

The Making of Chicago's World-Class Lakefront

More than 20 years of work by Kearney and Merrill produce a colorful, in-depth history.

Out of social conflict comes a great community asset. Out of legal tangles spanning decades come important precedents. And out of more than 20 years of research and writing comes a book that breaks ground in describing an important chapter in both American urban development and legal history.

The subject is the Chicago lakefront, the book is *Lakefront: Public Trust and Private Rights in Chicago*, and the authors are Dean Joseph D. Kearney of Marquette Law School and Thomas W. Merrill, Charles Evans Hughes Professor at Columbia Law School. The strong ties the book has to Marquette Law School extend beyond the many years of work by Kearney, much of it in summers, to include the work of numerous law students who assisted in the research.

"This book seeks to explain how Chicago came to have such a beautiful, well-tended, and publicly accessible lakefront—the city's most treasured asset," Kearney and Merrill say in the introduction.

It is not a simple story. "The history of the lakefront has been one of almost continual social conflict," they write. The cast of characters includes railroad magnates, business leaders, politicians, scalawags, haves, have-nots, Supreme Court justices, and many others, almost none of whom set out to create a great lakefront. But, in the end, they did.

The book documents how, through many disputes and lawsuits, the law was important in reaching such an outcome. The decades of contention over lakefront property included landmark decisions establishing the American public trust doctrine, which holds that some public resources are off-limits to private development.

Kearney and Merrill were both living in Chicago in the 1990s when the idea of writing this book was launched. Both moved to academic positions in other cities, as they note in the acknowledgments. "We found ourselves nevertheless—or, perhaps, all the more—unable to resist the challenge of untangling the history of the Chicago lakefront, which is at once a large puzzle and a kind of miracle," they relate.

"Because the majority of the social conflicts over the lakefront have been waged by rival elites, the forums in which these disputes have unfolded have been legal ones," Kearney and Merrill write. "[T]he

lakefront has been the subject of virtually nonstop litigation from the 1850s to the present." The two, with the help of research assistants and librarians and others at several repositories of primary documents and legal records, piece together a history that has not been told previously in such detail or comprehensive fashion.

The many legal cases involving the lakefront broke ground in determining who owned the land under the water along the shore, as well as the balance between private and public rights to lakefront land. The legal history includes "the slow but inexorable development of new institutions to regulate the lakefront." One irony of the history: In some instances, private rights did more than public remedies to create the lakefront that exists today.

"[O]ur book can be seen as an examination of the importance of law and, in particular, legal property rights in the long-term development of an important resource like the lakefront," Kearney and Merrill write. "If the outcome in Chicago was largely fortuitous, part of our motivation in writing this book has been to suggest how a more deliberate mix of policies might produce similar results elsewhere."

The newly released book was published by Cornell University Press. It has drawn praise from experts in Chicago history and from law and history professors at universities including Harvard, Yale, Princeton, Notre Dame, and Northwestern. ■

