The Entering Class

Sixty-eight colleges and universities are represented in the entering class for the academic year 1959-60. The class, the most carefully selected in the history of the Law School, numbers one hundred and forty—the maximum number set by the School's admissions committee. Twenty-one of the entering students, or fifteen per cent, come from the University of Chicago. The next largest group of entering students—thirteen—come from Yale College. The entire student body has in it representatives of approximately 190 colleges and universities; the students come from thirty-six states, the District of Columbia, and nine foreign countries.

The colleges and universities represented in the entering class are:

- Albion College
- Amherst College
- Antioch College
- Beloit College
- Blackburn College
- Brown University
- Brigham Young University
- Brooklyn College
- University of California
- Calvin College
- Carleton College
- University of Chicago
- University of Colorado
- Columbia University
- Cornell University
- Dartmouth College
- DePaul University
- DePauw College
- Duke University
- Emory University
- Earlham College
- Georgetown University
- Hamilton College
- Harvard University
- Haverford College
- Hunter College
- Illinois College
- University of Illinois
- Indiana University
- Kalamazoo College
- Knox College
- Lake Forest College
- Lawrence College
- Loyola University
- Miami University (Ohio)
- University of Michigan
- Michigan State University
- Mills College
- University of Minnesota
- New York University
- University of Notre Dame
- University of North Carolina
- Oberlin College
- Ohio Wesleyan University
- Northwestern University
- University of Pennsylvania
- Princeton University
- Reed College
- University of Rochester
- Roosevelt University
- Saint John's University
- Saint Joseph's College
- Sarah Lawrence College
- Stanford University
- Syracuse University
- Trinity College
- Tufts University
- University of Vermont
- Wabash College
- Walla Walla College
- Washington State College
- Wayne State University
- Wesleyan University
- Whitman College
- Williams College
- University of Wisconsin
- Wittenberg College
- Yale University

The Dedication Year, 1959-1960

During the current academic year, the Law School has sponsored a series of public lectures and conferences to commemorate the dedication and occupation of the New Law Buildings.

The program for the year was opened by a Dedication Address delivered by the Honorable Richard M. Nixon, Vice President of the United States. Mr. Nixon's Address was preceded by a dinner in Burton Dining Hall, and followed by a reception in the James Parker Hall Concourse. The speech itself has been printed and circulated to all alumni of the School.

Shortly after the Vice President's appearance at the Law School, Mr. Lloyd K. Garrison, of the New York firm of Paul, Weiss, Rifkind, Wharton and Garrison, and former Dean of the Law School at the University of Wisconsin, delivered a public address on "The Practice of Law." Mr. Garrison's talk, to which entering students were specially invited, was preceded by the dinner which the Law Faculty gives annually for the entering class.

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Dedicated Year—continued from page 1

The first Conference of the Dedication Year was held in October, on the subject of "The Public Servant." The program was as follows:

- William E. Stevenson, President, Oberlin College
  "Liberal Arts Training for Public Service"

- John M. Gaus, Professor of Government, Harvard University
  "The Social Scientist as Public Servant"

- Sir Percival Waterfield, K.B.E., First Civil Service Commissioner of the United Kingdom, 1939-51
  "The Training and Selection of Candidates for the Public Service in the United Kingdom"

- Oscar Schachter, Director, Legal Division, The United Nations
  "The Public Servant in International Affairs"

- Harrison Tweed, President, The American Law Institute; Acting President, Sarah Lawrence College
  "The Private Lawyer as Public Servant"

- Charles L. Decker, Brigadier General, USA, Assistant Judge Advocate General
  "The Military Lawyer"

- Mr. Justice Stanley Reed, The Supreme Court of the United States
  "The Lawyer in Government Service"

- "Power and Responsibility" was the theme of the Second Dedication Conference, held in November. The speakers and their subjects included:
  - Robert M. Hutchins, President, Fund for the Republic
    "Introduction to the Subject"

- Armen A. Alchian, Professor of Economics, University of California at Los Angeles
  "The Assumptions of Economics with Respect to Power and Responsibility"

- Peter H. Odegard, Professor of Political Science, University of California, Berkeley
  "The Response of the Political Order"

- James R. Wiggins, Executive Editor, WASHINGTON POST AND TIMES-HERALD; President, American Society of Newspaper Editors
  "The Position of the Press"

- Wilber G. Katz, James Parker Hall Professor of Law, The University of Chicago Law School
  "Power and the Modern Corporation"

- Paul R. Hays, Nash Professor of Law, School of Law, Columbia University
  "The Position of Labor"

On the evening of the same day, Jacob Viner, Professor of Economics, Princeton University, delivered the Second Henry Simons Lecture, entitled "The Intellectual History of Laissez-Faire." The Simons Lectures were established in memory of the late Henry Simons, for many years Professor of Economics in the Law School.

In early January, the Third Dedication Conference, on the subject of Criminal Justice, took place. The program of that Conference included:

- Frank J. Remington, Professor of Law, University of Wisconsin; Director of the Analysis Phase and formerly Director of Field Research of the American Bar Foundation's Survey of the Administration of Criminal Justice in the United States
  "The Administration of Criminal Justice as an Area of Research"

- Herman Goldstein, Staff Member, Public Administration Service; formerly Field Representative of the America Bar Foundation's Survey of the Administration of Criminal Justice in the United States
  "Police Decisions and Police Discretion in the Criminal Law Process"

- The Honorable Charles D. Breitel, Justice of the New York Supreme Court, Appellate Division, First Department
  "The Controls in Criminal Law Enforcement"

- Lloyd E. Ohlin, Professor of Sociology, New York School of Social Work, Columbia University
  "Types of Delinquent Subcultures; Patterns of Delinquent Behavior"
Bruno Bettelheim, Principal, Sonia Shankman Orthogenic School; Professor in the Departments of Education, Psychology, and Psychiatry, University of Chicago

"The Nature and Structure of an Institution Designed to Rehabilitate Delinquents"

The Honorable Sir Patrick Devlin, Lord Justice of the Court of Appeal

"The Criminal Trial and Appeal in England"

At about the time this issue of the Record reaches its readers, the sixth event of the Dedicatory Year will be taking place. The Fourth Ernst Freund Lecture will be delivered by the Right Honorable Lord Denning of Whitchurch, P.C., Lord of Appeal in Ordinary, who will speak on "The Judiciary in Modern Democracy." Lord Denning's opinions in the House of Lords have marked him as one of the most distinguished members of the British judiciary. His lecture will also constitute the first use of the Auditorium in the New Law Buildings.

The celebration of the Dedicatory Year will culminate in a Special Convocation on Sunday, May 1. The Convocation Speaker will be the Honorable Nelson Rockefeller, Governor of New York. Among those expected to attend the Convocation and events preceding and following are the Honorable Earl Warren, Chief Justice of the United States, the Right Honorable Viscount Kilmuir, Lord High Chancellor of Great Britain, and the Honorable Dag Hammerskjold, Secretary-General of the United Nations. Mr. Hammerskjold will deliver a public lecture on Sunday evening, following the Convocation. May 1 is, of course, nationally observed as Law Day.

The Law School moved into the New Buildings in time for the opening of the academic year, last October. These really outstanding structures, with the Burton-Judson Residence Halls attached, and with the American Bar Center immediately across the street, constitute a Law Center unique in the nation. Alumni and other friends of the School are most cordially invited to visit the New Law Center. Tours will be offered at the time of the Special Convocation, but visitors are welcome at any time.
At the Alumni Reception honoring Professor Tefft, left to right: Robert McDougal, Jr., JD'29, Professor Sheldon Tefft, Jerome S. Weiss, JD'30, Chairman of the Alumni Fund Campaign, and Roger Severns, JD'39.

Andrew J. Dallstream, JD'17, President of the Law Alumni Association, presenting to Professor Sheldon Tefft a gift from the alumni, to mark the thirtieth anniversary of Professor Tefft's service on the Law Faculty.

One of the tables at the '48-'49 Reunion dinner, which was attended by more than 100 alumni and their wives. Seated immediately in front of the pillar is Emeritus Professor George G. Bogert, with Mrs. Bogert on his right.
A Tribute to Sheldon Tefft

The academic year 1939-1940, in addition to its other significant events, has brought the Thirtieth Anniversary of Professor Sheldon Tefft's membership on the Law Faculty. Professor Tefft was born in Nebraska, and received the B.A. and the LL.B. from the University of Nebraska. He went to Oxford as a Rhodes Scholar, where he earned the B.A. in Jurisprudence, the B.C.L., the M.A., and became the first American to win the Vinerian Prize.

After teaching for two years at his alma mater, Professor Tefft came to the University of Chicago Law Faculty, of which he is now the senior member. While he has taught a wide variety of subjects, he is best known, to his students and to the world of legal scholarship, for his work in Real Property, Equity and Future Interests.

A flat biographical sketch such as the two paragraphs above fails completely, of course, to convey anything important about the man concerned, or the regard in which he is held by his students and colleagues. Two events of the Autumn Quarter do serve, however, to demonstrate this feeling.

Shortly after the academic year opened, a committee of alumni arranged for a reception, to be held in the Main Lounge of the New Law Buildings, commemorating Mr. Tefft's Thirtieth Anniversary. More than 250 alumni attended. Acting on behalf of all alumni, Andrew Dallstream, JD'17, President of the Law Alumni, presented to Mr. Tefft a silver pitcher, inscribed with the thanks and congratulations of his former students.

On the evening of the same day, a joint reunion dinner of the first postwar classes of the Law School, principally members of the Classes of 1948 and 1949, was held in the Main Lounge. This reunion, arranged by a committee chaired by Bert Sommers, James McClure and Milton Shadur, of 1949 and Michael Borge of 1948, was attended by more than 100 alumni and wives. Professor Tefft was the guest of honor and the featured speaker at the dinner. The law classes concerned presented him with a document, the text of which follows in full. (It is regrettable that the original hand-engrossing cannot also be reproduced.)

THIS INDENTURE made the 29th day of October in the year of our Lord 1959 between the Members of the First Post-World-War-II Classes of the University of Chicago Law School (hereinafter called Bargainers) and SHELDON TEFFT, Esq., of Chicago, Cook County, Illinois (hereinafter called Bargainee);

WITNESSETH,

THAT, in consideration of one peppercorn paid by said Bargainee to said Bargainers on the execution of these presents, the receipt of which peppercorn, and that said peppercorn is in full for the absolute purchase of the fee-simple in possession, whereof said Bargainers are now seised, of the manor, messuages, lands, hereditaments and best wishes and sincere thanks hereinafter described, the said Bargainers hereby acknowledge,

The said Bargainers have bargained and sold, And by these presents Do bargain and sell, unto the said Bargainee, his heirs, executors, administrators and assigns:

1. That certain manor improved with the courthouse of the Island Court in the Island of Tobago, British West Indies, together with the appurtenances thereunto belonging, including but not limited to the courthouse door affixed thereto and each summons posted thereon; and

2. All the best wishes and sincere thanks of all the graduates of the University of Chicago Law School from and after the year of our Lord 1930, including but not limited to the Members of the First Post-World-War-II Classes thereof;

Together with all courts, franchises, rents, services, and other privileges and fruits of seigniory, mines, minerals, trees, woods, ways, water, watercourses, profits, easements, rights, members, and appurtenances whatsoever to the said manor and other hereditaments and premises belonging, or at any time hereafter held, used, or enjoyed therewith; And also all the estate, right, title, interest, claim, and demand, at law or in equity, of the said Bargainers, in, to, out of, or upon the said manor and other hereditaments and premises or any part thereof, with their appurtenances.

TO HAVE AND TO HOLD the said manor, and other hereditaments and premises hereby bargained and sold, or intended so to be, with their appurtenances, unto and to the only proper use of the said Bargainee, his heirs and assigns for ever.

And the said Bargainers, for themselves, their heirs, executors, and administrators, hereby covenant with the said Bargainee, his heirs and assigns, That, notwithstanding any act, matter, or thing done or permitted by the said Bargainers or any of their ancestors to the contrary, the said Bargainers have in themselves good right by these presents to bargain and sell the said hereditaments, premises, best wishes and sincere thanks, with their appurtenances, unto and to the use of the said Bargainee, his heirs and assigns for ever.

IN WITNESS WHEREOF, the Bargainers have hereunto set their hands and seals the day and year first above written.

Members of the First Post-World-War-II Classes of the University of Chicago Law School

/s/ BERT SOMMERS (Seal)

By /s/ MILTON I. SHADUR (Seal)
their duly authorized agents
On The Current Recapture of the Grand Tradition

An Address delivered to the Annual Meeting of the Conference of Chief Justices, by

KARL N. LLEWELLYN

Professor of Law
The University of Chicago Law School

There are many people—there are altogether too many people—Gentlemen the Chief Justices of the various Supreme Courts in these United States—whom the basic question about you seems to be whether you and your brethren are in the nature of Delphic oracles, mere voices with a mission only of accurate transmission, or whether, in sharpest contrast, you and your brethren are in the nature of better-class politicians deciding cases the way you see fit while you just manipulate the authorities to keep it all looking decent.

You resent that kind of misposing of the issue. I join you in resenting it. Nevertheless, that kind of issue-posing is there, and it is uncomfortable. When the bar does it, or the public does it, the result has to be an undermining of confidence in the appellate bench. Because a Pythian priestess type of job, a purely inspired opinion into which the answer just flows, happens (in my guess) not much oftener than one time in one thousand.

Today, however, I am concerned much less with the emotional effects of the misposing on bar and public than with the effects, emotional and other, on the appellate bench itself. If you are addressed—and this outrageous sort of issue-posing is not gentle in so addressing you—if you are addressed with the question: Didn't you go hunting around for authorities after you already knew how you wanted to decide? Don't you, now, know in your soul that you then shaped those authorities up like a lawyer so as to make the opinion look good? Do you mean to say, then, that it was the Rules of Law and not You that tipped the scales?—Against these questions for half, or even two-thirds of the run of cases, there can be only one answer.

What I now suggest is that this kind of queer but persistent misposing of the issue by bar and public, coupled (as it is coupled) with the facts of life about how appellate deciding is, and has to be, done, has been producing among the appellate bench themselves an unease which hampers their own work inside themselves. What I shall proceed to suggest is that a touch of history and of analysis can turn this very unease into a welling fountain of new strength; and also, incidentally, into a wherewithal for restoring a faith and confidence of the bar that has long been in dangerous decay.

My position is going to be that the course of history has led not only bar and public, but you yourselves and your brethren, into holding as a general picture of what your job is and of how it should be done, a picture which is a snide false picture. It is a picture which, thank God, is at odds, and in tension, with what you have for decades been actually doing and with how you are actually doing your vital work today. This tension, I argue, both accounts for the unease and offers a machinery for stepping up the work.

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Two New Appointments

The Law School takes great pleasure in announcing the appointment of Stanley A. Kaplan, JD'33, as Professor of Law. Mr. Kaplan received the Ph.B. degree from the University of Chicago in 1931, and was graduated from the Law School two years later. In 1935 he was awarded the Master of Laws degree by Columbia University. He was admitted to the Illinois Bar in 1934, and has been in private practice in Chicago continuously since that time. In 1958 Mr. Kaplan served as a Lecturer in Law at the Law School, offering a seminar in Securities Regulation. His subjects will be Securities Laws and Corporation Law.

We are delighted also to report that Leon M. Liddell has been appointed Professor of Law and Law Librarian. Mr. Liddell received the Bachelor of Arts degree from the University of Texas in 1937, and the Bachelor of Library Science from the Graduate Library School of the University of Chicago in 1946. He was graduated from the College of Law of the University of Texas in 1937, and admitted to the Texas Bar in the same year. After a period of private practice, and five years of military service, Mr. Liddell spent a year on the faculty of the University of Connecticut. Since 1949 he has been at the Law School of the University of Minnesota, from 1954 on as Professor of Law and Law Librarian.

Faculty Note

Professor Max Rheinstein, Max Pam Professor of Comparative Law, has been elected to membership in the Academie Internationale de Droit Compare. The Academy, which has its seat in Paris, is limited in membership to forty persons. Professor Rheinstein is one of two American members.

Professor Rheinstein, who delivered a guest lecture at the University of Zurich last summer, has been made an honorary member of the American Bar Association.
The Class of 1920

By JACOB M. BRAUDE, J.D. '20
Judge of the Circuit Court of
Cook County, Illinois

By today's standards ours was a small class. In The 1920 Cap and Gown we took up very little space—eight pages in all, with a total of fifty-three photographic likenesses. Had all who graduated with us had their pictures taken and published, there might have been a dozen or so more.

As of today, only forty-six names remained on the list with which the Law School provided me. Of these, two died while I was in the process of collecting the data for this article and six have not responded to my several requests for information. Thirty-five answered and one other promised to do so but as yet hasn't followed through.

It seems ages have passed us by since Dean Hall handed us our diplomas and sent us on our way. So much has happened during the intervening years that it all seems almost unbelievable in retrospect. The war to end all wars, in which twenty-five of us participated apparently ended nothing except active military service for most of us. Only one of our group apparently saw service in World War II.

Professionally we have fared much better than average. Eight have served or are serving as judges of one kind or another. Eleven have taken to teaching law—some on a full-time and others on a part-time basis. Fourteen are in private practice. Three are with federal agencies and one is general counsel for a large fraternal organization. Two have forsaken the law and are devoting themselves to being housewives.

We apparently comprised a very romantic group because all but one of those who replied married at one time or another, and to these unions a total of fifty-six children were born.

Many of our classmates have been active in bar associations and have held other professional positions and have participated in public and community affairs. All of this will appear more particularly in the detailed information which follows.

Bernard Byrd Bailey is currently Professor of Law at Cumberland University, Lebanon, Tennessee. Following graduation he was admitted to practice in Kentucky and since then moved about quite a bit practicing in Florida, the District of Columbia, New York and Louisville, Kentucky. He has contributed articles to several legal publications and has engaged in legislative drafting for numerous organizations and agencies. For a period of time he was on the legal staffs of the New York Title & Mortgage Company and Home Owners' Loan Corporation.

John Harvey Bass taught in the Department of Government at the University of Oklahoma from the time he graduated until February 1, 1922. He then entered the federal service as an Attorney-Examiner for the Federal Trade Commission and continued with that agency for the next thirty-four years until he retired in 1956. Having built up a good retirement and other interests, he decided to retire and return to Oklahoma, which State had been his home since 1893, when with his father he made the celebrated run into the "Cherokee Strip." His only son, John Jr., a graduate of Harvard Law School, is a lawyer with the Federal Communications Commission. His chief hobby these days is continuing his interest in the Civil War and the Southwest, and he and his wife continued on page 24.
Honorary Degrees

Edward H. Levi, JD'35, Dean of the Law School, was one of two law professors awarded an honorary degree (LL.D.) by the Law School of the University of Michigan at its Centennial Convocation last autumn; the other honorary degree awarded to a law professor went to Erwin Griswold of Harvard. Other members of the Law Faculty who have received honorary degrees include Max Rheinstein (University of Stockholm), Roscoe Steffen (College of Idaho) and Francis Allen (Cornell College).

The Placement Office

The Class of 1959—It might be of interest to readers of the Record to know where graduates of the School settle upon graduation. In the case of the most recent class, the distribution was as follows:

- Private Practice in Chicago: 13
- Private Practice Elsewhere: 19
- Law Clerks to Judges: 10
- Corporate Legal Departments: 6
- Military Service: 13
- Teaching: 3
- Post-Graduate Study: 4
- Government: 5
- Miscellaneous: 9

(The Justice Department Honor Graduate Program, an Assistant State's Attorney in-dominated Illinois, the World Bank, and 2 at the NLRB.)

Graduate Placement—The School frequently receives inquiries concerning the availability of its graduates for positions requiring some experience. These requests have run the full range, from firms or companies seeking lawyers who have simply been admitted to the bar and are immediately available, to employers seeking lawyers with three, five, or as much as ten years experience in practice. Similarly, the Placement Office hears from lawyers with such experience who inquire about the availability of positions.

The Law School is happy to act as a clearing house on such matters, and will keep all communications sent to it as confidential as directed.

The Placement Office has recently received inquiries, for example, from a large manufacturing company seeking a lawyer with six to eight years of experience for its legal staff, from a national trade association looking for a young lawyer to serve as assistant counsel, from a nationally known company in need of a young lawyer of some experience for labor relations work, and from a number of law offices, seeking men of varying degrees of experience.

The Class of 1960—As of February 1, more than half the members of the current senior class had made commitments. However, firms or corporate employers interested in adding to their staffs, are still most welcome, and are cordially invited to visit the School. It should be emphasized that this applies to firms of all sizes. The custom of a very few years ago, when only large offices interviewed systematically at the Law School, is rapidly vanishing. Many medium-sized and small firms have now found it desirable to visit the School regularly.

The Speaker's Table at the Reunion Dinner held in the Law School by the first post-war classes, those of 1948 and 1949. Left to right: Bert Sommers, '48, Chairman of the Reunion Committee, Mrs. Sommers, Wilber G. Katz, James Parker Hall Professor of Law, Mrs. Katz, Milton Shadur, '48, toasts master for the dinner, Mrs. Sheldon Tefft, Professor Sheldon Tefft, guest of honor and principal speaker, and Mrs. Milton Shadur.
Three Years' Hard:
Learning Law at Chicago

by David J. Cocks

The following article appeared in the London Times Educational Supplement of June 12, 1959, and is reprinted here with the permission of Mr. Cocks and of The Times.

The difference between learning law in Oxford and teaching it in Chicago is not only the difference between teacher and taught but between two systems of legal education. The Law School of the University of Chicago, built in the same grey Gothic style as the rest of the university but soon to be rehoused in a modern glass and concrete structure, is by general consensus one of the top five in America. I came out West as Bigelow Teaching Fellow and I teach first-year students a tutorial course in legal writing.

The transition from Oxford to Chicago is revealing and slightly intimidating. The vibrations of the American competitive machinery penetrate even the Law School, where its effect is felt in many places. For three years students with a very full curriculum read, eat and sleep law, and perhaps absorb it by mutual osmosis at night. Most of them live in a dormitory in which there are few students from other faculties. All this seems to me to produce a certain intellectual and emotional claustrophobia. But though a mild hysteria may be a necessary concomitant of American legal training, the achievements of this education give rise to feelings of admiration not unmixed with envy.

In spite of everything one is among people going places. The destination may be of doubtful value, but there is a sense of excitement and movement.

To understand both the advantages and the shortcomings of an American Law School it is necessary to understand how it is orientated. It is a professional
Lloyd Garrison, of the New York Bar, formerly Dean of the Law School at the University of Wisconsin, addressing entering law students in one of the new Law Building classrooms.

The graduate school designed primarily to produce a technically equipped lawyer, unlike Oxford or Cambridge schools where law is merely another not very practical liberal arts subject. Nearly all the students at Chicago have had four years of undergraduate education, admittedly of a lower standard than English undergraduate education. Professional training entails three more years of hard intensive work. Virtually all who last the course will become academics or practicing lawyers, or alternatively men of public affairs—lawyers who still supply the hard core of men in public life in America.

This connexion with professional and public life is in the main, what brings a leading law school so much to life and divides it so sharply from an English university. Only three subjects that are of any practical value are taught at Oxford—Contracts, Torts, and Land Law. A random selection from the syllabus at Chicago illustrates the difference—Labour Law, Anti-Trust Law, Corporation Law, Evidence, Procedure, Family Law. The link, moreover, is not merely one of subject matter. It also concerns personnel. In England no member of the bench has ever been recruited from academic ranks (if we make the exception of Blackstone). In America the examples are many: Douglas and Frankfurter, two present members of the Supreme Court, stand out. On the faculty at Chicago are a past assistant head of the Anti-Trust division, a former recruit to Roosevelt’s New Deal experts, a Labour arbitrator, and so on. In fact the standing of the American legal academic vis-a-vis the profession and his influence on the profession is much greater than that of his English counterpart.

There is little ground for an academic inferiority complex which affects even the greatest English teachers. The status of the law student is more ambivalent. On the one hand he is regarded as incapable of working completely on his own; on the other hand, if he is at the top of his class he will
probably be on the *Law Review*. (All university law reviews are run by students.) Here he may have the satisfaction of having a comment that he has written quoted in court or of rejecting an article written by one of his teachers. No English student would dream of either.

The *Law Review* is a very characteristic institution. There is tremendous competition to get on it (the top 10 per cent. do so), because a law review post is a good job-ticket. One has to realize that upon a student's standing in his class may depend his whole future career.

This professional orientation has its disadvantages however. To understand them fully one must look at teaching methods as well as the aims of those methods. Teaching is done mainly on a Socratic method, that is in classes with a theoretically continuous dialectic between teacher and student. At Chicago the size of a class varies from 120 to 30. Law is taught throughout America by the traditional case method. Basically what this means is that for each course the main material consists of a book containing a series of cases on a subject, the cases being so arranged by the compiler of the book as to contribute to the fullest possible understanding of a branch of the law by inductive reasoning.

The pragmatism of this approach and the self-conscious concentration on technique are very attractive in spite of the often aggressive atmosphere and a certain grim thoroughness. But there are serious drawbacks to the system. There is first too much to do and not enough time to think about it. Secondly, immersed as one is in a mass of fresh detail at the beginning of each term, it is difficult to gain much sense of perspective in a given subject or to envisage any satisfactory framework of reference.

It is here that the Oxford system is superior. The approach under the tutorial system tends to be more deductive. We work from text books which state rules, not from case books from which the rules have to be extracted. We have more time (too much) to keep our heads above water. We have more time for the sociological outlook that is essential for the practising lawyer even though we make appalling traditional use of that time. And, at Oxford at any rate, there is more opportunity to consolidate one's knowledge as the examinations are at the end of a three-year period instead of at the end of each term. Once you have taken a course at an American law school, it is too easy to put it on one side and forget all about it.

It is tempting to think that the results achieved in America outweigh the disadvantages for there is little doubt that in terms of sheer knowledge and intellectual interest the American student is far ahead of his English counterpart. The argument runs thus—the immense vigour and alertness in an American law school stems largely from its professional orientation. The only way in which we can awaken English legal education is to direct it in a similar way—i.e., by taking away legal training from the Inns of Court and giving it to the universities. This would probably be a mistake. The job of a university is not to train people professionally; that should be left to the profession.

It may be possible to introduce a little conscious preoccupation with technique and some much-needed vigour by doing two things. Here I must speak only for the Oxford school as this is the only one I know well enough. First, the syllabus could be reorganized to include more practical subjects such as Company Law and Family Law at the expense of nearly all the Roman law in the syllabus. Secondly, and perhaps more important, methods of teaching should be stringently reconsidered.
On Misunderstanding
The Supreme Court

A talk delivered to the alumni of the University of Chicago Law School at the American Bar Association Meeting in Miami Beach, Florida, on August 26, 1939.

PHILIP B. KURLAND
Professor of Law
The University of Chicago Law School

It would hardly seem necessary, in this environment, to remind you that criticism of the Supreme Court has again reached full tide. The criticism has taken many forms, from the diatribes of Southern demagogues to the demands for self-restraint from the Chief Justices of the High Courts of the respective States, from the antics of the lunatic fringe to the calm, dispassionate, thoughtful, studied writings of the law faculty of the University of Chicago.

We have it on the highest authority that criticism of the Supreme Court's work is essential to the Court's function; that it should not be dispensed with either because it would offend those whom we like or please those whom we dislike. Thus, Mr. Chief Justice Stone, echoing the views of Justices Brewer and Holmes, among others, expressed himself in this language:

"I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with great public questions, the only protection against unwise decisions, and even judicial usurpation, is careful scrutiny of their actions and fearless comment upon it."

And Justices Frankfurter and Harlan have recently expressed similar sentiments. The only appropriate limitation on the critics of the Court is that the criticism should be responsible. Judge Learned Hand phrased it this way:

"... while it is proper that people should find fault when their judges fail, it is only reasonable that they should recognize the difficulties. ... Let them be severely brought to book, when they go wrong, but by those who will take the trouble to understand them."

The problem, however, is this. The Court's responsible critics can only address themselves to each other or to an audience which does not understand the role and function of the Supreme Court of the United States. The result is that however valid or justifiable the criticism, it tends to fall on ears that are deaf to the bases of the criticisms and hear only the condemnation of the Court. In short, the problem is that the Supreme Court is probably the least understood of all our important American institutions and responsible criticism cannot be brought home to the appropriate audiences. And there are many causes for this lack of understanding, some of which I should like to speak to this afternoon, for implicit in the causes are to be found the bases for cure.

I. The Bar. Because my audience today is what it is, I list the deficiencies of the Bar as first among the factors contributing to the lack of understanding of the Supreme Court. It would seem to me obvious that the Bar is the natural intermediary between the people and the Court. The fact is that few members of the Bar are any more familiar with the work of the Supreme Court than are other semi-educated people in the community. Possibly many can name all nine justices, but usually it goes little beyond that. The Supreme Court's business does not involve bread and butter matters for most of us. A few specialists will read the decisions of the Court which are published in the loose-leaf services which they read so religiously. But on the whole lawyers are more dedicated to reading the comic strips than the Supreme Court reports. And yet lawyers are relatively influential people in their community. Their views on Supreme Court matters would be welcomed, if they represented a study of greater depth than that which is available in the newspapers. The layman may think that the law is clear and simple, and well known to those who have had legal training. The lawyer knows that the law in hard cases is wrought out of contemplation and understanding, and is only obtained after intellectual... continued on page 31
Clarence Darrow's Unreported Case
by
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of the Washington, D.C. Bar,
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This is the most recent in a series of public lectures on distinguished Chicago lawyers, sponsored by the Law School.

Tonight, I shall discuss with you a hitherto unreported legal controversy of Clarence Darrow's. One can hardly believe that any matter Darrow was involved in could have escaped public notice. He was to the press what cheese is to mice. Whenever he was an actor on the scene, reporters could always count on his picturesque personality to illuminate some human interest story against the background of a tragedy or a stirring public event. And yet, strangely enough, an intimate detail of one of the most important civic functions Clarence Darrow ever performed has not heretofore been chronicled. I shall do so, not so much because its recounting will add to the present growing Darrowianism, but because past encroachments on individual liberty are so closely paralleled by present ones of even greater proportions and more terrifying consequences that we need to be reminded of Santayana's words "Those who cannot remember the past are condemned to repeat it."

Current events crowding upon us make it later than you think. Law Day in the year of our Lord 1959 is none too soon a time and the campus of the University of Chicago (Darrow's home neighborhood) is none too close a place for the matter at hand to be put down in black and white.

Generally speaking, Darrow functioned by applying macroscopic ideals in a microscopic way. For instance, the universal right of a man to defend his own home was exemplified in his defense of one person, Dr. Ossian Sweet of Detroit. We can picture Darrow's battle against tyranny over the mind of man, in his advocacy of one Tennessee school teacher, John T. Scopes. We can appreciate his exposition of the futility of capital punishment in the McNamara, Loeb and Leopold cases and more than a hundred other capital offense trials in which he participated. But in the instant matter, the process was reversed, except that, as usual, Darrow was still on the unpopular side. In the matter I shall speak of tonight Darrow was dealing with broad ideals unrelated to the life or welfare of a single person but in support of the broad principles of free enterprise. And this right after the crash of '29 when the words "free enterprise" were dirty words.

The incident took place one bright, sunny afternoon in the spring of 1934. This is the way Clarence Darrow described it after visiting the White House that day.

"Mr. Darrow, you are doing a wonderful job."

It was the President of the United States speaking. The two of them were having tea together in one of the small parlors of the White House. The President had appointed a Citizen's Committee to investigate NRA, and Darrow, its Chairman, was making his first, of what he hoped would be three reports.

Mr. Roosevelt, in the course of a long political career, would appoint a good many committees to investigate a good many things and he would have to listen to a good many reports. The occasion called

At the Conference on the Public Servant, left to right, William Eagleton, JD'26, a former member of the Law Faculty, Brigadier General Charles Decker, Assistant Judge Advocate General of the Army, and Louis H. Kohn.
for the usual amenities and Mr. Roosevelt was not one to ignore them.

"Mr. Jones—Mr. Smith—Mr. Darrow—(as the case might be), you are doing a wonderful job."

According to protocol, Mr. Darrow should have bowed his head, rubbed his hands together and murmured, "Thank you, Mr. President, you are very kind." But Darrow (never much on the amenities) had reached that advanced age in life when policies were more important than politics and people were more important than the offices they held.

His reply, if not ungracious, was certainly full of concern and (let me add) considerable incredulity.

"Do you think so, Mr. President?"

How typical of Darrow. Here were two men, one the most powerful (and the most popular) of his era, and the other, to use Darrow's own words: "A man who had stood with the hunted all his life." Men who stand with the hunted generally find their utterances vanish into oblivion. No doubt, if my assistant, Richard Carr and I, had not been waiting at the west gate of the White House to pick up Darrow after his visit with the President, the short but pregnant conversation, as he recounted it to us, would have remained lost to posterity.

That day, I played Boswell to Darrow's Johnson—and for good cause. As General Counsel for the Darrow Board, I had a hand in drafting the Darrow report and I knew it was very bad—very bad for NRA.

I think Arthur Schlesinger describes its genesis and tone pretty accurately:

"Darrow, his associates and his staff, headed by Lowell Mason—worked day and night. In four months they held nearly sixty public hearings, considered about three thousand complaints, inquired into thirty-four codes and

turned out a bundle of reports. The first, early in May, set the tone. It was no measured appraisal of the program, but rather a scathing attack on NRA as the instrument of monopoly."

None of us were so naive as to expect the President to endorse the report. Up to now the whole force of the Administration had been behind NRA. To approve the Darrow report, would have meant an about face for the President when public opinion had not been conditioned for it. And no one knew better than a President versed in the art of democratic leadership that "The movement of opinion is always slower than the movement of events." Besides this, we were painfully aware of the fact that the President set great store by Hugh Johnson and his Blue Eyed N. R. A. We also realized (which is hard to appreciate in today's Washington) that with the exception of a few stalwarts, such as Wheeler, Hiram Johnson, Borah and Nye, the so-called rubber stamp Congress would enact nearly anything Roosevelt desired. If he had wanted greater latitude in the management of private industry, he would have received it, for the main concepts, principles and precepts of economic democracy—what Walter Lippman in his recent book "The Public Philosophy" calls "Civility", were never at a lower ebb than in '33 and '34. Big and Little business were blatant in their demands for the right to fix prices and channel trade through set pattern. They had to have these powers (they claimed) in order to secure the continued existence of free enterprise. (How incongruous can people get!). Labor demanded more than fair treatment to compensate for the past when labor had not got what it felt it was entitled to. This "generous" and "reassuring" state of affairs was guaranteed to both organized capital and organized labor by Congress delegating its legislative powers to groups of private citizens, whose public aims were sometimes obscured by private directions. In answer to the few protests that this was no way to run a country, the supporters of N.R.A. replied that ultimate control of private industry was still subject to the approval of a Bureaucracy under the direction of the Chief Executive. Of course, its supporters did not call it "Bureaucracy." They used the more euphonious word "Government."

The day when Darrow walked into the White House with his report under his arm, he was in somewhat the same position as that of Archimedes when the Romans invaded Syracuse and killed the great mathematician. You remember the story. The Centurions came upon

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Let me get down to detail; but as I do, let me remind you that American legal history is (the Supreme Court excepted) one of the more neglected and is at the same time, for any lawyer, one of the most accessible avenues to not only pleasure but illumination. All a lawyer has to do is to read his earlier reports and statutes not for their doctrine alone, but also or indeed primarily as a series of documents from the times: Why the result? Why this road to the result? And what is being simply taken for granted, and again specially, why?

To work: Since our reports first begin to accumulate—say 1810—there have been two well-nigh complete revolutions in the way and theory that deal with how you supreme appellate judges have been going and ought to go about your job. You can test this cleanly by looking, say, at 1859, 1909, and 1959. This is a matter of plain fact. I shall proceed to urge that it is a most important fact. But first I want to test in advance another proposition of fact on which I expect to rely.

How many of you are familiar with the two revolutions of your craft-ways? No, that would be dice-loading. Let me rephrase: When I say: "There have been two complete revolutions, since 1820, in the general way in which American appellate judges have gone about their work, contrasting, in general, such times as 1859, 1909, and 1959," to how many of you does this assertion make any real sense? [Not one person suggested that it made any sense.]

Thank you.

In 1859, one era and manner of your work was perhaps beginning to wane, though it was still definitely dominant—say, like a moon one or two days after full. Roscoe Pound has called this general period our "formative period" when his eye was on the rather lovely building of doctrine in that time. In a happier phrase, he has also called it our "classic period". Then he was thinking of the method.

I call it our Grand Style, or the Manner of Reason. The essence is, I think, that every current decision is to be tested against life-wisdom, and that the phrasing of the authorities which build our guiding structure of rules is to be tested and is at need to be vigorously recast in the new light of what each new case may suggest either about life-wisdom, or about a cleaner and more usable structure of doctrine. In any event, and as overt marks of the Grand Style: "precedent" is carefully regarded, but if it does not make sense it is ordinarily re-explored; "policy" is explicitly inquired into; alleged "principle" must make for wisdom as well as for order if it is to qualify as such, but when so qualified it acquires peculiar status. On the side both of case-law and of statutes, where the reason stops there stops the rule; and in working with statutes it is the normal business of the court not only to read the statute but also to implement that statute in accordance with purpose and reason.

And also, if I may return to my opening: the writing judge has neither any illusion that he is or ought to be a Pythian priest, nor has he any illusion of freedom to move as he wills. He does recognize, indeed, the duty to make a solid case on the authorities. But my reading has turned up only one judge who (according to my sniffer) was completely ready to distort them in the interest of his will. Reasonable, lawyer-like arrangement of authorities in a good cause, even if slightly skewed,—that I am not denying. What I
am saying, and this is important, is that for most judges on most occasions—should I guesstimate over 90 per cent?—this was in no way under cover, and that policy—which means the reason of the situation—was a normal, overt and sometimes lengthy subject of discussion. Thus, as of 1859.

By 1909 such practice had become exceptional, the ideal of it, even the idea of it was all but dead, and most lawyers, indeed most sitting judges, either knew, or thought, or felt, any such way of appellate deciding to be simply wrong, and, praise be, absent. Statutes, moreover, tended to be read unfavorably, and even when seen favorably, they tended to be limited to the letter.

I give you a flat fifty-year figure. Have you ever thought about the meaning and power of fifty years in our queer American legal tradition? With us fifty years can re-create the whole nature of the legal universe. We do not work with an unchanging canonized text like the Koran or the Mishnah or the Code Civil. We do not even have a carefully gathered and carefully taught doctrinal tradition such as might have grown up out of Coke, Blackstone, Kent, Story, Cooley, Pomeroy, Wigmore. Success of the case-book completely killed off that line of tradition-building. In result, the organ of tradition is the instructor. And a generation, there, amounts to hardly fifteen years. When you enter law school at twenty-one, a professor of thirty-five has the experience and authority of a father; one of fifty speaks like grandpa, from an ancient past behind which nothing ever has been different.

Hence, by the time any of you entered law school the way of work of 1859, the image of on-going constant and overt reexamination, redirection, rephrasing and general refreshment of the rules, in the light of sense not for the case alone but for the type of situation—that way of work and that image lay buried under formal thinking and formal ideals and a formal manner of reasoning and of writing—lay buried, for you, as if they had never been. Even after your experience in practice and on the bench, our test of a moment ago shows that the high tradition of the earlier nineteenth century is not vigorous in your minds as being a thing which once was the thing, which just got temporarily displaced by one unhappy intellectual revolution.

But when you are now reminded of the fact that that way and ideal of work dominated the American appellate bench—great judges and mediocre judges alike—for more than half a century, then you should see and feel at once that the open and conscious quest for the reasonable rule for the type situation which characterizes the work of the American State Supreme Court today, so far from being ground for unease, should be a basis for rich pride. What it means is that your branch of the profession has performed a truly amazing feat. Within fifty years, without conscious planning, in the teeth of the conscious image of duty and of correct craftsmanship misinculcated in your legal youth and insisted upon loudly and bitterly by the whole vocal bar, you have yet managed to work your way back to a daily way of judging which has almost recaptured the full Grand Tradition of the Common Law.

I speak of the American Supreme Bench in general; but I feel safe. I have studied New York at all periods, with closely examined mine-run samplings from 1939, 1940, 1951, and 1958. I have studied Ohio in 1844, 1940, 1953, and 1958. In Massachusetts, North
Carolina, Pennsylvania and Washington there were sustained studies from fifteen or twenty years ago and then from full current samplings as well—all mine-run stuff, the reported cases taken in sequence as they appear. Nine other states, West, South and Middle West, were studied in full current samplings. In each instance the material tested runs regardless of subject matter, accounts to “unfavorable” as well as “favorable” material, and reaches at least a majority of the judges on the court. There have also been a number of intensive borings, especially into Illinois material, to test the possibility of getting further light by approaches from other angles. Results: the historical comparisons show that the march toward re-capture of the Grand Style is unmistakable, strong, steady, and increasing. The fifteen current samplings seem to me conclusive that almost no state can have escaped its influence. It is, I repeat, an amazing achievement, and it is more than time that it should become a source not only of conscious pride but of that even more effective craftsmanship which can be generated when men add to a sound feeling for the job a conscious study directed to improving the know-how of the craft.

Before moving on to a few suggestions which the best work, older or current, holds out for any work of every day, let me take a precaution against possible misunderstanding. When I speak of overt resort to and discussion of sense as an opinion-daily phenomenon of current judging among American Supreme Courts, I do not mean merely such discussion in regard to the application of the rule. Neither do I mean such discussion merely in regard to a choice between two so-called competing rules or principles. I refer to open, reasoned, extension, restriction or re-shaping of the relevant rules, done in terms not of the equities or sense of the particular case or of the particular parties, but instead (illuminated indeed by those earthy particulars) done in terms of the sense and reason of some significantly seen type of life-situation. A short speech is no place to develop what has cost me a 500-page book.* I give a single illustration. Oregon had a precedent, based on soapy window-washing water on a sloping sidewalk, that was cast in terms of “not creating a hazard or adding to the danger of pedestrians who might use the sidewalk, by placing thereon, or, if so placed, in not removing therefrom, any matter that would cause a slippery or dangerous condition.” Some snow fell in Portland, was cleared from steps onto an embankment, melted and ran, and, overnight, left a small patch of ice on the sloping sidewalk. The plaintiff slipped and was injured. What the court did was not to “apply.” What it did, in the light of “negligence” “principle” plus some aversion to “strict liability,” and in the light of three well considered Eastern cases, was to diagnose a new significant situation: “snow-clearance by the abutter”, and to adopt a new rule to further general public convenience by freeing such clearing from risks of liability merely for refreezing.

The case simultaneously brings out another of the more striking phenomena of modern advance sheets. The courts search for, and then quote in some fullness, among out-of-state opinions as well as among home opinions, cases which give not only a rule but also a persuasive presentation of good life-reason in the light of the type life situation. Now I shall be slow to be persuaded that it is, as yet (though God grant it may soon be), the general habit of the bar to dig out and brief-quote this type of opinion in particular; and rarely is the possession of any such given reason even suggested by either digest or encyclopaedia. The labor of this increasingly general quest thus indicates to me one of two things: either a hunger of the writing judge for situation-reason, before he can himself be satisfied, and then, in true Common Law Grand Tradition, his hunger also for merging that situation-reason with authority; or else it shows that, as a skilled man who wishes to keep or capture votes among his brethren, he knows this kind of material to be what they will go for. This is the sweetest dilemma any disciple and preacher of the Grand Tradition can ask to be impaled on. Either horn is honey. Neither will I be put off by any judge’s conviction and assertion that he never writes to capture votes, that he writes merely his best version of the facts, the law, and the sound and right decision—let votes or heavens fall where they may. No judge of such conviction can deprive me of my comfort. For he could not be a judge unless he was a lawyer. And

*THE COMMON LAW TRADITION: DECIDING APPEALS: (Little, Brown; now in press.)
a lawyer either is no lawyer at all, or else as he shapes up a matter he puts its best foot forward. And a lawyer—including an appellate judge writing for his own conscience (but also to get his duty done, of a right resolution of the litigation in hand)—may indeed not think consciously about the particular tribunal he has in front of him. But his lawyer’s instinct does a lot of that kind of work without his thinking.

With this as a background, let me turn to a few suggestions about both manner of actual judging and manner of opinion-writing which hang like bunches of good grapes, ready to be picked, on the vines of the better practice of your tradition.

The first of these is obvious: (1) The drive should be for consistent and sustained application and development of the best modern manner. Today, at unpredictable moments, there still pops up into consciousness and control the unhappy and obsolete 1909 image of your office as being purely formal, non-creative, powerless, indeed in a deep sense irresponsible: “It is the rule and not the court . . . etc.” Whenever that image does so pop up, it interferes with the job. It interferes in the case in hand, which is bad; but, what is much worse, it slows and checks the smooth development of your general recurrence to the Grand Tradition. The doctrine I am preaching is, of course, not that a clear rule which leads to a right result needs anything more than mere clear statement in a single paragraph. The doctrine is instead that under the Grand and Only True Manner of deciding: (a) any rule which is not leading to a right result calls for re-thinking and perhaps re-doing; and, also and equally, (b) any result which is not comfortably fitted into a rule good for the whole significant situation-type calls certainly for cross-check and probably for more worry and more work.

(2) The second of the points is one which as between the 1939-1941 samplings I have studied and the current ones seems to be on the perceptible increase. That is the practice, whenever time permits, of what I think of as a tidying-up of the whole particular little corner of doctrine, so as to afford the court a canvass of all the local experience to date, and so as to afford the bar a fresh and clean foothold. Note how comfortably this fits with any persuasive life-reason for a significantly seen type of situation which a court may locate in experience from across the border. Note also, where no such ready-made rationale is at hand, how the tidy-up provides an authority-underpinning for any rationale the court may reach on its own. Note finally the dividends such a job pays not only to the bar in guidance, but to the court itself in speed of disposing of further cases in the same area. I have been proud of my Common Law Tradition, as I worked through my current samplings (in all, 350-400 cases) and met instance upon instance in which, even after such a recent tidying-up, the court was willing to review the field once more. I have been disturbed when, after two such jobs, a court has not felt that it was time to take a little skin off the back of slovenly counsel who despite the recent clean-up had been wasting court’s time and clients’ hopes and money.

(3) Save for the course of the prior discussion, the third point might well have been put first. It is a formula for avoiding both “Hard cases make bad law” and any splintering of “the law” into narrow jackstraw-decisions which offer to neither bar nor tomorrow’s court any helpful pattern for guidance. In my judgment this formula is always helpful, in three cases out of five it resolves the chief difficulties almost automatically and in the rest it presses things toward sound solution. The formula is simple to state, and not hard to apply. It is this: As you size up the facts, try to look first for a significant life-problem-situation into which they comfortably fit, and only then let the particular equities begin to register; so that when the particular equities do begin to bite, their bite is already tempered by the quest for and feel for an appropriate rule that flows from and fits into the significant situation.

This kind of language means little by ear, or in the abstract. Let me try both to illustrate and to save time by taking a case most of you met (and were mistaught) while you were still students: McPherson v. Buick. That was a case in which the defendant not only had done every normal thing that in the then state of the art there was to do, but also had an astounding record of experience to show both its care and the soundness of its judgment. If you take the party-equities as a base-line and if you take “fault” of any kind as a principle, that pretty well cleans up the plaintiff. And Willard Bartlett’s reminder that at the time of the accident the car was
moving only at a stage-coach speed of eight miles an hour also becomes crushing argument. What Cardozo did, in contrast, was to take a significant life-situation, first, and to take these individual equities only against that background. I am not going to argue whether or not he was right or wise as to the doctrine in the particular situation. For my concern is with method; and not even the grand methods of the Grand Style give any assurance of sound outcome in any individual case. What they do is to double or treble the probability that the outcome will be sound. But the case does show sound method going to one value which would be live and real even if the particular case-result were most unhappy in its substance; to wit, the gain at least in predictability which can be achieved by a combination of looking first for a significant type of situation, and then doing a careful tidy-up. Thus before McPherson v. Buick the law of New York had for some demonstrable forty years been swinging around on this matter like a weather-vane. I urge that even Willard Bartlett’s beautiful argument (which Law School never introduced you to—Have you ever read it? Who has?) was just another of the same: another individual equity job. The Torts boys praise Cardozo in this one because of his beautiful new doctrine. I agree, but that is not my point here. I praise him here because of his beautiful old method, and—as I hope my book makes unmistakable—I would praise that, even though I objected violently to his particular result.

See what he did. It is so simple. It is so grand.

Instead of individual parties doing their best, or queer articles: “dangerous instruments,” he set up a significant type-situation: consumer-purchase in a community which has to rely on increasingly understandable basic technology. That typical situation, seen that way, stepped up the aspect of reliance and stepped down the aspect of fault. And the typical situation, as of course, included the need for marketing the product through middlemen. You will find no such overall picture sharply expressed in the opinion. What the opinion does is to feel that picture. Indeed, it is not the job, even of a great judge, to get fully explicit, all at once, about great social change. His job is to feel what he can, and to see what he can, and to say what he can. But his method has to be to reach, first, for the significant type-situation. Then, to diagnose a problem, and to prescribe an answer accompanied by an explicit life-reason: this not only helps toward a good answer, but is also priceless in affording easy wherewithal for tomorrow’s intelligent application, or else for tomorrow’s explicit correction, as tomorrow’s case may prove to need. Finally, the good judge’s office, in the Grand Tradition, is to do a careful and honest tidy-up in his opinion.

Out of a dozen more further matters there are three which press peculiarly for mention, even though the mention must be cut to the bare bones. There is, to begin with, the syllabus by the court. The propositions are these: (1) Whether or not there is a present practice for the court to prepare its own syllabus, it ought to. (2) A syllabus court which prepares the syllabus not before the opinion is written, but only after the opinion has been written, sacrifices the main value offered by the syllabus to the opinion, to the court, and to the law. (3) My argument is independent of any theory or doctrine to the effect that “it is the syllabus which states the law.”

On the third point first: My book demonstrates, from Ohio, and I will undertake to demonstrate from any jurisdiction, that regardless of local theory on the point, a syllabus-court is up against the same multi-wayed problems of handling prior authorities as is a non-syllabus court. My guess is that the diverging correct doctrinal possibilities merely rise from 60 plus to 80 plus, as syllabus and opinion come to interact in their operation and application.

Now on the first two propositions together, and flat, and simple: Elementary theory of argument makes it clear that if the points to be made are thought out, arranged, and also phrased, before writing begins, the result has to improve in

(a) clarity, and
(b) force, and
(c) speed of production. And almost always improves also in

Shown in the Quadrangle Club Library, a short time before the Henry Simons Lecture, left to right, Abram L. Harris, Professor of Economics, The University of Chicago; Peter Odegard, Professor of Political Science, University of California; Jacob Viner, Professor of Economics, Princeton University; and Simons Lecturer; George Stigler, Charles R. Walgreen Professor, Department of Economics and Graduate School of Business; and Aaron Director, Professor of Economics in the Law School and Editor of the Journal of Law and Economics.
(d) shortness and bite.

Again let me avoid being mistaken. When I apply the theory of argument to an appellate judicial opinion, I do not mean that an opinion is merely an argument. What I do mean is that whatever else it is, it is also and necessarily an argument: A conclusion has been reached and has been tested and has been found both right and solid. The opinion-writer now has a lawyer's job: the facts, issues, and authorities are to be marshalled so that on any point the rule announced is shown to any reasonable reader to be properly controlling, and so that the application of that rule is shown to any reasonable reader to be not only justifiable but wise. Only thus can a satisfying opinion come into being. The laws of argument apply: The points to be made are best thought out, arranged, and also phrased, before the writing begins. Of course the writing may show rearrangement or rephrasing to be required. Sometimes a judge may be forced to reverse his initial conclusion. But that cuts down not one tittle on the value of preliminary phrased organization.

It is a queer thing that you gentlemen, who, in order to make things clearer for yourselves to see and easier for yourselves to handle, force upon the bar in their briefs an organization by way of phrased points which come first, should in your own work and in your own product disregard that method. This calls for some soul-searching on your part.

The second remaining "must" for mention is a question of judicial statesmanship: the value of a two-stage operation whenever any important change of doctrine either portends or is undertaken. Warning is a tremendous value to a counselling lawyer. Warning is also old practice. Take the familiar cases where the court says: "Now look: here is what we are not deciding." Or, beside and against these, take the cases where the court says: "Of course, if the facts were this other way, it seems clear that the outcome would be the opposite." Both caveat and prophecy, when carefully considered, give good warning. Both caveat and prophecy, even when carefully considered, offer the court a second think. Note now a new factor on the scene: we have today, in the law reviews, to a degree and with a general spread never before met in the history of our country, a forum for dubious or dangerous, even though carefully considered, suggested ideas of the State Supreme Court to be explored with freedom and with fullness, before they bite. To open an idea to such a forum is to widen materially the likelihood and range of information the court can hope to tap. Not infrequently such additional material can shift what seems the balance of wisdom. Meantime, the counselling lawyer has marked his chart with a danger flag, and transactions are so channeled that—no matter which way it goes—disappointments are reduced. That is pure gain for everybody.

Why, in the light of these facts, is not the principle of warning and the practice of two-stage operation made general? Thus, for example, when there is some novel ruling, it is almost always technically easy to add at the end an alternative which on the facts leaves the main, and meant, ruling still open, if real reason should appear, to be distinguished for cause.

A study of your current practices of distinguishing shows that purely technical distinguishing is today almost as extinct as the dear dodo. Today a distinction without a reason expressly given is rare; and almost always the reason given goes to reason of fact, which is reason of life, as seen by the court. I therefore feel no hesitation at all in suggesting a standard technical procedure to avoid silly questions of face ("Can We Overrule So Recent a Decision?") while a court still keeps its eye on the ball in a two-stage operation.

Finally, on this matter, and again in the interest of "general principle" (not coined for this argument, but built out of a careful examination of a century of our case-law experience)—finally: why should you not generally, instead of at odd moments, bring this principle of warning and this practice of two-stage to bear on the problem of overruling, as well as of any other change or warning? There is no time to develop this. I ask you only to think about three questions:

(1) If the argument and study in a case persuade
you that a rule in the immediate area is ready to fall in the next wind, I am suggesting that warning of that is by any discoverable standard of decency as much needed as can possibly be the carving out of a little Swiss cheese hole in any pending decision.

(2) If the case in hand just slips in under an exception (so to speak, "on other grounds") to a rule which the argument has persuaded you no longer fits our people: why is this not the perfect opportunity to give, in regard to a rule, the warning notice which every man of you is willing to give with regard to an exception?

You will observe that what I am here urging, to wit, the considered expression that "When we get a clean chance, we will extirpate," does not even touch the problem of the Sunburst Oil case.

And yet, as far as my limited reading goes, this easier and more useful method has found more resistance among you gentlemen and your brethren than has even the bold move of deciding the pending case by the old rule, while announcing a new rule (or a new approach to a statute) for the future. I think that this difference is because you have been (rightly) trained to think protection against retro-active "law" to be not only decency, but your office; while you have also been mistrained to think that your office has no part in prophecy. But surely any good case-law judgment is in its best part a combination of prophecy and of clean guidance toward fulfillment thereof. In any event:

(3) Why do not the principle of warning, and the practice and policy of two-stage operation become a standard approach to possible overruling, prospective overruling, and to the case which has, in itself, to be excepted from the overruling—easing all of these, while it effectively warns the bar, and also opens up whatever may be elicited to inform the court before the final leap?

The last matter which refuses to be left without mention is that of the statutes. Here the image of 1909—"We must accept what is written, we have only to read the [mostly non-existent] 'intent of the legislature,' we have no power to add," etc.—modified only by the 1959 willingness to abdicate self-will and to try to make sense—here, I say, the image of 1909 stalks not only active (though most intermittently) but vicious.

The simple basic principle which expresses both the Grand Manner and today's need is this: It is contrary to a Supreme Court's duty, and therefore to its power, to allow any statute to remain as an undigested and indigestible lump in the middle of Our Law.

Even the most formal judges of the Formal Period recognized this principle. Their response was sound in terms of office-instinct: The Law does call for wholeness. Their response was not good, in terms of measure. They refused to participate in the intrusion. They excepted what they could, via unconstitutionality. They wallowed off the rest by literalistic construction.

That is past, in regard to the particular. But it is still with us at odd moments, and vigorously whenever a court settles down to a sermon on its lack of power over the written word.

But in my current samplings

(a) I have found no single court which, even if it mouths the statute-image of 1909 today, cannot also be found operating in conflict with that image, and in an approach to the Grand Approach to statutes, on the same opinion-day or on the next.

(b) Nor have I found any court which, judged on a sequence of cases, is not moving with regard to statutes about as freely in the average as it is in the case-law field. This holds also for the 1939-1940 and 1944 work examined from six courts. What you get in the statutory field is a jerker, less predictable movement: here more of a hitch, there a sudden jump, so to speak, under cover; no adequate guidance, as to when which will occur.

That is not healthy judging.

According to the Grand Style, it is the office of the Supreme Courts in these United States to do, with statutes, too, what you have for now a demonstrable two legal generations been doing for the rules of our case-law. You must accept them, to start with: you are no independent agents. You must shape yourselves to what, in essence, they give you to receive; you are no officers to move as you see fit. You must also accept policy and basic measure, if, as and when the legislature gives them to you. Indeed—and here begins the tough duty—your job is also the perplexing one of remaining true to such policy and measure and at the same time to the nature and spirit of the inherited rule-machinery—of somehow handling the individual case according to all of these at once, as you labor in the vineyard of the heritage. You accept today from the Legislature, as your forebears of 1889-1909 would not, the Legislature's essential declarations of policy, and its outlines of measures. But as you do it, and very queerly, you still proceed to pick up, proclaim, and sometimes even trip yourselves on, the very noises that the foot-draggers of 1909 used to use in order to keep legislative policy from receiving any real recognition. For "We have no power," when that slogan was first popularized in the Formal Period, meant "Thank God, we can whittle it down to frustration."

Briefly, then: (1) A piece of legislation, like any other rule of law, is, of course, meaningless without reason and purpose.

(2) Few are the legislatures, even when equipped with tops legislative reference bureaus, who also have had time to give this particular bill the visiting Queen Elizabeth treatment, or who, in passing any bill, pass
yet with any real "intention," as to the question which is now before the court.

(3) Even when legislators do have demonstrable intentions—as with an open grab-bill—there can be times when a court has a duty of restrictive construction. (On this Breitel's forthcoming article advances—yet with sweet restraint—far beyond any earlier writing.)

In the net, then: as in the Grand Tradition, so in current practice, and even more in current need, the recapture of the Grand Tradition is almost there, but irritatingly is not yet there, quite. It needs to be fulfilled.

In regard to the How, my guess is that most of you who may disagree with me may be worried more about statutes than about anything else. In regard to statutes, and with my own mind on the way statutes have been viewed in our tradition in the first Elizabeth's time, and in Coke's, and in Marshall's or Shaw's, and in Hughes', as his viewing changed through his long legal life, and as I work over instance after instance of your current work—in regard to statutes, the essence comes to this: that except for occasional almost unwelcome reappearances you are almost back to getting at them in terms of "where the reason stops, there stops even the enacted rule." You are still, however, far short of the other duty, addressed to the undigested lump—the hard, the troubling stone in the law's stomach. That other, complementary duty is: Whither the reason leads, thither goeth the rule, as well. That is the principle of implementation by purpose. It is a Supreme Court's duty, the duty to keep Our Law Whole, and a working Whole.

There is so much in this, my plea for conscious recreation of the responsible forward-guiding of our Common Law, which may offend all or some of you. To these I can only say in the words of old Oliver Cromwell: "I beseech you, in the bowels of Christ, bethink you that ye may be mistaken."
Alumni Notes

Morris B. Abram, JD'40, has been elected a trustee of the Twentieth Century Fund. Mr. Abram, who practices in Atlanta, served on the prosecution staff at the Nuremberg trials, and later became a Public Member of the Wage Stabilization Board, Southern Region. He is currently Chairman of the Citizens' Crime Committee of Atlanta. For some years he has been a member of the Board of the Law School Alumni Association.

Arnold A. Silvestri, JD'49, has been elected president of the Justinian Society of Lawyers. Mr. Silvestri is in private practice in Chicago.

The Honorable Florence Allen, '12 Judge of the U. S. Circuit Court of Appeals for the Sixth Circuit, retired recently after twenty-five years of service in that court. Prior to her appointment to the Federal Bench, Judge Allen had served as Judge of the Court of Common Pleas of Cuyahoga County, and for two terms as a member of the Supreme Court of Ohio.

The Record reports with regret the death of three distinguished alumni of the School. Mr. Eugene N. Blazer, JD'13, returned to Omaha upon his graduation from the Law School, and became one of the most eminent members of the local bar. Mr. Oscar Worthwine, of Boise, Idaho, and Mr. Charles Leviton, of Chicago, were both members of the Class of 1911. Mr. Leviton, who engaged in private practice in Chicago, had served for a great many years as General Counsel of the Chicago Bar Association. Mr. Worthwine, who practiced in Boise for 48 years, had served as chairman of the Idaho Code Committee, President of the Boise Chamber of Commerce, and was one of the founders, and first secretary of the Idaho State Bar Association.

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spend considerable time in touring the old battlefields. He is an ardent football fan and follows the great Oklahoma University Football team all around the country.

Howard B. Black is currently employed as a Hearing Examiner by the Bureau of Land Management of the United States Department of Interior. Occasionally he is on assignment in Salt Lake City but he maintains his permanent residence at 3000 Thomas Street, Cheyenne, Wyoming. His wife, Marjorie, died early in 1959 and left him with one married daughter. At different stages in his career he was Attorney General of Wyoming and a Special Attorney in the Wyoming Land Office as well as Attorney for the House of Representatives in Wyoming in 1941. The balance of his time has been spent in the private practice of law.
Lucile Bradley is now Mrs. Lucile Bradley Geldert and lives in Berkeley, California. She writes that she never practiced law but married and raised three children—"that's all"—one of whom is an accountant, one a teacher and one son-in-law will be a lawyer when his training is completed.

James R. Bryant practiced law privately until 1953 when he was elected a Judge of the Superior Court of Cook County. Prior to that, for a period of sixteen years he had been a Master of Chancery in that court. In 1958, he was selected by the Supreme Court of Illinois to serve as a Justice of the Illinois Appellate Court, which is his current tour of duty. Judge Bryant has on occasion talked at the John Marshall Law School in Chicago.

William C. Christianson is today Judge Christianson and is a District Judge for the First Judicial District of Minnesota. From 1946 to 1947, he was Associate Justice of the Supreme Court of Minnesota and also served as a judge in the tribunals in Nuremberg, Germany in connection with the war crimes trials. He is a Past President of the First District Bar Association of Minnesota, is married and the father of William Lorenz Christianson, who is now studying law. Judge Christianson was appointed to serve at the Nuremberg trials in 1947 and stayed in Nuremberg for over two years, during which time he served as judge on two tribunals engaged in the trial of men charged as major war criminals. On each of these tribunals he had as an associate judge a graduate of the University of Chicago Law School. He may be reached by writing to him at the Court House, Red Wing, Minnesota.

Harry X. Cole has specialized in matrimonial law for the greater part of his practicing career. He has been in Bar Association work both on a local and national level, and is currently Grand Orator of Illinois of Grand Lodge of Masons of that State, and a Past Grand Patron of the Order of Eastern Star of Illinois and Past Supreme Watchman of the Order of White Shrine. He is married and has two children.

Daniel Henry Cronin is practicing law in Detroit, Michigan and is a Senior Partner in the firm of Cronin Cronin. He has two sons, one of whom is presently an Assistant Prosecutor for Wayne County, Michigan. Mr. Cronin is a Past President of the Hamtramck Bar Association and Past President of the Rotary Club and has been a Director of the local Board of Commerce for fifteen years. By his own admission he has been practicing law since graduation from the University of Chicago "with success better than average."

DeWitt S. Crow was admitted to the Nebraska Bar immediately after his graduation from the University of Chicago Law School in 1920, and the following year was admitted to practice in Illinois. At one time he was a member of the Board of Education in the City of Springfield, and on the Board of Supervisors for Sangamon County, Illinois, a member of the Election Commission, City of Springfield, and he has served as President of the Sangamon County Bar Association. He was elected Judge of the Circuit Court of Illinois for the Seventh Judicial District, and was appointed to serve as a Justice of the Appellate Court for the Second District in 1954, which position he still holds.

Charles Edward Dawson is currently Judge of the Chancery Court for the Eleventh Chancery Division at Knoxville, Tennessee. In 1921, he was admitted to practice law in Tennessee and continued in private practice in Knoxville until 1950, at which time he was elevated to the Bench. From 1926 to 1934, he was First Assistant Attorney General, and from 1934 to 1950, he was Clerk and Master in Chancery to the court which he now serves as judge. He is the father of two children and the grandfather of five. In 1958, he was re-elected to a second eight-year term as Chancellor of the Eleventh Chancery Division.

Earl B. Dickerson, after having practiced law for many years, discontinued active practice and became President and General Manager of the Supreme Liberty Life Insurance Company, which position he now holds. At various stages in his career he was Assistant Corporation Counsel for the City of Chicago (1923 to 1927), Assistant Attorney General for the State of Illinois (1933 to 1939), a Member of the City Council, City of Chicago (1939 to 1943) and a Member of President Roosevelt's Committee on Fair Employment Practices (1941 to 1943). He ascended to the presidency and general management of the Supreme Liberty Life Insurance Company after having served as its General Counsel, and he considers the position he now occupies the highest point in his career. His company operates in twelve states and the District of Columbia and has assets approaching twenty-five million dollars with a total of six hundred employees. He reports that the greatest thrill he received during his life as a practicing attorney came as a result of his participation in the trial of the case of Hanksberry vs. Lee (United States Supreme Court, November, 1940) which involved restrictive covenants and in which the United States Supreme Court reversed the Illinois State Supreme Court, which had previously sustained such covenants. The action by the United States Supreme Court made available for occupancy to non-whites twenty-six city blocks on the south side of Chicago.

Isadore J. Fine is a Senior Partner of the firm Fine, Hatfield, Sparrenberger & Fine, of Evansville, Indiana. While Mr. Fine has had outside interests of a business nature, all of his time since graduation has been devoted to the practice of law. He was Past President of the Evansville Bar Association and a member of the American Bar Association Committee on Federal Tax Liens. He has an only son, who is in practice with
him, and is the grandfather of two. He has been active as an officer or director or both in a number of business enterprises, including several broadcasting stations in Missouri.

W. Turney Fox first became a judge when he was elected to the Superior Court of Los Angeles County in 1932. He served that court until 1952, when he became Associate Justice of the District Court of Appeal, on which bench he still sits but is today Presiding Justice. He has been a member of the California Judicial Council and President of the California Conference of Judges. From 1923 to 1927, he was a full-time Professor of Law at the University of Southern California Law School, and later continued as a lecturer on a part-time basis. He is still married to Lillian Hill who, he says, pushed him through Law School; the father of two children, one of whom is deceased, and he is also the grandfather of four. From 1927 to 1929, he was City Attorney of Glendale, California, and from 1929 to 1932, was Assistant City Attorney of Los Angeles. The highlights of his career include his term as President of the Conference of California Judges, which is made up of all judges of courts of record in that State, as well as his tenure as Presiding Judge of the Superior Court of Los Angeles County, which he informs us is reputed to be the largest trial court in the world. While a Judge of the Juvenile Court of Los Angeles County, he was instrumental in developing a Forestry Camp Program for teen-age boys and his work in this regard was written up in the Reader's Digest, issue of September, 1939, under the title "The Judge Didn't Throw the Book." He has been active in community and welfare work and seems to be still going quite strong.

Leo Carlisle Graybill is currently practicing law in Great Falls, Montana and is a Senior Partner of the firm Graybill, Bradford & Graybill, the Junior Partner being his only son, Leo Jr. He is Past President of the Cascade County (Montana) Bar Association and several years ago received the University of Chicago Citizenship Award. Mr. Graybill has been active in politics, both on a local and national level, having
served as City Attorney for Belt, Montana from 1922 to 1938, as member of the Montana State Legislature from 1943 to 1956, and Speaker of the House of Representatives for the period from 1949 to 1955. Since 1951, he has been a member of the Democratic National Committee and is its Executive Committee.

Wendell Green, who was the first Negro to serve on the Circuit Court of Cook County, Illinois died on August 23, 1959. He began his public career with an appointment as Assistant Public Defender in 1930 and was named to the Chicago Civil Service Commission in 1935. He was elected a judge of the Municipal Court of Chicago in 1942 and was re-elected for an additional six years. But before that term expired (1950), he was appointed to the Circuit Court by the then Governor of Illinois, Adlai E. Stevenson, and he served on that court until his death. He was one of the thirteen founders of the National Bar Association, an organization of Negro lawyers, and was the first national secretary of that organization. In 1958, Judge Green was cited by the University of Chicago Alumni Association as an outstanding alumnus.

Melvin L. Griffith got a late start in law, having been Superintendent of Schools in Breckenridge, Missouri from 1915 to 1917. After graduation he was associated in practice with the firm of Henslee, Monek & Murray in the City of Chicago where he did chiefly Appellate Court work. He has two sons, one of whom, George F., is a practicing lawyer. Each of his sons have four children making him grandfather of eight. For a while he was Attorney for the Village of Homewood, Illinois. Those interested in seeing what he and his family look like as recently as twelve years ago are referred to Page 7 of the University of Chicago Magazine for February, 1947, which carries a picture of his family and an article written by him entitled "The Worm in the Rose." He has retired from the practice of law and now lives in Golden City, Missouri.

Esther Jaffe, who is now Mrs. George J. Mohr, is currently making her home in Los Angeles, California. While married to Dr. George J. Mohr, an outstanding Psychoanalyst in Chicago, she continued in the practice of law. She is the mother of two and the grandmother of four. Her son, David L. Mohr, graduated from the University of Chicago Law School in August, 1959, and her daughter-in-law, Elaine G. Mohr, received her J.D. from our Alma Mater in 1954. She closed her Chicago law office in 1955 when she and her husband went to Israel and where they stayed for one year. She reports that of the six in her immediate family, three are already lawyers and a fourth is studying law, and so far as she knows, she and her daughter-in-law are the only mother-in-law—daughter-in-law legal team in the United States.

Gleonard Harrison Jones has retired and is living in Lawton, Michigan. He is married and has two children and six grandchildren. Other than this, he gave no further information concerning himself in response to the questionnaire which was sent him.

Julius Kreeger is still actively engaged in the practice of law in the City of Chicago. He is married, the father of two children and the grandfather of six. He has been active in local philanthropies and has held offices in many social clubs. In addition to his law practice, he is an officer and director in a number of corporations and has spent a great deal of time in travel.

Carl S. Lloyd is a Partner in the law firm of Kirkland, Ellis, Hodson, Chaffetz & Masters, in Chicago. He is unmarried, which fact probably accounts in part for the great deal of time which he has devoted to the welfare of the University of Chicago School of Law and its fund-raising and planning activities in connection with the new Law School building. He has had an active and varied law practice, including patent and trademark work, and has been with the same firm, of which he is now a member, for thirty years. He is on the Board of Directors of the American National Bank and Trust Company of Chicago and was President of the Village of Winnetka, Illinois from 1952 to 1956. He is very civic minded and has participated in many community, civic and church activities, particularly in his home village of Winnetka where he resides at 16 Indian Hill Road.

Katherine Biggins Magill resides with her husband, Roswell Foster Magill, both graduates of the Law School Class of 1920, at 31 East 79th Street, New York City. At one time she was secretary to Judge Evan A. Evans of the Circuit Court of Appeals for the Seventh District. Apart from that she apparently has done little in the field of law and has devoted herself
to being wife, mother and grandmother. Her chief interest has been working for Recording for the Blind, where she has concentrated on recording case books and other legal material for blind students. This organization records books free of charge for blind students engaged in the study of law.

Roswell Foster Magill is a Partner in the New York law firm of Gravath, Swaine and Moore. He taught law at Columbia University where he held a professorship from 1924 to 1951. He is currently president of the Tax Foundation. In 1933-34, he was Assistant to the Secretary of the Treasury (U. S.) and from 1937-38 was Under Secretary of the United States Treasury. During his law practice he has concentrated on taxation and tax policy, first in practice, later in government service and then in teaching. He is the author of Cases in Taxation, which is now in the fourth edition, Taxable Income, which has gone to the second edition, and The Impact of Federal Taxes. He has also contributed articles to Harvard, Columbia, University of Chicago and other law reviews, the Reader's Digest and Saturday Evening Post.

Louis M. Mantynband is a Partner in the firm of Arvey, Hodes & Mantynband and has been practicing law ever since graduation from Law School. From 1944 to 1946, he served as a Master in Chancery in the Superior Court of Cook County. He is married, has three children and six grandchildren. A son, Ralph, is a lawyer and a graduate of the University of Chicago Law School Class of 1953, and is today associated in the practice of the law with his father. In commenting on his career he had this to say: "I have been engaged in the active practice of law and have handled matters of extreme interest in the nisi prius courts and also appeals. On the whole, I have enjoyed good health and feel that I have done those things that a good citizen should do for his family and country."

Robert E. Mathews is currently teaching in the College of Law of Ohio State University. He is a member of the Council on the Section of Legal Education of the American Bar Association and Chairman of various committees of the Labor Relations Law Section of the A.B.A. Back in 1922, he was a lecturer at the University of Chicago on a part-time basis but since then has been teaching full time first at the University of Montana, then Columbia and now at Ohio State University. In addition, he has taught summer school at the University of Chicago, Columbia, University of Michigan, Rutgers and the University of Colorado. He has a son Craig, who is now in law practice but forsook our Alma Mater to take his law at Yale. Among the high points in Professor Mathews' career are these items: He was President of the Association of American Law Schools in 1952 and a member of the United States National Commission for UNESCO from 1951 to 1956. He has published three case books of his own on Agency and Partnership and has been editor-in-chief of three more volumes on Labor Law. He is also the author of numerous articles on Wills, Legal Education and Professional Ethics, and is editor of a new text on legal education for professional responsibility. He is a member of the National Academy of Arbitrators, a member of the American National Civic Liberties Union and consulting editor of the Journal of High Education. In 1943, he was a member of the United States-Bolivian Joint Labor Commission for the study of labor conditions in the tin industry in Bolivia. He was a member of the legal staff of the Board of Economic Warfare and Foreign Economic Administration from 1942 to 1944, and Associate General Counsel of the National War Labor Board from 1944 to 1945.
delegate of the Association of American Law Schools to the Second World Congress on Labor Law in Brussels in 1953, and a member of the Executive Committee of the International Society for Labor Law and Social Security from 1958 to date.

George H. McDonald today lives in Rock Island, Illinois and is General Counsel and Director of the Modern Woodmen of America. He has been active in local civic activities for many years, at one time being Commander of the Rock Island Post of the American Legion, President of the Community Chest of Rock Island and President of the local Library Board. He is National Grand Marshal of Alpha Sigma Phi Fraternity, and Secretary and Treasurer of the Law Section of National Fraternal Congress of America. On June 9, 1945, he received a citation from the Alumni Association of the University of Chicago "For unselfish and effective service to the community, nation and humanity."

Alfred M. Miller practices law in Newton, Iowa and is Past President of the Jasper County (Iowa) Bar Association. He has two children and five grandchildren. At one time he was County Attorney for Jasper County, and at another time was Mayor of the City of Newton, both in Iowa.

Harold W. Norman is a Senior Partner in the Chicago law firm of Norman, Engelhardt & Zimmerman and is actively engaged in the practice of law. Besides his active interest in the Chicago Bar and Illinois Bar Associations, he is a former President of the Bannockburn School District No. 106, and the Highland Park High School District in Lake County. He is a former President of the Illinois Association of School Boards and was appointed by former Governor Adlai E. Stevenson as chairman of a special commission on the public schools. Besides being the author of several articles on education and taxation, he is a director of several corporations and was President of the O-Cedar Corporation from 1942 to 1944.

LeRoy B. Reynolds is practicing law in Hermosa Beach, California. He has nine children and ten grandchildren. One son is presently studying law at the University of Southern California. He has held various offices in local Bar Associations and at one time was President of the Chamber of Commerce of Redondo Beach, California. He has also been active in church affairs. He was originally admitted to the Bar in Iowa in June, 1920, practiced law there and at the same time held the position of cashier of the Lohrville Savings Bank in Lohrville, Iowa. From there he went to California where he has been ever since. In addition to being a practicing lawyer, he was ordained a minister of the gospel some time in 1930, and from that date has had the unusual distinction of practicing law and preaching grace.

Frank J. Riha is presently living in Riverside, Illinois, is married and the father of two children and the grandfather of five. His practice is limited to matters involving real estate which gives him time to pursue his hobbies of travel and gardening.

W. Lewis Roberts holds the position of Professor of Law at the University of Kentucky College of Law in Lexington, Kentucky. His one son, Raymond B. Roberts, a graduate of Harvard Law School, is now Senior Partner in the firm of Hale & Davis of Boston, Massachusetts. Mr. Roberts was in the Legal Department of the Glenn L. Martin Aircraft Company during World War II, and since then has devoted his time exclusively to teaching law.

The questionnaire, which was directed to Paul Sayre, was returned by his wife with the brief comment that Paul died August 10, 1959.

Earl K. Schiek modestly reports that he never became active in public or community or other offices of a public nature purely because of personal reasons. But he nevertheless has cause to feel proud of his professional record. After being associated with a Chicago law office for a number of years, he refused an offer of a partnership because, he said, he has always been an individualist and wanted to practice on his own. This he has been doing for many years and with more than a fair measure of success.

Riley E. Stevens was County Judge of Knox County, Illinois from 1926 to 1939, and an Illinois Circuit Judge from 1929 to 1957. He has since retired and is neither on the bench nor practicing law. Early in his career he was City Attorney for the City of Galesburg, Illinois. He reports that he retired from the bench at a time when all lawyers in his circuit wanted him to continue but he was selfish enough to want to retain that fellowship which I might have lost had he continued.

George Eugene Strong lives in Chevy Chase, Mary-
land and is currently General Counsel for the Federal Mediation and Conciliation Service. He has been a professional lecturer in the Graduate School of Business on the subject of Advanced Industrial Relations at American University in the District of Columbia. Among his civic activities he had been Regional Chairman of the Wage Stabilization Board, President of the Chevy Chase Citizens Association and the District of Columbia Playgrounds Association. He was a Colonel in the Air Force in World War II, which followed his service as Lieutenant in World War I. He is married and has two sons, neither of whom has gone into professional law. He was a Special Assistant to the United States Attorney General from 1923 to 1925, and Acting Regional Director of the Securities and Exchange Commission in 1936. From 1926 to 1935 and during the period from 1946 to 1954 he was engaged in private practice of law.

Alan F. Wherritt is a Senior Partner in the law firm of Wherritt and Turpin, Liberty, Missouri. He is Past President of the Clay County Bar Association and a former member of the Board of Governors, Missouri Bar Association, and its Executive Committee. He was President of his local Chamber of Commerce way back in 1934, but more recently was County Chairman of Civil Defense during World War II. He has been President and General Counsel of the Clay County Building and Loan Association, General Counsel and Supervisor of the Birmingham Drainage District, Secretary and General Counsel of the Clay County Abstract Company, and Trustee and Elder of the Liberty Christian Church for more than twenty-five years, a member of the Board of Regents, Northwest Missouri State College, and in the past six months has toured eleven European countries visiting battlefields in Italy where he found two villas where he had been billeted in World War I. He concludes his returned questionnaire with the statement "The World has been good to me."

John Estill Wilson is practicing alone in Asheville, North Carolina where he is President of the local Bar Association. At one time he was Superintendent of Schools at Hazard, Kentucky. But that was before he entered Law School. He organized and was twice President of the Hazard Rotary Club and while there practiced law with his brother Grover C. Wilson under the firm name of Wilson and Wilson. He writes that he has had quite a number of hardships and ups and downs since getting his diploma from Dean Hall, including being wiped out financially in the 1929 Stock Market Crash and the depression years that followed. But he has had good health, worked hard and made a good living and has done what he could to promote good government and fight for progress regardless of his personal interest. He has enjoyed life very much and is still active on approaching his seventy-second birthday which will come on April 24, 1960.

As for the writer of this article, life has been good to him too. After practicing law for about ten years, he entered public service by becoming Associate Director of Finance for the State of Illinois under Governor Henry Horner. Later he became Assistant Attorney General under Otto Kerner. In November, 1934, he was elected Judge of the Municipal Court for a six-year term, re-elected in 1940, again in 1946 and again in 1952. In 1956, he was elevated to the Circuit Court of Cook County to fill a vacancy and was re-elected for a full term of six years in 1957. Late in life he married Adele Covy Englander of Cincinnati and adopted her two daughters, Ann and Jane. The former is a Graduate Teaching Assistant in the Department of English at Northwestern University where she is working for a doctorate, and the latter has given up teaching grade school to take on the duties of wife and mother. He is the author, editor and compiler of four books in the field of speech material, the most recent of which has just been published by Prentice-Hall, Inc. of Englewood Cliffs, New Jersey, who published his three previous books. Titles and dates of publication are as follows: *Speaker’s Encyclopedia of Stories, Quotations and Anecdotes*, 1955; *Braude’s Second Encyclopedia of Stories, Quotations and Anecdotes*, 1957; *Braude’s Handbook of Humor for All Occasions*, 1958; and the most recent book, *New Treasury of Stories for Every Speaking and Writing Occasion*, which was published in October, 1959.

The writer closes this piece with the very firm hope that when the time comes to write a similar article at the end of another decade that all of us who have responded will be here to answer a similar questionnaire and to give a further accounting of ourselves to bring the story to that date.
work of the most difficult and searching kind.” And it is his obligation to communicate that understanding.

Mr. Justice Harlan recently said to the New York County Lawyers’ Association:

“It would be a fine thing, in my opinion, were a bar association like yours to establish a special committee of qualified lawyers whose duty it would be to follow regularly the decisions of the Supreme Court, and to issue to the press from time to time brief, simply written, and objective accounts of those decisions likely to make “headline” news. Such authoritative accounts would do a great deal towards preventing irresponsible abuse of the Court’s decisions on the part of those who are displeased with them or have special axes to grind.”

I would concur in these views, but |I think that there is a more fundamental duty to be performed. Either before or at least concurrently with its undertaking by committee to keep the public informed about the Court’s business, I think it incumbent on the Bar to undertake to educate itself on the subject—and not by committee. A committee of readers is not the answer to this problem, any more than a committee is normally the answer to any real problem.

Every time I hear a suggestion that a committee be established I am reminded of two Churchillian comments. “I should deplore setting up a special committee,” he once wrote. “We are overrun by them like the Australians were by the rabbits.” He commented again on the ineffectiveness of committees as they work on “those broad, happy uplands where everything is settled for the greatest good of the greatest number by the common sense of the most after the consultation of all.” He concluded that important business could not be conducted by “a copious flow of conversation.” In this vein, I should like to suggest that the problem of which I have spoken requires individual effort—a do it yourself program.

2. The Press. The second major barrier to the understanding of the Court is the daily and weekly American press. With the single exception of the work of Anthony Lewis of The New York Times, the most appropriate adjective I can propose for the press coverage of the Supreme Court is “abominable”. Were I not fairly sure that the cause is ineptitude, I should suspect malevolence.

Let me say quickly that I am not scoring the press for being critical of the Court. Criticism, as I have already noted, is essential to the Court’s proper functioning. But it must be informed criticism. And this the press has not made available. For the most part, the press has treated Supreme Court opinions as if they were government news releases. Most Supreme Court cases are not deemed newsworthy in the pages now so crowded with stories of rapes and auto accidents and ribbon-cutting ceremonies and comic strips and cooking recipes. And those cases which do receive attention in the press are treated in the same manner as political issues involving Congress or the Executive. The complexes of fact and law which distinguish one case from another, which call forth different emphases and different solutions are ignored. The headlines shout “Communist Freed by Supreme Court”; the news stories have no more content than the headlines; and editorial comment tends to be based on the inadequate news stories.

Perhaps it is naive of me to believe that there is a difference between a news story and an editorial. And my naivete extends to the belief that the primary element of a news story is accuracy. But I would remind the American press of Professor Hocking’s justification for its existence: “The press must be free because its freedom is a condition of its veracity.” Freedom of the press is not an end in itself. It is a fundamental liberty because it is a means of keeping the people informed of the truth. I would go so far as to suggest that its obligation is to tell the people the whole truth and nothing but the truth; that it must justify its freedom by its responsibility. And I will not be put off by the suggestion that the task of accurate and reasonably complete reporting of the business of the Court is not possible, The New York Times does it and The Times of London demonstrates that the New York paper is not unique in its capacity to report on judicial business. Without it the Supreme Court is not likely to be understood as it should be understood if our free institutions are to function properly.

3. Congress. A third impediment to the understanding of the Court in its actual or ideal role is Congress. In its official capacity, Congress speaks with but a single voice: through the legislation which it enacts. But unofficially it speaks through as many voices as there are Senators and Congressmen. So far as the Court is concerned, Congress has frequently been irresponsible in its utilization of its single voice and its many voices.

Let me speak first to the problem of the Court and the many voiced Congress. One of the primary duties of the Court is to interpret and apply the language which Congress has utilized in framing its laws. The statutes, as we know, are often the result of compromise on the part of the interested legislators and ignorance on the part of most of those who have merely followed their party leader’s orders. The problem of statutory construction is ordinarily difficult enough whenever the meaning is sufficiently clouded to result in litigation. And a case finds its way to the Supreme Court only in the more important and frequently in the most delicate matters.

No sooner has the Court performed the difficult task of interpreting the meaning of Congressional language,
however, than one or more of Congress’ several voices will be heard to damn the Court for having misconstrued the statute. These are often isolated voices, but the press finds them newsworthy and it magnifies them. The fact is, of course, that if the dissatisfaction with the judicial construction were widespread in Congress, it could, speaking through its single voice amend the statute to conform with its desires. Seldom has this occurred in comparison with the number of times that the brass has been sounded. Congressmen prefer condemning the Court in public orations to taking constructive effort to remedy what they consider to be the Court’s errors. The Congressional furor which followed the decision in Pennsylvania v. Nelson, for example, has still not abated. But so far as revision of the Smith Act is concerned, there has been none. In the interim the Court has been the subject of violent abuse by Congressmen whose actions are not calculated to help the Court perform its function. Similarly, Congressional philippics about the School Segregation Cases has filled volumes of the Congressional Record. But, for these orators, words speak louder than actions.

It is not only the multiple-voiced Congress that has created inappropriate problems for the Court. One of the burdens which Congress has wilfully or ignorantly imposed on the Court from time to time is the delegation to it of legislative functions. Such confusion of function is not calculated to help the Court to assume its proper role in American government. It has been justified by two scholars whom I greatly respect. Mr. Justice Frankfurter has said: “government sometimes solves problems by shelving them temporarily. The legislative process reflects that attitude. Statutes as well as constitutional provisions at times embody purposeful ambiguity or are expressed with a generality for future unfolding.” And in a more concrete situation, Professor Meltzer has said of the failure of Congress to allocate power between the states and the nation in the field of labor regulation: “It may be that, despite the defects of the judicial process, the issues of federalism in labor relations must be left to the Court because they are too complex for legislative determination or compromise.” I cannot agree, however, that issues “too complex for legislative determination or compromise” are properly dumped on the Court for resolution. I submit that Congress cannot at one and the same time say to the Court: “You decide these questions of policy which are too difficult, or politically too hot, for us to handle” and then say that the Court should stay out of the legislative area. By imposing this political function of legislation on the Court, it does a disservice to the Court and to the Country.

4. The Court. Perhaps the most delinquent of all, however, in creating confusion about its role is the Court itself. This is a theme worthy of a book, but here I want to touch on just three points. Underlying them all is the fact that the Court suffers from a form of institutional schizophrenia.

First, there is a basic conflict of philosophy within the Court. Some justices believe that their function is to utilize the power at hand for the accomplishment of those ends of “social justice” which they conceive to be appropriate. This is not a novel theory of judicial power. Most of you are probably conversant with it as it was exercised by Mr. Justice McReynolds and company in earlier years of this century. It is hard to distinguish between the judicial and legislative functions on the basis of this activist philosophy. The current activist theme has been described by Professor Schlesinger in this way: “The Court cannot escape politics: therefore, let it use its political power for wholesome social purposes. Conservative majorities in past Courts have always legislated in the interests of the business community; why should a liberal majority tie its hands by a policy of self-denial . . . ?” The activists will tell you that absolute detachment is impossible of achievement therefore it ought not to be strived for.

The Vice President greets Albert Jenner, of the Law School Visiting Committee.

The second face of the Supreme Court says that the Court’s function is not the promulgation of its own notions but rather, in statutory cases, it is the “proliferation of the purpose of Congress.” in Constitutional matters, it is to sustain the powers of the responsible branches of government except where the exercise of such powers patently infringes on Constitutionally guaranteed rights or privileges. This view was expressed by Mr. Justice Jackson this way: “My philosophy has been and continues to be that such an institution, functioning by such methods, cannot
and should not try to seize is initiative in shaping the policy of the law, either by constitutional interpretation or by statutory construction. While the line to be drawn between interpretation and legislation is difficult and numerous dissenters turn upon it, there is a limit beyond which the Court incurs the just charge of trying to supersede the lawmaking branches.” And in response to the notion that judges are not capable of detachment, this group says:

“For judges, it is not merely a desirable capacity ‘to emancipate their purposes’ from their private desires; it is their duty. It is a cynical belief in too many quarters, though I believe this cult of cynicism is receding, that it is at least a self-delusion for judges to profess to pursue disinterestedness. It is asked with sophomoric brightness, does a man cease to be himself when he becomes a Justice? Does he change his character by putting on a gown? No, he does not change his character. He brings his whole experience, his training, his outlook, his social, intellectual and moral environment with him when he takes a seat on the supreme bench. But a judge worth his salt is in the grip of his functions. The intellectual habits of self-discipline which govern his mind are as much a part of him as the influences of the interests he may have represented at the bar, often much more so.”

Certainly one will understand the role of the Court differently according to whether its function is defined in activist terms or in terms of judicial restraint and majorities of the Court continue to wobble between the two.

There is a second manner in which the Court prevents an appropriate understanding of its function. Since it speaks with several voices in its official capacity and speaks not at all in its unofficial capacity, at least as to the business before it, the only way to secure an idea of the reasons and factors which caused the Court to reach a given judgment is by reading its opinions. But recently we have had too many opinions which obfuscate rather than enlighten. “The Court’s product has shown an increasing incidence of the sweeping dogmatic statement, of the formulation of results accompanied by little or no effort to support them in reason, in sum, of opinions that do not opine and of per curiam orders that quite frankly fail to build the bridge between the authorities they cite and the results they decree.” Holmes told us long ago that “general propositions do not decide concrete cases.” Some members of the Court apparently believe otherwise. Not only are “general propositions” used to resolve the case before the Court, they are used as proclamations of doctrine irrelevant to the case before it but perhaps applicable to other cases which might arise in the future. Once again we have the confusion of the judicial and legislative functions inherent in the activist philosophy. Professor Freund says, in his characteristically kindly way, that this “represents a tendency toward over-broadness that is not an augury of enduring work and that misses the opportunity to use the litigation process for the refinement and adaptation of principle to meet the variety of concrete issues as they are presented in a lawsuit.” For a prime example of the manner in which the Court may confound rather than reveal the bases for its decision, while at the same time issuing edicts on all sorts of matters not before the Court, I refer you to the opinion of the Chief Justice, speaking for four members of the Court, in Sweezy v. New Hampshire.

A third difficulty created by the Court in explaining its appropriate function is revealed by the conflict between those Justices who think its job is to consider only those cases involving federal questions of major importance to the country and those of its members who regard themselves as sitting as a court of errors and appeals. Certainly one of the burdens from which the Court suffers is the amount of work which it must handle each year. It must pass upon two thousand applications to be heard and from one hundred to one hundred and fifty cases on the merits. Any time it devotes to matters which are of importance only to the immediate litigants means less time available to deal with those issues which are of great importance to the Country. And yet, Term after Term, the Court must turn to analysis of questions relating solely to the weight of the evidence or similarly isolated matters because four members of the Court have voted to bring such cases before the entire tribunal for consideration.

It is because of these three internal conflicts that I think the Court prevents a general understanding of its proper function.

Having imposed on you to this extent, I will seek your indulgence for a few more minutes to explain
why I concur in the view that the Court should abandon its activist role. I have three reasons.

First, I think judicial activism should be rejected because it replaces a representative legislature with a group who are neither representative nor responsible to anyone but themselves. Judicial activism is undemocratic. To the extent that a check on democracy is necessary, its function should be confined to those areas in which it is essential. To return once again to the language of Judge Hand: "Each one of us must in the end choose for himself how far he would like to leave our collective fate to the wayward vagaries of popular assemblies. . . . For myself it would be irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not."

Second, judicial activism should be rejected because it undermines the public faith in the objectivity and detachment of the Court, without which the Court will be reduced to an impotent body, unable to perform those important, indeed vital functions which properly fall within its scope. As long ago as de Tocqueville, it was recognized that the Court's "power is enormous, but it is the power of public opinion. [It is] all powerful so long as the people respect the law; but [it] would be impotent against popular neglect or contempt for the law." At this time when the Court is being called upon so frequently for the protection of minority and individual rights against the claims of the state and society, its power to command popular support is reduced to a minimum. Unable to sustain its authority through the approval of its judgments, its basic claim to support must rest on the understanding of the people "that the Supreme Court, whatever its defects, is still the most detached, dispassionate, and trustworthy custodian that our system [can offer] for the translation of abstract into concrete constitutional commands."

Finally, I suggest that judicial activism should be rejected because the exercise of such naked power invites a reply in kind from those on whose domain the Court is poaching. And in a pitched battle between Congress and the Court, Congress is endowed with the stronger weapons; the jurisdiction and membership of the Court are at its mercy. Shorn of its shield of judicial objectivity, in a day when its opinions are not likely to be popular, it has no adequate defense against such potential legislative attack, the reality of which is all too patent in the Bills which have been introduced in Congress.

Professor Freund has aptly said that: "To understand the United States Supreme Court is a theme that forces lawyers to become philosophers." While this may be an onerous burden to place upon us, I can only say that it is one which we are under an obligation to assume.

Archimedes while he was working a geometric problem in the sand. As they drew their swords, he exclaimed "Wait until I have finished my circle." The most we could hope for, was that the President would let Darrow finish his circle. By that, I mean if the President rejected the first Darrow report out of hand without waiting for the second and third and without giving public opinion a chance to catch up with events, the march to the corporate state might well have gone on to entirely eclipse the free enterprise system. For NRA like any other kind of economic fascism (as was later proved in Italy and Germany) carried to its ultimate end, could only lead to a total state.

Those who remember, or who have studied the economic history of the 1930's, will bear in mind that in the face of a terrifying financial debacle, American industry undertook to raise wages and employ more people in exchange for the privilege of fixing prices and regulating production. I am inclined to believe the frenzy of support for the NRA whipped up by its head, General Hugh Johnson, did help to get our stalled economy off dead center, and I am also inclined to believe that as the enthusiasm died down and Bureaucracy moved up in the industrial scene, if it had not been for Darrow's castigation of NRA, supported later by the Supreme Court's Schechter decision, our loss of personal liberty would not have been limited to one pants presser being sent to jail because he would not charge what his competitors told him to charge.

No need to waste your exasperation on evils that now we know came to nothing. But that you may sense just a bit of the tension—pretend it is the year 1934, you have just invented a marvelous new ink well. Your financial backers are convinced it will capture the market. You are all set to go.

What are you waiting for? You are waiting for Mr. Mason.


"Better wait until you get permission from Mr. Mason first—remember the pants presser. He went to jail for charging less than the Central Government said he must charge. Don't make ink wells, don't do anything, without getting the O.K. from Big Brother in Washington, or you will go to jail too."

"All right, I will see Mason and get my permit. Who is he? Mayor? County Judge? Federal Something or Other? Say, you don't mean Lowell Mason do you? He's no government inspector. He's the biggest ink well maker in the country. He's my competition. He'll
see me dead before he'd give me a permit."

"Well, he's on the Code Authority and the NRA says no permit—no ink well factory. This is what a controlled economy means."

Sounds silly doesn't it? It makes me laugh every time I think of it—a nervous laugh—like when you get knocked down by a big wave at the sea shore. Back safe on the beach, you can laugh, but it is not funny in the breakers. Nor was it funny in those NRA days. We were not safe on the shore, nor did we know the direction of the current.

It takes a backward look to pinpoint a change of tide. As I saw it then, Darrow's visit only persuaded the President to sit out the change of public sentiment if there was to be one. As I see it now, it was the beginning of the end of NRA.

What manner of man was this who could persuade another to retreat from a position as vigorously advocated as Roosevelt had advocated NRA? I am convinced the President regarded Darrow as a man of great spiritual depth, for without power he had tremendous influence. Another man could have uttered the same words that Darrow had uttered before hundreds of juries and lost nine out of every ten cases. Someone else could have marshalled logic and economic facts far more cogently than Darrow's that day he sat in the White House parlor with the President. And that someone else, with the President's compliments still ringing in his ears would have most likely found both himself and his report out in the street.

Was Darrow an atheist, radical, non-conformist? Here was one place, Fundamentalists and Atheists could agree; yes, he was. It ought to be quite obvious why Atheists called Darrow an Atheist. They sought company and confirmation of their own disbelief by ascribing it to him. But if there were room for other interpretations of Darrow's views why didn't the Fundamentalists do likewise. Why shouldn't they claim as their own, this man of pity, this advocate of tolerance, of charity, this living parable of the good Samaritan, this man who did not live by bread alone. But to Fundamentalists, his good deeds were irritating—irritating because unexplainable in terms of their own motivations. "What! No heaven! Then why be good?". They could ignore his heresies and forgive his derelictions, but his workable, durable acts of kindness were an anathema to the anointed. To make matters worse, Darrow would not let them alone. For Darrow was an intolerant man. He was intolerant of intolerance. His son Paul and I discussed this one time. Paul held much the same views as his father, but Paul didn't try to reform every witch burner or Fundamentalist he met. Paul took people as they were. He had his views and they were entitled to theirs. But his father could never resist the missionary spirit. That's why he liked to be around Fundamentalists—not that he wanted to join them, but because he wanted them to join him. Few of them were as well informed on the Bible as he, and he delighted in overwhelming them with Scripture and Verse while he ridiculed their dogma.

Spending his time in court persuading men to reject the inhumanities of man was not enough. He wanted to proselytize men away from a God, who after the Amorites were defeated, bade the sun stand still for twenty-four hours so Joshua could see to lay the sword on to all the Amorite women and children in Libnah, Gezer and Hebron or, if I were to use modern localities, Buchenwald and Lidice. In exasperation at his cruel logic, Fundamentalists would lash back at him with the worst epithet they could use: "Darrow—Atheist, of course!"

Certainly in the sense that Darrow would not acribe anthropomorphic characteristics to a supreme power, he and every other non-member of H. L. Mencken's Bible Belt could be called atheists.

But those who were an intellectual notch above such literal interpretations of the Bible generally classed Darrow as an agnostic—a doubter. If he were here today and you asked him, that would be the impression he would want you to have. And I think if you were to ask a hundred people who knew him casually or had read his books, they would agree, "Darrow was not an atheist, he was an agnostic."

Call him what you will, Darrow had an inner strength to undergird him far beyond what adrenalin or what he called his "protoplasm" could vouchsafe.

Despite the role of radical, Darrow was the most conservative lawyer I ever saw in a courtroom. Unlike Charles Sumner who, when he felt he was right, could see no obstacles in the limitations of a hostile
Constitution, Darrow was a great respecter of the law; just as much when it ran against him as when it ran with him.

His cross examination was a delight to behold, apparently stumbling, aimless and friendly; he would never cross examine an adverse witness unless he could sense in advance what the man would say. I must admit that his prescience was uncanny. What sounded like a most innocuous query to the opposing witness would often produce devastating answers—devastating to the opposition.

Darrow was what I would call a master in Reverse English. In court, instead of complimenting and fawning upon a jury—a cheap and common enough trick to pettifoggers, I have seen Darrow absolutely berate a jury—and then go on to win his case. Years ago, when I was the youngest Senator in the Illinois State Senate, he used to come out to Oak Park and campaign for me. After I had fulsomely introduced him, he would not only refuse to say anything nice about me, but what was worse, he would blast the daylights out of my audience. They loved it and I won. I introduced a bill in the Senate appropriating funds to establish a state farm for the mentally retarded. The press asked Darrow for comments. "If Lowell puts every moron on a state farm, he will cripple manufacturing, tie up transportation, and completely close all legislative halls."

I considered myself of a happy disposition. One day in court Mr. Darrow looked first at me and then at my partner, Floyd Lanham—a man of serious countenance—"Lowell", he said, "there are two kinds of people in this world—the well informed or the happy—you can't be both."

I was his friend. He never spared friends when they were on top of the world, but when they were the underdog, whose'e'er asked him to go a mile, he would go the twain.

But enough of personal reminiscing. Let us compare the May Day of a quarter of a century ago with the Law Day of today. In the thirties one element alone, pushed us toward the total state—economic collapse. I was going to say—the threat of economic collapse. But you can't blink it—we had it. Banks closed, our capital structure—farm, home and corporate mortgages, besides equities and stocks, all caved in. I know—I lost my house and the Mid West Utilities I bought on margin with the money I had borrowed.

The popular answer to our troubles then was NRA. To the Governing Elite this meant government control of private enterprise. To the Financial Elite (or what was left of them) this meant private enterprise control of government. Either way it added up to the Corporate State and, but for Darrow's Tea Party, the near miss might well have been a hit.

Perhaps you have wondered why I entitled tonight's talk "Mr. Darrow's Unreported Case." There has been some personal reminiscing—an opinion or two of Darrow's beliefs—but I have outlined neither the pleading, the issues, the evidence nor the verdict in Darrow's Unreported Case. Except for general background I have given you only one statement and one question to ponder.

"Mr. Darrow, you are doing a wonderful job."

"Do you think so, Mr. President?"

As a matter of fact, that is all in this case that is important today.

Mr. Darrow's denunciation of NRA and his reaffirmation of a belief in free enterprise was labelled by Mr. Roosevelt as a "Marvelous Job". The important question was: "Do you think so, Mr. President?" Or in blunter words, "Is your praise a sincere endorsement of a stand against the total State, or are you merely engaging in the amenities of the occasion, and trying to soothe the ruffled feelings of a querulous old man?"

Today the scene is no longer the microscopic picture of a tea party—"Two men in a Parlor." It is the macroscopic picture of, "All America proclaiming "A Marvelous Job".

May Day with its Bread Lines, its Red Flags, Marching Anarchists and Singing Socialists has been supplanted by Law Day.

Thank heavens a financial debacle of such pandemic proportions as November 1929 is now impossible.

Federal Deposit Insurance keeps people from standing in lines ten blocks long to draw out their savings accounts just because somebody saw the bank cashier with his hat on. Collective bargaining, Fringe Benefits, stock margin restrictions, S.E.C.—F.T.C.—Social Se-
curity and dozens of other alphabet agencies keep all of us financial. Mortimer Snerds reasonably secure and safely dormant.

Law Day 1959 is a Safe Day. It's a Free Day. It's a Rich Day. It's a Secure Day. My speech, a Law Day speech, should contain a short review of the principles of liberty we Americans hold sacred and perhaps I should include some overtones of regret that other nations are not as blessed as we.

The whole atmosphere of the occasion is set for expressions of confidence in our future liberties, and calls for congratulations. On this day, twenty thousand ceremonies are being held in schools, court houses, city halls, clubs and universities throughout the United States. These meetings are a reaffirmation of our reliance upon law in private and governmental affairs as contrasted with the tyranny and oppression of the individual in the Communist world. Mayors of countless cities are issuing proclamations that "the greatest heritage of American citizenship is a system of government under laws devised by elected representatives of the people for their protection, and administered by courts in which every citizen enjoys equal standing."

As a fitting climax to my speech I felt it only proper to quote from the official document designating the first of May as Law Day. In fact, I thought so well of the idea that late last night, like Demosthenes practicing oratory by addressing the waves, I went to the nearest body of water (the pond in Jackson Park) to try it out. It was very dark and there was no one around. I don't know how I happened to be near Wooded Island where Darrow's ashes are scattered—but there I was reciting the President's Law Day proclamation.

"WHEREAS by directing the attention of the world to the liberty under law which we enjoy and the accomplishments of our system of free enterprise, we emphasize the contrast between our freedom and the tyranny which enslaves the people of one-third of the world today."

From out the midnight gloom brooding over Wooded Island there came a still, small voice.

"Do you think so, Mr. President?"

Many things come to your mind when a ghost talks to you. Should I call the police? No, they would probably just give me the alcohol breath test. How about contacting the Committee for Extra Sensory Perception, or should I tell the Press I had finally accomplished at Wooded Island what many of Darrow's friends had attempted there. But when I got back to the Shoreland and considered the matter calmly and in its true light, I decided any of these alternatives would completely frustrate the purpose of Darrow's message to me. The significance of his communique would be lost in the bizarre surround-ings of its delivery. The manner of its presentation would become more important than the message itself.

For believe me, I am sincere when I say it was a message. If it offends your intelligence to accept my poetic interpretation; that words came from across the dark waters of Wooded Island, then take the more modern explanation. Informed Psychologists would say anyone brought up to hate tyranny, suffers an inner conflict if called upon to boast of Freedom—Liberty—Bill of Rights—Constitution—Right of Trial by Jury—Protection to Personal Liberty, etc., here in America on Law Day.

For if Clarence Darrow was not talking to me across the pond, it is too bad he wasn't. If he were, maybe he could ask twenty thousand mass meetings across the country, "Just what do you mean by all your fulsome praise? Are you engaging in the amenities of the Occasion? Are you soothing the feelings of a few querulous carping critics? Are you giving aid and support to our free institutions? No, to tell the truth you are playing right into the hands of the Communists."

Here lies the key to expose one of the Great Fallacies which Communists want us to destroy ourselves with. If you prefer that I don't explain by putting words in the mouth of the departed, then let me give you the words of someone very much alive,—"In our fat, dumb, and happy fashion," (if we praise ourselves enough) "and damn the Communists enough, right will surely prevail in the end." Mr. Adial Stevenson in his introduction to his new book Friends and Enemies1 then points out that Athens, an infinitely superior civilization, lost to Sparta on just such a Pollyanish note.

As one advocate of the Total State put it:

"We want people to brag about Freedom of Speech, Freedom of Worship, Freedom of Assembly, Freedom to Petition Congress and the other Freedoms that are on everybody's lips today.

"There is an awkward adolescence for nations as well as for children. In the transition from free to total state, you have to up-Santa Claus people slowly. When they first become aware that government is not by them individually they need assurance that it is at least for them en masse. As the state circumscribes man's private choice of action, the repetition of certain phrases gives that assurance. It takes the place of religion, formerly the soporific of the masses."

Thus it is that many speeches made by innocent zealots of democracy may, in fact, play right into the hands of communism. This facility to utilize the energy of democracy against itself is a favorite ploy of the totalitarians.

1As quoted in New York Times Sunday Magazine March 1, 1959
It's a ploy Mr. Stevenson does not fall for, and I must say I admire his Darrowesque quality in referring to us as "dumb, fat, and happy." Some more honest opinions like this and the Republicans might still win the coming national election.

But most of the other Fallacies the Communists rely on to defeat us, give Mr. Stevenson more trouble. He admits they present hard questions for him to answer. Here are his questions:

Can our American system prevail in competition with the central planning and direction of the Soviet system?

Can we mobilize, organize and utilize our human and natural resources as effectively as they can?

Can we do so without imposing controls that imperil the very freedom and values we in the United States are trying to preserve?

Are our institutions adequate to conduct foreign policy in competition with the speed, secrecy and certainty of the Kremlin?

The trouble with these questions is: they are loaded. When you have tried cases around Clarence Darrow you were taught to spot loaded questions with your eyes closed. A loaded question presupposes the existence of the very fact which is in dispute. The favorite example of a loaded question amongst law students is that old gag "when did you stop beating your wife?"

If Mr. Darrow were alive today he would tell Mr. Stevenson his group of questions (taken together) assume (first) that we are not already a secret government and, (second) that we have not already lost the freedoms in the U.S. we think we are trying to preserve.

I will wager Mr. Darrow would dispute both assumptions. As to the first: He would probably insist the American government is already a secret government. If there are any doubts about this, read James R. Wiggins' "Freedom or Secrecy."

Wiggins says after three centuries of progress away from State secrecy, our government is now moving in the other direction; and that the excuses for this movement are the constant military crisis, changes in the structure of government, expansion of government power in accordance with the peoples' demand for more federal service and the increase in the sheer size of government. Congressman M. John Moss' Committee Reports on Secret Government, (the latest filed last month in the current session of the 86th Congress) documents the proof that when the state

asserts the right to say which of its acts it will divulge and which it will hide, it has the means of concealing its crimes and exaggerating its virtues. This is a device that accomplishes that greatest of all corruptions— the corruption of the mind of the public. "A people so corrupted is a people no longer free."

I wonder if we have been so busy "directing the attention of the world to the liberty under law which we enjoy" and "emphasizing the contrast between our freedom and the tyranny which enslaves the people of one-third of the world" that we don’t realize this corruption of the public mind has been going on in our own backyard for over five years. But the Twentieth Century Fund’s recent report called "Arms and The State," Civil—Military—Elements in National Policy realizes it and in effect says so. Discussing the influence of civil and military factors in determining national policy, the report admits it cannot intelligently discuss what has happened in this country since the Korean War because "the facts as to most of these episodes and issues are still hidden in the top-secret papers*** and too little information is available to permit of much useful comment."

Now, if Publisher Wiggins, Congressman Moss and a great research organization can’t find out what’s going on in Washington, what chance have you as a citizen to inform yourself?—considerably less than my congressman, the late Chauncy Reed, one-time Chairman of the House Judiciary had. He noticed an item in a Washington paper about a traffic jam 15,000 government clerks in a super-secret agency created when they went to and from work on a certain public highway. Chairman Reed wrote enquiring whom the clerks worked for, what pay roll they were on, and what they did. Mr. Reed was told it was none of his business, and that was that.

I don’t say you can do much about this. Just be aware of it the next time you hear a speech about the "right of assembly," the "right to petition Congress," and the "right to your own religion." Ask the speaker if he would like to add "the right to know" in his bill of particulars.

Now, let us turn to the second assumption implicit in Mr. Stevenson’s questions—that we still have the freedoms—the protections to liberty, in the United States that we would like to preserve. In judicial and quasi-judicial matters you can get your teeth in this area for there is no claim of Executive privilege and, therefore, there is no cloak of secrecy—only the veil of indifference—the indifference recognized by Mr. Stevenson in his characterization of us and furthered by our own constant repetition of self-praise. But the veil of indifference can be pierced, for judicial and quasi-judicial cases are fully reported in public records. We do not need to rely on the conclusions of a newspaper publisher, chairman of a congressional
Shown at the dinner honoring the Vice President are, left to right, the Honorable Norman F. Arterburn, JD'26, Justice of the Supreme Court of Indiana, Andrew J. Dallstream, JD'37, President of the Law Alumni, and Chancellor of the University Lawrence A. Kimpton.

We are unable to report what Robert McDougall, Jr., JD'29, said to the Vice President. On the right, Dr. and Mrs. Francis Strauss.

At the reception held during the School's Conference on the Public Servant, Oscar Schachter, Director of the Legal Division of the United Nations is shown, at right above, with Professor and Mrs. Nathanson of Northwestern University.

Mr. Lloyd greets Mrs. Charles Bane, as Mr. Bane, '37, a member of the Visiting Committee, is introduced to the Vice President.

commitee, or of a research organization. The veriest tyro can walk to the nearest law library and run down the citations to prove for his own satisfaction that many time-honored protections to liberty still carried on our books as assets really do not belong to us any more. Or, if we still claim title to them, they have been so heavily mortgaged that they are mere empty shells.

First, let us be explicit as to what protections to liberty we are talking about. Do we mean in economic matters a man is entitled to counsel and may not be clapped in jail after a secret inquisition without trial? Do we mean a man may not be tried in absentia and wake up some morning to find a $5,000 a day penalty staring him in the face without ever being near a court and, of course, without ever having a chance to defend himself against the original charge? Do we mean that prosecutors may not sit as judges in the cases they prepare and file? Do we mean there are statutes of limitations which prevent a man from being charged with offenses dating so far back that he would be unable to marshal testimony in his favor? Are there prohibitions against ex-post-facto trials—that is, can government punish a man for doing something that was not declared wrong until after he did it? Are there rules against conviction by hearsay—that findings of facts against a man must be based on legally accepted evidence? Does everyone have the right to his day in court? What about double jeopardy?

Those who think these fundamental concepts of Anglo-American jurisprudence in the world of commerce are the breath of life in the United States are
forty years behind the times and should be brought up-to-date. This is neither the time nor place to document the citable judicial and quasi-judicial decisions to support the contention that a series of administrative court decisions have been quietly built up in the world of commerce which provide precedents for judicially abrogating every one of these rights. The fallacy that these rights still exist lures us toward the Total State.

We have forgotten that liberty is a fragile thing. It cannot stand alone. It calls for constant help and surveillance. Chief Justice Earl Warren, of the U. S. Supreme Court, is one man who obviously is devoted to due process. Apparently he resigned membership in the American Bar Association because of a committee report criticizing the court’s defense of due process. But I can see no advantage in leaving the field to those zealots who whine at the bar of public opinion for the curtailment of rights they feel confident they themselves will never need. Why don’t some members of the American Bar Association think very much of the Bill of Rights? Is it because constant association of due process with alleged communists, thieves, kidnappers, and bank robbers has degraded the high regard this basic concept of liberty and justice once commanded? This denigration occurs simply because such protections to liberty are seldom dramatized except when called into play by the arrest, indictment or trial of those charged with crime. People do not realize that the Bill of Rights and due process deal only collaterally with accused persons. Their major function is to protect democracy, not persons. Due process is the only way a democracy can insure itself against the blunders, tyrannies, and the officiousness of those who think they can use totalitarian means to achieve democratic ends.

Except for describing a last great fallacy which endangers our Country, this is the end of my speech. But in a way it is only a beginning for all of us. There is no finish line in the race for Liberty. It is a relay our ancestors started and our heirs will be running long after. All you and I can do is to carry the baton as well as we can for our share of the distance.

To drop the poesy and be very practical, I mean to say: Every person in this room has some special resource, some special talent that sets him or her apart from everyone else in the world. That talent is needed not just to give full expression to our own lives, but to see that others have a like opportunity. In what manner and when your voice will speak is hidden, even from you, until the time presents itself.

Then you must speak.

Perhaps as a teacher inculcating in others a working respect for the Bill of Rights. Perhaps as a lawyer in court or on platform advocating the principles of Constitutional freedom. Perhaps as a student preparing for democratic leadership, or as a voter or constituent. When Clarence Darrow’s voice was heard in the parlor of the White House twenty-five years ago he qualified for all of these roles, but none of them were as important as the one he assumed that day—the role of a citizen.

When your destiny requires you to take this role, do not labor under the last great fallacy the Communists encourage and with which many people in this country needlessly burden themselves.

This Fallacy? I have never heard anybody put it in words before. It is the hidden quiet fear of total extinction that triggers a “What the Hell’s the difference” attitude in people when they are confronted with the tyranny of their own state. They accept the false aphorism, “The democratic process is fast withering in the nuclear blast. We must have total, secret, monolithic government; the individual no longer counts.”

Just how aping the Russians in their debasement of human rights and their glorification of the state will save us from total extinction is not made clear. Yet few there are who seem willing to challenge the value of totalitarianism as a stop gap to destruction.

What is there so new about death that its threat now makes obsolete the greatest instrument of freedom ever created by the mind of man—The Constitution of the United States.

If we are riding to extinction, groveling on the floor of the tombrel will not slow the journey.

Perhaps the system our Founding Fathers created, which promised us Life, Liberty and the Pursuit of Happiness will fail in all of its three commitments.

Perhaps Mr. Stevenson’s fears are well founded. Perhaps our Constitution——our machinery of government——the written and unwritten rules protecting the sanctity of the individual are not adopted to saving our skins.

We, the fat, happy and dumb who are about to die, salute you! You! the denizens of the Ant State will inherit the earth.

Across the waters of Wooded Island, I hear the still small voice of Mr. Darrow.

“Do you really think so?”