Good evening, ladies and gentlemen. I would like to welcome you to the first William Crosskey Lecture in Legal History at The University of Chicago Law School. The Crosskey Lectureship has been established to honor the memory of William Winslow Crosskey, the distinguished scholar and teacher of Commercial and Constitutional Law and legal history, who was a member of this faculty from 1935 to 1962. I know that our speaker will comment on Professor Crosskey, but I hope that you will forgive me if I say a word or two about him on this inaugural occasion.

Crosskey came to The University of Chicago after a distinguished career at Yale College and Yale Law School, a long clerkship with Chief Justice William Howard Taft, and a brief practice with the Davis, Polk firm in New York. He was brought to the Law School to create courses in Federal Taxation and Public Utilities, subjects which were newly being introduced to the curriculum during those early days of the New Deal. His great virtue, I take it, was thought to be his considerable practical experience and orientation, but as it turned out Crosskey’s career here was to be that of the pure scholar. Harry Kalven has described the curious way in which his research began. It was “gently” suggested to Crosskey that he ought to publish a Law Review article or two in order to justify his retention on the faculty, and Crosskey decided that the easiest thing to do would be to revise an extensive memorandum on the jurisdictional reach of the Securities Act which he had prepared while practicing with John W. Davis on Wall Street. He therefore descended into the basement of the old Law School library in order to begin his work, but not until twenty years had passed did he finally emerge (in 1953) with his great two volume study, Politics and The Constitution.

Crosskey’s thesis in his dramatically revisionist book was that the framers of the Constitution, when properly understood, had not intended to create a federal system in which the states would play a powerful and somewhat independent role. Rather, he argued, the Constitutional Convention intended a system in which the national government should be supreme, the states barely more than administrative subdivisions, and that Congress should have sweeping powers, subject only to the procedural review of the Supreme Court. The Bill of Rights, he thought, was clearly intended to be applicable to the states under the Privileges and Immunities clause. Crosskey’s thesis was worked out at great length and with infinite care, with a special reference to the precise contemporary meanings of language which the framers had employed.

The book startled its scholarly audience and found several distinguished reviewers, men such as Judge Charles E. Clark, Walton Hamilton, and our own colleague Malcolm Sharp, who praised it as the most important contribution ever made to constitutional history. A smaller number of equally eminent reviewers greeted the book with outrage and con-

These remarks were delivered by Stanley N. Katz, Professor of Legal History at The University of Chicago Law School, at the inaugural William Crosskey Lecture in Legal History on May 4, 1972.
tempt. The heat of the controversy is difficult to imagine at twenty years distance, but it can perhaps be best suggested in the language used by Henry Hart in his lengthy attack in Volume 67 of the *Harvard Law Review*. Hart referred to Crosskey as “the Don Quixote of Chicago,” “the Knight of La Mancha, the Knight of Hyde Park,” and spoke of Crosskey’s two volumes as “a farrago of fancy, rendered plausible only by a confident tongue, nice printing, and an abundance of notes and appendices referring to obscure documents and esoteric word meanings.” I think it is fair to say that professional legal and constitutional historians have come down on the side of Hart’s intellectual position, if not his etiquette, and yet, speaking personally, I must say that I cannot think of any dozen books on the Constitution which have taught me half as much as I’ve learned from Crosskey’s remarkable pair.

Crosskey the man must have been remarkable. Reading the tributes to him collected in Volume 35 of *The University of Chicago Law Review*, one gets a sense of the man. All of the commentators refer to Crosskey’s brilliant success as a teacher, his strength of mind, and his austere independence. He seems to have had a very warm side to his personality and he obviously made a profound impression on those who knew him well.

He was also a considerable character. Harry Kalven says, “I am confident he compiled one of the world’s great records for unbroken nonattendance at faculty meetings, thus realizing the secret dream of faculties everywhere.” Abe Krash remembers the opening lecture of his course on Constitutional History in 1947. On the opening day of the term, he arrived in the classroom a few minutes late, thumped the four volumes of Farrand’s *The Records of The Federal Convention* onto the desk in front of him with a loud bang, and began substantially as follows:

> You have all heard, gentlemen, that James Madison is the father of the Constitution; that Oliver Wendell Holmes, Jr. of Massachusetts was our greatest Supreme Court Justice; and that Louis Dembitz Brandeis was the leading authority on the jurisdiction of the federal courts. Before I finish this summer, I propose to demonstrate to you that Madison was a forger—

He tampered with the notes he kept of the debates at the federal constitutional convention in order to suit his own political advantage and that of his party. Holmes undoubtedly knew a great deal about old English law, but he was not the most eminent authority on American constitutional history. As for Brandeis, his opinion in *Erie v. Tompkins* demonstrates that he did not understand the true meaning of the judiciary provisions in Article II of the Constitution.

Charles Gregory remembers that Crosskey never bothered to prepare his cases for the classes he attended as a student, although he was the first man in his class at Yale. “One day Charlie Clark called on Crosskey to state a case. I’m afraid we sniggered at his equivocal recitation; and he brought down the house by boldly declaring, ‘Professor Clark, if you can control your class, perhaps we could get somewhere with this case.’ Nevertheless Crosskey always insisted that before the final exam in each course he read every case in the book—a claim we had to believe when he turned up with the usual string of A’s.”

And Malcolm Sharp, who continues to be the most distinguished of the Crosskeyites, writes in a more serious vein, “His wisdom is concealed from the wise but revealed to the simple. He has restored the Constitution to the simple structure which every sixth-grader or high school student thinks it has. The powers of Congress, Executive, and particularly Court are seen to be much more modern, much more suitable to the current age, than the patchwork which the court has made of the Constitution since the Jeffersonians began to confuse our understanding.” It was only at a happy lunch I had with Professor Sharp two weeks ago that I began to get a true feel and appreciation for Crosskey the man—and to discover what apparently only Crosskey and Sharp have known all these years, that *Huidekoper’s Lessee v. Douglas* 7 U.S. (3 Cranch) 1 (1805) is the greatest case in the history of the United States Supreme Court.

Crosskey was a remarkable man, one of the most eminent scholars associated with this institution, and certainly the originator of what I hope will be a continuing tradition in legal history here.
Our speaker this evening is Grant Gilmore, who doubtless needs no introduction to most of this audience. There is no more distinguished scholar on this faculty nor anyone held in greater esteem by the student body as a teacher. The bare, biographical facts of his career are these.

He was born in Boston, Massachusetts and received his education entirely at Yale, where he was awarded the Bachelor's degree in 1931, the Ph.D. in 1936, and the LL.B. in 1942. Professor Gilmore’s graduate work was in Romance Languages, and his dissertation a brilliant study of the poetry of Mallarmé. He taught French at Lehigh University for a year, and for three years at Yale. After switching to the law, he practiced briefly with the Millbank, Tweed firm in New York and served for a year in the Office of the General Counsel of the U.S. Naval Reserve. He began his law teaching career at Yale in 1946 and came here as the Harry A. Bigelow Professor of Law in 1965. His two major publications are The Law of Admiralty, published in 1957 in collaboration with Charles L. Black, Jr., and his treatise on Security Interests in Personal Property, which was published in 1965. The Security Interests book won the rarely awarded Harvard Law School Ames Prize in 1966 and the Coif Award of the Association of American Law Schools in 1967. After the death of Mark DeWolfe Howe, Professor Gilmore was selected to complete the multi-volume biography of Oliver Wendell Holmes, Jr., and that is his major scholarly interest at the moment.

His topic this evening is “The Age of Antiquarius: Legal History in a Time of Troubles.” It is a great pleasure for me to introduce Professor Gilmore to you.