The Functions of a Law School

By Phil C. Neal
Dean and Professor of Law, The University of Chicago Law School

This talk was delivered by Dean Neal at the School's annual Dinner for Entering Students, on October 4, 1966. It was first published in the Chicago Bar Record, Volume XLVIII, Number 2, November-December, 1966.

This is an occasion which we celebrate annually to welcome the newest recruits to the ranks of University of Chicago lawyers. What I have to say will be mainly directed to the new first-year class, but I hope it may also have some relevance for our friends who have come from abroad or from other law schools to spend a year with us and to whom we extend an equally enthusiastic welcome. It is an occasion of welcome, but it is more than that. We hope you will take from this gathering not only a sense of our pleasure in your arrival but also some notion of our pride in you, our confidence that you have the qualities required for success here, and our hope that you will find in the life of the School and in your careers thereafter the challenges and rewards that have come to a long line of your predecessors.

Perhaps I need especially to emphasize the confidence we have in you. This is not because I doubt that you bring with you a proper measure of self-confidence but because all experience suggests that in the weeks and months ahead it will have to survive severe strains. There will be times, I am afraid, when some of you will feel that one of our chief aims (or worse, chief pleasures) is the destruction of your self-confidence. Your reaction will be natural, though quite mistaken. I doubt that anything I may say now can wholly inoculate you against it, but perhaps you will try at such times to remind yourselves that our attitude toward you is a mark of high respect.

If law school is in some ways an intellectually rough and aggressive place, as it is, part of the reason is that the faculty regard you as hardy stock. You will come closer to being treated as the intellectual equals of the faculty (Continued on page 6)

Address at the Dedication of the Laird Bell Quadrangle

By Robert Maynard Hutchins
President, Center for the Study of Democratic Institutions
Formerly Chancellor, The University of Chicago

I first met Laird Bell in April, 1929, under circumstances embarrassing to us both.

The occasion was the Board meeting at which I was to be elected President of the University. After a pleasant luncheon in the Chicago Club, Laird was asked to take me to another room and talk with me a few minutes while the Board gave routine assent to the recommendation of its nominating committee.

The minutes grew into hours. The shadows lengthened, and the evening fell. Our conversation languished and became at times touched with hysteria. When we were finally released, we had covered all conceivable subjects, some of them several times. As our talk ended, it was as though we had known each other for many, many years. The most notable aspect of this remarkable conversation was that it was the only one I ever had with Laird in which I got him to say anything about

(Continued on page 3)
and of each other than in any previous part of your education. You will, I hope, have faith that our estimate of you is justified; if you do, you will end by knowing a surer sense of self-confidence than you enjoy even now.

I should not want to leave the impression that self-confidence is the only quality you will need here. But I believe that properly understood this is perhaps the most important attribute you can have. Perhaps what I have in mind is not so much self-confidence in what you now are as a proper awareness of what you can be if you have the will to be it. The fact is that the limits of self-development are much more distant than we habitually assume. That is true of all of us. I was told recently by an athletic coach that the fact that new records are made each year, records which would have been thought impossible only a few short years earlier, is to be explained more by the mental conditioning of the athletes than by any physical facts. What is true, or may be true, of physical accomplishments seems to me even more obviously true of mental accomplishment. The lives of most of us could be written as a record of potentialities not fully exploited. What law school has most to offer is the opportunity for channeling your full energies toward a well-defined goal, perhaps for the first time in your lives—

the goal of achieving real mastery in whatever subjects of the law you choose to make your own. It offers even the possibility that in some one or more corners of the field you can become more of a master than anyone else has yet been.

It will help you realize such a goal, I think, if you can keep in mind a general view of the aims of legal education. In trying to suggest what such a view might be, I am walking on dangerous territory. There are different ways of looking at it, and each of many ways in which it might be put has its partial truth. None is the whole truth, not even the classic and still highly useful proposition of Mr. Justice Holmes that the whole aim of the study of law is the prediction of the future incidence of the public force—to gather from the "sibylline leaves" of reported cases "the scattered prophecies of the past upon the cases in which the axe will fall." On this question as on every other problem in the law school you must form, you will form, your own opinion, and you must take what I say as at best only a half truth and a first approximation.

I would begin and very nearly end by saying what a legal education is not—or, less dogmatically, by distinguishing it from another view of it that you may hold. You will discover that this is a favorite method of procedure in the law. It is easier to get an idea of what a trust is, for example, by seeing the ways in which it differs from other kinds of relationship than by trying to define it.

My proposition is that the aim of the law school, at any rate, of this law school, is not to train lawyers. I can see the jaws of some of our alumni beginning to harden at this heresy, so let me hasten on. The aim of the law school is not to train lawyers, but to educate men for becoming lawyers. There is a vast difference, although it is one that is not always sufficiently appreciated by the bar in general, by students, and sometimes, I think, not even by those of us on the faculties of law schools. It is a difference that divides the preparation of lawyers today from that of a century ago. It is a difference that I think very largely distinguishes preparation in our field from that in the medical schools of today. It is a difference that emphasizes the division of labor between ourselves on the law faculty and the men sitting among you under whose tutelage you will have to come after you have left our hands and before you are really fit to call yourselves lawyers.

Time was when the training of lawyers, like training for many other trades, took place by means of the apprenticeship system. A young man would go at once into the office of an older lawyer; there he would learn simultaneously by "reading law" and by doing the things that lawyers do. It was not a bad system and it is still a conceivable system. It is still the system, very largely, by which men today are trained for the English bar. But in this country a different system came to prevail. I shall not attempt to discuss the reasons for the change or to defend, except by implication, the superiority of our present system. You will notice that I have not said that we abandoned apprenticeship or substituted law school education for it. The real change was not substitution but addition. We developed the view that there is a dimension of preparation for the law that can best be acquired through formal study in a university setting. It would be
a mistake to pretend that we had carried over into the university setting all that the apprenticeship system had attempted to do. In fact, apprenticeship still goes on, as it must. The chief difference is that we no longer acknowledge it as such because now, instead of paying for the privilege of being one, each of you will be able to command as an apprentice something like $8,000 a year. It is not easy for practicing lawyers to accept the fact that they must pay a price like that for the privilege of being your teachers. But it is part of the price for a hard-won status. The real significance of the establishment of law schools in this country was its acknowledgment that the law is, whatever else it may be, a learned profession.

How much of such learning does a man need? Three years is a long time, and it is safe to say that before they are over many of you will feel that you are ready for a different kind of adventure. I wish that I could offer a more confident justification for the fact that it is three years, and not two and not four. You must not look for logic to explain legal education any more than to explain the law itself. We cannot claim that three years will give you a comprehensive and systematic view of the whole corpus of the law. We have lost, and for good reasons, the faith that enabled Holmes, in the famous lecture I have referred to, to say, "The number of our predictions when generalized and reduced to a system is not unmanageably large. They present themselves as a finite body of dogma which may be mastered within a reasonable time." Lacking this faith we sometimes tend to fall back on the rather lame explanation that we teach method, or skills, or approaches, or how to think like a lawyer, or inculcate some other sort of virtue disembodied from knowledge itself. But I think that our real faith is deeper and more old-fashioned. We believe that to know a continent you must know some parts of it and keep adding others, that the process of becoming educated is a process of reducing the areas of our ignorance, that the man who has explored deeply some areas of the law will meet new problems and new fields with a subtlety and perspective that the less educated man cannot hope to match. It is not because the field of the law is finite that you must spend three years studying it, but rather because it is infinitely vast, complex, and changing.

Is three years longer than is necessary to enable you to start being a lawyer? Of course it is. We could turn you out much sooner without grossly increasing the risks to the innocent public. Is a lifetime of study too short to make you masters of your chosen field? Of course it is. And so you will do well, I suggest, to accept gratefully the three years that our folkways have allotted for the undiluted pursuit of knowledge, and to crowd what you can into them.

I have said that I was offering only a partial view, and I am sure you will find much in the life of the Law School that may seem to qualify my statement of our aims. You will find, I hope, that to be theoretical is not the opposite of being practical, and that most of our teaching deals with real life and with practical problems. You will find that the members of this faculty bring a wealth of knowledge of the world to the understanding of their fields. You will find that we do put a high value on the cultivation of such arts as speaking cogently and writing well, and that we do try as often as we can to make you see your problems as a counselor, a draftsman, or a litigating lawyer would have to view them. We do not disdain the aims of apprenticeship insofar as formal education can make an efficient contribution to those aims. You will also have abundant opportunities in various activities that go on here, and in the work experience that your summers will offer, to get a glimpse and a taste of some of the many paths that will be open to you when you reach the end of the three years. The law school is not an ivory tower; it is as open to the world as its glass walls suggest. But I hope you will remember that the books in the library are the best symbol of what you are here for, and that there are times in a man's development when the inward view should predominate.

I also hope that you will carry with you a proper sense of pride in this Law School, in its faculty and students, and in what it stands for in American legal education. You will come to understand this heritage better and to absorb its spirit as the months go by. But let me say a few words that may help you toward an appreciation of it.

If the creation of university law schools was the first great revolution in legal training in America, and the introduction of the case system of study about 1875 was the second, a third revolution was a revolution in outlook. This revolution, a quieter and slower revolution that is still going on, had its beginnings around the turn
of this century and was associated with emerging broader views about the nature of law itself. If I may go back once more to Holmes' famous speech, 'The Path of the Law,' delivered in 1897, one finds there some prophecies whose fulfillment could be seen in the founding of this law school half a dozen years later. Let me quote a couple of striking passages.

For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.

And again,

I look forward to a time when the part played by history in the explanation of dogma shall be very small . . . and we shall spend our energy on a study of the ends sought to be attained and the reasons for desiring them . . . . The present divorce between the schools of political economy and law seems to me an evidence of how much progress in philosophical study still remains to be made. In the present state of political economy, indeed, we come again upon history on a larger scale, but there we are called on to consider and weigh the ends of legislation, the means of attaining them, and the cost. We learn [and here Holmes struck a note whose resonances you will surely encounter at Chicago today] we learn that for everything we have to give up something else, and we are taught to set the advantage we gain against the other advantage we lose, and to know what we are doing when we elect.

The University of Chicago Law School had its birth in an uneasy but successful partnership between men at Chicago, notably President Harper and Professor Ernst Freund, who held a Holmesian view of legal education, and Professor Joseph Beale who brought from Harvard a vigorous tradition of narrowly professional instruction. You can read the story of these interesting beginnings in Professor Richard Starr's new book, *Harper's University*. Not surprisingly, the offspring of this somewhat miscegenous union was an institution with some new and strong characteristics and with its own special vitality. You can see the marks of this vitality in some of the ways in which this law school has been a leader. It introduced the subject of Administrative Law to the American curriculum. It was the first to teach Legislation as a subject in its own right. The first chair of Comparative Law in an American law school was established here, and we have been the first school to make intensive study of civil law systems available in this country. The now common pattern of tutorial work in legal research and writing was an invention of this faculty. The idea that a knowledge of accounting should be a standard part of a lawyer's equipment was first acted upon here. Ours was the first school to appoint economists as full-time members of the faculty, and to infuse the teaching of economics into the regular curriculum (with such effect that George Stigler has recently referred publicly to Professor Kurland as a "great economist")! During the past decade this school has pioneered in an attempt to bring experimental and statistical methods of research to bear in understanding the behavior of legal institutions, an effort that has recently borne major fruit in the publication of Kalven and Zeisel's study of the American jury. It is currently providing leadership in the effort to understand more about the causes of criminal behavior and the ways in which law can deal more effectively with it, and to bring the resources of psychology and sociology to the service of this inquiry. Perhaps the day will even come when we can find or provide a more adequate body of political theory to illuminate our understanding of the proper distribution and exercise of official power in a free society, as economics has illuminated other areas that are the law's concern.

I have heard of law schools of which it is said that they teach no law or that they teach nothing but law. If such places still exist (as I find hard to accept) I can at least say that there is one law school that has never been able to see its mission in any such terms. This law school has never seen the universe of the law as being at war with the universe of social fact and theory out of which law grows and which it helps to shape. It has been our long and steady conviction that a lawyer is not less fitted to represent clients because he is also something of a social scientist and something of a humanist, and that he is not less fitted to be a servant and leader of the public because he accepts the discipline of his own professional craft and has mastered the technicalities of its subject matter.
This is the tradition that you are now entering and that you will help to make. If I were to try to capture its essence in a phrase, I could hardly do better than to borrow one suggested by Professor Kalven in a recent polite debate with a former chancellor of this University, Mr. Robert Hutchins, about the quality of American law schools. The issue, Mr. Kalven suggested, is whether a law school attempts to "exhaust the intellectual interest of its subject matter." I believe that the spirit of this law school is and has been to press hard on the boundaries of the intellectual interest of its subject matter. It is a spirit made possible by the fact, not merely that we have had great teachers, but that we have great teachers who view the enterprise as a continuing joint quest with our students to widen the grasp of reason on the mysterious phenomena of the law. You are now a part of that enterprise. I am confident that in your time here you will do much to make the fires burn even more brightly than they have in the past.

Three Distinguished Journals

One of the distinctive contributions of The University of Chicago Law School to legal education and research is its role as the home of three major scholarly journals. The University of Chicago Law Review is edited by members of the student body. A more detailed description of the organization and purpose of the Review may be found on page 12 of this issue of the Record. The contents of the Autumn, 1966 issue were as follows:

Laird Bell, Edward H. Levi:
Precedent and Policy, Walter V. Schaefer
Suitcase Divorce in the Conflict of Laws: Simons, Rosenstein, and Borax, David P. Currie
The Conscientious Objector and the First Amendment
Picketing the Homes of Public Officials
The Constitutionality of Statutory Criminal Presumptions
Selective Detention and the Exclusionary Rule
Forum Commission Enforcement of Foreign Workmen's Compensation Acts
Marital Privileges and the Right to Testify

Professor Ronald H. Coase has assumed the editorship of The Journal of Law and Economics from Professor Aaron Director, its founder. A recent statement by Professor Coase described the function of the Journal as follows:

"The Journal of Law and Economics is published annually by The University of Chicago Law School. In the main, the articles which appear in the Journal deal with the interplay between the legal and economic systems. What influence does the legal framework have on the operations of the economic system? How far are existing, or proposed, laws appropriate to bring about an efficient working of the economic system? These are the underlying questions to which articles in The Journal of Law and Economics are directed.

These articles are sometimes concerned with clarifying the issues and improving the analysis; sometimes with the history of important doctrines and institutions; but more often they are concerned with how particular market or governmental institutions actually operate and therefore with providing the basis for an informed discussion of issues of public policy."

The most recent issue of the Journal was made up of the following articles:

Rationing Justice, Geoffrey C. Hazard, Jr.
Entry in Commercial Banking, Samuel Peltzman
Oil and Gas Licensing and the North Sea, Kenneth W. Dam
The Structure of National Time Rates in the Television Broadcasting Industry, John L. Peterman
Promises Respecting the Use of Land, Allison Dunham
The Dominant Firm and the Inverted Umbrella, George J. Stigler
Monetary Rules: A New Look, M. Bronfenbrenner
Occupational Self-Regulation: A Case Study of the Oklahoma Dry Cleaners, Charles R. Plott

The Supreme Court Review was established to provide continuing, responsible and scholarly criticism of the work of the Supreme Court of the United States. Professor Phillip B. Kurland has been editor of the Review since its inception. Contained in the 1966 issue were the following:

Felix Frankfurter: A Lesson of Faith, Archibald MacLeish
The Obscenity Cases: Grapes of Wrath, C. Peter Magrath
The Voting Rights Cases, Alexander M. Bickel
The Albertson Case: Conflict between the Privilege Against Self-Incrimination and the Government's Need for Information, John H. Mansfield
Kent v. United States: The Constitutional Context of Juvenile Cases, Monrad G. Paulsen
Elfbrandt v. Russel: The Demise of the Oath?, Jerold H. Israel
The Union as Litigant: Personality, Pre-emption, and Propaganda, Alfred Kamin
Graham v. John Deere Co.: New Standards for Patents, Edmund W. Kitch
The Origins of Franklin D. Roosevelt's "Courtpacking Plan," William E. Leuchtenburg