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Symposium: Leflar on Conflicts--Introduction

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SYMPOSIUM: LEFLAR ON CONFLICTS

INTRODUCTION

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The following papers are a version, published in somewhat altered sequence and form, of presentations and discussions regarding the work of Robert A. Leflar in the field of conflict of laws. The remarks were delivered at a meeting of the section on conflict of laws of the Association of American Law Schools in Chicago on January 3, 1979. The occasion was the annual meeting of the Association. Although Professor Leflar's work is noteworthy, as a matter of ordinary course, the dialogue was particularly enlivened by the recent publication of the latest edition of his treatise on conflict of laws.[1] As chairman of the section for 1978, I had the happy task of organizing and moderating the program for the evening.[2] My efforts were at all times made easy by the willing participation of Justice John Todd of the Supreme Court of Minnesota, by Professors Maurice Rosenberg[3] of Columbia University and Friedrich Juenger of the University of California at Davis, and by Professor Leflar himself as guest of honor and respondent.

I began the evening with a brief account of the editions of Professor Leflar's treatise from its origin as a set of Arkansas

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1. R. LEFLAR, AMERICAN CONFLICTS LAW (3d ed. 1977).

2. Earlier in the day the indefatigable Professor Leflar had combined his roles as Commissioner on Uniform State Laws and conflicts scholar by participating in the section's afternoon program. Other panelists in the program on uniform state laws and the conflict of laws were Professor James Martin of Michigan; Professor Leonard Ratner of the University of Southern California; Professor Jack Davies of the William Mitchell School of Law, who is also a Minnesota state senator; and myself as moderator.

3. On leave 1978-79, Center for Advanced Study in the Behavioral Sciences, Stanford, California.

annotations to the first Restatement[4] to the pre-eminent position of the present edition. Commenting on the latest version, I speculated that some of Professor Leflar's predictions were now being followed. The analysis of *Shaffer v. Heitner*,[5] though the discussion of the case had to be included specially in the treatise in order to be published with it, contains most of what one finds in later and more leisurely commentary.[6] Much in the role of an admiring picador, I invited Professor Leflar to expand upon his views regarding the relations between jurisdiction and choice of law as one moves from one substantive field to another, and to comment upon the possiblity that *Kulko*[7] foretells a more aggressive filling in of the outlines of constitutional limitations on state-court jurisdiction by the United States Supreme Court.

Next, Justice John Todd of the Supreme Court of Minnesota presented a state court judge's view of the choice-of-law process and the use of Leflar's choice-influencing considerations. Justice Todd was particularly well qualified to participate in the program because the Minnesota Supreme Court has adopted the Leflar method of analyzing, deciding, and explaining choice-of-law cases by candid exposition of choice-influencing considerations.[8] Justice Todd has written several of these opinions, beginning with Minnesota's first adoption of the Leflar method in *Milkovich v. Saari*.[9]

The Supreme Court of Minnesota has declined, however, to follow Professor Leflar's counsel to apply the choice-influencing considerations to choice-of-law problems involving statutes as well as common-law rules.[10] This gave added interest to Justice Todd's remarks and to the later exchange of views. Having participated in such decisions, Justice Todd had valuable insights into

4. *See* R. LEFLAR, THE ARKANSAS LAW OF CONFLICT OF LAWS (1938).

5. 433 U.S. 186 (1977).

6. *See, e.g., Symposium: State-Court Judicial Jurisdiction after* Shaffer v. Heitner, 63 IOWA L. REV. 991 (1978) (articles based in large part on the panel discussion by Professors Vernon, Reese and Sedler at the December, 1977, meeting of the Association of American Law Schools); *Symposium: The Impact of* Shaffer v. Heitner, 1978 WASH. U.L.Q. 273. An earlier treatment of the case that continues to stimulate thought is Casad, Shaffer v. Heitner: *An End to Ambivalence in Jurisdiction Theory?*, 26 U. KAN. L. REV. 61 (1977).

7. Kulko v. Superior Court, 436 U.S. 84 (1978).

8. As Professor Leflar has identified them, the choice-influencing considerations are: (1) predictability of results; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; (5) application of the better rule of law. R. LEFLAR, *supra* note 1, § 96 at 195.

9. 295 Minn. 155, 203 N.W.2d 408 (1973).

10. *Compare* Blamey v. Brown, 270 N.W.2d 884, 890 n.4 (Minn. 1978) *with* R. LEFLAR, *supra* note 1, § 94 at 189-91.

the court's reservations in the case of statutes. Like New York, Minnesota has adhered to the doctrine of *Seider v. Roth*[11] which permits garnishment of a non-resident defendant's insurer doing business in the forum state. At the time of the program, Minnesota had recently reaffirmed that stand following the vacating and remanding of its first post-*Shaffer* decision for further consideration in the light of the *Shaffer* opinion.[12] The stage was thus set for the dialogue that appears in the following pages regarding the sometimes uneasy balance between due process and equal protection in such matters and in their choice-of-law repercussions.

Professor Juenger's presentation combined a graceful assessment of Professor Leflar's place in the tradition of our subject and in its antecedents in private international law. Professor Juenger vigorously reminded us that law must serve practical needs and requires a methodology that identifies those needs and explains attending to them in a way that keeps this function in useful perspective. Professor Juenger developed the idea that Professor Leflar's contributions to conflicts theory have uncovered and helped to facilitate and make understandable the practical social aims of common-law decisionmaking. It was the consensus of all that Professor Juenger's subject matter itself put the dual aspects of his presentation in easy harmony.

Next, Professor Rosenberg, with characteristic wit and verve, examined the Leflar thesis that choice of law has reached a position of relative stability achieved through an eclectic blend of modern methodologies following the repudiation or abandonment of first Restatement[13] systematics by most states. More specifi-

11. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). *Compare* O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194 (2d Cir.), *cert. denied*, 99 S. Ct. 638 (1978) *with* Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 624 (1976), *vacated and remanded in light of* Shaffer v. Heitner, 433 U.S. 902 (1977). Recently the Supreme Court of Minnesota reaffirmed its original decision, Savchuk v. Rush, 272 N.W.2d 888 (Minn. 1978), relying in part on several post-*Shaffer* New York state and federal cases adhering to the *Seider* doctrine, notably *O'Connor*. In light of reaffirmation and further appeal, the United States Supreme Court noted probable jurisdiction. 99 S. Ct. 1211 (1979). In early October, the Court heard argument in the case. Rush v. Savchuk, 48 U.S.L.W. 3238 (Oct. 9, 1979).

[EDS. NOTE: On Jan. 21, 1980, when this issue was in final publication stages, the United States Supreme Court reversed Rush v. Savchuk, 48 U.S.L.W. 4088 (Jan. 22, 1980). Additionally, the Court reversed World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351 (Okla. 1978), *rev'd*, 48 U.S.L.W. 4079 (Jan. 22, 1980). The reader should consider these reversals in connection with discussions in this Symposium by Professor Felix, pp. 430-31 *infra*; Justice Todd, p. 441 *infra*; and Professor Leflar, p. 461 n.18 & pp. 463-65 *infra*.]

12. Savchuk v. Rush, 272 N.W.2d 888 (Minn. 1978). *See* note 11 *supra*.

13. RESTATEMENT OF CONFLICT OF LAWS (1934).

cally, Professor Rosenberg focused upon choice-of-law developments in New York where decisions have, from Professor Leflar's viewpoint, been a fly in the ointment. The issue was joined on the basis of Professor Leflar's optimistic survey of the choice-of-law terrain.[14] Professor Rosenberg's spirited performance set the stage for entertaining and thought-provoking repartee with Professor Leflar, especially regarding the opinion by the New York Court of Appeals in *Neumeier v. Kuehner*[15] and the controversial interpretation of the *Neumeier* doctrine by the United States Court of Appeals for the Second Circuit in *Rosenthal v. Warren.*[16]

Professor Leflar responded to the remarks of the panelists at some length in order to consider as many as possible of the points raised. He did not share Professor Rosenberg's optimism regarding the development of a jurisprudence of rules designed to cut down the flow of repetitious litigation in the class of cases covered by a given rule. He expressed preference for a jurisprudence of policies designed to achieve a comparable goal but through the flexible application of more general postulates such as his own choice-influencing considerations. Professor Leflar's discussion of the uses and misuses of parochialism, particularly in regard to the decision in *Rosenthal,* gave considerable focus to the discussion.

The papers set out here give a good idea of the program. What is necessarily lost in the way of spontaneity and informality is offset by the greater opportunity that print gives for study and reflection and by the modest bit of updating to allude to pertinent matters that have occurred since the time of the program. This group of papers is written testimony of an evening well spent.

14. Leflar, *Choice of Law: A Well-Watered Plateau,* 41 LAW & CONTEMP. PROB. 10 (Spring 1977).

15. 31 N.Y.2d 121, 286 N.E.2d 454, 335 N.Y.S.2d 64 (1972).

16. 475 F.2d 438 (2d Cir.), *cert. denied,* 414 U.S. 856 (1973).