Neal Appointed Dean

On January 8, 1963, George Wells Beadle, President of the University, announced the appointment of Phil C. Neal as sixth Dean of the Law School.

Dean Neal was born in Chicago, in 1919, and grew up in the western suburb of Oak Park. In 1940, he received the Bachelor of Arts degree, summa cum laude, from Harvard University, and in 1943, the LL.B., magna cum laude, from Harvard Law School. While in college he was elected to Phi Beta Kappa and to the Presidency of the Student Council. In Law School he became President of the Harvard Law Review, an unusually happy association, since Miss Mary Cassidy, then secretary to the Review, subsequently became Mrs. Neal.

A Glimpse of the Supreme Court at Work

The Seventh Ernst Freund Lecture

By The Honorable John M. Harlan
Associate Justice, The Supreme Court of the United States

Apart from the honor of being asked to deliver a paper under a lectureship bearing the revered name of Ernst Freund, there are two other reasons why I was especially pleased to accept the invitation of the former Dean of this Law School to address you. One is that this School numbers among its faculty or alumni not a few of our Court's most distinguished Law Clerks of the past, and that the School's annual Supreme Court Review, edited by Professor Kurland, ranks high among the annual critiques of our Court's work. The other, and more personal, reason is that your invitation brings me back to the city of my

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Dean Neal greets Ward J. Farnsworth, JD'58, as Walter T. Fisher, '17, Assistant Dean James M. Ratcliffe, JD'50, look on.

At the dinner which preceded his Freund Lecture, Mr. Justice Harlan talks with Professor Kenneth Davis, the Honorable Walter V. Schaefer, JD'28, Justice of the Illinois Supreme Court and Chairman of the Law School Visiting Committee, and Mrs. George W. Beadle, wife of the President of the University.
Neal Appointed Dean—
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Upon graduation from Law School, Dean Neal served for two years as law clerk to Mr. Justice Jackson, of the United States Supreme Court. He then entered private practice in San Francisco, and was associated with the firm of Pillsbury, Madison, and Sutro when, in 1948, he became Associate Professor of Law at Stanford University. He became a full professor in 1954, and continued to teach at Stanford until his appointment as Professor of Law at The University of Chicago Law School beginning with the academic year 1961-62.

Dean Neal’s principal fields of interest are Administrative Law, Constitutional Law, and Anti-Trust Law.

In 1945, he served briefly with the State Department as a member of the Secretariat which, under the auspices of the International Conference of Jurists, drafted a proposed plan for a new International Court of Justice. He was also

Dean Neal shown at the Reception in his honor, with, left to right, Ward Farnsworth, JD’58, Hon. John V. McCormick, JD’16, Hon. Ulysses S. Schwartz, of the Visiting Committee, Jerome S. Weiss, JD’30, President of the Alumni Association.

Charles W. Boand, JD’33, Chairman of the Tenth Annual Alumni Fund Campaign, greets the new Dean.

More of those present at the Reception, left to right: Richard B. Hansen, JD’57, Julian R. Hansen, JD’52, Professor Dallin H. Oaks, JD’57, Dean Neal, and A. Daniel Feldman, JD’55.
a member of the International Secretariat at the conference in San Francisco, in 1945, at which the United Nations was established.

Currently, he is serving as executive secretary for the Co-ordinating Committee for Multiple Litigation of the United States District Courts. This Committee is concerned with the co-ordination of 1,962 civil actions pending before thirty-three U.S. District Courts and arising out of the electrical equipment price-fixing cases.

Mr. Neal was also selected to write the fifth volume of the History of the United States Supreme Court; the Congress has commissioned the History utilizing funds from the Oliver Wendell Holmes Devise.

The Dean and Mrs. Neal have four sons: Richard C., 15; Stephen C., 13; Timothy B., 9; and Andrew G., 3. They live in the University community, at 4825 Woodlawn.

His distinguished predecessors were Joseph H. Beale, who was Dean from 1902 until 1904; James Parker Hall, 1905-1928; Harry A. Bigelow, 1930-1940; Wilber G. Katz, 1940-1950; and Edward H. Levi, 1950-1963.

In announcing the appointment of the new Dean, President Beadle said: “Since its beginnings sixty years ago, the Law School has brought together a rigorous professional education with the most thoughtful scholarly inquiry and the most imaginative research. Under Dean Levi, this tradition has been greatly enriched. The Faculty has been enlarged, diversified, and strengthened, and its research contributions widened. The student body has grown within the limitations necessary for the University’s standards of excellence. A magnificent law center has been erected for the School. Closer relationships have been established with the Bar and the Bench, which have brought the American Bar Association headquarters to the Midway, and actual courtroom deliberations to the School.

Professor Neal takes over one of the nation’s top-ranking law schools. He has the wide-ranging intellectual qualities, the credentials of scholarly and professional excellence and the capacity for leadership that will create a record of new achievement for the Law School.”

The Rieser Society

The Record is pleased to announce the formation of the Rieser Society of The University of Chicago Law School. The purpose of the Society is to encourage and facilitate the exchange of views among those associated with the Law School, members of other Faculties of the University, and their students, on a wide variety of topics that have a bearing on law or that impinge on the learning or work of lawyers.

To this end, the Society at various times throughout the year will meet to be addressed informally by and engage in discussion with a member of some other department of the University.

The membership of the Society consists of all members of the Law School Faculty, students of the Law School who will be selected by the Faculty and invited to attend particular sessions thought to be of special interest to them, and guests invited to participate in the sessions.

The Society has been named after the late Leonard Rieser, a prominent Chicago attorney, who took a personal interest in the affairs of the Law School, and in the education of law students. The formation and continued operation of the Society was made possible through a fund endowed by Mr. Rieser’s family and friends.

At the first meeting of the society, in February, Arnold Harberger, Professor of Economics at The University of Chicago, discussed the tax cut and tax reform proposals of the Administration. John P. Roche, Professor of Politics at Brandeis University, and Visiting Professor of Political Science at The University of Chicago, discussed civil liberties in modern America at the Society’s second meeting, in April.
A Glimpse of the Supreme Court at Work—
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birth, whose ways I like to think still course in my outlook.

It is a favorite pastime among lawyers, as well as laymen, to speculate on whether the Supreme Court with any change in membership is likely to become more “liberal” or “conservative,” words which as applied to the judicial office I intensely dislike. What the Court decides in great cases is, of course, the thing of ultimate importance. But since the character of the cases that reach the Court for review and how they are decided once there are products not only of the individual qualities of its members but of the character of its deliberative processes as well, it is important that the way in which the Court’s business is conducted should also be understood, particularly, of course, by members of the Bar who expect to practice there.

I therefore thought it appropriate before an audience like this to discuss, as compendiously as time permits, the manner in which the Court goes about its work, with special emphasis, I hope, on certain things which even well versed lawyers appear sometimes to overlook or underestimate. I shall deal with the subject from three standpoints—the intake of cases, the decision of cases, and the work load of the Court.

I

The cornerstone of the operations of the Court is the control it possesses over the amount and character of its business. That control is found primarily in the statutory certiorari system which in the main enables the Court to select the cases brought before it for review. Another aspect of that control is found in the Jurisdictional Statement procedure, a judge-made device through which the Court is enabled to deal with some appeals, representing that part of the Court’s appellate jurisdiction that is obligatory, without setting them for argument and thus to cut down on the time necessary to dispose of cases as to which the Court has no option of refusal.

Prior to 1925 the Court’s appellate jurisdiction was
obligatory to the extent of some 80 per cent of its appellate business. That is, in most instances litigants had an absolute right to invoke the Court's reviewing powers by writ of error or appeal. The other 20 per cent of appellate cases reached the Court only through the exercise of its discretionary reviewing power, that is, by certiorari. By the early nineteen-twenties this had resulted in the Court's docket becoming clogged with a large backlog of cases, so that it sometimes took as much as two years after a case was filed for it to be heard and decided.

The Court, concerned about this state of affairs, formed a committee, chaired by Mr. Justice Van de Ven, to make remedial proposals to the Congress. This resulted in an overhauling of the Court's appellate jurisdiction in the Judiciary Act of 1925. That Act greatly broadened the classes of cases which henceforth could be brought to the Supreme Court only by certiorari, and conversely decreased the number of those that could still be brought there for review as a matter of right. The consequence has been that since the new system took hold the Court, despite the great increase in federal litigation and state federal-question cases, has been able to keep virtually abreast of its business.

This is not the occasion for a detailed discussion of the refinements, or mysteries if you please, of certiorari. But there are several aspects of the system that it is appropriate to mention. The first is that the Supreme Court, contrary to what many lawyers surprisingly enough still seem to think, is not a court of general errors and appeals, in the sense that most of the highest state courts are. That is, the rights and wrongs of a particular case will not alone assure its review by the Supreme Court. I recognize that this statement may fairly be regarded as subject to qualifications in some areas of the Court's business, but this general concept of the Court's role still remains for the most part true.

Speaking broadly, there are three basic questions that a lawyer who can only bring his case to the Court by certiorari should ask himself in gauging the chances of getting it there: Does the case involve a substantial constitutional issue? Does it present a question of law of general importance, as distinguished from its importance only to the particular litigants? Does it entail a conflict of decision on the same point of law among the federal Courts of Appeals or other federal courts whose decisions are immediately reviewable by the Supreme Court? While there are many variables that affect these generalizations, it is fair to say that a lawyer whose case falls in one of these categories will more likely than not get it to the Court.

The second thing that is worthy of mention is that every petition for certiorari and Jurisdictional Statement is voted on by each member of the Court. It is not true, as I have heard it sometimes said, that these matters are divided among the Justices for disposition or recommendation. It requires the votes of four Justices, that is a minority, to bring any case to the Court for plenary consideration, the scales being tipped to that extent in favor of full-scale review. This is not a statutory or formal rule requirement, but an unwritten custom which, however, is strictly adhered to. The practice has its origin in representations made to the Congress when the Court's discretionary appellate jurisdiction was enlarged, in order to assuage the fears of some who thought that the new system might result in depriving worthy cases of Supreme Court review. And the practice has been carried over to the disposition of appeals on Jurisdictional Statements. The short of the "rule of four," as it is called, is that a minority of the Court can control the character of new business, while it takes a majority of the Court, that is five Justices, or of a quorum (not less than six) to dispose of a case once taken.

The next thing that should be given an observation is the Court's oft repeated statement that a denial of certiorari signifies nothing beyond the fact that there were not as many as four Justices who deemed the case worthy of review. This is, of course, literally so as far as predecisional value is concerned, although seemingly not always recognized by lawyers and some lower federal or state courts. It is also true in the administration of the certiorari system, in that a point of law deemed "uncertworthy" at one time may, in light of intervening circumstances, be thought so at a later period.

Before passing to the next part of my subject, a word should be said about a phase of the intake of cases that is perhaps not as widely known about as it should be. This is what we call our Miscellaneous Docket, consisting of cases brought to the Court by indigent persons, mostly those who have been convicted of crime in the state or federal courts. These litigants, at the stage of petitioning for certiorari or filing their appeals, are almost always without lawyers. Their papers are filed in typewritten form, and often in handwriting, and run all the way from laboriously prepared legal documents to the most informal statements of grievances. All of these applications are processed through the Court and, as with the cases of represented litigants, are voted on by each Justice. If a case is taken for review, a lawyer is assigned by the Court to represent the indigent litigants on the plenary hearing. These lawyers serve without pay, but their traveling expenses and the cost of the printing of records and briefs are defrayed out of the fees paid by lawyers upon admission to the Bar of the Supreme Court. The willingness of lawyers to serve in these cases reflects great credit on the Bar.

In recent years the Miscellaneous Docket has grown to very sizable proportions. Those who keep abreast of the Official United States Reports will be interested to observe how many of the leading criminal cases come from this source.
River Water cases, for example, 16 hours, a full argument week, were allowed for the original arguments at last Term, and seven hours on reargument this Term.

This description of an argument week brings me to a point that should be particularly emphasized in connection with the plenary consideration of cases. It is the importance of oral argument. It has often seemed to me that many lawyers appear to underestimate the significance of that part of their job in our Court. They seem to assume that since their briefs will be read anyway, the oral argument is little but the relic of a bygone day, more important to satisfying a client than of significance to the outcome of their cases. I can assure you that this is a greatly mistaken notion.

The reasons for this confident statement are found not in tradition, nor in the tastes of particular Justices, but in practical considerations. From the outline that has been given of the argument work week, you will doubtless have gathered that the time between the hearing of a case and its discussion at the Friday Conference leaves little time for study. A considerable amount of the work on a complex case indeed takes place before its argument. Even in less intricate cases the briefs are usually read before the case is heard, at least to the extent that each Justice has more than a casual acquaintance with each case. The oral argument furnishes the occasion for coming to grips with the issues that are likely to be controlling, an opportunity which, if not initially grasped by counsel, is usually quickly created for him by questions from the Bench. A lawyer who is not prepared to take full advantage of this golden opportunity is missing an important milestone in the process of decision of his case. For if he is able to enlist the favorable interest of even one member of the Bench, his cause will have advocacy in the Conference debate which the lawyer, who is content to rest on his brief, is, in the nature of things, not so likely to have. Although the Conference discussion by no means always determines what the final outcome of a case will be, it is certainly a very vital stage, for positions once taken in Conference debate are not easily dislodged.

This brings me to the heart of the decisional process. At the Conference each case is stated by the Chief Justice, who, after expressing his own views as to what the decision should be, then calls on each Justice, in order of seniority, for his viewpoint. In controversial cases this is followed by general debate and then a vote is taken, this time in inverse order of seniority. In some instances, memoranda by individual Justices to support their views of a case are circulated before or after the Conference. This was the uniform practice, and still is, in the Second Circuit Court of Appeals on every case. I wish it were also the practice in the Supreme Court, but, because of the quite different circumstances, this would hardly be feasible.

After the Conference vote is taken it falls to the lot of
the Chief Justice, if he is in the majority to assign the case for the writing of an opinion, or if he is in the minority that function falls to the senior member of the majority. If decision of the case is by a divided vote, the members of the minority usually agree among themselves on one of their number to write the dissenting opinion, unless the issues are so divisive as to call for multiple dissents, such cases frequently also producing multiple opinions on the majority side. All draft opinions are of course circulated, and usually more than once, among all members of the Court, and not until the last word has been written is the decision announced in open court, always on a Monday morning.

But the point I would especially emphasize is that the books on voting are never closed until the decision actually comes down. Until then any member of the Court is perfectly free to change his vote, and it is not an unheard-of occurrence for a persuasive minority opinion to eventually as the prevailing opinion. In short, decisions of the Court are not the product of an institutional approach, as with a professional decision of a law firm or policy determination of a business enterprise. They are the result merely of a tally of individual votes cast after the illuminating influences of collective debate. The rule of ultimate individual responsibility is a respected and jealously guarded tradition of the Court.

III

The final aspect of this paper is the work load of the Court, a subject about which there has been much recent discussion. The matter is not an easy one to get at, for it is attended by many variables, but I shall venture some general observations.

To begin with it can be said with assurance that the annual statistics of the Court's operations are not alone a solid yardstick of the work load. Indeed they are apt to distort the picture. For example, in the three Terms ending with the last, the total cases on the docket rose from 2178 in 1959 to 2585 in 1961. These figures of course include all cases offered but not taken for review. But it would not be realistic to regard this increase in numbers as reflecting a comparable drain upon judicial energy. The reason is that, of these some 400 additional cases, all but 15 were of the Miscellaneous, or in forma pauperis, variety.

In the nature of things most of the Miscellaneous cases, coming as they do from impoverished persons not represented by lawyers, do not present the volume of substantial or even marginal legal questions as do those coming from litigants acting under the constraints of economic influences and legal advice. This means, in the first place, that petitions for certiorari or appeals on the Miscellaneous Docket can generally be disposed of by the Court with less expenditure of time than those on the regular or Appellate Docket. It also means that, of a given number of Miscellaneous cases, fewer will be taken for plenary consideration than of the same volume of nonindigent cases. Thus, in the last three Terms about 45 per cent of the Miscellaneous cases have been taken for plenary hearing as against some 14 per cent of Appellate Docket cases. The short of it is that the over-all figures alone are not very revealing of recent trends in the volume of the Court's work. Nor do I think that other purely statistical approaches that appear from time to time are in themselves very significant.

A truer measure of things is the character of the cases that the Court is called on to deal with in a particular Term. An important controversial case inevitably leads to divisions in the Court, which in turn add to the amount of time-consuming opinion writing. A complex case, involving a long record or difficult question of law, even though not necessarily divisive, also naturally requires more time than others to decide. And I think it fair to say that the increasing number of both kinds of cases accounts for the fact that the last three Terms have been among the busiest in recent Court history. I think it would be foolish to suppose that this is a temporary phenomenon. It can hardly be anticipated that the period ahead is likely to produce comparatively more equilibrium in the Court's affairs.

Where can we look for preventative against the Court becoming unduly overburdened? An increase in the membership of the Court is certainly not the answer. Unlike the Court of Appeals, the Supreme Court sits en banc in every case, whether at the intake or adjudication stage. It should not be otherwise, even though a contrary course were deemed constitutionally permissible. An increase in the Court's membership would thus

At the reception preceding the Freund Lecture, Robert Cushman, Gerhard Jersild, JD'31, and Junius Allison, Executive Director of the National Legal Aid and Defender Association.
simply add to the burdens of the decisional process. Chief Justice Hughes put it well when he said some years ago: "There would be more judges to hear, more judges to confer, more judges to discuss, more judges to be convinced and to decide." These factors, I believe, would not be offset by the broadening of the manpower base for opinion writing. Indeed, the contrary would more likely be the case.

Nor does it seem to me that the answer lies in any of the general proposals that have been made from time to time to relieve the Court of some of its normal appellate jurisdiction. I do believe, however, that substantial avenues of relief could be found in eliminating at least some facets of the Court's "direct" review jurisdiction, that is, where a case does not first pass through intermediate appellate review. The anachronistic requirement of direct review in Government antitrust cases certainly affords one prime example. From the standpoint of sparing the Court the necessity of reviewing what in most of such cases are essentially factual issues, involving the time-consuming task of reading often enormous records, as well as assuring the parties more satisfactory appellate review, it would be much better to leave primary appellate review in such cases to the Courts of Appeals, with further review by the Supreme Court subject to the process of certiorari.

There is also an opportunity for relief in one area of the Court's self-imposed procedures. Until the 1929 Term it was not unusual for the Court to carry over to the next Term any unfinished opinions. Beginning with the 1929 Term it has been the practice of the Court not to rise for the summer vacation until the opinions in all argued cases have been handed down. It happens not infrequently that a case requiring a difficult opinion or multiple opinions is not reached for argument until the closing period of the Term. Under present procedures the alternative lies between doing the best one can with such opinions within the pressures of reasonable adjournment deadlines or setting the case for reargument at the next Term, even though reargument would otherwise not be deemed necessary. It is not difficult to understand why any Justice confronted with that choice usually prefers to stretch his energies, or perhaps even to cut corners at the expense of solid professional work, in order to avoid the necessity of imposing an otherwise unnecessary reargument upon his Brethren and the litigants. The time may come when this procedure will have to yield to exigencies that call for recognition.

For the present and I believe at least the immediate future, the Court can keep the management of its business in good order by appropriate use of its certiorari power. I have heard it said in recent months that the Court has been taken an increasing volume of cases for plenary consideration. This is not true, and indeed the contrary is the fact, as the following percentages of grants of certiorari for the past three Terms indicate.

<table>
<thead>
<tr>
<th>Term</th>
<th>Appellate Docket</th>
<th>Miscellaneous Docket</th>
<th>Combined Dockets</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>15.9%</td>
<td>6.9%</td>
<td>11.3%</td>
</tr>
<tr>
<td>1960</td>
<td>12.2%</td>
<td>2.5%</td>
<td>6.8%</td>
</tr>
<tr>
<td>1961</td>
<td>13.4%</td>
<td>3.4%</td>
<td>7.4%</td>
</tr>
</tbody>
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In evaluating these percentage comparisons it should be borne in mind that in each of these Terms the actual numbers of cases on the Appellate Docket have been relatively stable, while those on the Miscellaneous Docket have shown marked increase.*

I do not suggest by what has been said that there is not room for further tightening up of certiorari standards. And that will undoubtedly occur if the time arrives when the Court's dockets reach seriously unmanageable proportions.

There is another phase of the matter, on which I have taken occasion to speak to lawyer groups in the past, but without making much headway, I fear. The largest part of the petitions for certiorari annually filed is, from the standpoint of the legitimate business of the Court, composed of quite insubstantial, if not indeed frivolous, cases. This is mostly due to nothing more than unfamiliarity with the nature of the Court's functions, and doubtless reflects the passing of anything that can really be regarded as a Supreme Court Bar, in the sense of one composed of lawyers having special familiarity with the ways of the Court. Again, in terms of the statistics of the last three years:

*Appellate Docket: 1959 Term, 1047; 1960 Term, 1046; 1961 Term, 1062.
Miscellaneous Docket: 1959 Term, 1119; 1960 Term, 1255; 1961 Term, 1510.
Terms: Of the Government petitions for certiorari, all of which must receive the approval of the Solicitor General before they can be filed, between 60-70 per cent were granted, as compared with some 14 per cent of the Appellate Docket petitions involving private litigants. Even with due allowance for the fact that the Solicitor General does not practice under the same influences and urges as a private lawyer, this does surely tend to show that more "know-how" or circumspection on the part of the Bar would substantially decrease the number of filings, with a consequent saving in the expenditure of judicial time now devoted to the examining of petitions.

The Miscellaneous Docket petitions, of course, present quite different problems and, short of legal aid coming into the picture at an earlier stage than it does now, it is difficult to see how the numbers of such filings can be appreciably checked or reduced.

Perhaps I am stargazing in adverting to the possibility of a change for the better in this state of affairs, but before an audience like this I thought it at least deserving of mention.

Let me bring this paper to a close with a remark or two about the present Term. It is proving to be a very busy one, though again not fully revealed by the mere statistics. The unexpected retirements of Justices Frankfurter and Whittaker caused the carrying over for reargument at this Term of some 16 cases, most of which would otherwise have been put away with the last Term's business. This, combined with the fact that a larger number of cases than usual has been put on the Summary Docket, meaning that a greater number of cases will be argued and decided on the merits, is likely to result in more full-scale opinions than in any Term of the recent past. I can assure you, however, that the Court is in good vigor and spirit and that you, rather than we, are more likely to be victims of this increased output!
Alumni Dinner and Law Day Celebration

The Annual Dinner and Law Day Celebration of the Law Alumni Association was held on the eve of Law Day, April 30, in the Guild Hall of the Ambassador West.

The principal speakers were The Honorable A. Roden Cutler, Australian Consul-General, New York, who talked on “Australia, the United States, and the Common Market,” and Phil C. Neal, Dean of the Law School.

Laurence A. Carton, J.D.'47, First Vice-President of the Association, presided. The Chairman of the Annual Dinner Committee was J. Gordon Henry, J.D.'41. Mr. Carton announced the election of Officers and Directors of the Association, who are as follows:

**Officers:**
- Jerome S. Weiss, '30, Chicago, President
- Laurence A. Carton, '47, Chicago, First Vice-President
- P. Newton Toohunter, '37, Chicago, Second Vice-President
- Charles W. Boano, '33, Chicago, Third Vice-President
- Charles F. Russ, Jr., '51, Chicago, Fourth Vice-President
- J. Gordon Henry, '41, Chicago, Secretary
- Charles F. Harding, III, '43, Chicago, Treasurer

**Directors** (elected this April, to serve through April, 1965):
- Jean Allard, '53, Chicago
- Hon. Jacob M. Braude, '20, Chicago
- John A. Eckler, '39, Columbus, Ohio
- L. Julian Harris, '24, Chicago
- Marvin Green, '30, Chicago
- Sidney J. Hess, Jr., '32, Chicago
- Kent V. Lukinbeal, '42, New York
- Robert McDougal, Jr., '29, Chicago
- Herbert Portes, '36, Chicago
- John D. Schwartz, '30, Chicago
- Louis H. Silver, '28, Chicago
- Earl F. Simmons, '35, Chicago
- Edwin Strugala, '54, Chicago
- Donald J. Yellon, '48, Chicago
- Dudley A. Zinke, '42, San Francisco

**Directors** (elected April, 1962, to serve through April, 1964):
- Ronald J. Aronberg, '57, Chicago
- Stuart B. Bradley, '30, Chicago
- J. L. Fox, Jr., '47, Chicago
- Andrew C. Hamilton, '28, Chicago
- George C. Hoffmann, '28, Springfield, Illinois
- Paul R. Kitch, '35, Wichita, Kansas
- James J. McClure, Jr., '49, Chicago
- Arner J. Mikva, '51, Chicago
- Thomas L. Nicholson, '55, Chicago
- Keith I. Parson, '37, Chicago
- John C. Pryor, '10, Burlington, Iowa
- Hon. Willis W. Ritter, '24, Salt Lake City, Utah
- Frederick Sass, Jr., '32, Washington, D.C.
- Arnold I. Shure, '29, Chicago
- Bernard Weissberg, '52, Chicago

The Munro Doctrines

During his stay at the Law School as a Visiting Professor, Sir Leslie Munro delivered a series of three public lectures. The topic of the first was "The Minority Position of the Western Powers in the Enlarged General Assembly of the United Nations, with Particular Reference to Their Financial Burdens." In the second lecture, Sir Leslie discussed "The Tendency of the United States and Certain European States to Work Through NATO and Like Organizations Rather Than Through the United Nations." The final lecture was devoted to "The International Commission of Jurists—Its Present and Future Functions." That lecture appears elsewhere in this issue of the Record.

During the current academic year, the Faculty has also been enriched by the presence of Jean-Jacques C. A. Rey, of the University of Brussels; Xavier Blanc-Jouvan, of the University of Aix-Marseille, Aix-en-Provence; J. Duncan M. Derrett, Reader in Hindu Law at the School of Oriental and African Studies, the University of London; and William Twining, Faculty of Law, University College, Dar es Salaam, Tanganyika.

Sir Leslie Munro, delivering the second lecture in his series
Notes from the Law Library

Three gifts of more than usual interest have been made to the Law Library in recent months. The firm of Winston, Strawn, Smith and Patterson has contributed bound volumes of the printed records in the receivership and reorganization proceedings of seventeen railroads. This gift, which was arranged by Bryce Hamilton, JD'28, will form the nucleus of an outstanding collection of this type of material to be established in the Law Library. At the suggestion of Mr. Hamilton a number of railroads have been contacted with a request that they add to the collection. Two companies have already responded and made additions to the collection, and answers have been received from others indicating a willingness to cooperate in this project.

Herbert DeYoung, JD'28, gave to the Law Library a part of the library of his father, Frederic R. DeYoung, who was a Justice of the Supreme Court of Illinois from 1924 until his death in 1934. Among the more important items were sets of the Illinois Supreme Court Reports and the Harvard Law Review, which Mr. Herbert DeYoung has arranged to bring up to date.

The firm of Gardner, Carton, Douglas and Children has contributed 190 volumes covering the laws of Argentina, Brazil, and Uruguay. This forms an important addition to the Law Library's Latin American collection.

The Library Committee of the Law Alumni Association, under the chairmanship of Arnold I. Shure, JD'29, is actively developing new sources of support for the Law Library. The Committee is concerned both with raising funds for the purchase of books, and stimulating the kind of direct gifts of books described above. The Committee has pointed out that some gift books may be actual additions to the collection. Others, while duplicates, may be held in reserve to replace existing sets worn out by repeated usage. This is particularly true of reports. Even in the event that books are useful for neither of these purposes, they may be used in trades with other libraries to acquire important additions to the library collection.

Richard Levine, who was a member of the Law Library staff for five years, resigned April 1, 1963 as Circulation Librarian to become Librarian of the U.S. Court of Appeals for the Second Circuit, in New York City. John Iglar, who was formerly at the Northwestern University Law Library and the Chicago Medical School Library, has become Circulation Librarian.

Supreme Court Clerks

Two members of the Class of 1963 will serve as law clerks to Justices of the Supreme Court of the United States.

Lee B. McTurnan will be clerk to Mr. Justice Arthur Goldberg. Mr. McTurnan is a native of Bloomington, Illinois. He received the B.A. degree from Harvard College in 1959 and entered the Law School in the autumn of that year. At the end of his first year at the School, he was awarded a Rotary International Fellowship, which enabled him to spend a year as a law student at Lincoln College, in Oxford University. Mr. McTurnan then returned to the Law School, and completed his work for the Doctor of Law degree in June, 1963. During the academic year 1962-1963, he served as Editor-in-Chief of the University of Chicago Law Review.

Mr. Justice Byron White has appointed Rex E. Lee as his law clerk for 1963-1964. Mr. Lee, a native of St. John's, Arizona, attended Brigham Young University, from which he received the Bachelor of Arts with high honors. During his senior year in college, Mr. Lee was president of the student body. Prior to graduation from college, he spent some two and one-half years in Mexico as a missionary for his church. He is a member of the Board of Editors of the University of Chicago Law Review. At the most recent computation of grade averages, Mr. Lee stood first in his graduating class.

Leon Liddell, Professor of Law and Law Librarian, examines a display of materials representative of those added to the Law Library through the Frieda and Arnold Shure Research Fund. Lee McTurnan Rex Lee
in Chicago where he had been theretofore employed and, in the course of a payroll robbery, Crump shot and killed Ted Zukowski, a guard.

Ted Zukowski was a married man, the father of four children. Crump was the beneficiary of a public school education, ending in the second year at Morgan Park High School.

In both trials he was represented by unusually able criminal counsel of his own choice. He was convicted twice and his punishment was fixed in each instance by a jury at death, although his codefendants were given lesser penalties. This result at each trial was approved by a different trial judge.

The death verdict at the second trial was approved by the Supreme Court of Illinois, People v. Crump, 12 Ill. 2d 402 (1955), the United States Supreme Court denying certiorari, 357 U.S. 906 (1958); by the United States District Court, the United States Court of Appeals, 7th Circuit (United States ex rel Crump v. Sain, Sheriff, 295 F.2d 699 (1961), and the United States Supreme Court denied certiorari, 369 U.S. 830 (1962), followed by a denial of rehearing, ibid. 882. In none of these courts of review did any judge file a dissenting opinion.

His unsuccessful attempts to set aside his conviction were based on his claim that unfair methods were used in obtaining his corroborating confession.

We are not here concerned with any question as to a governor’s power to grant a pardon or commutation of a sentence. Anglo-Saxon law has long recognized that the sovereign possesses that power. Derived from that precedent, the constitution of Illinois expressly bestows such authority on the governor “subject to such regulations as may be provided by law relative to the manner of applying therefor”. § 14, Art. v, Const. Ill. 1870. However, when the governor published his novel reason for exercising this power in the circumstances of this case, he invited thought and comment by the people.

The governor’s announced reason for commuting Crump’s death sentence to 199 years “without parole”1 is that, during his incarceration in the Cook County jail awaiting disposition of several years of post-conviction judicial review instituted by Crump, he has been “rehabilitated.”

It will be noted that this executive action is not based on the traditional ground of a belief in the innocence of a prisoner, either arising from a miscarriage of justice or

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1 No comment is made herein as to the words “without parole,” because of the general assumption by members of the bar that no governor can thereby prevent succeeding state officials from applying the existing parole law from time to time to any person in the future subject thereto. Approximately one month after Crump’s sentence was commuted to 199 years with “no parole,” the Illinois Supreme Court in People ex rel Kinney v. Kinney, et al., 25 Ill. 2d 491, ruled that a 1961 law, making all prisoners eligible for parole in twenty years “regardless of the length” of the sentence, was retroactive. The law thus applies to all prisoners, whether sentenced before or after the effective date of the statute.

The Honorable Elmer J. Schnackenberg, J.D.’12, Judge of the United States Court of Appeals for the Seventh Circuit.

People v. Crump

By THE HONORABLE ELMER J. SCHNACKENBERG, J.D.’12

Judge Schnackenberg, a judge of the United States Court of Appeals, Seventh Circuit, since 1954, has been a member of the Bar of the State of Illinois since 1912. He was in private practice from 1912 to 1945, when he was elected a judge of the Circuit Court of Cook County, where he sat for nine years until his appointment to the Federal bench. He served for a part of his Circuit Court career in the Criminal Court of Cook County.

While Judge Schnackenberg was in private practice, he was also a member of the Illinois House of Representatives, serving twenty-four years in the Legislature. He was Speaker of the House from 1941 to 1944 and while in the Legislature he was one of the principal sponsors of, and was most instrumental in the passage of, the Illinois Indeterminate Sentence Law, which is still the law in Illinois today.

As a judge of the United States Court of Appeals, Judge Schnackenberg hears many of the criminal appeals taken from the District Courts of the Seventh Circuit; he sat upon two of the appeals taken in the Crump case.

The unprecedented reason given by the Governor of Illinois for his recent grant of executive clemency to convicted murderer Paul Crump left Illinois citizens with a widespread feeling of insecurity for the safety of themselves and their families.

In two trials, juries had heard evidence that Crump led four other men on March 20, 1953 to a Stock Yards plant
the discovery of new evidence favorable to the prisoner. Instead, as the people learned from the press, while in jail Crump became a regular reader of the Bible and evi-
denced such a change that it was concluded that he was not the same man who pulled the trigger that produced Ted Zukowski's death; in short, that he had become rehabilitated since entering the jail.

The State of Illinois is firmly committed to the benefi-
cent policy that rehabilitation may be considered by its parole board, established largely for giving effect to that policy, when it decides how long a prisoner shall serve within prison walls a penitentiary sentence imposed by the judgment of a court. Necessarily, however, there is implicit in any conviction imposing the death penalty a forfeiture of any right to an opportunity for rehabilitation.

When the enormity, atrocity and heinousness of a de-
fendant's commission of murder rises to a point indicat-
ing that his continued existence will constitute a real threat to the lives and safety of law-abiding people, then society, as a matter of self-preservation, provides that the death penalty may be imposed. In such a case as the present, a robber by his premeditated, wanton destruction of a fellow human being has, in the judgment of the court, died himself beyond the right of rehabilita-
tion. So they condemned him to die.

If it were not so, every criminal sentenced to the death penalty would artfully strive for executive clemency and, the better the actor, the more his chances to escape that punishment would be.

One awaiting death in a cell, no matter what he has done to others which brought him to that dilemma, can find people, even his keeper, who might state that he has been rehabilitated. As to Crump, even the governor was con-
vincing of that fact, but the application of the rehabilita-
tion theory to one sentenced to death is a contradiction in thought and terms. It actually amounts to a refusal to apply the Illinois death penalty act.

The jurors, as the traditional representatives of the people of the state, after considering the evidence heard in open court, including Crump's confession, found him guilty and, in fixing his punishment, weighed the future risk to innocent persons should he ever be released into contact with society. Two juries felt the risk to society was too great and hence they chose the death penalty, which undoubtedly was within their province. That verdict still stands despite Crump's appeals to all available Illinois and federal courts.

Here was an unbroken sequence of judicial actions, strung out for several years by Crump's use of every law-
ful effort to avoid punishment, which settled once and for all the legal correctness of his death sentence. The courts thereby served notice on all who plan to kill for the purpose of robbery that, when such a killer is convicted, he may for the protection of society be considered beyond rehabilitation and shall forfeit his life.

This action of the courts made every citizen and his family feel safe in Illinois. They knew, of course, if they thought about it, that the governor had an undoubted right to pardon or reduce the sentence. But, no new evi-
dence favorable to Crump having appeared, no perjury or fraud at his trial having been suggested, and his convic-
tion having withstood in every available court the attacks of ingenious lawyers, they assumed that no irrelevant event occurring after his conviction, such as his claimed "rehabilitation," could be utilized to defeat the death penalty law of Illinois.

Citizens might well repeat the query "Death, where is thy sting?" if a murderer may escape that penalty by con-
vincing a governor that, after the lawful imposition thereof, he has "become another man" or has been "rehabilitated." One shudders at the thought that one con-
templating a ruthless killing might even confidently rely on his own histrionic ability, if caught, convicted and sen-
tenced to death.

For then, at the end of the road would not be the pun-
ishment of death but the rainbow of rehabilitation.

Conference Program

In the Autumn Quarter, the School held a Conference on the Uniform Commercial Code. This Conference was designed to examine the Code from a point of view quite different from that of most discussion to date. Instead of the customary article-by-article approach, a group of leading scholars discussed some of the basic problems which arise under articles of the Code, and analyzed the similarities and differences in the treatment of such pro-
blems, in the various articles, as well as the reasons for those similarities or differences. The topics and speakers were:

"Self-Help and other Remedies in the Uniform Commer-
cial Code," by John G. Fleming, Professor of Law, University of California; Berkeley.

"The Floating Lien: A Road to Monopoly?" by Peter F. Coogan, of Ropes and Gray; Boston.

"The Concept of Commercial Reasonableness and Good Faith under the Code," by Alan Farnsworth, Professor of Law, Columbia University.

"Cutting Off Claims of Ownership under the Code," by William D. Warren, Professor of Law, University of California; Los Angeles.

"Cutting Off Defenses under the Code," by Grant Gilmore, Townsend Professor of Law, Yale University.

Soa Mentschikoff, Professor of Law, The University of Chicago Law School, and Associate Chief Reporter, Uniform Commercial Code, presided, introduced the topics and speakers, and moderated the discussion which followed each paper.

A Conference on Church and State was held during
the Winter Quarter, under the chairmanship of Professor Philip B. Kurland. It might interest readers of the Record to note here Mr. Kurland's prospectus of the Conference: "It is perhaps strange that in this democracy the two great causes of domestic conflict currently derive from differences in creed and color among its people. At least these are the conflicts that are of deep concern both to the courts and to the public at this time. It is not strange that the Law School of the University of Chicago should undertake, as part of its Conference Program, to bring together persons competent to shed light rather than heat on the subject of the religious issues, first by an exploration of the depth and breadth of the problem of church and state in this country; second, by an examination of the proper role of the courts and the constitution in the resolution of some of the thornier legal problems that have arisen and are likely to arise."


"Some Vexing Constitutional Issues" was the subject of the afternoon session, over which Professor Dallin H. Oaks presided. The speakers and subjects were:

"Taxation and the First Amendment's Religion Clauses," by Paul G. Kauper, Professor of Law, University of Michigan.


"Constitutionality of Public Aid to Parochial School Education," by the Reverend Robert F. Drinan, S.J., Professor of Law and Dean, Boston College Law School.


Papers delivered at this Conference will be published by The University of Chicago Press in September, 1963.

By the time this issue of the Record reaches its readers, the Conference on the Control of Narcotic Addiction will have taken place. The opening session will examine the case for penal sanctions against addicts, discussing the issues underlying the selection and use of penal and alternative controls of addiction. "A Prosecutor's View" will be presented by the Honorable Carl J. DeBaggio, Chief Counsel, Bureau of Narcotics, U.S. Treasury Department. John R. Silber, Professor of Philosophy at the University of Texas, will speak on "A Philosopher's View." The second session will present four perspectives on the profile of addiction. The papers and speakers will be:

"Addicting Drugs and Human Chemistry: A Pharmacological View of Addiction," by Maurice H. Seevers,

At the Luncheon Session of the Conference on the Uniform Commercial Code, Professor Allison Dunham, of the Law Faculty, left, and Peter F. Coogan, of Ropes and Gray, in Boston.

Left to right: William D. Warren, Professor of Law, University of California at Los Angeles, Soia Mentschikoff, Professor of Law, The University of Chicago Law School, and Grant Gilmore, William K. Townsend Professor of Law, Yale Law School, all of whom participated in the Conference on the Uniform Commercial Code.

Between sessions of the Commercial Code Conference, David Marshall Evans, Assistant Professor of Law at the University of Chicago Law School, left, discusses doctrine (or possibly pipes) with John G. Fleming, Professor of Law at the University of California at Berkeley.
The International Commission of Jurists

By Sir Leslie Knox Munro

Formerly Dean of the Faculty of Law at the University of Auckland; New Zealand Ambassador to the United States, New Zealand Representative to the United Nations Security Council, President of the Twelfth General Assembly of the United Nations; Secretary-General of the International Commission of Jurists; Visiting Professor of Law at The University of Chicago Law School, 1963.

I find, as Secretary-General of the International Commission of Jurists, a growing interest throughout the world in its objectives and its work. I am satisfied that for a long time to come there will be a need for such a body to secure the observance of the Rule of Law.

Let me quote the aims and objectives of the Commission as set forth in its Statute:

The Commission is dedicated to the support and advancement of those principles of justice which constitute the basis of the Rule of Law. The Commission conceives that the establishment and enforcement of a legal system which denies the fundamental rights of the individual violate the Rule of Law.

The Commission will uphold the best traditions and the highest ideals of the administration of justice and the supremacy of law and, by mobilizing the jurists of the world in support of the Rule of Law, will, inter alia, advance and fortify the independence of the judiciary and the legal profession and promote fair trial for all persons accused of crime.

The Commission will foster understanding of and respect for the Rule of Law and give aid and encouragement to those peoples to whom the Rule of Law is denied.

The Commission consists of jurists who are dedicated to its aims and objectives and who in their persons provide wide geographic representation of the legal profession of the free world. The Commission includes 25 members, which number may be increased to a maximum of 40.

I think that it may be properly said that the Jurists now forming the Commission are representative judges and lawyers from all parts of the non-Communist world. Communist judges and lawyers are not associated with the Commission for the simple reason that they are opposed to the Rule of Law as defined by the Commission.

The Commission normally functions through an Executive Committee which meets in Geneva where the headquarters of the Commission are, but from time to time it has met in other countries.

The Secretary-General is responsible for the practical work necessary for the realization of the aims and objectives of the Commission and is empowered within the general policy laid down by the Executive Committee to take such action as may be necessary to this end.

In his report of the Commission's Congress in New Delhi, Mr. Norman Marsh, one of my distinguished predecessors and a well-known British authority on international and comparative law, has thus defined the Rule of Law:
The Rule of Law, as defined in this paper, may therefore be characterized as: "The principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man."

The Commission has evolved, in its ten years of operation, a policy basically carried out in two ways:

a) the investigation of systematic and general violations of the Rule of Law. This requires taking appropriate steps to expose those violations to the world at large and taking such action as may be necessary to rectify breaches of the Rule of Law;

b) the promotion and strengthening of the Rule of Law throughout the world by making more precise its meaning, particularly with reference to rapidly changing societies.

The Commission has been most successful in its investigations of systematic violations of human rights. In carrying out this responsibility, aside from the publication of articles, special reports and the issue of press statements, the Commission has relied heavily in recent years on the situations in countries requiring support of the Rule of Law.

It can be argued that the preservation and promotion of the Rule of Law is part of the daily life of the lawyer, but this is all too frequently forgotten by lawyers whose main concern too often seems to be the increase of income. For example, to have practicing lawyers devote time to the studying of the importance of the independence of the Judiciary—a real and practical problem—requires great invocation on the part of the Commission staff. This is quite remarkable in view of the fact that today there are so many glaring examples of countries, close at hand, where the Rule of Law is non-existent and human suffering is appalling, where the efforts of lawyers and other leading members of the community could have averted disaster. In spite of obstacles and the lassitude from which so many of our colleagues suffer, the Commission will continue to encourage its many associates and friends to act more vigorously for the principles in which it believes and which should be the daily concern of all lawyers.

The Commission has three regular publications: the Bulletin, Journal, and Newsletter. Each has its specific purpose and advantages. The Bulletin, which will now appear four times per year, is designed to permit the Commission to offer frequent editorial comments on instances in which the Rule of Law may be threatened or strengthened. The articles are based on the usual painstaking research, but are generally short and without notes. The Bulletin generally consists of between fifty and fifty-six pages. The Journal is in a sense more "academic" in appearance, is designed to contain longer articles with extensive footnotes and is more exhaustive in its presentation of positive steps taken to strengthen the Rule of Law or to denounce violations of human rights. The Journal appears twice a year and averages about 160 pages in length. The Newsletter is essentially a house organ and comments on current Commission activities; it includes a report on missions, texts of press statements, changes in Commission membership, and similar matters. The Newsletter comes to eight or twelve pages and appears whenever circumstances warrant it.

As mentioned above, it is intended that the Commission publish annually four numbers of the Bulletin, two numbers of the Journal and such Newsletters as may be considered necessary. Since October 1954, when the Commission's publication programme was initiated, the Commission has published fourteen Bulletins (five since January 1959), nine Journals (four since January 1959) and thirteen Newsletters (eight since January 1959).

During the period January 1959 to October 1962, the Commission has distributed a total of 1,134,961 individual units of publications in all languages (1959: 276,330; 1960: 262,531; 1961: 257,642; 1962: 338,418).

I should emphasize that the 40 to 50,000 judges, lawyers and teachers of Law who receive the Commission's publications are to the best of my belief actively interested in our work and its publications. They are on our mailing list because they have asked to be put on the list.

Once every three or four years, the Commission has a World Congress, which is always widely attended by Jurists from all over the world. Thus, we have had Congresses in Berlin, Athens, New Delhi, and last month in Petropolis near Rio de Janeiro. The Congress at Athens issued what is known as the Act of Athens, and that at Delhi the Declaration of Delhi.

At Petropolis the Congress in what is known as the Resolution of Rio de Janeiro reached these conclusions:

It is considered that the protection of the individual from unlawful or excessive interference by government is the foundation of the Rule of Law; the Congress has observed with concern that the rights of the individual were transgressed or ignored in many places in the world and that in many cases this arises from the overreaching by the executive power unrestrained by an independent judiciary. Accordingly the Congress having discussed appropriate measures to remove improper and excessive encroachment by government on the rights of the individual in the field of executive action,

NOW SOLEMNLY
adopts the conclusions annexed to this Resolution and reaffirms the Act of Athens and the Declaration of Delhi assembled by earlier world conferences; which again were sanctioned in the Law of Lagos by the African Conference on the Rule of Law and accordingly calls upon the International Commission of Jurists to give its attention to the following matters which were in the debates of this Congress:

1. The conditions in varying countries on the independence of the judiciary, its security of tenure and its freedom from control direct or indirect by the executive;

2. The encouragement of the establishment of international courts of human rights on a regional basis;
3. The role of the profession of law in modern society having regard to the conclusions of Committee III and in particular to its preamble which enjoins: "In a changing and interdependent world lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenges and the dangers of the times and to realize the aspirations of all people. The lawyer today should not content himself only with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in economic and social affairs if he is to fulfill his vocation as a lawyer; he should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice.

   The conditions to be fulfilled and the steps to be taken in order to enable the lawyer to play this role effectively were dealt with to some extent in the Conclusions of the Fourth Committee of the International Congress of Jurists, New Delhi, India, 1959, and of the Third Committee of the African Conference on the Rule of Law, Lagos Nigeria, 1961.

4. The improvement of legal education where it is needed so that the teaching and the understanding of the Rule of Law in the best traditions of the bench of the bar is inculcated in those entering the profession of the law.

5. The continuance of its important work in investigating and reporting.

There are no doubt varying interpretations of the Rule of Law. Some would identify it with parliamentary democracy, in which there is an opposition and where the principle is adopted of one man one vote. Thus, many denied that the Rule of Law can exist in the single party state.

The question is posed thus: "if a hypothetical one party Afro-Asian state has a free bar, an independent judiciary, a free press and no preventive detention, does not the Rule of Law exist therein as much as it does so in France today?" With the partial acceptance of Pakistan while it was subject to martial law, those Asian states which have adopted one party or military rule do not observe the Rule of Law. I draw your attention to some observations made by Mr. John J.McCloy:

Mr. (Patrick Gordon) Walker has pointed out the fatuity of our belief that democracy and free elections will make friends and win the world. Yet I have the feeling we should not accept too readily the thought that the Asian may not be interested in developing his individual freedoms. Do we not abandon too much to Communism if we cease stressing the simple doctrine of freedom from the oppression of the secret police and the concentration camp? The Asian may be far less sensitive than a Briton to his rights as an individual, but he understands them, or, let us say, recognizes them. Certainly he would appreciate it if he were no longer subject to arbitrary arrest or decapitation. There is something more fundamental here than an electoral system, and given a fair increase in the Asian standard of living, the idea may as readily catch fire in Asia as it did in an earlier day in Europe.

6. What the political form will be in this part of the world is hard to say—it may be a welfare state presided over by an oligarchy—it may well be something far less than parliamentary democracy, as we know it. But constant emphasis on freedom from the police call and slave labour is appealing even if the individual or his whole country never heard of the Bill of Rights. This is a true asset of the West and it is no illusion to continue to feel that all men are attracted to it and better off for it.

There are discouraging manifestations in certain of the new states in Africa of which a prime example is Ghana. While there is a small opposition in the legislature of six, there is no effective opposition. At the same time, there is a preventive detention, whereby the President, Mr. Nkrumah can put into jail for five years, and if he so decides for a further period of five years any person of whose conduct he disapproves. This Statute was validly passed and the Courts in Ghana have held that a person detained has no remedy in the Courts. There is no trial and the only opportunity for regress is an application to the President, who need give no reasons for his refusal to release a detainee. The numbers detained have run into hundreds. Of course, preventive detention is part of the Law of many of the new countries. During the last war, it was employed in this country and the United States. The argument adduced in its favor is that in time of war or where there is no war but a state of emergency, the State should be empowered to act to preserve public safety. I consider the classic case on preventive detention in time of war to be Liversidge v. Anderson 1942 A.C. 206. In this decision, the House of Lords applied the subjective principle and decided that where the Secretary of State acting in good faith under a certain regulation makes an order in which he recites that he has reasonable cause to believe a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him and directs that that person be detained, a Court of Law cannot inquire whether in fact the Secretary of State had reasonable grounds for his belief. I wish to refer in particular to the observations Lord Macmillan made:

   In the first place, it is important to have in mind that the regulation in question is a war measure. This is not to say that the courts ought to adopt in wartime canons of construction different from those which they follow in peace time. The fact that the nation is at war is no justification for any relaxation of the vigilance of the courts in seeing that the law is duly observed, especially in a matter so fundamental as the liberty of the subject—rather the contrary. But in a time of emergency when the life of the whole nation is at stake it may well be that a regulation for the defence of the realm may quite properly have a meaning which because of its drastic invasion of the liberty of the subject the courts would be slow to attribute to a peace time measure. The purpose of the regulation is to ensure public safety, and it is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm. That is in accordance with a general rule applicable to the interpretation of all statutes or statutory regulations in peace time as well as in war time.

I should add that Lord Atkin strongly disented. The Commission is constantly inquiring into this question of preventive detention and has protested strongly to Mr. Nkrumah. One of the persons he detained was the President of the national section of the Commission in Ghana.
I am happy to say that this gentleman has been released, but the government of Ghana refused him permission to attend the Congress at Petropolis.

There may be arguments that in time of war or extreme emergency preventive detention is not incompatible to the Rule of Law, but I believe that where the emergency is created in effect by a state removing any opposition, preventive detention is wholly opposed to the Rule of Law.

In this address I must direct myself to the future activities of the Commission.

This aspect was, of course, carefully considered at the Congress meeting at Petropolis. I have given you the terms of the Resolution of Rio.

Let me go briefly into some essentials. We are living in a changing society. When I say "we" of lawyers, I would look at this juncture particularly at our brethren in the underdeveloped and emerging countries in Asia, Africa, and Latin America. These countries are subject to enormous stresses, both internal and external. One has only to look at India alone, with its enormous population, its great poverty and its menace from its northern neighbour.

The role of the lawyer in all such countries is of supreme importance. He is always in government. Many lawyers are in the administrative agencies and tribunals. Of course, they form the judiciary, the bar, the solicitor branch of the profession. They function in most government departments. They educate those who are to become lawyers and judges.

The Commission must seek to encourage and when necessary, to protect the lawyer in all his various activities.

The Commission's duty is to the layman as well as to the lawyer and to help in the task of assisting the layman in the labyrinth of administrative agencies and tribunals. It must encourage lawyers in all countries to see that there are certain minimum standards for the safeguarding of the Rule of Law in the adoption of administrative regulations and in their enforcement.

The Congress considered it desirable that States should prepare and adopt international conventions providing a right to appeal for individuals and interested groups before an international tribunal to guarantee, in exceptional as well as in normal circumstances, the protection of prescribed rights.

"It is considered to be necessary that at least in cases involving Human Rights there should be an international court to which final recourse might be had by an individual whose rights have been infringed or threatened. Such an international tribunal would be a World Court of Human Rights, its writ effective in any jurisdiction.

"The first step in this direction could be regional conventions with optional clauses analogous to The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Inter-American Draft Convention on Human Rights, and regional courts analogous to the European Court of Human Rights. Close liaison between such regional courts would have to be established in order to develop a common body of judicial decisions."

The Congress and therefore the Commission believes that "In a changing and interdependent world, lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenge and the dangers of the times and to realize the aspirations of all people.

"The lawyer today should not content himself with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in economic and social affairs if he is to fulfill his vocation as a lawyer: he should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice."

The Commission has a responsibility, as I believe, to encourage legal education.

"For the legal profession to be able to perform its social function satisfactorily, the teaching of law should lay special emphasis on three points:

1. reveal the processes through which law can evolve, promoting orderly and significant changes in the social and economic organization of society leading to improved standards of living;

2. stress the study of the principles, institutions and proceedings that are related to the safeguarding and promotion of the rights of individuals and groups;

3. imbue students with the principles of the Rule of Law, making them aware of its high significance, emphasizing the need of meeting the increasing demands of social justice, and helping develop in the student the personal qualities required to uphold the noble ideals of the profession and secure the effective enforcement of law in the community."

"There are two interdependent factors: the content of courses and teaching methods. What follows is in no sense a suggested complete curriculum for law students. Obviously important subjects for the establishment of the Rule of Law are those which stress the content of human freedoms and the protection of the individual from arbitrary action: constitutional and administrative law, criminal law and international legal studies. The importance of procedural safeguards for human rights makes the study of procedural law indispensable. Students must be instructed in general legal principles and in reasoning on specific legal problems. All courses must be taught with emphasis on their social, economic, political and historical background.

"A reference should be made regularly to other legal systems and comparisons drawn between them so as to
allow a more precise evaluation of the merits and defects of the students' own legal system.

"Law Schools should be an active forum for all matters of legal interest and not merely function for the training of law students. They should therefore organize discussions of topics relating to legal reform which concern the area served by them. They should provide refresher courses in new developments of law."

The 1962-63 Committee for the Hinton Moot Court Competition. Seated, clockwise from left front: Richard L. Sigal, A.B., Yale University, Chairman; Donald Segal, S.B., University of Wisconsin, Vice-Chairman; Donald Elsberg, S.B., I.I.T., Vice-Chairman; Henry W. Siegel, A.B., A.M., U.C.L.A., Secretary; Alexander Allison, A.B., Amherst College; Dennis H. Kops, A.B., Harpur College; Barry E. Fink, B.S.C., DePaul University; Ronald Cope, A.B., University of Chicago; Gary Bengston, A.B., Southern Illinois University; Robert Leone, A.B., DePaul University; Russell M. Pelton, A.B., DePauw University; Gaar W. Steiner, A.B., Lawrence College; and Daniel L. Rubin, S.B., University of Pennsylvania. Standing, left to right: Stewart Diamond, A.B., University of Chicago; Thomas Managers, A.B., Wesleyan University; Paul J. Wisner, S.B., Marquette University; and Charles R. Staley, A.B., Harvard University.

The Board of Directors of the Law Student Association for 1962-63, clockwise from left: T. Frank O'Rourke, A.B., C.C.N.Y., President, Autumn and Winter Quarters; Oliver S. Chappell, A.B., Brown University; Peter J. Mone, A.B., Bowdoin College; Thomas A. Ross, A.B., St. Mary's College; Alan Orschel, A.B., Dartmouth College; Charles Kleinbaum, S.B., University of Pennsylvania, President, Spring Quarter; Richard Fine, S.B., University of Wisconsin; James Rainey, S.B., University of Notre Dame; Gerald G. Hester, A.B., Whittier College; William F. Steigman, A.B., Haverford College; Richard Brown, A.B., Princeton University; and Richard Casson, A.B., Colby College.

Shown on the bench of the Kirkland Courtroom after hearing argument in two cases from the Court's regular calendar, left to right: The Honorable Arthur J. Murphy, J.D'22, the Honorable Henry M. Burman, Presiding Justice, and the Honorable Robert E. English, J.D'33, all of the Illinois Appellate Court.

The Board of Editors of the University of Chicago Law Review for 1962-63. Seated, clockwise from center front: Edwin B. Firmage, S.B., Brigham Young University; Rex Lee, A.B., Brigham Young University; June M. Weisberger, A.B., Swarthmore College; Bethilda Olson, A.B., Mills College; Maurice McSweeney, B.S.C., DePaul University; Anthony Gilbert, A.B., Harvard University; John R. Wing, A.B., Yale University; Robert Miller, A.B., University of Chicago; Noel Kaplan, B.S.C., De Paul University; James Marlas, A.B., Harvard University; William Kelley, A.B., Marquette University, Managing Editor; George Fletcher, A.B., University of California; and Burton Glazov, S.B., Northwestern University. Standing, left to right: Paul J. Galanti, A.B., Bowdoin College, Managing Editor; William T. Huyck, A.B., Dartmouth College, Managing Editor; Lee McTurnan, A.B., Harvard University, Editor-in-Chief; George Liebmann, A.B., Dartmouth College, Managing Editor; and William L. Velton, A.B., Amherst College, Managing Editor.
Reapportionment and Judicial Responsibilities

_A talk before the Legal Club of Chicago, April 8, 1963_

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

The question with which I should like to worry you for a few minutes this evening is this: As lawyers and as citizens (but not as Republicans or Democrats, city dwellers or suburbanites) what are we to think of the role the courts are playing or are trying to play in the reapportionment of the state legislatures? Should we applaud or should we deplore? May we accept it as a new and proper phase in the fulfillment of the historic role of courts in our system, or must we receive such benefits as it may produce with misgivings if not with alarm? As to whether it is useful or important for us to consider this question I say nothing. I suggest only that it is an interesting question.
I hesitate to state the issue more precisely than I have done because it is the kind of problem which can hardly be reduced to a narrow proposition and in the end calls more for intuition than for analysis. It is possible, however, to frame the area of uncertainty by recalling some competing social insights which wise and eloquent masters in our field have given us. We might start, for example, with Justice Frankfurter's admonition in Baker v. Carr itself, in his dissenting opinion: "In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives." And alongside this we might put Judge Learned Hand's similar declaration of belief, uttered in a different but surely not irrelevant context: "...This much I think I do know—that a society so riven that the spirit of moderation is gone, no court can save; what a society where that spirit flourishes, no court need save; that in a society which evades its responsibility by thrusting upon courts the nurture of that spirit, that spirit in the end will perish."

But then on the other edge of the same field of vision we must admit the possible force of Professor Freund's gentle rejoinder to Judge Hand's proposition: "The question is not whether courts can do everything but whether they can do something." And although we may doubt that Mr. Justice Holmes would have favored judicial intervention in legislative apportionment, we must bear in mind the possible relevance of his observation that "the felt necessities of the time" have had much to do with the course the law has taken, and that "The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient." Finally, I find at least somewhat arresting the remark made to me by a distinguished lawyer who has himself had more than a small role in the current reapportionment controversy. Commenting on a piece of mine which criticized the Supreme Court's position in Baker v. Carr, he said: "Much of the academic world seems to me to have far too little appreciation of the depth and force of the currents on which the Court is riding. ...I am inclined to believe that many of the problems we now regard as conventional were once even more baffling than these."

It is the depth and force of the currents, perhaps, that give this particular question of judicial responsibility whatever special importance and interest it may have. How should a court respond to strong currents?

It will also help mark out the contours and dimensions of our question, I think, to see just what the problem of reapportionment is, leaving aside the question of the appropriate means to achieve it. The inability to compel representatives of thinly populated districts to surrender their powers over state legislatures amounts to nothing less than the breakdown of the existing foundations of government. What it means is that the built-in mecha-

anisms for adjusting the distribution of political power have failed. If resort to judicial help is really necessary—if neither legislative act nor popular initiative nor constitutional amendment nor constitutional convention is possible because of the rural hold on key parts of the machinery—then the existing constitution has failed. The transfer of political power must be accomplished outside the established processes. In short, the government must be reconstituted.

The term "revolution" is too strongly associated with violence to be appropriate here, I suppose, but it has other implications that are relevant. We really have no word for the peaceful substitution of a new frame of government for an old, by procedures not provided for in the old. In dealing with the southern states after the Civil War we called it reconstruction. What was it when the men of Philadelphia in 1789, departing from their mandate, decided to substitute a new constitution for the Articles of Confederation and when that new constitution went into effect by the ratification process prescribed in the document itself? Is it not that kind of transition which the courts are being asked to bridge in the current reapportionment litigation?

I do not overlook the point that, as the case is put, it is the Federal Constitution which provides the continuity, support and command. I mean only to stress the fundamental nature of the function which the courts are being called upon to perform. Should they respond?

Certainly there are strong reasons on the side of saying they should not. Mention of two must suffice, though there are others. The first is that there is no body of law which points the way toward how a state legislature should be reconstructed, and little likelihood that any satisfactory body of law can emerge from the present litigation. The often-asserted principle of "one man, one vote" gives no recognition to the equally important principle of adequate representation for minority interests, furnishes no guidance on such crucial problems as the size of the legislative body and the drawing of district boundaries, and is capable of producing quite arbitrary restrictions on the framing of state political processes. We would not think of espousing it, for example, as the controlling rule for determining representation in the United Nations.

No other principles which a court might declare have been suggested or seem likely to be. It is true that the Supreme Court might find the problem easier for itself than I have indicated. It might, for example, limit itself to deciding that a state's representation scheme was "unfair," and avoid the difficult question of what would be a fair plan by remanding to the lower court with that convenient directive, "for further proceedings not inconsistent with this opinion." But the problems will not seem that simple to the lower courts.

And this brings me to a second reason against judicial
It cannot, I assume, compel a legislature to enact, a constitutional convention to propose, or the people to initiate a new plan of representation. Its choices seem limited to admonishing the existing legislature or arranging for the election of a new one. Unless the threat of the second is genuine, the first seems likely to be futile or to produce only the mildest kind of self-correction. The ultimate power which the courts are necessarily invoking (and have in some instances already exercised) is the power to create a new legislature, not merely the power to invalidate a law. So drastic an assertion of judicial supremacy would perhaps seem less offensive to democratic principles if the judicial plan of reapportionment could at least be submitted to ratification by the people, as would a new plan of representation framed by, let us say, a constitutional convention. But to condition a judicial decree on popular approval would, of course, be offensive to our notions of the independence of courts and the integrity of the judicial function. Is there not a lesson, perhaps, in this dilemma? Does it not suggest that there may be more importance in the concept of separation of powers than it is fashionable these days to believe?

This issue of principle aside, courts concerned with the vitality of the judicial function must give at least some heed to the possibility that what they command may in the end have to be enforced. I have not so far seen signs of serious resistance to judicial orders in reapportionment cases, and I think we should hope there will be none. But must we not recognize as a possibility that somewhere, sometime, one of these cases may result in a contest for control of a legislative chamber between a group of representatives elected under federal court order and a group elected under the laws of the state? Unlikely as that may be, I think it is not irrelevant to consider whether in such an event we would expect to see the proceedings dictated by federal marshals armed with contempt citations, or entrance to the statehouse controlled by federal soldiers armed with bayonets. Judicial power is at its strongest where it brings the force of the entire community behind a judgment of individual right or individual wrong based on recognizable legal principles which in turn have the sanction of community ethics. It is at its weakest, surely, when it seeks to resolve the conflicting interests of large groups in the community by enforcing mass compliance with a judgment not based on established legal rules or a great moral principle. It is hard not to believe that if judicial power in reapportionment cases ever put to the ultimate test it would end in judicial defeat.

So much for the negative side of the question. There is of course another side, as I tried to indicate at the outset. Perhaps the most appealing point to be made in favor of judicial intervention in reapportionment, and I have no doubt the consideration most influential with the Supreme Court, was the argument of necessity. No matter how difficult or novel the task, and despite some rather nebulous risks or costs to the purity of the judicial function (the argument implied), courts should act because all other avenues were closed. Judicial action was necessary to unlock the situation and release the pent-up democratic energies which would then take over the process of reform. A second point which should now be made, I suppose, is that it is difficult to argue with success. There can be no doubt that the Supreme Court's decision in Baker v. Carr has touched off a wave of activity and brought about, or is in the process of bringing about, legislative revision on a broad front. I do not think we know how substantial this will turn out to be, but for the moment there is certainly reason to believe that Baker v. Carr will indeed prove to have shifted materially the basis of power in our state legislatures.

It is about at this point that analysis must give way and let intuition take over. How shall we appraise these arguments in favor of judicial reapportionment and how shall we weigh them against the vague and impalpable costs? Whatever one says must rest largely on speculation. As to the impossibility of reapportionment without judicial help, my own speculation is that the obstacles to reform were exaggerated. I am sceptical that a determined and organized political majority can indefinitely be denied its proper voice in the state legislature. In Illinois, of course, the reapportionment of 1954 came about shortly after the courts had rejected efforts to obtain judicial help. My examination of the record in Baker v. Carr does not convince me that the failure to reapportion in Tennessee represented more than the rather easy rejection of desultory efforts to obtain new legislation.

I suspect that in general the rural domination of state legislatures has continued not in the face of the kind of "aroused popular conscience" of which Justice Frankfurter spoke, but in the face of the same sort of apathy that permits corrupt machines to dominate city politics and inefficiency to dominate the administration of government. Indeed, it is possible to read the success of Baker v. Carr as confirmation of this point of view. To the extent that reapportionment has already occurred, it is hard to account for in terms of the coercive power of the courts, although uncertainty about what that coercive power might turn out to be has no doubt had some part in the process. Is it not likely, however, that the most important contribution of Baker v. Carr has been its polemic force? It has focused attention on the problem, brought into the open a widespread consensus as to the need for reform, and helped create a momentum for change which legislators find hard to deny—in short, it has itself helped generate the "aroused popular conscience which sears the conscience of the people's representatives."

In the end, perhaps, one's views of Baker v. Carr must turn on whether one believes that arousing the popular
conscience is a proper responsibility of courts, independent of their function of deciding cases. I may conclude by echoing, with variations, some themes suggested earlier: If the currents of reform are deep enough and strong enough, a court need not ride them but need only divert them into their proper channel; but if a court chooses to ride them, or perhaps to generate them, we must hope that it will have vision to see that there may be rocks and shoals ahead. We must also hope that by enjoying the heady satisfactions of riding these currents the court is not encouraging the people to surrender their democratic responsibilities to officials appointed for life.

**Book Review**


**Reviewed by Stanley A. Kaplan**
Professor of Law, The University of Chicago Law School

The review which follows appeared in The Decalogue Journal, Volume 13, Number 1, September–October, 1962, and is reprinted here with the gracious permission of that publication and of the author.

As a gesture of honor to Judge Ulysses S. Schwartz of the Illinois Appellate Court upon the occasion of his 75th birthday, his opinions have been edited and compiled by Louis A. Kohn and Edward R. Lev of the Chicago Bar, and published by the judge's brothers. This compilation is, however, no inconsequential presentation piece issued by a "vanity press"; it is a volume which merits a place of respect on the shelves of any library.

The most immediate and obvious characteristic of Judge Schwartz's opinions is their facility of expression and felicity of allusion. Their literary grace makes them genuinely pleasing to read. They tend to be written in what Professor Llewellyn has termed the "Grand Style" of opinion writing, as contrasted with the "Formal Style"; in Llewellyn's terminology, this suggests no grandiosity but means that the opinion places its legal problem and the pertinent rules in proper perspective in the factual situation and discusses the social and legal considerations relevant to the decision and to the development of a useful rule. Other attributes—of deeper significance than literary lustre—that characterize and pervade Judge Schwartz's opinions are his concern with the effect of the opinion upon the society, his focus upon the social utility of the law, and his constant concern with improving the manner of rendering justice. This concern is illustrated by his many trenchant suggestions for revising rules or statutes which he deems outmoded or unwise; it is particularly well epitomized by his opinion in *Gray v. Gray,* which has been praised and quoted at length in *Delay in the Courts,* by Messrs. Zeisel, Kalven, and Buchholz, who state that Judge Schwartz puts his point "eloquently" and "with special force" in an opinion which is a "notable judicial essay on the problem of court congestion and the concentration of the trial bar."

Judge Schwartz's opinions indicate clearly his belief that the judge should play an active and enlightened role in the growth and development of the law, within the interstitial area in which it is proper for a judge to "make law." He recognizes that the judge does not have full freedom of action, when he states: "This is not a matter involving method or practice or those interstices of the law where courts have latitude. A court is not the forum to consider the effect of the proposed new type of litigation upon the marital status and mold its opinion to form a public policy so determined. Public opinion cannot be consulted by a court nor can social investigators be engaged to inquire into such matters. We must adhere to the more traditional method of construction." He has a decent respect for precedent, a good craftsman's understanding of it, and a willingness to deal openly with it; but he is not hobbled or paralyzed by it.

In *Eich v. Perk Dog Food Co.*, a case of first impression in Illinois, he upheld the right of privacy in an erudite opinion examining the right of privacy in its legal, social, and historical aspects. The *Eich* opinion states, page 37, "But even if we grant defendants' point of view that the right of privacy has no foundation in ancient common law, it does not follow that we should deny plaintiff's right to recovery. To deny relief because of lack of precedent is to freeze the common law as of a particular date. . . . With changing times rigidity can often mean injustice."

With similar flexibility and perspicacity, Judge Schwartz held that the doctrine which denies indemnity between tortfeasors is inapplicable where the liability of one tortfeaster is primary and active and the other secondary and passive. "The principle of no contributions and no indemnity between all joint tortfeasors is more a rule of ethics than a principle of law. The law simply closed its door to the *inter se* disputes of those whom it considered to be bad men. This originated at a time when torts were in the main such wrongs as slander, libel, and assault and battery. Today, torts are mainly the incidents of industry and transportation. To continue to apply the rule to such cases as that before us would make the law no jealous mistress, but a squeamish damsel, refusing to have anything to do with a couple of respectable suitors because her grandfather once told her they were joint tortfeasors." That his participation in the development of the law is conscious and sophisticated is indicated by such statements as: "This is how the doctrine emerges from the cases which have considered it. That this is the common method for the development of our law and represents its unique
and constructive character is demonstrated in *Introduction to Legal Reasoning*, Levi (U. of Chi. Press, 1949).6

Despite his earnest desire to stimulate the improvement of the law and the administration of justice, Judge Schwartz's opinions exhibit the strong rein of judicial restraint. This is peculiarly manifest in his various opinions on appeals involving various administrative activities, ranging from discipline within the police force, to discretionary zoning variations, to the issuance of liquor licenses. He tends strongly to defer to the administrative judgment in the absence of egregious abuse.

On the question of the latitude which a court has in statutory interpretation he commented:7 "We consider it our duty to give the statute a fair and reasonable meaning and not, by a process of indirect attenuation, to repeal or partially repeal it. The legislature, unlike the court, could hear testimony pro and con and could, as a matter of policy, determine whether the statute should be repealed, qualified, or remain as it is. We have no such freedom in determining the law."

This volume of opinions is divided into eight sections. The first section is entitled "Admonition to Counsel"; this title carries an unfortunate implication of officiousness, to which neither the opinions themselves nor Judge Schwartz's reputation for gracious treatment of counsel would lend the slightest support. With few exceptions, the material in the various sections could often be interchanged. One section which is genuinely discrete is that devoted to "Society and the Policeman."

It does not include any headline cases involving extorted confessions, brutality, false arrests, or the like, but it does contain a number of opinions which carefully and conscientiously consider the relationship between the executive staff of the police department, the civil service commission, and the courts. Judge Schwartz points out the need for judicial restraint in this area, with special reference to the imponderables which go into the making of an executive decision and which are difficult of proof in formal litigation. "Courts must move with great care and caution before they set aside the acts of the executive department of the government under any circumstances, but especially in matters such as this."8 He comments further that,9 "It is easy in such cases for courts to fall into the error of assuming their function to be charismatical and to take on the character of super commission or super chief of police.***

"Not a single case has come before us in recent years in which it has been charged, much less proved, that politics or bias motivated the administration of the civil service.

** The Civil Service Act therefore must not be permitted to become a mantle for the corrupt and inefficient. If the court is to substitute its judgment for the judgment of the Civil Service Commission and of the Commissioner of Police as to disciplinary action that should be taken, it would in effect be substituting judicial discipline with-out responsibility for executive discipline with responsibility."

Judge Schwartz's opinions, like his conversation, mirror his eager curiosity, his prodigious memory, and his wide-ranging literary and philosophic interests. They are also enlivened by flashes of sprightliness and wit. He notes, for example, that glib medical witnesses have "shattered the aerial limits of verdicts in personal injury cases and made hundreds of thousands grow where only thousands grew before."10 He recognizes the therapeutic effect of petitions for rehearing which "are sometimes used to serve a secondary purpose—to enable counsel to assuage the digestive pains which follow defeat in a hard fought case where stakes are high."11 He soliloquizes on the problems of the slowness of justice and comments that "Hamlet summarized the seven burdens of man and put the law's delay fifth on his list. If the meter of his verse had permitted, he would perhaps have put it first."12 He quips that "A psychological assault of upper-case artillery and a barrage of emphases serve only to distract and becloud."13 He describes demurrers, prior to the Practice Act, as having come "to have an odious synonymity with deliberate delay."14 In recognizing that opinions should be strongly buttressed and should not be mere exercises in language, he states, "Our conclusion should rest on sturdier basis than the fine art of drawing a desired meaning from ambiguous phrases."15

It is seldom that any judge's work is assembled, examined, and valued as a whole, much less a judge of an intermediate state appellate tribunal. Usually, the work of judges (other than a few of the justices of the United States Supreme Court and such men as Learned Hand) is considered in disparate units, piece by piece, opinion by opinion. In this collection, we are not provided with all of Judge Schwartz's opinions, nor are his opinions complete or in chronological order. The opinions are rigorously excerpted; although the editors have provided excellent brief factual summaries at the beginning of each opinion, the reader often feels that he is reading short essays on varied subjects rather than judicial opinions. In passing, it is surprising to note from this volume how frequently he has dealt with matters of first impression in Illinois. The editors have enhanced the volume with careful annotations. One cannot, however, readily determine from the collection in this form whether there has been change, modification, or growth over the years in Judge Schwartz's philosophy or in his mastery of the opinion form. The reader cannot easily determine from this collection whether Judge Schwartz is more effective in one field or in one subject matter than in another, though it seems to me that his opinions in corporate and commercial affairs are especially trenchant and discerning. It is to be regretted that this volume does not also contain some of the speeches and occasional papers which he has prepared and delivered from time to time. For example, the short address
which he made at the dedication of the courtroom of the University of Chicago Law School in 1960 richly merited preservation; it was a graceful little gem of a speech, wise in its observations, rich in its scholarship, and warmly respectful and sympathetic to the law.

It has been enlightening to read these opinions in conjunction with Professor Llewellyn’s recent volume, The Common Law Tradition: Deciding Appeals, which examines in detail the craft and the techniques of appellate judging. Llewellyn largely takes as his raw material certain random opinions of selected appellate benches, as delivered at particular times; so an observer keen as Professor Llewellyn, this volume of Judge Schwartz’s would be a veritable laboratory, in which, in concentrated form, he could observe the judges as it is practiced by one able exponent. This volume, I trust, may be the forerunner of other similar collections to facilitate the study of such craftsmanship through the close and detailed observation of the work of individual judges. Studies in depth of the opinions of individual judges promise genuine usefulness for observation of judicial craftsmanship and development. From the point of view of watching changes and growth in a judge’s style, his technique and his viewpoint, it would be preferable for the purposes of this kind of study if all of a judge’s opinions were collected, put in chronological order, and set forth in full.

Judge Schwartz’s judicial performance, as exemplified in this volume, merits high commendation; collections of a judge’s opinions which will measure up to his high standards will be very rare. His opinions are forthright, clear, and gracefully stated. They proceed with logic and cogency in stating their premises and in making explicit their relation to precedent, without twisting it or avoiding issues. They demonstrate practical and knowledgeable grasp of their fact situations, and they exhibit wisdom and understanding in their conclusions. They perform well their function of making clear to the litigants and to the Bar the issues which concerned the court, the matters which the court found helpful in dealing with these issues, and the reasons which led the court to the conclusions reached. This volume of Judge Schwartz’s opinions is a pleasing and valuable addition to legal literature.

**FOOTNOTES**

1 Llewellyn, The Common Law Tradition: Deciding Appeals.
9 Nolting v. Civil Service Commission, p. 188 (7 Ill. App. (2d) 147) (1955).
12 Gray v. Gray, p. 6.

**CONFERENCES, LECTURES, AND SPECIAL EVENTS, 1963-1964**

**Summer Quarter, 1963**

Aug. 7—Joint Dinner Meeting of Members of the Conference of Chief Justices, the National Conference of Commissioners on Uniform State Laws, and the Faculty of the Law School.


**Autumn Quarter, 1963**

Oct. 2—Address to entering students by the HONORABLE HENRY J. FRIENDLY, Judge of the United States Court of Appeals for the Second Circuit, and Member of the Law School Visiting Committee.

Nov. 9—Conference on Legal History.

**Winter Quarter, 1964**

Eighth Ernst Freund Lecture, by the RIGHT HONORABLE KENNETH DIPLOCK, Lord Justice of Appeal.

In addition to the items listed above, three more conferences and at least one additional public lecture are currently being arranged.
THE CONFERENCE ON NARCOTIC ADDICTION

Shown during the luncheon break at the Conference on the Control of Narcotic Addiction, left to right, Harold Solomon, Visiting Professor of Law at the University of Chicago, Dr. Maurice H. Seevers, Professor of Pharmacology at the University of Michigan Medical School, Dean Markham, Executive Director of the President's Commission on Narcotic and Drug Abuse, and John R. Silber, Professor of Philosophy, University of Texas.

Left to right, Professor Dallin Oaks, Herbert L. Packer, Professor of Law at Stanford University, who spoke at the Narcotics Conference, and Law School Professor Harry Kalven, Jr., who presided at the morning session of the Conference.

At the Narcotics Conference: Edwin M. Schur, Assistant Professor of Sociology, Tufts University, left, and James M. Ratcliffe, Assistant Dean of the Law School.

Professor Walter J. Blum, left, Chairman of the Conference Committee of the Law Faculty, with Dr. Lawrence Z. Freedman, Foundations' Fund Research Professor of Psychiatry at the University of Chicago School of Medicine, and a speaker at the Narcotics Conference.

THE HINTON COMPETITION

Prior to the beginning of argument in the final round of the Hinton Moot Court Competition, the winning team of Russell M. Pelton, Jr., A.B., DePauw University, left, and Barry E. Fink, B.S.C., De Paul University.

Runners-up in the Hinton Competition were Gary Bengston, S.B., Southern Illinois University, left, and Robert Leone, A.B., De Paul University.
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