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## In Memoriam: Alan C. Swan

### **Authors**

Judge Barzee Flores, Peter D. Lederer, Katja Simone Wuelfert, William Twining, Keith S. Rosenn, and John .F. Murphy

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## IN MEMORIAM: ALAN C. SWAN

### Remembrance for Professor Alan Swan

JUDGE BARZEE FLORES

Alan Swan, the Indian-born son of missionaries, died on the morning of Sunday, June 8, 2008, in Miami. We mourn his death as our loss and celebrate his life as our gain, for so many of us were forever touched by this extraordinary man.

Professor Swan was a loving husband, father, and grandfather. He was a first-rate scholar, an inspiring teacher, and he literally wrote the book on International Business Transactions. He had a gifted lawyer's mind and a gifted musician's ear. He was a first-class Gibson-drinking gentleman.

Alan Swan was my professor at the University of Miami Law School in the late 1980s. He was my teacher and friend for nearly twenty years.

Like so many of his students, I had Professor Swan for Elements—that esoteric, vexatious torture endured by all of us in that boot camp first year of law school.

We studied The Cantaloupe Case, which, best that I can recall, had something to do with interstate shipping, rotting cargo, and the puzzle of who bore the risk of loss. But Elements (probably not ever, but surely not as taught by Swanie—as we called him behind his back) had very little to do with actually solving the puzzle of who bore the risk of loss. It wasn't about figuring out who would or should win the case. Who won was *so* besides the point. The journey was the point.

Those of us who were fortunate enough to have had Professor Swan for Elements, Constitutional Law, Contracts, International Business Transactions, or any of the other courses he taught, know what I mean.

Professor Swan urged us to “Peel the Onion,” and, as every just-peeled-and-analyzed scale leaf fell to the floor, the next-to-be analyzed leaf layer of complexity was revealed. And on and on. Now, for a few, that journey, that way of exploration, lasted only a semester. But, for most of us who studied under Professor Swan, that journey has never ended.

And who amongst us could ever forget *how* he traveled with us on those law-school classroom adventures? With his booming voice, his former football player’s gait, rolling up his sleeves and pacing—wiping his brow and his glasses, prodding, coaxing, cajoling us—fatherly—sometimes gentle, sometimes stern, he was always wanting us to get it, always wanting us to enjoy the journey with him as much as he enjoyed the journey with us.

Our friendship grew from there and the law was only part of it. Alan had so many interests, so many passions—the opera being one of them; there was always so much to talk about over a long, leisurely lunch.

When my husband Hector and I planned a trip to India, Alan encouraged us to visit Darjeeling. Alan’s father had been the headmaster in a small Christian school in Darjeeling, in the northeast corner of India, in the foothills of the Himalayas. In the Colonial days, the British had a Hill Station there. And there was tea. Before the British were there, and long after they were gone, there was tea—great green blankets of tea fields covering the terraced, sloping mountainsides.

Before we left for India, Alan wrote to the school that they should be expecting a visit from some American travelers, friends of the venerated headmaster’s son. And Alan sent us with a letter of introduction in case the first letter hadn’t made it. Of course we went.

We saw Darjeeling, where Alan had lived as a young boy—speaking Telugu, playing in those same foothills, acquiring his taste for hot curries. We toured the school. We sang hymns with the new headmaster—hymns Alan’s father had arranged so many years ago. And we drank tea. That was a journey unlike *The Cantaloupe Case* for sure, but so *not* unlike Alan to have encouraged it.

Thank you Alan, for your love and friendship, your good counsel and encouragement throughout these years. Thank you Professor Swan for teaching us how to peel the onion and why it matters. Thank you for whetting our appetite for adventure—in the classroom, in the law, in life.

You remain with us as we journey on.

## Alan Swan . . . a Remembrance

PETER D. LEDERER

Some friendships start slowly, only to deepen as the years pass. Such was the case over the more than fifty years that Alan and I knew each other. We were classmates at the University of Chicago law school, but our contact then was casual and slight. And yet, we had powerful linkages: Alan had been Soia Mentschikoff's research assistant; I had been Karl Llewellyn's. Somehow, if you worked for one of this pair, you automatically became part of the "family" of the other. That bond endured.

Not long after Alan began teaching at Miami, Soia Mentschikoff, newly named the law school's Dean, formed her first Visiting Committee. For its ranks she recruited distinguished judges, officials and lawyers—Justice Blackmun, Chief Justice Adkins, Edward Levi and Nick Katzenbach, to name a few—and a few of her "pets" from her Chicago days. Having the good fortune to fall in that latter category, I joined the group in 1974, and Alan and I thus met again at the law school.

In the years that followed, Alan and I would meet with regularity on my Miami visits at the law school. His academic interests and my professional practice, both centering on things international, had significant areas of overlap. Often this led to mutually useful exchanges. I would use him as a sounding board to test my understanding of an issue; he would draw upon the cross-illumination of my practice experience to examine a doctrine. We discovered that we greatly enjoyed these conversations, which often ranged far from the law. Alan's interests were catholic, and rarely casual. Whatever interested him he tended to explore thoroughly and know in depth.

"He loved the law" is not a descriptive cliché when applied to Alan. From his years at Chicago, both as student and academic, he brought to his work a broad range of skills there learned. From those years also came a deep rooting in the intellectual world that was the law school of Chicago in the 1950's. The views, the analysis, the philosophy, the very approach to law of Llewellyn and Mentschikoff and Levi, had soaked in. The law as a solid craft had great meaning for him and imbued his research and teaching.

There was a reassuring sturdiness to Alan; he exuded sensibleness, soundness, and strength. Hand-in-hand with that he had his passions: his

family, his students, his singing,<sup>1</sup> and—almost fiercely—those legal principles the “oughtness” of which he believed in. Consider his article in this issue of the *Law Review*. His disapproval—no, disdain—for the arbitrators’ award is palpable. An ordering he admired and felt to be good for a regime he strongly believed in, had been injured. Still, there could be a good deal of gentle give when one argued with him. I admired much of Judge Teitelbaum’s decision in *Aluminum Co. of America v. Essex Group, Inc.*<sup>2</sup> Alan, however, possessed all of a common-law lawyer’s distrust of the *clausula rebus sic stantibus* and thought the case badly decided. That, however, did not stop him from helping me build my argument by seeking out bulwarks for me in the UNCITRAL provisions.

For all the rigor in his teaching and his scholarship, it was his impact on the lives of his students that stands out remarkably. He was honored in 2003 for his service and scholarship by alumni of the Law School’s International and Foreign LL.M. programs at their worldwide reunion. Two things stood out: One was the remarkably large number of alumni who traveled great distances for this two-day event celebrating their teacher. The other was that over half a dozen of his former students presented a half-day panel of substantive papers prepared for the occasion. Hard work by busy people went into these; each illuminated a facet of what they felt they had learned from him. It was an admirable performance.

He took great pride in the law school and would glory in its ceremonial moments. There is a wonderful photograph of him in full academic regalia, staff in hand, proudly leading the commencement procession. A happy warrior, and one who will be very much missed.

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1. His eulogy for Soia Mentschikoff was in song. He sang *Panis Angelicus* at the memorial service held for her on June 29, 1984 in Miami.

2. 499 F.Supp. 53 (W.D.Pa.1980).

# **Tribute to Professor Alan C. Swan**

KATJA SIMONE WUELFERT<sup>1</sup>

A bright yellow cap. A baseball cap, to be more specific. The cap, as I still remember very vividly, was handed to me by Professor Swan on our way to the football stadium making sure I would not catch too much sun while sitting in the stadium for a couple of hours. And it was one of the many signals of how thoughtful and caring he was.

The day I have in mind was the day of my very first (and I have to admit it, so far only) live football event in the United States. Professor Swan, for whom I was working as a research assistant during my participation in the International LL.M. program in the course of the 2000–2001 academic year, had invited me to join him for the game, making use of his second season ticket. After working together for some months, he found out that my knowledge about football was scarce to say the least. Always eager to help people gain knowledge and broaden their horizon, he took it upon himself to get me acquainted with this sport. For the former football player and lifelong football enthusiast he was, it was presumably one of his favorite subjects to teach—well, probably until he found out how very early in football's evolutionary stages he actually had to begin in teaching me about the sport. Being the skilled teacher he was, he managed this task in an outstanding way, and I will never forget the memorable drawings designed by him, making use of every spare sheet of paper to be found on his desk, sketching—to my recollection—almost every possible scenario that could occur in a football game. To make the subject of football vivid, to illustrate it, to comment on it, and place it in the necessary context to broaden the understanding—all of this was part of his memorable teaching skill, on the subject of football and, even more so beyond, in his legal areas of expertise.

The teaching, of course, was only the prelude to using the skills in practice. In my case: Apply the zillion rules just heard for the first time in my life to the actual setting in the stadium only about an hour after the lecture. I must add: It was not Professor Swan's fault that I often had to rely on his reactions to find out the appropriate response to the situation I had to evaluate. Or to put it more bluntly: Only cheer when he cheers

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1. International LL.M. Graduate, University of Miami School of Law, 2001. Ms. Wuelfert currently works as attorney in an international law firm in Frankfurt am Main, Germany. She specializes in the area of investment law.

in order to do it for the right team. And cheer he did. Although having worked with him closely for several months beforehand, and although this meant that I had experienced a great deal of his enthusiasm already, I had learned another, totally new side of his personality on that day: Pure fascination and overwhelming joy for “his” sport. I have never met anybody so enthusiastic about, and submerged into, the action taking place on the playing field. Getting to know him in this way certainly added to the professional and personal bond that, over time, developed between us. To sum it up: The day in the stadium was one of the most memorable ones during my time in Miami, and I have no doubt that I will never have a chance to watch football, or to hear about it, without Professor Swan coming to my mind so vividly.

Of course, there was much more to the time I had the pleasure of working as his research assistant, than this one day.

It is an extraordinary coincidence to find a teacher who belonged to the faculty of the University of Miami School of Law since 1972 and therefore taught at the law school I was attending for roughly my entire life time. The combination of his previous practical experience, together with the many years of successful teaching, created a splendid opportunity for those whom he taught over the years to gather knowledge from an expert—not only an expert in his field, but also an expert in teaching.

His book on international business transactions, *The Regulation of International Business and Economic Relations*, was one of my favorite law books during my LL.M. studies, not only because I enjoyed the precise and highly intellectual way in which it is written, but also because I was able to help gather updated information on various topics included therein in preparation of the planned next update to the text book.

As Professor Swan’s research assistant, I was able to participate in his scholarly projects related to GATT, WTO, and NAFTA issues and had the distinct pleasure of working with him on a NAFTA lawsuit involving business activities in Mexico, preparing amicus curiae briefs and research memoranda for trial participants. It helped in strengthening our fight for justice that we certainly were on the ‘right’ side in this trial—a conviction we were able to share rather enthusiastically and certainly without leaving any doubts. This was especially so when we realized that we had to work hard to convince everybody else in the trial of our ‘correct’ view. Not even the most mundane task was to be done without the right portion of enthusiasm in Professor Swan’s presence.

After completing my studies, I had the pleasure of returning to Miami during the course of the International Worldwide Reunion in 2003 being held in tribute to Professor Swan and his work. He gave the



keynote address at the reunion seminar, and I was able to participate in an alumni roundtable, giving a speech and discussing various NAFTA and European law-related issues. Although the scope of my work had changed from my earlier research while an LL.M. student, it was a pleasure to return to the subjects I had discovered in detail while working with Professor Swan.

Professor Swan had a lot to give to his students, and he gave freely—not only through his expertise, but also in his approach and dedication to his work and the law school.

I truly hope that Professor Swan noticed how deeply grateful I was for the opportunity to get to know him. I wish his family all the best in getting over the dark side of the loss with strength and hope, for he will always shine in the brightest of light in our memories, and his life's work will continue to serve as a beacon in our pursuit to aspire to become even remotely the kind of jurist he was.

# Alan Swan: The Chicago Connection<sup>1</sup>

WILLIAM TWINING\*

I first met Alan Swan at Joe's Stone Crab in the mid-1970s. My wife and I were on a private visit to stay with Soia Mentschikoff, and she had designated the Swans to look after us. We soon found that we had much in common. We both had experienced a colonial childhood, Alan in India until he was thirteen, myself in Uganda and Mauritius. We both shared a lifelong concern for developing countries and world poverty. Alan had graduated from the University of Chicago in 1957; I had been a postgraduate there in 1957–58. Alan had worked as Soia Mentschikoff's research assistant on the Arbitration Project. I had recently completed my intellectual biography of Karl Llewellyn, and this had involved a delicate combination of maintaining his widow's cooperation while ensuring my independence.<sup>2</sup> Alan had been lured to Miami in 1972 by Soia, who was about to become Dean. I did not realize that lunch at Joe's Stone Crab was part of the process of wooing me to join the Miami Faculty as a regular visitor.

Alan was much more of a Chicagoan than I was. He had grown up in Michigan after leaving India; he spent three years at the University of Chicago Law School. After several years away at Milbank Tweed in New York (1957–61) and as part of the Kennedy administration at the Agency for International Development in Washington, DC (1961–65), he returned to the University of Chicago for six years as Assistant Vice-President for Special Projects and, for some of that time, as Professorial Lecturer in Law in the Business School. Between 1963 and 1966, I returned to Chicago for short visits, mainly to put Karl Llewellyn's papers in order.

Of course, the main thing that Alan and I had in common was that we were devotees of Llewellyn and Mentschikoff. After Soia became Dean, Alan became Associate Dean. We both became part of the team of

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\* William Twining is Quain Professor of Jurisprudence Emeritus and a regular Visiting Professor of the University of Miami School of Law.

1. I am grateful to Georgie Angones, Ken Casebeer, Peter Lederer, Irwin Stotzky, and Mary Joe Swan for information and comments. The interpretation is my own.

2. WILLIAM TWINING, *KARL LLEWELLYN AND THE REALIST MOVEMENT* (1973). In fact, although Soia Mentschikoff was an invaluable source of information and material, she left me largely to my own devices and respected my independence, except in relation to the history of the U.C.C., about which she had a distinctive story to tell. Chapter 7 is quite openly the Mentschikoff version of events, as I was seen to be too much as "Soia's boy" to get full cooperation from key players who had a different view.

"Chicago Boys" recruited by her to help to transform the University of Miami Law School according to her Llewellynesque vision of legal education. Alan was pivotal in this scheme. In time he was joined on the Faculty by Terry Anderson, John Gaubatz, and Henry Manne, all Chicago law graduates, and by Ernie Haggard, a psychologist who had collaborated with Soia in Chicago on the Arbitration Project. But before that she had recruited a team of young lawyers ostensibly to run a rigorous Legal Writing program, but more generally to drill first-year students in a particular approach and vision of the common law, to change the atmosphere at Miami, and to improve the staff-student ratio of the Law School.<sup>3</sup> Of the Legal Writing instructors—popularly known as the Seven Dwarfs—five were Chicago law graduates. Two of the Instructors, Ken Casebeer and Irwin Stotzky, in due course became tenured members of the Faculty and core members of the Law School. There were other Chicago graduates who played an important role from the mid-1970s. Three members of the Visiting Committee (established in 1974), Lillian Kramer, James Donohoe, and Peter Lederer, were Chicago graduates. Lederer, an influential partner in Baker & Mackenzie, who had worked as a research assistant on Llewellyn's magnum opus, *The Common Law Tradition*, has continued the connection for over thirty-five years.

One of Dean Mentschikoff's first innovations was to introduce "Elements" into the first year curriculum. In time the materials for the course evolved into Mentschikoff and Stotzky's *The Theory and Craft of the Common Law—Elements*.<sup>4</sup> Elements and the writing program were to be the main vehicles for introducing law students to both the methods and the ethos of the common-law tradition, as interpreted by Llewellyn and Mentschikoff. It was no coincidence that from the mid-1970s well into the 1990s the main teachers of Elements were not only Chicago graduates but had also taken the course that bore that name, taught by either Llewellyn or Mentschikoff. Soia Mentschikoff had been taught by Llewellyn at Columbia; Terry Anderson, John Gaubatz, Irwin Stotzky taught it regularly—Anderson and Stotzky still do. I taught it twice as a Visitor in the 1980s, even though I had not actually taken Llewellyn's course. Ken Casebeer, having served his time as a Dwarf, was eventually allowed to teach it, even though he had studied at Harvard. Alan Swan loved Elements. But he taught the course only twice before being transferred reluctantly to meet a need for the teaching of Contracts. John

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3. Each of the Dwarfs was given a substantive course to teach in addition to legal writing; a very cost-effective way of increasing the teaching resources and a good experience for those with academic ambitions.

4. SOIA MENTSCHIKOFF & IRWIN STOTZKY, *THE THEORY AND CRAFT OF THE COMMON LAW—ELEMENTS* (1981).

Gaubatz used to say that in Alan's hands Contracts was Elements under another name.

As much as anyone, Alan shared the Llewellyn-Mentschikoff vision of law and legal education. What was that vision? Here one needs to distinguish three strands. First, a clear idea of how students should be introduced to law. Second, Llewellyn's specific perspective on law, which was more like a *weltanschauung* than an abstract philosophy. Third, more broadly, a distinctive law-school ethos that characterized the University of Chicago Law School during the Deanship of Edward Levi. Each of these are complex sets of ideas, whose meaning is contested. Let me give a brief personal interpretation.

First, Elements. It is a mistake to view this as Llewellyn's creation.<sup>5</sup> Long before Llewellyn and Mentschikoff joined the Chicago Faculty in 1951, Edward Levi, with the support of President Robert Maynard Hutchins and the assistance of Roscoe Steffen, had prepared a set of materials on "The Elements of Law," and these became the basis of the course of that name from 1937.<sup>6</sup> Levi's aim was to introduce "an intellectual attitude to the law"<sup>7</sup> and the materials included extracts from philosophical and juristic classics (e.g., Aristotle, Aquinas, Maine). The course was a vehicle for developing Levi's own subtle account of common-law reasoning, which in time was more fully articulated in his *Introduction to Legal Reasoning*.<sup>8</sup>

It is ironic, in view of the subsequent history, that the original course can be interpreted as a reaction against the more extreme versions of Legal Realism, some of which, rightly or wrongly, have been attributed to Llewellyn. It was Dean Levi who recruited Llewellyn to Chicago and presumably it was Levi who handed over the course to this leading Realist. Llewellyn immediately substituted an entirely different set of materials, consisting only of cases, mainly from New York State, with the extracts from philosophers and other theoretical material dropped. The main objective was to focus on "the craft of lawyering" with almost no reference to abstract theory or philosophy.

This is not the place to pursue the question whether the change was more one of style, method, and examples than of a radically different

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5. I am indebted for information about the history of Elements to Dennis J. Hutchinson, *Elements of the Law*, 70 U. CHI. L. REV. 141 (2003).

6. ROSCOE STEFFEN & EDWARD LEVI, *ELEMENTS OF THE LAW* (1936) (reissuing subsequent editions in 1938 and 1946 and eventually published as the 4th edition by the University of Chicago Press in 1950, the year before Llewellyn took over the course); Hutchinson, *supra* note 5, at 151 n.50.

7. Letter from Edward Levi to Robert Maynard Hutchins (Sept 19, 1936), Box 113, Presidential Papers, Joseph R. Regenstein Library. See also Hutchinson, *supra* note 5, at 142-43.

8. EDWARD LEVI, *AN INTRODUCTION TO LEGAL REASONING* (1st ed. 1949).

conception of the educational rationale of “Elements.”<sup>9</sup> There is no doubt that Llewellyn’s version replaced Levi’s in Chicago, and it was this that was transported to Miami. This version can be traced back to Llewellyn’s *The Bramble Bush*, which began as a series of lectures to entering students at Columbia Law School in 1929—the year which some historians mark as the start of what came to be known as the American Realist Movement. The book sparked immediate controversy. It became the best-selling student-law text in American legal history. It is still widely read by first-year law students today and, of course, still features in courses on Elements. The editor of the reissue of the work, published in 2008, neatly encapsulates its “plot” as follows:

Llewellyn is introducing students to four things—an idea of what the law is, a technique for reading cases, a technique for preparing for class, and an understanding that justice in the real world is essential for law. Rules are important in all this, but for Llewellyn, the individual rules are less important than their applications.<sup>10</sup>

This is an accurate, but mundane, précis that could apply to almost any introduction to Anglo-American law. It does not capture what makes *The Bramble Bush* distinctive as a book: the idiosyncratic style, the passion and the poetry, and the tension between tone and substance—in my view it presents a quite conservative and orthodox view of the American law school masquerading as an iconoclastic tract.<sup>11</sup>

*The Bramble Bush* occasioned controversy not because of its approach to legal education, which was quite conventional, but as a radical contribution to legal philosophy, which it was not intended to be. This is not the place to revisit the “Realist” controversies of the 1930s, in which Karl Llewellyn was portrayed as an extreme “rule sceptic” and one of the leaders of a jazz jurisprudence for a jazz age. There is a continuing controversy as to whether there is continuity in Llewellyn’s thought or whether his later work marks a conservative retreat from youthful radicalism.<sup>12</sup> What is relevant here is that Alan Swan, as a student at Chicago, imbibed the general theory and the mature realism of the later Llewellyn through his courses on Elements and Jurisprudence

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9. Hutchinson states: “The materials Llewellyn used for his brand of Elements could not have been more different from the Levi-Steffen materials.” Hutchinson, *supra* note 5, at 152. But he later acknowledges that there may have been “deeper commonalities” between the courses. *Id.* at 156. I would be less emphatic about the differences. The central focus for both was on common-law reasoning and Llewellyn regularly assigned Levi’s short book to his classes.

10. Steve Sheppard, *Introduction* to KARL LLEWELLYN, *THE BRAMBLE BUSH*, at xi (2008).

11. Twining, *supra* note 2, at 140–52.

12. Compare MORTON HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1870–1960*, at 169–92 (1992), with WILLIAM TWINING, *KARL LLEWELLYN’S UNFINISHED AGENDA* 6–9 (1993), and WILLIAM TWINING, *THE GREAT JURISTIC BAZAAR* 154–57 (2002).

and his close association with both Karl Llewellyn and Soia Mentschikoff.

My account of Mentschikoff's "colonization" of Miami with a particular brand of Chicago Boys and a very specific approach to the first-year curriculum may give the impression that this was a kind of indoctrination, even a kind of brain washing. On its own that would be quite misleading. A distinctive perspective and approach to law were indeed being inculcated, but its essence was antidoctrinaire, pragmatic, and pluralist, emphasising craftsmanship and practical wisdom in confronting concrete, particular problems.<sup>13</sup> This is nicely illustrated by a recent book about five members of the Chicago Law School Faculty in the 1950s and 1960s: Edward Levi, Harry Kalven, Jr., Karl Llewellyn, Philip Kurland, and Kenneth Culp Davis.<sup>14</sup> These were among the teachers that Alan Swan and I encountered in the late 1950s. The Law School was a strongly integrated, quite sociable, and collegial community and students had quite close contact with most of this star-studded faculty, whether or not one took their courses. Indeed, as Liebmann brings out quite clearly, Levi had a deliberate policy of recruiting a diverse individualistic faculty representing a range of political, moral, and juristic views. Almost the only thing that they had in common was that they were antidoctrinaire. Edward Levi can take some of the credit for pioneering economic analysis of law, but in the late 1950s this was only one small part of a varied program in the School and it was not yet the dogmatic Friedmanite free-market ideology that it later became under the influence of Director and Posner.<sup>15</sup> Liebmann, having emphasised the individuality and distinctive views of the five subjects of his pen

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13. Given the autonomy of individual teachers in American law-school culture, it is hardly surprising that *Elements* has been variously interpreted and delivered by individual teachers over the years. Some of the differences can be gleaned from comparing STEFFEN & LEVI, *supra* note 6, LEVI, *supra* note 8, Llewellyn's *Elements* materials, in *The Karl Llewellyn Papers*, at the University of Chicago Law School Library, MENTSCHIKOFF & STOTZKY, *supra* note 4, and WILLIAM TWINING & DAVID MIERS, *HOW TO DO THINGS WITH RULES* (Lexis Law Publ'g 4th ed. 1999)(1976). Swan used the Mentschikoff and Stotzky version. Some interpretations are more idiosyncratic.

14. GEORGE W. LIEBMANN, *THE COMMON LAW TRADITION: A COLLECTIVE PORTRAIT OF FIVE LEGAL SCHOLARS* (2005). Alan Swan got on particularly well with Bernard Meltzer, Brainerd Currie, and Alison Dunham, but there were other stars including Walter Blum, Malcolm Sharp, Max Rheinstein, Nicholas de Belleville Katzenbach, and Francis Allen. Any of these might have been included in Liebmann's book.

15. However, the seeds were already sown in Aaron Director's course variously called *Economic Analysis of Law* and *General Theory of Price*. I refused to take the course on ideological grounds ("To pass the course you have to agree with the instructor") and nearly had to leave Chicago. Alan Swan, having achieved magna cum laude with honors in economics at Albion College, is reputed not to have done well in Director's course in Chicago—but the details and reasons for this are unclear. He was generally in favor of free trade and free markets, but he was much less doctrinaire than disciples of Milton Friedman and Aaron Director.

portraits, bravely tries to articulate a common ethos. Pointing out that they belonged to a generation that came to maturity during the Depression and in the shadow of war, these individuals were not disillusioned revolutionaries or bitter reactionaries, but constructive thinkers concerned to “engage in hard thinking about how to reform, how to rebuild and how to avoid the destructive passions of an ideological age.”<sup>16</sup> He continues:

They did not reason backward from either ideology or received doctrine. They believed in an empirical approach to the law and heeded an admonition attributed to Judge Augustus Hand: ‘Hold fast to the English tradition,’ by which he meant the common law tradition. It was that conviction that supplied the title of Karl Llewellyn’s last book, the reason that Philip Kurland testified as he did at the Bork hearings, the explanation why Harry Kalven’s writings were so fact-specific, the focus of Edward Levi’s *Introduction to Legal Reasoning*, and the motive for Kenneth Davis’ long interviews with administrators.

They were convinced that law served best when it served its own values, and that predictability, incremental change, conformity to community needs and customs, respect for ascertainable legislative will were high among these. As for the Constitution, that darling of the modern law teachers’ nursery, several, most notably Kurland and Davis, were explicit in saying that its primary bite was procedural.<sup>17</sup>

Alan Swan was the son of missionaries in India, a well-educated economist, an accomplished singer, an admirer of Llewellyn and Mentschikoff, a graduate of the University of Chicago Law School of the 1950s, and a pillar of the Congregationalist church. But he was not “a product” of any one of them. As a teacher and scholar his profile fits the Chicago model: a distrust of abstractions; a rejection of sharp distinctions between theory and practice; emphasis on institutions, process, craft, and “the bigger picture” in addition to doctrinal detail; concern for and demanding high standards of his students; an exemplary colleague; a model of ethical integrity; a believer in the craftsmanship and particularistic approaches of what he felt represented the best in the common-law tradition.

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16. LEIBMANN, *supra* note 14, at 305.

17. *Id.* Not all will agree with Leibmann’s bold attempt to construct a “Chicago Law School ethos” from such a varied group of individuals, but his book captures something of the spirit of the institution in the 1950s and early 1960s.

## In Memoriam—Alan C. Swan

KEITH S. ROSENN

In June of 2008, I returned from Brazil to learn that a drunk driver had snuffed out tragically the life of Alan Swan and badly injured his wife, Mary Jo. That Sunday morning in June, the University of Miami School of Law lost of one its most distinguished scholars, and I lost one of my best friends.

Alan and I did not start out as friends. When I arrived in Miami in 1980 with a Joint Appointment at the Law School and the Law and Economics Center, Alan was the Associate Dean. My first recollection of him is when he came to my office to give me a hard time about not spending enough of my time at the Law School. I replied somewhat testily that the Law and Economics Center provided me three essential things that the Law School did not: a full-time secretary, a typewriter, and a place to park. Two years later, when I became the Associate Dean, Alan was one of the two faculty members most likely to give me a hard time. Gradually, however, our shared intellectual interests in the international arena led us to forget our initial differences, and we became good friends. Alan and I went out for lunch together frequently, and we often went out socially with our spouses. Alan loved Indian and Chinese food; no restaurant could make a dish too spicy for his asbestos palette.

Alan was born and raised in India, where his parents were serving as missionaries. That early experience left him with a deep devotion to his church and family and a passion for the international arena. Alan also had a passion for music and was blessed with a marvelous voice. When he was particularly happy or otherwise moved, Alan would break out in song. When finishing college, he debated whether to become a lawyer or an opera singer. Fortunately for his many students and colleagues, he decided to go to the University of Chicago Law School, and his singing was relegated to his church choir and occasional spontaneous outbursts.

Alan was an outstanding teacher and scholar. He did a superb job of training countless numbers of our students in contracts, international business transactions, commercial law, antitrust, and international economic law. His case book with John Murphy, *The Regulation of International Business and Economic Relations*, is a tour de force and one of the finest in the field. It is highly rigorous and well organized, and the questions and note material are first rate. With his kind permission, I have used Alan's materials dealing with the Foreign Corrupt Practices



Act in my course in Doing Business in Latin America, and the materials teach extremely well. Alan also leaves behind a large collection of law review articles that also reflect his meticulous scholarship and keen insights.

Alan's contributions to the Law School go far beyond his great teaching and scholarship. When I arrived in Miami in 1980, the Law Library was simply dreadful. Alan chaired the committee that recruited Wes Daniels as head librarian and worked with him and Dean Sowle to transform the Law Library into a first-rate institution. After the Supreme Court decided the Iran Hostage case, *Dames & Moore v. Regan*, Alan persuaded Soia Mentschikoff to part with enough resources to organize a symposium around the case. Drawing on his long experience and contacts as a lawyer with the U.S. Agency for International Development (AID), Alan brought down to Miami many of the major players in the crisis. The truly remarkable symposium Alan organized afforded the faculty and student body fascinating insights into what went on behind the scenes and produced a noteworthy issue for the Inter-American Law Review. Alan gave his time generously to faculty and university committees. In addition to his regularly faculty duties, Alan chaired the LL.M. Program in International Law by himself for many years, and later with Professor Caroline Bradley. He also gave his time generously while aiding students writing for the law reviews. The Inter-American Law Review honored him with its prestigious Lawyer of the Americas Award in 1999.

Alan leaves behind a devoted wife, Mary Jo and three marvelous children in Alan Jr., Kathy, and Emily. He also leaves behind a rich legacy of scholarship, teaching, and community service. Alan was an enormously valuable member of this faculty, and his presence is already sorely missed.

# Alan C. Swan: A Tribute

JOHN F. MURPHY\*

I am writing this tribute to the memory of Professor Alan C. Swan after just having returned from participating in International Law Weekend, an annual event held in New York City and primarily sponsored by the American Branch of the International Law Association (ABILA). Participating in International Law Weekend brought back some bitter-sweet memories for me, because Alan and I were both active in ABILA and often met at International Law Weekend for professional benefit and personal pleasure. Alan was chair of the American Branch's Committee on International Trade Law and one of the Branch's representatives to the International Law Association's Committee on International Trade Law.

As any reader of this *Tribute* can readily attest, 2008 was, in many and varied ways, an *annus horribus*.<sup>1</sup> One of the most "horrible" of last year's developments was Alan's tragic death when the car he was riding in was hit by a drunken driver who fled the scene of the crime. Alan's wife, Mary Joe, who was driving the car, survived but spent six weeks in the hospital undergoing extensive treatment. Now she continues to suffer considerable pain. Alan is also survived by a son, Alan Jr., and two daughters.

A reading of the other contributions to this memorial issue of the *Miami Law Review* and of Alan's *curriculum vitae* will give one a somewhat fuller picture of Alan's accomplishments. Suffice it to say for my purposes that Alan was extraordinarily brilliant and extraordinarily successful as a teacher, as a scholar, as a practicing attorney, both in private practice and in government, and as an administrator. My primary purpose in this *Tribute* is to briefly describe the incredible professional and personal relationship Alan and I had over many years.

Alan and I first met when we were both participating in the panel on the Constitution and the Conduct of American Foreign Policy, established by the American Society of International Law, which held meetings during 1974–1975. We soon hit it off on a personal basis, and I had my initial introduction to Alan's brilliant mind at work. It was clear to

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1. Much of the rest of this *Tribute* is based on John F. Murphy, *Alan C. Swan: A Personal Remembrance*, ABILA Newsletter, Jan. 2009, at 2, and ABILA Newsletter, May 2009, which corrects an error in the *Remembrance* that Alan was driving the car on June 8, 2008, when it was hit by a drunken driver. In fact, he was not driving the car when the accident occurred.

me then that Alan had a deep understanding of the complexities of constitutional law.

Thereafter, Alan and I kept in touch, often, as mentioned above, meeting during the American Branch's International Law Weekend. (Alan's *curriculum vitae* reveals that he was a frequent participant on International Law Weekend panels.) Alan was also a member of the Branch's Committee on Economic Sanctions, which I chaired in 1991–1993 and 1998–2000. Alan provided me with numerous helpful comments on the report of the Committee on “International Armed Conflict: Some Salient Problems,” published in the 1993–1994 Proceedings of the American Branch of the International Law Association, at 45–62.

I frankly don't remember when or where Alan and I first discussed the possibility of writing a casebook on international trade and business together. For my part, although I had taught International Business Transactions for a number of years and International Trade once or twice, almost all of my research and writing, as well as my practice experience, had been in Public International Law. Nonetheless, the challenge appealed to me, and I rashly asked Alan whether he would be interested in having me join him. He consented.

I was delighted because Alan met the three criteria I apply to a potential coauthor: (1) that he be smarter than I, (2) that he know more about the subject matter of the proposed project than I, and (3) that we would work well together. The result was that working on the two editions of our casebook, *The Regulation of International Business and Economic Relations* (1991 and 1999), as well as two supplements, was the most educational and professionally fulfilling experience of my life. Alan and I were, of course, delighted when the first edition of the casebook was awarded a Certificate of Merit by the American Society of International Law in 1992.

Working on the casebook and its supplements with Alan made me fully understand just how exceptional Alan's mind was. There are few lawyers or law professors, after all, who are highly competent in such diverse and complex fields as Constitutional Law, International Trade, International Business, International Economics, Contracts, Commercial Law, and Antitrust. I also learned that Alan knew a considerable amount about Public International Law and Jurisprudence.

Alan was also a personal pleasure to work with. I only had two problems working with Alan. The first was his perfectionism. Alan liked to work and rework his drafts until they met his standard of perfection. This created a problem with meeting the deadlines of the publisher for the final version of the manuscript. In fact, it became such a problem with the first edition of the casebook that the publisher and I entered into

a conspiracy. The publisher would write both of us a letter setting forth a “drop dead” deadline, i.e., a threat that unless we submitted a final version of the manuscript by a certain date, the agreement to publish would be withdrawn. This did the trick. My second problem was that Alan sometimes forgot that we were writing a casebook for teaching students rather than a treatise for professional colleagues. This proved a particular problem with Alan’s first draft of the chapter on international antitrust. This was a draft that would be of interest and a challenge to Ph.D. economists but would have overwhelmed most students as well as many teachers of international trade. Fortunately, Alan accepted my suggestion that he submit the draft to some experts in international antitrust, and this resulted in a much more appropriate second draft.

Alan and I also connected on a personal level. First, we had a strong mutual interest in India, where I spent a year on a Ford Foundation grant in 1962–1963. Alan was born in India, his father was a missionary there, and he did not come to the United States until he was fourteen. Second, we both had been football players in college. Third, Alan was extremely supportive as I tackled a serious medical problem that developed in 1996. Alan wrote me a sensitive letter expressing concern and assuring me that “The diagnosis is early. You’re strong. You know how to go about seeking a cure rationally and with care. And we know there is courage in your heart. So, dear friend, get well and soon.”

Speaking of illness, many of Alan’s friends and colleagues are aware that Alan had a number of serious health problems that would have caused many persons to retire. Alan, however, so loved teaching and the “life of the mind” that he would have none of it. In other words, in addition to his brilliance, Alan had more than his fair share of toughness and courage.

The University of Miami Law School, Alan’s family, and all of us have suffered a great loss.