The Center for Studies in Criminal Justice

The Law School has received a grant of $1,000,000 from the Ford Foundation to found and help support a Center for Studies in Criminal Justice.

In a statement made at the time of the grant, Dean Neal stated: "The primary aims of the Center will be to conduct research on problems of the criminal law, including the disposition and treatment of convicted offenders, and to give specialized education in the criminal law field at the graduate level, including training in the technique of social science research appropriate to the field. The Center will thus contribute directly, by its research activities, to the enlargement of knowledge concerning criminal behavior and the procedures and sanctions for dealing with it; and it will contribute indirectly to the same end by the impetus and direction it will give to the work of younger scholars interested in the field or who may be attracted to it."

Initially, the Center will concentrate on law enforcement, corrections, and prevention and treatment of juvenile delinquency. Projects already planned include:

- An evaluation of defender services for indigents, with special attention to the role of social workers in such programs.
- A demonstration project on the need for legal assistance on civil matters.
- Development of standard police, judicial, and correctional statistics in Illinois to serve as a national model.
- Establishment of a regional planning group to coordinate the introduction and evaluation of new treatment methods in correction.
- Evaluative research on "half-way house" and other community-treatment experiments as an alternative to imprisonment, and assistance to public and private agencies planning such facilities.
- A re-examination of the juvenile court as a means of reconciling conflicts between child welfare and delinquency control.

A study of the Swedish prison system, which is considered by many scholars to be the most advanced in the world.

Further projects now under consideration include a study of bail administration, a study of the problems of probation and its administration, surveys of existing methods of research, graduate fellowships in criminal justice studies, a program of advanced training for young law teachers and legal scholars, and a visiting scholars program.

Important among the Center's research objectives will be an effort to study systematically the effectiveness of different sanctions in deterring criminal behavior, a problem about which surprisingly little scientific knowledge exists. In this, as in other aspects of its work, the Center will build upon the experience and techniques of empirical investigation developed in the Law School's studies of the jury and other law and behavioral science research.

Norval R. Morris, Julius Kreeger Professor of Law and Criminology, has been appointed Director of the Center. Professor Morris will work closely with Francis A. Allen, University Professor of Law and nationally recognized authority in the criminal law field.

Three New Appointments

Grant Gilmore, formerly William K. Townsend Professor of Law at Yale University, has been appointed Professor of Law at The University of Chicago Law School.

Professor Gilmore received his A.B. from Yale in 1931, and his Ph.D., in Romance Languages, in 1936. He then taught French at Yale College until entering Yale Law School, from which he was graduated in 1942. He practiced in New York City, served in the armed forces, and returned to the Yale Law faculty in 1946.

He has served as Associate Reporter for the Uniform Commercial Code, and is currently at work on a book on insured transactions. He is the author of numerous arti-
icles and co-author, with Charles L. Black, Jr., of The Law of Admiralty, which has become the standard work in the field.

Professor Gilmore's principal areas of interest are contracts, commercial transactions, negotiable instruments, and admiralty. During this, his first quarter at the Law School, he is teaching the first-year course in contracts.

EDMUND W. KITCH, a graduate of the Law School in the Class of 1964, has been appointed Assistant Professor of Law. A native of Wichita, Kansas, Mr. Kitch was graduated from Yale College, magna cum laude, in 1961, and received the J.D. from The University of Chicago, cum laude, in 1964, where he served as a managing editor of the Law Review. In 1964-65 he was Assistant Professor of Law at Indiana University. During the current academic year he will teach the courses in Regulation of Competition, Agency, and Patents, Trademarks and Copyright, and a seminar in Legislation.

GEORGE E. FEE, JR., J.D'63, has been appointed Assistant Dean and Director of Placement. Following his graduation from Tufts University, in 1957, he served for three years as an officer in the U.S. Marine Corps. After graduation from the Law School in 1963, Mr. Fee was associated with the firm of Peabody, Arnold, Batchelder & Luther, in Boston, and subsequently joined the staff of Little, Brown and Company, where he has been Associate Editor of the Law Book Department.

Two Special Programs

During the summer of 1965, students of the School participated in two special programs of unusual interest.

The Indigent Appeals Project gave fifteen students experience in the preparation of abstracts of record and briefs in criminal cases. The Project, carried out under the supervision of Marshall Pattner, J.D'56, a practicing lawyer, and members of the Faculty, undertook to provide assistance to the Public Defender of Cook County and private counsel representing indigent defendants on appeal. The Project was supported by gifts from the New World Foundation, the Chicago Community Trust, The Wieboldt Foundation, and a number of Chicago law firms.

The Summer Internship Program, supported by a grant from the National Council on Legal Clinics, provided opportunities for summer work by seventeen law students in a variety of agencies, such as legal aid organizations, neighborhood legal services offices, and public defender offices, with a view to broadening the students' understanding of the problems and responsibilities of the Bar in areas not ordinarily part of the experience of young lawyers entering private practice immediately upon graduation.

Fellowship for Rheinstein

MAX RHEINSTEIN, Max Pam Professor of Comparative Law, is spending the academic year 1965-66 as a Fellow of the Center for Advanced Studies in the Behavioral Sciences, at Palo Alto, California. He is one of forty-eight scholars from thirty-seven different universities awarded fellowships. The Center, sometimes referred to as "the leisure of the theory class," gives its visiting fellows an opportunity for a year of work at research of their own choosing, free of teaching responsibilities, administrative distractions or any sort of commitment to publish.

Professor Rheinstein joined the Law Faculty in 1935, as Max Pam Assistant Professor of Comparative Law; he became a full professor in 1942. He is a member of the International Academy of Comparative Law, First Vice-President of the International Faculty of Comparative Law, honorary professor of the University of Freiburg, and a Commander of the Order of Merit of the Federal Republic of Germany. He has received honorary degrees from the University of Stockholm, the University of Basel, the University of Louvain, and the University of Brussels.
The Hopkins Lecture Hall

The largest lecture hall in the Law School has been named in honor of Albert L. Hopkins, JD'08. At a dedication ceremony held in April, Mr. Hopkins' portrait was unveiled and nameplates were displayed designating the 171-seat classroom as the Albert L. Hopkins Lecture Hall.

Speakers on the occasion included Mr. Hopkins, his law partner Thomas R. Mulroy, JD'28, George W. Beadle, President of the University, Edward H. Levi, Professor of Law and Provost of the University, and Phil C. Neal, Professor of Law and Dean of the Law School.

Mr. Hopkins was born in Hickory, Mississippi, in 1886. After attending Millsaps College and the University of Mississippi, he received the Bachelor of Arts degree from the University of Chicago in 1905. He was awarded the J.D. degree, *cum laude*, from the University of Chicago in 1908, and the LL.B. from Harvard University in 1909.

In 1917 he served as Assistant United States Attorney for the Northern District of Illinois. Mr. Hopkins was also Assistant Chief Counsel of the United States Interstate Commerce Commission from 1917 until 1919. During that period of service he wrote the legal opinion on which President Wilson relied in assuming control over the railroads in World War I. He also served as a Special Attorney for the Internal Revenue Service in 1919. In this capacity he directed the prosecution and conviction of "Umbrella Mike" Boyle and the electrical switchboard manufacturers for violation of the Sherman Anti-Trust Act; Boyle was the first person to serve a prison term for a Sherman Act violation.

Since 1920, Mr. Hopkins has practiced law in Chicago, where he is now senior member of the firm of Hopkins, Sutter, Owen, Mulroy, Wentz and Davis.
Mrs. Neal and Dean Neal greet Mrs. Albert Hopkins

The portrait of Mr. Hopkins which hangs in the Albert L. Hopkins Lecture Hall is admired by Mrs. Hopkins, their son, Albert L. Jr., and three of their grandchildren.

Provost of the University Edward H. Levi, JD'35, congratulates Mr. Hopkins at the conclusion of his talk.

Phil C. Neal, Dean of the Law School, formally announces the naming of the Albert L. Hopkins Lecture Hall.

Thomas R. Mulroy, JD'28, a director of the Law Alumni Association, and partner of Mr. Hopkins, was the first speaker at the Dedication Ceremonies.
Israel’s Highest Judge

The Honorable Shimon Agranat, J.D.’29, has recently been elevated to the Presidency of the Supreme Court of Israel. Justice Agranat entered private practice in Palestine upon graduation from the Law School. He has been a member of the Supreme Court of Israel for several years and was serving, at the time of this appointment, as Relieving President of the Court, the second-ranking member.

The Kreeger Chair

The Julius Kreeger Professorship of Law and Criminology has been established at the Law School in memory of a distinguished alumnus who was, for more than forty years, a prominent practitioner in Chicago.

Norval R. Morris, Professor of Law at the School since the Autumn Quarter, 1964, has been appointed to the chair.

The Kreeger Professorship was established with a gift from Mrs. Arthur Wolf in memory of her late husband, Julius Kreeger. In presenting the gift, Mrs. Wolf said: “I can think of no way more fitting to honor the memory of my late husband. Through the establishment of this professorship, my family and I hope to encourage the study of criminal law and advance the community’s knowledge of how to deal effectively with one of society’s greatest problems, that of criminal behavior.”

Julius Kreeger, born in Chicago in 1896, received both his Ph.B., in 1917, and his J.D., in 1920, from the University. He practiced from 1921 until 1935 with the firm of Felsenthal, Struckman and Berger, and from 1935 until 1946 as a partner of Mayer and Kreeger; in 1946 he opened his own offices.

Mr. Kreeger was president of Motoramp Garages of Illinois, past President of the Standard Club and served on the board of Michael Reese Hospital Research Foun-
Public Law Perspectives on a Private Law Problem:
Auto Compensation Plans

By Walter J. Blum and Harry Kalven, Jr.
Professors of Law, The University of Chicago

The material which follows constitutes most of the opening section of the book of the same name, published by Little, Brown and Company, Boston, 1965. It appears here with the permission of the authors and of the publisher. The book, in turn, grew out of the Harry Shulman Lectures, delivered, in the authors’ words, “jointly, but not quite simultaneously,” at the Yale Law School in 1964.

In a general way we intend to discuss automobile accident compensation plans, but the center of our interest is somewhat different from that of others who have written on the subject. We are not responding directly to the practical problem of coping with carnage on the highways; nor are we concerned with the merits of any particular compensation plan. Instead our interest lies in exploring the underlying rationale of tort liability and compensation schemes, and we look upon auto accidents as providing both an active and a finite area for testing liability and compensation theories. Our concern therefore is with policy.

Speaking loosely, the main question is usually taken to involve a single choice between the common law system in which not all victims recover, and where inevitably there is delay in paying claims, and an auto compensation plan under which every victim would get something, including prompt payment of medical and emergency expenses. This is too stark a contrast because of possible variations both on the common law side and among auto compensation plans. Thus if we add to the common law both compulsory liability insurance and comparative negligence—neither of which can now be considered a radical change—we end up with a negligence system under which the vast majority of victims recover something, albeit not promptly. And similarly if we postulate a compensation plan which embodies a low ceiling on damages, we would have a scheme under which victims as a class bear a large part of the losses. Moreover, most of the plans which have been offered resemble the common law to the extent that all losses are thought of as being borne only by motorists and victims of accidents. If we were to conceive of the special combination of tort law and social insurance of the English variety as constituting a plan, it differs both from the common law and from other plans in that the public at large, through tax funds, bears part of the losses. But enough has been said to indicate why our subject cannot quickly be reduced to a simple policy choice.

The idea of a plan for auto accidents has been con-
Four Alumni Meetings

The accompanying pictures describe, more eloquently than any text, four major meetings of Law School alumni held since last spring.

In April, the Alumni Association of Southern California held a dinner meeting at the Ambassador Hotel in Los Angeles, at which the Honorable Roger Traynor, Chief Justice of the California Supreme Court and Dean Neal were the featured speakers. Association Board Chairman Judge Benjamin Landis, and President Irving I. Axelrad, were responsible for the highly successful arrangements.

During the annual meeting of the American Law Institute, the Washington, D.C., alumni heard Professor Walter Blum as the featured speaker at an alumni luncheon attended by nine members of the Faculty. Frederick Sass, Jr., JD'32, concluded two years of service as president of the Washington alumni group, and was succeeded by Abe Krash, JD'49.

Professor Geoffrey Hazard, Jr., spoke at the alumni luncheon held in connection with the annual meeting of the Illinois State Bar Association, in St. Louis. His topic was "A Newcomer Looks at the Law School." The Honorable Ivan Lee Holt, Jr., JD'37, was firmly in charge.

Law School alumni who attended the annual meeting of the American Bar Association, in Miami Beach last August, heard Professor Allison Dunham speak at luncheon. It is already clear that next year's ABA speaker, at the Montreal meeting, must be former Professor of French Grant Gilmore.

This past is truly but prelude. Plans for the current academic year call for three meetings each in New York, Washington, San Francisco and Los Angeles, with Faculty speakers present at two of each group of three meetings, and at least one meeting, with Faculty representation, in Seattle, Portland, Phoenix, Salt Lake City, Denver, Houston, Dallas, Wichita, Minneapolis-St. Paul, Milwaukee, Detroit, Indianapolis, Cleveland, and Boston.

Irving I. Axelrad, JD'39, President of the Southern California Alumni Association, the Honorable Roger J. Traynor, Chief Justice of the Supreme Court of California, member of the Law School Visiting Committee and featured speaker of the evening, Dean Phil C. Neal, and the Honorable Benjamin Landis, Judge of the Superior Court of Los Angeles and Chairman of the Southern California Alumni Association, at the Los Angeles meeting.
Conferences and Lectures, Past and Future

“The Good Samaritan and the Bad: The Law and Morality of Volunteering in Situations of Emergency and Peril, or of Failing To Do So” was the subject of a Law School Conference in April. At the opening session, Charles O. Gregory, Professor of Law at the University of Virginia, discussed the Anglo-American law on the subject, and André Tunc, Professor of Law, University of Paris, compared the law of France and other Continental jurisdictions. Norval Morris, Julius Kreeger Professor of Law and Criminology at The University of Chicago Law School, and Louis Waller, Sir Leo Cussen Professor of Law, Monash University, Victoria, Australia, commented upon these papers. At the luncheon session, Alan Barth, Editorial Writer of The Washington Post, spoke on the subject of “The Vanishing Samaritan.”

Herbert Fingarette, Professor of Philosophy, University of California, Santa Barbara, explored the ethical questions underlying the “obligation” to intercede, and Joseph Gusfield, Professor and Chairman, Department of Sociology, University of Illinois, considered the general problem from the point of view of the modern sociologist to open the afternoon session. Following Mr. Gusfield, Lawrence Zelic Freedman, M.D., Foundations’ Fund Research Professor of Psychiatry at The University of Chicago, spoke on “No Response to the Cry for Help.” “The Perspective of the Police” was the title of the paper delivered by Herman Goldstein, Assistant Professor of Law, University of Wisconsin and former Executive Assistant to the Superintendent of Police of Chicago. Hans Zeisel, Professor of Law and Sociology, The University of Chicago, discussed the methodology of investigating the problems in this field, and reported on the results of a survey of public attitudes on the Good Samaritan problem which he had directed in West Germany, Austria and the
United States. Anthony W. Honore, Fellow of New College, Oxford, opened the evening session with an address on "Law, Morals and Rescue." The Conference concluded with a round-table discussion involving all twelve speakers and chaired by Professor Harry Kalven, Jr., of the Law School.

Later in the Spring Quarter, the School sponsored a Conference on Problems of Urban Renewal. The opening address, "Blitz and the Blight—Post War Law and Practice in Britain" was delivered by Desmond Heap, Comptroller and City Solicitor, the City of London. A major innovation, and a successful one, was the presentation of three papers by students in the Law School. John C. Cratsley and George A. Ranney collaborated on "Private Actions by Tenants to Facilitate Rehabilitation of Urban Housing," while David C. Long spoke on "Protection of Interests of Site Families in Urban Renewal," and Robert C. Funk on "Changing Concepts of Urban Renewal." The Conference concluded with a round-ta-
ble discussion involving the five speakers mentioned, and Joseph Epstein, of the Urban Redevelopment Agency, North Little Rock, Arkansas, Nancy E. LeBlanc, Deputy Director, Legal Services Unit, Mobilization for Youth, Inc., New York; David E. Pinsky, Housing and Home Finance Agency, Washington; Bernard Weissbourd, JD'48, President, Metropolitan Structures, Inc., Chicago; Julian Levi, JD'33, Professor of Urban Studies, The University of Chicago, and Edward C. Banfield, Professor of Government, Harvard University. Both the Conference and the round table were chaired by Allison Durham, Professor of Law, The University of Chicago Law School.

Two major events in the 1965–66 program of the Law School will have taken place by the time this issue of the Record reaches its readers. The Eighteenth Annual Federal Tax Conference will be held in the Auditorium of the Prudential Building on October 27, 28 and 29. The Conference Program, which is too long to be set forth here, has again been planned for lawyers, accountants and business executives interested in problems of federal taxation and possessing substantial background in the field. Last year, the Conference attracted more than 500 participants from twenty-three states; it is anticipated that the attendance this year will be comparable. The Conference is planned by a seventeen-man committee of lawyers and accountants, on which the School is represented by Professor Walter J. Blum and Assistant Dean James M. Ratcliffe.

At the opening of each academic year, the Faculty of the School holds a welcoming dinner, followed by a lecture by a distinguished judge or practitioner, for its entering students. The members of the Law School Visiting Committee and the officers and directors of the Law Alumni Association, are honored guests. This year, the Lecturer was the Honorable Charles D. Breitel, Justice of the Appellate Division of the New York Supreme Court, who spoke on "The Many Faces of Law."

On November 12 and 13, the School will sponsor a Conference which will represent a unique departure from those held in the past. "The Conference on Consumer Credit and the Poor" was conceived and organized by students of the Law School. Students initially suggested the topic, planned the program, have managed arrangements for the Conference, will provide the papers for the workshop sessions and the briefs for the moot court session, and will preside over all six meetings involved. The two-day gathering provides for public addresses on the morning of November 12 and the afternoon and evening of November 13. The afternoon of November 12 and the morning of November 13 will be devoted to workshops. Papers which will provide the basis for workshop discussion, all being prepared by students, will be distributed to participants in advance of the Conference. On the evening of November 12, there will
be a moot court presentation in which the legal issues involved will be selected from problems in the consumer credit field. Students preparing papers for the workshops are Ralph C. Brendes, Peter H. Darrow, Robert C. Funk, Roger P. Levin, and William A. London. The general Student Planning Committee for the Conference is composed of John C. Cratsley, Barbara J. Hillman, and Lawrence H. Schwartz.

Tentatively scheduled for mid-Winter, 1966, is a Conference on the Arts and the Law. The Tenth Ernst Freund Lecture will be given in the Spring Quarter by the Honorable Carl McGowan, Judge of the United States Court of Appeals for the District of Columbia, and member of the Law School Visiting Committee. Also in the Spring Quarter, Milton Friedman, Paul Snowden Russell Distinguished Service Professor of Economics at The University of Chicago, will deliver the Henry Simons Lecture.
Law Schools and the Universities

By Edward H. Levi
Professor of Law, The University of Chicago Law School, and
Provost of The University

The address which follows was presented at the Annual Meeting
of the Association of American Law Schools in December. It later
appeared in the Journal of Legal Education, Volume 17, Number 3
(1965). It is reprinted here with the permission of the Journal
and of the author.

I suppose it is true that in an important sense law schools
today are stronger than they ever have been. Students are
becoming plentiful. A sufficient number of them are attractive,
well balanced and marketable. Three years of
ordinary growth and loss of sleep will make them look
the way law offices think entering law clerks should look.
In some instances their geographical distribution is likely
to be such as to give them good points in some employer’s
eyes. He likes grown products if they are the right
kind. He also likes to pull in the best from far away
places. On top of that, the lad by then may have been a
law clerk to a Supreme Court justice. Many of the law
students have high aptitude scores, a sufficient number to
enable the quality law schools to vie with each other on
their average and minimum scores, in a continuous effort
to convince themselves that their students are really good.
The drive, imagination and tolerance of the students are
wonderful. They enable the students to relish the stimu-
lating atmosphere of a closed society, which at times par-
takes of the sadistic flavor of an intellectual boot camp,
and at other times is a grand theatrical performance in
which every law professor is a Supreme Court Justice—
U.S.—that is. When the students come, they don’t read or
write very well. This enables law school deans to make
courageous speeches on this controversial topic. It also
gives the law schools something to do, for the training
which is offered is largely a training in reading and writ-
ing. Despite this training, complaints concerning the fail-
ure of entering students to read or write well evoke a
sympathetic response from law firms, for they know that
law graduates are similarly incapacitated. Of course, as
night follows day, a certain number of law students will
make the Law Review. From this group, future law pro-
fessors will be picked. They become full professors very
fast, because they are very bright, have good aptitude
scores, make good grades, and, at the very least, were on
the Law Review.

I assume this partial and unbalanced description will be
taken for the loving caricature which it is intended to be.
It is not easy to describe the modern university law
school—partly prep school, partly graduate school—in
part directed toward the intellectual virtues and the
tributes of scholarship, and yet in main thrust the producer
of technicians for a learned (and sometimes demi-learned)

profession containing within itself many of the same
contradictions and conflicts. I recall a talk, probably given
for proselytizing purposes, by a most eminent law teacher
in which he referred in a matter of fact way to the “peck-
ing order” as he described it, among the law schools of
the Ivy League. Since I was dean of one of the greatest
law schools in the world in one of the greatest universi-
ties in the world, and that university did not even play
intercollegiate football, I was at a momentary loss to un-
derstand what the Ivy League business had to do with the
law or law schools. I was further puzzled because I had
forgotten that his particular urban university was even in
the Ivy League. But then with the ability to reason given
to me through legal training, I realized this was the
whole point. The finishing school or prep school attrib-
utes are still with us. But the result is not bad. The esprit
and spirit of the modern law school are the wonder of
many graduate departments and other professional
schools. Indeed recognizing the slowness with which ed-

Edward H. Levi
ucation proceeds in the United States, we have created a liberal arts graduate program and have given to it a generalist professional thrust to justify an across the board attention to precision and structure within a common subject matter. We have substituted the law for the classics. We are for the most part overwhelmingly interested in teaching, which to some extent sets us apart from other graduate areas. We are giving the modern counterpart of a classical education to many who will be the leaders of our country as well as of the Bar. The result is a powerful intellectual community in which a continuous dialogue is not only possible because of the sameness of subject, but is insisted upon both because of the method of instruction and the type of research which is expected and honored. The subject matter may be that of the social sciences, but we are the inheritors of the humanistic tradition. We create structures and admire them. We initiate our students into appreciation and make artists of the best of them. We write book or court opinion reviews with enthusiasm or acrid distemp the layman misunderstands as somehow being concerned with the practical effects for good or bad of particular decisions. Poor layman. He does not understand we are artists, not social planners.

If this description has any considerable element of truth in it, I think we must agree that the modern university law school (and I realize of course that not all modern law schools are in universities) could not so well exist outside of a university environment. At the very least the University has placed a protective cloak around the school. I think the result which has been achieved is perhaps largely unintended, or at least has not been directly faced. The motor power of course is still the thrust for the training in a profession. The Bar still regards the modern law school as the successor not only in time but in spirit to the law office traineeship. The law faculties still worry most directly about the actual problems which graduates may face. The focus of law school discussions may be good, hard, tough actual problems, or problems thought to be so, no matter how far from reality they really are. But in truth this is a liberal arts education in structured reasoning. So far as subject matter is concerned, it could be cut down to two years, or, if this were really desired, it could be expanded to cover much more of the art of practice. Perhaps taking seriously the mission of the law school to train the elite citizen to participate in government within a democracy—including the governmental function of private practice, the education should—indeed must—expand to draw into itself the new knowledge of the social sciences. But change is difficult and our skepticism, which is our stock in trade anyway, is very great. We are the victims of our own success. We have a protected oasis within the University community, and we are doing just fine. Moreover I should say at once that the law school contribution to a university through the school’s adherence to the liberal arts tradition at the graduate level—a tradition of talk and skepticism and appreciation, and its strong tradition of interest and instruction and concern for students—is very great. One can have a great university without a law school, because it has been done, but it must be much more difficult.

The modern university, mirroring many of the conditions of modern life, has changed a great deal in the last quarter century. In the first place, it is apt to be very large not only in numbers of students and of faculty, but in the sheer number of transactions, financial or otherwise, which take place. Second, there has been an enormous change in the research environment of many universities, and to some extent what is meant by research. The large machines needed for important scientific research are expensive. A considerable portion of the budget of a university, between one third and one fourth in some instances, may reflect governmental support for research largely in the biological and physical sciences, and to some extent in the more behavioral aspects of the social sciences. Individual faculty members become entrepreneurs for financial support and in one way or another become accountable for the time which they spend upon it. The weight of the jobs to be done and the evolving structure of the modern university encourage the pulling away of faculty groups into more or less separate entities. And this comes at a time when a whole view of the university is desperately needed.

The values represented in a university are still taken for granted. Among these are the pursuit of knowledge for the purpose of understanding; the acceptance of the power of the free spirit of inquiry. But the modern condition appraises the productivity of the institution in terms of the numbers of students handled and the research which counts. This is not a conflict between the scientific and the humanistic spirit, as has been said, but whether either will survive in strength the condition which has made possible the much needed support of education and research in our day. That condition is the acceptance of the importance of education and research because of the material gains they make possible and because of their impact upon security. The inner spirit and the cultural values which provide the setting and the reason are not forgotten, but neither are they much loved for their own sake. Perhaps they never are, and yet they are all important.

In this setting the modern law school within a university community finds its position considerably altered. The law school as a graduate area is no longer particularly unique by virtue of its post undergraduate status. There are many graduate areas, and graduate work is the assumed objective of a large proportion of undergraduate students. A recent study showed 26 per cent of the students in some large state schools and up to 65 per cent and 72 per cent in other selected colleges intending to go
on to do graduate or professional study. Recent studies have been interpreted also, and I don’t believe them, to suggest that Ph.D. and medical students are even brighter than law students. But what this says, and we all know it, is that both some of the uniqueness of the law school by virtue of its post graduate study and the uniqueness of the bar itself are diminishing. Lawyers after all were first important—and this was a long time ago—because they could read and write, not in the way law schools deans now say they should, but barely. Now many people can read and write in the same way. Then they were unique because they were the undoubted leaders in the community. They are still among the leaders, but there are many professions which in some sense have taken over. Business itself has become a profession and is gaining strong professional and well-supported schools. The lawyer now finds himself advising clients in industry who have had more schooling than he has had and who have been back for more high level refresher courses than are available in the law school world. Law schools are not unique either to the extent that through their Association or otherwise—they demand special recognition of their separatism, as, for example, on such an important matter that the law library be autonomous, whatever that means.

Every area of the University is apt to demand the same kind of recognition in the flurry of centrifugal forces which have overtaken the modern institution of learning. What may be unique is that the law schools have relatively less financial means to go it alone than some of the other areas. Law schools do not get large federal grants, and the day when law schools could operate as large tuition receiving institutions is probably vanishing. Even the competition of the Bar may not be the help to law school faculty salaries in that unique sense which may have been assumed. There is a lot of competition for physicists, mathematicians, economists, and, perhaps because of the speeches of law school deans, even English professors. I fear I am now distorting what should be the merit of the inner spirit and cultural values with somewhat crass material considerations. But if universities are to be divided up for the benefit of those areas which bring the most money or have the greatest political power, I doubt the law schools will fare very well.

These thoughts are not a new found cloak to protect a professor of law on leave as a central administrator. I got them, mistakenly or otherwise, as a law school dean. Indeed I was summoned along with some of my colleagues to appear before the Legal Education Section of the American Bar Association which has some intimate connections with your organization, to show cause, as it were, why our school should not be punished because our law library, while in fact quite separate, was part of the University system, and therefore not autonomous, and because of our recalcitrance in observing a university rule that we could not publish the separate law school faculty salary schedules. The faculty of which I was a member took the position it did because I think we realized that in the long run the strength of law schools would be greater to the extent they were part of the universities, and that separatist pressures upon universities weaken these institutions. I realize of course the public spirit and, to some extent, the provocations which have induced such separatist moves. But I suspect that at least now, or if not now, soon, the greater glory and the greater service is all the other way, and lawyers who so frequently are the guardians of the resources of our universities as well as of our law schools should be the first to recognize this.

Just as lawyers conceive of themselves as generalists and frequently are, so law professors move naturally to this same role within the University community. They come armed with a discipline and a structure of ideas covering a vast area of human knowledge and related to immediate issues of social policy. It is of course true that law, perhaps in an effort to establish itself as scientific, has often tended to make policy issues a matter of value judgments to be decided by political processes and upon which much cannot be said in any disciplined way. But the value judgments then enter into the argument anyway, even though perhaps illicitly, and the important thing is that the dialogue includes them. One might feel a little more comfortable about the role of the law schools in directing inquiry to social problems before they erupt into crises, if, for example, on such matters as reappropriation we had been more concerned with the problem of urban and rural representation prior to the recent decisions, and were not so frequently satisfied to be only critics of the Court. Our law schools are court-tied to a considerable extent. Too much so undoubtedly. And we are talking court law, when our colleagues within the University community are mistakenly grateful to us for discussing the underlying issues. They do not realize we are only talking law in a most narrow sense and of course we aren’t. This suggests that somewhere within the University structure, and probably not the mission of only one school in particular, a continuing and structured dialogue ought to be fostered on important policy issues. Much of this role, indirectly sometimes and frequently directly, is performed by the law schools, and it is a magnificent and unique contribution. Law schools also have the opportunity, and sometimes they take it, to examine for law the consequences of apparent new knowledge and new techniques. One example is the research today which purports to show the overwhelming and perhaps defeating influence of early childhood environment upon later adolescence and the adult years. How should our legal institutions fashioned for the protection of the family, and also to protect the community, respond to these facts, if they are facts in a society which has mass delinquency and cultural deprivation? It is not I think sufficient for us to discuss only procedure and to leave the substance to
some unknown other discipline to pick up. A dialogue of values—in addition to our humanistic appreciation of our artistic creations of logic—is in fact within our tradition. It is one of the things which makes us uniquely valuable to the university community.

As institutions the law schools and universities confront each other with their own way of doing things. I suspect each could learn with profit from the other. The law schools offer an example of a community within a faculty, and including the students—a community unfortunately increasingly rare in the large amorphous university where remoteness and separatism has become the atmosphere felt by all. The university on the other hand increasingly backs the individual faculty member to help him go where his research runs, from one discipline to another, if necessary, and without as many confining notions of what is a priori significant or achievable. The very sense of community which law schools have—and I hesitate to say this but I think it is true—have to some extent dampened the interest in new experiments and new directions by individual faculty on their own, backed up by the kind of research support which in one way or another is made available in other areas. And this indeed is strange with a subject as complicated and varied as law.

is, where the interdisciplinary work for one corner may be quite irrelevant in its lesson for work in another. I don’t suppose it is significant in this respect that this association of law school professors is called an association of law schools. I should like to think that is a trick to compel the law schools to pay what otherwise would be our dues; yet the symbolism has some importance. Perhaps we should give less attention to what law schools do and give greater encouragement to law professors to do as they please. I realize, of course, this is often done but still the results from a little bit more might be surprising.

When I was a law school dean I had to say, or so I thought, that law and law schools were of the greatest importance to the larger community and to the universities of which they are a part. Now that I am in a sense free, I find that what I said was true. I had not fully realized, however, how intertwined the roles of law school and university were, nor had I appreciated that so much of the humanistic tradition is kept alive in the professional course of liberal arts—which is the law. And that is the sense of values, which while so frequently formally eschewed, helps give the law schools their distinction. It is good to hope that the values and ways of life of law schools and universities will gain from each other.

The Honorable Ramsey Clark, JD’51, Deputy Attorney General of the United States, speaking informally with law students in the Green Lounge.
Alumni Day and Dinner

While it sometimes seems fatuous to describe anything as the “First Annual,” when the occasion is clearly a success, and definitely will be continued, it is probably justified. Therefore, the School’s First Annual Alumni Day was held last May. Representatives of the local law alumni organizations in New York, Washington, D.C., San Francisco and Los Angeles, together with representative alumni from fourteen other cities, were invited to join Chicago-area members of the Alumni Board for a day-long program at the School. The visiting alumni attended classes in the morning, then lunched with Faculty members and students. The afternoon was devoted to a report by Dean Neal, a round table discussion of Law School teaching methods, chaired by Irving I. Axelrad, JD’39, of Los Angeles, and a discussion of means of further strengthening alumni organization in areas outside metropolitan Chicago. In the evening, the visiting alumni and their wives attended the Annual Dinner of the Law Alumni Association.

Featured speaker at the Annual Dinner, again held in the Guild Hall of the Hotel Ambassador West, was the Honorable Nicholas deBelleville Katzenbach, Attorney General of the United States and Professor of Law, on leave, at the Law School. The Attorney General was introduced by Professor Soia Mentschikoff. Dean Phil C. Neal also spoke briefly to the overflow crowd; Alumni Association President Laurence A. Carton, JD’47, presided. The officers and directors of the Association for 1965-66 are as follows:

- **President**
  - Laurence A. Carton, JD’47
- **First Vice-President**
  - P. Newton Toddhunter, JD’37
- **Second Vice-President**
  - Charles W. Boand, JD’33
- **Third Vice-President**
  - J. Gordon Henry, JD’41
- **Fourth Vice-President**
  - Richard H. Levin, JD’37
- **Secretary**
  - William G. Burns, JD’31
- **Treasurer**
  - Charles F. Harding III, JD’43

The Officers and directors of the Association for 1965-66 are as follows:

Robert McDougal, Jr., JD’28, Alumni Association Board Member, Laurence A. Carton, JD’47, President of the Alumni Association, and Mrs. Jean Allard, JD’51, of the Alumni Board, at the luncheon session of the Annual Alumni Day.

The Honorable Benjamin Landis, JD’30, and Irving I. Axelrad, JD’39, respectively Chairman and President of the Southern California Alumni Association, with James McClure, JD’49, Alumni Board Member, and Linda Thoren of the Class of 1966 and Elizabeth Ellenbogen, JD’65.

At the luncheon session of the Annual Alumni Day, J. Leonard Schermer, JD’41, center, of St. Louis, holds forth for students and fellow St. Louisan Richard M. Stout, JD’44, right.
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The Hon. Hubert L. Will, '37
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Dudley A. Zinke, '42
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It is hard to say whether this moment at the speaker's table during the Annual Dinner should be described as apprehensive, or merely thoughtful. Left to right, Richard H. Levin, JD'37, General Chairman of the Annual Fund Campaign, Dean Phil C. Neal, Attorney General-Professor Katzenbach, and Laurence A. Carton, JD'47, President of the Alumni Association.

At the reception preceding the Annual Dinner, Elliot Epstein, JD'51, John D. Schwartz, JD'50, and Miles Jaffe, JD'50, of Detroit, who had participated in the Alumni Day program preceding the Dinner.

At the Annual Dinner, left to right, Kenneth Pursley, JD'65 and Mrs. Pursley, Peter Karasz, JD'65, Mrs. Thomas R. Mulroy and Thomas R. Mulroy, JD'28, Director of the Law Alumni Association and member of the Visiting Committee.
Malcolm P. Sharp received an appreciative ovation from those attending the Annual Dinner, when the announcement was made that, after more than thirty years of service to the School, Mr. Sharp had become Professor Emeritus.

White House Fellow

EDWIN B. FIRMAGE, JD‘63, JSD‘64, has been appointed a White House Fellow for 1965-66. Fifteen White House Fellows are selected, this year from among more than 4,000 applicants. Four Fellows are assigned to the White House Staff, one to the Vice-President, and one to each member of the Cabinet. The program is designed to give persons of outstanding promise a working knowledge of the federal government at the highest level.

Mr. Firmage has been assigned to Vice-President Hubert Humphrey.

A native of Provo, Utah, Mr. Firmage was graduated from Brigham Young University summa cum laude in 1960. He received the Brigham Young-University of Chicago Law School National Honor Scholarship. During his stay at the Law School, he served as an editor of The University of Chicago Law Review. He spent the academic year 1964-65 as assistant professor of law at the University of Missouri, teaching international law, administrative law and conflicts.
Placement—The Class of 1965

The employment choices of members of the School's graduating class continue to show great diversity, both as to type of work and as to geographic location. The pattern for the class graduated last June was as follows:

Private Practice with Law Firms (25 in Chicago, 4 in New York, 2 in Philadelphia, 1 each in Boise, Idaho, Cleveland, Helena, Montana, Los Angeles, Middlebury, Vermont, Milwaukee, Portland, Oregon, Sioux City, Iowa, Springfield, Illinois and Wichita, Kansas) 41
Law Clerks to Judges 18
Military Service 15
Graduate Work 11
Teaching and Research 8
Corporate Legal Departments 6
Federal Government 5
State or Local Government 5
Business Management Positions 3
Miscellaneous 4
Unknown 9

Once again it should be emphasized that this listing is deceptive in one respect. When military service, judicial clerkships and graduate work have been completed, and further information gathered on those now unknown, it is likely that the number of graduates entering private practice will be on the order of 85, rather than the 41 shown above.

Those graduates serving as law clerks to judges are as follows:

ALEC P. BOUXSEIN—With the Honorable Richard B. Austin, U.S. District Court, Chicago.
BRUCE L. ENNIS, JR.—With the Honorable William Miller, U.S. District Court, Nashville, Tennessee.
HENRY F. FIELD—With the Honorable Walter V. Schafer, Supreme Court of Illinois.
ROBERT J. GOLDBERG—With the Honorable Thomas E. Kluczynski, Illinois Appellate Court.
MIGUEL GORDON—With the Honorable Walter Pope, U.S. Court of Appeals, Ninth Circuit, San Francisco.
CARL A. HATCH—With the Honorable John C. Harrison, Supreme Court of Montana.
PHILLIP E. JOHNSON—With the Honorable Roger J. Traynor, Chief Justice, Supreme Court of California.
CHESTER T. KAMIN—With the Honorable U. S. Schwartz, Illinois Appellate Court.
MIGUEL B. LA VINSKY—With the Honorable John Pickett, U.S. Court of Appeals, Tenth Circuit, Denver.
MERLE W. LOPER—With the Honorable Jesse E. Eschbach, U.S. District Court, Fort Wayne, Indiana.
TOM A. ROTHSHCHILD—With the Honorable James B. Parsons, U.S. District Court, Chicago.
ALAN SALTZMAN—With the Honorable Matthew Tobriner, Supreme Court of California.
M. SCHNEIDERMAN—With the Honorable Bernard M. Decker, U.S. District Court, Chicago.

MILTON R. SCHROEDER—With the Honorable Carl McGowan, U.S. Court of Appeals for the District of Columbia.
TERRY J. SMITH—With the Honorable John W. Fitzgerald, Michigan Court of Appeals, Lansing.
WILLIAM C. SNouffer—With the Honorable Ralph M. Holman, Supreme Court of Oregon.
JOHN L. WEINBERG—With the Honorable Henry L. Burni, Illinois Appellate Court.
WILLIAM ZOLLA—With the Honorable U. S. Schwartz, Illinois Appellate Court.

Dean Neal presents the award for outstanding work in the field of Real Property to Richard Vetter, JD'65, at the Convocation Luncheon for students graduated last June.


Felix Frankfurter

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

The memoir which follows appeared in the University of Virginia Law Review, Volume 51, at page 562 (1965). It is reprinted with the permission of the Review and of the author.

“A little trust that when we die
We reap our sowing! and so—goodbye!”

If, as Felix Frankfurter once suggested, the reason for writing a Nachruf is that “the dead should not cease to be in the minds of men,” none need be written to him. For certainly he will remain in the minds of men so long as the future of law and government in this country derives in any way from their past. It is neither appropriate nor necessary nor possible to describe or document here the contributions that Felix Frankfurter made to government under law as a scholar, a counselor, a judge. He cannot escape the judgment of history. And his friends, with good reason, are sanguine about the outcome of that judgment. Posterity is assured of knowing Felix Frankfurter as one of the giants of the law.

Felix Frankfurter will live in the minds of men. The pity is that he cannot live equally long in the hearts of men, where those who knew him really cherish him. It is the private rather than the public figure that will not be conveyed to future generations. For his epigone, like their master, are necessarily mortal and the unique experience of having known F.F. is not transferable. The keenest minds with the most facile pens have proved incapable of capturing his genius. His friends read the words of perhaps his closest companion, Dean Acheson, and smile and nod in recognition. They admire and envy the close likeness that the poet’s command of language made possible for Archibald MacLeish. But whatever they share in common with Acheson and MacLeish on this score, there is much more that each of F.F.’s friends has for himself alone. Gardner Cox’s portrait that hangs in the Harvard Law School and Karsh’s magnificent photographs are revealing. But neither art nor science has yet perfected the instrument capable of recording the man who was Felix Frankfurter. Indeed, as might have been expected, it was he—in Felix Frankfurter Reminiscies—that came closest. Perhaps, when his letters are published—there must be a million of them—he will come even closer.

Certainly it is possible to isolate the factor that made F.F. unique. Alex Bickel did it: “And above all there never was such a friend. Young or old, whoever was touched by the friendship of Felix Frankfurter was affected forever. . . . Friendship with Felix Frankfurter was a romance. It made everything worthier and handsomer, including the friend.” Nor is there any secret about the reason why friendship with F.F. was the extraordinary thing that it was. Paul Freund touched upon it in his
eulogy: "His love of friends was equally unabashed, as all of us can testify. Who of us will not continue to feel the iron grip on the arm, to hear the full-throated greeting, to be rocked with the explosive laughter, and to be moved by those solicitous inquiries about ourselves and our dear ones that seemed to emanate from some miraculous telepathic power on his part but were only evidence of what the deepest caring could uncover."

If one had to put in the shortest possible compass what it was that made F.F. different, it would be summed up in the words: "He cared." He cared about everything: about ideas, about institutions, about individuals. But he cared most about individuals, and above all about those individuals whom he befriended.

It is not surprising, therefore, that the tributes to F.F. have so frequently been written in the first person singular. This is not merely a reflection of the common desire to associate with greatness. It is rather that F.F. cannot be considered, by those who knew him, separate and apart from the deep personal meaning that he had for them. And so, as he frequently noted, because a tired cliché can gain fresh vitality from a rare occasion, it is true that when F.F. died, a little bit—more than a little bit—of a lot of people died with him. We did not ask for whom the bell tolled; we knew it tolled for us.

When I undertook to prepare this note, I too expected to speak of the significance that F.F. had for me. But I find the wound still too raw to probe it by recording my memories of F.F. For a while, at least, I prefer to husband them. With apologies, I therefore end at the beginning of what was to be my tale. To those who did not know him, I offer my sympathy, for they have missed an experience that can never be duplicated. To those who numbered among his friends—and they are legion—I repeat his own words, taken from a letter typical of the kindness that was his: "Sorrow is unique and I won't say that I know your grief for him but I can say that I feel mine."

**Freund Centennial Prizes**

The generosity of two distinguished alumni, Harry N. Wyatt, JD'21, and Maurice Turner, JD'25, has made possible the establishment of a series of annual prizes in commemoration of the centennial of the birth of Professor Ernst Freund. A prize of $250 is awarded to the student submitting the best paper on a topic designated by a Faculty committee.

The Freund Essay Prize for 1964-65 was awarded to Lawrence T. Hoyle, Jr., JD'65, for his paper on "The Value To Be Assigned Legislative Findings of Fact in Constitutional Litigation." The topic for the Second Freund Essay Prize, in 1965-66, will be "Is there anything left to the constitutional concept of invalid delegation of legislative powers?"

**Court Program Continues**

For the past five years, Illinois trial and appellate courts have held regular sessions in the Weymouth Kirkland Courtroom, hearing actual cases. These court proceedings are integrated with the first-year program of legal research and writing. Students hold informal discussion sessions with participating lawyers following the trial or arguments.

The Supreme Court of Illinois, The Honorable Ray I. Klingbiel, Chief Justice, and The Honorable Joseph E. Daily, Harry B. Hershey, JD'11, Byron O. House, Walter V. Schaefer, JD'28, Roy J. Solisburg, and Robert C. Underwood, Associate Justices, met in regular session in the Courtroom in March, 1965. Earlier in the academic year, as noted in previous issues of the Record, the School had the benefit of visits from the Illinois Appellate Court and the Circuit Court of Cook County.
AG and DAG

The School takes great pride in the appointment of Nicholas deBelleville Katzenbach, Professor of Law on leave, as Attorney General of the United States, and Ramsey Clark, JD'51, as Deputy Attorney General. Early in April, the Washington, D.C. Law Alumni Organization held a reception in their honor. The success of this occasion, arranged by George Kaufmann, JD'54, is amply attested by the photographs accompanying this report.

... and at the reception ...

By Ronald H. Coase
Professor of Economics in the Law School

The paper which follows first appeared in Land Economics, Volume XLII, Number 2, 1956 and is reprinted here with the permission of the publisher and of the author. Professor Coase wishes it noted that the first published suggestion that radio frequencies be awarded to the highest bidders appeared in an unsigned student comment entitled “‘Public Interest’ and the Market in Color Television Regulation,” 18 University of Chicago Law Review 802 (1951). The author of the comment was Mr. Leo Herzel, now a practicing lawyer in Chicago.

In the United States, an evaluation of public policy relating to radio and television broadcasting turns itself into an evaluation of the work of the Federal Communications Commission, the body which (together with its predecessor, the Federal Radio Commission), has regulated the broadcasting industry for over 37 years. The performance of the Federal Communications Commission (herein referred to as FCC) has not been such as to lead most students of its operations to express admiration for the way it handles its problems.

James M. Landis, in his Report on the Regulatory Agencies which he prepared for President-elect Kennedy and which was issued in December, 1960, had this to say:

The Federal Communications Commission presents a somewhat extraordinary spectacle. Despite considerable technical excellence on the part of its staff, the Commission has drifted, vacillated and stalled in almost every major area. It seems incapable of policy planning, of disposing within a reasonable period of time the business before it, of fashioning procedures that are effective to deal with its problems. The available evidence indicates that it, more than any other agency, has been susceptible to ex parte presentations, and that it has been subservient, far too subservient, to the committees on communications of the Congress and their members. A strong suspicion also exists that far too great an influence is exercised over the Commission by the networks.

If we turn from the work of the FCC to the product of the broadcasting industry—the programs which are broadcast, and these must play a central role in any appraisal of the performance of the industry—we find a chorus of adverse criticism, in which members of the FCC have joined. They proclaim the failure of the existing system. It was Chairman Newton Minow who referred to television programs as a “vast wasteland.”

Such views as those expressed by Dean Landis and Chairman Minow no doubt contain much truth. But they seem to have been unaware of the reason for this poor performance. Dean Landis hoped that the inefficiencies of the FCC would be cured by the appointment of men who would give strong and competent leadership. Mr. Minow seems to have looked for better programs as a
result of changes to be made within the broadcasting industry itself. But it is my considered opinion that the task imposed on the FCC could not be handled efficiently by any organization, however competent, while no basic change in programming is conceivable within the existing structure of the broadcasting industry.

There are many aspects of the broadcasting industry which are outside the competence of an economist. But this is not an industry in the appraisal of which an economist has to take a back seat. The root cause of the poor performance of both the FCC and the American broadcasting industry is the result of the way in which two basic economic questions have been handled: these are the allocation of radio frequencies and the method of finance of the broadcasting industry. And I think it is precisely because these problems are economic that most observers of the industry (in general non-economists) have been unable to see what is wrong or to suggest adequate remedies.

The basis for the present regulation of the broadcasting industry is that it uses a scarce resource, the radio frequency spectrum. As Mr. Justice Frankfurter said in 1943 in the famous National Broadcasting Company case: "The facilities of radio are not large enough to accommodate all who wish to use them. Methods must be devised for choosing among the many who apply. And since Congress itself could not do this, it committed the task to the Commission." The FCC is seen as the necessary mechanism for choosing out of the many claimants those who are to be allowed to use radio frequencies. An economist can hardly be surprised at the nature of the problem (scarcity, after all, is his subject) but the conclusion that is drawn about the need for a Commission to solve the problem is not one to which an economist would give immediate assent. All resources (free goods excepted) are scarce. And yet the American economic system manages to work without having a Commission for each resource which is entrusted with the task of allocating that resource to those who are to be allowed to use it. It is true that if a zero-price were maintained for each resource (as it is for radio frequencies), demand would exceed supply and in the circumstances there would be need for some governmental body to decide who among the many claimants should be granted use of each resource. But of course, as we all know, scarce resources are normally allocated in the United States by means of the pricing mechanism and a price emerges which is sufficiently high to reduce demand to equal the available supply. The question is: why isn't this done in the case of the radio frequency spectrum?

The answer, extraordinary though it may seem, is that the possibility of using the pricing mechanism is something which never occurs to those responsible for policy concerning the use of the radio frequency spectrum. Mr. Doerfer, when Chairman of the FCC, said that it would be desirable to have a "mechanism whereby you could have an exchange of frequencies between government and non-government" without apparently realizing that the pricing system provided such a mechanism. And Mr. Frank Stanton, President of Columbia Broadcasting System, when asked in the course of a Congressional inquiry, whether it would not be desirable to dispose of television channels by awarding them to the highest bidder, could only reply that this was a "novel theory," as if he had not noticed how the rest of the American economic system operated and was under the impression that the Columbia Broadcasting System obtained the land, labor and capital it required as the result of allocations from various federal commissions. Of course, once it is assumed that use of the pricing mechanism is out of the question it is hardly surprising that there is general support for the allocation of the radio frequency spectrum by the FCC to private users, including state and local government. This is the source of the FCC's power, and its weakness.

What has emerged can best be envisaged by imagining a situation in which a Federal Land Commission (the FLC) was given control over all the land in the United States and was instructed to dispose of it to users without charge. The position then would be that land could be obtained from the FLC for nothing or it could not be obtained at all. In these circumstances, applications for land from business, industry and individual would pour in to the FLC. Existing users, who would gain no financial advantage from disposing of their land to others, would resist any attempt to dispossess them of the land they were using. The excess demand over supply for land in many parts of the country would be appalling. The reasons advanced by the various claimants as to why they needed the land would be compelling and, up to a point, true. Extensive hearings would be required to determine what use should be made of any piece of land. The purposes for which the land was required would have to be examined, the character, competence and financial qualifications of the various applicants investigated. When land was awarded for one purpose, continuing inspection would be required to make sure that the way the land was used had not been changed without first having obtained permission from the FLC. The question of what constituted a change of use would have to be determined. The purely administrative problems faced by the FLC would be prodigious. At the same time, the external pressures exerted on the FLC would be strong and unremitting. Business groups would oppose any change which exposed them to additional competition. Politicians would oppose proposed changes which would reduce the income of their constituents or their own influence (and sometimes they might even have regard to their own incomes). No business would have any interest in economizing in the use of its land. Changes in land-use would come about only with great difficulty and would depend
to a large extent on land becoming valueless in existing uses. Economic growth in the United States would be slowed by the shortage of land and the problem would no doubt call for Presidential attention.

That such would be the consequences of the establishment of a Federal Land Commission is not, I think, open to serious doubt. It is my contention that similar consequences have resulted from the establishment of the FCC. The most detailed enquiries are conducted before a grant is made of a license for the operation of a broadcasting station. The procedures are costly and time-consuming. This is particularly true in comparative hearings in which the FCC often has to choose between claimants, each of whom seems to be about equally well qualified, and between whom therefore the choice has to be based on some quite trivial or even dubious consideration. It might perhaps be argued that at least the selective process, which pays attention to the character of the applicants and their devotion to the public interest, has had as a result the selection of broadcast station operators with unusually high moral standards. But I doubt whether this is true. It is hardly possible to maintain such a point of view after the revelations at the time of the quiz and payola scandals. I would not wish to argue that the ethical standards of those in the American broadcasting industry are lower than those found in the rest of American business. It is enough for my purpose that, in spite of the selective process, it is not obvious that they are significantly higher. This is not really surprising. Most people have presumably invested in the broadcasting industry because they thought it would be more profitable than any alternative investment open to them; and the list of occupations of broadcast station owners as published by the FCC shows them to represent a cross-section of American business. It is not clear to me that the character of broadcasting station owners would have been significantly different if the licenses had been awarded to the highest bidder.

But the present system is not objectionable merely because it is expensive and fails to achieve its professed objectives. The present system introduces rigidities which a pricing system would avoid. Any adjustment of radio frequency use depends on the approval of the FCC and cannot be secured as a result of negotiation between the parties concerned. It is not possible for an expansion of the broadcasting industry to take place by firms in that industry acquiring the use of additional radio frequency spectrum in the same way that they would acquire any additional land, or labor, or capital that they would need. And in this connection it is important to realize that the broadcasting industry uses only a small fraction of the radio frequency spectrum. Such an industry would normally find it easy to expand. But this is not so with the existing procedures. This may be illustrated by the fact that the FCC itself was not able to arrange for the television broadcasting industry to expand into the adjacent VHF band (occupied by the military) at the same time releasing the UHF channels—which the broadcasting industry had not been able to use effectively—for military use. The situation was described by Mr. Doerfer, when Chairman of the FCC, to a Congressional enquiry. After explaining that there was wasteful use of radio frequencies rather than a shortage, he continued: ‘That brings me back to where the FCC and the military begin to bargain back and forth for space... The military says ‘Yes, we can use the UHF for this, but to do so is going to cost a billion dollars.’ My answer to that is going to be, ‘Maybe it would be advisable to spend a billion to make $10 billion in national wealth.’ They say ‘You go up to Congress and try to get the billion dollars to obsolesce this equipment,’ and we say, ‘Well, that is part of your duty.’ We go back and forth...’ It is clear that if the broadcasting industry had been able to pay for the additional channels which a shift of the military to UHF would have allowed, a sum of money would have become available which might well have been sufficient to cover the additional costs which the move would have imposed on the military. As it is, the solution adopted was to compel all set manufacturers to make sets able to receive programs in the UHF band, a solution which could well be much less satisfactory and more costly than the proposal favored by Mr. Doerfer.

There are two other aspects of the present method of allocating the radio frequency spectrum which I must mention. A station operator who is granted a license to use a particular frequency in a particular place may be granted a very valuable right, one for which he would be willing to pay millions of dollars and which he would be forced to pay if others could bid for the frequency. But if in fact he gets this grant from the FCC at all, he gets it for nothing. Not only that but, after a decent interval, he may dispose of his station and in fact, if not in law, sell the grant which the FCC gave him for nothing. This procedure results in an arbitrary enrichment of those private individuals who receive these favors from the FCC. The FCC, by its emphasis on the financial qualifications of the claimants, must inevitably tend to favor firms or individuals who are already financially well-endowed. The FCC is, in fact, engaged in an anti-poverty campaign for millionaires. Of course, it has been alleged that the ability of the FCC to grant such large financial favors leads to corruption, and these allegations have not always been without foundation. But in such a situation it is hardly surprising to find that there is suspicion of undue influence in one form or another. In ancient Rome it was said that Caesar’s wife should be above suspicion. This is impossible with the FCC. All this would be changed if the FCC sold its grants to the highest bidder. This is not, of course, an unheard-of proposal. This is exactly what the government does with its grazing lands and other types of governmental property. Oil companies are not
given rights to exploit oil and gas deposits for nothing.

So much for one unfortunate aspect of the present policy. There is another. If the choice between claimants is honestly made, it is inevitable that it should be made on the basis of programs promised and, when the time for renewal of the license arrives, on the basis of programs actually broadcast. According to the Communications Act, there must be no censorship of the programs. But if the FCC takes programs into account in its decisions, it is clear there is a real threat to freedom of speech and of the press. That the threat has not been more apparent has been due to the timidity or political wisdom of the FCC. But what this has meant is that in granting or renewing licenses the FCC has not paid much regard to the product of the industry, the program. This does not mean that members of the FCC have not attempted to influence programs. Speeches are constantly being made which suggest that if the industry does not do something to improve its programs, the FCC may have to take more positive action—this is what has been called regulation by the raised eyebrow. And since the FCC has many favors to give, I am sure that its wishes receive some consideration. But this is surely a matter for concern. This does pose a threat to freedom of the press. And yet there is good reason to be dissatisfied with the programs provided by the American broadcasting industry.

The American broadcasting industry itself presents a "somewhat extraordinary spectacle." It is financed by revenue from advertisements, a system commonly called commercial broadcasting. The essence of a commercial broadcasting system is that the operator of a radio or television station is paid for making broadcasts or allowing them to be made. But he is not paid by those who listen to or those who view the programs. He is paid by those who wish listeners to receive a particular message—the advertisement, or commercial. However, simply to broadcast the commercial will not usually lead people to listen or view. In a commercial broadcasting system the object of the program is to attract an audience for the commercials. It is not from the benevolence of the butcher, the brewer and the baker that we expect our radio and television programs. The programs are a by-product of the selling process.

In such a system, what programs will be broadcast? They are the programs which maximize the difference between the profits yielded by broadcast advertising and the costs of the program. A thorough examination of this system is obviously impossible here but I will indicate some of its consequences for the choice of program. Of two audiences of equal size, the one which is more responsive to advertising will always be preferred. In general, a large audience mildly interested will be preferred to a small audience intensely interested. The additional costs that will be incurred for programs will be limited to the profits on the additional sales of the advertised product that these additional program costs will bring. The result of all this is that commercial broadcasting leaves some sectors of the public with the feeling that they are not being catered to. And this is true. This is recognized by the FCC in its exhortations to the broadcasters. But such appeals, if they have any effect at all, bring only marginal changes in a structure of programming which is tied to the profitability of the commercials. No significant improvement in the present situation is to be expected unless the financial basis of the industry is changed. Businessmen do not pay $20 million for a television station in order to use up their capital.

In the circumstances it might have been expected that the FCC would have welcomed the proposal for pay-television. But welcome would be the wrong word to use to describe the response of the FCC. In dealing with pay-television, to adopt Dean Landis' words, the FCC has "drifted, vacillated and stalled." Proposals for subscription television were made in the late 1940's and the early 1950's; but it was not until 1959 that the FCC announced its detailed conditions—not for subscription television but for an experiment in subscription television. These conditions were highly restrictive. A given system could be tested only in a single city and then only in one in which there were at least four television stations. But this is not the place for a detailed discussion of FCC policy towards

pay-television. Suffice it to say that only one such experiment has been started, that in Hartford, Connecticut. At present, of course, wire pay-television systems are outside the control of the FCC. But moves are afoot which would bring these also under FCC control.

It is often said that regulatory commissions are, in the end, captured by the industries which they regulate. There is much truth in this observation and the FCC is well on the way to providing us with another example. In spite of all the criticisms which the FCC itself makes, and notwithstanding the obvious faults of a commercial broadcasting system, the FCC is becoming a defender of that system. Competition must be rigidly controlled. Mr. William Henry, the present Chairman of the FCC, said of the role of pay-television: “It must be a supplemental service, not a substitute service.”

The time is not too late for the FCC to change its course. The present system, in which no use is made of the pricing system in the allocation of radio frequencies and in which consumers are barred from the market for programs, represents such an extreme position and is so different from what is found in other American industries, as to create a presumption that it is wrong. I have emphasized the need to introduce a market in radio frequencies and to improve the market for programs. But the policy choice should not be put in terms of government action versus the market in the field of radio and television. I am arguing for sensible government action. I am arguing for a properly functioning market. These aims are not inconsistent. Of course, the task of building social institutions is not an easy one. But it is not made easier by syrupy talk about broadcasters acting in the public interest. What is wanted is more economics and less humbug.
Joseph C. Ewing

Law School and nearly concurrently with playing for the University under A. A. Stagg.

Mr. Ewing practiced law in Greeley, Colorado, from the time of his graduation until 1928, when he moved to San Diego, which became his permanent home.

JAMES M. SHELDON, JD’05, was a member of the first graduating class to have had the full three years of legal education at the Law School. Also a football player under Stagg, Mr. Sheldon acted as coaching assistant to Stagg during his second and third years at the Law School. After his graduation, he became Assistant Professor of Law and head football coach at Indiana University, filling both positions until 1913.

While a student at the Law School, Mr. Sheldon became one of the founders of Phi Delta Phi, one of the national legal fraternities.

Mr. Sheldon was in the investment business in Chicago for many years, as a partner in Farnum, Winter and Company, and through other associations. At the time of his death he was connected with Merrill Lynch, Pierce, Fenner and Smith.

The Visiting Committee

The Annual Meeting of the Law School Visiting Committee was held on May 14, 1965. Members of the Committee attended classes in the morning. There was then a luncheon, followed by an executive session of the Committee, and a report from Dean Neal.

The afternoon was devoted to a discussion of current developments in the curriculum and research programs of the School. Professor Norval Morris reported on research in criminal law and criminology; Professor Dallin H. Oaks discussed the legal problems of the poor as a focus for research and teaching. Professor David P. Currie reported on the work of the Law-Economics Seminar on the Nature of Property Rights, and Professor Harry Kalven, Jr. spoke on some current questions about the Law School curriculum. Each of the Faculty presentations was followed by questions and extensive discussion.

The gathering concluded with a reception and dinner for the Committee, the Faculty, the graduate students, and the Mechem Scholars.

At the reception for the Visiting Committee, left to right, Professor Walter J. Blum, Professor Stanley A. Kaplan, Morris E. Feiwell, JD’15, and Frank J. Madden, JD’22.

Visiting Scholar Judge Takano, of Tokyo, and Mrs. Takano, with graduate student Thor Juul-Andresen, of Norway, at the reception for the Visiting Committee.
"It's Shocking How Old He Looks"

The Classes of 1915, 1940 and 1955 held reunions near the end of the past academic year.

For the Class of 1915, the enormously successful 50th Reunion built on the precedent of 40th and 35th reunions held in years past. The Reunion opened with dinner at a downtown club, and continued through Alumni Day, June 12, with a tour of the Law School, followed by a luncheon addressed by Dean Neal. This reunion, like its predecessors, was organized by Morris E. Feiwell, member of the Board and past president of the Law Alumni Association, and Henry F. Tenney, Honorary Trustee of the University and past Chairman of the Law School Visiting Committee.

The 25th Reunion of the Class of 1940 was arranged by E. Houston Harsha, Mrs. Thelma Brook Simon and Seymour Tabin. A gratifyingly large group had dinner in the Green Lounge, heard an informal talk from Dean Neal, and adjourned to another South Side location until an hour late enough to attest to the success of the whole undertaking.

Also during Reunion Week, the Class of 1955 met at the Center for Continuing Education. The Reunion Committee was made up of Donald Ephraim, A. Daniel Feldman and Ira Kipnis. Thomas L. Nicholson presided. Professor Harry Kalven, Jr., was the featured speaker; Joseph DuCanto presented a report on the class which is largely indescribable.
The Class of 1968

The 148 members of the Class of 1968 were selected from more than 1,300 applicants, an increase of almost 25% over last year. They received baccalaureate degrees from 81 different colleges and universities, of which 37 are in the east, 28 in the central states, 11 in the west, and five in the south. In numbers of graduates represented, the College of the University of Chicago leads with nine. There are eight students from Stanford, seven from Harvard, six from Brown, and four each from Holy Cross, Michigan, Oberlin and the University of California at Berkeley.

Members of the class represent 33 states, including the District of Columbia, and one foreign country. Seventytwo students come from ten central states, 51 are from nine eastern states (including D.C.), 18 live in seven western states, and one student is from each of seven states in the south.

Seventy-two students, or almost half the class, were graduated from college with honors. The average student in the class had a B-plus cumulative college record and a Law School Admission Test score just above the 95th percentile.

There are 11 women in the class. Twenty-two of the entering students are married, including one man who is bold enough to enter Law School simultaneously with his wife.

The School notes with great regret the deaths of Laird Bell, J.D. '07, and L.L.D. (h.c.) '53, and Professor Brainerd Currie, formerly a member of the Law Faculty. The next issue of the Record will refer to these losses at appropriate length.
Public Law—
(Continued from page 6)

spicuous for almost half a century, with the obvious analogy to workmen’s compensation having suggested itself early. The topic today is as lively as it ever has been. Several factors may account for its re-emergence. The contemporary mood is again congenial to sociological research in law. It has seemed attractive to many to redo the Columbia study because the auto accident problem is a natural subject for large scale empirical research on which newly developed tools can be brought into play. In addition there is the enormous increase in liability coverage for auto accidents. The ubiquity of insurance has sharpened the perception of the inefficiencies, costs and inequities of the present system for determining liability, measuring damages, and adjusting claims in or out of court. Another factor is the increased sensitivity to welfare. Concern has centered on the inability of the system to provide victims with prompt payment of their medical and emergency expenses. Finally, there has been the practical stimulus of urban court congestion which frequently has been blamed on auto accident cases crowding the docket. More than one seasoned trial judge has argued that an auto compensation plan under an administrative agency would be the best solution to court delay.

Despite the renewed interest, current discussions of auto plans are largely unsatisfying. They lack any sustained confrontation of issues. The bar, although it might be expected to play the role of the experienced conservative and thus to supply a sharp challenge to the reform, has been bluntly hostile when not apathetic. At most an occasional spokesman has sallied forth in the journals to stigmatize the plans as socialistic departures from the American way of life. And even if the response had been different, many would view with skepticism any defense of the current system by the lawyers because of the bar’s great financial stake in its preservation. At the other extreme, proponents of auto plans, largely from academic life, have concentrated on social engineering to produce results they have already accepted as desirable. They appear so convinced that auto plans are the coming thing that they see no point in debating the merits of inevitable social change. Thus, although an appreciable amount has been written about plans, very little has centered on the kinds of policy issues which are to be our primary concern.

Indeed the special flavor of our policy concerns is the source of our collaboration in this essay. A bedrock question for us is the old-fashioned inquiry, who is to pay the bill? Payments to victims under compensation plans are compulsory payments under the coercion of the state, and obviously someone in the society must bear the cost. Allocating the cost of plans raises a fundamental question of fairness. It strikes us as odd that this issue should figure so little in current discussions. The incidence of liability has been the classic question for the common law torts man; and yet the allocation of costs is simply another name for the allocation of liability. The oddity is that the torts man should lose all interest in the question when a shift is made from the common law to a compensation plan. We suspect we know the reason. Torts has been regarded as a private law topic concerned with resolving the disputes between particular individuals. But when one turns to insurance funds and compensation plans, the matter becomes alchemized into public laws dealing with large groups in the society; and the result is that the private law expert has little interest in following through the questions which now seem to lie beyond the realm of his own special competence. Nor in their present stage of development have auto compensation plans engaged the attention of public law men, who have continued to center their interest on taxation and social security and other welfare systems. The topic has therefore fallen into a kind of no-man’s land.

The design for our collaboration should now be clear. We hope to combine the perspectives of the teacher of private law and the teacher of public law on a topic that seems to need the attention and skills of both.

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