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The Crumbling of the Wills Act: The Australians Point the Way

John H. Langbein*

On November 29th of 1978, a probate court sitting in the Australian city of Adelaide issued a judgment that is likely in time to stand as a great milestone in the progress of probate law in the United States and the rest of the common law world. The Australian court admitted to probate and thereby enforced a will that was conceded to have been executed in partial violation of the formal requirements of the local Wills Act. For the first time in the common law world, a court excused a testator's failure to comply strictly with the Wills Act formalities. A “substantial compliance” or “harmless error” doctrine had finally been recognized and applied.

The present article outlines the background of this development and points to its large implications for American probate practice.

The Wills Act

Every Anglo-American jurisdiction has a so-called Wills Act that prescribes the formalities for making a valid will. These statutes have a common core that traces back to English models—the wills provisions of the Statute of Frauds of 1677 and the Wills Act of 1837. This received English tradition recognizes only one mode of testation, the attested (sometimes called the formal or witnessed) will. Its essentials are writing, signature and attestation. The terms of the will must be in writing, the testator must sign the will, and two (sometimes three) witnesses must attest to the testator's signature. A variety of other formal requirements can be found in the Wills Acts of the various jurisdictions: rules governing the acknowledgment of a signature already in place, rules calling for the testator and the witnesses to sign in each other's presence, requirements about the positioning of signature, and many more. (For a fairly recent compilation of the details, see Rees, “American Wills Statutes,” 46 Virginia Law Review 613, 856 (1960).)

An alternative formal system for holographic wills is permitted to testators in twenty-odd American jurisdictions, mostly those in the Western states where Spanish law has been influential, but including Pennsylvania, Virginia and now (through the medium of the newly enacted Uniform Probate Code) Michigan as well. Holograph statutes allow the testator in effect to substitute handwriting for attestation. He may execute his will without witnesses, but it must be “entirely” (or in some states “materially”) in his handwriting.

Strict Compliance

These formal requirements are not difficult to comply with, and one of the basic responsibilities of conscientious lawyer-draftsmen is to supervise execution ceremonies in order to ensure compliance. In general, the bar discharges this responsibility well, so that execution blunders occur relatively rarely in the lawyer-served end of the estate planning spectrum. Not so for homedrawn wills, however. Laymen ignorant of the existence or true import of the formal requirements of the Wills Act have left behind them a staggering legacy of noncomplying instruments, frustrated estate plans, aggravated probate expenses, and commensurate human misery.

In dealing with these botched wills, Anglo-American courts have produced one of the crudest chapters that survives in the common law. Purely technical violations that could in no way cast doubt

* Professor of Law. A substantially similar version of this article appears in the August, 1979, issue of the American Bar Association Journal. Reprinted with permission.
upon the authenticity or finality of wills are held to invalidate the offending instrument.

A typical illustration, currently reproduced in one of the leading American law school casebooks, is the decision of Sir Jocelyn Simon in the English case of Re Groffman, (1969) 1 W.L.R. 733 (Ct. Ap. 1968). Each of the two witnesses, who were attending a social gathering at the testator’s home, affixed his signature while the other was in the next room. The will was held invalid for violation of the requirement that the witnesses sign in the presence of each other, although the judge forthrightly declared: “I am perfectly satisfied that the document was intended by the deceased to be executed as his will and that its contents represent his testamentary intentions.”

Because this rule of strict compliance with the Wills Act formalities produces results so harsh, sympathetic courts have been inclined to squirm. The law reports bulge with a vast, hopelessly contradictory case law on questions such as whether a gesture or a grunt constituted a testator’s acknowledgment of signature. (See Annotation, 7 A.L.R. 3d 317 (1966).) Courts have thus enabled themselves to find literal compliance in cases that in fact instance defective compliance. In the leading case of Re Hornby, (1946) P. 171, interpreting the requirement of the English statute that the testator’s signature be “at the end” of the will, the court concluded that a signature in the middle of the instrument was actually at the end because the testator “thought it would be more convenient to have his signature” in the middle.

It is very hard to predict when the equities of particular cases will inspire particular courts to indulge in these evasions. Hence, the strict compliance rule—although meant to promote certainty in testamentation—breeds litigation on account of the unpredictability about when and how the courts will apply it. The rule has achieved what is in many respects the worst of both worlds. It produces results of unexampled harshness when it is enforced, and it frequently leads the courts to dishonesty and caprice when it is not.

Reform Efforts Commence

Not surprisingly, this state of affairs has provoked discontent. Recent law school casebooks in the field have prodded students to ask whether the purposes of the Wills Act really compel the results inflicted under the rule of literal compliance. The Uniform Probate Code of 1969 has made a contribution towards reducing the dimensions of the problem (in those states that have enacted the Code) by reducing the number and complexity of Wills Act formalities, so that laymen have less to get wrong. Signature and attestation are still required, but the rules about placement of signature and presence of witnesses have been abolished.

Finally, the rule of literal compliance came under direct attack. Within a period of a few months in 1974–1975, literature appeared in England, Australia and the United States calling for the development of a purposive standard for evaluating defectively executed wills.

The first article was provoked by Re Beadle, (1974) All E.R. 493, another of the endless series of irreconcilable cases applying the requirement that the signature be “at the end.” The testatrix had signed her will at the top and again on the envelope into which she sealed it. The court “regretfully” declared the will invalid. The judge candidly observed that there was no possibility of anything having been altered after the envelope had been sealed and put away, and that there was “no doubt at all that the paper contains what she wanted. . . .”

Commenting on Re Beadle in a leading practitioners’ journal, G.M. Bates of Birmingham University juxtaposed the case with Re Hornby and wondered why, if a signature placed halfway down a will could satisfy the statutory requirement, a signature at the top could not. That sort of critique was hardly novel, sound though it was. But Bates went further, arguing that the strict compliance rule itself was misguided. He suggested that “if one or more of the [Wills Act] formalities is not observed, then the court should nevertheless give effect to the true intentions of the testator as expressed in the document, in the absence of suspicious circumstances” (Bates, “A Case for Intention,” 124 New Law Journal 380, 382 (1974)).

Five months after Bates’ article appeared, the official Law Reform Committee of the state of South Australia took up the theme (without knowledge of the Bates’ article) as an incidental topic in a report to the Attorney General dealing mainly with the projected overhaul of the state’s intestacy laws. The Committee remarked that the number of intestate estates could be reduced if the courts were empowered to validate wills despite mechanical execution defects. “It would seem to us that in all cases where there is a technical failure to comply with the Wills Act, there should be a power given to the Court or a Judge to declare that the will in question is a good and valid testamentary document if he is satisfied that the document does in fact represent the last will and testament of the testator . . .” (Twenty-eighth
The Substantial Compliance Doctrine

These English and Australian developments occurred while an article of mine setting forth a doctrinal basis for more discerning enforcement of the Wills Act was in press. My position was summed up in the title: there should be a rule of “Substantial Compliance with the Wills Act” (88 Harvard Law Review 489 (1975)) that would permit the proponents of a defectively executed will to prove that the particular defect was harmless to the purposes of the Wills Act. Drawing on a rich literature devoted to identifying the functions of the Wills Act formalities, I made the following points:

(1) The Wills Act is meant to assure the implementation of the decedent's testamentary intention at a time, when by definition, he can no longer be on hand to express himself. The requirement of written terms forces the testator to leave permanent evidence of the substance of his wishes. Signature and attestation provide evidence of the genuineness of the instrument, and they caution the testator about the seriousness and finality of his act. The attestation ceremony also has a protective function: disinterested observers are supposed to prevent crooks from deceiving or coercing the testator into making a disposition that does not represent his true intentions. Taken together, these evidentiary, cautionary and protective functions serve another end, the channeling function: when the formalities are complied with, they routinize testation, eliminate contest, reduce probate costs and court time, and facilitate good estate planning.

(2) When, however, there has been a mechanical blunder, it does not follow that the purposes of the Wills Act have been diserved. Thus, for example, if the statute calls for signature “at the end” in order to prevent subsequent interpolation, it does not follow that in every case of misplaced signature such an event has occurred.

(3) Accordingly, we could obtain all of the benefits of the Wills Act formal system and yet avoid so much of the hardship if the presumption of invalidity applied to defectively executed wills were reduced from a conclusive to a rebuttable one. The proponents of a defectively executed will should be allowed to prove what they are now entitled to presume in cases of due execution—that the will in question expresses the decedent's true testamentary intent. They should be allowed to prove that the defect is harmless to the purpose of the formality.

In the example just given of misplaced signature, the proponents would bear the burden of proving (on an ordinary preponderance-of-proof standard) that subsequent interpolation had not occurred.

(4) Although the substantial compliance rule is a litigation doctrine, it should not be feared as a potential litigation-breeder. Precisely because it is a litigation rule, it would have no place in professional estate planning. Nor would the substantial compliance doctrine attract the reliance of amateurs. Every incentive for due execution would remain, for no testator sets out to throw his estate into litigation.

Other factors would operate to diminish the incidence and the difficulty of the litigation that would arise under the substantial compliance rule. By no means would every defectively executed instrument result in a contest. On many issues, the proponents' burden of proof would be so onerous that they would forego the trouble and expense of hopeless litigation; and on certain other issues, the proponents' burden would be so easy to discharge that potential contestants would not bother to litigate. Evidentiary and cautionary formalities like signature and writing are all but indispensable, whereas omitted protective formalities like the simultaneous presence of attesting witnesses are easily shown to have been needless in the particular case.

Indeed, it seems plausible that the substantial compliance doctrine might actually decrease the levels of probate litigation. In numerous situations such as the “at-the-end” cases we have discussed above, the literal compliance rule has produced a large and contradictory case law. The courts now purport to ask in these cases: did the particular conduct constitute literal compliance with the formality? The substantial compliance doctrine would replace that awkward, formalistic question with a more manageable question: did the conduct serve the purpose of the formality? By substituting a purposive analysis for a formal one, the substantial compliance doctrine would make the standard more predictable, and contestants would lose their present incentive to prove up harmless defects.

(5) An equivalent substantial compliance doctrine has been working smoothly for decades in the functionally identical sphere of the major will substitute, life insurance, in those situations where there are technical violations of the testament like formalities for change-of-beneficiary designations. (See Annotation, 19 A.L.R. 2d 5 (1951).)

Breakthrough in South Australia

In November, 1975, the state of South Australia
enacted a substantial compliance doctrine patterned on the recommendation of the state Law Reform Committee discussed above. Section 9 of the Wills Act Amendment Act (No. 2), which came into effect in January, 1976, amends the South Australian Wills Act to provide:

A document purporting to embody the testamentary intentions of a deceased person shall, notwithstanding that it has not been executed with the formalities required by this Act, be deemed to be a will of the deceased person if the Supreme Court (which is the first instance court), upon application for admission of the document to probate as the last will of the deceased, is satisfied that there can be no reasonable doubt that the deceased intended the document to constitute his will.

By enacting this extremely liberal provision, the South Australian parliament determined to put to the test of actual experience all the hoary justifications for the rule of strict compliance. Experience rather than conjecture would now decide whether the strict compliance rule had been an essential bulwark against legions of schemers ready to coerce and defraud enfeebled testators; experience would now disclose whether decedents' estates would be engulfed in floodtides of litigation.

The Graham Case

Now that the proverbial floodgates have been left open for three years, only a single case has thus far arisen under the new law, Re Graham, decided on November 29, 1978, and not yet published in the reports (Action No. T.C.J. 38/78, Judgment No. 4090 of the Supreme Court of South Australia, per Jacobs, J.). Accordingly, the first important lesson of the South Australian experiment appears to be—as proponents of the substantial compliance doctrine predicted—that the probate process functions quite well without the strict compliance rule. Conceivably, future caseloads might mount as potential schemers and contestants explore their new license, but the experience to date certainly is to the contrary.

The opinion in the Graham case gives further cause for confidence that the courts will not find it difficult to strike the right balance between flexible treatment of formal defects on the one hand and the need for strong evidence of testamentary intent on the other. The facts of the case may be easily stated. An elderly testatrix handed her will to her nephew with her signature already in place and asked him "to get it witnessed." He took it to two neighboring housewives, who signed as "witnesses," although neither had actually seen the testatrix sign as the Wills Act requires. The nephew then returned the will to the testatrix. (In the subsequent probate proceedings upon the defectively executed instrument, the testatrix' signature was independently verified.)

The judge concluded that "upon these facts, I have not the slightest doubt that the deceased intended the document which is before me to constitute her will." Although not wishing to lay down broad dictum about the new statutory substantial compliance doctrine, the court emphasized the statute's "requirement that the Court should be satisfied that there can be no reasonable doubt that the deceased intended the document to constitute his will" (emphasis original). The court then remarked "that in most cases, the greater the departure from the requirements of formal validity dictated by" the Wills Act, "the harder will it be for the Court to reach the desired state of satisfaction." This reading of the statutory language is very close to the burden-shifting rule that was envisaged in the scholarly literature preceding the South Australian statute, where it has been urged that the proponents of the will should bear the burden of proving that the particular execution defect is harmless to the purposes of the Wills Act.

Is Statute Needed?

The South Australian experience is likely to put to rest any remaining doubts about the wisdom of the substantial compliance approach. The large issue that is still unresolved in current discussions is whether, in states whose legislatures have not taken up the question, the courts should be free to adopt the substantial compliance solution without statute.

It is conceded on all sides that a legislature could forbid substantial compliance and insist on a literal compliance rule if it wished. I have taken the position that the existing literal compliance rule is a judicial creation and that the courts can abandon it when experience and reflection reveal that its harsh results are not essential to the good order of the probate system (88 Harvard Law Review at 530-31). The substantial compliance doctrine would do little more than bring the Wills Act into parity with the Statute of Frauds, where the judicially-developed part performance and main purpose rules apply a functional standard to the formalities for contract and conveyance.

Particularly in those American jurisdictions where the legislatures have authorized holographic wills, it seems appropriate to ask courts to take a fresh look at the substantial compliance question. The legislatures in these states have authorized in the holograph
a type of testation that completely dispenses with the protective policy that is the dominant concern of so many of the formalities for attested wills. When, therefore, a testator attempts to make an attested will but blunders, he will still have achieved a level of formality that compares favorably with that permitted for a holographic will in the same state.

In an age when the expansive requirements of public law tend ever more to crowd private law matters from the legislative agenda, it is unrealistic to pretend that the legislatures should correct the courts' mistake in the interpretation of the Wills Act. Substantial compliance is the proper work of the courts, and it is also the new responsibility and opportunity of the probate bar to raise the issue on behalf of the intended beneficiaries of blemished wills.
Speech to Graduating Class of
The University of Chicago Law School
Paul Bator*

I had hoped to be able to start with the salutation, "Dean Casper, ex-Dean Levi, ex-Dean Neal, ex-Dean Morris," but not all of them are here. I had hoped to do so to underline what seems to me to be one of the distinct charms of this wonderful school: the fact that there is such a covey of retired, if not deposed, monarchs around who continue to participate happily and uncensoriously in the life of the place. It is a little like the days when the British had numerous Queen Mothers around all at the same time; it adds great class.

As a visiting country cousin, I am especially grateful for being allowed to participate in this family celebration, and by way of singing for my supper, to be allowed to say a few words. I stress, by the way, the privilege of being allowed to eat as well as to perform. I contrast my situation with that of the great violinist, Kreisler, who was engaged by a New York dowager to play for a reception she was giving in her mansion. She asked Kreisler what his fee would be. "One thousand dollars," he said. "That is satisfactory," she said. Then she added, "You do understand, Mr. Kreisler, that when the time comes for supper, you are to eat with the servants downstairs." "Oh," said Kreisler, "in that event, my fee is only $500."

What I want to do, boldly, is to tell you about yourselves. Gibbons said that Corsica is easier to deplore than to describe. I am here not to deplore, and though it is hard, I want to describe how the University of Chicago Law School appears to a friendly visitor.

Last October, on the first day of classes, I was walking across the Green Lounge and encountered the former Dean, Norval Morris. (By the way, that was the day during which, also in the Green Lounge, struggling to get out of one of its accursed doors, Mr. Fried came up to me, put his arm paternally around me, led me out, and then looked at me and asked, "Are you here to interview?") Norval asked how things were going, and I told him that I was about to teach my first class at the University of Chicago Law School. I added, "I am very nervous; you know I am really in awe of teaching here." Norval looked a bit surprised. I think he was more surprised at my having avowed such a thought than at the fact of the matter. But I have, since then, reflected about why I was, why I still am, in awe of this institution. After all, I have taught for almost 20 years at the Harvard Law School, itself a great and splendid place. Indeed, I understand that it is widely felt that Harvard Law School people have such an exalted view of themselves that they would not be put in awe by Paradise itself.

Perhaps I can explain my feeling by a musical parallel. Teaching at the Harvard Law School seems to me to be a little like being allowed to sing Wagner at the Metropolitan Opera House in New York; but teaching law at Chicago is like singing Wagner at Bayreuth.

Now I do not by that remark mean to put you in mind of Shaw's gibe, that the Bayreuth artists excel in the art of making five minutes seem like twenty. My image is meant to convey that what really distinguishes Chicago from all the other great law schools is not so much the matters conventionally referred to—for instance, the close connection of the law school with the rest of the university; that is splendid and significant, but no longer unique—but

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* Visiting Professor during the 1978-1979 academic year, Mr. Bator has returned to teaching at Harvard Law School. This speech was given at the annual Third Year Dinner, May 21, 1979.
rather, a more intangible matter. What I refer to is the special sense felt and conveyed here that the enterprise is a noble and elevated one, that the university study of law should be carried out with purity and integrity, that this study involves a vocation which needs no apology or explanation, and that it has within it the intellectual depth and aesthetic elegance which befits it to be an ornament within the university.

I appreciate that I risk making some of the students here a trifle impatient. In your present state of mind, near the end of a seemingly endless educational process, most of you will not be much moved by talk about the nobility of the enterprise; you will be more in the mood of Mark Twain, who you remember said, “Education is not as sudden as a massacre; but it is more deadly in the long run.” Nevertheless, I venture a prediction: in the long run, what you will remember with most pride about your time here is that you belonged to a great and proud institution which seemed actually to know what it is doing, one devoted to an ideal vision of what the university study of law should be like and with the courage to adhere to that vision with fidelity.

I turn to another matter. I had expected to find, and did find, a school that evokes awe. I did not foresee the extent to which we would find a school within whose faculty and within whose student body life is enriched and sweetened by bonds of community, warmth, and welcoming friendship.

You will have remarked that I said, “within the faculty and within the student body.” Between these two groups a certain reserve subsists, here as elsewhere, though Chicago is certainly a far cry from those not too distant days at Harvard when one of my colleagues remarked that student-faculty relations had become a literal enactment of Oscar Wilde’s famous description of the English fox hunt: The Unspeakable in full cry after the Unatable.

Let me say this to the faculty: the most precious gift you have here is that underneath the many and sharp differences of opinion, robustly expressed (I did not know what robust disagreement meant until I saw Richard Epstein descend on the Posner-Landes workshop in law and economics week after week like an avenging fury, ready to expose ideological sin) there exists a commitment to collegiality and a sensitivity to what that requires and entails that is unique among the law schools with which I am familiar.

Similarly, a word to the students: a most striking and remarkable thing about Chicago is the sense of solidarity and fellowship one feels among the students. This sense is, I think, immeasurably aided by two lucky factors, your size and your architecture, especially the availability of the Green Lounge as a center for conviviality and interaction.

Let me just add (and I know I speak for all the visitors) that we are immeasurably grateful and deeply touched by the generosity of feeling with which we have been received by both the faculty and students of the school.

I want to conclude by remembering that this is a graduation dinner, and that it is therefore appropriate to dish up some advice. I have some advice I can label conventional. Remember not to be like Prime Minister Gladstone, about whom it was said that his conscience is his accomplice rather than his guide (but remember, too, that Gladstone was a very great man). Do not either be like that other 19th century prime minister, Lord Derby, about whom it was said that his lordship is like a feather pillow: he assumes the shape of the last ass which sat on him (but remember, too, that Lord Derby was a most generous politician). Do not emulate Tallulah Bankhead, about whom Dorothy Parker said, “A day away from Tallulah is like a month in the country” (but remember that Tallulah was the
most entrancing of women). As lawyers, you will
do a lot of writing; be careful not to write a book
that “fills a well-deserved gap in the literature,” or
about which it will be said that it is “well done but
not worth doing.” Follow Belloc, who wrote:
“When I am dead, I hope it may be said, his sins
were scarlet but his books were read.” Remember
to be virtuous, but be careful about being saintly,
lest you end up like King Henry VI, who is des-
scribed in 1066 And All That as follows:

Henry VI: A Very Small King

The next king, Henry VI, was only one year
old and was thus a rather weak king. Indeed the
Barons declared he was quite numb and vague.
When he grew up, however, he was considered
a saint, or alternatively, an imbecile.

I now turn to my less conventional, perhaps even
subversive advice, which is drawn from a theological
theme. As I thought yesterday about what to say
to young lawyers about to enter the profession,
there came into my head—and maybe this just proves
that my year here has made me go completely crazy
—a recollection of the old theological quarrel about
the question whether salvation is won by good works
or by the gift of grace. Now, tonight, when I speak
about salvation, I mean salvation in this world, not
the next, and I feel free to give all these terms—
salvation, grace, works—my own definition.

I start with the proposition that, as between works
and grace, most lawyers are drawn to the life of
works. The fulfillment, satisfaction, and happiness
we count as salvation comes, we think, from the life
of energetic and beneficent action. Lawyers by na-
ture seek a world of movement and effort. We want
to do things, and salvation lies in doing good things;
we want to have an impact, and virtue lies in im-
proving the world. That is why we are exhilarated
by the use of power and enjoy its material and
psychic rewards.

This is, I stress, as it should be. It is natural and
right that you should try to do high deeds. You are
called to improve the world; you will find satisfac-
tion in work and works.

The advice I have is only this: leave a little chink
in your lives for grace. By grace I mean a number
of things, but primarily the cultivation of the inner
private virtues. I mean the willingness and ability
occasionally to be still and inactive, to allow scope
for the unheroic and the personal. Amidst the good
works, take the time and energy to be a loving
spouse, a devoted friend, an enchanted and enchant-
ing parent. Don’t be totally prosaic; don’t exclude
from your life completely the nonlegal, the anti-
legal, the subversive spirit of poetry. Don’t forget
Shelley’s words, that poets are the unacknowledged
legislators of the world. Listen with a small part of
you to one of my favorite poems, an early poem by
Ezra Pound. It is called An Inmorality, and as an
ex-Hungarian, I have always related to it with special
warmth:

Sing we for love and idleness,
Naught else is worth the having.
Though I have been in many a land,
There is naught else in living.

And I would rather have my sweet,
Though rose leaves die of grieving,

Than do high deeds in Hungary
To pass all men’s believing.

Good luck and good cheer to the University of
Chicago Law School family.
The Chicago Lake Front and A. Montgomery Ward

Allison Dunham*

In the years since the first publication of this article, many changes in people’s attitudes toward conservation of land have occurred. The fight to preserve open spaces and historic landmarks is now an acceptable one.

However, I have made it impossible to determine scientifically whether publication of this article alone has had influence on law development because I have been active in legal organizations which have also been active. Thus, it would be hard to claim a causal relationship between publication of this article and the decision of the Commissioners on Uniform State Laws to draft uniform legislation concerning agreements by landowners about historic preservation and conservation agreements.

I have had such long association with the National Conference in so many different capacities that not even I can assert with confidence a causal relationship between conservation and legislative action. Unfortunately, I cannot assert the absence of a causal relationship as any meaning either. I wrote the article to demonstrate how a single property owner could use a private agreement concerning private property for the public good without an elaborate supervisory superstructure to administer it.

A glance at the index to legal periodicals under the heading “Environmental Law” and “Natural Resources Law” appalls me when I compare the number of articles with the meager list under “Real Property; Covenant.” The law of agreements respecting private property does not seem to provoke as much zeal as regulatory law.

I may be forced back on the response of an astrophysicist studying the Milky Way to a question about why he studied it. To paraphrase: “I studied Grant Park because it was there. I studied private agreements involving Montgomery Ward not because of the man, but because of the existence of private agreement.” Fortunately, the law respecting the use of land remains substantially unchanged as to the power of private landowners to control the future use of land.

Few visitors to the commercial center of Chicago, known as the “Loop,” realize that the present beauty and openness of the lake front park between the Loop and Lake Michigan is due to a right of private property in this park which A. Montgomery Ward, founder of the mail-order house, had from about 1887 until his death in 1913. The continuation of proposals for use of this park, called Grant Park, for buildings would indicate that the future openness of the area may depend on the present owners’ exercise of this same right of private property, which Montgomery Ward established in a bitter legal feud. For it was only by asserting in court, four times between 1890 and 1911, this private right peculiar to certain property owners that A. Montgomery Ward, “watchdog of the lake front” as he was called, stopped the city from filling the park with public buildings.

Chicago’s lake front, since the founding of the city in 1830’s, has been a vivid example of Alexis de Tocqueville’s acute observation that our American democracy and constitution seem to turn political issues into legal controversies. Since the first case in the United States Supreme Court involving the lake front in 1839, only two years after Chicago became a city, there has been in the courts in each decade at least one case involving some part of the lake shore. So bitter has been this one hundred and

* Arnold I. Shure Professor Emeritus of Urban Law. This article was previously published in Preservation of Open Space Areas (Welfare Council of Metropolitan Chicago) 1966, as an appendix. Reprinted with permission.
thirty-five years of feuding concerning use of the Chicago lake front that most of the more prominent lawyers in Chicago, and many of the prominent lawyers in the United States, have at one time or other held briefs in the lake front litigation. Francis Scott Key, author of “The Star-Spangled Banner,” Daniel Webster, Chief Justice Melville Fuller of the United States Supreme Court, Senator Lyman Trumbull of Illinois, Stephen Gregory, a past president of the American Bar Association, and an attorney for Eugene Debs, are only a few of the prominent lawyers who have participated in this controversy. So much were these controversies based on historical facts that the Chicago Tribune wryly complained in 1910 that the files of the Chicago Historical Society concerning the lake front were so much in use by the numerous lawyers litigating the lake front that they were unavailable for professional historians.

The lake front of Chicago was not a pretty sight in 1890 when Montgomery Ward began his legal campaign. An article in Harper’s Weekly in 1892 described it as an area in which you could see “the flagstaffs of an armory and the quarters of a battery of militia, and in the ruins, coming south, are the ruins and debris of a once powerful building of iron and glass in which a national convention and exhibitions galore had been held, to wit the Exposition Building.” The tracks of the Illinois Central Railroad at this time formed the eastern or lakeside boundary of the “park.” Other contemporaneous observers saw squalid collections of livery stables, squatters’ shacks, and mountains of cans, ashes, and garbage, which the city dumped there to await transfer to railroad cars. The author of the Harper’s Weekly article associated these with railroad and concluded that it was impossible to decide whether “the railroad or the sleepers in the park make up the most disagreeable aspect of the lake front.” On the western side of Michigan Avenue, where Ward’s building was located, commercialism was rapidly closing in on the residential character of the street. As the Harper’s Weekly article described it, only at the southern or Roosevelt Road end of the park, was Michigan Avenue the “fashionable boulevard of the wealthy south side.”

The only newspaper attention paid to Montgomery Ward’s first law suit against the City of Chicago, filed on October 16, 1890, was a short note in the report of legal proceedings: “Montgomery Ward and Company yesterday began legal proceedings to clear the lake front from Randolph to Madison Streets of the unsightly wooden shanties, structures, garbage, paving blocks and other refuse piled thereon.” He was more specific in his legal complaint, for he objected to the garbage scaffolding erected by the city to dump garbage into Illinois Central railroad cars to be hauled away;
he sought removal of the right-of-way of eight railroad companies and of a warehouse of the American Express Company.

Why did A. Montgomery Ward and George Thorne, partners trading as Montgomery Ward and Company, enter the legal lists in 1890? There had been earlier law suits concerning the same area which had been moderately successful. Someone had stopped the Chicago Baseball Club, which included Billy Sunday, the famous evangelist, among its players, from playing professional ball there. The exposition hall was demolished according to Harper's Weekly because of a law suit ordering its removal. All of this had occurred almost ten years before Ward became a litigant. The answer may lie in the “lake front” litigation involving the Illinois Central Railroad. In the late 1860’s, the state legislature had attempted to give the whole of the lake front area, including a mile of submerged land in the lake, to the Illinois Central Railroad for construction of a great industrial park. The city government and the civic leaders united in opposition to this “lake front steal” as it was called, and a great legal battle ensued. In 1888, the city won the first round against the Illinois Central Railroad in a decision by Mr. Justice Harlan of the United States Supreme Court who was sitting in circuit court. Although this decision was on appeal to the Supreme Court and was not finally decided in the city’s favor until 1892, after Ward began his legal battle, the victory in 1888 stimulated newspaper, municipal, and civic interest in the question to what use the city should put its lake front when it finally won. Already the city government had built a firehouse and temporary armories; it had granted permission to the Trade and Labor Assembly to build a meeting hall in Grant Park; it had authorized the Logan family to construct a monument and burial site for General Logan of the Civil War; it had authorized construction of a temporary building to house the Democratic national convention of 1892; and it had granted permission to the World’s Columbian Exposition to construct and maintain a building for a temporary exhibit of fine arts for the World’s Fair of 1893 and to house the permanent collection of the Chicago Art Institute. In the press, every conceivable public use of the area was proposed except that of an open park. Hetty Green, the eccentric New York financier and heavy investor in Chicago real estate, wrote a letter to the Chicago Tribune urging that the park area be turned into a great port for merchant ships. Editorialy, the Tribune spoke for armories, museums, and libraries. Other newspapers spoke for a union station, a city hall, a police station, post office, and other public buildings.

Perhaps it was against this background of civic buildings proposals to fill this narrow area about 400 feet wide and a mile long with buildings that Montgomery Ward decided to champion something else. He commenced his law suit which the newspapers described as a suit against unsightliness. Since most citizens were against unsightliness while championing their own pet civic projects, no attention was paid to Montgomery Ward’s suit. He was acting as a good citizen just as the proposers of armories, libraries, and museums were.

If the newspapers had bothered to read Ward’s legal pleadings, perhaps they would have been more upset about the implications of his law suit. Montgomery Ward was not proceeding as a disgruntled citizen against his government trying to stop the defendant city from loading garbage in front of his house. Montgomery Ward claimed that because he was the owner of two and one-half lots fronting on Michigan Avenue between Washington Street and Madison Street, he owned in the public area east of Michigan Avenue a right of private property, a right that this area be kept open and unobstructed in order to provide light, air, and view to the property owners on the west side of Michigan Avenue. True, he was proceeding only against an unsightly scaffolding and a railroad warehouse, but if his theory was correct, Montgomery Ward could stop armories, museums, city halls, libraries, and, indeed any civic building supported by the newspapers and other civic leaders.

Ward’s legal theory about his private right was based on the land title of this part of Chicago. When Chicago was founded, Fort Dearborn, at the mouth of the Chicago River, included in its military reservation that part of Chicago east of State Street, north of Madison Street, with the river on the north and the lake on the east. Thus it included part of what is now Grant Park and it also included the land west of Michigan Avenue on which was located in 1890 the Montgomery Ward store. The land south of the military reservation was selected by the Commissioners of the Michigan and Illinois Canal in 1836 as part of the land allocated to Illinois by the United States to help finance construction of a canal between Lake Michigan and the Mississippi River. The Commissioners subdivided the selected land east of State Street, between Madison and 12th Streets, made a map of it, and began to sell lots in 1836. This 1836 map, as far as appearances are concerned, could double for the map of almost any subdivision today,
of a new residential development near any city of the United States built upon what was once public domain. The particular feature of this map that is crucial to the story of Montgomery Ward is the fact that the map appears to leave unsubdivided or vacant the land east of a street shown on the map without an eastern boundary and which was named on the map “Michigan Avenue.” Nothing on the 1836 map indicates why this area was left vacant.

Actually there was not much permanent land east of Michigan Avenue, for the shoreline changed with every storm. In the 1880’s, a resident of Chicago testified that he remembered the area in 1836 as about 400 feet wide at the south end, while at Madison Street, the waters of Lake Michigan lapped Michigan Avenue. On abandonment of Fort Dearborn, the Secretary of War, disposing of surplus military property, subdivided in 1839 the area north of Madison Street for sale as lots, and he made his subdivision conform to that of the Canal Commissioners. This map, recorded in 1839, showed similar vacant land east of Michigan Avenue between Madison and Randolph Streets and additional vacant land west of Michigan Avenue where the Chicago Public Library Cultural Center is now situated. This map shows why the land east of Michigan Avenue was left vacant, for it carries a notation in the part now occupied by the cultural center “public ground, forever to remain vacant of building.” Sketches in the sales-promotional literature of the Canal Commissioners indicated that this also was the objective east of Michigan Avenue. On these quoted words hangs Montgomery Ward’s legal theory.

The lots in both subdivisions fronting Michigan Avenue were quickly sold and became the site of the luxurious housing of the major citizens of Chicago. But it was expensive to own land fronting Michigan Avenue, and it was expensive for the struggling city to save this land on the lake front. By 1850, the landowners and the city were practically bankrupt from building seawalls to prevent the storms on Lake Michigan from washing away the avenue and the residential district. There was talk of abandoning the area because of expense but a miracle came to the city in 1850 in the form of the Illinois Central Railroad. When the state legislature incorporated the railroad and gave it much public land to finance its development, it provided that the railroad could not enter any city without the consent of that city. The City of Chicago exacted a price for its consent. It consented to the railroad building its main line between 12th Street and a proposed station north of Randolph Street at a distance 400 feet east of Michigan Avenue, on condition that the railroad erect and maintain, 700 feet east of Michigan Avenue, on the east line of its right-of-way, “a continuous stone wall not to exceed the height of Michigan Avenue” of sufficient strength “to protect the entire front of the city . . . from further damage or injury from the section of the waters of Lake Michigan.” The railroad was first built on a trestle out in Lake Michigan, at some points 300 feet from the shoreline, and east of its tracks it built a seawall to protect Chicago. This water area between Michigan Avenue and the railroad was an unexpected asset after the great fire of 1871 because it was a place to dump the fire debris in the rebuilding of Chicago. By 1890, all of the submerged land west of the tracks had been filled; the shore of Lake Michigan was now the seawall of the Illinois Central Railroad on the eastern side of its tracks.

Montgomery Ward acquired land on the west of Michigan Avenue just north of Madison Street about 1887, and the company built one of the new type “skyscrapers” then coming to Chicago. This building with its unique steam elevators and marble lobby was the warehouse and office space of the Montgomery Ward company. Ward’s customers who came to Chicago found that they could not buy there, for it was not a retail store, but they could sit in a comfortable “Customers’ Parlor,” read the catalogue, and rest after weary hours of sight-seeing. Ward claimed in his suit that the original purchasers of these lots from the Secretary of War had relied on the map that showed the area fronting their properties as forever to be public ground and vacant; therefore, these original purchasers acquired an easement of light, air, and unobstructed view to which Ward succeeded as a purchaser of these lots.

If the newspapers did not see the implications of this position of Ward, the corporation counsel of the city did, and he vigorously opposed Ward’s legal theory. In his answer, he asserted that there were no private rights in the land east of Michigan Avenue, that the city was the absolute owner of this area, and the city council could use it for whatever public purposes it wished. He asserted that the open space shown on the maps merely dedicated land for public use, and that no private rights were given. He further claimed that, if there were any private rights in the area, they were only in the original land and not in the filled area, and, therefore, since most of the activity complained of was on land which was not in existence in 1836, no objection could be made by the property owners.
It was not until 1897 that the Supreme Court of Illinois decided this case [Chicago v. Ward 169 Ill. 392 48N.E. 927 (1897)] in favor of Montgomery Ward on his theory that the subdivision plats filed in the 1830's gave the owners on the west side of Michigan Avenue rights of private property in the park west of the railroad tracks. In the meantime, in 1892, the United States Supreme Court had decided in favor of the city against the claims of the Illinois Central Railroad so that Chicago civic groups were busy with plans for use of the lake front. The Chicago Tribune in an editorial on Montgomery Ward's victory noted that the effect of the decision was to stop the proposed police station, city hall, board of education building, municipal power plant, and other municipal structures. It was undaunted as to its own pet projects however, for it stated, "It is not likely that the property owners would object to either an armory or a museum."

Montgomery Ward himself was undecided about the Field Museum of Natural History then being considered for the park area, for he stated to the press that, "I do not think I would be inclined to resist its erection." Besides, he had consented to two civic structures being erected on the open space—the Chicago Public Library on the space west of Michigan Avenue and the Art Institute under construction at the time he commenced his law suit in 1890. Even without Ward's opposition both of these structures had had legal troubles. At the same time that the city, with the consent of the property owners, had authorized construction of the public library in the open space, the state had confused matters by authorizing the Grand Army of the Republic to build a home on the same site. Apparently, friends of the library, which had the property owners' consents (the Grand Army did not), despaired of further litigation and compromised with the state supported organization. The result was that the Chicago Public Library Cultural Center is a unique building: it has two cornerstones on Michigan Avenue, one at the south end stating that this cornerstone of the Chicago Public Library was laid in 1893 and one at the north end stating that the cornerstone of the Grand Army of the Republic Memorial Hall was also laid in 1893.

Although Montgomery Ward had consented to the Art Institute because he thought the people wanted it, he stated later in life that he had made a mistake when he had consented to its construction. Perhaps the subsequent history indicated why he thought his consent was mistaken. Even though he consented, the Art Institute became involved in litigation when a Mrs. Sarah Daggett, claiming as a property owner on Michigan Avenue, attempted to enjoin its construction. It was discovered that she
was from New York City, and it was asserted in the Chicago Journal that she represented "a New York clique aimed at crippling one department of" the World's Fair. The matter was settled by Mrs. Daggert's husband signing her name to the consents for construction. Whether this was done with or without her knowledge does not appear. Thus, the Art Institute and "all necessary improvements" was excepted from the injunction issued in Ward's 1890 law suit. But, the original consents were only for a building with a frontage of no more than 400 feet from north to south on Michigan Avenue. Even before Montgomery Ward's death in 1913, several enlargements of the Art Institute had occurred. When a property owner finally litigated the matter in 1929, it was held that the consents included all necessary enlargements of the Art Institute, but that the enlargements must not have more than a 400-foot frontage on Michigan Avenue. Visitors to Chicago may have noted that "front" on Michigan Avenue does not mean "seen" from Michigan Avenue but apparently means a building "facing" on Michigan Avenue. Additions on the side streets extend the building much more than 400 feet from north to south on Michigan Avenue. But only 400 feet "fronts" or faces on Michigan Avenue. At least without Montgomery Ward to dispute them, this is what these consents have come to mean.

All that Montgomery Ward's victory in the Supreme Court of Illinois in 1897 decided was that he had a private right in the land west of the Illinois Central tracks. In 1895, before his first law suit was decided, the city had extended the boundary of the park east of the tracks to the harbor line established by the United States Corps of Engineers, and the city had granted authority to fill some 1200 feet of submerged land to this harbor line. In establishing this new area as a park, the city had excluded a piece of new land north of Monroe Street for the construction of armories for units of the Illinois National Guard. Since the consent of the state was also needed for this fill of submerged land, the General Assembly confirmed the extension of the park. It also then authorized construction of the armories and changed the name of the whole area from Lake Park to Grant Park, as it is known today.

The armories were the pet projects of the Chicago Tribune. From time to time, articles appeared in its Sunday supplement pointing out that Chicago was the only world seaport without defense installations as part of its harbor facilities. Labor disturbances such as the Pullman strike and the Haymarket riot were also advanced by civic leaders from time to time as establishing the need for armories. Whether they did or did not establish the need for armories, Montgomery Ward apparently thought they did not establish the need in Grant Park, and he went into legal action for the second time. This time his defendants were the board of commissioners of the lake front armories, and he sought to enjoin construction. Ward's theory was the same as in the earlier case. The government defense changed however. It asserted that the United States Supreme Court had held that the state owned the submerged lands in trust for the people of the state and that the authorization of the armory on the newly created land was carrying out the trust.

In 1902, the Supreme Court of the state again backed Montgomery Ward [Bliss v. Ward 198 Ill. 104 64 N.E. 705 (1902)]. It held that when the state consented to the extension of the park east of the tracks, it did not purport to act inconsistently with a park but rather to extend the original park to the east. Therefore, the reclaimed lands east of the Illinois Central track were subject to the same private rights as the lands to the west of the tracks. In this manner the armories were stopped.

If the civic leaders of Chicago had not been greedy, Ward might have stopped with this, his second victory. He had already indicated that he was not adverse to the location of the Field Museum in the park, and he might have formally consented. During the third litigation, Ward offered to consent to the museum if the park commissioners would agree to build nothing else. But the proponents of use of the park for buildings tried to gain complete victory. In 1903, the state legislature authorized all park districts in the state to erect and maintain "museums and libraries" within any park as part of the "park facilities." Since the park districts already had authority to construct "park facilities," this was an unnecessary grant of power if these were park facilities. If the park commissioners could construct any building they wished simply by calling it a "park facility," Ward had lost his war even though he had won two battles. In preparation for the expected law suit, the South Park Commissioners, who had control of Grant Park, had sent experts to Europe to prepare documents showing that in Europe great parks included cultural buildings. Reference was made in the press to Pittsburgh where a man named Laird had lost a legal fight against the occupancy of Schenley Park by the Carnegie Library because a library was held to be a park facility. The park commissioners did not stop with a museum. They proposed to construct the John Crerar Tech-
logical Library in the park north of the Art Institute; they proposed to erect a 25-foot boulder as a monument to Dr. Guthrie, inventor of chloroform. According to Montgomery Ward, the park commissioners had, when Ward commenced his third suit [Ward v. Field Museum 241 Ill. 496 89 N.E. 731 (1909)] twenty projects for occupancy of Grant Park, involving buildings which would qualify as "park buildings."

At this point, the issue of the Field Museum of Natural History became crucial. Marshall Field died in 1906 and, in his will, left $8,000,000 to the Field Museum to erect a suitable building to house its natural history collection on a site to be furnished to the museum by the city without cost. Apparently recognizing that he had an antagonist in A. Montgomery Ward, Field conditioned his $8,000,000 gift on the city's providing a site for the museum within six years of Field's death. Now, if Ward fought the museum, he might cost the city $8,000,000. This did not bother Ward, and he brought his third law suit against the trustees of the museum and the park commissioners to prevent them from constructing the museum east of the Illinois Central tracks and immediately south of the Art Institute.

Newspaper tolerance of Ward's eccentricity (they really thought he was only against unsightliness) changed to bitter opposition after the Field gift. Ward was called "stubborn," "a persistent enemy of real park buildings," and "undemocratic" because he would not let the people decide where to locate the museum. The pressure put upon Ward and his company must have been tremendous. The Tribune, for example, reported that "an unidentified man interested in the museum" had suggested that Ward's customers all over the midwest be asked to write the company urging Ward to withdraw his law suit so that "on their visit to Chicago they will be enabled to visit the museum."

Less "inner-directed" men in the Ward Company than A. Montgomery Ward wilted under this pressure. Several newspapers reported that "the company" or the Thomes, his partners, were in favor of consenting to the museum and that the Thomes hoped to persuade Ward to consent. Others, men with whom Ward had associated in other civic affairs, made trips to Georgia, Wisconsin, California, wherever Ward was, to try to get him to relent. As each of them returned without Ward's consent, they gave interviews to the press expressing bitterness at Ward's recalcitrance. Some of them could not understand him at all. The president of the trustees of the Field Museum was quoted as saying "Ward expressed the belief that it was better to have this great tract of land as a place for people to go and lie around on the grass than to make it the pivotal point of Chicago's scheme of beautifying the city. Yes, he did actually!"

In this third law suit, the government's defense took the tack suggested by the 1903 legislation authorizing museums as park facilities. It interpreted the earlier cases as giving Ward and the other lot owners a right that there be a park on Michigan Avenue and, the government lawyers argued, a museum and a library were park facilities. The Illinois Supreme Court was unimpressed. It said whether a museum was a park facility or not was beside the point because it had never held that Ward's right was a right to a park. His right was a right to open space and to an unobstructed view of Lake Michigan. Location of the Field Museum in Grant Park was stopped.

This third victory for Ward in 1909, only three years before the deadline on the $8,000,000 gift, created a civic crisis for friends of the museum, so much so that Ward felt obliged for the first time to grant an interview to the press to justify his actions. He stated that he was not opposed to the museum and would help raise money to buy a site for the museum; besides, he thought it should be located near the University of Chicago. Also, for the first time, he publicly expressed his plan for the lake front. The Chicago Daily News quoted him as saying that he had done Chicago's future generation a service, "I fought for the poor people of Chicago, not for the millionaires. Here is a park frontage on the lake... which city officials would crowd with buildings, transforming the breathing spot for the poor into a show ground of the educated rich."

In the next and final round of the Ward legal war with the civic leaders, the museum officials and the park commissioners decided to take the offensive and save the Field Museum for the lake front area. Under the statute authorizing park districts to build museums and libraries, the district was given power to condemn private property for these purposes. The park commissioners accordingly brought a condemnation suit against Montgomery Ward, representing the property owners in the Fort Dearborn addition to Chicago, and against Levi Mayer, a prominent Chicago lawyer, representing the property owners in the Canal Commissioners addition [South Park Commissioners v. Montgomery Ward & Company 248 Ill. 299 93 N.E. 910 (1910)]. It sought to condemn the private rights which these property own-
ers asserted in Grant Park. Montgomery Ward won again in 1911, but for the first time the Supreme Court was not unanimous in supporting him. A majority of four said that if an owner dedicates his land to a particular public use, here an open space, government cannot change that use even by use of the condemnation power. The minority of three asserted that condemnation is a sovereign power, whereby government recognizes the right of private property and seeks to acquire those rights upon payment of compensation. Of the four Montgomery Ward law suits this is the only one which he won on what is today (if not then) a dubious point of law.

As any person who has seen Chicago knows, the Field Museum was ultimately located on the lake front but not in the area subject to Montgomery Ward’s private rights. It is located on reclaimed land south of Roosevelt Road where the land is not subject to the plats filed in 1836 and 1839.

Thus, in 1911, after 20 years litigation and expenditure of an estimated $50,000, Montgomery Ward had successfully prevented all of the civic projects for buildings in Grant Park. He had done this in spite of the almost unanimous opposition of the newspapers and civic leaders of Chicago. With no public opinion surveys in those decades, we can only guess what the citizenry thought. However, shortly before Montgomery Ward died in 1913, vindication came. Frederic A. Delano, then president of the Wabash Railroad and, later, on appointment from his nephew, Franklin D. Roosevelt, chairman of the National Capital Planning Commission, speaking before the Chicago City Plan Commission said: “Many of us once felt that the fight of Mr. Ward was selfish. We now recognize that it was wise. Had he not made it, a stream of fire engine houses, police stations, post offices, and other buildings would now cut off all view of the lake from Michigan Avenue. Mr. Ward winked his eye once, in the case of the Art Institute, and it would have been better had he not done so.”

After Ward’s death, others endeavored to succeed to Ward’s mantle as “watchdog” of the lake front, but they have generally failed in court. An objecting taxpayer or citizen has little standing to thwart the will of the majority as expressed in the legislative halls. But Ward had demonstrated that a single owner of private property could protect old and new land which was part of the park. However, an owner of land on Michigan Avenue learned in the 1920’s from the Illinois Supreme Court that if a private yacht club (the Chicago Yacht Club) could obtain permission from the Secretary of War and the State of Illinois to fill an island area not part of the park, it could build on this “island” even though the park commissioners permitted the island to be connected with the park by a driveway. The way would now appear open to defeat the expansiveness of the Grant Park area, if the citizens are so inclined, by building on reclaimed land adjacent to the park but not made a legal part of it.

Why did Mr. Ward fight his friends and associates? He made no attempt to explain himself publicly until after his third law suit, almost 20 years after he started litigation. To some, this explanation could be an after-the-fact rationalization after he had been so severely criticized for his position on the Field Museum. To others, this could mean only that the press finally forced him to break his policy of silence and privacy. During the bitter feud, newspapers frequently speculated as to his motives. When asked if he knew why Ward opposed the Field Museum, its president would say to reporters: “I do not know. Mr. Ward was once a clerk in the Field store.”

We can conclude that A. Montgomery Ward must have felt strongly about the lake front. All other known facets of his life point to a man who hated publicity. While he gave lavishly for charitable purposes, he never allowed his name to be used in connection with a public charity; he endowed hospital beds under assumed names, and many of his larger benefactions were not known until after his death. He seldom granted newspaper interviews, and he refused permission to be written up in numerous sketches of Chicago’s leaders or wealthy men. Though he so hated publicity, his feelings about the lake front were strong enough to make him begin a law suit and pay the inevitable price of public glare, and, in his case, even bitterness. Once he started his litigation in 1890, there was not a year until his death in 1913 when he was not in the public press as “watchdog” of the lake front.

Those who really want to know Mr. Ward’s motives will have to await psychoanalysis of his letters and papers. Perhaps the really important point of this story is that we do not need to know why he acted as he did, whether from stubbornness, selfishness, irrationality, or vindictiveness, as his enemies suggested, or altruism and a dream of the future needs of Chicago’s workers, as he himself suggested. The result of Ward’s private decision about use of private property rights was public good—the great open space in the heart of commercial Chicago.
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.

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 headman 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-

* Remarks of Dean Gerhard Casper at the Annual Dinner of the University of Chicago Law School Alumni Association, April 19, 1979.
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, seriously 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.
Wilber G. Katz
Harry Kalven, Jr.*

Wilber G. Katz, Dean of the Law School from 1939 to 1950, and a faculty member for over thirty years, died on May 17, 1979, in Milwaukee. Harry Kalven, Jr., one of Mr. Katz’ students at the Law School, upon Mr. Katz’ retirement from the teaching of law, wrote a moving tribute originally published in the Wisconsin Law Review. In honor of Mr. Katz, we reprint this tribute, which is unsurpassed in freshness, charm, and loving admiration.—The Editor

Wilber Katz was a member of the faculty for over 30 years and was Dean of the University of Chicago Law School from 1939 to 1950. It was a crucial time of transition for the school as it moved from a period of orthodoxy typified by such legendary names as Mechem, Hall, Freund, Bigelow, and Bogert into a position of leadership among contemporary schools. Wilber had with him a remarkable group of men—Edward Levi, Malcolm Sharp, Charlie Gregory, Sheldon Tefft, Max Rheinstein, William Crosskey, Fritz Kessler, Henry Simons, and, a bit later, Aaron Director and Roscoe Steffen—remarkable, I think, even when one makes discounts for nostalgia. It was, under the stimulus of Robert Maynard Hutchins, a period of fresh and radical rethinking of the purpose and style of legal education with experiments in a four-year curriculum and comprehensive year-long sequences; introduction of training in accounting, economics, and psychology; and implementation of a serious individual tutorial program in legal writing and research for the freshman year and industry studies for the senior year. It was a time of steady, excited reflection and experimentation by the faculty. Of course, such experimentation was destined to be not altogether successful, but it served to give the school its intellectual trademark—a professional home of liberal education in the law. The history and evaluation of that moment of ferment in legal education has yet to be written, and it is difficult indeed to bestow individual credits given the affection and admiration one has for that whole group who generated an environment of excitement, serious purpose, warmth, and grace; but I think that Wilber Katz was clearly the principal architect.

In a unique and wonderful manner, Wilber Katz combined firmness with extraordinary gentleness, high purpose with grace and wit, professionalism with an amateur’s spontaneity and curiosity, and anxiety with poise. As a teacher and a friend, he was always serious enough and concerned enough to pay one the compliment of criticism, a gentle but firm corrector of one’s flaws.

I am bemused by sudden memories of odd fragments of conversation and gentle, modest anecdotes such as his delighted disclosure at one early point in our friendship that little children often had trouble with his name and ended up with “Wibbler.” It was a disclosure that was to mark me for life; even now when I go to use his name I have to think twice. Years ago, he was appointed by the United States Supreme Court to argue a postconviction appeal under the then notoriously complex, frustrating, and impenetrable Illinois procedures. Wilber was so offended by the stance of the lawyer representing the state, who had expended great ingenuity and skill in defending the wretched scheme (an example, I suppose, of a lawyer devoting his selfless best to his client’s cause), that he declined to meet with him for a friendly breakfast on the morning before the argument. Then there is an episode which rises to mind

* Mr. Kalven, JD 1938, was The Harry A. Bigelow Professor of Law at The University of Chicago and taught at the Law School until his death in 1974. This tribute is adapted from the Winter, 1973, issue of the Wisconsin Law Review, which was dedicated to Wilber Katz. Adapted with permission.
every time I face the ordeal of marking blue books, an ordeal especially painful for Wilber: to moderate the sense of burden that a large pile of unmarked exams always gave him, he hit upon the stratagem of dividing them into small piles and hiding them around the house so that at any moment he could look around and he could deceive himself into thinking he was almost through. The stratagem was a great success psychologically until the day came when he could not remember where he had hidden the last pile! There was his long and determined effort to get interested in baseball. He had been baffled and then intrigued by the fact that two of his apparently rational students and friends, Walter Blum and I, invested such serious attention in the matter. But after going to several games, reading the sports pages dutifully, and listening to us talk some more, he concluded that baseball was a peculiar cultural taste that one had to begin to develop when one was much younger than he. There was the Law Review dinner my last year at school. Wilber had almost single-handedly brought a Law Review into existence at Chicago a few years before and had been unstinting in his help on its behalf. He was preparing a set of remarks from the vantage point of the father of the Review, playing over in his mind various changes on that theme, when I, borrowing a maxim from my mother, chanced to introduce him as “the Review’s best friend and severest critic, our Mother Katz.” There were the marvelous marionette shows that the Katzes, thanks to Ruth’s artistic gifts, used to put on at their home with Wilber busily pulling the strings and somehow supplying the voices for a dozen different characters. Perhaps lost to culture forever now is one especially memorable show, a take-off of a University of Chicago Roundtable, which had a script written by Edward Levi, then a student, and which featured a puppet named Mortimer J. Adler. Ruth had, at one point, made a puppet of Wilber, and he was fond of telling that whenever he slipped into pomposity or vanity, he would be given a gentle reminder the next day and find his puppet sitting in his big arm chair.

Above all, Wilber Katz was a teacher. It was the clear consensus of the student body when I was at school that he was the “hot” teacher, the real focus of classroom excitement; the taste for him was shared equally by the students who approached law study with philosophic yearnings as by those who had already developed a firm taste for the more worldly aspects of careers in law. The passage of time and the accumulation of experience at law teaching have supplied distance now to those youthful judgments. The verdict still stands; he was simply the best teacher I ever experienced. He exuded the quick intellectual brightness and taste for logic that law schools have always prized; he carried rigor and authority in the classroom; but his teaching, even of a large law class, was like a conversation with a friend—it had an endearing quality because he almost never, in his excitement over what he was discussing, completed a sentence! He was effortlessly polite and gentle and shunned any use of the power to bully which had been so much a part of the older case method teaching tradition. He taught always like a man seized with an idea. And he made law proper exciting. I recall now with a touch of awe that his teaching of the statutory scheme regulating preferences under the Bankruptcy Act alchemized it into a splendid subject matter for intellectual analysis. And finally, he was interstitially, but only interstitially, philosophical. The stuff of his classes, to borrow Llewellyn’s phrase, was law stuff, but it was interwoven with hints of larger themes.

There was a second characteristic of his teaching that impresses me now as I look back. He had a firm sense of the architecture of a course and of the teaching responsibility for it. The plot of his courses always emerged with clarity from the sequence of individual class sessions. He steadily counteracted the myopia that the case method can engender. You may not have been able each day to know exactly where
the class was on his secret map, but you inevitably emerged from his courses with a firm sense of where you had been.

He was very good whatever the field; he was splendid when he taught from a congenially subtle pattern as with his bankruptcy course and Roscoe Steffen's great casebook. But he was at his utter best in his own course in corporations, for which he had developed his own set of teaching materials and into which he had built, really as a pioneer, a substantial dose of accounting. I have classmates who went on to distinguished careers at the corporate bar who swear to this day that Wilber's materials were and remained their bible for years after they left law school, so well had he met the teacher's responsibility for detecting the structure of a field of law. One can only regret that in his modesty and nonexhibitionism, he never sought to publish his corporation materials, although they stick in my mind—and it is now 35 years—as the very model of a casebook.
Max Rheinstein's Collected Works Published

Adolph Sprudzs*

Edited by Professor Dr. Hans G. Leser (MCL '59 from the University of Chicago) of the University of Marburg, the two volumes of Max Rheinstein's Gesammelte Schriften - Collected Works were published in June 1979 by J.C.B. Mohr in Tuebingen.

Comprising more than one thousand pages, the Collected Works bring together 52 of the most important essays of the late Professor Rheinstein, previously scattered in numerous publications and not easily accessible. The selection and systematization of the included publications were accomplished over a period of years with the active participation and support of the author himself, who gave his approval to the final version of the project in Munich just a few days before his death.

Arranged by the editor according to Rheinstein's main fields of research interests, the included publications appear under the chapter headings of "Jurisprudence and Sociology," "Comparative Law and Common Law (USA)," "Conflict of Laws," and "Family Law." Two literary essays and a bibliography of Max Rheinstein's writings, consisting of 413 individual titles, conclude the work. Most of the included items are contributions to Festschriften or collections of essays, articles in periodicals, and article-length book reviews; the great majority (43) of these are in English, the rest in German. A brief "Editor's Introduction" devotes a few pages to Max Rheinstein's career and accomplishments, explains the arrangement of material included, and concludes with the editor's personal thanks to those who helped in making the appearance of these volumes possible.

The publication of Max Rheinstein's Collected

* Foreign Law Librarian and Lecturer of Legal Bibliography.
Memoranda

Gifts of Art to the Law School
The Law School has received two major additions to its art collection.

Mr. and Mrs. Joseph R. Shapiro, who have made numerous gifts to the University, have given the Law School over 50 prints of major twentieth century art. The prints, handsomely matted and framed, are now hanging in the lower level corridor as well as in the Library staircases and add a warm and colorful note to those areas.

Mr. and Mrs. Dino D'Angelo (he is a 1944 graduate of the Law School) have given a major work of art by the British sculptor Kenneth Armitage. It is a bronze statue entitled Diarchy and is now permanently installed on the lawn at the west end of the pool. This important work is the first of two copies which were cast. The second is in the collection of the Tate Gallery in London.

Volunteering at the Law School
Irving T. Zemans (JD '29) has made a splendid gift to the Law School. After practicing law in Chicago for fifty years, Toby has volunteered his services to the school as Building Coordinator. Three days a week, he devotes all of his time ensuring that the building custodians, engineers, and groundskeepers have the place working for use by staff, students, and faculty. It is a thankless job that Toby fills with humor, courtesy, and grace.

Prizes Awarded to Students
The following awards were made to students during the 1978-79 academic year:

To Michael Shortley, III, and Paul S. Fisher, the Karl Llewellyn Memorial Cup for excellence in brief writing and oral argument in the Moot Court Competition at the Law School.

To Rex Browning and Steven A. Marenberg, the Hinton Moot Court Competition Awards as winners of the 1978-79 Moot Court Competition.

To Emile Karafiol, the George Gleason Bogert Trust Prize made to the student with the best academic performance in the course in which Trusts is taught.
Gifts
served
S. Jerome
Labor
James
T.
September
28,
active
and
Weiss,
a
of life
Development
member
a
partner
coif
the
Coif)
S.
Ruth
To
Robert
E.
Shapiro
and
John
B.
Berrenger,
the
Isaiah
S.
Dorfman
Prize
for
outstanding
work
in
Labor
Law.

To
Ruth
B.
Kleinman,
the
Ann
Barber
Outstanding
Service
Award
for
her
contributions
to
the
quality
of
life
at
the
Law
School.

The
Deaths
of
Two
Noted
Alumni

Jerome
S.
Weiss
(Ph.B.
1928,
J.D.
1930,
Order
of
the
Coif)
died
suddenly
on
September
11,
1979.
Mr.
Weiss,
a
senior
partner
at
Sonnenchein,
Carlin,
Nath
and
Rosenthal,
was
chairing
the
50th
reunion
effort
of
his
Law
School
class
at
the
time
of
his
death.
Throughout
his
life,
Jerome
S.
Weiss
was
a
loyal
and
active
supporter
of
the
Law
School.
Mr.
Weiss
served
as
Chairman
of
the
1959
Fund
Drive,
President
of
the
Alumni
Association
from
1961–64,
and
on
the
Visiting
Committee
from
He
was
a
Director
of
the
Alumni
Association
since
1950
and
a
member
of
the
Development
Council
since
1970.

Russell
Baker
(Ph.B.
1923,
J.D.
1925),
founder
and
senior
partner
of
Baker
and
McKenzie,
died
September
28,
1979.
Mr.
Baker
was
a
member
of
the
Special
Gifts
Committee
for
the
1963
campaign,
a
member
of
the
Citizens' Board,
and
a
founding
member
of
the
Law
School
Recruitment
Program.

The
loss
of
these
fine
lawyers
and
exceptional
people
has
saddened
the
Law
School.

Law
School
Obtains
Grant
from
Thyssen
Foundation

The
Thyssen
Foundation
of
Cologne,
Germany,
has
awarded
the
Law
School
a
$115,000
grant.
The
grant
enables
the
Law
School
to
invite
senior
scholars
as
well
as
students
for
purposes
of
research,
teaching,
and
study.
It
is
also
designated
for
Law
School
research
in
the
Federal
Republic.
Judge
Hans
Rupp,
who
recently
retired
from
the
Federal
Constitutional
Court
in
Karlsruhe,
was
the
first
Thyssen
Foundation
Visiting
Professor
during
the
Spring
Quarter,
1979.
The
grant
also
supported
Professor
Richard
Epstein,
of
the
Law
Faculty,
for
research
at
the
Max
Planck
Institute
for
Foreign
and
Comparative
Law
in
Hamburg
this
past
summer.
Mr.
Wolfgang
Witz,
of
the
University
of
Freiburg
in
Breisgau,
who
is
currently
enrolled
as
a
graduate
student
at
the
Law
School,
has
received
a
tuition
scholarship
from
the
grant.

New
Appointments
to
Faculty
and
Staff

Ms.
Lea
Brilmayer
has
been
appointed
Assistant
Professor.
Prior
to
her
appointment,
Ms.
Brilmayer
was
an
Assistant
Professor
of
Law
at
the
University
of
Texas.
She
received
her
J.D.
and
her
undergraduate
degree
from
University
of
California,
Berkeley.
Ms.
Brilmayer
subsequently
obtained
an
L.L.M.
from
Columbia
University.
Her
areas
of
interest
include
law
and
statistics,
jurisprudence,
and
conflicts
of
laws.

James
T.
Gibson,
Jr.,
was
appointed
Associate
Dean
for
Administration
and
Development.
A
1952
graduate
of
the
Law
School,
Mr.
Gibson
also
received
his
undergraduate
degree
(Ph.B.
1948)
from
the
University
of
Chicago.
For
nineteen
years
prior
to
his
retirement
in
early
1978
as
vice-president,
Mr.
Gibson
was
employed
by
International
Minerals
Chemical
Corporation.
Before
joining
IMC,
Mr.
Gibson
practiced
law
with
the
firm
of
Gould
&
Ratner
in
Chicago.

Ms.
Holly
Davis
was
appointed
Assistant
Dean
for
Alumni
Relations
and
Development.
After
receiving
her
BA
from
Michigan
State
University,
Ms.
Davis
attended
the
University
of
Chicago
Law
School
from
which
she
graduated
in
1976.
Ms.
Davis' most
recent
position
was
with
the
Continental
Illinois
National
Bank
and
Trust
Company.
Ms. Edna Epstein has been appointed Lecturer in Law. Ms. Epstein, a 1973 Cum Laude graduate of the Law School, is in private practice with the Chicago firm of Sidley and Austin. Ms. Epstein will teach a seminar in trial practice Winter and Spring Quarters.

Visiting Faculty

Dennis W. Carlton, a member of the faculty of the Economics Department at the University of Chicago, is a visiting faculty member and Law and Economics Fellow for Fall and Winter terms. He is teaching Economic Analysis Fall term. Mr. Carlton’s areas of special interest are industrial organization, especially market behavior under uncertainty, and incentives and consequences of the use of long-term contracts.

Peter Martin, a Professor at Cornell Law School, will serve as a Visiting Professor. He will teach the first year property course as well as welfare law and a seminar on social security law.

Mr. Brian Simpson will return to the Law School for Spring Quarter to teach a course in legal history. Mr. Simpson, a noted legal historian, is the occupant of a Chair at the University of Kent at Canterbury.

Stephen Williams, a Law and Economic Fellow as well as a Visiting Professor for the 1979-80 school year, is a Professor of Law at the University of Colorado. His interests are property, environmental law, and oil and gas law.

Two Clinical Fellows Appointed

Stefan H. Krieger and Amy Hilsman have been appointed Fellows at the Mandel Legal Aid Clinic.

Stefan H. Krieger is a 1975 graduate (with honors, Order of the Coif) of the University of Illinois College of Law. While attending law school, Mr. Krieger served as Managing Editor of the University of Illinois Law Forum. After graduation, Mr. Krieger clerked for Judge Hubert L. Will, Federal District Judge, Northern District of Illinois. After his clerkship, Mr. Krieger was employed by the Legal Assistance Foundation of Chicago.

Amy Hilsman is a 1977 graduate of the University of Chicago Law School. She obtained her undergraduate degree as well (B.A. 1973) from the University. After graduation from law school, Ms. Hilsman clerked for Bernard M. Decker, United States District Court, Northern District of Illinois. Her areas of specialization include welfare and social security law.

Bigelow Teaching Fellows

There are six Harry A. Bigelow Teaching Fellows at the Law School this year. The Fellows’ primary responsibility is to design and implement the legal research and writing program for first-year students. Professor Geoffrey Stone will coordinate the program this year.

The Fellows are:

Claudia G. Allen, a graduate of the State University of New York at Buffalo, having received her B.A., M.A., and J.D. degrees from that institution, the latter awarded in May of 1979. In law school, she served on the editorial board of the Buffalo Law Review and as a teaching assistant in the Legal Research and Writing Program. Between 1970 and 1976, Ms. Allen was employed as an art instructor in the Depew Public Schools. Since 1977, she has been a law clerk in the Buffalo firm of Magavern, Magavern, Lowe, Beliveau and Dopkins.

A 1970 graduate of Bradley University, C. Peter Erlinder studied at the Georgetown University Law Center until 1972 when he left to manage a business. He resumed his law study at Chicago-Kent College of Law in 1977, receiving his J.D. degree this year. While at Chicago-Kent, he placed first in the Moot Court Competition, served on the Law Review, and worked as a teaching assistant in the Legal Writing Program.

Debra M. Evenson received her law degree from Rutgers in 1976 and has been working as an associate in the New York law firm of Willkie Farr & Gallagher since graduation. While in law school, she served on the editorial board of the Rutgers Law Review. A 1964 graduate of Barnard College, Ms. Evenson has done work toward a Master's degree in urban planning at Columbia University. She has worked as a research associate at the Russell Sage Foundation, as a consultant to the Trans Urban East Organization in New York City, and as a research analyst at the Columbia University School of Social Work.

David F. Graham is a 1978 graduate of this Law School, where he was a Llewellyn Cup Finalist and a member of the Hinton Moot Court Committee. He received his B.A. degree in 1975 from Haverford College, graduating with high honors in political science and philosophy. Since his graduation from law school, Mr. Graham has been clerking for Justice Charles Levin of the Michigan Supreme Court.

Rayman L. Solomon is also a graduate of the Law School (J.D. ’76). Mr. Solomon received his B.A. degree at Wesleyan University in 1968, did graduate work in American history at Memphis State
University, and in 1972 was awarded the M.A. degree in history by the University of Chicago. He is presently a Ph.D. candidate in American legal history. Since his graduation from law school, Mr. Solomon has been Director of the History Project of the U.S. Court of Appeals for the Seventh Circuit, and this past year served as law clerk to Judge George C. Edwards of the Sixth Circuit Court of Appeals.

Jane M. Wieher received her B.S. degree from Iowa State University in 1971. She served from 1971–73 as a VISTA Volunteer assigned to the Wichita, Kansas, Legal Aid Society. Ms. Wieher graduated with high distinction in 1976 from the University of Iowa College of Law and has been employed since graduation as an associate in the litigation department of the Kansas City law firm of Morrison, Hecker, Curtis, Kuder & Parrish.

Faculty and Staff Notes

Walter J. Blum, Wilson-Dickenson Professor of Law, was elected to the American Academy of Arts and Sciences.

Gerhard Casper, Dean and Max Pam Professor of American and Foreign Law, testified on constitutional requirements for amending the United States Constitution before the California Assembly Ways and Means Committee in February. In April, he participated in the Conference on Comparative Analysis of Constitutional Law sponsored by the Center for Study of the American Experience and the Law Center of the University of South California in Los Angeles. Mr. Casper was a member of the faculty of the Salzburg Seminar in American Studies for the session on American Law and Legal Institutions. In August, he was elected to the Board of Directors of the American Bar Foundation.

Kenneth W. Dam, Harold J. and Marion F. Green Professor in International Legal Studies, is the co-author of Energy: The Next Twenty Years. The book is a report of a study group sponsored by the Ford Foundation. In a forward, McGeorge Bundy wrote, “The central message of the present report is that energy—expensive today—is likely to be more expensive tomorrow and that society as a whole will gain from a resolute effort to make the price the user pays for energy, and for saving energy, reflect its true value.”

Spencer L. Kimball, Seymour Logan Professor of Law, has agreed to continue as Executive Director of the American Bar Foundation after having tendered his resignation to become effective last year. This year, he has published a strong criticism of the United States Supreme Court decision in City of Los Angeles, Department of Water and Power v. Manhart in the 1979 volume, no. 1 of the American Bar Foundation Research Journal, under the title “Reverse Sex Discrimination: Manhart.”
Press casebook on unfair competition, trademarks, copyrights, and patents was published this past summer. The book is written and edited by Professor Kitch and Professor Harvey Perlman of the University of Virginia, a former Bigelow Fellow.

Professor William Landes presented a paper entitled “Legal Change, Judicial Behavior, and the Diversity Jurisdiction” (with Professor Richard Posner) at the Research Conference on Public Policy and Management in Chicago in October. He has also presented a paper entitled “Rescue at Sea: A Theoretical and Empirical Analysis of Salvage Awards” (with Richard Posner) and participated in the National Science Foundation—National Bureau of Economic Research Conference on Law and Economics.


Assistant Professor Douglas Laycock discussed school busing at a joint meeting of the Los Angeles alumni associations of The University of Chicago, Harvard, and Yale law schools. He is serving on the Advisory Board of the Consumer Services Organization, a nonprofit corporation offering a prepaid legal services plan in Chicago. Professor Laycock is also serving as Faculty Coordinator of the Chicago Law Student Public Interest Intern Program. In summer, 1979, the program placed twenty-one law students, including six University of Chicago students, in internships with seven public interest agencies in Chicago. The program is funded by Chicago philanthropists. He continues to serve as faculty advisor to the student legal ethics program, a series of quarterly seminars on legal ethics organized by an informal student committee and financially supported by Calvert House, the Catholic Student Center adjacent to the University.

The manuscript from James Parker Hall Professor of Law, Bernard D. Meltzer’s 1979 supplement to Labor Law: Cases, Materials and Problems (2nd ed, 1977), will be published by Little Brown and Company in 1979.
Class Notes Section – REDACTED

for issues of privacy
Dear Graduates and Friends:

The Law School continues to flourish, as it has in the past, as part of one of the most distinguished universities in the world. Its preeminence in teaching and professional training, in research and clinical activities, has had a long tradition. You are part of this tradition. The many graduates and friends who have helped us have participated in an important endeavor. The School is fortunate that it has always been able to call on you to an extent which is unique.

The 1978 Fund Drive raised half a million dollars in unrestricted expendable funds. This is approximately the same amount as was donated in 1977. In addition, we received significant restricted contributions. This support encourages and enables the School to perform its many tasks. Nevertheless, I hope the 1979 Fund Drive will do better. Not only did the Fund not keep up with inflation, but we failed to come close to coping with extraordinary cost rises in such areas as library acquisitions. In addition, I am concerned about our long-term ability not only to maintain but to strengthen and increase what I think is the most productive law faculty in the country. We must also continue to attract one of the finest groups of students.

We are extremely grateful to all who have helped us to meet the challenge. This year, I urge you to increase your contribution. I believe that the Law School renders an important service to the legal profession. This tradition can be maintained only through greater participation of our graduates and friends.

Sincerely,

Gerhard Casper
Dean
The Law School