CARE AND MAINTENANCE OF OUR LEGAL SYSTEM: RICHARD V. WELLMAN—ACADEMIC LAWYER

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Nearly all human beings share an interest to seek peaceful resolution of differences that interrupt what they consider to be the reasonable conduct of their affairs. In our form of government, the legal system reflects and reinforces this basic conception. Our society employs the legal system to avoid or remedy disruptive confrontations that occur among us.

One of the important functions performed by the legal profession, or lawyers, is the maintenance and improvement of our legal system in its impact on all of us. Under our shared view of a society governed by law, the legal system touches all activities of individuals or groups and is necessarily complex. In the continuing and evolving development of our social, economic, and physical environments, parts of our legal system fall behind or apart, or otherwise are in need of repair or reform. When these malfunctions of law become apparent, we need to address them to keep the legal system functioning with reasonable efficiency and fairness. These inadequacies in the law, however, can be advantageous to some and exploited by them for unfair advantage. As a consequence, lawyers react differently to these apparent malfunctions; many ignore them, while others utilize them to the advantage of themselves or their clients, or simply take the view that the matter is beyond their concern. Fortunately, lawyers who are truly concerned about the efficiency and fairness of our legal system and who look beyond self-interest can take steps to address the malfunctions and join with others to correct them.

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Richard V. Wellman was one of those leaders in the law who identified significant problems with the way our legal system provided for the transmission of family wealth from one generation to the next. During his first five years of practice following World War II, he observed how the legal process and procedure in the area of probate and administration of decedents’ estates and trusts had become inefficient, expensive, and subject to frequent abuse, as well as frustrating to the parties involved. These practices were often lucrative to lawyers, counties, and newspapers and frequently were so ensonced as to resist correction. In the mid-fifties, Dick Wellman gave into his academic bent and became an academic lawyer, a law teacher at The University of Michigan. There, his study and scholarship deepened his detailed knowledge of the area of wills, trusts, probate, and administration that governs the transmission of assets from one generation to another. He not only acquired further knowledge of the area, but also developed theories and practical suggestions for significant reform, protective of the public interest. He became recognized as a scholarly lawyer who had great professional pride in our legal system and who was willing to work industriously toward its improvement.

Dick Wellman was a personable individual, pleasant, and persistently persuasive in both his extensive scholarly work and in cooperative efforts with other scholars and lawyers. He was always willing to explore different approaches to a problem and to work out and write reform proposals to explore with others. His genuine “workhorse” attitude, as well as his fertile imaginative ideas, attracted like-minded academics and members of the organized bar and law reform organizations. In the mid-sixties, by then a recognized scholar in the field, he was named to an American Bar Association (ABA) committee to review and consider revising the influential Model Probate Code, a joint project of the ABA and the American Law Institute (ALI) published by The University of Michigan.\(^1\) This project to revise the Model Probate Code soon became a uniform law project undertaken by the leading state law reform organization, the National Conference of Commissioners on Uniform State Laws (NCCUSL). Dick was appointed Chief

\(^1\) *Model Probate Code* (1946).
Reporter, or chief drafter, of the proposed Uniform Probate Code (UPC). The drafting team of Reporters consisted of eight other law teachers, all well regarded in the area of wills, trusts, and administration of estates.

The Special Committee on the Uniform Probate Code supervised and reviewed the work of the UPC Reporters. The Special Committee consisted of sixteen lawyers, judges, commissioners, and legal scholars, and reflected their expert perspectives from experience in different areas of the profession. In addition, the Special Committee had the continuing advice and suggestions of the ABA Advisory Committee (fifteen members) and the American Bankers Association Liaison Committee (nine members). All of these lawyers were consulted on successive drafts of the proposed UPC as it evolved over the four years of the drafting process that resulted in its promulgation by NCCUSL and its approval by the ABA in August 1969.

Initially, the Committee and Reporters worked and met periodically for over two years, on separate parts of the proposed Code as the scope and basic approach of the UPC evolved. Then, in the summer of 1967, before NCCUSL's annual conference in August, where the drafters scheduled a first reading of the tentative draft of the Code, the team of Reporters convened in Boulder, Colorado at the University of Colorado to meet continuously for six weeks to review and revise prior partial drafts, to reconcile the parts, to fill in the gaps, and to assemble a tentative final draft. Most of us who were Reporters were housed and took our meals in a University dormitory with our families.

The Reporters, along with Allison Dunham, Executive Director of NCCUSL, Tom Jones, Commissioner, and Tom Mapp, Oregon State Bar observer, met in day-long sessions, hammering out differences in the drafts of various part. Sometimes we broke into subcommittees to deal with particular parts, all with special attention to simplifying the language and operation under the Code, always with a view toward concise and brief expression. The sessions were intense, and no one was permitted the luxury of pride of authorship. Dick Wellman, ably and amiably leading us in this

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complex task, sometimes expressed his suggestions in an extended train of thought and was himself often the object of severe editorial or policy criticism, which he accepted gracefully. He maintained order and spurred progress by the sometimes unruly group of Reporters, all of whom had more than adequate egos growing out of extensive knowledge and experience. To relieve the tensions of debate and drafting, after adjourning our daily session, we gathered for an “attitude adjustment” hour with spouses, children, and visitors. We had the use of the “house mother” apartment in the dormitory. This apartment had a living room, dining room, and kitchen adequate for our “after work” social gatherings. We used the kitchen as our bar, the oven as a liquor cabinet, and the refrigerator for ice, wine, and soft drinks. While it sometimes took time to smooth “pride of authorship” feathers ruffled during our day, meeting in this way with our spouses and children present greatly eased the necessary process of reconciling approaches in drafting the following day. When people live, work, and play together in closely confined quarters, they get to know and appreciate each other as serious, thoughtful, and genuinely concerned persons. On weekends, we enjoyed the locale with camping trips, visits to the Dunhams’ ranch at Tolland, fishing, and sightseeing. Lifelong friendships grew out of our professional and social associations during these six weeks of intensive drafting.

By August of 1967, the tentative draft was prepared, with some acknowledged gaps and possible deletions. Dick and the commissioner members of the Special Committee presented the draft of the UPC to the annual NCCUSL Conference for its first preliminary exposure. There, it was generally well received, but with many suggestions and criticisms of particular provisions, the NCCUSL sent it back to the Conference Special Committee for further work and refinement.

Following the 1967 annual meeting of the NCCUSL, Dick undertook to revise portions of the UPC draft and submitted various portions to co-Reporters for review and revision. During the fall and early spring of 1968, reporters and advisory groups made revisions and reviewed the draft. In the early summer of 1968, Dick met for a month in Berkeley, California with his co-Reporters, Ed Halbach and myself, to review proposed revisions and to draft a series of
sections on trusts and administration, included in the UPC as Article 7. In August 1968, the revised tentative draft of the UPC was presented for the first official "line by line reading" to the NCCUSL's annual meeting. Attendees raised numerous questions and suggestions for improvement from the floor of the Conference, and the Conference gave the UPC general approval and sent it back to the Special Committee to revise and present a proposed final draft for second reading and possible approval in August of 1969. With the assistance of co-Reporters, Dick spent the time remaining in 1968 and in 1969, before August, responding to comments and polishing the proposed final draft for the August 1969 NCCUSL meeting in Dallas, Texas.

The 1969 annual meeting of NCCUSL was held in a large, soon to be renovated or removed, motel-hotel complex located near the end of a runway of Love Field, Dallas. About this time, NCCUSL was in a severe budget cutting mode, and hotel facilities and services were the subject of austere negotiation. The UPC was given priority scheduling on successive days. Dick and the Special Committee organized teams of Reporters and committee members to first read, line by line, a significant segment to the assembled conference of Uniform Laws Commissioners, and then to respond to questions from the floor or to agree to consider suggestions and come back to the Conference later with needed changes. While one team read a segment, the prior team would work in a meeting room to polish the draft segments responsive to suggestions by the Conference. The weather was hot—after all, it was Texas in August—and the air conditioning was sporadic and limited. Regular air traffic out of Dallas took off over the hotel so that frequent "moments of silence" occurred, along with other interruptions. Dick directed traffic, and informed and persuaded dubious commissioners by persistent exhortation based on previously stated policy or practice reasons. There was no leisure time for the presenters in this time-compressed legislative-type session of merry-go-round presentations, explanations, re-drafting, and representations by the Special Committee and Reporters. The final day of the Conference, on the state-by-state vote, the Commissioners decisively approved

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the Uniform Probate Code. Only then could the Special Committee and Reporters wearily celebrate.

While the promulgation by the NCCUSL and the approval by the ABA were necessary milestones, they were only the beginning of the process for the UPC to become law by state legislative enactment. A series of explanatory presentations around the country initiated the campaign for state legislative adoption of the UPC, not only to reform, but also to make probate law uniform. Here, again, Dick Wellman organized and led session after session before state bar associations, state legislative committees, and other interested organizations. The Code's abolition of so many of the cumbersome, expensive, and time-consuming court proceedings requiring published notices—popular with some local newspapers or comfortable for county probate judges, fee revenue for counties, and familiar and lucrative for lawyers—stirred up much resistance and opposition to the details of probate reform. Under Dick Wellman's direction, Reporters and Special Committee members prepared books and materials and made presentations before many state and local bar associations. The ALI and ABA sponsored national institutes in various parts of the country, as well as a half-dozen regional public conferences for lawyers, judges, and the public.

In 1972, the Joint Editorial Board of the Uniform Probate Code (JEB) formed under sponsorship of the ABA Section on Real Property, Probate and Trust Law, the American College of Trust and Estates Counsel (ACTEC), and the NCCUSL. Members representing each sponsoring organization and public members representing probate judges and law teachers constituted the JEB. The JEB was organized to provide educational material and presentations, and to respond to questions from the public or legislatures about the UPC. Dick Wellman was named Executive Director. Law schools, local law associations, and legislative committees invited JEB members and others to participate in educational forums about the UPC. The first enactment by Idaho in 1972⁴ spurred more intense consideration of the UPC, and continued educational activities led to the general national acceptance of the UPC as the model for probate reform.

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A project of this dimension for enactment of a complex code takes a lot of time. That, plus the revisions and additions to the UPC and its many related acts, have made enactment an ongoing project that outlives many early enthusiasts, but also recruits others. Dick Wellman was always active and alert to the need for new enthusiastic participants in this continuing saga of law reform in this area of family property. As the original group of Reporters and Committee members end their professional careers and lives, younger lawyers in this area, who are concerned about how our legal system impacts upon the public, carry on the work pursued so arduously by Richard V. Wellman.

Dick Wellman’s remarkable contribution to the improvement of our legal system demonstrates his dedication as a lawyer and scholar to the concept of justice under the law that forms a cornerstone of our society. His life’s work also exemplifies the public service by law teachers, or academic lawyers, of which the public and many practicing lawyers are often unaware or unappreciative. This public service is the active academic participation in improving law and the legal system as an element of their academic lives. The two leading national organizations dedicated to law improvement are the American Law Institute—which concentrates on the case-by-case, nonstatutory development of our common law—and the National Conference of Commissioners on Uniform State Laws. Lawyers of experience, highly regarded for their work, including academics, are selected as members of each of these organizations. As members, law teachers work on law improvement projects both in advisory positions and as Reporters, very much like Dick Wellman’s efforts on the UPC. Law teachers generally undertake, and law schools encourage, scholarship, research and writing that identify instances of injustice or inefficiency in the law and stimulate reform movements. Often viewed as public interest gadflies, academics also suggest remedies from an independent public interest point of view. Consultative activities with state and local governments, or with private lawyers, often address questions that arise in states before matters reach the crisis stage that attracts political attention. Our federal government also solicits the assistance of lawyer academics to participate in many advisory functions, such as the Secretary of State’s Advisory Committees.
This type of advisory service to our government is not only valuable, but, in many instances, deals with matters on which disinterested views from private practitioners are not available, either because of conflict of interest or client involvement. Further, academics are more likely to be familiar with the broader field because practicing lawyers' work is concentrated on particular, narrow issues involving clients. Nearly all these valuable contributions by law teachers to the well-being of our law and legal system are made without compensation, but rather are provided pro bono publico.

Finally, a rather personal note. I have worked with Dick Wellman in professional efforts of law improvement for forty years. Our personal and professional careers evolved over the same period in different parts of the country, but with frequent interactions. Even though we had competing books in the same field, our mutual professional regard and respect led to a strong friendship, accented each year by two or three social occasions including our spouses or children, particularly during the drafting of the UPC. Our families have camped together, lived together, exchanged home visits, and many dinners or short excursions in different parts of the world. Our professional relationship developed into a personal friendship in which we shared both joyful occasions and family tragedies. I hold no greater regard or affection for any of the thousands of professionals with whom I have shared my life. Dick Wellman was a consummate academic lawyer, teacher, and scholar whose personal integrity and energy supported his professional endeavors, but, above all, he was a decent and great human being who enriched society and the lives of all of us who were privileged to know him.