THOMAS JEFFERSON McDERMOTT[1]

(November 17, 1861 - November 17, 1939)

Occasionally we read a magazine profile or biography of an individual and for some reason remember an anecdote or odd detail that we know is insignificant when placed against that person's whole life, yet we cannot shake it. And so it may be that Thomas Jefferson McDermott will be recalled by some as the lawyer who was admitted to the bar and practiced three years *before* he graduated from law school. [2]

After reading law in the offices of Eugene M. Wilson and William Lochren, two of the most prominent lawyers in the state, he was admitted to the bar on April 6, 1892.[3] He then entered the University of Minnesota Law Department and was awarded a LL.B. in 1895 and a LL.M. in 1897.[4] He probably saw the inadequacies of a short clerkship, and concluded that further, formal education was necessary to practice law at this time. Nevertheless, while attending law, he "had an active practice" and even argued two appeals to the state supreme court in 1896, the year after his graduation.

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[1] He should not be confused with Thomas Ignatius McDermott, a lawyer who also practiced in St. Paul. See "Thomas I. McDermott (1876-1927)" (MLHP, 2011-2013).

[2] For another example of a lawyer who attended law school after being admitted to the Minnesota bar, see "Harry Lee Buck (1861-1952)" (MLHP, 2013). Buck attended one year at the University of Wisconsin Law School right after his admission to the Minnesota bar.

[3] 1 *Roll of Attorneys: Supreme Court, State of Minnesota, 1858-1970* 27 (State Law Library, 2011).

[4] Alumni of the College of Law, 1899-1915, at 252 (online). His entry provides:

> Thomas Jefferson McDermott,
> LL. B., 95; LL.M., 97; Lawyer; chmn. State
> Central Comm. Dem. party, 2 yrs.; Supreme
> rep. to internatl. meeting of I. O. F. for 15
> yrs. last past; delegate to World's Court Cong.,
> 15; mem. St. Paul Athletic and Automobile
> Clubs. 714 N. Y. Life Bldg. and 942 Summit
> Ave., St. Paul, Minn.

He was, by his own account, a successful trial lawyer from the start. In 1904, Hiram F. Steven's *History of the Bench and Bar of Minnesota* included his autobiographical sketch. He listed seven of his cases; two were criminal cases resulting in acquittals, the others were civil cases, four of which his clients lost on appeal. One loss, which must have rankled, was a libel suit he brought against a credit company that had rated him "slow in the payment of his bills." Initially a majority of the supreme court held that this was libel per se, but after granting a motion for reconsideration, it reversed itself and held that the label "slow" was not libelous. Both opinions were written by Justice Mitchell and are posted in the Appendix. Here is his profile:

> Thomas Jefferson McDermott is a product of the state of Minnesota, having been ushered into life November 17, 1861, in Kasota, Le Sueur county, his parents being Paul A. and Rose (McMamee) McDermott. After receiving a good common school education he was given the advantage of a good business training in a commercial school at Minneapolis, supplementing this with a course in the law school of the state university, from which he graduated, taking both bachelor and master degrees. He also had practical training in the office of Eugene M. Wilson, and under the direction of Judge William Lochren, of Minneapolis, and was admitted to practice before the supreme court of Minnesota in April, 1892, and the supreme court of the United States March 4, 1895.
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> Preferring to stand or fall on his own merits, Mr. McDermott opened an office in St. Paul, and, more fortunate than many young professional men, met with prompt recognition among the fraternity by reason of his vigor and energy. That he has been a very successful man during the ten years of his practice is seen by a casual glance at the records, which show him to have been the counsel in the following cases, which were of paramount importance: State of Minnesota vs. Charles A. Hawkes; same vs. John Adler, who was indicted for murder and owes his acquittal to the untiring zeal, shrewdness and unanswerable eloquence of Mr. McDermott; Hebner vs. Great Northern Railway (a blacklisting case): McDermott vs. Union Credit Co. (libel case); LeRocque vs. Chappie (sic) (cost for foreclosure of a mortgage); Singer

Manufacturing Co. vs. Flynn (power of an agent); Lamotte et al. vs. Mohr (power of trustee or referee).[5] He has been for some time the special attorney of the Singer Manufacturing Company, the Western Supply Company, assistant general attorney of the Chicago Great Western Railway for three years, and other companies.

Probably few men are more widely and pleasantly known through out Minnesota than Thomas Jefferson McDermott, who is a prominent and influential leader of the democratic party of his state and is ex-chairman of the state central committee. He has served on the executive committee for four years and has been an important factor in strengthening and harmonizing the party with which he affiliates. His genial and companionable ways have made him a universal favorite among all classes, and his influence is potent and far reaching, always exerted in sustaining the cause of the masses and bettering their condition. Mr. McDermott was married in 1887, in Marysburg, Minnesota, to Miss Caroline T. Doran, with whom he has five children, four sons and one daughter, Sylvester, Paul, John and George and Helen Grace McDermott.

He is a member of the Independent Order of Foresters, and was their international representative from Minnesota in 1901-2 at Toronto, Canada. He is an earnest Catholic. Few men are more closely wedded to their business than is Mr. McDermott, and he enjoys a large and lucrative practice from

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[5] The last five were appealed to the state supreme court:

Hebner v. Great Northern Railway, 78 Minn. 289, 80 N.W.1128 (1899) (Collins, J.) (libel case which McDermott's client, who was dismissed and blacklisted, lost);

McDermott v. Union Credit Co., 76 Minn. 84, 78 N. W. 967, on reconsideration, 79 N.W. 673 (1899) (Mitchell, J.; Collins and Buck J., dissenting) (libel case in which the trial court's overruling a demurrer was reversed) (it is posted in the Appendix at pages 8-14 below);

Larocque vs. Chapel, 63 Minn. 517, 65 N. W. 941 (1896) (Mitchell, J.) (McDermott's client's suit to recover costs of mortgage foreclosure because Sheriff Chapel did not file affidavit on time dismissed) (the sheriff's last name was misspelled in the book);

Singer Manufacturing Company vs. Flynn, 63 Minn. 475, 65 N. W. 923 (1896) (Canty, J.; Collins, J. dissenting) (Singer, represented by McDermott, was bound by contract made by employee for sale of machines; judgment for Flynn, the buyer);

La Motte et al. vs. Mohr, 78 Minn. 127, 80 N. W. 850 (1899) (Mitchell, J.) (statute on partition of land does not require each parcel to be of the same average quality; McDermott's client prevails).

> the masses of the people, with whom he is in close touch and sympathy. We cannot find a more fitting close to this sketch than his own words: "I love the profession and enjoy the work. I have been in active practice since my admission, and I expect to live in the state all my life and follow the law for a calling while I survive." [6]

Active in local and state politics, he was, as implied by his middle name, an ardent Democrat. In 1904, he ran against Edward T. Young for state attorney general. The seat was open because William J. Donahower chose not to run. The Republican party was weakened because it had undergone a bitter battle between former Supreme Court Justice Loren W. Collins and ex-state Auditor Robert C. Dunn for the gubernatorial nomination, with the latter prevailing.[7] The Democrats had turned to John A. Johnson, a newspaper editor from St. Peter. There was a large voter turnout because this was a presidential election year in which the redoubtable Theodore Roosevelt was opposed by Alton B. Parker. In the election on November 8, 1904, Johnson won narrowly, while Roosevelt received almost four times more votes than Parker in Minnesota.[8] Young defeated McDermott handily. The results were:

> Edward T. Young (Republican).....180,346
> Thomas J. McDermott (Democrat).....87,528[9]

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6 Hiram F. Stevens, II *History of the Bench and Bar of Minnesota* 79-80 (1904).

7 This intraparty battle was described by Harlan P. Hall in his political memoir, *Observations* 317-344 (1904). It will be posted on the MLHP at a later date.

8 The votes for governor were:

> Robert C. Dunn (Republican).....140,130
> John A. Johnson (Democrat).....147,992
> Charles W. Dorsett (Prohibitionist).....7,577
> J. E. Nash (Public ownership).....5,810
> A. W. M. Anderson (Socialist-Labor).....2,293

The votes for president were:

> Theodore Roosevelt (Republican).....216,651
> Alton B. Parker (Democrat).....55,187
> Thomas Watson (Peoples).....2,103
> Eugene V. Debs (Public ownership).....11,692
> Silas C. Swallow (Prohibition).....6,253
> Charles H. Corregan (Socialist-Labor).....974

1905 Blue Book, at 506-7, 532.

[9] Id., at 508-9.

Two years later, William Hennessey published *Past and Present of St. Paul, Minnesota*, which contained sketches of many prominent professional men of the city, including another of McDermott. Because the subjects themselves wrote, edited or contributed the information that formed the sketch, they inevitably were flattering; indeed they were a not-so-subtle form of advertising. Thus it was disingenuous for McDermott to claim, "He adheres to the old views of professional ethics which discountenance all manner of advertising and self-adulation." This self-portrait, which included most of the earlier one, also contained new material that was vainglorious even by the standards of these local histories:

> Thomas Jefferson McDermott, whose careful preparation, deep interest in his profession and fidelity to the interests of his clients has made him one of the most able of the younger members of the St. Paul bar, was born in Kasota, LeSeuer county, Minnesota, November 17, 1861, his parents being Paul A. and Rose (McNamee) McDermott. After acquiring a good common-school education he was given the advantage of business training in a commercial school in Minneapolis and supplemented it with a course in the law school of the State University, from which he was graduated, winning both the Bachelor and Master degrees. He was also a student in the office of Eugene M. Wilson and likewise of Judge William Lochren, of Minneapolis, now United States judge, and thus gained practical knowledge of the tasks which are necessities to the capable practice of law. He was admitted to practice before the supreme court of Minnesota in April, 1892, and the supreme court of the United States, March 4, 1895.
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> Entering upon the active work of the profession, Mr. McDermott met with prompt recognition by reason of his vigor and energy. No dreary novitiate awaited him. Almost immediately he gained a large clientage that has constantly brought him legal business of much importance. His devotion to his clients' interests is proverbial and that he has been very successful during the ten years of his practice is seen by a casual glance at the records, which show him to have been the counsel in the following cases, which were of paramount importance: State of Minnesota vs. Charles A. Hawkes; same

vs. John Adler, who was indicted for murder and owes his acquittal to the untiring zeal, shrewdness and unanswerable eloquence of Mr. McDermott; Hebner vs. Great Northern Railway (a blacklisting case); McDermott vs. Union Credit Company (libel case); LaRocque vs. Chapple (sic) (cost for foreclosure of a mortgage); Singer Manufacturing Company vs. Flynn (power of an agent); Lamotte et al. vs. Mohr (power of trustee or referee). He has been for some time the special attorney of the Singer Manufacturing Company, the Western Supply Company, assistant general attorney of the Chicago Great Western Railway Company for three years, and other companies.

Mr. McDermott was married in 1887, in Marysburg, Minnesota, to Miss Caroline T. Doran, and to them have been born five children, four sons and a daughter: Sylvester, Paul, John, George and Helen Grace McDermott. A prominent member of the Independent Order of Foresters, he was international representative from Minnesota at Toronto, Canada, in 1901-2 and at Atlantic City, New Jersey, in 1904-5, while in the recent state convention he was nominated and unanimously elected high counsel for the order in Minnesota, which position he is holding at this writing, in 1906. He belongs to the Catholic church and gives his political allegiance to the democracy.

In 1904 he received the nomination of his party to the office of attorney general of Minnesota and with one or two exceptions ran several thousand votes ahead of every candidate on the ticket — a fact which indicates his personal popularity and the confidence which is uniformly reposed in him by those who know him. He has a wide and favorable acquaintance throughout Minnesota and is recognized as a prominent and influential leader of the democracy. He has been chairman of the state central committee, has served on the executive committee for four years and has been an important factor in harmonizing the party with which he affiliates. His genial and companion-able ways have made him a universal favorite among all classes and his influence, which is potent and far-reaching, is always exerted in sustaining the cause of the

> masses and bettering their condition. He adheres to the old views of professional ethics which discountenance all manner of advertising and self-adulation. He is a public-spirited citizen, always ready to support real reforms of existing abuses of law or its administration and to encourage and support institutions calculated to aid his fellow men. His home, his profession and the questions of the day, covering a wide range of study, absorb him, and in these he finds his greatest enjoyment. Few men have a more intimate knowledge of the history of the country or its public men or have devoted more time to the study of the social and economic questions of the times.
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> He has sought no office outside of the direct path of his profession, to which he is thoroughly devoted. He takes high rank as an able and successful lawyer and is known as the champion of the interests of the people. In the preparation of his cases he is very thorough and pain-staking and displays keen analytical power, logical reasoning and careful deductions. Few men are his equal as a brilliant and effective speaker, which fact has been demonstrated times without number in the presentation of his cause to the jury. His use of argument, of humor and of pathos are equally effective. Many times he has brought tears to the eyes of his auditors by the realistic and touching manner in which he has presented the cause of a client. His oratorical power enables him to "play upon the harpstrings of human emotion." He carries his hearers with him in thought and is justly regarded as one of the most able and eloquent speakers of today at the bar. [10]

He continued to practice law and politics in St. Paul for the next thirty years. His death on November 17, 1939, was reported by the *St. Paul Dispatch*:

T. J. McDermott, Dem Leader, Dies

> Tomas Jefferson McDermott, long a prominent Minnesota Democrat and St. Paul attorney, died Friday night, at his

[10] William B. Hennessy, *Past and Present of St. Paul, Minnesota* 470-71 (1906).

home, 942 Summit avenue, just two days short of his 78th birthday anniversary.

Mr. McDermott was a friend of Minnesota's famed Governor John A. Johnson, ran for attorney general on the Democratic state ticket in 1904 and had previously served as chairman of the Democratic state central committee.

He was born in Kasota, Minn., November 19, 1861, son of Paul A. and Rose McNamee McDermott, pioneer residents of the region. His parents fled the 1862 Indian outbreak with him.

After a country schooling, supplemented by a business college course, he read law and was admitted to the bar in 1892. He attended the University of Minnesota college of law, graduating in 1895.

His active career as an attorney here included, among many activities, three years as assistant general attorney for the Chicago Great Western Railway.

Mr. McDermott was a delegate to several national Democratic conventions and had served more than once as presidential elector.[11]

APPENDIX

In both biographical profiles, McDermott listed his libel suit against the Union Credit Company as being "of paramount importance." To his complaint, the credit company filed a "demurrer." This pleading is no longer used; however, it is similar to a motion today by the defendant to dismiss a complaint because it does not state a viable claim as a matter of law—in other words, even if what the plaintiff says in his complaint is true, he is not entitled to any damages, and his case should be dismissed by the court and not submitted to a jury. A treatise on common law pleading used in the 1890s describes when a party should "demur":

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[11] *St. Paul Dispatch*, Saturday, November 18, 1939, at 3 (funeral details omitted).

> If, as a matter of law, the statement of the cause of action in the declaration is on its face insufficient in substance to support the action, or is defective in form, the defendant should demur.
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> A demurrer will also lie by the plaintiff to the pleadings of the defendant, or by the defendant to pleadings of the plaintiff, subsequent to the declarations, for insufficiency in substance or form.[12]

In McDermott's case, the trial judge, George L. Bunn, denied or, in the parlance of the day, "overruled" Credit Union's demurrer, and it appealed his order. Such an appeal—called an "interlocutory appeal" because it occurs in the midst of a case, before a final judgment is entered—is not permitted today, except in extraordinary situations.

Associate Justice William Mitchell wrote the majority opinions, which are reproduced below. Although he had been defeated in the 1898 election, his term would not end until January 1900.[13] This case was, therefore, one of his last. His explanations of the public policies underlying rules on defamation actions—particularly in his "reconsidered" ruling—are vintage Mitchell. That he changed his mind will not surprise anyone familiar with his judicial reasoning.[14]

Particularly attentive readers will note that Mitchell does not cite any court cases or treatises in his opinions — no authorities at all. He paraphrases a "sarcastic definition of libel" by Jeremy Bentham but does not cite its source. This is an example of the "citationless" opinion the state supreme court issued occasionally in the late nineteenth century. An article explaining this style of opinion writing will be posted on the MLHP in the near future.

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[12] Benjamin J. Shipman, *Hand-Book of Common-Law Pleading* 156 (West Pub. Co., 1895) (2d ed.).

[13] "Results of the Elections of Justices to the Minnesota Supreme Court, 1857-2012" 31-33 (MLHP, 2010-). For an explanation of the "puzzle" why Mitchell's term was extended to 1900, see Id., at 8-10.

[14] See, e.g., Douglas A. Hedin, "When Justice Mitchell Changed His Mind—Twice" (MLHP, 2009).

THOMAS J. McDERMOTT

v.

UNION CREDIT COMPANY

76 Minn. 84, 78 N.W. 967,
on reargument, 79 N. W. 673

April 26, 1899

Action in the district court of Ramsey county to recover $5,000 damages for libel. From an order, Bunn, J., overruling a demurrer to the complaint, defendant appealed. Reversed on reargument.

Larimore & Marvin, for appellant. *S. L. Pierce*, *John H. Ives* and *Thos. J. McDermott*, for respondent.

MITCHELL J.

This is an action for libel. Plaintiff alleges that he is an attorney at law, and as such engaged in the practice of his profession, and the complaint was evidently framed upon the theory that the alleged defamatory publication affected him in his profession or occupation as a lawyer. It appears from the complaint that the defendant was a commercial agency engaged in publishing and circulating among its subscribers, who are retail merchants, a book which purports to be

"a compilation of the actual experiences of business men in St. Paul respecting the worthiness of individuals to credit, based solely on the manner in which they pay their bills."

The book contained about 33,000 names. It contained a key to the letters used to indicate the report or rating of each individual as to the payment of his bills. This key is as follows:

"B, prompt weekly; C, prompt monthly; D, pays on demand; E, slow; F, pays when pushed; G, promises not kept; H, refused payment; I, note protested; K, left for collection; L, judgment taken; N, unrecommended credit; O, disputed bills."

The alleged libel consisted of defendant, in this book, reporting or rating the plaintiff "E," which, according to the key, meant that he was slow in payment of his bills. No extrinsic facts were alleged to enlarge the

meaning of the words. This was attempted by innuendo, but it is a familiar rule of the law of libel and slander that the sense of words cannot be enlarged by mere innuendo. Neither were any facts alleged tending to show special damages. The publication is alleged to have been made falsely and maliciously, but there is no allegation that the words were published of and concerning the plaintiff in his profession as an attorney. And when it is considered that the "key," taken as a whole, impliedly negatives any charge that the plaintiff is either dishonest or insolvent, there is nothing in the publication that would necessarily or directly affect him in relation to his profession as a lawyer. As a publication addressed to retail dealers, it presumably, if not necessarily, referred to his habit in the matter of paying his personal bills. The head and front of the publication is that plaintiff is slow in the payment of his bills, but not to the extent that his promises are not kept, or that it is necessary to place a claim in the hands of a collector, or to put it into judgment, in order to secure payment, or that he ever disputes his bills. An attorney, like any other man, may for various reasons be slow, to the extent of not paying his personal bills promptly, weekly or monthly, or on demand, and yet be not only honest and solvent, but also entirely prompt In the performance of his professional duties, and in accounting for and paying over all property or money of his clients which may come into his hands. It is possible that anything published in disparagement, however slight, of a person as an individual may incidentally affect him somewhat in his business or profession; but it does not necessarily follow that the words are actionable, per se, as published of and concerning him in relation to his profession or business. Any such rule would open the door for a flood of vexatious litigation. To be actionable on that ground alone, the publication must be such as would naturally and directly affect him prejudicially in his profession or business. Hence our opinion is that if the publication in this case is, per se, actionable under the allegations of the complaint, it must be because it is actionable, per se, when published of a person as an individual, without reference to profession or business. It is familiar law that printed or written words may be actionable, which, if merely spoken, would not be actionable. And, generally stated, the law of libel is that any written or printed words are actionable which tend to blacken the memory of one who is dead, or to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt, or ridicule, degrade him in society, lessen him in public esteem, or even lower him in the confidence of the community, even although the words do not impute to him criminality or immorality. It is sometimes difficult to

determine upon which side of the line a publication falls. It is impossible, as well as impolitic, to lay down any more definite rule than the general statement of the law already given, and then make a common-sense application of it to the facts of each case as it arises. On the one hand, it will not do to hold that everything published in disparagement of a person is actionable, or to adopt Bentham's sarcastic definition of libel as "anything of which any one thinks proper to complain." But, on the other hand, everything falsely and maliciously published on another, which necessarily or naturally tends to injure his standing and good name in the community or lower him in the confidence and respect of his neighbors, ought to be held actionable. The case is a border one, and the question not free from doubt, but, applying this test, we think that, in this age and country, a charge that a man is not prompt, but habitually slow, in the payment of his personal bills, — especially those contracted with his grocer, butcher, and other retail dealers, for his personal and family expenses — would naturally and almost inevitably injure his standing in the community, and lower him in the esteem and respect of his neighbors. We therefore hold that the words complained of were actionable per so, although published of the plaintiff as an individual, and not in relation to his business as an attorney.

Order affirmed.

COLLINS, J.

I concur in the result, but do not feel quite prepared to say that printed matter in which a practicing attorney is charged with being slow in the payment of his debts does not tend to injure him in his professional standing, and lower him in that confidence of the community which every attorney must have to succeed. My impression is decidedly to the contrary.

On Reargument.

June 28, 1899.

MITCHELL, J.

Upon the original argument we considered it a very close and doubtful question, as was indicated in the opinion filed, whether the publication complained of was' actionable per se. It was this doubt, increased by subsequent reflection, which induced us to grant a reargument. After examining the additional arguments, and giving the subject all the

consideration of which we are capable, we have come to the conclusion that we ought to recede from our former views, and hold that the publication is not per se actionable at all.

While general definitions of defamatory language may be given, yet, from the very nature of the subject, it is impossible to mark out the exact line of cleavage between what is and what is not actionable language in every case. Moreover, in determining whether language, either written or spoken, is actionable, the courts have two opposite evils or inconveniences to guard against. The first is the danger of encouraging a spirit of vexatious litigation by affording too great a facility for this species of action; the second is the danger of refusing legal redress to those who have been appreciably injured by the wrongful acts of others. Any discommendatory language used of and concerning a person is liable to do him injury, although such injury is often inappreciable in law. But nothing is better settled than that much discommendatory language, whether written or spoken, is not actionable per se, because not calculated to do the person of whom it is published any injury appreciable or cognizable by the law. The courts have, for practical reasons and considerations of public policy, to draw the line somewhere, and this has often to be done by a gradual process of exclusion and inclusion, depending upon the particular facts of each case as it arises.

In order to determine what the word “slow” means in the book published by the defendant, we must consider the whole key, in order to ascertain what the word asserts as well as what it negatives by implication. Thus considered, it by clear implication asserts that the plaintiff does pay all his bills, and that he does this without being “pushed,” and without the necessity of leaving the claim in the hands of some one for collection or taking judgment against him; that he does not dispute his bills, refuse payment, or break his promises to pay; neither does he let his note, when he gives one, go to protest, nor is his credit unrecommended; but, on the other hand, he does not pay promptly weekly or monthly, or always on demand.

Our final conclusion is that, thus construed and limited, there is nothing in the word “slow” that tends per se appreciably to injure a man’s credit or his reputation for integrity and honesty, or affect his standing in the community in the esteem and respect of his neighbors. It is a matter of common knowledge that, on account either of limited means, lack of

ready money, or of mere inattention, the same thing might be truthfully said of a great many people in every community who stand very high in the esteem and respect of their neighbors, and whose credit and reputation for honesty and integrity are unquestioned. Moreover, to hold such language actionable per se would open the door for a flood of merely vexatious litigation.

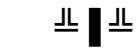
The order contained in the former opinion affirming the order appealed from is vacated, and the order appealed from is hereby reversed.

COLLINS, J. (dissenting).

I remain quite decidedly of the impression that the publication in question tended prejudicially to affect plaintiff professionally, and for that reason was libellous, and actionable per se.

BUCK, J.

I agree with COLLINS, J. ■



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