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WALTER V. SCHAEFER
FIRST DISTRICT

MEMORIAL SERVICES

HELD IN THE SUPREME COURT OF ILLINOIS AT THE
SEPTEMBER TERM, 1986, ON THE LIFE AND
PUBLIC SERVICE OF THE LATE
JUSTICE WALTER V. SCHAEFER

At the hour of 2 p.m., September 9, 1986, other business being suspended, the following proceedings were had:

CHIEF JUSTICE CLARK:

Good afternoon.

Once in a while a very special person emerges from the masses to earn a very, very special place in history, sometimes in the arts or sciences, government, labor, medicine, religion or any of the hundreds of professions, occupations or, indeed, from life itself. Today we honor such a man: a distinguished lecturer and former professor of law at Northwestern University, a former justice and chief justice of this court.

Present today to participate in this tribute to our former colleague, Walter Schaefer, are his wife Margaret, his daughter Nancy, her husband Chet Kamin, together with former justices of our court: Mr. Justice Robert Underwood and Dorothy, Mr. Justice Thomas Kluczynski, and Mr. Justice Caswell Crebs. We are pleased and proud that the Fourth District appellate judges are also here and many other representatives of this court and friends of Justice Walter Schaefer and his family.

Here to participate in this memorial service is the president of the Illinois State Bar Association, Mr. Richard L. Thies. Mr. Thies, would you please address the court.

RICHARD THIES:

May it please the court.

As president and representative of the Illinois State Bar Association, I move that these proceedings be spread upon the records of this court for posterity. It is a distinct honor for the Illinois State Bar Association and for me personally to participate in this memorial to Mr. Justice Schaefer.

In 1963, when I was only 32 years of age, Justice Schaefer, whom I had never met, called me at home one evening. The purpose of his call was to tell me that the court was, for the first time, going to be hearing oral arguments at the University of Illinois Law School and asked me if I had any objection to their hearing a case that I had on appeal. After getting over the initial shock of being called personally by a Supreme Court justice, whose name I revered and whose reputation was as a mountain, and who called me by my first name, I responded that of course I didn't have any objection and would be happy to cooperate in any way that I could. His call and the way he put me at ease were so indicative of the fatherly and yet direct way that he did things.

Justice Schaefer was awarded the American Bar Association Medal in 1969, he was presented with the Award of Merit of the Illinois State Bar Association in 1977, he served on the Board of Governors of the Illinois State Bar Association and on numerous committees of our association.

Justice Schaefer devoted much of his life to service of the highest order to the State of Illinois and to the cause of justice. He was recognized not only in Illinois but across the nation as an exemplary jurist and legal scholar. He served for 26 years as justice of the Supreme Court, including two years as chief justice. During his years of service to the court he authored 1,051 opinions, many of which are of landmark nature and will be quoted for many years to come.

Justice Schaefer expressed the ultimate goal of all great judges when he wrote: "Their inner satisfaction, which they do not articulate even to themselves, comes from devotion of their best efforts of mind and heart to the service of the ideal, unattainable perhaps, but still inspiring, of universal justice for all men." Justice Schaefer exhibited during his life and career the highest personal and professional standards. His passing has left a void in the profession of law and in the annals of judicial tradi-

tion that is irreplaceable. Thank you.

CHIEF JUSTICE CLARK:

Thank you Mr. Thies.

Also present with us today is Mr. Joseph Stone, president of the Chicago Bar Association. Mr. Stone.

JOSEPH STONE:

Thank you, Chief Justice Clark.

Justices of the Supreme Court, former justices of the Supreme Court, members of the judiciary, distinguished guests and friends.

It is indeed an honor for me also to be asked to participate in this memorial service honoring Justice Walter Schaefer, distinguished justice of the Illinois Supreme Court. Justice Schaefer was an active and involved member of the Chicago Bar Association almost from the date of his admission to practice in the State of Illinois. When I was asked to participate in this service as a representative of the Chicago Bar Association, I requested our executive director to go to the archives and pull Justice Schaefer's membership file so that I could review his activities as a member of the association. As you might expect, that file was thick and it indicated an enormous amount of involvement and activity on a variety of committees, which is just another indication of his deep and abiding commitment to the community and profession.

I will not detail his many years of service to the CBA dating back to 1929, or the 18 committees on which he served and the many that he chaired, but I will mention just two areas of his activity at the CBA which are diverse but representative of the man. He was elected to serve on our governing body, the Board of Managers, in 1940 and served there from 1940 to 1942. Two-year terms are the maximum at our association. He also served on our Development Law Committee for many years and was its chairman from 1944 to 1949. I mention that committee specifically because, having served on and chaired that committee myself, I know full well the extent of his commitment to the association and the profession and his considerable talent in

leadership. That committee is sort of a "think tank" for our bar association, and its membership consists of deans of law schools, professors, Federal and State court judges, distinguished lawyers from all segments of the community, and its jurisdictional limits know no boundaries. At the CBA, chairmen ordinarily serve for one year and are generally succeeded by the vice-chairman the following year. To have served as chairman of this committee for five consecutive years is unprecedented and is deserving of special mention. Not only does it attest to Justice Schaefer's considerable qualities of leadership, but as to his durability as well. What is also further evidenced is the high regard and esteem in which his colleagues held him.

Dick Thies has mentioned, in commenting, the number of scholarly opinions written, and others, I'm sure, will also detail his considerable talents, abilities and scholarship as a jurist. His service to the country, community and the State are well chronicled in the media and have also been touched upon by Dick. But I think the spirit and essence of Justice Schaefer was captured in the words of the award that Dick Thies made reference to. The award that was given to him at the 92d annual meeting of the American Bar Association held in Dallas, Texas, in August of 1969. On that occasion the then-president of the ABA, William T. Gossett of Detroit, presented the ABA Medal, the ABA's highest award, to Justice Schaefer. I will quote only a part of that award. Justice Schaefer was described as "a lawyer's judge who has given distinguished service to his State and nation, service worthy of the highest standards which our nation expects of its judiciary." His opinions were described as "models of clarity and judicial learning."

I attended Northwestern Law School, and although Justice Schaefer was no longer a full-time faculty member at that time, having been appointed to the Supreme Court, he frequently returned as a guest lecturer and I had the opportunity to observe firsthand his scholarship, erudition and wit.

One of my classmates, who is now a partner of mine, Jeff Grossman, clerked for Justice Schaefer after graduation. I took the time to talk to Jeff and asked him about Justice Schaefer the man. I wanted to learn a little more about him than I could ever learn from reading opinions, listening to lectures or reading

news clippings. As you know, the clerks live with the justices while the court is in session, and my partner spent a good deal of his workdays and leisure time with Justice Schaefer. To say that he was a warm, sensitive and caring human being is all true, but is not sufficient. He had a genuine, down-home sense of humor which was as likely to be demonstrated from the bench as not. Jeff described to me an incident where a young assistant State's Attorney from Cook County was arguing a case and during the course of his remarks he indicated that there were only two reasons for sex: love and money. As he prepared to continue Justice Schaefer intervened and asked, "What happened to good old-fashioned fun?" I'm sure the assistant State's Attorney was taken aback, but I know Justice Schaefer's colleagues on the bench were smiling, if not outwardly, at least on the inside.

Even after his days as a member of the Northwestern faculty, Justice Schaefer took pains to return to the law school, if only to participate in the annual student-faculty softball game, which is something you don't find many Supreme Court justices doing.

To paraphrase again the language on the ABA award which he received in 1969, Justice Schaefer brought to the Illinois Supreme Court a comprehensive knowledge of the law, a broad vision and a wide humanitarian approach. He was neither a liberal nor a conservative, neither a strict constructionist nor an activist. He was aware of both the obligations and limitations of judicial office. He helped to keep the law of Illinois abreast of the times without an undue assertion of judicial prerogative. Those words are indeed an enduring legacy to an outstanding Illinois jurist. As John Housman might say today, "Justice Schaefer deserved such a legacy because he got it the old-fashioned way—he earned it." Thank you.

CHIEF JUSTICE CLARK:

Thank you, Mr. Stone.

This entire court and many of you present attended the memorial services for Justice Schaefer at Northwestern University Law School recently. It was not only a meaningful memorial to our departed colleague, but one that helped make us realize the tremendous loss that not only Justice Schaefer's colleagues, as-

sociates, professors, law partners, friends, admirers, and students have suffered but helped us to realize the fact that this great jurist, athlete, teacher, *amicus*, this man who belongs to history was also like the rest of us—a person, a husband and a father. I have asked, on behalf of the court, and now call upon Justice Schaefer's daughter, Nancy, an officer of the court, to tell us if she will, about her dad.

NANCY SCHAEFER:

Thank you, your honor.

May it please the court, it means a great deal to our family to share this time of remembrance with the people and in the place that meant so much to Wally.

Springfield is the place where Wally's career began in more than one sense. It began here in the sense that his first job was here with the Legislative Reference Bureau in 1928. But more importantly, it was here that he first felt a passion for the law. As an undergraduate at the University of Chicago, his passion was for tennis. When Wally was a junior in college, he found that he had so many credits that he was in danger of graduating. Graduating was unthinkable because he was going to be captain of the tennis team in his senior year. So he avoided graduating by the simple device of switching his major, stayed on another year, and was captain of the team.

This is perhaps an early example of Wally's instinct for focusing on what was important in a situation, but it does not foreshadow a passion for the law.

As a law student, at least to hear him tell it, he was not outstanding. He and his older brother, Elmer, were in law school at the same time. Elmer was a brilliant student and decided to take Wally under his wing. They took one course together. According to Wally, Wally got an "A" and Elmer got the highest grade ever awarded at the law school.

Wally's mother had insisted on his going to law school, but she died shortly before he graduated. His own ambition on graduation from law school was not to be a lawyer, but to be an airplane pilot. He wasn't going to take the bar examination at all and finally did only because his brother Elmer dared him to do

it. This is perhaps a good example of his liking for challenges, but it does not reflect a passion for the law. But when he and his friends and classmates from law school, Alex Elson and Rufus Poole, came to Springfield, his life in the law began. At that time the newly established Legislative Reference Bureau had a seven-member staff headed by Dewitt Billman. This small group turned out almost 2,000 bills in a 12-month period, often working late into the night.

Alex Elson speaks of Wally "catching fire" while he worked at the Legislative Reference Bureau. That's my impression too. He mastered the technique of drafting and discovered the fascination of matching words to far reaching decisions about human conduct.

Here in Springfield was the beginning of an interest in law which was so broad that later, when he became a professor at Northwestern Law School, he taught courses in evidence, civil procedure, Federal procedure, agency, taxation, constitutional law, legal institutions, legal bibliography, moot court, real estate transactions, and property. But that breadth of interest came from a single source, his passion for the ideal of justice.

Later, after he became a justice of this court, he said, "There have been great judges in the past and there are great judges among us today. By no means do all of the great judges achieve wide acclaim. For many of them, the outward recognition that they receive is the respect, the admiration and the affection of their fellow lawyers, and even that is more frequently felt than expressed. Their inner satisfaction, which they do not articulate even to themselves, comes from devotion of their best efforts of mind and heart to the service of the ideal, unattainable perhaps, but still inspiring, of universal justice for all men." And I think it is no accident that both Mr. Thies and I selected that brief passage as it puts in quintessential form Wally's thought and life.

Justice was not an abstraction for Wally. He never lost sight of the human dimensions of legal problems. To this day, the case I remember most vividly from my childhood is a workmen's compensation case, not one of his precedent-setting opinions. The workman had committed suicide after suffering a back injury at work, and the issue was whether the injury brought about this

suicide. I can still remember Wally telling me about how the man had cut not only his own lawn but his neighbor's lawn before the injury and how after the injury he couldn't even cut his own lawn. Wally agonized about that case, and it meant so much to him, or more, than the cases which are more widely known. I should add that even at home with his family, he never discussed a case until he had completed his opinion.

Serving on the court was a joy to him. He was heard to say: "I've never worked a day in my life." Yet, to the outside observer, he worked all the time. After dinner, he often worked in the dining room with his papers spread out and the life of the household of my mother, my three brothers, and Wally's aunt, flowing around him. Dinner, of course, had been spent talking about different important questions. Wally was teaching us, but we thought we were having fun.

Wally retired from the court in December 1976. In January, when the next term began, there was a terrific snow storm. As the wind howled around the house, Margo said to Wally, "Aren't you glad you don't have to go to Springfield now?" Wally was silent. She said again, "Aren't you glad you don't have to go to Springfield now?" "No," he said, "No, I'm not."

When Wally and Margo's house caught fire in 1977, his set of Illinois Reports was destroyed. After the fire, he replaced them. "My favorite reading," he explained, only half jokingly. When Wally was in Springfield, he loved to take walks past Lincoln's home late at night. Perhaps he felt close to Lincoln at those quiet times. It seems particularly fitting to me that our remembrance of Wally today will become part of the books that meant so much to him.

CHIEF JUSTICE CLARK:

Thank you, Miss Schaefer.

Those of you who attended Justice Schaefer's memorial ceremony at Northwestern University and all of us were fortunate to hear from our colleague, Justice Ward, who made some very inspirational remarks that day. Justice Ward and Justice Goldenhersh and Justice Ryan are the only three sitting members of this court who served with Justice Schaefer, so Justice Ward

said, having already addressed us at the memorial at Northwestern, he would yield his time to our other two colleagues. The court now calls upon Justice Goldenhersh.

JUSTICE GOLDENHERSH:

I should add to the Chief Justice's comments that Justice Ward told us that at dinner last night, so it didn't give us too much time to prepare.

I do want to say that Justice Schaefer, with whom I had the honor to serve, that I did a little research on his record on this court. On May 24, 1951, he filed his first opinion as a justice of this court in the case of *People v. Walker*. On November 15, 1976, he filed his last opinion as a member of this court in the case of *Washington v. Atlantic Richfield Company*. Between those two dates, that period of approximately 25½ years, Wally Schaefer enjoyed one of the most spectacular and remarkable judicial careers in the history of American jurisprudence. I will not try to describe his career because it was done so eloquently recently by Mr. Justice William Brennan of the Supreme Court of the United States. In December of 1979, the Northwestern University Law Review was dedicated to, and it's entitled in honor of, Walter V. Schaefer, and the lead comment is by Justice Brennan. He says, "I fully confess my bias for Justice Walter V. Schaefer, my warm friend for some 23 years. I take great pride that every list of great judges of our time has his name near the top. He crowded brilliant achievements one upon another over his 26 years upon the Illinois Supreme Court. He authored an extraordinary number of distinguished opinions covering the broad spectrum of issues that erupted so massively in his years on the bench. His opinions made him one of the best known and most widely respected appellate judges of his time. The numerous invitations from outside Illinois to deliver distinguished lectures—Harvard's Oliver Wendell Holmes Lecture and New York University's Cardozo Lecture, are examples—attest to the high esteem, as a judge of prodigious intellect and as a foremost legal scholar, in which he is held throughout the country. His opinions, lectures, and numerous articles are not only models of clarity, construction, and reasoning, and the results of industrious and

comprehensive research—they also reflect a rich background of culture and learning. He possessed in the highest degree deep and perceptive insights into the larger function of law in our turbulent and rapidly changing society.”

Wally had been called upon to deliver some important lectures at important seminars. In March and April of 1966 he delivered the Rosenthal Lectures at Northwestern University Law School. These three lectures are compiled in a volume that is entitled *The Suspect and Society*. In reading that it must be kept in mind these lectures were delivered before the decision in *Miranda v. Arizona* and reveal truly an understanding of the problems arising in that critical period from between arrest and arraignment and, in addition to that, a sense of justice coupled with deep compassion for the plight of the indigent prisoner.

In contrast to that level of lecture, in April of 1967 he was called upon to deliver the annual Benjamin N. Cardozo Lecture before the association of the bar of the City of New York and in that lecture, entitled *Techniques of Prospective Overruling*, he set out the theory which has been called the “Sunburst Doctrine” and which this court applied in *Molitor v. Kaneland Community Unit District* and a number of opinions thereafter.

I came on the court in 1970 and had the good fortune to have attended the American Bar Association meeting in London the following year. I was invited to a reception by some English judges and I met the Master of the Rules, who is the top judge in the British Empire. I suppose he is the equivalent of our Chief Justice, if there is such a thing. I was introduced to him as a member of the Supreme Court of Illinois and, oh yes, Wally Schaefer’s court.

I went over to Dublin and was introduced to the members of the Supreme court of Ireland and one of the judges there knew him and asked about his health. He had been taught by Wally at the seminars at New York University the preceding year.

He was in far advance of his time, I think, in the leadership that he contributed to this court. His contributions were great and really too numerous to recall. Just to list a few, Illinois was one of the first States in the country to have an annual judicial conference. It was Wally Schaefer’s idea and his creation and preceded the constitutional provision by some 10 or 15 years.

The principles that he laid down for the conference are now included in the constitutional provision, and it still follows those rules. He was the activist in the updating of the rules in both civil and criminal procedure and far ahead of the rest of the country in that regard. I know that, when I went to meetings of the National Council for State Courts, they were talking about the rules which we had in place in Illinois for many many years and I was proud of the fact that our court had led in that particular activity.

When I was elected to this court, my older son, who is now a circuit judge, was one year out of law school. His comment on my election was, "Just think, Pop, you're going to get to serve on the same court as Walter Schaefer." It was an honor and I enjoyed it immensely, and it was a great learning experience. I know that I, for one, miss him very greatly.

CHIEF JUSTICE CLARK:

Thank you, Justice Goldenhersh.

The only other sitting member of the court who has not addressed the services on behalf of Justice Schaefer and who was fortunate enough to serve with him and I know has many many wonderful, heart-warming stories about him—I call upon now, Mr. Justice Howard Ryan.

JUSTICE RYAN:

Thank you, Chief Justice Clark.

Margo, Nancy, the melancholy of this occasion, at least for those of us who had the privilege of serving on this court with Justice Walter Schaefer, is dispelled by the many warm memories that we have of that association. Justice Ward had the privilege of serving with him for 10 years, Justice Goldenhersh and I had the privilege of serving with him for six years. It is indeed a pleasure for me to have this opportunity to express my feelings about those almost six years at this time.

I need not speak of Wally's stature as a judge or as a scholar or as a teacher, that has more eloquently been done by others today and previously. I would instead speak of Wally's relationship with those of us who worked with him on this court and the

influence that he had upon us and our work and on the work of the court.

Wally was a meticulous opinion writer. He liked short, concise, and to-the-point opinions, and that is the way he wrote his and that is what he expected of us. He detested lengthy, rambling legal writing, and the law, he thought, should most certainly not be cluttered up in that manner.

Soon after I came on this court, I wrote what I thought was a rather scholarly opinion, and as we were discussing the case in the conference room, I explained how I was tracing the historical development of this particular point of law from the early period down to the present time and the next logical step in the holding of this case. Wally interrupted and said, "Why did you put all that stuff in the opinion?" I said, "Well, it is an accurate historical development of the law on that point." He said, "Of course it is Howard, but it's been said a hundred times before." And so, after deleting about two or three days of lengthy legal research from the opinion and several pages, the opinion was adopted.

Wally was also extremely conscious of our obligations and our responsibilities as judges and the role that we should play in shaping the law. On another occasion I was writing an opinion on a subject for which there was very little precedent, and after discussing the case in the conference room, I stated what I thought the holding of that case should be, and Walter said, "Why didn't you say that in the opinion?" And I said I could find no authority to support it. He said, "In that case, we will be the support, the authority to support that particular decision."

Although Walter may have appeared to be an adversary in the conference room, he in reality was seeking only to assist us in producing the best opinions possible, opinions worthy of the Supreme Court of the State of Illinois. He spent long hours in the library, not only researching his own opinions, but researching those of his colleagues so that no opinion would be filed that would diminish the reputation of this court. It was a great learning experience for me, as Justice Goldenhersh indicated that it was for him, to have had the opportunity to serve on this court with Walter Schaefer for six years. That had to be one of the great educational periods of my life. We didn't always agree, in

fact, we often disagreed, but whether we voted together or in opposition on an opinion, each discussion was extremely meaningful to me and a great learning experience. I know that today I am a much better judge for having had the opportunity to serve with him on this court for six years.

The Supreme Court of Illinois enjoys an extremely unique experience in our living arrangements here by virtue of the fact that we live together on the third floor, we work together here, and we develop a very close family relationship, whether we are sitting around the table in the dining room or relaxing in the Wilson Room. We naturally talk about our children, our families, our likes or dislikes, our hobbies and our various interests. We come to know one another very closely. It was at these times that Walter's very compassionate nature would surface. He displayed a deep interest in each member of the court, in the interests of each member of the court, and in our families. If there was an illness in the family of one of the members of the court, he shared that concern, and if there was a happy occasion, he rejoiced with his colleagues. He shared our concerns about our children, and he shared our happiness at their successes. I can recall one occasion, when my daughter had been involved in a very serious automobile accident, Walter came to my room one night and displayed a compassion that I am not able to adequately describe, but it was certainly a meaningful experience to me.

His compassionate nature was also displayed here in the courtroom, from the bench. He had a great fondness for young people, and particularly, young lawyers, and if the young lawyer was making a rather halting presentation from the podium, he would attempt to smooth the way and put the lawyer at ease by injecting with some sort of friendly question, always helping with a very fatherly tone. I can well recall one occasion where it didn't work and it backfired. There was a young lady speaking to the court and she obviously was very nervous, and in an attempt to put the lady at ease, Walter said, "Now we have all stood out there were you are standing now, and we have all at one time or another been just as nervous as you are now," and that just completely undid the poor girl and I don't think that she was able to make a very meaningful presentation after that,

much to the embarrassment of Walter.

All will acknowledge Walter's great contribution to the law; however, those of us who had the pleasure of living and working with him on this court had a very unique opportunity to know him both as a legal scholar and as a person. We had the privilege of his tutoring in the law, so to speak, and we certainly had the privilege of learning from him the love of our fellow man and the concern that we should have for our fellow man through his compassionate examples. It was a great privilege to have served with him for those six years.

CHIEF JUSTICE CLARK:

Thank you, Justice Ryan.

I couldn't help but notice as the various justices were talking about their old friend and colleague and relating some stories, that Justice Underwood and Justice Crebs and Justice Kluczynski, who are with us today, would smile, and I am certain that they themselves remember many many priceless moments that they had with Justice Schaefer.

Harold Washington, Mayor of the City of Chicago, was unable to be with us today but he sent the following letter for inclusion in these memorial services:

"I am proud to have known Justice Schaefer and to have called him my friend. His intelligence and scholarliness were admired by all who knew him. His integrity was beyond reproach, and his long tenure as a public servant was lauded and appreciated, not only by the citizens of Illinois, but by his fellow lawyers. Among the many honors he received, one of the most noteworthy was the American Bar Association Medal for 'conspicuous service to the cause of American jurisprudence.'

He is missed in the legal community, as he is most surely missed by his family and friends."

The proceedings of today will be distributed to the members of the family of Justice Schaefer.

Members of the court are always sad and reflective when we participate in memorial proceedings. Still, it is a time to reflect on greatness. There are those who feel it fashionable and in

vogue today to attack the judicial branch of government, but when we can refer to the Wally Schaefer's among us, we can hold up our heads and say, "Who can do it better?"

On behalf of the court I wish to thank Mr. Thies, representing the Illinois State Bar Association, Mr. Stone, representing the Chicago Bar Association and Miss Schaefer, representing the family of Justice Schaefer, for participating in this ceremony and for their very warm remarks and memories.

You are all invited to join Justice Schaefer's family upstairs, where Ruth has made arrangements for a reception in their honor.

Mr. Marshal, the Supreme Court stands adjourned until 9:30 a.m. tomorrow morning.

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