You will find how much we are plundering from your work when you receive our issue of the second book of the Theodosian Code."⁵⁵³ That summer, after assuring him that Pharr and his colleagues were "looking forward to the time when we may devote all our time to your translation [of the Justinian Code] and to collaborating with you on the final preparation for its publication,"⁵⁵⁴ Pharr advised him, "Your notes and translations are proving more and more valuable to us, and I am thoroughly convinced that all your notes should be published."⁵⁵⁵ After another year of Blume's fruitful assistance, Pharr's expression of gratitude increased:

You have sent us a great many valuable criticisms and suggestions and we are deeply indebted to you for your extremely helpful collaboration. No other of our contributing editors has been so helpful.⁵⁵⁶

Again, in early 1947, Pharr's assessment continued, "You are easily the most active and the most helpful of our Consulting Editors."⁵⁵⁷ Each year as the project advanced, Pharr never failed to give honor to whom honor was due: "Your contributions were much greater than those of any other member of the Board of Consulting Editors,"⁵⁵⁸ and "of all our Consulting Editors you have been the most valuable in your criticisms and suggestions."⁵⁵⁹

In addition to giving Blume praise, Pharr continued to give him a promise: "Throughout our work we have leaned very heavily on your translations and annotations on the Code of Justinian and we are looking forward to the time when we can collaborate with you on the translation of the Code and Novels of Justinian."⁵⁶⁰

And:

553. Letter from Clyde Pharr to Fred Blume (April 28, 1945) (H69-10, WHR, *supra* note 7).

554. Letter from Clyde Pharr to Fred Blume (July 12, 1945) (H69-10, WHR, *supra* note 7).

555. *Id.*

556. Letter from Clyde Pharr to Fred Blume (July 18, 1946) (H69-10, WHR, *supra* note 7).

557. Letter from Clyde Pharr to Fred Blume (March 5, 1947) (H69-10, WHR, *supra* note 7).

558. Letter from Clyde Pharr to Fred Blume (May 7, 1947) (H69-10, WHR, *supra* note 7).

559. Letter from Clyde Pharr to Fred Blume (March 2, 1948) (H69-10, WHR, *supra* note 7).

560. Letter from Clyde Pharr to Fred Blume (July 18, 1946) (H69-10, WHR, *supra* note 7).

As soon as we can get the Theodosian Code out of the way we shall turn to your work on the Justinian Code and Novels. With the additional knowledge that we have all gained from our work on the Theodosian Code, I feel sure that we shall be able to do a superb job on Justinian.⁵⁶¹

Blume's continuing work on the translation did not interfere with his preparation for the 1946 judicial election. As he had done in past campaigns, he enlisted the aid of newspaper owner and publisher C. Watt Brandon of Kemmerer.⁵⁶² He also continued to rely on his wife's wise counsel and personal campaigning effort.⁵⁶³ He filed for reelection in May with no opposition yet announced; he had heard rumors, however, that Robert R. Rose, a lawyer and former district court judge, might enter the race.⁵⁶⁴ Upon the announcement of his own candidacy, Blume received expressions of broad support across the state. Typical of these expressions was this one from a Laramie lawyer:

I was very glad to notice the announcement of your candidacy for re-election to the bench. I feel certain that you will not have very much difficulty in securing re-election, unless there is still a hangover from the days of F.D.R. It is to be hoped that that influence is dying out in American politics.⁵⁶⁵

Although Blume was pleased to receive such expressions, as well as the endorsements of the Sheridan and Cheyenne bar associations,⁵⁶⁶ and encouraging letters from supporters in the southern and eastern counties of the state,⁵⁶⁷ he knew Rose would be a tough opponent.⁵⁶⁸ Future governor and United States Senator Milward L. Simpson assured Blume that voters in Park County favored his re-election.⁵⁶⁹ Blume issued a one-page letter to all members of the state bar as-

561. Letter from Clyde Pharr to Fred Blume (February 5, 1947) (H69-10, WHR, *supra* note 7).

562. Letter from C. Watt Brandon to Fred Blume (February 25, 1946) (H89-28, WHR, *supra* note 5); Letter from Fred Blume to C. Watt Brandon (March 1 & 18, 1946) (H89-28, WHR, *supra* note 5).

563. Letter from Fred Blume to C. Watt Brandon (March 1 & 18, 1946), *supra* note 562.

564. Letter from Fred Blume to C. Watt Brandon (May 24, 1946) (H89-28, WHR, *supra* note 5); *see also* letter from Fred Blume to C. Watt Brandon (March 1, 1946), *supra* note 562.

565. Letter from Lenoir Bell to Fred Blume (May 31, 1946) (H89-28, WHR, *supra* note 5).

566. Letter from Fred Blume to E.J. Sullivan (June 10, 1946) (H89-28, WHR, *supra* note 5).

567. *Id.*

568. *Id.*

569. Letter from Milward L. Simpson to Fred Blume (June 15, 1946) (H89-28, WHR, *supra* note 5).

sociation, asking for their continued support and hinting that this might be his last campaign:

I have heretofore enjoyed the support of substantially every member of the bar, and I hope that this may be true this time, the last time, presumably, when I shall ask it.⁵⁷⁰

He delivered the heart of his message in these words:

My life, from the time when I was a chore-boy in a law office at the age of about sixteen or seventeen to this time, has been in the main, lived with the law, bearing in mind that "law is a jealous mistress." During my long service on the Bench I have considered every member of the Bar my friend, pursuing the same ultimate end, and I have so treated them if they would let me.

I have been on the Bench too long to now return to private practice. It takes time to build up a law practice. But my health is in excellent condition, and my work, if anywhere, is in the place which I now occupy.⁵⁷¹

One observer, H.S. Harnsberger, who would join Blume on the court seven years later, noted that Rose's main argument to unseat Blume would be that "the personnel of the Supreme Court has not changed for so many years. * * *"⁵⁷² Indeed, Kimball and Blume had served together for twenty-five years, and Riner had served with Kimball and Blume nearly twenty years. Many lawyers saw this as a strength. One said, "As I told you personally some time ago, I feel that our Supreme Court as now constituted should continue so long as is possible."⁵⁷³ Another offered more forcefully:

It will take more of a reason than to give some other person a job to convince me that we should have change in the membership of our Court. Able judges should not be displaced for the alleged reason that a scholarly opinion is too lengthy or that all the points of law raised in the briefs of litigants were not decided. I am of the opinion that you and the other

570. Letter from Fred Blume to the members of the Bar (June 20, 1946) (H89-28, WHR, *supra* note 5).

571. *Id.*

572. Letter from H.S. Harnsberger to Fred Blume (June 21, 1946) (H89-28, WHR, *supra* note 5).

573. Letter from Ernest J. Goppert to Fred Blume (June 22, 1946) (H89-28, WHR, *supra* note 5).

members of the Court have been a credit to the State of Wyoming.⁵⁷⁴

Leaving nothing undone, Blume and his wife traveled the state. Blanche was well received wherever she campaigned. A Casper lawyer best captured the value of her efforts when he wrote her, "If some of the other candidates had as much 'home assistance' as your husband has had there would be very little doubt about the outcome of their election."⁵⁷⁵

Their investment of hard work and concentrated efforts paid the desired dividend in November. Blume carried nineteen of the state's twenty-three counties, winning the election by more than ten thousand votes.⁵⁷⁶

As Blume began his fourth consecutive term on the state supreme court, he and his judicial colleagues, Republicans all, offered their full support to a member of the loyal opposition whose name had surfaced as a possible candidate for nomination to the United States Supreme Court. They sent a telegram to President Truman urging the appointment of Joseph C. O'Mahoney, Wyoming's highly respected Democratic United States Senator.⁵⁷⁷ O'Mahoney was deeply moved:

I cannot begin to express the appreciation I felt. I could imagine no greater compliment than your message to the President and I want you and your associates to know that I never received a communication which I prize more highly than your letter * * * and its enclosures.

There are, as you know, many factors which enter into the availability of any person for public office, whether by election or appointment. I am frank to say that I personally did not feel when either of these vacancies occurred that I would be regarded as available but * * * that the Justices of the Supreme Court of my own state were willing to send the wire they did send to the President will be a memory which I shall always deeply cherish and I thank you all most sincerely.⁵⁷⁸

574. Letter from Marvin L. Bishop to Fred Blume (June 25, 1946) (H89-28, WHR, *supra* note 5).

575. Letter from John H. Casey to Mrs. Blanche Blume (November 2, 1946) (H89-28, WHR, *supra* note 5).

576. 1947 WYOMING OFFICIAL DIRECTORY AND 1946 ELECTION RETURNS 78-79 (compiled by A.G. Crane, Secretary of State); the vote count was Blume 41,224 to Rose 30,741.

577. Letter from Fred Blume to Joseph C. O'Mahoney (September 12, 1949); letter from Joseph C. O'Mahoney to Fred Blume (September 16, 1949) (H89-28, WHR, *supra* note 5).

578. Letter from Joseph C. O'Mahoney to Fred Blume (September 16, 1949), *supra* note 577.

As history records, O'Mahoney was not nominated. It should be noted this was not the first time O'Mahoney's name had surfaced as a possible court nominee. In late 1938, President Roosevelt asked Democratic power broker James Farley for advice about the vacancy caused by Justice Sutherland's resignation.⁵⁷⁹ To Farley's proposal of O'Mahoney, Roosevelt said, "Black has dissented many times since I put him on the bench, but his dissents would be a drop in the bucket to what O'Mahoney would do if he were on the Court."⁵⁸⁰ Again, in late 1939, Farley had proposed O'Mahoney as Justice Butler's replacement; again, Roosevelt rejected him.⁵⁸¹ O'Mahoney's opposition to the President's court reform proposal may have endeared him to his constituents, but obviously not to the leader of his party.

Having defeated Milward L. Simpson in 1940, and Harry B. Henderson, a Cheyenne lawyer, in 1946, O'Mahoney enjoyed national prestige and seniority in the senate.⁵⁸² Considering that O'Mahoney had been an ardent New Dealer, with the exception of FDR's court-packing plan, Blume's support of an O'Mahoney judgeship may at first glance be suspect, but is probably explicable due to O'Mahoney's principled and courageous stand against FDR's court-packing plan. In 1952, O'Mahoney was defeated by Frank A. Barrett, a Lusk lawyer and former Congressman and Governor who resigned the latter office upon his election.⁵⁸³ In 1954, O'Mahoney returned as the state's junior senator, winning the 1954 election.⁵⁸⁴

As the new year of 1950 began, Blume was seventy-five years old and still going strong. The decade of the 1950's would bring a mixture of joy and heartache to this remarkable man. He would again experience grief. His beloved Blanche would become ill. Before the decade was out his two judicial brothers, Kimball and Riner, would pass from the scene. He would win his fifth consecutive election. A grateful bar association and the state's university would honor him. And, the promise of the publication of his Justinian work would be renewed.

X. THE DECADE OF THE 1950'S

No evidence exists to suggest that Blume was superstitious or

579. JAMES A. FARLEY, *JIM FARLEY'S STORY: THE ROOSEVELT YEARS 162* (1948), cited by Thomas R. Ninneman, *Wyoming's Senator Joseph C. O'Mahoney*, 49 ANNALS OF WYOMING No. 2, 193, 222 (Wyoming State Archives and Historical Department, Fall 1977).

580. *Id.*

581. Ninneman, *supra* note 579, at 222.

582. LARSON, *supra* note 88, at 508.

583. *Id.* at 508-18.

584. *Id.* at 520-21.

believed in omens. Had he entertained such notions, perhaps his wife's serious heart attack in 1951 would have alerted him that the winds of change were blowing and the days of several of the persons to whom he was closest were measured. Concerning Blanche's condition, he recalled in 1960:

Mrs. Blume and I had expected to travel a good deal in our old age but "fortuna," as Seneca would have called it, prevented it. Mrs. Blume had a very severe heart attack about nine years ago. She has never quite got over it and has been in the hospital a good share of the time since, so we don't travel any more.⁵⁸⁵

On January 7, 1952, Blume's judicial brother of thirty-one years, Ralph Kimball, retired from the court. From the scant record available, we can judge that their relationship was warm and friendly. Upon his retirement, Kimball and his wife, Mary, moved back to Lander. Blume and Kimball exchanged only a few letters during the latter's remaining years. As Blume jested with his long-time colleague, "I've often thought of writing you * * * but I just haven't anything particularly to say except that my handwriting is worse than yours."⁵⁸⁶ Blume reported to Kimball that:

I am in reasonably good physical condition and do not believe my reasoning faculties so far have been adversely affected. But just how long I shall stay on the court is a matter which I simply do not know at this time. I frequently ask myself why I should continue trying to solve the troubles of others.⁵⁸⁷

A few months before Kimball's death on November 19, 1959, Blume had reported to him about the court's caseload and Blanche's health and his own, closing with these simple words, "I hope life is as kind to you as can be expected under the circumstances and that too as to Mary."⁵⁸⁸ Of Kimball, Blume said, "He was an excellent judge of the law, very careful in examining it, and he had a fine sense of justice."⁵⁸⁹ According to other observers, the dominant characteristic of Kimball's personality was reticence. "It managed and disciplined his conversation, and also of course his decisions."⁵⁹⁰ He

585. Letter from Fred Blume to Mary Pharr (March 7, 1960) (H69-10, WHR, *supra* note 7).

586. Letter from Fred Blume to Ralph Kimball (August 3, 1959) (H89-28, WHR, *supra* note 5).

587. Letter from Fred Blume to Ralph Kimball (June 5, 1957) (H69-10, WHR, *supra* note 7).

588. Letter from Fred Blume to Ralph Kimball (August 3, 1959), *supra* note 586.

589. Kimball Memoriam, Wyoming Reporter, 344-356 P.2d (1961).

590. *Id.*

had a talent for "the art of condensation. He was so able to discern and define the heart of [a] complex issue, so capable at writing it down in sharply-drawn and concise language."⁵⁹¹

On Kimball's retirement from the court in 1952, Governor Frank A. Barrett had appointed Harry P. Ilsley to fill the vacancy. Ilsley was born in December 1884, in Markesan, Wisconsin. In 1908, he received his law degree from the University of South Dakota before moving to Wyoming in 1910. For the next ten years he practiced law in Sundance, Wyoming. In 1920, he was elected to the state district court in the Sixth Judicial District composed of Crook, Weston and Niobrara Counties. Re-elected four times, he served as district judge for thirty years, until his appointment to the high court.⁵⁹² Ilsley's tenure on the court was brief; he died on February 18, 1953.

Ilsley's replacement on the bench was H.S. Harnsberger, who, like Kimball, was from Lander. Acting Governor C.J. Rogers appointed Harnsberger on March 12, 1953. He was born in 1889, in Decatur, Illinois. Graduating from Georgetown University Law School in 1914, he began his practice in Lander that same year. From 1930 to 1942, Harnsberger served Fremont County as county and prosecuting attorney. In 1950, he was appointed to serve as the state's attorney general.⁵⁹³ He would serve on the court until his retirement on January 1, 1969; he died on July 1, 1975.⁵⁹⁴

With Kimball's retirement in 1952, Blume and Riner carried on the tradition established by that long-serving triumvirate first formed in the decade of the 1920's. But, on November 20, 1955, a second member of that distinguished bench departed. On that date, William A. Riner died. And with his death ended his judicial association of twenty-seven years with Blume. As is the case concerning Blume and Kimball's relationship, scant record exists from which to judge the Blume-Riner relationship. Evidence of the court conferences during these years does not exist; neither do inter-office memoranda from which one could perhaps gain insight into the internal workings of their court, the nature and scope of their discussions, the extent to which their personalities came into play, the manner in which they arrived at a decision, and what combined effort went into any given opinion which outwardly bore the signature of but one author. The reported opinions spanning the triumvirate's existence reveal that these jurists seldom openly disagreed. Dissenting opinions were rare. About one of those rare occasions, Blume opened the conference door a crack when he reported, perhaps in an unguarded moment:

591. *Id.*

592. Ilsley Memoriam, 71 Wyoming Reports (1953).

593. Harnsberger Memoriam, Wyoming Reporter, 543-550 P.2d 7-15 (1976).

594. *Id.*

I have been somewhat low in spirit lately on account of a dissent in a case before this court involving the sales tax law, and which is, in my judgment, rather important, and affects probably thousands of merchants in the state. I disagreed with the majority who, in my judgment were clearly wrong. Judge Riner apparently hates everyone who disagrees with him so I have not been of the most cheerful disposition lately.⁵⁹⁵

On another occasion, speaking generally, Blume unemotionally said, "I am accustomed to make changes in my opinions pursuant to suggestions and criticism of my colleagues."⁵⁹⁶

From the available evidence, the conclusion which may be fairly drawn is that Riner's personality was somewhat rigid, certainly less warm than those of his two colleagues, Blume and Kimball. Remembering one particular incident which supports that conclusion, Louis J. O'Marr, a close friend of Blume's over the years and former state's attorney general and, later, associate commissioner of the Federal Indian Claims Commission, recalled:

This, by the way, reminds me of a remark made by Judge Riner one time while I was Attorney General. I stopped in his office to express my appreciation of some decision of the court in a matter I was interested in as Attorney General. He said, "General, you obtain no consideration from this court that you are not entitled to."⁵⁹⁷

The Blumes' longtime neighbors, Mary Liz and Julian Carpenter, also report that Riner, who also lived on the same street, was not the kind of neighbor from whom one would want to borrow a cup of sugar.⁵⁹⁸ In contrast, they fondly recall a warm and loving friendship with the Blumes. Strongly suggesting that Riner maintained a bright-line boundary line between his public and private lives is the Carpenters' account that in the morning Riner would emerge from his house to begin his short walk to the office and, upon seeing Blume emerge from his and start walking one way, would invariably start walking the other way.⁵⁹⁹

Notwithstanding Riner's apparent aloof nature, Blume considered him an excellent jurist and recognized his many strengths. At

595. Letter from Fred Blume to C. Watt Brandon (March 18, 1946) (H89-28, WHR, *supra* note 5) (the case referred to is *Walgreen Co. v. State Board of Equalization*, 62 Wyo. 288, 166 P.2d 960 (1946)).

596. Letter from Fred Blume to Ralph Kimball, *supra* note 587.

597. Letter from Louis J. O'Marr to Fred Blume (July 8, 1959).

598. Conversation with Mary Liz and Julian Carpenter, September 21, 1990, Cheyenne, Wyoming.

599. *Id.*

the court's memorial tribute to Riner, Chief Justice Blume said:

I know of no man more devoted to his work than he. I know of no man who worked more persistently and earnestly and efficiently at what he had to do than he. With keenness of perception he quickly saw the kernel of the cases that came before the court, but though his judgment might dictate as to what should be the result, he never omitted, in connection with the opinions written by him, to look up the authorities that had a bearing on the case, and then, and only then did he come to a final conclusion as to what the result in the case should be—a course essential to be taken by a court of final resort. Nor did he overlook the broad justice of the case, and when conflicting authorities presented themselves to him, he chose the line which, under modern conditions, appealed to him to be the most just.⁶⁰⁰

On December 8, 1955, Glenn Parker filled the Riner vacancy, having been appointed by Governor Milward L. Simpson. Parker was born in November, 1898, in Murray, Iowa. His family moved to a ranch near Big Horn, Wyoming, where he spent his youth. In 1922, he received his undergraduate degree from the University of Wyoming, thus enjoying the distinction of being that institution's first graduate to serve on the state's supreme court. After pursuing graduate studies at the University of Chicago, he returned to Laramie, Wyoming, where he taught high school English. From 1923 to 1926, he served as principal and school superintendent in Casper. In 1927, the University of Wyoming Law School, established in 1920 largely due to the efforts of the Arnold family of Laramie, awarded him a law degree; thus, he also gained the distinction of being that school's first graduate to serve on the state's highest court. For the next three years, Parker practiced law in Laramie. From 1930 to 1932, he served there as city attorney. From 1932 to 1942, he worked as county attorney for Albany County. He saw active duty with the United States Army in World War II, attaining the rank of colonel. After the war, Parker returned to Laramie where he resumed his law practice. In 1949, he was appointed to the state district court for the Second Judicial District. Six years later he took Riner's chair on the court.⁶⁰¹

With the personnel changes on the court, the court on which Blume had served for more than thirty years was now undergoing change, not from political conditions at the ballot box but from the ordinary human conditions to which all mere mortals are subject. In

600. Riner Memoriam, 74 Wyoming Reports (1955).

601. Parker Memoriam, Wyoming Reporter, 801-806 P.2d xxvi-xxxii (1991).

1954, Blume, seemingly impervious to the ravages of time at the age of seventy-nine, faced the ballot box for the fifth and, as he would later choose, final time. In this, his last hurrah, he would prove once more that he was unbeatable.

Justice Blume's opponent was John J. Spriggs, Sr., the Wyoming judiciary's version of Harold Stassen, of whom Chief Justice C. Stuart Brown, Retired, has noted he ran often but never "as an incumbent."⁶⁰² About Spriggs' decision to oppose him, Blume said:

I never dreamed that Spriggs would run against me in view of the fact that he had run against me twice before and was badly defeated and that he had also previously run against Judge Kimball twice and also against Judge Riner. So that this is his sixth try at the office. But I was mistaken.⁶⁰³

Blume had no use for Spriggs. He explained his low opinion of his opponent to his confidant C. Watt Brandon:

So I was rather appalled when on the last day for filing, Spriggs filed against me after having been defeated by me twice before; once by elimination in the primary and once defeated by me by 30,000 majority. And after he had been twice convicted of unprofessional conduct; once being reprimanded and once being disbarred for six months. See 61 Wyo. 70, 155 P.2d 285.⁶⁰⁴

Blume was somewhat uncertain about how he should campaign against Spriggs. Although he strongly believed that the public was entitled to know Spriggs' record, he was sensitive to the concerns of his own supporters that "it is a little below the dignity of the Chief Justice to say anything at all about his opponent."⁶⁰⁵ Blume's view was in step with the advice of his supporters, as he told Brandon, "I do not want to do anything that is not in conformity with the dignity of the office."⁶⁰⁶

From the available evidence, the conclusion can be safely drawn that Blume took the high road and campaigned on his own excellent record and not on his opponent's shortcomings. As he had in past campaigns, he sought and obtained the generous and active support

602. See *Hamburg v. State*, 820 P.2d 523, 524 n.1 (Wyo. 1991).

603. Letter from Fred Blume to Harry B. Durham, Casper lawyer (August 4, 1954) (H89-28, WHR, *supra* note 5).

604. Letter from Fred Blume to C. Watt Brandon (July 13, 1954) (H89-28, WHR, *supra* note 5).

605. *Id.*

606. *Id.*

of lawyers throughout the state. This support knew no partisan party lines. Stanley K. Hathaway, then a Torrington lawyer who would later be elected as a Republican governor for two terms from 1966-1974, shared Blume's opinion that Spriggs was "completely unqualified to serve on our Supreme Court,"⁶⁰⁷ and assured Blume:

I will do everything in my power to help you in this county and I am confident that you will have no difficulty in the forthcoming election. The value of your service is known to every lawyer in this state and to most of our clients. I will talk to the other members of our Goshen County Bar Association and you may be sure we will all do everything possible to help you.⁶⁰⁸

On the other side of the state, and on the other side of the "political aisle," Ed Herschler, then a Kemmerer lawyer who later would be elected as a Democratic governor for three terms from 1974-1986, wrote Blume:

I trust that you will not have too much trouble in gaining re-election and if you would have any cards or posters, I shall be very happy to circulate them in Lincoln County for you. I will also do my utmost to secure a good vote for you in this county in the general election.⁶⁰⁹

Of course, Blume also enjoyed the deep and wide support of lay citizens as well. Representative of that backing was this expression:

Today I received an envelope containing a limited amount of cards, your picture appears on the front cover, while on the inside a condensed, but explanatory account is printed of your long and intensive service to our state of Wyoming, and to its people. I have met you in person only once, and have many times wished to see your picture. As I look at the photo, I see a man who I am certain would be altogether at home with the *ordinary*, and *common* class of citizenry while he himself is of the *extraordinary* class. I * * * will gladly do all I can to accomplish your return to your present position.⁶¹⁰

607. Letter from Stanley K. Hathaway to Fred Blume (July 28, 1954) (H89-28, WHR, *supra* note 5).

608. *Id.*

609. Letter from Ed Herschler to Fred Blume (July 31, 1954) (H89-28, WHR, *supra* note 5).

610. Letter from Mrs. Thomas Hood, Afton, Wyoming, to Fred Blume (October 5, 1954) (H89-28, WHR, *supra* note 5).

Carrying all twenty-three counties in the primary election in August, Blume garnered 44,220 votes to Spriggs' 23,558.⁶¹¹ Blume increased his winning margin in the general election, crushing Spriggs in a vote of 60,783 to 34,463.⁶¹²

Unfortunately, Blume had not heard the last of Spriggs. A few years later, the frustrated perennial also-ran filed a federal civil rights action against Chief Justice Blume and Justice H.S. Harnsberger as appellate judges, Judge Spencer J. Lewis, as a trial judge, and several private parties who had been adverse litigants in a long string of cases in state court litigation which Spriggs had unsuccessfully waged.⁶¹³ The Federal Circuit Court of Appeals affirmed the Federal District Court's dismissal of the suit.⁶¹⁴ Blume, then aged eighty-two, expressed his opinion of Spriggs' action to Ralph Kimball, his former colleague and now retired in Lander:

Spriggs keeps hounding me and I have felt at times when I saw him like taking a good poke at his nose.⁶¹⁵

A few years later, when Blume asked a member of the Goshen County Bar Association to urge that group to give its full support to Justice Harnsberger who was seeking re-election in 1960 and was opposed by the persistent Spriggs, Blume's emotional reaction to Spriggs' candidacy was more subdued. He only said, "It would take a book to express what I think about my friend Spriggs."⁶¹⁶ Of course, when it came to writing books, the only ones on his mind in the decade of the 1950's were those on which he and Clyde Pharr had been working for many years.

In 1950, Pharr left Vanderbilt University and accepted a position as research professor in Roman law at the University of Texas in Austin, Texas.⁶¹⁷ Pharr assured Blume that his move to Texas would not adversely affect the completion of the Theodosian project.⁶¹⁸ Pharr also renewed his promise:

As soon as the Theodosian Code is out of the way, we shall be able to put the final touches on the Code and Novels of

611. 1955 WYOMING OFFICIAL DIRECTORY AND 1954 ELECTION RETURNS 51 (Compiled by Everett T. Copenhaver, Secretary of State).

612. *Id.* at 53.

613. *Spriggs v. Pioneer Carissa Gold Mines, Inc.*, No. 5662, United States Court of Appeals, Tenth Circuit, November Term 1957.

614. *Id.* (judgment dated December 20, 1957).

615. Letter from Fred Blume to Ralph Kimball, *supra* note 586.

616. Letter from Fred Blume to George P. Sawyer, Torrington lawyer (August 30, 1960) (H89-28, WHR, *supra* note 5).

617. 7 WHO'S WHO IN AMERICA (1977-1981), *supra* note 474, at 452; letter from Clyde Pharr to Fred Blume (April 13, 1950) (H69-10, WHR, *supra* note 7).

618. Letter from Clyde Pharr to Fred Blume, *supra* note 617.

Justinian. We hope to be able to get it through the press in record time, since you had already done the fundamental work on both the translation and the commentary.⁶¹⁹

After the passage of two years, publication of the English translation of the Theodosian Code was achieved. Entitled *The Theodosian Code and Novels and the Sirmondian Constitutions*, the book included a preface that contained Pharr's acknowledgment of Blume's contribution:

Special mention must be made of the translation and commentary of the Code and Novels of Justinian, which were prepared several years ago by Fred H. Blume. Justice Blume very generously made all of his material available to us and his work has been extremely helpful and valuable.⁶²⁰

On a more personal level, Pharr wrote Blume, "There is no way to estimate the value of your assistance to us in completing this work, and we feel that by all rights you are definitely a collaborator—really one of the authors—in this enterprise."⁶²¹ With the publication of this book Pharr again informed Blume that the work on the Code and Novels of Justinian "is actively underway."⁶²² He added:

With the aid of the fundamental work that you have already done, we think that CJ will be completed much more rapidly than was CTh. * * * Our manuscript should be ready for the press within the next two or three years. * * * When CJ-NJ is published, we should like to carry your name also on the title page as one of the authors, since we are making fundamental use of your translations.⁶²³

Blume was heartened by Pharr's letter and pleased that Pharr wished to identify him as one of the authors of the translation of the Justinian Code and Novels. "I would be less than human if I were to say no, provided that it does not detract in any way from the superior credit to which you will be entitled."⁶²⁴

In February, 1952, Pharr told Blume that he was resigning from his teaching position in June in order to devote all of his time on

619. *Id.*

620. PHARR, *supra* note 431, at viii.

621. Letter from Clyde Pharr to Fred Blume (January 4, 1952) (H69-10, WHR, *supra* note 7).

622. *Id.*

623. *Id.*

624. *Id.*

the Justinian project.⁶²⁵ Unfortunately, Pharr's earlier prediction that publication would be swiftly achieved did not come true. From the available evidence, it appears that a number of factors combined to frustrate publication. Funding was a major problem. In late 1956, Pharr informed Blume:

You did the harder part of this task, and it is enormously easier for me to revise your translation, which is at least 95 percent correct, than it would be for me to draft my own translation without the help that you give.

Professor [Max] Rheinstein⁶²⁶ of the University of Chicago has been familiar with our work for the past fifteen years, and I have had considerable correspondence with him. I am writing him again, in the hope that the present may offer better opportunities for obtaining funds for publication than was possible when I last heard from him, during the war.⁶²⁷

In the fall of 1957, Pharr wrote Blume that if adequate funds for clerical assistance could be secured, "we are confident that the manuscript of the translation of the Code of Justinian will be ready for the press before the end of 1958."⁶²⁸ Blume wrote the American Council of Learned Societies, imploring it to provide financial assistance.⁶²⁹ The Council responded favorably with a grant.⁶³⁰ The grant enabled Pharr to continue the work.⁶³¹ In January 1958, Pharr and his wife, Mary, who also had assisted him with the Theodosian project, were "now giving full time to the completion of the translation and annotation of the Code."⁶³² Pharr planned to follow the same method he had used in preparing the Theodosian manuscript for publication. He would send Blume the manuscript one book at a time, with Blume reading, criticizing, and making revision suggestions.⁶³³

With respect to Blume's valuable commentary notes, Pharr counseled that they would probably have to be published separately, in-

625. Letter from Clyde Pharr to Fred Blume (February 9, 1952) (H69-10, WHR, *supra* note 7).

626. Rheinstein was the Max Pam Professor of Comparative Law at the University of Chicago from 1937-1977. He died at the age of seventy-eight on July 9, 1977. 45 U. CHI. L. REV. 516 (1978).

627. Letter from Clyde Pharr to Fred Blume (December 6, 1956) (H69-10, WHR, *supra* note 7).

628. Letter from Clyde Pharr to Fred Blume (September 15, 1957) (H69-10, WHR, *supra* note 7).

629. Letter from Fred Blume to American Council of Learned Societies, *supra* note 548.

630. Letter from Clyde Pharr to Fred Blume (January 25, 1958) (H69-10, WHR, *supra* note 7).

631. *Id.*

632. *Id.*

633. *Id.*

dicating that limited funds dictated the down-sizing of the publication.⁶³⁴ About this Pharr said:

In your more extensive commentary * * * you have made an extremely valuable contribution, and I hope that as soon as we can publish the joint edition of our translation of the Code, we can get something worked out whereby your commentary can be published in full, as a companion volume to our edition of the translation, with its more limited notes. Your commentary is too valuable to be lost, and such a companion volume is indispensable for any scholarly study of the Code. In fact, it is also an extremely valuable introduction to the historical study of Roman law, especially of Roman statutory law, as it has been handed down to us.⁶³⁵

Pharr expressed the hope that Blume would be willing to follow through with the issuance of his more extensive commentary.⁶³⁶ Pharr also hoped to be able to send Blume the manuscript of the Code's first book within a few weeks.⁶³⁷

Once again Pharr's prediction proved overly optimistic, as final preparation for publication stalled. The manuscript was not, as Pharr had earlier hoped, "ready for the press before the end of 1958."⁶³⁸ In March, 1959, Pharr at length explained to Blume why the project languished. Pharr had found it necessary to place the Justinian Code aside temporarily in order to concentrate on extensive revision of another Roman law translation project that several Princeton University scholars had begun at about the same time as Pharr and Blume were working on the Theodosian project.⁶³⁹ The Princeton project involved "the collection, translation, and annotation of the Roman law material contained in inscriptions and papyri."⁶⁴⁰ The University of Texas Press had earlier agreed, on the strength of Pharr's recommendation, to publish the Princeton translations; but due to serious translation errors, Pharr would not approve publication until those errors were corrected. The Princeton scholars were unwilling to work further on the material; therefore, Pharr felt obliged to do the corrective work himself.⁶⁴¹ Having completed that work, Pharr, once more, assured Blume, "We are now free to devote our entire

634. *Id.*

635. *Id.*

636. *Id.*

637. *Id.*

638. Letter from Clyde Pharr to Fred Blume, *supra* note 627.

639. Letter from Clyde Pharr to Fred Blume (March 11, 1959) (H69-10, WHR, *supra* note

7).

640. *Id.*

641. *Id.*

attention to the finishing touches on our translation of CJ.”⁶⁴² Explaining the strength of their collaboration, he said:

Although you have [an] excellent working knowledge of Greek and Latin, you approach the Code primarily from the juristic point of view. And although I am familiar with fundamental legal principles, I approach my Roman law work from the linguistic angle, and I lay great stress on the varying shades of meaning of words in their different contexts.⁶⁴³

Blume was now eighty-four, Pharr seventy-four. Recognizing the possibility that he might not live long enough to complete their project, since he had a history of a heart condition, Pharr told Blume that, in the event of his death, there were “trained, competent younger scholars [whose graduate work he was supervising] to take up my work, and my material and yours can be used.”⁶⁴⁴

Despite Pharr’s best intentions, his Justinian work was again interrupted. In late 1961, he pledged to Blume that any further distractions “will have to wait until we have completed the Justinian Code and Novels, for which we are finding your material indispensable.”⁶⁴⁵ Further, he told Blume:

I continually marvel that you were able to produce a work of this extent and quality in the midst of your exacting judicial duties. Henceforth our work on your material shall proceed without interruption or delay and as fast as our health and strength will permit.⁶⁴⁶

Although Blume’s hopes that his work would be published had been buoyed early in the decade, as the 1950’s closed those hopes had dimmed considerably. With the opening of the new decade, Blume, aged eighty-five, faced the final two years of his judicial career and his Justinian translation, aged forty, faced an uncertain future.

Before leaving the 1950’s, we would be remiss if we failed to mention three other events, two in 1957, the other in 1959, in which Blume was involved. In April, 1957, the Natrona County Bar Association hosted a recognition dinner in Blume’s honor. Messages of tribute poured in. All were greatly appreciated by Blume, but perhaps

642. *Id.*

643. *Id.*

644. *Id.*

645. Letter from Clyde Pharr to Fred Blume (December 19, 1961) (H69-10, WHR, *supra* note 7).

646. *Id.*

there were two which he especially treasured. Chief Justice of the United States Supreme Court Earl Warren wrote:

My congratulations on your having completed thirty seven years on the Supreme Court of Wyoming and very best wishes for your continued success and happiness. To have your friends and colleagues honor you this evening is a much deserved tribute. I am sorry I cannot be there to enjoy the occasion.⁶⁴⁷

Adding to that tribute, President Dwight D. Eisenhower sent this telegram:

Through Senator Barrett, I learned you are being honored by the Natrona County Bar Association for your long and splendid public service as a member of the Wyoming Supreme Court.

This testimonial is evidence of the esteem in which you are held and focuses attention on your distinguished record in the high court of your state. It is a pleasure to join your friends and fellow citizens as they offer you congratulations.⁶⁴⁸

To the assembled gathering, the humble and grateful Blume said:

The path of my life, no more than anybody else's, was strewn with roses all of the way. But take it by and large fate or destiny has been kind to me. It was kind to me from the time I was admitted to the Bar, largely by reason of the fact that I went in partnership with an older man. Sheridan was kind to me and I think I am warranted in saying that I had there innumerable friends. Without them and without the Bar of Sheridan and of northern Wyoming, I would not perhaps be in the position in which I now find myself. The people of Wyoming have been kind to me in the various elections. The Bar of the state, as a whole, has been kind to me from the very time when I became a member of the Supreme Court of this state. And now that the Natrona County Bar has given this splendid dinner in my honor, the cup of kindness and happiness has been filled to the brim. When the messenger of the Grim Reaper knocks at my chamber door, as he will,

647. Telegram from Earl Warren, Chief Justice, United States Supreme Court, to Fred Blume (April 23, 1957) (album, Blume Room, University of Wyoming Law School, Laramie, Wyoming).

648. Telegram from Dwight D. Eisenhower, President of the United States, to Fred Blume (April 23, 1957) (album, Blume Room, University of Wyoming Law School, Laramie, Wyoming).

and bids me to come forth to accompany him to regions unknown, I shall still remember this banquet hall and the kindly faces looking at me tonight.⁶⁴⁹

A month later, the University of Wyoming conferred upon Blume the honorary degree of Doctor of Laws.⁶⁵⁰ On his death he would leave his extensive library and Justinian translation to that institution.

One other event of the 1950's in which Blume played a major role, and which deserves passing mention, was the case of J. Norman Stone.⁶⁵¹ In 1955, the court had held that the state board of law examiners, established by the legislature to pass upon the qualifications of all applicants seeking admission to practice law in the state, had not abused its discretion in denying the application of one Jack N. Steinberg, aka J. Norman Stone. The court's decision rested not only on the board's assertion that the confidential information it had secured from a nationally known investigational service revealed that Stone should not be allowed to practice law in Wyoming, but also on the court's own examination of the evidence before the board.⁶⁵² That evidence revealed that Stone, while practicing law in Washington, D.C., had sued many clients for recovery of fees and had been censured several times for unprofessional conduct. In Wyoming only a short time and awaiting board action on his bar application, Stone asserted he wanted to "prove 'execrable practices of certain Sheridan lawyers living and deceased.'"⁶⁵³ He also threatened to sue board members; held himself out as an attorney in this state; and sent numerous letters to newspapers inside and outside of the state, as well as to state officials and representatives and the Pope, which claimed with scriptural flourish that the board and the court were conspiring to deprive him of his livelihood.⁶⁵⁴ Concerning Stone's quotation of scripture, the court observed, "the undue excess thereof cannot help but make anyone wonder as to the applicant's mental operations."⁶⁵⁵ Commenting on one of Stone's half-hour-long public radio addresses broadcast while his case was pending before the court, the court noted:

He informed his audience that he did not need a lawyer for the reason that Jesus was his senior partner in his efforts to have his application granted. It may be that applicant is de-

649. Blume, remarks to the Natrona County Bar Association (April 22, 1957) (H69-10, WHR, *supra* note 7).

650. Letter from G.D. Humphrey to Fred Blume (March 14, 1957) (H69-10, WHR, *supra* note 7).

651. Application of N. Stone, 74 Wyo. 389, 288 P.2d 767 (1955).

652. *Id.* at 397.

653. *Id.*

654. *Id.* at 397-99.

655. *Id.* at 398.

voutly religious, which is highly commendable, but his excessive reference to religion and to the scriptures, when submitted as evidence of his qualifications to be admitted to the practice of law, does give some cause to suspect that his religious fervor partakes of a fanaticism, the presence of which does not make for that mental balance and equipoise which every lawyer should possess in order that his client's interest be not endangered, for after all, no matter how devoutly religious a lawyer may be, he must, when he comes into a court of justice and law, rely upon the legal principles of our jurisprudence, which does take cognizance of the moral law as we humans have found that to be practicable.⁶⁵⁶

Following the issuance of the court's opinion, Stone "sent to the court various writings, scurrilous and contumelious in nature, demanding that certain steps be taken by the court * * *,"⁶⁵⁷ which demands the court rejected. Stone was charged with contempt in an action invoking the court's original jurisdiction. In defending against the charge, Stone chose not to rely solely on his previous "senior counsel"; instead, he chose none other than Blume's "old friend," John J. Spriggs, Sr. After careful consideration of the matters presented, the court held Stone in contempt of the court.⁶⁵⁸ Blume added the following opinion to the court's opinion:

Over thirty-five years of service on this court and my advancing years combine to place me in a singularly disinterested position as far as personal feelings are concerned. I feel, therefore, that although I concur in all that has been said in the opinion of the court, I would perhaps be remiss in my duty to the citizens of Wyoming if I did not here present my views on the broader aspect of this situation.⁶⁵⁹

After expressing the views that the "very foundation of [the judicial branch's] existence" is "assurance to it of a complete independence,"⁶⁶⁰ and that an "unbridled and uncurbed attack upon a court"⁶⁶¹ serves to destroy that independence, Blume concluded:

[W]hile occasional outbursts of a defeated litigant should be overlooked, persistent attacks on the integrity of the court which have a tendency to destroy it should be put on a dif-

656. *Id.* at 398-99.

657. Application of Stone, 77 Wyo. 1, 9, 305 P.2d 777, 789 (1957).

658. *Id.* at 27, 30.

659. *Id.* at 31.

660. *Id.* at 32.

661. *Id.*

ferent footing. The very fact that under our law judges are elected will, ordinarily at least, serve as a sufficient guide to heed the statement of Chief Justice Marshall that the power of contempt should be used sparingly. There is, perhaps, some common sense in the old adage which we have in the West that a defeated litigant has 24 hours (some say 48) to "cuss" the court, but that he must "shut up" thereafter. It is a crude compromise between freedom of speech and, if we want to keep on being civilized, the respect necessarily due the court.⁶⁶²

XI. THE FINAL YEARS: 1960 - 1971

In January, 1961, Blume and his two colleagues on the bench, Harnsberger and Parker, welcomed a fourth member to their exclusive club. Due to a constitutional amendment in 1958, the Wyoming Supreme Court had been expanded to four positions. John J. McIntyre was elected to fill the fourth seat. Born on December 17, 1904, near Oakwood, in Dewey County, Oklahoma, McIntyre had earned his law degree in 1928 from the University of Colorado.⁶⁶³ The following year he began the practice of law first in Glenrock, then in Douglas, Wyoming.⁶⁶⁴ He was county attorney in Converse County from 1933 to 1936.⁶⁶⁵ Between 1936 and 1938, he held a variety of positions in the Department of Justice and the Solicitor's office in Washington, D.C.⁶⁶⁶ Entering politics, in 1940 he was elected as Wyoming's lone member of the House of Representatives, serving one two-year term.⁶⁶⁷ He held the position as a State Deputy Attorney General in 1943 and 1944. He then joined the United States Army, serving until August, 1945. Returning to the state, he was State Auditor in 1946.⁶⁶⁸ From 1947 until his supreme court election, he practiced law in Casper.⁶⁶⁹

The four justices worked well together, steadily publishing their opinions as Blume had been doing diligently for the past forty years. In early 1962, Blume announced that he would be writing no more opinions after the year's end; he would be retiring. Blume had written excellent opinions throughout his tenure on the court, but one more measurement of his contribution was revealed in June of 1962 when he received word from the Lawyers Co-operative Publishing Company, publishers of American Law Reports, that over the years some

662. *Id.* at 35-36.

663. McIntyre Memoriam, Wyoming Reporter, 524-534 P.2d 9-16 (1975).

664. *Id.*

665. *Id.*

666. *Id.*

667. *Id.*

668. *Id.*

669. *Id.*

sixty-four of his opinions had been published as lead opinions in the company's annotated reports, covering both the first and second series.⁶⁷⁰ Few, if any, judges have had more opinions reported in that publication.⁶⁷¹

Away from the court on his personal homefront, June of 1962 would be a tragic month. Since early 1961, Blanche had been ill. In April, 1961, she broke her arm and hip but was recovering from those injuries.⁶⁷² In June, 1962, she was under a doctor's care and was attended daily by nurse Dorothy Ratz.⁶⁷³ Suddenly, the worst happened. As described by the judge:

I bade her goodnight on the night of June 23, at about 9:45 when I was going to bed. In fact I bade her goodnight twice about that same time. Fifteen or twenty minutes later Dr. Flett came into my room and told me that Blanche had died of a heart attack. It was, of course, a terrible shock to me. Perhaps time will heal the wound that has been inflicted, but until then I shall be terribly lonely.⁶⁷⁴

The court's work continued but Blume's work soon would be done. After participating in the oral arguments presented on Thursday, December 13, 1962, Blume "announced with extreme emotion that he was sitting as a jurist for the last time."⁶⁷⁵ He said:

There comes a time in the life of every judge when he must say goodbye to the bench on which he sat.⁶⁷⁶

Turning to Justice Parker, Blume continued:

I feel comforted that this court shall be in strong and able hands. No man is indispensable. It is a great satisfaction when you leave the bench to know you leave it in strong and able hands.⁶⁷⁷

He officially retired on January 1, 1963. On January 9, 1963, he turned eighty-eight years old. The well-chosen words of the late Charles

670. Letter from Robert T. Kimbrough, vice president, Lawyers Co-operative Publishing Company, to Fred Blume (June 27, 1962) (H69-10, WHR, *supra* note 7).

671. *Id.*

672. Letter from Fred Blume to Mrs. E.L. Knight (July 17, 1962) (H89-28, WHR, *supra* note 5).

673. Ratz, *supra* note 8.

674. Letter from Fred Blume to Dr. and Mrs. John H. Alexander, brother of Blanche Blume (July 2, 1962) (H89-28, WHR, *supra* note 5).

675. WYOMING TRIBUNE, December 14, 1962.

676. *Id.*

677. *Id.*

M. Crowell, prominent Casper lawyer, expressed the feeling of admiring citizens throughout the state:

It must be a tremendous source of satisfaction to you to know that no one in any branch of government has played a more significant or distinguished role in the orderly development of the State of Wyoming than have you. The clarity and reasoning of your opinions will be a beacon light for all of us for years to come.⁶⁷⁸

Commenting on his court years, Blume said:

The work on the court has been very pleasant, in fact, sometimes rather fascinating. One thing I never have been quite able to get over and that is feeling sorry for a party or attorney for a party when they lost their case in this court.⁶⁷⁹

In addition to receiving honor from persons residing within the state's borders, Blume also received honor from admirers residing outside those borders. As mentioned at the beginning of this biography, the New York University Law School dedicated its 1962 Annual Survey of American Law to this distinguished jurist who, at a measured height of only five feet seven and one-half inches,⁶⁸⁰ was a judicial giant. Professor Gerhard O.W. Mueller of that law school's faculty, who years earlier had first taken notice of Blume's judicial work when teaching at the West Virginia Law School,⁶⁸¹ had nominated Blume for the dedication.⁶⁸² Explaining for Blume the law school faculty's selection process, the Annual Survey's editor-in-chief and noted legal historian, John Reid, informed him:

I might just say that for the first twenty volumes the dedicatee was chosen by the Dean, but last year for the first time the choice was given to the faculty in order to make it an honor coming from the entire school. In a year in which there was such an event to honor as the retirement of Justice Felix Frankfurter, you may be pleased to learn that you were selected by a rather substantial majority of the law school faculty. I think that this was a rather fine tribute to your long

678. Letter from Charles M. Crowell to Fred Blume (March 27, 1962) (H89-28, WHR, *supra* note 5).

679. Letter from Fred Blume to William H. Brown (April 2, 1962) (H89-28, WHR, *supra* note 5).

680. Letter from Fred Blume to G.D. Humphrey, *supra* note 461.

681. Letter from Gerhard Mueller to Fred Blume (September 24, 1956) (H69-10, WHR, *supra* note 7).

682. Letter from Gerhard Mueller to Fred Blume (June 21, 1963) (H69-10, WHR, *supra* note 7).

career in particular and to the state judiciary in general. This was the first occasion that the volume was dedicated to a state judge, excepting of course Arthur T. Vanderbilt who was honored really for his work as Dean of this School.⁶⁸³

Echoing the tribute, United States Senator Milward L. Simpson, long one of Blume's ardent admirers, wrote:

You have brought credit to the State of Wyoming and founded a rich heritage for every lawyer following in your footsteps.

This eloquent dedication echoes the sentiment of every lawyer, not only in Wyoming but throughout the nation, who has been privileged to appear in your court. With your vast knowledge and understanding of the law, your keen interpretation, and your wise and just dispensation, you have made an enviable record which is a challenge to all of us.⁶⁸⁴

Throughout his years on the court Blume's health had been excellent. Other than his hearing problem, he had experienced nothing more than the usual aches, pains, and sniffles of temporary and fleeting duration. He attributed his well-being to his daily exercises and walks with his canine companions. In his last year on the court, however, he experienced eye problems. Considering the colossal feats of reading those wondrous orbs had performed in their eighty-seven year lifetime, these problems were perhaps long overdue. In January, 1962, he told Clyde Pharr:

Up to about a year ago I took a good deal of pride in having wonderful eyes but I find that old age takes its toll.⁶⁸⁵

In April, 1962, Blume had a cataract removed from his left eye;⁶⁸⁶ in January, 1963, after his retirement, he had a cataract removed from his right eye.⁶⁸⁷ He then suffered a mild stroke which left him weak physically, but certainly not mentally.⁶⁸⁸ Nurse Dorothy Ratz worked with the judge following the stroke.⁶⁸⁹ Through her efforts,

683. Letter from John Reid to Fred Blume (September 27, 1963) (H69-10, WHR, *supra* note 7).

684. Letter from Milward L. Simpson to Fred Blume (December 4, 1963) (H69-10, WHR, *supra* note 7).

685. Letter from Fred Blume to Clyde Pharr (January 2, 1962) (H69-10, WHR, *supra* note 7).

686. Letter from Fred Blume to Clyde Pharr (April 17, 1962) (H69-10, WHR, *supra* note 7).

687. Letter from Fred Blume to Clyde Pharr (June 3, 1963) (H69-10, WHR, *supra* note 7).

688. *Id.*; Ratz, *supra* note 8.

689. Ratz, *supra* note 8.

he was able to write again and his speech returned. Blume's mental alertness was demonstrated by his correspondence with several persons, including Pharr, who continued to work on their Justinian project.

From the available evidence, we must conclude that Pharr was unable to achieve publication of the translation of the Code and Novels of Justinian. Although the Pharr-Blume correspondence of the early 1960s clearly shows Pharr had the best of intentions, the last letters in 1963 and 1965 contain no mention of the publication.⁶⁹⁰ Research reveals that no publication of the work exists. Clyde Pharr died on December 31, 1972, in Austin, Texas; his wife, Mary Brown Pharr, had died a week earlier, on December 24, also in Austin.⁶⁹¹ Regrettably, the younger scholars of whom Pharr had spoken did not carry on his work.

In his retirement years, Blume maintained his office in the Supreme Court Building and, with his nurse, Dorothy Ratz, walked to that office every day.⁶⁹² About his routine, he said:

I aim to walk two miles each day and take manual exercises twice a day in the hope that my physical imbalance, that is to say my wobbling, might disappear, but it may be a man cannot expect too much when close to 90 years of age.⁶⁹³

To the end, Blume's sense of humor remained intact. In his retirement he received many complimentary letters. One, from a newly admitted member of the bar, was addressed to him as Judge "Bloom." Sharing it with Justice Parker, Blume penned the note, "sic transit gloria mundi," literally, how swiftly passes the glory of the world.

On January 9, 1970, the judge celebrated his ninety-fifth birthday. Joining him at his home, located a few blocks from the court he loved, were nearly one hundred friends, including members of Wyoming's federal and state judiciary and Governor and Mrs. Stanley K. Hathaway.⁶⁹⁴ The Governor and his wife helped Blume cut the two large cakes baked for the special occasion. After the party, Blume happily remarked, "I just can't believe that such a party could be given for such a decrepit old man."⁶⁹⁵ He quickly added, "It was a beautiful day."⁶⁹⁶

690. Letter from Clyde Pharr to Fred Blume (June 10, 1963); letter from Mary Pharr to Fred Blume (January 8, 1965) (H69-10, WHR, *supra* note 7).

691. Letter from Hans W. Baade, Professor, University of Texas Law School, Austin, Texas, to author (January 22, 1992).

692. Letter from Fred Blume to John Reid (October 2, 1963) (H69-10, WHR, *supra* note 7); Ratz, *supra* note 8.

693. *Id.*

694. WYOMING STATE TRIBUNE, January 10, 1970.

695. *Id.*

696. *Id.*

In 1971, the last year of his life, he remained active until June when, while walking near his home, he fell, fracturing a hip.⁶⁹⁷ He was hospitalized.⁶⁹⁸ In early September, at his request, his doctor released him to go home.⁶⁹⁹ His condition deteriorated.⁷⁰⁰ The end came peacefully. On September 26, 1971,⁷⁰¹ he joined his beloved Blanche and his colleagues Potter, Kimball, Ilsley, Riner, Cicero, Gaius, Ulpian, and Papinian. His body lay in state in the rotunda of the state capitol building until September 29, 1971,⁷⁰² with interment at Lakeview Cemetery, Cheyenne, Wyoming.

Like his colleagues before him, Justice Fred H. Blume now belonged to the ages.

XII. POSTSCRIPTUM—THE ROMAN CONTRIBUTION TO WYOMING LAW

In light of Blume's knowledge of and interest in Roman law and his premier role over a forty-year period in the development of Wyoming jurisprudence, this final chapter will examine briefly the extent to which he may have used Roman law principles to help shape the growth of the common law in this state's formative years.

As background, it is helpful to recall the brief discussion in Chapter seven about the historical development of the Roman legal system and the influence of that system on the English common law. It is also useful to observe that legal historians have examined the reception of Roman law in the common law jurisdictions of the United States in the formative years of the late eighteenth and first half of the nineteenth centuries—roughly the period from the American Revolution to the Civil War.⁷⁰³

The common law state of Wyoming,⁷⁰⁴ like its other common law counter parts in this country, experienced its own formative era.

697. Raiz, *supra* note 8; THE WYOMING EAGLE, September 28, 1971.

698. *Id.*

699. *Id.*

700. *Id.*

701. THE WYOMING EAGLE, *supra* note 697.

702. THE WYOMING EAGLE, September 30, 1971.

703. See, e.g., *supra* note 453; Bryson, *supra* note 453; Hoeflich, *Roman and Civil Law in American Legal Education and Research Prior to 1930: A Preliminary Survey*, 1984 U. ILL. L. REV. 719 (1984); Peter Stein, *The Attraction of the Civil Law in Post-Revolutionary America*, 52 VA. L. REV. 403 (1966); Hassel E. Yntema, *Roman Law and Its Influence on Western Civilization*, 35 CORNELL L.Q. 77 (1950); Roscoe Pound, *The Influence of the Civil Law in America*, 1 LA. L. REV. 1 (1938-39); Lewis C. Cassidy, *The Teaching and Study of Roman Law in the United States*, 19 GEO. L. J. 297 (1930-31); and William Wirt Howe, *Roman and Civil Law in America*, 16 HARV. L. REV. 342 (1902).

704. Section 8-1-101 of the Wyoming Statutes provides:

The common law of England as modified by judicial decisions, so far as the same is of a general nature and not inapplicable, and all declaratory or remedial acts or

That era began with statehood in 1890 and spanned at least to the mid-twentieth century. Justice Blume played his preeminent role for more than forty years during that era. Although our focus will be on those judicial opinions in which he used Roman law rules, we note in passing that he also engaged in some extra-judicial writing, apart from his Theodosian and Justinian translations.

In June, 1922, at a meeting of the seven-year old Wyoming State Bar Association, Justice Blume delivered a paper entitled *The Roman Lawyer*.⁷⁰⁵ At the Association's 1930 meeting, he presented *Human Rights and Property Rights and Other Facts in the History of Private Law*.⁷⁰⁶ Also in 1930, he wrote an article entitled *Legitimation Under the Roman Law* for the *Tulane Law Review*.⁷⁰⁷ In 1936, at another Wyoming State Bar Association gathering, he presented a paper entitled *Contractual Obligations*.⁷⁰⁸ In May, 1938, in Washington, D.C., at a meeting of the Riccobono Seminar on Roman law, he delivered a paper entitled *The Code Justinian and Its Value*.⁷⁰⁹ And, in 1948, he wrote an article entitled *Bracton and His Time* for the *Wyoming Law Journal*.⁷¹⁰ Blume also reviewed several books on Roman law.⁷¹¹

Turning to Blume's judicial opinions, the some six hundred sixty opinions⁷¹² which Blume authored in his judicial career were surveyed. Twelve were identified in which he discusses aspects of Roman law in more than abbreviated fashion. Areas of the law covered by these opinions include evidence, real property, personal property, declaratory judgment, contracts, personal injury and wrongful death, succession, corporations, and marriage. Perhaps one should not be surprised at the comparatively small number of opinions in which Blume used Roman law. He explained this to Professor Pharr in 1933:

I fear, however, that I have for some time been the only one on a court of last resort in a purely common law state who

statutes made in aid of, or to supply the defects of the common law prior to the fourth year of James the First (excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth and ninth chapter of thirty-seventh Henry Eighth) and which are of a general nature and not local to England, are the rule of decision in this state when not inconsistent with the laws thereof, and are considered as full force until repealed by legislative authority.

WYO. STAT. § 8-1-101 (1989). See *State v. Foster*, 5 Wyo. 199, 38 P. 926 (1895), and *Crawford v. Barber*, 385 P.2d 655 (Wyo. 1963).

705. Letter from Fred Blume to John H. Wigmore, *supra* note 412 and accompanying text.

706. 1930 WYOMING STATE BAR ASSOCIATION PROCEEDINGS 67-82.

707. 5 TULANE L. REV. 256-66 (1930-31).

708. 1936 WYOMING STATE BAR ASSOCIATION PROCEEDINGS 110-20.

709. Manuscript (Blume Room, University of Wyoming Law School, Laramie, Wyoming).

710. 2 WYO. L. J. 43-59 (1948).

711. In 24 A.B.A.J. 660 (1938), Justice Blume reviewed CHARLES P. SHERMAN, *EPITOME OF THE ROMAN LAW* (1937, N.Y.: Baker, Voorhis & Co.). In 5 OKL. L. REV. 264 (1952), he reviewed H.J. WOLFF, *ROMAN LAW, AN HISTORICAL INTRODUCTION* (Univ. of Okla. Press, 1951).

712. Manual count from 1921 to 1945 and Westlaw count from 1945-1962.

has made any extensive use of it, and even I have made limited use of it for fear of appearing to be pedantic. That ought not to be so, since there are many occasions on which we could well learn from the civil law.⁷¹³

The first case in which Blume brought Roman law to bear on a legal problem requiring the court's resolution was *Crago v. State*.⁷¹⁴ As may be recalled, it was this opinion that first drew Dean Wigmore's attention to Blume. Seeking a reversal of his rape conviction, the appellant raised the issue whether the trial court erred in allowing the prosecution to impeach its own witness. The facts framing the legal issue were these. At trial the prosecution's chief witness corroborating the alleged victim's testimony testified on direct examination that he had been in the same room with the appellant and the alleged victim at which time the appellant was sitting on the edge of the bed; he then left the room for fifteen minutes; and when he returned he saw the appellant sitting on the edge of the bed. The prosecutor then asked the witness whether he recalled an admission the defendant made the next morning. The witness testified he recalled no admission. Upset with the witness, the prosecutor then asked the witness whether he had made a prior written statement to the effect that the appellant and the alleged victim were having sexual relations in the room and the appellant told him about it the next morning. The witness testified he did not recall making the statement and denied the statement was true. Over objection, the trial judge allowed the prosecutor to introduce the statement in evidence and to read it to the jury.⁷¹⁵

In writing the court's opinion which found error in the trial judge's evidentiary ruling, Blume reviewed Roman law, English common law, early American common law in seven states east of the Mississippi River, American statutory law in the "era of legislation," American case law construing the statutory law, and statements from Dean Wigmore's *Evidence* treatise. His treatment of Roman law and early English common law is of particular interest. With respect to Roman law he observed:

[U]nder the Roman law a party could not generally impeach his own witness. That appears inferentially from Code Justinian 4, 20, 17, and 4, 20, 19.⁷¹⁶

713. Letter from Fred Blume to Clyde Pharr, *supra* note 483; see also letter from Fred Blume to Max Radin, Professor, Duke University Law School (January 6, 1950) (H89-28, WHR, *supra* note 5) and *supra* text accompanying note 484.

714. 28 Wyo. 215, 202 P. 1099 (1922).

715. *Id.* at 219, 202 P. at 1100.

716. *Id.* at 220, 202 P. at 1100.

Next, we learn that:

[A] custom had grown up, traceable at least to the middle of the second century of our era, but which perhaps was but a reversion to primitive type, with modifications, that where it was difficult or impossible for a party to prove his case, he might call upon the other party to prove his claim, or defense, by making his statement under oath. When this was done it was binding, and could not be contradicted. It is commonly called the "decisory oath." Just. 4, 6, 18; 4, 13, 4; Dig. 12, 2; Cod Just. 4, 1; Paulus Sent. 2, 1. The reason for the finality of the oath was based on the great sanctity attached to the latter. If perjury was committed, no prosecution therefor followed, since God was considered a sufficient avenger thereof. Code Just. 4, 1, 2; Dig. 12, 2, 1.⁷¹⁷

Blume then moved to the Middle Ages and described "the system of compurgation, commonly, in England, called the wages of law, which, it seems, has been in existence among a number of races in different parts of the world."⁷¹⁸ From his description of that system, we learn that a party, usually an accused in a criminal action, was allowed to prove his defense or claim "by taking an oath according to a prescribed formulary, supported by a certain number of compurgators, who testified to the verity of the oath taken by the party * * *."⁷¹⁹ The modern day compurgator is the character witness.⁷²⁰ As Blume explained, these character witnesses "were either for or against a party; no thought occurred * * * that a party calling them could contradict or impeach them."⁷²¹ The party using these character witnesses vouched for them. Should they refuse to testify as expected, the party producing them was bound.⁷²²

From this history, Blume concluded "the growth of the common law on this subject took its root in the idea that the party's witness could not be impeached by him."⁷²³ Blume also concluded that that idea remained unchanged after Roman law study began in England in the late twelfth century.⁷²⁴

After further analysis, Blume adopted the rule, as recognized by Dean Wigmore and other reputable authority, that a party producing

717. *Id.*

718. *Id.*

719. *Id.*

720. *Id.*

721. *Id.*

722. *Id.* at 220-21, 202 P. at 1100.

723. *Id.* at 221, 202 P. at 1100-01.

724. *Id.*

a witness can use that witness' prior inconsistent statements made outside of the trial, not as substantive evidence of a fact to be proved, but only to neutralize and counteract "the effect of the evidence given by the witness on the witness stand, so as to make that evidence as near as possible as though it had never been given."⁷²⁵

Having chosen his rule, Blume applied it to the facts of the case. When the prosecution's witness testified he did not recall the appellant's admission, that witness "stated no fact prejudicial or detrimental to the state; he simply failed to prove a fact which the [prosecution] wanted to show."⁷²⁶ The witness had given no evidence to be neutralized. The only purpose to be achieved by the prosecution's introducing the witness' prior inconsistent statement "would be to cause these [hearsay] statements * * * to appear to the jury as substantive evidence, the highly prejudicial effect of which is clear. It was, therefore, error."⁷²⁷

Seven years after *Crago*, Blume referred again to Roman law in a case in which he thoroughly explored the law of adverse possession. In *City of Rock Springs v. Sturm*,⁷²⁸ an action in ejectment, the court affirmed the judgment in favor of the adverse possessor. The specific point addressed by Blume, "the point that has given rise to the greatest controversy in the law of adverse possession,"⁷²⁹ was whether "possession must be taken and held under a claim of right, title, or ownership."⁷³⁰ The adverse possessor in question had taken possession of the property under a mistake; Blume noted that in that kind of case "[t]he controversy has been fiercest."⁷³¹ Narrowing even further the question to be answered, Blume focused on the statement "that the intention with which possession is taken is the controlling factor in determining its adverse character."⁷³² In beginning his analysis of whether the intent to claim must exist independently of the way in which the physical possession of the property is held by the adverse possessor, Blume turned to Roman law. He observed:

We are reminded of the controversy that has for several generations been waged between the expounders of the Roman law on this subject, for in that law, too, the intent to claim—the mind of the owner (*animus domini* or *possidendi*)—was required. But the rule seems to have been applied principally

725. *Id.* at 225, 202 P. at 1102.

726. *Id.* at 229, 202 P. at 1104.

727. *Id.*

728. 39 Wyo. 494, 273 P. 908 (1929).

729. *Id.* at 503, 273 P. at 911.

730. *Id.*

731. *Id.*

732. *Id.* at 504, 273 P. at 911.

in connection with determining whether a person ousted from possession had certain possessory remedies.⁷³³

At this point, Blume noted a law review article dealing with possession in Roman law.⁷³⁴ That article referred to the views of the great German scholar Rudolf von Ihering,

that the subjective theory was considered impracticable and that physical possession was held to be possession with intent to claim as owner until the contrary was shown; that the Romans, with their practical tact, adopted the rule that such physical possession alone was required to be proved and that it was for the opponent to show that the apparent possession was not with intent to claim it as owner.⁷³⁵

Blume next moved to the English common law, noting that Bracton, in particular, was largely influenced by Roman law.⁷³⁶ After discussing English authority on the subject of possession, Blume arrived at "the general rule in the United States * * * that possession will be presumed to be in subservience to the title of the true owner, and that the burden to prove adverse possession is upon the party who relies thereon."⁷³⁷ Blume pointed out, however, that the general rule has been qualified under certain circumstances. He stated:

The character of possession may give rise to a presumption, and it is generally held that the actual occupation, use, and improvement of the premises of the claimant as if he were in fact the owner thereof will, in the absence of explanatory circumstances showing the contrary, be sufficient to raise a presumption of his entry and holding as absolute owner, and, unless rebutted, will establish the fact of a claim of right.⁷³⁸

After further discussion, Blume concluded by identifying the prime purpose behind the elements of adverse possession: "to advise the real owner that his ownership is in danger."⁷³⁹ With that purpose in mind, he decided that

it is a reasonable rule that when a man has occupied a piece of ground, though under a mistaken belief as to the true

733. *Id.* at 505, 273 P. at 911.

734. *Id.*

735. *Id.*

736. *Id.* at 506, 273 P. at 912.

737. *Id.* at 508, 273 P. at 912-13.

738. *Id.* at 509, 273 P. at 913.

739. *Id.* at 517, 273 P. at 915.

boundary * * * the presumption should be, in the absence of explanatory circumstances showing the contrary, that he occupied the land adversely and under a claim of right, casting the burden of explaining such possession upon the person who disputes his right.⁷⁴⁰

As Blume had shaped the rule, it strongly resembled the Roman rule which he had earlier identified.

A few years later, Blume upheld the constitutionality of Wyoming's Uniform Declaratory Judgments Act against a claim that the law conferred upon the courts a power which is nonjudicial in character. In *Holly Sugar Corp. v. Fritzler*,⁷⁴¹ in support of his decision on this point, he referred to Professor Edwin M. Borchard's article, *The Declaratory Judgment—A Needed Procedural Reform*.⁷⁴² Blume noted that the article "has traced the history of these judgments, and * * * they were or have been in use under the Roman, Italian, French and German laws, and continually in Scotland for several centuries, and that our laws are based on those which were first introduced in England in 1852."⁷⁴³ Recognizing the force of that historical precedent, Blume concluded, "When mankind has, accordingly, considered proceedings of that character as judicial for the period of 2000 years, it would ill behoove us to declare the contrary."⁷⁴⁴

In the area of contract law, Blume used Roman law for background purposes in a case which ultimately turned on whether a land purchaser's covenants to pay the assessments of a water users' association ran with the land. In *Lingle Water Users' Ass'n v. Occidental Bldg. & Loan Ass'n*,⁷⁴⁵ the water users' association had recovered a personal judgment in the trial court against a building and loan association. The building and loan association had loaned money to the land purchaser, had taken an assignment of the land purchase contracts, and had taken possession of the land upon the land purchaser's default. Blume observed:

Since the early dawn of history up to the present time it has been the general policy of semi-civilized and civilized man that no one should be held chargeable with an obligation under a contract except by his consent and that, generally, express. * * * The Romans had a contract, called a stipulation, made in the form of question and answer: "Do you, Mr. A,

740. *Id.* at 517, 273 P. at 915-16.

741. 42 Wyo. 446, 296 P. 206 (1931).

742. 28 YALE L.J. 1 (1918).

743. *Holly Sugar*, 42 Wyo. at 461, 296 P. at 209.

744. *Id.* at 461-62, 296 P. at 209.

745. 43 Wyo. 41, 297 P. 385 (1931).

promise to pay or do so-and-so? Answer: I do." The contract was necessarily personal to the parties. No one could act as agent or substitute for them. Other contracts were more informal and could be made through a slave or son in paternal power, but otherwise no agency was permitted. * * * Even assignments of contracts were at first not recognized. That rule, in so far as benefits were concerned, was more and more relaxed as time went on, but the personal nature of contracts was nevertheless maintained throughout the history of the development of the law.⁷⁴⁶

Having identified the historical underpinnings of the general policy that one must consent to be charged with an obligation under contract, Blume next stated the exception to that rule. That exception was, of course, "when a covenant runs with the land."⁷⁴⁷ He explained that binding the land for the performance of duties was "no new thought."⁷⁴⁸ The rule "became nearly fully developed under the Roman law"⁷⁴⁹ with respect to benefits, as opposed to burdens.⁷⁵⁰ With respect to burdens he stated, "we can readily see that to say that a personal undertaking may be shifted on to a stranger willy nilly by merely imagining it to be in some way affixed to the soil—a mental process difficult of conception—must have given the early jurists no little trouble."⁷⁵¹

After further discussion of American case law, Blume noted that the water users' association enjoyed neither privity of contract nor privity of estate with the building and loan association.⁷⁵² Consequently, he could find no legal basis for holding that the land purchaser's covenant with the water users' association to pay assessments ran with the land.⁷⁵³ Accordingly, he reversed the judgment in favor of the water users' association.⁷⁵⁴

Six months after deciding *Lingle Water Users' Ass'n*, Blume brought Roman law to bear in a case involving the measure of damages, the elements of damages, and a jury instruction covering those matters in a wrongful death action. In *Coliseum Motor Co. v. Hester*,⁷⁵⁵ the defendant automobile dealer sought reversal of the trial court's judgment entered on a jury verdict awarding \$20,000 to the

746. *Id.* at 48-49, 297 P. at 387.

747. *Id.* at 49, 297 P. at 387.

748. *Id.*

749. *Id.* at 50, 297 P. at 387.

750. *Id.*

751. *Id.*

752. *Id.* at 63, 297 P. at 392.

753. *Id.* at 64, 297 P. at 392.

754. *Id.* at 65, 297 P. at 392.

755. 43 Wyo. 298, 3 P.2d 105 (1931).

surviving family members for the death of the nineteen-year-old deceased caused when the dealer's truck struck the automobile in which the deceased was a passenger. Writing for the court, Blume held that under Wyoming's wrongful death statute, based on England's Lord Campbell's Act, "the damages are the loss resulting to the beneficiaries named in the statute."⁷⁵⁶ With respect to the elements of damages to be recovered, Blume adopted the rule prevailing in the group of western states comprised of Utah, Montana, Idaho, Washington, and California.⁷⁵⁷ The elements of damages allowed under that rule included:

[F]irst, strictly pecuniary losses on the part of those in whose behalf the action is brought, and second, the pecuniary loss sustained by a wife, minor children or parents, and in some instances by collateral relatives, on account of being deprived of the advice, comfort and society which they enjoyed prior to the death of the decedent and which would have been continued for their benefit.⁷⁵⁸

Notably excluded as an element of damages was any allowance for the survivors' mental suffering.⁷⁵⁹ Examining the jury instruction on damages given by the trial judge, Blume held it was in error to the extent that it allowed the jury to consider the deceased's probable net earnings without the further instruction that

[t]he criterion of damages * * * is not what the decedent would have earned, but the amount which the survivors probably failed, by reason of the death, to receive out of these earnings. The earnings are not an element of damages, but simply evidence to be taken into consideration * * * to determine and fix one of the elements.⁷⁶⁰

Preceding Blume's analysis resulting in his adoption of the above and foregoing rule concerning the elements and measure of damages, he had thoroughly explored the historical development of the rule. Making the initial observation that "[u]p to within less than a century ago, no damages were recoverable for the death of a free human being,"⁷⁶¹ he qualified that by making a reference to Roman law. He stated:

756. *Id.* at 310, 3 P.2d at 108.

757. *Id.* at 310, 313-14, 318-19, 3 P.2d at 108, 109, 111.

758. *Id.* at 314, 3 P.2d at 109.

759. *Id.* at 314, 319, 3 P.2d at 109, 111.

760. *Id.* at 321, 3 P.2d at 112.

761. *Id.* at 303, 3 P.2d at 105.

Damages for the killing of a slave were recoverable. D. 9, 2, 7, 4; D. 9, 2, 9. But a slave was considered property; damages were allowed on account of his unlawful death just as for the unlawful killing of cattle, and this cannot, accordingly, be considered a true exception to the rule.⁷⁶²

He next noted that the jurists and the judges had made two exceptions to the general rule of nonrecovery:

If a free man was in a place where people were accustomed to pass and an object fell or was thrown from a building and he was killed, damages in the sum of fifty gold pieces could be recovered. D. 9, 3, 1 pr. So the aediles, the supervisors of the markets, issued an edict that if a wild or untamed animal killed a free man in a public place, the owner should be held liable in damages to the extent of 200 pieces of gold. D. 21, 1, 42. Aside from these exceptions, however, the rule was that the life of a freeman could not be made the subject of valuation. D. 9, 3, 7.⁷⁶³

Moving from Roman law on the subject, Blume observed that the rule was different "among the Anglo-Saxons and other Teutonic nations."⁷⁶⁴ Reviewing English law, he found that compensation would be paid "to stay the hands of the private avenger, to make atonement, in this manner, for taking life, instead of atoning for it by the taking of another."⁷⁶⁵ When the government established a criminal justice system, in which murder was punishable, however, the compensation system disappeared.⁷⁶⁶

As explained by Blume, this was the state of affairs in England until the passage of Lord Campbell's Act in 1846.⁷⁶⁷ According to Blume:

The public conscience had simply not yet awakened to the fact that life as such has a pecuniary value. The age of chivalry with its continuous combats and the system of duels doubtless contributed to this fact. And the cheapness of human life is no less indicated by the multitude of capital offenses, and the scaffolds erected as a punishment for many crimes, which we,

762. *Id.* at 304, 3 P.2d at 106.

763. *Id.*

764. *Id.*

765. *Id.*

766. *Id.*

767. *Id.* at 305, 3 P.2d at 106.

in this age of enlightenment, would consider minor in character.⁷⁶⁸

Before leaving this opinion, it must be noted that the late Frank J. Trelease, dean of the University of Wyoming Law School, considered Blume's analysis one of the most outstanding examples of the use of legal history he had seen.⁷⁶⁹

A few months after deciding *Hester*, Blume used Roman law again in a real property case. In *Brewer v. Folsom Brothers Co.*,⁷⁷⁰ the question to be resolved was whether a purchaser of property at a tax sale, who failed to assert his claim for the value of improvements made on the property during his occupancy in the action brought by the property's original owner to recover the property, could maintain an independent action to recover the value of the improvements. Wyoming's occupying claimant statute provided that a person lawfully in possession of land could not lose that possession to another having better title until he is paid the value of the improvements he made on the property. Unfortunately, the tax purchaser in question failed to make a claim for that value in the action to recover the property brought by the delinquent original owner of the property. In that action, the latter had prevailed. Out of possession, the tax purchaser brought an independent action. In holding that the independent action could not be maintained, Blume followed Ohio law on the point since that law was the origin of Wyoming's statute.⁷⁷¹ Blume observed, however, that the adoption of Roman law on the point would achieve the same result.⁷⁷² Characterizing the statutory remedy as a right of retention,⁷⁷³ Blume explained:

That right played an important part in Roman law. It is not unknown to our own law in a number of other instances. Thus attorneys, agistors, stable keepers and others have such right; but when possession has once been relinquished the claim to any equity in the property is lost.⁷⁷⁴

Exploring the development of the rule further, he noted that the legendary Justice Story had held in an 1841 case that a good faith possessor defeated in an ejectment action by one with better title may maintain an independent action in equity for the recovery of the value

768. *Id.*

769. Letter from Frank Trelease to Justice Glen Parker (January 13, 1954) (H69-10, WHR, *supra* note 7).

770. 43 Wyo. 433, 5 P.2d 283 (1931).

771. *Id.* at 443, 5 P.2d at 286.

772. *Id.* at 442, 5 P.2d at 285.

773. *Id.* at 440, 5 P.2d at 285.

774. *Id.*

of his improvements.⁷⁷⁵ Story's decision was based "on what he conceived to be the principles of the civil law."⁷⁷⁶ In Blume's judgment, Story had been in error. Blume explained:

Great jurist that he was, versed not only in the common law but in the civil law as well, his citations, nevertheless, from the Roman law, namely, Inst. 2, 1, 30 and 32; D. 6, 1, 38 and 65; D. 20, 1, 29, 2, are not happy, for they all deal with the right of retention against one who sought to recover the property. In exceptional cases, some of the Roman jurists gave both the right of retention as well as a right of action for useful or necessary expenditures. D. 25, 1, 5, 2; D: 5, 3, 50. But the rule was distinctly otherwise in a case like that at bar.⁷⁷⁷

To illustrate, Blume continued:

Thus it is said in Inst. 2, 1, 30, cited by Justice Story:

"If the builder of the house has possession of the land, and the owner of the latter claims the house by real action, but refuses to pay for the materials and the workmen's wages, he can be defeated by a plea of fraud, provided the builder's possession is in good faith."⁷⁷⁸

Next, Blume noted:

Justinian Code, 3, 32, 11, 1 and 3, 32, 16, states the law in the same way. D. 12, 6, 33 deals with building on another man's ground, and it is stated that "the only way in which he (the builder) could make sure of recouping the cost he incurred, would be by keeping the property in his hands." More specific is D. 6, 1, 48, which would seem to relate to all useful and necessary expenditures, including necessary taxes paid. It states:

"When a possessor in good faith has incurred expenses in connection with a piece of land, which is shown to belong to another, he cannot sue to recover them from the person who gave it to him or from the owner. But if he interposes the plea of fraud (in the action to recover), then upon principles of equity, he will be allowed these expenses by the judge, by

775. *Id.* 440-41, 5 P.2d at 285.

776. *Id.* at 441, 5 P.2d at 285.

777. *Id.*

778. *Id.*

virtue of his office, if they exceed the profits which he received before joinder of issues.⁷⁷⁹

In this statement, Blume saw that only the right of retention was given, just as provided under Wyoming's statute.⁷⁸⁰ Blume concluded, then, that Justice Story had not followed either common law or Roman law in his 1841 decision.⁷⁸¹ Blume conceded that if Justice Story had applied Roman law at all, "he could not follow it strictly."⁷⁸² Blume further observed:

Under Roman law both equity and law could be administered in the same action. There was no rule that equity could not be administered in an action at law in the sense in which that rule has been applied by our common law courts. But courts of equity were distinct from courts of law in the time of Justice Story, even though presided over by the same man. That is not true to the same extent today.⁷⁸³

Having made his explanation, Blume recognized that the Wyoming legislature had provided that the claim for improvements, resting on equitable principles, was to be presented in the action at law to recover the land.⁷⁸⁴ Ending his discussion on the point, he stated, "And if, accordingly, we apply the Roman law (from which our principles of equity are derived * * *) to the case at bar, we are constrained to hold that [the tax purchaser] slept on his rights and is not now in position to recover."⁷⁸⁵

Before leaving our review of this opinion, it is appropriate to notice Blume's statement in the final pages of his opinion. In describing the judge's dilemma in the face of the perceived harshness of the result, he said:

We recognize * * * that no man should be unjustly enriched at the expense of another. And everyone should pay his taxes. So we had hoped that we could find a way to affirm the judgment [for the tax purchaser]. But we have been unable to do so. Equity follows the law. * * * Even though we may hate to deny what we conceive to be a just claim, yet when the law is clear, as it is in this case, we cannot by our fiat annul it. Courts, while unquestionably aiding, as they should,

779. *Id.*

780. *Id.* at 442, 5 P.2d at 285.

781. *Id.*

782. *Id.*

783. *Id.*

784. *Id.* at 442, 5 P.2d at 286.

785. *Id.*

in developing the law by interpretations placed upon it as cases arise, and, as a result, frequently modifying at least what appears to be the law, are not the makers thereof. They cannot usurp the functions of the legislature, a coordinate branch of the government.⁷⁸⁶

Turning from real property to personal property, Blume soon had an occasion to consider Roman law on a question concerning the true ownership of fifteen head of sheep given by a father to his minor children. In *Kreigh v. Cogswell*,⁷⁸⁷ the minor children brought an action for conversion against their father's judgment creditor who had levied execution upon the sheep as the father's property and sold them in partial satisfaction of the judgment against the father. From a judgment in favor of the children in their conversion action, the judgment creditor appealed. Blume held in favor of the children. In his analysis, Blume investigated both Roman law and the common law to determine whether personal property, acquired by the children as a gift from their father, belonged to the father. Identifying authority from Louisiana, a civil law state, that the usufruct⁷⁸⁸ of such property, which might include lambs and ewes, might belong to the father, Blume traced its historical derivation.⁷⁸⁹ He wrote that the rule:

appears to be derived from the Roman law, through the Code Napoleon. * * * Originally, under the Roman law, the oldest male member of an agnatic family, who might be the father, the grandfather, or great-grandfather, had peculiar paternal power (*patria potestas*). Unless emancipated, the offspring, with some exceptions in the case of married girls, were absolutely under his control, no matter of what age they might be. All property acquired by them in any manner whatever, whether by earnings, by gift or otherwise, was acquired for him. They were incapable of owning any property of their own.⁷⁹⁰

Noting that this general rule existed into Justinian's time, Blume continued his review:

Some modifications were made therein during the empire, first in favor of soldiers, who were permitted to own property ac-

786. *Id.* at 453-54, 5 P.2d at 290.

787. 45 Wyo. 531, 21 P.2d 831 (1933).

788. The right of using and enjoying the fruits or profits of another's property without impairing the substance.

789. *Kreigh*, 45 Wyo. at 533, 21 P.2d at 831.

790. *Id.* at 533, 21 P.2d at 831-32.

quired during their time of service, and do with it as they pleased. Inst. 2, 11; 12 pr; C. Just. 12, 36. In 326 A. D. the emperor Constantine directed that palace officials should acquire for their own benefit whatever they might be able to save out of their salaries, or which they should obtain as gratuity from the emperor. C. Just. 12, 30, 1. The same privilege was extended in 444 A. D. to the officials of the praetorian prefects and to shorthand writers and keepers of records. C. Just. 12, 36, 5. Four years previously a like right had been conferred upon the high advocates of the praetorian courts. C. Just. 2, 7, 8. In 469 A.D. bishops, presbyters and deacons of the church were allowed full control over their clerical income. C. 1, 3, 34. And Justinian gave subdeacons, singers and readers in the church independent ownership over everything they acquired. Nov. 123, 19. He also released bishops from paternal power entirely, and all property acquired from the emperor or the empress were exempted from the general rule. C. 6, 61, 7; Nov. 81.⁷⁹¹

Next, Blume noted in what way the general rule was modified in favor of children. He related:

Constantine the Great provided that property acquired by children from their mother should not be acquired for the benefit of the father, except only that he should have a usufruct therein. C. Just. 6, 60, 1. The exception was extended in 379 A.D. to cover property acquired by children through the maternal line generally (C. Th. 8, 18, 6; C. Just. 6, 60, 2) and was further extended to cover property acquired through marriage. C. Just. 6, 61, 4.⁷⁹²

Blume concluded his review of Roman law by quoting from Justinian's law in 529 A.D. taken from C. Just. 6, 61, 6:

Since it is proper that the interest of fathers as well as of children should be protected, but we find that, under the ancient laws, there are many things that come to unemancipated children which are not by them acquired for the benefit of the father, as in the case of maternal property and property acquired by or through a marriage, so we shall also introduce a definite rule as to property which unemancipated children received from other sources. If, therefore, a child in the power of the father, grandfather, or great-grandfather receives any

791. *Id.* at 534, 21 P.2d at 832.

792. *Id.*

property not originally belonging to the person in whose power he or she may be, but which is received from other sources, as for instance through the bounty of fortune or through his or her own labor, it shall not wholly belong to the parent who has the paternal power, as the law formerly was, but shall belong to such parent only to the extent of the usufruct thereof. Such father, grandfather, or great-grandfather shall be entitled to such usufruct, but the fee of the property shall belong to the children just as in the case of property which is derived from a mother or from a spouse.⁷⁹³

Turning to examine the common law, Blume reported that its path of development was different. The Anglo-Saxons had no "institution at all comparable to the paternal power of the Roman law."⁷⁹⁴ Tracing the English authorities down to Blackstone, Blume cited Blackstone's statement of the rule, which Blume found to be the rule accepted in the common law states of the United States:

A father has no other power over his son's estate than as his trustee or guardian; for though he may receive the profits during the child's minority, yet he must account for them when he comes of age.⁷⁹⁵

After reviewing a number of American cases in accord with the English rule, Blume adopted and applied the same rule to the facts before him. The sheep had belonged to the children, not their father. He affirmed the children's judgment.⁷⁹⁶

In the area of testate succession, Blume made limited use of Roman law in *Johnson v. Laird*⁷⁹⁷ in determining whether an implied revocation of testator's will occurred by virtue of the annulment of testator's first marriage and his subsequent marriage to another. In the course of deciding that implied revocation had occurred, Blume, as he had in other cases, traced the development of the particular rule of law in question. He identified *Overbury v. Overbury*, decided in the thirty-fourth year of Charles II (1694), as "the first decision relating to this subject."⁷⁹⁸ That decision, he said, "was, professedly, based on the Roman law."⁷⁹⁹ He continued:

The pronouncements under that law extend no further than that the effect of the birth of a child, subsequent to the time

793. *Id.* at 534-35, 21 P.2d at 832.

794. *Id.* at 535, 21 P.2d at 832.

795. *Id.* at 537, 21 P.2d at 833.

796. *Id.* at 540, 21 P.2d at 834.

797. 48 Wyo. 532, 52 P.2d 1219 (1935).

798. *Id.* at 538, 52 P.2d at 1220.

799. *Id.*

of making a will, revokes it. The reason for that may be found in the social conditions of the time. Husband and wife were not, in classical and post-classical times, heirs of each other, except under very remote circumstances. Code Justinian 6, 18, 1. A wife generally brought a dowry to the marriage. That and the prenuptial gift, usually, and part of the time compulsorily, given her by her future husband, were considered sufficient security against poverty so far as the wife was concerned. No moral duty, accordingly, existed for the husband to make provision for her in his will, and if the existence of a new moral duty lies at the basis of implied revocation, as is generally assumed, it is clear that *the Roman law* does not prevent but rather *permits the rule*, under circumstances existing in this country, *that a subsequent marriage is*, under proper conditions, *a proper ground for implied revocation.*⁸⁰⁰

Continuing to review not only the later English cases but also the American cases, Blume showed that, in fact, there was no established common law rule that marriage alone does not revoke a will.⁸⁰¹

Turning to the particular facts before the court, Blume found it unnecessary to decide the case on the sole ground of testator's subsequent marriage.⁸⁰² Not only was there an annulment of the testator's first marriage, accompanied by a final property division and settlement of property rights, "but the testator subsequently married and lived with a second wife for [more than] twelve years. The estate which he left was * * * so small * * * that it will not, by itself, keep the wolf from her door."⁸⁰³ From those strong circumstances, the intent to revoke the will favoring the first wife must be implied.⁸⁰⁴

Another limited use of Roman law by Blume is presented in *Drew v. Beckwith, Quinn & Co.*,⁸⁰⁵ in which the court rebuffed an effort by minority shareholders, claiming that the corporation's term of existence had expired, to have the corporation's affairs wound up. The court's original decision held against the minority shareholders. On rehearing, the court's decision remained unchanged, with Blume providing additional support for that view in the form of a narrative on the history of corporations. He said:

Originally, it seems, all corporations existed for an unlimited time. In Roman law, it seems, the corporation continued to

800. *Id.* at 538-39, 52 P.2d at 1220 (emphasis added).

801. *Id.* at 539-41, 52 P.2d at 1220-21.

802. *Id.* at 543, 52 P.2d at 1222.

803. *Id.* at 546, 52 P.2d at 1223.

804. *Id.*

805. 57 Wyo. 140, 114 P.2d 98 (1941).

exist whether "all of its members remain, whether only part of them remain, or whether all of them have been changed." D. 3, 4, 7, 2.⁸⁰⁶

Aside from this limited use of Roman law, Blume's opinion is noteworthy for another reason. Arguing for a construction of a particular state statute that favored his clients' position, the minority shareholders' counsel had suggested that, since Blume had introduced and sponsored the statute when he was a state senator, perhaps it was improper for Blume to write the court's opinion rejecting that counsel's argument. Blume handled the charge in this way:

The point is new. The writer hereof was unaware of any impropriety in writing the opinion, and unaware that he was less qualified to construe the legislative act * * * by reason of the fact that he sponsored it in the state senate. It is generally thought that thorough knowledge of the history of legislation—and sponsoring an act could only involve such knowledge—is an aid in the construction thereof, rather than a disqualification. Some of our predecessors, namely, Justices Knight, Conaway, Scott, and Potter, were members of the constitutional convention. They, particularly the last named, were frequently called upon to construe provisions of the constitution, yet it has never been suggested, so far as we know, that they were disqualified to do so, or that it was improper for them to write an opinion in that connection.⁸⁰⁷

Switching to another tack, Blume continued:

Of course, counsel is much too complimentary to the writer hereof in thinking that he, after the expiration of thirty years, would remember, either the intention of the legislature or his own. * * * Reference to the writer's connection with that act was probably made by reason of the disappointment of counsel in the result of the case. And such disappointment is natural. Yet the members of the bar well know that the lot of lawyers is, unfortunately, in the nature of things, one of frequent disappointment. But in that connection they should remember that it gives no pleasure to the court to be the cause thereof. An opinion in cold type may seem to come from a bloodless heart, when in fact it found birth only after much travail.⁸⁰⁸

806. *Id.* at 172 (opinion on petition for rehearing not reprinted in the Pacific Reporter).

807. *Id.* at 170.

808. *Id.* at 170-71.

Another case in the area of succession involved a will contest based on a claim that the testatrix was of unsound mind when she executed her will, leaving her property to her former music pupils instead of her estranged sisters. Blume used Roman law to support the court's decision that the testatrix had not made an unnatural disposition of her property. In *Watts v. Farmer and Jensen*,⁸⁰⁹ Blume observed:

What is and what is not a natural disposition of property by a decedent is not always easily answered, particularly in a case which involves, as here, merely collateral relatives. Under the Roman law, the disposition of the property in this case would not have been considered unnatural. No one was permitted to attack as unjust a testament of his or her brother or sister, unless the instituted heir was base or dishonorable. Code Justinian 3, 28, 27, Buckland, Textbook on Roman Law (2d Ed.) 328. That rule is, perhaps, not wholly without value even today. Friendship frequently far outweighs, in the human mind, the mere fact of blood relationship.⁸¹⁰

Moving from the area of succession to the area of torts, we find Blume using Roman law in support of the court's refusal to repudiate the common law rule that actions for damages for wrongful death do not survive the death of the injured person or the wrongdoer. In *Mull v. Wienburg*,⁸¹¹ conceding that the legislature had changed the common law rule as to future cases, Blume refused to change the rule judicially in an action accruing before the legislative change. After discussing and rejecting several of the arguments advanced by the plaintiff seeking recovery, Blume discussed and rejected the final argument that changed conditions, *viz.*, the prevalence of insurance and the injustice of the common law rule, dictated that the judicial branch of government change the rule. He explained the court's refusal to act in this passage:

That rule is hoary with age. It was laid down by Bracton, one of the main founders of the common law in the thirteenth century, trice stating in substance that it would be an injustice to penalize the heirs of a tortfeasor for a wrong not committed by them * * *. That injustice must have appeared as axiomatic for many generations, for the rule has for at least seven centuries clung to the body of our law with a remarkable tenacity, equaled by few other rules * * *. And what makes the rule

809. 63 Wyo. 332, 181 P.2d 611 (1947).

810. *Id.* at 344, 181 P.2d at 615-16.

811. 66 Wyo. 410, 212 P.2d 380 (1949).

more remarkable is the fact that it also existed in an older civilization. Gaius (4, 112), in the second century of our era, in the heyday of Roman civilization, announced that it was an unquestionable and absolute rule of law. Three and a half centuries later, Justinian repeated that statement, Institutes 4, 12, 1. So that we are here asked to repudiate a rule by judicial fiat which persisted in two civilizations, each perhaps partially crude, each partially enlightened, for, say, a millennium and a half or longer * * *.

We think that we should shut our ears to the siren voices of counsel for appellants.⁸¹²

The final opinion we shall examine is *Roberts v. Roberts*,⁸¹³ in which the court held that a common law marriage entered into in Wyoming is not recognized as valid.⁸¹⁴ The facts presenting the issue were simple. The deceased died leaving a common law wife and brothers and sisters. They were fighting over his property. Blume's analysis is remarkable for several reasons. First, it reveals the legal historian at his best, tracing the rule from earliest times in ancient civilizations through the inconclusive English common law decisions to the American cases where the rule in favor of such marriages at first enjoyed but then lost favor by a majority of the jurisdictions considering the issue. Second, Blume's analysis demonstrates that the New York decision in *Fenton v. Reed*,⁸¹⁵ probably written by Chancellor Kent, then Chief Justice, and considered "the beginning and at least partially the foundation of the doctrine of other cases as to the validity of common law marriages,"⁸¹⁶ was wrongly decided.⁸¹⁷

Blume began his masterpiece by defining, for purposes of the analysis, a common law marriage as one "entered into by words of present assent (*per verba de praesenti*). In other words, it is an informal contract by the parties declaring that they are then and there husband and wife."⁸¹⁸ He then noted the nature and extent of the debate on the issue:

The subject before us has given rise to many discussions, even acrimonious in character, and to many opposite opinions. Bishop strenuously maintains the validity of such marriage, not even shrinking from the fact that it might be called con-

812. *Id.* at 434, 212 P.2d at 389.

813. 58 Wyo. 438, 133 P.2d 492 (1943).

814. *Id.* at 468, 133 P.2d at 503.

815. 4 Johns. 52 (N.Y. 1809).

816. *Roberts*, 58 Wyo. at 453, 133 P.2d at 497.

817. *Id.*

818. *Id.* at 443, 133 P.2d at 493.

cubinage. * * * Others, on the other hand, have deplored or wondered at the fact that the contract of marriage, the most sacred of all contracts, should be treated so lightly. * * *⁸¹⁹

Having set the stage, Blume next announced that his court would dutifully and humbly enter the fray, but not without apprehension:

In the face of such different views it would be vain to hope that anything which we might say on the subject would convince anyone having the contrary opinion. But inasmuch as the ultimate authority to declare the law in this state is vested in us, we shall state our opinions and conclusions as dispassionately as possible, knowing that if we are wrong, the legislature has power to correct whatever errors we may commit. It has been said that the law on the subject in the United States is in a state of chaos. We cannot hope to put it in order, but if we can furnish one ray of light to penetrate the gloom, we shall be satisfied.⁸²⁰

Entering the initial phase of his analysis, Blume first examined the statement "that the idea of the validity of a common law marriage comes to us directly from the canon law and through it from the Roman law."⁸²¹ He felt that a look at the history of marriage as "an institution common to the human race * * * will perhaps aid us in keeping our mind at equilibrium on so controversial a subject."⁸²² He began his examination with this historical narrative:

[W]e have strong grounds for believing that at least in the last twenty-four centuries, in countries pretending to any civilization, marriage without any formality aside from the agreement of the parties has at times been tolerated but has never met with general approval. Formalities in connection with marriage did not always consist of ceremonies, though they were usual, but might, for instance, consist of written contracts, generally relating to dowry rights. In ancient Greece, ceremonies, particularly among the higher classes, were much more elaborate than with us. A dowry was thought to be necessary to be brought to the husband by the wife to mark the distinction between a wife and a concubine. * * * In ancient Rome marriages were attended by religious ceremonies performed under the auspices of the pontiff, and the idea of

819. *Id.*

820. *Id.* 443-44, 133 P.2d at 493.

821. *Id.* at 444, 133 P.2d at 493.

822. *Id.*

the sanctity of marriage, even in Ovid's day, may be gathered from the superstition that the month of May and the first half of June were deemed unlucky for the rite.⁸²³

According to Blume, marriage was seen legally as a mutual agreement under which the woman was placed in the husband's control.⁸²⁴ The concept of divorce by agreement of the parties was a logical extension of the contract theory.⁸²⁵ "[C]eremonies, formal betrothal, and dowry instruments were usual."⁸²⁶ Further discussing the Roman law authority on the subject, Blume noticed:

It may be gathered from Code Justinian 5, 4, 23, 6, which provided that marriages without dowry instruments should be valid, that an opinion to the contrary had prevailed. * * * In fact, the Emperor Marjorian had enacted a law to that effect. Nov. 6, 9. Concubinage, in its outward form, was not distinguishable from marriage by agreement of the parties. * * * Mainly doubtless on account of slavery and because soldiers were not permitted to marry during the early part of the empire, concubinage came to be recognized since the time of Augustus as legal, without giving the woman the rights of a wife and without making the children legitimate.⁸²⁷

Discussing the Romans' struggle with the existence of concubinage, Blume reported:

Constantine denounced concubinage, but, partly through the influence of the Christian Church, subsequent emperors made numerous laws on behalf of the children of such unions, and even some provisions for the concubine. Code, 5, 27; Nov. 74 and 87. The evil, or supposed evil, of concubinage, had become so great that Justinian, in Nov. 74, ch. 4, felt himself impelled to make a new law compelling men to execute a dowry instrument or have the marriage ceremony performed in the Christian Church * * * .⁸²⁸

Blume then quoted from Justinian to the effect that the previous laws recognized as valid only those marriages formed through marital in-

823. *Id.* at 444-45, 133 P.2d at 493.

824. *Id.* at 445, 133 P.2d at 493.

825. *Id.*

826. *Id.* (citing as authority: "Corbett, Roman Law of Marriage, p. 1; McKeldy on Roman Law, Dropie Translation, Sec. 549; Code Justinian, 5, 1; Girard, Manuel Elmentaire de Droit Romain, 7th ed., 161; 1 Smith & Cheatham, Dictionary of Christian Antiquities, 458.")

827. *Roberts*, 58 Wyo. at 445, 133 P.2d at 493-94.

828. *Id.* at 445-46, 133 P.2d at 494.

tentions and not by written contracts. Continuing, Blume said this had caused the Republic to "become filled with fictitious contracts and witnesses come forward who lie with impunity that men and women living together have called each other husband and wife, and in this manner invent marriages which in fact were never contracted."⁸²⁹ Blume pointed out that Justinian was later forced to lessen the scope of his law.⁸³⁰

Continuing with his historical account, Blume observed that after Justinian's time the Visigothic Code recognized that dignity and honor accompanied a marriage which was the result of a written dowry instrument.⁸³¹ Over the following centuries, as Blume traced it, a number of rulers made efforts to require that men and women participate in a religious ceremony.⁸³² In this regard, Blume identified Charlemagne, in the West, about 800 A.D., Leo, in the East, about 900 A.D., and King Edmund, in England, about 940 A.D.⁸³³

Despite the effort to eradicate concubinage, the concept of marriage by mutual consent without ceremony survived. The responsibility for that survival in England was, according to Blume, "due largely to the canon law, part of which at least, as ecclesiastical law, became a part of the common law of England."⁸³⁴ Explaining the survival of that concept, Blume described the Catholic Church's dilemma:

The Church had, almost from the beginning, encouraged marriages with religious ceremonies. Marriages entered into otherwise were, and gradually became more and more, odious to the prelates of the church. They had detested and even prohibited them. * * * But the Christian Church arose under the Roman Empire. The canon law was modeled after the Roman law, and the latter permitted so-called common law marriages and even concubinage. Christian feeling was divided between the fear of recognizing what might seem half marriages only on the one hand and the desire to sanction any union which fulfilled the primary condition of marriage on the other. It desired to convert to its faith the heathens of France, of England and of Germany, and found, during the dark and middle ages, disorganized society, free and easy marriages, and concubinage. Due partly, doubtless to Roman tradition, partly to anxiety to keep people out of meretricious relations and to

829. *Id.* at 446, 133 P.2d at 494.

830. *Id.*

831. *Id.*

832. *Id.*

833. *Id.*

834. *Id.* at 446-47, 133 P.2d at 494.

make children legitimate, and doubtless partly to the fear of driving men out of or not retaining them in the church, it recognized many clandestine unions as valid, though irregular, and presumed everything in favor of the validity thereof.⁸³⁵

According to Blume, before the Council of Trent, which lasted from 1545 to 1563, canon law recognized the validity of a marriage with words of present assent.⁸³⁶ After the Council of Trent, the church prohibited marriages without religious ceremony.⁸³⁷ Neither France nor England accepted the Council's action.⁸³⁸

Considerable dispute existed whether that part of canon law recognizing the validity of marriage with words of present assent was fully accepted as part of the English common law.⁸³⁹ According to Blume, the dispute centered around the holdings in three English cases. In 1810, in *Dalrymple v. Dalrymple*, the canon law view was accepted.⁸⁴⁰ However, in 1844, in *Reg. v. Millis*, it was "held that a marriage by words of present assent without intervention of the clergy was void."⁸⁴¹ That rule was reaffirmed on a tie vote in 1861 in *Beamish v. Beamish*.⁸⁴² In light of the two latter decisions, it was argued that "a so-called common law marriage was never valid in England."⁸⁴³ Despite the continuing debate about the soundness of the three English decisions, which Blume related,⁸⁴⁴ Blume stated all the authorities agreed that under a so-called common law marriage:

the parties receive no reciprocal rights in the property of the other, even after death, so that, even if a common law marriage were held to be valid in [Wyoming], we could not, if we should follow the common law, give the [common law wife] any rights in the property of the deceased.⁸⁴⁵

Leaving the state of the common law in England, Blume next traced the development of the rule in the United States. In this important phase of his analysis, Blume considered Chancellor Kent's 1809 per curiam decision in *Fenton v. Reed*, which recognized the validity of a common law marriage, and pronounced that the decision

835. *Id.* at 447, 133 P.2d at 494.

836. *Id.* at 447-48, 133 P.2d at 494.

837. *Id.* at 447-48, 133 P.2d at 494-95.

838. *Id.*

839. *Id.* at 448-52, 133 P.2d at 495-97.

840. *Id.* at 448, 133 P.2d at 495.

841. *Id.*

842. *Id.*

843. *Id.*

844. *Id.* at 449-50, 133 P.2d at 495-96.

845. *Id.* at 450, 133 P.2d at 496.

was wrong.⁸⁴⁶ Blume commented, "Great scholar that he was, he simply, apparently, took at correct the rule announced or apparently announced in the English cases above mentioned, without further investigation."⁸⁴⁷ Blume then pointed out that Chancellor Kent "evidently overlooked" a New York statute, enacted in 1684 and in force until 1828, although concededly not printed in 1809, requiring solemnization of a marriage by a minister or justice of the peace and the procurement of a license.⁸⁴⁸ Blume speculated that had Chancellor Kent known of the existence of the colonial statute, he would have decided *Fenton* differently, considering Chancellor Kent's personal view that marriages should be attended by greater solemnization than mere agreement of the parties.⁸⁴⁹ Given the reliance by the early American courts on Chancellor Kent's Commentaries and his "erroneous" decision in *Fenton*, Blume concluded:

[T]he remarkable fact appears in our jurisprudence that the doctrine on so important a subject as the validity of common law marriages in this country is at least partially based on false premises, the extent of the falsity of which being, of course, difficult to measure at this time.⁸⁵⁰

After further thorough analysis,⁸⁵¹ in which he reviewed Wyoming's marriage statutes, public policy considerations, the strongest reason supporting recognition (children should not be made illegitimate), the compelling reasons against recognition, local conditions which argued against recognition, and the trend of national authority against recognition, Blume concluded that common law marriages entered into in Wyoming were invalid.⁸⁵² As a result of his labors, Blume had convincingly shown that the rule adopted was much preferred over the Roman rule "in which * * * was inherent the danger of concubinage and easy divorce."⁸⁵³ In this respect, and not without a pinch of mischief, Blume remarked:

We half suspect that if the non-conformists, dissenters and Puritans had been told that they were adopting such a rule of easy marriages, they would have met the charge with vigorous protest and denial. It might not be profitless to re-read Hawthorne's "Scarlet Letter."⁸⁵⁴

846. *Id.* at 452-53, 133 P.2d at 497.

847. *Id.* at 453, 133 P.2d at 497.

848. *Id.* at 454, 133 P.2d at 497.

849. *Id.*

850. *Id.*

851. *Id.* at 457-68, 133 P.2d at 498-503.

852. *Id.* at 468, 133 P.2d at 503.

853. *Id.* at 457, 133 P.2d at 498.

854. *Id.*

CONCLUSION

Our examination of Blume's use of Roman law, and coincidentally his deft use of legal history, is at an end. From this brief study, what conclusions can be drawn? Without question he used Roman law quite sparingly. Even though Roman law was a time-tested source of abundant principles and rules, he did not often draw upon that source for fear of being considered pedantic. And, on those occasions when he did draw upon that vast reservoir, he did so, not to replace common law doctrine and rules with Roman law counterparts, but, rather, to illustrate the historical development of a rule of law. Thus, Blume identified for his audience the genetic connection between a Roman law rule and a common law rule. It is clear that he did not view Roman law as the only source of *ratio scripta*, i.e., written reason. His opinions demonstrate beyond doubt that he was first, last, and always a common lawyer.

It would be too harsh, and inaccurate, to conclude that most of Blume's Roman law citations were superfluous to his opinions, merely entertaining sidetrips into esoteric learning. Although not central to his analyses, they served a useful supplementary function. Blume illustrated his common law decisions with Roman law examples in a worthwhile effort to draw attention to the venerable Roman legal system as a whole. In this way, he could stimulate the audience's appreciation for the richness of the Anglo-American tradition.

In the final analysis, our examination of Blume's work illustrates the wondrous complexity of the interaction of legal systems. Regardless of the specific ways in which Blume used Roman law, we have gained from our study of his judicial process a new appreciation for and heightened awareness of the complex role played by Roman law in the development of the common law. We realize as never before that the intellectual history of our common law tradition is both fascinating and challenging.

LEGACY

No stone edifice stands on the grounds of state government in Cheyenne as a monument to Justice Fred H. Blume, although the state's legislative fathers have over the years seen fit to name three such structures after former governors whose combined years of executive service do not begin to match the devoted years of judicial service which Justice Blume selflessly gave to this equality state.

And yet, we recall that the splendid marble columns and temples that once epitomized the glory of the mighty Roman Empire were laid waste, crumbling into dust which then was swept away by the winds of time.

But the best of that great and ancient civilization is still with us and honored today. The system of laws which it created, the genius of those people, still lives, and will live forever.

Like that Roman system of law that he so assiduously studied, Justice Blume, too, shall be never forgotten. His learning and application of law, his very genius, preserved in his opinions and works, still lives. As long as there is a State of Wyoming which is governed by the rule of law, Justice Blume shall be not only remembered, but shall also be with us.