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Grant Gilmore as I Remember Him

Friedrich Kessler†

Grant Gilmore's was a singularly rich life. His writings on commercial law, contracts, and admiralty, and his work on the Uniform Commercial Code, opened new vistas; they inspired his colleagues and students alike. Grant's many works were distinguished by penetrating analysis, by the elegance of his prose, by what the French call *clarté*. The success of Grant's work is due in large measure to an enviable and supreme self-confidence, which enabled him to strike out boldly in his attack on many a traditional doctrine and in his attempt to blaze new trails. As a result of his work, the law in the fields he chose for study will never be the same.

Fate has not allowed him to finish the work he set out to do. The planned revision of his work on secured transactions¹ may never appear. Nor will his part of the biography of Justice Oliver Wendell Holmes that he undertook to complete.² Gilmore's part of the third edition of our casebook on contracts³ had to be entrusted to other hands.

Grant Gilmore was not only my coauthor, he was a personal friend. As friendships go nowadays, ours was a friendship of long standing. When I rejoined the Yale faculty in 1947 after a stay of nine years in Chicago, Grant arranged for me to teach a section of the contracts course. My own casebook (coauthored by Malcolm Sharp) was not yet completed and so I used the book that Addison Mueller, who taught another section of the course, had prepared. Grant was keenly interested in contracts and it came about that the three of us met almost daily in Mueller's attractive office to discuss the many challenging questions raised by Mueller's book.

After an interval of many years, my own casebook required reworking, and since Sharp was no longer interested in the book, a new partner had to be found. After being turned down by two of my colleagues, I approached Grant and, after making full disclosure, asked him to be my co-author. Much to my surprise, he accepted immediately. I had found an ideal collaborator.

Readers familiar with Grant's style will have no difficulty in recognizing his contribution to the book. In addition to writing eight chapters,

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1. G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* (1965).

2. The first two volumes of that biography have already been published. See 1 M. HOWE, *JUSTICE OLIVER WENDELL HOLMES: THE SHAPING YEARS, 1841-1870* (1957); 2 M. HOWE, *JUSTICE OLIVER WENDELL HOLMES: THE PROVING YEARS, 1870-1882* (1963).

3. F. KESSLER & G. GILMORE, *CONTRACTS: CASES AND MATERIALS* (2d ed. 1970).

Grant Gilmore

Grant also prepared a teacher's manual.⁴ It is a pity that the manual is not available to the general public. It not only guides the reader through the labyrinth of contract law, but it also contains an introduction of its own that offers a gentle critique of my own introduction in the casebook.

Although we never talked about it, Grant and I were convinced that collaboration was possible despite differences in opinion. And we did have many differences in opinion. I have not radically changed my views as to the central position of freedom of contract nor do I believe in what Grant was fond of calling "contorts." By introducing the concept of contort, Grant meant to express his belief that contracts and torts would eventually be absorbed into a general law of obligation.⁵ I would express the idea somewhat differently and more cautiously. In the language of Patterson, "Anglo-American law, with its consensual-relational duties, its feudal survivals and its original tort theory of contract, can stretch its conception of consensual obligation pretty far."⁶ But consent will remain a vital ingredient of contractual obligations; though there are many bridges between contracts and torts, their distinctive features will endure. However deep our disagreement on this or other scores, Grant and I had a most successful collaboration.

Grant was an eminently private person. He was also a very kind and tolerant friend to whom I owe an immense debt of gratitude. What he said about me in a most generous essay in the *Yale Law Journal*⁷ applies with equal force to him. The evenings in his house, the hospitality of the Gilmores on Edgehill Road, belong to my fondest memories. They made my return from Chicago to New Haven a most enriching experience.

4. F. Kessler & G. Gilmore, *Teacher's Manual, Contracts: Cases and Materials* (1972) (unpublished).

5. G. GILMORE, *THE DEATH OF CONTRACT* 87-94 (1974).

6. Patterson, *Compulsory Contracts in the Crystal Ball*, 43 COLUM. L. REV. 731, 743 (1943).

7. See Gilmore, *Friedrich Kessler*, 84 YALE L.J. 672 (1975).