The Adventures of Rollo

Opening Talk by Professor Karl Llewellyn in His Elements Class

And so little Rollo came to the University of Chicago Law School. His heart was high, and his eyes were filled with shining stars, because little Rollo knew that the world was waiting on his coming. A world to be shaped by little Rollo! Because, after all, little Rollo had read the great books; and he thought large thoughts. Easily and lightly he could balance a large thought and bounce it the way a trick sea lion bounces a ball upon his nose. And little Rollo had not yet waked up to the fact that there is no more inhumane thing among the humanities than a great idea unaccompanied by the experience on which it rests, devoid of the human meaning test by test, man by man, experience by experience, that made the great idea great. So that the formula of formulas is a bubble for a sea lion to play with, and the job, for anybody, of understanding becomes a job of getting down to the cases, of getting down to the people, and getting down to the happenings and events, the loves and the hates, the greeds and the fears, that went into making the great idea a great idea, and gave it bite.

Most of all, of course, is that true of the lawyer. A theologian perhaps may be able to take a great idea, work with it as such, as a shining goal; and a philosopher may be able to get towered away from all the world around him enough to contemplate his navel and a great idea simultaneously; and a poet can dream great beauty and put it into words that will convey something of the dream.

But none of these is the lawyer's function as a lawyer. The lawyer is, instead, the man of measures. The lawyer is the man to whom you turn in a situation of human relations and human difficulties to find effective ways and means with teeth that cog into life and get the job done. Great ideas to a lawyer are lovely things—they are also completely, utterly, absolutely and irrevocably useless in and of themselves. The lawyer, I repeat, is the man of measures. The man who must devise effective ways and means with what's at hand for getting an inch or a foot or a mile closer to the great idea, and to the great goal. And that, of course, becomes a matter of the most desperately uncomfortable, hard, dirty, grubbing over technique, a matter of developing skill, a matter of developing patience along with skill.

Now Rollo appears to be commonly so clear about inheriting a world, that he forgets that what he inherits is a World. And a World is made up of people, made up of people organized in queer ways, people filled with queer and frequently very silly prejudices. At the same time the World provides a large body of tools that we sum up as a "culture"—with which you can work, but which cripple you as you work with them, because they limit and shape even as they afford leverage. And no-

Karl N. Llewellyn

where, again, is that truer than in law, and in the tradition of law—that great tradition of the law of which the Dean spoke yesterday in particular application to some phases of legal education and of this school in particular. This is something that lies very close to my own experience. One frequently makes points clearest on the basis of things that have cost him. I am (with one exception, who is my coeval in the matter) the senior in the teaching game on this faculty. My work goes back to the days when I could look some of the giants who made the first reputation of this school in the face, and I even had the pleasure of working with one and another of them. In some ways indeed I am in the direct line of succession, for example, from Daddy Mechem. He was the foremost man in American Commercial Law at the turn of the century. He was succeeded by Samuel Williston in that particular aspect of his work; and Williston (constantly citing Mechem on Sales) drafted the Uniform Sales Act which is essentially the basic law of the country today on the central aspect of Commercial Law. In turn it has been given to me to draft the statute which will succeed the Williston statute as carrying on that piece of Commercial Law. So that Daddy Mechem is in a sense at least my granduncle in this field. Yet as one looks back to the history of Commercial Law in this country, one sees that there have been, from the beginning, two radically different traditions running along side by side. One of them made things look simple in law, even when they were really complex; and chose lines of seeming simplicity which did not
fit the life-situation, and thus kept things—for lawyers and for laymen—in what one may cartoon as nearly the most uncommercial possible condition. The other tradition was mainly typified in this country by a sequence of great judges in the commercial field who had their ear to the heart of the thing itself, and whose work was shaped in neglected beauty to the effective accomplishment of clean running work that served good faith and gave only a slippery hold to technicality or trickery, work that was simple along the lines of the

that there is not one thing that I saw in his work or learned from it that I am not putting into daily use; that he goes before me, though long dead, as a living inspiration. What I bring to you in that connection is the knowledge that when Ernst Freund first looked at me, he saw little Rollo; and he treated me just that way. And he explained to me, so patiently, how much I was going to have to learn of technique, and of patience, above all of patience. And for the last thirty years I have been drawing on those lessons, and living, my way, the life that he taught me to enter upon as a craftsman who believes in his ideals, even though it does take him thirty years to get anywhere, and who will continue to believe in his ideals, even though he be thrown out at the end of thirty years, but who in the interim is going to get his nose down onto the grindstone and learn how to make sharp tools, how to deal with human factors which are in his way, how, slowly, to overcome the infinite quantity of inertia and even of dirt that’s there ahead of him, and so get an inch, or a foot, or, by the grace of God, a mile, closer to where the job ought to be taken by a lawyer—because a lawyer is a man of measures, a man of getting things done with the wherewithal at hand, in spite of the difficulties at hand, in unceasing service of the vision that goes beyond what is at hand.

Now, when you turn to the slow grubbing into the technical phases (and there are plenty of them), the particular body of law that you happen to be a part of is probably the most complex body of law ever known to man. I think that is a mild and restrained statement because I put a “probably” in it. As a matter of fact it is without question the most complex body of law ever known to man; and a body of that kind is bound to be shot through with technicality some of which seems extremely silly. When you come across some piece of law which seems to you thus silly, remember first Miss Mentschikoff’s proposition that there is always a kernel of horse-sense in it somewhere. Remember another thing, and that is, that some silliness is the price of certain types of advance. There are parts of the silliness of law which we must, indeed, seek to reform at once, to the best of our ability. But there are parts which reflect and are a price of some of law’s major achievements. I think, for example, of what I conceive to be a curiously silly piece of law, the piece of law which we are going to study in this course as our first piece of law—the rules which completely disregard the modern market, and set up when a good faith man buys goods in the open, fair, clear market, a rule subjecting him to the risk that the goods may be taken away from him; a rule which goes back in essence and in purpose, in emotion as well as in actual genesis, to the happy days of the feudal raid, or before then; a set of ideas which take their origin in the picture of a man’s few possessions, his two cows and the one silver cup which he inherited from his great-great-great-great-grandfather, and allow him to

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The Summer Quarter

In the second year of its re-established Summer Quarter, The University of Chicago Law School was an exciting and busy place. Two courses were open to beginning law students, with the regular faculty represented by Wilber G. Katz, James Parker Hall Professor of Law, offering his course in Accounting, Allison Dunham teaching Trusts, Bernard Meltzer holding forth on Evidence, and Edward H. Levi offering a seminar on Unfair Trade Practices.

In addition to the regular faculty, four visiting professors taught at the School, three of them alumni. Jerome Hall, '23, of the University of Indiana Law School offered Criminal Law and Procedure; Philip Mechem, '26, of the University of Pennsylvania Law School taught Torts; and Casper W. Ooms, '27, of Dawson and Ooms, Chicago, presided over a seminar on Patent Law. Coming to the Law School from the University of Pittsburgh, where he is law school dean, Brainerd Currie taught Conflict of Laws.

We regret that our photographer's confused time schedule prevented our obtaining photographs of Mr. Mechem and Mr. Ooms.

Elsewhere in this issue of the Record we have reported on the seminar for police, "The Police and Racial Tensions." The seminar brought many new faces to the Law School building, and highlights of the meeting were the public lectures by Jerome Hall on "The Police and the Law in a Democratic Society," in three sessions covering the topics "Standards," "Arrest," and "Evidence." The concluding lecture in the series by Professor Harry Kalven was on the subject of "The Law of Racial Discrimination."

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...chase those things when they have been taken away from his house by armed robbery. But carrying this kind of fossil-approach forward into the modern market, that is rather a small piece of price to pay for the achievement of a situation in which armed robbers do not come around as a normal thing in which we no longer wall our houses or our villages; in which we have around us, as a normality, a thing that we have come to know so well that we have almost lost the old word for it: the Peace—a regime under which you can go about your business, most of the time, without fear of raids—and raids were raids in the good old days, and the good old days are not so far back. In English history the "good old days" of raids at practically any time at all are still in full swing at the end of Elizabeth's reign, for example. And in this country, I do seem to recall the early history of a State now known as Kansas, which reminds you of a good deal of that, and you will find a good deal more of it all up and down the East shore of the Mississippi too, until the time of the steamboat.

This achievement is something which today we simply take for granted. What, then, if in the process we have to over-stress this or that minor idea and carry it along for a considerable distance in a fashion which is not too well adjusted to modern times. Take the most recent instance that I know of in this connection; think of how pleasant it must have been to be a resident of Germany in the days immediately following the last war when our soldiers were, as they so blithely put it, "liberating" things of one kind or another.

So then, I say, much that seems silly may have reason that is to some extent still wanted. Some of it is of course utterly silly, irrevocably silly, hopelessly silly, because the grain of horse-sense of which Miss Mentschikoff spoke was sometimes the supposed horse-sense of a silly person who happened to be in a key position, and who thus got a piece of utter nonsense made law which nobody had ever taken out. Or it may be almost completely obsolescent or obsolete; the circumstances which made it sense once may now be largely or wholly gone. There is, for example, in the law of promissory notes a body of material that has to do with how a good faith purchaser for value, known technically as a holder in due course, can take that note free of practically all defenses of the man who made it. So that even if the man who made it has paid it, or even though he never got anything for it, or even though he gave it as the price of a stove that blew up in his face the next day, he still has to pay up to this bona fide purchaser for value whom we call tech-

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2 A reader of legal training will be good enough to observe that the discussion is about promissory notes. It is not about checks or securities, in regard to which I have done my best to press negotiability far beyond traditional bounds (Uniform Commercial Code, Arts. IV and VIII); nor is the discussion about acceptances, which still have a useful general market. This discussion is not about "negotiable instruments." I may repeat, but about what it is about.
nically a holder in due course. And there was some sense in that rule in the days when notes were for substantial purposes the currency of the country—to a degree perhaps even greater than the check is the currency of the country today. But nowadays notes for the price of goods don’t travel like that. Nowadays when the man who takes a note for the price of goods transfers the note, he transfers it to a single person who holds it from on through until the note is dead. And who is the single person? The single person is either the finance company or the bank which is regularly financing that particular seller and which knows his business about as well as he himself knows his business, and the conception of wiping out defenses otherwise good by that kind of transfer is enough to stink in the nostrils of any fresh-minded person who approaches the picture. But do you realize that tant and dispassionate reason, to be dubious ends. And there again you as a lawyer will have to get ready to deal with that kind of passionate affection for even what may appear to you to be utterly absurd or even evil. I think, therefore, that we must take as the first lesson for little Rollo, in this aspect, what is probably the wisest thing that Abraham Lincoln ever said: “God must love the common man;” you recall he said, “because he made so many of him.”

The common man is the man with whom your law practice is going to have to deal. In the first place, he is the fellow on the bench. There is an odd fellow on the bench here and there—you are going to meet one in the speech on the 8th—there is an odd fellow around who is smarter than any one of you will ever hope to be. Wyzansky is of that caliber. But the very fact that he is so good makes him stand out with curious uniqueness, the way Everest peak would stand out on Western plains. Most judges are just plain people, to start with; people with a very large range of respectable horse-sense, people with a proper attitude toward their duty to do what they can to promote justice and to do that job under and with and within the law. But on the whole, they made C grades in a second-rate law school, and it was because of the nature of their minds that they did. They didn’t have this sharp diamond-hard mind, so beloved of so many of the faculties in the so-called best law schools, delighting in a distinction too fine for any normal man to even see without a microscope, and grading students A if they can make that kind of distinction on an examination paper instead of using horse-sense. Most judges are not like that kind of professor. They are Lincoln’s common men, and rather the nicer kind of common man, on the whole. Very average in their brains. Better, much better, than average, in their judgment; and in their feeling for high duty.

Your clients are going to be the same kind of egg in regard to brains. In the course of thirty years you may get three or four extraordinary clients. If you do, it is a thing to cherish. Some fine old buccaneer, who should have been sailing the Spanish main and has had to take it out on business, but who still has the sturdiness and the verve and the pungency that goes with that kind of personality. On the whole, however, your clients are going to be little guys, they are going to be average guys, many are going to have their extra touch of meanness—which is probably why they came to you, thinking that they would find a fellow in their feeling. They are folks you’ve got to deal with as they are. They’re very human. But they’ve got lots of good stuff in them, too. And part of your business is to elicit a little more of that than comes out of them normally, because that is always do-able, and few people have as good an opportunity to do it as a practicing lawyer with his clients.

And finally, when it comes to legislation, when it comes to influencing public opinion, when it comes to any of the bigger jobs of the lawyer, the common man

Stuart Hyer in his room in Beecher Hall, the new Law School residence. Mr. Hyer, whose home is in Rockford, Illinois, is a first-year student in the Law School. His father, Stanton E. Hyer, received his J.D. from the School in 1925 and served last year as one of the state chairman for the Law School Alumni Fund drive.

the law of negotiability of notes is dear to the hearts, the souls and the gizzards of the entire Bar? A hundred and seventy seventy thousand men (less three: Miss Mentschikoff, me and one other)—a hundred and seventy thousand men rise, join, lock shields and march with uplifted spears shouting: “Down with any attack at all upon Negotiability!” Because when they were in law school they learned to meet negotiability, they learned to love it, they learned to believe in it not by reason or for reason, but as the order of the legal universe. They feel about any change in “it” the way a dairy farmer feels about the change to daylight saving time.

Now there are values in human emotions, even when directed to what may appear, in the light of more dis-
is the fellow known by that name because that is what he is, he is the public. Again, you've got to deal with him as he is.

There is an awful deal of hogwash talk these days about "Democracy." There is this crazy notion that by "the Democratic Process," talking and talking forever, and voting and voting forever, you achieve effective leadership as a normal thing, not as a grand accident, but as a normal thing. And that of course is pure hogwash, as anybody with any sense can see.

There is also this companion feeling that there is something sacred and beautiful about talking forever about things, instead of getting something done.

But that does not alter the fact—that type of hogwash about democracy—that bilge doesn't alter the fact that the idea of "democracy" carries with it deep and fundamental truths that are worth having as fighting faiths. For the sense of responsibility to self and society which is the thing we are trying to instill into every decent citizen, and above all into every officer, that sense of responsibility to self and of self, policed by self, is, of course, the fundamental of good and decent government, or of good and decent work in any line. But the fact is that we do not do a hundred percent job on getting that sense instilled. We never have done it and it doesn't look as if in our lifetime we shall be able to get it done: one hundred percent. So that when that sense of responsibility fails on the part of any officer, there has got to be machinery for bringing him to book, for facing him squarely with the responsibility which he is seeking to evade. There's got to be, I say, machinery for that purpose; and also it's got to be machinery which isn't of a character that will block off all the doing and all the leading that need doing during the process, when we aren't occupied in bringing the mistaken guys to book.

And who makes that machinery? Who devises it? Who passes it as a legislator? or who sells it to the legislator to pass? And who administers it in its operation from the top to the bottom? (And let me tell you, the bottom is the place where it counts most!) That's lawyers' work. And it is only one-third done as yet under our Bill of Rights, our system of divided powers, our highly complex and still most baffling procedure, especially in the criminal field. All you have to do to realize how close that problem is to you, today, as a problem almost completely unsolved, is to watch the process of legislative investigation today, with its effects of character-assassination on people who have no chance to answer the accusations and the publicity given those accusations. No man can doubt that the process of legislative investigation is fundamental to our polity but neither can any man doubt that we do not yet have the first beginnings of an idea of what sound rules of procedure in legislative investigation would be, which would leave utterly free the full play needed for getting at the facts, and at the same time hold the excrescences within bounds. That is a typical lawyer's job, and it faces your generation. It is a growing lawyer's job of the kind that went into the Bill of Rights itself—which has its history, you will recall, not only of interpretation since we got it, but its prior history of centuries of groping toward the idea before we got around to framing our own first version of machinery to make the idea real.

Hence, it is quite clear that in the matter of diagnosis of trouble—a most difficult thing in the field of human relations—accurate diagnosis: not simply "that it hurts," but "where and why it hurts," and "how much it hurts," and "whether the hurt might not be beneficial" as some pain we well know is—and in the matter of devising an effective measure—and, finally, I repeat, in getting into the operation at any stage from the top all the way down to the very bottom day to day and hour to hour or in the crucial decision for a century—these are things which call for the lawyer's skill in ways and means, and which set out what his peculiar calling is. And these are things that we must go after by grubbing into dirty detail, by seeking to learn how, by seeking a habit of accuracy, by getting ready to answer now and hereafter, hereafter and now, the calls upon our time. Law and obstetrics wait not upon our leisure.
When I was in school in those good old days (which are always good because they are old) there was still one very worth-while feature of the top-notch full-time law school. That was that it moved on what was a roughly 70-hour week for the worth-while students. (The more skilful sliders got along with fifty.) That delightful condition has disappeared, to some extent. It lasted pretty well through the period of the second World War. But with the GI bill of rights, there came back into the law schools a tremendous influx of students, as to whom there was a greatly benevolent point of view on the part of the law faculties, because instead of granting them degrees without doing any law study, as had been done at the close of the first world war, the faculties took themselves firmly by the necks and said: "We must preserve the public from an untrained lawyer! So," they said, "we will make them go back to school!" Then, having made that decision, they said, "Oh my! Oh my! the poor dears," and they let their standards just go down like this. . . . In addition to which so many of the GI bill of rights boys were married; and who wants a returning soldier to be kept away from his wife by a 70-hour week? Furthermore, there wasn't any reasonable place for them to live, so a lot of them lived God knows how far away, operating with car pools out of nowhere, and the amount of time it took them to go back and forth used up those hours. And children do use up time. So the standards of labor went down, down, down. And it only takes three years for a completely new generation to inhabit a student body in the law. By the time the GI bill of rights had done its excellent work in other fields, the standard working week on classes for a student of law in the best full-time schools had dropped to something like fifteen hours, in addition to class time, and you attended classes if you felt like it. And you only occasionally used the rest of your time on things contributing to a legal education.

I am glad to say, my dearly beloved hearers, that at the University of Chicago Law School it has ceased to be. We are back on the ball. Now, I do not counsel you to put in 70 hours of actual reading, writing and class attendance. I would say limit that to about 55 or 60 hours. You can very properly put in the other ten in letting it simmer and cook, by talking with your friends about matters of the law. Cooking time is worth-while time. You will even find that you will get a fair amount of cooking out of a brisk walk, a game of tennis or something else that stimulates the red corpuscles. But we're back on the ball, as I say, and that is good news.

I have now a brief message to Rollo's Little Cousin. He is not here with starry eyes. His eyes remind you of a depression banker when you are asking for a loan. He is here because he read about a million-dollar fee that some lawyer got on something, and he says: "That's the game for me."

He had better quit. The reasons why he had better quit are very simple. If he had been coming to law school in 1875 without the ideals he hasn't got but with the ability to acquire some good sharp techniques (which we can give him, if he has got anything inside his head at all), if he had been coming in 1900, he would still have had an excellent bet at the Bar, an excellent opportunity to get ahead. It can even be said that, in the main, the presence of ideals or even vision was rather a handicap than not for most of the men who were coming in to the law at those dates. But by 1925 that situation had very materially changed. By 1950 it had ceased to be a good bet to have that attitude in going to the Bar, it had become a serious professional handicap, a difficulty in the effective vision and imagination needed for doing a job that paid the rent. I do not say that there aren't lawyers at the Bar today, in reasonable number, who have made money even out of their practice, and even without ideals. I do say that they are rare in terms of percentage of the gang as compared with any respectable line of business.

In addition to which, the income that is available to the Bar at large has long ceased to be what that income was. There is not merely the fact that professional men have much greater difficulty in keeping a slice of their earnings from the government than do people who can operate in terms of "capital gains." The income-tax law recognizes no capital gains in your brain. It is not only that. It is also that the type of opportunity open to the lawyer is no longer anything like what it was, when viewed in terms of money-making. So then it becomes a necessity with the ordinary man of the law to adjust his top financial ambitions to a reasonable living, instead of figuring as a not too unlikely thing that if he has a touch of luck he can rival his investment banking neighbor. No longer, I say, is that the case. If that is what you are after, go into business where the getting is easier and will cost you less in the way of personal dignity, and indeed, in the long run, of personal happiness. It's a queer thing, a very queer thing indeed to see the effects of living with money as the goal on a lawyer at about the time his sons get to the age of twenty, or his daughters. It isn't a pleasant thing to see. No, law and the work of law and the men of law, they all go dead, unless they can accomplish effective trouble-shooting in any human relation, and unless they keep an eye out for the welfare of all of us. "Technique without ideals is a menace"— even to the technician. That is for Rollo's cousin. But for Rollo: "Ideals without technique are a mess."

So that we in this School have got to put the two together and, by the same token, we shall devote our schooling of you largely to lawyerizing, to the hows of effective doing of the craftsman's job. Inevitably—as you will see—that leads to a study and to an appreciation and an evaluation also of the ideals of the craft and of its goals. But not "The Law," the rules of law, any knowledge about things that are in books, is what we are primarily after. We are after exercise in the craftsmanship jobs. And that is why there is no substitute for classwork. Only in classwork do you get a chance to go through the
exercise. The bookwork you can do for yourself. You ought to be able to read, by now, in the large; and at the end of another nine months, I trust that you would have learned the new art of reading in the accurate particular. Quite a different art. It has as little to do with the art of reading in the large, as, let us say, watch-making, on the one hand, has to do with mowing a lawn, on the other. Each one involves moving machinery, but you don't play them the same way, and excellent mowers of lawns have been known to fail at the repair of watches. In a similar fashion, your skill at absorbing 80 pages, all the fine ideas, quick like that—in the course of 20 minutes, is worth exactly nothing when it comes to the exact point on page 2, at line 19, which is the crux of the case, or with seeing whether or not a similar point, as put forward by the court, will stand up as a "holding" on which you can rely when acid-tested by the procedural issue and by the particular point of appeal that had been brought before that court. And of course when you get to the statutes: commas can make or break necks in a statute. And the words will not change for you. You cannot paraphrase. There the darn thing sits; and it says what it says. The only thing that you can do with it is to see whether you can make it mean something different. But the language that you work with, sits. . . . In reading it, there indeed is art, and there is the most joyous of the lawyer's arts. My old chief used to say to me: "To make the sterile shoot of fact put forth the buds of fancy: That's a lawyer's job." At any rate it's a lot of a lawyer's fun; and I think it's a fruitful job as well.

So it's lawyering, I say, that we shall try to teach.

We can begin at once. You know that this is to be a discussion class. One of the things that you are going to do as a lawyer that you haven't done too much of yet, is to talk on your feet. By the same token, discussion in this class will be conducted on your feet. When you have something to say, you climb onto your hind legs and give forth. This not only as a matter of accustoming you to phrasing and standing up in a discussion on your feet. There are other values, and the other values are also very real. For example, if you are in the back of the room, you will be able to be heard in the front of the room very much better if you talk on your feet. Almost anybody can mumble like this—into his book—but it is very hard to mumble entirely into your book when you get on your feet, even when you are trying not to talk too loud; the voice comes out a little more. That's good for everybody. If on the other hand you're in the front, and you're still sitting down, you are going to be trying to carry on a little private conversation with me, and people in the back are not going to hear a thing. On the other hand if you get up you cannot carry on a private conversation, because you realize that you are talking for the crowd—So far Point number 1.

Point number 2 in our discussion class is that it moves quite regularly in terms of one man serving as the scapegoat for all. As the Dean pointed out, you need to be carrying on between your own ears your own private piece of the discussion. When the instructor asks a question, you ought to be busy answering it, not waiting for the other guy. He, on the other hand, does have control of the discussion in that it is from his answer that the further discussion will develop. He owes us therefore a duty of accurate, fair, frank answer. When he finds that he has made an ass of himself, it is not his business to try to save his face by evading the question. So when I ask him, "Do you still mean apple pie?" and what he says is, "My desire has always been to live in Rome," that is a waste of time, and is to be regarded as Contempt of Class. And will be so dealt with. On the other hand, it also becomes the instructor to see to it that no man who is serving as the scapegoat for all should be made fun of for making blunders. There will be no fun made of anybody in this class for making blunders. I shall not poke fun at him, and you will not laugh at him. He is suffering for the common weal.

One last thing, to sum up the process of learning by doing, actively or in sympathy as you watch it go; it calls for Pre-doing; it calls for the actual process of the group-work, which I will call Wk-doing. But then, and above all, for the lessons to drive home after you have seen what the job should be, it calls for Re-doing. . . .

I never expect again to look upon your faces with such innocent sweetness shining from your eyes as now. Instead, I take it, I shall be looking upon incipient lawyers. I welcome you to your entrance upon what I and many others have come to feel is perhaps the noblest calling known to man.