

**International Society  
of  
Barristers**

**Volume 51**

**Number 2**

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**Quarterly**

**THE INCREDIBLE MR. APPLEMAN:  
A TRIBUTE TO JOHN ALAN APPLEMAN, 1912-1982\***

**Stephen Pate\*\***

**I  
INTRODUCTION**

Insurance-coverage attorneys will know of *Appleman on Insurance Law*<sup>1</sup> and will have frequently consulted this treatise during their careers. Yet who today knows of John Alan Appleman, who first published the work in 1941? Sadly, he seems to be forgotten today. Yet, he deserves to be remembered. Through his groundbreaking insurance treatise and his other works it can be said that he founded the insurance coverage bar in the United States. Moreover, he was renowned in his time as a trial lawyer and as a teacher of trial advocacy. He revitalized or was instrumental in founding no less than three major bar associations: what is now known as the Federation of Defense and Corporate Counsel, The International Academy of Trial Lawyers, and The International Society of Barristers.

In addition, Appleman had many interests outside the law. He wrote a western novel that was published in England. He wrote a book of poetry. He wrote several financial planning works. Finally, he wrote a book entitled *Your Psychic Powers and Immortality*, a book in

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\* Article previously published in NEW APPLEMAN ON INSURANCE: CURRENT CRITICAL ISSUES IN INSURANCE LAW (Winter 2017).

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1. This is the colloquial name. It was originally published as *Insurance Law and Practice, with Forms* (1941).

which he examined what he believed to be his own powers of telepathy and ESP.

Perhaps Appleman would best be described as a polymath. Others would say that he was "a man for all seasons," or "a Renaissance man." Certainly, he was a lawyer who was right for his times. His career began at a time when American insurance and tort law were beginning to fully develop. Appleman aided greatly in that expansion. He was always on the cutting edge of legal developments. One cannot forget his other interests, including those in his community and his Midwest "boosterism," which seemed to be a hallmark of the last century. Yet, at the end of the day, John Alan Appleman was first and foremost a lawyer, and he was a lawyer's lawyer.

## II

### APPLEMAN'S EARLY YEARS

Appleman was born in Webster Grove, Missouri, on May 14, 1912.<sup>2</sup> His father was an Army officer, and Appleman lived at or near several different Army posts in his youth.<sup>3</sup> He began working at fourteen and was self-supporting from that age forward. He worked in his early years as a salesman, shipping clerk, theatre manager, journalist, and even as a dancing teacher.<sup>4</sup> He attended the University of Illinois, where it was noted that he was extremely active in interscholastic sports and campus activities.<sup>5</sup> He worked as an athletic director for several summers.<sup>6</sup> A recognizable picture of Appleman as a twenty-year-old member of the University "Cavalry

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2. *John Alan Appleman*, WHO'S WHO IN AMERICA (42d ed. 1982-83).

3. MELVIN M. BELLI, III THE VOICE OF MODERN TRIALS (JOHN ALAN APPLEMAN, ILLUSTRATION OF CROSS EXAMINATION TECHNIQUES) (1960) (booklet accompanying records).

4. *Id.*

5. Frederick Fell, *Preface* to JOHN ALAN APPLEMAN, YOUR PSYCHIC POWERS AND IMMORTALITY (1968).

6. BELLI, *supra* note 3.

Officers Club" appears in the 1932 University of Illinois yearbook.<sup>7</sup> One of the first mentions of him in print is when the *Chicago Tribune* noted that he had been elected Vice President of the Independent Council at the University of Illinois.<sup>8</sup> This was the organization that controlled activities of students, not members of fraternities.

This is perhaps an early example of how Appleman would join and become a leader in a group. He was elected to Phi Beta Kappa in his junior year and graduated Magna Cum Laude. This was not to be unexpected, as Appleman reportedly had an IQ of 175.<sup>9</sup> He graduated from the University of Illinois Law School and received his law license in 1935.<sup>10</sup> It should be noted that he worked his way through both undergraduate and law school.<sup>11</sup> Moreover, he did his undergraduate work in three years, and obtained his law degree in two.<sup>12</sup>

It was now that Appleman began his legal and writing career. The 1936 Peoria, Illinois, City Directory lists him as an adjuster, not as an attorney.<sup>13</sup> In the midst of the Great Depression this was not an unusual first job for a young law-school graduate, as many law firms were not hiring. Perhaps this work as an adjuster sparked his lifelong interest in insurance. His first published article appeared in January 1936 in the *American Bar Journal*, only a few months after he had graduated from law school. The article reflected that he was a member of the Peoria Bar. The article, oddly enough, has nothing to

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7. 1932 UNIVERSITY OF ILLINOIS Y.B. 391.

8. *Chicago Student Heads U of I Independent Council*, CHICAGO TIMES 24 (May 13, 1931).

9. Fell, *supra* note 5.

10. Craig Spangenberg, *John Alan Appleman, In Memoriam*, 19 INT'L SOC'Y BARRISTERS Q. 371 (1984).

11. Fell, *supra* note 5.

12. BELL, *supra* note 3.

13. 1936 PEORIA, ILLINOIS, CITY DIRECTORY 52.

do with insurance law and was entitled *The Tort Liability of Charitable Institutions*.<sup>14</sup>

At a later date, Appleman would comment upon his legal writing and upon this article. He wrote,

I've been writing one thing or another since about age 13. My first legal article, at age 23[,] came about because of my indignation over the state of the law in that area and how to change it. All other books on the law were written because of the void which needed to be filled, and these became standards.<sup>15</sup>

How many twenty-three-year-olds publish serious, scholarly works in the American Bar Association Journal? A review of the article shows that it is a deep, scholarly survey of the law regarding charitable institutions in every state. In the article, Appleman discusses how different states addressed whether charitable institutions were immune to suit by recipients of their charity or suits by strangers. In order to determine how particular states had ruled on the issues, he had personally contacted professors at different state universities when he could not find recorded decisions.<sup>16</sup> It is a solid work and indeed complains about the inequities among the different states and the public policy that he felt should be changed.

It was in July 1936 that Appleman's first insurance article appeared: *Forecasting Loss Ratios on Personal Liability*.<sup>17</sup> By the time of this next article, he was practicing law in Bloomington, Illinois.

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14. John Alan Appleman, *Tort Liability of Charitable Institutions*, 22 ABA J. 48 (1936). This was the January edition. He would not turn twenty-four until May.

15. Stephen Pate, *Above and Beyond the History of the Federation of Defense and Corporate Counsel*, FEDERATION OF DEFENSE AND CORPORATE COUNSEL (75TH ANNIVERSARY ED.) (Fall 2011), [www.thefederation.org](http://www.thefederation.org).

16. See Appleman, *supra* note 14, at 48.

17. John Alan Appleman, *Forecasting Loss Ratios on Personal Liability*, 3 INS. COUNSEL J. 21 (1936).

Perhaps because of the location—State Farm is located in Bloomington—it can be presumed that by this time he had joined State Farm Insurance Company as legal counsel. It is known that he worked with State Farm for a period of time supervising tort litigation in some thirty-eight states.<sup>18</sup> Appleman did not choose the most interesting of subjects for this first insurance article. Yet it can be said that he saw a problem and sought to *remedy* it. The article appeared in the *Insurance Counsel Journal*, and in it Appleman wrote that estimates regarding claims losses could be forecast according to the scientific method. He noted that “this has been done to some extent to the present time, but[,] at best, it has been a matter of mere hazard or guesswork.”<sup>19</sup> He then proceeded to lay out a system upon which loss ratios could be accurately calculated.

Appleman was always on the cutting edge. Here, in 1936, at the dawn of the era of tort expansion, he was laying out a system for forecasting how claims losses could be forecast. He noted, “[M]any statisticians will ignore this idea entirely, not realizing that some such method of forecast is inevitable.”<sup>20</sup> Of course, he was right. Loss forecasting is an important part of the insurance industry today.

More articles followed. In December 1936, he published *Special Phases of the Family Purpose Doctrine* in the *Tennessee Law Review*.<sup>21</sup> This article shows in his byline that he was indeed working in State Farm’s Legal Department in Bloomington.

In 1937, Appleman published his first book—*Automobile Liability Insurance: Based Upon the National Standard Policy Provisions*<sup>22</sup>—with which he became, at twenty-five, a published author of a noted legal text. Many of Appleman’s early writings were

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18. See Spangenberg, *supra* note 10.

19. Appleman, *supra* note 17.

20. *Id.* at 22.

21. John Alan Appleman, *Special Phases of the Family Purpose Doctrine*, 14 TENN. L. REV. 307 (1936).

22. JOHN ALAN APPLEMAN, *AUTOMOBILE LIABILITY INSURANCE: BASED UPON THE NATIONAL STANDARD POLICY PROVISIONS* (1937).

on automobile liability issues. Those were not, however, Appleman's only focus. In 1938, he wrote an article entitled "*Guest Cases in Aviation Law*" for the *Air Law Review*.<sup>23</sup> In that article he stated, "[W]ithin the next 20 years aviation law will become one of the major fields of jurisprudence."<sup>24</sup> He noted then that "the comparison between automobile and aviation law is like that between an old slow-growing town and a planned city. . . . Aviation law with its future still before it may be developed in a clear[-]cut and accurate manner."<sup>25</sup> This was something that appealed to Appleman, and he would write on aviation law for the rest of his life.<sup>26</sup>

Despite the fact that he had control over litigation in many states, a major task for one so young, Appleman did not appear to be content at State Farm. This can be assumed because of an article he wrote for the *Insurance Counsel Journal* in January 1937. This article, entitled *Insurance Companies and Their Lawyers*,<sup>27</sup> was a frank discussion of the way insurance companies treated their defense counsel in the Thirties. In that article, Appleman stated, "[T]here is an excellent future for lawyers with quick intelligence, pliability, and a capacity for thoroughness[] who are willing to learn ever[y] detail involved in insurance cases. Fees[,] while not excessive, represent a very fair return for work done."<sup>28</sup> He was right; this could describe the insurance defense bar for many years to come. "But," Appleman further noted,

a position within the personnel of an insurance company is greatly different. Insurance companies

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23. John Alan Appleman, *Guest Cases in Aviation Law*, 9 AIR L. REV. 30, (1938).

24. *Id.*

25. *Id.*

26. See, e.g., John Alan Appleman, *Get Ready for the Sonic Boom*, 3 INT'L SOC'Y BARRISTERS Q., no. 4, 1968, at 33.

27. John Alan Appleman, *Insurance Companies and Their Lawyers*, 4 INS. COUNSEL J. 19, (1937).

28. *Id.* at 19.

search for legal aid as carefully as the Department of State would select an Ambassador Plenipotentiary. The young lawyer must have excellent legal training, a fine and discriminating mind, tact, character, courage, personality, speaking ability, sales magnetism, and a capacity for thorough work. They seek for something very few lawyers ever hope to possess. When such a man is found he is relegated to a legal clerkship with a maximum future salary ranging from approximately \$3,600 to \$12,000. Usually he is placed either in the claims department[,] where he attempts to settle all claims which might be lost in litigation, or he is placed in the legal department in a brief-making capacity.<sup>29</sup>

Appleman observed that many in-house counsel lost heart and their initiative, and he believed that when they did, their great value was gone. Many left either to become plaintiffs' attorneys and earn three times what the insurance companies would pay them, or to be recruited eventually by outside law firms.<sup>30</sup> Obviously, stating these opinions revealed what been on Appleman's mind, and doing so probably did not endear him to State Farm's management. It appears that by February 1938, Appleman had left State Farm and entered private practice.<sup>31</sup> At that time he was associated with Lord Lloyd and Bissell in Chicago, Illinois, a predecessor to today's Locke Liddel law firm.<sup>32</sup>

Soon, however, Appleman would move to Urbana, Illinois. It was where he had family, and it was a good small town to raise children. He had married Jean Gerber on January 9, 1935.<sup>33</sup> Their daughter, Jean Appleman, who would become a law professor and later his coauthor, was born October 14, 1939, in Urbana.<sup>34</sup> Urbana is

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29. *Id.*

30. *Id.*

31. *See Contributors to This Issue*, 22 MARQUETTE L. REV. 92 (1938).

32. *Id.*

33. WHO'S WHO, *supra* note 2.

34. *Jean Appleman*, WHO'S WHO IN AMERICA, (42d ed., 1982-1983).



in east-central Illinois, the county seat of Champaign County. Appleman would live here until illness forced him to move to California. In 1949, he purchased a farm on the rural outskirts of Urbana.<sup>35</sup> It had a stone house he called "The Maples," reached by a dirt lane, branching off a secondary road.<sup>36</sup> Because of this rural location, Appleman would often call himself a "country lawyer," though nothing could have been further from the truth. The Maples would become famous to a generation of visiting attorneys involved with Appleman and his bar association duties, and to those who practiced law with him. They would note its "Big City private library."<sup>37</sup>

Early in 1941, the Bloomington, Illinois, *Pantagraph* bore the headline, "Former Resident Writes 20-volume Work."<sup>38</sup> This article stated that "John Alan Appleman, for many years head of the legal department of the State Farm Insurance Companies, is the author of a 20-volume work, 'Cyclopedia of Insurance Law,' it was announced Monday." This was the announcement of what Appleman would best become known for: the work known as *Insurance Law and Practice, with Forms*, which would be published and written by Appleman, and later by Appleman and his daughter, Jean, until 1981. Today it continues under Appleman's name.

This publication and his other activities began to give Appleman a measure of fame as an attorney. By the early 1940s he was traveling to give speeches to different bar associations. For example, he spoke at the South Dakota State Bar Convention and the Texas State Bar Convention.<sup>39</sup> He became a civic booster, becoming active in the Champaign County Bar Association, which he would

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35. See *Appleman v. U.S.*, 338 F.2d 729, 731 (7th Cir. 1964).

36. Spangenberg, *supra* note 10 at 371.

37. *Id.*

38. *Former Resident Writes 20-Volume Work*, PANTAGRAPH, Feb. 12, 1941, at 14.

39. See, e.g., *Lawyers Arrive for Bar Meeting*, DAILY PLAINSMAN, August 21, 1940; *Insurance Section to Hear Appleman*, HUTCHESON, 4 TEX. BAR J. 334 (1941).

later serve as President,<sup>40</sup> and an active member of the Rotary Club, and by 1946 a member of the Federation of Insurance Counsel.<sup>41</sup>

It was during this period that Appleman's interests outside the law began to surface. In 1945, he was somehow able to get the United Nations to consider Champaign County, Illinois, where Urbana was located, as a possible site for the new permanent headquarters of the United Nations. The Illinois *Decatur Herald* wrote that an invitation had been sent from Appleman, who said that he had "acted with advice and assistance of unnamed friends in Washington and London."<sup>42</sup> Anyone could have invited the prestigious United Nations to locate its headquarters in his hometown. Appleman actually got the Committee to act. The paper reported that "a seventeen man UNO subcommittee yesterday listed the Champaign County location as one of twenty-two in the United States suggested."<sup>43</sup>

Appleman had suggested Champaign County because it had a rural rather than concentrated population, a central location, the new University of Illinois airport, railroad service, highway access, and proximity to Chicago, among other things. Of course, the United Nations decided to permanently locate in New York, but Appleman was responsible for a small Illinois county being short-listed for the United Nations' location. No one today can identify who his contacts in Washington and London were, but undoubtedly, he had them.

### III

#### THE FIFTIES: BAR ASSOCIATIONS AND A WESTERN

Appleman continued his legal practice and his other interests. In 1950, he obtained a Master's Degree in International Law from the University of Illinois Law School.<sup>44</sup> In 1950, he became President of

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40. *John Alan Appleman, supra note 2.*

41. *Id.*

42. *List Champaign for UNO Site, DECATUR HERALD, Nov. 30, 1945, at 13.*

43. *Id.*

44. *John Alan Appleman, supra note 2.*

the Federation of Insurance Counsel (FIC), now known as the Federation of Defense and Corporate Counsel. He did not found the FIC, but he saved it from extinction. In 1949, exactly twelve members had attended its nationwide annual meeting. In 1950, when Appleman became president for a two-year term, only sixty-five members attended, and there was not enough money to pay the hotel bills.<sup>45</sup> Appleman took control and turned the organization around. He wrote this about the 1950 meeting:

There comes a time when every organization must take stock of its past, its present and its future. At this Convention, this was done. Following the final meeting, the new officers met and talked with brutal frankness. It was felt that certain fundamental changes of policy should be made to maintain the type of organization which our members are entitled to expect. Fundamentally criticisms levelled were of two types: (1) that there should be a closer supervision of persons selected for membership invitations; (2) that there should be closer contact with the members throughout the year . . . .<sup>46</sup>

Appleman then established the *Federation of Insurance Counsel Quarterly* and, publishing it from Champaign, wrote the first article—on military tribunals.<sup>47</sup> By the time he concluded his term as President in 1952, the FIC had tripled its membership and had become established as a premier defense organization with high standards for membership. The organization to this day awards the *John Alan Appleman Award* for outstanding service by a member.<sup>48</sup>

While engaged in resurrecting the FIC and practicing law, Appleman also engaged in another extracurricular pursuit. In 1953

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45. Pate, *supra*, note 15.

46. John Alan Appleman, *Message of Incoming President*, 1 FED. INS. COUNSEL Q. 1, 5 (1950)

47. *Id.* at 17.

48. This article's author is the 2005 recipient of that award.

he published a Western novel. Using the pseudonym Bill Daley, he entitled the work *Restless Saddles*. It was published not in the United States, but in Great Britain, by Billing and Sons, Ltd., located in Guildford and Esher. Today, there is a cottage industry of successful trial lawyers publishing murder mysteries or courtroom dramas, most of them quite awful. Appleman published a Western, completely unrelated to his law practice. While the book will not rival the efforts of Zane Grey or Louis L'Amour, it is not bad. The blurb at the book's beginning summarizes its plot:

*About the Story*

Austin Scott and his partner, Rodney Webb, stumble into the midst of a range war by which Burton McClean plans to eliminate old Pop Holmes of the Y Bar and capture his land. Turning the tables on the raiders brings in all the most popular elements of the wild west, including flaming guns—fistfights—bushwhacking and rodeo—as we are carried spellbound through this breathless adventure.<sup>49</sup>

In the book, Appleman described characters as “long-legged galoots,”<sup>50</sup> talks about “ki-yotes,”<sup>51</sup> and has a main character named “Mr. Steven Austin Colonel Bowie Johnson,” familiarly known as “Aus.”<sup>52</sup> The book reflects a remarkable knowledge of western firearms and shooting.

Appleman did not give up his legal writing. *Restless Saddles* was published at approximately the same time as Appleman's first major book on trial practice, *Successful Jury Trials* (1952), followed by *Successful Appellate Techniques* (1953). By this time, he had developed an interest in estate planning and published *How to Use Life Insurance in Estate Analysis* in 1954.

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49. BILL DALEY, *RESTLESS SADDLES* (1953).

50. *Id.* at 24.

51. *Id.* at 53.

52. *Id.* at 121.

But more than writing a Western or continuing to publish legal texts, in December 1951, Appleman did something else that he should be remembered for: Appleman was a life-long Illinois Republican.<sup>53</sup> 1951 was the height of the Red Scare in America. Appleman wrote a letter that was published in the ABA Journal reacting to other attorneys' calls for constitutional amendments pertaining to Communists and calling for loyalty oaths. Appleman strongly opposed such measures. He wrote that "if constitutional protections are abandoned the witch hunt is on."<sup>54</sup> He further noted that "star chamber proceedings are not in accordance with our ideas of justice and I, for one, do not want to see my fellow citizens browbeaten into false confessions, sent to concentration camps, or executed without a semblance of a fair trial."<sup>55</sup> Being a rock-ribbed Republican in Illinois in the 1950s did not mean that John Alan Appleman did not believe in civil liberties.

And what of the man? The introduction to an article he'd written the *Rotarian Magazine* in May 1953 noted his love of music: "[W]hen not untangling estate problems, he [Appleman] relaxes by writing music and playing the piano."<sup>56</sup> The article demonstrates, once again, the full range of Appleman's talents. By this time, apparently, he was heavily involved in practicing estate law. The article, entitled *Now is the Time*,<sup>57</sup> is a cautionary tale about enjoying life to its fullest. It begins by Appleman's describing that much of his work is estate planning, where clients ask for advice on insurance and investment programs. He wrote, "I ponder why so many have no goal beyond their pre-occupation with financial success."<sup>58</sup> The point of the article is that as he examined his clients who sought his

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53. See *GOP to Pick Delegates in Friday Meeting*, DECATUR DAILY REV., Jan. 3, 1962, at 28.

54. *Views of Our Readers*, 37 ABA J. 937 (1951).

55. *Id.*

56. John Alan Appleman, *Now Is the Time*, 82 ROTARIAN MAGAZINE 5, 6 (1953).

57. *Id.* at 9.

58. *Id.*

counsel on finance and planning, he saw many who concentrated on material wealth to the exclusion of all else. He asked the rhetorical question, "[W]hy don't we live once we go along?"<sup>59</sup> In this article, Appleman expresses his philosophy of life:

The spiritually mature person doesn't need to prop his ego. He is himself always. He may wear a flannel shirt and with no mental discomfort, drive a jalopy. He knows the pleasure in little things—the feel of the breeze, the single flower, the budding tree, the scudding clouds, the lonely kitten, the puppy's eager nose, the tawny haired child clutching a doll, the fascination of a ruined brick building and the silent cobblestone street . . . What then is worthwhile in life? To eat one's fill, to sleep a dreamless sleep, to have family and friends, to love, to sense the meaning of living. Money cannot purchase more.<sup>60</sup>

This is a good philosophy of life and, frankly, one rarely heard from a lawyer. It was said of Appleman that if he had located his office in a metropolitan area, "his fees would range annually in the millions."<sup>61</sup> While he did well and, as will be seen, overworked himself, his true passion seemed to be the love of his profession, and of legal scholarship.

Nor would he compromise his principles to please his client base. By the 1950s, Appleman had long been associated with the insurance industry. Yet in the September 1953 *Reader's Digest*, Appleman published an article entitled *Health and Accident Insurance Policies—How Much Can You Rely Upon Them?* in which he was sharply critical of health-and-accident-insurance carriers.<sup>62</sup> He noted that health-and-accident insurance was a "black sheep in the

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59. *Id.*

60. *Id.*

61. Mayo L. Coiner, *Preface* to JOHN ALAN APPLEMAN, *PREPARATION AND TRIAL V* (1967).

62. John Alan Appleman, *Health and Accident Policies—How Much Can You Rely Upon Them?* *READER'S DIG.*, Sept. 1953, at 23.

industry.”<sup>63</sup> He wrote that “exclusion” and “exception” clauses in policies stating conditions under which the company would not pay were often “deceptive and misleading.”<sup>64</sup> These clauses were in small type and frequently ambiguous<sup>65</sup> and seldom understood by the average policyholders who wrongly believed themselves to be fully protected. Appleman compared the health-and-accident insurance industry to a legalized confidence game that involved “browbeating the sick, the maimed and the bereaved.”<sup>66</sup> Appleman urged every one of his readers to read his policy thoroughly and insist on an explanation in writing of any obscure provision. He advised his readers to select their insurance agent as carefully as they would select their doctors or lawyers. He noted, “Don’t buy bargains; there aren’t any. Good health and accident insurance is never cheap.”<sup>67</sup>

The article caused a great deal of consternation. When Appleman wrote about insurance, people took note. Years later, Appleman noted that “30 million people read the *Reader’s Digest* article.”<sup>68</sup> He wrote that as a result of the article, the Interstate Commerce Commission set up an Enforcement Division to bring charges against . . . companies engaging in improper practices.<sup>69</sup> A 1958 article called Appleman’s *Reader’s Digest* piece “[o]ne of the most famous articles published about insurance in recent years.”<sup>70</sup> This article noted,

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63. *Id.* at 26.

64. *Id.* at 23.

65. *Id.*

66. *Id.* at 26.

67. *Id.*

68. John Alan Appleman, *A Forecast: Troubled Waters but New Horizons*, *INS. L.J.*, Feb. 1977, at 79, 79.

69. *Id.*

70. O.D. Dickerson, *A Note on Insurance Articles in the Popular Press*, 24 *J. INS.*, 4, 89 (1958).

"[I]t is difficult to see after a lapse of a few years how this article could stir up such a storm of controversy. However, it did and the wide reaction it awakened on the part of the public was a contributing factor to the Federal Trade Commission's attack on health insurance advertising and to the adoption of codes by the industry."<sup>71</sup>

The article claimed that Appleman's piece "was hardly scholarly despite the attainments of the author."<sup>72</sup> Indeed, the article is not scholarly; it consists, in the main, of a series of anecdotes about unfairly denied claims. Still, because of its author, it had a major impact.

Amazingly, the criticism of the insurance industry found in the *Reader's Digest* article apparently did not impact Appleman's insurance practice. His 1956 Martindale-Hubbell listing shows approximately fifty insurance companies still using his services.<sup>73</sup> To be sure, Appleman let it be known that he was commenting upon only some unscrupulous companies.

Respect for Appleman was enormous. John Rhea, an early member of the Federation of Insurance Counsel and a friend of Appleman's, recalled that Appleman would travel all over the Midwest on his cases. When Appleman arrived at a lawyer's office in a small Midwestern city, the local bar would learn of his presence. Attorneys would go to where Appleman was yet to meet him, and frequently, to ask his advice. Appleman always obliged and "held court."<sup>74</sup>

In 1954 Appleman published what the author believes to be his true masterpiece: *Military Crimes and International Tribunals*.<sup>75</sup> Both

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71. *Id.*

72. *Id.* at 90.

73. John Alan Appleman, MARTINDALE HUBBELL LEGAL DIRECTORY (82d ed. 1956).

74. Conversation with John Rhea (2006).

75. JOHN ALAN APPLEMAN, *MILITARY CRIMES AND INTERNATIONAL TRIBUNALS* (1954).



Appleman's undergraduate degree and his master's in law had been in international law.<sup>76</sup> Therefore, it was no surprise that Appleman had a deep interest in the war-crimes proceedings that had occurred after the Second World War. Many books had already been published upon the Nuremberg trials, and many have been published since. Appleman's work was a methodical, step-by-step description of the substantive law applied, the procedures used by the tribunals, and then descriptions of the several different Nuremberg trials, such as the Medical cases, the Krupp case, the SS cases, and the High Command cases.<sup>77</sup> Appleman then turned to the much less well-known International Military Tribunal for the Far East and discussed its nature and what it had achieved. Many later scholars have criticized this tribunal. Appleman was perhaps the first to do so by stating,

With reference to the procedure to be followed, the trial leaves much to be desired, and it would seem essential that future bodies crystalize in advance the nature of evidence to be introduced, rules of procedure to be followed, and the respective duties owed by counsel to the tribunal and by the tribunal to the counsel.<sup>78</sup>

*Military Tribunals and International Tribunals* is a detailed, methodical look at the functioning of the war-crimes tribunals. It is neither a flashy nor a juicy read, and is not designed to be so. It is full of detail not found in other books upon the subject. It is a lawyer's book. The amount of detail and research involved is breathtaking. In his description of individual cases, Appleman relates the particulars of the indictments, the evidence produced, arguments of counsel and even comments upon the performance of counsel. To prepare the book, he consulted Justice Robert Jackson of the United States Supreme Court and Telford Taylor, both former Nuremberg

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76. Spangenberg, *supra* note 10.

77. See *MILITARY CRIMES*, *supra* note 75, pt. III.

78. *Id.* at 264.

prosecutors, and Louis Johnson, former Secretary of Defense, among others.<sup>79</sup>

In 1958, Appleman was once again engaged in the early years of another prominent legal organization. This time, it was the American Academy of Trial Lawyers. His friend Craig Spangenberg later wrote, "[T]he soft spoken author from Urbana, Illinois, John Alan Appleman became Dean. John . . . was a switch hitter but at that time he was generally considered to be a Defendant's man."<sup>80</sup> This would change. As time wore on, Appleman would become increasingly identified with the Plaintiff's bar.

Indeed, at the end of the decade, Appleman plowed new ground for plaintiffs in a personal case. On May 14, 1959, his forty-seventh birthday, he purchased an expensive Lincoln Premier automobile from Fabert Motors, Inc., a car dealership in Urbana.<sup>81</sup> The car was a lemon. After suffering valve trouble, vibrations, broken left springs, transmission issues, temperature-gauge troubles, as well as other problems, Appleman's wife Jean took the automobile to the car dealership and left it. Later she talked to the car salesman. The car salesman told her that he would make it right. When neither Ford Motor Company nor the car salesman did make it right, Appleman brought suit on an implied warranty of fitness for a particular purpose.<sup>82</sup> The trial court found for Appleman. The holding was appealed, but the court of appeals affirmed the verdict. In doing so, it noted,

It is realized that this opens up a broad field of litigation, but where an automobile is so unquestionably unfit for use as an automobile as the one involved here, where it developed trouble that could have injured or killed its occupants, . . . there

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79. *Id.* at xi-xii.

80. Craig Spangenberg, *The History of the International Academy of Trial Lawyers* (1989), <https://www.iatl.net/i4a/pages/index.cfm?pageID=3552>.

81. *Appleman v. Fabert* 174 N.E. 2d 892 (Ill. App. 1961).

82. *Id.* at 427.

can be no question that it was unfit for the general purpose for which it was sold . . . .<sup>83</sup>

In establishing that an automobile was subject to an implied warranty of fitness for a particular purpose, Appleman did indeed open up a new area of law.

#### IV

#### THE 1960S: HIS GREATEST CASE, THE ILLINOIS SUPREME COURT BID, AND "APPLEMANIANS"

As the 1960s began, Appleman was well-established in his profession. By then, he engaged in no general practice, only litigation. Though he would have some partners, most of the time he had a plaintiff's solo practice, with his office in his home. He tried cases primarily before rural and small-town juries.<sup>84</sup> The 1960s would see him take on a case that would lead to a substantial verdict and—probably more important to Appleman—new standards in medical-malpractice law. He also made a failed bid to become a judge, started another bar association, and opened his own trial school. In March 1965, however, he suffered a catastrophic heart attack, which kept him from ever practicing law again.

What was Appleman like in the courtroom? Del Mitchell, now a prominent attorney in Quincy, Illinois, who served as a law clerk for Appleman, remembers watching Appleman in trial. Mitchell recalls that Appleman was incredibly well prepared and always thought out how to present his case to the jury in the most persuasive manner possible. Mitchell relates that Appleman was a genius, with a prodigious memory.<sup>85</sup> Spangenberg, himself a famous trial advocate known for the creating the "Eggshell Plaintiff" theory, stated that Appleman was a "lifelong proponent of the non-flamboyant school of advocacy. He believed that a lawyer who quietly presents the facts,

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83. *Id.* at 432.

84. Coiner, *supra* note 61.

85. Telephone interview with Del Mitchell (June 27, 2017).

so marshalled and integrated . . . that those facts would lead to but one rational conclusion, could trust the jury to reach that conclusion."<sup>86</sup>

Mitchell has interesting memories of Appleman. Appleman was able to achieve all he did because he rarely slept. Mitchell stated that though he was called a law clerk, in fact he was an investigator who would take statements and present the results to Appleman. His appointments with Appleman were usually at either ten or eleven at night. These were normal working hours for Appleman. Appleman employed two secretaries, one who would work from 8:00 a.m. to 5:00 p.m. and then another who would work from 5:00 p.m. until midnight. Mitchell relates that, early on, he realized that as brilliant a man as Appleman was, he had certain faults. One of these was that he would misplace things, including reports that Mitchell provided for him. He would then chastise Mitchell for not providing the reports. Mitchell quickly learned to always make copies of the reports so that he could provide them again.

Mitchell recalls that Appleman enjoyed deep friendships with other lawyers. He and Jack Horsley, his friend and frequent opponent, kept up a lasting and teasing line of communication; Horsley would append personal notes to his formal correspondence to Appleman stating something along the lines of: "How does Jean (Appleman's wife) put up with you?"<sup>87</sup>

Indeed, Mitchell relates that Melvin Belli, the flamboyant "King of Torts" was a close friend of Appleman. In the Fifties and Sixties, this unlikely pair collaborated on some long-playing records on trial techniques entitled *The Voice of Modern Trials*.<sup>88</sup> Appleman's portion of the set were three records on cross-examination techniques in which he gave actual demonstrations from his trials. It is interesting to listen to Appleman's voice. He had a Midwestern accent, and the voice is somewhat high-pitched. Mitchell relates that Appleman had

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86. Spangenberg, *supra* note 10, at 372.

87. Mitchell, *supra* note 85.

88. Belli, *supra* note 3.

"delicate" features.<sup>89</sup> Perhaps Appleman did not fit the classic portrait of a trial lawyer, as Belli did. He was certainly the opposite of the rough and ready Belli. Yet listening to the content of the records, and knowing of his successes, reveals how effective Appleman was. It is a matter of style. In reviewing Belli's famous book *Ready for the Plaintiff*, Appleman, though recommending the book highly, dryly noted that "there are places of course, where the ideas of this reviewer and Mr. Belli do not coincide."<sup>90</sup>

In 1963, Appleman began what he called the "Professional Trial Lawyers Seminar."<sup>91</sup> This was perhaps the first true "trial school." Appleman himself noted that in the 1960s very few law schools taught trial-advocacy courses.<sup>92</sup> His own law school did not want to offer a trial-advocacy class for fear of being "known as a "trade school;"<sup>93</sup> that must have enraged Appleman. The National Institute for Trial Advocacy itself did not begin its sessions until 1972.<sup>94</sup> Interestingly, despite all the legal books and seminars, there is no indication that Appleman ever served as a professor at a school of law, either full-time or as an adjunct. This is despite the fact that his home was near the University of Illinois Law School. However, he was renowned as a teacher, and Spangenberg would write that "above all else Appleman was a teacher who shared his knowledge with young lawyers from both the Plaintiff's and Defendant's ranks."<sup>95</sup>

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89. Mitchell, *supra* note 85.

90. John Alan Appleman, Book Review, *Ready for the Plaintiff*, 43 ABA J. 723 (1957).

91. See John Alan Appleman, *Who's Who*, *supra* note 2.

92. John Alan Appleman, *The Advocate and his Future*, 4 INT'L SOC'Y BARRISTERS Q., no. 3, 1969, at 5, 13.

93. *Id.*

94. See [www.NITA.org](http://www.NITA.org)

95. Spangenberg, *supra* note 10.

The trial school was two weeks long and was conducted in Urbana.<sup>96</sup> An attorney had to be selected to attend the seminar, and selection was limited to only one attorney from each locale.<sup>97</sup> In 1963, the inaugural year, only twelve attorneys attended,<sup>98</sup> and 1969 only twenty-five could attend.<sup>99</sup> Entrance to the program was highly sought after. Attorneys who attended the program eagerly sought to publicize their attendance in their local newspapers.<sup>100</sup> Those newspaper articles noted that local attorneys were taught by “an acknowledged legal genius”<sup>101</sup> and a lawyer, who as a plaintiff’s attorney, had achieved a verdict of \$750,000.<sup>102</sup> Seven-hundred-fifty thousand dollars equates to approximately \$5.1 million in 2017.<sup>103</sup>

The seminar was an intensive, coordinated series of lectures and demonstrations on all aspects of preparation and trial.<sup>104</sup> As Spangenberg commented, “These were not narrow, one-man shows. John reached out to all of his friends to contribute their ideas, which he synthesized and polished into themes and variations to show the many forms the art of persuasion can take.”<sup>105</sup> Appleman charged \$1,000 a student, a considerable sum for the 1960s. He limited the number of students, because of the “intensely personal nature” of the course.<sup>106</sup> It was a great innovation. Prior to the school, trial lawyers had learned by second-chairing their mentors in trial, or simply by

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96. See *Howard McKissick to Attend Seminar*, NEV. ST. J., June 30, 1969, at 2.

97. *Id.*

98. See *id.*

99. *Attorney Home from Seminar*, (Hagerstown, Maryland) DAILY MAIL, July 27, 1963, at 18.

100. See, e.g., *supra* notes 96 and 99.

101. *Howard McKissick*, *supra* note 96.

102. *Id.*

103. DollarTimes, Inflation Calculator, [www.dollarTimes.com](http://www.dollarTimes.com).

104. Spangenberg, *supra* note 10, at 372.

105. *Id.*

106. JOHN ALAN APPLEMAN, PREPARATION AND TRIAL (1967), at viii.

going into trial. Now Appleman gave the lucky few a "post-graduate finishing school."<sup>107</sup>

Appleman was not happy that only a relative few could afford to attend the seminar. Some young lawyers criticized him for this, and "these criticisms have haunted me," he wrote.<sup>108</sup> The result, as might be imagined, was a book, the magnificent *Preparation and Trial*.<sup>109</sup> Published in 1967, Appleman considered it his finest work.<sup>110</sup> This is Appleman's *magnum opus* on trial work, an 895-page treatise that takes lawyers step by step through discovery, pre-trial motions, trial, verdict and appellate post-trial motions.

*Preparation and Trial* is still found in most law-school libraries. Even after fifty years, any young trial lawyer could find much to learn from it. Appleman dissects *every* aspect of trial; for example, how to handle the "bullying," "smart-aleck," or a "confused but honest" witness on cross-examination.<sup>111</sup> He discusses damages in depth, with advice to Plaintiff's counsel: "Don't Oversell."<sup>112</sup> His advice to defendants in closing arguments? The defense should stick to rebutting the Plaintiff's main points: "when blasting, use dynamite!"<sup>113</sup> He does not lecture; he describes. He uses actual trial and deposition transcripts to make his points.

Thus, in that era, because of Appleman's publications, lectures, and trial school, it was said that it was "inconceivable that there is an actively practicing lawyer unfamiliar with his name."<sup>114</sup> One trial lawyer said "of the rising crop of advocates[,] ' . . . they are Applemanians to a man.'"<sup>115</sup>

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107. *Id.*

108. *Id.*

109. *Id.*

110. Spangenberg, *supra* note 10, at 372.

111. APPLEMAN, *supra* note 106, at 302-02

112. *Id.* at 725.

113. *Id.* at 808.

114. Mayo L. Coiner, *Preface to APPLEMAN*, *supra* note 106, at v.

115. *Id.*

Still, though Appleman was esteemed by his peers, when he sought judicial office in the early 1960s, he was unsuccessful. In late 1961, a vacancy in the third district of the Illinois Supreme Court occurred when an incumbent died.<sup>116</sup> Appleman became one of the nine candidates seeking the Republican nomination in the special election to fill the vacancy.<sup>117</sup> Of course, Appleman was not half-hearted about this campaign. The *Decatur Herald* noted on January 6, 1962, that the race was in full force and that campaign mail was being sent to people in the third district:

The most detailed to date is an information sheet published by the committee backing Champaign attorney John Alan Appleman. In addition to a picture of Appleman it has a picture of some of the 35 volumes of legal works of which he is author.

While most campaign literature makes note that the candidate is a good Republican, the soft pedal is given to that. But in Appleman's literature his committee boasts that he has voted in every Republican primary since he was 21. [He is 49] and has contributed generously and consistently to the Republican Party.<sup>118</sup>

A lawyer's poll was taken of the area's lawyers. Of the nine candidates, Appleman polled a very respectable third.<sup>119</sup> But politics raised its ugly head. The Champaign County Republicans endorsed an attorney named J.C. Ermantrout, who had ranked eighth in the poll among the nine candidates. Appleman was displeased. The *Decatur Daily Review* stated, "Appleman himself expressed bitterness yesterday over the Champaign's Republican's disregard of the poll of

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116. *GOP to Pick Delegates in Friday Meeting*, DECATUR DAILY REV., January 3, 1962, at 28.

117. *Id.*

118. *Lawyers Being Polled On Pick for Court Post*, DECATUR HERALD, January 2, 1962, at 3.

119. *Lawyer Poll Held Inconclusive for Court Vacancy; Drake, Smith Lead*, DECATUR HERALD, January 6, 1962, at 3.



lawyers as to their choice for judge."<sup>120</sup> Yet there was nothing he could do. His campaign ended.

This was not the only time Appleman was considered for a judgeship. In 1956 Senator Everett Dirksen of Illinois had sent biographical information on four men to the Justice Department so they might be cleared for possible appointment to a United States Supreme Court vacancy. One of the men was John Alan Appleman.<sup>121</sup>

Perhaps it was for the best that Appleman did not receive the judgeship. For it was later in 1962 that Appleman obtained what he and others would regard as his crowning achievement: winning the landmark *Darling v. Charleston Community Memorial Hospital* case,<sup>122</sup> a major event in medical-malpractice law. Forty years after the decision, a commentator wrote that, in his view, "the *Darling* decision was "the 'Big Bang' event that, in an instant, gave rise to a totally new and still expanding universe of hospital liability theory."<sup>123</sup> The *Darling* decision, he wrote, had effected two radical changes in hospital-liability jurisprudence.

The first [was] the extension of direct liability theory to hospital entities in their role as providers of care. The second [was] what [could] constitute competent evidence of the duties of care owed by a provider-hospital directly to its patients . . . .

No court prior to *Darling* had ever enunciated either of these two radical elements, much less ever combined them. Before *Darling*, there was no equivalent in the American jurisprudence of hospital liability for either of these elements. Then the *Darling*

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120. *Champaign Republicans Endorse Ermantrout*, DECATUR DAILY REV., Jan. 6, 1962, at 12.

121. *Dirksen Joins Fight to Name Federal Judge*, CHICAGO TRIBUNE, Aug. 2, 1957, at 40.

122. The verdict came down in the fall of 1962. The Illinois Supreme Court decision affirming that verdict is found at *Darling v. Charleston Community Memorial Hospital*, 211 N.E.2d 253 (Illinois, 1965).

123. Michael J. Wiet, *Darling v. Charleston Community Memorial Hospital and its Legacy*, 14 ANNALS HEALTH L., no. 2, 2005, at 399.

Big Bang occurred, giving rise to a new and still expanding universe of hospital liability theory."<sup>124</sup>

The same article notes that, as of 2005, the *Darling* case had been cited in over 340 state and federal cases, and some 389 law review articles, monographs, and treatises.<sup>125</sup> This would undoubtedly have made Appleman very proud.

The facts of *Darling* were these: Darling was an eighteen-year-old college football player who broke his right leg while playing football. At the Charleston Hospital emergency room, a Dr. Alexander put Darling's leg in a plaster cast. Soon after the cast dried, Darling began experiencing pain in his toes; the toes began swelling, became discolored, and were cold and insensitive. After the patient's complaints, Dr. Alexander made modifications to the cast, including notching it and then splitting the sides with a saw, cutting Darling's legs. The nurses did not follow hospital procedures to monitor Darling's toes for changes in color, temperature or movement, did not check for circulation and did not report any changes to medical staff. Finally, Darling was transferred to another hospital, where he was treated by a doctor who found that his leg contained dead tissue resulting from an overly tight-fitting cast, which had interfered with blood circulation of the leg. After several unsuccessful operations, the leg was amputated.<sup>126</sup>

Despite these egregious facts, in 1962 America, the case seemed hopeless. As Appleman noted, "there were no medical experts nor hospital authorities willing to testify for the plaintiff."<sup>127</sup> Yet Appleman took the case on. He organized the facts and came up with the issues. He believed that Dr. Alexander had applied the cast negligently, had negligently cut the patient in splitting the cast, failed

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124. *Id.* at 400.

125. *Id.* at 399-400.

126. *Darling v. Charleston Community Mem. Hosp.*, 211 N.E.2d 253, 255-56 (Ill. 1965).

127. John Alan Appleman, *The Darling Case—A Real Tiger*, INS. L.J., Dec. 1975, 714, 716 (1975).

to associate physicians who had skills beyond his, and failed to take steps consistent with the physical conditions previously described.<sup>128</sup> Moreover, Appleman believed that the hospital had been negligent in failing to supervise Dr. Alexander, to review the treatment rendered to Darling and by failing to have a sufficient number of nurses to provide for the bedside care of Darling.<sup>129</sup> In a 1975 speech on the case, Appleman described some of his preparations for the trial:

In my own library I had probably every good orthopedic text published in the United States from 1925 on, as well as the better British texts. Prior to the trial, I had visited the medical library of the Charleston Hospital, the doctors' cloak room, and the offices of expected adverse expert witnesses and noted the books and magazine which were present there.<sup>130</sup>

Appleman knew that he could not find an expert witness for the Plaintiff. He wrote, "It was once said that no gentleman would testify that any woman was unchaste. Similarly, for decades, almost no physician would testify that a colleague had blundered."<sup>131</sup> To solve this problem, at trial, Appleman took the state medical regulations, standards of accreditation, books from the hospital's own library, and standard medical treatises. He then began to call the hospital staff members, doctors, and nurses as adverse witnesses and obtained damaging admissions from them when they acknowledged they had not followed their own procedures.<sup>132</sup>

Appleman's meticulous preparation won the day. The jury returned a verdict of \$150,000<sup>133</sup> (equivalent to approximately \$1

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128. *Id.*

129. *Id.*

130. *Id.* at 717.

131. *Id.* at 714.

132. *Id.*

133. *Id.* at 719.

million in 2017 dollars).<sup>134</sup> Appleman believed that the significance of the *Darling* trial itself was that “no longer were malpractice cases the subject of a ‘swearing contest’ between hired experts over which the Courts had no control.”<sup>135</sup> “Here at last were certain standards recognized, in law, for those who administer to the care of the sick and injured. They constituted evidence which could aid the jury in determining the presence or absence of negligence.”<sup>136</sup>

Appleman later commented that the *Darling* trial judge had stated at the conclusion of the trial that he had spent many years trying lawsuits and presiding over them, and that the *Darling* case was the finest example of advocacy on both sides he had ever seen. This must have pleased Appleman to no end. He had tried the *Darling* case against his personal friend, Jack Horsley.<sup>137</sup>

Appleman’s *Preparation and Trial* treatise contains many excerpts from the *Darling* case, such as his *voir dire* questions and his opening and closing statements. Most notably, the book contains Appleman’s cross-examination of the hospital administrator. It is a masterful example of destructive cross-examination, and after fifty-five years, still worthy of being taught in any trial-advocacy class. Without trickery, or traps, Appleman inexorably uses medical texts and the hospital’s own rules to box the administrator in. In turn, the administrator is evasive or openly combative. At the end, his own concessions turn him into Appleman’s expert.<sup>138</sup> Though an excellent attorney himself, Horsley could do nothing on redirect.<sup>139</sup>

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134. DollarTimes Inflation Calculator, [www.dollarTimes.com](http://www.dollarTimes.com)

135. Appleman, *supra* note 127, at 719.

136. *Id.* at 720.

137. Mitchell, *supra* note 85.

138. APPLEMAN, *supra* note 106, 655–75.

139. *Id.*

## V

## APPLEMAN'S HEART ATTACK

By 1965, Appleman was at the top of his game. The *Darling* case had been affirmed by the Illinois Court of Appeals and was about to be affirmed by the Illinois Supreme Court. Appleman himself was involved in founding another bar association for the trial elite, the nonpartisan International Society of Barristers. Yet in March 1965, two months before his fifty-third birthday, John Alan Appleman suffered a devastating heart attack, which ended his trial career forever.<sup>140</sup>

Del Mitchell, Appleman's former law clerk, says Appleman was undoubtedly a workaholic who did not take care of himself. Mitchell recalls being with Appleman the day before the heart attack. Appleman went to Barnes Hospital in St. Louis, Missouri, to take a deposition. There he suffered his heart attack, and Mitchell believes had it not occurred in a hospital, where he received prompt care, he would have died.<sup>141</sup> As it was, the damage was severe enough. Appleman himself described the heart attack as follows: "On March 6, 1965, I was taken into Barnes Hospital as a result of myocardial infarction. Because it had been misdiagnosed for almost a week (not by Barnes' physicians), during that period I had been doing all types of physical and mental activities inconsistent with such condition and permanent damage to the heart resulted."<sup>142</sup>

The next ten years would see eight hospitalizations, cardiac-bypass surgery, serum hepatitis from transfusions and a resection of his bowels because of cancer.<sup>143</sup> For an outstanding trial attorney to have his career cut short at the age of fifty-two might have caused many other men to simply give up and turn their faces to the wall. Appleman kept going. This led his friend Craig Spangenberg to speak of his "courage under outrageous stress."

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140. JOHN ALAN APPLEMAN, *YOUR PSYCHIC POWERS AND IMMORTALITY* 127 (1968).

141. Mitchell, *supra* note 85.

142. APPLEMAN, *supra* note 140 at 127.

143. Appleman, *supra* note 127, at 714.

When his trial career was ended with a devastating heart attack, followed by survival but minimal recovery, John Alan Appleman continued to research, create, write, teach, make LP records and cassettes, revise his texts, finish "Preparation and Trial," and did it all while tethered to his life support oxygen tanks. By sheer effort of will he outlived every doctors' prediction by a full decade.<sup>144</sup>

It is useless to speculate what Appleman might have accomplished had his trial career not been cut short. It would be similar to wondering how many symphonies Mozart would have written had he not died at thirty-five. Like Mozart, Appleman had already accomplished more than most. Appleman did continue to write and to lecture as much as he was able. Still, he would continually refer to having been put "on the shelf"<sup>145</sup> as a result of the heart attack. Moreover, after the heart attack, it seems Appleman did take time to turn to some interests outside the law.

## VI

### OUTSIDE THE LAW: PSYCHIC POWERS, POETRY—AND INCREASING YOUR MONEY-MAKING POWERS

To those who, rightfully, regard Appleman as a great legal scholar and a great trial attorney, it is perhaps astonishing to know that Appleman wrote a book about psychic powers, ESP, telepathy and other subjects. In fact, Appleman readily acknowledged that the subject was one often reported on "by kooks" and that it was considered "nutty stuff."<sup>146</sup> Nevertheless, he wrote a lengthy book about these powers, including his own experiences. This book, *Your*

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144. Spangenberg, *supra* note 10, at 372.

145. Appleman, *supra* note 127, at 714.

146. APPLEMAN, *supra* note 140, at 5. As a measure of Appleman's international reach, the book was published in Mexico as *Sus Poderes Psiquicos y la Inmortalidad* (1975).

*Psychic Powers and Immortality*<sup>147</sup> is far different than anything else he ever wrote.

Appleman's evaluation of the subconscious begins with him explaining that he became interested in the subject when exploring medical literature to learn about the functions of the brain. Obviously, this was because he was researching a case on medical malpractice. Throughout the book he weighs in some of his experiences as a trial attorney and the nature what is, in fact, direct and circumstantial evidence.

Then, Appleman becomes personal. Appleman believed that he could read minds.<sup>148</sup> Here is what he wrote: "[W]hen a brother of mine and I attended the University of Illinois, we could be at opposite ends of a large room and glance over towards each other and know precisely what the other was thinking. Rarely was there a need for verbal communication between us except for the benefit of others."<sup>149</sup> He relates how he could stack a deck of cards using his mind powers.<sup>150</sup> He notes an incident in which he told a perfect stranger what floor of a hotel he was staying on.<sup>151</sup>

Beyond telepathy, he describes several incidents in which he had been clairvoyant.<sup>152</sup> More than his own personal experiences, which obviously triggered his interest in the subject, Appleman discusses all manner of telekinesis, precognition, and whether people had auras. In the chapter on immortality, he discusses many examples of near-death experiences, which of course has now become a popular subject. It is indeed an interesting book. It is not for us to judge Appleman's interests. Aristotle allegedly once wrote that no great mind ever existed without a touch of madness.

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147. *Id.*

148. *Id.* at 49.

149. *Id.*

150. *Id.* at 50.

151. *Id.*

152. *Id.* at 60-61.

Another literary effort by Appleman was in a perhaps more ordinary vein. In 1969 Appleman published a volume of poetry entitled *The Elusive Song*.<sup>153</sup> He used the pen name James St. David Montrose. Appleman was not the first attorney, nor indeed the first Illinois attorney, to publish poetry. Edgar Lee Masters, Clarence Darrow's law partner, wrote the *Spoon River Anthology* and other major works.<sup>154</sup> In one copy of *The Elusive Song*, a handwritten note dated May 9, 1969, said, "You may find this a strange area of writing—yet I felt that you, my friend, would appreciate it. The pen name is an old Scot family name. It comes to you with deep affection following another long and severe hospitalization."<sup>155</sup>

Appleman's preface to the book discusses his thought upon poetry and some of his favorite poets. Many of Appleman's *Elusive Song* poems had been published before in different poetry reviews. Many of the poems are quite lyric and are dedicated to persons important in Appleman's life, such as his wife, Jean. Here is an example:

#### The Hush of Evening

A star gemmed crescent moon  
In this quiet place  
With gentle radiance  
Illuminates your face.

The breeze about us kisses  
Despondency away.  
The soft caress of evening  
Erases cares of day.

We stay to watch this tempter  
With its glowing peace.

153. JAMES ST. DAVID MONTROSE, *THE ELUSIVE SONG* (1969).

154. Randall Tietjen, *Clarence Darrow and Edgar Lee Masters*, 13 GREEN BAG 411 (2010).

155. Handwritten note in *Elusive Song* in this author's possession.



Talk stops, time stays its march.  
All interruptions cease.<sup>156</sup>

Another poem perhaps represents Appleman's thinking after his heart attack:

#### The View of Youth

I would not die of age  
Or of a sere decay  
But—like the flash of Dawn  
Flame briefly, die away.<sup>157</sup>

The last poem in the volume reads thus:

#### Last Line

I can speak no more.  
My thoughts are gone.  
Which might have formed a perfect song—  
They clash against each other now  
And I can speak no more.<sup>158</sup>

Appleman had another, more-practical interest: making money. He wrote of his time after his recent heart attack, saying "A solo trial lawyer whose income suddenly ceases finds himself rather helpless. I had to replace that income by investing sagely—not too easy in recent years."<sup>159</sup> Appleman had earlier written a book entitled *How to Increase Your Money Making Power*.<sup>160</sup> Throughout

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156. MONTROSE, *supra* note 153, at 33.

157. *Id.* at 57.

158. *Id.* at 63.

159. Appleman, *supra* note 127, at 714.

160. JOHN ALAN APPLEMAN, *HOW TO INCREASE YOUR MONEY MAKING POWER* (1959).

the 1960s this book was advertised for the cost of \$5.98 with a ten-day free-trial period.<sup>161</sup> The advertisement, which ran in major newspapers, stated that the book would disclose insider's financial knowledge with seven "smart money secrets"<sup>162</sup> that would help increase a person's finances.<sup>163</sup> The advertisement also said that the book was "brought to you by one of the few men in America qualified to write this book. His name is John Alan Appleman. He is a unique blend of financier, corporate president and scholar."<sup>164</sup> In 1975, as his last nonlegal publication, Appleman, along with his daughter Jean, would publish *The Midas Touch: Dynamics of Market Investment*.<sup>165</sup>

## VII THE LAST YEARS

Because of his health, Appleman left his beloved Maples estate sometime before 1975 to move to Lake San Marcos, California, a community located near San Diego.<sup>166</sup>

In August 1975, he gave what could have been his last lecture when he spoke on *Darling* to the insurance-practice section at the Annual Meeting of the American Bar Association. By 1977 he'd published his last two articles, both in the *Insurance Law Journal*, one in February and another in May. The first, entitled *A Forecast: Troubled Waters But New Horizons* discusses his belief that insurance companies were headed for trouble because of "deceptive terminology and shortsighted claims practices."<sup>167</sup> Appleman observes that such industry greed would, and was, resulting in

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161. See *Advertisement*, ST. LOUIS POST, January 10, 1965, at 85.

162. *Id.*

163. *Id.*

164. *Id.*

165. JOHN ALAN APPLEMAN & JEAN APPLEMAN, *THE MIDAS TOUCH: DYNAMICS OF MARKET INVESTMENT* (1975).

166. John Alan Appleman, *supra* note 2.

167. Appleman, *supra* note 68, at 79.

(deserved) punitive damages: in California in 1976 a major insurer had denied a claim for \$200 a month on a disability policy and wound up with a verdict of \$100,000 in actual damages and \$5.3 million in punitive damages.<sup>168</sup>

The article also discussed another recent development in insurance law. Appleman was remarkably prescient about the frontier of directors' and officers' liability. He wrote,

I predict with some confidence that one of the next vast fields of litigation will be against corporate officers and directors. Insurance companies . . . being among the most corporate entities in terms of assets—and their interactions (and errors) being more easily traceable—will be favorite defendants. Lawyers could have a field day and send their children through college on the profits from such cases.<sup>169</sup>

After making some suggestions for reform in the insurance industry, he concluded by saying, "But don't call me! Remember, I'm on the shelf."<sup>170</sup>

Appleman's second, and last, article was entitled *Jabberwocky Revisited—Or What Does My Policy Cover?*<sup>171</sup> In it Appleman complained that the average property and casualty policy written then was unclear and that insurance companies would be paying the price for poor drafting. He wrote that it was time for redrafting and simplification of policies so that the insureds knew just what was covered and what was not covered by their policies.<sup>172</sup> At the conclusion of the article he gave the following suggestion:

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168. *Id.* at 80.

169. *Id.* at 82.

170. *Id.* at 84.

171. John Alan Appleman, *Jabberwocky Revisited—Or What Does My Policy Cover?* *INS. L.J.*, May 1977, at 279.

172. *Id.* at 279.

Organizations of insurance attorneys, working with the American Bar Association, could well help to organize a standardization committee; but, after the committee has produced its finest effort, it should submit the policy to students at the 8<sup>th</sup> grade level and ask them to describe what it means. If they misunderstand any provision, then it's back to the old drawing board.<sup>173</sup>

Appleman concluded with a now-familiar refrain: "Sorry, don't call me. I've been on the shelf now for 12 years and my days of personally rewriting insurance contracts are in the past. But good luck."<sup>174</sup>

With those words, Appleman's forty-one-year career as a writer and lecturer on law came to an end. But what an end, and what a career. In his last two articles he correctly predicted the rise of extracontractual litigation and the rise of litigation against corporate officers and directors. Moreover, he foresaw the need for the simplification of policy forms, which became a growing trend in the next twenty years. Even at the end, Appleman was on the cutting edge, as he had been when he sought to change the law concerning charitable-organizations immunity in 1936.

In 1978, Appleman appears in one last appellate decision, not as an advocate, but as a litigant, in *Appleman v. National-Ben Franklin Insurance Company*.<sup>175</sup> It was a last, anticlimactic coda to his career. While in California, Appleman underwent cancer surgery and incurred hospital expenses. He sent the bill to his insurer, National-Ben Franklin Insurance Company. The policy was a Medicare supplemental policy. The carrier declined the claim, saying the expenses were "not actually incurred" because Appleman had not been required to pay the charges, their having been paid by

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173. *Id.* at 284.

174. *Id.*

175. *Appleman v. National-Ben Franklin Ins. Co.*, 84 Cal. App. 3d 1012 (1978).

Medicare.<sup>176</sup> Appleman argued that if Blue Cross or "a like insurer," had paid those costs (rather than Medicare), National Ben Franklin would have paid the bill again.<sup>177</sup> Payments from Medicare were no different. The Court disagreed, holding it was the hospital, not the individual who entered into the contract with the federal government to participate in the program. As part of its participation, the hospital agreed not to charge the individual for services rendered. Appleman's claim fell squarely within the policy exclusion because he was not required to pay.<sup>178</sup>

This is a rather unremarkable decision, but the Court made a rather stinging remark in a footnote:

In his treatise on insurance law, the eminent authority John Alan Appleman says: "It has been the rule that insurance contracts should be properly construed according to the normal tenor and meaning of the terms employed so as to carry out the intention of the parties and if any question arises, it should be liberally construed in favor of the insured. . . . [T]his rule does not justify abandoning principles of normal interpretation where the contract is clear, or taking such a construction as would vary the true meaning of the contract and the intention of the parties." . . . Here the contract is clear[.] [T]he company does not pay those expenses which the insured is not required to pay.<sup>179</sup>

What could Appleman do to respond to this (probably justified) comment? Nothing. He had a rule about this. "Jones may cite Appleman against Appleman," he wrote, "but Appleman can't cite Appleman in his own support. 'Twould never do!'"<sup>180</sup> There is no

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176. *Id.* at 1014.

177. *Id.*

178. *Id.*

179. *Id.* at 1015, n.1.

180. APPLEMAN, *supra* note 106, at 33.

other record of Appleman's appearing in court after this decision. Thus, with the *National-Ben Franklin* case, after forty-three years, John Alan Appleman rested and closed.

### VIII CONCLUSION

Appleman died in Lake San Marcos, California, on July 14, 1982.<sup>181</sup> Since his death, one writer has stated that he "has undeservedly faded from our consciousness."<sup>182</sup>

Yet, is this so? When Sir Christopher Wren, the architect of St. Paul's Cathedral in London, died, his son buried him in the cathedral and inscribed upon his grave the following: "*Lector, Si Monumentum Requiris, Circumspice.*" Translated from the Latin, "Reader, if you seek his monument, look around you." For John Alan Appleman's monument, look at the medical-malpractice standards that arose from the *Darling* case, the constant updates in policy drafting, his legal texts, the bar associations he founded, the number of trial-advocacy courses that exist today and of course *Appleman on Insurance Law*. Reader, if you seek his monument, look around you.

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181. Spangenberg, *supra* note 10, at 371.

182. Anonymous, *The Early Days: An Appleman Addendum*, 49 INT'L SOC'Y BARRISTERS Q., no. 1, 2015, at 89, 89.

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