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STEFAN A. RIESENFELD—IN TRIBUTE

Richard W. Jennings†

For 40 years I have marveled at the protean talents and scholarly achievements of Stefan Riesenfeld. Our paths first crossed in 1935 when he arrived in Berkeley from Germany, by way of Italy. Steve seems to have been destined for an academic career. His father had been a member of the Faculty of Law of the University of Breslau for only 4 years when he lost his life in World War I. Following in his father's footsteps, Steve studied law at the Universities of Munich, Berlin and Breslau, receiving the degree of Dr. Jur. from Breslau in 1932 at the age of 23.

He immediately began to climb the tough, competitive academic ladder of pre-Hitler Germany as a young instructor in law at Breslau, and within a year had a book and several articles to his credit.¹ Like many of his contemporaries, however, Steve was forced to flee from Nazi terror. Luckily, through the good offices of his senior professors, he was able to obtain an assistantship at the University of Milan. In Milan, he concentrated on international law and criminal justice, working with several of Italy's most distinguished professors of law. These efforts led to a J.U.D. from Milan in 1934.

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1. DAS PROBLEM DES GEMISCHTEN RECHTSVERHÄLTNISSES IM KÖRPERSCHAFTSRECHT UNTER BESONDERER BERÜCKSICHTIGUNG DER VERSICHERUNGSVEREINE AUF GEGENSEITIGKEIT (Vol. 19 of GESELLSCHAFTSRECHTLICHE ABHANDLUNGEN, Nussbaum ed. 1932); *Firmenrecht und Ausverkaufswesen*, 7 ZENTRALBLATT FÜR HANDELSRECHT 205 (Aug.-Sept. 1932); [Anmerkung zum] Kammergericht, 8. Zivilsenat, Beschluss vom 11. Nov. 1930, 8 W 11246/30, 61 JURISTISCHE WOCHENSCHRIFT 758 (Mar. 1932); *Rechtskraft contra Verbot der Reformatio in Peius?* 26 LEIPZIGER ZEITSCHRIFT FÜR DEUTSCHES RECHT 26 (Jan. 1, 1932); *Zur Pfändung künftiger Provisionsansprüche der Agenten*, 27 LEIPZIGER ZEITSCHRIFT FÜR DEUTSCHES RECHT 1419 (Nov. 1932); (with Riebe), *Sicherungsübereignung und (stille) Sicherungszession im Lichte der neuesten Rechtsprechung des Reichsgerichts*, 11 OSTDEUTSCHE WIRTSCHAFTSZEITUNG 221 (1932).

By a happy coincidence, Dean Edwin D. Dickinson of Boalt Hall was serving as Reporter on a Draft Convention on Jurisdiction with Respect to Crime sponsored by the Harvard Law School's Research in International Law. The project called for extensive country-by-country research relating to criminal jurisdiction. Professor Max Radin's inquiries abroad for a person capable of this kind of research inevitably led to Steve's discovery, and in 1935 he came to Berkeley as a research associate to Dean Dickinson and the Boalt faculty. I was then a graduate student studying international law with Dickinson and about to enter Boalt Hall. When Steve arrived in Berkeley he lived at International House, the campus home of many foreign and domestic graduate students. I, too, lived there, supporting myself as a part-time worker on the staff. Our close personal association and common interests immediately led to a warm friendship which has never wavered. During our student years together, Steve and I shared ideas while soaking up law. We worked on the *California Law Review* together—Steve suggesting the topic for my first student Comment—and we became almost like brothers.

Steve's major obstacle in his new home was the English language. Although his written English was immaculate, he could fairly be described as disadvantaged in English conversation. His solution was to study oral conversation by attending first year classes at Boalt Hall. Evidently both Steve and the Boalt faculty regarded this as somewhat of an experiment, for the records show that he did not register for classes during that first semester. On taking the examinations, however, he achieved a remarkable record, the only blemish being a "C" from Captain Kidd in Criminal Law, one of Steve's specialties.² The upshot was that at the beginning of the second semester Steve received credit for a number of courses as to which he was already an acknowledged expert and was given 1½ years of advanced standing. Steve was thus able to receive a J.D. degree from Boalt in 1937.

His fellow students will remember that in those years Steve became an instant Boalt Hall legend. His course summaries were mini-textbooks that I regarded as practically ripe for publication. One of our professors, a close personal friend of Steve, made it a practice, after the discussion of a principal case, to reel off a string of other cases dealing with the same legal principles in various ways. Most of us dutifully took down these citations and promptly forgot them. Not Riesenfeld. On the following day Steve held up his hand and spoke respectfully: "Professor———, that case in 48 N.W. 157 was only a dictum", or

2. See note 3 *infra*. He thus joined a list of outstanding students, including several who later became Boalt professors, who achieved the unique distinction of having completed their Boalt education with only a single "C" grade—and that from the Captain. Only one who has experienced one of his examinations can understand.

even worse, others "were not in point." At this juncture, the professor smiled benignly and said: "Mr. Riesenfeld, I have been giving these citations for 20 years, and never before has anyone ever raised a question." It broke up the class.

In 2 years, while supporting himself as a faculty research associate and studying law, Steve established a remarkable publication record on a variety of legal topics.³ As his tenure in Berkeley came to a close, Harvard Law School offered him a research fellowship to work in administrative law under then Professor Felix Frankfurter.

At Harvard, Steve produced his classic study of the French system of administrative justice.⁴ Numerous Anglo-American legal scholars had been fascinated by the French system as a means of curbing "administrative lawlessness"—a hot topic at the time—but no comprehensive comparative study of that system was then available. Steve sought to present "a complete and unbiased picture" of the French system for the purpose of providing "the American student of Administrative Law sufficient material on the foreign system from which he may be able to judge *for himself* whether it answers, or at least suggests answers to, some of the burning problems presented by administrative justice in America today."⁵ The study ultimately was a factor in President Franklin D. Roosevelt's veto of the Walter-Logan bill, which proposed the establishment of a separate federal administrative court. Perhaps it was this three-part article that broke the ice and launched Steve on an academic career in his new homeland; by the time the third installment appeared in 1938, he had become a member of the law faculty of the University of Minnesota. His research on the French system of administrative law, together with research on jurisdiction over coastal fisheries under international law, led to a Harvard J.S.D. in 1940.

Upon joining the faculty of the University of Minnesota, Steve finally was able to put down roots in one place for an extended period of time. The next 14 years were eventful in numerous ways. Never quite satisfied, Steve had always yearned for a career in Science. In addition to his law teaching, he enrolled in the College of Engineering

3. *Homicide Committed Through the Operation of a Motor Vehicle While Intoxicated*, 24 CALIF. L. REV. 555 (1936); *Negligent Homicide—a Study in Statutory Interpretation*, 25 CALIF. L. REV. 1 (1936); *Structure and Phases of a Criminal Trial in Europe*, 11 THE STATE BAR JOURNAL OF CALIFORNIA 168 (1936); *A Comparison of Continental and American Legal Education*, 36 MICH. L. REV. 31 (1937); *Decision of the German Supreme Court on Termination of Treaties of the German States*, 31 AM. J. INT'L L. 720 (1937); *The Power of Congress and the President in International Relations: Three Recent Supreme Court Decisions*, 25 CALIF. L. REV. 643 (1937).

4. *The French System of Administrative Justice: A Model for America?* (pts. 1-3), 18 B.U.L. REV. 48, 400, 715 (1938).

5. *Id.* at 745.

and by 1943 had earned a B.S. degree in electrical engineering from the University of Minnesota. He must have found some leisure time, however, for soon thereafter he married Phyllis.

In World War II, Steve was able to make practical use of his training in electronics. He enlisted in the U.S. Navy and served in the South Pacific from 1944-1946. When Steve passed through the Bay Area, Betty and I had a chance for a short visit with him. He had a day of leave and we invited him to dinner at our home. When he arrived, it became clear that he had used his 1 day of leave to visit the Berkeley campus. With great excitement, he told us that by searching through the scientific literature he had been able to trace the origins and later discoveries that had eventually led to the development of radar. It was radar, he explained, that was winning the battle of the Atlantic and enabling Britain to hang on until the United States could throw its full might into the war against Germany. At the close of the evening I took him to meet his other shipmates for a return to their base. He was Doc Riesenfeld to them, and was greeted with such warmth and genuine affection that I could see that Steve had quickly adapted to his military experience.

At the close of the war, Steve returned to Minnesota. The universities were flooded with returning veterans, and engineering teachers were in short supply. Steve was offered an assistant professorship in the Engineering School and actually was very nearly persuaded to accept. But the thought that Steve might relinquish a full professorship in law for a beginning rank in engineering proved too much for Dean Everett Fraser, who took Steve in hand and promptly spiked the idea. Fortunately, by this time, Peter and Steve had arrived in the Riesenfeld household; eventually they were to fulfill Steve's dreams by choosing to have careers in the physical sciences and engineering themselves.

When I joined the Boalt Hall faculty in 1947, few of the faculty I had known as a student were still active, and that golden period in the life of the School was rapidly coming to an end. Within a year, the process of recruiting a new postwar faculty began under the leadership of Dean William L. Prosser. Bill wanted great teachers, but he also regarded creative research as an indispensable ingredient of good teaching. Since Bill and Steve had been colleagues at Minnesota, I suggested that we could hardly overlook Steve in our rebuilding plans. Although there were minor complications in fitting Steve into the Boalt Hall mosaic,⁶ it was a glorious day in 1952 when Steve, Phyllis and the boys finally arrived to take up permanent residence in Berkeley.

6. *Albert H. Ehrenzweig—In Memoriam*, 62 CALIF. L. REV. 1076 (1974).

Steve's many contributions to legal education and law reform stagger the mind. Most law teachers are content to gain distinction in one or perhaps two major fields of law; Steve is a recognized authority and a prolific writer in countless fields. Over the years he has written outstanding books or articles in international law,⁷ comparative law,⁸ administrative law⁹ and legal history.¹⁰ While continuing his interest in

7. PROTECTION OF COASTAL FISHERIES UNDER INTERNATIONAL LAW (1942); *The Power of Congress and the President in International Relations: Three Recent Supreme Court Decisions*, supra note 3; *Sovereign Immunity of Foreign Vessels in Anglo-American Law; the Evolution of a Legal Doctrine*, 25 MINN. L. REV. 1 (1940); (with J. Bingham, C. Colombos, G. Gidel, M. Hudson, C. Hyde, H. Kelsen, W. Masterson, R. Pound, F. Roman) *Joint Memorandum in Support of Rehearing in United States v. Texas*, 3 BAYLOR L. REV. 319 (1951); *The Decisions of the Court of Justice of the European Communities*, 56 AM. J. INT'L L. 724 (1962); *The Decisions of the Court of Justice of the European Communities, 1961-1963*, 59 AM. J. INT'L L. 325 (1965); *Jus dispositivum and Jus cogens in International Law: In the Light of a Recent Decision of the German Supreme Constitutional Court*, 60 AM. J. INT'L L. 511 (1966); *The Doctrine of Self-Executing Treaties and GATT: A Notable German Judgment*, 65 AM. J. INT'L L. 548 (1971); *The Doctrine of Self-Executing Treaties and Community Law: A Pioneer Decision of the Court of Justice of the European Community*, 67 AM. J. INT'L L. 504 (1973).

8. *A Comparison of Continental and American Legal Education*, supra note 3; *The French System of Administrative Justice: A Model for America?* supra note 4; *Recent Developments of French Labor Law*, 23 MINN. L. REV. 407 (1939); *Evolution of Modern Bankruptcy Law: A Comparison of the Recent Bankruptcy Acts of Italy and the United States*, 31 MINN. L. REV. 401 (1947); (with J.N. Hazard) *Federal Courts in Foreign Systems*, 13 LAW & CONTEMP. PROB. 29 (1948); *Contemporary Trends in Compensation for Industrial Accidents Here and Abroad*, 42 CALIF. L. REV. 531 (1954); *Die moderne amerikanische Versicherungspolice und ihre Rechtsgrundlagen*, in RECHTSFRAGEN DER INDIVIDUALVERSICHERUNG; BETRACHTUNGEN UND PROBLEME IN INTERNATIONALER SICHT: FESTGABE FÜR ERICH R. PRÖLSS 213 (E. Klingmüller ed. 1957); *The Legal Protection of Competition in France*, 48 CALIF. L. REV. 574 (1960); *Vertikale Wettbewerbsbeschränkungen: Neuere Strömungen im amerikanischen Antitrust-Recht*, 11 WIRTSCHAFT UND WETTBEWERB 813 (1961); *Kollisionen zwischen der dinglichen Sicherung von Lieferantenkredit und Bankkredit nach amerikanischem Recht*, in KOLLISIONEN ZWISCHEN DER DINGLICHEN SICHERUNG VON LIEFERANTENKREDIT UND BANKKREDIT, 23 ARBEITEN ZUR RECHTSVERGLEICHUNG 41 (E. von Caemmerer ed. 1964); *The Effect of Regional Cooperation upon the Traditional Concept of State*, in LEGAL THOUGHT IN THE UNITED STATES OF AMERICA UNDER CONTEMPORARY PRESSURES 483 (J. Hayard and W. Wagner eds. 1970); *Legal Systems of Regional Integration*, 67 AM. J. COMP. L. 503 (1973).

9. *The French System of Administrative Justice: A Model for America?* supra note 4; (with J.A. Bauman and R.C. Maxwell) *Judicial Control of Administrative Action By Means of the Extraordinary Remedies in Minnesota* (pts. 1-2), 33 MINN. L. REV. 569, 685 (1949); *Basic Problems in the Administration of Workmen's Compensation*, 36 MINN. L. REV. 119 (1952).

10. *Law-Making and Legislative Precedent in American Legal History*, 33 MINN. L. REV. 103 (1949); *Forty Years of American Workmen's Compensation*, 35 MINN. L. REV. 525 (1951); *The Formative Era of American Public Assistance Law*, 43 CALIF. L. REV. 175 (1955); *Collection of Money Judgments in American Law—A Historical Inventory and a Prospectus*, 42 IOWA L. REV. 155 (1957); *Individual and Family Rights in Land During the Formative Period of the Common Law*, in ESSAYS IN JURISPRUDENCE IN HONOR OF ROSCOE POUND 439 (1962); *Enforcement of Money Judgments in Early American History*, 71 MICH. L. REV. 691 (1973). Steve has written re-

these fields, he pioneered the study of Social Legislation as a separate discipline, and in 1950, co-authored with Dean Richard C. Maxwell, a former student, the first American text in that field.¹¹ By and large, these are advanced subjects, and, some might think, not in the mainstream of American legal education.

Steve loves to teach and particularly enjoys large classes. It may have been the challenge of mastering new fields or the desire to attract a broader spectrum of students that led him into Creditors' Remedies, Commercial Law and Property. The first list of publications in Creditors' Remedies appeared in 1942, in collaboration with one of his students.¹² His interest in this field culminated in a leading book stressing both creditors' remedies *and* debtors' protection, the most recent edition of which has just appeared.¹³ Steve has also taught and published in commercial law¹⁴ and property¹⁵ again co-authoring a book on California mortgage law just last Spring.¹⁶

Steve's scientific interests have found a legal outlet through his teaching and creative research in the patent system and its relation to antitrust law.¹⁷ Again, when the European Common Market emerged,

views of over 75 books, a number in the field of legal history. I particularly enjoyed his reviews of M. RADIN, *HANDBOOK OF ANGLO-AMERICAN LEGAL HISTORY* (1936) in 25 CALIF. L. REV. 383 (1937) and of W. HURST, *THE GROWTH OF AMERICAN LAW. THE LAW MAKERS* (1949) in 38 CALIF. L. REV. 973 (1950).

11. (With R.C. MAXWELL) *MODERN SOCIAL LEGISLATION* (1950, Supp. 1958). And see (with W. Eastlund) *Public Aid to Housing and Land Redevelopment*, 34 MINN. L. REV. 610 (1950); *The Formative Era of American Public Assistance Law*, *supra* note 10; *The Place of Unemployment Insurance within the Patterns and Policies of Protection Against Wage-Loss*, 8 VAND. L. REV. 218 (1955); *Efficacy and Costs of Workmen's Compensation*, 49 CALIF. L. REV. 631 (1961); *Workmen's Compensation and Other Social Legislation: The Shadow of Stone Tablets*, 53 CALIF. L. REV. 207 (1965).

12. (with W.E. Mussman) *Garnishment and Bankruptcy*, 27 MINN. L. REV. 1 (1942). And see (with W.E. Mussman) *Suretyship and the Statute of Frauds: A Survey of the Minnesota Law* (pt. I), 31 MINN. L. REV. 1 (1946); *Evolution of Modern Bankruptcy Law; A Comparison of the Recent Bankruptcy Acts of Italy and the United States*, *supra* note 8; (with W.E. Mussman) *Jurisdiction in Bankruptcy*, 13 LAW & CONTEMP. PROB. 88 (1948); *Creditors' Remedies and the Conflict of Laws—Part One: Individual Collection of Claims*, 60 COLUM. L. REV. 659 (1960).

13. *CASES AND MATERIALS ON CREDITORS' REMEDIES AND DEBTORS' PROTECTION* (1st ed. 1967, 2d ed. 1975).

14. *THE UNIFORM COMMERCIAL CODE AND THE HAWAII LAW* (U. of Hawaii Legislative Reference Bureau Rep. No. 5 1963); *Anti-Deficiency Legislation*, in STATE BAR OF CALIFORNIA, *CALIFORNIA LAND SECURITY AND DEVELOPMENT* 389 (California Continuing Education of the Bar 1960).

15. *THE QUAGMIRE OF CHATTELS SECURITY IN NEW ZEALAND* (AUCKLAND SCHOOL OF LAW, LEGAL RESEARCH FOUNDATION, PAMPHLET No. 4, 1970).

16. (with R. MAXWELL, J. HETLAND and W. WARREN) *CALIFORNIA CASES ON SECURITY TRANSACTIONS IN LAND* (2d ed. 1975).

17. *The New United States Patent Act in the Light of Comparative Law* (pts. 1, 2), 102 U. PA. L. REV. 291, 723 (1954), reprinted as *Das neue Patentgesetz der Vereinigten Staaten im Lichte der Rechtsvergleichung*, in *FESTSCHRIFT FÜR ERNST RABEL*, Band 1 at 479 (H. Dölle, M. Rheinstein, and K. Zweigert eds. 1954); *Patent Protection*

he became fascinated with the rules of competition in that market as they affected American enterprise. The result was a brilliant essay on this important subject.¹⁸ Other common market studies have followed.¹⁹ And all this from a man who describes himself as "basically trained as a legal historian"—with substantial publications in that field to prove the point.²⁰

Steve also loves to travel. He is very much at home whether lecturing on the Uniform Commercial Code in Berkeley, the German Commercial Code in Cologne,²¹ or commercial law in New Zealand.²² Over the years, he has served as a mini-law reform commission for the State of Hawaii. His broad interest in Social Legislation having already established him as a leading authority on Workmen's Compensation, the state of Hawaii invited him to do a comprehensive study of its workmen's compensation law. This study (including a proposed statute) led to the complete overhaul of Hawaii's workmen's compensation system.²³ It was followed by two further studies relating to protection against temporary disability and expenditures for medical care. Both of these studies resulted in comprehensive legislation in these fields, and the medical care statute is the first and so far the only one of its type operating in the United States.²⁴

One could go on, for the above survey is by no means exhaustive. The fact is that in the last 40 years, Steve, like his close personal friend and colleague, Albert H. Ehrenzweig, has produced more quality research than the entire faculties of many first-rate law schools. He is the closest approximation to a law faculty, a research center and a law

and Atomic Energy Legislation, 46 CALIF. L. REV. 40 (1958), reprinted in 1 ATOMIC ENERGY L.J. 23 (1959); *Compulsory Licenses and United States Industrial and Artistic Property Law*, 47 CALIF. L. REV. 51 (1959).

18. *The Protection of Competition*, in 2 AMERICAN ENTERPRISE IN THE EUROPEAN COMMON MARKET: A LEGAL PROFILE 197 (E. Stein and T. Nichol森 eds. 1960).

19. *The Legal Protection of Competition in France*, *supra* note 8; *Antitrust Laws in the European Economic Community*, 50 CALIF. L. REV. 459 (1962); *Antitrust Laws in the European Economic Community: A Sequel*, 50 CALIF. L. REV. 829 (1962); *The Anti-Trust Laws of the Common Market Countries*, 56 AM. SOC'Y OF INT'L L. PROCEEDINGS 27 (1962). *Common Market for Agricultural Products and Common Agricultural Policy in the European Economic Community*, 1965 U. ILL. L. FORUM 658; *The Law of Trade-Marks and Unfair Competition in the United States*, in UNFAIR COMPETITION 1 (British Institute of Int'l and Comp. L. Ser. 12, D. Thompson ed. 1966); *The Effect of Regional Cooperation upon the Traditional Concept of State*, *supra* note 8.

20. See sources in note 10, *supra*.

21. Steve has been a visiting professor at the University of Cologne on several occasions. In 1970 that University honored him with the degree Dr. Jur.h.e.

22. THE QUAGMIRE OF CHATTELS SECURITY IN NEW ZEALAND, *supra* note 15.

23. STUDY OF WORKMEN'S COMPENSATION LAW IN HAWAII (U. of Hawaii Legislative Reference Bureau Rep. No. 1 1963).

24. TEMPORARY DISABILITY INSURANCE (U. OF HAWAII LEGISLATIVE REFERENCE BUREAU REP. NO. 1 1969); PREPAID HEALTH CARE IN HAWAII (U. of Hawaii Legislative Reference Bureau Rep. No. 2 1971).