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Ernst Freund and the New Age of Legislation

By Francis A. Allen
University Professor of Law
The University of Chicago

(This evaluation of Ernst Freund is excerpted from Professor Allen's introduction to a new edition of Freund's Standards of American Legislation, to be published by The University of Chicago Press in March, 1965.)

Ernst Freund is one of the great and distinctive figures in the history of American legal scholarship. The high regard of his contemporaries is perhaps sufficiently suggested by Mr. Justice Frankfurter's tribute: "I don't think I ever met anybody in the academic world who more justly merited the characterization of a scholar and a gentleman than did Ernst Freund." A more particular recognition of Freund's unique contribution was expressed by an English legal periodical at the time of his death: "All [of Freund's] treatises have a very peculiar quality of their own, unlike anything else in the whole range of English and American legal literature. The author's Teutonic education produced an inexhaustible industry, a remarkable capacity for inventive classification, and a power of subtle and penetrating analysis. . . . He stands out pre-eminently as 'a pioneer in scholarship,' to quote the phrase used in the dedication to him of a recently published volume. . . ."

Perhaps the most persuasive demonstration of Freund's quality may be found in the facts that, although his major preoccupations were in the most fluid and volatile of legal subject matters—constitutional law, administrative law, and legislation—and although his first major work appeared sixty years ago, his writing still possesses the power to stimulate thought and to illuminate contemporary issues. Undoubtedly there are many reasons for the continuing relevance of his work. One of the most important of these was Freund's willingness to relate his writing to a broad base of social theory which . . .

The Class of 1967

The opening paragraph of an article written a year ago to report on the Class of 1966 read as follows: "The student body of the Law School continues to be national in nature, both with respect to colleges attended and the home states from which the students come. On the basis of college grades and aptitude test scores, it also continues to be of remarkably high quality."

Precisely the same statement may be made this year, except that the statistics are even more impressive. Members of the class entering last October had an average Law School Admission Test Score falling in the 95th percentile of all students in the nation taking the test. The 152 members of the class were selected from among nearly 1,100 applicants.

They hold degrees from seventy-five different colleges and universities, divided as follows:

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An aerial view of the Law Buildings, with Burton-Judson Courts, the Law School Residences, in the foreground
Freund and the New Age of Legislation—
Continued from page 1

was, in turn, the product of his remarkable erudition and the wide range of his interests and sympathies. Unlike many of the great legal scholars of his era, he did not devote his life to the elaboration and rationalization of particular areas of common-law adjudication. This is not to say, of course, that Freund was indifferent to legal issues possessing immediate utilitarian importance. A glance at his bibliography reveals clearly enough that Freund was interested in much that is of direct concern to the practicing attorney. But it is significant that, with one possible exception, none of Freund’s major treatises can be described as a practical guide to litigation or counseling. His important study of The Police Power might be so characterized. Freund himself is said to have modestly intended the work as a “practitioner’s handbook,” but no modern reader is likely to accept this as an adequate description. Freund’s theoretical concerns are revealed in his earliest published writings. In the preface to his first volume, The Legal Nature of Corporations, he wrote: “The subject of the following essay belongs to a field of study and investigation that has been comparatively little cultivated in this country: the analysis and nature of legal conceptions without immediate or exclusive reference to practical questions.” If Freund’s influence with the bench and bar was less striking than that of certain other legal scholars of his generation, it was largely because of his refusal to devote his principal attention to matters of immediate professional concern. But the very depth and breadth of his interests contributed to the survival of his work and go far to explain its present importance.

LIFE AND CAREER

Ernst Freund was born in New York on January 30, 1864, while his German parents were paying a brief visit to the United States. His early education was almost wholly German. He was a student at the Kreuzschule in Dresden and the Gymnasium at Frankfort-am-Main, and later attended the University of Berlin and the University of Heidelberg. He received the degree of J.U.D. from the last-named institution in 1884. Shortly thereafter Freund migrated to the United States, and practiced law in New York City from 1886 until 1894. He began his teaching career at Columbia College in 1892, when he joined the faculty as acting professor of administrative law. He was granted a Ph.D. in political science from Columbia in 1897. In 1931, the year before his death, he received an honorary LL.D. from the University of Michigan.

In 1894, Freund began his thirty-eight years of association with the University of Chicago when he accepted an appointment to the political science faculty of the new university as instructor in Roman law and jurisprudence. He quickly gained an enviable reputation as a teacher and a scholar; and when, in 1902, the Law School of the University of Chicago was established, Freund was appointed to the original faculty as professor of law. Within two years Freund had published The Police Power, and in the three decades that followed he produced a steady stream of articles, books, teaching materials, and reports, including his best known writing: Cases on Administrative Law (1911, 2d ed., 1928), The Standards of American Legislation (1917), Administrative Powers over Persons and Property (1928), and Legislative Regulation (1932). In 1929, he was appointed the first John P. Wilson Professor of Law. In 1916, he married Harriet Walton. She and two adopted daughters survived his sudden death on October 20, 1932.

Ernst Freund is remembered as more than a legal scholar. For all his devotion to intellectual pursuits, his life reveals an admirable amalgam of the active and the contemplative. Being a practical legislative draftsman of unusual skill, he was inevitably drawn into vigorous campaigns for legislative law-reform. He played a principal role in the drafting of the new charter for the City of Chicago. In 1908, he was appointed by the governor of Illinois to the National Conference of Commissioners on Uniform State Laws, a position he was to occupy until his death almost a quarter of a century later. From 1915 to 1927, he was a member of the Conference’s Committee on Scope and Program, and contributed importantly to decisions concerning the subjects to be undertaken for uniform legislation. The Report of 1922, dealing exhaustively with the policy and future program of the organization, was largely his. In addition, Freund formulated many of the standards governing the drafting of uniform legislation and personally prepared a substantial number of the uniform acts. This drafting activity encompassed an impressive range of subjects: marriage and divorce, guardianship, child labor, narcotics, drugs, and many more. But Freund was not content to play merely a draftsman’s role; he actively participated in the promotion of legislative reform. His correspondence reveals many instances of his involvement in law-reform efforts throughout the country. He was especially prominent in obtaining legislative acceptance of uniform legislation in Illinois. At the time of his death, Illinois had adopted fourteen of the uniform acts, all but one of which were enacted while he was a member of the conference. In anticipation of the convention which drafted the proposed Illinois constitution of 1920, Freund was retained as counsel by the City of Chicago. After a period of research, drafting, and consultation, Freund formulated provisions dealing with local government based on the principle that Chicago should “possess for all municipal purposes full and complete power of local self-government and corporate action.” The reaction to these pro-
posals and Freund's skill in promoting them have been described by a contemporary observer: "Instantly he became the target of attacks. Men, spurred by sectional feeling or political aims, assailed him as an impractical visionary, derided him as a fanciful professor. Against these attacks he arrayed fundamentals of government, constitutional principles. He restated his views with courteous deference but with learned authority. Toward changes in phraseology he interposed no pedantic pride; but, against any change that might be an impediment in the path of progress, he was adamant. The force of his intellect, the integrity of his character, and the charm of his personality triumphed. The majority rallied to him. His provisions, granting home rule to Chicago, were adopted as proposed!"

One of the prominent aspects of Freund's character and personality was what writers of the past generation sometimes described as a social conscience. He was moved by the human problems of an industrial civilization, and responded to movements for the amelioration of suffering and distress. To some extent these interests were reflected in his scholarly production, as in his study of illegitimacy laws commissioned by the Children's Bureau of the United States Department of Labor. He maintained close contacts with persons engaged in Chicago's welfare and social-work programs. He took an active role in founding the School of Social Service Administration at the University of Chicago in 1920. He was a member of the first board of the Immigrant's Protective League and continued his affiliation with the organization for some twenty-five years, serving for a time as its president. He drafted the act which established the Illinois State Immigrants' Commission. In her memorial tribute to him, Jane Addams said: "He never once failed to be sensitive to injustice and preventable suffering." Harriet Vittum, another prominent social worker of the period, described him as one of the most useful men in Chicago.

Teaching was undoubtedly one of the central concerns of Freund's life. He had strong views on the legal education of his time, and (as will be discussed more fully in later paragraphs) he sought to achieve certain reforms in the methods and substance of American law teaching. His former students recall Freund with affection and respect, and many remember him as the great teacher in their days at the University. A graphic picture of Freund's methods in the classroom was sketched by one of his students:

Yet his passionate eagerness and dynamic enthusiasm for his subject made these classes, particularly the one in Statutes, the intellectual climax of each student's day. Not, however, that we claimed at that time that we understood him fully. Or that he made us content. On the contrary, we emerged from the class in Statutes uncomfortable, confused and bewildered. Most of us had spent more than two years in the orderly process of tracing the intricate designs of the mosaic of judge-made law, carefully laid down in the historical-approach casebooks of the period. But Mr. Freund swept us from the German Civil Code to the English Acts of Parliament, to the Statutes at Large of the Congress and into the myriad session laws and statute books of the several states, where could be found for our guidance no rationalizations, in written opinion or treatise. Worse still, we were placed in the position of legislators or draftsmen facing prospectively a problem. Policies had to be determined, the appropriate devices discovered with which these policies could be best expressed and their administration and enforcement facilitated. It was our first contact with the distressing uncertainties involved in the constructive formulation of the law, our first attempt to cope with unanticipated difficulties."

The picture of Ernst Freund at leisure and in his social contacts emerges with unusual clarity from the comments of those who knew him. He was modest and unassuming in manner, and managed his human relations with unfailing courtesy and consideration. The range of his private interests was exceptional. Mr. Justice Frankfurter recalls his "exquisite appreciation for and pursuit of music and painting and the arts generally." Another interest is rather unexpectedly revealed in Standards of American Legislation. Discussing the then recent legislative assaults on horse racing in the state of New York, Freund observed: "It is understood that this drastic legislation has effectually done away with the previous system of legalized gambling, but that it has also been prejudicial if not fatal to the raising of thoroughbred horses in the United States." Freund proved to be a poor prophet, but one welcomes this evidence of his appreciation of good horse flesh. "The wide range of his reading and his interest in human beings made him a delightful member of any company. His unique talents made him a leader in his profession and in the intellectual life of the University. The integrity of his character and the constancy of his affections made and kept for him a host of friends."

THE INTELLECTUAL WORLD OF ERNST FREUND

The life of Ernst Freund spans the years between the Civil War and the New Deal. In this period "the great transformation" in American life occurred. "As if the forces of change had been pent up for a century, a torrent of events [came] pouring down on mankind." Throughout the Western world, the forces of change produced a new age of legislation. In the United States, the Interstate Commerce Act of 1890 and its subsequent amendments inaugurated an era of federal regulation and established many of the characteristic features of American administrative law. The Sherman Act was only the most conspicuous of the numerous legislative enactments directed against the trusts. In the decade between 1889 and 1899, for example, some seventy antitrust statutes were adopted in twenty-seven state and federal jurisdictions. In the second decade of the twentieth century, the Clayton Act and the Federal Trade
Commission began their careers. Factory legislation, laws regulating the hours of labor and other aspects of the labor contract, workman’s compensation, public utility regulation, and agitation for schemes of social insurance—all became prominent features of American life at or near the turn of the century. This remarkable outburst of legislative innovation brought with it judicial reaction and restraint. Cases like *Lochner v. New York* and *Ives v. So. Buffalo R. Co.* were among the most widely discussed public events of the day.

Throughout his professional life, Freund viewed these occurrences with interest and concern. He brought to his analysis an unmatched knowledge of comparable legislative developments in the industrialized societies of Western Europe. He was one of the first American scholars to give detailed attention to the problems of achieving efficient and effective government while preserving individual rights and volition in an age of widespread legislative regulation. Freund was no uncritical admirer of all that had been done in the name of legislative reform. His underlying attitudes were expressed in a public lecture delivered to the Bar Association of St. Louis in 1923. “It is a different matter,” he said, “when we consider a deliberate course of legislation, which seems to represent a national and world wide tendency. Not that we therefore need consider it as wise or perfect; but the presumption is that it responds to some demand of the time, and that it is inevitable, and temporarily at least legitimate.” And again: “Most of those who are beyond middle life have been educated to regard neutrality with reference to business as the orthodox and desirable attitude of the state. The theory which that attitude reflects was probably well suited to a period of profound economic transformation which could have been directed by law neither successfully nor intelligently. Now the lines of that transformation have become tolerably clear, and since one of the outstanding features of the new organization of business is the service of large numbers of persons by particular concerns, standardization of methods is almost inevitable, and it is perhaps equally inevitable that this standardization should in the course of time express itself in law. The tendency in other words seems to be toward legislative regulation of economic activity.” But if the main tendencies of modern legislation may be regarded in some sense as inevitable, Freund did not doubt that the form and impact of legislative regulation could be significantly controlled and conditioned by deliberate and intelligent effort. Nor did he doubt that failure to take appropriate precautionary measures may result in the most serious consequences to vital social and individual interests.

All Freund’s major volumes are concerned with the new problems created by legislative law-making. Indeed, they may be viewed collectively as a single work, since each of the volumes deals with particular aspects of the larger theme. *The Police Power*, published by Freund early in his career as a law professor, seeks to define the constitutional scope and limits of legislative powers of regulation. The first paragraph of his Preface exposes the fundamental tension between freedom and restraint inherent in all regulative endeavors. The “police power,” he says, should be defined as “meaning the power of promoting the public welfare by restraining and regulating the use of liberty and property.” In *Standards of American Legislation and Legislative Regulation*, the latter published in the final year of his life, he turned directly to the problems of law-making by legislatures and undertook to identify the basic principles of sound legislation and the distinctive techniques of statutory law. But an age of legislation is almost inevitably an age of administration, and Freund’s pioneering works on American administrative law are a natural expression of his general concerns. *Cases on Administrative Law*, which for more than two decades dominated American law school instruction in the field, and *Administrative Powers over Persons and Property*, perhaps Freund’s best known work, complete the list of his major productions.

Freund brought to his work a high intelligence and an erudition that have rarely been matched in the history of American legal scholarship. It was an erudition of many dimensions. First, it should be noted that Freund possessed unusual command of the various divisions of Anglo-American law and that his knowledge encompassed the law in its historical as well as in its modern manifestations. Freund’s interests were by no means confined to the public-law subjects. He wrote and taught in the law of real property (including wills and future interests). His articles range over such diverse areas as domestic relations, corporations, torts, municipal corporations, criminal law, jurisprudence, and international law. Second, because of his German education and subsequent studies, Freund possessed a thorough grasp of the Continental legal systems. It is accurate to regard Freund as one of the first and most important American comparative-law scholars. His *Administrative Powers over Persons and Property* bears the subtitle *A Comparative Survey*; and readers of *Standards of American Legislation* will be impressed by his skillful use of German, French, and English legislative materials. Freund at no time made a fetish of the comparative technique, but employed it as a natural and necessary device for the comprehensive consideration of the subjects he treated. Finally, Freund’s erudition encompassed more than law. He earned a doctorate in political science, taught for a decade in the political science departments of two universities, and in 1915 served as president of the American Political Science Association. He read extensively in the literature of sociology and economics, and possessed a detailed knowledge of commercial practice. His interest in legislation very early directed his attention to the re-
lations of law and social science; and, although he distrusted the enthusiastic movements for "integrating" law and the social sciences that burgeoned in the later years of his life, his comments on the contributions of the social sciences to law-making and legal scholarship are still entitled to respectful consideration.26

Standards of American Legislation provides an admirable introduction to Freund's work and thought. Written originally as a series of lectures for delivery at Johns Hopkins University in 1915, it is the most graceful and engaging of Freund's books. It should be read not as a systematic treatise but as a collection of related essays. Freund professed no great regard for the work, and characteristically described it as a series of impressionistic notes.27 It in fact represents the reflections of a mature scholar of great learning on a vital subject, and it contains insights which retain their freshness and a relevance even after the passage of a half-century. The quality of the Standards was widely recognized when it first appeared, and the book was awarded the James Barr Ames Medal by the Harvard Law School. The present volume presents the text of the work as it appeared in the 1931 printing. The index has been considerably expanded, and a "Summary of Contents" that accompanied earlier printings has been omitted. It is perhaps just to say that the Standards deals with matters of "technical" interest, for it is concerned with problems of social technique. But the matters are not technical in any narrow or trivial sense of the term. Freund is concerned with the new problems of lawmaking confronting the industrialized democracies of the Western world. These are the problems of effective implementation of legislative policy within a framework of values that accord high priority to individual rights and individual freedom. He is primarily concerned with the legislative product, and directs attention to the organization and procedures of legislatures only when such matters bear directly on the form and substance of statutory law. For the same reason he does not concern himself with such problems as apportionment and legislative representation, lobbying, or corruption. In this volume, he speaks primarily of principles and standards and accordingly gives comparatively little detailed attention to the intricacies of statutory drafting or interpretation. The latter subjects were of concern to him, and one interested in a fuller treatment of these matters may turn to his treatise on Legislative Regulation.28 Needless to say, the Standards does not attempt a comprehensive history of the development of social policy in the manner of Dicey's classic work.29

No serious examination of American legislation can avoid discussion of the relations of legislative and judicial power. This was even more clearly true in Freund's day than it is in ours. It is significant that the opening paragraph of the Standards advert to these problems. He does not hide his conviction that many of the then recent decisions invalidating legislative acts on constitutional grounds were mistaken. Thus, Lochner v. New York,30 in which the Supreme Court of the United States struck down a state law limiting the working hours of bakers, is succinctly branded a "judicial blunder."31 Referring to Ives v. So. Buffalo R. Co.,32 which invalidated the New York workman's compensation act, Freund says: "It is perhaps easier to criticize the decision of the Court of Appeals of New York than to explain how the highest court of the greatest state of the Union could have possibly reached the conclusion it did by a unanimous vote."33 It is clear, also, that Freund believed that the judicial doctrines of "liberty of contract," which achieved sudden prominence at the turn of the century, announced no defensible or intelligible principle of constitutional law. As early as 1904, he had written: "It is the merest commonplace that some restraint of liberty of contract and business, some discrimination, is not merely valid, but essential to the interests of society. Can the fundamental law be satisfied with the proclamation of rights of absolutely indeterminate content, directly contrary to other recognized principles, or is not limitation and definition of some sort absolutely essential to an intelligible rule of law?"34 He sounds a similar note in the Standards: "But then, from a legal standpoint, the essential thing is not the right, but its qualification, and an undefined claim to freedom of contract presents in reality no justiciable issue."35 Speaking more generally, he also remarks that "the theory of constitutional law as found in the opinions interpreting due process of law is perhaps the least satisfactory department of American jurisprudence."36

If Freund's position is not to be misapprehended, however, it should be clearly understood that although he believed that many judicial applications of constitutional standards were mistaken and much constitutional doctrine ill-conceived, he never challenged the legitimacy of judicial review or doubted its necessity in the American system. He does not call for the abandonment of the doctrines of substantive due process in the areas of economic regulation; and there is reason to believe that he would have been disconcerted by the developments that approach this result in the modern law of the Fourteenth Amendment.37 Although he believed that "liberty" does not provide a proper criterion for constitutional adjudication, he asserted the importance of judicial protection against arbitrary legislative invasion of vested rights. At several points in the Standards he protests the failure of the courts to assume a more active role. "Indeed, there is rather reason to fear that the courts will exercise the guardianship committed to them with less confidence and boldness than is desirable."38 For Freund, certain kinds of legislative intervention were clearly iniquitous and indefensible. He unreservedly condemns many of
the state licensing laws which he saw as creating wholly unjustifiable barriers to the entry of persons into productive occupations.49 Freund's quarrels with the performance of the courts of his day did not extend to the "underlying philosophical concept" of the due process clause: "It stands for the idea that it is not the mere enactment of a statute in constitutional form that produces law, but the conformity of that enactment to those essentials of order and justice which in our minds are indispensable to the nature of law."40 He adds, however: "Viewed in the light of history, these essentials are few..."41

But Freund went further. He saw in the "liberty of contract" cases, which he freely criticized, evidence of legislative as well as judicial failure. "It would be untrue to say," he wrote in 1904, "that all of the legislation that has been declared unconstitutional has been vicious or oppressive, and none of it has been absolutely arbitrary or unreasonable; but most of it has been of doubtful wisdom or expediency, and probably all of it has inflicted or threatened to inflict serious injury on legitimate interests. And it is probably true that, in a great majority of cases, those interests received their first hearings under forms giving some assurance of impartial and adequate consideration in the courts of justice."42 The same point is elaborated in the Standards: "A statute enacted at the request of labor interests generally seeks to redress some injustice or grievance, but very often the practice which employers are forbidden to continue has some element of justification in the shortcomings of labor; and a mere one-sided prohibition without corresponding readjustments leaves the relations defective, with the balance of inconvenience merely shifted from one side to the other. Under such circumstances the courts are much inclined to assent to the claim that there has been an arbitrary interference with liberty or a violation of due process, and there is a sufficient falling short of sound principles of legislation to make adverse judicial decisions intelligible."43

Freund's comments on the relations of legislative and judicial power lead naturally to the primary theme of the Standards: the search for adequate principles to guide modern legislative law-making. As has been observed, he regarded the judicial function as vital and could assert that "our main reliance for the perpetuation of ideals of individual liberty must be in the continued exercise of the judicial prerogative."44 But equally important is Freund's strongly expressed conviction that constitutional law is incapable of serving as an adequate source of legislative principles. This theme recurs throughout Freund's major works. It seems not too much to say that one of his principal scholarly objectives was the freeing of American public law from what he conceived to be the crippling dominance of constitutional law.45 Freund identifies a number of considerations which, in his view, render constitutional law an insufficient guide for modern legislation. In one of his articles, he argues that the adversary process in constitutional litigation is incapable of unearth ing the range of facts required for sound judgments on the wisdom of legislative measures.46 At other times, he emphasizes the inevitable vagueness of constitutional standards. Even when the legislation under attack suffers from serious deficiencies, judicial condemnations expressed in the language of due process or liberty of contract rarely expose the vice with necessary precision.47 Of perhaps particular relevance to the modern reader is his argument that because constitutional adjudication is primarily concerned with the limits of power, it provides poor guidance for the wise uses of conceded power. Reliance on constitutional standards may therefore result in lesser rather than greater protections of individual rights. "The extreme of power tends to become the norm of legislation. For unfortunately the only utterances upon the constitutional justice of legislation that carry any authority are those from the courts; from this lawyers are likely to conclude that there are no non-judicial principles applicable to constitutional rights; and legislators (many of whom are lawyers) seem to believe that the principles enforced by the courts are the true and only principles of legislation."48 On another occasion, he wrote: "We have become so accustomed to rely upon written constitutions for legislative restraint, that we have lost to a considerable degree the habit of voluntary restraint which is politically so much more valuable."49 We are in danger of "confusing what is sustainable with what is right."50 These points have been made frequently since Freund wrote, and undoubtedly had been expressed before; but they have rarely been made as effectively.

Freund's search for standards of legislation leads him, naturally enough, to a consideration of the common law and the processes of common-law adjudication. He recognizes that the common law is a system of principle and, as such, gains allegiance and acquires legitimacy.51 Clearly, however, the system of judge-made law is insufficient to satisfy the requirements of the modern era. Most of the reasons adduced by Freund to support this conclusion are familiar and need not be canvassed here. His final point is arresting, however, and deserves attention. "The spirit of the common law," he writes, "was too neutral for an effective offensive against practices injurious to the weaker elements of society."52 In an earlier paragraph he had developed the same point with perhaps unconscious irony: "When interests are litigated in particular cases, they not only appear as scattered and isolated interests, but their social incidence is obscured by the adventitious personal factor which colors every controversy. If policy means the conscious favoring of social above particular interests, the common law must be charged with having too much justice and too little
He recognized that there are certain regularities in human behavior, certain conditioning factors in the traditions, habits, and values of a people, which can be ignored by the law-maker only at his peril. Freund was never tempted to believe that water can be induced to run uphill by an act of Congress. "That the fight is won in the courts settles nothing if the principle is unsound. The courts tell us that valuable interests may be sacrificed to conjectural apprehensions, but the practical needs of the community reject and finally overthrow the conclusion." So also, a criminal statute that does not adequately define the scope of liability "is not only unjust to the defendant, but disadvantageous to the prosecuting government, not only because it will make convictions difficult, but because it will diminish the vigor and confidence of official enforcement." Certainly, the beginning of wisdom in legislative law-making is to acquire an adequate factual basis for action. "[T]he determining factor in justifying legislation is that both defect and remedy have some basis of evidence and have ceased to be a matter of more surmise and allegation." He thought it possible that "[t]he time may come when courts will be justified in demanding that the legislature shall act only upon some evidence somewhere placed on record." But, he adds, "that time has hardly yet arrived." Indeed, the absence of appropriate concern for the facts is one of the characteristic and deplorable aspects of legislative practice. "The student of the history of legislation has constant occasion to wonder, not merely at the absence of impartial and authoritative statements of facts and conclusions, but at the entire failure on the part of those demanding legislative interference to make an impressive or plausible, or, for that matter, any kind of a presentation of their case." Even with the most conscientious effort, legislation, like all other forms of social action, runs the risks of unanticipated consequences. "It is also necessary to have a proper appreciation of the unintended reactions of the proposed legislation resulting either from its normal operation . . . or from the conditions of enforcement . . . or from attempts at lawful evasion . . . or from illegal evasion . . ." On the whole, Freund was profoundly skeptical of the capacity of legislation to effect sudden and significant alterations in the structure of society. "[G]enerally speaking, the function of legislation [is] to remedy grievances and correct abuses, and not to reconstruct society de novo or to force standards for which the community is not prepared."

The foregoing discussion, whatever its general interest, leaves Freund the task of identifying and analyzing particular principles of legislation. No attempt is made in the Standards to present a comprehensive canvass of such principles. Instead, Freund is content to offer illustrations of the kinds of considerations that might be made the objects of more systematic elaboration in the science of
jurisprudence he visualized. He first presents a series of random examples. Thus, from the history of criminal enforcement of the Sherman Act he deduces the proposition that "penal legislation ought to avoid elastic prohibitions where the difference between the exercise of a valuable right and the commission of a proposed criminal offense is entirely one of degree and effect."66 But the larger part of his analysis concerns two much more comprehensive concepts: the principles of correlation and of standardization.

By correlation, Freund means the interdependence of rights and obligations. "In so far as it is recognized it compels the legislator to examine a relation, if the term may be used, from the debit as well as the credit side, and it works against the assertion of absolute and unqualified right."67 It is the failure "to perform the difficult task of adequately surveying and covering the entire aggregate of rights and obligations involved in new legislation which accounts for much of the alleged unreasonableness of modern statutes, and has been particularly conspicuous in labor legislation."68 Thus, can the state without the sacrifice of justice require an employer to institute a hiring policy that does not discriminate against union labor without protecting him from the abuses of union power? Or (to use an example much discussed in Freund's centennial year) may the community impose penalties on the citizen who fails to come to the aid of one being made a victim of crime without offering compensation to the citizen or his family in the event that the required intervention results in injury or death? It will be clear to the reader, as it was to Freund, that the principle of correlation is impossible of complete realization. The ramifications of legislative regulation are so numerous and pervasive that no effort or foresight on the part of legislators can assure a perfect balancing of privileges and obligations. "The claim," says Freund, "is not that legislation shall be perfect, but that it shall approximate perfection so far as actual conditions will permit. Only to this extent is the principle of correlation contended for. It is easily demonstrated that much legislation falls short even of the attainable standard."69

The principle of standardization is Freund's second major concept. "If correlation means more carefully measured justice, standardization serves to advance the other main objects of the law, namely, certainty, objectivity, stability, and uniformity."70 Whatever improvements may have occurred in legislative practice during the past half-century, sheer caprice and inconsistency still characterize much of American legislation. In Freund's view, these failures threaten the legitimacy of statutory law. "Permanence and uniformity are in themselves elements of strength ... Conversely, lack of standardization must weaken the authority of statutes."71 Modern illustrations of Freund's position come readily to mind. It was discovered, for example, that the criminal statutes operative in Illinois before the enactment of the Criminal Code of 196172 employed more than a dozen different terms to describe the mental elements of the various crimes defined. The difficulty was that the legislature had used some fifteen or sixteen undefined statutory terms to express not more than five or six distinct ideas. The wholly avoidable confusion that resulted advanced neither the interests of the state nor those of the individual citizen. But the problem encompasses more than the capricious use of language. Certain features of regulatory legislation, such as those relating to enforcement and administration, present common problems and, in Freund's view, should be made to express a consistent policy. "If policies regarding subsidiary clauses are determined anew for each measure as a mere matter of habit or as a consequence of the absence of a general rule, it means for the legislature the waste and wear of responsibility for new decisions, for the administration the inefficiency which results from lack of consistent purpose, and for the individual lack of uniformity and therefore something that approaches the deprivation of the equal protection of the law."73 No doubt, in some degree modern American legislation reveals greater fidelity to the principle of standardization than in the period in which Freund wrote; and it is also probably true that further improvements may be expected from the expanded operations of such devices as the legislative reference bureau, of which Freund was one of the earliest and most effective proponents. But Freund's discussion demonstrates that some of the causes of the unfortunate "ad hocness" of our statutory law reflect basic characteristics of American legislative bodies. "The striking difference between legislation abroad and in this country is that under every system except the American the executive government has a practical monopoly of the legislative initiative."74 This extraordinary diffusion of legislative initiative among all members of the legislature breeds irresponsibility and resists standardization and uniformity where consistency of practice is most desirable. But the privilege of legislative initiative does much to enhance the power and prestige of the individual legislator; and its speedy surrender is hardly to be anticipated.

Although the Standards is first and foremost an investigation into the nature of principle in legislation, it also serves as a vehicle for a variety of Freund's reflections on the problems of the modern world. These dicta remain one of the principal attractions of the volume. Much of Freund's thought was devoted to the complexities of preserving individual freedom in the emerging welfare state. He approached these problems with a strong initial bias in favor of the basic freedoms of expression. In The Police Power he had written: "[T]he constitutional guarantee of freedom of speech and press and assembly demands the right to oppose all government and to argue that the overthrow of government cannot be accom-
plished otherwise than by force; and the statutes referred to, in so far as they deny these rights, should be considered unconstitutional.”775 In the Standards he says: “That immediate political advantage is so readily sacrificed to the conviction that free expression of opinion is in the long run more wholesome to the constitution of the body politic is one of the most remarkable achievements of democracy and of education in public affairs.”776 Although he was not unaware of certain illiberal tendencies of his time, his confidence in the security of the rights of free expression seems to have prevented his foreseeing the continuing crisis of individual freedom that first beset the United States and all Western civilization in the years immediately following the First World War. Perhaps more surprising was Freund’s failure to anticipate the complexity of the specifically legal problems presented by certain kinds of civil liberties litigation, particularly that involving charges of obscenity. “The offense of lewdness and obscenity,” he wrote, “...is a matter of circumstance, spirit, and purpose, but these are on the whole so well understood that in the great majority of cases it is clear enough whether acts or conditions fall under the criminal law.”777 But if some of Freund’s particular comments on the civil liberties have only limited application to modern problems, much of his general analysis has greater relevance. One of the preoccupations of American legislatures in the present century has been the enactment of statutes that define “political” crimes: offenses that adversely affect or are believed to affect the security of the state. Since the legislative objective is to frustrate subversive activity before it becomes an unmanageable threat to the government, the statutes typically attempt to reach, through the conspiracy concept or other devices, conduct that is not immediately dangerous but which is believed to be potentially dangerous.778 Although Freund’s comments were not specifically directed to legislation defining political offenses, his remarks constitute an unusally effective and succinct description of the problems in this area: “[I]n the absence of scientific certainty it must be borne in mind that the farther back from the point of imminent danger the law draws the safety line of police regulation, so much the greater is the possibility that legislative interference is unwarranted.”779 And again: “If free action is as essential to the interests of the community as protection from harm, the remoteness or conjectural character of the danger is in itself a strong argument against the policy of legislative interference and, if liberty is held to be a constitutional right, against its validity.”780

It is apparent that Freund was fascinated by the paradoxes of freedom in the modern world. Certainly, the conditions of an industrialized society require police power regulation, which is to say, the limitation of freedom. In this connection Freund delivers one of his best known observations: “Living under free institutions we submit to public regulation and control in ways that would appear inconceivable to the spirit of oriental despotism; it is well known what deep-seated repugnance and resistance of the native population to the invasion of their domestic privacy and personal habits English health officers in India have to overcome in order to enforce the sanitary measures necessary to prevent the spread of infectious or contagious disease.”781 Even the notion of freedom from regulation “has become unmeaning in so far as adequate freedom in the sense of free scope of endeavor and of action demands regulation in support of it.”782

But Freund also identifies another range of problems: those encompassed by the paradox that there are certain kinds of freedom peculiarly vulnerable to invasion by the political agencies of a democratic community. “A strong sense of civil liberty affords no guaranty of tolerance for practices conceived to be immoral, especially where the immorality bears on social as distinguished from business and political relations; on the contrary, the enlightened democratic community is apt to be more intolerant than that which is despotically governed.”783 These problems are still very much a part of American life, and, insofar as their practical aspects are concerned, it is doubtful that the modern polemics have advanced the discussion much beyond the point at which Freund left it in the Standards. Freund does not begin with a doctrinaire insistence that there are areas of private morality that may under no circumstances be invaded by legislative power. Instead, he explores the American experience with sumptuary legislation, particularly that involving liquor control and gambling, and concludes that such attempts have in general resulted in unfortunate consequences. “We may start with the obvious observation,” he says, “that not every standard of conduct that is fit to be observed is also fit to be enforced.”784 And the discrepancies between the legal norms and their enforcement are where many of the difficulties arise. In The Police Power Freund observes: “It [legislation for the protection of morals] is the tribute which the organized community pays to virtue, and the tribute is willingly paid so long as it involves nothing more than the enactment of a statute.”785 And in the Standards: “The formal declaration of policies is insisted upon irrespective of whether they can be carried out faithfully or even with tolerable success; indeed, the advanced policy is sometimes consented to only upon the tacit understanding that in actual administration it will be somewhat relaxed.”786 It is perhaps here that a sound sense of “the limits of the attainable” is particularly required. “There is an obvious unwillingness to abandon abstract moral standards once established, and the evil effects of disharmony between legislation and administration is not sufficiently appreciated.”787 Freund’s essential teaching is that before legislative intervention in these areas is sanctioned there should be a careful and dispassionate
calculation of the costs involved. It is a message of as great a relevancy today as it was in Freund's time and one substantially ignored by the makers of American legislation during the half-century since he wrote.

Freund's views on American legal scholarship and American legal education require brief attention, because they constituted an integral part of his thought and contributed in some measure to his continuing influence. The Law School of the University of Chicago was opened on October 1, 1902. An agreement had been reached with Harvard Law School for the loan of Professor Joseph H. Beale, Jr., to serve as the first dean of the new school. There is some evidence that President Harper of the University of Chicago originally conceived of the new school primarily as an institute for scholarly research rather than as a school for the training of professional practitioners. Freund resisted this concept, and argued that the effectiveness of the new school depended upon its being placed on a sound professional basis; and his view of the matter ultimately prevailed. Nevertheless, only six months before the law school was scheduled to open, a letter from Dean James Barr Ames of Harvard to President Harper protested Freund's views of legal education and suggested that if they were to prevail, Professor Beale ought not to undertake the temporary deanship at Chicago. "I understand it to be your wish and purpose," wrote Dean Ames, "to establish at your University a law school resembling as closely as possible in its curriculum, methods of study, and quality of its Faculty, the Harvard Law School." But a recent conversation with Professor Freund had raised serious doubts about the latter's commitment to these goals. Dean Ames lists three principal areas of disagreement. First, Freund had "suggested that 2/9 of the work leading to the degree should consist of subjects belonging properly in the departments of Political Science or Sociology." Second, Freund would admit non-lawyers to the faculty to teach non-legal subjects, whereas the success at Harvard was "due in no small degree to the solidarity of our Faculty and to its concentration upon the work of teaching the law pure and simple." Finally, Dean Ames suspected that Freund's commitment to the case method of instruction was something less than wholehearted. Appropriate assurances were apparently provided, since Professor Beale came to Chicago as dean of the Law School and made an important contribution to the School's establishment and early development.

Consideration of Dean Ames's concerns provides a convenient device for examining Freund's views on legal education. Sometime early in 1902, Freund prepared a proposed three-year curriculum for the new school. Some of the proposals were entirely conventional, but others must have seemed at the time to involve startling innovations. In the second and third years, the students would have been required to elect five or six units from among such course offerings as criminology, experimental psychology, relation of state to industry, and finance. It was this proposal which seems to have particularly alarmed Dean Ames and Professor Beale. But perhaps more significant was Freund's emphasis on the public law subjects. He proposed instruction in constitutional law and international law as part of the required first-year curriculum and would have offered administrative law and federal jurisdiction among the second and third-year electives. Freund's proposed courses in non-legal subject matter did not survive the opening of the Law School, but his impact on the school's instructional program was, nevertheless, clear. Thus, the 1902 catalogue states the second objective of the school to be the cultivation and encouragement of "the scientific study of systematic and comparative jurisprudence, legal history, and principles of legislation." Administrative law became an established feature of the curriculum, and courses in international law were taught by members of the University's political science faculty.

In the years that followed, Freund's own courses and the particular emphasis of his interests strongly affected the character of the institution. Indeed, the nature and extent of Freund's influence led Mr. Justice Frankfurter to identify him as "the father of the Law School." There is no evidence that Freund at any time advocated complete abandonment of the case method of instruction in the American law schools. In the Standards he recognizes it as "a method superior to the German system as a training for the future practitioner..." But Dean Ames's suspicions that Freund entertained reservations about the case method seem to have been well founded. As early as 1915, Freund was quoted as doubting the effectiveness of the method after about the middle of the student's second year in law school, an observation expressed by many modern teachers of law. But more seriously, Freund was concerned about case study as the exclusive mode of law school instruction, because of its impact not only on legal education but on legal scholarship as well. He regarded the influence of the case method as being "as unfavorable as possible from the legislative point of view; for the ideals of case law will tend to be those of the system in which judge-made law had its highest development... and the case method will foster the common-law attitude toward legislation, looking upon it as an inferior product of the non-legal mind to be tolerated and minimized in its effects. Freund made no secret of his dissatisfaction with the state of legal scholarship in his time. In the Standards he remarks: "Unfortunately, hardly any systematic thought has been given to problems of jurisprudence in their constructive aspect... In America the critical treatment of technical legislative problems is... meager and unsystematic." Freund must have suffered at times from the loneliness of an intellectual pioneer; and he was probably
expressing more than the natural resentment of an author for his critics when he confessed that he had never read an understanding review of one of his books.87 There is evidence that he believed that legal scholars had not sufficiently immersed themselves in the problems of social policy and had failed to master the materials necessary for sound policy judgments. At a meeting of the Association of American Law Schools, he is reported to have "compared the wanderings of the social scientist through the trackless wilderness of fact and official action with the smooth road of the law teacher, whose way was made clear... when he found the appropriate key number" in the legal digests.88 It is apparent that the preoccupations of legal scholarship have substantially changed since Freund's day and, from Freund's point of view, for the better. It would not be accurate to suggest that Freund's influence was primarily responsible for these changes. The logic of events made it inevitable that the law schools could not forever confine themselves to the elaboration and rationalization of common-law doctrine, important as that undertaking undoubtedly is. But Freund foresaw the path that much modern legal scholarship would be required to follow, and he is entitled to recognition for his vision and his constructive example.

_Standards of American Legislation_ remains after half a century one of the most stimulating books ever to come out of an American law school. It is not without its weaknesses. One may justly complain, for example, that much of Freund's discussion of legislative principle is too general and too little related to particular areas of legislative regulation to be wholly meaningful. On the other hand, the need for general theory in at least certain areas of legislative policy is clear and compelling. Penal sanctions appended to regulatory statutes constitute one of these areas, and Freund's argument for consistency of policy in the interests of efficiency and individual rights is highly persuasive.89 Much greater attention is given to legislative materials in legal education today than formerly; but many of the difficulties confronting courses in legislation that Freund identified remain largely unsolved.90 In short, the _Standards_ does not solve all the problems it exposes. "It is not for the student of... law to offer a solution for every problem in his field," Freund wrote, "but he should help others to understand why some problems are as yet unsolved."91 Tested by Freund's own criteria, the book must be judged an impressive achievement.

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1 Frankfurter, Some Observations on Supreme Court Litigation and Legal Education 1 (The Ernst Freund Lecture, The Law School, University of Chicago, February 11, 1953).
2 Note, 49 Law Quarterly Review 177 (April, 1933).
4 Van Hecke, “Ernst Freund as a Teacher of Legislation,” 1 U. Chi. L. Rev. 92 (1933).
5 Freund, The Legal Nature of Corporations 5 (1897). Freund was not unaware that theoretical writing in the law was confronted by its own particular perils, for he adds: “Such analysis is apt to lose itself in metaphysical speculations and refined distinctions of little substantial value: it has therefore fallen into some measure of disrepute even in Germany, where legal science and abstract jurisprudence were for a long time almost convertible terms.”
7 The fullest account of Freund’s activities in the National Conference of Commissioners on Uniform State Laws is to be found in Kent, “The Work of Ernst Freund in the Field of Legislation,” 1 U. Chi. L. Rev. 94 (1933). See also Kent, “Ernst Freund (1864–1932)—Jurist and Social Scientist,” 41 J. Pol. Econ. 145 (1933).
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39 Id. at 99-103.

40 Id. at 207.

41 Ibid.

42 Freund, op. cit. supra note 34, at 9-10.

43 S.A.L. at 240-241.

44 Id. at 212-213.

45 One manifestation of this position was Freund's insistence that the study of administrative law requires a focus on the administrative process rather than on such constitutional problems as delegation and separation of powers. See Comment, "Ernst Freund—Pioneer of Administrative Law," 29 U. Chi. L. Rev. 755 (1962).

46 Freund, op. cit. supra note 34, at 11-12.

47 S.A.L. at 211-212, 220.

48 Id. at 284-285.


50 Id. at 78.

51 'Permanence and uniformity are in themselves elements of strength and authority; and with all its defects the common law has never failed to command that respect which belongs to a settled and consistent rule." S.A.L. at 261.

52 Id. at 71.

53 Id. at 48.

54 Id. at 214.

55 Id. at 215.

56 Freund, op. cit. supra note 49 at 77.

57 S.A.L. at 218.

58 Id. at 216.

59 Id. at 94-95. See also Freund, Illegitimacy Laws of the United States 56 (1919); "The practicability of such legitimation of the child by the face of the law should be carefully scrutinized. The normal legal relation between parent and child involves the social foundation of a lawful or de facto marriage; without this, it is in fact a different relation—a fact which no dictate of legislation can alter." S.A.L. at 225.

60 Id. at 128.

61 Id. at 99.

62 Id. at 135.

63 Id. at 254.

64 Id. at 255.

65 Id. at 222. Freund had made the same point in his earlier work: "it cannot be maintained that this principle is part of the general American constitutional law; but it seems to be in accordance with sound legislative policy, that the exercise of a right intrinsically useful and indispensable should not become criminal by overstepping a line which the law refuses to define and which is not defined by custom." Pol. P. at 25. See also Freund, "The Use of Indefinite Terms in Statutes," 30 Yale L.J. 437 (1921).

67 S.A.L. at 248.

68 Id. at 240.

69 Id. at 246.

70 Id. at 248.

71 Id. at 261.


73 S.A.L. at 269.

74 Id. at 288.

75 Pol. P. at 513.

76 S.A.L. at 16.

77 Id. at 78.


79 S.A.L. at 83.

80 Id. at 84.

81 Id. at 21. See also Pol. P. at 109.

82 Freund, op. cit. supra note 28, at 116-117.

83 Pol. P. at 172, n. 1.

84 S.A.L. at 106.

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86 S.A.L. at 19-20.

87 Id. at 105.

88 Van Hecke, "Ernst Freund as a Teacher of Legislation," 1 U. Chi. L. Rev. 92, 93 (1933).


90 Proposed Curriculum of Ernst Freund, Archives of the University of Chicago.


93 S.A.L. at 311-312.

94 Van Hecke, op. cit. supra note 88, at 93.

95 S.A.L. at 312.

96 Id. at 251-252.

97 Van Hecke, op. cit. supra note 88, at 92.

98 Id. at 93-94.

99 S.A.L. at 270. See also Freund, Legislative Regulation 339-340 (1932).

100 S.A.L. at 314.

"Fresh Breezes in the Windy City"
Fresh Breezes in the Windy City

By Katharine Kuh

(The article which follows is reprinted from the July 25, 1964 issue of the Saturday Review, with the kind permission of the Review and of the author.)

This spring Chicago hit the jackpot twice with impressive impact. First came the announcement that the Newberry Library had purchased Louis Silver's peerless collection of rare books, a formidable group designed to augment and reinforce the already distinguished holdings of that institution. Mr. Silver, a dynamic personality, served on the board of the library until his recent death. To visit the collection at his suburban home was an electrifying experience, made more so by the presence of several fine Rembrandt drawings and by Mr. Silver's own contagious chubbiness. If my blood pressure sometimes shot up during these encounters, so always did my spirits. Mr. Silver's name is remembered, too, at the University of Chicago, from whose Law School he graduated. There, in the recently completed Law Library, a room dedicated to the Louis Silver Special Book Collection features rare legal volumes, some dating from as early as the fifteenth century.

And it was in front of the handsome new law buildings designed by the late Eero Saarinen that Chicago hit the jackpot a second time this season. On June 10, what may well prove to be the city's most important modern outdoor sculpture was dedicated. Conceived by Antoine Pevsner, noted Russian constructivist artist who lived in Paris from 1923 until his death in 1962, the soaring bronze abstraction is named Construction in Space in the Third and Fourth Dimension, a title which on first acquaintance may seem unduly pretentious but which after adequate study becomes entirely valid. For what happens here is peculiarly related to the dimensions of space and time. The sculpture, specifically planned to be seen from all sides, changes as the observer varies his position, an act requiring deliberation. To view it from a window in the Law Library is a radically different experience from approaching it at street level. Rarely has a sculpture been more fully oriented to the multilateral possibilities of its structure. It seems to unfold, to move not only in space but in time with an almost hypnotic rhythm, and yet this bronze is static, securely fastened to a magnificent granite base (also designed by Pevsner). Convoluted free planes are so interpenetrated with linear ribs as to suggest the process of evolving growth.

Pevsner and his equally renowned younger brother, Gabo, have proved that a sculpture can be mobile without being a mobile. Never literal, never realistic, Pevsner abstracted from both nature and contemporary life, his proliferating forms reminiscent of immaculate industrial machinery no less than intricate plant life.

In discussing the construction he gave to the university, New Yorker Alex Hillman, a graduate of Chicago forty years ago, has described it as "the conquest of a poetic vision." Pevsner, he says, "liberated us from mass. His sculpture affirms the architecture of Saarinen." And, indeed, from the start Eero Saarinen advocated a work by Pevsner for the 90-by-120-foot reflecting pool in the Law School's central court, a refreshing decision these days when public sculpture in America focuses almost obsessively on the massive figures of Henry Moore. This is not to deplore such abundance, but constant repetition can make even inspired work seem perfunctory. "Eero felt that Pevsner belonged to our time," said the architect's widow, Aline Saarinen, at the dedication.

Saarinen's four buildings comprising the Law School complex are joined by organic passageways that lead without interruption from library to classrooms, from offices to auditorium. Here an authentic environment has been created, meaningful, useful, and vigorous. As Saarinen himself said, "The buildings were designed to function for the University of Chicago Law School and not for anything else. The over-all concept seeks to reflect the importance to the legal profession of both the written and the spoken word." Hence the pivotal position and dominating design of the library; hence the emphasis on free meeting areas for open discussion.

Finished in 1960, the new law group adapts itself but does not succumb to neighboring dormitories, which, alas, are all too typical examples of banal collegiate Gothic. The most dramatic single unit in the Saarinen compound is the six-story glass-walled library and office building, from whose multiple windows Pevsner's sculpture appears to consummate advantage.

The university is fortunate in having two faculty members who are at once authorities in their own field and informed enthusiasts where art and architecture are concerned. The moving spirit behind the new buildings is Edward Levi, now provost of the university but until recently dean of the Law School. It was he who backed the entire project, assisted by his colleague, Walter Blum, professor of law and a tax specialist. It is both rare and reassuring to find legal scholars dedicated to such high quality in the arts.

Near Saarinen's Law School, Edward Durrell Stone has erected a Conference Center for Continuing Education, a somewhat overelegant building that seems curiously at odds with Chicago's exuberant vitality. Several blocks west, a pure skeleton of steel heralds a disciplined structure by Mies van der Rohe soon to accommodate the Social Service Administration School. This is good news and long overdue, for Chicago's greatest architect should certainly not be overlooked by Chicago's greatest educational institution. There is also talk that a Fermi Memorial may be designed by Nervi, an appropriate choice since both men represent the pinnacle of Italian invention during our century.

That the campus could become overdiversified is a
Welcome

“A welcome addition to the periodical output of the Law School.”

With these words, Dean Phil C. Neal greeted the first issue of the newest Law School publication, a quarterly newspaper called The Reporter. And with the emergence of The Reporter, the Law School has joined the ranks of the many law schools throughout the country which publish their own student newspapers.

Designed, in the words of its first editorial, both to report the news of the School and to serve as a vehicle for the expression of the ideas of its constituents, The Reporter was conceived and brought to life by a group of students led by Kenneth P. Norwick, who served as editor-in-chief of the first issue. The first issue was prepared during the Fall quarter, and published on December 4, 1964.

The eight page, glossily-printed maiden issue, which featured a unique, blue-tinted view of the Law School building as its nameplate, included comprehensive coverage of such Law School events as the School’s Conference on Judicial Ethics, the Annual Federal Tax Conference, and the success of the School’s National Moot Court team, as well as feature articles on Professor Dallin H. Oaks’ experience as a State prosecutor last summer, Professor Philip B. Kurland’s recent scathing criticism of the Supreme Court, the “Today” program’s visit to the Law School, and the athletic activities of the law students, among many others.

“We tried to provide as complete a review of the events of the School during the Fall quarter as possible,” Norwick said, “while at the same time attempting to bring before the Law School community ideas and experiences that would probably otherwise go unnoticed. And in future issues, while retaining these goals, we also hope to serve as a ‘crusading’ or ‘muckraking’ influence whenever necessary.”

The Reporter’s second issue, which will be published late in the Winter quarter, will be under the combined editorship of Judith A. Lonquist, Warren P. Miller, and Les Munson, who all served on the first issue. Among other questions, the editors hope to explore, in this issue, the bases upon which an entering class is selected, and why the members of such a class chose to come to law school and to this School in particular.

On Entering the Path of the Law

By The Honorable Henry J. Friendly
Judge of the United States Court of Appeals for the Second Circuit

The Annual Lecture for Entering Students, delivered on October 5, 1964.

The conventional way in which to start a talk of this sort is to express the speaker’s gratification at the inspiring sight of hopefully bright young men and certainly attractive young women about to begin the study of law. I shall commence somewhat differently—by voicing wonder at your decision to devote yourselves to a subject of whose nature you have not the faintest notion. If in your few days here you have already learned to demand authority for so brash a statement, I will respond, admittedly with less than perfect logic, that since those of us who have been at the law all our lives don’t know what it is, there is at least a reasonable doubt whether you do now.

A distinguished English scholar, Professor Herbert L. A. Hart, has noted how in this respect law is “not paralleled in any other subject systematically studied as an academic discipline.” “No vast literature,” he writes in his book, The Concept of Law, “is dedicated to answering the question ‘What is chemistry?’ or ‘What is medicine?’... A few lines on the opening pages of an elementary text-book are all that the student of these sciences is asked to consider; and the answers he is given are of a very different kind from those tendered to the student of law.”

Surely, you must be saying to yourselves, this is no end peculiar. Law is scarcely a new-comer on the world scene. The Code of Hammurabi dates from the third millennium B.C., and law existed long before. How then that no one has ever taken the trouble to define it? What a golden opportunity for the University of Chicago Law School Class of 1967!

I must warn you against indulging in so seductive a phantasy. Others have tried to define law; more than that, they were quite sure they had succeeded. “In the very definition of the term ‘law,’” wrote Cicero, some years ago, “there inheres the idea and principle of choosing what is just and true.” St. Augustine put it more crisply, “An unjust law is not a law.” Hegel, in true German fashion, put it more obscurely, “Right and ethics and the actual world of justice and ethical life, are understood through thought; through thoughts they are invested with a rational form. ... This form is law.”

Well, you must now be saying, if this was good enough for Cicero, and St. Augustine, and Hegel, why isn’t it good enough for us? Perhaps you will find it so. But the team of Cicero, St. Augustine, and Hegel, which includes many other players of repute, has by no means had the field to itself. Take this as an example: “These dictates
of Reason, men used to call by the name of Laws; but improperly, for they are but Conclusions or Theorems concerning what conducteth to the conservation and defense of themselves; whereas Law, properly, is the word of him that by right hath command over others. You ought not need to be told that this cynical voice is that of Thomas Hobbes. Two centuries later came the famous statement that law was the command of the sovereign: "The existence of law is one thing; its merit or demerit another,"—Hobbes' concept in the 19th century dress fashioned by John Austin. By the turn of the century even more sceptical views came on the stage. To John Chipman Gray, one of the quartet of professors who brought fame to the Harvard Law School, statutes—what most people would think the archetype of a command of the sovereign—were only "sources of Law . . . not parts of the Law itself." The "law itself," said a former great teacher at this school, Professor Karl Llewellyn, consists of "What officials do about disputes." The most famous of American judges had gone even further, "The prophecies of what the courts will do . . . are what I mean by the law," Mr. Justice Holmes wrote in 1897. Certainly that is an unhelpful definition for judges, who apparently are obliged to do their work with mirrors; it thus is not strange that they and others have thought there must be some underlying stuff that enables the prophets to prophesy and the judges to proceed from prophecy to decision. Since this prophecy-enabling stuff is more significant than the prophecies, why not call it the law? If you think that fair enough, you must next ask what that stuff is. What can it be other than statutes and decisions and, for the interstices not filled by these, concepts so abhorrent to the realists as justice and morality and social utility? Thus the realist quest devoured itself and ended where it began. Such, at least, was the belief of another greatly admired judge: "A definition of law which in effect denies the possibility of law since it denies the possibility of rules of general operation," Judge Cardozo wrote, in words that make sense to practicing lawyers and judges, however they may seem to jurisprudes, "must contain within itself the seeds of fallacy and error. . . . Law and obedience to law are facts confirmed to us all in our experience of life. If the result of a definition is to make them seem to be illusions, so much the worse for the definition; we must enlarge it till it is broad enough to answer to realities." And again, men "go from birth to death, their action restrained at every turn by the power of the state, and not once do they turn to judges to mark the boundaries between right and wrong. I am unable to withhold the name of law from rules which exercise this compulsion over the fortunes of mankind."

If at this point you are thinking of a transfer to some other graduate faculty which at least has some idea what it is teaching, resist the temptation! Although none of the statements about the nature of law that I have been quoting may be wholly true, none is wholly false. As Professor Hart has also said, "understood in their context, such statements are both illuminating and puzzling; they are more like great exaggerations of some truths about law unduly neglected, than cool definitions. They throw a light which makes us see much in law that lay hidden; but the light is so bright that it blinds us to the remainder and so leaves us without a clear view of the whole." Moreover, and this is another paradox, you can have a rich and satisfying life in the law without resolving these great issues, although it will be a richer and more satisfying life if you are always aware of them and occasionally take time to ponder over them.

Let us descend to more mundane matters and consider the work you will be doing these next three years, if I have not unduly discouraged you. I remember with horror the first day of our course on Property. We had a case about wild animals, which the court, in an effort to clothe them with proper legal dignity, called ferae naturae. The opinion detailed the views of various Continental jurists. One, whom I remember after forty years because of his intriguing name, was Pufendorf. Another case set forth the views of a different civilian, whom I recall only because his name resembled that of the famous French chef who killed himself when the fish did not arrive for the royal dinner—Vattel. Try as I would, I could not retain in my memory what were the views of the pompous sounding Pufendorf, and what were those of the culinary reminding Vattel. With this seemingly insurmountable hurdle confronting me on my very first day, what chance was there to complete the course, much less to prosper in the law? It was an enormous relief to find—not, of course, by any direct word from the professors, who were as mysterious then as now, but from older students—that no one expected us to remember the conclusions of these jurists, or even, although this was a bit more desirable, what the New York Supreme Court decided about wild foxes in Pierson v. Post, 3 Caines, 175 (1805). What we were to learn was not the law, but how to "do law"—as today's philosophers say they "do philosophy." If some substance rubbed off on us in the process, so much the better; but that was not the main object of the game.

Your efforts thus will be primarily directed not at learning "law" but at acquiring a "legal mind"—more accurately, since even twentieth century medicine has not learned how to slip a new mind into the brain case, at making your minds legal. What, you may ask, is a legal mind? This is something easier to spot than to define. Obviously Dean Neal has one—if he didn't, he wouldn't be dean. I can testify on the basis of a year's happy association with him as my law clerk that Professor Currie has one—although there were times when I was not altogether sure he would return the compliment.
Indeed, I would be willing to stipulate that all the members of this faculty have legal minds, even if some of them might think I was being unduly generous as regards others. An official communication next summer will give each of you a notion of the extent to which he is acquiring one. Still it seems fair for you now to seek more enlightenment as to what a legal mind is.

An easy out would be for me to take as an example the standard charge to the jury in a criminal case that reasonable doubt is a doubt based on reason, and to tell you that a legal mind is a mind capable of handling legal matters. But I can do a little better than that, and give you some characteristics, if not a comprehensive definition. The legal mind is an inquiring mind. It does not accept; it asks. Its favorite word is “why.” Charles M. Hough, one of the great judges of the Second Circuit, wrote that “the legal mind must assign some reason in order to decide anything with spiritual quiet.” It is analytical; it picks a problem apart so that the components can be seen and judged. It is selective; it rejects characteristics that are not significant and focuses on those that are. The legal mind learns to know that it does not matter whether an accident takes place on a Monday or a Tuesday, although some old cases indicated it might be as well never to be injured on Sunday, but that it may matter whether the cause of the accident is an automobile, an airplane, or an atomic explosion. It is a classifying mind; it finds significant differences between cases that superficially seem similar and significant similarities between cases that at first seem different. It is a discriminating mind; it has a profound disbelief in what Professor Frankfurter used to call “the democracy of ideas.” Beyond this, Dean Levi’s little book will tell you as much as anything I know.

As you pursue this primary aim of making your minds legal, you will be exposed to various branches of the law, and they to you. Here again your adventure will be quite different from your counterparts in other graduate schools. No medical school turns out a doctor whose studies have included only the head, the throat and the chest cavity but have wholly omitted the abdomen and the bone structure—even though he will later have to spend several more years in learning every cell of his chosen organ. But the variety and complexity of mid-twentieth century law, ranging through the alphabet from Administrative Law, Admiralty and Agency to Taxation and Torts, and Wills and Workmen’s Compensation, prohibit anything approaching coverage, even in the most superficial sense. If we classify the subjects of legal study in a more functional way, the variety still is dazzling. One branch deals with the demands of organized society on the individual, in such diverse forms as taxation on the one hand and criminal law on the other. Another branch concerns the claims on and protection of the individual against organized society; the social security system is an example of the former, and many aspects of constitutional law concern themselves with the latter. Another covers the claims of one member of society against another not otherwise known to him. Here the great and always fascinating subject is the law of torts; much of property law can also be fitted under this rubric. Then there is the law governing various relations, most of these voluntarily assumed, husband and wife, employer and employee, stockholder and corporation, another never voluntary on one side and sometimes not wholly so on the other, parent and child. Bordering these are instances where the law enables people to enter into transactions having legal significance although indifferent whether they do or not—the immense variety of contracts, ranging from some of the relations I have already mentioned through the great field of commercial law to intercorporate transactions of almost unimaginable complexity, and wills and trusts. Then come the newer areas where government has imposed restrictions on the freedom of transactions—antitrust law, public utility and securities regulation, many facets of labor law. Other subjects are concerned with the distribution of power among organs of the same government or of different governments, a topic peculiarly important in our federal system; these include portions of constitutional law, administrative law, federal jurisdiction, foreign relations law, perhaps the conflict of laws. Finally there are the branches which concern themselves with the manner in which rights are invoked or duties imposed—civil and criminal procedure and other portions of administrative law. You will require, and receive, good guidance through this wood, whose size and luxuriance I have only begun to describe. When you complete your three years here, many parts of the forest will necessarily remain untraveled; but by that time you will have learned to find the paths for yourselves.

If you want my views whether all this effort will be worthwhile, I would answer with a resounding “Yes”—and I say that as one who has been powerfully attracted to another subject in his student days. My first, and best, reason I shall borrow from a master of that discipline, the historian Samuel E. Morison. “For my part,” he wrote, “I freely confess myself a historical hedonist; one in whom the pursuit of pleasure overlaps the pleasure of pursuit.” So it is with the law—you will find the sharpening of your mind, the learning and use of legal analysis, the effort to put your thoughts into clear and persuasive English, the exploration of the panorama of legal subjects, as pleasurable as any such endeavor that I know. A second reason is that the law is all encompassing; nothing human is alien to it. There are so many related subjects about which you ought to know something if you are truly to understand the law—subjects which make law more meaningful and are made more meaningful by it.
First of all, history. Which of the wealth of apposite quotations shall I use to make the point? I will pluck from Holmes, not the familiar sentences from the opening paragraph of "The Common Law" which you must already know, or the epigram from his opinion in *New York Trust Co. v. Eisner*, which you will learn, but a combination of two others. "The rational study of law is still to a large extent the study of history"; for "historic continuity with the past is not a duty, it is only a necessity." Belief of that sort underlay Judge Learned Hand's modest proposal that a judge called upon to pass on a question of constitutional law should "have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant ..." Next, as Judge Hand's list itself indicated, I would put philosophy, not so much for its forever changing content as for its method. A Harvard graduate student asked me last year, quite seriously and perhaps not without basis, how anyone could become a lawyer, much less a judge, without understanding modern analytical philosophy, particularly Wittgenstein; I have never so deeply valued the privilege of silence conferred by the Fifth Amendment. Many fields of law—trade regulation, labor law, taxation, commercial law—can scarcely be comprehended without some knowledge of economics, an interdisciplinary development in which this School has pioneered. Psychology has a role to play in evidence and in criminal and family law. Other social sciences contribute to our understanding of torts, of criminal law, and of land use—and in the last we must work also with the artists and the architects. We link arms with the political scientists in exploring administrative and constitutional law. And I am certain that the lawyer of the 1970's would do well to know a good deal about the theory and practice of computers, and the mathematics that underlies this.

When you begin the practice of law, you will become an interdisciplinarian in a different way. The office lawyer who lacks knowledge of his client's business is a poor adviser; the litigator who tries a case or argues an appeal without adequate information as to the relevant technologies is perpetrating a fraud on his client and is failing in his duty to the court. The lawyer who tries personal injury suits must have at least a "bowing acquaintance" with medicine and with machines; one specialist in airplane accident cases included a year as an airline mechanic in his preparation. The patent lawyer must know chemistry and engineering; the copyright lawyer must be familiar with literature and music. Counsel who appear before the Federal Communications Commission must understand frequencies, and contours, and coverage. Although the advocate before the Civil Aeronautics Board need not be able to fly an airplane, I found it did no harm to know what makes them fly, and a thorough understanding of airline economics was essential. So, too, with the practitioners before the Interstate Commerce Commission, the Federal Power Commission, the Atomic Energy Commission—ton-miles and train-miles, kilowatts and B.T.U.'s, neutrons and megatons, are their daily grist. Indeed, there is always the risk that the lawyer will become so adept in his client's affairs that financial and other inducements may lead him to forsake his proper mistress. No wonder that when, during World War II, it was found that the airmen engaged in bombing and the scientists analyzing its results could not communicate, the Air Force recruited lawyers as interpreters, and that the colonel chosen to command the first such group was a trial lawyer, now better known as Mr. Justice Harlan. No wonder also that so large a proportion of the lay leadership in such endeavors as hospitals, education, and the care of the young and the old, not to speak of politics, is furnished by lawyers. I know that the extent of lawyers' participation in these efforts is often attributed to motivations not completely altruistic. I neither deny this nor believe it requires defense, so long as the lawyer gives honestly of his time and brains. Few courses of conduct are wholly unselfish, and if a lawyer thinks he may get business by helping put a social agency on its feet rather than by lingering at the nineteenth hole, the community is the gainer. The ability, resulting from legal training, to come into an unfamiliar area, quickly to grasp the essentials, then to organize a solution, and finally to translate all this to others, is what makes the lawyer so immensely valuable in all these efforts; and his abhorrence of the vacuum presented by an unsolved problem relentlessly sucks him in.

You will thus, I am quite certain, find yourselves absorbed, both in your years of study and later, by the fascinating game of the law. But you must resist the temptation to think of it only as a game. To fall into that trap is all too easy even—perhaps particularly—for an appellate judge. The higher reaches of such subjects as federal jurisdiction, the conflict of laws, and income taxation have somewhat the quality of a chess tournament, and unless lawyers and judges and law-teachers are constantly on the alert, the solutions may have about as much relation to reality. Sometimes one has an impulse to sweep the chessmen off the board and attempt a fresh start. Often in dealing with such subjects, I am reminded of Hermann Hesse's great novel, Das Glasper­ lenspiel, the "bead-game," translated under the rather less descriptive title, "Magister Ludi." It tells how, after a catastrophe that destroyed most of civilization, the remnants were picked up in a central European country, Castalia, etc. There the elite of the youth were trained to master the bead game, never described in detail but combining the highest elements of music, art, mathematics and drama—a sort of double acrostic raised to the
n th power. To become a member of the order which protected and performed the game was a high reward for a young man; to become the master was the highest of all. Yet the youth who reached this pinnacle came ultimately to disillusionment and disaster. Such is the fate of the lawyer who becomes unduly fascinated with techniques and acrobatics.

Practitioners thus must always be on guard that they do not become too completely absorbed in contests for the benefit of clients, and judges must be wary of the risks in the overardorous performance of bead games for the applause of the law reviews. We are engaged not only in administering but in developing rules for the conduct of society. If you do not like German symbolic novels, even in excellent translation, the occasional reading of a book about some foreign legal system or on jurisprudence, even if you do not fully understand it, will help keep your eye on the goal. When John W. Davis said that lawyers "supply the lubrication" that makes it possible for society to run, he was speaking the truth but not the whole truth; you are not here simply to become better wielders of oil cans. Dean Pound had it better when he wrote that "Civilization involves the subjection of force to reason, and the agency of this subjection is law." Law is a process, not a result that has ever been achieved for all time.

Professor Fuller has recently added another to the many definitions of law. He says that it "is the enterprise of subjecting human conduct to the government of rules." Some may find, as I do, that this alone does not take us far. But it is a start, and we can supplement it with an analysis of the important differences in the nature of legal rules—some of which I have already suggested. There are the rules whose violation brings retribution, whether criminal, "Thou shalt not kill," or civil, "Thou shalt not slander." There are other rules the violation of which will have unpleasant consequences, but only if one has previously so agreed, "Thou shalt not breach a contract." There are the rules that enable men, by following certain procedures, to impose their desires on others perhaps yet unborn—wills, trusts, restrictive covenants. There are what Professor Hart calls "rules of recognition"—rules determining who can make rules and how. There are rules that can be and are looked up in law books before taking action—how many witnesses are needed for a valid will, how to make an instrument negotiable, how to have a profit taxed at the lower rates established for capital gains. There are other situations where the rule is so vaguely stated that people often cannot know whether particular conduct is within or beyond it until a jury or a judge or an administrative agency tells them—examples are the requirements that an autoist drive with due care or that an employer bargain in good faith. There are the rules made by the legislature or its delegate, and those, decreasing in number, still left for the courts to evolve. And there are the cases not governed by any rule yet ascertainable, where the actors must simply guess, whether before or after acting, what answer a court will provide, and the judges, within some limits, can indulge in "the sovereign prerogative of choice." Another contrast is between rules that rarely change and those that constantly do—not by the swift revolution that makes what was black today white tomorrow but by the gradual evolution wherein rules no longer suit the demands of our society are eroded until after a half century they are entirely gone and new ones have taken their place. Products liability is a sufficient example in our time. Then there is the fascinating interaction wherein society having moulded the law is then moulded by it—men today do not have to be constantly reminded that they must not drive carelessly, fail to perform bargained promises, or neglect to file an income tax return; indeed, without this knowledge of the general nature of the rules and broad acquiescence in them, the legal machinery would break down.

The task you have set yourselves thus is not a small one; it is nothing less than to learn, in the moving words in which the degrees in law have long been conferred at the Harvard commencement, to be "ready to aid in the shaping and application of those wise restraints that make men free." All of you can have some part in the shaping, as well as in the application, if you will. Many of you will become judges, legislators, law teachers and writers. But for those who do not, there is still useful law-shaping work to be done—as members of bar associations or of political parties, or just as informed and responsible citizens. You will have a responsibility for what Professor Fuller calls the internal morality of law—that it be clearly expressed, that it be applicable generally and without discrimination, that usually it be prospective, and that it be known or at least be readily knowable to the citizen. You will have a further responsibility that the law should help to achieve the good society. Fashion no longer requires that you look descendingly on the utilitarian concept of the greatest good for the greatest number or, despite Mr. Justice Holmes' oft quoted cynical remark, that you take a contemptuous view of the age old idea of justice—a notion that is still meaningful even if no one can define it with precision.

I hope that, in thus telling you of all that lies ahead, I have not overburdened you with a sense of enormous difficulty. Susrum cordal The prescription is really quite simple. "What is wanted for success at the Bar," wrote Lord Lyndhurst, "is a clear head, a good memory, strong common sense, and an aptitude for analysis and arrangement. Before these combined qualities, the difficulties of the law vanish like the morning mist before the sun." As you puzzle over the seeming contradictions carefully planted in your case-books and the Delphic deliverances
of your inscrutable instructors, perhaps it will cheer you to recall those encouraging words of the Lord Chancellor, to reflect on your own sterling qualities, and, if I may slightly alter the title of a novel popular in my youth, to remember that “the sun always rises.”

A group of Law School alumni in Metropolitan Los Angeles, who gathered to hear Dean Neal report on the state of the Law School.

Iolani to Capitol Hill

The Record is pleased to note that Mrs. John Mink, whom members of the Class of 1951 will remember as Patsy Takemoto, has been elected to the United States House of Representatives from the State of Hawaii. Mrs. Mink had served for several years as a member of the State Legislature.

Graduates of the Law School are occasionally beautiful and frequently distinguished; we are seldom privileged to point to one who is both.

The Appellate Court

The program of cooperation among the Courts, the Bar and the School, described in detail in Professor Oaks’ article in the last issue of the Record, continued in the Autumn Quarter of 1964. The Illinois Appellate Court, the Honorable Robert English, ’33, presiding, the Honorable John V. McCormick, JD’16, and the Honorable Joseph J. Drucker, heard two cases from its regular calendar argued in the Kirkland Courtroom. Students in the first year Tutorial Program were given research and writing problems based on the cases being argued, then studied the briefs, which were provided in advance, then heard the oral arguments. Following the Court session, counsel were kind enough to meet with the students at some length, discuss their conceptions of the cases, and answer student questions regarding their handling of the issues.

The Court—1964

The Supreme Court Review for 1964, edited by Professor Philip B. Kurland, was published in mid-December. The Review is dedicated to responsible criticism of the work of the United States Supreme Court. Contents of the current issue are:

“The Reapportionment Cases: One Person, One Vote—One Vote, One Value”

by Carl A. Auerbach, Professor of Law, University of Minnesota

“Full Faith and Credit, Chiefly to Judgments: A Role for Congress”

by Brainerd Currie, Professor of Law, Duke University

“United States v. Barnett: ’twas a Famous Victory”

by Sheldon Tefft, James Parker Hall Professor of Law, The University of Chicago Law School

“The Sit-in Cases of 1964: ‘But Answer Came There None’”

by Monrad Paulsen, JD’42, Professor of Law, Columbia University

“Potential Competition under Section 7: The Supreme Court’s Crystal Ball”

by George E. Hale, JSD’40, and Rosemary D. Hale, Lecturer in Economics, Lake Forest College


by Harry Kalven, Jr., Professor of Law, The University of Chicago Law School

“Act-of-State Doctrine Refined: The Sabbatino Case”

by Stanley D. Metzger, Professor of Law, Georgetown University

“Flood Tide: Some Irrelevant History of the Admiralty”

by Jo Desha Lucas, Professor of Law, The University of Chicago Law School

A Goal Surpassed

The Eleventh Annual Fund Campaign set new records, both as to the total amount contributed and as to the number of alumni giving. The Campaign goal of $125,000 was exceeded by more than 6 per cent, with total gifts aggregating $133,600. General Chairman J. Gordon Henry, JD’41, and Special Gifts Chairman Arnold I. Shure, JD’28, led more than 200 Fund workers in this remarkable effort. It is interesting to note that some 79 gifts totalling more than $20,000 came from non-alumni friends of the School.

Richard H. Levin, JD’37, has accepted the General Chairmanship of the Twelfth Annual Fund; organization for the Campaign is under way.
The Electrical Equipment Cases

A great flood of litigation, amounting to more than 1,800 cases, was loosed upon the Federal Courts as a result of the electrical equipment price-fixing cases. In an effort to expedite the handling of these cases, a coordinating committee was set up, with the cooperation of the courts and counsel for both plaintiffs and defendants. Dean Phil C. Neal is acting as Executive Secretary of that committee, which has its headquarters in Chicago. (For a detailed description of the work of the Committee, see Dean Neal's article, with Perry Goldberg, JD'60, "The Electrical Equipment Antitrust Cases: Novel Judicial Administration," 50 American Bar Association Journal 621 (1964).) Early in October, a national meeting of those concerned with the work of the Committee was held in Chicago. The Law School was host to a reception and dinner for the judges and lawyers involved. On the following day, hearings carrying forward the work of the Committee were held in the Weymouth Kirkland Courtroom.

The Honorable Alfred Murrah, Judge of the U.S. Court of Appeals for the Tenth Circuit and Chairman of the Coordinating Committee, with Dean Phil C. Neal.


George Stigler, Charles R. Walgreen Distinguished Service Professor of American Institutions, was the featured speaker of the evening.

The Honorable Edwin Robson, U.S. District Judge, Northern District of Illinois, and Mrs. Robson, at the Committee Reception.
Law Day Address

By The Honorable Robert F. Kennedy
United States Senator from New York

A Talk Delivered by Senator Kennedy, then Attorney General of the United States, at the Law School on Law Day, May 1, 1964

Law Day is a day which is set aside for all of us to re-affirm our faith in a government of law. We lawyers can celebrate it in two ways: by speeches which praise the law and, by implication, ourselves; or by using it as an occasion to examine the problems which beset our society and whose resolution should challenge us as lawyers.

Tonight I wish to do the latter.

We meet here today at a great law school in the heart of a great metropolitan center. In the area surrounding this school there live thousands and tens of thousands of people who are daily coping with—or failing to cope with—the problems which beset an urban and industrial society. In this area are problems of crime and delinquency, of education and over-crowded housing, and all the other problems which accompany poverty.

This is not a unique area. These are not unique problems. They are the problems of an urban and industrial society.

And because law does not exist in a vacuum, they are the problems which law faces today in the United States.

I think the solution to these problems should be a challenge to all of us—and particularly to young people who are now embarking upon professional careers. I am deeply concerned over whether, as a profession dedicated to the rule of law, we are meeting—or even seeing—the challenge which the peculiar character of our urban society is daily making. We concentrate too much on the traditional stuff of the law—on lawsuits, courts, and formal legal learning—too little upon the fundamental changes in our society which may, in the final analysis, do much more to determine the fate of law and of the rule of law as we understand it.

No single set of experiences has brought this point home to me more forcibly than the contacts I have had with juvenile delinquency.

The Justice Department's traditional concern is with law enforcement. But in coping with an ever mounting trend in young offenders, law enforcement is a small part of the total picture. In formulating our program on juvenile delinquency it quickly became clear to us that the emphasis could be not upon law violations and law violators, but upon the causes of violation. To put it differently, youth offenses are not the illness to be dealt with. They are merely symptoms of an illness that goes far deeper in our society.

To arrive at this conclusion one need not be a sociologist, or a social worker or a planner. One simply needs to walk the slums of Washington, or New York, or Chi-
Chicago, or through the communities of Appalachia, and talk with the young people.

For many of these young people law violation is not the isolated outburst of a social misfit. It is part of a way of life where all conventional routes to success are blocked and where law abidingness has lost all meaning and appeal.

You cannot look into their eyes or look up and down the asphalt jungle or the desolate hollows in which they live without sensing the despair, the frustration, the futility and the alienation they feel. One is strongly compelled to do something, to make some gesture that says: "People do care; don't give up."

Surely the answer to this problem is not simply to provide more and better juvenile courts, more and better juvenile institutions or more and better lawyers in the process to prosecute or defend young people who then return to the same desolation which caused their difficulty in the first place.

What is needed are programs which deal directly with the causes of delinquency. These are programs to impart skills, to instill motivation, to create opportunity. These are programs which urge young people to stay in school. These are summer job programs for high school students. These are programs to provide decent recreational facilities.—These are, in short, programs which indicate that all young people do count in this society.

The model programs developed through the President's Committee on Juvenile Delinquency all involve expanding our concept of law enforcement—from detection, punishment and treatment—to prevention. We seek to help communities build programs which deal not with law violation but with eliminating its underlying causes.

The idea of social action programs rather than simply programs of law enforcement is not a new one. But it is an idea which threatens to leave the lawyer behind—to cut him adrift from day-to-day involvement with the major social issues of our times. Let me tell you why.

The lawyer helps to frame the legislation for the programs dealing with these problems; he writes the grants to agencies to carry on these programs. He preserves the form, ignores the substance, and then he goes his way.

As a profession, we have conveniently—perhaps lazily—abandoned responsibility for dealing with major social problems to other professions—to sociologists, educators, community organizers, social workers, psychologists.

Rarely, if ever, do the best lawyers and the best law firms work with the legal problems that beset the most deprived segments of our society. With some outstanding exceptions, that work is done—if it is done at all—by the members of the bar who have least prestige, who are likely to be poorly trained and who are themselves engaged in a struggle for economic survival.

There remain whole areas of the law where no more than a handful of lawyers go to assist those most in need of legal help. How often does one find the needy represented by counsel in dealing with social welfare agencies, unemployment compensation review boards, or school and welfare officials, finance companies, or slum landlords?

In the realm of criminal law we are now beginning to fulfill our professional responsibility. To the indigent, we are witnessing a series of steps toward fairer representation for those without funds. No small portion of the credit is due to your own Professor Allen who headed our committee which has made an excellent report on the problems of the poor in obtaining equal justice in the federal courts.

That report has spurred efforts on both the state and federal level. To these efforts must be added full recognition of the monumental work of the legal profession. Law schools have contributed much and should contribute more. Legal aid societies, often staffed in part by law students, have done extremely worthy work. This University's program, sparked by Dean Levi, provides a notable example of public service, community concern, and intellectual inquiry.

But these efforts are in large part due to the Supreme Court's decision in *Gideon v. Wainwright*, which made representation by counsel mandatory in criminal proceedings. All these efforts notwithstanding, the fundamental question remains: Should there ever have been a need for the *Gideon* decision? Did we need a Constitutional determination to tell us our professional responsibilities?

Lawyers could ask themselves similar questions about other problems which are central to our society but which
exist on the fringes of the law. The social protest of the American Negro is not, as such, a legal problem. But the voluntary Lawyers' Committee for Equal Rights under Law, for example, has generated the effective assistance of many lawyers, normally devoted to more formal legal pursuits, in the cause of civil rights.

There is a great need for America to live up to its political promise of civil rights for all its citizens. But there is a parallel need for America to live up to the economic promise of social rights, of social—and thus equal—justice under law.

The place to start is to ask ourselves what is our responsibility in dealing with those problems which stem from poverty—from that phenomenon of massive privation to which our nation is now awakening and to which our legal profession must now respond.

We, as a profession, have an obligation to enlist our skills and ourselves in the unconditional war on poverty to which President Johnson has summoned all of us.

And in asking where do we begin, we must first recognize that poverty is not simply a condition of want.

In the final analysis, poverty is a condition of helplessness—of inability to cope with the conditions of existence in our complex society.

We know something about that helplessness. The inability of a poor and uneducated person to defend himself unaided by counsel in a court of criminal justice is both symbolic and symptomatic of his larger helplessness.

But we, as a profession, have backed away from dealing with that larger helplessness. We have secured the acquittal of an indigent person—but only to abandon him to eviction notices, wage attachments, repossession of goods and termination of welfare benefits.

To the poor man, "legal" has become a synonym simply for technicalities and obstruction, not for that which is to be respected.

The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away.

It is time to recognize that lawyers have a very special role to play in dealing with this helplessness. And it is time we filled it.

Some of the necessary jobs are not very different from what lawyers have been doing all along for government, for business, for those who can pay and pay well. They involve essentially the same skills. The problems are a little more difficult. The fees are less. The rewards are greater.

First, we have to make law less complex and more workable. Lawyers have been paid, and paid well, to proliferate subtleties and complexities. It is about time we brought our intellectual resources to bear on eliminating some of those intricacies.

A wealthy client can pay counsel to unravel—or to create—a complex tangle of questions concerning di-
vorce, conflict of laws and full faith and credit in order to straighten out—or cast doubt upon—certain custody and support obligations. It makes no kind of sense to have to go through similarly complex legal mazes to determine whether Mrs. Jones should have been denied social security or Aid to Dependent Children benefits. To put a price tag on justice may be to deny it.

Second, we have to begin asserting rights which the poor have always had in theory—but which they have never been able to assert on their own behalf. Unasserted, unknown, unavailable rights are no rights at all.

Lawyers must bear the responsibility for permitting the growth and continuance of two systems of law—one for the rich, one for the poor. Without a lawyer of what use is the administrative review procedure set up under various welfare programs? Without a lawyer of what use is the right to a partial refund for the payments made on a repossessed car?

What is the price tag of equal justice under law? Has simple justice a price which we as a profession must exact?

Helplessness does not stem from the absence of theoretical rights. It can stem from an inability to assert real rights. The tenants of slums, and public housing projects, the purchasers from disreputable finance companies, the minority group member who is discriminated against—
all these may have legal rights which—if we are candid—remain in the limbo of the law.

Third, we need to practice preventive law on behalf of the poor. Just as the corporate lawyer tries to steer company policy away from the antitrust, fraud, or securities laws, so too, the individual can be counselled about leases, purchases and a variety of common arrangements whereby he can be victimized and exploited.

Fourth, we need to begin to develop new kinds of legal rights in situations that are not now perceived as involving legal issues. We live in a society that has a vast bureaucracy charged with many responsibilities. When those responsibilities are not properly discharged, it is the poor and the helpless who are most likely to be hurt and have no remedy whatsoever.

We need to define those responsibilities and convert them into legal obligations. We need to create new remedies to deal with the multitude of daily injuries that persons suffer in this complex society simply because it is complex.

I am not talking about persons who injure others out of selfish or evil motives. I am talking about the injuries which result simply from administrative convenience, injuries which may be done inadvertently by those endeavoring to help—teachers and social workers and urban planners.

These are not unusual tasks. Lawyers do them all the time in every major field of law.
It is time we used these traditional skills—our precision, our understanding of technicalities, our adversary skills, our negotiating skills, our understanding of procedural maneuvers—on behalf of the poor.

Only when we have done all these things, when we have created in fact a system of equal justice for all—a system which recognizes in fact the dignity of all men—will our profession have lived up to its responsibilities.

That job is not to be done by simply writing a check for $100—or $1,000—to the legal aid society. These are jobs that will take the combined commitments of our intellectual, and ethical energies—a sustained commitment—a pledge to donate not once or twice but continuously the resources of our profession and our legal system.

Our professional mandate goes far beyond protecting the presumption of innocence throughout a criminal trial. Our obligation extends to championing a larger presumption—the presumption of individual sanctity and worth which must attend all—rich and poor alike—if the rule of law is to prevail in reality as it does in Law Day speeches.

These are obligations of the legal profession. But here at this University they are peculiarly yours. That is so because—whether you welcome it or not—graduating from a great school puts an obligation squarely upon you.

Last October, President Kennedy, visiting Amherst College, said:

There is inherited wealth in this country and also inherited poverty. And unless the graduates of this college and other colleges like it who are given a running start in life—unless they are willing to put back into our society those talents, the broad sympathy, the understanding, the compassion—unless they are willing to put those qualities back into the service of the Great Republic, then obviously the presuppositions upon which our democracy are based are bound to be fallible.

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An English Visitor’s View of the Law School

By Guenther Treitel

Fellow of All Souls; Lecturer in Law, Magdalen College; Visiting Lecturer, The University of Chicago Law School, 1963–64

In giving my impressions of this Law School, the first and most important thing I want to say is that my year here has been a most exciting and enjoyable one. I attribute this mainly to three things. First, to the library, which offers facilities far better than those of any single law library now open in England. Secondly, to the students whom I have found lively, intelligent and pleasant to teach. Thirdly, to the faculty: their kindness and patience in innumerable discussions have done more than anything to make this such a rewarding year for me, and I should like to take this opportunity of thanking them.

My impressions of the Law School may be most interesting to you at the points of contrast between this School and Oxford. Of course one must bear in mind that this is a graduate professional school, while at Oxford we teach a law course to undergraduates which does not lead them to, or even very near to, a professional qualification. This may account for some of the differences between the two places, such as differences in the curricula. But even so, there are two differences between this School and Oxford which are so striking that I should like to say something about each of them. They are teaching methods and examinations.

In Oxford the principal method of teaching is still the individual tutorial. A student writes a weekly essay on some quite broad topic. He then reads it out to his tutor who criticizes it, discusses the topic generally, and tries to answer any questions which the student may ask. We also use the straight lecture, with no audience participation at all. Seminars have come into vogue as a method of teaching those who stay on to do graduate work; they are not commonly held for undergraduates. We attach great importance to the undergraduate's own reading for his tutorial essay. The number of hours of formal instruction which he is expected to attend is rarely more than eight a week. The number which he actually attends is of course much smaller. Lectures are truly voluntary.

I have not found it at all easy this year to make the transition from teaching single students in tutorials to teaching up to 140 students in a case class. I have enjoyed teaching by this method, partly because of the many utterly unexpected things which have happened to me in classrooms here. I have also been impressed by the ability which it develops in students to analyze cases, and by the skill which it fosters in oral discussion. In these important

1 We hope soon to rival it in Oxford, where a new Law library, built with the aid of a very generous grant from the Rockefeller Foundation, was opened in October, 1964.
respects, the case class method is, I think, clearly superior to our tutorial method. On the other hand, I have some doubts or worries about the case method, which may simply reflect my own shortcomings in a strange medium.

First, I have missed the close relationship between pupil and tutor which develops under the Oxford system and which is, I think, a great help in teaching. When the pupil is cleverer than the tutor, this relationship is also very valuable to the tutor.

Secondly, I have found the case method slow, at any rate with large classes. That is, I have consistently failed to cover in class as much material as I had hoped to cover. Perhaps I was too optimistic; perhaps "covering ground" is not very important. All the same, I was worried by this feature of the case method.

Thirdly, I was worried by the fragmentary nature of the case method. The materials which an Oxford student is told to read will usually give him some initial framework for his essay topic. If he is a good student he will probably modify or abandon this framework in the light of his reading of cases and articles; but it does give him some help in organizing his ideas. It seems to me that the American law student is given much less help of this kind. Of course this has the merit of forcing him to be more creative and independent. My only doubt is whether the challenge which he is in this way made to face is not too severe for the majority of students; or, to put the matter in a slightly different way, whether the majority would not profit by being guided by their books a little more. I am thinking now of the average, not of the best, students.

My fourth doubt is whether the case method sufficiently develops the student's ability to write. I rather think that it does not. My impression is that the students here are on the whole better than Oxford students in oral discussion, but worse on paper. I wonder, in this connection, whether it would be a good thing to extend the tutorial program here in some form into the second and third years. I know that second and third year students write occasional seminar papers, moot court briefs and even notes for the Law Review. But I doubt whether these occasional exercises are any real substitute for the constant practice in legal writing which we in Oxford regard as an important part of legal education.

I want to turn now to examinations. I do not want to discuss the merits and demerits of examinations generally. I only want to raise some questions about your examination system which have occurred to me as a result of the contrast between it and our examination system at Oxford.

I have an uneasy feeling that students here are examined too soon, too often and too much. Is it, I wonder, right to examine them in a subject less than a week after their last class in it? Is it necessary to examine them at the end of every quarter? Is it necessary to make them write about thirty examinations in three years? I am not asking these questions out of concern for the comfort of the students. I am asking them because I feel that the examination system here may have some undesirable effects. Two points, above all, disturb me.

The first is that a student's final standing in his class will be affected, perhaps adversely, by the result of examinations taken at the end of his very first quarter. We may assume that his capacity as a lawyer increases during his three years here. Should he not be graded on the basis of his capacity at the end of his course? What is the case for averaging out his performance over three years? If we must average, must we do so over the whole period? Could first year grades at least be left out of account in determining final standing, and be used for qualification purposes only? Many students find it hard to settle down to law in their first year but later do good work in the subject. Are not such students unfairly prejudiced by the system of averaging over three years?

The second thing that disturbs me is that the examination system here does not seem to give the student enough time to reflect on what he has learned. In Oxford a law student normally takes a qualifying examination after two terms; at the end of another seven terms he is examined on the whole main part of his course. The last of those seven terms is in most colleges set aside for a review of the whole course. No new subject is taught during it. I found this review period the most illuminating part of my time as an undergraduate. I began to see new relationships and to learn to profit from my own mistakes. I think that many other Oxford students have similar experiences. Of course it will be said that students who can look forward to such a long review period will work less hard than those who are under constant pressure of examinations. This is probably true. But there may be more important educational considerations at stake here than the need to keep students working at full pressure all the time.

I am afraid that these comments on your examination system may have distorted the perspective of this talk. In case they have done so, let me end as I began by saying how much I like and admire this Law School. I like it for its friendliness and informality. I admire it for its exciting intellectual atmosphere. That is the only really important thing I have to say.

New Fellowship Program

A new program of fellowships in international trade and development was inaugurated at the Law School at the beginning of the current academic year.
Faculty Notes

Professor Geoffrey C. Hazard, Jr., has been appointed Administrator of the American Bar Foundation. Since it was established in 1952 by the American Bar Association, the Foundation has become the nation’s largest legal research organization, with a staff of around 45 persons and an annual budget of approximately $500,000. The Foundation, which is housed in the American Bar Center across the street from the Law School, is supported in part by sources within the profession, principally the American Bar Association, the American Bar Association Endowment, and the Fellows of the American Bar Foundation, and in part through grants for specific projects from foundations and governmental agencies. Professor Hazard will continue to be a regular member of the Faculty, and will divide his time between the Foundation and the School.

Professor Norma R. Morris was a leading participant in a special program on the theme of “Modern Advances in Criminology” offered in December by the Center of Criminology of the University of Toronto. Professor Morris’s public lecture, “The Past and Future of Imprisonment,” was one of four featured lectures. In addition, he conducted a seminar, jointly with T. S. Lodge, Director of the Home Office Research Unit, London, on “Theories of Punishment.”

We are pleased to note, even though very belatedly, that Professor Sota Mentschikoff was one of two law professors in the six-person American delegation to the Conference on International Sales Law, held at The Hague last spring.

The Law Student and Legal Aid

By John Weinberg
Class of 1965
President, Legal Aid Student Association

In the Law School’s Legal Aid Clinic program, law students get a chance to try their wings as lawyers, and at the same time make a vital contribution to the community. Working under the close supervision of full-time attorneys, students hear the legal problems of residents of Chicago’s South Side who cannot afford to hire an attorney, and advise the clients of their legal rights and best courses of action.

The first contact the student has with the work of the Clinic comes as somewhat of a jolt to him. Many of the problems presented by the clients are ones which he has seldom if ever met in the course of his classroom studies or in his personal life. The client may have purchased an automobile or furniture on an installment contract with terms so stiff he has not been able to comply with them. It may be the law student’s job to work out with the client and his creditor a new payment plan satisfactory to both; occasionally such a problem has ripened to the point that, by the time the client comes into the Clinic, all the lawyer can do for him is to explain how the creditor can take the car away and get a huge judgment against him besides. Often, a client will present a story of marital discord and misbehavior which will make the student’s hair stand on end. He must determine whether the story offers the elements of a case for divorce or for separate maintenance. Trouble with landlords also comprises a sizeable portion of the work of the Clinic. The client’s landlord may have instituted an action to evict him; or a prior landlord may be holding some of the client’s property as “security” for rent never paid. In these cases, the student must combine a careful reading of the lease, if any, with reference to relevant statutes to give the client an accurate picture of his legal position.

These are just prominent examples drawn from the wide range of problems handled by the Clinic. Although legal assistance in criminal cases is left to other agencies, almost all conceivable other kinds of problems are encountered in the Clinic.

Students’ function

The prime task of the students working in the Clinic is that of interviewing. Each participating student is scheduled for certain hours of work in the Clinic each week, and interviews the clients who come in during his hours. The student’s first visits to the Clinic are spent sitting in as a “silent partner” on interviews by the full-time attorneys. After the client leaves, the attorney and the student discuss the problem and the alternative
courses of action. In “off-moments,” the student acquaints himself with the more bureaucratic aspects of the Clinic’s procedure by reading the manual provided for that purpose.

When the student feels that he is ready, he begins interviewing clients on his own. He must understand and be able to operate under the procedural system of the Clinic. But more important, he must by then have enough of a grasp of the substantive problems which are most often presented to be able to ask the right questions, and to be able to restrict the interview to the relevant scope of inquiry. This restriction not only promotes the efficient use of his time, but also provides for the maximum preservation of the privacy of the client’s affairs. In beginning to interview on his own, the student need not wait until such time that he is confident he knows the best course of action in all or even most of the situations he will meet. Indeed, it would be presumptuous of a second- or third-year law student to think that he has the knowledge of the law and of its artful use which is required for successfully handling cases in the Clinic. Such knowledge and understanding are picked up by the student as he gains experience in his Clinic work.

The interview procedure permits the student to contribute without hindrance that which he is qualified to do, and yet guarantee a safeguard on his work. Students talk to clients in their own special offices within the Clinic. After determining that the client is financially eligible for the services of Legal Aid, the student and client discuss the legal problems which brought him to the office. When the student thinks he has elicited all the information relevant to the disposition of the case he excuses himself from his office and, while the client waits, talks with one of the full-time attorneys. Together, the lawyer and the student discuss the client’s problem, the law in the area, and the best course of action. After the matter has been thoroughly explored and discussed, the student returns to his client and makes the suggestions which he and the attorney have worked out.

**Disposition of Cases**

Often the result will be a referral of the matter to some other agency. This can occur when, for example, the client is financially able to hire an attorney; if the client doesn’t know a lawyer, it is suggested that he take advantage of the Lawyer Reference Plan of the Chicago Bar Association. Many family cases, such as divorces, are referred to the Social Service division of the Legal Aid Bureau to explore further the facts of the situation and to determine the best solution. A social worker of that agency maintains an office right in the Clinic. Once cleared there, the case returns to the Legal Aid Bureau for the required legal action. In support cases, clients are directed to the Court of Domestic Relations.

Some wage claim cases are turned over to the Illinois Department of Labor, which will furnish assistance to the client. But in many cases, the student can advise the client as to the best course of action. This may consist of simply explaining in detail to the client his legal rights in the situation, thus enabling him to insist on that to which he is entitled in settling the matter himself. Sometimes the student is called upon to write a letter or make a call in the client’s behalf. If the case is to go to court, the student may assist in the preparation of court papers. The dispositions are as varied as the number of problems presented.

**Structure and History of the Clinic**

The Legal Aid Clinic serves only the residents of a specified portion of Chicago’s South Side. It operates as a branch office of the Legal Aid Bureau, which serves the entire city, and has its main office downtown. The Clinic was established under a grant from Edwin F. Mandel in 1957, and had its original offices on 63rd St. When the new law school building opened in 1959, space was provided under the classroom wing for a suite of offices for the Clinic.

The administrative structure of the Clinic reflects its hybrid nature. It is basically a branch office of the downtown Bureau. The attorneys and other paid staff are employed by that agency, but the Director of the Clinic is also a member of the faculty of the Law School. General supervision of the Clinic and the students’ work in it is the function of a faculty committee, formerly under the chairmanship of Professor Nicholas deB. Katzenbach and currently of Professor Dallin H. Oaks.

As of November 1, thirty-eight students were participating on a regularly scheduled basis. The Legal Aid Student Association is made up of all the students participating in the Clinic. Through its officers, it serves the functions of stimulating student participation, publicizing the work of the Clinic, scheduling the students working there, providing liaison between the Law School and the work of the Clinic, etc. The Edwin F. Mandel Prize is awarded each year to the graduating third-year student who performed outstanding service in and for the Clinic; and regular participants receive certificates upon their graduation.

The Director of the Clinic is Mr. Henry J. Kaganiec; he and Mrs. Mary Smithsburg are the Clinic’s two full-time attorneys. Mr. Kaganiec, after extensive legal education on the Continent and a J.D. degree at Northwestern, was selected for the position of Director by committee from the Law School and from the Legal Aid Bureau at the inception of the Clinic in 1957. He has served in this capacity throughout the Clinic’s seven year existence.

Other Legal Aid Clinics are in operation throughout the country. There are clinics affiliated with Harvard and Duke University Law Schools, for example; and North-
western students participate in the work of the Legal Aid Bureau's downtown office. The Edwin F. Mandel Clinic, however, is the largest Clinic in the country, measured by the number of cases handled.

VALUE OF PARTICIPATION

The benefits to the law student participating in the Legal Aid program derive only in small part from the knowledge of the substantive law involved in solving the clients' problems. Of much greater importance is the realization that legal problems are people's problems. The Clinic helps to put legal questions in the proper perspective for a neophyte practicing lawyer: not as abstract theoretical problems, as one finds on an examination, in a law review article, or in an appellate case, but as disruptive factors in people's lives. The work of a lawyer is clearly seen not to be that of an impartial balancing of issues and theoretical propositions; he is a member of the community who has special skills and training and to whom people turn for help with these disruptive problems. In this sense, the program of the Clinic serves as a vital supplement to the more conventional aspects of law school work.

Another benefit derived by the student is the development of the skills of dealing with people and helping them solve their own problems. Facing a client in your own office is an awkward and sometimes a frightening thing to a young lawyer or law student. Talking the problem out with the client, and padding the legal advice given with the interest and understanding necessary for satisfying a client, are skills which must be learned through experience by every lawyer. Those who have had experience in this direction in law school are that much ahead when they enter practice.

Underlying all these activities, however, is the motive of excitement in the Clinic's work. A participant is almost always enthusiastic about his experience. It is gratifying to him to realize that people are coming to seek his help, and that he has real help to offer them. One is much closer to conditions in the community, and has a much clearer grasp of the problems of the poor in an urban area.

In this summary of benefits from the Legal Aid program, one must not slight the community contribution made by students giving their time and efforts to the work of the Clinic. To be sure, it is unusual to find a program which offers simultaneously so many personal benefits to the participant and such a significant community service.

But providing legal assistance to the poor is more than just a community service. It is increasingly being recognized as a duty of the profession and, as the decision in *Gideon v. Wainwright* would indicate, of the society as a whole. The Honorable Robert F. Kennedy, then Attorney General of the United States and now Senator-elect from New York, put it thus in his Law Day address at the Law School on May 1, 1964:

> It is time we used those traditional skills—our precision, our understanding of technicalities, our adversary skills, our negotiating skills, our understanding of procedural maneuvers—on behalf of the poor.

> Only when we have done all these things, when we have created in fact a system of equal justice for all—a system which recognizes in fact the dignity of all men—will our profession have lived up to its responsibilities.

And Now, for a Word from...

When the Weymouth Kirkland Courtroom was designed, large windows were placed between the Courtroom and the adjoining lounges with the thought that, in addition to the other purposes they serve, they might be useful for television cameras. They are.

During the autumn, a considerable segment of NBC-TV's "Today" show was filmed at the Law School. The portion of the program dealing with the School itself consisted of an interview of Dean Neal by Hugh Downs, and a broadcast of a substantial segment of a moot court argument from the Kirkland Courtroom. Counsel shown arguing were Patrick Hardin, A.B., University of Alabama, of Childersburg, Alabama, and Thomas West, B.B.A., Northwestern University, of Galesburg, Illinois, both of the Class of 1965. Hardin and West, together with Kenneth L. Pursley, A.B., Cornell University, of Sandpoint, Idaho, make up the School's national moot court team.

On the Bench were Professors Soia Mentschikoff, presiding, Sheldon Tefft, and Dallin H. Oaks.

Later in the day, the Law Buildings were used as a setting for interviews with Samuel K. Allison, Professor of Physics and Director of the Enrico Fermi Institute, and with Charles H. Percy, then candidate for Governor of Illinois.

As a feature of the "Today" show, Charles Percy, Trustee of the University and then candidate for Governor of Illinois, is interviewed in the Law Quadrangle.
The Hinton Competition argument seen by viewers of the "Today" show. On the bench are Professors Dallin H. Oaks, JD'57, Soia Mentschikoff and Sheldon Teft. Patrick Hardin, Class of 1965, is addressing the Court. Thomas West, also Class of 1965, was the other participant in the televised argument.

Television cameras over Loch Levi

A group of law students with Jack Lescoulie, of the "Today" show.
Placement Report

The Class of 1964

Graduates of the Law School continue to make widely varied choices, both as to the kinds of jobs they prefer and the parts of the country to which they go. The pattern for the class graduated last June was as follows:

Private Practice with Law Firms (19 in Chicago; 9 in New York; 3 in Denver; 2 in Boston; 1 each in Columbus, Ohio; Portland, Oregon; Hammond, Indiana; Rochester, New York; Washington, D.C.; Syracuse; Detroit; Hartford; Twin Falls, Idaho; San Francisco; Minneapolis; Evanston, Illinois; Flint, Michigan; Salt Lake City; LaCrosse, Wisconsin; Cincinnati; Los Angeles; and Seattle) ....... 51
Graduate Work ........................................ 10
Law Clerks to Judges ................................. 8
Teaching and Research ............................. 7
Corporate Legal Departments ....................... 5
The Placement Office

The number of law firms, corporate legal departments, government agencies, and other employers which visit the School to interview its students continues to increase. Such visits tend to be heavily concentrated in the Autumn Quarter, but occur also in the Winter and even in the Spring; the number of such visits during the Autumn Quarter, 1964, was the highest on record.

Since about half of the current seniors have firm commitments as of this writing, placement of the Class of 1965 is proceeding at a satisfactory pace, as compared with past performance in this Law School and current performance at other leading institutions. It is hardly necessary to add that no pace is “satisfactory” to a student who has not yet made a commitment, and that this is a view of its placement activity in which the School emphatically concurs.

Readers of the Record who may be interested in adding young lawyers to their offices, or who know of other employers with available openings, are urged to notify the Placement Office. Interviews can be arranged at the Law School or in the employers’ offices. Because our student body is truly national in origin (less than one-third of this year’s entering class is from Illinois) positions in almost any part of the country are usually of interest to some students. It should also be pointed out that a large number of first- and second-year students are strongly interested in summer employment, and that the School regularly hears from recent graduates who wish to change their associations.

Grades and Class Standing

As part of a general program for further strengthening placement, the Law School has revised its policy with respect to disclosure of class standing. The School is persuaded that under present circumstances some methods of disclosure may, in some cases, be so misleading as to do more harm than good. Thus, a small difference in numerical grade average may mean a large difference in class standing; for example, in the present senior class,
19 students are separated by less than 1 point. Reliance on
class standing in such circumstances tends both to mag-
nify insignificant differences and to exaggerate the preci-
sion of the grading process. The resultant distortion is,
moreover, accentuated by the selectivity of our admis-
sions policy and the resultant strength of our student
body. Because of exacting admissions standards and
exacting requirements thereafter, the gap between the
lower and higher ranking, on a numerical basis, has di-
minished strikingly. Such strength in a student body
cannot, of course, be reflected in any numerical ranking
system.

In an attempt to mitigate distortions implicit in class
rankings and at the same time to supply meaningful in-
formation to prospective employers, the School has
adopted the following policy:

1. Numerical grade averages will be disclosed to students and
prospective employers. Complete transcripts of students’ course
grades will also be made available.

2. If a student ranks in the first 40 places in his class, a specific
class ranking will appear on his transcript.

3. All prospective employers will be informed of the distribution
of members of a class with respect to their cumulative averages.

For example, in the current senior class, that distribution is as
follows:

<table>
<thead>
<tr>
<th>Score Range</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>79 and above — 2</td>
<td>74 to 74.99 — 19</td>
</tr>
<tr>
<td>78 to 78.99 — 4</td>
<td>71 to 73.99 — 52</td>
</tr>
<tr>
<td>77 to 77.99 — 4</td>
<td>69 to 70.99 — 22</td>
</tr>
<tr>
<td>76 to 76.99 — 11</td>
<td>68 to 68.99 — 0</td>
</tr>
<tr>
<td>75 to 75.99 — 11</td>
<td></td>
</tr>
</tbody>
</table>

A minimum average of 68 is required for a student to remain
in good standing.

4. With respect to the general quality of the student body,
the performance of the Law School’s students on the Law School
Admission Test, as compared to the national norms, is an eloquent
piece of evidence. (The School fully realizes that the LSAT score
is only one significant element of many. It does provide, however,
a significant and manageable standard of comparison with law
students generally. Other major indices, such as undergraduate
academic records, tend to provide strong corroboration.)

National Norm, LSAT—Median Score is the 50th percentile
Current Third-Year Class, The University of Chicago Law
School—Median Score is slightly above the 90th percentile
Current Second-Year Class—Median Score is slightly above the
92nd percentile
Current First-Year Class—Median Score is at the 95th per-
centile

The graph adjoining, which is provided to all stu-
dents and all prospective employers, vividly underscores
the above information.

The opening session of the School’s Seventeenth Annual Federal Tax Conference
The Conference and Lecture Program: Ethics, Taxes, Slums, and Other Considerations

For some years it has been the School's agreeable custom to hold a dinner, followed by a lecture by a distinguished lawyer or judge, for members of the entering class. The lecture and dinner take place during the opening week of the academic year. Members of the Board of Directors of the Law Alumni Association and of the Law School Visiting Committee are honored guests.

Last October, members of the Class of 1967 heard the Honorable Henry J. Friendly, Judge of the United States Court of Appeals for the Second Circuit. Judge Friendly's talk, "On Entering the Pathway of the Law" appears in its entirety in this issue of the Record.

In October also, the Ninth Ernst Freund Lecture was delivered by the Right Honorable Lord Devlin, P.C., Chairman of the British Press Council and formerly Lord of Appeal in Ordinary. The Lectureship, named in honor of the distinguished member of the Law Faculty who is saluted at length by Professor Allen elsewhere in this issue, has been held in the past by the Honorable Felix Frankfurter, Justice of the U.S. Supreme Court, the Honorable Walter V. Schaefer, Justice of the Illinois Supreme Court, the Honorable Charles E. Wyzanski, Jr., Judge of the U.S. District Court for Massachusetts, The Right Honorable Lord Denning of Whitchurch, Lord of Appeal in Ordinary, the Right Honorable Lord Parker of Waddington, Lord Chief Justice of England, Wilber G. Katz, Professor of Law, University of Wisconsin, the Honorable John Marshall Harlan, Justice of the U.S. Supreme Court, and the Right Honorable Sir Kenneth Diplock, Lord Justice of the Court of Appeal. Lord Devlin's Freund Lecture, "Liberty in Morality," will appear in the forthcoming issue of The University of Chicago Law Review.

Later in the Autumn Quarter, the Law School sponsored a Conference on Judicial Ethics. The Honorable John S. Hastings, Chief Judge, United States Court of Appeals for the Seventh Circuit, presented the principal paper of the opening session, on the subject of "Participation in Money-Making Activities." Commenting on the paper were the Honorable Thomas E. Fairchild, Justice of the Supreme Court of Wisconsin, and Robert L. Stern, of Mayer, Friedlich, Spiess, Tierney, Brown and Platt, Chicago. The second session heard a paper by Simon H. Rifkind, of Paul, Weiss, Rifkind, Wharton and Garrison, New York, and formerly a U.S. District Court Judge, on "The Public Concern in a Judge's Private Life." Comment was offered by Edward L. Wright, of Wright, Lindsey, Jennings, Lester and Shultz, Little Rock, Arkansas, formerly Chairman of the House of Delegates of the American Bar Association.

The central paper of the third session was "The Problem of Sanctions against Judges," by the Honorable Absalom F. Bray, Presiding Justice, District Court of Appeals of California. Commentators were James Halpin, of Kissam and Halpin, New York, and R. Newton Rooks, of Stevenson, Conaghan, Hackbert, Rooks and Pitts, Chicago, past president of the Chicago Bar Association. The Honorable Charles D. Breitel, Justice of the Appellate Division of the New York Supreme Court, delivered the final paper of the Conference; his subject was, "Ethical Problems in the Performance of the Judicial Function." Presiding over the Conference sessions were Professor Stanley A. Kaplan, Professor Soia Mentschikoff, Professor Geoffrey C. Hazard, Jr., and Dean Phil C. Neal.

The Law School's Seventeenth Annual Federal Tax Conference was held during the last week in October. The three-day Conference, the program of which is too long to be reproduced here, drew more than 500 lawyers, accountants and corporate tax executives from 23 states. Chairman of the Conference Planning Committee was Michael J. Sporrer, of Arthur Andersen and Company; the School's representatives on the Planning Committee are Professor Walter J. Blum and Assistant Dean James M. Ratcliffe. Papers delivered at the Conference have been published; alumni of the School should by now have received a copy.

Two additional Conferences are scheduled for the Spring Quarter, the Conference on the Good Samaritan, on April 9, and the Conference on Slums and the Law, on May 7.
At the Conference on Judicial Ethics, left to right, the Honorable Benjamin Landis, Judge, Superior Court of Los Angeles, Professor Soia Mentschikoff, who presided at the Conference, and the Honorable Charles Breitel, Judge of the Appellate Division, New York Supreme Court, and Conference speaker.

Justice Breitel responds to a question during a discussion period of the Conference on Judicial Ethics.

Professor Geoffrey C. Hazard, The University of Chicago Law School, opening the third session of the Conference on Judicial Ethics. On the platform, the session speakers, left to right, R. Newton Rooks, Esq., of Stevenson, Conaghan, Hackbert, Rooks and Pitts, Chicago; James Halpin, Esq., of Kisam and Halpin, New York, and the Honorable Absalom F. Bray, Presiding Justice, District Court of Appeals of California.

At a break during the Conference, left to right, the Honorable John S. Hastings, Chief Judge, United States Court of Appeals for the Seventh Circuit; Robert L. Stern, Esq., of Mayer, Friedlich, Spiess, Tierney, Brown and Platt, Chicago; Law School Assistant Dean James M. Ratcliffe, JD'50, and Professor Stanley Kaplan, JD'33.

Judge Hastings and Mr. Stern flank the Honorable Thomas E. Fairchild, Justice of the Supreme Court of Wisconsin, between sessions at the Judicial Ethics Conference.

Also at the Conference: Simon H. Rifkind, Esq., of Paul, Weiss, Rifkind, Wharton and Garrison, New York, formerly a U.S. District Judge; Professor Mentschikoff, and Edward L. Wright, Esq., of Wright, Lindsey, Jennings, Lester and Shults, Little Rock, immediate past Chairman of the House of Delegates, American Bar Association.
Lord Devlin with the Honorable Walter V. Schaefer, JD'28, Justice of the Illinois Supreme Court and Chairman of the Law School Visiting Committee, and the Honorable Jacob M. Braude, JD'20, Judge of the Circuit Court of Cook County and Director of the Law Alumni Association.

Harry N. Wyatt, JD'21, Member of the Visiting Committee and of the Alumni Board, greets an entering student.

A view of the dinner welcoming the Class of 1967 to the Law School.

The Right Honorable Lord Devlin begins the Ninth Ernst Freund Lecture.

Professor Norval R. Morris, Mrs. Morris, and three first-year students view the School with wild surmise as their careers there begin.
The University Honors Law Alumni

Each Spring, the general Alumni Association of the University of Chicago awards to selected graduates of the University their Alumni Citation of Useful Citizen, recognizing "leadership in those civic, social and religious activities that are essential to democracy." Of twenty-two so honored in 1964, six were Law School alumni. The University Alumni Association described their accomplishments as follows:

JUDGE RICHARD B. AUSTIN, Chicago, JD'26, has been a Judge of the United States District Court for the Northern District of Illinois since 1961. He is a trustee of Denison University in Ohio and a vestryman of the Church of St. John the Evangelist in Flossmoor. He serves on the boards of the Flossmoor Recreation Association and the Olympia Fields Country Club. Before his appointment to the federal bench, Judge Austin was a Superior Court Judge in Cook County; twice served as Chief Justice of the Criminal Court; and twice served as first Assistant State's Attorney of Cook County.

LEO J. CARLIN, Chicago, JD'19, is a senior partner in the law firm of Sonnenschein, Levinson, Carlin, Nath and Rosenthal. He is a trustee of the Chicago Medical School, the Francis W. Parker School, the Anshe Emet Synagogue, and the Retina Foundation of Boston. He has led fund-raising efforts on behalf of the Jewish Federation of Metropolitan Chicago, the Combined Jewish Appeal, and other causes. He has served on the boards of the Citizens of Greater Chicago and The University of Chicago Law School Alumni Association.

ALBERT J. MESEROW, Chicago, JD'30, is chairman of the Great Lakes Commission, an inter-state statutory agency whose members are appointed by the governors of eight interested states. He has also served as the first chairman of the Joint Civic Committee on Elections, which represents 57 civic organizations, and has been active on numerous committees of the Illinois and Chicago bars.

CHARLES STRULL, Louisville, JD'10, was the founder, and later president, of the Legal Aid Society of Louisville. Strull was a charter member of the Conference of Jewish Organizations, which acts as the central planning body of the Louisville Jewish community. In 1934, he founded the Kentucky Committee for Service to New Americans, which helped refugees from Hitler's Germany and continues to serve new immigrants. He was a founder and is a past president of the Louisville Committee for the Council on Foreign Relations. He was a founder and president of the Louisville Astronomical Society, and a founder of the Beckham Bird Club in Louisville.
JAMES H. EVANS, New York, JD'48, is chairman of the Board of Trustees of the National Recreation Association, which services both public and private affiliated agencies in 1,480 communities throughout the United States with publications, field services conferences, and experimental recreation programs. Evans' work in the Association dates from his Chicago days, when he was a member of its special lay committee to develop an experimental recreation program for the home-bound.

Since moving to New York in 1957, Evans has been a trustee of the Midtown Hospital, member of the Boy Scout Metropolitan Council, chairman of the major gifts division of the city Red Cross appeal, and treasurer of the Bronxville Community Fund.

Evans is an elder and executive committee member in the Dutch Reformed Church of Bronxville. A native of Kentucky, Evans continues to serve there as a trustee of Centre College, his undergraduate alma mater. He is vice-president for finance and a director of Dun & Bradstreet, Inc.


A member of the International Council of the Museum of Modern Art in New York, Hillman has made distinctive gifts to several institutions. Notable among these is the Antoine Pevsner sculpture to The University of Chicago Law School. Hillman was a special consultant to the Senate Appropriations Committee and the State Department for several years following World War II. He was a trustee of Pacific University in Stockton, California, and is a member of the Endowment and Public Fund Committee for the Lahey Clinic in Boston.