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The University of Chicago Law School Record
Law School Publications

Winter 1-1-1966


Law School Record Editors

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The Critical Spirit

By Edward H. Levi

Professor of Law, The University of Chicago Law School
and Provost of The University

The paper that follows was the Convocation Address at the University's 310th Convocation, in June, 1965.

This is a time for congratulations. We are proud of you. There is even a certain amount of envy in this edifice as we think of your future. The degrees to be conferred today by President Beadle represent a hope for further work to be done, for a deepening of understandings, and for that service which comes from those specially endowed and trained. I trust you carry within yourself, in response to these expectations, the proper mixture of confidence and anxiety.

It is the University which brings us together. Each of us has been touched and changed by the experiences of this place. We do not all share the same values. The skills which have been perfected here vary enormously. Yet the power of this institution—because of its restless, critical spirit, its hospitality to many cultures, the supremacy which it gives to the intellectual disciplines, the recognition it asks for excellence—compels a unity among us.

It is a tribute to the Founders of this University that the institution they created is now so much taken for granted. When it was organized, almost seventy-five years ago, it was a new kind of institution, borrowing from the structure and aims of German and English Universities, joining the gentlemanly tradition of zeal for good works of the New England Colleges with the con-

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The University of the Future

By Philip B. Kurland

Professor of Law
The University of Chicago Law School

One of the more engaging customs at the University of Chicago is the annual dinner given by the University's Board of Trustees for all Faculties of the University. Traditionally, there are three speakers at these occasions, the President of the University, a Trustee speaking for the Board, and a representative of the Faculties. Professor Kurland spoke for the Faculties on January 12, 1966.

Mr. Cone, Mr. Beadle, Mr. Ranney, Reverend Parsons, Ladies and Gentlemen:

I hope that you will excuse me if I read this paper to you. But, as some one once said—I've forgotten whether it was Archie or Mehitabel—"Art Is Long and Life Is Short" and if I'm to get through this masterpiece in the hour and a half allotted to me, I shall have to adhere very closely to my text. (The fact of the matter is that the paper was written for me by a graduate student who thereby fulfilled his thesis requirement for his degree.)

Not too long ago a vacancy was created on the Supreme

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The Critical Spirit—
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fidence and brashness of the Middle West. "No episode," a recent study of American Higher Education declares, "was more important in shaping the outlook and expectations of American higher education during those years than the founding of The University of Chicago, one of those events in American history that brought into focus the spirit of an age." The creation began and continued as one of the leading universities of the world. A national survey in 1925 placed this University as first in its graduate departments, followed by Harvard, Columbia, Wisconsin and Yale. During that period, as another commentator has recently written, "The University of Chicago... was unquestionably the greatest single University, department for department, school for school, that this country has seen."

This University did not create itself. It did not come into being spontaneously. It was not the God-given right of the region to have it. Many forces and groups made it possible. But these were effective because of the leadership of John D. Rockefeller and William Rainey Harper. This was not a reluctant partnership. Without this partnership, this University, as we know it, would not exist. The course of American education would have been different. Harper and Rockefeller were joined by other leaders; by teachers and scholars whose later careers would justify the confidence placed in them. All realized they could not take the existence of the University for granted, for it was to be the work of their hands. Men do make a difference. And, if I may be excused for saying so—since it runs contrary to one of the many contradictory themes of American folklore—so does money, creatively given and creatively used.

The decisions made in those early years and so often magnificently reaffirmed have fixed the character of this institution. Harper's innovations gave the University multiple functions, but he created one university, graduate and undergraduate, although Harper was told the mixture would not work; always interdisciplinary, never as much as we say, but more than we have a right to expect. There never was any doubt of the importance of teaching. Never any doubt of the duty to investigate and to speak out. At bottom there was a religious faith, which because of the spirit of the times converted itself into a belief in the mission of the human mind to understand the universe and the civilizations of mankind, and to transmit that understanding both to the elite and to the unenlightened. The mission was deemed sufficiently important to justify what appeared to be arrogance. At many times and in many ways this has been an embattled institution, regarded as too liberal by some, too conservative by others, and unsettling by many. For the most part this has not been a quiet place.

You may say this is a view of history through tinted glasses, and, of course, it is. There was a time, for example, approximately forty years ago, when the University Senate suggested a limitation on undergraduate instruction because of the greater importance of the University's graduate and professional work, and when, as a later dean of the College described it, "undergraduate work was grossly neglected... the College came to be regarded by some members of the family as an unwanted, ill-begotten brat that should be disinherited." But this period was followed by one of the most courageous, influential and far reaching efforts to rethink the fundamentals of a college education, and to change both the materials and methods of instruction. The fact is that the basic liberal arts programs in most colleges have been influenced by the Chicago experiment of many years ago. Chicago has been an innovator at all levels of higher education. Its research has prodded the growth of almost every strategic field of knowledge. At the frequent cost of popularity, it has stood for intellectual freedom. And however irritating the newcomer may have been, the standards of education in innumerable institutions have been helped by its presence.

Between 1950 and 1955, the University went through a most difficult period. There was a grimness to the neighborhood and to the campus; both were considered doomed by many. The crime rate in the police district became the highest in the city. On top of this, gifts and income declined by more than a million dollars annually. This came at a time when the buildings, libraries, and laboratories of the University, as is still the case, were inadequate because of appropriate prior choices to maintain salaries, fellowships and scholarships over the need for bricks and mortar. The regular academic budget was severely cut. In 1953, the budget cut was more than 9 per cent. There was a flight of faculty from the University reminiscent in reverse of Harper's raids which originally had established Chicago. It was extremely difficult to make replacements. At a time when the University should have been building on strength, it found itself in a fight to stay alive. Enrollment in the entire University declined from 8,500 in 1947 to 4,600 in 1953. College enrollment declined approximately 60 per cent. The University considered moving. Then in an act of courage, the full extent of which probably never will be known, it decided to remain, not as a declining, middle-aged, mediocre institution, which those careless about excellence would have considered good enough, but to remain, rebuild and recapture its academic strength.

Rebuilding meant going far beyond what had been previously considered central academic concerns. The leadership in a unique neighborhood redevelopment program had to be assumed. New methods of approach of importance to all urban communities had to be devised. The cost to the University of this program became about
twenty-nine million dollars given or pledged at a time when the academic work of the institution was starved for funds. The income on this money would be sufficient to pay every member of the faculty $12,000 in each ten-year period, or to establish a fellowship program of the kind we still need for top students, awarding 230 top students each year a stipend of $5,000. The twenty-nine million dollars would have given us the projected new graduate library, and made possible in addition the restoration of Cobb Hall for the College, new facilities for Chemistry, the new science library, new quarters for the Music Department, and possibly a much needed new theatre. If anyone thinks I speak with feeling concerning these matters, as one concerned with academic budgets and the academic strength of the institution, he is not far wrong. But these steps had to be taken, with the partnership of many, and a certain amount of free advice from many more.

One can speak of these matters now, for the University is again strong. Its neighborhood is an asset. The University in fact has gained in meaning, in understanding, in opportunity because of the responsibilities it assumed. The crime rate has been cut in half; on any comparable basis it is the lowest in the city. Almost every academic unit has responded to the challenge to rebuild or increase its strength. The faculty is outstanding, equalled in only a very few institutions, and unrivalled in some fields. Under the leadership of President Beadle, for the last three years the strengths and weaknesses and central conceptions of each area have been explored. Innovations of thirty or more years ago are now no longer new; sometimes they are no longer appropriate or at least not the best possible. We have subjected our own ideas to criticism—which is more difficult and less enjoyable than criticizing the views of others. It is the kind of experience which might well be built into any curriculum. We must do more of this. There are still quite a few sacred cows about, not worth the grass they eat. The reference of course is not to faculty, or indeed to persons at all, but to ideas. The studies are continuing. We know, for example, that the divisions, created to further an interrelationship among subject matters now sometimes constitute artificial barriers splitting growing fields of knowledge, imposing unnecessary restrictions on training and research. In some areas a multiplicity of departments provides unnecessary artificial pockets, obscuring the University's resources in related areas, complicating the life of the student.

The College has been reorganized into five colleges to preserve and further its unique values, including the appropriate relationship of concern among faculty and students. The reorganization will bring the University's strength into more direct confrontation with the problems of undergraduate education, and should give impetus to the kinds of experiments which have characterized Chicago's leadership. Chicago with a total student body of 7,000, a faculty of more than 900, and a college of approximately 2,000, has a superb faculty-student ratio in aid of this venture, even though not all faculty will be involved, of course. This is the opportunity to demonstrate that preparatory instruction in a variety of disciplines may be recast within the structure of knowledge to become through its questioning discipline a genuine part of liberal education. In many areas this is already being done; so much the better. I trust that both tolerance of plans and an insistence upon high intellectual demands will characterize all our programs. It is better to develop diverse challenging programs suited to the growth capacity of students, as an adjunct to whatever programs we have, than to compromise on what is acceptable to all.

Through their partnership in these new programs, at a time when students feel the need to witness, I hope we can remind them, indeed as I believe our present college program does, that learning itself is a form of witnessing, and in some ways the highest form. At the same time, possibly we should respond also in a more structured way to the desire of students to break the seven or more years of expected undergraduate and graduate training with some opportunity for meaningful service. I hope attention will be given also to the opportunities for cultural enrichment for students beyond the bounds of the formal curriculum. Surely Chicago is not at the point where credits, formal courses, or even examinations must be the measure of inclusion in the total academic program.

During the period of the greatest difficulties, it was natural for the University to lose its voice on issues of public affairs. I do not mean the University should take an institutional position on matters of public importance, but rather through commissioned papers, seminars and conferences, it should stimulate disciplined discourse to elevate the understanding of both sides of public issues. We hope the organization of an Academy of Public Affairs will provide the mechanism for this and will add also a new dimension to student life. We must rethink the University's participation in the training of scholars for public service, not losing the inhibitions which have guided us, but recognizing this is one of the missions of scholars, and that in some areas, of which the education of the underprivileged is one, and, in a quite different way, international studies programs is another, greater involvement is required both for training and for research.

American education is now going through a somewhat tumultuous period. New temptations and necessities have been placed upon the schools. New responsibilities have been added without in any way diminishing the old. The universities have been unable to avoid being caught in a conflict between old ways and new demands. No one thinks it is sufficient any more, if it ever was, for colleges to exist for the custodial care and feeding of young adults. But just at the time when increased seriousness about undergraduate education might have established
some principles and priorities, colleges have become universities, universities have greatly expanded their graduate and postgraduate work, and research has become more expensive, more exciting and more threatening to the entire educational process. The resulting turmoil has been stirred by placing additional service functions upon the schools. Universities have outposts throughout the world, advise foreign governments, redevelop neighborhoods, run hospitals, and have become instruments for social change. The service functions of the American university have always been present but now they are more embracing. In this situation universities find themselves, as scholars frequently do, forced to take stock of cherished beliefs, forced to learn new techniques, forced to establish new frontiers.

In meeting these challenges universities will be responsive, as they always have been, to the popular demands and views of the society they serve. But the response must not be automatic acceptance. Universities are expected to be masters in their own house, and if they are not, their value diminishes.

In the midst of these conflicting pressures and demands, Chicago finds itself in a most fortunate situation. Almost the entire educational process is here represented. Our facilities range far and wide. Our incredible lack of rules and regulations has made possible a variety of University experiments and ventures. We are, to a considerable extent, the complete university, as Harper intended. We have not been afraid to take on projects which remade the world. Yet we are of small size. The dialogue among us is real. We can know what we are doing, and we can talk about it to each other. The greatest dangers to us are our prior successes, our desire for the comfortable life, our willingness to rest on the creations of thirty years, the insidious and reasonable thought that mediocrity also has its uses.

I have taken this occasion to speak to you about your University because it is just that. There are many colleges and universities. All have important functions to serve. But if Chicago cannot be of the best, its particular mission will have been performed, its role ended. You have the right to the knowledge of the effort it has taken throughout all the departments and schools and in the College, and particularly by the eminent faculty who stayed and those who came, and who by their presence have attracted others, to restore this University to the excellence which its view of itself and its mission demand. And you have the right to share in the pride of this achievement. I will not flatter you by telling you that students add to the intellectual environment, as much as faculty do and perhaps more. But of course it is true.

Institutions are wonderful inventions because they can transcend all of us. To this University is given the power to link the cultures of many ages. In a more immediate sense through this institution you are not only joined to each other and to us but to graduates of long ago and hopefully of many years to come. In other than the strictest legal sense, no one owns this institution—not even the students. In a more genuine way it possesses all of us. It calls upon us to enter into its fellowship of the intellect. In this fellowship no place is more honored than that of the graduate who carries this University in his mind and heart. I welcome you to that place.

A Unique Program Continues

Several previous issues of the Record have described visits of the Courts to the Law School. It is gratifying to report that this important program is continuing. On January 27 the Supreme Court of Illinois sat in the Weymouth Kirkland Courtroom hearing argument in two cases from its regular calendar. The Court consists of the Honorable Ray I. Klingsbiel, Chief Justice, and the Honorable Harry B. Hershey, JD’11, Byron O. House, Walter V. Schaefer, JD’28, Roy J. Solfsburg, and Robert C. Underwood, Associate Justices.

Law students are provided with the briefs and records in cases heard, and are subsequently required, as part of the work of the Tutorial Program, to write papers on appropriate aspects of those cases. After the January 27 arguments were concluded, Albert E. Jenner, Jr., Thomas Sullivan, and Owen Rall, of the Chicago Bar, and the Honorable Raymond Terrell, State’s Attorney of Sangamon County, lunched with law students and informally discussed the preparation and handling of the cases they had just argued.

A session of the Eighteenth Annual Federal Tax Conference, held in October in the Assembly Hall of the Prudential Building.
Is the main function of the University teaching—that is, the transmission of knowledge and the values of the culture to future generations? Or, is the main function of the University research, the discovery of new knowledge? The tension generated between these two questions we recognize as basic to the definition of any institution of higher learning. It is a tension that has a long history which derives from the different ways of looking at the University, different ways of looking at the meaning of education, different ways of looking at the nature of mind itself.

You will be surprised, as I was, to learn some thirteen pages later that the author reached the extraordinary conclusion that there is a place in a true university for both teaching and research. That they are but two sides of the same coin. And I think that he is probably correct in his conclusion.

It appears to me, however, that this answer does not reach the fundamental question. As Provost Levi has demonstrated so cogently in his program for five undergraduate colleges, the primary problem is not so much substance as it is form. And the faculty of the university of the future, like the college of today, if it is to attain its promise, will require fundamental reorganization. Instead of the vertical organization that now exists—by vertical organization, I mean, the line that travels from instructor, to assistant professor, to professor, to university professor, to distinguished service professor, to dean, to provost, to president, to vice-president for public relations, to the pinnacle, vice-president for development—instead of such a vertical organization, I hope to see a horizontal organization of the kind I shall describe to you. In short, I find W. H. Auden’s praise of the vertical man in preference to the horizontal man misplaced. The future belongs to the horizontal man. For it is the horizontal man that is most compatible with the new society.

The first of the horizontal faculty categories is that of the teacher. This will of necessity be a small group, its members will devote all of their time to teaching students. It will be a small group, in part, because of the force of the prediction of one who even The New Yorker has recently acknowledged to be one of the greatest thinkers of our time: Richard Buckminster Fuller. Fuller has authoritatively stated:

"We'll get rid of all the teachers who are just holding their jobs in order to eat—all the deadwood, which is the biggest problem in a university anyhow. . . . There will be a large technical staff making documentary movies. The university is going to become a really marvellous industry, with tools like individually selected and articulated two-way TV that will permit any student anywhere in the world to select from a vast stockpile of documentaries on any subject and watch it over his own TV set at home. And the great teachers won't have to spend their time delivering the same lectures over and over, because they'll put them on film."

Thus, as you can see, this teaching division will need only a small staff. Its personnel will be recruited from Ph.D. candidates who have not yet written their theses and professorial types that have become redundant in the other
branches of the faculty. Any notion that teaching requires dialogue rather than monologue is simply old-fashioned and inefficient. Members of this branch of the faculty will be identified by shoulder patches reading: “Persona non grata.”

The second division in the university faculty of the future will be the research division. This will be made up of two parts. The first and smaller part will consist of those who have ideas that they want to explore and for which they can themselves successfully beg, borrow, or steal foundation or governmental support. But by far the larger portion of this group will be made up of the more versatile, the more flexible, the more universal men, “The New Men,” who will contract to execute any research project that any foundation or governmental agency desires to have carried on. The emblem for this group will read: “We go where the money is.” But the English will be translated into mathematical symbols so that it won’t look so crass.

Now a word should be said about tenure for these two divisions of the faculty. A recent article in the new magazine called The Public Interest makes it abundantly clear that tenure for faculty members is an anachronism. Nevertheless, I submit, it should be recognized as a tradition not lightly to be forsaken. There is, however, one fundamental change that is required in the tenure policies of the university of the future. The essential change is that all teachers and researchers shall have life tenure as heretofore, subject to one condition. The right to tenure shall be lost by anyone who spends more than three consecutive years in residence. Long-continued, unbroken service at a single institution is stultifying for several reasons. First, it is conducive to the development of a loyalty to the university which, after all, is only a juvenile form of patriotism. And patriotism is a coin that has long since been devalued. Second, it makes for the possibility of cooperative efforts among teachers and researchers, thus stifling individual initiative. Third, it makes for continuity of supervision of doctoral candidates’ research efforts, which would have the horrific effect of doctoral degrees being completed in a much shorter time, thus contributing to the glut on the market of trained teachers and researchers. And, finally, it deprives the individual professor of a major basis for negotiating salary increases. For these reasons, and others, it will be necessary to confine the right to tenure to those who do not abuse it by remaining at the university for unreasonably long periods of time.

I come then to the third of the divisions, about which little need be said. I refer to the Parkinson or administrative division of the faculty. Its personnel will be broken down, essentially into three branches. First, will be those concerned with academic programs. These officials will be chosen primarily from those who, having demonstrated extraordinary promise in either teaching or re-

search, must be taken out of their roles as teacher and scholar. We must disprove Professor David Riesman’s recent dictum “that a faculty member who becomes . . . a dean despises himself and feels alienated.” The time has come when a presidency, deanship, or departmental chairmanship must be recognized for what it is, a reward for excellence in teaching or scholarship. The second group in administration will not necessarily be drawn from academic ranks, these are the fund-raisers and public relations experts. Theirs is the more important job, for it is the image of the university rather than the reality that must take priority in administration. So, too, is it the gross amount of money raised, not the uses to which it is put, that determines whether the university is really successful. Academia cannot aspire to such administrative skills as this group requires. Before I come to the third group in this administrative division, I would point out what is already obvious, that administration, unlike teaching or research, does require a hierarchy. And it is the third group that must be accepted as the top of the hierarchy. I refer, of course, to the student council, which must be given total hegemony over the university of the future. For, if The Great Society has taught us nothing else, it has demonstrated conclusively through the administration of the Poverty Program that the success of any venture depends on its being administered by those for whose benefit it exists. This, as I understand it, is also the lesson to be derived from Professor Friedman’s and Professor Stigler’s descriptions of the operations of the market. And so, quite clearly the motto for this branch of the university of the future must be: Student Council Ueber Alles.

The fourth—and last—division of the faculty of the university of the future will be the public affairs division. This will be made up of faculty members who will make public pronouncements on how government—local, state, and federal—is to be run. It must be obvious that so important a task requires that the faculty members in this division devote full-time to these obligations. There are, here too, a few conditions that must be placed on the exercise of their powers. First, the pronouncements issued must purport to be made on behalf of all thinking men. Second, they must not be made until a petition in support of the position is circulated and endorsed by more than 2% but less than 5% of the faculty. Third, the position must never be stated by a person with special knowledge of the subject matter. These conditions, I submit, are inherent in the nature of the task. It is obvious then that this division of the faculty will be made up of those who are neither teachers, nor scholars, nor administrators. In large measure it will consist of young faculty who, threatened with failure of promotion, will make public a position that gives the university the choice of promoting them or violating their academic freedom. The banner under which this group will operate will be a series of
musical notes which to the initiate, will be recognized as that once popular song: “Anything You Can Do I Can Do Better.”

This, then, will be the university of the future, to which those born in this 75th year of our university can hope to be admitted. Whether this dream—this vision—can be brought to fruition will depend in no small measure on the efforts of all those gathered here tonight. If there were any wine on your tables, I should propose a toast: LADIES AND GENTLEMEN, I give you the UNIVERSITY OF 1984! I don’t want it.

The Rieser Society

The Rieser Society, named in memory of Leonard Rieser, a distinguished Chicago tax lawyer who was deeply interested in the Law School and in legal education, continues to make an important contribution to the life of the School. At the Society’s meetings, held four times a year, speakers from outside the Law Faculty address members of that faculty and law students on subjects of interest to lawyers but not of a technical, legal nature. Questions and informal discussion follow each talk.

In the Autumn Quarter, 1965, the Society heard LEONARD BINDER, Chairman of the Department of Political Science, The University of Chicago, who discussed “Regionalism in International Relations.” WILLIAM R. POLK, Chairman of the Committee on Near Eastern Studies, The University of Chicago, spoke on “Problems of Foreign Policy: Intelligence, Analysis and Planning,” at a meeting in early February. The speaker at the Society’s next meeting will be ROBERT M. ADAMS, Director of the Oriental Institute of The University of Chicago.

Laird Bell—1883–1965

To expect that a memorial to a remarkable man will convey a feeling of what he was really like and what the experience of knowing him meant, is to expect the impossible. Nevertheless, it is incumbent upon those who admired him to try.

The customary way to begin is to recite the simple, objective facts of his career, what Christopher Fry called “the bare untruth.” Following his graduation from Harvard College, Laird Bell entered The University of Chicago Law School, from which he received the J.D. degree in 1907. He became associated with a law firm then known as Fisher and Boyd. He remained with that firm, now Bell, Boyd, Lloyd, Haddad and Burns, throughout his professional career. While actively engaged in the practice of law, Mr. Bell served also for a substantial period as Chairman of the Board of the Weyerhaeuser Company and as a director of numerous other corporations.

His contribution to the Bar and to the community was reflected in terms as president of the Chicago Bar Association, president of the Chicago Community Fund, and president of the Chicago Council on Foreign Relations. These are, of course, only examples from a lengthy list. On the national level Mr. Bell was Chairman of the National Navy Price Adjustment Board, and Deputy Director of the Economic Division of the Military Government of Germany, during and shortly after World War II. In 1955 he was appointed Alternate Delegate to the United Nations General Assembly.

In the face of all this, the outstanding aspect of his career was the prodigious investment of time and energy in the field of higher education. He was a member of the Board of Trustees of The University of Chicago from 1928 until 1953, and was an Honorary Trustee until his death. In addition, he served as Chairman of that Board from 1949–1953. He was Chairman of the Board of Trustees of Carleton College, the third generation of his family to hold that position, during the period 1943–1955. And, from 1948 until 1954, overlapping the period of both Chairmanships, he was a member of the Harvard Board of Overseers. The gratitude of each of these institutions was expressed in the award of the degree of Doctor of Laws, honoris causa. It is a typical example of Mr. Bell’s dedication and standing that, immediately upon his retirement from active service on the academic boards mentioned above, he agreed to become Chairman of the Board of the National Merit Scholarship Corporation.

A quiet and persuasive force for excellence within the academic institutions he served, Mr. Bell was also an eloquent and outspoken defender of academic freedom, particularly in those eras in which that position was most difficult and least popular.

It is possible only now to describe Laird Bell as a true
The Twelfth Annual Law School Fund

It is possible to take great pleasure in certain kinds of monotony. To be able to state again that the Annual Law School Fund Campaign exceeded its goal, and that it set new records both for the total amount contributed and for the number of donors, is certainly such a pleasure. The Twelfth Campaign, which concluded last autumn, resulted in a total of $151,092, from 1,659 contributors.

General Chairman of the Campaign was Richard H. Levin, JD'37. William G. Burns, JD'31, was Chairman for Class Organization, Herbert Portes, JD'36, Chairman for Major Alumni Gifts, and Richard F. Babcock, JD'47, Chairman for Non-Alumni Giving (strongly assisted by Arnold I. Shure, JD'28 and Morris I. Leibman, JD'33).

Mr. Burns has agreed to act as General Chairman of the Thirteenth Annual Campaign. Advance gifts to that Campaign have already provided about one-fourth of its goal.

Research, Punishment and Rehabilitation

By Norval Morris

In his Kreger Professor of Law and Criminology
The University of Chicago Law School

The article which follows was excerpted from a longer paper called "Prison in Evolution," which appeared in Federal Probation, Volume 29, Number 4, December, 1965, and is reprinted here with the permission of that journal and of the author. In the original paper, Professor Morris first examined the broadening range of available penal sanctions other than imprisonment and the steadily increasing use of such alternative sanctions. He then discussed changes in the concept of imprisonment itself, including the growing variety of penal institutions and the increasing flexibility of approach within such institutions. Finally, in the section appearing below, he turned his attention to the problems and potential of research in this area.

If the above analysis is broadly true, if it is true that we are developing and increasingly applying penal sanctions differing widely from the traditional prison and that prison itself is in a state of flux moving towards a wide variety of penal institutions, there are many consequences of policy and practice which should be considered. For example, the task of the prison officer is suddenly one of much greater complexity than the maintenance of security and discipline; inevitably he becomes part of a larger correctional process with institutional and noninstitutional facets, and should play a difficult rehabilitative role in a complex therapeutic community. And he must be better trained and better paid for these tasks. Similarly, there are consequences for the organization and administration of correctional services.

If the above analysis be correct, the pressure towards the consolidation and regionalization of correctional services is great. Only with some administrative consolidation is it practicable to achieve sufficient flexibility of moving criminals through the various institutional and postinstitutional phases of their treatment and of timing their progress and release. Each of these points merits protracted consideration, as does the relationship between the above analysis and the deterrent functions of criminal sanctions, both on the criminal and the community at large, and that between the realities of criminal sanctions and community expectations of and attitudes toward punishment. But not all such implications of the thesis I have offered can be discussed here; one is selected for brief mention because of its importance. We must, in a planned and determined way, commit resources to discovering which of our evolving armamentarium of penal sanctions are effective with various categories of offenders. We must start the important research task of evolving treatment and rehabilitation taxonomies of offenders.

Correctional practices must cease to rest on prejudice, surmise and good intentions. We are under a moral obli-
Knowledge of Deterrence.—We have some knowledge of the deterrent effects of certain punishments. It has been repeatedly demonstrated that capital and corporal punishment, for the types of crime to which the conscience of the community is prepared to apply them, do not deter any more effectively than other less brutal sanctions. Most states have acted on this knowledge. There remains, however, a vast ignorance of the differential deterrent effects of our other penal sanctions on the convicted criminal and on the rest of the community. We continue to impose deterrent punishments without bothering to ascertain what effects they have. Such slight evidence as there is indicates that we tend to exaggerate their efficacy.

Knowledge of Reform.—Even less is known about the reformative effects of our penal practices. We preserve this ignorance in two ways. First, we do not look for such knowledge, with the result that the value of reformative efforts can never, with propriety, be attacked; their success is never tested, it is merely assumed. And this has, indeed, been a defect in the presentation in this article of the alternatives to and developments from prison. It has been presented with a bias against the traditional prison and in favor of the sanctions that are supplanting it; and this bias, inevitably for the time being, lacks firm scientific validity. Secondly, such minimal research into the effects of our correctional practices as takes place is pursued by research methods of such naiveté that valid results rarely emerge. There are, of course, exceptions to this second proposition: Mannheim and Wilkins, Prediction Methods in Relation to Borstal Training, is an obvious exception, as is the developing work of the Home Office Research Unit, particularly in its probation project. And in the United States there is the evaluative research of the California Youth and Adult Authorities, particularly into methods of parole supervision, and the probation study of the School of Social Service Administration of the University of Chicago in collaboration with the federal probation office at Chicago. But in relation to the need, there is no overstatement; we maintain our ignorance either by not searching for knowledge or by searching by methods that cannot disturb our prejudices.

Perhaps it is fanciful to suggest a deliberate suppression of truth. Possibly our lack of knowledge is to be attributed to intellectual sloth combined with a scarcity both of people interested in criminological research and of sufficient funds for such work to be pursued. After all, people become interested in this work largely for humanitarian reasons, and this applies as much to the trained social worker as to the lay volunteer. It is not sensible to look to such people for critical, methodologically sophisticated assessments of their own work. But no such excuse can be offered for senior officials in many departments of prisons and corrections who use substantial community funds and considerable resources of personnel in the treatment of criminals, without insisting upon research that evaluates what they are doing. The demands of sound business practice alone should have led such departments to test critically the marginal return, in crimes prevented, from each successive reformative technique applied or extended. It is obviously wise business practice to try to discover the return from your investment. When the investment is in the happiness of law-abiding sections of the community, the prevention of social suffering, and the confidence of all people in their physical safety and the protection of their property, such an effort is overwhelmingly necessary.

Towards a Treatment Nosology.—Criminological re-

Norval Morris
search has been too long concentrated on the search for
that will "drench the wisp, the causes of crime, and much too
little attention has been given to research into treatment
methods. If the evolution of criminal sanctions is to be
adapted to the needs of community protection, the evolu-
tion of different correctional methods is essential, and of
various techniques and practices within those methods in
their application to different categories of offenders. In
short, we need gradually to develop a treatment nosology
of offenders. We must know which of our available
methods work best with a range of classifications of types
of criminals.

When Gil Blas joined the medical profession he was
armed with the alternative remedies of bleeding or
drenching. All authorities agreed that these were medi-
cally sound and effective treatments, and established diag-
nostic techniques, backed by a considerable literature,
facilitated the important choice between them. Critical
evaluation of their true effects faced active opposition
from the conventional wisdom. The situation is not dis-
similar in relation to current penal practice.

Many followup studies have sought to determine the
different rates of success and failure of different treat-
ment measures applied in the same locality, but few seek
to relate the twin variables of the type of treatment and
the type of criminal to the likelihood of successful treat-
ment. If we find that treatment A "succeeded" with
group Y in so many cases, and treatment B "succeeded"
with group Z in so many cases, we have a narrative and
not a functional relationship. There are too many unex-
pressed variables at work for this type of research to be
regarded as a critical comparative assessment of treatment
methods.

There have been a few efforts at more direct evaluative
research. Two pioneer projects were the Cambridge-
Somerville study,10 and the Highfields study.11 Both en-
countered severe methodological difficulties, but both con-
firm the economic and social value of such evaluative
research. Further studies of this nature have been con-
ducted by the United States Office of Naval Research,12
and are being pursued by the Home Office Research Unit
and by the California Youth and Adult Authorities.

The Clinical Trial.—In the long run, effective evalua-
tive research demands clinical trials, and even the method-
ologically sophisticated techniques of association analysis
and predictive attribute analysis13 cannot avoid this; and
clinical trials themselves raise important and difficult
issues of principle.

In medical research the clinical trial is well established
and has proved of great value in the development of
therapeutic methods. Where there is genuine doubt as to
the choice between two or more treatments for a given
condition, efficient experimentation requires that the com-
peting methods be tested on matched groups of patients.
The new treatment will be given to one group of patients
while the traditional treatment will be given to another
group of patients matched so far as possible in all clinical-
ly significant respects with the first group. A careful fol-
lowup of the success of the two treatments gives a
foundation on which further testing will provide secure
knowledge, when statistically significant differences are
found and validated, upon which the new treatment may

10 E. Powers and H. Witmer, An Experiment in the Prevention of
11 H. A. Weeks, Youthful Offenders at Highfields, An Evaluation of
the Short-Term Treatment of Delinquent Boys. University of Michigan
Press, 1958. L. W. McCorkle, A. Elias, and F. L. Bixby, The High-
fields Story, fn. 2 supra.
12 A Group Dynamics Approach to the Treatment of Non-Conform-
ists in the Navy," J. D. Grant and M. Q. Grant, Annals of the Amer-
ican Academy of Political and Social Science, Volume 322 (1958),
pp. 126–135.
13 "New Prediction and Classification Methods in Criminology,"
L. T. Wilkins and P. Macnaughton-Smith, The Journal of Research in
be accepted, rejected, or modified. Frequently the new treatment, even if found to be of therapeutic value, does not entirely supplant the old. A common result is that for certain types of conditions within the group being tested the new treatment is found to be more effective while for others the previously established method for the time being is to be preferred. And thus, gradually, and in relation to defined conditions, treatment methods improve and are more selectively applied.

We should, in like manner, experimentally control some criminal sanctions in the cause of the advancement of knowledge and the rational application and development of correctional methods. We should subject criminals of similar personality structures, home backgrounds, and environmental circumstances to deliberately different methods of treatment; unless we do, we shall have no more than reasonably cogent surmises to guide us; unless we do, we shall continue to lack the minimum knowledge necessary for developing a rational correctional system from our present diversity of sanctions consequent upon the abatement of imprisonment.

Typically, a clinical trial involves defining a group of criminals by age, sex, offence, personality, and home circumstances, the absence of any gross psychological abnormalities, and their rough suitability for two (or more) alternative methods of punishment. Then, as such come forward as convicted offenders, to subject them to these alternative treatments guided only by the demands of a random sampling process (or possibly a more sophisticated stratified matching technique). At the stage of input, extensive information about them and their correctional treatment is obtained; thereafter their relative success rates are assessed and by association analysis information emerges concerning the suitability of various subgroups within the larger group for the two treatments. This result itself requires validation and retesting by further clinical trials, and thus the twin variables of criminal and treatment are gradually related.

Clinical Trials and Human Rights.—The analogy between the doctor’s “treatment” and that court’s or penal administrator’s “treatment” is imperfect. The subject of medical diagnosis is better defined than is the social disease of crime, and in the former the patient consents to treatment while the criminal does not. Problems of abuse of human rights thus obtrude when it is sought to apply the clinical trial to correctional practice. It is justifiable to impose a criminal sanction guided by the necessities of research and not the felt necessities of the case? Emotionally a negative reply is appealing, but it is submitted that given certain safeguards an affirmative answer is wise and does not involve any abuse of human rights. First, we do not have to apply such methods at the stage of judicial sentencing; they can well operate within what the judge determines to be the just and appropriate sentence in every case. Secondly, by applying a principle which may be called, for want of a better phrase, “testing down,” any abuse of human rights can be avoided.

Correctional sanctions already include the possibility and indeed the fact of wide diversities of treatment within the judicially imposed sentence. A defined term in “prison” becomes, as we have already seen, a commitment to possibly extremely different institutions with profoundly different reformative processes and substantially different degrees of social isolation. A sentence of “probation” can lead to a close personal supervision or to the most perfunctory experience of occasional reporting. The range of subtreatments within each correctional treatment is very wide—so wide that ample room for evaluative clinical research into those subtreatments exists without interference with judicial processes. Of course, as information relevant to sentencing emerges from such administratively created clinical trials, it should be fed back into the judicial process and will then create yet new opportunities for further evaluative research.

By “testing down” I mean that the new treatment being studied should not be one that is regarded in the minds of the criminal or the community at large as more severe than the traditional treatment with which it is being compared. To take a group of criminals who would otherwise be put on probation and to select at random some for institutional treatment would risk an abuse of human rights; conversely, to select at random a group who would otherwise be incarcerated and to treat them on probation or in a probation hostel would seem to me not to risk any abuse of human rights. Within this principle it would be possible to develop all that we need for many decades by way of research evaluative of our correctional methods.

There are many methodological problems in evaluative research. One of the most intractable is to define precisely the treatment method that is being studied. Probation, for example, is such a potpourri of methods of social casework and individual control that it would be grossly unwise merely to compare probation with any other treatment. “Probation” is not a defined treatment; it is rather a convenient name for a considerable diversity of treatments. And there are other difficulties. But the method lies within our competence and the case for its application is incontrovertible if it be admitted that it is wise for us to seek to know which of our diversity of treatment and punishment methods best serve our various social purposes.

No new correctional practice should ever be introduced without at the same time plans being made and applied for its critical evaluation. The purposes behind its introduction should be capable of formulation. Insofar as they involve any reformatory aim or any aim of special deterrence (e.g., the detention center), those aims can be tested. If a new reformatory method is applied without evaluating testing, it will very likely appear to be successful since
there will operate a strong tendency to apply it to those who in any event are the most hopeful offenders in terms of likelihood of reform. If we are not perennially to delude ourselves in this way, every penal experiment requires a concomitant evaluative research, with the new method being applied randomly within a defined group for whom it is thought to be a suitable sanction and who otherwise would have been dealt with more severely.

What is true of any new treatment method applies also to all existing treatment methods, and it is only the inertia of correctional practice that conceals this fact. It is foolish to risk a guess as to the cost of a research programme, independent of a close study of the realities of practice in the area to be studied; but, taking the risk, it is confidently submitted that if 2 percent of the annual budget devoted to applying our criminal sanctions, not including capital costs, were to be made available for research evaluative of those same criminal sanctions, it would be possible to attune those methods rapidly to social needs and within a very few years to diminish suffering from crime, to save a great deal of the present waste of human and financial resources in our untested correctional methods, and to produce a return, even in terms of finances, greatly in excess of the investment. Put more concretely: It is submitted, for example, that at present half the time of all probation officers is wasted by their services being applied to those who do not need them (and who should be bound over, or on suspended sentence, or supervised by other than skilled caseworkers) and those who will not respond to their efforts (and who need more forceful casework supervision than the average probation officer can provide); and that it would be quite possible in a few years of evaluative research greatly to reduce that wastage, and at the same time better to protect the community.

Research and the Evolution of Prison.—If the abatement of imprisonment is to lead to the rational selection of the methods that should collectively take over most of its functions in the evolution of criminal sanctions, an evaluative research programme must be supported; correctional administrators must come to see the research scholar as their ally rather than as an irresponsible critic, untroubled by the care and duties of office; and some research effort must be devoted to this type of research, of immediate practical value alike to those who have to create new correctional methods and to those who must make the difficult choices in the application of such methods as are already available. Criminological research must be directed to acquiring this type of information which must be regarded as of primary importance and not as a distraction from the frenzied search for causes. Ultimately, it is perhaps true that completely effective treatment presupposes adequate diagnosis; but the present treatment problem is pressing and important, the need for knowledge is great, and as in medicine, we can with some success treat many conditions whose aetiology remains obscure.

Further, if research were directed to evaluating our correctional methods it would very likely, as has happened in medical research, throw up, as a byproduct, aetiological information of value to our more adequate understanding of crime and criminals.

Given our present rate of social change and the rapid developments in penal practice the case for empirical evaluative research of the type I have suggested is surely strong. Its acceptance may well be a precondition to wise planning for community protection.

A New Commissioner

The Governor of Illinois has appointed Professor Sofia Mentschikoff (Mrs. Karl Llewellyn) a member of the National Conference of Commissioners on Uniform State Laws. The Conference, the purpose of which is clear from its title, was founded in 1892. It now consists of about 150 members, each of whom is appointed as a representative of his state, by the governor of his state. Professor Allison Dunham, of the University of Chicago Law School, is Executive Director of the Conference.

The appointment of Miss Mentschikoff brings to six the number of Law Faculty members who have served as Commissioners. Her predecessors were Ernst Freund, Arthur H. Kent, William Eagleston, George G. Bozert, and her late husband, Karl N. Llewellyn.
Consumer Credit and the Poor

In the fourteen years since the School's Conference and Lecture Program was launched, law students have frequently been consulted on program and speakers. On at least one occasion, the 1965 Conference on Problems of Urban Renewal, student papers constituted the bulk of the program.

The Conference on Consumer Credit and the Poor, held on November 12 and 13, 1965, was nevertheless unprecedented in that it was conceived, planned and carried out by members of the student body. It is important to note that this was not merely a student-run conference, but a successful student-run conference. The Conference Program was as follows. Authors of all workshop papers are law students.

Friday Morning, November 12

BARBARA J. HILLMAN, Student Planning Committee, Presiding

Welcoming Remarks

WALTER J. BLUM, Professor of Law and Chairman of the Law School Conference Committee

Consumer Credit: A Description of Today's Practices

"The Credit Market"

ROBERT W. JOHNSON, Professor of Industrial Relations, Purdue University; Reporter, National Conference of Commissioners on Uniform State Laws

"Existing Legislation and Case Law"

ROBERT L. JORDAN, Professor of Law, University of California at Los Angeles; Member, National Conference of Commissioners on Uniform State Laws

"Available Institutional Devices for the Debtor"

PHILIP J. MURPHY, Field Director, National Legal Aid and Defenders Association; Executive Committee, Governor's Credit Laws Study Committee, State of Illinois

Comment by:

GARY BELLOWS, Administrative Director, United Planning Organization; Washington

BARBARA CURRAN, Research Attorney, American Bar Foundation; Advisory Committee, National Conference of Commissioners on Uniform State Laws

DOROTHY LASCHE, Credit Legislation Committee, Mayor's Committee on New Residents, City of Chicago; Governor's Credit Laws Study Committee, State of Illinois

Among the Speakers . . .

Professor Jordan of UCLA

Philip Murphy, of the National Legal Aid and Defender Association.
Gary Bellow, of the United Planning Organization

Barbara Curran, of the American Bar Foundation

Bruce Terris, President's Committee on Law Enforcement; Professor Robert W. Johnson, of Purdue; Dorothy Lascoe, Governor's Credit Laws Study Committee (Illinois); and Barbara Hillman, of the Student Planning Committee.

The Student Planning Committee, right to left, Lawrence H. Schwartz, A.B., University of Michigan; John C. Cratsley, A.B., Swarthmore College; and Barbara J. Hillman, A.B., The University of Chicago; with Mrs. Jeanne Yeidel, Secretary to the Faculty Conference Committee.

In the audience . . .

In the Workshops . . .
Friday Afternoon, November 12

Workshop 1

THE SUBSTANTIVE CREDIT ARRANGEMENT

Working Paper:

“Retail Installment Sales Contracts Under the Uniform Commercial Code,” ROGER P. LEVIN

Workshop 2

CREDITOR REMEDIES: THE APPROPRIATE DEBTOR DEFENSES

Working Papers:

“Creditors’ Remedies After Default; Repossession and Resale,” PETER I. OSTROFF

“Confession of Judgment Clauses and the Poor,” WILLIAM A. LONDON

“The Wage Assignment and Garnishment as Collection Devices for Small Loans,” ROBERT C. FUNK

Friday Evening, November 12

Moot Court Presentation

Ex parte Jones et al

A class action by signers of a retail installment sales contract

Counsel:

RUSSEL A. BANTHAM and ROBERT A. SKIRNICK

Court:

BERNARD D. MELTZER, Professor of Law, The University of Chicago Law School

PHILIP KNOX, Law Department, Sears, Roebuck and Company

LANDON L. CHAPMAN, of the Illinois Bar

Ex parte Husted

Action to reopen and defeat a judgment brought on a retail installment sales contract

Counsel:

RICHARD F. FRIEDMAN and JOHN C. WYMAN

Court:

EDMUND W. KITCH, Assistant Professor of Law, The University of Chicago Law School

LLOYD R. MOWREY, Household Finance Corporation, Chicago

MARVIN M. VICTOR, of the Illinois Bar

Saturday Morning, November 13

Workshop 1

THE SUBSTANTIVE CREDIT ARRANGEMENT

A second presentation of the workshop offered on Friday afternoon

Workshop 3

AFFIRMATIVE ACTIONS BY THE DEBTOR

Working Papers:

“Wage Earner Plans and the Insolvent Debtor,” ROBERT M. LEVIN

“Bankruptcy; The Schlockmeister’s Jubilee,” RALPH C. BRENDENS and LAWRENCE H. SCHWARTZ

“Private Actions to Enjoin Unconscionable Credit Practices; The Theory of Commercial Nuisance,” PETER H. DARROW

“Consumer Credit Statutes; A Basis for Civil Remedies,” PHILIP W. MOORE

Saturday Afternoon, November 13

LAWRENCE H. SCHWARTZ,
Student Planning Committee, Presiding

THE EFFECTIVENESS OF CASE LAW DEVELOPMENT: A CRITIQUE

“The Role of Legislation”

The Honorable ABNER J. MIKVA, Member of the Illinois House of Representatives; Executive Committee, Governor’s Credit Laws Study Committee, State of Illinois
"The Economics of Credit"
David Fand, Professor of Economics, Cowles Foundation for Research in Economics, Yale University; Advisory Committee, National Conference of Commissioners on Uniform State Laws

"Consumer Education: A Viable Alternative"
David A. Swankin, Executive Secretary to the Consumer Advisory Council, President's Committee on Consumer Interests

Comment by:
William Davenport, Governor's Credit Laws Study Committee, State of Illinois
Julian H. Levy, Professor of Urban Studies, The University of Chicago
Soia Mentschikoff, Professor of Law, The University of Chicago Law School

Saturday Evening, November 13
John C. Cratsley, Student Planning Committee, Presiding

Closing Address
Bruce Terris, formerly of the General Counsel's Office, Office of Economic Opportunity

The Student Planning Committee was made up of John C. Cratsley, Barbara J. Hillman, and Lawrence H. Schwartz. The members of the Student Advisory Committee were Ralph C. Brendes, President, Law Student Legal Aid Association; Robert C. Cordek; David C. Long, Chairman, Law Students Civil Rights Research Council; and George A. Ranney, Jr., Editor-in-Chief, The University of Chicago Law Review.

Brainerd Currie—1912-1965

By Philip B. Kurland
Professor of Law
The University of Chicago Law School

Mr. Currie was Professor of Law at the University of Chicago from 1953 until 1961. Professor Kurland's tribute appeared in the Duke Law Journal, Winter, 1966, and is reprinted here with the permission of that publication and of the author.

A Nachruf, to use Mr. Justice Frankfurter's expression, is ordinarily an exercise in futility, except when one is observing the biblical mandate to praise famous men. For other subjects, it is only when it can no longer make any difference to the only person to whom it could make a difference that we permit ourselves such public expressions of affection and admiration.

Like most great law teachers, Brainerd Currie does not qualify as a famous man. His name will be absent from history books, however frequently it will be found in law books. For, in the law, except for the truly seminal thinkers of whom there have been very few indeed, it has been the men of action rather than the men of thought who have laid claim to history's notice. Oliver Wendell Holmes, Jr., understood this when he abandoned the chair for the bench. Moreover, the novel ideas of one generation, if they are not wholly rejected, tend to become the commonplace ones of the next. For all the techniques of public relations that have come to be a commonplace of university life, a professor of law remains essentially a cloistered figure, a private rather than a public person. However much Brainerd Currie has diverted the stream of the law—and the importance of his work in conflict of laws and civil and admiralty procedure is not to be gainsaid—his essential role was that of the teacher.

As he understood it, the teaching process does not call for the creation of disciples. The success of a law teacher is better measured by his contributions toward the emergence of independent minds, an independence that results as often in the rejection of the teacher's postulates as in their acceptance. At the very least, it requires an instillation of skepticism, of doubt, of testing the very fundamentals that the teacher may long since have accepted for himself. The process is one of example rather than preaching. And this is the role that Brainerd Currie played so well, the role that commended him to his students and to his colleagues who were also his students.

Brainerd Currie was eminently qualified for the part, in large measure because he had a rare combination of attributes: he was both tough-minded and soft-spoken. There was no malice in the man and because he had an instinct for fairness he seldom if ever resorted to sarcasm—the classroom weapon of so many of us. His values were revealed in his review of Mrs. Rosenfield's book.
about her father, Morris R. Cohen: "It is easy to believe that Cohen was a great teacher—that he sought not to indoctrinate, but to encourage independent thinking; that he made a deep impression on his students, and was remembered by them chiefly for his kindness... It is more difficult to believe in the cliché that such success is achieved in good part by what passes for withering sarcasm in the classroom."

This is not to suggest that Brainerd Currie did not frequently display a sharp and pungent wit. His prime targets, however, were pomposity and pedantry. His stay at the Center for Behavioral Science, for example, called forth some of his famous Gilbertian rhymes that heretofore have not been published. This effort need no longer remain hidden; time has dulled such personal sting as it might have contained. Like much of his nontechnical writing, it is more revealing of his wit than anything I could say about it and so I have appended it here.

There is a hint in this clever parody of his very real romance with the English language. Many were the verbal battles and small monetary wagers over the proper use of language and grammar. Fowler was, I think, his favorite book. The abuse of the word "shambles" by the most literate authors provided a frequent source of amusement. One of his unfulfilled ambitions was to catch an error of grammar in the New Yorker's London column, so that he might tell the editors that they had been caught with their Mollie Panter-Downes.

Language was fun; it was also a serious matter. I would venture that no author of an article in Law and Contemporary Problems ever wrote so well as he did under Brainerd Currie's editing. Certainly the first volume of The Supreme Court Review, because of his interest, is the best edited volume in the series. Nor were his changes limited to that of a copy editor. Substance as well as form was the object of vigorous challenge. And many were the days when we each ended upon the side opposite that on which we had started.

If he could dish out helpful criticism, he was also able to take it. And the relative immaturity of the source did not blind him to the validity of the points made. I refer you to this not untypical comment from a letter referring to his most junior colleagues: "... over lunch one day I was telling him about a theory I had advanced in one of my articles, which he hadn't read; on the basis of sheer analysis—not superior knowledge of the cases involved—he punctured my reasoning and turned out to be right. The consequence is that I will have to rewrite a whole section of the article..." His confessions of error were not limited to private viewings. Thus, in the University of Chicago Law Review in 1960, referring to an earlier article of his own published in the same journal, he wrote: "The article was not without merit; it was a conscientious analysis of the problems and of various proposed solutions. Indeed, there is only one reason for regretting the article or offering apologies for it: The conclusion reached was wrong—not just plain wrong, but fundamentally and impossibly wrong."

Obviously the invitation from the editors to participate in this symposium has called forth from me only maudlin meanderings by way of reminiscence rather than appraisal. But more fundamental appraisal is beyond me. Evaluation of his work will be made by those more competent to praise and appraise. His efforts in conflict of laws are already the subject of a doctoral dissertation at the University of Cologne. Nor can I offer an adequate appraisal of the man. We shared many things that are essential to a prized professional collaboration, and I profited enormously. We joined forces in writing briefs for the Supreme Court; the successful ones were largely his doing. We even tried to write an article together, but were compelled to publish separate pieces on the same subject because neither of us was willing to impose unacceptable ideas on the other. We shared, too, common friends and uncommon enemies, and common interests in and out of the law. But there was something deep within him that I never got to know. For his was essentially a
lonely spirit. I am reminded that in his book review, to which I have already alluded, he selected for comment a sentence from a Holmes letter to Cohen: "The other dissenters thought I went too far and I flocked alone." The emphasis was Currie's and he referred to it as "a magnificent book title." If he had ever been moved to write autobiography, as he was moved from time to time to indulge other engaging if extraordinary pastimes, like making a violin or writing a murder mystery, I am sure that it would have been titled: "I Flocked Alone." It would have been an appropriate title.

THE BEHAVIORAL SCIENTIST

I am the very model of a modern intellectual;
I know the ruddy answers thought I'm rather ineffectual.
I'm more sophisticated, son, than people clad in denim are:
When I have nothing much to say, I say it in a seminar.
I have a little paper on some matters psychological;
The highest court knows less than I of subjects pedagogical;
I know which books are best to read,
which symphonics are better, Ah,
I'm very well informed upon aesthetics and et cetera.
I know a thing or two about the science behavioral—
To which to foster, fellows shout, you sacrificed and gave your all.
I know about relations, both platonical and sexual—
In short, I am the model of a modern intellectual.

I'll tackle any snafu with a model mathematical;
Tough legal problems vanish when I use my method graphical;
My judgment is impeccable on matters architectural;
I'm very adamant about most things that are conjectural;
At regulating conflicts I am pretty near infallible;
On values my opinions are reportedly invaluable;
Quite modestly, I see myself an elegantly mentored man—
The jealous critics call me a complacently self-Centered man.
I ken the social sciences and eke the poor humanities;
My imprimatur sanctifies the veriest inanities;
I understand philosophy, pragmatic and conceptual—
You see, I am the model of a modern intellectual.

I flatter me that I know free-dom from responsibility—
My fellowship maintains me in respectable gentility;
My coffee-steeped opinions have remarkable felicity;
My knowledge is distinguished for its very catholicity;
I'm right on top of inside dope on Little Rock and satellites,
On horseshoe pitching, Dead Sea scrolls, and even western cattle rights,
On how to tune a motor and on how to make a Chevy sing—
I think I ought to organize a seminar on everything!

My friends are IBM machines, my methods are statistical;
My just reflections on myself are somewhat narcissistical;
And though my lucubrations may be mostly ineffectual,
I am the very model of a modern intellectual.
—Not-G.*

* All poetry may be divided into two categories: (1) That written by W. S. Gilbert (G), and (2) All other (Not-G).

Truly National

The Law School is frequently, and accurately, described as a national institution in the sense that its graduates are found in substantial numbers in almost all sections of the country.

In view of this, the School has launched an ambitious program of alumni gatherings throughout the United States. The program began in mid-November, when Professor Kenneth Dam, JD'57, addressed a luncheon meeting of alumni in Washington, D.C. Abe Krash, JD'49, President, and George Minon, JD'56, Vice-President, observed. In December Professor Geoffrey C. Hazard, Jr., and Assistant Dean James M. Ratcliffe, JD'50, visited Seattle, and spoke at a luncheon meeting arranged by Michael K. Copass, JD'50. At that meeting Gene Brandzel, JD'62, was elected Chairman and Bertram L. Metzger, JD'61, Secretary, of the Seattle-Tacoma Alumni. The following day both Faculty members spoke at a luncheon for the Portland-Salem Alumni. The meeting was arranged by the Honorable Sidney I. Lezak, JD'49; Leon Gabinet, JD'54, was elected Alumni Chairman. In the evening, Professor Hazard was the featured speaker at a banquet celebrating the merger of the Northwestern College of Law with Lewis and Clark College. The next stop on the itinerary was San Francisco. Here a Law Alumni organization already existed, headed by the trio of Dudley A. Zinke, JD'42, Marvin T. Tepperman, JD'49, and Jack E. Frankel, JD'50. Mr. Tepperman chaired the luncheon meeting. Among the special guests were the Honorable Roger Traynor, Chief Justice of the Supreme Court of California, the Honorable Stanley Mosk, '35, Justice of the Supreme Court of California, and Professor Max Rheinstein, who, as was noted in the last issue of the Record, is spending the current academic year at the Center for Advanced Studies in the Behavioral Sciences at Palo Alto. The Southern California Alumni Association sponsored a dinner on the following evening, under the leadership of the Chairman, the Honorable Benjamin Landis, '30, and the President, Irving I. Axelrad, JD'39, who presided.

During the last week in January, as this is being written, meetings have been arranged for Dean Ratcliffe in Minneapolis-St. Paul by Donald B. Smith, JD'32, and William H. Abbott, JD'28; in Milwaukee by Edwin P. Wiley, JD'52, and Charles C. Erasmus, JD'29; for Professor Norval Morris in Cleveland by Fred H. Mandel, JD'29, and Richard N. Ogil, JD'61; and in Detroit for Professor Jo Desha Lucas by Charles F. Russ, Jr., JD'51, and Miles Jaffe, JD'50. Sheldon Tefft, James Parker Hall Professor of Law, will be the featured speaker at the annual meeting of the Law Alumni Association of Greater New York on February 4.

In mid-February, Dean Ratcliffe will meet with Law School alumni in Houston, Dallas and Phoenix. In mid-
March a Faculty speaker will visit Wichita, Denver, Salt Lake City and San Francisco. Finally, it is expected that the Washington, D.C. alumni will meet in late May, during the annual meeting of the American Law Institute, and that a luncheon will be held in New York on the following day.

At Alumni Association Meetings
Campus to Quadrangle

College students considering entering upon the study of law were guests at a luncheon and open house sponsored by the Law Alumni Association and the Law School. The event took place on December 21, 1965, at the Law School.

Two hundred and one students from eighty-five colleges and universities accepted the invitation to attend. In addition, about twenty-five alumni, twenty-five students currently enrolled in the Law School, and twenty-one members of the Faculty were present.

Since the principal purpose of the gathering was to give college students an opportunity to talk personally with a variety of people at various stages of their careers in the law, the program was brief and informal. It began with lunch in the Green Law Lounge. Immediately following, Dean Phil C. Neal spoke on the nature of legal education and of the work of a lawyer. After Dean Neal's talk, current law students and recent graduates of the School conducted tours of the Law Buildings for small groups of guests. Many of the visitors took the opportunity to talk informally with members of the Faculty in their offices.

The gathering was considered so successful that a similar affair is being planned for the Christmas holidays next December. It is likely also that there will be a comparable meeting in New York.

At the Open House for College Students

After lunch, a talk by Dean Neal

Tours of...

the School...

with law students...
The Law and Economics Fellows

The Law School's long-standing concern with the relationships between law and economics has manifested itself in several ways. For nearly a generation, a Professor of Economics has been a full-time member of the Law Faculty. In addition, the School has sponsored the publication of The Journal of Law and Economics, edited initially by Professor Aaron Director and currently by Professor Ronald H. Coase. The third important area in which this interest is expressed is the Law and Economics Program, which involves bringing to the Law School scholars interested in problems involving both fields, to work on specific topics of their choice.

During the current academic year, four Law and Economics Fellows are in residence. Professor James Ferguson is a member of the faculty of the Department of Economics at the University of Virginia. He is working on tie-in contracts, in which buyers or distributors of a product obtain it only on the condition that they also take one or more other products from the seller. One leading example to be studied is the combination sale of advertising space in morning and evening newspapers.

Dr. J. Randolph Norsworthy recently received the Ph.D. in Economics from the University of Virginia. He is investigating the use of the concept of cross-elasticity of demand in the Dupont cellophane anti-trust case. Dr. Norsworthy is seeking to determine whether estimates of the cross-elasticity of demand are consistent with the Court's findings, or the plaintiff's contentions of monopoly power, or both.

Robert M. Schuchman, after graduation from the Yale Law School, practiced law in New York City. He is involved in two projects at this Law School. The first is concerned with the regulation of milk marketing in the United States; the second involves the estimating of the value to the airlines of licenses to fly particular routes.

Dr. E. G. West came to the Law School from the
University of Newcastle upon Tyne, where he was Lecturer in Economics. His book, *Education and the State*, was published last year by the Institute of Economic Affairs, London. He is studying the implementation of statutory obligations to educate in England and the United States, with particular reference to the social and economic problems associated with judicial and administrative areas of discretion in interpreting those statutes.

**Notable Coming Events**

As the last issue of the *Record* noted, Norval Morris has been appointed Julius Kreeger Professor of Law and Criminology. Early in the Spring Quarter, Professor Morris will deliver the Inaugural Lecture for the Kreeger Professorship.

The Annual Meeting of the Law School Visiting Committee, of which the Honorable Walter V. Schaefer, JD'28, Justice of the Illinois Supreme Court, is Chairman, will be held at the Law School on April 8. The Visiting Committee, a group of about fifty distinguished judges and practitioners, constitutes a major source of assistance and advice in the continuing development of the School and its program.

On April 15, the School will sponsor a Conference on the Arts and the Law. The Conference will be concerned with the commercial market in the visual arts, and with the influence of the law on that market and on the arts, with respect to productivity, both as to quantity and quality, and with respect to the reconciliation of interests as among artists, dealers and purchasers.

The Ernst Freund Lecture is the most venerable of the School's named lectureships. The Tenth Ernst Freund Lecture will be delivered 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, on April 26.

Last year, through the joint action of the School and the Law Alumni Association, an Annual Alumni Day program was begun, in conjunction with the Annual Dinner of the Association. The Alumni Day and Dinner will take place this year on May 11.

**What Ever Happened to that *Alumni Directory*?**

About a year ago, alumni of the School received an announcement that a new *Alumni Directory* was planned, and were asked to provide information needed for accurate listings. When the processing of information for the *Directory* was still in its very early stages it was decided that the preparation of the *Directory* presented a remarkable opportunity for a complete revision of the School's alumni records. As then organized, four separate sets of records were kept in the Law School; namely, a basic file arranged on a geographic basis, an alphabetical cross-file, a cross-file by class years, and a separate group of cards on which contributions were recorded. In addition, a complete set of addressograph plates was maintained by the University Alumni Office. It was true also that these records had never really been planned and organized; in the two decades since World War II they had simply grown.

The School therefore launched an ambitious program with three general objectives. First, all information pertaining to an alumnus after his graduation is being consolidated on a single master card. That information will then be transferred to magnetic tapes in the University Comptroller's computer. Second, all information has been rigorously checked before being entered on the master cards. When this process is completed, in about mid-May, the School's records should be at a level of reliability and completeness unique in its history. The final objective is, of course, to publish an *Alumni Directory*, which should be available in early summer.

A further benefit will flow from this recasting of records. After the forthcoming *Directory* has been published, it should be possible to publish a supplement listing subsequent changes at least biennially and perhaps annually, and to do so quickly and at modest cost. The usefulness of the records generally will be enormously improved. For example, the computer can print out a list of all alumni in Los Angeles, or all members of the Class of 1937, or all alumni who spend a substantial percentage of their time on labor law work, in a matter of minutes. The School and its graduates should both be better served.
The Jury Project

One of the principal projects undertaken as a part of the School's work in Law and the Behavioral Sciences has been a sweeping inquiry into the American jury system. The first volume describing that study and its results will appear in early May, 1966. In the hope that it may serve to suggest the scope and content of the study, the table of contents of that volume is printed here.

THE AMERICAN JURY

By Harry Kalven, Jr., Professor of Law, and Hans Zeisel, Professor of Law and Sociology, The University of Chicago Law School. With the collaboration of Philip Ennis and Thomas F. Callahan. Little, Brown and Company, Boston, 1966. $15.00

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APPENDIX B—Deliberation Process: Jury Requests, Deliberation Time, and Hung Juries
APPENDIX C—Notes on Comparative Empirical Studies: England, Denmark and Austria
APPENDIX D—Prior Studies of Judge-Jury Disagreement
APPENDIX E—Questionnaires for Criminal Jury Cases

The reader may recall a prior publication emanating from the Jury Project, Delay in the Court, by Zeisel, Kalven and Buchholz (Little, Brown and Company, Boston, 1959). It is anticipated that by May, 1967, a second volume on the jury study proper will have been published and a third will be in manuscript.
The Law School Record
A Publication of the
University of Chicago Law School
Chicago • Illinois 60637
Local photos by Stephen Lewellyn
and Warren P. Miller