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## Fred Herzog Memorial Service: Fred's Life (1938-2008), 41 J. Marshall L. Rev. xxxi (2008)

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# FRED HERZOG MEMORIAL SERVICE

## FRED'S LIFE (1938-2008)

PROFESSOR GERALD E. BERENDT

Imagine being driven out of your home and country, expelled from your profession, your possessions confiscated, fleeing under threat of violence and even death to you and your family. Today, we look back on the Holocaust with the benefit of much hindsight.

But the Holocaust was not an academic or historical matter for Fred Herzog. It was all too real and personal. It was a family tragedy, an outrage, a hideous travesty against humanity. All this notwithstanding, it was also a personal challenge to young Fred Herzog who first fled to Sweden and then to the United States to reassemble his life and his career as a lawyer. And his experience, emerging from Europe's descent into madness further forged the character of this already exceptional person.

As Ann Lousin has recounted, Fred entered the United States through a program designed to enable legal scholars to escape persecution in Europe on the premise that they were participating in post-graduate programs at American law schools. Like so many refugees before and after him, Fred entered New York harbor by ship, to the inspiring sight of the Statue of Liberty.

While waiting in New York City for assignment to an American law school, Fred Herzog was not idle. He taught himself to read and write English by reading the New York Times, completing its crossword puzzles and reading other publications he could acquire. Fred was assigned to study at the University of Iowa College of Law, where he studied American Law from 1940 through 1942. In Iowa City, this urbane, European legal scholar, a former judge, steeped in the poetry of Goethe and Schiller, the philosophy of Leibniz and Descartes, devotee of the music of Haydn, Mozart and Beethoven, worked in a dormitory cafeteria to cover his room and board. While studying American Law, Fred further developed his ability to read, speak and write English. Fred learned to speak, read and write English. In later years, Fred explained that it was in Iowa City that he picked up his distinct Iowa accent. Joking aside, Fred always recalled his second legal education at the University of Iowa College of Law with great appreciation and gratitude.

After obtaining his American law degree in Iowa in 1942, Fred moved to Chicago and began his new career as an editor-in-chief of legal periodicals and as a lawyer. In Chicago, he met his

beloved Betty; they married and had two sons, Stephen and David.

In Chicago, this remarkable man would be no ordinary lawyer. He was drawn to academia, and the legal academy embraced him. In 1947, he began his 25-year association with the Chicago-Kent College of Law, first as a professor, then as an associate dean, and eventually as that law school's dean. There, he made lasting friendships with his colleagues and students, many of whom remained in close contact with him until his passing in March 2008.

So, first a judge, then a lawyer and editor, then a law professor and dean. But this multi-faceted Renaissance man was hardly through. In 1963, he became special counsel to the Metropolitan Sanitary District. I had occasion some years ago to introduce Fred to computer legal research. The first case he asked me to look up for him was the pioneering environmental law case he argued before the United States Supreme Court, arguing that the City of Milwaukee was polluting Lake Michigan. He was proud of his early role, before it became fashionable, in what would become the environmental protection movement.

Fred continued his periodic government service as First Assistant Attorney General of Illinois from 1972 to 1976. In that capacity, he represented the people of the State of Illinois and various government entities in a wide range of legal proceedings. While serving in government, he followed his penchant for making lasting connections and friendships with others, including Ann Lousin.

Then in 1974, The John Marshall Law School approached Fred Herzog to serve as Acting Dean of the Law School. Fred accepted. About a year later, the Trustees appointed him Dean. In the Centennial History of the Law School, our Law School curator and historian Bill Wleklinski wrote, "The Herzog deanship changed everything." John Marshall had long been known for providing access to legal education to individuals who had previously been excluded from the profession by elitist and even racist admissions policies at other institutions. Although John Marshall served the laudable role of a law school of opportunity, we also had a reputation for being on the outer edge of mainstream legal education. The challenge to Fred was to preserve our fundamental mission while entering that mainstream. And he succeeded.

John Marshall had been fully accredited by the American Bar Association since 1951. But Fred aimed to have the Law School qualify for membership in the prestigious Association of American Law Schools. To do this, he had to educate, lead and work with the Trustees, faculty, staff, alumni and other law school constituencies.

First, he set out to increase the number of full-time faculty,

hiring an unprecedented number of new faculty in his first three years.

Many of those faculty members are here today, including Ann Lousin, Celeste Hammond, founder and director of our Real Estate Law Center, Ken Kandaras, Director of our Advocacy and Dispute Resolution Center, Susan Brody who directed our Lawyering Skills Program and became an Associate Dean, Ralph Ruebner, now an Associate Dean, and this speaker who also became an Associate Dean. Future Dean Gil Johnston returned from Hawaii. George Trubow, founder of John Marshall's Information, Technology and Privacy Law Center returned from Washington. Justice Joe Gordon also returned to the faculty at Fred's request. Previously a member of the adjunct faculty, future Dean Leonard Schragger joined the full-time faculty. United States Commissioner of Patents, Don Banner was named Director of our Intellectual Property program during Fred's term as Dean.

And the new faculty added greater diversity to the law school in the broadest sense. The law school already had a fine teaching faculty, made up primarily of distinguished practicing lawyers, as had been the John Marshall tradition. In addition to experienced practicing attorneys, Fred sought out professors who had records of scholarship and publication as well. Moreover, he was not averse to recruiting professors from government as well as private practice. But first and foremost, he sought faculty who had promise as classroom teachers and who were willing to devote themselves to the job of teaching and mentoring their students. He valued proficiency in teaching over all faculty accomplishments. Delivering a quality legal education to our students was his priority.

After expanding the faculty, Fred then moved that faculty in the direction of faculty self-governance. He reformed and regularized our tenure and promotion policy. He created new faculty committees. While keeping a steady hand on the Law School's rudder, he gradually delegated more and more responsibility to faculty committees in such important areas as hiring, promotion, tenure and student academic matters.

In the interest of accuracy, I must divulge that the curriculum was the one area in which Dean Herzog was reluctant to cede control. I vividly recall his reaction at a faculty meeting when the faculty curriculum committee proposed reducing the number of hours for the course in Remedies from 3 to 2 hours. "I must forbid it," Dean Herzog forcefully intoned in his heavy Iowa accent. The chairman of the faculty committee that had made the proposal then said, "Well, I guess that completes my report," drawing laughter from all, including Dean Herzog. Fred's refusal to cede control of the curriculum was a minor short-coming, if a short-coming at all. I knew his thinking to be misguided or flawed in

only one other matter: Fred Herzog was a White Sox fan.

The other positive developments Fred Herzog ushered in at John Marshall are too numerous to cover in detail, but they include a highly successful moot court program, our highly regarded lawyering skills program, and a retooling of our law review. Fred expanded and updated our library collection as well. It was during Fred's deanship that we introduced the Conditional Program designed to permit applicants with non-traditional qualifications to demonstrate that they could make it in law school. The Conditional Program permitted us to retain our commitment as a law school of opportunity and was the predecessor program to our present Scales program.

And Fred dealt effectively and decisively with the facilities and space challenges presented by our physical plant. During his administration, the law school purchased the State Street building, expanding classroom, library and office space into that facility. All this to better serve our students and bring us into the mainstream of legal education.

To accomplish these many improvements, Fred worked closely with the President of the Law School's Board of Trustees, Louis Biro, and with long-time Associate Dean Helen M. Thatcher. Their successful collaboration is a testament to all of them, but particularly to Fred. Because he brought an outsider's knowledge of legal education, Fred had to convince the Trustees, the faculty, staff and alumni that the changes he advocated would be worth it.

And the verdict of history is in. Fred walked the tightrope successfully, insuring that The John Marshall Law School retained its identity as a law school of opportunity while becoming a law school of excellence in urban legal education. In 1979, Dean Herzog led the Law School into membership in the Association of American Law Schools.

Fred Herzog served as Dean from 1975 to 1983, when he became Dean Emeritus and returned to the John Marshall faculty to teach. But the story doesn't end there. In 1990, the Trustees once again called on him to serve as Acting Dean during the Law School's search for a new dean. Fred was then over 82 years old, but he came out of retirement to serve the law school in a time of need for yet another year.

Fred then settled into what for him was retirement. During the cold months, he traveled to Florida. Whenever the Law School engaged in a dean search, some faculty remarked that Fred "was tanned, rested and ready to go." But Fred found other activities to keep him occupied. He frequently came into his Law School office until his health began to fail shortly after his 99<sup>th</sup> birthday. Marilyn Criss was Fred's guardian angel in his later years. And the faculty secretaries watched him closely when he came into his office. The secretaries taught him to use e-mail, and Fred

corresponded with academics in the United States and Europe, sometimes writing e-mail messages in German.

When Fred was in his office, faculty routinely stopped to chat with him about law, literature, politics, international affairs, philosophy, music and history. Not many years ago, I gave Fred an article about a particularly interesting person who was well known in Vienna in the early part of the 20<sup>th</sup> Century, Alma Mahler-Werfel. After Fred read the article, he beckoned me into his office. His eyes lit up and he gave that wonderful, impish laugh of his. Fred lectured me that Alma Mahler was accomplished in her own right, a composer and writer, who was extremely intelligent as well as strikingly beautiful. He recounted that she had been married many times: first to the composer Gustav Mahler, then to the architect Walter Gropius, author Franz Werfel, philosopher Rafael Schmidt, and film maker Nicolas Vergara. Alma also had flirtations with several other prominent figures, including artist Gustav Klimt. And she had a particularly scandalous and tempestuous affair with the Expressionist artist Oskar Kokoschka. In 1940, Alma and her Jewish husband Franz Werfel fled the Nazis in a dramatic escape on foot across the Pyrenees Mountains to ship passage from Portugal to New York. Fred recalled that Alma and Franz had lived for a while in my home town, Charleston, South Carolina. I left Fred's office marveling at his memory of the details about these famous people and the events surrounding their lives. Fred spoke of them as if he knew them, as if he were there. But then I remembered . . . Fred was there.

Last September, Fred returned to the Law School to celebrate his 100<sup>th</sup> birthday with his many friends. We scheduled a Herzog Lecture on human rights to coincide with the occasion. As you know, due to his personal experiences, Fred had a life-long interest in and commitment to human rights and justice. Fred participated in the planning of the fall Herzog Lecture, suggesting the speaker, noted human rights expert Professor Michel Rosenfeld.

The night before the 2007 Herzog Lecture, a group of Fred's friends and colleagues joined him for dinner. A string ensemble played Viennese music, and Fred treated those present by singing in his rich baritone. In German, he sang, "Vienna, Vienna, you alone will always be the city of my dreams." He never forgot his beloved native country, Austria.

Shortly after this dinner and the 2007 Herzog Lecture, Fred's body, but not his mind, began to fail him, age inevitably taking its toll. Fred died on Friday, March 21, 2008 at Swedish Covenant Hospital.

I would like to close with a quotation that sums up Fred Herzog's philosophy, his view of life, humanity and the world, a

view forged by the life experiences of this most remarkable man whom we celebrate today. It will be familiar to those who attended commencement ceremonies when Fred was dean. It is from the French philosopher, Francois de Chateaubriand:

**“Justice is the bread of the nation; it is always hungry for it.”**

We celebrate your memory, Fred. We are all fortunate for having known you.