

Comments^{*}

Last summer, my predecessor's zest for scholarship and law reform led him to develop an elaborate plan. At least in retrospect, it seems clear what his goal was—a return to teaching, scholarship, and missionary work. He went about accomplishing this goal by first yielding to the entreaties of the administration in Washington to let them put forward his name for a high position in the Justice Department. Then he alerted the National Rifle Association that he had written an interesting little book which they might like to take issue with. The rest was, at least in the world of congressional politics, a foregone conclusion.

Of course, the success of Norval Morris' scheme depended on the convening of a search committee for a new dean. Such a committee was ready to advise the President of the University sometime late in the summer. There is only one other fact you need to know to comprehend the outcome. I was the only faculty member who was out of the country and, indeed, incommunicado during the crucial period.

Norval Morris has been a superb and energetic dean. I follow him with great trepidation. We all know how strongly Norval believes that the Law School is made up of more than the present population of the Laird Bell Quadrangle, be they students or faculty and staff. As dean, he loved working with the graduates and friends of the School. I am confident I may speak for these graduates and friends when I say that we are most appreciative of the tireless manner in which he reminded all of us that the Law School is a community reaching far beyond the Midway.

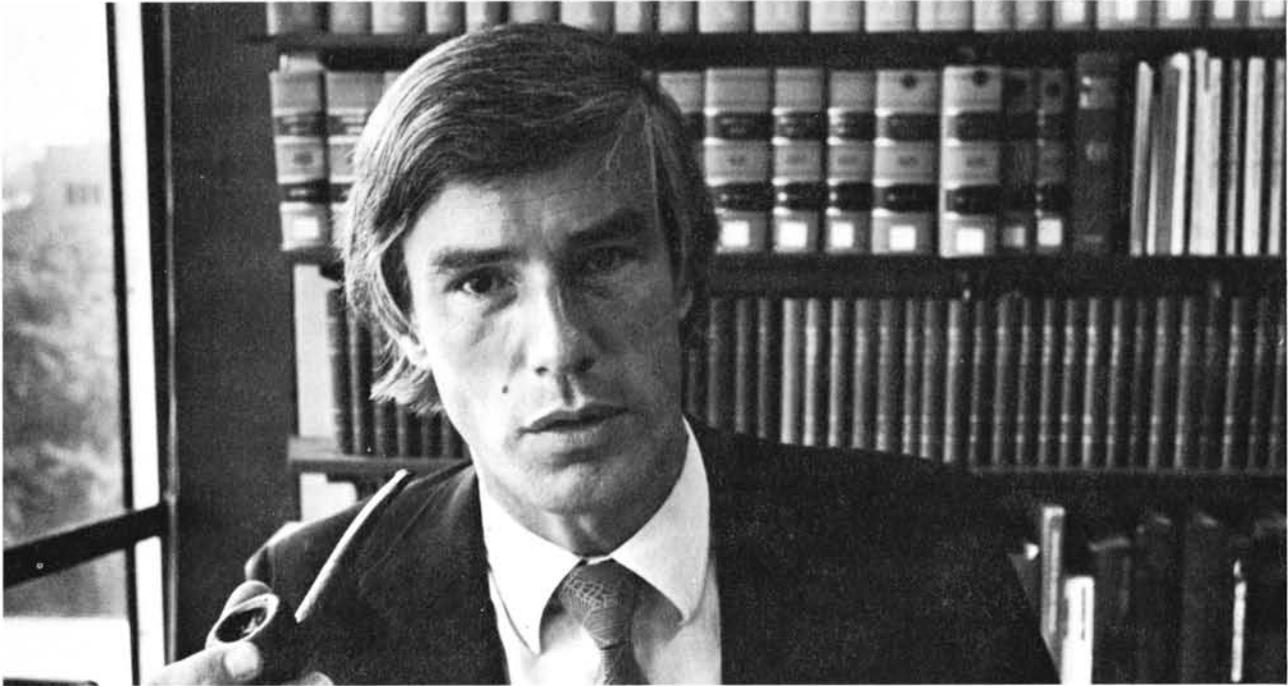
^{*} Remarks of Dean Gerhard Casper at the Annual Dinner of the University of Chicago Law School Alumni Association, April 19, 1979.

That as the new dean of the Law School, I should have mostly sleepless nights goes without saying. It is indeed part of the job description. In this respect, as in many others, the deanship is very much like the chieftaincy of the Tshidi, a South African tribe about which I read an anthropological paper the other night. At a public meeting, a headman described the chieftaincy in the following terms:

A chief is the herdsman of the tribe. If he guides us well, we will be prosperous. Rain will be plentiful. . . . [The chief] asks for our advice and decides what to do. A chief never sleeps. . . . It is our custom that a chief is like a rubbish dump. Anything can be brought to him and he must listen.

These quotations were from the first paragraph of a speech. In the second paragraph, the speaker goes on to severely criticize the chief. There, too, some of you may find analogies. Addressing the incumbent directly, the headman said: "You do not even go to church as you used to. You have had the best education, and yet you have nothing to show. Improvement ceased when your father died."

The task is awesome, not simply because of the problems but also because of the accomplishments of prior deans. Among recently chosen deans of major law schools, I have the particular honor and joyous burden of having the most distinguished line of "fathers" to cope with—to cope with not just in the abstract but, as it were, in the flesh because of the presence of three of them on campus—Edward Levi, Phil Neal, and Norval Morris. When an article in one of those well-informed Chicago newspapers recently referred to Edward Levi as the Dean of the University of Chicago Law School, I dropped Edward a note asking him if he knew something I did not know. He responded with one of those typi-



cal Levi statements which were the delight of the press when he was the Attorney General of the United States—unambiguous, crystal clear, leaving no room for further questions. I quote: “If I did, it would only be fair.”

It is a very great honor to be chosen as the dean of this law school. This statement would be true for any person so chosen. It is particularly true in my case, given my background and my accent which, while a slight improvement on Norval’s, still is a rather peculiar one for an American law school dean to have. In 1966, I came to Chicago from California—and before that, Germany—persuaded by Phil Neal that Chicago, the University of Chicago, and the Law School were great centers of serious professionalism and scholarly activity. “Robust, uninhibited, and wide open,” in short, nonparochial, are proper adjectives to describe the School and its graduates. While I do not want to appear immodest, I think it is proper to invoke the name of Ernst Freund (who also came from Germany after having first been educated in German law schools) to suggest how nonparochial the University and the Law School have been from their very beginnings when President Harper chose Freund to be, in Felix Frankfurter’s words, “the father of the Law School.” Alas, I have never been able to find out whether Freund spoke with a German accent. Even a slight one would give me great comfort.

President Harper, prior to meeting Freund, seri-

ously considered the notion of an institute for legal research rather than a law school. In 1932, reflecting on this issue, Professor Freund restated the position he had taken vis-a-vis Harper. I quote: “To my question: Is jurisprudence something better than law? Is scientific law different from professional law? Should scientific law be merged in the social sciences? I suggest a demurrer rather than an answer. I do think that if we had established a school of jurisprudence we should have been disappointed in our expectations.”

I think it is accurate to say that the same questions which troubled Harper and Freund more than seventy-five years ago are still concerning us. Indeed, we are seeing an effort to push the best law schools beyond the high level of scholarly orientation which they have achieved in recent decades to new frontiers. If a label is needed, I would call it “neolegal realism.” The distinguished dean of a distinguished law school recently referred to this as perhaps the most exciting time for academic law since the end of the second World War. My colleague said approvingly, and I quote: “Academic lawyers today are concerned with the appropriate limits of law and with the interrelationship between procedural matters—in the large sense of that term—and substantive and distributive justice. Relative to his predecessor, today’s young academic is enormously sophisticated in humanistic and social science studies.”

I hate to be a spoilsport but, just as Ernst Freund

did earlier, I should like to suggest a demurrer. There is no doubt in my mind that we should be interdisciplinary, though interdisciplinary work carries with it not only the promise of additional light shed but, in the absence of modesty, the danger of amateurishness in other disciplines. There is also no doubt in my mind that law schools should be concerned with what nowadays is referred to as "policy," and what more old-fashioned people like myself might call "justice" or "values." We should be willing to call a spade a spade, and, in particular, an injustice an injustice. But let us be clear about two constraints. First, individually and collectively, lawyers should be very skeptical about their ability to understand truth and justice better than the next man. Second, when we speak about the law of the land, we should state it as fairly as we can. Law as a science is an elusive matter, but the scientific spirit calls first of all for extreme fidelity to facts and circumstances, especially when we set out to engage in broad and tall generalizations.

In part, my remarks are triggered by my concern about recent speculative writings by law professors, many of whom relentlessly attempt to impose on the law their own policy preferences while losing sight of what the truth of the matter is. I am referring especially to that area of law which I know something about, that is, Constitutional law. There are, God knows, enough ambiguities in the Constitution for us to help it develop in what we view as

the right direction. But let us be fair and clear about where our own preferences come into play. Neither law nor its history can be infinitely manipulated to suit our own views.

You may find it curious, given my German background and my long-standing interest in political science and interdisciplinary work, that I should warn against excessive doses of speculative scholarship. It is precisely because of this background that I am especially sensitive to the pitfalls. Indeed, I have fallen into a great number of pits myself. Also, as dean of this law school, I can speak from a position of strength, as we have pioneered in the integration of legal studies with other intellectual disciplines while maintaining the most rigorous standards of professional training. In this, I have no doubt, we are less unique than we sometimes flatter ourselves to be. But because of it, we share with other law schools of a scholarly orientation the responsibility to protect legal education. We must protect legal education not only against the mindless efforts of certain elements of the bar which want to return us to the status of trade schools but also against the danger that legal education might lose its moorings in the law of the land and the profession for which it educates its students.

Gerhard G. G. G.

