

Duke Law Journal



A TRIBUTE TO
ARTHUR LARSON



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Dr. Arthur Larson, James B. Duke Professor of Law, has retired after twenty-two years of teaching at the Duke Law School. For a man of Dr. Larson's energy and diverse interests, the notion of retirement may have little significance. The occasion is important to the members of the *Duke Law Journal*, however, for it provides the opportunity to thank him for his outstanding teaching, for his many valuable contributions to this *Journal*, and for his lasting friendship to the students of Duke Law School. It is also an opportunity for us to pay well-deserved tribute to Dr. Larson for his accomplishments as a versatile scholar, a prolific writer, and a distinguished public servant. Thus, we are pleased to present a tribute to Dr. Arthur Larson. To help us recall Dr. Larson's many achievements, the Editors have asked five men who have known and worked with him to comment on various aspects of his multifaceted career. All of us join his friends, colleagues, and Duke students past and present in thanking and honoring him, and we wish him great happiness in his retirement.

The Editors and Staff
Duke Law Journal

ARTHUR LARSON

CURRICULUM VITAE

A.B., M.A., B.C.L., J.D., D.C.L., LL.D., L.H.D., *James B. Duke Professor of Law and Director of the Rule of Law Research Center*

A.B., 1931, LL.D., 1953, Augustana College; M.A. (Juris.), 1938, B.C.L., 1957, D.C.L., 1957, Oxford University; Fellow of Pembroke College, Oxford. General practice, 1935-39; Assistant Professor of Law, University of Tennessee, 1939-41; Division Counsel, Office of Price Administration, 1941-44; Chief, Scandinavian Branch, Foreign Economic Administration, 1944-45; Associate Professor, 1945-48, Professor of Law, 1948-53, Cornell Law School; Fulbright Fellow, London School of Economics, 1952; Dean, University of Pittsburgh Law School, 1953-54; Knapp Professor of Law, University of Wisconsin School of Law, 1958; Undersecretary of Labor, 1954-56; Director, U.S. Information Agency, 1956-57; Special Assistant to the President, 1957-58; Special Consultant to the President, 1958-61; Consultant to the President on Foreign Affairs, 1964-68; Consultant to the State Department of International Organizations, 1963-69. Professor of Law and Director of the Rule of Law Research Center, Duke University, since 1958; James B. Duke Professor of Law, since 1975.

NORMAN COUSINS*

When I first met Arthur Larson, he was presidential aide to Dwight D. Eisenhower. The year was 1959. The occasion for our talk was the President's person-to-person program.

I had been sent to the Soviet Union in the early stages of the cultural exchange program. Before leaving for the USSR I had had a meeting with the President at which he expressed his hope that some way might be found to arrange conferences between private citizens of both countries to explore the possibilities of easing tensions. The President wisely felt that it would be difficult for diplomats to initiate a way out of the Cold War. There was something in the nature of diplomacy, he said, that caused official representatives to dig in very early in their conferences, fearful that the slightest concession would be interpreted as weakness that could be exploited by the other side. Private citizens, on the other hand, could examine issues without penalty to their countries. They could probe for daylight in the murky issues and then report back to their governments about areas of possible agreement.

While in Moscow, I spoke to the Praesidium of the Peace Committee. At the end of my talk I proposed a conference of private citizens who had the confidence of their respective governments and who might address themselves informally to a wide range of outstanding issues, some of which were highly volatile. I received no specific encouragement from the Russians at that time. When I returned to the United States and reported to the President, he expressed the deepest interest in the possibility of such exploratory conferences. Even if I received a negative reply from the Russians, he said, the invitation ought to be renewed—again and again, if necessary.

The President suggested that I speak to Arthur Larson and keep him informed about the project. The President described Arthur Larson as a person of extraordinary intelligence and historical knowledge who brought special qualities of vision and good will to any enterprise in which he was engaged.

I met with Arthur Larson in his office in the White House. It took only a few minutes for me to recognize the aptness of the President's characterization. Arthur Larson was open, unambiguous, positive. He was unabashedly committed to a morally imaginative stance in our for-

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eign policy. He believed in the need for effective world order and for a basis in law for international relations. I told him that I could think of nothing more promising for the American future than to have people close to the President who held such views. Arthur assured me that the President himself was probably the strongest advocate of this position.

It was several weeks before I received a reply from the Russians on the proposal for a citizens' conference. The reply was negative. Following the President's advice, I renewed the invitation. I believe this process was repeated at least four times. Finally, I received a wire from Moscow agreeing to send some twenty prominent Russians to a meeting in the United States. By this time, Arthur Larson was at Duke University. I telephoned him excitedly to report the good news and got him to agree to serve on an informal steering committee. John Dickey, the president of Dartmouth College, offered the facilities of his school for the conference. The Ford Foundation agreed to underwrite the project.

That first meeting at Dartmouth was everything President Eisenhower had hoped it might be. The conferees identified at least six different areas, including a ban on nuclear testing, that were distinct possibilities for reducing tensions between the two countries. I doubt that any American at that first meeting—or subsequent early meetings in the series—was more influential or esteemed by the Russians than Arthur Larson. He is a master of the arts of friendship, and he brought all his special qualities to the exchange. His genuineness, his sincerity, his delightful sense of humor, his ability to state a case constructively and without any intimation of harshness or testiness, gave him special access to the Soviet delegates. Away from the conference table, he used his time to good advantage in informal talks with the Russians. They obviously enjoyed his company and that of Florence—as did everyone else. Not infrequently, in my own informal exchanges with some of the Soviet delegates, I would press a point on them only to have them ask: "Where does Arthur Larson stand on this matter?"

I must not make it seem that his popularity existed only with the Russians. All the Americans looked to him not just for leadership at the conference table but for good fellowship. I know that I delighted in his company. Whether we were walking on empty Russian streets late at night after long hours at the smoky conference table, or were enjoying the special excursions arranged for us by our hosts, I found Arthur the most congenial of all companions. He never flaunted his wide knowledge but he could discourse with equal facility on subjects as diverse as ancient Greece, American history, music (classical or modern), sports, and limericks. He could sing with the best of them—accompan-

nied or unaccompanied. And I have never seen him sparkle more than when in the company of Florence.

I fear I have given the impression that the only times I saw Arthur and Florence were at the Dartmouth Conferences. Not so; the World Law movement has given us ample opportunity to combine forces in the past two decades. Next to Grenville Clark and Louis Sohn, who collaborated on the standard work, *World Peace through World Law*, I know of no one who has contributed more to the theory and practice of durable world order than Arthur Larson. He knows that disarmament, in order to be effective, must be connected to the machinery for dealing with basic causes of war. He knows, too, that genuine peace requires an in-depth design and that it must possess the components of codified law and the means for keeping the peace.

In all these respects Arthur Larson is a national and a world asset. It is impossible to pay too high a tribute to such a human being.

WEX S. MALONE*

We can best appreciate the magnitude of Arthur Larson's contribution to the field of workers' compensation if we begin with a passing glance at the nature of the subject matter to which he applied his talents when he released his monumental treatise in 1952. By that time the administration of work injuries had been the object of continuous legislative experimentation for forty years. It had been worked over extensively by courts and commissions. Accretion had set in through repeated decisions and a body of settled law was in the making.

But the judges were finding the going tough indeed. Significantly, the trouble they countered in their struggle with the new legislation was in part the result of their own efforts a century earlier to work out a system at common law for handling the claims of injured workers. In their efforts, the courts had freighted the law with a complex network of rules and had brought into being an imposing body of defenses designed to relieve the employer of liability for many accidental job injuries. But by the turn of the century this chary response to the injured worker's cry for help had given rise to public discontent which, in turn, had goaded the legislatures to take action. During the first decades of the present century, legislatures undertook a wholly innovative statutory approach to alleviating the plight of the worker, inspired by a more humane set of social values. This statutory scheme was handed over to the courts as a substitute for their own earlier creations. The effort of judges to face up to the new and alien measures gave rise to much doctrinal confusion and unevenness in the decisions. Two antagonistic philosophies faced each other, and eventual collision was unavoidable. Traditional nineteenth century tort law remained in full force outside the field of employment injuries, and even job accidents did not always fall within the contemplation of the new statutes. As a result, much litigation centered on whether particular cases should be governed by the new statutes or tort law; the outcome often turned on trivial factual differences. The mass of rules and doctrines that emerged as the courts proceeded to interpret the compensation statutes reflected the skepticism to be expected of judges when faced with a body of statutory innovations directly opposed to long-accepted principles made by the courts themselves. The language of the statutes became steeped in the dye of common law theology. It was not easy for

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judges to abandon their accustomed insistence that there be some discoverable blameworthiness; nor could they cheerfully tolerate the prospect of a largesse passed out by law to claimants who were unable to demonstrate that they themselves were cautious and deserving persons. Other familiar common law tendencies continued to exert their influence in compensation controversies. Courts continued to draw conservative boundaries for recovery when faced with claims for accidents whose relation to the employment appeared doubtful.

This entanglement of the old and the new served to deprive the emerging compensation scheme of a much needed sureness of direction. Legal scholarship at that time had done little that could be regarded as truly helpful in pointing the way. There were efforts by a few writers during the 1930s to present an organized approach to the subject,¹ but unfortunately, these treatments, helpful as they were, served chiefly as encyclopedic aids for attorneys. Although much of the periodical literature in these early decades was thoughtful and constructive, it attracted very spare attention in the courts. A significant breakthrough came in 1944 with the publication of Samuel Horovitz's *Injury and Death Under Workmen's Compensation Laws*. This was a compact volume written primarily with the needs of students in mind. Horovitz's work was sharply critical of many trends of the decisions, and his call for reform was urgent. After forty years one might now fairly conclude that both the strength and the weakness of Horovitz's treatment lies in its intensity. His experience was principally that of an advocate, and he wrote as an advocate—a staunch one. "True neutrality in workmen's compensation," he observed unabashedly in the preface, "is a myth. . . . [T]he neutral is usually the vacillating individual who gives and takes, trying to satisfy both sides, and creating only enmity or confusion."² Horovitz's sharp and persistent criticism of the reactionary taint of many compensation decisions did serve frequently to prod the social conscience of judges. But this alone was not enough. Judicial habits of thought that have become deeply set through tradition can be more effectively purged with temperate advocacy taking both sides of the social equation into account—an advocacy that demonstrates a thoughtful consistency in approach and that reflects a generous measure of sober scholarship.

The time was ripe for the kind of textual treatment that Arthur Larson was prepared to offer. His text, *The Law of Workmen's Compensation*, has become established as a treatment that is classic in the

1. D. CAMPBELL, *WORKMEN'S COMPENSATION* (1935); W. SCHNEIDER, *THE LAW OF WORKMEN'S COMPENSATION* (3d ed. 1939).

2. S. HOROVITZ, *INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS* vii (1944).

fullest sense of the word. Although the appeal of this work to the judiciary was evident from the start, its compelling attraction grew enormously with the passage of years. Few treatises have been quoted as frequently and with such evident approval in the opinions. Even casual attention to recent developments in the law of workers' compensation affords convincing evidence that courts have not hesitated to modify or openly abandon earlier positions criticized in Larson's text, and have moved over to his side. In so doing, they have frequently adopted his own unique phraseology.

The reasons for the courts' enthusiastic reception are several, but one is outstanding: the author has provided clear policy underpinning for virtually every position he has advocated. His arguments are grounded on the solid social thinking of our own time. This he makes clear from the outset. In the first chapter he hastens to stress that workers' compensation is a scheme designed to impose upon the industrial enterprise itself the cost of the human death and misery that employment unavoidably entails. Professor Larson thoroughly discusses the similarities and differences between the compensation scheme and other forms of social security. His continued reversion to the ultimate purpose to be served in workers' compensation affords a dependable cynosure enabling courts to attain consistency of interpretation. He points out that the legislatures borrowed much of the terminology of the compensation statute from the familiar vocabulary of the negligence network of the common law. Hence, there is a persistent temptation to borrow from the older system. This can be minimized if the trier constantly bears in mind the distinction between the purpose of the new scheme and the old.

It appears to me that Arthur Larson has made his most impressive contribution to compensation law through the assistance he has afforded in working out acceptable boundaries within which the system can operate. He has succeeded in giving new and more vital meaning to the familiar phrases, "arise out of employment" and "during course of employment," which are found in virtually all cases. These have been effectively recast by the author, who also created new language to encompass vital aspects of the law. Larson took the cases as he found them and made his estimate of the direction in which the law appeared to be moving. Sometimes this movement was fairly evident from the language of the courts. At other times, however, it was discoverable only through painstaking observation of the similarities of pattern in the results reached in the decisions. The next step was to shape up language in which the author's ideas could be effectively couched. The result was a set of novel and attractive expressions, which the courts

immediately found appealing. Prior to the appearance of Larson's treatise, phrases such as *positional risk*, *neutral risk*, and *personal risk*; *so-close rule*; or *quantum theory* were wholly unknown. Thereafter, they quickly became absorbed into the everyday vocabulary of workers' compensation and were accepted as though they were classic doctrines. They have served as ingenious language devices drawing together accident situations that at first blush may appear disparate, or directing attention to distinctions that otherwise might well remain unnoticed.

Merely devising a novel set of expressions, however, would not alone have worked the revolutionary changes in court attitude that followed as the courts became familiar with the book. Larson's text abounds in common sense. The touch is light, and because of this his arguments are all the more persuasive. Sometimes his humor is wholly irresistible, and the situations he uses for illustration are human and readily grasped. But with all this literary charm, the book is encyclopedic in its coverage. Not only are virtually all the cases cited, but they are usually accompanied by some brief comment or point of distinction noted by the author. He continuously enlarges the text and supplements it with new material. In short, *The Law of Workmen's Compensation* is truly a great book, and it abundantly deserves all the praise that can be heaped upon it—I only wish that I could enjoy the satisfaction of having written it!

DANIEL H. POLLITT*

Mark Twain used to say that he never let school stand in the way of getting an education. I have decided not to let ritual third party formalisms stand in the way of expressing strong sentiments about my favorite professor. The story must be told in full ambiance, and in the first person. After all, Arthur Larson is definitely not a “third person” type of guy.

I met Arthur Larson in the fall of 1946 when I enrolled in the Cornell Law School. I had not approached a legal career with much enthusiasm. After three years in a Marine combat unit I took my time adjusting to civilian life—traveling the east coast visiting old friends, debating issues of the day at the American Veterans Committee, and on occasion looking for a job.

I told prospective employers that I could read, I could write, and I could see relationships. These credentials got me nowhere. They told me that I lacked the necessary experience and/or paper qualifications, and many suggested further formal education. In the meantime, there was the continuous well-meant question from family friends: “What are you going to do now that the war is over?” Since both my mother and father were lawyers, law school seemed a logical next step. But I felt trapped somehow as my bus carried me hour after hour from my home in Washington, D.C., to Ithaca; and the nagging doubts multiplied when it started to snow as I waited for connections in a dingy bus depot in Binghamton, New York. I felt I had made a mistake, but it was too late to turn back. What could I say back home? It was thus that I began the study of law.

I liked my classmates at once. There was a mirror image wherever I looked. Typically, one roommate had skippered a landing craft in the Pacific, another had flown a P-38 on low level strafing missions over Europe, the third was a Marine veteran from the early days of Guadalcanal. We all wore field boots and Eisenhower jackets and felt a little superior for having done “our bit.” Above all, we didn’t want any hassle or bluster. We didn’t get any.

The professors were kindly, learned, highly skilled, dedicated, enthusiastic, elderly, and somewhat dull. The property professor almost glowed when he distinguished a shifting from a springing use, but no sparks reached my spirit. The professor of contracts told by word and

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deed that Williston wrote the most exciting book known to man. I read it, diligently, but preferred Dashiell Hammett. The history of common law pleading was presented almost with awe. I well remember the lecture about how detinue was merged with trover in *Slade's Case*, but it didn't seem to matter much when the Berlin airlift was going on outside.

I decided early on that I would study hard, make respectable grades, and then, with colors flying, leave at the end of the first semester to join a college chum on the Paris edition of the *Herald Tribune*. Two things thwarted my early departure from law school. The first semester grades did not come out until the second semester was almost over, and more significant, Arthur Larson entered my life with full force.

He (as we) was new to Cornell, new to the courses he taught. Considerably younger than his colleagues, he did not answer our questions with citations to the Restatement or to the leading cases and texts. Instead he counter-questioned; asked what we thought would be a fair solution to the problem at hand. If pressed, he might discourse on how the problem had been resolved in Roman law. At first we resented this evasive approach, and concluded that he did not know the answers. We sought security in the certainty of black-letter law, and this he denied us. Gradually the initial resentment changed to appreciation, and then to affection, as he nurtured our growth and development through a process of free-wheeling class discussions which prompted individual research and private reflection.

He taught us first-year torts, second-year corporations, and third-year agency. And he did it full well. But he taught far more than the substance of these courses; he taught the joy of intellectual pursuit. He taught that law is a process for the sensible solution of human problems. He taught us to revere the antiquities, but to face change with confidence and pride. He taught that law, perforce, consists of dull details; but that law also stands for ideals, honor, even romance and high adventure.

It was much later that he became Mr. Workmen's Compensation; Mr. Fair Employment; Mr. World Peace. But the qualities of soul manifested by these subsequent achievements were obvious even then. His concern for the less fortunate was infectious. His visions of world law and economic justice encouraged us too to reach for the stars. Above all, perhaps, he gave us complete trust and respect; and we tried hard to prove worthy.

How did he do all this? I don't know, but it was not easy.

He had a style that put some of us off at first. Arthur Larson was

imperial, no doubt about it; and something of a dandy. Tall, handsome, with long hair, he even carried a cane. In contrast to our pea-jackets and jump boots (entirely suitable for the snows of Ithaca), his apparel reminded of Seville Row. He cut quite a swath; he looked the modish Oxford graduate that he was. The oar in his office emphasized that he had won a "blue" crewing at Balliol.

Some saw the style, and not the man; but not for long. We learned of a back injury (hence the cane) and admired the way he conquered the pain and never missed a class. We saw the light in his office burn right after night as he explored the frontiers of corporate law. He led our class down new pathways of pedagogical experimentation as we approached the problems of agency deductively. We learned to seek solutions from within based on our own common sense experiences before turning to cases and hornbook for the "answer." He was innovative, experimental, solid on the fundamentals, humorous, light-hearted. His classes were dubbed "the hour of charm."

Outside the classroom we sought his counsel, his advice, and especially his companionship. His way home went by a tavern, frequented primarily by mill workers and law students. The proprietor subscribed to the *Saturday Review of Literature*, and I well remember how we kept watch, invited the professor in for a drink on the house, and marveled as he excelled in an inimitable droll fashion on the weekly "crosstic" word puzzles. He was a favorite guest at student gatherings, where he entertained with comic English ditties, accompanying himself on the mandolin or other available stringed instrument. The charm was more than doubled when he brought his wife, who taught dramatic arts at nearby Ithaca College and was herself a dramatic and lovely person.

He did not court popularity; he was far too busy for that. But he was the student's friend. At the end of our first year he had a delicate operation on his lower back, and I well remember returning in the fall to the repeated questions: "How is Arthur Larson?" "How is his back?" "Will he be all right?"

In Henry VIII, Cardinal Wolsey is banished from London and says to Cromwell, his servant, in parting: "When I am forgotten, . . . say I taught thee."¹ Arthur Larson can repeat this refrain with pride about the students he has taught in the past thirty-five years. Those I knew at Cornell have gone on to grace the federal bench, to serve well in legislative councils, and to represent the average citizen in his day-to-day affairs with careful diligence. This is a great legacy. We in return can give our thanks, bless our lucky stars, that Arthur Larson was

1. W. SHAKESPEARE, HENRY VIII, Act III, Scene II.

our teacher. Life can bestow no fairer gift. Emerson said "the spirit only can teach"; and this we got from Arthur Larson in full measure.

A. KENNETH PYE*

Tributes to Arthur Larson from the viewpoints of a former student, an associate in government and private practice, an outstanding man of public affairs, and a distinguished professor in one of his major fields of work are included in this issue. My piece reflects the view of a colleague within the University that he has served with such distinction for over two decades.

I first met Arthur Larson in 1966. I knew of him, of course, primarily from his writings and his distinguished service in the Eisenhower Administration. I was immediately struck by his majestic bearing, powerful voice, and ability to command any group in which he participated. Over the years I have been privileged to gain deeper insights into this humane, thoughtful, unselfish lawyer of immense capacity. There are many men in higher education whom I respect; there are only a few whom I revere. Arthur Larson is in a class by himself.

Members of the faculty of law at Duke are extraordinarily competent in the fields in which they teach and write. This is no more than what a university has a right to expect, and no less than dedicated professionals are willing to give in service to their students, their profession, and their university. What is it, then, that distinguishes Arthur Larson from the rest of us?

I find the answer in the quality of his scholarship, the depth and breadth of his professional expertise in the law, his capacity for judgment and wisdom, and the extraordinary diversity of his interests. The combination produces a *gestalt* effect of a kind rarely seen in today's universities—a modern equivalent of the Renaissance Man.

Most practitioners of the law know Arthur Larson for his major contributions to the field of workmen's compensation, so well described by Wex Malone. His treatise combines thorough scholarship and wide practical utility. Its usefulness is clearly demonstrated by its sales and the courts' reliance upon it. Harvard University recognized the quality of its scholarship by awarding Dr. Larson the Henderson Prize for the importance of the treatise to the administrative process.

Students of the seventies know Dr. Larson primarily for his groundbreaking treatise in the field of employment discrimination and for the courses that he has taught in the fields of race and sex discrimi-

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nation. Once again he has brought scholarship and impartiality to bear on a body of law too easily politicized by competing forces more dedicated to radical change or preservation of the status quo than to adherence to law. In the sixties, international law was the principal area of his work, reflecting his commitment to the rule of law in world affairs and support for the role of international organizations in making the law meaningful in the arena of nation states.

But even these widely different fields—workmen's compensation, employment discrimination, international law—reflect only the tip of the iceberg of his contributions to legal scholarship. Dr. Larson's first article, published forty years ago, was in the field of constitutional law.¹ It dealt with the inherent powers of the president, and explored the question in such depth that he was required to make only slight modifications of his thesis thirty-four years later when he testified on the same subject before the Senate Judiciary Committee. In his early years in legal education, he published articles concerning the law of torts and legal education.² His first major book was in the field of private corporations.³ Later works explored the treaty power and social security. In books, pamphlets, and articles in the major magazines of the nation, he wrote concerning world peace, nuclear nonproliferation, population problems, South African justice, and American foreign policy.

Not infrequently Dr. Larson reflected a prescience that in retrospect appears extraordinary. For instance, in 1956 he gained national recognition among nonlawyers with the publication of his thoughtful volume, *A Republican Looks at His Party*. He summarized the principles of the New Republicanism for a party not yet ready to accept the challenges of a new era:

The individual person is the pre-eminent object of all our political arrangements.

. . . .

Government should be as local as possible.

. . . .

Whatever can be done privately should be done privately.

. . . .

The government has a responsibility for prosperity which it discharges best by aiding and releasing, not by overruling, the forces of private enterprise.

1. Larson, *Has the President an Inherent Power of Removal of His Non-Executive Appointees?*, 16 TENN. L. REV. 259 (1940).

2. See, e.g., Larson, *An "Inductive" Approach to Legal Instruction*, 1 J. LEGAL EDUC. 287 (1948); Larson, *A Problem in Contribution: The Tortfeasor with an Individual Defense Against the Injured Party*, 1940 WIS. L. REV. 467.

3. R. STEVENS & A. LARSON, *CASES AND MATERIALS ON THE LAW OF CORPORATIONS* (1st ed. 1947).

. . . .

The government has a responsibility for enabling working people to improve their lot through fair collective bargaining, which it discharges best by encouraging free trade unionism, guaranteeing the right of genuine representative collective bargaining, and then avoiding interference with these free negotiations.

. . . .

The government has a responsibility for the general welfare of people, which it discharges best by initiating systems of income insurance, disaster relief, aid for education, health, safety and the like, with a maximum of private and local content and a minimum of centralized control.⁴

These principles could easily be endorsed today by a Baker or a Bush, or for that matter, a Carter. In 1956 it was branded liberal republicanism, and for his dedication to these ideals Larson experienced what may have been the unique honor of being expelled from the Republican party of Durham, North Carolina, by a formal resolution in 1964.

In a slender volume in 1965 Dr. Larson argued that the United States neither had longstanding commitments to South Vietnam nor was required to engage in military action there to protect American interests and security. He wrote:

The need for an effective alternative to our present course is urgent in the extreme. The people of the United States do not want to become bogged down in what Secretary Rusk has called a 'mean, dirty war' on the Asiatic mainland—a war that is becoming meaner and dirtier than any we have ever become embroiled in, what with news of napalm, nauseous gas, defoliation of forests, burning of villages, and mistaken killing of one's own troops increasingly filling our papers. Among the side effects of this strange encounter are two of major size and significance: the downgrading of the legal systems we have created for handling such peacekeeping situations, and the imminent danger of breaking down the *détente* with the nuclear-armed Soviet Union, so laboriously built up over the years, simultaneously forcing a regrouping of a unified world communist front at the precise time when the schism between the two communist worlds is at its widest.

The sad thing about all this is that it has not been brought about by a conscious act of national judgment, policy, or will. It has come about by a process of creeping involvement, of almost imperceptible increases in American participation from week to week, which have drastically altered our basic position and purpose from one of technical assistance and military advice to one of apparently open-ended involvement in all-out war against both internal and external enemies of the South Vietnam regime, using our own planes and men.⁵

4. A. LARSON, *A REPUBLICAN LOOKS AT HIS PARTY* 199-202 (1956).

5. D. LARSON AND A. LARSON, *VIETNAM AND BEYOND* 30-31 (1965).

A nation chose to ignore his advice, at the price of internal dissension and runaway inflation at home and impact upon its credibility on the international scene, the implications of which are still unclear.

In 1967, as a member of a National Policy Panel of the United Nations Association, Dr. Larson urged that the United States support efforts to open the way for the People's Republic of China to be admitted to the United Nations and to membership on the Security Council. Once again he was required to wait years before his views gained public acceptance.

None of his writings exhibit greater courage than his honest recitation of President Eisenhower's reservations concerning Richard Nixon contained in *Eisenhower: The President Nobody Knew*, published in 1968. Few were concerned about such revelations, but his courage in stating them probably deprived the nation of his services at the national level during the Nixon Administration when good men were hard to find in Washington.

Arthur Larson is not the kind of person upon whom I would call for detailed knowledge of the many problems in higher education. He is, however, a person upon whom I and others have relied both for wisdom and judgment when hard choices must be made in matters of significance. His advice is the product of his wide range of experiences and a keen intellect. It reflects his realization that important problems do not usually involve a choice between good and evil, but the reluctant selection of the least undesirable from a number of unfortunate alternatives. As a colleague, he has always been available to answer a telephone call at night requesting assistance in a matter within his field of expertise, that he serve on a committee, or that he advise a young man concerning his future.

Dr. Larson's efforts in legal education at Duke constitute only one phase of his contributions to his university. No member of the Law School faculty in memory has played such an important role in the general intellectual life of the university. He has served actively within the committee of Distinguished University Professors, and his participation in the musical affairs of the university would justify a place of honor even if his contributions to the law were ignored. He is an active member of the Collegium Musicum, where he both sings and plays the viola da gamba. At age sixty-four he began taking weekly singing lessons, and has sung the roles of Hans Sachs in *Die Meistersinger* and King Melchior in *Amahl and the Night Visitors*, among others. He is presently engaged in a scholarly study of the songs of Edward Grieg, and he is brushing up on the Norwegian of his youth in order to better understand the subject of his study. I am informed by a distinguished

colleague in the Department of Music that he could have sung professionally had that been his choice in life.

It has been the privilege of the faculty and students at Duke to enjoy Dr. Larson's wise counsel for one-half of his professional career. Few suspect that he will ever really retire. It may be that his devoted wife, Florence, will find that her own distinguished career in sculpture will be assisted by his more frequent presence at home. It is more likely that the two of them will choose to embark on a yet undecided new venture. If such is the case, there is no reason to doubt that the product will once again be one of unrivaled excellence.

HENRY S. REUSS*

I first met Arthur Larson in the summer of 1936 when we found ourselves taking the Wisconsin bar exams together. We had both just emerged from law school—he from Pembroke College, Oxford, and a Rhodes scholarship; I from Harvard. We had just gotten our first jobs, at Milwaukee's then equivalent of a Wall Street law office, Quarles, Spence and Quarles. Arthur was somewhat laminated in those days: a lawyer of effete and elite Oxford topsoil over a sturdy Scandinavian-Lutheran-American bedrock.

There came the time in the bar exams when we came up for our oral inquiry by the Board of Bar Examiners. The elderly Chairman of the Board, glaring menacingly at Larson and me, asked us: "Why did you go to Harvard and to Oxford? Wasn't our own University of Wisconsin Law School good enough for you?" To my eternal shame, I sniveled something about the University of Wisconsin Law School's being a wonderful place, and that I had probably made a terrible mistake. Not so with the steely Larson. Looking his tormentor square in the eye, Larson replied, "Sir, mine was a considered choice!" We both passed the bar, Larson with his honor intact.

For three years we practiced together in Milwaukee. Workmen's compensation and automobile negligence cases were great rent-payers, and Larson did his share. I remember the case in which he represented the insurer, who was trying to dress up what looked like an employee as an independent contractor, so that he would not be covered by workmen's compensation for a grievous injury on the job. Art went right back to feudal precedent, asking rhetorically in his brief, "Is this worker but a serf, chained forever to his workbench?" The Wisconsin Supreme Court decided that the applicant was indeed not a serf, but a free yeoman divinely entitled to remain uncompensated for his injury.

Much New Deal legislation came before us young lawyers, scribbling away in the firm's library, and we pronounced it unconstitutional in its entirety.

When the clouds of World War II began to gather, I found myself in Washington with a lot of other young lawyers in one of the wartime agencies—the Office of Price Administration. Art came down from Milwaukee to join me, and to participate in an exhilarating adventure

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in legal and economic problem solving. The challenge was whether the nation could prepare for, and then fight, World War II without inflation and without sacrificing our basic liberties. We worked in Temporary D on the Washington Mall; no architectural treasure perhaps, but now sadly bulldozed down instead of being placed on the National Register of Historic Places. It was great to be alive in those days.

I left the Office of Price Administration late in 1942. Art remained on for awhile, and then became Chief of the Scandinavian Branch, Foreign Economic Administration, in 1944-45. For a Viking from the Dakotas and a graduate of Augustana College, this was an ethnically perfect appointment.

After the war, it was law teaching for Professor Larson at Cornell and Pittsburgh, and I did not see him. But then we both reappeared in Washington in the mid-1950s, he as Undersecretary of Labor in a Republican administration, I as a member of the Democratic congressional opposition. Our friendship flourished. Larson served President Eisenhower well, first as Undersecretary of Labor, then as Director of the United States Information Agency, and as Special Assistant and Special Consultant.

About a century before Arthur Larson, at 25, arrived in Wisconsin to make his fortune, Carl Schurz, just 25, also appeared in Wisconsin, a refugee from Prussian despotism. Schurz settled in Watertown in 1854. He was an early and ardent Republican, and later became United States Senator from Missouri and Secretary of the Interior. Schurz's biographer might have been writing of Arthur Larson when he wrote that "Schurz was a fine-looking man . . . a lithe graceful boyish figure, keen and eager of aspect, who loved walking, riding, hunting, music; who was intellectually alert, voluble in speech, a great reader, a student, a devotee of politics."¹ In their middle age, Schurz and Larson both declared their independence from Republicanism—Schurz from GOP imperialism in the Caribbean and Pacific around the turn of the century, Larson from President Nixon's prolongation of the Vietnam conflict in the late 1960s.

Arthur Larson's mind in the last two decades has rested importantly on world peace, on the nonviolent resolution of disputes both foreign and domestic, and on the teaching of young lawyers at Duke. All have benefited from the thought and character of Arthur Larson. On past form, we shall be hearing from him frequently and to our advantage in his retirement.

1. J. SCHAFER, CARL SCHURZ, *MILITANT LIBERAL* 77 (1930).

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