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Introduction

Dean John W. Wade— A Fitting Tribute

*Victor Schwartz**

I express my deepest appreciation to the editors of the *Vanderbilt Law Review* for permitting me the honor of writing this tribute to Dean John W. Wade, my dear partner in scholarship and co-author for over two decades.

It is a privilege to join with the Honorable Gilbert S. Merritt¹ and distinguished attorney John Frank² who have warmly, skillfully and accurately portrayed a few of the highlights of Dean Wade's distinguished life.

Dean Wade's scholastic works, extraordinary development of Vanderbilt Law School, and impact on the law of torts will always remain. His special skill in balancing his professional activities with a warm personal life, including a "mutual respect" marriage to his extraordinary wife Mary Moody, are there for all of us—lawyer and non-lawyer alike—to admire.

Like any tribute, this is, in part, personal.

* Senior Partner, Crowell & Moring, Washington, D.C.; co-author John W. Wade, Victor E. Schwartz, Kathryn Kelly, and David F. Partlett, *Prosser, Wade and Schwartz's Cases and Materials on Torts* (Foundation, 9th ed. 1994); author, *Comparative Negligence* (Michie, 3d ed. 1994); co-author, Victor E. Schwartz, Patrick W. Lee, and Kathryn Kelly, *Guide to Multistate Litigation* (Shepard's/McGraw-Hill, 1985); advisor, Restatement (Third) of Torts Product Liability and Apportionment of Liability Targets; Chairman, Federal Interagency Task Force on Product Liability (1976-1980); Principal Draftperson, The Uniform Product Liability Act; Adjunct Professor of Law, University of Cincinnati. In 1994, the *National Law Journal* named Mr. Schwartz one of the 100 most influential attorneys in the United States.

1. Hon. Gilbert S. Merritt, *Dean John Wade*, 48 *Vand. L. Rev.* 587 (1995).
2. John P. Frank, *John W. Wade*, 48 *Vand. L. Rev.* 591 (1995).

When the end of life comes, we recognize that a few people have transformed our lives, enriched them, and gave us insight. For me, Dean Wade was such a person from the time when we first met in 1968.

It was, however, the twenty-one-year partnership on our casebook³ that meant the most. In 1973, Dean Wade "took a chance" on a relatively unknown law professor at the University of Cincinnati to be his co-author. I was about thirty years his junior and was in many ways green as the spring grass that grew on the Cincinnati campus. Nevertheless, his confidence in my judgment, his "teaching," and his sharpening of my skills made a profound change in my life. In the early years it was the relationship of tutor and pupil, but as time went on, it became a true partnership. We had many discussions and different points of view on a variety of subjects, but never an argument or disagreement on basic principle. He brought monumental skills to the task; he always let me feel that I brought a few along also.

When we worked on the casebook we would begin our day early in a sequestered corner of the Vanderbilt Law School Library. At noon we would proceed to a brief lunch, at 6:30 p.m. or so, we would have a brief dinner (often at his home), and then we would work until he finally would say, "Victor, you seem to be getting tired, maybe that is enough for now."

John's remark was a small example of his marvelous dry wit. He also possessed an insight about people that is the envy of any x-ray machine ever made. From that insight he could build bridges with virtually anyone. He would receive, without ever acting in an arrogant or supercilious manner, their respect. It was natural that after Dean Prosser's health started to fail, Dean Wade was named to be Reporter for the Restatement (Second) of Torts. In an era when the tenure of law deans is less than four years, it may be difficult to understand how Dean Wade led Vanderbilt for twenty. He had a quiet, yet steel-like leadership ability that could be effective and endure; he possessed a leadership ability that, unfortunately, is often lacking among those who have public responsibility today.

There have been many tributes to Dean Wade, but this edition of the Vanderbilt Law Review is indeed fitting. A combination of

3. The most recent edition of the casebook is John W. Wade, Victor E. Schwartz, Kathryn Kelly, and David F. Partlett, *Prosser, Wade and Schwartz's Cases and Materials on Torts* (Foundation, 9th ed. 1994).

three very different, but unique, pieces of scholarship would be just what would make Dean Wade happy and pleased.

It is appropriate that one of the great minds of this century in shaping the law of torts, Judge Robert E. Keeton, agreed to participate.⁴ Judge Keeton worked with Dean Wade on the Restatement (Second) of Torts and in a number of other important ventures. Judge Keeton's insights into *Restating Strict Liability in Nuisance* shows how the Restatement process actually works, when it works well. In discussing the interplay of ideas, the mutual respect among colleagues, and the development of better and better results, Judge Keeton's article will long endure. It will always help folks to understand how Restatements, when effective, are made.

Professor Marshall S. Shapo, a productive and insight-filled scholar of my generation, provides a critique of the new Restatement (Third) of Torts project.⁵ Dean Wade valued constructive criticism. Professor Shapo's critique includes graphic background about the project, its history, and careful research. He turns a project around as one looking at a prism; he then makes thoughtful, well-intended suggestions for how the project might be improved.

One of the fundamental changes that new reporters Professors James Henderson and Aaron Twerski have made in the new Restatement (Third) of Torts stemmed from Dean Wade's writing when he explained, over two decades ago, that the singular definition of "defect" in the Restatement (Second) of Torts had perhaps missed the mark, because there really is no singular definition of defect.⁶ Dean Wade understood that in the long run, function might have to triumph over form, and that the subject of products liability needed to be looked at in terms of defects in manufacture, defects in design, and defects relating to failure to warn, and also representation.

Perhaps the most fitting tribute of all is penned by a leading scholar of the next generation, Professor Michael D. Green of the University of Iowa Law School.⁷ Now an associate reporter for a new Restatement (Third) of Torts project on Apportionment,⁸ Professor

4. Hon. Robert E. Keeton, *Restating Strict Liability and Nuisance*, 48 Vand. L. Rev. 595 (1995).

5. Marshall S. Shapo, *In Search of the Law of Product Liability: The ALI Restatement Project*, 48 Vand. L. Rev. 631 (1995).

6. See John W. Wade, *On the Nature of Strict Tort Liability for Products*, 44 Miss. L. J. 825 (1973); John W. Wade, *On Product "Design Defects" and Their Actionability*, 33 Vand. L. Rev. 551 (1980).

7. Michael D. Green, *The Schizophrenia of Risk-Benefit Analysis in Design Defect Litigation*, 48 Vand. L. Rev. 609 (1995).

8. With reporter, Distinguished Professor of Law William C. Powers, Jr. of the University of Texas Law School.

Green's article is, in the argot of those of us who have followed the subject of torts a while, "a breakthrough piece." Design defect cases have been analyzed again and again, but Professor Green's article, *The Schizophrenia of Risk-Benefit Analysis in Defining Defect Litigation*, combines an understanding of the practical aspects of design liability with the theory, in a way that has not been done before. This is not a rehash or a "restatement" of old ideas or articles; to the contrary, it is new and refreshing and piercing in its analysis and fair.

* * *

Many people have strong beliefs about life after death. On the other hand, some believe that no one knows what comes "hereafter." But we can know this fact—the editors of Vanderbilt Law Review have assembled the type of tribute and permanent work that would have made my dear colleague John Wade smile and be proud.