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New Faculty Appointments

The Law School is pleased to announce six new appointments to its Faculty.

The character and achievements of Professor Denis V. Cowen, former Dean of the Faculty of Law, University of Cape Town, are described in a newspaper article reprinted elsewhere in this issue of the Record.

The Class of 1964

The 166 men and women who entered the Law School last October were selected from among 807 applications for admission. Students continue to come to the School from all over the country; for example, the 166 students referred to above include residents of California, Connecticut, the District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Washington, West Virginia, Wisconsin, and Canada. This is a total of 28 states, plus the District of Columbia and Canada.

Students in the entering class came to the Law School from 81 different colleges and universities. The institutions represented are:

Bard College
Bates College
Beloit College
Bowdoin College
Brigham Young University
Brown University
Bryn Mawr College
University of California
University of California, Los Angeles
Carleton College
University of Chicago
Colgate University
Colorado College
Columbia University
University of Connecticut
Cornell University
Dartmouth College
Denison University
DePauw University
Dickinson College
Earlham College
Elmhurst College
Emory University
Franklin and Marshall College
George Washington University
Grinnell College
Hamilton College
Harvard University
Heidelberg College
College of Idaho
University of Illinois
Illinois College
Illinois Institute of Technology
Johns Hopkins University
Kalamazoo College
Lawrence College
Loras College
Loyola University (Chicago)
Luther College
University of Maryland
Massachusetts Institute of Technology
Miami University (Ohio)
University of Michigan
Michigan State University
Middlebury College
Millikin University
University of Minnesota
New School for Social Research
College of the City of New York
University of North Carolina

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Class of 1964—

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Northwestern University
University of Notre Dame
Oberlin College
Ohio Wesleyan University
University of Oklahoma
Oklahoma State University
Oregon State College
University of Pennsylvania
Princeton University
Purdue University
Reed College
University of Rochester
St. Mary’s College
St. Olaf’s College
Shimer College
Southern University at Memphis

Stanford University
Swarthmore College
Syracuse University
Trinity College
Tufts University
University of Vermont
University of Virginia
Walsh College
Washington State College
Wellesley College
Wesleyan University
University of West Virginia
Whitman College
University of Wisconsin
Yale University

Jerome S. Weiss, JD’30, President of the Law Alumni Association, greeting the Honorable Roger Traynor, Justice of the Supreme Court of California and member of the Law School Visiting Committee, as Glen A. Lloyd, JD’23, Chairman of the Board of Trustees of the University looks on. Judge Traynor was the speaker at the welcome to entering students during the first week of the academic year.

Max Rheinstein, Max Pam Professor of Comparative Law, with three of the German students now doing graduate work at the Law School.

The Honorable Walter V. Schaefer, JD’28, Justice of the Supreme Court of Illinois and Chairman of the Law School Visiting Committee, introducing the Honorable Roger Traynor, Justice of the Supreme Court of California and member of the Visiting Committee, at Judge Traynor’s address to the entering students.

The Honorable Harry Hershey, JD’11, Justice of the Supreme Court of Illinois and the Honorable Elmer J. Schnackenberg, JD’12, Judge of the U.S. Court of Appeals for the Seventh Circuit, with three entering students at the reception opening the academic year.

A New Scholarship

The Anna Weiss Graff Honor Scholarship has been established at the Law School through the generous gift of the Julian D. Weiss and Shirley W. Weiss Foundation of Los Angeles. The Scholarship, honoring the mother of a Trustee of the Foundation, may be bestowed on a second or third year student, and is to be “awarded to a deserving student, without regard to race, color or creed; . . . on the combined bases of need, scholarship and personal qualities.”

Mr. Julian Weiss, for many years a leading Chicago lawyer, is now a resident of Los Angeles. He is a member of the Law School Class of 1933.
Walter L. Fisher

By WALTER T. FISHER, ESQ., '17

(Mr. Fisher's paper, and Professor MacChesney's, which appears elsewhere in this issue, are parts of a series on distinguished Chicago lawyers, sponsored by the Law School in recent years.)

Biographical sketches—not excluding this series—sometimes give the impression that the author is writing a brief on behalf of the subject intended to conceal his faults. He must have had faults. Everybody has them. Later I shall mention a few. A son, of course, wants to see his father large. At the same time, as Freud tells us, he cannot free himself from an unconscious competitive wish to trim his father down to size. So a talk about one's father is bound to be more or less personal. With some diffidence I am going to risk erring on the side of putting in too much personal detail, in the hope that it may portray my father as a human being and give you the flavor of his personality. For example, I shall try to show why it was that Boss Lorimer gave him the unwilling compliment described in the Autobiography of Lincoln Steffens. Steffens had been questioning the powerful and unsavory political boss as to how it happened that the Municipal Voters' League of Chicago was effective against his organization as compared with the relative failure of the people in other cities who were working for good government. Lorimer finally replied: "Say, have you seen that son of a bitch, Fisher?"

My father's role was markedly different from that of the eminent lawyers who have been depicted in this series. As I proceed you will see that he was less in the regular practice of law and more in governmental matters. His position on public issues was frequently and hotly attacked and defended in the newspapers. His role in Chicago expanded to the national scene. President Taft made him a cabinet member, to the surprise of Taft's Bourbon coterie.

Young lawyers who would like to get into public affairs wonder how they are going to earn a living. My
father was paid for a lot of his public service, often in the form of compensation for particular work done for government while he was in private practice. This was not a result of supporting some successful candidate, but because the people in power, both Democrats and Republicans, felt that they needed him for the task at hand.

AS OTHERS SAW HIM

He was a forceful and dynamic person. A feature article in the Chicago Tribune described him—he was then in his forties—as follows:

[Fisher] is the embodiment of energy. He is a lean, alert man . . . the possessor of an unusual and striking face . . . . There is a curious air of expectancy about his countenance. You feel that you are about to make some blunder and that he knows all about it . . .

At public meetings, when he is not himself addressing the audience, he sits bolt upright, with a half smile on his face which indicates his assurance that he will presently tear to ribbons every argument of his opponent . . . . He is a strong man . . . . Above all things else, Mr. Fisher is confident. Assurance in himself radiates from the man.

His pungent friend William Kent wrote of him that he "would doubtless take a contract to regulate the weather if the Lord offered it to him."

One of his juniors, my partner, Kenneth McCracken, says:

"He was a dominating personality, unshakeable in battle, and I am sure well hated by many an opponent. It seemed to me that he enjoyed it all, and thrived in an atmosphere of conflict that would give most lawyers ulcers and nervous breakdowns."

McCracken describes an occasion which he no doubt remembers particularly well because, as he says, "[Mr. Fisher] directed me, not too gently, to look up something and bring it to him in the courtroom.

"As I started down the corridor in the County Building after leaving the elevator I could hear all the way down the hall and around the corner Mr. Fisher's booming voice. I had often observed how his voice carried with no apparent effort on his part. As I approached, Mr. Fisher's deep voice grew more distinct and louder. Having arrived in the courtroom, I was considerably awed, and hesitated to complete my errand at once.

"The courtroom was certainly not crowded for the case was a dull one [involving the validity of street railway legislation]. It had been on trial for many days. But there were a number of lawyers on both sides of the counsel table. Standing at the middle of the table rather than near the judge, and with one foot on a chair, was Mr. Fisher speaking in what seemed to be a conversational tone, but which penetrated far and wide. There was absolute silence except for his speaking. The judge, with his shoulders hunched forward and his head lowered, kept his eyes fixed on the speaker. If he had not been a judge, I would describe him as cowering. The clerk was definitely cowering behind his own desk, making no movement and no sound and looking unbelievably humble and grave. The bailiff was standing nearby with his back to the wall at attention and as motionless as if he were about to be shot.

"The lawyers on the other side of the counsel table were less respectful. At one point Judge Foster, who was chief counsel for the other side, interrupted Mr. Fisher with some comment or objection. This was not to Mr. Fisher's liking. Standing there with one foot on his chair, he leaned over the table, towering over Judge Foster, and addressed sharp words to him in a suddenly harsh voice. I have no idea now what he said, but in a moment there was again complete silence and Mr. Fisher resumed his argument to the court in a calm but booming voice."

HIS METHOD

My father was highly articulate and fluent in the courtroom or on the speaking platform. Court reporters have told me that he was so fast they hoped he would choke. But he never did and they would have to call for time out.

Soon after I came in the office I was set to looking up law on a point he was arguing before a jury. I ran across a new point that neither my father nor anybody else had thought of. I hoofed it over to court. Luckily, my father was still arguing. I wrote the point on a scrap of paper in a line or two as intelligibly as I could and pushed up behind him at the counsel table. I handed him the paper. He glanced at it, seeming to resent the interruption. I was crestfallen. In a few minutes my father finished the point he had been discussing, then said "and fourthly." Then followed ten or fifteen minutes of cogent presentation and amplification of my new point.

Similar stories are told by his other juniors. One of them was faced with having to tell my father that instead of receiving the advance notice that he had expected before a certain argument, he was due in court within the next hour. My father smiled and went to the courthouse. He was fortunately already well grounded in the facts and law of the particular case, and, like other skilled advocates, knew that he would have no difficulty in organizing his argument on his feet. But the junior never forgot the finished argument that was made.

My father's method, whether in the courtroom, on the platform, in the press, the conference room or with individuals, was the same: forceful and reasoned presentation. He did not insinuate himself by a soft approach. He was neither light nor brief. A newspaperman said that in his speeches he was "fond of speaking in the courtroom" and "very effective in the courtroom." He was thorough and clear. He succeeded in persuading people and in reconciling conflicting interests by the strength of his reasoning and his forceful personality. He would put a point so convincingly and with such easy, poised confidence that it commanded agreement. Dissent seemed
not arguable. Kent said that "Fisher's intellectual mastery of a subject was such that he could convince a paint mixer that pink was green."³⁷

In this way, for example, he obtained agreement among the dozen lawyers representing the different classes of security holders of the street railways and elevated lines. There were only a few dissents among the score of aldermen constituting the local transportation committee of his client, the City of Chicago. Colonel Arvey, who was a member of the committee, tells me that my father's main ability was that of a coordinator—bringing people to agreement. In these negotiations some of the participating lawyers regarded him with resentment and others with fear. Resentment because he was so sure his analysis was right. He was like Jessel, Master of the Rolls, who said: "I may be wrong, but I never have any doubts."³⁹ He lectured these lawyers like a schoolmaster with his factual discussion. He pushed the negotiations so actively that they had to be on their toes every moment and work harder than they otherwise would. Henry Tenney, who was there, tells me they feared my father's lucid dissection would make mincemeat of their arguments. Among themselves they derisively referred to him as "God"—the same kind of a grudging compliment as Boss Lorimer's.

But they respected him. He knew his subject with a knowledge based on the hardest kind of hard work. A New York newspaper commentator said: "The synonym for Fisher is work."³⁹² By the nature of his practice he did not have knowledge that many lawyers possess of the details of a wide diversity of businesses, but he had great aptitude in ascertaining the essential facts of anything with which he was called upon to deal, always seeking the most competent engineering, accounting or other expert assistance. He was respected for his unquestioned integrity, not only in the narrow sense but in the sense of having everything out on the table and meeting it head on. His method was direct. He scorned concealment or evasion of any kind. He avoided doubtful reasons. He relied on the rational development of a clear and solid position. Another basis for the respect in which he was held was his lifetime emphasis on the long range public interest as compared with immediate private financial interests.

It was hard for non-Chicagoans—for example, a certain United States Senate Committee—³¹ to understand his prestige; why it was that the federal court employed him as a special adviser in local transportation matters; why the City of Chicago needed him in that arena in addition to its own Corporation Counsel. But in Chicago, where the average newspaper reader thought of him as Fisher the tracton expert, it seemed the natural way to deal with those tough and tangled problems. To the aldermen and those traction lawyers it seemed natural and appropriate that the conference meetings should be held not in the city hall but in my father's office.

In these meetings, and always, he jumped right into the business at hand. There was no preliminary small talk. It was the same with his law office associates. He did not stop to pass the time of day. He was abrupt. But at the same time he was completely considerate of the independent position of the other lawyers in the office. He would discuss a law point with the youngest of them on a basis of complete intellectual equality.³²

**HIS CHARACTER**

With him competence, integrity and courage were everything. They crowded from his mind consideration for the feelings of others. That was his principal deficiency. He lacked compassion for the weak and the ineffective. He demolished stupid arguments without deference to their makers. He could not wholly conceal his contempt for a rich young neighbor who had no occupation. He was scornful of people who took the easier way. Once my father had decided on the best way to deal with a situation, he never failed to attempt it, however laborious or unpleasant. In seeking agreement he withstood his inclination to use his sharp tongue, thus showing "a virtue rare in men of his intellectual type, amazing patience with those who differed from him."³³

In manner he was informal. He was so sure of his superior strength that he had no tendency to be pompous. Still most people found him so serious as to be forbidding. Not so the newspaper reporters; his easy assurance enabled him to talk to them with the utmost freedom. "No interviewer," said one of them, "ever approached Mr. Fisher without confidence in his geniality and reliance on his courteous fluency of speech."³⁴ Then there were his cronies at his regular luncheon table and at bridge and golf, which he greatly enjoyed and played fairly well. No seriousness here. These companions found him relaxed and joking,³⁵ relishing the chaff he received as well as what he gave.³⁶ He has been described as a master of banter.³⁷

His written repartee was heavier. A sample has been preserved. In the summer of 1912 my parents had parked

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³ "Throughout the long summer and fall and winter of 1906-07 he had spent frequently from twelve to eighteen hours a day in work on the ordinances..." (Ida M. Tarbell, "How Chicago is Finding Herself," American Magazine, Vol. 67, Nov., Dec., 1908, p. 158.)

³¹ "Traction" was the common American word for street railway. In the pre-automotive age the terms upon which the companies maintained their tracks in city streets were of deep concern to the citizenry, also a source of civic corruption.
some of us children in New Hampshire. They had rented the cottage of Edward Cummings, a popular Massachusetts clergyman. After the summer was over and the rent paid, Mr. Cummings sent my father an additional bill for an amount equivalent to half the rent, for damages that we children were alleged to have done to the property. He coughed his long list of items in facetious vein, referring to our “painful” activities in breaking windows, and so on. Probably his congregation enjoyed that sort of thing. My father enjoyed the opening presented. He replied: “As an exhibition of combined literary and commercial ingenuity [your letter] is a wonder. However, as I had heard from the neighbors of your attainments in both of these directions, it would not be true to say that I was entirely surprised. . . . You may recall telling the boys to use the rockets freely; but of course this was only generosity of language . . . and I shall return the gift by paying for it.” And so on for four pages, enclosing a check for most of the amount claimed, with a final shot “I congratulate you on doing so well.”

My father’s golf and bridge were exclusively masculine. He had no small talk with women. He did not seek their society. Dinner parties at our house were rare except during the two years in Washington. He read much history and biography.

My mother naturally was busy with our family of eight children. Luckily she had some independent income. She was another strong-minded person. She counteracted any tendency to be a domestic autocrat that my father might have inherited from his father. My father devoted a lot of time to us children, especially considering how busy he was. He took us on occasional fishing and camping trips. We were allowed great independence. He did not dominate the details of our lives, but when I became engaged to be married while attending the University of Chicago Law School, he thought the threat to my education was so serious that he permutedly forbade the wedding. But I had been taught too much independence for me to pay attention to that.

My partner, Darrell Boyd, who was with him twenty years, suspects that my father was fundamentally a shy man, fully at ease only in the arenas where he excelled.

HIS FATHER

The key to my father’s character, I am convinced, was his father. I hardly knew my grandfather Fisher. He was a Presbyterian minister. He became the president of Hanover College in Indiana on the Ohio River just at the time that my father was ready for college. So my father attended Hanover.

My grandfather’s people were Pennsylvania “Dutch” farmers. My grandmother Fisher’s people were likewise farmers of German extraction. My grandfather was encouraged to seek an education. He kept industriously at it all his life. For example, he ultimately taught himself to read French, Italian, Spanish and German, in addition to the Latin, Greek and Hebrew he had acquired in college and theological school. He was educated in a wide variety of other subjects. He wrote a few articles and books, including his autobiography.

That autobiography is not an intimate one. The author confesses few mistakes, but admits he once uttered a swear word. “There here are people,” a newspaperman once wrote, “who ascribe [W. L. Fisher’s] didactic manners to hereditary influences.”

When my mother first went to Hanover she newly-acquired father-in-law made some observation at the dinner table, to which she replied: “I don’t agree with you at all.” My mother said that consternation was in every face, and amazement too, not least at the suavity with which Dr. Fisher proceeded to pass it over. He lived in the big new president’s house just completed before he came.

Every Sunday afternoon he preached what was called a “college sermon” in the village Presbyterian Church. He must have been the most important man in town.

Such was my father’s example. The son went on to lead his class in scholarship and student activities. He represented Hanover in its only intercollegiate contest in those days, the statewide competition in what was called “oratory.”

LEARNING TO BE A LAWYER

My father did not go to law school. After graduating from Hanover he spent a year studying law at home, teaching Latin and Greek in the college and making a small profit out of publishing the magazine of his fraternity, Sigma Chi. College fraternities had become an outlet for his energies. At the end of the year the national convention of Sigma Chi adopted his plan for a complete reorganization of the fraternity government. He was put in charge of its headquarters in Chicago at a compensation to pay modest living expenses. Sigma Chi friends helped him make a special arrangement with the law office of Dexter, Herrick & Allen—one of the precursors of the present firm of MacLeish, Spray, Price & Underwood—which then had the largest private law library in the city. My father wanted to use that library to study law. He was to receive no pay but could be called upon for any office work except that the other law clerks were normally to be called on first.

“My method [of studying],” he wrote, “was to read one of the standard text books and take down from the shelves the decisions cited by the author and examine them to see to what extent I thought they supported the text. I filled my memorandum books with notes. I have now no doubt that the case system of a first class law school is a better method of studying law and that my method required more time and more intense application. . . . I did my fraternity work chiefly at night. At the end of a year I was asked to take charge of the office docket and was paid a small weekly wage. I also did
from this law school as a clerk, drawn by a speech he had heard my father make advocating the street railway ordinance of 1907. In 1918, thirty years after the firm was founded, the number of lawyers in the office, including the clerks, was eight. Albert M. Kales joined then. By the time of my father’s death there were 25, including D. S. Boyd, Thomas L. Marshall and Glen A. Lloyd.

**HIS LAW OFFICE**

When as a small boy around the year 1900 I first used to visit my father’s office, my principal recollection is the big stair-well of the building containing the one elevator. The operator pulled up and down on a rope. The cage was of open grillwork. It shook. To a child the ascent seemed a bit perilous. Rising toward the fifth floor, which must have been near the top of the building, one saw a crinkly-glass interior wall carrying the words “Matz, Fisher & Boyden” in enormous black letters. The partners’ rooms and the library had coal-burning fireplaces.

In 1914 they moved to the rather new Corn Exchange Bank Building at the northwest corner of LaSalle and Adams Streets, the building that is there now. In the firm’s eyes the new quarters seemed, I am sure, an even greater step toward magnificence than our subsequent moves to and in the Field Building. But there were still features that we think of as old-fashioned. Though the fireplaces had vanished, each room still had its spittoon. My father had brought his roll-top desk with him. Elmer, the office boy, who was also the bookkeeper, sat on a high stool and worked at a high desk in the reception room, sharing it with the switchboard operator. There was no file clerk; you did your own filing. My father had difficulty in getting adjusted to flat filing; he was accustomed to refolding the letters he had received, restoring them to their envelopes and placing them either in the file or, just as likely, in one of the numerous pigeon-holes in his old desk. Letterpress copies of all outgoing letters were made, usually by Elmer but by Mr. Bell or anybody. The procedure was to make a single carbon copy. Additionally, after the letter had been signed it was copied by being moistened and clamped into a book of innumerable rice-paper pages by means of what was called a letterpress. That was then the common practice of lawyers. It curbed subsequent alteration. It was thought to be the only safe method of knowing what had been written and mailed. A lot of persuading was required to substitute our present method of chronological green carbons.

The youngest clerk had a small desk in the corner of the library. He was docket clerk in his spare time. That was what I did on my arrival in the office in June, 1917. The pay was $10 a week.

**PUBLIC AND OTHER ACTIVITIES**

In 1888, in the growing Chicago, much street and
public construction was being made by special assessment. The office of Special Assessment Attorney for the city had importance and prestige though the salary was small. Matz had been suggested for it. Needing to spend his time cultivating his many friends for the benefit of the firm, Matz succeeded in getting my father appointed instead of himself. The job only lasted a year but the salary was most helpful and my father had gained experience and reputation as a trial lawyer.32

That was the only public employment he ever sought,33 but it was the first of a long series of public activities, some for pay and some not, that continued throughout his life.

My father's overflowing energies were not exhausted by his growing trial and appellate practice.34 In the single year of 1897, the year that he was thirty-five, he was arranging the Chicago Literary Club's weekly program of speakers, he was Chairman of the House Committee of the University Club, and was active in the formation of the Skokie Country Club from negotiating the contract under which it acquired its grounds to personally staking out the sand traps on the golf course.35

During this period he began his activity in the improvement of municipal government. He was active in organizations for civil service reform. He participated in the formation of the Municipal Voters' League. Three years later, in 1899, he took over active management of the League with the understanding that Charles R. Crane of the plumbing fixture company would be president and would give liberal financial support. The two agreed between themselves to serve several years, in my father's words, "if necessary to secure a good working majority of honest and competent aldermen in the City Council. We accomplished what we set out to do."

This is true. With excellent newspaper support they actually did have that extraordinary success in non-partisan reform politics.36 My father worked nights and Sundays. Steffens describes the practical ward-to-ward way in which it was done.37 It laid the foundation of my father's national reputation.

It and his success with the street railway ordinance of 1907.38 His connection with that subject had started in 1905, when the Democratic Mayor Dunne, whose election my father had opposed on this very issue, made him Special Traction Counsel for the City, to work out a solution on the principles that my father had urged. He continued to represent the City in local transportation matters off and on until his death.

He also represented the City in a number of other public utility matters, especially those connected with railroad terminals, such as those involving the Union Station, the lake front and the straightening of the Chicago River.39

While my father never represented any street railway companies—or for that matter any public utilities except steam railroads—he did do special assignments for the railroad companies and the investors, as well as for public bodies. For example, in 1910 or thereabouts he represented the Chicago and Western Indiana and the Illinois Central in civil and criminal proceedings where officials of the roads had been stealing from their own companies through fraudulent land purchases and car repairs. I remember my boyish excitement when William J. Burns, the detective, came to our home to discuss the evidence that he participated in gathering.40

In 1910 my father represented the Chicago Association of Commerce in hearings before the Interstate Commerce Commission.41 In the same year President Taft appointed him a member of the Railway Securities Commission, of which President Hadley of Yale was chairman.42

In 1920 he served as counsel for the National Association of Railroad Security Owners.43

Having for many years had clients in the livestock business, in 1923 he was employed as special counsel for the Department of Agriculture in connection with the proposed absorption of Morris & Company by Armour and Company.44 The controversial atmosphere is disclosed by a Swift & Company memorandum that turned up in the hearings—to the Company's embarrassment and to my father's relish—urging the companies to get their friends in the cattle organizations "to discredit and undermine Walter Fisher."45

In 1926 he represented the Interstate Commerce Commission in its investigation of the causes of the Chicago, Milwaukee & St. Paul receivership, and we find him relentlessly examining Percy Rockefeller and the New York bankers.46 In 1929 he argued on behalf of the Interstate Commerce Commission the great O'Fallon case on the theory of railroad rates, which takes up 93 pages of the Supreme Court reports.47 Two of his fellow cabinet members under Taft represented other parties to the proceedings, Taft sitting as Chief Justice.

PRIVATE CLIENTS

Over his lifetime his work for the public must have taken something of the order of half his time. Undoubtedly he deemed it the more important half. But, of course, his private clients enlisted his energies with the same devotion and enthusiasm. I have spoken of his railroad clients. He was counsel for the Chicago Daily News under Victor Lawson and the Chicago Record-Herald under Frank B. Noyes. But he was not primarily a business adviser or "client caretaker." Though he attracted business to the office, he did not cultivate it. In my time the vital matter of cultivation was largely done...
by Mr. Boyden, an effective business-getter in his own right. I have heard Mr. Boyden say that every hour he spent in the office was wasted. My father, on the contrary, did not trouble himself to cultivate possible clients.

He was the surgeon called in for the big operation—to advise the Associated Press, for instance, or to represent the International Harvester Company in governmental hearings. I heard him argue a Chicago real estate case in the United States Supreme Court against Charles Evans Hughes, later Chief Justice. Mostly it was to try tough cases for clients whose names are now forgotten. He was brought in, for example, after a false heir had been established by the Circuit Court; he succeeded in getting the fraud reversed in the Supreme Court of Illinois. He took a principal part in representing the Kingdom of Norway against the United States on behalf of certain Norwegian shipowners whose cargo ships had been seized in World War I. That case was an argument before the Permanent Court of Arbitration at the Hague. Senator Sutherland, later on the Supreme Court, represented the United States. One of the assistants on my father's side was a recently graduated law student named Dean Acheson.

CIVIC ACTIVITY

In addition to the Municipal Voters' League and similar work which I have mentioned, my father's civic activities were numerous throughout his life. For instance, he initiated the formation of the City Club, which soon became influential for the improvement of municipal government in Chicago. He was frequently active, both in Springfield and Chicago, in advocating legislation which he regarded as desirable from the public's standpoint. The Tribune ran editorial called "The King Fisher," saying that since he had never been elected to anything, he should stay away from Springfield and stick to helping elect good aldermen and legislators. They then printed his reply inquiring whether a citizen had to own a printing press before offering advice to the legislature.

The Tribune, like many people, supported my father in some matters and opposed him in others. The first time I ever heard him in public was when he presided and made one of the principal speeches at an immense mass-meeting to protest the extradition to Russia of a revolutionist against the Czar's government. I was astounded at my father's forceful vehemence.

CONSERVATION AND NATIONAL POLITICS

He would not have become Secretary of the Interior if it had not been for one of his civic activities which I have not yet mentioned. That was his work on the conservation of natural resources, meaning the sound development of coal, oil, forests and water power, primarily on the public lands of the United States. By 1910 conservation had become "the foremost political and social question in the United States."

My father's connection with national politics was quite separate from his work for good government in Chicago. His political effort at the ward or grass roots level was, as we have seen, entirely non-partisan. On the other hand his party activity was always at the highest level of the Republican party, where he could carry no precincts.

It started when he was twenty-six years old, when he became the active secretary of a national effort to nominate federal Judge Walter Q. Gresham as the Republican candidate for the presidency. In 1898, before Theodore Roosevelt had been nominated for governor of New York, my father met with a number of young men who declared for Roosevelt for president in 1904. My father thought that was the first group to make the proposal. It received wide publicity.

When Roosevelt appointed to federal office in Chicago one of Boss Lorimer's principal lieutenants my father complained to the President about the aid and comfort this was giving to the enemies of good government in Illinois. This led to a meeting with the President at his request at the White House.

It was Gifford Pinchot who enlisted President Roosevelt in the conservation movement. My father became active in its support and in the Conservation Association of America, presiding over a stormy meeting at which Pinchot and his friends, James R. Garfield and Henry L. Stimson, succeeded in retaining control. In 1909 my father with Pinchot visited Roosevelt at Oyster Bay and they were urged to found the Conservation League of America on lines similar to those of the Municipal Voters' League. This was done. My father was president. Roosevelt was honorary president and William Howard Taft and William Jennings Bryan honorary vice presidents. My father writes that the field was too vast to cover effectively, so the organization lasted only a year or two. He had given this voluntary task his customary energetic effort, for his letterpress copy book as president of the Conservation League has 681 pages of his own letters.

This contact with Taft made it natural for the President to think of my father as an appropriate successor to Secretary of the Interior Ballinger when Ballinger's resignation became necessary because of Pinchot's attack on his conservation policies. The foundation had been laid by previous recommendations by John P. Wilson, John Barton Payne and other Chicago lawyers that Taft appoint Fisher to the Supreme Court. The President had told Frank B. Noyes, the influential publisher of the Washington Star, that he had thought seriously of appointing Fisher Secretary of the Treasury in his original cabinet—a post for which my father's experience did not qualify him. He had not known in advance of these moves.

My father served as Secretary of the Interior during
the last two years of the Taft administration. This is not the place to discuss his activities and policies in that office. The central problems were those of conservation. He favored “a liberal leasing system, with effective regulation and recapture provisions to protect the public.” The system was analogous to his attitude toward the street railways of Chicago. It is characteristic of his lifelong middle position between government ownership on the one hand and unregulated private exploitation on the other.

During my father’s term of office some of the foundations of the National Park Service were laid. He visited Alaska. I was one of the party. He determined the route and recommended the construction of the Alaska Railroad.

All this time the reactionary political elements around Taft were trying to undermine my father’s position, but without success. They pointed out that he had said good things about the initiative, referendum and recall and, worst of all, about Senator La Follette. Taft’s aide, Archie Butt, wrote: “[Fisher] is of the reformer type and therefore to be suspected,” and, later, that it was said he was trying to get the Republican nomination for himself.76

Taft did suspect that my father would end up supporting La Follette for the Republican nomination.77 But Taft left that for the future. Throughout his life he never deviated from his cordial friendliness. After his term as President was over I find a letter to my father in which Taft expresses his pleasure at having succeeded in reducing his weight from 336 pounds, maybe 340 pounds, to 310.78

My father did not desert Taft. He made a political speech in Nebraska supporting him as a sincere believer in the fundamental principles of such a constructive progressive policy as my father described as his own. But such a position was unsatisfactory to the reactionaries in control of Taft’s campaign, who were hopeless of victory anyway. My father’s further speeches were cancelled.79 There was a movement that received some editorial support around the country to get President Wilson to retain him in office.80 Instead Wilson appointed another conservationist and reform politician, my father’s friend, Franklin K. Lane.

With his customary balance my father still valued Theodore Roosevelt.81 In 1916 during the Wilson administration he wired Stimson and others in New York urging that Roosevelt be the Republican nominee for Senator.82

My father agreed with those who thought the Bull Moose party a terrible blunder.83 In later life he wrote:

It took out of the republican party, and especially out of the party organization, most of the progressive elements that were already on the very point of gaining control of the party and of the organization, and it left the control again to the reactionary elements which remained in control when Roosevelt was defeated, as was inevitable. It was an ephemeral, emotional, political hysteria, foredoomed to failure, and it set back the progressive republican movement so that it has not yet recovered, and which would otherwise eventually have come into control. In Illinois it is the real secret of the party demoralization which still exists.84

At the end of his term he went back to his law firm. He was then 50 years old. But he had no more interest in high office. Though in the Municipal Voters League he had had extraordinary success as a practical politician, he never ran for public office. He probably realized that a man of his impersonal exterior would find it hard to win the electorate. “Mr. Fisher is the embodiment of government, and the average man does not like to be governed.”85

After his return to Chicago he was enormously active in public affairs, both as special counsel for the City on various public utility matters and as a citizen.86 During World War I he wrote and spoke many times on military policy, beginning with the convocation address in Mandel Hall in December, 1915. He followed Taft in urging a League to Enforce Peace. He opposed universal military service. The Tribune, differing, said: “Walter L. Fisher is distinctly the most formidable opponent of military preparedness. His intellectual powers do not permit him to substitute a heart thrill for a mental process . . . and his ability in controversy is confusion to his opponents.”87

When war came, his service was as a mediator of labor disputes in shipbuilding.88

After age sixty, though he continued to be fully active—never seemed an old man—there were fewer occasions on which he rendered aid pro bono publico. One of these was in the year in which he died, 1935, at the age of seventy-three, when he had joined with others in taking a leading part in blocking Mayor Kelly’s plan for commercialized recreation on the lake front. He was still a trustee of a civic agency that he had helped form twenty-five years earlier, whose name and function were characteristic of him, the Chicago Bureau of Public Efficiency.

**HIS PHILOSOPHY**

Like Theodore Roosevelt, and like my father’s friends Steffens and Brandeis, my father was “an amalgam of strenuous reform and innate conservatism.”89

Throughout his life he preserved his middle position of being a Republican who believed in some increase of government regulation. His political and economic views were naturally unsatisfactory to most businessmen on the one hand, and on the other to the believers in government ownership. The opponents of the Municipal Voters’ League called it socialist, and said that Fisher clamored and worked for socialist legislation.90 He wrote to Theodore Roosevelt that a machine like Lorimer’s has “its most dangerous members among men of social prominence and financial influence, sleek and successful hypocrites . . .”91 But in the political campaigns over the traction ordinances he was charged with being
too favorable to the private companies and their security holders. 

"[W]hen I drafted and put through our present street railway ordinances," he wrote, "the Chicago Federation of Labor attacked me and these ordinances as viciously as possible, although the holders of railway securities were almost equally displeased with my position"; on certain other matters the attitude of the Federation of Labor was quite the other way.85

At the same time that the Osage Indians were supporting him as the protector of their oil lands from private oil interests, he was being denounced as "a tool of the Standard Oil Co."86

My father believed that there was nothing more worth doing than to labor for the improvement of our American system of government. He was always talking about "the public interest." He had proved over the years that with him it was no empty phrase. He meant the claim of long-run social considerations for priority over immediate interests. To him this claim was not only a guidepost in solving public problems, but it was a compelling beacon in his personal life. In my opinion it was his religion, the substitute for the religion of the church in which he had been raised and from which he had broken away. True, the fighting was congenial to him, but he deeply believed that he had a duty to fight and labor for good government. That this was a matter of faith with him is supported by his lack of interest in a political career.

His role was that of the independent lawyer, a powerhouse of ability available for public or private use, alternating between the representation of private businesses on the one hand and governmental bodies on the other. The emphasis was on independence. He was not under the thumb of any client. Of course no lawyer ought to be; the methods and ethics of what we lawyers do are our own business. But my father went beyond the canons of ethics in that respect. He was loyal to his clients, all right, but he would often stipulate in advance that he was to be free to express publicly his personal views on public aspects of the subjects involved.87 Those were his terms and the client could take him on those terms or not at all.

There was an implication of superiority in this. It is the egotism of setting higher standards for yourself than others set for themselves. No doubt his father's position in Hanover, Indiana, helped make the son believe that such standards were appropriate. As a young man he had written to the secretary of the Chicago Literary Club: "I am unwilling to read a paper before the club that has not been carefully prepared on a subject upon which I have something more to contribute than the average member of the organization."88 Still, I cannot help feeling that if more people had his approach it would be, to use my father's favorite phrase, "in the public interest."

NOTES

2 Edward F. Roberts in Chicago Tribune, Aug. 30, 1908.
3 Letter (1903) to Lincoln Steffens in "William Kent—Independent," MS by Elizabeth T. Kent in Chicago Historical Society, p. 150. Kent not only backed the Municipal Voters' League financially, but got himself elected alderman. Later he was a member of Congress from California.
4 Kenneth McCracken, MS Notes Concerning Mr. Walter L. Fisher, Aug. 10, 1939.
5 Conversation with David A. Watts, Aug. 1959. F. C. E. Landgren describes a similar incident.
6 Roberts, loc. cit. n. 2 supra.
7 Arthur M. Evans in Chicago Record-Herald, Jan. 6, 1912.
8 This paragraph and the next three are largely based on conversations, July-Sept. 1959, with Jacob M. Arvey, Allan T. Gilbert, Judge Ulysses S. Schwartz and Henry F. Tenney, lawyers, and Everett Norlander, newspaperman, all of whom attended many of the traction conferences.
12 McCracken, op. cit., n. 4 supra.
13 Tarbell, loc. cit. at n. 10 supra.
14 Roswell Field in Chicago Examiner, Mch. 16, 1911. Also E. Norlander, n. 8 supra.
15 Conversation with George M. McConnell, one of his card-playing companions, July 1959.
17 ibid. "[N]o man's sense of humor is keener than his." (Vernon, loc. cit. n. 10 supra.)
18 MS copy of letter of WLF, Library of Congress.
21 Ibid., p. 17.
22 Chicago Tribune, Dec. 18, 1910.
24 Ibid., p. 205.
26 Ibid.
27 Ibid., p. 5.
28 Ibid., p. 6.
29 Ibid.
30 Ibid., p. 7.
31 Ibid., p. 8.
33 Ibid., p. 28.
34 WLF's bound briefs (21 vols.) are in the library of the Chicago Bar Assn.
35 Autobiog. sketch, p. 15; MS letterpress copy book (containing year 1897 of WLF, Library of Congress, pp. 75, 86, 88 and passim.
36 Autobiog. sketch, pp. 11-12.
38 See Tarbell, loc. cit. at n. 10 supra.
39 Autobiog. sketch, pp. 29-31.
40 Ibid., pp. 32-33.
41 Ibid., p. 28.
42 Ibid., p. 20.
43 Ibid., p. 33.
Kenneth Culp Davis has been appointed John P. Wilson Professor of Law. After graduation from Harvard Law School, Professor Davis practiced in Cleveland, and then taught at West Virginia, Texas, as Visiting Professor at Harvard, and for the eleven years prior to his coming to Chicago at the University of Minnesota. His official biography suggests that he has taught sixteen different subjects; he is nationally known for his work in Administrative Law.

James C. Hormel comes to the Law School as Assistant Dean and Dean of Students, a position relinquished by Professor Jo Desha Lucas, who will now devote full time to teaching and research. Mr. Hormel, a member of the Class of 1958, served as law clerk to Justice James Bryant, of the Illinois Appellate Court, and subsequently practiced with the Chicago firm of Peterson, Lowry, Rall, Barber and Ross.

Professor Phil C. Neal practiced in San Francisco following his graduation from Harvard Law School in 1943. In 1948 he became a member of the law faculty at Stanford University, from which he comes to the Law

New Faculty Appointments—
Continued from page 1

Professor Oaks, with Mr. Chief Justice Warren, with whom he served as law clerk.
School. He has taught Agency, Administrative Law, Anti-Trust Law, Civil Procedure and Public Utilities; his two major fields are Constitutional Law and Creditor's Rights. Professor Neal is one of the authors of the history of the U.S. Supreme Court, authorized by the Congress in connection with the Oliver Wendell Holmes Devise. Professor Neal is writing on the Chief Justiceship of Melville Fuller, covering the years 1888-1910.

DALLIN H. OAKS, like Professor Dam a member of the School's Class of 1957, has been appointed Associate Professor of Law. Professor Oaks, whose undergraduate work was done at Brigham Young University, served for the year following his graduation as law clerk to Mr. Chief Justice Warren. Since that time he has practiced with the Chicago firm of Kirkland, Ellis, Hodson, Chaffetz and Masters. He is currently teaching Accounting and will, inter alia, teach Oil and Gas Law and work with Professor Blum in the Federal Taxation field.

Not a new appointment, strictly speaking, but one that will be received with pleasure by a generation of Law School graduates, is the announcement by the President of the University that he has appointed SHELDON TEFFT the James Parker Hall Professor of Law.

Lectures and Conferences

During 1961, four major conferences were held under the auspices of the School.

In February, the School sponsored a Conference on Conflict of Interest. Papers presented considered the problem with reference to law firms, corporations, accounting firms, and the executive and legislative branches of the government. This Conference was part of a continuing program made possible by a grant from the New World Foundation, for conferences and seminars devoted to advancing thought and work in the area of practices and ethics of industry and commerce.

The most recent session of the Illinois Legislature enacted into law a new Criminal Code, for which Professor Francis Allen was Chairman of the Drafting Subcommittee. In October, a Conference was held on the new Code, to consider its content and implications. Speakers included those most responsible for the preparation of the Code, including Professor Allen and the Honorable Richard Austin, JD'26, Chairman of the Joint Bar Association Committee on the Code.

The Fourteenth Annual Federal Tax Conference spon-
sored by the Law School took place during the last week in October. The three-day Conference, held before an audience of 500, heard the Assistant Secretary of the Treasury for Taxation and the Commissioner of Internal Revenue, in addition to twenty other speakers and panelists, discuss recent developments in federal taxation, and the promise, if that is the appropriate word, of further change.

The Conference on Atomic Radiation and the Law devoted two days, in mid-November, to a statement of the legal problems to which, it was thought fifteen years ago, the introduction of atomic energy might give rise, an analysis of the nature of the problems which did, in fact, arise, and suggested solutions for many of them. In form, the Conference consisted of a series of paired speeches, in the first of which a speaker expert in a par-

Professor Soia Mentschikoff and Professor Covey Oliver, of the University of Pennsylvania Law School, chat with students during the Conference on Atomic Radiation and the Law.


Professor Samuel D. Estep, of the University of Michigan Law School and Theo Vogelaar, Director General, Service Juridique des Executifs Europeens (Branche Euratom), both of whom spoke at the Conference on Atomic Radiation and the Law.

The Honorable Hugo Friend, JD'08, Justice of the Illinois Appellate Court, the Right Honorable Lord Parker of Waddington, Lord Chief Justice of England, and the Honorable Abraham Marovitz, Judge of the Superior Court of Cook County, at the reception for Lord Parker preceding his Freund Lecture.
Norval Morris, Dean of the Law Faculty at the University of Adelaide, Australia, speaking at the concluding session of the Conference on the Illinois Criminal Code. He was introduced by Professor Francis Allen, who shares the platform with him.

Professor Covey Oliver, of the University of Pennsylvania, Kenneth Culp Davis, John P. Wilson Professor of Law at the University of Chicago Law School, and William Mitchell, former General Counsel of the U.S. Atomic Energy Commission, at the Conference on Atomic Radiation and the Law, at which all were speakers.

The Right Honorable Lord Parker of Waddington, Lord Chief Justice of England, right, greets the Honorable Latham Castle, Judge of the U.S. Court of Appeals for the Seventh Circuit, following Lord Parker’s Ernst Freund Lecture.

Professor Willard Pedrick, of Northwestern University Law School, Arthur W. Murphy, of Baer, Marks, Friedman and Berliner, New York, and Professor Harry Kalven, Jr. of the Law Faculty. Professor Kalven presided over the session of the Conference on Atomic Radiation and the Law at which Mr. Murphy and Professor Pedrick spoke.

Professor Kenneth Dam, of the Law School, Professor E. Ernest Goldstein, JD'43, of the University of Texas Law School, Sheldon Tefft, James Parker Hall Professor of Law, and Bennett Boskey, of the District of Columbia Bar and Consultant to the Law School on the Conference on Atomic Radiation and the Law, at which Professor Goldstein spoke.

Left to right, the Honorable A. L. Marovitz, Circuit Court of Cook County, the Honorable Michael Igoe, U.S. District Court, Chicago, the Honorable David L. Bazelon, Judge of the U.S. Court of Appeals for the District of Columbia, and Professor Francis A. Allen, during Judge Bazelon's visit to the School to deliver the Isaac Ray Memorial Lectures.
A New American—And Why

(From the Chicago Daily Tribune, September 26, 1961)

D. V. Cowen will soon take up the duties of a professor of law at the University of Chicago. As a professor of comparative law at the University of Cape Town, Mr. Cowen made a close study of the constitutions of his native country, South Africa, and the United States. He has reported his findings and conclusions in a recently published book, "The Foundations of Freedom," and he has expressed his conclusions not only with his scholarly typewriter but with his life, in the decision to take up residence in a country with a Constitution which effectively upholds human rights.

"No one who has studied American society, even for a comparatively short period," Prof. Cowen writes, "can fail to be impressed by the central position of the Constitution in the affection, the thought, and the imagination of Americans. No enumeration of the characteristics and qualities which go to make up a good American would be complete without a reference to the United States Constitution and its Bill of Rights."

Mr. Cowen believes that Americans' affection for their Constitution is based not only on patriotic sentiment but on the objective value of their Constitution. "If any one experiment in taming power, more than another, has been greatly justified by its works," he states, "it is the entrenchment in a written constitution of fundamental human rights, so that they may be placed beyond the reach of executive decisions and legislative majorities, and entrusted to the protection of the ordinary courts."

In South Africa, where this constitution is to be used, Prof. Cowen believes, will come the day when the history of that country will be written, he holds, such as "The Foundations of Freedom" contain a clear picture of American society. His book, in fact, is a study of the Constitution of the United States, and the author's views of the same are as clear as the description of the Constitution as a whole. He believes, he says, that the Constitution of the United States is "the most important document in the world."
General Nathan William MacChesney

By BRUNSON MACCHESNEY
Professor of Law, Northwestern University

(Professor MacChesney's lecture, and Mr. Fisher's, which appears elsewhere in this issue, are parts of a series on distinguished Chicago lawyers, sponsored by the Law School in recent years.)

This series of talks on distinguished Chicago lawyers would have won father's enthusiastic approval. He was a firm believer in the continuity of culture and the lawyer's role as a leader in society. He had an intense interest in public affairs and felt closely linked to the history and development of this country. In his earlier years, he cast himself as the player of a major part, even the Presidency not being excluded from his ambitions. Having this sense of history and his projected share in its unfolding, he kept detailed records of his activities and preserved many documents reflecting his participation.

Father would also have appreciated this occasion. Convinced of the value of recognition of accomplishment as a stimulus to endeavor, he was both generous in his recognition of others and proud of his own achievements. During his full life, he received many military and foreign decorations, honorary degrees, and civic awards. His delight in their acquisition was parodied in the Chicago Tribune's "A Line O'Type or Two" in 1918.

Nathan, Nathan, we've been thinking
How the world will be perplex't.
When the press omit to mention
Some new title you've annex't.

Father's sense of humor enabled him to enjoy this spoofing. Another humorous piece he kept in his files was a tongue-in-cheek New Yorker article by Alva Johnston entitled "The Fifteen Biggest Men in America." The author's suggested new method for scientifically measuring genius and merit called for the counting of the number of lines in Who's Who biographies. On this basis, Samuel Untermeyer won with 99, Nicholas Murray Butler was a close second with 97, and father was fourth with 87. Elihu Root came in eighth with 82.

Life with my father was not quite as colorful as the menage portrayed by Clarence Day, but it was always interesting and controversial. Father, who was usually called General by most of his friends and acquaintances, had a commanding presence, a forceful personality, and a strong sense for the proprieties. With courtly manners and great charm in personal relationships, he was a genial host and a gregarious man. Possessing an endless fund of stories about men and events, he was a practitioner of the dying art of conversation. Somewhat as it was said of Senator Taft, wherever he sat was the head of the table. It took considerable fortitude to interrupt and disagree with him, but it could be done, and he in fact welcomed and enjoyed spirited disputation.

In his youth, he had been the Western Conference tennis champion and an avid horseman. In his middle years, he kept horses and rode regularly at his Libertyville country place, Riverhill Farm. Throughout his life, he was a teetotaler, even refusing whiskey when he had fainted from the altitude in the Rockies. His convictions on this subject led him to decline an invitation to join Calvert's "Men of Distinction."

He was a voracious reader, especially of history and biography. He also loved detective stories, but his Presbyterian conscience dictated a life-long practice of reading two "serious" books before "indulging" in a detective yarn. He had an amusing habit of annotating biographies with his personal reactions to the incidents described. Coupled with his deeply felt sense of duty was a zest for life, and he savored its humor and pathos. He enjoyed ritual and ceremony on routine as well as more important occasions—whether it was "marching" his family, or any guest would do, to the flagpole at Riverhill Farm to salute the "colors," or at large family gatherings when he would don his Scotch garb, stand on the chair, and toast the clan in water! His letters to intimate friends also revealed his wit and humor. One example is his correspondence over a thirty-year period with Frederick A. Brown of the Chicago Bar.

He demonstrated his physical courage in several tours of riot duty with the National Guard as well as in his army service in three wars. In the Iroquois Theater fire, one of Chicago's great disasters, father, who was at a meeting next door, rushed in to assist in the grim rescue work. But his moral courage was equally significant. He never hesitated to speak out on controversial issues, and never remained silent in the presence of injustice or unfairness. I can remember being at the Union League
Club in the thirties at luncheons with his friends or clients who would launch vitriolic attacks on Franklin Roosevelt. Father would vigorously defend the man whose policies and actions were abhorrent to him.

Although a strong partisan, he was tolerant of the views of others and understood the motivations for differing social aspirations. His tolerance encompassed dissent within his own family. In 1941, a Wyoming lawyer wrote him to comment approvingly on my different political faith as a healthy sign of independent thinking. In father’s reply, after referring to his boyhood spent among his father’s friends who were all Republicans, and mostly Civil War veterans, he said:

It never occurred to me to be anything other than a Republican. However, the old background of life has changed. I have always been a progressive conservative and have felt that the real problems we have in this country must be worked out by a constantly advancing social program. I felt the way to do it was within the framework of the Republican party. My son thought that was hopeless. We disagree radically on the approach to many questions. He still has more faith in the possibility of early reform than, unfortunately, I have been able to retain. Fortunately, it does not affect our personal relations and we have many a good discussion together regarding these matters.

I can endorse his statement on our personal relations and “many a good discussion.” In support of his self-characterization as a “progressive conservative,” I offer his commencement address at Detroit City College in June of 1933. Father, then 55 years old, described his attitude towards the age in which he lived and defined his philosophy of life to the depression generation in his audience.

He begins by quoting Mirabeau, “Nothing is impossible to the man who can will, then do”; and Emerson’s “Nothing worth while was ever achieved without enthusiasm.”

Mentioning his college years (1894-1898), years which he described as a turning-point in social attitudes, he said:

During the decade preceding, our people had been a very confident and self-satisfied people. It had been largely a period of rapid physical development, but one without much social outlook or sense of duty to human life or its surroundings. . . . [The period] was “hard” from a social standpoint.

About that time, however, there came a desire for a wider and broader life and something better than we had known . . . .

After a brief discussion of the Spanish War and the emergence of Theodore Roosevelt as a practical idealist, who struggled to purify the politics of the day and to correct some of the outstanding abuses of business and industry, he continued:

The young men of that day, too, were inspired by world interest and a faith that things would soon be better. . . . [They] were taking a vital interest in political reform and social work, as evidenced by the founding of city clubs and civic organizations, and going into residence at social centers springing up all over the country. . . . The atmosphere was one of hopeful interest as we drew near the beginning of this century and on through its first decade (until World War I). . . . We had a feeling that things could be made better, and that in the not too distant future, and that we had a part to play in it.

Referring to the generation of his audience, he said: I am not critical. . . . They sometimes startle me, but on the whole I think they are an improvement over . . . my generation. I have one criticism to make . . . [your generation] seems to lack the vital interest in the things about them, or the sense of personal responsibility to change them, or the desire to work at that improvement which characterized the college man or woman of the better type in the days before the World War [I].

Commenting on the effect of World War I, the Peace Conference, and Wilson’s idealism, he said:

. . . . a great disillusion had taken place which was to turn the attention of all America from the high plateau of social and world service to the illusion of continued progress and social contentment through business prosperity which became a new God.

Reflecting on the twenties, he continued:

. . . . Perhaps one trouble with the decade has been that . . . national prosperity [was regarded] as an end in itself instead of a means to a larger life, deeper contentment, wider social welfare and greater spiritual values. . . . It should have taught us that the life of any individual or nation based upon a mere accumulation of wealth has a foundation of shifting sand.

Analyzing the impact of the machine age and war, he stressed the importance of idealism in youth and urged them to hold onto their ideas with enthusiasm through life; that these youthful ideals were generally right if their pursuit was guided by experience. He concluded:

Do not be a “poodle dog”; get out and fight for the things in which you believe and for the things which are worthwhile. I call you to a life of hard endeavor and of worthwhile accomplishment; not to a mere cult of efficiency but to an objective worthy of life itself. Have faith that better times are ahead and that you can contribute to them. Work for an adequate social program that will advance the world toward a goal in which you believe; a better chance for every child; better opportunities for the average man; higher standards of morality, of living, and of outlook; more sunshine and joy for the women and children of the nation; the abolition of fear in men’s lives; some security for his livelihood; some assurance against sickness and disaster; a more serene old age as assured by old age pensions, insurance and the like; a social program that shall somehow take the nation forward along the way in which you believe it should go.

He ended by quoting one of his favorite philosophers, Josiah Royce: “The shadows will be behind you if you walk into the light.”

These commencement remarks throw light on his personality and help explain his motivations and activities. Before discussing his career, a brief survey of his family background and youthful influences may contribute to an understanding of his development. The immediate background is professional, and, over a longer period, there is a tradition of conviction, dissent, and anti-establishment.
Father was a descendant of Scotch Presbyterians who, having been expelled from Scotland and then from Northern Ireland for adherence to their faith, emigrated in 1688 to Virginia. His grandfather, Nathan MacChesney, after whom he was named, was an officer of the Virginia militia in the War of 1812. Paid for his war services by a land grant located near Gailesburg, then part of Virginia, his grandfather was one of the founders of Knox College. His father, Alfred Brunson MacChesney, studied at Knox, and completed his education at the University of Michigan Medical School in 1853. He was awarded an M.A. degree at Knox in 1857. Practicing medicine in Quincy and Alton before the Civil War, his homes were stations on the “underground railroad.”

In 1860, his first wife, Elizabeth Hudnut of Philadelphia, died in Alton. Subsequently, as a member of the Illinois Volunteers, Dr. MacChesney was a Lieutenant-Colonel and surgeon on General Grant’s staff during the Civil War. In the course of this service, he met the woman who was to become his second wife, my English grandmother, Henrietta Milsom. She was the daughter of a clergyman who taught Greek at Oxford and who was sympathetic to the abolitionist cause. Her two brothers were serving in the Union Army, and she had come over to nurse one of them when he was fatally injured at the Battle of Atlanta.

After the war, she studied medicine at the old Northwestern Medical School for one year. The school having then decided to exclude women, she transferred to Michigan, graduating in 1873. After graduation, she worked in out-patient clinics on New York’s East Side. Father, years later, took pride in making the motion, as trustee, for readmitting women to Northwestern’s Medical School. In 1876, she married my grandfather, who had practiced surgery in Chicago after the Civil War. Their first child, my father, was born in 1878 on Chicago’s West Side. Her second child, Alfred Brunson MacChesney, Jr., died in his seventh year. Another brother, Chester MacChesney, survives.

Childhood influences, in addition to Republicans and Civil War veterans, included well-known figures from the then Western frontier who were family friends and acquaintances. Buffalo Bill (Cody), one of them, excited the envy of father’s contemporaries when Cody drove his wagon to his Wild West show at the World’s Fair of 1893 in Chicago, with Annie Oakley, the famous markswoman, in the back seat with father, then in his early teens.

At the age of seven, an experience which father often recounted with relish was a trip to New York with his father to attend Grant’s funeral. They rode in the funeral procession in a carriage which had been used by George Washington for his inauguration. The carriage is now in the Smithsonian. The then owner of the carriage was a military friend of Grant’s, Captain Richardson. Richardson occupied a large mansion at 23rd and Broadway, at which father and grandfather stayed for a week. Grandfather testified, after Richardson’s death, in a suit brought by his former housekeeper to establish herself as his common-law wife. When asked on cross-examination why he felt she did not have this status, grandfather replied that there had been a sign at the front door saying “the woman who runs my house and presides at the table is my housekeeper, and is not, and does not expect to be my wife. Richardson!”

Father went to the Chicago public schools for his primary education, graduating from Hyde Park High School, the family having moved to the South Side. For health reasons, he went west for his college education. He completed his undergraduate work in 1898 at the College of the Pacific. He was a student instructor at the University of Arizona the following year. During these years, he was a Chautauqua lecturer and press correspondent. Riding in the open spaces and the frontier atmosphere of the period were vivid memories which fortified father’s life-long faith in individualism and self-reliance.

Returning to Chicago in 1899, he took his first year of law at Northwestern University. Wigmore was one of his teachers, and remained a friend, and associate in numerous enterprises, for many years. Father wrote: “He has influenced me more than any other law teacher.” Transferring to the University of Michigan, he graduated from the Law School in 1902. He maintained an active interest in the schools he attended, and they, in turn, recognized his efforts by conferring honorary degrees.

Father met my mother, then Lena Frost of Riverside, at Michigan where she graduated in 1901. Subsequently, she did a year’s graduate work at the University of Berlin and taught at the Friends Academy in New Bedford. They were married in 1904, and for nearly fifty years enjoyed a happy and fruitful partnership. My mother was a person in her own right with a good mind. She had a delightfully subtle sense of humor, which enabled her to “handle” father easily and skillfully. She shared his interest in civic affairs. Nonetheless, her major efforts were directed to assisting her husband’s career, family, and ambitions, and to these she gave a full measure of devotion.

Admitted to the Illinois Bar in 1902, father started the practice of law with Frederick Becker under the firm name of MacChesney and Becker. Dean Wigmore had advised him to practice by himself and not to enter any of the then larger law firms. Father in later life often told me he thought this was poor advice for big city practice even in 1902. This decision was undoubtedly crucial, contributing both to his independence and prominence. He was never temperamentally fitted to be an ‘organization man.’
Father's legal career can be divided conveniently into periods for purposes of discussion. The first period, from 1902 until 1917, when he went on active military service, was one of growth in professional matters and of increasing reputation as a leading citizen in political, civic, bar association, and military affairs. Upon his father's death in 1903, he inherited large real estate holdings in Chicago, and much of his early practice was in the property field. He was active in trial work, defending a variety of personal injury cases and handling taxation and condemnation matters for railroads and public utilities. He also did a considerable amount of appellate work in Illinois and other states. One example is North v. Illinois, 201 Ill. App. 449 (1916), a test case in which father appeared for the University of Illinois and helped secure a ruling that the Workmen's Compensation Act did not apply to educational institutions.

At this time he also acted as counsel for various banks and insurance companies, and other businesses. Within five years of graduation, he became general counsel for the Chicago Real Estate Board, and subsequently the first general counsel for the National Association of Real Estate Boards, which he helped organize and represented until he became a full-time referee in bankruptcy in 1947. On behalf of the realty interests of others and of his own, he tried many assessment cases, and represented realtors and builders in other matters. Throughout his career, he appeared frequently before legislative bodies, state and federal, on behalf of real estate interests. He was also counsel for California and Arizona fruit growers' associations on interstate commerce questions.

Despite these demanding and absorbing professional interests, he devoted time and effort, normally set aside for recreation and relaxation, to a bewildering variety of civic activities. Their chief significance for present purposes is to reveal his enormous energy, his willingness to work, and his sense of duty and social conscience, as well as ambition, that spurred him on. In his youth, he had seriously considered the ministry as a career, and he later served as a Presbyterian layman in various church activities. During his first years of practice, he worked in social centers as well as being a director of the United Charities, and other similar organizations. In the pre-World War I period, he served as chairman of several committees of the Republican Hamilton Club and the non-partisan City Club. These committees fought the proposed terms of telephone and public utility franchises, and engaged in many civic struggles involving taxation, special assessments, and the city council.

In 1909, he was secretary of the Lincoln Centennial Commission appointed by Mayor Busse. He delivered the address on Lincoln on behalf of the bar before the Supreme Court of Illinois, and edited a volume: Abraham Lincoln: The Tribute of a Century, which included the principal addresses delivered during that year in Illinois and throughout the world. Woodrow Wilson, then President of Princeton, delivered the principal Chicago address, and other contributors included Adlai E. Stevenson I and Rabbi Hirsch, grandfather of Dean Levi of the University of Chicago Law School.

Concurrently with these other activities, father had been interested in military matters since joining the Illinois National Guard just before being called out for guard duty in the Pullman strike of 1894. Governor Altgeld had publicly ordered the guard not to use firearms, and many were stoned. Father's disapproval of that order was more than matched by his feeling about the Pullman Company's social attitudes. Some years later, father called on Pullman's president to obtain an additional contribution for the United Charities to assist its laid-off employees. The employees were receiving many thousands of dollars of relief, and the company was contributing $500 a year. The president refused, saying: "The company recognizes no obligation to its employees except to pay the wages contracted for while in the employ of the company."

As a volunteer in the Spanish-American War, initially with a regiment that was part of the "Rough Riders," he first became acquainted with Theodore Roosevelt and Leonard Wood, with whom he was to later associate politically. Between that war and World War I, he served with the Illinois National Guard, becoming Judge Advocate General in 1911. Upon his entry into U.S. Army service in 1917, he was retired by order of Governor Lowden with the rank of Brigadier General in the National Guard. It was the title thus acquired that led to the familiar appellation of "General" to which I have referred.

Prior to our entrance into World War I, he worked with the War Department on legal aspects of the relationship between the National Guard and the regular army. He wrote an article on the constitutional questions involved in this relationship for the Pennsylvania Law Review (64 U. Pa. L. Rev. 347, 449 [1916]), and argued the test case of Stearns v. Wood (236 U.S. 75 [1915]) in which General Order No. 8 of the Secretary of War, ordering the guard to conform to federal requirements, was challenged. He also worked on the Selective Service Act, and, after his entry on active duty, argued a test case (Franke v. Murray, 248 F. 865 [8th C.C.A., 1918]), which upheld the application of military law to a draftee from the date of draft, instead of from the date of the oath of enlistment applicable to volunteers.

With his military interests, he was a strong advocate of preparedness. Prior to our entrance into World War I, he supported Theodore Roosevelt and General Leonard Wood on preparedness, took military training at Plattsburg and volunteered to serve in the proposed Roosevelt division overseas. As is known, President Wilson vetoed Roosevelt's proposal. Subsequently, Wood charged he was not being sent overseas for political reasons and went to Washington for a showdown with the then
Secretary of War, Newton Baker. At the time, father was on active duty in the War Department, and was just leaving Baker's office when Wood appeared with an aide. Baker asked father to stay with him during the interview. The incident has been much discussed in biographies of Wood and Baker. Father always supported Secretary Baker's sincerity in his position that General Wood could not effectively serve under General Pershing, even though father believed Wood's going abroad would have been good for the morale of allied troops as well as our own.

As one of the first volunteers in the new Judge Advocates' Reserve Corps, he was commissioned, and ordered to duty in June of 1917. He served first as a judge advocate in the Central Department, and subsequently in France in a similar capacity on General Pershing's staff. A special citation from Pershing and other military honors recognized his military services. His experience abroad affected his thinking on international and defense issues between the World Wars.

Returning to Chicago in 1919, he resumed his practice and civic activities. Many of his former clients had left him, never to return. Gradually, he rebuilt his law practice, now more generally centered in real estate. He no longer tried cases as frequently as before. Continuing as general counsel for the National Association of Real Estate Boards, he argued numerous appeals throughout the country and in the Supreme Court of the United States in defense of the so-called model "MacChesney Act" for a state real estate broker's license law. The test case in the Supreme Court was Bratton v. Chandler (260 U.S. 110 [1922]). The court below had held Section 8 of the Tennessee model act violative of due process as calling for secret evidence in license proceedings. Father procured a unanimous ruling that the section properly construed did not violate due process. He also argued successfully in many state supreme courts the validity of the trade term "Realtor," a term which Mencken ridiculed as a status symbol in The American Language but which father defended vigorously as a method for improving business practices.

In addition to representing others, he was heavily involved in real estate developments of his own. The collateral pledged on loans for these developments was lost, along with the property, in the stock market crash of 1929. This personal financial disaster and the depression changed the nature of his practice. Many of the smaller businesses and banks which he had previously represented were either merged into larger organizations represented by others, or failed. Despite these reverses, he remained active, as counsel for bondholders and protective committees, in handling numerous reorganizations of real estate developments. The impact of New Deal legislation on real estate was also another area of new activity. An example was his appearance before the Federal Trade Commission as spokesman for all of Chica- go's real estate interests to contest the application of the Securities Act to various realty transactions.

Concurrently with these professional endeavors, he continued to play a prominent role in civic affairs. In the years after World War I, he became a member of the Plan Commission, the Crime Commission, the Committee of Fifteen, and the Air Board, all of Chicago, among other civic organizations. He was director of the City Club for six years, as well as serving on the Board of the Illinois Children's Home and Aid Society.

With the advent of the European War in 1939, father volunteered once again for active duty. Called out in 1942, he served as a Judge Advocate at Fort Sheridan and on travelling Courts-Martial in the region. In the winter of 1943, he was sent to Alaska for a special Court. In subsequent speeches, he hinted at contacts with the Russians there. On this trip, a plane's oxygen supply had failed, and father's life-long lung trouble was aggravated. Shortly thereafter, he was retired under a new Army regulation discharging Colonels over age 60.

Soon after his return to civilian life, he was appointed by Judge Barnes as a Referee in Bankruptcy, succeeding Walter Schaefer. Referees were then on a fee basis, and bankruptcies were at a minimum, so, concurrently, he maintained his law office, now chiefly devoted to representation of the National Association of Real Estate Boards. Never again to be really well as a result of his Alaskan trip, the strain of maintaining two offices seriously undermined his health. He also served as Special Master for Judge Barnes in several cases during this period. When Referees were put on a full-time salary basis in 1947, father was appointed by Judge Barnes to a six-year term, and he closed his law office with mixed feelings of relief and regret.

The remainder of his active professional career was thus spent in the role of a judge, and he enjoyed the service and devoted his energies to the task despite the declining health which resulted in his death at the age of 76 in 1954. When his term expired in 1953, he was given a testimonial luncheon by the lawyers who had appeared before him, and other legal friends. Among those who wrote on this occasion in praise of his service were Herbert Hoover, Otto Kerner, Jr., Henry P. Chandler, Floyd Thompson, and John T. Chadwell. The latter wrote:

There is no lawyer in Chicago whom I hold in higher regard or for whom I feel greater respect than yourself. Your long and distinguished career is an example to younger lawyers and will be for many years to come.

Mr. Chandler said, in part:

It is only just to acknowledge the high plane on which you conducted the office. ... You have set an example in the office of Referee the influence of which I am convinced will not be lost.

Father's conception of the duties of a lawyer included participation in professional activities such as the Con-
ference of Uniform Law Commissioners and bar associations. He practiced what he preached. In organized bar work, he was Chairman of the Committee on Amendment of the Law as well as of other committees of the Chicago Bar Association. In his later years, he was an elected member of their Board of Managers. In the Illinois State Bar Association, he undertook various committee assignments. In 1915, at the age of 37, he was elected as the 38th President of that Association, being then the youngest man to have been elected to the office.

During his administration of that office, he demonstrated his constructive imagination and executive vigor by establishing several new departures. He inaugurated the annual testimonial dinner for the Justices of the Supreme Court, now given jointly with the Chicago Bar Association, and hoped to start as an annual feature the first dinner given in honor of the visiting deans and professors of the Association of American Law Schools. A more controversial action was his invitation on behalf of the State Bar to Theodore Roosevelt to speak on preparedness. Roosevelt at that time had also been agitating for the recall of judicial decisions and was not unreceptive to the 1916 Republican nomination for President. Announcement of the invitation set off an enraged outcry among some prominent members of the Association, Lessing Rosenthal and Charles Hamill being among them. Roosevelt was referred to as an anarchist, and the kindest thing said about father's invitation was that it was in very poor taste. Fifteen members resigned in protest, but, according to father, all save one returned quietly.

Joining the American Bar Association in 1906, he served on numerous committees throughout his life. In 1925, he was vice-president for Illinois. In the thirties, he became the Chairman of the Section of International and Comparative Law, and then of the Real Property, Probate and Trust Law Section. He was also a member of the House of Delegates.

In 1938, he was a candidate for President of the American Bar Association. Frank Hogan of the District of Columbia, however, was chosen, and the third 1938 candidate, Charles Beardsley of California, was elected the following year. An examination of the extensive correspondence on that race in his files suggests he would have been a better president than a candidate. Father was not the 'hail-fellow-well-met' type of mixer, and he had taken various stands which had made enemies. For example, in 1912, at the Milwaukee meeting of the Association, he was a leader in the successful fight to maintain the membership of three negroes who had been elected in regular course during the previous year. The Executive Committee had voted subsequently to cancel their election. The then U.S. Attorney-General, George W. Wickersham, father and others supported a proposal which accepted the three already admitted as members but, in return for their retention, a race question on future applications would be required.

In 1927, in his address as Chairman of the Conference of Bar Association Delegates at the Buffalo meeting, he spoke of the decline in influence of the bar and attributed it to undue subservience to clients, especially to business interests, and called on the bar to reassert its independence and individualism. With the prohibition law clearly under reference, he went on to criticize the bar and the bench for their failure to observe the law.

In 1937, at the Kansas City meeting, he opposed the American Bar Association's position against ratification of the pending Child Labor Amendment. Speaking later that year to the Nebraska State Bar Association, he decried the partisan political character of the Kansas City meeting and the tendency of some A.B.A. leaders to be class advocates. He called on the organized bar to appraise fairly social legislation and maintain a position of disinterested leadership on public questions.

Whether issues or personal factors were mainly responsible for his defeat, it was a great disappointment at the time. The experience did not, however, make him bitter. He was grateful for the warm support of his candidacy by the academic branch of the profession, the Illinois Bar, most of the Chicago Bar, and by many practitioners throughout the country as well. What he lacked was the votes of the state delegates.

As a Commissioner on Uniform State Laws for forty-six years, having been appointed by Governor Deneen in 1908, father was, successively, President of the Illinois group, Chairman of the Executive Committee of the National Conference from 1920 to 1922, and national President from 1922 to 1925. His files on the subject are voluminous and reveal much on the methods of the Conference, such as its difficulties in getting adequate financing, its delays, and the scrupulous care with which the Uniform Acts are prepared. He enjoyed the debates and thought the close collaboration of practicing lawyers and such noted professors as Williston, Freund, the Llewellyns, Austin Scott, and Deans Bates, Havighurst, Prosser and Stason, to mention only some of them, to be extremely valuable.

He was a strong believer in the importance of the Conference's work, and wrote frequent articles and delivered many addresses on the subject. His major paper, given as the presidential address in 1916 to the Illinois Bar Association, and subsequently reprinted in pamphlet form, was entitled: Uniform State Laws—A Means to Efficiency Consistent with Democracy. Throughout this and the other papers and addresses, there is strong emphasis on the theme that only by the vigorous action of state governments in meeting social problems could the balance of federalism be maintained. Otherwise, there would be inevitable expansion of the federal government and a consequent decline in individualism and local responsibility. If the states were to be prevented from act-
ing on constitutional grounds, then the federal government must and should act.

His views on the issue of federalism were an important part of his political philosophy. He was not a supporter of states' rights in a vacuum. For example, he criticized the Supreme Court for invalidating the District of Columbia's minimum wage legislation in the Adkins decision (261 U.S. 525 [1923]). Nor did he merely criticize. In 1916, he and Thomas L. Parkinson wrote briefs supporting the Child Labor Amendment which were used by the National Child Labor Committee in conjunction with Hammer v. Dagenhart. He was also active in the drafting of the Uniform Child Labor Act, and other social legislation in the Conference of Commissioners.

To some degree, his views on these questions included a belief in the states as laboratories for social experimentation, akin to Justice Brandeis' well-known philosophy on this matter. He had a Jeffersonian belief in the diffusion of power as a means of preserving democracy and averting dictatorship.

Despite this belief, he also had a realistic understanding of the pressures brought to bear, and the reasons why it was even more difficult to reach agreement on the non-commercial uniform state acts which involved reform or social progress. He nonetheless retained his faith and struggled to achieve reform and social objectives through uniform state action.

In his activities as a commissioner, he demonstrated an objectivity and balance that were characteristic. A few examples must suffice. In the drafting of the Public Utilities Act, funds for conference work were furnished by the industry and efforts were made to keep the source of the funds secret. Father insisted on announcing the source, and, in correspondence with other commissioners, urged particularly careful scrutiny of the provisions and the submission of the drafts to disinterested academic authorities. In the consideration of the Uniform Sale of Securities Act, he expressed disapproval of the negative attitude of investment bankers and their lawyers, and called for specific suggestions from them for improvement. During the protracted drafting of the Uniform Corporation Act, he favored effective regulation of management interests and criticized, for example, the inadequate protection minority shareholders were receiving under existing law. This viewpoint was consistent with his public protests in 1913 and 1917 against corporation bills sponsored by the Chicago Bar Association which he and others charged were too lax and one-sided.

Although general counsel for the National Association of Real Estate Boards, one of his principal clients, he never hesitated to espouse what he considered the public welfare in questions before the Conference affecting their interests. Professor Brainerd Currie has kindly called my attention to one example. In debate on the Model Power of Sale Mortgage Foreclosure Act, he opposed inclusion of any provision for deficiency decrees. In the debate, he argued forcefully that such decrees were "economically wrong and socially undesirable" and were only effective in entrapping the unwary.

His objectivity and essential fairness were not confined to conference or organized bar action. Throughout his association with the real estate interests, he retained his faith in the lawyer's role as policy advisor rather than technician. In his early years, he advised the local Board not to fight workmen's compensation and to recognize labor's right to organize. At the national realty convention of 1917, he criticized severely the practice of inserting in leases clauses attempting to waive servicemen's statutory rights.

Nor was his willingness to cross swords with powerful groups confined to legal matters. Shortly after World War I, he was one of the founders of and the counsel for the Public Health Institute, organized to provide low-cost medical services for venereal diseases. Constantly harassed and bitterly opposed by organized medicine, the Institute was finally forced to close in the thirties.

Education and scholarship was another area in which father was deeply involved. He taught short courses on international and constitutional law and legal ethics at the University of Illinois for several years, and lectured occasionally at other law schools. As one of the founders of the Illinois Law Review and the Journal of Criminal Law, he served continuously on their Boards of Editors and was a frequent contributor. He was also an editor of the Journal of Air Law and Commerce, the other periodical associated with Northwestern Law School.

During his busy life, he found time to complete several books. Written and published in the twenties, his major work, The Principles of Real Estate Law, was a study of the significant current problems in real estate law, accompanied by model forms discussed in detail in the text. Modern terminology was employed in sub-titling it as real estate transactions. In the thirties, he prepared a series of lectures which were subsequently published as The Law of Real Estate Brokerage, a brief survey of the legal problems faced by the real estate broker in his daily work.

He also wrote a number of rather long essays, some of them delivered as papers at the Chicago Literary Club. Among the published essays were French Contribution to American Life, and French Contribution to American Legal and Political Theory. Several papers on American history, criminal law and procedure, and military law and policy were also reprinted and circulated.

He was one of the organizers of the Order of the Coif and subsequently became the first president of the national Order in 1910. During his incumbency, he installed the University of Chicago chapter. Also a founder and president of the American Society of Military Law, he contributed often to discussions of court-martial procedures and other questions of military law.
Father was always keenly interested in efforts to improve criminal law and procedure. He was active in the formation of the American Institute of Criminal Law and Criminology and succeeded Wigmore in the presidency. At the Institute meeting held in Boston in 1911, while he occupied that office, he plunged into a well-publicized controversy with Mayor Fitzgerald, Senator Kennedy's grandfather. Father, after an afternoon visit to Deer Island Prison, charged that conditions were "atrocious," particularly the failure to segregate hardened criminals. The mayor countered with some comments on visiting reformers.

His major educational interest was Northwestern University, and especially its law school. He became a trustee in 1913 and served continuously until his death. In the twenties, he became President of the Alumni Association and in the forties received the Alumni Medal. During his term of office, he characteristically managed to engage in several heated controversies. An amusing instance of his wading in where angels fear to tread was his assertion that there were too many women on the Evanston Campus! Catherine Waugh McCulloch, a graduate of the law school and Trustee of Rockford College, promptly wrote the Chicago Tribune advocating that gifts by women to Northwestern should be returned and suggesting Rockford College as a suitable substitute recipient!

His part in the creation of Northwestern's Chicago Campus was, to him, his most significant contribution to the University. In 1915, he made the original proposal for that campus to the Board of Trustees. Subsequently, he espoused and fought for the conception. James A. Patten, then President of the Board of Trustees, was the leader of the opposition. At a meeting of the Deans, Trustees, and officials of the University, Patten charged it would cost three million dollars. In a manner typical of his large vision, father replied that what he had in mind would cost thirty million dollars! Patten resigned when the decision to go ahead was made but subsequently rejoined the Board, and made a generous gift.

In my opinion, he made an even greater contribution to the University's development in his role as trustee with respect to academic freedom and in support of the measures needed to make the university a growing force in the intellectual life of the community and the nation. More than most trustees, he knew what a university should stand for, and he respected and encouraged its administrators and faculty. For example, when Leon Green was under fire, as a result of his asserted positions on the sit-down strikes and the Roosevelt Court Plan, father defended him vigorously, although he disagreed equally vigorously with Dean Green's views on those questions. Similarly, when a Northwestern staff member was drafted in 1941, and was immediately cut off the payroll, father protested and characteristically kept up the pressure until a more generous policy was instituted for faculty and staff alike who were called to military or government service.

When the abortive merger negotiations with the University of Chicago took place in the early years of the depression, his initial reaction was favorable. Eventually, he became doubtful, partly perhaps because of the vexing question of the merger's effect on Northwestern's constitutionally protected tax exemption. His files contain the conflicting opinions of leading Chicago law firms on the exemption issue. The informal negotiations that came closest to agreement involved the merger of the law schools into a consolidated school on Northwestern's Chicago campus. Father told me that President Hutchins seemed eager to trade away his law faculty, and then start a school of jurisprudence on the University of Chicago campus under Mortimer Adler. But for the failure of these plans, I would not be here tonight!

Another interesting incident involving the two schools appears in father's unpublished essay on Wigmore. When President Harper was starting the University of Chicago Law School, he visited Dean Ames of Harvard in a search for talent, which was successful in securing Beale as the first Dean. Ames told Harper: "You will have to consider Northwestern."

"I know that. I have invited four of its best men, and that will be the end of that school," Harper replied.

We are still going strong despite later raids! Speaking of raids, they can work both ways. Father, just out of Michigan Law School, was once accused by Coach A. A. Stagg of trying to move Walter Eckersall, star quarterback, from Chicago to Michigan. Countercharges that Eckersall was being subsidized generated considerable heat, but threatened libel suits never materialized.

One by-product of father's official educational activities was an admiration and affection for educators. Professors were frequent guests at his home. Northwestern faculty friends are too numerous to mention. Ernst Freund was an intimate friend and Dean Hall and Professor Bogert of the University of Chicago Law Faculty were close associates. Other law professors who were good friends included Roscoe Pound and Samuel Williston, both of whom warmly endorsed his candidacy for President of the American Bar Association. Dean Wigmore, an old friend, was an active supporter in that campaign.

From the beginning of his professional career, father participated in politics pursuant to his conception of the obligations of a citizen, particularly a lawyer. He early allied himself with the then progressive and reform forces in the Republican Party. He remained associated with the Deneen group in that party throughout his political life. He was a precinct committeeman and delegate to county conventions during this early period, and served on the Republican Cook County Central Committee for many years thereafter, as well as being of­
cially associated with Republican National Conventions from 1908 to 1940.

Indicative of the orientation of his political activities in his earlier years was his membership on the Executive Committee of the "Republican Committee of 100," a civic group formed in 1911 to combat "Lorimerism" in Illinois. Lorimer was then the Republican "boss," and was later to lose his seat in the United States Senate on the basis of charges of vote-buying in the Illinois legislature. The Presidents of Chicago and Northwestern Universities were vice-presidents, and Colonel McCormick was Chairman of the Executive Committee. At a giant mass meeting sponsored by the Committee in 1912, father was the principal speaker. The manuscript of his speech, befitting the times, reveals a deep conviction that they were at Armageddon and battling on behalf of the Lord for civic decency and reform.

His papers confirm what he often told me of Roosevelt's later thoughts on the 1912 split in the Republican party—that Roosevelt's race was a mistake, giving control of the party to the Old Guard, and depriving progressive Republicans of any influence on its policies. This recantation fortified father's belief in party regularity. In the pre-1912 maneuvering, he had been originally for Roosevelt, but ultimately supported Taft. Although he frequently fought for progressive and reform candidates in primaries, he usually supported the organization choice in the election, not necessarily with enthusiasm. But he was not always "regular." He wrote all his firm clients in 1916 endorsing Maclay Hoyne, the Democratic candidate for State's Attorney, who was subsequently elected. And in later years, he voted for Adlai Stevenson for Governor and for Sidney Yates for Congress. In 1951, he supported Walter Schaef er for the Supreme Court and refused a request to head a committee for Julius Miner.

One of his major political efforts was his participation in the 1920 Republican contest for the presidential nomination. Long an admirer of General Wood, under whom he had briefly served in World War I, he was vice-chairman of the National Wood Committee, and manager of the Wood Campaign in Illinois. Subsequently, he was Wood's floor manager at the convention, and joined in the fruitless efforts to form a Wood-Lowden ticket.

In correspondence in his files, father attributes the defeat to a general rout of the progressives by the Old Guard, who were determined to nominate a man they thought they could control. Father, like many other Roosevelt adherents, regarded Wood as the candidate of the Bull-Moosers. He opposed Wood's entry into the Illinois and Ohio primaries against Lowden and Harding, and felt these primary entries to have been dictated for personal reasons by large financial backers of Wood. In his opinion, Lowden's bitterness arising out of this Illinois primary opposition as well as his resentment of the tactics used against him in the Dakotas prevented any merger of forces with Wood. In common with other followers of General Wood, he believed Harding's nomination would result in domination of the party by reactionary forces for a long period.

In the post-World War I period, he participated in the debate over American entrance into the League of Nations. Despite his strong nationalism, he supported our entrance with certain reservations. Even though he was never sanguine about the effectiveness of a league to enforce peace, he believed we should try to make the experiment work. Although critical of Wilson's tactics in the League fight, he admired Wilson's moral idealism and defended him publicly in Republican gatherings. During this same period, he backed the efforts to obtain our adherence to the World Court under the so-called Hughes-Root formula.

Although not active in national politics again until 1928, he continued local and state activity. He became well-acquainted with Herbert Hoover in the latter's conferences on highway safety in the twenties in which father served as chairman of the uniform laws committee. As a result of this association, he became a great admirer of Hoover, and retained throughout his life a deep affection for him. In 1928 father was manager of the campaign west of Pittsburgh and director of the Hoover-Curtis Organization Bureau, which organized lawyers, realtors, and other functional groups for campaign purposes. He occupied essentially the same positions in 1932.

As a devoted supporter of Hoover, he shared the view that the election of Franklin D. Roosevelt was a grievous mistake, and a departure from sound traditions. He was critical of the New Deal, and opposed it vigorously. Unlike some other conservatives, however, he recognized that the Harding-Coolidge era had neglected needed social and economic change, and he did not oppose New Deal reforms blindly. His chief objection was to New Deal methods. The Hoover campaigns were to be his last major efforts on the national political scene. In 1936, he was critical of Republican opposition to social security and refused to participate actively.

During his long political career, he was offered the Republican nomination for various offices, such as the Presidency of the County Board in 1912, and a seat on the Supreme Court of Illinois in 1924. Although frequently tempted to do so, he never ran for nor held an elective office. Apart from his service as Referee, the only appointive position he occupied was that of Minister to Canada in 1932. He also served as consul-general for Siam in Chicago for many years. He did, however, undertake various special governmental assignments, such as Special Assistant to the Attorney General of the United States in 1911, and a similar position with the Attorney General of Illinois from 1913 to 1933. He was a Special Assistant State's Attorney in the investigation of election frauds in 1912, and counsel to the United
States Senate for investigations of rent control in the District and of the Veteran's Bureau in this region.

The actions and attitudes on the various issues and occasions previously recounted speak for themselves in portraying father's philosophy and character. He was, above all, an individualist in an age of increasing concentration and conformity. He never lost his belief in individual responsibility for social action. Throughout his life, he was a practical idealist. In his pre-World War I years, he was definitely a progressive. To me, this is the most interesting phase of his professional career, which is the first in this series to be wholly in this century. Summarizing his impressions of father in a 1916 sketch, Herbert Harley, Secretary of the American Judicature Society, wrote:

... he is essentially, with his intense moral convictions, persuasive and forceful personality, acute critical discernment, varied experience, and impelling sense of responsibility, in the largest and fullest sense a legislator, a lawmaker.

As he grew older, he became more conservative. But his depression experience and other buffets of fortune did not generate pessimism. He retained his enthusiasm for life. He adapted himself to changing conditions and fought stubbornly for his convictions. He kept his faith in the great tradition of the lawyer as a leader of society. He personified the best in constructive American conservatism. Professor William L. Cary captured the mood of this period in the Northwestern law faculty obituary. He wrote:

... [His life] is remembered by us best in the mellowing background of his later years. Although he held strong views on public questions and was always ready to defend his positions against any of us with whom he happened to differ, age brought tolerance rather than inflexibility, and warm friendship rather than misunderstanding. .

Although father occupied important posts in local and national affairs for five decades, he did not hold public office except for his brief tenure as Minister to Canada. But a major place in history usually depends on power and position, particularly high public office. Willard King in his recent fine biography of Justice David Davis reminds us of the truth of this in attributing Davis' principal fame to his prominent part in the nomination and election of Lincoln rather than to his service on the Supreme Court of the United States.

What, then, was father's contribution and what was his significance in his own time? To me, it is the character of the role he played. With courage and energy, he participated actively in public affairs. A vital democracy depends on citizens who care about the body politic. My father was a committed man. It was not his professional success but his dedication to the public welfare that made his life significant. It is this quality which is rare, although happily not unique, in the leaders of the bar today. Many of the modern leaders render notable civic services but relatively few of them take controversial public positions in opposition to the views of their powerful clients. This critical function is now chiefly exercised by the law faculties. Changes in social and economic conditions may make it more difficult today for leading practitioners to take such stands. But society is the poorer for it. In his life-long devotion to the commonwealth, father performed a notable public service, and set a high standard for future generations to follow. His family cherishes this legacy of service and values the goals he has set for us. We shall strive to be worthy of our inheritance.

The Secretary-General

The late Dag Hammarskjold, Secretary-General of the United Nations, was awarded the Honorary Degree of Doctor of Laws (LL.D.) at the Special Convocation held in celebration of the Dedication of the New Law Buildings, on May 1, 1960. Following the Convocation, Dr. Hammarskjold delivered a public lecture in the Law School Auditorium. The closing paragraph of that lecture was as follows:

Perhaps a future generation, which knows the outcome of our present efforts, will look at them with some irony. They will see where we fumbled and they will find it difficult to understand why we did not see the direction more clearly and work more consistently towards the target it indicates. So it will always be, but let us hope that they will not find any reason to criticize us because of a lack of that combination of steadfastness of purpose and flexibility of approach which alone can guarantee that the possibilities which we are exploring will have been tested to the full. Working at the edge of the development of human society is to work on the brink of the unknown. Much of what is done will one day prove to have been of little avail. That is no excuse for the failure to act in accordance with our best understanding, in recognition of its limits but with faith in the ultimate result of the creative evolution in which it is our privilege to cooperate.

Dr. Hammarskjold as he was presented for the degree of Doctor of Laws.
The caricatures appearing on this page were drawn by David M. Rothman, of Los Angeles, a senior student in the Law School. The Law Student Association is now planning to publish a portfolio of about fifteen such Faculty caricatures by Mr. Rothman. Inquiries concerning this publication may be directed to Mr. Rothman at the Law School.

Doesn't anyone know what's wrong in that horrible case: 1 v. (in 11 Cases, on table 70), where a sociener cut [fig], and the son, according to the "clear meaning," was cut off pyramid-less!
Tax Lawyers and Tax Policy

By WALTER J. BLUM
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On several recent occasions, economists and political scientists have raised this question: Why do lawyers who are knowledgeable about the federal income tax react negatively to the suggestion that substantial rate reduction be coupled with elimination of the major preferential provisions in the law? It has been apparent for some time that, without affecting the over-all yield of the individual income tax, the rates could be compressed under a ceiling of fifty per cent if the tax base were tightened up by treating capital gains as ordinary income, stopping the escape of gains through gift or transfer at death, taxing interest from state and municipal bonds, reducing percentage depletion rates to levels compatible with cost depletion, paring down excluded fringe benefits, and halting deduction of some items not connected with seeking gain. Indeed, a rigorous closing of the escape paths would make possible an even more drastic rate reduction without disturbing aggregate revenues from the tax. Considerable enthusiasm for a program along these lines has been generated among economists familiar with fiscal affairs. But with the exception of a few academic members and a stray here and there, all efforts to launch such a program seem to have been ignored or accorded an icy reception by the tax bar. Virtually no toehold has been gained even though the move on the whole would definitely benefit lawyers in their roles as taxpayers inasmuch as their professional earnings by and large do not qualify for any of the specially favored treatments. The question of why lawyers act against what appears to be their own self-interest surely deserves to be considered.

Of course I do not presume to speak for the tax bar or even a part of it; neither can I furnish a reasonably full answer to the question. At best, I can only pass along some incomplete observations, growing out of numerous contacts and conversations with lawyers active in the tax field which suggest why they are hostile to the proposal. And I report these as inconclusive and unverified reflections in the hope that others will challenge or correct or supplement the explanation which emerges.

To begin with, the typical tax lawyer appears not to take the proposal seriously because he is sure that it is a political impossibility. A plan to abolish all the principal preferences would encounter the combined opposition of many vocal and powerful groups, and is unlikely to incite the unorganized taxpayers who would benefit from rate reduction to march on Washington. Treating the proposal as visionary, the tax lawyer need not, and frequently does not, examine carefully his own thoughts on the merits. Often it is unclear whether his remarks on the subject are facetious or in earnest. Perhaps the most telling clue here is the abundance of jibes and witticisms. But whatever these are intended to signify they surely contribute much to spreading the impression that the bar is dead set against the suggestion.

As might be anticipated, the most outspoken and articulate critics seem to be closely associated with taxpayers who have a heavy financial stake in maintaining the status quo. We should expect that tax counsel employed by business firms are often unable or unwilling to be more impartial in judgments on tax policy than their employers, at least when not surrounded by complete privacy. To a lesser extent this handicap applies to independent counsel who regularly represent certain well-defined financial interests. And no doubt it operates for the wealthy lawyer who in effect has himself as a client. At some stage of his career he well might be more concerned with taxes on his accumulation of wealth than on his current or future professional earnings.

But virtually all tax lawyers perceive that the proposal would render obsolete much of their specialized knowledge and art. We should not underestimate the amount of specialized learning which has been accumulated by the expert in taxation, and we must recognize that it is only human to protect one’s investments from destruction. While there would be a demand for his services even after the system was stripped of its preferential aspects—since transactions would still carry tax consequences—the market for the expert’s talents would be markedly altered if taxes were simpler and rates lower. Once the existing stock of knowledge became obsolete, newcomers could more easily establish themselves. And once the system were more neutral, the need for elaborate planning to minimize taxes might be reduced. In these respects, the position of today’s expert would deteriorate and his earnings might be expected to fall. Before that time arrived, however, the multitude of problems emerging from the transition to the new law would certainly keep his business output at high levels, quite likely for years and years.

The prospect of such a transition gives the tax lawyer still another reason to recoil from the proposal. Any lawyer is inclined to be defensive about arrangements he has worked out for his clients and to guard against changes which are disruptive. There is an understandable feeling that if things fail to materialize as planned, even if solely because of new legislation, somehow the planner will be considered to have fallen below the mark in serving his clients. In contrast, there is commendable pleasure in seeing one’s advice and suggestions achieve their stated goals. No craftsman enjoys watching his own handiwork come tumbling down.

Pride apart, the tax lawyer is apt to be acutely aware that problems of transition usually are more numerous and dogged than the proponent of change cares to admit. A myriad of business, estate and personal plans have
been built on the present rules of the game. Even if there is no warrant in law to assume that they will continue indefinitely, the fact is that as a practical matter it would be unwise, as to most of the preferential provisions, to assume anything else. Repudiation of the preferences inescapably would require a massive unscrambling of old plans and formulation of new models. In the process, there are bound to be heavy casualties. Some lawyers would be unable to reorient their thinking; some taxpayers would be trapped into undesirable tax positions; in the rush some taxpayers would not get competent advice; and inevitably there would be windfalls and unintended penalties. All this is to say that the usual costs of changing a tax law undoubtedly would be magnified greatly under the neutrality proposal—and the tax lawyer is likely to be most sensitive to the import and extent of these costs.

Of greater significance, probably, is the fact that the tax lawyer typically does not regard the preferential provisions as lacking justification. It is a good guess that the average tax specialist thinks that most of these gaps in the tax base deserve to be preserved on what he regards as their merits. In not a few situations, however, it seems that his appraisal is colored by a one-sided vista of the preferences in operation. Take the treatment of capital gains as an example. When one has operated closely and repeatedly with the legal distinction between capital gains and ordinary income, the two concepts tend to be viewed as having a difference in reality which calls for a different treatment in law. The lawyer, moreover, sees the capital gains provisions operate in the context of the actual affairs of particular clients; and he therefore is likely to reflect on how the tax burden would have been repressive in the absence of the special dispensation, noting what plans the client might not have been able to carry out if the gain attracted the full weight of tax. From such musings, he might readily conclude that the dispensation is meritorious in that it promotes activities or arrangements which are desirable or important not only for his client but perhaps for society as well.

This point might have a considerable reach. The main case for eliminating preferences is that taxpayers in comparable economic circumstances should be treated alike, and the force of this position can be appreciated only when taxpayers are viewed at a distance and compared in the large. Where the situation of one taxpayer or one class of taxpayers is studied narrowly at a close range, it usually is not difficult to locate grounds for granting special tax relief to that individual or group. Such an approach is merely another version of the old story of justifying the protection of particular industries with tariffs without considering the economy and all its constituent parts in panoramic fashion. Many tax lawyers seem especially susceptible to this weakness because they repeatedly are engaged in dealing narrowly with the aspirations and fears of particular clients. And the vulnerability of the tax bar in this respect increases as its members become more specialized, concerning themselves with an ever smaller range of tax problems.

Their compartmentalized view of the tax system also tends to produce another common reaction in tax lawyers. One preference is readily justified by the existence of others. Today if a certain preferential provision is called into question, the lawyer’s response frequently is that it is not significantly different from other special dispensations, and that it operates to equalize tax burdens. A fully neutral tax system of course would destroy the basis for this line of reasoning. But lawyers do not always distinguish the usual challenge to a specific preference from the more novel challenge to the whole range of preferences; and even after the two issues are differentiated, some find it hard to overtake their quick reaction to the more familiar question.

Another facet of the experience of tax lawyers which affects their attitude towards the neutrality program arises out of their contacts with the tax administrators. It is no secret that tax consultants frequently believe that government representatives are arbitrary, unreasonable, and even worse. Operating on this appraisal, the lawyer in practice might welcome a highly complex and uneven law which generates more issues and thereby affords him additional opportunities to bargain and maneuver in his contests with the administrators. Some practitioners are so sensitive about administrative harassment and abuse that they brush aside the consideration that a more neutral tax system would curtail the discretion of administrators by reducing the number of arbitrary distinctions rooted in the law. Maybe this is irrational; but reactions to governmental arbitrariness often carry men to great lengths and indefensible positions.

There is another strong source of the tax expert’s wariness about the program. By training and experience, the lawyer has conditioned himself to look ahead and vi-
ualize consequences and conditions which would not occur to the uninitiated, and the tax lawyer is regularly challenged to call this faculty into play. When it is applied to the neutrality proposal he immediately detects a trap: Granting that somehow rate reduction can be traded for loophole closing now, is there any assurance that the "bargain" will be maintained in the future? It goes without saying that the present Congress cannot bind its successors and that the deal hardly could be given constitutional status. With the tide running in the direction of larger doses of the welfare state, and with potential national emergencies lurking all over the place, surely there is cause to speculate that someday if more tax revenue is demanded the government will repudiate the old agreement. At such a time, it might be simple to raise rates without restoring the old loopholes, especially in the face of the arguments which earlier had been advanced in public for getting rid of them. And who knows whether new escape routes could be developed before it was too late?

Clearly in the background of such thoughts there lies a distrust of popular government. In stating the proposition so baldly, no reproach to the profession is intended. Merely because he represents persons of wealth, and bends his efforts to conserve that wealth, the tax lawyer ought not be suspect when he exhibits concern over a too-generous use of the taxing power. More than others he is in a good position to observe the disastrous consequences of very high taxes in particular instances. As these occasions grow in number, it would not be surprising for him to reach the conclusion that very high surtaxes are incompatible with the type of society he favors. And from there, it is only a short step to the view that, as a person especially knowledgeable about taxes, he has a special commission to guard against erosion of that form of society through high taxes. At such a stage the neutrality bargain is apt to be classed as dangerous and unacceptable.

A better light can be placed on this attitude when it is stated in another way. The power to tax is the power to destroy—not only individuals and firms, but the vitality of a society which is founded in considerable part on private enterprise. It has yet to be demonstrated that maintenance of a free or open society is possible in the absence of numerous pools of private wealth, nourished out of the income stream. The uninformed electorate may not be able to appreciate the destructive capacity of high taxes. The tax lawyer often thinks he does.

Thus many a tax lawyer does not approve of using taxes to redistribute income—at least not on a large scale; and he looks upon the well established preferential provisions in the law as a brake against more radical redistribution. Two elements of possible braking power seem to be provided by the preferences. As long as there are large holes in the tax base, the revenue potential from higher surtax rates is reduced. It is conceivable that Congress might be reluctant to raise surtaxes knowing that the relatively small tax increase would be concentrated and piled on those who cannot take refuge in the preferred havens. A paradox perhaps is to be found here. While in the past the loopholes made higher rates palatable, the continuation of the loopholes might make further rate increases less digestible. The other braking element is more easily demonstrated. It has been pointed out that
the unevenness of the tax base, which is accompanied by a complicated superstructure of technical law, makes it difficult for Congress to act with proper dispatch in raising or lowering taxes. Every time it reconsiders revenue needs and tax rates, the legislators are practically compelled in effect to redelegate the equity and economic consequences of each of the major special dispensations. All this not only takes time but invites a great deal of technical rhetoric and flak which obviously tends to bog down passage of rate change legislation. When revenue increases are the order of the day, the tax lawyer can be thankful for the drag of the preferences. And when the occasion again (if ever) arises for revenue reduction, he can look upon it as an opportunity for extending old preferences and creating new ones.

For some reflective tax lawyers, there is more behind these attitudes than distrust of popular government and dislike of drastic economic redistribution. If the income tax were purged of its major preferential features, the “class” nature of progressive taxation would immediately protrude more prominently. Any legislative review or change of rates would tend sharply to divide forces in terms of income or wealth alone, and thus highlight tensions stemming from economic inequality in our society. To those who abhor such direct clashes, our network of preferential provisions might seem to be a blessing. The actual distribution of tax burden is not known to the public (and probably not even to the experts); and the nominally high surtax rates can pacify persons with low incomes while the preferences can comfort those at the upper end of the income scale. Especially in the legislative process, this ignorance, confusion, and irregularity might serve to reduce friction and keep passions in check. When the tax base is a patchwork, the rich do not always seem to be lined up against the poor, and surely the long technical arguments and discussions about details do dissipate large charges of energy which otherwise could be more troublesome. In this view, the advantage of the present structure is that it makes the graduated income tax less divisive—which is no small accomplishment.

It remains to be noted that these thoughts which I have attributed to some “typical” tax lawyers point to a condition found in most advanced western societies. There is a near deadlock in the field of income taxation. In almost each advanced tax system, there is the familiar combination of nominally high surtaxes and a sievelike tax base; and almost everywhere in the face of demands for larger tax revenues there appears to be little pressure or disposition to alter the combination. We have yet to understand what brought about and perpetuates this condition. I wish only to suggest that some of the considerations which seem to have influenced the attitudes of tax lawyers might possibly have contributed to its making.

Kenneth Craddock Sears, 1890–1961

The Law School notes with deep regret the death, in December, 1961, of Professor Emeritus Kenneth C. Sears.

Professor Sears received his Bachelor of Arts degree from the University of Missouri in 1913. An alumnus of the Law School, he received his J.D. in 1915. After serving briefly in the office of the Attorney General of Missouri, he practiced in Kansas City until 1919.

Professor Sears then joined the Faculty of the University of Missouri School of Law, where he taught until coming to the Law School in 1926; he became Professor Emeritus in 1956, and since that time had resided in Santa Barbara, California.

While Mr. Sears taught, among other subjects, Criminal Law, State and Local Government, Municipal Corporations and Evidence, he was best known for his work in Constitutional Law and Administrative Law. He was the author of a casebook on Administrative Law and co-author of the 4th edition of May on Crimes.

Professor Sears’ work on Methods of Reapportionment, published by the Law School in 1952, reflected his longstanding interest in the problems of legislative apportionment, and the efforts he expended over many years to bring about a reapportionment of the Illinois General Assembly. He made also a major contribution to state and local government as the principal draftsman of the Revised Cities and Villages Act (Illinois) in 1941.

The bare outline of his career as recited above fails entirely, of course, to reflect the esteem and affection in which Kenneth Sears was held by his colleagues and by a generation of students.
The Courts and the Students

When the Weymouth Kirkland Courtroom was designed, it was intended to be used not only for student moot court competitions, important as they are in the curriculum of the School, but by real courts sitting in regular session. The School has been most fortunate that, through the cooperation and good will of both Bench and Bar, this hope has become a reality.

Last winter, the Illinois Supreme Court heard argument in two cases from its regular calendar in the Kirkland Courtroom. In the spring, a jury trial, presided over by the Honorable Jacob M. Braude, was held in its entirety in the Courtroom. The students had the opportunity, not only to observe the selection of the jury and the entire trial, but through the cooperation of Judge Braude and counsel, to hear in open court the conference on instructions to be submitted to the jury, and, finally, to question the Judge and counsel on any aspect of the trial's procedure. In the autumn, the Illinois Appellate Court, with Justices John McCormick, presiding, Ulysses S. Schwartz, and John Dempsey, brought to the Courtroom a case specially selected from its calendar for its interest to students.

The courts, and the lawyers appearing before them, are thus making possible a unique and really significant enrichment of the School's program.

Second Volume of the Supreme Court Review Published

As Mr. Kalven will explain to those who are not experts in baseball or law, the second year is always the hardest. But the new volume of the Supreme Court Review, just published, proves once again that the sophomore jinx is not a real problem for those of undoubted quality. The Supreme Court Review, published for the first time last year, was very well received indeed: laudatory notices began with the pre-publication story in The New York Times and continued through the November issue of the American Bar Association Journal. Even higher praise may be found by followers of Professor Director's beliefs in the fact that the very first issue sold exceedingly well.

The first article in the 1961 publication is Professor Allen's detailed analysis of the Mapp case, which held for the first time that the exclusionary rule of the Fourth Amendment was to be applied to the states. "Federalism and the Fourth Amendment: A Requiem for Wolfe" is, even by Professor Meltzer's standards, an extraordinarily keen job. The articles that follow have not yet been scrutinized by Mr. Meltzer and so have not been put to the acid test, but Mr. Kurland, the editor of the volume, does not shrink from the judgment that will be forthcoming. The other articles include Mr. Alexander Meiklejohn's "The First Amendment Is an Absolute"; Professor Blum's "Knetesch v. United States: A Pronouncement on Tax Avoidance"; Professor Lucas' "Dragon in the Thicket: A Perusal of Gomillion v. Lightfoot"; "Ma­chinists v. Street: Statutory Interpretation and the Avoidance of Constitutional Issues" is the contribution of Professor Harry H. Wellington of the Yale Law School; Professor Bok of the Harvard Law School is the author of a lengthy analysis of "The Problem of Exclusive Arrangements under the Clayton Act: The Tampa Electric Cases"; Professor Fellman of the Political Science Department of the University of Wisconsin analyzes the "Constitutional Rights of Association"; and Professor Murphy of the Department of Government at Princeton is the author of "In His Own Image: Mr. Chief Justice Taft and Supreme Court Appointments."

Copies of the 1961 volume are available from the University of Chicago Press, 5750 Ellis Avenue, Chicago 37, Illinois, at $6.50 per copy.
The New Climate for Collective Bargaining

By Bernard D. Meltzer
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Observations During Panel Discussion at the Ninth Annual Management Conference Graduate School of Business of the University of Chicago
March 1961

As I reflected on our topic, I became increasingly concerned about my assignment. At first I derived some comfort from a rather old story about the dream of a young lady. She dreamt that as she was lying in bed, a wild-eyed man burst into her room, dragged her down the stairs, out of the house, and into a waiting car. The intruder sped over city streets, into the country, stopped at a dark, secluded spot, and roughly pulled the lady from the car. Frozen with terror, she managed to ask: "What are you going to do with me now?" The answer was: "How should I know, lady; it's your dream." But the more I thought about that story, the more I worried—and not about the young lady. For if anything is clear about our topic, it is that the climate for collective bargaining is shaped by a variety of conflicting dreams, aspirations and values. There is no stable consensus as to how these conflicts should be reconciled. And there is a torrent of discussion advancing with varying explicitness and candor one value at the expense of another. As a result, there is a risk that appraisal of the general climate may be based on soundings or sounds that are incomplete and that wholly personal dreams may be confused with those of the community.

There is a second and related risk which bears mention, that of overgeneralization. It is useful to inquire about the general drift of opinion, as we are doing. But the term "collective bargaining," like the law's reasonable man, is a convenient but misleading abstraction. Collective bargaining obviously covers a broad spectrum of quite different relationships, and no single climate applies to all of them. The current climate for Hoffa and the truckers is not the same as that for Reuther and the auto companies. In addition, there may be quite significant variations in the individual response to any general climate. For example, unions in bad odor because of corruption or tyranny may be pushed to a vigorous exercise of power because of the unfortunate tendency to excuse disreputable conduct by leaders who do bring home the bacon.

The final difficulty comes from the word "new." That word presupposes some fixed base period. Are we, for example, talking about a new climate in relation to the Wagner Act and the thirties or in relation to 1947 and Taft-Hartley? Each of those statutes marked important shifts in opinion. And Landrum-Griffin marks another shift, especially in relation to corruption and despotism in some unions. But the climate for bargaining tends to be a continuum, and, apart from legislative registers of significant changes, there are no nicely identifiable reference points. And so, as I turn to major influences in the current climate, I disclaim any general warranty of novelty as to these influences or, indeed, as to what I shall say.

Perhaps the most important influence is the increased concern about major strikes. An obvious explanation for this attitude lies in the economic consequences of such strikes. Even though such consequences are typically exaggerated, they transform a major strike into a private quarrel into what appears to be a war against the community. Although strikes generally result from the failure of both management and unions to reach agreement, the onus of disrupting the community's flow of income and denying it goods and services typically falls on the union because it usually is asking for more and because it formally declares the economic war.

The economic effects of strikes may, however, be less important for the current climate than more subtle psychological effects. A major strike reflects internal conflict and disorder. The surcharged international climate may aggravate our disquiet about dramatic shows of internal division, whether in Little Rock or the steel industry. Furthermore, our system, we know, is competing with the Soviets: indeed, we have sometimes been told that our rate of growth is to be governed by Soviet statistics. The Soviet system gives the appearance of internal peace and of order. Such a system may have a special appeal to new nations, anxious to make "giant leaps forward." On the other hand, our system, in which a handful of tugboat employees or disaffected flight engineers may paralyze transportation facilities, may seem like anarchy to nations that do not understand a free society. But even Americans may find a disquieting contradiction between the new emphasis on growth and a mechanism of industrial adjustment whose ultimate weapon is idle men and idle machines on a broad economic front. And we may also be perturbed by reading in the same newspaper about our missile gap and about jurisdictional strikes at missile centers. In short, a community which in general does not tolerate major strikes in a hot war feels increasing concern about strikes during the cold war.

But the massive or critical strike is not the only disturbing aspect of contemporary collective bargaining. Peace, we know, is important, but peace, we also know, is not order. And there is today increased concern that even strike-free bargaining may produce settlements which do not promote that elusive object—the public interest.

Such doubts about collective bargaining are connected with profound changes in our social framework since
the depression of the thirties—changes that are now so familiar and so fixed that their significance is sometimes overlooked. The government has accepted affirmative responsibility for full employment. Through unemployment insurance and social security, we have increased the workers’ protection against the rigors of our economic system and against their own inability or unwillingness to provide for their old age. Furthermore, organized labor, backed by legal protection and moral approval, has since the thirties dramatically grown in numbers and apparently in power. I say “apparently” because power is a fuzzy word and is meaningful only if we talk about power to achieve specified objectives. While these changes were becoming accepted, employed American workers, organized and unorganized, were in the post-war period enjoying a material progress that was the envy of the world.

There remain dismal pockets of poverty and the enduring problem of our system, full employment. But there is increasing doubt that unions through collective bargaining can do much about those problems. Indeed, most economists have rejected the purchasing power rationale which was one of the justifications for the Wagner Act. And a good many economists have turned that justification on its head and have suggested that inflation or unemployment or both are the price for the significant accomplishments of American unionism.

Against this backdrop, Samuel Gompers’ philosophy of “more” no longer has the automatic appeal of any plea to improve the lot of the underdog. “More” is, of course, not the only objective of unions and it may be less important than the grievance-arbitration mechanisms which have subjected economic power to the rule of law. But “more” is the objective which, when it produces large-scale strikes, catches the public eye. “More” may have been enough when the issue was bread, but it is not enough when the issue appears to be a new T.V. On the contrary, the question is being increasingly asked whether more is financed by the weaker elements of the community and especially by lower paid workers who pay more as consumers and who are excluded from the better-paying jobs because of the link between costs, prices and output. This is, of course, an old question. What is new is that it can no longer be dismissed as an aberration of the rearguard of the N.A.M. or of economists wedded to the nineteenth century.

The greater frequency of that question is related to a change in the popular image of management. Management in performing its historic responsibility of cutting costs no longer necessarily appears as the capitalistic exploiter hungry for dividends. On the contrary, management may appear to be a defender of the social interest, and especially of consumers, who otherwise are not represented at the bargaining table. There are, however, doubts about management’s capacity and will to protect the consumers’ interests. One source of such doubt is that some unions appear to have great power. Although our yardsticks of power are imperfect and our empirical data about wage determination inadequate, there is enough information to suggest that some unions have gotten more only because they have had the power to do so. In those situations, the persuasion of power seems more important than the power of persuasion, if I may use a Reutherism. The community need not accept the preexisting distribution between shareholders, workers, and consumers as sacrosanct to ask whether power is an acceptable ethical basis for a changed distribution.

Another source of doubt results from the fear that competition has been undermined as a disciplinary force. If so, it cannot be assumed that managerial conduct in the interests of the enterprise will be socially responsible. The powerful union may then be justified as a form of countervailing power which will siphon off some of the monopoly loot for workers. Such a sharing has a powerful appeal. Nevertheless, the interplay between union and enterprise power may result in a cooperative monopoly, aggravating the position of the consumer. This interplay may be accompanied by mutual recriminations or by a strike. But when the rhetorical dust has settled, the consumer generally will find a higher price tag, and he increasingly is saying “a plague on both your houses” or at least is giving labor less unreserved support.

This disquiet about the impact of collective bargaining is not overcome by solemn and well publicized declarations by each side that it is defending the public interest. Those who represent and are advancing particular interests customarily draw on the ethical currency of the community. The union will naturally phrase its demands in terms of justice and fair treatment; it cannot admit that it is seeking preferential advantage or that power carries its own justification. Management is subject to similar compulsions. And each side with varying degrees of sincerity or cynicism can identify itself with the public interest; employers, by invoking their responsibility to consumers or the evils of allegedly wage-induced inflation; unions, by resort to purchasing power arguments.

The public interest is one of our many precious phrases which are more important as aspirations than as guides to conduct in concrete situations. The problem here again is an old one. In 1929, Owen D. Young proclaimed the gospel of responsible corporate citizenship. Management was to protect and balance the interests of consumers and workers, and shareholders. But no one, to my knowledge, has devised either a formula for discharging those conflicting responsibilities or an effective mechanism of accountability.

I am not suggesting that the ideal of the public interest has no impact on corporate management, but I doubt that that ideal will cause it to sacrifice its vital interests. Nor do I believe any such sacrifice desirable or appro-
The leaders of American industry are presumably picked to promote the interests of their enterprise and their shareholders within a framework of legal and ethical compulsions. Their burdens in discharging their traditional duties are substantial, given the relentless pressure of change and competition at home and abroad. Those leaders are not picked to save the country, and they may not be equipped to do so. If they attempt to do so, they are likely to be faced by intolerable conflicts, and they are likely to confuse their interests with the broader interests of the nation.

The same conflict and the same confusion results when labor leaders invoke the public interest to rationalize bargaining demands, and the same public skepticism results. Furthermore, labor leaders who restrain their power in order to protect the public interest run the risk of being outshone and replaced by those unconcerned by vigorous use of power in the interests of their own group.

The current tendency to rationalize bargaining positions in terms of the public interest may paradoxically be contrary to the interest in peaceful settlements. One result has been a barrage of public pronouncements before and during bargaining. Such pronouncements tend to harden positions, first, because they are public and secondly, because concessions or compromises are all right in a horse trade but not in a holy war waged on behalf of the community. Thus, bargaining by press release often interferes with the flexible search for pragmatic accommodation, which is at the heart of collective bargaining.

In making that point, I do not underestimate the strong pressures which exist to enlist the help of Madison Avenue. Public opinion, it is said, may in the end affect the terms of settlement by way of its impact on the parties, on politicians, neutrals or other adjuncts to bargaining. Thus it is natural for both parties to try to enlist public support even though they recognize that such efforts may complicate the bargaining process. The parties are caught in the perennial dilemma of foreign offices. They want to avoid war, if possible, but to win it if it breaks out. The search for allies may have to go forward even though it may increase the risk of war.

You may ask, if the corporate conscience or the laboristic conscience will not protect the public interest, what will do? Our faith is that somehow these rival aggregations moved, not by conscience, but by their own interests will achieve a tolerable balance. That faith is in essence Adam Smith's invisible hand in a new context of collective or countervailing power. But the present climate seems to me to contain as much skepticism about the collective hand as there was about Adam Smith's.

This skepticism is an important factor behind current suggestions for a greater use of neutrals both to keep the peace and to protect the larger interest. There is the suggestion that the third chair at the bargaining table, the public's chair, is to be filled by neutrals picked either by the parties or by the government. This is reminiscent of the suggestion popular in the thirties, that consumers be represented on the Board of Directors. The use of neutrals in collective bargaining may help in some cases to avoid strikes, but it is doubtful that neutrals can do very much to promote settlements which will serve the public interest. One reason for this is that, except in extreme cases, there are no criteria for determining what is a fair wage, a fair price, or a fair profit; and general criteria become even less serviceable after differences have been narrowed by bargaining. A related reason is that neutrals are likely to view their main task as avoiding strikes rather than as promoting the sound settlements even if they could identify them. What is acceptable to the parties will, to the harried neutral, seem sound.

There are, however, reasons to doubt that mediators or more activistic neutrals operating in major bargaining, such as steel or automobiles, will be an effective peace corps. Mediators can help parties who are unsophisticated, who get emotionally involved, who leave themselves no avenue of face-saving retreat, or who do not know their own or the other party's interest. I doubt that many major negotiations have these characteristics. It is commonplace that they frequently deadlock, not because the parties misunderstand each other, but because they understand each other only too well. In such circumstances, mediation does not promise to be of very much help to sophisticated bargainers. But in some circumstances, informed, resourceful, detached and tactful outsiders may be able to make a contribution, especially where the parties have picked them to lubricate the bargaining process and have fixed the time when they should be called.

The imposition of neutrals by the government is, of course, an entirely different matter. Where such intervention becomes typical, the prospect that it will occur is likely to chill bargaining and increase the bargaining gap. Management is likely to save something for the neutrals to give, and the unions, something for the neutrals to take away. Thus government boards and other forms of intervention may become a kind of social narcotic; the more they are used, the more they are likely to be needed.

The history of intervention in steel and in railroads in avoiding strikes is not an encouraging one, but it is difficult for any administration to resist pressures to intervene. This administration has its share of people who criticized the inaction of the last administration. Some of this criticism may be dismissed as the inevitable grumbling of those out of power, but the current weather-map suggests that we will have more government intervention and at a higher echelon of government.

Secretary Goldberg is apparently ready to assume an activist role and to do so publicly. He has great energy,
great gifts, and a world of experience, and I would not underestimate his potential contribution. But his availability may encourage the parties to postpone the painful process of getting down to brass tacks. Furthermore, with each intervention that involves something more than the delaying action involved in his two initial successes, there is likely to be more dissatisfaction from one side or the other and a decrease in the moral authority he represents. High level mediation or pressure tends to become less effective the more it is used.

The current proposals for intervention are basically an attempt to build a half-way house between free bargaining and government direction. In a society whose genius is compromise, one should not automatically sniff at half-way houses. But if bargaining with such intervention produces an "intolerable" amount of strikes, there is likely to be strong pressure for direct government resolution of bargaining deadlocks.

While I am dealing with new forms of intervention, I want to mention the familiar suggestion that the President should by law be given a choice of methods for dealing with so-called emergency disputes. Support for that approach has almost become an academic literacy test. With great respect for my more exuberant colleagues, I believe that this method has been oversold. The basic justification for it seems to be that the package is better than the individual procedures it contains because the package creates uncertainties as to what the government may do and thus will complicate efforts of the parties to adjust their bargaining to the possibility of intervention. I share Professor Livernash’s view, expressed in his recent study of bargaining in basic steel, that the hope of keeping the parties guessing is somewhat unrealistic. Indeed, the parties may well discount the possibility that intervention will take the most coercive form and may adjust their bargaining accordingly.

Familiar interventionist devices are being supplemented by proposals and arrangements designed to avoid disputes and to promote sound settlements through advance studies of problems in particular plants or industries or by meetings of national councils drawn from labor, management, and the universities. Both types of arrangements may be useful at least as a symbolic recognition of the need for quiet, long term inquiry and of the important general interests involved. As for more concrete benefits, my own hunch is that they will increase accordingly as the agenda for such studies is more rather than less specific. We know that it is usually easier for parties with clashing interests to agree to a solution of particular problems as opposed to an abstract doctrine which is to govern future problems whose shape and impact are largely unforeseen. As a result, there are justifiable doubts about the value of summit meetings, which are now à la mode domestically, if not internationally. There are enough similarities in these two different forms of summity to keep in mind Dean Acheson’s observation that "Nothing grows on the summit." Summities may, of course, rejoin that it is the lack of growth which permits an uncluttered view.

I want now to turn from the somewhat elusive intangibles I have touched on to some of the other determinants of the new climate which you outlined. First there is the shift of a larger proportion of employees from manufacturing which is highly organized into white collar and service occupations, which are more difficult to organize. The unionized sector has traditionally been a minority of the total work force. Current tendencies suggest that it will represent a progressively smaller minority, even if its absolute numbers remain fairly constant. Furthermore, in some industries, the absolute number of union members may decline because of changing technology, more effective foreign competition, and changing demand. Numbers are important to any organization, as an index of success and prestige, as a source of money, and of political power. The normal pressures for organizational success may move unions losing members to press for dramatic bargaining gains in order to solidify the loyalties of any waverers in their own ranks and to present a record of achievement in new organizational battles. Unions may thus be bargaining hard. Management will, of course, say that’s an old story. Hard bargaining by either side increases the risks of strikes, which may alienate the uncommitted worker and sometimes the waverers. It is difficult for me to judge how these conflicting pressures will be reconciled or, indeed, whether the immediate pressures of particular negotiations may be so strong as to override long run and speculative considerations. But one general point seems clear. Threats to organizational survival, whether on the air lines or elsewhere, are likely to provoke severe union responses.

This point is equally pertinent in connection with the promise and the pains of automation. I shall leave to others the question of whether automation is a new phenomenon or merely a continuation of the unrelenting drive for technological advance among highly developed societies. A similar question, you will remember, surrounded the use of the term "industrial revolution." What is new is the wider recognition among labor and management that the worker is not to bear the whole brunt of change, which benefits the whole community. But this consensus, although significant, does not take us far in resolving specific controversies. For example, although the principle of severance pay may be estab-
lished, the criteria as to its magnitude may be a fertile source of conflict. There are other difficulties which I must pass over. The point which I would emphasize is that bargaining over such pliable matters may be directed at cushioning the effects of change or may be exploited to block change. The danger of such exploitation is especially acute where new technology threatens the existence of particular unions. Thus, railroad spokesmen have urged that union rejection of proposals, modelled on the Canadian solution, to eliminate certain firemen jobs only as the incumbents retire or resign is an effort to protect the union rather than the employees. I lack the knowledge necessary to appraise that charge, which I mention only as an indication of problems which may arise when change threatens organizational interests.

Our Chairman also mentioned tough bargaining by companies because of diminishing profits, increased competition both domestic and foreign, and pressures and exhortations for modernizing their plants. Here our union friends may urge that tough company bargaining is not new but an old occupational disease. But the apparent and well-publicized success of tough bargaining in some negotiations and the pressures now operating on business suggest that there will be increased resistance to demands for more.

Our gold and international payments position may, it seems to me, operate in the same direction. The Administration seems to have dealt with the immediate gold problem. But unless we are to be pushed into restrictionist trade policies or into substantial reduction in our international commitments, our international balance of payments position will ultimately depend on the level of our costs. And if there is to be any coherence in government policy, which one cannot guarantee in this or any other administration, this Administration will encourage wage and price restraint and will increasingly link the two.

In searching for that elusive imponderable, the social climate, I have perhaps unduly emphasized the storm clouds that may be ahead. There are two reasons for that emphasis: First, collective bargaining is on trial, and both its costs and its accomplishments will be under sharp scrutiny. Secondly, a note of disquiet may be a desirable corrective against a pervasive element of our folklore. We tend to believe that there are neat simple solutions for extremely complex problems, and that frictionless accommodations can be achieved by exhortation about responsibility, public interest, and the good life. One need not believe in original sin to react against such oversimplifications as they are applied to the bargaining process. Its ideal is reasoned consent, but its motive power is economic warfare. It embodies also the ideal of economic democracy and individual dignity in a context where democracy is both difficult to define and to achieve and where democracy and socially responsible action may pull in different directions.

It would be strange if this complex and paradoxical process were free from substantial problems. The factors which have been touched on here may aggravate those problems. But that risk may be offset by the increased recognition on the part of labor and management that they have joint interests as well as conflicting ones, and by the increased maturity of many of their relationships. More specific and meaningful predictions of the bargaining weather would require me to go beyond the limits of my ignorance. I must leave such prophecy to those with greater capacity and taste for such hazardous work.

The Harold J. Green Law Lounge

(The following story appeared in the Chicago Daily Tribune on October 3, 1961)

Harold J. Green, 56 year old attorney, donated $150,000 to the University of Chicago law school yesterday to furnish the students' lounge and decorate it in the atmosphere of an English barrister's club.

"All a law school does is pay attention to the rigors of learning," Green said. "But a lawyer isn't going to be just a machine, so that's why I did it."

A YOUTHFUL DESIRE

Green, who lives at 6922 Jeffery blvd., said he often wished for such a place to relax when he was working his way thru the law school in the 1920s. "I promised myself, when I was doing all the menial jobs that one does when he works his way thru school, that if I ever made good I'd establish a place like that," he said.

Green maintains that a lawyer should develop a manner comparable to a doctor's bedside manner, so that he can deal better with clients.

He said such a lounge also has academic values.

"Not only will it serve as a place of study and sociability, but it helps the student distill and retain what he's learned," he explained.

AN ENTIRE FLOOR

The lounge, which occupies the entire main floor of the six story library-office building at the law school center, will be furnished with four main conversational areas, each of which will include two 12 foot sofas, one 10 foot bench, a 7 foot octagonal marble topped coffee table, and two large lamps.

Two central groups will consist of a 9 foot table with a lamp and 12 chairs. The color motif throughout will be set by the black leather upholstery of the sofas and chairs, and the wood and metal benches.
The Class of 1941

Compiled and Edited by

DAVID S. LOGAN and J. GORDON HENRY

The class of 1941 was the first legitimate child of the New Plan—that first commingling of philosophy, theology, sociology, economics, and, lest we forget, law.

The motto “One more such Plan and the Law School is undone” has been attributed to this class. This is no more true than the report that the faculty motto was, “One more such class and we are all undone.”

Now, twenty years later, the New Plan and the class can be judged more objectively. The reporting members of the class (28 out of 42 members) are enthusiastically appreciative of the rigors of their training and the tolerances of the Faculty and this is as it should be.

To a greater extent than any other class which has reported, the members of this class are now in the practice of law or in fields directly related to law. Eleven reporters teach or have taught law full or part time. This teaching is primarily in traditional disciplines such as taxation, negotiable instruments, secured transactions and in traditional forums, that is, not at our law school.

The graduates of 1941 have accepted a high degree of responsibility in civic, community, charitable and religious affairs. All but two have accepted the responsibility of marriage and each such member has produced an average of two and one-half children. Two have six children; one has seven. These figures are not final. There is a firm, if not obstinate, indication of a current and continuing interest in the subject.

A possible side-effect of this continuing interest in procreation is an appalling lack of interest in recreation. Interest in hobbies and sports ranges from half a dozen golfers (only one an enthusiast) through a few swimmers, travelers and bridge players to one White Sox fan.


ALBERT A. EHRENWEIG, Walter Perry Johnson Professor of Law, University of California. Married. Children, Elizabeth, 27 and Joan, 25. Professional Activities: American Bar Association; New York City Bar Associa-
Maurice Rosenfield, JD '38, with Roscoe T. Steffen, John P. Wilson Professor Emeritus of Law, and Miss Eleanor Steffen, at the Alumni Association reception honoring Professor Steffen during his final academic quarter prior to retirement.


Ralph M. Goldstein, Private practice of law. Married. Children, Michael 13, Julie 6 and Terry, 5. World War II, Warrant Officer, Judge Advocate General Department and Legal Officer (First Lieutenant) in Air Force. Professional Activities: President, Baseball Little League, West Covina. Hobbies: Indoor sportsman of the card playing variety. Comment: "Have an excellent neighborhood practice in my own building in Mexican section of Los Angeles; have tried cases in court in which all parties, witnesses and judge spoke in Spanish." Home Address: 1546 East Cameron Avenue, West Covina, California. Business Address: 447 North Ford Boulevard, Los Angeles, California.


HOWARD HAWKINS, Secretary and Director of Employee Relations, Kern County Land Company. Married. Children, Howard 8 and Larry 2. Professional Activities: Member—Securities Committee, American Society of Corporate Secretaries; Chairman—Board of Governors, Agricultural Inter-insurance Exchange (California). Army: Intelligence and Security Officer Manhattan Project. (“You'll get no ‘self-serving’ statements from me—my lips are sealed.”) Hobbies: “Golf, swimming, reading 10 year old best-sellers and finding no one to discuss them with; marveling at the energy and ingenuity of young children—and beginning to feel too old to be a father of a 2 year old or even an 8 year old.” Organizations: President, University of Chicago Alumni Club—San Francisco Bay Area (and for 3 preceding years, Chairman of the Alumni Fund Drive in this area. “I’ve had it!”). Highlights: “Just as touch football Kennedy was about to make the game a national pastime, I was forced to retire from active play due to broken nose and wrist and concussion when a 6” x 6” redwood post interfered with my pass receiving. Accident occurred last October and I am just getting accustomed to the new, flatter but not flattening look to my nose.” Home Address: 30 Drayton Road, Hillsborough, California. Business Address: 600 California Street, San Francisco, California.

J. GORDON HENRY, Attorney, Northern Trust Company. Married. Children, Bruce 8 and Laura 6. Professional Activities: Member, various Bar Association committees and sections from time to time; Secretary, University of Chicago Law School Alumni Board; Co-Chairman, University of Chicago Law School Alumni Fund Campaign, 1958. Taught Commercial Law, American Institute of Banking; Discussion Leader, World Politics Program. Military: Special Agent, Security Intelligence Corps and Counter Intelligence Corps; U.S. Army 1943-46, discharged with rank of Master Sergeant. Highlights: Secretary, Lake Bluff School Caucus, 1957; President of Lake Forest Club, a swimming and tennis club; Past President, Cherry Circle Tankers, swimming club at Chicago Athletic Association; Executive Committee and sometime Vice-Chairman, Youth Service Bureau of the Church Federation of Greater Chicago; Executive Board, North Shore Area Council, Boy Scouts of America; Past President and sometime Executive Committee member, University of Chicago Club of Lake County (Illinois). Hobbies: Swimming, canoe-camping, fishing, hunting and bridge. Home Address: 241 East Sheridan Road, Lake Bluff, Illinois. Business Address: The Northern Trust Company, 50 South LaSalle Street, Chicago, Illinois.

JEROME S. KATZIN, Vice-President, Kuhn, Loeb & Company. Married. Children, David 16, Daniel 13 and Diane 7. Professional Activities: Director, Division of Public Utilities, Securities and Exchange Commission 1952-53. Military: U.S. Army, Finance Department 1943-45—First Lieutenant. Hobbies: Involved in local village, temple and school affairs. “Coming from Wall Street find myself appointed only to fiscal committees, budget committees, finance committees, ways and means committees, etc.” Highlights: “The shift from law to banking was not too difficult since my 12 years at SEC were as much in finance as in law. Now my legal training is used mostly to harass counsel who undoubtedly prefer their clients to know as little law as possible.” Home Address: 23 Wensley Drive, Great Neck, New York. Business Address: Kuhn, Loeb & Company, 30 Wall Street, New York, New York.

SEYMOUR KEITH, Private practice of law. Married. Children, Bonnie 18, Bruce 13 and Jill 4. Professional Activities: Member of Chicago Bar Association; American Judicature Society; Decalogue Society; Law Institute. Military: World War II, Commissioned through Fort Benning, Georgia, awarded Silver Star with Oak Leaf Cluster, Purple Heart with Oak Leaf Cluster, Bronze Star, Combat Infantrymen’s Badge, 3 or 4 Battle Stars. Former Commander of Jewish War Veterans Post; Former Vice President of B’nai Brith Lodge; Former Director of Temple. Hobbies: Bowling. Highlights: Assisted in organization of Lemont Savings Association; represented Illinois College of Optometry at the trial in connection with the appeal resulting in the finding by the Supreme Court that the Illinois College of Optometry was a school within the definition of the Constitution. Presently endeavoring the organization of the proposed Lincolnwood Savings and Loan Association. Home Address: 6445 North Kilpatrick, Lincolnwood, Illinois. Business Address: Seymour Keith & Seymour Potsman, 134 North LaSalle Street, Chicago, Illinois.

DAVID S. LOGAN, Real Estate (motels, garages and construction) and Law (specializing in Real Estate and Federal Taxation). Married. Children, Daniel 14, Richard 11 and Jonathan 6. Professional Activities: Member of Chicago, Federal and Illinois Bar Associations. Judicial or Quasi-Judicial Positions Held: Father. Supported Air and Ground Forces as Attorney (Chairborne) for Board of Economic Warfare 1942-45. Covenant Club; Director, Chicago Chapter of National Multiple Sclerosis Society; Director, Men’s Club North Shore Congregation Israel; Executive Committee, Law School Building Fund Drive; Founding member, Gastro Intestinal Research Foundation (University of Chicago Clinics). Comments: “Calculated ambiguity of this communication is product of law school training. Prior to same was frank, open, above-board, tiresome, etc. . . . Am now ambiguously frank, open, above-board, tiresome, etc.” Home Address: 1430 Edgewood Lane, Winnetka, Illinois. Business Address: 6445 North Kilpatrick, Lincolnwood, Illinois.
ness Address: 33 North LaSalle Street, Chicago, Illinois.


PAUL E. MOELLER, Private practice of law. Professional Activities: American Committee for Liberation, Inc.; New York European Counsel. Private, Infantry, Camp Wolters, Texas (1943-45) to First Lieutenant, Magdeburg, Germany. Highlights: Pending assignment to the Allied Control Commission in Berlin 2 weeks duty as Information Control Officer in Munich in July, 1945. These two weeks ended in September, 1952 after transfer to OMGUS and HICOG Legal Division in 1949, the last assignment being Chief Legal Officer in Bavaria and Chief, German Justice Branch, Office of General Counsel, HICOG, Bonn. In September 1952, I accepted the position of European Counsel of the American Committee for Liberation, Inc., New York, which I still hold. In May, 1960 I was admitted to the practice of Law in West Germany, Home Address: 22 Sonnenstrasse, Munich, Germany. Business Address: 6 Kardinal-Faulhaber-Strasse, Munich, Germany.

ROBERT H. MOHLMAN, Vice-President, Inlander Container Corp. Married. Children, Robert 16 and David 12. Military: Quartermaster Corps and Officer Candidate School, Camp Lee, Virginia; Assigned to Contract Negotiation, Chicago for 2 years, ending as First Lieutenant. Professional Activities: Principal interest in All Souls Unitarian Church, Indianapolis, as Trustee and President during construction of new church. Also Director of United Unitarian Appeal Budget Committee for national denomination. Regional Chairman of Unitarian Development Fund, raising $3,800,000 for national needs. Active in Indianapolis United Fund Budget Allocations Committee and Fund raising. Chairman in previous years of University of Chicago Law School Alumni Fund for Indiana. Hobbies: "Play clarinet with local amateur concert band." Home Address: 4620 Marrison Place, Indianapolis, Indiana. Business Address: 120 East Market Street, Indianapolis, Indiana.


sea fishing and a wonderful climate. A congenial and convivial population, many of whom are retired and when I get old enough I hope to engage in a profitable probate practice. I have never believed that youth should be wasted on children, so have put off amassing any fortune (if ever to do so) and substituted having good health and a great deal of happiness and fun." Home Address: P.O. Box 503, Pebble Beach, California. Business Address: P.O. Box 689, Monterey, California.


JOHN R. VAN DE WATER, Private practice of law. Married. Children, Eleanor 19, John 17, Ann 16, Elizabeth 12, Jeanne 10, and Charles 8. Professional Activities: Director of Los Angeles Bar Association weekly radio discussion programs; Personnel and Industrial Relations Association; American Management Association; testimony before Congressional Committees on Labor Law, etc. Taught as Associate Professor of Industrial Relations and Business Law with Graduate School of Business Administration, University of California, Los Angeles; for the past three years, Director of Executive Development for the school. Military: Tank Destroyer Corps, United States Army, handling personnel problems. Hobbies: Swimming, fishing, "camping with kids," European trips, etc. Highlights: Organizing and Directing the University's Executive Development programs in which senior executives of hundreds of corporations have participated; organizing the nation's pioneer program for State of California for the continuing education of the bar. Home Address: 1412 Warner Avenue, Los Angeles. Business Address: University of California, Los Angeles 24, California.

Two members of our class are no longer with us. Jim Mitchell died of lung cancer on March 12, 1960; and John Phillips, a Second Lieutenant in the Marine Corps, was killed in action in the first landings on Tarawa.

Three for Three

During the past autumn, the President appointed three new Judges to the U.S. District Court in Chicago. All were alumni of the Law School.

RICHARD B. AUSTIN, JD'26, has been on the Bench in Cook County for many years. In 1956 he was a nearly-successful candidate for the Governorship of Illinois. At the time of his appointment to the Federal Bench he was serving as Chief Justice of the Criminal Court of Cook County.

JAMES B. PARSONS, JD'49, received his A.B. from the University of Chicago in 1940. After two years as a superintendent of schools in North Carolina, and military service, he returned to Chicago to attend the Law School. Upon graduation he became an Assistant Corporation
Alumni Notes

GEORGE ROSSMAN, JD'10, Justice of the Supreme Court of Oregon, recently received the Distinguished Service Award of the University of Oregon. Judge Rossman, after previous service on lower courts, came to the Oregon Supreme Court some thirty-four years ago. He has been prominent in the work of the American Judicature Society and of the American Bar Association, and is a member of the Board of Editors of the latter's Journal.

JOSEPH I. BRODY, JD'15, of Des Moines, Iowa, has been awarded the degree of Doctor of Laws, honoris causa, by Grinnell College. Mr. Brody is currently a member of the Des Moines School Board and has been active in the work of the American Civil Liberties Union and the National Conference of Christians and Jews. In 1957 he received the alumni merit citation of the University of Chicago Alumni Association.

MATTHEW E. WELSH, JD'37, is now completing his first year of service as Governor of Indiana. Following his graduation, Governor Welsh entered the practice of law in Vincennes, Indiana. He served as a State Representative from 1940 until entering military service in 1943. From 1950 through 1952 he was U.S. Attorney for the Southern District of Indiana. In 1954 he became a member of the State Senate, in which he continued to serve until his election as Governor in 1960.

The School notes with deep regret the death, in recent months, of three of its distinguished alumni. INGRAM M. STAINBACK, JD'12, had been one of Hawaii’s leading citizens for almost half a century. He served successively as Attorney General of the Territory, as United States Attorney, as U.S. District Judge, as Territorial Governor from 1942 until 1951, longer than any other man, and finally, as a Justice of the Supreme Court of Hawaii.

CASPER W. OOMS, JD'27, was one of the leading mem-
bers of the patent bar. He was a former U.S. Commissioner of Patents, who received, in 1960, the distinguished Service Award of the U.S. Atomic Energy Commission. Mr. Ooms served with distinction, for many years, as a member of the Law School Visiting Committee.

WILLIAM S. HEFFERAN, JR., JD'15 spent about a decade in the private practice of law following his graduation. In 1928 he joined the General American Transportation Corporation, from which he retired thirty years later as Vice President and General Counsel.

Not an alumnus, but friend of the Law School and member of its Visiting Committee, TAPPAN GREGORY was perhaps best known for his service to the organized bar. During a noteworthy career, he was President of the Chicago Bar Association, President of the Illinois State Bar Association and Chairman of the House of Delegates and President of the American Bar Association. Mr. Gregory was a member of the U.S. delegation at the U.N. Conference on International Organization in 1945, and represented the ABA at the Nuremberg Trials. He is known to a generation of lawyers as Editor-in-Chief of the American Bar Association Journal.

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**Book Reviews**


*Review by William L. Prosser*

Professor of Law, University of California

(The review which follows appeared in the *Journal of Legal Education*, Volume 13, Number 3, pages 431-433 (1961), and is reprinted here by the kind permission of the editors of the *Journal*.)

This is a most remarkable book. Requested to review it, against a rather impossible time limit, I started out with the rapid perusal, half reading, half skimming, which usually suffices a give a fast scanner a fair idea of the contents, and to permit some adequate, if admittedly imperfect, estimate of the merits. After about a dozen pages, my current eye was arrested, caught, and held by a passage, and steed and rider were halted short with an abrupt check rein. Another ten pages, and I had dismounted to a walk, with time out for savoring of sentences, and the importunate publishers with their un-
reasonable deadline were consigned to perdition. I ended by reading the book through twice at a snail's pace. I have come to the conclusion that it is a masterpiece, and a most extraordinary one, which no one but the author could have written.

Professor Karl Llewellyn is sufficiently well known to all law school men, and, indeed, to a large part of the American bar, if only as the Chief Reporter of the Uniform Commercial Code. He first emerged from the Yale Law School in 1920, after making life quite difficult for its faculty, including in particular William Howard Taft. Since then, for forty years, he has played with gusto and skill the part of the gadfly and the wasp, the man behind the jackass with the goad, prodding always with new ideas, with critical appraisal, with challenge, denunciation, and sometimes even praise, and with the urge to change and action. His voluminous writings betray a scintillating and fascinating personality, clad in a coat of many colors, which those who know him best have learned to approach with the caution and respect of one about to open a bottle of rare old Armagnac, with crumbling cork encrusted with the dust of the ancient home of D'Artagnan. His literary effusions have displayed, in amazing variety, elements of the genius, the poet, the visionary, the scholar, the skeptic, the cynic, the madman, the shrewd and sophisticated man-of-the-world, the plain damn fool (albeit with a lovely sense of humor), and the hard-headed practical lawyer with a keen sense of the limitations of the possible and his eye on the ball. When all of these assorted mules have been pulling in different directions, the effect sometimes has been one of an agreeable but bewildering schizophrenia. When all of them have pulled together, the effect sometimes has been overwhelming. They all have pulled together in this book; and it is, I think, by far the best thing that he has ever done. It is clearly the product of many long years of work, study, and thought, tried and tested in the fire of law school courses at Columbia and Chicago. Stimulated as I am by the Armagnac, and drunk with deep potions of his effervescent style, I do not find it easy to set impressions down on paper. But I can try.

The book is an elaborate and exhaustive study of the process of judicial decision at the appellate level, in so far, and only in so far, as it is or can be made apparent from the opinions written. It is, in other words, a penetrating study of the technique of writing opinions. It refers, usually in some enlightening detail, to some six hundred cases, which range over all fields of the law from marriage to election contests, and are chosen not for their substance, but for their method. Of these, I found that I had at least some nodding acquaintance with perhaps a hundred; and I was moved, from time to time, to pull others off the shelf to verify the author's observations. They were verified. Two or three times I found myself in disagreement with him as to whether a result might be a good one or a bad, but never as to the route by which the court had reached it.

There have been studies of cases before—Wambaugh comes at once to mind, as long ago as 1894—but never a book like this. Not only is it the most complete picture ever given of legal decisions as such en masse, and of the mental operations of those exalted but very human beings who become judges, and what makes them tick; it is also a very clear and, to me, utterly fascinating portrayal of the whole process by which our law has developed and grown, and of the slow-creeping change that, together with adherence to the past, has been the life of our legal system. This book is the whole story of stare decisis. That is, in a nutshell, what it is about. It is the supreme justification, the ultimate paean of praise, of what the title calls and the author has, at page 399, glorified in a very good song, as the Common Law Tradition.

The book begins by rejecting flat out the gastronomical approach to decided cases—the notion that the actual decision is made for reasons or bias not stated, and the opinion is only a reasoned justification, a "mere rationalization," "a term which for fifteen years or more meant (i) false, (ii) tricky, and (iii) a cover for the nastiest imaginable hidden motives, with carte blanche to anybody to fill in without evidence." Not so, says Llewellyn; not so at all. Judges, in the main, are honest men and moderately able men, almost always willing and commonly capable of overcoming innate repugnance and deciding against their own preference; and they do try hard, and honestly, to follow "the law" that has been handed down before. And so clear is this that to any one who really reads and understands opinions and knows a bit about what the particular court has been doing, the result of eight out of ten cases that come up on appeal is predictable, or "reckonable" in advance; and so reliable is this that the best law firms do, in fact, habitually so predict and reckon, with a constant high percentage of accuracy year after year. There follows a chapter dealing with the "steadying factors" that make for this predictability: law-conditioned judges, known legal doctrine and techniques, the written opinion, the tradition of the single right answer, issues that are limited and sharpened and phrased, adversary argument by counsel, group decision, and others sufficiently familiar to the bar.

The book then launches into a consideration of the "leeways" of precedent, with many illustrations of the various verbal devices by which the court refuses to budge from the "rule," or inches along within it, or shapes it into a new form, or confines it within limits, or erodes it away, or, finally, jettisons it entirely and makes a fresh start. Here Llewellyn distinguishes three periods in American judicial history. There is the early one of what he calls the "grand style," characterized by a high degree of flexibility and liberal use of the techniques of change. This is followed by the era of the "formal style," with closer adherence to the letter of
what was decided before, although by no means without more subtle methods of devotion. This is succeeded (since, say, 1920 to 1940) by the modern period, with both approaches still at war, but, on the whole, a marked return toward the "grand" method.

There is a chapter on "situation-sense" and reason, stressing the importance of the facts, and suggesting how to look for those that will tip the scale. There is another on the theory of "rules," and what they mean and are good for, followed by a return to "sense and reason" again. There is another on argument, and the art of making the prediction come true. There are nearly fifty pages of "conclusions for courts," with much sound advice to judges upon how to do it and how not, with scorn and contumely poured upon various "illegitimate" techniques, of which the simplest and most convenient is utterly ignoring the case that blocks the path like a fallen boulder. There is a great deal more, of which space and the reader's patience forbid the enumeration. No summary can begin to cover all that is in the book, or give any picture of the way in which all of it is illustrated and exemplified throughout by particular decisions, with much quotation of specific language. Nor can it indicate the quite delightful way in which it is all set forth, with a naturally exuberant and flamboyant style curbed, subdued, and channeled to say it all with neatness, point, and force.

It is, in short, a unique and most valuable book. Obviously, it is one to be taken into account in our law schools. Somewhere in the course of his legal education, any student ought to be exposed to it. I must confess that at the moment, I am a bit puzzled as to just where or how. It is not, I think, anything to be inflicted upon an entering freshman. The neophyte who is still struggling to understand that a demurrer is not the comparative of an obsolete adjective formerly applied to young ladies would simply be drowned. Somewhere later on, when he has learned to deal with cases in batches of a dozen at a time and search out trends and patterns, and to try his wings at advocacy and other skills, he ought to be handed this book, and allowed to sit quietly in a corner for several days. Even then, I have some lingering suspicion that the boys at the bottom of the class, at least in the law schools I have frequented, would make precious little of it, although the top man would benefit enormously. Since professors can sometimes be useful, the desirable thing would be to discuss large chunks of the book somewhere in class.

As to one thing, I am entirely clear. It should be required reading for any judge.


Reviewed by The Honorable Irving R. Kaufman
Judge of the U.S. District Court
Southern District of New York

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Since Delay in the Court was published, at least a score of legal periodicals have seen fit to carry reviews. Such nationwide response may be attributable solely to the present topical interest of the subject matter, but that seems unlikely. Anyone who has sought to follow the literature on judicial administration with assiduousness knows, somewhat to his sorrow, the number of books and articles which are published on that topic each year. He is also aware that by far the greater part of such works receive little or no comment, save that made under their breath by persons attempting to read them and find filing space for them. It would seem, therefore, that the authors of Delay in the Court must have done something different, or, more likely, differently, in order to have stirred up such a flurry of response.

To put the matter in its most general terms, the authors of this book have attempted to combine "the skills of the lawyer with the techniques—especially the 'quantifying' techniques—of the social scientist," giving their study "a firmer foundation in statistical data than any previous study of the problem." It appears that it is not the book's conclusions which are the spurs to interest, nor the breadth of its scope, but its approach. That being so, a few general remarks on that approach seem in order.

Ordinarily, methodology is better disclosed by viewing it in operation than by reading the methodologist's dis-
cussion of it. Thus the following fragment from the text, apparently inserted for little other reason than to advance the narrative, appears to me symbolic of the entire technique of the book:

[W]ith behavior as subtle and complex as that underlying the settlement process, a priori speculation is always risky. So once again our chief concern is to see if the inquiry can be advanced by resort to empirical data. (p. 112) (Footnote omitted).

In my view, that little fragment discloses both the strengths and weaknesses in a statistical or "quantifying" approach to the complex problem of judicial administration.

The strengths of such a technique are obvious. By carefully collecting, collating, and interpreting hard and cold figures, the authors are able to fill in the fuzzy phrases that typify and stultify the subject of delay. Moreover, these same techniques make it possible to create standards for comparing judicial administrations, and especially make it possible to evaluate the "cures" in a more or less objective fashion. Of the strengths of quantification I shall have more to say presently.

But the weaknesses of the quantitative approach are so much more subtle that they deserve immediate attention. First, statistics are by themselves unfitted to value judgments; they can only describe and circumscribe "amount." Knowing how much of something exists tells us nothing about whether that something is good or bad. For instance, as any chemist is aware, discovering that each liter of X contains one gram of Y is practically significant only when one knows the usual use of X and the ordinary effect of Y. If Y is poisonous to man, and X is a city's drinking water, then ethical considerations enter and the information becomes significant outside the closed statistical or quantitative system. But, that is only because a prior, unarticulated, considered judgment has been made that the poisoning of human beings is bad. That unarticulated ethical premise has nothing to do with quantity. The statistic is significant only in more complex contexts, e.g., in a world where there will always have to be some Y, and where Y kills human beings only if it is in a certain concentration. Such a quantitative analysis is most significant where Y is a good or an evil depending on its quantity, as for instance in a case where a certain amount of Y is necessary for human life while a slightly greater amount is poisonous.

To apply the above analysis to the subject at hand, this book can measure the quantity of delay, and the extent to which certain variables affect that quantity. But quantification is of no use unless certain qualitative assumptions are made. Some of these are quite simple to make, e.g., that delay is "bad"; that full utilization of court time is "good." But some assumptions depend on far more subtle discriminations that are not at all quantitative. For instance, abolishing the jury would in one sense be "good" because it would reduce delay, which is postulated as "bad." But, as the authors are aware, the administration of justice depends on things other than speed. The danger is that the quantitative "good" and "bad," which often mean little more than "faster" or "slower," will be accepted as ethical value judgments. The authors rarely fall into this trap but, as I shall attempt to indicate later in this review, occasionally they do.

The second subtle weakness in the use of quantification and statistical analysis as a method is that it necessitates reliance on the most dangerous of abstractions: averages, means, and so forth. These are abstractions because they take from actuality a quality that can be reduced to number and combine it with another similar quality to produce a result which inheres in neither actuality. It is somewhat like what Arthur Koestler called a Communist's definition of an individual: a crowd of one million divided by one million. These abstractions are dangerous because they are presented in the form of a mathematical quantity, and our modern, scientific conditioning predisposes us to put our faith in numbers as somehow "accurate" and "true."

One clear example of how averaging can mislead even the most sophisticated statisticians appears early in the book. In contrasting the periods of waiting faced by those litigants who are able to get a trial preference and by those who will have to await trial in regular order, the authors state that the proper measure of delay for the system as a whole is the average of these two waiting periods. Then they go on to state that this average delay "is the delay that interests a litigant who really does not know whether he will get any preference or not." (p. 45)

Miss Elizabeth V. Benyon, Assistant Librarian of the University of Chicago Law Library, and Chairman of the Program Committee of the Conference on Classification in Law Libraries. Miss Benyon is the author of a widely used system of classification.
(Footnote omitted.) I submit that an "average litigant" might be interested in the "average delay," but that a real litigant would have to wait out either the preference or the no-preference period. In fact, if there is one period of waiting that a real litigant would be certain not to have, it is the average between the two waiting periods.

With these general considerations which define my approach stated, the book under consideration can be discussed somewhat more specifically.

Delay in the Court is divided into five major sections. The first of these is devoted to measuring, as closely and accurately as possible, the actual extent of delay in the Supreme Court of New York County. The last is devoted to various problems tangentially related to the delay problem. The middle three sections are devoted, one each, to the only three possible "cures" for delay:

[T]he time required for the disposition of cases can be shortened; the number of cases requiring official disposition can be reduced by affecting the settlement ratio; or the amount of available judge time can be increased, either by directly adding judges or by increasing somehow the efficiency with which the current judge power is now used. (p. 5)

Each of these five parts is worthy of comment. But the nature of the book is such that merely sketching the authors' conclusions would not only do justice to the painstaking development of those conclusions; it would be positively misleading. Certainly, the authors come to conclusions, often very precise ones, but their statistical sophistication is such that the total context of any one of their conclusions modifies it significantly. Under such circumstances, one must either reproduce the book in toto, or concentrate on very small segments of the total work. For obvious reasons, I have chosen the latter approach.

Chapter 13 is devoted to pretrial proceedings. (pp. 141-54) Except for two brief paragraphs, (pp. 99, 141-42) the pretrial conference is treated as if it were primarily a settlement device. There is nothing unreasonable about such a treatment. Pretrial is a settlement device, for some of the judges all of the time and for all of the judges some of the time. As a matter of fact, it is one of the best settlement devices existing. Held early in a case's career, it helps the attorneys to clarify the facts, preparing them for intelligent talk about settlement. Held on the eve of trial, when the attorneys know as much about the case as they ever will (at least until the witnesses begin to testify), when the emotional drain of actual litigation is imminent, when the clients finally must face getting nothing or giving more than they like to think about, it comes at precisely the right moment for "private ordering." The addition of a neutral, impartial observer in the person of the judge would often seem to be enough to tip the balance toward a settlement. And indeed, the figures bear out what logic suggests. "In the New York Court... not less than 37 percent of all pre-trials end in settlement then and there." (pp. 142-43) (Footnote omitted.)

However, the authors are wise enough not to accept their own figure uncritically. "The problem... is whether these cases settled at pretrial would have been settled anyway in the natural course of events." (p. 143) As they point out, since most judicial time is used up on cases which go to trial and judgment, the settlement at pretrial of cases which would be settled before assignment, whether pretrial or not, does not reduce delay. In fact, it uses up judge time which could otherwise have been spent on actual trials. (p. 148)

However, this particular evaluative problem has often been noted elsewhere, and is well known to students of pretrial techniques. It is indeed the rare judge who is as naive as the one hypothesized by the authors (p. 143) who believes that a 37 per cent settlement figure in pretrial means a net gain in time of 37 per cent. We all know better than that. But the authors do not stop with the observation that the pretrial often wastes judge time on cases that would never get to trial in any event. They do not even stop with determining whether there is in fact any increase in the number of cases settled because of pretrial conferences. They go on to give a quantitative answer to the crucial question, "whether this additional number of cases reaching trial [if pretrial were abandoned] exceeds the number which the pretrial judge could try if he were transferred to the trial part." (p. 148) Using figures from the New York Court, the authors conclude that to justify the pre-trial judge's activity his pre-trying must in fact have reduced the percentage of cases reaching assignment from 37 to 30... (If it were not to reach that level, the court ought to stop pre-trials because it could dispose of more cases by having the pre-trial judge try cases instead. (p. 149).

In this conclusion is typified, I believe, one of the strength-weakness dyads alluded to above. On the one hand, the reader is not just left with the bland fact that pretrial-conference settlements are not all net gain. Instead he is given a fairly precise figure, which can be used in different years and, with modification, in different courts, for the precise amount of gain necessary to justify pretrial as a means of reducing delay.

On the other hand, pretrial is not only a means for reducing delay by settlement. The authors apparently became so impressed by the neatness of numbers that they were led into a highly questionable generalization: that pretrial should be abolished in any jurisdiction where the net-gain figure is not met. In so concluding, they overlooked the fact that pretrial, though it may not lead to the settlement of a suit, may nevertheless lead to admissions, clarifications, and stipulations which will shorten the actual trial time necessary, thus acting indirectly to reduce delay. This oversight was no doubt caused by the authors' allowing their approach to compartmental-
ize their thinking into a deceptively neat category entitled "the contribution of pre-trial to changing the settlement ratio." (p. 141)

More important than that relatively minor oversight, however, is the fact that the authors' quantification misled them in this instance into giving no consideration to qualitative factors. By dogged accretions of data and painstaking juxtapositions of figures, the authors could no doubt incorporate into their pretrial-justification figure the factor of more efficient and speedy trials for non-settled cases. But no amount of quantification will disclose whether the time spent in pretrial is justified by the fact that the trial eventually held is a better trial in ways having nothing to do with time. If the attorneys are not surprised at a trial, it will be a better trial. If they fully understand their own cases, and the ramifications of the evidence to be adduced, it will be a better trial. If needless duplication of evidence and the introduction of needless technical evidence are eliminated, again, the trial will be better. It may also be faster. But whether it is or not, it will still be more likely to achieve substantial justice because time was taken to pretry the case. Quantification is valuable, perhaps indispensable, for dealing with quantities—like time. It is extraordinarily dangerous if it obscures qualities—like fairness.

Part 4 of *Delay in the Court* is entitled "More Judge Time." It deals with the third major manner in which a delaying backlog may be removed—by providing more adjudicators. I found myself, ex officio, reading this portion of the book with the highest degree of attention. I must confess that when a judge reads a brightly lit study of the work habits of judges, his original inclination is to write what is in effect an *Apologia Pro Vita Sua*. But upon calmer reflection I have concluded that (a) the authors of this book have performed a service both to judges and to the cause of efficient judicial administration; (b) this service involves not only pointing out that judges are mortal, but that their work habits are, though variable, quite good; and (c) that once again the value of statistics is illustrated by rendering inapplicable any radical generalizations like "perfect" or "shocking."

Exclusive of holidays, there are 196 trial days each year in the New York court. The average number of trial days for any single judge of that court, however, is 170. (p. 174) The average number of trial days is therefore 37.4%. Moreover, the average number of hours which each judge spends on the bench each day is 4.1. (p. 181)

Once the above-quoted figures are derived, however, the problem has just begun. The question of what has become of the "lost" days and hours remains. Table 70 (p. 175) gives some indication. Officially, 9.1% of the lost days are assignable to "no ready cases," and 8.0% to "in chambers." Another 12.5% was lost to illness, with 13.8% being used up by religious holidays. These categories account for 43.4% of the lost days. Furthermore, as the authors note, "'absence' here denotes an absence of trial activity. It does not necessarily mean that the judge was wholly absent from the court. In any of the above categories except illness, religious holidays, and miscellaneous personal reasons, the judge may have been in chambers." (p. 174) It is for this reason, among others, that the authors state:

we have been unable to isolate satisfactorily how much of the loss is due to inefficiency in the trial scheduling process, producing gaps over which the judge himself has no control, and how much of the loss is due to a disinclination on the part of the Court to work as hard as it might. (p. 179)

Nevertheless, the authors do discover a "lost weekend" effect, which appears sinister at first blush. I am able to think of a few explanations for this effect which the authors could not (e.g., the difficulty in finding one-day cases to try, the manner in which official judicial conclaves are held in distant cities on Saturdays), but in the main I must agree to some extent with what the authors imply, that judges are indeed human.

To an extent this humanity also explains the 4.1 hour court day. But, that explanation is operative, I believe, to a much smaller degree than those unfamiliar with the work of judging would assume. No one has yet determined how long a trial day should be. In New Jersey, which the authors postulate at one point as possessing "the top performance that can be expected of a court system" (p. 176) the average judicial day on the bench is 4.5 hours. My own quantifying techniques tell me that this adds up to a difference of 24 minutes per day. This difference would certainly not be de minimis over the course of a year, but it is not earth-shaking either. There are always things to be done in chambers, even on "sitting" days and at home even after the court day. Charges must be written. Opinions on holdover cases must be researched and written (yes, even book reviews prepared). In many ways, a judge's four-hour day is very much like a professor's twelve-class-hour week: There is more to doing it than meets the public eye.

My major point in regard to this portion of *Delay in the Court* is not, however, merely that the authors have attacked a difficult and delicate subject with a great deal of insight. Once again, I am drawn to a "discourse on method" and its inherent dangers. In this instance, however, the pitfall of oversimplification was completely avoided by the authors. The danger remains, however, that far less sophisticated persons will be drawn into error. For one of the weaknesses of statistical analysis is that it may become scripture for various "devils" to quote. A statistic out of context is a deadly weapon. It has a seductive air of exactitude about it which does not fool experts in quantification (like the authors of *Delay in the Court*) but does mislead those less practiced in the art. Great care must be taken not only to avoid espousing quantification as the only method of analysis, but also to avoid oversimplifying the use of statistical analysis to render it less worthy of even the jobs it can do best.
My only other comment on this portion of the book deals with a cure for delay which I believe was given too little attention. Naturally, only so much can go into one book. But I believe that the authors would have been well advised to explore the use of masters in the alleviation of court congestion. The book does treat of the various plans and experiments utilizing substitute judges, (pp. 214–20) but no consideration is given to the possibility of having semi-judicial officers take over the burden of work which is not strictly adjudicatory. For instance, it has long seemed to me worthwhile to explore the possibility of employing standing masters to supervise the discovery or interlocutory phase of litigation. The less judge time that must be devoted to the interlocutory phases, the more that is free for trials. Moreover, the utilization of non-judges for discovery and related procedures would provide less of “an aura of ... second-class justice,” (p. 219) of which complaint is quite properly made when substitute judges are used for actual trials. In England, no trial judges take part to any significant extent in the management of the interlocutory phases of cases; it is all done by masters. It is further worth noting that as far back as 1904, when that year’s New York Commission on Law’s Delays pointed out that twenty-three English judges conducted twice as many trials as did their New York counterparts, they did not mention that this estimable efficiency was achieved with the aid of the highly trained English masters. True, the English masters have a very long history which gives them the automatic prestige of venerability. But if some litigants will accept substitute judges for actual trial, they are even more likely to accept standing masters or pretrial examiners to assist in the management of the interlocutory phase. Moreover, pretrial hearings under the supervision of pretrial masters or examiners might be as effective as judge-supervised proceedings. If that were to prove true, then we would have all the advantages of pretrial, with no use of judicial time. While it is foolish to complain when an author does not do what he has not set out to do, I for one would have appreciated a comparative study of the English and American practices.

I have dealt with only a small portion of the book, and that part has been treated mainly from the viewpoint of method. One nevertheless ought not take away the impression that Delay in the Court is slim on interesting conclusions. Not only the authors’ methods, but the results of those methods are of signal importance in any rational study of judicial statistics and judicial administration. Of especial importance are the chapters on the actual cost in time of retaining the jury system (ch. 6) and the effect of the concentration of the trial bar on trial delay. (ch. 17) In these fields it appears that our intuitions have led us somewhat astray, as they are often wont to do. The trouble with so many of the recent works on judicial administration is that they are often framed in terms of generality. I have yet to find anyone who dared dispute that “excessive delay is bad” (especially in the light of the way the adjective assumes the conclusion, not to mention the subtle question-begging of the noun). But it is absurd to think that such statements will ever get us anywhere unless someone appears to tell us, with reasonable exactitude, just how much delay there is. For that job, the quantifiers are in demand. If there is one thing the authors have done, it is to show us through their book how a group of sophisticated men can use figures to reach valuable results. Occasionally they slip, and forget that people are not merely measurable quantities, but that is extraordinarily rare. For the most part they succeed splendidly in giving some content to matters which were “pretty well understood” by those familiar with the field. And occasionally they succeed in showing that such “understanding” was illusory. Already the book is being extensively utilized by other scholars. As time goes on its figures will no doubt be refined and its techniques applied to other courts and other judicial problems. In time we will have more facts with which to work. It will not be a judicial millennium, but it will be a distinct gain for justice. This is a pioneering study and the work of the authors is worthy of high praise and emulation. Indeed, the authors serve to remove the mental block which has permeated the thinking on court congestion, that removal of backlogs is an impossible task in this litigious nation. They give us heart and hope.
Tentative Schedule of Forthcoming CONFERENCES AND LECTURES

Winter Quarter, 1962
SYMPOSIUM ON FEDERALISM IN THE NEW NATIONS: EXPERIENCE, OBJECTIVES, AND STRUCTURE (February 10–18)

Spring Quarter, 1962
INSTITUTE ON THE UNIFORM COMMERCIAL CODE (March 29–30)
LAW DAY CELEBRATION—ANNUAL ALUMNI DINNER (April 30)
THE SIXTH ERNST FREUND LECTURE, to be delivered by PROFESSOR WILBER KATZ (April 4)
CONFERENCE ON THE ENFORCEMENT OF ECONOMIC REGULATORY STATUTES (May 5)

Autumn Quarter, 1962
LECTURE by the HONORABLE FRANK R. KENISON at the Reception for Entering Students (October 2)
FIFTEENTH ANNUAL FEDERAL TAX CONFERENCE (October 24–26)
THE THIRD HENRY SIMONS LECTURE, to be delivered by PROFESSOR RONALD COASE
CONFERENCE ON CHURCH AND STATE

Winter Quarter, 1963
CONFERENCE ON NARCOTICS
THE SEVENTH ERNST FREUND LECTURE, to be delivered by the HONORABLE JOHN M. HARLAN, U.S. Supreme Court

Spring Quarter, 1963
CONFERENCE ON FOREIGN AID AND THE LAW

Autumn Quarter, 1963
LEGAL HISTORY CONFERENCE
The Law School Record

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