The Law Alumni Journal

The University of Chicago Law School Fall 1973

Contents

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Foreword

When the need for something seems clear, an announcement of its creation is in many respects superfluous. But it can, besides merely formalizing the event, attempt to put it in some perspective and offer a necessary caveat.

The University of Chicago Law School has since its founding in 1902 been increasingly competitive with older institutions for recognition as one of the leading national law schools. The achievements of the official Law School community and representative intellectual thought of its faculty have been amply communicated in *The Law School Record.* One result of the Law School's success as an institution has been the production of an increasingly distinguished alumni body,* of whom there are now some 4,500 living members. Until now, however, there has been no true counterpart of the *Record* to serve as a vehicle for communication of alumni thought and achievements among alumni and to the larger public.

The Law Alumni Journal has been created to meet that need. It retains the various biographical items and announcements of its predecessor, *Law Alumni Notes,* but it precedes these with serious articles, reviews, and other substantive material by or of interest to alumni, adding flesh to what were only bare bones impressions of alumni roles in society.

The *Journal* is presently a trial publication, and its success is dependent on the alumni it serves, to whom it must primarily look for publishable material. While all articles and reviews in this first issue were solicited, the Editorial Board hopes that future issues will contain a large percentage of unsolicited material and urges submission to the Law School for consideration by the Board of manuscripts of articles and reviews, letters for publication, books for review, and other appropriate material. Alumni response to the new opportunities presented by the *Journal* will in large part determine whether the perceived need that it was created to fulfill is substantial enough to warrant its continued existence—or, said differently, whether we deserve what we think we do.

Jeffrey Kuta, JD '72
Chairman, Editorial Board

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*This year, for example, the three alumni serving as U.S. Supreme Court clerks constitute a numerical representation exceeded by no other law school. More surprising is Dean Neal's calculation that the qualifications of the entering Class of 1976—average LSAT score 715 (upper 1%), college grades 3.70 (out of 4.0)—are such that only 10% of the class entering ten years ago would have been admitted today.

The Ethical Politician — Reducing the Inconsistency in Terms

Abner J. Mikva

From the time we came out of our caves, there was obviously a constant and healthy suspicion about those who sought to lead or serve us in government jobs. The president of a corporation does not take an oath of office, nor does his secretary. If one chooses the public sector, in contrast, the first thing he or she must do is swear to be honest. However, no mechanism exists for determining whether one is guilty of violation of the oath and, if so, for meting out punishment. The oath merely stands as a reminder to office seekers and office takers that, as a class, the body politic does not trust them.

The basis for such mistrust is, of course, amply documented. Many of the complaints about King John which led to Runnymede had more to do with his acquisitive itch than with the lords' civil rights. Senator Daniel Webster threatened to turn honest and stop bespeaking the Bank of the United States' cause in the Senate if the Bank failed to up his retainer. In Springfield, Illinois, tour guides point out to visitors the second floor window of the Old Capitol Building from which Abraham Lincoln jumped to keep a quorum from being present. Alas, the cause was not freedom or liberty; it was the Illinois Central Railroad, and State Representative Lincoln, acting as the Railroad's lawyer, was not wearing his white hat.

An entire article could be devoted merely to classifying and typing the kinds of scandals that have rocked government in every era and at every level. No form of government, no country, no political party has a monopoly on the vice that has given politics and politicians an odious tradition. The scandals of history meril study only to see whether they might not suggest better methods of checking the corruption and restoring people's confidence in the institutions of government. Such a study is, however, beyond the scope of this discussion.

Nor does this article attempt to examine ways of combating all unethical activities connected with political office and office-seeking. What should be done to remedy abuses in the areas of campaign contributions and tactics, for example, is an enormously complex question to which the Watergate Committee will hopefully provide some answers, for abuse of the election process is obviously a far greater threat to a democratic society than abuse of office for personal gain.

Unethical public officials do, however, by profiting at the expense of their constituents, cause society substantial economic harm. My purpose here is to present a brief theoretical argument that the best way of dealing with the problem of corruption in government is simply to require full financial disclosure by officeholders.

Lawyers and lawmakers are quick to look for a solution in black letter law. While there is certainly need for appropriate legislation, a word should first be said for voluntary procedures. Long before the Congress had any disclosure rules, former Senator Paul H. Douglas was abiding by voluntary standards of conduct that made him one of the Senate's paragons of conscience. He disclosed, for example, his net worth and his total income from all sources on a annual basis. He limited the value of gifts that could be received by him or his staff to $2.50 per donor. He refused to accept a disability pension for his war injuries since he was drawing a full salary from the Senate. He sent back

Mr. Mikva, JD '51, is Chairman of the Governor's Board of Ethics of the State of Illinois. He is a former member of the United States House of Representatives and of the Illinois General Assembly.

campaign contributions from persons whose influence he deemed improper. At a time when politics was even a dirtier word than at the present, Senator Douglas stood out as an honest man, not only on Capitol Hill, but even during his time in the Chicago City Council.

While the gift limitation perhaps ought to be raised to $5 to account for inflation, the other rules of conduct that Senator Douglas voluntarily set for his office are as timely as ever for all officeholders, elected or appointed. There is a recurring suspicion that voluntarism will not solve the problem, however, and it is not surprising that numerous attempts have been made to achieve ethics in government through law. In Illinois, there are more than 150 separate conflict-of-interest provisions on the statute books, ranging from making sure that the beauty culture committee is interested only in beauty to seeing that corporate officers do not engage in "persistent" bribery of public officials. More recently, there was enacted a Governmental Ethics Act. And even before legislators made such attempts to reform themselves, the common law insisted that "public office was public trust." The Illinois Supreme Court used the common law to uphold the censure of a Chicago alderman for forgetting that "a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position which will subject him to conflicting duties . . . ."

Given the plethora of law, why the need for additional governmental ethics laws? The common law has not provided adequate remedies for unethical conduct in government and, plainly speaking, the statutes passed to date have by and large been farcical, the minimum responses necessary to get the public off the legislatures' backs. Even the straightforward criminal laws of theft, extortion and bribery have been loopholed by courts and legislatures to the point where they more resemble Swiss cheese than statutes. Yet while only the most blatant instances of corruption run afoul of existing law, an increasing number of such cases have been brought recently before the public eye by crusading prosecutors, newspaper reporters and civic organizations intent upon prying open the cans of worms. Within the last two years in Illinois, indictments have been brought against an ex-governor, a county clerk, a former director of revenue, Chicago aldermen, a judge, policemen and other city employees; there have even been some convictions. One is inclined to believe that the increased number of indictments stems from more zealous prosecution rather than an increase in the level of corruption. (One City Hall actor complained in all seriousness that "they" should have given six months' warning that they were going to enforce the laws against aldermen to give the boys a chance to straighten themselves out before the crackdown.) In either event, the result has been a further weakening of confidence in governmental institutions, and there is now a climate for change that almost matches the need.

The question of greatest importance is what kind of new legislation is needed. Notwithstanding recent successful prosecutions, criminal laws usually catch only the most flagrant violators, and then not very often. The late Illinois Secretary of State Paul Powell's shoebox politics never did result in his indictment. In my judgment, much more fruitful than additional laws against bribery would be an approach involving candor as the touchstone. Simply put, public officials in important positions ought to be required to disclose their financial interests. Before a bank will extend its credit, it requires the prospective borrower to file detailed net worth and income statements. Before the public extends its credibility to elect or appoint somebody to high public office, it ought to insist on at least as much disclosure as would a bank.

It is the kind of disclosure that Senator Douglas was making voluntarily back in the 1940's, and it is not surprising that Governor Daniel Walker of Illinois, who entered politics during the Douglas era, should have called for that kind of disclosure in his recent executive order affecting certain employees within his jurisdiction. Under the order, three categories of executive branch personnel are required to file disclosure forms annually: those who are gubernatorial appointees, those with salaries exceeding $20,000 and those whose positions are subject to undue influence. The nine-page, 51-category form calls for the employee to detail all income and gifts, state all assets and liabilities and describe any close economic associates maintained by him (such as a law firm or a state-regulated business). Secret trusts in which the employee has an interest must also be disclosed, and the employee must submit a copy of his income tax return with his statement. In an effort to close up one of the larger loopholes of the past, the order requires similar disclosures about the employee's spouse and other

household members. Finally, the order delegates enforcement of its provisions to a Board of Ethics and authorizes public inspection of employee statements under certain circumstances. Since there is no statutory underpinning for the order, the ultimate penalty for an employee's noncompliance with its requirements or refusal to divest himself of a conflicting interest is discharge of the employee.

Governor Walker's executive order represents the latest and most extensive effort to obtain financial disclosure from representatives of the public sector. Governors Richard Ogilvie and Otto Kerner had promulgated earlier orders in the same vein. However, along with the Governmental Ethics Act, the earlier procedures were as marked for what they failed to require as for what they did, basically leaving it up to the individual to decide whether he was involved in any conflicts of interest which ought to be disclosed. Since objectivity is not a widely held commodity among public officials, it is not surprising that few acknowledged their own problems.

One of the difficulties, of course, stems from the public notion that all conflicts of interest can be avoided. Most legislators drive automobiles, many are parents of school-aged children and all have an interest in their salary; obviously, no session of the legislature can avoid conflicts between the public interest and the legislators' private interests. However, since conflict itself is a dirty word, legislators are reluctant to compel full disclosures which would identify conflicts.

Paradoxically, that is why emphasis on disclosure makes more sense than emphasis on substantive prohibitions. It is much easier to let the public decide how well the elected official has managed his conflicts than to try to close up the myriad of ways in which a legislator can skin the public cat. (The same is true of appointed officials, for if an elected superior knows all the financial facts, he has a manageable burden of measuring his subordinate's performance.) Obviously, the public must be made aware of the inevitability of conflict and must learn to evaluate conflicts. The task is not easy, but it is doable, and it is the best alternative. Private disclosure to an in-house body of either the legislature or the executive branch would not be an adequate substitute since the fraternally protective feelings of colleagues in government would overcome the purpose of such disclosure.

What is needed, then, not merely in Illinois but in all states and on the federal level as well, is legislation patterned after the concept embodied in the Walker order, requiring full disclosure of financial interests by officials in all branches of government, executive, legislative and judicial. My emphasis on disclosure is not meant to suggest, however, that governmental ethics legislation should not include any penalties for failure to disclose or for making incomplete or false disclosure. Nor do I believe that all existing criminal laws directly affecting public officials should be repealed upon passage of such legislation (although they might usefully be pared down in number and codified). There would remain a need for these types of sanctions against blatant violations as a supplement to the expression of public opinion at election time. The public would be better served, however, if the emphasis were less on jail sentences and more on penalties which fit the crime and serve to deter the criminal. While the current rash of convictions suggests the contrary, most prosecutors agree that obtaining a guilty verdict and imposing a jail sentence on a public servant is usually a difficult feat. It would be much easier and far more appropriate to punish crimes against the public purse by a prohibition against future holding of public office. Nothing touches the politician more where he lives than to tell him that he cannot live there any more if he breaches his solemn oath.

The strongest argument advanced against full financial disclosure deals with the right to privacy. Notwithstanding the fact that the right to privacy itself has limited viability in any sector, opponents of disclosure argue that it ought to be a right inviolate in the public sector. In *City of Carmel-by-the-Sea v. Young,* the California Supreme Court was persuaded to strike down a California statute which required rather substantial public disclosure.

The statute required every public official and each candidate for state or local public office to file, as a public record, a statement describing the nature and extent of all investments in excess of $10,000 owned by the official or candidate, by his spouse, and by any minor child. Mere violation of the statute was a misdemeanor, while knowing violation constituted a felony. The court held that the statute violated the rights of privacy protected by the fourth amendment of the United States Constitution and "also falls within the penumbra of consititutional rights into which the government may not intrude absent a showing of

compelling need and that the intrusion is not overly broad.'' In so holding, the court explained that the requirements of the statute ''encompass indiscriminately persons holding office in a statewide agency regardless of the nature or scope of activity of the agency, as well as those whose offices are local in nature . . . . No effort is made to relate the disclosure to financial dealings or assets which might be expected to give rise to a conflict of interest; that is, to those having some rational connection with . . . . the functions or jurisdiction of any particular agency . . . or . . . of any particular public officer or employee.''

While the *Carmel* case has been cited by opponents of disclosure as a landmark case in the field, it has not to date been followed by a court in any other jurisdiction. In fact, in recently upholding the Governmental Ethics Act in *Stein v. Howlett,* the Illinois Supreme Court rejected similar arguments and distinguished *Carmel* on the ground that the California Constitution contained no provision similar to article 3, section 2 of the Illinois Constitution, which provides that state officeholders shall file a verified statement of economic interest and which authorizes the state legislature to impose similar requirements upon holders of or candidates for local public office. And earlier, the federal courts in Illinois had made clear that the nature of employment of a public servant precludes tha same degree of privacy enjoyed by a private citizen.

Weak though the privacy argument may be, it has been resurrected in Illinois in an attack on Governor Walker's executive order requiring financial disclosure by certain state employees. Shortly after the disclosure forms were circulated, various groups of employees affected by the order brought suit in Sangamon County to enjoin the operation of the Board of Ethics, alleging violation of their constitutional right to privacy. Under a preliminary injunction issued by the court, the Board and the Governor are restrained from enforcing the order against any noncomplying employees, and public inspection is enjoined until the case is finally resolved.

As this article was being prepared, the Sangamon court handed down a decision upholding the Governor's order, subject only to relatively minor modifications. Under the decree, financial information may not be disclosed to the public until the Board defines the phrase ''open to public inspection'' contained in the order so as to provide the greatest amount of protection for individual privacy consistent with the state's compelling need for ethical government through full financial need for ethical government through full financial disclosure. A spouse and other family members are required to disclose only those financial interests constructively owned by the employee or property the title to which is held for the employee. That part of an employee's tax return listing itemized deductions need not be submitted with the disclosure form. Finally, the Board must define who are persons ''subject to undue influence'' by criteria that can be used by department and agency directors in determining which employees fall within the scope of the order.

The decision upholding the order is stayed, however, until thirty days after all appeals are exhausted, and it is expected that the case will eventually go to the United States Supreme Court. The ultimate outcome, of course, will determine not only the legality of the order, but also the fate of any governmental ethics legislation that might be introduced or passed in the near future.

Aside from constitutional difficulties, the most obvious obstacle to full-disclosure legislation is the reluctance of the legislators themselves, in the absence of overwhelming public pressure, to pass such a law. A bill introduced this year in the Illinois General Assembly, supported by Governor Walker and myself, was tabled in committee because of objections that it required disclosure of too much information and was not really wanted by the public. Governor Walker will soon have proposed his own program of ethics reform to the Assembly, and the legislative reception with which it is met will undoubtedly be a function of the strength of the public reaction to the proposal.

Ironically, failure of ethics reform may well result ultimately from the very public cynicism about politicians which is inspired by governmental corruption in the first place. The people have so often been assured by reformers that a new law would do the trick, and so often gulled by public officials who promise candor and deliver connivance, that they are skeptical that anything can be done about the problem. Thus, even while the climate for reform seems right in some respects, the jaded public attitude about politics limits the public pressure that can be achieved in support of change.

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A Perspective on the Lawyer: A Talk for Entering Students

Alexander Polikoff

When he first asked me to speak to you tonight, Phil Neal volunteered to send along copies of a few talks given on this occasion in previous years so I could see the range of subjects that had been covered. Four were sent, including one by Phil himself, but the range was not great: there were three hymns to the legal profession and one to this school. I gathered that I had been given a hint about tonight's subject matter. But when I had pondered the four talks, I resolved to advise you to read them all. Perhaps other talks to entering students should be examined also, but these four, taken together, will warm you, while enlightening you, about your chosen profession and school.

Lloyd Garrison, whose name is virtually synonymous with challenging and important issues, speaks of the fascinating demands of the lawyer's role: to be knowledgeable, articulate and persuasive, to inspire trust, to exercise leadership, to understand human nature, to be self-confident, to remain independent. In his ability to bring order out of chaos, the lawyer, he says, experiences the joy of the creative artist. And in his performance inheres the potential of the law to become "the great instrument for the progress of mankind."

Morris Abram, another lawyer of renown, delivers a paean to the trial lawyer, described (somewhat extravagantly, I think) as the architect of the continuing American revolution. With intense color tones Abram depicts challenge, involvement, struggle, satisfaction and reward. The courtroom is a safety valve, he says, that makes possible revolution without violence, and he paints a variegated picture of the life intensely lived in that heady atmosphere.

The third talk came from the erudite pen of Judge Henry Friendly of the Second Circuit Court of Appeals, who describes succinctly what makes the lawyer so valuable to society: "The ability to come into an unfamiliar area, quickly to grasp the essentials, then to organize a solution, and finally to translate all this to others." Judge Friendly recalls the words of the Harvard commencement that law involves the "shaping and application of those wise restraints that make men free." The challenge the entering student has set himself, the Judge says, is to play some part in that shaping and application.

Finally, Dean Neal's talk focuses on this school and its traditions: its tradition of innovation in curriculum, of vitality in instructional technique, of being an intellectually rough and aggressive place (but only because of its belief, as Dean Neal puts it, that the limits of self-development are much more distant than we habitually assume); its tradition of viewing law as a *learned* profession, its spirit of seeking to exhaust the intellectual interest of its subject matter, its sense that the vision of the social scientist and the humanist must be combined with discipline and mastery of professional craft if the lawyer is to be properly fitted for his role of servant and leader of the public.

Collectively, the four talks suggested to me, but in a kind of love-poetry form, de Tocqueville's remark that the profession of law is the only aristocratic element that can be advantageously and permanently combined with the elements of democracy. With less grandiloquence I would say that the talks point the way to the best traditions of the profession and this school. If they seem to any of you to overshoot the mark of realism, they nonetheless at least face toward the target.

I hope I have sufficiently interested you in Garrison, Abram, Friendly and Neal so that you will read them. If you do, I think I will have made my real contribution to your school and professional careers, and discharged

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Mr. Polikoff, JD'53, has for several years been associated with Businessmen for the Public Interest in Chicago. This presentation was given at the Law School's traditional dinner in honor of entering students, October 5, 1972.

tangibly my evening's obligation. Tradition however requires that I add a few personal thoughts.

What law school has most to offer, Dean Neal said in his entering students talk, is the opportunity to channel one's full energies toward a well defined goal—the goal of achieving real mastery in whatever subjects of the law you choose to make your own. It even offers the possibility, he said, that in one or more corners of the law you can become more of a master than anyone else has yet been. I have a related observation to put before you.

We are a nation of institutions, political, administrative, cultural, social. Indeed, it has been said that the proper object of change is nothing more nor less than to make institutions fairer and more responsive. Perhaps that view is too limited, but it remains true that to address the problems of our society one must address the institutions that have been established to deal with those problems. Speaking of the blacks—but he could have added the poor, the juvenile, the accused and so on—the executive director of the Kerner Commission study said: "I know of no way to change attitudes . . . until we change the institutions."

When it comes to institutions, especially government institutions, the lawyer has a special role to play. Analytically, an institution is a manageable entity. It can be examined in operation and theory. Its charter and rules and regulations can be comprehended. Its conceptual base in the law can be explored. Its personnel can be observed, its policies and actions described. In short, its functioning in relation to the problems to which it is supposed to respond is a fit object for study.

Moreover, it is virtually a truism that almost every major institution in our society has its own built-in systemic priority goal, a kind of bureaucratic perseverance, if you will; that this goal is almost never a justice or equal opportunity goal; and that until justice and equal opportunity goals are artificially imposed upon the institution from without, they will inevitably be subordinated to the institution's priority goal.

Let me illustrate. In our law enforcement and criminal justice system the priority goal is social order. Left to itself, the system tends to produce more and more order, not more and more justice. Indeed, not infrequently it produces *injustice* on the false assumption that order and justice are incompatible. Most people within this system are order-oriented, not justice-oriented, and except as outside forces impose other goals upon the system it will ever be so. Compare the resources available to the typical public defender with those available to the prosecutor; think about the implications of plea bargaining; try, just once, to process a grievance against a policeman; and so on.

The public housing system has the systemic priority goal of producing the largest possible number of housing units at the least cost. The result all across the country has been that public housing is concentrated in the least desirable and most powerless neighborhoods, is nearly one hundred percent segregated, and takes the form of the least attractive housing. It will ever be so unless forces from without the system impose other priorities upon it.

Where does the lawyer enter this picture? Assume a lawyer possessed of the skills and qualities described by Garrison, Abram and Judge Friendly, and the willingness referred to by Dean Neal to channel his energies toward the mastery of a particular subject. Suppose that lawyer brings those skills and qualities and energies to bear upon a particular institution and the problems it addresses. He may in time develop a perception and comprehensive view that can provide new insights and suggest new institutional procedures. But the lawyer may do much more than perceive and analyze. Possessing, as he is likely to have, the qualities of persuasiveness and leadership, he may organize and proselytize to try to produce the institutional response he thinks he has at long last perceived to be desirable. Finally, he has at hand the tool which Morris Abram discussed—the remarkable power given to individuals in our society to attempt to initiate change single-handedly through the adversary system, with the full panoply of state power shifted suddenly to the side of the challenger if he can but prevail in the arts of persuasion. In short, the lawyer may galvanize into being, he may indeed even become, the outside force impinging upon the institution I mentioned a moment ago.

Let me give some illustrations of this kind of lawyer-power in action. Mental health is a scandal throughout much of the country, but especially so in Alabama. After much effort Alabama plunged to fiftieth among the states in dollars spent per patient,

and the horror stories of what was supposed to constitute treatment inside its institutions would not be appropriate to discuss in an after-dinner speech. Last month some young lawyers brought real hope for change into this scandalous but venerable situation. They established in federal court that, whatever else it may have been, the so-called treatment in Alabama institutions was not due process. They obtained an order which in unprecedented detail spelled out administrative and professional standards to which those institutions would be required to adhere. The federal judge in the case indicated that if necessary he would appoint a federal master to oversee compliance.

A different kind of example: There is a lawyer (he happens now to be a professor) who has analyzed the ancient public trust doctrine and seen in it a new way of approaching some of our environmental concerns. He has now written a book about his theory, counseled with state and federal legislators and their staffs, and drafted new legislation, some of which has already been passed. Decisions are beginning to reflect his efforts. Environmental law, we may find, has been significantly shaped by the proselytizing of one man.

In the Chicago area alone, and limiting myself to current matters, two creative lawyers have succeeded in an imaginative lawsuit that bids fair to modify drastically the rules of as sacrosanct an arrangement as political patronage; another lawyer is almost single-handedly taking on the entire institutionalized system for meting out what passes for care and justice to juveniles and is pervasively affecting that system; still another lawyer, having steeped himself in the esoterica of coke ovens, has effected nothing less than a multi-million dollar agreement with the nation's largest steel company to clean up the major source of air pollution in Gary, Indiana; and in such disparate and heretofore intractable matters as fraud in the administration of local election laws and insensitivity to quality in the appointment of federal judges, young lawyers in Chicago are currently playing positive roles of unprecedented significance.

One hundred fifty miles north of this room a nuclear power plant has been constructed on the shores of Lake Michigan, but whether and on what conditions it will be allowed to operate will be determined in large part by the efforts of one young lawyer and one young scientist. Their participation, as volunteers, in the Atomic Energy Commission licensing hearing for that plant, and their similar participation in an AEC rulemaking proceeding in Washington, have forced into the open a major safety problem affecting the entire nuclear industry. The problem is in the cooling system which is supposed to prevent the ultimate in a nuclear plant accident—runaway overheating of the fuel core that ruptures the containment vessel and, depending on which way the wind is blowing, can quite literally kill millions of people. The problem, which had been hushed up and papered over while new plants were being licensed, has now been exposed by private advocates and scientists representing individuals and citizen organizations. History may some day tell us that the country was spared a major nuclear accident because of private, not regulatory or industry, initiative.

Of course, the attitude and approach of which I speak is neither new nor relevant only to young lawyers and major problems. Morris Abram closed his speech with a reference to the courtroom destruction a number of years ago of the county unit system in Georgia, a successful jugular thrust at the allocation of power in that state that has remade the state politically. And last week I received a call from a senior lawyer in one of Chicago's largest law firms who was distressed at the clouds of black smoke he could see through his office window regularly billowing skyward from the Federal Building smoke stack. He had already explored the rather complicated set of historical and technical reasons for those black billows, had been taken on an inspection tour of the federal premises, and, having been given what he considered to be a less than satisfactory explanation, was now resolved to pursue the matter.

Speaking of Ralph Nader—but the observation is of more general application—that omnipresent examiner of the American scene, Time Magazine, had this to say: "In an increasingly computerized, complex and impersonal society, one persistent man can actually do something about the forces that often seem to badger him—he can indeed even shake and change big business, big labor and even bigger government." I would add that no matter what the problem, crime or welfare policy, housing or public education, delivery of health services or the so-called energy crisis, none is so complicated and difficult that it and its attendant institutions cannot be broken down into significant and frequently local components and studied and analyzed

with potential profit to the community and perhaps even the nation by any one of you sitting here tonight.

So my homily to you, my addition to the prescription of my four predecessors at this podium, is to select an area of interest or curiosity early in your career. Begin to read in it and around it, ponder it, consider its simplicities and its complexities, talk to people about it, experts and laymen alike, live with it until it becomes *your* pet conundrum. Add that special focus to the other interests in your life. You will learn, as you read and observe and talk, that the experts are less expert than they are assumed to be. You will learn that the axioms in the field are not necessarily axiomatic. You will learn that conventional wisdom, accepted as gospel in one decade, turned out to be the shibboleth of the next. As you begin to talk with more confidence about your subject, you will make friends, and enemies. You will have fun, and you will be burdened. You will be frustrated, and you will be enthused.

And if the light hits you some day, or you think it has, you will try to persuade those with power to act. You may write and publish, you may organize your fellow citizens, or you may counsel with legislators; you may even be drawn into public service yourself. If the matter is an appropriate one for litigation, and not all are (I sometimes think I have become an expert on that subject, the hard way), you may follow Morris Abram to court and try your luck there. If you are successful in any of these endeavors, you will be pleased and perhaps useful. But whatever the result, you and your society will be the better for your having tried.

I do not give you this prescription without an awareness of having made certain assumptions, or at least of possessing certain biases, four to be precise. They should be made explicit.

The first is that there is at least a possibility of saving the system, as it is called, and that the system is worth saving. Both aspects of that assumption are of course viewed by some as questionable. And, I must say, not without apparent reason. Two and a half years ago, before another group of students, I had occasion to make these statements about the America of that time:

> That there were 35 million hard-core poor who, in the richest nation the world has even known, earned less than $3,000 a year (the income level then said by the federal government to constitute poverty).
>
> That our laws did not help the poor surmount their poverty, but perpetuated and exacerbated their despair and helplessness.
>
> That the bail system was in effect an oppressive means of permitting the police to charge and jail at will.
>
> That vagrancy, disorderly conduct and public drunkenness statutes made it criminal to *appear* to be poor in public.
>
> That our prisons were a national disgrace, hellholes shot through with politics, corruption and inhumanity, turning more and worse criminals out the front door than came in the back.
>
> That large numbers of our generals and admirals systematically "retired" into cushy jobs with major defense contractors, from which vantage points they negotiated with their former colleagues the appropriate portion of our $80 billion dollar defense and space budget to be allocated to their new employers.
>
> That we were engaged in an immoral war in which so-called victories were daily reported in terms of numbers of human beings killed.

And so on, in like vein, for many more paragraphs.

I believe that, in essentials, these statements remain accurate today. Indeed, in some respects our problems may be worsening. As our cities have burgeoned our bewildering urban problems have grown and festered. Racial separatism appears in many ways to be increasing, not decreasing. We are perhaps further away than ever before from a rational approach to the problems of crime. Numerous opinion polls suggest the development of a widespread crisis of confidence in the nation's institutions, portending I know not what for the future. And with each passing day our collective passivity about our monstrous Vietnam misadventure corrodes more deeply into the American soul.

But the affairs of men tend to be cyclical, and we are still relatively early in the cycle of urbanization in America. The mass in-gathering of the rural population to our congested urban centers is in historical terms still a new phenomenon. Probably it is not surprising that we have not yet learned to deal intelligently and humanely with the massive problems spawned by that massive movement of people. Perhaps we will yet do so. And many thoughtful observers,

William Shannon of the New York Times for one, believe that Americans *do* want to put the horror of Vietnam behind them, that they sense that their country is out of touch with its own best instincts, and that it is time to turn us into the paths of healing.

That the game is worth the candle—my assumption, so to speak—I have no doubt. The best instincts in America are very good instincts indeed, and trying to preserve them, and the system in which they root, is in my book of biases a very positive endeavor. Returning from an Eastern European visit, Tom Wicker once wrote that government there was "faceless, unreachable, sovereign, the system is arbitrary, the individual is reduced to a whispered conversation in the bathroom with the water running." He said that what is best to come back to in America is the knowledge that for all its faults, "this country has not yet deprived its most impudent, its most troublesome, of their right to be free; its courts can still tell the Government . . . that justice and the law do not change with administrations; and its populace can mass peacefully and march militantly." He added, "It is that kind of freedom . . . above all, and at whatever cost, that must be preserved in America."

My second assumption or bias is that what I urge upon you is a proper part of your chosen calling. Why? Perhaps because more often than not the lawyer can see better than most others into the workings of the system, and can appreciate better than most others what in a specific and technical way needs to be done to set those workings right. Perhaps because in the lawyer, whom Mr. Justice Brennan calls the "indispensable middleman of our social progress," are blended the skills and attitudes most relevant to such tasks. Perhaps because of what I believe is the special applicability to lawyers of Alfred de Musset's incisive line about men who do good but do not oppose evil. Lawyers, because of their knowledge of the workings of the system, and because of their relative independence, may be in a better position than many others in our society not only to do good but also to oppose evil.

Whatever the reason, the potential for significant service to the public weal that inheres in the legal profession when it is faithful to its best traditions is a common theme in Garrison, Abram, Friendly and Neal. John Gardner once said, while discussing some classic forms of escape from the tough problems of one's generation, that a "subtle exit from the grimy problems of the day is to immerse yourself so deeply in a specialized professional field that the larger community virtually ceases to exist. This is a particularly good way out because the rewards of professional specialization are very great today, so you may become rich and famous while you are ignoring the nation's problems." I think Gardner is describing a common but nonetheless, in principle, aberrant course for the lawyer, and that my predecessors at this podium have been true to the spirit of the legal profession in what they have said about it.

My third assumption is that your efforts need not solve any of our major, or even any of our minor, societal problems to be justified. Of course I hope they will, and I have, after all, referred to some success stories tonight. But if ever I find myself becoming pretentious about the potential that inheres in the efforts of any one man or group, I turn to that put-you-in-your-place paragraph from Loren Eiseley which runs like this: "Every spring in the wet meadows and ditches I hear a little shrilling chorus which sounds for all the world like an endlessly reiterated 'We're here, we're here, we're here.' And so they are, as frogs of course. Confident little fellows. I suspect that to some greater ear than ours, man's optimistic pronouncements about his role and destiny may make a similar little ringing sound that travels a small way out into the night. It is only its nearness that is offensive. From the heights of a mountain, or a marsh at evening, it blends, not too badly, with all the other sleepy voices that, in croaks or chirrups, are saying the same thing." Nonetheless, Eiseley would agree I know that it is in the nature of a frog, and in the nature of man, to join in that chorus.

Finally, my last bias, do what I say because it will be fun. The patronage case lawyer is having fun. The other lawyers I have referred to are all having fun. "Top accomplishment," said Sidney Cox, "is reached when we care a lot and still have fun. Far from being a function of frivolity or indifference, grand fun has to do with guts. With confidence, complete commitment, and a kind of fatal preference for the slim chance."

So read about the best traditions of your school and your profession, use your lawyers' heads (when you get them) *and* your hearts, and have fun. For your years ahead, I wish you well.

The Gentle Exemplar

Harry Kalven, Jr.

It is most gracious of the Review's editors to let me share in their tribute to Wilber Katz on the eve of his retirement from the teaching of law, a profession he has served with distinction for forty years now. Those of us who were raised, nurtured and taught by Wilber at Chicago, and we are many, can never be persuaded that he does not still wear our uniform, so integral and durable a part of the University of Chicago traditions had he become. We know that he found his decade at Wisconsin happy and rewarding; the dedication of this issue of the Review confirms what we knew anyway—that the Katz decade at Wisconsin had to be in turn altogether a happy and rewarding one for its students, faculty and friends.

Everyone has had, I suppose, the good fortune of encountering one or two persons outside their immediate family, whose lives became so interwoven with theirs at important points, who were so important to them, that writing about them carries the risk of writing about oneself. My personal debt to Wilber is so great that it may impede even the raising of this simple toast.

Wilber Katz was a member of the faculty for over 30 years and was Dean of the University of Chicago Law School from 1939 to 1950. It was a crucial time of transition for the school as it moved from a period of excellent orthodoxy typified by such names—names which had become almost legendary for its alumni—as Mechem, Hall, Freund, Bigelow, and Bogert into a position of leadership among contemporary schools. Wilber had with him a remarkable group of men—remarkable, I think, even when one makes the sharp discounts for nostalgia: Edward Levi, Malcolm Sharp, Charlie Gregory, Sheldon Tefft, Max Rheinstein, William Crosskey, Fritz Kessler, Henry Simons, and a bit later Aaron Director and Roscoe Steffen. It was, under the stimulus of Robert Maynard Hutchins, a period of fresh and radical rethinking of the purpose and style of legal education with experiments in a four-year curriculum, with comprehensive year-long sequences, introduction of training in accounting, in economics, in psychology, implementation of a serious individual tutorial program in legal writing and research for the freshman year and industry studies for the senior year. It was a time of steady, excited faculty reflection and experimentation. It was destined of course to be not altogether successful, but it served to give the school its intellectual trademark—a home, a professional home, of liberal education in law. Wilber was the midwife in the birth of the new law school from within the old. The history and evaluation of that moment of ferment in legal education has yet to be written, and it is difficult indeed to disentangle credits given the affection and admiration one has for that whole group who generated an environment of excitement, serious purpose, warmth and grace; but I think it clear that Wilber Katz was the principal architect.

As a person he combines in a unique and wonderful mix firmness with extraordinary gentleness, high purpose with grace and wit, professionalism with an amateur's spontaneity and curiosity, and anxiety with poise. As a teacher and as a friend, he was serious enough and concerned enough always to pay one the compliment of criticism, a gentle but firm correcter of one's flaws.

One is bemused by the sudden surfacing in one's memory of odd fragments, gentle modest anecdotes. His delighted disclosure at one early point in our friendship that little children often had trouble with his name and ended up with "Wibbler." It was a

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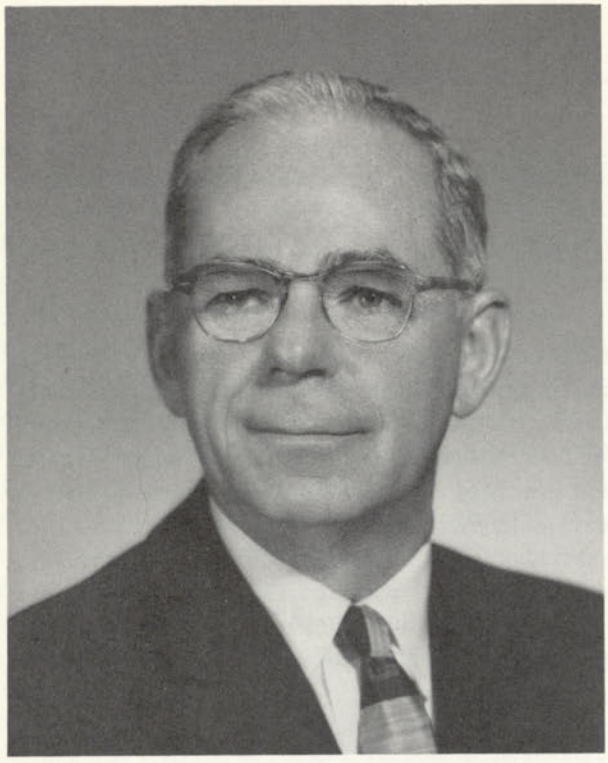

On September 15th Dean *Phil C. Neal* announced that the first Wilbur Katz Lecture will be given Fall Quarter, 1974. The lecture will be given by *Harry Kalven* '38.

disclosure that was to mark me for life; even now when I go to use his name I have to think twice. There is the time years ago he was appointed by the United States Supreme Court to argue a post-conviction appeal under the then notoriously complex, frustrating and impenetrable Illinois procedures. Wilber was so offended by the stance of the lawyer representing the state who had expended great ingenuity and skill in defending the wretched scheme, an example I suppose of a lawyer devoting his selfless best to his client's cause, that he declined to meet with him for a friendly breakfast on the morning before the argument. Then there is an episode which rises to mind every time one faces the ordeal of marking blue books, an ordeal especially painful for Wilber. To moderate the sense of burden that a large pile of unmarked exams always gave him he hit upon the stratagem of dividing them into small piles and hiding them around the house so that at any moment he could look around and he could deceive himself into thinking he was almost through. The stratagem was a great success psychologically until the day came when he could not remember where he had hidden the last pile! There was his long and determined effort to get interested in baseball. He had been baffled and then intrigued by the fact that two of his apparently rational students and friends, Wally Blum and I, invested such serious attention in the matter. But after going to several games, reading the sports pages dutifully, and listening to us talk some more, he concluded that baseball was a peculiar cultural taste that one had to begin to develop when much younger than he was. There was that Law Review dinner my last year at school. Wilber had almost single handedly brought a law review into existence at Chicago a few years before and had been unstinting in his help on its behalf. He was preparing a set of remarks from the vantage point of the father of the Review, playing over in his mind various changes on that theme, when I, borrowing a maxim from my mother, chanced to introduce him as "the Review's best friend and severest critic, our Mother Katz." There were the marvelous marionette shows the Katzes, thanks to Ruth's artistic gifts, used to put on at their home with Wilber busily pulling the strings and supplying somehow the voices for a dozen different characters. Perhaps lost to culture forever now is one especially memorable show, a take-off of a University of Chicago Roundtable, which had script written by

Edward Levi, then a student, and which featured a puppet named Mortimer J. Adler. Ruth had at one point made a puppet of Wilber, and he was fond of telling that whenever he slipped into pomposity or vanity, he would be given a gentle reminder the next day and find his puppet sitting in his big arm chair.

Above all Wilber Katz was a teacher. It was the clear consensus of the student body when I was at school that he was the ''hot'' teacher, the real focus of classroom excitement; the taste for him was shared equally by the students who approached law study with philosophic yearnings as by those who had already developed a firm taste for the more worldly aspects of careers in law. The passage of time and the accumulation of experience at law teaching have supplied distance now to those youthful judgments. The verdict still stands: he was simply the best teacher I ever experienced. He exuded the quick intellectual brightness and taste for logic that law schools have always prized; he carried rigor and authority in the classroom; but his teaching, even of a large law class, was like a conversation with a friend—it had the endearing quality that he almost never, in his excitement over what he was discussing, completed a sentence! He was effortlessly polite and gentle and shunned any use of the power to bully which had been so much a part of the older case method teaching tradition. He taught always like a man seized with an idea. And he made law proper exciting. I recall now with a touch of awe that his teaching of the statutory scheme regulating preferences under the Bankruptcy Act alchemized it into a splendid subject matter for intellectual analysis. And finally, he was interstitially, but only interstitially, philosophical. The stuff of his classes, to borrow Llewellyn's phrase, was law stuff, but it was interwoven with hints of larger themes.

There was a second characteristic of his teaching that impresses me now as I look back. He had a firm sense of the architecture of a course and of the teaching responsibility for it. The plot of his courses always emerged with clarity from the sequence of individual class sessions. He steadily counteracted the myopia that the case method can engender. You may not have been able each day to know exactly where the class was on his secret map, but you inevitably emerged from his courses with a firm sense of where you had been.

He was very good whatever the field, for example, bankruptcy; he was splendid when he taught from a congenially subtle pattern as with his agency course and Roscoe Steffen's great casebook. But he was at his utter best in his own course in corporations, for which he had developed his own set of teaching materials and into which he had built, really as a pioneer, a substantial dose of accounting. I have classmates who went on to distinguished careers at the corporate bar who swear to this day that Wilber's materials were and remained their bible for years after they left law school, so well had he met the teacher's responsibility for detecting the structure of a field of law. One can only regret that in his modesty and non-exhibitionism, he never sought to publish his corporation materials, although they stick in my mind—and it is now 35 years—as the very model of a casebook.

He was in brief a splendid thing to have happen in one's life, in and out of law school, and I am a little stunned as I reflect on my personal debt to him. As he turns now to new adventures, for he is at once too serious and too zestful to simply retire, I raise my glass in a toast of love and thanks.

Mikva (*continued from page 6*)

Many years ago, one of Chicago's aldermen, Paddy Bauler, danced a post-election jig and said, ''Chicago ain't ready for reform.'' Based on performance, he might as well have included the state and the nation. It seems unfair, however, to accuse the public of unreadiness; it is more likely that the body politic, like the woman who has been promised marriage once too often simply does not believe that good men exist.

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[1]Ill. Rev. Stat. ch. 38, § 38-I (1971).

[2]*Id.* ch. 16¾, § 18-A (1971).

[3]*Id.* ch. 127, §§ 601-101 *et seq.*

[4]Williams v. State, 83 Ariz. 34, 315 P.2d 981 (1957).

[5]*In re* Becker, 16 Ill. 2d 488, 492, 158 N.E.2d 753, 756 (1959).

[6]Ill. Exec. Order No. 4 (February 26, 1973).

[7]2 Cal. 3d 259, 466 P.2d 225, 85 Cal. Rptr. 1 (1970).

[8]*Id.* at 268, 466 P.2d at 231, 85 Cal. Rptr. at 8.

[9]*Id.* at 269, 466 P.2d at 232, 85 Cal. Rptr. at 8.

[10]52 Ill. 2d 570, 289 N.E.2d 40 (1972).

[11]Grabinger v. Conlisk, 210 F. Supp. 2113 (N.D. Ill. 1970), *aff'd*, 455 F.2d 490 (7th Cir. 1971).

[12]State Employees Assn. v. Walker, No. 365-73 (Cir. Ct. Sangamon County, Ill., filed May 24, 1973); Illinois Assn. of Highway Eng'rs v. Walker, No. 366-73 (Cir. Ct. Sangamon County, Ill., filed May 24, 1973); Troopers Lodge No. 41 v. Walker, No. 379-73 (Cir. Ct. Sangamon County, Ill., filed May 31, 1973).

[13]Ill. HB-1021, 78th Gen. Assembly, 1973 Sess.

Reviews

Zimring on Deterrence

Deterrence: The Legal Threat in Crime Control. Franklin E. Zimring, JD '67, and Gordon J. Hawkins. University of Chicago Press, 1973. Pp. 376. $13.50.

Stanley Mosk

Like Mark Twain and the weather, everyone favors deterrence but no one does much about it. Thus it fell to Franklin Zimring (University of Chicago) and Gordon J. Hawkins (University of Sydney, Australia) to prepare an analytical study-for-a-study in an area replete with assumptions, myths and dogma. They raise innumerable questions and reach few other than tentative conclusions, but they do chart the course for future study. Their book was published August 15 as one of the University of Chicago Press studies in crime and justice.

Whenever criminologists, sociologists, penologists, legislators or judges debate the qualities of criminal sanctions, and whether they advocate punition for correctional purposes of reform, rehabilitation, retribution, reintegration, or mere restraint (the five R's), they invariably maintain that their preferred methodology results in deterrence. But then they become vague. Is the object to deter the criminal from further depredations? Or is the intended purpose to deter others from following the path of the criminal? And how can one rationalize the absence of any empirical data to support the theory that punishment—any particular punishment or punishment in general—actually has significant deterrent value?

Blind faith that penal sanctions do deter is as old as the criminal law itself. Indeed, early texts spoke confidently of "deterrence by punishment" and "restraint by terror." In general there has been an accepted thesis that the attachment of unpleasant consequences to certain behavior will reduce the tendency of persons to indulge in that behavior. On the other hand, in recent times there has been an increasing skepticism that behavior can be suppressed by the threat of punishment; the prohibition era from 1920 to 1933, and the inability of current society to eliminate the narcotics problem, are cited as exhibits A and B. As long ago as 1884 the Italian sociologist Enrico Ferri wrote of the "bankruptcy of penal justice as a defense of society against crime," which, he believed, demonstrates that "criminal phenomena are independent of penal laws."

Most debates on the deterrent value of punishment have centered on the death penalty, with all its emotional and moral impact. In eighteenth century England there were 350 capital offenses, including theft, cutting down a cherry tree, letter stealing, forgery, sheep theft, associating with gypsies, and pickpocketing. Despite the palpable disproportion of the extreme penalty to such crimes, the rates of crime continue to rise. In colonial America executions for a dozen or more offenses failed to stem the tide of lawlessness. Barnes and Teeters, writing in 1951, declared that "the whole concept of capital punishment is scientifically and historically on a par with astrological medicine, the belief in witchcraft or the rejection of biological evolution."

Statistical examinations, before and after abolition of the death penalty, invariably raise serious questions as to the efficacy of the penalty. The Royal Commission report in England has been widely cited as authority for the conclusion that homicide rates and the death penalty are totally independent factors. As Sellin was quoted in the Royal Commission findings: "There is no clear evidence in any of the figures we have examined that the abolition of capital punishment has led to an increase in the homicide rate, or that its reintroduction has led to its fall."

Justice Mosk, '35, has been a member of the California Supreme Court since 1964. He previously served (1959-64) as Attorney General of California.

That, incidentally, was the conclusion of the California Supreme Court, which in *People v. Anderson,* decided six months before the United States Supreme Court case of *Furman v. Georgia,* held the death penalty to be cruel or unusual punishment prohibited by the state constitution. Chief Justice Wright observed that capital punishment "is in no way rehabilitative," that vengeance is not an acceptable purpose of penology, and that isolation may be achieved by less drastic alternatives. As to deterrence, he wrote: "We are aware of the obvious imponderable and variable characteristics of society which can cause statistical studies of deterrence to be misleading, and of the difficulties inherent in attempting to establish that an offense was not committed because a would-be offender was aware of and restrained by the possibility of the death penalty. Nonetheless . . . many homicides in particular are not deterrable and as to the remainder capital punishment can have a significant deterrent effect only if the punishment is swiftly and certainly exacted. We have already demonstrated that the punishment is not swift. Moreover, it is far from certain."

But, of course, the extreme penalty is not necessarily a criterion for all penalties. Indeed, in the whole scheme of the criminal law and its administration, the death penalty is relatively insigificant—anguished law enforcement personnel and demagogic legislators to the contrary notwithstanding. Thus all the innumerable studies of capital punishment give few clues to the true effectiveness of punishment as deterrence.

The basic theory of simple deterrence is that many individuals who are tempted to engage in a particular form of criminal behavior can be induced to refrain from committing the offense if the risk of great unpleasantness communicated by a legal threat more than offsets the pleasure they might obtain as a result of the act. As Bentham explained, "The profit of the crime is the force which urges a man to delinquency; the pain of the punishment is the force employed to restrain him from it. If the first of these forces be the greater the crime will be committed; if the second, the crime will not be committed."

Obviously, the threat of punishment serves a number of purposes other than deterrence. It indicates the prevailing beliefs of society and thus is a teacher of right and wrong. It becomes a habit builder for conduct deemed by society to be proper. It also operates as a mechanism for creating and compelling respect for law. Finally, it functions as a rationale for desirable societal conformity.

As Professor Norval Morris has pointed out, however, virtually every criminal law system in the world has deterrence as its primary and essential postulate. Moreover, while politically motivated legislators advocate that the best hope of control lies in "getting tough" with criminals by increasing penalties and police generally subscribe to a similar notion of "strict law enforcement," most thoughtful persons also seem to believe in the deterrent effect of sanctions. As long ago as 1911 Professor Saleilles of the University of Paris wrote about "preventive punishments for the irresponsible." Professor Packer has written more recently that "People who commit crimes appear to share the prevalent impression that punishment is an unpleasantness that is best avoided." For every Karl Menninger, who insists that punishment by definition means an excess of penalty that necessarily produces a backlash instead of correction, there are numerous sociologists like Bailey and Smith, who describe the severity and certainty of punishment as salutary additive factors. In the *Journal of Criminal Law* last year, they wrote: "[W]hen punishments are severe and administered with certainty, maximum deterrence results. Inversely, when punishments are slight and uncertain, deterrence will be minimal. Common sense, as well as some evidence, would seem to support these assertions."

"Common sense" is a fragile reed upon which to lean. Yet I cannot resist noting parenthetically that no less an authority than the majority of the United States Supreme Court relied on this same type of nebulous concept in justifying its latest revision of the legal test for pornography. In *Paris Adult Theater v. Slaton,* decided June 21 of this year, Chief Justice Burger wrote: "If we accept the *unprovable assumption* . . . and the well nigh universal belief that good books, plays, and art lift the spirit, improve the mind, enrich the human personality and develop character, can we then say that a state legislature may not act on the corollary *assumption* that commerce in obscene books, or public exhibitions focused on obscene conduct, have a tendency to exert a corrupting and debasing impact leading to antisocial behavior." We are, he said in quoting Cardozo, "guided by a robust common sense"; thus legislatures may inhibit First Amendment rights even though "there is no conclusive evidence or empirical data."

Unfortunately, guided only by such common sense reasoning, many of those who perceive a deterrent effect in sanctions also suspect that if the threat of punishment is likely to prevent repetition of crime, then doubling or trebling the penalty should do even better. Says Professor Zimring: "Carried to what may be an unfair extreme, this style of thinking imagines a world in which armed robbery is in the same category as illegal parking, burglars think like district attorneys, and the threat of punishment will result in an orderly process of elimination in which the crime rate will diminish as the penalty scale increases by degrees from small fines to capital punishment, with each step upward as effective as its predecessor."

On the other hand, refusal to espouse a monolithic theory of deterrent efficacy does not preclude a conviction that deterrent measures may be a promising strategy in some situations. Thus, Professor Zimring believes, a significant step must be taken toward more rigorous research in deterrence and ultimately toward a more rational crime control policy.

In any study of deterrence we begin with an assumption that the individual against whom sanctions are to be imposed is blameworthy. A street robbery is objectively dangerous behavior and the offender's intentions are seldom in doubt. When we catch him the quality of his conduct makes it clear that he is eligible for punishment. But once it is decided that punishment of an individual robber is appropriate, the sentencing authority must answer the important question, how much punishment is just?

The particular penalty imposed for robbery exists for several purposes: to physically isolate the robber and thereby prevent other crimes by him, to assist in the rehabilitation of the robber, to express society's retributive feelings towards robbers in general, and to add potency to mere legal proscription in order better to deter both apprehended and potential robbers.

If we assume *arguendo* that considering all purposes the appropriate punishment for an individual robber under the circumstances involved in the commission of his crime is two years in prison, and if he is given a standard sentence of five years in prison largely for its deterrent effect on others, we encounter a complex of issues revolving about the validity of punishing for deterrent purposes. This robber will argue that he is in fact being punished twice: two years of prison for the offense of robbery and three years of prison to serve the interests of mankind in general. Understandably, he will resent his *pro bono* role.

Legislators who provided the statutory penalties may respond that once an individual is found blameworthy the term of punishment is just if it serves a legitimate punishment objective, and that deterrence of future crimes by the individual and others is such a valid objective. To that the prisoner may contend in rebuttal that while deterrence is a laudable goal of public policy, if the sentence is designed to deter him it is unfair because there is no indication he will commit another robbery. And if the extra sentence is motivated by the desire to prevent others from entering the path of crime, he feels unfairly imposed upon. Why, he will argue, should his misfortune constitute the tuition for the moral education of others?

Such mythical dialogue, as related by Professor Zimring, is relevant because it has been assumed that an extra measure of punishment is assessed for deterrent purposes only. It is not deterrence as an objective that causes concern, but the escalation of otherwise ample sanctions for deterrent purposes. Thus, the authors point out, "The moral problems raised by punishment for deterrent purposes arise only when we impose a punishment for deterrent purposes that is more severe than would otherwise be imposed. Yet increases in penalty for exclusively deterrent purposes are far from rare if the reasons given for legislative and judicial change in policy are taken at face value."

The more serious the criminal conduct, the less likely the community will have any sympathy for the offender, and the gap between the deterrent increment and the total punishment level will be relatively insignificant. Under those circumstances there is an acceptability and inevitability of severe punishment. As Professor Packer has written, "In our present state of comparative ignorance about the sources and control of human conduct there is no escape from the use of punishment as a device for reducing the incidence of behavior that we consider antisocial."

The analysis is further complicated by the fact that there are numerous significant elements in the rationale of deterrence other than legal and ethical. There are, for example, the economic aspect and the political aspect.

Though one may find relating money to the confinement of human beings to be distasteful, the

economic aspect of crime prevention and control cannot be understated. As Professor Galbraith has wryly pointed out, we not infrequently "defend low pecuniary interests on grounds of high moral principle." But the undeniable fact is that comparative costs of law enforcement do enter into the picture, and they often make longer punishment terms for deterrent purposes seem the most attractive alternative. One additional police officer assigned to a particular task adds $10,000 to $25,000 per year to the community budget, and if we turn to costs of studies in crime prevention we run into hundreds of thousands of dollars for results which seldom readily demonstrate tangible benefits. In contrast, the monetary costs of imprisonment range from $620 to $2,600 per prisoner per year, depending on conditions and methods of accounting.

Nor can the political aspect of the rationale of deterrence be overlooked. The frequent legislative tactic of increasing the harshness of penalties to achieve deterrence often encourages only more selective enforcement of the law in a way that defeats the intended result. The police, while they do not make basic decisions about penal policy, have wide discretion in regard to its application. The prosecutor also has discretion whether to prosecute. Grand juries may decline to indict, and trial juries may acquit the guilty. Trial judges may, in many jurisdictions, suspend either the imposition or the execution of sentence. And correctional bodies are given, in the indeterminate sentence system and various parole schemes, responsibility for selective decisions. Such widespread discretion, while advantageous as an intrinsic limitation on the usual severity of the legislative process in this field, thus often works in a zero-sum manner counterproductive to the goal of deterrence. Affording a greater degree of flexibility to those who have the closest and most continuous contact with the offender might decrease some of these pressures and conflicts inherent in the present system.

Dispassionate studies of crime deterrence are more necessary today than ever before. In the wake of awesome crime statistics the instant reaction of all too many citizens is for repressive law enforcement. Abolish the fifth amendment, unshackle constitutional restrictions on the police, adopt preventive detention, permit no-knock intrusions into private homes and business offices—these responses and similar emotional rhetoric are seen as the conceptual solution.

But thoughtful scholars, like Professors Zimring and Hawkins, appreciate that crime originates in the mind and that its commitment is a social reality. How society inadvertently stimulates that conduct and, conversely, how it can effectively deter that conduct deserve much more thorough study than has yet been undertaken.

Professors Zimring and Hawkins conclude their work with an agenda for research in deterrence. They point out that a small fraction of one percent of the total national expenditure for crime control has in the past been devoted to research and that it is therefore not surprising that available empirical data are manifestly deficient. Yet vast resources are not necessary for academic retrospective and comparative studies in this field.

The authors advocate six primary areas for research and experiment: social control of the drunken driver, intensive enforcement and urban street crime, countermeasures to folk crimes, traffic offenses—threat and punishment, variations in the sanctions for serious crimes, and the establishment and repeal of criminal prohibitions on behavior.

Deterrence is the first book-length attempt to produce a conceptual and philosophical basis for further studies in this broad field. The discussions of the differences among men and types of crimes, variations in penalties and risk of penalty, and the factors that help explain the success and failure of legal threats are splendid analyses of society's greatest current domestic problem: how to prevent crime. As James Vorenberg points out in his foreword, the chapter on "The Strategy of Research" frankly faces up to the limitations of previous studies in criminology and the need for an intelligent approach in this field. But—and they make this point effectively—the lack of any one perfect method to date should not lead us either to total reliance on imperfection or to despair in pursuit of better alternatives.

This is a book that deserves thoughtful consideration by everyone interested in the effective administration of our criminal law. And that should include all of us.

The Making of a New Bill of Rights, 1970

For the First Hours of Tomorrow: The New Illinois Bill of Rights. Elmer Gertz, JD '30. University of Illinois Press, Champaign, 1973. Pp. 178. $3.45.

Paul G. Annes

The most up-to-date charter of a major state was given life when the present Illinois Constitution of 1970, framed by the Sixth Illinois Constitutional Convention in the summer of that year and approved by Illinois voters soon thereafter, replaced its century-old predecessor effective July 1, 1971. The 1870 Constitution was not a "bad" document by the standards of its time—nor, for that matter, even of our own times. Like most state constitutions, it included many provisions of the federal constitution. The desire for revision on the part of most who wished it came simply from a general feeling that it was time to reexamine the 1870 Constitution and modernize it. A more vocal minority had stronger desires and more definite ideas about changes, particularly with respect to a Bill of Rights, appropriate to their conceptions of present day needs.

Just how does a constitutional convention operate? How are the various, often opposing views of different groups reconciled? Who and what influence decisions? The answers to these and related questions are of great interest, to some because of scholarly or professional interest in constitutional revision, and to many more because of their practical value for future conventions in other states. A good collection of answers has been provided by the Institute of Government and Public Affairs of the University of Illinois, which authorized the writing and publication of a series of monograph studies in Illinois constitution making. The present work in that series, dealing with problems, questions and answers that arose in the Convention's Bill of Rights Committee, was written by its Chairman, Elmer Gertz.

His appointment by Samuel Witwer, President of the Convention, was as wise and auspicious as it was unpredictable when one thinks of Mr. Gertz's long-time reputation as a liberal, devoted in word and action to basic freedoms. In the extraordinary effort that Mr. Gertz put into his role as Committee Chairman, he drew on his many and special resources: his wide background, his very considerable practical legal experience of over thirty years in litigation involving human rights in general and the federal Bill of Rights in particular, his long association with organizations concerned with the protection of these rights, and a conscious moderation disciplined by several decades of serious writing.

This combination of talent and experience served him very well in the Committee, later before the Convention itself, and finally in the writing of his monograph. Some may call it distinctly personal and subjective—and it is that, for Mr. Gertz does offer his own feelings and viewpoints, characterizes members of the Committee, and reveals much else personal. But that is only a small part of the whole, and indeed helps illuminate the rest, which comes through real, live and objectively convincing. The author manages in an agreeable, almost conversational style to describe the many forces and sources which informed and formed the decisions of the Committee and afterwards by the Convention, blow-by-blow, section-by-section. The reader gets a remarkably clear view of nearly all the Committee members—and of some others: distinct personalities, backgrounds, motivations and styles. And what a group it was, this Committee of fifteen, the heart of the Convention, balanced only in the sense that there was not a sufficient concentration of any group among its members to constitute a continuing effective block, thus making compromise necessary.

The composition of the Committee may be indicated in various ways. It was made up of: (a) 7 Catholics, 6 Protestants and 2 Jews; (b) 11 whites and 4 blacks; (c) 14 men and 1 woman; (d) 7 from Chicago, 5 from the suburbs and 3 from downstate; (e) 6 Republicans, 5 Democrats, 3 independent Democrats and 1 independent; (f) 10 lawyers, 2 politicians, 1 priest, 1 housewife and 1 teacher.

Grouped yet another way, there were three well-known liberals, eight moderates of various complexions, one strong conservative, and three others unclassified. Many predicted that such a Committee would be unable to agree, much less arrive at a consensus, on any number of troublesome issues. The end product is a tribute to practically all the members of the Committee, beginning with the Chairman. Many others helped, too numerous to name, but

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Mr. Annes, JD '23, practices law in Chicago.

President Witwer surely deserves special mention.

How all this came about is told diligently and in considerable detail. Reading it one gets an inside view of the workings of a constitutional convention, the process which in turn accounts for the results. In the present case it produced some significant new concepts, which with some changes by the Convention are now part of the Illinois Constitution. And while most of the changes may be said to be on the ''liberal'' side, it isn't entirely so.

As one would expect, a large part of the 1870 Constitution was taken over intact, principally the provisions concerning inherent rights, religious freedom, rights after indictment, self-incrimination and double jeopardy, ex post facto laws and laws impairing contracts, and a number of others—including the provision about truth as a defense to libel, which the liberals on the Committee were anxious to modify.

As for the changes, Mr. Gertz considers those with respect to nondiscrimination to be ''the most far-reaching of all of the new provisions in the Bill of Rights, . . . beyond all the other states and the Federal government in eliminating discrimination in the more important areas—employment and the sale or rental of property.'' There is also the important addition of an equal protection clause to the due process clause, but without the phrase ''including the unborn,'' which opponents of abortion on the Committee were eager to insert. Among other changes: a strengthened right to assemble and petition, a revised search-and-seizure provision, and a new prohibition against unreasonable invasion of privacy and interception of communications. While the conservatives did not come away with most of what they wanted, they got some things, notably ''the right to bear arms,'' resisted by the liberals and Mayor Daley's forces but staunchly insisted on by the downstaters.

One should not omit something symbolically significant, some new hortatory provisions in the present Constitution looking in the direction of the next century—to be sure, not self-executing, but hopefully useful in the interpretation and implementation of specified and unspecified ''inherent rights'' newly reserved by the Constitution to the people. There is, indeed, a call to the future in the very opening words of the Constitution, a ''resounding preamble,'' as the author puts it, ''to eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual.'' There is no mistaking Mr. Gertz's satisfaction with the accomplishments of his Committee; he has said so clearly in his concluding paean: ''What more can one expect of a Bill of Rights? For our day and for the first hours of tomorrow, we have achieved enough.''

Why Federal Bureaucracies Flourish Despite Themselves

The Institutional Imperative: How to Understand the United States Government and Other Bulky Objects. Robert N. Kharasch, JD '51. Charterhouse Books, New York, 1973. Pp. 257, $7.95.

Frederick Sass, Jr.

The author not only tells the reader how bulky objects such as the United States government and General Motors (''What is good for General Motors is good for the government'') can be expected to act under certain selected situations—he explains the rules that govern their actions and reactions. The result, no doubt, of training received at the Law School, where the reason was always more important that the result. But what is really unique about the book is the way the author uses Laws, Axioms, Theorems and Corollaries, as in the physical sciences, to explain institutional behavior. Before he received his J.D., he obtained a B.S. in mathematics, which also undoubtedly influenced the structure of the book.

The author first proposes three Axioms. One: Institutional action is merely the working of the institution's internal machinery. Two: Institutional existence depends upon the continual working of the internal machinery. Three: Institutions tend to believe that the detail functions they actually perform, rather than the social, economic or political objectives for which they were originally created, are their *raison d' etre.* Function is seen as purpose. From this is derived the Institutional Imperative: Every action or decision

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of an institution must be intended to keep the institutional machinery working.

If one accepts the three axioms and the Institutional Imperative, it must follow that morality and humanity are irrelevant in the operation of the institutional machinery. What a sobering thought! Only to be followed by the observation that "secrecy offers irresistible temptation to institutions," and they all succumb.

The operation of the more than a dozen Laws, Axioms and Theorems advanced by the author is illustrated by innumerable "disasters," as they are termed, products of such institutions as the White House, the Congress, Executive Departments, independent government agencies, giant corporations, labor unions, institutions of higher learning, Ralph Nader, the youth, the blacks. Few escape the spotlight Kharasch turns on.

What makes the book so entertaining is, for one thing, its timeliness. It is fascinating to contemplate the current events of the Watergate fiasco, Vietnam, our pollution problems, against the background of the Institutional Imperative. And every reader will immediately think of similar situations from his own experience, or about which he has recently read, as the most stupid decisions and actions of our government and other bulky objects are discussed. It gives a ring of truth to what the author has to say.

What the book tells us about our government and our favorite institutions should be very depressing. But the way it is told makes it possible to understand without being overcome. And the author does offer an answer to our dilemma. The human individual can be moral and humane, whereas the institution cannot. Morality, decency, common sense can be added to institutional acts and decisions only by one not a part of the institution, but who controls it as the man at the helm. And, finally, "directions for assembly and control" and a "manual for repair" of institutions are included.

While the Washington lawyer may be able to identify with the book more than others, every lawyer should be able to identify sufficiently to be fascinated by it. And to the extent that one works with his government, the understanding the book will give him will be well worth the reading.

Memoranda

The Increase in Law School Graduates as Law Clerks

Although they are known as "court criers" within the U.S. judicial system, first year law clerks Mary Allen and Robert Schuwerk seldom announce the courtroom appearance of the presiding judge, now a responsibility of court bailiffs. Both graduates of the Class of 1972, Mrs. Allen and Mr. Schuwerk, who clerk for judges on the federal district level, consider law clerk duties a worthwhile and interesting way to start their careers.

In clerking for Judge Hubert Will, JD '37, of the Northern District Court of Illinois, Mrs. Allen hopes to gain a perspective of the legal profession in order to choose the specialty she will eventually pursue.

Having already chosen to practice in the legal field in which the civil rights of a client have been violated, Mr. Schuwerk intends to gain a knowledge of what arguments succeed and fail in this area of law by clerking for Judge Fred Cassibry of the Eastern District of Louisiana in New Orleans.

Of the 161 Law School graduates of 1972, 23 or 16% are law clerks. Richard I. Badger, JD '68, Dean of Students, says that surveys conducted by his office show the number of students who chose to start their careers as law clerks rose from 4% to 16% over the last 15 years (1957 to 1972).

Many reasons are advanced for this increase: more state judges are permitted to hire clerks or additional clerks; federal judges may hire more clerks; judges tend to hire clerks directly from school and to rotate them more often; more law students develop the strong social-consciousness to pursue a less profitable career in legal service where a greater knowledge of constitutional law is needed.

A reason for this increase which is, however, specifically applicable to graduates from this Law School is: newer faculty members, such as Owen M. Fiss, Richard A. Posner, David P. Currie, and Geoffrey R. Stone, JD '71, who were once law clerks, advise students of the advantages in taking clerkships.

Of the twenty-three 1972 graduates who are now serving judges in state and federal courts, six are in state courts, 11 in federal district courts, and six in U.S. appellate courts.

In the Class of 1973, 15% of the graduates accepted clerkships with 27 federal and 14 state court judges. During the 1972-73 and 1973-74 terms, five Law School graduates have served or will be serving as clerks for justices on the United States Supreme Court.

Judicial Clerkships Class of 1973

Victor Bass
Edward Hennessey, Supreme Judicial Court of Massachusetts, Boston

Robert Berger
Motions Clerk, 7th Circuit Court of Appeals, Chicago

Ellen Bowen
Robert E. English, Illinois Court of Appeals, Chicago

Jean Burns
Wilbur F. Pell, Jr., 7th Circuit Court of Appeals, Chicago

Ronald Carr
David L. Bazelon, D.C. Circuit Court

William Casella
Edward Weinfeld, U.S. District Court, Southern District of New York, New York City

Ron Cass
Collins Seitz, 3rd Circuit Court of Appeals, Wilmington, Delaware

Frank Easterbrook
Levin Campbell, 1st Circuit Court of Appeals, Boston

Richard Fielding
Walter Schaefer, Illinois Supreme Court, Chicago

Doug Ginsburg
Carl McGowan, D.C. Circuit Court of Appeals

Philip Guistolise
Roger J. Kiley, 7th Circuit Court of Appeals, Chicago

Kenneth Handal
Robert A. Ainsworth, Jr., 5th Circuit Court of Appeals, New Orleans

Steven Harris
Robert E. English, Illinois Court of Appeals, Chicago

Douglas Laycock
Walter J. Cummings, Jr., 7th Circuit Court of Appeals, Chicago

Don McDougall
Ralph Holman, Oregon Supreme Court, Salem

Lee Movius
Frank M. Parker, North Carolina Court of Appeals, Raleigh

Donna Murasky '72
Wade McCree, 6th Circuit Court of Appeals, Detroit

Marsha Novick
David N. Edelstein, U.S. District Court, Southern District of New York, New York City

Don Parker
Roszel C. Thomsen, U.S. District Court, Baltimore

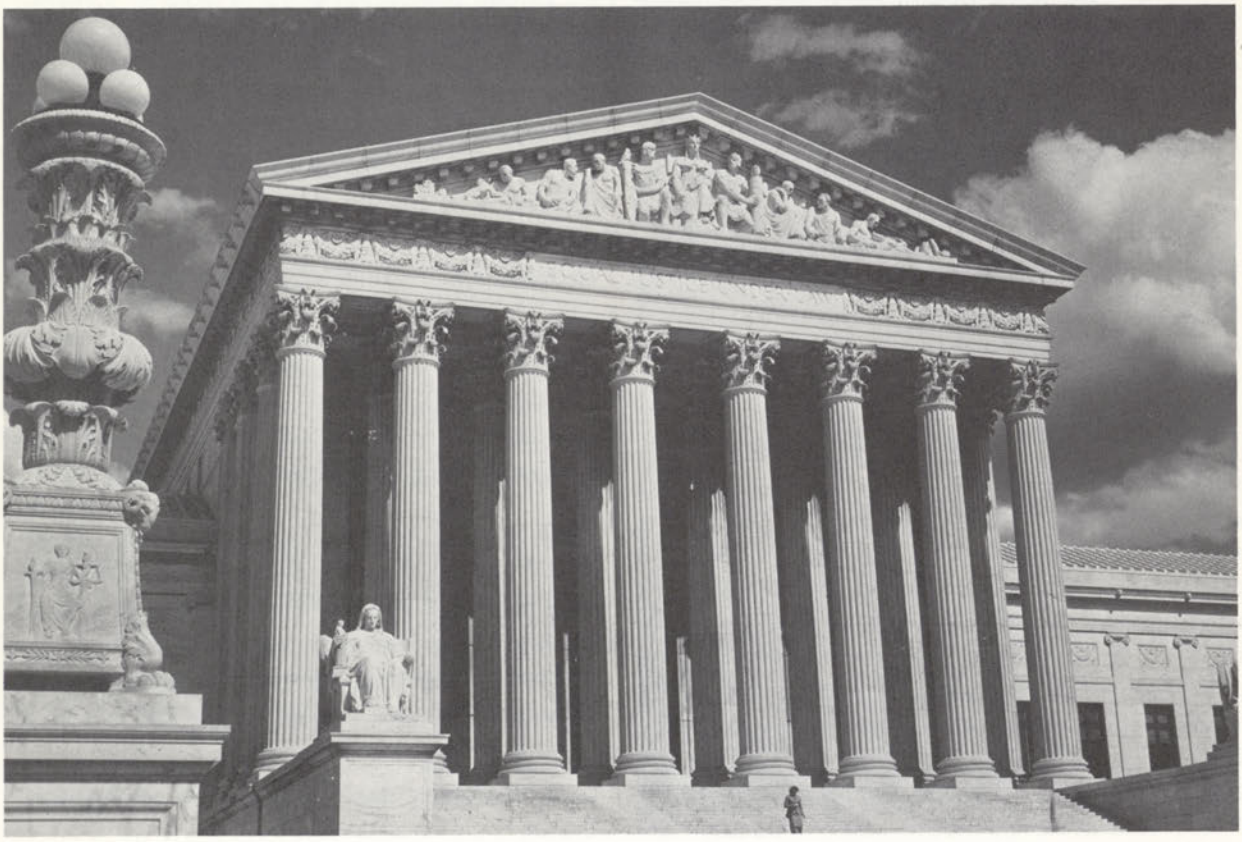
Tom Patrick
John T. Dempsey, Illinois Appellate Court, Chicago

U.S. Supreme Court Clerks Fall 1973 Term

John J. Buckley, Jr.
Justice Powell

Robert I. Richter
Justice Blackmun

Hal C. Scott
Justice White



In Progress: Legal Services for the Middle Class

Prepaid legal insurance plans, group practice and specialization by salaried lawyers, use of paraprofessionals, and assistance by social workers in law-related areas are all components of a new kind of legal services organization that would provide effective and affordable legal services to working-and middle-class persons. The creation of such an organization is the aim of a project now being developed by a group of students at the Law School.

Although the primary function of the proposed organization would be representation of individuals rather than promotion of group interests or legal change, its ultimate scope and impact would not be so limited. Both directly and indirectly, the staff and facilities of such an organization would provide a new resource for community development. And the cumulative effect of providing large numbers of people with the means of exercising the rights and privileges established by judicial precedent or legislation would serve to broaden the implementation of existing law reforms. Finally, the creation of such an organization within a framework for continuing research and evaluation—a secondary but important goal—would create a significant potential for generating or assisting other legal service projects with ideas, materials and data.

Ultimately, the proposed entity would develop into a large, decentralized organization capable of making legal services available to large numbers of individuals and to some extent confronting economic and social problems of the communities in which the organization functions. An information program would encourage both active and preventative use of legal services, which would be provided from easily accessible neighborhood offices. Prepaid legal insurance would be available in various benefit plans for groups with different resources and needs. The non-profit nature of the organization and the predominant use of salaried lawyers would allow a large percentage of income to be devoted to improving client services. Specialization by lawyers and the use of paraprofessionals would be developed in a way that would allow both the independent operation of local offices and the flexibility and expertise available in a large organization. At the same time, clients would exercise a measure of "local control" of the organization's activities in order to insure against bureaucratization, inertia and lack of accountability.

As a result of research already conducted into the basic legal and ethical issues confronting the proposed organization, the student group has prepared a brief for the Illinois Supreme Court on the proposed Disciplinary Rule 2-103 (D), adopted verbatim from the American Bar Association Code by the Illinois State Bar Association but not yet approved by the Illinois Supreme Court. The proposed rule, by regulating solicitation of legal business and acceptance of employment in group legal service arrangements, attempts to discourage the development of all but the most limited types of legal services organizations. The brief argues that the rule violates the first amendment right of association applied to lawyers and potential litigants by the United States Supreme Court in four landmark cases dealing with group legal services, *NAACP v. Button* (1963); *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar* (1964); *United Mine Workers v. Illinois State Bar Association* (1967); and *United Transportation Union v. State Bar of Michigan* (1971). In lieu of the restrictions of the proposed rule the brief calls for the creation of a commission to monitor experiments and to submit recommendations to the court when specific group legal practices cause or threaten real harm to the public. The Chicago Council of Lawyers, which now numbers several thousand, has also challenged the proposed rule, and action by the Illinois Supreme Court is expected soon.

The student group's efforts are now focused on the organization and funding of a major research effort that would lay the foundation for the creation of a model legal services organization and for the establishment of a functioning pilot program by the summer of 1975. Research later would be used, in conjunction with information gathered on specific client groups and on personnel considerations and operational factors peculiar to the Chicago area, to structure a pilot program incorporating features of the model insofar as they meet existing legal requirements.

The project's final phase would involve the refinement and evaluation of the operation of the pilot program with respect to the adequacy of legal services provided, the costs of providing services, the utility of specific benefit plans, and client attitudes.

The core group working on the project includes six law students from the class of 1975—Peter Dowd,

Christine Luzzie, Eric Gershenson, William Geller, Ronald Goldblatt, and Lawrence Fenster; Elan Adler of the School of Social Services Administration; and Marcia Dowd.

An advisory board has been formed to help with the grant proposal and the supervision of the research project. It includes Milton I. Shadur, JD '49, Samuel J. Brakel, JD '68, Alex Elson, JD '28, David C. Hilliard, JD '62, Abner Mikva, JD '51, Harry Kalven, JD '38, and Assistant Dean Frank L. Ellsworth.

A much larger advisory committee has also been formed of scholars, legal experts, and labor and community leaders to assist with specific research problems and practical planning. Many of these advisors are alumni of the University or were suggested by alumni. Members of the Law School faculty and administration already involved in this respect include Bernard D. Meltzer, JD '37, Franklin E. Zimring, JD '67, Geoffrey R. Stone, JD '71, and Assistant Dean Richard I. Badger, JD '68.

Several Chicago-area unions and community organizations have indicated their intent to support and participate in the project, and others are anticipated. Those committed so far include the American Federation of Government Employees, the United Electrical Radio and Machine Workers of America, the Amalgamated Meatcutters, The Midway Organization, the North River Commission, the Uptown Center of the Hull House Association, and the Hyde Park-Kenwood Community Conference.

From the Environmental Law Society

The Environmental Law Society this past academic year sponsored its first environmental seminar, "The Compleat Environmental Lawyer," which included discussions by several faculty members: David Currie, "Pollution Law in a Nutshell"; Richard Posner, "Costs of Pollution and Pollution Control"; Owen Fiss and Norval Morris, "Equitable and Criminal Control of Pollution"; Stanley Katz, "The Taking and Regulation Issue in Land Use"; Allison Dunham, "Proposed ALI Model Land Development Code"; Soia Mentschikoff, "Environmental Law: New Fad or Passing Fancy"; Kenneth Culp Davis, "Environmental Standing: Who Can Sue"; and Harry Kalven, JD '38, "Tortious Pollution." Encouraged by attendance ranging from 50 to 70 students per session, the Society is considering sponsoring another seminar during the coming year.

Among other activities, the Society coordinated the third annual Association of Trial Lawyers of America Environmental Law Essay Contest, won by Richard Fielding, JD '73, and arranged for members to speak before local high school biology and ecology classes on the role of law in environmental management. It also published for the fourth consecutive year its *Illinois Environmental News*.

A major project, interventon in the application by Commonwealth Edison for a permit to operate a nuclear electric generating plant at Dresden, Illinois, was concluded. While the U.S. Supreme Court mooted the Society's federal pre-emption contention in a similar case decided only a few days after ELS had presented its oral argument to the Illinois Appellate Court, the Atomic Energy Commission in its latest proposed regulations adopted the Society's major argument advocating stricter control of radioactive emission.

Law School Honors and Prizes: 1973

At the June, 1973 Convocation, Dean Phil C. Neal announced the following honors and prizes for the 1972-73 academic year.

Cum Laude and Order of the Coif

In announcing members of the Class of 1973 who would receive their J.D. degree *cum laude* (an average of 78 or better), the Dean noted that the number of members of that class receiving this honor is substantially larger than in any class for at least the last twenty years, and perhaps is the largest in the history of the School. The cut-off point for Order of the Coif (the top ten percent of the class) is also higher than in previous years.

The following students were awarded the J.D. degree *cum laude: Robert S. Berger, Jean L. Wegman Burns, Ronald G. Carr, Ronald A. Cass, Frank H. Easterbrook, Edna L. Epstein, Douglas H. Ginsburg, Harold D. Laycock, Bruce R. MacLeod, David L.*

Ross, *Stewart R. Shepherd*, and *Linda E. Van Winkle*.

The following students, in addition to those listed above, were elected to the Order of the Coif: *Victor Bass*, *John F. Cooney*, *George F. Galland, Jr.*, *Donald T. McDougall*, and *Hal S. Scott*.

Prizes

Dean Neal also announced several prizes awarded for the academic year 1972-73:

The *Jerome N. Frank Prize*, for the outstanding comment by a third-year member of the Law Review: *Frank H. Easterbrook*.

The *Casper Platt Award*, for the outstanding seminar paper: *Steven Robert Loeshelle*, '73.

The *United States Law Week Award*, for the student making the greatest scholastic progress: *Kenneth Robert Schmeichel*, '73.

The *Hinton Awards*, for the winners of the third-year Hinton Moot Court Competition: *David N. Frederick* and *James S. Whitehead*.

The *Karl N. Llewellyn Cup*, for outstanding performance in the second-year moot court competition: *Michael A. Rosenhouse* and *Robert James Straus*.

The *Joseph Henry Beale Prizes*, for excellence in the first-year research and writing program: *David S. Hammer*, *Bruce E. Larson*, *Robert B. Millner*, *Robert Pondolfi*, and *Roger H. Trangsrud*.

The *Wall Street Journal Award*, for excellence in Corporation Law: *Harold D. Laycock*, '73.

Students, faculty and alumni enjoy a sherry reception in the James Parker Hall Concourse and discuss their reactions to the speech given by Judge Marvin E. Frankel, from the United States District Court in New York, who spoke at the dinner in honor of the entering Class of 1976 on October 3rd.

Alumni Briefs

Chicago

Last winter downtown luncheons were planned by the Alumni Activities Committee for the purpose of renewing acquaintances between faculty and alumni and bringing alumni up-to-date on developments at the Law School. On February 7th, *Gerhard Casper,* Professor of Law and Political Science, spoke to law alumni and on February 21st *Soia Mentschikoff,* Professor of Law, was the special luncheon guest.

Members of the Committee in 1972-1973 were Co-Chairmen, *Lee B. McTurnan* '63 and *Vincent P. Reilly* '63, *Ronald J. Aronberg* '57, *Robert S. Fiffer* '47, *James J. McClure, Jr.* '49, *Robert M. Leone* '63, *Judson H. Miner* '67, and *Robert J. Stucker* '70.

This fall two downtown luncheons were announced by *Susan A. Henderson* '69, Chairman, and *Robert E. Ulbricht* '58, Co-Chairman, of the Alumni Activities Committee. On September 13th *Peter Dowd* '75 and several other students of the Law School presented to interested alumni their project to provide legal services to working class and middle class people. This luncheon was held in conjunction with a meeting of the Federal Bar Association in Chicago. At the September 25th luncheon *Walter J. Blum,* Professor of Law, was the special guest.

Cleveland

Last February 8th Assistant Dean *Frank L. Ellsworth* spoke to law alumni who were attending the Midwinter Meeting of the American Bar Association on "Hot and Cold Hors d'oeuvres: The Law School in 1973." *Fred H. Mandel* '29 was responsible for the arrangements of the law alumni luncheon and program which was held in the Sheraton-Cleveland Hotel.

Los Angeles

"The Law of Slavery: Is this Any Way for Grown Law Professors to Spend their Time" was the title of a program given to Los Angeles Law Alumni last January 30th by *Owen M. Fiss,* Professor of Law, and *Stanley N. Katz,* Professor of Legal History. After cocktails and a dinner at the Wilshire Hyatt House, sponsored jointly by the University of Chicago Club of Los Angeles and the Law School Alumni Association of Los Angeles, Professors Fiss and Katz spoke about how the law helped to establish and maintain the institution of slavery and the role of the law in attempting to terminate slavery. *Ray Wallenstein* '34, President of the Law Alumni Association in Los Angeles, was responsible for the arrangements of this event.

On September 12th a law alumni luncheon was held in conjunction with the California State Bar meeting in the Pacific Room of the Disneyland Hotel. The honored guest was Justice *Stanley Mosk* '35 of the Supreme Court of California. Judge *Benjamin Landis* '30, The Superior Court, Los Angeles, made the arrangements for the luncheon.

Pictured at a luncheon on April 10th for Los Angeles alumni at which Justice *Mathew Tobriner* of the California State Supreme Court spoke are Judge *John M. Alex* '57, *Ray Wallenstein* '34, Justice *Tobriner,* Judge *Ben Landis* '30 and Justice *Stanley Mosk* '35.

Justice *Walter V. Schaefer* '28 talks with Professor *Stanley A. Kaplan* '33 (left) and *Laurance A. Carton* '47 (left) at one of the luncheons held in the University Board of Trustees Room in the Loop which are sponsored by the Law School Alumni Association.

New York

Assistant Dean *Frank L. Ellsworth* spoke to the New York City Law Alumni at the New York Hilton on January 26th about the anticipated plans for the expansion of the Law School buildings and other current developments at the School. This luncheon was given by the Law Alumni Association in conjunction with the annual meeting of the New York State Bar Association.

New York City Law Alumni heard *Hans Zeisel,* Professor of Law and Sociology, speak on "Scientific Experiments In the Law" at the Williams Club last February 13th. Mr. Zeisel's talk particularly concerned his current analysis of the traditional *voir dire* system, a courtroom procedure applied to the examination of prospective jurors. This luncheon was sponsored by the New York Luncheon Committee, comprised of *George E. Badenoch* '66, *Charles R. Brainard* '58, *Paul Falick* '68, and *Lloyd A. Hale* '59.

Students currently enrolled at the Law School had a lively discussion with New York City law alumni at a luncheon sponsored by the New York Luncheon Committee held in the Francois Restaurant last March 30th. *Lillian E. Kraemer* '64, President of the Law School Alumni Association in New York, welcomed the students who gave their versions of life at the Law School.

On June 14th the New York Luncheon Committee held its final luncheon before summer adjournment at the Williams Club. *Stanley A. Kaplan,* Professor of Law, was special guest at this luncheon.

San Diego

Assistant Dean *Frank L. Ellsworth* met informally with San Diego Law Alumni at a special reception held in the University Club last March 21st. *James A. Malkus* '61, President of the Law Alumni Association of San Diego, was responsible for the event.

San Francisco

On January 29th *Owen M. Fiss,* Professor of Law, and *Stanley N. Katz,* Professor of Legal History, spoke to San Francisco alumni on "The Law of Slavery: Is this Any Way for Grown Law Professors to Spend their Time." The luncheon, which was jointly sponsored by The University of Chicago Club and The Law School Alumni Association in San Francisco, was held at Gino's in San Francisco.

On July 12th the University of Chicago Law School and the School of Social Service Administration jointly presented a program on "Prison Reform: Here It Comes Ready or Not." Following a film showing on Attica, *Lawrence G. Becker* '64, the Program Chairman, moderated a panel. *Fay A. Stender* '56, a member of the panel, spoke on "Dachau Revisited, How It Really is in California Correctional Facilities." *Roland E. Brandel* '66, President of the Bay Area Law Alumni Association, and Mr. Becker were

responsible for this event which took place in the Holiday Inn, Fisherman's Wharf.

On August 1st Dean *Phil C. Neal* was special guest at a law alumni luncheon, sponsored by the Bay Area Law Alumni Association and held in Kan's Chinese Restaurant.

Alumni from the Classes of 1970, 1971, and 1972 are pictured at a reception in honor of Professor Grant Gilmore on March 1st. Alumni serving on the planning committee included *Paul Stepan* '70, *Frederic Artwick* '70, *Jim Serritella* '71, *Barry Alberts* '71, *Steve Bowen* '72, and *David Cook* '72.

Tulsa

On May 22nd *Norval R. Morris* spoke to Tulsa Law School alumni on "Crime, Sin and Mental Illness" in the Great Hall of the University of Tulsa's Westby Center. After a dinner held in his honor Mr. Morris, who is Julius Kreeger Professor of Law and Criminology and Co-Director of the Center for Studies in Criminal Justice, discussed what he feels to be "misguided" legislation concerning drunkenness, narcotics, gambling and sexual behavior and offered some recommendations for a more efficient, humane criminal justice system. *Raymond G. Feldman* '45 was responsible for the arrangements of this event.

Washington, D.C.

On May 17th *Allison Dunham,* Arnold I. Shure Professor of Law and Director of the University's Center for Urban Studies, spoke to Washington, D.C. Law Alumni on the topic "I'm So Busy Noticing, I'm Hard of Hearing." *Frederick Sass, Jr.* '32, Chairman of the Washington, D.C. Law Alumni Association was responsible for the planning of this luncheon, which was held in conjunction with the American Law Institute in the Chinese Room of the Mayflower Hotel.

The Law School Alumni Association of Washington, D.C. held a reception on August 7th for law alumni attending the American Bar Association meetings. *Robert H. Bork* '53, Solicitor General of the United States Department of Justice, was the special guest.

Reunions

Class of 1928

After the Annual Dinner of the Law School Alumni Association on May 3rd, the Class of 1928 held their 45th reunion celebration in the Hotel Ambassador West. Special guests at the reunion party were Dean and Mrs. *Phil C. Neal* and Assistant Dean and Mrs. *Frank L. Ellsworth*. Also attending the reunion was Justice *Walter V. Schaefer*, speaker at the Annual Dinner and a graduate of the Class of 1928. *Leo H. Arnstein*, the Reunion Chairman for the class, was responsible for the arrangements.

Class of 1933

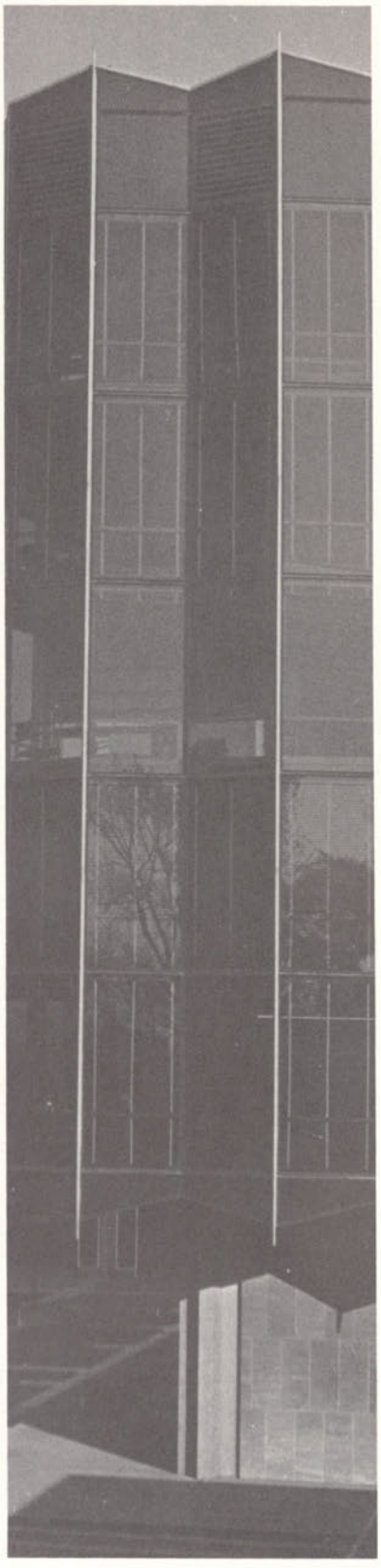
On the evening of May 4th, Law Alumni Day, the Class of 1933 celebrated its 40th reunion in the Burton Judson Lounge at the Law School. Special guests at the reunion were Dean and Mrs. *Phil C. Neal*, Assistant Dean and Mrs. *Frank L. Ellsworth*, and *Sheldon Tefft*, James Parker Hall Professor Emeritus of Law, who came from San Francisco especially to attend this event. *Morris I. Leibman*, Chairman of the reunion, was responsible for the arrangements of the reunion.

Class of 1947

The Class of 1947 celebrated another reunion at the Hotel Ambassador West after the Annual Dinner of the Law School Alumni Association on May 3rd. Dean and Mrs. *Phil C. Neal* and Assistant Dean and Mrs. *Frank L. Ellsworth* were special guests. Members of the Class of 1947 Reunion Committee who arranged this event were *Robert S. Fiffer*, Chairman, *Edward F. Barnicle*, *Jacob L. Fox*, and *Ruth and Harold Goldman*.

Classes of 1953 and 1958

On the evening of May 4th a joint reunion for the classes of 1953 and 1958 was held at the home of *Jean* and *Robert Allard*, members respectively of each class. Dean and Mrs. *Phil C. Neal*, Assistant Dean and Mrs. *Frank L. Ellsworth*, Professor and Mrs. *Walter J. Blum*, and Professor *Malcolm P. Sharp* were special guests. Responsible for the arrangements of this reunion were *John W. Bowden*, Chairman of the 1953 Reunion Committee, and *John G. Satter*, Chairman of the 1958 Reunion Committee, and members, *Robert E. Allard*, *Richard W. Burke*, *Charles F. Custer*, *Robert C. Gobelman*, *Oral O. Miller*, *Aldus S. Mitchell* and *Robert E. Ulbricht*.



Morris I. Leibman, Chairman of the Class of 1933 40th Reunion is pictured at a recent alumni event.

Enjoying an opinion at a recent meeting of the Visiting Committee of the Law School are (from left) Judge *George N. Leighton, Charles D. Satinover '30,* Justice *Stanley Mosk* '35, *Rex E. Lee* '63 and *Lillian E. Kraemer* '64, who is President of the New York City Alumni Association, and *Peggy Kerr* '73.

Pictured here are several of the law alumni who gathered for a luncheon during their meeting of the University's Alumni Cabinet on February 9, 1973. Professor *Gary H. Palm,* Director of the Mandel Legal Aid Clinic, spoke to the group about the new Woodlawn Criminal Defense Program.

Annual Dinner

The prelude to Law Alumni Weekend was the Annual Dinner of the Law School Alumni Association. The Honorable *Walter V. Schaefer* '28, Justice of the Supreme Court, State of Illinois, was the speaker at this year's Annual Dinner, held in The Guild Hall of the Hotel Ambassador West, Chicago, on May 3rd. Members of the 1973 Annual Dinner Committee were *Herbert C. Brook* '36, Chairman, *Norman H. Nachman* '32, Co-Chairman, *Barry S. Alberts* '71, *Alice M. Bright* '41, *Harry Crandall* '65, *Earl B. Dickerson* '20, The Honorable *Samuel B. Epstein* '15, *Henry D. Fisher* '32, and *Mildred G. Peters* '49.

Law Alumni Weekend 1973

The second annual Law Alumni Weekend was held on May 4th through 6th at the Law School. Once again law alumni gathered together to attend law school classes, roundtable discussions and reunions.

Law Alumni Day began with a continental breakfast for the alumni. Special faculty guests *Walter J. Blum* '41, *Allison Dunham,* and *Bernard D. Meltzer* '37 and Dean of Students *Richard I. Badger* '68 spoke informally on "The Law School in 1973" at the breakfast.

Later in the morning alumni had the opportunity of meeting new faculty: *Richard A. Epstein,* Professor of Law; *Stanley N. Katz,* Professor of Legal History; *Spencer L. Kimball,* Professor of Law and Executive Director of the American Bar Foundation; and *John H. Langbein,* Associate Professor of Law. At lunch *Malcolm P. Sharp,* Professor Emeritus of Law, was present to talk with alumni.

In the afternoon of Law Alumni Day two roundtable discussions were held. Professor *Stanley A. Kaplan* '33 moderated a roundtable on "Continued Problems of Lawyers' Responsibility." Commentators in this discussion were *Milton I. Shadur* '49 of Devoe, Shadur, Krupp, Miller, Adelman & Hamilton, and *Bernard Weisberg* '52 of Gottlieb & Schwartz. "The Need for a Puisne Supreme Court" was a roundtable moderated by *Gerhard Casper,* Professor of Law and Political Science. Professor *Philip B. Kurland,* Dean *Phil C. Neal,* Professor *Richard A. Posner* and *Robert L. Stern* of Mayer, Brown & Platt were commentators in this discussion. Throughout the entire day alumni attended classes.

Charles D. Satinover '30 was Chairman of the Alumni Day 1973 Committee and *Charles F. Custer* '58 served as Co-Chairman. Committee members were *Nicholas J. Bosen* '66, *Perry L. Fuller* '49, *Burton E. Glazov* '63, *Hugh Moore Matchett* '37, *James R. Reilly, Jr.* '72, and *Lynn Sterman* '71.

Alumni and students listen to the roundtable discussion moderated by Professor *Gerhard Casper* on "The Need for a Puisne Supreme Court" at the 2nd annual Law Alumni day on May 4th.

Alumni Notes

1920

After seven years of teaching at the University of Texas Law School, *Robert E. Mathews* has now retired. Recently Mr. Mathews' proposal for a new course in the responsibility of judges and arbitrators has been published in the *Utah Law Review*. His article is entiled: "Adjudicative Responsibility: Its Place in the Curriculum."

1921

John Ladner, who was until six years ago a senior member of a law firm consisting of two or three members, is now a solo practioner in Tulsa, Oklahoma. During his career Mr. Ladner served twice as Oklahoma District Court Judge of the Fourteenth Judicial District.

1924

As a representative of the American Bar Association, *Horace A. Young* attended the annual meeting of Inter-Doc at Freedoms Foundations Headquarters in Valley Forge, Pennsylvania.

1925

Last March ground was broken and construction was begun on the proposed 200 units of Public Housing for the Elderly in Miami Beach, Florida, a project brought about by the constant efforts of *Milton Gordon* over the past four years. Mr. Gordon was formerly Regional Attorney for the Federal Housing Authority and Attorney-Advisor for the Department of Housing and Urban Development.

Having practiced in the field of patent law for more than forty years, *Charles J. Merriam,* a partner in the Chicago firm of Merriam Marshall Shapiro & Klose, has recently published a booklet on patent experts entitled *Personal Reflections on Patent Experts—A Help or Danger?*

1927

Morton John Barnard, a partner in the Chicago firm of Barnard & Barnard, is Immediate Past President of the Illinois State Bar Association Board of Governors.

1928

Walter V. Schaefer, Justice of the Supreme Court of Illinois, is a member of the Special Committee for a Study of Legal Education, a seven-member group whose task it is to advise and assist the American Bar Foundation in devising and conducting a study of legal education.

Clinical Law Training: Interviewing and Counseling is the title of a new book which is co-authored by *Henry P. Weihofen* and published by West Publishing Company. Mr. Weihofen, who retired last year as professor from the University of New Mexico School of Law after forty years of teaching, is the author of a number of previous books, including *Legal Writing Style, Mental Disorder as a Criminal Defense,* and *The Urge to Punish.*

1930

The Decalogue Society of Lawyers awarded *Elmer Gertz,* a Chicago lawyer and author, with their Prime Minister of Israel Medal at the annual State of Israel Bond Testimonial Dinner.

Alumni are encouraged to submit notes on their professional activities and achievements to the Editor. Items received after this issue went to press will appear in the next issue.

After retiring as vice president and general counsel of the American Life Insurance Association this June, *C. Malcolm Moss* became of counsel with the Chicago firm of Schiff, Hardin & Waite.

1931

In June *Julian H. Levi,* Professor in Urban Studies at the University and Executive Director of the South East Chicago Commission, received an honorary Doctor of Humane Letters from the Chicago Osteopathic Hospital.

Delmar Olson retired as chairman of Mutual Trust Life of Chicago, but continues as a director of the firm.

1932

In April *Ira S. Kolb,* a member of the Chicago firm of Schwartz, Cooper, Kolb & Gaynor, spoke at the Illinois Institute for Continuing Legal Education course, "Advising Illinois Banks and Bank Directors," which was held in Chicago.

Last year *John F. McCarthy,* a partner in the Chicago firm of McCarthy & Levin, was re-elected secretary of the Chicago Bar Association.

1933

In the July 1973 issue of the *Illinois Bar Journal, Leonard M. Cohen* published an article on "Current Decisions of Confession of Judgment." Mr. Cohen is a partner in the Chicago firm of Leonard M. Cohen and Melvin Cohen, and General Counsel for the Midwest Finance Conference and the Independent Finance Association of Illinois.

1934

After 37 years of service as attorney, legislative counsel, and Deputy Gen-

eral Counsel in the Department of Housing and Urban Development, and its predecessor agencies, *Ashley Foard* retired. Mr. Foard received the Rockefeller Public Service Award in the field of "Law, Legislation, or Regulation" in 1969.

Leo Segall, a partner in the Chicago firm of Asher, Greenfield, Gubbins and Segall, has been elected to the board of the National Foundation of Health, Welfare and Pension Plans.

1935

Edward H. Levi has been elected a trustee of the Woodrow Wilson National Fellowship Foundation.

1936

Last winter *Elmer M. Heifetz* became a member of the Chicago firm Childs & Wood, Inc.

1937

Harry Adelman, a partner in the Chicago firm Adelman & Meyers, is on the Council of the Section on Commercial, Bankruptcy Law, the Illinois State Bar Association.

Last May St. Louis Superior Court Judge *Ivan Lee Holt* was elected chairman of the Council of Judges of the National Council on Crime and Delinquency.

In May *Bernard D. Meltzer,* James Parker Hall Professor of Law at the Law School, was elected a Fellow of the American Academy of Arts and Sciences, the nation's second oldest learned society.

Presiding Judge of the Juvenile Division of the Circuit Court of Cook County, *William Sylvester White,* is currently serving as Chairman of the Accreditation Committee of the National Council of Juvenile Court Judges. Judge White is also a member of the Executive Committee of the National Council of Juvenile Court Judges.

1938

Stanford Miller, president and chief executive officer of Employers Reinsurance Corporation in Kansas City, Missouri, has been elected chairman of the Reinsurance Association.

1939

Formerly an attorney in Rockford, Illinois, *John E. Sype* has been named by the Illinois Supreme Court to fill a vacancy on the Winnebago County circuit bench.

1940

"'Merit' in *No Fault* Divorce" is the title of an article co-authored by *Joseph Winslow Baer,* a partner in the Chicago firm of Davis Boyden Jones & Baer, which appeared in the June 1972 issue of the *Illinois Bar Journal.*

Last April *Harold I. Kahen* became a member of the firm of Schwartz, Mermelstein, Burns, Lesser & Jacoby in New York City. Mr. Kahen had been a member of the New York firm, Delson & Gordon.

This past year *Thelma Brook Simon* taught Administrative Law at John Marshall Law School.

1941

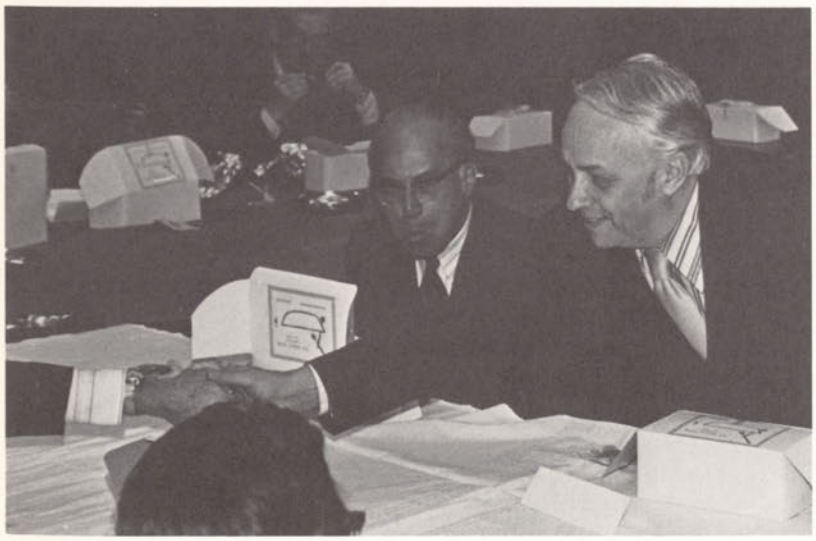
Last March *Walter J. Blum,* Professor of Law, chaired the panel discussion on tax reform at the Business School's Management Conference.

"Illinois Parole and Pardon Board Adult Parole Decisions" is the title of an article written by *Theodore P. Fields* for the September 1973 issue of the *Illinois Bar Journal.* Mr. Fields, who is a partner in the Chicago firm of Fields & Owens, is presently a legal consultant to the Illinois Parole and Pardon Board.

1942

Maurice Fulton, President of the Fantus Company, has been elected President of the Glencoe Board of Education and also to the Glencoe Planning Commission.

George W. Rothschild has been elected secretary of General American Transportation Corporation, Chicago. Mr. Rothschild is also a vice-president, general counsel and director of the company.



Judge *Hubert L. Will* '37, greets a friend at a recent alumni association program.

1943

A partner in Coudert Frères, Paris, *E. Ernest Goldstein,* recently received the Legion d 'Honneur of France.

1944

George B. Pletsch, a partner of the Chicago firm Schiff Hardin & Waite, was elected to the new Millikin University Board of Trustees.

1945

Last May *Raymond G. Feldman,* a partner in the Tulsa firm of Green Feldman & Hall, and his wife, *Nancy Goodman Feldman,* presided over a meeting of Tulsa alumni which featured Norval Morris, Julius Kreeger Professor of Law and Criminology and Co-Director of the Center for Studies in Criminal Justice. Mrs. Feldman, who is a member of the class of 1946, is a sociologist at the University of Tulsa.

1946

Last winter *Jewel Stradford La Fontant,* a Chicago attorney, was named deputy solicitor general in the Justice Department.

1947

This spring *Margaret Stevenson,* a partner in the firm Lambach, Stevenson & Goebel in Davenport, Iowa, was one of the keynote session panelists at a symposium on women in law held at the University of Iowa.

Executive vice president of Walter E. Heller & Company, *Maynard E. Wishner,* was named chairman of the public affairs committee of the Jewish United Fund of Metropolitan Chicago.

1948

Last April *Thomas R. Alexander* was named assistant director of labor relations for the Republic Steel Corporation in Cleveland, Ohio. Mr. Alexander has served as administrator of the Equal Opportunity Employment section of the company's Personnel Department for the past five years.

Henry Litvak, who had been a partner in the Chicago firm of Schradzke, Gould and Ratner, died unexpectedly on July 9, 1973.

In April *Donald J. Yellon,* Vice President and General Counsel of the First National Bank spoke on the topic "Trust Investments: Problems Regarding the Exchange of Information Between the Trust Department and Other Departments Within the Bank" at the Illinois Institute for Continuing Legal Education course "Advising Illinois Banks and Trust Directors" in Chicago.

1949

"Procedural Directions in Antitrust Treble Damage Litigation: An Overview of Changing Judicial Attitudes" by *Sheldon O. Collen* appeared in the winter issue of the *Antitrust Bulletin.* Mr. Collen is a partner in the Chicago firm of Friedman & Koven.

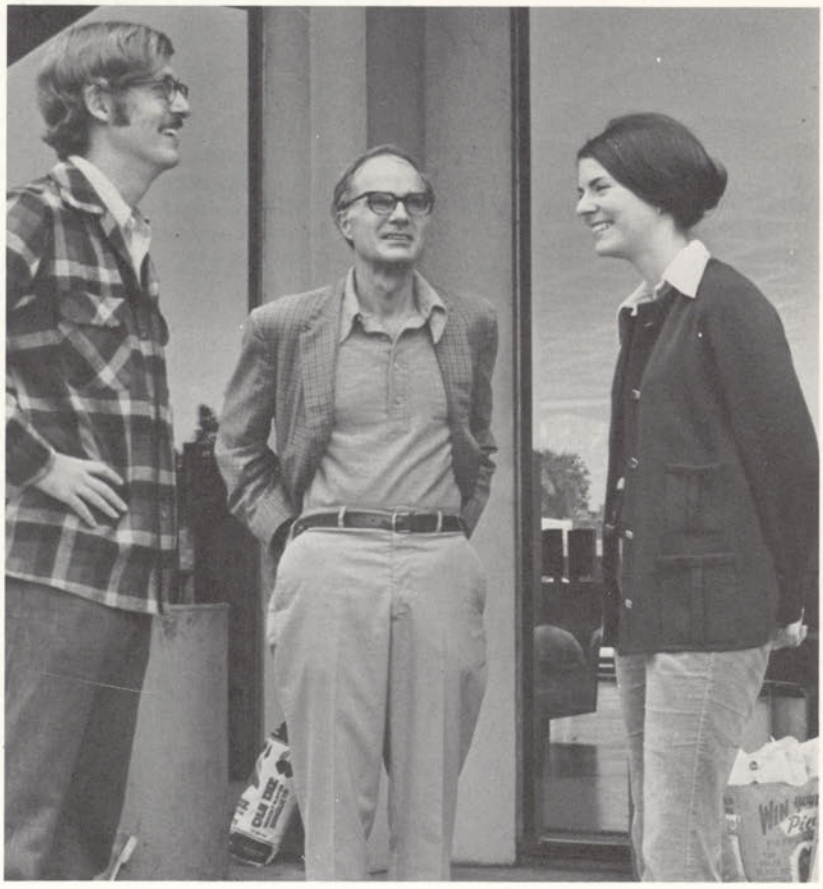
This winter *Richard M. Orlikoff* announced the formation of a partnership for the general practice of law with John N. Tierney '68 under the firm name of Orlikoff and Tierney in Chicago.

1950

This year's chairman of the American Cancer Society's McLean County residential crusade was *William R. Brandt,* a partner in the firm of Livingston, Barger, Brandt, Slater and Schroeder, in Bloomington, Illinois.

"Control Devices and Buy-Sell Arrangements in Closely Held Corporations" was the title of a speech given by *Richard L. Furry,* a partner in the firm of Shaman, Winer, Shulman & Ziegler in Dayton, Ohio at the Dayton Bar Association Corporation Law Seminar. In May Mr. Furry spoke on

Dean *Phil C. Neal* is pictured during the annual orientation picnic.



"Corporations" for the Up-date '73 Program at the Annual Meeting of the Ohio State Bar Association in Dayton.

The Association of American Law Schools Study of Part-Time Legal Education by *Charles D. Kelso* of the firm Kelso and Kelso in New Albany, Indiana, was published in the 1972 Association of American Law Schools Annual Meeting Proceedings, Part One, Section II.

1951

Edward R. de Grazia is a Fellow at Yale Law School.

Fritz H. Heimann has edited a book, *The Future of Foundations,* published by Prentice-Hall. Mr. Heimann is General Counsel for General Electric Corporation in New York City.

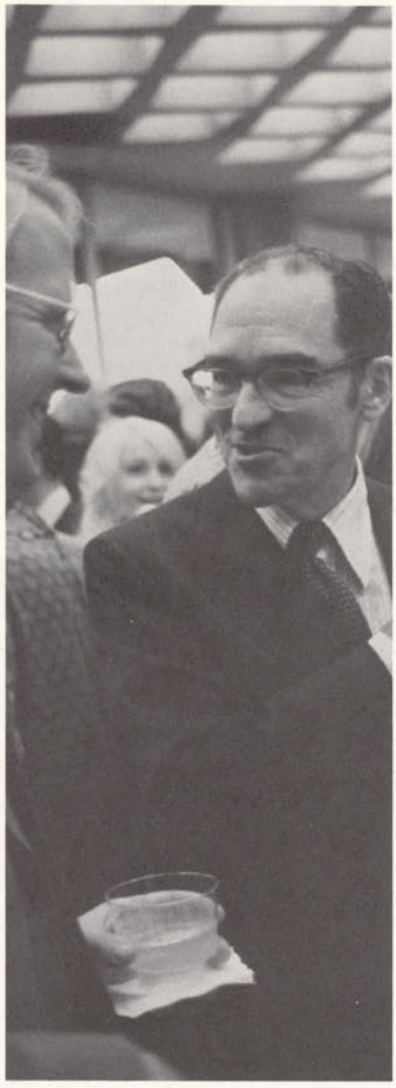
This spring *Alvin J. Ziontz,* who is a partner in the Seattle firm of Ziontz, Pirtle & Morisset, taught a course at the University of Washington on American Indian Legal Problems. Mr. Ziontz's firm represents approximately 8,000 Indians of the Makah, Lummi, Colville and Suquamish Tribes in the State of Washington.

1952

In May *Arland F. Christ-Janer,* president of the College Entrance Examination Board, was elected president of New College in Sarasota, Florida. Mr. Christ-Janer's new position in this small, highly-rated and innovative college enables him to practice those views he represented as co-sponsor of the Carnegie-funded Commission on Non-Traditional Study.

This spring *Elizabeth Head* became a partner in the firm Kaye, Scholer, Fierman, Hays & Handler in New York City.

"Use of Multiple Trusts as Income Tax Planning Devices in Connection with Business Activities or Specific Forms of Investment Activities" is the title of an article co-authored by *Burton W. Kanter* in the March 1973 issue of the *Illinois Bar Journal.* Mr. Kanter is a partner in the Chicago firm of Levenfeld, Kanter, Baskes & Lippitz.



Professor *Kenneth C. Davis* is shown with Visiting Professor *James B. White* at the reception preceeding the dinner in honor of the entering Class of 1976 which was held in the Harold J. Green Lounge.

A. Bruce Schimberg, a partner in the firm of Sidley & Austin, is chairman of the Section on Commercial, Bankruptcy Law, the Illinois State Bar Association.

1953

Robert H. Bork has been appointed Solicitor General of the United States Department of Justice.

After the success of his first hymn, "Listen Corinth," *Harry N. D. Fisher* has written many others including "He Lives," a Christmas carol which was dedicated to the St. Louis Christmas Carol Association and sung throughout the St. Louis area last Christmas.

1954

Donald Baker, a partner in the Chicago firm of Baker & McKenzie, is a member of the Council of the Section of International Law of the Illinois Bar Association.

This June *Gregory B. Beggs,* a partner in the Chicago firm of Neuman, Williams, Anderson & Olson, spoke on "Patent Litigation" in the program, "Intellectual Property Law for the General Practitioner," presented by the Patent, Trademark and Copyright Law Section of the Illinois State Bar Association Annual Meeting.

At the last New York State Bar Meeting in January, *Renato Beghe,* a partner in the New York firm of Carter Ledyard & Milburn, participated in a panel on Federal Tax Ruling Policies as a member of the Tax Section Panel.

"Conglomerate Mergers and the Antitrust Laws" is the title of an article in the *Columbia Law Review,* (Vol. 73, No. 3) by *Harlan M. Blake,* Professor of Law at Columbia University.

The paintings of *Judith Liberman* have been exhibited in the Boston area and the Ward-Nasse Gallery in New York City. Answering a query about the number of lawyers who became artists, Ms. Liberman alludes to such notables as Degas, Cezanne, and

Matisse and expresses a belief in a correlation between law and art: "The habits of reasoning acquired as a result of a good legal education (induction, deduction, analogy, distinguishing between what is and what is not relevant, etc.) are remarkably similar to those required in art."

1955

In July *Roger C. Cramton* became Dean of the Cornell University Law School. Following his resignation as Assistant U.S. Attorney General in Charge of the Office of Legal Counsel in the Department of Justice, Mr. Cramton served as a consultant to the American Bar Foundation, heading the developmental phase of its program to study legal education in the United States.

Adrian Kuyper, County Counsel for Orange County, California, was elected president of the California District Attorneys' and County Counsel's Association. Mr. Kuyper is currently the vice-chairman of the Committee on Administrative Agencies and Tribunals in the California State Bar Association. Since 1970 he has been a member of the Board of Directors of the Children's Home Society and is currently its secretary-treasurer. Last year he was appointed a member of the Board of Governors of Chapman College.

Bernard J. Nussbaum of the Chicago firm Sonnenschein Levinson Carlin Nath & Rosenthal is a member of the Council of the Section on Antitrust Law of the Illinois State Bar Association.

This May *Alan S. Ward* resigned as Director of the Federal Trade Commission and went into the private practice of law in Washington, D.C. Mr. Ward spoke on "The Federal Trade Commission—Operations and Planning" at the Washington D.C. State Bar Meeting in January.

1956

Chicago attorney, *Solomon Gutstein,* wrote the fifth chapter of the *Handbook on Commercial Real Estate Transactions* for the Institute on Continuing Legal Education of the Illinois State Bar Association.

Newell N. Jenkins, a partner in the firm of Klein Thorpe Kasson & Jenkins, is a member of the Council of the Section on School Law, the Illinois State Bar Association.

Richard W. Power, Professor of Law at Saint Louis University, served as Fulbright Lecturer at the University of Tehran last year.

"Estate Accounting Made Easy" is the title of an article by *Donald M. Schindel,* a partner in the Chicago firm of Sonnenschein Levinson Carlin Nath & Rosenthal in the January 1973 issue of the *Illinois Bar Journal.*

1957

Mary Popkin Bass has been named to head the new Family Court Division, set up recently by the City of New York to handle legal representation of petitioners in proceedings related to juvenile delinquency, neglect, child abuse, persons in need of supervision, and in paternity and support proceedings involving persons who are likely to become public charges.

1958

Last winter *George Kaye,* a trials and appeals attorney in Paxton, Illinois, was named by the Illinois Supreme Court to fill a vacancy on the bench of the eleventh judicial circuit.

Jaro Mayda has been named director of the new multi-disciplinary Institute for Policy Studies & Law at the University of Puerto Rico.

Formerly a partner in Bishop & Crawford, Ltd., Chicago, *J. Stephen Crawford* has recently joined CF Industries, Inc. as vice president and general counsel.

In the January 1973 issue of the *Cornell Law Review* (Vol. 58, No. 2) is an article, "The Bad Man Revisited," by *William L. Twining,* Professor of

Professor *Richard Epstein* flanked by *Tony Waters,* a Bigelow Teaching Fellow, and *Carl Dixon* '74, listen to a Moot Court argument.

Law at the University of Warwick in Warwickshire, England. Mr. Twining is also the author of *Karl Llewellyn and the Realist Movement* which has just been published as one of the Law and Context Series of the London publisher, Weidenfeld and Nicolson.

1959

Ronald O. Decker of the Stewart-Warner Corporation in Chicago is a member of the Council of the Section on Family Law of the Illinois State Bar Association.

Correction: In April 1972 *Richard B. Wilks* became a partner in the firm of Marks & Marks of Phoenix, Arizona —not of Chicago, as stated in the last issue of *Law Alumni Notes.*

1960

This winter *David R. Babb,* a partner in the firm of Babb and Hetzler in Belvidere, Illinois, was appointed a circuit judge on the 17th Judicial Circuit for Boone County, Illinois.

Vice President and General Counsel of A-T-O, Inc., in Willoughby, Ohio, *Luther A. Harthun* was graduated from the Advanced Management Program of the Harvard School of Business Administration last December.

The University of Chicago Alumni Association has given a citation for public service to *Howard B. Miller,* a professor at the University of Southern California Law Center.

Formerly an advisor on International Commercial and Petroleum Law in London, England, *Robert L. Norgren* is now with the firm of Drinker, Biddle & Reath in Philadelphia, Pennsylvania.

1961

Last year *Fred K. Grant,* assistant U.S. attorney and assistant states attorney in Baltimore for the past nine years, moved to Caldwell, Idaho, and is working as deputy sheriff and administrative assistant to the sheriff of Canyon County, Idaho.

Vice President of the National Association of Independent Insurers, *James R. Faulstich* delivered an address on the subject of insurance ecology at the annual Insurance All-Industry Day, sponsored by the central Illinois chapter of the Society of Chartered Property and Casualty Underwriters last November at Illinois Wesleyan University.

Last January *Kenneth L. Gillis* was appointed Chief of the Criminal Appeals Division, Office of the State's Attorney, Cook County, Illinois.

Since 1970 *Charles E. Kopman* has been a partner with the firm of Lowenhaupt, Chasnoff, Freeman & Holland in St. Louis, Missouri. Mr. Kopman is also the Legal Chairman of the Ozark Chapter of the Sierra Club.

As associate director of the domestic and anti-poverty operations of ACTION, *Christopher M. Mould* is responsible for the administration and management of their domestic programs. Prior to joining ACTION, Mr. Mould spent two years with the Department of Housing and Urban Development, organizing and directing its national office of voluntary action.

1962

Richard W. Bogosian recently began an assignment at the American Embassy in Kuwait as Chief of the Economic Section.

Chicago attorney *Frederick F. Cohn* is teaching a course in Criminal Procedure during the fall semester for the Graduate School of The John Marshall Law School.

"Conflict of Laws and the Second Restatement—Illinois Accepts the Tort Provisions; What About Contracts?" is the title of an article by *David P. Earle III,* which won first place in the Illinois State Bar Association's Annual Lincoln Award legal writing contest. Mr. Earle is a senior attorney with the First National Bank of Chicago and an instructor at The John Marshall Law School.

In November *Mary Anne Krupsak* was one of three women elected to the New York State Senate. A state assembly member for the two terms from 1968 to 1972, Senator Krupsak is serving on five standing committees of the Senate.

Former United States District Attorney for the northern district of Indiana, *William C. Lee* returned to private practice with the firm of Hunt Suedhoff Borrow Eilbacher and Lee in Fort Wayne, Indiana.

Last fall *Harry D. Leinenweber* of Joliet, Illinois, was elected to the Illinois House of Representatives on the Republican ticket from the forty-second district.

Last winter *Robert I. Starr* became an attorney with the law office of Frank Boas in London, England.

1963

"Zoning: The Definition of 'Family'" is the title of an article by *Ronald S. Cope* in the September 1973 issue of the *Illinois Bar Journal.* Mr. Cope is associated with the Chicago firm of Ancel, Glink, Diamond & Murphy.

"Condominium Law and Practice" is being taught by *Vincent P. Reilly* at the Graduate School of The John Marshall Law School during the fall semester. Mr. Reilly is a partner in the Chicago firm of Russell, Bridewell & Lapperre.

1964

Allen R. Faurot has recently become Counsel for Norton Simon, Inc., New York City.

This past spring *Richard I. Fine* became associated with the firm of Swerdlow, Glikbarg & Shimer in Beverly Hills, California. He was formerly an attorney with the Foreign Commerce Section of the Antitrust Division, U.S. Department of Justice, in Washington, D.C.

Last year the Springfield firm of Sorling, Catron and Hardin announced that *William S. Hanley* became associated with their firm. Mr. Hanley had

been Legislative Counsel to the former Governor of Illinois, Richard B. Ogilvie.

Last November *Larry K. Harvey* was appointed Dean of Willamette University College of Law in Salem, Oregon.

At the Illinois State Bar Association Annual meeting last June *Albert F. Hofeld* spoke on "Plaintiff's Preparation and Evaluation of a Medical Malpractice Case" during the all-day program "Medical Malpractice in Illinois."

"Recent Developments in Income Tax (Individual and Corporate)" is the title of a speech given by *George B. Javaras* of the Chicago firm of Kirkland & Ellis.

Malcolm S. Kamin of the Chicago firm Arvey Hodes & Mantynband is Secretary of the Section on Individual Rights and Responsibilities of the Illinois State Bar Association.

The Chicago firm of Crowley Barrett & Karaba announced that *Alan R. Orschel* has been admitted to membership in the firm.

Along with her other activities as law professor at Golden Gate University in San Francisco and as consultant on poverty law for the OEO, *Carol Ruth Silver* is now assuming the part-time post of attorney for the San Francisco sheriff's department.

This spring *Milton S. Wolke, Jr.* joined the Associates Casualty and Life Insurance Groups, Inc. in South Bend, Indiana, as assistant general counsel. Prior to this new position, Mr. Wolke was assistant general counsel for Kemper Insurance Group in Long Grove, Illinois.

1965

The firm of Mackenzie Smith Lewis Michell & Hughes of Syracuse, New York, announced that *Dennis R. Baldwin* has become a partner of the firm.

Marvin A. Bauer was made a partner in the firm of Archbald, Zelezny & Spray in Santa Barbara, California.

The Union Pacific Railroad Company in Omaha, Nebraska, has appointed *W. Donald Boe, Jr.* its General Attorney. Mr. Boe spent the last seven years in Washington, D.C., with the Civil Aeronautics Board, American Telephone and Telegraph Company, and most recently with the U.S. Postal Service, practicing before the Postal Rate Commission.

Frank Cicero, Jr. of the Chicago firm of Kirkland & Ellis is a member of the Council of the Section on Individual Rights and Responsibilities, the Illinois State Bar Association.

Director of the American Civil Liberties Union, *Bruce J. Ennis, Jr.*, is co-author of a handbook on *The Rights of Mental Patients* published by Avon Books. This study takes the viewpoint that involuntary hospitalization should be abolished, advocates the right to a free lawyer for prospective patients who cannot afford such, and warns of the discrepancy between the facts and theory of patients' rights.

Last winter *Howard C. Flomenhoft,* a partner in the Chicago firm of Levenfeld, Kanter, Baskes & Lippitz, was on the planning committee of The 29th Annual Federal Tax Course of the Illinois Institute for Continuing Education. Mr. Flomenhoft gave a speech on "Personal Planning."

After completing a leave of absence as an Assistant United States Attorney, Criminal Division, in Los Angeles, *Joseph H. Golant* returned to private practice with the Los Angeles firm of Harris, Kern, Wallen & Tinsley, specializing in the fields of patents and trademarks.

The Chicago firm of Jenner & Block announced the admission of *Chester T. Kamin* to partnership. Mr. Kamin has taken a leave of absence to become special counsel to the Governor of Illinois.

Formerly a professor in the Department of Philosopy of Washburn University in Topeka, *Leon J. Lysaght, Jr.* has recently been appointed Assistant Professor of Law at the University of Detroit Law School.

1966

Steven M. Barnett has become President of Apelco-Health Service, Inc. in Chicago.

Roland E. Brandel, a partner in the San Francisco firm of Morrison Foerster Holloway Clinton & Clark, has been appointed to the Berkeley Planning Commission.

Roland E. Brandel '66, President of the Bay Area Law Alumni Association, listens attentively to Professor *Walter J. Blum* '41.

This spring *Paul F. Gleeson* became a partner at Vedder, Price, Kaufman & Kammholz, in Chicago.

This July *Andrew M. Klein* became Special Counsel for the Office of Market Structure, Securities and Exchange Commission in Washington, D.C. He had been with the New York firm of Lovejoy, Wasson, Lundgren & Ashton.

In 1972 *Richard E. Poole* became a partner in the firm of Potter Anderson & Corroon in Wilmington, Delaware.

Peter E. Riddle of the San Diego firm McDonald & Riddle was elected to the Coronado City Council last April.

In January *Robert C. Spitzer,* formerly Assistant District Attorney for Dauphin County, Pennsylvania became a partner in the firm of Nauman, Smith, Shissler & Hall in Harrisburg. For his work as Assistant District Attorney as well as other civic activities in the criminal justice field, Mr. Spitzer was named Harrisburg's "Outstanding Young Man of the Year" for 1971 and was selected as one of Pennsylvania's Ten Outstanding Young Men for 1972.

After serving as assistant schools attorney for the San Diego Unified School District since 1971, *Ralph D. Stern* was appointed schools attorney by the Board of Education this past June.

1967

Last winter *William J. Bowe* was made a partner of the Chicago firm of Roan & Grossman.

In January *Thomas A. Gottschalk* became a member of the firm of Kirkland & Ellis in Chicago.

Former Special Assistant to the New York City Police Commissioner, *Wayne A. Kerstetter* was appointed Superintendent of the Illinois Bureau of Investigation by Governor Walker this past winter.

Philip A. Mason is presently legislative assistant to Congressman Robert F. Drinan in Washington, D.C.

John S. Elson '67, Staff Attorney and Teaching Fellow in the Mandel Legal Aid Clinic, Professor *Gary H. Palm* '67 and *Wayne Kerstetter* '67, who is superintendent of the Illinois Bureau of Investigation, are pictured at the Over-the-Hump celebration sponsored by the Law Student Association.

Last June *Charles E. Murphy* left his position as Regional Labor Counsel for the United States Postal Service to become associated with the Honolulu firm of Torkildson, Katz and Conahan.

Otto Graf Praschma opened a private law practice in Frankfurt, Germany, under the firm name of Gehr, Pochlatko, & Praschma, specializing in U.S. and German taxation and corporate law.

Secretary and general counsel of National Spinning Co., Inc. in New York City, *Arnold G. Schlanger* has been elected to the company's board of directors.

Frank Zimring has been named co-director of The Center for Studies in Criminal Justice.

1968

Formerly an associate professor of law at Rutgers Law School, *Richard H. Chused,* has been appointed a full-time faculty member at Georgetown University Law Center.

Ronald M. De Koven, associated with the Chicago firm of Goldberg, Weigle, Mallin & Gitles, is an assistant editor of the newsletter published by the Section on Commercial, Bankruptcy Law, the Illinois State Bar Association.

Last January *Thomas M. Landye* became a member of the firm of Keane, Haessler, Harper, Pearlman and Copeland in Portland, Oregon.

Presently on the faculty of the Bronx High School of Science, *Joel S. Seidenstein,* teaches the senior elective, "The American Legal System."

This winter *John N. Tierney* announced the formation of a partnership for the general practice of law with Richard A. Orlikoff '49 under the firm name of Orlikoff and Tierney in Chicago.

1969

Along with her duties as Assistant Professor at Washington University in St. Louis, Missouri, *Marilyn J. Ireland* has been appointed Assistant Dean with responsibility for student relations.

Formerly with the New York firm of Weil, Gotshal & Manges, *Jane R. Levine* has been appointed a Lecturer in the Faculty of Law at the University of New South Wales in Australia.

Formerly associated with O'Melveny & Myers in Los Angeles, *Milan D. Smith, Jr.* has entered into a partnership under the name of Petersen & Smith in Torrance, California.

Alfred Elliott Volkuwitz of the Chicago firm Schiff Hardin & Waite wishes to notify his friends and associates of the change of his name to Alfred Elliott.

This fall *Alvin C. Warren, Jr.* will become Associate Professor of Law at Duke University School of Law where he will specialize in the area of Federal Taxation. Mr. Warren will also be editor of *Law and Contemporary Problems.*

As Director of Litigation for the Legal Aid Society of Sacramento County, California, *Roger K. Warren* supervises the court activity of the program's twelve attorneys in the fields of housing, welfare, consumer, and prison law.

1970

After practicing law in the more traditional situations for several years in Vermont, *Paul S. Berch* has been involved in the litigation of prisoners rights cases "with considerable success in spite of the position of the 2nd Circuit."

1971

Alan A. Alop is presently head of a neighborhood law office with the Duval County Legal Aid Association in Jacksonville, Florida. Mr. Alop also spends considerable time working as assistant counsel to the local chapter of the Florida Mithrasian League.

As legislative assistant to Senator Walter Mondale *Robert B. Barnett* is concerned with the areas of housing, education, and urban affairs. Mr. Barnett plans to teach an evening course in Constitutional Law at Georgetown Law School. Mr. Barnett was a clerk for U.S. Supreme Court Justice Byron R. White.

After clerking with the Honorable John Paul Stevens, U.S. Court of Appeals in Chicago, *Samuel D. Clapper* is practicing with the firm of Barbera & Barbera in Somerset, Pennsylvania.

Last winter *William H. Cowan* became associated with the Chicago firm of Roan & Grossman.

This spring *Nancy E. Goldberg* was named Assistant Director of Defender Services for the National Legal Aid and Defender Association. Her new Book, *The Dollars and Sense of Justice,* a study of the Law Enforcement Assistance Administration as it relates to the defense function of the criminal justice system, has been published by the National Legal Aid and Defender Association.

Steven A. Grossman is now associated with the Chicago firm of Peterson, Ross, Rall, Barber & Seidel. He was formerly associated with the Detroit firm of Hyman and Rice.

Jeffrey Jahns of the Chicago firm Roan & Grossman has co-authored *Corporate Acquisition Debt-Interest Deduction—Sec. 279,* published by The Bureau of National Affairs as part of its Tax Management series.

The American Bar Association named *Esther F. Lardent* an assistant director in its Public Service Activities Division. In this position, Ms. Lardent will be staff director for the ABA's Section of Individual Rights and Responsibilities, as well as the ABA liaison with the Council on Lawyers and Social Workers and several ABA committees. Ms. Lardent had been a Contract Compliance Specialist at the Department of Health, Education and Welfare in the Office for Civil Rights.

Mr. and Mrs. *Frederick W. Axley* '69 are pictured at an Alumni Association event with Professor *Franklin E. Zimring* '67, Co-Director of the Center for Studies in Criminal Justice.

As Legal Director of the Connecticut Civil Liberties Union Foundation, *Judith Mears* has been involved with cases which violate the Equal Protection clause.

Marianne K. O'Brien accepted a position as Assistant Director of the Law Students Division of the American Bar Association in Chicago.

John L. Swartz, formerly a Legislative Staff Member in the Office of the Minority Leader in Springfield, Illinois, has been appointed Assistant Appellate Defender.

1972

Jamie Johnson Kelman is with the Chicago firm of Gardner, Carton, Douglas, Chilgren and Waud.

This spring *Jay E. Leipham* began the practice of law with the firm of Hullin, Roberts, Mines, Fite & Riveland in Seattle, Washington.

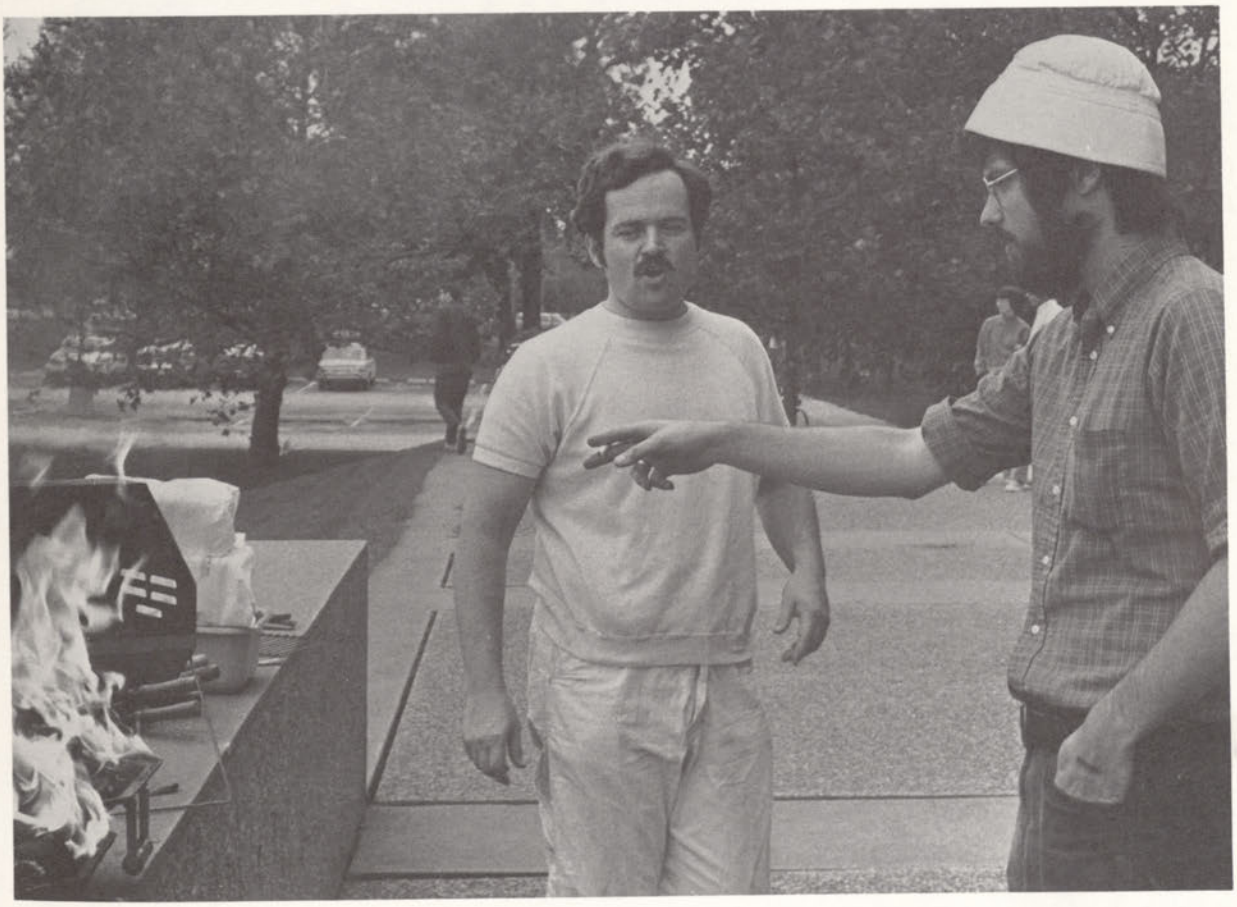
This September *Carol E. Moseley* became Assistant United States Attorney in the office of U.S. Attorney James R. Thompson in Chicago.

In May *Stephen L. Spitz* assumed his new position in the Office of the General Counsel of the Department of Health, Education and Welfare, working on elementary, secondary and higher integration and various other educational matters. This past year Mr. Spitz was Instructor in Law at the University of Michigan.

1973

Shimon Shetreet has become Assistant Professor of Law at the Hebrew University in Jerusalem, Israel.

Dean of Students, *Richard I. Badger* '68, and LSA President *Allan Levin* '75, supervise the making of hamburgers at the orientation picnic held behind the Law School.



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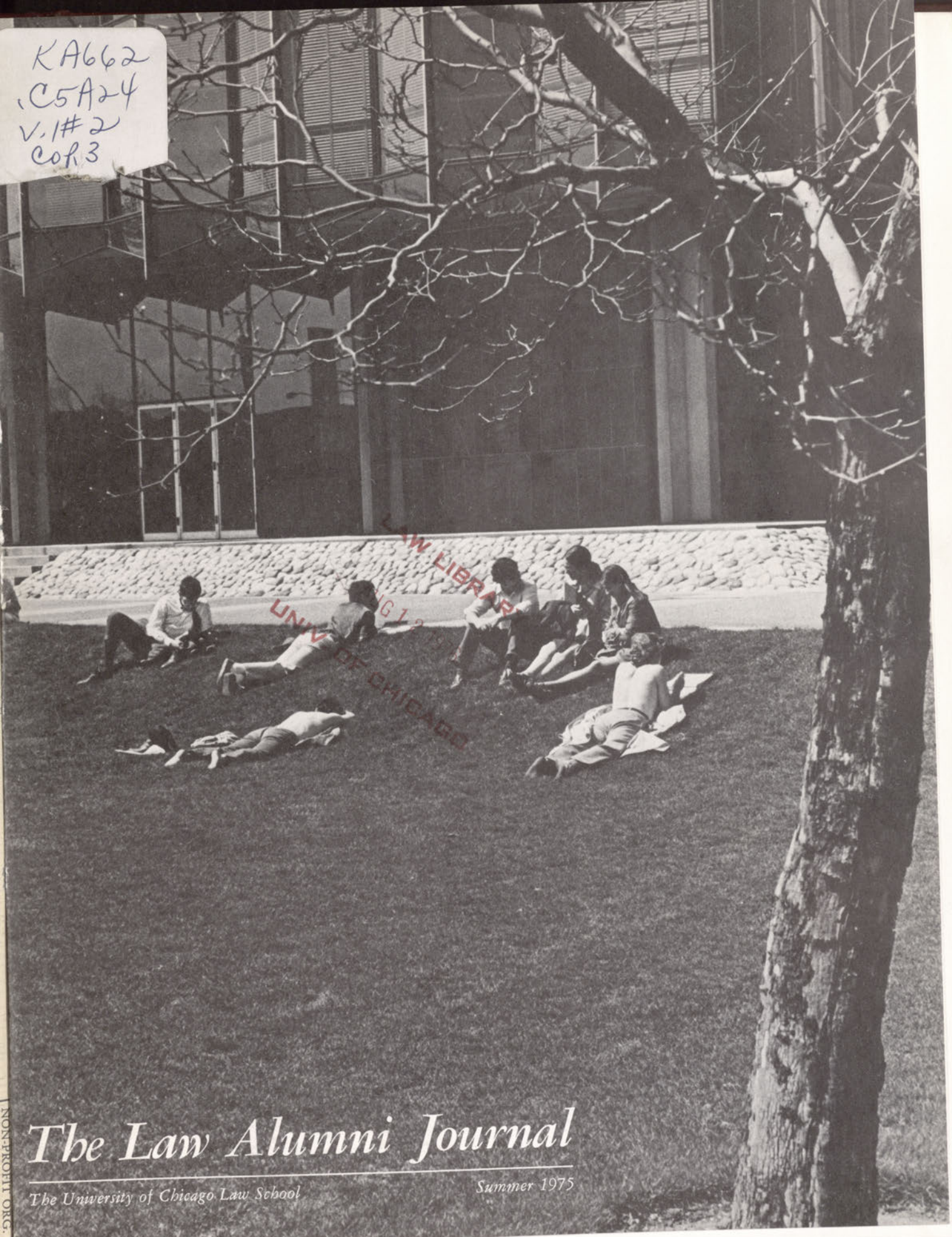

The Law Alumni Journal

The University of Chicago Law School

Summer 1975

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Contents

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Frank L. Ellsworth, Editor; Eula Gibbs, Assistant Editor. Manuscripts of articles and reviews, copies of books for review, and letters for publication should be submitted for consideration by the Editorial Board, care of the Editor, 1111 East 60th Street, Chicago, Illinois 60637. All other materials and correspondence should be sent to the Editor.

This issue is dedicated to Harry Kalven, Jr., JD '38, the late Harry A. Bigelow Professor of Law at The University of Chicago, who was loved as much by the thousands of alumni he once taught as by the faculty and students he was with last year. We join in the tributes to Mr. Kalven recently published in The University of Chicago Law School Record.

— The Editorial Board

The Popular Myth of the Victimless Crime

Dallin H. Oaks

My topic is decriminalization—the increasingly successful efforts to obtain the repeal of criminal laws on many forms of behavior that traditionally have been treated as crimes. Current proposals would decriminalize all forms of sexual behavior involving consenting adults, including adultery, fornication, prostitution, homosexuality, and other forms of deviate sexual behavior. The more extreme proposals would even decriminalize commercialized sex, such as procuring for prostitution. Most decriminalization proposals would repeal criminal penalties on the possession of marijuana, LSD, and comparable drugs. Some would repeal the laws against possession of heroin, and a few would even decriminalize the sale of hard drugs. Other crimes usually included in decriminalization proposals are pornography, abortion, gambling, public drunkenness, and vagrancy.[1]

We should not underestimate the importance of these proposals. The publicity and political power gathering behind various decriminalization proposals is impressive indeed. The long list of organizations currently involved includes the President's Crime Commission, the National Council on Crime and Delinquency, the American Assembly, and even the American Bar Association.

Criminal law revisions already adopted or under favorable consideration leave no doubt that we are witnessing revolutionary changes in the function and content of criminal law. The effects are likely to be as far-reaching as the eighteenth-century reform movement that made the punishment fit the crime (thus abolishing capital punishment for several hundred minor crimes) and the nineteenth-century reforms that made the punishment fit the offender (thus introducing probation and indeterminate sentences). The decriminalization movement could appreciably change the business of the courts and the functions of the police. It could also bring about significant changes in our standards of morality.

I will identify the principal arguments for and against decriminalization, emphasize an important but neglected consideration, discuss the relationship between law and morality, and, finally, offer my recommendations on several of the specific proposals for decriminalization. But first, I offer the vital disclaimer. In this lecture I speak only for myself; my evaluations and recommendations should not be taken as the position of Brigham Young University or its sponsoring church.[2]

One of the principal arguments in favor of decriminalization is that the inevitable effect of criminal penalties on many of these acts is to increase other crimes. Proponents suggest three ways this in- particular goods or services, we drive out legal compecrease occurs. First, when we pass a law criminalizing tition and leave the business to criminals. This underground trade will encourage organized crime, which will charge high prices as compensation for the risk of illegal behavior and then use its high profits to promote other criminal activities, just as the bootlegger's profits from prohibition days provided the capital for later investments in gambling, prostitution, and the drug traffic. Second, the high prices that patrons, such as drug addicts, must pay to the criminal proprietors will force these patrons to commit other crimes like robbery or theft to support their addiction. Third, criminal penalties on certain conduct will drive its participants to associate with other criminals, thus

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Mr. Oaks, JD '57, is President of Brigham Young University. *This paper appeared in the* Commissioner's Lecture Series, *Brigham University Press, 1974 and is reprinted with permission.*

strengthening a subversive criminal subculture.[3]

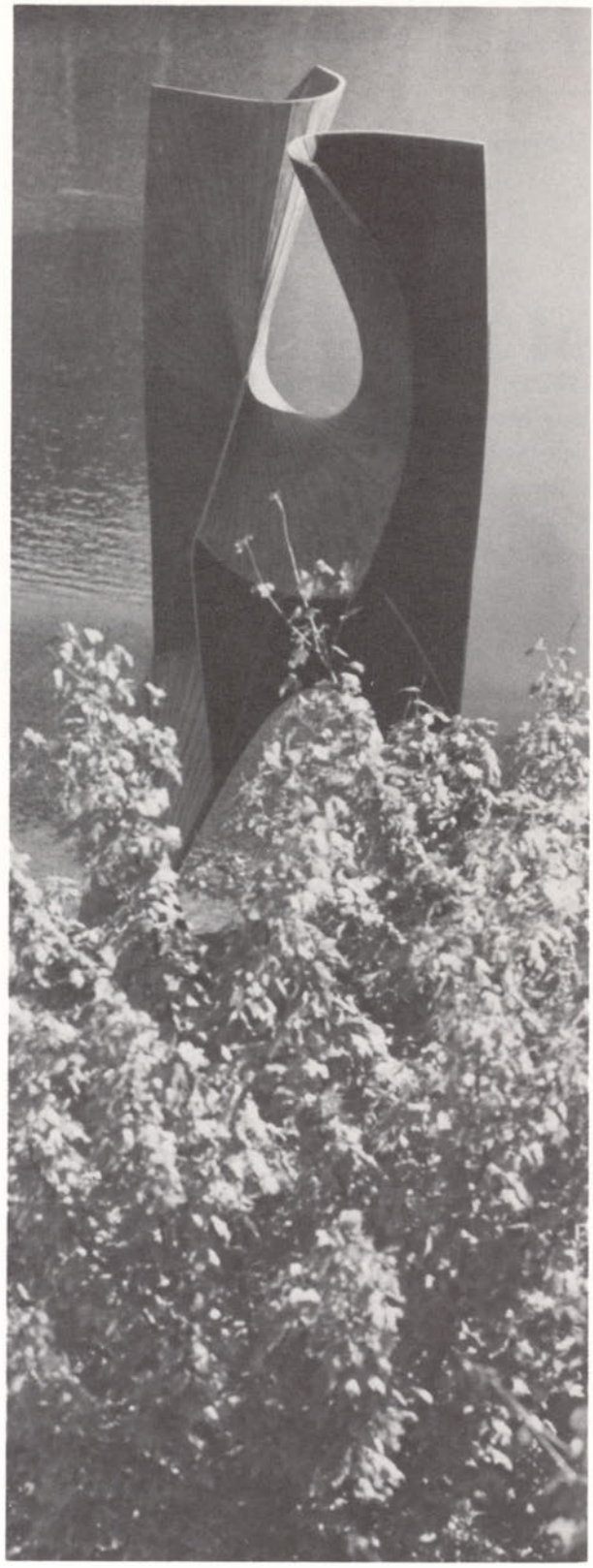
Such arguments have considerable force in support of proposals to decriminalize offenses of a commercial nature like the drug traffic, gambling, and prostitution. They have little persuasive force for proposals to decriminalize crimes like public drunkenness, vagrancy, and most sex crimes.

A second argument relies on the obvious overloading of our police resources and the overcrowding of our courts and prisons. The crimes proposed for decriminalization are said to be less important to the public than many of the so-called serious crimes that we already lack sufficient resources to enforce properly. Decriminalization would therefore permit improved enforcement of criminal laws of greatest concern to the public.[4]

As with the first argument, this point has considerable force as to some decriminalization proposals and little or none as to others. For example, the amount of law enforcement resources currently committed to the enforcement of laws pertaining to drug offenses and public drunkenness is considerable. In contrast, the resources involved in enforcing laws against adultery or other private sexual offenses are negligible. A New York judge recently observed that so far as he was aware there had never been a criminal prosecution for adultery in New York State, although, as he observed dryly, "the opportunity has surely been presented."[5]

This argument for reallocating law enforcement resources has some vital flaws even as to those crimes that currently involve significant resources. Would the resources really shift, and would the increased efforts be effective if they did? Moreover, can we be so sure, as this argument glibly assumes, that it is the will of the people or in the best interest of society to close out our enforcement efforts on one crime in favor of some increase in effort on another? For example, on what objective criteria or system of values do we conclude that we should abandon enforcement of drug laws or drunkenness in order to shift public resources and increase the enforcement of laws against robbery or theft?

In terms of its prominence in popular discussion, the third argument in favor of decriminalization seems to be the most persuasive. Unlike the first two arguments, which apply only to some of the proposed



crimes, this third argument unites the whole group of crimes under one theory and one label. The label is "victimless crime." The theory is that, if a person's conduct will not injure anyone other than himself—in other words, if the crime is "victimless"—it shouldn't be a crime. The intellectual scripture for this position is John Stuart Mill's classic essay *On Liberty,* which argues that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."[6] A modern characterization of Mill's argument is the following:

[M]an has an inalienable right to go to hell in his own fashion, provided he does not directly injure the person or property of another on the way.[7]

Along with the label "victimless crime," this argument has an apparently irresistible drawing power. More and more persons seem to be catching hold of the argument and label and climbing aboard the decriminalization bandwagon.

My objection to the victimless crime argument is twofold. First, I will discuss my contention that Mill's principle is misapplied in many of the proposals for decriminalization because these acts do involve harms and victims. Second, I will contend that Mill's argument is unsound in any case because the criminal law has an important function in addition to the protection of an identifiable victim.

I will discuss my first contention under the somewhat overstated subtitle "There is no such thing as a victimless crime." Some so-called victimless crimes have readily identifiable personal victims other than the criminal himself. Take the drug traffic, for example. The press has recently carried accounts of newborn babies suffering drug withdrawal symptoms because of their mothers' addiction during pregnancy. Another press account described addict mothers nursing infants who became addicted and wailed endlessly if the mothers were long deprived of their drug.[8] Not long ago a University of Utah Medical Center scientist announced the discovery of "a significant amount of chromosome breakage in most users" of marijuana, even among those who only smoked the drug less than once a week. Users had three times the rate of chromosome breakage as nonusers, a fact that could later be related to birth defects and even to cancer in their future offspring.[9] Other directly identifiable victims of so-called victimless crimes are the innocent children whose family life is destroyed by the sexual irregularities of a parent or whose parents are pauperized by gambling or twisted by alcohol or drugs.

In other instances it is not possible to identify persons who are the direct victims of a particular crime. In some so-called victimless crimes, all society is the victim. In a close-knit, predominantly urban society such as ours, and in a country that is presently committed to an extensive program of welfare assistance for disadvantaged persons of many types, our lives are so interwoven that one person cannot rationally contend that what he does to or with himself is of no concern to anyone but himself. Each person steers his ship of life through a very narrow passage. The wreckage of one person in that passage becomes a serious navigational hazard for many others. Thus, in John Stuart Mill's time it may have been possible to make a rational argument that society had no interest in restraining an individual who chose to destroy himself, such as by alcohol or drugs. But whatever the merit of that argument in nineteenth-century England, which had a relatively limited system of employing tax revenues to care for the sick and disabled, it is without persuasive force today.

Whether we like it or not, we live in a welfare state, where one or another agency of government is the ultimate provider for the aged, sick, disabled, and unemployed. If men or women wreck their health or destroy their capacity to labor, they and their natural dependents are almost certain to become a burden to some tax-supported agency of the local or national government. Taxpayers—all society—are the victims. The cost of rehabilitating a narcotic addict runs from $1,300 to $3,000 per year.[10] If a hunter shoots a hole in a $200 road sign, he can be arrested and put in jail. Vandalism is not a victimless crime. But if he shoots himself in the arm with heroin and becomes

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The Editorial Board reminds alumni that contributions to the Journal*—including letters containing substantive commentary—are encouraged and will be considered seriously for publication.*

addicted, it may cost the state as much as $3,000 to rehabilitate him or more thousands to hospitalize him and care for his family. Yet some persons argue that a narcotics offense involving a consenting adult is a victimless crime.

Some would argue that the appropriate response is to withdraw welfare assistance from those who have deliberately destroyed their capacity to labor. But even if it were practical to enforce that rule against the guilty parties, which I doubt, our society would not penalize their families. Whether on moral or on practical grounds, our current charitable impulses and our welfare programs should be taken as an established fact for purposes of this argument. The potential financial burden gives society a keen interest in personally destructive behavior that once may have appeared of concern to no one but the person himself. A society that is committed to support has a basis to control.

Although the evidence is admittedly less well focused, I contend that we can also identify some personal and societal victims of crimes like pornography and sex-related offenses.

Hard empirical evidence that pornography is damaging to society is scarce or nonexistent. But common sense is sufficient evidence for some. I believe it would be acknowledged as common experience that the pictures and literature of the gutter produce the thoughts of the gutter and that the thought is parent to the act. Those who would reject this reasoning should consider the premise they are rejecting. Society and our school systems foster ennobling literature and educational material on the assumption that this material will affect behavior for good. If wholesome literature has a wholesome effect, how can the proponents of pornography be so sure that what is ugly and vicious will not encourage ugly and vicious behavior?

The most readily measurable social cost of irregular sexual behavior is the tax burden imposed on our society by illegitimacy. The annual number of illegitimate births in the United States is more than 300,000, with over half being born to women under twenty years of age.[11] Without the emotional and financial support of a normal family relationship, most of these illegitimate children are handicapped in their emotional development and need to be supported by tax revenues.

Recently the American Bar Association passed a resolution urging the states to "repeal all laws which classified as criminal conduct any form of non-commercial sexual conduct between consenting adults in private. . . ."[12] This would wipe out laws against adultery, fornication, homosexuality, and other irregular sexual behavior. Such laws are frequently used as prototype illustrations of "victimless crimes." In contrast, I contend that society is the victim of these crimes because they pose a threat to the integrity of the family structure, which is the basic supportive institution in our society.

There is no social institution in which society has greater interest than the family. The survival of our society depends upon our having a predominance of citizens whose social interactions are secured by the adhesive of common moral values. The family is the indispensable agency for educating or socializing children in the values of the society.[13] The basic attitudes, characteristics, and values that guide us throughout our entire lives are acquired in our family surroundings at a very early age. There is no substitute for the family. "[T]he organized community has not developed methods of discipline and training which are equal in efficiency to those of the adequate home."[14] Thus, a prestigious federal commission suggesting goals for criminal reduction and prevention recommended the "highest attention" to preventing juvenile delinquency. The report observed that "society has long depended on the authority of the family as a major instrument of social control and thus of crime prevention."[15] There is also abundant evidence on the vital importance of the family as the most effective institution to provide the basic emotional nutriment and support necessary if infants are to become adequately functioning human beings.[16] Adequate performance of this function may be more important in today's impersonal mass society than ever before.[17]

Though I know of no empirical evidence on the proposition, I believe that decriminalization of conduct involving sexual relations outside the bonds of marriage would weaken the ideal and practice of family life in this country. Sexual behavior is more than procreative. It is a great force that solidifies the relationship of the father and mother in a family.[18] Or it may tear the relationship asunder. Any sexual

behavior outside the bonds of marriage can be a threat to family life in our society because our moral standards forbid it and because our laws make it a basis for divorce. If such behavior does not weaken or destroy family organization and functioning, it at least carries an unacceptable risk of such results. Adultery and fornication, if they do not produce illegitimate and unwanted children, may at least disrupt the tranquility of homes that should be devoted to raising well-balanced, stable children. The importance that society must attach to the stability of the family structure and the effectiveness of its function gives society a sufficient interest in the sexual behavior of persons who may affect families.

When a family is weakened, the children are affected and all society is the victim. As Commissioner Neal A. Maxwell has cautioned, "The unloved individual can be as dangerous as untreated sewage, and the sewage of sin is so devastating downstream in life" that it deserves as much time in the priorities of our planning as the other environmental concerns that are so often urged upon us in these times. "The consequences of unchastity may be less visible than those of drugs, but can be just as destructive. Both may be rooted in loneliness, or thrill seeking, and both produce tragic human debris with which we must deal."[19] In this manner the consequences of sexual relations outside the bonds of marriage extend beyond the participants to the detriment of members of their families, born and unborn, and to the public at large.

One of the most striking illustrations of the inappropriateness of the label "victimless crimes" in many of these situations I have been discussing is the fact that even John Stuart Mill, the patron saint of the decriminalization movement, recognized a legitimate social interest in criminal penalties on individual conduct that imposed " a definite damage, or a definite risk of damage, either to an individual or to the public. . . ."[20] Thus, Mill's celebrated essay *On Liberty* concedes that a person could be punished for idleness where the person was receiving support from the public.[21] A person could be punished for drunkenness where past experience had shown that drunkenness made him dangerous to those around him.[22] Although Mill advocated doing away with criminal punishment of persons indulging in gambling and fornication, he conceded that it might be appropriate to have criminal penalties on those who kept gambling houses or procured for prostitution because of the general social interest in discouraging such conduct.[23]

Mill also argued that the general social interest in an educated citizenry justified the state in forcing everyone to be educated up to a minimum standard. He said that parents who brought children into existence without providing instruction and training for their minds were guilty of "a moral crime, both against the unfortunate offspring, and against society. . . ."[24] Mill even carried this theory to the extent of arguing that, in a country either over-peopled, or threatened with being so," parents who produced more than a small number of children had committed a serious wrong against all laboring people whose wages would be reduced by the excessive competition produced by overpopulation, as well as against all other persons affected by the "wretchedness and depravity" of the offspring.[25] In this respect John Stuart Mill was obviously more willing than most of us to see social injury in individual conduct and even to affix criminal penalties to that conduct. It is therefore ironic that his essay *On Liberty* is so often cited in support of decriminalization of crimes in which there is no identifiable personal victim but for which there is demonstrable "damage or a definite risk of damage . . . to the public."[26]

By now you may be concluding that the whole concept of "victimless crimes" is artificial and unhelpful. I agree. The late Professor Herbert Packer, one of the principal proponents of decriminalization, conceded that Mill's formula "solves very little" because "it is usually possible to make a more or less plausible argument that any given form of conduct" involves some damage or risk of damage to the interests of others.[27] By conceding that the absence of an identifiable victim should not preclude criminal liability, Packer rejected Mill's test of "harm to others" as a criterion for criminal liability, but he contended that the victimless characterization should still serve as a limitation on the imposition of criminal sanctions in two ways. First, Packer contended that the absence of an identifiable victim should force an inquiry into the advantages and disadvantages of trying to suppress particular conduct by the criminal law. I agree with the appropriateness of that inquiry and will undertake it myself before I conclude. However, I cannot

agree with Packer's other point—that the "victimless crime" characterization should help us assure "that a given form of conduct is not being subjected to the criminal sanction purely or even primarily because it is thought to be immoral."[28] To the contrary, the entire process of identifying the victims of crime is heavily dependent upon our basic assumptions about morality.[29] For example, our opinion on whether abortion is a victimless crime is a function of whether we recognize any protectable interest in the embryo or fetus, and this decision is itself dictated by moral assumptions about the nature and origin of life.

Thus far I have decribed and evaluated various arguments in favor of decriminalization, assigning significance to some arguments but concluding with an attempt to discredit the rhetoric of the so-called victimless crime. I now proceed to my second main topic, an argument against decriminalization, in which I contend, contrary to John Stuart Mill and Herbert Packer, that the criminal law has an important function other than the protection of an identifiable victim. That function is to reinforce certain moral values or standards. Speaking in headlines, I assert that there are times when the law can and does and should legislate morality.

I begin by highlighting the important standard-setting and teaching function of the criminal law. The point needs emphasis because it is often omitted by

persons whose "victimless crimes" orientation causes them to focus exclusively on the question of measurable harm to identifiable victims. The criminal law also exists for the protection of society at large. The standard-setting function of law can also be over looked by those who are preoccupied with whether a particular law can be effectively enforced. Enforcement is an important consideration but not a dispositive one. Because of its teaching and standard-setting role, the law may serve society's interest by authoritatively condemning what it cannot begin to control directly by criminal penalties. This standard-setting function of law is of ever-increasing importance to society in a time when the moral teachings and social controls of our nation's families, schools, and churches seem to be progressively less effective.

It is easy to give examples of the enormous educative influence of the law. Law focuses our attention on a particular problem, enacts a solution, and sometimes even provides and persuades us with reasons for the solution. By these means, laws sometimes resolve and put a mark of official finality on bitterly contested social issues. This has been the case with entitlement to social security, the legality of labor unions and the right to strike, the progressive income tax, and the right to be free from racial discrimination in government, common carriers, and places of public accommodation.

This last example is recent and persuasive. You will recall the prolonged debate over the Civil Rights Act of 1964, especially the section forbidding racial discrimination in public accommodations. The issue was whether a proprietor on an interstate highway should be compelled to provide service to blacks or any other group with whom he preferred not to deal. The country was bitterly divided over that issue, and only Senator Everett Dirksen's last-minute change of mind (an important decision by an influential conservative Republican) obtained passage of the Civil Rights Act by a very narrow margin. Today, just ten years later, the controversy seems as if it had come from another century. With the passage of the Civil Rights Act we not only changed our law, but we also changed our minds. Today the proposition adopted in that legislation is well accepted from coast to coast and from north to south.

The *repeal* of laws can also have an educative effect. If certain activities are classified as crimes, this

is understood as a public declaration that the conduct is immoral, bad, unwise, and unacceptable for society and the individual. Consequently, if an elected legislative body removes criminal penalties, many citizens will understand this repeal as an official judgment that the decriminalized behavior is not harmful to the individual or to society. Indeed, some may even understand decriminalization as a mark of public approval of the conduct in question. In these reactions lies a great danger for some decriminalization proposals.

The law is an effective teacher, and it can teach for good or for ill. Laws can affect the attitudes of our citizens about what is right and wrong, fair and unfair, proper or improper, advisable or inadvisable. The criminal law is a moral force, and that force is exerted without regard to whether or not there is an identifiable victim and, to a certain extent, without regard to whether or not the particular law is enforced. As Dr. Richard J. Neuhaus recently reminded us:

Through laws a community tries to reinforce what it considers right and good, and to restrain or suppress what it considers wrong and bad. . . . Law-making never has been and never can be value-free, objective, computerized. . . .

The debate, then, about what ought and what ought not to be a crime is a debate about morality. Legal discourse—at least reflective legal discourse—is moral discourse.[30]

Neuhaus' comment explains why it is shortsighted and simplistic to say that we cannot legislate morality. As Yale Law School Dean Eugene Rostow declared, "We legislate hardly anything else."[31]

But whose morality or values is the law to teach? Here we meet an old controversy over the relationship between the criminal law and the principles of morality or right and wrong. A hundred years ago Sir James Fitzjames Stephen confronted John Stuart Mill on this issue.[32] In our own day the most prominent protagonists are Sir Patrick Devlin and Professor H. L. A. Hart.[33]

My support belongs to Lord Devlin, who argued that society has the right to "legislate against immorality" because without a "common morality," which he defined as the moral judgment of the "reasonable man," society would disintegrate.[34] Devlin's adversary, Professor Hart, who classified himself with "John Stuart Mill and other latter-day liberals," rejected this as "an unjustifiable extension of the scope of the criminal law."[35] By this view, the only "common morality" the law could enforce would be principles "essential to the existence" of a society of human beings, like rules against violence or other harm to an identifiable victim.[36]

In common with Lord Devlin, I contend for the desirability of legislating on a broader moral front. I would not, however, agree to Lord Devlin's assertion that "the law must base itself on Christian morals and to the limit of its ability enforce them."[37] In past centuries most criminal laws were almost direct codifications of religious principles. Historic abuses such as the Salem witch trials and official penalties for religious heresy have forced the direct religious source of law to yield to our constitutional separation between church and state. Today no thoughtful American would advocate using the criminal law to enforce that portion of the religious-moral law pertaining to religious belief or practice. But religious principles of right and wrong or good and evil in matters of individual behavior continue to wield an important moral influence on the content of the criminal law through their effect on the opinions and action of individual citizens in the lawmaking process.

In his illuminating John Randolph Tucker Lecture at Washington and Lee University, Professor Edward

H. Levi improves Lord Devlin's position and makes it acceptable to American secularism. Here is how he describes it:

In matters of morality, the law-maker's function, as Lord Devlin saw it, was to enforce those ideas about right and wrong which are already accepted by the society for which he was legislating and which were necessary to preserve its integrity. . . . In so doing they were reflecting and changing the collective morality which was the substitute in a democratic society for any other authority outside of the law.[38]

Whether finding its origin in religious belief, ethical system, or rational process, this "collective morality" is a legitimate source of criminal law in our society. By this means our criminal laws teach and compel the observance of standards of behavior not demonstrably related to harm to others or the survival of society but nevertheless important to our individual or collective well-being. Our laws forbidding obscenity, indecent exposure, or lewdness are of this type, protecting our traditional moral sensibilities rather than our physical welfare. Other examples could be cited.[39]

Most of our laws—particularly our criminal laws—are, in fact, an expression of what our lawmakers deem good for society. Their reasons are usually unstated or inarticulate, but that is inherent in the complexity of the task. Lawmakers who pass zoning and land-use laws on the basis of their perceptions of aesthetics can just as validly pass criminal laws on the basis of their judgments of morality.[40] Any democratic lawmaking proceeds from a composite of factual findings based on empirical evidence or assumptions, combined with moral values attributable to religious belief or other ethical systems. It is therefore inevitable that the law will codify and teach moral values, including moral values not shared by some portion of the society—usually a minority. I find that circumstance both understandable and desirable because it maintains an essential relationship between the moral values of citizens and the requirements and teachings of law in a democratic society.

This formulation of the relationship between moral values and the criminal law obviously contemplates that the law can change to accommodate what Chief Justice Warren called "the evolving standard of decency that marks the progress of a maturing society."[41] Thus, in constitutional interpretation our Eighth Amendment limitation on "cruel and unusual punishment" is not forever bound to a 1793 interpretation that would apparently have permitted criminals to be punished by "cropping ears and branding."[42]

But the law must not depart too far from the collective morality, either to lead or to lag, or it will lose its force as a prescriber of behavior and its persuasiveness as a teacher and setter of standards. Here is the true significance of the slogan "You can't legislate morality." The law will be ineffective if it attempts to *criminalize* conduct that is not condemned by collective morality. Thus, as Professor Levi notes in his lecture, "the test of the community's intolerance, indignation and disgust . . . is a continuing one which has to be met if the law is to be maintained."[34] That is the lesson of the unsuccessful attempt at prohibition of alcoholic beverages.

Similarly, I contend that the law will be discredited if it attempts to *decriminalize* conduct condemned under collective morality. A Missouri judge recently applied that principle in explaining why he supported the proposed Missouri Criminal Code in retaining criminal penalties on gambling, marijuana, prostitution, obscenity, and deviate sexual relations. For example, here is what he said about homosexuality:

Rightly or wrongly, most Missourians today regard homosexuality as immoral; if the law fails to support that notion, disrespect for law and a general loosening of the bonds of society must follow. . . .

{A} majority of the people in Missouri still regard homosexuality as disgusting, degrading, degenerate, and a threat to society. Whether this is rational or not, so long as the feeling persists the majority will insist that its condemnation be reflected in a positive manner in the criminal code even if it is unenforceable.[44]

The popularity of current efforts to restore the death penalty identifies this as another area where the lawmakers (in this case the United States Supreme Court) may have led out too far in advance of the collective morality.

Differences of opinion over the appropriate relationship between law and morality are also involved in the resolution of important legal issues other than decriminalization. For example, the principal thrust

of Professor Levi's lecture was to explain how the United States Supreme Court had used ideas of "community standards" or "attitudes" as a basis of constitutional decisions adjudicating obscenity cases and upsetting criminal laws on abortion and capital punishment. Siding with Justice Lewis Powell's contention that "the assessment of popular opinion is essentially a legislative, not a judicial, function,"[45] Levi criticizes the Supreme Court—properly, in my view—for judicial decisions and techniques that have impaired the process by which collective morality is created and used, thus widening the gap between the people and the law.[46] By this view, the law-and-morality issue is a key consideration in the current debate over judicial activism. But that is a matter for another time.

For present purposes, the principal implication of this description of the relationship between collective morality and law is that no one need make apology for attempting to implement commonly accepted positions on moral behavior by giving them the force of law. The majority should surely exercise restraint, and the Bill of Rights will occasionally compel restraint, but society can properly promote collective morality by legislation. The law is a schoolmaster as well as a policeman, and its curriculum includes morality.

I will conclude by applying the principles I have discussed above to an evaluation of proposals for decriminalization of three categories of criminal conduct: sexual crimes, drug offenses, and public drunkenness and vagrancy.

First, I believe in retaining criminal penalties on sex crimes such as adultery, fornication, prostitution, homosexuality, and other forms of deviate sexual behavior. I concede the abuses and risks of invasion of privacy that are involved in the enforcement of such crimes[47] and therefore concede the need for extraordinary supervison of the enforcement process. I am even willing to accept a strategy of extremely restrained enforcement of private, noncommercial sexual offenses. I favor retaining these criminal penalties primarily because of the standard-setting and teaching function of these laws on sexual morality and their support of society's exceptional interest in the integrity of the family. The decision on decriminalization of these crimes depends on one's attitude toward legislation in support of moral principles. The other arguments have relatively less persuasive force.

In the case of drug offenses, it will come as no surprise that I believe in retaining criminal penalties on the possession and sale of currently illegal drugs. I reach this decision despite the undoubted force of the first two arguments for decriminalization. We are undoubtedly committing significant law enforcement resources in this area—resources that could be used elsewhere. I am also persuaded that our current criminal penalties on drugs, as presently enforced, probably have the effect of increasing the overall level of crime. Yet I am unwilling to adopt the conclusion of those who urge these arguments. According to one capable scholar, "decriminalizing heroin should drastically reduce the rate of serious crime since narcotics could then be provided to addicts at very low prices and they would not need to be committing crimes in order to support their habit."[48] Proponents further claim that this would remove the profit from the drug traffic and thus weaken the powers of organized crime. Though all of us would desire that result and hope it would occur as predicted, we should also look carefully at the price we would pay for the promised result.

I urge retention of criminal penalties on drug offenses because of the measurable harm drug use inflicts on identifiable victims and on society as a whole and also because criminal penalties are necessary if the law is to perform its function of teaching against and discouraging the use of drugs. Heroin and other hard drugs stand convicted of so much human misery and such staggering social costs[49] that there can be no doubt of the propriety of extensive government efforts to discourage their use. The retention of criminal penalties is part of those efforts. What would happen if the distribution of heroin and other hard drugs were decriminalized, making drugs readily available for all who wished to indulge? Experience suggests the high risk of an epidemic increase in the level of narcotics addiction. A Swedish psychiatrist who made an extensive study of the problem of drug addiction concluded that "the one factor that correlates most highly with the epidemic spread of addiction is availability of the drug in question."[50] According to this scientist, the only persons who advocate heroin maintenance are those "who don't know anything about addiction. . . ."[51]

Evidence on the effects of marijuana is far less compelling than that on heroin, at least partly because the history of experience is shorter. Yet there is accumulating evidence of disabling physical and mental deterioration from use of this drug.[52] I find it significant that the proponents of decriminalization of marijuana have chosen to associate their case with the record on alcohol. Thus, a Stanford law professor recently made this argument:

When one adds together the physical, psychological, and social dangers of the drug . . . it is impossible for any reasonable person to conclude that marijuana is more dangerous than alcohol. . . . A very powerful argument can be made for licensing the sale of marijuana as we do the sale of alcohol.[53]

This is the same kind of reasoning employed by a personal finance company whose Chicago billboards used to invite people to come in and borrow enough money to get completely out of debt. Both arguments ignore the added costs of the remedy they advocate.

A former cabinet-level official in the Department of Health, Education, and Welfare has labeled alcoholism the most serious public health problem in the country. There are 9 million alcoholics or serious problem drinkers in the United States. Their life expectancies are shortened ten to fifteen years. Each year more than 85,000 people die of alcohol-related problems. The excessive use of alcohol has been linked to at least half of our 56,000 annual motor vehicle fatalities. The annual economic loss from alcohol-related problems, including medical costs, welfare services, and lost productivity, has been estimated at from $10 to $15 billion annually.[54]

These costs support the logic of imposing criminal penalties on the sale of alcohol. That proposal is persuasive but impractical. Our experience with prohibition shows the futility of using the criminal law against alcohol. The middle-class citizens who defied prohibition demonstrated that this law had exceeded and could not alter our collective morality.

The supposed widespread use of marijuana has been cited as a reason for decriminalizing this drug as well. But so far the collective morality seems to stand against marijuana. The National Commission on Marijuana and Drug Abuse found that 64 percent of the adult public agreed that "using marijuana is morally offensive," compared with only 40 percent for alcohol. It is also significant that 71 percent of the adults and 80 percent of the youth had never used marijuana;[55] the figures on the proportion of the population using alcohol are much higher.[56]

Logic would dictate similar treatment of alcohol and marijuana, either to criminalize both or to decriminalize both. But, as Justice Holmes observed, the life of the law has not been logic but experience, and in this case the teachings of experience oppose the criminalization of alcohol, and the dictates of collective morality oppose the decriminalization of marijuana. In that circumstance we should stay with the status quo.

There are other reasons for not decriminalizing drugs. If we increased the availability of drugs, we would be supporting addicts in their efforts to encourage others to join them in their addiction. Decriminalization of the drug traffic would only remove the drug problem from the public view. As with alcoholism, the problem would continue and grow. We would have to learn how to live with the abuse of drugs in the same calloused fashion that we have been taught to live with the staggering expense and shocking social cost of alcoholism.

Despite my opposition to decriminalization of drug offenses, I am persuaded that current criminal penalties for possession of marijuana, and even our penalties for the sale or distribution of small quantities of this drug, are too severe. For example, in New York a person who provides an adult with one marijuana cigarette can be imprisoned for up to twenty-five years; if the cigarette goes to a minor, the offense carries the same penalty as first-degree manslaughter and first-degree rape.[57] Experience teaches that, when the severity of penalties outruns our public appraisal of the seriousness of the offense, juries will refuse to convict, prosecutors will refuse to charge, and police and witnesses will neglect to enforce. I see that happening with the administration of the criminal laws against marijuana.[58] I believe we would lose little in the law's teaching effort against marijuana and perhaps gain considerable effectiveness in enforcement if we substantially reduced the severest penalties on possession and distribution of small quantities, at the same time continuing existing penalties and vigorous

enforcement efforts on the sale or possession of wholesale quantities.

Although opposing decriminalization of sex and drug offenses, I favor decriminalization of the laws against public drunkenness, vagrancy, and similar crimes. I am brought to this conclusion for two reasons. First, the standard-setting function of law has little or no force in respect to public drunkenness and vagrancy. The criminal penalty has already shown itself ineffective against alcohol, and it will be even less effective against the skid-row derelict who is arrested for public drunkenness or vagrancy than it was against the middle-class citizen during prohibition. Second, the enforcement of criminal laws on drunkenness and vagrancy requires significant law enforcement, judicial, and penal resources that could be more usefully employed in the enforcement of crimes in which society has a greater interest. Thus, studies show that drunkenness and vagrancy offenses account for about two million arrests annually, about 40 percent of the total arrests for all crimes in this country.[59] Most of these arrests involve skid-row men who are arrested, jailed, convicted, released, and rearrested in a meaningless revolving door that accomplishes nothing except to impose a burden on police, courts, and jails and inflict a temporary inconvenience or convenience (bed and board and a brief period of forced sobriety) on the arrested person. The criminal process does have the effect of "cleaning the streets" of derelicts. This is a legitimate social interest, but one that ought to be pursued by some civil remedy that is subject neither to the abuses involved in the vague criminal statutes that seek to punish drunks and vagabonds nor to the expenses entailed in arrest, booking, jail, and court appearance to achieve the simple expedient of transporting a person out of a situation where he is a threat to himself or others.

The current movement for decriminalization involves vital matters of social policy and requires our most careful attention. We should examine the proposals crime by crime since the principal arguments apply to some crimes but not to others. The popular label of the "victimless crime" is misleading, if not meaningless; so is the popular slogan "You can't legislate morality." Preservation of the public health, safety, *and morals* is a traditional concern of legislation. This does not justify laws in furtherance of the special morality of a particular group, but it does justify legislation in support of standards of right and wrong of sufficient general acceptance that they can qualify as "collective morality." In the exercise of its important but underestimated standard-setting function, the law should teach observance of that collective morality, thus preserving the essential relationship between the moral values of citizens and the requirements and teachings of law in a democratic society.

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[1]E.g., Morris & Hawkins, *The Honest Politicians' Guide to Crime Control* (1970); Schur, *Crimes Without Victims* (1965); Olivieri & Finkelstein, 18 *N.Y.L. Forum* 77 (1972); Borucho-witz, "Victimless Crimes: A Proposal to Free the Courts," *Judicature* 69 (Aug./Sept. 1973).

[2]I am indebted to Edward L. Kimball, professor of law, and Darwin L. Thomas, associate professor of CDFR and sociology and director of the Family Research Center, for valuable suggestions and to Mark Zobrist for research assistance. Eric Andersen, Scott Jenkins, Bryce McEuen, and Nicholai Sorensen provided research assistance for an earlier draft.

[3]Morris & Hawkins, note 1 *supra* at 5.

[4]*Id.* at 6.

[5]Wachtler, "The High Cost of Victimless Crimes," 28 *Record of the Ass'n of the Bar of the City of New York* 357, 360 (1973).

[6]Mill, *On Liberty* 23 (7th ed. 1871).

[7]Morris & Hawkins, note 1 *supra* at 2.

[8]Markham, "What's All This Talk of Heroin Maintenance." *N. Y. Times Magazine* 6 (July 2, 1972).

[9]*University of Utah Medical Center Report* 3 (Sept. 1973).

[10]Bureau of Narcotics and Dangerous Drugs, "Fact Sheet" 13 (Washington, D.C., 1970).

[11]Dept. of Health, Education & Welfare, Public Health Service, "Natality," 1 *Vital Statistics of U.S.* 1-22 (1968).

[12]59 *American Bar Ass'n Journal* 1131 (October 1973).

[13]Murdock, *Social Structures* 10-11 (1949).

[14] Sutherland & Cressey, *Principles of Criminology* 178 (6th ed. 1960).

[15]National Advisory Commission on Criminal Justice Standards and Goals, *A National Strategy to Reduce Crime* 25, 33-34 (1973). The Commission lamented the "declines in traditional family stability" (p. 25) foretold in rising rates of illegitimate births and divorces, but, surprisingly, its recommendations for action to combat crime included no proposals for strengthening the family. It is apparently easier and more acceptable to propose structural changes in the criminal justice system.

[16]Evidence is reported in Monroe, *Schools of Psychoanalytic Thought* 185-86 (1955); Walters & Stinnett, "Parent-Child Relationships: A Decade Review," *A Decade of Family Research and Action* 99, 100-101 (Broderick, ed. 1971); Reiss, "The University of the Family: A Conceptual Analysis," 27 *Journal of Marriage and the Family* 443 (1965).

[17]Nimkoff, *Comparative Family Systems* 361 (1965).

[18]Murdock, note 13 *supra* at 4-5.

[19]Maxwell, *A Time to Choose* 14 (1972).

[20]Mill, *On Liberty* 158 (7th ed. 1871).

[21]*Id.* at 189.

[22]*Id.*

[23]*Id.* at 191.

[24]*Id.* at 204.

[25]*Id.* at 209-10.

[26]*Id.* at 23. In light of Mill's reputation as an advocate of liberty it is also ironic that he applied his principle of liberty only to members of "a civilized community" (p. 23). In his view even despotism was "a legitimate mode of government in dealing with barbarians, provided the end be their improvement," because in that instance the end justified the means (p. 24). We still have aristocrats who will cut the corners of liberty in order to improve the lot of the barbarians.

[27]Packer, *The Limits of the Criminal Sanction* 266 (1968).

[28]*Id.* at 267.

[29]Quinney, "Who Is the Victim?" 10 *Criminology, an Interdisciplinary Journal* 314 (Nov. 1972).

[30]Neuhaus, "We Can't Legislate Morality: True or False?" *The National Observer* 24 (June 16, 1973).

[31]Rostow, "The Enforcement of Morals," 18 *Camb. L. J.* 174, 197 (1960).

[32]Stephen, *Liberty, Equality, Fraternity* (White ed. 1967).

[33] Devlin, *The Enforcement of Morals* (1959); Hart, *Law, Liberty and Morality* (1963).

[34]Devlin, "The Enforcement of Morals," The Maccabaen Lecture in Jurisprudence, 14 *Proceedings of the British Academy* 129, 138-41 (1959).

[35]Hart, "Social Solidarity and the Enforcement of Morality," 35 *Univ. Chi. L. Rev.* 1, 2 (1967).

[36]*Id.* at 9. A recent application of the "individual harm" standard is found in the use of the Surgeon General's findings on the harmful effects of tobacco as a basis for laws restricting cigarette advertising. To return briefly to my thesis about the standard-setting function of the law, I would suggest that in the long run the immediate effect of this law in ending advertising may be less significant than its impact as an official teacher of the semi-moralistic proposition that smoking is harmful and inadvisable.

[37]Devlin, note 34 *supra* at 151.

[38]Levi, "The Collective Morality of a Maturing Society," 30 *Wash. & Lee L. Rev.* 399, 426 (1973).

[39]See Henkin, "Morals and the Constitution: The Sin of Obscenity," 63 *Col. L. Rev.* 391 (1963); Schwartz, "Morals Offenses and the Model Penal Code," 63 *Col. L. Rev.* 669 (1963).

[40]This argument comes from Neuhaus, note 30 *supra.*

[41]Trop v. Dulles, 356 U.S. 86, 101 (1958).

[42]"Address of Governor John Hancock," in Powers, *Crime and Punishment in Early Massachusetts 1620-1692: A Documentary History* 192-93 (1966).

[43]Levi, note 38 *supra* at 424.

[44]Richardson, "Sexual Offenses Under the Proposed Missouri Criminal Code," 38 *Mo. L. Rev.* 371, 387-88 (1973).

[45]Furman v. Georgia, 408 U.S. 238, 443 (1972), quoted in Levi, note 38 *supra* at 420.

[46]Levi, note 38 *supra* at 428-30.

[47]Morris & Hawkins, note 1 *supra* at 19-23.

[48]Packer, "Decriminalizing Heroin," *The New Republic* 12 (June 3, 1972).

[49]U.S. House Committee on Foreign Affairs, House Res. 109 (92d Congress, 1st Session, Committee Report, 1971).

[50]Markham, note 8 *supra* at 30.

[51]*Id.*

[52]E.g., Nahas, *Marihuana—Deceptive Weed* (1973); note 9 *supra.* But compare "First Report of the National Commission on Marihuana and Drug Abuse," *Marihuana: A Signal of Misunderstanding* 83-91 (1972).

[53]Kaplan, "Official Views on Marijuana," *Science* 167 (Jan. 12, 1973).

[54]Sources cited in Olivieri & Finkelstein, note 1 *supra* at 93; 117 *Congressional Record* 42344-45 (92d Congress, 1st Session).

[55]"The National Commission Report," note 52 *supra* at 81, 133.

[56]"The National Commission Report," note 52 *supra* at 81, 137.

[57]Olivieri & Finkelstein, note 1 *supra* at 101.

[58]"The National Commission Report," note 52 *supra* at 109-25, contains some evidence of this.

[59]Nimmer, *Two Million Unnecessary Arrests* 1, 155 (1971); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Drunkenness* 3-4 (1967). In general, see Bahr, *Skid Row* ch. 7 (1973).

Reflections of Women Graduates

Thelma Brook Simon and James C. Franczek

The phrase "woman lawyer" is now largely vestigial, having been replaced in common parlance by the word "lawyer." Today we view as incredible the comment of George C. Sill to Yale Law School officials in presenting the issue of admitting women, "Are you far advanced enough to admit young women in your school? In theory I am in favor of their studying and practicing law, provided they are ugly, but I should fear a handsome woman before a jury."* The University of Chicago Law School opened its doors to women—at its founding in 1902—long before other national law schools. Women were not eligible at Yale until 1918, at Columbia until 1927, and at Harvard until 1950; in fact Harvard Law School did not graduate its first alumna until 1957. But in more recent years women students and lawyers have merged into the law schools and legal profession with no discernible loss of feminity, nor with any of the adverse affects feared by their male counterparts.

We thought this transition, evidenced by the reflections of some of our own Law School's women graduates, would be of interest to all of its alumni. With no intention to resurrect any vestigial discrimination, nor to present an in-depth analytical study, we sent a very unscientific questionnaire to a group of women who graduated over a period of 50 years, have performed in a variety of legal roles, and live in diverse communities across the United States.

Mrs. Simon, JD '40, retired last year from the faculty of The John Marshall Law School. Her legal career includes 20 years as Law Clerk for state and federal courts (16 with the Illinois Supreme Court) and several years in private practice. Mr. Franczek, JD '71, who is associated with the Chicago law firm of Vedder, Price, Kaufman & Kammholz, is the husband of Deborah C. Franczek, JD '72.

The job outlook after law school is perhaps the best measure of discrimination against women, and the responses indicate that until recent decades it was dismal. Rhea Brenwasser, JD '27, affectionately known at Chicago's United States Courthouse as the "dean of the law clerks" because of her 18 years with the Seventh Circuit Court of Appeals and eight years with the federal district courts, replied tersely as to employment opportunities upon graduation: "None. Volunteered at Legal Aid until Miss Bradley in the Dean's office got me a position at Commerce Clearing House."

What progress women might have made during the thirties was inhibited by the Depression, and the few advances they did make were often minimized by it. "There were no paid employment opportunities for me," recalled Jean Miller, JD '38. "I found desk space in a small, now defunct firm and worked for them for my expenses. This arrangement was not because they would not, but because they could not, pay me. After a year or so they added a pittance of a salary." (While the professional relationship was otherwise most satisfactory, she later became staff attorney to the Chief Counsel of the Office of Price Administration until it disbanded and then devoted herself to being a mother and housewife—with no apparent dissatisfaction with either role.)

Edith Lowenstein, JD '39, a New York attorney specializing in alien and immigration law, experienced both the economic and sex discrimination crunch: "I pounded the pavement in Chicago where everybody asked me whether I could take shorthand." After a similar experience in New York, Miss Lowenstein was able ("with the help of a number of recommendations

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*Frederick C. Hicks, *Yale Law School: 1869-1894, Including the County Court House Period* 72 (1937).

from Law School professors") to secure a position with the Department of Justice. "From 1939 to 1941 my situation as the only female attorney in the Criminal Division was not enviable. I was patronized and saddled with unpleasant assignments." Like the careers of many of her contemporaries, however, her position advanced substantially with the outbreak of World War II, because she was one of the few young attorneys not subject to the draft. Thereafter she handled litigation for the Criminal Division, trying cases and arguing appeals. "Discrimination was forgotten."

A similar practical consideration—immunity from the draft during the Vietnam War—abetted the career of Mary Lee Leahy, JD '66, who became Special Assistant to the Illinois Bureau of the Budget after serving as a delegate to the state's recent constitutional convention: "Several law firms considered the hiring of a woman a better gamble. Three of us who graduated at that time went into law firms dealing primarily with labor relations—a significant breakthrough in a field where women had been noticeably missing." (Despite such breakthroughs, women are still a rarity in labor law in comparison to their involvement in other fields.)

Another 'sixties graduate mentioned hearing "by the grapevine" that a major law firm had refused to interview her because it would not consider hiring a woman, but she was "fortunate enough during my last year of law school to have Wally Blum recommend me" to another major firm, in whose corporate law department she was hired to work prior to graduation.

By the current decade the vast bulk of law firms did not discriminate against hiring women graduates. Joan Levin, JD '72, who has combined full-time law practice in Chicago with rearing three children, felt that she had "substantially the same opportunities as my male counterparts." Irene Saal Holmes, JD '73, who went to San Francisco with her lawyer husband, received several job offers from law firms to which she had applied. (In submitting applications she was careful not to apply to the same firms as her husband.) She ultimately accepted an appointment with the Antitrust Division of the Justice Department in a field of law consistent with her interest and training.

Employment opportunities are, however, only one measure of acceptance of women as lawyers. More subjective, but no less valid, are women's experiences within the legal profession. While the graduates we surveyed cited no particularly serious incidents of prejudice against their gender, their comments did reflect a pattern of waning sex discrimination. Vivian Wagner, JD '30, formerly a Legal Aid attorney, recalled that "in the '30s and '40s the attitude toward me was one of chivalry, tempered with condescension, and it was clear that in considering me an exception, the attitude toward women lawyers by men in the profession was defensive and angry."

More than thirty years after Mrs. Wagner's experiences, there were still traces of underestimation of the ability of women lawyers, excessive solicitude and surprise at their competency. According to one graduate now prominent in state government, "During my first two years of practice I was repeatedly asked by judges if I were a secretary answering the call or asking for a continuance on behalf of my boss. This question was normally asked before I could open my mouth to address the court." When judges complimented her after oral arguments, male colleagues sometimes remarked that if they had said the same things they wouldn't have received such compliments, but that the judge was surprised to hear them coming from a woman.

Another graduate of the last decade, happily employed by a large Chicago law firm, told of representing a client "whose yo-yo general counsel would say in front of us all, 'what would our president say if I introduced you as our lawyer,' and then would crack up with laughter." She also recalled that the president of one of the firm's clients "solved the whole woman bit by pretending I wasn't there."

Until women became more generally accepted in the profession, there was little one could do about such attitudes beyond proving her abilities. Elizabeth Head, JD '53, the first woman partner of the New York law firm of Kaye, Scholer, Fierman, Hays & Handler, reflecting on her 20 years of private law practice, expressed a view undoubtedly held by other woman graduates: "I would like to think that my major contribution to the legal profession has been to demonstrate to my employers, and now to my partners, that a woman can be just as good a lawyer as a man."

There still may be little one can do about unenlightened clients, but in this era of women's liberation

recent graduates are able to take a less passive approach in attacking vestiges of chauvinism among fellow attorneys, and are finding novel ways of integrating themselves into the profession. Ms. Holmes surmised that "my colleagues accept me if for no other reason than I won't let them get away with anything else," adding with much pride that she "plays a creditable second base on the office softball team." (She is the only female in the league.)

The responses indicated a widespread conviction that women *qua* women have no special responsibilities to the legal profession, and definitely no obligation to enter fields in which greater sympathy and understanding are in demand. "Don't be lured," a 'thirties graduate advised, "down any special 'woman's role' practice, even as appealing as poverty law or juvenile justice, unless there is a real desire. Be lawyers." But Fay Stender, JD '56, who has practiced prisoners' and women's rights law extensively in the San Francisco Bay Area, felt somewhat differently. She recently attempted to win for a woman a community property share of an underground newspaper that had been started jointly by the client and a man—also represented by a female attorney—with whom the client lived in a family relationship for 12 years. "Opinions vary as to whether defense of such a man is a proper case for a woman," she noted. "Should women take all sides of all questions? Will women be more compassionate as lawyers and politicians? I think many will; obviously some won't be."

Surprisingly, most of the graduates we surveyed indicated that their decision to become lawyers was made before they were teenagers. And, with the exception of one who admitted that she "might have gone into medicine" and another who philosophized that "life is too 'iffy' to speculate," all said they would have made the same decision if they had it to do over again. Jewel Lafontant, JD '46, Deputy Solicitor General of the United States and once counsel for the NAACP and similar groups in *Brown* v. *Board of Education* and other cases, inherited her predisposition for a legal career: "Since my grandfather and father were lawyers whom I admired in every way, I was determined at an early age (about 11) that I, too, would go into law, for I firmly believed that through the law social change can best be wrought."

Although some graduates withdrew from the practice of law after having children, many continued to utilize their legal educations in valuable community service. No price tag, for example, could be put on Mrs. Miller's services for the PTAs, the League of Women Voters, the School Board, and a number of caucuses charged with selecting public officials in Glencoe, Illinois.

The question on which there was greatest unanimity in replies dealt with the quality and effect of legal education at the University of Chicago, which, according to the graduates surveyed, not only gave them confidence in their legal ability, but opened doors which otherwise might be closed to them. According to one attorney, "the opportunity to work in an unbiased atmosphere—I experienced no sense of being discriminated against or being in any way second class—led me to approach the practice of law on the assumption that I would be treated like any other

(continued on page 37)

Malcolm P. Sharp and the Spirit of '76

George Anastaplo

> This story shall the good man teach his son;
> And Crispin Crispian shall ne'er go by,
> From this day to the end of the world,
> But we in it shall be remembered—
> We few, we happy few, we band of brothers . . .
> And gentlemen in England now abed
> Shall think themselves accursed they were not here,
> And hold their manhoods cheap whiles any speaks
> That fought with us upon Saint Crispin's day.
>
> —Shakespeare, *Henry V,* IV, iii

Prologue

Malcolm P. Sharp retired from the University of Chicago Law School faculty in 1965 at the age of 67. He had come to Chicago in 1933 from the University of Wisconsin Law School faculty, having been trained at Amherst, Wisconsin and Harvard. After leaving Chicago, Mr. Sharp taught at the University of New Mexico Law School until 1970. During the two following years he continued to live in Albuquerque, working both as an associate with a local law firm and as a part-time teacher at the law school. Since the summer of 1972, he has been Professor and Chairman of Political Science at Rosary College, in River Forest, Illinois.

Mr. Anastaplo, JD '51, PhD '64, is Lecturer in the Liberal Arts, The University of Chicago, and Professor of Political Science and of Philosophy, Rosary College. He is currently serving as well as Research Director and Advisor for the Governor's Commission on Individual Liberty and Personal Privacy, State of Illinois.

I was asked to contribute something to the *Journal* about Mr. Sharp on the occasion of his seventy-sixth year. It seemed to me appropriate for this purpose that I should first share with my fellow alumni of the University of Chicago Law School the talk I made about Mr. Sharp in Albuquerque in 1970 upon his retirement as a full-time member of the University of New Mexico faculty. With the addition of some more recent observations, I can try to bring up to date the record left by the Winter 1966 issue of the *University of Chicago Law Review,* which had been dedicated to him. (That issue, which Mr. Sharp calls his "memorial issue," included personal tributes by Harry Kalven, Jr., Wilber G. Katz, Abe Krash and Edmund Wilson.)

Although Mr. Sharp did not disavow my Albuquerque remarks about him, he can be assumed to have received them with the self-deprecating attitude (long familiar to his associates) evident in a recent telephone conversation we had in which I tried to prevail upon him to come in from River Forest to Hyde Park for lunch. Our exchange went something like this:

> G.A.: You appreciate, I know, the incomparable Anastaplo cuisine.
> M.P.S.: I do, indeed, but I can get something out of a can today.
> G.A.: It is not fitting that someone of your status, dignity and years should eat out of a can.
> M.P.S.: Ah yes, but think of what it does for the can.

Some Remarks in Albuquerque (May 5, 1970)

I have been asked to speak this evening about Malcolm Sharp, with special emphasis (I have been instructed) upon our association over the past quarter

century, an intimate association testified to by one of the names my son bears. Permit me to pay Mr. Sharp the tribute of imitation by proceeding to my subject in the roundabout manner which he has no doubt made as familiar here in New Mexico as it was in Chicago.

I have been most impressed during my current visit here (as one born in St. Louis and raised in Illinois) by the distinctive character of this region of our country, a character which is reflected in the manners and outlook of the students of this law school. That is, this character has survived the pervasive influences both of professional training and of the national communications industry.

This distinctive regional character, which may be more apparent to the visitor than it is to you, is no doubt largely due to the special history and resulting traditions of New Mexico and the Southwest, traditions which include traces both of the thousands of years of Indian life and of the decisive decades of the conquistadores, to say nothing of something so earth-shattering as the assembling and testing here of the first atomic bomb.

Underlying all this, both as a contributing cause to and as a constant reinforcement of the distinctive character of this region is the influence of nature. This was richly evident in the flight I enjoyed this morning up to Santa Fe (with one of your law students as pilot) and my drive back this afternoon across the "desert." I was reminded this morning, as we ambled along at only 2,000 feet, what flying can mean, how much fun it can be.

I have been reminded the last few days of how much I enjoyed this landscape, especially at sunset, during those months in 1945 when my bomber crew trained out here in preparation for its overseas assignment. I have been reminded as well, by the Sandia Range as it looms over Albuquerque, of something I had thought unique, the awesome Parnassus Range looming over Delphi, Greece.

This, then, is the New Mexico in which Mr. Sharp has thrived the past five years. There is, on the other hand, the Chicago in which he lived and taught the preceding thirty-two years of his always busy life. One would be hard put to find settings as diverse (despite their joint contributions to the historic harnessing in the 1940s of nuclear power) as New Mexico and Chicago—as diverse as this flat dry land punctuated by impressive mountains and that inland city crowded up against the great inland sea which permits it to breathe.

What need I say about Chicago? You know the reputation of its great university and of the law school from which Mr. Sharp came to you. And you have been reminded as well, in the course of our discussions this week, of the Democratic National Convention of 1968, of the recent Conspiracy Trial and of gun battles between the police and the Black Panthers—you have been reminded, that is, of the excesses for which Chicago is notorious. And yet Chicago continues to appeal to some of us as the distinctively American city, as perhaps our most vital city. New York, San Francisco and New Orleans—each with its distinctive attractions—look out to the world across the seas. It is Chicago which, if any city does, exhibits the soul of America—energetic, self-righteous, perhaps even bigoted, and yet relaxed, livable, challenging and above all hopeful.

It is one of Mr. Sharp's accomplishments that he has been so much himself in physical and cultural settings as diverse as Chicago and Albuquerque. This has been evident in the way he has conducted the discussions, both formal and informal, which I have enjoyed here this week. His character may be seen in how people—faculty, students, local attorneys and judges alike—respond to him. It would be difficult to find anyone who has anything but a kind word to say about him—and we suspect that the rare detractor would expose his own shortcomings rather than Mr. Sharp's. He is in this respect, as well as in various intellectual qualities and interests, very much like one of his heroes, Charles Darwin, of whom it has been said that he was the only member of the *Beagle's* crew to go through its historic, yet aggravating, voyage of several years without exchanging a cross word with anyone.

Perhaps most revealing of what Mr. Sharp is like is what students, in particular, say about him—about his rich store of information and speculations, about the way he develops his courses. Thus, I have heard again here what we knew as a tradition at Chicago, that a course with Malcolm Sharp is an exercise in disintegration and despair, until suddenly, somehow, order emerges from chaos. I think Mrs. Sharp was most perceptive when she observed to me a couple days ago that "confusion" was her husband's favorite

Malcolm P. Sharp

word. It is the confusion characteristic of the pedagogical midwife who would relieve us of our prejudices and preconceptions so that we may begin to give birth to a properly examined life.

The constancy of Mr. Sharp and of student response to him is seen also in the kind of declarations that the young are moved to make about him. Thus, there is the petition of February 10, 1970 addressed to their dean by the students of this law school:

> Inasmuch as Professor Malcolm P. Sharp is perhaps the most highly respected member of the Law School faculty at the University of New Mexico, who has contributed a broad intellectually unfettered approach to the study of law, and who, perhaps more than anyone else in our educational career, has forced us to re-examine and discard our prejudices and narrow perspectives, in favor of a critical overall approach to the function of law in our society,
>
> We the undersigned strongly recommend that every possible measure be taken to retain Professor Sharp on the faculty of the Law School for as long as he is willing to remain.

Then there is the bookplate, prepared for the "Malcolm P. Sharp Collection," established May 26, 1965 by the students of the University of Chicago Law School upon his retirement there—a collection of books selected by him which ranges unashamedly across three thousand years of Western thought:

> This is one of the books Malcolm P. Sharp thought law students and lawyers should also read sometime during their careers. Given by his students and friends, who are certain that Professor Sharp's influence—his ability to induce students to explore the values and foundations of the law they are studying—will continue in the Law School after his retirement.

The students having said it so well—both in Albuquerque and in Chicago—there may not seem much

more to say. But since my license to speak tonight has been conferred by the students organizing this celebration of Mr. Sharp's second retirement, who am I to question their judgment or their desires, especially at a time when their power seems to be growing on campuses across the land? I therefore ask Mr. Sharp's pardon as well as your indulgence for a few more minutes, while I attempt to say what I believe may lie behind the universal esteem for Malcolm Sharp.

Characteristic of him are his good will, his care for others and his gentleness—traits which are sensed and appreciated by both the intelligent and the unintelligent, by both the calm and the impassioned, by both the confident and the fearful. These traits are evident both in periods of prosperity and in periods of tribulation. But however evident all this is, it is not all. Not everyone may appreciate that this gentleness conceals (and, indeed, is made both possible and responsible by) a core of ethical toughness. This ethical toughness—or, if you prefer a gentler term, integrity—means that it is possible for Mr. Sharp to have and to exhibit on rare occasions what is called in *King Lear* "noble anger." However tolerant he may be of much that is weak and questionable, he can be clear and firm about what is proper and good.

Mr. Sharp's self-discipline is reflected in the fact that even his "noble anger" is kept in check, perhaps even a little too much so for his own good. Thus, I have never heard anyone speak of him as angry—aside from the "flashing indignation" one may occasionally exhibit in dealing either with one's children or with one's sometimes childish colleagues. For a variety of reasons—not the least of which is my longstanding interest in doing what I can to raise the quality of the American bar and hence contribute to American republicanism—I believe it useful to recall for your instruction a couple of occasions on which I have known Mr. Sharp to be truly angry.

I should hasten to add that I am *not* referring to what he once told me of his experiences as a trainer of naval pilots during the First World War. He discovered then that no cadet could really be shaped into a pilot until he had been thoroughly "chewed out" by his flying instructor—and Mr. Sharp was not above manufacturing opportunities for such necessary outbursts.

The first episode to be recalled came in the course of my bar admission controversy, a controversy which I have been induced to say much more about in seminars here this week than I have in almost a decade. Mr. Sharp was not, I should at once observe, angry about what happened to me between 1950 and 1961, but he *was* concerned—and he was most helpful in those troubled days. Thus, I was moved to say about him on May 26, 1958, in the course of identifying my character references for the Committee on Character and Fitness:

> Malcolm Sharp you have all heard of, both as a professor of law and as a conscientious and responsible advocate at the bar. Those of you who have had dealings with him, either as students in his Contracts Course or as colleagues in the law, will know what I mean when I say he is a gentleman in the old-fashioned sense . . . I should acknowledge that Mr. Sharp has been my most thoughtful and consequently most valuable supporter throughout all these years, even though he began by disagreeing with the position I was taking before this Committee [in 1950] and urging me to abandon it. This early advice was based, in part, upon his sense of duty as a teacher toward a young student about to be deprived of his career at the bar.

(I add, parenthetically, that I learned from Mr. Sharp always to discourage those law students who have seen fit to ask me for advice from challenging as I did the character committee, figuring that no one could have dissuaded me in my circumstances then from doing what I did. I also figured that anyone who *could* be discouraged by what I might say probably should leave well enough alone and become a lawyer as soon as possible.)

What stirred the anger I have referred to was not the folly or the ignorance of the committee—that sort of thing (which Mr. Sharp would not describe as pointedly as I do) he is usually prepared to put up with in mankind—but rather its callous lack of fair play on one critical occasion. I had finally managed, several years after my application for admission had been originally denied (in 1951), to force from the committee (in 1954) a statement of facts and reasons in support of its decision. I showed the committee's statement to Mr. Sharp—I believe it was over lunch at the faculty club of the University of Chicago—and

he became incensed. It was, he immediately saw and said, "simply dishonest." This was a dishonesty made even worse by the fact that he knew that I always tried to play fair with the committee in the documents I prepared. A young applicant had been seriously damaged professionally and financially while the seventeen lawyers on the committee continued in their established and prosperous careers—and yet they had resorted in this document to evasions and even deliberate misstatements more appropriate to shysters, not to character commissioners of a state supreme court. It was difficult for us to take seriously thereafter the integrity of the Committee on Character and Fitness for Admission to the Illinois Bar.

It was indicative of the frightened callousness of those times, I should add, that Mr. Sharp stood virtually alone among his colleagues at our law school in recognizing from the beginning, and publicly, what the real problem was in that bar admission controversy, the problem of the quality of the bar we are to have in this country. Indeed, Mr. Sharp used to tease his remarkably timid colleagues by observing that I was surely one of their most successful graduates, if only because my bar admission case (which has always seemed to make them uncomfortable and which has led to what Mr. Sharp calls my academic "blacklisting") has been the greatest contribution to American legal education since the Second World War. He has even said these things a couple times this week in public, which only goes to show that he is incorrigible as well as confusing.

Far more important, both in itself and as indicative of what the 1950s were like, is the second episode of Sharpean anger I have promised you. I turn now to something far more serious than my adventures at the bar were ever permitted to become either by him or by me—to a subject which may seem somewhat too somber to bring up on this festive occasion, but which it is necessary to at least touch upon if we are to recognize more than the genial side of this remarkable man.

The second episode to be recalled took place immediately after the execution of Julius and Ethel Rosenberg in June 1953, the only peacetime executions for espionage ever exacted by our civil courts. The general public opinion, then as well as now, about that disgraceful chapter in our history is indicated in a comment in the current issue of *Time* magazine:

> The Rosenbergs were convicted on March 29, 1951, of conspiracy to commit espionage in connection with supplying atomic-bomb data to the Russians. In the next 26 months, there were at least 14 appeals and reviews of their case. Justice may be blind once. It is not likely to be blind that often.

The fact remains, even though it is not generally recognized, that the *Rosenberg* case was never reviewed on its merits by the Supreme Court of the United States. It did seem in June 1953, however, that a review by the Supreme Court might finally come. Justice Douglas had gallantly granted, after the Court had recessed for the term, a last-minute stay of execution. Certainly it seemed, whatever else might happen, that the defendants and their counsel (among whom, in their final days, someone as conservative as Mr. Sharp was numbered) would have a summer's respite.

But Attorney General Brownell prevailed upon Chief Justice Vinson immediately to reconvene the Court in order to hear the Government's motion that Justice Douglas's stay be vacated. It was only the third time in the history of the Republic that the Court was called back into such extraordinary session, and this time primarily for the purpose of killing a man and his wife who had been convicted only twenty-seven months before of having passed atomic bomb secrets in wartime to an allied country.

What made this bloodthirsty haste even worse was that defense counsel (and, no doubt, the defendants and their families as well) were celebrating the temporary victory provided by Justice Douglas's stay of execution when news came over the radio of what the Attorney General and the Chief Justice had done. The rest you know—or should know.

When Mr. Sharp returned to Chicago from the East a few days after the execution of the Rosenbergs, he was still incensed, but not so much as to render him unable to assess properly what had happened. Since I had long been the advocate in our conversations of what I understood to be certain Platonic teachings, he was moved to tell me that he had never really appreciated before how right Socrates had been to insist that it was far better to be unjustly treated than to act unjustly oneself—an insistence which only the truly tough can recognize and accept in moments

of deep distress.

Anger and concern were put to good use by him on this as on other occasions—as was seen in the efforts he made for years thereafter on behalf both of the orphaned Rosenberg children and of the imprisoned codefendant of the Rosenbergs, Morton Sobell. Mr. Sharp has indeed been a man who knows how to be useful, a man who can be depended upon to put to good use even casual encounters and the social amenities. This has been, I believe, because he is a man who both cares to know and, even more important in understanding him, knows what it is to care. Thus, he has been heard to say that anyone who would not teach for nothing should not be teaching at all.

I should not conclude this tribute without saying something about that which is most evident in Mr. Sharp, that which is usually called "style" today. This is seen not only in his manner and manners but also in such things as language. To this day, for instance, I dare not use "contact" (not "contract") as a verb. And such phrases as "written contract," I have learned from him, have to be used with the greatest caution, if at all.

These injunctions were impressed upon me about the same time as another injunction, that one should (especially if one is engaged in sedentary pursuits) prefer the staircase to elevators for any ascent or descent of less than five floors. I am reminded by what I have just said that I have learned as well from him what he has learned from Edmund Wilson, how to use "one" as a pronoun: when we three go, *that* art will be lost on this side of the Atlantic. (But then, what else can one expect of a people who use "hopefully" as Americans do these days?) Mr. Sharp's self-confident competence with respect to these things is evident in his disconcerting ability to dictate to a secretary page after page of complete, well-polished sentences.

When I speak of "style" I return to what I have already said this evening about Mr. Sharp as a gentleman, in the old-fashioned sense of that term—the citizen who is open to the best in his community, even as he insists upon a healthy respect for facts and a lively skepticism about impassioned crusades (whether at home or abroad).

It has seemed to me particularly salutary to stress this evening, after the demoralizing events yesterday at Kent State University, two of the several academic careers of Malcolm Sharp, careers in which the cause of the unpopular, the just and the oppressed has never been far from his heart. That is, is it not reassuring that we are able to say of the United States that it can produce such men as Malcolm Sharp, that it not only can produce and tolerate but can even recognize and love such men, despite their evident dissent from orthodox opinions?

When communities as diverse as Albuquerque and Chicago can cherish as they have this respectful rebel, it should assure us, even in these troubled days, that the soul of America remains basically sound.

Epilogue (Spring 1975)

Mr. Sharp has been heard to say that his legal education really began only a few years ago upon his association, down in Albuquerque, with the law firm established by several of his former students at the University of New Mexico Law School.

The death of Mrs. Sharp in October 1971, however, after years of incapacitating illness, obliged Mr. Sharp to consider moving from Albuquerque. When an appointment was offered him at Rosary College by the President of that coeducational school (herself a University of Chicago doctor in political science), Mr. Sharp began still another academic career—and his first experiment as a department chairman. He lives in Elmwood Park, a half-mile walk from the campus. His extracurricular activities have included trips to Switzerland in the summers of 1973 and 1974 and service as an arbitrator in a five-million dollar contracts controversy in which the United States is involved.

His courses at Rosary College explore the wide-ranging interests which continue to challenge and frustrate students: Aristotle on Justice; Order and Disorder in International Relations (he will not use the conventional rubric, International Law, insisting there is no such thing); The Limits of Deterrents; Problems in the Proof of Facts and Events; Crosskey and the Constitution; Public Administration and Law; and St. Thomas on Law. The tenor of his well-documented courses is indicated by the final examination in one of them:

How, if at all, may a study of human history contribute to efforts to establish international order?

What are the prospects of peace and what are the means of promoting these prospects?

Some of you may well be able to give adequate answers in an hour; but you may use the two hour period alloted if you wish.

Think before you write.

The Malcolm P. Sharp issue of the *University of Chicago Law Review,* to which I have referred, included an extended bibliography of his publications. One can, by continuing the bibliography compiled by the law review editors in 1966, give Mr. Sharp's former students and colleagues still another indication of his interests of the past decade:

1) "Reflections on Conscientious Objections to War," 25 *National Lawyers Guild Practitioner* 115 (1966);
2) "Charles Gregory," 53 *Virginia Law Review* 770 (1967) (on torts and labor law);
3) "Introduction: The Relevance of Contract Theory," 1967 *Wisconsin Law Review* 803 (1967);
4) "Unmaking History: The Warren Report and Its Critics," 34 *University of Chicago Law Review* 453 (1967);
5) "The Master," 35 *University of Chicago Law Review* 238 (1968) (on William W. Crosskey's Constitution);
6) Review: Davies, *The Rosenbluth Case,* 2 *New Mexico Law Review* 122 (1972) (on probabilities and the burden of proof);
7) "Crosskey, Anastaplo and Meiklejohn on the United States Constitution," 20 *University of Chicago Law School Record* 1 (1973);
8) Review: Nizer, *The Implosion Conspiracy, Panorama/Chicago Daily News,* January 27-28, 1973, p. 8 (on the *Rosenberg-Sobell case*);
9) "Concessions for Survival," 29 *Science and Public Affairs (Bulletin of the Atomic Scientists)* 48 (1973);
10) Review: Fromm, *The Anatomy of Human Destructiveness,* and Milgram, *Obedience to Authority,* 32 *The Critic* 68 (1974).

In addition, Mr. Sharp and I prepared for newspaper publication, in April 1975, an article on the treaty power under the Constitution, "The Promises That Presidents Make."

I conclude this progress report on Mr. Sharp by drawing on the *University of Chicago Law School Record* for Winter 1972, where there is printed a letter from him describing the everyday practice of law in New Mexico. This kind of legal practice was a world apart from that to which he had been introduced on Wall Street in 1924—and he was fascinated.

A modest commercial case had come into the small Albuquerque office with which he was associated (his letter relates)—but not so modest as to fail to provoke opinions familiar (in both style and content) to generations of law students who have been privileged to study with Mr. Sharp (emphasis added):

> . . . Our case itself is in my judgment not too complicated, but it suggests an extraordinary range of problems about the Code's Statute of Frauds applicable to contracts of sale. The case itself has some interest on a variety of grounds involving the law of contracts, and if it is not settled, it may be tried in a few months.
>
> Reflections on the case have confirmed my impression that we waste a considerable amount of time, which if one adds up the hours over thirty years of teaching becomes startling, on teaching systematic but inadequate justifications for welching, including the law of consideration and the Statute of Frauds. *On the other hand,* we deal unsystematically and inadequately with the psychological problems involved in legitimate excuses for not doing what the words of an undertaking by themselves lead a hearer or reader to expect.

There is always for Malcolm Sharp something to be said "on the other hand." That is, he is never content to leave bad enough alone.

Because of severe financial constraints on the Law School and the University, only one issue each of The Law Alumni Journal *and* The Law School Record *have been published this academic year.*

Vignettes

Chicago in the Depression

David F. Silverzweig

The year 1932 was remarkable for many things. It was the year when the Great Depression was at its height, or, I should say, its lowest depth. It was in that year that many of our banks shut the paying tellers' cages and permanently closed their doors. In that year unemployed war veterans were selling apples on the streets of our large cities and financiers were falling from high windows. That was the year when Franklin Delano Roosevelt first toured the country as the herald of the New Deal.

It was also the year in which I was admitted to the Illinois bar. Unfortunately, a license to practice law did not carry with it any solvent clients or even an office from which the law could be practiced. For weeks I roamed the office buildings in Chicago's Loop, the city's legal center, following whatever leads came my way, as well as making a cold canvass of many offices, in pursuit of—to be blunt—a job! But it was a bearish market for young lawyers in those days. When it seemed that the law would lose a promising young talent to the apple vendors' lists, I heard one of the most musical and expressive sentences in all the world: "All right, you can come in with us."

At last I found a place where I could hang my hat. It was strictly a "space for services" arrangement. This meant that I would assist other lawyers in the office in exchange for the privilege of having my name on the door and desk space. Cash, a rare commodity in 1932, was not involved in my employment contract. I entered upon my duties hopefully and philosophically. As they say, any port in a storm.

Two days after the magic sentence was spoken, one of the great artists of our era appeared upon the scene. He was a sign painter. His mission was to add my name below the three that already adorned the door leading into our small suite. I watched in deep fascination as the name "Edward R. Schwartz" slowly took form in gold below the names:

Albert M. Goldman
Samuel H. Steinman
Benjamin P. Cooper

For the next two or three weeks I was kept busy answering court calls, filing and serving papers, and running errands. This more or less clerical work was not without its compensations. I left and returned to the office several times each day. And upon each return, before entering the office, my eyes would rest for a moment of admiration upon the newly added name on the office door. How beautiful simple lettering can be!

After three weeks of "leg work," as it is called, my first case was assigned to me. At last I was practicing law. Isidore Epstein was a dealer in hay, grain, and feed, a business almost extinct in these days of the horseless carriage but still in evidence in 1932. Epstein brought to our office a billhead showing that Morris Zuckerman owed him three hundred and forty dollars for merchandise sold and delivered. Zuckerman, it soon developed, operated a livery stable on 14th Street, just east of Halsted Street. His business was renting a horse and wagon to peddlers by the day. The bill of three hundred and forty dollars was a large one for those days—and no payment on account had been received for over six months.

I wrote the customary collection letter to Zuckerman, but received no response. A week later I filed suit in the Municipal Court of Chicago. Judgment was entered in our client's favor by default. Zuckerman obviously had no defense and was not contesting the suit. We directed the court bailiff to serve the

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Mr. Silverzweig, JD '33, practices law in Chicago. This story, originally published in The Decalogue Journal *(1966), is based upon an actual incident.*

defendant with a writ of execution apprising him of the judgment against him and demanding payment. Still hearing nothing from Zuckerman, we ordered the bailiff to make a levy upon the livery stable and sell the property at public auction to satisfy the judgment.

Then events began to move swiftly. We were served with notice of an intervening action by an attorney representing one Abraham Schlossberg, who we later learned was Zuckerman's brother-in-law. Schlossberg claimed he had a chattel mortgage on all of the property of the livery stable, and that the lien of his mortgage had priority over our judgment. The bailiff's sale of Zuckerman's property was held in abeyance pending the trial of Schlossberg's claim. If the chattel mortgage were found to be valid, no sale would be held and we would be defeated. It was a gloomy prospect.

A contest was in the making and Mr. Goldman, who had originally assigned the case to me, began to take an interest in the proceedings. Epstein was sent for and he came running from his store on Blue Island Avenue. A tall, lean man of about sixty-five with a weather-beaten, ruddy complexion and a bushy moustache, Epstein was eloquent in his indignation. He had carried Zuckerman along on promises for months and months. He himself was pressed by creditors on all sides since delinquency was a fate shared in common by virtually all of his customers. Business was terrible to boot. And now Zuckerman, a man whom he had known and trusted for years, was scheming to cheat him out of his money with a fake chattel mortgage. "Where is justice?" Epstein demanded. I did not undertake to answer him. Instead, I puffed on my pipe and gazed meditatively out of the window.

The inspiration I was seeking came instead to Epstein. Suddenly his moustache began to quiver in agitation. His lean body jumped from the chair. "Judge Hausen is my neighbor!" he cried. "Let's go to Judge Hausen; he'll know what to do!"

Epstein and I walked across LaSalle Street to the City Hall and to Judge Hausen's courtroom. We waited for the judge to complete his court call of eviction which was huge in those days. The call completed, Judge Hausen waved to Epstein and invited us into his chambers. I was impressed. It was the first time I had been in a judge's chambers and my first meeting on a personal basis with any judge.

A tall man with narrow shoulders, John Hausen was of about the same age as Epstein and had lived on the West Side among Jews most of his life. His accent had traces of his German origins, and he had a working knowledge of Yiddish. The judge greeted Epstein warmly, if jocularly. "Izzy, what brings you downtown? Are you lost? How is the feed business these days?" Then followed an exchange of banter between them in Yiddish. The judge was obviously proud of his small skill with Epstein's native tongue. The preliminaries over, Epstein quickly poured out his lament. He finished with a challenge: "*Nu,* where is there justice? You're a judge; then do something!"

The banter was now gone as the judge's face was furrowed in deep thought. Then he turned to me and said, "We have so many of these questionable chattel mortgages these days. Why don't you check the records in the Recorder's office and get the particulars? I'll bet this mortgage won't stand up."

I left the chambers and went directly to the office of the Recorder of Deeds where mortgages were recorded. I discovered that while the chattel mortgage was *dated* prior to the date of entry of our judgment, it was actually *recorded* two days after the entry of the judgment.

Schlossberg's intervening action came to trial five days later before Judge Patrick Madigan. Judge Madigan was known as a "no nonsense" judge. Things in this world were either white or black. There were no grays in the Madigan field of vision. And, it was said, Judge Madigan could smell a dubious transaction at fifty paces.

"Schlossberg versus Epstein," called out the court clerk. Two men of dour countenance sitting at the rear of the courtroom rose and slowly walked towards the front accompanied by their attorney, a slight, elderly man who was carrying a briefcase. Epstein and I rose from our seats in the middle of the courtroom and joined the others at the judge's bench. "What's this case about?" the judge asked brusquely as he scanned the court papers in the file which the clerk had placed on his desk. "Swear the witnesses, Mr. Clerk."

Abraham Schlossberg was a squat man of about fifty with a phlegmatic appearance. Under questioning by his attorney, it was Schlossberg's contention that

The Law School Library in earlier days

he had made a loan of five hundred dollars to Zuckerman and was given the chattel mortgage on the livery stable for security. Unaccustomed to courtrooms, Schlossberg was obviously ill at ease—even before Judge Madigan took over the cross-examination following my own eager but inept efforts in that direction. Stern and authoritarian, his athletic body enveloped in a black robe, Judge Madigan's presence on the bench was erect and commanding. His red face was taut and his voice sharp and piercing. The Judge had been an active trial lawyer prior to his elevation to the bench—and cross-examination was his forte.

The judge fixed his unrelenting gaze on the witness and the moment of truth had arrived. The questions from the bench were direct and incisive. "Was the loan to Zuckerman in cash or by check? Cash? Where did the money come from? From your home, you say? Are you accustomed to keeping large sums of money at home? Do you own a safe? No? H-m-m. What did Zuckerman do with the money? Paid bills? Bills to whom? Who has the receipts? When was the loan made? Did you know of Epstein's suit when you made the loan? Why the delay in recording the chattel mortgage? Answer, Mr. Witness, and answer quickly."

The rapid-fire questions came in a merciless stream. Every aspect of the transaction must be accounted for in minute and precise detail. Ill-prepared to cope with the penetrating inquiries from the bench which pursued him at every turn, Schlossberg floundered. The case began to crumble soon after it commenced. By

the time that Zuckerman timidly took the stand to corroborate his brother-in-law in a low and halting tone, it was evident that he was a soldier in a losing cause. Judge Madigan's questions now registered not only skepticism and sarcasm but definite hostility as well. The word "contempt" escaped his lips once or twice. The rout was complete. White was still white and black was still black. Judge Hausen was right; the fake chattel mortgage did not stand up. Schlossberg's petition was dismissed.

The bailiff was directed to proceed with the sale three days later, on Friday at two in the afternoon at the livery stable on 14th Street. Zuckerman now had to pay the judgment or suffer the sale of his property. He did not pay.

On Friday, I arrived at the livery stable a half hour before the scheduled time of the sale. Epstein came in a few minutes later. A number of horse dealers and livery men were already on the scene, examining the horses, looking over the wagons, testing the whips and other livery trappings. Others, together with curiosity seekers, kept streaming in. While waiting for the sale to commence, I walked outside to the sidewalk. The earthy smell of fresh manure, coupled with a feeling of dankness, pervaded the stable and penetrated to the outdoors. It was a gray October day with a suggestion of chill in the air.

The livery stable was a one-story wooden structure which housed about twenty horses and an equal number of wagons. I looked at the sign which was painted above the stable entrance. It read "Zuckerman's Livery Stable." Below the curved lettering, which was partly obliterated by time and the elements, was a crude painting of a horse's head. An iron horseshoe was nailed to the timbers on each side of the painting. This was obviously an established business of many years, probably in the hands of the second or third generation of Zuckermans.

From time to time could be heard the rearing and whinnying of the animals as practiced hands would pry open their jaws. The horse traders were a breezy lot. "Hey, Louie, you *goniff*, come to steal something?" one cried out in raucous tones. By way of answer, Louie the *goniff* hollered back, "You can kiss my ....," at the same time turning his hip sharply in the direction of his questioner and giving it a suggestive slap. The remainder of Louie's retort was lost in the loud laughter which erupted following this bit of pantomime. I was reminded of a country fair, where horses were sold and traded, which I had attended as a child in the small town in Romania where I was born.

The deputy bailiff who was to conduct the sale, together with an assistant, arrived ten minutes of two. He inspected the official notice which was nailed to the door, counted the horses and wagons, and cleared a small space in the center of the stable. Here he pushed together two wooden crates and formed a rough stand for the conduct of the sale. The deputy beckoned to Zuckerman, who was walking about aimlessly and silently, a small man attired in baggy pants, with hollow cheeks, a three days' growth of beard, and a large, drooping moustache. The deputy told Zuckerman he was entitled to claim a portion of the property for his exemptions as the head of a family. Zuckerman selected two of the likeliest looking horses and two of the wagons. He led the two horses to one corner of the stable just inside the entrance.

The deputy rested his right foot on the spoke of a wagon wheel. The first item to be auctioned, a chestnut mare, produced a spirited encounter between Louie the *goniff* and another trader called *"Yossel"* with Louie the winner. After this exchange, the sale proceeded at a rapid pace. With each final bid the deputy would cry "Sold!" and bring the hammer down on the wheel's iron rim while his assistant accepted payment and issued a receipt. As horses were sold, they were led out of the stable by their new owners. Wagons were pulled to the street. The three hundred and forty dollar debt had now grown to over five hundred dollars with the addition of court costs, interest, bailiff's charges and commissions. Hoover was still President and money was tight. The bids were correspondingly low. Horses went for twenty to twenty-five dollars, wagons for five to ten.

When the sale was over, the stable was virtually cleaned out. What had been just minutes ago alive with horses and people and excitement was now empty and quiet, like a party after the guests had departed, but for the deputy and his assistant and Epstein and me. And, yes, but for the two lonely wagons and the two horses selected as exemptions, and a couple of broken wagons that nobody wanted. And Zuckerman.

Zuckerman was still standing at the corner of the stable near the entrance, holding the two docile animals by the reins. But there were now others. A

woman holding a small child in her right arm. Next to her and clutching her mother's skirt was a little girl of about six. And two older children, boys of perhaps ten and twelve. Had they come in but now or were they present during the sale? With the horses, wagons, and people gone, I now saw them for the first time. Zuckerman's moustache was now drooping lower than ever, his cheeks appearing more sunken than only an hour before. He was looking at us—the bailiffs and Epstein and me—but I cannot say he really saw us. The woman was holding her husband's arm with her left hand, tears encircling her eyes. The daughter was crying, and the boys looked frightened. Nobody spoke—just standing and looking at us.

The room suddenly became hot and uncomfortable. Perspiration was forming about my neck and forehead. I wiped my brow with my handkerchief and at the same time obscured the vision at the stable entrance. I quickly finished my business with the deputies and walked with rapid steps from the stable, followed by Epstein muttering more to himself than to me, "Such a business, such a business! For months I carried him. Who can you trust nowadays, who can you trust?" A northbound Halsted Street trolley car was approaching. I hastily said good-bye to Epstein and boarded the car.

I took an empty seat in the middle of the street car and sat next to the window. I opened my brief case and took out a magazine. "Maxwell Street Market!" called out the conductor. I lifted my eyes from the magazine as the car rolled past the familiar street scenes. I turned back to the magazine, ruffled a few pages and then closed it and let it rest on my lap. The car crawled on to Taylor Street and Little Italy. We passed on to Harrison Street and the Greek Colony. We reached Madison Street where the burlesque lights of the Star and Garter were flashing on and off.

Familiar sights all! But I neither saw them, nor heard them, nor smelled them. The streets all ran together into an amorphous grayish blotch, like the pigments of a water color painting caught in a rainstorm. All I could see was a little man with baggy pants and a drooping moustache holding the reins of two horses, and his wife and children—all staring at me. And an empty stable! Only this I saw. My skin was damp and in my nostrils was the lingering smell of fresh manure.

I had won my first case. I did not feel like celebrating.

Prisoners' Rights in California

Fay Stender

In January of 1970 I met George Jackson and agreed to represent him in what became known as the Soledad Brothers case. After receiving five or six letters from Jackson, I became aware that he was not only a brilliant person, but a writer, perhaps a great one. Jean Genet was at that time in San Francisco, and I was referred to him by a friend. My French was execrable; Genet's English non-existent. On my way to see Genet with some of Jackson's letters, still in handwriting, I stopped to pick up Joan Holden, an actress and a friend of a friend, who had offered to translate. I had not previously known Ms. Holden, and she had not spoken French for two years. We took the letters to Genet, and Ms. Holden translated orally from the handwritten pages. Genet quickly said, "He is a writer; I will have him published in France." And within a few more minutes Genet offered to write the preface, which he later did in Brazil, and which along with the book *Soledad Brother* has been translated into 14 languages.

Soledad Brother is now a text in dozens of college classes, and Jackson's is a household name in the black, liberal, and other communities where civil rights are of concern; but of course Jackson is dead. and prison conditions generally are the same if not worse.

Sometimes I see posters containing quotations from Jackson's letters to me and wonder of the path which led from the University of Chicago Law School to the hole at "O" wing, Soledad, and the maximum security isolation section at San Quentin called the Adjustment Center. It was in interviewing witnesses for the Soledad case that I first became aware of the thousands of people in prison. I'm ashamed to say that their plight had not come to my attention before; nor had anything in my legal or college education caused it to. I feel that both the educators and I were to blame for this, and I note that at least some of this has changed today. Clinical programs involving work with prisoners are found in most major law schools,

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and concern with prisoners' rights is widespread. So far I don't believe that the concern has achieved any real change for prisoners, but at least the channels of communication between the prisons and the legal community are opening.

The pain of Jackson, dramatically articulated by him, was no more devastating than the pain of thousands of other prisoners. Realizing this, lawyers and others from the Soledad case created the Prison Law Project in Oakland, and for three years we sought to provide legal services and a counselling center for California's 22,000 prisoners. At the Prison Law Project I often received 200 letters per week for months running. Some of these letters have found their way into appendices of the House Judiciary Committee's Hearings (see particularly Vol. II, *Corrections,* Subcomm. No. 3, Oct. 27, 1971), another book called *Maximum Security: Letters from California's Prisons* (E. Pell ed. 1972), and various California legislative reports.

I was often asked if I and not Jackson wrote *Soledad Brother.* My colleagues and I were also accused of bringing revolutionary ideas to prisoners. People still cannot conceive that the conditions in the prisons might be the cause both of the revolutionary ideas of prisoners and of the violence which occurs there. When I came to see first hand the situation of prisoners in California, and later elsewhere, my attitude was one of stunned disbelief, even though I did not view myself as naive with regard to operation of the criminal justice system. Both as to long-term solitary confinement (I met a man who had not seen a free person in 11 years and whose original offense was escaping from a juvenile facility when he was 17) and the anxieties suffered under the indeterminate sentence (in California sentences can range from 6 months to natural life imprisonment), it seemed to me that some of what lawyers think of as minimal due process of law could be brought to the processes which determine when an individual stays in a tiny, locked cell, and how long he remains incarcerated generally.

At the time of its peak activity—which coincided with the brief time in which prisons had priority attention of the liberal foundation—the Prison Law Project had 12 workers, consisting of 6 lawyers and 6 legal assistants and supportive personnel. We visited all of California's 12 major prisons and many of the 33 camps and additional "facilities." We brought class action lawsuits and individual actions seeking to bring due process protections to prison life, negotiated hundreds of cases about medical care and serious deprivations in prisoners' lives, spoke to hundreds of groups and individuals about prison conditions, assisted in the production of several books, published and distributed a Jailhouse Lawyers Manual on Habeas Corpus for Prisoners, completed several law review articles, furnished technical assistance at legislative hearings, and gave information about prisons in several criminal cases where prison issues arose. We furnished major legal assistance to the Prisoners' Union in their efforts to bring into the prisons unionization concepts and collective bargaining over wages and other important issues. We attempted to bring about a decrease, if not the elimination, of the "lock up" as a major penological tool. In this latter attempt we totally failed, and locking a person up remains the major device used by California prison authorities to solve all of the human problems which arise in the prison situation. Major lawsuits pending on this issue may bring some relief to the prisoners; it is no comment on my high admiration for the attorneys who are pressing these cases to say that I am dubious about substantive change in the foreseeable future.

I believe that tortures of prisoners relate to the phenomenon of class, and since we in America look resolutely away from recognition of this problem, it will be a long time in achieving a more just solution. Because most of the prisoners were indigent, and their families poor, the Project paid its staff from foundation funding. The forces of society are both crude and subtle; the more subtle pressures upon the movement for prison change (and for abolition, in the sense that perhaps only one tenth of persons incarcerated today require isolation from society in order to protect it) came in the form of increasing difficulties of funding. I and others on the staff began spending more and more of our time on proposal writing and trips to visit foundation personnel. When in the spring of 1973 I saw that I was spending over half of my time in this way, and that letters from prisons in most of the 50 states and the federal system were increasing as our staff decreased, it seemed that the experiment of the Project had to cease and take another form.

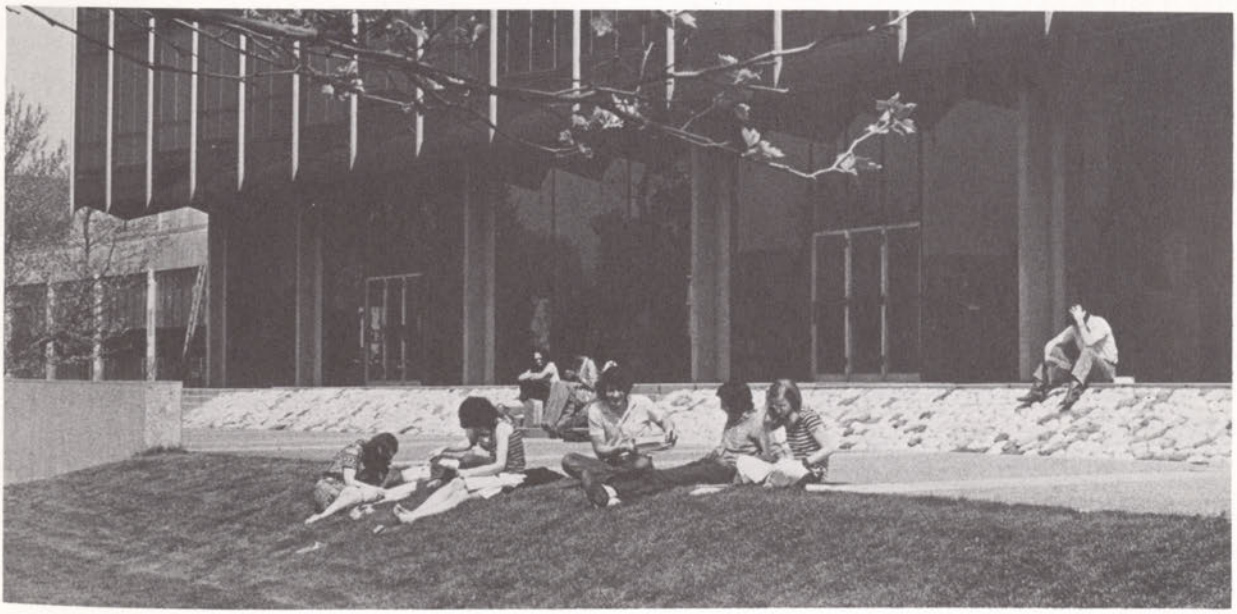
I call it an experiment because I analogize our efforts to the search for cure(s) for various types of cancer. We don't have it yet, but it is my belief that those working intensely in the field—in close touch with the voice of the prisoners and their families, the courts, the legislature, the public, and the press, and with some degree of distance from the prison bureaucracy and its own needs to perpetuate and justify itself—will make the breakthroughs. The "prison problem" arises in part because America solves many of its problems by locking up persons who can't "make it." The far less numerous population who do require isolation—*e.g.,* those who are dangerously psychotic or otherwise dangerous—would not present the "prison problem" which occurs when hundreds of thousands of black, brown, and white poor persons are locked up for economic crimes.

In the final weeks before the Project closed, many people asked what the prisoners would do without the staff to write to, and with few outsiders left to assist in emergencies and over the long haul. There are a very few attorneys and prison reform groups still working in California, but the difference between routinely dealing with the 200 letters per week received by the Project, and not doing so, is enormous. The violence rate in California's prisons went up considerably after the termination of the Project; whether it was related to the closing of this release valve of legal assistance and concern is unknown.

I eventually became emotionally exhausted from the hundreds of letters detailing prisoners' anguish and phone calls from prison families to which I could not adequately respond, and I finally decided that I had to leave the exclusive practice of prisoners' rights law. I have now returned to general practice, particularly to more involvement in women's rights cases. My husband Marvin graduated from the Law School two years ahead of me, and we've now been married over 20 years. For the first time, commencing in October of 1973, we have been working together in a law firm, and it's working out well. We have two children, who used to complain about "too much law talk" at home, and who have been to the courts, the prisons, and an unbelievable number of meetings. My daughter wouldn't dream of working in law; my son sometimes gives it a thought.

Recently my daughter and I were in a New York subway, and the passengers next to us, two young black men, were poring over a well worn, heavily underlined copy of *Soledad Brother.* I passed them a card, and after giving me the look reserved for crazies who approach one on the subway, they broke into delighted recognition. Before they rushed out at the next stop, we were practically embracing and they were showering literature (dealing with Newark) upon me. From Soledad to Harlem, an interesting interstate commerce.

When I think about the Law School today, I have various thoughts. I would like to see more racial minorities at the Law School. The Law School was



hospitable to women law students before it was fashionable (and necessary) to be, but I would like to see a University or Law School sponsored child care project so mothers could attend the School, or perhaps some scholarships with a child care component included. I would like to see a well known Law School professor keep Oregon green and unlittered.

I wonder what books are presently being taught in the introductory course. I remember Karl Llewellyn's opening address to the first year law students, and often think about the many applications of the concept of "the law job." It might be interesting to add *Soledad Brother*—the view of the law from "the hole," by a black political theorist and revolutionary who spent eleven years in prison for an $80 robbery at age 19, to *The Bramble Bush* and *An Introduction to Legal Reasoning*. Jackson's views on judges and lawyers and prisons were pragmatic and philosophical. His childhood was spent in Chicago not far from the University. Since lawyers and judges are now also going to prison, the profession may take an increased interest in the imprisoned. But I believe the jails and prisons will continue to be receptacles for the poor, and that we need to grapple more honestly with that fact in all of our educational and social institutions.

The Mandel Legal Aid Clinic

Steven E. M. Hartz

After a quiet first year in the Law School Library buried in basic law texts, I was not quite prepared for the intensity of life in the Mandel Legal Aid Clinic. Like many of my contemporaries, I joined the Clinic in my second year of law school out of a somewhat overly ambitious desire to put my embryonic legal knowledge to practical use. I was like the reader of a lengthy novel who impatiently flips to the last page to find out how the plot comes out. How quickly I discovered that I had only scanned the first of many many volumes!

My first assignment in the Clinic struck me as rather anticlimactic. I was given a sheaf of subpoenas and told to serve them on witnesses for an impending trial. The project seemed simple enough. But, alas, things are seldom what they seem, and I spent the next two days pursuing the witnesses through lesser known parts of Chicago as they fled the long arm of the law. Upon hearing of my arrival, one witness even went so far as to lock herself in an office. I noted, however, with great legal acumen, that the lavatories were down the hall. I decided to be patient. Finally, after an hour had passed, the forces of nature prevailed, and justice was done to the tune of many undeleted expletives.

One of the great advantages of the Mandel Clinic is that every staff attorney is actively engaged in developing a particular specialty in poverty law practice—welfare, employment discrimination, landlord-tenant, etc. Thus, from the first, a student is exposed not only to routine matters, but also to complex and challenging problems of law reform. By luck of the draw, I was assigned to Thomas Stillman, JD '67, whose field of interest is fair employment practices. Under his supervision, I gradually became involved in virtually every aspect of this rapidly developing area of civil rights law. I frequently participated in conciliation conferences before the Illinois Fair Employment Practices Commission; I took part in every phase of developing a classs action suit for sex discrimination against a large hospital; I prepared a number of research memoranda on unsettled procedural issues which plague litigation in this area. Although time consuming and undercompensated in Law School credit, the work which I did under Stillman's direction was as intellectually stimulating as any I did at Chicago. Few areas of the law offer greater diversity of issues and few teachers are more willing to spend time exploring them individually with students.

Not all of the work in legal aid, however, involves exciting problems of law reform; evictions, collection suits, and custody fights are plentiful. Every student who has been brash enough to volunteer for clinical work has spent countless hours poring over tedious statutes and long forgotten cases dealing with obscure trivia. Yet, for the neophyte, such matters are not without excitement. Regardless of the legal significance of a given case, there is always a certain satisfaction in helping an indigent client obtain a fair shake from the system.

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I remember one of my first cases, that of Mrs. Y, a 72-year-old custodial worker in one of Chicago's government-run hospitals. Although she had been hired at the youthful age of 64 and was still performing her work well, Mrs. Y was summarily discharged one day on the ground that she was over 65. Several hours of tedious research into Illinois Civil Service law revealed a dusty statute which forbade the hospital from firing an employee without a hearing at which good cause was shown. After attempts to persuade the hospital to rehire our client failed, we took our case to court. Within a few days, the signature of a judge accomplished what painful negotiations had not. Although this simple victory made no great mark on the law, it was one of the most satisfying accomplishments of my time at the Clinic. That an impoverished and elderly woman could succeed in reversing the decision of a multi-million dollar government enterprise surely points up what is most inspiring about our system of justice.

The most poignant experiences one has in the Clinic, however, come in the third year, when students are permitted to appear in the state courts under Rule 711 of the Illinois Supreme Court. It is here that one sheds the protective cover of academic life and faces the vicissitudes of the trial court. These first forays into the judicial arena might strike devotees of Louis Nizer and F. Lee Bailey as pedestrian, but they are for student participants moments of real drama.

The first trial to which I was assigned involved defending a rent action for $1200. As I first looked through the pleadings, I had the strange sensation that I had been assigned to this case out of a perverse desire on the part of my supervisor to give me a taste of defeat. After a dismal interview with the client, I recommended that we settle the case on any reasonable terms. Our adversaries, however, shared my perception of the case and refused to settle.

The trial date approached inexorably, and I began to feel rather like a policeman out of *The Pirates of Penzance* about to meet his gory fate. At trial, plaintiff's case proceeded swiftly; the conclusion seemed foregone. Counsel for the plaintiff methodically laid the foundation for the introduction of business records apparently showing conclusively that my client was liable for the rent. He had gone through this simple trial procedure a thousand times before; his questions rolled out like a computer printout. I noted one flaw, however. He failed to ask *when* the document had been prepared. I objected to the introduction of the document for the sake of form. The judge looked at me in a slightly amused fashion and allowed me to ask the question on *voir dire*. To everyone's astonishment, the plaintiff answered that the record in question had been prepared shortly before trial. Under the rules of evidence, it was plainly inadmissible. The judge burst into a broad smile and sustained my objection. Plaintiff's counsel argued valiantly, but the case was effectively, and quite miraculously, over.

It is easy, of course, to recount the moments of exhiliration. But the Clinic experience also has its extremely sobering moments, times at which one is powerless to help a deserving client. There are cases in which one sees poor people caught up in the cruel and unrelenting gears of welfare bureaucracy, and cases in which the law, by inertia or design, has simply not kept pace with contemporary social demands. Each of us, I am sure, has felt on occasion that the mere presence of legal aid counsel in a case has lent undeserved legitimacy to grossly unfair procedures and decisions. For those who might be tempted to romanticize the work of the poverty lawyer, all this is a useful reminder of the profound limitations of the role.

In addition, I think that we must frankly admit, as we all too rarely do, that the effectiveness of legal aid attorneys is often diminished by the social and economic gaps between attorney and client. The attorney is educated; the client is, by and large, uneducated. The attorney enjoys considerable freedom and power; the client is comparatively helpless. Under these circumstances, it is not surprising that those who seek legal aid often approach with fear, suspicion, and even contempt.

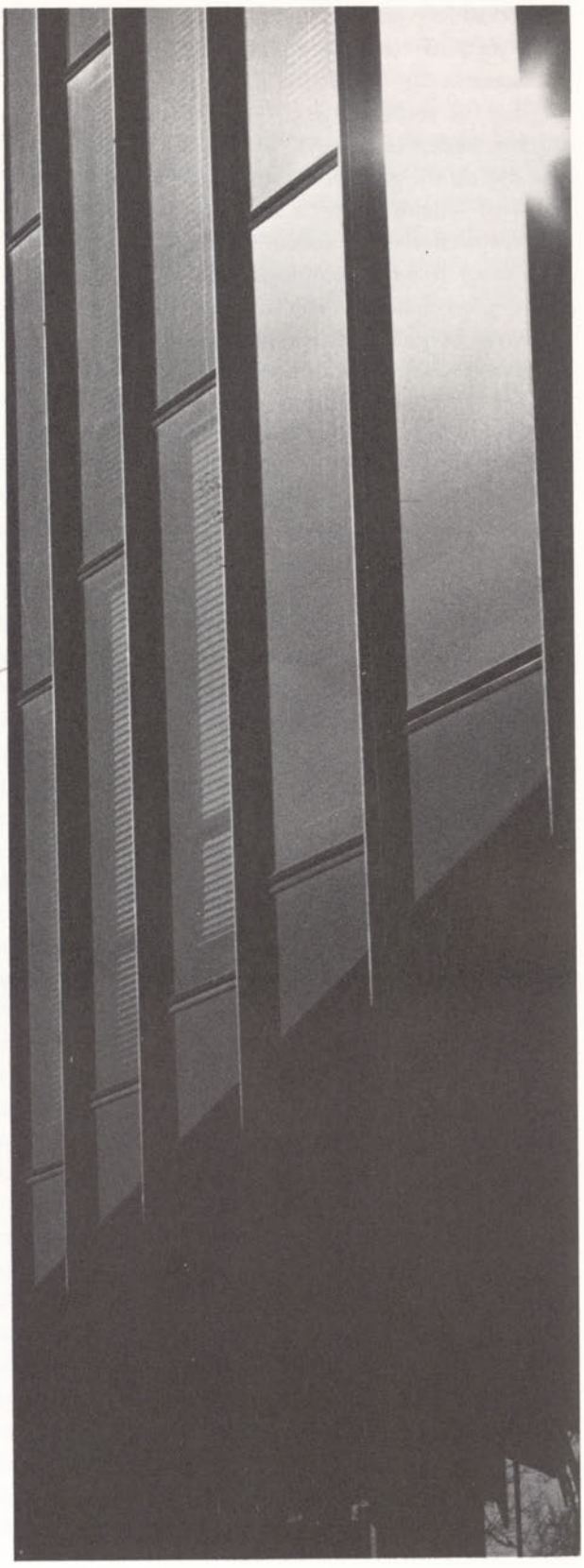
It is common for students to spend valuable hours working on a matter only to find that the client has disappeared or lost interest. Often a client will deposit a summons in a student's hand and walk out never to be seen again. The natural temptation, of course, is to write this off to the client's ignorance and apathy; however, we are not always without fault. Whether we intend it or not, we often treat our clients with insulting paternalism. We are prone to assume that they are unable to do anything for themselves. Rapidly taking charge of matters, we often leave them out in

the cold, compounding their sense of helplessness. Not only does this insure that the client will be dependent on legal aid in the future for similar problems, but it also generates much of the hostility and lack of cooperation which we so often encounter.

Equally troubling in the legal aid setting is the difficulty of using the powerful weapons of law in a restrained and constructive manner. We are often thrust into explosive controversies in which injured clients demand that we pursue drastic remedies. At times, adversaries compound the problem with provocative behavior. Unfettered by traditional economic restraints, it is all too easy to overreact. Maintaining an independence of judgment in the midst of the tempest, reasoning parties out of unreasonable actions, building compromise out of confrontation, are thankless tasks and ones which we have not always accomplished as well as we might.

Yet, despite the vicissitudes of life in the Clinic, it is a rich experience. It is a guided tour through the panoply of legal and ethical problems of professional life. It offers the excitement and rewards of practical experience in an environment of disciplined study.

No description of the Mandel Clinic would be complete without a word about its director, Professor Gary H. Palm, JD '67. At first glance, Palm's robust figure and broad smile might lead the casual observer to conclude that he is a serene Buddha presiding benignly over the worldly pandemonium of a legal aid office. But any such similarities are purely superficial. I have rarely found a moment, early or late, when Palm was not in the office immersed in the plethora of problems generated by four or five hundred pieces of pending litigation. It would not be an exaggeration to say that he actively participates in virtually every serious matter in the Clinic. A tough litigator, demanding teacher, and sharp wit, Palm maintains tight rein over the quality of the Clinic's practice. He dissects sloppy work with excruciating detail; he has been known to punish negligent work with failing grades in the Trial Practice Seminar, which he runs for Clinic students. But despite the demands he makes on the overworked members of the Clinic staff, Palm maintains a wonderful rapport with the people around him. His dedication to poverty law, prodigious energy, and keen legal insight lie at the heart of what I have found to be most worth-while in the clinical experience.



Phil C. Neal: Dean, 1963-1975

Jean Allard

Phil C. Neal relinquished the position of Dean of the Law School in June at the end of the current academic year. He resumes—happily at our own Law School—his full-time professorial and scholarly pursuits. There are books and articles to be written, ideas to be contemplated, classes to teach and adventures which Phil and his wife Mary have had to defer while he carried the responsibilities of leadership of the Law School. We understand his desire to be relieved of the deanship and we all wish him great joy in his decision.

Phil Neal was the sixth Dean of the Law School. He has served in that post for some twelve and one-half years—longer than any Dean in the history of the Law School with the exception of James Parker Hall. It is part of the tradition that ten years of one's life is all that the University can fairly demand of a Dean of the Law School.

The period in which Phil Neal has had the leadership of the Law School has been, I need not tell you, a particularly turbulent one in the field of education generally and in legal education in particular. It has not been a time in which the Dean of a great Law School could indulge a bent for the quiet, scholarly and contemplative life. I recall that Robert Maynard Hutchins remarked, wryly, a few years ago that he never thought the time would come when what a university would most like to see in its students was "greater apathy."

The Law School has, of course, survived those difficult years and indeed has emerged, under Phil Neal's administration, with its position as one of the pre-eminent law schools of the country, strengthened and reinforced.

At the annual dinner of the Alumni Association on April 17, 1975 which honored Phil Neal, Frank Greenberg spoke of these things and of Phil's accomplishments as Dean. But more particularly he spoke—for all of us—of the exceptionally warm and congenial relationship which Phil has enjoyed with the alumni. I should like to share with those of you who could not be present at the dinner at least these excerpts from Frank Greenberg's remarks.

"It is not," Frank said, "simply that Phil Neal is an exceptionally warm person whom it is very easy to like; the relationship has had the much more important foundation of *respect* for his accomplishments, his stewardship of the Law School, his abilities, and the perception we have had of his firmness of purpose. Without that ingredient of *earned respect,* the relationship, however pleasant, would not have been very consequential.

"To be the Dean of a law school such as that about which the alumni feel so possessive requires a great deal more than a talent for being voted 'Mr. Congeniality.' And Phil, however gracefully on occasion he has concealed it, is not lacking in the necessary hard-nosed qualities.

"I can only guess at some of the problems of presiding over a faculty which must inevitably combine genius with temperament. Or of contending for an appropriate share of the budget in a University that has so many other prestigious, if not equally deserving, graduate schools. But I have some insight, particularly from having served as a member of the Visiting Committee, into the way in which Phil has managed to listen to the alumni—always patiently—always more than just dutifully—and at the same time remain free of our more bizarre suggestions.

"Phil Neal—and the alumni—have understood, and acted upon, the idea that the Law School and the alumni must be *mutually supportive.* There can be no one-way street in the relationship. The alumni feel keenly the need, not unselfishly, to keep the luster of

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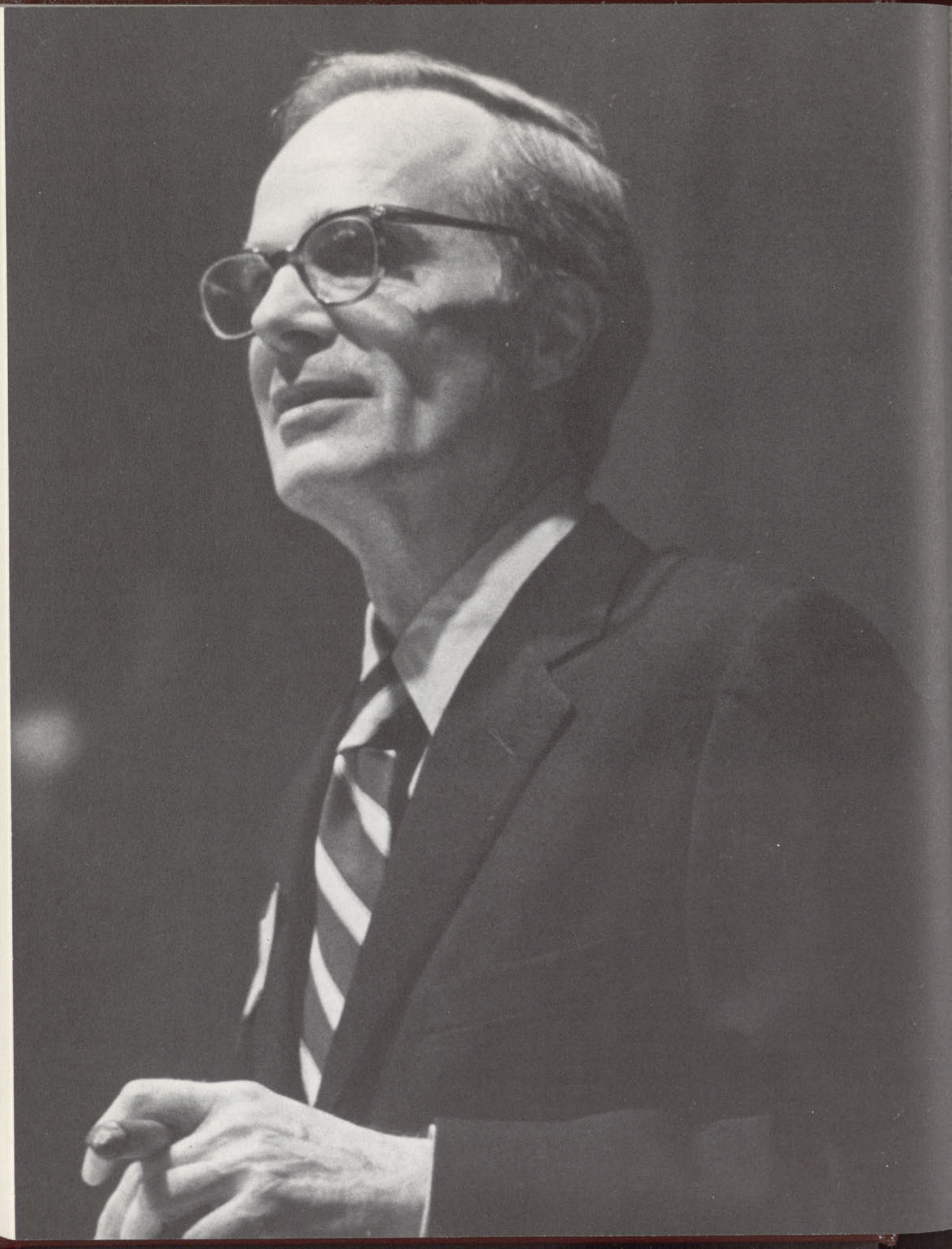
Mrs. Allard, JD '53, is President of the Law School Alumni Association and Vice-President for Business and Finance of The University of Chicago.



the Law School well burnished. And the Law School needs the alumni—but it also needs to be independent—even of the alumni.

"If the faculty and the alumni are occasionally difficult, I shall leave unsaid the problems of dealing with so vital a student body as we have always had at the Law School.

"It would hardly surprise me if on occasion Phil Neal—like other deans—has dreamed of that impossible deanship in the sky, of a law school that had no faculty, no alumni and perhaps even more to be desired, no student body. But since, except in such fantasies, law schools that have Deans must also have faculty and students and alumni, I testify from my vantage point that Phil Neal has coped successfully—indeed brilliantly—with all of these temperamental and diverse and importunate elements.

"I have no tangible token of our esteem to present to Phil on this occasion, only these words by which I have tried to convey the thanks of the alumni for what he has been, what he is, and what he will yet be.

"And a final word. It is a cliche on occasions of this kind when one speaks of a distinquished man that a bow should be made in the direction of his spouse. In the case of Phil and Mary Neal, cliche or not, I tell you that it has been our perception that the Deanship has been a partnership to which Mary has made a very great contribution. It is that contribution which is perhaps ultimately the secret of how Phil has managed to do so well.

"I think that perhaps the most effective way in which we can pay tribute to Phil Neal is by continuing to evidence, tangibly and intangibly, our loyalty to the Law School, to enlarge the membership of the Dean's Fund, and to give to his successor the same financial and moral support which we have tried to give to Phil.

"And that, I suspect, is all the tribute he wants or would gladly tolerate . . ."

Frank Greenberg's words were apt and Phil Neal responded with his usual grace and felicity. While I cannot hope to evoke the emotion of the evening, you will know that it was a warm and happy occasion.

It detracts nothing from his worthy and distinguished successor to say that we shall miss Phil Neal as Dean. We have come to know him and to appreciate him far too much to let him go very easily. But fortunately we shall still have him as a member of the faculty and perhaps he will be able to enjoy us, and we him, even more.

Reflections *(continued from page 17)*

lawyer." Other comments ranged from the exuberant opinion of Ingrid Beall, JD '66, of the Chicago law firm of Baker & McKenzie, that "as a matter of prestige, being a graduate of the Law School of the University of Chicago cannot be surpassed" to the bland admission of another graduate that "in general, laymen and lawyers acknowledge that you must possess some intelligence to have managed to graduate from the institution."

The question that evoked the most diverse responses concerned advice for women now entering law school and the legal profession. "It would take a great deal of temerity," one attorney replied, "to offer women entering law school any general advice at all." Others were not so reluctant. "Don't bother going to law school," Ms. Levin warned, unless you think you really want to do it—don't do it because it seems like the 'in' thing to do at this time and place."

"Once a woman has decided to become a lawyer and has entered law school," Ms. Holmes observed, "she probably doesn't need much advice any longer. The time for advice is between the ages of 12 and 18 when girls do not plan realistically and are not encouraged to take themselves seriously." Once out of law school, "I think you have to be absolutely determined without on the one hand becoming bitter or, on the other, stepping on people's toes constantly. However, it's part of the determination not to suffer in silence when that will not accomplish what you want, such as when you don't like the kind of work you are doing."

Miss Lowenstein's similar observation seems to epitomize the prevailing credo of women graduates over the decades: "The fact that you are a woman should be irrelevant to the practice of law. True that probably there is discrimination all along, but despite the discrimination, the practice of law can be most enjoyable provided one goes out there and fights and does not sulk."

Reviews

And Now for Something Completely Different

A History of American Law. Lawrence M. Friedman, JD '51, LLM '53. Simon & Schuster, New York, 1973. Pp. 655. $14.95.

Grant Gilmore

Professor Friedman's excellent volume is a notable contribution to the rapidly growing literature which seeks to recapture our legal past—to make some kind of overall sense out of the growth of a distinctively American legal system. The book is essentially an inquiry into what happened to the law and the legal establishment in the United States from the Revolution to the end of the nineteenth century. A brief and somewhat perfunctory introductory part tells the story of American law during the nearly two hundred years which preceded the Revolution. An even briefer epilogue on American law in the twentieth century, which is far from perfunctory, summarizes Professor Friedman's views on where we are now, how we got there, what direction we seem to be following and what (ideally) we ought to aim at. But the heart, and great bulk, of the book is a reconstruction of our nineteenth century legal history.

It is only recently that we have begun to think historically about the law. When I studied law at Yale in the early 1940's there was no suggestion, in any of the instruction which I received, that there was any point in thinking about law as an historical process. The implicit philosophical or jurisprudential bias which the entire law faculty seemed to share was that law was a sort of mystical absolute waiting to be discovered, described, catalogued, mapped and, so to say, reduced to possession. I think the point is worth making that my instructors included such predecessors of and participants in the so-called legal realist movement as Arthur Corbin, Underhill Moore, Wesley Sturges and Harry Shulman—men who, in their several ways, had decisively contributed to the tearing down of the structure of orthodox theory which had gone almost unquestioned until after World War I. And yet, reflecting, thirty years after the event, on what they taught me (which may not have been at all what they meant to teach me or thought they were teaching me), I come up with something like this: they taught me that the orthodox or pre-World War I version of law, enshrined in treatise and Restatement, was wrong but that there was (or could be) a correct version of law which was in the course of being worked out and which would presently be revealed. That is to say, they appeared to believe, quite as much as their predecessors had believed, in the theoretical possibility (or existence) of absolute legal truth which could be scientifically investigated, determined and stated. Or, to put it another way, they had no more abandoned or rejected the underlying presuppositions of nineteenth century legal theory than the Protestant reformers of the fifteenth and sixteenth centuries had abandoned or rejected the underlying presuppositions of Christian theology. They proposed a change of course, not a change of goal.

When Professor Friedman studied law at Chicago in the early 1950's he found there, I have no doubt, much the same state of things that I had found at Yale ten years earlier. It was not until considerably later—if we must have a date, 1960 will do as well as any—that a historical approach to law seemed, almost overnight, to become fashionable, at least among academic theorists. (I dare say that a page count of "historical" material published since 1960 in the law reviews and in monographs would, if anyone mad enough to undertake such a project could be found,

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demonstrate that the foregoing statement is factually true.)

In his Preface Professor Friedman notes that American legal history has been a neglected field—indeed, that his book "is the first attempt to do anything remotely like a general history, a survey of the development of American law . . . . "[1] He comments:

> The state of legal history is no mere accident. Part of the problem has been that in the United States there was no place for legal history to come *from*. The conceptual blindness of legal education was not conducive to creative scholarship, at least not until recently. The dominant ideology of law schools was such that these were not centers of legal research. They taught legal method, legal reasoning, analytical skills, how to take cases apart, and how to put them together again. Legal scholars and lawyers were interested in precedents, but not in history; they twisted and used the past, but rarely treated it with the rigor that history demands.[2]

Professor Friedman's suggestion seems to be that the neglect of historical study of law is a fault chargeable to American (as distinguished from English and European) legal scholarship and that the fault is attributable to the peculiar nature of American law schools which, at least "until recently," could not become centers of legal research because they were, predominantly, trade schools for training practitioners ("lawyers . . . interested in precedents, but not in history"). If we follow Professor Friedman so far, we should want to know what has happened "recently" to change all this and to make "creative scholarship," for the first time, possible.

I am inclined to think that the American experience, in these respects, has not been significantly different from the English or the European experience.

Within the Western European tradition ("Western European" includes "American" *pro hac vice*), the systematic study of law dates only from the eighteenth century. From that time until our own the instinctive presupposition of almost all writers about law has been that the general, basic or fundamental characteristics of any legal system change very slowly, if indeed they change at all. The goal of legal scholarship and of legal philosophy—which we learned quite recently to call jurisprudence—was to identify these unchanging verities. As I suggested earlier, both the presupposition and the goal were unquestioningly accepted even by my iconoclastic instructors at Yale in the 1940's as they no doubt were by Professor Friedman's instructors at Chicago in the 1950's.

So long as most lawyers and most law professors shared that theoretical approach to law, there could have been no serious, historical legal writing and there was none, or almost none. In England, Maitland seems to have been the only exception to the rule and he has had, until recently, no successors. In this country the most celebrated book in our jurisprudence—Holmes on *The Common Law*—pretended to be history but was not.

No doubt it is what we think about the present which determines how we look at the past. So long as we are content with the present, we look to the past only for instructive moral lessons on why it was that everything worked out for the best in the best of all possible worlds. It is only when we question or reject the values of our own time that we turn, instinctively, to the past in an attempt to find out what went wrong. In the Western European tradition most intellectuals seem to have shared the "best of all possible worlds" approach until after World War II. It is, I suggest, the malaise which has eroded the strength of that tradition since the 1950's which accounts for the current attempts to recapture our history, including our legal history.

Karl Llewellyn in his last book, *The Common Law Tradition* (1960), proposed a "periodization" of American law which has been followed by many other writers. In Llewellyn's terminology, American law, until the Civil War, had been characterized by what he called the Grand Style. After the Civil War the Grand Style lost out to what he called the Formal Style. By "Style" Llewellyn meant the process of adjudication, not the presence or absence of literary felicity. In his view the post-Civil War Formal Style was one of arid conceptualism which sought to reduce the law to a closed, logical system. Llewellyn, a congenital optimist, had persuaded himself that after 1940 or thereabouts the Grand Style had reemerged or was in process of reemerging. On that proposition he has had few followers, although most of those who have accepted his conclusion that the Civil War was a watershed in our legal history as it was in our social, political and economic history have also accepted the

idea that the Formal Style went into a process of breakdown during the period between the two World Wars.

Professor Friedman seems to accept Llewellyn's "periodization" (as I do myself), albeit without accepting Llewellyn's belief that the good old times of the Grand Style have returned and may be here to stay. In his Epilogue Professor Friedman reserves some of his most scathing rhetoric for the twentieth-century law reform and unification movement. The draftsmen of the Restatements of the 1920's and 1930's, he comments, "took fields of living law, scalded their flesh, drained off their blood, and reduced them to bones."[3] The Uniform Commercial Code was "curiously old-fashioned . . . a product of a time that now seems as quaint . . . as the era of highbutton shoes."[4] In Professor Friedman's view the people who worked on such projects as the Restatements and the Code failed to make any contribution commensurate with the vast effort which they expended because they were blinkered to a narrow, formalistic view of the law; the only problems which they saw were "problems of logic and consistency" or "problems of disorder in doctrine."

Professor Friedman's own sympathies go to what he likes to call a "social" view of the law, which modulates into a "social scientific" view. In his Preface he characterizes his book as "a *social* history of American law" and goes on to say that "[he has] surrendered [himself] wholeheartedly to some of the central insights of social science."[5] He recurs to the same theme in his Epilogue. One of his criticisms of the Code is that it was not based on "empirical studies of what business wanted, or with a theory of what the economy needed."[6] And he approvingly cites the Chicago jury study as an indication that "collaboration between legal scholars and their social science colleagues [is] possible at least."[7]

I do not myself share Professor Friedman's faith in the insights of social science or in the value of empirical studies. Indeed I incline to the belief that the attempt to restructure our legal thinking in the light of the theories and methods of the social scientists will run into a dead end in the 1970's exactly as it did in the 1930's. However that may be, we are all in Professor Friedman's debt. His book makes available, for the first time, a comprehensive, detailed and accurate account of what went wrong with our legal system (as many of us now feel) during the hundred years when (as most people then felt) everything was going exactly right.

[1]P. 9.
[2]*Id.* (emphasis in original).
[3]P. 582.
[4]Pp. 581-82.
[5]P. 10 (emphasis in original).
[6]P. 582.
[7]P. 594.

Our Famous Feline

Tiger in the Court. Paul Hoffman. The Playboy Press, Chicago, 1973. Pp. 290. $8.50.

S. Yasgur

HELP! The House of Government, screamed daily headlines, was being attacked by political termites. Plunkett*, said many, was alive and well and living in the White House. Special Prosecutors, super prosecutors, and committee upon committee competed for public attention. Governmental corruption at all levels maintained a fast hold on page one. The seventies had ingloriously begun.

Unfortunately, we Americans are an impatient lot. Awakened to the existence of an epidemic, we seek an immediate panacea, not an understanding of the cause. When the disease is corruption, the reaction is to call upon the prosecutor. Many forget, or perhaps choose to ignore, the prosecutor's handicaps. Corruption may spread as insidiously as cancer and may be as consuming as a forest fire, but it is not

*Tammany Hall's George Washington Plunkett, a legendary figure in the annals of political corruption.

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susceptible to being as completely removed or as fully extinguished. The reasons are as basic as civil rights. The surgeon and the forest ranger can sacrifice healthy tissue and growing trees to insure a total cure.

The prosecutor, however, must err on the other side. His efforts to eradicate corruption are, or ought to be, limited by viligant concern for individual rights, his assumption of the burden of proof, and sundry legal impediments. In addition, much corruption simply goes undetected, due to such factors as the absence of an able and dynamic prosecutor, the reluctance of witnesses to come forward, or the lack of an independent investigating staff. Thus, the public's expectation that a prosecutor can excise corruption is unrealistic. Worse, it shifts the focus away from the efforts everyone must daily make in order to eradicate political rot.

Still, if a prosecutor is non-political, fearless, tenacious and imaginative, he may become a very heroic figure. If such a prosecutor also has the good fortune to be in the right place at the right time, some may view him or her as a "tiger in the court." Paul Hoffman has concisely and straightforwardly written of one such lawman. His subject—the Honorable Herbert J. Stern, formerly United States Attorney for New Jersey—is an alumnus (JD '61) whose record of successfull investigation and prosecution of highranking, corrupt public officers is brilliant and unique.

Granting an author the right to his own style, a reviewer who is familiar with the subject matter owes his readers a thorough discussion of the book's weaknesses along with its strengths. Mr. Hoffman's topic is Stern, not corruption. Thus, he highlights Stern's development of his cases, but not the development of corruption itself. In like manner, there is justifiable emphasis on the impressive array of high office holders Stern personally convicted, but little consideration of the impact, if any, that those prosecutions had on subsequent office holders. And little attention is given to what must yet be done by Lacey's and Stern's able, young successor and by the people of New Jersey.

Such omissions are, of course, appropriate in a book devoted to a man rather than to a condition, but they unwittingly do Stern and his biographer a disservice. One must recognize that Stern above all others would have rather had an exciting work designed to arouse the public to constructive action than to have had his own triumphs paraded through 290 pages. Some will conclude from *Tiger* that a white knight dressed as a prosecutor crossed almost the entire state of New Jersey, leaving only small cleanup operations in his wake. Although clearly not by design, such a lulling of readers might mean that another tiger will find New Jersey fertile territory once again in the near future.

The jacket notes state that Mr. Hoffman, who obtained his A.B. and A.M. in political science from Chicago, has been a newspaper man, a contributor of articles to several popular periodicals, and an author of a book on Wall Street law firms. In *Tiger* his newspaper background is much in evidence. The book, for the most part a series of case summaries, is generally easy to read and tabloid-quick. Some readers, however, may miss the lengthy novel-type descriptive paragraphs that often give one a feel for the humanness of the people behind the names. Indeed, even as to the star subject himself, there is a minimum of material from which we can get a handle on the man inside the tiger. We must settle for the remote images created by such clipped lines as "his suits are dark and narrow lapelled, his ties thin and somber striped." Presented as a quiet, almost one-dimensional man, Stern seems to suffer from a lack of in-depth understanding by the author. It is, of course, possible that Stern was not accessible to Mr. Hoffman except in a formal context. Nevertheless, it is the duty of a good reporter to ferret out the personal. While prosecutors are rarely seen as the local jester, experience teaches us that one-dimensional, dry types don't achieve what Stern attained by way of trial record, appellate record, reputation, admiration and respect.

Another minor complaint is the lack of graphic exhibits. The book deals with the escapades of scores of defendants, many of them interrelated. In treating these convoluted, many tiered conspiracies, charts would be as helpful to a reader as to a juror. Also, there is much reference back to cases discussed earlier. If the book is not read at one sitting, some rereading of earlier passages may be required to get on track again.

These minor points aside, it is hard to take strong objection to the book as far as it goes. What one could wish for, however, is that it had gone much,

much farther into a host of other issues that fairly leap out of the pages. For example:

1. In my own experience, nine factors determine a prosecutor's chance for success:

(a) Political independence;
(b) Financial and manpower resources;
(c) Jurisdictional limitations;
(d) Procedural limitations;
(e) Substantive law limitations;
(f) The existence or non-existence of an independent investigative staff;
(g) The passive vs. the dynamic approach to investigation;
(h) The attitude of the public; and
(i) The ability, character, determination and goals of the man who holds the office, which is by far the most important of the nine.

Had these factors been carefully analyzed, the brilliance of Stern's success would have been even more demonstrable. Severly handicapped by the limits of federal jurisdiction, federal substantive law, and the lack of a fully independent investigative staff, he unearthed more "state" criminal conduct than any local officials.

2. What is it about the system that, unfortunately, makes a successful prosecutor like Herb Stern so unique? Do the selection and elevation of prosecutors somehow favor those who are mediocre, or willing to direct their energies in paths not embarrassing to political king makers? Can the public do anything to insure that their prosecutor's offices will regularly be occupied by fearless, gifted, energetic, honest and humane people?

3. What of the hyphenated prosecutors phenomenon? Consider the common description of some of the more noteworthy offices: Dewey-Hogan, Lacey-Stern and Cox-Jaworski. Do these examples mean that once a courageous prosecutor breaks an office out of its "see no evil" lethargy the initial success will rebreed and sustain itself?

4. Why is corruption more difficult to uncover than other criminal activity? Stern himself notes that from an investigator's viewpoint corruption is almost the opposite of most crime. In a street crime, the criminal act is obvious and the challenge comes in identifying and apprehending the perpetrator. With corruption, the general populace is usually sure that certain identified persons are engaged in unlawful activity. The challenge is in isolating specific criminal acts and obtaining sufficient admissible evidence to yield a conviction. The problem is compounded by the fact that official corruption is commonly a part of the three-headed monster known as official corruption, organized crime, and labor racketeering. The profit that the corruption part of the monster brings to some, as well as the fear that the other two heads instill in others, usually results in a wall of silence of incredible proportions.

5. Mr. Hoffman notes that Judge Stern does not advocate the use of court-authorized electronic eavesdropping in corruption cases, while such other acclaimed prosecutors as the late Frank Hogan considered it law enforcement's most vital tool in the battle against official corruption and organized crime. Some pursuit of this seeming conflict might have proved informative and interesting. It soon would have been discovered, I suspect, that the two were referring to different types of underlying criminal activity and that each might acknowledge the validity of the other's opinion in the context of particular cases. Such a presentation might also have cautioned that not all official corruption can be discovered by an audit. It might have shed some needed light on a controversy which, unfortunately, is not always objectively considered because of the emotional impact of the right to privacy.

6. Is it important that most of Sterns' prosecutions were against state officials? Does the work of Lacey and Stern suggest that a "higher" political entity may have more success in investigating a "lower" entity than in policing itself? What then of federal corruption? Will that phenomenon never yield except to a "special" prosecutor? (In the case of Stern, the evidence seems reasonably clear that he would not have shied from investigating corruption on any level. Having limited resources, he apparently directed them to where the stench of corruption was the strongest and the most in need of eradication.)

Many other topics could have been treated in a

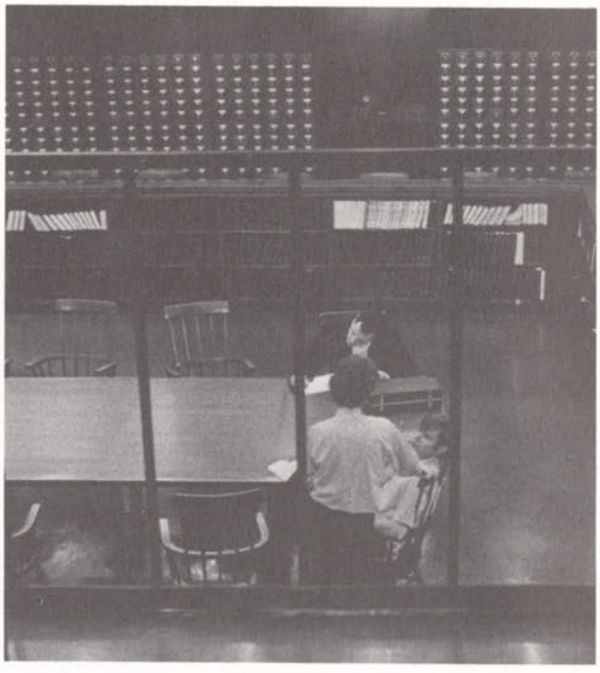
book about Herb Stern. Nevertheless, Mr. Hoffman's book is biographical in nature, and it was certainly his right to resist the temptation to author an encyclopedia on the problems of contemporary American criminal justice. The author does provide a digest of Stern's views on a number of subjects as a final chapter. The problem is that treating "On Crime" in one page and "Plea Bargaining" in eight lines is like showing a movie theater audience only the previews of coming attractions.

I have never met Mr. Hoffman, and I certainly owe him the benefit of the doubt. Yet, I confess to being concerned about whether some of these issues weren't further explored either because the book was simply programmed for 300 pages, or because the author was not aware that he was on the fringe of issues whose full development would have been as interesting as any of the recitation of the case histories.

Finally, in this vein, there is a tantalizing note at the end of the book, which, unfortunately, is not further explained:

> This is not an authorized account. Although I had the cooperation of Judge Frederick B. Lacey and Herbert J. Stern, there were some things they could not tell me for reasons of security or legal ethics, and other things they would not tell me for reasons of policy or politics. In some instances, I came to conclusions directly opposite to what they said.

That is a shocking statement to find appended to a book whose central theme is that Lacey and Stern were great because of their politics-be-damned attitude. A reader must always remember that he is not really seeing the subject. Rather, he is seeing the subject through the eyes of the author, eyes that may not be totally distortion-free. Certain passages of the book provide warning that in *Tiger* we may be reading a bittersweet account. The failure to make Stern more human, and the constant cracks that Stern's accomplishments were by a Nixon appointee—as though anyone appointed by Nixon must have been a Nixon look-alike—give a picture of an anti-establishment writer intrigued with Stern for bringing down the local establishment yet, at the same time feeling the need to attack Stern since, in his own capacity, Stern was the establishment. Difficult as it is for me to be totally objective, I suspect some



will best see Mr. Hoffman's "modern view" of public officials in his almost *Village Voice*-ish analysis of the Hogan office.

In order to make most important public people seem larger than life, biographers must usually augment the record with a liberal sprinkling of well worn adjectives. Mr. Stern's record is such, however, that the reader can be well and properly awed with only a straightforward recitation of facts. After a brief review of his accomplishments, "great," "brilliant" and "super" are unnecessary.

Born in 1936 in Manhattan's East Side, Herbert Jay Stern earned degrees from Hobart College (where the subject of his senior honors thesis was Machiavelli) and the University of Chicago Law School. ("Like most departments at the University of Chicago," Mr. Hoffman observes, "the Law School is academically oriented, more concerned with turning out legal scholars than with producing trial lawyers—scarcely the grounding Stern sought.")

Stern began as an Assistant District Attorney in New York County in 1962. He progressed rapidly through the ranks to the Homicide Bureau, where he learned the fine art of courtroom law from two of Frank Hogan's best trial lawyers, Vincent Dermody and John Keenan—not people to be aped, since

litigators must find their own style, but men to teach and hone the skills of investigation, issue spotting and meticulous preparation.

In 1965, Stern was appointed Special Attorney in the Department of Justice Organized Crime Section. His first big indictment, in the *Colonial Pipeline* case, not only led to an important courtroom victory for Stern, but also left a lasting impression on one of the defense counsel—Frederick Lacey. When Lacey soon was appointed United States Attorney for New Jersey, he appointed Stern as his First Assistant.

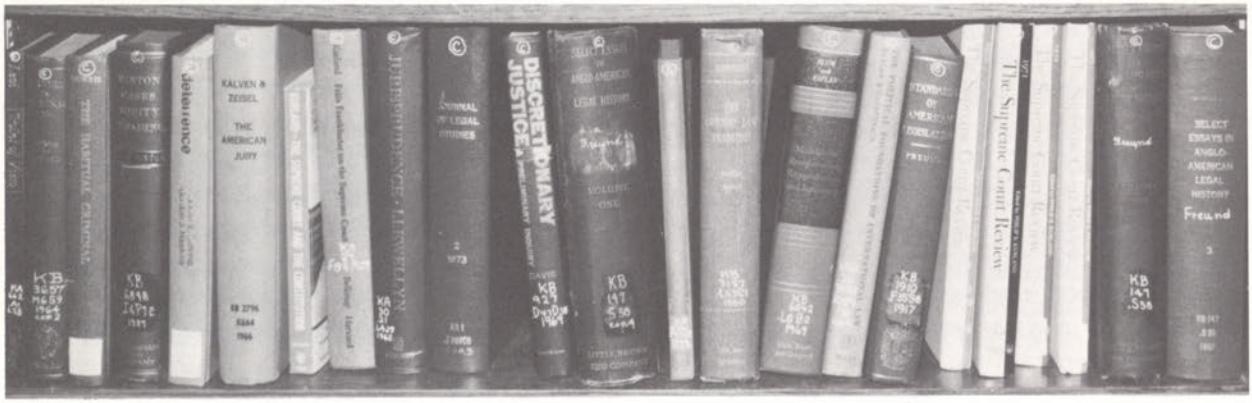
Together, during the next few years, Lacey and Stern created headlines that made New Jersey seem the most corrupt state in the Union, although knowledgeable observers say that New Jersey differed from other states only in the presence of Lacey and Stern. Mayors Addonizio and Whalen, the Hudson County Machine, judges, commissioners, council presidents, and other political bigwhigs, as well as organized crime figures, all fell like dominoes as Lacey and Stern repeatedly applied their successful strategy: examination of the books and records through which illegal payments had been channelled, a patient search for the chain's weakest link, and a carefully prepared trial.

In 1970, Lacey was nominated to the federal bench and recommended Stern as his successor. Stern, however, was conducting an investigation of New Jersey State Republican Chairman Nelson Gross, and when Lacey was sworn in as a federal district judge in 1971, the President still had not appointed his successor. Accordingly, it fell to New Jersey's federal district court to designate someone to represent the Government in the interim. At 34, Herbert Stern became the youngest United States attorney in the nation. A nomination by the President eventually came, followed by Senate confirmation on November 8, 1971—Stern's thirty-fifth birthday.

The book jacket sums up Stern's accomplishments in office: "The U.S. Attorney who prosecuted 8 Mayors, 2 Secretaries of State, 2 State Treasurers, 2 Powerful Political bosses, 1 U.S. Congressman and 64 other public officials." As a New York City television correspondent exclaimed at the time of his judicial appointment, "If it were happening in New York instead of New Jersey—New York being the media capital of the world and New Jersey being some place between New York and Philadelphia—then they would probably be running Herbert Stern for Governor by now." A Hogan associate and fellow alumnus, New York's highly regarded City Investigations Commissioner Nicholas Scoppetta, regards Stern's stewardship of the United States Attorney's office as "one of the truly remarkable accomplishments made by any prosecutor in fighting official corruption." An equally telling description comes from a former New York City detective, later a Stern investigator, who called him "the best." When a reserved, serious young man can win such admiration from a tough, cigar-chewing, expletive-eschewing, cynical cop of the old school, he has achieved a distinction most in law enforcement would envy.

Unfortunately, the otherwise inspiring career is flawed. Our famous feline no longer prowls New Jersey's courts. Instead, though obviously a willing captive, the tiger in the Honorable Herbert Stern now paces in a cage of judicial robes.

Recent books by alumni not reviewed here are cited among the Class Notes.



Memoranda

Norval Morris Appointed Dean of Law School

Norval Morris has been appointed Dean of the Law School. The appointment, effective July 1st, was made by John T. Wilson, Provost and Acting President of the University.

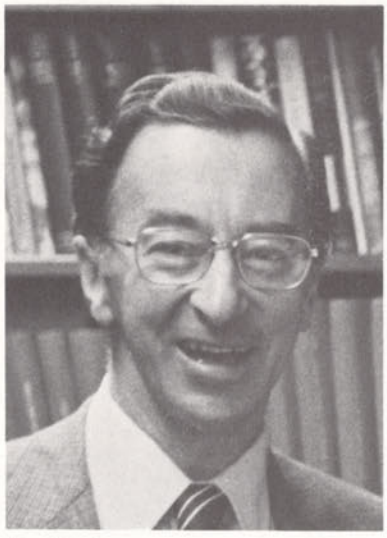
Dean Morris, who joined the law faculty in 1964, is the Julius Kreeger Professor of Law and Criminology. He becomes the seventh Dean of the Law School since its founding in 1902.

He was born in Auckland, New Zealand in 1923 and served in the Australian army during World War II. He studied law at Melbourne University, where he earned his LL.B. and LL.M. degrees, and later at the University of London, where in 1949 he received his Ph.D. degree in law and criminology.

After teaching on the Faculty of Law at the London School of Economics, Dean Morris returned to the University of Melbourne, where he taught from 1950 to 1958. He was the Bonython Professor and Dean of the Faculty of Law at the University of Adelaide from 1958 to 1962.

Dean Morris became director of the United Nations Institute for the Prevention of Crime and Treatment of Offenders (Asia and the Far East in 1962). Long a critic of this nation's penal system, Dean Morris has written six books on crime and the criminal, including *The Habitual Criminal* and, as co-author, *Studies in Criminal Law* and *The Honest Politician's Guide to Crime Control.* His most recent book, *The Future of Imprisonment,* was published in 1974 by The University of Chicago Press.

Dean Morris serves on two United Nations advisory committees on crime and the treatment of offenders, the Illinois Governor's Advisory Council on



Dean Morris

Adult Corrections, and the Governor's Council on the Diagnosis and Evaluation of Criminal Defendants. He is also on international boards of two journals on criminology and is a U. S. Delegate of the International Association for Social Defense. He is a member of the Advisory Council on Research to the National Council of Crime and Delinquency.

From 1969 to 1970, Dean Morris was a member of the President's Task Force on Prisoner Rehabilitation. He is a past president of the Illinois Academy of Criminology. He has been an Australian delegate to numerous meetings on human rights and social defense from 1955 through 1965.

Dean Morris succeeds Phil C. Neal, who will remain on the faculty as the Harry A. Bigelow Professor of Law.

Susan Haddad to Become Assistant to the Dean

Susan Christine Haddad joins the Administrative Staff of the Law School on September 1st as Assistant to the Dean. Ms. Haddad will work in the office of Assistant Dean Ellsworth, concentrating on alumni and development programs and assisting in other areas.

During the past year Ms. Haddad has worked as Special Assistant in the Office of the President of the American Bar Association, where she has assisted the President in research and preparation of speeches, correspondence, and other administrative matters. Previously she was Director of Publications for the National Legal Aid and Defender Association and Administrative Assistant at the American Bar Association.

She received her B.A. from Lake Forest College in 1964 and an M.A. from the University of Chicago in 1967. Prior to her work at the American Bar Association she served as a Congressional Staff Assistant and taught English at Claremont High School, Claremont, California.

She is presently attending John Marshall Law School at night and expects to graduate in June, 1977.

Susan Haddad

New Directors Elected by Alumni Association

At the last meeting of the Officers and Directors of the Law School Alumni Association, the following alumni were elected Directors for three-year terms of office: *George Hugh Barnard* '31, *Steve M. Barnett* '66, *Benson T. Caswell* '74, *George M. Covington* '67, *Joseph DuCoeur* '57, *S. Richard Fine* '50, *Herbert B. Fried* '32, *Jean Marie Hamm* '73, *Carol E. Moseley* '72, *Marshall A. Patner* '56, *Samuel Schoenberg* '35, *Arnold A. Silvestri* '49, and *Robert E. Stevens* '63.

Current officers of the Law School Alumni Association are *Jean Allard* '53, President; *Frank Greenberg* '32, First Vice President; *Morris E. Feiwell* '15, *Susan A. Henderson* '69; *Jeffrey Kuta* '72; *John F. McCarthy* '32; *Antonio R. Sarabia* '49; and *John G. Satter, Jr.* '58, Vice Presidents; *Jerry H. Biederman* '71, *Secretary;* and *Arnold I. Shure* '29, Treasurer.

Regional Chapter Presidents and Vice Presidents of the Association are *Fred C. Ash* '40, Dallas; *Roland E. Brandel* '66, San Francisco; *Gene B. Brandzel* '61, Seattle; *Mont P. Hoyt* '68; *Miles Jaffe* '50, Detroit; *Robert N. Kharasch* '51, Washington, D. C.; *Lillian E. Kraemer* '64, New York City; *Michael B. Lavinsky* '65, Denver; *Sidney I. Lezak* '49, Portland; *James A. Malkus* '61, San Diego; *Fred H. Mandel* '29, Cleveland; *Philip A. Mason* '67, Boston; *John F. McCarthy* '32, Chicago; *Lester E. Munson, Jr.* '67, DuPage County; *Robert L. Seaver* '64, Cincinnati; *Henry H. Stern* '62, St. Louis; *Martin Wald* '64, Philadelphia; *Donald M. Wessling* '61, Los Angeles; and *Matsuo Takabuki* '49, Honolulu.

Chicago Chapter Formed, McCarthy Elected President

The Officers and Directors of the Law School Alumni Association created at their last meeting a Chicago Chapter to assume responsibility for regional activities previously conducted by the national Association. Their action followed the recommendations of a Committee on Organizational Structure, chaired by *Alan Rauh Orschel* '64, that the Association's national base be broadened and that a local chapter similar to other regional clubs be created to conduct activities confined to the Chicago area.

The following Chicago Chapter officers were elected to serve one-year terms: *John F. McCarthy* '32, President; *Susan A. Henderson* '69, First Vice President; *Joseph DuCoeur* '57; *Charles A. Lippitz* '51; *Aldus S. Mitchell* '58, *George W. Rothschild* '42; *Erwin A. Tomaschoff* '61, Vice Presidents; *Benson T. Caswell* '74, Secretary; and *Raymond A. Jensen* '50, Treasurer.

Other members of the Committee on Reorganization were *William L. Achenbach* '67, *Ronald J. Aronberg* '57, *Susan A. Henderson* '69, *Jeffrey Kuta* '72, *Carl S. Lloyd* '20, *John F. McCarthy* '32, *Aldus S. Mitchell* '58, *John G. Satter, Jr.* '58, *Jerry H. Biederman* '71, *Frank Greenberg* '32, *J. Gordon Henry* '41, and *Frank L. Ellsworth, ex officio.*

Bumper Year for LSA Speakers Program

Two dozen guest lecturers have participated this academic year in the Law Student Association's lunchtime Speakers Program at the Law School. Students and others heard and questioned speakers on a variety of topics, ranging from pro bono, civil rights, criminal justice, and breaking into politics to practicing law in Europe and what law firm partnership really means.

Speakers included Solicitor General

Robert H. Bork '53 (Question and Answer Session); *Milton Friedman* of Arnold & Porter, "Watergate and the Washington Lawyers"; Rep. *Ralph H. Metcalfe,* "The Congressional Black Caucus and Its Role in Politics"; former FCC Chairman *Newton Minow,* "Communications and the Law"; and United States Attorney *James R. Thompson,* "What Next in Federal Law?"

Among Law School faculty speakers were Professor *Walter J. Blum* '41, "The History and True Story of the Law School Buildings," and Professor Emeritus *Max Rheinstein,* "What is Happening to Marriage?"

The program was organized by *Jayne Barnard* of LSA.

Law School Honors and Prizes: 1974-1975

At the respective June Convocations, Dean Phil C. Neal announced the following honors and prizes.

Cum Laude and Order of the Coif

The following students were awarded the J.D. degree *cum laude* at the June 1974 Convocation: *Mark A. Aronchick, Keith H. Beyler, William H. Block, Richard J. Bronstein, John M. Clear,*

Judith L. Dowdle, Louis B. Goldman, James M. Hirschhorn, James E. Honkisz, Ted R. Jadwin, Robert G. Krupka, Glen S. Lewy, James B. McHugh, Matthew A. Rooney, John A. Strain, and *James S. Whitehead.* The following students, in addition to those listed above, were elected to the Order of the Coif: *Donald L. Schwartz* and *Keith E. Secular.*

The following students were awarded the J.D. degree *cum laude* at the June 1975 Convocation: *Sharon Baldwin, Patrick B. Bauer, Eugene J. Comey, Ronald W. Hanson, Philip J. Hess, Dean T. Jost, William F. Lloyd, Nicholas A. Perensovich, Greg William Renz, Michael Stuart Schooler,* and *John Joseph Scott.* The following students, in addition to those listed above, were elected to the Order of the Coif: *Mark Oliver Beem, Jr., Jay Murray Feinman, Alan Scott Gilbert, Dennis Michael Robb,* and *Melvin Alfred Schwarz.*

Prizes

Dean Neal also announced several prizes:

The Jerome N. Frank Prize, for the outstanding comment by a third-year member of the Law Review: *Sheldon I. Banoff* (1974)

The Casper Platt Award, for the outstanding seminar paper: *William Adler-Geller* (1975)

The United States Law Week Award, for the student making the greatest scholastic progress: *H. Anderson Ellsworth* (1974) and *Sidney Bennett Chesnin (1975)*

The Hinton Awards, for the winners of the third-year Hinton Moot Court Competition: *Keith H. Beyler* and *James S. Whitehead (1974)* and *Leon Milton Bronfin* and *Joseph Allan Morris (1975)*

The Karl N. Llewellyn Cup, for outstanding performance in the second-year moot court competition: *Philip J. Hess* and *Eugene R. Wedoff* (1974) and *John William Rotunno* and *Charles Michael Santaguida* (1975)

The Joseph Henry Beale Prize, for excellence in the first-year research and writing program: *Christopher S. Berry, Charles H. Kennedy, Peter G. Leone, Staughton C. Lynd,* and *Arthur F. Sampson* (1974) and *Henry J. Escher, Scott A. Mandelup, Samuel F. Saracino, Suzanne R. Sawada, and Barbara Ann Lerner* (1975)

The Wall Street Journal Award, for excellence in Corporation Law: *John I. Stewart, Jr.* (1974)

Lecture Series Dedicated to Harry Kalven, Jr.

"Cases I Have Known," a public lecture series in which *Harry Kalven, Jr.* '38 was to have participated, was dedicated to his memory and presented this year by Rosary College, River Forest, Illinois.

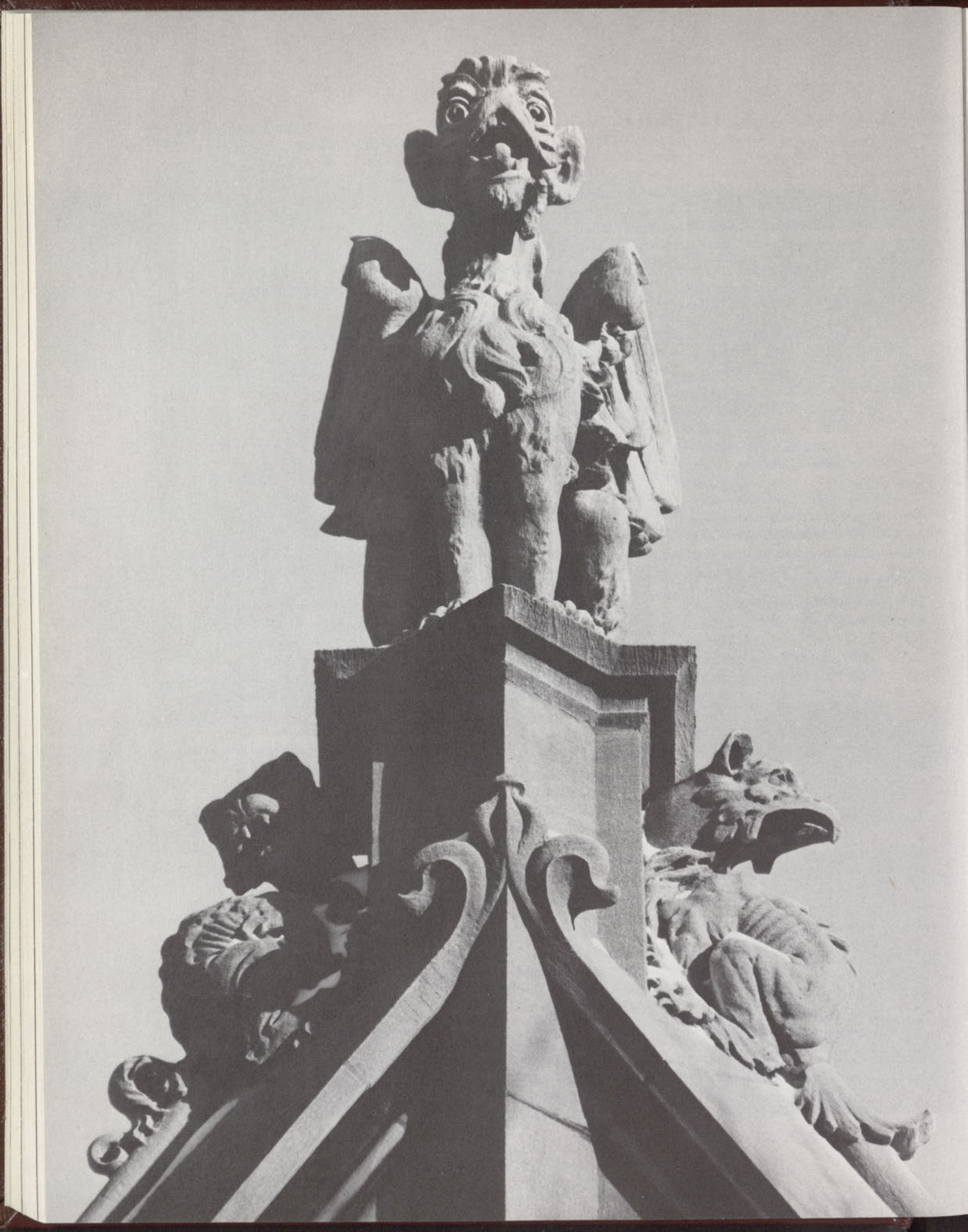
Among the speakers were *Dr. Lawrence Z. Freedman,* Foundations Fund Research Professor of Psychiatry at the University, whose topic was "A Psychiatrist Works with a Lawyer"; *Fay Stender* '56, "Soledad Brothers, Angela Davis, California Prison Cases of 1970-75"; *Elmer Gertz* '30, "Nathan Leopold — the Man, the Case, the Consequences"; *Bernard Weisberg* '52, "The Ballot Listing Case Against Paul Powell"; and *George Anastaplo* '51, "The Trial of Sir Thomas More."

Since Mr. Kalven's death, the American Civil Liberties Union has instituted an annual award known as "The Harry Kalven, Jr. Freedom of Expression Award." *Malcolm P. Sharp,* Professor Emeritus in the Law School, was named the first recipient of the Kalven award December 13th.

Students Receive Distinguished Fellowships

Robert Burns, awarded a Kent Fellowship by the Danforth Foundation, used the Fellowship this past academic year to continue his study of law and philosophy. After graduating from the Law School, he will resume studies toward a Ph.D. in philosophy from the University.

Larry Fenster, another Law School student, was designated a Luce Scholar this past year by the Henry Luce Foundation. Luce Scholars are given financial support for a full year of study, work, and travel in the countries of East Asia.



Alumni Events

Chicago Loop Luncheons

The Loop Luncheons for the winter quarter this past year were planned by the Alumni Activities Committee for the purpose of bringing alumni up to date on new developments at the Law School. The first luncheon was held on February 11th with *Stanley A. Kaplan* '33, Professor of Law, speaking on "Professional Responsibility and the Teaching of Legal Ethics in the Law School." The next luncheon was on February 24th with special guest *Philip B. Kurland,* Professor of Law, and *William R. Kenan, Jr.,* Professor in the College. The third luncheon featured *Alexander Polikoff* '53, Executive Director for Businessmen for the Public Interest, Inc. "Housing Problems and Policies in the Chicago Metropolitan Area" was the subject of his talk.

Members of the Alumni Activities Committee for 1974 were: Chair, *Susan A. Henderson* '69, *Charlotte Adelman* '62, *Fred Axley* '69, *Miriam Balanoff* '73, *Kenneth K. Howell* '59, *Richard Orlikoff* '49 and *Jim Weisman* '71.

In the spring there were three Loop Luncheons planned. The first was held April 11th with *Norval Morris,* Julius Kreeger Professor of Law and Criminology as special guest speaker. On April 24th, *Martin E. Marty* who is Professor and Associate Dean in the Divinity School spoke on "The American Moral Condition." The last luncheon for the academic year was on May 15th. The Honorable *William S. White* '37, Presiding Judge, Juvenile Division, Circuit Court of Cook County, shared "The Concept of Juvenile Justice in Illinois" with alumni and friends.

New York City

On March 12th, *Philip B. Kurland* spoke on "Some Unlearned Lessons in Watergate" before the University's New York City alumni which was held at The Princeton Club of New York. Mr. Kurland also discussed the two principal aspects of Watergate, one personal, the other constitutional, and explored the basic institutional deficiencies revealed by the case.

On March 26th, *Philip B. Kurland* was featured at an evening program with alumni and friends in New York City. They met at The Princeton Club to hear Mr. Kurland speak on "Some Unlearned Lessons in Watergate." Presiding was *Lillian E. Kraemer* '64, President of the Law School Alumni Association in New York City.

Luncheon at The Wall Street Club for New York City area alumni on Tuesday, October 29th. The speaker was Assistant Dean *Frank L. Ellsworth.* Presiding was *Lillian E. Kraemer* '64, President of the Law School Alumni Association in New York City.

Cleveland

Norval Morris, Julius Kreeger Professor, Co-Director, Center for Studies in Criminal Justice, spoke to area alumni and guests on March 11th, on the topic of "The Future of Imprisonment" held at the Shaker House in Shaker Heights. Mr. Morris has just completed a book on the subject: *The Future of Imprisonment* (1974), co-author of the *Honest Politician's Guide to Crime Control* (1970). Mr. Morris has served on the Illinois Governor's Advisory Council on Adult Corrections and was a member of the President's Task Force on Prisoner Rehabilitation in 1969-70.

Pittsburgh

Pittsburgh Law Alumni heard *Norval R. Morris,* the Julius Kreeger Professor and Co-Director of The Center for Studies in Criminal Justice, speak on "The Future of Imprisonment" at The Lawyer's Club last March 12th. Professor Morris discussed various questions such as: Who should be in prison? And for what purpose? And just what is the proper role of imprisonment in a democratic society?

On April 23, 1974, *Julian H. Levi* '31 spoke to area alumni on "The American City as an Example of . . . ?" "Democracy, which is a charming form of government full of variety and disorder and dispensing a sort of equality to equals and unequals alike." The event was held at The Faculty Club, University of Pittsburgh, with dinner and cash bar at 6:30 p.m.

Philadelphia

On May 7, 1974, *Norval R. Morris,* Julius Kreeger Professor and Director of the Center for Studies in Criminal Justice at the University of Chicago, spoke on "The Future of Imprisonment" to area alumni and guests which was held at The Marriott Motor Hotel, Bala Cynwyd, Pennsylvania, a cash bar at 6:30 p.m. in the Pennsbury Room, Dinner at 7:00 p.m. in the Delaware Room #2 and the Lecture at 8:00 p.m. in the Delaware Room #1.

Boston

"The Future of Imprisonment" was the topic of a speech given on May 6th by *Norval R. Morris,* Julius Kreeger Professor and Director, Center for Studies in Criminal Justice held at The Colonnade Hotel. Professor Morris, a leading expert on crime and penology, capsulized his series of his presentation of the Cooley Lectures given at the University of Michigan at Ann Arbor.

Newark

Julian H. Levi '31, Professor of Urban Studies spoke to area alumni April 24, 1974 on the subject of "The American City as an Example of . . .?" "Democracy, which is a charming form of government full of variety and disorder

David Ziskind '25 receives the Distinguished Alumnus Award of the University of Chicago Club of Greater Los Angeles on December 4, 1974 from *Alexander H. Pope* '52.

and dispensing a sort of equality to equals and unequals alike." Professor Levi also discussed the prospects for the survival of democracy in the American city. Levi, who joined the faculty in 1963, specializes in research and teaching in urban affairs, covering disciplines ranging over law, planning, administration, and community relations. Professor Levi has served since 1952 as Director of the South East Chicago Commission and has been an advisor to various cities and communities. This event was held at the Central Presbyterian Church, Montclair, New Jersey.

San Francisco

Through the efforts of *Ray Sherman* '72, the San Francisco Bay Area University of Chicago Law Alumni was able to hear a debate on "It's A Matter of Life or Death!" *Charles C. Marson* '67, Legal Director, American Civil Liberties Union, Northern California v. *Thomas A. Ross* '64, Alameda County Deputy District Attorney, Re: "Should the Death Penalty Be Reinstated in California?" A luncheon followed the debate which was held April 11th, 1974 at Johnny Kan's San Francisco. The debate was particularly interesting in light of the current efforts in California and throughout the nation to reinstate the death penalty for certain classes of crime.

Alumni in the San Francisco area got together to renew old acquaintances over a Chinese luncheon on December 27th. They had the company of three faculty members from the Law School: Dean *Phil C. Neal,* Professor *Allison Dunham* and Professor *Richard Posner.* Professor Posner shared some thoughts on "The Interrelationship of Law and Economics." A topic on which he is a well-recognized authority and writer. Presiding at this event, as with other Bay area programs, was *Roland Brandel* '66, President of the Law School Alumni Association in San Francisco.

Washington, D. C.

The annual luncheon held in conjunction with the ALI Meeting is always a special event. This year it was particularly so because the guest speaker was The Honorable *Edward H. Levi* '35, Attorney General of the United States. Mr. Levi is on leave of absence from the Law School Faculty as the Karl N. Llewellyn Distinguished Service Professor of Jurisprudence.

Other guests from the Midway included Dean *Phil C. Neal, Allison Dunham, Philip B. Kurland, Hans Zeisel* and Assistant Dean *Frank L. Ellsworth.*

Professor *Richard Epstein* was the speaker at the luncheon held at The Mayflower for Washington, D. C. area alumni and friends on April 17th. Presiding was *Robert N. Kharasch* '51, President of the Law School Alumni Association in Washington, D. C.

Los Angeles Alumni at a recent meeting

Los Angeles

Richard Epstein spoke to Los Angeles area alumni at a luncheon meeting on December 16th. The subject of his talk was "Current Trends in Tort Theory." *Donald M. Wessling* '61, President of the Los Angeles group, made the arrangements for the luncheon.

California

On September 10th, California alumni had their traditional luncheon in conjunction with the State Bar Meeting at the Sacramento Inn. The guest speaker was Judge *Leonard M. Friedman,* Associate Justice of the Court of Appeals in Sacramento. He spoke on "The Mythology of Crime and Punishment."

Professor *Richard Epstein,* a speaker at a luncheon in Los Angeles is pictured between *Donald M. Wessling* '61, President of the Los Angeles Law Alumni Club, and Judge *Benjamin Landis* '30.

Class Notes

1913

Earl Quincy Gray was granted the Fellows Fifty-Year Award Recipient last year at The American Bar Foundation's eighteenth Annual Banquet held in Houston, Texas.

1921

Through an error in the *Law Alumni Directory, Amos M. Mathews* was indicated as practicing in Chicago, but is indeed practicing in Evanston, Illinois.

1925

Last fall, *Milton Gordon,* retired Federal Government Attorney, was appointed to the Miami Beach Housing Authority for a four year term.

Last year, *Russell Baker*, senior partner of the law firm of Baker & McKenzie and Chairman of Chicago's First Pacific Bank, was named 1974 "Man of the Year in Mid-America World Trade."

Last December, 1974, the Los Angeles Club's "Distinguished Alumnus Award" was presented to *David Ziskind.*

1927

Milton Mallin has become a partner with the firm of Jenner & Block in Chicago.

Irving H. Goldberg became a partner in the firm of Jenner & Block in Chicago.

1928

Last year, *Alex Elson* was appointed by Governor Dan Walker as Chairman of the newly reactivated Board of Mental Health Commissioners, a blue-ribbon advisory council to the Department of Mental Health and Developmental Disabilities.

1930

A recent issue of the "Wisconsin Law Review" was dedicated to the late Chief Justice *E. Harold Hallows* of the Wisconsin Supreme Court. Tributes were paid to him by Judge *Thomas E. Fairchild,* Senior Judge of the United States Court of Appeals for the Seventh Circuit, and the new Chief Justice of the Wisconsin Supreme Court, *Horace W. Wilkie,* and *George Bunn,* Dean of the Wisconsin Law School. Chief Justice Hallows was first appointed to the Wisconsin Supreme Court in 1958 and was subsequently twice elected to the Court, despite his staunch advocacy of merit selection of judges. He participated in over 5,000 full-court opinions and wrote over 700 majority opinions and numerous concurring and dissenting opinions, on almost every subject known to the law.

Joseph C. Swidley was named as one of the members for the Commission on Critical Choices for America.

Benjamin Landis, Los Angeles County Superior Court Judge, was recently elected as a fellow of the American Bar Association.

1931

"The American City: Love it or Leave it" was the topic of a speech given by *Julian H. Levi,* Professor of Urban Studies, before the University's alumni in Milwaukee, Wisconsin this spring.

1932

Paul S. Davis has been appointed an Administrative Law Judge in the Department of Health, Education and Welfare, assigned to the Detroit, Michigan office. Judge Davis was for some years Assistant Counsel for Michigan Wisconsin Pipe Line Company in Detroit, Michigan and was formerly Special Counsel for the Securities and Exchange Commission, Washington, D.C.

Norman H. Nachman, senior partner of the firm Nachman, Munitz & Sweig, participated in a Seminar sponsored by the Illinois Institute for Continuing Legal Education on "Creditor Representation."

William G. Navid, formerly of Chicago, Illinois, was recently elected Vice-President of the Lawyers Association at Laguna Hills Leisure World, Laguna Hills, California.

1933

Harold Kruley is now associated with the firm of Jenner & Block in Chicago.

1934

Previously Vice-President and General Counsel, *Frederick Thornton Barrett* has become Chairman of the Board of Cudahy Packing Company in Phoenix, Arizona.

1935

Last summer, *Maurice S. Weigle* became a partner with the firm of Jenner & Block in Chicago.

Former Executive of the W. U. Consulting Services in Chicago, *Robert B. Shapiro* has moved to 10 Sunrise Lane, Mill Valley, California.

1937

Last year, *Gerald Ratner* of the firm Gould & Ratner in Chicago, spoke on the "Environmental Considerations" at a seminar sponsored by Illinois Institute of Continuing Legal Education.

The law firm of Gould and Ratner announced effective May 1, 1975, that *Samuel Schlesinger* has become a member of this firm.

1939

John Eckler has served as Chairman of Bar Examination Committee of National Conference of Bar Examiners. *Phil C. Neal* was on the original committee which has planned and developed the Multi-State Bar Examination now administered in over 40 jurisdictions.

Last fall, The Honorable *Leland Simkins* was named Justice of the Illinois Appellate Court, Lincoln, Illinois.

1940

Morris B. Abrams has been chairing the Investigation of the Nursing Industry in the State of New York.

1941

Van de Water is now President of Van de Water Associates, consultants to management.

1943

E. Ernest Goldstein lectured on antitrust law at the 4th Annual International Lawyers Conference in Copenhagen last February, 1974.

1946

Last year, *Richard F. Babcock* became co-chairman of the National Lawyer's Committee in Chicago.

1948

Former Vice-President and a Director of Dun & Bradstreet and Bristol-Myers Company, *James H. Evans* has been named President of Union Pacific Corporation. He is also Vice-Chairman of the Union Pacific Railroad Company and is a recently elected Trustee of the University of Chicago.

Eliza McFeld wrote a novel "Would You Believe Love" published by Flanguages.

1949

Last December, Judge *James B. Parsons* became Federal District Chief Judge for the Northern District of Illinois.

1950

William R. Brandt, partner in a Bloomington, Illinois law firm, has been elected president of the McLean County Bar Association.

Last year at the ABA's Annual Meeting in Washington, Professor *Charles D. Kelso* of Indianapolis Law School became Chairman of the Section of Legal Education and Admissions to the Bar.

Last summer, *Jack J. Herman* announced the formation of a new firm to be known as Herman, Glazer, Rhinehart, Waters & Kessler in Chicago.

Last April, *Lionel G. Gross* participated in the course on Federal Civil Practice sponsored by the Illinois Institute for Continuing Legal Education.

1951

This spring, *Joseph Minsky* announced the formation of a partnership with the law firm of Minsky, Lichtenstein & Feiertag.

1952

Burton W. Kanter of the Chicago firm Levenfeld, Kanter, Baskes & Lippitz recently published "What Alice Sees Through the Looking Glass" and an article on "Recent Tax Court Decisions Shed Further Light on Private Annuity Transactions" in *The Journal of Taxation.*

Recently, *Richard F. Scott* was appointed Legal Adviser of the International Energy Agency in Paris, France.

Roger A. Weiler is with a new company that has been established to render counseling services in Management, Marketing, and Finance called Counselors to Corporate Management, Inc.

Effective July 1, *Arland F. Christ-Janer,* announced a change from president of New College (Florida) to president of Stephens College, Columbus, Missouri.

Bernard Weisberg is chairman of the Commission recognized by Governor Daniel Walker as the gravity of some of the problems brought to public attention largely as a result of Watergate by creating a Governor's Commission on Individual Liberty and Personal Privacy.

Formerly of the Legal Aid Society, *Robert S. Kasanof* is returning to private practice with the New York City firm of Migdal, Tenney, Glass & Pollack.

F. Raymond Marks, Jr., formerly with the American Bar Foundation is now with the University of California Law School, Berkeley, California.

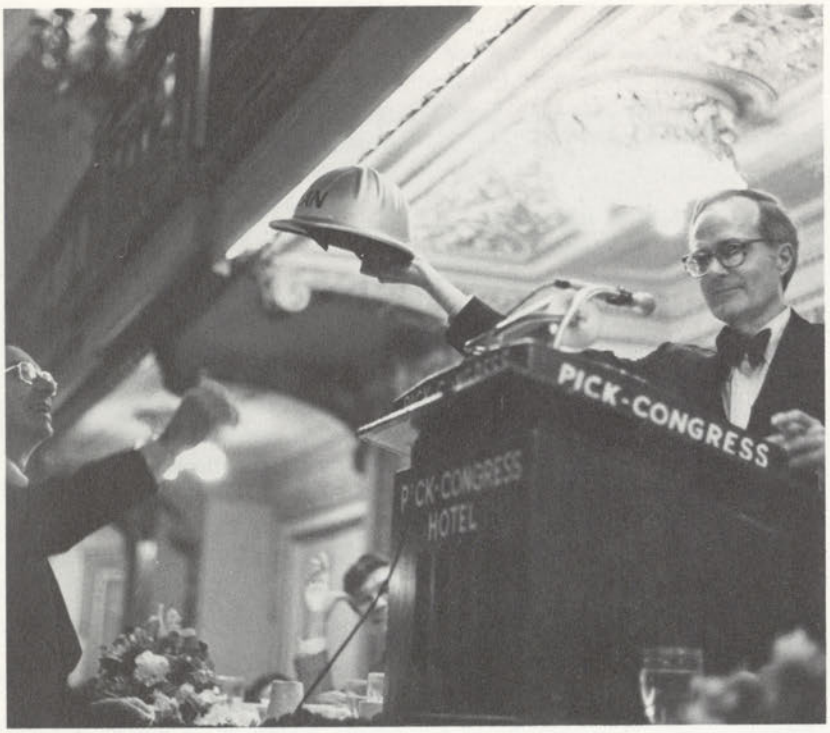
1953

The University of Santa Clara in Santa Clara announced a new appointment for *Jost J. Baum* as Professor of Law.

1954

Last summer, *William H. Brown* became Parliamentarian in the House of Representatives in Washington, D. C.

Renato Beghe is presently serving as Secretary of the Tax Section of the New York State Bar Association.



Phil C. Neal turns over one of the symbols of office to *Norval Morris* at the Annual Dinner of the Alumni Association. The hard-hat is used in occasional dealings with faculty, students, and alumni.

Ellis Shaffer, formerly with the firm of Shaffer, Seelig, Haberman & Shapiro announced the consolidation of the firm with the firm of Gottlieb and Schwartz.

1955

President Ford's substitution of five of his proposed nominees for the board of the Legal Services Corporation drew praise from James D. Fellers, who had expressed keen disappointment with the President's original choices. Two of the newly named are *Roger C. Cramton,* of Ithaca, New York, dean, Cornell University Law School, the President's choice for chairman; *Robert J. Kutak,* of Omaha, Chairman, ABA Section of Individual Rights and Responsibilities.

1956

Last year, *R. Marlin Smith,* of the firm Ross, Hardies, O'Keefe, Babcock & Parsons of Chicago, spoke on the Judicial Review at a seminar sponsored by the Illinois Institute of Continuing Legal Education.

Last Summer, *Jordan H. Sobel* accepted a new position at Scarborough College, University of Toronto, West Hill, Ontario, Canada.

1957

Last fall, *Alden Guild* was promoted to Assistant Vice President-Counsel and Assistant Secretary of the National Life Insurance Company of Vermont, Montpelier, Vermont.

Ernest B. Goodman is presently serving as counsel for MCA Television Limited in charge of legal activities for television syndication throughout the world.

1958

Recently, *Richard A. Magill* became Second Vice President and Director of Consumer Affairs for the Penn Mutual Life Insurance Company in Philadelphia.

Recently, *Robert V. Zener* was appointed General Counsel for the Environmental Protection Agency, Washington, D. C.

Last April, *Oral L. Miller,* an attorney with the U. S. Small Business Administration, was named one of the ten winners of the "Outstanding Handicapped Federal Employees of the Year" award, by the U. S. Civil Service Commission.

1959

John Voortman has become a partner with the firm of Schiff, Hardin & Waite in Chicago.

Last summer, the Chicago firm of Shaffer, Seelig, Haberman & Shapiro merged with the firm of Gottlieb & Schwartz. *Kenneth S. Haberman* is now a partner in the firm of Gottlieb & Schwartz.

Last fall, *Ronald O. Decker* was appointed Associate Director, Legal Services of the Institute of Gas Technology. He will be serving as attorney and legal advisor for IGT and its staff.

The Honorable Judge *George W. Unverzagt* is now Chief Judge of the 18th Judicial Circuit Court of Wheaton, Illinois.

1960

Bennett R. Katz was named Executive Vice President of National BankAmericard Incorporated based in the San Francisco headquarters. Mr. Katz, who formerly was general counsel, will be responsible for the law, international and finance divisions.

This February, *Morton H. Zalutsky* gave lectures for the American Law Institute-American Bar Association on "Qualified Plans, Insurance, and Professional Corporations-IV" and the practicing Law Institute's Fifth Annual Employee Benefit Institute in Atlanta, San Francisco and New York.

In January, 1974, *Stephen A. Land* announced his association with the firm of Montis, Land and Hayden in Decatur, Georgia.

1961

Recently, *Waverly B. Clanton, Jr.* became associated with the Westinghouse Electric Corporation in Pittsburgh.

William S. Easton has been elected District Judge of Marquette County, Marquette, Michigan.

James Valentino, Jr., a partner in the Chicago Loop law firm of Valentino & Valentino, recently was elected President for the Illinois State Rifle Association.

Recently, *Eric E. Bergsten* was appointed as Deputy Director of the International Trade Law Branch of the United Nations.

Last fall, *Donald E. Egan* announced his new affiliation and partnership with the firm of Katten, Muchin, Gitles, Zavis, Pearl & Galler, Chicago, Illinois.

Recently, *Richard R. Elledge* became a member of the firm of Gould & Ranter in Chicago.

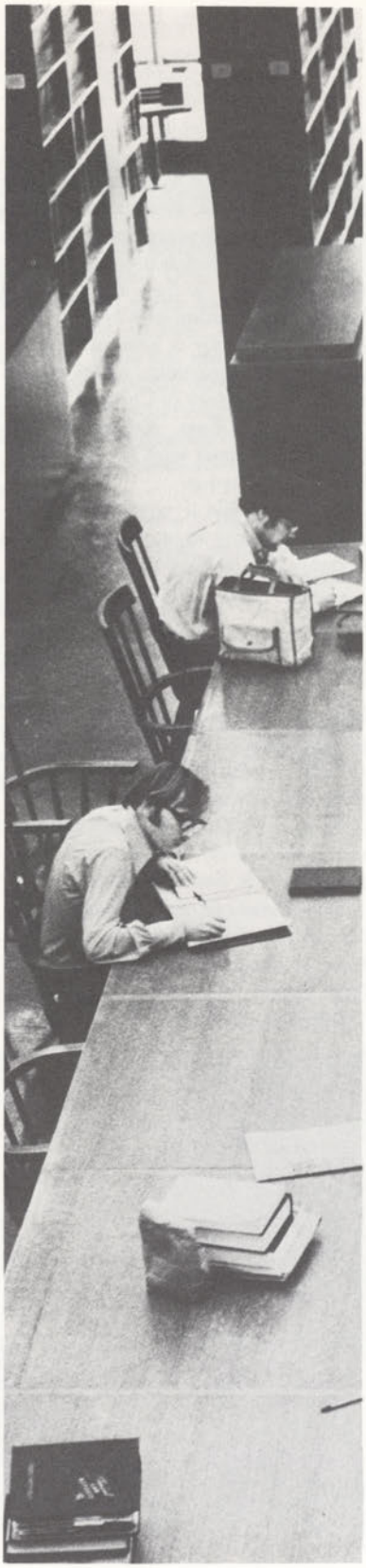
Lawrence H. Eiger is presently serving as Chairman of the Illinois State Bar Association Antitrust Law Section.

Formerly an Associate Professor of Criminal Justice at the University of Illinois at Chicago Circle, *Stephen A. Schiller* is now Executive Director of the Chicago Crime Commission.

1962

Last spring, *Edward Greensfelder, Jr.* became a partner in the firm of Karr & Greensfelder, Washington, D. C.

David Craig Hilliard has co-authored a book, *"Trademarks, Trade Identity and Unfair Trade Practices: Cases and Materials,"* which is published by Matthew Bender, 1974.



Robert I. Starr is the author of a new book titled *East-West Business Transactions.*

Charlotte Adelman announced the formation of a partnership under the firm name of Didzerekis, Hochfelder & Adelman, Chicago, Illinois.

Last summer, *Richard L. Marcus* announced his new partnership with the firm of Adams, Fox, Marcus & Adelstein, Chicago, Illinois.

Last spring, *Frederick F. Cohn* received an award from the Illinois Defender Association.

1963

William L. Richardson is currently serving a six-year term as district court judge in Multnomah County, Portland, Oregon.

Last year, *J. Timothy Ritchie,* spoke at the 17th Annual Estate Planning Short Course on "Advising the Client on Gifts to Minors," sponsored by the Illinois Institute of Continuing Legal Education.

Judith Breisch Wise was promoted last fall to Assistant Professor of General Education at Clark Technical College, Springfield, Ohio.

Cooper & Golin, Inc. announced the appointment of *Noel Kaplan* as Assistant General Counsel for McDonald's Corporation.

Formerly with a firm in Los Angeles, California, *Jack W. Greene* is presently associated with the firm of Jenner & Block of Chicago, Illinois.

While serving as editor of the CLE Handbook on "Representing Municipal Governments," *Stewart H. Diamond,* a partner in the firm of Ancel, Glink, Diamond & Murphy, spoke on "Negotiating a Public Employee Collective Bargaining Agreement" at the Illinois Institute for Continuing Legal Education's Session on "Handling Labor Conflicts in the Public Section."

Last summer, *Albert H. Branson* became a partner with the firm of Jacobs, Branson & Guetschow in Anchorage, Alaska.

Recently, *Rex E. Lee,* dean of the Brigham Young University law school, was sworn in as Assistant Attorney General in charge of the Justice Department's civil division.

Philip R. Rosi recently became a partner in the firm of Kristensen, Cummings & Price, Brattleboro, Vermont.

Borg-Warner Corporation announced the new appointment of *Jack L. Wentz* as Assistant General Counsel. Mr. Wentz is also Vice President and Secretary of the Borg-Warner Foundation, Inc.

1964

Last fall, at the Treasury Department's Annual Awards Ceremony, *William M. Lieber* received the Meritorious Service Award for his assistance in developing the recently enacted pension legislation.

Anthony J. Valentino announced the moving of his law offices to be associated with Santo J. Volpe in Chicago.

Frederick R. Schneider is now Professor of Law at Chase College of Law, Covington, Kentucky.

In February, 1974, *Frank M. Grazioso* announced the formation of a partnership for the general practice of law with Gerald M. Still under the firm name of Still and Grazioso in New Haven, Connecticut.

Formerly Chief, Antitrust Division, City Attorneys Office, Los Angeles, California, *Richard I. Fine* has announced the opening of his new law offices specializing in Antitrust and Trade Regulations, Business, Civil Litigation and International matters of Los Angeles, California.

James B. Krasnoo is now in private practice in Boston.

Last fall, *James A. Moreland* became a partner in the firm of Turnbull, Abner & Daniels in Winter Park, Florida.

Recently, *David B. Sarver* announced his new association with the accounting firm of Laventhol, Krekstein, Horwath & Horwath in Minneapolis, Minnesota.

James S. Rudnick is now Senior Loan Officer of Percy Wilson Mortgage and Finance Corporation in Chicago.

David L. Porter is now an Attorney in the Legal Department of the Northern Trust Company in Chicago.

Last June, *Tom Kabaker* became Corporate Counsel with W. F. Philipsborn and Company.

L. Jorn Dakin is now with the Bureau of Competition, Federal Trade Commission, in Washington, D. C.

1965

Recently, *Kenneth P. Norwick* accepted an appointment as a Special Professor of Law at the Hofstra Law School, Hempstead, New York.

Bruce S. Feldacker has been admitted as a partner to the firm Schuchat, Cook & Werner, St. Louis, Missouri.

Peter Karasz recently became a member of the firm of Cleary, Gottlieb, Steen & Hamilton in New York City, New York.

Last year, *Michael E. Braude* became a partner in the firm of Weinstein, Myer, New & Berlin, Chicago, Illinois.

Last summer, *Charles Work* was appointed Deputy Administrator of the Law Enforcement Assistance Administration, Washington, D. C.

Last fall, *Lawrence T. Hoyle, Jr.* became associated with the firm of Schnader, Harrison, Segal & Lewis, Philadelphia, Pennsylvania.

William A. Halama is now a partner with the firm of Stein, Robenstein & Halama in Los Angeles, California.

Last spring, *Michael Schneiderman* accepted a new position as President of the Hyde Park Neighborhood Club.

Last year, *Basil Condos* became Visiting Professor of Law at Wayne State University.

Daniel P. Kearney is now President of the Government National Mortgage Association, Washington, D. C.

Thomas E. Cahill is now General Counsel to the National Commission on Water Quality in Washington, D. C.

1966

Last April, *Lewis M. Collens,* associate professor of law of Illinois Institute of Technology was appointed dean of IIT's Chicago-Kent College of Law.

Last summer, *Duane W. Krohnke* became a partner with the firm of Faegre & Benson in Minneapolis, Minnesota.

Professor *Al Dunham* talks to an alumnus at the Annual Dinner. The speaker this year was The Honorable *Carl McGowan,* Judge, United States Court of Appeals, District of Columbia.

Samuel S. Yasgur is now Deputy County Attorney with the Department of Law, White Plains, New York and is also at Mercy College, Dobbs Ferry, New York.

This spring, *Terry Yale Feiertag* became a partner of the Chicago firm of Minsky, Lichtenstein & Feiertag.

Last summer, *Steve M. Barnett* was appointed President of Apelco-Health Services, Inc. in Chicago.

Patricia Horan Latham has become a partner in the firm of Martin, Moore, Thaler & Whitfield, Washington, D.C.

1967

Last fall, *Peter I. Ostroff* was elected as a trustee of the Los Angeles County Bar Association.

Neal J. Block has become a partner in the firm of Baker & McKenzie in Chicago.

Last summer, *John T. Gaubatz* became Associate Professor and Associate Dean of the Case Western Reserve Law School, Cleveland. Ohio.

Formerly associated in the private practice of corporate law with the firm of Szold, Branwyn, Meyers and Altman, *Howard M. Landa* is now with IPCO Hospital Supply Corporation as Corporate Counsel in Valhalla, New York.

Recently, *Richard J. Goetsch* accepted new responsibilities in the areas of marketing and anti-trust law with the staff of The Standard Oil Company of Ohio.

Formerly an Assistant State's Attorney for the Cook County State's Attorney's Office, *Christopher Jacobs* is now associated with the firm of Neistein, Richman, Hauslinger & Young, Ltd. in Chicago.

Linda Thoren is now Vice President for Development of the Art Institute of Chicago.

Philip A. Mason announced the formation of a partnership under the firm name of Mason & Martin in Boston, Massachusetts. Both Philip A. Mason and Thomas H. Martin are University of Chicago graduates.

James N. Williams, Jr. is now a partner in the firm of Wyatt, Grafton & Sloss, Louisville, Kentucky.

Geoffrey A. Braun is now associated with the Office of the Public Defender of Santa Clara County in San Jose, California.

Last spring, *David Minge* accepted a teaching position as professor at the University of Wyoming in Laramie, Wyoming.

Justin M. Schwamm has been appointed Assistant General Counsel of the Tennessee Valley Authority involving litigation research, supervision of the briefs, pleadings, motions, etc.

Recently, *Roberta Ramo* announced that she is now serving as Chairman of the Systems Analysis Subcommittee of the ABA's Committee on Law Firm Economics.

Arthur J. Massolo is presently Vice-President and General Manager of the Rome branch of the First National Bank of Chicago.

1968

Last summer, *Ronald B. Grais* announced the new formation of the law firm of Neiman & Grais, Chicago, Illinois.

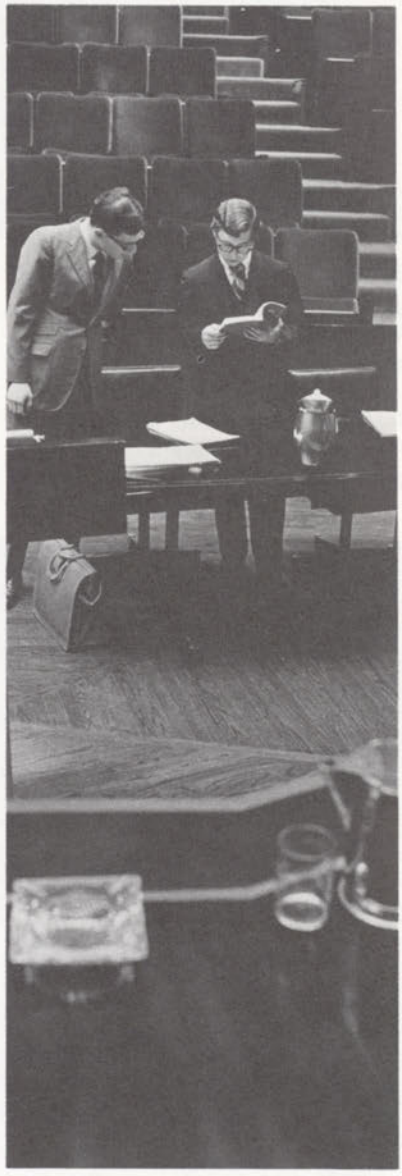
Alumni are encouraged to submit notes on their professional activities and achievements to the Editor. Items received after this issue went to press will appear in the next issue.

Last Spring, *David Wolf* became a partner in the firm of Nosek, Wolf & Schlosberg, Anchorage, Alaska.

The firm of Baker & McKenzie in Zurich, Switzerland, announced the new partnership of *Peter Widmer.*

Paul D. Falick is now associated with the firm of Gifford, Woody, Carter & Hays, New York, New York.

Recently, *Danny J. Boggs,* formerly Assistant to the Solicitor General of the United States, announced the opening of his new office for the general practice of law in Bowling Green, Kentucky.



Recently, the firm of Baker & Botts announced that *Mont P. Hoyt* has become a new member in their firm.

The ABA Division of Judicial Service Activities announced *Wantland L. Sandel, Jr.* as their new staff director. Mr. Sandel previously served as Assistant Division Director one year prior to his new appointment.

Ann L. Delugach is now associated with the firm of Armstrong, Allen, Braden, Goodman, McBride and Prewitt in Memphis, Tennessee.

1969

Allan Horwich has become a partner in the firm of Schiff, Hardin & Waite in Chicago.

The Legal Aid Society of the City and County of St. Louis recently announced the appointment of *David A. Lander* as the Society's new Executive Director and General Counsel.

Byron Starns was recently appointed by Minnesota Attorney General to the post of deputy attorney general of the Pollution Control Agency of Minnesota.

Last spring, *Stephen E. Kitchen* accepted a new position in the Office of General Counsel at Mobil Oil Corporation in Schaumburg, Illinois.

John E. Hill is now a partner with the firm of Lieff, Alexander, Wilcox & Hill of San Francisco, California.

Last fall, *David M. Blodgett* was appointed as Assistant Counsel with the General Counsel's Office of the University of California at Berkeley.

Joel H. Kaplan is now a partner with the firm of Seyfarth, Shaw, Fairweather & Geraldson in Chicago.

John E. Hill is presently associated with the firm of Lieff, Alexander, Wilcox & Hill, San Francisco, California.

1970

C. Harley Booth, formerly associated with Xerox Corporation in California, is now associated with Xerox Corporation in Rochester, New York.

Recently, *P. Eric Souers* announced his new association with the firm of Fried, Frank, Harris, Shriver & Jacobson, London, England.

1971

Recently, *Jerry Biederman* became associated with the law firm of Levenfeld, Kanter, Baskes & Lippitz in Chicago.

Last year, *David W. Gast* accepted a new position with Household Finance Corporation, Chicago, Illinois.

William G. Nosek is now associated with the firm of Tenney & Bentley in Chicago.

Thomas Fabel has been named deputy attorney general of the Department of Public Welfare of Minnesota.

Marianne K. O'Brien is now assistant staff director of the American Bar Association's law student division. She was previously a VISTA lawyer with the Chicago Legal Aid Society.

Last summer, *Philip R. McLoughlin* was elected as an Assistant Counsel and Secretary of the Phoenix Equity Planning Corporation of Hartford, Connecticut.

Attorney General *William J. Brown* named *Diane R. Liff* as the Deputy Chief of the Civil Rights Section of the Attorney General's Office.

Martin Freed is now with the firm of Altheimer & Gray in Chicago.

Last fall, *Earl M. Tinsley* became Dean of the College of Cottey College at Nevada, Missouri.

James C. Franczek is now a member of Vedder, Price, Kaufman & Kammholz in Chicago.

Ira S. Blatt is now a partner with the firm of Blatt & Gompertz in Arcata, California.

Robert L. Misner is now at Arizona State University teaching Contracts, a seminar in criminology and a seminar in advanced contract drafting.

Justice *Walter V. Schaefer* '28 talks with Norval and Elaine Morris at the Annual Dinner.

Jean Allard '53, President of the Law School Alumni Association, presides at the Annual Dinner. On her right is *Phil C. Neal,* who was honored by the Association at the dinner, Judge *Carl McGowan,* who was the speaker, and *Frank Greenberg* '32, First Vice-President of the Association.

1972

Last year, *Michael Luros* became associated with the firm of Gold, Herscher & Taback, Beverly Hills, California.

James R. Reilly, Jr. is now City Attorney for Municipal Building, Jacksonville, Illinois.

Formerly a member of Loeb & Loeb, Los Angeles, California, *Leonard T. Radomile* has recently become a partner in the firm Radomile and Roach, Beverly Hills, California.

In January, *Richard A. Kruk* was promoted to Trust Officer of Continental Illinois National Bank and Trust Company of Chicago.

Mary Donohue Allen is now associated with the firm of Kirkland & Ellis in Chicago.

Martin S. Glushakoff is now associated with the firm of Grubbs & Sutera in New York City.

The law firm of Gould and Ratner announced, effective May 1, 1975, that *Virginia M. Harding* has become associated with the firm.

Last fall, *Mary D. Allen* was appointed by the Supreme Court of Illinois as Associate Member of the Supreme Court Committee on Jury Instructions.

David M. Rieth announced his new association with the firm of Fowler, White, Gillen, Kinney, Boggs and Villareal in Tampa, Florida.

James S. Sorrels, formerly of the FTC in Seattle was appointed Deputy Prosecuting Attorney in Seattle, Washington.

1973

Last fall, *Wilson P. Funkhouser* wrote a supplement to a chapter of a book on closely-held corporations, sponsored by the Illinois Institute of Continuing Legal Education.

Ronald R. Peterson has become a member with the firm of Jenner & Block in Chicago.

Last summer, *Stanley M. Stevens* became associated with the firm of Schreeder, Wheeler & Flint, Atlanta, Georgia.

Richard Michi, from the firm of Mayer, Brown & Platt, last year spoke on "Exorcising the Devil by Legislature Limits on Tax Shelters" at a seminar sponsored by the Illinois Institute of Continuing Legal Education.

Steve Fisher is now Corporate Counsel of Philadelphia Electronics in Philadelphia.

Randall Sims is now associated with the firm of Breed, Abbott & Morgan in New York, New York.

Richard Matthews announced a new business address of LeSourd, Patten, Fleming & Hartung, 1300 Seattle Tower, Seattle, Washington 98101.

Victor Bass is now associated with the firm of Sullivan & Worcester in Boston, Massachusetts.

Lawrence C. Kuperman is now associated with the firm of Hillyer & Irwin in the Southern California First National Bank Building, San Diego, California.

Last fall, *Jean Hamm* was appointed by the Supreme Court of Illinois as Associate Member of the Supreme Court Committee on Jury Instructions.

Howard A. Cohen is presently working as Legal Assistant for the Department of Law and Public Safety, State of New Jersey at East Orange.

Kenneth V. Handal is presently associated with the firm of Arnold and Porter in Washington, D. C.

1974

Last fall, *Sheldon Banoff* became associated with the firm of Katten, Muchin, Gitles, Zavis, Pearl & Galler in Chicago.

Photography credits: *Jeffrey Kuta* '72, cover; *E. Carol Stein,* p. 20; *Stephen Llewellyn,* p. 27; *Glen S. Howard* '74, pp. 31, 46, 47, 52; *Darrell Mitchell,* p. 49; other photography by *Richard L. Conner* '75.

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THIRD CLASS

The Law Alumni Journal

The University of Chicago Law School

Fall 1976

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Contents

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Susan C. Haddad, Managing Editor; Margaret M. Clark, Editorial Assistant. Manuscripts of articles and reviews, copies of books for review, and letters for publication should be submitted for consideration by the Editorial Board, care of the Managing Editor, 1111 East 60th Street, Chicago, Illinois 60637. All other materials and correspondence shoud be sent to the Editor.

In Defense of Decriminalization: A Reply to Dallin Oaks

Gordon Hawkins

"The Popular Myth of the Victimless Crime," by Dallin H. Oaks, JD '57, appeared in the Summer, 1975 issue of The Law Alumni Journal. *Mr. Oaks' response to what he termed the "decriminalization bandwagon" was twofold.*

First, he argued that many of the so-called victimless crimes (gambling, alcohol and drug abuse, sexual irregularities) "do involve harms and victims."

Second, he contended that "the criminal law has an important function other than the protection of an identifiable victim. That function is to reinforce certain moral values or standards." Mr. Oaks proposed society's "collective morality" as "a legitimate source of criminal law in our society."—The Editor

My attention has been drawn to Dallin H. Oaks's article, "The Popular Myth of the Victimless Crime," in the last issue of this JOURNAL. That sounds pompous, but it's true. The former Chairman of the Editorial Board not only did the attention-drawing but also invited a response. And it seems to me that someone ought to respond to Mr. Oaks' provocative but courteous and scholarly animadversions.

As Mr. Oaks disclaims speaking for Brigham Young University or its sponsoring church, perhaps I should also enter a disclaimer. For my part, I can't claim to speak for the impressive gathering of political power that Mr. Oaks discerns ranged behind various decriminalization proposals. In fact, although the book I co-authored with Norval Morris (to which Mr. Oaks kindly refers a number of times) was addressed to "The Honest Politician," the response from politicians, when not downright hostile, could best be described as wary. Neither at the time of publication nor since has there been, as Mr. Oaks suggests, any feverish "climbing aboard the decriminalization bandwagon." However, things may be different in Utah.

Elsewhere, despite the increasing urgency of the need for effective crime control, politicians are still finding that they can give the appearance of responding to the crime problem by declaring war on drug addicts, prostitutes and pornographers. Such posturing is of course irrelevant to the continued alarming increase in violent and predatory crime, which has so extensively eroded the quality of life in America. It is because Dallin Oaks' article might be interpreted as providing some justification for that kind of wearisome irrelevance that, quite apart from considerations of polemic politesse, a reply to Mr. Oaks is called for.

The first thing to be said about "the popular myth of the victimless crime" is that, in addition to its not being notably popular, it is not mythical. In *The Honest Politician's Guide to Crime Control* we defined victimless crime as "crimes (which) lack victims, in the sense of complainants asking for the protection of the criminal law."[1] This definition may not be entirely satisfactory, but there can surely be no doubt that such crimes exist. To this Mr. Oaks' objection is twofold. First, he says that some so-called victimless crimes have readily identifiable personal victims other than the criminal himself, such as "the innocent children whose family life is destroyed by the sexual irregularities of a parent or whose parents are pauperized by gambling or twisted by alcohol or drugs." Second, he maintains that in the case of some so-called victimless crimes, all society is the victim. Thus the rehabilitation of narcotics addicts is expensive, and taxpayers—all society—are the victims; pornography

Mr. Hawkins, co-author with Dean Norval Morris of The Honest Politician's Guide to Crime Control, *is an Associate Professor in The University of Chicago Law School's Center for Studies in Criminal Justice.*

may ("hard empirical evidence . . . is scarce or nonexistent") be damaging to society; adultery, fornication, homosexuality and other irregular sexual behavior may ("I know of no empirical evidence") weaken the ideal and practice of family life in this country.

But what do these objections amount to? Of course it has to be admitted that there is a wide variety of parental behavior, by no means confined to sexual irregularity, gambling or the consumption of alcohol or drugs, and some of it no doubt benevolently motivated, which may harm innocent children. It is undeniable also that some narcotics addicts become a burden to tax-supported agencies; and although Mr. Oaks' inferences from the nonexistent evidence relating to the effects of pornography, adultery, fornication, etc., could be mistaken, he does not appear to represent them as more than contingent or possible. But does Mr. Oaks demonstrate any more than the point made by the late Professor Herbert Packer, that it is usually possible to make a more or less plausible argument that any given form of conduct involves some damage or risk of damage to the interests of others?[2]

This may be an effective rhetorical response to what Mr. Oaks calls "the rhetoric of so-called victimless crime" but it is hardly any more than that. The characterization of certain crimes as "victimless" is not intended to imply that there are kinds of criminal behavior, or for that matter kinds of human behavior, about which it can be stated categorically that they could not conceivably in any circumstances harm anyone other than the agent himself. It is intended merely to distinguish crimes in which the victimization is remote or uncertain and where no one *identifies* himself as the victim from those in which there are direct, identifiable victims. The distinction is not absolute, and no doubt most crimes could be theoretically ranged on a continuum, distinguished from one another only by imprecise and indefinite variations in the degree of harm occasioned to others. But although there would inevitably be disagreement about the appropriate placement on that continuum of many offenses, there would surely, *pace* Mr. Oaks, be little dispute about such polar extremes as violent predatory crimes on the one hand and noncommercial sexual conduct between consenting adults in private on the other. The distinction is in fact, as Packer said,

> *a prudential criterion rather than a hard and fast distinction of principle . . . which brings into play a host of secular inquiries about the effects of subjecting the conduct in question to the criminal sanction.*[3]

In short, it is the practical implications of drawing this distinction which are important. If we ask what are the practical implications of Mr. Oaks' failure to recognize it, we are compelled to the conclusion not merely that we should eschew decriminalization but that what society needs is a massive criminalization program. For there is a large range of widely disapproved behaviors, especially on the part of young people, which on the basis of unsubstantiated assertion ("common sense is sufficient evidence") could be assessed as detrimental to society and proper subjects for criminal sanctions. Of course Oaks does not advocate anything of the kind; indeed, he says quite specifically that he favors the decriminalization of some conduct which currently attracts criminal penalties. Yet, having rejected the "victimless" criterion, it is very hard to understand on what basis he discriminates between offenses.

Thus it is interesting to examine his varying attitudes to the types of behavior which he cites as destroying the family life of innocent children. In the case of sexual irregularities such as adultery he favors retaining criminal penalties, although many readers (especially any police officers amongst them, and possibly some congressmen) will have been relieved to find that he is "willing to accept a strategy of extremely restrained enforcement." Nevertheless, he favors the retention of the penalties primarily because of "the standard-setting and teaching functions of these laws on sexual morality . . ." In the case of gambling, however, he says nothing about restrained enforcement, and presumably believes that the law should be enforced as fully as possible, although that is unlikely to alarm operators in this field.

In the case of alcohol consumption he says that "the teachings of experience oppose the criminalization of alcohol" and furthermore that he favors the "decriminalization of the laws against public drunkenness." In this connection he says that the criminal law has shown itself ineffective against alcohol; will be even less effective against public dunkenness; and requires significant law enforcement, judicial and penal resources that could be more usefully employed

elsewhere. In the case of drugs he says, to take marijuana as an example, that while "logic would dictate similar treatment of alcohol and marijuana . . . the dictates of collective morality oppose the decriminalization of marijuana." (The dictates of collective morality, incidentally, were derived from an opinion poll which found that 64 percent of the adult public agreed that "using marijuana is morally offensive" compared to only 40 percent in the case of alcohol.)

The puzzling thing about this confusing congeries of attitudes is that in relation to the victims no consistent underlying principle can be discerned. "The innocent children whose family life is destroyed by the sexual irregularities of a parent" are entitled only to the modified protection of "extremely restrained" criminal law enforcement. "The innocent children . . . whose parents are pauperized by gambling" are entitled to the protection of the criminal law only if the form of gambling happens to be illegal, although parents can as easily, if not more easily, be pauperized by legal gambling and the children will be no less innocent. "The innocent children . . . whose parents are . . . twisted by alcohol or drugs" will receive no protection at all if their parents indulge in a legal but lethal drug like alcohol, which kills 85,000 people per year, but will be protected by the criminal law if their parents use marijuana, which has never killed anyone.

"The law is an effective teacher," says Mr. Oaks, "and it can teach for good or for ill. Laws can affect the attitudes of our citizens about what is right and wrong, fair and unfair, proper and improper, advisable or inadvisable. The criminal law is a moral force . . ." No one would dispute that the law can have an educative influence, but one wonders precisely what lessons the operations of the law in the areas mentioned in the last paragraph will inculcate into those who, because "the moral teachings and social controls of our nation's families, schools and churches seem to be progressively less effective," are bereft of guidance. They will certainly learn nothing about logic, although that won't worry Mr. Oaks unduly for he quotes approvingly Justice Holmes's observation that the life of the law has not been logic but experience. But can it be seriously maintained that they will learn anything about morality?

"The law is a schoolmaster," says Mr. Oaks, "as well as a policeman, and its curriculum includes morality." But he seems to forget a vital pedagogic principle: pupils learn as much from what is practiced as from what is preached. The law's educational role is not played out in a school for the blind. So it is relevant to ask what lesson is learned from the promulgation of a code of sexual behavior unrelated to reality (according to Kinsey, 95% of the male population is criminal by statutory standards) and its enforcement on an "extremely restrained" scale, in an arbitrary fashion? We are entitled to ask also in what way the law's pupils are edified by the selective prohibition of various forms of gambling and the spasmodic and discriminatory enforcement of these prohibitions, which are so widely disregarded that gambling provides the greatest source of revenue for organized crime. It is no less pertinent to inquire what moral principle is inculcated by the policy evinced in the decriminalization of alcohol, which gives rise to the most serious public health problem in the country and is responsible for some 28,000 motor vehicle fatalities each year, and the contemporaneous pursuit and prosecution (with a scale of penalties that causes even Mr. Oaks to blench) of the users of marijuana, about the harmful effects of which even a "not proven" verdict would grossly misrepresent the general tendency of the available evidence? Can it really be the case that morality will be the product of these examples? Or would hypocrisy be a likelier outcome?

Speaking of "the enormous educative influence of the law," Mr. Oaks says that "law focuses our attention on a particular problem, enacts a solution, and sometimes even provides and persuades us with reasons for the solution." But it is notable that the examples he gives—entitlement to social security, the legality of labor unions and the right to strike, the progressive income tax, and the right to be free from racial discrimination in government, common carriers and places of public accommodation—are somewhat remote from what would ordinarily be regarded by society as part of "the crime problem." In regard to that problem it can hardly be maintained that the law enacts a satisfactory solution, and even the most avid and devoted student must have difficulty in understanding, let alone being persuaded by, the reasons underlying the operations of the criminal law.

What is there to be learned from a situation in

which, while citizens suffer helplessly from the ravages and incursions of violent and predatory criminals, we annually set our police to arresting four million assorted drunks, addicts, loiterers, vagrants, prostitutes and gamblers? What is there to be learned from the fact that, in a country which has more violent crime than any other nation, half of all arrests are for crimes without direct victims, crimes which bring no complainant to the station house, no call to the police switchboard? What is to be learned from the fact that the law's attempt to prevent people from obtaining goods and services they have clearly demonstrated they do not intend to forgo has led to the development of organized crime on a scale unparalleled anywhere else in the world and an equally unsurpassed degree of corruption amongst law enforcement agents and public officials?

Mr. Oaks is well aware of, and of course disputes, the conclusions which Norval Morris and I arrived at after careful consideration not only of the facts referred to above but also of many other features of the crime problem. But as there may conceivably be readers who are not familiar with those conclusions, I may perhaps be forgiven for reproducing them here:

. . . [W]e must strip off the moralistic excrescences on our criminal justice system so that it may concentrate on the essential. The prime function of the criminal law is to protect our persons and our property; these purposes are now engulfed in a mass of other distracting, inefficiently performed, legislative duties. When the criminal law invades the spheres of private morality and social welfare, it exceeds its proper limits at the cost of neglecting its primary tasks. This unwarranted extension is expensive, ineffective, and criminogenic.

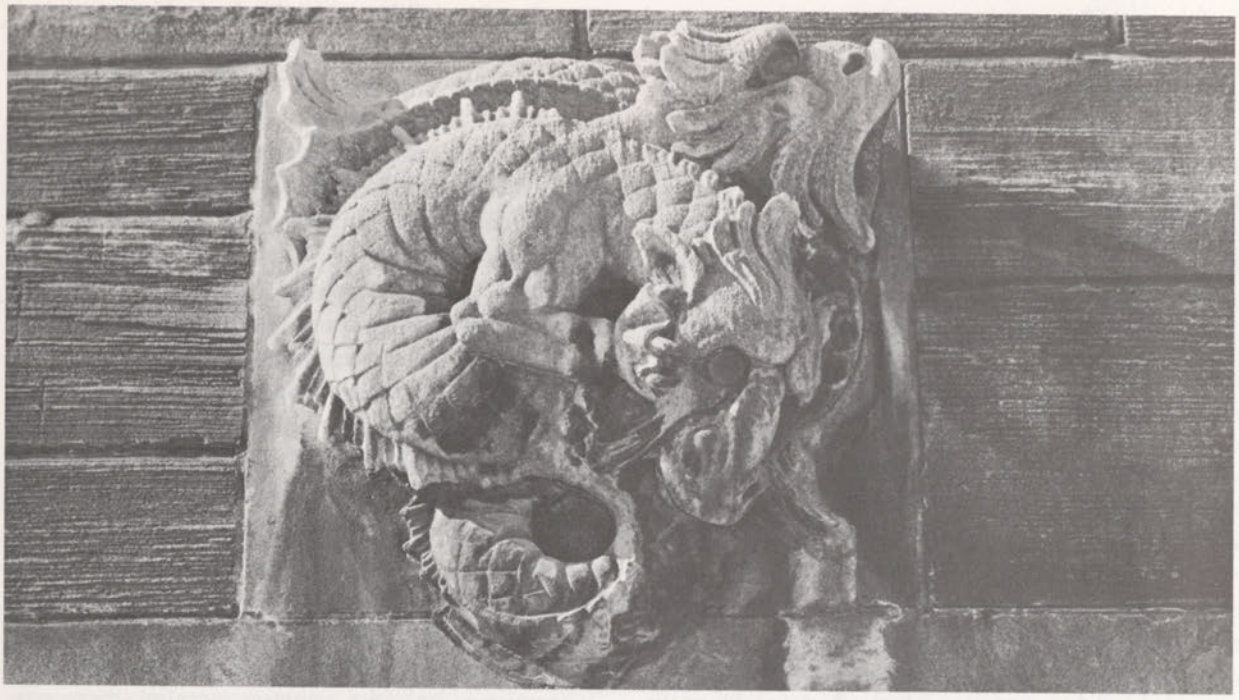
. . . We think it improper, impolitic, and usually socially harmful for the law to intervene or attempt to regulate the private moral conduct of the citizen. In this country we have a highly moralistic criminal law and a long tradition of using it as an instrument for coercing men toward virtue. It is a singularly inept instrument for that purpose. It is also an unduly costly one, both in terms of harm done and in terms of the neglect of the proper tasks of law enforcement.

Most of our legislation concerning drunkenness, narcotics, gambling, and sexual behavior and a good deal of it concerning juvenile delinquency is wholly misguided. It is based on an exaggerated conception of the capacity of the criminal law to influence men. We incur enormous collateral disadvantage costs for that exaggeration and we overload our criminal justice system to a degree which renders it grossly defective as a means of protection in the areas where we really need protection—from violence, incursions into our homes, and depredations of our property.[4]

In *The Honest Politician's Guide to Crime Control* we then go on to detail the ways in which the "overreach" of the criminal law contributes to the crime problem. But there is no need to go into that here, for Mr. Oaks in his article provides a very fair and succinct summary of our argument in this connection and even acknowledges that it has "considerable force" at least in regard to offenses like those relating to the drug traffic, gambling and prostitution. This brings us, however, to what is surely the crucial question in the decriminalization debate.

That question is: what is the criminal law good for? It is of course a question with which Dallin Oaks is concerned, for he quotes and rejects Lord Devlin's assertion that "the law must base itself on Christian morals and to the limit of its ability enforce them."[5] By contrast he believes, if I read him aright, that the law must base itself on what he refers to as "collective morality" and to the limits of its ability enforce that. Our criminal laws, he says, "teach and compel the observance of standards of behavior not demonstrably related to harm to others or the survival of society but nevertheless important to our individual or collective well-being." And by way of example he cites such laws as those forbidding obscenity which protect "our traditional moral sensibilities rather than our physical welfare."

The example is an interesting one, for the history of law enforcement in the field of obscenity in recent years raises not only the question of how effectively "traditional moral sensibilities" have been protected but also the more fundamental question whether, in a society with increasingly manifold moralities and various aesthetic standards, the law has any business, beyond preventing affronts to public decency, in determining what individual citizens may be permitted to hear, view or read. Individual susceptibilities to pleasurable or painful experiences are extremely di-



verse in our society, and there is no universal conformity with "traditional moral sensibilities." Nor is there any reason to believe that our individual or collective well-being would be enhanced if such conformity could be brought about by means of criminal sanctions. Incidentally, Mr. Oaks' curious categorical assertion that it is "common experience that the pictures and literature of the gutter produce thoughts of the gutter and the thought is parent to the act" seems to imply the existence of an unusual uniformity of response of a rather different character.

The essential point though is that, just as Dallin Oaks has *his* reasons for rejecting Lord Devlin's view that the law must be based on "Christian morals" and must try to enforce them, so in a pluralistic, secular society there will be those who have *their* reasons for rejecting Dallin Oaks' views that the law must be based on "collective morality" and must try to enforce that. Nor is this at all surprising. Certainly what he tells us about collective morality is, to say the least, uninspiring. Thus it appears to be in favor of the death penalty: "The popularity of current efforts to restore the death penalty identifies this as another area where the lawmakers . . . may have led out too far in advance of the collective morality." It appears to be opposed to the prohibition of alcoholic beverages: "The middle-class citizens who defied prohibition demonstrated that this law had exceeded and could not alter our collective morality." It appears to disapprove of marijuana; as noted earlier, "64 percent of the adult public agreed that 'using marijuana is morally offensive.' " It appears, in Missouri at any rate, to regard homosexuality as immoral: "A majority of the people in Missouri still regard homosexuality as disgusting, degrading, degenerate and a threat to society." In fact, it appears generally to be against "any sexual behavior outside the bonds of marriage . . . our moral standards forbid it."

Moreover, whatever the content of collective morality, it is by no means clear what Mr. Oaks means by his contention that "the law will be discredited if it attempts to decriminalize conduct condemned under collective morality." In what sense, for instance, would the law be discredited if adultery, now punishable in some states by up to five years' imprisonment (and Mr. Oaks believes in retaining the criminal penalties on adultery), were to be declared no longer subject to the criminal law? No doubt there would be those who were annoyed by the change just as there are many people who are annoyed by the failure to decriminalize adultery. But even among those most annoyed it is hard to believe that *the law,* including all the other

rules proscribing crimes against the person and against property, would thereafter be viewed as invalid or illegitimate.

Ironically, it used to be argued by those urging the decriminalization of adultery, that the law was "discredited" by the retention on the statute book of laws which were virtually unenforceable. It wasn't a very good argument then, and it isn't improved by being stood on its head. In its earlier usage what seems to have been suggested was that resentment of the unfairness in operation or impropriety of a particular prohibition would lead to disapproval of all other prohibitions in the criminal law. In Mr. Oaks's usage what seems to be suggested is that resentment of the impropriety of the repeal of a particular prohibition would lead to contempt for, or dissatisfaction with, the rest of the criminal code. In neither formulation does it appear particularly plausible. There are few people who could not think both of some legal prohibitions of which they disapprove and of some types of conduct not prohibited which might profitably be prohibited; but in neither case does this cause them to refuse to accept the criminal law in general or regard it as discredited.

What is at issue, *au fond,* is surely the question posed above: what is the criminal law good for? Or to make it a little more concrete: are there good reasons for using the criminal law against this type of conduct? To which the beginning of an answer was given nearly sixty years ago by the late Ernst Freund when he said: "Not every standard of conduct that is fit to be observed is also fit to be enforced."[6] And not even the most rigorous moralist would be likely to disagree with that and argue that all morally wrong or undesirable actions should be proscribed by the criminal law. At the same time it is obvious that when we come to consider which standards of conduct fit to be observed are also fit to be enforced, no meaningful answers can be given which are not related to a particular political and social context. What was an acceptable answer in sixteenth-century Geneva under John Calvin would not be acceptable in Geneva today. What would be acceptable in a culturally homogeneous society under an authoritarian patriarchal form of government would not be acceptable in a culturally heterogeneous society under a democratic form of government.

That, of course, is what underlies the answer suggested as a possible one by H. L. A. Hart, to which Dallin Oaks refers so briefly that all that emerges is that he rejects it. That answer is that the criminal law should enforce only that part of social morality which contains those restraints and prohibitions essential to the existence of a society of human beings. This moral minimum essential for social life "includes rules restraining the free use of violence and minimal forms of rules regarding honesty, promise-keeping, fair dealing, and property."[7]

In every society discriminations are made between those aspects of social morality or society's moral code which are suitable for legal enforcement, and are required to be enforced by the criminal law, and those which are not. Hart's suggestion is that in a society where there is no single moral code, beyond recognition of the restraints necessary for social cohesion, plural moralities may co-exist in a condition of mutual toleration. Indeed, he suggests that, in fact, "over wide areas of modern life, sometimes hiding behind lip-service to an older common morality, there actually are divergent moralities living in peace."[8]

The decriminalization movement and the enormous growth of public discussions of the relationship between law and morality in the last two decades can be viewed in fact as the reflection of a condition of moral plurality. Indeed, if one were to accept Dallin Oaks' description of the contemporary scene—with a "decriminalization bandwagon" attracting adherents, amassing power and gathering momentum; with a substantial aggregation of publicity and political power gathering behind various decriminalization proposals; and with criminal law revisions already adopted or under favorable consideration amounting to "revolutionary changes in the function and content of criminal law"—one might conclude that any attempt to stem the tide and legally enforce standards reflecting "traditional moral sensibilities" must be hopelessly anachronous.

But the decriminalization movement insofar as it can be identified does not necessarily involve the rejection of traditional moral standards or the values reflected in "collective morality" insofar as that can be identified. Support for decriminalization does not involve the advocacy of general permissiveness in the field of morals. What Ernst Freund was concerned about was our over-reliance upon the criminal law to such an extent that, as he said, we submit to public

regulation and control "in ways that would appear inconceivable to the spirit of oriental despotism."[9] Francis Allen had a similar concern when he wrote that "the system of criminal justice may be viewed as a weary Atlas upon whose shoulders we have heaped a crushing burden of responsibilities. . . ."[10] In other words, the argument is about the extent to which the criminal law, rather than other means of social control, is the appropriate vehicle for dealing with undesirable behavior and motivating compliance with social rules. Disagreement about what types of conduct should be prohibited by the criminal law is not necessarily connected with disagreement about what forms of conduct are undesirable or deserve moral censure.

Moreover, not only does support for decriminalization not imply support for general moral permissiveness, neither does it imply support for wholesale legalization and the total deregulation of conduct. As the President's Commission *Task Force Report: The Courts* put it:[11]

The criminal law is not the sole or even the primary method relied upon by society to motivate compliance with its rules. The community depends on a broad spectrum of sanctions to control conduct. Civil liability, administrative regulations, licensing, and noncriminal penalties carry the brunt of the regulatory job in many very important fields, with little additional force contributed by such infrequently used criminal provisions as may appear in the statute books.

What is required is better regulation. One of the crucial points to be made in this context is that *it is impossible to regulate behavior that you prohibit.* The proper role of the law in many of the areas under discussion is to back up rational regulatory efforts with criminal sanctions. The fundamental objection to the Volstead Act is not that it "exceeded and could not alter our collective morality," as Dallin Oaks would have it, but that it was prohibitory, not regulatory. Repeal of the Act led to a reasonably enforceable regulatory system, with admitted defects but inflicting nothing like the societal damage caused by Prohibition. Oaks of course is aware that the choice is not between the use of the criminal law and complete decontrol. For in advocating the decriminalization of the laws against public drunkenness, vagrancy and similar crimes, he says that the legitimate social interest which the criminal law seeks to protect in this area ("cleaning the streets of derelicts") is "one that ought to be pursued by some civil remedy that is subject neither to the abuses involved in the vague criminal statutes that seek to punish drunks and vagabonds nor to the expenses entailed in arrest, booking, jail, and court appearance to achieve the simple expedient of transporting a person out of a situation where he is a threat to himself or others."

What is required is that we should substitute for our present absolute prohibitions multiple and diverse strategies of regulatory intervention which effectively control that which we ineffectively attempt to abolish. In the case of drugs, for example, quite a complex regulatory system would be necessary. The rational control of dangerous drugs might involve (1) the *prohibition* of nonmedical importation, manufacture and sale of opium derivatives like heroin, (2) the *regulation* of the prescription and distribution of some other drugs like the barbiturates, and (3) the *decriminalization* of the medically controlled consumption of some drugs by addicts and of the consumption of some other drugs like marijuana by any adult.

The important point about drugs such as heroin is not whether crimes like the acquisition, purchase or possession of it should properly be described as "victimless" because of the burden imposed on taxpayers when addicts wreck their health and destroy their capacity to work. The important point is whether the invocation of the criminal process so that the addict lives in almost perpetual violation of one or several criminal laws is the most effective, economical and least collaterally damaging way of exercising social control. Mr. Oaks is well aware of the problem of collateral disadvantage costs and admirably summarizes the ways in which the effect of criminal penalties "is to increase other crimes." He does not, however, mention the fact that the use of criminal penalties in the case of drug addiction also stimulates the recruitment of addicts.

Thus he notes that the high prices that criminal organizations engaged in the narcotics trade force addicts to pay cause addicts to commit other crimes like robbery and theft in order to support their addiction. He does not mention that one of the most common methods of obtaining money to support addiction is that of becoming a narcotics salesman or

"pusher." So that the addict engages in proselyting, seeking to promote the sale of the drug by influencing or inducing others to experiment with it, so that they in turn may become addicts and regular customers. In this way the prohibition of the addicts' access to drugs spreads the contagion and helps to attract newcomers to the market.

Clearly the way to reduce that market, reduce addiction-supportive crime, and reduce the incentive for organized criminals to engage in the narcotics traffic is to make narcotics available to addicts through controlled outlets. Recently law-enforcement efforts to intercept drugs at the source have enjoyed increased success and this suggests that the problem of cutting off the supply to non-addicted users would be manageable if the addicts' demand were otherwise supplied. The recommendation of the Consumers Union report on *Licit and Illicit Drugs* that "policies and practices be promptly revised to insure that no narcotics addict need get his drugs from the black market"[12] is based on a sound analysis of the nature of the problem. And until that is recognized, all efforts at control and treatment are doomed to impotence. Dallin Oaks appears to suggest that the only alternative to retaining our current criminal penalties on drugs is "making drugs readily available for all who wish(ed) to indulge"; but, as far as I know, no one has ever advocated the withdrawal of all regulation and the making available of heroin or any other dangerous drug for unrestricted purchase.

Few would question Dallin Oaks' statement that "Heroin and other hard drugs stand convicted of so much human misery and such staggering social costs that there can be no doubt of the propriety of extensive government efforts to discourage their use." But it is reasonable to question the wisdom of the retention of the criminal penalties on the possession of currently illegal drugs as a feature of those government efforts, when the considerable law enforcement resources committed in this area operate so ineffectively (and could be more profitably used elsewhere) and, as Oaks acknowledges, those penalties as currently enforced have the effect of increasing the overall level of crime and moreover also have the effect of stimulating the recruitment of drug addicts. To say that the "criminal penalties are necessary if the law is to perform its function of teaching against and discouraging the use of drugs" not only ignores the

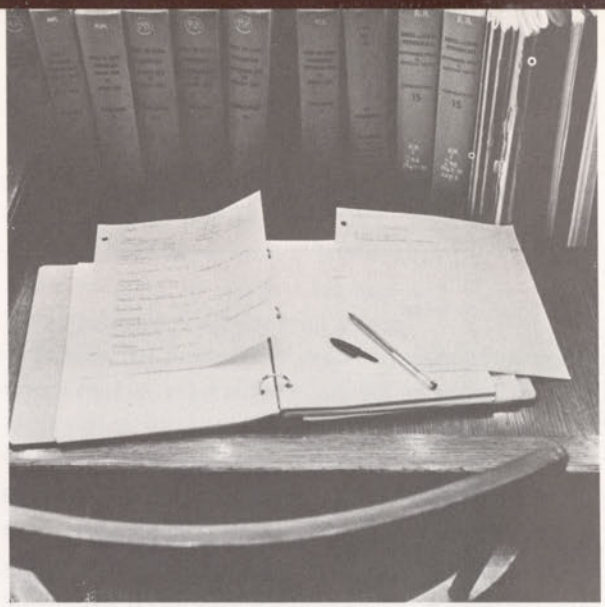
enormous social costs of this particular mode of social education but rests on the extremely dubious assumption that the use of criminal penalties is an effective educational technique in relation to drug abuse.

It is necessary, in conclusion, to say something about another of Dallin Oaks' assertions about the function of the criminal law in relation to behaviors condemned by "collective morality." "The law," he says, "must not depart too far from the collective morality, either to lead or to lag, or it will lose its force as a prescriber of behavior and its persuasiveness as a teacher and setter of standards." And it is clear that he believes that the decriminalization of drug offenses would be opposed to "the dictates of collective morality." Yet it is questionable whether in matters of this kind legislators should regard themselves as bound to do no more than reflect in their decisions what an often ill-informed constituency happens to feel about an issue.

There are occasions when legislators are called upon to act in accordance with the conception of the proper role of a representative set out in Burke's classic "Speech to the Electors of Bristol" in 1774; in essence they should vote according to their own judgment and informed consideration of the facts.[13] When legislators act in that way, they may by their own actions produce a change in public opinion. Indeed, Dallin Oaks gives a striking example of this himself when, in relation to the educative influence of the law, he cites the effect of the passage of the Civil Rights Act of 1964. "With the passage of the Civil Rights Act," he says, "we not only changed our law but we also changed our minds. Today the proposition adopted in that legislation is well accepted from coast to coast and from north to south."

In relation to criminal law reform and penal reform, where public opinion is frequently apathetic if not hostile and sometimes influenced by facile demogoguery, the acceptance of "the dictates of collective morality" should never be unquestioning. As Gresham Sykes has said:[14]

There is a great temptation to treat society as if it were a person—to speak of society doing this or that, the reactions of society, the morals of society, and so on. The usage is convenient, for it avoids a cumbersome phrasing; but it carries the danger of viewing society as much more homogeneous than it is in actu-



ality. Society is a diversity, a collection of individuals with varied patterns of sentiments and behavior. And this variation is particularly marked in the area of crime and punishment. How and why the criminal should be penalized is subject to sharp dispute.

And in relation to the death penalty, where Dallin Oaks says that the lawmakers "may have led out too far in advance of the collective morality," it is arguable that such a lead was desirable. Thus, R. J. Buxton in a 1973 article on "The Politics of Criminal Law Reform," in *The American Journal of Comparative Law,* notes that although in England, in the case of capital punishment the legislators "still lead from the front," as a result "the tone of the debate has moved on to a markedly more rational level."[15] Both responsible lawmaking and what Dallin Oaks calls "preserving the essential relationship between the moral values of citizens and the requirements and teachings of law in a democratic society" require more than assiduous attention to public opinion polls.

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[1]N. Morris and G. Hawkins, *The Honest Politician's Guide to Crime Control* 6 (1970).
[2]H. Packer, *The Limits of the Criminal Sanction* 266 (1968).
[3]*Id.,* at 266-67.
[4]N. Morris and G. Hawkins, n. 1 *supra,* at 1-3.
[5]Devlin, "The Enforcement of Morals," 14 *Proceedings of the British Academy* 151 (1954).
[6]E. Freund, *Standards of American Legislation* 106 (1917).
[7]Hart, "Social Solidarity and the Enforcement of Morality," 35 *U. Chi. L. Rev.* 9-10 (1967).
[8]*Id.,* at 13.
[9]E. Freund, n. 6 *supra,* at 21.
[10]F. Allen, *The Borderland of Criminal Justice* 4 (1964).
[11]President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* 98 (1967).
[12]Brecher, *Licit and Illicit Drugs* 530 (1972).
[13]E. Burke, *Works,* Vol. II, 89-98 (1865).
[14]G. Sykes, *Crime and Society* 81 (1956).
[15]Buxton, "The Politics of Criminal Law Reform: England," 21 *Am. J. Comp. Law* 244 (1973).

Judicial Lawmaking in the Leviathan State

Roger C. Cramton

I.

Seventy years ago in St. Paul, Roscoe Pound gave a famous speech on "The Causes of Popular Dissatisfaction with the Administration of Justice." Six weeks ago a prestigious group of lawyers and judges, assembled by Chief Justice Burger, reconvened in St. Paul to reconsider Pound's theme. A surprising conclusion was that, although the professionals—the lawyers and judges themselves—have many problems with the administration of justice, the tide of popular dissatisfaction is at a relatively low ebb.

In contrast to other agencies of the government, the people have confidence in the fairness and integrity of the courts. True, there is continuing complaint over the law's cost and delay. But, apart from this perennial complaint, popular dissatisfaction appears to turn on two perceptions: first, that decisions in criminal cases turn too often upon procedural technicalities rather than upon the guilt or innocence of the offender; and second, that some judges, and especially the federal judiciary, have been too actively engaged in lawmaking on social and economic issues that are better handled by other institutions of government. The layman, on scanning his newspaper or viewing the television screen, discovers to his surprise that judges are running schools and prison systems, prescribing curricula, formulating budgets and regulating the environment.

Causation is a tricky matter. A student theme has reported that, since Smokey the Bear posters were displayed in the New York subways, forest fires have disappeared in Manhattan. Despite the risks, I hazard the generalization that several fundamental changes in the nature of our society may have altered the role of the judiciary.

Foremost among those changes is that suggested by my title. The Leviathan is upon us, and it has implications for all branches of government, including the judiciary. Government now attempts so much! Every technical, economic and social issue seems to end up in the hands of government; and the demand for further government action is combined with charges that existing government is inefficient, heavy-handed and ineffective. This is one field in which the appetite for nostrums does not fade with the demonstrated failure of prior cures. Each reformer, after criticizing the failure and inefficiency of government, then concludes that the remedy is—more of the same!

But our attitudes about ourselves and about conflict have also changed. The confrontational style of contemporary America assures that social conflict will increase. "Doing your own thing" is the central value of a hedonistic, self-regarding society; and patience is a neary extinct virtue. Nowadays no one takes "no" for an answer, whether it is a job aspirant or a welfare claimant or a teacher who has been denied tenure. We perceive our society as having grown old; the enthusiastic and venturesome spirit that prompted the uncharted growth of the American past is now suffering from hardening of the arteries. As we experience slower economic development and approach zero population growth, organized groups contend with each other with increasing ferocity for larger shares of a more static pie. There is a declining sense of a common purpose; the prevailing attitude is "what's in it for me?"

These trends give lawyers and judges an even more central role in our society than they have had in the past. The decline of any moral consensus and of institutions of less formal control, such as the family and the church, places much more strain on the law as an instrument of conflict resolution and social con-

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trol. And the increasing contentiousness of groups organized for their own advantage has made conflict resolution a growth industry. If you could buy stock in law firms, I would advise you to do so. Lawyers have a legal monopoly of the conflict resolution industry, and it is the boom industry of today.

To these developments—the increasing reliance on law as an instrument of social control and the rapid growth of group conflict—must be added another factor: the failure of the executive and the legislature to meet the challenge of today's inflated expectations. The public perception that these branches of government have failed—a perception greatly abetted by the debacles of Vietnam and Watergate—has led the people to turn increasingly to the courts for solutions to their problems.

II.

Consider in the context of the Leviathan State two models of judicial review of administrative action. The traditional model is one of a restrained and sober second look at what government has done that adversely affects a citizen. The controversy is bipolar in character, with two parties opposing each other; the issues are narrow and well defined; and the relief is limited and obvious. Has a welfare recipient been denied a benefit to which he is entitled by statute? Was fair procedure employed by the agency? Were constitutional rights violated?

Judicial review in this model serves as a window on the outside world, a societal escape valve which tests the self interest and narrow vision of the specialist and the bureaucrat against the broader premises of the total society. Every bureaucracy develops its own way of looking at things, and these belief patterns are enormously resistant to change. In time an agency acquires a tunnel vision in which particular values are advanced and others are ignored. An independent judiciary tests agency outcomes against the statutory framework and the broader legal context.

Judicial review in this form is an absolute essential, especially in a society in which the points of contact between officials and private individuals multiply at every point. The impartial and objective second look adds to the integrity and acceptance of the administrative process rather than undermining it. If the administrator is upheld, as usually is the case, citizen confidence in the fairness and rationality of administration is enhanced. In the relatively small number of cases in which the administrator is reversed, the administrator is forced to readjust his narrower view to the larger perspective of the total society.

During the last twenty years the pace of constitutional change, especially in judicial review of government action, has been astounding. The values implicit in general constitutional provisions such as due process, equal protection and free speech have been given expanded content and new life. Even more important, constitutional rights have been extended to persons who were formerly neglected by the legal system—blacks, aliens, prisoners and others. One can disagree with the merits of particular decisions. But the general trends—implementation of fundamental values by the courts and the inclusion of previously excluded groups in the application of these values—constitute a great hour in the long struggle for human freedom.

There is, however, a second model of judicial review that is growing in acceptance and authority. This model of the judicial role has characteristics more of general problem-solving than of dispute resolution. Simon Rifkind speaks of a modern tendency to view courts as modern handymen—as jacks of all trades available to furnish the answer to whatever may trouble us. "What is life? When does death begin? How should we operate prisons and hospitals? Shall we build nuclear power plants, and if so, where? Shall the Concorde fly to our shores?"

Thoughtful observers believe that controversies of this character strain the capacities of our courts and may have debilitating effects on the self-reliance of administrators and legislators. At the risk of appearing more reactionary than I am, let me focus not on the achievements of the past but on the possible dangers that arise when the judiciary succumbs to pressures to attempt too much.

III.

The traditional judicial role, earlier described, envisions a lawsuit which is bipolar in character, seeks traditional relief (usually damages), and applies established law to a relatively narrow factual situation. The relief given is backward-looking and does not order government officials to take positive steps in the future.

The traditional model still persists in much private litigation and in many routine cases challenging official action, but in many other constitutional and statutory controversies radical changes have occurred. The changes have led Abram Chayes to argue that the basic character of public litigation has changed. In today's public litigation, a federal judge often is dealing with issues involving numerous parties; indeed, everyone in the community may be affected. Moreover, the issues are complex, interrelated and multifaceted; and they turn less on proof concerning past misconduct than on complex predictions as to how various social interests should be protected in the future. Since the remedy is not limited to compensating named plaintiffs for a past harm, the judge gets drawn, for example, into coercing school officials to close schools, bus pupils, change curricula and build new facilities. The federal judge becomes one of the most powerful persons in the community; on the particular issue, he is the one who decides.

Consider the role of one man, Frank Johnson, in the governance of the once sovereign State of Alabama. Johnson, a distinguished United States District Judge in Alabama, is supervising the operation of the prisons, mental hospitals, highway patrol and other institutions of the State. His decrees have directed the State to hire more wardens with better training and rebuild the prisons, and even extend to such details as the length of exercise periods and the installation of partitions in the men's rooms.

What is the authority of a federal judge to take such far-reaching actions? Why isn't the Alabama legislature the proper body to determine what prison or hospital care should be provided, and at what cost, through agencies administered by the State's executive branch? The answer is that all of these actions are designed to remedy violations of the constitutional rights of prisoners, mental patients and others. And the Alabama legislature and executive have defaulted on their obligation to remedy these violations.

We are caught on the horns of a terrible dilemma. It is unconscionable that a federal court should refuse to entertain claims that state officials have systematically violated the constitutional rights of prisoners, mental patients or school children. On the other hand, the design of effective relief may draw the court into a continuing role as an administrator of complex bureaucratic institutions. The dangers of the latter choice are worth brief exploration.

First, the judge who assumes an administrative role may gradually lose his neutrality, becoming a partisan who is pursuing his own cause. In one recent class action, a federal judge not only appointed expert witnesses, suggested areas of inquiry, and took over from the parties a substantial degree of the management of the case, but also went so far as to order that $250,000 from an award required of the defendants be paid for social science research on the effectiveness of the decree. That may be good government, but is it judicial justice?

A further problem arises from the tentativeness of our knowledge about such matters as minimum standards in operating a prison or mental hospital. We fervently hope that civilized and humane treatment will be provided to all of those who are confined to public institutions. But is it desirable to take the view of the current generation of experts, especially those self-selected by the plaintiffs or the judge, and to give their views of acceptable standards the status of constitutional requirements, with all that implies concerning their fixed meaning and difficulty of change?

Here as elsewhere, our capacity to anticipate the future or to discern all relevant facets of polycentric problems is limited. Thus, for example, when a federal judge ordered New York City to close the Tombs as a city jail or to rebuild it, the City, faced with an extraordinary financial crisis, opted to close it, and prisoners confined to the Tombs were transferred to Riker's Island. The crowded conditions of the Tombs were immediately duplicated on Riker's Island. But a further result was not anticipated: Riker's Island is much less accessible to the families and attorneys of prisoners; and there is reason to believe that the vast majority of prisoners prefer the convenience of the Tombs, despite its problems, to the inaccessibility of Riker's Island.

The underlying truth is that court orders cannot by judicial decree achieve social change in the face of the concerted opposition of elected officials and public opinion. In a representative democracy, the consent of the people is required for lasting change.

The impulse to reform, moreover, is not limited to courts nor to constitutional law. A vigilant press, an informed populace and the leadership of a committed minority have mobilized forces of change and reform

throughout our history. A representative democracy may move slowly, but if we lack patience we may undermine the self-reliance and responsibility of the people and their elected officials.

The danger of confrontation between branches of government is yet another concern. What happens, for example, if Alabama refuses to fund its mental hospitals or prisons at the level required to achieve the standards specified in Judge Johnson's decrees? The next step, Judge Johnson has said, is the sale of Alabama's public lands in order to finance, through court-appointed officers, the necessary changes.

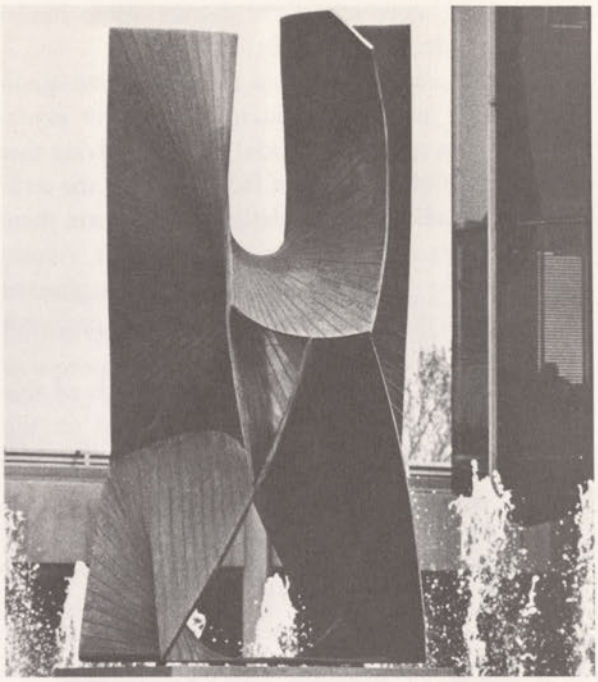
A degree of tension is a necessary concomitant of the checks and balances of a federal system. But in our urge to check we should not forget that balance is involved as well. One of the lessons of the Watergate era, in my view, is that cooperation, restraint and patience among the various branches and levels of government is necessary if our system is to survive in the long run. As Ben Franklin said many years ago, we must hang together or we will hang separately.

IV.

Why have the courts undertaken these more expansive functions? They have not done so as volunteers desirous of expanding their own powers, but reluctantly and hesitantly in response to public demands for effective implementation of generally held values.

The American people today have little patience or restraint in dealing with social issues. An instant problem requires an instant solution that provides instant gratification. Playing this game under those rules, the executive and legislature have done their best—grinding out thousands of laws and regulations, many of them ineffective and some of them intrusive and harmful. The public, while demanding even more action from legislators and administrators, perceives these bodies as inept, ineffective and even corrupt. Moreover, issues on which there is a deep social division, such as school busing or abortion, are avoided by elected officials, who view them as involving unacceptable political risks.

Nature abhors a vacuum, and the inaction of the executive and lawmaking branches creates pressures for judicial action. A prominent federal judge put it



succinctly at the recent St. Paul conference: "If there is a serious problem, and the legislature and executive don't respond, the courts have to act."

And they have done so on one after another burning issue. The mystery is that they have been so successful and that there has been so little popular outcry. The desegregation of Southern schools, of course, is a success story of heroic proportions. Legislative reapportionment is also generally viewed as a success despite the mathematical extreme to which it was carried in its later years. Organs of opinion, especially the TV networks and major newspapers, support the Supreme Court's actions in general and especially in such areas as civil rights and criminal procedure. There is no institution in our society that has as good a press as the Supreme Court. Judicial activism, it appears, has the approval of the intellectual elite who have become disillusioned with the effectiveness of social change by other means. It is more doubtful, however, whether the common man concurs either in the elite's support of judicial lawmaking or of its substantive results.

V.

Neither popular acclaim nor criticism, of course, can answer the long term question of the appropriate lawmaking role of the judiciary and the desirable

limits on the scope of judicial decrees. More fundamental considerations must be decisive.

First, the practical question of comparative qualifications. Do judges, by training, selection or experience, have an aptitude for social problem-solving that other officials of government lack? And are the techniques of adjudication well designed to perform these broader policy-making functions? Professor Abram Chayes of the Harvard Law School, in a current article, answers these questions with a confident affirmative. I am inclined to disagree.

Second, what will be the long-term effects of this trend on the credibility of the courts and on the sense of responsibility of administrators and legislators?

After I had completed this paper, my fears on this score received support from an unlikely source: Anthony Lewis in the *New York Times* (May 24, 1976, p. 29). After acknowledging, as I do, that the Boston School Case "presented exceptional difficulties," that "a judge could [not] in conscience remit the complaining black families to their political remedy," and that District Judge Garrity's lonely efforts should be viewed with sympathy, Lewis nevertheless concludes that Garrity's involvement in the day-by-day administration of school affairs "has not worked well" and "is a serious philosophical error."

"American judges," Lewis writes,

have to handle many controversial problems with political implications—redistricting, prisons and the like. Their object should always be to nudge elected officials into performing their responsibility. [*Excessive intervention by the judge*] *tends to take responsibility away from those who ought to be seen to bear it.*

And finally, as Simon Rifkind has put it, there is "the ancient question, *quo warranto?* By what authority do judges turn courts into mini-legislatures?"

The critical question in a republic is how government by nonelected, lifetime officials can be squared with representative democracy. The magic of the robe, the remnants of the myth that law on these matters is discovered by an elaboration of existing rules (rather than by personal preference), and the prudence of the judiciary in picking issues on which it could command a great deal of popular support—perhaps these factors explain why the judges have been as successful as they have.

I fear, however, that the judiciary has exhausted the areas where broad majoritarian support will sustain new initiatives and that the tolerance of local communities for "government by decree" is fast dissipating. If so, caution is in order lest a depreciation of the esteem in which we hold the courts undermines their performance of the essential tasks that are indisputably theirs and that other institutions cannot perform.

The authority of the courts depends in large part on the public perception that judges are different from other policy makers. Judges (but not elected officials) are impartial rather than willful or partisan; judges utilize special decisional procedures; and they draw on established general principles in deciding individual cases. In short, traditional ideas concerning the nature, form and functions of adjudication as a decisional technique underlie popular acceptance of judicial outcomes.

While the precise boundaries of the adjudicative technique are flexible rather than fixed, if they are abandoned entirely the judge loses credibility as a judge. He becomes merely another policymaker who, in managing prisons or schools or whatnot, is expressing his personal views and throwing his weight around. When that point is reached, the judge's credibility and authority is no greater than that of Mayor White in Boston or Mayor Rizzo in Philadelphia.

With the credibility of the legislative and executive branches of government in such disrepair, we cannot afford any further depreciation in the judicial currency. General acceptance of the authority of law is a necessary bulwark of our otherwise fragile social order. If it disappears, the resulting collapse of order may put the Ameican people in the mood for that "more effective management" which is likely to characterize any distinctly American brand of authoritarianism.

Opportunities for charismatic and authoritarian leadership, it has been said, derive in considerable measure from the ability to "accentuate [a society's] sense of being in a desperate predicament." If the courts, by overextension and consequent failure, contribute to our growing sense of desperation, our liberties may not long survive. When a people despair of their institutions, force arrives under the masquerade of ideology.

Vignettes

A Book to Remember from a Chancellor's Trial Book

Judge Samuel B. Epstein

At the trial level, a judge sitting in chancery, as distinguished from a common law court, is confronted daily with the entire spectrum of human emotions. The litigation is as varied as human endeavor. The "Tropic of Cancer" case was by far the most challenging, and the most sensational, of my judicial career.

When a professor of English at Northwestern University named Franklyn S. Haiman decided he wanted to read Henry Miller's book *Tropic of Cancer,* written in 1934 and banned in the United States for 17 years, my problems began.

Tropic of Cancer was at the time perhaps the most litigated book in the history of literature. Cases either were pending, or had been decided, in such states as Massachusetts, New York, California, Minnesota, New Jersey, Maryland, Ohio, and Wisconsin, with varied results. The book is a realistic account of life among the literary and artistic expatriates in the Paris of the 1930's, and deals frankly and explicitly with sex and bodily functions.

Because the police would not permit the book to be sold in Evanston, Professor Haiman, through the local office of the American Civil Liberties Union, filed suit for an injunction to restrain the police from interfering with its sale. As Chief Justice of the Superior Court at the time, I could have assigned the case to another judge, but I realized that this was a very controversial case, and I did not feel that I should impose the responsibility upon any other judge. Accordingly, I decided to hear the case myself.

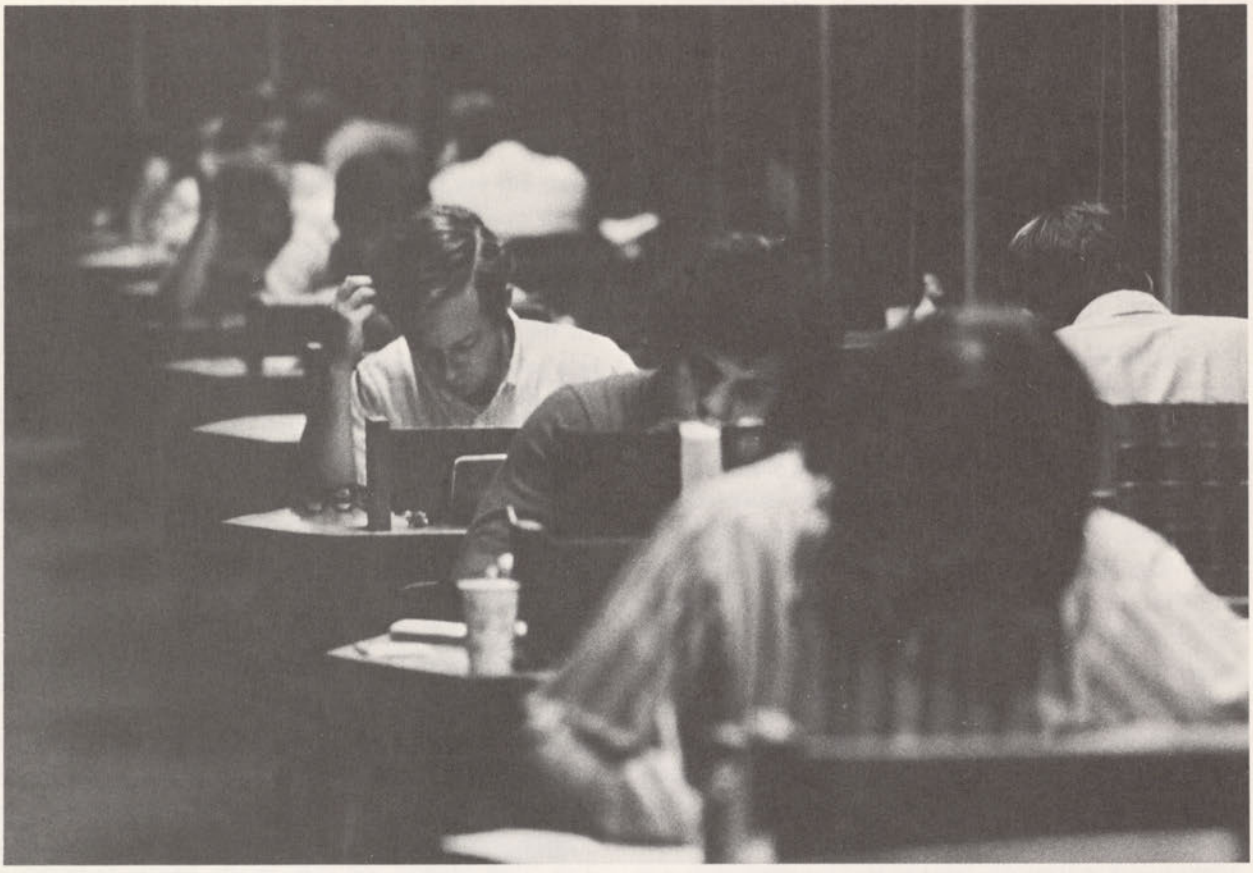
Judge Epstein, JD '15, continues to serve as a Circuit Judge, Chancery Division, Circuit Court of Cook County, Illinois.

A preliminary motion was made to dismiss the suit on the ground that the plaintiff, Professor Haiman, as a prospective reader, did not have a cause of action. Perhaps for the first time by any court, I ruled that, as a corollary to the freedom of speech and press guaranteed by the Constitutions of the United States and of the State of Illinois, there is also the *freedom to read,* and that the right to free speech and press becomes a useless privilege when the freedom to read is restricted or denied. I denied the motion to strike the complaint.

Ultimately, the author and publisher, as well as the City of Chicago and a number of suburban municipalities, joined in the litigation. Able counsel represented various parties, among them prominent members of The University of Chicago Law School alumni —Elmer Gertz and Sidney Z. Karasik, representing the author and publisher, and Jack M. Siegel, representing the City of Evanston.

It was alleged that the book sellers in Chicago and in the suburbs were being harassed by the police, ordered not to display the book for sale, and required to remove the book from their shelves. In some instances the book was confiscated, and some book sellers were arrested. I could have resolved the case upon the narrow ground that the police departments of the various municipalities were exceeding their authority by exercising prior restraint in banning this book from the shelves of the book seller. However, I felt that I would be dodging my responsibilities if I ruled on such narrow basis and left open the determination of the principle issue in this case, namely, whether or not *Tropic of Cancer* is obscene. If obscene, it did not enjoy the protection of the First or the Fourteenth Amendments of the United States Constitution, or of the provisions of Article II, Section 4, of the Illinois Constitution of 1870, then in force.

The internal and external struggle to decide a case of such complexity was graphically described in a law review article by my old friend, and former as-



sociate in my law firm, Elmer Gertz:

> Judge Epstein is temperamentally a very conservative and restrained man. He does not smoke or drink and is circumspect in all of his habits and tastes. His first reaction to the book was of intense distaste. At the same time, he had a strong fear of all infringements upon the freedom of the press. Thus, he kept a careful balance throughout the trial. He read and re-read the book several times—every word of it, and not isolated passages. He listened to all of the evidence. He read all of the reviews and critiques of the book that were offered. Starting with relatively little knowledge of the law in the field of obscenity, he familiarized himself with the cases and other authorities and grasped their essential meaning. In the end, he wrote an opinion that may achieve permanent status as a classic.*

The trial was long and tense. Literary experts, book reviewers, newspaper columnists, ministers, rabbis, psychiatrists, and others testified on both sides of the case. A large number of opinions of prominent, recognized literary critics, authors and reviewers, characterized *Tropic of Cancer* as being of substantial literary merit. There was little evidence to controvert it. It was also established by unquestionable authorities and literary publications that Henry Miller, the book's author, is an important figure in twentieth century literature.

Upon the voluminous evidence presented, and the examination of legal authorities, I concluded:

1. *Tropic of Cancer* is written with serious literary purpose;
2. It has substantial literary merit;
3. Henry Miller is a major writer;
4. *Tropic of Cancer* is an important work in the development of literature;
5. The coarse language and frank sexual descriptions contained in the book are integral parts of the book's literary purpose.

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*Gertz, "The 'Tropic of Cancer' Litigation in Illinois," 51 Ky. L. J. 591, 592-593 (1963). *See also* Gertz, "The Illinois Battle Over 'Tropic of Cancer,'" 46 Chi. B. Rec. 161 (1965).

In an 18-page opinion, I concluded that the book was not *legally obscene.* I adopted, as my legal conclusion, the principle laid down by the Supreme Court of the United States, in its famous *Roth* decision (*Roth* v. *United States,* 354 U.S. 476 (1957)), that:

> All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guarantees of free speech and free press, under the First and Fourteenth Amendments of the United States Constitution.

Although the book is vile, vulgar, and disgusting in its description of sex and bodily functions, I held that the literary and social value of the book is dominant and must prevail. The test established by many decisions requires that the book be considered as a whole and not dissected into separate parts—good and bad.

In addition to the legal grounds, the defendants attacked the book on moral and social grounds—on its effect on the reading public and, particularly, upon the young. With regard to the adult reading public, I adopted the accepted legal test that the book is to be judged as a whole on its effect on the *average normal reader.* Such normal readers are not a captive audience. What they read is their own voluntary act. They have the power to be their own censors. Because some may find the book unpalatable is no justification for depriving others of the free choice to read the book. With regard to the effect of this book upon the young, I quoted the emphatic, colorful statement of Justice Frankfurter, in *Butler* v. *Michigan,* 352 U.S. 380 (1957), in declaring a certain Michigan statute unconstitutional, that:

> The incidence of this enactment is to reduce the adult population to reading only what is fit for children.

I stated that I was committed to the principle expressed by the majority opinion in the *Roth* case:

> The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion by Congress or by the States. The door barring Federal and State intrusion into this area cannot be left ajar.

I further said:

> Censorship is a very dangerous instrumentality, even in the hands of the court. . . .
>
> Censorship has no fixed boundaries. It may become an oppressive weapon in a free society. . . .
>
> Literature which has social merit, even if controversial, should be left to individual taste rather than to governmental edict.

In summary, I concluded:

> Let parents control the reading matter of their children. Let the taste of the readers determine what they may or may not read; let not the government or the courts dictate the reading matter of a free people.

The abuse to which I was subjected is beyond description. The Mayor of Chicago received a flood of letters condemning me, some asking that I be impeached. I was insulted, threatened, and even disturbed during the night by abusive telephone calls. Ministers maligned me in their Sunday sermons. On the other hand, bundles of mail from all over the nation, from judges, authors, rabbis, ministers, professors, and just people poured into my office daily for many weeks, commending my decision. "The New World," an official publication of the Catholic Archdiocese of Chicago, attacked me mercilessly in an editorial written by Monsignor Kelly, its editor. In part it stated:

> It is hard to attribute dishonesty and stupidity to the men honored by appointment to any of our courts. . . .
>
> As for some members of the judiciary, it would seem they have done a splendid job of paving the way for pornography. These are hired hands

> of our society. The blame then must lay with our society. It is hard to maintain respect for judges who render such decisions, unless we have reached the point where we would regard filthy material as acceptable. Personally, I feel the odor is rotten.

It was my practice not to reply to any of the attacks upon me. However, I felt it was my duty to respond to this editorial. I took issue with the editor's comments. In part, I stated:

> You may quarrel with my findings and with my conclusions. That is your right. You may not question my integrity, and not being a lawyer, you may not question the legal basis of my decision.

To the credit of Monsignor Kelly, my response was printed in full in a subsequent edition.

I quote with a great deal of present amusement a few literary gems which I received in the mail:

> You filthy swine. We hope you are satisfied. You are a disgrace and we hope your conscience will torment you to your dying days.

Another letter from a fellow Jew read:

> You are a disgrace to your people and profession and an insult to every normal, decent Chicagoan. I am sorry for you.

Another letter threatened my future on earth as well as in the hereafter:

> What manner of man are you, that could condone and exonerate the perpetrators of the publication, *Tropic of Cancer?* You have created a greater miscarriage of justice to mankind than Henry Miller, the author of the book. You sit in the cause of justice *now*. Someday you will sit in the cause of justice and morality later. . . .
>
> A man who is supposedly dedicated to righteousness and then declares this book, *Tropic of Cancer,* is not legally obscene should be tossed to the wolves. You will be tossed to the voters at your next attempt at re-election. We will make *sure* you are not back on a bench in authority.

On the other hand, I received a written endorsement of my decision by about 200 leading authors, book publishers, newspapers, and publishing departments of leading universities of the nation, including Saul Bellow, *Encyclopaedia Brittanica,* New York Times, Harvard University Press, and the University of Chicago Press. The written endorsement in part, was as follows:

> We, the undersigned, strongly endorse Judge Samuel B. Epstein's defense of the freedom to read in his historic decision in the *Tropic of Cancer* case in Chicago. Judge Epstein, by stating that the right to free utterance becomes a useless privilege when the freedom to read is restricted or denied, has put the issue of police censorship squarely before the public. . . .
>
> We believe with Judge Epstein that neither the police nor the courts should be allowed to dictate the reading matter of a free people. . . .

The Mayor of Chicago, shocked by references to some pages of the book, ordered the Corporation Counsel to appeal my decision to the Illinois Supreme Court. For some reason, the case rested in the Illinois Supreme Court for a couple of years. On a certain Wednesday in June, 1964, following the adjournment of the Supreme Court for the summer, a vacation opinion was rendered by the Supreme Court of Illinois, unanimously reversing my decision. The Supreme Court of Illinois was not aware that on the following Monday a decision by the Supreme Court of the United States would be rendered in an identical case from Florida. My gloom, resulting from the reversal by the Supreme Court of Illinois, turned to joy when the Supreme Court of the United States in the Florida case affirmed my conclusion.* Embarrassed, the Supreme Court of Illinois, at a special vacation conference, withdrew its opinion and rendered a short opinion affirming my decision.

Yes, *Tropic of Cancer* is a book to remember—and a case to remember.

**Grove Press, Inc.* v. *Gerstein*, 378 U.S. 577 (1964).

George E. Fee, Jr. — a Death in the Family

Franklin E. Zimring

To the generation of law students that entered the Law School between 1964 and 1969, Nick Fee (JD '63) was the lively, sympathetic and human side to the not-so-humane task of getting a Chicago legal education and beginning our careers. He collected, through the years, a variety of job descriptions: Director of Placement; Dean of Students and Director of Placement; and finally Assistant Dean in charge of just about everything.

Even then, the job description didn't come close to depicting Nick Fee's role. To hundreds of us, he was the glue that held the Law School, and many of us, together. If the winter was particularly gloomy, Nick would rent an old Woodlawn house and throw a party Pearl Mesta would have wanted to attend if she had had the stamina. If the academic competition and arrogance became unbearable, Nick would find some way to burst the ballooning myth of all important grades. If a student had personal problems (my God did we!), Nick was the older-brother confessor who always helped. As Placement Director, his pride derived not from the number of graduates placed or the salaries they commanded, but from finding the right job for the unique personality that Nick saw in each of his students.

Nick left the Law School to start a lawyer placement service, George Fee and Associates. The firm prospered because there was a great need for a more careful matching of particular people and particular jobs than the traditional hiring and "executive search" processes provided. The firm extended Nick's reach; many of his generation at the Law School came to him again for help. Again, he could and did help.

Nick died in February after a brave and painful fight against cancer. His firm continues under its original name. Nick is survived by his wife, four children, his mother and sister, and hundreds of friends.

Mr. Zimring, JD '67 is Professor of Law at the Law School.

The Law School Placement Office

Herbert B. Fried

Handling the placement operations at the Law School is a far cry from either the practice of law or the operation of a business (I've been involved in one or the other of these past many years), but it's been a busy, exciting, and gratifying experience. Primarily it's been a learning and experimental period for me, one in which I have had to depend upon a great number of people for their knowledge and experience. All of them have been helpful—the Dean; Bernie Meltzer, Chairman of the Faculty Placement Committee; Assistant Dean Frank Ellsworth, especially with his extensive alumni contacts; and particularly, Dick Badger, without whose help this would have been a very difficult changeover.

Of course the Placement Office doesn't get jobs for people; all it can do is open doors, point students and job-seeking alumni in the right direction, and act as a clearing house for employers and potential employees. Certainly it's very helpful to have clients as capable and qualified as are our students. Of the 157 students in the class of 1976, I know of only three who do not have jobs at this time, and of the second year class, a good 90% plus had law related summer jobs. This is no tribute to the Placement Office—it's a deserved tribute to our Law School and its students.

There are some things though that the Placement Office can and does do. With the somewhat encouraging economic picture, there is a greater demand to hire students, which allows the student to be somewhat more particular in the selection of a position.

This fall, for instance, we will have some 350 employers (mostly law firms) interviewing second and third year students here on campus—against 275 last year. We have enlarged the number of potential interviews per student by computerizing the mechanics of the program—and, assuming the computer doesn't foul up too much, we should have a good interview season, and students will have had a larger

Mr. Fried, JD '32, was appointed the Law School's Director of Placement in April, 1976.

selection from which to choose. As I am writing this we have been in operation with computer processing for two weeks, and it appears that students are receiving an average of from four to five interviews per week out of the ten they had selected, which should give a student an opportunity to interview between 30 and 40 firms during the interview season. Of course not all students interview, particularly the third-year students, many of whom have accepted positions as a result of their previous summer's association. Incidentally, the computer has worked well these first few weeks—we've had some physical problems of space as far as the posting of notices and sign-up sheets are concerned, but we're changing and adapting as we go along, and eventually I'm sure we'll have a smooth running operation.

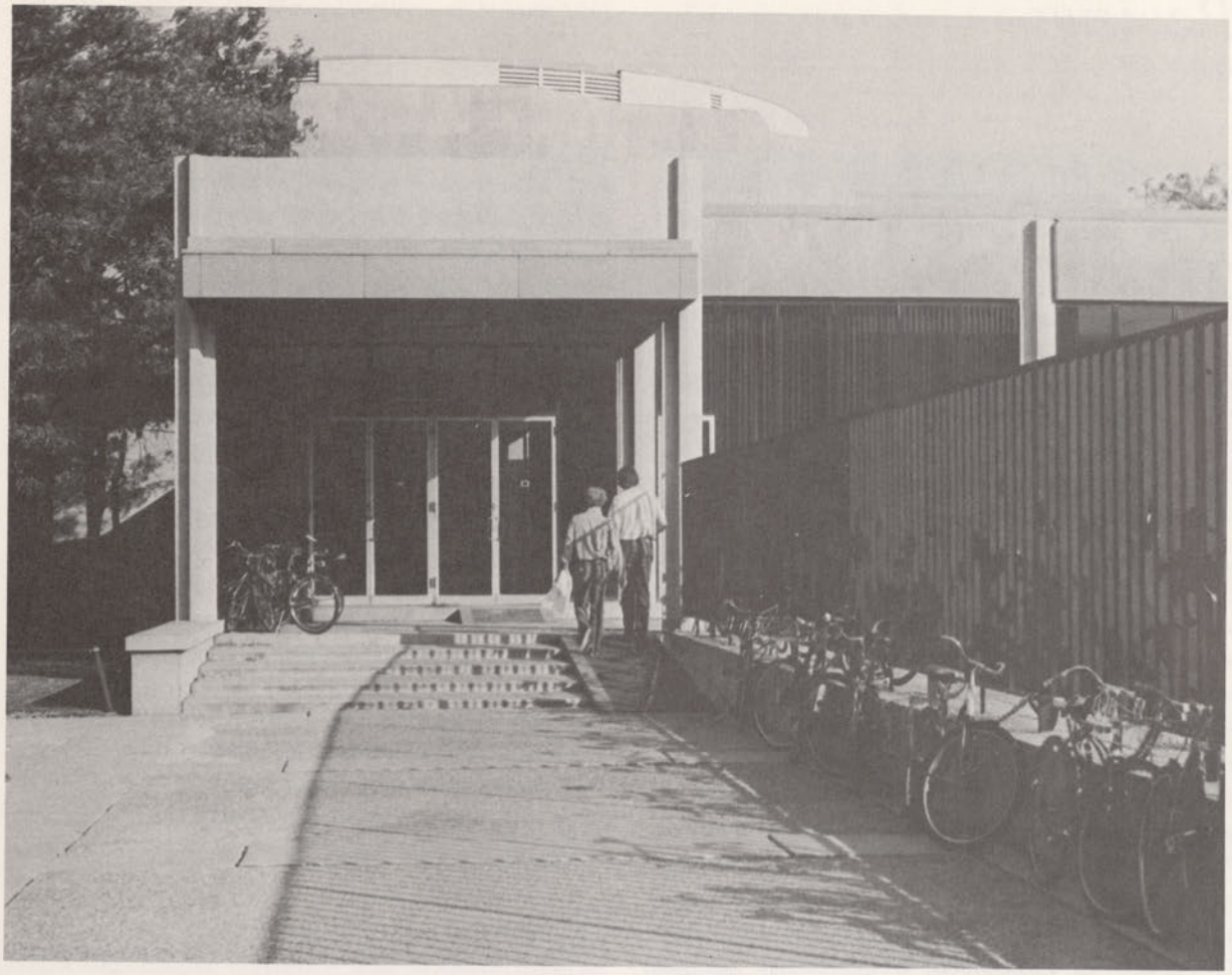
First-year students present a somewhat more difficult problem. Very few employers have thus far worked out a first-year intern program. Consequently, most of the jobs available are in the area of research. We do expect that as the market for our graduates gets stronger, more firms will develop first-year programs, but for this past summer, we were fortunate that our faculty and the American Bar Association and Foundation had need for a substantial number of first-year students for research projects. One of the ways we hope to improve the availability of jobs for first-year students is by making them more aware of the placement process and placement prospects earlier in the year. We try not to burden them in the first few weeks as they have enough trouble trying to figure out what they're doing in the school, without concerning themselves about what they're going to do after they finish. But, right around the first of November we're going to start educating them in the preparation of resumes and the nature of interviewing. We also hope to make available to them information concerning opportunities and objectives in all areas of the law.

As for alumni, we have a bulletin service which goes out twice a month to all alumni who have notified us of their interest in learning of job openings. We capsulize the availability information that we have received from employers, publish it in the bulletins, and then respond to requests from interested alumni by sending them the particular job information in which they are interested. We are thinking seriously of expanding our efforts in the alumni area by putting out a bi-monthly listing (anonymous of course) of available alumni to a large list of potential employers, but this will have to wait until we finish the interview season.

Where is our placement effort lacking? First I think we can do more and better counselling; too many of our students don't seem to know where they are going, what they really want to do, what's available to them in a career choice, or even how to find out. We hope to help in these areas by an individual counselling effort, and also by running a series of weekly meetings during the fall quarter in which we would cover practically all phases of the law open to a new lawyer, from legal services and public interest through government and corporation legal departments, and large, small, and middle-sized law firms. I hope to convince the placement committee of the Law Student Association to take this project on, and they (or we) will be calling on our own alumni to help in this series wherever possible.

Another area in which we believe alumni can be of great help is through the alumni advisory program. You'll be hearing more about it later, but suffice it to say that it is a way for students to receive advice from knowledgeable alumni on career objectives and the day-to-day practice of law. Once the program is in effect, I'm sure that many of our students will want to take advantage of it, and we will want your cooperation.

There is another very important area in which the Placement Office can use more alumni help. That is in letting us know of any opportunity that becomes available, particularly in the area of government, legal services, clerkships, and other non-traditional jobs. Sources for this kind of information are so wide-spread that they are not easy to develop, and alumni help could be invaluable. The diversity of our student body, particularly as to career objectives (for those who do have them), gives us a substantial number who will make good use of this information. Another reason for having as much of this kind of information on hand is that the traditional interview season is not the be-all and end-all of placement. It was very surprising to me last spring how many jobs became available after the interview season and right up to graduation day; there are always a few good



students on hand—some who didn't interview, some who have changed their minds about what they want to do, or where they want to locate, or some whose spouses' career plans dictate renewed job hunting. But for whatever reason they may still be seeking employment, they are good candidates, they do become available, and they do need your help. One of the important things I hope to do in this regard is to spend a substantial amount of time on the road—visiting with alumni associations, with individual alumni, and with hiring partners—beating the bushes to enlarge areas of contacts, to find new opportunities for our students, and to cement continuing relationships. I'm not sure that I can get everything done that I want to do, but I think as things become better organized here, we'll be able to accomplish a good deal.

And finally there is one area where we might be able to do more for alumni than we've done in the past. I thought that most alumni realized that we did have a placement service for those of you who are interested in changing careers or jobs, or merely finding out about the state of the job market. However, there evidently is a substantial number of you who don't realize this because from time to time we get an inquiry as to whether or not there is anything the Law School can do for alumni. I want to emphasize that there is such a service, and that, as a matter of fact, over the last several months there seem to be more positions available than we have alumni to fill them. Of course, some of the requests require special skills and experience, but there doesn't seem to be a day go by in which we don't have some request by a law firm or another employer for a lawyer with limited experience, and it would be very helpful to have a larger pool of job-seeking alumni from which to choose.

That's the placement picture for the moment.

Reviews

A Legal Ethics Casebook for the Real World

Problems and Materials on Professional Responsibility. Thomas D. Morgan, JD '65, and Ronald D. Rotunda. The Foundation Press, Inc., Mineola, New York, 1976. Pp. 491. $13.50.

George W. Overton

Books on legal ethics have come and gone. Nonetheless, there is a growing demand for more law school attention to the Bar's professional role. This work admirably serves that classroom need; but it also goes beyond the law school.

The work is divided into a number of judicial opinions, quotations from the Canons, law review articles and the like, followed by problems devised to test these various propositions in working situations. The problems create the basis for lively discussion, and many of them have no clear-cut answers—or at least this member of the Chicago Bar Association Committee on Professional Responsibility was not able to find a wholly satisfactory answer to many of them.

For example, the following problem is stated:

The grand jury investigation of a criminal antitrust price fixing case includes as potential targets a corporation and certain individuals, some of whom are present or former employees of the corporation. Counsel for the corporation is Barbara Bentley.

Bentley wants to investigate to find out what the facts of the case are and what the grand jury may turn up. She wants to talk to present and former employees, both officers and nonofficers, as well as other individuals: competitors, customers, suppliers, the corporation's independent and in-house accountants and others who may have vital information about any alleged price-fixing scheme.

Some of these individuals have their own counsel; others do not. During the course of their conversations, several of the unrepresented potential defendants ask Bentley to represent them. She and lawyers for the other potential defendants already have been holding several conferences to share information and to consider developing a joint defense.

Following the problem are a series of questions, such as:

What is the corporate counsel's duty to the corporation's officers, employees, and outside accountants when questioning them? May she take a "we're all in this together" approach? Should she advise them to obtain counsel? Should she tell them that she is not their lawyer and that what they tell her is not privileged?

Does the information shared in the multi-attorney conferences constitute "confidences" or "secrets"? What is the difference between the two for purposes of the Code? Is a secret still secret once it is told to other attorneys?

The attempt is to present professional responsibility and legal ethics in the kind of working situation in which it arises in a normal practice. Thus, it does not leave us with the self-righteous rhetoric that frequently obscures these discussions. The book presents situations, at least some of which, any working lawyer has faced in his career or can easily imagine himself facing. I would think a law school course using this book in casebook fashion as a basis for developing classroom discussion would be fascinating.

The topics discussed involve most of the thorny issues under the Code of Professional Responsibility, including the restraints on the lawyer in the pursuit of litigation; the practical problems of conflict of inter-

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est; the restraints on the solicitation of clients; and several special problems relating to criminal law, government service and public interest.

It should be recognized, of course, that this *is* a casebook (I use that term in the loose sense it had acquired by the time I went to law school); hence the full vitality of the work is demonstrable only in the classroom. It remains, however, eminently readable. If one were to ascertain weaknesses, I would say that two questions seem to be either absent or glossed over.

There is first of all that ambiguity in Canon 2 which states the clearly desirable goal that a lawyer shall assist in making legal counsel available. This mandate is followed by a series of interpretations, all designed to prevent the lawyer from making legal services available. The ethical difficulties imposed by Canon 2 are not merely those of the prohibition against the solicitation of business; they are the problems of a lawyer who sees persons with a need for legal services and lacks the mechanism to provide it for them. I felt the factual illustrations used in this portion of the book did not fully illuminate the depth of the dilemma.

In dealing with solicitation of business and Canon 2, the book tends to fall into the rhetoric of "advertising," suggesting that the problem relates to the merchandising of legal services in the same way one might merchandise cigarettes. This reviewer believes that no serious person is proposing such a thing and that this treatment obscures the main problem: How is a potential client to be given the widest array of choices in selecting his attorney? This problem exists not only in terms of the unserved middle class, which is the focus of current attention, but even in the larger commercial organizations.

Let us suppose that Lawyer *A* has developed considerable expertise in industrial equipment leasing. He practices in a relatively new, small firm. A leading national corporation in the industrial leasing business subsequently opens an office in his city for the first time. The present Canons forbid Lawyer *A* from sending his card to this company explaining his skills and suggesting that the new arrival try him out. This result is not in the potential client's interest, nor is it in Lawyer *A*'s interest; the only interest which such a rule serves is the interest of the more established law firms.

I felt the Morgan-Rotunda book fell into a great deal of the current misleading rhetoric, using sample newspaper advertisements and similar material to convey the idea of what lawyer "advertising" might become, rather than an examination of the kind of *communication* that is probably going to take place when restraints are removed.

Secondly, I felt the book's treatment of the public interest law firm accepted the bona fides of that new institution with too little question. The book's quotation from Mark Green's *The Other Government,* representing the Nader point of view, contains an extreme example of this: the notion that a statement by any group that it represents the public interest must be taken at face value and that other parties are obviously hypocritical or dishonest. The validity of Dr. Johnson's discussion with Boswell about the handling of a bad case comes to mind:

Sir, you do not know it to be good or bad till the Judge determines it. I have said that you are to state facts fairly; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from supposing your arguments to be weak and inconclusive. But, Sir, that is not enough. An argument which does not convince yourself, may convince the Judge to whom you urge it: and if it does convince him, why, then, Sir, you are wrong and he is right.

This reviewer is presently wrestling with the problems of bar foundation support for "public interest" entities. He finds it difficult to articulate any standard of action for such agencies, if such a standard is not to be simply the extension of the personal prejudices of its organizers—prejudices, in many cases, of good and honorable men but, nonetheless, all matters about which reasonable men might differ. The Morgan-Rotunda book does not explore this problem, perhaps because it is not adequately treated by the Canons of Professional Responsibility themselves.

Nonetheless, it is a unique work, and I commend it to the Bar generally as both instructive and interesting. When I received my review copy, I found myself fighting some reluctance to get into reading it: I never have read an entire book on how to behave. However, once I started this one, I couldn't put it down.

And Yet There's Room and Love for Poetry

A Lawyer's Landscape. Eli Edgar Fink, JD '30. Lawyers and Judges Publishing Co., Inc., Tucson, 1976. Pp. 86. $12.00.

Sheldon O. Collen

Eli Edgar Fink has enjoyed a distinguished career as a business lawyer in Chicago since 1931. He was elected to Phi Beta Kappa at the University of Chicago and to the Order of the Coif when he received his degree from the Law School. His academic successes foreshadowed his professional successes.

With the publication of this volume of sixty-three poems, all of which concern legal subject matter, most of which are addressed to lawyers, and all of which are written from a lawyer's perspective, Mr. Fink has also achieved a substantial degree of literary success. He has been writing poetry for many years and in 1974 was responsible for originating "Poetry Corner," a feature in the *American Bar Association Journal.* The Bar is indebted to Mr. Fink, not only for this unusual volume, but for his constant devotion to nurturing the *A.B.A. Journal* as a vehicle for literary efforts; several of the poems appearing here were first published in that journal.

Mr. Fink has been a rationalist and a civilized person all of his life. His poems reflect the preciseness and orderliness of his reactions. The language of statutes and rules, contracts and deeds, torts and crimes, mergers and bankruptcies, opinions and appeals, is not the language of love and beauty and is certainly not the mother tongue of poetry. The habits of thought and expression that lend themselves to the skillful use of legal concepts and the painstaking drafting of legal instruments are probably at odds with the dramatic, the celebrational, the mystical, the lyrical, which are so often the stuff of poetry as we have known it in our culture.

No abstract impressionism for Mr. Fink. His meaning is always clear. He presents his thesis and elaborates it like the good brief writer that he is. He takes a position, develops his point, reaches a conclusion. Although he conveys more thoughts than feelings, there is ample evidence of warmth and of love and affection throughout the volume. In a sense, however, there is more truth than poetry in Mr. Fink's poems.

The volume,lik e a good brief or a good contract, is divided into a number of sections. *"The Courtroom Landscape"* is the name of the first section and includes poems about clerks, judges, spectators, court reporters, witnesses, bailiffs and lawyers. The poem about lawyers is aptly entitled "Stage Center"—all the other players, of course, are members only of the supporting cast. Interestingly, however, neither plaintiffs nor defendants warrant a poem. This, I believe, reflects the thoroughly lawyer-like training and career of Mr. Fink since he cannot personally identify with a plaintiff or defendant; he is himself universally the lawyer—center stage (with the rest of us). The client is felt, in "Stage Center," only "Tugging at my arm, whispering in my ear/Why doesn't he let me alone?"

"United States District Judge," one of the more elaborate poems in this section, conveys a sense of might and right:

> Save for impeachment a lifetime
> Save for rare reversals omnipotent
> Every branch of law my specialty

The same poem also offers a unique string of names of rules and acts which, somehow, in the context of the draftsmanship amount to poetry instead of prose:

> Rule 10b-5
> Rule 23(b) (3) (D)
> Admiralty Rule 19(a)
> Rule XI-(2) (c)
> * * *
> Lanham Act
> Clayton Act
> Wagner Act
> Dyer Act

Such is the magic of the law that if one lives with such words and phrases for enough years—says them often enough and hears them often enough—they really have a poetic quality. For the lawyer there is most certainly an architectural quality—a rich and

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Sheldon O. Collen, JD '49, is a member of the Illinois Bar.

aesthetic quality to a good 10b-5, Lanham Act or Clayton Act case.

"The Feminine Facet" includes "The Bride's Second Disappointment" ("Handsome he was not but a lawyer he was"), "Frustrations of a Legal Secretary" ("My shorthand skills are quickly succumbing to speakers plugged into my ears"), and other poems embracing the gamut of romantic episodes from "Thoughts of a Switchboard Operator" to "My Husband." We are all familiar with the switchboard operators "tug of war whose boss is put on first". "My Husband" is heartwarming—at least for lawyers who were nurtured by workaholic seniors whose motto was "you can't be a good lawyer and a good husband". "My Husband" concludes:

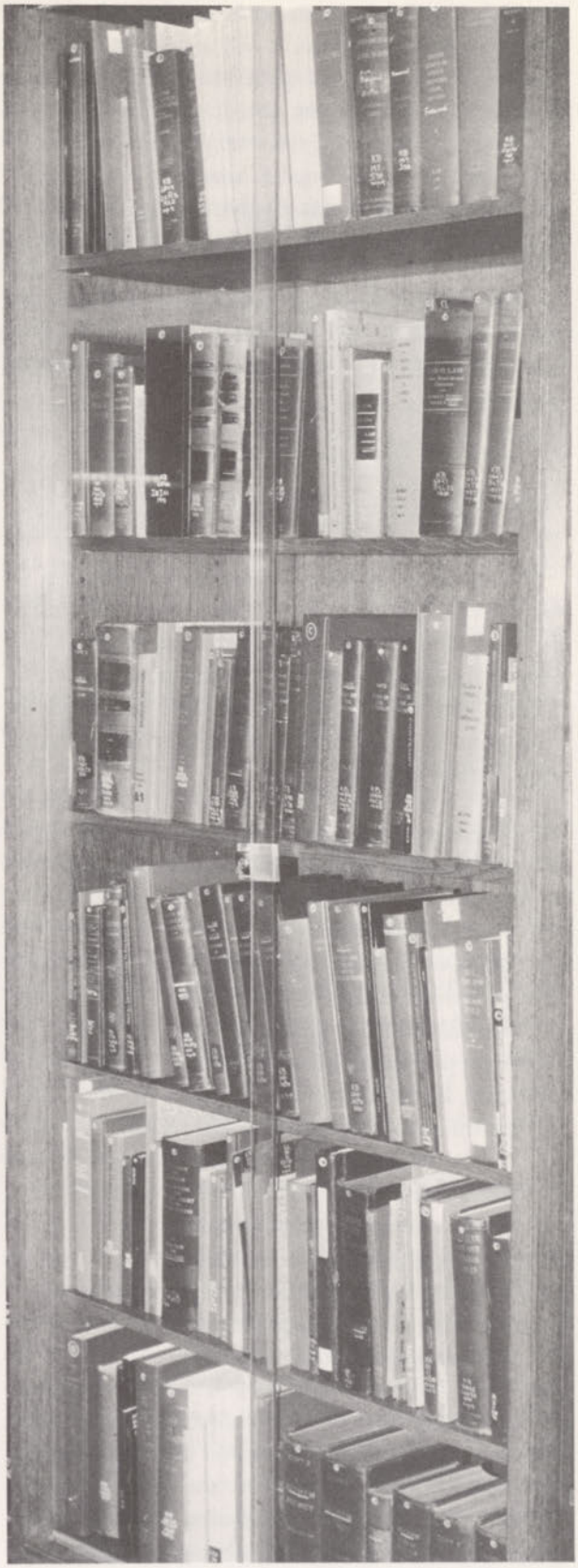
> and yet there's room and love for family
> for music golf and fun
> I'm proud to be my lawyer's wife
> and in my heart
> he'll always rank as number one.

"Rewards of Individuality" is devoted to lawyers from Abraham Lincoln to Timothy Hayseed, J.D. The first poem in the section reminds me to appreciate that poetic reactions are always multilevel; one level is confined to the special focus of the particular reader. In "A. Lincoln, Lawyer," Mr. Fink writes:

> On his homely face the soil of Illinois
> the furrows of fertile fields
> deep hollows set with brooding eyes
> portending the storms ahead

Besides a reaction to Lincoln's face—and so much that the face connotes in common for all of us—I get another reaction: my son far away at college with a beard cut like Lincoln's and no mustache!

Another poem in this section celebrates the sixty-fifth birthday of Elmer Gertz—"Great Crusading Lawyer"; the poem is contrived to follow the verbal pattern of the Gettysburg Address, but it contains some genuinely clever sentiments and phrases. Edmund D. Adcock, the late senior partner of Mr. Fink, is properly and warmly appreciated:



His love for the common law and Scotch
came naturally
his Virginia forebears lured to Blackhawk's lands
at fifty cents per acre
corn husking champion at eighteen
Greek, Latin and legal scholar
practiced the law as a noble calling
not a business

"The Perfect Word" is a humorous verse turned out in a Gilbert and Sullivan cadence. It revolves about the reaction of court and counsel to the word "pismire":

I asked: 'What was that horrid word you
uttered?'
He guffawed and muttered: 'Look it up!'

"Verses Writ in Blood" opens with "Gestation"—the familiar grapple with a mass of material until at last there is a creative leap from chaos to order. For each of us there is a private, second-level reaction to a poem like this; in my case I have to regard the analogy to a golfer finally holing out from a sand-trap as truly inspired:

The capsule tumbles through space despite
my expertise my years of training my
intimate knowledge of all mechanisms
spinning in dizzy circles
on its way to oblivion
reviewed the facts a dozen times
restudied the law again and again
must put the subject out of mind
must let the seeds cross-pollinate
germinate in the subsoil of the mind
let the conscious toil in other vineyards
awoke with a start but without solution
then one morning while dressing
my sleepy mind without a thought
suddenly my wedge cuts through the sand
the ball arcs onto the green and
rolls smoothly into the cup.

Other poems in this section take us through such familiar experiences as the inept document that is never called upon to meet a test ("Lucky"), the lawyer's anxieties at the conference table ("Negotiating") ("Is he bluffing/Does he sense my anxiety/Be firm but don't kill the deal"), and the horrendous omission ("No Boners").

The best of *"The Lawyer's Humor Sardonic"* is "Hic Haec Hoc," a poem devoted to Latin expressions and archaic phrases:

Intestate does not connote a lack of virility
nor does *nudum pactum* pornography

"Cliental Chains," "The Telephone," "Conflict of the Authorities" and "Mechanization" are typical of the poems grouped together among *"The Daily Torments."* "Mechanization" with its partly facetious, partly prescient conclusion sounds a note that brings to mind Shakespeare's unkind dictum—"First we'll kill all the lawyers." Mr. Fink doesn't kill us—he merely phases us out:

Soon all the law programmed on a 370
dispensing with legal research
press a button, printout the brief
Soon lawyers will be dispensed with
when clients press a button.

Several poems including a rhapsody to one's law license entitled "The License to Practice Law" are classified as *"Rewards Beyond Price."* The most delightful of these is entitled "Reflections of a Client." We may all bow our heads solemnly as we read the closing lines:

through all the years he's been my confidant
my trusted dearest friend
I pay his bills with promptitude
and deem them understated
My lawyer, my friend supreme.

"Genesis to Armageddon" is really Exodus—the last group in the volume. The group begins with "Why I Became A Lawyer" and ends with "My Last Oral Argument." In between we have an apt dissertation on the Law School called "The Monastery":

moot court
cramming for exams
year after year after year
endless debating with fellow students
studying, studying the law like troglodytes
never within a courtroom or law firm

far removed from the practice
emerging as students of the law
but not as lawyers.

"My Last Oral Argument" is made, of course, to the Supreme Judge, He who knows all and to whom all is revealed. We may be hopeful that Mr. Fink will not have occasion to deliver this argument for many years. We may be certain that when his time comes to deliver it his prayer will be granted.

The editors might have provided a little more help in the physical layout of some of the poems, many of which appear on the printed page as rather box-like. Visual experience is part of poetic imagery, and variations in paragraphing, margins, punctuation and spacing may be used to create or augment effects. These considerations, however, were by no means entirely neglected throughout the volume and comprise, at worst, only a minor blemish.

Although several hundred volumes of poetry are published annually in the United States, and almost all of them are largely ignored, Mr. Fink's collection is a welcome and virtually unique addition to the literature of the law. It deserves a considerable audience among lawyers.

Self and Soul

Human Being and Citizen: Essays on Virtue, Freedom and the Common Good. George Anastaplo, JD '51, PhD '64. Swallow Press, Chicago, 1975. Pp. 345. $10.00.

Malcolm P. Sharp

George Anastaplo and I share, among other things, an admiration for Greek classics. The beginning of our differences, on the other hand, may be in the fact that I think most often of Fifth Century Athens and he thinks first of the Fourth Century great, particularly Plato and Aristotle. In the Fifth Century there was an accumulation of ideas from earlier Greek centers, particularly from Greek settlements in Italy and Asia Minor with its islands. Athens was the proud but disputed leader of the Greek world. In the Fourth Century she had lost her power; though in the end she defied Philip of Macedon. Plato emphasizes the failings of Athens, and he speaks of "Eastern" mysteries, while his extraordinary genius expressed many of the influences of the pioneer Fifth Century, with its buildings and sculpture, its comedies, tragedies, great Sophists, and its historians. The funeral oration of Pericles presents an ideal of what Plato found a failure.

Socrates belonged in the late Fifth Century. He can be dimly observed as working between Protagoras and Hippocrates, on the one side, and Aristotle, the biologist, on the other. My impression is that George's favorite paper in this book is the second, on Plato's *Apology,* which gives the book its title.

Socrates is rightly thought of first as a philosopher. But his mind is puzzled and his energy challenged by the problems and the life of politics. He knows, partly from his own experience, that philosophical puzzles do not long delay most practicing politicians. Their limited awareness of their own limitations does not lead them to reflect long on the problems which they nevertheless are the ones to solve.

In a country of Athens's size the philosopher can concern himself not only with his first puzzle, the nature of the human being, but also his second, the nature of citizens' judgments. The philosopher will put the first question first. He will find that he is hindered by his concern for the second question. But somehow he will keep them both at work, even—or perhaps particularly—when he is on trial for his life. His opinion is that such public services as his should be rewarded, not punished. By this time you will, I hope, want to discover the conclusion of his story, helped by the careful and thoughtful, and original, essay of Mr. Anastaplo.

In our immense city, Mr. Anastaplo is a human being as well as a citizen. He has been denied admission to the Illinois bar, and excluded from Soviet Russia and the Colonels' Greece (his parents' homeland) for expressing ideas not congenial to any of them. His thoughts about contemporary Greece are expressed in the first essay in this volume, the reconstruction of a talk he gave as a guest at a dinner given by members of the Colonels' administration in Greece. I summarize it, not unfairly, as saying, "If your politics were as good as your dinner, I would not have about you the following complaints. . . ."

Mr. Sharp is Professor of Law Emeritus, The University of Chicago, and Chairman of the Political Science Department, Rosary College.

Next to, or even with, his paper on Socrates, belongs in my view his fourth essay. It deals with the philosophy of Professor Lon Fuller, of The Harvard Law School, under the title, "Natural Right and the American Lawyer." Mr. Anastaplo praises Mr. Fuller for his concern with the tradition of natural law and natural rights. On the other hand, he suggests that the treatment would be enriched by a closer acquaintance with classical and perhaps medieval writing.

Mr. Anastaplo disregards the limits put by some on the uses of natural law thinking. He makes two specific applications of doctrine. He suggests that natural law, in view of population growth, is violated by legal impediments to family planning. He thinks that natural law would condemn an executive who took such chances on human annihilation as President Kennedy is said to have said he did in the Cuban Missile Crisis.

Passing from a part called "Political Theory" to a part called "The Practice of Politics," we observe that the line is thin or non-existent.

Essay XII, for example, is "Vietnam and the Constitution." Originally published in 1972, it deals with theoretical and practical problems about the disputed power of the President, by himself, to "declare war." Theory and practice have interacted to produce a more limited Presidential power to "declare war" than that envisaged by the views which had been developing since 1939. The effect of "executive agreements" not satisfying the requirements of the Constitutional power to make "treaties" is due for a comparable examination of the President's powers in foreign affairs.*

Each of the essays in Mr. Anastaplo's book challenges one to write an individual review in response. Perhaps enough has been said about four essays, out of seventeen, to indicate the quality of the whole. Essay VII, "In Search of the Soulless 'Self' ", and Essay X, "Obscenity and Common Sense," raise for me doubts and differences which seem consistent with admiration for the whole.

On pages 93 and 94 of the "Soulless 'Self' " the author seems to me to say that the Greek "Psyche" was, even more clearly than the Christian "Soul," an entity distinct from the body. The large Liddell and Scott Greek dictionary gives the first meaning of psyche as "life," putting the separate "soul" second. Both meanings appear in the Homeric poems; and the emphasis is not simply historical. As an amateur, I find the first meaning the more significant, partly because it anticipates a modern tendency among physicians to find, in a significant number of cases, no way of differentiating between the psychology and the physiology of ailments.

It would take a debate to explore our differences. My own position is that the work of physical and biological scientists is providing us with a world, subject to the control of evidence, which is miraculous but without a place for miracles. "Miraculous" I am using as a word meant to recall the Greek word which means wonderful as well as superhuman or divine. Hippocrates said, "It seems to me that these diseases and all the others are divine [wonderful] and no one is more divine or more human than another, but all are alike and all wonderful [divine]. Each of them has its own nature and none occurs apart from nature." To suggest a moratorium on all the thoughtful and constructive work being done on the brain, the most extraordinary of all natural objects, seems unwise.

The proposal to abolish television, elaborated elsewhere by Mr. Anastaplo, seems to me unwise also. It is mentioned in his "Soulless" essay. The threat of print, including printing translated books of the Bible, has always been considerable, and it is increased by paperbacks, valuable as they may be. The theme is related to the later essay on "Obscenity and Common Sense." Quite apart from questions of constitutional law and of individual taste, I do not think any legal controls are desirable. A set of measures which is likely to be defined at the bottom is too likely to deprive us of Aristophanes, however modernized, and of Joyce's *Ulysses,* whose suppression in the twenties and early thirties was a warning of what controls may do.

George Anastaplo doubtless does not take naively his attacks on brain studies, and his essays and remarks on TV and obscenity may be read as concerned, practically, with taste and judgment rather than prohibition. But the spirit of prohibition may be due for a revival, and it should in my opinion be given no encouragement.

*Mr. Anastaplo and I prepared in 1975 a brief newspaper account of this subject. See *Human Being and Citizen,* at 305, 309-310; and for our full text, see Anastaplo, "The American Constitution and the Virtue of Prudence," in L. P. de Alvarez, ed., *Abraham Lincoln, The Gettysburg Address and American Constitutionalism* (University of Dallas Press, 1976), at 136-137. For an even more emphatic, and better informed, statement on the subject, see George Ball, *Diplomacy for a Crowded World* (Little Brown, 1976), at 206-210.

Memoranda

Several '70's Alumni Now Teaching Law

"I call on a student, and there's an immediate 'saliva effect,'" *Hal S. Scott* '72, told the *Law Record* at Harvard, where he has been teaching since last fall. "Questions are perceived as intimidation. There's no harm intended. I'm just trying to develop a theory for the class, using the students' ideas, but a small number of students end up dominating the class. I want to hear from everyone."

To many recent Chicago graduates, the same perception lingers on. But several alumni of the decade of the 1970's are now on the other side of the lectern. Another is *Douglas H. Ginsburg* '73, who followed Mr. Scott out of the same high school, onto the *Law Review* Managing Board, into the chambers of the United States Supreme Court, and, coming full circle, back to school again—this time teaching, also at Harvard. (Among their courses is Regulation of Financial Institutions, which they teach together.)

Geoffrey R. Stone '71, another *Review* editor and Supreme Court clerk, teaches at Chicago, as does *Walter Hellerstein* '70, who started this past winter. *Douglas Laycock* '73, will begin teaching at the Law School in January, 1977 .Among other graduates of the 1970's teaching law are *Ronald G. Carr* '73 (at Berkeley), *Ronald A. Cass* '73 (at Virginia), *Robert N. Clinton* '71 (at Iowa), *Richard F. Fielding* '73 (at North Carolina although he has been visiting at Vanderbilt), *Eileen L. Silverstein* '72 (at Indiana), *Martha Fineman* '75 (at Wisconsin), *James B. Jacobs* '73 (at Cornell), *Catherine P. Hancock* '75 (at Tulane), *Scott M. Reznick* '73 (at Rutgers-Camden), and *Jeffrey A. Parness* '74 (at Akron).

Geoffrey R. Stone '71

Impact of Law School's Legal Publications

An article in the first issue of the *American Bar Foundation Research Journal* states that *The University of Chicago Law Review* ranks seventh of all legal periodicals in number of times cited. However, in "Measuring the Impact of Legal Periodicals," Olavi Maru of the American Bar Foundation finds that the *Law Review* ranks fourth in impact. He arrives at this figure by weighing number of citations with the size of the publications.

The Supreme Court Review ranks sixth in this impact tabulation, whereas in the straight citation tabulation it had ranked 33rd. *The Journal of Law and Economics* was found to be 12th in impact and 50th in number of citations.

Whitehead Selected New Journal Editor

James S. Whitehead '74, has been appointed the new Editor of *The Law Alumni Journal* to succeed *Jeffrey Kuta* '72, who chaired its Editorial Board since its inception in 1973. Under bylaws ratified last Spring by the Board of Directors of the Law School Alumni Association, Mr. Kuta is to assist Mr. Whitehead as Editor Emeritus during a transitional year.

In addition to Mr. Whitehead, the following new Editorial Board members were appointed by *Jean Allard* '53, outgoing President of the Alumni Association: *George T. Donoghue, Jr.* '38, *Jean Hamm* '73, *Steven P. Handler* '71, and *Richard Harris* '62. Assistant to the Dean *Susan C. Haddad,* assisted by *Margaret M. Clark,* succeeds Assistant Dean *Frank L. Ellsworth* as the Law School's ex officio member of the Board. The new bylaws also provide for the appointment of Regional Correspondents to facilitate geographic diversity of authorship.

Electing to remain on the Board are *William H. Cowan* '71, *James C. Franczek* '71, *Elmer Gertz* '30, *Aaron E. Hoffman* '72, *Robert H. Shadur* '72, and *Thelma Brook Simon* '40. Outgoing Board members are *Herbert L. Caplan* '57, *Richard F. Fielding* '73, *J. William Hayton* '50, *David Craig Hilliard* '62, and *David F. Silverzweig* '33. This, the third issue of the *Journal,* reflects the efforts of both the old and the new Boards.

The *Journal* was created as an alumni counterpart to the faculty-oriented *Law School Record* in recognition of the need for a vehicle of communication for an increasingly prominent and influential alumni body. Its substantial audience includes judges,

libraries, and friends of the Law School, and its Editorial Board continues to urge unsolicited contributions, including letters to the editor.

Mary Nissenson Heads LSA

Mary Nissenson '77, of Highland Park, Illinois, has been elected the President of the Law Student Association. Ms. Nissenson, who will serve during the 1976-77 academic year, is the first woman to hold this office.

Chicago Student Practices Before Tax Court

In March, 1976, Chief Judge *Howard A. Dawson, Jr.,* of the United States Tax Court granted the motion of a petitioner to allow then third year student *Samuel Mullin* '76, to represent him before the Court. Professor *Gary H. Palm,* who was responsible for supervision of the case, said that to his knowledge this was the first time a student has been permitted to practice before the Tax Court.

Law School Honors and Prizes: 1976

At the June, 1976 Convocation, Dean Norval Morris announced the following honors and prizes:

Cum Laude and Order of the Coif

The following students were elected to the Order of the Coif: *James Alt, David Bradford, John Brower, Dean Criddle, Robert Ebe, Daniel Edelman, Seth Eisner, James M. Harris, Peter George Leone, Paul Levy, Frederick V.P. Lochbihler, Michele Ordorizzi, Joseph Schuman, Michael Sweeney, Ricki Tigert,* and *Phillip Waldoks.* The following students, in addition to those listed above, were awarded the J.D. degree *cum laude: Sally Damon* and *Michael Slutsky.*

Prizes

Dean Morris also announced the award of these prizes:

The Casper Platt Award, for the outstanding seminar paper: *Daniel Edelman.*

The United States Law Week Award, for the student making the greatest scholastic progress: *Roger Huff.*

The Hinton Awards, for the winners of the third-year Hinton Moot Court Competition: *Karla Bell* and *Dana Smith.*

The Karl N. Llewellyn Cup, for outstanding performance in the second-year moot court competition: *Emily Nicklin* and *Samuel F. Saracino.*

The Joseph Henry Beale Prize, for excellence in the first-year research and writing program: *John M. Coleman, Lance E. Lindblom, Marjorie P. Lindblom, Portia O. Morrison,* and *Maureen T. Ward.*

Ann Barber Retires

After 14 years as Registrar at the Law School, *Ann Barber* retired on June 30, 1976. Mrs. Barber was universally beloved by students at the School.

Her retirement was marked by a reception held for her by recent graduates on March 26 and by a party given by current students on May 13. Mrs. Barber, it is reported, has already come out of retirement; she is working in the Loop, no doubt bringing warmth there as she did to the School.

Ann Barber

George E. Fee Memorial Fund Established

George E. (Nick) Fee, Jr. '63, former Assistant Dean of the Law School from 1964 to 1969, died of cancer in February, 1976. While at the Law School, Mr. Fee was in charge of a great many of the School's administrative tasks, including admissions and placement, and he also served as Dean of Students.

An Emergency Aid Fund has been established at the Law School in Nick Fee's memory. The Fund will make emergency aid available to students to help them over the financial contingencies and difficulties that occasionally arise. Distribution of the Fund will be handled through the Dean's office. Contributions should be made payable to The University of Chicago—Fee Fund and mailed to the Fund's Co-Chairmen, *Charles E. Murphy* '67, 115 South LaSalle Street, Chicago, Illinois, 60603 or *William Achenbach* '67, 150 South Wacker Drive, Chicago, Illinois, 60606.

"Cases I Have Known" Lecture Series

Among the speakers in the recent public lecture series entitled "Cases I Have Known" at Rosary College in River Forest, Illinois, were *Elmer Gertz* '30, Judge *Hubert Will* '37, *Marshall Patner* '56, and *George Anastaplo* '51.

Gertz discussed the suit brought against him by Robert Welch, publisher of the John Birch Society Magazine. This case, a milestone Supreme Court decision in the law of libel, has been the subject of at least 40 articles in law reviews and other legal periodicals.

Judge Will, of the United States District Court for the Northern District of Illinois, examined the role of the judge, the joys and sorrows of courtroom work, and the stresses and strain placed upon jurists in "A View from the Bench."

Patner discussed a suit he filed on behalf of Frederick W. Thompson and the Industrial Workers of the World

to abolish the list of subversive organizations that the United States Attorney General had compiled. George Anastaplo considered "The Trial of Jesus of Nazareth."

"Starting Tomorrow's Gift Today"

The Development Council for the Law School has produced a descriptive booklet, "Starting Tomorrow's Gift Today," that explains the various opportunities for making testamentary and inter vivos gifts to the Law School. The booklet explains the advantages, both to the donor and to the Law School, of the gift alternatives. Copies of the booklet and additional information on opportunities for giving and basic tax factors are available from Assistant Dean *Frank L. Ellsworth* at the Law School.

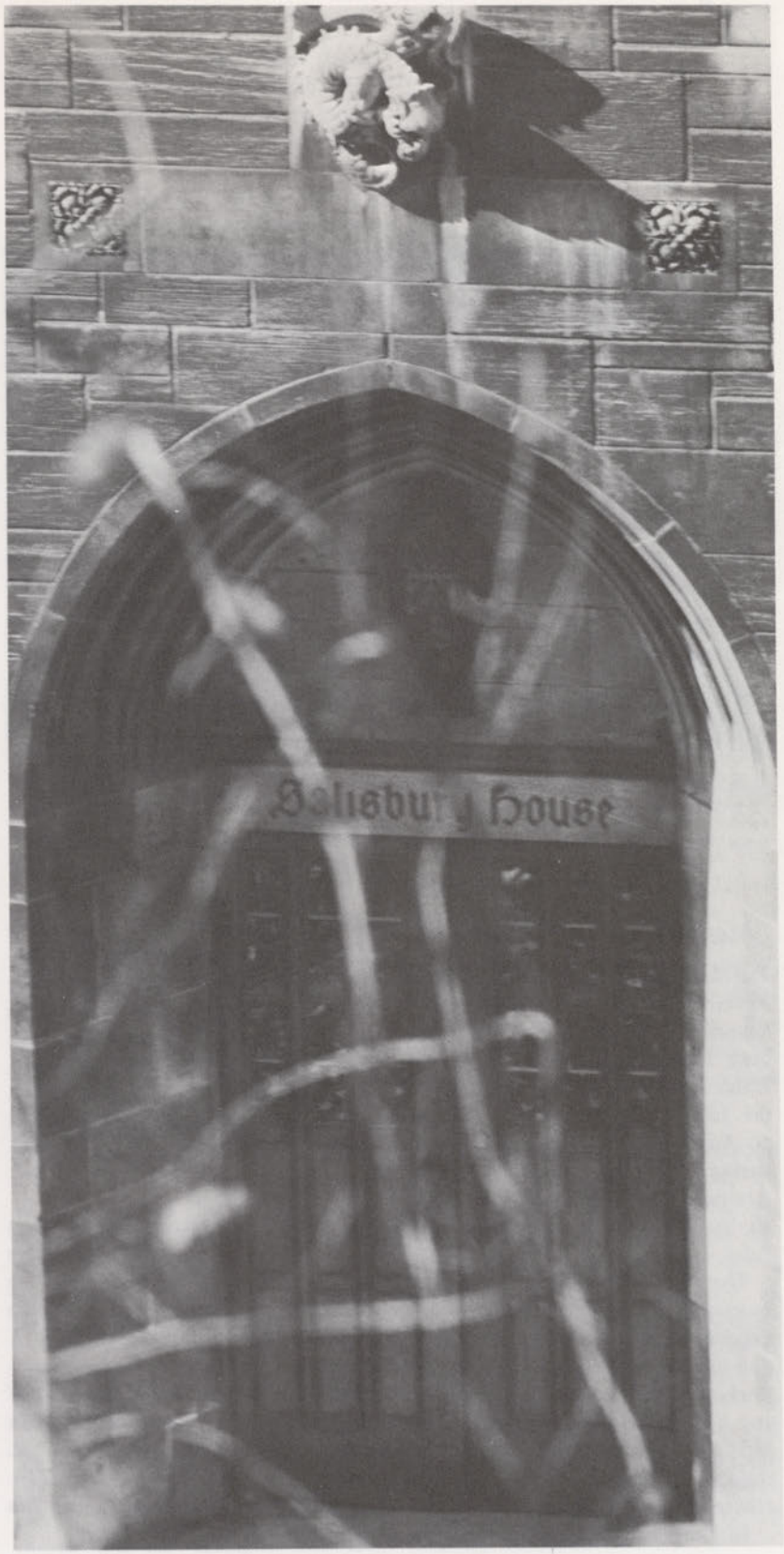
Maurice S. Weigle '35, is Chairman of the Development Council. He is assisted by Vice Chairmen *Irving I. Axelrad* '39, *Marcus Cohn* '39, and *Frank Detweiler* '31.

Erratum

The Law School has announced that *Thomas Cole* '75, graduated *cum laude* and was elected to the Order of the Coif. Mr. Cole's name was inadvertently omitted from the lists of those who graduated with honors in June, 1975.

LAJ Issue to Mark Law School Anniversary

The next issue of *The Law Alumni Journal,* to be published in late summer of 1977, will commemorate the Seventy-Fifth Anniversary of the founding of the Law School. The Editorial Board is eager to receive photographs, artifacts, and other memorabilia that might be printed as part of a pictorial review of the Law School's history. In addition, alumni who wish to contribute their editorial reminiscences are invited to do so. Please address all submissions to *The Law Alumni Journal,* c/o the Law School.



Alumni Events

Dean *Norval Morris* was hosted by Honorable *Benjamin Landis* '30, Program Chairman, and *Donald Wessling* '63, President of the Southern California Chapter of the Law School Alumni Association at the "Meet the Dean" Luncheon in Los Angeles.

"Meet the Dean" Functions

The Law School's new Dean, *Norval Morris,* has met with hundreds of alumni during the past year. Beginning in Chicago, where a series of "Meet the Dean" lunches were held in the fall, and culminating in Atlanta on August 10 at an alumni reception during the annual meeting of the American Bar Association, Dean Morris has spoken with alumni in nine cities.

The organizers of the Chicago area functions were *Edna Epstein* '73 (classes of 1970-1975), *David Chernoff* '62 (classes of 1960-69), *George Rothschild* '42 (classes of 1940-59), and *Sidney Hess* '32 (classes through 1939). Co-Chair of the Chicago "Meet the Dean" Committee were *J. Gordon Henry* '41, and *Ingrid L. Beall* '56.

In October Dean Morris spoke in New York City; *Lillian E. Kraemer* '64, organized the event; the Washington, D.C., meeting was planned by *Robert N. Kharasch* '51. Dean Morris also spoke with University alumni in Northern New Jersey and in Tulsa, Oklahoma in the fall. The Oklahoma gathering was hosted by two Law School graduates, *Raymond* and *Nancy Feldman* '45, and '46.

Dean Morris talked with graduates on the West Coast in March. "Meet the Dean" functions were held in Portland, San Francisco, and Los Angeles. The Honorable *Sidney I. Lezak* '49, planned the Portland meetings. *Cary I. Klafter* '72, and *Roland E. Brandel* '66, organized the San Francisco luncheon; and *Donald M. Wessling* '61, and the Honorable *Benjamin Landis* '30, arranged the Los Angeles function.

Alumni Association Reception Planned for 1977 ABA Annual Meeting

Plans are already under way, according to *Frank Greenberg* '32, President of the Law School Alumni Association, for a special alumni reception to be held at the Law School during the American Bar Association Annual Meeting in Chicago in August, 1977. The reception will be part of the Alumni Association's celebration of the 75th Anniversary of the founding of the Law School.

Washington, D.C.

The Washington, D.C., Chapter has had two functions during the past year. One was a "Meet the Dean" luncheon on October 22. The other was the Chapter's traditional luncheon held in conjunction with the American Law Institute meeting. At this second gathering, on May 20, *Norval Morris* reviewed his first year as Dean and told about the new faculty appointments. *Robert N. Kharasch* '51, President of the Chapter, and *Charles Ephraim* '51, arranged these affairs.

Philadelphia

On May 7 *Herbert B. Fried* '32, the Law School's new Director of Placement, spoke to Philadelphia area graduates and friends about the problems of placement, as well as about what is going on at the Law School. The luncheon meeting was planned by *Martin Wald* '64, President of the Philadelphia Chapter of the Law School Alumni Association.

Chicago Chapter

The Chicago Chapter of the Law School Alumni Association, under the tutelage of *John F. McCarthy* '32, President, and its other officers (*Susan A. Henderson* '69, First Vice-President; *Joseph Du Coeur* '56, *Charles A. Lippitz* '51, *Aldus S. Mitchell* '58, *George W. Rothschild* '42, *Erwin A. Tomaschoff* '61, Vice-Presidents; *Benson T. Caswell* '74, Secretary; and *Raymond A. Jensen* '50, Treasurer) has been extremely active this past year.

Among its many activities the Chapter hosted four "Meet the Dean" functions, nine Loop Luncheons, a Mandel Clinic Wine Mess, a reception honoring *Ann Barber,* and a seminar on solo practice.

The Loop Luncheon Committee, chaired this past year by *Susan Henderson* '69, and *Bernard J. Nussbaum* '55, arranged the following programs: in the fall, Professor *Richard A. Epstein* discussed the problems of medical malpractice litigation, and Professor *Gerhard Casper* spoke on "Congress and the Constitution." Professors *John H. Langbein* and *Richard A. Posner* discussed the phenomenon of index funds on February 3. On February 20 a former President of the Chicago Bar Association, *Frank Greenberg* '32, discussed the judicial selection process with the then President of the CBA, *John Menk.* Professor *James B. White* talked about his impressions of the Law School on March 4.

Professor *Walter J. Blum* '41, and *George Anastaplo* '51, were the two spring Loop Luncheon speakers. Mr. Blum spoke on "Tax Canons—Light Thoughts about Some Very Light Artillery." Mr. Anastaplo, who was introduced by Professor Emeritus *Malcolm P. Sharp,* spoke on "Human Nature and the Criminal Law." This past summer *Ray Garrett, Jr.,* who was Chairman of the Securities and Exchange Commission in 1973-75, discussed "What Is Materiality in Matters Concerning the SEC?" And, Professor *Philip B. Kurland* spoke on "The New Justice's First Opinions" on August 2.

On January 17 the Clinical Legal Education Advisory Committee held an open house/wine mess in the Mandel Legal Aid Clinic, which has been expanded and newly refurbished. This event was organized chiefly through the efforts of *Virginia M. Harding* '72, and *David C. Hilliard* '62.

The Chapter's new Committee on Younger Members planned two programs this past year; both were enormously successful. On March 26, the Committee held a reception honoring the School's retiring Registrar, *Ann Barber.* And, on April 22, the Committee arranged a seminar, "Going Solo," which addressed the question, "Can Chicago Graduates Survive Professionally Outside of Established Law Firms?" Program panelists were: *Sandra Bixby* '64, *Howard C. Flomenhoft* '65, *John Gwinn* '68, *Stephen Slavin* '64, and *John N. Tierney* '68. This function was organized by *Virginia M. Harding* '72, *Alan R. Orschel* '64 and *Judson Tomlin* '74.

The Chapter's Committee on Senior Members, co-chaired by *Carl S. Lloyd* '20, and *Walter Montgomery* '36, is planning a reception and dinner on October 29 to honor Justices *Thomas E. Kluczynski* '27, and *Walter V. Schaefer* '28, on the occasion of their retirement from the Illinois Supreme Court.

Minneapolis-St. Paul Chapter Formed

A new regional chapter of the Law School Alumni Association has been formed in Minneapolis-St. Paul. The chapter's first President is *Duane W. Krohnke* '66, of Minneapolis.

San Francisco

Roland E. Brandel '66, President of the San Francisco Chapter, with the aid of *Cary I. Klafter* '72, and *Preston Moore* '74, has arranged four area events this year. Professor *Franklin Zimring* '67, spoke on January 29 on "Federal Policy Toward Youth Crime: The Blind Leading the Halt." On March 8 Dean *Norval Morris* discussed "Prisons, Law Schools and Other Reformatories." The Chapter members held a reception honoring Professor *Bernard D. Meltzer* '32, on April 22, and on August 31 they gave a reception honoring the recent graduates and current students working in San Francisco during the summer at which Justice *Stanley Mosk* of the California Supreme Court spoke.

New York City

The New York City Chapter of the Law School Alumni Association hosted five events this past year. The first was organized by outgoing Chapter President, *Lillian E. Kraemer* '64, who is the Association's new First Vice-President, and the others were arranged by the Chapter's new President, *Robert A. Lindgren* '63.

Lillian arranged the "Meet the Dean" luncheon on October 21, and in April Bob planned a return visit for Dean *Norval Morris* so that he could talk about Butner, the experimental prison which opened its doors this April in North Carolina. The Butner prison was designed upon the model which Dean Morris proposed in *The Future of Imprisonment.*

The Chapter also held a meeting in January in conjunction with the New York State Bar Annual Meeting. Assistant Dean *Frank Ellsworth* discussed "Hot and Cold Hors d'Oeuvres on Life in the Glass Menagerie" at this function. The other two Chapter meetings had Professor *John H. Langbein* and *Herbert B. Fried* '32, as special guests. On April 13 Professor Langbein spoke on market funds and investments. And, on July 14, Mr. Fried discussed placement problems. *Richard Sigal* '63, helped Bob set up this last luncheon.

Class Notes

1921

Edgar Bernhard was honored by the ACLU at its annual Civil Rights Day benefit. Bernhard is chairman of the ACLU Board.

1925

Robert A. Gallagher was recently named Corporate Vice-President of the Singer Company in New Canaan, Connecticut.

1926

Jerome L. Abrahams has retired from practice with the Abrahams, Chapman & Roin firm in Chicago and is now residing in North Miami, Florida.

1927

Paul E. Mathias served on a panel "Organizing and Advising Not-for-Profit Corporations" in Springfield in October. He is the author of the chapter on operating considerations in the practice handbook, *Organizing and Advising Not-for-Profit Organizations,* published by the Illinois Institute for Continuing Legal Education.

1929

Justice *Shimon Agranat* retired this past September after eleven years as President of Israel's Supreme Court. He is only the third jurist to have held this position since the founding of that nation. Justice Agranat began his judicial career as a Judge of Israel's Magistrate's Court in 1940. Most recently he also served as head of the Inquiry Commission formed to investigate Israeli readiness for and involvement in the Yom Kippur War.

Bindley C. Cyrus died in Barbados in February, 1976 at the age of 82. He had lived in Barbados since returning there in 1971 after nearly 50 years of practice in Chicago. In 1955, Mr. Cyrus was one of twelve persons cited by Queen Elizabeth at the British Embassy in Washington for services to the cause of Anglo-American friendship and understanding. He was the first American to be appointed an honorary officer of the Order of the British Empire. Prior to his retirement Mr. Cyrus was President of the Victory Mutual Life Insurance Company of Chicago and Barbadian Consul.

1930

As a participant in the public lecture series, "Cases I have Known," *Elmer Gertz* spoke on "Your Right to Say It: Libel, Slander, Privacy, Obscenity." The lecture series was sponsored by Rosary College in Illinois.

1932

An article by *Frank Greenberg,* "The Task of Judging the Judges," appeared in the May, 1976 issue of *Judicature.*

1933

David C. Bogert is a partner in the Los Angeles firm of Bogert, Ehrmann, Halpern, Haile & Bruckner.

1934

John P. Barnes retired in June, 1975 from Chesapeake & Potomac Telephone Company.

Frederick T. Barrett has retired as chairman of Cudahy Company of Phoenix, Arizona.

Wilbur J. Glendening has become magistrate in Hammond, Illinois.

Roland C. Matthies retired as Vice-President and Treasurer of Wittenberg University in Springfield, Ohio.

Harry B. Solmson, formerly President of Plough, Inc., and Senior Vice-President of Schering-Plough Corporation, has become counsel to the firm Canada, Russell & Turner, in Memphis, Tennessee.

1935

Searing W. East, formerly with Texas Nuclear Corporation, is now Business Manager of Austin State Hospital.

1937

Earl G. Kunz is now Chief Counsel for Rockwell International Corporation at the Rocky Flats Plant in Golden, Colorado.

Hubert Will participated in the public lecture series "Cases I Have Known." He spoke on "A View from the Bench." The lecture series was sponsored by Rosary College in Illinois.

1938

Irwin Askow has been appointed trustee of Bennington College.

1940

Morris B. Abram, Chairman of the Moreland Act Commission, was awarded the honorary degree of Doctor of Laws by Yeshiva University this spring. Mr. Abram is a partner in the New York City firm, Paul, Weiss, Rifkind, Wharton & Garrison.

Daniel C. Smith, formerly Vice-President and General Counsel of Weyerhaeuser, is now Senior Vice-President of FMC Corporation in Chicago.

1941

J. Gordon Henry received the Public Service Citation at the Awards Assembly of the University of Chicago on June 5, 1976.

1942

Russell J. Parsons, Vice President, General Counsel and Secretary of Borg-Warner Corporation, served as a member of the planning committee of the 14th Annual Corporate Counsel Institute.

Monrad G. Paulsen, Dean of the University of Virginia Law School since 1968, is now head of the new Benjamin N. Cardozo School of Law of Yeshiva University in New York City.

James M. Demetri Spiro, formerly with the American Bar Association, is now a solo practitioner in Chicago.

1947

E. F. Barnicle, Jr., is now with American Telephone and Telegraph Company in New York City.

Appearing in the November, 1975 issue of *Illinois Bar Journal* was an article by *Richard A. Mugalian,* "Cumulative Voting Should Be Retained." This article is a rebuttal of a previous *Illinois Bar Journal* publication, "The Illinois Constitution of 1970—Four Years Later."

1948

Lawrence Howe of the Chicago firm of Vedder, Price, Kaufman & Kammholz, participated as a faculty member in the 14th Annual Corporate Counsel Institute. Specializing in employee benefit plans, Howe's workshop was "ERISA—The First Year."

Arthur H. Simms, formerly Acting Director of the Civil Aeronautics Bureau of Economics, is now Director.

Morley Walker is currently Special Assistant for Employee Relations at the University of California in Berkeley.

1949

William M. Birenbaum has been appointed President of Antioch College in Yellow Springs, Ohio.

Robert T. Bonham is now Director of the Citizens' Involvement Network in Washington, D.C. He was formerly with the Urban Home Ownership Corporation in New York.

Harry E. Groves has recently been appointed Dean of the Law School at North Carolina Central University.

Mildred G. Peters has recently finished her second term as Village Trustee of the Village of Winnetka and a term of office as a member of the Village's Plan Commission. She has also been appointed Chairman of the Zoning Board of Appeals in Winnetka.

Morris Spector, formerly Vice President of Metropolitan Structures in Chicago, is now Financial Vice President of Michael Reese Medical Center, also in Chicago.

John E. Zimmerman, formerly with G A F Corporation, is now with Certain-teed Products Corporation in Valley Forge, Pennsylvania.

1950

Robert G. Cronson, formerly Vice President and Secretary of the Chicago Corporation, is now Auditor General of the State of Illinois in Springfield.

Virginia Leary has been appointed Visiting Associate Professor of Law at State University of New York at Buffalo.

1951

As a participant in the lecture series, "Cases I Have Known," sponsored by Rosary College, *George Anastaplo* spoke on "The Trial of Jesus of Nazareth."

1952

Robert S. Blatt has become a Partner in the Chicago firm Marks, Katz, Walker & Blatt.

Robert S. Kasanof, formerly attorney in charge of Criminal Defense Division, New York Legal Aid Society, participated in the "Criminal Conspiracy Developing Law and Practice" program co-sponsored by the Illinois Institute for Continuing Legal Education and the Federal Defender Program. His topic was "Statute of Limitations; Withdrawal."

1953

Jean Allard has returned to private practice after serving for nearly four years as Vice-President for Business and Finance of the University of Chicago. She is now a partner in the Chicago firm of Sonnenschein, Carlin, Nath & Rosenthal. Immediately prior to going to the University she had been secretary and general counsel with the Maremount Corporation. Allard was recently elected by the Board of Governors of the American Bar Association to represent them on the Council for Public Interest Law. The Council's tasks are to analyze public interest law financing, to develop new financial resources, and to assure that the developments in recent years in public interest law are preserved and expanded. The LaSalle National Bank has named her its first woman director.

The Honorable *Robert H. Bork,* Solicitor General, U. S. Department of Justice, served as a member of the faculty of the 14th Annual Corporate Counsel Institute, held at the Northwestern University School of Law.

William M. Marutani has been appointed Judge, Court of Common Pleas, First Judicial District of Pennsylvania.

Irving M. Mehler has written a book, *Effective Legal Communication,* which was published by Philgor Publishing Company of Denver. The book deals with communication theory, and oral and legal communications.

George J. Phocas, formerly with Occidental Petroleum, is now Counsel for Casey, Lane & Mittendorf, in their London office.

In September *Wallace M. Rudolph,* professor of law at University of Nebraska, will become Dean at University of Puget Sound Law School.

1955

Kenneth S. Weiner, formerly a Legal Honors Fellow and legislative counsel in the Department of Housing and Urban Development's Office of General Counsel, has joined the General Counsel's office at the President's Council on Environmental Quality where he will study the implementation of the National Environmental Policy Act.

1956

Langdon Ann Collins is now Senior Associate Counsel and Assistant Corporation Secretary of Blue Cross Association in Chicago.

Marshall Patner spoke on "A Wobbly Immigration Case" as a participant in the public lecture series, "Cases I Have Known," sponsored by Rosary College, Illinois.

William E. Van Arsdel is presently Vice-President at Washington Mutual Savings Bank in Seattle.

1957

John M. Alex, formerly Judge in the State of California, West Covina, is now in solo practice in West Covina.

Janice M. Jacobson is currently a trial attorney in the New York Regional Office of the Antitrust Division of the United States Department of Justice. She has completed her Ph.D. in economics at Columbia University. Her dissertation was entitled "Mr. Justice Brandeis on Regulation and Competition: An Analysis of his Economic Opinions."

Dallin Oaks was recently honored by the Brigham Young University Alumni Association in a reception held for the living presidents of that school. The presidents were honored in commemoration of BYU's Centennial celebration.

1958

Aldus S. Mitchell has formed a partnership in law, Mitchell, Hall & Jones, P.C., in Chicago.

Robert V. Zener, formerly General Counsel to the U.S. Environmental Protection Agency, has become a member of the firm of Pepper, Hamilton & Scheetz in the Washington, D.C. office.

1960

H. Collyer Church is currently Vice President and Senior Division Counsel for the Central California Division of Title Insurance and Trust Company.

Edward K. Eberhart, formerly a judge of the Wooster Municipal Court, is now in private practice with the Wooster, Ohio firm of Kauffman, Cicconetti & Kennedy.

Henry H. Foster, professor at New York University School of Law, has been installed as Chairman of the American Bar Association's Family Law Section.

David L. James, formerly Assistant General Counsel of Texasgulf, Inc., is now General Counsel and Secretary for the Dillingham Corporation in Honolulu.

John W. Morrison is now with Karon, Morrison & Savikas, Ltd., in Chicago.

1961

Richard F. Broude, formerly with the Georgetown University Law Center, is now with Commons & Broude in Los Angeles.

Michael Nussbaum has formed the firm of Nussbaum & Owen in Washington, D.C.

1962

Charlotte Adelman ran for the Democratic nomination for Cook County Circuit Court Judge in March of 1976.

Richard W. Bogosian has recently completed an assignment as Economic Counselor at the American Embassy in Kuwait and has been assigned to the American Embassy in Khartoum, Sudan where he will be the Deputy Chief of Mission.

John Brooks, sole practitioner in Raleigh, North Carolina, has won the Democratic nomination for North Carolina Commissioner of Labor. He faces the Republican incumbent in the fall election.

Frederick F. Cohn has been named Director of the Woodlawn office of the Criminal Defense Consortium in Chicago. The Consortium has been designed as a model clinical program for the delivery, through neighborhood offices, of legal services to indigents charged with crimes. The office serves approximately 1,000 clients annually. Thirty Law School students will work in these facilities.

Gerald H. Evans has opened his offices for the general practice of law in Evansville, Indiana.

Robert A. Jonoski, formerly Vice-President of the American National Bank and Trust Company in Chicago, is now with the Chicago firm Antonow & Fink.

Alex Kleiboemer, formerly in practice with the Austin & Kleiboemer firm, is now a solo practitioner in Washington, D.C.

Justice *Walter V. Schaefer* '28, retiring from the Illinois Supreme Court, speaks with Professor *Bernard D. Meltzer* '37.

1963

David Phillips Bancroft acted as the Assistant U.S. Attorney in the government's prosecution of Patricia Hearst in San Francisco. Following his graduation, he joined the U. S. Justice Department in Washington, D.C.

Gary E. Davis, formerly in Nairobi, Kenya with the United Nations Development Program, is now in New York with the same.

Thomas M. Haney, partner in the Chicago law firm of Edwards, Haney, Singer and Stein, has recently been named to the faculty of the Law School of Loyola University of Chicago as assistant professor of law.

Vincent P. Reilly has become partner in the Chicago firm, Peterson, Ross, Rall, Barber & Seidel.

Bob Weber is now with the Moorhead, Minnesota branch of the Minneapolis firm, Fredrickson, Byron, Colborn, Bisbee, & Hansen.

1964

Melinda Aikins Bass has been appointed Assistant for Legislation to the Women's Division of the Office of the Governor in New York. The Women's Division is charged with the development of effective and responsive programs on state, local, and federal levels in the public and private sectors, promoting equal opportunity and status for women.

Joseph N. Darweesh is now with D'Aurizio & Darweesh in Rochester, New York.

Richard I. Fine has been appointed co-chairman of the Antitrust Committee of the Los Angeles County Bar Association. He has also recently published an article in the December, 1975 *Los Angeles County Bar Journal* entitled "Sovereign Immunity and Nation State Cartels" which relates to the problems of engaging in antitrust lawsuits against nation state cartels such as OPEC.

Ira Jacob Fistell, after five years on the Milwaukee WNUW "Open Line" radio talk show, resigned in May of this year. His show provided his listeners with comments on such diverse topics as trains, classical music, literature, and sports. He will continue to do some free-lance work in Milwaukee.

Taylor McMillan, Counsel for North Carolina's Administrative Office of the Courts, was one of *John Brooks' JD '62,* chief campaign strategists in a campaign in which Brooks won the Democratic nomination for North Carolina Commissioner of Labor. The Republican incumbent will be faced in the fall elections.

Mitchell S. Shapiro is now a partner in the firm Shapiro, Robin, Cohen & Posell in Los Angeles, California.

As of last July, *Armin Strub* has been counsel in the legal department of Alusuisse/Swiss Aluminium Ltd., in Zurich.

Julie Shore Worley is Law Editor of Commerce Clearing House in Chicago.

1965

Bruce S. Feldacker, formerly with the St. Louis firm of Schuchat, Cook & Werner, is now a solo practitioner in St. Louis. In addition, he teaches in the labor studies program at Forest Park Community College in St. Louis. This program is designed for union shop stewards and business agents. In the Spring of 1977 Mr. Feldacker will be an adjunct instructor in labor law at the University of Missouri, Columbia.

Joseph H. Golant has recently formed the firm of Romney, Schapp, Golant, Scillieri & Ashen in Beverly Hills, California.

Patrick H. Hardin has become a member of the faculty at the Law School of the University of Tennessee. He was formerly with the National

Labor Relations Board in Washington, D.C.

Willis E. Higgins is currently senior patent attorney in the Motorola Patent Department in Phoenix, Arizona. He is also the Arizona Coordinator of the National Organization for the Reform of Marijuana Laws.

David W. James, Jr. has been appointed technical consultant for Uhthoff, Gomez, Vega & Uhthoff in Mexico City.

Daniel P. Kearney has been appointed Associate Director of the Office of Management and Budget in Washington, D. C. Prior to this he had been head of the Federal National Mortgage Association. From 1969 to 1973 he served as executive director of the Illinois Housing Development Authority. At OMB he will be in charge of economic and government affairs, including regulatory reform.

Larkin Kirkman was active in the campaign which netted John Brooks, JD '62, the Democratic nomination for North Carolina Commissioner of Labor. The Republican incumbent will be faced in the fall elections.

Judith A. Lonnquist has become general counsel for the Washington Education Association in Seattle.

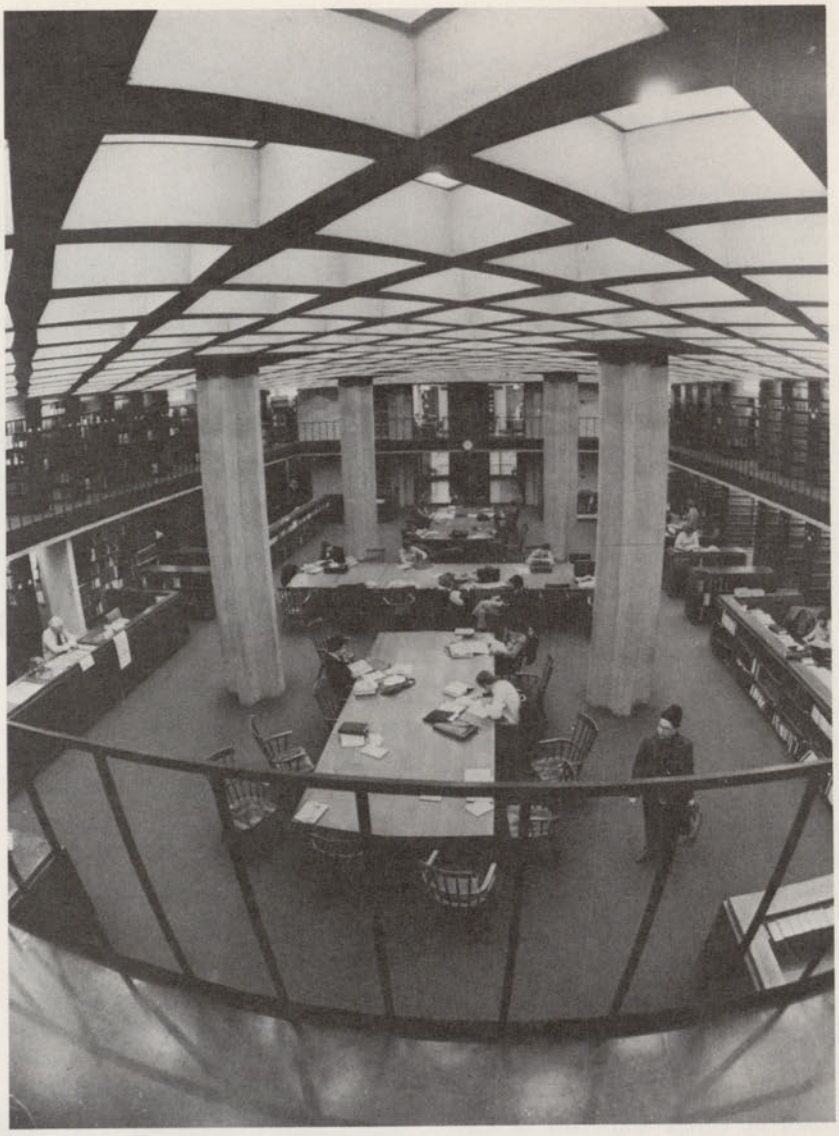
Douglas D. McBroom, formerly Chief Criminal Deputy in the prosecutor's office, Pierce County, Tacoma, Washington, has returned to private practice with Shroeter, Jackson, Goldmark & Bender, Seattle.

Last August *John G. Roach* resigned as a member of the St. Louis Board of Aldermen to become the first director of the Community Development Agency. He is also a solo practitioner in St. Louis.

Jeffrey S. Ross, formerly with Merrill, Lynch, Pierce, Fenner & Smith, has been Branch Manager of Lehman Brothers, Inc. in Chicago, since last fall.

Michael G. Schneiderman has become a partner in the Hopkins, Sutter, Mulroy, Davis & Cromartie firm in Chicago.

Mary M. Schroeder has been appointed judge on the Court of Appeals of the State of Arizona in Phoenix.



1966

Alexander Blair Aikman, formerly with the National Center for State Courts in San Francisco, is now with the Mid-Atlantic Regional Office in Williamsburg, Virginia.

Steven L. Bashwiner is now a partner in the Chicago firm, Friedman & Koven.

Charles C. Bingaman is now Executive Director of Massachusetts Continuing Legal Education—New England Law Institute, Inc., in Boston, Massachusetts.

Nathaniel E. Butler is now chief of the Equal Opportunity Section of the Office of Saver and Consumer Affairs of the Board of Governors of the Federal Reserve System in Washington, D.C.

Dennis M. DeLeo has been appointed manager, licensing and special contracts, in corporate commercial affairs at Eastman Kodak Company. DeLeo has been associated with the company since 1966.

Harry J. Glasbeek, formerly at the Law School of Monash University in Clayton, Victoria, Australia, is now Professor of Law at York University Law School, in Downsview, Ontario, Canada.

Micalyn S. Harris is now with the

Law Offices of Paul H. Schramm in St. Louis.

James F. Kelley, formerly associated with the New York firm of Breed, Abbott & Morgan, has been appointed vice-president of United Technologies International in Hartford, Connecticut. He will continue to serve as general counsel of that company.

Lawrence G. Martin has been appointed vice-president of the CNA Financial Corporation in Chicago.

Peter J. Messitte has formed a partnership for the general practice of law in the State of Maryland and the District of Columbia.

John C. Wyman is now with the firm Roche, Carens & DeGiacomo in Boston, Massachusetts.

1967

After nine years abroad, *Peter Bayne* has returned to Australia and is now teaching at La Trobe University in Victoria. Over the period 1974-1975 he advised the government of Papua, New Guinea on the constitutional arrangements for that country's independence in September, 1975.

Howard C. Eglit has joined the faculty of IIT-Chicago Kent College of Law. He was formerly with the American Civil Liberties Union as Staff Counsel.

John S. Elson has left the Mandel Legal Aid Clinic here at the Law School and has joined the faculty of the School of Law at Northwestern University as an Associate Professor.

Last July *Robert M. Farquharson* became a member of the Chicago firm, Sonnenchein, Carlin, Nath & Rosenthal.

James G. Hunter has formed a firm in partnership with Reuben L. Hedlund and John P. Lynch, Hedlund, Hunter & Lynch, in Chicago.

Wayne A. Kerstetter, formerly Superintendent of the Illinois Bureau of Investigation, has been named Associate Director of the Center for Studies in Criminal Justice at the University of Chicago Law School.

Stephen R. Yates has been named Associate Judge of Traffic Court in Chicago.

1968

Joseph I. Bentley has become a partner in the Los Angeles firm of Latham & Watkins.

Danny J. Boggs has been appointed Assistant to the Chairman of the Federal Power Commission. Boggs, a Republican, was defeated in a race for State Representative in Bowling Green, Kentucky last November.

Sybille C. Fritzsche is currently teaching at De Paul University College of Law in Chicago.

Jeffrey L. Grausman is now associated with Tuttle & Taylor, Inc. in Los Angeles.

James S. Gray is now a partner in the Chicago firm of Altheimer & Gray.

Celeste Hammond will be teaching research, writing, and restitution at John Marshall Law School in Chicago this Fall.

Darrell Johnson is now on the faculty of Southwestern School of Law in Los Angeles.

Daniel L. Kurtz, formerly associated with the law firm of Skadden, Arps, Slate, Meagher & Flom, is now the executive director of the newly created New York Lawyers for the Public Interest. This public interest law agency will screen and evaluate requests for legal services and channel major matters to participating law firms. Ultimately its sponsors expect the new organization to develop a legal staff of its own to provide legal services directly.

Charles A. Marvin, formerly with the Canada Department of Justice Research and Planning, is now professor of law at the University of Manitoba, Winnipeg, Canada.

T. Michael Mather has become partner in the Philadelphia firm of Montgomery, McCracken, Walker & Rhoads.

Last January *Jan J. Sagett* was appointed Executive Director of the Bureau of Hearings and Appeals of the Social Security Administration. In this capacity he is responsible for the day-to-day functioning of the Bureau which employs over 4,000 employees including over 600 administrative law judges and hearing examiners—the largest administrative law judge corps in the federal government.

Allen H. Shapiro has become associated with the Chicago firm of Rudnick & Wolfe.

After two years' association with Unilever Group Companies in Turkey, *Mehmet R. Uluc* is now with the Directorate of Legal Affairs of the Council of Europe in Strasbourg, France.

1969

Lee F. Benton has become partner in the San Francisco firm of Cooley, Godward, Castro, Huddleson & Tatum.

Joel M. Bernstein has become a member of the Los Angeles firm of Stern, Hanessian, Clarke & Stambul.

Gary Edidin, formerly Vice-President of Heitman Mortgage Company, is now with Edidin Associates in Northbrook, Illinois.

John A. Johnson, formerly Senior Vice-President of the Communications Satellite Corporation in Washington, D.C., is now with the U.S. Steel Corporation in Gary, Indiana.

Barry B. Kreisler, formerly with Security Supervisors, Inc., is presently with the Chicago firm of Hollobaw & Taslitz.

Gary T. Lowenthal, formerly Assistant Public Defender, Alameda County, in Oakland, California, has formed his own firm, Lowenthal & Zimmerman, in Oakland and San Francisco.

Russell J. Parsons has been named a senior vice-president of Borg-Warner Corporation. He will continue his duties as general counsel and secretary.

Grantlen Rice is now partner in the San Francisco firm of Morrison & Foerster.

Filmore E. Rose has become associated with the Hedrick and Lane firm of Washington, D.C.

Peter W. Schroth will be a Fellow in Law and Humanities at Harvard for the academic year 1976-1977. He is currently Assistant Professor of Law at Southern Methodist University, Dallas.

Milan D. Smith has recently formed

a firm, Smith, Hilbig & Chidsey, in Torrance, California.

Roger K. Warren has been appointed judge in the Municipal Court of Sacramento, California.

1970

Thomas D. Hanson has become associated with the Blanchard, Cless & Hanson firm in Des Moines, Iowa.

James W. Hathaway is now associated with Burditt & Calkins in Chicago.

James M. Iacino, formerly with Price Waterhouse & Co., in Paris, is now with Droit et Pratique du Commerce International, in Paris.

Daniel M. Kasper, Assistant Professor of Management at the University of Southern California Graduate School of Business, has written "An Alternative to Workmen's Compensation" in the July, 1975 *Industrial and Labor Relations Review.*

William A. Peters is currently with Stearns, Jacobowski, Doffing, Hennessy & Peters in St. Paul, Minnesota.

Lawrence E. Rubin was discharged from the U.S. Marine Corps, JAG, in March, 1975, and is now engaged in the practice of law in the firm of Rubin and Rubin, Silver Spring, Maryland.

Capt. *Herbert Schulze* is now with the Logistics Command Unit at Wright-Patterson Air Force Base in Ohio.

Ronald W. Staudt joined the Mandel Legal Aid Clinic staff in 1975. He is concentrating on housing problems. Prior to joining the Clinic Staff, Staudt was with the Legal Aid Society of the Pima County Bar Association in Tucson, Arizona.

Kim A. Zeitlin, formerly with the New York firm of Hughes, Hubbard & Reed, is now in Washington with the Antitrust Division of the FTC.

1971

Henry R. Balikov, formerly Deputy Chief of the United States Environmental Protection Agency in Chicago, is presently Chief of the Legal Branch of U.S.E.P.A. in Philadelphia.

Judith S. Bernstein, formerly the Associate Director of the Lawyer's Committee for Civil Rights Under Law, has assumed the directorship of the Boston Lawyers' Committee.

Robert A. DiBiccaro, formerly a lieutenant in the Navy serving with the Judge Advocate General Corps, is now in private practice in Boston with Goulston & Storrs.

Michael R. Friedberg is now with Ireland, Stapleton, Pryor & Holmes in Denver, Colorado. In June, 1975 he spoke at an Illinois Institute for Continuing Legal Education conference on tax shelters on "Is There Life After Death in Tax Shelters?"

Michael Paul Gardner is currently Personnel Director with the Boston Police Department.

Steven Grossman is currently with Rosenthal & Schanfield in Chicago.

Russell F. Kurdys, formerly a Regional Counsel to the IRS in New York, is now Regional Counsel in Pittsburgh.

Diane R. Liff has been appointed Director of the Legal Department of the Public Utilities Commission of Ohio.

Adam M. Lutynski, formerly with the Chicago firm, Hubachek, Kelly, Rauch & Kirby, is now with the Massachusetts Defenders Committee in Boston.

Judith Mears, formerly with the Women's Rights Project of the ACLU in New York, has assumed the position of Supervising Attorney and Clinical Teaching Fellow at Yale Law School.

Robert J. Pohlman has recently become associated with the Phoenix law firm of Evans, Kitchel & Jenckes.

Shimon Shetreet, Lecturer in Law at The Hebrew University of Jerusalem, has written *Judges on Trial, A Study of the Appointment and Accountability of the English Judiciary,* which has been published by North-Holland Publishing Company (Amsterdam and New York).

After having served as deputy prosecuting attorney, criminal division, in Seattle, and as senior deputy prosecuting attorney in the same office, *Thomas H. Wolfendale* is now in the civil division of that same office.

1972

Associated with the Center for Policy Alternatives at MIT, *Nicholas A. Ashford* is the author of *Crisis in the Workplace: Occupational Disease and Injury,* a report to the Ford Foundation recently published by The MIT Press.

Michael B. Carroll is now with the San Francisco firm, Morrison & Foerster.

William A. Dietch is with the Washington, D.C., firm of Brownstein, Zeidman, Schomer & Chase.

Don E. Glickman has returned to Jenner & Block in Chicago having served in the U.S. Navy's JAG Corps.

Terry Gordon is now associated with Slavin & Glovka, Ltd., in Chicago.

Morton Holbrook, a Foreign Service officer, is currently assigned to the office of the Under Secretary for Security Assistance at the State Department in Washington. His next assignment will be at the U.S. Embassy in Hong Kong, after a period of language training in Taiwan.

John Jacobs, released from active duty in the Navy, has been associated with attorney Robert Plotkin in Chicago since last September.

Robert M. Kargman has become as-

sociated with the Boston firm of Landis, Hochberg & Cohn.

Jeffrey Kuta has accepted a position at the Chicago law firm of Newman, Stahl & Shadur. He continues to serve *The Law Alumni Journal* as Editor Emeritus.

J. Kenneth Mangum is currently associated with the Phoenix firm of Robbins, Green, O'Grady & Abbuhl.

Neal S. Millard is with the Los Angeles office of the San Francisco firm, Morrison & Foerster.

Michael M. Morgan is now associated with Tonkon, Torp & Galen in Portland, Oregon.

Thomas Pillari has joined the Department of Law at the United States Air Force Academy, Colorado Springs.

David M. Rieth is now a solo practitioner in Tampa, Florida.

As of last September, *Michael T. Sawyier* has been with Pillsbury, Madison & Sutro in San Francisco. He was formerly with the U.S. Department of State in the Office of the Legal Advisor, in Washington, D.C.

Hal Scott was featured in a recent issue of *Harvard Law Record* in the "Faculty Forum" column. Scott previously taught at Berkeley Law School. His area of special interest is international business; he plans to teach a seminar on International Trade and Monetary Policy.

Robert H. Shadur has become a partner in the Chicago firm, Newman. Stahl & Shadur.

1973

Jean Wegman Burns is currently with Dechert, Price & Rhodes in Philadelphia.

Ronald Carr will join the faculty at the University of California School of Law at Berkeley this fall.

Ronald A. Cass has joined the faculty at the University of Virginia Law School.

Jerold H. Goldberg, formerly with the Office of the General Counsel of the U.S. Department of Housing and Urban Development, is now with the firm of McDonald, Riddle, Hecht & Worley, in San Diego, California.

Jay N. Hartz has joined the Weissburg and Aronson firm in Los Angeles.

James B. Jacobs, formerly an instructor at Lewis College in Lockport, Illinois, is now Assistant Professor at Cornell University School of Law with the department of Law & Sociology.

John E. Jacobson, Attorney-Adviser in the Department of Interior, Office of the Solicitor, has left the Washington, D.C. office to join the Twin City, Minnesota office.

As of March of this year, *Richard A. Michi* is now with Romanek Golub & Co. in Chicago.

Thomas M. Patrick is currently clerking in the U.S. District Court in Tacoma, Washington.

Patricia A. Patton is currently an administrative law judge for the Fair Employment Practices Commission of the State of Illinois.

George L. Priest, who was appointed Fellow in Law and Economics in 1975, has been appointed a Lecturer at the University of Chicago Law School for the 1976-77 academic year. Priest, who joined the faculty of the University of Puget Sound Law School in Tacoma, Washington following graduation, will be teaching commercial law at the Law School.

Jerome Charles Randolph is presently Assistant United States Attorney in Chicago.

Last September *Scott M. Reznick* accepted a teaching position on the faculty of Rutgers Law School in Camden, New Jersey. He was formerly on the American Bar Association Advisory

Commission of Housing and Urban Growth.

Last September *David M. Rubenstein* became Chief Counsel for the United States Senate Subcommittee on Constitutional Amendments.

Kenneth R. Schmeichel is currently associated with Calfee, Halter & Griswold in Cleveland.

Stewart R. Shepherd, formerly in San Francisco, is now with the Chicago firm Hopkins, Sutter, Mulroy, Davis & Cromartie.

Darryl O. Solberg has become a partner in the firm McDonald, Riddle, Hecht & Worley in San Diego, California.

Thomas Weigend has been named Lecturer in Law at the University of Chicago for the 1976-77 academic year. He will be teaching criminal law. Since receiving his M. Comp. L. degree in 1973, he has worked as research assistant at the Max Planck Institute for Foreign and International Criminal Law in Freiburg and, at the same time, served as a law clerk for several courts and administrative agencies. His doctoral thesis on problems of prosecutorial discretion has been submitted to the faculty of the University of Freiburg.

1974

Robert M. Axelrod joined the Mandel Legal Aid Clinic staff in the fall of 1976. Prior to this he clerked for Judge Bernard M. Decker and then for Judge Joel Flaum, both of the U.S. District Court of the Northern District of Illinois, and worked for the Illinois State Department of Corrections.

Philip H. Bartels is now associated with Duel & Holland in Greenwich, Connecticut.

Keith H. Beyler, formerly clerk to Judge James A. Cobey in Los Angeles, is now with O'Melveny & Meyers in Los Angeles.

Ellen Higgins Brower is currently with the St. Paul, Minnesota law firm of Doherty, Rumble & Butler.

Louis B. Goldman is with the New York firm Cleary, Gottlieb, Steen & Hamilton.

Glen Scott Howard is currently with the Washington, D.C. firm of Sutherland, Asbill & Brennan.

Ted R. Jadwin, formerly a law clerk for Judge Bernard M. Decker, U. S. District Court for the Northern District of Illinois, is presently with the Chicago firm Sonnenschein, Carlin, Nath & Rosenthal.

Herbert W. Krueger, Jr., formerly an instructor at the University of Miami Law School, is now with Mayer, Brown & Platt in Chicago.

Kenneth W. Lipman, formerly an Instructor of Law at the University of Miami School of Law, is now in private practice with Davis, Polk & Wardwell, in New York.

Robert W. Love is now in business with the Wichita, Kansas firm, Love Box Company, Inc.

Larry George Mendes is now with the City of New York Board of Corrections.

Jeff Nemecek is currently with Reavis & McGrath in New York.

Jeffrey A. Parness has joined the faculty at the C. Blake McDowell Law Center at the University of Akron.

Matthew J. Piers has opened a firm specializing in criminal law and civil litigation, Clark, Howar, Thomas & Piers, in Chicago.

Matthew A. Rooney, formerly clerk for Judge Philip Tone, U.S. Court of Appeals for the Seventh Circuit, is now with Mayer, Brown & Platt in Chicago.

Michael A. Rosenhouse has opened his own law office in Chicago where he is engaged in the general practice of law.

Karen P. Smith is working at the National Legal Aid & Defender Association, Indigent Defense Analysis Project, in Chicago.

Miles O. Smith is now with Barret, Ferenz, Bramhall & Williams, in Agana, Guam.

Judson E. Tomlin, Jr. is now with Peterson, Ross, Rall, Barber & Seidel in Chicago.

1975

Gregory K. Arenson has become associated with the Chicago firm of Rudnick & Wolfe.

Marc O. Beem has joined the staff of the Mandel Legal Aid Clinic. He hopes to concentrate on litigation concerning the mentally ill. Prior to returning to the Law School Beem clerked for Judge Bernard M. Decker, U.S. District Court for the Northern District of Illinois.

The article "Brazilian Marital Property: The Dwindling Community," by *Richard L. Conner,* appeared in *The American Journal of Comparative Law,* Fall, 1975.

In July, *Jay M. Feinman* left the University of Miami law faculty to work with the Philadelphia firm of Dechert, Price & Rhodes.

Martha L. Fineman will be teaching civil procedure and legal history this year at the University of Wisconsin Law School.

James W. Gallagher has been associated with Hudson & Auerbach since June, 1976.

The article "Purpose and Promise Unfulfilled: A Different View of Private Enforcement Under the Federal Trade Commission Act," by *Stephen W. Gard,* appeared in the May-June, 1975 issue of the *Northwestern University Law Review.*

The article "Enforcing the Fourth Amendment: The Exclusionary Rule and Its Alternatives," by *William A. Geller* appeared in the *Washington University Law Quarterly.*

Ronald Goldblatt is director of admissions at Shimer College, Mt. Carroll, Illinois.

Edward H. Jacobs is now in Pittsburgh with the Jacobs and Frobouck firm.

Harvey L. Levin, formerly on the faculty at the University of Miami School of Law, is now with the Los Angeles firm of Richards, Wetson, Dreyfuss & Gershon.

Richard L. Schmalbeck is currently with the Office of Management and Budget in Washington, D.C.

William F. Ware is currently with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C.

Stanley Wrobel has been working at the Judicial Panel on Multidistrict Litigation in Washington, D.C. since March, 1976.

The Law Alumni Journal

THE LAW SCHOOL · THE UNIVERSITY OF CHICAGO
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The Law School: 1902–1977

The Law Alumni Journal

The University of Chicago Law School *Fall 1977*

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Front cover: President William Rainey Harper introducing President Theodore Roosevelt at the laying of the Law School cornerstone on April 2, 1903

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Susan C. Haddad, Managing Editor; Elaine Harrison, Editorial Assistant. Manuscripts of articles and reviews, copies of books for review, and letters for publication should be submitted for consideration by the Editorial Board, care of the Managing Editor, 1111 East 60th Street, Chicago, Illinois 60637. All other materials and correspondence should be sent to the Editor.

Law on the Midway: The Founding of The University of Chicago Law School

Frank L. Ellsworth

The University of Chicago Law School was founded in response to rapid and extensive changes within American society in the 1890's. An increased social complexity, a burgeoning industry was matched by an extension of the legislative and regulatory reach of government. Social reform movements proliferated, together with confidence in the role of law as a lever to social justice.

The shortcomings of society as evident in economic, political, educational, and social institutions were loudly voiced by reformers, frequently with a sense of moral outrage. Traditional institutions and processes were questioned and challenged. Adaption to new situations was slowly attained and usually incomplete. Problems appeared in all aspects of society: federal and city government, big corporations, public transportation, communications, urban and agrarian living, banking, administration of justice, immigration, and so on. Extensive legislation was enacted to ameliorate problems and thus a new body of law emerged.

Law and lawyers were not immune to the criticisms of reformers. Distrust of lawyers had been fashionable in varying degrees in earlier American history. The elitism of the late eighteenth and early nineteenth century bar described by Tocqueville and others collided with the notion inherent in Jacksonian democracy that efforts to limit entry into the bar or to establish standards within the professions were undemocratic. Following the Civil War, the legal profession was in a serious state of disarray, and criticism of the lawyer heightened in intensity. Traditional apprenticeship requirements were abolished, and attempts at formal legal education diminished. Organized bar associations floundered as requirements for admission to the bar disappeared. The numerous scandals in all layers of American society in the 1890's did little to enhance the image of the lawyer or the law. Lawyers and judges were considered the pawns of capitalists and politicians.

Massive developments in the body of law following the Civil War compounded the situation. With increased attention to human rights came the emancipation of married women, recognition of labor unions, prison reforms, and attempts to modify select portions of the law. Urban living brought the need for different ways of regulating society and administering justice. Corporation and railroad law was born out of the phenomena of business trusts and new modes of transportation. With the attempts at reform through legislation came codes.

Perhaps the most important factor affecting the law and the lawyer was his major client, modern business. Lawyers had to understand developments in insurance, manufacturing, railroads, the telegraph, the telephone, and the laws affecting these developments. Skills and knowledge previously unheard of were required. To many observers law had ceased being a learned profession and had itself become big business. The independent lawyer, trained in the past by means of apprenticeship, was a fading phenomenon. Large city law firms emerged, and the era of specialization began. The profession changed complexion sharply, being divided into the incorporated and unincorporated—the large law firm and the solo practitioner. During no previous period in the country's history had the nature of the law and the role of the lawyer changed so dramatically.

In the midst of these changes many reformers perceived the law as a panacea for the ills of society. The need for change was urged in law enforcement, crim-

Mr. Ellsworth is Assistant Dean of the Law School. *This article is an excerpt from his book of the same title published by The University of Chicago Press, 5801 South Ellis Avenue, Chicago, for $8.95.*

inal law, legislation, administration of law, preventive justice, and professionalization of lawyers. Respect for the law, the reformers claimed, would diminish social laxity and commercial and public frauds. The functions of the lawyer were to be commensurate with the polity, civilization, and indeed the destiny of the country. Toward the end of the century the American Bar Association, attempting to strengthen the negative image of the profession, spoke increasingly of law in terms of restoration and reconstruction. If the law was to provide a major remedy for the ills in society, the law schools had to assume new responsibilities. For if the future man of law was to be equipped to restore and to reconstruct, the law schools would have to provide adequate training. The problem was how to define the purpose and nature of legal education.

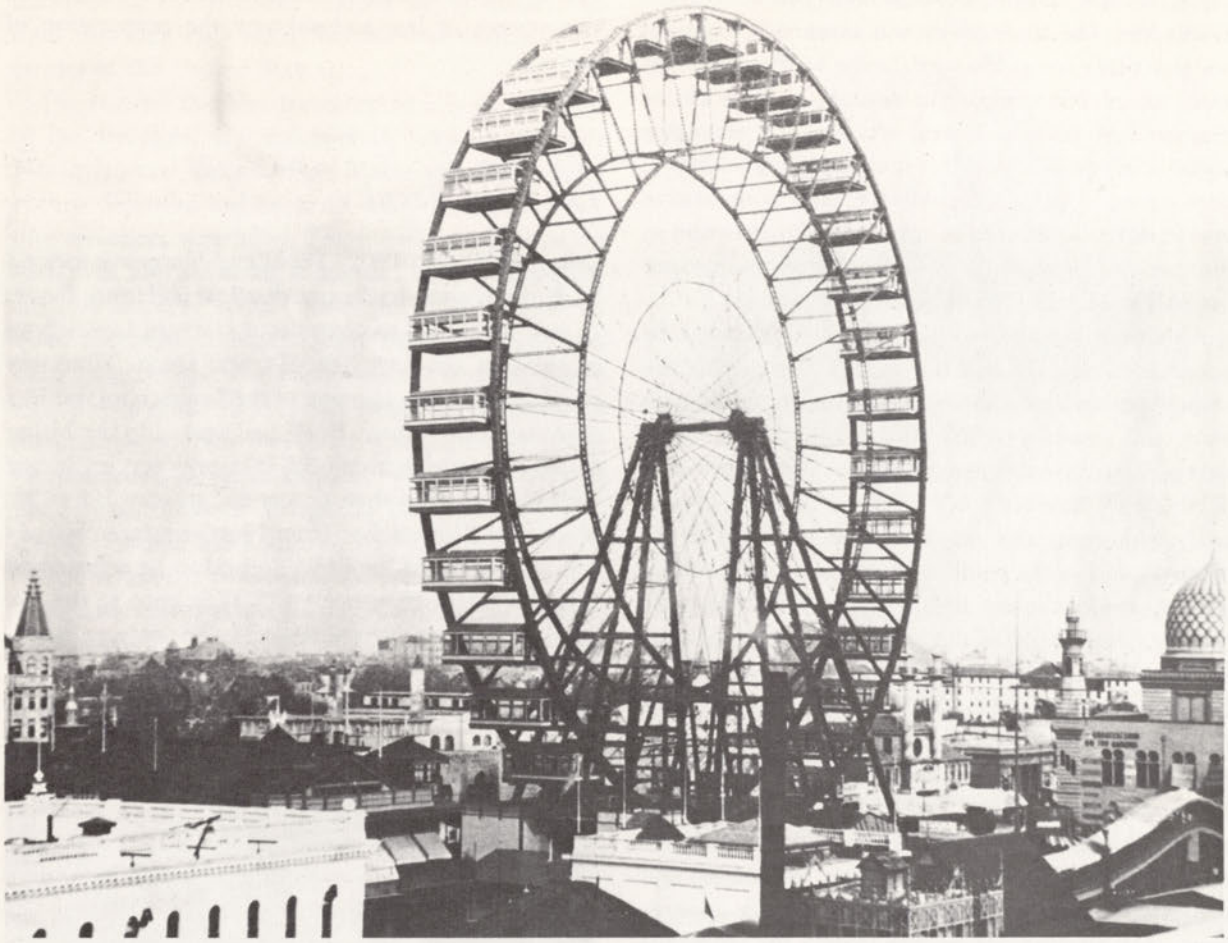
Despite the rapid growth in the number of law students and law schools in the 1890's, few schools reflected the need for departing from conventional practices. Proprietary law schools thrived. Indeed few schools provided adequate training for even the traditional practice of law. With the growth of the cities came the growth of urban law schools. With the rise of land-grant institutions, the growth in state universities, the increase in proprietary law schools, the development of evening and correspondence schools, legal education became available to everyone. The common denominator of legal education had become mediocrity.

Standards for admission, graduation, and admission to the bar were minimal. For most members of the bar, the growing numbers of law students were an economic threat as well as a leveling force to the proud traditions of the past. Law students were viewed as bold and unscrupulous, overcrowding the bar and bringing scandal and disgrace to the profession. Law school curricula were hardly designed to challenge students intellectually or to prepare them for the demands of a changing profession and society. The conventional content of legal education was geared to the technicalities essential for starting practice. Instruction in jurisprudence, comparative and international law, and legal reasoning was rarely found. Courses in public law were confined to criminal and constitutional law. Administrative law was ignored. Other academic disciplines such as political science, history, sociology, and economics were felt inappropriate for law school curricula. Instruction was at the undergraduate level, and for most schools a high school diploma was not required.

The deficiencies of legal education were listed by the American Bar Association in 1890 in a report by the Committee on Legal Education. In comparison with other professions, the standards for the legal profession were sharply inferior, the report asserted. Although laws existed in most states concerning the practice of medicine, dentistry, and pharmacy, none existed for the practice of law. Requirements for admission to most schools were minimal; in many cases the law school had become a loafer's paradise. Toward the turn of the century the newly formed American Association of Law Schools and the State Board of Law Examiners began to talk about increasing the standards of the profession but met continually with resistance from the organized bar and the schools.

In 1890 most lawyers received their training through self-education and apprenticeship. By 1900 this situation was no longer the case. The profession moved cautiously away from traditional methods and slowly acknowledged that a more comprehensive training might be desirable because of the increased complexity of law. The early attempts at university law schools had been notably unsuccessful, and proprietary schools, which were merely offshoots of law offices, arose to fill the void the academic institutions failed to satisfy. As the law schools within colleges and universities became stronger, several models, notably at Harvard and Columbia, were held up for emulation.

Several issues emerged during this time which served as topics of discussion in educational and professional circles. One concerned the duration of law study. On the one hand existing traditions and economic demands argued for short periods of study; the young lawyer could learn how to be a lawyer after beginning practice. At the same time, demands for higher standards, increased complexity of the law, and concern for academic respectability of legal education within university communities argued for at least two or three years of study. Yet the competition from proprietary schools was formidable: commercial standards were more appealing than scholastic standards. Few universities were successful in defining and implementing professional legal education. Most were content with either a smattering of courses at the



View looking northwest from the ferris wheel at the 1893 Columbian Exposition on the Midway Plaisance at Woodlawn Avenue

undergraduate level or with a narrowly defined series of practical and technical law courses.

The innovations by Christopher Columbus Langdell at Harvard on the length of study, as well as on other issues, became a watershed for American legal education. In 1872 the period of study at Harvard was extended to two years. Four years later, with the crucial support of President Charles W. Eliot, the third year was added. Although several schools eventually followed Harvard's example by providing more than a one-year curriculum, most law schools remained undisturbed. Harvard, under the leadership of Langdell and Eliot, also took the lead in improving standards of admission to law schools. But most schools designed their programs to attract students and then admitted anyone accordingly. The issue at Harvard and elsewhere had financial implications: higher standards might result in fewer students, thus lower revenue. Nevertheless, Langdell started his drive in 1875, and ten years later, for admission at Harvard Law School, prospective students needed either a B.A. degree or had to be qualified to enter Harvard's senior class. At Columbia the effort met with resistance until 1899, when the faculty voted to admit only college graduates or others with equivalent backgrounds beginning in 1903. Yale, as did other eastern colleges, resisted the notion of law as graduate study largely because of the opinions held by President Hadley, which were based on the traditional notion of the supremacy of the collegiate experience.

The curriculum established by Story at Harvard and expanded upon by Langdell had become the standard

model for law schools, although most offered considerably less. The study of law was essentially technical and practical even at Harvard. In the 1890's questions were raised concerning the desirability of a closer relation between the liberal arts and the emerging social sciences and law. But courses in legal history, administrative law, jurisprudence, and comparative law were felt to dilute the curriculum. Instruction in the theory of legislation and criminology was proper for political scientists and not for lawyers.

Although scientific scholarship as expounded by Langdell maintained that law was a science—that the contents of the law could be made consistent through analytical scrutiny—most lawyers and professors viewed "legal science" as a misnomer. The significance of the case system of study fathered by Langdell was hotly contested, and the Yale System, the Dwight method, and other traditional methods of teaching were all evident in the 1890's. Perhaps the most significant contribution of the Harvard model as defined by Langdell and Eliot was that legal education had become firmly established in university life.

Reform in American society was a major theme of the World's Congress Auxiliary held in 1893 in conjunction with the Columbian Exposition on the Midway in Chicago. Over 5,900 speakers spoke at 1,283 sessions on topics including suffrage, law reform and jurisprudence, civil service reform, and city government. The attention of people around the world focused on Chicago's "White City," which itself was a work of art. A nearby enterprise, the recently established University of Chicago, also attracted considerable attention, due largely to the efforts of its first president, William Rainey Harper. His was to be a different institution, a great urban university which would spring overnight from the marshlands off the Midway Plaisance as a neighbor to the colossal World's Fair.

The design of Harper's University was grandiose and excitingly different in American higher education. His original plan for the University in 1891 called for a law school. In view of Harper's dream of a new university, it is not surprising that he wanted to include legal education, nor that he chose to consider something different. Harper's Law School, which opened October 1, 1902, would be at once both eclectic and innovative—characteristics not uncommon on the Midway—and certainly a law school which attempted to reflect in its mission the demands and problems of a rapidly changing society which placed heavy strains on the system of law and thereby the preparation of lawyers.

The First Faculty

On April 12, 1902, President Harper informed the University Senate that Joseph Henry Beale, Jr. had consented to come from Harvard Law School to serve as the Law School's first Dean. Time was running short; the opening of the Law School was less than six months away. Beale had agreed to the hiring of several faculty members in a previous exchange with Harper, who then proceeded to steal Julian W. Mack and Blewett Lee from Northwestern. Harper had also arranged for Ernst Freund to be transferred from the Department of Political Science to the law faculty. He then moved ahead in an attempt to get Floyd R. Mechem from Michigan and James Parker Hall and Clarke Butler Whittier from Stanford. With

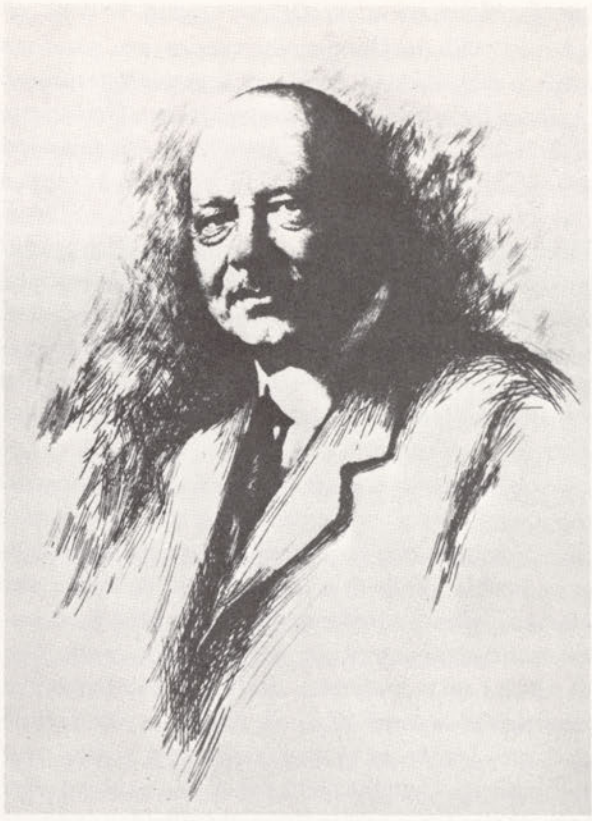
President *William Rainey Harper*

unrelenting persistence, Harper acted quickly to draw together what would become the strongest law faculty in the United States.

The raid on the Northwestern faculty yielded two of the strongest law teachers in America and left Northwestern floundering; Mack and Dean John Henry Wigmore had been the only two resident faculty members remaining. There had been discussion earlier of also securing Wigmore. Harper appeared anxious initially to get him, perhaps because of Beale's strong recommendation. But Harper's efforts were unsuccessful. The Northwestern trustees waged a successful effort to persuade Wigmore of his moral obligations to Northwestern. On April 9, 1902, Harper wired Beale in Boston: "Wigmore wavering under great pressure brought to bear by Northwestern. Could you write him?"

But Wigmore would not be moved. Harper became bitter over this episode. The next year Beale pushed Harper to appoint Wigmore as dean and tried to eliminate the misunderstanding which had risen. Conceding to Harper that Wigmore had used bad judgment in regard to the negotiations, Beale noted that Columbia was also trying to persuade Wigmore to leave Northwestern: "I know that a misunderstanding has grown up between you; but knowing Wigmore as I do I feel sure that while he may be lacking in judgment he *cannot* have been intellectually dishonest. Under those circumstances, considering the obvious advantages in many ways of having him with us, I hope you would approve of trying to get him for us." But Harper would not budge and squelched further discussion. Responding to Beale, Harper stated: "I cannot persuade myself that Wigmore had the ideals which we wish to characterize our Law School. His own statements made to me clearly convince me of this fact; besides, I am very sure that his spirit is not the spirit which we would like to have developed in our work." "I speak of this," Harper added, "entirely outside of the question of dishonesty to which you refer."

The appointment of Julian Mack brought together two Cambridge friends, and Beale must have been delighted that his classmate and close friend would assist in establishing the new venture. Mack was born in San Francisco but grew up in Cincinnati. Although he did not attend college, Mack was accepted into the Harvard Law School as a member of the class of 1887. He was chosen class orator and received his



Dean *Joseph Henry Beale, Jr.*

LL.B. cum laude. With Beale he had been a founder of the *Harvard Law Review* and a member of its first board of editors. Following law school, he was awarded the first Parker Scholarship by Harvard, an award that enabled him to study civil law and legal philosophy for three years (1887–90) at the universities of Berlin and Leipzig. Thus, like Freund, he was exposed to and influenced by the German system of legal education. He was admitted to the bar of the supreme courts and of the federal courts of Ohio and Illinois in 1890 and began an active practice. In 1895 he became a professor of law at Northwestern.

Blewett Lee had also combined a career of practice and teaching prior to his appointment at Chicago. Born in 1867 in Columbus, Mississippi, the son of one of the surviving commanders of the Confederate Army, Lee was graduated from the Agricultural and Mechanical College of Mississippi with a B.S. in 1883. He then spent two years in study at the University of Virginia and afterward attended Harvard, where he was graduated in 1888 with the degrees of LL.B. and A.M. Then he went to Europe and like

Mack and others in the Chicago group, became acquainted with the German universities, studying for a year in Leipzig and Freiberg. Upon his return to America he served as secretary to Justice Gray of the U.S. Supreme Court. For three years he practiced law in Atlanta, a period during which he became a member of the first faculty of the Atlanta Law School. He then came to Chicago, accepting an offer to join the faculty at Northwestern where he taught carriers, corporations, and constitutional law. He continued to have an active practice and resigned his teaching responsibilities in 1902 to become general attorney for the Illinois Central Railroad Company. In 1897 Harvard made a strong bid to get Lee to return to his alma mater, an episode that caused some embarrassment for Harvard. In rejecting the offer, Lee noted that Northwestern permitted him to maintain full-time practice while teaching and that accepting the Harvard offer "would involve some pecuniary sacrifice and giving up of the practice of my profession to which I am considerably attached." Apparently the newspapers learned of Lee's rejection, for several days later Lee wrote an apologetic letter to Eliot over the publicity, claiming that a friend had read the offer from Dean Ames and indiscreetly talked.

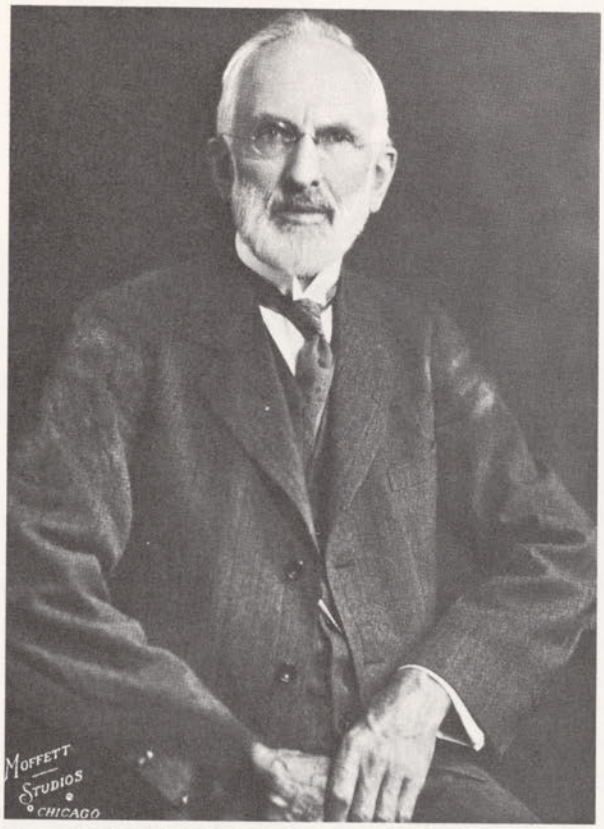
Prior to the first faculty meeting on April 17, Harper had already begun his attempt to entice Floyd R. Mechem from Michigan. Despite the uncertainty expressed by Ames about Mechem's ability, Harper chose to follow the counsel of Freund, Galusha Anderson, and others who urged Mechem's appointment. On March 24 Harper, hoping to gain Mechem's advice on the new laid school, wrote to him asking whether he planned to be in Chicago in the near future. "Although we have never met," Harper wrote, "I do not feel that we are utter strangers, in view of the many appreciative words which our boys have given me concerning your work with them." Mechem had been at Michigan since 1891 and held the Tappan Professorship in Law there. Born in New York in 1858, Mechem grew up in Michigan and attended high school in Ann Arbor. Unable to attend college or law school due to financial reasons, he taught school part-time and devoted his evenings to the reading of law. In 1879 he was admitted to the bar at Marshall, Michigan, and began the practice of law in Battle Creek with the man who had directed his law studies, a Mr. Wadleigh. For eight years he practiced law and for four terms served as city attorney.

In 1887 he moved to Detroit, where he established the firm of Mechem and Beaumont. Responding to the need for an adequate book for the practitioner on the subject of agency, Mechem published in 1889 *A Treatise on the Law of Agency*. A laudatory review in the *Harvard Law Review* noted that Mechem had carefully classified the different branches of "the law under discussion, and divided and subdivided its topics in a most admirable manner; in fact, one is almost led to believe that the law can be reduced to an exact science after reading Mr. Mechem's simple though exhaustive classification of the law of agency." Encouraged by this reception, Mechem went on to write a number of scholarly works: *A Treatise on the Law of Public Offices and Officers* (1890), the only treatise, English or American, on this subject; a revision of *Hutchins on Carriers* (1891); *The Law of Agency* (1893); *The Law of Damages* (1893); *The Law of Succession* (1895); and *The Law of Partnerships* (1896).

Mechem's interest in legal education went beyond the efforts mentioned above and numerous articles in magazines and journals. While practicing in Detroit he was instrumental in the organization of the Detroit College of Law. Concerned with the practical implications of legal education, Mechem was in charge of the Practice Court at the University of Michigan. He felt strongly that the law faculty should be involved in the restatement of the law:

> With the enormous growth in bulk of our law, with the increasing output of reports, with the constantly increasing number of new questions caused by the wonderful changes in our social and economic conditions, there is a constant and increasing demand that some persons shall sift and analyze and restate the principles of law which are being applied. Nowhere else can this be so intelligently and thoroughly done as by the law teachers of the country. Into the law schools, as into great laboratories, all these new ideas in law schools should come to be tested, compared, analyzed and reported upon.

It is understandable how Harper would be drawn to a man intent on viewing legal education as a process of



Professor *Floyd Russell Mechem*

discovery and one who viewed the law school as a laboratory.

Mechem also believed the law school to be an appropriate place for the pursuit of research. "The Law Schools of this country," Mechem insisted, "must be places wherein the most original and most scholarly legal investigation is carried on. The law teacher has, upon the whole, the best opportunity for this work." The practicing lawyer could not find time to move beyond the mastery of a particular subject without the availability of outstanding library facilities. The law professor, suggested Mechem, has the "advantage of consultation with his colleagues who are also experts in cognate fields and he has the opportunity of hearing the discussions and answering the objections of successive classes of bright students whose arguments in many cases, as those who hear me will bear witness, would do credit to the older members of the Bar."

In regard to his opinions on the proper method of teaching, Mechem was an "unknown quantity" from the Harvard point of view. Despite the fact that he wrote casebooks, Mechem did not give unqualified support to the case method: "I think we are inclined in these days to say too much about methods and to convey the impression that some of us think we have a sort of patent upon the only right way, and that if the student will only pursue our method he will have a guaranty of success." Mechem said that perhaps for the ends sought the study of cases was the best method. Yet the qualification was ever present: "Professor Dwight was a great teacher under one method, Professor Langdell under another and Judge Cooley under still another." To be a good law professor, Mechem suggested, one had to have experience. Although he viewed teaching as a full-time profession, he did not subscribe to the opinion held by Ames and others that one could teach without practical experience. "Law is so distinctively a practical science," Mechem observed, "it exists so necessarily for practical ends, so many elements enter into its operation and effect beside pure theory or clear logic, that some experience with the practical seems to me to be essential."

At Michigan Mechem taught the science of jurisprudence, damages, taxation, partnership, and the administration and distribution of the estates of deceased persons. He supported the attempts at Michigan by President James B. Angell to develop a sense of intellectual unity among departments, particularly in the joint efforts involving the literary and professional departments. He also created a course in higher commercial education, which was described as an effort "to adjust instruction to the needs of practical life without destroying the culture and scholarship which a university education ought to bestow." He was concerned about the absence of legal history in the curriculum. "Nowhere else is there likely to be found either the temper, the time, or the facilities for this important work." Central to legal education was the study of jurisprudence. "Nothing in my judgment," maintained Mechem, "can be of greater interest and importance than the careful study into the nature of the law, the analysis of legal ideas and the correlation and comparison of legal rules."

His advice to his students revealed Mechem's insistence that students analyze and classify their work in order to see the relation of each subject to the other. He urged them to go beyond the mere language of the law in question, to the reason of the law: "to so associate each principle with some leading case in which it was applied that the principle itself shall

be to him not a mere abstraction but a living force operating upon actual facts in such wise as to at once suggest the manner and the limit of its application."

Harper had to wait only a week for a careful response from Mechem, who stated three conditions necessary for his removal from Michigan. The first concerned Mechem's desire to be in charge of all subjects concerning public law, in particular constitutional law, taxation, and the law of public officers and offices. He also noted his decade-long interest in the science of jurisprudence. Second, Mechem hoped that his work would be arranged so as to allow "a reasonable amount of leisure for research and writing" as well as the liberty to "keep in touch with the practical side of the profession by a limited amount of consultation practice, if the opportunity should present itself." He believed, said Mechem, "that this is one way, much neglected, in which the University expert may make himself useful and extend the influence of the university." Third, "I should expect that my salary shall be of the highest class paid to professors in the School of Law. I am not mercenary, but I *am* jealous of that sort of professional standing which comparative salaries usually indicate." Mechem continued by indicating satisfaction with his current position combined with a curious desire in regard to the plans underway at Chicago:

> I realize, however, that the establishment of your new Law School presents an opportunity, which I feel assured will be improved to the uttermost—of gathering together a group of first class men, and of founding a school of Law upon such lines that connection with it may be a credit, and the opportunity to assist in creating it may be a pleasure. It is this possibility which appeals to me, and I therefore am led to say, as I

The Law School building, circa 1903, looking southeast across the Midway

> said at the outset, that if you are still of mind to make me a proposal, and can see your way clear to make it upon the conditions I have indicated, I shall be ready to consider it.

Harper's response was immediate. In regard to Mechem's first condition Harper noted that there was only one person, Freund, whose work overlapped with Mechem's in the area of law of public officers and offices. Harper quickly added that Freund's desire to continue this work would be satisfied if he could offer a course occasionally during a summer quarter. Harper also said that Freund consented to allow Mechem to be in charge of the subjects listed by Mechem but cautioned him that the science of jurisprudence might be offered only as an elective. As to Mechem's request for time for research and consultation, Harper responded by emphasizing the necessity of an organic relationship between the Law School and the university, a relationship that would satisfy Mechem's concern:

> Great emphasis will be placed upon the fact that the University spirit is to prevail in the work of the Law School, and it is desired that every man in the faculty shall have a large amount of leisure for research and writing. There is every reason further, why it would be to the advantage of the University, as well as to yourself, to have you keep in touch with the practical side of the profession by a limited amount of consultation practice.

The third request was easy for Harper, for he knew that no American law schools were paying higher salaries than he was. The $5,500 he was offering was the highest salary paid. "In case a higher salary is at any time paid to the professors of the School of Law, and I have no doubt that this will be done soon," Harper shrewdly noted, "your salary would be increased to the highest point."

This time Mechem was slower in responding. When he did write, he said that Harper's letter answered his requests "fully, frankly and satisfactorily." Citing the fact that he and Mrs. Mechem had wanted to check the living conditions on the Midway, Mechem said that the authorities at Michigan had asked him to reserve his final decision until after the Board of Regents met. "There are also," he noted "certain moral obligations of the sort of which I spoke to you, being urged against my going." Yet Mechem's conclusions were positive to the point that he offered to meet with the Chicago faculty in their preliminary discussions. "I must say, however, that I expect to come."

Harper weighed carefully his response and drew up two telegrams, both dated the same day, to send to Mechem. The first telegram is edited in pencil and probably was not sent: "We think Michigan Regents have exaggerated obligation. We feel you ought not yield because of these representations. Such representations are frequently made in similar cases without basis. While no legal obligation to us, is there not also moral obligation toward Chicago?" The last sentence was crossed out in pencil. The other telegram directly put pressure on Mechem to consider his moral obligations to Chicago. "May I suggest," Harper said, "that you must have concluded previous to your last visit that your moral obligations toward Michigan did not prevent acceptance of our offer. Should you allow your own judgment to be determined by others now that you have assumed some obligation toward us by joining in our preliminary work?" Yet despite the fact that Mechem had by then participated in the preliminary discussions, he had made up his mind to stay at Michigan for one more year.

Responding to Harper upon receipt of the telegram, Mecham apologized profusely for the situation and any possible embarrassment to Chicago. "I realize that in order to satisfy moral obligations here, I am disappointing expectations there," Mechem lamented, "and I regret more than I can tell you that I have permitted myself to get into this predicament." The major reason, Mechem suggested, was that Professor Wilgus was leaving. Mechem went on to say that Harper would undoubtedly learn that Michigan's regents had proposed to increase his salary and reduce his work, yet he hastened to add that this had not influenced his decision, "especially as it is still financially to my disadvantage."

Writing a letter the same afternoon to Mechem, Harper could not conceal his disappointment as he doggedly pursued the outside chance: "Could you not arrange to come in the middle of the year? We want you and we want you very much. We are ready to do anything that is possible to have you carry out the original plan." Mechem's reply was optimistic, for

he noted that he had agreed to stay only another year. "It seems to me that by the expiration of that period I should have satisfied every form of moral obligation that I may be under by reason of my undertakings here." Ultimately the exciting prospects of the new law school on the Midway and Harper's persistence were to win out, but the first year would not include Mechem, described by Beale as "the best-known teacher of law in the West, easily the foremost teacher at the largest law school in the country, and probably the foremost legal authority now writing in the country."

The disappointed Harper shared the Mechem correspondence with Beale, who had returned to Cambridge. Asking Beale where to turn next, Harper said: "I can understand his embarrassment, but I thought he was thoroughly committed to us." The same letter, however, contained good news, for Harper told Beale of the acceptance of James Parker Hall. Born in Frewsburg, New York in 1873, Hall attended high school in Jamestown, New York. He was an exceptional student at Cornell University, receiving a Phi Beta Kappa key in his junior year and serving as one of the Woodward orators as well as commencement orator in his senior year. Graduating from Cornell, where he expressed interest in engineering, in 1894 he nonetheless attended Harvard Law School, graduating cum laude in 1897. During his stay at Cambridge he was president of the Harvard Union. In 1897 he was admitted to the New York bar and practiced with the Buffalo firm of Bissell, Carey and Cooke. In 1898–1900 Hall lectured on real property and constitutional law at the Buffalo Law School. He then went to Stanford in 1900 to accept the appointment of associate professor, abandoning the active practice of law. Hall's was the first name suggested by Beale in his preliminary discussion with Harper.

With his customary directness, Harper pursued Hall vigorously, aware of the fact that Harvard and then Columbia were trying to get him. In a telegram on April 11, Harper queried: "Would you consider proposition to accept professorship in school of law just being established in University of Chicago? If so, on what conditions?" Harper then followed this up with a letter in which he mentioned that Mechem would be coming, as well as Mack and Lee. Suggesting that a new building would be erected for $200,000 and that $50,000 would be allocated for books, Harper offered Hall a full professorship. "We are hoping that you may see your way clear to join us in Chicago," Harper continued, "and help establish a new school which shall have the spirit and methods of the Harvard School and do for the west what Harvard has done for the east. The faculty is a most excellent one as thus far constituted. We spent last evening working over details, and the spirit of cooperation was of the heartiest character."

Professor, later Dean *James Parker Hall*

Hall was clearly interested. In a telegraph dated April 19, he told Harper that he expected to accept the offer but wanted more particulars. Harper responded: "Beale of Harvard Dean. Methods and spirit like Harvard. Beale suggests you take Commercial Law and Evidence or Equity. Full professorship salary fifty-five hundred dollars. We know Harvard offer. Have written other colleagues Mechem of Michigan probably Mack and Lee with them." Harper did know about Harvard's offer, which proposed an assistant professorship with a sal-

ary of $2,500 "and promotion in two years if successful." Hall's letter of acceptance to Harper was written on April 21. The delay is accounted for by Hall, who told Harper pointedly that he had waited for a response from Harvard's Ames, "whom I asked for advice upon your offer independently of their own proposition. Both came yesterday and both were so satisfactory that I had no further hesitation." A telegram from Hall to Eliot on April 15 suggested that Hall's initial inclination was toward his alma mater. He had queried Eliot: "Chicago offers full professorship at $5,500. Can you give $4,000 and let me teach constitutional law as one of my courses?" Undoubtedly Hall was attracted by the salary, for he noted to Harper that he was grateful for the offer, "which to a man of my age seems particularly generous and attractive." Moreover Hall was drawn to the excitement of being involved in the organization of a new law school. "When I came here two years ago," Hall noted in regard to Stanford, "our school was then for the first time organized on a three year basis and it has been a great pleasure helping to put it in good running order. The same kind of work at Chicago ought to be still more enjoyable under your much more favorable conditions."

Harper's reputation for stealing distinguished professors by means of seductive offers was well established in educational circles. Dean Ames tried to console President Eliot over his loss by saying that Hall probably "found that he could not honorably withdraw his invitation to [the University of] Chicago." Stanford's president, David Starr Jordan, wrote a friendly letter to Harper concerning Hall:

> In taking our Professor Hall you have made a great break in our flourishing young Law School. I congratulate you on having secured him. I think there is no more promising young man to be found on the list of professors in any institution in the country. His ultimate strength will lie in his power of investigation and his marked cleverness of intellect. I am glad to see him receive the promotion he deserves, even though we were not quite able to give it here.

Harper's reply expressed appreciation to Jordan for the courtesy of his letter. "I am sure that Hall is a strong man, and I am sure that you are making a great contribution to the new law school of the University of Chicago in permitting him to come to us."

Beale expressed delight to Harper that his favorite candidate had accepted. Possibly to heal the wounds over Harper's lost battle for Wigmore, Beale prophesied that ultimately Hall would prove to be the greater man: "There is no doubt in my mind that within a few years he [Hall] will stand head and shoulders above Wigmore as a legal scholar and I believe will be quite as good as a teacher." Beale continued by suggesting reasons why Hall chose Chicago over Harvard: "The dignity of a full professorship and the better choice of subjects, I think, influenced him."

This was not to be the last time that Harvard would try to get Hall and be confronted with the issue of salaries and the other attractions of Harper's law school. The next summer Eliot made another unsuccessful attempt, much to the chagrin of Dean Ames, who knew his salaries were not competitive. Writing to Eliot, Ames noted that Williston and Beale were receiving $4,500 and that Hall had been offered $5,000. He then continued to prod Eliot on the question of salaries, urging him to consider the law faculty apart from other departments. He expressed concern over the Chicago salaries. "Wyman can go to Chicago at any time. . . . Williston has been offered $7,000 to go to Columbia." Harvard's attempt to get Hall from Chicago is an interesting undercurrent to the outwardly friendly relationship between the institutions. Unquestionably, Ames was unhappy with his own faculty situation; within a year after Harper's law school was established he expressed great concern over the "formidable" rival. Thus Ames complained to Eliot: "I cannot share your sanguine view as to the attractive power of Harvard if they [Chicago] remain as they are. I think too our faculty must strengthen quickly. Gray, as you have said, is not successful with the important courses of Evidence and Constitutional Law. Smith, while excellent in Torts, leaves much to desire in working with the third year course in Corporation. Wambaugh and Brannan are moderately successful. Strobel is a cipher as far as the Law School is concerned."

In order to recruit the distinguished faculty which he enticed to the Midway, Harper paid handsomely. He knew it and Eliot knew it. Harper's argument to the trustees soon after the school opened, on the issue of law faculty salaries, is revealing. First he argued that top salaries were necessary as it was ex-

tremely difficult to find strong men willing to give themselves to teaching law. He also noted that Columbia and Harvard had been actively recruiting three of the faculty. Further, Harper stressed the "importance from the point of view of maintaining the work of the Law School in its present basis of creating a confidence in the faculty itself that its best members may not be tempted to join Columbia and Harvard Schools at their suggestion." Thus at Chicago a professor received $5,500 when appointed, $6,000 after five years, $6,750 after another five years, and $7,500 after the next five years. The top salary was $8,000.

The comparable salaries at Harvard were $4,000, $4,500, $5,000, and $5,500. Ames also noted the provisions at Chicago for a retirement allowance, which Harvard did not provide. In order for Harvard to do some raiding to improve the quality of its faculty, Ames suggested:

> If we were to have a scale of salaries $500 less than that of Chicago, I believe we could tempt away any of their good men who could come on any terms. If the difference was greater than that we must be prepared to see Chicago building a formidable rival of our Faculty. . . . Just as soon as our younger men begin to feel that our School with its ample funds treats them in a parsimonious spirit it will be difficult not only to bring to us new men from other Schools paying larger salaries, but also to keep them here.

Ames tried to understand Eliot's reluctance to give salary preference to law faculty in relation to other Harvard faculty but refused to accept Eliot's position. "I am not, as you suggest, discouraged, but apprehensive lest a raison [sic] for uniformity may injure the Law School. I see no reason why," Ames insisted, "a department which has a surplus should fail to pay adequate salaries, because other departments with no surplus or with a deficit cannot do the same thing." The failure to get Hall was a severe disappointment to Eliot and Ames and a major victory for Harper, who would eventually name Hall to succeed Beale as dean, a position Hall would then hold for twenty-three years.

Harper sent Hall the official acknowledgment of his acceptance, and asked him to exert influence on Clarke Butler Whittier, the final professor asked to serve on the first faculty. Whittier, who was born in St. Louis in 1872, grew up in Toronto, Canada, and later in southern California, where he graduated in the first class of Riverside High School. He spent two years at the University of the Pacific until Stanford University began classes in 1891. Majoring in history, he received his A.B. in 1893. For two years he studied at Harvard Law School and then took a leave of absence for a year to practice in Los Angeles. In 1896 he received his LL.B. from Harvard. Following a decision to make the teaching of law his permanent career, he studied history and economics at Stanford for one year and during that time was invited to join the law faculty there. Like Hall, he had worked with Dean Nathan Abbott in organizing the Stanford Law School.

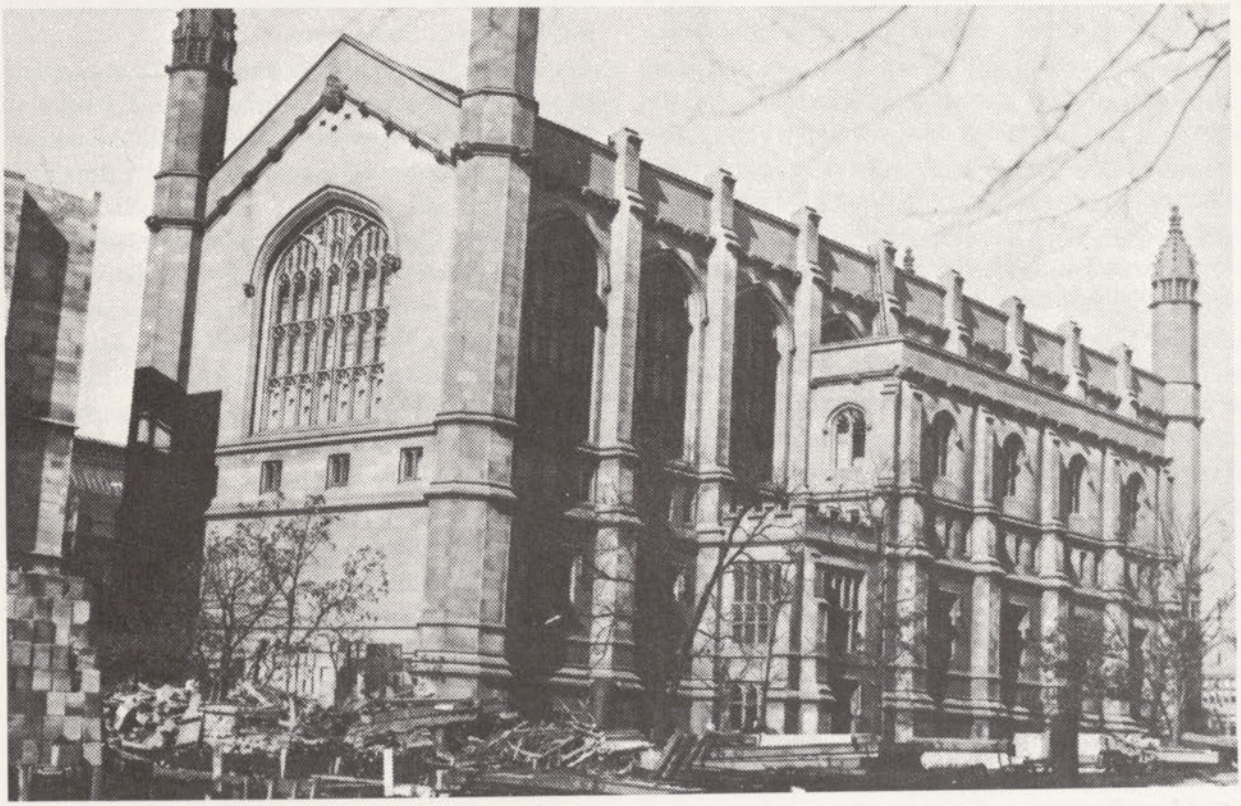
Harper had little trouble in recruiting Whittier and apparently turned to him largely because of Beale's advice, who a year later was to propose to Harper that Whittier might be a good acting dean. His offer, as noted in a telegram of April 28, was mild in contrast to the other offers: "Would you consider proposition of professorship in new faculty of law. Salary fifty-five hundred. Answer. Beale very anxious." The response was positive. The initial faculty was complete. Although other names had been discussed, Beale informed Harper that another full-time professor would not be desirable and that "it will hardly be necessary now to consider any other names." On May 1 the trustees approved the faculty at a special meeting, noting that Mack would work only ⅝ of the time and Lee ¼ of the time. It is interesting that the only faculty member whose base pay was not approved at $5,500 was Ernst Freund, who received $1,000 for extra services rendered during the year and a salary of $3,500 from October 1, 1902. Two days later Harper announced to the University Council that the "Law Faculty had been completed with six members, Professor Beale of the Harvard Law School as Dean." Harper could certainly be proud of the quality of the faculty recruited in less than three months, a faculty later to be considered—after the addition of Mechem and Harry A. Bigelow—as probably the greatest law faculty in American legal education.

Recruiting Students for a National Law School

Having determined that the standards for admission were to be among the highest existing in legal education, the faculty then turned to the task of student recruitment. At the first faculty meeting, Beale and Freund were appointed to be in charge of publicity. Following the formal approval by the trustees of the plans of organization of the new school, flyers and circulars of information were sent to colleges across the country, announcements were put in various university journals and publications, and other forms of advertising were prepared, including notices in newspapers. The task of admitting students was assigned to Freund and Lee.

The first *Announcements* of the Law School made it clear that, contrary to existing practices, students were expected to give their whole time to the study of law. Furthermore, students would not be encouraged to work in law offices during the academic year. In acknowledgment that the traditional law office education had some value, it was stated that special provision would be made for instruction in the drafting of documents and in court practice. Between quarters students could attend court sessions for observation of the trial of cases. But the study of law at Chicago would demand the entire time of the student.

Because of the high standards, as well as the brief period available for creating the school, Harper had not envisaged a large number of students the first year. In December 1902, two months after classes had begun, he spoke about the new school at convocation. "It is somewhat difficult for me to describe the feeling of satisfaction which, I think, exists throughout the University in view of the fact that the Law School is at last actually organized and its work in process of accomplishment," Harper began. Observing that the requirements for admission exceeded those of any school west of New York, he noted that "it was hardly to be expected that a large body of students would come together during the first Quarter." The quality of the students, who numbered nearly eighty, was also a source of great satisfaction to Harper: "The general character of the students and their intellectual ability have been the sub-



The Law School building shortly after its completion in 1904

ject of most favorable comment on the part of all who have come into contact with them. Their devotion to the work of their particular school and the interest taken by them in the University at large deserves special mention."

The official *Register* of the university for 1902–3 indicated that seventy-six men and two women were enrolled in the professional program and an additional twenty in the preprofessional program. Thirty-nine were first-year professional students, twelve were enrolled in the second-year program, and eight in the third-year program. Forty students in the professional program came from the University of Chicago. The rest of the first class of students came from schools that included Berkeley, Harvard, Illinois, Missouri, Montana State, Stanford, Toronto, and Wheaton. The students were likewise widely distributed in their geographic origins. In the first year thirteen states and Canada were represented. The states with the largest number of students were Illinois (thirty-two, eight of whom were from outside Chicago), Indiana (five), Kansas (five), Iowa (four), and California, Kentucky, and Wisconsin with two students each.

The fact that Chicago was firmly established as a national law school was made further evident by the figures for the next year. The number of students in the professional program had increased from seventy-eight to one hundred twenty-six. Forty-nine schools were represented as opposed to sixteen from the year before, and only 33 percent of the students had come from the University of Chicago as opposed to 50 percent in 1902. The geographical distribution of students had likewise increased in diversity. The states with more than one student represented in 1903 were Illinois (fifty-two, with eighteen from outside of Chicago), Iowa (nineteen), Kansas and Wisconsin (six each), Indiana (five), Kentucky (four), Texas (three), and Michigan, Missouri, Ohio, Mississippi, and Minnesota (two each). Canada had three students in residence. Thus the number of states represented had more than doubled, from thirteen to twenty-seven.

Students came to Chicago for many reasons, despite the fact that the school had the reputation for being "tough and all business." One early alumnus, Edward J. Clark, recalls that his decision was made upon the recommendation of his Latin teacher, who used texts by Harper. Another, Albrecht R. C. Kipp, notes that Laird Bell and Edgar Noble Durfee, both Harvard College graduates, persuaded him to enroll, "pointing out rightly the professors were Harvard men, the classes were smaller and the competition tougher."

It is not known whether the proposed unofficial loan of Harvard students to Chicago for several terms of study actually happened. The *Register* notes one student from Harvard the first year and three from Harvard the second. Conceivably these students may have been at Chicago as a result of the proposal. However, at least one of them, Robert Hunt, was on loan from Harvard, although the circumstances surrounding his presence were less than desirable as a regular feature for exchange between the two cooperating institutions. Hunt had experienced serious academic problems at Harvard and had been in trouble outside the classroom, much to the unhappiness of his well-to-do father, who exerted great pressure on Eliot to get him through Harvard. In his first report to Eliot on the new school Beale began with an evaluation of the work on Hunt: "First, as to Hunt, I have just written his father a favorable account of his work. I know very little of his life outside the classes though I have some reason to believe he is doing well. In class," Beale continued, "I have found him always prepared, and better still I almost always find him alive to the question under discussion, interested and intelligent. I hope it will be just what he needed to be in a small class and constantly under the eye of the teacher."

It is clear that students from other law schools transferred to Chicago. In a report in the spring of 1903 Harper spoke of transfer students as well as of the presence at the school of nondegree candidates who were practicing lawyers. One reason these students were attracted, Harper suggested, was that "the presence of lectures of so strong a body of men seems already to have been appreciated by those who desire to use the summer months in the prosecution of their law studies."

Perhaps the most significant departure from existing traditions in legal education was the admission of women into the Law School. The first class had two women, including Sophonisba Preston Breckinridge, who became a guiding force in the establishment of the university's school of Social Service Administration and a pioneer in the field of social services and welfare agencies. Women were not eligible for ad-

Sophonisba Breckinridge, JD '04

mission to Yale until 1918, to Columbia Law School until 1927, and to Harvard until 1950. The earliest record of a woman law graduate had been in 1872 from Michigan. In 1899 a woman was granted admission to Harvard Law School, but the action was rescinded several months later. For the next two years the Cambridge Law School for women law students was conducted by Harvard Professors, but that experiment was discontinued.

The law schools were decidedly a man's world, reflecting the opinion of the bar that the practice of law was a male jurisdiction. In 1872 the issue of women at the bar was first raised at Harvard and Yale. Miss Helen M. Sawyer applied for admission at Harvard. Since no statute existed for this situation, it was referred to the Harvard Corporation, which, after two full discussions, rejected her application. Harvard did not graduate its first alumna until 1957.

Stumped by the same novel issue, Yale too turned to the Yale Corporation, which decided against female law students. At least one mitigating factor in the case against women in law was reflected in the letter to Yale officials from George C. Still: "Are you far advanced enough to admit young women to your school? In theory I am in favor of their studying & practising law, provided they are *ugly,* but I should fear a handsome woman before a jury." In 1885 a woman applicant at Yale took an assertive approach. Showing up at registration, Alice Rufie Jordon, who had received a B.S. from the University of Michigan and was a member of the Michigan bar, demanded admission, citing the fact that the catalogue did not bar women. Dean Francis Wayland allowed her to enroll, but President Noah Porter and the Yale Corporation had other reactions. After discussion, the corporation ruled she could not be listed as an official student but did not forbid her to take classes. Undaunted, Miss Jordon completed her work and received her LL.B. in 1886. The Corporation reacted by directing the following statement be placed in future catalogues of the college: "It is to be understood that the courses of instruction are open to persons of the male sex only, except where both sexes are specifically included." This warning statement appeared in the university catalogue until 1918–19, although it was never included in the Law School Bulletin.

The Harvard position on women in law school was amplified in the minutes of a law faculty meeting which occurred some time in 1896 or 1897. The question before the faculty concerned the desirability of allowing graduate students at Radcliffe to register in selective Law School courses. Christopher Columbus Langdell "declines to express an opinion—the question not being [formally] before us." The others present agreed in principle to the presence of the Radcliffe students, but their reservations are revealing. Dean Ames commented that he would support the idea "but personally would regret it." Thayer remarked that he "personally does want them." Gray concurred, "but does not want them to come and does not advise." Smith conceded that he thought "*some* women would make good lawyers." Wambaugh allowed that he did "not advise women to study law and prefers not to have women in the school." Finally, Beale noted that this move would require "special instruction in first-year courses."

Beatrice Doerschuk's 1915 survey, *Women in The Law,* found that the "net proportion of women admitted to the bar and applying their legal training is probably less than half of those who attend law school." Her survey indicated that the five law schools at that time with the largest number of

women graduates were Northwestern (forty), Michigan (twenty-nine), Iowa (twenty-five), Minnesota (twenty), and Chicago (seventeen). Thus the trend had been decidedly a midwestern phenomenon among larger law schools, with the exception of Chicago, which had a relatively small student body. In 1915 the seven schools with the largest enrollment of women were Chicago (twelve), Berkeley (six), University of Washington (six), Northwestern (four), Cornell (four), University of Pennsylvania (four), and Wisconsin (four).

Harper's view on coeducation had been frequently voiced. The East, according to Harper, was at least fifty years behind the West. One reason for this fact, suggested Harper, was economic necessity. "How could provision be made in the western states for separate colleges for women when there were so few such colleges for men?" But with so many students in his day interested in higher education, Harper was persuaded that the coeducational trend would continue. With his characteristic flourish, Harper predicted: "The Spirit which opens the doors of educational institutions to women as well as to men is, one may safely say, splendidly modern and higher than the older spirit of the monastery or the convent. It is surely more American." The question for Harper was not whether there should be coeducation but how it could be accomplished. Thus he concluded, "coeducation demands for its acceptance as a principle, association of men and women in educational work, on absolutely equal terms, and under the same general management. . . . there is not only ample room, but a stern demand, for liberty of action as well as of thought, in those things which pertain to the further development of this policy."

Marion Talbot, the dean of women at the university, provided additional insight for the question of women on the Midway. In 1892, when the university first conducted classes, the proportion of women enrolled was 24 percent. By 1901, on the eve of the opening of the Law School, the percentage, which had risen steadily during the past decade, was 52. In her autobiography, *More than Lore,* Dean Talbot observed that in 1898–99, fifty men and fifty-two women received honorable mention, honor scholarships, and honors in the departments. "An explanation of this situation is hinted at," Talbot wryly observed, "in the remark of a bumptious young man student who was serving as a messenger in one of the administration offices: 'No man can lower himself by competing with girls in the classroom.' " The increasing proportion of women undergraduates was an alarming situation, according to Talbot, who urged Harper to make the university more attractive to men. "Within three or four years the following means of serving men were inaugurated: Bartlett Gymnasium, Reynolds Club, Hutchinson Commons, Hitchcock Hall, and the Law School."

Whether the law faculty was aware of their role in this "conspiracy" to meet the problem posed by the increasing number of women on campus is unclear. There is no evidence, however, that the law faculty ever considered excluding women from the Law School. One alumna of the Law School, Eileen Markely Znaniecki, recalled the James Parker Hall did question her about her motivations as a prospective woman lawyer. He also questioned her desire to do legal-aid work. Mrs. Znaniecki had been rejected at Columbia despite the fact that her father had received his law degree there, and she had received her master's degree from Columbia. "Dean Hall, however, said that a young lady who had taken some courses had scandalized the University by sitting out on the lawn surrounded by a circle of adoring law students. When I assured him that my only interest was in learning enough law to help the poor, he was reassured. However, he tried to discourage my interest in Legal Aid, saying the matters were too small to be important and that the lawyers were apt to be below University of Chicago standards."

Writing for the university's annual yearbook, *The Cap and Gown,* a student pondered the symbolic significance of the Law School's new home:

> Was the location of the Law Building a chance, or is it significant that, standing as it does between the halls of men on one side and the halls of women on the other, it seems to hold its four spires heavenward in a mute plea for justice, equality, and now segregation? Does the small entrance on the east stand as an invitation for more Portias to become Balthasars or is it merely to afford an avenue of escape for the weary minds of the prospective juris doctors to soothing influence? Only the faculty know, and only the future will reveal.

Laying the Cornerstone: April 2, 1903

President William Rainey Harper
President Theodore Roosevelt

A procession was held following the Forty-sixth Convocation of the University on April 2, 1903, to the site of the new building of the Law School to witness the laying of the corner-stone by President Theodore Roosevelt.

In opening the exercises University President William Rainey Harper said:

Members of the University and Friends:

The event we are about to celebrate is one of highest interest, both in view of its significance and in consideration of the attending circumstances. We are to lay the corner-stone of a building erected for the purpose of fostering an interest in the study of law. The school of which this building shall become the home is the first of the many schools of law located in the middle western and southern states—one of three in the country—to require for graduation the possession of a college degree. It is a source of the greatest possible gratification to us that the first stone, the great stone, the corner-stone, should be placed in its position by the chief magistrate of our republic.

It is in order first of all to have recounted by the Secretary of the Board the articles placed in the box inclosed within the corner-stone.

Dr. Goodspeed, the Secretary of the Board of Trustees, then read the following list of articles deposited in the box in the corner-stone:

1. Photograph of President Roosevelt.
2. Photograph of the Founder of the University.
3. Photographs of members of the Law Faculty.
4. Photograph of the building.
5. The last *Annual Register* of the University.
6. *The Circular of Information of the Law School.*
7. *The Annual Announcements of the Law School.*
8. The Law School number of the *University Record.*
9. The list of students in the Law School for this, its first year.
10. The Chicago daily papers.
11. The *Maroon* of Wednesday, April 1, 1903.
12. The *Monthly Maroon.*
13. The Decennial Souvenir Edition of the *University of Chicago Weekly.*
14. A copy of the *Regulations of the University.*
15. A copy of the minutes of the first meeting of the Faculty of the Law School.

President Harper then introduced the President of the United States in the following words:

It is my privilege now to present to you one who came to us three years ago. May I use again the words employed on that occasion: "Some men we revere, some we admire, some we love. There are some whom we revere and admire and love; for we revere the statesman, we admire the hero, we love the man who is known to be a good fellow." I present to you our University colleague, our honored President.

After performing the duties usual to the laying of the corner-stone, President Roosevelt made the following address:

Mr. President, men and women of the University, and you, my fellow-citizens, people of the great city of the West:

I am glad indeed to have the chance of being with you this afternoon to receive this degree at the hands of President Harper and in what I have to say there is little that I can do save to emphasize certain points made in the address of Mr. Judson.

I speak to you of this University, to you who belong

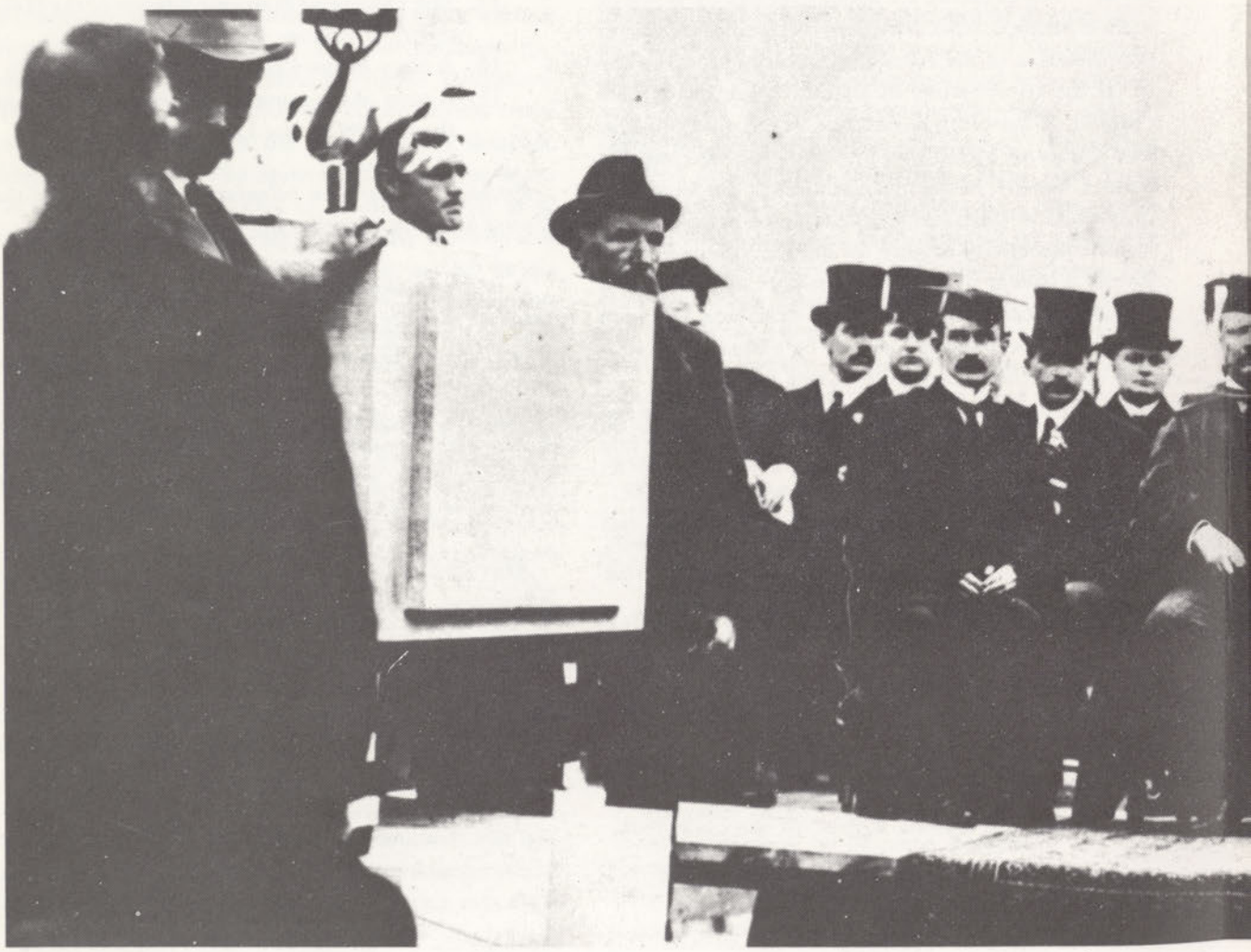
This account of the laying of the cornerstone of the original Law School building is reprinted from The University Record, *vol. VII, no. 12 (1903).*

to the institution, the creation of which has so nobly rounded out the great career of mercantile enterprise and prosperity which Chicago not merely embodies, but of which in a peculiar sense the city stands as symbolical.

It is of vast importance to our well-being as a nation that there should be a foundation deep and broad of material well-being. No nation can amount to anything great unless the individuals composing it have so worked with the head or with the hand for their own benefit as well as for the benefit of their fellows in material ways, that the sum of the national prosperity is great. But that alone does not make true greatness or anything approaching true greatness. It is only the foundation for it, and it is the existence of institutions such as this, above all the existence of institutions such as this, above all the existence of institutions turning out citizens of the type which I know you turn out, that stands as one of the really great assets of which a nation can speak when it claims true greatness.

From this institution you will send out scholars, and it is a great and a fine thing to send out scholars to add to the sum of productive scholarship. To do that is to take your part in doing one of the great duties of civilization, but you will do more than that, for greater than the school is the man, and you will send forth men; men who will scorn what is base and ignoble; men of high ideals, who yet have the robust, good sense necessary to allow for the achievement of the high ideal by practical methods.

It was one of our American humorists who, like all true humorists, was also a sage, who said that it was easier to be a harmless dove than a wise serpent. Now, the aim in production of citizenship must not be



University President *William Rainey Harper* introducing U.S. President *Theodore Roosevelt*

merely the production of harmless citizenship. Of course, it is essential that you should not harm your fellows, but if, after you are through with life, all that can be truthfully said of you is that you did not do any harm, it must also truthfully be added that you did no particular good.

Remember that the commandment had the two sides, to be harmless as doves and wise as serpents; to be moral in the highest and broadest sense of the word; to have the morality that abstains and endures, and also the morality that does and fears, the morality that can suffer and the morality that can achieve results—to have that and, coupled with it, to have the energy, the power to accomplish things which every good citizen must have if his citizenship is to be of real value to the community.

Mr. Judson said in his address today that the things we need are elemental. We need to produce not genius, not brilliancy, but the homely, commonplace, elemental virtues. The reason we won in 1776, the reason that in the great trial from 1861 to 1865 this nation rang true metal, was because the average citizen had in him the stuff out of which good citizenship has been made from time immemorial, because he had in him honesty, courage, common sense.

Brilliancy and genius? Yes, if we can have them in addition to the other virtues. If not, if brilliant genius comes without the accompaniment of the substantial qualities of character and soul, then it is a menace to the nation. If it comes in addition to those qualities, then of course we get the great general leader, we get the Lincoln, we get the man who can do more than any common man can do. But without it much can be done.

The men who carried musket and saber in the armies of the East and West through the four grim years which at last saw the sun of peace rise at Appomattox had only the ordinary qualities, but they were pretty good ordinary qualities. They were the qualities which, when possessed as those men possessed them, made in their sum what we call heroism. And what those men had need to have in time of war, we must have in time of peace, if we are to make this nation what it should ultimately become, if we are to make this nation in very fact the great republic, the greatest power upon which the sun has ever shone.

And no one quality is enough. First of all is honesty—remember that I am using the word in its broadest signification—honesty, decency, clean living at home, clean living abroad, fair dealing in one's own family, fair dealing by the public.

And honesty is not enough. If a man is ever so honest, but is timid, there is nothing to be done with him. In the Civil War you needed patriotism, and yet if a man felt compelled to run away when that was needed he was not of much use.

Together with honesty you must have the second of the virile virtues, courage; courage to dare, courage to withstand the wrong and to fight aggressively and vigorously for the right.

And if you have only honesty and courage, you may yet be an entirely worthless citizen. An honest and valiant fool has but a small place in usefulness in the body politic. With honesty, with courage, must go commonsense: ability to work with your fellows, ability when you go out of the academic halls to work with the men of this nation, the millions of men who have not an academic training, who will accept your leadership on just one consideration, and that is if you show yourself in the rough work of actual life fit and able to lead, and only so.

You need honesty, you need courage, and you need commonsense. Above all you need it in the work to be done in the building the corner-stone of which we laid today, the law school out of which are to come the men who at the bar and on the bench make and construe, and in construing make, the laws of this country; the men who must teach by their actions to all our people that this is in fact essentially a government of orderly liberty under the law.

Men and women, you the graduates of this university, you the undergraduates, upon you rests a heavy burden of responsibility; much has been given to you; much will be expected from you. A great work lies before you. If you fail in it you discredit yourselves, you discredit the whole cause of education. And you can succeed and will succeed if you work in the spirit of the words and the deeds of President Harper and of those men whom I have known so well who are in your faculty today.

I thank you for having given me the chance to speak to you.

The Costs of a Law School Education

The Law School's entering class of 49 students arrived on October 1, 1902. As described in the Law School's Circular of Information for the 1902–1903 academic year, the costs of their legal education seem most modest when viewed by today's standards.

Tuition for the professional curriculum was $50.00 per quarter, $150.00 for the entire academic year. The Circular contained a table to enable the entering students to estimate their annual expenses:

	Lowest	*Average*	*Highest*
University tuition bill . .	$150.00	$150.00	$150.00
Rent and care of room .	60.00	105.00	175.00
Board	90.00	126.00	225.00
Laundry	15.00	25.00	35.00
Text-books and stationery	20.00	30.00	50.00
	$335.00	$436.00	$635.00

The Circular noted that even this lowest estimate could be reduced if necessary. "Rooms outside the quadrangles, furnished, with heat, light, and care, may be obtained at from $1.00 a week upwards, the $1.00 rate being easily secured where two students room together. Many places offer room and board from $4.50 upwards. There are student clubs which secure board at cost, the rate during the past year ranging from $2.25 to $2.75 a week."

In comparison, tuition for students during the 1977–1978 academic year is $1,450.00 per quarter, $4,350.00 for the three-quarter school year. The 1977–1978 Law School *Announcements* inform prospective students that a single student's expected expenses, including tuition, fees, books, supplies, room, board, travel and incidental expenses will be $7,900 for the academic year. Married couple's expenses are estimated at $9,300, with an additional $1,000 for each dependent.

Memories of an Ex-Dean

Wilber G. Katz

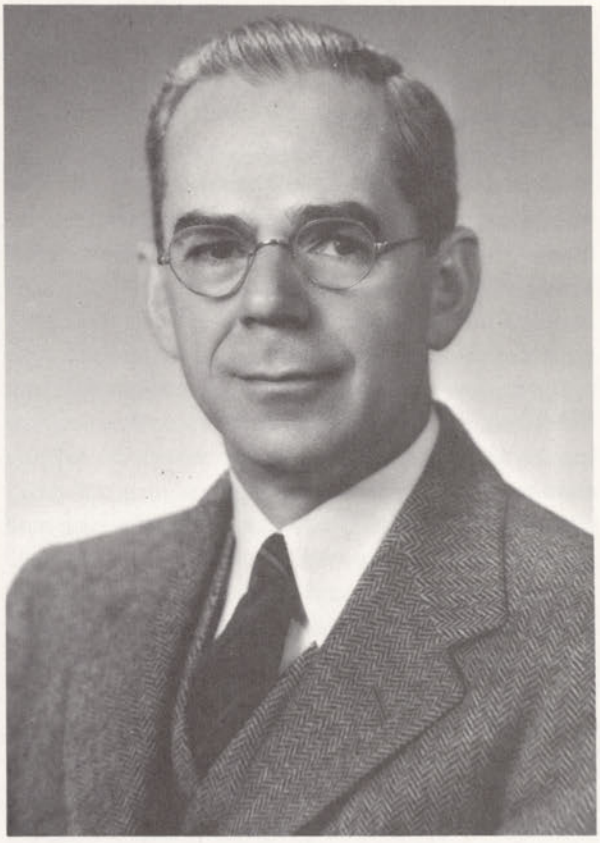
> *. . . forsan et haec olim*
> *meminisse iuvabit.*

I fear that some recent alumni may have come to the Law School without grounding in the classics. I shall therefore translate the foregoing epigraph, a passage in which Aeneas tries to comfort his weary companions: ". . . perhaps some day even these hardships may be remembered with pleasure."

But it ain't necessarily so! Planning this memoir might not have been so painful had I not tried to meet Law School standards for historical research. I even reviewed the minutes of faculty meetings! This exercise sorely tempted me to renege on my promise to reminisce in public. But a promise to the alumni is a promise supported amply by past consideration. So here goes.

During the mid-thirties the faculty had two sources of excitement. One was the Great Depression and the issues raised by the New Deal of President Roosevelt, issues which many of us attacked with unwavering faith in the beneficence of legal change. Scarcely less stimulating were the educational issues raised by President Hutchins, who kept needling the law faculty to set objectives broader than training for law practice and to develop closer ties to other departments of the University. Some of us enlisted for study of economics under the gentle tutelage of Henry Simons, and also for reading of Aristotle and Plato and St. Thomas under a less gentle tutor, Mortimer Adler.

Before turning to my period as Dean, I must record a grateful memory of 1935. It concerns a corrupt



Dean *Wilber G. Katz*

and successful deal made with Edward Levi during his editorship of the Law Review. I had been importuning him to write a Round Table skit for which my wife would make puppets. He claimed to be too busy with a note for the Review, and the upshot was that the Review published, anonymously, a note from my pen, and Edward wrote the skit. It was entitled "What We Know about Life" and featured Gertrude Stein (a recent visitor to the campus), Mortimer Adler, and Donald Schlesinger. Many alumni of the period may recall the portrait puppets; their final appearance was at the Quadrangle Club during the University's fiftieth anniversary celebration.

My deanship spanned pre-war, war-time, and

Mr. Katz was Dean of the Law School from 1940 to 1949. He served on the Law School faculty from 1930 to 1961, holding the John P. Wilson and James Parker Hall Professorships from 1941 to 1949 and 1951 to 1961. Mr. Katz now resides in Whitewater, Wisconsin.

post-war years. The period could hardly have been less auspicious for completing the launching of the new curriculum which had been adopted in 1937. This curriculum consisted chiefly of a required sequence of courses with annual comprehensive examinations. Students were admitted only in the autumn and there was no optional summer session. From the coming of the draft law, however, through the period of demobilization, the School was preoccupied with endless adjustments in which the structure of the program was preserved chiefly in the printed Announcements.

The setting for the adoption of the 1937 curriculum was the general reorganization of the University under President Hutchins. Central in this reorganization was "The College" to which students were admitted after two years of high school. The Law School had to decide what provision should be made for these younger "college graduates." We first experimented with a separate "pre-professional" year under Law School auspices, in which one option was the Adler-Sharp program described in Adler's memoir in this Journal. In 1936 Levi joined the faculty after a year at Yale; curricular planning and negotiation went into high gear.

In 1937 an integrated Four Year Program was adopted, in which courses in law and in fields such as economics and philosophy were to be studied in a prescribed sequence, supplemented by elective seminars in the last two years. An alternative Three Year Program was also provided, chiefly for graduates of other colleges and universities. The announcement of the new programs created no great stir. Other things were happening, including Roosevelt's court-packing venture, on which the law faculty was sharply (and closely) divided. The new programs were introduced progressively in 1937–40.

In 1939 a new Dean had to be concerned about the declining enrollment. Students entering both programs that year totalled 75. The University was then making available only a few tuition remissions, and larger scholarship grants were almost unheard of. Enrollment prospects were clouded by doubts as to the operation of the draft. Relations with liberal arts colleges were clouded by resentments against the University arising from fear that the new masters degree programs might lure many of their upper classmen to Chicago. Relations with the bar were clouded by reactions of lawyers who did not appreciate Hutchins' witty diatribes. His 1937 address to the American Bar Association was vintage Hutchins. He prescribed for the profession massive doses of Aristotle: metaphysics, psychology, ethics, and politics. He concluded: "What the bar needs is a tradition and an education. It now has neither that is adequate to its task. . . . The bar has led our people into the wilderness. Armed with a tradition and an education it may yet lead them out."

With the Dean, alumni leaders were warmly cooperative, but there were many other graduates for whom the Law School still meant the faculty of its first thirty years, principally Hall, Mechem, Freund, Bigelow, and Hinton. But a new generation of teachers had been coming along, including Tefft, Gregory, Sharp, Crosskey, and Rheinstein. I found myself wishing that during the thirties more had been done to make the alumni and the bar familiar with the work of these professors.

I am tempted to speculate as to whether more vigorous promotion in 1939–41 might have initiated a turn-around in enrollment before Pearl Harbor. Edward Levi was urging that strong additions to the faculty be made, and Hutchins was open to such proposals. But in the autumn of 1941, with Levi already on leave of absence in Washington, a majority of the faculty decided that no appointments should be made.

No useful purpose would be served by rehearsing the war-time adjustments. For two years Sheldon Tefft held the fort as Acting Dean while I taught an eight o'clock class and spent the rest of the day in the Renegotiation Section of the Chicago Ordnance District, first under Glen Lloyd and later under George James. Most of the law building was taken over for the Air Force meteorology program.

Total enrollment sank to a low of 45. At one point Hutchins reminded me of the earlier discussion of merger with the Law School of Northwestern University. He suggested the possibility of closing the Law School with a view to later establishing instead a Department of Jurisprudence in the Division of Social Sciences. I did not know how seriously he meant the suggestion, but I mentioned it at a faculty meet-

(continued on page 32)

Reminiscences

Edward H. Levi

I realize it is a great honor to be asked to address this annual meeting of the alumni of our Law School. I cherish the occasion, inevitably filled with much sentiment and recollections, spanning forty-five years. Moreover as the Law School approaches its seventy-fifth anniversary, this apparently is a time for reminiscing. I gather your own Journal—a fairly recent innovation—is preparing such a collection. Mortimer Adler indeed recently told me that he was writing an account of how the Law School in the thirties looked to him. I told him I thought this was a perfectly dreadful idea. But I am in doubt whether those who asked me to speak—if indeed they had any idea to justify such folly—had this in mind. Possibly their thoughts were more on the experiences I am assumed to have had more recently in the Department of Justice, and the relevance of these experiences to the bar generally and to the law school in particular.

Having just recently resumed the effort to teach or to learn—activities which I find properly demanding and difficult—and also having just been a Chubb Fellow at Yale—an endeavor which is supposed to be limited to political figures of some sort—there is room for a crisis of identity. The point was brought home to me at the conclusion of a breakfast with students at Yale. The event was almost identical, I thought, to the many breakfasts I had had with undergraduates at Chicago when I was Provost. The students did a great deal of talking, and, if I had thought about it, I would have judged the conversation a great success. But after the breakfast, one participant, a young lady, felt compelled to comment that the Chubb Fellowship was after all for political figures, who were, perforce, outgoing, witty and funny. But I was different. This crushed me. Since she was a kind young lady, I think she meant—and anyway I managed to get her to say she meant—that we had discussed problems in the way one discusses them in a university. Obviously I had failed some stereotype. I did not exhibit the somehow different reactions of people "out there". I had slipped back into a role which I was not supposed to play—at least not then.

I do not want to similarly disappoint you. I shall try to touch upon certain themes common to the Law School, to the University, and to the Department of Justice. In this connection let me make one personal observation on the nature of experience which I am sure you have all shared. The University of Chicago has been kind enough—and probably sufficiently foolish—in some press releases to give the impression that I really never set foot outside of its protective walls—not since kindergarten. But all of us find different continuities. I was at the Department of Justice for five years between 1940 and 1945. When I came back to the Department of Justice in 1975, the Press and the Department as a whole *greeted* (if that is the right word) me as a newcomer. I didn't feel that way at all. The rooms were the same. I knew them well. They were filled with memories. It was from the Attorney General's office that I had watched the Roosevelt cortege go by. It was the place where I had tried to explain to a concerned Attorney General, Francis Biddle, how it was that a distinguished economist in the antitrust division had testified in such a way as to touch upon some government secrets before a publicly reported meeting of a congressional committee. The consequence of that was that I had to personally express the United States Government's apologies to the ambassador of a beleagured state. It was in those rooms I had heard various representatives of the motion picture industry press their claims. Indeed it was the same office to which Thurman Arnold, then Assistant At-

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Mr. Levi, JD '35, Professor and Dean of the Law School, Provost and President of the University, and most recently Attorney General of the United States, has come full circle and is now the Glen A. Lloyd Distinguished Service Professor in the Law School. These remarks were given at the Annual Dinner of the Law School Alumni Association on April 21, 1977.

Professor *Edward H. Levi* addressing the Alumni Association's Annual Dinner

torney General, had first brought me when Robert Jackson was Attorney General. Arnold had in his hand what he thought was a "hot" document to be shown to the Attorney General. He marched me to the inside elevator which took us from the third floor up to the fifth floor into the Attorney General's suite. He showed the document to Jackson, who understood it, I think, not at all, and then took me quickly back into the elevator and descended to the antitrust division. On the way down I said with some puzzlement, "Why didn't you explain to the Attorney General what the document was about?" "The first rule you should know", Arnold said to me, "is that you should never tell the Attorney General anything." When I returned to the Department of Justice, there was part of me, at least, which thought I had never left it. But of course that was only part of me. (Arnold's rule was still in force.)

I am sure I express a sentiment which I share in common with you who are alumni of the Law School when I affirm an overwhelming personal indebtedness. For me it is an indebtedness to particular individuals. It is an indebtedness to the faculty who tried to teach me, to my colleagues then and now, to the students and alumni, and to that special group of friends who have helped keep this Law School a place of rare importance. I can say the same thing for the University as a whole. I used to write to graduating seniors from the Law School when I was Dean that I hoped the University would be for them always an intellectual home. I think one of the proper claims of the University is that this is frequently true. The University places a recognizable stamp upon those it has touched. There is often a spark of recognition of this whenever two persons who have been at the University meet, whether it be in China, speaking to the Vice-Rector of the University of Peking, or in groups in foreign lands, or in a meeting of a White House task force in the Roosevelt room, or in more customary circumstances. I recall a conference some years ago—I believe it was in the Roosevelt room, but I may be mistaken—when an impatient chairman, trying to call a meeting to order, shouted "I wish you University of Chicago people would sit down." I protested mildly that I was the only University of Chicago person present. My protest brought a quick rebuttal from the companions with whom I was talking: David Riesman, then at Harvard; Daniel Bell, then at Columbia; Martin Myerson, at Pennsylvania. "We are all University of Chicago people," they said. They were, of course, correct. I realize the University lays claim to almost every Nobel prize winner who walked across its campus. Yet there is a certain authenticity to this boast. The University has this influence, I believe, because it has a special history and coherence. "Are you a member of the Chicago

School of Economics?", I was asked by one Senator at the confirmation hearing. I think I answered: "In my Father's mansion there are many rooms." I probably should have added, "However, there is only one mansion."

My expression of indebtedness has two parts. One part goes to specific individuals. I have not named them, but I could easily do so. The other part goes to the institution as a whole, whether it be the Law School or the University, and it is the nature of the University of Chicago that these be closely interrelated. Indeed, although at times it has been out of fashion to do this, I want to stress the importance of institutions. I have often quoted Le Szilard who, when I asked him how the University would know when it had a good laboratory, responded, "You know you have a good laboratory when it makes scientists better than they are." The reverse, unfortunately, is also true. A bad laboratory can make scientists worse than they are. The institution sets the environment; it can keep fresh the goals; it can make use of a history and a continuity which exemplified the progress of the science. I would generalize this and add that there are some institutions for which a history is of more importance than others. I believe that is true of universities. In a special way it is true of a fundamental government agency. Of course history is not simple. There are many strains in the pattern of the past. The history gets its meaning—sometimes a changing meaning—through reaffirmation.

The reaffirmation is of course a recreation, a selection of what we value most. There are many strains in an institution's history. It is a point of oddity, for example, that what was once called Harper's Bazaar, because its founding president at times seemed determined to get the University into almost every walk of life, and into the most divergent endeavors, should now be seen as the institution, which because of the stamp of the founding President, has achieved the greatest unity, and is distinguished by its insistence upon a particular kind of excellence. I think the concept which emerged is true to Harper's dominant meaning and the structure he created. But as with scripture, the interpretation could have been different. The leadership of the University at various times could have steered a different path. There were many temptations. As with a constitution, the original meaning is important, but so are the subsequent readings.

To the extent that a University has been thoughtful about itself and therefore self-critical throughout the years, its directions can be set with greater assurance. One small example—although it didn't seem small at the time—is that the University during the sixties did not feel compelled to call in the police to help the institution deal with internal disorders. Not everyone agreed with this decision, of course, but I think the University was prepared for it by its sense of individuality and purpose. Those who take part in the leadership of a university—and of course since it is a shared leadership many people do—have to be concerned about how change is best accomplished to maximize preferred qualities of the institution. They also have to be prepared for wondrous cycles of major or lesser calamities. Many of these are because of outside forces. Robert Hutchins has sometimes described his presidency and chancellorship as against the backdrop of two wars and a depression. Of course like the prohibitionists, he was accused of making use of the absences in one war as a way of getting his college plan voted in. Hutchins was one leader who had no doubt institutions could be changed, but as he has written since, there is a question as to the preferred way. The most lasting way is not always the quickest.

I believe there is an inherent cyclical factor in a university and probably most institutions in any event. The finiteness of life, the law that all new buildings eventually prove to be inadequate, and the necessity that all prior research be shown to be wrong until, through the passage of time, the prior research is your own, are perhaps some of the factors.

Speaking of the American body politic during the weak federation, George Washington in 1786 wrote to John Jay, "We are apt to run from one extreme to another." I do not believe we have lost this aptitude. As we know a government of some checks and balances was created to cope with this, alongside of the belief that representative government and the later Bill of Rights would help prevent the kind of explosions brought on by repression. Our governmental structure is set up to perhaps moderate but yet welcome the cycle. We want a new administration to be new. We are a country which believes in new starts. We believe that for academic institutions—or at least pretend to—as well. A new president of a

university—a new dean of a law school—is most likely to be asked what his new program is. He is supposed to have one. A new attorney general is supposed to have one also. During the earlier days of my second stay at the Department of Justice I was repeatedly asked by reporters what I was going to do with the Department. This really isn't very difficult to answer if one is willing to play the game. Moreover the announcement of new directions—even old ones—has some usefulness. It is quite a different thing, however, to come up with solutions to some of the hardest problems which assault our society. I had already said many times I intended the Department to be non-partisan, that the administration of justice was to be non-political, and that I hoped the Department would be thoughtful about some of the very difficult problems which existed in the administration of justice, and that we intended to face up to these problems. But this obviously was too general. On one such occasion, for reasons unknown to me, but probably moved by the unreality of the assumption of complete freedom, to say nothing about adequate knowledge, and having reinvented the wheel several times that day, I responded, "I am like a camel tender. I suppose the camel will do more or less what it pleases. But I will try to lead it." Since then I have been in Egypt and I have seen a camel. I can only wonder at the accuracy of my observation.

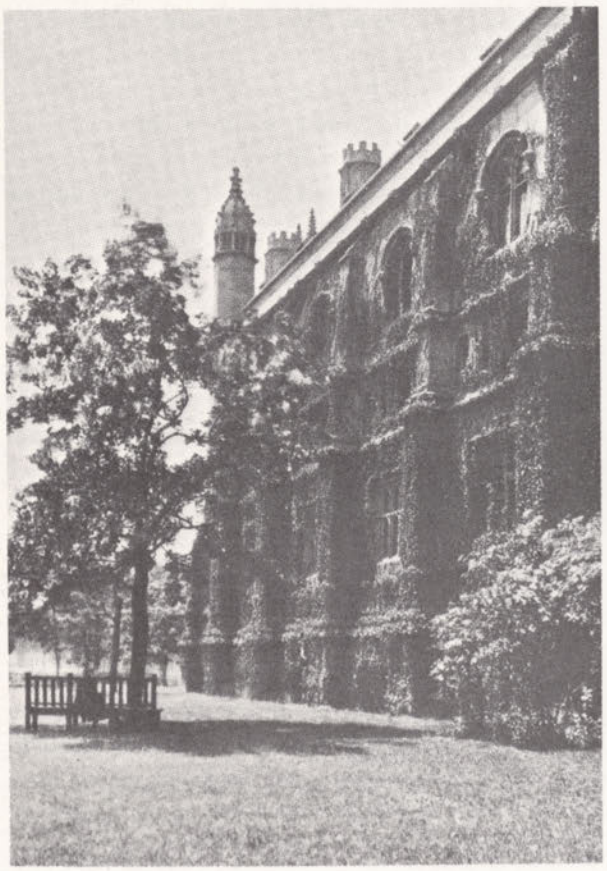
If there seems to be some cynicism in these remarks, or ingratitude to the able men and women—some of the ablest I have known—in the Department of Justice, I wish to disavow it. Everyone knows there is some resistance to change in a large organization. But I think it is more important to realize that there is also responsiveness and a willingness to reason things out. This means, of course, that one must have an atmosphere which encourages reasoning and there must be time for it.

One reflection which I carry with me, arising out of my experiences with the Law School, the University and the Department of Justice is the very commonplace one that change, and most surely reasoned change, takes considerable preparation. The New Plan for the Law School on which Wilber Katz and Malcolm Sharp worked so hard in the thirties, and which helped to spawn most of the developments in legal education since that date, took considerable time. It was that new plan which expanded the horizons of the School to include such radical subjects as economics and accounting. But it did not stop there. It included sociology, criminology, and comparative law. It thought legal history was important. It introduced the tutorial system which, when another law school adopted it, was considered invented. It emphasized jurisprudence and ethics. To reach this point, both the beginning history of the School and much of the intervening prior developments could be drawn upon. There is a line which goes through Wilfred Puttkammer's work in the actual administration of justice to the present work of Norval Morris and Frank Zimring. And while I am sure he would have been astonished at some of the developments, the work of Roscoe Pound in jurisprudence at this Law School in the early days, apparently arising out of his association with Professor Small in sociology, was an important step along the way. Today the period of that new plan still marks a significant reaffirmation, I trust, of the School's professional goals. As with all new plans, it was later modified, but rather more in its structural elements, I think, than in its goals. In any event it seemed to me that between 1950 and 1962—the period when I was Dean of the School—practically all of the programs had their origin in this earlier preparation. Even so, the preparation for many of the research endeavors was of course insufficient. But this has to be a continuing and working process. The economics of today, to take an example, is not quite the way it was then. For one thing, some of it was still in English at that time.

When I returned to the Department of Justice I was immediately faced with the problem of the best techniques for supplying appropriate guidance for the Federal Bureau of Investigation. I thought that guidelines for this purpose could be completed in about six months. While important ones have now been adopted and have been in place for some months, the total work was not completed after two years. My original time scale was naive. This was a pioneering effort with respect to the control of investigations and law enforcement. The committee which worked on this continually, and on which the bureau was represented, had to face up to problems which our jurisprudence has for the most part evaded. Many of them are not easy questions. In my book the guidelines committee has been extraordinarily successful. It has been an educational device

to which both the Bureau and the Department responded. It was a forum for creating the necessary understanding; it carried its own persuasion. As a result of the guidelines and of the Bureau's own reassessments, the number of domestic security investigations has dramatically dropped. In July, 1973, the FBI had more than 21,000 open domestic security cases. My information is that before I left office this had dropped to about 260. This was achieved with understanding and without divisiveness, because we took the time to think things out. I cannot tell you how often I regretted that the Department had not been able some years ago to begin to work seriously on a host of problems in the administration of justice which were beyond the capacity of anyone for immediate answers. Parenthetically let me remark the Department is the only cabinet agency, I believe, which has no specifically allocated funds for its own research. We tried to provide for such funds in the new budget, and I hope the item remains. Without it the process of analysis of the Department's own activities is severely handicapped.

How does the world look from the Department of Justice? A working attorney general has no time to think. He takes things as they come. He tries to get things started. He envies the world of ideas out there. He is sorry he cannot share all the facts he knows with those whose advice he would like to seek. The Advisory Committee Act makes this difficult. He knows that the process of finding solutions to problems frequently will move from out there, be refined, be picked up through the political process, and eventually be offered as a solution. He wonders whether the hearings of a congressional committee, an essential part of oversight, are going to be the way to get a reasoned approach. He tries to move on with his own set of priorities. There is a certain difficulty in this, because he finds that more than likely it is the news media which will set the agenda for the work of his agency. He takes on hard problems, such as foreign electronic surveillance, and numerous others, and is highly grateful when there is a thoughtful and reasoned response from members of the Bar. He does wonder at the anomaly of a modern country which seems to be unable to agree upon a federal code of criminal law. He wonders, too, how faith in the administration of criminal justice can be restored if our present sentencing system continues; how many judges it is going to take to service the needs of the most litigating society the world has ever seen; what can be done without continual federal intervention to remedy the conditions in state penitentiaries. Then he turns to the daily crises which it is claimed have to be decided at once.



He keeps in top place the restoration of faith in at least the honest administration of what is after all our ministry of justice. Because it is a ministry of justice he thinks he has to keep on probing for whatever solutions can be found for the many weaknesses our system has. He is enormously pleased that reasoning—called wobbling—is once more respectable in this building as it was years ago. He is grateful for the colleagues he has—a few of them from the University of Chicago. He hopes he has accomplished something. And at the end of the time, when he retires, he knows that whatever good he did, if any, would have been impossible without the incredible backing of the President.

As he leaves, he says to himself, this was a good way to have stepped down from the presidency of a University, and a good way to step up to becoming a professor.

Laying the Cornerstone: May 28, 1958

Chief Justice Earl Warren

This, for me, has been an exciting day. To have participated with the Lord High Chancellor of England and with the faculty and friends of the Law School of the University of Chicago in laying the cornerstone of its new building was a thrilling experience. The construction of any new law school building is a notable event, but the construction of this particular building should be one of great significance to the Bench and Bar of our Nation as well as to the cause of legal education. It will be unique among the law schools of the world. Standing between its great parent University and the American Bar Center, and containing a courtroom that will be used for sessions of the Illinois Supreme Court, this building will offer its occupants an unprecedented opportunity to enrich the conventional legal curriculum with the spirit of scholarly achievement, the practical outlook of the organized Bar, and the day-to-day operations of one of our most distinguished state courts. It will not merely be a one-way street between the law school and these other segments of our profession. Benefits will flow to and from each of them. Each can pass on to the others its own strengths, and receive support from them where strength is needed. It will provide the best opportunity in America for an integrated approach to the many problems that confront all of us in the administration of Justice.

The proximity of these institutions and the spirit which brings them together should insure the evolvement of a unique Law Center—one that will provide a place where the members of the organized Bar of this country, students, teachers, and judges can co-operate in the continuing task of building and administering a legal system that will keep pace with the changing needs of our Society. The orderly development of jurisprudence and the proper administration of law must always be among the most important objectives of a free nation. We must never become complacent or self-satisfied with either the content or administration of our system of justice. The adaptation of our laws to the changing needs of our people requires the closest cooperation among all segments of our profession. Our total experience and knowledge, academic and practical, must be marshalled if we are to meet the challenges to our legal system. It must not be treated as a mechanical operation that can be improved in the isolation of a laboratory or through the medium of theoretical discourse. The operation of our laws and of our Government can only be evaluated in terms of practical application. Everything we do must include the human equation, for what we do with our legal system will determine what American life will be—not only now but in the years ahead. This important responsibility must be shared by the Bench, the organized Bar, and the law schools, each being oriented to the other and all dedicated to the common aim of improving the substance and administration of our laws. In view of the special opportunities afforded by its unique affiliation with Bench and Bar, the Law School of the University of Chicago must discharge a special responsibility to that end.

Life in the world of today has become increasingly complex with the rise in population, the concentration of people in great metropolitan areas, and the tremendous growth of our industrial and economic structures. The problems of law and government are further increased by world tensions that place additional strains on our democratic processes. Every factor at work seems to increase the complexity of life in this highly organized society so that we must continually be on guard to preserve individual freedom and to protect the dignity of the individual.

The laws that serve our Nation must develop and grow with the changing needs of our social, political, and economic life. As citizens demand more of their governments, legislation becomes more pervasive. We already have a mass of regulations and a complex

Mr. Chief Justice Warren's speech is reprinted from The Law School Record, *vol. 7, no. 3 (1958).*

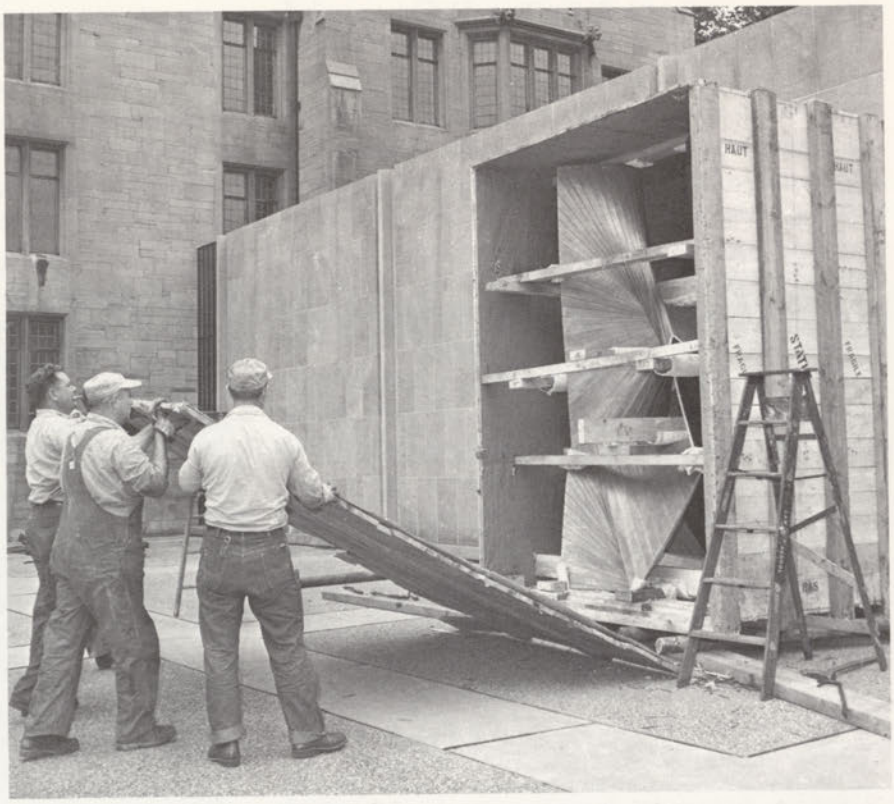
of Government Commissions, Boards, and Agencies essential to their administration. With each increase in complexity a new legal specialty appears. Now we can even observe the growth of specialties within specialties. Accompanying this growth in public or administrative law has been an increase in the volume of litigation in our courts, which are now more than ever beset with the problem of keeping their dockets current. All of these factors act as a drag on the orderly development of a legal system dedicated to the preservation of a free, democratic society.

In this labyrinth of administrative practice, specialization, and court congestion, we are in danger of losing the spirit and scholarly quality essential to a profession. Specialization of itself is not to be criticized. In some fields it becomes necessary. But one of its faults is that our young lawyers may lose their perspective by becoming specialists too early, perhaps before they have learned to become lawyers. Too often they lose contact with the soul of the law. The subject matter of materials supplied to members of the Bar by institutes for continuing legal education is almost entirely of the "how to do it" variety. As necessary as a practical approach may be, it is threatening to turn the practice of law into a trade. The myopia of specialization is aggravated by its materialistic companion, the ever-increasing emphasis on speed.

It is in our law schools that the spirit and scholarly direction of our legal system must be supplied. It is here that the practical operation of contemporary legal institutions can be oriented with reference to the traditions and objectives of the Anglo-American system of law, a system developed in and based upon the needs of a free society. It is the *law student* who must be imbued with the spirit of the law, for the practicing lawyer will seldom have the time, the opportunity, or the will to achieve that orientation for himself. Well grounded in the great principles on which our jurisprudence is based, the law student will be equipped to discharge his obligation to society and to his profession—to assist in the growth and improvement of a legal system adequate to meet the needs of tomorrow.

One of the most difficult tasks of law is to remain stable and yet not to stand still. While law must be

Viscount Kilmuir, Lord High Chancellor of Great Britain; *Glen A. Lloyd,* JD'23, Chairman of the Board of Trustees of the University; *Lawrence A. Kimpton,* Chancellor of the University; *Edward H. Levi,* JD'35, Dean of the Law School; and Chief Justice *Earl Warren,* laying the cornerstone



Uncrating the
Pevsner statue

adapted to serve the needs of a dynamic society, whether and to what extent it is doing so should be tested largely by the experience of the past. This calls for legal training that takes into account the social, economic, and political forces at work in our society. Perhaps even more important, it calls for legal training that will draw upon the whole history of civilization. Law is by nature conservative, and at each step it must be tested by the logic of reason and by the experience of history. Holmes, painting with one of his broadest brushes, once said, "A page of history is worth a volume of logic."

Legal education should be regarded as the foundation of our legal system, the guardian of the common objective and responsibility of maintaining and advancing the state of our civilization. It must provide, not only excellence in technical legal training, but it must also contribute to the growth and quality of our legal institutions. Their development must be viewed, not only with respect to the needs of the present, but with equal attention to the wisdom of the past and the prospects of the future. Its objective must not be to build a new and independent system, but rather to supplement an existing one, to conform to an architectural symmetry that is the product of 6,000 years of civilization and the contributions of lawgivers from the time of Hammurabi. Justice must be regarded as the sum total of man's achievements and aspirations since the beginning of recorded history. Without that heritage, the small contributions of the past century would be both impossible and meaningless.

The student of law in America must recognize that law as an element of our civilization was derived or inherited from former civilizations. The sculpture on the front of the Supreme Court building in Washington demonstrates some of the ancient sources of our concept of "equal justice under law." Those marble figures have a real and living significance today, and the contributions they represent should be dear to the hearts and minds of freedom-loving men everywhere. The shield of Achilles signifies the ancient origin of law and custom. The Praetor, publishing the edict that proclaimed judge-made law in Rome, signifies the importance of judges at work. The third group, Julian and a pupil, illustrates the development of law by scholar and advocate. Justin-

ian is depicted publishing the first modern code of law. Thence we see King John signing the Magna Charta giving legal rights to all men, followed by the Chancellor publishing the Statute of Westminster in the presence of King Edward I. Later we see Coke barring King James I from sitting as a judge in the "King's Court," thereby making the Court independent of the executive. And, finally, John Marshall is seen delivering the opinion in *Marbury* against *Madison*.

In like fashion, on the interior of the Courtroom one finds a procession made up of Menes, Hammurabi, Moses, Solomon, Lycurgus, Solon, Draco, Confucius, and Octavian. This group, each of whom made his contribution to the development of law prior to the time of Christ, emphasizes the interdependence of law, ethics, politics, and religion during the formative stages. On the opposite wall of the Courtroom are depicted those who came later: Justinian, Mohammed, Charlemagne, King John, St. Louis, Hugo Grotius, Blackstone, Marshall and Napoleon. Of all these great lawgivers whom we honor for their contributions to our present system of justice, only John Marshall was an American. Man's struggle to achieve justice and freedom knows no racial, ethnic or political boundaries. The age-old struggle is a common heritage of every race, creed or religion. Each generation of each nationality has contributed something to our understanding of man's relation to man and man's relation to God. From antiquity to modern times, all mankind has engaged in the quest for a more perfect system of government based on various concepts of justice.

Our legal system is most closely identified with and indebted to that of England, and we are honored to have such a distinguished representative of that great nation with us this evening. It is most appropriate that the Lord High Chancellor of Great Britain should join in these ceremonies, for his high office carries with it the duty of leadership in the improvement of the British legal system, and thus symbolizes the contributions of the past and the leadership of the present.

The culture of any civilization can be measured to a large degree by the extent to which it can utilize the experience of history. Especially is this so with law, for it is nothing more or less than an accumulation of the wisdom of the past. This does not mean a reversion to antiquarianism or the perpetuation of laws developed to serve a society now outmoded. Law must not be placed in a strait jacket of historical precedent, but, as pointed out by Maitland,

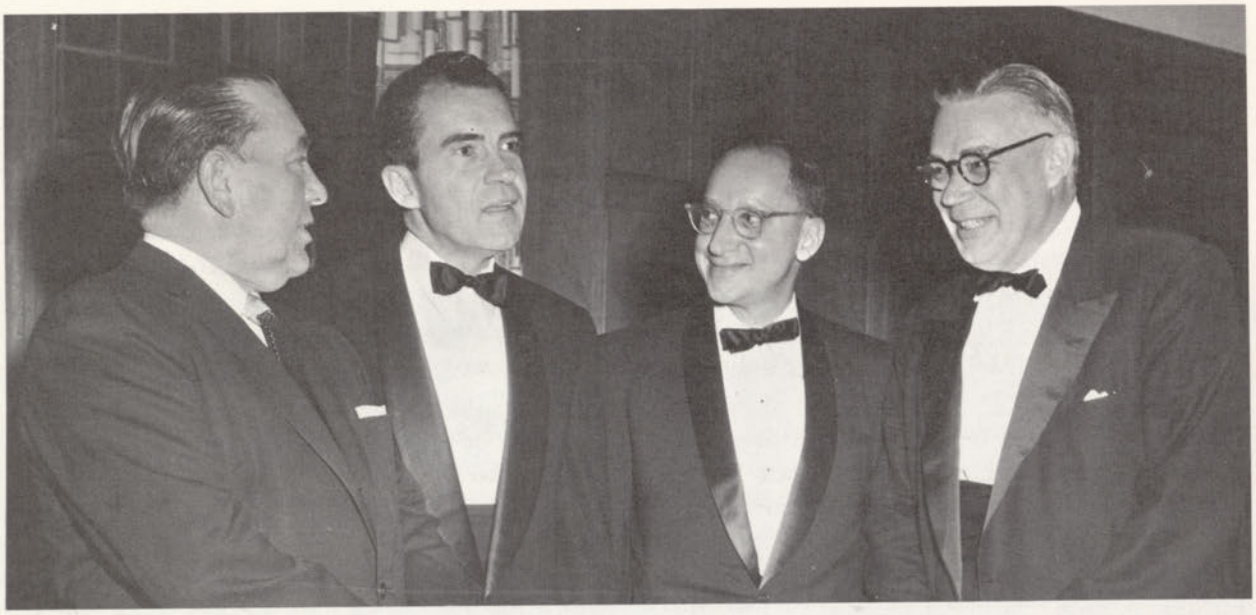
> We may see the office of historical research as that of explaining and lightening the pressures that the past must exercise upon the present, and the present upon the future. Today we study the day before yesterday in order that yesterday may not paralyze today, and today may not paralyze tomorrow.

While there has been a widespread dissatisfaction with strict adherence to the historical school of jurisprudence, we must not turn our backs on the rich heritage of the past. It is entirely proper to be concerned with facts, with realities, and with the relation of law to contemporary society. We must approach law with a desire to know what is really going on in the law, its impact on our accepted values, and its effect on our institutions. However, there is no reason why legal realism and historical jurisprudence cannot develop side by side, providing depth and substance to the law. It is only by such combination that the law can meet the needs of society and provide a true balance between change and stability.

And so, in laying this cornerstone today, we express the hope that upon it will stand an institution devoted to excellence in legal training, enriched by the historical heritage of the past, and dedicated to the service of both present and future. Upon that institution, and others like it, rests the responsibility of preparing and directing our profession in its efforts to realize the highest aspirations of mankind. Strategically located in the heart of our country, in close proximity to the workings of her organized Bar, and within the spiritual atmosphere of one of her great courts, the Law School of the University of Chicago will, I am sure, discharge a special responsibility to the legal institutions by which it has been so favored.

Upon its cornerstone rests a portion of our hope that the legal profession can preserve and perfect a system of justice where "equal justice under law" is a reality as well as a precept.

It is a great challenge—one that will test the mettle of all—one that is worthy of the best that is in us, in our determination to keep this a government of laws and not of men.



Chicago Mayor *Richard J. Daley,* Vice President *Richard M. Nixon,* Dean *Edward H. Levi,* and University Chancellor *Lawrence A. Kimpton* at the dedication of the new Law School building

Memories (continued from page 22)

ing. All hell broke loose. A resolution was passed requesting from the President a written communication concerning the funding of the School during the war and, particularly, concerning his understanding of the obligations of the University under tenure contracts if the school were to be closed. Hutchins was apparently too busy to respond to this request.

I came to admire his tactics in getting the jump on an eager dean who came in prepared to make a pitch for money for his school. After a breezy greeting he would immediately start "sharing" some insoluble problem of his own and asking "advice." Invariably, at least in my case, the strong pitch was weakened, and the dean was softened up for a sympathetic refusal of his plea.

After Hutchins became Chancellor, initial budget conferences were routed to President Colwell, who seemed to have a certain skepticism about legal education and scholarship. He was scandalized by the Law Review subsidy and characterized law reviews in general as "house organs," not learned journals. On one occasion I was able to brighten Hutchins' day by reporting a dream I had had after a budget session with Colwell. I dreamed that at one point he had suddenly stood up. I jumped to my feet, grabbed his shoulders, and shouted, "NOW YOU SIT DOWN!" Then I woke up.

The most important development of the post-war years was the expansion of the faculty. Levi returned to the school in 1945, and new appointments were soon made, adding to the faculty professors Blum, Director, Kalven, Meltzer, and Steffen. Alumni need no reminder of what these appointments have meant for the school.

The current Law School *Announcements* are a reminder that two of the developments of the forties have found a secure place in the program of the school. One of these was the addition of courses integrating economics and law. The other was the establishment of the tutorial program in legal research and exposition.

Moving from the Dean's office brought me an unexpected dividend, an experience which I have often related and which always produces hearty laughter. My last frustration as Dean was my inability to get the janitor to clean the shelves in the office to which I was moving. Finally I resorted to self-help and was proceeding through the hall with rags and a pail of water. I passed a student who stopped short, wide-eyed, and said, "God, there *has* been a shake-up here!"

Vignettes

A Tribute to Ernst Freund

Justice Felix Frankfurter

It was a great law teacher, unfortunately one under whom I never sat, Professor James Bradley Thayer, who told a colleague who was rather fussy about extravagant appreciation by law students of their teachers, "It's good for students to praise their teachers. It's good for them and it's good for their teachers; provided the teachers don't inhale it." I have come here tonight as an act of pious gratitude to a great teacher of the law, Ernst Freund. That is the only reason, mingled as it is with my close feelings for the University of Chicago Law School—indeed, it is because Freund was the father of the Law School—that I am here tonight.

It is a great pity—but, thanks to some of the gadgets of the modern technological world, the source of the regret that I express will be remedied in the future—that Freund's very presence cannot endure. I don't think I ever met anybody in the academic world who more justly merited the characterization of a scholar and a gentleman than did Ernst Freund. He was a courtly man, "of the old school," as it is said. But his courtliness was of an exquisite form, an exquisite expression of his great courtesy and of his great kindliness. Unlike many scholars of courtesy and kindliness, he was a man of strong convictions. But in his case passion was behind his judgment and not in front of it. He was a scholar in the most comprehensive and relevant sense of that term. He was not a pedant. It was Holmes who said that one need not be heavy to be weighty. It could not have been said of him what Maitland said when von Gierke, the heavy German scholar, visited Cambridge. After two or three days of the admirable hospitality of Cambridge, von Gierke said to his host, the great Maitland, as he left, "You seem to have everything at Cambridge except one thing." Professor Maitland, who must have been an adorable creature, replied, "I'm sorry you missed something in our midst. What is it that we haven't got?" And von Gierke said, "You don't seem to have *Gelehrte.*"[1] "Oh yes, we do," said Maitland, "but we call them prigs."

Ernst Freund was a scholar and not a pedant. His specialized competence in the field in which he was a master and, as Mr. Katz said, a pioneer was set in the context of a wide and deep culture. Particularly for lawyers, I should like to call attention to the fact, which is not without significance, that Ernst Freund was immersed in an appreciation for and cultivation of the arts. I know nothing more conducive to cultivating and disciplining and broadening the imaginative faculties in which lawyers, according to Burke, are lacking than the kind of exquisite appreciation for and pursuit of music and painting and the arts generally, so characteristic of Ernst Freund.

Mr. Katz used the word "pioneer," and that is an important word; that is the important thing to remember about Ernst Freund. He was a pioneer in two domains which, until his coming, were nonexistent in our legal scholarship, namely, administrative law and legislation. It was good fortune that Ernst Freund was educated abroad, so that he had drunk the best there was of German scholarship and was aware, just as Maitland had been aware fifty years earlier, of administrative law, before it received a rubric and became a canon of our law.

Ernst Freund brought to the American world of learning the realization that something was going on right under their eyes unattended to: administrative

Mr. Justice Frankfurter made these remarks as part of his address entitled Some Observations on Supreme Court Litigation and Legal Education *given in February, 1953 to initiate the Ernst Freund Lectureship at the Law School.*

Professor *Ernst Freund*

law. And, while in the beginning, for him, administrative law was the control of administrative agencies by the courts, he came soon to see that administrative law also described the controls exercised by the administrative agencies. And legislation wasn't regarded by him as some haphazard, crude, bungling interference by illiterate or untutored people with the beautiful symmetry of the common law. He appreciated what another man of insight, Sir Henry Maine, saw fifty years before, that legislation was one of the chief engines of lawmaking in the English-speaking world.

As to both administrative law and legislation, Freund was not one of those people who thought that what is now called the "social sciences" should be added to the law. He was not for "integrating" law with the social sciences. He was aware and insisted upon the interdependence between law and the social sciences and the social sciences and law. It is just as relevant to point out that lawyers thought that law was a closed system of thought, a closed system of problems, as it is to point out that students of American history, of the American scene, of American institutions, wrote American history with singular indifference, born of ignorance not merely of the role that the federal judicial system has played in the history of law in the United States but, what is no less important, of the effect, the consequences, the bearing, of the federal judicial system and federal law upon the economic development of the United States. This is not the occasion to enter upon a consideration of these matters. But simply, in passing, we can note, for example, that it has made a good deal of difference in the development of the corporation in the American economic scene that a corporation could, through the facilities of the federal courts, do things that it could not do through the facilities of the state courts.

How much of a pioneer Freund was, could be illustrated in many ways. His deep insight that law draws upon the forces of society and does not exist outside them; that law is an endeavor to accommodate these forces of society, to express them, to further them, to thwart them, more or less, in some ways, I think could easily be demonstrated by a reading of his important and influential book on the *Police Power,*[2] published in 1904. The awareness that he then showed in construing certain provisions of the Constitution better anticipated the future than did the decision of the Supreme Court of the United States the next year in the notorious *Lochner* case,[3] which held that a law that men should not work more than ten hours a day violated a provision of the Constitution of the United States. Then, again, it was a pioneer piece of work that culminated in 1917 in the publication of his book *The Standards of American Legislation.* As to this work, I take some parochial pride in recalling that my law school crowned it with the famous Ames prize.

It is well worth recalling that he was one of those voices crying in the wilderness about things that we now take for granted as though they had fallen like manna from heaven. It was nearly sixty years ago that Mr. Justice Holmes wrote a paper in which he bewailed the misfortune of the separation between faculties of law and the faculties of political science in our universities.[4] Men like Holmes and Freund do not solve problems by jargon, by catchwords. They let lesser epigoni do that for them. Freund was a writer who deeply influenced the course, the current, and the forces of legal and sociological scholarship

and thought and the world of adjudication, in the slow way that the world of adjudication is influenced by wisdom from without. In the practical application of his perception of what the legislative process requires, he demonstrated that law was the expression of and response to the needs and the forces of society which push this way or that. In his legislative work, because he was a very active draftsman, he called upon and worked and collaborated with what are now called "social scientists."

[1]Literally translated, "savants."
[2]*The Police Power: Public Policy and Constitutional Rights.*
[3]*Lochner* v. *New York,* 198 U.S. 45.
[4]"The Path of the Law," 10 *Harv. L. Rev.* 457, 474 (1897), in *Collected Legal Papers,* 167, 195 (1921).

The Influence of Ernst Puttkammer

Ernest Samuels

It is with some trepidation that I appear before this company of persons learned in the law, for I have been out of the practice longer, I suspect, than most of you have been in it. But whether in or out I have never lost the pleasant recollection of Professor Ernst Puttkammer as he sat in the classroom before us fifty-four years ago, his lanky form comfortably entangled in his chair. In those uncomplicated days before [1969] the *Miranda* Rule and other novelties which annoy ambitious prosecutors, Professor Puttkammer, in his course in criminal law, led us from one fascinating felony to another, including some of the then unmentionable ones. I speak of felonies as if they were his only staple. The fact is that we did take other courses from him at that period. Being young and adaptable, he had also developed expertise in Sales, in Bills and Notes, and in Wills and Administration. But those courses did not have the allure of criminal law. After all, when the appellant in a case was seeking to cheat the gallows, the arguments mustered in his behalf had an intensely human interest. And it appears that Professor himself succumbed at last to the drama and the moral challenge of criminal justice with the result that he left a permanent mark for the better on that legal wasteland.

All that I ever knew about criminal law I learned in his class perhaps eked out by a hornbook. I recall those wonderful contests in the classroom, when primed with our five or so cases, we matched wits with Professor Puttkammer, who, with unfailing courtesy and good nature, taught us to discriminate and distinguish and, so to speak, to proceed on all fours. It was a training in logic and evidence that proved invaluable to me when I later embarked on literary research. Professor Puttkammer had remarkable colleagues in that distant day, but I think he seemed closer to us and easier to argue with than his august senior associates. We were still undergraduates, having been admitted in our senior year to the first year in the law school. And what an array of

Professor *Ernst W. Puttkammer*

Mr. Samuels, Ph.B. '23, JD '26, AM '31, Ph.D. '42, winner of the Pulitzer Prize, is currently Professor Emeritus of English at Northwestern University. Mr. Samuels' remarks were delivered at a dinner given by the faculty honoring Professor and Mrs. Puttkammer on May 24, 1977.

teachers they were—James Parker Hall, Harry Bigelow, Ernst Freund, Edward Hinton, Frederic Woodward, and of course Floyd Mechem. Was there ever a more impressive figure than the philosophic and bewhiskered Daddy Mechem, unless it was Chief Justice Charles Evans Hughes?

As it turned out my first law practice in El Paso, Texas, to which I had gone in search of health, was in large part in criminal law, and I had reason to be grateful for Professor Puttkammer's instruction. As there was no public defender, the district court judge appointed us newcomers at the Bar to defend the disinherited. However, I learned there something that I had not been taught, that a young lawyer with a Yankee accent, and with what was worse, a University of Chicago vocabulary, would have pretty hard going before a Texas jury, especially when the facts were against him and there was good evidence of an *animus furandi,* though that was not how the district attorney put it. Being of a literary turn of mind, I really went for law Latin and relished the taste on my tongue of such expressions as *malum in se* and *malum prohibitum, malice propense* and *particeps criminis.* But there was nothing quite so commanding as *res judicata.* To my ear it had always been res *ad*judicata, but Black's dictionary has fortunately corrected me and in the process put me on to a lovely law Latin dictum: (I pray indulgence for my pronunciation.) *Res judicata facit ex albo, nigrum; ex nigro, album; ex curvo, rectum; ex recto, curvum.* That is to say, the judgment of a court of competent jurisdiction makes white, black; black, white; the crooked, straight; the straight, crooked.

It is a flattering, if perverse, dictum to the correction of which Professor Puttkammer devoted his life in the field of criminal justice. He has helped ensure that the crooked shall always be seen to be crooked and the straight, straight, that innocence and guilt shall be humanely discriminated and law and order be terms of praise and not of reproach.

As I Remember Him: A Profile of Professor Bigelow

Milton M. Hermann

To law students of this generation the name of Professor Harry Augustus Bigelow must, of course, be a legend; but to those of us who sat at his feet and marvelled at the depth of his learning and his extraordinary ability to impart it, he must always be the prototype of the perfect professor.

For almost half a century—a period which, by any standard, must be deemed the school's "Golden Age"—Professor Bigelow graced our school as Professor and, for a time, as Dean.

"There were giants in the earth in those days."[1] Bigelow, Mechem, Freund, Hinton, Hall, Bogert: What memories these names stir! All these men were nationally—some internationally—known. Each was pre-eminent in at least one field of the law: Bigelow in Property, Mechem in Agency, Freund in Administrative Law, Hinton in Procedure, Hall in Constitutional Law, Bogert in Trusts. To be exposed to so many fine minds in the brief period of three years was a privilege which is given to few.

What makes a law teacher great? A thorough knowledge of his subject? Exceptional ability in articulating legal principles? Total mastery of the art of making difficult subjects interesting? The capacity to stimulate thought? These are, indeed, the attributes of the great teacher. Professor Bigelow had all of them—and in abundance.

But, like all persons of great talent, he was unique. In acuteness of legal analysis, in the ability to distinguish cases which to a mind less analytical were indistinguishable, in the rapier-like thrust with which he laid bare "the heart of the matter", he has been equalled by few and excelled by none. He had, in short, the ability to make the student "think like a lawyer." In any Law Professors' Hall of Fame he would certainly stand in the front ranks of the great law teachers of his time.

But what of the man himself? I would not have you conclude that he was an unfeeling "thinking machine." To the many who knew well the quiet voice, the patient and compassionate man, the acute obser-

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Dean *Harry A. Bigelow*

vation and the dry humour behind it, Professor Bigelow was a warm person indeed. But kindly of heart though he was, he did not suffer fools gladly; and the benighted wight who would substitute talk for understanding had short shrift. It is not surprising, then, that in his courses the high grades were sparingly bestowed and thoroughly earned.

The physicist tells us that matter is indestructible; it may change its form—from solids to liquids, and from liquids to gases—but in some form it continues to exist. There is a similar indestructibility in the spiritual world. The poet understood this when he yearned to "join the Choir Invisible of those immortal souls who live again in minds made better by their presence." The truly great teacher achieves *this* form of immortality at least—the immortality of influence. He will touch *some* of his students, and move them deeply, by the spark of his genius.

Professor Bigelow's own career exemplifies this. Like his friend, Professor Albert M. Kales of Northwestern (the outstanding practitioner of his generation at the Illinois Bar in the field of property), he was a student and protege of John Chapman Gray of Harvard ("Mr. Perpetuities"). Gray's influence on both Bigelow and Kales was profound. *Their* influence on many of their own students, in turn, was no less profound. My own deep interest in the field of property was sparked, I am sure, by Professor Bigelow.

Like a stone dropped into a fast-flowing stream, the influence of a great teacher sends out ripples without end. "A teacher affects eternity; he can never tell where his influence stops."[2]

Those of us who were students of Professor Bigelow will always be grateful that our lives were touched at an early age by so extraordinary a man.

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[1]*Genesis*, VI, 4.
[2]*The Education of Henry Adams* (Modern Library ed.) 300.

Reflections on the Law School in the '30's

Mortimer J. Adler

When President Hutchins invited me to come to the University of Chicago in the Fall of 1930, he was acquainted with certain facts about my academic career at Columbia: that, while devoted to philosophical studies from my undergraduate days on, I had been teaching experimental psychology for six years; that I had been engaged in work on the law of evidence with Professor Jerome Michael of the Columbia Law School, work that paralleled the efforts of Hutchins and Schlesinger at the Yale Law School; and that I had been conducting great books seminars of the sort in which I had participated as a student under John Erskine. With this in mind, Hutchins proposed that I divide my teaching at Chicago three ways—one quarter in the philosophy department, one quarter in the psychology depart-

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Mr. Adler was Associate Professor of Philosophy from 1930 to 1932, Associate Professor of Philosophy of Law from 1932 to 1942, and Professor of Philosophy of Law from 1942 to 1952. He is currently Director of the Institute for Philosophical Research in Chicago, Illinois.

ment, and one quarter in the Law School—and that, in addition, I conduct with him as co-moderator a great books seminar for a selected group of entering freshmen.

I forget which quarter of the academic year 1930–1931 I came to bat at the Law School, but I cannot forget the auspices under which I first became engaged in its curriculum. Sometime that year Judge Hinton and I offered a seminar for seniors on the law of evidence. Dear old Judge Hinton, who was from Missouri in more ways than one, did not know what he was getting into when he accepted that assignment. Professor Michael and I were just in the process of completing a large treatise on *The Nature of Judicial Proof,* a book that employed the kind of symbolization then stylish in logic to formulate the distinctions and inferences involved in the trial of an issue of fact. During the seminar, I would go to the blackboard and cover it with the hieroglyphics of my trade as a logician, while Judge Hinton would sit back smiling his approval of generalizations to which he would never have given his consent if he had fully understood the significance of the symbols on the board. From time to time, he would interrupt my flight into the blue-sky of abstractions by bringing the seminar back to earth with an earthy story of a case he had tried when he was on the bench in Missouri.

During that first year at Chicago, I did not have a seat on the law faculty. My acquiring one resulted from the blow-up in the philosophy department, with University-wide repercussions, which had been precipitated by the unorthodox initiative of Bob Hutchins, prompted by me, to alter the character of the philosophy department by new appointments. To quiet things down, Hutchins was compelled to acquiesce in my withdrawal from the philosophy department and to abstain from further appointments to it. A waif on a storm-tossed academic sea, I was rescued from drowning by Dean Bigelow and his colleagues on the law faculty, who offered me their hospitality. It was thus that I became Associate Professor of the Philosophy of Law, a post that had not previously existed in the Law School and that was created to provide respectable academic status for me.

During the academic year 1931–1932, I continued to teach a great books seminar in the college with Bob Hutchins and a seminar on the law of evidence with Judge Hinton, but, in view of my newly acquired title, I thought it was incumbent upon me to give a lecture course on the philosophy of law, open to seniors who had completed enough bread-and-butter courses to have some free time for inessentials. The course was scheduled for the winter quarter. I had never taught the philosophy of law before. In fact, at the time I put the course in the catalogue, I was as ignorant of the subject as the students who registered to take it in January, 1932. So far as I can remember, I had never even read a single treatise on jurisprudence or a book on the philosophy of law.

Compiling a bibliography of the subject, I quickly collected the books on the shelf of my study and, somewhat more slowly, started to plough through them. They were, for the most part, works written in the 19th and 20th centuries, mainly Anglo-American, with some smattering of continental writers. The more I read, the more bewildered I became. I stumbled over a terrain the topography of which

President *Robert M. Hutchins*

remained hidden from my eyes. Wandering in a fog, I made little progress toward an outline of the course of lectures I would have to begin giving right after the end of the Christmas recess.

Throughout December, my failure to come to grips with the subject left me in a state of panic. I kept on reading and making voluminous notes; I even assembled the notes in neat piles on my desk; but the few ideas I then had in my head about the philosophy of law were in chaotic disarray. I remember vividly awaking one night in a cold sweat from a nightmare in which I had opened the window of my study on the fourteenth floor of 5400 Harper Avenue, had thrown the piles of notes on my desk out the window, and had then dived suicidally through them to the street below.

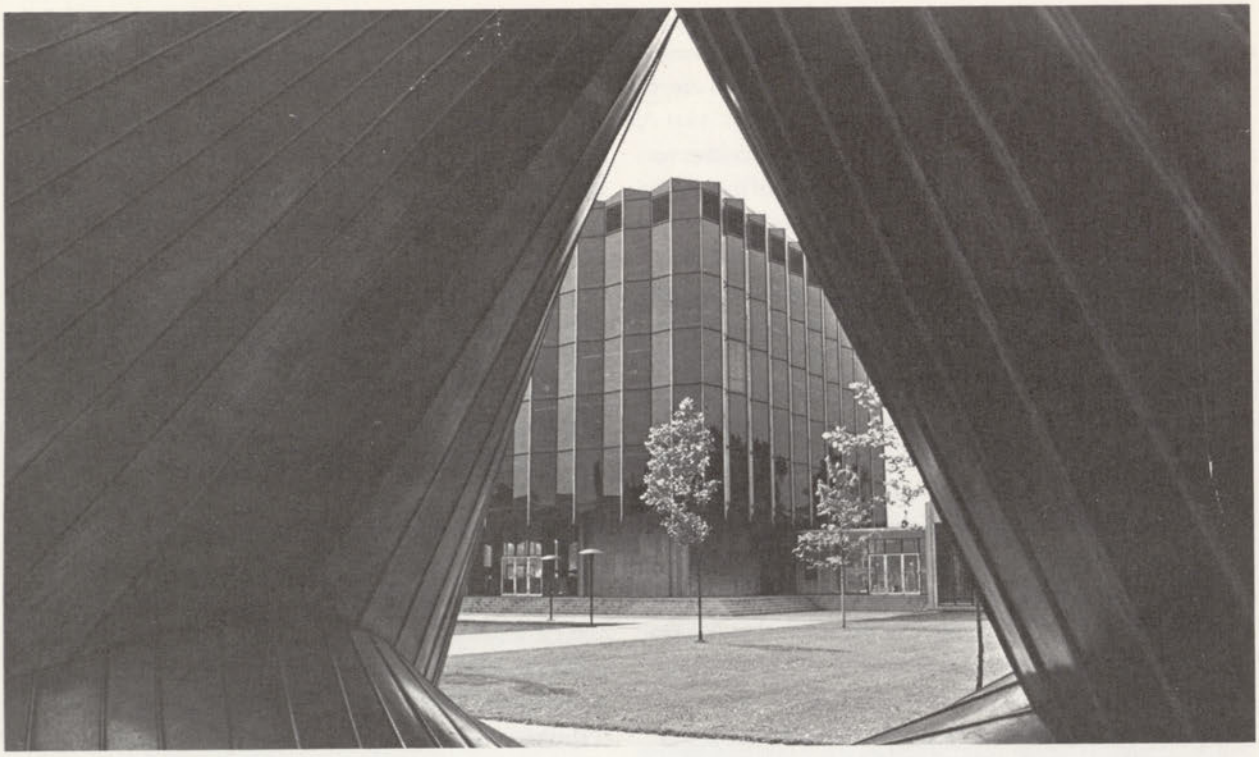
The members of the class of 1932, now celebrating the forty-fifth anniversary of their graduation from the Law School, will, I hope, remember that I survived that nightmare to give a course on the philosophy of law which I found as instructive as they did, for we were exploring that subject together for the first time. They will also remember the pivotal role played by Thomas Aquinas in the organization and illumination of the subject matter being considered. At the eleventh hour, when I was just about ready to give up in despair and petition the Dean to cancel the course, my prayers for help were answered by my pulling volumes of the *Summa Theologica* from the shelf and discovering that Aquinas had written a treatise on law which put the whole subject in clear perspective for me, raised most of the significant questions that a philosopher of law should think about, and provided most of the answers, as well as dealt with many persuasive objections to each of the answers that Aquinas himself espoused.

The number of students enrolled in the course were few enough to allow for extended discussion of points raised in the lectures. The seniors in that class were not only extremely bright but very argumentative. Some of them aided my own learning of the subject, in gratitude for which I rewarded them with grades in their final examinations that shocked the law school faculty and almost led to my being court-martialled for conduct unbecoming a law teacher. No one had told me that 80 or 85 was the highest grade conceivable on a final examination, and so I handed out a number of grades over 90 and two, I recall, in the neighborhood of 100.

In subsequent years, I substituted for the course on the philosophy of law a course on logic and argumentation; and Bob Hutchins and I taught great books seminars that were specifically designed to engage law students in the discussion of philosophical and humanistic topics that might enlighten their human and professional careers. Both of us harbored the conviction that a university law school should have a curriculum of studies far above the level of bread-and-butter courses aimed solely at helping students pass their bar examinations. The practitioners of a truly learned profession should be liberally educated as well as vocationally trained; and their liberal education, begun in the kind of college that Hutchins and I were trying to create at Chicago, should not only continue but deepen during their years at an ideal law school.

In the discussions of the curriculum which occurred during meetings of the law faculty, my voice expressed the point of view that Hutchins and I shared, and that point of view elicited sympathetic responses from such younger members of the faculty as Sheldon Tefft, Wilber Katz, Charles Gregory, and Malcolm Sharp. Their elders, Dean Bigelow and Professors Bogert and Ernst Freund were a little more skeptical or, shall I say, hesitant about drastic departures from the traditional content of a law curriculum, but they never allowed their doubts to shut the discussion down. It broadened to consider the kind of courses that should occupy students in the year just before entering the Law School—the so-called pre-law options in the third year of the College. I proposed that the Law School itself should develop its own pre-law course for students in the college, that it should be taught by members of the law faculty, that it should concentrate on the liberal disciplines of reading and writing, speaking and listening (the traditional liberal arts of the trivium—grammar, logic, and rhetoric), and the full credit for one whole year should be attached to the taking of this single course.

I cannot remember how long it took to get the law faculty to approve this proposal or how the approval was finally won. All I remember is that Malcolm Sharp agreed to conduct the "Trivium course" with me, that we engaged two young men, William Gorman and James Martin, to assist us as tutors, and that the four of us constituted the teaching staff that took on about twenty students who were intending to



enter the Law School. This was the only course they registered for that year. Malcolm Sharp and I conducted seminars for eight hours each week—four hours, morning and afternoon, on Tuesday, and four again on Wednesday; and the students met individually with the tutors at other hours on Thursday or Friday to discuss papers they had been assigned to write.

The "Trivium course" as it came to be called was, for me, the high point of my teaching career. It was offered in three successive years from 1934 to 1937. In the first year, it took us almost eight months to read one dialogue of Plato—the *Meno,* about fifty pages long—for we read it line by line, raising and discussing every grammatical, rhetorical, and logical consideration that the text suggested or allowed. In subsequent years, we similarly studied Thomas Aquinas's *Treatise on God* and Aristotle's *Physics.* I think I learned more about how to read a book in the three years of teaching the Trivium course than from any other experience in my life. Most of the rules of reading that I later set forth and explained in *How To Read A Book* emerged from the sessions of the Trivium course.

An educational success in almost every other way, not only for the students but for Malcolm Sharp and me and our two tutors, the Trivium course failed in one signal respect. It had been intended to prepare students for the Law School; but more than half of the students had become so excited about the study of ideas or the reading of books, and the liberal disciplines involved in these activities, that they decided not to go to the Law School after they finished the Trivium, and chose instead to go on into the graduate school for further work in literature, philosophy, history, or the social sciences. However, those who did enter the Law School distinguished themselves there as students, and some of them later became members of the faculty.

I cannot conclude these recollections without expressing my gratitude to the Law School for all the fruitful and pleasant years I spent as a member of its faculty, from 1931 until 1945 when I took leave of absence from all other academic duties to work on editing *Great Books of the Western World* and on constructing the Syntopicon. I have already mentioned colleagues of whom I have fond memories. To them I must add the names of students, such as Ed Levi, Bud Kalven, and Wally Blum, who not only contributed to my own education, but also subsequently to the development of the great Law School that now celebrates its 75th anniversary.

Memoranda

Mandel Clinic Activities

Last fall *Mark Heyrman,* while still a third-year student, argued in the United States Court of Appeals for the Seventh Circuit on behalf of a class of sexually dangerous persons that they had been improperly committed to the Menard State Penitentiary under the civil standard of proof, the mere preponderance of the evidence, rather than the criminal standard of proof, beyond a reasonable doubt. The Seventh Circuit agreed and affirmed the issuance of writs of habeas corpus requiring that the 58 members of the class be retried under the criminal standard or be released.

Recognizing that social and psychological services were required to arrange appropriate integration of these men into society, the Mandel Clinic co-operated with the John Howard Association and the Department of Corrections of the State of Illinois to obtain a $49,000 grant from the Illinois Law Enforcement Commission to support three social workers and clerical staff for six months to re-settle these persons. Professor *Gary H. Palm* '67, Director of the Mandel Clinic, and *Marc Beem* '75, Mandel Staff Attorney, were responsible for the prosecution of the class action.

Frank Bloch supervised *Richard Zehnle,* third-year student, in his oral argument before the Seventh Circuit requesting that the Court clear the way for the provision of housekeeping services for many disabled or elderly persons to avoid the necessity of their placement in nursing homes. The Seventh Circuit reversed the decision of the District Court to abstain and ordered a consideration of the merits.

Thomas P. Stillman '68 supervised *Amy Hilsman,,* third-year student, in the presentation of oral argument before the Seventh Circuit in a landmark employment case. Ms. Hilsman argued that the United States Civil Service Commission is required to advise applicants for employment of the negative evidence assembled against them and to allow them the opportunity to cross examine the sources of such information. Ms. Hilsman is awaiting the decision of the Court.

Ronald Staudt '70 has recently undertaken the management of the Clinic's Fair Employment Practices Project. He has renewed the Clinic's agreement with the Illinois Fair Employment Practices Commission to provide representation to those complainants who lack the financial resources to retain private counsel.

Moot Court

Justice *John Paul Stevens* presided at the 1977 Hinton Moot Court Competition. Other judges of this argument were Judge *Thomas E. Fairchild,* Chief Judge of the United States Court of Appeals for the Seventh Circuit, and Justice *Shirley S. Abrahamson* of the Supreme Court of Wisconsin. Finalists were *A. Eric Arnold* and *Robert H. Riley*—the winners of the competition—and *Brunn W. Roysden* and *Thomas R. Wilhelmy.*

The judges for this year's Karl N. Llewellyn Memorial Cup Competition were Justice *James A. Dooley* of the Illinois Supreme Court, Judge *Joel Flaum* of the United States District Court for the Northern District of Illinois, and *Jean Allard* '53. Llewellyn finalists were *David L. Applegate* and *David F. Graham,* and *William J. Baum, Jr.* and *C. Owen Paepke*—the competition winners.

Abner Mikva '51 was the guest speaker at the traditional dinner given by the Law Review staff and Moot Court Committee this year.

Alumni Directory

The 1977 edition of the Law School's Alumni Directory will be off the press late in the fall. Graduates who would like to order a Directory should write the Law School's Alumni Office, 1111 E. 60th Street, Chicago, Illinois 60637. The cost is $15.00 per copy.

Law School Honors and Prizes: 1977

At the June, 1977 Convocation, Dean Norval Morris announced the following honors and prizes:

Students who were awarded their J.D. degrees *cum laude* and were elected to the Order of the Coif were: *James Bird, Richard Buik, Richard Craswell, Henry Escher, Daniel Fischel, Durward Gehring, Andrew Kull, Richard Lipton, Thomas Merrill, Emily Nicklin, Paul Rochmes, Carol Rose, Peter Wellington, Timothy Wolfe, Michael Yanowitch,* and *Charles Yast. Alan Blankenheimer* was also elected to the Order of the Coif. Other persons who graduated with honors were: *Scott Burson, Robert Fryd, Lee Gudel,* and *Gary Winston.*

Dean Morris also announced the award of the following prizes: *The Casper Platt Award,* for the outstanding paper written by a student in the Law School: *Daniel R. Fischel* and *David A. Kessler.*

The United States Law Week Award, to the graduating student who has made the most satisfactory scholastic progress in the final year in the Law School: *Nell Minow.*

The Hinton Moot Court Competition Awards, to the winners of the 1976–1977 Moot Court Competition: *A. Eric Arnold* and *Robert H. Riley.*

The Karl N. Llewellyn Memorial Cup,

for excellence in brief writing and oral argument in the 1976–1977 Moot Court Competition: *William J. Baum, Jr.* and *C. Owen Paepke.*

The Joseph Henry Beale Prize, for outstanding work in the first year legal research and writing program: *Rebecca R. Pallmeyer, Robert E. Shapiro,* and *Herbert L. Zarov.*

Entering Students' Dinner

Thomas Ehrlich was the speaker at the Entering Students' Dinner on September 28, 1976. This traditional event held during the first week of school is to welcome new students to the Law School

Mr. Ehrlich is the President of the Legal Services Corporation. Until last year he had been Dean of Stanford Law School.

The 1977 speaker was The Honorable *Shirley M. Hufstedler* of the United States Court of Appeals, for the Ninth Circuit. She and her husband *Seth Hufstedler,* who is in private practice in Los Angeles, were the Ulysses S. and Marguerite S. Schwartz Visiting Fellows at the Law School during the week of September 26, 1977.

Chicagoans at Rosary

All six of the public lectures on the law in the Rosary College lecture series entitled "Cases I Have Known" were given this year by University of Chicago Law School Graduates.

George Anastaplo '51 discussed "The Trial of Joan of Arc." *Linda R. Hirshman* '69 examined the problem of obtaining meaningful relief, focussing on appropriate remedies for violations of federal civil rights laws and federal labor laws. The title of Ms. Hirshman's lecture was "Winning Isn't Everything: The Problem of Enforceable Remedies."

Richard M. Orlikoff '49 in "The House Unamerican Activities Committee and Its Judicial Nemesis" described how the litigation that met HUAC in Chicago helped kill the committee; he also discussed whether it is constitutionally possible for HUAC to be revived.

Alexander Polikoff '53, Executive Director of Business and Professional People for the Public Interest, discussed "Residence, Race and Poverty: Subsidized Housing in the Suburbs." Mr. Polikoff was chief counsel for the Gautreaux plaintiffs in *Hills vs. Gautreaux,* which resulted in the U.S. Supreme Court ruling that HUD can use its power to provide housing opportunities for low income families throughout the Chicago metropolitan area.

Franklin E. Zimring '67, Professor of Law and Director of the Center for Studies in Criminal Justice, spoke on sentencing reforms. And, Judge *Samuel B. Epstein* '15 shared his reminiscences of his days as a chancery judge.

October 1: 1902–1977

Marking the 75th Anniversary of the founding of the Law School on October 1, 1902, was a panel on "The Law and Legal Education, 1902–1977." Deans *Wilber G. Katz, Edward H. Levi* '35, *Phil C. Neal* and *Norval Morris* participated in the panel. *George F. James* '32, a member of the faculty in 1939–44, moderated.

The day also included a luncheon for alumni, friends and students at which *Bernard D. Meltzer* '37, James Parker Hall Professor, provided some reflections.

Members of the Class of 1927 were honored at the Alumni Association Annual Dinner

Alumni Events

Alumni Association Officers and Board

A Nominating Committee chaired by *J. Gordon Henry* '41 recommended to the Officers and Board of Directors of the University of Chicago Law School Alumni Association that 22 persons be elected to a three year term of office on the Association's Board. The following persons were elected: *Wendell H. Adair* '69, Chicago; *Richard F. Babcock* '46, Chicago; *Leon Bronfin* '76, Denver; *Elliot S. Epstein* '51, Chicago; *Eli Fink* '30, Chicago; *John Gwinn* '68, Chicago; *Morris I. Leibman* '33, Chicago; *Gerald F. Munitz* '60, Chicago; *George W. Overton* '46, Chicago; *Daniel N. Parker* '66, Atlanta; *Russell J. Parsons* '42, Chicago; *William G. Pfefferkorn* '62, Winston-Salem; *George A. Ranney, Jr.* '66, Chicago; *Michael A. Rosenhouse* '74, Chicago; *George W. Rothschild* '42, Chicago; *Thelma Brook Simon* '40, Wilmette; *Paul M. Stokes* '71, Miami; *Stephen E. Tallent* '62, Los Angeles; *Karen L. Tarrant* '73, Chicago; *Linda Thoren* '67, Chicago; *Mary M. Thorkelson* '71, Chicago; and *Roger A. Weiler* '52, Northfield.

Other members of the National Board are: (Terms of office in 1976–79) *John M. Friedman, Jr.* '70, New York; *Kenneth V. Handal* '73, Washington, D.C.; *Virginia M. Harding* '72, Chicago; *Donald M. Hawkins* '47, Toledo; *George C. Hoffmann* '28, Springfield; *Jerome F. Kutak* '28, Hammond; *Benjamin Landis* '30, Los Angeles; *John van der Ford Long* '51, Washington, D.C.; *Laurel L. McKee* '64, New York; *Michael Nussbaum* '61, Washington, D.C.; *Alan R. Orschel* '64, Chicago; *Grantlen Rice* '69, San Francisco; *James P. Walsh* '70, Phoenix. (Terms of office in 1975–1978) *George Hugh Barnard* '31, Chicago; *Steven M. Barnett* '66, Northbrook; *Benson T. Caswell* '74, Chicago; *George M. Covington* '67, Chicago; *Joseph Du Coeur* '57, Chicago; *S. Richard Fine* '50, Chicago; *Herbert B. Fried* '32, Chicago; *Carol E. Moseley* '72, Chicago; *Jean Hamm Munk* '73, Chicago; *Marshall A. Patner* '56, Chicago; *Samuel Schoenberg* '35, Chicago; *Arnold Silvestri* '49, Chicago; and *Robert E. Stevens* '63, Portland, Maine.

The officers of the Alumni Association are: *Frank Greenberg* '32, Chicago, President, and *Lillian E. Kraemer* '64, New York, First Vice President; Vice Presidents are *Frederick Sass, Jr.* '32, Washington, D.C.; *Raymond Wallenstein* '34, Los Angeles; *Daniel C. Smith* '40, Chicago; *Nancy Goodman Feldman* '46, Tulsa; *Gene B. Brandzel* '61, Seattle; *Roland E. Brandel* '66, San Francisco; *Raymond A. Jensen* '50, Chicago, is Secretary and *John G. Satter, Jr.* '58, Pontiac, is Treasurer. Regional Presidents are: *Fred C. Ash* '40, Dallas; *Roland E. Brandel* '66, San Francisco; *Gene B. Brandzel* '61, Seattle; *Mont P. Hoyt* '68, Houston; *Miles Jaffe* '50, Detroit; *Robert N. Kharasch* '51, Washington, D.C.; *Duane W. Khronke* '66, Minneapolis; *Michael B. Lavinsky* '65, Denver; *Sidney I. Lezak* '49, Portland; *Robert A. Lindgren* '63, New York; *James A. Malkus* '61, San Diego; *Fred H. Mandel* '29, Cleveland; *Philip A. Mason* '67, Boston; *John F. McCarthy* '32, Chicago; *Lester E. Munson, Jr.* '57, DuPage County; *Robert L. Seaver* '64, Cincinnati; *Henry H. Stern* '62, St. Louis; *Matsuo Takabuki* '49, Honolulu; *Martin Wald* '64, Philadelphia; and *Donald M. Wessling* '61, Los Angeles.

Reunions

During the past year many Law School classes have marked an anniversary of their graduation from the School.

Members of the *Class of 1927* celebrated their 50th Reunion at a special reception on the evening of the Annual Dinner of the Alumni Association. The gathering was planned by *Irving H. Goldberg.*

The *Class of 1932* had a reception and dinner on June 4 at the Law School. Reunion Chairman was *Thomas H. Alcock.*

On May 7 members of the *Class of 1937* celebrated their 40th Reunion. The class had a reception and dinner at the School planned by a committee headed by Reunion Chairman *Samuel R. Lewis, Jr.*

A large contingent from the *Class of 1942* gathered on the evening before the Annual Dinner to celebrate their 35th Reunion. *Maurice Fulton, Lorenz F. Koerber, Herbert Lesser, Russell J. Parsons,* and *George W. Rothschild* planned the function.

The 25th Reunion of the *Class of 1951* was held on a November weekend last year. This event was planned by *Charles Lippitz, Richard Bockelman, Robert Kharasch, Karl Nygren, Gerald Specter,* and *Charles Russ.*

The *Class of 1952* will be holding their 25th Reunion this fall around the festivities of the 75th Anniversary of the Law School. Planners of this affair are *Julian R. Hansen, David V. Kahn, Burton W. Kanter, A. Bruce Schimberg, Roger A. Weiler* and *Bernard Weisberg.*

Ronald A. Aronberg chaired a committee of his classmates from the *Class of 1957* who organized their 20th Reunion which was held on May 21.

The *Class of 1962* gathered in Chicago for a reunion luncheon on the day of the Annual Dinner. *James A. Donohoe* hosted this event.

The *Class of 1967* held their 10th Reunion during the ABA Annual Meeting in Chicago. Reunion organizers were *William L. Achenbach, William Bowe,* and *Donald Samuelson.*

And, an anonymous group from the *Class of 1972* planned a gathering at *Virginia M. Harding*'s home the evening following the Annual Dinner.

ABA Reception

An informal supper for Law School graduates and their guests was held on August 6 at the School during the Annual Meeting of the American Bar Association. The dinner followed a reception given by University President John T. Wilson and Mrs. Wilson.

During the day special campus tours were offered, and an organ concert and a carillon recital were given.

A committee of graduates (*Jean Allard* '53, *Carol E. Moseley* '72, *Antonio Sarabia* '49, *James S. Whitehead* '74 and *Jerome S. Weiss* '32, chairman) helped *Frank Greenberg* '32, President of the Law School Alumni Association, plan this event.

Atlanta

This spring Professor of Legal History and Associate Dean *Stanley N. Katz* spoke at a luncheon for graduates of the Law School in the Atlanta area. At this luncheon, which was planned by *Daniel N. Parker* '66, Mr. Katz discussed activities at the Law School and the research he is doing on the law of philanthropy.

Director of Placement *Herbert B. Fried* '32 met informally with graduates and others interested in the Law School in Atlanta on June 13. *Stephen A. Land* '60 planned this reception.

Washington, D.C.

The Washington, D.C. chapter of the Alumni Association held its traditional luncheon in conjunction with the ALI meeting on May 19. *Walter J. Blum* '41, Wilson-Dickinson Professor of Law, was the speaker. Special guest was *Bernard D. Meltzer* '37, James Parker Hall Professor of Law. *Robert N. Kharasch* '51, Chapter President, planned this affair.

San Francisco

During the past year the San Francisco chapter has had two functions, planned by *Roland E. Brandel* '66, Chapter President, and *Ronald G. Carr* '73. The first was an informal luncheon in May for *Lilly* and the late *Max Rheinstein,* Max Pam Professor Emeritus of Comparative Law.

Professor *Hans Zeisel* speaking to Los Angeles area alumni

The chapter's annual luncheon for Chicago's summer associates in the Bay Area was held on July 6. *Preble Stoltz* '56 was the speaker at this function. He discussed his work as Assistant to California Governor Brown and Director of Programs and Policies.

Los Angeles

Hans Zeisel, Professor Emeritus of Law and Sociology, spoke to Los Angeles graduates and their guests on May 25. He discussed "New Research in Criminal Law." Judge *Benjamin Landis* '30 made the arrangements for this program.

Houston

Dean *Norval Morris* was the speaker at a gathering of Houston graduates and their guests on June 20. *Mont P. Hoyt* '68, Regional President of the Alumni Association in Houston, planned this event.

1977 Annual Dinner

The Law School Alumni Association's Annual Dinner was held this past year on April 21 at the Hyatt Regency Chicago. *Edward H. Levi* '35, Glen A. Lloyd Distinguished Service Professor, was the evening's featured speaker. *Gene B. Brandzel* '61, Seattle Regional President of the Law School Alumni Association, presided at the function, which was attended by over 700 persons.

Dallas

James A. Donohoe '62 planned the program at which Dean *Norval Morris* was guest speaker on June 21 in Dallas. Mr. Morris reflected upon his two years as dean of the Law School and discussed some topics from his most recent book, *Letter to the President on Crime Control,* which he co-authored with Gordon Hawkins.

Miami

Paul M. Stokes '71 planned a luncheon on March 18 in Miami for the nearly 70 University of Chicago Law School graduates in the area. Special guest Professor *Edmund W. Kitch* '64 discussed the state of the School at the luncheon.

San Diego

Dean *Norval Morris* was the speaker at a Law School luncheon in San Diego on June 24. Special guest at this function was *Kenneth Culp Davis,* John P. Wilson Professor Emeritus of Law. *James Malkus* '61, San Diego Regional President of the Law School Alumni Association, and *James Granby* '63 planned this event.

Regional Correspondents

The Editorial Board of *The Law Alumni Journal* urges all graduates to contact either the Law School's Alumni Office directly (at 1111 E. 60th Street, Chicago, Illinois 60637) or their regional correspondent with news or articles for inclusion in the *Journal.*

Regional Correspondents are: BOSTON—*Philip A. Mason* '67, CHICAGO—*James S. Whitehead* '74, CINCINNATI—*Robert L. Seaver* '64, CLEVELAND—*Kenneth R. Schmeichel* '73, DALLAS—*Fred C. Ash* '40, DENVER—*Michael B. Lavinsky* '65, DETROIT—*Miles Jaffe* '50, HONOLULU—*Matsuo Takabuki* '49, HOUSTON—*Donald R. Cassling* '76, LOS ANGELES—*Donald M. Wessling* '61, MINNEAPOLIS—*Duane W. Krohnke* '66, NEW YORK CITY—*Robert A. Lindgren* '63, PHILADELPHIA—*Michele Langer* '73, PORTLAND—*Richard M. Botteri* '71, ST. LOUIS—*Henry H. Stern* '62, SAN DIEGO—*James A. Malkus* '61, SAN FRANCISCO—*Robert J. McCarthy* '72, SEATTLE—*James E. Rottsolk* '71, WASHINGTON, D.C.—*Robert N. Kharasch* '51.

Chicago Chapter

The Chicago Chapter of the Law School Alumni Association held a series of Loop Luncheon programs again this year and sponsored the School's first Continuing Legal Education program.

The Loop Luncheon Committee, chaired this year by *Bernard J. Nussbaum* '55 and *Ann Rae Heitland* '75, arranged the following programs: in the fall *Soia Mentschikoff, Julian Levi* '31, and *John P. Heinz* were the speakers. Ms. Mentschikoff, a member of the School's faculty for more than 25 years, discussed legal education from her new vantage point as Dean of the Law School at the University of Miami. Mr. Levi discussed urban problems and what the South East Chicago Commission, of which he is Executive Director, is doing about them. Mr. Heinz, who was a Visiting Professor at the Law School during the 1975–76 academic year, discussed his study of the legal profession in Chicago. A paper by Mr. Heinz, "Specialization and Prestige in the Legal Profession: The Structure of Deferrence," has recently been published by the American Bar Foundation.

This winter Judge *George N. Leighton,* who was Chairman of the ABA's Section of Legal Education and Admissions to the Bar, discussed the role of law schools on the legal profession. *Norval Morris,* Julius Kreeger Professor of Law and Criminology and Dean of the Law School, examined sentencing practices. The third winter speaker was *Francis A. Allen,* who was Visiting Professor at the Law School during the Winter and Spring quarters and who is the immediate past president of the Association of American Law Schools.

The three Spring speakers were *Philip M. Hauser,* Lucy Flower Professor in the Department of Sociology and the Director of the Population Research Center; *Elmer Gertz* '30; and *Alex Elson* '28. Mr. Hauser considered "The Implications of Demographic Changes for the Law and Legal Profession." Mr. Gertz discussed "Is the Press Still Free? Thoughts on *Elmer Gertz v. Robert Welch, Inc.*" Mr. Elson, who was one of the founders of the National Academy of Arbitrators and who has been practicing law and arbitrating for the past 30 years, spoke on "How an Arbitrator Decides a Case—A Discussion of the Decisional Process."

This summer U.S. Magistrate *Olga Jurco* discussed "What a Magistrate Does." And, *Linda R. Hirshman* '69, General Counsel to the ACLU, examined the constitutional rights of public employees.

The Loop Luncheon Committee also held a special function on Going to Law School. Panelists participating in the informal discussion of such topics as opportunities open to persons with legal educations, preparation for law school, and admissions were: Dean *Norval Morris;* Assistant Dean and Dean of Students *Richard I. Badger* '68; and Director of Placement *Herbert B. Fried* '32.

The Law School's first Continuing Legal Education program was planned by a committee chaired by *Antonio R. Sarabia* '49 and *Edmund W. Kitch* '64. Professor *Richard A. Epstein* led a program and discussion on products liability.

Following the recommendations of a Nominating Committee chaired by *George W. Rothschild* '42, the Chicago Chapter Board of Directors elected the following persons to serve as Officers of the Chapter for the next two years: *Susan A. Henderson* '69 and *C. Curtis Everett* '57 will serve as President and First Vice President respectively. Other Chapter officers are: *David S. Chernoff* '62, *Lorenz F. Koerber* '42, *Carl S. Lloyd* '20, *Carol E. Moseley* '72, and *Bernard J. Nussbaum* '55, Vice Presidents; *Robert E. English* '33, Secretary; and *Ann Rae Heitland* '75, Treasurer.

Newly elected Directors whose terms expire in 1980 are: *Harry Adelman* '37, *Ronald J. Aronberg* '52, *Herbert L. Caplan* '57, *Sherman P. Corwin* '41, *Alex Elson* '28, *Edwin H. Goldberger* '50, *Walter C. Greenough* '75, *Celeste M. Hammond* '68, *Steven L. Harris* '73, *David C. Hilliard* '62, *Thomas E. Kluczynski* '27, *Herbert Lesser* '42, *Ann M. Lousin* '68, *Byron S. Miller* '37, *Joseph Morris* '76, *Richard M. Orlikoff* '49, *A. Bruce Schimberg* '52, *Michael Schneiderman* '65, *Hubert L. Will* '37, and *James Zacharias* '35.

Other members of the Board are: (Terms expiring in 1978) *George Hugh Barnard* '31, *Steve M. Barnett* '66, *Benson T. Caswell* '74, *George M. Covington* '67, *Joseph DuCoeur* '57, *S. Richard Fine* '50, *Herbert B. Fried* '32, *Carol E. Moseley* '72, *Jean Hamm Munk* '73, *Marshall A. Patner* '56, *Samuel Schoenberg* '35, and *Arnold Silvestri* '49; (Terms expiring in 1979) *Frederick W. Axley* '69, *Michael A. Braun* '72, *Roberta G. Evans* '61, *Howard C. Flomenhoft* '65, *Maurice Fulton* '42, *Elmer Gertz* '30, *Zenia S. Goodman* '48, *Theodora Gordon* '47, *Steven A. Grossman* '71, *Ann Rae Heitland* '75, *Franklin W. Klein* '32, *Joan D. Levin* '72, *Carl S. Lloyd* '20, *David S. Logan* '41, *Bernard J. Nussbaum* '55, *Marianne K. O'Brien* '71, and *Michael L. Shakman* '66.

Class Notes

1920

Earl B. Dickerson has been honored by the NAACP and Northwestern University recently. Mr. Dickerson received the Legal Defender Award for his civil rights activities from the NAACP and the degree of Doctor of Laws from Northwestern University.

1923

Edward D. McDougal, has retired and moved to Santa Barbara, California.

1924

Hugh J. Dobbs retired from Gillespie, Burke & Gillespie in 1972 although he shared office facilities with them until 1975. He now maintains his own separate private office in Springfield, Illinois.

1927

Thomas E. Kluczynski retired from the Illinois Supreme Court in December 1976. Justice Kluczynski is now practicing law with the Chicago firm of Kluczynski, Dore & O'Toole.

Wilson H. Shorey, formerly of Davenport, Iowa, has retired and is living in Mt. Ida, Arkansas.

Theodore J. Ticktin, formerly President of the Bryson Hotel Corporation, in Chicago, has retired and is living in West Los Angeles, California.

1928

Charles T. Sabel has retired and is living in Miami Beach, Florida.

An honorary membership was conferred upon retired Illinois Supreme Court Justice *Walter V. Schaefer* by the Fellows of the American Bar Foundation at their annual meeting in February of this year. The American Judicature Society also honored Justice Schaefer recently when it presented him with the Herbert Harley Award for his "distinguished service to the state of Illinois and the nation."

1929

Since retiring from the U.S. Senate, *Roman L. Hruska* has become Of Counsel to the Omaha firm of Kutak, Rock, Cohen, Campbell, Garfinkle & Woodward.

Fred H. Mandel is an Acting Judge in the Cleveland Heights Municipal Court. Mr. Mandel is a Vice President of the Law School Alumni Association.

1932

Thomas H. Fitzgerald has retired from the Circuit Court of Cook County, Illinois.

Victor E. Hruska has retired from his position as Director of Older American Volunteer Programs—ACTION. He now resides in Fair Haven, New Jersey.

1933

William B. Basile has retired from the Richardson Company of Melrose Park, Illinois.

Robert Lee Shapiro is now Of Counsel to the Chicago law firm of McCarthy & Levin.

1935

Edward H. Levi has returned to the University of Chicago Law School as the Glen A. Lloyd Distinguished Service Professor. He will teach Elements of Law. Mr. Levi most recently served as Attorney General of the United States.

James Zacharias is presently serving as the Chairman of the Illinois Commission on Children.

1938

Sheldon E. Bernstein, formerly of Bernstein, Alper, Schoene and Friedman, is now with Union Center Plaza Association, in Washington, D.C.

Thomas I. Megan is now with the Interstate Commerce Commission, in Washington, D.C.

1939

A. Leonard Anderson is now Real Estate Manager with the U.S. Army Corps of Engineers in Bourbon, Missouri.

Leland Simkins has retired from his post as Chief Judge of the 11th Judicial Circuit, in Lincoln, Illinois and now resides in Naples, Florida.

1940

Seymour Tabin has joined the law firm of Gottlieb & Schwartz in Chicago.

1942

Robert B. Hummel is now with Arnold & Porter in Washington, D.C.

Paul W. Rothschild is at the School of Business Administration of Pepperdine University, in Malibu, California.

Robert W. Schafer is the IRS Assistant Regional Counsel, in San Francisco.

1944

Henry W. Fredericks is with Fremaco, Inc. in Pacific Palisades, California.

1946

Jewel Lafontant has been elected a director of the Equitable Life Assurance Society of the United States. Ms. Lafontant is a member of the Chicago law firm of Lafontant, Wilkins and Fisher.

1948

James H. Evans has been named Chairman and Chief Executive Officer of the Union Pacific Corporation, New York.

Joseph E. Sheeks is with Sheeks & Oswald, San Rafael, California.

Donald J. Yellon has been named Executive Vice-President and General Counsel of The First National Bank of Chicago.

1949

Walter J. Welter is with the Office of General Counsel of the U.S. Department of Agriculture, in Temple, Texas.

1950

Marion W. Garnett has been elected a Cook County Circuit Court Judge.

1951

George Anastaplo conducted two week-long courses this summer at the Clearing in Ellison Bay, Wisconsin.

Peter Krehel is now the president of Northumberland County Court, Pennsylvania. Judge Krehel took his oath of office in January 1977.

Patsy T. Mink has been appointed Assistant Secretary of State; her responsibilities include oceans, international environmental and scientific affairs.

Alfred M. Palfi is a Trust Officer at the Chicago Title & Trust Company.

Sheldon R. Stein has joined the Chicago firm of D'Ancona, Pflaum, Wyatt & Riskind.

1952

Stephen I. Martin has been named Vice-President of the Hartford Insurance Group, located in Hartford, Connecticut. He had been with the Florida Association of Insurance Companies in Tallahassee, Florida.

George M. Sfeir is now with the United Nations in Geneva, Switzerland. He had been located in Beirut as Chief of the Industry Division of the United Nations Economic Commission for Western Asia.

1953

Jean Allard was elected a director of the Maremont Corporation of Chicago.

This winter *Harry Fisher* was a scholar in residence at the Ecumenical Institute for Advanced Theological Studies in Jerusalem.

William M. Marutani is a judge in the Common Pleas Court in Pittsburgh, Pennsylvania.

1954

Renato Beghe, a partner in the New York law firm of Carter, Ledyard and Milburn, is Chairman of the Tax Section of the New York State Bar Association this year.

Hugh A. Brodkey has been named Vice-President and Association General Counsel of the Chicago Title Insurance Company, in Chicago.

1955

George M. Joseph has been appointed a Judge of the Oregon Court of Appeals. Governor Straub made the appointment after Mr. Joseph was recommended for the position by a poll of Oregon lawyers. The appointment is effective September 1, 1977. For the past 2½ years Mr. Joseph had been Multnomah County Counsel.

1957

Walter C. Clements is with McCarthy & Clements, in Chicago.

Miriam Chesslin Feigelson is now a Legal Officer with the Bergen County Community Action Program, Inc. in Hackensack, New Jersey. Ms. Feigelson had been Senior Attorney with the National Employment Law Project, Inc. in New York City.

Marshall J. Hartman is with the Criminal Defense Consortium in Chicago.

Fredrick A. Yonkman was honored this past January by the National Collegiate Athletic Association at their annual Honors Luncheon.

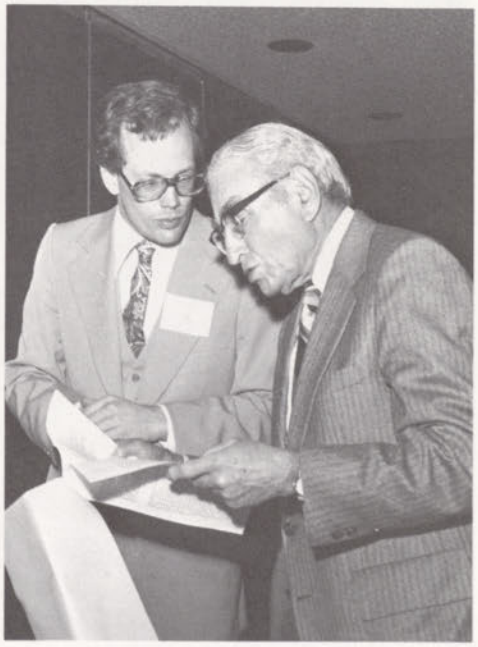
1958

Allen C. Engerman has joined the Chicago firm of Solomon, Rosenfeld, Elliott, Stiefel & Engerman.

1959

Frederick B. Abramson is now with Sachs, Greenebaum & Tayler of Washington, D.C.

In September 1976, *Ronald O. Decker* was promoted to Director of Legal Services of the Institute of Gas Technology, an energy research institute in Chicago.



Assistant Dean *Frank L. Ellsworth* reviews preparations for the Reunion of the Class of 1927 with *Irving H. Goldberg,* JD '27

1960

John W. Castle has become Director of the State of Illinois Office of Local Government Affairs in Springfield.

During the past year *Morton H. Zalutsky* has lectured throughout the country on employee benefits. He has spoken at three Practicing Law Institutes, three ALI-ABA meetings, and at an institute at the University of Miami Law Center. Mr. Zalutsky is with Dahl, Zalutsky & Nichols in Portland, Oregon.

1961

Mary Ann Glendon was Visiting Professor at Harvard Law School this past year. She is on the faculty of Boston University School of Law.

Richard A. Heise is now Executive Vice-President of Hillenbrand Industries in Batesville, Indiana.

Roger E. Reynolds is now at the Pontifical Institute in Toronto, Ontario. He had been a member of the history faculty at Carleton University in Ottawa.

1962

Charlotte S. Adelman has been elected to the Board of Directors of the Illinois Environmental Council. The Council is a coalition of environmental groups and concerned citizens formed to coordinate activities statewide on environmental issues and to serve as an environmental lobby in Springfield.

John C. Brooks has been elected the North Carolina Commissioner of Labor.

Arnold J. Karzov is with Morgan, Slater, Sider, Tuchow, Karzov & Brode, in Chicago.

William C. Lee has joined the firm of Hunt, Suedhoff, Borror, Eilbacher & Lee in Fort Wayne, Indiana.

Robert M. Pearl has joined Burke, Haber & Berick in Cleveland.

Howard J. Silverstone, formerly with the Internal Revenue Service, has become a member of the law firm of McClure & Trotter in Washington, D.C.

Raymond I. Skilling is now with the Combined Insurance Company of America in Chicago.

1963

George F. Bruder is with Bruder & Gentile in Washington, D.C.

Donald Elisburg has been appointed Assistant Secretary of Labor for Employment Standards Administration. An article by Mr. Elisburg, "Wage Protection Under the Davis-Bacon Act," appeared in the June 1977 *Labor Law Journal.*

Gene Edwin Godley is now Assistant Secretary for Legislative Affairs for the Treasury, in Washington, D.C.

Linn C. Goldsmith is with the law firm of Boyle & Goldsmith, in Hennepin, Illinois.

Rex E. Lee has returned to Brigham Young University's J. Reuben Clark Law School in Provo, Utah, as Dean. He had previously been in Washington, D.C., serving as U.S. Assistant Attorney General in the Department of Justice-Civil Division.

Michael Marks is now Assistant General Counsel of Alexander & Badner; he is involved in agriculture, shipping and real estate.

William Richardson, who had been a judge on the District Court of Multnomah County (Portland), was elected to a position on the Oregon Court of Appeals. His election unseated an incumbent. After the election, Judge Richardson was appointed a judge pro tem to the appellate court to finish out the term of another retiring judge. His own term began in January 1977.

G. O. Zacharias Sundstrom, formerly on the law faculty at the University of Abo in Turku, Finland, is now associated with Nordic Law Consultants in Helsinki.

Gene B. Brandzel, JD '61, presided at the Alumni Association Annual Dinner

1964

Terence J. Anderson has joined the faculty of the University of Miami School of Law in Coral Gables, Florida.

Sandra Weaver Bixby has joined the Chicago firm of Defrees & Fiske.

Douglas M. Costle has been appointed Administrator of the Environmental Protection Agency in Washington, D.C.

Robert V. Johnson is with the Legal Services Corporation in Chicago.

Richard G. Kinney recently opened his own law office in Chicago. He is specializing in patents, trademarks, copyrights and related matters.

Jerome H. Marcus is now with Con-

Laying the cornerstone, April 2, 1903

cord Fabrics in New York City.

Lawrence E. Scholl has moved from Cincinnati to New Orleans, where he is Vice President and General Counsel of the Ohio River Co.

1965

Ronald E. Boyer is now with Fleming, McGrew & Boyer in Watseka, Illinois. Mr. Boyer had been the Iroquois County States Attorney.

Janice C. Griffith is now with the Office of Corporation Counsel in New York.

Grady J. Norris is with HUD in Washington, D.C.

Kenneth L. Pursley is with Pursley & Underwood, in Boise, Idaho.

Alan H. Saltzman has joined the faculty of the University of Detroit School of Law.

William Snouffer has left the faculty of the Northwestern School of Law at Lewis and Clark College in Portland, Oregon to become a judge on the District Court of Multnomah County (Portland).

Edward E. Vaill is now with the Atlantic Richfield Company in Los Angeles.

1966

Jerry N. Clark is Director of Research and Statistics with the United Mine Workers' Health and Retirement Fund in Washington, D.C.

Robert C. Funk has joined Smith and Granack in Hammond, Indiana.

Robert W. Hamilton is with Max Factor & Co. in Hollywood, California.

Eugene M. Kadish is President of Standard Glass Company, Phoenix, Arizona.

Joseph V. Karaganis has recently formed the firm of Karaganis and Gail, Ltd. in Chicago.

Mary Lee Leahy is now with Leahy and Maksym in Springfield, Illinois.

Since 1974 *Donald L. McGee* has been Vice-President, Secretary and General Counsel for Grubb and Ellis, a real estate brokerage company in Oakland, California. Mr. McGee is a Director of the Bay Area Alumni Club for the University of Chicago.

David S. Tatel is the Acting Director of the HEW Office of Civil Rights in Washington, D.C.

C. Bruce Taylor is a partner in the Birmingham, Michigan firm of Surridge, Afton, Young, Reid & Taylor.

Frank H. Wohl is with the U.S. Attorney's Office in New York City.

1967

Milton M. Barlow is Executive Vice President of the Johnson County National Bank in Prairie Village, Kansas.

John H. Barrow is Vice President of Mars, Inc., in McLean, Virginia.

Albert C. Bellas has joined Loeb, Rhoades & Co. in New York City.

John J. Berwanger is with Household Finance Corporation in Chicago.

William Bowe travelled to Cuba last fall, following an invitation from the Cuban government. He published an article describing his travels in the *Chicago Tribune*.

Keith Eastin is with Eastin, Benefield

& Widmer in Houston.

Howard M. Landa has been elected to the board of directors of IPCO Hospital Supply Corporation of White Plains, New York. Mr. Landa is the company's secretary and corporate counsel.

Michael A. Lerner has joined Haskell & Perrin in Chicago.

David Minge, while on leave of absence from the University of Wyoming College of Law last year, was a consultant on administrative law to the Judiciary Committee of the U.S. House of Representatives and then was a Fulbright Lecturer at the Faculty of Law, University of Helsinki. Recently he joined the firm of Nelson, Oyen & Torvik in Montevideo, Minnesota.

David L. Passman is now with Baum, Glick & Wertheimer Associates in Chicago.

Roberta C. Ramo's book, *How to Create a System for the Law Office,* was published in January by the American Bar Association.

Kenneth M. Stern is now with SBM, Inc. in Monaco.

1968

Celeste Hammond is helping coordinate a conference on Teaching Professional Responsibility at the University of Detroit Law School.

Darrell B. Johnson has joined the faculty of Southwestern University School of Law in Los Angeles.

Ann Lousin, an assistant professor at John Marshall Law School, has been appointed Chairman of the Illinois Civil Service Commission by Gov. James R. Thompson.

Charles A. Marvin is now with the Law Reform Commission in Ottawa, Ontario.

Philip R. McKnight is with Ivey, Barnum and O'Mara in Greenwich, Connecticut.

John E. Morrow is now with Baker & McKenzie's office in Hong Kong.

Galen R. South is with the Combined Insurance Company of America in Chicago.

Thomas P. Stillman, formerly a staff attorney at the Mandel Legal Aid Clinic, is with the law office of Robert Plotkin in Chicago.

1969

Joel M. Bernstein is associated with Memel, Jacobs, Pierno & Gersh in Los Angeles.

David M. Blodgett has joined the legal department of Central Telephone & Utility Corporation in Chicago.

John M. Delehanty has formed his own law firm, Parker, Auspitz, Neesemann & Delehanty, in New York City.

Quin A. Denvir, formerly with the California Rural Legal Assistance program in Gilroy, is now with the California Department of Health in Sacramento.

Claude Georges Duval is Senior Counsel with the World Bank in Washington, D.C.

Gilbert E. Gildea is at Harvard Business School.

Phillip Gordon has become a partner in the Chicago firm of Altheimer & Gray.

Dennis L. Jarvela, formerly with the Dayton Hudson Corporation in Minneapolis, has joined the legal department of the Owen-Corning Fiberglas Corporation in Toledo.

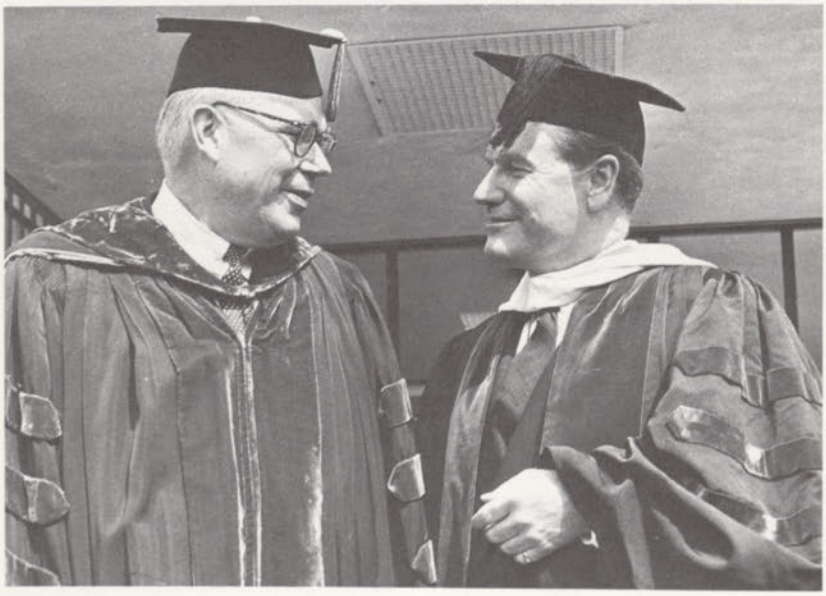
Patrick A. Keenan has become a member of the faculty of the University of Detroit School of Law.

Stephen E. Kitchen is now an attorney in the Antitrust Section of Mobil Oil Corporation's U.S. Division Office of General Counsel, in New York City. Previously Mr. Kitchen had been with Mobil's Law Department in the Chicago area.

Gary Wayne Kyle is Vice President of Pacific Southwestern Airlines in San Diego.

Gary T. Lowenthal has joined the law faculty at Arizona State University in Tempe.

Filmore E. Rose is with the Washington, D.C. law firm of Hedrick and Lane.



Chancellor *Lawrence A. Kimpton* and Governor *Nelson Rockefeller* at the dedication of the new Law School building, April 30, 1960

Dean *Phil C. Neal;* Mrs. *Eero Saarinen; Alex Hillman,* JD '24, donor of the Pevsner statue; *George Wells Beadle,* University President; and *Edward H. Levi,* University Provost, at the dedication of the Pevsner statue, June 10, 1964

John M. Samuels has been appointed Deputy Tax Legislative Counsel at Treasury. His office participates in the preparation of Treasury Department recommendations for Federal tax legislation and also helps develop and review tax regulations and rulings. Prior to joining the Treasury, Mr. Samuels had been a partner in the New York firm of Dewey, Ballantine, Bushby, Palmer & Wood.

Steven Schatzow, formerly with the Ministry of State for Urban Affairs in Ottawa, Canada, is now with the Environmental Protection Agency, Water Quality Division in Washington, D.C.

In September *Peter W. Schroth* will become an Associate Professor at New York Law School. This past year he has been a Fellow in Law and the Humanities at Harvard, while on leave of absence from Southern Methodist University. Mr. Schroth will be the U.S. Reporter on products liability for the 1978 International Congress of Comparative Law. A recent article by Mr. Schroth, "Comparative Environmental Law: A Progress Report," appears in *Harvard Environmental Law Review.*

Kenneth R. Talle is Assistant Vice-President of the First National Bank of Minneapolis.

Kenneth W. Yeates is now with the Salt Lake City firm of Van Cott, Bagley, Cornwall & McCarthy.

1970

Sara Joan Bales is with the Milwaukee firm of Edhlund & Bales.

Paul S. Berch is with the Windham County Public Defender Office in Brattleboro, Vermont.

Alan I. Farber is now in private practice in Louisville, Kentucky.

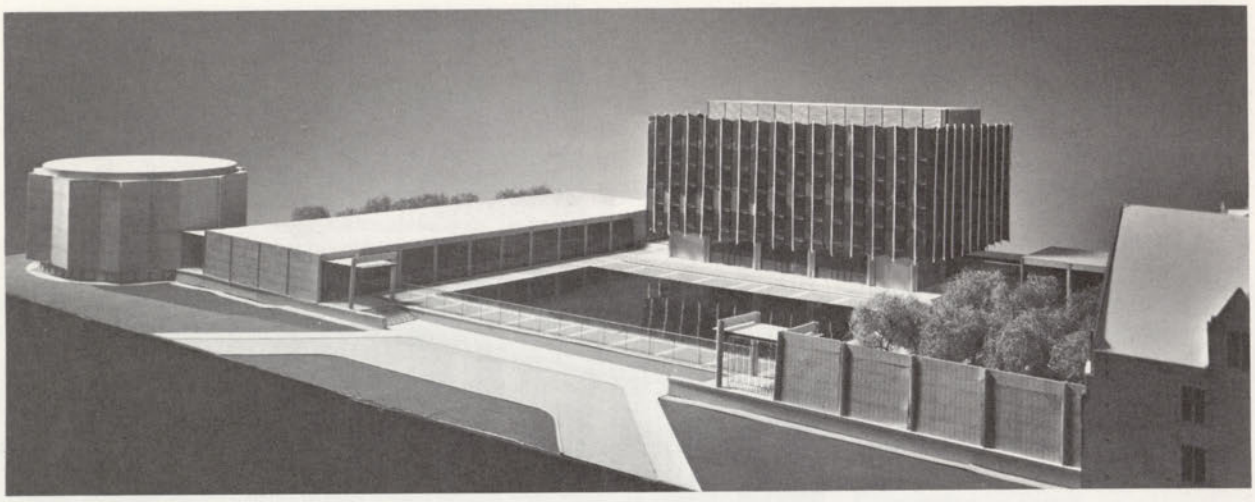
Ralph Faust, Jr., formerly with the Western Center on Law and Poverty in Los Angeles, has joined the Chicago law firm of Gary, Juettner & Pyle.

Ruth Miriam Friedman is with the Agricultural Labor Relations Board in Salinas, California.

Joseph H. Groberg, formerly of the Colorado firm of Ireland, Stapleton, Pryor and Holmes, has opened an office in Idaho Falls, Idaho.

In April of this year *Edwin E. Huddleson, III* joined the law firm of Volpe, Boskey and Lyons in Washington D.C. He had been with the Appellate Section of the Civil Division of the Department of Justice.

Paul M. Shupack, of Cleary, Gottlieb, Steen, and Hamilton, is joining the Yeshiva Law Faculty.



Theodore S. Sims is now working for the Office of Tax Legislative Counsel in the Treasury.

1971

Alan A. Alop is with the Legal Assistance Foundation of Chicago.

Vincent Badger is now with De Forest & Duer in New York City.

Daniel I. Booker, formerly with the Justice Department, Antitrust Division in Washington, D.C., is now with the Pittsburgh firm of Reed, Smith, Shaw & McClay.

Lawrence J. Corneck has joined the New York law firm of Weisman, Celler, Spett, Modlin, Wertheimer & Schlesinger.

During the past year *David W. Gast* earned the degree of Master of Science in Industrial Relations from Loyola University and was promoted to the position of General Attorney with Household Finance Corporation in Chicago.

Nancy Albert Goldberg has been appointed Director of Training for the Criminal Defense Consortium of Cook County, Inc. The Consortium is a federally funded program consisting of six private defender offices in poverty neighborhoods. The Woodlawn neighborhood office of the Consortium provides a clinical program for University of Chicago law students.

Chaitanya Gurtu is now with the Chicago office of Arthur Andersen & Co.

Robert J. Janosik is an Associate Fellow at New York University.

Stephen K. Kent is with the U.S. Nuclear Regulatory Commission in Washington, D.C.

Esther F. Lardent has been appointed Executive Director of the Boston Bar Association Volunteer Lawyers Project.

Diane R. Liff has joined the legal staff of the Columbia Gas Distribution Companies, a subsidiary of the Columbia Gas System, in Columbus, Ohio. Ms. Liff previously had been chief of the Ohio Consumer Protection Division, an Assistant Attorney General for the State of Ohio, and a member of the staff of the Ohio State Legal Services Association.

Judith Mears has become a Master of Public Health candidate at the Harvard School of Public Health.

Joel S. Newman has joined the faculty of Wake Forest University School of Law in Winston-Salem, North Carolina.

Andra Nan Oakes has become a partner in the Washington, D.C. firm of Dobrovir, Oakes, Gebhardt & Scull.

In August *Mark R. T. Pettit* joined the law faculty of Boston University. He had been at the Mandel Legal Aid Clinic since 1973.

Gabriel N. Steinberg is now with the General Services Administration in Chicago.

Paul M. Stokes has become a partner in the Miami firm of Smathers & Thompson.

1972

Roy Bleiweiss is with the Rare Books and Manuscripts Store in Los Angeles.

Laurie A. Deutsch is on the faculty at Golden Gate College of Law in San Francisco.

Deborah C. Franczek has joined the Office of Legal Counsel of R. R. Donnelley & Sons in Chicago.

Wilbur A. Glahn, II is now with the office of the New Hampshire Attorney General in Concord.

Terry M. Gordon has joined O'Melveny & Myers in Los Angeles.

James T. Hinchliff is with the Peoples' Gas Light & Coke Co. in Chicago.

Cary I. Klafter is with the San Francisco firm of Morrison & Foerster.

Robert Allen Long received an M.A. from the University of Virginia this past June.

Leonardo T. Radomile is now the managing partner of the law firm of Kantor & Wolf in Los Angeles. Mr. Radomile has also been named managing director of D.L. Abraham & Co., Inc., an investment banking firm with offices in San Francisco and Los Angeles.

Hal S. Scott is on the faculty of Harvard University Law School. Formerly he taught at the University of California School of Law at Berkeley.

James S. Wright is now with Morgan, Lewis & Bockius in Washington, D.C.

1973

Mary L. Azcuenaga is with the San Francisco General Counsel's office of the FTC.

Ronald G. Carr has joined the San Francisco firm of Morrison & Foerster.

Scott H. Clark is now with the Salt Lake City firm of Ray, Quinney & Nebeker.

Jerry R. Everhardt is now with Stern, Rendleman, Isaacson & Klepfer in Greensboro, North Carolina.

Kenneth V. Handal is presently an Assistant United States Attorney in New York City.

In February *Richard P. Horn* joined the legal department of Hershey Foods Corporation in Hershey, Pennsylvania.

Bjorn Lorenz Houston is an International Banking Officer with the United California Bank in San Francisco.

John T. McCafferty is now with the Treasury Department Office of Tax Legislation Council in Washington, D.C.

Donald T. McDougall has left Portland, Oregon, and is now working for Weldon Industries in Harvey, Illinois.

Judith K. Mintel is an assistant insurance commissioner in the Virginia Corporation Commission. Prior to assuming this position and moving to Charlottesville, she had been assistant general counsel and assistant secretary for the Maryland Casualty Company in Baltimore.

Henry J. Mohrman has been named assistant general counsel of LaBarge, Inc. of St. Louis, Missouri.

Jean Hamm Munk has joined the legal department of the Standard Oil Company in Chicago.

James C. Pratt is with the State's Attorney's Office in Atlanta.

David L. Ross has become a partner in the Atlanta firm of Haas, Holland, Levison & Gibert.

David M. Rubenstein has been appointed Deputy Assistant to the President for Domestic Affairs and Policy.

Marc P. Seidler is with the State Attorney's Office in Waukegan, Illinois.

Stanley M. Stevens has joined the Chicago firm of Rudnick & Wolfe.

Thomas Weigend, who was a Fellow and Visiting Lecturer in Law at the University of Chicago Law School during the Fall and Winter Quarters during the past academic year, is now living in Freiburg, West Germany.

1974

Margaret Du B. Avery has joined the firm of Stern, Rendleman, Isaacson & Klepfer in Greensboro, North Carolina.

Professor *Walter J. Blum* presiding at the tie competition at the annual Law Student Association "Over the Hump" party

James P. Beckwith has joined the faculty of the University of Miami School of Law.

Joseph D. Bolton has joined the Miami firm of Shutts & Bowen.

James M. Hirschhorn is with the Justice Department in Washington, D.C.

James B. McHugh is now working in the London office of Cleary, Gottlieb, Steen & Hamilton. He had been with the firm's Paris office.

June Marie Elloie Morgan is with Sears Roebuck & Co. in Chicago.

Harold F. Parker is with the Public Defender Service Corporation in Agana, Guam.

Robert Jay Reynolds has joined Fortier & Baker in Yakima, Washington.

Lawrence Rosen has left Duke University, where he taught anthropology and law, for Princeton University.

V. Lane Wharton, Jr. has formed the partnership of Hunter & Wharton in Raleigh, North Carolina.

Marc R. Wilkow has joined the law office of William W. Wilkow.

1975

Peter M. Barnett is now with the Federal Home Loan Bank Board in Washington, D.C.

Jay M. Feinman has joined the faculty of the State University—School of Law in Camden, New Jersey.

Since December of last year, *William A. Geller* has been Research Director of the Chicago Law Enforcement Study Group. An article by Mr. Geller, "Alternatives to the Exclusionary Rule," was published in the June 1977 *Search and Seizure Law Report.*

Richard L. Schmalbeck is now with Caplin & Drysdale in Washington, D.C.

Richard F. Spooner has joined the Rochester, New York firm of Nixon, Hargrave, Devans & Doyle.

Robert S. Stern has joined the firm of Tuttle & Taylor in Los Angeles.

David S. Tenner is law clerk to the Hon. Seymour Simon in Chicago.

Charles David Uniman is with Skadden, Arps, Slate, Meagher & Flom in New York City.

Dean *Norval Morris* addressing an alumni group

William F. Ware is with the American Civil Liberties Union in Washington, D.C.

Pamela Pritchard Wassmann is with the Towson, Maryland firm of Semmes, Bowen & Semmes.

John Philip Witten is with the Columbus, Ohio firm of Dunbar, Kienzle & Murphy.

James L. Woolner is now associated with the law firm of Sachnoff, Scharger, Jones & Weaver in Chicago.

1976

Timothy G. Atwood has joined Marsh, Day & Calhoun in Bridgeport, Connecticut.

Nan McCollough Gold is with the South Shore Law Office in Chicago. The storefront office is designed to bring quality, low-cost legal services to those of the working class community not eligible for legal aid. It is sponsored jointly by the Chicago Council of Lawyers, IIT-Kent Law School, the South Shore Commission and the South Shore National Bank. While still in the experimental stages, the Law Office, if successful, is expected to become a permanent addition to the community and a model for other such offices in the city.

Mark Edward Grummer is with the U.S. Department of Justice Antitrust Division in Washington, D.C.

Peter D. Heinz is with Betz Laboratories, Inc. in Trevose, Pennsylvania.

Joel M. Hurwitz is with the firm of Fohrman, Lurie, Holstein, Sklar & Cottle, Ltd. in Chicago.

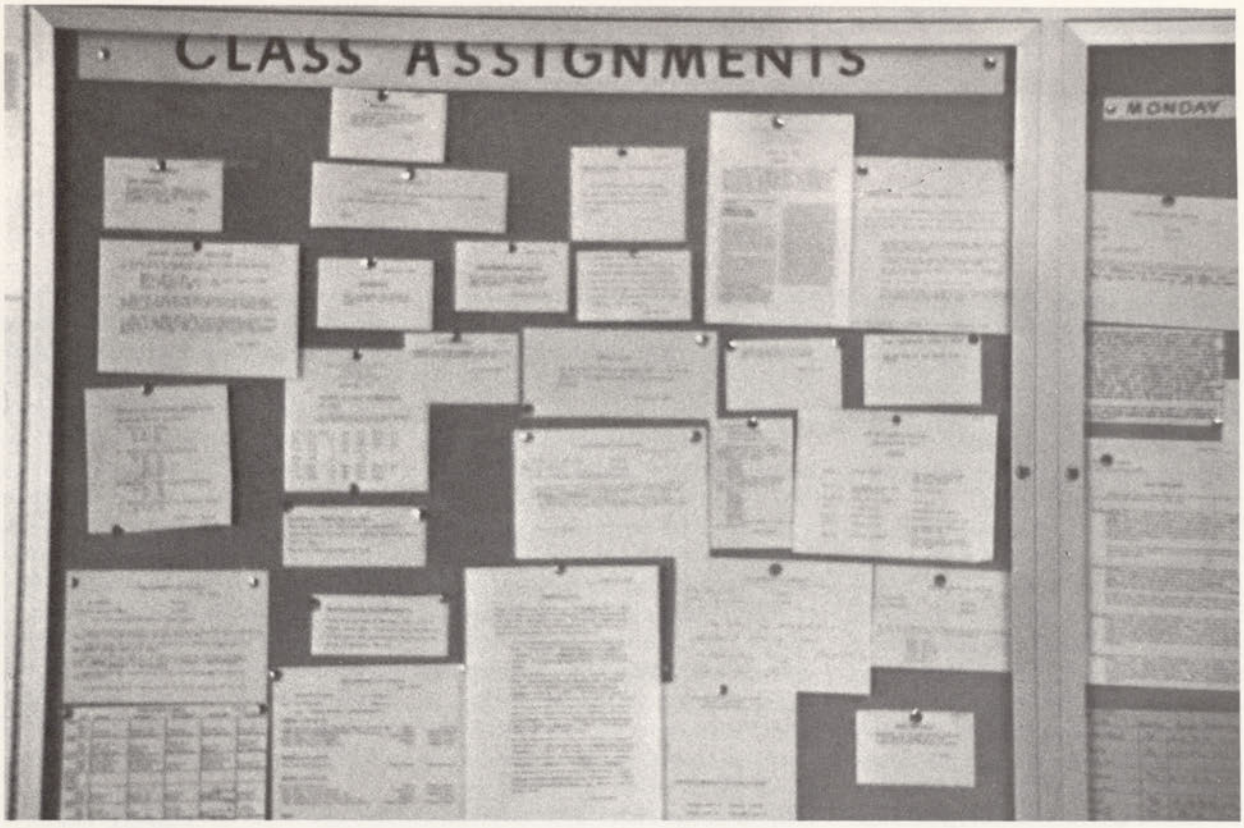
Christopher Miller Klein is with the office of the Judge Advocate General in Washington, D.C.

Early in February, *Kenneth Shepro* joined the law firm of Friedman & Koven in Chicago.

Alexander A. Spinrad has joined the Washington, D.C. law firm of Murtha, Cafferty, Powers & Jordan.

John A. Washburn has joined the law firm of Liebling, Uriell & Hamman in Chicago.

William David Witt has joined Wittco Standard, Inc. in Cleveland.



Letters (Continued from page 56)

find that at least some of these things should be illegal and that almost anyone would find that some of them should be legal. My hypothesis is that each of you gentlemen would feel that about half should be illegal, but that the two sets would be disjoint. In order to test this hypothesis, could I ask each of you to check those victimless crimes on my list that you feel should be illegal and return the list to me?

Crimes in which only one person is involved:

1. Carrying a wire-cutter in saddle bags (illegal only in Texas, but it is regarded as important enough in Texas so that it is part of the constitution);
2. Carrying a concealed pistol;
3. In many states, carrying a pistol at all, concealed or otherwise (note that in New York this applies also to such disabling, but nonfatal, weapons as Mace);
4. Riding a motorcycle without a safety helmet.

Crimes which involve more than one person:

1. Sex acts between consenting adults, whether homosexual, heterosexual, sodomy, etc.;
2. Sale of an unregistered gun;
3. Sale of drugs, which may be (a) heroin, (b) marajuana, (c) alcohol;
4. Constructing and selling new cars without safety equipment to knowing purchasers;
5. Gambling (note that this is perfectly legal in many areas, if a heavy tax is paid or if a state bureaucracy is acting as bookie; however, it is illegal in many places, regardless of these considerations);
6. Selling an unlicensed drug to victims of heart disease (assume this particular drug is the drug of choice for a number of diseases in most of the world, but its use is illegal in the U.S., essentially because the Food and Drug Administration takes a very long time to make up its mind about new drugs);
7. Sale of pornography, whether in the form of printed material or movies;
8. Hiring an individual to work in a factory which does not meet the safety standards required by the federal government (note that the individual hired is assumed to *know* the safety standards are not met);
9. Prostitution;
10. The sale of meat which has not been slaughtered under approved conditions (note, once again, we must assume for purposes of this example that the customer knows this).

Gordon Tullock '47
University Distinguished Professor
Virginia Polytechnic Institute
and State College

Letters

To the Editor:

I read with much interest the two articles by Dallin Oaks and Gordon Hawkins in recent issues of *The Law Alumni Journal.* The article discuss whether and to what extent the criminal law should encompass "victimless crimes,"—those that lack victims (complainants) asking for the protection of the criminal law.

The issue is a philosophic one, requiring serious attention to first principles. It is the inadequacy of this attention in Mr. Hawkins' reply to Mr. Oaks that occasions my comments. I found his article to be clever and adroit, but not satisfying.

It is easy to agree with Mr. Hawkins' very general assertions (1) that (quoting Freund) "not every standard of conduct that is fit to be observed is also fit to be enforced," or (2) that our criminal justice system is asked to do much more than is feasible, or (3) that responsible lawmaking requires "more than assiduous attention to public opinion polls."

Mr. Hawkins' comment on poll-taking was provoked by Mr. Oaks' argument that the collective morality should be sized up and regarded as a legitimate source of criminal law. Yet I question whether Mr. Hawkins has not been far more guilty than Mr. Oaks of too much poll-taking. One of Mr. Hawkins' objections to the criminalizing of victimless conduct, after all, is based on his view of the dire consequences of the "law's attempt to prevent people from obtaining goods and services they have clearly demonstrated they do not intend to forego . . ." Again, it is Mr. Hawkins who implies that when the poll indicates a society to be pluralistic and secular, the law then has little business, if any, in determining what people should be permitted to hear, view and read.

And it is Mr. Hawkins, in trying to answer the basic question of what standards of conduct should be both observed *and* legally enforced, who says that no long-term, enduring answers can be given because one must first take a poll of the moral and cultural values held by each particular society in its particular historical setting.

Of course, Mr. Hawkins' statement on poll-taking is guarded and lawyer-like. He says "something more" (presumably much more) than assiduous attention to the polls is required. Mr. Hawkins finds the "something more" in the writings of H. L. A. Hart. The criminal law, he says, should enforce only the moral minimum necessary for social life. Mr. Hawkins, in line (I would guess) with the vast majority of academic experts, goes on to define the moral minimum for our pluralistic society to comprehend little more than protections from violence, from incursions into our homes and from depredations of our property.

I do not pretend to any expertise in criminal law. But as has been said of other areas, perhaps the underlying principles of criminal law are too important to be left to the experts. To me the all-important question which must be answered, before one can decide what the criminal law is good for, is this: What *is* the moral minimum necessary for the maintenance of a high civilization? I do not treat this as a question to be answered lightly. Responsible consideration calls for wisdom and for a long-term view of history and presupposes a coherent theory of the self and of society—an underlying set of values. What bothers me is that Mr. Hawkins seems to be unaware of the profoundness of the question.

If one views civilization, as do I, as a precarious and delicate mechanism to be preserved in the face of irrational springs of wickedness, one must then question the sanity of Mr. Hawkins' approach. Within the last generation we have scrapped, in fairly wholesale fashion, most of those traditional criminal law restraints that had been intended to prevent the gross immorality of the few from polluting the whole society and to protect all of us in a very minimal way against our own frailty. It is ironic that our society, which in two decades has substantially abridged the individual's freedom of contract in the economic arena so as to protect him in countless ways against his own frailty, has during the same period conferred upon poor, frail man unfettered freedom of contract in the moral arena.

I believe that history will ultimately record Mr. Hawkins' concept of the moral minimum to have been much too superficial for the maintenance of an advanced level of social life.

Elmer W. Johnson '57
Chicago, Illinois

To the Editor:

I enclose a copy of a letter to Oaks and Hawkins which you, too, may find interesting:

Dr. Dallin H. Oaks, President
Professor Gordon Hawkins

Gentlemen:

I've read with interest your exchange in *The Law Alumni Journal.* I wonder if you'd be willing to participate in a little experiment. I have prepared a set of crimes that meet *The Honest Politician's Guide to Crime Control's* definition of victimless crimes as "crimes [which] lack victims, in the sense of complainants asking for the protection of the criminal law." It is my hypothesis that almost anyone would

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