For the purpose of expressing the appreciation of the House of Delegates to Professor Russell R. Reno, Sr., for his contributions to the legal profession upon the occasion of his retirement from the School of Law of the University of Maryland.

WHEREAS, After many years of dedicated and brilliant service to the University of Maryland School of Law, Professor Russell R. Reno, Sr., is retiring from the faculty of the Law School.

Upon this occasion the University of Maryland School of Law Alumni Association has presented a portrait of Professor Reno to the Law School at its annual meeting.

A graduate from the College of Law at the University of Illinois in 1927, Professor Reno spent two years on the faculty of the College of Commerce of the University of Illinois and two years in private practice at Decatur, Illinois. Then followed 43 years of law school teaching interrupted only by his wartime service. Prior to joining Maryland Law School, Professor Reno taught for five years at the law schools of Valparaiso University and University of South Dakota.

Professor Reno joined the faculty in 1936 taking over the property courses when Professor Andrew James Casner, now of Harvard Law School, left Maryland. Professor Reno became a full Professor in 1940, and is now completing his thirty-eighth year as a member of the Law School faculty and will reach compulsory retirement age at the end of this school year. During this period until about 5 years ago, every graduate of the Law School had been a student in at least two of his real property courses, except...
for a few graduates during World War II when he was on military leave of absence for three and a half years.

During this military leave, Professor Reno served as an artillery officer with the Third Army in Europe and after the war continued as a member of the active reserves, Judge Advocate General's Corps, Department of the Army, until his retirement in 1960 at the grade of Lieutenant Colonel.

Professor Reno has been an active participant in the revision of the statutes on real property of the Annotated Code of Maryland and served as Chairman of the Section on Real Property, Planning and Zoning of the Maryland Bar Association. In addition, he served on several gubernatorial commissions relating to real property. He is one of the co-authors of the American Law of Property (1952), having written part IX of that treatise.

After retirement Professor Reno expects to remain a resident of Baltimore County since he has eight grandchildren that live within a mile of his home. He also expects to see many of his former students at the meetings of the Maryland State Bar Association; now, therefore, be it

RESOLVED BY THE HOUSE OF DELEGATES OF MARYLAND, that the best wishes of the entire House be extended to Russell R. Reno, Sr., for a long and enjoyable retirement; and be it further

RESOLVED, That the House express its sincere appreciation to Professor Reno for his invaluable legal assistance in the field of real property and for his faithful service to his students and the legal profession; and be it further

RESOLVED, That a copy of this Resolution be sent to Professor Russell R. Reno, Sr., University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, Maryland, 21201.
TRIBUTE TO RUSSELL R. RENO, SR.

RUSSELL R. RENO, SR.

LOUIS L. KAPLAN*

During the course of Professor Russell Reno's long tenure with the University of Maryland School of Law, the many students and alumni of the School of Law have developed a unanimous appreciation of Professor Reno as a teacher and as a man. All agree that Professor Reno was one of the most demanding members of the faculty but that he never asked any more of his students than of himself. His courses were well organized and brought up to date with the latest legislation and decisions. Some have volunteered the information that, since their primary interest was not in Property Law, they entered the course with some misgivings. However, Professor Reno's enthusiasm as well as his lucid analysis of every problem won their interest very early in the course, and they remained to enjoy it as well as to profit from it.

Another facet of Professor Reno's character was his ready availability to students and to alumni, some of whom had been away from the School for a number of years. They brought their problems to him; he was always glad to be helpful, he was always pleased that they turned to him for advice.

These traits add up to the character of an unusual person, and Professor Reno is deserving of all the praise and encomia that will be directed to him. It is to be hoped that he will now be in a position to take things a bit easier without, however, denying the legal profession and the community the added contributions that can come from his creative and encyclopedic mind.

* Chairman, Board of Regents of the University of Maryland.
March 4, 1974

Dear Professor Reno,

Your retirement in the spring of 1974 is an occasion for mixed emotions. The University will miss your constant dedication to the welfare of the students and the School of Law, but your friends and associates recognize that you deserve the substantial fruits of retirement.

I want to thank you personally for your excellent service and dedication, and I also want to express the gratitude of the University for your contributions to many activities and interests of the University.

You have been not only a teacher and a scholar, you have been an extraordinary citizen of our academic community. I know that you will continue to support the advancement of the University.

May you enjoy an abundance of happiness and good health in the years ahead.

Sincerely,

[Signature]
PROFESSOR RUSSELL RONALD RENO, SR.—A TRIBUTE

WILLIAM P. CUNNINGHAM*

Russell Ronald Reno has achieved at the University of Maryland School of Law what Roscoe Pound did at Harvard—he has become an institution within an institution. Consequently, his influence on the School will be felt for many years after his retirement as a full-time member of the faculty.

Professor Reno was teaching at the University of South Dakota Law School when Dean Roger Howell persuaded him to join us here at Maryland. Except for a three-year period in the military service during World War II, he has been “Mr. Property” at Maryland ever since. To emphasize the remarkable fact that Professor Reno has taught at this institution for thirty-eight years, however, is to miss the main point, for what is noteworthy is the quality of his service and not merely its longevity.

What has made him such an outstanding teacher? My answer lies in these attributes:

1. His enthusiasm in the classroom—a buoyancy that never flags.
2. His high intellectual excitement about property which is contagious.
3. His idealism, combined with rigorous standards.
4. His absolute honesty, that at times is startling but always refreshing.
5. A warm interest in students, past and present.

A fine portrait of Professor Reno, presented to the School by the Law School Alumni Association, now hangs in the Faculty Conference Room, which is most appropriate, for the qualities we associate so strongly with him will always be vital to the success of our educational enterprise.

* Dean, University of Maryland School of Law; A.B., 1944, J.D., 1948, Harvard University.
Professor Russell R. Reno has retired after thirty-eight years as a member of the faculty of the University of Maryland School of Law. As a result of such a long and continuous tenure, broken only by a year of graduate study at Columbia and four years of service in the army during World War II, he has exerted a great influence on the law school, the students, and the Bar of the State.

During his career as a teacher hundreds of students have sat in his classes, have listened to his lectures, and have been subjected to his questioning about the cases and material under consideration. He has been a superb teacher, and taking one of his courses has been a unique educational experience. When Professor Reno arrived for class, he had the facts of each case and the rules, principles and standards applicable to it thoroughly digested and organized, and any student who was not well prepared soon found himself caught in the maze of questions which were directed to him. Professor Reno's insistence on thorough preparation by students and sharp attack on those who had not prepared thoroughly or who did not see the point that he was trying to develop sometimes caused considerable discomfort for those students, although the Professor was simply trying to help them get the proper perspective of the material under study and to see the error of their approach. His adherence to a high standard of performance is what made him such a great teacher, and it is in that capacity that he exerted his greatest influence on his students and through them, as future lawyers, legislators and judges, on the law of Maryland.

* * * Professor of Law, University of Maryland; A.B., 1930, J.D., 1932, LL.M., 1933, State University of Iowa; S.J.D., 1934, Harvard University.

1. Professor Reno joined the faculty of the University of Maryland School of Law in 1936. Prior to that time he had been a member of the faculties of the University of South Dakota and Valparaiso University.

2. Professor Reno was a Special Fellow at the law school of Columbia University during the academic year 1939-40.

3. During World War II Professor Reno served with the Field Artillery in the Army from 1942 to 1946.

4. For years, Professor Reno taught the basic courses in Real Property, Conveyancing, and Future Interests. He then moved into the field of testamentary law, and in recent years, he developed the courses in Land Use Control and Real Estate Transactions; the latter was probably his favorite and most popular course.
When Professor Reno joined the faculty in 1936, it was just six years after the school had been approved by the Association of American Law Schools and nine years after accreditation by the American Bar Association. The full-time faculty was small, and the enrollment in the day and evening divisions did not exceed two hundred and twenty-five students. The classes were small enough so that the faculty and students knew each other, and Professor Reno's influence was immediately felt. His well known enthusiasm for teaching law, and particularly the subject of property, has rubbed off on his students and colleagues, and as a result he has become a legend in his own time. Whenever a group of his former students gather together, they immediately begin to relate stories concerning incidents which happened in his classes. The stories are legion and have been enhanced by repeated telling over the years, but they all reflect the high regard his former students have for him.

Professor Reno, however, is not only a great teacher; he is a scholar and master of his subject, the law of property. During his career as a teacher, he has published a number of articles in various legal publications which have established his reputation as a scholar and authority in the field. Probably his most famous and important writing was the article in the Virginia Law Review discussing the problems of covenants running with the land. In that article, published in two issues of the Review, Professor Reno considered in detail the difficult problems of covenants running with the land and traced the historical background and modern development of the rules governing the subject. Professor Reno's ability to analyze the cases, to break the problems down into their basic elements, and then to organize these in a logical and orderly fashion made the article one of the clearest discussions to be found on the law of covenants running with the land. Because of these factors, this article, the result of his year of study at Columbia under Professor Richard Powell, established Professor Reno's reputation as an authority on the law of property and led to his being selected to write the sections in the American Law of Property dealing with the subject of covenants.

5. On that date the full time faculty, in addition to Professor Reno, consisted of Dean Roger Howell and Professors Bridgewaters M. Arnold, G. Kenneth Reiblich, Edwin Ruge, John S. Strahorn, Jr., and John Ritchie, III, who like Reno joined the faculty that year.


In addition to the article in the Virginia Law Review and the sections in the American Law of Property concerning the subject of covenants running with the land, Professor Reno has published several articles in the Maryland Law Review dealing with a variety of problems involving the law of property. These articles, in addition to his teaching, have established his reputation in Maryland as the authority in this state on the law of property, and oftentimes he is well-deservedly referred to as Mr. Property.

His first article in the Maryland Law Review dealt with the problems of alienability and transmissibility of future interests in Maryland. In this article he was critical of the Maryland Court of Appeals handling of the problem of contingent remainders, particularly in the case of Demill v. Reid, which, although somewhat clarified by later cases, still continues to plague Maryland lawyers. After returning from service in World War II, Professor Reno reviewed these problems and brought his earlier article up to date. Meanwhile, he had dealt with an ancient and more esoteric problem, the doctrine of Worthier Title as interpreted and applied by the courts in Maryland. As his interest shifted so did his scholarship, and his next publication involved a problem of testamentary law, the abatement of legacies and devises. As usual, he approached the subject with a critical viewpoint and made recommendations for changes in the Maryland law which were later included in the revision of article 93 of the 1957 Maryland Code. His latest article dealt with one of the newer concepts of zoning, the floating zone. All of these articles have had a great influence on the thinking of Maryland lawyers and judges and have to a great extent determined the direction of the revision of the law of property in Maryland in recent years.

For the past several years, Professor Reno has been active in the Maryland State Bar Association Section on Real Property,
Planning and Zoning, of which he was Chairman for the year 1970-71. He also served as a member of the Code Revision Committee of that Section and actively participated in the revision of the Maryland law of real property which has now culminated in the Real Property Article of the new Code. This work, in which his ideas and influence have been so important, may be his greatest contribution to the law in Maryland. Certainly it is the end result of his years of teaching and study of the law of real property. Without that long period of study and thinking about the various problems involved in his courses and articles, his ideas would not have matured to the point necessary for him to serve as the catalyst for the Code Revision Committee.

As Mr. Stiller has indicated in his article, not only did Professor Reno serve as a valuable member of the committee in presenting ideas and directions for the committee to follow, but his personal relations with his former students, now members of the Bar and the legislature, were most useful in securing passage of legislation once it had been drafted. Anyone who knows Russell Reno can appreciate this, for he likes people; he is gregarious and enjoys getting together and discussing personal affairs with his friends, colleagues, former students, and members of the bar.

My personal relations with Russell have been intimate and amicable. Although I had met him before coming to Maryland, it was not until his return from his war service that I really got to know him. I had taken over his classes while he was away, and upon his return we quickly became close friends. We have worked together harmoniously ever since. Because of the increase in the law school enrollment, we were able to divide the property courses between us. Thus, it has been possible for each of us to teach the subjects in which we are chiefly interested. Though we do not always agree upon the details, there have been no serious disputes with respect to the basic law or with respect to how the courses in property should be taught. For more than twenty-five years we have enjoyed a close and intimate relationship; he is truly a gentleman and a scholar, and it is with great and sincere regret that as a colleague I now have to say to him, “Good-by Mr. Property.”

16. See Stiller, supra note 6, at 230-32 where Mr. Stiller comments on the importance of Reno’s contributions to the committee and his influence with members of the legislature in securing passage of the bills. See also Albert, Russell R. Reno, Sr., 34 Md. L. Rev. 222, 223 (1974).
Any attempt to reduce a distinguished career to an adequate recognition of the merits of an individual is a very serious challenge. The undertaking is rendered even more hazardous when the subject is one whose talents and personality are widely known and appreciated. The peril always is that one who has made his impact on many generations of students and lawyers tends to occasion a subjective and emotional reaction which, in measuring a man, is more important than the objective facts which give rise to the final conclusion. Objective biographical facts turn into platitudes and platitudes do no honor to the personality or professional stature of a man like Russell Reno.

Mr. Reno's impact on the Bench, the Bar, and the academic world can be seen today, but the full measure of his contributions to our profession will only be realized many years from now as those who in recent years benefited from his wisdom, knowledge, and personality apply his teachings to the development of the law of this State.

I was fortunate enough to know Russell Reno in many capacities, the earliest being as one of his students. Those who had an opportunity to know him as a professor at the University of Maryland School of Law were fortunate indeed. He brought to the faculty a well trained legal mind, noteworthy for the clarity and precision of thought, which enabled him to bring order out of the most chaotic aspects of the law. He applied these talents with such enthusiasm and joy that he never permitted order and clarity to become rote or mediocrity. He challenged the student to enjoy the learning process and to contribute to it by keen analysis and penetrating criticism.

He structured his courses to make the student aware of that which was certain in an uncertain world, of that which required refinement, and of that vast sea of uncertainty in the law which would yield the cases of the future in the subject-matter areas where he taught. He had a marvelous eye for the subtle point and withering disdain for any student with too little intellectual capacity to appreciate the point. He expected a degree of discipline in the student's professional thinking which would permit the legal principle under discussion to be identified with precision.

* President, Maryland State Bar Association, 1973-74; Partner, Semmes, Bowen, & Semmes; LL.B., 1947, University of Maryland School of Law.
even though the courts and statute writers had exhibited a lack of intellectual discipline in addressing the point.

His sense of history as it applied to the law was a matter of continuing importance to him in resolving unanswered legal problems. For example, on one occasion, I wrote a brief where I outlined the history of the ground rent in the State of Maryland, and I made reference to several of the provisions of the Charter of Maryland granted by Charles, the King of England, to Cecilius Calvert, Baron of Baltimore, including references to the right of the Lord Proprietor to create various forms of tenure in the land within the Proprietary. Needless to say, it was an exercise in somewhat esoteric ancient land law. In deciding the case, the trial court quoted from my "history" of Maryland. Immediately after publication of the opinion in the Daily Record, I received a message from Professor Reno complimenting me on having an appreciation of the significance of the Proprietor’s rights as necessary to an understanding of Maryland real estate law.

I came away from the University of Maryland School of Law with a decided impression that Professor Reno was one of the most delightful, effective, colorful, and helpful representatives of the teaching profession. That rather grassroots view of Professor Reno became even more certain when I had the pleasure of serving as a lecturer at the Law School for almost 17 years; during this time I was afforded an opportunity to know and appreciate what a truly remarkable representative of a law professor Russell Reno was. His colleagues viewed him with respect, admiration, regard, and affection and paid him the tribute of recognizing him as an ideal, to be hoped for by all, but attained by very few. His eminent good sense and the warm friendship which he extended to all of those on the staff enhanced the professional regard which he was accorded.

When troublesome problems arose concerning a student in a course, if he chanced to be a student who had been in one of Professor Reno’s courses, a short conference with Professor Reno was all that was necessary to permit the teacher to focus on what weaknesses in the student’s makeup contributed to the student’s failure to perform up to expectations. Russell Reno had almost total recall of any student; he was so perceptive that he could readily identify the student who was habitually unprepared, the intellectually lazy student, the student with minimal grasp, and the student who showed little promise of ever becoming an effective lawyer. I was always astonished at the accuracy with which Professor Reno could analyze the potential of those he taught. He had such discernment and such ability to analyze strengths and
weaknesses that fellow teachers often found themselves abashed at having seen and learned so little from their contacts, while Professor Reno had seen and learned so much from the same classroom contacts. Thus, it is no surprise that his colleagues on the faculty recognized how talented and perceptive he was. They appreciated his unceasing demand for top performance from the students and his humanity and fairness in assessing the potential of the total human being and the future potential of that human being to serve well in the practice of law.

His scholarship and the ability to convey the results of that scholarship from the lecture platform and in writing were of the highest order. A law review article prepared by Russell Reno dealing with any aspect of the law could be and was relied upon by the Bench and Bar both as a definitive statement of the status of the law and as a knowledgeable and apt forecast of the unresolved problems and the probable future course of the development of the law. He never confused his own certain conviction about the route the law should follow with an appreciation of the course the law had followed. He exerted his enormous professional and intellectual power to demonstrate where he felt error had occurred in the past in the development of a given aspect of the law, but he resisted the urge to attempt by intellectual arrogance to override judicial concepts which suffered from logical or intellectual flaws.

We have all suffered at the hands of the writer who ignored binding precedent on the ground that it was a product of incompetence or improper reasoning. To the incautious practicing lawyer, the citation of legal writing which arrogated to itself the right to ignore such precedent can only be trouble. While Professor Reno knew the flaws and pointed them out, he never misled the student or the reader of his writings, and an assertion that the state of the law on any given subject was as Professor Reno set it out had the assurance of acceptance by any court. Indeed, the recognition of the inherent shortcomings of a given line of cases could be argued with conviction and a hope of success if Professor Reno had analyzed the field of law and criticized the line of cases which established it. So clear was his grasp and so powerful his logic that correcting an erroneous approach was made to seem obvious. He was not victimized, however, by any mistaken view that the law and logic are exactly coextensive, and he recognized the invaluable contribution of human experience to the formation of the principles applicable to legal questions. In a word, he sought order and clarity consistent with logic, but he did not permit himself to be victimized by the implacable certainty of the ivory tower.
There is only one real regret which the Bench and Bar can have when the career of Russell Reno is reviewed. It is the regret that the academic world’s gain was the practicing Bar’s loss. All too frequently we hear it said, “Those who can, do, those who can’t, teach.” This cannot be said of Russell Reno. He would have made an enormous contribution to any firm or any Bar had he turned his great talents in the direction of practice rather than to academic pursuits. He was an engaging combination of talent, wit, personality, and enthusiasm which would have taken him to the pinnacle of success in private practice. It is fortunate for those he taught that he devoted this bundle of capability to the teaching profession. This channelling of his energies has improved the quality of legal services delivered to the public. The only unfortunate aspect is that he thereby deprived the public of the professional services of one of the most talented of the profession.

Russell Reno’s monument lives in the well-trained lawyers in whom he took such pride. It lives in the Law School which he has seen grow to be an increasingly important part of our State University. It lives in his contributions to legal literature and to legal thinking. If the life of a man is measured by the simple standard of whether he left the world a better place than he found it, there is not the slightest doubt that Russell Reno has already established his claim to a successful life. He is, however, too intellectually demanding and too restless of spirit to permit his retirement to stop his already great contributions, and we look forward to many years of continued association with Professor Reno and his future contributions to our profession.

If his professional colleagues would see his monument, they need but look around them. The life and accomplishments of Russell Reno reflect great credit on him, his chosen profession, and the academic aspect of the law. He brought much to his profession. He gave much to his profession. He leaves much behind which will benefit his profession and those it serves. We shall be fortunate if we see his like again.
I did not have the fortunate experience of being one of the large group of individuals who were students of Professor Reno in a formal classroom, although I consider myself his student through our many other contacts. My first awareness of Professor Reno and his contributions to the law came from comments made by Professor A. J. Casner in a course which I monitored and also through remarks made by Professor Casner at less formal gatherings of Maryland related persons.

It was not until 1956, when I returned to Maryland, that I met Professor Reno personally and came to appreciate his warmth, his interest in those around him, and his never ending enthusiasm for life, because he at once became a fellow church member and a fellow student. The school house was the dusty old Fallsway Armory and the courses were given to reservists under the Judge Advocate General program. However, Colonel Reno's eagerness and willingness to contribute to the education of both the officers assigned to instruct the course and to the other students was certainly not dampened.

The Maryland State Bar Association was reorganized in 1968 into Sections, and I became the Chairman of the Code Revision Committee, a committee of the Real Property Planning and Zoning Section, of which Professor Reno had long been an active member. We were told to revise the Maryland Code insofar as it covered the private sector of real property, that is, consensual relationships, although I am not certain how title 12 crept into the package.

The first task we tackled was to collect those British statutes pertaining to real property in force in Maryland on July 4, 1776 that remained in force today, to modernize the language, taking into account statutory changes and those made by judicial decisions, and to codify them and to declare the remainder, by specific statutory references, no longer in effect. This effort consumed many four hour sessions often on a regular bi-week basis; the Professor set aside time from his crowded schedule and regularly came prepared to educate us from the depth of his vast store of knowledge and experience. By the 1971 Session of the General Assembly the bill was ready, and Professor Reno, who by then was Chairman of the Section, assumed the responsibility of pres-

* Chairman, 1973-74, Real Property Planning and Zoning Section, Maryland State Bar Association; Partner, Piper & Marbury; A.B., 1951, Princeton University; LL.B., 1956, Harvard University.
enting the bill. Ultimately it was enacted and signed into law. Professor Reno's reputation in Annapolis and his relationship with the many legislators who were his former students undoubtedly were of great assistance towards making such a bill acceptable, despite the breadth and antiquity of the subject. In fact, by unanimous vote, the Delegates sent a message to the Senate designating the bill as "Reno's Revised British Statutes."

During this and later periods the indefatigable, often irrepressible, Professor was one of the wheel horses of the chariot that was attempting to bring the statutory framework of the real property law of Maryland out of the eighteenth century and to make it more responsive to the social and economic needs of the twentieth century, by modernizing or eliminating the many archaic, disorganized and illogical sections of that body of law through a broad recodification of article 21. At the same time, the Professor found time to suggest substantive changes in such diverse areas as straw conveyances, rights of entry, and possibilities of reverter, to mention a few. When these bills were introduced, he delighted in assisting the legislators, including many former students, to understand the history and impact of some of the more obscure, obtuse points in order that they could enact legislation on the basis of a firm understanding of its historical roots and effect on society and the world of real property.

Because of Professor Reno's participation in the Maryland State Bar Association, it is fitting that the Real Property Planning and Zoning Section is offered an opportunity to join in the tribute to Professor Reno upon the occasion of his retirement from teaching at the University of Maryland School of Law, an event in which we can rejoice as we know it is not a retirement from teaching—that is something he is unable to do. We will all continue to learn from him; we are pleased that he will have even more time to assist us.

The first issue of the *Maryland Law Review*, published in December, 1936, contained the following brief announcement:

Mr. Russell R. Reno, A.B., LL.B., University of Illinois, has joined the full-time faculty this year as Assistant Professor of Law. Mr. Reno has practiced law in Decatur, Illinois. He taught Commercial Law at the University of Illinois, 1929-1931, and also taught at the Law School of Valparaiso University, 1931-1934, and at the Law School of the University of South Dakota, 1934-1936. He will teach the courses in Property formerly taught by Professor Casner.¹

The resignation of A. James Casner, who had come to the Law School in 1930 as a 23-year old instructor in Property, precipitated this announcement.

At the time, of course, no one on that extraordinary faculty² could have anticipated that Assistant Professor Reno, with his unlikely background of teaching at South Dakota and Valparaiso, would ultimately be known as "Mr. Real Property of Maryland" and would bear the record of the longest tenure of any full-time member of the faculty in the history of the University of Maryland School of Law. His only published work had been an article titled, *Imputed Contributory Negligence in Automobile Bailments*, published in the *University of Pennsylvania Law Review* two years before his arrival at Maryland.³ Work on the

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¹ 1 MD. L. REV. 57 (1936).
² The faculty included Dean Roger Howell, Judge W. Calvin Chesnut, Judge Eli Frank, Emory H. Niles, R. Dorsey Watkins, Huntington Cairns (later General Counsel and Secretary of the National Gallery of Art), G. Kenneth Reiblich, John S. Strathorn, Jr., and George Gump.
³ 82 U. PA. L. REV. 213 (1934). This article is still cited as one of the leading explanations of the area. See, e.g., W. PROSSER, TORTS, § 74, at 491 n.12 (4th ed. 1971). The problem is whether the contributory negligence of a bailee should be imputed to the bailor in an action by the bailor for damage to the automobile inflicted by the defendant. Mr. Reno's article is the only one he ever wrote that did not contain a citation of the
five-volume *Restatement of Property*, supervised by Professor Richard Powell of Columbia, had already begun; since Mr. Reno's only published article had dealt with automobile bailments, his services were not sought for the role of Adviser to the Reporter. It was then no less than inconceivable that he would, in a few years, gain the national reputation of those already selected by Professor Powell to work on the Restatement, such as Simes, Leach, Casner, Bigelow, Aigler, Bogert, Fraser, and Rundell.

Russell R. Reno was born in October, 1904, in Chicago. Shortly after his birth, the family moved to Oak Park, Illinois, where Mr. Reno spent his entire youth. He failed the first grade, and he may be the only person in America to have done so and thereafter been elected to both Order of the Coif and Phi Beta Kappa. An indifferent student through elementary school, he was inspired by a seventh grade history teacher; thereafter, his academic achievements became legendary. He completed the four year course at Oak Park High School in three years, being graduated as valedictorian. In 1922, he enrolled as an undergraduate at the University of Illinois and, after two years, entered the Illinois Law School, receiving his LL.B. in 1927. He then engaged in the general practice of law with the firm of Redmond & Redmond in Decatur. In 1929, he was offered the opportunity to teach business law at the undergraduate school at the University of Illinois. Although he had already become a very able lawyer, when the University indicated that while he was teaching full-time he could also complete the work for his undergraduate degree, Redmond & Redmond lost its promising associate.

After he obtained his B.A. degree from Illinois in 1931, he joined the faculty of Valparaiso Law School. Teaching at a private law school in the depression required enormous perseverance; salaries were drastically cut, and the teachers were overworked. In December, 1933, the University of South Dakota Law School, a state institution, offered Mr. Reno a position. With a wife and two children, Mr. Reno had little choice, especially when he considered that Valparaiso had promised to pay any departing faculty member the total reductions in salary which had been foisted on the faculty. Mr. Reno began at South Dakota in February, 1934, and stayed until June, 1936.

Professor Casner had known Mr. Reno from their days at Illinois, and when it became apparent that Casner would not
resume his teaching duties at Maryland, he recommended Mr. Reno's appointment. Dean Howell had met Mr. Reno at one of the annual meetings of the American Association of Law Schools. He, too, had been favorably impressed, and in the Spring of 1936, he sent a telegram to Mr. Reno in Vermillion, South Dakota, offering him a position as Assistant Professor of Law. The offer was accepted with alacrity, the Renos not being terribly charmed with the South Dakota weather, which seemed perpetually to alternate between horrible dust storms and sub-zero temperatures.

In the few years between 1936 and 1942, when he departed to become a captain in the Army, Mr. Reno set about on a whirlwind of scholarly activity, culminating in 1942 in a brilliant article on equitable servitudes which established his reputation as one of the leading scholars in the country of real property law. As a teacher, he carried an incredible load of seven courses: During the day, he taught Property I (the basic real property course), Property II (an advanced course dealing primarily with conveyancing and incorporeal interests), Property III (the course in future interests), and Personal Property. During the evening, he taught Property I, Property II, and Personal Property, leaving future interests to a recent graduate of the school, George Gump. Even with this schedule, by the time Mr. Reno went off to war, he had written three major articles, the Maryland Annotations to volume I of the *Restatement of Property*, and two brief book reviews. In the process he also acquired an LL.M. from Columbia Law School, where he had been awarded a research fellowship during 1939-40 to do post-graduate study under Professor Powell in Property Law.

During the Second World War, Professor Reno, who had been in ROTC at college and had spent many summers training with the reserves, taught field artillery for a couple of years, first at Fort Bragg, North Carolina, then at the University of Illinois, and finally at Fort Leonard Wood in Missouri, where he joined the 662d Field Artillery Battalion. In December, 1944, the battalion left for Europe, spending the last several months of the War in heavy combat east of the Rhine in Bavaria and Austria. The pursuit across Germany by the 662d Field Artillery Battalion, which was part of the XXth Corps Artillery Group ("the Ghost Corps"), was complicated by many technical problems, none the least of which was the transport of enormous howitzer guns. Captain Reno was one of the few officers who both understood the problems and could solve them. He was greatly admired by his battalion for his meticulousness in confronting these problems:
He was meticulous. Everything had to be just right . . . . He was a good officer. There was no huffing and puffing. He knew his job superbly well. He had excellent standards. . . . It was a privilege to serve him . . . . He gave the battalion a spirit of wanting to do the job carefully and well.\textsuperscript{4}

Captain Reno's bravery, for which he received the Bronze Star, is also chronicled in a brief history of the 662d Field Artillery Battalion:

On 31 March, the battalion crossed the Rhine River at Mainz, via the longest pontoon bridge in the world. Later that evening we bivouacked at Nieder-Eschbach.

1 April 1945, Easter Sunday, saw the battalion once more on the road. We made a long march from Neider-Eschbach to Nieder-Thalhausen where we finally closed at 020335 April. We fired 201 rounds from this rain-infested position, principally into the town of Bebra. Reconnaissance parties moved out and encountered a brief small arms fire fight on 2 April. Thirty prisoners were taken. Captain Russell R. Reno (then Commanding Officer of Battery A) showed conspicuous qualities of leadership in advancing alone on a stone house that had not been cleared.\textsuperscript{5}

After the War, Captain Reno was sent to Biarritz to teach at the American University that had been set up for the American servicemen. He was discharged in November, 1945, and he rejoined the Law School faculty in February, 1946. His army career continued for many years on a part-time basis with the Judge Advocate General, and, when he ultimately retired from the army, he was a Lieutenant Colonel.

In 1942, Laurence M. Jones came to the Law School as a Visiting Professor to teach Professor Reno's Property courses. He remained as a Visiting Professor for four years, then became a permanent member of the faculty and a full Professor. When Mr. Reno returned in February, 1946, he resumed all of his old courses except for Future Interests, which Professor Jones continued to teach. But, over the next twenty-nine years, Professor Reno added a number of other courses. He taught testamentary law for twenty years, restitution for fifteen years, and assorted seminars on legal bibliography, land use controls, and modern real estate transactions. He also taught during the summers at Illinois Law

\textsuperscript{4} Interview with James M. Harrington, Jr., then a twenty-two year old Lieutenant under Captain Reno and now a senior partner at the prestigious Boston law firm of Ropes and Gray.

\textsuperscript{5} 662d Field Artillery Battalion—A Brief History, a privately circulated pamphlet.
School (in 1946) and at George Washington Law School (from 1947 to 1954).

The anecdotes are legion about his teaching. His students talk about his "Renograms"—blackboard diagrams of complicated cases. They speculate about the origins of the strong tones of his voice; some assume, erroneously, that his voice matured by calling out commands over the roar of the field artillery during the War, while others assume, also erroneously, that he must have been a champion hog caller in South Dakota. The truth is that his vocal cords have always been powerful—as a boy, he was admonished by the music director that, while the rest of the class should sing, he should move his lips without uttering any sounds.

On the serious side, however, there is a similarity to all descriptions of life with Reno in the classroom. They all emphasize his intense dedication, devotion, and great enthusiasm. The bell signifying the end of the period for other teachers was only a nuisance for Professor Reno. He had a point to make, and if it took seven minutes beyond the bell, he and the entire class would take the extra minutes. Because he demanded much of himself, he also demanded much of his students. His grades were generally lower than those given by his colleagues. Nevertheless, Dean Howell has told me that, while he was Dean, he never knew of a student who complained of a low grade from Professor Reno. The students knew that his standards were exacting, and they expected lower grades from him than from other teachers. Yet, they always knew that he was fair. He was painstaking in his preparation of examinations, and he devised an intricate system for marking the papers in order to insure more adequately the reliability of the grades.

The stories about Russell Reno, the teacher, all wind up with universal respect for the image he projected—the scholar who would never relax his standards and who would never display anything less than total devotion and enthusiasm for his subject. There were, of course, some who believed that his standards were "old-fashioned." He would not deny the relevance of the epithet if it meant that there were no short cuts to learning the law and its processes, or if it meant that the lawyer or the student had to know and understand the basic substantive rules before discussing vagaries of public policy. He, more than most, guided his teaching and his writing by Platonic notions of excellence from which he never wavered.

During the period after the War, he continued to write. He contributed one of the major parts of the *American Law of Property* and wrote several more law review articles. He was

offered the position of dean by a number of other law schools, but he believed that he was essentially a teacher and therefore he declined all of the offers. In 1968, when he was at an age when most lawyers decelerate, Professor Reno began a new phase of activity—legislative reform. It was in this phase that my closest relationships with this extraordinary man were formed, and I came to know him on a first-name basis.

The first subject matter of this new activity was possibilities of reverter and rights of entry. In July, 1968, the Legislative Council of Maryland asked me to appoint a committee to study legislative treatment of possibilities of reverter and rights of entry. The Committee consisted of Professors Reno and Jones, Paul Plack, Roger Redden, Frank McDonough, and George Parkhurst. Russell felt strongly about the importance of curtailing these future interests. They were immune to the rule against perpetuities, and they clogged many titles throughout the State. The report of the Committee bears the imprint of Russell’s scholarship. The bill prepared by the Committee was quickly enacted by the General Assembly in early 1969.

Even more important was Russell’s subsequent work on the Code Revision Committee of the Section of Real Property, Planning, and Zoning Law of the Maryland State Bar Association. This Committee, chaired by Charles T. Albert of the Baltimore Bar, accomplished the most important statutory overhaul of real property in the history of Maryland. The first job was a modernization of Alexander’s British Statutes. It never ceased to amaze the uninitiated that the Maryland Code did not contain such basic materials as the Statute of Frauds or the Statute of Uses. These statutes, and many others of importance to real estate lawyers, could be found in Julian Alexander’s compilation, but less than five percent of the lawyers in Maryland possessed copies of Alexander. Many other British statutes relating to real property, obscure and insignificant, could also be found in Alexander, but no one was certain whether the Court of Appeals would declare that they were still in force. These statutes were generally cited only by desperate lawyers attempting to buttress an impossible argument with an Act laid down before the founding of the Palatinate which neither party to the transaction had ever dreamed of considering.


Russell was the only person on the Committee with the historical learning to assess both the original meaning and the contemporary significance of these British statutes. His scholarship and the Committee's bill were successful, so that statutes of no contemporary significance were expressly repealed, and important statutes were finally inserted into the Maryland Code.\(^9\) Shortly after the passage of the bill, he wrote a two-part article for the Maryland Bar Journal, explaining the importance of the action taken by the General Assembly.\(^10\)

The second and major effort of the Committee was the revision and recodification of all the laws of Maryland relating to real property.\(^11\) This was a Herculean job, taking almost three years to complete. The statutes were a hodge-podge, strewn helter-skelter throughout the volumes of the Code, obtusely written, often archaic, and generally demeaning to that segment of the profession that prides itself on order and not on chaos. The Committee meetings turned out to be sophisticated graduate seminars in real property. The Committee members were, in addition to Chairman Albert and this writer, Lewis Kann, Paul Plack, Paul Rogers, George Parkhurst, Edgar Brown, and Russell. In its final six months, the Committee met every Tuesday afternoon from 2-6 P.M. Attendance was almost perfect. The debates were heavy, with enormous learning borne from both practical experience and scholarship marshalled on every side of every difficult question.

An interesting aspect of the Committee's deliberation was Russell’s shift in approach as the work progressed. Initially, he was conservative about making any changes. However, the mark of the true scholar emerged very quickly. Even though the Committee was recommending the repeal of many of the concepts Russell had taught so carefully for over thirty years, he came to be one of the Committee's leading exponents of the Holmesian view that “[i]t is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV.”\(^12\) No one who watched Russell in those meetings could ever again make the charge that property teachers revel in obscurity for the sake

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of obscurity, or that the older a lawyer gets, the more set in his ways he becomes.\footnote{The dedication of some of the senior members of the bar is extraordinary. One other instance that bears retelling is the work of G. Van Velsor Wolf, Esq., on the Henderson Commission revision of the testamentary law. I cannot forget one meeting that Mr. Wolf, Roger Redden and I attended. It began at 9:00 A.M. in Mr. Wolf’s office; we did not leave until 1:00 A.M. the next morning. By that time, Roger and I were dragging, but Van cheerfully took home a briefcase full of office work that had accumulated during the day.}

Of one aspect of all this legislative ferment, I can speak with some certainty. The absence of any members of any of the Committees, other than Russell, would have been irrelevant in the ultimate passage of the legislation. Had Russell not been intimately involved in the drafting and planning of these bills, however, they would not have passed. The most frequently encountered question in Annapolis was always, “Has Professor Reno approved this bill?” If he approved it, his reputation was enough, and justifiably so, to persuade a legislator to vote affirmatively. Had he disapproved, the rest of us would not have bothered even to introduce the bill. The Governor, the President of the Senate, the Speaker of the House, and many members of the General Assembly had been his former students. They knew his dedication; they knew his scholarship; they knew his integrity.

**Professor Reno’s Writings on Property Law**

Professor Reno’s major writings demonstrate two unyielding traits: First, he never chose an easy subject. He believed that it was the obligation of the teacher to clarify the most difficult and obscure areas of the law. The doctrines relating to covenants running with the land, equitable servitudes, the alienability and transmissibility of future interests, worthier title, and abatement of bequests and devises appealed to his instinct to make the lot of the practitioner and the student a bit simpler. Second, his articles were models of clarity. Whether writing in the area of torts, as he once did, or in the jungle of future interests, he organized his subject along neat, logical lines and then proceeded to dissect the cases, the conflicting lines of authority, and the ambiguities.

In an unguarded moment, while reviewing a collection of law review articles, he expressed the philosophy that summarizes his own attitude toward the importance of the law reviews and, albeit indirectly, of his own contributions:

For a considerable period the law reviews of this country have been producing comprehensive and scholarly articles
and comments upon numerous controversial questions of law which daily confront the profession. Most of these articles and comments have been written, after thorough and complete investigations of all adjudicated cases, by writers who have spent much time qualifying themselves in their particular fields. Unfortunately, the products of this research have never been fully utilized by the bench and bar . . . . But, to a lawyer who is confronted by the very problem in his practice such an article or comment can have inestimable value in preparing the particular case for trial.¹⁴

The standard of "thorough and complete investigations of all adjudicated cases" is one which dominates all of Professor Reno's work. It is a standard of excellence; it has been the dominant trait in his 40-year professorial career.

**Covenants Running With the Land and Equitable Servitudes**

Probably his most significant article was *The Enforcement of Equitable Servitudes in Land*, published in the *Virginia Law Review* in 1942.¹⁵ It is cited in all of the leading texts and casebooks,¹⁶ and it forms the major part of chapter II of Professor Reno's contribution to Mr. Casner's multi-volume *American Law of Property*.¹⁷ Indeed, it probably is not an exaggeration to conclude that, without the *Virginia Law Review* article, Mr. Reno would not have been selected by Mr. Casner, the Editor-in-Chief, to join the illustrious group of authors which included Atkinson, Casner, Leach, Lesar, Martz, Moynihan, Russell Niles, Osborne, Patton, Rundell, Simes, Simpson, Tudor, William F. Walsh, and Westfall.

Part 9 of the *American Law of Property* is titled "Covenants, Rents and Public Rights."¹⁸ Written by Professor Reno, it was

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¹⁵. 28 Va. L. Rev. 951 (part 1); 1067 (part 2) (1942). A notation at 28 Va. L. Rev. 980 recites that Mr. Reno was a Captain in the field artillery, U.S. Army, but does not contain the usual disclaimer that the views expressed in the article do not necessarily represent those of the Army. Compare the disclaimer by Mr. Reno's colleague, Mr. Gump, in his article, Apportionment of the Federal Estate Tax, 6 Md. L. Rev. 195 (1942): "The opinions and assertions in this article are the private ones of the writer and are not to be construed as official or reflecting the views of the Navy Department or the Naval Service at large." Perhaps Secretary of War Stimson, a great lawyer himself, had approved Mr. Reno's article.
¹⁶. See A.J. Casner & W.B. Leach, Cases and Text on Property 1052 (2d ed. 1969) [hereinafter cited as Casner & Leach]; C. Clark, Real Covenants and Other Interests Which "Run With Land" 97 n.15, 105 n.38, 109 n.53, 135 n.124, 148 n.12, 171 n.4, 173 n.12, 180 n.37, 182 n.49 (2d ed. 1947); S.R. Powell, Law of Real Property ¶ 671 at 148 n.13 (1973) (which recites that the article "gives an excellent analysis of the theories").
singled out by one reviewer, along with the contributions by Leach, Osborne, and Rundell, as examples of "outstanding discussion.""^{19} Professor Sparks stated: "[T]he part dealing with covenants running with the land is probably the best discussion and easily the most clearly written treatment available of this very difficult topic."^{20}

Charles G. Page, of the Baltimore Bar, who had served for a brief time on the Law School faculty, concluded:

Maryland lawyers will be especially interested in Part 9, by our own Russell R. Reno (University of Maryland Law School), entitled "Covenants, Rents and Public Rights." His chapters come up to the fine standard of teaching and writing for which he is generally known in this State.\(^2\)

The subject of covenants running with the land was an exciting one in the 1940's. In one major controversy, for example, the *Restatement of Property* provided that privity between the covenantor and covenantee was not essential, in an action at law, to the running of the benefit of a covenant,\(^2\) although it was essential to the running of the burden.\(^2\) This position was severely criticized by Judge Charles E. Clark, of the United States Court of Appeals for the Second Circuit, formerly Dean of the Yale Law School. The *Restatement* was vigorously defended by Oliver S. Rundell, Dean of the University of Wisconsin Law School and Reporter for volume 5 of the *Restatement*. The verbal battle was quite fierce.\(^2\) In cutting through the quagmire Mr. Reno's writings clearly and dispassionately outlined all of the rules relating to covenants and servitudes: the distinctions between affirmative covenants and negative covenants, the distinctions between covenants enforceable at law and those enforceable in equity.

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20. Sparks, Book Review, 28 N.Y.U.L. REV. 1052, 1054 (1953). This is an especially superb tribute in view of the fact that just a few years earlier Judge Clark had written the second edition of his famous treatise on the subject.
22. 5 Restatement of Property § 548 (1944).
23. Id. at § 534.
24. Clark, The American Law Institute's Law of Real Covenants, 52 Yale L. J. 699, reprinted in appendix I of C. CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND" 266 (2d ed. 1947); Rundell, Judge Clark on The American Law Institute's Law of Real Covenants: A Comment, 53 Yale L. J. 312 (1944); Clark, A Note on Professor Rundell's Comment, 53 Yale L. J. 327 (1944); Sims, The Law of Real Covenants: Exceptions to the Restatement of the Subject by the American Law Institute, 30 CORN. L. Q. 1 (1944); Clark, More About the "Law" of Real Covenants and its Restatement, 30 CORN. L. Q. 378 (1945), reprinted in appendix III of C. CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND" 266 (2d ed. 1947).
These matters, generally looked on with horror by law students, are of enormous practical importance today. A lease, a plan of a neighborhood development, the rights of a homeowners' association, the by-laws of a condominium, and the urban renewal agreement between the governmental agency and the private developer are all governed by the principles in this area of law. It is indicative of the importance of Mr. Reno's writings in this field that almost every major casebook on property law cites or quotes Reno extensively. Professor Berger's casebook devotes four pages to an excerpt from the Virginia Law Review article. Both part 9 of the American Law of Property and the Virginia Law Review article are frequently cited in the Casner and Leach casebook. Judge Clark's book cites the Virginia Law Review article on nine different occasions. Recent cases rely heavily on Professor Reno's research.

Alienability and Transmissibility of Future Interests

Professor Reno's first article in the Maryland Law Review was Alienability and Transmissibility of Future Interests in Maryland. It was supplemented 17 years later by his Further Developments as to the Alienability and Transmissibility of Future Interests in Maryland. The articles organize and elucidate a difficult area of the law. The first portion of each article presents a discussion of inter vivos alienation of future interests. The balance of each article deals with the transmissibility of future interests at death. The latter problem is initially a question of whether a future interest may be transmitted by intestate succession and by testamentary succession. If it may be so trans-
mitted, the next question is whether the particular future interest was terminated by the death of its owner—i.e., whether there was an implied condition of survivorship until the remainder vested in possession.\footnote{31}

Reversions and vested remainders were clearly alienable; possibilities of reverter and rights of entry were probably not alienable, although the law was not entirely clear.\footnote{32} Because of the clarity of the rules with respect to reversions and vested remainders and the infrequency of attempted alienations of possibilities of reverter and rights of entry, most of the cases on alienation involved contingent remainders and executory interests. At common law, these interests were inalienable, but in 1898, the Maryland Court of Appeals held that a contingent remainder or executory interest in which the taker is fully ascertained and which is solely contingent as to an event is alienable inter vivos.\footnote{33} In 1926, the Court of Appeals seemed to move even further toward the result of making all contingent remainders and executory interests alienable.\footnote{34} In 1940, the court was presented with an opportunity to resolve the entire area in Hans v. Safe Deposit and Trust Co.\footnote{35} The case presented a remainder after the death of the last surviving life tenant which was to be divided among the testator's "grandchildren then living". Before the death of the life tenant, one of the grandchildren transferred her interest, but after the death of the life tenant, she attempted to renege, arguing that the attempted transfer was invalid because her interest was contingent on survival and was therefore inalienable. The Court of Appeals avoided the issue of whether a contingent remainder was alienable by construing the remainder interest to be vested subject to divestment.

Professor Reno was critical of the court's analysis of the problem, although he agreed with the result in the case.

If this question is to continue to depend upon the artificial distinction between vested and contingent remainders, then

\footnote{31. The condition of survivorship is discussed \textit{infra} note 45.}
\footnote{32. The result with respect to possibilities of reverter and rights of entry has been changed by statute so that they are now clearly alienable. See Md. ANN. CODE, Real Prop. Art., § 6-104 (1974).}
\footnote{33. \textit{In re} Banks' Will, 87 Md. 425, 40 A. 268 (1898).}
\footnote{34. Reilly v. Mackenzie, 151 Md. 216, 134 A. 502 (1926).}
\footnote{35. 178 Md. 52, 12 A.2d 208 (1940).}
in each case the Court of Appeals has within its own hands the absolute power to determine alienability by merely electing to treat a clause requiring survival as a condition subsequent rather than a condition precedent. If "then living" can be treated in one case as a condition subsequent thereby rendering the interest alienable and as a condition precedent rendering it inalienable in the next case, how can a lawyer advise his client in advance?36

Professor Reno's approach would be to avoid deciding cases on the basis of whether the remainder is contingent or vested, or whether the condition is precedent or subsequent.37 His realistic approach has yet to be adopted by the Maryland Court of Appeals, but it is not unlikely that at some point the court will

37. A similar approach is suggested by an excellent, but rarely noticed, article by Professor Jones, Vested and Contingent Remainders, A Suggestion with Respect to Legal Method, 8 MD. L. REV. 1 (1943) [hereinafter cited as Jones]:

The traditional legal technique, which assumes that all questions concerning remainders can be answered by first classifying the interests as vested or contingent, is no longer a satisfactory method by which to solve the cases. In most instances this approach serves no useful purpose; it is, in fact, nothing more than a preliminary exercise in mental gymnastics. This is due, in a large measure, to the fact that the distinction between vested and contingent remainders is not clear and definite, as assumed by the courts, and that it is based on principles which, although they had historical importance and justification, are now obsolete and have no particular significance with respect to the problems which the courts now have to decide. The solution would be for the courts to abandon their basic assumption that all cases involving remainders must be solved by first classifying the interests as vested or contingent, and to approach the cases by carefully analyzing them to determine the exact problem involved and then to decide that problem; usually this can be done without determining whether the interest is a vested or contingent remainder. Such an approach would bring before the court in each case the exact question to be decided and would cause them to consider that question on its merits without regard to some abstract concept; they would then be in a position to weigh all the competing factors and to balance the various interests involved before making their decision. This, it is submitted, would tend to reduce the apparent conflict which one now finds, in many instances, between the language of the cases and the actual decisions. Id. at 20-21 (footnotes omitted). See also Waggoner, Reformulating the Structure of Estates: A Proposal for Legislative Action, 85 HARV. L. REV. 729, 732 (1972) ("[O]pinions string together definitions which were meaningless to begin with and are, to boot, irrelevant to the case at hand; lost in verbal mazes, they never come to grips with the real issues . . . . Decisions often turn on the form in which a disposition is stated rather than on its substance. Different legal consequences flow from verbal differences in referring to the same time, the same person, or the same event."); Dukeminier, Contingent Remainders and Executory Interests: A Requiem for the Distinction, 43 MINN. L. REV. 13 (1958); Grbich, Vesting: The Classification Charade, 9 MELBOURNE L. REV. 81 (1973); Halbach, Vested and Contingent Remainders: A Premature Requiem for Distinctions Between Conditions Precedent and Subsequent, PERSPECTIVES OF LAW: ESSAYS FOR AUSTIN WAKEMAN SCOTT 152 (R. Pound, E. Griswold & A. Sutherland, eds. 1964) [hereinafter cited as Halbach].
disgustedly survey its prior decisions in this area and move to the more realistic Reno approach.

The Court of Appeals should acknowledge that the distinctions between vested and contingent remainders are purely formalistic, supported neither by policy nor logic. As the Supreme Court of Iowa stated many years ago:

It may also be admitted that where the courts themselves have sought to blaze their way through a jungle of precedents and mark each turn and twist in the route by guideposts adorned with Latin quotations which everybody feels in duty bound to admire and nobody tries to read, they have, as a rule, found much difficulty in leaving a clear highway which others can follow with any assurance of finding their way home again.

It is a matter of almost daily occurrence to find that remainders devised in what seems to be identical form and terms are held by one court to be vested and by another court contingent, and not infrequently the same court is found to be committed to both propositions. Naturally, efforts are often made to avoid the appearance of inconsistency by emphasizing minute differences in cases, but each finespun distinction only aggravates the lack of harmony, and leaves the lawyer or the court who is anxious to keep in line with the authorities in ever-increasing doubt — not so much in respect to the fundamental principles of the law of remainders as to their practical application to the case in hand.38

If the realism of the Reno approach were to be adopted by the Maryland Court of Appeals, the following principles would emerge:

1. The so-called preference for early vesting is a disguise for a preference for certain results in certain types of cases.39 Thus, in cases involving the rule against perpetuities, the real reason for the "early vesting" rule is to avoid the invalidation of the interest, a result the testator would not have intended under normal circumstances. In cases involving pre-1929 instruments and the destructibility of contingent remainders, the real reason for the "early vesting" rule is to avoid the invalidation of the remainder.40

2. In cases involving the alienability of future interests, the sole issue should be whether there is any public policy in prohibiting the transferability of these interests. To phrase the issue in terms of whether the remainder is vested or contingent leads the inquiry along meaningless lines.\textsuperscript{41} Professor Reno argued that the "only sound solution" of this problem was the Restatement of Property rule that all remainders and executory interests, whether vested or contingent, are fully alienable.\textsuperscript{42}

3. In cases involving the existence of an implied condition of survivorship, the other major problem discussed in the two articles,\textsuperscript{43} it is fruitless to argue the cases in terms of the vested-contingent distinction. The traditional analysis breaks down totally in an example such as: "To A for life, remainder to the issue of A, but if A should die without issue, then to B." B's interest is clearly subject to a condition precedent, and, under orthodox thinking, B's interest is therefore contingent. Yet, gifts to a designated person generally do not imply a requirement of survivorship.\textsuperscript{44} There are many policy considerations in these cases which are generally ignored by the Court of Appeals in favor of the litany of contingent-vested and condition precedent-condition subsequent.\textsuperscript{45}

\textsuperscript{41} See also the authorities cited supra note 37.
\textsuperscript{44} See Reno, Further Developments, supra note 29, at 210-11.

A superb article on the subject is Halbach, Future Interests: Express and Implied Conditions of Survival (pts. 1-2), 49 CALIF. L. REV. 297, 431 (1961). See also Trautman, Class Gifts of Future Interests: When is Survival Required, 20 VAND. L. REV. 1 (1966). I am not wholly satisfied with Professor Reno's analysis of the implied condition of survivorship. I think that Dean Halbach's article, written many years after Professor Reno's articles, contains many insights that apparently no one else had ever propounded. My criticism is doubly unfair, because Professor Reno attempts to reconcile all the Maryland cases, a task which I consider to be utterly impossible. The Court of Appeals has not been notably consistent on the question of implied conditions of survivorship. (N.B. This footnote may not be cited against me in any litigation. Cf. CASNER & LEACH, supra note 16,
4. The so-called preference for early vesting should be balanced against the fact that for the last twenty-five years, the law schools have taught the horrible estate tax results of vested interests and the alternative non-taxable device of testamentary powers of appointment. As Louis Auchincloss put it in one of his short stories, *The Power of Appointment*, an "expert" in will drafting had a recurrent nightmare: "At night he often lay awake and tried to visualize the different ways in which disaster would strike. . . . It would be a trust where the remainder vested in a dead person." 46

The doctrine of "Reno realism" has been developed at length in an article by Dean Halbach, *Vested and Contingent Remainders: A Premature Requiem for Distinctions between Conditions Precedent and Subsequent*: 47

Whether a particular future interest which is subject to a particular condition is contingent in form or is a vested remainder subject to defeasance has nothing to do with the policy considerations relevant to the cases still employing the distinction. Nor is this distinction likely to have anything to do with a testator's intent, unless his choice of forms of expression is to be given some Freudian significance in defiance of common sense. Wherever a rule requires the dis-

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tinction between conditions precedent and conditions subsequent to be drawn for the purpose of resolving questions in litigation today, the rule represents a willingness to decide cases without coming to grips with the real issues of the controversy . . . .

. . . The lines between conditions precedent and conditions subsequent are often so difficult to draw, and they can so readily be "erased" by a court even when the traditional lines are present and seem reasonably clear, that the embodying of this distinction in a "rule" virtually precludes the very existence of a rule in any meaningful sense. Courts are understandably tempted to classify the future interests in question in a manner justifying whatever result seems fair and appropriate in the court’s view of the case. Such pliable "rules" offer no basis for impersonality of decision in the process of adjudication. Furthermore, such rules offer no real basis for evaluating a client’s case, and no expected result is secure without litigation.48

Worthier Title

In The Doctrine of Worthier Title as Applied in Maryland (Herein of the Revocability of Certain Trusts),49 Professor Reno examined this obscure doctrine which nullifies an attempted gift to heirs of a transferor. Thus, if A transfers by deed to B for life and then to A’s heirs, Worthier Title cancels the gift to the heirs, making the transfer the equivalent of one from A to B for life, leaving a reversion in A. The theory is that the heirs cannot take under the instrument, but must take the property, if they ever do, by intestacy at A’s death.

A rash of interest developed in the doctrine in the 1930’s because it enabled a settlor to terminate an otherwise irrevocable trust; these termination suits increased greatly after the stock market crash of 1929. Only the most scholarly of Maryland lawyers had been aware of the doctrine before Mr. Reno’s article. Mr. Edgar G. Miller’s frequently-cited treatise on The Construction of Wills in Maryland had devoted only one paragraph to the subject.50

Professor Reno demonstrated that the doctrine had been applied in Maryland as a rule of law in cases involving the con-

48. Id. at 170-71. When the Court of Appeals cites with approval the above quotation, or the quotation from Professor Jones’ article, supra note 37, we will have reached a new era in the Maryland law of future interests.
49. 4 Md. L. Rev. 50 (1939) [hereinafter cited as Reno, Worthier Title].
50. E. Miller, Construction of Wills in Maryland § 79 (1927).
struction of wills, but he argued that, as both a rule of law and a rule of construction, the doctrine should be abolished because of its lack of modern significance. With respect to inter vivos transfers, however, he agreed with the conclusion of the Maryland cases that the doctrine, as a rule of construction,

is justified on the basis that it represents the probable intention of the average conveyor. Where a person makes a gift in remainder to his own heirs (particularly where he also gives himself an estate for life) he seldom intends to create an indestructible interest in those persons who take his property by intestacy, but intends the same thing as if he had given the remainder "to my estate." 51

There have been no Maryland cases on the Worthier Title doctrine since Professor Reno's article. This lack of judicial activity should not lull the practitioner into thinking that the doctrine has no modern significance. The failure to appreciate the significance of the doctrine could readily lead a draftsman of an irrevocable inter vivos trust into creating a trust which will not avoid the estate tax when the grantor dies. The Reno article is well known and is often cited in out-of-state cases and in national treatises. 52

Abatement of Legacies and Devises

In 1957, Professor Reno wrote The Maryland Order of Abatement of Legacies and Devises. 53 This article develops the abatement rules where the estate is depleted between the date of execution of the will and the testator's death, or the estate is depleted after death because of debts and estate taxes. Professor Reno concluded that the Maryland Court of Appeals had developed the following order of abatement: (1) intestate personalty, (2) residuary legacy, (3) intestate realty, (4) residuary devise, (5) gen-

51. Reno, Worthier Title, supra note 49, at 73. The Restatement of Property also recommends the abolition of the rule in will cases. See 3 RESTATMENT OF PROPERTY § 314 (1940).

52. Reno, Worthier Title, supra note 49, at 73, quoting 3 RESTATMENT OF PROPERTY § 314, Comment a.


eral legacies, (6) specific legacies, and (7) specific devises. He recommended that the order of abatement be amended by the legislature by abolishing the distinctions between realty and personality, between devises and bequests. In revising the testamentary laws of Maryland, the Henderson Commission completely followed Professor Reno's suggestions.

The article also dealt with the problem which arises where a surviving spouse renounces the will and elects to take her statutory share. What is the effect upon the other dispositions in the will as a result of the election? Professor Reno argued for greater application of the equitable doctrine of sequestration to avoid any substantial distortions in the testator's scheme of distribution. His approach on this subject has also been codified by the General Assembly.

The Floating Zone

Professor Reno's interest in land use control, initially demonstrated in his article on equitable servitudes and in his part 9 of the American Law of Property, shifted, in his most recent article in the Maryland Law Review, from private controls to public controls. In Non-Euclidean Zoning: The Use of the Floating Zone, he discussed the concept of a "floating zone." A floating zone is a special use district that has no specific location; it "floats" over the entire county or municipality until, upon application of a property owner, it is caused to "descend" upon his land. This process effects a reclassification for special use.


In his customary, well-organized manner, Professor Reno first examined the legality of the floating zone from the perspectives of whether a zone must be specific with regard to boundaries, whether a floating zone is in accordance with a comprehensive plan, and whether the legislature, in creating these zones, is unlawfully delegating its authority to the zoning agency or to the private developer who petitions for a special use district. He concluded with a discussion of the judicial limitations which had developed on the use of the floating zone.  

CONCLUSION

The retirement of Professor Russell R. Reno signals the end of a remarkable career of teaching and scholarship. He would conclude that he is in our debt for having been given the opportunities to teach and write in Maryland. He would say, to paraphrase Casner and Leach: "I wonder why all of my colleagues are not fighting to get a chance to teach the first-year property course. I can only surmise that they want to live more sheltered lives. I do not envy them." But all of us know that our debt to him will always be the greater. It can never be repaid.


64. Casner & Leach, supra note 16, Preface, ix.